

EXHIBIT “1”

ORIGINAL

FILED

1 \$3850

Jerry M. Snyder, Esq.

2 Nevada Bar Number 6830

Hale Lane Peek Dennison and Howard

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Reno, Nevada 89511

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Attorney for Applicant

2007 FEB 14 PM 2:08

RONALD A. LONGTIN, JR.

BY *[Signature]*
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

Case No.

CV07 00341

Dept. No.

Applicants,

vs.

MARK B. STEPPAN,

Respondent.

APPLICATION FOR RELEASE OF MECHANIC'S LIEN

Applicants John Iliescu Jr., Sonnia Santee Iliescu and John Iliescu Jr. and Sonnia Iliescu as Trustees of the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust ("the Iliescu") hereby file their Application for Release of Mechanic's Lien.

I. INTRODUCTION

This matter arises out of a mechanic's lien which Respondent and lien claimant Mark Steppan ("Steppan") recorded against certain real property owned by the Iliescus and being developed by BSC Financial LLC ("BSC"). BSC apparently contracted with Steppan to provide the design for the development. The parties proceeded pursuant to their contract, but a dispute arose regarding the amounts due to Steppan for the completion of preliminary schematic designs. As a result, Steppan recorded the instant mechanic's lien.

CV07-00341
JOHN ILIESCU ETAL VS. MARK S. 6 Pages
District Court 02/14/2007 01:59 PM
Washoe County \$3850

Hale Lane Peek Dennison and Howard
5441 Kietzke Lane, Second Floor
Reno, Nevada 89511

1 This lien is void and unenforceable because the putative lien claimant recorded the lien without
2 (1) providing notice of right to lien pursuant to NRS 108.245(6) (pre-lien notice) or (2) providing
3 notice of intent to lien under NRS 108.226(6). For these reasons, the mechanic's lien is facially
4 unenforceable and should be released.

5
6 **II. STATEMENT OF FACTS**

7 This matter arises out of a disagreement for the amounts due under an agreement between BSC
8 and Steppan for architectural design services. BSC is in the process of developing the Property,
9 located in downtown Reno, as a mixed-use development that would include the construction of high-
10 rise condominiums to be known as Wingfield Towers.

11 On July 29, 2005, the Iliescu entered into a contract with Consolidated Pacific Development,
12 Inc. ("CPD") for the sale of the Property. CPD subsequently transferred its interest in this property to
13 BCS Financial, Inc. ("BCS"). As of this date, this sale has not closed. Declaration of Dr. John Iliescu
14 ("Iliescu Decl.").

15 BSC is in the process of developing the Property into a residential condominium tower.
16 However, Dr. Iliescu has not been regularly apprised of the status of the development. BSC has not
17 informed him of the status of their development efforts. Although Dr. Iliescu attended certain public
18 meetings at which someone from the BCS design team made a presentation, at no time was he
19 introduced to any architect or engineer. Dr. Iliescu was never informed of the identity of any architect
20 or engineer working on the development project. Iliescu Decl. ¶ 4.

21 A dispute apparently arose between BSC and the architect, Mark B. Steppan. On November 7,
22 2006, Steppan recorded a mechanics lien against the Property. Iliescu Decl., Ex. 1. Through this lien,
23 Steppan claims to be owed an amount exceeding \$1.8 million. *Id.* However, Steppan never served a
24 Notice of Right to lien, as required by NRS 108.245(1). Likewise, Steppan never provided a 15-day
25 notice of intent to lien, as required by 108.226(6). Iliescu Decl., ¶ 6-7.

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1 **III. ARGUMENT**

2 **A. Steppan's Failure To Comply With Procedural Requirements Renders The**
3 **Subject Lien Unenforceable**

4 **1. Standard for Removal of Lien Under NRS 108.2275**

5 NRS 108.2275(1) specifically sets forth a procedure through which a property owner or party
6 in interest may apply to the court for an order releasing or expunging a mechanic's lien that is
7 frivolous, excessive, or was made without reasonable cause:

8 The debtor of the lien claimant or a party in interest in the premises
9 subject to the lien who believes the notice of lien is frivolous and was
10 made without reasonable cause, or that the amount of the lien is excessive,
11 may apply by motion to the district court for the county where the
property or some part thereof is situated for an order directing the lien
claimant to appear before the court to show cause why the relief requested
should not be granted.

12 Upon the filing of such an application, the district court is to issue an order setting the date for
13 a hearing on the motion. The petitioner seeking removal of the lien then serves the order, application
14 and other documents on the lien claimant. NRS 108.2275(2).

15 Accordingly, where a lien claimant is not entitled to record or enforce the subject lien, the court
16 is to release or expunge the lien pursuant to NRS 108.2275. The Nevada Supreme Court has held that
17 where a lien claimant could not establish a statutorily valid lien claim, the district court erred by failing
18 to expunge the lien pursuant to NRS 108.2275. *See Crestline Inv. Group, Inc. v. Lewis*, 119 Nev. 365,
19 75 P.3d 363 (2003). In *Crestline*, an employee of the property owner placed a lien on the property for
20 unpaid wages. *Id.* The property owner moved to have the lien expunged under NRS 108.2275, but the
21 district court denied this motion and actually increased the amount of the lien. *Id.* On appeal by the
22 owner, the Nevada Supreme Court held that the district court erred in failing to expunge the lien
23 because the lien claimant had not shown that his labor improved the subject property, and therefore,
24 the lien was invalid under NRS 108.223. *Id.*

25 The Nevada Supreme Court has reasoned that "[t]he mechanics lien is a creature of statute,
26 unknown at common law." *Schofield v. Copeland Lumber Yards, Inc.*, 101 Nev. 83, 84, 692 P.2d 519,
27 520 (1985). "Strict compliance with the statutes creating the remedy is therefore required before a
28 party is entitled to any benefits occasioned by its existence.... If one pursues his statutory remedy by

1 filing a complaint to perfect a mechanic's lien, he necessarily implies full compliance with the
2 statutory prerequisites giving rise to the cause of action." *Id.* quoting *Fisher Bros., Inc. v. Harrah*
3 *Realty Co.*, 92 Nev. 65, 67, 545 P.2d 203 (1976). Although the Court has held that "where there is
4 substantial compliance with the lien statutes notices, liens and pleadings arising out of those statutes
5 will be liberally construed in order to effect the desired object," the Court also reasoned that it "did not
6 think that a notice of lien may be so liberally construed as to condone the total elimination of a specific
7 requirement of the statute." *Id.* at 85, 692 P.2d at 520. For example, in *Schofield v. Copeland Lumber*
8 *Yards, Inc.*, the Court concluded that the lien was invalid as a matter of law because the lien claimant
9 did not fully or substantially comply with the requirement to provide a statement of the terms, time
10 given and conditions of the contract. *Id.*

11
12 2. Steppan's Lien Should Be Removed Because He Did Not Provide the Required
13 Pre-Lien Notice

14 Pursuant to Section 108.245(1) of the Nevada Revised Statutes "[e]xcept as otherwise provided
15 in subsection 5, every lien claimant, other than one who performs only labor, who claims the benefit of
16 NRS 108.221 to 108.246, inclusive, shall, at any time after the first delivery of material or
17 performance of work or services under his contract, deliver in person or by certified mail to the owner
18 of the property a notice of right to lien."¹ NRS 108.245(3) provides that "no lien for . . . services
19 performed . . . may be perfected or enforced pursuant to NRS 108.221 to 108.246, unless notice has
20 been given."

21 Here, it is undisputed that Steppan claims to have a lien on the Property for architectural
22 services. However, Steppan did not provide any Notice of Right to Lien to Dr. Iliescu, the property
23 owner. Accordingly, pursuant to the unambiguous language of NRS 108.245, the lien Steppan
24 recorded is not enforceable.

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¹NRS 108.245(5) states that "[a] prime contractor or other person who contracts directly with an owner or sells materials directly to an owner is not required to give notice pursuant to this section." Therefore, subsection 5 does not apply in this case because Steppan did not contract directly with the Owners of the Property.

3. Steppan's Lien Should Be Removed Because He Did Not Provide the Required 15-Day Notice of Intent to Lien

Besides having to satisfy the requirements of providing the owner with notice of right to lien, a lien claimant must also comply with the notice provisions of NRS 108.226. Pursuant to NRS 108.226(6), "[i]f a work of improvement involves the construction, alteration, or repair of multi-family or single-family residences, a lien claimant, except laborers, **must serve a 15-day notice of intent to lien.**" (emphasis added). The statute outlines the required contents of the notice and the manner in which it must be served, and provides that "[a] notice of lien for materials or equipment furnished or for work or services performed, except labor, for a work of improvement involving the construction, alteration, or repair of multi-family or single-family residences **may not be perfected or enforced** pursuant to NRS 108.221 to 108.256, inclusive, **unless the 15-day notice of intent has been given.**" (emphasis added).

In the present case, Steppan's lien is statutorily invalid because there has been absolutely no attempt by Steppan to comply with the statutory notice requirements discussed above. First, Steppan did not deliver to the Iliescus a notice of right to lien at any time after he began performing under the AIA Agreement. Therefore, pursuant to NRS 108.245(6), Steppan has no right to record a lien on the Property for any of the services he has performed thus far under the AIA Agreement. Further, Steppan recorded the lien without delivering a Notice Of Intent to Lien, as required by NRS 108.226(6), to the Iliescus. Accordingly, Steppan has failed to provide both the required notice of right to lien and the required 15-day pre-lien notice. As a result, the mechanic's lien is invalid as a matter of law. Therefore, this Court is authorized to expunge Steppan's mechanic's lien pursuant to NRS 108.2275 because Steppan is not entitled to record or enforce the subject lien.

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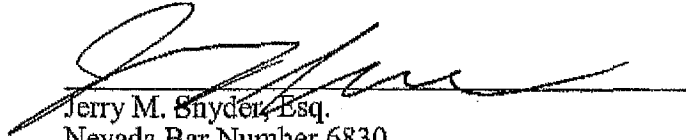
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1 **IV. CONCLUSION**

2 For the foregoing reasons, the Iliescus respectfully request that this Court grant their
3 Application for Release of Mechanic's Lien.

4 DATED: February 14, 2007.

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Jerry M. Snyder, Esq.
Nevada Bar Number 6830
Hale Lane Peek Dennison and Howard
5441 Kietzke Lane, Second Floor
Reno, Nevada 89511

7
8
9 *Attorney for Applicant*

EXHIBIT “2”

2-4-1

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FILED

2007 MAY -4 PM 12:51

RONALD A. LONGTIN, JR.

BY Y. Lloyd
DEPUTY

1 CODE §1425
2 GAYLE A. KERN, ESQ.
3 Nevada Bar No. 1620
4 GAYLE A. KERN, LTD.
5 5421 Kietzke Lane
6 Reno, Nevada 89511
7 Phone: (775) 324-3930
8 Fax: (775) 324-1011
9 E-Mail: gaylekern@kernltd.com

10 Attorneys for MARK STEPPAN

11
12 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
13 IN AND FOR THE COUNTY OF WASHOE

14 MARK STEPPAN, CASE NO.: CV07 01021
15 Plaintiff, DEPT. NO.:
16
17 vs.

18 JOHN ILIESCU, JR. and SONNIA ✓
19 ILIESCU, as Trustees of the JOHN ✓
20 ILIESCU, JR., AND SONNIA ✓
21 ILIESCU 1992 FAMILY TRUST ✓
22 AGREEMENT; JOHN ILIESCU, ✓
23 individually; DOES I-V, inclusive; ✓
24 and ROE CORPORATIONS VI-X, ✓
25 inclusive.

26 Defendants.

27 COMPLAINT TO FORECLOSE MECHANIC'S LIEN AND FOR DAMAGES

28 Plaintiff, MARK STEPPAN ("Plaintiff"), by and through his attorney, Gayle A. Kern,
Ltd., for his complaint against the defendants, above- named, does allege and aver as follows:

GENERAL ALLEGATIONS

1. Plaintiff is, and at all times herein mentioned was, an individual licensed as an
architect under the laws of the State of Nevada.

2. Plaintiff is informed and believes, and based thereon alleges, that Defendants

GAYLE A. KERN, LTD.
5421 KIETZKE LANE, SUITE 200
RENO, NEVADA 89511
TELEPHONE: (775) 324-5930

1 7. On information and belief, Defendants entered into a Land Purchase
2 Agreement to sell the Real Property, and that such Land Purchase Agreement provided that
3 the purchasers had the right to develop and obtain improvements on the Real Property prior
4 to the close of escrow.
5

6 8. On or about April 2006, Plaintiff entered into a contract with the purchaser of
7 the Real Property to provide architectural services.
8

9 9. Pursuant to the contract with the purchaser, Plaintiff did supply the services
10 required of him under contract, however, Plaintiff has not been paid in full for the services.
11

12 10. There is now due, owing and unpaid as of April 19, 2007, from the Defendants,
13 for which demand has been made, the sum of \$1,939,347.51, together with interest until paid.
14

15 11. Plaintiff, in order to secure its claim, has perfected a mechanic's lien upon the
16 property described above by complying with the statutory procedure pursuant to NRS §
17 108.221 through NRS § 108.246 inclusive.

18 12. Plaintiff recorded its Notice of Lien on November 7, 2006, as Document No.
19 3460499 in the Office of the County Recorder of Washoe County, Nevada; a 15-day Notice
20 of Intent to Claim Lien was served on March 7, 2007; and Amended Notice and Claim of
21 Lien was recorded on May 3, 2007, as Document No. 3528313.
22

23 13. That pursuant to the provisions of NRS Chapter 108, Plaintiff is entitled to
24 recover its costs of recording and perfecting its mechanic's lien, interest upon the unpaid
25 balance at a rate of 24 percent per annum and reasonable attorney's fees and costs.
26

27 **WHEREFORE**, Plaintiff prays for judgment against the Defendants, jointly and
28

GAYLE A. KERN, LTD.

5421 KIETZKE LANE, SUITE 200
RENO, NEVADA 89511
TELEPHONE: (775) 324-5930


severally, as follows:

As to Plaintiff's First Claim For Relief:

1. Judgment in a sum in excess of \$10,000.00, together with interest from April 19, 2007, until paid at the per diem rate of \$955.82;
2. Costs of recording and perfecting Notice of Claim of Lien, costs of suit incurred herein, and a reasonable attorney's fee;
3. That the sums set forth above be adjudged a lien upon the land and premises described herein, owned or reputedly owned by defendants and that the Court enter an order that the real property, land and improvements, or such as may be necessary, be sold pursuant to the laws of the State of Nevada, and that the proceeds of the sale be applied to the payment of sums due the Plaintiff;
4. For such other and further relief as the Court may deem just and proper in the premises.

Dated this 4th day of May, 2007.

GAYLE A. KERN, LTD.


GAYLE A. KERN, ESQ.
Attorneys for MARK STEPPAN

GAYLE A. JERN, LTD.
5421 KIETZKE LANE, SUITE 200
RENO, NEVADA 89511
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VERIFICATION

STATE OF CALIFORNIA)
: ss.
COUNTY OF _____)

I, MARK STEPPAN, am the Plaintiff in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are thereon alleged on information and belief, and as to those matters I believe them to be true.

MARK STEPPAN

Subscribed and sworn to before me
this _____ day of May, 2007.

NOTARY PUBLIC

GAYLE A. KERN, LTD.
5421 KIETZKE LANE, SUITE 200
RENO, NEVADA 89511
TELEPHONE: (775) 324-5930

SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document,
COMPLAINT TO FORECLOSE MECHANIC'S LIEN AND FOR DAMAGES filed in case
number to be assigned.

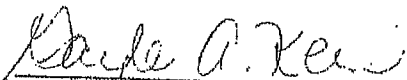
☒ Document does not contain the social security number of any person

-OR-

☐ Document contains the social security number of a person as required by:

☐ A specific state or federal law, to wit:

Dated this 4th day of May, 2007.



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Nevada Bar No. 1620
GAYLE A. KERN, LTD.
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E-mail: gaylekern@kernltd.com
Attorneys for MARK STEPPAN

CIVIL COVER SHEET

Washoe County, Nevada

Case No. _____

(Assigned by Clerk's Office)

I. Party Information

Plaintiff(s) (name/address/phone): MARK STEPPAN
DOB: _____Defendant(s) (name/address/phone): JOHN ILIESCU, JR.
DOB: AND SONNIA ILIESCU, as Trustees of
the JOHN ILIESCU, JR. AND SONNIA ILIESCU
1992 FAMILY TRUST AGREEMENT, ET AL.Attorney (name/address/phone): Gayle A. Kern, Esq
5421 Kietzke Ln. #200, Reno, NV
89511; (775) 324-5930

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)

☐ Arbitration Requested

Civil Cases

Real Property

- ☐ Landlord/Tenant - LT
☐ Unlawful Detainer - UD
☒ Title to Property
☐ Foreclosure - FC
☒ Liens - LE
☐ Quiet Title - QT
☐ Specific Performance - SP
☐ Condemnation/Eminent Domain - CD
☐ Other Real Property - RO
☐ Partition - PT
☐ Planning/Zoning - PZ

Torts

- Negligence**
☐ Negligence - Auto - VP
☐ Negligence - Medical/Dental - MD
☐ Negligence - Premises Liability - SF
 (Slip/Fall)
☐ Negligence - Other - NO
- ☐ Product Liability
☐ Product Liability/Motor Vehicle - VH
☐ Other Torts/Product Liability - PL
☐ Intentional Misconduct
☐ Torts/Defamation (Libel/Slander) - DF
☐ Interfere with Contract Rights - IR
☐ Employment Torts (Wrongful Term) - WT
☐ Other Torts - TO
☐ Anti-trust - AI
☐ Fraud/Misrepresentation - FM
☐ Insurance - IN
☐ Legal Tort - LG
☐ Unfair Competition - UC

Probate

- ☐ Summary Administration - SU
☐ General Administration - FA
☐ Special Administration - SL
☐ Set Aside Estates - SE
☐ Trust/Conservatorships
☐ Individual Trustee - TR
☐ Corporate Trustee - TM
☐ Other Probate - OP

Other Civil Filing Types

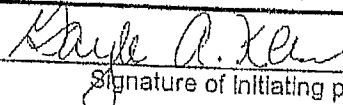
- ☐ Construction Defect - CF
☐ Chapter 40
☐ General
☐ Breach of Contract
☐ Building & Construction - BC
☐ Insurance Carrier - BF
☐ Commercial Instrument - CI
☐ Other Contracts/Acct/Judg. - CO
☐ Collection of Actions - CT
☐ Employment Contract - EC
☐ Guarantee - GU
☐ Sale Contract - SC
☐ Uniform Commercial Code - UN
☐ Civil Petition for Judicial Review
☐ Other Administrative Law - AO
☐ Department of Motor Vehicles - DM
☐ Worker's Compensation Appeal - SI
- ☐ Appeal from Lower Court (also check applicable civil case box)
☐ Transfer from Justice Court - TJ
☐ Justice Court Civil Appeal - CA
☐ Civil Writ
☐ Other Special Proceeding - SS
☐ Other Civil Filing
☐ Compromise of Minor's Claim - CM
☐ Conversion of Property - CN
☐ Damage to Property - DG
☐ Employment Security - ES
☐ Enforcement of Judgment - EJ
☐ Foreign Judgment - Civil - FJ
☐ Other Personal Property - PO
☐ Recovery of Property - RE
☐ Stockholder Suit - ST
☐ Other Civil Matters - GC
☐ Confession of Judgment - CJ
☐ Petition to Seal Criminal Records - PS

III. Business Court Requested (If you check a box below, you must check an additional box above to determine case type.)

- ☐ NRS Chapters 78-88
☐ Commodities (NRS 90)
☐ Securities (NRS 90)
☐ Investments (NRS 104 Art. 8)
☐ Deceptive Trade Practices (NRS 598)
☐ Trademarks (NRS 600A)
☐ Enhanced Case Mgmt/Business
☐ Other Business Court Matters

5/4/07

Date



Signature of Initiating party or representative

See other side for family-related case filings.

EXHIBIT “3”

ORIGINAL

FILED

2007 SEP 27 PM 3:59

RONALD A. LONGSTIN, JR.

BY

DEPUTY

CODE \$1130
CODE 4180
PREZANT & MOLLATH
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Attorneys for John Iliescu, Jr. and Sonnia Iliescu and The
John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust

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

MARK B. STEPPAN,

Plaintiff,

v.

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

Defendants.

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

Third-Party Plaintiffs,

v.

CONSOLIDATED PACIFIC
DEVELOPMENT, INC., a Nevada

Case No. ~~CV07-01021~~

Department No. B6

Consolidated with:

Case No. CV07-00341

Department No. B6

1 Corporation; DECAL OREGON, INC., an
2 Oregon Corporation; CALVIN BATY,
3 individually; JOHN SCHLEINING,
4 individually; HALE LANE PEEK
5 DENNISON AND HOWARD
6 PROFESSIONAL CORPORATION, a
7 Nevada professional corporation, dba
8 HALE LANE; KAREN D. DENNISON;
9 R. CRAIG HOWARD; JERRY M.
10 SNYDER; and DOES I thru X,

11 Third-Party Defendants.

12 **ANSWER AND THIRD PARTY COMPLAINT**

13 **ANSWER TO COMPLAINT TO FORECLOSE MECHANIC'S LIEN AND
14 FOR DAMAGES**

15 Defendants John Iliescu, Jr. and Sonnia Iliescu as Trustees of the John Iliescu, Jr. and
16 Sonnia Iliescu 1992 Family Trust Agreement, and John Iliescu individually, by and through their
17 attorneys Prezant & Mollath and Downey Brand LLP, hereby answer the COMPLAINT TO
18 FORECLOSE MECHANIC'S LIEN AND FOR DAMAGES ("Complaint")¹, filed by Plaintiff
19 Mark Steppan, on May 4, 2007, and in support thereof, states as follows:

20 **GENERAL ALLEGATIONS**

21 1. Defendants are without knowledge or information sufficient to form a belief as to
22 the truth of the allegations of Paragraph 1 of the Complaint, and they are therefore denied.

