

CLERK OF THE COURT

Electronically Filed
Jun 02 2016 11:56 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

NOAS

HOWARD C. KIM, ESQ.
Nevada Bar No. 10386
E-mail: diana@kgelegal.com
JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10580
E-mail: jackie@kgelegal.com
KAREN L. HANKS, ESQ.
Nevada Bar No. 9578
E-mail: karen@kgelegal.com
KIM GILBERT EBRON
7625 Dean Martin Drive, Suite 110
Las Vegas, Nevada 89139
Telephone: (702) 485-3300
Facsimile: (702) 485-3301
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

THE FREDRIC AND BARBARA
ROSENBERG LIVING TRUST,

Plaintiff,

vs.

BANK OF AMERICA, N.A.; BAC HOME
LOANS SERVICING, LP, a foreign limited
partnership; MACDONALD HIGHLANDS
REALTY, LLC, a Nevada limited liability
company; MICHAEL DOIRON, an individual;
SHAHIN SHANE MALEK, an individual;
PAUL BYKOWSKI, an individual; THE
FOOTHILLS AT MACDONALD RANCH
MASTER ASSOCIATION, a Nevada limited
liability company; THE FOOTHILLS
PARTNERS, a Nevada limited partnership;
DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

Defendants.

Case No.: A-13-689113-C

Dept. No.: I

NOTICE OF APPEAL

SHAHIN SHANE MALEK,

Counterclaimant,

vs.

THE FREDRIC AND BARBARA
ROSENBERG LIVING TRUST,

Counter-Defendant.

KIM GILBERT EBRON
7625 DEAN MARTIN DRIVE, SUITE 110
LAS VEGAS, NEVADA 89139
(702) 485-3300 FAX (702) 485-3301

1 The FREDRIC AND BARBARA ROSENBERG LIVING TRUST, by and through its
2 counsel of record, Kim Gilbert Ebron, hereby appeals the following:

3 1. The Findings of Fact, Conclusions of Law, and Judgment on
4 Defendant/Counterclaimant Shahin Shane Malek's Motion for Summary Judgment, entered on
5 August 13, 2015; and

6 2. All other orders made appealable thereby.
7

8 DATED this 23th day of May, 2016.

KIM GILBERT EBRON

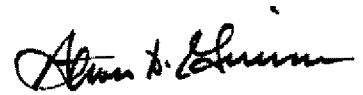
/s/Jacqueline A. Gilbert
HOWARD C. KIM, ESQ.
Nevada Bar No. 10386
JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593
DIANA S. CLINE, ESQ.
Nevada Bar No. 10580
KAREN L. HANKS, ESQ.
Nevada Bar No. 9578
7625 Dean Martin Drive, Suite 110
Las Vegas, Nevada 89139
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23th day of May, 2016, pursuant to NRCP 5(b), I served, via the Eighth Judicial District Court electronic filing system, the foregoing **NOTICE OF APPEAL**, to the following parties:

<u>Select All</u> <u>Select None</u>			
Akerman LLP			
Name	Email	<input type="checkbox"/>	Select
Akerman Las Vegas Office	akermanlas@akerman.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Darren T. Brenner, Esq.	darren.brenner@akerman.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Steven G. Shevorski, Esq.	steven.shevorski@akerman.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Kemp Jones & Coulthard			
Name	Email	<input type="checkbox"/>	Select
Ian P. McGinn	ipm@kempjones.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Sandy Sell	s.sell@kempjones.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Kemp, Jones & Coulthard			
Name	Email	<input type="checkbox"/>	Select
J. Randall Jones	jj@kempjones.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Janet Griffin	janetiamesmichael@gmail.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Janet Griffin	jlg@kempjones.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Matthew Carter	m.carter@kempjones.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Sandy Sell	s.sell@kempjones.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Spencer Gunnerson	s.gunnerson@kempjones.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Kemp, Jones & Coulthard, LLP			
Name	Email	<input type="checkbox"/>	Select
Pamela Montgomery	p.montgomery@kempjones.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
The Firm			
Name	Email	<input type="checkbox"/>	Select
Jay M. DeVoy	jay@thefirm-lv.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
The Firm, P.C.			
Name	Email	<input type="checkbox"/>	Select
Jacqueline Martinez	jacqueline@thefirm-lv.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Preston P. Rezaee, Esq.	preston@thefirm-lv.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Ryan E. Alexander, Esq.	ryan@ryanalexander.us	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

/s/Jacqueline A. Gilbert
An Employee of Howard Kim & Associates



CLERK OF THE COURT

ASTA

HOWARD C. KIM, ESQ.
Nevada Bar No. 10386
E-mail: diana@kgelegal.com
JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10580
E-mail: jackie@kgelegal.com
KAREN L. HANKS, ESQ.
Nevada Bar No. 9578
E-mail: karen@kgelegal.com
KIM GILBERT EBRON
7625 Dean Martin Drive, Suite 110
Las Vegas, Nevada 89139
Telephone: (702) 485-3300
Facsimile: (702) 485-3301
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

THE FREDRIC AND BARBARA
ROSENBERG LIVING TRUST,

Plaintiff,

vs.

BANK OF AMERICA, N.A.; BAC HOME
LOANS SERVICING, LP, a foreign limited
partnership; MACDONALD HIGHLANDS
REALTY, LLC, a Nevada limited liability
company; MICHAEL DOIRON, an individual;
SHAHIN SHANE MALEK, an individual;
PAUL BYKOWSKI, an individual; THE
FOOTHILLS AT MACDONALD RANCH
MASTER ASSOCIATION, a Nevada limited
liability company; THE FOOTHILLS
PARTNERS, a Nevada limited partnership;
DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

Defendants.

SHAHIN SHANE MALEK,

Counterclaimant,

vs.

THE FREDRIC AND BARBARA
ROSENBERG LIVING TRUST,

Counter-Defendant.

Case No.: A-13-689113-C

Dept. No.: I

CASE APPEAL STATEMENT

KIM GILBERT EBRON
7625 DEAN MARTIN DRIVE, SUITE 110
LAS VEGAS, NEVADA 89139
(702) 485-3300 FAX (702) 485-3301

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement:

PLAINTIFF FREDRIC AND BARBARA ROSENBERG LIVING TRUST

2. Identify the judge issuing the decision, judgment, or order appealed from:

THE HONORABLE KENNETH C. CORY

3. Identify each appellant and the name and address of counsel for each appellant:

Attorneys for Appellant SFR Investment Pool 1, LLC

Jacqueline A. Gilbert, Esq.
Howard C. Kim, Esq.
Diana Cline Ebron, Esq.
Karen L. Hanks, Esq.
KIM GILBERT EBRON
7625 DEAN MARTIN DRIVE, SUITE 110
LAS VEGAS, NEVADA 89139
(702) 485-3300

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):

Trial Attorneys for Shahin Shane Malek

Preston R. Rezaee, Esq.
Jay DeVoy, Esq.
THE FIRM, P.C.
200 E. Charleston Blvd.
Las Vegas, Nevada 89104
(702) 222-3476

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

N/A

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

Retained counsel

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Retained counsel

8. **Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:**

N/A

9. **Indicate the date the proceedings commenced in the district court, e.g., date complaint, indictment, information, or petition was filed:**

Complaint filed September 23, 2013, amended complaint filed on January 12, 2015

10. **Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:**

This action arose following the purchase by plaintiffs of a golf course frontage home in MacDonald Highlands and discovering that a piece of the golf course had been sold to the owner of the lot adjacent to plaintiff's home without disclosure of the sale or of any rezoning or vacating of easements. Plaintiffs brought claims for breach of contract and breach of Implied covenant of Good Faith and Fair Dealing against Bank of America, NA ("BANA") (seller of real property); Unjust Enrichment and Fraudulent or Intentional Misrepresentation and Negligent Misrepresentation against BANA, BAC Home Loans Servicing, LP, Macdonald Highlands Realty, LLC and Michael Doiron; Real Estate Brokers Violation of NRS 645 against MacDonald Highlands Realty, LLC and Doiron; Easement against MacDonald Highlands Realty LLC, Doiron and Shahin Malek; Declaratory relief against all defendants; mandatory injunction against Malek; Implied Restrictive Covenant against Malek; Mandatory Injunction against The Foothills at MacDonald Ranch Master Association, the Foothills Partners, LP and Paul Bykowski in his various capacities.

Malek brought a counterclaim against Plaintiff (the "Trust") for slander of title.

The district court granted summary judgment in favor of Defendants MacDonald Highlands Realty and Doiron by order entered on August 13, 2015 and in favor of Malek on plaintiff's claims by order entered on August 13, 2015. An order granting MacDonald Highland realty and Doiron's motion for attorney's fees and costs was granted on November 10, 2015, and on the same day an order was entered certifying the orders related to MacDonald Highland Realty and Doiron as final and appealable pursuant to NRCP 54. On March 10, 2016, the district court entered Stipulation and Order to Dismiss BANA with prejudice.

On May 17, 2016, the district court entered Stipulation and Order for Dismissal of Malek's counterclaims against plaintiff for slander of title, notice of entry of which was served on May 18, 2016..

11. **Indicate whether the case has previously been the subject of an appeal or an original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding.**

Yes. The order granting summary judgment in favor of Doiron and MacDonald Highlands Realty, which incorporated by reference the order that is the subject of this appeal, is currently pending (in briefing) before this court as:

Fredric and Barbara Rosenberg Living Trust v. MacDonald Highlands Realty, LLC
Case No. 69399

12. **Indicate whether this appeal involves child custody or visitation:**

N/A

13. **If this is a civil case, indicate whether this appeal involves the possibility of settlement:**

Because of the issues regarding easement that are the subject of this appeal, it is unlikely that the parties can reach an agreement.

DATED this 23th day of May, 2016.

KIM GILBERT EBRON

/s/Jacqueline A. Gilbert

HOWARD C. KIM, ESQ.

Nevada Bar No. 10386

JACQUELINE A. GILBERT, ESQ.

Nevada Bar No. 10593

KAREN L. HANKS, ESQ.

Nevada Bar No. 9578

7625 Dean Martin Drive, Suite 110

Las Vegas, Nevada 89139

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23th day of May, 2016, pursuant to NRCP 5(b), I served, via the Eighth Judicial District Court electronic filing system, the foregoing **CASE APPEAL STATEMENT**, to the following parties:

<u>Select All</u> <u>Select None</u>			
Akerman LLP			
Name	Email	<input type="checkbox"/>	Select
Akerman Las Vegas Office	akermanlas@akerman.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Darren T. Brenner, Esq.	darren.brenner@akerman.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Steven G. Shevorski, Esq.	steven.shevorski@akerman.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Kemp Jones & Coulthard			
Name	Email	<input type="checkbox"/>	Select
Ian P. McGinn	ipm@kempjones.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Sandy Sell	s.sell@kempjones.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Kemp, Jones & Coulthard			
Name	Email	<input type="checkbox"/>	Select
J. Randall Jones	jj@kempjones.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Janet Griffin	janetiamesmichael@gmail.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Janet Griffin	jlg@kempjones.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Matthew Carter	m.carter@kempjones.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Sandy Sell	s.sell@kempjones.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Spencer Gunnerson	s.gunnerson@kempjones.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Kemp, Jones & Coulthard, LLP			
Name	Email	<input type="checkbox"/>	Select
Pamela Montgomery	p.montgomery@kempjones.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
The Firm			
Name	Email	<input type="checkbox"/>	Select
Jay M. DeVoy	jay@thefirm-lv.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
The Firm, P.C.			
Name	Email	<input type="checkbox"/>	Select
Jacqueline Martinez	jacqueline@thefirm-lv.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Preston P. Rezaee, Esq.	preston@thefirm-lv.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Ryan E. Alexander, Esq.	ryan@ryanalexander.us	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

/s/Jacqueline A. Gilbert
An Employee of Howard Kim & Associates

CASE SUMMARY
CASE SUMMARY
CASE NO. A-13-689113-C

Frederic and Barbara Rosenberg Living Trust, Plaintiff(s)
vs.
Bank of America, Defendant(s)

§
§
§
§
§
§

Location: **Department 1**
Judicial Officer: **Cory, Kenneth**
Filed on: **09/23/2013**
Cross-Reference Case Number: **A689113**
Supreme Court No.: **69399**

CASE INFORMATION

Case Type: **Breach of Contract**
Subtype: **Other Contracts/Acc/Judgment**
Case Flags: **Appealed to Supreme Court**
Jury Demand Filed
Automatically Exempt from Arbitration

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	A-13-689113-C
Court	Department 1
Date Assigned	09/23/2013
Judicial Officer	Cory, Kenneth

PARTY INFORMATION

Plaintiff	Frederic and Barbara Rosenberg Living Trust	Kim, Howard C. <i>Retained</i> 702-485-3300(W)
Defendant	BAC Home Loans Servicing LP	Stern, Ariel E. <i>Retained</i> 702-634-5000(W)
	Bank of America	
	Bykowski, Paul Removed: 04/22/2015 Dismissed	Jones, Jon Randall <i>Retained</i> 7023856000(W)
	Doiron, Michael	Jones, Jon Randall <i>Retained</i> 7023856000(W)
	Dragonridge Golf Club Inc Removed: 01/10/2014 Dismissed	Jones, Jon Randall <i>Retained</i> 7023856000(W)
	Dragonridge Properties LLC Removed: 01/10/2014 Dismissed	Jones, Jon Randall <i>Retained</i> 7023856000(W)
	FHP Ventures	Jones, Jon Randall <i>Retained</i> 7023856000(W)
	Foothills at MacDonald Ranch Master Association Removed: 04/22/2015 Dismissed	
	Foothills Partners	

CASE SUMMARY

CASE SUMMARY

CASE NO. A-13-689113-C

MacDonald Highlands Realty LLC

Jones, Jon Randall

Retained

7023856000(W)

MacDonald Properties Ltd

Removed: 01/10/2014

Dismissed

Jones, Jon Randall

Retained

7023856000(W)

Malek, Shahin Shane

Rezaee, Preston P, ESQ

Retained

702-868-3311(W)

Real Properties Management Group Inc

Removed: 04/29/2014

Dismissed

Counter Claimant Malek, Shahin Shane

Removed: 05/17/2016

Dismissed

Rezaee, Preston P, ESQ









Retained

702-868-3311(W)













Counter Defendant Fredric and Barbara Rosenberg Trust

Removed: 05/17/2016











Dismissed

DATE	EVENTS & ORDERS OF THE COURT	INDEX
09/23/2013	 Complaint Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Complaint</i>	
09/23/2013	Case Opened	
09/30/2013	 Notice of Lis Pendens Filed by: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Notice of Lis Pendens</i>	
10/18/2013	 Acceptance of Service Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Acceptance of Service of Summons and Complaint</i>	
10/24/2013	 Notice of Lis Pendens Filed by: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Amended Notice of Lis Pendens</i>	
10/24/2013	 Affidavit of Service Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Affidavit of Service of Summons and Complaint upon BAC Home Loans Servicing, LP</i>	
10/24/2013	 Affidavit of Service Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Affidavit of Service of Summons and Complaint upon Shahin Shane Malek</i>	
10/24/2013	 Affidavit of Service Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Affidavit of Service of Summons and Complaint upon Real Properties Management Group, Inc.</i>	
10/24/2013	 Release of Lis Pendens Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Release of Notice of Lis Pendens</i>	






CASE SUMMARY
CASE SUMMARY
CASE NO. A-13-689113-C

10/28/2013	 Certificate of Service Filed by: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Certificate of Service</i>
10/29/2013	 Affidavit of Service Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Affidavit of Service of Summons and Complaint upon Michael Doiron</i>
10/30/2013	 Initial Appearance Fee Disclosure Filed By: Defendant Bank of America <i>Initial Appearance Fee Disclosure</i>
10/30/2013	 Motion for Summary Judgment Filed By: Defendant Bank of America <i>Bank of America, N.A.'s Motion to Dismiss Plaintiff's Complaint Pursuant to NRCP 12(b)(5), or Alternatively, Motion for Summary Judgment</i>
10/31/2013	 Certificate of Service Filed by: Defendant Bank of America <i>Certificate of Service</i>
11/05/2013	 Notice Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Notice of Filing and Recording of Release of Notice of Lis Pendens</i>
11/05/2013	 Notice Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Notice of Filing and Recording of Amended Notice of Lis Pendens</i>
11/06/2013	 Initial Appearance Fee Disclosure Filed By: Defendant Dragonridge Properties LLC <i>Initial Appearance Fee Disclosure</i>
11/06/2013	 Motion to Dismiss Filed By: Defendant Dragonridge Properties LLC <i>Defendants DRFH Ventures, LLC f/k/a Dragonridge Properties, LLC; Dragonridge Golf Club, Inc.; MacDonald Properties, Ltd.; MacDonald Highlands Realty, LLC; and Michael Doiron's Motion to Dismiss</i>
11/08/2013	 Motion To Dismiss - Alternative Motion For Summary Judgment Filed By: Defendant Dragonridge Properties LLC <i>DRFH Ventures, LLC f/k/a DragonRidge Properties, LLC; DragonRidge Golf Club, Inc.; MacDonald Properties, LTD; MacDonald Highlands Realty, LLC; and Michael Doiron's Partial Joinder To Bank of America, N.A.'s Motion To Dismiss Plaintiff's Complaint Pursuant To NRCP 12(B)(5), Or Alternatively, Motion For Summary Judgment</i>
11/13/2013	 Motion to Dismiss Filed By: Defendant Malek, Shahin Shane <i>Defendant's Motion To Dismiss Plaintiff's Complaint And Expunge Lis Pendens On Order Shortening Time</i>
11/13/2013	 Initial Appearance Fee Disclosure Filed By: Defendant Malek, Shahin Shane <i>Defendant's Initial Appearance Fee Disclosure</i>








CASE SUMMARY
CASE SUMMARY
CASE NO. A-13-689113-C

11/14/2013	 Notice of Change of Firm Name Filed By: Defendant Bank of America <i>Notice of Change of Firm Name</i>
11/15/2013	 Affidavit of Service Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Affidavit of Service of Summons and Complaint upon Bank of America, N.A.</i>
12/02/2013	 Opposition to Motion to Dismiss Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Plaintiff's Opposition to Defendant Shahin Shane Malek's Motion to Dismiss Plaintiff's Complaint and Expunge Lis Pendens</i>
12/03/2013	 Reply to Opposition Filed by: Defendant Malek, Shahin Shane <i>Reply In Support Of Defendant's Motion To Dismiss Plaintiff's Complaint And Expunge Lis Pendens On Order Shortening Time</i>
12/04/2013	 Opposition to Motion to Dismiss Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Plaintiff's Opposition to Bank of America's Motion to Dismiss Plaintiff's Complaint or Alternatively, Motion for Summary Judgment</i>
12/04/2013	 Opposition Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Oppositon to DRFH Ventures, LLC, f/k/a Dragonridge Properties, LLC; Dragonridge Golf Club, Inc.; MacDonald Properties, Ltd.; MacDonald Highlands Realty, LLC; and Michael Doiron's Partial Joinder to Bank of America, N.A.'s Motion to Dismiss Plaintiff's Complaint or Alternatively, Motion for Summary Judgment</i>
12/04/2013	 Opposition to Motion to Dismiss Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Opposition to DRFH Ventures, LLC f/k/a Dragonridge Properties, LLC; Dragonridge Golf Club, Inc.; MacDonald Properties, Ltd; MacDonald Highlands Realty, LLC; and Michael Doiron's Motion to Dismiss</i>
12/04/2013	 Minute Order (1:00 PM) (Judicial Officer: Cory, Kenneth)
12/09/2013	 Motion to Dismiss (11:00 AM) (Judicial Officer: Cory, Kenneth) 12/09/2013, 12/19/2013 <i>Defendant's Motion To Dismiss Plaintiff's Complaint And Expunge Lis Pendens On Order Shortening Time</i> <i>Parties Present: Attorney Smyth, James E., II</i> <i>Attorney Byrne, Patrick G.</i> <i>Attorney Winslow, Natalie L.</i>
12/12/2013	 Stipulation and Order Filed by: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Stipulation and Order to Continue Hearings</i>
12/12/2013	 Reply in Support Filed By: Defendant Bank of America <i>Bank of America, N.A.'s Reply in Support of Motion to Dismiss Plaintiff's Complaint Pursuant to NRCp 12(b)(5), or Alternatively, Motion for Summary Judgment</i>

CASE SUMMARY
CASE SUMMARY
CASE NO. A-13-689113-C

12/12/2013	 Reply to Opposition Filed by: Defendant Dragonridge Properties LLC <i>Reply To Plaintiff's Oppositions To Defendants DRFH Ventures, LLC f/k/a DragonRidge Properties, LLC; DragonRidge Golf Club, Inc.; MacDonald Properties, Ltd; MacDonald Highlands Realty, LLC; And Michael Doiron's (1) Joinder To Bank Of America, N.A.'s Motion To Dismiss Plaintiff's Complaint And (2) Motion To Dismiss</i>
12/13/2013	 Supplement to Opposition Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Plaintiff's Supplement to Opposition to Defendant Shahin Shane Malek's Motion to Dismiss Plaintiff's Complaint and Expunge Lis Pendens</i>
12/18/2013	 Supplemental Brief Filed By: Defendant Malek, Shahin Shane <i>Supplemental Brief In Support Of Defendant's Motion To Dismiss Plaintiff's Complaint And Expunge Lis Pendens On Order Shortening Time</i>
12/18/2013	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Notice of Entry of Stipulation and Order to Continue Hearings</i>
12/19/2013	Motion to Dismiss (10:00 AM) (Judicial Officer: Cory, Kenneth) <i>Bank of America, N.A.'s Motion to Dismiss Plaintiff's Complaint Pursuant to NRCP 12(b)(5), or Alternatively, Motion for Summary Judgment</i>
12/19/2013	Motion to Dismiss (10:00 AM) (Judicial Officer: Cory, Kenneth) <i>Defendants DRFH Ventures, LLC f/k/a Dragonridge Properties, LLC; Dragonridge Golf Club, Inc.; MacDonald Properties, Ltd.; MacDonld Highlands Realty, LLC; and Michael Doiron's Motion to Dismiss</i>
12/19/2013	Joinder (10:00 AM) (Judicial Officer: Cory, Kenneth) <i>DRFH Ventures, LLC f/k/a DragonRidge Properties, LLC; DragonRidge Golf Club, Inc.; MacDonald Properties, LTD; MacDonald Highlands Realty, LLC; and Michael Doiron's Partial Joinder To Bank of America, N.A.'s Motion To Dismiss Plaintiff's Complaint Pursuant To NRCP 12(B)(5), Or Alternatively, Motion For Summary Judgment</i>
12/19/2013	 All Pending Motions (10:00 AM) (Judicial Officer: Cory, Kenneth) <i>Bank of America, N.A.'s Motion to Dismiss Plaintiff's Complaint Pursuant to NRCP 12(b)(5), or Alternatively, Motion for Summary Judgment... DRFH Ventures, LLC f/k/a DragonRidge Properties, LLC; DragonRidge Golf Club, Inc.; MacDonald Properties, LTD; MacDonald Highlands Realty, LLC; and Michael Doiron's Partial Joinder To Bank of America, N.A.'s Motion To Dismiss Plaintiff's Complaint Pursuant To NRCP 12(B)(5), Or Alternatively, Motion For Summary Judgment... Defendants DRFH Ventures, LLC f/k/a Dragonridge Properties, LLC; Dragonridge Golf Club, Inc.; MacDonald Properties, Ltd.; MacDonld Highlands Realty, LLC; and Michael Doiron's Motion to Dismiss... Defendant's Motion To Dismiss Plaintiff's Complaint And Expunge Lis Pendens On Order Shortening Time</i> <i>Parties Present: Attorney Smyth, James E., II</i> <i>Attorney Brenner, Darren T.</i> <i>Attorney Gunnerson, Spencer</i> <i>Attorney Byrne, Patrick G.</i> <i>Attorney Winslow, Natalie L</i> <i>Defendant Malek, Shahin Shane</i> <i>Attorney Shiroff, Justin</i>
12/20/2013	 Demand for Jury Trial Filed By: Defendant Bank of America <i>Demand for Jury Trial</i>
12/30/2013	 Answer to Complaint

