

EXHIBIT 10

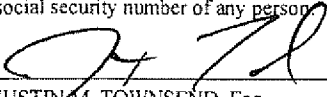
EXHIBIT 10

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

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 
7 JUSTIN M. TOWNSEND, Esq.

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.

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

17 Defendants.
18

19 **NOTICE OF ENTRY OF ORDER REGARDING**
20 **AMOUNT OF SANCTIONS**

21 NOTICE IS HEREBY GIVEN that on the 24th day of April, 2017, the Court duly
22 entered an *Order Regarding Amount of Sanctions* in the above-entitled matter. A copy of said *Order*
23 is attached hereto as **Exhibit "1"**.

24 DATED this 25th day of April, 2017.

25 ALLISON MacKENZIE, LTD.
26 402 North Division Street
27 Carson City, NV 89703-4168

28 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 25th day of April, 2017.


NANCY FONTENOT

4849-5653-7671, v. 1

1 Case No. 15-10DC-0876

2 Dept. I

FILED

2017 APR 24 AM 8:07

SUE SEVON
COURT CLERK

BY [Signature] 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 an individual,

12 Plaintiff,

13 vs.

ORDER REGARDING AMOUNT OF
SANCTIONS

14 ELIZABETH C. HOWARD, an individual, et
al.,

15 Defendants. /

16 This Matter came before the Court on Plaintiff SHAUGHNAN HUGHES' (hereinafter
17 "Mr. Hughes") Motion for Sanctions, filed August 26, 2016. Mr. Hughes is represented by Justin
18 Townsend, Esq. ELIZABETH HOWARD (hereinafter "Ms. Howard") opposed the Motion for
19 Sanctions on September 14, 2016. Ms. Howard is represented by Charles Kozak, Esq. On March
20 1, 2017, this Court entered an Order Granting in Part and Denying in Part Motion for Sanctions
21 (hereinafter "Order for Sanctions").

22 The Order directed counsel for Mr. Hughes, Justin Townsend, Esq., to file an affidavit
23 establishing the cost of attorney's fees pertinent to the awards set forth in the Order for Sanctions.
24 The Court has reviewed the affidavit along with Ms. Howard's Opposition and makes the
following findings and conclusions.

1 As a preliminary matter, the Court notes that, on March 27, 2017, Ms. Howard filed a
2 Notice of Appeal regarding the "Order After February 6, 2017 Hearing." In general, a timely
3 notice of appeal "divests the district court of jurisdiction to act." *Mack-Manley v. Manley*, 122
4 Nev. 849, 855 (2006). However, "the district court retains jurisdiction to enter orders on matters
5 that are collateral to and independent from the appealed order, i.e., matters that in no way affect
6 the appeal's merits." *Id.* Here, the pending issue applies to the Order Granting in Part and Denying
7 in Part Motion for Sanctions, entered March 1, 2017 (hereinafter "Order for Sanctions"). This
8 Order is separate and distinct from the order appealed from. The Order for Sanctions in no way
9 affects the appeal's merits. Therefore, this Court retains jurisdiction to address the issue of
10 reasonable attorney's fees.

11 "In determining the amount of fees to award, the [district] court is not limited to one
12 specific approach; its analysis may begin with any method rationally designed to calculate a
13 reasonable amount, so long as the requested amount is reviewed in light of the' *Brunzell* factors."
14 *Logan v. Abe*, 131 Nev., Adv. Rep. 31, 350 P.3d 1139, 1143 (2015) (quoting *Haley v. Eighth Jud.*
15 *Dist. Ct.*, 128 Nev., Adv. Op. 16, 237 P.3d 855, 860 (2012); citing *Brunzell v. Golden Gate*
16 *National Bank*, 85 Nev. 345, 349 (1969)). In factors set forth in *Brunzell* include: "(1) the qualities
17 of the advocate," "(2) the character of the work to be done," "(3) the work actually performed by
18 the lawyer," and "(4) the result." *Brunzell*, 85 Nev. at 349.

