

## **EXHIBIT 8**

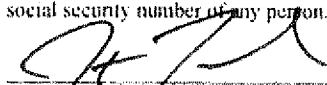
## **EXHIBIT 8**

ALLISON MacKENZIE, LTD.  
402 North Division Street, P.O. Box 646, Carson City, NV 89702  
Telephone: (775) 687-0202 Fax: (775) 882-7918  
E-Mail Address: law@allisonmackenzie.com

Case No.15-10DC-0876

Dept. No. I

The undersigned hereby affirms that  
this document does not contain the  
social security number of any person.

  
JUSTIN M. TOWNSEND, Esq.

FILED

2017 MAR -3 PM 12:43

SUE SEYON  
COURT CLERK

BY  DEPUTY

IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF CHURCHILL

SHAUGHNAN L. HUGHES, an  
individual,

Plaintiff,

vs.

ELIZABETH C. HOWARD, an  
individual; and DOES I through  
XX, inclusive.

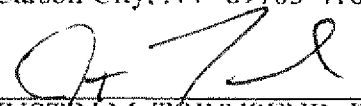
Defendants.

**NOTICE OF ENTRY OF ORDER GRANTING IN PART  
AND DENYING IN PART MOTION FOR SANCTIONS**

NOTICE IS HEREBY GIVEN that on the 1<sup>st</sup> day of March, 2017, the Court duly  
entered an *Order Granting in Part and Denying in Part Motion for Sanctions* in the above-entitled  
matter. A copy of said *Order* is attached hereto as **Exhibit "1"**.

DATED this 2<sup>nd</sup> day of March, 2017.

ALLISON MacKENZIE, LTD.  
402 North Division Street  
Carson City, NV 89703-4168

By:   
JUSTIN M. TOWNSEND, ESQ.  
Nevada State Bar No. 12293

Attorneys for Plaintiff,  
SHAUGHNAN L. HUGHES

CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON, MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be served on all parties to this action by:

- ☒ Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]
- ☐ Hand-delivery - via Reno/Carson Messenger Service [NRCP 5(b)(2)(A)]
- ☐ Electronic Transmission
- ☐ Federal Express, UPS, or other overnight delivery
- ☐ E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures [NRCP 5(b)(2)(D)]

fully addressed as follows:

CHARLES R. KOZAK, ESQ.  
KOZAK LUSIANI LAW, LLC  
3100 Mill Street, Suite 115  
Reno, NV 89502

DATED this 2<sup>nd</sup> day of March, 2017.

  
NANCY FONTENOT

**EXHIBIT “1”**

**EXHIBIT “1”**



1 Case No. 15-10DC-0876

2 Dept. I

FILED

2017 MAR -1 AM 9:52

CLERK OF COURT

BY *Joseph* DEPUTY

3  
4  
5  
6 IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF CHURCHILL  
8  
9

10 SHAUGHNAN L. HUGHES,

11 Plaintiff,

12 vs.

ORDER GRANTING IN PART AND  
DENYING IN PART MOTION FOR  
SANCTIONS

13 ELIZABETH C. HOWARD, an individual;  
14 and DOES I through XX, inclusive,

15 Defendants.  
\_\_\_\_\_ /

16 This Matter is before the Court on Plaintiff SHAUGHNAN HUGHES' (hereinafter "Mr.  
17 Hughes") Motion for Sanctions, filed August 26, 2016, and Motion for Order to Show Cause,  
18 filed November 4, 2016. Mr. Hughes is represented by Justin Townsend, Esq. ELIZABETH  
19 HOWARD (hereinafter "Ms. Howard") opposed the Motion for Sanctions on September 14,  
20 2016, and opposed the Motion for Order to Show Cause on November 22, 2016. Ms. Howard is  
21 represented by Charles Kozak, Esq.

22 The factual background in this case is summarized in the Order After February 6, 2017  
23 Hearing. In short, the Complaint in this matter seeks an accounting of the parties' respective  
24 interests in a piece of real property, which they hold as joint tenants.

1 Mr. Hughes' Motion for Sanctions alleges that Ms. Howard and her attorney, Mr.  
2 Kozak, are subject to sanction because they repeatedly violated the Nevada Rules of Civil  
3 Procedure, District Court Rules and Tenth Judicial District Court Rules. Mr. Hughes notes  
4 especially the following violations: (1) Ms. Howard failed to timely file a responsive pleading to  
5 Mr. Hughes' Complaint;<sup>1</sup> (2) Ms. Howard failed to timely oppose Mr. Hughes' Motion to  
6 Dismiss Ms. Howard's Counterclaim; (3) Mr. Kozak did not participate in the early case  
7 conference in the manner contemplated in NRCP 16.1(b)(1);<sup>2</sup> (4) Mr. Kozak failed to timely  
8 respond to discovery requests;<sup>3</sup> (5) Mr. Kozak failed to timely file his Case Conference Report;<sup>4</sup>  
9 (6) Mr. Kozak insisted he had actually filed his Case Conference Report at the pre-trial hearing  
10 on May 17, 2016;<sup>5</sup> (7) Mr. Kozak's conduct with respect to the Motion to Set Aside Dismissal  
11 of Counterclaim was sanctionable under NRCP 11; (8) Mr. Kozak did not participate in the May  
12 17, 2016 Pre-Trial conference in good faith; (9) Ms. Howard's Motion for Summary Judgment  
13 was not supported by existing law and was brought only for purposes of delay; and (10) Ms.  
14 Howard's delay in filing the Motion to Set Aside Dismissal of Counterclaim was filed belatedly  
15 and for the purpose of delay. Due to the above allegations, Mr. Hughes argues that he incurred  
16 unnecessary attorney's fees, and he requests an award of such attorney's fees.

17  
18  
19 <sup>1</sup> Pursuant to an Order Granting Publication of Summons, the Complaint in this case was published in the Lahontan  
Valley News with a last date of publication on October 21, 2015. Thus, the Answer was due on November 10,  
2015. The Answer was not filed until November 24, 2015.

20 <sup>2</sup> Specifically, Mr. Townsend alleges that Mr. Kozak stated he had not read the applicable law prior to the  
conference.

21 <sup>3</sup> Initial disclosures were due by March 1, 2016. After Mr. Kozak failed to timely comply with this requirement, the  
Court directed Mr. Kozak to send the initial disclosures to Mr. Townsend's office by no later than May 19, 2016,  
they were delivered May 20, 2016.

22 <sup>4</sup> The parties participated in an early case conference on February 16, 2016. Pursuant to NRCP 16.1(c), the Early  
Case Conference Reports were due by no later than March 17, 2016. Mr. Kozak did not file his Early Case  
Conference Report until January 4, 2017.

23 <sup>5</sup> At the May 17, 2016 hearing, Mr. Kozak specifically stated that he could provide proof of a file-stamped copy of  
24 his early case conference report even though the Court did not have an original in the file. Mr. Kozak's office  
submitted a faxed version of a (non-file-stamped) case conference report, which was lodged in the file in  
anticipation of him sending the original in accordance with 10JDCR 18. The Court did not receive the original until  
January 4, 2017, and the Court notes that the faxed document from May 17, 2016 is not identical to the subsequently  
submitted "original."

1 As a preliminary matter, Ms. Howard argues that Mr. Hughes' Motion for Sanctions  
2 should be denied because he did not abide by the 21-day safe-harbor rule under NRCP  
3 11(c)(1)(A). Specifically, NRCP 11(c)(1)(A) provides:

4 A motion for sanctions under this rule shall be made separately from other  
5 motions or requests and shall describe the specific conduct alleged to  
6 violate subdivision (b). It shall be served as provided in Rule 5, *but shall*  
7 *not be filed with or presented to the court unless, within 21 days after*  
8 *service of the motion (or such other period as the court may prescribe),*  
9 *the challenged paper, claim, defense, contention, allegation, or denial is*  
10 *not withdrawn or appropriately corrected.* If warranted, the court may  
11 award to the party prevailing on the motion the reasonable expenses and  
12 attorney's fees incurred in presenting or opposing the motion. Absent  
13 exceptional circumstances, a law firm shall be held jointly responsible for  
14 violations committed by its partners, associates, and employees.

15 (emphasis added). Here, Ms. Howard argues that she was not served with the Motion before it  
16 was filed by Mr. Hughes. Mr. Hughes argues that he has complied with the requirements of  
17 NRCP 11(c)(1)(A) because his Motion was not "presented to the court" until more than 21 days  
18 after service.

19 The Court finds that Mr. Hughes substantially complied with the 21-day requirement  
20 under NRCP 11 and that even if he did not, Ms. Howard was not prejudiced by any failure to  
21 strictly comply with the technical requirements of NRCP 11(c)(1)(A). First, the Court notes  
22 that much of the complained-of conduct in the Motion for Sanctions refers to Mr. Kozak's lack  
23 of candor regarding his receipt and delivery of documents.<sup>6</sup> Because of Mr. Kozak's conduct,  
24 Mr. Hughes was left with limited options of ensuring that there was a clear record of him  
25 sending the Motion for Sanctions to Mr. Kozak.

26 Second, although Mr. Kozak states that he had no prior notice of the Motion, the record  
27 is clear that Mr. Kozak had prior notice of many of Mr. Hughes' claims of sanctionable conduct.

28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
560  
561  
562  
563  
564  
565  
566  
567  
568  
569  
570  
571  
572  
573  
574  
575  
576  
577  
578  
579  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
590  
591  
592  
593  
594  
595  
596  
597  
598  
599  
600  
601  
602  
603  
604  
605  
606  
607  
608  
609  
610  
611  
612  
613  
614  
615  
616  
617  
618  
619  
620  
621  
622  
623  
624  
625  
626  
627  
628  
629  
630  
631  
632  
633  
634  
635  
636  
637  
638  
639  
640  
641  
642  
643  
644  
645  
646  
647  
648  
649  
650  
651  
652  
653  
654  
655  
656  
657  
658  
659  
660  
661  
662  
663  
664  
665  
666  
667  
668  
669  
670  
671  
672  
673  
674  
675  
676  
677  
678  
679  
680  
681  
682  
683  
684  
685  
686  
687  
688  
689  
690  
691  
692  
693  
694  
695  
696  
697  
698  
699  
700  
701  
702  
703  
704  
705  
706  
707  
708  
709  
710  
711  
712  
713  
714  
715  
716  
717  
718  
719  
720  
721  
722  
723  
724  
725  
726  
727  
728  
729  
730  
731  
732  
733  
734  
735  
736  
737  
738  
739  
740  
741  
742  
743  
744  
745  
746  
747  
748  
749  
750  
751  
752  
753  
754  
755  
756  
757  
758  
759  
760  
761  
762  
763  
764  
765  
766  
767  
768  
769  
770  
771  
772  
773  
774  
775  
776  
777  
778  
779  
780  
781  
782  
783  
784  
785  
786  
787  
788  
789  
790  
791  
792  
793  
794  
795  
796  
797  
798  
799  
800  
801  
802  
803  
804  
805  
806  
807  
808  
809  
810  
811  
812  
813  
814  
815  
816  
817  
818  
819  
820  
821  
822  
823  
824  
825  
826  
827  
828  
829  
830  
831  
832  
833  
834  
835  
836  
837  
838  
839  
840  
841  
842  
843  
844  
845  
846  
847  
848  
849  
850  
851  
852  
853  
854  
855  
856  
857  
858  
859  
860  
861  
862  
863  
864  
865  
866  
867  
868  
869  
870  
871  
872  
873  
874  
875  
876  
877  
878  
879  
880  
881  
882  
883  
884  
885  
886  
887  
888  
889  
890  
891  
892  
893  
894  
895  
896  
897  
898  
899  
900  
901  
902  
903  
904  
905  
906  
907  
908  
909  
910  
911  
912  
913  
914  
915  
916  
917  
918  
919  
920  
921  
922  
923  
924  
925  
926  
927  
928  
929  
930  
931  
932  
933  
934  
935  
936  
937  
938  
939  
940  
941  
942  
943  
944  
945  
946  
947  
948  
949  
950  
951  
952  
953  
954  
955  
956  
957  
958  
959  
960  
961  
962  
963  
964  
965  
966  
967  
968  
969  
970  
971  
972  
973  
974  
975  
976  
977  
978  
979  
980  
981  
982  
983  
984  
985  
986  
987  
988  
989  
990  
991  
992  
993  
994  
995  
996  
997  
998  
999  
1000

<sup>6</sup> As noted previously, Mr. Kozak claimed that he filed an Opposition to Mr. Hughes' Motion to Dismiss Counterclaim in a timely fashion (for which there is no record), Mr. Kozak stated that he could produce a file-stamped copy of the Opposition (which he has not), Mr. Kozak stated that Mr. Townsend told him he had received the Opposition (Mr. Townsend disputes this), Mr. Kozak stated that he had submitted his case conference report (for which there is no record). In the Order Denying Defendant's Motion For Summary Judgment And Denying Defendant's Motion To Set Aside Dismissal Of Counterclaim, the Court specifically noted its concern regarding Mr. Kozak's lack of candor regarding the opposition to the motion to dismiss counterclaims.

1 In fact, the issues related to Ms. Howard's counterclaims, discovery, and the early case  
2 conference report were raised at the May 17, 2016 hearing. Nevertheless, Mr. Kozak failed to  
3 cure the defects in the months between the hearing and the date on which the Motion was filed.<sup>7</sup>

4 Finally, even after Mr. Hughes filed the Motion for Sanctions, Mr. Kozak did not take  
5 steps to cure his sanctionable conduct within 21 days. It is almost inexplicable that even after  
6 the Motion for Sanctions was filed on August 26, 2016, Mr. Kozak did not remedy his failure to  
7 file a case conference report. In light of Mr. Kozak's failure to correct the simple task of filing  
8 his case conference report after the Motion was filed, it is evident that Mr. Kozak's conduct  
9 would not have been any different even if Mr. Hughes would have waited to file the Motion 21  
10 days after serving it. Thus, the Court will consider the merits of Mr. Hughes' Motion for  
11 Sanctions.

12 Ms. Howard's Motion for Summary Judgment

13 Mr. Hughes argues that Ms. Howard should be sanctioned because her Motion for  
14 Summary Judgment was without merit and was filed for the purpose of delay. The Court has  
15 previously entered an Order ruling on the merits of the Motion on September 9, 2016. Although  
16 Ms. Howard did not prevail on her Motion, her arguments were based upon applicable law and  
17 the Court does not find that it was presented for an improper purpose. Thus, to the extent that  
18 Mr. Hughes' Motion for Sanctions pertains to the Motion for Summary Judgment, it is Denied.

19 Ms. Howard's Counterclaims

20 Regarding Ms. Howard's Counterclaims, the Court the Court finds as follows: to the  
21 extent that Mr. Hughes' Motion for Sanctions pertains to Ms. Howard's original Answer and  
22 Counterclaim, it is Denied; to the extent that Mr. Hughes' Motion for Sanctions pertains to Mr.  
23 Kozak's conduct following the Dismissal of Counterclaims, it is Granted.

24  
<sup>7</sup> Again, the Court specifically notes that Mr. Townsend raised the issue of Mr. Kozak's failure to file an early case  
conference report in May. Mr. Kozak did not "cure" this defect until more than 6 months later, on January 4, 2017.

1 With respect to the original Counterclaims, Ms. Howard argued that she had various  
2 claims for relief against Mr. Hughes. Pursuant to NRCP 13(b) "[a] pleading may state as a  
3 counterclaim any claim against an opposing party not arising out of the transaction or  
4 occurrence that is the subject matter of the opposing party's claim." Although the  
5 Counterclaims were dismissed in an Order entered on January 7, 2016, Ms. Howard's initial  
6 pleading does not rise to the level of sanctionable conduct.

7 Regarding Mr. Kozak's subsequent conduct, the Court previously noted its concern  
8 regarding Mr. Kozak's lack of candor.<sup>8</sup> Mr. Kozak informed the Court that he had timely filed  
9 an Opposition to the Motion to Dismiss and that he could produce a file stamped copy thereof.  
10 To date, Mr. Kozak has not produced such a copy. Mr. Kozak also informed the Court that Mr.  
11 Townsend told Mr. Kozak that he had received a copy of the opposition. At the May 17, 2016  
12 hearing, Mr. Townsend informed the Court that he had *not* received a copy of the opposition.  
13 The Court finds Mr. Kozak's representation that Mr. Townsend told him he had previously  
14 received a copy of the opposition to lack the candor due under the rules of professional  
15 conduct.<sup>9</sup> Additionally, the Court finds that Mr. Kozak's incredible delay in addressing the  
16 dismissed counterclaims caused unnecessary delay and needlessly increased the cost of  
17 litigation.<sup>10</sup> Thus, to the extent that Mr. Hughes' Motion for Sanctions pertains to Mr.

18  
19  
20 <sup>8</sup> See Order Denying Defendant's Motion For Summary Judgment And Denying Defendant's Motion To Set Aside  
Dismissal Of Counterclaim at p. 4, entered September 7, 2016.

21 <sup>9</sup> See NRCP 3.3.

22 <sup>10</sup> Specifically, the Opposition was due on December 29, 2015. Noting the absence of an opposition, the Court  
entered an Order Dismissing Counterclaims on January 7, 2016. On May 17, 2016, Ms. Howard filed a Notice of  
23 Motion to set aside dismissal of counterclaim on the morning of the pre-trial hearing. Due to Mr. Kozak's assertion  
that he had attempted to timely file an Opposition, the Court directed Mr. Kozak to supplement his Motion with  
24 information supporting his assertion. On June 20, 2016, Mr. Kozak filed "Elizabeth Howard's Opposition to Motion  
to Dismiss; Motion to Strike." After speaking with Mr. Townsend, Mr. Kozak withdrew this document and filed a  
Supplement to Elizabeth Howard's Motion to Set Aside Dismissal of Counterclaim filed May 17, 2016" on July 8,  
2016. Mr. Townsend then filed an Opposition to the Motion to Set Aside on July 28, 2016. In sum, the issue of Ms.  
Howard's Counterclaims came before the Court for a decision in January 2016. Because Mr. Kozak failed to  
oppose the original Motion to Dismiss the Counterclaim in a timely fashion, and because of his subsequent lack of  
candor, Mr. Hughes incurred substantial additional attorney's fees.

1 Kozak's delay in addressing the dismissed counterclaims, it is Granted. Mr. Kozak shall  
2 personally pay attorney fees incurred as a result of the delayed opposition.

3 Early Case Conference & Pre-Trial Conference

4 Regarding Mr. Hughes' allegation that Mr. Kozak did not adequately participate in the  
5 early case conference or pre-trial conference, the Court does not find that Mr. Kozak's conduct  
6 rises to the level of sanctionable conduct (except as specifically noted above). Thus, to the  
7 extent that Mr. Hughes' Motion pertains to these defects, it is Denied.

8 Case Conference Report

9 Mr. Hughes alleges that Ms. Howard failed to provide discovery in accordance with  
10 NRCP 16.1(a)(1) or file his Early Case Conference Report. The attorneys participated in an  
11 early case conference on February 16, 2016. Thus, Ms. Howard's Case Conference Report was  
12 due on March 17, 2016. At the May 17, 2016 hearing, the Court noted the absence of the Case  
13 Conference Report. At the time Mr. Hughes filed the Motion for Sanctions on August 26, 2016,  
14 Ms. Howard's early case conference report was still outstanding. This fact is especially  
15 troubling because Trial was set to begin in this matter on October 3, 2016. Although the trial  
16 was ultimately continued, Defendant's failure to file a case conference report caused delays in  
17 discovery and caused Mr. Hughes to incur additional attorney's fees by preparing and filing the  
18 Motion for Sanctions to address this issue. Thus, to the extent Mr. Hughes' Motion for  
19 Sanctions pertains to Mr. Kozak's failure to file an early case conference report, it is granted.  
20 Mr. Kozak shall personally pay attorney's fees incurred by Mr. Hughes between March 17,  
21 2016 and August 26, 2016 due to Mr. Kozak's failure to file the case conference report.

22 Motion for Order to Show Cause

23 In his Motion for Order to Show Cause, Mr. Hughes seeks an Order directing Ms.  
24 Howard to appear and show cause as to why she should not be held in contempt of Court for her

1 failure to comply with the Court's September 27, 2016 Order Continuing Trial. Specifically  
2 Mr. Hughes alleges that Ms. Howard's attorney, Mr. Kozak was not cooperative in allowing an  
3 appraiser to access their property because he provided inaccurate contact information for Ms.  
4 Howard and failed to correct the inaccurate information in a timely fashion.

5 Pursuant to NRS 22.010(3), an act of contempt includes "disobedience or resistance to  
6 any lawful writ, order, rule or process issued by the court or judge at chambers." "An order on  
7 which a judgment of contempt is based must be clear and unambiguous, and must spell out the  
8 details of compliance in clear, specific and unambiguous terms so that the person will readily  
9 know exactly what duties or obligations are imposed on him." *Cunningham v. Eighth Judicial*  
10 *Dist. Court*, 102 Nev. 551, 559-560 (1986).

11 Here, the Court's September 27, 2016 Order states "Ms. Howard shall cooperate with  
12 Mr. Hughes to allow an appraiser to inspect the property by no later than October 27, 2016."  
13 Although Mr. Kozak's conduct is not ideal, the Court does not find that the September 27 Order  
14 was sufficiently specific to hold Mr. Kozak or Ms. Howard in contempt for their alleged  
15 conduct. Thus, Mr. Hughes Motion for Order to Show Cause is Denied.

16 The Court reviews Mr. Kozak's conduct throughout the history of this case in the greater  
17 context of the administration of our adversarial legal system. While the Court generally  
18 anticipates legal positions that are disparate from one another, it expects litigants to adhere to  
19 the guidelines that shape our legal system. Our legal system is governed by such authorities as  
20 the Rules of Civil Procedure, Rules of Professional Conduct, and local court rules to ensure that  
21 our adversarial proceedings remain civil. When one party (or counsel for one party) disregards  
22 the guidelines, they place an unfair burden on the other party. Here, it is clear that Mr. Kozak  
23 not only disregarded the rules, but also minimized the significance of his non-compliance on  
24

1 multiple occasions.<sup>11</sup> This attitude frustrates the legal process and has, in this case, caused Mr.  
2 Hughes to incur substantial fees for the work his attorney performed to compensate for Mr.  
3 Kozak's lack of diligence.

4 **GOOD CAUSE APPEARING, IT IS HEREBY ORDERED**

- 5 1. Mr. Hughes Motion for Order to Show Cause is DENIED.  
6 2. To the extent that Mr. Hughes' Motion for Sanctions pertains to Ms. Howard's Motion  
7 for Summary Judgment or her originally pled counterclaims, it is DENIED.  
8 3. To the extent that Mr. Hughes' Motion for Sanctions pertains to Mr. Kozak's belated  
9 filing of a Motion to Set Aside Dismissal of Counterclaim and his supplemental filings,  
10 Mr. Hughes' Motion is Granted.

11 a. Mr. Kozak shall personally pay Mr. Hughes for the attorney fees incurred in  
12 response to Mr. Kozak's delayed Motion and subsequent filings.

- 13 4. To the extent that Mr. Hughes' Motion for Sanctions pertains to Mr. Kozak's failure to  
14 timely file an Early Case Conference Report, it is Granted.

15 a. Mr. Kozak shall personally pay Mr. Hughes for the attorney fees incurred as a  
16 result of Mr. Kozak's failure to file the Report until January 4, 2017.

