

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 XI**

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

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Counsel for Appellants

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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
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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

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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
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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
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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

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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
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33	12/09/13 Hrg.	Transcript: Trial Day 1 - Volume I – Corrected/ Repaginated Transcript (File Date - 02/27/15) Transcript pages 1-242	IV	AA0736-0979
		Transcript: Trial Day 1 - Volume I – Corrected/ Repaginated Transcript (File Date - 02/27/15) Transcript pages 243-291	V	AA0980-1028
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35	12/10/13 Hrg.	Transcript: Trial Day 2 - Volume II (File Date - 02/24/14) Transcript pages 292-492	V	AA1030-1230
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	12/09/13	Trial Exhibit 2 [Amended Lien Notice]		AA1735-1740
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	12/09/13	Trial Exhibit 15 [December 14, 2005 Nathan Ogle Letter]		AA1754-1755
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	12/09/13	Trial Exhibit 20 [May 31, 2006 Side Agreement Letter Proposal for Adjacent Church Parking Studies]		AA1762-1765

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	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
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42	01/02/14	Steppan's Supplemental Trial Brief	VIII	AA1893-1898
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62	05/27/15	Order Denying Defendants' Motion for Court to Alter or Amend Its Judgment and Related Prior Orders	X	AA2443-2446
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¹ These documents are not in chronological order because they were added to the Appendix shortly before filing.

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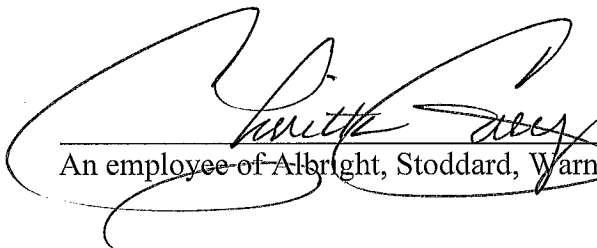
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		Transcript: Trial Day 2 - Volume II (File Date - 02/24/14) Transcript pages 493-586	VI	AA1231-1324
38	12/11/13 Hrg.	Transcript: Trial Day 3 - Volume III (File Date - 02/24/14) Transcript pages 587-735	VI	AA1333-1481
		Transcript: Trial Day 3 - Volume 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 XI**, 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:

Michael D. Hoy, Esq.
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50 West Liberty Street, Suite 840
Reno, Nevada 89501
(775) 786-8000
mhoy@nevadalaw.com
Attorney for Respondent Mark Steppan



An employee of Albright, Stoddard, Warnick & Albright

1 **CODE: 2545**

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

7 G. MARK ALBRIGHT, ESQ.

8 Nevada Bar No. 001394

9 D. CHRIS ALBRIGHT, ESQ.

10 Nevada Bar No. 004904

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

12 801 South Rancho Drive, Suite D-4

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14 Tel: (702) 384-7111

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16 gma@albrightstoddard.com

17 dca@albrightstoddard.com

18 *Attorneys for Applicants/Defendants*

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

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

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

22 vs.

23 MARK B. STEPPAN, Respondent.

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

DEPT NO. 10

24 MARK B. STEPPAN,

25 Plaintiff,

26 vs.

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

Defendants.

AND RELATED CLAIMS.

**NOTICE OF ENTRY OF
VARIOUS ORDERS**

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

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

4 DATED this 14th day of July, 2015.

5
6 By 

G. MARK ALBRIGHT, ESQ.

Nevada Bar No. 001394

D. CHRIS ALBRIGHT, ESQ.

Nevada Bar No. 004904

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& ALBRIGHT**

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Tel: (775) 329-0678

Attorneys for Applicants/Defendants

16 **AFFIRMATION**

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

19 DATED this 14th day of July, 2015.

20
21 By 

G. MARK ALBRIGHT, ESQ., #001394

D. CHRIS ALBRIGHT, ESQ., #004904

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Attorneys for Defendants

CERTIFICATE OF SERVICE

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

Michael D. Hoy, Esq.
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50 West Liberty Street, Suite 840
Reno, Nevada 89501
(775) 786-8000
mhoy@nevadalaw.com
Attorney for Plaintiff Mark Steppan

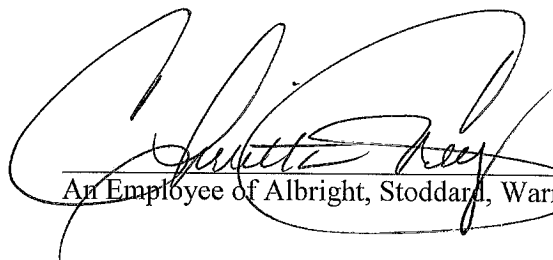
☐ Certified Mail
☒ Electronic Filing/Service
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☐ Hand Delivery
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David R. Grundy, Esq.
Todd R. Alexander, Esq.,
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6005 Plumas Street, Third Floor
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*Attorneys for Third-Party Defendant
Hale Lane*

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☐ Email
☐ Facsimile
☐ Hand Delivery
☒ Regular Mail


An Employee of Albright, Stoddard, Warnick & Albright

INDEX OF EXHIBITS

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

EXHIBIT 1

EXHIBIT 1

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

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

Plaintiffs,

vs.

MARK B. STEPPAN,

Defendant.

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

Dept. No: 10

AND RELATED MATTERS.

ORDER GRANTING MOTION FOR PARTIAL SUMMARY JUDGMENT

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

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

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

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

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

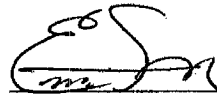
27 In this case, Defendant moves for partial summary judgment stating that where, as here, the
28 Lien Claimant's compensation is fixed by an express contract, the lien secures the amount specified

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

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

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

8
9 DATED this 8 day of May 2013.

10
11 

12 ELLIOTT A. SATTLER
13 District Judge
14
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CERTIFICATE OF MAILING

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

GREGORY WILSON, ESQ. for JOHN SCHLEINING

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

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

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

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

MICHAEL HOY, ESQ. for MARK STEPPAN

And mailed, postage paid to the following:

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

DATED this 9 day of May, 2013.


SHEILA MANSFIELD
Judicial Assistant

EXHIBIT 2

EXHIBIT 2

1 CODE: 3025

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

5 JOHN ILIESCU, ET AL.,

6 Plaintiff,

7 vs.

Case No. CV07-00341
Dept. No. 10

8 MARK STEPPAN,

9 Defendants.
10 _____/

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

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

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

24
25 ^[1] The pleadings note that there are remaining claims and/or parties that are the subject of
26 this litigation. Specifically, Calvin Eugene Baty, Jr., Consolidated Pacific Development, and
DeCal Oregon, Inc. (hereinafter, "the third parties"). See generally, the Motion at pages 2
through 3 and the Opposition at page 3. It would appear that the status of the third parties is
unknown by the Plaintiff and the Defendants. It is unknown if the claims will be contested;

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

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

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

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

20 Dated this 23 day of August, 2013.

21
22 
23 DISTRICT JUDGE

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

1
2
3 **CERTIFICATE OF MAILING**

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

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

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

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

18
19 **CERTIFICATE OF ELECTRONIC SERVICE**

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

24 GREGORY WILSON, ESQ.

25 DAVID GRUNDY, ESQ.

26 MICHAEL HOY, ESQ.

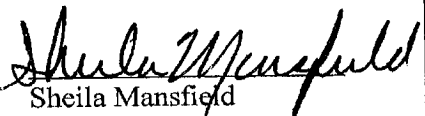
27
28

Sheila Mansfield

EXHIBIT 3

EXHIBIT 3

1 CODE: 3025

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

5 MARK B. STEPPAN,

6 Plaintiff,

7 vs.

Case No. CV07-00341
Dept. No. 10

8 JOHN ILIESCU, JR; ET AL.,

9 Defendants.
10 _____ /

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

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

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

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

8 The issues presented in the pleadings are those of statutory interpretation. The Motion
9 seeks to apply a statute specific to the area of law in question: the foreclosure of mechanic's
10 liens. The Opposition relies on the more general (and more restrictive) statute that addresses
11 costs of litigation.
12

13 When two statutory provisions conflict, [the Nevada Supreme Court] employs the rules
14 of statutory construction, Williams v. Clark County District Attorney, 118 Nev. 473, 484,
15 50 P.2d 536, 543 (2002), and attempts to harmonize conflicting provisions so that the act
16 as a whole is given effect, In re Eric L., 123 Nev. 26, 31, 153 P.3d 32, 35 (2007).
17 Statutes are interpreted so that each part has meaning. Leven v. Frey, 123 Nev. 399, 405,
18 168 P.3d 712, 716 (2007). Therefore, when a scheme contains a general prohibition
19 contradicted by a specific permission, "the specific provision is construed as an exception
20 to the general one." RadLAX Gatgeway Hotel, L.L.C. v. Amalgamated Bank, 566 U.S.
21 ___, ___, 132 S.Ct. 2065, 2071, 182 L.Ed.2d. 967 (2012).
22

23 State v. Eighth Judicial District Court (Logan D.), 129 Nev. Adv. Op. 52, 306 P.3d 369, 380-81
24 (2013).
25

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

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

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

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

22 Id.

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

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

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

18 DATED this 11 day of December, 2014.

19
20 
21 DISTRICT JUDGE

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

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CERTIFICATE OF MAILING

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

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

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

CERTIFICATE OF ELECTRONIC SERVICE

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

MICHAEL D. HOY, ESQ.

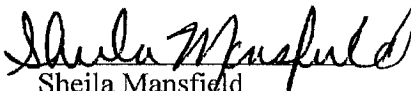

Sheila Mansfield

EXHIBIT 4

EXHIBIT 4

1 CODE: 3025

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

5 MARK B. STEPPAN,

6 Plaintiff,

7 vs.

Case No. CV07-00341
Dept. No. 10

8 JOHN ILIESCU, JR; ET AL.,

9 Defendants.
10 _____ /

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

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

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

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

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

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

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

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

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

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

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

25
26

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

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

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

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

17 DATED this 12 day of December, 2014.

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22 DISTRICT JUDGE

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CERTIFICATE OF MAILING

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

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

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

CERTIFICATE OF ELECTRONIC SERVICE

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

MICHAEL D. HOY, ESQ.


Sheila Mansfield

CASE NO. CV07-00341 MARK STEPPAN VS. JOHN ILIESCU, ETAL

DATE, JUDGE

OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

11/13/15

HEARING ON DEFENDANTS' MOTION FOR CLARIFICATION

HONORABLE

10:35 a.m. – Court convened.

ELLIOTT A.

Michael Hoy, Esq., was present on behalf of the Plaintiff.

SATTLER

G. Mark Albright, Esq., was present on behalf of the Defendants.

DEPT. NO.10

COURT reviewed the recent procedural history of the case.

M. White

Counsel Albright presented argument in support of the Defendants' Motion

(Clerk)

Seeking Clarification of Finality of Court's Recent Judgment for Purposes of

D. Gustin

Maintaining Appeal; and Motion for Expedited Decision on Shortened Time

(Reporter)

Basis, filed October 29, 2015.

Counsel Hoy responded; and he further noted that he does not have an objection to preparing a better judgment, however he has concerns regarding this Court's jurisdiction.

COURT ORDERED: Respective counsel shall draft an amended judgment that comports with their mutual agreement and submit it to the Court by November 19, 2015.

10:55 a.m. – Court adjourned.

3105

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

MARK B. STEPPAN,

Plaintiff,

v.

JOHN ILIESCU, JR. and SONNIA ILIESCU, as
trustees of the John Iliescu, Jr. and
Sonnica Iliescu 1992 Family Trust
Agreement; JOHN ILIESCU; DOES I-V,
INCLUSIVE, AND ROE CORPORATIONS VI-X,
INCLUSIVE,

Defendants.

And Related Claims.

Consolidated Case Nos. CV07-00341
and CV07-01021

Dept. No. 10

**Decision and Order Granting Motion
Seeking Clarification of Finality of Judgment**

On February 26, 2015, this Court entered a Judgment, Decree and Order for Foreclosure of Mechanics Lien ("Judgment"). The Applicants in Case No. CV07-00341 and the above-captioned Defendants in Case No. CV07-01021, consolidated therewith (hereinafter the "Defendants" or "Appellants") appealed the Judgment, thereby commencing *Iliescu et al. v. Steppan*, Nevada Supreme Court Case No. 68346 (the

1 "Appeal"). On October 23, 2015 the Nevada Supreme Court entered an "Order
2 Granting Motion for Stay Without Posting Any Further Security and Order to Show
3 Cause" ("Order to Show Cause") in the Appeal, which, among other matters, provides
4 in relevant part:
5

6 The district court purported to certify the February 26, 2015 [Judgment]
7 as final pursuant to NRCP 54(b), however, the certification appears
8 improper because the district court did not make an express direction
9 for the entry of judgment. Further . . . it is not clear whether the
appellants or respondent have been completely removed from the
action.

10 Order to Show Cause, page 2.

11 On October 29, 2015, Defendants (and Appellants) filed a "Motion Seeking
12 Clarification of Finality of Court's Recent Judgment for Purposes of Maintaining
13 Appeal...." ("Motion"). The Motion was fully briefed, submitted for decision, and
14 argued at a hearing on November 13, 2015. Based on the briefing and oral arguments,
15 it is plain that both Plaintiff/Respondent and Defendants/Appellants agree that the
16 Judgment is a final, appealable order. Such was also this Court's intent. Furthermore,
17 no claims remain pending herein against the Defendants/Appellants or the
18 Plaintiff/Respondent.
19

20 For purposes of clarification, this Court hereby amends, with retroactive effect,
21 the Judgment, as set forth hereinafter. In the event that this Court currently lacks
22 jurisdiction to amend the Judgment, this Court indicates that upon dismissal of the
23 Appeal it will amend the Judgment to comply with NRCP 54(b) and any other
24
25

1 requirements of the Nevada Supreme Court to make the Judgment final and
2 appealable, as set forth herein.

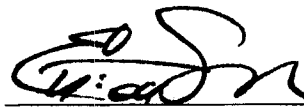
3 Therefore, good cause appearing,

4 IT IS HEREBY ORDERED as follows:

5 Paragraph 7 of the Judgment is hereby amended, *nunc pro tunc*, as aforestated,
6 to read as follows:
7

8 7. This Judgment finally and fully adjudicates all of the claims and all of the
9 defenses between Mark B. Steppan ("Steppan") on the one hand, and John Iliescu Jr.,
10 individually, and John Iliescu, Jr., and Sonnia Iliescu as Trustees of the John Iliescu Jr.
11 and Sonnia Iliescu 1992 Family Trust Agreement ("Iliescus") on the other hand, in
12 both of these consolidated cases. Notwithstanding the existence of certain pending
13 third-party claims by the Iliescus against certain third-party defendants which
14 remain pending and have not yet been fully resolved or adjudicated herein, this Court,
15 pursuant to NRCP 54(b): expressly determines that there is no just reason for delay;
16 expressly directs entry of this Judgment in favor of Steppan and against the Iliescus
17 as of February 26, 2015; and certifies this Judgment as final.
18
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20 DATED November 17, 2015.

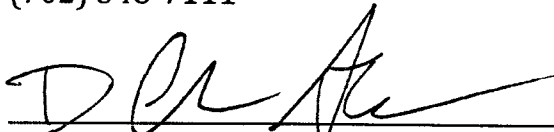
21 
22 Hon. Elliott A. Sattler
23 District Judge
24
25

//

//

Form of order submitted by:

G. Mark Albright (NV 1394)
D. Chris Albright (NV 4904)
Albright Stoddard Warnick & Albright
801 South Rancho Drive, Suite D-4
Las Vegas, Nevada 89106
(702) 348-7111


Attorneys for Defendants

Form of order approved by:

Michael D. Hoy (NV 2723)
Hoy Chrissinger Kimmel & Vallas
50 West Liberty Street, Suite 840
Reno, Nevada 89501
(775) 786-8000


Attorneys for Plaintiff

1 **CODE: 1097**

2 G. MARK ALBRIGHT, ESQ.

3 Nevada Bar No. 001394

4 D. CHRIS ALBRIGHT, ESQ.

5 Nevada Bar No. 004904

6 **ALBRIGHT, STODDARD, WARNICK & ALBRIGHT**

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8 Las Vegas, Nevada 89106

9 Tel: (702) 384-7111

10 Fax: (702) 384-0605

11 gma@albrightstoddard.com

12 dca@albrightstoddard.com

13 *Attorneys for Appellants/Applicants/Defendants*

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

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

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

21 vs.

22 MARK B. STEPPAN, Respondent.

23 MARK B. STEPPAN,

24 Plaintiff,

25 vs.

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

Defendants.

AND RELATED CLAIMS.

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

DEPT NO. 10

**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**

NOTICE is hereby given that JOHN ILIESCU, JR., individually, and JOHN ILIESCU AND SONNIA SANTEE ILIESCU as Trustees of the JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT, the Applicants in Case No. CV07-00341 and the Defendants in Case No. CV07-01021 consolidated therewith (jointly hereinafter the "Appellants" or the "Iliescus")

1 hereby appeal to the Supreme Court of the State of Nevada from the following orders, judgments and
2 rulings entered against them and in favor of Mark B. Steppan, the Respondent in Case No. CV07-
3 00341, and the Plaintiff in Case No. CV07-01021 consolidated therewith (hereinafter "Respondent"
4 or "Steppan") in these proceedings. This Amended Notice is filed as a precautionary measure, at this
5 time, in recognition of: the Nevada Supreme Court's October 28, 2015 Order to Show Cause; the
6 District Court's issuance of a "Decision and Order Granting Motion Seeking Clarification of Finality
7 of Judgment" entered on November 17, 2015, which again certified the Judgment (listed as item (i)
8 herein, below), as final, notice of entry of which Decision and Order was served on December 16,
9 2015; Appellants' Response to the Order to Show Cause, filed on November 19, 2015; and the fact
10 that the Nevada Supreme Court has not yet ruled on the Order to Show Cause, but the re-certification
11 of the Judgment, as final, was entered within the past 30 days. This Amended Notice also deletes a
12 reference to a May 27, 2015 Order denying a motion to alter or amend, which the Supreme Court has
13 indicated, in its October 23, 2015 Order to Show Cause, was not appealable. This Amended Notice
14 of Appeal is not intended to prejudice any rights which appellants already enjoy under their original
15 Notice of Appeal, and if this Amended Notice of Appeal is unnecessary it may be disregarded,
16 depending on the outcome of the Order to Show Cause. The following District Court Orders,
17 Decisions, rulings, and Judgments are appealed:

- 18 (i) the "Judgment, Decree and Order for Foreclosure of Mechanic's Lien" entered by the
19 District Court on February 26, 2015 (Washoe County Clerk Transaction No. 4836215);
- 20 (ii) the June 22, 2009 "Order" denying a Motion for Partial Summary Judgment filed by
21 the Iliescus, and granting a Cross-Motion for Partial Summary Judgment filed by
22 Steppan (Transaction 850528);
- 23 (iii) the May 9, 2013 "Order Granting Motion for Partial Summary Judgment" in favor of
24 Steppan (Transaction 3715397);
- 25 (iv) the August 23, 2013 "Order Granting Motion to Strike or Limit Jury Demand"
26 (Transaction 3946236);
- 27 (v) the May 28, 2014 post-trial "Findings of Fact, Conclusions of Law and Decision"
28 (Transaction 4451229);

(vi) the March 13, 2015 "Decision and Order Denying NRCP 60(b) Motion" (Transaction 4860752);

(vii) any and all other orders, judgments, decisions, or rulings of the District Court during this litigation which led to or resulted from any of the foregoing orders, rulings, and partial or full summary judgments or final judgments, or which would need to be overturned in order to afford the Iliescus, as Appellants, full and adequate appellate relief herein, such as, without limitation: any oral rulings from the bench regarding the admissibility of evidence during trial (including the Court's ruling excluding and limiting certain expert testimony as described in the Iliescus' Offer of Proof, filed on October 2, 2013); any oral decisions from the bench in response to oral motions (such as motions to dismiss) during trial or during other pre-trial or post-trial appearances, together with any follow-up written orders on such matters; the Amended Order regarding Plaintiff's Motion for Attorneys' Fees and the Amended Order regarding Plaintiff's Motion for Costs, both entered on December 12, 2014 (Transactions 4734845 and 4734821), as well as the original versions of said Orders amended thereby, and the intervening orders on motions to clarify or reconsider said original versions of the subsequently amended orders, and all other appealable pre-trial, trial, and post-trial orders and judgments of the Court which accrued to the benefit of Respondent Steppan.

DATED this 16th day of December, 2015.

By



G. MARK ALBRIGHT, ESQ.

Nevada Bar No. 001394

D. CHRIS ALBRIGHT, ESQ.

Nevada Bar No. 004904

**ALBRIGHT, STODDARD, WARNICK
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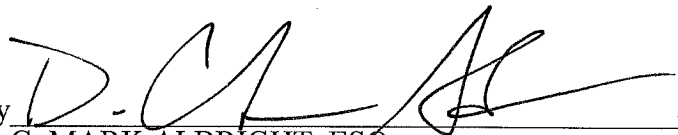
Counsel for Appellants

AFFIRMATION

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

DATED this 16th day of December, 2015.

By



G. MARK ALBRIGHT, ESQ.

Nevada Bar No. 001394

D. CHRIS ALBRIGHT, ESQ.

Nevada Bar No. 004904

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dca@albrightstoddard.com

Counsel for Appellants

CERTIFICATE OF SERVICE

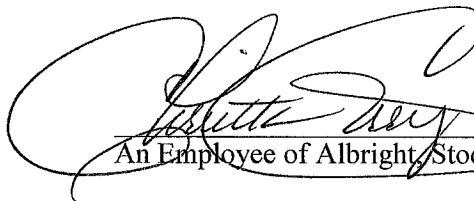
Pursuant to NRCP 5(b) and NEFCR 9, I hereby certify that I am an employee of ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, and that on this 16th day of December, 2015, service was made by the ECF system to the electronic service list, a true and correct copy of the foregoing **AMENDED NOTICE OF APPEAL BY JOHN 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**, and a copy mailed to the following person(s):

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

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

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Todd R. Alexander, Esq.,
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6005 Plumas Street, Third Floor
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drg@lge.net
tra@lge.net
*Attorneys for Third-Party Defendant
Hale Lane*

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



An Employee of Albright, Stoddard, Warnick & Albright

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN ILIESCU, JR., INDIVIDUALLY;
AND JOHN ILIESCU, JR. AND
SONNIA ILIESCU, AS TRUSTEES OF
THE JOHN ILIESCU, JR. AND SONNIA
ILIESCU 1992 FAMILY TRUST
AGREEMENT,

Appellants,

vs.

MARK B. STEPPAN,

Respondent.

No. 68346

0007-0034
DID **FILED**

JAN 13 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *S. Young*
DEPUTY CLERK

*ORDER DISMISSING APPEAL IN PART AND REINSTATING
BRIEFING*

This is an appeal from district court orders entered in consolidated actions regarding a mechanic's lien. Second Judicial District Court, Washoe County; Elliott A. Sattler, Judge.

We previously entered an order directing appellants to show cause why this appeal should not be dismissed for lack of jurisdiction. Specifically, we questioned whether the district court's February 26, 2015, order was appealable as a judgment certified as final under NRCP 54(b) where it was not clear whether a party had been completely removed from the action or the certification contained an express direction for entry of judgment. See NRAP 3A(b)(1); *Mallin v. Farmers Ins. Exch.*, 106 Nev. 606, 797 P.2d 978 (1990); *Knox v. Dick*, 99 Nev. 514, 516, 665 P.2d 267, 268 (1983). We also noted that although appellants purported to appeal from an order denying a motion to alter or amend, such an order is not appealable. *Uniroyal Goodrich Tire v. Mercer*, 111 Nev. 318, 320 n.1, 890 P.2d 785, 787 n.1 (1995), *superseded on other grounds by statute as stated*

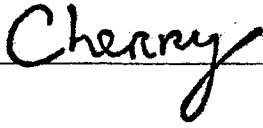
in *RTTC Commc'nc, LLC v. Saratoga Flier, Inc.*, 121 Nev. 34, 110 P.3d 24 (2005).

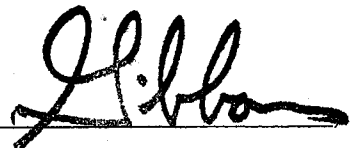
Appellants have filed a response wherein they concede that the order denying the motion to alter or amend is not appealable. Accordingly, we dismiss this appeal as to the May 27, 2015, order denying the motion to alter or amend. Appellants also assert that the February 26, 2015, order was properly certified as final and have attached several district court documents to support that assertion. Having considered appellants' argument and the attached documentation, we conclude that the district court order was properly certified as final. Accordingly, this appeal may proceed as to the February 26, 2015, order.

Briefing of this appeal is reinstated. Appellants shall have 11 days from the date of this order to file and serve a transcript request form. See NRAP 9(a).¹ Appellants shall have 120 days from the date of this order to file and serve the opening brief and appendix. Thereafter, briefing shall proceed in accordance with NRAP 31(a)(1). We caution the parties that failure to comply with this order any result in the imposition of sanctions. NRAP 31(d).

It is so ORDERED.


_____, J.
Douglas


_____, J.
Cherry


_____, J.
Gibbons

¹If no transcript is to be requested, appellants shall file and serve a certificate to that effect within the same time period. NRAP 9(a).

cc: Hon. Elliott A. Sattler, District Judge
Albright Stoddard Warnick & Albright
Hoy Chrissinger Kimmel, PC
Washoe District Court Clerk✓

CV07-00341
MARK STEPPAN VS. JOHN ILIESCU
District Court
Washoe County
12/10/2013 02:35 PM
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MMERK0112

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

FILED

DEC 10 2013

JOEY HASTINGS, CLERK
By: [Signature]
DEPUTY CLERK

-o0o-

MARK B. STEPPAN,

Case No. CV07-01021

Plaintiff,

Dept. No. B6

vs.

JOHN ILIESCU, JR., SONIA ILIESCU,
as Trustees of the JOHN ILIESCU,
JR., AND SONNIA ILIESCU 1992
FAMILY TRUST AGREEMENT, et al.,

ORIGINAL

Defendants.

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

Consolidated with
Case No. CV07-00341

Third-Party Plaintiffs,

Department No. B6

vs.

CONSOLIDATED PACIFIC DEVELOPMENT,
INC., a Nevada corporation, et al.,

Third-Party Defendants.

DEPOSITION OF
DAVID SNELGROVE

Tuesday, November 18, 2008

Reno, Nevada

Reported by: KIMBERLY J. WALDIE, NV CCR #720, RPR
CALIFORNIA CSR #8696

1
2
3 APPEARANCES OF COUNSEL:
4

5 For the Plaintiff:
6 GAYLE A. KERN, LTD.
7 BY: GAYLE A. KERN, ESQ.
8 5421 Kietzke Lane, Ste. 200
9 Reno, Nevada 89511

10 For Defendants and Third-Party Plaintiffs:
11 PREZANT & MOLLATH
12 BY: STEPHEN C. MOLLATH, ESQ.
13 6560 SW McCarran Blvd., Ste. A
14 Reno, Nevada 89511

15 For DAVID SNELGROVE:
16 FAHRENDORF, VILORIA, OLIPHANT & OSTER, LLP
17 BY: R. SHAWN OLIPHANT, ESQ.
18 327 California Avenue
19 Reno, Nevada 89505

20 Also present: John Iliescu, Jr.
21
22
23
24
25

I N D E X

<u>WITNESS</u>	<u>EXAMINED BY</u>	<u>PAGE</u>
DAVID SNELGROVE	MR. MOLLATH	5, 51
	MS. KERN	38

EXHIBITS FOR IDENTIFICATION

A	Affidavit of David Snelgrove in Support of Supplemental Response to Application for Release of Mechanic's Lien	5
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CORRECTION LIST

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"Tech" not Tack

-oOo-

1 BE IT REMEMBERED, that on Tuesday, the 18th day
2 of November, 2008, at 10:00 a.m., at the offices of
3 Prezant & Mollath, 6560 SW McCarran Blvd., Ste. A, Reno,
4 Nevada, before me, KIMBERLY J. WALDIE, a Certified Court
5 Reporter, personally appeared DAVID SNELGROVE.

6 -oOo-

7
8 DAVID SNELGROVE

9 having been duly sworn by the court reporter,

10 was examined and testified as follows:

11 (Exhibit A marked for Identification.)

12 EXAMINATION

13 BY MR. MOLLATH:

14 Q Could you please state your name for the
15 record.

16 A Ronald David Snelgrove.

17 MR. MOLLATH: All right. Let the record
18 reflect this is the time and place set for the
19 deposition of Mr. Snelgrove pursuant to the Nevada Rules
20 of Civil Procedure, and pursuant to Notice of Taking
21 Deposition and, I think, stipulation as to time and
22 place of the deposition.

23 Um, can we have a stipulation that the
24 deposition can be signed before any notary public, and
25 that if the deposition is unsigned at the time of its

1 intended use, it may be used in its unsigned form
2 provided, however, that the witness has had a chance to
3 review the deposition prior to that time?

4 MR. OLIPHANT: Right. After 30 days have
5 passed, after he's been provided with the deposition for
6 review and signature, I don't have a problem with that.

7 MR. MOLLATH: Okay.

8 Q What is your current business, profession or
9 occupation?

10 A I'm a land use planner.

11 Q How long have you been a land use planner?

12 A 18 years.

13 Q And what degrees do you hold from any
14 university or colleges with regard to land use planning?

15 A Both of my degrees are in economics. I have a
16 bachelor of science degree from the University of
17 California Riverside, economics, and I have a master of
18 science degree from the University of Nevada in
19 economics. I have my American Institute of Certified
20 Planners certification.

21 Q Okay. All right. And you work for Wood
22 Rodgers at the present time?

23 A Yes.

24 Q How long -- how long have you worked for Wood
25 Rodgers?

1 A Four and a half years.

2 Q And prior to working for Wood Rodgers, who did
3 you work for?

4 A Gray & Associates.

5 Q How long did you work for Gray & Associates?

6 A Five years.

7 Q Prior to Gray & Associates?

8 A Worked for FPE Engineering.

9 Q Okay. And how long did you work for them?

10 A Four and a half years.

11 Q Okay. And prior to FPE?

12 A For Jeff Codega Planning Design, and that was
13 about four years.

14 Q Okay.

15 A And prior to that was Codega and Fricke.

16 Q Okay. Are you familiar with the project on the
17 river, that piece of property owned by Dr. Iliescu
18 called the Wingfield Towers project?

19 A Yes, I am.

20 Q How did you first become involved in the
21 Wingfield Towers project?

22 A In assistance putting together the special uses
23 permit and tentative map applications.

24 Q Who first contacted you concerning the
25 Wingfield Towers project?

1 A Sam Caniglia.

2 Q Okay. And who was Sam Caniglia?

3 A Sam Caniglia is one of the partners that was
4 involved in BSC Financial who were the applicants on the
5 project.

6 Q Okay. Now BSC Financial -- did you -- at Wood
7 Rodgers -- I assume Wood Rodgers is the entity that --
8 (Whereupon John Iliescu entered the deposition
9 room.)

10 (Break taken.)

11 Q MR. MOLLATH: We were at the point in time
12 where you were contacted by Sam Caniglia --

13 A Yes.

14 Q -- concerning the project. And the best of
15 your recollection, what was the date of when you were
16 contacted by Sam?

17 A Start of 2006, probably around -- just around
18 or just after January 1st.

19 Q Okay. So what did Sam Caniglia tell you that
20 he wanted you to do in relationship to the Wingfield
21 Towers project?

22 A The contact initially came in to another one of
23 the owners in our firm, Scott Christy, who knew Sam --

24 Q Okay.

25 A -- and then relayed to me. So I didn't have

1 any direct contact at that point with Sam.

2 Q In regards to the business relationship that
3 was started between Sam Caniglia and his company and
4 Wood Rodgers, who was responsible for negotiating that
5 deal?

6 A I ended up writing the contract.

7 Q Okay. And who was the contract with? Between
8 Wood Rodgers and who?

9 A Consolidated Pacific Development.

10 Q And what was your understanding of what
11 Consolidated Pacific Development was?

12 A That was Sam's company based in San Francisco.

13 Q And what was your understanding that BSC
14 Financial was?

15 A I didn't hear of BSC Financial until either at
16 the time of submittal that that was the partnership
17 group. I just understood that to be a group of
18 investors involved in the project.

19 Q All right. So submittal occurred sometime in
20 February of '06?

21 A We made an initial submittal on January 17th,
22 which included just a Special Use Permit request, and
23 then submitted on February 7th a Special Use Permit and
24 a tentative map, which basically overrode the previous
25 application.

1 Q At what point in time in that process did you
2 find out BSC Financial was involved?

3 A I don't recall whether they were listed on
4 the -- both applications or whether they were just
5 listed on one. I'd actually have to look at the
6 application documents because that was quite some time
7 ago.

8 Q In any event, when Sam Caniglia first contacted
9 you, you had the understanding that Consolidated Pacific
10 Development was the developer on the project?

11 A Yes. That they were -- they were involved.

12 Q At what point in time did you determine that
13 there was an architect involved in the project?

14 A Fairly early on, because most of our
15 coordination did not go through Sam Caniglia. It went
16 through the architecture firm, and I believe it was
17 Nathan Ogle that we were predominantly speaking to.

18 Q And when did you first make contact with Nathan
19 Ogle, the architect on the project?

20 A Probably within a day or two after our initial
21 contact from Sam Caniglia.

22 Q And when you say you worked with the
23 coordinator -- coordinated with the architect, what do
24 you mean by that, or where did you get your information?

25 A They -- they had been working on the

1 application apparently or -- and were going to try and
2 submit it themselves. We assisted them to make sure
3 that it was submitted correctly. And we saw drawings
4 and graphics that were sent over to us at that time
5 shortly after the start of the year.

6 Q Okay. How did the contact with the architect
7 come into existence between Wood Rodgers and the
8 architect? How did that start? Was it something that
9 Sam Caniglia put together or introduced? How did that
10 connection occur?

11 A I believe that that's what happened.

12 Q Okay.

13 A And I don't recall whether we called them or
14 they called us, but some of the conversations were with
15 our engineering staff and not me on the planning
16 side.

17 Q During the period of time that you were
18 involved in processing the applications for the
19 development approvals for this project, did you have any
20 contact with the lawyers for any of the parties?

21 A Not to my recollection.

22 Q And when I say "lawyers," I'm talking about
23 lawyers from BSC Financial, Consolidated Pacific, or
24 anybody.

25 A I don't -- I don't believe that I had any

1 contact with them. I worked with DeCal Nevada as the
2 primary managing group, and Cal Bosma and Michelle
3 Powell were the two that I dealt with most.

4 Q In the entitlement process, was there anybody
5 else working on the entitlement process as a lawyer or
6 other representative of the developer with you, such as
7 a political consultant or in the development process
8 presenting the application to the city of Reno?

9 A Run that -- back through your question. I
10 apologize.

11 Q Okay. We know that the application had the
12 involvement of the architect because they're the company
13 that did all the drawings and gave you the information
14 to then submit to the city of Reno; is that correct?

15 A Yes.

16 Q Okay. And we know that the developer was
17 involved?

18 A Uh-huh.

19 Q What role did he take in the process?

20 A Sam Caniglia?

21 Q Yeah.

22 A I didn't have a lot of day-to-day contact with
23 Sam, as mentioned previously. My day-to-day contact,
24 direction and guidance came through DeCal Nevada.

25 Q Okay. Now did -- did you become aware of any

1 political consultant that was retained in connection
2 with the processing of the application with the city of
3 Reno?

4 A Yes.

5 Q Okay. And who was that?

6 A Chris Barrett.

7 Q And who retained Chris Barrett?

8 A I don't know as I wasn't a party to that
9 contract.

10 Q What did Chris Barrett do or how did you
11 coordinate with Chris Barrett in relationship to getting
12 the project processed through the city of Reno planning
13 staff, Planning Commission and city council?

14 A Typically, through weekly or biweekly
15 meetings.

16 Q And what did Chris Barrett do in connection
17 with that?

18 A In talking to the officials to see if there
19 were any questions, comments about the project that we
20 could try and resolve ahead of time.

21 Q Okay. Were there any lawyers involved in
22 processing the project?

23 A Yes. Gary Duhon.

24 Q And who retained Gary Duhon?

25 A Not sure who -- what entity that would have

1 been as I was not a party to that contract.

2 Q How did you coordinate with Gary Duhon in the
3 processing of this project? In other words, how did his
4 role manifest itself throughout the process?

5 A It was through weekly/biweekly meetings
6 largely.

7 Q What involvement did he have in the hearing
8 processes?

9 A He led the presentation when we got to the
10 Planning Commission, city council levels and then had
11 the questions for the technical experts, such as the
12 engineer, the architect, land use planner, as myself,
13 all answered by the appropriate person.

14 Q At what point in time did Chris Barrett become
15 involved in the project? And using as a point of
16 reference, the first time you had a meeting with Sam
17 Caniglia on the project. In other words, how much later
18 did Mr. Barrett come onto the scene?

19 A It was after submittal of the project, and I'll
20 refer to the February --

21 Q Okay.

22 A -- 7th submittal. I'd say it was within a
23 month to three months. We were getting really close to
24 having our 3-D fly-through done by the architect, and I
25 recall showing that to Mr. Barrett and Mr. Duhon at

1 Mr. Barrett's office. I'd say that was probably April
2 or May.

3 Q And did Gary Duhon come on at the same time as
4 Chris Barrett?

5 A A little after.

6 Q Okay. Do you recall having any discussions
7 with Mr. Caniglia concerning what the involvement of
8 Mr. Chris Barrett and Mr. Duhon would be?

9 A I never had any conversations with Mr. Caniglia
10 to that effort.

11 Q Okay. Who was your -- your contact person that
12 you discussed the processing of the application with?

13 A Cal Bosma with DeCal Nevada.

14 Q Who was Cal Bosma?

15 A Cal Bosma was the manager of the office here
16 for DeCal -- I think their parent company was DeCal
17 Custom Homes out of Oregon. And the company subsidiary
18 here was DeCal Nevada.

19 Q What relationship did he have to Sam Caniglia?

20 A I believe he was contracted too, but I couldn't
21 say in particular, as I was not a party to that
22 contract.

23 Q All right. So as I understand it, then, your
24 first contact involvement came through Sam Caniglia?

25 A (Witness nodding head.)

1 Q And at that point in time a contract was
2 entered into between Wood Rodgers and Consolidated
3 Pacific Development for the services to be rendered?

4 A Yes.

5 Q All right. And then at some point in time Sam
6 Caniglia and Consolidated Pacific Development handed off
7 the contact relationship for the project between Wood
8 Rodgers and the owner to Cal Bosma?

9 A That's correct.

10 Q Okay. How much -- when did Cal Bosma step into
11 the picture?

12 A Around the submittal of both of the
13 applications. And I want to say it was between the 17th
14 of 2000- -- January 17 of 2006 and -- and February 7th
15 of 2006.

16 Q Okay. Um, tell me about the relationship or
17 the interaction that occurred thereafter between Cal
18 Bosma and Wood Rodgers. How did that manifest itself?

19 A We stayed in very good contact. We did have
20 regular meetings regarding the project. We had many,
21 many phone conversations and e-mails as well regarding
22 what steps we needed to take.

23 Q Okay. Um, during this process, did you have
24 any trouble getting payment for the services of Wood
25 Rodgers?

1 A I don't remember anything really big. There
2 may have been a lag, you know, going out to 90 days or
3 120 days, but it always got resolved.

4 Q And as of today, there's no monies --

5 A There's about \$2,700, which is not big in the
6 whole world scheme of things.

7 Q And the party that paid you, or the client that
8 paid you, was Consolidated Pacific Development?

9 A I don't know if the check said DeCal or if the
10 check said Consolidated Pacific.

11 Q Okay.

12 A But I believe it was one of those two entities.

13 Q How much interaction did you have with the
14 architect on this project during the period of time that
15 you were processing the application?

16 A Quite a bit.

17 Q Tell me how that worked. In other words, give
18 me a general description of how that relationship
19 progressed and what it consisted of.