19 The Court has considered the factors and finds that Mr. Townsend's ability, training and
20 education facilitated his ability to achieve a favorable result for his client. As this Court has
21 previously noted, Mr. Townsend carried the unanticipated burden of having to compensate for
22 Mr. Kozak's lack of preparation and diligence on several occasions. Throughout the life of the
23 case, Mr. Townsend was diligent in preserving his client's interests.
24

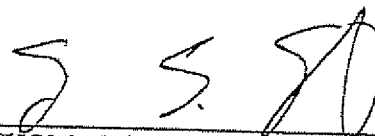
1 The Court finds that Mr. Townsend's affidavit represents reasonable attorney's fees for
2 the work attested to. However, the Court notes that a few of the itemized categories are outside
3 the scope of the Order for Sanctions.¹ Upon review of the affidavit and the opposition, the court
4 finds that the reasonable value of attorney's fees pertinent to the awards set forth in the Order for
5 Sanctions is \$16,500.

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

7 1. Mr. Townsend is awarded attorney's fees in the sum of \$16,500, which shall be paid by
8 Mr. Kozak.

9 IT IS SO ORDERED.

10 Dated this _____ day of April 2017.

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

24 ¹ The Court specifically notes, for example, the fees attested to in paragraph 5 of the Affidavit, which pertain to work performed prior to Mr. Kozak's misconduct.

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

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

Sue Sevon, Court Administrator

24 day of April, 2017.

Shelley Norton
Notary Public/Clerk

EXHIBIT 9

EXHIBIT 9

FILED

2017 APR 20 AM 11:04

SUE SEYON
COURT CLERK

Beth Hooten
DEPUTY

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 an individual,

12 Plaintiff,

13 vs.

14 ELIZABETH C. HOWARD, an individual, et
al.,

15 Defendants. /

ORDER DENYING MOTION
FOR RECONSIDERATION

16 This matter is before the Court on ELIZABETH HOWARD's (hereinafter "Ms. Howard")
17 Amended Motion for Reconsideration of Order in Part Granting Sanctions, filed March 20, 2017.

18 SHAUGHNAN HUGHES (hereinafter "Mr. Hughes") opposed the Motion on April 10, 2017.

19 As a preliminary matter, the Court notes that, on March 27, 2017, Ms. Howard filed a
20 Notice of Appeal regarding the "Order After February 6, 2017 Hearing." In general, a timely
21 notice of appeal "divests the district court of jurisdiction to act." *Mack-Manley v. Manley*, 122
22 Nev. 849, 855 (2006). However, "the district court retains jurisdiction to enter orders on matters
23 that are collateral to and independent from the appealed order, i.e., matters that in no way affect
24 the appeal's merits." *Id.* Here, the Order Granting in Part and Denying in Part Motion for

1 Sanctions, entered March 1, 2017 (hereinafter "Order for Sanctions"), is separate and distinct
2 from the order appealed from. The Order for Sanctions in no way affects the appeal's merits.
3 Therefore, this Court retains jurisdiction to consider Ms. Howard's motion for reconsideration.

4 Reconsideration of motions is governed by various rules and doctrines. Distilled to their
5 essence, those rules and doctrines permit a court to exercise its discretion and reconsider motions,
6 subject to limitations of time and substance. There is no right to have a matter reconsidered.
7 However, a court has the inherent authority to reconsider its prior orders. *Trail v. Faretto*, 91 Nev.
8 401 (1975) ("a court may, for sufficient cause shown, amend, correct, resettle, modify or vacate,
9 as the case may be, an order previously made and entered on the motion in the progress of the
10 cause or proceeding").

