

**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 13, 2016 10:47 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

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

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

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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

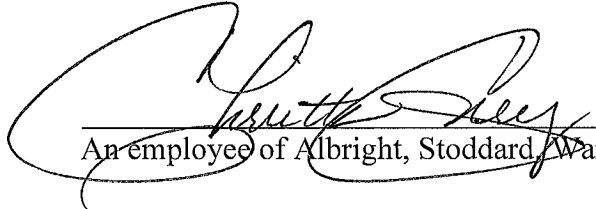
<b>DOC.</b>	<b>FILE/HRG. DATE</b>	<b>DOCUMENT DESCRIPTION</b>	<b>VOL.</b>	<b>BATES NOS.</b>
		Transcript: Trial Day 1 - Volume I – Corrected/ Repaginated Transcript (File Date - 02/27/15) Transcript pages 243-291	V	AA0980-1028
35	12/10/13 Hrg.	Transcript: Trial Day 2 - Volume II (File Date - 02/24/14) 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 13<sup>th</sup> day of May, 2016, the foregoing **APPENDIX TO APPELLANT'S OPENING BRIEF, VOLUME VII**, was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

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1       A.    The firm is not licensed in Nevada, correct.

2       Q.    And that's what precipitated you signing the contract,  
3 because you had the Nevada license?

4       A.    Correct.

5       Q.    Okay.  Now, at any time after signing -- strike that.

6            At any time after signing the engagement letter of  
7 Exhibit 14, did you make any inquiry as to who the owner of the  
8 property was?

9       A.    I didn't personally make any inquiries, I don't know  
10 if we already knew or when -- as I've already testified, I  
11 don't know exactly when we learned of that fact that  
12 Dr. Iliescu owned the land and not our client.  And I did not  
13 personally make any investigations into that situation.

14      Q.    Did you direct anybody to make such an inquiry?

15      A.    No.

16      Q.    Would you want to have known who the owner of the  
17 property was?

18      A.    It's a good thing to know.  And since at some point I  
19 knew it -- I hadn't thought about it in the way you're asking  
20 the question, so I don't know that -- I don't know that I  
21 wouldn't want to know and I don't know that I've come across a  
22 situation where we didn't know.

23           MR. PEREOS:  I'm sorry.  Can I have you're the answer  
24 read back.

1 THE COURT: Go ahead.

2 (Record read.)

3 THE COURT: Understandably confusing.

4 THE WITNESS: Yes.

5 THE COURT: Just for the point of clarification, when  
6 you signed Exhibit No. 6, the AIA contract that is -- it was  
7 dated, I believe, April 26th, if memory serves me correctly of  
8 2006. By that point is it your testimony that you knew that  
9 BSC Financial was not the owner of the property in question?

10 THE WITNESS: Yes.

11 THE COURT: And at the time that you signed the  
12 stopgap agreement, you didn't know that they were not the --  
13 that's a double negative, I apologize -- you had no knowledge  
14 that BSC was not the owner of the property; is that correct?

15 THE WITNESS: I do not know if at the time we did that  
16 agreement that we had discussed that yet or not. It's quite  
17 probable we did, but I don't remember.

18 THE COURT: All right. Just at some point, you found  
19 out that Dr. Pereos and Mrs. Pereos owned the property and BSC  
20 was the developer; is that right?

21 THE WITNESS: No, because Mr. and Mrs. Pereos don't  
22 own the property.

23 MR. HOY: You just misspoke, Your Honor, I think.

24 THE COURT: Oh, "Pereos," I apologize, Iliescu. It

1 took me a second. I thought, boy, then I have not really been  
2 paying attention at all.

3 THE WITNESS: Sorry.

4 THE COURT: I know that Mr. Pereos does not own the  
5 property. I know that Dr. and Mrs. Iliescu own the property.  
6 Thank you for that clarification.

7 THE WITNESS: That's all right.

8 THE COURT: It shows that you are paying attention, so  
9 I appreciate that, Mr. Steppan.

10 Mr. Hoy?

11 MR. HOY: Just one clarification I want to make for  
12 the record, so we don't have to go rounds with various  
13 witnesses.

14 There is legal title to property and there is  
15 equitable title to property. Arguably, BSC Financial, being in  
16 contract with the legal owner, has some equitable rights in the  
17 property. And so when you use the terms "ownership" or  
18 "owner," there's technically a difference between equitable  
19 owner and legal owner.

20 MR. PEREOS: I'll rephrase the questions to refer to  
21 title ownership.

22 THE COURT: That's okay. I think that we all know  
23 we're talking about ownership in the general or commonly  
24 understood sense. And if memory serves me correctly there was

1 a trust involved, anyway, so...

2 BY MR. PEREOS:

3 Q. Did you send the copy of the AIA contract, after it  
4 was signed, to John Iliescu?

5 A. Not that I'm aware of.

6 Q. Did you direct any representative of your staff to  
7 send a copy?

8 A. Not that I'm aware of.

9 Q. In fact, you're not aware of any direct contact by a  
10 representative of your office with John Iliescu, correct?

11 A. Can you put a time frame on that? Because obviously  
12 there was contact at some point, so --

13 Q. Prior to the submission of the application for the  
14 special use permit.

15 A. I believe that is correct.

16 Q. Prior to the execution of a contract?

17 A. I believe that is correct.

18 Q. Did you ever contact John Iliescu about payment  
19 problems?

20 A. No. We were talking to our contracted client to try  
21 to resolve payment issues.

22 Q. Did you ever provide a copy of an -- of the  
23 application for special use permit, whether it be 36,  
24 Exhibit 36 or 37 to John Iliescu?

1       A.    I don't think we sent copies of that to anybody.

2       Q.    Did you ever direct any member of your staff to  
3 provide a copy to John Iliescu?

4       A.    No.  And we would not have had the original to send.

5       Q.    What is required in order to get the entitlements?  
6 What's required in a package?

7       A.    You have to fill in the appropriate forms for the  
8 jurisdiction in question and provide all the appropriate  
9 background material that each jurisdiction requests or requires  
10 for the different entitlements that you are going after.  That  
11 can include a variety of pieces of information, including site  
12 plans, floor plans, elevation sections, grading plans, utility  
13 information.  It depends on the level of what you are  
14 submitting for.  You might have to do traffic studies and  
15 geotech reports or other specific reports or pieces of  
16 information.

17       Q.    Did you --

18       A.    And if I may complete?

19            I'm not an expert at submissions for jurisdictional  
20 requirements.  I help provide or oversee the production of the  
21 documentation from an architectural standpoint.

22       Q.    Before testifying today, did you review Exhibits 35,  
23 36 and 37, the respective applications?

24       A.    I've seen them before.

1 Q. Okay. Did you flip through those pages to look at  
2 them?

3 A. I have flipped through them before, yes.

4 Q. Okay. Did you review any draft of those applications  
5 before they were submitted?

6 A. I believe I did, as far as parts of it. I don't know  
7 if I saw drafts of a complete document, including all of the  
8 portions that Wood Rodgers was producing.

9 MR. PEREOS: Court's indulgence.

10 BY MR. PEREOS:

11 Q. Did you review the application for the special use  
12 permit before it was submitted?

13 A. I don't remember what portion of it I reviewed.

14 Q. Did you review any of it?

15 A. I'm sure I reviewed parts of it. I don't remember if  
16 I reviewed the whole thing.

17 MR. PEREOS: May I have the deposition of Mr. Steppan,  
18 dated March 2, 2010, opened and published.

19 MR. HOY: No objection.

20 THE COURT: Yes.

21 THE CLERK: The deposition marked Steppan, Volume II,  
22 dated Tuesday, March 2, 2010, is opened and published.

23 BY MR. PEREOS:

24 Q. Let me direct your attention to page 306 of your

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1 deposition, commencing -- if you will read to yourself line 16  
2 and down to line 22, with the following question in mind: Do  
3 you recall testifying at your deposition that you don't  
4 remember reviewing the application?

5 A. Page 306, line 16?

6 Q. Yep, start at line 16, down to line 22.

7 A. Okay. I've read it.

8 Q. Now, did you testify previously that you don't  
9 remember looking at that application, being Exhibit 27 to the  
10 deposition?

11 MR. HOY: Excuse me, counsel, I object. If I'm on the  
12 right page, three -- page 306, right?

13 MR. PEREOS: Page 306.

14 MR. HOY: And you said, "Look at lines 16 through 22"?

15 MR. PEREOS: That's right.

16 MR. HOY: And at line 16, an exhibit, a deposition  
17 Exhibit 27 was marked and the question refers to Exhibit 27.

18 MR. PEREOS: That's correct.

19 MR. HOY: What is Exhibit 27?

20 MR. PEREOS: The application to the City of Reno.

21 THE COURT: Is it -- and I would note that the  
22 deposition itself appears to be rather thick. Is Exhibit 27  
23 attached onto there?

24 MR. PEREOS: It is. I just confirmed that, Your



1 Honor.

2 MR. HOY: May I approach the witness stand?

3 THE COURT: You may.

4 MR. HOY: Is that the first page?

5 THE WITNESS: Exhibit 27.

6 MR. HOY: Let's see the next page.

7 It's not the same exhibit, Your Honor.

8 MR. PEREOS: I'm sorry, I don't understand the  
9 reference.

10 THE COURT: Well, is it -- Mr. Hoy, are you saying  
11 that Exhibit 27 in the deposition transcript is not the same  
12 document as what has been referred to and admitted in this case  
13 as Exhibit 35?

14 MR. PEREOS: Oh, I know that.

15 MR. HOY: That's what I'm saying, Your Honor.

16 MR. PEREOS: Oh, I know that.

17 THE COURT: No, I --

18 MR. PEREOS: I'm sorry.

19 THE COURT: But my understanding of your question,  
20 Mr. Pereos -- and that might be where the confusion lies -- is  
21 that I thought you were asking him if -- if he ever reviewed  
22 what is Exhibit 27 there, which is the same thing as Exhibit 35  
23 in our books?

24 MR. PEREOS: I'll clear it up.

1 THE COURT: Perfect. Thank you.

2 MR. PEREOS: I'll clear it up.

3 THE COURT: Sustained.

4 BY MR. PEREOS:

5 Q. Exhibit 27 to your deposition is the draft,  
6 handwritten notations of someone preparing the application to  
7 the City of Reno for the special use permit, is it not?

8 A. That's what it appears to be, yes.

9 Q. Okay. Now, my question to you is, did you ever review  
10 that?

11 A. Well, as I said, I don't have any different  
12 remembrance than what my deposition says, which is, "I don't  
13 remember."

14 Q. Okay.

15 A. The documents were prepped. That handwriting is  
16 Nathan Ogle's.

17 THE COURT: So the document -- just so I'm clear, the  
18 document that is contained in Exhibit 27 of the deposition is  
19 not what was submitted and file-stamped on February 7th of  
20 2006, as received by Fisher-Friedman and Associates and  
21 eventually filed with the city council; is that correct?

22 THE WITNESS: That is correct.

23 BY MR. PEREOS:

24 Q. Now, the application was done by Wood Rodgers, was it

1 not?

2 A. Yes.

3 Q. And do you have any understanding as to who would have  
4 prepared or -- prepared the draft of Exhibit 27?

5 THE COURT: Exhibit 27 to the deposition?

6 MR. PEREOS: Exhibit 27 to the deposition. My  
7 apologies.

8 THE WITNESS: Well, briefly looking at it, there are  
9 parts that Nathan Ogle of Fisher-Friedman drafted up and it  
10 looks like there are parts that David Snelgrove of Wood Rodgers  
11 would have prepared.

12 BY MR. PEREOS:

13 Q. Okay. But the point that I'm getting at is  
14 Exhibit 27 -- well, let me go about it will this way.

15 Did you ever review the drafts of Exhibit 37 in this  
16 trial -- Exhibit 37 to this trial -- before they were  
17 finalized?

18 A. I don't remember.

19 Q. Did you ever review Exhibit 36 to this trial -- of  
20 this trial -- before it was finalized?

21 A. I will say I don't remember. And the consistent  
22 answer is, I probably did, but I cannot specifically remember  
23 doing so, so that's why I say that.

24 Q. Now, if I remember correctly, you testified that you

1 were the supervising architect on the project?

2 A. Correct.

3 Q. And also you categorized yourself as the lead  
4 architect?

5 A. I don't remember saying "lead architect," but you may  
6 phrase it as you wish.

7 Q. Let me direct your attention to your deposition of  
8 March 2, 2010. If you will read to yourself lines 321 --  
9 excuse me -- page 321, line 5, down to line 23. And tell me  
10 whether or not you ever characterized yourself as the lead  
11 architect.

12 A. Okay. I've read that. It still doesn't say I'm the  
13 lead architect, it says that I led the group doing the work.

14 Q. Okay. Did you ever characterize yourself as being the  
15 supervising architect?

16 A. By your question, are you asking me to anyone within  
17 the firm on this project? Any project? Can you be more  
18 specific.

19 Q. Well, my questions are all focused on this project  
20 alone, unless I'm referring to another project, Mr. Steppan. I  
21 will let you know.

22 A. Thank you.

23 Q. Okay. Now did you ever characterize yourself as being  
24 the supervising architect?

1       A.    I might have.

2       Q.    Why don't you direct your attention to your deposition  
3 of February 16, 2010. Go to page 21.

4       A.    I'm there.

5       Q.    Okay. Go to line 7, read to yourself down to line 18.

6       A.    Okay. I've read it.

7       Q.    Did you characterize yourself then as being the  
8 supervising architect?

9       A.    When I answered the question in the deposition, I was  
10 explaining a role. It's not how we were called or were to call  
11 ourselves within the firm.

12      Q.    Well, let me read the question and answer, and you  
13 tell me if I'm making a mistake.

14            "Question: Well, how would you define your role on  
15 the Reno project as executive vice president? And if it is --  
16 and if it changes over the course of time, tell me about what  
17 that, as well" -- "tell me about that, as well."

18            "Answer: The project was being performed under my  
19 purveyance as the supervising architect. That included  
20 involvement from attending of meetings and meeting parties and  
21 participating in decision making, to look over people's  
22 shoulder" -- "shoulders and see if they were properly drawing  
23 items, or to telephone calls, whatever it might be. It was an  
24 oversight role, as is typical of someone in my position."

1           THE COURT: Mr. Hoy, are you going to make an  
2 objection?

3           MR. HOY: There are some minor differences between  
4 what was just said out loud and what's actually in the  
5 transcript. I don't believe that those differences change the  
6 meaning, though.

7           THE COURT: Thank you.

8           Go ahead, Mr. Pereos.

9 BY MR. PEREOS:

10       Q. Did you characterize yourself as the supervising  
11 architect?

12       A. I characterized myself as a supervising architect in  
13 answering the question at the deposition. I do not walk around  
14 calling myself out as a supervising architect. That's not  
15 something that we talk about that way.

16           So my point in the answer is that it was in answer to  
17 a question to help explain a role.

18       Q. The first step in getting the approvals would be  
19 getting approval of the Planning Commission; is that not  
20 correct?

21       A. I don't remember what the exact first step would have  
22 been. It might have been applying to the planning department  
23 first; I don't remember.

24       Q. As you're testifying today, what did you do to refresh

1 your recollection to be prepared to testify?

2 A. I've looked at exhibits that my counsel has  
3 prepared -- has prepared for the case.

4 Q. Did you read your depositions?

5 A. Yes.

6 Q. Okay. Do you understand, as you testify today, that  
7 the approval of the tentative map necessitated approval of the  
8 Planning Commission?

9 A. Yes.

10 Q. Okay. So would you agree with me that the  
11 presentation to the Planning Commission was important?

12 A. Yes. Excuse me. Can you read back the original  
13 question, because I thought you asked if that was the first or  
14 the only step.

15 THE COURT: It's unnecessary. I think he's modified  
16 the question.

17 THE WITNESS: Okay.

18 THE COURT: So the answer to the last question was,  
19 yes, you would agree that the presentation to the Planning  
20 Commission was important?

21 THE WITNESS: Correct.

22 THE COURT: Next question, please.

23 BY MR. PEREOS:

24 Q. Did you attend the Planning Commission hearing?

1       A.    No.

2       Q.    Do you remember who submitted the package for approval  
3 to the Planning Commission?

4       A.    The package was submitted by David Snelgrove of Wood  
5 Rodgers, as far as I know.

6       Q.    Do you remember the date that the package was  
7 submitted?

8       A.    No.

9       Q.    Did you attend any of the meetings in Reno to advance  
10 the project?

11      A.    I attended at least one meeting in Reno.

12      Q.    Let me direct your attention to your deposition of  
13 March 2, 2010. Go to page 362, line -- read to yourself --  
14 well, are you there?

15      A.    Yes.

16      Q.    Okay. Did you testify at your deposition that you  
17 didn't believe you attended any of the meetings in the State of  
18 Nevada in 2006 to obtain entitlements?

19      A.    That is what I said there; and that was not your  
20 question.

21      Q.    Did you attend meetings in 2005?

22      A.    Yes.

23      Q.    Did you attend the meeting called by the City  
24 forefathers when they requested a meeting regarding this



1 project?

2           And by "City forefathers," I'm referring to the mayor  
3 and other officials of the City government.

4       A.    I did not attend a meeting with the mayor.

5       Q.    Did you attend any meetings at the Reno City Planning?

6       A.    Yes.  I had a -- I was at a meeting at the Planning  
7 Department.  That was the meeting that was -- I believe the  
8 only time I came to Reno was, for this project, was a meeting  
9 with Sam and Tony and Rodney and myself, and I believe we met a  
10 planner or two at the Planning Department.  And we also went  
11 off to another location to get some map information for the  
12 project site.

13           And that would have been around -- I don't actually  
14 remember the date, so I don't want to guess.

15       Q.    Was Dave Snelgrove the point man to do the work for  
16 Wood Rodgers?

17       A.    As far as I knew, yes.

18       Q.    And you only met Dave Snelgrove once?

19       A.    I don't believe I've said that.  I don't remember how  
20 many times I've met him.  I know I met him, as far as I can  
21 remember, at least once in our office.  I've talked to him on  
22 the telephone many times, or in part of phone conversations  
23 with him, at any rate.

24       Q.    I want to direct your attention to your deposition of

1 March 2, 2010, page 315.

2           The question is: "Did you previously testify that you  
3 only met Dave Snelgrove once?"

4           And if you will direct your attention to lines 5  
5 through 6.

6       A.    Okay. I've read it.

7       Q.    Did you previously testify that you only met Dave  
8 Snelgrove once?

9       A.    Well, actually, I testified that I think I only met  
10 him once. That does not rule out meeting him more than  
11 another -- more than the one time.

12       Q.    Well, the question was: "How many times had you met  
13 Dave Snelgrove?"

14           And you answered: "I think I've only met him once."  
15           Isn't that correct?

16       A.    That's what it says.

17       Q.    That's what it says.

18           Now, are you testifying that there may have been more  
19 meetings than that one time with Dave Snelgrove?

20       A.    I just don't remember. I will go with this: It  
21 doesn't change my base response, I think I've only met him  
22 once; but, again, if you forgot another meeting, no, it  
23 doesn't.

24       Q.    You weren't at the Planning Commission meeting, were

1 you -- Planning Commission hearing, were you?

2 A. I just answered, no.

3 Q. Did you have a handle, an understanding, as to all the  
4 work that was done by Wood Rodgers in preparing these  
5 applications for approval?

6 A. I remember having an understanding of some of the work  
7 they were doing. I don't know if I knew everything that they  
8 were doing as they prepared the submissions.

9 Q. In fact, Dave Snelgrove didn't even consider you part  
10 of the team when he was emailing Nathan Ogle and others at  
11 FF&A; isn't that correct?

12 MR. HOY: Objection, lacks foundation.

13 THE COURT: Sustained.

14 BY MR. PEREOS:

15 Q. Okay. Do you know whether or not Dave Snelgrove ever  
16 considered you part of the team in connection with this project  
17 when he was interacting with FF&A?

18 A. I don't know what he thought or didn't think. I would  
19 have assumed he considered me part of the team, since we were  
20 part -- we had discussions together.

21 Q. Let me direct your attention to your deposition of  
22 March 2, 2010. Let's go to page 349.

23 A. Okay.

24 Q. Why don't you read to yourself line 1 to line 9 of the

1 next page, with the following question in mind: Were you  
2 considered or were you included as a member of the team when it  
3 came to communications from Dave Snelgrove?

4 A. Okay. I have read it.

5 Q. Okay. And my question was, okay, were you considered  
6 part of the team when it came to the communications that were  
7 precipitated by Dave Snelgrove to FFA?

8 MR. HOY: I object, your Honor. There is nothing in  
9 this portion of the transcript that has the word "team" in it.  
10 I'm not sure how --

11 MR. PEREOS: I'll rephrase it.

12 MR. HOY: -- the question relates to what the witness  
13 is being asked to review, either for impeachment or for  
14 refreshment of recollection.

15 THE COURT: The witness cannot testify to what  
16 Mr. Snelgrove was thinking. It would either be hearsay or  
17 speculation. And so the Court doesn't know how Mr. Steppan is  
18 going to answer the question about what Mr. Snelgrove -- who  
19 Mr. Snelgrove thought were part of the team or the  
20 organization, or whatever you want to call the group at  
21 Fisher-Friedman and Associates, who were putting together the  
22 Wingfield Towers project. So on that grounds, I will sustain  
23 the objection.

24 Next question.

1 MR. PEREOS: Fine.

2 BY MR. PEREOS:

3 Q. Who is the one who made the decision as to whether or  
4 not or who is to receive communication in connection with this  
5 project from David Snelgrove in the FFA office?

6 MR. HOY: Objection, lacks foundation if the question  
7 is, who at Snelgrove's office or Wood Rodgers' office is making  
8 these decisions. Perhaps counsel could rephrase the question.

9 THE COURT: Actually, I believe I under -- I  
10 understood the question a little bit differently, and I've gone  
11 back and reviewed the realtime transcript, and the question  
12 isn't about who is making decisions in Wood Rodgers with  
13 Mr. Snelgrove, it's who is making the decisions at  
14 Fisher-Friedman and Associates about where communications from  
15 Mr. Snelgrove get routed at Fisher-Friedman and Associates.

16 Is that correct, Mr. Pereos?

17 MR. PEREOS: That's correct, your Honor.

18 MR. HOY: That's a fair question. I will withdraw my  
19 objection.

20 THE COURT: Do you understand that question?

21 THE WITNESS: Yes.

22 THE COURT: Can you answer, please.

23 THE WITNESS: There was not one person making that  
24 decision, nor was there a decision made as to limiting of

1 contact from David Snelgrove at Wood Rodgers or other people.

2           As was testified in my deposition, to the best of my  
3 memory here, there were things that Rodney and Nathan had  
4 conversations and communications, whether it was things that I  
5 was party to and not party to. And not including me in an  
6 email chain does not preclude my finding out about the piece of  
7 information, since part of the way I managed or supervised the  
8 project was to walk around and talk to people. It was much  
9 easier and simple and fairly consistent with action that I  
10 would walk around and talk to Nathan. And he could say -- show  
11 me on the screen, "Hey, I just got this from David, we are  
12 talking about this," or whatever it might be. There was not a  
13 need to include me.

14           Would it have been a convenience? Probably. But it  
15 was not a requirement.

16 BY MR. PEREOS:

17       Q.   So you agree that Nathan Ogle was the one that was  
18 making the decision as to who would be included in the  
19 communications with David Snelgrove, as far as it related to  
20 FFA?

21       A.   That's not what I said.

22       Q.   Well, I'm asking you that question now.

23       A.   No, that's not true.

24       Q.   Okay. Then let me ask you whether or not you so

1 testified that it was Nathan Ogle who was sending the  
2 communications out, okay, and deciding what communications you  
3 were to receive?

4 THE COURT: Can you cite him to a specific portion of  
5 the transcript?

6 MR. PEREOS: Yeah, sure. Same transcript as before,  
7 page 349, line 1, down to page 350, line 9.

8 THE WITNESS: The way I answered it was similar to  
9 what you just stated, yes. It appears that in 2010, I noted  
10 that Rodney and Nathan made decisions about lines of  
11 communication or things like that and kept me in the loop or  
12 didn't keep me in the loop; and I knew things and I sent  
13 communications out or participated.

14 I could not say, even with this, that on a consistent  
15 basis it was Nathan always making the decision about who was  
16 included in communication that was either electronic or  
17 written, which is different than communication via phone or  
18 talking.

19 BY MR. PEREOS:

20 Q. Did you send any emails out to anyone else, other than  
21 FFA internally, regarding this project?

22 A. I would have said, "I don't remember." In re-reading  
23 part of these words, it still says, "I don't remember," and the  
24 answers from the attorney was that they didn't find any.

1 Q. In other words, the attorney commented during the  
2 deposition, the attorney examining you, that he didn't see any  
3 of your emails? That's what you're getting at?

4 A. Correct.

5 Q. Did you prepare any type of written memos on this  
6 project?

7 A. I probably did. Whether they're in record or whether  
8 they were scratch documents that I took over and handed to  
9 David while he was designing elevations and we talked about  
10 stuff, I really don't remember. This was 2005 and 2006.

11 Q. Did you even know that there was an economic study  
12 done by Meridian or "Mair-i-dan" on this project?

13 A. At this very second, I don't remember.

14 Q. I'm so sorry?

15 A. At this second, I don't remember.

16 Q. Do you remember testifying that you did not know about  
17 it in March 2nd of 2010?

18 A. No.

19 Q. Okay. Let me direct your attention to page 367 of  
20 your deposition. Go to line 13 and read the question and  
21 answer.

22 A. Done.

23 Q. Did you testify at that time that you didn't know who  
24 Meridian Economic Advisors was at that time and exactly what



1 they were doing?

2 A. Yes, that's what it says.

3 Q. Now, you know that there was a change in the unit  
4 count today, as you're testifying today, correct?

5 A. A change in the unit count relative to the starting of  
6 the design, the completion of the design?

7 Q. I'm so sorry. I'll rephrase that.

8 Change in the unit count of the project, okay, from  
9 the time that you were first engaged with your letter of  
10 Exhibit 14.

11 A. Yes, there was a change in count.

12 Q. Let me direct your attention to Exhibit 91. Do you  
13 have the book in front of you, for 91?

14 A. No.

15 THE COURT: It's my understanding that Exhibit No. 91  
16 has not been admitted.

17 MR. PEREOS: I'm sorry? Ninety-one has not admitted?

18 MR. HOY: It has been admitted.

19 THE CLERK: I'm sorry, Your Honor, I was wrong, it has  
20 been admitted.

21 MR. PEREOS: It was admitted, that's what I thought.

22 BY MR. PEREOS:

23 Q. Are you there?

24 A. Yes, I'm there.

1 Q. Now, ninety-one is the Sullivan Group report, is it  
2 not?

3 A. That's what it says.

4 Q. Okay. Did you ever review that report?

5 A. I might have; I might not have. I was not the  
6 designer of the project, so it was not imperative for me to  
7 review that.

8 Q. Okay. Did you know that the Sullivan Group report,  
9 okay, talked in terms of 390 units?

10 A. Without reading it, I wouldn't know that.

11 Q. And the Sullivan Group report was prepared on -- well,  
12 let's go back.

13 It was prepared in October of '05, was it not?

14 A. I could only attest, that's what the cover says.

15 Q. Okay. And it was received by your office on  
16 November 4, '05?

17 A. That's what it says.

18 Q. Okay. And did you know that it evaluated what the --  
19 what the price was going to be with regard to the units?

20 A. No.

21 Q. Well, let's direct our attention to Bates number  
22 page 050052. Do you see where it says, "Number of units, 268  
23 and 122"?

24 A. In the chart at the bottom, yes.

1 Q. Okay. And if you add that up it amounts to about  
2 390 units. Do you see that?

3 A. Yes.

4 Q. Okay. Do you see where it talks about the average  
5 total price? It says, "Average base price," and then, "Average  
6 total price"?

7 A. Yes.

8 Q. Okay. Now, at any time did you multiply out the  
9 number of units based on -- by the base price or the price of  
10 the units as identified in the Sullivan Group report that  
11 determined the revenues that could be generated from sales?

12 MR. HOY: Objection, your Honor the witness already  
13 testified that he never reviewed this document.

14 THE COURT: Sustained.

15 MR. PEREOS: Okay.

16 BY MR. PEREOS:

17 Q. Did you even know that information was in there?

18 THE COURT: Mr. Pereos, I don't know how to be more  
19 clear --

20 MR. PEREOS: Okay. That's fine.

21 THE COURT: -- he said he hasn't read it, so --

22 MR. PEREOS: I'll move on; I'll move on; I'll move on.

23 BY MR. PEREOS:

24 Q. Did you even know that the report was in your office?

1       A.    I've said I don't know.  Other than the fact that it's  
2 been stamped in as being received, that's the only way I would  
3 know at this moment.

4           MR. PEREOS:  Court's indulgence for a second.

5           THE COURT:  Take your time.

6 BY MR. PEREOS:

7       Q.    Are you familiar with the fact that Exhibit 35 ran --  
8 or changed the condominium count to 390 units?

9       A.    Can I see the exhibit, please?

10       Q.    I'm sorry.

11           THE COURT:  It will probably be in front of you,  
12 Mr. Steppan.

13           MR. PEREOS:  I'm sorry.  I thought you had these books  
14 in front of you.

15           THE WITNESS:  Well, I can't reach down there.

16           MR. PEREOS:  I'm so sorry.  No, I agree, you can't.

17           THE WITNESS:  Thank you.

18           So the question you've asked me is --

19 BY MR. PEREOS:

20       Q.    Is whether or not you are aware that Exhibit 35  
21 changed the condominium count units to 390.

22       A.    I don't know what you're saying it changed from.

23       Q.    Well, why don't you take a look at Exhibit 35 and see  
24 if that tells you.

1           Are you familiar with Exhibit 35?

2           A.    I had previously testified that I read through the  
3 documents prior to trial.

4           Q.    Does Exhibit 35 tell you the number of units?

5           A.    Yes, 390.

6           Q.    Okay.  So are you familiar with the fact that  
7 Exhibit 36 changed the unit count to 394?

8           A.    That's a completely different question, but yes.

9           Q.    I'm sorry.  Was that a "yes"?

10          A.    Well, you had been asking me was I aware that  
11 Exhibit 35 had changed the unit count to 390.  Having looked at  
12 the exhibit, the exhibit shows that it was originally 390.

13          Q.    Okay.

14          A.    I've asked what you asked it was changing from.  And  
15 then you asked me if I was aware of Exhibit 36 changing the  
16 count from 35.

17                THE COURT:  Mr. Hoy, do you have an objection?

18                MR. HOY:  No, Your Honor, I'm just stretching.

19                THE COURT:  Stretching your legs, okay.

20 BY MR. PEREOS:

21          Q.    Okay.  Are you familiar with the fact that, Exhibit 36  
22 changed the unit count to 394 units?

23          A.    Yes.

24          Q.    Are you aware of the fact that Exhibit 37 changed the

1 unit count -- the unit count to 499?

2 A. Yes.

3 Q. Now, each of those documents, 35, 36 and 37, identify  
4 the architect as Fisher-Friedman Associates, does it not?

5 A. They do not.

6 Q. They do not? I'm so sorry.

7 Do they identify the person to contact as being  
8 Fisher-Friedman and Associates?

9 A. Yes.

10 Q. Do they identify the person to contact as being Mark  
11 Steppan?

12 A. No.

13 Q. If you had seen the draft of those applications, would  
14 you have addressed that issue?

15 A. I still might have had Nathan as -- I don't remember.  
16 As I've testified, I don't remember if I saw the drafts or the  
17 portions prepared by Wood Rodgers. Had I seen it or if I saw  
18 it, would I have changed the contact person from Nathan to me?  
19 Probably not. He was still the project manager and doing the  
20 day-to-day operations of the project under my supervision.

21 Q. Did you participate in the discussions regarding the  
22 change of unit count?

23 A. I was probably in the meetings when that was talked  
24 about, but I don't remember off the top of my head.

1 Q. Did you testify in your deposition that you did not  
2 participate directly in any meetings that changed the unit  
3 count?