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23

24 <sup>11</sup> In addition to the previously noted conduct, the Court notes that, in his opposition to the motion for sanctions, Mr. Kozak argued that his Answer was only served 9 minutes late. He served the Answer upon Mr. Townsend at 9 minutes past midnight on the day it was due (it was not received or filed by the court until several days later).



1 5. By no later than March 17, 2017, Mr. Townsend shall submit an affidavit establishing  
2 the cost of attorney fees pertinent to the awards set forth above.

3 a. Mr. Kozak may file a response to the requested amount by no later than April 3,  
4 2017.

5 b. Thereafter, the Court will enter an Order establishing the amount of attorney fees  
6 owing.

7 IT IS SO ORDERED.

8 Dated this 1<sup>st</sup> day of March 2017.

9  
10   
11 THOMAS L. STOCKARD  
12 DISTRICT JUDGE  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

CERTIFICATE OF MAILING

The undersigned, an employee of the Tenth Judicial District Court, hereby certifies that I served the foregoing **ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR SANCTIONS** on the parties by depositing a copy thereof in the U.S. Mail at Fallon, Nevada, postage prepaid, as follows:

Justin Townsend, Esq.  
Allison MacKenzie, Ltd.  
402 North Division Street  
Carson City, NV 89703-4168

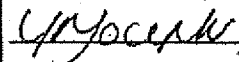
Charles R. Kozak, Esq.  
Kozak Lusiani Law, LLC  
3100 Mill Street, Suite 115  
Reno, NV 89502

DATED this 1<sup>st</sup> day of March, 2017.

  
Sue Sevon, Court Administrator

Subscribed and sworn to this

1<sup>st</sup> day of March, 2017.

  
Notary Public/Clerk

## **EXHIBIT 7**

## **EXHIBIT 7**

received  
3/2/17

Case No. 15-10DC-0876

Dept. I

FILED

2017 MAR -1 AM 9:52

STATE JUDICIAL  
COURT CLERK

BY *Joseph* DEPUTY

IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF CHURCHILL

SHAUGHNAN L. HUGHES,

Plaintiff,

vs.

ORDER GRANTING IN PART AND  
DENYING IN PART MOTION FOR  
SANCTIONS

ELIZABETH C. HOWARD, an individual;  
and DOES I through XX, inclusive,

Defendants.

This Matter is before the Court on Plaintiff SHAUGHNAN HUGHES' (hereinafter "Mr. Hughes") Motion for Sanctions, filed August 26, 2016, and Motion for Order to Show Cause, filed November 4, 2016. Mr. Hughes is represented by Justin Townsend, Esq. ELIZABETH HOWARD (hereinafter "Ms. Howard") opposed the Motion for Sanctions on September 14, 2016, and opposed the Motion for Order to Show Cause on November 22, 2016. Ms. Howard is represented by Charles Kozak, Esq.

The factual background in this case is summarized in the Order After February 6, 2017 Hearing. In short, the Complaint in this matter seeks an accounting of the parties' respective interests in a piece of real property, which they hold as joint tenants.

1 Mr. Hughes' Motion for Sanctions alleges that Ms. Howard and her attorney, Mr.  
2 Kozak, are subject to sanction because they repeatedly violated the Nevada Rules of Civil  
3 Procedure, District Court Rules and Tenth Judicial District Court Rules. Mr. Hughes notes  
4 especially the following violations: (1) Ms. Howard failed to timely file a responsive pleading to  
5 Mr. Hughes' Complaint;<sup>1</sup> (2) Ms. Howard failed to timely oppose Mr. Hughes' Motion to  
6 Dismiss Ms. Howard's Counterclaim; (3) Mr. Kozak did not participate in the early case  
7 conference in the manner contemplated in NRCP 16.1(b)(1);<sup>2</sup> (4) Mr. Kozak failed to timely  
8 respond to discovery requests;<sup>3</sup> (5) Mr. Kozak failed to timely file his Case Conference Report;<sup>4</sup>  
9 (6) Mr. Kozak insisted he had actually filed his Case Conference Report at the pre-trial hearing  
10 on May 17, 2016;<sup>5</sup> (7) Mr. Kozak's conduct with respect to the Motion to Set Aside Dismissal  
11 of Counterclaim was sanctionable under NRCP 11; (8) Mr. Kozak did not participate in the May  
12 17, 2016 Pre-Trial conference in good faith; (9) Ms. Howard's Motion for Summary Judgment  
13 was not supported by existing law and was brought only for purposes of delay; and (10) Ms.  
14 Howard's delay in filing the Motion to Set Aside Dismissal of Counterclaim was filed belatedly  
15 and for the purpose of delay. Due to the above allegations, Mr. Hughes argues that he incurred  
16 unnecessary attorney's fees, and he requests an award of such attorney's fees.

18  
19 <sup>1</sup> Pursuant to an Order Granting Publication of Summons, the Complaint in this case was published in the Lahontan  
Valley News with a last date of publication on October 21, 2015. Thus, the Answer was due on November 10,  
2015. The Answer was not filed until November 24, 2015.

20 <sup>2</sup> Specifically, Mr. Townsend alleges that Mr. Kozak stated he had not read the applicable law prior to the  
conference.

21 <sup>3</sup> Initial disclosures were due by March 1, 2016. After Mr. Kozak failed to timely comply with this requirement, the  
Court directed Mr. Kozak to send the initial disclosures to Mr. Townsend's office by no later than May 19, 2016,  
they were delivered May 20, 2016.

22 <sup>4</sup> The parties participated in an early case conference on February 16, 2016. Pursuant to NRCP 16.1(c), the Early  
Case Conference Reports were due by no later than March 17, 2016. Mr. Kozak did not file his Early Case  
Conference Report until January 4, 2017.

23 <sup>5</sup> At the May 17, 2016 hearing, Mr. Kozak specifically stated that he could provide proof of a file-stamped copy of  
his early case conference report even though the Court did not have an original in the file. Mr. Kozak's office  
24 submitted a faxed version of a (non-file-stamped) case conference report, which was lodged in the file in  
anticipation of him sending the original in accordance with 10JDCR 18. The Court did not receive the original until  
January 4, 2017, and the Court notes that the faxed document from May 17, 2016 is not identical to the subsequently  
submitted "original."

1 As a preliminary matter, Ms. Howard argues that Mr. Hughes' Motion for Sanctions  
2 should be denied because he did not abide by the 21-day safe-harbor rule under NRCP  
3 11(c)(1)(A). Specifically, NRCP 11(c)(1)(A) provides:

4 A motion for sanctions under this rule shall be made separately from other  
5 motions or requests and shall describe the specific conduct alleged to  
6 violate subdivision (b). It shall be served as provided in Rule 5, **but shall**  
7 **not be filed with or presented to the court unless, within 21 days after**  
8 **service of the motion (or such other period as the court may prescribe),**  
9 **the challenged paper, claim, defense, contention, allegation, or denial is**  
10 **not withdrawn or appropriately corrected.** If warranted, the court may  
11 award to the party prevailing on the motion the reasonable expenses and  
12 attorney's fees incurred in presenting or opposing the motion. Absent  
13 exceptional circumstances, a law firm shall be held jointly responsible for  
14 violations committed by its partners, associates, and employees.

15 (emphasis added). Here, Ms. Howard argues that she was not served with the Motion before it  
16 was filed by Mr. Hughes. Mr. Hughes argues that he has complied with the requirements of  
17 NRCP 11(c)(1)(A) because his Motion was not "presented to the court" until more than 21 days  
18 after service.

19 The Court finds that Mr. Hughes substantially complied with the 21-day requirement  
20 under NRCP 11 and that even if he did not, Ms. Howard was not prejudiced by any failure to  
21 strictly comply with the technical requirements of NRCP 11(c)(1)(A). First, the Court notes  
22 that much of the complained-of conduct in the Motion for Sanctions refers to Mr. Kozak's lack  
23 of candor regarding his receipt and delivery of documents.<sup>6</sup> Because of Mr. Kozak's conduct,  
24 Mr. Hughes was left with limited options of ensuring that there was a clear record of him  
25 sending the Motion for Sanctions to Mr. Kozak.

26 Second, although Mr. Kozak states that he had no prior notice of the Motion, the record  
27 is clear that Mr. Kozak had prior notice of many of Mr. Hughes' claims of sanctionable conduct.

28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
560  
561  
562  
563  
564  
565  
566  
567  
568  
569  
570  
571  
572  
573  
574  
575  
576  
577  
578  
579  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
590  
591  
592  
593  
594  
595  
596  
597  
598  
599  
600  
601  
602  
603  
604  
605  
606  
607  
608  
609  
610  
611  
612  
613  
614  
615  
616  
617  
618  
619  
620  
621  
622  
623  
624  
625  
626  
627  
628  
629  
630  
631  
632  
633  
634  
635  
636  
637  
638  
639  
640  
641  
642  
643  
644  
645  
646  
647  
648  
649  
650  
651  
652  
653  
654  
655  
656  
657  
658  
659  
660  
661  
662  
663  
664  
665  
666  
667  
668  
669  
670  
671  
672  
673  
674  
675  
676  
677  
678  
679  
680  
681  
682  
683  
684  
685  
686  
687  
688  
689  
690  
691  
692  
693  
694  
695  
696  
697  
698  
699  
700  
701  
702  
703  
704  
705  
706  
707  
708  
709  
710  
711  
712  
713  
714  
715  
716  
717  
718  
719  
720  
721  
722  
723  
724  
725  
726  
727  
728  
729  
730  
731  
732  
733  
734  
735  
736  
737  
738  
739  
740  
741  
742  
743  
744  
745  
746  
747  
748  
749  
750  
751  
752  
753  
754  
755  
756  
757  
758  
759  
760  
761  
762  
763  
764  
765  
766  
767  
768  
769  
770  
771  
772  
773  
774  
775  
776  
777  
778  
779  
780  
781  
782  
783  
784  
785  
786  
787  
788  
789  
790  
791  
792  
793  
794  
795  
796  
797  
798  
799  
800  
801  
802  
803  
804  
805  
806  
807  
808  
809  
810  
811  
812  
813  
814  
815  
816  
817  
818  
819  
820  
821  
822  
823  
824  
825  
826  
827  
828  
829  
830  
831  
832  
833  
834  
835  
836  
837  
838  
839  
840  
841  
842  
843  
844  
845  
846  
847  
848  
849  
850  
851  
852  
853  
854  
855  
856  
857  
858  
859  
860  
861  
862  
863  
864  
865  
866  
867  
868  
869  
870  
871  
872  
873  
874  
875  
876  
877  
878  
879  
880  
881  
882  
883  
884  
885  
886  
887  
888  
889  
890  
891  
892  
893  
894  
895  
896  
897  
898  
899  
900  
901  
902  
903  
904  
905  
906  
907  
908  
909  
910  
911  
912  
913  
914  
915  
916  
917  
918  
919  
920  
921  
922  
923  
924  
925  
926  
927  
928  
929  
930  
931  
932  
933  
934  
935  
936  
937  
938  
939  
940  
941  
942  
943  
944  
945  
946  
947  
948  
949  
950  
951  
952  
953  
954  
955  
956  
957  
958  
959  
960  
961  
962  
963  
964  
965  
966  
967  
968  
969  
970  
971  
972  
973  
974  
975  
976  
977  
978  
979  
980  
981  
982  
983  
984  
985  
986  
987  
988  
989  
990  
991  
992  
993  
994  
995  
996  
997  
998  
999  
1000

<sup>6</sup> As noted previously, Mr. Kozak claimed that he filed an Opposition to Mr. Hughes' Motion to Dismiss Counterclaim in a timely fashion (for which there is no record), Mr. Kozak stated that he could produce a file-stamped copy of the Opposition (which he has not), Mr. Kozak stated that Mr. Townsend told him he had received the Opposition (Mr. Townsend disputes this), Mr. Kozak stated that he had submitted his case conference report (for which there is no record). In the Order Denying Defendant's Motion For Summary Judgment And Denying Defendant's Motion To Set Aside Dismissal Of Counterclaim, the Court specifically noted its concern regarding Mr. Kozak's lack of candor regarding the opposition to the motion to dismiss counterclaims.

1 In fact, the issues related to Ms. Howard's counterclaims, discovery, and the early case  
2 conference report were raised at the May 17, 2016 hearing. Nevertheless, Mr. Kozak failed to  
3 cure the defects in the months between the hearing and the date on which the Motion was filed.<sup>7</sup>

4 Finally, even after Mr. Hughes filed the Motion for Sanctions, Mr. Kozak did not take  
5 steps to cure his sanctionable conduct within 21 days. It is almost inexplicable that even after  
6 the Motion for Sanctions was filed on August 26, 2016, Mr. Kozak did not remedy his failure to  
7 file a case conference report. In light of Mr. Kozak's failure to correct the simple task of filing  
8 his case conference report after the Motion was filed, it is evident that Mr. Kozak's conduct  
9 would not have been any different even if Mr. Hughes would have waited to file the Motion 21  
10 days after serving it. Thus, the Court will consider the merits of Mr. Hughes' Motion for  
11 Sanctions.

12 Ms. Howard's Motion for Summary Judgment

13 Mr. Hughes argues that Ms. Howard should be sanctioned because her Motion for  
14 Summary Judgment was without merit and was filed for the purpose of delay. The Court has  
15 previously entered an Order ruling on the merits of the Motion on September 9, 2016. Although  
16 Ms. Howard did not prevail on her Motion, her arguments were based upon applicable law and  
17 the Court does not find that it was presented for an improper purpose. Thus, to the extent that  
18 Mr. Hughes' Motion for Sanctions pertains to the Motion for Summary Judgment, it is Denied.

19 Ms. Howard's Counterclaims

20 Regarding Ms. Howard's Counterclaims, the Court the Court finds as follows: to the  
21 extent that Mr. Hughes' Motion for Sanctions pertains to Ms. Howard's original Answer and  
22 Counterclaim, it is Denied; to the extent that Mr. Hughes' Motion for Sanctions pertains to Mr.  
23 Kozak's conduct following the Dismissal of Counterclaims, it is Granted.

24  
<sup>7</sup> Again, the Court specifically notes that Mr. Townsend raised the issue of Mr. Kozak's failure to file an early case  
conference report in May. Mr. Kozak did not "cure" this defect until more than 6 months later, on January 4, 2017.

1 With respect to the original Counterclaims, Ms. Howard argued that she had various  
2 claims for relief against Mr. Hughes. Pursuant to NRCP 13(b) “[a] pleading may state as a  
3 counterclaim any claim against an opposing party not arising out of the transaction or  
4 occurrence that is the subject matter of the opposing party’s claim.” Although the  
5 Counterclaims were dismissed in an Order entered on January 7, 2016, Ms. Howard’s initial  
6 pleading does not rise to the level of sanctionable conduct.

7 Regarding Mr. Kozak’s subsequent conduct, the Court previously noted its concern  
8 regarding Mr. Kozak’s lack of candor.<sup>8</sup> Mr. Kozak informed the Court that he had timely filed  
9 an Opposition to the Motion to Dismiss and that he could produce a file stamped copy thereof.  
10 To date, Mr. Kozak has not produced such a copy. Mr. Kozak also informed the Court that Mr.  
11 Townsend told Mr. Kozak that he had received a copy of the opposition. At the May 17, 2016  
12 hearing, Mr. Townsend informed the Court that he had *not* received a copy of the opposition.  
13 The Court finds Mr. Kozak’s representation that Mr. Townsend told him he had previously  
14 received a copy of the opposition to lack the candor due under the rules of professional  
15 conduct.<sup>9</sup> Additionally, the Court finds that Mr. Kozak’s incredible delay in addressing the  
16 dismissed counterclaims caused unnecessary delay and needlessly increased the cost of  
17 litigation.<sup>10</sup> Thus, to the extent that Mr. Hughes’ Motion for Sanctions pertains to Mr.

18  
19  
20 <sup>8</sup> See Order Denying Defendant’s Motion For Summary Judgment And Denying Defendant’s Motion To Set Aside  
Dismissal Of Counterclaim at p. 4, entered September 7, 2016.

21 <sup>9</sup> See NRPC 3.3.

22 <sup>10</sup> Specifically, the Opposition was due on December 29, 2015. Noting the absence of an opposition, the Court  
entered an Order Dismissing Counterclaims on January 7, 2016. On May 17, 2016, Ms. Howard filed a Notice of  
Motion to set aside dismissal of counterclaim on the morning of the pre-trial hearing. Due to Mr. Kozak’s assertion  
that he had attempted to timely file an Opposition, the Court directed Mr. Kozak to supplement his Motion with  
information supporting his assertion. On June 20, 2016, Mr. Kozak filed “Elizabeth Howard’s Opposition to Motion  
to Dismiss; Motion to Strike.” After speaking with Mr. Townsend, Mr. Kozak withdrew this document and filed a  
Supplement to Elizabeth Howard’s Motion to Set Aside Dismissal of Counterclaim filed May 17, 2016” on July 8,  
2016. Mr. Townsend then filed an Opposition to the Motion to Set Aside on July 28, 2016. In sum, the issue of Ms.  
Howard’s Counterclaims came before the Court for a decision in January 2016. Because Mr. Kozak failed to  
oppose the original Motion to Dismiss the Counterclaim in a timely fashion, and because of his subsequent lack of  
candor, Mr. Hughes incurred substantial additional attorney’s fees.



1 Kozak's delay in addressing the dismissed counterclaims, it is Granted. Mr. Kozak shall  
2 personally pay attorney fees incurred as a result of the delayed opposition.

3 Early Case Conference & Pre-Trial Conference

4 Regarding Mr. Hughes' allegation that Mr. Kozak did not adequately participate in the  
5 early case conference or pre-trial conference, the Court does not find that Mr. Kozak's conduct  
6 rises to the level of sanctionable conduct (except as specifically noted above). Thus, to the  
7 extent that Mr. Hughes' Motion pertains to these defects, it is Denied.

8 Case Conference Report

9 Mr. Hughes alleges that Ms. Howard failed to provide discovery in accordance with  
10 NRCP 16.1(a)(1) or file his Early Case Conference Report. The attorneys participated in an  
11 early case conference on February 16, 2016. Thus, Ms. Howard's Case Conference Report was  
12 due on March 17, 2016. At the May 17, 2016 hearing, the Court noted the absence of the Case  
13 Conference Report. At the time Mr. Hughes filed the Motion for Sanctions on August 26, 2016,  
14 Ms. Howard's early case conference report was still outstanding. This fact is especially  
15 troubling because Trial was set to begin in this matter on October 3, 2016. Although the trial  
16 was ultimately continued, Defendant's failure to file a case conference report caused delays in  
17 discovery and caused Mr. Hughes to incur additional attorney's fees by preparing and filing the  
18 Motion for Sanctions to address this issue. Thus, to the extent Mr. Hughes' Motion for  
19 Sanctions pertains to Mr. Kozak's failure to file an early case conference report, it is granted.  
20 Mr. Kozak shall personally pay attorney's fees incurred by Mr. Hughes between March 17,  
21 2016 and August 26, 2016 due to Mr. Kozak's failure to file the case conference report.

22 Motion for Order to Show Cause

23 In his Motion for Order to Show Cause, Mr. Hughes seeks an Order directing Ms.  
24 Howard to appear and show cause as to why she should not be held in contempt of Court for her

1 failure to comply with the Court's September 27, 2016 Order Continuing Trial. Specifically  
2 Mr. Hughes alleges that Ms. Howard's attorney, Mr. Kozak was not cooperative in allowing an  
3 appraiser to access their property because he provided inaccurate contact information for Ms.  
4 Howard and failed to correct the inaccurate information in a timely fashion.

5 Pursuant to NRS 22.010(3), an act of contempt includes "disobedience or resistance to  
6 any lawful writ, order, rule or process issued by the court or judge at chambers." "An order on  
7 which a judgment of contempt is based must be clear and unambiguous, and must spell out the  
8 details of compliance in clear, specific and unambiguous terms so that the person will readily  
9 know exactly what duties or obligations are imposed on him." *Cunningham v. Eighth Judicial*  
10 *Dist. Court*, 102 Nev. 551, 559-560 (1986).

11 Here, the Court's September 27, 2016 Order states "Ms. Howard shall cooperate with  
12 Mr. Hughes to allow an appraiser to inspect the property by no later than October 27, 2016."  
13 Although Mr. Kozak's conduct is not ideal, the Court does not find that the September 27 Order  
14 was sufficiently specific to hold Mr. Kozak or Ms. Howard in contempt for their alleged  
15 conduct. Thus, Mr. Hughes Motion for Order to Show Cause is Denied.

16 The Court reviews Mr. Kozak's conduct throughout the history of this case in the greater  
17 context of the administration of our adversarial legal system. While the Court generally  
18 anticipates legal positions that are disparate from one another, it expects litigants to adhere to  
19 the guidelines that shape our legal system. Our legal system is governed by such authorities as  
20 the Rules of Civil Procedure, Rules of Professional Conduct, and local court rules to ensure that  
21 our adversarial proceedings remain civil. When one party (or counsel for one party) disregards  
22 the guidelines, they place an unfair burden on the other party. Here, it is clear that Mr. Kozak  
23 not only disregarded the rules, but also minimized the significance of his non-compliance on  
24

multiple occasions.<sup>11</sup> This attitude frustrates the legal process and has, in this case, caused Mr. Hughes to incur substantial fees for the work his attorney performed to compensate for Mr. Kozak's lack of diligence.

**GOOD CAUSE APPEARING, IT IS HEREBY ORDERED**

1. Mr. Hughes Motion for Order to Show Cause is DENIED.
2. To the extent that Mr. Hughes' Motion for Sanctions pertains to Ms. Howard's Motion for Summary Judgment or her originally pled counterclaims, it is DENIED.
3. To the extent that Mr. Hughes' Motion for Sanctions pertains to Mr. Kozak's belated filing of a Motion to Set Aside Dismissal of Counterclaim and his supplemental filings, Mr. Hughes' Motion is Granted.

a. Mr. Kozak shall personally pay Mr. Hughes for the attorney fees incurred in response to Mr. Kozak's delayed Motion and subsequent filings.

4. To the extent that Mr. Hughes' Motion for Sanctions pertains to Mr. Kozak's failure to timely file an Early Case Conference Report, it is Granted.

a. Mr. Kozak shall personally pay Mr. Hughes for the attorney fees incurred as a result of Mr. Kozak's failure to file the Report until January 4, 2017.

///

///

///

///

///

///

---

<sup>11</sup> In addition to the previously noted conduct, the Court notes that, in his opposition to the motion for sanctions, Mr. Kozak argued that his Answer was only served 9 minutes late. He served the Answer upon Mr. Townsend at 9 minutes past midnight on the day it was due (it was not received or filed by the court until several days later).

1 5. By no later than March 17, 2017, Mr. Townsend shall submit an affidavit establishing  
2 the cost of attorney fees pertinent to the awards set forth above.

3 a. Mr. Kozak may file a response to the requested amount by no later than April 3,  
4 2017.

5 b. Thereafter, the Court will enter an Order establishing the amount of attorney fees  
6 owing.