20 A Most of it was by phone. But Nathan Ogle was
21 the primary person that would come over from San
22 Francisco and be involved in some of the presentations. ^{II}
23 gave between 30 and 35 presentations on this to various
24 people or groups over time, ^{and} and Nathan was involved in
25 quite a number of those.

1 Q Okay. Would you say that the person most
2 knowledgeable on the operational aspects of the
3 processing of the application was Nathan Ogle?

4 A On the processing of the application?

5 Q From an architectural standpoint?

6 A From an architectural standpoint, yes.

7 Q Was there anybody else involved from the
8 architect besides Nathan Ogle?

9 A Rodney Friedman periodically would come over
10 the hill, and I believe Mark Steppan was here once or
11 twice.

12 Q Okay. So one to two times with Steppan. And
13 how many times, to the best of your recollection, did
14 Rodney Friedman come up here?

15 A I'm going to say three or four.

16 Q And how about Nathan Ogle? You said 35 or --

17 A No. Probably on the order of 12 to 18.

18 Q 12 to 18. Okay. And those were meetings with
19 you or meetings with --

20 A Largely, they were meetings with association
21 groups, Park Towers, the -- gosh, what's the name of the
22 condominium right next to it?

23 Q Homeowners association?

24 A Homeowners associations. Downtown Improvement
25 Associations, citizens advisory committees, neighborhood

1 advisory boards, sometimes planning commissioners and/or
2 city council members. Those were the types of meetings
3 that we --

4 Q Okay.

5 A -- conducted.

6 Q And some were public meetings?

7 A Yes.

8 Q And some were meetings with staff, city staff?

9 A Some were meetings with city staff.

10 Q Um, were there meetings, internal developer's
11 meetings held that Mr. Steppan, Mr. Friedman, Mr. Ogle
12 attended?

13 A Most of those meetings were attended by them
14 through telephone conference call. Um, I don't recall
15 in our typical meeting location whether we had Nathan
16 and/or anyone else from the architect's team there any
17 more than once or twice.

18 Q So I -- could it be characterized that
19 Mr. Steppan, Mr. Friedman and Mr. Ogle traveled to Reno
20 or engaged in telephone conferences concerning the
21 project at various stages of the development process?

22 A Yes.

23 Q And depending on who was involved at a
24 particular point in time or who was tasked with doing a
25 particular job, Mr. Steppan, Mr. Friedman or Mr. Ogle

1 would attend public meetings or city of Reno staff
2 meetings concerning the project from time to time?

3 A Yes.

4 Q Okay. Then there would be developer meetings
5 they would attend or participate in from time to time
6 either by person or telephone conference?

7 A Yes.

8 Q Okay. Do you recall whether Dr. Iliescu or his
9 real estate agent attended any internal developer
10 meetings that you were involved in?

11 A I don't recall any -- him being involved in any
12 of the developer meetings.

13 Q Okay. Okay. How about meetings with city
14 planning staff? Do you recall whether Dr. Iliescu or
15 his real estate broker, Mr. Johnson, was involved in any
16 of those city of Reno staff meetings concerning the
17 project?

18 A I don't recall their attendance at those.

19 Q Do you recall whether Dr. Iliescu or his real
20 estate agent, Mr. Johnson, attended any public meetings
21 concerning the project?

22 A Yes. Two in particular that I recall, which
23 are identified in my affidavit. One was the Arlington
24 Towers Association meeting, and the other was the
25 Downtown Improvement Association meeting that I recall

1 seeing Dr. Iliescu. And Sonia, I think, was only at the
2 Arlington Towers meeting. Downtown Improvement, I
3 think, was only Dr. Iliescu.

4 Q Okay. So -- so the only meetings that you can
5 recall --

6 A Uh-huh.

7 Q -- that Dr. Iliescu or Sonia or Mr. Johnson
8 attended were public meetings concerning the project?

9 A That's right, that's correct.

10 Q They weren't involved in any private developer
11 staff meetings or any staff meetings with
12 representatives of the city of Reno?

13 A Not any to my recollection.

14 Q Okay. And I'll get to your affidavit in a
15 minute, but I just have some general questions. You
16 mentioned in your affidavit which is marked as Exhibit A
17 to this depo Arlington Towers Homeowners Association
18 meeting of July 27, 2006, that you recall Dr. Iliescu
19 being present at?

20 A Correct.

21 Q And do you know whether Dr. Iliescu is a
22 homeowner of Arlington Towers, he lives there?

23 A It's my understanding that he has a unit at
24 Arlington Towers.

25 Q Okay. Do you recall what occurred at the

1 Arlington Towers Homeowners meeting on July 27, 2006?
2 In other words, what -- what was presented to them and
3 who was there?

4 A What we were submitting that evening or
5 presenting was the 3-D fly-through and general overview
6 of the project. The unfortunate part of that meeting
7 was that the many windows that existed at Arlington
8 Towers on whatever floor we were on, the sun didn't make
9 it a great viewing platform for us to -- to show the 3-D
10 fly-through. We ran through portions of it, but it was
11 difficult to see for the people in the audience, so we
12 answered as many questions as we could and did as best
13 we could given the conditions that we had.

14 Q Okay. Then you referred to a Downtown
15 Improvement Association meeting in August of '06?

16 A Yes.

17 Q Tell me what was presented at that meeting.

18 A The 3-D fly-through and the general overview of
19 the project and general question-and-answer session.
20 And that was much more effective than the first one as
21 we had a darker room.

22 Q Okay. All right. And at that meeting you
23 recall Dr. Iliescu was there?

24 A Yes.

25 Q Okay. Do you recall any meetings where

1 Mr. Johnson, his real estate broker, was present?

2 A I did not know that Mr. Johnson was the real
3 estate representative for Dr. Iliescu on this project
4 during, I believe, most of the processing on this
5 project.

6 Q Okay. Do you recall having -- with that said,
7 do you recall having any conversations with Mr. Johnson
8 concerning the project and his representation of
9 Dr. Iliescu on the project?

10 A I do not recall any conversations of that sort.

11 Q Okay. Do you recall any conversations that you
12 had personally with Dr. Iliescu concerning the project
13 during the processing of the applications?

14 A One more time on the question. I was thinking
15 about something because I want to clarify --

16 Q Go ahead.

17 A -- that I've had recent conversations with
18 Dr. Iliescu and Dick Johnson regarding the extension or
19 the condition amendment that we just went through. So I
20 don't want there to be any unclarity or anything that's
21 unclear in that. So that has been very recent.

22 Q Okay. Let's focus on the period of time prior
23 to the -- or just prior to the approval, the final
24 approval, of the city of Reno of the project in November
25 of 2006.

1 A Uh-huh.

2 Q Okay. The question I have for you is do you
3 recall having any conversations with Dr. Iliescu
4 concerning the project prior to November 15th of 2006?

5 A Only brief conversations where I talked to him
6 in the hallway at Arlington Towers after we were done
7 giving our presentation. And all of these were very
8 brief. And the other time would be just more saying hi
9 and chatting with him very briefly at the Downtown
10 Improvement Association meeting.

11 Q Okay. So essentially when we were talking
12 about the Arlington Towers Homeowners Association
13 meeting in July of 2006, after that presentation you
14 exchanged -- was it -- would it be pleasantries or would
15 it be details?

16 A I don't recall whether it was before or after
17 the presentation -- he sat near me, whether it was
18 behind or just to the side of me -- during the Downtown
19 Improvement Association meeting, and I had to get up and
20 give the presentation. And I don't recall whether it
21 was before or after we said hi to each other and -- and
22 not a whole lot more that I recall.

23 Q Okay. All right. That's fair enough. Were
24 you the presenter at the Arlington Towers and Downtown
25 Improvement Association --

1 A Nathan Ogle and I were both presenting at that.

2 Q Okay. What percentage of the presentation did
3 do you versus Nathan Ogle?

4 A I was probably about 70 percent; Nathan was 30.

5 Q Do you recall whether Dr. Iliescu had any
6 conversations with Nathan Ogle at those meetings that
7 you witnessed?

8 A I couldn't say.

9 Q Okay. And I think I remembered your testimony
10 correctly. You didn't have -- other than talking to
11 Mr. Duhon, who was a lawyer who was involved in the
12 project, you didn't have any discussions with any
13 representatives of Hale Lane on the project up to
14 November of 2006?

15 A None that I recall.

16 Q Do you recall in the file whether Hale Lane
17 made any inquiries of your office concerning the
18 progress of the project?

19 A None that I recall.

20 Q Um, did you recall any interaction with Hale
21 Lane relative to the obtaining of any entitlements for
22 the property?

23 A None that I recall.

24 Q Okay. Now, let me ask you this question: I'll
25 represent to you that on or about December 14, 2005,

1 Hale Lane represented to Dr. Iliescu that they were
2 going to assist Calvin Baty and Consolidated Pacific
3 Development in obtaining the condominium entitlements
4 for the project. Okay?

5 A Okay.

6 Q Let's assume that that was represented to
7 Dr. Iliescu by Hale Lane on December 14, 2005. The
8 question I have for you is, do you recall any assistance
9 or coordination or inquiries that Hale Lane made to you
10 or your office concerning the processing of the
11 entitlements for this project subsequent to
12 December 14th of 2005?

13 A I don't recall. As you've been questioning me
14 on this, I've had to go back through my brain and
15 different meetings and -- what's his name? -- Craig
16 Howard may have been in attendance at one of our
17 developer meetings, but I -- it's only very fuzzy to
18 me.

19 Q And would that have been prior to submission or
20 subsequent to submission?

21 A That would have been subsequent to submission,
22 as we didn't have any of those developer meetings prior
23 to submission.

24 Q Okay. All right. Do you recall what type of
25 participation he had at that -- if any, at that meeting?

1 A I do not.

2 Q Okay. Is that the only recollection of any
3 involvement in obtaining the entitlements for the
4 project that Hale Lane was involved in?

5 A That is my only recollection.

6 Q Okay. Would there have been any other
7 engineering firm besides the architect that would have
8 been involved in obtaining the entitlements for the
9 project from the city of Reno?

10 A Traffic engineering, Paul Solaegui, would have
11 been involved. He was on the meetings from time to time
12 when we would have traffic engineering questions,
13 comments and concerns.

14 Q Really what I'm asking is whether was there any
15 other lead engineering or planning firm that was
16 processing this application besides Wood Rodgers? I
17 mean, was Wood Rodgers the point person for this
18 application in representing the applicant before the
19 city of Reno?

20 A Yes. We were the point person.

21 Q So there wouldn't have been somebody else doing
22 the entitlements --

23 A None that I'm aware of.

24 Q -- besides Wood Rodgers?

25 A None that I'm aware of.

1 Q At any point in time did you become aware that
2 the architect was having trouble being paid by the
3 developer on this project?

4 A I became aware, but I don't recall specifically
5 what time frame.

6 Q What did you become aware of relative to
7 nonpayment of the architect on the project?

8 A I understood that there were some payment
9 difficulties. But beyond that I didn't have any
10 specifics.

11 Q Did this come prior to the submission or after
12 the submission?

13 A After the submission.

14 Q Do you recall how long after the submission?

15 A It was somewhere during the application
16 processing. I would only be speculating and kind of in
17 the middle of the processing. Maybe May to August.

18 Q And how did you become aware of that payment
19 problem?

20 A In being over at DeCal Nevada's offices and
21 overhearing different conversations.

22 Q And who was involved in those conversations?

23 A Typically, Cal Bosma and Michelle Powell of
24 DeCal Nevada.

25 Q And who were they talking to, to the best of

1 your recollection?

2 A Couldn't say.

3 Q Okay. Now, let's look at Exhibit A which is
4 your affidavit.

5 I think I have a copy for you, Shawn.

6 Let's go to paragraph five. And paragraph five
7 says: Included with the Special Use Permit Application
8 dated January 17, 2006, and Tentative Map and Special
9 Use Permit Application dated February 7, 2006, are Owner
10 Affidavits. See that?

11 A Uh-huh.

12 Q Says, Accordingly, the owners of the real
13 property, Dr. and Mrs. Iliescu, executed the Owner
14 Affidavits that were a part of the Applications. Okay?

15 A Uh-huh.

16 Q Tell me about how these Owner Affidavits were
17 prepared and how they came into your possession signed
18 in a form that could be submitted to the city of Reno
19 along with the application?

20 A One of them, and I do not recall whether it was
21 the February 17, 2006 or the -- I'm sorry, February 7,
22 2006 or January 17, 2006 affidavit was provided to us.
23 I believe it came from Mr. Caniglia and got over to our
24 office. I don't recall whether we picked it up, whether
25 he delivered it, whether -- how it got there.

1 Q And that would be, to the best of your
2 recollection, the February --

3 A It's one of the two. And I don't recall which
4 one that was. The other, Dr. Iliescu came to our office
5 and signed the affidavit.

6 Q Okay. Did you have any conversations with
7 Dr. Iliescu at the time he signed the affidavit in your
8 office?

9 A Yes, I did.

10 Q Tell me what the nature and extent of those
11 conversations were.

12 A It was to share with him where the application
13 was. We were getting close to the submittal, and we
14 needed the affidavit for inclusion in the application,
15 so I took him upstairs to the Planning Department.

16 And at our table we were in the process of
17 getting everything put together. And at the corner of
18 the table we had a copy of the application. I don't
19 recall whether it was bound or unbound at that point.
20 But it wasn't a hundred percent complete. But the
21 information largely was all there.

22 Q Okay. And how long did this meeting last?

23 A Maybe five minutes.

24 Q Okay. And in essence what did you tell
25 Dr. Iliescu?

1 A I wanted to point out to him what the
2 application itself was, show him as much as I reasonably
3 could so that he had a general nature of the application
4 and what was being requested on his property.

5 Q Okay. And did Dr. Iliescu ask you any
6 questions or tell you anything?

7 A I seem to recall a comment about the size of
8 the building. But beyond that, nothing that I recall in
9 particular.

10 Q Did you tell Dr. Iliescu or discuss with
11 Dr. Iliescu how the architect fit into the application
12 process?

13 A We didn't have any specific conversations about
14 the architect.

15 Q Now, on paragraph seven of the affidavit, it
16 says: Both the January 17, 2006 and February 7, 2007
17 Applications contained building elevations and/or
18 building floor plans containing the name of the project
19 architect, Mark Steppan, and the architectural design
20 consultant, Fisher Friedman. You see that?

21 A Uh-huh.

22 Q It says: It is my recollection that
23 Dr. Iliescu saw the architectural drawings as provided
24 in the two applications at or about the time of the
25 receipt of the Owner affidavits.

1 A That's correct.

2 Q Now, what -- tell me what you believe
3 Dr. Iliescu saw at this five-minute meeting that you had
4 where he came in and signed the Owner's affidavit?

5 A With a Tentative Map or Special Use Permit
6 Application that is submitted to the city of Reno, in
7 addition to the reduced copies, there are full-size
8 copies of maps that are required to go in, and we had
9 those on the table. I believe some of those were folded
10 up. And I recall opening some up. Whether they were
11 engineering or whether they were architectural, I don't
12 recall in specific. But the maps were there and shown
13 and present.

14 Q Okay. But you have no idea whether Dr. Iliescu
15 specifically saw the name of the project architect or
16 the architectural design firm and focused on that?

17 A No, I couldn't answer that.

18 Q Okay. And you didn't tell him or engage in a
19 dialogue with him concerning on this particular page,
20 this is the architect, and this is his name, and things
21 like that?

22 A No, I did not.

23 Q Okay. So essentially all you -- you are really
24 telling us is that there were architectural drawings on
25 the table at the time Dr. Iliescu came in to sign his

1 Owner's affidavit, and within that five-minute period of
2 time, Dr. Iliescu had available to him, if he so chose,
3 to look at sheets that contained the architect's name?

4 A Yes.

5 Q But you don't know whether he actually saw the
6 architect's name, or what the address was, or anything
7 like that?

8 A I wouldn't be able to answer that, what he saw.

9 Q Okay. And you didn't engage in a discussion as
10 to how the architect fit into the overall project
11 approval process?

12 A I -- no, I don't recall any conversation of
13 that sort.

14 Q Okay. Paragraph eight is the paragraph, I
15 think, we talked about earlier where you attended
16 meetings, and two of which Dr. Iliescu was present: the
17 Arlington Towers and Downtown Improvement Association.
18 Is that the paragraph that we discussed earlier?

19 A Yes.

20 Q Is the extent of your recollection as to
21 Dr. Iliescu's exposure to the presentation of you and
22 the architect in a public forum?

23 A That is what I can attest to with 100 percent
24 certainty.

25 Q And that occurred on July 27, 2006 and

1 August 3rd of 2006?

2 A Yes.

3 Q Prior to that time, that being prior to
4 July 27, 2006, other than the meeting either in January
5 or February of 2006 where Dr. Iliescu came in and looked
6 at the plans in connection with the execution of the
7 Owner's affidavit, was Dr. Iliescu present at any other
8 meetings, or public hearings, or anything that you can
9 recall that involved the architect on this project?

10 A Not with 100 percent certainty. He was present
11 after the -- after either the Planning Commission or
12 city council approval, we went to the Sierra Tap House,
13 and I recall seeing Dr. Iliescu at that. I was busy
14 with the meeting at that time. So who was in the
15 audience, I can't attest to that with 100 percent
16 certainty.

17 Q So let me re-ask it a different way. The
18 Planning Commission hearing was held on October 4th of
19 2006?

20 A I had a list that had all the dates. I don't
21 recall specifically.

22 Q Let's assume that we -- we knew we had a
23 Planning Commission hearing.

24 A Uh-huh.

25 Q I'll represent to you that was in October.

1 A Okay.

2 Q Then thereafter we had a city council hearing
3 where final approval was given. That was in November.

4 A Probably November 15th.

5 Q 15th. Okay. So prior -- and to the best of
6 your recollection you recall Dr. Iliescu being there at
7 those two hearings?

8 A I believe he was.

9 Q Okay. Did you have any interaction or
10 conversations with Dr. Iliescu at those two hearings
11 besides pleasantries?

12 A Only at -- only at Sierra Tap House afterwards.
13 I don't recall any conversations either in the foyer
14 or in the council chambers. More than anything at
15 Sierra Tap House it was pleasantries and we were very
16 happy.

17 Q Okay. And this was after the city council
18 approval?

19 A Don't recall whether it was Planning Commission
20 or council.

21 Q Now, prior to the hearings at the city council
22 and prior to the hearings at the Planning Commission, do
23 you recall Dr. Iliescu being present at any public
24 hearings or meetings or any other types of functions
25 where the project was discussed in any shape, manner or

1 form?

2 A None that I can specifically recall to where I
3 can say, yeah, he was there. These are the two that I
4 can definitely say he was present at the meeting.

5 Q Okay. And that's July 27th of '06 and
6 August 3rd of '06?

7 A Yes.

8 Q Okay. Did you know at the time of the Planning
9 Commission hearing on October 4th of 2006 that there was
10 a payment problem of the architect from Consolidated
11 Pacific or Sam Caniglia?

12 A I believe I did know it in that time frame.

13 Q Okay. And in that -- if I recall your
14 testimony, that information was gleaned by you
15 overhearing conversations at the office of Mr. Bosma?

16 A Correct.

17 Q Okay. Did you have any conversations with the
18 architect in that regard?

19 A During this time frame I don't recall any. I
20 have had subsequent conversations.

21 Q Okay. Okay. Let's go to paragraph nine of
22 your affidavit. Would it be fair to say that the
23 contents of paragraph nine, we discussed that earlier in
24 your testimony as to the fly-by Power Point presentation
25 and where you had those presentations available for

1 Dr. Iliescu?

2 A Yeah. At these two meetings --

3 Q At these two --

4 A -- would have been visible.

5 Q Okay.

6 A One a little bit less visible than the other,
7 the Arlington Towers.

8 Q Okay. All right. And to the best of your
9 knowledge, you had no conversations or interaction
10 with Mr. Johnson, the real estate agent for
11 Dr. Iliescu?

12 A I don't recall any knowledge that he was
13 involved and he was Dr. Iliescu's real estate agent
14 until after this was over. And at that time I may or
15 may not have recognized who Dick was, and he may have
16 been present at some of these meetings, but I wouldn't
17 have had the recognition of him.

18 MR. MOLLATH: Okay. Give me a minute. John, I
19 want to talk to you for a second.

20 (Break taken.)

21 MR. MOLLATH: That's all I've got.

22 DR. ILIESCU: Thank you for coming.

23 MR. MOLLATH: They may have some.

24 DR. ILIESCU: I'm sorry.

25 MR. MOLLATH: The procedure is not over yet.

EXAMINATION

1
2 BY MS. KERN:

3 Q Hello, Mr. Snelgrove. I know you know who I
4 am.

5 A Yes.

6 Q I'm Gayle Kern and I represent Mark Steppan in
7 this. I just have a few follow-up questions.

8 A Uh-huh.

9 Q You didn't have any business contract with the
10 architects involved in this. Correct?

11 A Huh-uh, no.

12 Q The only contract that Wood Rodgers had was
13 solely with which entity?

14 A BSC Financial.

15 Q Okay.

16 A Well, first Consolidated Pacific, and I believe
17 we switched things over to BSC Financial through DeCal
18 Nevada. All mailings went to DeCal Nevada.

19 Q Okay. And if I understood it correctly, your
20 initial communication may have been with Sam Caniglia,
21 but after that you had more communications with
22 Mr. Bosma?

23 A Yes.

24 Q Okay. Would Sam still be around or would he
25 not even really be in the picture from your standpoint?

1 A He'd be on telephone conference calls on some
2 of the developer meetings, but I don't recall whether he
3 was on the majority or all. It was more the development
4 team that was on that.

5 Q Did you take your direction from Mr. Bosma
6 then?

7 A Yes, I did.

8 Q Your initial contact was the beginning of
9 January 2, 2006. And by January 17, 2006, you had the
10 first application done?

11 A Yes.

12 Q Okay. It seems to me that it was a really big
13 project, so were you working a lot of hours during that
14 period of time to put it together?

15 A Yes.

16 Q Okay. And at Wood Rodgers, how many people
17 were involved? Was it just you or did you have a whole
18 group involved?

19 A I think there were two on the planning side:
20 myself and one of my assistants.

21 Q And what is that name?

22 A Who was working on that then? I believe Nate
23 Hastings was working on it with me. Then we had two to
24 three in our engineering. We had Scott Christy
25 involved, John Bailey, and then I believe we had an --

an ~~X~~ ^{Tech} tack and draftsman.

What you have to understand is our component part was relatively small in this overall application in the maps that we had to produce. We had to put together application forms in an appropriate fashion so that they could be -- could be submitted adequately. But the big part was the building. And then we're dealing with this -- what was it? -- 1.25 acres, I believe, of dirt. There's not a whole lot of civil engineering that has to be done on 1.25 acres.

Q So the majority of the work for the building would have been the architect's?

A The vertical components, yes.

Q Okay. Mr. Mollath asked you whether or not you had been aware of or had contact with Mr. Johnson during the application process. My understanding is that you did not.

A I don't recall any conversations or otherwise with Mr. Johnson. And I could be entirely incorrect on that, but I don't recall any.

Q Is that unusual?

A That -- no, with the real estate representative of the property owner? No.

Q Yeah. I was surprised by the question in that I would not think a real estate agent would be the one

1 that would interact with you. But do you --

2 A At times -- I know a lot of real estate agents,
3 so I have a lot of contact. But it's not uncommon.

4 Q Okay. But in the application process were
5 there ever any questions that came up or anything that
6 you needed any information from what the real estate
7 agent would have possessed?

8 A I don't recall any of the sort.

9 Q And you were aware that the owner of the
10 property was Dr. and --

11 A Yes.

12 Q -- Mrs. Iliescu?

13 A Yes.

14 Q Different than who was developing the project?

15 A Yes.

16 Q Did you have any knowledge with respect to the
17 agreement that Dr. and Mrs. Iliescu had with the
18 developer?

19 A I understood some of the things that were
20 apparently in that agreement, but I'd never saw that
21 agreement or read through that agreement.

22 Q What things were you aware of?

23 A I understood that there was a penthouse or unit
24 that was supposed to go along with -- with the sale for
25 Dr. and Mrs. Iliescu. And I understood there to be a

1 certain number of parking spaces that were supposed to
2 be accommodated into the garage for Dr. and
3 Ms. Iliescu.

4 Q Okay. So -- and would that have been -- would
5 that knowledge have come at or about the time that you
6 were doing the application process and presenting it?

7 A Probably mid process after we submitted to the
8 city of Reno and as we were working through city
9 questions. So maybe in the March, April time frame.

10 Q Okay. Did you assist in developing the 3-D
11 fly-through or was that done all by the architect?

12 A That was done by Fisher Friedman Associates.

13 Q Okay. Did you offer any suggestions or
14 contributions to that?

15 A Yes. We ran through the first-cut version and
16 gave verbal comments relative to edits and how it should
17 appear.

18 Q Okay. You testified that you recently assisted
19 in an extension of the entitlements. Is that correct?

20 A That's correct.

21 Q And who did you communicate with, with respect
22 to that extension?

23 A With Dick Johnson primarily and Dr. Iliescu.

24 Q Okay. And as I understand it, you were
25 successful in getting that extension?

1 A Yes.

2 Q When is the extension due now?

3 A The extension is good until November 15th of
4 2010.

5 Q So a two-year extension?

6 A Yes.

7 Q Okay. And in the context of that extension,
8 did Dr. Iliescu, as the owner of the property, have to
9 execute any paperwork or documents?

10 A We had to have the Owner Affidavit signed for
11 that, as it was an application to the city, which we did
12 while he was in our office meeting with Dick Johnson,
13 myself and Dr. Iliescu.

14 Q Do you recall when that meeting occurred?

15 A Month and a half ago, give or take. Maybe a
16 month ago. It got onto the agenda pretty quick.

17 Q And was it based on the same entitlements that
18 were approved back in November of 2006?

19 A Yes. Nothing was redone for that. And that
20 was not viewed during the -- during the hearing. It was
21 a matter of the condition was requested to be changed
22 and we got the approval for what we requested.

23 Q Okay. So it would be based upon the same
24 drawings and work that had been done by the architects?

25 A That's correct.

1 Q Okay. When you spoke at Arlington Towers --
2 this is back at the meeting of July 27, 2006 --

3 A Uh-huh.

4 Q -- you testified that 70 percent of the
5 presentation was done by yourself, is that correct, or
6 am I opposite?

7 A That was Downtown Improvement Association.

8 Q Okay. At the Arlington Towers Association,
9 when do you -- do you recall -- you remember that?

10 A I believe Nathan was there with me as well, and
11 that was a difficult night in the fact that it was hard
12 to see the screen. I don't recall who did what that
13 night and what percentages --

14 Q Okay.

15 A -- because it was definitely out of our
16 standard routine.

17 Q Okay. Do you recall whether or not you
18 introduced or identified who Mr. Ogle was?

19 A Yeah. Either I introduced him or he introduced
20 himself.

21 Q Okay. And would the same have occurred at the
22 August 3rd, 2006 Downtown Improvement Association
23 meeting?

24 A Yes, yes. The introduction would have been
25 made.

1 Q Okay. Um --

2 A And that -- at the DIA meeting, Downtown
3 Improvement Association, I'm trying to fully recall
4 whether Nathan was present or not. This is a listing of
5 meetings that the doctor was present and I was present.
6 Nathan Ogle was present at the meeting at Arlington
7 Towers, but I don't recall whether he was present at the
8 Downtown Improvement Association.

9 Q Do you recall if any other representative from
10 the architect's office was there?

11 A I don't believe so.

12 Q Okay. Um, at that meeting would you also have
13 identified who the architects were, however?

14 A It would have been listed on our -- on our
15 project development team page.

16 Q Of the fly-through?

17 A Right, of the Power Point presentation.

18 Q Who is Michelle Powell?

19 A She was -- she's an assistant or was an
20 assistant at DeCal Nevada.

21 Q Okay. So that's why she would have been
22 somewhere within that conversation with -- Mr. Bosma was
23 there --

24 A Yeah.

25 Q -- at DeCal?

1 A Yeah.

2 Q When you had your meeting -- and it was either
3 the January 17th or February 7th application where
4 Dr. Iliescu actually came into --

5 A Uh-huh.

6 Q -- your offices, did Mrs. Iliescu accompany
7 him?

8 A I don't recall.

9 Q Okay. My recollection is her signature is
10 needed on the owner application as well. So do you
11 recall if she was there?

12 A I believe one, we had her signature and one, we
13 didn't have her signature.

14 Q Okay. When you took him upstairs, I wrote down
15 that you said plans were on the table. Can you describe
16 for me what exactly you meant by "the plans"?

17 A Plans, copy of the document, was on the table.
18 Whether everything was in it at that point or not, I
19 don't recall.

20 Q When you say "the document," you mean the
21 application?

22 A The application.

23 Q Okay.

24 A The 8-1/2-by-11 and 11-by-17 sheets. But we
25 also did have our maps, the full-size maps that we were

1 getting ready to insert into the back of the document as
2 something that's included with every application, that
3 you have maps of the site.

4 Q And what would the maps have been of?

5 A They would be of the architectural drawings.
6 They would be of the site grading plan, utilities plan,
7 landscape plan, and so on.

8 Q Okay. Do you recall Dr. Iliescu making any
9 indication that he wanted to see what his penthouse
10 looked like, for example?

11 A No.

12 Q Just going to --

13 A It wasn't that level of detail.

14 Q Okay. Okay. The maps themselves, the plans,
15 weren't of that level of detail --

16 A That's correct.

17 Q -- at that point? Okay.

18 A It was looking more at the outside of the
19 building, what the exterior appeared to be and
20 cross-sections of the building so he could see what was
21 going on through the building, but not to that level of
22 detail, what a penthouse looked like.

23 Q Okay. That comes a little bit later in the
24 process?

25 A Absolutely.

1 Q Okay. Do you recall whether the application
2 itself had any of the names of the architect in
3 conjunction with the Owner's Affidavit?

4 A Nathan Ogle's name, if I recall, was the name
5 that we put on the application. I don't -- I don't even
6 know if, in the first application -- if you have it, I
7 could look at it --

8 Q Okay.

9 A -- and tell you for certain. But I don't know
10 that I even put my name down on it because our
11 involvement had been relatively quick.

12 Q Sounds like it. Okay. And I apologize, I
13 don't understand the process completely. So explain to
14 me what role Chris Barrett and Gary Duhon played in
15 connection with the application?

16 A Chris Barrett and Gary Duhon had most of the
17 conversations or set up most of the conversations that
18 were had with planning commissioners and/or city council
19 members to explain what the project was outside of the
20 public meeting so that they -- when they got questions
21 from the public, they knew what we were doing, and that
22 we could see -- if they had any concerns, that we could
23 try and address through our application process.

24 Q Does Chris Barrett have his own separate
25 company? Is he an individual on his own? What is

1 his --

2 A His company name, whether he works there, is --
3 I believe it's IW Strategies. It's -- he does lobbying
4 and public relations, working in conjunction with an
5 advertising firm.

6 Q Okay. And as I understood it, you weren't the
7 one that contacted either Chris or Gary; it was DeCal or
8 Sam?

9 A I think I gave the recommendation for Chris.
10 And I -- Chris and I agreed that Gary Duhon would be the
11 best person on this due to past working relationships we
12 had had, and we ended up getting Gary on the team
13 through Chris calling him --

14 Q Okay.

15 A -- and asking him if he would participate.

16 Q And as I understand it, you were never
17 instructed or told, wait a minute, use somebody over at
18 Hale Lane, they're going to be the ones to help us
19 through this?

20 A I don't recall anything of that sort.

21 Q Okay. And the only thing you recall briefly is
22 kind of a fuzzy recollection of Craig Howard maybe being
23 at one of the meetings?

24 A Yeah. As I sat and thought about it, in
25 DeCal's office, he may have been present at one or more.

1 We had many, many meetings in the -- DeCal's office.

2 Q Okay. And that would have been strategic
3 meetings in order to try to figure out who to present
4 this to, to get it through the process so that you could
5 get the approval?

6 A Yeah. That and -- and any changes that we need
7 to make to the application, to address staff's comments
8 and who is doing those, and pulling everyone together so
9 we're pulling on the same side of the rope.

10 Q Okay. You said that in the meeting when
11 Dr. Iliescu came to sign the Owner Affidavit there was
12 some comment about size.

13 A I seem to recall that there was a comment about
14 the size of the building. And whether we were looking
15 at a small size graphic or larger graphic, I don't
16 recall.

17 Q Would that have been a graphic that would have
18 been prepared or produced by the architect?

19 A Yes.

20 Q Okay. And that was a comment that was made by
21 you to Dr. Iliescu or by Dr. Iliescu to you?

22 A I recall that being made by Dr. Iliescu to me,
23 as this was a combination 40-story and 28-story tower
24 project.

25 Q So his comment was, Wow, it's big, or do you

1 remember?

2 A I don't remember the specific.

3 Q Okay.

4 A But I recall there being some comment about,
5 it's a large project.

6 Q Okay. So he had to have seen that picture in
7 order to make that comment. Is that your -- your
8 understanding?

9 A That would be my assumption.

10 Q You had -- you hadn't raised any issue about
11 what the size was in oral conversations with him during
12 this meeting?

13 A I don't recall doing anything of that sort.

14 Q Okay.

15 MS. KERN: Those are all the questions that I
16 have. Thank you.

17 MR. MOLLATH: Shawn, do you have any?

18 MR. OLIPHANT: No.

19 MR. MOLLATH: I have a couple follow-ups.

20 FURTHER EXAMINATION

21 BY MR. MOLLATH:

22 Q If I understand your testimony, um, when Wood
23 Rodgers became involved to process the application
24 before the city of Reno, substantially all or a great
25 portion of the architectural work had been done for this

1 project to put it in the position to be processed
2 through the city of Reno.

3 A Yes.

4 Q Okay. And your involvement was such that you
5 were needed to facilitate from an engineering and
6 planning standpoint the processing of the approvals and
7 entitlements for the project which included to a great
8 degree the architectural component of that?

9 A Yes.

10 Q Okay. On a scale of one to ten, what was the
11 architectural component of the -- or what was the --
12 what comprised the architectural component was --
13 application that was submitted to the city of Reno for
14 the entitlement, was that, you know -- I'm trying to
15 determine whether that's a large portion or --

16 A That's really difficult to measure. If you
17 look at -- paper copies in the application, geotechnical
18 reports and traffic reports and different reports such
19 as that take up a large volume.

20 Q Okay.

21 A The sheer number of pages that are directly
22 associated with the architecture is relatively small
23 when you compare it to the application forms, the
24 project description and those other reports, hydrology
25 and sewer reports, so on.

1 It's a big component of what people look at in
2 the tangible, the tangible feel that you have when
3 taking a project through. So that is very hard for me
4 to quantify.

5 Q Okay. Let me see if -- maybe I just didn't
6 give you a good question. What I'm trying to determine
7 was, let's go back to the -- to January 1st, 2006 when
8 Sam Caniglia contacted you. And I'm assuming at that
9 point in time the architectural scope of the project was
10 given to you, and you knew what this project was all
11 about.

12 A Uh-huh.

13 Q All right. Um, as of January 1st, 2006, when
14 you got your arms around this project after the meeting
15 with Sam Caniglia, what portion of the architectural
16 work had been completed on this project so as to allow
17 it to go to the planning process?

18 A There was enough to submit an application to
19 the city of Reno for Special Use Permit or Tentative Map
20 relative to the architecture.

21 Q Right.

22 A There was some engineering that had to be done
23 to coincide with that submittal to form a complete
24 package. And that's where our role came in. And we did
25 it post haste.

1 Q So essentially at the time of January of
2 2006 -- let's look at that time frame.

3 A Uh-huh.

4 Q At the time you were preparing the application
5 to be submitted, would it be fair to say that
6 substantially all of the architectural component of that
7 application was complete?

8 A For that initial submittal, that would be
9 correct.

10 Q All right. And then thereafter there were
11 architectural input that came in during the application
12 process, that being or consisting of meetings with city,
13 staff meetings with the developer, and public meetings
14 where the architect would then come in and fine-tune and
15 discuss and supplement?

16 A There were modifications to the maps that the
17 arc -- or the graphics of the architect had prepared
18 based on comments from those groups.

19 Q Okay.

20 A That would be correct.

21 Q All right. All right. So if I understand it
22 correctly, when you called Dr. Iliescu in to sign the
23 Owner's affidavits, for all intents and purposes, the
24 architectural component was complete to the degree that
25 would allow you to submit the application for the

1 entitlements that you were applying for?

2 A Yes.

3 Q And the only architectural component that
4 occurred after that point was the interface of the
5 architect with city of Reno staff, public meetings and
6 developer meetings and in furtherance of the
7 consideration of the application by the city of Reno,
8 Planning Commission, various CABs and CEBs and things of
9 that sort?

10 A And addressing code issues to a finer level
11 though, yes.

12 MR. MOLLATH: Okay. That's all I have.

13 MS. KERN: I don't have anything further.

14 THE WITNESS: Okay. Thank you.

15 (The proceedings concluded at 11:05 a.m.)
16
17
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25

CERTIFICATE OF WITNESS

I hereby certify under penalty of perjury that I have read the foregoing deposition, made the changes and corrections that I deem necessary, and approve the same as now true and correct.

Dated this 23rd day of December
2008.

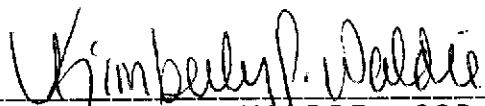


DAVID SNELGROVE

1 I, KIMBERLY J. WALDIE, a Certified Shorthand
2 Reporter licensed in the State of California and the
3 State of Nevada, do hereby certify that on Tuesday,
4 November 18, 2008, at the offices of Prezant & Mollath,
5 6560 SW McCarran Blvd., Ste. A, Reno, Nevada, personally
6 appeared DAVID SNELGROVE, who was duly sworn to testify
7 and deposed in the matter entitled herein; that said
8 witness was duly sworn by me; that, before the
9 proceedings' completion, the reading and signing of the
10 deposition was requested by the deponent; that the
11 foregoing transcript, consisting of pages 1 through 56,
12 is a true and correct transcript of the stenographic
13 notes of testimony taken by me in the above-captioned
14 matter to the best of my knowledge, skill and ability.

15 I further certify that I am not an attorney or
16 counsel for any of the parties, nor a relative or
17 employee of any attorney or counsel connected with the
18 action, nor financially interested in the action.

19 Dated at Reno, Nevada, this 24th day of
20 November, 2008.

21
22 
23 KIMBERLY J. WALDIE, CSR No. 8696
24 NV CCR #720, RPR
25

OFFICER'S ACTIONS RE SIGNING OF DEPOSITION
PURSUANT TO NEVADA RULES OF CIVIL PROCEDURE

DATE

11-24-08

AT DIRECTION OF COUNSEL, THE ORIGINAL
WAS SENT TO THE WITNESS

WITNESS SIGNED DEPO

ORIGINAL SENT TO

OTHER ACTIONS

1/8/09

Signed & sealed original
returned to Mollath

Exhibit

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Attorneys for Respondent Mark B. Steppan

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

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

CASE NO.: CV07-00341

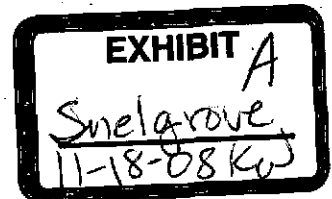
DEPT. NO.: 6

Applicants,

vs.

MARK B. STEPPAN,

Respondent.



AFFIDAVIT OF DAVID Snelgrove IN SUPPORT OF
SUPPLEMENTAL RESPONSE TO APPLICATION FOR
RELEASE OF MECHANIC'S LIEN

STATE OF NEVADA }
COUNTY OF WASHOE } ss:

I, David Snelgrove, affiant herein, do hereby swear under penalty of perjury that the assertions of this Affidavit are true.

1. That I am employed by Wood Rogers and worked directly with the project design team inclusive of the project Architect and applicant regarding the Wingfield Towers development.

2. In connection with my work, I assisted in preparing the Special Use Permit Application dated January 17, 2006 and the Tentative Map and Special Use Permit Application dated February 7, 2006.

3. A true and correct copy of the Special Use Permit Application dated January 17, 2006 is attached hereto as Exhibit "A."