4 A. I don't remember. If that's what I testified at that  
5 time, then that's what I said.

6 Q. Let's direct your attention to page 364 of your  
7 deposition --

8 A. Which one?

9 Q. -- Volume II. I'm sorry?

10 A. Which deposition?

11 Q. Oh, I'm so sorry. March 2, 2010.

12 A. Sorry. Excuse me.

13 Can you repeat the page, please?

14 Q. Sure, page 364, line 2 down to line 13.

15 A. Okay.

16 Q. Did you testify at the time of your deposition that  
17 you didn't participate directly in the change of the unit  
18 count?

19 A. Yes. That's what it says.

20 Q. And as a result, you didn't participate in any  
21 conversations regarding the change that would have occurred  
22 with regard to the parking?

23 A. Correct. It wasn't required of me.

24 Q. Did you attend any meetings that discussed unit

1 tabulation and parking or square footage in the units?

2 A. I don't honestly remember.

3 Q. Let's go to page 347 of your deposition.

4 As a preface, do you remember testifying at the time  
5 of the deposition you don't remember attending such a meeting?

6 A. You asked me to go to page 347?

7 Q. Yeah. Line -- I'm sorry, same deposition, March 2,  
8 2010, line 1 through line 15.

9 A. It says the same thing that I said today.

10 Q. Did you discuss and address any issues of parking with  
11 anybody at Wood Rodgers or the developer?

12 A. I don't believe I did. Given the fact that Rodney was  
13 the designer and Nathan was the project manager, they would  
14 have been having the bulk of those conversations, not me,  
15 anyway.

16 Q. Did you attend any meetings that discussed the  
17 increase in parking?

18 A. Since I don't remember participating in the  
19 conversations or those changes, I would have to say I don't  
20 remember, since that's consistent with my deposition.

21 Q. Did you prepare any of the modifications to the  
22 instruments of service that had changed because of the change  
23 of the unit count?

24 A. Are you -- if I may ask you a question back to make



1 sure I understand? Are you asking if I personally made  
2 document changes to the instruments of service that would be  
3 provided for the submissions?

4 Q. That's correct.

5 A. I did not make any of the CAB changes to any of the  
6 documents, no.

7 Q. Did you participate in any discussions involving the  
8 tentative map sheets that were being part of the applications?

9 A. I do not remember.

10 Q. Now, this project was approved after -- it was  
11 approved by the Reno City Council after the lien was recorded,  
12 was it not?

13 A. Yes.

14 Q. Let me direct your attention to -- do you have  
15 Exhibit 43 handy or do you need me to get --

16 A. I've got it.

17 Q. Okay. Here, I'll help you get that off your desk.

18 A. Thank you.

19 Q. I direct your attention to Exhibit 43, please.

20 A. Okay.

21 Q. Okay. Had you reviewed the Community Development  
22 Memorandum regarding this project?

23 A. I'm pretty sure I've looked at that.

24 Q. Okay. And some of the issues of concern, for

1 instance, appear as Items 1 through 13, do they not?

2 A. Well, they're comments. Item 1 is just discussing  
3 somebody's availability with intent to discuss the comments.

4 There are requests for information or telling us to  
5 provide certain pieces of information, like a site plan, in  
6 No. 2.

7 And there's basically a lot of engineering  
8 staff-requested pieces of information or discussions.

9 Q. Okay. And these are pieces of information that the  
10 Community Development is saying that they would like to see  
11 before the tentative map is approved?

12 A. That seems reasonable, yes.

13 Q. Okay. And some of the issues, for instance, is going  
14 to be the FEMA Flood Zone, Item No. 10? Do you see that?

15 A. Yes.

16 Q. And Item No. 11, the groundwater issue?

17 A. Yes.

18 Q. Let's direct your attention to Exhibit 47.

19 A. Okay.

20 Q. This is the letter addressed to Consolidated Pacific  
21 regarding the Planning Commission findings?

22 A. Okay.

23 Q. And it was received by your office on October 12,  
24 2006?

1 A. That's what the stamp says.

2 Q. Did you review this document?

3 A. I'm sure I did.

4 Q. Now, some of the items that the Planning Commission  
5 wanted addressed was Item No. 10, being the hydrology report?

6 A. Okay. Yes, it says that.

7 Q. Okay. Item No. 11, water quality issues?

8 A. Yes.

9 Q. Item No. 13, flood water issues?

10 A. Yes.

11 Q. And that precipitated Exhibit 48, which is the  
12 approval from the City of Reno, does it not?

13 A. Are you asking me if the --

14 Q. I'll ask you it this way --

15 A. Yeah.

16 Q. -- did that precede Exhibit 48, which is the approval  
17 from the City of Reno?

18 A. Yes. This information preceded the November approval.

19 Q. Okay. Were you present at the hearing before the Reno  
20 City Council?

21 A. No.

22 Q. Were you present at the hearing before the Planning  
23 Commission?

24 A. I've answered already, no.

1 Q. Now, was traffic a concern of the Reno City Council?

2 A. I don't remember who traffic was a concern for, other  
3 than probably everybody. Traffic is a concern almost on every  
4 single project that I've ever worked on that is a residential  
5 project that has cars involved, so --

6 Q. Okay.

7 A. That's as good as I can say.

8 Q. Why don't you take a look at Condition No. 26.

9 A. Are we in Exhibit 48, still?

10 Q. Please, we're on 48, um-hum.

11 A. Okay.

12 Q. Okay. Does that reference traffic studies being  
13 updated with regard to the movement of traffic on this project?

14 A. Yes. There was a traffic study that was part of one  
15 of the submissions.

16 Q. Okay. And there was an issue concerning the hydrology  
17 that was adopted in paragraph No. 10?

18 A. I'm sorry, where are you asking me to read?

19 Q. Paragraph 10, page 3 of Exhibit 48.

20 A. Yes. It's a request for a report addressing concerns  
21 about water flow on the site.

22 Q. Okay. And paragraph 11 addresses stormwater, effluent  
23 and discharge?

24 A. Yes. These are fairly normal requirements.

1 Q. And paragraph 12 talks in terms of on-site stormwater  
2 management?

3 A. Yes.

4 Q. Paragraph 13 discusses the FEMA Regs?

5 MR. HOY: Objection, he's just asking the witness to  
6 confirm what's in a document that's admitted into evidence. I  
7 think it's cumulative, Your Honor.

8 THE COURT: Mr. Pereos?

9 MR. PEREOS: I didn't know that that's improper  
10 cross-examination leading up to my next set of questions.

11 THE COURT: So you're suggesting that these questions  
12 are foundational questions --

13 MR. PEREOS: Yes.

14 THE COURT: -- to some ultimate other questions?

15 MR. PEREOS: Yes.

16 THE COURT: Okay. Go ahead.

17 BY MR. PEREOS:

18 Q. Paragraph 13 discusses the FEMA regulations?

19 A. Yes.

20 Q. And paragraph 14 talks in terms of drainage flow  
21 consistent with gravity flow?

22 A. Well, I don't know if it talks about consistency, but  
23 it talks about flow of the water, yes.

24 Q. All right. What about paragraph 28, how do you read

1 paragraph 28?

2 MR. HOY: Object to the form of the question.

3 THE COURT: Sustained.

4 BY MR. PEREOS:

5 Q. Did you read paragraph 28 when this report was issued?

6 A. As stated, I read the report; that would include all  
7 portions of it.

8 Q. Okay. Now, do all these items that are discussed in  
9 Items 1 through 37 of the approval, do they add to the cost of  
10 a project?

11 A. There are many items of approval that have costs  
12 associated with them.

13 Q. Okay. I'll accept that. Now, when you first  
14 undertook the assignment, did you know that there was no money  
15 lined up to pay what you claim to be the \$2,070,000 fee that  
16 would be due you for completion of the schematic design work?

17 A. No.

18 Q. When did you come to learn that issue?

19 A. I don't remember when in the process. Most likely in  
20 the time frame later in the year of -- middle of the year of  
21 2006, when they obviously weren't paying our invoicing is when  
22 it became apparent there were monetary issues.

23 Q. When did they go delinquency -- delinquent on the  
24 invoicing?

1       A.    I don't remember the month off the top of my head.

2       Q.    When did you submit your last invoicing for last work  
3 done?

4       A.    I believe it was after the approval of the project at  
5 the City -- at the November 15th meeting. Or that was a repeat  
6 of a previous one. I don't remember.

7       Q.    Do you consider it within your obligation to have  
8 designed this project within the parameters of \$180,000,000  
9 build-out costs?

10           MR. HOY:  Objection, Your Honor, asked and answered.

11           THE COURT:  Sustained.

12           MR. PEREOS:  Okay.

13           THE COURT:  Would you have undertaken a project like  
14 this had you known that the money wasn't there to pay you?  
15 That's kind of a common-sense question, but...

16           THE WITNESS:  If we had known when Sam came to us  
17 that -- if he said, "We have no money to pay you, but we want  
18 you to get started," then the answer is, no, we wouldn't have  
19 started.

20           THE COURT:  "And we're hoping to get the funding down  
21 the road"? Did FFA ever do that?

22           THE WITNESS:  No. We didn't start work not knowing  
23 that the client had the ability to pay us upfront as we started  
24 the work.

1 THE COURT: Next question.

2 BY MR. PEREOS:

3 Q. Who was handling the contract negotiations for the AIA  
4 contract?

5 A. I thought that --

6 THE COURT: Do you mean at Fisher-Friedman?

7 MR. PEREOS: Yes, at Fisher-Friedman. My apologies,  
8 my apologies.

9 THE WITNESS: Nathan Ogle and myself and a little bit  
10 of Rodney's participation.

11 BY MR. PEREOS:

12 Q. Did you generate any communications or any written --  
13 well, any written communication to Hale Lane or the developer  
14 in connection with those communications for the contract?

15 A. I believe I -- I believe I let all of that go through  
16 Nathan.

17 Q. Okay.

18 MR. PEREOS: Court's indulgence.

19 THE COURT: Take your time.

20 BY MR. PEREOS:

21 Q. Directing your attention to Exhibit 33, do you have  
22 that book handy?

23 A. It's in front. Thank you.

24 Q. Are you there?



1       A.    Yes.

2       Q.    This is the email regarding the delinquency of the  
3 account?

4       A.    Yes, it discusses that.

5       Q.    Okay.  And the delinquency of the account, the numbers  
6 referenced in this particular email are after you started  
7 billing for a percentage of that \$2,070,000 schematic design  
8 fee; is that correct?

9       A.    You're asking the amounts due in here are indicating  
10 the amounts due after the contract was signed?

11      Q.    And after you started billing for the percentages of  
12 the \$2,070,000, yes.

13      A.    Yes.

14      Q.    Okay.  In fact, if we go to those billings, which is  
15 Exhibit 24 -- you're welcome to look at it.

16      A.    Twenty-four or 25?

17      Q.    No, let's start with 24.  Twenty-four is the billings  
18 for the work that was done based upon the billing or the  
19 agreement of Exhibit 14, that is, the letter agreement to go  
20 forward on a time and hourly basis, correct?

21      A.    Exhibit 24 are invoices around dash 01 which is the  
22 hourly recording, yes.

23      Q.    Okay.  And then we go to Exhibit 25 and that's when  
24 you started billing for the percentage of the 2,070,000 that

1 would otherwise be owed under the fixed-fee contract; is that  
2 correct?

3 A. That was -- this appears to be the first bill under  
4 the terms of the agreement of a fixed-fee percentage, yes.

5 Q. Okay. And that first bill is May 18, 2006?

6 A. Yes.

7 Q. Is there a reason why you waited until May 18, 2006,  
8 to send that first bill?

9 A. Because our invoicing was done in the middle to the  
10 end of the month, it's not done --

11 Q. Well, then why wasn't it sent out, for instance, on  
12 June 15th or June 16th or June 17th, 2006, for a percentage of  
13 the 2,070,000?

14 A. I can't answer why it might not have been issued at a  
15 later date. I'm sure it was issued at this date relative to  
16 the signing of the agreement.

17 Q. Well, I'm asking you, is there a reason why you didn't  
18 invoice the client for the 2,070,000, okay, and then give them  
19 a credit for what they paid on the hourly contract?

20 A. We invoiced them for the -- effectively, for the work  
21 done to date as a credit against the total 20 percent for  
22 schematic design. We would not have invoiced them the  
23 2,070,000 until we were complete with schematic design.

24 Q. But none of those invoices that are marked on

777

1 Exhibit 24 reflect on the invoicing that there is going to be a  
2 credit against the debt owed of 2,070,000 for completion of the  
3 schematic design, does it?

4 MR. HOY: Objection, misstates exactly what the first  
5 invoice in Exhibit 24 says.

6 MR. PEREOS: No, it doesn't.

7 THE COURT: Well, Exhibit 24, the first invoice, dated  
8 November 22nd of 2005, it's a two-page document, speaks for  
9 itself. It says that -- and this is during the stopgap period  
10 of time -- that the total hours times charges is \$39,190.  
11 That's the invoice. Am I missing something?

12 MR. HOY: And then it says, "Note, billing shall be  
13 credited to SD/Entitlements phase once contract is signed."

14 THE COURT: Right. Because this is during the period  
15 of time when the parties were still negotiating --

16 MR. HOY: Correct.

17 THE COURT: -- the AIA contract.

18 MR. PEREOS: Okay. I don't have a problem with that.  
19 So I'll rephrase my question if it's any easier.

20 THE COURT: Go ahead and rephrase the question.

21 MR. PEREOS: Okay.

22 BY MR. PEREOS:

23 Q. Are you telling this Court that that notation was sent  
24 out with the invoice?

1       A.    I have no idea.

2       Q.    Okay.  So let's go to the invoice of December 20,  
3 2005, being Bates No. 3306.  Is there anything contained in  
4 that invoice indicating that the amount of payment of this  
5 invoice is credited towards the 2,070,000 that would otherwise  
6 be owed?

7       A.    Could you repeat the Bates number?

8       Q.    Is there anything contained in that invoice that would  
9 indicate that the amount paid on this invoice would be credited  
10 against the 2,070,000?

11      A.    I asked if you could repeat the Bates number, please.

12      Q.    Oh, I'm so sorry.  3306.

13      A.    Which -- I'm sorry, which exhibit, then?

14           THE COURT:  Twenty-four.

15 BY MR. PEREOS:

16      Q.    I have a question on 3306, Bates number page 3306.

17      A.    3306?

18      Q.    Um-hum.

19           THE COURT:  The Court will just take notice that there  
20 is nothing that indicates that in the document.

21           MR. PEREOS:  All right.

22           THE COURT:  And the second page of that invoice has a  
23 note that says, "Terms:  Payable 30 days from date of invoice,  
24 unless otherwise governed by contract terms.  Past due invoices

1 will carry a service charge of one-and-one-half percent per  
2 annum."

3 BY MR. PEREOS:

4 Q. Did you previously characterize your role in prior  
5 deposition testimony, that your role was only to stamp  
6 documents and sign the AIA contract?

7 A. I don't remember if that is specifically what I said.  
8 We've already looked at testimony today from one of my  
9 depositions that I was, as you quoted, a supervising architect  
10 overseeing the work product.

11 Q. Let me direct your attention to page 334 of your  
12 deposition of March 2, 2010.

13 A. Okay.

14 Q. And read to yourself line 13 to the next page, line 6,  
15 and ask whether or not -- and my question to you is whether or  
16 not the question asked as to what your role was in this  
17 particular project?

18 A. Well, this portion of it is speaking to the previous  
19 part of the questioning, which is talking about communications  
20 coming from Washoe County and whether I needed to be looped in  
21 or not looped in.

22 The basics of the architect of record, in addition to  
23 the supervisory role, per the requirements, talks about the  
24 role of that level of supervision, so that you're able to stamp

1 and sign the documents. That occurs at the time of building  
2 permit submission, that type of full oversight. Excuse me.

3 Q. The question starts on line 13:

4 "In distinguishing between required, sir, and what you  
5 understood your role to be, was there anything, other than  
6 putting your stamp on documents, that was appropriate to be  
7 communicated to you rather than someone else at Fisher-Friedman  
8 Associates?

9 "Answer: I'm not sure I can think of anything in  
10 specifics, as we sit here.

11 "Question: So sitting here today, you understand --  
12 your understanding of what was required of you with respect to  
13 the Reno project was putting your stamp on documents?

14 "Answer: And signing of the contract.

15 "Question: Anything else?

16 "Answer: Probably, but I can't think of anything  
17 specifically.

18 "Question: I appreciate that. Is there anything that  
19 you would -- you could look at, sir, that would refresh your  
20 memory to answer my question?

21 "Answer: Not that I can think of."

22 THE COURT: Mr. Hoy, do you have an objection?

23 MR. HOY: I have an objection and a motion to strike.

24 First of all, counsel starts reading into the trial

1 record what is in the deposition record, without having  
2 permission to do that.

3           Second, he's taking it out of context and has  
4 mischaracterized what he just read, by not putting it into the  
5 context of the deposition examination.

6           THE COURT: I'll allow you to make the proper -- well,  
7 to put it into what you feel to be the appropriate context on  
8 redirect examination.

9           Go ahead, Mr. Pereos.

10          MR. PEREOS: Thank you.

11 BY MR. PEREOS:

12          Q. Did you at any time ever discuss the AIA contract with  
13 Sam Caniglia?

14          A. I don't remember.

15          Q. Calvin Baty?

16          A. Most likely not, as the communications seem to be more  
17 through Sam and Cal and the folks at Hale Lane.

18          Q. Cal Bosma?

19          A. Probably, but I can't guarantee it.

20          Q. Let me direct your attention --

21          MR. PEREOS: May I have the deposition of the witness,  
22 of March 3, 2010, opened and published?

23          THE COURT: Any objection, Mr. Hoy?

24          MR. HOY: No objection, your Honor.

1 THE COURT: So ordered.

2 THE CLERK: The deposition of Mark Steppan, Volume  
3 III, dated Wednesday, March 3, 2010, is opened and published.

4 THE COURT: So eventually we got to all four.

5 MR. PEREOS: We got to all four.

6 THE WITNESS: Two depositions.

7 MR. HOY: What I enjoyed on the prior openings,  
8 though, is that when the clerk said, "It will be opened and  
9 published," then she would punctuate it with the stamp at that  
10 point. And you were ahead of it with the stamp this time.

11 BY MR. PEREOS:

12 Q. Let me direct your attention to page 442 of your  
13 deposition. I want you to read to yourself, line 9, go to the  
14 end of that particular -- well, you have to go to line 6 on  
15 page 443, with the question as to whether or not you previously  
16 testified that you did not have any communications with Cal  
17 Bosma.

18 A. I believe I said I don't remember, not that I didn't  
19 have them.

20 MR. PEREOS: I have no further questions.

21 THE COURT: Mr. Hoy, redirect examination of the  
22 witness.

23 MR. HOY: Thank you, Your Honor.

24 THE COURT: We've got about 15 or so minutes, so take



1 as much time as you want. If we have to come back after our  
2 afternoon break, we can certainly do so.

3 MR. HOY: Okay.

4 REDIRECT EXAMINATION

5 BY MR. HOY:

6 Q. Mr. Steppan, you were just asked a question about your  
7 deposition testimony on March 3, 2010, on pages 442 and 443.

8 And when you gave testimony about having meetings with  
9 Sam Caniglia, you were asked specifically about a range of  
10 dates, is that right, in your deposition?

11 A. Correct.

12 Q. You weren't testifying that you never talked to Sam  
13 Caniglia, were you?

14 A. No.

15 Q. Did you ever meet with Sam Caniglia about the Reno  
16 Wingfield Towers project?

17 A. Yes.

18 Q. How many times?

19 A. I'm sure Sam was at our office more times than I can  
20 count on my two hands.

21 Q. At the initial meeting back in October of 2005, did  
22 you meet Mr. Caniglia at that time?

23 A. Yes.

24 Q. Did you ever talk to Mr. Caniglia on the telephone?

1       A.   Probably not by myself, but on the conversations with  
2 Rodney, yes.

3       Q.   Okay.  And was it your understanding that Mr. Caniglia  
4 was the main contact person between Fisher-Friedman and  
5 Associates and the developer on the other hand?

6       A.   Generally speaking, yes.

7       Q.   And then counsel asked you a question or two from your  
8 March 2nd deposition, at pages 334 and 335.  And he actually  
9 read into the record more than what he asked you to review, as  
10 a prelude to his question.

11           And what he read into the record had to do with your  
12 only role on the project being stamping the drawings and  
13 signing the contract.  But in the context of the deposition --  
14 what was the context of the deposition question that was put to  
15 you in those pages?

16       A.   This was the March 2nd?

17       Q.   Yes.

18       A.   What page again?

19       Q.   Three three four.

20       A.   Thank you.

21           It was in the context of the -- of questions revolving  
22 around conversations that Nathan or others would have had with  
23 the City of Reno or Washoe County employees, as to who would  
24 have had those conversations and things like that.

1 Q. So the context of the question was not, "Tell me  
2 everything you did with respect to the project," it was, "Tell  
3 me everything that you did that would have to be communications  
4 with the City of Reno"?

5 A. That's how I understand the gist of the original  
6 question, yes.

7 Q. And, in fact, did you do more for the Wingfield Towers  
8 project on behalf of Fisher-Friedman Associates than just stamp  
9 drawings and sign the contracts?

10 A. Well, I signed the contracts, obviously. I  
11 participated, as its been stated in multiple places, in  
12 meetings and presentations; internally oversaw work that was  
13 being produced in the office; participated in discussions on  
14 the project.

15 Obviously there was no actual stamping or sealing of  
16 documents by me, because that would have occurred at submission  
17 for the building permit at the end of the construction  
18 documents phase only.

19 Q. Do you confirm your testimony from this morning that  
20 you maintained responsible control and direct supervision of  
21 the work performed by Fisher-Friedman Associates for the  
22 Wingfield Towers project?

23 A. Yes.

24 MR. HOY: No more questions, thank you.

1           THE COURT: Any recross examination based on the  
2 redirect?

3           MR. PEREOS: No.

4           THE COURT: Thank you, Mr. Steppan. You may step  
5 down. If you would be so kind as to -- you can leave the  
6 binders there, but if you would return the deposition testimony  
7 to the clerk.

8           THE WITNESS: Will do.

9           THE COURT: Thank you, sir. I appreciate that.

10          MR. HOY: May I help out the witness?

11          THE COURT: I would appreciate that. Thank you,  
12 Mr. Hoy.

13          MR. HOY: The plaintiff rests, Your Honor.

14          THE COURT: Thank you.

15          Counsel, it's about -- oh, I've got about five minutes  
16 or so after 3:00. Would the parties like to take our afternoon  
17 recess now?

18          It will give you an opportunity, Mr. Pereos, to  
19 prepare for whatever evidence you may choose to present to the  
20 Court. Or would you like to get started now and take a break  
21 in a few minutes?

22          MR. PEREOS: With the Court's permission, I would like  
23 to get started now. You will understand why in a second.

24          THE COURT: Okay. Then why don't we start now.

1           Mr. Pereos, your first witness, please.

2           MR. PEREOS: Well, I'm not going to call a witness  
3 yet, but I want to make a motion to dismiss the Complaint.

4           THE COURT: Go ahead.

5           MR. PEREOS: Based upon the fact that counsel has  
6 rested his case, I have prepared a legal memorandum. He has  
7 failed to meet and prove that which is required under NRS  
8 108.239. Here's a copy of the memorandum for the Court.

9           NRS 108.239 mandates -- and the Nevada Supreme Court  
10 has observed that when it comes to compliance with the  
11 mechanic's lien laws, there's to be strict compliance, not  
12 substantial compliance.

13           NRS 108.239 mandates that there must be a recording of  
14 a lis pendens. And NRS 14.010 mandates that the recording of  
15 the lis pendens must be done within 30 days after the  
16 commencement of the lawsuit.

17           There has been no evidence introduced that there's  
18 been a recording of a lis pendens.

19           And I would like to talk about the logical reason for  
20 that. Because when a title searcher searches the record, they  
21 will find a mechanic's lien. And by statute, that mechanic's  
22 lien expires within six months.

23           And the title searcher is not going to know, or  
24 anybody else searching the record is not going to know that a

1 lawsuit was started to foreclose that mechanic's lien, without  
2 the recordation of a notice of lis pendens.

3           The record is void of any notice of lis pendens, nor  
4 have I ever seen one in my review of all the documents. But  
5 I'm not -- I know I'm not supposed to personally get involved,  
6 and to that degree, I apologize. Maybe it's out there and I  
7 just didn't see it.

8           The statute, NRS 108.239, also mandates that when you  
9 file your Complaint for foreclosure, you must publish in the  
10 newspaper, notification of the foreclosure.

11           The purpose for that, if you read the statute, is  
12 clear. It's so that every other lien claimant, or anybody else  
13 having an interest in this property, join in this lawsuit so  
14 that when this Court issues a judgment, if it were to issue a  
15 judgment of foreclosure authorizing the sale of the property,  
16 it would be in a position to join and bring everybody else in  
17 the proceedings. And if they had not done so, the Court can go  
18 ahead and say, "Sheriff, I authorize you to sell the property  
19 to satisfy a judgment in the amount of X number of dollars."  
20 And that property would be transferred free and clear of any  
21 liens. That's in the statute.

22           And there's been absolutely no evidence introduced  
23 regarding proof of a publication on that. And I repeat, the  
24 cases I've cited, talk in terms of the Nevada Supreme Court

1 dictating that there be strict compliance, to be distinguished  
2 from substantial compliance. And as a result, I make a 50(a)  
3 motion to dismiss. And with the Court's permission I would  
4 like to file the original with the Court.

5 THE COURT: Okay. You're permitted to file the  
6 original.

7 Mr. Hoy?

8 MR. HOY: Thank you, Your Honor.

9 At the time the original mechanic's lien was recorded,  
10 there was no lis -- I'm sorry. At the time this action was  
11 originally commenced, there was no lis pendens recorded and  
12 there was no newspaper publication, at least not so far as I  
13 can tell from the files that we've inherited.

14 When we did inherit the files, we did record a lis  
15 pendens. And I can certainly find that online and I can make a  
16 motion to reopen the evidence to offer that. I can also get  
17 the proof of publication. As soon as we received the file, we  
18 did publish pursuant to the statute.

19 But I don't think it's really necessary, because there  
20 is a court case -- and I was trying to find it and I think I  
21 can find it during the break for you. The United States  
22 District Court for the District of Nevada has ruled on this  
23 very issue, and ruled that the lis pendens is not fatal to the  
24 lien foreclosure action.

1           Now, of course, U.S. District Court decisions are not  
2 binding, but the -- on this Court, but I think that the logic  
3 of that case is instructive for this case.

4           THE COURT: Then what we'll do is, we will take a very  
5 brief recess of approximately 15 minutes now -- it's ten  
6 minutes after 3:00 -- and I will allow counsel to collect the  
7 information that you've just described, both the United States  
8 District Court case and any other documents that you feel would  
9 demonstrate proof that the lis pendens had been filed or proof  
10 of publication that would comply with the statutes, and we'll  
11 come back and reconvene -- it certainly is possible that at  
12 this point we won't take any further testimony today, because I  
13 would like to have the opportunity to review the legal  
14 memorandum that was prepared by Mr. Pereos, as well as  
15 entertain any argument Mr. Pereos may have about the  
16 possibility of reopening the plaintiff's evidence at this  
17 point, or any argument that he may have about the case law  
18 cited by counsel for the plaintiff.

19           So Court will be in recess until approximately, let's  
20 say, 3:30. That will give you about 20 minutes.

21           MR. PEREOS: Your Honor, if I may?

22           THE COURT: Yes.

23           MR. PEREOS: Directive, I have witnesses lined up.  
24 I'm to cancel them?



1           THE COURT: No, I'm not saying you should cancel them  
2 yet.

3           MR. PEREOS: Keep the witnesses?

4           THE COURT: You might want to keep them on -- keep  
5 them available. My concern is, is that I don't want to make  
6 just an off-the-cuff ruling on a very important issue that  
7 you've raised, without the opportunity -- or, excuse me,  
8 without the opportunity to have oral argument from both  
9 parties.

10          MR. PEREOS: No, I understand that. But I don't know  
11 whether to have my witnesses here ready to testify this  
12 afternoon. I have my first witness coming in at 4:00 and it's  
13 Karen Dennison.

14          I'll do what the Court tells me.

15          THE COURT: No, I understand, Mr. Pereos. I  
16 appreciate that. I'm just trying to think about not  
17 inconveniencing Ms. Dennison, but I also don't want to waste  
18 the remaining hour and 45 minutes, or at least hour and a half  
19 of the Court's and counsels' time today by just telling you not  
20 to do something.

21          How many witnesses do you anticipate calling,  
22 Mr. Pereos?

23          MR. PEREOS: Today I had two lined up, Karen Dennison  
24 and Mr. Clark. It depends how late Karen Dennison goes, too.

1 I will only be 10, 15 minutes with Karen Dennison, but I don't  
2 know how long cross will be. And then Mr. Clark was lined up  
3 and that was it for today.

4 THE COURT: And what do you have for tomorrow?

5 MR. PEREOS: Tomorrow I have the remaining witnesses  
6 of -- well, Sonnia will go on the stand, Sonnia Iliescu. I  
7 could put her on almost any time to fill a gap on that. And  
8 possibly Joe Campbell, but I don't know yet, okay, I haven't  
9 made that final decision.

10 THE COURT: Joe Campbell, the person doing the more  
11 recent --

12 MR. PEREOS: The appraisal.

13 THE COURT: -- appraisal on the property?

14 MR. PEREOS: I'm problematic on that one. I will be  
15 the first to admit to that.

16 Mr. Iliescu might be taking the stand again.

17 THE COURT: Okay.

18 MR. PEREOS: Okay.

19 THE COURT: Well, why don't we do this: We'll be in  
20 recess until 3:30 -- so that's about 17 minutes -- and I'll  
21 come back and let you know what we need to do and then we can  
22 take another very brief recess and I'll give you the  
23 opportunity to contact Miss Campbell or any -- or, excuse me,  
24 Mr. Campbell -- strike that.

1 MR. PEREOS: Ms. Dennison or Mr. Clark.

2 THE COURT: Ms. Dennison or Mr. Clark regarding their  
3 testimony for today. Court is in recess.

4 (Recess taken.)

5 THE COURT: The Court has, on the break, had the  
6 opportunity to review the legal memorandum in support of  
7 dismissal for failure to comply with statute for foreclosure  
8 pursuant to Nevada Rule of Civil Procedure 50, filed in Court  
9 by Mr. Pereos.

10 The Court also has had the opportunity to review the  
11 case referenced by Mr. Hoy, that being the United -- excuse  
12 me -- West Charleston Lofts I, LLC, versus R&O Construction  
13 Company, 915 F.Supp.2nd, 1191, from January of this year.

14 As Mr. Hoy states in his opposition to the defendant's  
15 motion, the issues touched on in West Charleston versus R&O  
16 Construction are similar, if not identical, to those issues  
17 that are touched on by Mr. Pereos's motion.

18 Judge Pro of the Federal District Court analogizes the  
19 situation presented to one where the failure to provide the  
20 notice contemplated in Chapter 108 doesn't provide the relief  
21 requested by Mr. Pereos.

22 Specifically, as I read West Charleston versus R&O  
23 Construction, Judge Pro is actually saying in that holding that  
24 really the lack of filing a notice of lis pendens and the lack

1 of filing, potentially, the publication, go to future  
2 purchasers of the property and what are known as bona fide  
3 purchasers, that they may have some claim down the road that  
4 they purchased the property free and clear, if in fact the  
5 lienholder doesn't comply with the strict requirements of  
6 Nevada Revised Statute Chapter 108, regarding the filing of  
7 mechanic's liens.

8           However, those persons who have actual notice of the  
9 lien don't get to claim, somehow, that failure to follow  
10 strict -- the strict compliance of the statute relieves them of  
11 any ability to claim rights that they may have.

12           And so I would understand Mr. -- or, excuse me,  
13 Mr. Hoy's argument to be that while it may be true, as the case  
14 stands at this instance, that there is no evidence of a  
15 mechanic's lien -- or, excuse me, of a lis pendens and notice  
16 of publication, that doesn't in any way help Mr. -- or, excuse  
17 me, Dr. Iliescu, simply because based on a previous ruling by,  
18 I believe, Judge Adams, he was on notice; and, therefore, he  
19 does not get to claim that he somehow is free of that notice.