23 2. Admitted.

24 3. The allegations of Paragraph 3 are legal conclusions to which no response is
25 required and/or Defendants are without knowledge or information sufficient to form a belief as to
26 the truth of the allegations of Paragraph 3 of the Complaint, and they are therefore denied.

27 4. The allegations of Paragraph 4 are legal conclusions to which no response is
28 required and/or Defendants are without knowledge or information sufficient to form a belief as to
the truth of the allegations of Paragraph 4 of the Complaint, and they are therefore denied.

¹ Any capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Complaint.

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1 limit the legal basis upon which any affirmative defense to the allegations of the Complaint is
2 asserted.)

3 **FIRST AFFIRMATIVE DEFENSE**

4 (Failure to State Any Claim For Relief)

5 As an affirmative defense to each and every claim for relief, Defendants are informed and
6 believe and on that basis allege that the claim for relief fails to constitute any claim for relief.

7 **SECOND AFFIRMATIVE DEFENSE**

8 (Lack of Standing)

9 As an affirmative defense to each and every claim for relief, Defendants are informed and
10 believe and on that basis allege that the Plaintiff lacks standing, because he failed to comply with
11 the provisions of NRS 108.221 et seq.

12 **THIRD AFFIRMATIVE DEFENSE**

13 (Statute of Limitations and Statutory Requirements)

14 As an affirmative defense to each and every claim for relief, Defendants are informed and
15 believe and on that basis allege that each and every claim for relief is barred by the statute of
16 limitations in that Plaintiff failed to follow statutory requirements in connection with his
17 mechanic's lien.

18 **FOURTH AFFIRMATIVE DEFENSE**

19 (Laches)

20 As an affirmative defense to each and every claim for relief, Defendants are informed and
21 believes and on that basis allege that each and every claim for relief is barred, in whole or in part,
22 by the equitable doctrine of laches.

23 **FIFTH AFFIRMATIVE DEFENSE**

24 (Privilege)

25 As an affirmative defense to each and every claim for relief, Defendants are informed and
26 believe and on that basis allege that each and every claim for relief thereof is barred, in whole or
27 in part, by the doctrines of privilege.

28 **SIXTH AFFIRMATIVE DEFENSE**

(Justification)

As an affirmative defense to each and every claim for relief, Defendants are informed and

1 believe and on that basis allege that each and every claim for relief thereof is barred, in whole or
2 in part, by the doctrines of justification.

3 **SEVENTH AFFIRMATIVE DEFENSE**

4 (Equity)

5 As an affirmative defense to each and every claim for relief, Defendants are informed and
6 believe and on that basis allege that each and every claim for relief thereof is barred, in whole or
7 in part, by principles of equity and fairness.

8 **EIGHTH AFFIRMATIVE DEFENSE**

9 (Unclean Hands)

10 As an affirmative defense to each and every claim for relief, Defendants are informed and
11 believe and on that basis allege that each and every claim for relief thereof is barred, in whole or
12 in part, by the doctrine of unclean hands.

13 **NINTH AFFIRMATIVE DEFENSE**

14 (Consent)

15 As an affirmative defense to each and every claim for relief, Defendants are informed and
16 believe and on that basis allege that each and every claim for relief thereof is barred, in whole or
17 in part, by the doctrine of consent and/or acquiescence.

18 **TENTH AFFIRMATIVE DEFENSE**

19 (Estoppel)

20 As an affirmative defense to each and every claim for relief, Defendants are informed and
21 believe and on that basis allege that each and every claim for relief thereof is barred, in whole or
22 in part, by the doctrine of estoppel.

23 **ELEVENTH AFFIRMATIVE DEFENSE**

24 (Failure to Mitigate)

25 As an affirmative defense to each and every claim for relief, and while denying that
26 Plaintiff has incurred any damages, Defendants are informed and believe and thereon allege that
27 Plaintiff has failed to act reasonably to mitigate, minimize or avoid damages, if any there be. As
28 a result, Plaintiff's recovery, if any, should be barred or reduced.

1 **TWELFTH AFFIRMATIVE DEFENSE**

2 (Failure to Join Indispensable Parties)

3 As an affirmative defense to each and every claim for relief, Defendants are informed and
4 believe and on that basis allege that Plaintiff has failed to join indispensable parties.

5 **THIRTEENTH AFFIRMATIVE DEFENSE**

6 (Waiver)

7 As an affirmative defense to each and every claim for relief, Defendants allege that each
8 and every claim for relief thereof is barred, in whole or in part, by waiver.

9 **FOURTEENTH AFFIRMATIVE DEFENSE**

10 (Uncertainty)

11 As an affirmative defense to each and every claim for relief thereof, Defendants allege
12 that each and every claim for relief thereof is barred, in whole or in part, as the allegations of the
13 Complaint are uncertain to include the amount claimed as Plaintiff's lien.

14 **FIFTEENTH AFFIRMATIVE DEFENSE**

15 (Intentional Acts)

16 As an affirmative defense to each and every claim for relief, Defendants are informed and
17 believe and on that basis allege that each and every claim for relief is barred, in whole or in part,
18 by the intentional acts, omissions, commissions and/or intentional conduct of the Plaintiff, and/or
19 his respective agents, representatives, attorneys and employees, if any.

20 **SIXTEENTH AFFIRMATIVE DEFENSE**

21 (Failure To Do Equity)

22 As an affirmative defense to each and every claim for relief, Defendants are informed and
23 believe and on that basis allege that each and every claim for relief is barred, in whole or in part,
24 by reason of the Plaintiff's failure to do equity.

25 **SEVENTEENTH AFFIRMATIVE DEFENSE**

26 (Attorneys' Fees and Costs)

27 As an affirmative defense to each and every claim for relief, Defendants are informed and
28 believe and on that basis allege that Plaintiff is not entitled to any attorney fees or costs of suit.

CONCLUDING PRAYER FOR RELIEF

WHEREFORE, Defendants pray for judgment as follows:

1. Plaintiff takes nothing by way of his Complaint;
2. Plaintiff's Complaint be dismissed in its entirety with prejudice;
3. Defendants be awarded his costs of this suit;
4. Defendants be awarded attorneys' fees; and
5. For such other and further relief as the Court deems just and proper.

THIRD PARTY COMPLAINT

Third Party Plaintiffs, by and through counsel, Prezant & Mollath and Downey Brand, LLP, allege:

The Parties

1. Third Party Plaintiffs John Ilescu, Jr. and Sonnia Ilescu (hereinafter referred to as Ilescu or Third Party Plaintiffs) are residents of Washoe County, Nevada, and are the Trustees of the John Ilescu, Jr., and Sonnia Ilescu 1992 Family Trust Agreement.
2. Third Party Plaintiff John Ilescu, Jr. is an individual and a resident of Washoe County, Nevada.
3. Third Party Plaintiff Sonnia Ilescu is an individual and a resident of Washoe County, Nevada.
4. Third Party Defendant Consolidated Pacific Development, Inc. is a Nevada corporation.
5. Third Party Defendant DeCal Oregon, Inc. is an Oregon corporation and the successor, by name, to DeCal Custom Homes and Construction, Inc.
6. Third Party Defendant Indemnitor Calvin Baty is an individual and a resident of Oregon.
7. Third Party Defendant Indemnitor John Schleining is an individual and a resident of Oregon.
8. Third Party Defendant Hale Lane Peek Dennison and Howard, a Nevada professional corporation, dba Hale Lane, are attorneys licensed to practice law in the State of Nevada (hereinafter referred to as the "Hale Lane law firm").

9. Third Party Defendants Karen D. Dennison, R. Craig Howard and Jerry M. Snyder are attorneys licensed to practice law in the State of Nevada and are partners and associates of Hale Lane (hereafter referred to individually as "Dennison", "Howard" and "Snyder").

10. Third Party Defendants, Does I through X, are persons or entities who participated in the acts alleged herein, or received the proceeds of the acts alleged herein, whose names or identities are not yet known to Third Party Plaintiffs. Third Party Plaintiffs reserve the right to amend this complaint after the identities and nature of their involvement becomes known.

11. Third Party Plaintiffs are informed and believe, and based thereon allege, that at all times relevant herein, all Third Party Defendants, including Does I through X (collectively "Third Party Defendants"), were and are the agent, employee and partner of each of the remaining Third Party Defendants, and were, in performing the acts complained of herein, acting within the scope of such agency, employment, or partnership authority.

General Allegations

12. Third Party Plaintiffs are the owners of the real property assigned Washoe County Assessors Parcel Numbers 011-112-03, 011-112-06, 011-112-07, and 011-112-12, also commonly known as 219 Court Street, Reno, Nevada, 0 Court Street, Reno, Nevada and 223 Court Street, Reno, Nevada (all collectively, the "Property").

13. On or about July 14, 2005, Richard K. Johnson of the Metzker Johnson Group, real estate brokers for Iliescu (hereinafter referred to as Johnson) was contacted by Consolidated Pacific Development, Inc. ("CPD"), and its President Sam Caniglia, with an offer to purchase the Property ("Offer"), for \$7,500,000.00.

14. On or about July 21, 2005, Johnson prepared a "Land Purchase Agreement that was subsequently executed by Mr. Caniglia for CPD on July 25, 2005.

15. On or about July 29, 2005, the Johnson Defendants prepared a revised "Land Purchase Agreement" ("Purchase Agreement") that was submitted to and executed by Iliescu on August 3, 2005.

16. The Purchase Agreement also incorporated an Addendum No. 1 dated August 1, 2005, and executed by Iliescu on August 3, 2005, and an Addendum No. 2 dated August 2, 2005.

1 and executed by Iliescu on August 3, 2005. Addendum No. 2 specifically provided, and the
2 parties contemplated, that the Purchase Agreement would be reviewed, "fine tuned" and clarified
3 by legal counsel retained by Iliescu before finalization.

4 17. On or about August 11, 2005, unbeknownst to Iliescu, CPD had unilaterally
5 purported to assign and transfer all of its interests in the Purchase Agreement to an entity known
6 as DeCal Custom Homes and Construction ("DeCal").

7 18. On or before September 22, 2005, pursuant to Addendum No. 3, Iliescu retained
8 the Hale Lane law firm to review, "fine tune", clarify and, in all respects, advise Iliescu relative to
9 the Purchase Agreement.

10 19. An Addendum No. 3 to the Purchase Agreement was thereafter prepared by Karen
11 D. Dennison of the Hale Lane law firm. Addendum No. 3 was executed by Iliescu and CPD on
12 or about October 8, 2005 and provided that, in certain circumstances, CPD could assign its
13 interests in the Purchase Agreement to another entity. The assignment referred to in Paragraph 17
14 above, however, was not addressed, disclosed or contained in Addendum No. 3.

15 20. On or before December 14, 2005, the Hale Lane law firm undertook to represent
16 both Iliescu and Purchasers Calvin Baty and Consolidated Pacific Development, Inc. in relation to
17 obtaining the necessary entitlements on the property as contemplated by the Purchase Agreement.
18 A copy of the December 14, 2005 Waiver of Conflict letter is attached hereto and marked Exhibit
19 "A". A major component of the entitlement was the work and drawings of an architect.

20 21. The Hale Lane law firm never discussed with or advised Iliescu at any time to
21 record a Notice of Non-Responsibility with the Washoe County Recorder to ensure the Property
22 would not be encumbered by mechanics or architect's liens recorded by individuals hired by CPD
23 as contemplated by the Purchase Agreement. On October 31, 2005, unbeknownst to Iliescu, an
24 architect, Mark Steppan, AIA, entered into a contract with BSC Financial, LLC in relation to the
25 property subject to the Purchase Agreement.

26 22. Despite being aware and/or involved in the purported assignment to DeCal and
27 representing the purchaser in connection with the entitlement process, the Hale Lane law firm
28 never advised or discussed with Iliescu the assignment, whether DeCal was an appropriate

1 assignee and purchaser of the Property, whether it had the means and financial viability to close
2 the sale, whether or how the purported assignment to DeCal affected Iliescu's interests under the
3 Purchase Agreement and the existence of BSC Financial, LLC as it may relate to the property and
4 Purchase Agreement and the October 31, 2005 contract with Mark Steppan, AIA..

5 23. Iliescu first became aware of the DeCal assignment on or about October 2, 2006 in
6 connection with a TMWA consent form related to the development application for the property
7 with the City of Reno (Case No. LDC06-00321, Wingfield Towers). The original Owner's
8 Affidavit of Iliescu that accompanied the City of Reno application made reference to only CPD
9 and Sam Caniglia.

10 24. On November 7, 2006, Mark Steppan, AIA recorded a mechanic's lien on the
11 property in the sum of \$1,783,548.00. A copy of said Notice and Claim of Lien is attached hereto
12 and marked Exhibit "B". The Hale Lane law firm never informed Iliescu that there was a dispute
13 with the project architect over non-payment for his services.

14 25. On November 28, 2006, the Wingfield Towers project (Case No. LDC06-00321)
15 was approved by the Reno City Council. The Clerk's Letter of Approval was issued November
16 30, 2006.

17 26. The Mechanic's Lien recorded by Mark Steppan, AIA on November 7, 2006 made
18 reference, at its Paragraph 2, to BSC Financial, LLC, as the entity that employed Mark Steppan,
19 AIA and who furnished the work and services in connection with Iliescu's property. Prior to said
20 date, Iliescu had no knowledge of the existence of or involvement of BSC Financial, LLC relative
21 to the property.

22 27. At some point subsequent to August 10, 2005, without the knowledge and/or
23 consent of Iliescu, Consolidated Pacific Development, Inc. and DeCal Custom Homes &
24 Construction transferred or assigned their interest in the Land Purchase Agreement to BSC
25 Financial, LLC. The Hale Lane law firm never informed Iliescu of any such assignment or even
26 the existence of BSC Financial, LLC.

27 28. As of December 14, 2005, and at all times thereafter, BSC Financial, LLC,
28 Consolidated Pacific Development, Inc., DeCal Custom Homes & Construction, Calvin Baty and

1 John Schleining (all related entities or persons) were represented in connection with the property
2 and project referred to in this litigation by the Hale Lane law firm. At the same time, the Hale
3 Lane law firm represented Iliescu.

4 29. An Addendum No. 4 to the Purchase Agreement was prepared by the Hale Lane
5 law firm on or about September 18, 2006, and executed by Iliescu and CPD on or about
6 September 19, 2006. Again, in said Addendum, there was no disclosure of or reference to DeCal
7 or BSC Financial, LLC.

8 30. The Hale Lane law firm also represented Iliescu in regard to a) the Mechanic's
9 Lien recorded by Mark Steppan, AIA, and b) closing the Land Purchase Agreement. During said
10 time, the Hale Lane law firm did not advise Iliescu of the nature and extent of the problems that
11 existed relative to the transaction, the Purchase Agreements, the Mechanic's Lien filed by Mark
12 Steppan, AIA, the inherent conflicts that now existed between Iliescu, the inter-related Buyers as
13 referred to above, and the complications of the transaction.

14 31. On or about December 8, 2006, as a result of the recordation of the Mechanic's
15 Lien by Mark Steppan, AIA, the Hale Lane law firm and R. Craig Howard prepared an Indemnity
16 Agreement for their clients referred to in Paragraph 28 above. A copy of said Indemnity
17 Agreement is attached hereto and marked Exhibit "C". Said Indemnity Agreement was submitted
18 to Iliescu on December 12, 2006. Again, the Hale Lane law firm did not advise Iliescu of the
19 problems that existed as set forth in the above paragraphs.

20 32. On or about December 26, 2006, the Hale Lane law firm drafted a Conflict of
21 Interest Waiver Agreement and submitted it to Iliescu and BSC Financial, LLC for signature.
22 The Agreement was executed by the parties. A copy of said Agreement is attached hereto and
23 marked Exhibit "D". The Hale Lane law firm never advised Iliescu that the conflict of interest
24 that existed might not be waivable, nor did it advise Iliescu of the problems that now existed as
25 set forth in the above paragraphs.

26 33. Thereafter, the Hale Lane law firm embarked upon a course of advising Iliescu and
27 preparing documents so as to allow the Purchase Agreement to close with BSC Financial, LLC.
28 Such conduct included dealing with the Mechanic's Lien of Mark Steppan, AIA, recommending

1 to and obtaining Iliescu's consent to the assignment of the Land Purchase Agreement to BSC
2 Financial, LLC. Such consent was not in the best legal interests of Iliescu, given the existence of
3 the Mechanic's Lien and other problems as set forth in the above paragraphs.

4 34. On February 14, 2007, Jerry M. Snyder and the Hale Lane law firm, on behalf of
5 Iliescu, filed an Application for Release of the Mark Steppan, AIA Mechanic's Lien in Case No.
6 CV07-00341. Said Application is still pending. On May 4, 2007, Mark Steppan, AIA filed a
7 Complaint to Foreclose Mechanic's Lien and Damages in Case No. CV07-01021.

8 35. BSC Financial, LLC filed for Chapter 11 bankruptcy protection on April 25, 2007.

9 36. The Architect's Lien remains a cloud on Iliescu's title, Steppan has filed suit for
10 foreclosure of the Architect's Lien and seeks judicial foreclosure of his purported Architect's Lien
11 upon Iliescu's real property.

12 **FIRST CLAIM FOR RELIEF**

13 (Declaratory Relief—Against the Indemnitors Baty and Schleining)

14 37. Iliescu realleges and incorporates by reference Paragraphs 1 through 36 of this
15 Complaint, as if fully set forth herein.

16 38. A dispute and actual controversy has arisen and now exists between Iliescu and
17 Defendants regarding the rights, duties, and obligations of the parties.

18 39. Specifically, Iliescu is informed and believes, and based thereon allege, that the
19 Indemnitors, both pursuant to the Indemnity Agreement and an implied indemnity, owe Iliescu a
20 duty to defend this action and make Iliescu whole for any and all costs, damages, claims, or losses
21 suffered as a result of the Architect's Lien and the BSC Financial, LLC contract or agreement
22 with Steppan and its bankruptcy filing.

23 40. Iliescu is informed and believes, and based thereon allege, that the Indemnitors
24 dispute Iliescu's interpretation and assertion of rights.

25 41. In view of the actual conflict and controversy between the parties, Iliescu desires a
26 judicial determination of the respective rights, duties, and obligations of Iliescu, and the
27 Indemnitors.
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42. Iliescu realleges and incorporates by reference Paragraphs 1 through 41 of this Complaint, as if fully set forth herein.

THIRD CLAIM FOR RELIEF
(Breach of Contract – Against CPD and DeCal)

45. The Purchase Agreement is a valid and binding contract.

47. DeCal is obligated under the terms of the contract by virtue of the assignment to DeCal.

49. Both CPD and DeCal have failed to, among other things, tender the remainder of the purchase price for the Property due under the terms of the Purchase Agreement.

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51. Iliescu realleges and incorporates by reference Paragraphs 1 through 50 of this Complaint, as if fully set forth herein.

53. CPD and DeCal have failed to satisfy their obligations under the Purchase Agreement.

FIFTH CLAIM FOR RELIEF

55. Iliescu realleges and incorporates by reference Paragraphs 1 through 54 of this Complaint, as if fully set forth herein.

57. The Hale Lane law firm breached the duties enumerated above, and failed to perform these duties, as addressed herein.

(Against the Hale Lane law firm – Negligence)

14

1 59. The Hale Lane law firm, Dennison, Howard and Snyder were negligent because,
2 among other things, they failed to advise Iliescu to record a Notice of Non-Responsibility, failed
3 to properly advise Iliescu of the consequence of their conflict of interest in representing Iliescu in
4 the transaction addressed herein, and continued to represent Iliescu in the face of a non-waivable
5 conflict of interest.

6 60. The Hale Lane law firm's negligence has damaged Iliescu, has caused them to
7 incur attorneys fees, and has resulted in the Mechanic's Lien and potential loss of the Property
8 through foreclosure.

9 61. The Hale Lane law firm owed a duty to Iliescu to exercise reasonable care in how
10 they handled the sale transaction, the Purchase Agreement, and their advice to Iliescu regarding
11 the Property, and breached that duty by way of the breaches and omissions set forth above.

12 WHEREFORE, Iliescu prays for judgment as follows:

13 1. For damages in an amount in excess of \$10,000.00 to compensate for the losses,
14 damages, and expenses incurred by Iliescu;

15 2. For a declaration that the Indemnitors are fully responsible for any and all costs or
16 damages suffered by Iliescu arising out of the Architect's Lien and/or the BSC Financial, LLC
17 contract or agreement with Steppan;

18 3. For a decree of specific performance requiring CPD and DeCal to perform as
19 required under the terms of the Purchase Agreement, to include damages and indemnification
20 from the Steppan Mechanic's Lien.

21 5. For attorneys' fees incurred in the prosecution of this action;

22 ///

23 ///

1 6. For costs of suit; and,

2 7. For such other and further relief as the court deems proper.

3 DATED this 27th day of September, 2007.

4 **PREZANT & MOLLATH**

5 
6 By _____

7 Stephen C. Mollath, Esq.

8 and

9 **DOWNEY BRAND LLP**

10 
11 By _____

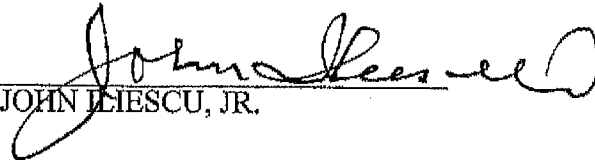
12 Sallie Armstrong, Esq.

13 Attorneys for John Ilescu, Jr. and Sonnia Ilescu
14 and The John Ilescu, Jr. and Sonnia Ilescu
15 1992 Family Trust

1 STATE OF NEVADA)
2 COUNTY OF WASHOE) ss.
3)

4 JOHN ILIESCU, JR., being duly sworn, deposes and says:

5 That he is a Third Party Plaintiff herein; that he has read the foregoing Third Party
6 Complaint and knows the contents thereof, and that the same is true of his own knowledge,
7 except as to the matters therein stated to be alleged upon information and belief, and as to those
8 matters, he believes it to be true.

9 
10 JOHN ILIESCU, JR.