7 IT IS SO ORDERED.

8 Dated this 15<sup>th</sup> day of March 2017.

9  
10   
11 THOMAS L. STOCKARD  
12 DISTRICT JUDGE  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24


CERTIFICATE OF MAILING

The undersigned, an employee of the Tenth Judicial District Court, hereby certifies that I served the foregoing **ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR SANCTIONS** on the parties by depositing a copy thereof in the U.S. Mail at Fallon, Nevada, postage prepaid, as follows:

Justin Townsend, Esq.  
Allison MacKenzie, Ltd.  
402 North Division Street  
Carson City, NV 89703-4168

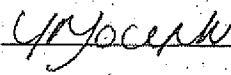
Charles R. Kozak, Esq.  
Kozak Lusiani Law, LLC  
3100 Mill Street, Suite 115  
Reno, NV 89502

DATED this 1<sup>st</sup> day of March, 2017.

  
Sue Sevon, Court Administrator

Subscribed and sworn to this

1<sup>st</sup> day of March, 2017.

  
Notary Public/Clerk

## **EXHIBIT 6**

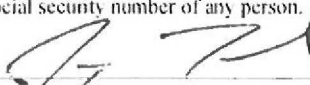
## **EXHIBIT 6**

ALLISON MacKENZIE, LTD.  
402 North Division Street, P.O. Box 646, Carson City, NV 89702  
Telephone: (775) 687-0202 Fax: (775) 882-7918  
E-Mail Address: law@allisonmackenzie.com

Case No.15-10DC-0876

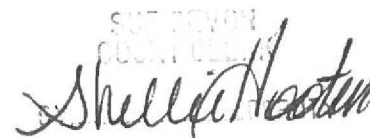
Dept. No. I

The undersigned hereby affirms that  
this document does not contain the  
social security number of any person.

  
JUSTIN M. TOWNSEND, Esq.

FILED

2017 MAR -1 AM 10:43

  
SUE TOWN  
COUNTY CLERK

IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF CHURCHILL

SHAUGHINAN L. HUGHES, an  
individual,

Plaintiff,

vs.

ELIZABETH C. HOWARD, an  
individual; and DOES I through  
XX, inclusive.


Defendants.

**NOTICE OF ENTRY OF ORDER AFTER  
FEBRUARY 6, 2017 HEARING**

NOTICE IS HEREBY GIVEN that on the 27<sup>th</sup> day of February, 2017, the Court duly  
entered an *Order After February 6, 2017 Hearing* in the above-entitled matter. A copy of said  
*Order* is attached hereto as **Exhibit "1"**.

DATED this 28<sup>th</sup> day of February, 2017.

ALLISON MacKENZIE, LTD.  
402 North Division Street  
Carson City, NV 89703-4168

By:   
JUSTIN M. TOWNSEND, ESQ.  
Nevada State Bar No. 12293

Attorneys for Plaintiff,  
SHAUGHINAN L. HUGHES

CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be served on all parties to this action by:

- ☒ Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]
- ☐ Hand-delivery - via Reno/Carson Messenger Service [NRCP 5(b)(2)(A)]
- ☐ Electronic Transmission
- ☐ Federal Express, UPS, or other overnight delivery
- ☐ E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures [NRCP 5(b)(2)(D)]

fully addressed as follows:

CHARLES R. KOZAK, ESQ.  
KOZAK LUSIANI LAW, LLC  
3100 Mill Street, Suite 115  
Reno, NV 89502

DATED this 28<sup>th</sup> day of February, 2017.

  
NANCY FONTENOT



**EXHIBIT “1”**

**EXHIBIT “1”**

FILED

2017 FEB 27 PM 2:26

SUE SEYON  
COURT CLERK  
By Julie Benninghoff

1 Case No. 15-10DC-0876

2 Dept. I

3  
4  
5  
6 IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF CHURCHILL  
8  
9

10 SHAUGHNAN L. HUGHES,

11 Plaintiff,

ORDER AFTER FEBRUARY 6, 2017

HEARING

12 vs.

13 ELIZABETH C. HOWARD, an individual;  
14 and DOES I through XX, inclusive,

15 Defendants.

16 On February 6, 2017, this Matter came before the Court for a Trial on SHAUGHNAN  
17 HUGHES' (hereinafter "Mr. Hughes") Civil Complaint. At the trial, Mr. Hughes was present  
18 and was represented by Justin Townsend, Esq. ELIZABETH HOWARD (hereinafter "Ms.  
19 Howard") was also present and was represented by Charles Kozak, Esq.

20 At the trial, Mr. Hughes, Ms. Howard, John Hughes, and Fallon Hughes were each placed  
21 under oath and offered testimony. No other witnesses were called. Based upon the evidence  
22 provided, the Court makes the following findings and conclusions.<sup>1</sup> Mr. Hughes has also filed  
23

24 <sup>1</sup> The Court made its factual findings in this case after considering the totality of evidence. It considered carefully the testimony of the parties and witnesses, as well as the documentary evidence. The Court determined the credibility of each witness and the weight to be given their testimony, especially in light of contradictory evidence and testimony presented during the hearing.

1 an Application for Order to Show Cause and a Motion for Sanctions, both of which will be  
2 addressed in a separate Order.

### 3 I. Factual and Procedural Background

4 Mr. Hughes and Ms. Howard were involved in a romantic relationship in the years leading  
5 up to the filing of the Complaint in this case. The couple began dating in the fall of 2009 after  
6 Ms. Howard sold a number of coins to Mr. Hughes in his capacity as a buyer for Gold Star Coin.  
7 Although both Mr. Hughes and Ms. Howard were living in California, they decided to move to  
8 Fallon, Nevada in the summer of 2010. Together, they leased property on Melanie Drive for  
9 approximately one year.<sup>2</sup> The couple then moved to another leased property on Stillwater Road.<sup>3</sup>

10 While living in Fallon, the parties sought a piece of property to purchase in the area. They  
11 each applied for financing, but encountered a hurdle do to an IRS debt owed by Ms. Howard.  
12 Then, Ms. Howard obtained a third party settlement in the approximate amount of Three Hundred  
13 and Ninety Thousand Dollars (\$390,000), stemming from a workplace injury.<sup>4</sup>

14 In June of 2012, using funds from the third party settlement, Ms. Howard purchased a  
15 parcel of real property in Churchill County, Nevada (hereinafter "Fulkerson property") for Sixty-  
16 Seven Thousand Dollars (\$67,000.00).<sup>5</sup> The property was conveyed to Ms. Howard by way of  
17 Special Warranty Deed. Several days later, on July 11, 2012, Ms. Howard conveyed the  
18 Fulkerson property by way of Quitclaim Deed to herself and Mr. Hughes as Joint Tenants.<sup>6</sup>

19 The property was originally in a dilapidated condition and required extensive  
20 rehabilitation. The parties made a number of improvements, including: installing a fence; causing  
21

22  
<sup>2</sup> Both Mr. Hughes and Ms. Howard were listed on the lease.

23 <sup>3</sup> Again, both Mr. Hughes and Ms. Howard were listed on the lease.

24 <sup>4</sup> Based upon Ms. Howard's testimony and Mr. Hughes' testimony, the amount that Ms. Howard actually received  
was approximately One Hundred and Fifty-Three Thousand Dollars (\$153,000). Recording of Ms. Howard's  
Testimony, at 1:43:00 p.m.

<sup>5</sup> Recording of Ms. Howard's Testimony, at 1:42:39 p.m.

<sup>6</sup> See Plaintiff's Exhibit 1.

1 an accessory dwelling to be built on the property; erecting a garage and workshop area; pouring  
2 a new concrete slab in front of the garage; rehabilitating a preexisting aircraft hangar; building a  
3 series of retaining walls, an aviary, and a dog house; and making other landscaping improvements.  
4 Ms. Howard contributed in excess of One Hundred Thousand Dollars (\$100,000) to the  
5 improvements on the Fulkerson Property.<sup>7</sup> For his part, Mr. Hughes and his daughter, Savannah  
6 Hughes, completed much of the physical labor involved in the improvements. Mr. Hughes  
7 testified that his financial contribution to the property was approximately Twenty Thousand  
8 Dollars (\$20,000). Mr. Hughes' father also contributed to the improvement efforts by purchasing  
9 a tractor and transferring funds from his checking account to Ms. Howard's checking account.<sup>8</sup>

10 With regard to regular expenses on the property, both parties testified that they had an  
11 agreement whereby Ms. Howard was generally responsible for paying the property insurance  
12 while Mr. Hughes was responsible for paying the property taxes.<sup>9</sup> The parties noted only a few  
13 exceptions when Mr. Hughes also paid monthly insurance premiums. Neither party presented  
14 evidence regarding the payment of other regular expenses for the property.

15 Notably, the parties have provided several receipts for their purchases, but they have  
16 limited documentation regarding the flow of money between themselves and between them and  
17 their parents. Mr. Hughes maintained a safe with substantial cash reserves and several high-value  
18 items, which he sold throughout the Fulkerson construction process. At times, the safe contained  
19 cash belonging to Ms. Howard or her mother.<sup>10</sup> Ms. Howard specifically testified that she  
20

21 <sup>7</sup> Based upon the testimony, there is some ambiguity as to whether Ms. Howard personally contributed this entire  
22 amount or if her mother contributed a portion of these funds. *See, e.g.* Recording of Ms. Howard's Testimony at  
23 1:50:16 p.m. In any event some combination of Ms. Howard and her mother contributed in excess of \$100,000.

24 <sup>8</sup> There was conflicting testimony regarding one substantial transfer of \$5000 from John Hughes to Ms. Howard.  
John Hughes testified that the funds were intended for improvements related to the garage. Ms. Howard testified  
that \$3500 was a reimbursement for a truck that she purchased for Mr. Hughes. Upon review of the testimony, the  
Court finds John Hughes' testimony more credible and finds that he contributed at least \$5000 toward the  
improvements.

<sup>9</sup> *See, e.g.* Recording of Ms. Howard's Testimony at 2:03:00 p.m.

<sup>10</sup> There is no testimony as to whether the cash was stored separately from Mr. Hughes' funds or whether Ms. Howard  
or her mother had independent access to the safe.

1 obtained her third party settlement in the form of money orders, which she placed in an envelope  
2 in the safe. She later cashed several of the money orders and placed the cash in the safe as well.<sup>11</sup>  
3 Meanwhile, Mr. Hughes' father would transfer funds directly to Ms. Howard's checking account.  
4 Although there is conflicting testimony regarding John Hughes' intent for the funds, it is clear  
5 that there was never any kind of written or formal agreement regarding the funds. The funds were  
6 simply transferred to Ms. Howard for the benefit of the family. Additionally, although Ms.  
7 Howard paid for a majority of the materials on the home, many of the materials were specifically  
8 intended for the projects on which Mr. Hughes was working. It is clear that the parties jointly  
9 pursued each of the improvements and contributed some level of effort or funds toward their  
10 completion. There was never any kind of formal agreement between the parties regarding how  
11 much money either party would spend, how much time either party would spend, or what interest  
12 either party would have after completion. In fact, at Trial, neither party was able to articulate,  
13 with any degree of certainty, how much time or money either of them had dedicated to this  
14 property.

15 Sometime around March of 2015 the relationship between the parties deteriorated. Ms.  
16 Howard sought a Protection Order against Mr. Hughes from the New River Township Justice  
17 Court, but her application was denied. Nevertheless, Ms. Howard replaced locks on the property  
18 to prevent Mr. Hughes from accessing the property.<sup>12</sup> Thereafter, Mr. Hughes initiated this action  
19 by filing his Complaint on July 27, 2015.

20 In his Complaint, Mr. Hughes seeks an accounting of his interest in the Fulkerson  
21 Property. He further seeks an order directing the sale of the Fulkerson property and an equitable  
22 division of the proceeds thereof between the parties. On November 24, 2015, Ms. Howard filed  
23

24 <sup>11</sup> Ms. Howard specifically stated that *she* put the cash in the safe because she did not know what else to do with it.  
Recording of Ms. Howard's Testimony at 1:43:00 p.m.

<sup>12</sup> See Recording of Ms. Howard's Testimony at 2:02:00 p.m.

1 an Answer and Counterclaim requesting an order directing Mr. Hughes "to specifically perform  
2 the action required to give 100% sole ownership of the property to [Ms. Howard]." In an Order  
3 entered January 7, 2016, Ms. Howard's Counterclaims were dismissed.<sup>13</sup>

4 During the course of litigation, the parties obtained an appraisal for the Fulkerson property  
5 and they have stipulated to a current value of Two Hundred and Twenty-Five Thousand Dollars  
6 (\$225,000).

## 7 II. Analysis

8 Mr. Hughes asks the Court to determine the parties' respective rights to a parcel of real  
9 property, which they own as joint tenants. A joint tenancy in real property may be created "by  
10 transfer from a sole owner to himself or herself and others." Nev. Rev. Stat. 111.065(1) (2015).  
11 Once a joint tenancy is established, it may be partitioned at the request of a joint tenant in  
12 accordance with Chapter 39 of the Nevada Revised Statutes. The Court must then determine the  
13 respective interests of the parties in the real property. See Nev. Rev. Stat. 39.080 (2015).

14 The fractional shares held by joint tenants are presumed to be equal. See *Sack v. Tomlin*,  
15 110 Nev. 204, 213 (1994)<sup>14</sup> (citing *Sandars v. Knapp*, 674 P.2d 385 (Colo. Ct. App. 1983)  
16 (holding that "[i]t is presumed that the shares of co-tenants are equal, whether they be tenants in  
17 common or joint tenants")). "[U]nequal contributions toward acquisition of property by co-  
18 tenants who are not related and show no donative intent can rebut the presumption of equal  
19 shares." *Id.* (quoting *Williams v. Monzingo*, 235 Iowa 434, 16 N.W.2d 619 (Iowa 1944)). When  
20 there is a showing that the parties unequally contributed to the purchase price, a new presumption  
21

23 <sup>13</sup> Ms. Howard's subsequent Motion to Set Aside Dismissal of Counterclaim pursuant to NRCP 60(b)(1) was denied  
24 in an order entered September 7, 2016.

<sup>14</sup> The Court notes that the ruling in *Sack* was specific to land held as a tenancy in common, however the court in  
*Langevin* found the precedent applicable to property owned as a joint tenancy. *Langevin v. York*, 111 Nev. 1481,  
1485 (1995).

1 donee's acceptance of the gift" *Monzo v. Eighth Judicial Dist. Court of Nev. (In re Irrevocable*  
2 *Trust Agreement of 1979)*, 331 P.3d 881, 885 (Nev. 2014). "Determining a donor's donative intent  
3 and beliefs is a question for the fact-finder." *Id.* at 888.

4 Mr. Hughes presented overwhelming and largely uncontroverted evidence regarding Ms.  
5 Howard's donative intent. Mr. Hughes testified that the parties jointly sought a piece of  
6 investment property in Fallon. Both parties initially sought financing for the property, but altered  
7 course when Ms. Howard obtained the third party settlement. The parties discussed putting both  
8 names on the deed on several occasions and they ultimately went to the County Recorder's office  
9 together to execute the quitclaim deed. Mr. Hughes testified that, at the time the deed was  
10 executed, he paid the transfer tax of Two Hundred and Thirty Seven Dollars (\$237) after Ms.  
11 Howard told him that she had "already paid her half" and that the transfer tax constituted his  
12 half.<sup>15</sup> Mr. Hughes also testified that Ms. Howard joked with him, saying, "when was the last  
13 time you paid Two Hundred and Thirty-Seven Dollars for a Thirty-Seven Thousand Dollar  
14 coin."<sup>16</sup> The Court finds Mr. Hughes' testimony credible. Ms. Howard's statements at the time  
15 of the transfer show that she intended to bestow unto Mr. Hughes a one-half interest in the  
16 Fulkerson property.

17 Additionally, both Mr. Hughes and Ms. Howard testified that they had an informal  
18 agreement whereby Ms. Howard paid the property insurance while Mr. Hughes paid the property  
19 tax.<sup>17</sup> In general, co-owners are responsible for their proportionate share of the expenses in a joint  
20  
21  
22

<sup>15</sup> See Recording of Mr. Hughes' Testimony at 9:25:10 a.m.

<sup>16</sup> See Recording of Mr. Hughes' Testimony at 9:25:30 a.m. This statement is significant, because it refers to the history of coin exchanges between the parties. As noted previously, Mr. Hughes and Ms. Howard's relationship began with Ms. Howard selling coins to Mr. Hughes, and Mr. Hughes continued to work as a coin buyer for the first few years of their relationship. Although the math does not equate to exactly one-half of the original purchase price, the numbers are close enough to demonstrate donative intent.

<sup>17</sup> Recording of Ms. Howard's Testimony at 2:02:40 p.m.



1 arises: that the parties intended to share in proportion to their contribution to the purchase price.

2 *Id.* See also *Langevin v. York*, 111 Nev. 1481, 1485 (1995).

3 In this case, the parties agree that they own the Fulkerson property in joint tenancy. Thus,  
4 the Court begins with the presumption that Mr. Hughes and Ms. Howard's shares in the tenancy  
5 are equal. The evidence regarding the parties' interests can be divided into two categories:  
6 evidence pertaining to the initial formation of the joint tenancy and evidence pertaining to the  
7 improvements on the property.

8 (a) Initial Formation

9 With respect to the initial formation, Ms. Howard argues that the parties' unequal  
10 contribution to the purchase price of the real property rebuts the presumption of equal ownership.  
11 Pursuant to *Langevin*, "there is a presumption that where co-tenants unequally share in the  
12 purchase price of property, 'the co-tenants intended to share in proportion to the amount  
13 contributed to the purchase price.'" 111 Nev. at 1485 (citing *Sack*, 110 Nev. at 210). Here, Mr.  
14 Hughes does not dispute that Ms. Howard originally paid the entire purchase price of Sixty-Seven  
15 Thousand Dollars (\$67,000) for the property, and that she was the sole owner of the property.  
16 Within a few days, Ms. Howard executed the Quitclaim Deed, transferring title to herself and Mr.  
17 Hughes as joint tenants. Thus, the Court finds, that Ms. Howard rebutted the initial presumption  
18 of equal ownership.

19 However, Mr. Hughes has provided clear and convincing evidence of Ms. Howard's  
20 donative intent at the time of the transfer—thereby rebutting the secondary presumption.  
21 Specifically, Mr. Hughes argues that Ms. Howard intended to gift him an equal share in the joint  
22 tenancy when she executed the quitclaim deed. "In Nevada, a valid inter vivos gift or donative  
23 transfer requires a donor's intent to voluntarily make a present transfer of property to a donee  
24 without consideration, the donor's actual or constructive delivery of the gift to the donee, and the



1 tenancy.<sup>18</sup> Here, the parties had an agreement in which each of them paid comparable expenses.<sup>19</sup>  
2 The parties continued to follow this agreement even after their relationship deteriorated and Ms.  
3 Howard replaced the locks to prevent Mr. Hughes from entering the property.<sup>20</sup> This arrangement  
4 supports a finding that both parties intended to share the property equally.

5 To controvert Mr. Hughes' evidence, Ms. Howard testified only that she had no memory  
6 of purchasing the home or executing the quitclaim deed.<sup>21</sup> By contrast, Ms. Howard was able to  
7 testify in detail about conversations she had with Mr. Hughes before she purchased the property.  
8 Ms. Howard also testified in detail about improvements that the parties made to the property after  
9 they purchased it.<sup>22</sup> Ms. Howard also recalled driving between Fallon and Western California on  
10 a regular basis in the weeks before and after executing the deed.<sup>23</sup>

11 Mr. Hughes and his father, John Hughes, each also testified that Ms. Howard was alert  
12 and lucid during the timeframe of the quitclaim deed.<sup>24</sup> John Hughes testified that he had a  
13 telephone conversation with Ms. Howard shortly after she executed the quitclaim deed in which  
14 she stated that she put Mr. Hughes on the deed to protect him in the event that something happened  
15  
16

17 <sup>18</sup> See, e.g. 17 Amer. & Eng. Ency. Law, p. 686 (1900) (stating that "[t]he general rule is that all the co-tenants are  
18 liable in proportion to their respective interests for the necessary expenses connected with the protection and  
19 preservation of the common property")

20 <sup>19</sup> Based upon Plaintiff's Exhibits 2 and 3, the insurance costs were approximately \$150 per month or \$1800 per year  
21 from 2015 forward. The property taxes went from \$800 for tax year 2013-2014 to \$1943 for tax year 2014-2015 and  
22 \$2042 for tax year 2015-2016. There is no evidence regarding the property insurance cost prior to 2015. Based upon  
23 the comparable cost for the 2014-2016 period, the Court finds that the parties intended to share the expenses  
24 approximately equally.

<sup>20</sup> In fact, Mr. Hughes not only continued to pay the property taxes after he moved from the property, but also paid  
at least one monthly payment for the property insurance.

<sup>21</sup> See Recording of Ms. Howard's Testimony at 1:38:53 p.m. (Ms. Howard's testimony regarding the initial  
purchase) & 1:39:22 p.m. (Ms. Howard's testimony regarding execution of the quitclaim deed)

<sup>22</sup> The Court specifically notes Ms. Howard's ability to recall that she hired Hotwire to perform the electrical work  
necessary to put a lamp in the living room, and that she hired Shawn Thursten from SRT Construction to put locks  
on the front and rear doors of the home. She was also able to recall purchasing a water heater, toilet, and faucet for  
the restroom. She also recalled purchasing a washer and dryer for the home, the receipt for which was dated the  
same day as the quitclaim deed. See Recording of Ms. Howard's Testimony at 1:41:34 p.m.

<sup>23</sup> Ms. Howard testified that, in retrospect, she did not believe it was safe for her to be operating a motor vehicle  
during this timeframe. Nevertheless, she did operate a motor vehicle and at the time of the Trial, she recalled having  
operated the motor vehicle.

<sup>24</sup> Recording of Mr. Hughes' Testimony at 9:25:05 a.m.; Recording of John Hughes' Testimony at 11:47:00 a.m.

1 to her.<sup>25</sup> Upon review of the evidence, the Court does not find Ms. Howard's testimony—that  
2 she simply cannot recall executing the quitclaim deed—credible. The Court finds that Ms.  
3 Howard knowingly executed the deed with the intent to transfer an equal interest in the property  
4 to Mr. Hughes.<sup>26</sup>

5 In light of the evidence of Ms. Howard's donative intent at the time of transfer, Mr.  
6 Hughes has rebutted the secondary presumption that the joint tenants intended to share in the  
7 tenancy in proportion to their respective contributions to the purchase price. Thus, the Court finds  
8 that the parties have equal interests in the joint tenancy.

9 (b) Improvements and Increased Value

10 The parties agree that the property was in an extremely dilapidated condition before they  
11 began improving it. Both Mr. Hughes and Ms. Howard contributed substantially toward  
12 improvements on the property in the years following the initial transfer. Based upon the stipulated  
13 current property value of Two Hundred and Twenty-Five Thousand Dollars (\$225,000), the  
14 property value increased by One Hundred and Fifty-Eight Thousand Dollars (\$158,000). In  
15 general, if one co-tenant improves property held in joint tenancy, that tenant may be entitled to  
16 reimbursement upon partition. See *Collier v. Collier*, 73 Ariz. 405, 413; 242 P.2d 537 (Ariz.  
17 1952); *Denton v. Lazenby*, 255 Kan. 860, 863-64 (1994); *Milian v. De Leon*, 181 Cal. App. 3d  
18 1185 (1986); see generally *Sack v. Tomlinson*, 110 Nev. 204 (1994); *McKissick v. McKissick*, 93  
19 Nev. 139 (1977). The entitlement to contribution for improvements arises from principles of  
20 equity, and one purpose is to ensure that the efforts of one co-tenant do not unjustly enrich another.