20           Mr. Hoy, do you have any additional argument that you  
21 wish to make?

22           MR. HOY: Yes, Your Honor. And begging the Court's  
23 pardon in advance for going a little beyond what the Court has  
24 done to analyze this issue so far -- and Mr. Pereos and I have

1 been working on mechanic's lien cases for more than a few  
2 decades and so we both know a lot of background that probably  
3 has not come to this Court's attention during your short  
4 tenure.

5 THE COURT: True.

6 MR. HOY: But let me just set the stage this way.

7 When a lien claimant -- the first step that the lien  
8 claimant takes is perfecting the lien, what we call perfecting  
9 the lien. And to do that, you've got to give a pre-lien notice  
10 in some circumstances, but not all circumstances; you have to  
11 record a mechanic's lien. And then within a six-month time  
12 period you have to bring a suit to foreclose the mechanic's  
13 lien. Because as Mr. Pereos said, accurately, if you don't  
14 bring a timely lawsuit to foreclosure of a mechanic's lien, the  
15 lien simply evaporates.

16 THE COURT: It expires.

17 MR. HOY: It expires. That's what the statute says.

18 So in land development, title companies are typically  
19 looking at the public record to see if there has been a lis  
20 pendens, and they also go to the courthouse to see if there's  
21 any new litigation filed to foreclose any mechanic's liens that  
22 they see of record.

23 Judge Pro was absolutely correct in his analysis and  
24 say, look, the purpose of the lis pendens is to warn potential

1 buyers of the property -- not the current property owner, but  
2 potential buyers of the property -- that this land may be  
3 encumbered by a lien and that that lien is in a foreclosure  
4 proceeding.

5           Now I would like to shift over to the publication in  
6 the newspaper. The purpose of the publication in the newspaper  
7 is several-fold. Number one, it also gives notice, some notice  
8 to the world, although not as good a notice as a lis pendens,  
9 to potential buyers, but it's also there for other potential  
10 mechanic's lien claimants.

11           Because the procedure at least used to be that the  
12 first party who filed a suit to foreclose a mechanic's lien had  
13 to give this notice so that other lien claimants could join in  
14 the action. And we had a specialized form of joinder called a  
15 "Statement of Facts Constituting Lien." That was the actual  
16 name of the pleading.

17           And so all of the other lien claimants would join in.  
18 Because, of course, if there's going to be a foreclosure, the  
19 Court has to decide who has priority, how the proceeds of the  
20 sale are disbursed and so forth. Because laborers get paid  
21 first and then I think -- I can't remember the priorities.

22           The procedure today is a little bit different. Today  
23 multiple lien claimants can file multiple actions, and then  
24 typically there is just a motion to consolidate. And, of

1 course, these are all on a piece of property, so it's all going  
2 to be done within a single county, anyway.

3           The difficulty there becomes, what happens if some  
4 lien claimants go to federal court and some are in state court?  
5 Then you've got a procedural nightmare.

6           But the point of the publication is not to give the  
7 owner notice of the lien; the point of the publication is to  
8 give other lien claimants and potential buyers notice of the  
9 lien foreclosure action, not the lien itself.

10           THE COURT: So they wouldn't -- they would know. And  
11 my understanding is, if you put those parties on notice that  
12 they need to take some action, as well, that there is an issue  
13 regarding this piece of property, regarding this lien -- and  
14 presumably those people would review the newspapers where the  
15 publication occurs -- and, in essence, say, "Oh, I need to join  
16 in" or, "I need to perfect my interest in this property, as  
17 well."

18           MR. HOY: Right. And I'm not aware of any precedent  
19 that specifically addresses the publication issue, but I would  
20 argue that it's the same analysis that Judge Pro used with  
21 respect to the lis pendens.

22           THE COURT: And Judge Pro -- so the record is totally  
23 clear, Judge Pro only discusses in the issues in West  
24 Charleston versus R&O Construction, only address the lis

1 pendens, they don't say anything about the publication.

2           MR. HOY: Correct. And the motion, Your Honor, does  
3 not cite to any precedent with respect to either the lis  
4 pendens or the publication issue directly. What it is, is a  
5 collection of Nevada cases and cases from outside of our  
6 jurisdiction that talk about strict compliance with the lien  
7 statute.

8           And I guess the first point is that these requirements  
9 that are discussed in the motion are not requirements to  
10 perfect the mechanic's lien itself, they are simply things that  
11 should be done any time you have a Court action that affects  
12 real property, at least with respect to the lis pendens.

13           In fact, the mechanic's lien statute in Chapter 108  
14 refers you back to Chapter 14, and Chapter 14, of course,  
15 requires a lis pendens in any action that affects the title to  
16 real property.

17           In my reading of the Nevada decisions on mechanic's  
18 liens over the years, it seems to me that some of the decisions  
19 are a little bit schizophrenic, in the sense that some talk  
20 about liberal construction and others talk about strict  
21 compliance. And as practitioners in this area, we've all  
22 struggled with it.

23           Of course, we've got the Fondren decision, talking  
24 about the pre-lien notice. And in Fondren, even though the



1 statute says, "you shall give this pre-lien notice," the Nevada  
2 Supreme Court nevertheless said, "If there is actual notice,  
3 that's good enough." And that was the basis for Judge Adams'  
4 ruling.

5           Years ago --

6           THE COURT: That's consistent with the West Charleston  
7 ruling, as well. At least I would say it is.

8           MR. HOY: And there's another case that I think -- the  
9 most recent case from the Nevada Supreme Court, talking about  
10 its attitude with respect to compliance with the mechanic's  
11 lien statute is called Lehrer McGovern -- Lehrer is  
12 L-e-h-r-e-r, McGovern, Bovis, B-o-v-i-s, against Bullock  
13 Insulation. It's 124 Nev. 1102, and I don't have a Pacific  
14 citation for that.

15           But starting at page 1040, the Court says -- and just  
16 to set the stage, the issue in this Lehrer McGovern Bovis case  
17 has to do with contractual waivers of mechanic's lien rights.  
18 In other words, one party put in the contract that you're  
19 waiving your lien rights, whatever they are.

20           California for many years has held you can't do that  
21 because it's a constitutional right in the state constitution.  
22 In Nevada there was a statutory change in 2003 or 2005, that  
23 says that's against public policy, you can't ask somebody to  
24 waive it.

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1 But here's what the Nevada Supreme Court said in its  
2 decision -- and this is some famous litigation out of the  
3 construction of the Venetian, Phase III, I believe.

4 "The Venetian argues that the district court erred  
5 when it concluded that the agreement's lien waiver clause was  
6 unenforceable based upon public policy considerations as  
7 codified in NRS Chapter 108, Nevada's mechanic's liens laws.

8 "When the facts in a case are not in dispute, contract  
9 interpretation is a question of law, which this court reviews  
10 de novo. A contractor has a statutory right to a mechanic's  
11 lien for the unpaid balance of the price agreed upon for labor,  
12 materials, and equipment furnished." Quote, "'The object of  
13 the lien statutes is to secure payment to those who perform  
14 labor or furnish material to improve the property of the  
15 owner.'"

16 And there is a footnote and I can't easily get to the  
17 footnote.

18 "This Court has held on numerous occasions," quote,  
19 "'that the mechanic's lien statutes are remedial in character  
20 and should be liberally construed,'" end quote. Footnote.

21 "Similar to this court, the California Supreme Court  
22 also liberally construes mechanic's lien laws, considering them  
23 to be remedial in nature. Accordingly, the California court  
24 has concluded that," quote, "'public policy strongly supports

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1 the preservation of laws which give the laborer and materialman  
2 security for their claims,'" end quote. "Underlying the policy  
3 in favor of preserving laws that provide contractors secured  
4 payment for their work and materials is the notion that  
5 contractors are generally in a vulnerable position because they  
6 extend large blocks of credit; invest significant time, labor,  
7 and materials into a project; and have any number of workers  
8 vitally depend upon them for eventual payment. We determine  
9 that this reasoning is persuasive as it accords with Nevada's  
10 policy favoring contractors' rights to secured payment for  
11 labor, materials, and equipment furnished."

12           Of course, Your Honor, that is not directly on point  
13 with our case, but I think it is reflective of the Nevada  
14 Supreme Court's attitude about the relative positions of  
15 property owners and mechanic's lien claimants.

16           So with that Your Honor, I would submit that the  
17 motion should be denied.

18           THE COURT: Mr. Pereos.

19           MR. PEREOS: Yes, Your Honor. I think we're  
20 forgetting the fact that the ultimate end of what counsel or  
21 plaintiff is seeking, Mr. Steppan in this case, is a judgment  
22 for foreclosure.

23           In order to issue a judgment for foreclosure, this  
24 Court needs to bring together everybody that has an interest in

1 this particular property. And jurisdictionally, it has no way  
2 to know whether or not everybody has received such a notice  
3 without the publication, because there is no evidence that  
4 there's a publication of summons. All right.

5           This is beyond the issue as to the notice of Iliescu  
6 with regard to the notice of the mechanic's lien and the lis  
7 pendens, this goes to the authority of the Court to issue a  
8 judgment of foreclosure eliminating the particular liens and  
9 those that have an interest in the property.

10           THE COURT: Mr. Pereos, Mr. Hoy has provided to the  
11 court, and it's my understanding provided to counsel as well, a  
12 copy of a notice -- is this the notice of lis pendens,  
13 Mr. Pereos?

14           MR. PEREOS: Yes, the notice of lis pendens.

15           THE COURT: Right. So he's provided that to the  
16 Court, so it does in fact exist.

17           We were able to determine on the break that the Court  
18 does obviously have the authority to allow Mr. Hoy to reopen  
19 his case and provide this certified copy of a document from the  
20 Washoe County Recorder's office.

21           Specifically in Andolino, A-n-d-o-l-i-n-o, versus  
22 State, 99 Nev. 346, at 351, the Nevada Supreme Court says that:

23           "Generally, the decision to reopen a case for the  
24 introduction of additional evidence is within the sound

1 discretion of the trial court. Leave to amend and reopen  
2 should be freely given in order that justice may be done.  
3 Where an essential element of a party's case can easily and  
4 readily" -- "can" -- I apologize.

5 "Where an essential element of a party's case can be  
6 easily and readily established by reopening the case, refusal  
7 to allow the case to be reopened will most often constitute an  
8 abuse of discretion."

9 And so -- and I've omitted all the citations to other  
10 case law in that citation that I just read, but there are cases  
11 from the states of Idaho, Utah, New Mexico and Arizona  
12 contained therein.

13 And so should the Court grant the request that Mr. Hoy  
14 has made prior to the break to reopen the case and to provide  
15 this document, which clearly exists, wouldn't it resolve the  
16 issues that are presented in your legal memorandum and resolve  
17 the issue that you've raised?

18 MR. PEREOS: It resolves -- and the name of the cases?  
19 I'm not disputing the authority.

20 THE COURT: It's Andolino, A-n-d-o-l-i-n-o, versus the  
21 State of Nevada, 99 Nevada 346. It's a 1983 case.

22 MR. PEREOS: It resolves the issue with regard to the  
23 lis pendens, as well as if the Court adopts the Charleston  
24 ruling that the lis pendens would achieve no end because of the

1 constructive notice or at least of the notice to John Iliescu  
2 to the pending lawsuit.

3           It doesn't resolve the issue of the jurisdiction of  
4 this Court to be able to issue a judgment of foreclosure,  
5 because as this record now exists -- and even if the Court  
6 wants to reopen the record to permit amendments or additional  
7 evidence, the Court does not know what's out there with regard  
8 to this property. You don't know. There's no record.

9           There is no record as to what interests people have in  
10 connection with this property, whether they be recorded or  
11 unrecorded. And for that purpose, I think --

12           THE COURT: Well, how would I ever know about  
13 unrecorded interests in the property?

14           MR. PEREOS: That's what the notice of the publication  
15 of summons is designed to do; it's designed to put the world on  
16 notice that, look, there's a lawsuit going; that you've got a  
17 responsibility at least to follow the legal publications; if  
18 you have an interest in this property, you need to join in  
19 these proceedings, because I'm going to issue or may issue a  
20 judgment for foreclosure, which would then impact your rights  
21 to this property.

22           You don't know that. You don't even know -- you don't  
23 have a title report that tells you what currently exists  
24 against this property. It's not in evidence.

1 THE COURT: Mr. Hoy?

2 MR. HOY: Yes. Thank you, Your Honor.

3 I think Mr. Pereos's understanding of foreclosure law  
4 is incorrect. Let's take a simpler example.

5 Suppose that there's a deed of trust that's being  
6 judicially foreclosed. If the Court is asked to judicially  
7 foreclose a deed of trust, that foreclosure is subject to any  
8 prior liens. So that if you have an owner, a first deed of  
9 trust beneficiary and a second deed of trust beneficiary, if  
10 the Court orders the foreclosure of the second deed of trust,  
11 that second deed of trust beneficiary then takes the property  
12 subject to the first deed of trust.

13 And so it is with mechanic's liens. Now, one of the  
14 big issues in mechanic's lien litigation is called busted  
15 priority. And here's how it happens. Sometimes the owner --  
16 and this used to happen quite often in housing tracts.

17 The owner would have a construction and development  
18 loan, evidenced by a deed of trust attached to the property,  
19 let's say January 30th. A year later, all of the  
20 subcontractors who didn't get paid say, "I'm going to record a  
21 mechanic's lien," and they record their mechanic's lien, say,  
22 eight months later, after that deed of trust is already on the  
23 land.

24 Well, the mechanic's lien law is that the mechanic's

1 lien attaches for the purpose of determining priority when the  
2 first work was done on the property -- not the first work of  
3 the particular lien claimant, the first work done by anybody on  
4 the property.

5           And so if you had a surveyor out on the land before  
6 the development loan was recorded, all of those mechanic's  
7 liens could theoretically be ahead of the lender on the  
8 development loan.

9           So in that case, if you had a mechanic's lien  
10 foreclosure action, you would not only name as a defendant the  
11 fee title owner, but you would also name the beneficiary on  
12 that deed of trust, alleging, "Hey, we're not just foreclosing  
13 subject to your deed of trust, we think that we have priority  
14 over you, so that we're suing you, as well, to establish that  
15 our foreclosure wipes out your position."

16           And this ties back into Mr. Pereos's discussion about  
17 giving the lis pendens and giving notice and so forth. But it  
18 really goes to jurisdiction of the Court. The Court has before  
19 it the fee legal title owners of the property. It's alleged in  
20 the Complaint; it's admitted in the Answer; it was admitted in  
21 the trial stipulation.

22           If, theoretically, there was somebody out there who  
23 had an easement interest, had a loan recorded or anything of  
24 that nature -- had a contract of sale or some similar equitable



1 interest in the land -- and we didn't give notice by lis  
2 pendens, we would foreclose the property, but we would have it  
3 subject to whatever those encumbrances are.

4           And then in the future, they may -- there may be  
5 future litigation between the lien claimant who has just  
6 foreclosed and those people claiming those other interests of  
7 title. And that might not even be discovered for five or  
8 ten years, until the foreclosing mechanic's lien claimant tries  
9 to -- to sell the property and goes to the title company to try  
10 and get a clear title. The title company says: Oops, you did  
11 not -- you didn't sue XYZ Company that has this easement or has  
12 this deed of trust. That's all it means.

13           So even if, hypothetically, there were loans on this  
14 property and we decided that we didn't want to sue them, either  
15 because we didn't think we had priority over them or because we  
16 didn't know about them, or whatever, we take subject to that  
17 interest.

18           THE COURT: And so theoretically, any foreclosure sale  
19 that occurs, whoever purchases it, takes it in the same  
20 position that Mr. Steppan would take it in?

21           MR. HOY: Correct. Or -- or -- yes.

22           THE COURT: Mr. Pereos, do you have an objection at  
23 this point to Mr. Hoy's request to reopen his case and admit  
24 the notice of lis pendens that has been provided to the Court?

1           MR. PEREOS: Yes, I would state for the record I have  
2 an objection, but I recognize the authority of this Court.

3           THE COURT: Thank you. Your objection is duly noted.

4           Other than the objection of reopening the case, do you  
5 have any other evidentiary objection to make to Document  
6 No. 4052463, that has been provided by Mr. Hoy in this action?

7           MR. PEREOS: No. I'm assuming that if Mr. Hoy  
8 represents that it was recorded, I'll accept his  
9 representation.

10          THE COURT: And, therefore, that document will be  
11 admitted over objection. The Court will permit Mr. Hoy to  
12 reopen his case for that limited purpose.

13          Mr. Hoy, that document will be admitted as the next  
14 document in order in the trial.

15          MR. HOY: Your Honor, I've had my office go to find  
16 the Affidavit of Publication, as well. Again, we -- when we  
17 received the file, we went to Reno Gazette-Journal and we set  
18 up the publication for this lawsuit. And so we'll, at some  
19 point -- hopefully this afternoon -- we'll have that affidavit  
20 and we can offer that at that time, too, Your Honor.

21          THE COURT: And I do appreciate the fact that you are  
22 attempting to locate that. I'm very cognizant of the fact that  
23 both Mr. Pereos and Mr. Hoy are not the original counsel on  
24 this case for their respective clients and, therefore,

1 sometimes putting our hands immediately upon documents is not  
2 always the easiest thing to do.

3           And so, Mr. Hoy, I would request that you have your  
4 office provide that document to the Court and I will give you  
5 leave to reopen your case for the limited purpose of providing  
6 that affidavit to the Court to make sure that the record is, in  
7 fact, complete.

8           The defendant's motion for dismissal is denied. The  
9 Court believes that there has been compliance with the  
10 statutes. Further, the Court does agree with the argument  
11 presented by Mr. Hoy and, therefore, does not believe that a  
12 motion for dismissal is appropriate at this point. And the  
13 Court does specifically rely on West Charleston Lofts I versus  
14 R&O Construction Company and the legal analysis contained  
15 therein.

16           Mr. Pereos, do you have a witness available this  
17 afternoon?

18           MR. PEREOS: There should be one outside. Yes, there  
19 is. I do.

20           My next witness will be Karen Dennison.

21           THE COURT: Counsel, just so you know, the exhibit  
22 that we just admitted has been made Exhibit No. 23, which I  
23 presume is one of the numbers that was not used by Mr. Hoy when  
24 he was marking his exhibits.

1           (Exhibit No. 23 was marked for identification and  
2 admitted into evidence.)

3           MR. HOY: Thank you.

4           Your Honor, I see Mr. Grundy is with us this  
5 afternoon, and I think he's here as counsel for Ms. Dennison,  
6 the witness. I have no objection to Mr. Grundy making  
7 objections to questions in this proceeding.

8           MR. PEREOS: That's okay with me.

9           THE COURT: Good afternoon, Mr. Grundy.

10          MR. GRUNDY: Good afternoon, Your Honor. I appreciate  
11 the opportunity and if that's okay with counsel -- I don't know  
12 that I will or plan to make any, but I will be happy to  
13 exercise that right if I think somebody is abusing my client.

14          THE COURT: I have no doubt that you will, Mr. Grundy.

15          If you would like to just come up -- rather than  
16 sitting in the audience section, if you would like to just come  
17 up and sit in the chair there in the back row, on my far  
18 right-hand side while Ms. Dennison testifies, at least you'll  
19 be easier of access to her in case the issue arises.

20          MR. GRUNDY: Thank you.

21          MR. PEREOS: Ms. Dennison, please come forward, raise  
22 your right hand and face the court clerk.

23        /////

24        /////

1 KAREN DENNISON,

2 called as a witness herein, being first duly

3 sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. PEREOS:

6 Q. Please state your name.

7 A. Karen Dennison, D-e-n-n-i-s-o-n.

8 Q. The nature of your occupation or profession?

9 A. I'm a lawyer.

10 Q. And how long have you been so engaged?

11 A. Since April of 1972.

12 Q. Are you currently affiliated with a law firm?

13 A. Yes.

14 Q. The name of the law firm to which you are currently  
15 affiliated?

16 A. Holland & Hart.

17 Q. Is there a relationship between the law firm of Hale,  
18 Lane, Peek, Dennison & Howard and Holland & Hart?

19 A. Yes.

20 Q. What is the nature of that relationship?

21 A. The two firms combined in mid 2008.

22 Q. Okay. Were you the "Dennison" in the law firm of  
23 Hale, Lane, Peek, Dennison & Howard?

24 A. Yes.

812

1 Q. All right. In the last quarter of 2005, did you have  
2 occasion to counsel with John Iliescu in connection with the  
3 sale of land located on Court Street?

4 A. I had occasion to counsel John Iliescu in 2005. I'm  
5 not sure that it was the last quarter of 2005.

6 Q. Okay. Was it within the last half of 2005?

7 A. That sounds right.

8 Q. Okay. All right. At that time were you affiliated  
9 with a law firm?

10 A. Yes.

11 Q. And the law firm you were then affiliated with was  
12 what?

13 A. Hale, Lane, Peek, Dennison & Howard.

14 Q. At any time during your counseling, did you ever  
15 advise John Iliescu that Mark Steppan was an architect working  
16 on the project --

17 A. No.

18 Q. -- on the project at Court Street?

19 A. No.

20 Q. Okay. At any time that you counseled with John  
21 Iliescu, did you ever advise Mr. Iliescu that Fisher-Friedman  
22 Associates was an architectural firm working on the property,  
23 on Court Street?

24 A. No.

1 Q. Did you ever come to learn whether or not, okay, a  
2 pre-lien notice was recorded in connection with -- in  
3 connection with the work that was done by Mark Steppan on the  
4 subject property?

5 A. No, I was not aware of that.

6 Q. Okay. Are you familiar with the case of Fondren  
7 versus K/L Complex?

8 A. Yes.

9 Q. Are you familiar with the pre-lien notice as it  
10 existed in the -- strike that -- the statutes regarding a  
11 pre-lien notice as they existed in the year 2005?

12 A. Yes.

13 Q. Okay. Did the Fondren versus K/L Complex case predate  
14 the pre-lien notice statute as it -- as it existed in 2005?

15 A. I don't know.

16 MR. PEREOS: Fine. No further questions.

17 THE COURT: Any cross-examination?

18 MR. HOY: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. HOY:

21 Q. Ms. Dennison, was there an associate at your firm  
22 called Sarah Class?

23 A. In 2005?

24 Q. Yes.

1       A.    Yes.

2       Q.    All right.  Do you know whether or not Ms. Class did  
3 any work for the developers named Sam Caniglia, Mr. Bosma,  
4 Mr. Baty and so forth?

5           Do you know whether or not Sarah Class looked at a  
6 design contract on behalf of those developers?

7       A.    I came to find out after this particular lawsuit was  
8 filed that Sarah Class had looked at a form of architectural  
9 contract, which was later, apparently, used in connection with  
10 the Court Street property.

11      Q.    But Ms. Class never told you about that -- that work  
12 assignment?

13      A.    No.

14      Q.    And so Ms. Class never told you that Mark Steppan and  
15 Fisher-Friedman were negotiating with your other client for an  
16 architectural design agreement?

17      A.    No, she did not.

18           MR. HOY:  All right.  Nothing further.  Thank you.

19           THE COURT:  So just so I'm clear, Ms. Dennison, you  
20 were unaware that your -- strike that.

21           Were you unaware that your firm was providing legal  
22 advice both to Dr. Iliescu and to the other party at the same  
23 time?

24           THE WITNESS:  Yes.  At the time Sarah Class was doing



1 her work, I was unaware that she was doing that work.

2 THE COURT: Thank you.

3 Any redirect?

4 MR. PEREOS: No, no redirect.

5 THE COURT: Any recross, based on my question?

6 MR. HOY: Nothing further, your Honor.

7 THE COURT: Mr. Grundy, I don't think anyone was  
8 abused, and I appreciate your being here today.

9 MR. GRUNDY: It was a pleasant variation from what  
10 I've been doing all day.

11 THE COURT: Thank you.

12 And thank you, as well, Ms. Dennison, I appreciate  
13 your time. Hopefully you didn't have to wait too long.

14 MR. PEREOS: Is Don Clark outside?

15 Okay. The next witness will be Sonia Iliescu.

16 THE COURT: Okay.

17 SONNIA ILIESCU,

18 called as a witness herein, being first duly  
19 sworn, was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. PEREOS:

22 Q. Please state your name.

23 A. Sonnia Santee Iliescu. Sonnia is spelled with two Ns,  
24 S-o-n-n-i-a; Santee, S-a-n-t-e-e; Iliescu.

1 Q. Mrs. Iliescu, were you present at the hearing before  
2 the Reno Planning Commission?

3 A. Yes, I was present at the Planning Commission meeting.

4 Q. Who did the presentation at the Planning Commission  
5 meeting?

6 A. I'm sorry, what?

7 Q. Who did the presentation for this project at the  
8 Planning Commission hearing?

9 A. To the best of my recollection, it was an attorney  
10 that was representing the project.

11 Q. Okay. Was that Gary Duhon?

12 A. I believe -- yes, I believe so.

13 Q. Okay. Were you present at the presentation of the  
14 Reno City Council hearing --

15 A. Yes.

16 Q. -- for the approval of this project?

17 A. Yes, that's correct.

18 Q. And who did the presentation at that hearing?

19 A. I believe that it was the same person --

20 Q. Gary Duhon?

21 A. -- but I'm not absolutely certain.

22 Q. Were you present at the presentation of this project  
23 at the Arlington Towers Homeowners Association meeting --

24 A. Yes, I was.

1 Q. -- or homeowners meeting?

2 A. Yes, I was at that meeting.

3 Q. Okay. And who was doing the presentation on behalf of  
4 the developer of this project?

5 A. I'm not absolutely certain on that one. I do believe  
6 that Mr. Snelgrove was present at that. Whether he was doing  
7 the presentation, I don't know. I think there was another  
8 party present, but I don't recall who that was.

9 And the presentation was very incomplete, in the sense  
10 that there appeared at the beginning of the meeting to be some  
11 kind of a malfunction or something that was out of array as far  
12 as their presentation went.

13 They apologized for not being able to give the  
14 presentation as they normally gave it, and just had, basically,  
15 a question and answer of the people who were present, a group  
16 of residents at the Arlington Tower.

17 Q. Did this malfunction that you referenced impact the  
18 ability to present a PowerPoint program?

19 A. There was no PowerPoint program presented.

20 Q. Was there any presentation of a video fly-through?

21 A. Absolutely none. I was disappointed, if I might say  
22 so, because I had not seen anything regarding that project. I  
23 was curious about it, and nothing was available to see.

24 Q. Okay. Do you recall signing the owner's affidavits

1 that were part of the application for the tentative map?

2 A. I have seen those with my signature on them. Do I  
3 remember signing them specifically?

4 Q. Yes.

5 A. I don't, but that's just because --

6 Q. That is your signature?

7 A. -- it was a long time ago.

8 Q. Okay.

9 A. Yes.

10 Q. That's fine.

11 MR. PEREOS: I've got nothing further.

12 THE COURT: Any cross-examination?

13 MR. HOY: Very brief, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. HOY:

16 Q. Mrs. Iliescu, when you were at the Planning  
17 Commission, did you see a PowerPoint at that time?

18 A. At the Planning Commission meeting there were a large  
19 number of people at that meeting, Mr. Hoy. There were several  
20 issues going on at that meeting; I don't recall what they were,  
21 but the chamber of the City Hall was packed.

22 We were fortunate when we got there -- because it was  
23 very full by the time we got there -- to even find a place to  
24 sit. And it was not possible to see everything that was

1 presented.

2 Q. All right.

3 A. We sat rather far back in the council chamber.

4 Q. And in that council chamber there is a projection  
5 system so that what's on the video is projected high above the  
6 main; is that right?

7 A. I assume so.

8 Q. And then there's other TV monitors around the  
9 chambers?

10 A. I couldn't say.

11 Q. Okay. And there's TV monitors out in the hallway  
12 outside of the council chambers?

13 A. I'll take your word for that.

14 Q. Well, I'm asking you what your recollection is.

15 A. I don't recall the TV screens, but there was some kind  
16 of a screen in front of the chamber to show the presentation.

17 Q. Okay. Was the City Council meeting on this project as  
18 packed as the Planning Commission meeting?

19 A. There were quite a few people there; I don't recall.

20 Q. Did anybody stand up and talk about the design of the  
21 project?

22 A. I assume there was; it was a very long time ago.

23 Q. Okay. You just don't remember anybody standing up --

24 A. I don't.

1 Q. -- to talk about the project?

2 A. I do recall that there were people talking about it,  
3 of course.

4 Q. Okay. Who do you recall talking about the project?

5 A. Other than Mr. Duhon, I don't recall.

6 Q. So you don't remember today, who stood up and  
7 presented the project, other than Gary Duhon, right?

8 A. To the best of my recollection.

9 Q. But you can't testify that Rodney Friedman didn't get  
10 up and talk about the project?

11 A. Could I say that? No.

12 Q. All right.

13 A. I could not because I don't recall.

14 Q. And you can't remember whether or not Mark Steppan  
15 stood up and talked about the project, can you?

16 A. No, I could not. I don't ever recall seeing  
17 Mr. Steppan. I don't recall ever seeing Mr. Steppan until the  
18 day that we were attending his deposition on this case. That  
19 was the first time I recall ever meeting him. That's correct,  
20 right? Yes.

21 Q. And you can't say under oath that you didn't see  
22 Nathan Ogle at the County Commission?

23 A. I would not know who Mr. Ogle was. If you had a  
24 picture of him, I would not know who he was.

1 Q. All right. And you cannot testify that you never saw  
2 a slide up on the video projection system that said that  
3 Mark B. Steppan was the project architect?

4 A. No, of course not. I could not say that because --  
5 when you are in a crowded situation or a social situation, like  
6 the chambers are, there's a lot -- there's activity going on.  
7 Unless you were focused on that, you probably would not notice  
8 it.

9 Q. All right. Let's go back to the ATHOA -- I'm sorry,  
10 the Arlington Towers Homeowners Association meeting that you  
11 attended.

12 A. All right.

13 Q. And you said that there was no PowerPoint or video  
14 fly-through at that meeting --

15 A. That's correct.

16 Q. -- as far as you remember?

17 A. That's correct.

18 Q. And that's because there was discussion about a  
19 malfunction?

20 A. That was my understanding. I heard Mr. Snelgrove say  
21 that it was because of the lighting. The room is on the south  
22 side of the building and it's all windows, so that was his  
23 explanation for that.

24 My understanding at the time was there was just

1 something going on that they were disturbed about and they  
2 couldn't get the program going.

3 Q. So were there some pictures on paper?

4 A. There were none -- no. There was nothing that they  
5 had that I saw that was of any exposure as to the nature of the  
6 project.

7 Q. All right. And besides Mr. Snelgrove, who spoke at  
8 that meeting?

9 A. I don't recall that. I wish I could, but he -- I was  
10 familiar with him from a prior experience that we had had with  
11 Mr. Snelgrove, so I did know who he was. There was -- I do  
12 believe there was someone else there, but I could not say who  
13 that was.

14 Q. So you can't testify that Nathan Ogle was not present  
15 at that meeting?

16 A. No, I could not testify to that.

17 Q. And did you attend a meeting of the -- I think it's  
18 called the Downtown Improvement District or Association?

19 A. No, I have never been to one of those meetings.

20 Q. Other than the Reno City Council meeting, the Reno  
21 Planning Commission meeting and the Arlington Towers Homeowners  
22 Association meeting, did you ever attend any other meetings,  
23 public in nature, to talk about the Wingfield Towers project?

24 A. I was never at another public meeting.



1 Q. Okay. Now, were you in the courtroom when  
2 Mr. Snelgrove gave his testimony to the Court?

3 A. I was.

4 Q. And you heard Mr. Snelgrove testify to the effect that  
5 on at least one occasion, you had gone to his office to sign  
6 your owner's affidavit?

7 A. I heard him say -- make that statement. I do not  
8 recall that.

9 Q. All right. So you just have no recollection of the  
10 circumstances of signing your owner affidavit?

11 A. That's correct, I do not.

12 MR. HOY: No more questions. Thank you.

13 THE COURT: I actually have a question based on your  
14 testimony, Mrs. Iliescu.

15 Did you hear earlier there were -- my recollection,  
16 two different people including possibly your husband, who  
17 testified that after the City Council meeting, everybody went  
18 over to the Taproom, Mr. Friedman was present there. I don't  
19 recall if Mr. Steppan was there or not, I would have to refer  
20 to my notes.

21 But that was when Mr. Friedman said that he met your  
22 husband. Were you there at that meeting or at that gathering?