CASE SUMMARY
CASE SUMMARY
CASE NO. A-13-689113-C










	Filed by: Defendant Bank of America <i>Bank of America, N.A.'s Answer to Plaintiff's Complaint</i>
01/09/2014	 Order Filed By: Defendant Malek, Shahin Shane <i>Order</i>
01/10/2014	 Notice of Entry of Order Filed By: Defendant Malek, Shahin Shane <i>Notice of Entry of Order</i>
01/10/2014	 Order Filed By: Defendant Dragonridge Properties LLC <i>Order Granting In Part Defendants DRFH Ventures, LLC f/k/a DragonRidge Properties, LLC; DragonRidge Golf Club, Inc.; MacDonald Properties, Ltd; MacDonald Highlands Realty, LLC; And Michael Doiron's (1) Joinder To Bank Of America, N.A.'s Motion To Dismiss Plaintiff's Complaint And (2) Motion To Dismiss</i>
01/10/2014	Order of Dismissal Without Prejudice (Judicial Officer: Cory, Kenneth) Debtors: Frederic and Barbara Rosenberg Living Trust (Plaintiff) Creditors: Dragonridge Properties LLC (Defendant), Dragonridge Golf Club Inc (Defendant), MacDonald Properties Ltd (Defendant) Judgment: 01/10/2014, Docketed: 01/17/2014
01/13/2014	 Notice of Entry of Order Filed By: Defendant Dragonridge Properties LLC <i>Notice of Entry of Order Granting In Part Defendants DRFH Ventures, LLC f/k/a DragonRidge Properties, LLC; DragonRidge Golf Club, Inc.; MacDonald Properties, Ltd; MacDonald Highlands Realty, LLC; And Michael Doiron's (1) Joinder To Bank of America, N.A.'s Motion To Dismiss Plaintiff's Complaint And (2) Motion To Dismiss</i>
01/15/2014	 Recorders Transcript of Hearing <i>Transcript of Proceedings: Hearing Re: All Pending Motions -- 12-19-13</i>
01/21/2014	 Substitution of Attorney Filed by: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Substitution of Counsel</i>
01/28/2014	 Answer to Complaint Filed by: Defendant MacDonald Highlands Realty LLC <i>Answer To Plaintiff's Complaint</i>
02/20/2014	 Answer and Counterclaim Filed By: Defendant Malek, Shahin Shane <i>Defendant Shahin Shane Malek's Answer And Counterclaim</i>
03/17/2014	 Joint Case Conference Report Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Joint Case Conference Report</i>
03/20/2014	 Answer to Counterclaim Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>The Frederic and Barbara Roseberg Living Trust's Answer to Defendant Shahin Shane Malek's Counterclaim</i>
03/21/2014	 Scheduling Order

CASE SUMMARY
CASE SUMMARY
CASE NO. A-13-689113-C















Scheduling Order

03/25/2014	 Certificate of Service Filed by: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Certificate of Service</i>
04/01/2014	 Order Setting Civil Jury Trial <i>Order Setting Civil Jury Trial and Pretrial Procedures</i>
04/21/2014	 Certificate of Service Filed by: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Certificate of Service</i>
04/28/2014	 Affidavit of Service Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Affidavit of Service - Person Most Knowledgeable The City of Henderson</i>
04/29/2014	 Notice of Voluntary Dismissal Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Notice of Voluntary Dismissal of Real Properties Management Group, Inc.</i>
04/29/2014	Dismissal Pursuant to NRCP 41 (Judicial Officer: Cory, Kenneth) Debtors: Real Properties Management Group Inc (Defendant) Creditors: Frederic and Barbara Rosenberg Living Trust (Plaintiff) Judgment: 04/29/2014, Docketed: 05/06/2014
04/30/2014	 Certificate of Service Filed by: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Certificate of Service</i>
08/01/2014	 Notice Filed By: Defendant Bank of America <i>Notice of Site Inspection</i>
08/21/2014	 Affidavit of Service Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Affidavit of Service - Person Most Knowledgeable at Realty One Group</i>
08/21/2014	 Affidavit of Service Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Affidavit of Service - Person Most Knowledgeable at Greater Las Vegas Association of Realtors</i>
08/21/2014	 Affidavit of Service Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Affidavit of Service - Person Most Knowledgeable at Foothills at MacDonald Ranch Master Homeowners Association</i>
08/22/2014	 Stipulation and Order to Extend Discovery Deadlines Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Stipulation and Order to Extend Discovery Deadline Dates (First Request)</i>
08/23/2014	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Notice of Entry of Stipulation and Order</i>


CASE SUMMARY
CASE SUMMARY
CASE NO. A-13-689113-C

08/27/2014	 Motion to Withdraw As Counsel Filed By: Defendant Malek, Shahin Shane <i>Motion to Withdraw as Counsel on Order Shortening Time</i>
09/03/2014	 Substitution of Attorney Filed by: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Substitution of Counsel</i>
09/04/2014	 Affidavit of Service Filed By: Defendant Bank of America <i>Affidavit of Service - Custodian of Records for DSC Archives and Records - City Clerk's Office - City of Henderson</i>
09/10/2014	 Notice of Association of Counsel Filed By: Defendant Malek, Shahin Shane <i>Notice of Association of Counsel</i>
09/19/2014	 Stipulation and Order to Extend Discovery Deadlines Filed By: Defendant Malek, Shahin Shane <i>Stipulation and Order to Extend Discovery Deadlines and to Continue the Trial Date Pursuant to EDCR 2.35 (Second Request)</i>
09/23/2014	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Notice of Entry of Stipulation and Order</i>
10/13/2014	CANCELED Motion to Withdraw as Counsel (3:00 AM) (Judicial Officer: Cory, Kenneth) <i>Vacated - Moot</i> <i>Motion to Withdraw as Counsel on Order Shortening Time</i>
10/24/2014	 Affidavit of Service Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Affidavit of Service - Custodian of Records for Wallace Morris Surveyors</i>
10/27/2014	 Order Setting Civil Jury Trial <i>Order Setting Civil Jury Trial and Pretrial Procedures</i>
11/13/2014	 Stipulation and Order to Extend Discovery Deadlines Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Stipulation and Order to Extend Discovery Deadlines Pursuant to EDCR 2.35 (Third Request)</i>
11/14/2014	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Notice of Entry of Stipulation and Order to Extend Discovery Deadlines Pursuant to EDCR 2.35 (Third Request)</i>
11/24/2014	 Motion to Amend Complaint Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Motion for Leave to Amend Complaint and Caption</i>
12/22/2014	 Affidavit of Service Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Affidavit of Service - Real Properties Management Group Inc</i>












CASE SUMMARY
CASE SUMMARY
CASE NO. A-13-689113-C

12/22/2014	 Affidavit of Service Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Affidavit of Service - Paul Bykowski</i>
12/22/2014	 Affidavit of Service Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Affidavit of Service - Chicago Title of Nevada</i>
12/30/2014	 Stipulation to Extend Discovery Party: Defendant MacDonald Highlands Realty LLC <i>Stipulation and Order to Extend Discovery Deadlines Pursuant to EDCR 2.35 (Fourth Request)</i>
01/02/2015	 Supplement Filed by: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Supplement to Motion for Leave to Amend Complaint and Caption</i>
01/05/2015	 Motion for Leave (3:00 AM) (Judicial Officer: Cory, Kenneth) <i>Plaintiff's Motion for Leave to Amend Complaint and Caption</i>
01/09/2015	 Notice of Entry of Order Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Notice of Entry of Order</i>
01/09/2015	 Minute Order (10:30 AM) (Judicial Officer: Cory, Kenneth) <i>A689113</i>
01/09/2015	 Order Granting Motion Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Order Granting Plaintiff's Motion for Leave to Amend Complaint and Caption</i>
01/12/2015	 Amended Complaint Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Amended Complaint</i>
01/13/2015	 Affidavit of Service Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Affidavit of Service - MacDonald Properties Ltd</i>
01/13/2015	 Affidavit of Service Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Affidavit of Service - Realty One Group Inc</i>
01/13/2015	 Affidavit of Service Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Affidavit of Service - Richard MacDonald</i>
01/13/2015	 Affidavit of Service Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Affidavit of Service - The Foothills at MacDonald Ranch Master Association LLC</i>
01/13/2015	 Affidavit of Service Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Affidavit of Service - Matthew Lubawy MAI, Lubawy and Associates Inc</i>

CASE SUMMARY
CASE SUMMARY
CASE NO. A-13-689113-C

01/14/2015	 Affidavit of Service Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Affidavit/Declaration of Service of Craig E. Jiu, MAA</i>
01/14/2015	 Affidavit of Service Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Affidavit of Service -MacDonald Properties Ltd</i>
01/14/2015	 Affidavit of Service Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Affidavit of Service - MacDonald Properties LTD</i>
01/14/2015	 Affidavit of Service Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Affidavit of Service - Richard MacDonald</i>
01/14/2015	 Affidavit of Service Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Affidavit of Service - Richard MacDonald</i>
01/15/2015	 Affidavit of Service Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Affidavit of Service - Matthew Lubawy MAI</i>
01/15/2015	 Affidavit of Service Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Affidavit of Service - Realty One Group Inc</i>
01/15/2015	 Affidavit of Service Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Affidavit of Service - Chicago Title of Nevada</i>
01/16/2015	 Affidavit of Service Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Affidavit of Service - Paul Bykowski</i>
01/16/2015	 Affidavit of Service Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Affidavit of Service - Foothills at MacDonald Ranch Master Association</i>
01/16/2015	 Affidavit of Service Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Affidavit of Service - Foothill Partners</i>
01/20/2015	 Motion for Protective Order Filed By: Defendant Bank of America <i>Motion For Protective Order re: Deposition of Rule 30(B)(6) Witness, and For Attorneys' Fees on Order Shortening Time</i>
01/21/2015	 Receipt of Copy Filed by: Defendant Bank of America <i>Receipt of Copy</i>


CASE SUMMARY
CASE SUMMARY
CASE NO. A-13-689113-C


01/22/2015	 Receipt of Copy Filed by: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Receipt of Copy</i>
01/22/2015	 Receipt of Copy Filed by: Defendant Bank of America <i>Receipt of Copy</i>
01/23/2015	 Opposition to Motion For Protective Order Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Opposition to Motion for Protective Order</i>
01/27/2015	 Answer to Amended Complaint Filed By: Defendant Malek, Shahin Shane <i>Answer To Amended Complaint And Counterclaim</i>
01/28/2015	 Reply in Support Filed By: Defendant Bank of America <i>Reply in Support of Motion For Protective Order Re: Deposition of Rule 30(B)(6) Witness, and for Attorneys' Fees on Order Shortening Time</i>
01/30/2015	 Motion for Protective Order (9:00 AM) (Judicial Officer: Bulla, Bonnie) <i>Bank of America, N.A.'s Motion For Protective Order re: Deposition of Rule 30(B)(6) Witness, and For Attorneys' Fees on OST</i> <i>Parties Present: Attorney Hanks, Karen</i> <i>Attorney Rulis, Nathanael R., ESQ</i> <i>Attorney Winslow, Natalie L</i> <i>Attorney DeVoy, James M.</i>
02/02/2015	 Answer to Amended Complaint Filed By: Defendant MacDonald Highlands Realty LLC <i>Defendants MacDonald Highlands Realty, LLC and Michael Doiron's Answer to Plaintiff's Amended Complaint</i>
02/03/2015	 Affidavit Filed By: Defendant MacDonald Properties Ltd <i>Notice of Filing Affidavit of Service of Notice of Taking Deposition of 30(b)(6) PMK - city of Henderson</i>
02/11/2015	 Motion to Dismiss Filed By: Defendant FHP Ventures <i>Defendant FHP Ventures's Motion to Dismiss Amended Complaint</i>
02/12/2015	 Initial Appearance Fee Disclosure Filed By: Defendant FHP Ventures <i>Initial Appearance Disclosure Statement</i>
02/26/2015	CANCELED Pretrial/Calendar Call (9:00 AM) (Judicial Officer: Cory, Kenneth) <i>Vacated - per Commissioner</i>
03/04/2015	 Opposition to Motion to Dismiss Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Plaintiff's Opposition to Motion to Dismiss</i>
03/06/2015	CANCELED Status Check: Compliance (11:00 AM) (Judicial Officer: Bulla, Bonnie)


CASE SUMMARY
CASE SUMMARY
CASE NO. A-13-689113-C

Vacated - per Commissioner


03/16/2015 **CANCELED Jury Trial** (10:00 AM) (Judicial Officer: Cory, Kenneth)
Vacated - per Commissioner


03/18/2015  Discovery Commissioners Report and Recommendations
Filed By: Defendant Bank of America
Discovery Commissioner's Report and Recommendations


04/01/2015  Reply in Support
Filed By: Defendant FHP Ventures
Defendant FHP Ventures' Reply In Support Of Motion To Dismiss


04/08/2015  **Motion to Dismiss** (9:00 AM) (Judicial Officer: Cory, Kenneth)
Defendant FHP Ventures's Motion to Dismiss Amended Complaint
Parties Present: Attorney Hanks, Karen
Attorney Shevorski, Steven G.
Attorney Gunnerson, Spencer
Attorney Chavez, Sarah M, ESQ


04/13/2015  Transcript of Proceedings
Transcript Re: Defendant FHP Ventures' Motion to Dismiss Amended Complaint 04-08-15


04/16/2015  Appendix
Filed By: Defendant MacDonald Highlands Realty LLC
Appendix Of Exhibits To Motion For Summary Judgment

04/16/2015  Motion for Summary Judgment
Filed By: Defendant Malek, Shahin Shane
Defendant Shahin Shane Malek's Motion for Summary Judgment

04/16/2015  Statement
Filed by: Defendant Malek, Shahin Shane
Defendant Shahin Shane Malek's Statement of Undisputed Material Facts in Support of Motion for Summary Judgment

04/16/2015  Motion for Summary Judgment
Filed By: Defendant MacDonald Highlands Realty LLC
Motion For Summary Judgment

04/16/2015  Motion for Summary Judgment
Filed By: Counter Defendant Fredric and Barbara Rosenberg Trust
Plaintiff's Motion for Summary Judgment against Defendant Shahin Shane Malek

04/22/2015  Notice of Voluntary Dismissal Without Prejudice
Filed by: Plaintiff Frederic and Barbara Rosenberg Living Trust
Notice of Voluntary Dismissal of Paul Bykowski and the Foothills at MacDonald Ranch Master Association

04/22/2015 **Dismissal Pursuant to NRCP 41** (Judicial Officer: Cory, Kenneth)
Debtors: Paul Bykowski (Defendant), Foothills at MacDonald Ranch Master Association (Defendant)
Creditors: Frederic and Barbara Rosenberg Living Trust (Plaintiff)
Judgment: 04/22/2015, Docketed: 04/29/2015

CASE SUMMARY
CASE SUMMARY
CASE NO. A-13-689113-C

05/04/2015	 Opposition to Motion Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Plaintiff's Opposition to Defendant MacDonald Realty, Michael Dorion and FHP Ventures' Motion for Summary Judgment</i>
05/04/2015	 Response Filed by: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Response to Malek's Statement of Undisputed Facts</i>
05/04/2015	 Opposition to Motion Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Plaintiff's Opposition to Defendant Malek's Motion for Summary Judgment</i>
05/05/2015	 Opposition to Motion For Summary Judgment Filed By: Defendant Malek, Shahin Shane <i>Defendant Shahin Shane Malek's Opposition to Plaintiff's / Counterclaim Defendant's Motion for Summary Judgment</i>
05/07/2015	CANCELED Pretrial/Calendar Call (9:00 AM) (Judicial Officer: Cory, Kenneth) <i>Vacated</i>
05/11/2015	 Errata Filed By: Defendant MacDonald Highlands Realty LLC <i>Errata To Motion For Summary Judgment</i>
05/11/2015	 Reply to Opposition Filed by: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Plaintiff's Reply to Malek's Opposition to Motion for Summary Judgment</i>
05/12/2015	 Reply in Support Filed By: Defendant MacDonald Highlands Realty LLC <i>Reply In Support Of MacDonald Realty, Michael Doiron And FHP Ventures' Motion For Summary Judgment</i>
05/12/2015	 Order Denying Motion Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Order Denying FHP Ventures' Motion to Dismiss Amended Complaint</i>
05/12/2015	 Notice of Entry of Order Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Notice of Entry of Order Denying FHP Ventures' Motion to Dismiss Amended Complaint</i>
05/12/2015	 Reply to Opposition Filed by: Defendant Malek, Shahin Shane <i>Reply to Plaintiff's Opposition to Defendant Malek's Motion for Summary Judgment</i>
05/14/2015	 Default Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust Default Prty: Defendant Foothills Partners <i>(Set Aside 5/21/15) Default Against The Foothills Partners</i>
05/18/2015	 Minute Order (9:00 AM) (Judicial Officer: Cory, Kenneth)
05/21/2015	 Notice of Entry of Stipulation and Order

CASE SUMMARY
CASE SUMMARY
CASE NO. A-13-689113-C

Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust
Notice of Entry of Stipulation and Order to Set Aside Default Against The Foothills Partners

05/21/2015



Stipulation and Order

Filed by: Plaintiff Frederic and Barbara Rosenberg Living Trust
Stipulation and Order to Set Aside Default Against the Foothills Partners

05/26/2015

CANCELED Jury Trial (10:00 AM) (Judicial Officer: Cory, Kenneth)
Vacated

06/03/2015



Motion to Amend Complaint

Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust
Motion to Amend Complaint to Conform to Evidence

06/10/2015



Status Check: Reset Trial Date (9:00 AM) (Judicial Officer: Cory, Kenneth)
06/10/2015, 07/15/2015, 07/29/2015
Status Check: Reset Trial Date

Parties Present: Attorney Gilbert, Jacqueline
Attorney Hanks, Karen
Attorney Jones, Jon Randall
Attorney Gunnerson, Spencer
Attorney Rezaee, Preston P, ESQ
Attorney Panoff, Jesse N
Attorney DeVoy, James M.
Attorney Barishman, Melissa
Attorney Haddas, William S.
Attorney Hanks, Karen
Attorney Shevorski, Steven G.
Attorney Carter, Matthew S.
Attorney DeVoy, James M.

06/10/2015

Motion for Summary Judgment (9:00 AM) (Judicial Officer: Cory, Kenneth)
Plaintiff's Motion for Summary Judgment against Defendant Shahin Shane Malek
Parties Present: Attorney Gilbert, Jacqueline
Attorney Hanks, Karen
Attorney Jones, Jon Randall
Attorney Gunnerson, Spencer
Attorney Rezaee, Preston P, ESQ
Attorney Panoff, Jesse N
Attorney DeVoy, James M.
Attorney Barishman, Melissa
Attorney Haddas, William S.

06/10/2015

Motion for Summary Judgment (9:00 AM) (Judicial Officer: Cory, Kenneth)
06/10/2015, 06/29/2015
Defendants' MacDonald Highlands, Michael Doiron and FHP Ventures' Motion for Summary Judgment

06/10/2015

Motion for Summary Judgment (9:00 AM) (Judicial Officer: Cory, Kenneth)
06/10/2015, 06/29/2015
Defendant Shahin Shane Malek's Motion for Summary Judgment
Parties Present: Attorney Gilbert, Jacqueline
Attorney Hanks, Karen
Attorney Jones, Jon Randall
Attorney Gunnerson, Spencer
Attorney Rezaee, Preston P, ESQ
Attorney Panoff, Jesse N
Attorney DeVoy, James M.
Attorney Barishman, Melissa
Attorney Haddas, William S.