21  
22 <sup>25</sup> See Recording of John Hughes' Testimony at 11:46:40 a.m. Specifically, John Hughes stated that Ms. Howard  
23 was worried that her family might interfere with Mr. Hughes' interest in the property if Ms. Howard died. The Court  
24 finds John Hughes' testimony credible and notes that Ms. Howard's statement indicates that she was cognizant of  
the right of survivorship in a joint tenancy. This further supports a finding that Ms. Howard intended to create a joint  
tenancy when she executed the deed.

<sup>26</sup> The parties did not provide any evidence to suggest that the property value changed between the time that Ms.  
Howard initially purchased the property and when she executed the quitclaim deed. Because the transfers were only  
several days apart, and in the absence of evidence to the contrary, the Court finds that the value was \$67,000 at the  
time of transfer.

1 See *Denton*, 255 Kan. at 863; *Janik v. Janik*, 474 N.E.2d 1054, 1057 (Ind. App. 1985); *Capogreco*  
2 *v. Capogreco*, 378 N.E.2d 279 (Ill. App. 1978); *Clift v. Clift*, 10 S.W. 338, 341 (Tex. 1888). In  
3 some instances, the value of an improvement is higher or lower than its cost. In such cases, it is  
4 equity that guides the Court's determination of the appropriate value for reimbursement.<sup>27</sup> In any  
5 event, in order to receive a reimbursement, a tenant who funds improvements must affirmatively  
6 seek such reimbursement at the time of partition. See *Sack v. Tomlinson*, 110 Nev. 204 (1994).

7 Here, the parties each testified regarding their monetary and in-kind contributions to the  
8 improvements on the property. Ms. Howard did not argue that she was entitled to a  
9 reimbursement for any contribution, however she argued that the court should apportion the  
10 parties' ownership interests in proportion to their expenses. Because the Court has found that the  
11 parties are equal co-tenants, it will consider the issue of reimbursement to address Ms. Howard's  
12 argument that she is entitled to more than a one-half interest in the property. Although Ms.  
13 Howard argues that she expended in excess of Two Hundred Thousand Dollars (\$200,000) toward  
14 the improvements on the property, many of the expenses were paid in cash, and there are no  
15 records showing the source of the cash.<sup>28</sup> Further, neither party maintained sufficiently detailed  
16 records to confirm their exact contributions. For example, it is undisputed that the single most  
17 costly improvement on the property is the accessory dwelling, which the parties built as a  
18 residence for Ms. Howard's mother. Even for this significant improvement, neither party  
19 presented clear testimony or other evidence regarding their respective interests.

20  
21  
22  
23 <sup>27</sup> For example, if one co-tenant does not consent to an improvement and the cost of the improvement is substantially  
24 higher than the resulting increase in value, the un-consenting co-tenant may not be responsible for his share of the  
cost but rather his share of the increase in value.

<sup>28</sup> The court specifically notes that the evidence reveals that both Ms. Howard's mother and Mr. Hughes' father  
contributed funds toward the improvements on the property. Because the parties operated primarily in cash, there  
are very limited records pertaining to large transactions.

1 To begin, the evidence regarding the increase in property value attributable to the  
2 accessory dwelling is limited.<sup>29</sup> Each party testified that the cost of the accessory dwelling was  
3 likely in excess of One Hundred Thousand Dollars (\$100,000), however neither party was able to  
4 narrow the cost to a more precise number. Of greater significance is the fact that the parties  
5 provided conflicting testimony regarding the source of funds for the accessory dwelling.<sup>30</sup>  
6 Because the Court has no reliable evidence regarding who actually paid for the improvement, it  
7 cannot find that Ms. Howard is entitled to a reimbursement.<sup>31</sup>

8 Further, it is clear that the parties jointly sought the construction of the accessory  
9 dwelling.<sup>32</sup> Each party testified that both parties were involved in procuring and directing the  
10 contractors on this project. While each party testified that the majority of the labor performed on  
11 the accessory dwelling was contracted, there is no dispute that Mr. Hughes performed site  
12 preparation and clean-up services and worked with Ms. Howard to complete several  
13 improvements to the interior.<sup>33</sup> Absent any evidence that either party is entitled to reimbursement,  
14 the Court finds that the parties are entitled to equal shares of the resulting increased value.<sup>34</sup>  
15

16 <sup>29</sup> The primary reference to the attributable increase in value appears in Defendant's Exhibit J, which is an Appraisal  
17 of the property. The appraisal estimates a value attributable to the accessory dwelling that is \$76 per square foot or  
18 \$76,000, total (the appraisal lists the square footage of the accessory dwelling at 1000 square feet). Plaintiff's Exhibit  
19 14 is an Assessor's Improvement List for the property, it values the replacement cost of the Accessory Dwelling Unit  
20 as \$118,486. There is no evidence establishing how this number was generated.

21 <sup>30</sup> Mr. Hughes does not dispute that he did not contribute financially to the dwelling, but it is not clear whether the  
22 funds came from Ms. Howard or her mother (who has no cognizable ownership interest in the property whatsoever).  
23 See Recording of Ms. Howard's Testimony at 1:50:16 p.m. (Ms. Howard's testimony that she paid all of the  
24 contractors in cash from a box in which her mother had all of her money).

25 <sup>31</sup> Notably, Ms. Howard's counsel argued during closing arguments that a combination of Ms. Howard and Ms.  
26 Howard's mother had paid in excess of \$200,000. He argued that Ms. Howard's interest in the property should be  
27 reflective of both her and her mother's contributions. In other words, he argued that the improvement had been a  
28 gift to Ms. Howard from her mother and that Ms. Howard was entitled to the full benefit thereof. However, at Trial,  
29 Ms. Howard presented no evidence whatsoever regarding her mother's intent when funding various improvements.  
30 Thus, the Court has no basis for a finding that Ms. Howard has a greater interest in the improvements than Mr. Hughes.

31 <sup>32</sup> Specifically, Ms. Howard completed the initial Special Use Permit Application, Mr. Hughes completed the  
32 Building Permit Application, and both parties completed the Owner Acknowledgment for the Special Use Permit.  
33 See Plaintiff's Exhibits 9-11.

34 <sup>33</sup> Specifically, Mr. Hughes testified that they installed some subflooring and various fixtures.

35 <sup>34</sup> A similar analysis is applicable to the garage/workshop structure: each party contributed financial resources (Ms.  
Howard contributed approximately \$20,000, which included approximately \$5,000 in funds from Mr. Hughes' father;  
meanwhile, Mr. Hughes funded electrical work and the pouring of a concrete pad); Mr. Hughes also conducted site  
preparation and cleanup. The parties clearly endeavored to complete this improvement together; each of them

1 With respect to Ms. Howard's other expenditures, almost every receipt offered into  
2 evidence corresponds to a project on which Mr. Hughes was working. Ms. Howard primarily  
3 provided the funds necessary to purchase tools and equipment while Mr. Hughes and his daughter  
4 completed the vast majority of the labor for the improvements.<sup>35</sup> Mr. Hughes also alleges that he  
5 expended approximately Twenty Thousand Dollars (\$20,000) in cash toward improvements, but  
6 he has provided only one receipt for electrical work in the approximate amount of One Thousand  
7 Dollars (\$1,000).<sup>36</sup> Although it is unusual to spend almost Twenty Thousand Dollars (\$20,000)  
8 without records thereof, it is not inconsistent with the parties' general approach to this project.<sup>37</sup>

9 Throughout the entire construction process, each party contributed significant resources  
10 toward improving the property, but neither of them maintained any records showing a running  
11 balance of the value of their respective contributions. Their lackadaisical approach to record  
12 keeping tends to show that the parties were jointly working toward a common goal of increasing  
13 the value of the property with an intent to share equally in the benefits.<sup>38</sup>

14 Upon review of the testimony and other evidence presented at Trial, the Court finds that  
15 each party is entitled to an equal share of the property. Based upon the property appraisal in  
16 Defendant's Exhibit J, the vast majority of the property value is centralized in the building  
17 structures, thus there is no practical way of conducting a partition. Because Ms. Howard is in  
18 possession of the property and has denied Mr. Hughes access, she shall be directed to pay Mr.

19  
20 contributed resources toward the improvement with no formal bookkeeping or agreement regarding the value of their  
contributions. In the absence of evidence to the contrary, the parties are each entitled to share in the increased value  
resulting from this improvement.

21 <sup>35</sup> By way of example, Ms. Howard purchased hundreds of railroad ties, which Mr. Hughes and his daughter used in  
the construction of various retaining walls. See Defendant's Exhibit L, Bates Stamp EHTRIAL000520 (receipt for  
256 Railroad Ties).

22 <sup>36</sup> See Recording of Mr. Hughes' Testimony at 11:32:27 a.m.

23 <sup>37</sup> The parties almost entirely operated in cash, as exemplified by the fact that Ms. Howard obtained a \$137,000.00  
settlement in cashier's checks, which she subsequently cashed and maintained in a safe.

24 <sup>38</sup> Regarding the parties' intent to share in the benefits, the Court also notes that Ms. Howard testified that she intended  
for Mr. Hughes to be an equal co-tenant after the parties were married. Recording of Ms. Howard's Testimony at  
2:03:45 p.m. Both parties testified that they discussed marriage throughout most of the construction process, but  
their plans never came to fruition. Nevertheless, Ms. Howard's testimony indicates that at the time of the  
construction, the parties discussed marriage and even she believed that they would be equal co-tenants in the future.



1 Hughes his one-half share of Two Hundred and Twenty-Five Thousand Dollars (\$225,000), less  
2 his one-half share of closing costs, fees and standard realtor commission by no later than July 1,  
3 2017.

4 **GOOD CAUSE APPEARING, IT IS HEREBY ORDERED**

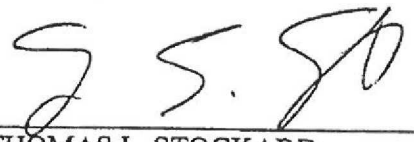
5 1. By no later than June 1, 2017, Ms. Howard shall buy-out Mr. Hughes' share in the property  
6 by paying him his one-half share of Two-Hundred and Twenty-Five Thousand Dollars  
7 (\$225,000), less his one-half share of standard fees and costs associated with the sale of  
8 real property.

9 a. Ms. Howard shall transfer Mr. Hughes' payment to Mr. Hughes' attorney's trust  
10 account, where it shall remain until Mr. Hughes executes the documents necessary  
11 to transfer his interest in the joint tenancy to Ms. Howard.

12 2. If, by June 1, 2017, Ms. Howard declines to exercise the option of buying-out Mr. Hughes,  
13 the parties shall immediately list the property for sale with a mutually agreeable Realtor  
14 who regularly conducts business in Churchill County, Nevada. If the parties cannot agree  
15 upon a realtor, they shall file an application for setting to put this matter on calendar for  
16 the Court to designate a realtor.

17 IT IS SO ORDERED.

18 Dated this 27<sup>th</sup> day of February 2017.

19   
20 THOMAS L. STOCKARD  
21 DISTRICT JUDGE  
22  
23  
24

1  
2  
3 CERTIFICATE OF MAILING

4 The undersigned, an employee of the Tenth Judicial District Court, hereby  
5 certifies that I served the foregoing **ORDER AFTER FEBRUARY 6, 2017 HEARING** on the  
6 parties by depositing a copy thereof in the U.S. Mail at Fallon, Nevada, postage prepaid, as  
7 follows:

8 Justin Townsend, Esq.  
9 Allison MacKenzie, Ltd.  
402 North Division Street  
Carson City, NV 89703-4168


10 Charles R. Kozak, Esq.  
11 Kozak Lusiani Law, LLC  
3100 Mill Street, Suite 115  
12 Reno, NV 89502

13 DATED this 27<sup>th</sup> day of February, 2017.

14   
15 Sue Sevon, Court Administrator

16 Subscribed and sworn to this

17 27<sup>th</sup> day of February 2017.

18   
19 Notary Public/Clerk

## **EXHIBIT 5**

## **EXHIBIT 5**



FILED

2017 FEB 27 PM 2:26

SUE SEYON  
COURT CLERK  
by Julie Bonifant

1 Case No. 15-10DC-0876

2 Dept. I

3  
4  
5  
6 **IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
7 **IN AND FOR THE COUNTY OF CHURCHILL**  
8

9  
10 SHAUGHNAN L. HUGHES,

11 Plaintiff,

**ORDER AFTER FEBRUARY 6, 2017**

12 vs.

**HEARING**

13 ELIZABETH C. HOWARD, an individual;  
14 and DOES I through XX, inclusive,

15 Defendants.  
16

17 On February 6, 2017, this Matter came before the Court for a Trial on SHAUGHNAN  
18 HUGHES' (hereinafter "Mr. Hughes") Civil Complaint. At the trial, Mr. Hughes was present  
19 and was represented by Justin Townsend, Esq. ELIZABETH HOWARD (hereinafter "Ms.  
20 Howard") was also present and was represented by Charles Kozak, Esq.

21 At the trial, Mr. Hughes, Ms. Howard, John Hughes, and Fallon Hughes were each placed  
22 under oath and offered testimony. No other witnesses were called. Based upon the evidence  
23 provided, the Court makes the following findings and conclusions.<sup>1</sup> Mr. Hughes has also filed

24 <sup>1</sup> The Court made its factual findings in this case after considering the totality of evidence. It considered carefully the testimony of the parties and witnesses, as well as the documentary evidence. The Court determined the credibility of each witness and the weight to be given their testimony, especially in light of contradictory evidence and testimony presented during the hearing.

1 an Application for Order to Show Cause and a Motion for Sanctions, both of which will be  
2 addressed in a separate Order.

### 3 I. Factual and Procedural Background

4 Mr. Hughes and Ms. Howard were involved in a romantic relationship in the years leading  
5 up to the filing of the Complaint in this case. The couple began dating in the fall of 2009 after  
6 Ms. Howard sold a number of coins to Mr. Hughes in his capacity as a buyer for Gold Star Coin.  
7 Although both Mr. Hughes and Ms. Howard were living in California, they decided to move to  
8 Fallon, Nevada in the summer of 2010. Together, they leased property on Melanie Drive for  
9 approximately one year.<sup>2</sup> The couple then moved to another leased property on Stillwater Road.<sup>3</sup>

10 While living in Fallon, the parties sought a piece of property to purchase in the area. They  
11 each applied for financing, but encountered a hurdle do to an IRS debt owed by Ms. Howard.  
12 Then, Ms. Howard obtained a third party settlement in the approximate amount of Three Hundred  
13 and Ninety Thousand Dollars (\$390,000), stemming from a workplace injury.<sup>4</sup>

14 In June of 2012, using funds from the third party settlement, Ms. Howard purchased a  
15 parcel of real property in Churchill County, Nevada (hereinafter "Fulkerson property") for Sixty-  
16 Seven Thousand Dollars (\$67,000.00).<sup>5</sup> The property was conveyed to Ms. Howard by way of  
17 Special Warranty Deed. Several days later, on July 11, 2012, Ms. Howard conveyed the  
18 Fulkerson property by way of Quitclaim Deed to herself and Mr. Hughes as Joint Tenants.<sup>6</sup>

19 The property was originally in a dilapidated condition and required extensive  
20 rehabilitation. The parties made a number of improvements, including: installing a fence; causing  
21

---

22 <sup>2</sup> Both Mr. Hughes and Ms. Howard were listed on the lease.

23 <sup>3</sup> Again, both Mr. Hughes and Ms. Howard were listed on the lease.

24 <sup>4</sup> Based upon Ms. Howard's testimony and Mr. Hughes' testimony, the amount that Ms. Howard actually received  
was approximately One Hundred and Fifty-Three Thousand Dollars (\$153,000). Recording of Ms. Howard's  
Testimony, at 1:43:00 p.m.

<sup>5</sup> Recording of Ms. Howard's Testimony, at 1:42:39 p.m.

<sup>6</sup> See Plaintiff's Exhibit I.

1 an accessory dwelling to be built on the property; erecting a garage and workshop area; pouring  
2 a new concrete slab in front of the garage; rehabilitating a preexisting aircraft hangar; building a  
3 series of retaining walls, an aviary, and a dog house; and making other landscaping improvements.  
4 Ms. Howard contributed in excess of One Hundred Thousand Dollars (\$100,000) to the  
5 improvements on the Fulkerson Property.<sup>7</sup> For his part, Mr. Hughes and his daughter, Savannah  
6 Hughes, completed much of the physical labor involved in the improvements. Mr. Hughes  
7 testified that his financial contribution to the property was approximately Twenty Thousand  
8 Dollars (\$20,000). Mr. Hughes' father also contributed to the improvement efforts by purchasing  
9 a tractor and transferring funds from his checking account to Ms. Howard's checking account.<sup>8</sup>

10 With regard to regular expenses on the property, both parties testified that they had an  
11 agreement whereby Ms. Howard was generally responsible for paying the property insurance  
12 while Mr. Hughes was responsible for paying the property taxes.<sup>9</sup> The parties noted only a few  
13 exceptions when Mr. Hughes also paid monthly insurance premiums. Neither party presented  
14 evidence regarding the payment of other regular expenses for the property.

15 Notably, the parties have provided several receipts for their purchases, but they have  
16 limited documentation regarding the flow of money between themselves and between them and  
17 their parents. Mr. Hughes maintained a safe with substantial cash reserves and several high-value  
18 items, which he sold throughout the Fulkerson construction process. At times, the safe contained  
19 cash belonging to Ms. Howard or her mother.<sup>10</sup> Ms. Howard specifically testified that she  
20

21 <sup>7</sup> Based upon the testimony, there is some ambiguity as to whether Ms. Howard personally contributed this entire  
22 amount or if her mother contributed a portion of these funds. *See, e.g.* Recording of Ms. Howard's Testimony at  
1:50:16 p.m. In any event some combination of Ms. Howard and her mother contributed in excess of \$100,000.

23 <sup>8</sup> There was conflicting testimony regarding one substantial transfer of \$5000 from John Hughes to Ms. Howard.  
John Hughes testified that the funds were intended for improvements related to the garage. Ms. Howard testified  
24 that \$3500 was a reimbursement for a truck that she purchased for Mr. Hughes. Upon review of the testimony, the  
Court finds John Hughes' testimony more credible and finds that he contributed at least \$5000 toward the  
improvements.

<sup>9</sup> *See, e.g.* Recording of Ms. Howard's Testimony at 2:03:00 p.m.

<sup>10</sup> There is no testimony as to whether the cash was stored separately from Mr. Hughes' funds or whether Ms. Howard  
or her mother had independent access to the safe.

1 obtained her third party settlement in the form of money orders, which she placed in an envelope  
2 in the safe. She later cashed several of the money orders and placed the cash in the safe as well.<sup>11</sup>  
3 Meanwhile, Mr. Hughes' father would transfer funds directly to Ms. Howard's checking account.  
4 Although there is conflicting testimony regarding John Hughes' intent for the funds, it is clear  
5 that there was never any kind of written or formal agreement regarding the funds. The funds were  
6 simply transferred to Ms. Howard for the benefit of the family. Additionally, although Ms.  
7 Howard paid for a majority of the materials on the home, many of the materials were specifically  
8 intended for the projects on which Mr. Hughes was working. It is clear that the parties jointly  
9 pursued each of the improvements and contributed some level of effort or funds toward their  
10 completion. There was never any kind of formal agreement between the parties regarding how  
11 much money either party would spend, how much time either party would spend, or what interest  
12 either party would have after completion. In fact, at Trial, neither party was able to articulate,  
13 with any degree of certainty, how much time or money either of them had dedicated to this  
14 property.

15 Sometime around March of 2015 the relationship between the parties deteriorated. Ms.  
16 Howard sought a Protection Order against Mr. Hughes from the New River Township Justice  
17 Court, but her application was denied. Nevertheless, Ms. Howard replaced locks on the property  
18 to prevent Mr. Hughes from accessing the property.<sup>12</sup> Thereafter, Mr. Hughes initiated this action  
19 by filing his Complaint on July 27, 2015.

20 In his Complaint, Mr. Hughes seeks an accounting of his interest in the Fulkerson  
21 Property. He further seeks an order directing the sale of the Fulkerson property and an equitable  
22 division of the proceeds thereof between the parties. On November 24, 2015, Ms. Howard filed  
23

24 <sup>11</sup> Ms. Howard specifically stated that *she* put the cash in the safe because she did not know what else to do with it.  
Recording of Ms. Howard's Testimony at 1:43:00 p.m.

<sup>12</sup> See Recording of Ms. Howard's Testimony at 2:02:00 p.m.

1 an Answer and Counterclaim requesting an order directing Mr. Hughes "to specifically perform  
2 the action required to give 100% sole ownership of the property to [Ms. Howard]." In an Order  
3 entered January 7, 2016, Ms. Howard's Counterclaims were dismissed.<sup>13</sup>

4 During the course of litigation, the parties obtained an appraisal for the Fulkerson property  
5 and they have stipulated to a current value of Two Hundred and Twenty-Five Thousand Dollars  
6 (\$225,000).

## 7 II. Analysis

8 Mr. Hughes asks the Court to determine the parties' respective rights to a parcel of real  
9 property, which they own as joint tenants. A joint tenancy in real property may be created "by  
10 transfer from a sole owner to himself or herself and others." Nev. Rev. Stat. 111.065(1) (2015).  
11 Once a joint tenancy is established, it may be partitioned at the request of a joint tenant in  
12 accordance with Chapter 39 of the Nevada Revised Statutes. The Court must then determine the  
13 respective interests of the parties in the real property. See Nev. Rev. Stat. 39.080 (2015).

14 The fractional shares held by joint tenants are presumed to be equal. See *Sack v. Tomlin*,  
15 110 Nev. 204, 213 (1994)<sup>14</sup> (citing *Sandars v. Knapp*, 674 P.2d 385 (Colo. Ct. App. 1983)  
16 (holding that "[i]t is presumed that the shares of co-tenants are equal, whether they be tenants in  
17 common or joint tenants")). "[U]nequal contributions toward acquisition of property by co-  
18 tenants who are not related and show no donative intent can rebut the presumption of equal  
19 shares." *Id.* (quoting *Williams v. Monzingo*, 235 Iowa 434, 16 N.W.2d 619 (Iowa 1944)). When  
20 there is a showing that the parties unequally contributed to the purchase price, a new presumption  
21  
22  
23

24 <sup>13</sup> Ms. Howard's subsequent Motion to Set Aside Dismissal of Counterclaim pursuant to NRCP 60(b)(1) was denied in an order entered September 7, 2016.

<sup>14</sup> The Court notes that the ruling in *Sack* was specific to land held as a tenancy in common, however the court in *Langevin* found the precedent applicable to property owned as a joint tenancy. *Langevin v. York*, 111 Nev. 1481, 1485 (1995).

1 arises: that the parties intended to share in proportion to their contribution to the purchase price.

2 *Id.* See also *Langevin v. York*, 111 Nev. 1481, 1485 (1995).

3 In this case, the parties agree that they own the Fulkerson property in joint tenancy. Thus,  
4 the Court begins with the presumption that Mr. Hughes and Ms. Howard's shares in the tenancy  
5 are equal. The evidence regarding the parties' interests can be divided into two categories:  
6 evidence pertaining to the initial formation of the joint tenancy and evidence pertaining to the  
7 improvements on the property.