ILIESCU000578

AA2552

1 4. A true and correct copy of the Tentative Map and Special Use Permit Application
2 dated February 7, 2006 is attached hereto as Exhibit "B."

3 5. Included with the Special Use Permit Application dated January 17, 2006 and
4 Tentative Map and Special Use Permit Application dated February 7, 2006 are Owner Affidavits.
5 Accordingly, the Owners of the Real Property, Dr. and Mrs. Iliescu executed the Owner Affidavits
6 that were a part of the Applications.

7 6. Both Applications include the name of Fisher Friedman Associates and Nathan
8 Ogle, AIA, with an address of 1485 Park Avenue, Suite 103, Emeryville, CA 94608, phone number
9 510-420-1666 and fax number of 510-420-0599.

10 ✓ 7. Both the January 17, 2006 and February 7, 2007 Applications contained building
11 elevations and/or building floor plans containing the name of the project architect, Mark Steppan,
12 AIA and the architectural design consultant Fisher Friedman Associates. It is my recollection that
13 Dr. Iliescu saw the architectural drawings as provided in the two applications at or about the time
14 of receipt of the Owner affidavits.

15 8. In connection with the Wingfield Towers Project, I attended numerous
16 neighborhood meetings. At some of these meetings, Dr. Iliescu was present. On information and
17 belief, I attended the following meetings and Dr. Iliescu was present.

Meeting	Date	Present
Arlington Towers HOA	July 27, 2006	Myself, Dr. Iliescu
Downtown Improvement Association	August 3, 2006	Myself, Dr. Iliescu

21
22 9. In connection with the Wingfield Towers Project, we made a concerted effort to
23 provide information to as many people as possible. In furthering that goal, the entire team working
24 on the Project produced a PowerPoint presentation and Fisher Friedman produced a 3-D Fly By.
25 I would present the PowerPoint presentation and/or the 3-D Fly By to various groups. A copy of
26 the PowerPoint presentation and the 3-D Fly By is attached hereto as Exhibits "C" and "D,"
27 respectively. A copy of a list of various meetings that I presented at, including either or both of the
28 PowerPoint and/or the 3-D Fly By is attached hereto as Exhibit "E."

GAYLE A. KERN, LTD.

5421 KIETZKE LANE, SUITE 200

RENO, NEVADA 89511

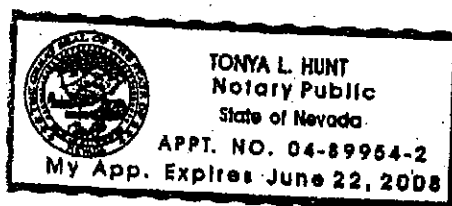
TELEPHONE: (775) 324-5930

1 DATED this 30th day of July, 2007.

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28
DAVID SNELGROVE

SUBSCRIBED AND SWORN to
before me this 30 day of July, 2007.

Tonya L. Hunt
NOTARY PUBLIC



TRIAL EXHIBITS 27-31

Exhibit 27: Invoices for Project 0515-02

Invoice	Date	Amount	Discovery
22385	6/20/06	645.00	ST4398
22409	7/19/06	255.00	ST4399

FISHER • FRIEDMAN • ASSOCIATES • AIA
ARCHITECTURE PLANNING URBAN DESIGN

INVOICE

INVOICE

Invoice # 22385
June 20, 2006
Page 1

Sam Caniglia
BSC Financial, LLC
c/o Consolidated Pacific Dev. Co.
932 Parker Street
Berkeley, CA 94710

Project #: 0515-02 Reno/Model-Bulk Massing Studies

Project Manager: Nathan Ogle

Professional Services for the Period: May 01, 2006 to May 31, 2006

Project #: 0515-02
Billing Group 001

Professional Services	Rate	Hours	Charge
-----	----	-----	-----
Principal/Officer	220.00	1.00	220.00
Sr Vice President	170.00	2.50	425.00
		-----	-----
		3.50	645.00
 Total Professional Services		\$	645.00

 Total Amount Due		\$	645.00
			=====

Aged Receivables:

Current	31-60 Days	61-90 Days	91-120 Days	+120 Days
-----	-----	-----	-----	-----
645.00	0.00	0.00	0.00	0.00

1485 PARK AVENUE • SUITE 103 • EMERYVILLE • CALIFORNIA • 94608-3536

TEL (415) 426-1666

FAX (510) 420-0599

STEPPAN 4398

AA2557

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A R C H I T E C T U R E P L A N N I N G U R B A N D E S I G N

I N V O I C E

I N V O I C E

Invoice # 22409
July 19, 2006
Page 1

Sam Caniglia
BSC Financial, LLC
c/o Consolidated Pacific Dev. Co.
932 Parker Street
Berkeley, CA 94710

Project #: 0515-02 Reno/Model-Bulk Massing Studies

Project Manager: Nathan Ogle

Professional Services for the Period: June 01, 2006 to June 30, 2006

Project #: 0515-02
Billing Group 001

Professional Services	Rate	Hours	Charge
-----	----	-----	-----
Sr Vice President	170.00	1.50	255.00
Total Professional Services		\$	255.00

Total Amount Due		\$	255.00
			=====

A c c o u n t s R e c e i v a b l e

Invoice Date	Description	Amount	Balance Due
-----	-----	-----	-----
22399 06/20/06	Billing	645.00	645.00

	Total Accounts Receivable		645.00

	Balance Due	\$	900.00

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(510) 420-1666

FAX (510) 420-0399

STEPPAN 4399

AA2558

Exhibit 28: Invoices for Project 0515-03

Invoice	Date	Amount	Discovery
22386	6/20/06	3,255.00	ST4401
22410	7/19/06	6,730.00	ST4402
22467	9/21/06	1,392.50	ST4403

INVOICE

INVOICE

Invoice # 22386
 June 20, 2006
 Page 1

Sam Caniglia
 BSC Financial, LLC
 c/o Consolidated Pacific Dev. Co.
 932 Parker Street
 Berkeley, CA 94710

Project #: 0515-03 Reno/Church Parcel Parking Ad

Project Manager: Nathan Ogle

Professional Services for the Period: May 01, 2006 to May 31, 2006

Project #: 0515-03
 Billing Group 001

Professional Services	Rate	Hours	Charge
Principal/Officer	220.00	9.00	1980.00
Sr Vice President	170.00	7.50	1275.00
		16.50	3255.00
Total Professional Services		\$	3255.00
Total Amount Due		\$	3255.00

Aged Receivables:

Current	31-60 Days	61-90 Days	91-120 Days	+120 Days
3255.00	0.00	0.00	0.00	0.00

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INVOICE

INVOICE

Invoice # 22410
July 19, 2006
Page 1

Sam Caniglia
BSC Financial, LLC
c/o Consolidated Pacific Dev. Co.
932 Parker Street
Berkeley, CA 94710

Project #: 0515-03 Reno/Church Parcel Parking Ad

Project Manager: Nathan Ogle

Professional Services for the Period: June 01, 2006 to June 30, 2006

Project #: 0515-03
Billing Group 001

Professional Services	Rate	Hours	Charge
-----	----	-----	-----
Principal/Officer	220.00	19.00	4180.00
Sr Vice President	170.00	15.00	2550.00
		-----	-----
		34.00	6730.00

Total Professional Services		\$	6730.00

Total Amount Due		\$	6730.00
			=====

Accounts Receivable

Invoice Date	Description	Amount	Balance Due
-----	-----	-----	-----
22386 06/20/06	Billing	3255.00	3255.00

Total Accounts Receivable			3255.00

Balance Due		\$	9985.00

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FAX (510) 420-0399

STEPPAN 4402

AA2561

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 ARCHITECTURE PLANNING URBAN DESIGN

INVOICE

INVOICE

Invoice # 22467
 September 21, 2006
 Page 1

Sam Caniglia
 BSC Financial, LLC
 c/o Consolidated Pacific Dev. Co.
 932 Parker Street
 Berkeley, CA 94710

Project #: 0515-03 Reno/Church Parcel Parking Ad

Project Manager: Nathan Ogle

Professional Services for the Period: June 01, 2006 to June 30, 2006

Project #: 0515-03
 Billing Group 001

Professional Services	Rate	Hours	Charge
-----	----	-----	-----
Principal/Officer	220.00	6.00	1320.00
Vice President	145.00	0.50	72.50
		-----	-----
		6.50	1392.50

Total Professional Services \$ 1392.50

Total Amount Due \$ 1392.50
 =====

Accounts Receivable

Invoice Date	Description	Amount	Balance Due
-----	-----	-----	-----
22410 07/19/06	Billing	6730.00	6730.00

Total Accounts Receivable 6730.00

Balance Due \$ 8122.50

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 (510) 420-1666 FAX (510) 420-0599

STEPPAN 4403

AA2562

Exhibit 29: Invoices for Project 0515-05

Invoice	Date	Amount	Discovery
22431	8/23/06	22,100.00	ST4405
22453	9/21/06	10,675.00	ST4406
22469	10/25/06	1,800.00	ST4407
22498	11/21/06	1,980.00	ST4408

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ARCHITECTURE PLANNING URBAN DESIGN

INVOICE

INVOICE

Invoice # 22431
August 23, 2006
Page 1

Sam Caniglia
BSC Financial, LLC
c/o Consolidated Pacific Dev. Co.
932 Parker Street
Berkeley, CA 94710

Project #: 0515-05 Reno/City Staff Comment Studies

Project Manager: Nathan Ogle

Professional Services for the Period: July 01, 2006 to July 31, 2006

Project #: 0515-05
Billing Group 001

Professional Services	Rate	Hours	Charge
Int. Drafter/Designer	90.00	13.00	1170.00
Principal/Officer	220.00	34.00	7480.00
Senior Designer	100.00	45.25	4525.00
Sr Vice President	170.00	52.50	8925.00
		144.75	22100.00

Total Professional Services \$ 22100.00

Total Amount Due \$ 22100.00

Aged Receivables:

Current	31-60 Days	61-90 Days	91-120 Days	+120 Days
22100.00	0.00	0.00	0.00	0.00

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FAX (510) 420-0399

STEPAN 4405

AA2564

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I N V O I C E

INVOICE

Invoice # 22453
September 21, 2006
Page 1

Sam Caniglia
BSC Financial, LLC
c/o Consolidated Pacific Dev. Co.
932 Parker Street
Berkeley, CA 94710

Project #: 0515-05 Reno/City Staff Comment Studies

Project Manager: Nathan Ogle

Professional Services for the Period: August 01, 2006 to August 31, 2006

Project #: 0515-05
Billing Group 001

Professional Services -----	Rate ----	Hours -----	Charge -----
Int.Drafter/Designer	90.00	3.00	270.00
Principal/Officer	220.00	21.00	4620.00
Senior Designer	100.00	40.25	4025.00
Sr Vice President	170.00	9.50	1615.00
Vice President	145.00	1.00	145.00
		-----	-----
		74.75	10675.00

Total Professional Services \$ 10675.00

Total Amount Due \$ 10675.00
=====

Accounts Receivable

Invoice Date	Description	Amount	Balance Due
-----	-----	-----	-----
22431 08/23/06	Billing	22100.00	22100.00

Total Accounts Receivable 22100.00

1485 PARK AVENUE • SUITE 103 • EMERYVILLE • CALIFORNIA • 94608-3536
(510) 420-1656 FAX (510) 420-0599

STEPPAN 4406

AA2565

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I N V O I C E

INVOICE

Invoice # 22469
October 25, 2006
Page 1

Sam Caniglia
BSC Financial, LLC
6121 Lakeside Drive Suite 230
Reno, NV 89511

Project #: 0515-05 Reno/City Staff Comment Studies

Project Manager: Nathan Ogle

Professional Services for the Period: September 01, 2006 to September 30, 2006

Project #: 0515-05
Billing Group 001

Professional Services -----	Rate ----	Hours -----	Charge -----
Senior Designer	100.00	18.00	1800.00

Total Professional Services		\$	1800.00 -----
-----------------------------	--	----	------------------

Total Amount Due		\$	1800.00 =====
------------------	--	----	------------------

Accounts Receivable

Invoice Date -----	Description -----	Amount -----	Balance Due -----
22431 08/23/06	Billing	22100.00	22100.00
22453 09/21/06	Billing	10675.00	32775.00

Total Accounts Receivable			32775.00 -----
---------------------------	--	--	-------------------

Balance Due	\$	34575.00 -----
-------------	----	-------------------

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(510) 420-1566

FAX (510) 420-0599

STEPPAN 4407

AA2566

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 ARCHITECTURE PLANNING URBAN DESIGN

INVOICE

INVOICE

Invoice # 22482
 November 21, 2006
 Page 1

Sam Caniglia
 BSC Financial, LLC
 6121 Lakeside Drive Suite 230
 Reno, NV 89511

Project #: 0515-05 Reno/City Staff Comment Studies

Project Manager: Nathan Ogle

Professional Services for the Period: October 01, 2006 to October 31, 2006

Project #: 0515-05
 Billing Group 001

Professional Services	Rate	Hours	Charge
-----	----	-----	-----
Senior Designer	100.00	4.50	450.00
Sr Vice President	170.00	9.00	1530.00
		-----	-----
		13.50	1980.00

Total Professional Services	\$	1980.00

Total Amount Due	\$	1980.00
		=====

Accounts Receivable

Invoice Date	Description	Amount	Balance Due
-----	-----	-----	-----
22431 08/23/06	Billing	22100.00	22100.00
22453 09/21/06	Billing	10675.00	32775.00
22469 10/25/06	Billing	1800.00	34575.00

Total Accounts Receivable	34575.00

Balance Due	\$	36555.00

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FAX (510) 420-0599

STEPPAN 4408

AA2567

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ARCHITECTURE PLANNING URBAN DESIGN

INVOICE

INVOICE

Invoice # 22498
November 21, 2006
Page 1

Sam Caniglia
BSC Financial, LLC
5121 Lakeside Drive Suite 230
Reno, NV 89511

Project #: 0515-06 Reno/Fly Through Edits

Project Manager: Nathan Ogle

Professional Services for the Period: March 01, 2006 to September 30, 2006

Project #: 0515-06

Billing Group 001

Professional Services	Rate	Hours	Charge
Graphic Designer	200.00	299.75	59950.00
Principal/Officer	220.00	29.00	6380.00
Vice President	145.00	2.00	290.00
		330.75	66620.00

Total Professional Services \$ 66620.00

Total Amount Due \$ 66620.00

Aged Receivables:

Current	31-60 Days	61-90 Days	91-120 Days	+120 Days
66620.00	0.00	0.00	0.00	0.00

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(510) 420-1666 FAX (510) 420-0599

STEPPAN 4410

AA2568

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ARCHITECTURE PLANNING URBAN DESIGN

INVOICE

INVOICE

Invoice # 22622
September 19, 2007
Page 1

Sam Caniglia
BSC Financial, LLC
6121 Lakeside Drive Suite 230
Reno, NV 89511

Project #: 0515 Reno

Project Manager: Nathan Ogle

Professional Services for the Period: August 01, 2007 to August 31, 2007

Project #: 0515
Billing Group 001

Construction Cost 180000000.00

Percent of Construction Cost 5.75
Total Fee \$ 10350000.00

DEPT	Percent of Total Fee	DEPT Fee	Percent Complete	Fee Earned
Schematic Design Phase	20.000	2070000.00	100.000	2070000.00
Design Development	22.000	2277000.00	0.000	0.00
Working Drawings	40.000	4140000.00	0.000	0.00
Bidding	1.000	103500.00	0.000	0.00
Construction Admin	17.000	1759500.00	0.000	0.00
Total Fee Earned				2070000.00
Prior Fee Billing				-2070000.00
Current Fee Total			\$	0.00
Total Amount Due			\$	0.00

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STEPPAN-007616

AA2569

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ARCHITECTURE PLANNING URBAN DESIGN

INVOICE

0515
Reno

Invoice # 22622
September 19, 2007
Page 2

Accounts Receivable

Invoice	Date	Description	Amount	Balance Due
				481275.00
22384	05/18/06	Billing	481275.00	481275.00
	02/16/06	Payment	-39190.00	442085.00
	02/16/06	Payment	-72700.00	369385.00
	02/16/06	Payment	-91035.00	278350.00
	02/16/06	Payment	-52065.00	226285.00
	02/16/06	Payment	-8230.00	218055.00
	03/21/06	Payment	-15490.00	202565.00
	05/16/06	Payment	-102160.00	100405.00
	06/16/06	Payment	-50000.00	50405.00
	09/16/06	Payment	100395.00	150800.00
22408	07/19/06	Billing	342171.00	492971.00
22430	08/23/06	Billing	345074.75	838045.75
22452	09/21/06	Billing	342171.00	1180216.75
22468	10/25/06	Billing	461817.00	1642033.75
22481	11/21/06	Billing		

Total Accounts Receivable

1642033.75

Balance Due \$ 1642033.75

Aged Receivables:

Current	31-60 Days	61-90 Days	91-120 Days	+120 Days
0.00	0.00	0.00	0.00	1642033.75

Project Billing Summary:

	Current	Prior	Total
Professional Services	0.00	2070000.00	2070000.00
Reimbursable Expenses	0.00	0.00	0.00
Outside Services	0.00	2525.00	2525.00
Late Fees	0.00	0.00	0.00
Invoice Fees	0.00	378.75	378.75
	0.00	2072903.75	2072903.75

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(510) 420-1666

FAX (510) 420-0599

STEPPAN-007617

AA2570

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ARCHITECTURE PLANNING URBAN DESIGN

INVOICE

0515
Reno

Invoice # 22622
September 19, 2007
Page 3

TERMS: Payable 30 days from date of invoice
unless otherwise governed by contract terms.
Past due invoices will carry a service charge
of 1-1/2% per month.

1485 PARK AVENUE • SUITE 103 • EMERYVILLE • CALIFORNIA • 94608-3536
(510) 420-1666 FAX (510) 420-0599

STEPPAN-007618

AA2571

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellants

vs.

MARK B. STEPPAN,

Respondent.

Supreme Court No. 68346

Washoe County Case No. CV07-
00341

(Consolidated w/ CV07-01021)

Electronically Filed
May 12, 2016 04:42 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

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

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	IV	AA0736-0979
		Transcript: Trial Day 1 - Volume I – Corrected/ Repaginated Transcript (File Date - 02/27/15) Transcript pages 243-291	V	AA0980-1028
34	12/09/13	Minutes: Bench Trial (Day 1) (Hearing Date - 12/09/13)	V	AA1029
35	12/10/13 Hrg.	Transcript: Trial Day 2 - Volume II (File Date - 02/24/14) Transcript pages 292-492	V	AA1030-1230
		Transcript: Trial Day 2 - Volume II (File Date - 02/24/14) Transcript pages 493-586	VI	AA1231-1324
36	12/10/13	Minutes: Bench Trial (Day 2) (Hearing Date - 12/10/13)	VI	AA1325

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

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

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

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
57	03/10/15	Defendants' Motion For Court To Alter Or Amend Its Judgment And Related Prior Orders	X	AA2384-2420
58	03/11/15	Opposition to Defendants' Motion to Alter or Amend Judgment and Related Orders	X	AA2421-2424
59	03/13/15	Decision and Order Denying NRCP 60(b) Motion	X	AA2425-2431
60	03/13/15	Notice of Entry of Order Denying Rule 60(b) Motion with Certificate of Service	X	AA2432-2435
61	03/20/15	Reply Points and Authorities in Support of Defendants' Motion For Court To Alter Or Amend Its Judgment And Related Prior Orders	X	AA2436-2442
62	05/27/15	Order Denying Defendants' Motion for Court to Alter or Amend Its Judgment and Related Prior Orders	X	AA2443-2446
63	05/28/15	Notice of Entry of Order Denying Motion to Alter or Amend, with Certificate of Service	X	AA2447-2448
64	06/23/15	Notice of Appeal By John Iliescu, Jr., Individually, and John Iliescu, Jr. and Sonnia Santee Iliescu, as Trustees of The John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust Agreement	X	AA2449-2453
65	07/15/15	Notice of Entry of Various Orders	XI	AA2454-2479
66	10/29/15	Minutes: Hearing on Defendants' Motion for Clarification (Hearing Date -11/13/15)	XI	AA2480
67	11/17/15	Decision and Order Granting Motion Seeking Clarification of Finality of Judgment	XI	AA2481-2484

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
68	12/16/15	Amended Notice of Appeal By John Iliescu, Jr., Individually, and John Iliescu, Jr. and Sonnia Santee Iliescu, As Trustees of The John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust Agreement	XI	AA2485-2489
69	01/26/16	Order Dismissing Appeal in Part and Reinstating Briefing	XI	AA2490-2492
		SUPPLEMENTAL DOCUMENTS¹		
70	12/10/13	Deposition Transcript of David Snelgrove on November 18, 2008	XI	AA2493-2554
71	12/11/13	Trial Exhibits 27-31 [Side Agreement Invoices]	XI	AA2555-2571

ALPHABETICAL INDEX

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
3	03/06/07	Affidavit of Mailing of Application for Release of Mechanic's Lien, Declaration of John Iliescu in Support of Application for Release of Mechanic's Lien; and Order Setting Hearing	I	AA0014-0015
68	12/16/15	Amended Notice of Appeal By John Iliescu, Jr., Individually, and John Iliescu, Jr. and Sonnia Santee Iliescu, As Trustees of The John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust Agreement	XI	AA2485-2489
49	12/04/14	Amended Opposition to Defendants' Motion for NRCP 60(b) Relief from Court's Findings of Fact, Conclusions of Law and Decision and Related Orders	IX	AA2066-2183
11	09/27/07	Answer to Complaint to Foreclose Mechanic's Lien and Third Party Complaint (Case No. CV07-01021) without Exhibits	I	AA0213-0229

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

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

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

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

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

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

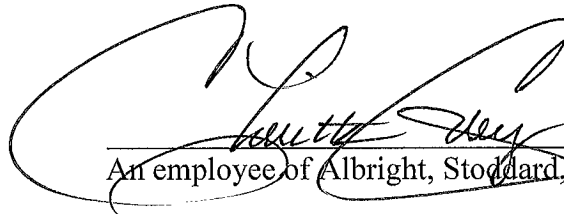
DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
61	03/20/15	Reply Points and Authorities in Support of Defendants' Motion For Court To Alter Or Amend Its Judgment And Related Prior Orders	X	AA2436-2442
4	05/03/07	Response to Application for Release of Mechanic's Lien with Exhibits (Case No.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

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

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c), I hereby certify that I am an employee of ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, and that on this 12th day of May, 2016, the foregoing **APPENDIX TO APPELLANT'S OPENING BRIEF, VOLUME X**, 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:

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 Respondent Mark Steppan

A large, stylized handwritten signature in black ink, appearing to read "Michael D. Hoy".

An employee of Albright, Stoddard, Warnick & Albright

CODE: 4185
PEGGY B. HOOGS, CCR #160
Peggy Hoogs & Associates
435 Marsh Avenue
Reno, Nevada 89509
(775) 327-4460
Court Reporter

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE ELLIOTT SATTler, DISTRICT JUDGE
--oOo--

MARK STEPPAN,	Case No. CR07-00341
Plaintiff,	Dept. No. 10
vs.	
JOHN ILIESCU, et al.,	
Defendant.	

TRANSCRIPT OF PROCEEDINGS

ORAL ARGUMENTS

Wednesday, February 18, 2015

Reported By: PEGGY B. HOOGS, CCR #160, RDR, CRR

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APPEARANCES:

For the Plaintiff: MICHAEL D. HOY, ESQ.
HOY CHRISSINGER KIMMEL & VALLAS, PC
50 West Liberty Street, Suite 840
Reno, Nevada 89501

For the Defendants: D. CHRIS ALBRIGHT, ESQ.
ALBRIGHT, STODDARD, WARNICK &
ALBRIGHT
801 South Rancho Drive
Las Vegas, Nevada 89106

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RENO, NEVADA; WEDNESDAY, FEBRUARY 18, 2015; 11:01 A.M.

-oOo-

THE COURT: Good morning. Please be seated.

This is CV07-00341, John -- Dr. John Iliescu, Jr., et al., vs. Mark Steppan, et al. And I should actually correct that. It should be Mark Steppan, et al., vs. Dr. John Iliescu, et al.

Dr. Iliescu and his wife are present in court. Good morning to both of you. Don't get up, Dr. Iliescu.

DR. ILIESCU: Forgive me. I'm not hearing too well at 88. I don't want to stress the age because I feel like 58, but I can't hear well. Could you maybe talk up just a little bit, and I appreciate it.

THE COURT: I will, Dr. Iliescu. If you can't hear something, please let me know, or you can move up and sit next to Mr. Albright if you'd like.

DR. ILIESCU: Forgive me for this. It's out of my hands.

THE COURT: Sometimes we get a little bit older and the machine doesn't work quite the way it used to, Dr. Iliescu.

1 The doctor and his wife are present.
2 Mr. Albright is here on their behalf. Mr. Hoy is here on
3 behalf of Mr. Steppan. Mr. Steppan I did not see this
4 morning.

5 MR. HOY: Yes, Your Honor.

6 THE COURT: Good morning to all of you.

7 As a preliminary matter, I want to offer my
8 apologies specifically to Mr. Albright. We had to
9 continue this matter for 24 hours, and we weren't able to
10 get ahold of Mr. Albright in time to call you off, so I
11 offer you my personal apology, Mr. Albright, that 24
12 hours of your day was taken up unnecessarily for you, and
13 so I apologize for your consideration.

14 MR. ALBRIGHT: Not a problem, Your Honor.

15 THE COURT: I offer you my apology and
16 appreciate your consideration.

17 MR. ALBRIGHT: Accepted.

18 THE COURT: We are here for the following
19 reason. The Court has received and reviewed the
20 October 27, 2014 file-stamped Defendant's Motion for
21 NRCF 60(b) Relief from the Court's Findings of Fact,
22 Conclusions of Law and Decision and Related Orders. The
23 Court also has received and reviewed the November 4, 2014
24 file-stamped errata to that document.

1 There were actually two oppositions filed,
2 but it's my understanding that the only opposition that
3 the Court needed to consider itself with was the
4 December 4, 2014 file-stamped Amended Opposition to
5 Defendant's Motion for NRCP 60(b) Relief From Court's
6 Findings of Facts, Conclusions of Law and Decisions and
7 Related Orders.

8 So I had the December 1st opposition, but the
9 Court did not review that. I figured the amended one was
10 what we would be going through, and then when I
11 read -- when I reviewed the Defendant's Reply Points and
12 Authorities file-stamped December 16th of 2014, it was
13 clear that that was the agreement of the parties, is that
14 we were only going with the amended. I didn't even try
15 to go back and figure out what the difference was between
16 the amended opposition and the opposition. I just
17 reviewed the amended opposition.

18 The issue was submitted for the Court's
19 consideration on December 17th of 2014 by Mr. Hoy, and
20 Mr. Hoy, on behalf of Mr. Steppan, specifically requested
21 oral argument, and therefore oral argument was scheduled.

22 The Court has received and reviewed all of
23 the documents, the Court has reviewed all of the exhibits
24 attached thereto, and I think it is safe to say that the

1 Court is very familiar with the facts and circumstances
2 regarding this entire case given both the motion practice
3 and the fact that a bench trial was held. So I'm
4 well-versed in the background of Mr. Steppan and
5 Dr. Iliescu's legal issues.

6 Just so the parties are clear, I do have
7 copies of the two primary cases that I would suggest
8 Mr. Albright cites to, specifically Nevada National Bank
9 vs. Snyder, which is 108 Nev. 151, 826 P.2d 560, a 1992
10 case, and then the case that came out after the
11 conclusion of that trial in this matter, that case being
12 DTJ Design, Incorporated vs. First Republic Bank,
13 130 Nev. Adv. Op. No. 5, 318 P.3d 709.

14 And so I just made sure that I had copies of
15 those. Though they're not the only cases that are being
16 cited by the parties, I think that they're the two
17 primary cases that are cited by the defendants in support
18 of their motion.

19 And so with that as the factual background,
20 Mr. Albright, I know that Mr. Hoy was the one who
21 requested oral argument. However, it is your motion, and
22 therefore, I will turn to you and simply ask you if
23 there's anything that you wish to add to the motion, or
24 if you'd like to address specific points, go right ahead.

1 MR. ALBRIGHT: Thank you, Your Honor.

2 I will cut to the chase.

3 THE COURT: I love that.

4 MR. ALBRIGHT: We're here today to ask you to
5 alter your decision and invalidate Mr. Steppan's lien,
6 and the reason we feel that you need to do that, our
7 argument is perhaps the simplest, most fundamental
8 argument that could be made in a mechanic's lien case,
9 and that is that a mechanic's lien claimant cannot lien
10 for somebody else's work.

11 What a mechanic's lien can lien for is they
12 can lien for their work and they can lien for the work of
13 their employees, and they can lien for the work of their
14 subcontractors, but they can't lien for some third
15 party's work.

16 By way of analogy, in this case I believe
17 there was a party named Wood Rogers, who there was some
18 testimony about, and if I understand that testimony
19 correctly, Wood Rogers had their own contract directly
20 with and worked directly for the customer,
21 BSC Consolidated. They weren't acting as anybody's
22 subcontractor. And if that's --

23 THE COURT: Did Wood Rogers do the fly-by or
24 did they do the -- it wasn't the water --

1 MR. ALBRIGHT: They did part of the schematic
2 design --

3 THE COURT: I just couldn't remember in my
4 head what Wood Rogers did.

5 MR. ALBRIGHT: -- I think. Again, my
6 understanding -- if that understanding is correct, that
7 they were working directly for BSC Consolidated, I don't
8 think anybody in this courtroom would argue that it would
9 be appropriate for Mr. Steppan to have included in his
10 lien unpaid invoices that were due and owing to
11 Wood Rogers.

12 Same thing here. You can't lien for FFA's
13 work if FFA was working directly for the customer, just
14 like you wouldn't be able to do that with Wood Rogers.

15 So what Mr. Steppan has done, in order to
16 overcome that argument, is he has said, look, I was
17 retained as a contract architect by the customer, the
18 purchaser of the property -- I think initially it was
19 Consolidated, and then it was BSC -- but whatever the
20 month was, the customer, BSC Consolidated, retained me as
21 the contract architect. And then what I did, he now
22 says, is I hired Fisher-Friedman Associates, FFA, as my
23 subprovider of design consulting services, and so,
24 therefore, I meet the test.

1 Now, the reason the test exists, sometimes
2 the most obvious legal ideas are hard to find. It's
3 pretty obvious that I can't go around and lien for
4 somebody else's work in Reno that I'm not doing, but the
5 reason the test exists, if you look at the lien statute,
6 it says in NRS 108.222(1)(a), which I think applies here
7 because you applied the contract price instead of (b), it
8 says that you can lien -- a lien claimant can lien for
9 the value of -- the contract value under 1(a) of the
10 services that were provided by or through the lien
11 claimant, and Steppan says, by me as a contract
12 architect, through my sub, FFA.

13 In addition to NRS 108.222(1)(a), we also
14 know that there's a case which you mentioned as one of
15 the two primary cases, which is the Nevada National Bank
16 vs. Snyder case, which also says you can't lien for
17 somebody else's work, that other person's employees' work
18 and so forth. So this is how he gets around that.

19 Now, the problem, Your Honor, with this
20 analysis, this two-phase analysis, is that the first half
21 of this analysis, the idea that Mr. Steppan was ever
22 anything other than an employee of FFA, that he was, in
23 fact, the contract architect, that was never more than a
24 polite fiction. And I say it's a polite fiction because

1 of how polite everyone was about ignoring it and not
2 giving it any credence whatsoever as the work went
3 forward.

4 Mr. Steppan was never treated as a contract
5 architect. His name wasn't put on submissions to Nevada
6 governmental entities, he wasn't paid the bills, he
7 wasn't primarily involved in the work. His
8 father-in-law, the owner of FFA, said that he was the
9 supervisor of the work; Steppan would only be the
10 supervisor if he, Mr. Friedman, went to Hawaii, broke his
11 leg, something like that. Now, I don't think that polite
12 fictions fly under Nevada lien laws.

13 The problem with the second half of this
14 analysis is that this idea that Mr. Steppan retained and
15 hired FFA as his subcontractor, that doesn't even rise to
16 the level of a polite fiction. That is plucked out of
17 thin air. There is no evidence whatsoever to support any
18 claim that FFA was working for Mr. Steppan.

19 THE COURT: What about the trial testimony?

20 MR. ALBRIGHT: The trial testimony, Your
21 Honor, including -- I'm going to go through some of
22 it -- including the questions at trial, repeatedly talked
23 to Mr. Friedman and asked Mr. Friedman questions with
24 respect to the idea that Mr. Friedman was working

1 directly for BSC Consolidated.

2 You know, in fact, I fear, by the response I
3 got this morning when I tried to greet Mr. Hoy, that he
4 may be offended that we are under 60(b)(3) here in part,
5 and I want --

6 THE COURT: Hold on, Mr. Albright. I
7 certainly don't mean to speak for Mr. Hoy because Mr. Hoy
8 is certainly capable of speaking for himself, but I agree
9 with you, when I read the amended opposition, that
10 Mr. Hoy took offense to the tone and the verbiage that
11 was used in the motion, and though it has no control over
12 what I do, I can certainly understand why he would. I
13 mean, it was -- it was confrontational.

14 I think there were certain terms that were
15 used that you or any other person of integrity -- and I
16 know Mr. Hoy to be a man of integrity -- would take
17 offense to. So maybe that's why you got the cold
18 shoulder when you rolled into Reno. I have no idea.

19 MR. ALBRIGHT: And that's why I want to
20 clarify that, Your Honor.

21 My client's from Reno, lived here for
22 decades, contributed to this community. The California
23 firm that's on the other side set this up, I think, to
24 get around Nevada law.

1 I'm not accusing Mr. Hoy, and if anything I
2 said could be misconstrued as doing that, I apologize.
3 In fact, as I look at the trial transcript, one of the
4 things that I'm very impressed with about Mr. Hoy is that
5 he asks question after question after question which
6 refuses to countenance this sham idea that FFA was
7 working for Mr. Steppan, and instead he repeatedly asks
8 Mr. Friedman about his relationship, direct relationship
9 with BSC. We'll go over some of that.

10 He repeatedly elicits responses from
11 Mr. Friedman indicating that they were directly working
12 for BSC. Now, he doesn't explain the implications of
13 that, but that's not his job, that's my job, and that's
14 why I'm here today. So let's just look at that.

15 Two quick procedural questions or principles
16 that need to guide us today.

17 The Nevada Supreme Court has said repeatedly
18 that when a mechanic's lien claimant files a lien
19 foreclosure lawsuit, he puts at issue the conformance of
20 his lien with Nevada lien law. That's his burden to
21 prove at that point. Schofield v. Copeland, one of the
22 cases cited in the opposition, references that idea.

23 The other thing the Nevada Supreme Court has
24 said -- in fact, they've reiterated this as recently as

1 three months ago in the case of Simmons Self-Storage
2 Partners v. Rib Roof, Inc., 331 P3d 850, a mechanic's
3 lien case.

4 They've said the district court's findings in
5 a mechanic's lien case have to be supported by
6 substantial evidence, and they explain what substantial
7 evidence is, and they say substantial evidence is
8 evidence, quote, which a reasonable mind might accept as
9 adequate to support a conclusion.

10 And that's why I don't think polite fictions
11 fly. I think there needs to be substantial evidence of
12 what was really going on here.

13 THE COURT: Mr. Albright, there
14 wasn't -- this wasn't a nod-and-a-wink case. Certainly I
15 didn't review the evidence with the polite fiction
16 analysis that you've suggested. I listened to the
17 entirety of the testimony, reviewed all of the exhibits
18 that were admitted, considered not only the rulings in
19 the case that I made, but the rulings in the case that
20 Judge Adams had made before me, so I made a finding that
21 there was substantial evidence.

22 It wasn't that I just kind of looked at it
23 and said, oh, yeah, you know, I get it, Mr. Friedman and
24 Mr. Steppan just had this canard going, but I'll just go

1 along with it. I reviewed the entire thing.

2 Mr. Pereos zealously advocated on behalf of
3 his client, I believe, and at the conclusion of the trial
4 itself, I commented on both the level of advocacy on both
5 sides and on the level of professionalism that both sides
6 exhibited during the course of the trial.

7 So the argument somehow that this was just a
8 polite -- nod and a wink is what I call it, to the law, I
9 found was actually not true. I found that there was that
10 appropriate level of evidence presented during the trial.
11 So I was just wrong, is the argument. With all due
12 respect, I understand.

13 MR. ALBRIGHT: Your Honor, there's a contract
14 that's signed by Mr. Steppan as the contract architect.
15 I give you that.

16 My concern is, did anybody treat Mr. Steppan
17 as the contract architect? And the evidence that I
18 derive from trial -- and I don't know that there was a
19 clear finding, in your case at least with respect to the
20 second half of the premise on who FFA was working for,
21 that it was ever clearly brought up and clearly
22 addressed.

23 But in any event, here's the problem I have
24 with calling Mr. Steppan the contract architect. He

1 signed the contract. Did he negotiate it? No. Friedman
2 did that. The original letter agreement says, here's the
3 contracts, contract architect's 28 categories of
4 employee. Are any of those people employees of Steppan?
5 No. They're all FFA employees.

6 The initial invoices get sent out on Steppan
7 letterhead, but then they start going out on FFA
8 letterhead. In fact, during the opening arguments,
9 Mr. Hoy specifically referenced one of the invoices which
10 he thought was noteworthy because it was the November 21,
11 2006 invoice which said -- which he noted billed for 100
12 percent of the work through schematic design.

13 If you look at that invoice, it's not from
14 Steppan; it's on FFA letterhead. They're all from FFA;
15 they all used FFA's billing system; they were all from
16 FFA's address. That one was even on FFA's letterhead.

17 None of the payments that came back from the
18 client came to Steppan. They all came back directly to
19 FFA. FFA maintained the project files. Who created the
20 work product? Steppan had basically two jobs here: To
21 sign the contract and then someday to stamp the plans.
22 It never even really approached where there were plans
23 necessarily to be stamped.

24 Who's doing all of this work in Nevada?

1 Steppan said the work product had primarily been produced
2 by Nathan Ogle, David Tritt and Rodney Friedman. None of
3 these guys are employees of Steppan. He didn't prepare
4 any drawings, he said. Friedman testified that FFA owned
5 the resultant instruments of service. We know that
6 Steppan only did about 4.1 percent of the work.

7 Now, let's look at --

8 THE COURT: Of the 3400 hours worth of work.

9 Now, let me ask you a question.

10 MR. ALBRIGHT: Yes.

11 THE COURT: And it may not have any bearing
12 whatsoever on the case, but just as I sit here and as
13 I've thought about this case since it started and
14 certainly since this issue was raised back in December --
15 actually in October of last year -- the money that is
16 going to go theoretically, based on the Court's findings
17 of fact and conclusions of law and the judgment that will
18 be signed, assuming I don't grant your motion, will go
19 directly to Mr. Steppan. It won't go to Mr. Friedman.

20 Let's just say, theoretically, there's a big
21 pot of money and that Dr. and Mrs. Iliescu have to pull
22 out a chunk of that big pot of money and give it to
23 someone. I'm not ordering that they give it to
24 Mr. Friedman, I'm not ordering that they give it to FFA.

1 I'm ordering, based on the terms of the contract and
2 based on the agreement, that it goes directly to
3 Mr. Steppan.

4 So how is Mr. Friedman even -- he's not a
5 party to any of these proceedings. He never has been.

6 MR. ALBRIGHT: I understand that, Your Honor.
7 And Mr. Steppan --

8 THE COURT: I think it's STEP-EN.

9 Is it STEP-EN, Mr. Hoy?

10 MR. HOY: It's STEP-EN.

11 MR. ALBRIGHT: I apologize.

12 THE COURT: That's all right.

13 MR. ALBRIGHT: Mr. Steppan isn't entitled to
14 that money. It's just that simple. He's not entitled to
15 lien for it. He may be entitled to pursue a contract
16 claim for it, but he's not entitled to lien for it
17 because it is not money that is for services that he
18 provided. He was a full-time employee of FFA throughout
19 this project performance.