11 The Nevada Supreme Court has held that a motion for rehearing should be granted "[o]nly
12 in rare instances in which new issues of fact or law are raised supporting a ruling contrary to the
13 ruling already reached." *Moore v. Las Vegas*, 92 Nev. 402, 405 (1976). Furthermore, "[a] district
14 court may reconsider a previously decided issue if substantially different evidence is subsequently
15 introduced or the decision is clearly erroneous." *Masonry & Tile Contrs. v. Jolley, Urga & Wirth*
16 *Ass'n*, 113 Nev. 737, 741 (1997). In other words, this avenue of relief is remedial in nature and
17 enables the court to correct an error in a previous ruling.

18 The Court has reviewed Ms. Howard's motion, the Order for Sanctions, and the applicable
19 law. The Court does not find sufficient cause to amend, modify or otherwise alter the March 1,
20 2017 Order for Sanctions.

21 ///

22 ///

23 ///


24 ///

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

2 1. Ms. Howard's Amended Motion for Reconsideration of Order in Part Granting Sanctions
3 is DENIED.

4 IT IS SO ORDERED.

5 Dated this 20th day of April 2017.

6 
7 THOMAS L. STOCKARD
8 DISTRICT JUDGE
9
10
11
12
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 DENYING MOTION FOR RECONSIDERATION** on the parties by depositing a copy thereof in the U.S. Mail at Fallon, Nevada, postage prepaid, as follows:

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

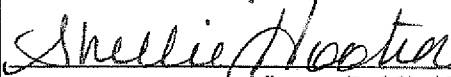
Charles R. Kozak, Esq.
Kozak Lusiani Law, LLC
3100 Mill Street, Suite 115
Reno, NV 89502

DATED this 20 day of April, 2017.


Sue Sevon, Court Administrator

Subscribed and sworn to this

20 day of April, 2017.


Notary Public/Clerk

()

EXHIBIT 8

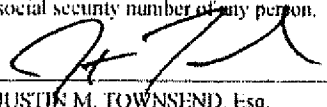
EXHIBIT 8

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. 1


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 1 through
XX, inclusive.

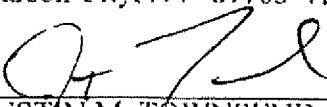
Defendants.

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

NOTICE IS HEREBY GIVEN that on the 1st 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 2nd 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

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)]
- 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 2nd 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;¹ (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);² (4) Mr. Kozak failed to timely
8 respond to discovery requests;³ (5) Mr. Kozak failed to timely file his Case Conference Report;⁴
9 (6) Mr. Kozak insisted he had actually filed his Case Conference Report at the pre-trial hearing
10 on May 17, 2016;⁵ (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 ¹ 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 ² Specifically, Mr. Townsend alleges that Mr. Kozak stated he had not read the applicable law prior to the
conference.

21 ³ 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 ⁴ 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 ⁵ 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.⁶ 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

⁶ 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.⁷

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
⁷ 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.⁸ 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.⁹ 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.¹⁰ Thus, to the extent that Mr. Hughes' Motion for Sanctions pertains to Mr.
18
19

20 ⁸ 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 ⁹ See NRPC 3.3.

22 ¹⁰ 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

multiple occasions.¹¹ 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.

///

///

///

///

///

///

¹¹ 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 15th day of March 2017.

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

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 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 1st day of March, 2017.


Sue Sevon, Court Administrator

Subscribed and sworn to this

1st day of March, 2017.

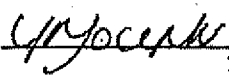

Notary Public/Clerk

EXHIBIT 7

EXHIBIT 7

received
3/2/17

Case No. 15-10DC-0876

Dept. I

FILED

2017 MAR -1 AM 9:52

SUE REYNOLDS
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;¹ (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);² (4) Mr. Kozak failed to timely
8 respond to discovery requests;³ (5) Mr. Kozak failed to timely file his Case Conference Report;⁴
9 (6) Mr. Kozak insisted he had actually filed his Case Conference Report at the pre-trial hearing
10 on May 17, 2016;⁵ (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 ¹ 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 ² Specifically, Mr. Townsend alleges that Mr. Kozak stated he had not read the applicable law prior to the
conference.