CASE SUMMARY
CASE SUMMARY
CASE NO. A-13-689113-C

06/10/2015	 All Pending Motions (9:00 AM) (Judicial Officer: Cory, Kenneth) <i>Parties Present: Attorney Gilbert, Jacqueline</i> <i>Attorney Hanks, Karen</i> <i>Attorney Jones, Jon Randall</i> <i>Attorney Gunnerson, Spencer</i> <i>Attorney Rezaee, Preston P, ESQ</i> <i>Attorney Panoff, Jesse N</i> <i>Attorney DeVoy, James M.</i> <i>Attorney Barishman, Melissa</i> <i>Attorney Habdas, William S.</i>
06/19/2015	 Opposition and Countermotion Filed By: Defendant Bank of America <i>Bank Of America, N.A.'s Opposition to Plaintiff's Motion to Amend Complaint to Conform to Evidence and Countermotion for Dismissal Based on NRS 38.310(2)</i>
06/22/2015	 Opposition to Motion Filed By: Defendant MacDonald Properties Ltd <i>Opposition to Motion to Amend Complaint to Conform to Evidence</i>
06/22/2015	 Appendix Filed By: Defendant MacDonald Highlands Realty LLC <i>Appendix Of Exhibits To Opposition To Motion To Amend Complaint To Conform To Evidence</i>
06/22/2015	 Opposition to Motion Filed By: Defendant Malek, Shahin Shane <i>Defendant Shahin Shane Malek's Opposition to Plaintiff's Motion to Amend Complaint to Conform on Evidence</i>
06/29/2015	 All Pending Motions (3:00 AM) (Judicial Officer: Cory, Kenneth) <i>Defendants' MacDonald Highlands, Michael Doiron and FHP Ventures' Motion for Summary Judgment...Defendant Shahin Shane Malek's Motion for Summary Judgment</i>
06/29/2015	 Reply to Opposition Filed by: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Reply to Bank of America, N.A.'s Opposition to Motion Amend Complaint to Conform to Evidence</i>
06/29/2015	 Reply to Opposition Filed by: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Reply to Opposition to Motion to Amend Complaint to Conform to Evidence</i>
06/29/2015	 Reply to Opposition Filed by: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Reply to Shahin Shane Malek's Opposition to Motion to Amend Complaint to Conform to Evidence</i>
07/02/2015	 Transcript of Proceedings <i>Status Check: Reset Trial Date Counter Defendant's Motion for Summary Judgment Defendant Shahin Shane Malek's Motion for Summary Judgment Plaintiff's Motion for Summary Judgment Against Defendant Shahin Shane Malek 06-10-15</i>
07/06/2015	 Motion to Amend Complaint (3:00 AM) (Judicial Officer: Cory, Kenneth) <i>Plaintiff's Motion to Amend Complaint to Conform to Evidence</i>










CASE SUMMARY
CASE SUMMARY
CASE NO. A-13-689113-C

07/23/2015	 Order Denying Motion Filed By: Defendant Malek, Shahin Shane <i>Order Denying Plaintiff/ Counterclaim Defendant's Motion for Summary Judgment</i>
07/28/2015	 Answer to Amended Complaint Filed By: Defendant Bank of America <i>Bank of America NA's Answer to First Amended Complaint</i>
08/03/2015	 Transcript of Proceedings <i>Recorder's Transcript Re: Status Check: Reset Trial Date 07-15-15</i>
08/04/2015	 Notice of Entry Filed By: Defendant Malek, Shahin Shane <i>Notice of Entry of Order</i>
08/13/2015	 Findings of Fact, Conclusions of Law and Judgment Filed by: Defendant MacDonald Highlands Realty LLC <i>Findings Of Fact, Conclusions Of Law, And Judgment Regarding Defendants MacDonald Highlands Realty, LLC, Michael Doiron, And FHP Ventures' Motion For Summary Judgment</i>
08/13/2015	 Order Filed By: Defendant Malek, Shahin Shane <i>[Proposed] Order, Findings of Fact and Conclusions of Law, and Judgment on Defendant / Counterclaimant Shahin Shane Malek's Motion for Summary Judgment</i>
08/13/2015	 Notice of Entry of Findings of Fact, Conclusions of Law Filed By: Defendant MacDonald Highlands Realty LLC <i>Notice of Entry of Findings of Fact, Conclusions of Law and Judgment</i>
08/13/2015	Summary Judgment (Judicial Officer: Cory, Kenneth) Debtors: Frederic and Barbara Rosenberg Living Trust (Plaintiff) Creditors: MacDonald Highlands Realty LLC (Defendant), Michael Doiron (Defendant), FHP Ventures (Defendant) Judgment: 08/13/2015, Docketed: 08/20/2015
08/13/2015	Partial Summary Judgment (Judicial Officer: Cory, Kenneth) Debtors: Frederic and Barbara Rosenberg Living Trust (Plaintiff) Creditors: Shahin Shane Malek (Defendant) Judgment: 08/13/2015, Docketed: 08/20/2015
08/18/2015	 Memorandum of Costs and Disbursements Filed By: Defendant MacDonald Highlands Realty LLC <i>Verified Memorandum Of Costs And Disbursements</i>
08/18/2015	 Appendix Filed By: Defendant MacDonald Highlands Realty LLC <i>Appendix of Exhibits to Verified Memorandum of Costs and Disbursements</i>
08/19/2015	 Motion Filed By: Defendant MacDonald Highlands Realty LLC <i>Motion For Certification Pursuant To NRCP 54(b)</i>
08/20/2015	 Notice of Entry Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Notice of Entry of Order</i>

CASE SUMMARY
CASE SUMMARY
CASE NO. A-13-689113-C

08/21/2015	 Motion to Retax Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Plaintiff's Motion to Retax and Settle Memorandum of Costs and Disbursements</i>
09/02/2015	 Motion for Attorney Fees and Costs Filed By: Defendant MacDonald Highlands Realty LLC <i>Motion For Attorney's Fees And Costs</i>
09/09/2015	 Memorandum of Costs and Disbursements Filed By: Defendant Bank of America <i>Verified Memorandum of Costs and Disbursements</i>
09/09/2015	 Motion for Attorney Fees and Costs Filed By: Defendant Malek, Shahin Shane <i>Defendant Shahin Shane Malek's Motion for Attorneys' Fees and Costs</i>
09/14/2015	 Motion to Retax Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Plaintiff's Motion to Retax and Settle Memorandum of Costs and Disbursements</i>
09/21/2015	Motion (3:00 AM) (Judicial Officer: Cory, Kenneth) <i>Defendant MacDonald Highlands Realty LLC's Motion For Certification Pursuant To NRCP 54(b)</i>
09/21/2015	CANCELED Motion to Retax (3:00 AM) (Judicial Officer: Cory, Kenneth) <i>Vacated</i> <i>Plaintiff's Motion to Retax and Settle Memorandum of Costs and Disbursements</i>
09/21/2015	 All Pending Motions (3:00 AM) (Judicial Officer: Cory, Kenneth) <i>DEFENDANT MACDONALD HIGHLANDS REALTY LLC'S MOTION FOR CERTIFICATION PURSUANT TO NRCP 54(B)...PLAINTIFF'S MOTION TO RETAX AND SETTLE MEMORANDUM OF COSTS AND DISBURSEMENTS</i>
09/21/2015	 Opposition to Motion Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Plaintiff's Opposition To Motion For Attorney's Fees And Costs</i>
10/02/2015	 Opposition to Motion Filed By: Defendant Malek, Shahin Shane <i>Defendant Shahin Shane Malek's Opposition to Plaintiff's Motion to Retax Costs</i>
10/05/2015	 Reply in Support Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Reply In Support Of Motion For Attorney's Fees And Costs</i>
10/14/2015	 Notice of Hearing Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Request for Hearing on Motions for Attorneys Fees and Costs</i>
10/22/2015	 Motion for Attorney Fees and Costs (1:30 PM) (Judicial Officer: Cory, Kenneth) 10/22/2015, 12/01/2015 <i>Defendant Shahin Malek's Motion for Attorney Fees and Costs</i> <i>Parties Present: Attorney DeVoy, James M.</i>

CASE SUMMARY
CASE SUMMARY
CASE NO. A-13-689113-C










10/22/2015	 Motion for Attorney Fees and Costs (1:30 PM) (Judicial Officer: Cory, Kenneth) 10/22/2015, 11/09/2015 <i>Defendant MacDonald Highland Realty, LLC and FHP Ventures Motion for Attorneys' Fees and Costs</i>
10/22/2015	Motion to Retax (1:30 PM) (Judicial Officer: Cory, Kenneth) <i>Plaintiff's Motion to Retax and Settle Memorandum of Costs and Disbursements</i>
10/22/2015	 All Pending Motions (1:30 PM) (Judicial Officer: Cory, Kenneth) <i>DEFENDANT SHAHIN MALEK'S MOTION FOR ATTORNEY FEES AND COSTS...DEFENDANT MACDONALD HIGHLAND REALTY, LLC AND FHP VENTURES MOTION FOR ATTORNEYS' FEES AND COSTS...PLAINTIFF'S MOTION TO RETAX AND SETTLE MEMORANDUM OF COSTS AND DISBURSEMENTS</i> <i>Parties Present: Attorney Gilbert, Jacqueline</i> <i>Attorney Hanks, Karen</i> <i>Attorney Carter, Matthew S.</i> <i>Attorney DeVoy, James M.</i>
10/23/2015	 Opposition to Motion <i>Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust</i> <i>Plaintiff's Opposition to Defendant Malek's Motion for Attorney's Fees and Costs</i>
11/10/2015	 Notice of Entry of Order <i>Filed By: Defendant MacDonald Properties Ltd</i> <i>Notice Of Entry Of Order Granting Defendants' Motion For Certification Pursuant To NRCP 54(b)</i>
11/10/2015	 Notice of Entry of Order <i>Filed By: Defendant MacDonald Properties Ltd</i> <i>Notice Of Entry Of Order (1) Granting Motion For Attorney Fees And Costs And (2) Granting Motion To Re-Tax Costs</i>
11/10/2015	 Order Granting Motion <i>Filed By: Defendant MacDonald Highlands Realty LLC</i> <i>Order Granting Defendants' Motion For Certification Pursuant To NRCP 54(b)</i>
11/10/2015	 Order Granting Motion <i>Filed By: Defendant MacDonald Highlands Realty LLC</i> <i>Order (1) Granting Motion For Attorney Fees And Costs And (2) Granting Motion To Re-Tax Costs</i>
11/10/2015	Judgment (Judicial Officer: Cory, Kenneth) <i>Debtors: Frederic and Barbara Rosenberg Living Trust (Plaintiff)</i> <i>Creditors: MacDonald Highlands Realty LLC (Defendant), Michael Doiron (Defendant), Foothills Partners (Defendant), FHP Ventures (Defendant)</i> <i>Judgment: 11/10/2015, Docketed: 11/17/2015</i> <i>Total Judgment: 141,043.24</i>
11/19/2015	 Reply in Support <i>Filed By: Defendant Malek, Shahin Shane</i> <i>Defendant Shahin Shane Malek's Reply in Support of Motion for Attorneys' Fees and Costs</i>
12/09/2015	 Notice of Appeal <i>Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust</i> <i>Notice of Appeal</i>
12/09/2015	

CASE SUMMARY
CASE SUMMARY
CASE NO. A-13-689113-C





	 Case Appeal Statement Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Case Appeal Statement</i>
12/09/2015	 Status Check (9:00 AM) (Judicial Officer: Cory, Kenneth) <i>Status Check: Status of Case. All Counsel must be present.</i> <i>Parties Present: Attorney Gilbert, Jacqueline</i> <i>Attorney Shevorski, Steven G.</i> <i>Attorney DeVoy, James M.</i>
12/10/2015	 Stipulation and Order Filed by: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Stipulation and Order for Stay Pending Appeal</i>
12/11/2015	 Transcript of Proceedings <i>Transcript Re: Defendant Shain Malek's Motion for Attorney's Fees and Costs Defendant MacDonald Highlands Realty, LLC and FHP Ventures Motion for Attorney's Fees and Costs Plaintiff's Motion to Retax and Settle Memorandum of Costs and Disbursements 10-22-15</i>
12/11/2015	 Bond Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Supersedeas Bond No. 29012</i>
12/11/2015	 Case Appeal Statement Filed By: Defendant MacDonald Highlands Realty LLC <i>Case Appeal Statement</i>
12/11/2015	 Notice of Appeal Filed By: Defendant MacDonald Highlands Realty LLC <i>Defendants MacDonald Highlands Realty, LLC, Michael Doiron And FHP Ventures Notice Of Cross-Appeal</i>
12/14/2015	 Notice of Posting Bond Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Notice of Posting and Acceptance of Supersedeas Bond No. 29012</i>
12/14/2015	 Notice of Change of Address Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Notice of Change of Address, Notice of Change of Firm Name and Notice of Change of Attorney</i>
12/18/2015	 Transcript of Proceedings <i>Recorder's Transcript Re: Defendant Shain Malek's Motion for Attorney Fees and Costs 12-01-15</i>
12/21/2015	 Notice of Posting of Cost Bond Filed By: Defendant MacDonald Highlands Realty LLC <i>Defendants MacDonald Highlands Realty, LLC, Michael Doiron And FHP Ventures Notice Of Posting Bond For Costs On Cross-Appeal</i>
01/04/2016	 Transcript of Proceedings <i>Recorder's Transcript Re: Defendant Shain Malek's Motion for Attorney Fees and Costs 12-01-15</i>
01/13/2016	 Order

CASE SUMMARY
CASE SUMMARY
CASE NO. A-13-689113-C

Filed By: Defendant Malek, Shahin Shane
Order on Defendant Shahin Shane Malek's Motion for Attorneys' Fees and Costs and Plaintiff The Frederic and Barbara Rosenberg Living Trust's Motion to Retax Costs

01/13/2016	Order (Judicial Officer: Cory, Kenneth) Debtors: Frederic and Barbara Rosenberg Living Trust (Plaintiff) Creditors: Shahin Shane Malek (Defendant) Judgment: 01/13/2016, Docketed: 01/20/2016 Total Judgment: 25,986.00
01/13/2016	Sanctions (Judicial Officer: Cory, Kenneth) Debtors: Frederic and Barbara Rosenberg Living Trust (Plaintiff) Creditors: Shahin Shane Malek (Defendant) Judgment: 01/13/2016, Docketed: 01/20/2016 Total Judgment: 500.00
01/20/2016	 Notice of Entry of Order Filed By: Defendant Malek, Shahin Shane <i>Notice of Entry of Order</i>
01/27/2016	 Transcript of Proceedings <i>Transcript Re: Status Check: Status of Case 12-09-15</i>
02/03/2016	 Motion for Relief Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Motion for Relief from Order</i>
02/24/2016	 Opposition to Motion Filed By: Defendant Malek, Shahin Shane <i>Defendant Shahin Shane Malek's Opposition to Plaintiff's Motion for Relief from Order</i>
02/24/2016	 Motion for Summary Judgment Filed By: Defendant Bank of America <i>Bank Of America, N.A.'S Motion For Summary Judgment On All Claims</i>
02/29/2016	 Reply in Support Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Reply in Support of Motion for Relief from Order</i>
03/07/2016	 Motion (3:00 AM) (Judicial Officer: Cory, Kenneth) <i>Plaintiff's Motion for Relief from Order</i>
03/10/2016	 Stipulation and Order for Dismissal With Prejudice Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Stipulation and Order to Dismiss Bank of America, N.A. with Prejudice</i>
03/10/2016	Order of Dismissal With Prejudice (Judicial Officer: Cory, Kenneth) Debtors: Bank of America (Defendant) Creditors: Frederic and Barbara Rosenberg Living Trust (Plaintiff) Judgment: 03/10/2016, Docketed: 03/17/2016
03/18/2016	 Notice of Entry of Stipulation and Order Filed By: Counter Defendant Fredric and Barbara Rosenberg Trust <i>Notice of Entry of Stipulation and Order to Dismiss Bank of America, N.A. with Prejudice</i>
04/05/2016	CANCELED Motion for Summary Judgment (9:00 AM) (Judicial Officer: Cory, Kenneth)

CASE SUMMARY
CASE SUMMARY
CASE NO. A-13-689113-C

	<i>Vacated</i> <i>Bank Of America, N.A.'S Motion For Summary Judgment On All Claims</i>	
05/17/2016	 Stipulation and Order for Dismissal Without Prejudice Filed By: Defendant Malek, Shahin Shane <i>Stipulation and Order for Dismissal of Counterclaim without Prejudice pursuant to Nevada Rule of Civil Procedure 41(a)(1)</i>	
05/17/2016	Order of Dismissal Without Prejudice (Judicial Officer: Cory, Kenneth) Debtors: Fredric and Barbara Rosenberg Trust (Counter Defendant) Creditors: Shahin Shane Malek (Counter Claimant) Judgment: 05/17/2016, Docketed: 05/24/2016	
05/18/2016	 Notice of Entry of Stipulation & Order for Dismissal Filed By: Defendant Malek, Shahin Shane <i>Notice of Entry of Stipulation & Order</i>	
05/23/2016	 Notice of Appeal Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Notice of Appeal</i>	
05/23/2016	 Case Appeal Statement Filed By: Plaintiff Frederic and Barbara Rosenberg Living Trust <i>Case Appeal Statement</i>	
06/09/2016	Pre Trial Conference (9:00 AM) (Judicial Officer: Cory, Kenneth)	
06/27/2016	Jury Trial (10:00 AM) (Judicial Officer: Cory, Kenneth)	
DATE	FINANCIAL INFORMATION	

Defendant Dragonridge Golf Club Inc	
Total Charges	30.00
Total Payments and Credits	30.00
Balance Due as of 5/25/2016	0.00
Defendant Dragonridge Properties LLC	
Total Charges	444.00
Total Payments and Credits	444.00
Balance Due as of 5/25/2016	0.00
Counter Defendant Fredric and Barbara Rosenberg Trust	
Total Charges	200.00
Total Payments and Credits	200.00
Balance Due as of 5/25/2016	0.00
Defendant MacDonald Properties Ltd	
Total Charges	44.00
Total Payments and Credits	44.00
Balance Due as of 5/25/2016	0.00
Defendant BAC Home Loans Servicing LP	
Total Charges	30.00
Total Payments and Credits	30.00
Balance Due as of 5/25/2016	0.00
Defendant Bank of America	
Total Charges	623.00
Total Payments and Credits	623.00
Balance Due as of 5/25/2016	0.00

CASE SUMMARY
CASE SUMMARY
CASE NO. A-13-689113-C

Defendant Doiron, Michael	
Total Charges	30.00
Total Payments and Credits	30.00
Balance Due as of 5/25/2016	0.00
Defendant FHP Ventures	
Total Charges	233.50
Total Payments and Credits	233.50
Balance Due as of 5/25/2016	0.00
Defendant MacDonald Highlands Realty LLC	
Total Charges	320.50
Total Payments and Credits	320.50
Balance Due as of 5/25/2016	0.00
Defendant Malek, Shahin Shane	
Total Charges	423.00
Total Payments and Credits	423.00
Balance Due as of 5/25/2016	0.00
Plaintiff Frederic and Barbara Rosenberg Living Trust	
Total Charges	326.50
Total Payments and Credits	326.50
Balance Due as of 5/25/2016	0.00
Defendant MacDonald Highlands Realty LLC	
Appeal Bond Balance as of 5/25/2016	500.00
Plaintiff Frederic and Barbara Rosenberg Living Trust	
Appeal Bond Balance as of 5/25/2016	1,000.00

CIVIL COVER SHEET

A - 13 - 689113 - C

- Clark County, Nevada

Case No.

(Assigned by Clerk's Office)

I. Party Information

Plaintiff(s) (name/address/phone): THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST

Defendant(s) (name/address/phone): BANK OF AMERICA, N.A.; BAC HOME LOANS SERVING, LP et al.

Attorney (name/address/phone): Lisa J. Zastrow, Kaempfer Crowl, NSB 9727 -- 8345 W. Sunset Rd., Ste. 250, Las Vegas, NV 89113

Attorney (name/address/phone): n/a

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)☐ Arbitration Requested**Civil Cases**

Real Property	Torts	
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	Negligence <input type="checkbox"/> Negligence - Auto <input type="checkbox"/> Negligence - Medical/Dental <input type="checkbox"/> Negligence - Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence - Other	<input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (Wrongful termination) <input checked="" type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition
Probate Estimated Estate Value: _____ <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	Other Civil Filing Types <input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input checked="" type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input checked="" type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Foreclosure Mediation <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	
	<input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment - Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters	

III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only.)

- | | | |
|---|--|---|
| <input type="checkbox"/> NRS Chapters 78-88 | <input type="checkbox"/> Investments (NRS 104 Art. 8) | <input type="checkbox"/> Enhanced Case Mgmt/Business |
| <input type="checkbox"/> Commodities (NRS 90) | <input type="checkbox"/> Deceptive Trade Practices (NRS 598) | <input type="checkbox"/> Other Business Court Matters |
| <input type="checkbox"/> Securities (NRS 90) | <input type="checkbox"/> Trademarks (NRS 600A) | |

9-23-13

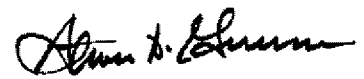
Date

Signature of initiating party or representative

See other side for family-related case filings.

1 Preston P. Rezace, Esq.
Nevada Bar No. 10729
2 Jay DeVoy, Esq., of counsel
Nevada Bar No. 11950
3 Sarah Chavez, Esq., of counsel
Nevada Bar No. 11935
4 THE FIRM, P.C.
200 E. Charleston Blvd.
5 Las Vegas, NV 89104
6 Telephone: (702) 222-3476
Facsimile: (702) 252-3476
7 *Attorneys for Defendant / Counterclaimant,*
SHAHIN SHANE MALEK

Electronically Filed
08/13/2015 11:11:51 AM



CLERK OF THE COURT

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 THE FREDERIC AND BARBARA
11 ROSENBERG LIVING TRUST,

12 Plaintiff,

13 vs.

14 BANK OF AMERICA, N.A.; BAC HOME)
LOANS SERVICING, LP, a foreign limited)
15 partnership; MACDONALD HIGHLANDS)
REALTY, LLC, a Nevada limited liability)
16 company; MICHAEL DOIRON, an individual;)
SHAHIN SHANE MALEK, an individual;)
17 PAUL BYKOWSKI, an individual; THE)
FOOTHILLS AT MACDONALD RANCH)
18 MASTER ASSOCIATION, a Nevada limited)
liability company; THE FOOTHILLS)
19 PARTNERS, a Nevada limited partnership;)
20 DOES I through X, inclusive; and ROE)
BUSINESS ENTITY I through XX, inclusive,)

21 Defendants.
22
23

CASE NO.: A-13-689113-C
DEPT NO.: I

**[PROPOSED] ORDER, FINDINGS OF
FACT AND CONCLUSIONS OF LAW,
AND JUDGMENT ON DEFENDANT /
COUNTERCLAIMANT SHAHIN SHANE
MALEK'S MOTION FOR SUMMARY
JUDGMENT**

24 Before the Court is Defendant/Counterclaimant Shahin Shane Malek's ("Malek['s]") Motion
25 for Summary Judgment on the claims asserted against him by Plaintiff/Counterclaim Defendant The
26 Frederic and Barbara Rosenberg Living Trust ("Plaintiff" or the "Trust"), and on Malek's
27 Counterclaim for slander of title against the Trust. The Court heard argument on this motion on June
28 10, 2015 at 9:00 a.m. Karen Hanks, Esq., Jacqueline Gilbert, Esq., Melissa Barishman, Esq., and Jesse

1 Panoff, Esq. appeared on behalf of the Plaintiff. Preston Rezaee, Esq. and Jay DeVoy, Esq. appeared
2 on behalf of Malek. Spencer Gunnerson, Esq. and J. Randall Jones, Esq. appeared on behalf of
3 Defendants MacDonald Highlands Realty, LLC, Michael Doiron, and FHP Ventures, erroneously sued
4 as The Foothills Partners. William Habdas, Esq. appeared on behalf of Defendants Bank of America,
5 N.A. and BAC Home Loans Servicing, LP (collectively, and for ease of reference only, "Bank of
6 America"). The Court, having reviewed all papers and pleadings on file in this matter in chambers,
7 entered a minute order granting in part and denying in part Malek's Motion, and articulated its
8 decision on the record during a status check for this matter on July 15, 2015 at 9:00 a.m.¹

9 I. Introduction

10 This case arises from the Trust's purchase of a house within the exclusive MacDonald
11 Highlands community, and its desire to restrict the use of Malek's neighboring property. On
12 September 23, 2013, the Trust filed a complaint against Malek, among other defendants, seeking
13 injunctive relief against Malek's development of his property at 594 Lairmont Place, and a portion of
14 additional land Malek had re-zoned and agreed to purchase before the Trust purchased an adjacent
15 parcel at 590 Lairmont Place. The Trust filed an Amended Complaint on January 12, 2015. Malek
16 answered the Amended Complaint, and additionally asserted his Counterclaim for slander of title
17 against the Trust.