20 One of the things you have to do under
21 NRS 108.222(1)(a) is you have to say, what's the amount
22 of the unpaid invoices, and then when you submit your
23 lien notice, you have to say who were you employed by.
24 And the purpose of that is to say, look, who is it that

1 you would be suing? Who is it that owes you money for
2 this work?

3 Mr. Steppan was paid in full, he testified,
4 his regular wages and salary by FFA, who was his only
5 employer during this entire time period. He's not owed
6 any money. They were his employer. Your Honor yourself
7 found that he was employed by FFA.

8 THE COURT: I don't think there was any
9 question he was employed by FFA, but that doesn't
10 mean -- it seems to me your analysis, Mr. Albright, is
11 that because he is employed by FFA, he also cannot be
12 employed or enter into contracts on his own, that they
13 are somehow mutually exclusive. It would be -- I'm just
14 trying to think of a legal analysis or an analysis in the
15 legal world.

16 Let's say I'm of counsel at Mr. Hoy's firm.
17 I may be employed by him and collect a certain amount of
18 money from him, but I may also have the right to go out
19 and get my own clients and do my own work and not give
20 Mr. Hoy's firm money.

21 So I just don't see how they're mutually
22 exclusive, that because Mr. Friedman -- excuse
23 me -- Mr. Steppan works for Fisher-Friedman and
24 Associates -- there's no question in anybody's mind that

1 that's where he worked -- it doesn't mean he can't work
2 somewhere else or have contracts on his own under some
3 other terms and employ FFA.

4 MR. ALBRIGHT: That's true, Your Honor, and
5 that's not my argument. I'm not saying that he can't do
6 that. I'm saying that he didn't do that.

7 So I mean, if we're going to accept that
8 polite fiction, that he was, despite all of the evidence
9 and the points that I've gone through in my motion, he
10 was really the contract architect, then let's look at the
11 second half of this.

12 How does he lien for FFA's work? FFA isn't
13 mentioned in the AIA contract where the architect's
14 consultants are to be identified. That's the master
15 agreement, as Mr. Hoy referred to it throughout the
16 trial, legally effective on October 31, 2005, and yet FFA
17 is not listed there. When they are finally listed as
18 design consultants, they're listed in an addendum, and
19 that addendum doesn't say BSC is hiring Steppan and
20 Steppan is hiring FFA. It says the owner under this
21 contract is BSC and the other parties to this contract
22 are Steppan and FFA.

23 Throughout the trial all the questions are:
24 Did the architect, i.e., Steppan and FFA, get this

1 schematic design work done? Did the architect, Steppan
2 and FFA, do this? Did Steppan and FFA do that? These
3 are questions by Mr. Hoy. Everyone treated them as
4 though they were in conjunction, combined, working for
5 BSC. It was never established, never treated at trial as
6 though FFA were somehow employed by Steppan. I'm not
7 saying that couldn't have been done. I'm saying it
8 wasn't done. There's no evidence to support it.

9 Steppan testified that both he and FFA were
10 working for the customer. Throughout the trial questions
11 were asked again and again: Who was your client? It's
12 never Steppan when Friedman was asked that question.

13 No written agreement exists by which a
14 subcontract was entered into here, no invoices were ever
15 delivered, no payments were ever made by Steppan to his
16 purported designer, FFA. No invoices from FFA ever went
17 to Steppan. There's no lawsuits from FFA suing Steppan
18 for the monies he supposedly owes. It just doesn't rise
19 to the level of showing that any such thing happened.

20 Now, not only that, but legally under Nevada
21 law, what we know from the DTJ Design case is, if you
22 were going to do something like this, what you should
23 have done is you should have gotten together and you
24 should have had some sort of an entity that was

1 two-thirds owned by Nevada licensees. Mr. Friedman
2 didn't want to become a Nevada licensee because he was
3 apparently told 20 years ago you shouldn't sign anything
4 as the owner, have other people sign things, and so he
5 didn't want to do that. So he went with this thing, this
6 plan instead, except that he didn't even come up with the
7 idea of being the design consultant until after the work
8 was all done.

9 We know from Mr. Steppan's deposition
10 testimony that the only thing that happened after the AIA
11 amendment -- addendum actually gets signed is that new
12 bills go out on FFA letterhead for the flat fee amount.
13 So you do the work, you're interacting directly with the
14 customer, and then you decide in what regard.

15 And everybody at trial treated it as a direct
16 relationship between FFA and BSC. Nobody ever talked
17 about "Mr. Friedman, in your contract with Mr. Steppan.
18 You know, let's look at this."

19 Mr. Hoy, in a question to Mr. Friedman: "Is
20 this the form of agreement that your firm proposed to
21 Mr. Iamesi for the Reno project?"

22 That's after Mr. Friedman had testified we,
23 FFA, were hired by my old friend, Mr. Iamesi, to do this
24 work. Iamesi isn't with Steppan; he's with BSC

1 Consolidated.

2 Mr. Friedman, page 233 of the trial
3 transcript: "Cal Bosma went through our billing" -- "our
4 billing" -- this is Friedman talking -- not Steppan's
5 billing, our billing -- "and fortunately for us
6 discovered that we," FFA, "had underbilled them."

7 And he told us you're underbilling me, your
8 bill should be such and such.

9 This isn't a conversation he's having with
10 Steppan as though Steppan was his client. It's a
11 conversation he's having with BSC, the direct client.

12 He's asked by Mr. Hoy:

13 "Did your client for the Reno project ever
14 complain that your bills were too high?"

15 That's page 234 of the trial transcript.
16 He's not talking about Steppan there.

17 Page 237 of the trial transcript, Mr. Hoy
18 asked Mr. Friedman:

19 "So the development agency or entity with
20 respect to the Wingfield Towers project in Reno did
21 actually commit to pay a fee to your firm" -- not to
22 Steppan, to your firm -- "based on a percentage of the
23 estimated construction costs?"

24 "Correct."

1 This was a direct relationship between FFA
2 and BSC. That's how it's described in Mr. Hoy's
3 questions. That's how it's described in Mr. Friedman's
4 answers.

5 Page 329 of the trial transcript. This is,
6 Your Honor -- I'm sorry, no -- this is Mr. Hoy.

7 "Let's pick it off into smaller chunks. In
8 September of 2006 did you have concerns about getting
9 paid for the work that had been done to date?"

10 Mr. Friedman: "Yes."

11 "Did you have -- this is a yes or no. Did
12 you have conversations with the developers about getting
13 paid?"

14 "Yes."

15 "Did the developers give you assurances that
16 they were seeking financing and that the financing would
17 close soon?"

18 "Yes."

19 He wasn't asking those questions to
20 Mr. Steppan. He was asking them directly to BSC. That's
21 who he was directly working for.

22 THE COURT: But if there was some issue
23 regarding that, Mr. Albright, wouldn't that be something
24 that Mr. Pereos could clarify on cross-examination rather

1 than simply to say, we go through the entire trial, trial
2 is concluded, the Court makes its findings of fact and
3 conclusions of law, and then I understand that your
4 argument is that Nevada Rule of Civil Procedure 60 is the
5 mechanism by which then we just kind of have an immediate
6 appeal at the trial level before we get to now the Nevada
7 Court of Appeals or, theoretically, the Nevada Supreme
8 Court.

9 I believe that Mr. Hoy, in his opposition,
10 pointed out that these are all -- all the information
11 that you're talking about was known to the parties, was
12 found through discovery. It is not fraud or
13 misrepresentation; it is simply the way that the evidence
14 was presented to the Court during the trial.

15 So Mr. Pereos, who, as I stated earlier today
16 and have stated in the past, is a very accomplished, very
17 good trial attorney, you know, he had the opportunity to
18 cross-examine; Mr. Hoy had the opportunity to do direct
19 examination. So now we just go back and we start arguing
20 all of these things maybe again that should have been
21 brought up at trial or at cross-examination?

22 It's --

23 MR. ALBRIGHT: And that's a fair question,
24 and let me address that, Your Honor.

1 THE COURT: It just seems to be the most
2 inefficient way to conduct any civil litigation, that you
3 go do an entire trial, you go through the entire
4 discovery process, you do the trial, the trial is over
5 with, you wait to find out what the judge says, and then
6 you go back and say, well, let's start talking about what
7 we should have asked at trial or clarify issues that
8 should have been clarified at trial, because now, you
9 know, the judge has made the decision as to what it was.

10 MR. ALBRIGHT: Well, I think there's several
11 answers to that.

12 Number one, DTJ Design came out after trial.
13 I think DTJ Design established certain things which
14 weren't as clear before that case came down. They
15 established whether or not --

16 THE COURT: That's not true, Mr. Albright,
17 because you know that Snyder came out in 1992, and as you
18 pointed out in both your moving papers, your motion and
19 your reply, that case was abrogated on other grounds.
20 However, as you continue to argue, the point that you
21 latch onto is still the law in Nevada.

22 So it's not like the Nevada Supreme Court in
23 DTJ Design created something out of whole cloth. Your
24 argument is as far back as 1992, the year that I

1 graduated from law school, this was the law in the state
2 of Nevada, and it has been so for the last 23 years.

3 MR. ALBRIGHT: Your Honor, let me address
4 that.

5 THE COURT: And I'm not saying that I
6 necessarily agree that either of those cases apply to
7 this case. That's one of the reasons that we're here
8 having oral argument. I don't know that it's as cut and
9 dry as you argue in both your motion and your reply, that
10 DTJ is just completely some sort of watershed moment that
11 makes everything in this case different or clearer than
12 it was back when I entered my order last year.

13 MR. ALBRIGHT: Sure. Let me answer your
14 question with a couple other points.

15 First of all, the mechanic's lien claimant as
16 the plaintiff has the burden of establishing facts which
17 are put into findings in your decision, which findings,
18 the Nevada Supreme Court says, have to be supported by
19 substantial evidence at trial. And so even if it wasn't
20 brought to your attention as well as it could have been,
21 and that's one of the reasons why we also filed under
22 Rule 60(b)(1), is that it doesn't necessarily matter.
23 They're the ones who have to establish this theory of
24 their case.

1 Why should Mr. Pereos cross-examine
2 Mr. Friedman when Mr. Hoy is doing such a good job of
3 adducing testimony from Mr. Friedman which establishes
4 that FFA was working directly for BSC, and therefore
5 Mr. Steppan can't lien for this other work that's being
6 done directly for the customer.

7 For example, page 336 of the trial
8 transcript, Mr. Hoy asked Mr. Friedman:

9 "Were you -- was your company motivated to
10 record the mechanic's lien..."

11 Who was recording the mechanic's lien?

12 "Was your company," Mr. Friedman, "motivated
13 to record the mechanic's lien on November 7, 2006 based
14 on something that you had heard from the developers?"

15 I thought this was Mr. Steppan's lien, but
16 now we're being asked, Mr. Friedman is being asked, "Was
17 your company motivated to record the lien?"

18 It's clear whose lien this really was. It's
19 FFA's lien. It's clear why FFA felt they were entitled
20 to this lien, because they were the ones who had done all
21 that work. They had done all that work under direct
22 relationship with the customer. They had been paid
23 directly for some of that work by the customer. The only
24 reason they couldn't lien on their own is because they

1 didn't have a license to be doing this work.

2 They claim, well, we don't have to have a
3 license because we were hired as a consultant. They were
4 clearly doing much more than consulting.

5 THE COURT: And if that were the case and if
6 they came in and were trying to somehow enforce the lien,
7 then I agree with you, DTJ Design is directly on point.
8 If FFA is in there and FFA files the mechanic's lien and
9 the process begins and then, as occurred in both DTJ
10 Design and Snyder, somebody had the epiphany and they're
11 like, wait, we can't do this, and then they pull somebody
12 out and they say, we're going to put this guy into the
13 lawsuit instead of DTJ Design, in that case -- I forget
14 the name of the individual's name --

15 MR. ALBRIGHT: Thorpe.

16 THE COURT: Thorpe in DTJ. It's like, we'll
17 just use him, we'll substitute him in our place. But
18 that's not what happened here.

19 From the very beginning of this case --
20 Strike that. From the very beginning of the contract, it
21 was Steppan, not FFA. There's clearly some relationship
22 between Steppan and FFA, that was developed by everybody
23 at trial, and I'm not -- you know, I'm not going to sit
24 up here and say that --

1 MR. ALBRIGHT: I'm not disputing there was
2 some relationship.

3 THE COURT: A clear relationship between the
4 parties, but in the end the parties negotiated their
5 contract in a specific way with a specific thought in
6 mind, and the Court found that that was the case.

7 I found it interesting, actually, in reading
8 Mr. Hoy's amended opposition, that apparently there was
9 some work that went into determining whether or not this
10 was the correct process to do this. If memory serves me,
11 Mr. Steppan actually inquired of the State of Nevada in
12 essence, to paraphrase: Am I doing this the right way or
13 are we going to screw this all up?

14 That's my simple way of looking at it or
15 phrasing it, but -- and he was told: No, this is the
16 right way to do it. You guys are on point. Go ahead.

17 MR. ALBRIGHT: I don't see any such testimony
18 in the record. What I see in the record --

19 THE COURT: I agree with you, there's no
20 testimony to that effect in the record.

21 MR. ALBRIGHT: What I see in the record is
22 they asked the board, "Can we make FFA architect of
23 record on this job since that's how it's really going to
24 be?"

1 And the board said, "Sure, if Mr. Friedman
2 will become licensed in Nevada."

3 Why did that have to happen? Well, because
4 we have this two-thirds rule as clarified by the DTJ
5 case, and Mr. Friedman didn't want to do that.

6 Now, would the board have said, "Oh, in that
7 case, don't worry about it. Just pretend you're not the
8 contract architect and we're fine with that"?

9 I don't think so. But even if they would
10 have said, "That's fine," that doesn't change the
11 question under the mechanic's lien law. The question
12 under the mechanic's lien law is, can Mr. Steppan lien
13 for work that he didn't do? And the answer is yeah, he
14 can lien for work he didn't do if his subcontractor did
15 the work.

16 So where's the evidence that Mr. Friedman,
17 FFA was hired by Steppan to do the work. It just isn't
18 there. There's no evidence whatsoever of anything like
19 that having occurred. There's no written agreement by
20 which Mr. Steppan hires FFA --

21 THE COURT: Stop. Mr. Hoy's point is that
22 there's no requirement for a written agreement, that
23 there's nothing in Chapter 623 or anywhere else that you
24 pointed to that says, in order for a subcontractor to be

1 a subcontractor such that the general contractor can have
2 a mechanic's lien for the work that the sub does, you
3 need to first produce the written contract. You're
4 right --

5 MR. ALBRIGHT: I'm looking at the evidence,
6 Your Honor. Is there any evidence that there was an oral
7 agreement? Was there any testimony adduced at trial
8 where Mr. Friedman or Mr. Steppan said, yeah, we entered
9 into an oral agreement, here were its terms? No, there's
10 nothing like that either.

11 Not only that, but there is a requirement
12 under Nevada lien law, if you're going to give FFA a
13 lien, which is essentially what's happened here, although
14 the money is going to go to Mr. Steppan, as you say, but
15 he's not entitled to it -- you know, one of the key
16 pretrial summary judgment rulings was that the lien is
17 going to be based on the contract amount, not on
18 NRS 108.222(1)(b) where you get fair market value, but on
19 NRS 108.222(1)(a).

20 How is it that FFA gets the benefit of 1(a)
21 when they don't have a contract? And the answer of
22 Mr. Hoy is, they don't have to have a contract. Well,
23 then why are they getting the benefit of that?

24 THE COURT: The answer, I would assume from

1 Mr. Hoy, is FFA doesn't have anything to do with it.
2 It's between Mr. Steppan and BSC.

3 MR. ALBRIGHT: But that goes back to my first
4 point, Your Honor, because Mr. Steppan isn't --

5 THE COURT: Stop. Stop. Listen to me,
6 Mr. Albright.

7 This is not a debate, and I understand that
8 there are times when we both have a point to make, but
9 the odd thing about my job is, when I feel like making a
10 point, I get to make it, and you don't get to talk over
11 me. And it's impossible for my court reporter to take
12 down two people at one time speaking simultaneously, it
13 just doesn't work.

14 And so if I'm making a point, I request you
15 let me make my point, and I promise you that I'll give
16 you the time that you need to make your point.

17 I would also note that I have no idea how you
18 thought this was going to take an hour. You
19 scheduled -- the parties scheduled one hour for oral
20 argument. I know that this was scheduled for yesterday,
21 and I had to move it 24 hours till today, but my schedule
22 yesterday was just as busy as it is today.

23 I had a noon meeting yesterday; I've got a
24 noon meeting today. I'm not cutting you off. I'm going

1 to give you as much time as you need; I'm going to give
2 Mr. Hoy as much time as he needs to make whatever
3 argument that he needs to make.

4 But I will simply note that we have 15
5 minutes left to conclude the oral argument on all of
6 this. This is one of the things that -- when I say what
7 I'm about to say, it sometimes sounds disparaging.

8 I don't know how things happen down in the
9 Eighth Judicial District, but at least with me -- Mr. Hoy
10 probably knows this more than most -- I ask a lot of
11 questions. I don't schedule oral argument just so I can
12 listen to you. I schedule oral argument because I'm
13 interested in the issues and think that there are things
14 that we need to discuss.

15 And so when I've got a 40-page motion and a
16 20-page reply and I think a 20-page opposition and the
17 attorneys tell me they only need an hour, I'm never quite
18 sure how that's going to work.

19 So I'm going to let you go, and let's in the
20 future keep in mind that both of us can't talk at the
21 same time. I'm just guessing that we're not going to get
22 this finished today, and so we'll reschedule some
23 additional time in the near future to finish, but go
24 ahead.

1 MR. ALBRIGHT: And I apologize, Your Honor.

2 It is my concern about time that it makes
3 me -- if I think I know what the question is, I try to
4 answer it, but I will do better.

5 THE COURT: Go ahead.

6 MR. ALBRIGHT: With respect to the issue of
7 what did we learn from the DTJ Design case, I think, Your
8 Honor, that there are a number of answers to that
9 question. And I think one of the things that we learned
10 is that foreign architectural firms are subject to
11 NRS 623 just as are individual architects.

12 You know, it's always a little bit of a funny
13 question when you have a professional licensing statute
14 because it typically applies to individuals who have to
15 get themselves licensed, and so how does that relate to a
16 law firm, say, from another state or something like that?

17 And Mr. Hoy points out in his opposition that
18 the statute is a little hard to read in that regard, and,
19 in fact, I think DTJ made the argument under the wording
20 of the statute that perhaps it doesn't relate to them,
21 and the Nevada Supreme Court said no, it does; your
22 individual employees need to become licensed in Nevada,
23 but you as a firm, if you're going to be doing work here,
24 need to be registered in Nevada.

1 THE COURT: Explain something to me based on
2 your experience, Mr. Albright. And it might be this is a
3 very simple answer and I just haven't quite grasped it.
4 I can honestly say I haven't looked into it with any
5 depth.

6 But in DTJ, at page 709, they were talking
7 about the fact that Thorpe, the T in DTJ, was seeking
8 reciprocity to practice in Nevada, and in this case
9 Mr. Steppan wasn't seeking reciprocity. As I envision
10 reciprocity, it's almost more along the lines of certain
11 state jurisdictions where -- I'll give you a perfect
12 example.

13 My father for many years lived in Micronesia,
14 and he was a lawyer. He still is a lawyer. And there
15 was reciprocity in Micronesia. If you had been licensed
16 to practice law in any state in the United States, there
17 was reciprocity. Therefore, you did not need to take any
18 additional testing, you didn't need to do anything. It
19 was just basically, I think, they were happy to have
20 lawyers there. So if you practiced law somewhere and
21 were in good standing, reciprocity meant there were no
22 additional steps that needed to be taken.

23 And in DTJ they do talk a lot about
24 reciprocity and that Mr. Thorpe was seeking reciprocity

1 as opposed to the licensure, which we know that
2 Mr. Steppan has. He is licensed in the state of Nevada.
3 Is there a difference? Is there a difference in the
4 analysis? Let's put it that way.

5 MR. ALBRIGHT: I don't know that there's been
6 a case that has directly addressed that, and so I'm not
7 sure if there is a difference.

8 What I would say is this, and this goes back
9 perhaps more to the Snyder case, but one of the things
10 that you have happen in this case is you have Mr. Steppan
11 saying, look, I'm the contract architect because I'm
12 licensed in Nevada, and so I'm going to be hired to do
13 this Nevada work, and then I'm going to go out and I'm
14 going to retain FFA as my subcontractor.

15 And I think that raises -- and I'm acting in
16 essence -- this was sort of what Depner did in the Snyder
17 case -- I'm acting in essence as a Nevada sole
18 proprietorship, let's say, and, in fact, he fills out one
19 of the forms to the Nevada architectural board saying, I
20 practice as an individual. It asks: Are you employed by
21 somebody? Individually. And I guess -- and then he
22 supposedly hires FFA, and I guess that raises two
23 questions.

24 First of all, there's no evidence that

1 Mr. Steppan ever got a Washoe County business license or
2 a Reno business license, that he ever registered with the
3 Nevada Department of Taxation so that when this money
4 that you say would come to him and not FFA were to come
5 through, that he would pay the taxes on that. There's no
6 evidence that he did what he needed to do to really truly
7 be an independent contractor in Nevada.

8 Secondly --

9 THE COURT: Hold on. Stop.

10 Isn't the counterargument to that, yes, that
11 very well may be true, and Mr. Steppan may be responsible
12 not only for taxes, but penalties associated with those
13 taxes, and he might be running afoul of the City of Reno
14 or Washoe County's business administration or code
15 enforcement administration, any number of other entities.
16 I'm trying to think of what other entities he might be
17 getting sideways with. That all may be true, but it
18 doesn't have anything to do with the contract.

19 MR. ALBRIGHT: I understand, Your Honor.

20 What it has to do with this case is it's
21 another piece of evidence to suggest that when Steppan
22 said he was the contract architect, that that was really
23 just, as I said before, a polite fiction that wasn't
24 actually backed up by the true course of dealing.

1 So I understand we're not here today -- and
2 that's true of many of our arguments. I mean, we're
3 making lots of arguments under NRS 623, but we're not
4 here today to charge someone with some violation of
5 NRS Chapter 623.

6 The relevance of those arguments is that they
7 go to the question of whether or not the chain of
8 command, as I wrote up there on the board, that BSC hired
9 Steppan, Steppan then hired FFA, whether or not that was
10 really, truly, in fact, the way that anybody looked at it
11 or that anybody treated it or that it should have been
12 treated by this Court, and so it's one more relevant
13 point.

14 If Your Honor doesn't feel it's all that
15 relevant, then so be it. I understand --

16 THE COURT: I apologize if my facial
17 expression led you to believe I didn't think it was
18 relevant. I might have furrowed my brow a little bit
19 because I was thinking about what you were saying, but I
20 wasn't trying to indicate you should stop or that I
21 wasn't buying what you're selling. So go ahead.

22 MR. ALBRIGHT: The second problem that I
23 think that issue raises, though, is, was it lawful for
24 Steppan to do what he says he did, to hire FFA. And,

1 again, this -- we're not here to prosecute FFA, but it
2 goes to the question of whether this really is what they
3 say it is, and I don't think that legally Steppan could
4 enter into this arrangement with FFA that's being
5 described here because I think what happens is that
6 because FFA is really doing architectural work, I think
7 it's clear from the evidence, from the opposition, that
8 there's all these designers at FFA doing thousands of
9 hours of work, producing architectural work product for
10 use on a Nevada piece of property.

11 And so the question is: Is there some
12 exemption that allows them to do that? And there's two
13 exemptions under Nevada law. There's one that says, if
14 you are employed by a Nevada registered architect, then
15 you're okay. Well, Steppan didn't have any employees.
16 All of the employees were employees of FFA.

17 And the other one says, if you're just -- if
18 you're acting as a consultant, you don't have to comply
19 with the Nevada licensing statute.

20 And the problem there is, you know, by
21 analogy to other professions that have in-state licensure
22 requirements, the test seems to be, you know, if you're
23 going to go into another state and you're going to claim
24 I don't have to be licensed, I don't have to do

1 reciprocity or get a license or any of those things or
2 pro hac vice myself in because I'm just a consulting
3 attorney, I'm just a consulting physician, I'm just a
4 consulting engineer, the question is, well, were you just
5 talking on the phone giving advice or were you really the
6 guy that operated on the human patient? Were you really
7 the guy that wrote all of the briefs and just some New
8 Jersey attorney signed it, but you billed way more than
9 them? You had the direct communications with the client,
10 you had the direct communications with opposing counsel.
11 I think the same tests would clearly apply to an
12 architect.

13 You know, to say, oh, yeah, we're going to do
14 all this work, thousands of hours of work from non-Nevada
15 licensed attorneys and we're okay with doing that because
16 we're just acting as the consultant doesn't really fly,
17 and it's a little bit opaque because they use this
18 phrase, "design consultant." Well, what does that mean?
19 Is the emphasis on "design" or is it on "consultant"?

20 I assume for purposes of being exempted from
21 Nevada's license laws, they wanted to be a consultant,
22 but they clearly weren't a consultant. So that's another
23 piece of evidence, that this idea that they were somehow
24 working as a subcontractor to Steppan instead of working

1 directly for BSC, the party that paid them directly, that
2 communicated with them directly, that they got bills on
3 FFA letterhead from directly, is not what they now claim
4 it to have been.

5 THE COURT: Isn't it normal or at least
6 understandable that Mr. Steppan would not be doing the
7 bulk of the work on a project like this?

8 I understand the argument that you're making
9 is that out of the -- I think it was like approximately
10 3400 hours of hours that were billed regarding this
11 project, Mr. Steppan himself was only responsible for
12 less than 5 percent. If memory serves me correctly, your
13 number was 4.1 percent of the hours are directly
14 attributable to Mr. Steppan. Those are his hours. Is
15 that unusual?

16 It seems to me, when you're building a
17 multi-tower, multi-story, multi-use project, as Wingfield
18 Towers was envisioned to be, that the guy, the architect,
19 in this case Mr. Steppan, wouldn't be doing all of the
20 thousands and thousands of hours of work. He's doing the
21 supervising of the work, which takes less time.

22 When I delegate something to my law clerk,
23 she might spend seven hours on it doing the research, and
24 I might spend an hour on it doing -- at the end, but I'm

1 still the guy that signs it at the end. It's still my
2 responsibility. Again, I just use myself as an analogy
3 there.

4 MR. ALBRIGHT: Sure. And I think that's a
5 fine question and argument. I think the problem with it
6 in this case is that Steppan wasn't really the guy that
7 was fulfilling that sort of oversight supervisory role.

8 In fact, at trial Mr. Friedman two times
9 testified that he was the guy that was supervising the
10 work, and the first time that he said that was when he
11 was asked by Mr. Hoy, tell us your job duties, and what
12 Mr. Friedman responded to was very similar to what you've
13 just described. He said, look, I'm kind of like -- I
14 think he drew an analogy to Michelangelo, and he said,
15 look, I'm the guy that has the vision, and I have this
16 idea in my mind of what this is going to look like, and
17 so what I did is I gave my underlings that vision, and
18 then I let them go and do the tech work and the CAD work
19 and all of the work to bring to fruition my vision, and
20 in the meantime I'm supervising them. That's my role.

21 And so that wasn't Steppan's role. And again
22 he's asked later about who supervised the work, did
23 Mr. Steppan supervise the work. Well, only if I had
24 broken my leg or something. Well, he billed many more

1 hours than Steppan did, so that apparently never
2 happened.

3 And I think that question also goes to this
4 idea that what they've said is, look, it's okay for him
5 to -- for Mr. Steppan to have been waiting there to sign
6 and stamp the documents, and as long as he was going to
7 be the guy that signed and stamped the documents and he
8 therefore had some sort of controlling authority as your
9 analysis suggests you would have over your law clerks,
10 then that's okay, that's fine.

11 But the problem with that is, when you look
12 at the rule that they cite, which is one of these uniform
13 architectural rules that's out there that's been adopted
14 in Nevada, what that rule says is one thing, and then
15 what Steppan said at trial about how he saw that role was
16 different.

17 Mr. Steppan was asked, what does it mean to
18 supervise, what does it mean to have -- I forget the
19 phrase now -- supervisory control, I believe.

20 He said, well, what it means to me is
21 responsible control, I guess. What responsible control
22 means to me, in my mind, he says, is that as the project
23 starts to approach the time for signing and sealing, then
24 I need to start looking at things, you know.

1 But if you look at the actual adopted rule,
2 what the adopted rule seems to indicate is that we don't
3 like that practice. In fact, it seems to be written
4 almost explicitly as though that practice has been done
5 in the past, and we don't like it, and so this is what we
6 are telling you architects.

7 What the rule says is that it's insufficient
8 to -- that you have to be in supervisory control during
9 preparation, and then it goes on to explain, it says,
10 other review of technical submissions, after they've been
11 prepared by others, does not constitute the exercise of
12 responsible control because the reviewer has neither
13 control over nor detailed professional knowledge of the
14 content of such admissions throughout their preparation.

15 So your analogy of a senior partner might say
16 to an associate, "Go write me up a brief," and then the
17 senior partner is going to sign that or the judge is
18 going to say to the law clerk, "Write me an order," and
19 the judge is going to read it, tweak it and ultimately,
20 if he agrees with it, sign it, that apparently works
21 fine. I think we could both say in the legal profession,
22 I think that kind of thing happens quite a bit, but
23 apparently in the architectural profession, what the
24 adopted rules say is that that's not going to work.

1 THE COURT: Mr. Albright, luckily, my meeting
2 is at noon, but it is in this building. It's 11:57 right
3 now, so I'm going to have to go down two floors to go to
4 my meeting, but I think this would be a good time to
5 break for today.

6 I wish we could come back at 1:30 and start
7 there. I have an all-afternoon settlement conference
8 that I'm doing for Chief Judge Hardy beginning at 1:30,
9 so I can't say let's stop for lunch and come back after
10 lunch, and I don't expect you to want to stay here. I'm
11 sure you have other things to do back at home.

12 But I can't even suggest to you that tomorrow
13 would be a good day to do it because I'm doing my
14 criminal calendar and Judge Steinheimer's calendar at
15 8:30, I've got two quiet title actions after that, I have
16 a status check at 1:30, and then I have a hearing on a
17 final approval for a class action certification that
18 apparently will be contested, and that starts at 2:30,
19 and then Friday is just about the same.

20 So I'm going to have to break for today. I
21 would direct the parties -- and you'll have as much time
22 as you need to continue your argument, Mr. Albright -- I
23 would direct the parties to find some time with my
24 judicial assistant, at least two hours. I think you're

1 going to need that much time. Mr. Hoy hasn't said a word
2 yet, and I'm sure he'll have some observations about both
3 your arguments and the opposition. So I'd say two hours
4 at a minimum, and maybe even just find a morning sometime
5 or an afternoon that works with your schedule, and we'll
6 continue this argument. So this matter will be
7 continued.

8 Court's in recess.

9 Mr. Hoy, I have the Judgment, Decree and
10 Order on the Foreclosure of Mechanic's Liens here in my
11 hand. I have intentionally not done anything with it
12 because I wanted to resolve this issue before I addressed
13 that issue.

14 That's not to say, Mr. Albright, I'm going to
15 sign it or not sign it. It's just while this Rule 60
16 issue was pending, I thought it would be prudent just to
17 wait on signing the judgment and decree based on how the
18 motions are framed. So that's why I haven't done
19 anything with it yet, just so you know, Mr. Hoy. My
20 judicial assistant gave it to me immediately, but I knew
21 this thing was out there pending, so it's kind of sitting
22 there.

23 And if, in fact, the Court does sign the
24 judgment decree and order, we'll adjust the amount of

1 interest that's owed based on -- what was it -- 832 bucks
2 or something a day interest that's accruing.

3 Court's in recess.

4 (Proceedings concluded.)

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

4 I, PEGGY B. HOOGS, Certified Court Reporter
5 in and for the State of Nevada, do hereby certify:

6 That the foregoing proceedings were taken by
7 me at the time and place therein set forth; that the
8 proceedings were recorded stenographically by me and
9 thereafter transcribed via computer under my supervision;
10 that the foregoing is a full, true and correct
11 transcription of the proceedings to the best of my
12 knowledge, skill and ability.

13 I further certify that I am not a relative
14 nor an employee of any attorney or any of the parties,
15 nor am I financially or otherwise interested in this
16 action.

17 I declare under penalty of perjury under the
18 laws of the State of Nevada that the foregoing statements
19 are true and correct.

20 Dated this 19th day of February, 2015.

21
22 Peggy B. Hoogs

23 Peggy B. Hoogs, CCR #160, RDR
24

CASE NO. CV07-00341 MARK STEPPAN VS. JOHN ILIESCU, ETAL

DATE, JUDGE
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

2/18/15

ORAL ARGUMENTS

HONORABLE

11:00 a.m. – Court convened.

ELLIOTT A.

Michael Hoy, Esq., was present on behalf of the Plaintiff, Mark Steppan.

SATTLER

Defendants, Dr. John Iliescu and Sonnia Iliescu, were present with counsel, D. Chris

DEPT. NO. 10

Albright, Esq.

M. White

C. Nicholas Pereos, Esq., was present in the gallery.

(Clerk)

COURT reviewed the recent procedural history of the case.

P. Hoogs

Counsel Albright addressed the Court and presented argument in support of the Defendants' Motion for NRCP 60(b) Relief From Court's Findings of Fact, Conclusions of Law and Decision and Related Orders (Motion), filed October 27, 2014.

(Reporter)

11:57 a.m. – **COURT** advised respective counsel that he has a noon meeting he must attend today, and this matter will need to be continued to a different date as he has a settlement conference set for this afternoon at 1:30 p.m. **COURT** further noted that this matter was set for one hour by respective counsel, and he is not sure how they planned to conclude arguments on this issue within one hour.

COURT ORDERED: Respective counsel shall meet with the Department Ten Judicial Assistant, Sheila Mansfield, and set this matter for continued oral arguments.

12:00 p.m. – Court adjourned.

Clerk's note: Respective counsel met with Ms. Mansfield after the hearing, and continued oral arguments were set for Monday, February 23, 2015 at 8:30 a.m. (2-3 hours). MW

CODE: 4185
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Court Reporter

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE ELLIOTT A. SATTler, DISTRICT JUDGE

--oOo--

MARK STEPPAN,

Case No. CV07-00341

Plaintiff,

Dept. No. 10

vs.

JOHN ILIESCU, et al.,

Defendants.

TRANSCRIPT OF PROCEEDINGS

ORAL ARGUMENTS

DAY 2

Monday, February 23, 2015

1 APPEARANCES:

2 For the Plaintiff

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5 Reno, Nevada 89501

6 For the Defendant

ALBRIGHT, STODDARD, WARNICK &
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7 Attorneys at Law

8 By: D. CHRIS ALBRIGHT, ESQ.

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9 Las Vegas, Nevada 89106

— o O o —

Mr. Albright, when we broke last on

1 February 18th, you were in the process of making an
2 argument, and so I had told you that I would give you as
3 much time as you needed, but suggested that you and
4 Mr. Hoy might want to find at least a couple of
5 additional hours. It appears that you've done that.

6 My morning is open. Judge Flanagan made a
7 very interesting point once when he said that lawyers are
8 like gas, they seek to fill any space that they have
9 available to them. He said it a lot better than that,
10 but that's the basic thought of it. And there's some law
11 of physics -- I have no idea what it is -- that suggests
12 that, that lawyers will, like gas, enter into any space
13 and fill it to the best of their ability.

14 You don't have to go all morning long if you
15 don't feel the need to just because it's there, but I
16 will let you know that I do have all morning available to
17 both you and Mr. Hoy for continued oral argument.

18 So with that, sir, I will turn to you and
19 allow you to continue to make your presentation.

20 MR. ALBRIGHT: Thank you, Your Honor. And
21 thank you very much, Your Honor, for your indulgence in
22 giving us so much time to argue this case. It's an
23 important matter, and my client really appreciates that
24 we're going to get to be fully heard.

1 You had mentioned you don't know how they do
2 things down in the Eighth Judicial, but I can tell you I
3 doubt I would have gotten this generosity. So I really,
4 really appreciate it.

5 And I will try not to be like the gas. I
6 will try to focus on about three areas that I think are
7 the most important, because I think a lot of the other
8 things are in the brief.

9 And what I would like to do, Your Honor, just
10 so you know, I would like to talk -- first of all, I
11 would like to finish my argument with respect to the
12 question of whether FFA, had it been hired by Steppan.
13 And then I would like to analyze a little bit the DTJ
14 Design case, and then there's some procedural matters
15 that I would like to get into briefly. And I will try to
16 answer your questions as they come up as best I can and
17 then return to that outline so I can try to make sure I
18 use the time wisely and I am going to be able to speak my
19 piece to the Court on these issues.

20 THE COURT: Did you need the board?

21 MR. ALBRIGHT: I don't think so.

22 THE COURT: Okay.

23 MR. ALBRIGHT: It was a pretty simple picture
24 that I drew.

1 THE COURT: Just so you know, I was the
2 one -- I actually took the picture off the board and
3 disposed of it, because I thought you were finished with
4 it. It was just a --

5 MR. ALBRIGHT: Okay.

6 THE COURT: Just so the record is clear, it
7 was just a drawing that Mr. Albright made of certain
8 business entities or individuals, with arrows going back
9 and forth between them. But the Court did see that. It
10 was never marked or admitted as an exhibit. I don't
11 think it was an exhibit.

12 So I personally, not anybody else on my
13 staff, I came out on the 18th and was moving the easel
14 and putting it away. I just took it off and folded it up
15 and away it went. But I do remember it, Mr. Albright.

16 MR. ALBRIGHT: Okay. Thank you.

17 THE COURT: You can recreate it if you want
18 to.

19 MR. ALBRIGHT: No, I'm fine. But along those
20 lines, just to sort of preface -- because I was about
21 halfway through an argument and before I just start
22 jumping in, let me just lay the proper context for the
23 record where I was.

24 You'll recall it's my contention that one of

1 the things that Steppan needs to prove in order to have a
2 lien for FFA's work is, Steppan needs to prove that FFA
3 was retained by Steppan, was hired by Steppan, was in
4 some fashion a sub-provider or a subcontractor to
5 Steppan, so that Mr. Steppan can say: "Look, there's
6 NRS 108.222(1)(a) or (1)(b). I'm allowed to lien for the
7 value of services provided by or through me. That would
8 include any subcontractors I've hired that I'm liable for
9 paying."

10 And the other reason that that's important
11 is, I think, because of what the DTJ case says. You'll
12 recall, Your Honor, that in DTJ Design what happened is a
13 Colorado architectural firm came into Nevada and they
14 entered into an agreement to do work, and they entered
15 into that agreement directly with the customer, and then
16 they pursued an action for the work they had done.

17 And the Nevada Supreme Court said: Well,
18 wait a minute. You're not registered in Nevada; you
19 don't -- you didn't, you know, get two-thirds of your
20 owners licensed in Nevada so as to get registered; and,
21 therefore, you can't maintain an action to pursue that.

22 And it's my contention, Your Honor, that that
23 same rule applies. If FFA was in a direct contractual
24 relationship with BSC Consolidated -- and I guess it was

1 Consolidated and then Consolidated was part of BSC, so I
2 guess, BSC, then I think the same rule applies.

3 And I think, Your Honor, that, in fact, FFA
4 was in that same kind of direct contractual relationship
5 with BSC. In fact, if you look at what's called the
6 Master Agreement, the AIA agreement -- signed later, but
7 effective in October of 2005, is the claim -- I believe
8 you will see that, in fact, FFA is listed in the addendum
9 as a party to that agreement.

10 Now, what does that mean that they were a
11 party to that agreement? Well, I contend, Your Honor,
12 that if you look at the way the bills went down that what
13 that means is, they were working directly for BSC. They
14 billed BSC directly. They got paid by BSC directly.
15 They communicated directly with BSC.

16 And, in fact, Your Honor, from my
17 perspective -- and I know you've indicated there's
18 certain evidence you heard, there's certain rulings you
19 made. But on that very narrow question -- I'm not
20 talking about Steppan having signed as the architect,
21 contract architect and so forth.