11 SUBSCRIBED AND SWORN to before me,
12 this 27th day of September, 2007.

13 
14 NOTARY PUBLIC



EXHIBIT A

HALE LANE

ATTORNEYS AT LAW

5441 Kietzka Lane | Second Floor | Reno, Nevada 89511
Telephone (775) 327-3000 | Facsimile (775) 786-6179
www.halelane.com

December 14, 2005

Edward Everett Hale
(1929-1993)

Steve Lane

J. Stephen Peck

Karen D. Dennison

R. Craig Howard

Stephen V. Mowcock

Richard L. Elmore

Richard Swenson

Robert C. Anderson

Alex J. Flanagan

James L. Kelly

Kelly Tanselin

N. Patrick Flanagan

Matthew E. Woodhead

Michelle D. Mullins

Roger W. Tappan

Lance C. Bart

Johnny J. Neek

David A. Garcia

Elisa F. Calish

Timothy A. Laska

Frederick J. Schmidt

Justin Newman

Terry R. Sanders

Patrick J. Kelly

Scott D. Fleming

Scott Scherer

Anthony L. Hall

Jerry M. Snyder

Brent C. Eckertley

Frederick R. Balcher

Paula C. Halstead

Matthew J. Kreutzer

Matthew H. Hippler

Erad M. Johnson

Bryce K. Kunkles

Douglas C. Flowers

Justin C. Jones

Nicole M. Vance

Kimberly R. Rothky

Dora V. Djilinska

Simon Johnson*

Barth E. L. Cline

Heleen E. Mandrosian

Of Counsel

Roy Farrow

Pauline Ng Lee

Andrew Pearl

*Admitted in New York
and New Jersey only

John Iliescu, Jr., an individual

Sonnia Santee Iliescu, an individual

John Iliescu, Jr. and Sonnia Iliescu,

as Trustees of the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust

200 Court Street

Reno, Nevada 89501

Calvin Baty, an individual

c/o Consolidated Pacific Development, Inc.

932 Parker Street

Berkeley, California 94710-2524

Consolidated Pacific Development, Inc.

932 Parker Street

Berkeley, California 94710-2524

Re: Court Street/Island Avenue Condominium Project

Lady and Gentlemen:

As you are aware, this law firm has an existing attorney-client relationship with John Iliescu, Jr., an individual, and Sonnia Santee Iliescu, an individual, and John Iliescu, Jr. and Sonnia Iliescu, as Trustees of the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust (collectively "Iliescu") the owners of property located between Court Street and Island Avenue in Reno, Nevada (the "Property"). Our law firm has been requested to act as special counsel to the buyers of the Property in obtaining the necessary entitlements for a condominium project to be developed on the Property.

With your consent, we will represent Calvin Baty, an individual ("Baty"), and Consolidated Pacific Development, Inc., a Nevada corporation ("Consolidated") in assisting in obtaining the condominium entitlements and any entity to be formed by them (Baty, Consolidated and such new entity being collectively referred to as "Buyer").

HALE LANE PECK DENNISON AND HOWARD

LAS VEGAS OFFICE: 2300 West Sahara Avenue | Eighth Floor | Box 8 | Las Vegas, Nevada 89102 | Phone (702) 332-2500 | Facsimile (702) 365-6040
CARSON CITY OFFICE: 177 East William Street | Suite 200 | Carson City, Nevada 89701 | Phone (775) 684-8000 | Facsimile (775) 684-8001

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December 14, 2005

Page 2

HALE LANE
ATTORNEYS AT LAW

It is understood and agreed that in the event a conflict between Iliescu and Buyer should arise in matters involving the Property, this law firm will continue to represent Iliescu in such matter. It is also understood and agreed by Buyer that our representation of Buyer on this one matter will not preclude our representation of Iliescu in matters not involving the Property in the event that Buyer, or any of them, is an adversary to Iliescu on such other matters.

If you consent to our representation of Buyer as set forth in this letter and waive any and all potential conflicts of interest which may exist as a result of such representation, please execute the acknowledgement of your consent which follows and return a signed copy of this letter to us.

Please call if you have any questions or if you wish to discuss this matter further.

Very truly yours,



Karen D. Dennison

KDD:csr

Acknowledgement

Iliescu and Buyer consent to joint representation in the above-referenced matter and waiver of any potential conflict is hereby given as of the date set forth below.

Iliescu:

Date: _____

John Iliescu, Jr., individually, and as Trustee of the
John Iliescu, Jr. and Sonnia Iliescu 1992 Family
Trust

Date: _____

Sonnia Santee Iliescu, individually, and as Trustee
of the John Iliescu Jr. and Sonnia Iliescu 1992
Family Trust

BSC Financial LLC:

BSC Financial LLC, a limited liability company

Date: _____

By: _____
Calvin Baty, Manager

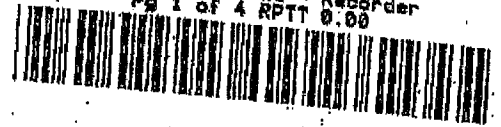
EXHIBIT B

When Recorded Mail To:

Gayle A. Kern, Esq.
Gayle A. Kern, Ltd.
5421 Kietzke Lane, Suite 200
Reno, NV 89511

DOC # 3460489
11/07/2008 04:21P Fee:17.00
BK1

Requested By
GAYLE A. KERN LTD
Washoe County Recorder
Kathryn L. Burke - Recorder
Pg 1 of 4 RPT 0.00



APN: 011-112-03; 011-112-06; 011-112-07; 011-112-12

GRANTEE'S ADDRESS:

Mark B. Steppan, AIA, CSI, NCARB
1485 Park Avenue, #103
Emeryville, CA 94608



NOTICE AND CLAIM OF LIEN

NOTICE IS HEREBY GIVEN that Mark Steppan, AIA, CSI, NCARB claims a Mechanic's and Materialman's Lien upon the property hereinafter particularly described, which property is located in Washoe County, Nevada, and which claim is made pursuant to the laws of the State of Nevada, particularly Chapter 108 of the Nevada Revised Statutes, as amended, for the value of work, labor, materials and/or services furnished by lien claimant for the improvement of real property hereinafter particularly described, located in the County of Washoe, State of Nevada.

That the whole or real property hereinafter particularly described has been or is in the process of improvement and is reasonably necessary for the convenient use and occupation of said property.

Claimant further states:

1. That the name of the owner or reputed owner of the premises sought to be charged is as follows: 011-112-03; 011-112-07; 011-112-12 - JOHN ILIESCU, JR., and SONNIA ILIESCU, as Trustees of the JOHN ILIESCU, JR., AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT; and 011-112-06 - John Iliescu, a married man as his sole and separate property.
2. That the name of the person by whom lien claimant was employed and to whom lien claimant furnished work, labor, materials and/or services in connection with the project is: BSC Financial, LLC, c/o Consolidated Pacific Development, Inc., 932 Parker Street, Berkeley, CA 94710; Job name: Residential Project, Reno, Nevada, Job Address: North Arlington Avenue, Island Avenue and Court Street; Owner's Designated Representative: Sam Caniglia.
3. That the terms, time given and conditions of the contract were: Payments on account of services rendered and for Reimbursable Expenses incurred shall be made monthly upon presentation of the Statement of services for the building, structure or other work of improvement located at North Arlington Avenue, Island Avenue and Court Street, Reno, Nevada. All services were to be invoiced based on work performed as reflected in applications for payment, no retainage to be withheld from monthly progress payments. All invoices are due in fifteen days.



4. That work, labor, materials and/or services have been furnished to and actually used upon the above-described project in the remaining amount of ONE MILLION SIX-HUNDRED THIRTY-NINE THOUSAND ONE-HUNDRED THIRTY AND NO/100 DOLLARS (\$1,639,130.00), reimbursable expenses of ONE-HUNDRED FIFTEEN THOUSAND THREE HUNDRED SIXTY-TWO AND NO/100 DOLLARS (\$115,362.00) plus interest through October 31, 2006 in the amount of TWENTY-NINE THOUSAND FIFTY-SIX DOLLARS AND 85/100 (\$29,056.85), continuing interest, attorney's fees and costs and the amount is now due and owing to lien claimant.

5. That the first labor and materials furnished by lien claimant to and incorporated in the project was on or about April 21, 2006 and that the last labor and materials furnished by lien claimant and incorporated in the project was within the past ninety days; that there are no other just credits or off-sets to be deducted and the total amount due and owing to lien claimant is the sum of ONE MILLION SEVEN-HUNDRED EIGHTY-THREE THOUSAND FIVE-HUNDRED FOURTY-EIGHT AND 85/100 DOLLARS (\$1,783,548.85), plus continuing interest, attorney's fees and costs.

6. That a demand for payment has been made by lien claimant and that no part or portion of the amount due and owing has been paid; that there are no further off-sets to the claim and that the sum of ONE MILLION SEVEN-HUNDRED EIGHTY-THREE THOUSAND FIVE-HUNDRED FOURTY-EIGHT AND 85/100 DOLLARS (\$1,783,548.85), plus continuing interest, attorney's fees and costs is now due and owing to lien claimant on account of the work, labor, materials and/or services furnished as above specified and that the undersigned claims a lien upon the real property particularly described herein for said sum, together with continuing interest and attorney's fees as provided by law.

7. That the real property sought to be charged with this Claim of Lien upon which the above described work of improvement has been made is located in Washoe County of State of Nevada, and is particularly described as:

Commencing at a point formed by the intersection of the East line of Flint Street (if protracted Northerly) with the North line of Court Street in the City of Reno; running thence Easterly, along the North line of Court Street, a distance of 100 feet, thence at a right angle Northerly, a distance of 140 feet to the true point of beginning; said true point of beginning being the Southeast corner of the parcel of land heretofore conveyed to Atha Carter by Antonio Rebori and wife, by deed duly recorded in Book 64 of Deeds, Page 294, Washoe County Records; running thence Easterly, parallel with the North line of Court Street, a distance of 50 feet to the Southwest corner of the property formerly owned by H. F. Holmshaw and wife thence Northerly at a right angle, along the west line of the property formerly owned by said H. F. Holmshaw and wife, to the South bank of the South channel of the Truckee River; thence Westerly along the South bank of said channel of the Truckee River to a point which would intersect a line drawn northerly and parallel with the East line of said property from the said true point of beginning; thence southerly along said line to the true point of beginning.



3466499
11/27/2006
3 of 4

SAVE AND EXCEPTING, however, from the above described premises, all that portion thereof conveyed by Antonio Rebori and Charlotta Rebori, his wife, to the City of Reno, a municipal corporation, by deed dated February 16, 1922, and recorded in Book 59 of Deeds, Page 297, Washoe County, Records.
APN: 011-112-03

Commencing at the point 129.6 feet West of where the center line of Hill Street projected Northerly will intersect the North line of Court Street thence running Westerly along the North line of Court Street, 75 feet; thence running Northerly at an angle of $89^{\circ}58'$ 140 feet; thence running Easterly at an angle of $90^{\circ}05''$ 75 feet; thence running Southerly at an angle $80^{\circ}55'$, 140 feet to the place of beginning, comprising a parcel of land 75 by 140 feet.
APN: 011-112-06

BEGINNING at the intersection of the Northerly extension of the Eastern line of Flint Street with the Northern line of Court Street, in the City of Reno, County of Washoe, State of Nevada, thence Easterly along the Northern line of Court Street, 125 feet, more or less to the Western line of the parcel conveyed to WALKER J. BOUDWIN, et ux, by Deed recorded in Book 143, File No. 100219, Deed Records; thence Northerly along said last mentioned line 140 feet; thence Westerly parallel to the Northern line of Court Street, 125 feet; thence Southerly parallel to the Western line of Said Boudwin parcel 140 feet to the point of beginning.
APN: 011-112-07

Commencing on the North line of Court Street, at the intersection of the North line of Court Street with the West line of Hill Street, if said Hill Street was protracted Northerly to said point of inter-section according to the official plat of Lake's South Addition to Reno, Washoe County, State of Nevada; thence running westerly and along the North line of said Court Street 100 feet; thence Northerly and parallel with the West line of said Hill Street, if protracted, 276 feet more or less to the South Bank of the Truckee River; thence Easterly and along the south bank of the Truckee River to the West line of Hill Street, protracted, 324 feet more or less to the North line of Court Street and the place of beginning, being the same lands conveyed by Antonio Robori and Carlotta Robori, his wife, to Charles Snyder, May 27, 1907, and by Antonio Robori to Charles Snyder, January 12, 1905, by deeds duly recorded in Book 32 of Deeds, page 405, and book 26 of deeds, page 296, Records of said Washoe County.

EXCEPTING THEREFROM that portion of the hereinabove described parcel conveyed to the City of Reno, a municipal corporation, in an instrument recorded August 4, 1922, as Document No. 26097, in Book 61, Page 280, of Deeds.

FURTHER EXCEPTING THEREFROM that portion of the hereinabove described parcel conveyed to the City of Reno, a municipal corporation, in an instrument recorded December 17, 1971, as Document No. 229332, in Book 600, Page 759 of Official Records.

APN: 011-112-12



3468493
11/07/2006
4 of 4

8. That the four parcels are to be developed as the project and it is appropriate to equally apportion the amount due between the four parcels identified herein.

DATED: This 7th day of November, 2006.

By Gayle A. Kern
Gayle A. Kern, Esq.

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

Gayle A. Kern, Esq., being first duly sworn, deposes and says that: I am the Attorney for Mark Steppan, the lien claimant in the foregoing Notice and Claim of Lien. I have read the above and foregoing Notice and Claim of Lien, know the contents thereof and state that the same is true based on the information provided by my client. I further state that I have been informed and based thereon believe that it contains, among other things, a correct statement of the demand of said lien claimant, after deducting all just credits and off-sets.

Gayle A. Kern
Gayle A. Kern, Esq.

SUBSCRIBED AND SWORN to before me
this 7th day of November, 2006.

Amber A. Garrell
Notary Public

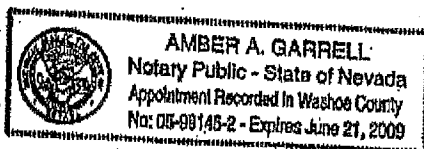


EXHIBIT C

INDEMNITY

THIS INDEMNITY ("Agreement") is executed by BSC FINANCIAL, LLC, a limited liability company ("BSC"), CALVIN BATY, individually ("Baty"), and JOHN SCHLEINING, individually ("Schleining") (collectively, the "Indemnifying Parties"), in favor of JOHN ILIESCU, JR., and SONNIA SANTEE ILIESCU, individually and as Trustees of the JOHN ILIESCU, JR., AND SONNIA ILIESCU 1992 FAMILY TRUST (collectively, "Iliescu"), and is effective as of the date set forth by the parties' respective signatures.

RECITALS:

A. Consolidated Pacific Development, Inc., a Nevada corporation ("Consolidated"), entered into a Land Purchase Agreement with Iliescu dated July 29, 2005, together with Addendum No. 1 dated August 1, 2005, Addendum No. 2 dated August 2, 2005, Addendum No. 3 dated October 8, 2005, and Addendum No. 4 dated as of September 18, 2006 (collectively, "Purchase Agreement"), concerning certain real property located in the City of Reno, County of Washoe, State of Nevada, identified as APNs 011-112-05, 06, 07 and 12, and more particularly described in the Title Report attached to Addendum No. 3 ("Property"). Sam Caniglia, President of Consolidated, Baty and Schleining formed BSC in order to proceed with the entitlement of the project on the Property.

B. BSC entered into an AIA Architectural Agreement ("AIA Contract") with Mark Steppan, AIA ("Architect"), for architectural services for a mixed-use development including residential, retail, and parking ("Project"). The architectural schematic drawings were necessary to obtain the land use entitlements for the Project. The land use entitlements were approved by the City of Reno.

C. On November 7, 2006, the Architect recorded in Washoe County, Nevada, a Notice and Claim of Lien against the Property in the amount of \$1,783,548.85 for claims of unpaid architectural services ("Mechanic's Lien"). These unpaid amounts are contested by BSC. In addition, the Mechanic's Lien is an improper lien not in compliance with Nevada law because the Architect failed to deliver to Iliescu (i) a Notice of Right to Lien pursuant to NRS 108.245, and (ii) a Notice of Intent to Lien pursuant to NRS 108.226(6).

D. Baty and Schleining are principals of BSC.

E. Baty, Schleining and BSC desire to indemnify Iliescu for any and all claims and costs related to the Architect's recording of the Mechanic's Lien on the Property.

NOW, THEREFORE, for valuable consideration, Baty, Schleining and BSC hereby agree as follows:

1. Indemnity. Baty, Schleining and BSC hereby, jointly and severally, agree to indemnify, defend, protect and hold Iliescu harmless against all damages, losses, expenses, costs, liabilities, including, without limitation, payments due or which may be due to the Architect arising out of services performed pursuant to the AIA Contract or any change order or extras.

related thereto, including interest, penalties and attorney fees which may be claimed by Architect to be owed by either BSC or Consolidated.

2. Attorneys' Fees. Baty, Schleining and BSC hereby jointly and severally agree to pay all attorney's fees and costs incurred to contest and discharge the Mechanic's Lien. In the event that a discharge of the Mechanic's Lien does not occur pursuant to a resolution of the dispute with Architect within ten (10) days of the date of this Indemnity, the Indemnifying Parties agree to initiate an action in the Washoe County District Court to contest and to discharge the Mechanic's Lien for (i) failing to comply with Nevada law, and (ii) the excessive amount. The Indemnifying Parties agree to diligently prosecute such action in an expedited manner to eliminate the Mechanic's Lien.

IN WITNESS WHEREOF, the Indemnifying Parties have executed this Indemnity as of the date set forth below.

BSC FINANCIAL, LLC, a limited liability
company

Dated: December 8, 2006

By: 

Calvin Baty
Manager

Dated: December 8, 2006


CALVIN BATY, individually

Dated: December 8, 2006


JOHN SCHLEINING, individually

EXHIBIT D

HALE LANE

ATTORNEYS AT LAW

5441 Kietzke Lane | Second Floor | Reno, Nevada 89511
Telephone (775) 327-3000 | Facsimile (775) 786-6179
www.halelane.com

December 26, 2006

John Ilescu, Jr., individually
Sonia Santee Ilescu, individually
John Ilescu, Jr. and Sonia Ilescu,
as Trustees of the John Ilescu, Jr.
and Sonia Ilescu 1992 Family Trust
200 Court Street
Reno, Nevada 89501

BSC Financial LLC
c/o DeCal Custom Homes
440 Columbia Blvd.
St. Helens, OR 97051

BSC Financial LLC
c/o Decal Nevada, Inc.
6121 Lakeside Drive, Suite 125
Reno, NV 89511

**Re: Wingfield Towers
Court Street/Island Avenue Condominium Project**

Dr. and Mrs. Ilescu and Messrs Baty, Caniglia and Schleining:

As you are aware, this law firm has an existing attorney-client relationship with John Ilescu, Jr., an individual, and Sonia Santee Ilescu, an individual, and John Ilescu, Jr. and Sonia Ilescu, as Trustees of the John Ilescu, Jr. and Sonia Ilescu 1992 Family Trust (collectively "Ilescu") the owners of property located between Court Street and Island Avenue in Reno, Nevada (the "Property"). Our law firm also has an existing attorney-client relationship with Decal Custom Homes and BSC Financial LLC, the Buyers of the Property. BSC Financial LLC is referred to herein as "Buyer". Our law firm has been requested to act as counsel to both Ilescu and Buyers because of the unity of interest in resolving the dispute with the Architect for the Property involving the AIA Architectural Services Contract, and the mechanic's lien recorded by the Architect and related issues.

We will represent both Ilescu and Buyer jointly regarding the resolution of the mechanic's lien issue with the Architect. An Indemnity Agreement has been executed by Buyer

HALE LANE PEEK DENNISON AND HOWARD

LAS VEGAS OFFICE: 3930 Howard Hughes Parkway | Fourth Floor | Las Vegas, Nevada 89169 | Phone (702) 222-2500 | Facsimile (702) 365-6940
CARSON CITY OFFICE: 777 East William Street | Suite 200 | Carson City, Nevada 89701 | Phone (775) 684-6000 | Facsimile (775) 684-6001

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December 26, 2006
Page 2

HALE LANE
ATTORNEYS AT LAW

indemnifying the Seller as more fully set forth therein which includes provisions that Buyer is responsible, among other obligations, to pay this law firm's fees regarding the mechanic's lien issue with the Architect.

It is understood and agreed that in the event a conflict between Iliescu and Buyer should arise in matters involving the mechanic's lien issue, this law firm may continue to represent Iliescu in such matter. This law firm will continue to represent Iliescu in the closing of the purchase and sale of the Property transaction.

If you consent to our joint representation as set forth in this letter and waive any and all potential conflicts of interest which may exist as a result of such representation, please execute the Acknowledgement of your consent attached hereto and return a signed copy of this letter to us.

Please call if you have any questions or if you wish to discuss this matter further.

Sincerely,

R. Craig Howard

RCH:dyt

1 CERTIFICATE OF SERVICE

2 I am a resident of the State of Nevada, over the age of eighteen years, and not a party to
3 the within action. My business address is Downey Brand LLP, 427 West Plumb Lane, Reno, NV
89509. On September 27, 2007, I served the attached document(s):

4 ANSWER AND THIRD PARTY COMPLAINT

- 5 ☐ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax
6 number(s) set forth below on this date before 5:00 p.m.
- 7 ☐ **BY HAND:** by personally delivering the document(s) listed above to the person(s)
8 at the address(es) set forth below.
- 9 ☒ **BY MAIL:** by placing the document(s) listed above in a sealed envelope with
10 postage thereon fully prepaid, in the United States mail at Reno, Nevada addressed
11 as set forth below.
- 12 ☐ **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an
13 overnight delivery service company for delivery to the addressee(s) on the next
business day.
- 14 ☐ **BY PERSONAL DELIVERY:** by causing personal delivery by _____ of
15 the document(s) listed above to the person(s) at the address(es) set forth below.