18 This order considers Malek's Motion for Summary Judgment on the Trust's claims against
19 him: easement, implied restrictive covenant, injunction, and declaratory relief. Malek has also moved
20 for summary judgment on his counterclaim for slander of title against the Trust. In support of his
21 motion, Malek submitted numerous exhibits, including public records, the Trust's discovery responses,
22 and documents authenticated during depositions, as well as excerpts from numerous depositions taken
23 in this case. The Trust opposed Malek's Motion for Summary Judgment, and referenced its Cross-
24 Motion for Summary Judgment on Malek's slander of title counterclaim² in opposing that branch of
25 Malek's motion. Malek timely replied in support of his motion.

26
27 ¹ At this status check, Karen Hanks, Esq., appeared on behalf of the Plaintiff/Counterclaim Defendant. Jay DeVoy, Esq.
28 appeared on behalf of Defendant/Counterclaimant Malek. Spencer Gunnerson, Esq., appeared on behalf of Defendants
MacDonald Highlands Realty, LLC, Michael Doiron, and FHP Ventures—erroneously sued as The Foothills Partners.
Ariel Stern, Esq. appeared on behalf of Bank of America.

² The Court denied this motion at its June 10, 2015 hearing, and subsequently entered an order to that effect.

1 **II. Legal Standard**

2 This Court evaluates motions for summary judgment under Nevada Rule of Civil Procedure 56.
3 Summary judgment is appropriate “when the pleadings and other evidence on file demonstrate that no
4 ‘genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a
5 matter of law.’” *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). In reviewing
6 the motion, the Court considers the evidence in the light most favorable to the non-moving party.
7 *Collins v. Union Federal Savings and Loan Association*, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983).

8 **III. Findings of Fact**

9 Based on its review of the briefing in this case, the Court makes the following findings of fact:

10 **A. Findings Pertaining to the Trust’s Claims Against Malek.**

11 1. This case arises from a private community’s sale of an out-of-bounds portion of a golf
12 course to an adjacent lot owner in order to increase the original lot’s size; this practice is common in
13 prestigious, exclusive communities throughout the Las Vegas valley, including MacDonald Highlands,
14 where the land at issue in this case is situated. Bykowski Dep. Vol. I at 39:16-40:19; Doiron Dep. Vol.
15 I at 110:9-111:25; MacDonald Dep. at 126:22-128:20; Mot. Exhs. 1, 2.

16 2. Malek purchased the property commonly referred to as 594 Lairmont Place (APN 178-
17 27-218-002) (“594 Lairmont”), located within the MacDonald Highlands community, in August of
18 2012. At the same time, Malek planned to purchase a 0.34-acre parcel of undeveloped land adjacent to
19 594 Lairmont (APN 178-28-520-001) (the “Golf Parcel”) and annex it to 594 Lairmont. Malek Dep. at
20 14:17-22:10, 67:9-68:8; Bykowski Dep. Vol. I at 38:12-20; MacDonald Dep. at 60:17-21, 100:12-18;
21 Rosenberg Dep. at 190:2-5, 213:11-23.

22 3. MacDonald Highlands approved of this plan and sold the Golf Parcel to Malek. Malek
23 Dep. at 19:16-22, 21:16-22:10; Bykowski Dep. Vol. I at 38:12-20; Doiron Dep. Vol. I at 120:7-122:5.

24 4. The Golf Parcel consisted of an out-of-bounds area near the ninth hole of the
25 Dragonridge Golf Course, situated within MacDonald Highlands, and occupied a portion of the space
26 bordering the property line of 594 Lairmont, and outside of the golf course’s in-play area. Rosenberg
27 Dep. at 190:2-5; Malek Dep. at 19:16-22, 67:9-68:8; MacDonald Dep. at 60:17-21, 100:12-18;
28 Bykowski Dep. Vol. I at 38:12-20; Rosenberg Dep. at 190:2-5, 213:11-23; *see* Mot. Exh. 7.

1 5. Before merging the Golf Parcel with 594 Lairmont, MacDonald Highlands needed to
2 re-zone it from its Public / Semi-Public designation to residential use. Bykowski Dep. Vol. I at 38:12-
3 20; Malek Dep. at 43:10-21, 47:4-20; Tassi Dep. at 16:6-23:9; see Bykowski Dep. Vol. II at 183:25-
4 185:7.

5 6. MacDonald Highlands had performed this process several times for other property
6 owners with lots adjacent to the golf course, and re-zoned parcels of land from Public / Semi-Public
7 use to the appropriate residential use so that they could be merged with adjacent lots, leased to the
8 owners of adjacent lots, or otherwise incorporated into abutting property.³ Bykowski Dep. Vol. I at
9 39:16-41:23; MacDonald Dep. at 127:3-128:20; see Doiron Dep. I at 110:9-111:22.

10 7. Part of this re-zoning process included MacDonald Highlands' submission of an
11 application to vacate easements that may exist on the Golf Parcel. In processing this application, the
12 City of Henderson found that no such easements existed. Bykowski Dep. Vol. II at 183:25-185:7; Mot.
13 Exh. 17.

14 8. To complete the re-zoning process, MacDonald Highlands retained the services of B2
15 Development, which in turn took the steps necessary to re-zone the Golf Parcel. Bykowski Dep. Vol. II
16 at 95:1-20; see Mot. Exhs. 4, 5.

17 9. B2 Development took the steps necessary to properly re-zone the Golf Parcel, including
18 organizing a community meeting to discuss the proposed re-zoning. Bykowski Dep. Vol. II at 93:22-
19 100:19; see Mot. Exhs. 4, 5. B2 Development mailed notices of the meeting to the owners of record of
20 all parcels near the Golf Parcel, including 590 Lairmont Place (APN 178-27-218-003) ("590
21 Lairmont"), the lot adjacent to 594 Lairmont. Bykowski Dep. Vol. II at 95:1-23; Woodbridge Dep. at
22 56:19-58:2; Mot. Exh. 6.

23 10. At the time B2 Development mailed its notices for the community meeting in October
24 2012, Defendant Bank of America owned 590 Lairmont. Woodbridge Dep. at 15:1-20; Rosenberg
25 Dep. at 43:31-44:25; see Mot. Exh. 8. B2 Development mailed its notice to a valid address for Bank
26 of America, which never objected to the Golf Parcel's re-zoning. Woodbridge Dep. at 15:1-20; Mot.

27
28 ³ As noted above, this practice is not limited to MacDonald Highlands, but is common within other Golf Communities within the Las Vegas valley.

1 Exh. 8. In fact, nobody objected to the Golf Parcel's re-zoning at the community meeting, or separately
2 to the City of Henderson. Tassi Dep. at 55:3-23; *see* Bykowski Dep. II at 92:2-18.

3 11. Acting for MacDonald Highlands, B2 further followed the City of Henderson's zoning
4 process in re-zoning the Golf Parcel by obtaining the City Counsel's approval of the Golf Parcel's
5 proposed re-zoning at two consecutive meetings, and the City's adoption of a resolution approving the
6 zoning change. Tassi Dep. at 16:6-23:17; *see* Mot. Exhs. 4, 5.

7 12. MacDonald Highlands' applications for the Golf Parcel's re-zoning were properly heard
8 by the City of Henderson; the City adopted a resolution re-zoning the Golf Parcel to residential use on
9 December 8, 2012, and the City recorded its resolution on January 7, 2013. Bykowski Dep. Vol. II at
10 93:22-97:16, 99:4-105:25; Tassi Dep. at 16:6-23:17; Mot. Exhs. 4, 5.

11 13. Maps and information reflecting the Golf Parcel's changed zoning were readily and
12 almost immediately available to the public. By January 24, 2013, the Golf Parcel's new, residential
13 zoning was reflected in zoning maps that were publicly available at the front desk of Henderson City
14 Hall. Tassi Dep. at 23:10-24:6, 25:2-26:1, 27:17-28:11, 56:16-24.

15 14. Less than a month later in mid-February of 2013, the Golf Parcel's residential zoning
16 could be seen in an online zoning map publicly available from the City of Henderson's website. *Id.* at
17 30:6-20; Mot. Exh. 7.

18 15. According to one of the City of Henderson's planners, a member of the public could
19 access a specific address on this online map in less than five minutes. *Id.* at 26:14-27:7.

20 16. Following the City of Henderson's duly passed resolution approving the Golf Parcel's
21 re-zoning to residential use, the Golf Parcel's sale was recorded and it was merged into 594 Lairmont,
22 creating one parcel of land that was zoned for residential use. Bykowski Dep. I at 38:12-20; Malek
23 Dep. at 43:10-21, 47:4-20; Tassi Dep. at 16:6-23:9.

24 17. Beginning in February of 2013, Barbara Rosenberg, an experienced residential real
25 estate broker and a trustee of the Trust, and David Rosenberg,⁴ an attorney in Las Vegas and a
26 beneficiary of the Trust, began contacting Bank of America in an attempt to purchase 590 Lairmont
27

28 ⁴ David Rosenberg had lived in the Green Valley area of the Las Vegas metropolitan region since 2009, and was familiar with the MacDonald Highlands community.

1 before the property was publicly listed for sale. Rosenberg Dep. at 43:20-46:3, 55:1-57:14; Mot. Exhs.
2 8, 9.

3 18. Barbara Rosenberg not only had more than 25 years of experience as a residential real
4 estate broker, but estimates she has sold more than 500 homes in her career. Rosenberg Dep. at 12:19-
5 13:15, 88:8-25. Individually and through the Trust, Barbara Rosenberg and her husband have made
6 numerous real estate purchases in the past, including an 8,000 square foot primary residence, two other
7 houses in California, and two condos in Manhattan Beach, California—in addition to 590 Lairmont. *Id.*
8 at 13:16-16:13.

9 19. When 590 Lairmont was listed for sale, Barbara Rosenberg offered to purchase it for
10 \$1,750,000—above the listing price of \$1,600,000—in an all-cash transaction. She then increased her
11 offer and submitted the winning bid to purchase the home for \$2,302,000, all cash. Rosenberg Dep. at
12 43:20-46:3, 50:3-51:25, 85:1-86:5; Mot. Exhs. 8, 9, 14.

13 20. Barbara Rosenberg did not do any research about 590 Lairmont's zoning, or the use of
14 surrounding land, prior to purchasing the property. Rosenberg Dep. at 95:9-19, 103:17-104:23, 115:12-
15 116:15, 121:23-123:6, 129:1-130:2; *see* Tassi Dep. at 55:24-56:12. The Rosenbergs were motivated to
16 purchase this property as quickly as possible because they considered it their “dream” home.
17 Rosenberg Dep. at 115:17-24, 210:5-19.

18 21. When Barbara Rosenberg walked through the property, despite generally waiving the
19 Trust's right to an inspection, she did not even look over to 594 Lairmont or the Golf Parcel, the latter
20 of which was marked with stakes that had been in place since December of 2012. Rosenberg Dep. at
21 130:3-23; Malek Dep. at 112:4-113:10.

22 22. In the course of purchasing 590 Lairmont, MacDonald Highlands Realty provided
23 Barbara Rosenberg with numerous disclosures, waivers, and other warnings that she and her husband
24 signed. Rosenberg Dep. at 95:1-16, 129:1-130:2; Mot. Exhs. 10, 11, 12, 13, 14; *see* Doiron Dep. Vol. I
25 at 145:25-149:25.

26 23. Additionally, Barbara Rosenberg knew that there would be subsequent home
27 construction on the vacant lots surrounding 590 Lairmont, including 594 Lairmont, at the time the
28 Trust purchased 590 Lairmont. Rosenberg Dep. at 46:19-47:24; Mot. Exh. 8.

1 24. The Trust was given five days to conduct due diligence before the sale would be
2 completed. Doiron Dep. Vol. I at 145:25-149:25; Mot. Exh. 13, 14. Barbara Rosenberg also signed a
3 zoning disclosure form stating specifically advising the Trust that the zoning information provided was
4 current as of February of 2010—more than three years before the Trust signed its purchase agreement
5 for 590 Lairmont—and the Trust should seek the most current zoning information from the City of
6 Henderson. Rosenberg Dep. at 120:10-23, 121:12-22; Mot. Exh. 12, 14. Among still other warnings
7 and waivers, Barbara Rosenberg signed a disclosure informing her and the Trust of 590 Lairmont's
8 reduced privacy inherent in its location adjacent to the golf course. Rosenberg Dep. at 116:18-118:19;
9 Mot. Exh. 11.

10 25. Additionally, due to the topography of the house and its views onto nearby streets, the
11 Trust already faced certain limitations on its privacy by virtue of the house's existing position and
12 condition. Rosenberg Dep. at 213:11-23, 201:10-203:5, 213:11-23, 201:10-203:5.

13 26. Nonetheless, the Trust purchased 590 Lairmont "as-is, where-is," and accepted the
14 property as it was when it signed the purchase documents in April of 2013. Rosenberg Dep. at 86:11-
15 88:7, 94:15-25, 95:9-19, 95:25-97:4, 99:10-100:7; Mot. Exh. 14 at 8:48-51. The Trust closed on 590
16 Lairmont, and title in the property transferred to the Trust on May 15, 2013.

17 27. Later, in the Summer of 2013, the Trust investigated the use of 594 Lairmont, which
18 now included the Golf Parcel, for the first time. According to Malek's deposition testimony, David
19 Rosenberg confronted him and threatened to sue him if he planned to build on the expanded 594
20 Lairmont. Malek Dep. at 102:13-103:14; *see* Doiron Dep. Vol. I at 80:15-82:17.

21 28. During the course of the litigation, the Trust's discovery responses indicated its only
22 concern was the loss of view, light, and privacy that might accompany Malek's construction on 594
23 Lairmont (including the Golf Parcel). Barbara Rosenberg's deposition testimony and the Trust's
24 responses to interrogatories propounded by Defendants Bank of America, MacDonald Highlands
25 Realty LLC, and Michael Doiron repeatedly identified potential loss of view, light, and privacy⁵ as the
26
27

28 ⁵ As Barbara Rosenberg noted in her deposition, she did not even know what Malek planned to build on 594 Lairmont, and stated that she nonetheless sought this Court's order prohibiting his construction due to the mere possibility of 590 Lairmont losing what Ms. Rosenberg described as its view and privacy.

1 damages arising if the Malek built on 594 Lairmont. Rosenberg Dep. at 184:22-187:20, 195:11-12;
2 Mot. Exhs. 15, 16.

3 29. Specifically, the Trust's interrogatory responses stated that 590 Lairmont would be
4 affected by Malek's construction on the Golf Parcel, with effects upon "the view of the golf course and
5 mountains, privacy, and light entering [the property]." Mot. Exhs. 15, 16.

6 30. The evidence produced to the Court, however, did not show any express easement that
7 would prohibit Malek from building on 594 Lairmont, including the Golf Parcel. All that was required
8 for Malek to construct his house was for him to obtain the MacDonald Highlands' Design Review
9 Committee's approval of his construction plans.⁶ Malek Dep. at 73:9-12; Bykowski Dep. II at 36:10-
10 37:21; *see* Doiron Dep. I at 71:10-72:10.

11 31. Meanwhile, and during the course of this litigation, the Design Review Committee
12 tasked with approving all plans for new buildings within the MacDonald Highlands community before
13 construction may commence, approved Malek's building plans for 594 Lairmont in early 2015.
14 Bykowski Dep. Vol. II at 74:16-21, 76:4-77:23. The Design Review Committee evaluates proposed
15 construction to ensure it maintains the unique character of the MacDonald Highlands community.
16 MacDonald Dep. at 34:16-36:9; 37:3-20; Bykowski Dep. Vol. II at 39:23-42:7. Had Malek's plans not
17 satisfied the Design Review Committee's standards, or negatively affected other residents within the
18 community, the Design Review Committee would not have approved them. *See* Bykowski Dep. Vol. II
19 at 74:16-77:23.

20 **B. Findings of Fact Related to Malek's Counterclaim.**

21 32. At the time the Trust filed this action, it filed a *lis pendens* on Malek's property at 594
22 Lairmont. *See* Sept. 23, 2013 Notice of *Lis Pendens*.

23 33. The Trust subsequently filed an amended *lis pendens* on 594 Lairmont. *See* Oct. 24,
24 2013 Amended Notice of *Lis Pendens*.

25 34. On January 9, 2014, the Court ordered the *lis pendens* on Malek's property expunged.
26 This prior order found that there was no basis for the Trust to have a *lis pendens* on Malek's property
27 under NRS 14.015(3). *See* Jan. 9, 2014 Order on Malek's Motion to Expunge *Lis Pendens*.

28 ⁶ And subsequent approval from the City of Henderson, although the MacDonald Highlands Design Guidelines were stated
to be more restrictive than the City of Henderson's requirements.

1 35. Barbara Rosenberg, being a residential real estate agent, was familiar with *lis pendens*
2 filings and their potential consequences for properties upon which they are filed. Rosenberg Dep. at
3 Rosenberg Dep. at 265:3-16.

4 36. However, she did not testify that she specifically knew the *lis pendens* the Trust filed on
5 Malek's property was false. *Id.* Moreover, the declaration of the Trust's former counsel, Peter
6 Bernhard, stated that he acted with a reasonable belief that the *lis pendens* was true when filing it on
7 Malek's property. Decl. of Peter Bernhard.

8 37. Malek submitted evidence of claimed damages in the form of a supplemental
9 disclosure, and testified in his deposition that he had incurred attorneys' fees in this action, which
10 included expunging the Trust's prior *lis pendens*. Malek Dep. at 106:25-107:17; Mot. Exh. 18.

11 **IV. Conclusions of Law**

12 All of the Trust's claims against Malek fail for numerous reasons. The evidence adduced to the
13 Court shows that the Trust's basis for seeking an easement over Malek's property is based solely on
14 the impermissible grounds of view, light, and privacy. While Nevada law has not previously
15 recognized a claim for implied restrictive covenant, and will not do so now, it also would fail for the
16 same reasons as the Trust's easement claim. Additionally, the Trust's claims for declaratory and
17 injunctive relief are remedies, rather than causes of action that stand on their own, and Malek is
18 entitled to judgment in his favor on both. Questions of fact, however, preclude this Court from
19 entering judgment in Malek's favor on his counterclaim.

20 **A. The Trust's Claims of Easement and Implied Restrictive Covenant Are Premised** 21 **on Grounds Not Recognized Under Nevada Law, and Nevada Law Does Not Even** 22 **Recognize the Latter Claim.**

23 1. Nevada law has squarely and repeatedly repudiated the notion that easements or
24 restrictive covenants may arise by implication to protect views, privacy, or access to light. *Probasco v.*
25 *City of Reno*, 85 Nev. 563, 565, 459 P.2d 772, 774 (1969); *Boyd v. McDonald*, 81 Nev. 642, 650-51,
26 408 P.2d 717, 722 (1965).

27 2. In this case, the Trust has argued alternately that an implied easement and an implied
28 restrictive covenant prevent Malek from building on the Golf Parcel. An easement is a right to use the
land of another, *Boyd*, 81 Nev. at 647, 408 P.2d at 720, while a restrictive covenant is "an easement or

1 a servitude in the nature of an easement.” *Meredith v. Washoe County Sch. Dist.*, 84 Nev. 15, 17, 435
2 P.2d 750, 752 (1968). Based on the evidence on record, and the bases for the Trust’s claim for an
3 easement or implied restrictive covenant in Malek’s property, the classification of the Trust’s claimed
4 restriction as an easement or restrictive covenant “does not matter” for the Court’s analysis in this
5 case. *Venetian Casino Resort L.L.C. v. Local Joint Exec. Bd.*, 257 F.3d 937, 946 (9th Cir. 2001).
6 Because an implied restrictive covenant is a form of easement, they are analyzed in the same manner
7 here.

8 3. The Trust has not produced any evidence showing the existence of an easement
9 requiring the Golf Parcel to remain part of the golf course indefinitely. While the Trust adopted this
10 argument in opposing Malek’s Motion for Summary Judgment, that is, as far as the Court can tell, the
11 first time such a theory arose. Counsel’s arguments do not replace facts in the analysis of a summary
12 judgment motion. *Glover v. Eighth Jud. Dist. Ct.*, 125 Nev. 691, 701, 706, 220 P.3d 684, 691, 695
13 (2009).

14 4. In contrast, the evidence before the Court shows only that the Trust has based its claim
15 for an implied easement on its fear of potentially losing the view, privacy, or access to light
16 Lairmont presently enjoys. The Trust has not shown any evidence of an express easement keeping
17 Malek from building on the Golf Parcel. Nevada law will not imply an easement or restrictive
18 covenant for the only, and undisputed, reasons that the Trust seeks them—protection of
19 Lairmont’s views, privacy, and access to light. *Probasco*, 85 Nev. at 565, 459 P.2d at 774; *Boyd*, 81
20 Nev. at 650-51, 408 P.2d at 722.

21 5. In considering claims for injunctive relief, the Court must consider the totality of the
22 circumstances in which relief is sought. *Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 325 130
23 P.3d 1280, 1285 (2006). Here, a seasoned real estate professional appears to have disregarded all
24 warnings and notices before paying more than two million dollars for the Rosenbergs’ “dream” home.
25 There similarly is no evidence the Trust’s attorney beneficiary did any research before the Trust
26 purchased the house in which he now resides. There is, however, undisputed evidence of the Trust and
27 its trustee’s substantial experience buying and selling high-end, residential real estate. To that end, the
28 Trust’s failure to use its acquired skill and knowledge in these areas effectively waived, under the

1 circumstances, any claim it could have for the Court to exercise its jurisdiction to impose a restrictive
2 covenant over Malek's property. *Id.*

3 6. Related to its claim for easement, the Court concludes that the Trust's claim for implied
4 restrictive covenant also fails. Nevada has not previously recognized a cause of action for implied
5 restrictive covenant, and this Court declines to do so. Consistent with the precedent of Nevada's
6 Supreme Court, this Court will not recognize a novel cause of action. *Brown v. Eddie World LLC*, 131
7 Nev. Adv. Rep. 19, 348 P.3d 1002 (2015); *Badillo v. Am. Brands*, 117 Nev. 34, 42, 16 P.3d 435, 440
8 (2001); *Greco v. United States*, 111 Nev. 405, 408-09, 893 P.2d 345, 347-48 (1995); *see Nat'l R.R.*
9 *Passenger Corp v. Nat'l Ass'n of R.R. Passengers*, 414 U.S. 453, 457-58 (1974) (promoting the
10 doctrine of *expressio unius est exclusion alterius*, which prohibits theories of liability that are not
11 expressly authorized). This Court's decision to not recognize this cause of action is steeped in the lack
12 of a cohesive national standard, the subjective nature of the claim's object, and the difficulty of
13 proving the claim. *Badillo*, 117 Nev. at 42-44, 16 P.3d at 440-41.

14 7. Among the states that do recognize this claim, the standards for offensively imposing an
15 implied restrictive covenant differ widely. *See Evans v. Pollock*, 796 S.W.2d 465, 466 (Tex. 1990);
16 *Knotts Landing Corp. v. Lathem*, 315 Ga. 321, 323, 348 S.E. 651, 653 (1986); *Arthur v. Lake Tansi*
17 *Village, Inc.*, 590 S.W.2d 923, 927 (Tenn. 1979); *see also Peck v. Lanier Golf Club, Inc.*, 315 Ga. App.
18 176, 178-79, 726 S.E.2d 442, 445 (Ga. Ct. App. 2012). Moreover, Trust seeks to use this claim to
19 enforce its subjective desire to preserve its view, light, and privacy, further militating against the Court
20 recognizing this cause of action. *Greco*, 111 Nev. at 409, 893 P.2d at 348.