22 On that narrow question, who was -- who was
23 FFA working for? Who had hired FFA? Who were they
24 responsible to -- I don't -- you know, as I read the

1 trial transcript, the opening, closing arguments, I don't
2 see where the plaintiff ever explicitly made a claim that
3 FFA had been hired by Steppan, and I don't see an
4 explicit ruling in your order to that effect.

5 Now, there may be something implied there
6 along those lines, depending on how certain things are
7 read, but -- you know, as I read, for example, the
8 closing arguments, Mr. Hoy says in closing, "Please, Your
9 Honor, go back to my trial statement." And in his trial
10 statement, he says in closing, "I have proven everything
11 that's in there."

12 If you look at the trial statement, what he
13 sort of does is, he says, "Steppan was the guy that
14 signed the contract, that he was licensed in Nevada."
15 And then he starts talking about FFA and how Steppan was
16 an upper-tier guy at FFA, and Friedman was the owner of
17 FFA, and FFA is a great company, it's got all these
18 awards and so forth. And then he just sort of goes into
19 this statement of fact, that is, Steppan and FFA did
20 this, Steppan and FFA did this, Steppan and FFA did this.

21 And I don't think there's ever been an
22 explicit claim by the plaintiff, or an explicit response
23 to that claim, saying who exactly FFA was responsible to,
24 who they were hired by, who they were looking for payment

1 from.

2 And so that's why I think this first part of
3 my argument is important, because I think the lien
4 claimant had the duty to demonstrate that FFA's work
5 could be leaned through the lien claimant, as having been
6 done by and through the lien claimant.

7 And I think what you see instead, at trial --
8 and I'm going to look at some of the trial transcript.
9 What I think you see instead is that throughout the
10 trial, whether Mr. Hoy is asking the questions or whether
11 Mr. Pereos is asking the questions or whether Your Honor,
12 following their lead, is asking the questions, all of the
13 questions and all of the responses seem to me to assume
14 that what FFA is doing, FFA is doing for BSC. FFA is
15 looking to BSC for payment.

16 So let me look at that. Your Honor, we were
17 talking last time about the lack of a written contract
18 between Mr. Steppan and FFA, whereby FFA was hired by
19 Mr. Steppan.

20 And I think one of the things that's
21 important in that regard, Your Honor, is that the
22 underlying AIA agreement, if you look at Section 1.1.2.6
23 of the final, ultimate master AIA agreement, it calls for
24 a 32-month time frame for this work to be completed.

1 And, therefore, Your Honor, if FFA had signed a
2 subcontract with Steppan to be the person doing the
3 design work throughout that 32-month period, that would
4 have needed to be in writing under the statute of frauds.

5 NRS 111.220: "Agreements not in writing:
6 When void. In the following cases every agreement is
7 void, unless the agreement, or some note or memorandum
8 thereof expressing the consideration, is in writing, and
9 subscribed by the person charged therewith."

10 Number one on the list in the statute of
11 frauds, "Every agreement that, by the terms, is not to be
12 performed within one year from the making thereof."

13 So clearly this was an agreement that, by its
14 terms, was going to last 32 months. And we know that FFA
15 isn't coming in and saying, "Oh, but we were just going
16 to do eight months of it or seven months of it," you
17 know.

18 Mr. Friedman testified that they would have
19 been involved once the construction started. They would
20 have sent an architect out here. He said it wouldn't
21 necessarily have been Mr. Steppan, which is odd, since
22 he's the one with the Nevada license. But in any event,
23 they were going to be the people doing the work
24 throughout this 32-month term. So I think that it did

1 need to be in writing to satisfy the statute of frauds.

2 And I think, also, because they call
3 themselves, "design consultant," you know, to the degree
4 that the emphasis is on "design," and to the degree that
5 this is a contract for architectural services for a piece
6 of property in Nevada, if what they're saying there is
7 that they're a residential designer, NRS Chapter 623
8 would require that agreement to be in writing.

9 If what they're saying is, "No, we were
10 really just the architect" -- which I think is clearly
11 the case -- then NRS 623.180 clearly indicates they
12 needed to be licensed here themselves to do that work.

13 The other problem, Your Honor, with this idea
14 Steppan hired FFA, is that, you know, when you look at
15 the way the invoices both read and the way they were
16 treated, it just does not look to me like a subcontractor
17 relationship.

18 When I see a subcontractor relationship --
19 what I've always seen is, you've got somebody that's
20 prime. He retains a sub, and prime bills the client.
21 The sub bills its client, the prime. And the sub lets
22 the owner know who he is, what he's doing.

23 The owner cuts joint checks so that he's sure
24 everybody is getting paid, and the payment changed, he's

1 not going to get stuck with any liens. And even if he
2 doesn't cut joint checks, the prime is the guy that's
3 paid, and he sends the money that is owed to his
4 sub-provider, to his sub-provider.

5 THE COURT: That's true, Mr. Albright. I
6 would agree with you that in the overwhelming majority of
7 cases that's exactly what happens. But it's not a
8 universal. It doesn't have to occur that way. And one
9 would have to agree that there are sometimes unique
10 circumstances that go against what you and I would agree
11 is the standard way that things get done.

12 When somebody builds a house, for example,
13 there's the prime contractor, as you say, and he might
14 hire somebody to come do the landscaping work. Well,
15 that's not his business, it's someone else's.

16 So there might be certain agreements that are
17 in place, but just because that happens most of the time
18 or probably a super majority of the time, doesn't mean it
19 has to happen all the time; does it?

20 MR. ALBRIGHT: No, Your Honor. But I do
21 think, again, that if that's the claim, that you would
22 think that you could see some indicia of such a
23 relationship.

24 You know, you and I talked last time a little

1 bit about, "Can an employee hire an employer?" And I
2 think that an employee can hire an employer, and I agree
3 with you that that can happen. But I think you would
4 agree with me that that's not exactly a traditional arm's
5 length relationship. And typically when you have a
6 relationship that's not an arm's length transaction,
7 that's not an arm's length deal, it is subject to higher
8 scrutiny, not lower scrutiny.

9 And so it seems to me that, if you've got
10 boss father-in-law saying to employee son-in-law, "You're
11 going to hire me to be the" -- your sub-provider and
12 you're my customer and that's the way it's going to be,"
13 it seems to me that, you know, Your Honor ought to be
14 saying, "Well, gee, if that's really the way it is,
15 because of this non-arm's length relationship I hope
16 there's some really clear evidence that that's really the
17 way the party is treated."

18 And instead what you have is, really, no
19 evidence that that's the way the parties treated it. You
20 have Steppan basically doing -- and I will read some
21 testimony later -- what he does on all of the jobs where
22 he has a certain role, and he's doing that as an
23 employee.

24 You know, if you really wanted to set it up

1 this way, knowing that it would be subject -- because
2 you're not arm's length -- to heightened scrutiny, it
3 seems to me that you would be bending over backwards to
4 say, "Look, we really are treating Steppan differently on
5 this job than on all the other jobs. On this job he's
6 not just getting his regular salary, the prime is
7 paying -- or the owner, the future owner -- is paying
8 him, and then he is paying us."

9 Or at least the invoices would separate,
10 "Here's, Mr. Client, what you are being paid" -- or what
11 you are being billed by Mr. Steppan for, his contract
12 architect work, and here's the advances that he's liable
13 for, to his sub-provider, FFA." And it's separated out
14 so that you know what's what.

15 And in this case, you don't see any of that
16 in any of the invoices. There is this one nod that some
17 of the invoices initially go out on Steppan letterhead,
18 and Steppan testifies -- and I will get to that -- that
19 he, "wished that it had stayed that way to maintain the
20 form." Not to maintain the substance or the truth, but
21 to maintain the form.

22 But in any event, other than that nod, you
23 look at the invoices and there is no indication that one
24 party is acting as the prime and that party has

1 subcontracted with another party. It's just not there.

2 And, in fact, I think that that continues
3 through trial to be the case, that the questions that are
4 asked of Mr. Friedman, the questions that are asked of
5 Mr. Steppan assume -- and the answers agree -- that FFA
6 was directly working for BSC.

7 And I'm not just talking about -- you know,
8 when we speak, we're not as careful as when we write.
9 And I'm sure I've said some things that will come back
10 and be used against me some day. Mr. Pereos probably
11 said some things during trial that will be used against
12 me today.

13 But I'm not just talking about a couple of
14 little got-you moments. I'm saying it's just pervasive
15 throughout the trial transcript that everybody assumes
16 FFA is working for the client. And Let me just share a
17 few of those.

18 You know you had asked about Mr. Pereos
19 cross-examining. And in Mr. Pereos's cross-examination
20 of Mr. Friedman, at page 373 he asks him:

21 "When did you first learn that your client,
22 the developer, was not the owner of the property?"

23 And he says: "We knew that from the outset."

24 There is no sense of, "Well, wait, wait, we

1 need to, you know, dial that back." That's not really --

2 THE COURT: Hold on a second, Mr. Albright.

3 I'm looking at page 373 of the --

4 MR. ALBRIGHT: Lines 13 through 15.

5 THE COURT: -- trial transcript. Oh, I got
6 it. There it is. Okay. Go ahead.

7 And just for clarification sake, the person
8 testifying during that colloquy is?

9 MR. ALBRIGHT: Mr. Friedman.

10 THE COURT: Mr. Friedman, okay. Okay. Go
11 ahead.

12 MR. ALBRIGHT: On page 932 of the trial
13 transcript, Mr. Hoy's closing arguments, he talks about a
14 double escrow and he says that they, meaning the customer
15 in the context of what he is saying there, BSC, is going
16 to pay Mr. Iliescu the promised purchase funds out of
17 that double escrow.

18 And then he says that that same day, quote,
19 "intended to pay Fisher-Friedman Associates based on
20 20 percent of the overall fee as specified in that master
21 agreement." So again, a direct relationship.

22 On page 212, lines 21 through 23 -- this is
23 Mr. Hoy and Mr. Friedman -- Mr. Friedman says: "That's
24 when I met Tony Iamesi who was the individual who hired

1 us to do the project here in Reno." Not Mark Steppan,
2 Iamesi.

3 Page 229, lines 13 through 17. Mr. Hoy says
4 to Mr. Friedman -- they're talking about the contract
5 with the AIA attached:

6 "Is this the form of agreement that your firm
7 proposed to Mr. Iamesi for the Reno project?"

8 "Answer: Correct."

9 Not "Steppan proposed," "your firm proposed."

10 Page 247, lines 14 through 18. This is Your
11 Honor speaking to Mr. Friedman, and nobody -- nobody
12 jumps up and corrects Your Honor. And I think Your
13 Honor's question is in line with the facts and the
14 evidence.

15 "When you say you didn't get paid" -- and
16 this was with respect to some work they did for the
17 neighboring congregation on a parking matter -- "did you
18 have to go to BSC to get approval or someone to get
19 approval to do this additional study?"

20 "THE WITNESS: BSC asked us to do this
21 study."

22 Well, again, if you were hired by Steppan,
23 why wasn't Steppan asking you? Page 250.

24 THE COURT: Wait a minute. With that last

1 part -- that last part was just an aside by you; is that
2 correct, or --

3 MR. ALBRIGHT: Oh, yes, I'm sorry.

4 THE COURT: Okay.

5 MR. ALBRIGHT: Let me be more careful. I
6 apologize. I apologize.

7 THE COURT: That last part was not in the
8 transcript. That was not a comment that I made, that's a
9 comment that you just made in court. Go ahead.

10 MR. ALBRIGHT: Yeah. And let me -- I
11 apologize. Let me be more careful. In fact, let me do
12 that one again so the record is clear.

13 So you, Your Honor, asked Mr. Friedman:

14 "When you say you didn't get paid, did you
15 have to go to BSC to get approval or someone to get
16 approval to do this additional study?"

17 "The witness: BSC asked us to do this
18 study."

19 And then I argued, you know, why wasn't
20 Steppan the one?

21 Page 250, lines 4 through 15. This is
22 Mr. Hoy and Mr. Friedman:

23 "Did you have any discussions with BSC
24 Financial about performing additional services

1 requested-- or having to do with the city staff meeting?"

2 And then there's an answer, back and forth,
3 and then:

4 "Question: Did the city staff generate a
5 list of questions that BSC then asked you to go study."

6 "Answer: Yes."

7 Again, it's a direct relationship between FFA
8 and BSC, just as is shown in the addendum to the AIA
9 where FFA is listed as a party.

10 Page 251, 9 to 18, Mr. Hoy to Mr. Friedman:

11 "So the City of Reno posed questions to the
12 developer and the developer asked you to provide answers
13 to those questions?"

14 "Answer: Yes." And then there's some
15 further text.

16 "Question: And so your firm billed BSC
17 Financial to answer those questions generated by the city
18 review process?"

19 So it's not "Steppan billed them," and it's
20 not -- and, again, I'm done with the quote now. So it's
21 not Steppan who did that, it's the developer who billed
22 BSC Financial to answer questions which BSC Financial had
23 posed directly to FFA.

24 "Answer: Right."

1 On page 258, lines 3 through 9. We covered
2 before in my last time, this is the first time that
3 Friedman indicates that he supervises the work.

4 On page 267, starting at line 21, there's an
5 interesting idea that Friedman puts forth, that the
6 reason he hasn't signed things is because he was told 20
7 years ago never to sign anything, so it's always somebody
8 else that signs; which I think is interesting, because I
9 think that means that that doesn't necessarily mean that
10 FFA isn't the actual contractor, the actual architect
11 that's been hired.

12 And then on page 268, line 2, he also
13 mentions that Bob Fisher never would sign anything, even
14 though he had also indicated that Bob Fisher was at one
15 time the guy who would be the Nevada licensee that they
16 were relying on.

17 On page 325, this is Mr. -- at lines 3
18 through 14, this is Mr. Friedman responding to a question
19 from the Court. He says:

20 "I would get paid for the schematic design,
21 because in the terms of our agreement, if you read the
22 abandonment clause, I would be entitled to my
23 compensation" -- and then there's more text -- "under
24 contract" -- more text -- "Plus the profit that I didn't

1 get had we completed the working drawings," close quote.

2 So, again, he's not talking about Steppan
3 would have gotten paid for this, Steppan would have done
4 this, he's describing a direct contractual relationship
5 between himself and BSC.

6 Transcript page 342 to 343. This is
7 Mr. Pereos to Mr. Friedman:

8 "Mr. Friedman, let's work on that last
9 message from the Judge. You would agree that you were
10 billing for your times and resources to the developer
11 until such time as you got your fixed-fee contract
12 signed, the AIA contract?

13 "Answer: Correct.

14 "Question: And the developer was actually
15 paying you for that work until he went delinquent on the
16 payments?

17 "Answer: Yes. He was" -- "He was behind."

18 Answer or -- I'm sorry.

19 "Question: That's right. And you received
20 approximately 40,000 [sic], thereabouts, approximately?

21 "Answer: Correct."

22 Now page 343, lines 17 through 344, line
23 about 7. This is Mr. Pereos to Mr. Friedman:

24 "Okay. Now, are we talking you were

1 confident that you weren't going to be paid for the
2 delinquency on the billings that you were doing on the
3 time-and-material basis, or are you talking about the 20
4 percent of the 5.75 percent?

5 "Answer: Both.

6 "Both. And you wanted the 20 percent of the
7 5.75 percent?

8 "Answer: It's in our agreement.

9 "Okay. But you wanted it?

10 "Answer: Of course.

11 "Is that correct?

12 "Yes.

13 "Okay. Well, so --" and then Mr. Friedman
14 cuts him off.

15 "Answer: It's in our agreement." Close
16 quote.

17 Well, there again, what's being described is
18 a direct relationship between FFA and BSC, not a
19 relationship wherein FFA does work for Steppan, who is
20 the guy that contracts with BSC.

21 Page 351, lines 14 through 352, line 2. This
22 is Mr. Pereos to Mr. Friedman: "Let's open up to
23 Exhibit 6."

24 That was the AIA contract, Part 1. Then

1 there's some more text.

2 "Now, Exhibit 6 was not received by your
3 office until April 26th, 2006; isn't that correct?

4 "Answer: April 26th, yes.

5 "Question: Okay. And it's actually signed
6 April 21st, but you didn't get it until April 26th?

7 "Answer: That's when we received it.

8 "Question: And then after you received it is
9 when you caused the signature of Mr. Steppan to be
10 affixed thereto?

11 "Answer: Yes."

12 So again, you know, it's my position this
13 goes more to point one than to point two, that
14 Mr. Steppan was really acting simply in name, but on
15 behalf of FFA.

16 Page 369, lines 11 to 17. This is Mr. Pereos
17 to Mr. Friedman:

18 "Mr. Pereos: The question is whether or not
19 those entitlements-- whether or not the work product, the
20 intellectual work product, of the architect can be
21 transferred to a new owner if he were to sell the
22 property.

23 "THE WITNESS: "Not without our permission."

24 So again, it's not "Steppan's permission,"

1 it's "our permission."

2 And then he's asked: "It's your work product
3 that constitutes the basis for the entitlements;
4 correct?"

5 "Answer: Correct."

6 Page 373, lines 13 through 15. I guess I've
7 covered that one already.

8 "When did you first learn that your client,
9 the developer, was not the owner of the property?"

10 "Answer: We knew that from the outset."

11 Page 381 to 383. There's a colloquy between
12 Your Honor and Mr. Friedman wherein Your Honor asks about
13 Mr. Friedman anticipating that he would be paid under the
14 AIA agreement. Nobody jumps up and corrects Your Honor
15 on those questions.

16 Page 391, lines 18 through 392, line 4.
17 Mr. Pereos to Mr. Friedman:

18 "Mr. Johnson led you to believe that there
19 were other people that were making proposals to buy
20 Mr. Iliescu's property...other than the developers?"

21 "By the way, the developer that you had
22 contracted with is your client?"

23 "Answer: One of the developers was still
24 trying to make-- put together a financial proposal, and

1 he didn't succeed."

2 So again, that's a little bit of a -- of a
3 compound question there, and he asks -- he answers one
4 part of it. But, again, nobody corrects that.

5 Page 417, lines 1 through 21. This is
6 Mr. Hoy to Mr. Friedman after they had been reading part
7 of the AIA agreement, and he asks Mr. Friedman about a
8 provision in the AIA agreement and he says: "Is that
9 provision" -- Mr. Hoy to Mr. Friedman:

10 "Is that provision consistent with your
11 testimony earlier today and yesterday that you were
12 entitled to be paid on a monthly basis for the progress
13 towards the completion of the schematic design phase as
14 that work was performed?"

15 And there's an objection that gets sustained,
16 so he rephrases. New question:

17 "Can you please explain to the Court how the
18 billing mechanism works and when FFA and Steppan are
19 entitled to be paid for the work on progress under
20 Section 1.3.9.1?"

21 So it's FFA and Steppan working together, not
22 one under the other. They're entitled to direct payment.
23 "Answer" -- and, I'm sorry, that was my -- that was my
24 insertion.

1 "Answer: Without reading the provision to
2 the Court, because you already have, our expectations
3 were consistent with the contract which Hale Lane
4 approved and gave to us and we signed."

5 He doesn't say, "and Mr. Steppan signed," he
6 says -- Mr. Friedman says, "and we signed." End of
7 quote. So in Friedman's mind it wasn't really Steppan
8 who signed it, it's "we," FFA. "And was it" -- and then
9 going back into the record:

10 "Question: And was it your expectation under
11 the contract that you would be paid on a monthly basis--

12 "Answer: Absolutely.

13 "Question: --for progress? All right.
14 Please--"

15 Then the court interjects and says:

16 "The Court: But then you modified that,
17 didn't you, at some point and you said that because the
18 developer was in, what, the-- some military service, that
19 he liked doing things a different way?

20 "THE WITNESS: Yes." Close quote.

21 And so again, Your Honor, Friedman is
22 testifying that he's the one who orally modified the AIA
23 agreement.

24 And in fact, if you go to page 436 of the

1 trial transcript, lines 1 through 5, Mr. Pereos follows
2 up on that, and Mr. Friedman indicates that he,
3 Mr. Friedman, had orally modified the AIA agreement.

4 And so the question is, how does Mr. Friedman
5 orally modify an agreement or enter into an arrangement
6 with BSC to orally modify an agreement unless FFA was a
7 party to that agreement, just as they're called out to be
8 in the addendum to the AIA agreement?

9 Page 421, lines 5 through 20. This is Your
10 Honor asking questions of Mr. Friedman:

11 "The Court: And is it accurate that during
12 the construction administration or CA phase that the
13 architect is physically required to be on site --"

14 And then there's some more text.

15 "The Witness: He's not on site. It depends
16 on the scale of the project. Okay. But in this
17 particular case, we would have had an architect on site.

18 "The Court: So it would be anticipated that
19 Mr. Steppan would have been physically in Reno?

20 "The Witness: Somebody from our office
21 representing our office would be physically on site."

22 So again, FFA is going to send somebody, not
23 necessarily even the licensed guy.

24 Page 436, lines 1 through 5. This is

1 Mr. Pereos to Mr. Friedman. I think I've mentioned that
2 already. The oral modification was by Mr. Friedman.

3 So then we can look, also, at Mr. Steppan's
4 testimony. And this is page 651 of the trial transcript.
5 Mr. Hoy is asking Mr. Steppan some questions. And he
6 says -- so -- all right. Line 16:

7 "All right. So Exhibit 18 lists Items 1
8 through 8 of things that your firm considers to be
9 additional services not within the scope of the fixed fee
10 contract?

11 "Answer: Not necessarily. I think part of
12 this -- for example, the FFA general time -- is helping
13 to define for the client, given that we were currently
14 still on an hourly because the contract wasn't agreed to
15 yet, these are -- so I will just make -- slightly adjust
16 what I've just said."

17 And Mr. Steppan, throughout his testimony
18 refers to "we," "our," never "my," never "I." Unless
19 he's, you know, sort of a pompous person that just likes
20 to use the imperial "we" all the time, I assume he's
21 talking about "we, FFA."

22 All right. Question on page 652:

23 "All right. With respect to the shadow study
24 updates" -- this is Mr. Hoy and Mr. Steppan.

1 "All right. With respect to the shadow study
2 updates was there ever a billing from Fisher-Friedman
3 Associates or you, for additional services?

4 "Answer: Not that I remember."

5 And then that goes on.

6 Now, page 655. I'm sorry. Page 656,
7 starting at line 11. The Court interjects some questions
8 here:

9 "Wait, before you go to 20, 19, then, that's
10 just something -- the subject matter of Exhibit 19 is
11 activity taken outside the scope of the flat -- or the
12 fixed-fee contract; is that correct?"

13 And so this is a colloquy, Your Honor, about
14 these add-ons. And the position at trial, of the
15 plaintiff, was that the AIA allowed for add-ons and,
16 therefore, they can lien for add-ons.

17 And the witness says: "It's outside the
18 scope of the fixed-fee contract and it's outside the
19 scope of the hourly stopgap agreement.

20 "The Court: So it is something you would be
21 reimbursed -- and by 'you,' of course, I mean
22 Fisher-Friedman and Associates -- reimbursed for
23 separately?

24 "The Witness: Yes."

1 So the witness agrees with Your Honor that
2 Steppan is in fact the equivalent of Fisher-Friedman and
3 Associates. Nobody jumps up and says, "No, no, no, Your
4 Honor, it's not Fisher-Friedman Associates that's going
5 to be compensated," because what Your Honor asks is
6 consistent with all the testimony that had been provided
7 both under questioning by Mr. Hoy and Mr. Pereos. And so
8 your question made sense and it was accurate factually,
9 and that's why nobody corrected it.

10 Page 658, this is again Mr. Hoy and
11 Mr. Steppan, line 18:

12 "Did Fisher-Friedman ever do an aerial
13 perspective along Island Drive indicating the streetscape
14 and landscape plan?

15 "Answer: I believe so.

16 "Question: Did the client ever object to
17 being billed for any of the work that is specified in
18 Exhibit 21?"

19 So, did Fisher-Friedman do this? Did the
20 client object?

21 Page 659. Your Honor is discussing whether
22 to admit one of these add-on contracts. And at line 21
23 you indicate:

24 "Whether it's not" -- "Whether or not it's

1 something that entitles Fisher-Friedman Associates to
2 compensation is different."

3 And again, I think you are making that
4 statement because all of the evidence is talking about
5 Fisher-Friedman Associates is going to be the one that
6 gets paid here. And nobody corrects Your Honor there.

7 Page 660. This is Mr. Hoy and Mr. Steppan.

8 "Question: Did Fisher-Friedman actually
9 invoice the client for the work that's described in
10 Exhibit 21?" One of these add-on agreements.

11 Steppan: "I would have to look at the
12 invoices; I don't remember off the top of my head."

13 Again, the assumption is Fisher-Friedman is
14 the one that's billing the client directly.

15 Page 664 is a colloquy between Mr. Hoy and
16 Mr. Steppan about whether the owner ever told Steppan or
17 Fisher-Friedman, "Don't do that work"? Did
18 Fisher-Friedman do the work? Yes."

19 And, "Did you and Fisher-Friedman Associates
20 give the developers notice that you were going to do a
21 video fly-through?"

22 So it's even, it's not describing a
23 relationship where FFA was working for Steppan.

24 Page 666, lines 10 through 14, Mr. Hoy asks

1 Mr. Steppan about invoicing and the question is:

2 "All right. Now as the executive vice
3 president of Fisher-Friedman Associates, were you
4 familiar with the way the firm created invoices for the
5 company?"

6 These were company invoices for the client,
7 not -- not for Steppan.

8 And then he asks again about invoices on the
9 bottom of page 667. Mr. Hoy and Mr. Steppan:

10 "Mr. Steppan, before the break I was asking
11 questions about Fisher-Friedman Associates' standard
12 practices for creating invoices. Were all of the
13 invoices in Exhibit 25 created at or about the time of
14 the dates of the invoices?

15 "Answer: Yes."

16 Twenty-five are all on FFA letterhead.

17 At page 673, Mr. Steppan is asked about -- or
18 on page 672, I guess, he's asked about the letterhead
19 changing from Steppan to FFA. And on the top of page
20 673, lines 1 through 4, Mr. Steppan says:

21 "It had changed from my letterhead to the
22 Fisher-Friedman letterhead, and I thought that things
23 should stay on the Mark Steppan letterhead for form."

24 Not for substance, for form. That's my

1 argument that this is all form over substance.

2 Page 677. Again, Your Honor is determining
3 whether or not to admit an add-on agreement, and you
4 indicate that it will be admitted, but then you indicate,
5 677, page 10 through 13:

6 "Whether or not Fisher-Friedman Associates is
7 entitled to compensation based on what is represented in
8 the documents may be a different question."

9 So again, based on all the questions that you
10 heard Mr. Hoy make, Mr. Friedman and Mr. Steppan answer,
11 Mr. Pereos make and Mr. Friedman answer, you know, your
12 understanding -- and I think it's absolutely correct --
13 is that the question before you is whether or not
14 Fisher-Friedman Associates is entitled to compensation.
15 That's who the direct relationship was with between FFA
16 and BSC.

17 Page 715, Mr. Steppan is testifying, and this
18 is Mr. Pereos's questions now and he's asking about the
19 32-month time scope. And he says in lines 21 through 24:

20 "I just had a very similar situation on
21 another high-rise. It had 36 months listed as the total
22 time, the same exact paragraph that was negotiated
23 between Fisher-Friedman and the client."

24 So he's comparing something that he's working

1 on right now, to this case and he said, "It's just like
2 what FFA negotiated with the client in this case."

3 Again, it's a direct relationship.

4 I've quoted in my brief some language about
5 what Mr. Steppan believes "responsible control" entails.
6 There's another quote on page 780 of the trial transcript
7 where Mr. Steppan again says that, with respect to that,
8 his supervision occurs only later.

9 So let's start on page 779, line 22, going to
10 page 780, line 2. This is Mr. Steppan testifying:

11 "The basics of the architect of record, in
12 addition to the supervisory role, per the requirements,
13 talks about the role of that level of supervision, so
14 that you're able to stamp and sign the documents. That
15 occurs at the time of building permit submission, that
16 type of full oversight. Excuse me."

17 So that, the type of full oversight, occurs
18 at the time of building permit submission. We know from
19 the NCARB-adopted rules that that's not the way it's
20 supposed to work. Mr. Steppan is supposed to be
21 exercising control throughout, not just as the -- as he
22 comes in at the end and looks at the things that are
23 about to be submitted.

24 Now, page 785 of the trial transcript. This

1 is now Mr. Hoy asking a question to Mr. Steppan:

2 "Question" -- and this is line 7.

3 "Question: And, in fact, did you do more for
4 the Wingfield Towers project on behalf of Fisher-Friedman
5 Associates than just stamp drawings and sign the
6 contracts?"

7 And then there's a colloquy back and forth.
8 Line 19 through 23:

9 "Question: Do you confirm your testimony
10 from this morning that you maintained responsible control
11 and direct supervision of the work performed by" --

12 THE COURT: Well, hold on, Mr. Albright. I
13 mean, the way you're doing this -- and I've tried to
14 follow you as you go through the different portions that
15 you have outlined, but this is one of the glaring issues,
16 now, that I have.

17 Just discussing what happened -- or the
18 testimony at line 7 -- or, excuse me, let me start again.

19 In discussing the testimony that is on page
20 785, you read a question. The question beginning at
21 line 7 is:

22 "And, in fact, did you do more for the
23 Wingfield Towers project on behalf of Fisher-Friedman
24 Associates than just stamp drawings and sign the

1 contracts?"

2 And for some reason you just skipped over the
3 answer. The answer was:

4 "Well, I signed the contracts, obviously. I
5 participated, as it's been stated in multiple places, in
6 meetings and presentations; internally oversaw work that
7 was being produced in the office; participated in
8 discussions on the project.

9 "Obviously there was no actual stamping or
10 sealing of documents by me, because that would have
11 occurred at submission for the building permit at the end
12 of the construction documents phase only."

13 So, you know, while it might be rhetorically
14 helpful just to blow through what the answer is, there
15 was an answer there, and it wasn't consistent with what
16 you are representing, it's more consistent with
17 Mr. Steppan saying, "I'm not just a straw man or a
18 scribe, I am involved as the main construction
19 architect."

20 Go ahead.

21 MR. ALBRIGHT: Your Honor -- and that's fine.
22 My point is this, to the extent that Mr. Steppan is
23 involved as the main contract architect -- and I think --
24 and I've gone through in detail in my brief all of the

1 reasons why, despite this testimony right there, I don't
2 think that's really so. But my point here is, in what
3 capacity is Mr. Steppan fulfilling that role?

4 I mean, he says -- he says now, in opposition
5 to our motion, "I'm this independent guy. I signed this
6 agreement, and then I hire somebody underneath me and
7 they're my sub-provider."

8 But what this describes is, whatever that
9 role that Mr. Steppan is fulfilling, he's doing it
10 internally on behalf of Fisher-Friedman Associates.

11 THE COURT: So do you think it would have
12 been better then if Mr. Steppan, for this -- this case --
13 or strike that -- this project, it would have been better
14 for Mr. Steppan to possibly go out and rent an office and
15 hang a shingle, so to speak, here in Reno, or maybe in
16 the Bay Area where, if memory serves me correctly,
17 Fisher-Friedman and Associates is located?

18 MR. ALBRIGHT: I'm not --

19 THE COURT: It just seems like that might be
20 form over substance, as well. I understand your
21 argument. The overall thrust of your argument is, this
22 is all just form over substance. But that might have
23 been just form over substance, too.

24 MR. ALBRIGHT: Well, and -- sure, Your Honor.

1 And I'm not saying that he needed to go that far. What
2 I'm saying, again, is, if this was really the way that
3 things were going to go down, then it behooved
4 Mr. Steppan and FFA to put things together in that way.

5 And what this language is describing -- and,
6 again, the question in line 19 and the answer at line 23,
7 you know, is that he's doing this, "for work performed by
8 Fisher-Friedman Associates." So what this is describing,
9 Your Honor, is a guy that is working in-house for FFA.

10 And, you know, I don't think that legally FFA
11 is entitled to say, "Look, we're going to go into Nevada
12 and we're going to do a bunch of architectural work in
13 Nevada, and the way that we're going to do that is we're
14 going to have our one employee, who has a Nevada license,
15 sign the contract; but then we're not going to treat him
16 any differently on this job than we treat him on any
17 other job."

18 I'm not saying he had to go rent a shingle.
19 I'm saying that there should have been some recognition
20 that this job really was different, that he's not just
21 doing what he's doing on behalf of FFA.

22 Because, remember -- and the reason I'm
23 focusing on, "on behalf of" is because, remember, this is
24 what they say. They say, client Steppan, FFA. So what

1 FFA does, it does on behalf of Steppan, who then is
2 billing the client for it.

3 But what this language describes is something
4 that's just the reverse of that, where FFA has this
5 direct relationship with the client, and internally at
6 FFA there is this guy who is doing certain things on
7 behalf of FFA. That's not what they need for that guy,
8 that lone individual, to suddenly come in and lien for
9 all of the work that FFA did.

10 You know, Your Honor, I -- I had a judge that
11 told me once that if something looks like a fish and it
12 flops like a fish and it smells like a fish and it tastes
13 like a fish, I'm going to presume it's a fish, unless
14 there is really good evidence to the contrary.

15 And what I feel like is happening here is,
16 I'm sitting down in a restaurant, somebody sets a
17 completely empty plate in front of me and says, "Enjoy
18 your fish."

19 And I say, "Well, it doesn't look" -- "I
20 don't see a fish."

21 "Well, that doesn't mean it's not there.
22 Maybe you have bad eyesight."

23 "Well, I don't smell a fish."

24 "Well, that doesn't mean it's not a fish. We

1 spice it so that it doesn't smell like a fish."

2 "Well, I don't" -- "I can't taste a fish,"
3 you know.

4 "Well, we cook it so it doesn't taste
5 like" -- I mean, at some point, I think I'm going to just
6 have to look at the waiter and think, "Okay. Either the
7 waiter is being willfully blind here, or I'm insane,"
8 because, you know, there's just -- I just don't see any
9 indicia here of a subcontract relationship between
10 Steppan and FFA.

11 What I see indicia here of is that FFA had a
12 direct contractual relationship with BSC. They did work
13 directly for BSC. They communicated directly to BSC.
14 They sent invoices on FFA letterhead for all of the ones
15 that are now -- correspond to the lien amount, to BSC.
16 Those invoices recognize prior payments which had been
17 made not to Steppan, but to FFA.

18 I mean -- and I understand on point one that
19 there's a contract that's signed by Steppan, and I
20 understand that there's the testimony about that. But on
21 this -- on this second point, your Honor, on this
22 question of who was FFA working for, who hired FFA, what
23 does it mean that FFA is listed as a party to the AIA
24 agreement on the addendum thereto, why is it that there

1 is no writing between Steppan and FFA, even though it was
2 for a 32-month contract and there would have needed to be
3 a writing under the statute of frauds? Why is it that
4 there is no payment chain that shows that? Why is it
5 that Steppan says he has no financial interest in this
6 case, and Rodney Friedman says, "I'm the guy that has a
7 financial interest in this case, I'm the one financing
8 this litigation"?

9 I mean, you know, I'm looking at an empty
10 plate. I don't see anything. There is nothing there.

11 THE COURT: Mr. Steppan has a financial
12 interest in the case. It might be that Mr. Friedman is
13 financing the litigation, but Mr. Steppan has an interest
14 in the case, because any judgment that is entered will be
15 entered only in the name of Mark Steppan. So obviously
16 he has an interest in the case.

17 MR. ALBRIGHT: Well, but again, that goes to
18 the comments both you and I have made this morning about
19 form and substance. And Mr. Steppan's testimony was that
20 he didn't have a financial interest in the case. And I
21 think that --

22 THE COURT: Well, maybe just clarify for me
23 then. Number one, where does Mr. Steppan say, "I have no
24 financial interest in the case" in the transcript? And

1 number two, maybe you might want to clarify what you mean
2 by "a financial interest."

3 There clearly has been an order entered by
4 the Court describing a financial interest that
5 Mr. Steppan will have in the case at some point. While
6 it is true that Mr. Friedman, if my memory serves me
7 correctly from the testimony at trial, did indicate that
8 he was financing the litigation, as I've said repeatedly,
9 the money is not going to Mr. Friedman. The order
10 doesn't direct that anything happens for Mr. Friedman.
11 It certainly directs that certain things may happen
12 towards Mr. Steppan.

13 MR. ALBRIGHT: And I understand that, Your
14 Honor. But, again -- and I don't have that -- that
15 transcript page handy, but I will try to find it.

16 THE COURT: Okay.

17 MR. ALBRIGHT: The question is, is
18 Mr. Steppan entitled to lien for this work that FFA did
19 under direct contractual relationship with BSC?

20 And so the fact that you are going to sign a
21 judgment that has Mr. Steppan's name on it -- and that's
22 all fine and good, in the fact that you don't really
23 care, perhaps, what Mr. Steppan does with the money once
24 he gets it or if he assigns it to somebody else. That's

1 not something you're interested in. I think it is
2 something that you should be interested in, form over
3 substance. But be that all as it may, the question still
4 remains, under what theory can Mr. Steppan lien for work
5 that some other entity did directly for the customer?

6 And, you know, there were some other parties
7 out there that did some things directly for BSC, and I
8 don't think anybody here would argue that Mr. Steppan's
9 lien can include unpaid invoices to those other parties
10 that had a direct relationship with BSC.

11 Now, there were some people that had a
12 subcontract through FFA, and to the extent that that
13 supposedly means that it was through Steppan, you know,
14 perhaps there's an argument there for those unpaid
15 invoices to be a lien.

16 But why would FFA be treated by this Court
17 any differently than any other entity that's out there
18 that did work directly for BSC under direct contractual
19 relationship with BSC? I just don't see legally how that
20 can be correct.

21 So moving on to point two, or area two, that
22 I wanted to cover with respect to the DTJ Design case.
23 The holding right up front, in the first paragraph of DTJ
24 Design is as follows:

1 "We conclude that regardless of whether a
2 foreign firm employs a registered architect,
3 NRS 623.349(2) and NRS 623.357 mandate that the firm be
4 registered in Nevada in order to maintain an action on
5 the firm's behalf."

6 Now, I understand that DTJ was the named
7 plaintiff in the DTJ Design case, but I think it's
8 interesting that the ruling says you can't do what DTJ
9 Design is doing and then maintain an action on the firm's
10 behalf. And it's my contention, Your Honor, that this
11 lawsuit was brought not ultimately on behalf of Steppan,
12 but on behalf of FFA, and that FFA, just like DTJ Design,
13 didn't get two-thirds of its owners licensed in Nevada,
14 didn't register itself in Nevada, and then went and did
15 just what DTJ Design did, entered into an agreement with
16 BSC.

17 FFA is listed as a party to that agreement on
18 the addendum, performed work under that agreement, got
19 paid directly under that agreement, and now wants to come
20 and, on FFA's behalf, pursue this action.

21 Now, why do I say that this action is on
22 behalf of FFA? Well, again, going to the trial
23 transcript, page 336, lines 10 through 15, Mr. Hoy asks
24 Mr. Friedman:

1 "Were you-- was your company motivated to
2 record the mechanic's lien on November 7th, 2006 based on
3 something that you had heard from the developers?

4 "Answer: Yes."

5 And Mr. Pereos returns to that. Page 343,
6 lines 6 through 16 of the trial transcript. This is
7 Mr. Pereos to Mr. Friedman:

8 "Now, you tell us that you recorded the lien
9 or at least you caused the lien to be recorded because
10 you were having anxieties as to whether or not you were
11 ever going to get" -- "to be paid your fee."

12 "Answer: It was more than anxieties."

13 Follow-up question.

14 "Answer: I was pretty sure we weren't going
15 to get paid."

16 So again, Your Honor, both under questioning
17 by Mr. Hoy and under questioning by Mr. Pereos,
18 Mr. Friedman is told, "Your company recorded this lien,
19 your company caused this lien to be recorded."

20 Mr. Friedman understands that and goes along with that.

21 Page 346, line 11, to page 348, line 24.

22 There's a colloquy about who is going to file a lien, and
23 Mr. Friedman says:

24 "My concern at the time of the party is that

1 this had a good possibility of going forward, but for
2 protection we were going to file a lien in case it
3 didn't. You would do the same."