16 *Gayle Kern, Esq.*
17 *5421 Kietzke Lane, Suite 200*
18 *Reno, NV 89511*

19 I am readily familiar with the firm's practice of collection and processing correspondence
20 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
21 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
22 motion of the party served, service is presumed invalid if postal cancellation date or postage
23 meter date is more than one day after date of deposit for mailing in affidavit.

24 I declare under penalty of perjury under the laws of the State of Nevada that the above is
25 true and correct.

26 Executed on September 27, 2007, at Reno, Nevada.

27 
28 Kim Kakunes

1
2 **SECOND JUDICIAL DISTRICT COURT**
3 **COUNTY OF WASHOE, STATE OF NEVADA**
4

5 **AFFIRMATION**
6 **Pursuant to NRS 239B.030**

7 The undersigned does hereby affirm that the preceding document, **ANSWER AND**
8 **THIRD PARTY COMPLAINT**, filed in Case No. CV07-01021, consolidated with CV07-
9 00341.

10 ☒ Document does not contain the social security number of any person
11

12 **-OR-**

13 ☐ Document contains the social security number of a person as required by:

14 ☐ A specific state or federal law, to wit:

15 **-or-**

16 ☐ For the administration of a public program
17

18 **-or-**

19 ☐ For an application for a federal or state grant
20

21 **-or-**

22 ☐ Confidential Family Court Information Sheet (NRS 125-130, NRS 125.230 and
23 NRS 125B.055)

24 DATED this 22nd day of September, 2007.

25 **PREZANT & MOLLATH**


26 By 
27 Stephen C. Mollath, Esq.
28 Attorney for Iliescu

EXHIBIT “4”

FILED

Electronically

01-05-2012:05:40:07 PM

Joey Orduna Hastings

Clerk of the Court

Transaction # 2683659

1 **CODE: 3995**

2 Gregory F. Wilson, Esq.

3 Nevada Bar No. 2517

4 **WILSON & QUINT LLP**

5 417 West Plumb Lane

6 Reno, Nevada 89509

7 Telephone: 775.786.7600

8 Facsimile: 775.786.7764

9 Email: gfwilson@wilsonquint.com

10 Attorneys for John Schleining

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

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

13 **MARK B. STEPPAN,**

Case No. CV07-00341

14 Plaintiff,

(Consolidated with
Case No. CV07-01021)

15 v.

Dept. No. 10

16 **JOHN ILIESCU JR. and SONIA ILIESCU, as**
17 **Trustees of the JOHN ILIESCU, JR. AND SONNIA**
18 **ILIESCU 1992 FAMILY TRUST AGREEMENT;**
19 **JOHN ILIESCU, individually; DOES I-V, inclusive;**
20 **and ROE CORPORATIONS VI-X, inclusive,**

21 Defendants.

22
23 **AND RELATED CROSS-CLAIMS AND**
24 **THIRD-PARTY CLAIMS.**

25 **STIPULATION AND ORDER**
26 **FOR DISMISSAL WITHOUT PREJUDICE**
27 **OF ALL CLAIMS BY JOHN SCHLEINING AGAINST HALE LANE PEEK DENNISON**
28 **AND HOWARD, HOLLAND & HART, LLP, AND R. CRAIG HOWARD**

1 **STIPULATION FOR DISMISSAL WITHOUT PREJUDICE**

2 This Stipulation is entered into by and between Cross-Claimant and Third-Party Plaintiff
3 JOHN SCHLEINING on the one hand ("SCHLEINING") and Cross-Defendant HALE LANE PEEK
4 DENNISON AND HOWARD, Third-Party Defendant HOLLAND & HART, LLP and Third-Party
5 Defendant R. CRAIG HOWARD on the other hand (collectively "HALE LANE").

6 This action, Case No. CV07-01021 consolidated with Case No. CV07-00341, is referred to as
7 the "Action".

8 SCHLEINING and HALE LANE are collectively referred to as the "Parties."

9 The Parties hereby stipulate, by and through their counsel of record, as follows:

10 1. SCHLEINING's Cross-Claim and Third-Party Complaint against HALE LANE filed
11 September 2, 2009 in the Action ("Complaint") shall be dismissed WITHOUT PREJUDICE with each
12 of the Parties to bear their own attorney fees and costs, except as provided in paragraph 2 below;

13 2. In the event SCHLEINING files a subsequent action against HALE LANE, arising
14 from the events, acts or omissions alleged in the Complaint ("Subsequent Action"), HALE LANE
15 shall have the right to seek their costs as defined in NRS 18.005 ("Costs") incurred in this Action as
16 though the court had granted HALE LANE's August 16, 2011 pending motion for summary judgment
17 against SCHLEINING. Such request shall be made by filing a memorandum of costs with the court
18 presiding over the Subsequent Action. SCHLEINING waives any claim that the memorandum of
19 costs was untimely. SCHLEINING reserves the right to move that HALE LANE's costs be retaxed.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

1 IT IS SO STIPULATED.

2 Dated: December 22, 2011

3 WILSON & QUINT LLP

4
5 By: 

6 Gregory F. Wilson

7 417 West Plumb Lane
8 Reno, Nevada 89509
9 Telephone: 775.786.7600
Attorneys for John Schleining

10 Dated: December 22, 2011

11 LEMONS, GRUNDY & EISENBERG

12
13 By: 

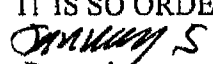
14 Christopher M. Rusby

15 6005 Plumas Street 3rd Floor
16 Reno, Nevada 89519
17 Telephone: 775.786.6868
18 Attorneys for Hale Lane Peek Dennison and
19 Howard, Holland & Hart, LLP and R. Craig
Howard

20 ORDER

21 The Court, having considered the foregoing Stipulation of the Parties, and good cause
22 appearing,

23 IT IS SO ORDERED.

24 
25 Dated: December 22, 2012

26 
27 DISTRICT COURT JUDGE
28

NRS 239B.030 AFFIRMATION

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

Dated: December 22, 2011

By: _____


Gregory F. Wilson

WILSON & QUINT LLP
417 West Plumb Lane
Reno, Nevada 89509
Telephone: 775.786.7600
Attorneys for John Schleining

EXHIBIT “5”

FILED

Electronically

02-14-2013:06:30:23 PM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3534067

1 **4050**

2 David R. Grundy, Esq. SBN 864
3 LEMONS, GRUNDY & EISENBERG
4 6005 Plumas Street, Suite 300
5 Reno, Nevada 89519
6 Telephone: (775) 786-6868
7 Facsimile: (775) 786-9716

8 Attorneys for Third Party Defendants

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

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

11 **MARK B. STEPPAN,**

12 Plaintiff,

13 vs.

14 **JOHN ILIESCU JR. and SONNIA ILIESCU, as**
15 **Trustees of the JOHN ILIESCU, JR. AND SONNIA**
16 **ILIESCU 1992 FAMILY TRUST AGREEMENT,**
17 **et al.,**

18 Defendants.

19 **CONSOLIDATED**

20 **JOHN ILIESCU, JR. and SONNIA ILIESCU, as**
21 **Trustees of the JOHN ILIESCU, JR. AND SONNIA**
22 **ILIESCU 1992 FAMILY TRUST AGREEMENT, et al.,**

23 Case No.: CV07-00341

24 Dept. No.: 10

25 Third-Party Plaintiffs,

26 vs.

27 **CONSOLIDATED PACIFIC DEVELOPMENT, INC., a**
28 **Nevada Corporation; DECAL OREGON, INC., an**
29 **Oregon Corporation; CALVIN BATY, individually;**
30 **JOHN SCHLEINING, individually; HALE LANE PEEK**
31 **DENNISON AND HOWARD PROFESSIONAL**
32 **CORPORATION, a Nevada professional**
33 **corporation, dba HALE LANE; KAREN D.**
34 **DENNISON; R. CRAIG HOWARD; JERRY M.**
35 **SNYDER; and DOES I thru X,**

36 Third-Party Defendants.

37 **SECOND STIPULATION TO STAY PROCEEDINGS AGAINST DEFENDANT**
38 **HALE LANE AND ORDER TO STAY AND TO DISMISS CLAIMS AGAINST DEFENDANTS**
39 **DENNISON, HOWARD AND SNYDER WITHOUT PREJUDICE**

40 Third party plaintiffs John Iliescu, Jr. and Sonia Iliescu, individually and as trustees of
41 the John Iliescu Jr. and Sonia Iliescu Family Trust (collectively "Iliescu") hereby stipulate with

LEMONS, GRUNDY
& EISENBERG
6005 PLUMAS ST.
THIRD FLOOR
RENO, NV 89519
(775) 786-6868

1 the following Third party defendants: Hale Lane Peek Dennison & Howard, a Professional
2 Corporation, dba "Hale Lane," and Karen D. Dennison, R. Craig Howard and Jerry M. Snyder
3 ("Hale Lane Partners") as follows:

4 **RECITALS**

5 A. Third Party Plaintiffs have commenced a third party action in this matter
6 against the above named attorneys and their law firm employer asserting claims arising out of
7 an attorney/client relationship between third party plaintiffs and these third party
8 defendants, including claims of legal malpractice arising from both litigation and transactional
9 issues.

10 B. Questions have arisen regarding whether any of these claims have "accrued"
11 so as to allow this present filing, or rather, whether the claims are premature in light of the
12 uncertainty of the outcome of claims by and between plaintiff and defendants who have
13 asserted these third party claims.

14 C. Guided by the law as established under *Nevada Medical Liability Insurance Co.*
15 *v. Semenza*, 104 Nev. 666, 668, *K.J.B., Inc. v. Drakulich*, 107 Nev. 367 (1991) and *Kopicko v.*
16 *Young*, 114 Nev. 1333 (1998), the parties have agreed to the terms of this stipulation and urge
17 the court to enter an order consistent herewith.

18 D. These parties entered into a stipulation to stay the case on or about December
19 13, 2007; however, no Order was entered thereon.

20 **STIPULATION**

21 1. All claims asserted against Hale Lane Partners, Karen D. Dennison, R. Craig
22 Howard and Jerry M. Snyder shall be dismissed, without prejudice. Third party plaintiffs may,
23 but need not refile the claims currently asserted or any other claims against these individual
24 third party defendants only upon the entry of final judgment regarding plaintiff's claims and
25 the claims of third party plaintiffs against all other third party defendants.

26 2. All claims asserted against Hale Lane shall be stayed for all purposes, including
27 discovery and trial, pending the final resolution of all claims asserted by plaintiffs against
28 defendants, and the unstayed claims asserted by and among all other parties.

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& EISENBERG
5005 PLUMAS ST.
THIRD FLOOR
RENO, NV 89519
(775) 786-6868

3. Notwithstanding the imposition of this stay, Hale Lane shall participate in any settlement conference if ordered to do so by the court, may assert dispositive motions and points and authorities in support of or in response thereto, and may participate in court hearings consistent herewith.

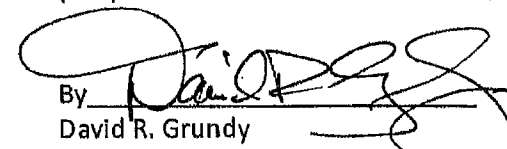
The undersigned affirm that this document does not contain the social security number of any person.

Dated: Jan 31, 2013
~~November 2012~~

GORDON COWAN, ESQ.
Attorney for Third Party Plaintiffs

Lemons, Grundy & Elsenberg
6005 Plumas Street, Third Floor
Reno, Nevada 89519
(775) 786-6868


MICHAEL D. HOY, ESQ.
Attorney for Plaintiff Mark Steppan


By David R. Grundy
David R. Grundy
Attorneys for Third Party Defendants
Hale Lane, Dennison, Howard and Snyder

ORDER

It is ordered:

1. All claims asserted against the Hale Lane Partners are hereby dismissed without prejudice;

2. These proceedings are hereby stayed as against Hale Lane for all purposes until such time as a final judgment is entered in the primary case between plaintiff, Steppan, and defendant, Iliescu, *provided that*, during such stay, (a) Hale Lane shall participate in any settlement conference if ordered to do so by the court; (b) Hale Lane may assert dispositive motions against Iliescu and file points and authorities in support thereof; and (c) Hale Lane may participate in court hearings consistent herewith.

DATED: February 13, 2013


DISTRICT JUDGE

LEMONS, GRUNDY
& EISENBERG
6005 PLUMAS ST.
THIRD FLOOR
RENO, NV 89519
(775) 786-6868

EXHIBIT “6”

1 **CODE: 1880**

2 D. CHRIS ALBRIGHT, ESQ. (Nv. Bar No. 004904)

3 G. MARK ALBRIGHT, ESQ. (Nv Bar No. 001394)

4 **ALBRIGHT, STODDARD, WARNICK & ALBRIGHT**

5 801 South Rancho Drive, Suite D-4

6 Las Vegas, Nevada 89106

7 Tel: (702) 384-7111 / Fax: (702) 384-0605

8 dca@albrightstoddard.com / gma@albrightstoddard.com

9 *Attorneys for Applicants/Defendants*

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

12 JOHN ILIESCU, JR.; SONNIA SANTEE
13 ILIESCU; JOHN ILIESCU, JR. and SONNIA
14 ILIESCU, as Trustees of the JOHN ILIESCU, JR.
15 AND SONNIA ILIESCU 1992 FAMILY TRUST
16 AGREEMENT;

17 Applicants,

18 vs.

19 MARK B. STEPPAN,

20 Respondent.

21 MARK B. STEPPAN,

22 Plaintiff,

23 vs.

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

Defendants.

And all pending third-party claims.

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

DEPT NO. 10

**JUDGMENT UPON REMAND IN
FAVOR OF THE ILIESCUS
RELEASING STEPPAN'S
MECHANIC'S LIEN AND VACATING
PRIOR JUDGMENT THEREON**

WHEREAS, on November 7, 2006, a Notice and Claim of Lien was recorded in the name of Mark A. Steppan as the lien claimant, as Document 3460499 in the official records of the Washoe County Recorder, which was amended on May 3, 2007, by an Amended Notice and Claim of Lien recorded as Document No. 3528313 in those same official records, and which was further amended

1 on November 8, 2013, by a Second Amended Notice and Claim of Lien recorded as Document No.
2 4297751 in those same official records (said recordings being referred to jointly hereinafter as the
3 “Steppan Mechanic’s Lien”); and

4 WHEREAS, the Steppan Mechanic’s Lien sought to encumber certain real property as
5 described therein (hereinafter the “Property”), which Property has also been described as Washoe
6 County Nevada Assessor Parcel Numbers 011-112-03, 011-112-06, 011-112-07, and 011-112-12; and

7 WHEREAS, the present consolidated cases included an Application For Release of the Steppan
8 Mechanic’s Lien (the first consolidated case) filed by the Iliescus under NRS 108.2275, relying in part
9 on a claim that Steppan’s lien should be released for his failure to comply with NRS 108.245; together
10 with a Complaint filed by Steppan as a lawsuit to foreclose on the Steppan Mechanic’s Lien (the
11 second consolidated case), which was defended by the Iliescus, including under the theory that
12 Steppan’s failure to comply with NRS 108.245 rendered the Steppan Mechanic’s Lien invalid; and

13 WHEREAS, certain prior orders of partial summary judgment, and post-trial findings and
14 rulings, have issued from this Court, rejecting the Iliescus’ NRS 108.245 arguments and granting
15 Steppan’s lien foreclosure claims, including ultimately a “Judgment, Decree, and Order for Foreclosure
16 of Mechanic’s Lien” entered by this Court on February 26, 2015 (Transaction #4836215), upholding
17 the Steppan Mechanic’s Lien, establishing the monetary value thereof, and ordering a foreclosure sale
18 of the Property in satisfaction thereof (hereinafter the “Prior Judgment”); and

19 WHEREAS, the Iliescus appealed to the Nevada Supreme Court which has issued a decision
20 in their favor, reversing this Court, agreeing with and accepting the Iliescus’ argument that the Steppan
21 Mechanic’s Lien is invalid by virtue of Steppan’s failure to abide by NRS 108.245, and remanding this
22 matter for the entry of Judgment in favor of the Iliescus by this Court. *Iliescu v. Steppan*, 133 Nev.
23 Adv. Op. 25, 394 P.3d 930 (May 25, 2017) *rehearing denied*, September 21, 2017; and

24 WHEREAS, Remittitur issued from the Nevada Supreme Court which was filed with the
25 Washoe County Clerk on October 17, 2017, and that Nevada Supreme Court decision now establishes,
26 as the law of this case, that Steppan’s failure to abide by NRS 108.245 is not excused by any claimed
27 exception to the mandates of that statute, such that Steppan did not substantially comply with the
28 Nevada mechanic’s lien statutes, and is therefore not entitled to a mechanic’s lien against the Iliescus’

1 aforestated Property.

2 NOW THEREFORE, good cause appearing, IT IS HEREBY ORDERED, ADJUDICATED,
3 AND DECREED AS FOLLOWS:

4 **1. Judgment Vacating Prior Judgment:** This Court's Prior Judgment, as defined
5 above, is hereby recognized as reversed, and is hereby vacated with prejudice, and all relief afforded
6 to Steppan against the Iliescus as set forth therein, including any and all monetary or declaratory or
7 injunctive or equitable relief provided for therein, is hereby recognized as reversed, and is hereby
8 vacated, with prejudice, as are all other substantive Orders or Decisions of this Court, prior to the date
9 hereof, in favor of Steppan and against the Iliescus, on which such Prior Judgment was based, or which
10 were themselves based on that Prior Judgment, including without limitation all prior costs or fee
11 awards in favor of Steppan and against the Iliescus.

12 **2. Judgment In Favor of the Iliescus and Against Steppan, Releasing the Steppan**
13 **Mechanic's Lien:** In accordance with the aforestated decision of the Nevada Supreme Court, and the
14 law of this case established thereby, the relief sought by the Iliescus in the first of these consolidated
15 cases is hereby granted and the relief sought by Steppan in the second of these consolidated cases is
16 hereby denied, and this Court hereby recognizes that the Steppan Mechanic's Lien, comprising all of
17 the aforestated lien and amended lien recordings, is invalid and unenforceable under Nevada's
18 mechanic's lien statutes, by virtue of Steppan's failure to comply with the provisions of NRS 108.245
19 in order to perfect his claimed lien rights under NRS Chapter 108, and, based thereon, the Steppan
20 Mechanic's Lien, including all of the aforestated Steppan lien recordings, together with any and all
21 notices of pendency of action, lis pendens, or any other similar liens or claims or notices or clouds on
22 title if any, recorded by Steppan in conjunction with these proceedings (including without limitation
23 any recordation of the Prior Judgment) against any real or personal property belonging to the Iliescus,
24 are hereby released and shall no longer be recognized as liens, encumbrances, lis pendens, or clouds
25 on title against any property belonging to the Iliescus, including without limitation the Property defined
26 above.

27 **3. Certification of Finality** Notwithstanding the existence of other third parties to the
28 proceedings pending under these consolidated case numbers before this Court, and without prohibiting

1 any rights held by the Iliescus to seek costs or interest or attorneys' fees on this Judgment hereafter
2 under any applicable statutes or rules, this Court (i) expressly determines pursuant to NRCP 54(b) that
3 there is no just reason for delay of entry of final judgment with respect to the claims between the
4 Iliescus and Steppan, and (ii) expressly directs pursuant to NRCP 54(b) the entry of this Judgment in
5 favor of the Iliescus and against Steppan as a final entered Judgment, and, accordingly, certifies this
6 Judgment as a final Judgment with respect to all claims and defenses by and between the Iliescus and
7 Steppan, in both of these consolidated cases (without affecting any Iliescu costs or attorney fees or
8 interest claims as reserved above).

9 DATED this 3 day of January, ²⁰¹⁸~~2017~~.

10 
11
12 DISTRICT COURT JUDGE

13 Submitted By:

14 **ALBRIGHT, STODDARD, WARNICK**
15 **& ALBRIGHT**

16 

17 D. CHRIS ALBRIGHT, ESQ., #004904
18 G. MARK ALBRIGHT, ESQ., #001394
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20 Las Vegas, Nevada 89106
21 Tel: (702) 384-7111
22 dca@albrightstoddard.com
23 gma@albrightstoddard.com
24 *Attorneys for Defendants*

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AFFIRMATION

The undersigned does hereby affirm this 31st day of November, 2017, that the preceding document filed in the Second Judicial District Court does not contain the social security number of any person.

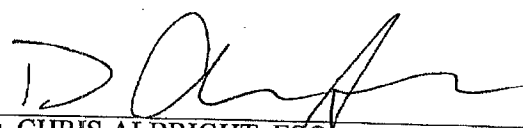
By 
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EXHIBIT “7”

1 **CODE: 2535**

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11 *Attorneys for Applicants/Defendants*

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

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

14 JOHN ILIESCU, JR.; SONNIA SANTEE
15 ILIESCU; JOHN ILIESCU, JR. and SONNIA
16 ILIESCU, as Trustees of the JOHN ILIESCU, JR.
17 AND SONNIA ILIESCU 1992 FAMILY TRUST
18 AGREEMENT;

19 Applicants,

20 vs.

21 MARK B. STEPPAN,

22 Respondent.

23 MARK B. STEPPAN,

24 Plaintiff,

25 vs.

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

Defendants.

And all pending third-party claims.

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

DEPT NO. 10

**NOTICE OF ENTRY OF JUDGMENT
UPON REMAND IN FAVOR OF THE
ILIESCUS RELEASING STEPPAN'S
MECHANIC'S LIEN AND VACATING
PRIOR JUDGMENT THEREON**

PLEASE TAKE NOTICE that a "JUDGMENT UPON REMAND IN FAVOR OF THE
ILIESCUS RELEASING STEPPAN'S MECHANIC'S LIEN AND VACATING PRIOR JUDGMENT
THEREON" was entered in the above-captioned matter on the 3rd day of January, 2018. A true and
correct copy of the Judgment is attached hereto.

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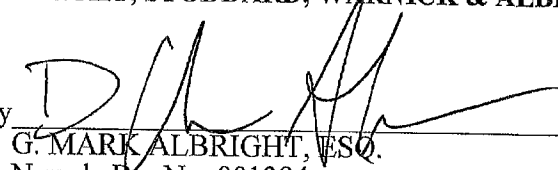
AFFIRMATION

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

DATED this 31st day of January, 2018.