21 ³ 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 ⁴ 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 ⁵ 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.⁶ 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 ⁶ As noted previously, Mr. Kozak claimed that he filed an Opposition to Mr. Hughes' Motion to Dismiss
29 Counterclaim in a timely fashion (for which there is no record), Mr. Kozak stated that he could produce a file-
30 stamped copy of the Opposition (which he has not), Mr. Kozak stated that Mr. Townsend told him he had received
31 the Opposition (Mr. Townsend disputes this), Mr. Kozak stated that he had submitted his case conference report (for
32 which there is no record). In the Order Denying Defendant's Motion For Summary Judgment And Denying
33 Defendant's Motion To Set Aside Dismissal Of Counterclaim, the Court specifically noted its concern regarding Mr.
34 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.⁷

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
⁷ 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.⁸ 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.⁹ 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.¹⁰ Thus, to the extent that Mr. Hughes’ Motion for Sanctions pertains to Mr.

18
19
20 ⁸ 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 ⁹ See NRPC 3.3.

22 ¹⁰ 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
information supporting his assertion. On June 20, 2016, Mr. Kozak filed “Elizabeth Howard’s Opposition to Motion
24 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.¹¹ 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 ¹¹ 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).

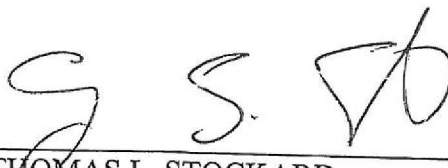
1 5. By no later than March 17, 2017, Mr. Townsend shall submit an affidavit establishing
2 the cost of attorney fees pertinent to the awards set forth above.

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 15th 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 1st day of March, 2017.


Sue Sevon, Court Administrator

Subscribed and sworn to this

1st day of March, 2017.

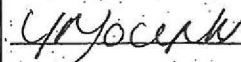

Notary Public/Clerk

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. 1

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



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

SHIAUGHINAN 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 27th 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 28th 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,
SHIAUGHINAN 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 28th 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

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.¹ Mr. Hughes has also filed

24 ¹ 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.² The couple then moved to another leased property on Stillwater Road.³

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.⁴

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).⁵ 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.⁶

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 ² Both Mr. Hughes and Ms. Howard were listed on the lease.

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

24 ⁴ 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.

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

⁶ 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.⁷ 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.⁸

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.⁹ 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.¹⁰ Ms. Howard specifically testified that she
20

21 ⁷ 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 ⁸ 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.

24 ⁹ See, e.g. Recording of Ms. Howard's Testimony at 2:03:00 p.m.

¹⁰ 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.¹¹
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.¹² 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 ¹¹ 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.

¹² 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.¹³

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)¹⁴ (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 ¹³ 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.

¹⁴ 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.¹⁵ 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."¹⁶ 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.¹⁷ In general, co-owners are responsible for their proportionate share of the expenses in a joint
20
21
22

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

¹⁶ 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.

¹⁷ 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.¹⁸ Here, the parties had an agreement in which each of them paid comparable expenses.¹⁹
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.²⁰ 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.²¹ 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.²² Ms. Howard also recalled driving between Fallon and Western California on
10 a regular basis in the weeks before and after executing the deed.²³

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.²⁴ 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 ¹⁸ 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 ¹⁹ 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.

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

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

²² The Court specifically notes Ms. Howard's ability to recall that she hired Hotwire to perform the electrical work
23 necessary to put a lamp in the living room, and that she hired Shawn Thursten from SRT Construction to put locks
24 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.

²³ 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.

²⁴ 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.²⁵ 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.²⁶

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 ²⁵ 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.

²⁶ 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.²⁷ 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.²⁸ 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 ²⁷ 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.