21 8. To the extent the Trust's claim for implied restrictive covenant is duplicative of, or
22 otherwise subsidiary within, the Trust's claim for easement, it fails for the reasons stated above.
23 *Probasco*, 85 Nev. at 565, 459 P.2d at 774; *Boyd*, 81 Nev. at 650-51, 408 P.2d at 722. The Trust has
24 not advanced any evidence that its claim for an implied restrictive covenant seeks to preserve or
25 protect anything other than its view, light, or privacy. Any of these three concerns are insufficient
26 bases for the Court to imply an easement or restrictive covenant exists over the Golf Parcel. As the
27 Trust has not produced any evidence showing an alternate, cognizable basis for the Court to impose an
28

1 implied restrictive covenant on the Golf Parcel, the Court will not do so. The Court therefore enters
2 judgment in Malek's favor on this claim.

3 **B. The Trust's Claims for Injunctive and Declaratory Relief Also Fail as a Matter of**
4 **Law.**

5 9. Additionally, the Court enters judgment in Malek's favor on the Trust's remaining
6 claims for declaratory and injunctive relief. This Court concurs with the United States Court of
7 Appeals for the Ninth Circuit and finds that declaratory relief is a remedy, rather than a cause of
8 action. *Swartz v. KPMG LLP*, 476 F.3d 756, 766 (9th Cir. 2007).

9 10. Similarly, this Court adopts the position of the United States District Court for the
10 District of Nevada and several other courts, and concludes that injunctive relief is merely a remedy,
11 rather than an independent claim. *In re Walmart Wage & Hour Empl. Practices Litig.*, 490 F. Supp. 2d
12 1091, 1130 (D. Nev. 2007); *see Brittingham v. Ayala*, 995 S.W.2d 199, 201 (Tex. Ct. App. 1999); *Art*
13 *Movers, Inc. v. Ni West*, 3 Cal. App. 4th 640, 646-47 (Cal. Ct. App. 1992).

14 11. To the extent the Trust has styled these remedies as causes of action, the Court enters
15 judgment in Malek's favor on them. As the Court finds in Malek's favor on the Trust's substantive
16 claims of easement and implied restrictive covenant (to the extent the latter may be recognized as a
17 claim), the Trust has no avenue to assert these remedies against Malek. Therefore, judgment in
18 Malek's favor is appropriate.

19 **C. Questions of Fact Preclude the Court from Granting Malek's Motion for**
20 **Summary Judgment on his Counterclaim.**

21 12. For the same reasons discussed in the Court's Order entered July 23, 2015, denying the
22 Trust's Cross-Motion for Summary Judgment on Malek's counterclaim, and incorporated by reference
23 herein, the Court also denies Malek's Motion for Summary Judgment on the same claim. To prevail,
24 Malek must show that the Trust made a false statement about his title or possession of the Golf Parcel
25 with actual malice—a knowingly false statement, or one made with reckless disregard for the
26 truth—that caused him damage. *Executive Mgmt., Ltd. v. Ticor Tile Co.*, 114 Nev. 823, 963 P.2d 465,
27 478 (1998); *Rowland v. Lepire*, 99 Nev. 308, 313, 662 P.2d 1332, 1335 (1983).

28 13. Questions of material fact exist as to whether the Trust and its Trustee, Barbara
Rosenberg, acted with actual malice in filing the *lis pendens* on Malek's property.⁷ Additionally, the

1 Court finds that there is a question of fact as to the calculation of Malek's damages on his slander of
2 title claim, which shall be left to the jury. Malek's Motion for Summary Judgment on his
3 Counterclaim therefore is denied.

4 **V. Conclusion**

5 For the foregoing reasons, it is **ORDERED** that Defendant Shahin Shane Malek's Motion for
6 Summary Judgment is **GRANTED** in part, and the Court enters judgment in Malek's favor on
7 Plaintiff's claims against him, and **DENIED** in part, as the Court denies Malek's Motion for Summary
8 Judgment as it relates to his Counterclaim.

9 **VI. Judgment**

10 This action having been submitted to the Court for decision at trial on June 10, 2015, and the
11 Court having made the foregoing findings of fact and conclusions of law, the Court decides Plaintiff's
12 claims in favor of moving Defendant Shahin Shane Malek, with regard to all of Plaintiff's claims
13 against him.

14 ..

15 ..

16 ..

17 ..

18 ..

19 ..

20 ..

21 ..

22 ..

23 ..

24 ..



25 ..

26 It is therefore **ORDERED, ADJUDGED, AND DECREED** that Plaintiff take nothing by way
27 of its January 12, 2015 Amended Complaint against Defendant Shahin Shane Malek.

28 ⁷ "In order to prove malice it must be shown that the defendant knew that the statement was false or acted in reckless
disregard of its truth or falsity." *Rowland*, 99 Nev. at 313, 662 P.2d at 1335.

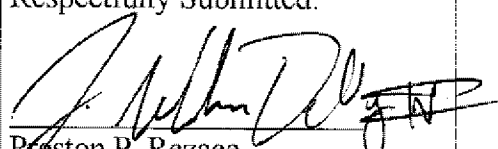
1
2 **IT IS SO ORDERED**

3
4 Dated: Aug 11, 2015

5
6 
7
8 DISTRICT JUDGE
9 

10 Respectfully Submitted:

Approved in content and form by:

11 
12 Preston P. Rezaee
13 Nevada Bar No. 10729
14 Jay DeVoy, of counsel
15 Nevada Bar No. 11950
16 Sarah Chavez, of counsel
17 Nevada Bar No. 11935
18 THE FIRM, P.C.
19 200 E. Charleston Blvd.
20 Las Vegas, NV 89104
21 Telephone: (702) 222-3476
22 Facsimile: (702) 252-3476
23 *Attorneys for Defendant/Counterclaimant,*
24 *Shahin Shane Malek*

Karen Hanks
Nevada Bar No. 9578
Melissa Barishman
Nevada Bar No. 12935
Howard Kim & Associates
1055 Whitney Ranch Drive, Suite 110
Henderson, NV 89014
Attorneys for Plaintiff/Counterclaim
Defendant,
The Fredric and Barbara Living Trust

25 Approved in content and form by:

Approved in content and form by:

26 J. Randall Jones
27 Nevada Bar No. 1927
28 Spencer H. Gunnerson
Nevada Bar No. 8810
Kemp, Jones & Coulthard
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169
Attorneys for Defendants
MacDonald Highlands Realty, LLC,
Michael Doiron, and
FHP Ventures
(formerly The Foothills Partners).

Darren Brenner
Nevada Bar No. 8386
Steven Shevorski
Nevada Bar No. 8256
William Habdas
Nevada Bar No. 13138
Akerman LLP
1160 Town Center Drive, Suite 330
Las Vegas, NV 89144
Attorneys for Defendants
Bank of America N.A. and BAC Home Loans
Servicing, LP.

CERTIFICATE OF SERVICE

1 It is therefore **ORDERED, ADJUDGED, AND DECREED** that Plaintiff take nothing by way
2 of its January 12, 2015 Amended Complaint against Defendant Shahin Shane Malek.

3
4 **IT IS SO ORDERED**

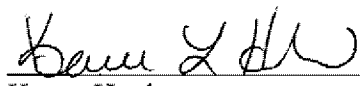
5
6 Dated: _____, 2015

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
DISTRICT JUDGE

Respectfully Submitted:

Not approved as to form and content by:

Preston P. Rezaee
Nevada Bar No. 10729
Jay DeVoy, of counsel
Nevada Bar No. 11950
Sarah Chavez, of counsel
Nevada Bar No. 11935
THE FIRM, P.C.
200 E. Charleston Blvd.
Las Vegas, NV 89104
Telephone: (702) 222-3476
Facsimile: (702) 252-3476
Attorneys for Defendant/Counterclaimant,
Shahin Shane Malek



Karen Hanks
Nevada Bar No. 9578
Howard Kim & Associates
1055 Whitney Ranch Drive, Suite 110
Henderson, NV 89014
Attorneys for Plaintiff/Counterclaim
Defendant,
The Fredric and Barbara Living Trust

Approved in content and form by:

Approved in content and form by:

J. Randall Jones
Nevada Bar No. 1927
Spencer H. Gunnerson
Nevada Bar No. 8810
Kemp, Jones & Coulthard
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169
Attorneys for Defendants
MacDonald Highlands Realty, LLC,
Michael Doiron, and
FHP Ventures
(formerly The Foothills Partners).

Darren Brenner
Nevada Bar No. 8386
Steven Shevorski
Nevada Bar No. 8256
William Habdas
Nevada Bar No. 13138
Akerman LLP
1160 Town Center Drive, Suite 330
Las Vegas, NV 89144
Attorneys for Defendants
Bank of America N.A. and BAC Home Loans
Servicing, LP.

1
2 **IT IS SO ORDERED**

3
4 Dated: _____, 2015

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
DISTRICT JUDGE

Respectfully Submitted:


Approved in content and form by:

Preston P. Rezaee
Nevada Bar No. 10729
Jay DeVoy, of counsel
Nevada Bar No. 11950
Sarah Chavez, of counsel
Nevada Bar No. 11935
THE FIRM, P.C.
200 E. Charleston Blvd.
Las Vegas, NV 89104
Telephone: (702) 222-3476
Facsimile: (702) 252-3476
Attorneys for Defendant/Counterclaimant,
Shahin Shane Malek

Karen Hanks
Nevada Bar No. 9578
Melissa Barishman
Nevada Bar No. 12935
Howard Kim & Associates
1055 Whitney Ranch Drive, Suite 110
Henderson, NV 89014
Attorneys for Plaintiff/Counterclaim
Defendant,
The Fredric and Barbara Living Trust

Approved in content and form by:

Approved in content and form by:

19  #9514
20 J. Randall Jones
21 Nevada Bar No. 1927
22 Spencer H. Gunnerson
23 Nevada Bar No. 8810
24 Kemp, Jones & Coulthard
25 3800 Howard Hughes Parkway, 17th Floor
26 Las Vegas, NV 89169
27 *Attorneys for Defendants*
28 *MacDonald Highlands Realty, LLC,*
Michael Doiron, and
FHP Ventures
(formerly The Foothills Partners).

Darren Brenner
Nevada Bar No. 8386
Steven Shevorski
Nevada Bar No. 8256
William Habdas
Nevada Bar No. 13138
Akerman LLP
1160 Town Center Drive, Suite 330
Las Vegas, NV 89144
Attorneys for Defendants
Bank of America N.A. and BAC Home Loans
Servicing, LP.

CERTIFICATE OF SERVICE

1
2 **IT IS SO ORDERED**

3
4 Dated: _____, 2015

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
DISTRICT JUDGE

Respectfully Submitted:

Approved in content and form by:

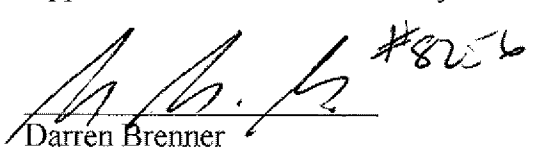
Preston P. Rezaee
Nevada Bar No. 10729
Jay DeVoy, of counsel
Nevada Bar No. 11950
Sarah Chavez, of counsel
Nevada Bar No. 11935
THE FIRM, P.C.
200 E. Charleston Blvd.
Las Vegas, NV 89104
Telephone: (702) 222-3476
Facsimile: (702) 252-3476
*Attorneys for Defendant/Counterclaimant,
Shahin Shane Malek*

Karen Hanks
Nevada Bar No. 9578
Melissa Barishman
Nevada Bar No. 12935
Howard Kim & Associates
1055 Whitney Ranch Drive, Suite 110
Henderson, NV 89014
*Attorneys for Plaintiff/Counterclaim
Defendant,
The Fredric and Barbara Living Trust*

Approved in content and form by:

Approved in content and form by:

J. Randall Jones
Nevada Bar No. 1927
Spencer H. Gunnerson
Nevada Bar No. 8810
Kemp, Jones & Coulthard
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169
*Attorneys for Defendants
MacDonald Highlands Realty, LLC,
Michael Doiron, and
FHP Ventures
(formerly The Foothills Partners).*



Darren Brenner
Nevada Bar No. 8386
Steven Shevorski
Nevada Bar No. 8256
William Habdas
Nevada Bar No. 13138
Akerman LLP
1160 Town Center Drive, Suite 330
Las Vegas, NV 89144
*Attorneys for Defendants
Bank of America N.A. and BAC Home Loans
Servicing, LP.*

CERTIFICATE OF SERVICE

1 I hereby certify that one this ____ day of July, 2015, pursuant to NRCP 5(b), I served via the Eighth
2 Judicial District Court electronic service system and to be placed in the United States Mail, with first
3 class postage prepaid thereon, and addressed the foregoing **[PROPOSED] ORDER, FINDINGS OF**
4 **FACT AND CONCLUSIONS OF LAW, AND JUDGMENT ON DEFENDANT /**
5 **COUNTERCLAIMANT SHAHIN SHANE MALEK'S MOTION FOR SUMMARY**
6 **JUDGMENT** to the following parties:

7
8 Howard C. Kim, Esq.
9 Email: Howard@hkimlaw.com
10 Diana S. Cline, Esq.
11 Email: Diana@hkimlaw.com
12 Jacqueline A. Gilbert, Esq.
13 Email: Jackie@hkimlaw.com
14 *Attorneys for Plaintiff*

15 Darren Brenner
16 Email: Darren.brenner@akerman.com
17 Deb Julien
18 Email: Debbie.julien@akerman.com
19 Natalie Winslow
20 Email: Natalie.winslow@akerman.com
21 *Attorneys for Bank of America, N.A.*

22 Erica Bennett
23 Email: E.bennett@kempjones.com
24 J. Randall Jones
25 Email: Jrj@kempjones.com
26 Janet Griffin
27 Email: janetjamesmichael@gmail.com
28 Email: jlg@kempjones.com
Spencer Gunnerson
Email: S.gunnerson@kempjones.com
Attorneys for Michael Doiron & MacDonald Highlands Realty, LLC

/s/ Jacqueline Martinez
Employee of The Firm, P.C.


CLERK OF THE COURT

1 **NEO**

2 Preston P. Rezaee, Esq.

3 Nevada Bar No. 10729

4 Jay DeVoy, Esq., of counsel

5 Nevada Bar No. 11950

6 THE FIRM, P.C.

7 200 E. Charleston Blvd.

8 Las Vegas, NV 89104

9 Telephone: (702) 222-3476

10 Facsimile: (702) 252-3476

11 *Attorneys for Defendant/Counterclaimant*

12 *SHAHIN SHANE MALEK*

13 **EIGHTH JUDICIAL DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 THE FREDERIC AND BARBARA)

16 ROSENBERG LIVING TRUST,)

17 Plaintiff,)

18 vs.)

19 BANK OF AMERICA, N.A.; BAC HOME)

20 LOANS SERVICING, LP, a foreign limited)

21 partnership; MACDONALD HIGHLANDS)

22 REALTY, LLC, a Nevada limited liability)

23 company; MICHAEL DOIRON, an individual;)

24 SHAHIN SHANE MALEK, an individual;)

25 PAUL BYKOWSKI, an individual; THE)

26 FOOTHILLS AT MACDONALD RANCH)

27 MASTER ASSOCIATION, a Nevada limited)

28 liability company; THE FOOTHILLS)

29 PARTNERS, a Nevada limited partnership;)

30 DOES I through X, inclusive; and ROE)

31 BUSINESS ENTITY I through XX, inclusive,)

32 Defendants.)

33 SHAHIN SHANE MALEK,)

34 Counterclaimant,)

35 vs.)

36 THE FREDERIC AND BARBARA)

37 ROSENBERG LIVING TRUST,)

NOTICE OF ENTRY OF ORDER

1
2 Counterdefendant.)
3)
4)

5 NOTICE TO ALL PARTIES that on August 13, 2015 the Court entered its Order,
6 Findings of Fact and Conclusion of Law and Judgment on Defendant / Counterclaimant Shahin
7 Shane Malek's Motion for Summary Judgment in the above-entitled action, a copy of which is
8 attached hereto.

9 DATED this 20th day of August, 2015.

10 */s/ Jay DeVoy, Esq.*

11 Preston P. Rezaee

12 Nevada Bar No. 10729

13 Jay DeVoy, of counsel

14 Nevada Bar No. 11950

15 THE FIRM, P.C.

16 200 E. Charleston Blvd.

17 Las Vegas, NV 89104

18 Telephone: (702) 222-3476

19 Facsimile: (702) 252-3476

20 *Attorneys for Defendant/Counterclaimant,*

21 *Shahin Shane Malek*
22
23
24
25
26
27
28

1 CERTIFICATE OF SERVICE

2 I hereby certify that on this 20th day of August, 2015, pursuant to NRCP 5(b), I served
3 via the Eighth Judicial District Court electronic service system and to be placed in the United
4 States Mail, with first class postage prepaid thereon, and addressed the foregoing **NOTICE OF**
5 **ENTRY OF ORDER** to the following parties:

6
7 Karen Hanks
8 Melissa Barishman
9 Howard Kim & Associates
10 1055 Whitney Ranch Drive, Suite 110
11 Henderson, NV 89014
12 *Attorneys for Plaintiff/Counterclaim Defendant,*
13 *The Fredric and Barbara Living Trust*

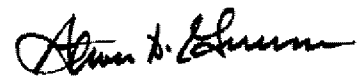
14 J. Randall Jones
15 Spencer H. Gunnerson
16 Kemp, Jones & Coulthard
17 3800 Howard Hughes Parkway, 17th Floor
18 Las Vegas, NV 89169
19 *Attorneys for Defendants*
20 *MacDonald Highlands Realty, LLC,*
21 *Michael Doiron, and*
22 *FHP Ventures*
23 *(formerly The Foothills Partners).*

24
25 Darren Brenner
26 Steven Shevorski
27 William Habdas
28 Akerman LLP
1160 Town Center Drive, Suite 330
Las Vegas, NV 89144
Attorneys for Defendants
Bank of America N.A. and BAC Home Loans Servicing, LP

25 /s/ Jacqueline Martinez
26 An employee of The Firm, P.C.

1 Preston P. Rezaee, Esq.
Nevada Bar No. 10729
2 Jay DeVoy, Esq., of counsel
Nevada Bar No. 11950
3 Sarah Chavez, Esq., of counsel
Nevada Bar No. 11935
4 THE FIRM, P.C.
200 E. Charleston Blvd.
5 Las Vegas, NV 89104
6 Telephone: (702) 222-3476
Facsimile: (702) 252-3476
7 *Attorneys for Defendant / Counterclaimant,*
SHAHIN SHANE MALEK

Electronically Filed
08/13/2015 11:11:51 AM



CLERK OF THE COURT

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 THE FREDERIC AND BARBARA
11 ROSENBERG LIVING TRUST,

12 Plaintiff,

13 vs.

14 BANK OF AMERICA, N.A.; BAC HOME)
LOANS SERVICING, LP, a foreign limited)
15 partnership; MACDONALD HIGHLANDS)
REALTY, LLC, a Nevada limited liability)
16 company; MICHAEL DOIRON, an individual;)
SHAHIN SHANE MALEK, an individual;)
17 PAUL BYKOWSKI, an individual; THE)
FOOTHILLS AT MACDONALD RANCH)
18 MASTER ASSOCIATION, a Nevada limited)
liability company; THE FOOTHILLS)
19 PARTNERS, a Nevada limited partnership;)
20 DOES I through X, inclusive; and ROE)
BUSINESS ENTITY I through XX, inclusive,)

21 Defendants.
22
23

CASE NO.: A-13-689113-C
DEPT NO.: I

**[PROPOSED] ORDER, FINDINGS OF
FACT AND CONCLUSIONS OF LAW,
AND JUDGMENT ON DEFENDANT /
COUNTERCLAIMANT SHAHIN SHANE
MALEK'S MOTION FOR SUMMARY
JUDGMENT**

24 Before the Court is Defendant/Counterclaimant Shahin Shane Malek's ("Malek['s]") Motion
25 for Summary Judgment on the claims asserted against him by Plaintiff/Counterclaim Defendant The
26 Frederic and Barbara Rosenberg Living Trust ("Plaintiff" or the "Trust"), and on Malek's
27 Counterclaim for slander of title against the Trust. The Court heard argument on this motion on June
28 10, 2015 at 9:00 a.m. Karen Hanks, Esq., Jacqueline Gilbert, Esq., Melissa Barishman, Esq., and Jesse

1 Panoff, Esq. appeared on behalf of the Plaintiff. Preston Rezaee, Esq. and Jay DeVoy, Esq. appeared
2 on behalf of Malek. Spencer Gunnerson, Esq. and J. Randall Jones, Esq. appeared on behalf of
3 Defendants MacDonald Highlands Realty, LLC, Michael Doiron, and FHP Ventures, erroneously sued
4 as The Foothills Partners. William Habdas, Esq. appeared on behalf of Defendants Bank of America,
5 N.A. and BAC Home Loans Servicing, LP (collectively, and for ease of reference only, "Bank of
6 America"). The Court, having reviewed all papers and pleadings on file in this matter in chambers,
7 entered a minute order granting in part and denying in part Malek's Motion, and articulated its
8 decision on the record during a status check for this matter on July 15, 2015 at 9:00 a.m.¹

9 I. Introduction

10 This case arises from the Trust's purchase of a house within the exclusive MacDonald
11 Highlands community, and its desire to restrict the use of Malek's neighboring property. On
12 September 23, 2013, the Trust filed a complaint against Malek, among other defendants, seeking
13 injunctive relief against Malek's development of his property at 594 Lairmont Place, and a portion of
14 additional land Malek had re-zoned and agreed to purchase before the Trust purchased an adjacent
15 parcel at 590 Lairmont Place. The Trust filed an Amended Complaint on January 12, 2015. Malek
16 answered the Amended Complaint, and additionally asserted his Counterclaim for slander of title
17 against the Trust.

18 This order considers Malek's Motion for Summary Judgment on the Trust's claims against
19 him: easement, implied restrictive covenant, injunction, and declaratory relief. Malek has also moved
20 for summary judgment on his counterclaim for slander of title against the Trust. In support of his
21 motion, Malek submitted numerous exhibits, including public records, the Trust's discovery responses,
22 and documents authenticated during depositions, as well as excerpts from numerous depositions taken
23 in this case. The Trust opposed Malek's Motion for Summary Judgment, and referenced its Cross-
24 Motion for Summary Judgment on Malek's slander of title counterclaim² in opposing that branch of
25 Malek's motion. Malek timely replied in support of his motion.