23 THE WITNESS: Thank you for bringing that up, Your  
24 Honor. That event was characterized as -- by Mr. Friedman as,

1 if I recall this correctly, a cocktail party hosted by  
2 Dr. Iliescu and myself.

3           That was a total mischaracterization of that. After  
4 the meeting was over, where they had the fly-through and all  
5 that at the Planning Commission, the people all left the  
6 chamber and were talking and mingling around outside. And it  
7 was suggested by someone that it would be nice to get together  
8 somewhere socially.

9           There was no preplanning of that event. And it was  
10 suggested, because the Tap House was close, it was on the  
11 river, an environment that we were aware of and familiar with,  
12 that it would be a good location to gather and have, you know,  
13 a social exchange.

14           THE COURT: Right, a celebration of some sort.

15           THE WITNESS: Yes, exactly. That would characterize  
16 it. So we did go over there.

17           The people that went, I don't know, I would say there  
18 may have been in the nature of around 10 or 12 people that  
19 walked over there together, to the best of my recollection.

20           The people that I knew, per se, by name at that  
21 gathering were my husband, Sam Caniglia, Richard Johnson.  
22 Mr. Snelgrove was there. I believe that Mr. Duhon was there,  
23 as well. I'm not certain. Those were the only people I knew  
24 personally to be there.

1           And the other people -- quite honestly, after that  
2 meeting there were a number of introductions to a number of  
3 people that -- it was quite overwhelming. The whole thing was  
4 rather overwhelming.

5           THE COURT: You did see Mr. Friedman testify yesterday  
6 and the day before; is that true?

7           THE WITNESS: Yes, I did.

8           THE COURT: You were here for his testimony?

9           THE WITNESS: Yes, I was.

10          THE COURT: And you do you remember him being there,  
11 being introduced to Mr. Friedman during that -- I'll just call  
12 it a celebration?

13          THE WITNESS: I don't recall that. I don't recall  
14 that. Do I state that he could have been there? He could have  
15 been there, but I do not recall that.

16          THE COURT: You just don't have an independent  
17 recollection, as you sit here?

18          THE WITNESS: No, no, I do not.

19          THE COURT: Okay. Thank you. Any additional  
20 questions, Mr. Pereos, based on my questions or --

21          MR. PEREOS: No additional questions, Your Honor.

22          THE COURT: And, Mr. Hoy?

23          MR. HOY: No, Your Honor.

24          THE COURT: Okay. Thank you very much, Ms. Iliescu.

1 Thank you for testifying.

2 THE WITNESS: You're welcome.

3 THE COURT: Do you have an additional witness to call,  
4 Mr. Pereos?

5 MR. PEREOS: Yes. I think Mr. Hoy has found a  
6 document that he would like to address.

7 MR. HOY: No, I was -- Your Honor, I -- I was just  
8 showing Mr. Pereos that I've got the conformed copy of the lis  
9 pendens from the Washoe County Recorder, in case he had any  
10 issues. But I think the Court has already admitted --

11 MR. PEREOS: Okay.

12 MR. HOY: -- the copy that we got off the Internet.

13 THE COURT: I did admit Exhibit 23, though. What we  
14 could do, Mr. Hoy, is, if you could provide that to the Court,  
15 we can -- Ms. Clerk, can we supplement Exhibit 23 by including  
16 both? So there will be both the copy that was originally  
17 provided by Mr. Hoy and now that we have the certified copy,  
18 that will be made a part of Exhibit No. 23, as well.

19 THE CLERK: Yes, Your Honor.

20 THE COURT: And it will be admitted over the same  
21 objection that you had originally, Mr. Pereos.

22 Now that we've resolved, possibly, Mr. Hoy's  
23 mechanical problem, do you have a witness to call?

24 MR. PEREOS: Yeah. I can call Mr. John Iliescu back

1 to the stand.

2 THE COURT: Okay. Dr. Iliescu, if you will retake it  
3 stand, I will just remind you that you are still under oath.

4 THE WITNESS: If I can get up.

5 JOHN ILIESCU, M.D.,  
6 called as a witness herein, having been previously  
7 duly sworn, was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. PEREOS:

10 Q. Mr. Iliescu, did you have contact with anyone else at  
11 the Hale Lane firm, other than Karen Dennison?

12 A. Did I have contact with anyone else?

13 Q. Yes, yes.

14 A. I had contact with Karen Dennison. Well, first I had  
15 contact for five minutes with Steve Peek; never saw him again.

16 Q. Okay.

17 A. And Karen Dennison and Craig Howard and Jerry Snyder.

18 Q. All right. In connection --

19 MR. HOY: Pardon me, counsel. I think just to make  
20 the record clear, the first name you gave is Steve Peek?

21 THE WITNESS: That's my understanding, yes.

22 MR. HOY: Okay.

23 BY MR. PEREOS:

24 Q. In connection with Mr. Howard, Craig Howard, how did

1 you come about to have interaction with him?

2 A. Craig Howard, I first met Craig Howard at -- during  
3 the time I met Karen Dennison. I don't remember whether it was  
4 the first meeting or second meeting. I had about three  
5 meetings with her to write up Addendum No. 3. He did come in  
6 and Karen introduced him -- it may have been that first  
7 meeting, now that I think about it -- and just -- it was just a  
8 social thing, nothing more than that.

9 And then when I received my -- my lien, which as I  
10 mentioned before came as quite a surprise, I went to call Karen  
11 Dennison and she was not available.

12 And I went to see Craig Howard and pointed out to  
13 him -- I had to explain what it was all about. And I didn't  
14 recognize the name of the person, anyway. I asked him about  
15 that.

16 He said: "Well, it's common and they're very simple.  
17 Did you get a pre-lien notice?"

18 I said, "I did not."

19 He said, "Well, don't worry about it."

20 And he was upset because, this is the reason I went  
21 there. So I couldn't put it all together.

22 I'm sorry. Did I answer your question?

23 Q. Yes. Was Mr. Howard upset or were you upset?

24 A. I was upset. Mr. Howard just kind of asked me if I

1 got a pre-lien notice. I asked him if he knew who was liening  
2 me. He never commented on that. And I left it with them.

3 I notified Dick Johnson after that. I think he may  
4 have -- they had already got the lien.

5 Q. At that time when you had that second meeting with  
6 Mr. Howard did you -- did he ever indicate to you that the firm  
7 was representing the developer in its negotiations with  
8 Mr. Steppan?

9 A. At no time -- I want it very clear for the record --  
10 did I ever know from Karen Dennison, Craig Howard or Jerry  
11 Snyder that the firm was representing an architect.

12 I learned -- I had an opportunity on December 14th to  
13 talk to -- Karen Dennison came to me and she said it would be  
14 well if you gave us a release for mutual -- let us handle both  
15 parties. The other party is very benign. They're a bunch of  
16 developers. No names. It would be well if we coordinated and  
17 worked together.

18 Wieland Carrison -- Karen Dennison at that time, and I  
19 talked it over with my wife, which we always do, and we agreed,  
20 if we believe in her and why not? We were not sophisticated  
21 enough to know the difference.

22 We subsequently learned, much to my distress, after  
23 attending a number of deposition meetings, that Karen Dennison  
24 did not tell me -- did not tell me all of the facts and neither

1 did any of the other members of their firm.

2           And if Mr. -- if Mr. Pereos would like to go into  
3 that, my statements could be documented by their depositions.  
4 I spent many years and lots of money and I have been tangled  
5 and fooled around with. And if I may go on --

6           THE COURT: Well, hold on. Why don't we not go on at  
7 this point, Doctor.

8           THE WITNESS: Okay. Thank you, Your Honor.

9           THE COURT: I want me Pereos to ask you the next  
10 question.

11          THE WITNESS: Okay.

12 BY MR. PEREOS:

13       Q.   You've referenced a letter. Has that been  
14 characterized in the past as "the conflict letter"?

15       A.   Yes.

16       Q.   Okay. And that was a letter issued by Hale, Lane,  
17 Peek, Dennison & Howard?

18       A.   It was a letter, I'm sorry, that came -- that Karen  
19 Dennison brought to us to sign. Is that your question?

20       Q.   Yes.

21       A.   Yes.

22       Q.   Okay. And did you have a conversation with Karen  
23 Dennison about signing that letter?

24       A.   I did.



1 Q. Okay. Now, in that regard, do you recall, as I'm  
2 looking -- I'm looking for the letter, but do you recall as to  
3 the reason they were asking you to sign the conflict letter?

4 A. For the reason I just stated. She said that it would  
5 be well if we -- that they -- there were developers on the  
6 other side and they were trying to develop this project and  
7 they had come -- the developers had come to her to ask if -- if  
8 they could -- she could -- if Hale Lane could represent them.  
9 And she thought it was in my best interests to do so, and I  
10 agreed to do it.

11 THE COURT: Dr. Iliescu --

12 THE WITNESS: Yes, sir.

13 THE COURT: -- a moment ago you said that Hale Lane  
14 was representing both you and the developer or the architect.  
15 Can you tell me -- what was your understanding? Were they --  
16 were they representing the developer, BSC, or the architect,  
17 Mr. Steppan and Fisher-Friedman Associates? Do you recall?

18 THE WITNESS: I'm sorry I confused you, Your Honor.

19 THE COURT: I'm not confused, I just want to know what  
20 your thoughts are.

21 THE WITNESS: Okay. Well, it's -- I've got a little  
22 anxiety about this and about what happened, that I would like  
23 to reveal to this Court, with subsequent knowledge.

24 In that time frame, Karen Dennison came to me and

1 asked me if I would be willing to allow them to represent the  
2 developers. I never, never knew about the architect.

3 THE COURT: Okay.

4 THE WITNESS: I never knew about any of the  
5 developers, other than Sam. I had no contact, never met them,  
6 any of them. And their deposition will verify that, sir.

7 THE COURT: Just so we clarify, then, your contention  
8 is -- and the record is what it is -- - that Hale Lane  
9 represented both you and they represented BSC. And then BSC is  
10 involved in the contract which is Exhibit No. 6, with  
11 Mr. Steppan, and then he's working for Fisher-Friedman and  
12 Associates.

13 So Hale Lane is representing BSC and you; that's what  
14 you're saying? That's the conflict, right?

15 THE WITNESS: I'm saying that Hale Lane, they came to  
16 me and Hale Lane -- I knew they were representing me, now, and  
17 the developers.

18 THE COURT: Right.

19 THE WITNESS: I subsequently learned, not through  
20 their information or Karen Dennison's information or anyone  
21 else, that they also represented the architect.

22 In Craig Howard's deposition, he clearly states that  
23 on December the 14th -- which is the date I signed this or the  
24 time that document was drawn -- that they had a meeting in

1 their the office and Craig Howard and Sarah Class and whatnot,  
2 with Karen Dennison, discussed the problem of a possible  
3 conflict of interest with the developer and me.

4           The question then came up, "Well, what about the  
5 conflict of interest with the architect?"

6           That's in their deposition, black and white.

7           THE COURT: So is it your contention -- and we'll --  
8 I'll move on in a moment from this. But is it your contention  
9 that Hale Lane was representing, in this process, at the same  
10 time, you and Mr. Steppan, the architect, and BSC? All three  
11 parties are being represented at the same time by Hale Lane?

12           THE WITNESS: By Hale Lane. And I didn't know of any  
13 of that, Your Honor.

14           THE COURT: Okay. Thank you.

15           Next question.

16 BY MR. PEREOS:

17       Q. Are you confident that Hale Lane was representing the  
18 architect, as well, or representing the developer in the  
19 negotiations with the architect?

20       A. Am I confident that Hale Lane was representing --

21       Q. Was representing the architect or the developer in its  
22 negotiations with the architect?

23       A. Hale Lane, from -- I've read all these depositions.

24 Hale Lane represent -- took on the architect first. They came,

834

1 the architect -- Sam Caniglia came to Hale Lane and said, "We  
2 want to you finish this contract." So they started work with  
3 him sometime in September, from what I've learned.

4           They then -- some -- then they -- they were also now  
5 working, of course, with the developers, because the developers  
6 asked Hale Lane to get involved with the architect and help  
7 negotiate that contract.

8           The question then came up, in December 14th: Well,  
9 look, this is going to be a conflict of interest. We now know  
10 that Karen Dennison is representing Iliescu and we are now  
11 representing the developers. He doesn't know about that. And,  
12 of course, he doesn't know we were representing the architect.

13           So the question came up -- and it's very clear in  
14 Craig Howard's deposition, they had a discussion in the  
15 presence of Karen Dennison. And Karen Dennison and Sarah Class  
16 and Craig Howard addressed the issue of working with the  
17 architect.

18           But the letter and the information I got was when  
19 Karen Dennison. They wanted to represent the developer and  
20 would I mind or -- she didn't tell me anything about the  
21 architect. In fact, she didn't tell me that the developers had  
22 been represented already a number of times by Hale Lane.

23           THE COURT: Mr. Hoy, do you have an objection or are  
24 you stretching again?

1           MR. HOY: May I offer a fact stipulation at this  
2 point?

3           THE COURT: Would you like to discuss it first with  
4 Mr. Pereos, if it's a stipulation?

5           MR. HOY: Yes, with the Court's permission.

6           THE COURT: Go ahead.

7           (Discussion held off the record between counsel.)

8           MR. HOY: Thank you, Your Honor.

9           THE COURT: After discussing it with Mr. Pereos, is  
10 there no stipulation to be offered at this point?

11 BY MR. PEREOS:

12       Q.    Let me show you what has been marked --

13           THE COURT: Hold on, Mr. Pereos.

14           Is that accurate, Mr. Hoy?

15           MR. HOY: That's accurate, Your Honor.

16           THE COURT: Thank you.

17           Next question, Mr. Pereos.

18 BY MR. PEREOS:

19       Q.    Let me show you what has been marked as Exhibit 8.  
20 Why don't you open it to 8.

21           Is that the conflict letter that we were just  
22 discussing a little earlier?

23       A.    Excuse me a minute. I'm having...

24           That's correct, Mr. Pereos.

1 Q. Okay. All right. Now, what I would like you to do is  
2 go to Exhibit 2.

3 A. Where is that?

4 Q. Two, right there, the book in front of you, No. 2.

5 A. Number two. Pardon me.

6 Q. Exhibit 2 is the Amended Notice and Claim of Lien. Do  
7 you see that?

8 A. Amended Notice and Claim of Lien. Yes, I see that.

9 Q. Okay. You received a copy of that document?

10 A. Yes, I did.

11 Q. Okay. Before receipt of that document, were you --  
12 did you also receive a pre-lien notice?

13 A. I thought this is a pre-lien notice, Amended Notice  
14 and Claim of Lien is a pre-lien notice. I received a lien  
15 notice before this.

16 Q. Okay. Well, let's -- you received the lien notice of  
17 Exhibit 1, did you not?

18 A. And right after the Planning Commission meeting, yes.

19 Q. Okay. Then you got another Amended Notice of Lien,  
20 that is, No. 2?

21 A. A pre-lien, yes.

22 Q. All right. Did you get a pre-lien, also?

23 A. Now, I got a pre-lien notice. The first one I ever  
24 saw was, now, after the lien notice.

1 Q. Okay. All right. That's what I'm getting at.

2 A. I'm sorry, I apologize.

3 Q. That's fine. And was that pre-lien notice before you  
4 got the amended notice of lien, do you remember?

5 A. This -- I got a lien notice right after the Planning  
6 Commission meeting. Some -- some months later -- I don't know  
7 what the date is here -- these couple months -- and they'll be  
8 dated here -- I got this pre-lien notice.

9 Q. All right.

10 A. And then some months after that I got another lien  
11 notice.

12 Q. Did you take the pre-lien notice to Hale Lane?

13 A. Yes, I did.

14 Q. Let me direct your attention to the second extension  
15 before the Reno City Council. The second extension. Okay?  
16 No, not an exhibit.

17 A. Okay.

18 Q. Just go to the second extension, where --

19 A. Yes. I --

20 Q. -- the extension has been sought for the project.

21 A. Okay. Yes.

22 Q. Okay. Now, prior to that time had you seen a  
23 communication from Mr. Caniglia to Dick Johnson identifying  
24 what debts were owed against the property?

1       A.    Yes, I did.  And you have a copy of that.

2       Q.    Okay.  All right.  That's fine.

3           Now, okay, in connection with Dick Johnson's remarks  
4 as to the debts that were owed against the property being paid,  
5 do you know whether or not he referred to those debts?

6       A.    He did.  He was -- as I said, he -- he communicated  
7 frequently with Sam.  In this letter Sam says, "I note you're  
8 upset with me, Dick."

9           And Dick explained to him why he was upset with him,  
10 because a number of people had not been paid and it came to  
11 almost the sum of \$90,000; 60,000 by one person and another --  
12 by people that never pre-liened us or anything.

13       MR. HOY:  Excuse me, counsel.

14       THE WITNESS:  I'm sorry.  If I --

15       MR. PEREOS:  It's not in evidence.

16       MR. HOY:  Are we talking about -- you're telling us  
17 what you remember from a letter that's not in evidence?

18       MR. PEREOS:  That's correct.

19       THE WITNESS:  Well, I have the letters here.  If you  
20 don't want to put it into evidence, fine, but it's here.

21       MR. HOY:  Well, I guess I missed my opportunity.  Go  
22 ahead and ask the next question.

23       THE COURT:  Were you going to object on hearsay  
24 grounds to the previous testimony?



1           MR. HOY:   Yes.

2           THE COURT:   I'll sustain the objection.   And I  
3 understand it wasn't contemporaneous with the evidence, but  
4 it's within one or two questions and Mr. Hoy did begin to stand  
5 up.

6           I was also under the impression it might have been a  
7 letter that was in evidence or was going to be referred to at  
8 some point.   But if the evidence -- or, excuse me -- if the  
9 letter is not part of the evidence that has been anticipated to  
10 be admitted in this trial, then it would be hearsay.

11          MR. PEREOS:   Your Honor, it's not even part of the  
12 record, I can tell you right now.

13          THE COURT:   I appreciate the candor, Mr. Pereos.

14          MR. PEREOS:   It hasn't produced with a Bates number.

15          THE COURT:   Dr. Iliescu, you can't testify to letters  
16 or conversations that occurred outside of the courtroom, that  
17 is hearsay.   And so you cannot testify to a letter that may  
18 have gone back and forth between Mr. Johnson and Mr. Caniglia,  
19 even if you believe you've seen that letter or it exists,  
20 because it's hearsay.

21          So we'll just move on.

22          THE WITNESS:   I testified to it earlier, in my first  
23 testimony, Your Honor, so I --

24          THE COURT:   Okay.

1           THE WITNESS: And I apologize, I'm not aware of that  
2 law.

3           THE COURT: That's okay. Nobody objected at that  
4 point, so your previous testimony will stand. But at this  
5 point, I'll sustain the objection to the most recent comments  
6 by Dr. Iliescu.

7           Go ahead.

8 BY MR. PEREOS:

9       Q. Let me direct your attention to Exhibit 73. I've got  
10 to give that to you. No, it's not in that book; it's not in  
11 that book.

12       A. Okay.

13       THE COURT: And we're getting pretty close to the end  
14 of the day here, Mr. Pereos, just so you know.

15       MR. PEREOS: Okay.

16       THE COURT: If there's a topic of conversation that is  
17 going to be brief, then I would suggest we keep going, but if  
18 not, we can come back and start here tomorrow.

19       MR. PEREOS: We can start tomorrow, yeah. I can ask  
20 Mr. Iliescu a question and then I'm not sure how long the  
21 answer is going to be.

22       THE COURT: I think that that is an accurate  
23 assessment of Dr. Iliescu's testimony in the past.

24       If it's a brief question that doesn't open the door to

1 further questioning, then I would suggest now is the time.

2 MR. PEREOS: Okay, then. Okay.

3 BY MR. PEREOS:

4 Q. Exhibit 73, that's Addendum No. 5?

5 A. That's correct.

6 Q. How did that come about to be executed?

7 A. Addendum No. 5, Mr. Caniglia wanted an extension to  
8 continue the project. He had been delinquent for some time  
9 and -- and this document came about as -- as regards to it.

10 That was the one, Your Honor, with the water rights  
11 and a number of statements made as to regarding the status of  
12 the situation. And of importance here is paragraph -- is  
13 No. 7, but I'll let Mr. Pereos address that.

14 Q. Okay.

15 THE COURT: So the answer to the question is, it came  
16 about because Mr. Caniglia approached you about another  
17 extension on the project; is that correct?

18 THE WITNESS: That's correct. By way of Dick Johnson.

19 THE COURT: Right.

20 Do you have a follow-up question to that, Mr. Pereos?

21 MR. PEREOS: No, but I have another question. I don't  
22 know if the court wants to take a recess, but I do have another  
23 question, if I may.

24 THE COURT: I'll give you one more.

1 MR. PEREOS: Okay. Hold on. Court's indulgence.

2 BY MR. PEREOS:

3 Q. Let me direct your attention to Exhibit No. 74.

4 A. And nothing else in this one, in this Exhibit No. 5?

5 Q. I'm sorry?

6 A. In Exhibit No. 5, you didn't want to ask me any other  
7 questions about it?

8 Q. Oh, on -- do you mean Addendum No. 5?

9 A. Yeah.

10 Q. That's what I asked you, how it came about to be  
11 executed. Was there anything else in connection with Addendum  
12 No. 5 that pertained to the claims of Steppan?

13 A. Yes, there was.

14 Q. And what were they?

15 A. The three people that were involved here was whether  
16 the architect had told me and my wife about the -- I mean,  
17 whether the -- when we knew about the architect.

18 The architects said -- he said we didn't -- he never  
19 notified us. I addressed the attorneys. They didn't tell me.  
20 They deceived me.

21 Now we come to Mr. Caniglia. Mr. Caniglia writes  
22 No. 7, "Buyer warrants" -- that's him -- "and acknowledges the  
23 following: Dr. Iliescu had no participation with regards to  
24 the architect or any of the buyers, other contractors hired for

1 this project" -- "or other contractors hired for this project.  
2 Dr. Iliescu was not aware" -- "made aware of any details  
3 involving the hiring of architects or" -- "or made the decision  
4 to hire architects. Mr. Baty instructed the general manager to  
5 sign the contract with the general manager" -- "which the  
6 general manager did. Dr. Iliescu's first meeting of the  
7 architectural firm was at the Planning Commission meeting."

8 THE COURT: And with that, court will be in recess  
9 until 8:30 in the morning.

10 MR. PEREOS: Thank you, Your Honor.

11 (Proceedings concluded.)

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

3

4 I, MARIAN S. BROWN PAVA, Certified Court Reporter in  
5 and for the State of Nevada, do hereby certify:

6           That the foregoing proceedings were taken by me at the  
7 time and place therein set forth; that the proceedings were  
8 recorded stenographically by me and thereafter transcribed via  
9 computer under my supervision; that the foregoing is a full,  
10 true and correct transcription of the proceedings to the best  
11 of my knowledge, skill and ability.

12 I further certify that I'm not a relative nor an  
13 employee of any attorney or any of the parties, nor am I  
14 financially or otherwise interested in this action.

15 I declare under penalty of perjury under the laws of  
16 the State of Nevada that the foregoing statements are true and  
17 correct.

18                      Dated this 25th day of February, 2014.

19

20 /s/ Marian S. Brown Pava

---

Marian S. Brown Pava, CCR #169

21

22

23

24

CODE: 4185  
MARIAN S. BROWN PAVA, CCR #169  
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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 B. STEPPAN,	Case No. C07-00341
Plaintiff,	Dept. No. 10
vs.	
JOHN ILIESCU et al.,	
Defendants.	

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TRANSCRIPT OF PROCEEDINGS  
TRIAL - DAY 4  
Thursday, December 12, 2013

APPEARANCES:

For the Plaintiff	MICHAEL D. HOY, ESQ. HOY CHRISSINGER KIMMEL, P.C. 50 West Liberty Street Suite 840 Reno, Nevada 89501
For the Defendant	C. NICHOLAS PEREOS, ESQ. 1610 Meadow Wood Lane, Suite 202 Reno, Nevada 89502

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## E X H I B I T S

## NO. DESCRIPTION MARKED/ADMITTED

132 10/10/13 Letter from Joseph ..... 904  
Campbell to C. Nicholas Pereos  
and 10/10/13 Report by Joseph  
Campbell

54 7/1/09 Draft Addendum No. 6..... 913 915

78 9/13/10 Draft Addendum No. 6..... 913 915



- oOo -

THE COURT: We're back on the record in Steppan versus Iliescu, CV07-00341. The parties are all present.

When we broke last night for the evening, Dr. Iliescu was on the stand and Mr. Pereos, I believe, was doing direct examination.

So, Doctor, if you would please resume the stand.

Good morning, Dr. Iliescu. I will remind you, though I am sure you remember, that you are still under oath.

Mr. Pereos, you may continue your direct examination of your client.

MR. PEREOS: Thank you.

DIRECT EXAMINATION (RESUMED)

BY MR. PEREOS:

Q. Mr. Iliescu, I want to clear up some confusion from your testimony of yesterday. Do you recall yesterday testifying that you thought that the Hale Lane firm was representing the architect?

A. It was a misstatement on my part, yes.

Q. Okay. Where did the confusion come from? How were -- why were you confused?

A. I'm not confused today; I was confused yesterday in my

1 haste to present the facts that I've known for some time.

2 Q. Okay. And those facts being, what?

3 A. That having sat in in all the depositions, that Sam  
4 went to the architect to engage them. Subsequently, the  
5 developer, Sam and the developers -- excuse me -- Sam went to  
6 the architect, engaged the architect. He did engage them.

7 They, in turn, of course, did some further work on the  
8 AIA contract.

9 Q. Well, let's focus on the attorneys, Hale Lane --

10 A. Okay.

11 Q. -- and Craig Howard.

12 A. Well, I think of those as one unit, Craig Howard,  
13 Karen Dennison, Jerry Snyder, Steve Peek. Those were the four  
14 people that I know of in the firm or have met.

15 Did I answer your question?

16 Q. Okay. That's fine. But was there something that came  
17 about, in your knowledge, as to Craig Howard's involvement?

18 A. I subsequently learned, as I mentioned, to my  
19 disappointment that -- when Karen Dennison came to me  
20 December 14th, or about that time frame, asking us for a -- if  
21 we would consider taking in -- or allowing the developers to --  
22 for them to represent the developers and that it was something  
23 in our best interests, she didn't reveal to us that they had  
24 been prior clients or -- nothing, in fact; just that this was

1 to our benefit, Sonnia's and I.

2 And we had spent some time with Karen, at least two --  
3 two sessions with her. And so we agreed. She didn't tell us  
4 we had to get other counsel or anything. And we didn't ask, we  
5 just believed in her.

6 We subsequently learned that she wasn't being very  
7 honest with us. In the depositions it clearly states that at  
8 sometime in that time frame, Craig Howard, along with Sarah  
9 Class -- who was doing the work with -- for their firm with the  
10 AI -- with the AI architects -- had a discussion that -- and  
11 which prompted her to come to me; that now somebody realized  
12 that Karen was representing us and, oh, boy, this was a  
13 conflict of interest between the developers and myself.

14 And the question also came up, "Well, how about the  
15 architects? We're also representing" -- "We're also working  
16 with the architects" -- I have to be careful with my  
17 terminology -- "and how we are going to handle that?"

18 They apparently just ignored that.

19 She came to me, with her asking us to go ahead and  
20 would we be willing to accept the letter of no conflict, and we  
21 agreed to that.

22 In at least three or four areas in the deposition,  
23 when she took them, it clearly points out that Karen Dennison  
24 was well aware of the fact that now they were also working with

1 the architect. And at no time -- and, of course, Craig Howard  
2 knew it -- at no time did Karen tell us this. In fact, in her  
3 deposition, when she was deposed, she was asked if she knew  
4 about the architect. She said, "No." The question  
5 subsequently followed, "Well, if you" -- "Well, why didn't you  
6 tell Dr. Iliescu?"

7 "Well, I didn't know about it."

8 Well, she certainly knew in that time frame about it.  
9 And as she testified yesterday, she says she never told me.  
10 Craig Howard never told me. Jerry Snyder never told me.

11 In the deposition, it -- when Craig Howard was asked,  
12 "Had you talked to Dr. Iliescu about this or anything," he  
13 said, "No, I had no communication with him."

14 Q. All right. So your confusion yesterday with the use  
15 of the words -- you didn't mean to say that they were  
16 "representing the architect," but they were "working with the  
17 architect"?

18 A. Exactly. And I apologize for that.

19 MR. PEREOS: All right. I have no further questions.

20 THE COURT: Cross-examination, Mr. Hoy?

21 MR. HOY: Thank you, Your Honor. Good morning.

22 THE COURT: Good morning.

23 MR. HOY: I have no questions, Your Honor.

24 THE COURT: Thank you, Dr. Iliescu. You can step

1 down.

2 THE WITNESS: Thank you, Your Honor.

3 MR. PEREOS: Our next witness will be Mr. Kloos --  
4 Clause, Kloos -- I can never quite get his name right.

5 MR. HOY: Your Honor, the plaintiff objects to this  
6 witness. This is not a disclosed witness.

7 MR. PEREOS: Oh, we agree he's not a disclosed witness  
8 on the trial statement, but he was here -- he's here for  
9 impeachment purposes. And usually we would do this outside the  
10 presence of the jury to determine whether it's impeaching  
11 testimony or not.

12 So the only thing I can say is, I can verbally make an  
13 offer of proof as to what I --

14 THE COURT: Mr. Kloos? Which one is Mr. Kloos?

15 Mr. Kloos, could you please wait outside for a moment?  
16 We called you in prematurely.

17 And who is this?

18 MR. SHIPMAN: Your Honor, Jon Shipman, Deputy City  
19 Attorney.

20 THE COURT: Oh. Hello, Mr. Shipman. Why don't you  
21 have a seat. Are you here on behalf of Mr. Kloos?

22 MR. SHIPMAN: Mr. Kloos, yes.

23 THE COURT: Okay. Mr. Pereos, would you like to make  
24 an offer of proof?

1 MR. PEREOS: Yes. My offer of proof is that Mr. Kloos  
2 will testify that there was no zone changes on the property of  
3 John Iliescu, nor were there any contemplated zone changes on  
4 that property, and that's it.

5 THE COURT: Would you stipulate to that?

6 MR. HOY: Yes, so stipulated.

7 THE COURT: Thank you. That stipulation, then, will  
8 be duly noted by the Court.

9 And you can tell Mr. Kloos to go about his daily  
10 business and thank him for being here.

11 MR. SHIPMAN: Thank you, Your Honor.

12 MR. PEREOS: Your Honor, my next witness is 9 o'clock.

13 THE COURT: Okay. Well, that's all right. I  
14 understand that sometimes the parties plan things -- I've been  
15 in your shoes before, Mr. Pereos, and so I know how that works.  
16 So what we'll do --

17 MR. PEREOS: Let me just go check. May I?

18 THE COURT: Okay.

19 MR. PEREOS: Don Clark, is he here?

20 (Off the record.)

21 MR. PEREOS: Okay. He's here at 9 o'clock.

22 THE COURT: I'm just checking something. My clerk  
23 asked me the name of the attorney from the City Attorney's  
24 office.

1 MR. PEREOS: Mr. Shipman.

2 MR. HOY: Jon Shipman. It's J-o-n.

3 THE CLERK: Thank you.

4 THE COURT: Okay. Well, then, we will be in recess.

5 And if you can just please advise me as soon as your next  
6 witness arrives, we'll get going.

7 (Recess taken.)

8 THE COURT: Mr. Pereos, just, if you would, give me  
9 one moment, I just want to make a note in my notes that I've  
10 been taking about the stipulation that was made.