²⁸ 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.²⁹ 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.³⁰
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.³¹

8 Further, it is clear that the parties jointly sought the construction of the accessory
9 dwelling.³² 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.³³ 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.³⁴
15

16 ²⁹ 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 ³⁰ 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 ³¹ 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 ³² 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 ³³ Specifically, Mr. Hughes testified that they installed some subflooring and various fixtures.

35 ³⁴ 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.³⁵ 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).³⁶ 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.³⁷

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.³⁸

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
21 contributions. In the absence of evidence to the contrary, the parties are each entitled to share in the increased value
22 resulting from this improvement.

23 ³⁵ By way of example, Ms. Howard purchased hundreds of railroad ties, which Mr. Hughes and his daughter used in
24 the construction of various retaining walls. See Defendant's Exhibit L, Bates Stamp EHTRIAL000520 (receipt for
25 256 Railroad Ties).

³⁶ See Recording of Mr. Hughes' Testimony at 11:32:27 a.m.

³⁷ 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.

³⁸ 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**

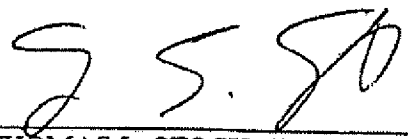
5 1. By no later than June 1, 2017, Ms. Howard shall buy-out Mr. Hughes' share in the property
6 by paying him his one-half share of Two-Hundred and Twenty-Five Thousand Dollars
7 (\$225,000), less his one-half share of standard fees and costs associated with the sale of
8 real property.

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 27th day of February 2017.

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

1 CERTIFICATE OF MAILING

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

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

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

13 DATED this 27th day of February, 2017.

14 
15 Sue Sevon, Court Administrator

16 Subscribed and sworn to this

17 27th day of February, 2017.

18 
19 Notary Public/Clerk
20
21
22
23
24
25
26
27
28

EXHIBIT 5

EXHIBIT 5

FILED

2017 FEB 27 PM 2:26

SUE SEYON
COURT CLERK
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.¹ Mr. Hughes has also filed

23
24 ¹ 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.² The couple then moved to another leased property on Stillwater Road.³

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.⁴

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).⁵ 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.⁶

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 ² Both Mr. Hughes and Ms. Howard were listed on the lease.

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

24 ⁴ 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.

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

⁶ 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.⁷ 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.⁸

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.⁹ 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.¹⁰ Ms. Howard specifically testified that she
20

21 ⁷ 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 ⁸ 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.

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

¹⁰ 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.¹¹
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.¹² 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 ¹¹ 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.

¹² 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.¹³

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)¹⁴ (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 ¹³ 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.

¹⁴ 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.¹⁵ 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."¹⁶ 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.¹⁷ In general, co-owners are responsible for their proportionate share of the expenses in a joint
20
21

22
23 ¹⁵ See Recording of Mr. Hughes' Testimony at 9:25:10 a.m.

24 ¹⁶ 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.

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

1 tenancy.¹⁸ Here, the parties had an agreement in which each of them paid comparable expenses.¹⁹
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.²⁰ 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.²¹ 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.²² Ms. Howard also recalled driving between Fallon and Western California on
10 a regular basis in the weeks before and after executing the deed.²³

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.²⁴ 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 ¹⁸ 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 ¹⁹ 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.

²⁰ 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.

²¹ 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)

²² 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.

²³ 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.

²⁴ 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.²⁵ 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.²⁶

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 ²⁵ 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.

²⁶ 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.²⁷ 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.²⁸ 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 ²⁷ 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.

²⁸ 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.²⁹ 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.³⁰
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.³¹

8 Further, it is clear that the parties jointly sought the construction of the accessory
9 dwelling.³² 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.³³ 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.³⁴

15
16 ²⁹ 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 ³⁰ 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 ³¹ 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 ³² 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 ³³ Specifically, Mr. Hughes testified that they installed some subflooring and various fixtures.