ALBRIGHT, STODDARD, WARNICK & ALBRIGHT

By



G. MARK ALBRIGHT, ESQ.

Nevada Bar No. 001394

D. CHRIS ALBRIGHT, ESQ.

Nevada Bar No. 004904

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Attorneys for Applicants/Defendants

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, and that on this 4th day of January, 2018, service was made by the ECF system to the electronic service list, a true and correct copy of the foregoing **NOTICE OF ENTRY OF JUDGMENT UPON REMAND IN FAVOR OF THE ILIESCUS RELEASING STEPPAN'S MECHANIC'S LIEN AND VACATING PRIOR JUDGMENT THEREON**, to the following person:

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

☐ Certified Mail
☒ Electronic Filing/Service
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☐ Hand Delivery
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Attorneys for Third-Party Defendant Hale Lane

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☐ Email
☐ Facsimile
☐ Hand Delivery
☐ Regular Mail


An Employee of Albright, Stoddard, Warnick & Albright

1 **CODE: 1880**

2 D. CHRIS ALBRIGHT, ESQ. (Nv. Bar No. 004904)

3 G. MARK ALBRIGHT, ESQ. (Nv Bar No. 001394)

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9 *Attorneys for Applicants/Defendants*

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

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

12 JOHN ILIESCU, JR.; SONNIA SANTEE
13 ILIESCU; JOHN ILIESCU, JR. and SONNIA
14 ILIESCU, as Trustees of the JOHN ILIESCU, JR.
15 AND SONNIA ILIESCU 1992 FAMILY TRUST
16 AGREEMENT;

17 Applicants,

18 vs.

19 MARK B. STEPPAN,

20 Respondent.

21 MARK B. STEPPAN,

22 Plaintiff,

23 vs.

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

Defendants.

And all pending third-party claims.

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

DEPT NO. 10

**JUDGMENT UPON REMAND IN
FAVOR OF THE ILIESCUS
RELEASING STEPPAN'S
MECHANIC'S LIEN AND VACATING
PRIOR JUDGMENT THEREON**

WHEREAS, on November 7, 2006, a Notice and Claim of Lien was recorded in the name of Mark A. Steppan as the lien claimant, as Document 3460499 in the official records of the Washoe County Recorder, which was amended on May 3, 2007, by an Amended Notice and Claim of Lien recorded as Document No. 3528313 in those same official records, and which was further amended

1 on November 8, 2013, by a Second Amended Notice and Claim of Lien recorded as Document No.
2 4297751 in those same official records (said recordings being referred to jointly hereinafter as the
3 "Steppan Mechanic's Lien"); and

4 WHEREAS, the Steppan Mechanic's Lien sought to encumber certain real property as
5 described therein (hereinafter the "Property"), which Property has also been described as Washoe
6 County Nevada Assessor Parcel Numbers 011-112-03, 011-112-06, 011-112-07, and 011-112-12; and

7 WHEREAS, the present consolidated cases included an Application For Release of the Steppan
8 Mechanic's Lien (the first consolidated case) filed by the Iliescus under NRS 108.2275, relying in part
9 on a claim that Steppan's lien should be released for his failure to comply with NRS 108.245; together
10 with a Complaint filed by Steppan as a lawsuit to foreclose on the Steppan Mechanic's Lien (the
11 second consolidated case), which was defended by the Iliescus, including under the theory that
12 Steppan's failure to comply with NRS 108.245 rendered the Steppan Mechanic's Lien invalid; and

13 WHEREAS, certain prior orders of partial summary judgment, and post-trial findings and
14 rulings, have issued from this Court, rejecting the Iliescus' NRS 108.245 arguments and granting
15 Steppan's lien foreclosure claims, including ultimately a "Judgment, Decree, and Order for Foreclosure
16 of Mechanic's Lien" entered by this Court on February 26, 2015 (Transaction #4836215), upholding
17 the Steppan Mechanic's Lien, establishing the monetary value thereof, and ordering a foreclosure sale
18 of the Property in satisfaction thereof (hereinafter the "Prior Judgment"); and

19 WHEREAS, the Iliescus appealed to the Nevada Supreme Court which has issued a decision
20 in their favor, reversing this Court, agreeing with and accepting the Iliescus' argument that the Steppan
21 Mechanic's Lien is invalid by virtue of Steppan's failure to abide by NRS 108.245, and remanding this
22 matter for the entry of Judgment in favor of the Iliescus by this Court. *Iliescu v. Steppan*, 133 Nev.
23 Adv. Op. 25, 394 P.3d 930 (May 25, 2017) *rehearing denied*, September 21, 2017; and

24 WHEREAS, Remittitur issued from the Nevada Supreme Court which was filed with the
25 Washoe County Clerk on October 17, 2017, and that Nevada Supreme Court decision now establishes,
26 as the law of this case, that Steppan's failure to abide by NRS 108.245 is not excused by any claimed
27 exception to the mandates of that statute, such that Steppan did not substantially comply with the
28 Nevada mechanic's lien statutes, and is therefore not entitled to a mechanic's lien against the Iliescus'

1 aforestated Property.

2 NOW THEREFORE, good cause appearing, IT IS HEREBY ORDERED, ADJUDICATED,
3 AND DECREED AS FOLLOWS:

4 1. **Judgment Vacating Prior Judgment:** This Court's Prior Judgment, as defined
5 above, is hereby recognized as reversed, and is hereby vacated with prejudice, and all relief afforded
6 to Steppan against the Iliescus as set forth therein, including any and all monetary or declaratory or
7 injunctive or equitable relief provided for therein, is hereby recognized as reversed, and is hereby
8 vacated, with prejudice, as are all other substantive Orders or Decisions of this Court, prior to the date
9 hereof, in favor of Steppan and against the Iliescus, on which such Prior Judgment was based, or which
10 were themselves based on that Prior Judgment, including without limitation all prior costs or fee
11 awards in favor of Steppan and against the Iliescus.

12 2. **Judgment In Favor of the Iliescus and Against Steppan, Releasing the Steppan**
13 **Mechanic's Lien:** In accordance with the aforestated decision of the Nevada Supreme Court, and the
14 law of this case established thereby, the relief sought by the Iliescus in the first of these consolidated
15 cases is hereby granted and the relief sought by Steppan in the second of these consolidated cases is
16 hereby denied, and this Court hereby recognizes that the Steppan Mechanic's Lien, comprising all of
17 the aforestated lien and amended lien recordings, is invalid and unenforceable under Nevada's
18 mechanic's lien statutes, by virtue of Steppan's failure to comply with the provisions of NRS 108.245
19 in order to perfect his claimed lien rights under NRS Chapter 108, and, based thereon, the Steppan
20 Mechanic's Lien, including all of the aforestated Steppan lien recordings, together with any and all
21 notices of pendency of action, lis pendens, or any other similar liens or claims or notices or clouds on
22 title if any, recorded by Steppan in conjunction with these proceedings (including without limitation
23 any recordation of the Prior Judgment) against any real or personal property belonging to the Iliescus,
24 are hereby released and shall no longer be recognized as liens, encumbrances, lis pendens, or clouds
25 on title against any property belonging to the Iliescus, including without limitation the Property defined
26 above.

27 3. **Certification of Finality** Notwithstanding the existence of other third parties to the
28 proceedings pending under these consolidated case numbers before this Court, and without prohibiting

1 any rights held by the Iliescus to seek costs or interest or attorneys' fees on this Judgment hereafter
2 under any applicable statutes or rules, this Court (i) expressly determines pursuant to NRCP 54(b) that
3 there is no just reason for delay of entry of final judgment with respect to the claims between the
4 Iliescus and Steppan, and (ii) expressly directs pursuant to NRCP 54(b) the entry of this Judgment in
5 favor of the Iliescus and against Steppan as a final entered Judgment, and, accordingly, certifies this
6 Judgment as a final Judgment with respect to all claims and defenses by and between the Iliescus and
7 Steppan, in both of these consolidated cases (without affecting any Iliescu costs or attorney fees or
8 interest claims as reserved above).

9 DATED this 3 day of January, ²⁰¹⁸~~2017~~

10 
11
12 DISTRICT COURT JUDGE

13 Submitted By:

14 **ALBRIGHT, STODDARD, WARNICK
& ALBRIGHT**

15 

16 D. CHRIS ALBRIGHT, ESQ., #004904

17 G. MARK ALBRIGHT, ESQ., #001394

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Attorneys for Defendants

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AFFIRMATION

The undersigned does hereby affirm this 31st day of November, 2017, that the preceding document filed in the Second Judicial District Court does not contain the social security number of any person.


By 
D. CHRIS ALBRIGHT, ESQ.
Nevada Bar No. 004904
G. MARK ALBRIGHT, ESQ.
Nevada Bar No. 001394
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gma@albrightstoddard.com
Attorneys for Defendants

EXHIBIT “8”

1
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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7
8 **IN AND FOR THE COUNTY OF WASHOE**

9 MARK B. STEPPAN,

10 Plaintiff,

11 vs.

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

18 Defendants.

19 AND RELATED CLAIMS

CONSOLIDATED

Case No. CV07-00341

Dept. No. 10

ORDER GRANTING THIRD-PARTY
DEFENDANT HALE LANE'S
MOTION FOR SUMMARY
JUDGMENT

18 On November 17, 2017, Third-Party Defendant HALE LANE PEEK DENNISON AND
19 HOWARD PROFESSIONAL CORPORATION ("Hale Lane"), filed a motion for summary
20 judgment of the third-party claims asserted against it by third-party plaintiffs JOHN ILIESCU,
21 JR. and SONNIA ILIESCU, individually and as trustees of the ILIESCU 1992 FAMILY
22 TRUST (collectively, "Iliescu"). Iliescu filed an opposition to Hale Lane's motion on
23 December 18, 2017. Iliescu's opposition also included a countermotion to amend the third-
24 party claims against Hale Lane and for further time to complete discovery. Hale Lane filed a
25 reply in support of its motion for summary judgment on January 8, 2018, which included an
26 opposition to Iliescu's countermotion to amend. On January 12, 2018, Iliescu filed a reply in
27 support of the countermotion to amend and for further time to complete discovery. This Court
28 heard oral arguments by counsel on June 6, 2018. Having considered the motion,

1 oppositions/countermotions, and reply briefs, along with all supporting documentation, and
2 having considered oral argument from the parties, this Court orders as follows.

3 **GENERAL FACTUAL BACKGROUND**

4 The matter underlying Iliescu's third-party legal malpractice claims against Hale Lane
5 was a lien dispute arising out of an architect's lien that had been recorded against Iliescu's real
6 property located in downtown Reno. After the lien was recorded, Hale Lane filed an
7 application on Iliescu's behalf to release the architect's lien, arguing that the architect, Plaintiff
8 Mark Steppan ("Steppan"), had not provided the required pre-lien notice and that his lien was
9 therefore invalid. Steppan then filed a complaint for foreclosure of his lien, and the two matters
10 were consolidated into this action.

11 Over Hale Lane's argument to the contrary, the District Court ultimately concluded that
12 the actual-notice exception to the pre-lien notice requirement was applicable in this case. The
13 Court further found that Iliescu had actual notice of Steppan's architectural work, and, after a
14 bench trial, the Court entered an Order foreclosing Steppan's lien. Iliescu appealed.

15 In May of 2017, the Nevada Supreme Court reversed the order foreclosing Steppan's
16 lien and remanded the matter for entry of judgment in Iliescu's favor. The Supreme Court's
17 Opinion was based on Steppan's failure to provide the statutorily-required pre-lien notice,
18 holding that Steppan was not entitled to rely on the actual-notice exception to the pre-lien
19 notice requirement.

20 After the successful appeal, Iliescu continues to pursue the third-party legal malpractice
21 claims against Hale Lane. Hale Lane now moves for summary judgment of those claims.

22 **UNDISPUTED FACTS MATERIAL TO THIS ORDER**

23 In the third-party legal malpractice claims asserted against Hale Lane, Iliescu alleges
24 that Hale Lane could have, and should have, taken steps to protect Iliescu from Steppan's lien.
25 (*See Answer and Third Party Complaint*, filed September 27, 2007).

26 The filing that initiated this action on February 14, 2007 was Iliescu's *Application for*
27 *Release of Mechanic's Lien*, which was prepared and filed by then-Hale Lane attorney, Jerry
28 Snyder. In that Application, Hale Lane argued on Iliescu's behalf that Steppan's lien was

1 invalid because Steppan had not provided a notice of right to lien pursuant to NRS 108.245(6)
2 or a notice of intent to lien pursuant to NRS 108.226(6). (*See, generally*, Application for
3 Release of Mechanic's Lien, filed February 14, 2007).

4 In the *Response to Application for Release of Mechanic's Lien* (filed by attorney Gayle
5 Kern), Steppan argued that, under *Fondren v. K/L Complex, Ltd.*, 106 Nev. 705, 800 P.2d 719
6 (1990), a statutory pre-lien notice was not required because Iliescu had actual knowledge of the
7 off-site architectural work being conducted with respect to his property. (*See, generally*,
8 Response to Application for Release of Mechanic's Lien, filed May 30, 2007)

9 On May 3, 2007, the District Court, Department 6, conducted a hearing on the
10 application to release Steppan's lien. On Iliescu's behalf, Hale Lane argued that the parties'
11 lien dispute was distinguishable from *Fondren*, and that the actual notice exception therefore
12 did not apply. At that hearing, Mr. Snyder argued on behalf of Iliescu, in pertinent part, as
13 follows:

14 The manner in which Ms. Kern would have this court read *Fondren* is to have
15 *Fondren* – I believe what Ms. Kern said was *Fondren* requires that the burden be
16 shifted. If the owner has any notion that there might be a construction project,
the burden is shifted to him to inquire. That's not what *Fondren* says.

17 What *Fondren* says is that where the owner has actual notice of construction, the
18 constructive notice by the pre-lien statute or the notice of right to lien statute is
19 not required. And so in order for *Fondren* to obviate the need for a pre-lien
20 notice, the actual notice has to have at least the information that would be
required under the pre-lien notice, under the constructive pre-lien notice.

21 What the pre-lien notice has to have is the identity of the lien claimant, a
22 general description of the work, materials, equipment or services, the identity of
23 the general contractor under whom the lien claimant is with contract.

24 None of that information was provide to Dr. Iliescu. He did not know the
25 identity of the lien claimant until at the earliest October of 2006 after virtually
26 all of the work had been done. So this notion that, because he had some idea
27 that an architect somewhere would be creating some plans, some design work or
a work improvement to this property, that he was under an obligation to go dig
28 out that information is simply untrue. That's reading *Fondren* so broadly as to
vitate the specific requirements of NRS 108.245, which explicitly says, if you

1 don't file your pre-lien notice, you don't have a lien.
2 (Transcript of Proceedings, May 3, 2007, pp. 47-49).

3 The District Court did not grant the application to release Steppan's lien. (May 3, 2007
4 Order). Instead, the Court ordered that the parties were to conduct discovery concerning
5 whether Iliescu had actual knowledge of the architectural services performed by Steppan.
6 (May 3, 2007 Order).

7 Shortly thereafter, other attorneys substituted in for Iliescu, in place of Hale Lane.
8 (Substitution of Counsel, filed August 3, 2007). Iliescu then filed an answer to Steppan's
9 complaint for foreclosure of his lien. Iliescu's answer included two third-party claims for relief
10 against Hale Lane, entitled Professional Malpractice and Negligence. (Answer and Third Party
11 Complaint, filed September 27, 2007, pp. 14-15). The third-party claims against Hale Lane
12 remained stayed throughout the litigation of the lien dispute between Iliescu and Steppan.

13 After a bench trial, this Court determined that Iliescu had actual notice of Steppan's
14 architectural work, and that Steppan's lien was therefore valid and enforceable. (Findings of
15 Fact, Conclusions of Law and Decision, entered May 28, 2014). Accordingly, this Court
16 entered an order foreclosing Steppan's lien. (Judgment, Decree and Order for Foreclosure of
17 Mechanic's Lien, entered February 26, 2015). Iliescu appealed that ruling to the Nevada
18 Supreme Court.

19 On May 25, 2017, the Nevada Supreme Court issued its Opinion in Iliescu's appeal.
20 *Iliescu v. Steppan*, 133 Nev. Adv. Op. 25, 394 P.3d 930 (2017). It held that the actual notice
21 exception described in *Fondren* does not apply to off-site work when no onsite work has been
22 performed on the property. *Id.* at 934-35. It therefore reversed this Court's order foreclosing
23 Steppan's lien and remanded the matter to this Court for entry of judgment in Iliescu's favor.
24 *Id.* at 936.

25 After the successful appeal, Iliescu now continues to pursue its legal malpractice claims
26 against Hale Lane, seeking recovery of the fees and costs incurred in successfully defending
27 against Steppan's lien, along with other claimed damages. Hale Lane now moves for summary
28 judgment of those claims for relief.

1 Hale Lane's motion is based on the principle that judicial error can, and in this case
2 does, constitute an intervening and superseding cause of the claimed damages in a legal
3 malpractice case. As discussed below, based on the applicable law and the undisputed material
4 facts of this case, this Court agrees with Hale Lane that the District Court's judicial error is the
5 intervening and superseding cause of Iliescu's claimed damages, that Hale Lane is thereby
6 relieved from liability for alleged legal malpractice, and that summary judgment is therefore
7 warranted.

8 APPLICABLE LAW

9 A. The Standard for Granting Summary Judgment

10 Summary judgment is appropriate when the pleadings, written discovery, depositions,
11 and affidavits, if any, demonstrate that no genuine issue of material fact remains for trial.
12 NRCP 56(c); *Wood v. Safeway, Inc.*, 121 Nev. 724, 732, 121 P.3d 1026 (2005). If the
13 nonmoving party bears the burden of persuasion at trial, the moving party has the burden of
14 producing evidence that negates an essential element of the nonmoving party's claim, or
15 pointing out that there is an absence of evidence to support the nonmoving party's case. *Cuzze*
16 *v. University and Community College System of Nevada*, 123 Nev. 598, 602-03, 172 P.3d 131
17 (2007). Once the moving party meets its burden, the nonmoving party must set forth facts
18 demonstrating the existence of a genuine issue of material fact. In order to defeat summary
19 judgment, "the nonmoving party must transcend the pleadings and, by affidavit or other
20 admissible evidence, introduce specific facts that show a genuine issue of material fact."
21 *Cuzze*, 123 Nev. at 602-03 (citations omitted).

22 A court may properly grant summary judgment if any of the essential elements of a
23 claim are missing. *See, e.g., Kusmirek v. MGM Grand Hotel, Inc.*, 73 F.Supp.2d 1222 (D. Nev.
24 1999) (summary judgment granted where plaintiff failed to satisfy elements of duty and
25 proximate cause). In order to establish entitlement to judgment as a matter of law, a moving
26 defendant must show that one of the elements of the plaintiff's prima facie case is "clearly
27 lacking as a matter of law." *Scialabba v. Brandise Construction Co.*, 112 Nev. 965, 968, 921
28 P.2d 928 (1996).

1 B. The Essential Elements of a Legal Malpractice Claim

2 Iliescu's Third-Party Complaint asserts two claims for relief against Hale Lane: (1)
3 Professional Malpractice; and (2) Negligence. Both of Iliescu's claims are based on the same
4 allegations and require the same legal analysis. *Morgano v. Smith*, 110 Nev. 1025, 1028 n. 2,
5 879 P.2d 735, 737 (1994).

6 In order for Iliescu to establish a prima facie case of legal malpractice, he must show:
7 (1) the existence of an attorney/client relationship which created a duty of care; (2) a breach of
8 that duty; (3) that Hale Lane's negligence is the proximate cause of his damages; and, (4) the
9 existence of actual loss or damage resulting from the negligence. *Mainor v. Nault*, 120 Nev.
10 750, 101 P.3d 308 (2004). If any of these essential elements is lacking as a matter of law, Hale
11 Lane is entitled to summary judgment. See *Kusmirek*, 73 F.Supp.2d at 1226-1227; and
12 *Scialabba*, 112 Nev. at 968; see also *Bulbman, Inc. v. Nevada Bell*, 108 Nev. 105, 111, 825
13 P.2d 588, 592 (1992) (holding that "[w]here an essential element of a claim for relief is absent,
14 the facts, disputed or otherwise, as to other elements are rendered immaterial and summary
15 judgment is proper.")

16 C. The Doctrine of Judicial Error as Superseding Cause

17 The Nevada Supreme Court has recognized that alleged legal malpractice damages may,
18 in certain circumstances, be more appropriately characterized as having been proximately
19 caused by judicial error rather than professional negligence on the part of the attorney. For
20 example, in *Semenza v. Nevada Medical Liability Ins. Co.*, 104 Nev. 666, 765 P.2d 184 (1988),
21 an attorney was sued for legal malpractice for negligently conducting discovery and negligently
22 preparing for trial in an underlying medical malpractice case. 104 Nev. at 667, 765 P.2d at 185.
23 Specifically, it was alleged that the attorney mistakenly allowed a damaging hospital
24 memorandum into evidence. *Id.* Based largely on the admission of that memorandum, a jury
25 awarded the medical malpractice plaintiff a substantial verdict. *Id.* The doctor's liability
26 insurer then sued the doctor's defense lawyer for legal malpractice. *Id.* The underlying
27 medical malpractice verdict was later reversed because the admission of the memorandum
28 "constituted prejudicial error of a magnitude that demands reversal and a new trial." *Id.*

1 (quoting *Mishler v. McNally*, 102 Nev. 625, 629, 730 P.2d 432 (1986)).

2 Based on the Supreme Court's reversal of the medical malpractice verdict, the attorney
3 argued that the trial court erred in finding him liable for legal malpractice. *Id.* The Supreme
4 Court agreed. *Id.* It analyzed the legal malpractice action under accrual principles, holding that
5 the legal malpractice cause of action did not accrue unless and until "the underlying case has
6 been *affirmed* on appeal." *Id.* at 668, 765 P.2d at 185-86 (emphasis added). In its analysis, the
7 Supreme Court recognized that "[a]pparent damage may vanish with successful prosecution of
8 an appeal and ultimate vindication of an attorney's conduct by an appellate court." *Id.* (quoting
9 *Amfac Distribution Corp. v. Miller*, 138 Ariz. 155, 673 P.2d 795, 796 (Ariz. App. 1983)).