8 (a) Initial Formation

9 With respect to the initial formation, Ms. Howard argues that the parties' unequal  
10 contribution to the purchase price of the real property rebuts the presumption of equal ownership.  
11 Pursuant to *Langevin*, "there is a presumption that where co-tenants unequally share in the  
12 purchase price of property, 'the co-tenants intended to share in proportion to the amount  
13 contributed to the purchase price.'" 111 Nev. at 1485 (citing *Sack*, 110 Nev. at 210). Here, Mr.  
14 Hughes does not dispute that Ms. Howard originally paid the entire purchase price of Sixty-Seven  
15 Thousand Dollars (\$67,000) for the property, and that she was the sole owner of the property.  
16 Within a few days, Ms. Howard executed the Quitclaim Deed, transferring title to herself and Mr.  
17 Hughes as joint tenants. Thus, the Court finds, that Ms. Howard rebutted the initial presumption  
18 of equal ownership.

19 However, Mr. Hughes has provided clear and convincing evidence of Ms. Howard's  
20 donative intent at the time of the transfer—thereby rebutting the secondary presumption.  
21 Specifically, Mr. Hughes argues that Ms. Howard intended to gift him an equal share in the joint  
22 tenancy when she executed the quitclaim deed. "In Nevada, a valid inter vivos gift or donative  
23 transfer requires a donor's intent to voluntarily make a present transfer of property to a donee  
24 without consideration, the donor's actual or constructive delivery of the gift to the donee, and the

1 donee's acceptance of the gift" *Monzo v. Eighth Judicial Dist. Court of Nev. (In re Irrevocable*  
2 *Trust Agreement of 1979)*, 331 P.3d 881, 885 (Nev. 2014). "Determining a donor's donative intent  
3 and beliefs is a question for the fact-finder." *Id.* at 888.

4 Mr. Hughes presented overwhelming and largely uncontroverted evidence regarding Ms.  
5 Howard's donative intent. Mr. Hughes testified that the parties jointly sought a piece of  
6 investment property in Fallon. Both parties initially sought financing for the property, but altered  
7 course when Ms. Howard obtained the third party settlement. The parties discussed putting both  
8 names on the deed on several occasions and they ultimately went to the County Recorder's office  
9 together to execute the quitclaim deed. Mr. Hughes testified that, at the time the deed was  
10 executed, he paid the transfer tax of Two Hundred and Thirty Seven Dollars (\$237) after Ms.  
11 Howard told him that she had "already paid her half" and that the transfer tax constituted his  
12 half.<sup>15</sup> Mr. Hughes also testified that Ms. Howard joked with him, saying, "when was the last  
13 time you paid Two Hundred and Thirty-Seven Dollars for a Thirty-Seven Thousand Dollar  
14 coin."<sup>16</sup> The Court finds Mr. Hughes' testimony credible. Ms. Howard's statements at the time  
15 of the transfer show that she intended to bestow unto Mr. Hughes a one-half interest in the  
16 Fulkerson property.

17 Additionally, both Mr. Hughes and Ms. Howard testified that they had an informal  
18 agreement whereby Ms. Howard paid the property insurance while Mr. Hughes paid the property  
19 tax.<sup>17</sup> In general, co-owners are responsible for their proportionate share of the expenses in a joint  
20  
21

---

22 <sup>15</sup> See Recording of Mr. Hughes' Testimony at 9:25:10 a.m.

23 <sup>16</sup> See Recording of Mr. Hughes' Testimony at 9:25:30 a.m. This statement is significant, because it refers to the  
24 history of coin exchanges between the parties. As noted previously, Mr. Hughes and Ms. Howard's relationship  
began with Ms. Howard selling coins to Mr. Hughes, and Mr. Hughes continued to work as a coin buyer for the first  
few years of their relationship. Although the math does not equate to exactly one-half of the original purchase price,  
the numbers are close enough to demonstrate donative intent.

<sup>17</sup> Recording of Ms. Howard's Testimony at 2:02:40 p.m.

1 tenancy.<sup>18</sup> Here, the parties had an agreement in which each of them paid comparable expenses.<sup>19</sup>  
2 The parties continued to follow this agreement even after their relationship deteriorated and Ms.  
3 Howard replaced the locks to prevent Mr. Hughes from entering the property.<sup>20</sup> This arrangement  
4 supports a finding that both parties intended to share the property equally.

5 To controvert Mr. Hughes' evidence, Ms. Howard testified only that she had no memory  
6 of purchasing the home or executing the quitclaim deed.<sup>21</sup> By contrast, Ms. Howard was able to  
7 testify in detail about conversations she had with Mr. Hughes before she purchased the property.  
8 Ms. Howard also testified in detail about improvements that the parties made to the property after  
9 they purchased it.<sup>22</sup> Ms. Howard also recalled driving between Fallon and Western California on  
10 a regular basis in the weeks before and after executing the deed.<sup>23</sup>

11 Mr. Hughes and his father, John Hughes, each also testified that Ms. Howard was alert  
12 and lucid during the timeframe of the quitclaim deed.<sup>24</sup> John Hughes testified that he had a  
13 telephone conversation with Ms. Howard shortly after she executed the quitclaim deed in which  
14 she stated that she put Mr. Hughes on the deed to protect him in the event that something happened  
15  
16

---

17 <sup>18</sup> See, e.g. 17 Amer. & Eng. Ency. Law, p. 686 (1900) (stating that "[t]he general rule is that all the co-tenants are  
18 liable in proportion to their respective interests for the necessary expenses connected with the protection and  
19 preservation of the common property")

20 <sup>19</sup> Based upon Plaintiff's Exhibits 2 and 3, the insurance costs were approximately \$150 per month or \$1800 per year  
21 from 2015 forward. The property taxes went from \$800 for tax year 2013-2014 to \$1943 for tax year 2014-2015 and  
22 \$2042 for tax year 2015-2016. There is no evidence regarding the property insurance cost prior to 2015. Based upon  
23 the comparable cost for the 2014-2016 period, the Court finds that the parties intended to share the expenses  
24 approximately equally.

<sup>20</sup> In fact, Mr. Hughes not only continued to pay the property taxes after he moved from the property, but also paid  
at least one monthly payment for the property insurance.

<sup>21</sup> See Recording of Ms. Howard's Testimony at 1:38:53 p.m. (Ms. Howard's testimony regarding the initial  
purchase) & 1:39:22 p.m. (Ms. Howard's testimony regarding execution of the quitclaim deed)

<sup>22</sup> The Court specifically notes Ms. Howard's ability to recall that she hired Hotwire to perform the electrical work  
necessary to put a lamp in the living room, and that she hired Shawn Thursten from SRT Construction to put locks  
on the front and rear doors of the home. She was also able to recall purchasing a water heater, toilet, and faucet for  
the restroom. She also recalled purchasing a washer and dryer for the home, the receipt for which was dated the  
same day as the quitclaim deed. See Recording of Ms. Howard's Testimony at 1:41:34 p.m.

<sup>23</sup> Ms. Howard testified that, in retrospect, she did not believe it was safe for her to be operating a motor vehicle  
during this timeframe. Nevertheless, she did operate a motor vehicle and at the time of the Trial, she recalled having  
operated the motor vehicle.

<sup>24</sup> Recording of Mr. Hughes' Testimony at 9:25:05 a.m.; Recording of John Hughes' Testimony at 11:47:00 a.m.



1 to her.<sup>25</sup> Upon review of the evidence, the Court does not find Ms. Howard's testimony—that  
2 she simply cannot recall executing the quitclaim deed—credible. The Court finds that Ms.  
3 Howard knowingly executed the deed with the intent to transfer an equal interest in the property  
4 to Mr. Hughes.<sup>26</sup>

5 In light of the evidence of Ms. Howard's donative intent at the time of transfer, Mr.  
6 Hughes has rebutted the secondary presumption that the joint tenants intended to share in the  
7 tenancy in proportion to their respective contributions to the purchase price. Thus, the Court finds  
8 that the parties have equal interests in the joint tenancy.

9 (b) Improvements and Increased Value

10 The parties agree that the property was in an extremely dilapidated condition before they  
11 began improving it. Both Mr. Hughes and Ms. Howard contributed substantially toward  
12 improvements on the property in the years following the initial transfer. Based upon the stipulated  
13 current property value of Two Hundred and Twenty-Five Thousand Dollars (\$225,000), the  
14 property value increased by One Hundred and Fifty-Eight Thousand Dollars (\$158,000). In  
15 general, if one co-tenant improves property held in joint tenancy, that tenant may be entitled to  
16 reimbursement upon partition. See *Collier v. Collier*, 73 Ariz. 405, 413; 242 P.2d 537 (Ariz.  
17 1952); *Denton v. Lazenby*, 255 Kan. 860, 863-64 (1994); *Milian v. De Leon*, 181 Cal. App. 3d  
18 1185 (1986); see generally *Sack v. Tomlinson*, 110 Nev. 204 (1994); *McKissick v. McKissick*, 93  
19 Nev. 139 (1977). The entitlement to contribution for improvements arises from principles of  
20 equity, and one purpose is to ensure that the efforts of one co-tenant do not unjustly enrich another.

21  
22 <sup>25</sup> See Recording of John Hughes' Testimony at 11:46:40 a.m. Specifically, John Hughes stated that Ms. Howard  
23 was worried that her family might interfere with Mr. Hughes' interest in the property if Ms. Howard died. The Court  
finds John Hughes' testimony credible and notes that Ms. Howard's statement indicates that she was cognizant of  
the right of survivorship in a joint tenancy. This further supports a finding that Ms. Howard intended to create a joint  
tenancy when she executed the deed.

24 <sup>26</sup> The parties did not provide any evidence to suggest that the property value changed between the time that Ms.  
Howard initially purchased the property and when she executed the quitclaim deed. Because the transfers were only  
several days apart, and in the absence of evidence to the contrary, the Court finds that the value was \$67,000 at the  
time of transfer.

1 See *Denton*, 255 Kan. at 863; *Janik v. Janik*, 474 N.E.2d 1054, 1057 (Ind. App. 1985); *Capogreco*  
2 v. *Capogreco*, 378 N.E.2d 279 (Ill. App. 1978); *Clift v. Clift*, 10 S.W. 338, 341 (Tex. 1888). In  
3 some instances, the value of an improvement is higher or lower than its cost. In such cases, it is  
4 equity that guides the Court's determination of the appropriate value for reimbursement.<sup>27</sup> In any  
5 event, in order to receive a reimbursement, a tenant who funds improvements must affirmatively  
6 seek such reimbursement at the time of partition. See *Sack v. Tomlinson*, 110 Nev. 204 (1994).

7 Here, the parties each testified regarding their monetary and in-kind contributions to the  
8 improvements on the property. Ms. Howard did not argue that she was entitled to a  
9 reimbursement for any contribution, however she argued that the court should apportion the  
10 parties' ownership interests in proportion to their expenses. Because the Court has found that the  
11 parties are equal co-tenants, it will consider the issue of reimbursement to address Ms. Howard's  
12 argument that she is entitled to more than a one-half interest in the property. Although Ms.  
13 Howard argues that she expended in excess of Two Hundred Thousand Dollars (\$200,000) toward  
14 the improvements on the property, many of the expenses were paid in cash, and there are no  
15 records showing the source of the cash.<sup>28</sup> Further, neither party maintained sufficiently detailed  
16 records to confirm their exact contributions. For example, it is undisputed that the single most  
17 costly improvement on the property is the accessory dwelling, which the parties built as a  
18 residence for Ms. Howard's mother. Even for this significant improvement, neither party  
19 presented clear testimony or other evidence regarding their respective interests.

20  
21  
22  
23 <sup>27</sup> For example, if one co-tenant does not consent to an improvement and the cost of the improvement is substantially  
24 higher than the resulting increase in value, the un-consenting co-tenant may not be responsible for his share of the  
cost but rather his share of the increase in value.

<sup>28</sup> The court specifically notes that the evidence reveals that both Ms. Howard's mother and Mr. Hughes' father  
contributed funds toward the improvements on the property. Because the parties operated primarily in cash, there  
are very limited records pertaining to large transactions.

1 To begin, the evidence regarding the increase in property value attributable to the  
2 accessory dwelling is limited.<sup>29</sup> Each party testified that the cost of the accessory dwelling was  
3 likely in excess of One Hundred Thousand Dollars (\$100,000), however neither party was able to  
4 narrow the cost to a more precise number. Of greater significance is the fact that the parties  
5 provided conflicting testimony regarding the source of funds for the accessory dwelling.<sup>30</sup>  
6 Because the Court has no reliable evidence regarding who actually paid for the improvement, it  
7 cannot find that Ms. Howard is entitled to a reimbursement.<sup>31</sup>

8 Further, it is clear that the parties jointly sought the construction of the accessory  
9 dwelling.<sup>32</sup> Each party testified that both parties were involved in procuring and directing the  
10 contractors on this project. While each party testified that the majority of the labor performed on  
11 the accessory dwelling was contracted, there is no dispute that Mr. Hughes performed site  
12 preparation and clean-up services and worked with Ms. Howard to complete several  
13 improvements to the interior.<sup>33</sup> Absent any evidence that either party is entitled to reimbursement,  
14 the Court finds that the parties are entitled to equal shares of the resulting increased value.<sup>34</sup>  
15

16 <sup>29</sup> The primary reference to the attributable increase in value appears in Defendant's Exhibit J, which is an Appraisal  
17 of the property. The appraisal estimates a value attributable to the accessory dwelling that is \$76 per square foot or  
18 \$76,000, total (the appraisal lists the square footage of the accessory dwelling at 1000 square feet). Plaintiff's Exhibit  
19 14 is an Assessor's Improvement List for the property, it values the replacement cost of the Accessory Dwelling Unit  
20 as \$118,486. There is no evidence establishing how this number was generated.

21 <sup>30</sup> Mr. Hughes does not dispute that he did not contribute financially to the dwelling, but it is not clear whether the  
22 funds came from Ms. Howard or her mother (who has no cognizable ownership interest in the property whatsoever).  
23 See Recording of Ms. Howard's Testimony at 1:50:16 p.m. (Ms. Howard's testimony that she paid all of the  
24 contractors in cash from a box in which her mother had all of her money).

25 <sup>31</sup> Notably, Ms. Howard's counsel argued during closing arguments that a combination of Ms. Howard and Ms.  
26 Howard's mother had paid in excess of \$200,000. He argued that Ms. Howard's interest in the property should be  
27 reflective of both her and her mother's contributions. In other words, he argued that the improvement had been a  
28 gift to Ms. Howard from her mother and that Ms. Howard was entitled to the full benefit thereof. However, at Trial,  
29 Ms. Howard presented no evidence whatsoever regarding her mother's intent when funding various improvements.  
30 Thus, the Court has no basis for a finding that Ms. Howard has a greater interest in the improvements than Mr. Hughes.

31 <sup>32</sup> Specifically, Ms. Howard completed the initial Special Use Permit Application, Mr. Hughes completed the  
32 Building Permit Application, and both parties completed the Owner Acknowledgment for the Special Use Permit.  
33 See Plaintiff's Exhibits 9-11.

34 <sup>33</sup> Specifically, Mr. Hughes testified that they installed some subflooring and various fixtures.

35 <sup>34</sup> A similar analysis is applicable to the garage/workshop structure: each party contributed financial resources (Ms.  
Howard contributed approximately \$20,000, which included approximately \$5,000 in funds from Mr. Hughes' father;  
meanwhile, Mr. Hughes funded electrical work and the pouring of a concrete pad); Mr. Hughes also conducted site  
preparation and cleanup. The parties clearly endeavored to complete this improvement together; each of them

1 With respect to Ms. Howard's other expenditures, almost every receipt offered into  
2 evidence corresponds to a project on which Mr. Hughes was working. Ms. Howard primarily  
3 provided the funds necessary to purchase tools and equipment while Mr. Hughes and his daughter  
4 completed the vast majority of the labor for the improvements.<sup>35</sup> Mr. Hughes also alleges that he  
5 expended approximately Twenty Thousand Dollars (\$20,000) in cash toward improvements, but  
6 he has provided only one receipt for electrical work in the approximate amount of One Thousand  
7 Dollars (\$1,000).<sup>36</sup> Although it is unusual to spend almost Twenty Thousand Dollars (\$20,000)  
8 without records thereof, it is not inconsistent with the parties' general approach to this project.<sup>37</sup>

9 Throughout the entire construction process, each party contributed significant resources  
10 toward improving the property, but neither of them maintained any records showing a running  
11 balance of the value of their respective contributions. Their lackadaisical approach to record  
12 keeping tends to show that the parties were jointly working toward a common goal of increasing  
13 the value of the property with an intent to share equally in the benefits.<sup>38</sup>

14 Upon review of the testimony and other evidence presented at Trial, the Court finds that  
15 each party is entitled to an equal share of the property. Based upon the property appraisal in  
16 Defendant's Exhibit J, the vast majority of the property value is centralized in the building  
17 structures, thus there is no practical way of conducting a partition. Because Ms. Howard is in  
18 possession of the property and has denied Mr. Hughes access, she shall be directed to pay Mr.

19  
20 contributed resources toward the improvement with no formal bookkeeping or agreement regarding the value of their  
contributions. In the absence of evidence to the contrary, the parties are each entitled to share in the increased value  
resulting from this improvement.

21 <sup>35</sup> By way of example, Ms. Howard purchased hundreds of railroad ties, which Mr. Hughes and his daughter used in  
the construction of various retaining walls. See Defendant's Exhibit L, Bates Stamp EHTRIAL000520 (receipt for  
256 Railroad Ties).

22 <sup>36</sup> See Recording of Mr. Hughes' Testimony at 11:32:27 a.m.

23 <sup>37</sup> The parties almost entirely operated in cash, as exemplified by the fact that Ms. Howard obtained a \$137,000.00  
settlement in cashier's checks, which she subsequently cashed and maintained in a safe.

24 <sup>38</sup> Regarding the parties' intent to share in the benefits, the Court also notes that Ms. Howard testified that she intended  
for Mr. Hughes to be an equal co-tenant after the parties were married. Recording of Ms. Howard's Testimony at  
2:03:45 p.m. Both parties testified that they discussed marriage throughout most of the construction process, but  
their plans never came to fruition. Nevertheless, Ms. Howard's testimony indicates that at the time of the  
construction, the parties discussed marriage and even she believed that they would be equal co-tenants in the future.

1 Hughes his one-half share of Two Hundred and Twenty-Five Thousand Dollars (\$225,000), less  
2 his one-half share of closing costs, fees and standard realtor commission by no later than July 1,  
3 2017.

4 **GOOD CAUSE APPEARING, IT IS HEREBY ORDERED**

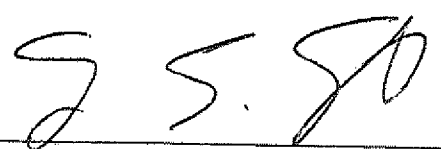
5 1. By no later than June 1, 2017, Ms. Howard shall buy-out Mr. Hughes' share in the property  
6 by paying him his one-half share of Two-Hundred and Twenty-Five Thousand Dollars  
7 (\$225,000), less his one-half share of standard fees and costs associated with the sale of  
8 real property.

9 a. Ms. Howard shall transfer Mr. Hughes' payment to Mr. Hughes' attorney's trust  
10 account, where it shall remain until Mr. Hughes executes the documents necessary  
11 to transfer his interest in the joint tenancy to Ms. Howard.

12 2. If, by June 1, 2017, Ms. Howard declines to exercise the option of buying-out Mr. Hughes,  
13 the parties shall immediately list the property for sale with a mutually agreeable Realtor  
14 who regularly conducts business in Churchill County, Nevada. If the parties cannot agree  
15 upon a realtor, they shall file an application for setting to put this matter on calendar for  
16 the Court to designate a realtor.

17 IT IS SO ORDERED.

18 Dated this 27<sup>th</sup> day of February 2017.

19   
20 THOMAS L. STOCKARD  
21 DISTRICT JUDGE  
22  
23  
24

CERTIFICATE OF MAILING

The undersigned, an employee of the Tenth Judicial District Court, hereby certifies that I served the foregoing **ORDER AFTER FEBRUARY 6, 2017 HEARING** on the parties by depositing a copy thereof in the U.S. Mail at Fallon, Nevada, postage prepaid, as follows:

Justin Townsend, Esq.  
Allison MacKenzie, Ltd.  
402 North Division Street  
Carson City, NV 89703-4168

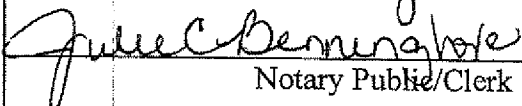
Charles R. Kozak, Esq.  
Kozak Lusiani Law, LLC  
3100 Mill Street, Suite 115  
Reno, NV 89502

DATED this 27<sup>th</sup> day of February, 2017.

  
Sue Sevon, Court Administrator

Subscribed and sworn to this

27<sup>th</sup> day of February 2017.

  
Notary Public/Clerk

## **EXHIBIT 4**

## **EXHIBIT 4**

ALLISON MacKENZIE, LTD.  
402 North Division Street, P.O. Box 646, Carson City, NV 89702  
Telephone: (775) 687-0202 Fax: (775) 882-7918  
E-Mail Address: law@allisonmackenzie.com

Case No.15-10DC-0876

Dept. No. I

The undersigned hereby affirms that  
this document does not contain the  
social security number of any person.

  
JUSTIN M. TOWNSEND, Esq.

FILED

2016 SEP 12 AM 11:18

SUE SEVON  
COURT CLERK

BY  DEPUTY

IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF CHURCHILL

SHAUGHINAN L. HUGHES, an  
individual,

Plaintiff,

vs.

ELIZABETH C. HOWARD, an  
individual; and DOES I through  
XX, inclusive.

Defendants.

**NOTICE OF ENTRY OF ORDER DENYING DEFENDANT'S MOTION  
FOR SUMMARY JUDGMENT AND DENYING DEFENDANT'S MOTION  
TO SET ASIDE DISMISSAL OF COUNTERCLAIM**

NOTICE IS HEREBY GIVEN that on the 7<sup>th</sup> day of September, 2016, the Court duly  
entered an *Order Denying Defendant's Motion for Summary Judgment and Denying Defendant's  
Motion to Set Aside dismissal of Counterclaim* in the above-entitled matter. A copy of said *Order* is  
attached hereto as **Exhibit "1"**.

**AFFIRMATION**

The undersigned does hereby affirm that the preceding document does not contain the  
Social Security number of any person.

///

///

///



1 DATED this 9<sup>th</sup> day of September, 2016.

2 ALLISON MacKENZIE, LTD.  
3 402 North Division Street  
4 Carson City, NV 89703-4168

5 By: 

6 JUSTIN M. TOWNSEND, ESQ.  
7 Nevada State Bar No. 12293

8 Attorneys for Plaintiff,  
9 SHAUGHNAN L. HUGHES  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

ALLISON MacKENZIE, LTD.  
402 North Division Street, P.O. Box 646, Carson City, NV 89702  
Telephone: (775) 687-0202 Fax: (775) 882-7918  
E-Mail Address: law@allisonmackenzie.com

CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON, MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be served on all parties to this action by:

- X Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]
- \_\_\_\_\_ Hand-delivery - via Reno/Carson Messenger Service [NRCP 5(b)(2)(A)]
- \_\_\_\_\_ Facsimile
- \_\_\_\_\_ Federal Express, UPS, or other overnight delivery
- \_\_\_\_\_ E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures [NRCP 5(b)(2)(D)]

fully addressed as follows:

CHARLES R. KOZAK, ESQ.  
KOZAK LUSIANI LAW, LLC  
3100 Mill Street, Suite 115  
Reno, NV 89502

DATED this 9<sup>th</sup> day of September, 2016.