35 ³⁴ 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.³⁵ 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).³⁶ 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.³⁷

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.³⁸

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 ³⁵ 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 ³⁶ See Recording of Mr. Hughes' Testimony at 11:32:27 a.m.

23 ³⁷ 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 ³⁸ 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**

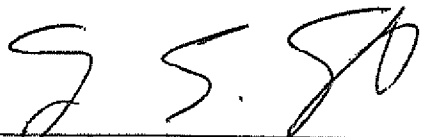
5 1. By no later than June 1, 2017, Ms. Howard shall buy-out Mr. Hughes' share in the property
6 by paying him his one-half share of Two-Hundred and Twenty-Five Thousand Dollars
7 (\$225,000), less his one-half share of standard fees and costs associated with the sale of
8 real property.

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 27th 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 27th day of February, 2017.


Sue Sevon, Court Administrator

Subscribed and sworn to this

27th day of February 2017.

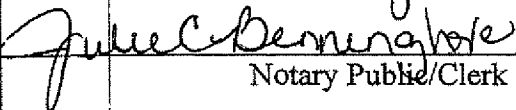

Notary Public/Clerk

EXHIBIT 4

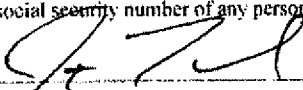
EXHIBIT 4

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

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 
7 JUSTIN M. TOWNSEND, Esq.

FILED

2016 SEP 12 AM 11:18

SUE SEVON
COURT CLERK

BY  DEPUTY

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

11 SHAUGHINAN L. HUGHES, an
12 individual,

13 Plaintiff,

14 vs.

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

18 Defendants.
19 _____

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

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

27 **AFFIRMATION**

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

///

///

///

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

1 DATED this 9th 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

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)]
- ☐ 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 9th day of September, 2016.


NANCY FONTENOT

4814-6544-3372, v 1

EXHIBIT “1”

FILED

2016 SEP - 7 AM 10:46

SUE GUYON
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.¹ 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.² 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.³

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 ¹ See Defendant's Motion for Summary Judgment, Exhibit 5.

² See Plaintiff's Opposition to Motion for Summary Judgment, Exhibit 1.

³ 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, 2016.⁴

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.⁵ 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 ⁴ There is no indication or allegation that Ms. Howard did not receive a copy of this notice of entry by mail.

⁵ 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)).⁶ 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

⁶ 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.⁷ Mr.
2 Hughes further provided receipts indicating that he paid property taxes for the Fulkerson
3 Property in an amount exceeding \$2,000.00.⁸ 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.⁹
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 ⁷ See Affidavit of Shaughnan L. Hughes, filed July 20, 2016

⁸ See Opposition to Motion for Summary Judgment, Exhibit 3.

⁹ 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, 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 ~~Shellee Hooten~~ PUTY

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,

12 vs.

13 ELIZABETH C. HOWARD, an individual;
14 and DOES I through XX, inclusive,15 Defendants.
16 _____ /17 **ORDER DENYING DEFENDANT'S**
18 **MOTION FOR SUMMARY JUDGMENT**
19 **AND DENYING DEFENDANT'S**
20 **MOTION TO SET ASIDE DISMISSAL**
21 **OF COUNTERCLAIM**22
23 This matter came before the Court on ELIZABETH HOWARD's (hereinafter "Ms.
24 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.22 **I. Factual and Procedural Background**23 Mr. Hughes and Ms. Howard were involved in a romantic relationship in the years
24 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.¹ 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.² 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.³

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 ¹ See Defendant's Motion for Summary Judgment, Exhibit 5.

² See Plaintiff's Opposition to Motion for Summary Judgment, Exhibit 1.

³ 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, 2016.⁴

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.⁵ 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 ⁴ There is no indication or allegation that Ms. Howard did not receive a copy of this notice of entry by mail.