11 Mr. Pereos, can you tell me how to spell Mr. Kloos's  
12 name?

13 MR. PEREOS: K-l-o-o-s.

14 THE COURT: Thank you.

15 MR. PEREOS: Vern, first name.

16 THE COURT: Thank you. Mr. Pereos, you can call your  
17 next witness.

18 MR. PEREOS: The next witness would be Donald Clark.

19 Mr. Clark, please come forward, face the court clerk  
20 and raise your right hand to be sworn.

21 DONALD J. CLARK,

22 called as a witness herein, being first duly  
23 sworn, was examined and testified as follows:

24 /////

## 1 DIRECT EXAMINATION

2 BY MR. PEREOS:

3 Q. Please state your name.

4 A. Donald J. Clark.

5 Q. Occupation or profession?

6 A. Architect.

7 Q. And how long have you been so engaged?

8 A. Thirty-three years.

9 Q. Can you give us a rundown as to your educational  
10 background after high school, please, starting with college?11 A. I got my architectural degree at the University of  
12 Idaho. To get licensed in architecture you have to do an  
13 internship of three years. I spent some of that time in Carson  
14 City under an architect named John Hancock, some time in Reno  
15 under Ray Hellmann, and then working with Mark Schroeder, and  
16 then got my license in 19 -- I can't remember -- '84, '87. I  
17 can't remember when I got it. But I've been licensed about  
18 30 years.19 Q. Okay. Are you licensed in any other states other  
20 than -- are you licensed in the State of Nevada?

21 A. Yes.

22 Q. Any other states?

23 A. California. I've been licensed in Washington, but  
24 I've let that lapse.



1 Q. Okay. Are you familiar with the -- let me rephrase  
2 that. My apologies. Okay.

3 Are you familiar with the content of the -- are you  
4 familiar with the nature of the dispute that is part of this  
5 litigation?

6 A. Yes.

7 Q. Okay. Are you familiar with the project that was  
8 proposed with regard to the property for John Iliescu?

9 A. Yes.

10 Q. Okay, on that. Explain to the Court what would be  
11 involved for purposes of securing the entitlements for that  
12 particular project in the 2005 year?

13 A. You would --

14 MR. HOY: Well, objection, Your Honor. I think this  
15 is beyond the scope of the disclosed expert opinions in this  
16 case.

17 MR. PEREOS: To me it's just background for his  
18 testimony.

19 THE COURT: Overruled. I'll allow him to testify. Go  
20 ahead.

21 BY MR. PEREOS:

22 Q. Go ahead.

23 A. Could you repeat --

24 THE COURT: Why don't we do this, Mr. Pereos. If you

1 could just ask a couple of foundational questions that would  
2 show that he has the knowledge of how you would get that, I  
3 will allow him to testify.

4 MR. PEREOS: All right. That's fine.

5 BY MR. PEREOS:

6 Q. Have you ever been involved in the entitlement process  
7 in connection with securing entitlements and tentative maps for  
8 projects?

9 A. Dozens of times.

10 THE COURT: And you're familiar with this type of  
11 project. Have you done that process with projects of this  
12 nature?

13 THE WITNESS: Yes, I have.

14 THE COURT: Okay. Go ahead.

15 BY MR. PEREOS:

16 Q. Could you give us an explanation as to what would be  
17 involved in securing the entitlements in the 2005 year for a  
18 project of this particular nature?

19 MR. HOY: Objection, Your Honor, no foundation.

20 May I take the witness on voir dire for just a few  
21 moments?

22 THE COURT: Yes.

23 MR. HOY: Thank you.

24 /////

## 1 VOIR DIRE EXAMINATION

2 BY MR. HOY:

3 Q. Mr. Clark, good morning.

4 A. Good morning.

5 Q. And welcome to my world.

6 You've never, ever designed a project with a tower of  
7 over 12 stories, have you?

8 A. Designed, yes.

9 Q. Have you ever sought entitlements for a project over  
10 12 stories?

11 A. Yes.

12 Q. Have you ever -- you've never designed anything even  
13 remotely close to the size and scope of the project that was  
14 proposed for Dr. Iliescu's land, have you?

15 A. Yes, I have.

16 Q. What project would that be?

17 A. I'm doing one right now in Millbrae, that's about a  
18 million-and-a-half square feet, as we speak, so --

19 Q. Is Millbrae in Washoe County, Nevada?

20 A. It's not in Washoe County.

21 Q. Okay. Have you ever done -- have you ever sought  
22 entitlements with the City of Reno for a project of this size  
23 and scope, anything approaching what was proposed for  
24 Dr. Iliescu's land?

1 A. No.

2 Q. What's the tallest building, in terms of number of  
3 stories, that you've ever sought entitlements for in Reno,  
4 Nevada?

5 A. When we entitled the expansion of the Kings Inn, it  
6 was 20, 21 stories total.

7 Q. So that was a remodel?

8 A. And adding 13 stories, yeah.

9 Q. Okay. Anything else?

10 A. When we did the Rialto project, that was about  
11 15 stories. Stuff for Harrah's. A few, not -- they've never  
12 been built. Building projects of that scope bears a different  
13 conversation.

14 Q. What is the Rialto project?

15 A. The Rialto was a mixed use, primarily retail, but it  
16 had a residential tower, and that was in Sparks, or in Spanish  
17 Springs.

18 Q. And when you say "a residential tower," how tall was  
19 the residential tower?

20 A. The tower was about 12, 13 stories. And then above --  
21 about five stories of office and retail above three levels of  
22 parking.

23 Q. All right. Did you have to do any shadow studies for  
24 the Rialto project?

1 A. I don't know if we had to, but we did.

2 Q. Do you know whether or not that was part of the  
3 entitlement approval process for that project?

4 A. I don't think it was.

5 Q. Did you have to do traffic studies for that project?

6 A. Yes.

7 Q. And is the -- that project was in Sparks, Nevada --

8 A. Yes.

9 Q. -- not Reno, Nevada?

10 A. Yes.

11 Q. Is the entitlement or the project approval process the  
12 same in Sparks as in Reno?

13 A. It's fairly similar. It's not identical, but it's  
14 pretty similar.

15 MR. HOY: All right. Thank you, Your Honor.

16 THE COURT: He can testify. Go ahead.

17 MR. PEREOS: Oh, okay.

18 THE COURT: I think that's enough foundation. Go  
19 ahead and you can ask the question now that you originally  
20 asked.

21 DIRECT EXAMINATION, RESUMED

22 BY MR. PEREOS:

23 Q. Could you explain a little bit to the Court as to what  
24 would be involved with -- in connection with the entitlements,

1 securing the entitlements, for a project of any nature above  
2 five stories in Reno, Nevada?

3 A. Well, it would depend on where it is. There's --

4 Q. What about with regard to the Downtown Development  
5 District in which this property was located?

6 A. If you're in the river corridor then, yes, on the  
7 south side you have shade issues that are different than the  
8 north side. So, again, it would depend on where it is.

9 Q. Okay. I want to walk through the processing a little  
10 bit, of what has to be secured and what type of applications  
11 have to be filed.

12 A. Okay. You would assess the existing zoning. You  
13 would do some preliminary massing and layout of the design on  
14 the site, per the request of whatever the owner's scope is, to  
15 see how it fit within the entitlements.

16 You would meet with the City. You would meet with the  
17 client. You would -- you know, there's iterations that you  
18 would go through in the process to establish the nature of the  
19 project that you want to do.

20 And then from there, you would develop that to a point  
21 that you settle on a proposal, using all of the input of codes,  
22 standards. You know, whatever information comes to light, you  
23 start working on the other process.

24 Q. Okay. When you're saying you're meeting with the

1 City, are you meeting with the City with the idea of getting an  
2 idea of what they're willing to digest and accept?

3 A. Well, you do multiple things. First you assess what  
4 the status quo is for today. And you would want to know about  
5 infrastructure, you would want to know about -- traffic would  
6 be one of those issues, power, sewer.

7 You would look at adjacent properties to see what  
8 impacts you would have on those and you would start -- you  
9 would begin a dialogue to, again, see what they could swallow,  
10 as well as what the code allows, and assess it politically as  
11 well as physically.

12 Q. Let me show you what's been marked as Exhibits 35, 36  
13 and 37. Start with 35.

14 A. Okay.

15 Q. Okay. Thirty-five.

16 A. Okay.

17 Q. Are you familiar with that type of package, that type  
18 of application?

19 A. Yes.

20 Q. Okay. Let me show you 36. My question is, are you  
21 familiar with that type of application, as well?

22 A. Yes.

23 Q. And let me show you 37. Are you familiar with that  
24 type of application?

1 A. Yes.

2 Q. Have you previously seen these applications?

3 A. Yes.

4 Q. Have you done so in connection with the preparation of  
5 a report to which we are going to discuss in a minute?

6 A. Yes.

7 Q. Okay. All right. Are you familiar with an enterprise  
8 known as Wood Rodgers?

9 A. Yes.

10 Q. Are they a planning company?

11 A. Planning, engineering.

12 Q. Planning and engineering?

13 A. I think they have landscape engineers, as well.

14 Q. Now, those particular documents are captioned  
15 "Applications For Tentative Maps and Special Use Permits."

16 A. Um-hum.

17 Q. Okay. Why would you need a special use permit?

18 A. There are different provisions for size, scale, use,  
19 in areas that have existing zoning that require a special use  
20 permit for approval to actually move forward and build.

21 Q. Okay. So for summation, certain zoned areas say: If  
22 you are going to do something on this property, you've got to  
23 get a special use permit?

24 A. Yes.



1 Q. Okay. All right. And given the size of this  
2 particular project and/or its mixed-use purposes it required a  
3 special use permit?

4 A. Yes.

5 Q. Okay. What was the tentative map for?

6 A. If you were going to subdivide a property into  
7 multiple units for sale, which condominiums are, you have to  
8 create a map that allows for the transaction in real estate.

9 Q. All right. So in this particular situation -- well,  
10 let me ask you this hypothetical. If this was just going to be  
11 an apartment building, would you have needed a tentative map  
12 application?

13 A. If all of the property that was being developed was  
14 going to be left in the hands of one owner, then you would not  
15 necessarily have needed one.

16 Q. Okay. So the tentative map is because you are going  
17 to break the property up into living units, separate, salable  
18 living units?

19 A. Yes.

20 Q. Okay. Now, some of the points that have to be  
21 addressed in the application process include, as brought up,  
22 traffic studies?

23 A. Yes.

24 Q. Okay. What do they look for in traffic studies?

1 A. They look for --

2 Q. The governmental agencies.

3 A. They look for the level of service and the impact that  
4 a new project will have on the level of service and whether  
5 that is acceptable; whether they'll condition a project to do  
6 improvements to support that development or whether they'll ask  
7 for alterations or deny it.

8 Q. Will they look at the existing trafficways that are  
9 the public trafficways to see if they can service the project?

10 A. Yes.

11 Q. And the number of traffic --

12 A. That's what I meant -- that's what I meant by "level  
13 of service."

14 Q. And if they think there is a question, would they  
15 require the developer to do something with regard to the public  
16 trafficways?

17 A. Yes. They would ask for mitigations of some kind.

18 Q. Okay, on that. Now, in this particular situation with  
19 the project being partly on Island Drive next to the river,  
20 what other issues did they wind up -- or had to be investigated  
21 or looked into, in terms of the applications for the tentative  
22 map and/or special use permit?

23 MR. HOY: Objection, no foundation for that question.

24 MR. PEREOS: Well, okay. I'll go back. I'll

1 rephrase.

2 THE COURT: Okay.

3 BY MR. PEREOS:

4 Q. Did you have occasion to see the approvals that were  
5 issued by the Reno Planning Commission --

6 A. Yes.

7 Q. -- on this project?

8 Did you have occasion to see the approvals by the --  
9 the notes of the Planning Commission on this project?

10 A. Yes.

11 Q. Did you have occasion to see the approval of the Reno  
12 City Council on this particular project?

13 A. Yes.

14 Q. Okay. Did you look at all the conditions that were  
15 attached thereto?

16 A. Yes.

17 Q. All right. Were you able to access a lot of this  
18 information online?

19 A. Yeah. I mean, it's -- it's -- and then you gave me  
20 some information, as well, so --

21 Q. Okay. All right. Now, in that regard, okay, did you  
22 also have an idea to -- in looking at the approvals and the  
23 conditions attached to the approvals, get a feel for the type  
24 of studies that were submitted and the concerns of the

1 governmental entities?

2 A. Yes.

3 Q. Okay. All right. Was there an issue surface -- or  
4 did an issue surface with regard to the location of this  
5 project on Island Drive, because of its proximity to the  
6 Truckee River?

7 A. Yeah, I think from all -- from the beginning that  
8 would have been a concern, as well; but, yes, it did arise.

9 Q. Okay. All right. So there's an issue with regard to  
10 the proximity to the Truckee River and there was concerns about  
11 the impact it would have --

12 A. Yes.

13 Q. -- on the river?

14 A. Yes.

15 Q. Okay. Would there be concerns about the impact that  
16 the river might have on the project if the river floods, goes  
17 over its banks?

18 A. There's actually flood controls that the City has that  
19 you have to address during the process, adjacent to the river.

20 Q. All right. Did you notice whether or not the City  
21 required any type of heating corridors, for instance?

22 A. I don't remember that.

23 Q. Okay. That's fine, on that thing.

24 Do you remember anything else that you looked into in

1 connection -- or observed in connection with the approval  
2 process of the project, without me referring you to the  
3 documents?

4 A. I have a general recollection, but you would probably  
5 need to focus me in on it --

6 Q. Okay.

7 A. -- if you want my opinion on something.

8 Q. Why don't you take a look at, I believe, at  
9 Exhibit 48. Is 48 available?

10 THE COURT: It's in the second binder, Mr. Pereos.

11 THE WITNESS: Now I know you why you guys have these  
12 rolling briefcases.

13 BY MR. PEREOS:

14 Q. Do you see that?

15 A. Yes.

16 Q. Okay. Were there some other conditions or references  
17 attached to that?

18 A. Yes.

19 Q. Okay. Do you recall looking -- had you seen that  
20 document prior to testifying today?

21 A. Yes.

22 Q. Do you recall if there are any -- well, let me ask you  
23 this question. Are there any unique conditions to this  
24 property that would not otherwise had to have been addressed in

1 an application for the special use permit?

2 A. Yes. I mean, there's a lot of specific zeroing in on  
3 different issues that the City was concerned about that showed  
4 up as conditions, more than a rubber-stamp, boilerplate,  
5 general approval.

6 Q. Do those conditions add to the cost of a project.

7 A. In general they do, yes.

8 Q. On that thing. In taking a look at the conditions  
9 that were attached, can you give me an indication as to some of  
10 the conditions, in your opinion as you are testifying, would  
11 add to the cost on this particular project?

12 MR. HOY: Objection, Your Honor. First of all, it's  
13 not relevant to the case. Second, it wasn't disclosed as part  
14 of the pretrial disclosure of this witness's scope of opinion.

15 MR. PEREOS: Well, I don't know that we --

16 THE COURT: Regarding -- I'm not as concerned with the  
17 scope of his opinion. Regarding the relevance, would you like  
18 to respond to that, Mr. Pereos?

19 MR. PEREOS: Well, it all goes to whether or not --  
20 all right. I'll withdraw the question, because I might be able  
21 to tie it in better when I come back to it later. I'll  
22 withdraw it.

23 THE COURT: Okay. Go ahead, next question.

24 /////

1 BY MR. PEREOS:

2 Q. Okay. Let me take you to Exhibit 4. Is that in your  
3 book? This one. Or 6, excuse me, Exhibit 6.

4 Are you familiar with that document?

5 A. Yes.

6 Q. Had you seen that document before?

7 A. Yes.

8 Q. Let me take a look -- take a look at Exhibit 7, if you  
9 will, please. Are you familiar with that document?

10 A. Yes.

11 Q. Have you seen that document before?

12 A. Yes.

13 Q. Let me direct your attention -- I know I'm going to  
14 jump you around and I apologize, okay, but let me direct your  
15 attention to 130. Let me get this out of your way.

16 Are you familiar with Exhibit 130?

17 A. Yes.

18 Q. And is that a document that you caused to be prepared?

19 A. Yes.

20 Q. And was that in connection with the assignment that  
21 was given to you in connection with this case?

22 A. Yes.

23 Q. Okay.

24 MR. HOY: It's not in evidence, Your Honor.

1 MR. PEREOS: It's not in evidence, 30.

2 THE COURT: Okay. No, the comment that I was going to  
3 make is I'm uncomfortable with balancing the big binder up  
4 there, because it's just probably going to fall.

5 There you go. And you can put that on top -- I don't  
6 care how you do it.

7 THE WITNESS: That's fine.

8 MR. PEREOS: Okay.

9 THE COURT: Go ahead.

10 BY MR. PEREOS:

11 Q. What was the nature of your assignment?

12 A. To assess the circumstances that Dr. Iliescu found  
13 himself in, in regard to the lien; go through the documents,  
14 see what I thought of the work performed, the contracts, the  
15 nature of the scale of the work that was done.

16 Q. How long have you been practicing architecture in  
17 Washoe County, Nevada?

18 A. Thirty-three years.

19 Q. Okay. Are you familiar with the AIA contract B141?

20 A. Yes.

21 Q. Okay. In performing your assignment, did you  
22 familiarize yourself with Exhibit 6?

23 A. Yes.

24 Q. Are you familiar with the custom and practice in the



1 industry?

2 A. Yes.

3 Q. I want you to --

4 MR. HOY: Pardon me. I object, that's vague.

5 MR. PEREOS: That's fine. It's too vague. I would  
6 agree. I would agree. Okay. Okay?

7 BY MR. PEREOS:

8 Q. Are you familiar with various customs and practices in  
9 the industry as they pertain to architects?

10 A. Yes.

11 Q. Okay. Now, I want you to assume the following facts.  
12 I want you to assume that Richard Rodney Friedman testified in  
13 these proceedings; and he was the principal involved in  
14 Fisher-Friedman Associates.

15 You're familiar with that Fisher-Friedman Associates  
16 name?

17 A. Yes.

18 Q. From your documents? Okay.

19 And he negotiated with developer BSC on the Wingfield  
20 project.

21 You're familiar with the Wingfield project?

22 A. Yes.

23 Q. That John Iliescu was not a part of those negotiations  
24 and not a party to the AIA contract.

1 A. Okay.

2 Q. Okay? Now, did you look at the AIA contract?

3 A. Yes.

4 Q. Would you agree with me that John Iliescu was not a  
5 party thereto?

6 A. Yes.

7 Q. When Fisher-Friedman and Associates accepted the  
8 assignment to design this project, Rodney Friedman knew that  
9 there was no money in place to develop the project and a loan  
10 was needed.

11 A. Okay.

12 Q. Rodney Friedman sent the developer a blank form AIA  
13 contract, B141, to the developer, identifying that his fee was  
14 to be 5.75 percent of the cost to build the project, but  
15 started work before the contract was signed, the AIA contract  
16 was signed.

17 A. Correct.

18 Q. All right. In that regard, why don't you take a look  
19 at Exhibit 9. Do you have that in front of you?

20 A. Yes.

21 Q. Okay. And I believe Exhibit 9 is a letter that was  
22 sent with the blank form of the AIA contract.

23 A. Okay.

24 Q. Okay. At no time -- I'm continuing on. At no time

1 prior to the signing of the AIA contract was the developer ever  
2 advised that the fee was going to be the numerical number of --  
3 the architect fee was going to be the numerical number of  
4 \$2,070,000.

5 A. Okay.

6 Q. Okay. Absent the completed and signed AIA contract,  
7 work was started by Fisher-Friedman and Associates on a letter  
8 agreement to be paid hourly.

9 Take a look at Exhibit 14, please.

10 A. Okay.

11 Q. Fisher-Friedman and Associates billed on an hourly  
12 basis; it was paid, approximately, okay, \$480,000, thereabouts.

13 A. Okay.

14 Q. Okay. The AIA contract was delivered to  
15 Fisher-Friedman and Associates on April 26th, completed and  
16 signed.

17 A. Correct.

18 Q. Okay. You're familiar with the phrase "instruments of  
19 service"?

20 A. Yes.

21 Q. Okay on that. I'm sorry, on that. Excuse me.

22 There were no instruments of service produced in this  
23 litigation after -- that were drafted and generated after  
24 April 26th.

1 A. Okay.

2 Q. Okay. After delivery of the AIA contract,  
3 Fisher-Friedman and Associates submits a fixed-fee billing at  
4 an amount of 28 percent completed work for schematic design  
5 work for portions of a percentage of the schematic design fee.

6 Did that make sense to you? If not, I will go back  
7 and break it down.

8 A. What was the date of that?

9 Q. After the AIA contract, I believe that first bill --

10 A. Okay.

11 Q. -- for the 28 percent was in June.

12 A. Okay. Does that make sense to me, is that the  
13 question?

14 Q. Okay. Yeah, the question was -- let me go back and  
15 let me break it down. Okay.

16 In reviewing the AIA contract, Exhibit 6, okay, did  
17 you notice the compensation schedule of one -- which was in  
18 paragraph 1.5?

19 A. Yes.

20 Q. Okay. And did you notice it was supposed to be  
21 5.75 percent of, okay, the \$180,000,000 for the build-out  
22 costs --

23 A. Yes.

24 Q. -- to be adjusted by the costs of the building? Okay?

1 And for schematic design it was supposed to be 20 percent.

2 A. Yes.

3 Q. Okay. Now, they submitted a bill, the first bill --  
4 you've seen the bills that they've submitted, have you not?

5 A. Yes.

6 Q. Okay. The first bill that they submitted was for  
7 22 percent of the 20 -- 20 percent of the 5.75 percent.

8 A. I think it was 28 percent, but, yes.

9 Q. Yeah. Then they got up to 28 percent. Do you  
10 remember that bill?

11 MR. HOY: I object, your Honor. This is a  
12 summation --

13 MR. PEREOS: Okay, fine.

14 MR. HOY: -- this is not a hypothetical question.

15 MR. PEREOS: I'll rephrase.

16 THE COURT: Gentlemen, gentlemen, I'll just remind you  
17 to please stop talking over the top of each other. And in this  
18 instance, I believe Mr. Hoy was making an objection.

19 I appreciate, Mr. Pereos, the fact that you're quickly  
20 willing to rephrase the question, but I just find it very  
21 difficult for the court reporter to be able to take down both  
22 of you talking simultaneously.

23 So, Mr. Pereos, I sustain the objection to the form of  
24 the question and I will allow you to ask another question.

1 MR. PEREOS: Okay, fine.

2 BY MR. PEREOS:

3 Q. So continuing on with my assumption I'm asking you to  
4 make.

5 A. Okay.

6 Q. That tentative approvals were secured for the project  
7 after the recording of the mechanic's lien.

8 You've seen the mechanic's lien, have you not?

9 A. Yes.

10 Q. That the project was not built for lack of funding?

11 A. Yes.

12 Q. Do you have an opinion as to whether or not the  
13 billing of 28 percent represented the totality of the work  
14 performed by Fisher-Friedman and Associates for the schematic  
15 design work based upon the documents that you've reviewed?

16 MR. HOY: I have the following objections, Your Honor.

17 THE COURT: What's your objection to that question?

18 MR. HOY: That question is based upon the last six or  
19 seven minutes of hypothetical assumptions that have been  
20 proffered to this witness. It's an incomplete hypothetical.  
21 It rests on a misstatement of the facts. And I can give you  
22 several examples of that.

23 THE COURT: I'll allow you to go into the additional  
24 issues that you wish to raise or any additional facts that you

1 would like Mr. Clark to consider in his answer on  
2 cross-examination. If you feel that the hypothetical is  
3 incomplete in some way, then you can add additional facts to  
4 the hypothetical and ask him the question again on  
5 cross-examination.

6 I understand your objection and I agree that there are  
7 certain facts that have not been stated by Mr. Pereos that are  
8 demonstrated by the evidence that has been admitted in the  
9 trial and/or the testimony that has been proffered by the  
10 previous witnesses. If you would like to draw those facts out  
11 on cross-examination, you can.

12 MR. HOY: Certainly.

13 One of my other objections to this particular question  
14 is that it's legally irrelevant. What is legally relevant in  
15 this trial, Your Honor, is, what is the amount due under what  
16 we've been calling the master agreement, Exhibit 6, as amended  
17 in Exhibit 7; not whether somebody thinks it's fair or -- not  
18 whether somebody thinks it's fair or in conformance with  
19 industry standards or anything of that nature.

20 THE COURT: Mr. Pereos, can you respond to that  
21 objection?

22 MR. PEREOS: Yeah, sure. That assumes that this Court  
23 makes a finding that there's been compliance and fulfillment of  
24 the contract by the AIA, and that they're entitled to the

1 five -- 20 percent of the five point -- the fixed fee,  
2 20 percent of the 5.75 percent of the \$180,000,000 in the AIA  
3 contract.

4 That also assumes that the Court agrees that the  
5 contract that was signed on April 26th was intended to relate  
6 back from the day one in which services were rendered and that  
7 the compensation schedule of Exhibit 14 did not control the  
8 interim period of time.

9 THE COURT: I agree with the recitation of the  
10 assumptions. And the Court has made no determination about the  
11 ultimate issues in this case, because it has not yet been  
12 submitted to me to decide. And so I understand that those will  
13 be your arguments at the conclusion of the case or arguments  
14 similar in nature.

15 My understanding of your question, however, that the  
16 objection was related to, was more along the lines of -- and  
17 this is my paraphrasing -- would that be fair or a reasonable  
18 thing to assume or a fair or reasonable contract?

19 And frankly, I don't know if it's Mr. Clark's role or  
20 even the Court's role to decide whether or not this was a good  
21 contract or one that I would have signed or possibly Mr. Clark  
22 would have agreed to.

23 This is the contract of the parties, and that's what  
24 we're left to deal with. You can make whatever arguments you



1 want in the closing argument phase about whether or not the  
2 Court should go along with your suggestion that the stopgap  
3 agreement controls and that's all that the architects are  
4 entitled to. Obviously, Mr. Hoy has a very different opinion  
5 of that, as do the plaintiffs.

6 But in a general sense, whether or not Mr. Clark can  
7 simply testify, was this a reasonable deal, I don't think he  
8 can offer that testimony.

9 So with those parameters in mind, I'll allow you to  
10 rephrase the question and ask -- either ask that question again  
11 in a different form or go on to a different question.

12 MR. PEREOS: Okay.

13 BY MR. PEREOS:

14 Q. In evaluating the work that was performed by the  
15 architect, did you come to a conclusion as to the value of that  
16 work that was performed at the billing rate of the architect?

17 MR. HOY: Objection, irrelevant. I can --

18 THE COURT: Go ahead.

19 MR. HOY: -- expand on that, if you would like, Your  
20 Honor.

21 THE COURT: Go ahead.

22 MR. HOY: If the witness is prepared to say that under  
23 the term -- under the definition of "schematic design" in the  
24 contract, the architects did not complete schematic design,

1 that is legally relevant.

2 THE COURT: I agree.

3 MR. HOY: Anything else is not legally relevant.

4 THE COURT: Mr. Pereos, that was my thought about your  
5 question. To put it another way, are you asking the witness  
6 whether or not this work, the instruments of service that have  
7 been provided to date, is worth \$480,000 or is it worth  
8 \$2,000,000?

9 That is one question that I don't know that, really,  
10 the witness is in a position to answer, that it would be  
11 appropriate for the witness to answer that question, just the  
12 flat value of this.

13 But I do agree -- and I was thinking along the lines  
14 of, this witness can testify, in his expert opinion, based on  
15 his training and experience, whether or not he believed that  
16 Mr. Steppan had provided the schematic design phase or had  
17 completed the schematic design phase, such that he was entitled  
18 to some form of compensation.

19 But whether or not he can testify that he thinks it's  
20 worth half a million dollars or \$2,000,000, I would sustain the  
21 objection on that. So you can rephrase the question.

22 MR. PEREOS: Your Honor -- okay.

23 THE COURT: No, go ahead. If you want to make an  
24 observation for the record.

1           MR. PEREOS: The only observation I have is that there  
2 was a billing of 28 percent. And this witness -- I am offering  
3 to proffer testimony from this witness that that 28 percent of  
4 the architect's fee for the schematic design represents a fair  
5 compensation as to what the architect performed at that point  
6 in time, based upon everything that this witness has seen for  
7 the schematic design work that was done.

8           Now, it's indicative in the billing, they billed at  
9 28 percent. And if I remember correctly, it was the second  
10 billing that showed the 28 percent on that. And I'm just  
11 taking the witness there, based upon what the evidence has  
12 demonstrated for their billing practice, because then I will  
13 have the witness go into the fact that he didn't see any  
14 instruments of service that were performed after April 26th.

15          THE COURT: Well, at this point I'll allow him to  
16 answer that question, but I'll give that answer the weight that  
17 I think is appropriate --

18          MR. PEREOS: Fine.

19          THE COURT: -- given my statement of what I believe to  
20 be the relevant or the salient issue.

21          Frankly, it's not whether or not he thinks that they  
22 were -- that it was \$500,000 is all they were entitled to, or  
23 \$2,000,000. The contract says what it says. That will be the  
24 ultimate issue in the case. And what are the controlling

1 documents that secure the agreement between these two parties?

2           So he can answer the question, but I don't know what  
3 weight I will give his answer. I'll give it whatever weight I  
4 think is appropriate. Go ahead.

5 BY MR. PEREOS:

6           Q.    Okay. Do you have an opinion as to whether or not the  
7 billing that represented 28 percent of the architect's fixed  
8 fee for the schematic design, okay, was consistent for the  
9 totality of the work performed by Fisher-Friedman and  
10 Associates?

11          A.    I think the way I would answer that is that, my  
12 assessment when I saw the billings and the time frame and I saw  
13 the package that was submitted, that that was the value that  
14 they put on the schematic design phase, and it seemed in  
15 alignment with what I saw.

16                But I actually thought that was the value they put on  
17 it to -- for the full contract that was later to be converted  
18 to a fixed fee. That was my assessment of their assessment of  
19 it and it was consistent with the way I looked at it.

20          Q.    Do you have an opinion as to what the custom and  
21 practice in the industry for architects is, as to the  
22 relationship of Exhibit 14 requesting the hourly compensation  
23 until the AIA contract was signed and the fixed-fee agreement  
24 defined in the AIA contract?

1 MR. HOY: Objection, not relevant.

2 THE COURT: Mr. Pereos?

3 MR. PEREOS: Oh, I think it's relevant if the Court  
4 goes about determining that the architect's AIA contract does  
5 not relate back to the date that they first started doing their  
6 work, which is going to be a crucial point for this  
7 determination.

8 MR. HOY: That point, Your Honor, is a question of  
9 law. I briefed it in our trial statement. The law is very  
10 clear that when parties pick an effective date for their  
11 contract, even if it is retroactive in nature, that the Court  
12 must give effect to the effective date.

13 It's also clear from all the evidence -- all the  
14 testimony and documentation -- that we have in this case that  
15 from a time before the work started, that everybody agreed to a  
16 fixed fee of 5.75 percent of what the estimated construction  
17 costs would be. Then there was a stopgap, then they signed the  
18 master agreement that adopted what they talked about from the  
19 very beginning.

20 So I don't understand how this question can possibly  
21 be relevant to this trial.

22 THE COURT: Mr. Pereos?

23 MR. PEREOS: Yes. If the custom -- the witness will  
24 testify that the custom and practice is to proceed with a

1 project before the AIA contract -- consistent with what  
2 occurred in this case -- that is, on an hourly -- on an hourly  
3 basis; that the custom and practice in the industry is that  
4 when the architect's contract is signed, okay, it doesn't  
5 relate back, it's predicated on the project going forward in  
6 connection with the funding of the project; and then the  
7 architect -- then the contract kicks in with regard to the  
8 compensation. That's the custom and practice in the industry.

9 THE COURT: But whether or not that is or is not the  
10 custom and practice in the industry, to me is not particularly  
11 relevant if the parties have agreed to something that is  
12 different than the custom and practice in the industry.

13 So if the custom and the practice in the industry is,  
14 we -- that Mr. Clark would testify to is that no one would ever  
15 do it like the parties did it in this case -- that's the custom  
16 and practice -- however, for whatever reason, the parties in  
17 this case chose to do it this way, then they're -- "they" being  
18 the parties -- are bound by their contract, whether or not  
19 anybody else in the architectural field or any other  
20 construction or business field would choose to do it that way.

21 And so I will sustain the objection on those grounds.  
22 Next question.

23 MR. PEREOS: All right.

24 MR. HOY: Your Honor, just for the record, I think the

1 correct objection that I should have made before is simply  
2 parol evidence.

3 THE COURT: That's true, it would be -- could be parol  
4 evidence, but I don't see it as, at even a threshold level,  
5 being relevant, that is, that it meets the standard of NRS  
6 48.015.

7 Next question.

8 BY MR. PEREOS:

9 Q. Exhibit 6, can I get you to direct yourself to page 7,  
10 being -- having a Bates number in the lower right-hand corner  
11 of 7504.