4 "We" were going to file a lien.

5 So, Your Honor, what's important about DTJ
6 Design is that if you look at this case for what it truly
7 is, substance not in form, what FFA did here is the same
8 thing that the DTJ Design case said that -- that DTJ
9 Design could not do.

10 THE COURT: But that's not true. I mean, I
11 just -- I understand your argument clearly, Mr. Albright,
12 and you've made it eloquently, but it's just factually
13 inaccurate, because in the DTJ case the plaintiff in that
14 case was not Mr. Thorpe, the "T" in DTJ, it was DTJ. So
15 let's just -- it's just not the same.

16 So you can argue that, "Look, DTJ is right on
17 point." But one could argue the other side, and that is,
18 is that the plaintiff in this case, Mr. Steppan, somehow
19 saw into the future and envisioned this exact ruling
20 coming out of the Nevada Supreme Court.

21 And as you noted, this ruling came out in
22 February of 2014, a little over a year ago, and if memory
23 serves me correctly, a couple of months after the trial
24 itself had concluded.

1 But it's just not -- it's not on all fours.
2 And the argument you keep making is that DTJ is right on
3 point with this case and it's clear on its face that this
4 requires the Court to reverse its earlier decision.

5 But it's not. They did -- they did things
6 entirely different. DTJ, Incorporated was the named
7 plaintiff. Nowhere in this case is FFA a named
8 plaintiff.

9 MR. ALBRIGHT: Your Honor --

10 THE COURT: I mean, maybe we can --

11 MR. ALBRIGHT: And I understand. I
12 understand the name was different, and that's why I
13 emphasized, Your Honor, this idea of --

14 THE COURT: The procedure is different. The
15 name isn't--

16 MR. ALBRIGHT: -- this idea of who's
17 behalf -- on whose behalf --

18 THE COURT: Stop. The name isn't just
19 different, Mr. Albright, the facts are different.

20 In DTJ Design, the company came in and sued
21 to collect, and then when it was pointed out that they
22 couldn't sue based -- if memory serves me correctly -- on
23 NRS Chapter 623, then they said, "Well, okay. Well,
24 we'll just pull Mr. Thorpe out and we'll put him in our

1 place." That's what they did, if I recall correctly, and
2 if I'm incorrect in that recollection, please correct me.

3 MR. ALBRIGHT: I think that may be more the
4 Snyder case, but, yeah --

5 THE COURT: Okay. I appreciate that.

6 MR. ALBRIGHT: -- same idea. But, yeah, I
7 understand.

8 THE COURT: But it's basically the same
9 thing. And the Snyder case is Nevada National Bank
10 versus Snyder.

11 So, you know, I'll just leave it at that.
12 It's just not exactly the same in my mind. They're
13 different.

14 MR. ALBRIGHT: Your Honor, and I understand
15 that there are some differences and I understand what
16 those differences are. But, again, Your Honor, what I'm
17 suggesting is that, if you look at the substance of
18 what's actually going on in this case that the
19 differences are not substantively material.

20 You know, you had asked earlier, or last
21 time, was DTJ related to some sort of watershed moment.
22 And, you know, Your Honor, we as lawyers, we look to the
23 judiciary for guidance.

24 And I guess the question is that -- you know,

1 myself, as a lawyer, if I get a call next week from an
2 architectural firm out of Oregon and they say: "Hey, we
3 want to do some work in Nevada," do I say to them:
4 "Well, here's what you need to do. According to the
5 Nevada Supreme Court and NRS Chapter 623, you need to get
6 two-thirds of your owners licensed in Nevada and you need
7 to register in Nevada. Then you need to do your work
8 under that registration, pay the fees for the
9 registration, qualify, do the other things you have to do
10 to get registered and then you will be okay"?

11 THE COURT: Or in the alternative --

12 MR. ALBRIGHT: Or do I say --

13 THE COURT: Stop. Or in the alternative,
14 could you tell them, "Do you have a guy just who is
15 registered in Nevada?" And if the answer is yes, then
16 maybe he's the person who does the business. Now, then,
17 you can start to flow into some more of your argument
18 where, how clear are you going to make it as to what
19 people are doing? And the argument that you've made so
20 far today is that there wasn't enough separation between
21 FFA and Mr. Steppan.

22 But I don't think DTJ requires the conclusion
23 that you're drawing, it requires one of -- it could
24 require one of numerous conclusions, the first one being,

1 as you've suggested, get two-thirds of your people
2 qualified or registered in the State of Nevada, go
3 forward in this way.

4 But to extrapolate a little bit more, if your
5 Oregon firm says, "We've got this one guy who is
6 registered in Nevada, help me do it" -- "You, as an
7 extremely qualified and competent attorney, help me have
8 him be the construction architect for this project," now
9 you could do two things. You can tell him, "Don't do it
10 this way," or you can say, "If you want to do it this
11 way, here's how you do it."

12 MR. ALBRIGHT: Well, and I guess, Your Honor,
13 the difference of opinion that you and I are having is
14 that I would not be comfortable telling him, "Look,
15 there's a big giant loophole here. Don't even worry
16 about DTJ, don't even worry about NRS Chapter 623, just
17 have somebody in your firm that's got a Nevada license
18 sign the AIA agreement and have the lien some day be in
19 his name, have the contract some day be in his name, and,
20 you know, nobody will really pay that much attention."

21 I mean, I -- you know, I don't know that I
22 would be comfortable -- because I don't know that that
23 client is going to end up in front of the right judge
24 that's going to buy into that, you know, and I just don't

1 think that's --

2 THE COURT: Mr. Albright, there's always that
3 tension -- and I recall it from my days in private
4 practice, as well, although they were quite some time
5 ago -- where you give the client who, in essence -- you
6 know, you give the first advice, and he says, "No, I want
7 to do this. How do I do it?"

8 And you might say it's a giant loophole and
9 you're uncomfortable giving that advice. You might write
10 a -- I assume they're still called a CYA letter to your
11 file about how you had advised your client.

12 But in the end, if he says, "No, I want to do
13 it this way," then you can say, "Well, this is one way
14 you could do it. It's not the way I would suggest. You
15 may be exposing yourself to unnecessary risk in doing it
16 this way. I would counsel you to do it in a different
17 way. But in the end, there is a way you can do it." And
18 you're not comfortable.

19 And I've had those cases in my past where the
20 client just goes, "Well, no, but this is what I want to
21 do and I'm paying you to tell me how to do it."

22 Now, unless it's completely illegal or some
23 sort of violation of your ethical responsibilities -- you
24 know, there could be that -- "Well, here's the" --

1 "here's the riskier response to your question."

2 MR. ALBRIGHT: Well, and, Your Honor, I guess
3 in my mind it is -- it is clearly illegal, because what
4 FFA came in Nevada and did is, they provided
5 architectural services in Nevada and they weren't
6 registered to do that, and they don't fall under either
7 of the exceptions in NRS Chapter 623 for doing that.
8 They're not -- the employees that did work on this work
9 were not W-2 employees of Steppan, the registered
10 contract architect, nor was FFA doing merely design work.

11 And so I don't see how FFA was legally
12 authorized to do what they came into the state and did,
13 And, you know, that's what I would hope that you would
14 take a close look at as you're looking to rule on our
15 motion.

16 THE COURT: Okay. Thank you, Mr. Albright.
17 Are you finished? Go ahead.

18 MR. ALBRIGHT: I have just a brief -- a
19 couple of procedural items, Your Honor, because there was
20 a question that came up last time about, you know, why
21 wasn't this addressed more thoroughly at trial?

22 We had had some -- some addressing of that in
23 our motion, but took it out. We thought if it was raised
24 by the opposition, we would put it in the reply. It

1 wasn't really raised there, but you've raised it. So let
2 me just -- let me just say, I think that there was, in
3 fact, a record made of some issues with standing.

4 Now, for example, on February 11, 2013,
5 there's an Opposition to Partial Motion For Summary
6 Judgment that gets filed on the Iliescus' behalf, in
7 which it's argued at page 2 and page 3 that it's not
8 believed that Steppan did anything, but that what
9 architectural services were rendered were ultimately
10 completed by Fisher-Friedman.

11 At page 944 of the trial transcript,
12 Mr. Pereos says:

13 "The plaintiff is Mark Steppan. And he has
14 alleged that he is a licensed architect and that he
15 performed services."

16 "What we don't know" -- and they go on -- "is
17 whether or not Steppan can legitimately go into a
18 consulting agreement, whereby Fisher-Friedman and
19 Associates act as a consultant...for him, versus
20 Mr. Steppan being the one who needs to do the work and/or
21 be responsible for the work."

22 And then on the next page he says, "I'm not
23 sure whether or not he does or doesn't have standing."
24 But, again, I think -- and he says, "I'm not there yet."

1 But then in his post-trial written brief filed January 3,
2 2014, at page 10, he does make that standing argument.

3 And I think that, again, the -- the
4 plaintiff, the lien claimant, has the duty under Nevada
5 law to plead and prove whatever it is that he needs to
6 plead and prove to demonstrate that his lien conforms
7 with the lien statute.

8 You had asked, Your Honor, "Isn't there a
9 more efficient way to do this than to wait until after
10 trial for a Rule 60 motion?"

11 And I suppose that's true, but I think it's
12 also true that there's case law out there that says that
13 the appellate courts would much prefer that if there is a
14 belief that there's an error in the ruling, that it get
15 brought in front of the judge on a Rule 60 motion or a
16 52 motion or a 59 motion. Rule 52 and 59 is not yet
17 ripe. It's our hope that they will never be ripe. But
18 six months was about to expire so we thought, "We'll get
19 it in on a Rule 60 motion."

20 And, you know, we may, just for appellate
21 preservation purposes, need to file another motion, which
22 I assume we won't get as much time to argue, because you
23 will have already ruled one way or another.

24 But the point is that if we can get this

1 fixed at the trial level, that's what the appellate
2 courts are telling us that we ought to try to do, and
3 that's what we're trying to do.

4 And I do believe, Your Honor, that the DTJ
5 Design decision is very, very close, and it's close
6 enough, in my mind, when you look at the substance of who
7 this lien was recorded on behalf of, that it ought to be
8 applied here, as well.

9 One brief side note and then I'll -- I'll
10 stop filling up the gas chamber, Your Honor. There
11 was -- there was a lot of arguments at trial about this
12 pre-lien notice argument. And I don't want to go back
13 and beat that dead horse too much, but I do want to say
14 this.

15 Nevada is somewhat unusual in that it allows
16 architects to lien, and not all states allow that.
17 Because in a lot of states some sort of improvement of
18 the property itself has to have occurred so that the
19 owner, whose property is all of a sudden subject to this
20 huge lien, at least can say, "Well, I sort of should pay
21 that because there's improvements sitting there."

22 Here you've got a four-and-a-half
23 million-dollar lien that's being asked for in the
24 judgment. The property looks today exactly the way it

1 looked when it went into escrow. No four-and-a-half
2 million-dollar mansion sitting there to offset that.

3 So what needs to be understood, though, Your
4 Honor, is that even though architects are allowed to lien
5 in Nevada, that doesn't change the application of the
6 statutes whenever the statutes talk about on-site work
7 and the importance of on-site work.

8 For example, there is a case that we cited in
9 our materials where the architect came in and said, "Hey,
10 look, we should have priority over the bank because the
11 bank knew that we were over here doing this architectural
12 work." And the Nevada Supreme Court said, "No, the liens
13 vest for purposes of that priority question when visible
14 on-site work begins."

15 And so it is my contention, Your Honor, that
16 in like manner, when you look at Fondren, when you look
17 at Hardy, the whole reason that the question of pre-lien
18 notice came up and whether the owner had actual notice or
19 not came up, is because the Nevada statute is written in
20 such a way that you can only lien for work that's
21 performed at the instance of the owner. And then the
22 Nevada statute says that the work is presumed to be
23 performed at the instance of the owner if, once on-site
24 work commences, the owner doesn't take some steps to

1 prevent that presumption from arising.

2 And what happened in this case, Your Honor,
3 is there was never any on-site work. And so the whole
4 point of Fondren, the whole point of the follow-up case,
5 Hardy, is that because the owner in those two cases knew
6 of on-site work -- not just knew of work, but the bank
7 knew of an architect that was out there doing work, knew
8 of on-site work -- the owner had to do certain things to
9 protect himself from being presumed to have had the work
10 done at the instance of the owner.

11 And so without that, where you don't have an
12 actual person on-site doing work, it's my argument that
13 the rationale of this case is -- falls apart, and,
14 therefore, you just go back to what the statute says.
15 And the statute says, if the mechanic's lien claimant
16 doesn't send a pre-lien notice, then the lien is not
17 valid.

18 He's also required to send a 15-day notice on
19 residential matters, which he didn't do here. And there
20 are district courts that have thrown out liens on that
21 issue alone. And I couldn't find any published opinions
22 that confirm that, but it happens.

23 And so I would just ask Your Honor before you
24 issue a ruling to -- and I'm not trying to beat a dead

1 horse of who knew what, when, but just to look at those
2 two cases more carefully than just, "Well, if there's
3 notice, then" -- "if there's actual knowledge, then you
4 don't have to give notice," but to look at the actual
5 reason why those -- why those questions arose in those
6 cases under the statutes -- they're cited in the
7 footnotes in the text of those cases -- and think about
8 that legal application before you rule. And I've, you
9 know, outlined that in the brief.

10 So thank you, Your Honor.

11 THE COURT: Thank you. Mr. Hoy, we'll take a
12 15-minute recess. It's ten minutes before 10:00, so
13 we'll be back at five minutes after 10:00 to continue,
14 and you will be able to make your argument.

15 Court is in recess.

16 MR. HOY: Thank you, Your Honor.

17 MR. ALBRIGHT: Thank you, Your Honor.

18 (Recess taken.)

19 THE COURT: We'll go back on the record in
20 CV07-00341, Mark Steppan versus Dr. Iliescu, et al.

21 Mr. Hoy, on behalf of Mr. Steppan.

22 MR. HOY: Thank you, Your Honor. I'm
23 grateful to the Court for taking all of this time to hear
24 extended arguments on this motion. There's three basic

1 reasons why this is important on this particular motion.

2 First of all, as we heard today and we saw in
3 the briefs, Dr. and Mrs. Iliescu have already promised
4 the Court and the parties that they will be bringing
5 additional post-trial motions probably on the same
6 substantive issues. So hopefully we can get all of our
7 arguments out so that will expedite those motions.

8 Number two, the reply brief said that I, as
9 counsel, didn't understand the arguments in the motion
10 itself. And I think that there is some truth to that. I
11 confess that I read some of those arguments and may not
12 have comprehended exactly what was being argued, and I
13 think that this oral argument has really fleshed out what
14 the motion is about and what it's not about.

15 Now, third, we've heard arguments today that
16 were not really explored in the briefs, at all. We've
17 heard about a lot of evidence that was not highlighted at
18 all or cited to in the brief. So there's no way I can go
19 back and respond to every page out of the trial
20 transcript that counsel referenced today, so you can rest
21 assured that I'm not going to fill the space with that
22 particular gas.

23 As I understood the original motion it was
24 all about fraud. The original motion used the words,

1 "fraud," "fraudulent," "sham," over and over and over,
2 and so that's what I really focused on with the
3 opposition brief.

4 And when the reply came in, it said: Well,
5 Dr. and Mrs. Iliescu are not just making a motion based
6 on fraud, they're also making a motion based on
7 Rule (60)(b)(1) for excusable neglect and also just to
8 correct the Court's error.

9 The excusable neglect cited in the reply
10 brief was that the time cards that had been produced
11 years before the trial were never offered as an exhibit
12 at trial and never argued at trial, and they said in the
13 reply brief that the reason that didn't seem important is
14 because they didn't have the DTJ Design case yet and DTJ
15 Design somehow made those time cards more important, but
16 we haven't heard anything about that in the oral
17 arguments. I will reference the time cards a little bit,
18 but I won't dwell on it, Your Honor.

19 And so during these oral arguments we really
20 haven't heard much about fraud at all. Of course,
21 anybody trying to prove fraud has to do so by clear and
22 convincing evidence. And the authorities are clear, that
23 that holds true even when fraud is offered as a basis for
24 relief under Rule 60(b). But there hasn't been any offer

1 of any evidence of any fraudulent misrepresentation or
2 fraudulent concealment. It's just not in the record
3 before the Court, and, indeed, the entire oral argument
4 has focused entirely on rearguing the trial evidence and
5 highlighting that.

6 THE COURT: So is the thought, Mr. Hoy, that
7 the fraud that is required is something that the Court
8 did not apprehend at trial, something that was
9 intentionally obscured or hidden at trial? And, in
10 essence, your argument is that there's nothing new today
11 that we didn't hear at trial, there is nothing -- there's
12 no fraud because they haven't pointed the Court to
13 anything additional that was not known during the trial.
14 In essence, they've just referred back to the trial
15 transcript, and this is what the Court heard at trial,
16 nothing new.

17 And I'm not saying that in a -- in an
18 insulting way to Mr. Albright, but there's just -- you're
19 just arguing the stuff that I already heard, to make it a
20 little bit simpler.

21 MR. HOY: That's basically it, Your Honor.
22 And we had a little bit of a debate in the papers about
23 intrinsic fraud versus extrinsic fraud. And intrinsic
24 fraud, under the older version of Rule 60, was fraud on

1 the court. In other words, somebody gave false testimony
2 or there was important evidence that was withheld from
3 the Court and the parties. And, of course, we haven't
4 heard anything about that sort of intrinsic fraud.

5 The other kind of fraud is extrinsic fraud,
6 in other words, a fraud on the party that is the basis
7 for the case to begin with. And, of course, there is no
8 assertion anywhere that anybody defrauded Dr. and
9 Mrs. Iliescu or concealed anything from Dr. and
10 Mrs. Iliescu.

11 So all of this really comes down to putting a
12 different spin on the evidence than was focused on during
13 the trial. And I would submit, Your Honor, that that's
14 not an appropriate way to litigate.

15 I would like to read just a short section of
16 a case called Davidson against Scully, 72 F.Supp.2nd 458.
17 And I'm on page 462. This is a 2001 case out of the
18 Southern District of New York.

19 MR. ALBRIGHT: I apologize. What was the
20 page number? 172 F.Supp.2nd --

21 MR. HOY: 458.

22 MR. ALBRIGHT: Sorry.

23 MR. HOY: The pinpoint is 462.

24 And the reason I use this case, Your Honor,

1 is most trial courts don't publish their decisions --
2 certainly that's true in the State of Nevada -- but the
3 federal district courts often do, and so we often look to
4 the federal courts for procedural matters.

5 "A motion for reconsideration may not be used
6 to advance new facts, issues or arguments not previously
7 presented to the Court, nor may it be used as a vehicle
8 for relitigating issues already decided by the Court. A
9 party seeking reconsideration 'is not supposed to treat
10 the court's initial decision as the opening of a dialogue
11 in which that party may then use such a motion to advance
12 new theories or adduce new evidence in response to the
13 court's rulings.' Thus, a motion for reconsideration 'is
14 not a substitute for appeal and "may be granted only
15 where the Court has overlooked matters or controlling
16 decisions which might have materially influenced the
17 earlier decision.'"

18 THE COURT: What's the citation on that
19 again, Mr. Hoy?

20 MR. HOY: 172 F.Supp.2nd 458. And I was
21 reading from page 462.

22 THE COURT: Thank you. Go ahead.

23 MR. HOY: So the gist of the motion, as I
24 understand it, today, Your Honor, is that the Court

1 should not evaluate the licensing issues in the case
2 based on the contracts that were actually entered into,
3 but should instead assume that Fisher-Friedman Associates
4 entered into the contract to be the architect of record,
5 the contract architect and so forth. And then, with that
6 factual assumption in mind, then go back and reevaluate
7 all of the law that would apply to that transaction.

8 The motions cited a case that, frankly, I
9 think I overlooked in the opposition. I didn't think it
10 was important enough to comment upon. But in light of
11 the arguments, I think it's very important, Your Honor.
12 I'm referring to the case called Dalton, Dalton, Little,
13 Inc. versus Miranda -- Mirandi, I apologize,
14 412 F.Supp. 1001. And I have a copy for the Court if the
15 Court would like to see that.

16 But this is the case -- this is the New
17 Jersey case, Your Honor, where the federal court there
18 was applying New Jersey law. In this case a Maryland
19 corporation sued to recover fees for architectural
20 services for a building to be constructed in New Jersey.

21 The holding was, the contract between the
22 owner and the Maryland design corporation was illegal,
23 and the Maryland corporation could not sue on an illegal
24 contract. The Court said that the contract with the

1 foreign corporation was illegal even though the plans
2 would be stamped by a New Jersey architect, and the
3 court's reasoning in that case is exactly square with
4 this Court's reasoning.

5 I'm going to start --

6 THE COURT: It's four -- what, is it again,
7 412?

8 MR. HOY: 412. I have a copy, Your Honor.

9 THE COURT: That's okay. It's easier for me
10 to just pull it up. F.Supp.?

11 MR. HOY: 1001.

12 THE COURT: Okay. I've got it. Okay. I put
13 it in as "F.Supp.2nd" instead of "F.Supp." Go ahead.

14 MR. HOY: Okay. And I would just like to
15 discuss a little bit of this case in this record, and I'm
16 going to start at -- I'm in West Headnote 3 if the Court
17 has West Law.

18 THE COURT: Okay.

19 MR. HOY: And I'm going to start with the
20 third full paragraph under that headnote. The court
21 ruled:

22 "But this established law, in practical
23 effect, does not entirely exclude foreign architects from
24 rendering professional services on New Jersey projects.

1 Two kinds of arrangements are used. Under one, the owner
2 contracts with a New Jersey architect and he, in turn, is
3 free to arrange for all manner of supporting services
4 from any architect in the world. The New Jersey
5 architect, of course, remains fully and solely
6 responsible for the professional services rendered to the
7 owner.

8 "Under the other arrangement an unlicensed,
9 out-of-state architect (or firm, or corporation) has in
10 its employ one or more who are licensed in New Jersey,
11 and it is such a person who signs, seals and certifies
12 the plans and specifications. In the absence of a
13 dispute which goes to litigation, many such transactions
14 have been made, executed, paid and satisfied. The
15 arrangement in this case obviously followed the second
16 form. The contract was made with a Maryland corporation
17 not licensed in New Jersey, but the plans and
18 specifications were sealed and certified by an employee
19 who is a New Jersey licensed architect."

20 Now, Headnote 4:

21 "There is little doubt that the first type of
22 arrangement (contract with a New Jersey architect) is not
23 likely to be open to attack on grounds of illegality, at
24 least so long as there is no issue of subterfuge,

1 pretense or improper circumvention of the law sufficient
2 to warrant penetration of the form to reach the
3 substance.

4 "The second type of arrangement, used in this
5 case, is inherently illegal and there are no means to
6 cure the infirmity."

7 So this is exactly what we have here, Your
8 Honor. We have Mark Steppan, who is and has been a
9 registered Nevada architect. He is free to use the
10 services of out-of-state, unregistered architects,
11 including Fisher-Friedman Associates. Now --

12 THE COURT: And just out of curiosity --

13 MR. HOY: Sure.

14 THE COURT: -- and it's something I've been
15 thinking about since February 18th, primarily when
16 Mr. Albright was making his argument, and I pointed out
17 to him that the -- the money is going to flow to
18 Mr. Steppan.

19 Hypothetically, if this building were built
20 and fell to the ground in the first significant windstorm
21 that we have here in Washoe County, Mr. Steppan, as the
22 architect, would be the person on the hook.

23 I mean, so there's pros and cons to the whole
24 thing, but I think that also goes to what Dalton, Dalton

1 and Little, Incorporated versus Mirandi is discussing, is
2 that, you know, you're on the hook. You go get your
3 subs, but in the end, the buck would have stopped with
4 Mr. Steppan, to mix my metaphors.

5 MR. HOY: That's exactly correct, Your Honor.
6 And if you consider all of NRS Chapter 623, indeed, any
7 of the professional licensing statutes in the State of
8 Nevada -- and the regulation of lawyers is a little bit
9 different because of separation of powers, the judiciary
10 has more power there -- but if you look at the other
11 professions that are regulated under statute, they all
12 say that the registrant, the person who is actually
13 authorized by the State of Nevada to render these
14 services, is ultimately on the hook both for discipline
15 and then in the cases, for any professional malpractice.
16 And that's really key.

17 And, of course, Mr. Steppan here, as the
18 contract architect, didn't merely have liability if
19 the -- if the tower blew down in a windstorm, if there
20 were issues of constructability, which sometimes happen,
21 and there's a battle between the contractor, the owner
22 and the design team about, "Hey, you designed something
23 that just isn't buildable," or, "You've got electrical
24 conduits conflicting with mechanical duct work, somebody

1 needs to provide compensation for that," that's
2 Mr. Steppan who is on the hook there, because he's got
3 the professional liability under his contract and by
4 statute, and he's also subject to discipline by the Board
5 of Architecture for those types of issues.

6 There's been some discussion about what's in
7 the trial transcripts in terms of this -- this
8 arrangement that Steppan and Fisher-Friedman had. And I
9 just want to reiterate for this record today that none of
10 this was concealed or glossed over or anything of the
11 sort during the trial.

12 Mr. Friedman started off testifying at length
13 about Fisher-Friedman being in Nevada for many years,
14 constructing multi-family residences in Las Vegas,
15 constructing a hotel up in Jackpot, Nevada -- and I
16 believe that hotel is attached to a casino, but I don't
17 know for sure -- indeed, even building or developing the
18 Green Ranch, which is the posh little subdivision just
19 north of Windy Hill off of Lakeside there.

20 And Mr. Friedman testified that he had a
21 partner named Fisher, who was a Nevada registered
22 architect, and Fisher was the guy who would sign the
23 contract and then engage Fisher-Friedman Associates as
24 the design consultant. And he further testified that

1 Mr. Fisher was pretty much the administrative guy for
2 Fisher-Friedman, and that Mr. Friedman himself ran the
3 design studio and Friedman was the guy who really did
4 most of the design work. And that's all repeated again
5 with Mr. Steppan.

6 Now, this is not in the trial transcript, so
7 I'm not sure what weight the Court can or should give to
8 this, but because of the allegation of fraud, in our
9 opposition we attached a couple of letters going back and
10 forth between Mr. Steppan and the State Board of
11 Architecture.

12 So back in 2008, long before the trial, which
13 was December of 2013, Mr. Steppan is having a
14 conversation with one of the investigators at the Board
15 and says: By the way, as mentioned in our conversation,
16 I'm currently working on a project in Nevada under the
17 Nevada licensed firm name of Mark B. Steppan, AIA, CSI,
18 NCARB, and I'm using Fisher-Friedman Associates as a
19 design consultant. I understand that this is one of the
20 correct ways of performing architectural services in
21 Nevada.

22 Of course, that's consistent with the Dalton
23 case. And then to further follow up, Steppan even
24 transmitted a copy of what we now know as Trial Exhibit

1 No. 6, which is the AIA contract between Steppan and BSC.

2 Also going to the point of whether this was
3 an issue that was known before trial, months before trial
4 Dr. and Mrs. Iliescu signed their Consumer Complaint to
5 the State Board of Architecture alleging that Mark
6 Steppan was a figurehead, I guess, of Fisher-Friedman
7 Associates. I would just note that that filing by
8 Dr. and Mrs. Iliescu transmitted at least two binders of
9 material to the State Board, and the Complaint letter
10 says, "See Court Exhibit 13, Binder No. 1." I don't know
11 what Exhibit 13 is. I suspect it was just a deposition
12 binder.

13 And then they wrote and signed, as shown by
14 the Steppan depositions, Binder 2: "Steppan did not work
15 on the project. All the work was done by other
16 individuals who were employees of Fisher-Friedman and
17 Associates." Of course, we know from the evidence, Your
18 Honor, that that statement was incorrect.

19 And then I've also pointed out, Your Honor,
20 that the Board of Architecture determined that the
21 Iliescus' claims were meritless, and that was Exhibit 4
22 to our opposition.

23 There's been, at least in the briefs, quite a
24 bit of discussion about this concept of responsible

1 control. And this dovetails with the argument that this
2 contract that Steppan entered into with the developer was
3 just a sham, and that Steppan didn't really have
4 responsible control.

5 And just to set the stage, responsible
6 control is a term that's defined in the statutes. It's
7 in NRS 623.029 and says:

8 "'Responsible control' means the amount of
9 control over and detailed knowledge of the content of a
10 technical submission during its preparation that is
11 ordinarily exercised by a registered architect,
12 registered interior designer or registered residential
13 designer, as applicable, when applying the normal
14 standard of professional care."

15 And then the NCARB Rules of Conduct, Rule
16 No. 5.2 expands on that a little bit to make clear that
17 you don't just pick up the plans at the final moment,
18 take a quick glance at them and stamp them, that's
19 improper.

20 On this point, Your Honor, I think that the
21 record made by the movant is incomplete, and I have just
22 a short handout to make this point.

23 May I approach, Your Honor?

24 THE COURT: You may. Thank you.

1 MR. HOY: The first section of this handout,
2 Your Honor, is pages 14 and 15 from the Reply Brief, and
3 the statement beginning at the last sentence on page 14.
4 And this is talking about whether or not Steppan
5 exercised responsible control within the meaning of NCARB
6 Rule 5.2.

7 "Steppan did not, as he claims, meet this
8 test under the definition of responsible control used in
9 the architecture profession. Instead he testified that
10 his personal definition of responsible control 'in my
11 mind,' is 'supervision of the project as it's approaching
12 a time for sealing and signing'" -- and then there's a
13 citation to the trial transcript -- "a point in time
14 which was never reached on this project." Citation to
15 the trial transcript.

16 "Adopted NCARB Rule 5.2, by contrast, does
17 not so define responsible control, but expressly and
18 explicitly rejects this definition, indicating that
19 responsible control cannot wait until later in the
20 project when the technical submissions are 'approaching a
21 time for sealing and signing,' but must be exercised from
22 the outset 'during preparation' of the work product,"
23 quote, "other review of technical submissions after they
24 have been prepared by others does not constitute the

1 exercise of responsible control because the reviewer has
2 neither control over nor detailed professional knowledge
3 of the content of such submissions throughout their
4 preparation."

5 And the briefing referenced a portion of
6 Mr. Steppan's trial testimony. And I guess my gripe,
7 Your Honor, is that the motion is only focused on the
8 portions of the testimony that were convenient. They
9 focused on, starting at trial transcript 639, line 20:

10 "Question: What does 'responsible control'
11 mean?

12 "Answer: Responsible control is really about
13 your supervision of the project as it's approaching a
14 time for sealing and signing to make sure that what is
15 presented to the agency for permitting review, in
16 essence, in my mind, is what -- is what that's talking
17 about."

18 And that's where the briefing ends. They
19 leave that statement hanging, even though the answer
20 continues:

21 "In the broader sense it is the responsible
22 control or oversight that an architect in the standard of
23 care would provide by overseeing the production and
24 creation of a project from the design through

1 construction documents."

2 Next question: "Okay. And did you maintain
3 responsible control over the Wingfield Towers project up
4 until the time the project was abandoned?

5 "Answer: Yes.

6 "Question: Did you also maintain direct
7 supervision of the design process?

8 "Answer: Yes. Inasmuch as Rodney was the
9 project designer and I was overseeing the work."

10 So the trial transcript was crystal clear
11 that Mr. Steppan was in fact exercising responsible
12 control over the entire process. And I think that the
13 motions, by omission, have mischaracterized that
14 particular testimony.

15 And then the final portion of the handout,
16 Your Honor, is just some redirect. And if you start at
17 page 785 of the trial transcript.

18 "Question: And, in fact, did you do more for
19 the Wingfield Towers project on behalf of Fisher-Friedman
20 Associates than just stamp drawings and sign the
21 contracts?

22 "Answer: Well, I signed the contracts,
23 obviously. I participated, as it has been stated in
24 multiple places, in meetings and presentations;

1 internally oversaw work that was being produced in the
2 office; participated in discussions on the project.

3 "Obviously there was no actual stamping or
4 sealing of documents by me, because that would have
5 occurred at submission for the building permit at the end
6 of the construction documents phase only.

7 "Question: Do you confirm your testimony
8 from this morning that you maintained responsible control
9 and direct supervision of the work performed by
10 Fisher-Friedman Associates for the Wingfield Towers
11 project?

12 "Answer: Yes."

13 Oh, and then the next page.

14 "The Court: Any recross examination based on
15 the redirect?

16 "Mr. Pereos: No."

17 So this notion that's been promoted that
18 Mr. Steppan was just a figurehead, who did nothing but
19 sign a couple of pieces of paper and had nothing else to
20 do -- nothing professionally to do with this project is
21 just not accurate, Your Honor.

22 Although it wasn't argued orally, there was
23 some argument about these time cards. And, Your Honor,
24 these time cards were produced in 2010, years before the

1 trial.

2 There was some argumentation in the briefing
3 about what was in Mr. Steppan's depositions. And
4 interestingly -- there's a couple of interesting points
5 about this.

6 Number one, we had a fairly extended
7 discussion during the trial about the use of deposition
8 testimony, and Mr. Pereos said, "Well, the deposition of
9 a party opponent can be used for any purpose." And, of
10 course, that's true. And then Mr. Pereos started reading
11 portions of the deposition transcript into the record and
12 the Court ruled that's incorrect or improper, you can
13 open and publish the transcript of the deposition, you
14 can then use it to refresh the witness's recollection,
15 and you can use it to impeach the witness on trial
16 testimony.

17 THE COURT: But it's not just that we take a
18 deposition and then we just bring it in at trial and
19 throw it down, so to speak.

20 MR. HOY: Right. The process --

21 THE COURT: There would be no real reason to
22 have a trial if you think about it.

23 MR. HOY: Right. The process of opening and
24 publishing a deposition transcript doesn't mean that

1 everything that's in the deposition transcript is now
2 part of the trial transcript or the filed record. And
3 so, you know, we could go back and dissect the briefing
4 and talk about which portions of this deposition
5 testimony of Mr. Steppan really is part of the trial
6 record and what is not.

7 But the point is, you know, Mr. Steppan's
8 trial testimony did not materially vary from any of the
9 deposition testimony, at least not that's been
10 highlighted in these papers or in the oral argument. And
11 furthermore, Mr. Steppan was examined very vigorously
12 about these time cards.

13 Now, this is maybe a small point, Your Honor.
14 There have been some statements made about Steppan's --
15 the quantity of Steppan's involvement in the project
16 based on the time cards. And I think the first point
17 would be that responsible control is not quantitative,
18 it's qualitative. Mr. Steppan testified that he
19 exercised supervision and control over the entire design
20 process. That testimony was never challenged by any
21 other witness or any other evidence.

22 The standard in 623 -- I'm sorry --
23 NRS 623.029, the definition of responsible control really
24 implicates the ordinary standard of care. It says

1 responsible control is the amount of control that another
2 architect exercising a reasonable standard of care would
3 also exercise or observe.

4 THE COURT: Well, and couldn't -- I mean,
5 just -- I'm just thinking along the lines of your
6 argument, Mr. Hoy. I forget the name of the plaintiff --
7 strike that -- the defendant's expert, but the
8 defendant's expert could have come in and testified that
9 Mr. Steppan was not complying with that standard of care
10 and control, and at least created an issue for the Court
11 to consider.

12 But my recollection of the trial transcript
13 is that Mr. Steppan, in essence, testified that he is
14 complying with that standard, and that there is nothing
15 to rebut that. So while it's true that we may come back
16 and later look and say, "Now I want to rebut it," at some
17 point the testimony comes in, the Court considers, or the
18 jury -- the finder of fact, shall I say, considers the
19 testimony and that's the testimony.

20 MR. HOY: Correct. Yes. And the defense
21 architectural expert didn't have anything to say about
22 responsible control. The scope of his expert testimony
23 was whether or not the design complied with -- or
24 satisfied a complete schematic design.

1 THE COURT: Right.

2 MR. HOY: That was the scope of his
3 testimony.

4 THE COURT: But presumably -- again, I
5 understand. I don't want to go back and relitigate the
6 case. But presumably if that were an issue, either that
7 expert or some other person who is an expert in that
8 field as an architect, could have come in and said, "No,
9 Steppan was not exercising control over the project," or
10 at least created an issue for the Court to consider. But
11 in the absence of that information or that testimony, the
12 Court has the un-rebutted testimony of Mr. Steppan that
13 he was.

14 MR. HOY: Correct. Just a couple more points
15 on these time cards. First of all, there was testimony
16 about the time cards not being complete. These time
17 cards don't reflect all of the work that was done on the
18 project.

19 Number two, after the parties signed the
20 fixed-fee or the percentage-fee, I guess, agreement, they
21 stopped keeping the time cards because the time cards
22 were only there during the stopgap portion of the
23 project.

24 THE COURT: So they would be irrelevant,

1 because regardless if it took ten minutes or ten thousand
2 hours, you're going to get paid the same.

3 MR. HOY: Correct, right.

4 THE COURT: Okay.

5 MR. HOY: And also, there was some
6 mathematics performed, and my math differs from the
7 defense math. According to my math, if you look at all
8 of the work done just in the time cards, Steppan did
9 five-and-three-quarters percent of the total load. If
10 you only look at the AIAs, the real architects,
11 registered architects, he did 9.12 percent. But it's a
12 small point.

13 I don't want to belabor the DTJ Design case
14 too much, because I think that that's been discussed
15 thoroughly by the parties -- I'm sorry, by the defense
16 and the bench, but it does tie back into the statutory
17 analysis, which I would like to start now.

18 NRS 108.222(1)(a) says that a lien claimant
19 has a lien for work "furnished by or through the lien
20 claimant." There's no statute, there's no precedent for
21 the concept that I believe was promoted initially in the
22 briefing that a lien claimant only has a lien for his own
23 personal toil. That's just never been Nevada law and
24 clearly would contradict the statute itself.

1 Steppan contracted for a complete design.
2 How he deliveries that complete design is a matter of
3 licensing and professional obligations. But that doesn't
4 have anything to do with whether or not the work is
5 lienable.

6 The point for the lien statute is that the
7 lien claimant has to be licensed to deliver the work for
8 which the lien is claimed. And there's no dispute here
9 that Steppan was always licensed to produce and provide
10 all of the work that he did supply under his contract
11 with BSC, the developer.

12 This is a point that was not discussed too
13 much during oral argument, but was in the briefs. Once
14 you move past the statute that says these people have a
15 lien for these things, then you get to the requirements
16 of the lien notice itself. And NRS 108.226 has the
17 requirements for the lien notice itself, and the lien
18 notice itself says that you must include the name of the
19 person by whom the lien claimant was employed or to
20 whom -- or to whom the lien claimant furnished the
21 material or equipment.

22 And if you look at each and every one of the
23 liens, from the original lien to the first amended to the
24 second amended lien, in the trial record they all

1 identify that BSC is the person to whom Steppan is
2 providing these services. And in the context of this
3 statute, Your Honor, it clearly could not mean a W-2-type
4 employee is the lien claimant. It has to be the broader
5 definition of what it means to be employed by or used by
6 someone or something else.

7 Turning now to NRS Chapter 623. I think on
8 the 18th, counsel alluded to this a little bit.
9 Originally these professional licensing statutes,
10 particularly the design statutes, contemplated that
11 individuals would be registered and only individuals
12 would be registered. And it's been a fairly recent
13 development -- by "recent," I mean maybe 40 or 50
14 years -- that design firms were also coming under
15 regulation by the State Board of Architecture and other
16 design disciplines.

17 And so there was some discussion of
18 NRS 623.350(1) that talks about certain requirements for
19 design firms that engage in the practice of architecture
20 inside Nevada's geographic boundaries. It says:

21 "Each office or place of business in this
22 State of any" -- and I'll just shorten the list of
23 business entities to "business entity" -- "that engages
24 in the practice of architecture...including, without

1 limitation, any business organization or association
2 practicing pursuant to the provisions of NRS 623.349" --
3 and that's important -- "must have an architect,
4 registered interior designer or residential designer who
5 is a resident of this State and holds a certificate of
6 registration issued pursuant to this chapter regularly
7 working in the office or place of business and having
8 responsible control for the architectural work or work
9 relating to engaging in practice as a registered interior
10 designer conducted in the office or place of business.
11 The provisions of this subsection do not apply
12 to...offices established for construction
13 administration."