⁵ 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)).⁶ 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

⁶ 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.⁷ Mr.
2 Hughes further provided receipts indicating that he paid property taxes for the Fulkerson
3 Property in an amount exceeding \$2,000.00.⁸ 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.⁹
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 ⁷ See Affidavit of Shaughnan L. Hughes, filed July 20, 2016

⁸ See Opposition to Motion for Summary Judgment, Exhibit 3.

⁹ 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.

Shelli Nooten
Deputy Court Clerk

EXHIBIT 2

EXHIBIT 2

FILED

2015 NOV 24 AM 8:31

SUE SEYON
COURT CLERK
Julie Boninger

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 Answering Paragraph 1 of Plaintiff's Complaint, Defendant admits that Plaintiff and
3 Defendant are recorded as joint owners of the property described in Paragraph 1 but denies
4 Plaintiff is in fact entitled to any interest in the property whatsoever;
5

6 Answering Paragraph 2, Defendant denies the allegations therein;

7 Answering Paragraph 3, Defendant admits improvements have been made to the
8 property but denies Plaintiff has any interest in said improvements;
9

10 Answering Paragraph 4, Defendant admits the allegations contained therein;

11 Answering Paragraph 5, Defendant admits there was romantic involvement for a time,
12 but was substantially less than six years.

13 Answering Paragraph 6, Defendant admits the allegations contained therein;

14 Answering Paragraph 7, Defendant admits the allegations contained therein.

15 Answering Paragraph 8, Defendant admits the allegations contained therein.

16 Answering Paragraph 9, Defendant denies the allegations therein;

17 Answering Paragraph 10, Defendant admits the allegations contained therein;

18 Answering Paragraph 11, Defendant admits the allegations contained therein;

19 Answering Paragraph 12, Defendant admits the allegations contained therein;

20 Answering Paragraph 13, Defendant denies the allegations contained therein;

21 Answering Paragraph 14, Defendant denies the allegations contained therein;

22 Answering Paragraph 15, Defendant admits the allegations contained therein;

23 Answering Paragraph 16, Defendant admits the allegations contained therein;

24 Answering Paragraph 17, Defendant admits the allegations contained therein; and

25 Answering Paragraphs 18, 19, 20, 21, 22, 23, 24 and 25, Defendant denies the
26
27
28

1 allegations contained therein.

2 **COUNTERCLAIM**

3 **STATEMENT OF FACTS**

4
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 9. Life at home became extremely stressful as Savannah (the eldest daughter) was
22 becoming mentally unstable. Plaintiff/Counterdefendant was ill-prepared to be around his
23 children full time, and vented his frustration on the Defendant/Counterclaimant. His children
24 were and are habitual liars and Plaintiff/Counterdefendant would constantly yell at
25 Defendant/Counterclaimant over things his children had done. As a result,
26 Defendant/Counterclaimant threatened to leave Plaintiff/Defendant.
27
28

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

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

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

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

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

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

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

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

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

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

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

1 up.

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

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/Counterclaimant'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 **COUNT II**

19 **CONVERSION**

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

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

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

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

11
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 44. Defendant/Counterclaimant re-alleges and reincorporates each and every allegation
21 contained in Paragraphs 1 through 43 inclusive, as set forth in full herein.

22
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.

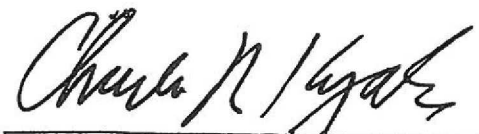
26 46. The only adequate remedy is have the Court Order the Plaintiff/Counterdefendent to
27 execute the proper documents for Defendant/Counterclaimant to have sole ownership of the
28

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 5. Issue an Order requiring the SHAUGHNAN L. HUGHES to specifically perform the
13 action required to give 100% sole ownership of the property to ELIZABETH C.
14 HOWARD.
15
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
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

On the 20th 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):

DATED this 20th day of November 2015.