12 A. Okay.

13 Q. And take a look at paragraph 1.3.7.5.

14 A. Okay.

15 Q. Okay. Would John Iliescu be considered a third party  
16 under that contract?

17 A. Yes.

18 Q. Does the contract, the AIA contract, based upon its  
19 usage and your experience with it, discuss the parameters of  
20 what the budget is?

21 A. Yes.

22 Q. And how much was the budget parameter, as amended?

23 A. \$180,000,000.

24 Q. Okay. What does that impose? Does that impose any

1 obligations on the architect in connection with his design  
2 obligations or the design of the project?

3 MR. HOY: Objection, Your Honor, parol evidence. It's  
4 an unambiguous contract. If counsel wants to point to some  
5 ambiguity and then ask to fill that gap, that's fine. But at  
6 this point, this question is irrelevant.

7 THE COURT: Mr. Pereos?

8 MR. PEREOS: I'm not amending the AIA contract, I'm  
9 asking the witness whether or not the parameters of how this  
10 design is supposed to be is defined by that budget.

11 THE COURT: Well, I would observe, Mr. Hoy, that even  
12 Mr. Friedman and a number of other witnesses who testified or  
13 were called by the plaintiffs, indicated that the \$180,000,000  
14 isn't even the budget. That's just, I believe, as Mr. Steppan  
15 testified, kind of the parameters for their billing.

16 I believe that Mr. Friedman, and possibly  
17 Mr. Steppan -- and I haven't reviewed my notes this morning --  
18 did testify that it's possible this building would have been  
19 over \$180,000,000, maybe in the \$200,000,000 range. And so I  
20 don't believe that that money -- or that number fixes the cost  
21 of the construction, it's just a number that the parties have  
22 stated was their understanding, kind of a ballpark, of where  
23 they were going with the billing on the 5.75 percent.

24 So I will overrule the objection. You can answer the



1 question. The Court doesn't find that it's a parol evidence  
2 issue.

3 BY MR. PEREOS:

4 Q. Does it define the parameters of the assignment of the  
5 architect?

6 A. Yes.

7 Q. Did the architect discuss a time frame -- or the AIA  
8 contract discuss a time frame in which it was anticipated that  
9 the project would be completed?

10 A. Yeah, I think it did; I just can't remember what it  
11 was.

12 Q. Let's go to the last paragraph.

13 MR. HOY: Forgive me. The last paragraph of what?

14 THE WITNESS: Of what?

15 BY MR. PEREOS:

16 Q. I'm sorry. The AIA contract. I'm so sorry. The AIA  
17 contract, which I'll show you it in a second.

18 Exhibit 6. Excuse me. Go to paragraph 1.5.9.

19 A. Okay.

20 Q. Does that discuss the parameters of the time frame for  
21 the completion of the project?

22 A. Yes.

23 Q. And if you want, if you would take a look at  
24 Exhibit 7, you will see that that paragraph was amended, but

1 the same time frame was inserted therein. Do you see that?

2 A. Okay.

3 Q. Let me direct your attention now to Exhibit 130, one  
4 three oh. It should be in the other book.

5 A. Okay.

6 Q. Was that a report that you prepared at my request?

7 A. Yes.

8 Q. And did that report address the project that's  
9 being -- that's being discussed herein?

10 A. Yes.

11 MR. PEREOS: Move for the admission of 130.

12 MR. HOY: Objection, hearsay. An expert's report is  
13 for pretrial disclosure; it's a hearsay document when presented  
14 at trial.

15 THE COURT: Well, technically it is hearsay. It's an  
16 out-of-court statement being offered in court to prove the  
17 truth of the matter asserted. And so pursuant to Chapter 51,  
18 it is defined as hearsay.

19 Mr. Pereos.

20 MR. PEREOS: The witness is here and subject to  
21 cross-examination with regard to the document.

22 THE COURT: Well, that's true. But for the same  
23 reason, in a criminal setting, a police officer's report isn't  
24 automatically just admitted when the police officer testifies

1 during the trial, even though the police officer may or may not  
2 be the person who wrote the report -- or would be the person  
3 who wrote the report. I apologize.

4 And similarly, just because Mr. Clark writes a report  
5 and is physically present in the courtroom, doesn't mean that  
6 the report comes in automatically.

7 Do you have anything other than the general statement  
8 that -- that Mr. Clark is present?

9 MR. PEREOS: The report is designed to assist the  
10 trier of fact in making his final decisions and the report can  
11 go into the ultimate decision of the trier of fact, by the  
12 rules.

13 MR. HOY: Counsel is free to elicit whatever opinion  
14 testimony he wishes, but he can't short-circuit that by just  
15 offering the Court a report with a bunch of statements in it.  
16 The report itself is hearsay.

17 THE COURT: I sustain the objection. I will allow  
18 Mr. Pereos to go into any area that is contained in the report  
19 itself. And so the -- I agree the document itself is a hearsay  
20 document; however, there, as we know, are numerous ways or  
21 exceptions to the hearsay rule.

22 I simply don't believe that an expert-opinion document  
23 is one of those exceptions to the hearsay rule, but I believe  
24 that Mr. Clark is able to offer an opinion on numerous issues

1 regarding this case, and if there are additional issues that  
2 are presented in his report, that Mr. Pereos would like to get  
3 into, then he's more than able to get into any or all of those  
4 issues, assuming that they're relevant and not subject to any  
5 other evidentiary objections.

6 So you can ask any additional questions you want,  
7 Mr. Pereos.

8 MR. PEREOS: Okay.

9 BY MR. PEREOS:

10 Q. In performing your assignment, did you evaluate the  
11 work that was performed by Fisher-Friedman and Associates?

12 A. Yes.

13 Q. What did you observe with regard to the work that was  
14 performed prior to April 26, 2006?

15 A. What did I observe? That they put together a package  
16 for entitlements and submitted it.

17 Q. Okay. And how much of the work was performed prior to  
18 that time by Fisher-Friedman and Associates?

19 A. Almost everything I saw.

20 Q. Okay. What would be the purpose of -- what would be  
21 one of the purposes of securing the AIA contract in connection  
22 with lending of funds -- for the borrowing of funds?

23 A. It would be to establish the total lending package and  
24 actually, sometimes it's required to have contracts in place

1 before funds will be released.

2 Q. Okay. Would that include contracts in place with the  
3 architect?

4 A. Yes. The architect, contractor, others.

5 Q. And is that customary in the industry?

6 A. Yes.

7 Q. Is it usual that financing for construction of a  
8 project of this nature would be secured prior to the  
9 entitlements?

10 A. No.

11 Q. Do the entitlements first have to be achieved?

12 A. I've never -- anything of this scale, you're not going  
13 to get financing without approvals in place.

14 THE COURT: So based on -- is it your testimony then  
15 that -- that the process that was in place in this case,  
16 including the lack of securing of funds, is not unusual?

17 THE WITNESS: Not at all. You very well could be  
18 modified. They could have reduced the size of the building in  
19 the planning process. You don't know what you are actually  
20 going to build until you get through with the entitlements --  
21 or going to be able to build.

22 So to finance that -- I mean, sometimes you can  
23 pre-qualify some things, but it doesn't get you the financing  
24 and the documents signed and the money in the bank.

1 BY MR. PEREOS:

2 Q. Was there language in the AIA contract that  
3 acknowledged the conversion of a fee arrangement on an hourly  
4 basis to a fixed fee?

5 A. Yes.

6 MR. PEREOS: I have nothing further.

7 THE COURT: One moment, Mr. Hoy.

8 Just before Mr. Hoy asks you questions, just give me  
9 an idea, Mr. Clark, when you say "entitlements," what is it  
10 specifically that you believe you are talking about?

11 THE WITNESS: Final approval by the City of Reno  
12 allowing a project to move ahead in the nature that it's  
13 approved.

14 THE COURT: That's my understanding, as well. Thank  
15 you.

16 Go ahead, Mr. Hoy.

17 CROSS-EXAMINATION

18 BY MR. HOY:

19 Q. Good morning, Mr. Clark.

20 A. Good morning.

21 Q. You were asked a question somewhere after five or  
22 six minutes of assumptions that you were given as part of a  
23 hypothetical, and one of those assumptions that you were asked  
24 to use was that there were no instruments of service created

1 after April 26, 2006.

2 Do you remember that assumption?

3 A. Yes.

4 Q. How does that assumption bear on the opinions that  
5 you've given in this trial?

6 A. It demonstrates to me the work that's performed during  
7 what time period and from what I saw of the billings associated  
8 with that work effort.

9 Q. All right. Do you know whether or not there was a  
10 change in the number of residential condominium units for this  
11 project?

12 A. Yeah, it -- it was made larger somewhere along the  
13 line; I can't remember when.

14 Q. Okay. Do you remember what the initial number of  
15 units was?

16 A. No.

17 Q. Do you remember what the second level of units was?

18 A. Near 500 units; I can't remember the exact number.

19 Q. Was that moved from approximately 390, then -- I will  
20 just tell you what it is.

21 In the -- in Exhibit 35, the special use permit asked  
22 for 390 units. I'm sorry. That was a horrible sentence.

23 In Exhibit 35, which is the January 17, 2006,  
24 application for a special use permit, the project is described

1 as 390 units. On February 7, 2006, there is an application for  
2 a special use permit, with a tentative map, asking for  
3 394 units. In Exhibit 36, which is misdated in the binder, but  
4 it was submitted in the middle of May of 2006, the project is  
5 described as 499 units.

6 THE COURT: I think that's 37, just for the record.

7 MR. HOY: Or 37. Thank you, Your Honor.

8 THE WITNESS: Okay.

9 THE COURT: Go ahead.

10 BY MR. HOY:

11 Q. Did you do any investigation to learn what  
12 architectural work was done between that February permit  
13 application, describing the project as 394 units, and the May  
14 amendment asking for 499 units?

15 A. Not in any detail.

16 Q. Do you know -- did you do any investigation to learn  
17 what work had to be done by the architecture firm in order to  
18 change the mix of the units from the 394 to 499?

19 A. No.

20 Q. Did you review a video fly-through?

21 A. No, I didn't see the fly-through.

22 Q. Do you know when the video fly-through was created?

23 A. In observing the billings and some of the paperwork,  
24 it was during the entitlement process. I don't remember what



1 month, but it was after that period of time, after summertime  
2 or later.

3 Q. So it was after -- yes. It was after April 26th?

4 A. Yes.

5 Q. Okay. And did you look at a PowerPoint presentation?

6 A. I didn't see it, but I'm aware of it.

7 Q. So you didn't look at all of the renderings that were  
8 done in that PowerPoint?

9 A. I saw some of it, but I didn't see all of it.

10 Q. Do you know when the renderings in the PowerPoint were  
11 created?

12 A. My assumption was also around the time the fly-through  
13 was.

14 Q. So sometime after April 26th --

15 A. Yes.

16 Q. -- 2006?

17 A. Yes.

18 Q. You were asked to look at Section 1.5.9, of the, what  
19 we've been calling the master agreement. This is at Exhibit 6.  
20 And in the lower right-hand corner of these documents, there's  
21 what we call a Bates number. And so it's Steppan 007507.

22 And that provision in the master agreement, before the  
23 amendment, says: "If the services covered by this agreement  
24 have not been completed within 32 months of the date hereof,

1 through no fault of the architect, extension of the architect's  
2 services beyond that time shall be compensated as provided in  
3 Section 1.5.2."

4 Can you please give us your understanding of what that  
5 provision is, based on your work as an architect and your use  
6 of the B141 document.

7 A. So projects have both -- not both -- budgets and  
8 timeframes that clients want to achieve and you tie your  
9 contracts to that, and usually giving yourself some wiggle room  
10 on time, in general, because things happen during the  
11 construction process, et cetera. Things don't always go as  
12 planned and sometimes adjustments need to be made.

13 Q. Adjustments to --

14 A. To contracts --

15 Q. -- contracts?

16 A. -- to relationships, all of that, yeah.

17 Q. But this particular provision really talks about  
18 adjustments to the architect's compensation, right?

19 A. Yes.

20 Q. Nothing more?

21 A. Yes.

22 Q. That's all it does?

23 And then if you would please turn to Exhibit No. 7,  
24 which is the Addendum No. 1 to the master agreement, and turn

1 to the second page there.

2           Section 1.5.9 amends what we just looked at in the  
3 master agreement to say, "The extent of the work as defined by  
4 this agreement is estimated at 32 months from the effective  
5 date of this agreement. If through no fault of either party  
6 the time frame is extended beyond the 32 months, then neither  
7 party, owner nor architect, shall be held liable for additional  
8 sums or compensation."

9           Let's just stop at that point. That amendment  
10 suggests that this Section 1.5.9 only addresses additional  
11 compensation to the architect and nothing more; fair?

12       A.    It actually says, "Neither will be held liable."

13       Q.    Correct.

14       A.    Yes.

15       Q.    It takes away the architect's ability to obtain  
16 additional --

17       A.    Yes.

18       Q.    -- compensation if the project runs over time?

19       A.    Correct.

20       Q.    And then this next sentence says, "The architectural  
21 work product, as defined to obtain the required entitlements  
22 and respective budgets, will remain as fact without respect to  
23 an estimated timeline."

24           Is that language something that you are familiar with

1 from your practice?

2 A. I've never used it in that way; but, in essence, the  
3 work we did is the work we did. And it's related to -- I mean,  
4 it's a pretty benign statement in the end.

5 Q. Okay. Section 1.5.9 doesn't constitute a guarantee by  
6 the architect that the project is going to be completely built  
7 within the 32 months?

8 A. It also doesn't guarantee from the owner that it will  
9 be completely built.

10 Q. Precisely.

11 MR. HOY: Thank you. No more questions.

12 THE COURT: Cross-examination -- or redirect?

13 MR. PEREOS: No, I don't have anything.

14 THE COURT: Thank you, Mr. Clark. You may step down.  
15 Thank you for being here today.

16 MR. PEREOS: My next witness is scheduled for 10:15.

17 THE COURT: Okay. How many other witnesses do you  
18 have, Mr. Pereos?

19 MR. PEREOS: I have -- Mr. Campbell is going to be  
20 next. And then I have Dick Johnson, but I had him scheduled  
21 for this afternoon, the first witness up, and then that's it.

22 THE COURT: And then that's your last witness?

23 MR. PEREOS: Yes.

24 THE COURT: Mr. Hoy, do you anticipate any rebuttal

1 witnesses at this point?

2 MR. HOY: No, Your Honor.

3 THE COURT: Okay. Well, it looks like we're obviously  
4 going to get this case concluded today.

5 Mr. Hoy, do you want to say something?

6 MR. HOY: Yes, Your Honor. We will object to any  
7 testimony by Mr. Campbell. Mr. Campbell is an appraiser, real  
8 estate appraiser, and I believe his opinion that's going to be  
9 offered is that the project would not have been financially  
10 successful because of the general conditions, the crash of the  
11 economy and so forth.

12 We don't think that that's relevant to the case at  
13 all. So what I would propose at this time, Your Honor, is that  
14 the defense make an offer of proof and then we can argue about  
15 whether that's germane in this case and maybe we can avoid  
16 another witness.

17 MR. PEREOS: I can't argue with that proposition.

18 THE COURT: Mr. Pereos, then why don't we use our time  
19 wisely, if you want to make the offer of proof, and we'll go  
20 forward from there.

21 MR. PEREOS: Mr. Campbell will testify that what he  
22 did was he appraised the value of the project. In appraising  
23 the value of the project, he determined how long it would take  
24 to sell out the project based upon the numbers that were used,

1 that he had access to, as to what was anticipated to be the  
2 market value of the individual units.

3 From that he came into a determination as to what the  
4 market value -- or the value of the project would be, in terms  
5 of using three discount rates. Okay? Because you're looking  
6 at future determination.

7 His report determined that there would be an  
8 approximate absorption of one unit per month, based upon what  
9 he saw in the market conditions; that based upon the sale of  
10 one unit per month, it would take so many years to sell out the  
11 project. He applies the discount rate. He applied three  
12 different types of discount rates to come to fair market value,  
13 and that every value that he came up with was less than  
14 \$180,000,000. That's it.

15 THE COURT: But the issue on the relevance of that  
16 would be, in the Court's mind -- and maybe you can address  
17 this, Mr. Pereos -- is that the agreement of the parties has  
18 nothing to do, as I understand it -- be it the contract itself,  
19 Exhibit 6, or as you suggested, their pre-contract  
20 understanding of the billing rate -- neither one of those has  
21 anything to do with how long it would take to sell out the  
22 Wingfield Towers apartments or how many people would be living  
23 there, it is: "What was the cost of constructing the project?"

24 That's the basis for the -- that would be the number,

1 shall we say, that we would apply the 5.75 percent to,  
2 eventually, whatever that cost would be -- \$160,000,000,  
3 \$180,000,000, \$250,000,000. I have no idea what the ultimate  
4 cost would be, as I sit here today.

5 But how long it would take to sell out or how many --  
6 what the value, in essence, of the project at the end would be,  
7 is not -- as I sit here this instant -- relevant and,  
8 therefore, I'm lost as to what his -- what value his testimony  
9 would have.

10 If he would be offering some testimony about how much  
11 it would cost to construct the project, that would be  
12 different.

13 MR. PEREOS: The timing, Your Honor --

14 THE COURT: Hold on, Mr. Pereos.

15 Mr. Hoy, do you have any comments on that or --

16 MR. HOY: Yes, Your Honor.

17 THE COURT: I don't want your response to the offer of  
18 proof yet.

19 MR. HOY: Just to make the offer of proof complete --  
20 I apologize for mumbling here.

21 Exhibit, marked for identification, 132 is an  
22 October 10, 2013, appraisal report by Joseph S. Campbell. To  
23 make the offer of proof complete, I would stipulate to the  
24 admission of Exhibit 132.

1 THE COURT: Okay.

2 MR. HOY: And from that point, it's really just an  
3 argument about relevance, and I can't add too much to what the  
4 Court has already observed, other than if the witness  
5 testifies, then the cross-examination will reveal that this  
6 perspective on what the project would have retailed for, if it  
7 had been built, is based upon what the fair market value of  
8 these unit was after the crash.

9 In other words, Mr. Campbell went out and looked at  
10 the experience of The Montage, for example, and some of the  
11 other condominium projects around Reno, and said, "Well, geez,  
12 because of the crash, the property values came way down;  
13 therefore, the retail value of this project, if it had been  
14 built, would be much lower than what everybody expected before  
15 the crash in 2008."

16 THE COURT: But would that have any effect on the cost  
17 to build it?

18 MR. HOY: No.

19 THE COURT: I might spend \$10,000,000 building my  
20 dream home, but the value of that home to someone else or on  
21 the market might be \$1,000,000.

22 But in this case -- and just to complete my analogy,  
23 it might cost \$10,000,000 to build my dream home because I have  
24 some bizarre thoughts about what esthetically I want in the



1 house. But that house to anybody, other than me, may be only  
2 \$1,000,000 or it may be valueless.

3 And in this case, the issue is, what was the  
4 construction costs -- that is what the percentage gets applied  
5 to -- not what the ultimate value of the -- of the completed  
6 product would be on the market. The construction costs is the  
7 term that is used in the contract, not the ultimate market  
8 value of the completed project.

9 MR. HOY: Correct. And Mr. Campbell is not offering  
10 an opinion about what the cost of construction would have been.

11 MR. PEREOS: Agreed.

12 THE COURT: And so I also understand that  
13 Mr. Campbell's report has been stipulated as an admitted  
14 document. And I would assume, Mr. Pereos, because it is your  
15 exhibit, Exhibit No. 132 --

16 MR. PEREOS: I so move.

17 THE COURT: You move it and it's stipulated in, so  
18 it's in. Do we need Mr. Campbell --

19 MR. PEREOS: Not now.

20 THE COURT: -- to come in and testify?

21 MR. PEREOS: Not now. The argument -- the tie-in,  
22 Your Honor, is that it's -- the architect knows that the money  
23 is not lined up, proceeds on an hourly basis. Okay? It goes  
24 to the AIA contract. The AIA contract has to be funded by a

1 loan. He knows that the developer doesn't have a loan.

2 Campbell would basically -- the logic of his testimony  
3 is that this project was dead in the water from the day it  
4 started. So that type of opinion.

5 THE COURT: Well, and we can argue about that --

6 MR. PEREOS: That's argument.

7 THE COURT: -- at some later time. I understand that.

8 MR. PEREOS: That's argument.

9 THE COURT: But I appreciate the stipulation by  
10 Mr. Hoy regarding Mr. Campbell's report, because it obviates  
11 the need for Mr. Campbell to come in and testify. Certainly it  
12 also eliminates Mr. Hoy's ability to cross-examine him.

13 But at this point, the document is admitted. The  
14 Court will review the document, because it is an admitted  
15 exhibit, in the Court's analysis of all of the documents, and  
16 then give it the weight that it feels is appropriate based on  
17 the ultimate decision that I make regarding what are the  
18 controlling documents in the case.

19 (Exhibit No. 132 admitted into evidence.)

20 MR. PEREOS: Your Honor what I will do is, if you take  
21 a recess, I will call Mr. Johnson, get him in here, see if I  
22 can get him in here earlier.

23 THE COURT: Okay.

24 MR. PEREOS: And then we can finish this up.

1 THE COURT: Excellent. I appreciate that.

2 And thank you both for the very professional way that  
3 this case has been handled to this point, I certainly  
4 appreciate it. Court is in recess.

5 (Recess taken.)

6 THE COURT: We'll go back on the record in Steppan  
7 versus Iliescu, CV07-00341. I am informed that Mr. Johnson has  
8 made himself available at a time earlier than anticipated.  
9 Mr. Johnson is present in court.

10 Thank you for coming in so quickly, sir.

11 We will go back to testimony. And, Mr. Pereos, if you  
12 would like to call your next witness.

13 MR. PEREOS: The next witness would be Dick Johnson,  
14 please. Mr. Johnson, please take the witness stand.

15 THE COURT: Mr. Johnson, I will simply remind you that  
16 you are still under oath. Do you understand that, sir?

17 MR. JOHNSON: Yes, sir.

18 THE COURT: Thank you.

19 RICHARD K. JOHNSON,  
20 called as a witness herein, having been previously  
21 duly sworn, was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. PEREOS:

24 Q. Please state your name.

1 A. Richard K. Johnson.

2 Q. Mr. Johnson, I want to direct your attention to the  
3 second extension with regard to this particular project. In  
4 connection with that second extension, were you present at a  
5 hearing before the Reno City Council?

6 A. Yes.

7 Q. Okay. Did you have any meetings prior to that  
8 hearing?

9 A. Yes.

10 Q. Okay. And with whom did you meet?

11 A. You're talking right prior to the actual --

12 Q. Yes.

13 A. Okay. I met with a couple of different people,  
14 obviously, Dr. Iliescu, and some people I knew in the audience,  
15 but also with Mayor Cashell.

16 Q. Okay. Was there an issue that surfaced with regard to  
17 people that were owed money on this particular project?

18 A. Yes.

19 Q. Okay. And was that part of the conversation with your  
20 meetings --

21 A. Yes.

22 Q. -- with Mr. Cashell, the mayor?

23 A. Yes.

24 Q. What did you tell the mayor?

1       A.    Well, the mayor was talking to me about the extension  
2 that was going to be heard in the council meeting. He said,  
3 you know, if your people -- and everybody, buyers, sellers --  
4 would agree to be sure that these other debts are paid off --  
5 in particular, there was three I remember, one was a public  
6 relations firm, which was -- what should I say -- had a direct  
7 relationship with one of the councilmen, so it was a sore spot  
8 there, that he knew about and what have you.

9           And I said, "Well, I need to get their okay, but I  
10 would tell you that I think that I can represent that, through  
11 escrow, that the buyer will pay them. But I need to have, you  
12 know, the agreement that they're going to add that money to the  
13 agreement."

14       Q.    Did you later have communications with a buyer?

15       A.    With a buyer? I believe so. If Sam was there, I did.

16       Q.    Oh, Sam Caniglia?

17       A.    Yeah.

18       Q.    Okay. And in those communications, what did you tell  
19 Sam Caniglia before the hearing?

20       A.    I don't remember the exact conversations.

21       Q.    The substance.

22       A.    But the bottom line is, I got the okay from buyer and  
23 seller before I got in front of the city council.

24       Q.    Okay. And what did you indicate in front of the city

1 council?

2 A. That if an escrow were to occur, that those people,  
3 all those underlying bills, would be paid off through escrow.

4 Q. Was that also codified in an addendum to the purchase  
5 agreement?

6 A. That's what I was hoping to look up before I got here,  
7 but -- I think in --

8 THE COURT: Mr. Johnson, if you want to take a moment  
9 and review a document, or if, Mr. Pereos, you can direct him to  
10 a document to review, we've got the time, so go ahead.

11 BY MR. PEREOS:

12 Q. Was there an Addendum No. 6 that was eventually  
13 drafted?

14 A. Oh, yes. I was worried about No. 5. No. 6, I know  
15 had everything spelled out in detail.

16 Q. Okay. And did No. 6 ever get implemented?

17 A. No.

18 Q. Oh, all right. What you were thinking about is  
19 whether or not Addendum No. 5 also addressed the issue --

20 A. Right.

21 Q. -- that if the escrow closed --

22 A. Right.

23 Q. -- these people were going to be paid?

24 A. Correct.

1 MR. PEREOS: Court's indulgence.

2 THE COURT: So, Mr. Johnson, are you saying that  
3 Addendum No. 5 would have covered the concerns of Mayor Cashell  
4 regarding outstanding balances that were owed?

5 THE WITNESS: Yeah. And it would -- when you say his  
6 concerns, he was just sharing with me the fact that there were  
7 people there, both in the audience and a council member, that  
8 had reason to want to be sure that the local people that were  
9 owed money were taken care of.

10 THE COURT: Okay. And it was Addendum No. 5 that  
11 would have covered that?

12 THE WITNESS: That's what I don't remember, what was  
13 in No. 5. I know No. 6, because before I was called, I just  
14 pulled up No. 6 and read it. In fact, I brought a copy with me  
15 and I know it covers it quite -- quite extensively in No. 6.

16 THE COURT: Okay. So it might be 5 and 6, but it's at  
17 least 6?

18 THE WITNESS: Absolutely.

19 MR. PEREOS: Well, Your Honor, that's good enough. I  
20 have no further questions.

21 THE COURT: Hold on. Let me just make a note here.

22 And, Mr. Johnson, was Addendum 6 the one that you said  
23 you weren't sure if it was put into effect?

24 THE WITNESS: To the best of my knowledge, it was

1 never signed. It was a negotiated thing and then the money  
2 fell out and we never went ahead. So whether it was signed or  
3 not, I don't remember.

4 THE COURT: But No. 5 was?

5 THE WITNESS: I'm pretty sure No. 5 was.

6 THE COURT: Go ahead, Mr. Hoy. Thank you.

7 MR. HOY: Thank you.

8 CROSS-EXAMINATION

9 BY MR. HOY:

10 Q. Good morning, Mr. Johnson.

11 A. Hi.

12 Q. Welcome back.

13 You just mentioned that you brought a copy of a draft  
14 Addendum No. 6 to the land purchase agreement with you today?

15 A. Well, yeah. I had just gotten to the office, frankly,  
16 when I got the call. And I had looked up, started looking up  
17 things and I came -- the first thing I saw was Addendum 6, and  
18 there was a draft.

19 One draft was -- that I actually pulled was in July of  
20 2009, and the other draft was September 13th of 2010. So I  
21 have two drafts -- and I know there was probably a couple more  
22 in between -- but both of them deal with what I am talking  
23 about.

24 Q. May I see the two draft Addenda 6?



1 A. It's --

2 MR. HOY: Any objection?

3 MR. PEREOS: No.

4 MR. HOY: May I approach the witness, Your Honor?

5 THE COURT: You may.

6 THE WITNESS: And they fell on the floor, so I hope I  
7 got the pages in the right order.

8 BY MR. HOY:

9 Q. Now, you maintained the files that were eventually  
10 turned over in discovery on behalf of Dr. Iliescu and  
11 Mrs. Iliescu in this case; is that right?

12 A. I turned over my files to them, yes.

13 Q. These two draft addendums are not in the discovery.  
14 Do you have any understanding why that's the case?

15 A. I'm not sure when the discovery was. These may have  
16 happened after. I don't remember the dates. If -- either they  
17 were in there or they -- you know, it came after the date of  
18 requesting my files; so it's one of the two.

19 Q. That's a fair point. One of these drafts is dated  
20 July 1, 2009, and the other is September 13, 2010. And I think  
21 this litigation started back in 2007. So that's very possible.

22 I would note that in the draft dated September 13,  
23 2010, there's an agreement -- this is just draft, but it reads:

24 "There were previous unpaid invoices for services

1 performed in the development of the property during prior  
2 escrows. Buyer agrees that in addition to the purchase price,  
3 all such monies owed will be paid by buyer through escrow. To  
4 the best of buyer's and seller's knowledge this includes, but  
5 is not limited to the following: Wood Rodgers Engineering,  
6 \$5,314.48; IW Strategies, Public Relations, \$60,000; and  
7 Tri-State Engineering, \$19,234.10."

8 But the architect is not listed there.

9 A. I think if you read some of the other paragraphs, it's  
10 dealt with. Look at the paragraph above it.

11 Q. Okay. You are correct, sir.

12 "Buyer shall assume all existing liabilities, liens,  
13 related costs and other issues, known or unknown, associated  
14 with the design and development of the property during the  
15 duration of the agreement and its addendums, which duration is  
16 July 29, 2005, through and including the close of escrow.  
17 Specifically, this shall include any obligations or liens,  
18 existing and/or in dispute, and related costs, to the  
19 architectural firm of Fisher-Friedman Architects (AIA  
20 architectural services contract) including but not limited to  
21 its architect of record, principals, consultants, related  
22 firms, employees and associated entities. Buyer to pay through  
23 close of escrow, any known claims by the above."

24 Can you please tell us what negotiations led to the

1 drafting of that language?

2 A. Yeah, at some point I found out about the stuff being  
3 owed, which was prior to the hearing, which -- because then --  
4 that's the soonest I can remember, because that's when it  
5 became record.

6 Beyond there, there's been so many discussions I  
7 couldn't begin to tell you when and what was talked about when.

8 MR. HOY: May I have these marked separately for  
9 identification, please. Let's make the earlier one first.  
10 There you go.

11 THE CLERK: Exhibit 54 marked for identification and  
12 Exhibit 78.

13 (Exhibit Nos. 54 and 78 marked for identification.)

14 THE COURT: Exhibits 54 and 78 have been marked.  
15 Again, we're just using numbers that were not used in the  
16 original marking of the exhibits by Mr. Hoy.

17 Any objection to 54 and 78 being admitted, Mr. Pereos?

18 MR. PEREOS: Yes, I do, because I never saw them  
19 before this witness testified to them.

20 THE COURT: Well, Mr. Hoy, could you provide them --

21 MR. PEREOS: I mean, I'm --

22 THE COURT: -- to Mr. Pereos.

23 And, Mr. Pereos, take as long as you feel you need to  
24 review those documents.

1 MR. PEREOS: May I ask the witness a question or two?

2 THE COURT: You may.

3 VOIR DIRE EXAMINATION

4 BY MR. PEREOS:

5 Q. Who prepared the addendums? I know they're on your  
6 stationery.

7 A. Yeah, I was going to say, I'm pretty sure that I typed  
8 them out and probably did the original. Like I stated earlier,  
9 there's two there. One was -- and this was on my computer,  
10 that's where I looked first, and that's as far as I got.

11 The earliest one was -- you know, and then the latest  
12 one. And those are the two I printed out because I was going  
13 to see what the difference was and try and recollect what went  
14 on. There were others on there, that were other drafts in  
15 between.

16 And now to answer your question, I don't remember if I  
17 had input on the original draft from Hale Lane -- which I think  
18 I did, because of some of the wording, but I'm not sure of  
19 that --

20 Q. Okay.

21 A. -- so I can't -- I can't give you a straight answer.

22 Q. So there were earlier generations of both of these  
23 drafts on your computer?

24 A. There's generations between those two, for sure.

1 Q. Oh, there's generations?

2 A. If there's any earlier, I don't know, because I didn't  
3 have time to look.

4 Q. All right. What's the basis of the explanation of the  
5 time differential of almost one year?

6 A. I think it's the same old story, we didn't get the  
7 money and now we're renewing it again.

8 MR. PEREOS: Well, the only basis I have for any  
9 objection is the fact that it's not signed. All it was, was  
10 subject to negotiations. But that goes to the weight, I guess,  
11 more than to admissibility.