  
NANCY FONTENOT

4814-6544-3372, v. 1

# **EXHIBIT “1”**

FILED

2016 SEP - 7 AM 10:46

SUE SEYON  
COURT CLERK  
Shelle Hooten  
DEPUTY

Case No. 15-10DC-0876

Dept. I

IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF CHURCHILL

SHAUGHNAN L. HUGHES,

Plaintiff,

vs.

ELIZABETH C. HOWARD, an individual;  
and DOES I through XX, inclusive,

Defendants.

**ORDER DENYING DEFENDANT'S**  
**MOTION FOR SUMMARY JUDGMENT**  
**AND DENYING DEFENDANT'S**  
**MOTION TO SET ASIDE DISMISSAL**  
**OF COUNTERCLAIM**

This matter came before the Court on ELIZABETH HOWARD's (hereinafter "Ms. Howard") Motion for Summary Judgment filed June 28, 2016, and her Motion to Set Aside Dismissal of Counterclaim, filed May 17, 2016. Ms. Howard is represented by Charles Kozak, Esq. SHAUGHNAN HUGHES (hereinafter "Mr. Hughes"), who is represented by Justin Townsend, Esq., has opposed both Motions. The Motions have been fully briefed by both parties.

**I. Factual and Procedural Background**

Mr. Hughes and Ms. Howard were involved in a romantic relationship in the years leading up to the filing of the Complaint in this case. In June of 2012, a parcel of real property

1 in Churchill County, Nevada (hereinafter "Fulkerson property"), was purchased by and  
2 conveyed to Ms. Howard by way of Special Warranty Deed.<sup>1</sup> Several days later, in July of  
3 2012, Ms. Howard conveyed the Fulkerson property by way of Quitclaim Deed to herself and  
4 Mr. Hughes as Joint Tenants.<sup>2</sup> The parties subsequently made a number of improvements to the  
5 property, the details of which remain in dispute. What is not disputed is that Ms. Howard paid  
6 for a number of materials used in the improvement of the land and that Mr. Hughes paid  
7 property taxes on the land.<sup>3</sup>

8 Sometime around March of 2015 the relationship between the parties deteriorated. Ms.  
9 Howard sought a Protection Order against Mr. Hughes from the New River Township Justice  
10 Court, but was ultimately denied. Thereafter, Mr. Hughes initiated this action by filing his  
11 Complaint on July 27, 2016.

12 In his Complaint, Mr. Hughes seeks an accounting of his interest in the Fulkerson  
13 Property. He further seeks an order directing the sale of the Fulkerson property and an equitable  
14 division of the proceeds thereof between the parties. On November 24, 2015, Ms. Howard filed  
15 an Answer and Counterclaim requesting an order directing Mr. Hughes "to specifically perform  
16 the action required to give 100% sole ownership of the property to [Ms. Howard]." Further, in  
17 her Counterclaim, Ms. Howard alleges Fraud, Conversion, Intentional Infliction of Emotional  
18 Distress, and Specific Performance; she asks for an award of damages and special damages.

19 On December 11, 2015, Mr. Hughes moved to dismiss Ms. Howard's Counterclaims and  
20 strike certain allegations contained in the Counterclaim pursuant to NRCP 9(b), 12(b)(5), and  
21 12(f). This motion remained unopposed, and on January 7, 2016 this Court entered an Order  
22 granting the requested relief.

23  
24 <sup>1</sup> See Defendant's Motion for Summary Judgment, Exhibit 5.

<sup>2</sup> See Plaintiff's Opposition to Motion for Summary Judgment, Exhibit 1.

<sup>3</sup> See, e.g. Plaintiff's Opposition to Motion for Summary Judgment, Exhibit 3.

1 On May 17, 2016, Ms. Howard filed a Motion to Set Aside Dismissal of Counterclaim  
2 pursuant to NRCP 60(b)(1). Specifically, Mr. Kozak (Ms. Howard's Attorney) stated that the  
3 opposition to Mr. Hughes' Motion "perhaps due to post office mistake or being misplaced  
4 somewhere at the Court, . . . was never filed by this Court."

5 Also on May 17, 2016, the court held a Pre-Trial Conference at which point the case was  
6 scheduled for a Settlement Conference on July 29, 2016 and set for Trial on October 3, 2016 at  
7 9:00 a.m. Ms. Howard was given until July 8, 2016 to file a supplement to her Motion to Set  
8 Aside Dismissal of Counterclaim.

9 On June 20, 2016, Ms. Howard filed an Opposition to Motion to Dismiss; Motion to  
10 Strike, however this Opposition was subsequently withdrawn on July 8, 2016. And, in its place  
11 on July 8, 2016, Ms. Howard filed her "Supplement to Elizabeth Howard's Motion to Set Aside  
12 Dismissal of Counterclaim Filed May 17, 2016."

13 Meanwhile, on June 28, 2016 Ms. Howard filed her Motion for Summary Judgment.  
14 Both the Motion for Summary Judgment and Motion to Set Aside Dismissal of Counterclaim  
15 were opposed by Mr. Hughes on July 20, 2016 and July 28, 2016, respectively, and come now  
16 before the Court for consideration.

## 17 **II. Analysis**

### 18 (a) Motion to Set Aside Dismissal of Counterclaim

19 "On motion and upon such terms as are just, the court may relieve a party or a party's  
20 legal representative from a final judgment, order, or proceeding for the following reasons: (1)  
21 mistake, inadvertence, surprise, or excusable neglect." N.R.C.P. 60(b). "This is in the nature of  
22 a remedial statute; its object [is] to relieve litigants who through some inadvertence, such as is  
23 common to mankind, might be deprived of a hearing upon the merits through their unintentional  
24 failure to bring themselves within a rule." *Whise v. Whise*, 36 Nev. 16, 20 (1913). Further, "the

1 court must give due consideration to the State's underlying basic policy of resolving cases on  
2 their merits whenever possible." *Id.*

3 The Nevada Supreme Court has held "that the presence of the following factors indicates  
4 that 60(b)(1) has been satisfied: (1) a prompt application to remove the judgment; (2) the  
5 absence of an intent to delay the proceedings; (3) a lack of knowledge of procedural  
6 requirements; and (4) good faith." *Yochum v. Davis*, 98 Nev. 484, 487 (1982) (citing *Hotel Last*  
7 *Frontier v. Frontier Prop.*, 79 Nev. 150 (1963)).

8 When considering if a Motion is prompt, the court generally looks to Rule 60(b), stating  
9 that "[t]he motion shall be made within a reasonable time, and for reason (1), . . . not more than  
10 6 months after the proceeding was taken or the date that written notice of entry of the judgment  
11 or order was served." N.R.C.P. 60(b). However, there are circumstances in which filings within  
12 the six month period are nevertheless not *prompt*. See, e.g. *Kahn v. Orme*, 108 Nev. 510, 514  
13 (1992) (finding that a filing to set aside default was not prompt even when it was filed within  
14 the six month period, because the moving party was aware of default and failed to take action  
15 for over five months). See also *Union Petrochemical Corp. v. Scott*, 96 Nev. 337, 339 (1980)  
16 (noting that six months is the outer limit, but that "want of diligence in seeking to set aside a  
17 judgment is ground enough for denial of such a motion").

18 Preliminarily, the Court is concerned by the lack of Mr. Kozak's candor regarding the  
19 Opposition to the Motion to Dismiss. On May 17, 2016, Ms. Howard filed her initial Motion to  
20 set aside the Order. In this Motion, Mr. Kozak indicated that his office properly prepared, and  
21 placed in the mail, copies of Ms. Howard's opposition. Mr. Kozak further stated that Mr.  
22 Townsend told Mr. Kozak that he had received a copy of the opposition. At the Pre-Trial  
23 hearing on May 17, 2016, the Court questioned Mr. Kozak about these statements. Ultimately,  
24 the record indicates that neither Mr. Townsend nor the Court ever received an Opposition to the

1 In the present case, Mr. Kozak's neglect is not excusable. Not only did Mr. Kozak fail to file an  
2 opposition or serve it on the opposing party, but he also delayed addressing the issue, and  
3 ultimately addressed it with a questionable level of candor.

4 Although the court recognizes the State's general preference of resolving issues on the  
5 merits, there is a limit to the deviations from procedural requirements that the court will tolerate.  
6 Mr. Kozak's conduct has exceeded that limit. Therefore, Ms. Howard's Motion to Set Aside  
7 Dismissal of Counterclaim is DENIED.

8 *(b) Summary Judgment*

9 Ms. Howard has also moved the Court for Summary Judgment against Mr. Hughes with  
10 respect to his Complaint. Summary judgment is proper only when "the pleadings, depositions,  
11 answers to interrogatories, and admissions on file, together with the affidavits, if any, show that  
12 there is no genuine issue as to any material fact and that the moving party is entitled to a  
13 judgment as a matter of law." N.R.C.P. 56(c). "A factual dispute is genuine when the evidence  
14 is such that a rational trier of fact could return a verdict for the nonmoving Party." *Wood v.*  
15 *Safeway, Inc.*, 121 Nev. 724, 731 (2005). Summary judgment may not be granted "if a  
16 reasonable jury could return a verdict for the non-moving party." *Sprague v. Lucky Stores*, 109  
17 Nev. 247, 249 (1993) (citing *Oehler v. Humana, Inc.*, 105 Nev. 348, 350 (1983)).

18 When deciding a summary judgment motion, all evidence must be viewed in the light  
19 most favorable to the nonmoving party. *Wood*, 121 Nev. at 729. However, once a party has  
20 moved for summary judgment, the non-moving party must "set forth specific facts  
21 demonstrating the existence of a genuine issue for trial or have summary judgment entered  
22 against him." *Sprague*, 109 Nev. at 250.

23 In the present case, Mr. Hughes has filed a complaint asking for the Court to determine  
24 the parties' respective rights to a parcel of real property which they own as joint tenants. A joint



1 Motion to Dismiss. Nevertheless, Mr. Kozak indicated that he could provide a file stamped  
2 copy of the Opposition from his records. Mr. Kozak has yet to produce such a copy.

3 The question remains as to whether Ms. Howard's Motion to Set Aside Dismissal was  
4 timely. Mr. Hughes filed a Motion to Dismiss Ms. Howard's counterclaims on December 11,  
5 2015. Ms. Howard failed to respond in a timely fashion. Thus, upon Mr. Hughes' Reply and  
6 Request for Submission, the Court entered the Order dismissing Ms. Howard's Counterclaim on  
7 January 7, 2016. Mr. Hughes filed a notice of entry regarding this Order on January 12, 2016.<sup>4</sup>

8 Ms. Howard took no action whatsoever regarding the Order until over five months after  
9 it was entered. The most generous interpretation of the facts would lead the Court to find that  
10 Mr. Kozak prepared the Opposition in a timely manner, that his assistant placed two copies of  
11 the opposition in the mail, and that the post office inexplicably lost or mis-delivered both  
12 envelopes. However, Mr. Kozak's failure to take action when he received Mr. Hughes' Reply,  
13 filed December 30, 2015, or the Notice of Entry, filed January 12, 2016 is inexcusable. Both of  
14 these filings put Mr. Kozak on notice that no one had received the Opposition. Nevertheless,  
15 Mr. Kozak waited until May 17, 2016, the day of the Pre-Trial Hearing, to raise the issue for the  
16 first time. Mr. Kozak's delay in raising the issue had the potential to significantly prejudice the  
17 opposing party who arrived for the Pre-Trial Hearing with the understanding that the  
18 Counterclaims had been resolved.<sup>5</sup> Thus, although his filing was within the six month period  
19 contemplated in N.R.C.P. 60(b), his actions do not constitute a "prompt application."

20 Further, the Court further finds that Mr. Kozak's conduct rises above the level of  
21 "inadvertence" contemplated in *Whise*. *Whise*, 36 Nev. 16, *see also Sherman v. Sothern Pacific*  
22 *Co.*, 31 Nev. 285, 291 (1909) (noting that the purpose of the court's discretion is to prevent  
23 injustice that arises from excusable neglect and leads to an application of form over substance).

24 <sup>4</sup> There is no indication or allegation that Ms. Howard did not receive a copy of this notice of entry by mail.

<sup>5</sup> The Court also notes that there is no mention of the counterclaims in the Plaintiff's Case Conference Report, filed March 15, 2016. This is the only case conference report in the record.

1 tenancy in real property may be created “by transfer from a sole owner to himself or herself and  
2 others.” Nev. Rev. Stat. 111.065(1) (2015). Once a joint tenancy is established, it may be  
3 partitioned, at the request of a joint tenant, in accordance with Chapter 39 of the Nevada  
4 Revised Statutes. The Court must then determine the respective interests of the parties in the  
5 real property. See Nev. Rev. Stat. 39.080 (2015).

6 Where unmarried persons acquire a parcel of real property as joint tenants, the  
7 apportionment should be in proportion to their respective contributions. *Langevin v. York*, 111  
8 Nev. 1481, 1485 (1995). Ms. Howard argues that the Nevada Supreme Court has stated that  
9 “there is a presumption that where cotenants unequally share in the purchase price of property,  
10 “the cotenants intended to share in proportion to the amount contributed to the purchase price.”  
11 *Id.* (quoting *Sack v. Tomlin*, 110 Nev. 204, 210 (1994)).<sup>6</sup> However, *Langevin* is distinguishable  
12 from the present case because the parties not only made unequal contributions to the purchase  
13 price, but the party which did not contribute to the purchase price also provided no contribution  
14 to improvements or maintenance of the property thereafter. See 111 Nev. at 1485–86. In *Sack*,  
15 while the court started by looking at the contributions to the purchase price, it ultimately  
16 adjusted the percentage based upon their subsequent contributions using the “*Kershman*  
17 formula.” *Sack*, 110 Nev. at 211. Specifically, the court favorably cited *Kershman v. Kershman*,  
18 which found that a joint tenant’s share should be the percentage of their contribution to the  
19 value of the property—including contributions toward improvements after the initial purchase.  
20 192 Cal. App. 2d 23, 28–29 (1961) (cited by *Sack*, 110 Nev. at 210).

21 In the present case, Ms. Howard deeded the property to herself and Mr. Hughes as joint  
22 tenants. Mr. Hughes alleges that Ms. Howard intended to gift him an equal share in the  
23  
24

---

<sup>6</sup> Although the dispute in *Sack* was centered around property owned as a tenancy in common, the court in *Langevin* found the precedent applicable to property owned as a joint tenancy. *Langevin*, 111 Nev. at 1485.

1 property. He has minimally supported this allegation with declarations in his Affidavit.<sup>7</sup> Mr.  
2 Hughes further provided receipts indicating that he paid property taxes for the Fulkerson  
3 Property in an amount exceeding \$2,000.00.<sup>8</sup> Mr. Hughes further alleges that he paid for certain  
4 electrical work conducted on the Fulkerson Property's detached garage. He states that this  
5 assertion is supported by an invoice provided in Defendant's Motion for Summary Judgment.<sup>9</sup>  
6 Additionally, Mr. Hughes alleges that he contributed toward some of the items purchased for  
7 the improvement for the property. Finally, Mr. Hughes alleges that he contributed to the value  
8 of the property by personally completing some of the improvements.

9 Although Ms. Howard disputes the degree to which Mr. Hughes contributed to the cost  
10 of improvements on the property, when viewed in the light most favorable to Mr. Hughes, there  
11 is an issue of material fact with respect to the parties' respective contributions.

12 Because Mr. Hughes has provided specific allegations regarding his financial  
13 contribution to the value of the property, and because the value of his contribution is a material  
14 fact for the court to consider in apportioning the parties' interests in a partition, Summary  
15 Judgment is not appropriate at this point. Therefore, Ms. Howard's Motion for Summary  
16 Judgment is Denied.

17 **GOOD CAUSE APPEARING, IT IS HEREBY ORDERED**

- 18 1. Ms. Howard's Motion to Set Aside Dismissal of Counterclaims is hereby DENIED.  
19 2. Ms. Howard's Motion for Summary Judgment is hereby DENIED.

20 IT IS SO ORDERED.

21 Dated this 7 day of September 2016.

22   
23 THOMAS L. STOCKARD  
DISTRICT JUDGE

24 <sup>7</sup> See Affidavit of Shaughnan L. Hughes, filed July 20, 2016

<sup>8</sup> See Opposition to Motion for Summary Judgment, Exhibit 3.

<sup>9</sup> See Motion for Summary Judgment, Exhibit 19A.

CERTIFICATE OF SERVICE

The undersigned, an employee of the Tenth Judicial District Court, hereby certifies that I served the foregoing **ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND DENYING DEFENDANT'S MOTION TO SET ASIDE DISMISSAL OF COUNTERCLAIM** on the parties, by depositing a copy thereof as shown below.

Justin M. Townsend, Esq.  
Allison MacKenzie, Ltd.  
402 N. Division Street  
Carson City, NV 89703-4168

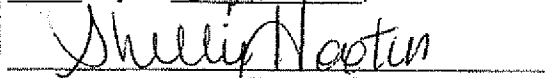
Charles R. Kozak, Esq.  
Kozak Lusiani Law, LLC  
3100 Mill Street, Suite 115  
Reno, NV 89502

DATED this 7 day of September, 2016.

  
Sue Sevón, Court Administrator

Subscribed and sworn to this

7 day of September, 2016.

  
Deputy Court Clerk

## **EXHIBIT 3**

## **EXHIBIT 3**

2016 SEP -7 AM 10:46

SUE SEYON  
COURT CLERKBY ~~Shella Howard~~ PUTY

Case No. 15-10DC-0876

Dept. I

IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF CHURCHILL

SHAUGHNAN L. HUGHES,

Plaintiff,

vs.

ELIZABETH C. HOWARD, an individual;  
and DOES I through XX, inclusive,

Defendants.

**ORDER DENYING DEFENDANT'S**  
**MOTION FOR SUMMARY JUDGMENT**  
**AND DENYING DEFENDANT'S**  
**MOTION TO SET ASIDE DISMISSAL**  
**OF COUNTERCLAIM**

This matter came before the Court on ELIZABETH HOWARD's (hereinafter "Ms. Howard") Motion for Summary Judgment filed June 28, 2016, and her Motion to Set Aside Dismissal of Counterclaim, filed May 17, 2016. Ms. Howard is represented by Charles Kozak, Esq. SHAUGHNAN HUGHES (hereinafter "Mr. Hughes"), who is represented by Justin Townsend, Esq., has opposed both Motions. The Motions have been fully briefed by both parties.

**I. Factual and Procedural Background**

Mr. Hughes and Ms. Howard were involved in a romantic relationship in the years leading up to the filing of the Complaint in this case. In June of 2012, a parcel of real property

1 in Churchill County, Nevada (hereinafter "Fulkerson property"), was purchased by and  
2 conveyed to Ms. Howard by way of Special Warranty Deed.<sup>1</sup> Several days later, in July of  
3 2012, Ms. Howard conveyed the Fulkerson property by way of Quitclaim Deed to herself and  
4 Mr. Hughes as Joint Tenants.<sup>2</sup> The parties subsequently made a number of improvements to the  
5 property, the details of which remain in dispute. What is not disputed is that Ms. Howard paid  
6 for a number of materials used in the improvement of the land and that Mr. Hughes paid  
7 property taxes on the land.<sup>3</sup>

8 Sometime around March of 2015 the relationship between the parties deteriorated. Ms.  
9 Howard sought a Protection Order against Mr. Hughes from the New River Township Justice  
10 Court, but was ultimately denied. Thereafter, Mr. Hughes initiated this action by filing his  
11 Complaint on July 27, 2016.

12 In his Complaint, Mr. Hughes seeks an accounting of his interest in the Fulkerson  
13 Property. He further seeks an order directing the sale of the Fulkerson property and an equitable  
14 division of the proceeds thereof between the parties. On November 24, 2015, Ms. Howard filed  
15 an Answer and Counterclaim requesting an order directing Mr. Hughes "to specifically perform  
16 the action required to give 100% sole ownership of the property to [Ms. Howard]." Further, in  
17 her Counterclaim, Ms. Howard alleges Fraud, Conversion, Intentional Infliction of Emotional  
18 Distress, and Specific Performance; she asks for an award of damages and special damages.

19 On December 11, 2015, Mr. Hughes moved to dismiss Ms. Howard's Counterclaims and  
20 strike certain allegations contained in the Counterclaim pursuant to NRCP 9(b), 12(b)(5), and  
21 12(f). This motion remained unopposed, and on January 7, 2016 this Court entered an Order  
22 granting the requested relief.

23  
24 <sup>1</sup> See Defendant's Motion for Summary Judgment, Exhibit 5.

<sup>2</sup> See Plaintiff's Opposition to Motion for Summary Judgment, Exhibit 1.

<sup>3</sup> See, e.g. Plaintiff's Opposition to Motion for Summary Judgment, Exhibit 3.

1 On May 17, 2016, Ms. Howard filed a Motion to Set Aside Dismissal of Counterclaim  
2 pursuant to NRCp 60(b)(1). Specifically, Mr. Kozak (Ms. Howard's Attorney) stated that the  
3 opposition to Mr. Hughes' Motion "perhaps due to post office mistake or being misplaced  
4 somewhere at the Court, . . . was never filed by this Court."

5 Also on May 17, 2016, the court held a Pre-Trial Conference at which point the case was  
6 scheduled for a Settlement Conference on July 29, 2016 and set for Trial on October 3, 2016 at  
7 9:00 a.m. Ms. Howard was given until July 8, 2016 to file a supplement to her Motion to Set  
8 Aside Dismissal of Counterclaim.

9 On June 20, 2016, Ms. Howard filed an Opposition to Motion to Dismiss; Motion to  
10 Strike, however this Opposition was subsequently withdrawn on July 8, 2016. And, in its place  
11 on July 8, 2016, Ms. Howard filed her "Supplement to Elizabeth Howard's Motion to Set Aside  
12 Dismissal of Counterclaim Filed May 17, 2016."

13 Meanwhile, on June 28, 2016 Ms. Howard filed her Motion for Summary Judgment.  
14 Both the Motion for Summary Judgment and Motion to Set Aside Dismissal of Counterclaim  
15 were opposed by Mr. Hughes on July 20, 2016 and July 28, 2016, respectively, and come now  
16 before the Court for consideration.

## 17 II. Analysis

### 18 (a) Motion to Set Aside Dismissal of Counterclaim

19 "On motion and upon such terms as are just, the court may relieve a party or a party's  
20 legal representative from a final judgment, order, or proceeding for the following reasons: (1)  
21 mistake, inadvertence, surprise, or excusable neglect." N.R.C.P. 60(b). "This is in the nature of  
22 a remedial statute; its object [is] to relieve litigants who through some inadvertence, such as is  
23 common to mankind, might be deprived of a hearing upon the merits through their unintentional  
24 failure to bring themselves within a rule." *Whise v. Whise*, 36 Nev. 16, 20 (1913). Further, "the



1 court must give due consideration to the State's underlying basic policy of resolving cases on  
2 their merits whenever possible." *Id.*

3 The Nevada Supreme Court has held "that the presence of the following factors indicates  
4 that 60(b)(1) has been satisfied: (1) a prompt application to remove the judgment; (2) the  
5 absence of an intent to delay the proceedings; (3) a lack of knowledge of procedural  
6 requirements; and (4) good faith." *Yochum v. Davis*, 98 Nev. 484, 487 (1982) (citing *Hotel Last*  
7 *Frontier v. Frontier Prop.*, 79 Nev. 150 (1963)).