10 Likewise, in *Hewitt v. Allen*, 118 Nev. 216, 43 P.3d 345 (2002), the Nevada Supreme
11 Court recognized that a legal malpractice plaintiff's claimed damages may have been caused by
12 judicial error, rather than an attorney's negligence. In *Hewitt*, the plaintiff was injured in a car
13 accident for which she attempted to sue several State of Utah governmental entities. 118 Nev.
14 at 218, 43 P.3d at 346. In filing suit, the plaintiff's lawyer failed to comply with a Utah statute
15 requiring that notice of her claim be served on the Utah Department of Public Safety, and the
16 plaintiff's claims against the governmental entities were therefore dismissed. *Id.* at 218-19, 43
17 P.3d at 346. The plaintiff appealed the dismissals, but later voluntarily dismissed her appeal
18 when her legal counsel advised her that the appeal was futile. *Id.* at 219, 43 P.3d at 346-47.
19 The plaintiff then sued her attorney for malpractice. *Id.* The question at issue in *Hewitt* was
20 whether the plaintiff had abandoned her legal malpractice claim by voluntarily dismissing an
21 appeal that may have vindicated the attorney's conduct. *Id.* at 220, 43 P.3d at 347.

22 Like in *Semenza*, the Supreme Court analyzed the issue by first discussing when a legal
23 malpractice claim can be said to have accrued. *Id.* at 220-22, 43 P.3d at 347-48. Recognizing
24 the fact that a client need not appeal an adverse ruling to preserve a legal malpractice claim, the
25 Court analogized the client's voluntary dismissal of her appeal to a decision not to appeal in the
26 first place. *Id.* at 222, 43 P.3d at 348-49. It thus concluded that voluntarily dismissing a futile
27 appeal does not amount to abandonment of a legal malpractice claim. *Id.* In reaching its
28 conclusion, the *Hewitt* Court observed as follows:

1 In cases where no appeal from an adverse ruling was filed, the defendants in the
2 legal malpractice action are able to assert, as an affirmative defense, that the
3 proximate cause of the damages was not the attorney's negligence, but judicial
4 error that could have been corrected on appeal. This issue is commonly raised
5 under theories of abandonment or failure to mitigate damages, but can also be
6 asserted as part of a claim that the malpractice action is premature. Moreover,
because the issue is raised in the context of an affirmative defense, the attorney
defendant has the burden of proof to establish that an appeal would have been
successful. Finally, whether an appeal is likely to succeed is a question of law
to be decided by the trial court.

7 *Hewitt*, 118 Nev. at 222, 43 P.3d at 348-49.

8 Although the Nevada Supreme Court has acknowledged that judicial error can
9 constitute the intervening and superseding cause of damages in a legal malpractice case, the
10 Court has not yet taken the opportunity to address the issue in depth. Courts in our sister states
11 have fleshed out the doctrine in greater detail, and there appear to be two prevailing approaches
12 to determining the legal effect of a judicial error in a legal malpractice action.

13 Under the first approach, "judicial error resulting in an adverse ruling is a superseding
14 cause that relieves a negligent attorney from liability for legal malpractice *without regard to*
15 *whether the judicial error was foreseeable.*" *Kiribati Seafood Co. v. Dechert LLP*, 2016 WL
16 1426297, *12 (Mass. 2016) (emphasis added). This approach applies "where the attorney has
17 presented the necessary legal arguments and the judge, albeit in error, rejects them." *Id.*
18 (quoting *Crestwood Cove Apartments Business Trust v. Turner*, 164 P.3d 1247, 1256 (Utah
19 2007)).

20 In *Crestwood Cove*, the Supreme Court of Utah considered the proximate cause issue in
21 a legal malpractice case where the trial court had erred in issuing a ruling that harmed the
22 client. It stated as follows:

23 Accordingly, summary judgment is appropriate where there is no doubt that
24 judicial error, rather than attorney malpractice, caused a client's losses. As
25 previously discussed, some jurisdictions, often through the guise of an
26 abandonment doctrine, have concluded that a plaintiff cannot establish a claim
27 for legal malpractice where judicial error was the proximate cause of the
28 adverse result. We agree. Where an attorney has raised and preserved all
relevant legal considerations in an appropriate procedural manner and a court
nevertheless commits judicial error, the attorney's actions cannot be considered
the proximate cause of the client's loss. Although a client may believe that an
attorney has not litigated a case in the most effective manner possible, such

1 beliefs are irrelevant where the attorney has presented the necessary arguments
2 and the judge, albeit in error, rejects them. Were it otherwise, an attorney
3 would be subject to liability every time a judge erroneously ruled against the
attorney's client. In effect, an attorney would become a guarantor of correct
judicial decisionmaking—a result we cannot accept.

4 *Crestwood Cove*, 164 P.3d at 1255-56 (internal citations omitted); *see also Pa. Ins. Guar. Ass'n*
5 *v. Sikes*, 590 So.2d 1051, 1052 (Fla. App. 1991) (“A reversal of a trial court’s order that denies
6 an attorney the opportunity to cure a nonprejudicial defect and enters judgment for the
7 opposing side because of the alleged defect, determines, essentially, that there was judicial
8 error rather than legal malpractice”); *Cedeno v. Gumbiner*, 347 Ill.App.3d 169, 806 N.E.2d
9 1188, 1194 (2004) (finding that where the court’s “misapplication of the law served as an
10 intervening cause, it cannot be said that plaintiff’s damages proximately resulted from” the
11 attorney’s actions, and summary judgment was therefore appropriate.)

12 Although the *Crestwood Cove* Court stopped short of holding that judicial error always
13 forecloses a plaintiff from bringing a malpractice suit, it did observe that “when an attorney has
14 raised the appropriate arguments and the court nevertheless commits judicial error, a plaintiff’s
15 suit can be appropriately dismissed on summary judgment.” *Id.* at 1256. In other words, as
16 long as the attorney asserts the appropriate legal arguments, judicial error is regarded as a *per*
17 *se* superseding cause in a legal malpractice action. *Id.*

18 Under the second approach, the foreseeability of the District Court’s judicial error is a
19 relevant consideration. Importantly, however, a judicial error is only regarded as foreseeable
20 under very limited circumstances. This approach was explained and applied by the Supreme
21 Court of Texas in *Stanfield v. Neubaum*, 494 S.W.3d 90 (2016). The *Stanfield* Court began its
22 opinion with the following preface:

23 Litigation rarely results in complete satisfaction for those involved. When a
24 lawyer makes a mistake and the client loses as a result, the law affords a
25 remedy. What happens, however, when the lawyer pursues a winning strategy
26 (perhaps with some strategic missteps), but the trial judge errs, and the error
27 requires a costly appeal to correct? Is the lawyer liable for the appellate costs
incurred to correct the error? Although the question presents a novel issue, the
answer is governed by well-established causation principles.

28 *Stanfield*, 494 S.W.3d at 93.

1 *Stanfield* involved an underlying usury case in which the defendants, the Neubaums,
2 were alleged to have loaned money at usurious interest rates to Buck Glove Company, through
3 an agent, Marvin March. *Id.* at 94. The Neubaums' lawyers argued, in pertinent part, that
4 March was not acting as their agent when he made the subject loans. *Id.* After a jury trial, the
5 jury found that March had served as the Neubaums' agent in making the usurious loans, and the
6 trial court entered judgment against the Neubaums. *Id.* The Neubaums' attorneys then moved
7 for a new trial or reformation of the judgment, again arguing that there was no evidence to
8 support the plaintiff's agency theory. *Id.* at 94-95. That motion was denied. *Id.* at 95.

9 The Neubaums then hired new counsel to appeal the adverse usury judgment, and the
10 appeal was successful. *Id.* The appellate court reversed the usury judgment, concluding that
11 there was legally insufficient evidence that March made the loans as the Neubaums' agent. *Id.*
12 When all was said and done, the Neubaums had spent \$140,000 in appellate attorney's fees to
13 obtain a favorable resolution of the usury case. *Id.* The Neubaums then sued their trial
14 attorneys for legal malpractice, seeking to recover the amounts expended to overturn the
15 erroneous trial court judgment. *Id.*

16 In their defense of the malpractice action, the attorney-defendants maintained that the
17 trial court's error in the underlying usury case was an intervening and superseding cause of the
18 Neubaums' damages. *Stanfield*, 494 S.W.3d at 95-96. The Supreme Court of Texas agreed.
19 The court held that "[t]o break the causal connection between an attorney's negligence and the
20 plaintiff's harm, the judicial error must not be foreseeable." *Id.* at 99. It explained that a
21 judicial error is reasonably foreseeable if an "unbroken connection" exists between the
22 attorney's negligence and the judicial error, "such as when the attorney's negligence directly
23 contributed to and cooperated with the judicial error, rendering the error part of 'a continuous
24 succession of events' that foreseeably resulted in the harm." *Id.* at 100.

25 Importantly, "merely furnishing a condition that allows judicial error to occur does not
26 establish the ensuing harm was a reasonably foreseeable result of the defendant's negligence."
27 *Id.* (emphasis added). Thus, for a judicial error to be foreseeable, the attorney must have done
28 more than merely furnish a condition that allows the judicial error to occur; the attorney must

1 have directly contributed to and cooperated with the judicial error. *Id.* *Stanfield's* explanation
2 of when judicial error is foreseeable applies where a legal malpractice defendant has, in effect,
3 invited the judicial error by advocating a legally erroneous principle that the court accepts.
4 Essentially, a lawyer cannot invite judicial error and then escape responsibility for the financial
5 consequences thereof by disavowing the attorney's inducement or encouragement of that error.

6 APPLICATION OF THE LAW TO THE UNDISPUTED FACTS

7 On May 3, 2007, the District Court determined that Steppan's lien may be upheld, over
8 Hale Lane's objection regarding the lack of a pre-lien notice, if it was shown that Iliescu had
9 actual notice of Steppan's architectural services. Over 10 years later, on May 25, 2017, the
10 Nevada Supreme Court held that Steppan was not entitled to rely on the actual-notice exception
11 to the pre-lien notice requirement because the actual-notice exception does not apply to off-site
12 work when no onsite work has been performed on the property. Thus, the May 2007 ruling and
13 all subsequent District Court rulings founded upon this faulty premise were determined to have
14 been judicial error. The issue now presented to this Court is to determine the legal (i.e., causal)
15 effect of the judicial error on this legal malpractice action.

16 This Court concludes that, under either of the prevailing approaches to the judicial-
17 error-as-superseding-cause analysis, Hale Lane is entitled to summary judgment. Hale Lane
18 did not invite the District Court's judicial error, nor did Hale Lane cooperate with such judicial
19 error. To the contrary, Hale Lane argued directly against the ruling that was ultimately held to
20 have been in error.

21 It is undisputed that Hale Lane argued that a pre-lien notice was a necessary predicate to
22 Steppan's lien, and that the lien was invalid specifically because of Steppan's failure to provide
23 such a notice. Indeed, Hale Lane went much further in its argument. When presented with
24 Steppan's contention, under *Fondren*, that actual notice was an exception to the pre-lien notice
25 requirement, Hale Lane drew the appropriate distinction between this case and *Fondren*.
26 Although Hale Lane did not draw the distinction in the strict terms of "onsite" versus "off-site"
27 work, it made the same basic point—i.e., that actual notice of off-site work does not provide a
28 property owner with the same information as does actual notice of onsite work. At the oral

1 argument hearing on May 3, 2007, Hale Lane attorney Jerry Snyder argued, in pertinent part:

2 I believe what Ms. Kern said was Fondren requires that the burden be shifted. If
3 the owner has any notion that there might be a construction project, the burden
4 is shifted to him to inquire. That's not what Fondren says.

5 What Fondren says is that where the owner has actual notice of construction, the
6 constructive notice by the pre-lien statute or the notice of right to lien statute is
7 not required. And so in order for Fondren to obviate the need for a pre-lien
8 notice, the actual notice has to have at least the information that would be
9 required under the pre-lien notice, under the constructive pre-lien notice.

10 What the pre-lien notice has to have is the identity of the lien claimant, a
11 general description of the work, materials, equipment or services, the identity of
12 the general contractor under whom the lien claimant is with contract.

13 None of that information was provide to Dr. Iliescu. He did not know the
14 identity of the lien claimant until at the earliest October of 2006 after virtually
15 all of the work had been done. So this notion that, because he had some idea
16 that an architect somewhere would be creating some plans, some design work or
17 a work improvement to this property, that he was under an obligation to go dig
18 out that information is simply untrue. That's reading Fondren so broadly as to
19 vitiate the specific requirements of NRS 108.245, which explicitly says, if you
20 don't file your pre-lien notice, you don't have a lien.

21 The same rationale argued by Snyder in May of 2007 formed the basis of the Nevada
22 Supreme Court's Opinion in May of 2017. In fact, juxtaposing Snyder's 2007 argument with
23 the Nevada Supreme Court's 2017 reasoning reveals that the two are nearly identical. In its
24 decision of Iliescu's previous appeal, the Nevada Supreme Court wrote:

25 We further explained that NRS 108.245 "protect[s] owners from hidden claims
26 and ... [t]his purpose would be frustrated if mere knowledge of construction is
27 sufficient to invoke the actual knowledge exception against an owner by a
28 contractor. Otherwise, the exception would swallow the rule."

This rationale equally pertains to offsite architectural work performed pursuant
to an agreement with a prospective buyer when there is no indication that onsite
work has begun on the property, and no showing has been made that the offsite
architectural work has benefited the owner or improved its property. As this
court has consistently held, a lien claimant has not substantially complied with
the mechanic's lien statutes when the property owner is prejudiced by the

1 absence of strict compliance. As the *Hardy* court recognized, to conclude
2 otherwise would frustrate the purpose of NRS 108.245, and the actual notice
exception would swallow the rule.

3 *Iliescu v. Steppan*, 133 Nev. Adv. Op. 25, 394 P.3d 930, 934-35 (2017) (internal citations
4 omitted).

5 The similarity between Hale Lane's 2007 argument and the Nevada Supreme Court's
6 2017 reasoning reveals, unequivocally, that Hale Lane "presented the necessary legal
7 arguments and the judge, albeit in error, reject[ed] them." *Kiribati Seafood*, 2016 WL 1426297,
8 *12 (Mass. 2016) (quoting *Crestwood Cove*, 164 P.3d at 1256 (Utah 2007)).

9 The similarity further shows that Hale Lane did not contribute to or cooperate with the
10 judicial error. See *Stanfield*, 494 S.W.3d at 100. Stated differently, Hale Lane did not invite
11 the judicial error by advocating a legally erroneous principle that the Court accepted. *Id.* To
12 the contrary, the District Court made its erroneous ruling despite Hale Lane's appropriate, and
13 ultimately correct, legal argument.

14 Accordingly, the District Court's judicial error is the intervening and superseding cause
15 of Iliescu's claimed damages. The legal effect of the District Court's judicial error is to sever
16 the causal connection between the alleged legal malpractice and Iliescu's claimed damages.
17 Because the element of causation is lacking as a matter of law in this case, Hale Lane is entitled
18 to summary judgment.

19 **ILIESCU'S COUNTERMOTION TO AMEND IS DENIED AS FUTILE**

20 In opposing Hale Lane's summary judgment motion, Iliescu filed a countermotion for
21 leave to amend and to conduct further discovery. Iliescu's proposed amended third-party
22 complaint, insofar as it pertains to Hale Lane, is essentially a list of steps Hale Lane allegedly
23 could have or should have taken to protect Iliescu from the possibility that Steppan would later
24 assert a lien against Iliescu's property. (Exhibit 1 to Iliescu's Opposition/Counter-motion, pp.
25 18-21, ¶¶ 97(i) – (xvii)). Iliescu further proposes to add an additional claim against Hale Lane
26 for breach of contract. (Exhibit 1 to Iliescu's Opposition/Counter-motion, pp. 23-24)

27 NRCP 15(a) provides that leave to amend a complaint shall be freely given when justice
28 so requires. "However, leave to amend should not be granted if the proposed amendment

1 would be futile.” *Halcrow, Inc. v. Eighth Judicial District Court*, 129 Nev. Adv. Op. 42, 302
2 P.3d 1148, 1152 (2013). The futility exception to NRCP 15(a) “is intended to mean that an
3 amendment should not be allowed if it inevitably will be considered a waste of time and
4 resources on which the movant has no realistic chance of prevailing at trial.” *Nutton v. Sunset*
5 *Station, Inc.*, 131 Nev. Adv. Op. 34, 357 P.3d 966, 973 (2015).

6 The above-outlined issue (judicial error as an intervening and superseding cause) is
7 purely an issue of law, and the facts bearing on the issue are undisputed. Even if Iliescu’s
8 amended allegations are accepted as true, the fact remains that Hale Lane’s 2007 application to
9 release Steppan’s lien should have been granted. No matter what Hale Lane allegedly could
10 have done to preclude Steppan from asserting a lien, the District Court’s judicial error will
11 always constitute an intervening and superseding cause of Iliescu’s claimed damages.
12 Accordingly, as a matter of law, Iliescu cannot establish the causation element of his legal
13 malpractice claim, even as prospectively amended.

14 Furthermore, Iliescu’s inclusion of a separate breach of contract claim against Hale
15 Lane in his proposed amended pleading does not relieve Iliescu of the requirement that he
16 prove the element of causation. Claims not labeled “legal malpractice” are still regarded under
17 the law as legal malpractice claims if they are “premised on [an attorney] allegedly breaching
18 ‘duties that would not exist but for the attorney-client relationship.’” *Stoffel v. Eighth Judicial*
19 *District Court*, 2017 WL 1078662, *1 (Nev. 2017) (quoting *Stalk v. Mushkin*, 125 Nev. 21, 29,
20 199 P.3d 838, 843 (2009)). Thus, Iliescu cannot get around the obligation to prove the element
21 of causation simply by labeling one of his claims something other than “legal malpractice.”
22 Iliescu’s inability to prove the element of causation is fatal to all his claims against Hale Lane,
23 no matter what he labels those claims and regardless of whether his pleading is amended.
24 Iliescu’s countermotion to amend and for further discovery is therefore denied as futile.

25 ORDER

26 NOW, THEREFORE, IT IS HEREBY ORDERED:

- 27 1. That Hale Lane’s Motion for Summary Judgment of Iliescu’s Fifth and Sixth Claims for
28 Relief is **GRANTED**.

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EXHIBIT “9”

1 **2540**
2 Todd R. Alexander, Esq. NSB #10846
3 Lemons, Grundy & Eisenberg
4 6005 Plumas Street, Suite 300
5 Reno, Nevada 89519
6 Telephone: (775) 786-6868
7 Facsimile: (775) 786-9716

8 Attorneys for Third Party Defendants

9
10 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
11 **IN AND FOR THE COUNTY OF WASHOE**

12 MARK B. STEPPAN,

13 Plaintiff,

14 vs.

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

21 Defendants.

22 AND RELATED CLAIMS.

CONSOLIDATED

Case No. CV07-00341

Dept. No. 10

23 **NOTICE OF ENTRY OF ORDER**

24 **PLEASE TAKE NOTICE** that the Order Granting Third-Party Defendant Hale Lane's
25 Motion for Summary Judgment was entered on June 12, 2018. A copy of said Order is
26 attached hereto as **Exhibit 1**.

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

Dated: June 12, 2018.

LEMONS, GRUNDY
& EISENBERG
6005 PLUMAS ST.
THIRD FLOOR
RENO, NV 89519
(775) 786-6868

Lemons, Grundy & Eisenberg

By: 

Todd R. Alexander, Esq.

Attorneys for Third Party Defendants

1 **CERTIFICATE OF SERVICE**


2 I hereby certify that I am an employee of the law office of Lemons, Grundy & Eisenberg
3 and that on June 12, 2018, I e-filed a true and correct copy of the foregoing **NOTICE OF**
4 **ENTRY OF ORDER**, with the Clerk of the Court through the Court's eFlex electronic filing system
5 and notice will be sent electronically by the Court to the following:

6 C. Nicholas Pereos, Esq.
7 1610 Meadow Wood Lane, Suite 202
8 Reno, Nevada 89502
9 *Attorney for John Iliescu, Jr. and Sonnia Iliescu, et al.*

10 G. Mark Albright, Esq.
11 D. Chris Albright, Esq.
12 Albright, Stoddard, Warnick & Albright
13 801 South Rancho Drive, Suite D-4
14 Las Vegas, Nevada 89106
15 *Attorney for John Iliescu, Jr. and Sonnia Iliescu, et al.*

16 Michael D. Hoy, Esq.
17 Hoy Chrissinger Kimmel, P.C.
18 50 West Liberty Street, Suite 840
19 Reno, Nevada 89501
20 *Attorney for Mark Steppan*

21 Gregory F. Wilson, Esq.
22 Gregory F. Wilson & Associates, PC
23 1495 Ridgeview Drive, Suite 120
24 Reno, Nevada 89519
25 *Attorney for John Schleining*

26 
27 Susan G. Davis
28

INDEX OF EXHIBITS

<i>Exhibit No.</i>	<i>Description</i>	<i>Length of Exhibit</i>
1	Order Granting Third-Party Defendant Hale Lane's Motion for Summary Judgment	15 pages

FILED
Electronically
CV07-00341
2018-06-12 03:40:33 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6725105

EXHIBIT 1

EXHIBIT 1

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5
6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**
8

9 MARK B. STEPPAN,

10 Plaintiff,

11 vs.