14

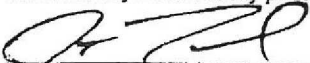
EXHIBIT 1

EXHIBIT 1

Case No. 15-1000-0876

Dept. No. I

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

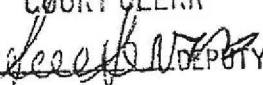


JUSTIN M. TOWNSEND, Esq.

FILED

2015 JUL 27 PM 2:48

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.

COMPLAINT
(Exempt from arbitration)

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

GENERAL ALLEGATIONS

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

PARCEL 2 AS SHOWN ON THE PARCEL MAP FOR AMMERCON
ENTERPRISES, RECORDED IN THE OFFICE OF THE CHURCHILL
COUNTY RECORDER'S OFFICE ON DECEMBER 28TH, 2000 AS
FILE NO. 333468, OFFICIAL RECORDS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

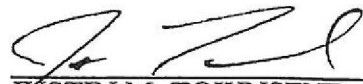
3. For attorneys' fees and costs of suit;

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

DATED this 27th day of July, 2015.

ALLISON MacKENZIE, LTD.

By:


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

Attorneys for Plaintiff,
SHAUGHNAN L. HUGHES

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

ELIZABETH C. HOWARD, an individual,

Appellant,

vs.

SHAUGNHAN L. HUGHES,

Respondent.

No. 72965

DOCKETING STATEMENT CIVIL APPEALS

Electronically Filed
May 30 2017 11:30 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

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:

Howard v. Hughes Case No. 72879

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 March 1, 2017, this Court entered an Order Granting and Part and Denying in Part Motion for Sanctions. The Court denied Mr. Hughes' Motion for Order to Show Cause and Mr. Hughes' Motion for Sanctions as it pertained to Ms. Howard's Motion for Summary Judgment and her originally pled counter claims. The Motion for Sanctions was only granted as it relates to two areas, belated filing of a Motion to Set Aside Dismissal of Courtclaim and supplemental filings and failure to file and Early Case conference report. On March 1, 2017 the Court issued its Order in Part Granting Sanctions in the amount of \$16,500.00 for the above two listed issues. Appellant asks the court to review this award based on the basis that Mr. Hughes failed to comply with the Nevada Rules of Civil Procedure Rule 11, Safe Harbor provisions prior to filing the Motion for Sanctions, that the filing of the Motion to Set Aside was timely and that Ms. Howard's counsel Case Conference Report and Initial Disclosure were provided to the Court and opposing counsel by May 17, 2017, according to Plaintiff's Motion so that Mr. Hughes was not disadvantaged.

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

1. Service of the Case Conference Report did not delay in Discovery or disadvantage Respondent.
2. Failure to comply with the Safe Harbor Provision of NRCP 11 warrants denial of Respondent's Motion for Sanctions.

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 April 24, 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 April 25, 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 May 8, 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 asserts that Respondent failed to adhere to the Safe Harbor Provision of NRCP 11 and that the amount of sanctions exceed reasonable fees and costs.
Respondent feels that delays warrant sanctions.

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

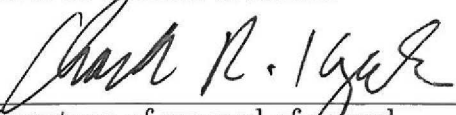
Name of appellant

May 30, 2017

Date

CHARLES R. KOZAK

Name of counsel of record


Signature of counsel of record

Nevada, County of Washoe

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 30 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 30 day of May, 2017

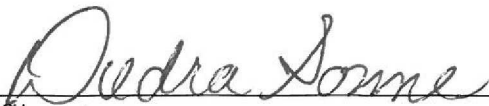

Signature

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
9	Order Denying Motion for Reconsideration	5
10	Notice of Entry of Order Regarding Amount of Sanctions and Order regarding Amount of Sanctions	8