12 THE COURT: I agree. They'll be admitted and the  
13 parties can argue what value they provide to the Court at a  
14 later time.

15 MR. HOY: Thank you. May I approach the witness, Your  
16 Honor?

17 THE COURT: Fifty-four and 78 are admitted.

18 You may approach the witness.

19 (Exhibit Nos. 54 and 78 admitted into evidence.)

20 CROSS EXAMINATION (RESUMED)

21 BY MR. HOY:

22 Q. Mr. Johnson, I'm handing you what has been marked for  
23 identification -- well, admitted as Exhibit 54. This is the  
24 July 1, 2009, draft of an Addendum No. 6.

1 Does Exhibit 54 reflect negotiations that were going  
2 on at or about the time of the -- that date, July of 2009?

3 A. Yes.

4 Q. And between whom were those negotiations taking place?

5 A. Well, through Sam Caniglia, Dr. Iliescu -- because I  
6 was representing him -- and at different times there were  
7 questions asked of Hale Lane; but I don't know.

8 Q. And by drafting this on your computer, does that  
9 indicate to you that you had no objections to the terms that  
10 were in that draft?

11 A. I don't recall having had objections. There were  
12 times where I did question some stuff and, you know, questioned  
13 if we should raise the price to do things and to put some bonds  
14 on it -- I think one of these maybe has a bond in it and one  
15 may not -- those types of things, to protect Dr. Iliescu. But  
16 those questions went back to the legal firm.

17 Q. May I take a quick look at 54?

18 A. Sure.

19 Q. In Exhibit 54, page 2, numbered paragraph 6, there's a  
20 listing of vendors who are owed money there. And this time it  
21 says: "Paragraph 6(d), Fisher-Friedman, architectural fees,  
22 \$2,585,561.55." Did I read that correctly?

23 A. Yeah.

24 Q. Was that number part of the discussion and negotiation

1 between the owner -- well, the developer, Sam Caniglia, and  
2 Dr. Iliescu at that time?

3 A. Well, it wasn't a negotiation. This was supposedly  
4 the best numbers that Sam Caniglia had at that time and that he  
5 provided to me. I think there's even further data in there  
6 saying, all that's subject to adjustment to whatever the actual  
7 numbers are. But that's what he was led to believe they were.

8 So there's an overall statement that he will pay for  
9 all of them, but here is a sampling of what we think it is.

10 MR. HOY: All right. Thank you. No more questions.

11 THE WITNESS: Um-hum.

12 MR. PEREOS: Your Honor, I don't have anymore.

13 THE COURT: Mr. Johnson, again, thank you for coming.  
14 I know you were only here briefly, but your testimony was  
15 important, so thank you for being here, sir.

16 THE WITNESS: Okay. Thank you.

17 THE COURT: Any further witnesses to call?

18 MR. PEREOS: No, nothing further.

19 THE COURT: So the defense rests?

20 MR. PEREOS: Defense rests.

21 THE COURT: And any rebuttal witnesses, Mr. Hoy?

22 MR. HOY: No, Your Honor.

23 THE COURT: Okay. Counsel I appreciate, again, the  
24 fact that we were able to do this in four days instead of five,

1 as originally anticipated.

2 It is now 11:15 a.m. And so what I would like to do  
3 is first find out, are there any additional just oral issues  
4 that we can take up prior to going forward with closing?

5 Mr. Hoy?

6 MR. HOY: I have no motions at this time.

7 THE COURT: Mr. Pereos, any additional --

8 MR. PEREOS: I have none.

9 THE COURT: Then let's talk about closing argument. I  
10 have given it a lot of thought, but I would like to hear what  
11 the parties' thoughts are at this point regarding how you would  
12 like to proceed.

13 Have you decided whether or not you just want to make  
14 an oral presentation to the Court and submit it or do written  
15 post-trial briefs and submit it in that fashion?

16 Mr. Hoy.

17 MR. HOY: My colleague and I have discussed this. I  
18 think we both prefer to have an oral closing argument. If the  
19 Court raises a legal issue during our oral argument, that might  
20 give rise to a brief. But absent that issue, I think that we  
21 could both argue and submit the case this afternoon.

22 THE COURT: Excellent.

23 Mr. Pereos?

24 MR. PEREOS: On that particular issue -- you know, I



1 did tell that to Mr. Hoy. And I'm rethinking it because I see  
2 legal issues surfacing that are going to necessitate briefing.  
3 I just see it in the arguments, you know.

4 THE COURT: Well what my thought, frankly, was, the  
5 more I've given it some consideration, is actually just to do  
6 both. I don't have an opposition to the parties being able to  
7 do a closing argument today, because as I stated -- I believe  
8 it was on Tuesday -- I see great value in closing argument  
9 rather than just writing something out.

10 But what I also see value in, in this case  
11 specifically, is the opportunity for the parties to possibly  
12 present in a written form, any additional legal authorities  
13 that they might like to direct the Court to or a supplemental  
14 post-type -- strike that -- a post-trial brief if they believe  
15 it is appropriate.

16 And so what we will do is we will reconvene at 1:15  
17 today -- unless you want to just get into it right now -- and  
18 do closing arguments on the case. And then I will give the  
19 parties the opportunity, if they feel that they want to  
20 exercise that opportunity, to file a post-trial brief, and that  
21 post trial brief will be filed -- one moment -- no later than  
22 Friday, January 3, 2014, at 5:00 p.m. so that will give you a  
23 couple of weeks to draft anything that you feel needs to be  
24 drafted.

1           Do you both think that would be enough time,  
2 approximately three weeks, to get that done?

3           MR. HOY: That's plenty of time for me, Your Honor.

4           THE COURT: Mr. Pereos, does that work for you, as  
5 well.

6           MR. PEREOS: Yes, I can deal with that, I hope.

7           THE COURT: Okay. And if it becomes an issue, then  
8 let the Court know and I will extend you some additional time,  
9 either party, if you feel that it's appropriate.

10           I don't anticipate that it's a briefing in the sense  
11 of motion, opposition, reply --

12           MR. PEREOS: No.

13           THE COURT: -- submission, it's just one document that  
14 is submitted by each party summarizing both the factual and  
15 legal issues in the case, if you feel it's appropriate.

16           And, Mr. Pereos, if you choose to file one and,  
17 Mr. Hoy, if you choose not to file one, I obviously won't  
18 consider it against Mr. Steppan. If you think you've made all  
19 your points, then there's nothing else to say. And I also  
20 appreciate not reiterating things unnecessarily. So I will  
21 leave it up to the parties.

22           Would you like to just go forward right now that we've  
23 got some time, with closing argument, or do you think you need  
24 an opportunity to collect your thoughts and come back possibly

1 after the noon hour?

2 MR. HOY: I --

3 THE COURT: You're first, Mr. Hoy, so it's up to you.

4 MR. HOY: My, friends, my family and my colleagues all  
5 know that I can't do anything in under 40 minutes, so I think  
6 we had better kick it off at 1:15.

7 THE COURT: Okay. Then the evidentiary portion of the  
8 trial will be considered concluded at this point -- strike  
9 that.

10 Prior to doing that, we did have the issue yesterday  
11 come up about both the lis pendens and the pre-lien -- or,  
12 excuse me, the publication. And I know, Mr. Hoy, you had your  
13 staff going back and reviewing to determine if you could  
14 produce the notice, the publication notice.

15 Were you successful in that endeavor or not?

16 MR. HOY: Not.

17 THE COURT: Okay. Then the Court's ruling regarding  
18 that issue will not change. I would have given you the  
19 opportunity to produce the Certificate of Publication, but  
20 given the fact that that is not available, then there is no  
21 need to reopen the case on that issue.

22 And now I will officially say that the presentation of  
23 evidence in the case is concluded and the Court will take no  
24 additional evidence.

1           We will reconvene at 1:15 for the purpose of closing  
2 argument.

3           Mr. Hoy, you suggested earlier that some departments  
4 like to set time limits on counsel for closing arguments. I  
5 don't think that that is necessary. I don't have any  
6 experience with either counsel professionally, outside of these  
7 proceedings, but I think that I've been very impressed with  
8 both counsel in the way they present their evidence and the way  
9 they've made their arguments.

10           I know I have the authority to impose reasonable time  
11 limits on people. And the issue always is, what is and is not  
12 reasonable? I don't think it's necessary in this case to do  
13 that. I would only encourage both parties to make their  
14 arguments and when they are finished, don't make them again.  
15 That's kind of the way I look at it.

16           So we will be in recess until 1:15.

17           (Recess taken.)

18           THE COURT: We'll go back on the record in Steppan  
19 versus Iliescu. I was briefly taken aback when I came into the  
20 courtroom, because the lights weren't on, so I was concerned  
21 that there was something wrong with me. It was a good thing  
22 that we had a doctor in the room.

23           But it appears that the lights are off because Mr. Hoy  
24 will be making a PowerPoint presentation during his closing

1 argument.

2 Mr. Hoy, do you need more lights than this or is this  
3 good for you?

4 MR. HOY: This is fine for me. Thank you.

5 THE COURT: Okay. Then we will begin with closing  
6 arguments on behalf of the plaintiffs.

7 Mr. Hoy, you may proceed.

8 MR. HOY: Thank you, Your Honor. I would like to  
9 start this afternoon by thanking the Court for its attention.  
10 And I know that those are words that are said at the end of  
11 many trials, but it is very sincere. I've been through many  
12 bench trials and never had a judge pay this close attention.

13 I would also like to thank the Court for extraordinary  
14 patience with some of the witnesses, including my client. Most  
15 courts would not just set up the courtroom to allow a couple of  
16 gentlemen to have a time to speak to one another. And I think  
17 that that might be part of what this trial was about, to be  
18 candid with you.

19 Under NRCP 52, in a bench trial the Court is required  
20 to make factual findings and conclusions of law in support of  
21 the judgment. And this is why, in our trial statement, we  
22 included a number of numbered paragraphs of claimed facts, so  
23 that that could serve as a guidepost for the Court in that  
24 effort to create findings of fact as required by Rule 52.

1 I would submit to the Court that the plaintiff has  
2 proven every one of those numbered claimed facts, with the  
3 exceptions of paragraphs 27 and 54.

4 Then I just have a further comment about paragraph 64.  
5 And paragraph 64 in our trial statement reads: "Even though  
6 the April 20th" -- "April 2007 transaction never closed, by  
7 September 25, 2007, Iliescu had received at least \$1,176,000 in  
8 nonrefundable deposits under the land purchase agreement as  
9 amended."

10 And then we cited Exhibit 102 for that. Exhibit 102  
11 was not admitted, Your Honor.

12 But Exhibit 79 was, and Exhibit 79 is an escrow  
13 instruction for that April 2007 closing that shows that there  
14 were previously \$1,176,000 in payments from the buyer already  
15 paid. Furthermore, Dr. Iliescu testified that he had received  
16 somewhere north of a million dollars in those nonrefundable  
17 deposits.

18 That's not directly relevant to our claim, it just  
19 goes to some of the issues of basic fairness that have been  
20 raised in this case.

21 And on that point, Your Honor, I would like to refer  
22 the Court back to an order of this Court by a prior judge, that  
23 we've not discussed in this trial. It was an order dated  
24 September 1, 2011.

1           And the Court can go back and read the motions that  
2 led to this order, but here's the basic background. Dr. and  
3 Mrs. Iliescu had sued the Hale Lane law firm and some of its  
4 constituent members for legal malpractice.

5           And one of the claims was that Karen Dennison and the  
6 rest of the firm could have and should have advised Dr. and  
7 Mrs. Iliescu to file a notice of non-responsibility, cutting  
8 off the ability of my client to record a mechanic's lien.

9           And one of the statutory prerequisites to being able  
10 to file a notice of non-responsibility is that the owner has to  
11 be a disinterested owner. And that's got a legal definition in  
12 the statute.

13           And Judge Elliott made certain findings about that  
14 claim. He said, "Dr. Iliescu is not a disinterested party" --  
15 or, I'm sorry, "a disinterested owner." And he wrote:

16           "This is because the undisputed evidence before the  
17 court demonstrates that plaintiffs" -- and that was Iliescus at  
18 the time -- "that plaintiffs entered into contract with  
19 developers for improvements to the property even before the  
20 defendants became involved in the matter. Plaintiffs  
21 negotiated and signed this contract by themselves.  
22 Furthermore, that contract contained language that required  
23 plaintiffs to participate actively in the development of the  
24 project" -- I'm sorry -- "the property."

1           "Specifically, the language within the original  
2 contract may be offered contingent upon obtaining the necessary  
3 government approvals with which plaintiffs were required to  
4 assist. Moreover, the court will note that as result of those  
5 negotiations, plaintiffs were to receive some \$7.5 million in  
6 payments and a penthouse valued at approximately \$2.2 million.

7           "Accordingly, these actions clearly demonstrate that  
8 plaintiffs personally contracted for and were to benefit from  
9 the improvements to their property, thus making plaintiffs  
10 interested owners before defendants" -- the Hale Lane law  
11 firm -- "had any part in the matter."

12           Now to be fair, the "personally contracted for" clause  
13 refers to the land purchase agreement and not the design  
14 agreement itself. But the purpose for me to bring this up is  
15 it really illustrates the point that we've been making all  
16 along, which is Dr. and Mrs. Iliescu are not disinterested in  
17 this design contract. Through their own contract with these  
18 developers, they had a role, they had a stake and a benefit to  
19 receive from the work that my client did.

20           So there is nothing inequitable about this Court  
21 imposing a mechanic's lien. And I know that this Court has  
22 already looked at the statute and really said, based on the  
23 application of the unambiguous statute, a lien is going to be  
24 imposed on this property.



1 But we will hear arguments this afternoon, I'm  
2 certain, that it's just not fair to Dr. and Mrs. Iliescu, and  
3 that they didn't sign the design agreement, and so on and so  
4 forth.

5 The mechanic's lien secures the amount of the  
6 agreement that is in Exhibit 6. This Court has so ruled.

7 The amount that's due under that agreement can be  
8 broken into three categories. One is the designer fee for the  
9 base contract, and that is based on 5.75 percent of the  
10 estimated construction costs; the reimbursable expenses, which  
11 the contract provides for reimbursement at cost, plus a markup  
12 of 15 percent; and additional services at an hourly rate, plus  
13 15 percent on those hourly rates.

14 And I'll get into it in a little bit more detail for  
15 each of those three categories.

16 Much of this trial has been a debate between lawyers  
17 through questions, rather than about evidence. And I say that  
18 because it's my view, at least, that the base contract, or the  
19 master agreement, is very clear about the mechanics of  
20 computing the designer's fee, based on the construction cost.

21 If you look at Section 1.5.1 it's crystal clear that  
22 the 160,000,000, which was increased to 180,000,000 in  
23 Exhibit 7, is merely an estimate to be used for billing  
24 purposes and that the contract has a mechanism built into the

1 contract for reconciliation of the total fees at the end of the  
2 project.

3           The defense in this trial has urged that the  
4 November 15, 2005, agreement, which I've been referring to as  
5 the stopgap, controls the computation of the fee for all of the  
6 work that was done from the period of November 15, 2005, until  
7 the master agreement was actually signed, which was signed by  
8 the developer on April 21, 2006.

9           And, of course, not to belabor the point that we've  
10 been talking about for three-and-a-half days, Exhibit 9 was the  
11 October 25th proposal for a 5.75 percent fee, 5.75 percent of  
12 the construction costs.

13           And that October 25th proposal attaches the B141 form  
14 agreement to it. And that form agreement has this  
15 reconciliation mechanism that was carried through all the way  
16 to Exhibit No. 6, the master agreement.

17           Now, of course, we have the stopgap hourly agreement  
18 while the lawyers are going back and forth throughout November,  
19 December, and all the way through into April.

20           And then finally, we have the master agreement signed  
21 on April 21, 2006, along with Addendum No. 1. Those are  
22 Exhibits 6 and 7.

23           That contract -- to further expound on the defense  
24 theory of this case, they argue that the stopgap agreement

1 controls the calculation of the fee earned between  
2 November 15th -- it should be 2005 -- and April 21, 2006. And  
3 furthermore, that no work or very little work was actually  
4 performed after April 21, 2006.

5 This is a legal argument, Your Honor. The effective  
6 date of the master agreement controls as a matter of law.  
7 We've cited these authorities in our trial statement at pages  
8 24 and 25. I'm sure the Court has read that, and there is no  
9 reason to get into that any further today.

10 This is an important point. There was no attempt by  
11 the defense to show that this October 31, 2005, effective date,  
12 which was specified in the contract, was not attended by the  
13 parties. In fact, all of the evidence that we have outside of  
14 the contract, confirms that the parties to the master agreement  
15 always intended that the fees would be based on 5.75 percent of  
16 the estimated construction costs. So I would like to go  
17 through some of that evidence.

18 The defense has also argued, at points during the  
19 trial, that because the project was never built, you don't know  
20 what the construction costs are, therefore, no fee is due  
21 whatsoever.

22 And counsel was ignoring in the examination of the  
23 witnesses, Section 1.3.9, which talks about the payments to the  
24 architect. And Section 1.3.9.1 indicates that the architect

1 will bill monthly, and further provides that if the client  
2 doesn't object -- there's only a period of time within which  
3 the client can object. And you've heard over and over that the  
4 client never objected to any of the invoices.

5 We can also look at the invoices themselves to  
6 determine what the parties intended through their performance.  
7 And Exhibit 25 is -- is the packet of invoices under the  
8 stopgap agreement, starting in November of 2005.

9 And the very first invoice has that handwritten note  
10 on it that says, "Billing shall be credited to SD/Entitlements  
11 phase once the contract is signed."

12 And Mr. Pereos has made the valid point, we don't know  
13 whether that notation was on the invoice that actually went to  
14 the client. All we know is that that notation is on the  
15 invoice as it was retained in Fisher-Friedman's files. And  
16 that's a very fair point. But it shows that at least from  
17 Fisher-Friedman's perspective, that's what the deal was.

18 But then we also have the later invoices in  
19 Exhibit 25. And the Court has seen these invoices and  
20 understands that as soon as the master agreement was signed,  
21 that Fisher-Friedman Associates started to re-bill under a  
22 percentage-fee basis, and then further showed all of the  
23 payments that had been received before that master agreement  
24 was even signed.

1           And again, there's no evidence in this case,  
2 whatsoever, that there was ever an objection from the client or  
3 from anybody else to this method of billing.

4           And then further, October 20, 2006, now we're getting  
5 to the point where the project is being submitted to the  
6 Planning Commission before it goes before the city council.  
7 And you will recall that Fisher-Friedman Associates, through  
8 the project manager, Nathan Ogle, sent Cal Bosma an email and  
9 that email says that, "This schedule shall supersede all  
10 previously agreed to payment schedules."

11           And it says, "Our fee is based on the value of the  
12 schematic design, the entitlements phase being \$2,070,000."

13           And as the Court has seen, that is 5.75 percent of the  
14 \$180,000,000 construction costs, times 20 percent for schematic  
15 design.

16           And you've heard Mr. Friedman testify that at some  
17 point, he was dealing with Cal Bosma, who was in the Coast  
18 Guard, and he wanted to have a schedule of payments that he  
19 could deal with.

20           And this is the schedule, this Exhibit 32, this email  
21 correspondence. "This schedule shall supersede all previously  
22 agreed-to payment schedules." And gives the dates and the  
23 amounts due.

24           Now, Mr. Friedman also testified that his recollection

1 was that all of the payments were going to be even, monthly  
2 payments. And, of course, this exhibit does not bear that out.  
3 But this exhibit does bear out that there was an agreement  
4 between the parties to schedule out what the payments would be,  
5 at least for the schematic design fee portion.

6 And then we have in April of 2007, an attempt to close  
7 escrow. And we didn't go into a lot of detail in the trial  
8 about this, because most of this is just documented in the  
9 exhibits. And they're Exhibits 79 through 89, 94 through 101,  
10 and 105 through 108.

11 And those documents demonstrate, Your Honor, that  
12 there was this double escrow set up to where one entity was  
13 going to receive upwards of \$23 million. They would take a cut  
14 and then they would pay Dr. Iliescu under his land purchase  
15 agreement, and the liens and so forth would be paid off.

16 Exhibit 99 was part of that escrow. And in this  
17 document, the parties demonstrated that, once again, they  
18 intended to pay Fisher-Friedman Associates, based on 20 percent  
19 of the overall fee, as specified in that master agreement.

20 No attempt to try and do some gyrations to account for  
21 some of the fees based on an hourly basis and some other fees  
22 based on the percentage of construction costs.

23 And the outstanding principal balance at that time was  
24 roughly \$1.7 million. The interest at that time was only 155,

1 \$156,000. But the daily interest rate was \$955, according to  
2 that payoff request.

3 And, in fact, if you -- if the Court wants to delve  
4 into those closing documents, there was actually a series of  
5 deeds that were signed -- obviously never recorded, because the  
6 escrow never closed. But there were many, many signed  
7 documents actually tendered to the escrow agent to close that  
8 escrow in April of 2007, including a lien release from Mark  
9 Steppan. Again, it didn't close, so that never became  
10 effective.

11 Just today we heard that two years after that, even,  
12 these developers, Mr. Caniglia, was still talking about putting  
13 a deal together to close escrow. And in that draft Addendum  
14 No. 6 that Mr. Johnson talked about this morning, there was a  
15 listing of the vendors who would be paid out of escrow and  
16 so -- and Mr. Johnson testified that this draft agreement  
17 reflected the negotiation that was going on at that time  
18 between the buyer and seller; the seller, of course, being  
19 Dr. and Mrs. Iliescu.

20 Under the contract, Mr. Steppan does not have to prove  
21 that the schematic design was 100 percent complete in order to  
22 recover something in this case. It's not an all-or-nothing  
23 deal. The contract is very clear that the architect was  
24 supposed to be paid for whatever progress was achieved towards

1 schematic design.

2           We've taken the position in this case that the  
3 schematic design was a hundred percent complete as soon as the  
4 entitlements were awarded on November 15, 2006, by the City of  
5 Reno.

6           Brad Van Woert testified that the schematic design was  
7 a hundred percent complete. Rodney Friedman testified that the  
8 schematic design documents were a hundred percent complete.  
9 Mark Steppan testified that the schematic design was a  
10 hundred percent complete. Nobody has come to this Court and  
11 said that the schematic design was not a hundred percent  
12 complete.

13           Now, Mr. Clark, the architect we heard from this  
14 morning, made some comments about qualities of the schematic  
15 design package, and so on and so forth. But you did not hear  
16 him say, given the contract definition of what schematic design  
17 requires, that Mark Steppan and Fisher-Friedman failed to  
18 achieve a complete schematic design package required by the  
19 contract. He didn't testify to that.

20           I would also note, Your Honor, that nobody from the  
21 defense side has ever testified that Steppan was X percent  
22 complete with the schematic design. It's always been an  
23 all-or-nothing proposition for the defense.

24           Exhibit 48, of course, is the November 30, 2000 -- I



1 believe it's 2006, but that could be a typo at the top.

2 In any event, it refers to the November 15, 2006,  
3 public hearing at which the tentative map was approved. And,  
4 of course, we have argued and had evidence that that concludes  
5 the entitlements and the schematic design phase under the  
6 contract. And there's been no contrary testimony or opinion  
7 about that point.

8 Let me turn now to additional services. At a point in  
9 this trial -- I don't remember, I think it was yesterday --  
10 defense counsel argued that the Court's prior summary judgment  
11 order precludes us from seeking additional services as part of  
12 this case. And the argument is that, based on the wording of  
13 the order granting partial summary judgment, that the only  
14 thing that Mark Steppan can recover is the fee based on a  
15 5.75 percent of the construction costs, and nothing else.

16 The motion for partial summary judgment definitely  
17 talks mostly about that part of the agreement, but it was a  
18 motion for partial summary judgment to just say, "We think that  
19 the lien secures payment of this amount."

20 That motion doesn't address additional services, but  
21 it doesn't rule out a lien for the additional services, either.  
22 And so part of the mechanic's lien claim in this case, Your  
23 Honor, is for these additional services. And again they're  
24 pretty minor amounts in the grand scheme of things, but it is

1 part of our case.

2 One category of additional services is the building  
3 mass model exhibits. We have a signed agreement, signed by the  
4 developer for that, in Exhibit 19. We have invoices in  
5 Exhibit 27. There's no evidence that anybody ever objected to  
6 those invoices.

7 Project 0515-03 is the study for the adjacent church  
8 parking structure. And you've heard a lot of testimony about  
9 that. We have a signed agreement from the developer,  
10 Exhibit 20. We have invoices in Exhibit 28. We have an amount  
11 due of \$8,122.50 for that work.

12 We are also seeking under Project 0515-05, the  
13 compensation on an hourly basis for the study to respond to the  
14 Reno City staff comments.

15 Now, we don't have an agreement signed by the  
16 developer for this work. We do have the facts that went from  
17 the architect to the developer; we have some invoices; and the  
18 Court knows that there was no objection to any of those  
19 invoices. And I will address that further in just a moment.

20 Then finally, we have Project 0515-06, the video  
21 fly-through. Again, we don't have a signed -- an agreement  
22 signed by the developer to do that work. We do have invoices  
23 for that work in Exhibit 30. And the amount due under that  
24 subproject is \$66,620.

1           What we do have, Your Honor, is a master agreement  
2 that says that the parties may mutually agree in writing to  
3 additional services. But there can also be changes in services  
4 of the architect if required by circumstances beyond the  
5 architect's control or if the architect's services are affected  
6 as described in 1.3.3.2.

7           Further, in the absence of mutual agreement in  
8 writing, the architect shall notify the owner prior to  
9 providing such services. If the owner deems that all or a part  
10 of such change in services is not required, the owner shall  
11 give prompt written notice to the architect, and the architect  
12 shall have no obligation to provide those services.

13           And then the paragraph goes on to describe how those  
14 services are going to be compensated.

15           And so even with respect to these additional work  
16 categories where the developer did not actually sign off, the  
17 Court has before it evidence that the architect told the  
18 developer what was going to be done; the developer said, "Go  
19 ahead and do it"; the work was done; the invoicing went out;  
20 and there was no objection to any of the invoicing.

21           Section 1.3.3.2 of the master agreement follows the  
22 provision that I had up on the screen just a moment ago. And  
23 it says that the architect is also entitled to compensation if  
24 there's a change in instructions or approvals given by the

1 owner that necessitates revisions in instruments of service.

2           So this would apply to the video fly-through. Even if  
3 there was no prior warning in writing to the developer, we  
4 nevertheless have an instruction by the -- "the owner," it  
5 says, but it's really the developer here -- to go ahead with  
6 that project. And it was a very time-consuming and expensive  
7 project.

8           We also have .6, "Preparation for and attendance at a  
9 public hearing." And I think that that also includes the video  
10 fly-through work, because all of that work, the PowerPoint, the  
11 video fly-through and those presentation materials, were all to  
12 prepare for the public hearings to try and get approval of the  
13 tentative map based on the architectural design.

14           Exhibit 3, Your Honor, is the second amended  
15 mechanic's lien. And the lien law allows parties to amend  
16 their lien up to the time of trial. And so we did that.

17           And one of the reasons we did that is to make it very  
18 easy for the Court to follow what our calculations are and also  
19 comply with the statute. The statute has a certain way of  
20 setting forth the amounts due.

21           And so that's what Exhibit 3 does, but it's also a  
22 very handy summary of what our claim is. And I'm showing right  
23 now, Exhibit No. 3, at page 4.

24           And so the total we claim in principal is one million

1 and seven hundred and fifty five dollars, two hundred  
2 twenty-nine -- let me try that again -- \$1,755,229.99.

3 I mentioned at the beginning of the trial that the  
4 computation of interest is really a legal matter for the Court  
5 to decide. Exhibit No. 5 is a schedule showing the calculation  
6 as I interpret the law.

7 NRS 108.237(2) essentially says that the interest  
8 shall be computed based on the rate of interest agreed to in  
9 the contract or the prime rate as of July 1 or January 1,  
10 immediately before the date of the judgment, plus 4 percent.

11 In most civil actions, Your Honor, the legal rate of  
12 interest is the prime rate plus 2 percent. The legislature has  
13 decided that for mechanic's liens it should be 4 percent. And  
14 I would submit to the Court that that's because mechanic's lien  
15 cases are supposed to be adjudicated rapidly and this is  
16 somewhat of a penalty, I suppose, for dragging out the process.

17 In any event, what I have done -- and I will show the  
18 Court some of the contract language that applies here. The  
19 contract, the base agreement, or the master agreement, says  
20 that invoices become due 15 days after they're given, and that  
21 interest begins to run 30 days after the invoice.

22 And so in the top portion of Exhibit No. 5, what I've  
23 done is I've taken the number of days outstanding under that  
24 current invoice and multiplied it by the contract interest

1 rate, which is 1.5 percent per month.

2 There's an argument to be made, Your Honor, that  
3 because the contract specifies a monthly rate, that you would  
4 compound every month. But we haven't really explored this too  
5 much in this case.

6 There is some Nevada authority that says that interest  
7 should be computed based on a simple basis rather than a  
8 compound basis. And in any event, 18 percent per year is a  
9 pretty high interest rate, so I think it might be overreaching  
10 to suggest monthly compounding on the interest. And I don't  
11 think the Supreme Court would uphold that, anyway.

12 So that's for the largest part of the claim. We've  
13 applied the 18 percent simple interest and we've come up with a  
14 number -- I can't exactly read it on here, but it looks like  
15 2.1, \$2.2 million. And again this case has been -- these  
16 amounts have been due for close to 2800 days, something like  
17 that.

18 For the additional services, what I've done is I've  
19 just taken the legal interest rate, or the prime rate plus  
20 4 percent, and applied those rates and I've -- and you can see  
21 that in this schedule.

22 I have the schedule in an Excel spreadsheet, so if the  
23 Court gives us some direction on how the Court wishes to  
24 compute the interest, we can very easily confer with counsel

1 and apply the Court's rules to the numbers and come up with the  
2 correct number.

3 This is the page from the master agreement that I was  
4 referring to. It's Section 1.5.8, page 10 of Exhibit 6.

5 "Payments are due and payable 15 days from the date of  
6 the architect's invoice. Amounts unpaid 30 days after the  
7 invoice date shall bear interest at the rate entered below, or  
8 in the absence thereof, at the legal rate prevailing from time  
9 to time at the principal place of business of the architect."

10 And the contract says one-and-a-half percent per month  
11 or monthly.

12 With that, Your Honor, I would be happy to try and  
13 answer any questions that the Court has, but I have no further  
14 summation at this point.

15 THE COURT: Thank you, Mr. Hoy. I don't have any  
16 questions for you at this moment.

17 The bailiff will turn the lights on. I don't know if  
18 Mr. Pereos anticipates a PowerPoint presentation in his closing  
19 argument.

20 MR. PEREOS: Too technical for me.

21 THE COURT: Mr. Pereos, you're somewhat old school  
22 like I am, I write with a pencil. So take a moment.

23 Whenever you are ready, Mr. Pereos.

24 MR. PEREOS: Thank you. I too will join in Mr. Hoy's

1 remarks concerning gratification for the time of this Court.  
2 It's a first experience for me, as well as it is for Mr. Hoy;  
3 and not knowing what to expect, I've got to tell you that it's  
4 a pleasant surprise.

5 I always am satisfied when I see a judge take notes,  
6 because I know, after practicing all the years I've practiced,  
7 I don't remember what witnesses testified to seven days ago  
8 without referring to my notes; mainly because -- maybe because  
9 I'm in the fight of the battle at the time and there's so many  
10 anxieties. But when I see a lot of the notes taken, which I  
11 did, on that, at least it means to me that the judge is  
12 tracking along.

13 And then, of course, well, you get a reading on the  
14 Judge when you hear the rulings. And if the Judge shoots me  
15 down with a logical ruling, it makes sense, I can understand  
16 that. Now, having said that -- and after I'm done shining your  
17 shoes -- I will move on to the merits of the case. All right.