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

18 Defendants.

19 AND RELATED CLAIMS

CONSOLIDATED

Case No. CV07-00341

Dept. No. 10

ORDER GRANTING THIRD-PARTY
DEFENDANT HALE LANE'S
MOTION FOR SUMMARY
JUDGMENT

18 On November 17, 2017, Third-Party Defendant HALE LANE PEEK DENNISON AND
19 HOWARD PROFESSIONAL CORPORATION ("Hale Lane"), filed a motion for summary
20 judgment of the third-party claims asserted against it by third-party plaintiffs JOHN ILIESCU,
21 JR. and SONNIA ILIESCU, individually and as trustees of the ILIESCU 1992 FAMILY
22 TRUST (collectively, "Iliescu"). Iliescu filed an opposition to Hale Lane's motion on
23 December 18, 2017. Iliescu's opposition also included a countermotion to amend the third-
24 party claims against Hale Lane and for further time to complete discovery. Hale Lane filed a
25 reply in support of its motion for summary judgment on January 8, 2018, which included an
26 opposition to Iliescu's countermotion to amend. On January 12, 2018, Iliescu filed a reply in
27 support of the countermotion to amend and for further time to complete discovery. This Court
28 heard oral arguments by counsel on June 6, 2018. Having considered the motion,

1 oppositions/countermotions, and reply briefs, along with all supporting documentation, and
2 having considered oral argument from the parties, this Court orders as follows.

3 **GENERAL FACTUAL BACKGROUND**

4 The matter underlying Iliescu's third-party legal malpractice claims against Hale Lane
5 was a lien dispute arising out of an architect's lien that had been recorded against Iliescu's real
6 property located in downtown Reno. After the lien was recorded, Hale Lane filed an
7 application on Iliescu's behalf to release the architect's lien, arguing that the architect, Plaintiff
8 Mark Steppan ("Steppan"), had not provided the required pre-lien notice and that his lien was
9 therefore invalid. Steppan then filed a complaint for foreclosure of his lien, and the two matters
10 were consolidated into this action.

11 Over Hale Lane's argument to the contrary, the District Court ultimately concluded that
12 the actual-notice exception to the pre-lien notice requirement was applicable in this case. The
13 Court further found that Iliescu had actual notice of Steppan's architectural work, and, after a
14 bench trial, the Court entered an Order foreclosing Steppan's lien. Iliescu appealed.

15 In May of 2017, the Nevada Supreme Court reversed the order foreclosing Steppan's
16 lien and remanded the matter for entry of judgment in Iliescu's favor. The Supreme Court's
17 Opinion was based on Steppan's failure to provide the statutorily-required pre-lien notice,
18 holding that Steppan was not entitled to rely on the actual-notice exception to the pre-lien
19 notice requirement.

20 After the successful appeal, Iliescu continues to pursue the third-party legal malpractice
21 claims against Hale Lane. Hale Lane now moves for summary judgment of those claims.

22 **UNDISPUTED FACTS MATERIAL TO THIS ORDER**

23 In the third-party legal malpractice claims asserted against Hale Lane, Iliescu alleges
24 that Hale Lane could have, and should have, taken steps to protect Iliescu from Steppan's lien.
25 (*See Answer and Third Party Complaint*, filed September 27, 2007).

26 The filing that initiated this action on February 14, 2007 was Iliescu's *Application for*
27 *Release of Mechanic's Lien*, which was prepared and filed by then-Hale Lane attorney, Jerry
28 Snyder. In that Application, Hale Lane argued on Iliescu's behalf that Steppan's lien was

1 invalid because Steppan had not provided a notice of right to lien pursuant to NRS 108.245(6)
2 or a notice of intent to lien pursuant to NRS 108.226(6). (*See, generally*, Application for
3 Release of Mechanic's Lien, filed February 14, 2007).

4 In the *Response to Application for Release of Mechanic's Lien* (filed by attorney Gayle
5 Kern), Steppan argued that, under *Fondren v. K/L Complex, Ltd.*, 106 Nev. 705, 800 P.2d 719
6 (1990), a statutory pre-lien notice was not required because Iliescu had actual knowledge of the
7 off-site architectural work being conducted with respect to his property. (*See, generally*,
8 Response to Application for Release of Mechanic's Lien, filed May 30, 2007)

9 On May 3, 2007, the District Court, Department 6, conducted a hearing on the
10 application to release Steppan's lien. On Iliescu's behalf, Hale Lane argued that the parties'
11 lien dispute was distinguishable from *Fondren*, and that the actual notice exception therefore
12 did not apply. At that hearing, Mr. Snyder argued on behalf of Iliescu, in pertinent part, as
13 follows:

14 The manner in which Ms. Kern would have this court read *Fondren* is to have
15 *Fondren* – I believe what Ms. Kern said was *Fondren* requires that the burden be
16 shifted. If the owner has any notion that there might be a construction project,
17 the burden is shifted to him to inquire. That's not what *Fondren* says.

18 What *Fondren* says is that where the owner has actual notice of construction, the
19 constructive notice by the pre-lien statute or the notice of right to lien statute is
20 not required. And so in order for *Fondren* to obviate the need for a pre-lien
21 notice, the actual notice has to have at least the information that would be
22 required under the pre-lien notice, under the constructive pre-lien notice.

23 What the pre-lien notice has to have is the identity of the lien claimant, a
24 general description of the work, materials, equipment or services, the identity of
25 the general contractor under whom the lien claimant is with contract.

26 None of that information was provide to Dr. Iliescu. He did not know the
27 identity of the lien claimant until at the earliest October of 2006 after virtually
28 all of the work had been done. So this notion that, because he had some idea
that an architect somewhere would be creating some plans, some design work or
a work improvement to this property, that he was under an obligation to go dig
out that information is simply untrue. That's reading *Fondren* so broadly as to
vitate the specific requirements of NRS 108.245, which explicitly says, if you

1 don't file your pre-lien notice, you don't have a lien.

2 (Transcript of Proceedings, May 3, 2007, pp. 47-49).

3 The District Court did not grant the application to release Steppan's lien. (May 3, 2007
4 Order). Instead, the Court ordered that the parties were to conduct discovery concerning
5 whether Iliescu had actual knowledge of the architectural services performed by Steppan.
6 (May 3, 2007 Order).

7 Shortly thereafter, other attorneys substituted in for Iliescu, in place of Hale Lane.
8 (Substitution of Counsel, filed August 3, 2007). Iliescu then filed an answer to Steppan's
9 complaint for foreclosure of his lien. Iliescu's answer included two third-party claims for relief
10 against Hale Lane, entitled Professional Malpractice and Negligence. (Answer and Third Party
11 Complaint, filed September 27, 2007, pp. 14-15). The third-party claims against Hale Lane
12 remained stayed throughout the litigation of the lien dispute between Iliescu and Steppan.

13 After a bench trial, this Court determined that Iliescu had actual notice of Steppan's
14 architectural work, and that Steppan's lien was therefore valid and enforceable. (Findings of
15 Fact, Conclusions of Law and Decision, entered May 28, 2014). Accordingly, this Court
16 entered an order foreclosing Steppan's lien. (Judgment, Decree and Order for Foreclosure of
17 Mechanic's Lien, entered February 26, 2015). Iliescu appealed that ruling to the Nevada
18 Supreme Court.

19 On May 25, 2017, the Nevada Supreme Court issued its Opinion in Iliescu's appeal.
20 *Iliescu v. Steppan*, 133 Nev. Adv. Op. 25, 394 P.3d 930 (2017). It held that the actual notice
21 exception described in *Fondren* does not apply to off-site work when no onsite work has been
22 performed on the property. *Id.* at 934-35. It therefore reversed this Court's order foreclosing
23 Steppan's lien and remanded the matter to this Court for entry of judgment in Iliescu's favor.
24 *Id.* at 936.

25 After the successful appeal, Iliescu now continues to pursue its legal malpractice claims
26 against Hale Lane, seeking recovery of the fees and costs incurred in successfully defending
27 against Steppan's lien, along with other claimed damages. Hale Lane now moves for summary
28 judgment of those claims for relief.

1 Hale Lane's motion is based on the principle that judicial error can, and in this case
2 does, constitute an intervening and superseding cause of the claimed damages in a legal
3 malpractice case. As discussed below, based on the applicable law and the undisputed material
4 facts of this case, this Court agrees with Hale Lane that the District Court's judicial error is the
5 intervening and superseding cause of Iliescu's claimed damages, that Hale Lane is thereby
6 relieved from liability for alleged legal malpractice, and that summary judgment is therefore
7 warranted.

8 APPLICABLE LAW

9 A. The Standard for Granting Summary Judgment

10 Summary judgment is appropriate when the pleadings, written discovery, depositions,
11 and affidavits, if any, demonstrate that no genuine issue of material fact remains for trial.
12 NRCP 56(c); *Wood v. Safeway, Inc.*, 121 Nev. 724, 732, 121 P.3d 1026 (2005). If the
13 nonmoving party bears the burden of persuasion at trial, the moving party has the burden of
14 producing evidence that negates an essential element of the nonmoving party's claim, or
15 pointing out that there is an absence of evidence to support the nonmoving party's case. *Cuzze*
16 *v. University and Community College System of Nevada*, 123 Nev. 598, 602-03, 172 P.3d 131
17 (2007). Once the moving party meets its burden, the nonmoving party must set forth facts
18 demonstrating the existence of a genuine issue of material fact. In order to defeat summary
19 judgment, "the nonmoving party must transcend the pleadings and, by affidavit or other
20 admissible evidence, introduce specific facts that show a genuine issue of material fact."
21 *Cuzze*, 123 Nev. at 602-03 (citations omitted).

22 A court may properly grant summary judgment if any of the essential elements of a
23 claim are missing. *See, e.g., Kusmirek v. MGM Grand Hotel, Inc.*, 73 F.Supp.2d 1222 (D. Nev.
24 1999) (summary judgment granted where plaintiff failed to satisfy elements of duty and
25 proximate cause). In order to establish entitlement to judgment as a matter of law, a moving
26 defendant must show that one of the elements of the plaintiff's prima facie case is "clearly
27 lacking as a matter of law." *Scialabba v. Brandise Construction Co.*, 112 Nev. 965, 968, 921
28 P.2d 928 (1996).

1 B. The Essential Elements of a Legal Malpractice Claim

2 Iliescu's Third-Party Complaint asserts two claims for relief against Hale Lane: (1)
3 Professional Malpractice; and (2) Negligence. Both of Iliescu's claims are based on the same
4 allegations and require the same legal analysis. *Morgano v. Smith*, 110 Nev. 1025, 1028 n. 2,
5 879 P.2d 735, 737 (1994).

6 In order for Iliescu to establish a prima facie case of legal malpractice, he must show:
7 (1) the existence of an attorney/client relationship which created a duty of care; (2) a breach of
8 that duty; (3) that Hale Lane's negligence is the proximate cause of his damages; and, (4) the
9 existence of actual loss or damage resulting from the negligence. *Mainor v. Nault*, 120 Nev.
10 750, 101 P.3d 308 (2004). If any of these essential elements is lacking as a matter of law, Hale
11 Lane is entitled to summary judgment. See *Kusmirek*, 73 F.Supp.2d at 1226-1227; and
12 *Scialabba*, 112 Nev. at 968; see also *Bulbman, Inc. v. Nevada Bell*, 108 Nev. 105, 111, 825
13 P.2d 588, 592 (1992) (holding that "[w]here an essential element of a claim for relief is absent,
14 the facts, disputed or otherwise, as to other elements are rendered immaterial and summary
15 judgment is proper.")

16 C. The Doctrine of Judicial Error as Superseding Cause

17 The Nevada Supreme Court has recognized that alleged legal malpractice damages may,
18 in certain circumstances, be more appropriately characterized as having been proximately
19 caused by judicial error rather than professional negligence on the part of the attorney. For
20 example, in *Semenza v. Nevada Medical Liability Ins. Co.*, 104 Nev. 666, 765 P.2d 184 (1988),
21 an attorney was sued for legal malpractice for negligently conducting discovery and negligently
22 preparing for trial in an underlying medical malpractice case. 104 Nev. at 667, 765 P.2d at 185.
23 Specifically, it was alleged that the attorney mistakenly allowed a damaging hospital
24 memorandum into evidence. *Id.* Based largely on the admission of that memorandum, a jury
25 awarded the medical malpractice plaintiff a substantial verdict. *Id.* The doctor's liability
26 insurer then sued the doctor's defense lawyer for legal malpractice. *Id.* The underlying
27 medical malpractice verdict was later reversed because the admission of the memorandum
28 "constituted prejudicial error of a magnitude that demands reversal and a new trial." *Id.*

1 (quoting *Mishler v. McNally*, 102 Nev. 625, 629, 730 P.2d 432 (1986)).

2 Based on the Supreme Court's reversal of the medical malpractice verdict, the attorney
3 argued that the trial court erred in finding him liable for legal malpractice. *Id.* The Supreme
4 Court agreed. *Id.* It analyzed the legal malpractice action under accrual principles, holding that
5 the legal malpractice cause of action did not accrue unless and until "the underlying case has
6 been *affirmed* on appeal." *Id.* at 668, 765 P.2d at 185-86 (emphasis added). In its analysis, the
7 Supreme Court recognized that "[a]pparent damage may vanish with successful prosecution of
8 an appeal and ultimate vindication of an attorney's conduct by an appellate court." *Id.* (quoting
9 *Amfac Distribution Corp. v. Miller*, 138 Ariz. 155, 673 P.2d 795, 796 (Ariz. App. 1983)).

10 Likewise, in *Hewitt v. Allen*, 118 Nev. 216, 43 P.3d 345 (2002), the Nevada Supreme
11 Court recognized that a legal malpractice plaintiff's claimed damages may have been caused by
12 judicial error, rather than an attorney's negligence. In *Hewitt*, the plaintiff was injured in a car
13 accident for which she attempted to sue several State of Utah governmental entities. 118 Nev.
14 at 218, 43 P.3d at 346. In filing suit, the plaintiff's lawyer failed to comply with a Utah statute
15 requiring that notice of her claim be served on the Utah Department of Public Safety, and the
16 plaintiff's claims against the governmental entities were therefore dismissed. *Id.* at 218-19, 43
17 P.3d at 346. The plaintiff appealed the dismissals, but later voluntarily dismissed her appeal
18 when her legal counsel advised her that the appeal was futile. *Id.* at 219, 43 P.3d at 346-47.
19 The plaintiff then sued her attorney for malpractice. *Id.* The question at issue in *Hewitt* was
20 whether the plaintiff had abandoned her legal malpractice claim by voluntarily dismissing an
21 appeal that may have vindicated the attorney's conduct. *Id.* at 220, 43 P.3d at 347.

22 Like in *Semenza*, the Supreme Court analyzed the issue by first discussing when a legal
23 malpractice claim can be said to have accrued. *Id.* at 220-22, 43 P.3d at 347-48. Recognizing
24 the fact that a client need not appeal an adverse ruling to preserve a legal malpractice claim, the
25 Court analogized the client's voluntary dismissal of her appeal to a decision not to appeal in the
26 first place. *Id.* at 222, 43 P.3d at 348-49. It thus concluded that voluntarily dismissing a futile
27 appeal does not amount to abandonment of a legal malpractice claim. *Id.* In reaching its
28 conclusion, the *Hewitt* Court observed as follows:

1 In cases where no appeal from an adverse ruling was filed, the defendants in the
2 legal malpractice action are able to assert, as an affirmative defense, that the
3 proximate cause of the damages was not the attorney's negligence, but judicial
4 error that could have been corrected on appeal. This issue is commonly raised
5 under theories of abandonment or failure to mitigate damages, but can also be
6 asserted as part of a claim that the malpractice action is premature. Moreover,
because the issue is raised in the context of an affirmative defense, the attorney
defendant has the burden of proof to establish that an appeal would have been
successful. Finally, whether an appeal is likely to succeed is a question of law
to be decided by the trial court.

7 *Hewitt*, 118 Nev. at 222, 43 P.3d at 348-49.

8 Although the Nevada Supreme Court has acknowledged that judicial error can
9 constitute the intervening and superseding cause of damages in a legal malpractice case, the
10 Court has not yet taken the opportunity to address the issue in depth. Courts in our sister states
11 have fleshed out the doctrine in greater detail, and there appear to be two prevailing approaches
12 to determining the legal effect of a judicial error in a legal malpractice action.

13 Under the first approach, "judicial error resulting in an adverse ruling is a superseding
14 cause that relieves a negligent attorney from liability for legal malpractice *without regard to*
15 *whether the judicial error was foreseeable.*" *Kiribati Seafood Co. v. Dechert LLP*, 2016 WL
16 1426297, *12 (Mass. 2016) (emphasis added). This approach applies "where the attorney has
17 presented the necessary legal arguments and the judge, albeit in error, rejects them." *Id.*
18 (quoting *Crestwood Cove Apartments Business Trust v. Turner*, 164 P.3d 1247, 1256 (Utah
19 2007)).

20 In *Crestwood Cove*, the Supreme Court of Utah considered the proximate cause issue in
21 a legal malpractice case where the trial court had erred in issuing a ruling that harmed the
22 client. It stated as follows:

23 Accordingly, summary judgment is appropriate where there is no doubt that
24 judicial error, rather than attorney malpractice, caused a client's losses. As
25 previously discussed, some jurisdictions, often through the guise of an
26 abandonment doctrine, have concluded that a plaintiff cannot establish a claim
27 for legal malpractice where judicial error was the proximate cause of the
28 adverse result. We agree. Where an attorney has raised and preserved all
relevant legal considerations in an appropriate procedural manner and a court
nevertheless commits judicial error, the attorney's actions cannot be considered
the proximate cause of the client's loss. Although a client may believe that an
attorney has not litigated a case in the most effective manner possible, such

1 beliefs are irrelevant where the attorney has presented the necessary arguments
2 and the judge, albeit in error, rejects them. Were it otherwise, an attorney
3 would be subject to liability every time a judge erroneously ruled against the
attorney's client. In effect, an attorney would become a guarantor of correct
judicial decisionmaking—a result we cannot accept.

4 *Crestwood Cove*, 164 P.3d at 1255-56 (internal citations omitted); *see also Pa. Ins. Guar. Ass'n*
5 *v. Sikes*, 590 So.2d 1051, 1052 (Fla. App. 1991) (“A reversal of a trial court’s order that denies
6 an attorney the opportunity to cure a nonprejudicial defect and enters judgment for the
7 opposing side because of the alleged defect, determines, essentially, that there was judicial
8 error rather than legal malpractice”); *Cedeno v. Gumbiner*, 347 Ill.App.3d 169, 806 N.E.2d
9 1188, 1194 (2004) (finding that where the court’s “misapplication of the law served as an
10 intervening cause, it cannot be said that plaintiff’s damages proximately resulted from” the
11 attorney’s actions, and summary judgment was therefore appropriate.)

12 Although the *Crestwood Cove* Court stopped short of holding that judicial error always
13 forecloses a plaintiff from bringing a malpractice suit, it did observe that “when an attorney has
14 raised the appropriate arguments and the court nevertheless commits judicial error, a plaintiff’s
15 suit can be appropriately dismissed on summary judgment.” *Id.* at 1256. In other words, as
16 long as the attorney asserts the appropriate legal arguments, judicial error is regarded as a *per*
17 *se* superseding cause in a legal malpractice action. *Id.*

18 Under the second approach, the foreseeability of the District Court’s judicial error is a
19 relevant consideration. Importantly, however, a judicial error is only regarded as foreseeable
20 under very limited circumstances. This approach was explained and applied by the Supreme
21 Court of Texas in *Stanfield v. Neubaum*, 494 S.W.3d 90 (2016). The *Stanfield* Court began its
22 opinion with the following preface:

23 Litigation rarely results in complete satisfaction for those involved. When a
24 lawyer makes a mistake and the client loses as a result, the law affords a
25 remedy. What happens, however, when the lawyer pursues a winning strategy
26 (perhaps with some strategic missteps), but the trial judge errs, and the error
27 requires a costly appeal to correct? Is the lawyer liable for the appellate costs
incurred to correct the error? Although the question presents a novel issue, the
answer is governed by well-established causation principles.

28 *Stanfield*, 494 S.W.3d at 93.

1 *Stanfield* involved an underlying usury case in which the defendants, the Neubaums,
2 were alleged to have loaned money at usurious interest rates to Buck Glove Company, through
3 an agent, Marvin March. *Id.* at 94. The Neubaums' lawyers argued, in pertinent part, that
4 March was not acting as their agent when he made the subject loans. *Id.* After a jury trial, the
5 jury found that March had served as the Neubaums' agent in making the usurious loans, and the
6 trial court entered judgment against the Neubaums. *Id.* The Neubaums' attorneys then moved
7 for a new trial or reformation of the judgment, again arguing that there was no evidence to
8 support the plaintiff's agency theory. *Id.* at 94-95. That motion was denied. *Id.* at 95.

9 The Neubaums then hired new counsel to appeal the adverse usury judgment, and the
10 appeal was successful. *Id.* The appellate court reversed the usury judgment, concluding that
11 there was legally insufficient evidence that March made the loans as the Neubaums' agent. *Id.*
12 When all was said and done, the Neubaums had spent \$140,000 in appellate attorney's fees to
13 obtain a favorable resolution of the usury case. *Id.* The Neubaums then sued their trial
14 attorneys for legal malpractice, seeking to recover the amounts expended to overturn the
15 erroneous trial court judgment. *Id.*

16 In their defense of the malpractice action, the attorney-defendants maintained that the
17 trial court's error in the underlying usury case was an intervening and superseding cause of the
18 Neubaums' damages. *Stanfield*, 494 S.W.3d at 95-96. The Supreme Court of Texas agreed.
19 The court held that "[t]o break the causal connection between an attorney's negligence and the
20 plaintiff's harm, the judicial error must not be foreseeable." *Id.* at 99. It explained that a
21 judicial error is reasonably foreseeable if an "unbroken connection" exists between the
22 attorney's negligence and the judicial error, "such as when the attorney's negligence directly
23 contributed to and cooperated with the judicial error, rendering the error part of 'a continuous
24 succession of events' that foreseeably resulted in the harm." *Id.* at 100.