14 So there's the answer to the Court's question
15 from this morning about, well, you know, Mr. Stepan can
16 just open an office in Nevada and run everything through
17 that. But now we're talking about form and substance
18 again. And NRS 623.350 clearly requires that if you are
19 going to have a physical office in the State of Nevada,
20 you must have somebody there who is a resident of Nevada,
21 who is registered as a licensed professional in Nevada,
22 and who exercises responsible control over all of the
23 professional work going through that office.

24 THE COURT: So the answer is, no, you

1 couldn't do that?

2 MR. HOY: So the answer is, no, you couldn't
3 do that. But as an individual who doesn't open an office
4 here, but is registered to practice architecture here --
5 which is exactly what Steppan is -- he can come into the
6 State of Nevada, enter into a contract and perform that
7 contract.

8 And there was some discussion about the
9 construction administration aspect of the work here. Of
10 course, we never got to that point on this particular
11 project, but it's interesting that this particular
12 section effectively says that Steppan can come in and
13 establish an office for the purpose of construction
14 administration, that is, watching the tower going up,
15 without being a resident of Nevada.

16 THE COURT: Right. I guess it would be
17 easier to say, maybe, Mr. Friedman could have come and
18 done that. Or could he, theoretically?

19 MR. HOY: I am not sure if the statute goes
20 quite that far.

21 THE COURT: Okay.

22 MR. HOY: I think --

23 THE COURT: I would have to go look at it
24 again. Hold on -- well, go ahead. Maybe I was thinking

1 too far down the line. It's irrelevant to these
2 proceedings, anyway. Go ahead.

3 MR. HOY: Thank you, Your Honor.

4 So NRS 623.350 references 623.349. And this
5 is the Statute that the defense has thrown out
6 repeatedly. Even though it was enacted long before this
7 case and could have been argued at trial, they never did
8 argue it at trial.

9 But NRS 623.349 is sort of an interesting
10 statute. I attached the legislative history for this
11 particular statute to our opposition. And I think that
12 the legislative history is notable for the fact that this
13 particular language was an amended -- an amendment to the
14 original bill. The original bill had something to do
15 with raising fees on architects, and that's it. And then
16 in the waning days of the legislature all of this
17 language got thrown in, and there was no testimony, no
18 letters, no evidence of any kind in the legislative
19 history to tell us what this statute is supposed to
20 accomplish for the State of Nevada.

21 What the title of the statute is, is
22 "Formation of business organizations or associations with
23 persons outside of field of practice or with unregistered
24 or unlicensed persons; conditions; and limitations."

1 Subsection 1: "Architects...may join or form
2 a partnership, corporation, LLC or other business
3 organization or association with registrants and
4 licensees outside of their field of practice, or with
5 persons who are not registered or licensed, if control
6 and two-thirds ownership of the business organization or
7 association is held by persons registered or licensed in
8 this State pursuant to the applicable provisions of this
9 chapter, chapter 623A or 625 of NRS."

10 625, Your Honor, is the engineer's statute.
11 623 I believe is -- I don't remember. I think it's
12 residential designers.

13 THE COURT: Landscape architects.

14 MR. HOY: Landscape architects. Thank you.

15 And so the defense has turned this into an
16 argument that Steppan could not join Fisher-Friedman
17 Associates unless he owned two-thirds of the company.
18 And this is where I maybe got sidetracked with my
19 constitutional arguments.

20 If the argument is that anybody who -- even a
21 nonresident who is registered in the State of Nevada,
22 wants to work for some design firm, that person, that
23 registrant, must own two-thirds of the company that is
24 his employer.

1 For a lot of reasons I don't think that the
2 statute can be interpreted that way. But certainly, if
3 it is, it violates privileges and immunities and it also
4 violates equal protection. And I don't want to get into
5 those arguments now, because they weren't discussed at
6 all either in the reply or in the oral argument.

7 But if the Court looks at the second
8 subsection of this statute, it reads:

9 "If a partnership, corporation, LLC or other
10 form of business organization or association wishes to
11 practice pursuant to the provisions of this section, it
12 must" do the following.

13 And so that to me, Your Honor, says that this
14 statute is applicable to a firm that actually wants to
15 come into Nevada and practice as a firm in Nevada, not
16 that this could ever have any application to foreign
17 companies that are not doing business under this statute
18 or under 623.350.

19 And if you go back into the DJT decision, it
20 talks about this statute a little bit.

21 THE COURT: "DTJ."

22 MR. HOY: DTJ.

23 THE COURT: I think you said "DJT."

24 MR. HOY: Oh, I keep doing that. I think I'm

1 dyslexic.

2 So again, Your Honor, just turning to what
3 DTJ Design, Inc. holds and what it doesn't hold, the
4 holding is:

5 "We conclude that regardless of whether a
6 foreign firm employs a registered architect,
7 NRS 623.349(2) and NRS 623.357 mandate that the firm be
8 registered in Nevada in order to maintain an action on
9 the firm's behalf."

10 And I think that the Court has already
11 traversed that in discussions with the defense counsel.

12 There's a further discussion of NRS 623.349,
13 on page -- it would be the Pacific Second or Third cite
14 at page 11. I'm looking for the nearest headnote.

15 THE COURT: Is it page 711?

16 MR. HOY: Yes. Yes, Your Honor.

17 THE COURT: I'm there.

18 MR. HOY: Your Honor, I apologize.

19 THE COURT: I've got it, so you can just tell
20 me where you're looking.

21 MR. HOY: Okay. It says: "NRS 623.349(1)
22 allows registered architects" -- that's italicized -- "to
23 partner with unregistered architects and form a business
24 organization to practice in Nevada, so long as the

1 registered architects satisfy a two-thirds ownership
2 requirement. In order for a foreign business to operate
3 as a separate entity in Nevada, it must satisfy the
4 requirements found in NRS 623.349 by demonstrating to the
5 Board that registered architects within the firm satisfy
6 the two-thirds ownership provision under NRS 623.349(1),
7 and that the business is qualified to do business in this
8 state and has paid the requisite registration fee
9 under" -- and then it cites the statutes.

10 So, again, this is not a case where
11 Fisher-Friedman Associates is the lien claimant. The
12 contract architect, the plaintiff, never opened an office
13 in the State of Nevada or otherwise triggered NRS
14 623.349.

15 And just reading this decision, that's what
16 the Supreme Court, I believe, thinks is the scope of
17 623.349. It's not -- it's not a requirement that every
18 individual architect licensed in the State of Nevada who
19 works for a foreign corporation must somehow own
20 two-thirds of that corporation. That's just not --
21 number one, it's not constitutional and, number two, it's
22 not practical.

23 As a practical matter, Your Honor, there are
24 these vast design firms -- NBB&J, I think you heard some

1 testimony in the trial about NBB&J being the outfit that
2 purchased Fisher-Friedman or purchased assets. Honestly,
3 I don't know if it was stock or assets. But that's a
4 firm with offices all over the planet, Hong Kong, Western
5 Europe, North America, I think South America. This
6 two-thirds requirement would be an impossibility if any
7 Nevada registrant wanted to work for a global firm like
8 that, Nevada would preclude that, and that's obviously a
9 violation of privileges and immunities.

10 Just very briefly, Your Honor, Nevada
11 National Bank against Snyder, I don't think that the
12 briefs really characterize that case correctly. The
13 Snyder case involved two different design firms, each of
14 whom came into Nevada, had contracts with the developer
15 and then became plaintiffs. And the basic problem with
16 that is, both of those foreign corporations failed to
17 comply with the -- I think, it's NRS 80.030.

18 80.030 says that a foreign corporation who
19 wants to bring an action in a Nevada state court must
20 first register with the Nevada Secretary of State as a
21 foreign corporation. And these two corporation s did not
22 do that, and that's the -- that's the main reason why
23 these claims were dismissed.

24 Now, in the case of the architect, Depner

1 tried to substitute himself. And I think Your Honor
2 alluded to this earlier.

3 THE COURT: I conflated DTJ with Snyder,
4 but -- that is true.

5 MR. HOY: Right. Well, the guy's name is
6 Depner, so it's not too far from the "D" in DTJ.

7 And the Court said, "Well, you can't come in
8 and change your mind about who the contracting parties
9 are." And at least within the spotlight of the Snyder
10 case, I don't think the Nevada Supreme Court thinks that
11 form is completely divorced from substance, because the
12 court in the Snyder case said: No, the party who
13 actually signed the design contract is the important
14 party here. You can't just willy-nilly go and substitute
15 the individual for the firm.

16 And I would submit to Your Honor that you
17 can't willy-nilly substitute Fisher-Friedman Associates
18 for Mr. Steppan, who took on all the legal responsibility
19 under the design contract.

20 Near the end of the oral argument from the
21 movant we heard about Nevada being somewhat unique
22 granting architects mechanic's liens. And I haven't done
23 a survey of all 50 states. I don't think California
24 would allow a mechanic's lien to a designer, but Nevada

1 clearly does. And that's a fairly recent innovation.
2 It's happened through the time that I've been practicing,
3 and I couldn't tell you which session of the legislature
4 did that. But the point is, a mechanic's lien is not a
5 common-law remedy, it's purely statutory, and so the
6 legislature is in the best position to decide who gets a
7 lien and who doesn't and we can't second-guess that.

8 Now, counsel also mentioned that -- and I
9 tried to write this down as a quote -- "The property
10 looks the same today as the day before it went into
11 escrow." And I gather that is just repeating the same
12 argument that we've heard over and over in this case
13 about, "Look, you shouldn't have a lien, it's not fair,
14 it's not right, because Dr. Iliescu didn't get any
15 benefit because his land wasn't improved, and
16 Mrs. Iliescu."

17 But remember the trial testimony.
18 Remember --

19 THE COURT: A million bucks and --

20 MR. HOY: Remember that --

21 THE COURT: I mean, wasn't that the number?
22 There was like -- there was a significant amount of money
23 that exchanged hands, so there was some benefit. And
24 then Dr. Iliescu and Mrs. Iliescu were going to get

1 certain parking considerations for the other building
2 that they have and they were going to get a high-rise
3 apartment or a penthouse apartment.

4 MR. HOY: Yeah, I think it was a
5 three-million-dollar penthouse apartment or a credit of
6 three million or something like that. I just don't
7 remember the details now.

8 But even more important, Your Honor, is this
9 point of -- and we had a lot of testimony about this in
10 the trial -- what was the impact on the value of the land
11 because of the entitlements that necessarily flowed from
12 the completion of the schematic design?

13 And this is the reason we started getting
14 into this double escrow concept, where the value of the
15 land was increased dramatically because of these
16 entitlements being put in place. That was the point of
17 that evidence.

18 Through that double escrow the developer was
19 going to sell its interest in the land for, I think,
20 23 million and then pay Dr. and Mrs. Iliescu whatever the
21 balance was due on their contract, which was something
22 like 7 million or 6 million. So the point is, there was
23 a huge benefit that was created by the work done by
24 Mr. Stepan and Fisher-Friedman Associates.

1 I guess the last point, Your Honor, is this:
2 Counsel referenced the mechanic's lien being a
3 four-million-dollar lien now, and I would just make the
4 observation that more than half of that is prejudgment
5 interest. We've been at this a long time. The Court
6 gave all the parties all the time they needed during the
7 trial to put on their presentations. The Court then
8 asked for the trial transcripts before making a ruling,
9 and I gather that the Court read those trial transcripts,
10 was fully aware of the testimony and wasn't just relying
11 on memory.

12 THE COURT: Well, as you know, and just so
13 Mr. Albright is fully aware -- Mr. Albright being the
14 only person who wasn't present during the entire trial --
15 I take voluminous notes. It was my first bench trial
16 that I did; I had only been on the bench for eight months
17 or so by the time the case went to trial. But I take a
18 lot of notes, and I want to make sure that I have the
19 transcripts so I can go back and review my notes and see
20 if I wrote something down incorrectly or if there's some
21 clarification that I needed as a result of my notes, and
22 so that's why I did that. I want to make sure I'm
23 getting it right based on the transcript, as opposed to
24 based on what my recollection of the testimony was, as I

1 wrote it down during the trial. So that's why I did
2 that. Go ahead.

3 MR. HOY: And so this truly is just a motion
4 for reconsideration, and the movants haven't shown the
5 Court that it overlooked any critical evidence. The
6 movants haven't shown the Court that it overlooked any
7 precedent. All this is, is rearguing the same evidence
8 and mostly the same theories that we've been hearing for
9 years and years and years in this case.

10 I would be happy to answer any questions from
11 the Court.

12 THE COURT: No, thank you, Mr. Hoy.

13 Mr. Albright, I'll give you five minutes in
14 reply. I know that you've been taking notes as Mr. Hoy
15 spoke, just as Mr. Hoy was taking notes when you spoke.
16 I'm not quite sure what else there is to say, what's
17 left, but I will give you a couple of minutes if you
18 think there's something that I really need to know --

19 MR. ALBRIGHT: Sure, sure, Your Honor.

20 THE COURT: -- or you need to clarify.

21 MR. ALBRIGHT: First of all, just going back,
22 I think that the reference to Mr. Steppan having been
23 paid a certain thing or looking to this transaction as
24 something that he was going to benefit from is from

1 Exhibit 12, deposition, at pages 85 to 86. I will say in
2 my writing I worded that less strong than I worded it in
3 court, and so I apologize if it's not quite as clear in
4 the depo as how I worded it and I want to be frank about
5 that. But I do think that that's clearly the implication
6 of his deposition testimony.

7 Your Honor, I guess my -- since I only have
8 five minutes, I won't go through all of my notes. But my
9 main concern here is, I guess I just still haven't seen
10 the fish. And when I say "the fish," I'm talking about
11 the subcontract arrangement whereby Mr. Steppan hires
12 FFA, as opposed to FFA -- as listed in the AIA
13 agreement -- having a direct contractual relationship
14 with the customer.

15 And I think the closest that we've gotten
16 today to seeing that fish is there's this exhibit that
17 shows that a couple of years after this was all done, FFA
18 bid for some public works contract and the Nevada
19 Architectural Board called them and said, "What are you
20 guys doing? You're not licensed in Nevada to be doing
21 this?"

22 And so Steppan sent a letter, and he says in
23 the course of that letter -- for the first time that I've
24 ever seen -- that, "I retained FFA on this other job that

1 we're in Nevada doing." But there's no response -- and
2 if there was a response it would be, you know, double
3 hearsay by now -- saying what the Architectural Board
4 thinks of that.

5 There is, as has been indicated, an
6 Architectural Board ruling on an issue that was brought
7 before them, and in the brief the plaintiff argued that
8 that showed prior knowledge. He didn't argue that that
9 was somehow binding on Your Honor. And so we didn't
10 address that, but I'll address it now just briefly since
11 it came up.

12 First of all, I think it's sort of circular
13 reasoning, because if you look at that decision of the
14 Architectural Review Board, instead of sort of digging
15 through all the materials that were sent over and then
16 coming to their own conclusion, they sort of waited for
17 Your Honor to rule and then they issued a ruling that
18 said, "Because of what the Court ruled, we'll just go
19 along with that."

20 THE COURT: I don't know if I would come to
21 that conclusion.

22 MR. ALBRIGHT: Well, and again, Your Honor,
23 we didn't -- because it wasn't used for this purpose, I'm
24 just saying it seems to me to be circular reasoning.

1 And there is case law -- and again, we didn't
2 cite it, because it wasn't used for this purpose in the
3 opposition -- that agency administrative decisions are
4 not binding on the Court.

5 But those are the only sort of new things
6 that I didn't -- I didn't respond to before, because I
7 hadn't heard them in the opposition.

8 Again, Your Honor, I still haven't seen the
9 fish. I still haven't seen where -- you know, Your Honor
10 ruled in the decision that FFA was the design consultant,
11 but you don't say for whom. And I don't see any evidence
12 where Steppan is the guy that hires FFA. What I see
13 instead is that FFA has a direct contractual relationship
14 with BSC.

15 And, Your Honor, you know, as was stated by
16 Mr. Hoy, it's the legislature who gets to say who can
17 have a lien, and the legislature has said who can have a
18 lien in NRS 108.222(1)(a), and that is anyone who is
19 doing the work or any -- you can have a lien for the
20 value of work that was done by or through you.

21 And FFA's work was not done through Steppan,
22 it was done directly for the underlying customer.

23 THE COURT: You can take a couple of extra
24 minutes if you want to, Mr. Albright.

1 MR. ALBRIGHT: Okay. I would disagree with
2 the characterization of the Snyder case. And one of the
3 reasons why I would not be comfortable giving my
4 theoretical Oregon client advice to just go with this
5 loophole is because in the Snyder case, what happens
6 is -- is they come in, they sue. They say, "You've got a
7 problem, you can't sue." And they don't ever reach the
8 Nevada licensing issue. They reach this other
9 registration issue, which is handled differently now
10 under Nevada law.

11 But they do examine the merits of, "Can
12 Depner be the plaintiff?" And in addition to saying --
13 or they don't just say, "You can't change who it is after
14 the fact," they say, "Let's look at this substantively."
15 And they say Depner did not employ the people who did the
16 work, those people were employed by this foreign
17 architectural firm. Depner did not invoice for the work,
18 the invoices were sent from this foreign firm -- just as
19 all the invoices here are on FFA letterhead, all the
20 invoices in TE.5, that correspond to the lien amount.

21 So I think that if you look at
22 NRS 108.222(1)(a) and you look at the Snyder case, you
23 come to the conclusion that for Steppan to lien for the
24 work of FFA, there needs to be some subcontract, some

1 hiring of FFA by Steppan, and I just don't see any
2 evidence of that having ever been brought forward.

3 My client wants to mention and -- excuse me.

4 THE COURT: That's okay.

5 MR. ALBRIGHT: The expert was not allowed in
6 at trial, is my understanding, and so perhaps we don't
7 know what the expert might have said. I do understand
8 there was probably an offer of proof made and Your Honor
9 wouldn't admit him, or wouldn't allow him to testify to
10 certain things.

11 THE COURT: Well, I can't remember
12 specifically as I sit here, but, Dr. Iliescu, you may be
13 right that the expert would not be allowed to testify to
14 things that -- that there was not the appropriate notice
15 given. So he can't just come in and testify in a general
16 sense, he has an obligation -- as you know, I'm sure,
17 having been an expert and testified before in court, you
18 have to give notice of what your testimony is going to
19 be. You can't testify outside of that area of testimony.

20 So my point merely was, is that the -- if
21 that were an issue to be raised, then it's incumbent upon
22 the parties, and specifically upon you and your counsel,
23 to have an expert on that issue, to give notice to the
24 opposing side that this is what your expert is going to

1 testify about, and failure to do so would result in my
2 excluding that person's testimony on that issue.

3 But I do know we had an expert -- and, again,
4 I forget what the person's name was, I would have to go
5 back through my records, but I know you did call an
6 expert. But it was more about, as Mr. Hoy pointed out,
7 the stage or whether or not the stage -- I think it was
8 the design phase or the construction design phase -- I
9 apologize for just trying to do this off the top of my
10 head -- had actually been reached and, therefore, there
11 was an entitlement to anything. But it could have
12 happened.

13 Is there anything else, Mr. Albright?

14 MR. ALBRIGHT: Just briefly, Your Honor. On
15 the point about the architect, you know, my -- my point
16 there was not tied into the value of the improvement of
17 the land. I understand I brought that up, but I'm -- my
18 point is that architects, even though they're allowed to
19 lien in Nevada, that doesn't mean that the statutes
20 somehow get changed when you are applying them to an
21 architect. And where there are statutes that talk about
22 on-site work being important to a particular point, that
23 still applies, and that's my argument with respect to the
24 notice. Thank you.

1 THE COURT: Thank you, Mr. Albright.

2 The Court has thoroughly considered the
3 arguments that have been made by counsel. I've had the
4 opportunity to review the pleadings on a number of
5 occasions, including prior to the testimony -- or, excuse
6 me, prior to oral argument today and prior to the oral
7 argument that happened back on February 18th of this
8 year.

9 The Court will deny the motion for NRCP 60(b)
10 relief. NRCP 60(b), either Subsection 1 or Subsection 3
11 are the grounds for the requested relief.

12 Specifically, the Court will address first,
13 NRCP 60(b)(3), and that says that:

14 "The Court can relieve a party or party's
15 legal representative from a final judgment, order, or
16 proceeding for the following reasons."

17 And then No. 3 being: "Fraud (whether
18 heretofore denominated as intrinsic or extrinsic),
19 misrepresentation or other misconduct of an adverse
20 party."

21 The Court simply doesn't find that there was
22 any fraud or misrepresentation that has been demonstrated
23 in these proceedings. Certainly the Court doesn't find
24 that there was any misconduct.

1 The Court heard the testimony of the
2 witnesses, and it's possible that different testimony
3 could have been brought in or different things could have
4 been done to illuminate the proceedings.

5 And that's not to suggest in any way that
6 Mr. Pereos didn't do a competent job presenting the case.
7 I will say it again -- and I know I said it at the
8 conclusion of the trial -- I think both Mr. Hoy and
9 Mr. Pereos did an excellent job presenting their
10 respective cases in a professional way.

11 But I simply don't see that there's been any
12 demonstration in these proceedings that there's something
13 fraudulent or some misrepresentation. As Mr. Hoy has
14 pointed out, really what we've just got is a reargument
15 of those facts that the Court already considered in
16 coming to its decision and entering its judgment. And so
17 the Court simply just doesn't find that relief under
18 NRCP 60(b)(3) is appropriate.

19 The fallback position is NRCP 60(b)(1), which
20 allows for relief in case there was a mistake,
21 inadvertent surprise or excusable neglect. And likewise,
22 the Court doesn't find that that has occurred in this
23 case, or that there's been evidence demonstrated to
24 support that contention.

1 The Court has thoroughly considered all of
2 the arguments regarding Chapter 623 that have both been
3 raised by the plaintiffs, and the Court doesn't find that
4 there are any issues regarding NRCP -- NRS 623 that
5 require a change in the Court's previously entered order.

6 Further, in consideration of Nevada National
7 Bank versus Snyder, 108 Nev. 151, or in consideration of
8 DTJ Design, Incorporated versus First Republic Bank,
9 318 P.3rd 709, 130 Nev. Adv. Op. No. 5. From February
10 13th last year, the Court doesn't find that those cases
11 are on point.

12 The Court's conclusion and its order -- and
13 if it wasn't articulate in the order, then I apologize.
14 And by "it" I mean the findings of fact and the
15 conclusions of law. The conclusion was, is that clearly
16 Fisher-Friedman was involved in this process. An
17 idiot -- you would have to be an idiot not to find that
18 Fisher-Friedman Associates wasn't involved. But the
19 question is, at what level? And the Court found that
20 Steppan, Mark Steppan individually -- strike that -- Mark
21 Steppan as the business entity Mark Steppan, not as an
22 individual person but Mark Steppan as the registered
23 architect in the State of Nevada, was the person who
24 signed the contracts and that he then subsequently was

1 employing as a -- oh, another word just jumped right out
2 of my head and I apologize -- a design consultant. He
3 was employing Fisher-Friedman Associates as the design
4 consultant.

5 Whether or not Mr. Steppan owes
6 Fisher-Friedman money, some or all of the money that the
7 Court will order in its judgment decree -- judgment in
8 this case is really not my concern. Mr. Steppan was the
9 only person who filed a lawsuit in this case.

10 It doesn't appear to the Court that
11 Fisher-Friedman Associates or Mark Steppan or BSC were
12 trying to have a nod and a wink to the Nevada Revised
13 Statutes. If that were the case I immediately would
14 grant the relief that is requested, assuming that that
15 had been proven during these proceedings. But they
16 haven't.

17 All I know now is the exact same thing that I
18 knew when I entered the order -- when did the order get
19 entered -- nine months ago, May 28th of 2014. That is,
20 is that Mr. Steppan signed the contracts with BSC.
21 Mr. Steppan represented himself to be the construction
22 architect. As was demonstrated through the testimony at
23 trial, he was the guy. If it would have fallen over,
24 he'd be the guy on the hook. But as it stands, he is the

1 person who is entitled to the funds that are due.

2 And so the Court will deny the motion and
3 direct Mr. Hoy to prepare the findings of fact,
4 conclusions of law and the order regarding the motion
5 pursuant to Washoe District Court Rule No. 9.

6 Mr. Hoy, do you need any additional findings
7 of fact from the Court in order to prepare that order?

8 MR. HOY: No, Your Honor, just one
9 clarification. I think you said that Mr. Steppan held
10 himself out as the "construction architect," and the
11 Court might have meant the "contract architect."

12 THE COURT: That is what I meant. I got my
13 "C" words mixed up. That was certainly my intent, as is
14 demonstrated by the contracts that were signed in the
15 case.

16 Mr. Hoy, as I told you back on February 18th,
17 I had withheld signing the Judgment, Decree and Order For
18 Foreclosure on Mechanic's Lien until the conclusion of
19 this case -- or, excuse me, the conclusion of this issue.
20 And so it is my intention to sign that, but I had had my
21 staff update the amount of interest that was owed as of
22 February 18th, and so we'll have to do that again. And
23 so I would anticipate that order being signed and filed
24 tomorrow, not today.

1 So we'll get that on file and the parties can
2 take whatever actions they need to take regarding that
3 judgment, decree and order for the foreclosure of the
4 mechanic's lien.

5 Is there anything else on behalf of the
6 plaintiffs, Mr. Hoy?

7 MR. HOY: Only this, Your Honor. After the
8 trial and long before this motion, I believe, Dr. and
9 Mrs. Iliescu made a motion to stay enforcement of a
10 judgment.

11 And rather than drag the Court through that
12 argument, we entered into a stipulation. And so for the
13 moment, the Court doesn't need to be concerned about us
14 trying to enforce the judgment prematurely. The
15 stipulation -- and I don't remember the exact triggers,
16 but the stipulation is designed to give the defense an
17 opportunity to file whatever post-judgment motions they
18 are going to make, and so the Court doesn't have to be
19 concerned about rushing through that process.

20 On the other hand, it's been a while since we
21 started the case and since we tried it, and I'm hopeful
22 that we can maybe shorten some of the briefing on the
23 next motions to come in so that we can get this done and
24 over with.

1 THE COURT: Well, I don't -- I can't address
2 something that hasn't happened yet. I think, to use your
3 own argument about -- and I'm trying to think. There was
4 a motion filed by the defendants post-judgment, wanting
5 me to determine what I would do if the sale of the
6 property did not yield funds sufficient to pay the
7 mechanic's lien and the associated costs. And I told
8 them that I wasn't going to do that, I will wait until
9 it's ripe.

10 I will just do the same thing in this case.
11 I'll wait until it's ripe. We'll see where we go from
12 there.

13 The Court would note that the pretrial order
14 entered in this case is still in place and that there are
15 certain page limits that exist.

16 I'm not quite sure, Mr. Albright, if you
17 needed all the pages that you used, let's put it that
18 way. We're kind of back to that observation that Judge
19 Flanagan made in the past about gasses filling up the
20 space that they have.

21 And so the Court would simply note that if
22 there is post-judgment motion practice that is required,
23 and if that post-judgment motion practice is expected to
24 exceed the page limits established in the Court's

1 pretrial order, then you will need to get permission to
2 do that and then demonstrate good cause why we need to go
3 outside the standard 15, 15 and five.

4 Mr. Hoy is member of the Washoe County Civil
5 Bench Bar Committee, so he knows that one of the things
6 that we're working on is a uniform pretrial order, and
7 we're trying to give attorneys enough latitude to fully
8 brief and discuss the issues that are presented, but at
9 the same time realizing that the courts and their staff
10 have a limited amount of time to devote to reading dozens
11 and dozens of pages.

12 So I'll just wait and see where it is. But
13 if you feel like you need to file a post-judgment motion
14 and you feel that that motion needs to exceed the limits,
15 I'll at least need some offer of proof to describe why
16 it's either different than the issues that we've already
17 considered or why you need to supplement those issues in
18 some way. So I'll just leave it at that.

19 On behalf of the defendants in this case, is
20 there anything else that you would like to raise,
21 Mr. Albright?

22 MR. ALBRIGHT: Just a couple of points, Your
23 Honor.

24 THE COURT: Okay.

1 MR. ALBRIGHT: If we should feel the need to
2 file any post-judgment motions, that would be in order to
3 preserve certain arguments for appeal, obviously --

4 THE COURT: I understand.

5 MR. ALBRIGHT: -- because you've reached the
6 merits, I think, but you've also asserted that we haven't
7 met the 60(b) requirements, and so we want to just make
8 sure that the other requirements are out there.

9 THE COURT: I understand.

10 MR. ALBRIGHT: And I would certainly --

11 THE COURT: Close a door and open a window.

12 MR. ALBRIGHT: And we can certainly -- we can
13 certainly keep those -- keep those briefs very brief.
14 And I think we can probably incorporate much of the
15 argument from these briefs therein, unless Your Honor
16 tells me, "Well, if you incorporate them, then I'm going
17 to treat it like it's 40 pages," and I don't think you
18 would do that to me.

19 THE COURT: No, I would not do that to you,
20 Mr. Albright.

21 MR. ALBRIGHT: Okay. I do have, Your Honor,
22 one concern. You know, in focusing on, really, this
23 motion -- I had an opportunity to review briefly the
24 judgment. I didn't perhaps look at it all that carefully

1 because I was trying to keep it from ever being entered.

2 There is one paragraph in the judgment that
3 concerns me a little bit and that is, it talks about how,
4 as you mentioned, you have not yet ruled and you have not
5 yet determined that it's ripe, whether or not -- or what
6 happens should the property be sold and should there not
7 be enough money to satisfy.

8 And, you know, we've presented arguments to
9 Your Honor that under Nevada law it was very clear that
10 that's all you get is that lien against the property, you
11 can't come individually against the owner of the property
12 unless you had a contract with them, and Your Honor
13 hasn't ruled on that one way or another yet. You said
14 it's not ripe.

15 And so what the judgment says is, it says
16 that they have the right to go ahead and file a motion
17 under the statute that they think gives them that right.
18 We have the right to defend that.

19 I guess I'm a little concerned about that
20 paragraph being in there, because I -- you know, if the
21 judgment gets recorded and it's clearly a judgment on a
22 judgment lien, then that's fine, it's affecting the
23 property that the lien has been affecting all these
24 years. But if it gets recorded and some title company

1 looks at that and they say, "Well, it looks to me like
2 there's some possibility here that this judgment might
3 also affect the Iliescus personally and other
4 properties" --

5 THE COURT: Or the trust.

6 MR. ALBRIGHT: -- then is that going to --
7 and the trust -- then is that going to cloud title to
8 other things?

9 You know, I just -- I don't think -- because
10 it hasn't been ruled on one way or another yet, because
11 you've repeatedly told us it's not yet ripe, I don't
12 think it's proper for that language to be in the
13 judgment.

14 I think that if it's not in the judgment one
15 way or the other, they're still allowed to come back
16 after the sale and file their motion, we're still allowed
17 to oppose it, but in the meantime there's only one cause
18 of action in this case and that's the lien foreclosure
19 cause of action, and I just would prefer that that
20 paragraph come out. And so that's my only issue.

21 THE COURT: Any objection to that, Mr. Hoy?

22 MR. HOY: A couple of points, Your Honor.

23 Yes, I do object. We provided that proposed
24 form of judgment before the trial. It was an exhibit to

1 our trial statement, it's been vetted with opposing
2 counsel. Mr. Pereos is not here -- is not here today.
3 We've tendered it again, there was no objection to the
4 form of the judgment. There has to be some record that
5 that is a possible issue in the case, the money judgment
6 being entered.

7 As a practical matter, with or without that
8 particular paragraph, any title company is going to look
9 at that and say, "Well, is this limited to one parcel or
10 is this a money judgment against the individuals?" And
11 then they're going to say, "We're not going to write a
12 title policy until somebody goes and gives us a lawyer
13 letter telling us that the only property subject to this
14 judgment is this particular property." And then that
15 lawyer is going to have to go look at the court record
16 anyway and figure out what's going on here, so -- I may
17 have just talked myself into a corner. I may have just
18 described why it doesn't really matter that it's there or
19 not. But I think that it does properly reflect the
20 rulings of the Court and the procedural posture of the
21 case.

22 THE COURT: Well, the -- I think that it does
23 reflect the current posture of the case, but that's not
24 to suggest that it may not change at some point in the

1 future, and the Court can enter an amended order nunc pro
2 tunc if at some point -- just to play it out -- if at
3 some point the property is sold and it's not sold at a
4 value that would satisfy the judgment and then the Court
5 decides that Mr. -- or Dr. -- and I apologize for
6 referring to you as "Mr. Iliescu." Out of respect, I
7 should always say "Dr. Iliescu."

8 But if I determine that Dr. Iliescu and
9 Mrs. Iliescu are not personally responsible for that,
10 then we can certainly take care of that at some later
11 time. But I guess we're back to the same ripeness issue.
12 I just don't see that it's a pressing concern at this
13 moment.

14 Certainly it hasn't been raised such that
15 Dr. and Mrs. Iliescu are out trying to sell another piece
16 of property or trying to do something that that language
17 is somehow encumbering it. But I have no doubt in my
18 mind, as I sit here right now, that this is not the last
19 I will decide on this case and that that will be an issue
20 that comes up.

21 I hope the property is sold and it satisfies
22 the judgment, and if it were a perfect world Dr. Iliescu
23 and Mrs. Iliescu would have, maybe, even some additional
24 money left over. I doubt that's going to happen, but I

1 simply don't know.

2 So I will wait and make that determination
3 when I do, and then I will be happy to modify my order if
4 it's the appropriate thing to do. I just don't know that
5 it is at this moment.

6 MR. ALBRIGHT: And --

7 THE COURT: Unless there's some thing that's
8 going on out there, Mr. Albright --

9 MR. ALBRIGHT: No, no, Your Honor.

10 THE COURT: -- that I don't know about.

11 MR. ALBRIGHT: I'm just saying that because
12 it hasn't been reached yet. I think there already is a
13 record from earlier motions that you ruled weren't ripe
14 yet, on that procedure. I think certainly that same
15 procedure can be included in the judgment -- or, I'm
16 sorry, in the order on this motion.

17 And certainly, I appreciate that Mr. Hoy
18 clearly indicated, you know, that they can file the
19 motion, we can oppose it, nobody is waiving anything.

20 I just don't think it is properly a part of
21 this judgment, and I think it could cause issues down the
22 road that don't need to be caused at this point, so --

23 THE COURT: Well, you've made your record on
24 that point.

1 Anything else, Mr. Albright?

2 MR. ALBRIGHT: No Your Honor.

3 THE COURT: Mr. Hoy?

4 MR. HOY: No, thank you, Your Honor.

5 THE COURT: Court is in recess.

6 MR. ALBRIGHT: Thank you, Your Honor.

7 (Proceedings concluded.)

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

4 I, MARIAN S. BROWN PAVA, Certified Court
5 Reporter in and for the State of Nevada, do hereby
6 certify:

7 That the foregoing proceedings were taken by
8 me at the time and place therein set forth; that the
9 proceedings were recorded stenographically by me and
10 thereafter transcribed via computer under my supervision;
11 that the foregoing is a full, true and correct
12 transcription of the proceedings to the best of my
13 knowledge, skill and ability.

14 I further certify that I am not a relative
15 nor an employee of any attorney or any of the parties,
16 nor am I financially or otherwise interested in this
17 action.

18 I declare under penalty of perjury under the
19 laws of the State of Nevada that the foregoing statements
20 are true and correct.

21 Dated this 6th day of March, 2015.

22 /s/ Marian S. Brown Pava

23 _____
24 Marian S. Brown Pava, CCR #169

CASE NO. CV07-00341 MARK STEPPAN VS. JOHN ILIESCU, ETAL

DATE, JUDGE
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

2/23/15

ORAL ARGUMENTS

HONORABLE

8:33 a.m. – Court convened.

ELLIOTT A.

Michael Hoy, Esq., was present on behalf of the Plaintiff, Mark Steppan.

SATTLER

Defendants, Dr. John Iliescu and Sonnia Iliescu, were present with counsel, D. Chris

DEPT. NO. 10

Albright, Esq.

M. White

COURT reviewed the recent procedural history of the case.

(Clerk)

Counsel Albright continued presenting argument in support of the Defendants' Motion for NRCF 60(b) Relief From Court's Findings of Fact, Conclusions of Law and Decision and Related Orders (Motion), filed October 27, 2014.

M. Pava

9:50 a.m. – Court stood in recess.

(Reporter)

10:03 a.m. – Court reconvened.

Counsel Hoy responded; and he further argued in opposition of the Motion.

Counsel Albright replied; and he further argued in support of the Motion.

COURT set forth findings of fact and conclusions of law; **COURT ORDERED:** The Defendant's Motion for NRCF 60(b) Relief From Court's Findings of Fact, Conclusions of Law and Decision and Related Orders, filed October 27, 2014, is **DENIED**.

Counsel Hoy shall prepare the order.

COURT further advised respective counsel that the judgment on the mechanic's lien will most likely be signed and filed tomorrow (2/24/15).

Counsel Hoy advised the Court that pursuant to stipulation, the Plaintiff will not be attempting to execute on the judgment prematurely; and he further requested that the briefing schedule be expedited on any future motions.

COURT indicated that he cannot make a ruling regarding motions that have not been filed yet, however the Pretrial Order in this case is still in effect, and respective counsel shall comply with page limits, etc.

Counsel Albright addressed the Court regarding language contained in the Findings of Fact, Conclusions of Law and Decision, filed May 28, 2014.

Counsel Hoy responded; and he further objected to any modifications being made to that order.

COURT advised respective counsel that this issue will not be addressed until such time that it is fully briefed and properly before him.

11:27 a.m. – Court adjourned.

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

8 MARK B. STEPPAN,

9 Plaintiff,

10 v.

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

Defendants.

14 And Related cross-claims and third-party
15 claims.

Consolidated Case Nos. CV07-00341 and
CV07-01021

Dept. No. 10

16
17 **Judgment, Decree and Order for**
18 **Foreclosure of Mechanics Lien**

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

1 IT HEREBY IS ORDERED, ADJUDGED, AND DECREED:

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

8

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

12

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

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

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

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

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

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

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

17 DATED February 26, 2015.

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19 

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

Document Code: 2535

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

Attorneys for: Mark B. Steppan

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

Mark B. Steppan,

Plaintiff,

vs.

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

Defendants.

Consolidated Case Nos. CV07-00341 and
CV07-01021

Dept. No. 10

And Related Claims.

Notice of Entry of Judgment

TO: All parties and their counsel:

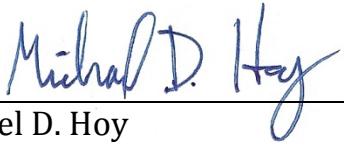
Please take notice that on February 26, 2015, the Court entered its Judgment,
Decree and Order for Foreclosure of Mechanics Lien. A true and correct copy of the
Judgment is attached as Exhibit 1.

Privacy Affirmation

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

Dated February 27, 2015.

Hoy Chrissinger Kimmel Vallas, PC


Michael D. Hoy

Certificate of Service

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

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

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

Gregory F. Wilson for John Schleining

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

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

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

Dated February 27, 2015.


Michael D. Hoy

Table of Exhibits

1 Judgment, Decree and Order for Foreclosure of Mechanics Lien

CODE: 3665

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

G. MARK ALBRIGHT, ESQ. (No. 001394)
D. CHRIS ALBRIGHT, ESQ. (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
Attorneys for Applicants/Defendants

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

MARK B. STEPPAN,

Plaintiff,

vs.

JOHN ILIESCU, JR. and SONNIA ILIESCU, as
Trustees of the JOHN ILIESCU, JR. AND
SONNIA ILIESCU 1992 FAMILY TRUST
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 COURT
TO ALTER OR AMEND ITS JUDGMENT
AND RELATED PRIOR ORDERS**

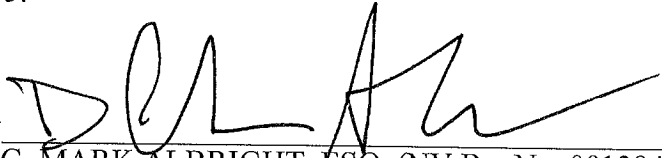
And all original prior consolidated case(s).