26
27 ¹ At this status check, Karen Hanks, Esq., appeared on behalf of the Plaintiff/Counterclaim Defendant. Jay DeVoy, Esq.
28 appeared on behalf of Defendant/Counterclaimant Malek. Spencer Gunnerson, Esq., appeared on behalf of Defendants
MacDonald Highlands Realty, LLC, Michael Doiron, and FHP Ventures—erroneously sued as The Foothills Partners.
Ariel Stern, Esq. appeared on behalf of Bank of America.

² The Court denied this motion at its June 10, 2015 hearing, and subsequently entered an order to that effect.

1 **II. Legal Standard**

2 This Court evaluates motions for summary judgment under Nevada Rule of Civil Procedure 56.
3 Summary judgment is appropriate “when the pleadings and other evidence on file demonstrate that no
4 ‘genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a
5 matter of law.’” *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). In reviewing
6 the motion, the Court considers the evidence in the light most favorable to the non-moving party.
7 *Collins v. Union Federal Savings and Loan Association*, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983).

8 **III. Findings of Fact**

9 Based on its review of the briefing in this case, the Court makes the following findings of fact:

10 **A. Findings Pertaining to the Trust’s Claims Against Malek.**

11 1. This case arises from a private community’s sale of an out-of-bounds portion of a golf
12 course to an adjacent lot owner in order to increase the original lot’s size; this practice is common in
13 prestigious, exclusive communities throughout the Las Vegas valley, including MacDonald Highlands,
14 where the land at issue in this case is situated. Bykowski Dep. Vol. I at 39:16-40:19; Doiron Dep. Vol.
15 I at 110:9-111:25; MacDonald Dep. at 126:22-128:20; Mot. Exhs. 1, 2.

16 2. Malek purchased the property commonly referred to as 594 Lairmont Place (APN 178-
17 27-218-002) (“594 Lairmont”), located within the MacDonald Highlands community, in August of
18 2012. At the same time, Malek planned to purchase a 0.34-acre parcel of undeveloped land adjacent to
19 594 Lairmont (APN 178-28-520-001) (the “Golf Parcel”) and annex it to 594 Lairmont. Malek Dep. at
20 14:17-22:10, 67:9-68:8; Bykowski Dep. Vol. I at 38:12-20; MacDonald Dep. at 60:17-21, 100:12-18;
21 Rosenberg Dep. at 190:2-5, 213:11-23.

22 3. MacDonald Highlands approved of this plan and sold the Golf Parcel to Malek. Malek
23 Dep. at 19:16-22, 21:16-22:10; Bykowski Dep. Vol. I at 38:12-20; Doiron Dep. Vol. I at 120:7-122:5.

24 4. The Golf Parcel consisted of an out-of-bounds area near the ninth hole of the
25 Dragonridge Golf Course, situated within MacDonald Highlands, and occupied a portion of the space
26 bordering the property line of 594 Lairmont, and outside of the golf course’s in-play area. Rosenberg
27 Dep. at 190:2-5; Malek Dep. at 19:16-22, 67:9-68:8; MacDonald Dep. at 60:17-21, 100:12-18;
28 Bykowski Dep. Vol. I at 38:12-20; Rosenberg Dep. at 190:2-5, 213:11-23; *see* Mot. Exh. 7.

1 5. Before merging the Golf Parcel with 594 Lairmont, MacDonald Highlands needed to
2 re-zone it from its Public / Semi-Public designation to residential use. Bykowski Dep. Vol. I at 38:12-
3 20; Malek Dep. at 43:10-21, 47:4-20; Tassi Dep. at 16:6-23:9; see Bykowski Dep. Vol. II at 183:25-
4 185:7.

5 6. MacDonald Highlands had performed this process several times for other property
6 owners with lots adjacent to the golf course, and re-zoned parcels of land from Public / Semi-Public
7 use to the appropriate residential use so that they could be merged with adjacent lots, leased to the
8 owners of adjacent lots, or otherwise incorporated into abutting property.³ Bykowski Dep. Vol. I at
9 39:16-41:23; MacDonald Dep. at 127:3-128:20; see Doiron Dep. I at 110:9-111:22.

10 7. Part of this re-zoning process included MacDonald Highlands' submission of an
11 application to vacate easements that may exist on the Golf Parcel. In processing this application, the
12 City of Henderson found that no such easements existed. Bykowski Dep. Vol. II at 183:25-185:7; Mot.
13 Exh. 17.

14 8. To complete the re-zoning process, MacDonald Highlands retained the services of B2
15 Development, which in turn took the steps necessary to re-zone the Golf Parcel. Bykowski Dep. Vol. II
16 at 95:1-20; see Mot. Exhs. 4, 5.

17 9. B2 Development took the steps necessary to properly re-zone the Golf Parcel, including
18 organizing a community meeting to discuss the proposed re-zoning. Bykowski Dep. Vol. II at 93:22-
19 100:19; see Mot. Exhs. 4, 5. B2 Development mailed notices of the meeting to the owners of record of
20 all parcels near the Golf Parcel, including 590 Lairmont Place (APN 178-27-218-003) ("590
21 Lairmont"), the lot adjacent to 594 Lairmont. Bykowski Dep. Vol. II at 95:1-23; Woodbridge Dep. at
22 56:19-58:2; Mot. Exh. 6.

23 10. At the time B2 Development mailed its notices for the community meeting in October
24 2012, Defendant Bank of America owned 590 Lairmont. Woodbridge Dep. at 15:1-20; Rosenberg
25 Dep. at 43:31-44:25; see Mot. Exh. 8. B2 Development mailed its notice to a valid address for Bank
26 of America, which never objected to the Golf Parcel's re-zoning. Woodbridge Dep. at 15:1-20; Mot.

27
28

³ As noted above, this practice is not limited to MacDonald Highlands, but is common within other Golf Communities within the Las Vegas valley.

1 Exh. 8. In fact, nobody objected to the Golf Parcel's re-zoning at the community meeting, or separately
2 to the City of Henderson. Tassi Dep. at 55:3-23; *see* Bykowski Dep. II at 92:2-18.

3 11. Acting for MacDonald Highlands, B2 further followed the City of Henderson's zoning
4 process in re-zoning the Golf Parcel by obtaining the City Counsel's approval of the Golf Parcel's
5 proposed re-zoning at two consecutive meetings, and the City's adoption of a resolution approving the
6 zoning change. Tassi Dep. at 16:6-23:17; *see* Mot. Exhs. 4, 5.

7 12. MacDonald Highlands' applications for the Golf Parcel's re-zoning were properly heard
8 by the City of Henderson; the City adopted a resolution re-zoning the Golf Parcel to residential use on
9 December 8, 2012, and the City recorded its resolution on January 7, 2013. Bykowski Dep. Vol. II at
10 93:22-97:16, 99:4-105:25; Tassi Dep. at 16:6-23:17; Mot. Exhs. 4, 5.

11 13. Maps and information reflecting the Golf Parcel's changed zoning were readily and
12 almost immediately available to the public. By January 24, 2013, the Golf Parcel's new, residential
13 zoning was reflected in zoning maps that were publicly available at the front desk of Henderson City
14 Hall. Tassi Dep. at 23:10-24:6, 25:2-26:1, 27:17-28:11, 56:16-24.

15 14. Less than a month later in mid-February of 2013, the Golf Parcel's residential zoning
16 could be seen in an online zoning map publicly available from the City of Henderson's website. *Id.* at
17 30:6-20; Mot. Exh. 7.

18 15. According to one of the City of Henderson's planners, a member of the public could
19 access a specific address on this online map in less than five minutes. *Id.* at 26:14-27:7.

20 16. Following the City of Henderson's duly passed resolution approving the Golf Parcel's
21 re-zoning to residential use, the Golf Parcel's sale was recorded and it was merged into 594 Lairmont,
22 creating one parcel of land that was zoned for residential use. Bykowski Dep. I at 38:12-20; Malek
23 Dep. at 43:10-21, 47:4-20; Tassi Dep. at 16:6-23:9.

24 17. Beginning in February of 2013, Barbara Rosenberg, an experienced residential real
25 estate broker and a trustee of the Trust, and David Rosenberg,⁴ an attorney in Las Vegas and a
26 beneficiary of the Trust, began contacting Bank of America in an attempt to purchase 590 Lairmont
27

28 ⁴ David Rosenberg had lived in the Green Valley area of the Las Vegas metropolitan region since 2009, and was familiar with the MacDonald Highlands community.

1 before the property was publicly listed for sale. Rosenberg Dep. at 43:20-46:3, 55:1-57:14; Mot. Exhs.
2 8, 9.

3 18. Barbara Rosenberg not only had more than 25 years of experience as a residential real
4 estate broker, but estimates she has sold more than 500 homes in her career. Rosenberg Dep. at 12:19-
5 13:15, 88:8-25. Individually and through the Trust, Barbara Rosenberg and her husband have made
6 numerous real estate purchases in the past, including an 8,000 square foot primary residence, two other
7 houses in California, and two condos in Manhattan Beach, California—in addition to 590 Lairmont. *Id.*
8 at 13:16-16:13.

9 19. When 590 Lairmont was listed for sale, Barbara Rosenberg offered to purchase it for
10 \$1,750,000—above the listing price of \$1,600,000—in an all-cash transaction. She then increased her
11 offer and submitted the winning bid to purchase the home for \$2,302,000, all cash. Rosenberg Dep. at
12 43:20-46:3, 50:3-51:25, 85:1-86:5; Mot. Exhs. 8, 9, 14.

13 20. Barbara Rosenberg did not do any research about 590 Lairmont's zoning, or the use of
14 surrounding land, prior to purchasing the property. Rosenberg Dep. at 95:9-19, 103:17-104:23, 115:12-
15 116:15, 121:23-123:6, 129:1-130:2; *see* Tassi Dep. at 55:24-56:12. The Rosenbergs were motivated to
16 purchase this property as quickly as possible because they considered it their "dream" home.
17 Rosenberg Dep. at 115:17-24, 210:5-19.

18 21. When Barbara Rosenberg walked through the property, despite generally waiving the
19 Trust's right to an inspection, she did not even look over to 594 Lairmont or the Golf Parcel, the latter
20 of which was marked with stakes that had been in place since December of 2012. Rosenberg Dep. at
21 130:3-23; Malek Dep. at 112:4-113:10.

22 22. In the course of purchasing 590 Lairmont, MacDonald Highlands Realty provided
23 Barbara Rosenberg with numerous disclosures, waivers, and other warnings that she and her husband
24 signed. Rosenberg Dep. at 95:1-16, 129:1-130:2; Mot. Exhs. 10, 11, 12, 13, 14; *see* Doiron Dep. Vol. I
25 at 145:25-149:25.

26 23. Additionally, Barbara Rosenberg knew that there would be subsequent home
27 construction on the vacant lots surrounding 590 Lairmont, including 594 Lairmont, at the time the
28 Trust purchased 590 Lairmont. Rosenberg Dep. at 46:19-47:24; Mot. Exh. 8.

1 24. The Trust was given five days to conduct due diligence before the sale would be
2 completed. Doiron Dep. Vol. I at 145:25-149:25; Mot. Exh. 13, 14. Barbara Rosenberg also signed a
3 zoning disclosure form stating specifically advising the Trust that the zoning information provided was
4 current as of February of 2010—more than three years before the Trust signed its purchase agreement
5 for 590 Lairmont—and the Trust should seek the most current zoning information from the City of
6 Henderson. Rosenberg Dep. at 120:10-23, 121:12-22; Mot. Exh. 12, 14. Among still other warnings
7 and waivers, Barbara Rosenberg signed a disclosure informing her and the Trust of 590 Lairmont's
8 reduced privacy inherent in its location adjacent to the golf course. Rosenberg Dep. at 116:18-118:19;
9 Mot. Exh. 11.

10 25. Additionally, due to the topography of the house and its views onto nearby streets, the
11 Trust already faced certain limitations on its privacy by virtue of the house's existing position and
12 condition. Rosenberg Dep. at 213:11-23, 201:10-203:5, 213:11-23, 201:10-203:5.

13 26. Nonetheless, the Trust purchased 590 Lairmont "as-is, where-is," and accepted the
14 property as it was when it signed the purchase documents in April of 2013. Rosenberg Dep. at 86:11-
15 88:7, 94:15-25, 95:9-19, 95:25-97:4, 99:10-100:7; Mot. Exh. 14 at 8:48-51. The Trust closed on 590
16 Lairmont, and title in the property transferred to the Trust on May 15, 2013.

17 27. Later, in the Summer of 2013, the Trust investigated the use of 594 Lairmont, which
18 now included the Golf Parcel, for the first time. According to Malek's deposition testimony, David
19 Rosenberg confronted him and threatened to sue him if he planned to build on the expanded 594
20 Lairmont. Malek Dep. at 102:13-103:14; *see* Doiron Dep. Vol. I at 80:15-82:17.

21 28. During the course of the litigation, the Trust's discovery responses indicated its only
22 concern was the loss of view, light, and privacy that might accompany Malek's construction on 594
23 Lairmont (including the Golf Parcel). Barbara Rosenberg's deposition testimony and the Trust's
24 responses to interrogatories propounded by Defendants Bank of America, MacDonald Highlands
25 Realty LLC, and Michael Doiron repeatedly identified potential loss of view, light, and privacy⁵ as the
26
27

28 ⁵ As Barbara Rosenberg noted in her deposition, she did not even know what Malek planned to build on 594 Lairmont, and stated that she nonetheless sought this Court's order prohibiting his construction due to the mere possibility of 590 Lairmont losing what Ms. Rosenberg described as its view and privacy.

1 damages arising if the Malek built on 594 Lairmont. Rosenberg Dep. at 184:22-187:20, 195:11-12;
2 Mot. Exhs. 15, 16.

3 29. Specifically, the Trust's interrogatory responses stated that 590 Lairmont would be
4 affected by Malek's construction on the Golf Parcel, with effects upon "the view of the golf course and
5 mountains, privacy, and light entering [the property]." Mot. Exhs. 15, 16.

6 30. The evidence produced to the Court, however, did not show any express easement that
7 would prohibit Malek from building on 594 Lairmont, including the Golf Parcel. All that was required
8 for Malek to construct his house was for him to obtain the MacDonald Highlands' Design Review
9 Committee's approval of his construction plans.⁶ Malek Dep. at 73:9-12; Bykowski Dep. II at 36:10-
10 37:21; *see* Doiron Dep. I at 71:10-72:10.

11 31. Meanwhile, and during the course of this litigation, the Design Review Committee
12 tasked with approving all plans for new buildings within the MacDonald Highlands community before
13 construction may commence, approved Malek's building plans for 594 Lairmont in early 2015.
14 Bykowski Dep. Vol. II at 74:16-21, 76:4-77:23. The Design Review Committee evaluates proposed
15 construction to ensure it maintains the unique character of the MacDonald Highlands community.
16 MacDonald Dep. at 34:16-36:9; 37:3-20; Bykowski Dep. Vol. II at 39:23-42:7. Had Malek's plans not
17 satisfied the Design Review Committee's standards, or negatively affected other residents within the
18 community, the Design Review Committee would not have approved them. *See* Bykowski Dep. Vol. II
19 at 74:16-77:23.

20 **B. Findings of Fact Related to Malek's Counterclaim.**

21 32. At the time the Trust filed this action, it filed a *lis pendens* on Malek's property at 594
22 Lairmont. *See* Sept. 23, 2013 Notice of *Lis Pendens*.

23 33. The Trust subsequently filed an amended *lis pendens* on 594 Lairmont. *See* Oct. 24,
24 2013 Amended Notice of *Lis Pendens*.

25 34. On January 9, 2014, the Court ordered the *lis pendens* on Malek's property expunged.
26 This prior order found that there was no basis for the Trust to have a *lis pendens* on Malek's property
27 under NRS 14.015(3). *See* Jan. 9, 2014 Order on Malek's Motion to Expunge *Lis Pendens*.

28 ⁶ And subsequent approval from the City of Henderson, although the MacDonald Highlands Design Guidelines were stated
to be more restrictive than the City of Henderson's requirements.

1 35. Barbara Rosenberg, being a residential real estate agent, was familiar with *lis pendens*
2 filings and their potential consequences for properties upon which they are filed. Rosenberg Dep. at
3 Rosenberg Dep. at 265:3-16.

4 36. However, she did not testify that she specifically knew the *lis pendens* the Trust filed on
5 Malek's property was false. *Id.* Moreover, the declaration of the Trust's former counsel, Peter
6 Bernhard, stated that he acted with a reasonable belief that the *lis pendens* was true when filing it on
7 Malek's property. Decl. of Peter Bernhard.

8 37. Malek submitted evidence of claimed damages in the form of a supplemental
9 disclosure, and testified in his deposition that he had incurred attorneys' fees in this action, which
10 included expunging the Trust's prior *lis pendens*. Malek Dep. at 106:25-107:17; Mot. Exh. 18.

11 **IV. Conclusions of Law**

12 All of the Trust's claims against Malek fail for numerous reasons. The evidence adduced to the
13 Court shows that the Trust's basis for seeking an easement over Malek's property is based solely on
14 the impermissible grounds of view, light, and privacy. While Nevada law has not previously
15 recognized a claim for implied restrictive covenant, and will not do so now, it also would fail for the
16 same reasons as the Trust's easement claim. Additionally, the Trust's claims for declaratory and
17 injunctive relief are remedies, rather than causes of action that stand on their own, and Malek is
18 entitled to judgment in his favor on both. Questions of fact, however, preclude this Court from
19 entering judgment in Malek's favor on his counterclaim.

20 **A. The Trust's Claims of Easement and Implied Restrictive Covenant Are Premised** 21 **on Grounds Not Recognized Under Nevada Law, and Nevada Law Does Not Even** 22 **Recognize the Latter Claim.**

23 1. Nevada law has squarely and repeatedly repudiated the notion that easements or
24 restrictive covenants may arise by implication to protect views, privacy, or access to light. *Probasco v.*
25 *City of Reno*, 85 Nev. 563, 565, 459 P.2d 772, 774 (1969); *Boyd v. McDonald*, 81 Nev. 642, 650-51,
26 408 P.2d 717, 722 (1965).

27 2. In this case, the Trust has argued alternately that an implied easement and an implied
28 restrictive covenant prevent Malek from building on the Golf Parcel. An easement is a right to use the
land of another, *Boyd*, 81 Nev. at 647, 408 P.2d at 720, while a restrictive covenant is "an easement or

1 a servitude in the nature of an easement.” *Meredith v. Washoe County Sch. Dist.*, 84 Nev. 15, 17, 435
2 P.2d 750, 752 (1968). Based on the evidence on record, and the bases for the Trust’s claim for an
3 easement or implied restrictive covenant in Malek’s property, the classification of the Trust’s claimed
4 restriction as an easement or restrictive covenant “does not matter” for the Court’s analysis in this
5 case. *Venetian Casino Resort L.L.C. v. Local Joint Exec. Bd.*, 257 F.3d 937, 946 (9th Cir. 2001).
6 Because an implied restrictive covenant is a form of easement, they are analyzed in the same manner
7 here.

8 3. The Trust has not produced any evidence showing the existence of an easement
9 requiring the Golf Parcel to remain part of the golf course indefinitely. While the Trust adopted this
10 argument in opposing Malek’s Motion for Summary Judgment, that is, as far as the Court can tell, the
11 first time such a theory arose. Counsel’s arguments do not replace facts in the analysis of a summary
12 judgment motion. *Glover v. Eighth Jud. Dist. Ct.*, 125 Nev. 691, 701, 706, 220 P.3d 684, 691, 695
13 (2009).

14 4. In contrast, the evidence before the Court shows only that the Trust has based its claim
15 for an implied easement on its fear of potentially losing the view, privacy, or access to light 590
16 Lairmont presently enjoys. The Trust has not shown any evidence of an express easement keeping
17 Malek from building on the Golf Parcel. Nevada law will not imply an easement or restrictive
18 covenant for the only, and undisputed, reasons that the Trust seeks them—protection of 590
19 Lairmont’s views, privacy, and access to light. *Probasco*, 85 Nev. at 565, 459 P.2d at 774; *Boyd*, 81
20 Nev. at 650-51, 408 P.2d at 722.

21 5. In considering claims for injunctive relief, the Court must consider the totality of the
22 circumstances in which relief is sought. *Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 325 130
23 P.3d 1280, 1285 (2006). Here, a seasoned real estate professional appears to have disregarded all
24 warnings and notices before paying more than two million dollars for the Rosenbergs’ “dream” home.
25 There similarly is no evidence the Trust’s attorney beneficiary did any research before the Trust
26 purchased the house in which he now resides. There is, however, undisputed evidence of the Trust and
27 its trustee’s substantial experience buying and selling high-end, residential real estate. To that end, the
28 Trust’s failure to use its acquired skill and knowledge in these areas effectively waived, under the

1 circumstances, any claim it could have for the Court to exercise its jurisdiction to impose a restrictive
2 covenant over Malek's property. *Id.*

3 6. Related to its claim for easement, the Court concludes that the Trust's claim for implied
4 restrictive covenant also fails. Nevada has not previously recognized a cause of action for implied
5 restrictive covenant, and this Court declines to do so. Consistent with the precedent of Nevada's
6 Supreme Court, this Court will not recognize a novel cause of action. *Brown v. Eddie World LLC*, 131
7 Nev. Adv. Rep. 19, 348 P.3d 1002 (2015); *Badillo v. Am. Brands*, 117 Nev. 34, 42, 16 P.3d 435, 440
8 (2001); *Greco v. United States*, 111 Nev. 405, 408-09, 893 P.2d 345, 347-48 (1995); *see Nat'l R.R.*
9 *Passenger Corp v. Nat'l Ass'n of R.R. Passengers*, 414 U.S. 453, 457-58 (1974) (promoting the
10 doctrine of *expressio unius est exclusion alterius*, which prohibits theories of liability that are not
11 expressly authorized). This Court's decision to not recognize this cause of action is steeped in the lack
12 of a cohesive national standard, the subjective nature of the claim's object, and the difficulty of
13 proving the claim. *Badillo*, 117 Nev. at 42-44, 16 P.3d at 440-41.

14 7. Among the states that do recognize this claim, the standards for offensively imposing an
15 implied restrictive covenant differ widely. *See Evans v. Pollock*, 796 S.W.2d 465, 466 (Tex. 1990);
16 *Knotts Landing Corp. v. Lathem*, 315 Ga. 321, 323, 348 S.E. 651, 653 (1986); *Arthur v. Lake Tansi*
17 *Village, Inc.*, 590 S.W.2d 923, 927 (Tenn. 1979); *see also Peck v. Lanier Golf Club, Inc.*, 315 Ga. App.
18 176, 178-79, 726 S.E.2d 442, 445 (Ga. Ct. App. 2012). Moreover, Trust seeks to use this claim to
19 enforce its subjective desire to preserve its view, light, and privacy, further militating against the Court
20 recognizing this cause of action. *Greco*, 111 Nev. at 409, 893 P.2d at 348.