25 Importantly, "merely furnishing a condition that allows judicial error to occur does not
26 establish the ensuing harm was a reasonably foreseeable result of the defendant's negligence."
27 *Id.* (emphasis added). Thus, for a judicial error to be foreseeable, the attorney must have done
28 more than merely furnish a condition that allows the judicial error to occur; the attorney must

1 have directly contributed to and cooperated with the judicial error. *Id.* *Stanfield's* explanation
2 of when judicial error is foreseeable applies where a legal malpractice defendant has, in effect,
3 invited the judicial error by advocating a legally erroneous principle that the court accepts.
4 Essentially, a lawyer cannot invite judicial error and then escape responsibility for the financial
5 consequences thereof by disavowing the attorney's inducement or encouragement of that error.

6 APPLICATION OF THE LAW TO THE UNDISPUTED FACTS

7 On May 3, 2007, the District Court determined that Steppan's lien may be upheld, over
8 Hale Lane's objection regarding the lack of a pre-lien notice, if it was shown that Iliescu had
9 actual notice of Steppan's architectural services. Over 10 years later, on May 25, 2017, the
10 Nevada Supreme Court held that Steppan was not entitled to rely on the actual-notice exception
11 to the pre-lien notice requirement because the actual-notice exception does not apply to off-site
12 work when no onsite work has been performed on the property. Thus, the May 2007 ruling and
13 all subsequent District Court rulings founded upon this faulty premise were determined to have
14 been judicial error. The issue now presented to this Court is to determine the legal (i.e., causal)
15 effect of the judicial error on this legal malpractice action.

16 This Court concludes that, under either of the prevailing approaches to the judicial-
17 error-as-superseding-cause analysis, Hale Lane is entitled to summary judgment. Hale Lane
18 did not invite the District Court's judicial error, nor did Hale Lane cooperate with such judicial
19 error. To the contrary, Hale Lane argued directly against the ruling that was ultimately held to
20 have been in error.

21 It is undisputed that Hale Lane argued that a pre-lien notice was a necessary predicate to
22 Steppan's lien, and that the lien was invalid specifically because of Steppan's failure to provide
23 such a notice. Indeed, Hale Lane went much further in its argument. When presented with
24 Steppan's contention, under *Fondren*, that actual notice was an exception to the pre-lien notice
25 requirement, Hale Lane drew the appropriate distinction between this case and *Fondren*.
26 Although Hale Lane did not draw the distinction in the strict terms of "onsite" versus "off-site"
27 work, it made the same basic point—i.e., that actual notice of off-site work does not provide a
28 property owner with the same information as does actual notice of onsite work. At the oral

1 argument hearing on May 3, 2007, Hale Lane attorney Jerry Snyder argued, in pertinent part:

2 I believe what Ms. Kern said was Fondren requires that the burden be shifted. If
3 the owner has any notion that there might be a construction project, the burden
4 is shifted to him to inquire. That's not what Fondren says.

5 What Fondren says is that where the owner has actual notice of construction, the
6 constructive notice by the pre-lien statute or the notice of right to lien statute is
7 not required. And so in order for Fondren to obviate the need for a pre-lien
8 notice, the actual notice has to have at least the information that would be
9 required under the pre-lien notice, under the constructive pre-lien notice.

10 What the pre-lien notice has to have is the identity of the lien claimant, a
11 general description of the work, materials, equipment or services, the identity of
12 the general contractor under whom the lien claimant is with contract.

13 None of that information was provide to Dr. Iliescu. He did not know the
14 identity of the lien claimant until at the earliest October of 2006 after virtually
15 all of the work had been done. So this notion that, because he had some idea
16 that an architect somewhere would be creating some plans, some design work or
17 a work improvement to this property, that he was under an obligation to go dig
18 out that information is simply untrue. That's reading Fondren so broadly as to
19 vitiate the specific requirements of NRS 108.245, which explicitly says, if you
20 don't file your pre-lien notice, you don't have a lien.

21 The same rationale argued by Snyder in May of 2007 formed the basis of the Nevada
22 Supreme Court's Opinion in May of 2017. In fact, juxtaposing Snyder's 2007 argument with
23 the Nevada Supreme Court's 2017 reasoning reveals that the two are nearly identical. In its
24 decision of Iliescu's previous appeal, the Nevada Supreme Court wrote:

25 We further explained that NRS 108.245 "protect[s] owners from hidden claims
26 and ... [t]his purpose would be frustrated if mere knowledge of construction is
27 sufficient to invoke the actual knowledge exception against an owner by a
28 contractor. Otherwise, the exception would swallow the rule."

This rationale equally pertains to offsite architectural work performed pursuant
to an agreement with a prospective buyer when there is no indication that onsite
work has begun on the property, and no showing has been made that the offsite
architectural work has benefited the owner or improved its property. As this
court has consistently held, a lien claimant has not substantially complied with
the mechanic's lien statutes when the property owner is prejudiced by the

1 absence of strict compliance. As the *Hardy* court recognized, to conclude
2 otherwise would frustrate the purpose of NRS 108.245, and the actual notice
exception would swallow the rule.

3 *Iliescu v. Steppan*, 133 Nev. Adv. Op. 25, 394 P.3d 930, 934-35 (2017) (internal citations
4 omitted):

5 The similarity between Hale Lane's 2007 argument and the Nevada Supreme Court's
6 2017 reasoning reveals, unequivocally, that Hale Lane "presented the necessary legal
7 arguments and the judge, albeit in error, reject[ed] them." *Kiribati Seafood*, 2016 WL 1426297,
8 *12 (Mass. 2016) (quoting *Crestwood Cove*, 164 P.3d at 1256 (Utah 2007)).

9 The similarity further shows that Hale Lane did not contribute to or cooperate with the
10 judicial error. See *Stanfield*, 494 S.W.3d at 100. Stated differently, Hale Lane did not invite
11 the judicial error by advocating a legally erroneous principle that the Court accepted. *Id.* To
12 the contrary, the District Court made its erroneous ruling despite Hale Lane's appropriate, and
13 ultimately correct, legal argument.

14 Accordingly, the District Court's judicial error is the intervening and superseding cause
15 of Iliescu's claimed damages. The legal effect of the District Court's judicial error is to sever
16 the causal connection between the alleged legal malpractice and Iliescu's claimed damages.
17 Because the element of causation is lacking as a matter of law in this case, Hale Lane is entitled
18 to summary judgment.

19 **ILIESCU'S COUNTERMOTION TO AMEND IS DENIED AS FUTILE**

20 In opposing Hale Lane's summary judgment motion, Iliescu filed a countermotion for
21 leave to amend and to conduct further discovery. Iliescu's proposed amended third-party
22 complaint, insofar as it pertains to Hale Lane, is essentially a list of steps Hale Lane allegedly
23 could have or should have taken to protect Iliescu from the possibility that Steppan would later
24 assert a lien against Iliescu's property. (Exhibit 1 to Iliescu's Opposition/Counter-motion, pp.
25 18-21, ¶¶ 97(i) – (xvii)). Iliescu further proposes to add an additional claim against Hale Lane
26 for breach of contract. (Exhibit 1 to Iliescu's Opposition/Counter-motion, pp. 23-24)

27 NRCP 15(a) provides that leave to amend a complaint shall be freely given when justice
28 so requires. "However, leave to amend should not be granted if the proposed amendment

1 would be futile.” *Halcrow, Inc. v. Eighth Judicial District Court*, 129 Nev. Adv. Op. 42, 302
2 P.3d 1148, 1152 (2013). The futility exception to NRCP 15(a) “is intended to mean that an
3 amendment should not be allowed if it inevitably will be considered a waste of time and
4 resources on which the movant has no realistic chance of prevailing at trial.” *Nutton v. Sunset*
5 *Station, Inc.*, 131 Nev. Adv. Op. 34, 357 P.3d 966, 973 (2015).

6 The above-outlined issue (judicial error as an intervening and superseding cause) is
7 purely an issue of law, and the facts bearing on the issue are undisputed. Even if Iliescu’s
8 amended allegations are accepted as true, the fact remains that Hale Lane’s 2007 application to
9 release Steppan’s lien should have been granted. No matter what Hale Lane allegedly could
10 have done to preclude Steppan from asserting a lien, the District Court’s judicial error will
11 always constitute an intervening and superseding cause of Iliescu’s claimed damages.
12 Accordingly, as a matter of law, Iliescu cannot establish the causation element of his legal
13 malpractice claim, even as prospectively amended.

14 Furthermore, Iliescu’s inclusion of a separate breach of contract claim against Hale
15 Lane in his proposed amended pleading does not relieve Iliescu of the requirement that he
16 prove the element of causation. Claims not labeled “legal malpractice” are still regarded under
17 the law as legal malpractice claims if they are “premised on [an attorney] allegedly breaching
18 ‘duties that would not exist but for the attorney-client relationship.’” *Stoffel v. Eighth Judicial*
19 *District Court*, 2017 WL 1078662, *1 (Nev. 2017) (quoting *Stalk v. Mushkin*, 125 Nev. 21, 29,
20 199 P.3d 838, 843 (2009)). Thus, Iliescu cannot get around the obligation to prove the element
21 of causation simply by labeling one of his claims something other than “legal malpractice.”
22 Iliescu’s inability to prove the element of causation is fatal to all his claims against Hale Lane,
23 no matter what he labels those claims and regardless of whether his pleading is amended.
24 Iliescu’s countermotion to amend and for further discovery is therefore denied as futile.

25 ORDER

26 **NOW, THEREFORE, IT IS HEREBY ORDERED:**

- 27 1. That Hale Lane’s Motion for Summary Judgment of Iliescu’s Fifth and Sixth Claims for
28 Relief is **GRANTED**.

2. That Iliescu's counter-motion to amend and for further discovery is **DENIED**.

IT IS FURTHER ORDERED that this Court has expressly determined that there is no just reason for delay and directs the entry of final judgment as to Third-Party Defendant Hale Lane, pursuant to NRCP 54(b).

DATED: June 12, 2018.

By: 
DISTRICT JUDGE

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

JOHN ILIESCU, JR., et al., Appellants,

vs.

HALE LANE PEEK DENNISON AND
HOWARD PROFESSIONAL CORPORATION,
et al., Respondent.

No. 76146

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Elizabeth A. Brown
Clerk of Supreme Court

DOCKETING STATEMENT
CIVIL APPEALS

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 Second Department 10

County Washoe Judge Honorable Elliot A. Sattler

District Ct. Case No. CV07-00341 consolidated with CV07-01021

2. Attorney filing this docketing statement:

Attorney D. Chris Albright Telephone 702.384.7111

Firm Albright, Stoddard, Warnick & Albright

Address 801 South Rancho Drive, Suite D-4
Las Vegas, Nevada 89106

Client(s) See Attachment.

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 David R. Grundy & Todd R. Alexander Telephone 775.786.6868

Firm Lemons, Grundy & Eisenberg

Address 6005 Plumas Street, Third Floor
Reno, Nevada 89519

Client(s) Hale Lane Peek Dennison and Howard Professional Corporation

Attorney _____ Telephone _____

Firm _____

Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

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

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input checked="" type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input checked="" 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 checked="" type="checkbox"/> Other (specify): <u>Lack of proximate causation</u> |
| <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:

Nevada Supreme Court Case No. 60036 - Mark B. Steppan vs. John Iliescu, Jr., et al.
Nevada Supreme Court Case No. 68346 - John Iliescu, Jr., et al. vs. Mark B. Steppan

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:

The Iliescus' Application for release of Steppan's mechanic's lien, commencing Case No. CV07-00341, was filed on February 14, 2007 (said Application has since been fully adjudicated and is not the subject of this appeal); Mark A. Steppan's Complaint to foreclose his mechanic's lien, commencing Case No. CV07-01021 (subsequently consolidated with Case No. CV07-00341) was filed on May 4, 2007 (said Complaint has since been fully adjudicated and is not the subject of this appeal). The Iliescus' Answer containing a Third-Party Complaint alleging legal malpractice claims against Hale Lane was filed on September 27, 2007. These third-party claims were dismissed by the June 12, 2018 Summary Judgment Order which is the subject of this appeal.

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

These two consolidated cases involved Mark A. Steppan's mechanic's lien claim against certain property owned by the Appellants. Said mechanic's lien was ultimately invalidated by Nevada Supreme Court decision. *Iliescu v. Steppan*, 394 P.3d 930 (Nev. May 25, 2017) Docket No. 68346.

In the meantime, the Iliescus had asserted third-party legal malpractice claims against Respondent Hale Lane arising from the Steppan mechanic's lien, which claims were stayed by stipulation pending the outcome of the Steppan lien litigation. After Steppan's lien was rejected, Hale Lane filed a motion for summary judgment dismissal of the malpractice claims. The Iliescus opposed said motion and filed a countermotion for leave to amend and for further time to complete discovery. The district court granted the Hale Lane motion for summary judgment and denied the countermotions. This is an appeal from that decision.

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

1. Whether the district court erred in granting summary judgment to the Respondents dismissing the Third-Party legal malpractice suit, where genuine issues of material fact remained to be adjudicated as to the proximate cause of the Iliescus' damages.
2. Whether a party who meets its legal duty to mitigate its losses has a correlative right to seek reimbursement for its mitigation expenses, and whether the district court's ruling improperly deprived the appellants of this right.
3. Whether the district court erred in dismissing the Plaintiffs' transactional malpractice claims by invoking a judicial-error as superceding/intervening proximate cause analysis, which properly applies to only litigation malpractice claims.
4. Whether the district court erred in dismissing the Plaintiffs' litigation malpractice claims by invoking a judicial-error as superceding/intervening proximate cause analysis, even though the law firm defendant invited the judicial error.

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: In dismissing Appellants' malpractice claims, the district court relied on cases from other states which treat judicial error as an intervening and superceding cause, preventing a malpractice claimant from establishing that his or her damages were proximately caused by a lawyer's malpractice, in certain factual circumstances which were distinguishable and inapposite herein. The Nevada Supreme Court has not adopted or applied those cases in any earlier decisions and this case will determine whether and how those cases are applied in Nevada.

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:

The matter should be assigned to the Nevada Supreme Court under NRAP 17(a)(10) as involving a matter of first impression under Nevada's common law, as described in Section 12 hereof, above.

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

Was it a bench or jury trial? _____ N/A _____

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?

No. N/A.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from June 12, 2018

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 June 12, 2018

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 June 15, 2018

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: The Appellants are John Iliescu, Jr., individually; and John Iliescu, Jr., as Trustee of the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust Agreement (the "Iliescu Trust"); and Sonnia Iliescu as Trustee of the Iliescu Trust. All Appellants filed their Notice of Appeal on June 15, 2018.

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)

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 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:

This is an appeal from a final summary judgment order dismissing Third-Party Plaintiffs' third-party legal malpractice claims. *Lee v. GNLV Corp.*, 116 Nev. 424, 996 P.2d 416 (2000) (summary judgment order which disposes of claims before the court, other than costs and fees claims, is final and appealable).

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

(a) Parties:

See Attachment.

(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:

See Attachment.

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.

See Attachment.

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:

The Appellants'/Iliescus' Third-Party Claims for indemnity against Third-Party Defendants Consolidated Pacific Development and DeCal Oregon Inc., remain pending.

(b) Specify the parties remaining below:

The Appellants still have claims pending below against Consolidated Pacific Development and DeCal Oregon, Inc. It is believed that both of these entities are defunct and no longer in operation or existence.

(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)):

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.

John Iliescu, Jr., et al.
Name of appellant

June 21, 2018
Date

D. Chris Albright, Esq.
Name of counsel of record


Signature of counsel of record

Clark County, Nevada
State and county where signed

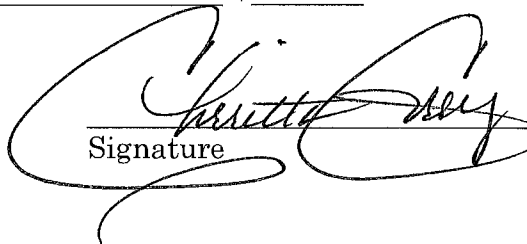
CERTIFICATE OF SERVICE

I certify that on the 21st day of June, 2018, 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.)

David R. Grundy, Esq.
Todd R. Alexander, Esq.,
LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Third Floor
Reno, Nevada 89519
Tel: (775) 786-6868
drg@lge.net / tra@lge.net
Attorneys for Respondent

Dated this 21st day of June, 2018


Signature

2. Attorney filing this docketing statement (continued as to identification of Clients):

Client(s) John Iliescu, Jr., individually; and John Iliescu, Jr., as Trustee of the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust Agreement (the "Iliescu Trust"); and Sonnia Iliescu as Trustee of the Iliescu Trust.

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

John Iliescu, Jr., individually and John Iliescu Jr. and Sonnia Santee Iliescu, as Trustees of the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust Agreement, as the Applicants in Case No. CV07-0341 and as the Defendants in Case No. CV-07-01021 and as the Third-Party Plaintiffs in Case No. CV-07-01021, the case now on appeal; Mark A. Steppan, the Respondent in Case No. CV07-00341 (since fully adjudicated and not at issue in this appeal) and the Plaintiff in consolidated Case No. CV-07-01021 (whose complaint in said action has since been fully adjudicated and is not at issue in this appeal). Third-Party Defendants in Case No. CV07-010201: Consolidated Pacific Development, Inc., DeCal Oregon Inc., an Oregon corporation, Calvin Baty, Individually, John Schleining Individually, Hale Lane Peek Dennison & Howard, a Nevada Professional corporation; Karen D. Dennison; R. Craig Howard; Jerry M. Snyder.

(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:

The claims and defenses between the Iliescus and Mark A. Steppan have been fully adjudicated, including through appeal, remand, and entry of final judgment in accordance with the Nevada Supreme Court's appellate reversal.

The Third-Party Defendants Consolidated Pacific Development, Inc., and DeCal Oregon Inc., an Oregon corporation, are not a party to this appeal given that this appeal is with respect to the district court's June 12, 2018 summary judgment dismissal of the third-party claims against Hale, Lane, Peek, Dennison & Howard, which, at page 15 thereof, expressly determined that no just reason for delay existed, and its Summary Judgment was certified as final under NRCP 54(b). Prosecution or voluntary dismissal in the lower court of the claims against these third parties may therefore continue to proceed at this time (although said remaining Third-Party Defendants are not believed to still exist and have likely become defunct, as is believed to be the case).

Third-Party Defendant Calvin Baty is not a party to this appeal for the reasons stated above and also because, upon information and belief, he filed a Chapter 7 bankruptcy petition in Oregon on May 30, 2008, as Case No. 08-32573, in which a discharge was granted in September, 2010.

Third-party Defendant John Schleining is not a party to this appeal because the third-party claims against him were dismissed, *without prejudice*, on November 22, 2011, and are therefore no longer pending as part of this case.

Similarly, Third-Party Defendants Karen D. Dennison, R. Craig Howard, and Jerry M. Snyder are not parties to this appeal because the third-party claims against them were dismissed, *without prejudice*, by stipulation and order entered February 14, 2013, and are therefore no longer pending.

(Certain cross-claims for malpractice and third-party claims for indemnity asserted by John Schleining against Hale Lane Peek Dennison & Howard, were also dismissed *without prejudice* by stipulation entered on January 5, 2012, and are therefore no longer pending.)

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.

John Iliescu, Jr., individually; John Iliescu Jr. and Sonnia Iliescu, as Trustees of the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust Agreement (as Applicants in Case No. CV07-00341) sought to invalidate Mark A. Steppan's mechanic's lien under NRS 108.2275. This claim was adjudicated in favor of the Iliescus via a "Judgment Upon Remand in Favor of the Iliescus Releasing Steppan's Mechanic's Lien and Vacating Prior Judgment Thereon," entered on January 3, 2018. That adjudication is now complete and is not part of this appeal.

Mark A. Steppan (as the Plaintiff in consolidated Case No. CV-07-01021) filed a Complaint listing a single cause of action against the aforesated Iliescu parties: foreclosure of mechanic's lien upon their property. This claim was adjudicated against Steppan and in favor of the Iliescus via the aforesated January 3, 2018 Judgment Upon Remand. That adjudication is now complete and is not part of this appeal.

Third-party claims for indemnity were also asserted by the Iliescu parties, in Case No. CV-07-01021, against Consolidated Pacific Development, Inc. (not yet adjudicated); DeCal Oregon Inc., an Oregon corporation (not yet adjudicated); Calvin Baty, individually (stayed and then discharged in bankruptcy on May 30, 2008, and in September of 2010); John Schleining individually (dismissed, *without prejudice*, on November 22, 2011); Karen D. Dennison (dismissed *without prejudice* by stipulation and order entered February 14, 2013); R. Craig Howard (dismissed *without prejudice* by stipulation and order entered February 14, 2013); and Jerry M. Snyder (dismissed *without prejudice* by stipulation and order entered February 14, 2013). Cross-claims for malpractice and third-party claims for indemnity were also asserted by John Schleining against Hale Lane which were dismissed *without prejudice* by stipulation and order entered on January 5, 2012.

Third-party claims for legal malpractice were also asserted by the Iliescus against Hale Lane Peek Dennison & Howard, a Nevada Professional corporation which were adjudicated via the June 12, 2018 Summary Judgment Order which is the subject of this appeal.

This appeal involves only the third-party claims against Hale Lane.

INDEX OF ATTACHED FILE-STAMPED DOCUMENTS

<u>TAB</u>	<u>DATE</u>	<u>DOCUMENT</u>
1	February 14, 2007	Application For Release of Mechanic's Lien
2	May 4, 2007	Complaint to Foreclose Mechanic's Lien and for Damages
3	September 27, 2007	Answer and Third Party Complaint
4	January 5, 2012	Stipulation and Order for Dismissal Without Prejudice of All Claims By John Schleining Against Hale Lane Peek Dennison and Howard, Holland & Hart, LLP, and R. Craig Howard
5	February 14, 2013	Second Stipulation to Stay Proceedings Against Defendant Hale Lane and Order to Stay and to Dismiss Claims Against Defendants Dennison, Howard and Snyder Without Prejudice
6	January 3, 2018	Judgment Upon Remand
7	January 4, 2018	Notice of Entry of Judgment Upon Remand
8	June 12, 2018	Summary Judgment Order
9	June 12, 2018	Notice of Entry of Summary Judgment Order