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

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

8
9 DATED this 10th day of March, 2015.

10
11 By


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

15 I. STATEMENT OF FACTS

16 A. The Defendants Agree to Sell Their Land.

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

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

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

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

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

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

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

II. ANALYSIS

A. Legal Standards.

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

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

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

1 **B. Key Legal Questions.**

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

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

1 claim.

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

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

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

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

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

20 Steppan's claim to have exercised "responsible control" of the work was also undermined by
21 his explanations, provided twice during his trial testimony, of what "responsible control" meant to him.
22 For example, prior to first indicating that he exercised responsible control, Steppan testified that his
23 personal definition of that phrase "in [his] mind" is "supervision of the project **as it's approaching**
24 **a time for sealing and signing**" (TT 639 at ll. 21-24)¹ a point in time which was never reached on this
25 project (TT 269, ll. 12-15). Likewise, at TT pages 777 l. 22 through 778 l. 2, Steppan again claimed
26 that the "type of full oversight" required of an architect of record who will one day stamp and sign the
27
28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 as his AIA Contract).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 **F. Lien Perfection Problems.**

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

9
10 **V. CONCLUSION**

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

16 DATED this 10th day of March, 2015.

17
18 By 

19 G. MARK ALBRIGHT, ESQ. (NV Bar 001394)
20 D. CHRIS ALBRIGHT, ESQ. (NV Bar 004904)
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AFFIRMATION

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



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1 **CERTIFICATE OF SERVICE**

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

7
8 Michael D. Hoy, Esq.
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13 *Attorney for Mark Steppan*

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____ Hand Delivery
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14
15 
16 An Employee of Albright, Stoddard, Warnick & Albright
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INDEX OF EXHIBITS

1. Deposition Transcripts of Mark B. Steppan

EXHIBIT “1”

EXHIBIT “1”

CV07-00341
DC-9500051920-134
MARK STEPPAN VS. JOHN ILIE 292 Pages
District Court 12/11/2013 02:01 PM
Washoe County
1595
JANEDV/11/13

IN THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA

FILED

DEC 11 2013

IN AND FOR THE COUNTY OF WASHINGTON

By: [Signature]
DEPUTY CLERK

--oOo--

MARK B. STEPPAN,
Plaintiff,
vs.

Case No. CV07-00341
Dept. No. B6

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.

DEPOSITION OF MARK STEPPAN

TUESDAY, FEBRUARY 16, 2010

Reno, Nevada

[Handwritten signature]

REPORTED BY:

Janet Menges, CCR #206, RPR
Computer-Aided Transcription

1 taking all the licensing exams, and at that time it
2 would generally take anywhere from five to eight years,
3 nine years after graduation depending on your
4 undergraduate or graduate degree.

5 Q Do you have any other higher education besides
6 the bachelor of arts in architecture?

7 A No.

8 Q Can you give me a history of your employment
9 starting from the time of your graduation from college?

10 A I was already working for Fisher Friedman
11 Associates at the time I was in college. I started
12 full-time with them in January of 1980 and I'm still
13 presently employed by Fisher Friedman Associates.

14 Q What positions or titles have you held there?

15 A Well, everything from starting at the bottom
16 doing filing, et cetera, and drafting all the way up to
17 my current position, which is executive vice-president.

18 Q Can you go through them for me so I can
19 understand the hierarchy?

20 A Drafter, designer, job captain, project
21 architect, project manager. I don't know if there is
22 any other title between that and executive
23 vice-president. Given the size of the office many of
24 those functions were performed at the same time and
25 we're not structured on pure category.

1 Q I know from your earlier deposition that there
2 were nine or ten architects in the firm at the time of
3 that deposition. Is that still true?

4 A No, there are currently nine people in the firm
5 total currently.

6 Q Okay.

7 And of those how many are architects?

8 A Five.

9 Q Of the hierarchy that just described starting
10 with drafter, designer, job captain, project architect,
11 project manager, and then executive vice-president, how
12 many of those jobs were held before you became a
13 licensed architect?

14 A Probably just the drafter and job captain and
15 designer.

16 Q So the first three are the sorts of positions
17 that are held by unlicensed or unregistered architects?

18 A Incorrect.

19 Q Incorrect?

20 A Um-hum.

21 Just by their nature and by the order of how I
22 have presented them does not make them held by
23 unlicensed architects. Typically a job captain role can
24 be held by a licensed architect, as can a designer. So
25 one of the people I have told you was licensed in the

1 office is one of the two main designers in the office.
2 He is licensed.

3 There is no -- There is no distinct
4 correlation. The only one that is typical to be not
5 licensed is the drafter.

6 Q As I understood your answer, the three jobs
7 that you mentioned, drafter, designer and job captain,
8 are ones that you held before you were an architect?

9 A I believe so, although I'm sure the job captain
10 morphed over.

11 Q So it's not necessary within your profession
12 that those particular types of jobs be held by
13 architects, although I understand they may be from time
14 to time?

15 A Correct.

16 Q But to be called a project architect, which I
17 think is the next in the order that you gave me, that is
18 a job that must be held by a licensed architect?

19 A Correct.

20 Q Now, there are other titles that are held
21 within Fisher Friedman Associates beyond the executive
22 vice-president, or not beyond, but in addition to the
23 executive vice-president that have more corporate
24 sounding names like vice-president, senior
25 vice-president, executive vice-president; correct?

1 A Yes, there are a couple of those.

2 Q There were people who held those positions back
3 in 2005 and 2006?

4 A Yes.

5 Q Tell me how those particular positions fit into
6 the hierarchy, if in fact they are part of the
7 hierarchy?

8 A I'm not sure how best to answer your question.
9 Are you talking about people -- Let me rephrase.

10 Are you asking about people that have worked on
11 this project or just in the office?

12 Q Well, my question certainly is prompted by the
13 titles that were held by some of the people that worked
14 on this project, but I'm trying to understand how Fisher
15 Friedman works in terms of its titular hierarchy, if
16 there is such a thing, and maybe there isn't?

17 A There isn't any particular hierarchy. Other
18 people that worked on the project have titles such as
19 senior vice-president, I believe for the other two
20 people of that senior level, but that does not really
21 come into play in the role they might play. They may do
22 designer's work, job captain's work, project architect's
23 work, project manager's work.

24 Q Let me see if I understand correctly.

25 The initial names and positions you talked

1 about were how the profession is arrayed, at least in
2 your firm, with regard to the jobs that they perform.

3 In addition to that these people may have other
4 positions as corporate officers. Is that an accurate
5 characterization of what you're trying to say?

6 A I suppose they could, but the corporate officer
7 component is not a necessary component of the office
8 functioning of the projects.

9 Q I understand that distinction. You define
10 people's roles by their titles within the profession,
11 but they may also have other roles as officers of the
12 corporation?

13 A They might.

14 Q So with that in mind, let's go back to 2005 and
15 2006 and talk about the people that were employed then,
16 the professionals or paraprofessionals, and what their
17 titles or positions were on both sides of the hierarchy?

18 A Working on this project?

19 Q Yes.

20 Let's start at the most senior and go down.

21 A Well, you would have Rodney Friedman, who is
22 the president, CEO, director of design. You would have
23 me --

24 Q Just a second.

25 A Sorry.

1 Q Rodney Friedman held the position of president
2 of the corporation?

3 A Correct.

4 Q Okay.

5 Did he also hold an architectural type of
6 title?

7 A You could call it director of design. It's not
8 on a business card.

9 Q Okay.

10 So he was the --

11 A He is the sole proprietor so he oversees
12 everything that goes on.

13 Q So Mr. Fisher was not engaged in the business
14 back then?

15 A No, Fisher retired around '97.

16 Q All right.

17 And by sole proprietor do you mean the sole
18 owner of Fisher Friedman Associates?

19 A Correct.

20 Q And in terms of how long had Mr. Friedman been
21 a licensed or registered architect back in -- Well, it's
22 easier to figure from today, I guess?

23 A I don't remember when he first got licensed in
24 California.

25 Q How old is he?

1 A Seventy-six.

2 Q Is there a relationship, a family relationship
3 between you and he?

4 A Yes, I'm his son-in-law.

5 Q So you're married to his daughter?

6 A That follows.

7 Q How long have you been married to Rodney
8 Friedman's daughter?

9 A Since 1985.

10 Q Then in terms of seniority within the firm back
11 in 2004, 2005, are you the next most senior?

12 A Yes.

13 Q And your corporate title then was executive
14 vice-president?

15 A Yes, it says that and director of operations on
16 the business card. It's not a corporate title. That is
17 just an architectural functioning title.

18 Q Can you explain to me what the director of
19 operators does in your firm?

20 A Oversee the operation of the firm from the
21 standpoint of things such as taking out the garbage,
22 looking at invoicing, running projects, ordering
23 supplies, handling the computer system.

24 Q All right.

25 It says --

1 Q For the purposes of the fee schedule the
2 vice-president and architect III and a project manager
3 III all billed out at the same rate. Would it be fair
4 to assume from that those people were generally of the
5 same level of experience and hierarchy within the firm?

6 A I suppose that is reasonable.

7 Q For instance, on a particular job is a project
8 manager III senior to an architect III or are these just
9 interchangeable?

10 A They are somewhat interchangeable and I don't
11 set how they are used. That is a full list of possible
12 titles and positions, some of which are used, some of
13 which are never used.

14 Q All right.

15 Then the next level down is the architect II,
16 project manager II. Would those also be somewhat
17 interchangeable?

18 A Somewhat.

19 Q So who filled this basically level below that
20 of senior vice-president on the Reno project in 2005,
21 2006, do you know, and I'm talking about the
22 vice-president, architect III or project manager III?

23 A Well, Nathan effectively was acting as the
24 project manager. So that is a point of multi-tasking,
25 if you want to look at it.

1 was defined other than as executive vice-president?

2 A I'm not sure I understand the question as it
3 relates.

4 Q Is there a professional role above that of
5 project manager on a particular project?

6 A Not that I'm aware of from a title standpoint.

7 Q Well, how would you define your role on the
8 Reno project as executive vice-president, and if it
9 changes over the course of time, tell me about that as
10 well?

11 A The project was being performed under my
12 purveyance as the supervising architect. That included
13 involvement from attending of meetings and meeting
14 parties and participating in decision making to looking
15 over people's shoulders and seeing if they were properly
16 drawing items or to telephone calls, whatever it might
17 be. It was an oversight role as is typical of someone
18 in my position.

19 Q All right.

20 Was that pretty much how you would define your
21 role from the time it started in late 2005 until the
22 time you stopped doing work in late 2006?

23 A I don't know how else to define it.

24 Q I'm sorry?

25 A I don't know how else to define it.

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

3 A That is what I understood.

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

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

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

10 A No.

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

15 A Correct.

16 Q I see you give two alternatives. It could be
17 0515 or 0515-R. I presume the R stands for Reno?

18 A No.

19 Q What does it stand for?

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

23 Q So this became project number 515?

24 A 0515.

25 Q There is a difference?

1 Q That wasn't my question.

2 Did you enter into an agreement or
3 understanding?

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

6 Q And then how would it be distributed after
7 that?

8 A As part of Fisher Friedman's income.

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

13 A Salary.

14 Q So it was a straight salary?

15 A Yes.

16 Q With bonuses?

17 A No.

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

20 A Yes.

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

1 A No.

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

4 A Correct.

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

9 A No.

10 Q Was your salary a fixed amount each year?

11 A Yes.

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

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

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

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

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

CV07-00341
MARK STEPPAN VS. JOHN ILIE
District Court 12/11/2013 02:06 PM
Washoe County 1595
MPEKMLD

IN THE SECOND JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FILED

DEC 11 2013

JOEY HASTINGS, CLERK
DEPUTY CLERK

--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

1 A Yes.

2 Q It's a letter to Calvin Bosma?

3 A Yes.

4 Q And do you recognize this as a letter in which
5 Mr. Friedman was writing about nonpayment of some
6 outstanding billings?

7 A Yes.

8 Q It makes references to invoices that are three
9 months overdue, which would put them into June or so. I
10 couldn't find in all of the records that were produced
11 by you any invoices in June, July or August. Do you
12 know if these invoices were on the hourly billing part
13 for \$573,000 or the percentage part?

14 A Well, once the contract was signed in April and
15 backdated to October, the only thing that would have
16 gone out on hourly were the added services that were
17 kept on hourly. Everything else was referenced and
18 related and credited back to a percentage of
19 construction cost phase fee amount due, so there was no
20 hourly any more period, other than as I stated any work
21 done on an added service.

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

25 Q Do you recall that there had not been any

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

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

6 Q Is that something that you were watching over?

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

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

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

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

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

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

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

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

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

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

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

16 A Rodney with David.

17 Q With David Tritt?

18 A Tritt.

19 Q Tritt?

20 A Yes.

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

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

4 A Did I personally gather them up?

5 Q That is my question.

6 A No.

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

11 A Yes.

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

14 A No.

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

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

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

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

25 Q Could you look at Exhibit 4 to your previous

Code: 2645

Michael D. Hoy
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(775) 786-8000

Attorneys for Mark B. Steppan

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

MARK B. STEPPAN,

Plaintiff,

vs.

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

Defendants.

Cons. Case Nos. CV07-0341 and
CV07-01021

Dept. No. 10

**Opposition to Defendants' Motion to
Alter or Amend Judgment and Related Orders**

Mark B. Steppan opposes the March 10, 2015 "Motion for Court to Alter or Amend Its Judgment and Related Prior Orders" (the "Motion") This Opposition is based on the following Memorandum of Points and Authorities.

Memorandum of Points and Authorities

This latest motion from Dr. and Mrs. Iliescu reiterates the same substantive arguments raised in their October 27, 2014 motion for relief under NRCP 60(b). The Court has received a complete briefing and hours of oral arguments on Movants' areas of concern. Therefore, Plaintiff Steppan incorporates all prior written and oral arguments submitted in opposition to the October 27, 2014 motion.

One subject deserves special comment. At pages 6 and 7, the Motion addresses testimony regarding "responsible control" within the meaning of NRS Chapter 623 and NCARB Rule 5.2 (which is incorporated by regulation into Nevada law). Movants once again assert that Mr. Steppan testified that "responsible control" is limited to "supervision of the project as it's approaching a time for sealing and signing [the drawings submitted for a building permit]." As was discussed at the hearing on February 23, 2015, Movants have omitted Mr. Steppan's key testimony that he maintained "responsible control" throughout the duration of the design work. The Motion cites only four lines on page 639 of the trial transcript. The complete answers are as follows:

Q. What does "responsible control" mean?

A. Responsible control is really about your supervision of the project as it's approaching a time for sealing and signing to make sure that what is presented to the agency for permitting review, in essence, in my mind, is what — is what that's talking about.

1 In the broader sense it is the responsible control or oversight
2 that an architect in the standard of care would provide by overseeing
3 the production and creation of a project from the design through
4 construction documents.

5 Q. Okay. And did you maintain responsible control over the
6 Wingfield Towers project up until the time the project was abandoned?

7 A. Yes.

8 Q. Did you also maintain direct supervision of the design process?

9 A. Yes. Inasmuch as Rodney was the project designer and I was
10 overseeing the work.

11 Trial Transcript, Vol. III, pp. 639-640 (December 11, 2013). Given the discussion at
12 the February 23, 2015, it is difficult to understand why Movants would continue to
13 omit critical parts of Mr. Steppan's answer.

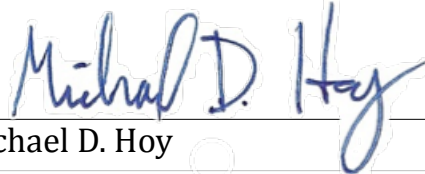
14
15 Mr. Steppan's understanding of "responsible control" exactly coincides with
16 the definition of that term in NRS 623.029 and NCARB Rule 5.2.

17 18 Privacy Certification

19 Pursuant to WDCR 19(4), undersigned certifies that this document does not
20 contain any social security numbers.

21
22 Dated March 11, 2015.

HOY CHRISSINGER KIMMEL VALLAS, PC

23
24
25

Michael D. Hoy



Certificate of Service

I certify that on March 11, 2015, I electronically filed this Opposition with the Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the following: (a) G. Mark Albright, D. Chris Albright, Thomas Hall, and Stephen Mollath for John Iliescu, Jr. and Sonnia Iliescu individually and as trustees of the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust Agreement; (b) David Grundy, Alice Campos Mercado, and Todd Alexander for Jerry M. Snyder, Craig Howard, Karen Dennison, Hale Lane Peek Dennison Howard, and Holland & Hart, LLP; and (c) Gregory F. Wilson for John Schleining. I certify that this notice was also served on C. Nicholas Pereos by mailing a true and correct copy to him, by first class mail, postage prepaid, addressed to C. Nicholas Pereos, 1610 Meadow Wood Lane, Reno, Nevada 89502.

Dated March 11, 2015.

A handwritten signature in blue ink, reading "Michael D. Hoy", is written over a horizontal line. The signature is enclosed in a light gray rectangular box.

2840

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

MARK B. STEPPAN,

Plaintiff,

v.

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

Defendants.

Consolidated Case Nos. CV07-00341 and
CV07-01021

Dept. No. 10

And Related cross-claims and third-party
claims.

Decision and Order Denying NRCP 60(b) Motion

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

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

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

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

16
17 ¹ See *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 956 P.2d 1382 (1998)(elements of
18 fraudulent representation). With respect to the false representation element, the
19 suppression or omission "of a material fact which a party is bound in good faith to
20 disclose is equivalent to a false representation, since it constitutes an indirect
representation that such fact does not exist. *Nelson v. Heer*, 123 Nev. 217, 225, 163
P.3d 420, 426 (2007).

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

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

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

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

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

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

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

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

23
24 ⁵ “Responsible control” is defined in NRS 623.029 and National Council of
25 Architectural Registration Boards (“NCARB”) Rules of Conduct 5.2. The Findings of
 Fact did not use the term “responsible control.”

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

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

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

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

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

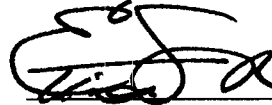
17 Movants have argued that the design contracts are a sham in the sense that Fisher
18 Friedman Associates, not Steppan, was truly the contracting party. Therefore, Movants
19 argue, the licensure of Fisher Friedman Associates is relevant.
20

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

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

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

5 Dated March 13, 2015.

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

Document Code: 2540

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

MARK B. STEPPAN,
Plaintiff,

v.

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

And Related cross-claims and third-party
claims.

Consolidated Case Nos. CV07-00341 and
CV07-01021

Dept. No. 10

Notice Of Entry Of Order

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

//

//

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Privacy Certification

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

Dated: March 13, 2015.

HOY CHRISSINGER KIMMEL VALLAS, PC

Michael D. Hoy
Attorneys for Mark B. Steppan



CERTIFICATE OF SERVICE

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

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

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

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

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

DATED this 13th day of March 2015.

A handwritten signature in blue ink that reads "Shondel Seth".

Shondel Seth



Index of Exhibits

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

1 **Code: 3785**

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4 Reno, Nevada 89502
5 Tel: (775) 329-0678

6 G. MARK ALBRIGHT, ESQ. (No. 001394) gma@albrightstoddard.com
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11 Tel: (702) 384-7111 / Fax: (702) 384-0605
12 *Attorneys for Movants/Defendants*

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

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

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

16 vs.

17 MARK B. STEPPAN, Respondent.

18 MARK B. STEPPAN,

19 Plaintiff,

20 vs.

21 JOHN ILIESCU, JR. et al.,

22 Defendants.

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

DEPT NO. 10

**REPLY POINTS AND AUTHORITIES
IN SUPPORT OF DEFENDANTS'
MOTION TO ALTER OR AMEND
JUDGMENT AND RELATED ORDERS**

23 Plaintiff's Opposition to Defendants' March 10, 2015 Motion for this Court to alter or amend
24 its Judgment and related Orders (the "Instant Motion") does not directly respond to almost any of the
25 arguments raised therein, but indicates that the "same substantive arguments" have previously been
26 raised in Defendants' prior motion for NRCP 60(b) relief, such that Plaintiff Steppan "incorporates
27 all prior written and oral arguments submitted in opposition" to that prior motion. However, Plaintiff
28 Steppan never did fully respond to many of the arguments set forth in the Defendant's earlier 60(b)
Motion, and, therefore, much of the Instant Motion is now essentially unchallenged.

Steppan Never "Retained" FFA, but Remained FFA's Employee. For example, Steppan
has still never provided any evidence demonstrating the existence of any subcontract pursuant to which
Steppan hired or retained FFA, for purposes of demonstrating that FFA's work was performed

1 “through” Steppan and could be liened for in his name. A lien claimant in Nevada may only lien for
2 services provided “by” the claimant, “or” for services provided “through” the lien claimant, but not
3 for work performed by another party, such as a foreign architectural firm working directly for a
4 customer, not as a subprovider to the lien claimant. NRS 108.222(1)(a) and (b); *Nevada National*
5 *Bank v. Snyder*, 108 Nev. 151, 157, 826 P.2d 560, 562-64 (1992) (partially abrogated on other grounds
6 by *Executive Mgmt. Ltd. v. Ticor Title Ins.*, 118 Nev. 46, 38 P.3d 872 (2002)).

7
8 Steppan never provided any evidence supporting the claim that he hired FFA. Despite the
9 statute of frauds, there exists no written agreement in which Steppan hired FFA as a subprovider for
10 this 32 month project. FFA is instead listed in the AIA Agreement as a party thereto, with a direct
11 relationship with the customer; and Steppan is now liening for amounts owed to FFA, as shown by
12 invoices sent from and on FFA letterhead, directly to that customer. Nor was there any trial testimony
13 that Steppan orally hired FFA, and there are no invoices from FFA to Steppan, or payments from
14 Steppan to FFA, to show that either party ever even pretended that Steppan retained FFA.

15 **Trial Transcript Quotations.** Furthermore, the Instant Motion includes references to certain
16 trial transcript quotations which were previously discussed during oral argument of the NRCP 60(b)
17 motion and which Steppan’s counsel indicated he would not be able to respond to at that time. (*See*,
18 *Transcript of Oral Argument, Day 2, at p. 108, ll. 15-22.*) As these quotations were provided in the
19 Instant Motion, the Plaintiff had the opportunity to now respond to the same, which opportunity has
20 been declined, such that they stand unchallenged. This is understandable, given what those quotations
21 clearly demonstrate: During the trial of this case it was repeatedly acknowledged by Steppan, by
22 Friedman, and by their counsel, that FFA’s client was not Steppan, but was the developer and
23 underlying customer; that FFA was a party to the AIA Agreement with that developer, which FFA’s
24 principal, Friedman, had authority to (and did) orally modify directly with that customer; that FFA
25 communicated with and billed that customer directly for work the customer asked FFA to do and
26 agreed to pay FFA for doing; and that the lien claim arose out of that direct contractual relationship,
27 and was pursued on behalf of FFA, for moneys owed to FFA by the underlying customer thereunder.
28

1 **Illegality of any Subcontract.** In addition, the Instant Motion raised an argument under the
2 principle enunciated by *Holm v. Bramwell*, 67 P.2d 114 (Cal. Ct. App. 1937), not previously cited in
3 the prior motion, namely, that a prime contractor mechanic's lien claimant cannot lien for work
4 performed illegally by his unlicensed subcontractor. Thus, even if FFA had been retained by Steppan,
5 Steppan had no right to lien for FFA's architectural services, illegally performed for a Nevada project
6 without first being registered. NRS 623.180. To comply with NRS Chapter 623, FFA needed to
7 register in Nevada. *DTJ Design Inc. v. First Republic Bank*, 318 P.3d 709, 709, 130 Nev. Adv. Op.
8 5 (2014). FFA did not do so. Nor did it even qualify to do so, as a prerequisite thereto, by having 2/3
9 of its owners, -- i.e., its sole owner, Friedman, licensed in Nevada. *Id.*

10
11 FFA needed to so register because it does not fall within either of the two exemptions to NRS
12 Chapter 623 as are set forth in NRS 623.330(1)(a). The services provided by FFA went far beyond
13 mere "consultant" services, and none of the other FFA designers who performed work with respect
14 to the project were the employees of a Nevada registered architect (Steppan having no employees of
15 his own). Thus, even if there were any evidence to suggest that FFA was a Steppan subcontractor,
16 rather than working directly for the Nevada customer on this Nevada project, this would still not allow
17 the work performed by FFA to be considered legal, and therefore lienable by Steppan.

18 **Failure to Provide a Pre-Lien Notice.** Nor has Steppan ever responded to the arguments
19 provided to this Court in the prior NRCP 60(b) motion and incorporated by reference into the Instant
20 Motion, listing the numerous failures of the Plaintiff to substantially comply with Nevada's mechanic's
21 lien perfection laws. The only one of those failures to be directly addressed by this Court is Steppan's
22 failure to provide a statutorily required pre-lien notice of right to lien, this Court having ruled that
23 Steppan could be excused from this failure under the "actual knowledge" exception of *Fondren v. K/L*
24 *Complex Ltd.*, 106 Nev. 705, 800 P.2d 719 (1990). However, as clarified in *Hardy Companies, Inc.*
25 *v. SNMARK, LLC*, 245 P.3d 1149, 1157 (Nev. 2010), this exception requires that the owner be made
26 "aware of the identity of the third party seeking to record and enforce a lien." [Emphasis added.] By
27 contrast, "mere knowledge of construction" without knowing "of both the existence and the identity
28

1 of” the third parties performing that construction, is insufficient. *Id.* at 1159 [emphasis added].
2 Otherwise, “the exception would swallow the rule.” *Id.*

3 In the present case, this Court has found that Iliescu had knowledge of architectural services,
4 but was unable to find on the evidence presented that Iliescu knew Steppan’s identity, ruling: “Iliescu
5 was aware that . . . instruments of service were being produced. Iliescu may not have known, at all
6 times, Steppan’s name; however, there is no doubt in the Court’s mind that Iliescu was aware of the
7 work being done by Steppan (a third party)” Decision at ¶ 14. This description (awareness of
8 work being done, without a clear showing of knowledge as to the identity of the third party performing
9 that work) is precisely what the *Hardy* case indicated was **insufficient** to invoke the actual knowledge
10 exception to the statutory requirement of providing pre-lien notice. Significantly, a pre-lien notice
11 allows a lien claimant to lien solely for any work performed within a time period commencing 31 days
12 prior to the date on which the notice was provided. NRS 108.245(6). Similarly, therefore, if the actual
13 knowledge exception is invoked, then the date of such actual knowledge must be ascertained to
14 determine when the lienable period began, as the value of services provided prior thereto cannot be
15 liened. This Court has upheld the entirety of the Steppan lien without any finding as to when, if ever,
16 Iliescu knew of Steppan’s identity as the potential lien claimant.

17
18 Also, as argued previously, without rebuttal, the actual knowledge exception only applies, in
19 any event, with respect to actual knowledge of on-site construction, whereas FFA’s work was
20 performed off site.

21 **Responsible Control, Even if Shown, Does not Render FFA’s Work Lienable.** The only
22 issue which *is* directly addressed in the Opposition is a reiteration by Steppan of his claim to have
23 exercised responsible control over the work performed by FFA’s other employees. The only evidence
24 supporting Steppan’s claims in that regard are the few lines of conclusory testimony now highlighted
25 in the Opposition, which testimony is contradicted by Friedman’s contrary testimony and undercut by
26 Steppan’s repeated caveats and hedges, elsewhere in his testimony, as to his personal understanding
27 of “responsible control.”
28

1 More importantly, even if it were to be conceded, arguendo, that Steppan exercised responsible
2 control over FFA's employees' work, this has no dispositive effect on his claim. Nothing in NRS
3 Chapter 623 indicates that "responsible control" is a relevant question (let alone *the* relevant question)
4 for determining whether FFA's work was legal, and nothing in NRS Chapter 108 indicates that this
5 is a relevant question for determining whether the value of FFA's work was lienable in Steppan's
6 name. Rather, as the *DTJ Design* opinion demonstrates, for FFA's work to be legal in Nevada, FFA
7 needed to be owned by 2/3 Nevada licensees, and to be registered here as a Nevada architectural firm.
8 Similarly, as the *Snyder* decision demonstrates, FFA's work is not lienable in Steppan's name, where
9 it was performed by FFA's, not Steppan's, employees, and is based on FFA's, not Steppan's, invoices
10 to the client. Whatever the level of involvement or oversight Steppan claims to have exercised may
11 be, he performed the same internally as an employee of FFA, and on FFA's behalf, not as a party who
12 had hired FFA to work on his behalf, and he has cited no authority to indicate that his alleged internal
13 "responsible control" over his fellow FFA employees allows FFA's work to be lienable.
14

15 Based on the foregoing, the Instant Motion should be granted, the Steppan lien should be
16 invalidated, and the Judgment and Orders to the contrary should be set aside.

17 DATED this 20th day of March, 2015.

18
19 By 

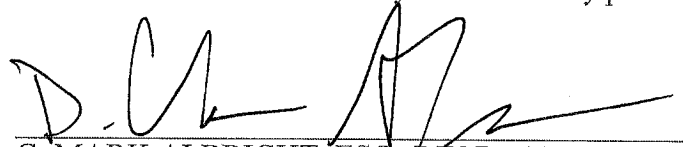
20 G. MARK ALBRIGHT, ESQ. [NV Bar No. 001394]
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AFFIRMATION

The undersigned does hereby affirm this 20th day of March, 2015, that the preceding document filed in the Second Judicial District Court does not contain the social security number of any person.



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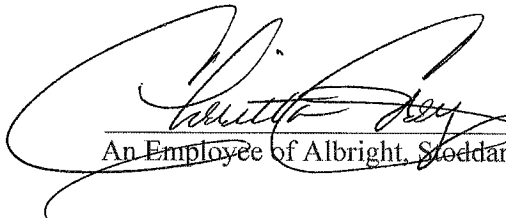
CERTIFICATE OF SERVICE

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 20th day of December, 2014, service was made by the ECF system to the electronic service list, a true and correct copy of the foregoing

REPLY POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION TO ALTER OR AMEND JUDGMENT AND RELATED ORDERS, and a copy mailed to the following person:

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


An Employee of Albright, Stoddard, Warnick & Albright

1 CODE: 3025

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

5 MARK B. STEPPAN,

6 Plaintiff,

7 vs.

Case No. CV07-00341
Dept. No. 10

8 JOHN ILIESCU, JR., et al.,

9 Defendants.
10 _____/

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

14 Presently before the Court is a DEFENDANTS' MOTION FOR COURT TO ALTER
15 OR AMEND ITS JUDGMENT AND RELATED PRIOR ORDERS ("the Motion"). The
16 Motion was filed by the Defendants JOHN ILIESCU, JR., SONNIA SANTEE ILIESCU, JOHN
17 ILIESCU, JR., SONNIA SANTEE ILIESCU as trustees of the JOHN ILIESCU, JR. AND
18 SONNIA ILIESCU 1992 FAMILY TRUST ("the Defendants") on March 10, 2015. The
19 Plaintiff MARK B. STEPPAN ("the Plaintiff") filed an OPPOSITION TO DEFENDANTS'
20 MOTION TO ALTER OR AMEND JUDGMENT AND RELATED ORDERS ("the
21 Opposition") on March 11, 2015. The Defendants filed a REPLY POINTS AND
22 AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION TO ALTER OR AMEND
23 JUDGMENT AND RELATED ORDERS ("the Reply") on March 20, 2015. The Motion was
24 submitted to the Court for consideration on March 26, 2015.
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1 These proceedings arise out of a bench trial conducted December 9-12, 2013. The trial
2 was an action to enforce a mechanic's lien. The Court entered its FINDINGS OF FACT,
3 CONCLUSIONS OF LAW AND DECISION ("FFCLD") on June 28, 2014. The Court ruled in
4 favor of the Plaintiff. There has been extensive post-trial motion practice. Specifically, the
5 Court entered a DECISION AND ORDER DENYING NRCP 60(b) MOTION on March 13,
6 2015. The pending Motion re-argues issues previously raised in the trial and during the
7 subsequent motion practice, but using a different rule of civil procedure. The Court has
8 thoroughly reviewed the previous pleadings, the entire record of the trial to include all of the
9 exhibits admitted and the transcript thereof, the case law that has been announced post-trial,¹ and
10 the previous arguments of counsel on these issues. The Motion will be denied.
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12 The Motion is predicated primarily on NRCP 59(e).² In *Stevo Design, Inc. v. SBR*
13 *Marketing, Ltd.*, 919 F.Supp.2d 1112 (D.Nev. 2013), Judge Hicks analyzed the requirements for
14 relief under FRCP 59(e), the Federal counterpart to NRCP 59(e). Federal decisions involving the
15 Federal Rules of Civil Procedure provide persuasive authority when examining the Nevada Rules
16 of Civil Procedure. *Nelson v. Heer*, 121 Nev. 832, 834, 122 P.3d 1252, 1253 (2005). The
17 Federal Court held a motion to alter or amend a judgment under rule 59(e) is, "an extraordinary
18 remedy which should be used sparingly." *Id.*, 919 F.Supp. at 1117 (citing, *McDowell v.*
19 *Calderon*, 197 F.3d 1253, 1255 n. 1 (9th Cir. 1999)). The Court went on to hold that this
20 infrequent relief is granted in the following limited situations:
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23 (1) where the motion is necessary to correct "manifest errors of law or fact upon which
24 the judgment rests;" (2) where the motion is necessary to present newly discovered or
previously unavailable evidenced; (3) where the motion is necessary to "prevent manifest

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

² The Motion also cites NRCP 52(b).

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

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

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

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

DATED this 27 day of May, 2015.


DISTRICT JUDGE

³ The Motion does not allege that there is any “newly discovered or previously unavailable” evidence for the Court to consider.

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CERTIFICATE OF MAILING

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

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

CERTIFICATE OF ELECTRONIC SERVICE

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

MICHAEL D. HOY, ESQ.

G. MARK ALBRIGHT, ESQ.


Sheila Mansfield

Document Code: 2540

HOY CHRISSINGER KIMMEL VALLAS, PC

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

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

MARK B. STEPPAN,
Plaintiff,

v.

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

And Related cross-claims and third-party
claims.

Consolidated Case Nos. CV07-00341 and
CV07-01021

Dept. No. 10

Notice Of Entry Of Order

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

CERTIFICATE OF PERSONAL SERVICE

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

Privacy Certification

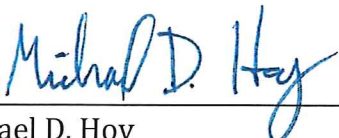
The undersigned affirms that this document does not contain any social security
numbers or other private information.



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Dated May 28, 2015.

HOY CHRISSINGER KIMMEL VALLAS, PC


Michael D. Hoy
Attorneys for Mark B. Stepan

CERTIFICATE OF SERVICE

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

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

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

DATED May 28, 2015.


Shondel Seth

Index of Exhibits

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

1 **CODE: \$2515**

2 G. MARK ALBRIGHT, ESQ.

3 Nevada Bar No. 001394

4 D. CHRIS ALBRIGHT, ESQ.

5 Nevada Bar No. 004904

6 **ALBRIGHT, STODDARD, WARNICK & ALBRIGHT**

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11 gma@albrightstoddard.com

12 dca@albrightstoddard.com

13 *Attorneys for Appellants/Applicants/Defendants*

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

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

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

21 vs.

22 MARK B. STEPPAN, Respondent.

23 MARK B. STEPPAN,

24 Plaintiff,

25 vs.

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

Defendants.

AND RELATED CLAIMS.

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

DEPT NO. 10

**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**

NOTICE is hereby given that JOHN ILIESCU, JR., individually, and JOHN ILIESCU AND SONNIA SANTEE ILIESCU as Trustees of the JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT, the Applicants in Case No. CV07-00341 and the Defendants in Case No. CV07-01021 consolidated therewith (jointly hereinafter the "Appellants" or the "Iliescus") hereby appeal to the Supreme Court of the State of Nevada from the following orders, judgments and

1 rulings entered against them and in favor of Mark B. Steppan, the Respondent in Case No. CV07-
2 00341, and the Plaintiff in Case No. CV07-01021 consolidated therewith (hereinafter "Respondent"
3 or "Steppan") in these proceedings:

- 4 (i) the "Judgment, Decree and Order for Foreclosure of Mechanic's Lien" entered by the
5 District Court on February 26, 2015 (Washoe County Clerk Transaction No. 4836215);
- 6 (ii) the June 22, 2009 "Order" denying a Motion for Partial Summary Judgment filed by
7 the Iliescus, and granting a Cross-Motion for Partial Summary Judgment filed by
8 Steppan (Transaction 850528);
- 9 (iii) the May 9, 2013 "Order Granting Motion for Partial Summary Judgment" in favor of
10 Steppan (Transaction 3715397);
- 11 (iv) the August 23, 2013 "Order Granting Motion to Strike or Limit Jury Demand"
12 (Transaction 3946236);
- 13 (v) the May 28, 2014 post-trial "Findings of Fact, Conclusions of Law and Decision"
14 (Transaction 4451229);
- 15 (vi) the March 13, 2015 "Decision and Order Denying NRCP 60(b) Motion" (Transaction
16 4860752);
- 17 (vii) the May 27, 2015 "Order Denying Defendants' Motion for Court to Alter or Amend
18 Its Judgment and Related Prior Orders" (Transaction 4971032);
- 19 (viii) any and all other orders, judgments, decisions, or rulings of the District Court during
20 this litigation which led to or resulted from any of the foregoing orders, rulings, and
21 partial or full summary or final judgments, or which would need to be overturned in
22 order to afford the Iliescus, as Appellants, full and adequate appellate relief herein,
23 such as, without limitation: any oral rulings from the bench regarding the admissibility
24 of evidence during trial (including the Court's ruling excluding and limiting certain
25 expert testimony as described in the Iliescus' Offer of Proof, filed on October 2, 2013);
26 any oral decisions from the bench in response to oral motions (such as motions to
27 dismiss) during trial or during other pre-trial or post-trial appearances, together with
28 any follow-up written orders on such matters; the Amended Order regarding Plaintiff's

1 Motion for Attorneys' Fees and the Amended Order regarding Plaintiff's Motion for
2 Costs, both entered on December 12, 2014 (Transactions 4734845 and 4734821), as
3 well as the original versions of said Orders amended thereby, and the intervening
4 orders on motions to clarify or reconsider said original versions of the subsequently
5 amended orders.

6 DATED this 23rd day of June, 2015.

7
8 By 

G. MARK ALBRIGHT, ESQ.

Nevada Bar No. 001394

D. CHRIS ALBRIGHT, ESQ.

Nevada Bar No. 004904

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dca@albrightstoddard.com

Counsel for Appellants

AFFIRMATION

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

DATED this 23rd day of June, 2015.

By 

G. MARK ALBRIGHT, ESQ.

Nevada Bar No. 001394

D. CHRIS ALBRIGHT, ESQ.

Nevada Bar No. 004904

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Counsel for Appellants

CERTIFICATE OF SERVICE

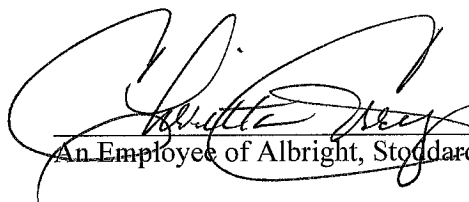
Pursuant to NRCP 5(b) and NEFCR 9, I hereby certify that I am an employee of ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, and that on this 23rd day of June 2015, service was made by the ECF system to the electronic service list, a true and correct copy of the foregoing **NOTICE OF APPEAL BY JOHN ILIESCU, JR., INDIVIDUALLY, and JOHN ILIESCU, JR. AND SONNIA SANTEE ILIESCU, AS TRUSTEES OF THE JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT**, and a copy mailed to the following person(s):

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☐ Hand Delivery
☒ Regular Mail



An Employee of Albright, Stoddard, Warnick & Albright