21 8. To the extent the Trust's claim for implied restrictive covenant is duplicative of, or
22 otherwise subsidiary within, the Trust's claim for easement, it fails for the reasons stated above.
23 *Probasco*, 85 Nev. at 565, 459 P.2d at 774; *Boyd*, 81 Nev. at 650-51, 408 P.2d at 722. The Trust has
24 not advanced any evidence that its claim for an implied restrictive covenant seeks to preserve or
25 protect anything other than its view, light, or privacy. Any of these three concerns are insufficient
26 bases for the Court to imply an easement or restrictive covenant exists over the Golf Parcel. As the
27 Trust has not produced any evidence showing an alternate, cognizable basis for the Court to impose an
28

1 implied restrictive covenant on the Golf Parcel, the Court will not do so. The Court therefore enters
2 judgment in Malek's favor on this claim.

3 **B. The Trust's Claims for Injunctive and Declaratory Relief Also Fail as a Matter of**
4 **Law.**

5 9. Additionally, the Court enters judgment in Malek's favor on the Trust's remaining
6 claims for declaratory and injunctive relief. This Court concurs with the United States Court of
7 Appeals for the Ninth Circuit and finds that declaratory relief is a remedy, rather than a cause of
8 action. *Swartz v. KPMG LLP*, 476 F.3d 756, 766 (9th Cir. 2007).

9 10. Similarly, this Court adopts the position of the United States District Court for the
10 District of Nevada and several other courts, and concludes that injunctive relief is merely a remedy,
11 rather than an independent claim. *In re Walmart Wage & Hour Empl. Practices Litig.*, 490 F. Supp. 2d
12 1091, 1130 (D. Nev. 2007); *see Brittingham v. Ayala*, 995 S.W.2d 199, 201 (Tex. Ct. App. 1999); *Art*
13 *Movers, Inc. v. Ni West*, 3 Cal. App. 4th 640, 646-47 (Cal. Ct. App. 1992).

14 11. To the extent the Trust has styled these remedies as causes of action, the Court enters
15 judgment in Malek's favor on them. As the Court finds in Malek's favor on the Trust's substantive
16 claims of easement and implied restrictive covenant (to the extent the latter may be recognized as a
17 claim), the Trust has no avenue to assert these remedies against Malek. Therefore, judgment in
18 Malek's favor is appropriate.

19 **C. Questions of Fact Preclude the Court from Granting Malek's Motion for**
20 **Summary Judgment on his Counterclaim.**

21 12. For the same reasons discussed in the Court's Order entered July 23, 2015, denying the
22 Trust's Cross-Motion for Summary Judgment on Malek's counterclaim, and incorporated by reference
23 herein, the Court also denies Malek's Motion for Summary Judgment on the same claim. To prevail,
24 Malek must show that the Trust made a false statement about his title or possession of the Golf Parcel
25 with actual malice—a knowingly false statement, or one made with reckless disregard for the
26 truth—that caused him damage. *Executive Mgmt., Ltd. v. Ticor Tile Co.*, 114 Nev. 823, 963 P.2d 465,
27 478 (1998); *Rowland v. Lepire*, 99 Nev. 308, 313, 662 P.2d 1332, 1335 (1983).

28 13. Questions of material fact exist as to whether the Trust and its Trustee, Barbara
Rosenberg, acted with actual malice in filing the *lis pendens* on Malek's property.⁷ Additionally, the

1 Court finds that there is a question of fact as to the calculation of Malek's damages on his slander of
2 title claim, which shall be left to the jury. Malek's Motion for Summary Judgment on his
3 Counterclaim therefore is denied.

4 **V. Conclusion**

5 For the foregoing reasons, it is **ORDERED** that Defendant Shahin Shane Malek's Motion for
6 Summary Judgment is **GRANTED** in part, and the Court enters judgment in Malek's favor on
7 Plaintiff's claims against him, and **DENIED** in part, as the Court denies Malek's Motion for Summary
8 Judgment as it relates to his Counterclaim.

9 **VI. Judgment**

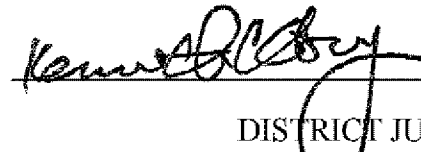
10 This action having been submitted to the Court for decision at trial on June 10, 2015, and the
11 Court having made the foregoing findings of fact and conclusions of law, the Court decides Plaintiff's
12 claims in favor of moving Defendant Shahin Shane Malek, with regard to all of Plaintiff's claims
13 against him.

14 ..
15 ..
16 ..
17 ..
18 ..
19 ..
20 ..
21 ..
22 ..
23 ..
24 ..
25 ..
26 It is therefore **ORDERED, ADJUDGED, AND DECREED** that Plaintiff take nothing by way
27 of its January 12, 2015 Amended Complaint against Defendant Shahin Shane Malek.

28 ⁷ "In order to prove malice it must be shown that the defendant knew that the statement was false or acted in reckless
disregard of its truth or falsity." *Rowland*, 99 Nev. at 313, 662 P.2d at 1335.

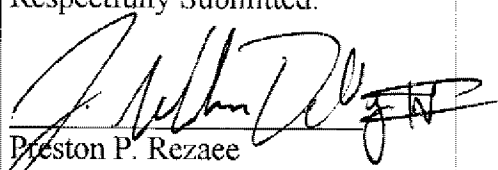
1
2 **IT IS SO ORDERED**

3
4 Dated: Aug 11, 2015

5
6 
7 DISTRICT JUDGE

8 Respectfully Submitted:

Approved in content and form by:

9 
10 Preston P. Rezaee
11 Nevada Bar No. 10729
12 Jay DeVoy, of counsel
13 Nevada Bar No. 11950
14 Sarah Chavez, of counsel
15 Nevada Bar No. 11935
16 THE FIRM, P.C.
17 200 E. Charleston Blvd.
18 Las Vegas, NV 89104
19 Telephone: (702) 222-3476
20 Facsimile: (702) 252-3476
21 Attorneys for Defendant/Counterclaimant,
22 Shahin Shane Malek

Karen Hanks
Nevada Bar No. 9578
Melissa Barishman
Nevada Bar No. 12935
Howard Kim & Associates
1055 Whitney Ranch Drive, Suite 110
Henderson, NV 89014
Attorneys for Plaintiff/Counterclaim
Defendant,
The Fredric and Barbara Living Trust

23 Approved in content and form by:

Approved in content and form by:

24 J. Randall Jones
25 Nevada Bar No. 1927
26 Spencer H. Gunnerson
27 Nevada Bar No. 8810
28 Kemp, Jones & Coulthard
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169
Attorneys for Defendants
MacDonald Highlands Realty, LLC,
Michael Doiron, and
FHP Ventures
(formerly The Foothills Partners).

Darren Brenner
Nevada Bar No. 8386
Steven Shevorski
Nevada Bar No. 8256
William Habdas
Nevada Bar No. 13138
Akerman LLP
1160 Town Center Drive, Suite 330
Las Vegas, NV 89144
Attorneys for Defendants
Bank of America N.A. and BAC Home Loans
Servicing, LP.

CERTIFICATE OF SERVICE

1 It is therefore **ORDERED, ADJUDGED, AND DECREED** that Plaintiff take nothing by way
2 of its January 12, 2015 Amended Complaint against Defendant Shahin Shane Malek.

3
4 **IT IS SO ORDERED**

5
6 Dated: _____, 2015

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
DISTRICT JUDGE

Respectfully Submitted:

Not approved as to form and content by:

12 _____
13 Preston P. Rezaee
14 Nevada Bar No. 10729
15 Jay DeVoy, of counsel
16 Nevada Bar No. 11950
17 Sarah Chavez, of counsel
18 Nevada Bar No. 11935
19 THE FIRM, P.C.
20 200 E. Charleston Blvd.
21 Las Vegas, NV 89104
22 Telephone: (702) 222-3476
23 Facsimile: (702) 252-3476
24 *Attorneys for Defendant/Counterclaimant,*
25 *Shahin Shane Malek*

11
12 _____
13 *Karen Hanks*
14 Karen Hanks
15 Nevada Bar No. 9578
16 Howard Kim & Associates
17 1055 Whitney Ranch Drive, Suite 110
18 Henderson, NV 89014
19 *Attorneys for Plaintiff/Counterclaim*
20 *Defendant,*
21 *The Fredric and Barbara Living Trust*

Approved in content and form by:

Approved in content and form by:

22 _____
23 J. Randall Jones
24 Nevada Bar No. 1927
25 Spencer H. Gunnerson
26 Nevada Bar No. 8810
27 Kemp, Jones & Coulthard
28 3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169
Attorneys for Defendants
MacDonald Highlands Realty, LLC,
Michael Doiron, and
FHP Ventures
(formerly The Foothills Partners).

22 _____
23 Darren Brenner
24 Nevada Bar No. 8386
25 Steven Shevorski
26 Nevada Bar No. 8256
27 William Habdas
28 Nevada Bar No. 13138
Akerman LLP
1160 Town Center Drive, Suite 330
Las Vegas, NV 89144
Attorneys for Defendants
Bank of America N.A. and BAC Home Loans
Servicing, LP.

1
2 **IT IS SO ORDERED**

3
4 Dated: _____, 2015

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
DISTRICT JUDGE

Respectfully Submitted:


Approved in content and form by:

Preston P. Rezaee
Nevada Bar No. 10729
Jay DeVoy, of counsel
Nevada Bar No. 11950
Sarah Chavez, of counsel
Nevada Bar No. 11935
THE FIRM, P.C.
200 E. Charleston Blvd.
Las Vegas, NV 89104
Telephone: (702) 222-3476
Facsimile: (702) 252-3476
Attorneys for Defendant/Counterclaimant,
Shahin Shane Malek

Karen Hanks
Nevada Bar No. 9578
Melissa Barishman
Nevada Bar No. 12935
Howard Kim & Associates
1055 Whitney Ranch Drive, Suite 110
Henderson, NV 89014
Attorneys for Plaintiff/Counterclaim
Defendant,
The Fredric and Barbara Living Trust

Approved in content and form by:

Approved in content and form by:

19  #9514
20 J. Randall Jones
21 Nevada Bar No. 1927
22 Spencer H. Gunnerson
23 Nevada Bar No. 8810
24 Kemp, Jones & Coulthard
25 3800 Howard Hughes Parkway, 17th Floor
26 Las Vegas, NV 89169
27 *Attorneys for Defendants*
28 *MacDonald Highlands Realty, LLC,*
Michael Doiron, and
FHP Ventures
(formerly The Foothills Partners).

Darren Brenner
Nevada Bar No. 8386
Steven Shevorski
Nevada Bar No. 8256
William Habdas
Nevada Bar No. 13138
Akerman LLP
1160 Town Center Drive, Suite 330
Las Vegas, NV 89144
Attorneys for Defendants
Bank of America N.A. and BAC Home Loans
Servicing, LP.

CERTIFICATE OF SERVICE

1
2 **IT IS SO ORDERED**

3
4 Dated: _____, 2015

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
DISTRICT JUDGE

Respectfully Submitted:

Approved in content and form by:

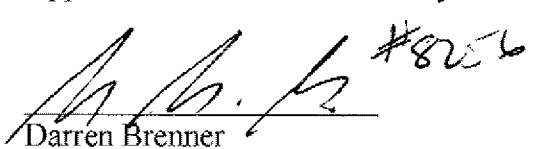
Preston P. Rezaee
Nevada Bar No. 10729
Jay DeVoy, of counsel
Nevada Bar No. 11950
Sarah Chavez, of counsel
Nevada Bar No. 11935
THE FIRM, P.C.
200 E. Charleston Blvd.
Las Vegas, NV 89104
Telephone: (702) 222-3476
Facsimile: (702) 252-3476
Attorneys for Defendant/Counterclaimant,
Shahin Shane Malek

Karen Hanks
Nevada Bar No. 9578
Melissa Barishman
Nevada Bar No. 12935
Howard Kim & Associates
1055 Whitney Ranch Drive, Suite 110
Henderson, NV 89014
Attorneys for Plaintiff/Counterclaim
Defendant,
The Fredric and Barbara Living Trust

Approved in content and form by:

Approved in content and form by:

J. Randall Jones
Nevada Bar No. 1927
Spencer H. Gunnerson
Nevada Bar No. 8810
Kemp, Jones & Coulthard
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169
Attorneys for Defendants
MacDonald Highlands Realty, LLC,
Michael Doiron, and
FHP Ventures
(formerly The Foothills Partners).



Darren Brenner
Nevada Bar No. 8386
Steven Shevorski
Nevada Bar No. 8256
William Habdas
Nevada Bar No. 13138
Akerman LLP
1160 Town Center Drive, Suite 330
Las Vegas, NV 89144
Attorneys for Defendants
Bank of America N.A. and BAC Home Loans
Servicing, LP.

CERTIFICATE OF SERVICE

1 I hereby certify that one this ____ day of July, 2015, pursuant to NRCP 5(b), I served via the Eighth
2 Judicial District Court electronic service system and to be placed in the United States Mail, with first
3 class postage prepaid thereon, and addressed the foregoing **[PROPOSED] ORDER, FINDINGS OF**
4 **FACT AND CONCLUSIONS OF LAW, AND JUDGMENT ON DEFENDANT /**
5 **COUNTERCLAIMANT SHAHIN SHANE MALEK'S MOTION FOR SUMMARY**
6 **JUDGMENT** to the following parties:

7
8 Howard C. Kim, Esq.
9 Email: Howard@hkimlaw.com
10 Diana S. Cline, Esq.
11 Email: Diana@hkimlaw.com
12 Jacqueline A. Gilbert, Esq.
13 Email: Jackie@hkimlaw.com
14 *Attorneys for Plaintiff*

15 Darren Brenner
16 Email: Darren.brenner@akerman.com
17 Deb Julien
18 Email: Debbie.julien@akerman.com
19 Natalie Winslow
20 Email: Natalie.winslow@akerman.com
21 *Attorneys for Bank of America, N.A.*

22 Erica Bennett
23 Email: E.bennett@kempjones.com
24 J. Randall Jones
25 Email: Jrj@kempjones.com
26 Janet Griffin
27 Email: janetjamesmichael@gmail.com
28 Email: jlg@kempjones.com
Spencer Gunnerson
Email: S.gunnerson@kempjones.com
Attorneys for Michael Doiron & MacDonald Highlands Realty, LLC

/s/ Jacqueline Martinez
Employee of The Firm, P.C.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Breach of Contract

COURT MINUTES

December 04, 2013

A-13-689113-C Frederic and Barbara Rosenberg Living Trust, Plaintiff(s)
vs.
Bank of America, Defendant(s)

December 04, 2013 1:00 PM Minute Order

HEARD BY: Cory, Kenneth **COURTROOM:** RJC Courtroom 16A

COURT CLERK: Michele Tucker

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Due to the Court's unavailability, COURT ORDERED, the Motion to Dismiss on OST CONTINUED.

CONTINUED TO: 12/09/13 11:00 AM

CLERK'S NOTE: The above minute order has been distributed to: Justin Shiroff, Esq., Lisa Zastrow, Esq. via e-mail. /mlt

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Breach of Contract

COURT MINUTES

December 09, 2013

A-13-689113-C Frederic and Barbara Rosenberg Living Trust, Plaintiff(s)
vs.
Bank of America, Defendant(s)

December 09, 2013 11:00 AM Motion to Dismiss

HEARD BY: Cory, Kenneth **COURTROOM:** RJC Courtroom 16A

COURT CLERK: Michele Tucker

RECORDER: Beverly Sigurnik

REPORTER:

PARTIES

PRESENT: Byrne, Patrick G. Attorney
Smyth, James E., II Attorney
Winslow, Natalie L Attorney

JOURNAL ENTRIES

- Statements by the Court as to arguments towards facts in a motion to dismiss. Mr. Byrne stated the position they are taking is based on the pled facts. The Court can take judicial notice as these are public documents. Mr. Byrne gave summary of client purchasing the property to build a custom home, has the plans and approval but cannot be signed off on because of the Lis Pendens. Further Mr. Malek can't lock down a rate because of this. Mr. Byrne argued as to notice stating lot could be used for custom home. There was a zoning change which has been recorded. Mr. Smyth argued as to APN number and it being golf course property. Further argued there is a blanket easement and the zoning change did not change the easement. Statements by the Court. Mr. Smyth stated if the Court is inclined to grant the motion Plaintiffs would request leave to amend. Ms. Winslow suggested the claims against Mr. Malek be separate from the claims against the bank. Further arguments by counsel as to zoning and easements. COURT ORDERED, matter CONTINUED. Court further stated the burden is on the Plaintiff as to why this should not be expunged.

CONTINUED TO: 12/19/13 10:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Breach of Contract

COURT MINUTES

December 19, 2013

A-13-689113-C Frederic and Barbara Rosenberg Living Trust, Plaintiff(s)
vs.
Bank of America, Defendant(s)

December 19, 2013 10:00 AM All Pending Motions

HEARD BY: Cory, Kenneth **COURTROOM:** RJC Courtroom 16A

COURT CLERK: Michele Tucker

RECORDER: Beverly Sigurnik

REPORTER:

PARTIES

PRESENT:	Brenner, Darren T.	Attorney
	Byrne, Patrick G.	Attorney
	Gunnerson, Spencer	Attorney
	Malek, Shahin Shane	Defendant
	Shiroff, Justin	Attorney
	Smyth, James E., II	Attorney
	Winslow, Natalie L	Attorney

JOURNAL ENTRIES

- ALL PENDING - Bank of America, N.A.'s Motion to Dismiss Plaintiff's Complaint Pursuant to NRCP 12(b)(5), or Alternatively, Motion for Summary Judgment... DRFH Ventures, LLC f/k/a DragonRidge Properties, LLC; DragonRidge Golf Club, Inc.; MacDonald Properties, LTD; MacDonald Highlands Realty, LLC; and Michael Doiron's Partial Joinder To Bank of America, N.A.'s Motion To Dismiss Plaintiff's Complaint Pursuant To NRCP 12(B)(5), Or Alternatively, Motion For Summary Judgment... Defendants DRFH Ventures, LLC f/k/a Dragonridge Properties, LLC; Dragonridge Golf Club, Inc.; MacDonald Properties, Ltd.; MacDonald Highlands Realty, LLC; and Michael Doiron's Motion to Dismiss... Defendant's Motion To Dismiss Plaintiff's Complaint And Expunge Lis Pendens On Order Shortening Time

Bank of America, N.A.'s Motion to Dismiss Plaintiff's Complaint Pursuant to NRCP 12(b)(5), or

Alternatively, Motion for Summary Judgment... DRFH Ventures, LLC f/k/a DragonRidge Properties, LLC; DragonRidge Golf Club, Inc.; MacDonald Properties, LTD; MacDonald Highlands Realty, LLC; and Michael Doiron's Partial Joinder To Bank of America, N.A.'s Motion To Dismiss Plaintiff's Complaint Pursuant To NRCP 12(B)(5), Or Alternatively, Motion For Summary Judgment -

Ms. Winslow stated this is a buyer's remorse case; property was sold as is. There are no additional warranties; this is a bare lot that is barely touching the plaintiff's property. Ms. Winslow provided aerial view of property and gave description. Further argued exhibit B of the purchase contract. It is the burden of the buyers to inspect the property lines of what they are purchasing and the surrounding properties. There is no right to a view in Nevada. Court stated this seems to be a motion for summary judgment and inquired if Mr. Smyth was prepared to argue. Mr. Smyth stated if the Court is inclined to grant, plaintiff would be requesting a continuance and 56(f). Argued his client only has a duty of diligence to look at the recorded documents. Court inquired if more discovery need to be done. Mr. Smyth stated more facts are needed as to the minor adjustment. Colloquy as to doing discovery. Mr. Smyth argued they have money damages as the bank did not disclose. Ms. Winslow argued there is a burden as to 56(f) to state what they are looking for. Statements by the Court. Mr. Brenner argued there is no 56(f) affidavit. Further argument by counsel. COURT ORDERED, Motion and Joinder DENIED WITHOUT PREJUDICE with six months discovery. Ms. Winslow to prepare the Order.

Defendants DRFH Ventures, LLC f/k/a Dragonridge Properties, LLC; Dragonridge Golf Club, Inc.; MacDonald Properties, Ltd.; MacDonald Highlands Realty, LLC; and Michael Doiron's Motion to Dismiss -

Mr. Gunnerson argued the entire case is about an easement. We have concerns as to three of the entities that are still in the lawsuit. There is no implied contract; these entities were not a party to this contract. Plaintiff can't rely on misrepresentation when they admit they never knew of the misrepresentations. Mr. Smyth argued they do not have to have implied easement. Plaintiff's claims are this is a golf course and DRFH is the developer. They are arguing there is little impact and there is a lot of impact. Further arguments by counsel. COURT ORDERED, Defendants DRFH Ventures, LLC f/k/a Dragonridge Properties, LLC; Dragonridge Golf Club, Inc.; MacDonald Properties, Ltd.; MacDonald Highlands Realty, LLC; and Michael Doiron's Motion to Dismiss GRANTED as to DRFH, Dragon, Inc., and MacDonald Ltd.

Defendant's Motion To Dismiss Plaintiff's Complaint And Expunge Lis Pendens On Order Shortening Time -

Mr. Brenner argued there was nothing false in the application; it stated there was going to be a custom home. Plaintiff has the exact view of the 9th hole. Further argued there is no evidence as to what hardship is. If the claim is not dismissed we will be filing a slander claim. Plaintiff had notice of the change, Bank of America had it and gave them notice. Statements by the Court. Mr. Smyth advised supplements have been filed the Plaintiff purchased property based on the plot maps. Mr. Smyth further argued the Court just heard argument from counsel Bank of America had knowledge.

Henderson gave notice of the application to Bank of America. Notice to the world is the recorded documents. This portion of the property is part of the golf course not Mr. Malec's property. Court inquired what gives the Plaintiff the right to lien the property. Mr. Smyth argued they have an interest to keep the title to the property in place. Statements by the Court. Further arguments by counsel. COURT STATED FINDINGS and ORDERED, Defendant's Motion to Dismiss Plaintiff's Complaint DENIED and Expunge Lis Pendens OST GRANTED WITHOUT PREJUDICE.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Breach of Contract

COURT MINUTES

January 05, 2015

A-13-689113-C Frederic and Barbara Rosenberg Living Trust, Plaintiff(s)
vs.
Bank of America, Defendant(s)

January 05, 2015 3:00 AM Motion for Leave

HEARD BY: Cory, Kenneth **COURTROOM:** RJC Courtroom 16A

COURT CLERK: Michele Tucker

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- This Motion was GRANTED on 1/9/15.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Breach of Contract

COURT MINUTES

January 09, 2015

A-13-689113-C Frederic and Barbara Rosenberg Living Trust, Plaintiff(s)
vs.
Bank of America, Defendant(s)

January 09, 2015 10:30 AM Minute Order

HEARD BY: Cory, Kenneth **COURTROOM:** RJC Courtroom 16A

COURT CLERK: Phyllis Irby

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Frederic and Barbara Rosenberg Living Trust vs. Bank of America
Plaintiff's Motion for Leave to Amend Complaint and Caption

Plaintiff's unopposed Motion for Leave to Amend Complaint and Caption is GRANTED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Breach of Contract

COURT MINUTES

January 30, 2015

A-13-689113-C Frederic and Barbara Rosenberg Living Trust, Plaintiff(s)
vs.
Bank of America, Defendant(s)

January 30, 2015	9:00 AM	Motion for Protective Order	Bank of America, N.A.'s Motion For Protective Order re: Deposition of Rule 30(B)(6) Witness, and For Attorneys' Fees on OST
------------------	---------	-----------------------------	---

HEARD BY: Bulla, Bonnie

COURTROOM: RJC Level 5 Hearing Room

COURT CLERK: Jennifer Lott

RECORDER: Francesca Haak

REPORTER:

PARTIES

PRESENT:	DeVoy, James M.	Attorney
	Hanks, Karen	Attorney
	Rulis, Nathanael R., ESQ	Attorney
	Winslow, Natalie L	Attorney

JOURNAL ENTRIES

- The homeowner purchased property in a foreclosure from Bank of America, and there was no communication the neighbor improving the adjacent property. Argument by Ms. Hanks. Colloquy re: notice must include better categories for areas of concern. Colloquy re: the timeframe. Argument by Ms. Winslow.