18 Nevada is a pleading, notice pleading jurisdiction.  
19 Now, I don't mean to -- let me go about it this way.

20 I recognize that the Court's background comes from a  
21 criminal background. And having said that, okay, I'm going to  
22 go through some elementary issues that I'm not sure that the  
23 Court is familiar with.

24 THE COURT: I won't be offended. I might know what



1 you are talking about, you never know. Go ahead.

2 MR. PEREOS: Okay. Nevada is a notice pleading  
3 jurisdiction, to be distinguished from a code pleading  
4 jurisdiction. California is a code pleading jurisdiction.  
5 Nevada follows the Federal Rules of Civil Procedure, which is a  
6 notice pleading jurisdiction.

7 Back many years ago when I was in the DA's office when  
8 I used to read the information in the Complaints, on that, I  
9 always equated it more like with the California code pleading,  
10 because you had to identify the particular statute that the  
11 criminal violation was, on that.

12 Up to about three years ago, or two years ago -- my  
13 memory is shaky as I get older, okay -- we used to get away  
14 pretty easily by simply identifying through the notice of the  
15 pleading what the nature of the claim was.

16 So, for instance, okay, if Mr. Steppan tripped me when  
17 I was coming in and out of the courtroom, all I would say was,  
18 "Steppan was negligent and, therefore, I sustained damages."  
19 Just simply identifying the word "negligence," constituted the  
20 basis for the notification.

21 Approximately two years ago, two-and-a-half years  
22 ago -- and I might be off on my dates -- the United States  
23 Supreme Court came down with a case called Twombly. Now, I may  
24 not be accurate on the pronunciation, but it's spelled

1 something like T-w-o-m-b-l-y.

2 And what they said in that case is, they said, under  
3 the federal rules now, okay, if you're going to plead a  
4 lawsuit, you've got to plead it with some degree of  
5 specificity.

6 In other words, you've got to identify, so that  
7 there's an adequate notice to the defendant -- and in this  
8 case, now, we're talking about Iliescus being the defendant --  
9 as to what the nature and the basis of the claim is so that  
10 they can adequately prepare a defense on that.

11 In this particular case, the plaintiff is Mark  
12 Steppan. And he has alleged that he is a licensed architect  
13 and that he performed services.

14 What we don't know -- which is a big void at this  
15 point in time -- is whether or not Steppan can legitimately go  
16 into a consulting agreement, whereby Fisher-Friedman and  
17 Associates act as a consultant -- a consulting company,  
18 consulting architects -- for him, versus Mr. Steppan being the  
19 one who is to do the work and/or be responsible for the work.

20 The way Mr. Steppan addresses the issue is by saying,  
21 "Well, I was" -- well, this is my word, "supervising  
22 architect," but he didn't like that phrase, so maybe "lead  
23 architect" -- but, "I monitored and saw what was going on with  
24 regard to the project."

1           Now, I am not advancing the proposition that he lacks  
2 standing to file the lawsuit. I'm not there yet, because I  
3 haven't looked into that issue. But that ties to my  
4 examination of Mr. Steppan as to what his particular  
5 involvement was.

6           Going back to the Complaint, the last time I looked at  
7 this Complaint in preparing for this trial, with the trial  
8 statement and the schedule of exhibits, this Complaint -- my  
9 best recollection -- was a Complaint against the Iliescus to  
10 foreclose a mechanic's lien. It asked for a judgment so that  
11 the lien can be foreclosed. It doesn't ask for anything else.

12           And if there is a prayer for anything else other than  
13 a judgment to foreclose the mechanic's lien, I would submit it  
14 does not come within the purview of what was pled in this  
15 lawsuit. And as a result, Iliescus are not ready and nor have  
16 they been put on notice to be prepared to defend that aspect of  
17 any case.

18           Now, Iliescus never signed the agreement. But Steppan  
19 alleges that they're bound by the terms of the AIA agreement,  
20 insofar as they're seeking a judgment to foreclose against the  
21 property. And one of the ways they try to get there is they  
22 say, "Let's look at the basic fairness of the case."

23           Well, that's a two-edge sword, because from Iliescus'  
24 viewpoint, the architects were paid. They were paid on a

1 time-and-material basis. And their own testimony -- and I  
2 wrote this down. When Steppan testified, he said, "We are  
3 still on an hourly basis." He also said, "Not knowing when we  
4 are going to get the contract signed," which means they were  
5 doing work on an hourly basis.

6 When Mr. Friedman testified, he said -- and I'm not  
7 quoting this -- the firm agreed to proceed on an hourly basis,  
8 because he was waiting for the lawyers to do their thing on  
9 that.

10 Now, this Court is going to be the one that is going  
11 to decide whether or not this contract that was effective  
12 October 31st, is the fee contract identified in the fixed-fee  
13 basis of the AIA contract or on the hourly basis.

14 But you can't get around the problem that the  
15 unconditional evidence demonstrated that Fisher-Friedman and  
16 Associates and Steppan were proceeding in the lawsuit -- excuse  
17 me -- in the work that they were performing, on an hourly basis  
18 until the contract was signed. That's irrefutable.

19 THE COURT: But doesn't, then, the contract --

20 MR. PEREOS: Relate back?

21 THE COURT: -- relate back.

22 MR. PEREOS: I know that's the argument and I can't  
23 tell the Court, no, because I haven't done an issue looking  
24 into that.

1 I do know that the Court is going to have to make a  
2 factual determination as to whether or not the parties intended  
3 the contract to relate back, notwithstanding the date.

4 But I would reiterate that if the Court says to me,  
5 "I'm going to find that the contract relates back," the  
6 question now becomes: How does that interplay with Iliescu?

7 To the extent that it interplays with the lien rights  
8 and creates a basis for the lien, it can be understood. But to  
9 the extent that it tries to bind Iliescus, it can't be  
10 understood, because they were not even parties, much less  
11 negotiating the contract.

12 And more importantly, the specific language of the  
13 contract holds that it is not intended to the benefit of  
14 Iliescu. And that's paragraph 1.3.7.5, which has been  
15 unrefuted in the evidence.

16 Talking about what issues are unrefuted that has never  
17 been addressed otherwise.

18 Now, the testimony you heard -- and I'm not going to  
19 dispute this -- from Steppan, the plaintiff, was that the  
20 intention was that the contract would relate back to  
21 October 31st.

22 But that's not consistent with what you saw in the  
23 evidence, because the documents demonstrate that they were  
24 expecting to be paid on an hourly basis for that particular

1 work, albeit after the contract is signed, they then say, "This  
2 is the new fee schedule that supersedes the old fee schedule."

3 Now --

4 THE COURT: Let me ask you something about that,  
5 Mr. Pereos.

6 MR. PEREOS: Go ahead.

7 THE COURT: Couldn't the argument be made, though,  
8 that the stopgap, as Mr. Hoy refers to it, is simply there in  
9 the -- to give a mechanism for payment to the plaintiff, should  
10 no contract ever be drafted.

11 And so let just say that the parties never got to the  
12 point of signing the contract, the developer and Mr. Steppan,  
13 that they could not come to some agreement -- pick a reason  
14 why, Mr. Steppan wanted 6 percent, he was firm at 6 percent,  
15 the developers were stuck on 5.75 percent, they thought they  
16 could work it out, six months go by, some things happen, they  
17 never work it out and no contract occurs. But they still have  
18 that understanding about how the developer will pay Mr. Steppan  
19 as a result of the stopgap agreement.

20 But once you have the contract, it supersedes that  
21 stopgap agreement. And so, in essence, you just get the  
22 offset. Those sums have to be set off against what the  
23 ultimate amount is, the 20 percent of 5.75 percent, times  
24 \$180,000,000.

1           MR. PEREOS: The answer to your question is, yes. But  
2 if you take your logic a step further, it's further  
3 substantiation of the fact that they were willing to take the  
4 hourly basis as the basis for their compensation before the  
5 contract was signed.

6           I've got to take you back to Contract 101. Okay?  
7 Every legitimate contract requires a give and a take. Okay?  
8 So when the contract was signed on April 21st, but delivered on  
9 April 26th -- so let's work with the April 21st, okay -- the  
10 services that were given, the give and the take is Steppan  
11 saying, okay, "As of April 21st, I agree that I am going to  
12 promote this project and continue to work on this project."

13           Up to that point in time, his compensation is defined  
14 by the hourly basis. And if I remember correctly, now -- I  
15 could stand to be corrected -- he was -- there was only  
16 delinquent up to about \$100,000 up to that point in time. It  
17 wasn't much more than that, on that.

18           What is, shall we say, disconcerting -- I don't even  
19 know if there's such a word, but I kind of use it often -- or I  
20 should say "concerting" -- is that Steppan proceeds to  
21 accelerate the work to get the entitlements to trip off the  
22 obligation to say, "I'm entitled to my fixed fee," even after  
23 he records the mechanic's lien.

24           All that work and showing up in city council and

1 everything else is after the mechanic's lien was recorded. And  
2 the only reason they would have done that was to trip off the  
3 obligation in connection with the payment of the mechanic's --  
4 the payment of the contract fixed-fee amount, and then try to  
5 relate it back to the mechanic's lien.

6 Having said that, it goes to the issue of fairness.  
7 Now, counsel submits that, wait a minute, Iliescu got over a  
8 million dollars on this thing.

9 Well, I know this Court is familiar with paying taxes,  
10 because we all are. By the time you are done with the tax  
11 payment, the legal fees and the commissions that accompany  
12 that, there wasn't much left that was put in the pocket. And  
13 the taxes are at the ordinary income tax rate, they're not at a  
14 capital gains rate.

15 THE COURT: And Dr. Iliescu said his rate, I think,  
16 was 39 percent.

17 MR. PEREOS: Thirty-nine percent, on that.

18 So what I am submitting to the Court is, let's go to  
19 the basic contract law. What was the give and take for the  
20 consideration of the contract?

21 Now, if we agree that that contract was a binding  
22 agreement as of April 21st, and that the give and take was  
23 Steppan saying, okay -- or, "I will go forward and continue on  
24 with the project," then we're looking at whether or not Steppan



1 has been adequately compensated for the work that was incurred  
2 from April 21st forward. Okay? Knowing that they were  
3 delinquent or owed approximately \$100,000 for the previous work  
4 that was not paid. It all goes to the quantitative amount of  
5 what the judgment is going to be on the mechanic's lien, on  
6 that.

7           What I am suggesting to the Court is that the Court  
8 has got to look first to the right for Steppan to collect on  
9 the contract when it decides, is it entitled to a judgment of  
10 foreclosure on the lien? And I mentioned that in my opening  
11 statement.

12           And the first right is to look at whether or not there  
13 has been performance under the contract. In that regard,  
14 Steppan's position has been, well, all we had to do was the  
15 schematic design, we didn't have to get the entitlements.

16           And I would submit, just look at the contract and see  
17 whether or not the contract, by its own language, indicates  
18 that they had to secure the entitlements. If you look at the  
19 addendum, it basically says that the purpose and the goal of  
20 the developer is to get the entitlements.

21           Now, if the Court agrees with me that the scope of  
22 services by the AIA -- under the AIA contract was to do both,  
23 get the tentative map and the entitlements, then the Court has  
24 got to look at the issue as to the activities of Steppan in

1 going forward to lock down the entitlements, even after they  
2 record the mechanic's lien. They recorded the mechanic's lien  
3 in September -- excuse me, my apologies -- November, a week  
4 before.

5 THE COURT: And do I remember correctly from one of  
6 the pretrial statements that the mechanic's lien was recorded  
7 and then it was removed and then it was re-recorded? Did I  
8 read that?

9 MR. PEREOS: No, not that I know of.

10 THE COURT: That might have been another case that  
11 I've been reading.

12 MR. PEREOS: Maybe it's another case.

13 MR. HOY: No. What happened, Your Honor, is -- the  
14 first notice of lien is Exhibit 1. It was recorded, I believe,  
15 November 6, 2006. There was an amended lien recorded in  
16 March -- March or May of 2007, and that's Exhibit No. 2. But  
17 there was no withdrawal of the motion and then re-filing of the  
18 motion.

19 THE COURT: Right. Because it has to be filed within  
20 a specific period from the cessation of the work. So if it's  
21 withdrawn, could you just then turn around and re-file it? I  
22 guess it's an unrelated issue, Mr. Hoy.

23 MR. HOY: Well, it's not really an issue. You could  
24 within 90 days of the last work performed.

1           THE COURT: I understand. I'm just saying if it was  
2 withdrawn at some point -- depending on when the work that  
3 Mr. Steppan had done was completed, if it was withdrawn, you  
4 might have waived the ability to re-file it?

5           MR. HOY: Correct.

6           THE COURT: Correct. Go ahead. It's a completely  
7 unrelated issue, but I just wanted to make sure in my head I  
8 was --

9           MR. PEREOS: And actually, there are three mechanic's  
10 liens. The second one was actually recorded several months  
11 thereafter with a pre-lien notice having then been served.

12           Now, I understand that we're not getting into that  
13 issue for decision making of this Court because of the prior  
14 decision of Judge Adams regarding the issue of actual  
15 knowledge.

16           However, what I do want to submit to the Court is that  
17 not only was there an issue concerning -- how would I say the  
18 foreclosure of the lawsuit -- I was going to say "perfection of  
19 the lien," but the perfection of the lien pretty well occurred  
20 upon the service and we don't dispute the service issue.

21           But with regard to the foreclosure of the filing of  
22 this lawsuit by its lack of publication and what have you,  
23 there's also an issue as to what is being sought under the  
24 terms of the Complaint.

1           After this Court decides if there has been performance  
2 on the contract and the amount of money that's owed under the  
3 contract, the Court then goes into the next step of determining  
4 whether or not there is a basis to foreclose the mechanic's  
5 lien.

6           And the only thing I can do at this point in time is  
7 repeat, without going into anymore detail, that it's our  
8 position that the statute mandates, it says, "shall publish the  
9 notice of foreclose." There's been no proof of that  
10 publication on that thing. And that's my only remark. I will  
11 not go into it anymore, on that thing.

12           But then if the Court then determines that there is an  
13 amount that covers -- that is covered by the mechanic's lien,  
14 then it would basically issue a judgment against the property  
15 for the foreclosure. It does not issue a judgment against the  
16 Iliescus, either as trustees or in their personal capacity, the  
17 judgment goes against the property.

18           In that regard, when I take a look at the signature on  
19 the AIA contract, I don't see Sam Caniglia's signature, nor has  
20 this Court seen any evidence or heard any evidence that Sam  
21 Caniglia signed that contract. In fact, when you look at the  
22 signatures of Sam Caniglia on the other documents, they're not  
23 even close to the same as the AI -- as the signature on the AIA  
24 contract.

1           The contract between Iliescu and the buyer was between  
2 Sam Caniglia's company, Consolidated, not with BSC. BSC is the  
3 one that entered into the AIA contract, and I believe that  
4 signature is Cal Baty's signature, based upon what I've seen in  
5 all the other signatures on these documents.

6           Having said that, on that, I think the Court is going  
7 to go through a two-step process: What was the agreement  
8 between the parties and whether or not there was performance.

9           The architect alleges that he didn't have to design it  
10 within a budget of it -- did not have to design it within the  
11 budget of \$180,000,000. Okay? Whereas Rodney Friedman  
12 testified that the way they designed it, the budget was up to  
13 200,000,000.

14           The architect says, "I don't have to design it within  
15 a 32-month window" or complete it within -- the project  
16 completed within a 32-month window. That's for the Court to  
17 look at. I can't argue it any more than to simply say that's a  
18 factual issue.

19           THE COURT: Would you agree, just in a basic context,  
20 that -- let's say that Wingfield Towers went through to  
21 completion. And by "completion," I mean that we would look out  
22 the window and the buildings are there and people are living in  
23 them and it's done; common sense, the buildings are finished.

24           And the amount that it costs when you pencil the whole

1 thing out, added everything up, the amount that it cost to  
2 build those two buildings was \$210,000,000, that based on the  
3 contract, what Mr. Steppan would be entitled to would actually  
4 be very simple, it's just \$210,000,000 times .0575, that's his  
5 fee?

6 MR. PEREOS: Agreed. I would agree with you, he would  
7 be entitled to that.

8 THE COURT: And then you would be able to go back and  
9 allocate each different phase, you were entitled to this much  
10 and this much and this much based on --

11 MR. PEREOS: Agreed. I don't dispute the written  
12 terms of that contract; and that clearly provides for it.  
13 We're --

14 THE COURT: And so based on that -- and even based on  
15 the information that we know, that the property probably would  
16 have been more than \$180,000,000, in a general sense, the  
17 Iliescus -- though they probably don't feel this way -- might  
18 be getting a break. If it was \$200,000,000, they would owe  
19 more money, assuming that I follow Mr. Hoy's analysis.

20 They're kind of just -- they're down at the  
21 \$180,000,000 level, that's just because of what they agreed to.  
22 But it seems to me, based on the testimony I've heard, it might  
23 have even been higher.

24 MR. PEREOS: Agreed, if the project were completed and

1 they were not paid and they had to file a mechanic's lien.

2 Agreed.

3 THE COURT: Right. Assuming all those facts --

4 MR. PEREOS: Assuming all those facts, yeah, I would  
5 agree with you, on that thing. Under those set of  
6 circumstances, okay, then the actual provision of the contract  
7 kicks in.

8 I'm simply suggesting to you that that provision for  
9 the compensation doesn't kick in until April 21st, at the  
10 earliest. And by that time, they had received most of their  
11 compensation, with the exception of what their unpaid bills  
12 were.

13 THE COURT: Then what would the point of the  
14 structural design block of the contract be? Why would that be  
15 in there, based on your analysis? Why would the parties  
16 include the 20 percent for structural design, which is clearly  
17 part of their contract?

18 MR. PEREOS: You mean schematic design?

19 THE COURT: Schematic design. I apologize.

20 MR. PEREOS: I know what you meant.

21 THE COURT: Not structural design. I appreciate that.

22 But based on your analysis, there would have been no  
23 reason to put that in the contract in the first place, because  
24 everything, all of the schematic design -- and I understand we

1 could disagree about whether or not certain small aspects of it  
2 were done later on, pursuant to requests of the city council.

3 But let's just say for sake of argument, if the  
4 schematic design was then completed, there would have been no  
5 reason to put that in the contract in the first place.

6 MR. PEREOS: Unless it also included securing the  
7 entitlements --

8 THE COURT: Okay.

9 MR. PEREOS: -- as set forth in the agenda, which talk  
10 in terms of entitlements also being the agenda of the builder  
11 developer.

12 THE COURT: Okay. That's a good point.

13 MR. PEREOS: That's all I have.

14 THE COURT: That's all? Okay. I didn't want to --

15 MR. PEREOS: No, no, I'm done.

16 THE COURT: Mr. Hoy, do you have any rebuttal  
17 argument? You do have the burden of proof.

18 MR. HOY: Yes, I do, Your Honor.

19 I would like to congratulate Mr. Pereos. He has only  
20 been in the case a few months and has come up-to-speed very  
21 rapidly, and I know it's been difficult. I think he's number  
22 five or six on the file and -- and it's a big file, and he's  
23 done a very nice job with the trial.

24 When Mr. Pereos argues about what the Complaint says,



1 I'm not crystal clear on what his point is, other than he  
2 coupled that with the statement that this is only a claim to  
3 foreclose a mechanic's lien against property, nothing more.

4 And I suspect that what he's trying to get at is,  
5 should the property value not be high enough to satisfy the  
6 claim, what happens then?

7 And I would just submit -- and this is part of our  
8 trial statement, but --

9 THE COURT: And as I understood the argument that  
10 Mr. Pereos was making, Mr. Hoy, it was basically along those  
11 lines. And I don't believe that the evidence was admitted  
12 during the trial about what the most recent appraisal of the  
13 property was, though I do think that at some point Dr. Iliescu,  
14 began to talk about it based on questioning from you, after you  
15 objected initially.

16 But let's just assume for the sake of argument that  
17 the value of the property is about \$800,000 today, and I order  
18 something in excess of that. My understanding, and Mr. Pereos'  
19 argument is that, you know, sell the property, that's it,  
20 there's no personal responsibility towards the trust, the  
21 Pereos's trust or towards either one of them individually.  
22 That's how I took it.

23 MR. HOY: That's -- I take that to be the issue. And  
24 I don't think that that issue is ripe at this time. I mean,

1 the statute is pretty clear what happens. The Court hears the  
2 evidence, decides upon a monetary amount that is secured by the  
3 lien, orders a foreclosure sale.

4 If the proceeds are enough to satisfy -- if the  
5 proceeds are more than enough to satisfy the lien, then the  
6 surplus goes back to the property owner. If there are exactly  
7 the amount of the lien, then the plaintiff is satisfied, and  
8 that's that.

9 But there is a statutory procedure that takes place  
10 after the foreclosure sale if there is a deficiency. We're  
11 simply not there yet.

12 THE COURT: I agree, it wouldn't be ripe at this point  
13 to discuss.

14 MR. PEREOS: I agree. That's fine.

15 MR. HOY: Counsel continues the argument about the  
16 propriety of relating back the master agreement to October 31,  
17 2005, as the parties stipulated. And he said -- I think he  
18 said that there is no evidence of the intent of the parties to  
19 do that.

20 Well, of course, under the parol evidence rule, we're  
21 not permitted to even talk about intent outside of the four  
22 corners of the document, if the document is unambiguous. And  
23 in this case, it is unambiguous. It says, this is the  
24 effective date, period, and it talks about all of the services

1 that will be rendered after October 31, 2005. It says, this is  
2 the manner of compensation for those services. So there is  
3 nothing ambiguous about the contract itself.

4 Mr. Pereos says, well, there's been no evidence of new  
5 consideration toward a new contract. And indeed there is. I  
6 mean, the Court has before it, Exhibit 37 and 38, which has  
7 work, instruments of service, created after April 21, 2006. We  
8 know about the video fly-through. We know about all the  
9 meetings. We know about the PowerPoint, and so forth.

10 We also heard testimony that this change in the number  
11 of units from 394 units before April 21, 2006, to 499 units,  
12 that change took place after this took effect. So there is new  
13 consideration, and it just has to be a valid point.

14 Mr. Pereos correctly points out that the design  
15 contract, the master agreement, specifically says that there  
16 are no third-party beneficiaries to this agreement. But that's  
17 beyond the point. The point is that a lien claimant is  
18 entitled to a lien for the unpaid balance of the lien  
19 claimant's contract.

20 The Statute doesn't say the lien only gives you  
21 security for the unpaid balance of a contract between the land  
22 owner and the mechanic's lien claimant, it's just the lien  
23 claimant's contract. And so whether or not Dr. and  
24 Mrs. Iliescu have third-party beneficiary status under that

1 contract is legally irrelevant.

2 Likewise, the distinction between BSC Development or  
3 BSC Developers versus Consolidated Development is legally  
4 irrelevant. The fact that one developer entity signed the  
5 design agreement and a different development entity signed the  
6 land purchase agreement, doesn't matter under the lien statute.  
7 That's also legally irrelevant. But in this case, we have an  
8 exhibit showing the assignment from Consolidated to BSC of the  
9 land purchase agreement, and that's in evidence.

10 Counsel has also made another argument about the  
11 interpretation of the master design contract, and said that the  
12 schematic design required that the architect create a project  
13 that fell within a budget.

14 That's not what the contract says. The contract  
15 merely says that the parties, at this point in time, estimate  
16 that the construction costs is \$180,000,000. But you heard the  
17 testimony from Mr. Friedman, and it's not disputed, that there  
18 is no way to know what the true construction cost is going to  
19 be until you have, you know, construction documents.

20 THE COURT: And then you go to the bid phase.

21 MR. HOY: And you go to bid. It would be impossible  
22 to say: You will design a project -- you will create a  
23 schematic design to fit this budget. You just can't do it.  
24 You're not there until you go through DD, or design

1 development, and CD, construction documents.

2 Counsel also argued that the architect only gets paid  
3 if the architect creates a project that is -- can be designed,  
4 approved and completely constructed and ready for occupancy  
5 within a schedule. And in this case, the schedule was  
6 32 months. Again, the contract doesn't say that.

7 THE COURT: You don't need to address that. I didn't  
8 find that argument -- I'm not quite sure why there was so much  
9 discussion about that argument, but I did not read Section, I  
10 think it's 1.9 of the contract, as I've reviewed it, to  
11 indicate that somehow that was a requirement, that this  
12 building would be erected within that period of time in order  
13 for the architects to have completed their requirements under  
14 the contract. I just -- as I looked at it and reviewed it, I  
15 never looked at it that way, so you don't have to address that.

16 MR. HOY: All right. That's all I have, Your Honor,  
17 except to thank the Court and counsel once more.

18 THE COURT: Well, I appreciate that, Mr. Hoy. And I  
19 would like to, myself, thank both Mr. Pereos and Mr. Hoy for  
20 the way that they've presented the evidence in this case and,  
21 frankly, for the professionalism and the collegiality that they  
22 have shown towards each other.

23 I think that both Mr. Hoy and Mr. Pereos are examples  
24 of what I would hope to see in a trial, that is, a good fight,

1 a fair fight, but at the same time, people acting like  
2 professionals and treating each other with respect.

3 And so Dr. Iliescu and Mrs. Iliescu and Mr. Steppan, I  
4 think that you both can be comfortable in the sense that your  
5 attorneys have presented your respective cases, at least to me,  
6 in the best way possible; and I've been very appreciative of  
7 the way that this trial has been conducted by all parties.

8 I won't anticipate a decision on the case until  
9 sometimes in the new year. As I've stated, I'll give the  
10 parties the opportunity to file a supplemental brief to the  
11 trial, if they choose to do so. And I gave you a deadline, I  
12 believe, of January 3rd of 2014.

13 And if you -- I will wait until that day to begin to  
14 consider the finding of facts that I have to draft, as Mr. Hoy  
15 has indicated. However, if the parties just decide that they  
16 don't think that they need to do that -- or, Mr. Pereos, I know  
17 that you expressed some interest in filing a supplemental  
18 brief, if at the conclusion of some reflection on the case you  
19 decide you just don't want to, I would appreciate your letting  
20 me know --

21 MR. PEREOS: Okay.

22 THE COURT: -- and letting Mr. Hoy know. And that  
23 way, maybe I'll be able to kind of expedite my review of the  
24 case a little bit.

1           But I would not anticipate an answer, by way of an  
2 order from the Court, before the end of January. It's my  
3 practice to try and get things done for the parties as quickly  
4 as possible, because I know it's important both to Mr. Steppan  
5 and to the Iliescus to have at least an answer one way or the  
6 other, whatever answer that may be.

7           And so with that, court will be in recess. I wish  
8 everybody the happiest of holidays.

9           (Proceedings concluded at 2:29 p.m.)

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

4 I, MARIAN S. BROWN PAVA, Certified Court Reporter in  
5 and for the State of Nevada, do hereby certify:

6 That the foregoing proceedings were taken by me at the  
7 time and place therein set forth; that the proceedings were  
8 recorded stenographically by me and thereafter transcribed via  
9 computer under my supervision; that the foregoing is a full,  
10 true and correct transcription of the proceedings to the best  
11 of my knowledge, skill and ability.

12 I further certify that I'm not a relative nor an  
13 employee of any attorney or any of the parties, nor am I  
14 financially or otherwise interested in this action.

15 I declare under penalty of perjury under the laws of  
16 the State of Nevada that the foregoing statements are true and  
17 correct.

18 Dated this 24th day of February, 2014.

19 /s/ Marian S. Brown Pava  
20

21 \_\_\_\_\_  
22 Marian S. Brown Pava, CCR #169  
23  
24



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

**PAGE 1**

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

**APPEARANCES-HEARING**

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12/11/13  
HONORABLE  
ELLIOTT A.  
SATTLER  
DEPT. NO. 10  
M. Merkouris  
(Clerk)  
M. Pava  
(Reporter)

**ONGOING BENCH TRIAL**

8:30 a.m. – Court reconvened.

Plaintiff Mark Steppan was present with counsel, Michael Hoy, Esq.

Defendants Dr. John Iliescu and Sonia Iliescu were present with counsel, C. Nicholas Pereos, Esq.

Witness **Dr. John Iliescu, Jr.** was reminded by the Court that he remained under oath; further cross examined; re-direct examined; re-cross examined; and excused.

Counsel Hoy called Plaintiff **Mark Bainum Steppan** who was sworn and direct examined.

**Counsel Hoy offered Exhibit 21; witness questioned by counsel Pereos; counsel Pereos objected to Exhibit 21.**

**COURT ORDERED: Objection overruled, Exhibit 21 ADMITTED into evidence.**

**Counsel Hoy offered Exhibit 22; counsel Pereos maintained the same objection as he had for Exhibit 21.**

**COURT ORDERED: Objection overruled, Exhibit 22 ADMITTED into evidence.**

Witness further direct examined.

10:20 a.m. – Court stood in recess.

10:38 a.m. – Court reconvened.

Witness further direct examined.

**Counsel Hoy offered Exhibit 24; witness questioned briefly by counsel Pereos and then no objection; ordered ADMITTED into evidence.**

Witness further direct examined.

**Counsel Hoy offered Exhibit 26; witness questioned briefly by counsel Pereos and then no objection; ordered ADMITTED into evidence.**

Witness further direct examined.

**Counsel Hoy offered Exhibit 27; witness questioned briefly by counsel Pereos; counsel Pereos objected to Exhibit 27. Counsel Hoy responded.**

Discussion ensued between the Court and respective counsel regarding the Order Granting Motion for Partial Summary Judgment filed May 9, 2013.

**Counsel Hoy offered Exhibits 28, 29 & 30; COURT noted counsel Pereos' objections to Exhibits 28, 29 & 30 are the same as his objections to Exhibit 27; objections overruled and Exhibits 27, 28, 29 & 30 shall be ADMITTED into evidence.**

Witness further direct examined; cross examined.

11:48 a.m. – Court stood in recess for lunch.

1:18 p.m. – Court reconvened.

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

**APPEARANCES-HEARING**

---

12/11/13  
HONORABLE  
ELLIOTT A.  
SATTLER  
DEPT. NO. 10  
M. Merkouris  
(Clerk)  
M. Pava  
(Reporter)

**ONGOING BENCH TRIAL**

Witness further cross examined.

**The deposition of Mark Steppan, dated Monday, September 29, 2008, was opened and published.**

Witness further cross examined.

**The deposition of Mark Steppan dated, Tuesday, February 16, 2010, was opened and published.**

Witness further cross examined.

**The deposition of Mark Steppan, Volume II, dated Tuesday, March 2, 2010 was opened and published**

Witness further cross examined.

**The deposition of Mark Steppan, Volume III, dated Wednesday, March 3, 2010 was opened and published.**

Witness further cross examined; re-direct examined; and excused. **Plaintiff rested.**

Counsel Pereos addressed the Court and moved to dismiss the case pursuant to NRCP 50; and he further presented a memorandum to the Court and counsel Hoy in support of his motion.

Counsel Hoy responded.

3:10 p.m. – Court stood in recess.

3:39 p.m. – Court reconvened.

Counsel Hoy further argued in opposition of the motion to dismiss; and he urged the Court to deny the motion.

Counsel Pereos replied; counsel Hoy further responded.

Upon questioning by the Court, counsel Pereos stated that he would object to counsel Hoy being allowed to re-open his case and offer the Notice of Lis Pendens.

**COURT ORDERED:** Counsel Hoy shall be allowed to re-open his case and offer the Notice of Lis Pendens, which shall be marked and admitted as Exhibit 23.

**COURT FURTHER ORDERED:** Defendant's motion to dismiss pursuant to NRCP 50 is DENIED.

Counsel Pereos called **Karen Dennison, Esq.**, who was sworn and direct examined; cross examined; and excused. (Mr. David Grundy, Esq. was present on behalf of Ms. Dennison during her testimony.)

Counsel Pereos called Defendant **Sonnia Santee Iliescu** who was sworn and direct examined; cross examined; and excused.

Counsel Hoy advised the Court that his office just brought him the original Notice of Lis Pendens (Exhibit 23); **COURT ORDERED** the original Notice of Lis Pendens shall be added to Exhibit 23 and admitted into evidence (marked as Exhibit 23a by the Clerk).

Counsel Pereos called Defendant **Dr. John Iliescu, Jr.**, who was reminded by the Court that he remained under oath; direct examined.

4:49 p.m. – Court stood in recess for the evening, to reconvene tomorrow, December 12, 2013 at 8:30 a.m.