8 When considering if a Motion is prompt, the court generally looks to Rule 60(b), stating  
9 that "[t]he motion shall be made within a reasonable time, and for reason (1), . . . not more than  
10 6 months after the proceeding was taken or the date that written notice of entry of the judgment  
11 or order was served." N.R.C.P. 60(b). However, there are circumstances in which filings within  
12 the six month period are nevertheless not *prompt*. See, e.g. *Kahn v. Orme*, 108 Nev. 510, 514  
13 (1992) (finding that a filing to set aside default was not prompt even when it was filed within  
14 the six month period, because the moving party was aware of default and failed to take action  
15 for over five months). See also *Union Petrochemical Corp. v. Scott*, 96 Nev. 337, 339 (1980)  
16 (noting that six months is the outer limit, but that "want of diligence in seeking to set aside a  
17 judgment is ground enough for denial of such a motion").

18 Preliminarily, the Court is concerned by the lack of Mr. Kozak's candor regarding the  
19 Opposition to the Motion to Dismiss. On May 17, 2016, Ms. Howard filed her initial Motion to  
20 set aside the Order. In this Motion, Mr. Kozak indicated that his office properly prepared, and  
21 placed in the mail, copies of Ms. Howard's opposition. Mr. Kozak further stated that Mr.  
22 Townsend told Mr. Kozak that he had received a copy of the opposition. At the Pre-Trial  
23 hearing on May 17, 2016, the Court questioned Mr. Kozak about these statements. Ultimately,  
24 the record indicates that neither Mr. Townsend nor the Court ever received an Opposition to the

1 Motion to Dismiss. Nevertheless, Mr. Kozak indicated that he could provide a file stamped  
2 copy of the Opposition from his records. Mr. Kozak has yet to produce such a copy.

3 The question remains as to whether Ms. Howard's Motion to Set Aside Dismissal was  
4 timely. Mr. Hughes filed a Motion to Dismiss Ms. Howard's counterclaims on December 11,  
5 2015. Ms. Howard failed to respond in a timely fashion. Thus, upon Mr. Hughes' Reply and  
6 Request for Submission, the Court entered the Order dismissing Ms. Howard's Counterclaim on  
7 January 7, 2016. Mr. Hughes filed a notice of entry regarding this Order on January 12, 2016.<sup>4</sup>

8 Ms. Howard took no action whatsoever regarding the Order until over five months after  
9 it was entered. The most generous interpretation of the facts would lead the Court to find that  
10 Mr. Kozak prepared the Opposition in a timely manner, that his assistant placed two copies of  
11 the opposition in the mail, and that the post office inexplicably lost or mis-delivered both  
12 envelopes. However, Mr. Kozak's failure to take action when he received Mr. Hughes' Reply,  
13 filed December 30, 2015, or the Notice of Entry, filed January 12, 2016 is inexcusable. Both of  
14 these filings put Mr. Kozak on notice that no one had received the Opposition. Nevertheless,  
15 Mr. Kozak waited until May 17, 2016, the day of the Pre-Trial Hearing, to raise the issue for the  
16 first time. Mr. Kozak's delay in raising the issue had the potential to significantly prejudice the  
17 opposing party who arrived for the Pre-Trial Hearing with the understanding that the  
18 Counterclaims had been resolved.<sup>5</sup> Thus, although his filing was within the six month period  
19 contemplated in N.R.C.P. 60(b), his actions do not constitute a "prompt application."

20 Further, the Court further finds that Mr. Kozak's conduct rises above the level of  
21 "inadvertence" contemplated in *Whise*. *Whise*, 36 Nev. 16, *see also Sherman v. Sothern Pacific*  
22 *Co.*, 31 Nev. 285, 291 (1909) (noting that the purpose of the court's discretion is to prevent  
23 injustice that arises from excusable neglect and leads to an application of form over substance).

24 <sup>4</sup> There is no indication or allegation that Ms. Howard did not receive a copy of this notice of entry by mail.

<sup>5</sup> The Court also notes that there is no mention of the counterclaims in the Plaintiff's Case Conference Report, filed March 15, 2016. This is the only case conference report in the record.

1 In the present case, Mr. Kozak's neglect is not excusable. Not only did Mr. Kozak fail to file an  
2 opposition or serve it on the opposing party, but he also delayed addressing the issue, and  
3 ultimately addressed it with a questionable level of candor.

4 Although the court recognizes the State's general preference of resolving issues on the  
5 merits, there is a limit to the deviations from procedural requirements that the court will tolerate.  
6 Mr. Kozak's conduct has exceeded that limit. Therefore, Ms. Howard's Motion to Set Aside  
7 Dismissal of Counterclaim is DENIED.

8 (b) Summary Judgment

9 Ms. Howard has also moved the Court for Summary Judgment against Mr. Hughes with  
10 respect to his Complaint. Summary judgment is proper only when "the pleadings, depositions,  
11 answers to interrogatories, and admissions on file, together with the affidavits, if any, show that  
12 there is no genuine issue as to any material fact and that the moving party is entitled to a  
13 judgment as a matter of law." N.R.C.P. 56(c). "A factual dispute is genuine when the evidence  
14 is such that a rational trier of fact could return a verdict for the nonmoving Party." *Wood v.*  
15 *Safeway, Inc.*, 121 Nev. 724, 731 (2005). Summary judgment may not be granted "if a  
16 reasonable jury could return a verdict for the non-moving party." *Sprague v. Lucky Stores*, 109  
17 Nev. 247, 249 (1993) (citing *Oehler v. Humana, Inc.*, 105 Nev. 348, 350 (1983)).

18 When deciding a summary judgment motion, all evidence must be viewed in the light  
19 most favorable to the nonmoving party. *Wood*, 121 Nev. at 729. However, once a party has  
20 moved for summary judgment, the non-moving party must "set forth specific facts  
21 demonstrating the existence of a genuine issue for trial or have summary judgment entered  
22 against him." *Sprague*, 109 Nev. at 250.

23 In the present case, Mr. Hughes has filed a complaint asking for the Court to determine  
24 the parties' respective rights to a parcel of real property which they own as joint tenants. A joint

1 tenancy in real property may be created “by transfer from a sole owner to himself or herself and  
2 others.” Nev. Rev. Stat. 111.065(1) (2015). Once a joint tenancy is established, it may be  
3 partitioned, at the request of a joint tenant, in accordance with Chapter 39 of the Nevada  
4 Revised Statutes. The Court must then determine the respective interests of the parties in the  
5 real property. See Nev. Rev. Stat. 39.080 (2015).

6 Where unmarried persons acquire a parcel of real property as joint tenants, the  
7 apportionment should be in proportion to their respective contributions. *Langevin v. York*, 111  
8 Nev. 1481, 1485 (1995). Ms. Howard argues that the Nevada Supreme Court has stated that  
9 “there is a presumption that where cotenants unequally share in the purchase price of property,  
10 ‘the cotenants intended to share in proportion to the amount contributed to the purchase price.’”  
11 *Id.* (quoting *Sack v. Tomlin*, 110 Nev. 204, 210 (1994)).<sup>6</sup> However, *Langevin* is distinguishable  
12 from the present case because the parties not only made unequal contributions to the purchase  
13 price, but the party which did not contribute to the purchase price also provided no contribution  
14 to improvements or maintenance of the property thereafter. See 111 Nev. at 1485–86. In *Sack*,  
15 while the court started by looking at the contributions to the purchase price, it ultimately  
16 adjusted the percentage based upon their subsequent contributions using the “*Kershman*  
17 formula.” *Sack*, 110 Nev. at 211. Specifically, the court favorably cited *Kershman v. Kershman*,  
18 which found that a joint tenant’s share should be the percentage of their contribution to the  
19 value of the property—including contributions toward improvements after the initial purchase.  
20 192 Cal. App. 2d 23, 28–29 (1961) (cited by *Sack*, 110 Nev. at 210).

21 In the present case, Ms. Howard deeded the property to herself and Mr. Hughes as joint  
22 tenants. Mr. Hughes alleges that Ms. Howard intended to gift him an equal share in the  
23  
24

---

<sup>6</sup> Although the dispute in *Sack* was centered around property owned as a tenancy in common, the court in *Langevin* found the precedent applicable to property owned as a joint tenancy. *Langevin*, 111 Nev. at 1485.

1 property. He has minimally supported this allegation with declarations in his Affidavit.<sup>7</sup> Mr.  
2 Hughes further provided receipts indicating that he paid property taxes for the Fulkerson  
3 Property in an amount exceeding \$2,000.00.<sup>8</sup> Mr. Hughes further alleges that he paid for certain  
4 electrical work conducted on the Fulkerson Property's detached garage. He states that this  
5 assertion is supported by an invoice provided in Defendant's Motion for Summary Judgment.<sup>9</sup>  
6 Additionally, Mr. Hughes alleges that he contributed toward some of the items purchased for  
7 the improvement for the property. Finally, Mr. Hughes alleges that he contributed to the value  
8 of the property by personally completing some of the improvements.

9 Although Ms. Howard disputes the degree to which Mr. Hughes contributed to the cost  
10 of improvements on the property, when viewed in the light most favorable to Mr. Hughes, there  
11 is an issue of material fact with respect to the parties' respective contributions.

12 Because Mr. Hughes has provided specific allegations regarding his financial  
13 contribution to the value of the property, and because the value of his contribution is a material  
14 fact for the court to consider in apportioning the parties' interests in a partition, Summary  
15 Judgment is not appropriate at this point. Therefore, Ms. Howard's Motion for Summary  
16 Judgment is Denied.

17 **GOOD CAUSE APPEARING, IT IS HEREBY ORDERED**

- 18 1. Ms. Howard's Motion to Set Aside Dismissal of Counterclaims is hereby DENIED.  
19 2. Ms. Howard's Motion for Summary Judgment is hereby DENIED.

20 IT IS SO ORDERED.

21 Dated this 7 day of September 2016.

22   
23 THOMAS L. STOCKARD  
DISTRICT JUDGE

24 <sup>7</sup> See Affidavit of Shaughnan L. Hughes, filed July 20, 2016

<sup>8</sup> See Opposition to Motion for Summary Judgment, Exhibit 3.

<sup>9</sup> See Motion for Summary Judgment, Exhibit 19A.

CERTIFICATE OF SERVICE

The undersigned, an employee of the Tenth Judicial District Court, hereby certifies that I served the foregoing **ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND DENYING DEFENDANT'S MOTION TO SET ASIDE DISMISSAL OF COUNTERCLAIM** on the parties, by depositing a copy thereof as shown below.

Justin M. Townsend, Esq.  
Allison MacKenzie, Ltd.  
402 N. Division Street  
Carson City, NV 89703-4168

Charles R. Kozak, Esq.  
Kozak Lusiani Law, LLC  
3100 Mill Street, Suite 115  
Reno, NV 89502

DATED this 7 day of September, 2016.

Sue Sevon  
Sue Sevon, Court Administrator

Subscribed and sworn to this

7 day of September, 2016.

Shelly Norton  
Deputy Court Clerk

## **EXHIBIT 2**

## **EXHIBIT 2**

FILED

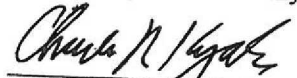
2015 NOV 24 AM 8:31

SUE SEYON  
COURT CLERK  
Julie Bonin  
Deputy

1 Case No. 15-10DC-0876

2 Dept. No. I

3 The undersigned hereby affirms that  
4 this document does not contain the  
5 social security number of any person.

6   
CHARLES R. KOZAK, ESQ.

7 IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
8 IN AND FOR THE COUNTY OF CHURCHILL

9 SHAUGHNAN L. HUGHES, an  
10 individual,

11 Plaintiff,

ANSWER AND COUNTERCLAIM

12 vs.

13 ELIZABETH C. HOWARD, an  
14 individual; and DOES I through  
15 XX, inclusive,

16 Defendants

17  
18 ELIZABETH C. HOWARD, an  
19 individual,

20 Counterclaimant,

21 vs.

22 SHAUGHAN L. HUGHES, an  
23 individual; and DOES 1 through  
24 XX, inclusive,

25 Counterdefendants

ANSWER

26 ELIZABETH HOWARD, an individual (hereinafter "Defendant/Counterclaimant"), by  
27 and through her attorney of record, Charles R. Kozak, Esq., answers SHAUGHAN L.  
28



1 HUGHES', an individual (hereinafter "Plaintiff/Counterdefendant"), Complaint as follows:  
2  
3 Answering Paragraph 1 of Plaintiff's Complaint, Defendant admits that Plaintiff and  
4 Defendant are recorded as joint owners of the property described in Paragraph 1 but denies  
5 Plaintiff is in fact entitled to any interest in the property whatsoever;  
6  
7 Answering Paragraph 2, Defendant denies the allegations therein;  
8  
9 Answering Paragraph 3, Defendant admits improvements have been made to the  
10 property but denies Plaintiff has any interest in said improvements;  
11  
12 Answering Paragraph 4, Defendant admits the allegations contained therein;  
13  
14 Answering Paragraph 5, Defendant admits there was romantic involvement for a time,  
15 but was substantially less than six years.  
16  
17 Answering Paragraph 6, Defendant admits the allegations contained therein;  
18  
19 Answering Paragraph 7, Defendant admits the allegations contained therein.  
20  
21 Answering Paragraph 8, Defendant admits the allegations contained therein.  
22  
23 Answering Paragraph 9, Defendant denies the allegations therein;  
24  
25 Answering Paragraph 10, Defendant admits the allegations contained therein;  
26  
27 Answering Paragraph 11, Defendant admits the allegations contained therein;  
28  
29 Answering Paragraph 12, Defendant admits the allegations contained therein;  
30  
31 Answering Paragraph 13, Defendant denies the allegations contained therein;  
32  
33 Answering Paragraph 14, Defendant denies the allegations contained therein;  
34  
35 Answering Paragraph 15, Defendant admits the allegations contained therein;  
36  
37 Answering Paragraph 16, Defendant admits the allegations contained therein;  
38  
39 Answering Paragraph 17, Defendant admits the allegations contained therein; and  
40  
41 Answering Paragraphs 18, 19, 20, 21, 22, 23, 24 and 25, Defendant denies the

1 allegations contained therein.

2  
3 **COUNTERCLAIM**

4 **STATEMENT OF FACTS**

5 1. Defendant/Counterclaimant was employed by Professional Hospital Supply located in  
6 Fairfield, California from September 2007 until August 2008. On July 23, 2008,  
7 Defendant/Counterclaimant was seriously injured on the job in San Francisco, California, and  
8 thus is disabled from that accident.

9  
10 2. Defendant/Counterclaimant was forced to sell precious metals and jewelry to make ends  
11 meet after her worker's compensation was stalled and she was waiting for a third party personal  
12 injury settlement.

13 3. Defendant/Counterclaimant met the Plaintiff/Counterdefendant, Shaughnan L. Hughes,  
14 who was employed by a precious metal buying company when she sold her coins to him. At the  
15 time, Plaintiff/Counterdefendant seemed very friendly and eager to help her.  
16

17 4. Eventually a relationship developed between Defendant/Counterclaimant and  
18 Plaintiff/Counterdefendant, and Defendant and they decided to move to Fallon, Nevada in  
19 August of 2010, after dating for almost a year. Plaintiff/Counterdefendant requested that  
20 Defendant/Counterclaimant give him all her jewelry and extra money from her worker's comp  
21 check and state disability payment so they could rent a place in Fallon, Nevada.  
22

23 5. On November 2, 2010, Defendant/Counterclaimant received \$4,489.14 as a settlement  
24 for her dog bite case. Defendant/Counterclaimant used part of her settlement being \$2,500 to  
25 purchase one-half interest in a 1995 Toyota 4-runner with the Plaintiff/Counterdefendant.  
26 Plaintiff/Counterdefendant also insisted Defendant/Counterclaimant purchase a bed for \$1500  
27 for Defendant/Counterclaimant and Plaintiff/Counterdefendant to sleep on since they were  
28

1 sleeping on a sponge on the floor.

2 6. In April 2011, Plaintiff/Counterdefendant took a cut in pay to avoid going on the road  
3 for his company and was reduced to answering prospective customers' questions on the phone.  
4 Plaintiff/Counterdefendant spent most of his \$15 dollar per hour earnings on bullets, projectiles,  
5 casings and firearms.  
6

7 7. Plaintiff/Counterdefendant also had child support obligations for his two daughters  
8 which he resented paying.  
9

10 8. In September 2011, Plaintiff/Counterdefendant's ex-wife was going to move to Indiana  
11 and take Plaintiff/Counterdefendant's two daughters with her, and Plaintiff/Counterdefendant's  
12 father did not want to lose contact with his granddaughters, so Plaintiff/Counterdefendant's  
13 father hired an attorney to help Plaintiff/Counterdefendant fight for custody of his two girls.  
14 Plaintiff/Counterdefendant's ex did not want to wait a year before moving, so the ex-wife called  
15 Plaintiff/Counterdefendant and told him that he had ruined her life again and to come and get  
16 the girls. Defendant/Counterclaimant accompanied Plaintiff/Counterdefendant to all court cases  
17 involving his children, including picking up the girls and bringing them back to Fallon, to the  
18 small two bedroom, two bath manufactured home on one acre which Plaintiff/Counterdefendant  
19 and Defendant/Counterclaimant rented when they first moved.  
20  
21

22 9. Life at home became extremely stressful as Savannah (the eldest daughter) was  
23 becoming mentally unstable. Plaintiff/Counterdefendant was ill-prepared to be around his  
24 children full time, and vented his frustration on the Defendant/Counterclaimant. His children  
25 were and are habitual liars and Plaintiff/Counterdefendant would constantly yell at  
26 Defendant/Counterclaimant over things his children had done. As a result,  
27 Defendant/Counterclaimant threatened to leave Plaintiff/Defendant.  
28

1 10. Eventually, Defendant/Counterclaimant received her settlement check in the amount of  
2 \$156,000 on June 13, 2012. With the proceeds, Defendant/Counterclaimant purchased the  
3 property located at 11633 Fulkerson Road in Fallon, Nevada.  
4

5 11. Plaintiff/Counterdefendant insisted that Defendant/Counterclaimant put numerous  
6 improvements on the property all of which she paid for. They included a \$25,000 garage, a few  
7 thousand dollars of base rock, and about 700 railroad ties for retaining walls and fence posts.  
8

9 12. Plaintiff/Counterdefendant exerted undue influence on Defendant/Counterclaimant to  
10 quit claim Plaintiff/Counterdefendant on the deed to her residence five (5) days after she closed  
11 the sale. Plaintiff/Counterdefendant represented that if she should die on one of her many trips  
12 to her work comp doctors' appointments in San Francisco, California, that he and his children  
13 would be out in the street, and brow beat her until she complied with his demands.  
14

15 Plaintiff/Counterdefendant also took Defendant/Counterclaimant to an attorney in Fernley,  
16 Nevada and wanted Plaintiff/Counterdefendant to make out a living will to him and his children  
17 so they could inherit her things in case Defendant/Counterclaimant passed away.

18 13. Defendant/Counterclaimant was under a doctor's care and on heavy medication at that  
19 time due to her injuries, and does not have a clear recollection as to the circumstances  
20 surrounding her execution of the quit claim deed.  
21

22 14. Plaintiff/Counterdefendant began introducing Defendant/Counterclaimant as his "wife"  
23 to all of their friends and Defendant/Counterclaimant was very afraid because she truly couldn't  
24 remember if they had married.

25 15. Plaintiff/Counterdefendant took Defendant/Counterclaimant and her mother to Virginia  
26 City, Nevada, in or around March of 2013, to show Defendant/Counterclaimant's mother  
27 around. While there, Plaintiff/Counterdefendant showed Defendant/Counterclaimant and her  
28

1 mother "Verda" where he would like to get married to Defendant/Counterclaimant, in a little  
2 church setting in a bar in Virginia City.

3  
4 16. At this time, Plaintiff/Counterdefendant had demanded that Defendant/Counterclaimant  
5 put all her money in cash in his safe and stated that "if you die, your family will get it all and I  
6 won't be able to afford to live here. Plaintiff/Counterdefendant was constantly using  
7 intimidation, coercion and guilt tactics to convince Defendant/Counterclaimant to put her assets  
8 under his control.

9  
10 17. In January of 2013, Plaintiff/Counterdefendant was fired from his job. He never  
11 obtained further employment because he didn't want to take any jobs that the EDD wanted him  
12 to interview for. Plaintiff/Counterdefendant never obtained further employment and  
13 Defendant/Counterclaimant was forced to pay all the bills and buy food.  
14 Defendant/Counterclaimant did so under duress; and if she complained,  
15 Plaintiff/Counterdefendant would yell, "I don't have a job, and you have a paycheck, you're  
16 loaded". Defendant/Counterclaimant was existing on a \$912 per month social security  
17 disability check, and Defendant/Counterclaimant's mother "Verda" was also chipping in over  
18 \$200 a month.

19  
20  
21 18. Plaintiff/Counterdefendant started driving Defendant/Counterclaimant's because he  
22 totaled his own and couldn't afford to buy another one, and he complained that the Toyota was a  
23 gas hog and couldn't afford to put gas in it.

24 19. Plaintiff/Counterdefendant began a campaign of terror, control and isolation over the  
25 Defendant/Counterclaimant. He berated her in front of his daughters who as a result lost  
26 complete respect for Defendant/Counterclaimant. Plaintiff/Counterdefendant constantly yelled  
27 at her that she was crazy and needed to see a psychiatrist. Plaintiff/Counterdefendant never shut  
28

1 up.

2 20. When Defendant/Counterclaimant was on the phone with anyone,  
3  
4 Plaintiff/Counterdefendant would drop what he was doing and come running in and start talking  
5 to Defendant/Counterclaimant and grabbing her breasts and pulling his pants down and  
6 spreading his butt cheeks in her face and try to hit her in the face with his penis while giggling  
7 and laughing in an idiotic manner. This was a daily occurrence.

8 21. Plaintiff/Counterdefendant spent most of Defendant/Counterclaimant's money while she  
9 was on opiate medication, and to this day she does not know where it all was spent.  
10

11 22. Plaintiff/Counterdefendant eventually convinced Defendant/Counterclaimant's mother  
12 "Verda" to sell her home of 67 years in the Bay area, and to move to Fallon, Nevada by  
13 repeatedly stating to her that "we will have so much fun!".  
14

15 23. Plaintiff/Counterdefendant insisted that instead of buying a home in town, she should  
16 build one on the property behind the main house because Plaintiff/Counterdefendant didn't want  
17 Defendant/Counterclaimant to be going to her mother's all the time.

18 Defendant/Counterclaimant's mother "Verda" is also disabled and needs constant help and  
19 that Defendant/Counterclaimant could take care of him and his children as well as her mother at  
20 the same time. Plaintiff/Counterdefendant told Defendant/Counterclaimant that her job was to  
21 take care of him and his children first.  
22

23 24. Defendant/Counterclaimant's mother purchased a fifth wheel to sleep in while her home  
24 was being built on the property.

25 25. Plaintiff/Counterdefendant insisted that Defendant/Counterclaimt's mother "Verda" keep  
26 all her cash in his safe and stole thousands of dollars from her. Plaintiff/Counterdefendant  
27 incurred unauthorized expenses purportedly for her home so that she was unable to complete  
28

1 her home.

2 26. After Plaintiff/Counterdefendant had depleted all of Defendant/Counterclaimant and her  
3 mother's assets, he did not feel the need to be civil to them. Plaintiff/Counterdefendant never  
4 mentioned getting married again; and if Defendant/Counterclaimant brought it up,  
5 Plaintiff/Counterdefendant would say, "why would you want to get married to someone that  
6 isn't working?", then Plaintiff/Counterdefendant would say "I consider us married".  
7

8 27. Plaintiff/Counterdefendant became very distant and angry and found fault with  
9 everything Defendant/Counterplaintiff did. On November 1, 2013, Defendant/Counterclaimant  
10 was cut off from all medical help as worker's comp insisted Defendant/Counterclaimant could  
11 pay for her own medical through Medicare, and Defendant/Counterclaimant went into severe  
12 withdrawals.  
13

14 28. In August of 2014, Plaintiff/Counterdefendant, Defendant/Counterclaimant and the kids  
15 were in the car coming from Fernley, and Plaintiff/Counterdefendant decided to start berating  
16 Defendant/Counterclaimant in the car in front of his kids until he had  
17 Defendant/Counterclaimant in tears. Upon arriving at home, Defendant/Counterclaimant got  
18 out of the car, walked up to the trees they planted a few months earlier and was crying, when  
19 Plaintiff/Counterdefendant decided to come up and start ridiculing Defendant/Counterclaimant  
20 for no reason until Defendant/Counterclaimant told him she was tired of watching  
21 Plaintiff/Counterdefendant wrestle with his two teenagers and putting his hands where they  
22 don't belong right in front of Defendant/Counterclaimant's mother and company. Afterwards,  
23 Plaintiff/Counterdefendant stepped back and blasted Defendant/Counterclaimant with calling  
24 him a pedophile, at which time Defendant/Counterclaimant said "it doesn't look right!", and  
25 Plaintiff/Counterdefendant started yelling at Defendant/Counterclaimant telling her that "why  
26  
27  
28



1 doesn't she just hurry up and die and leave them alone, and then he started running back to the  
2 house yelling at his daughters "did you see that, she's gonna kill me, she's gonna kill us!, over  
3 and over, screaming like a girl, yelling for them to call 911. Plaintiff/Counterdefendant ran into  
4 the house and hid behind his 13 year old while yelling to his older daughter (Savannah) to push  
5 Defendant/Counterclaimant off the steps, and she did. The Sheriffs came and took everyone's  
6 statement, and Plaintiff/Counterdefendant lied about everything so he could have more control  
7 over Defendant/Counterclaimant. Defendant/Counterclaimant's mother had just left that  
8 morning to stay with Defendant/Counterclaimant's youngest sister in La Pine Oregon, and  
9 wasn't there to be a witness.  
10

11  
12 29. After this incident, Plaintiff/Counterdefendant made life hell for  
13 Defendant/Counterclaimant in her own home by constantly berating her in front of his teenage  
14 daughters and was intent on getting rid of Defendant/Counterclaimant and her mother at all  
15 costs. Plaintiff/Counterdefendant's father even confronted Defendant/Counterclaimant at her  
16 home in 2015 demanding that Defendant/Counterclaimant put her mother in a rest home, at  
17 which time Defendant/Counterclaimant told Plaintiff/Counterdefendant's father that her mother  
18 "Verda" wasn't sick enough to be put in a rest home and what did he want her to do, throw her  
19 mother into the street? After that, Plaintiff/Counterdefendant's father "John" yelled "YES!",  
20 because he wanted to move into her home.  
21

22  
23 30. Plaintiff/Counterdefendant paid no bills or expenses with the exception of the property  
24 taxes and guns and ammo for his business since January 2013. Defendant/Counterclaimant  
25 applied for and received a food stamp card because Plaintiff/Counterdefendant would not do it  
26 and complained that he wasn't going to sit in that office with all those low lives. So  
27 Defendant/Counterclaimant sat in there and was able to get a food card for the four of them, and  
28



1 when Defendant/Counterclaimant got home and Plaintiff/Counterdefendant found out that  
2 Defendant/Counterclaimant had a food card, Plaintiff/Counterdefendant demanded it from  
3 Defendant/Counterclaimant and wouldn't let her have it back, proclaiming that he was better at  
4 buying food than her. All Plaintiff/Counterdefendant bought was breakfast food telling  
5 Defendant/Counterclaimant that if she wanted dinner stuff, then she could buy it with her own  
6 money.  
7

8 31. In December of 2014, Defendant/Counterclaimant had helped her mother sell the fifth  
9 wheel since now Defendant/Counterclaimant's mother was able to move into the home that was  
10 built and Plaintiff/Counterdefendant was helping Defendant/Counterclaimant to flush the septic  
11 out, but Defendant/Counterclaimant had a very bad dizzy spell and woke up on the dirt by the  
12 fifth wheel, and Plaintiff/Counterdefendant's daughters were kneeling beside  
13 Defendant/Counterclaimant and when Defendant/Counterclaimant saw  
14 Plaintiff/Counterdefendant, he was standing about 6-7 feet behind his daughters and said in a very  
15 nasty tone to Defendant/Counterclaimant "do you need an ambulance?", but  
16 Defendant/Counterclaimant doesn't remember answering him. The  
17 Plaintiff/Counterdefendant's two daughters stood Defendant/Counterclaimant up and walked  
18 her to the house. When Defendant/Counterclaimant said she thought she broke her nose,  
19 Plaintiff/Counterdefendant was caustic and told her that nothing was wrong with her, and  
20 Defendant/Counterclaimant had to beg Plaintiff/Counterdefendant to take her to the ER, which  
21 made Plaintiff/Counterdefendant mad. Plaintiff/Counterdefendant dumped  
22 Defendant/Counterclaimant off at Banner Hospital and told Defendant/Counterclaimant to call  
23 him when she was done, that he was going to take his daughter (Savannah) shopping, and  
24 Plaintiff/Counterdefendant and his daughter sped off. Defendant/Counterclaimant was taken by  
25  
26  
27  
28

1 ambulance to Renown and kept for a week at which time Defendant/Counterclaimant had a  
2 discectomy and fusion on her C-5 and 6. Plaintiff/Counterdefendant never called her to see how  
3 she was and only came by once at Defendant/Counterclaimant's request to bring her some  
4 toiletries.  
5

## 6 **COUNT I**

### 7 **FRAUD**

8 32. Defendant/Counterclaimant re-alleges and reincorporates each and every allegation  
9 contained in Paragraphs 1 through 31 inclusive, as set forth in full herein.  
10

11 33. Plaintiff/Counterdefendant exerted undue influence on Defendant/Counterclaimant to  
12 quit claim Plaintiff/Counterdefendant on the deed to her residence five (5) days after she closed  
13 the sale.  
14

15 34. Defendant/Counterclaimant has suffered damages as a proximate result of  
16 Plaintiff's/Counterdefendant's actions because she has been deprived of a peaceful and safe  
17 place for her and her relatives to reside.  
18

## 19 **COUNT II**

### 20 **CONVERSION**

21 35. Defendant/Counterclaimant re-alleges and reincorporates each and every allegation  
22 contained in Paragraphs 1 through 34 inclusive, as set forth in full herein.

23 36. Plaintiff/Counterdefendant knew that certain income and medical/disability payments  
24 were for exclusively for Defendant/Counterclaimant.  
25

26 37. Plaintiff/Counterdefendant also knew that the cash and monies of "Verda" belonged to  
27 her and that he knowingly stole her money by manipulating her to put it in his safe.

28 38. Plaintiff/Counterdefendant knowingly took the food stamp benefits of

1 Defendant/Counterclaimant for his use and benefit.

2 **COUNT III**

3 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

4  
5 39. Defendant/Counterclaimant re-alleges and reincorporates each and every allegation  
6 contained in Paragraphs 1 through 38 inclusive, as set forth in full herein.

7 40. For a period from 2010 to the present, Plaintiff/Counterdefendant has carried out a  
8 carefully executed plan of inflicting emotional stress upon the Defendant/Counterclaimant.

9  
10 41. This conduct constituted berating and belittling the Defendant/Counterclaimant in front  
11 of others.

12 42. As a direct result of this repeated behavior, Defendant/Counterclaimant was forced to  
13 seek medical attention which resulted in hospitalization.

14 43. Plaintiff/Counterdefendant's threatening and wrongful behavior resulted in abusive  
15 mental anguish and anguish to the Defendant/Counterclaimant, and such was the  
16 Plaintiff/Counterdefendant's malicious intent.

17  
18 **COUNT IV**

19 **SPECIFIC PERFORMANCE**

20  
21 44. Defendant/Counterclaimant re-alleges and reincorporates each and every allegation  
22 contained in Paragraphs 1 through 43 inclusive, as set forth in full herein.

23 45. Defendant/Counterclaimant should not be placed in the position of having to partition  
24 the Property and to sell the property as the Plaintiff/Counterdefendant has no legal equitable  
25 investment in the property.

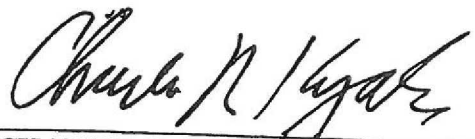
26  
27 46. The only adequate remedy is have the Court Order the Plaintiff/Counterdefendent to  
28 execute the proper documents for Defendant/Counterclaimant to have sole ownership of the

1 property.

2 WHEREFORE, Defendant/Counterclaimant ELIZABETH C. HOWARD, by and  
3 through her Attorney of Record, CHARLES R. KOZAK, ESQ. of KOZAK LAW FIRM, prays  
4 that the Court:  
5

- 6 1. Award her damages in excess of Ten Thousand Dollars (\$10,000.00);
- 7 2. Award her punitive damages in excess of Ten Thousand Dollars (\$10,000.00);
- 8 3. Award her special damages according to proof in excess of Ten Thousand Dollars  
9 (\$10,000.00);
- 10 4. Award her reasonable attorney's fees in excess of Five Thousand Dollars (\$5,000.00);  
11 and  
12
- 13 5. Issue an Order requiring the SHAUGHNAN L. HUGHES to specifically perform the  
14 action required to give 100% sole ownership of the property to ELIZABETH C.  
15 HOWARD.  
16

17  
18 DATED this 20 day of November 2015.



CHARLES R. KOZAK, ESQ.

KOZAK LAW FIRM  
Nevada State Bar #11179  
3100 Mill Street, Suite 115  
Reno, Nevada 89502  
Phone (775) 322-1239  
Facsimile (775) 800-1767  
[chuck@kozaklawfirm.com](mailto:chuck@kozaklawfirm.com)  
Attorney for Elizabeth C. Howard

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

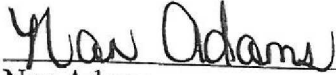
**CERTIFICATE OF SERVICE**

I certify that I am an employee working for Kozak Law Firm and am a citizen of the United States, over twenty-one years of age, and not a party to the within action. My business address is 3100 Mill Street, Suite 115, Reno, Nevada 89502.

On the 20<sup>th</sup> day of November 2015, I caused to be delivered via facsimile and U.S. Mail, postage fully prepaid, a true and correct copy of the foregoing document: ANSWER AND COUNTERCLAIM, in Case No. 15-10DC-0876, Dept. I, to the following party(ies):

Justin M. Townsend, Esq.  
Allison MacKenzie, Ltd.  
Nevada State Bar No. 12293  
402 N. Division Street  
P. O. Box 646  
Carson City, Nevada 89702  
Phone (775) 687-0202  
Facsimile (775) 882-7918  
Attorney for Plaintiff

DATED this 20<sup>th</sup> day of November 2015.

  
Nan Adams  
Employee of Kozak Law Firm

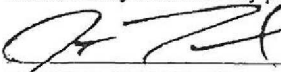
## **EXHIBIT 1**

## **EXHIBIT 1**

1 Case No. 15-1000-0876

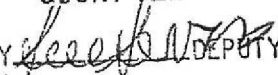
2 Dept. No. I

3 The undersigned hereby affirms that  
4 this document does not contain the  
5 social security number of any person.

6   
7 JUSTIN M. TOWNSEND, Esq.

FILED

2015 JUL 27 PM 2:48

SUE SEYON  
COURT CLERK  
BY  DEPUTY

8 IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
9 IN AND FOR THE COUNTY OF CHURCHILL

10 SHAUGHNAN L. HUGHES, an  
11 individual,

12 Plaintiff,

13 vs.

**COMPLAINT**  
**(Exempt from arbitration)**

14 ELIZABETH C. HOWARD, an  
15 individual; and DOES I through  
16 XX, inclusive.

Defendants.

17 COMES NOW, Plaintiff, SHAUGHNAN L. HUGHES, by and through his counsel,  
18 ALLISON MacKENZIE, LTD., and hereby complains and alleges against Defendants as follows:

**GENERAL ALLEGATIONS**

20 1. Plaintiff and Defendant, ELIZABETH C. HOWARD, own, in joint tenancy,  
21 an undivided one hundred percent (100%) interest in and to that certain real property situated in  
22 Churchill County, State of Nevada, commonly referred to as 11633 Fulkerson Road, Fallon, Nevada  
23 89406 (the "Property") and more particularly described as follows:

24 PARCEL 2 AS SHOWN ON THE PARCEL MAP FOR AMMERCON  
25 ENTERPRISES, RECORDED IN THE OFFICE OF THE CHURCHILL  
26 COUNTY RECORDER'S OFFICE ON DECEMBER 28<sup>TH</sup>, 2000 AS  
27 FILE NO. 333468, OFFICIAL RECORDS.

28 2. There may exist additional Defendants, whose true names and capacities,  
whether individual, corporate, associate, or otherwise are unknown to Plaintiff, and are therefore

1 sued by fictitious names, DOES I through XX, inclusive. Plaintiff will seek leave of this Court to  
2 amend this Complaint if and when the true identities of these Defendants become known to Plaintiff.  
3 Plaintiff is informed and believes and alleges that each of Defendants, DOES I through XX,  
4 inclusive, may have cognizable interests in the Property.

5 3. The Property consists of approximately 11.09 acres upon which exist several  
6 improvements including but not limited to a single family residence, a hangar, other buildings and  
7 certain improvements erected by Plaintiff at significant cost, in terms of time and money, to Plaintiff.

8 4. Plaintiff is informed and believes that there are no liens or interests in the  
9 Property other than the joint tenancy interests of Plaintiff and Defendant.

10 5. The Property was deeded to Plaintiff and Defendant as joint tenants by  
11 quitclaim deed recorded in the official records of Churchill County on July 11, 2012 as Document  
12 No. 428132.

13 6. Plaintiff and Defendant were romantically involved for a period of  
14 approximately six (6) years until March 2015.

15 7. On or about March 16, 2015, Defendant filed an application for protective  
16 order.

17 8. A hearing was held on Defendant's application for protective order on March  
18 23, 2015 at which time New River Township Justice of the Peace, Michael D. Richards, denied  
19 Defendant's application and ordered her to allow Plaintiff access to the Property to retrieve his  
20 belongings.

21 9. On April 3, 2015, Plaintiff, accompanied by a Churchill County Sheriff's  
22 Deputy, went to the Property to retrieve his personal belongings, but was denied access to the  
23 Property by Defendant.

24 10. Defendant has added a padlock to the entry gate to the Property such that  
25 Plaintiff is denied access to the Property.

26 11. On May 3, 2015, with the assistance of the Churchill County Sheriff's Office,  
27 Plaintiff was able to retrieve his personal belongings from the Property.  
28



1 23. Plaintiff is entitled to a judgment quantifying the parties' interests in the  
2 Property and ordering a sale thereof on terms equitable to the parties.

3 24. This matter is exempt from the District Court Arbitration Program under NRS  
4 Chapter 38 as Plaintiff is seeking equitable relief.

5 25. Plaintiff has been forced to incur fees and costs in pursuit of this action, for  
6 which it is entitled to recover pursuant to NRS 39.170.

7 WHEREFORE, Plaintiff, SHAUGHNAN L. HUGHES, prays for judgment as  
8 follows:

9 1. For entry of judgment identifying the parties' respective interests and shares  
10 in the Property;

11 2. For entry of judgment ordering partition of the Property by sale on terms  
12 equitable to the parties;


13 3. For attorneys' fees and costs of suit;

14 4. For such other and further relief as this Court deems just and proper.

15 DATED this 27<sup>th</sup> day of July, 2015.

16 ALLISON MacKENZIE, LTD.

17  
18 By:

  
JUSTIN M. TOWNSEND, ESQ.  
Nevada State Bar No. 12293  
402 N. Division St.  
PO Box 646  
Carson City, NV 89702

19  
20  
21  
22 Attorneys for Plaintiff,  
23 SHAUGHNAN L. HUGHES  
24

IN THE SUPREME COURT OF THE STATE OF NEVADA

ELIZABETH C. HOWARD, an individual,  Appellant,  Vs.  SHAUGNHAN L. HUGHES,  Respondent.	No. 72685 District Court Case No. 15-001876 Electronically Filed May 12 2017 08:13 a.m. Elizabeth A. Brown Clerk of Supreme Court  <b>AMENDED DOCKETING STATEMENT CIVIL APPEALS</b>
--	--

1. Judicial District 10th Department I  
County Churchill Judge Thomas L. Stockard  
District Ct. Case No. 15-10DC-0876

**2. Attorney filing this docketing statement:**

Attorney Charles R. Kozak, Esq. Telephone 775-322-1239

Firm Kozak Lusiani Law, LLC

Address 3100 Mill Street, Suite 115  
Reno, Nevada 89502

Client(s) ELIZABETH C. HOWARD

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorney Justin M. Townsend, Esq. Telephone 775-687-0202

Firm Allison MacKenzie, Ltd.

Address 402 N. Division Street  
PO Box 646  
Carson City, Nevada 89702

Client(s) SHAUGHNAN L. HUGHES

Attorney \_\_\_\_\_ Telephone \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

Client(s) \_\_\_\_\_

(List additional counsel on separate sheet if necessary)

**4. Nature of disposition below (check all that apply):**

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal:                                     |
| <input type="checkbox"/> Judgment after jury verdict           | <input type="checkbox"/> Lack of jurisdiction                           |
| <input type="checkbox"/> Summary judgment                      | <input type="checkbox"/> Failure to state a claim                       |
| <input type="checkbox"/> Default judgment                      | <input type="checkbox"/> Failure to prosecute                           |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief     | <input type="checkbox"/> Other (specify): _____                         |
| <input type="checkbox"/> Grant/Denial of injunction            | <input type="checkbox"/> Divorce Decree:                                |
| <input type="checkbox"/> Grant/Denial of declaratory relief    | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination        | <input type="checkbox"/> Other disposition (specify): _____             |

**5. Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:  
SHAUGHNAN L. HUGHES v. ELIZABETH C. HOWARD, 15-10DC-0876, Tenth Judicial District Court for the County of Churchill, February 6, 2017.

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

On July 27, 2015, Hughes filed the Complaint in this matter for Partition of his alleged interest in the Property under Nevada Revised Statutes ("NRS") 39.010. Hughes exerted undue influence on Ms. Howard to quit claim an interest in her Property five (5) days after she closed the sale. Hughes claimed he did some minimal labor and paid for some improvements and expenses on the Property, however, the only expenses Hughes paid totaled at the most \$2,367.16. This amount totals only 6% of the appraised value of the home of \$225,000.00. Despite a documented small contribution, the Judge order that Hughes receive a one-half  $\frac{1}{2}$  interest in this property.

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

The inequity in the distribution is contrary to Nevada law, which indicates that in the absence of an agreement between two unmarried parties living together, each party is entitled to share in the property jointly accumulated in the proportion that his or her funds contributed towards the acquisition. *Sack v. Tomlin*, 110 Nev. 204, 210, 871 P.2d 298, 303 (1994)(citing *Beckman v. Mayhew*, 49 Cal.App.3d 529, 122 Cal.Rptr. 604 (1975); *Barlow v. Collins*, 166 Cal.App.2d 274, 333 P.2d 64 (1958); *Hill v. Estate of Westbrook*, 95 Cal.App.2d 599, 213 P.2d 727 (1950); see also *Vallera v. Vallera*, 21 Cal.2d 681, 134 P.2d 761 (1943).) accumulated in the proportion that his or her funds contributed towards the acquisition.

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

**12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

**13. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This case should be retained by the Supreme Court as the proceedings invoke the original jurisdiction of the Supreme Court pursuant to NRAP 17(a)(1).

**14. Trial.** If this action proceeded to trial, how many days did the trial last? 1

Was it a bench or jury trial? Bench Trial

**15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?  
N/A.

## TIMELINESS OF NOTICE OF APPEAL

**16. Date of entry of written judgment or order appealed from** February 27, 2017

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

**17. Date written notice of entry of judgment or order was served** February 28, 2017

Was service by:

☐ Delivery

☒ Mail/electronic/fax

**18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b)      Date of filing \_\_\_\_\_

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☐ NRCP 59          Date of filing \_\_\_\_\_

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion \_\_\_\_\_

(c) Date written notice of entry of order resolving tolling motion was served \_\_\_\_\_

Was service by:

☐ Delivery

☐ Mail



**19. Date notice of appeal filed** March 27, 2017

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

**20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP 4(a)(1)

**SUBSTANTIVE APPEALABILITY**

**21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205              |
| <input type="checkbox"/> NRAP 3A(b)(2)            | <input checked="" type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3)            | <input type="checkbox"/> NRS 703.376             |
| <input type="checkbox"/> Other (specify) _____    |  |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

NRAP 3A(b)(1) Provides that an appeal may be taken from the judgment when the final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered.

NRS 233B.150 Provides that an aggrieved party may obtain a review of any final judgment of the district court by appeal to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution. The appeal shall be taken as in other civil cases.

**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

Elizabeth C. Howard and Shaughnan L. Hughes

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

**23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

Appellant owned the Property located at 11633 Fulkerson Road, Fallon, Nevada (hereinafter "Property"), outright in her name alone. Respondent exerted undue influence on Appellant to quit claim an interest in her Property five (5) days after she closed the sale. Respondent claims to have done construction work on the Property as well as pay some of the Property taxes. Appellant seeks apportionment of the proceeds from the sale of the house consistent with the contributions to the Property by Appellant and Respondent. *Sack v. Tomlin*, 110 Nev. 204, 871 P.2d 298 (1994).

**24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☒ Yes

☐ No

**25. If you answered "No" to question 24, complete the following:**

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

**26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

Order is independently appealable under NRAP 3A(b).

**27. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

## VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

ELIZABETH C. HOWARD

Name of appellant

CHARLES R. KOZAK

Name of counsel of record

May 11, 2017

Date

/s/ Charles R. Kozak

Signature of counsel of record

Nevada, County of Washoe

State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 11 day of May, 2017, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Justin Townsend, Esq.  
Allison MacKenzie, Ltd.  
PO Box 646  
Carson City, Nevada 89703-4168  
Attorney for Respondent

Jonathan L. Andrews  
14300 Poleline Road  
Reno, Nevada 89511  
Settlement Judge

Dated this 11 day of May, 2017

/s/ Dedra L. Sonne

Signature

### EXHIBIT LIST

Exhibit No.	Document	No. Pages
1	Complaint	4
2	Answer and Counterclaim	15
3	Order Denying Defendants Motion for Summary Judgment and Denying Defendant's Motion to Set Aside Dismissal of Counterclaim	10
4	Notice of Entry of Order	14
5	Order After February 6, 2017 Hearing	15
6	Notice of Entry of Order	18
7	Order Granting In Part and Denying In Part Motion for Sanctions	11
8	Notice of Entry of Order	14