COMMISSIONER RECOMMENDED, motion is GRANTED WITHOUT PREJUDICE to Pltf to reserve a proper 30(b)(6) notice with appropriate topic areas for the relevant timeframe. Commissioner is available by conference call if necessary. Colloquy re: resetting depositions, and remaining depositions needed.

COMMISSIONER RECOMMENDED, discovery cutoff RE-OPENED to 3/16/15 to complete depositions; FILE dispositive motions by 4/16/15; 5/26/15 Trial date STANDS; no fees or costs. Commissioner is available by conference call if something comes up.

Ms. Winslow to prepare the Report and Recommendations, and counsel to approve as to form and content. A proper report must be timely submitted within 10 days of the hearing. Otherwise, counsel will pay a contribution. Ms. Winslow to appear at status check hearing to report on the Report and Recommendations.

3/6/15 11:00 a.m. Status Check: Compliance

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Breach of Contract

COURT MINUTES

April 08, 2015

A-13-689113-C Frederic and Barbara Rosenberg Living Trust, Plaintiff(s)
vs.
Bank of America, Defendant(s)

April 08, 2015 9:00 AM Motion to Dismiss

HEARD BY: Cory, Kenneth COURTROOM: RJC Courtroom 16A

COURT CLERK: Michele Tucker

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT:	Chavez, Sarah M, ESQ	Attorney
	Gunnerson, Spencer	Attorney
	Hanks, Karen	Attorney
	Shevorski, Steven G.	Attorney

JOURNAL ENTRIES

- Mr. Gunnerson advised this case is in regards to a third acre property and it has been clear from the beginning plaintiffs do not want the defendant to build on the property. Mr. Gunnerson argued they have attempted to bring in easements to stop them for building. Plaintiffs are trying to create a strict covenant which would be guidelines; there is nothing in the restrictive guidelines. Plaintiffs are claiming the design guidelines are not applied to the third acre. Mr. Gunnerson argued as to declaratory relief. Ms. Hanks argued plaintiffs are only asking for FHP to enforce the design guidelines. This is essentially a breach of the covenants and CC&R's. Ms. Hanks stated Mr. Malek may be an innocent victim and if he is it falls to FHP for approving the design. Statements by the Court. Ms. Hanks advised discovery has closed and have requested leave to amend for damages. Court stated it was not going to close the door on the defendant for the plaintiffs to come back and claim damages. Ms. Hanks advised they have money damages against other parties, plaintiffs are just looking for FHP to enforce the guidelines. Mr. Gunnerson argued it is possible for the Court to base its decision on the facts pled without additional discovery. Court stated if the motion is granted the defendant has been placed on notice they will be coming back for money damages. Mr. Gunnerson stated they would rather be dismissed out at this point and do not feel there are any money damages.

Plaintiffs are attempting to bring in the CC&R's, and they do not apply to FHP. Ms. Hanks argued under the CC&R's FHP is still a declarant of the MacDonald property and are still in control. Mr. Gunnerson argued they have failed to show any restrictive covenants have not been enforced. Further arguments by counsel. COURT ORDERED, Defendant FHP Venture's Motion to Dismiss Amended Complaint DENIED. Colloquy. COURT FURTHER ORDERED, Trial date VACATED and Matter SET for status check. Ms. Hanks to prepare the Order.

6/10/15 9:00 AM STATUS CHECK: RESET TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Breach of Contract

COURT MINUTES

May 18, 2015

A-13-689113-C Frederic and Barbara Rosenberg Living Trust, Plaintiff(s)
vs.
Bank of America, Defendant(s)

May 18, 2015 9:00 AM Minute Order

HEARD BY: Cory, Kenneth **COURTROOM:** RJC Courtroom 16A

COURT CLERK: Michele Tucker

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- The COURT ORDERS, Plaintiff's Motion for Summary Judgment Against Shanin Shane Malek, Defendant Shanin Shane Malek Motion for Summary Judgment, and Counter Defendant's Motion for Summary Judgment RESCHEDULED from Tuesday, May 19, 2015 to Wednesday, June 10, 2015 at 9:00 a.m. The Status Check regarding resetting the trial will remain on the 6/10/15 oral calendar.

RESCHEDULED TO: 6/10/15 9:00 AM

CLERK'S NOTE: The above minute order has been distributed to: Jay DeVoy, Esq., Spencer Gunnerson, Esq., Karen Hanks, Esq., and Steven Shevorski, Esq. via e-mail. /mlt

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Breach of Contract

COURT MINUTES

June 10, 2015

A-13-689113-C Frederic and Barbara Rosenberg Living Trust, Plaintiff(s)
vs.
Bank of America, Defendant(s)

June 10, 2015

9:00 AM

**Status Check: Reset Trial
Date**

**Status Check: Reset
Trial Date**

HEARD BY: Cory, Kenneth

COURTROOM: RJC Courtroom 16A

COURT CLERK: Tena Jolley

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT:

Barishman, Melissa	Attorney
DeVoy, James M.	Attorney
Gilbert, Jacqueline	Attorney
Gunnerson, Spencer	Attorney
Habdas, William S.	Attorney
Hanks, Karen	Attorney
Jones, Jon Randall	Attorney
Panoff, Jesse N	Attorney
Rezaee, Preston P, ESQ	Attorney

JOURNAL ENTRIES

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Breach of Contract

COURT MINUTES

June 10, 2015

A-13-689113-C Frederic and Barbara Rosenberg Living Trust, Plaintiff(s)
vs.
Bank of America, Defendant(s)

June 10, 2015 9:00 AM All Pending Motions

HEARD BY: Cory, Kenneth **COURTROOM:** RJC Courtroom 16A

COURT CLERK: Tena Jolley

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT:	Barishman, Melissa	Attorney
	DeVoy, James M.	Attorney
	Gilbert, Jacqueline	Attorney
	Gunnerson, Spencer	Attorney
	Habdas, William S.	Attorney
	Hanks, Karen	Attorney
	Jones, Jon Randall	Attorney
	Panoff, Jesse N	Attorney
	Rezaee, Preston P, ESQ	Attorney

JOURNAL ENTRIES

- STATUS CHECK: RESET TRIAL DATE - Mr. Gunderson advised there is a Motion to Amend to Conform to Evidence set for July 6, 2015, and requested matter be continued. Ms. Hanks stated the Motion is set on the Court's Chambers Calendar. COURT ORDERED, matter CONTINUED to 7/15/15 at 9:00 A.M.

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AGAINST DEFENDANT SHAHIN SHANE MALEK - Ms. Hanks argued that Mr. Malek's counter-claim for slander of title based on the lis pendens recorded by the Rosenberg Trust fails as there is clearly no issue of fact. There is no evidence of malice. Further there is no computation of damages or supporting documentation as required to claim special damages and discovery is closed. Therefore, there are no issues of fact

remaining and summary judgment in favor of the Rosenberg Trust on the slander of title claim is appropriate. Mr. Devoy argued in opposition that the question of malice is whether the statement is knowingly false or is made with reckless disregard for the truth. Ms. Rosenberg knew exactly what she was doing and she filed the lis pendens to prevent Mr. Malek from building his home which was a reckless disregard for the truth that applies. On the issue of damages, attorney fees continue to accrue and questions of fact remain as to what Ms. Rosenberg knew when she filed the lis pendens. COURT ORDERED, Motion DENIED WITHOUT PREJUDICE. Upon Ms. Hanks request that Plaintiff be allowed to depose Mr. Malek if additional documents are produced, Court recommended the issues be brought before the Discovery Commissioner.

DEFENDANT SHAHIN SHANE MALEK'S MOTION FOR SUMMARY JUDGMENT - Mr. Devoy argued that Nevada law prohibits easements being granted to protect view and privacy. The implied restrictive covenant is improper as case law does not recognize this new cause of action and there is no evidence of a restrictive covenant that prevents someone from building their house. Plaintiff's requests for declaratory and injunctive relief requires an underlying finding of liability there can be no relief. Mr. Gunnerson adopted arguments made by Mr. Devoy and made three points: there is no easement for view or privacy recognized in Nevada; the one-third acre of bare land was a bare lot and not a part of the golf course; and the only use Plaintiff's use of that property would be to protect view and privacy. Argument that no genuine issues of material fact exist as the golf course is still the center of the community and no easement existed. Argument by Ms. Hanks in opposition that there are expressed and implied restrictive covenants which limits what a property owner can do with their property thereby maintaining the value of the property that Plaintiff purchased and the expectation that that the surrounding area would remain the same. These are issues of fact for the jury to determine. COURT ORDERED, matter UNDER SUBMISSION, ORDER WILL ISSUE from Chambers, and matter SET for Decision on Court Chamber Calendar.

DEFENDANTS' MACDONALD HIGHLANDS, MICHAEL DOIRON AND FHP VENTURES' MOTION FOR SUMMARY JUDGMENT - Mr. Gunnerson requested that as to the view ad privacy easement portion of their motion, was previously addressed. Argument that the case is ripe for summary adjudication at this time as the Rosenberg's purchased the property "as is," signed a Purchase Agreement, failed to research public records/zoning maps, and waived claims against the broker or their agents. Ms. Hanks argued in opposition that Plaintiff did not waive any defects as to the surrounding area/golf course and did not have knowledge of material facts as to any change in zoning which should have been disclosed and is a question for the jury to determine. Further Doiron and McDonald Realty had a duty to correct any misrepresentations made on the seller's disclosure form. COURT ORDERED, matter UNDER SUBMISSION, ORDER WILL ISSUE from Chambers, and matter SET for Decision on Court Chamber Calendar.

6/29/15 CHAMBERS - DEFENDANT SHAHIN SHANE MALEK'S MOTION FOR SUMMARY JUDGMENT // DEFENDANTS' MACDONALD HIGHLANDS, MICHAEL DOIRON AND FHP VENTURES' MOTION FOR SUMMARY JUDGMENT

A-13-689113-C

7/15/15 9:00 AM STATUS CHECK: RESET TRIAL DATE

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Breach of Contract

COURT MINUTES

June 29, 2015

A-13-689113-C Frederic and Barbara Rosenberg Living Trust, Plaintiff(s)
vs.
Bank of America, Defendant(s)

June 29, 2015

3:00 AM

All Pending Motions

HEARD BY: Cory, Kenneth

COURTROOM: RJC Courtroom 16A

COURT CLERK: Michele Tucker

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- ALL PENDING

Based on the arguments raised in Defendants' briefing, the COURT ORDERS, Defendants' MacDonald Highlands, Michael Doiron and FHP Ventures' Motion for Summary Judgment GRANTED. Counsel for Defendants are to prepare the order, which must include findings of facts and conclusions of law and distribute a copy to all parties.

Based on the arguments raised in Defendant Malek's briefing, the COURT ORDERS, Defendant Shahin Shane Malek's Motion for Summary Judgment GRANTED IN PART and DENIED IN PART. The motion is GRANTED as to claims brought by Plaintiff and DENIED as to Defendant Malek's counterclaim for Slander of Title. Counsel for Defendant Malek is to prepare the order, which must include findings of facts and conclusions of law and distribute a copy to all parties.

CLERK'S NOTE: The above minute order has been distributed to: John Randall Jones, Esq., and Preston Rezaee, Esq. via e-mail. /mlt

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Breach of Contract

COURT MINUTES

July 06, 2015

A-13-689113-C Frederic and Barbara Rosenberg Living Trust, Plaintiff(s)
vs.
Bank of America, Defendant(s)

**July 06, 2015 3:00 AM Motion to Amend
Complaint**

HEARD BY: Cory, Kenneth

COURTROOM: RJC Courtroom 16A

COURT CLERK: Michele Tucker

RECORDER: Lisa Lizotte

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- After reviewing all related motions, oppositions, and replies, the Court finds that a motion under NRCP 15(b) is not appropriate. Further, under NRCP 15(a) the Court finds that the proposed claims would be futile as they fall under the preview of NRS 38.310. Accordingly, COURT ORDRED Plaintiff's Motion to Amend Complaint to Conform to Evidence DENIED. The Plaintiffs may refile an appropriate NRCP 15(a) motion after exhausting all required remedies under NRS 38.310. Mr. Brenner to prepare the Order.

CLERK'S NOTE: The above minute order has been distributed to: Karen Hanks, Esq., Spencer Gunnerson, Esq., Preston Rezaee, Esq., and Darren Brenner, Esq. via e-mail. /mlt

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Breach of Contract

COURT MINUTES

July 29, 2015

A-13-689113-C Frederic and Barbara Rosenberg Living Trust, Plaintiff(s)
vs.
Bank of America, Defendant(s)

July 29, 2015

9:00 AM

**Status Check: Reset Trial
Date**

HEARD BY: Cory, Kenneth

COURTROOM: RJC Courtroom 16A

COURT CLERK: Michele Tucker

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT: Carter, Matthew S. Attorney
DeVoy, James M. Attorney
Hanks, Karen Attorney
Shevorski, Steven G. Attorney

JOURNAL ENTRIES

- Colloquy regarding last hearing. COURT ORDERED, Trial Date SET. COURT FURTHER ORDERED, all Dispositive Motion due February 22, 2016 and Motions in Limine due May 6, 2016.

6/9/16 9:00 AM PRETRIAL CONFERENCE

6/27/16 10:00 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Breach of Contract

COURT MINUTES

September 21, 2015

A-13-689113-C Frederic and Barbara Rosenberg Living Trust, Plaintiff(s)
vs.
Bank of America, Defendant(s)

September 21, 2015 3:00 AM All Pending Motions

HEARD BY: Cory, Kenneth **COURTROOM:** RJC Courtroom 16A

COURT CLERK: Michele Tucker

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- DEFENDANT MACDONALD HIGHLANDS REALTY LLC'S MOTION FOR CERTIFICATION
PURSUANT TO NRCP 54(B)...PLAINTIFF'S MOTION TO RETAX AND SETTLE MEMORANDUM
OF COSTS AND DISBURSEMENTS

PLAINTIFF'S MOTION TO RETAX AND SETTLE MEMORANDUM OF COSTS AND
DISBURSEMENTS heard and DENIED AS MOOT on 10/22/15 oral calendar.

COURT ORDERED, Defendant Macdonald Highlands Realty LLC's Motion For Certification
Pursuant To NRCP 54(B) GRANTED. Mr. Gunnerson to prepare the Order and distribute to all
parties.

CLERK'S NOTE: The above minute order has been distributed to: Spencer Gunnerson, Esq. via e-
mail. /mlt

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Breach of Contract

COURT MINUTES

October 22, 2015

A-13-689113-C Frederic and Barbara Rosenberg Living Trust, Plaintiff(s)
vs.
Bank of America, Defendant(s)

October 22, 2015 1:30 PM All Pending Motions

HEARD BY: Cory, Kenneth **COURTROOM:** RJC Courtroom 16A

COURT CLERK: Michele Tucker

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT: Carter, Matthew S. Attorney
DeVoy, James M. Attorney
Gilbert, Jacqueline Attorney
Hanks, Karen Attorney

JOURNAL ENTRIES

- ALL PENDING

DEFENDANT SHAHIN MALEK'S MOTION FOR ATTORNEY FEES AND COSTS:

Court noted it had not received an opposition. Ms. Hanks advised a copy had been provided to chambers today. Mr. DeVoy advised he had not seen a copy of the opposition and requested the Motion be granted. COURT ORDERED, Motion CONTINUED.

CONTINUED TO: 12/1/15 9:00 AM

DEFENDANT MACDONALD HIGHLAND REALTY, LLC AND FHP VENTURES MOTION FOR ATTORNEYS' FEES AND COSTS:

Following arguments by counsel, COURT ORDERED, Fees GRANTED in the amount of \$120,315.00; Costs CONTINUED to this Court's Chamber Calendar.

CONTINUED TO: 11/9/15 CHAMBERS

PLAINTIFF'S MOTION TO RETAX AND SETTLE MEMORANDUM OF COSTS AND
DISBURSEMENTS:

COURT ORDERED, Motion DENIED AS MOOT.

CLERK'S NOTE: Minutes corrected to include the continued hearing dates (which were given in
Court). /mlt

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Breach of Contract

COURT MINUTES

November 09, 2015

A-13-689113-C Frederic and Barbara Rosenberg Living Trust, Plaintiff(s)
vs.
Bank of America, Defendant(s)

**November 09, 2015 3:00 AM Motion for Attorney Fees
and Costs**

HEARD BY: Cory, Kenneth

COURTROOM: RJC Courtroom 16A

COURT CLERK: Michele Tucker

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- The Court previously granted Defendant MacDonald Highland Realty, LLC and FHP Ventures Motion for Attorneys' Fees and continued the matter as to Costs. COURT ORDERED, Motion GRANTED as to costs.

CLERK'S NOTE: The above minute order has been distributed to: Jacqueline Gilbert, Esq., Karen Hanks, Esq., Preston Rezaee, Esq., and Matthew Carter, Esq. via e-mail. /mlt

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Breach of Contract

COURT MINUTES

December 01, 2015

A-13-689113-C Frederic and Barbara Rosenberg Living Trust, Plaintiff(s)
vs.
Bank of America, Defendant(s)

**December 01, 2015 9:00 AM Motion for Attorney Fees
and Costs**

HEARD BY: Cory, Kenneth **COURTROOM:** RJC Courtroom 16A

COURT CLERK: Michele Tucker

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT: DeVoy, James M. Attorney

JOURNAL ENTRIES

- Mr. DeVoy stated this was his second time here for this motion. The first time the motion was continued to review and reply to the opposition and the date and time were agreed to by both parties; this time there is no appearance by counsel. Mr. DeVoy argued as to the fees and costs incurred by his client do to this litigation. Court inquired as to how much time was spent here this morning. Mr. DeVoy advised 1.8 billable hours. Statements by the Court. COURT ORDERED, Defendant Shahin Malek's Motion for Attorney Fees and Costs GRANTED; fees GRANTED from April 16, 2015 forward and fees for appearing today 12/1/15. All costs GRANTED. Mr. DeVoy to prepare the Order.

CLERK'S NOTE: The above minute order has been distributed to: Karen Hanks, Esq. and Jacqueline Gilbert, Esq. via e-mail. /mlt

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Breach of Contract

COURT MINUTES

December 09, 2015

A-13-689113-C Frederic and Barbara Rosenberg Living Trust, Plaintiff(s)
vs.
Bank of America, Defendant(s)

December 09, 2015 9:00 AM Status Check

HEARD BY: Cory, Kenneth **COURTROOM:** RJC Courtroom 16A

COURT CLERK: Michele Tucker

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT: DeVoy, James M. Attorney
 Gilbert, Jacqueline Attorney
 Shevorski, Steven G. Attorney

JOURNAL ENTRIES

- Statements by the Court regarding there being no signature on the stipulation to stay the matter. Mr. DeVoy and Mr. Shevorski advised they have no objection to the stay. Court STATED the trial date will stand and hopefully the Supreme Court will have made a ruling by then. Mr. DeVoy advised Mr. Malek still has a counterclaim. Mr. Shevorski advised Bank of America is still a party in this matter. COURT ORDERED, Stay to REMAIN IN PLACE and trial date STANDS.

Matter Recalled: Ms. Gilbert present. Court advised of the proceedings.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Breach of Contract

COURT MINUTES

March 07, 2016

A-13-689113-C Frederic and Barbara Rosenberg Living Trust, Plaintiff(s)
vs.
Bank of America, Defendant(s)

March 07, 2016 3:00 AM Motion

HEARD BY: Cory, Kenneth **COURTROOM:** RJC Courtroom 16A

COURT CLERK: Michele Tucker

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT ORDERS, Plaintiff's Motion for Relief from Order GRANTED. Throughout this litigation counsel for all parties have been diligent, and given the reasons advanced by the Plaintiff, the Court finds that relief from its order is warranted. Ms. Hanks to prepare the Order.

CLERK'S NOTE: The above minute order has been distributed to: Karen Hanks, Esq., Howard Kim, Esq., Preston Rezaee, Esq., Randall Jones, Esq., and Darren Brenner, Esq. via e-mail. /mlt



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

HOWARD C. KIM, ESQ.
7625 DEAN MARTIN DR., SUITE 110
LAS VEGAS, NV 89139

DATE: May 25, 2016
CASE: A-13-689113-C

RE CASE: THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST vs. BANK OF AMERICA, N.A.; BAC HOME LOANS SERVICING, LP; MACDONALD HIGHLANDS REALTY, LLC; MICHAEL DOIRON; SHAHIN SHANE MALEK; THE FOOTHILLS PARTNERS

NOTICE OF APPEAL FILED: May 23, 2016

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT TRANSMITTED HAVE BEEN MARKED:**

- ☒ **\$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)****
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ **\$24 – District Court Filing Fee (Make Check Payable to the District Court)****
- ☐ **\$500 – Cost Bond on Appeal (Make Check Payable to the District Court)****
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☐ **Case Appeal Statement**
 - NRAP 3 (a)(1), Form 2
- ☐ **Order**
- ☐ **Notice of Entry of Order**

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

*****Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.***

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; [PROPOSED] ORDER, FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND JUDGMENT ON DEFENDANT / COUNTERCLAIMANT SHAHIN SHANE MALEK'S MOTION FOR SUMMARY JUDGMENT; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

THE FREDRIC AND BARBARA
ROSENBERG LIVING TRUST,

Plaintiff(s),

vs.

BANK OF AMERICA, N.A.; BAC HOME
LOANS SERVICING, LP; MACDONALD
HIGHLANDS REALTY, LLC; MICHAEL
DOIRON; SHAHIN SHANE MALEK; THE
FOOTHILLS PARTNERS,

Defendant(s),

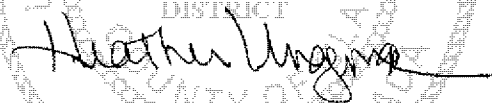
Case No: A-13-689113-C

Dept No: I

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 25 day of May 2016.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk