

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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

Appellants,

vs.

HALE LANE PEEK DENNISON AND  
HOWARD PROFESSIONAL  
CORPORATION, a Nevada professional  
corporation,

Respondent.

Electronically Filed  
Nov 21 2018 11:51 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**Supreme Court No. 76146**

**Washoe County Case No. CV07-00341**  
(Consolidated w/CV07-01021)

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**JOINT APPENDIX TO  
APPELLANT'S OPENING BRIEF  
VOLUME V**

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Appeal from the Second Judicial District Court of the State of Nevada  
in and for the County of Washoe County  
Case No. CV07-00341

G. MARK ALBRIGHT, ESQ.

Nevada Bar No. 001394

D. CHRIS ALBRIGHT, ESQ.

Nevada Bar No. 004904

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*Counsel for Appellants*

## DOCUMENT INDEX

<b>DOC.</b>	<b>FILE/HRG. DATE</b>	<b>DOCUMENT DESCRIPTION</b>	<b>VOL.</b>	<b>BATES NOS.</b>
1	02/14/07	Application for Release of Mechanic's Lien (Case No. CV07-0341)	I	JA0001-0006
2	02/14/07	Declaration of John Iliescu in Support of Application for Release of Mechanic's Lien	I	JA0007-0013
3	05/03/07	Response to Application for Release of Mechanic's Lien	I	JA0014-0106
4	05/03/07	Transcript of Proceedings – Application for Release of Mechanic's Lien held on May 3, 2007 [Transcript filed on June 29, 2007]	I	JA0107-0166
5	05/03/07	Order [Scheduling discovery on Application for Release of Mechanic's Lien]	I	JA0167-0169
6	05/04/07	Complaint To Foreclose Mechanic's Lien and For Damages (Case CV07-01021)	I	JA0170-0175
7	05/08/07	Original Verification of Complaint to Foreclose Mechanic's Lien and for Damages	I	JA0176-0178
8	05/11/07	Notice of Entry of Order	I	JA0179-0184
9	07/30/07	Supplemental Response to Application for Release of Mechanic's Lien	I	JA0185-0208
10	08/03/07	Substitution of Counsel	I	JA209-0211
11	08/13/07	Notice of Association of Counsel	I	JA0212-0215
12	09/24/07	Stipulation to Consolidate Proceedings; Order Approving Stipulation	I	JA0216-0219
13	09/27/07	Answer to Complaint to Foreclose Mechanic's Lien and Third Party Complaint (Case No. CV07-01021)	II	JA0220-0253

<b>DOC.</b>	<b>FILE/HRG. DATE</b>	<b>DOCUMENT DESCRIPTION</b>	<b>VOL.</b>	<b>BATES NOS.</b>
14	03/07/08	Stipulation to Stay Proceedings Against Defendant Hale Lane and to Dismiss Claims Against Defendants Dennison, Howard and Snyder without Prejudice	II	JA0254-0256
15	04/17/08	Motion [by Iliescus] for Partial Summary Judgment on Mark B. Steppan's Claim for Foreclosure of Mechanic's Lien	II III IV	JA0257-0445 JA0446-0671 JA0672-0708
16	02/03/09	Opposition [by Steppan] to Motion for Partial Summary Judgment and Cross-Motion for Partial Summary Judgment	IV	JA0709-0802
17	03/31/09	Reply [by Iliescus] in Support of Motion for Partial Summary Judgment and Opposition to [Steppan's] Cross-Motion for Partial Summary Judgment	IV	JA0803-0846
18	06/22/09	Order [Granting Partial Summary Judgment to Steppan and Denying Iliescus' Motion]	IV	JA0847-0850
19	10/07/09	Answer [by Hale Lane et al.] to [Iliescus'] Third Party Complaint	IV	JA0851-0857
20	08/18/11	Motion [filed by Iliescus] to Amend Third Party Complaint Against Defendant Hale Lane	V	JA0858-0910
21	09/01/11	Order Granting Third-Party Defendant Hale Lane's Motion for Summary Judgment Regarding Third-Party Claims by John Iliescu	V	JA0911-0920
22	09/06/11	Opposition [filed by Third Party Defendant Hale Lane] to Motion to Amend Third-Party Complaint by John and Sonnia Iliescu	V	JA0921-0946
23	09/22/11	Reply in Support of Motion to Amend Third Party Complaint	V	JA0947-0966
24	10/19/11	Order Denying Motion to Amend Third Party Complaint Against Defendant Hale Lane	V	JA0967-0969

<b>DOC.</b>	<b>FILE/HRG. DATE</b>	<b>DOCUMENT DESCRIPTION</b>	<b>VOL.</b>	<b>BATES NOS.</b>
25	10/25/11	Order Granting Defendants Iliescus' Motion to Dismiss	V	JA0970-0977
26	11/08/11	Motion for Leave to file Motion for Reconsideration [filed by Steppan]	V	JA0978-1004
27	11/22/11	Stipulation	V	JA1005-1007
28	02/07/12	Order Certifying Intent to Grant Motion for Reconsideration	V	JA1008-1010
29	02/17/12	Motion for Remand [filed by Steppan] (NV Sup. Ct. Case 60036)	V	JA1011-1016
30	03/01/12	Motion for Leave to File Motion for Reconsideration; or, Alternatively, Motion for Relief from Order Entered September 1, 2011 Granting Third-Party Defendant's Motion for Summary Judgment	V	JA1017-1040
31	06/07/12	Order Certifying Intent to Grant Motion for Reconsideration	V	JA1041-1044
32	06/28/12	Motion [filed by Iliescus'] to Remand (NV Sup. Ct. Case 60036)	V	JA1045-1059
33	08/02/12	Order [Nevada Supreme Court] Granting Motions for Remand (NV Sup. Ct. Case 60036)	V	JA1060-1062
34	08/31/12	Status Report [filed by Steppan] (NV Sup. Ct. Case 60036)	V	JA1063-1064
35	09/04/12	Status Report [filed by Iliescu] (NV Sup. Ct. Case 60036)	V	JA1065-1066
36	09/27/12	Order [Granting Iliescus' and Steppan's Motions for Reconsideration and Revoking earlier Summary Judgment in favor of Hale Lane]	V	JA1067-1072
37	11/09/12	Stipulation to Dismiss Appeal (NV Sup. Ct. Case 60036)	V	JA1073-1079
38	01/02/13	Order [Nevada Supreme Court] Dismissing Appeal and Remanding to the District Court	V	JA1080-1081

<b>DOC.</b>	<b>FILE/HRG. DATE</b>	<b>DOCUMENT DESCRIPTION</b>	<b>VOL.</b>	<b>BATES NOS.</b>
39	01/09/13	Stipulation and Order	VI	JA1082-1084
40	02/14/13	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	VI	JA1085-1087
41	04/09/13	Notice of Entry of [Stipulation and] Order [to Stay Claim against Hale Lane]	VI	JA1088-1091
42	05/09/13	Order Granting [Steppan's] Motion for Partial Summary Judgment	VI	JA1092-1095
43	07/19/13	Motion for Continuance and Motion to Extend Expert Disclosure Dates	VI	JA1096-1104
44	07/19/13	Affidavit of C. Nicholas Pereos in Support of Motion for Continuance and Motion to Extend Expert Disclosure Dates	VI	JA1105-1107
45	07/19/13	Affidavit of Gordon Cowan in Support of Motion for Continuance and Motion to Extend Expert Disclosure Dates	VI	JA1108-1110
46	08/23/13	Order Granting Motion to Strike or Limit Jury Demand	VI	JA1111-1113
47	09/09/13	Transcript of Proceedings of Hearing regarding Motion for Continuance and to Extend Expert Disclosures	VI	JA1114-1149
48	09/18/13	Second Supplement to Case Conference Report	VI	JA1150-1152
49	12/02/13	Defendant's Trial Statement	VI	JA1153-1163
50	12/04/13	Plaintiff's Trial Statement	VI	JA1164-1200
51		<u>Selected Trial Exhibits</u> [Listed by Exhibit Number] 1 Notice and Claim of Lien recorded November 7, 2006 2 Amended Notice and Claim of Lien recorded May 3, 2007	VI	JA1201-1204  JA1205-1209

<b>DOC.</b>	<b>FILE/HRG. DATE</b>	<b>DOCUMENT DESCRIPTION</b>	<b>VOL.</b>	<b>BATES NOS.</b>
		3 Second Amended Notice and Claim of Lien recorded November 8, 2013	VI	JA1210-1218
		6 Standard Form of Agreement (AIA B141)		JA1219-1237
		7 Addendum No. 1 to Design Contract		JA1238-1240
		8 Waiver of Conflict Letter, dated 12/14/05		JA1241-1245
		9 Letter Proposal - Architectural Design Services, dated 10/25/05		JA1246-1265
		10 Memo from Sarah Class to Calvin Baty, dated 11/14/05		JA1266-1267
		11 Email memo from Sarah Class to Calvin Baty, dated 11/18/05		JA1268-1269
		12 Email memo from Sarah Class to Calvin Baty, dated 11/29/05		JA1270
		13 Steppan Response to Owner Issues on AIA Contract, dated 12/20/05		JA1271-1273
		14 Architectural Design Services Agreement, dated 11/15/05		JA1274-1275
		15 Design Services Continuation Letter, dated 12/14/05		JA1276
		16 Design Services Continuation Letter, dated 2/7/06		JA1277
		17 Design Services Continuation Letter, dated 3/24/06		JA1278
		67 Proposal from Consolidated Pacific Development to Richard Johnson with handwriting, dated 7/14/05		JA1279-1280
		68 Land Purchase Agreement Signed by Seller, dated 7/25/05		JA1281-1302
		69 Addendum No. 1 to Land Purchase Agreement, dated 8/1/05		JA1303-1306
		70 Addendum No. 2 to Land Purchase Agreement, dated 8/2/05	VII	JA1307-01308
		71 Addendum No. 3 to Land Purchase Agreement, dated 10/9/05		JA1309-1324
		72 Addendum No. 4 to Land Purchase Agreement, dated 9/18/06		JA1325-1326

<b>DOC.</b>	<b>FILE/HRG. DATE</b>	<b>DOCUMENT DESCRIPTION</b>	<b>VOL.</b>	<b>BATES NOS.</b>
		76 Indemnity Agreement, dated 12/8/06 77 Waiver of Conflict Letter, dated 1/17/07	VII	JA1327-1328 JA1329-1333
52	05/28/14	Findings of Fact, Conclusions of Law and Decision	VII	JA1334-1346
53	02/26/15	Judgment, Decree and Order for Foreclosure of Mechanic's Lien	VII	JA1347-1349
54	02/27/15	Notice of Entry of Judgment	VII	JA1350-1352
55	03/10/15	Motion [filed by Iliescu] for Court to Alter or Amend its Judgment and Related Prior Orders	VII	JA1353-1389
56	05/27/15	Order Denying Defendants' Motion for Court to Alter or Amend its Judgment and Related Prior Orders	VII	JA1390-1393
57	06/23/15	Notice of Appeal filed by Iliescu	VII	JA1394-1398
58	07/29/15	Order [of district court Denying Motion for Stay Without Bond]	VII	JA1399-1402
59	10/28/15	Order [of Nevada Supreme Court] Granting Motion for Stay without Posting Any Further Security and Order to Show Cause	VII	JA1403-1405
60	11/17/15	Decision and Order Granting Motion Seeking Clarification of Finality of Judgment	VII	JA1406-1409
61	12/16/15	Amended Notice of Appeal [filed by Iliescu]	VII	JA1410-1414
62	01/26/16	Order Dismissing Appeal in Part and Reinstating Briefing	VII	JA1415-1417
63	05/12/16	Appellants' Opening Brief (NV Sup. Ct. Case 68346)	VII	JA1418-1484
64	09/16/16	Motion [filed by Iliescu] to Amend Third-Party Complaint and Motion for Clarification as to Stay	VII VIII	JA1485-1532 JA1533-1693

<b>DOC.</b>	<b>FILE/HRG. DATE</b>	<b>DOCUMENT DESCRIPTION</b>	<b>VOL.</b>	<b>BATES NOS.</b>
65	10/06/16	Opposition [filed by Hale Lane] to Motion to Amend and for Clarification as to Stay	VIII	JA1694-1699
66	10/17/16	Reply Points and Authorities in Support of Third-Party Plaintiffs' Motion to Amend Third-Party Complaint and Motion for Clarification as to Stay	VIII	JA1700-1705
67	12/19/16	Order [Denying Motion to Amend Third-Party Complaint]	VIII	JA1706-1711
68	02/27/17	Notice of Entry of Order [Denying Third-Party Plaintiff's Motion to Amend]	VIII	JA1712-1720
69	05/27/17	Nevada Supreme Court (en banc) Decision and Opinion reversing district court Judgment, Decree and Order for Foreclosure of Mechanic's Lien	VIII	JA1721-1732
70	09/22/17	Nevada Supreme Court Order denying rehearing	VIII	JA1733-1734
71	10/17/17	Remittitur	VIII	JA1735-1752
72	10/17/17	Proof of Electronic Service of Remittitur	VIII	JA1753-1755
73	10/24/17	Verified Memorandum of Costs [filed by Iliescus]	IX	JA1756-1761
74	11/03/17	Motion for an Award of Costs and Attorney's Fees and Interest Thereon	IX	JA1762-1918
75	11/14/17	Errata to Iliescus' Motion for an Award of Costs and Attorney's Fees and Interest Thereon	IX	JA1919-1922
76	11/17/17	Motion [filed by Third Party Defendant Hale Lane] for Summary Judgment of Third-Party Claims	X	JA1923-2050
77	12/15/17	Errata to the Iliescus' Verified Memorandum of Costs; and Errata to [their] Motion for an Award of Costs and Attorney's Fees and Interest Thereon	X	JA2051-2054

<b>DOC.</b>	<b>FILE/HRG. DATE</b>	<b>DOCUMENT DESCRIPTION</b>	<b>VOL.</b>	<b>BATES NOS.</b>
78	12/18/17	Opposition [filed by Iliescus] to Third-Party Defendant Hale Lane's Motion for Summary Judgment Dismissal of Third-Party Claims; and Countermotion to Amend Third-Party Complaint and for Further Time to Complete Discovery	X XI	JA2055-2148 JA2149-2234
79	01/03/18	Judgment Upon Remand in Favor of the Iliescus Releasing Steppan's Mechanic's Lien and Vacating Prior Judgment Thereon	XI	JA2235-2239
80	01/08/18	Reply [filed by Third Party Defendant Hale Lane] in Support of Motion for Summary Judgment and Opposition to Countermotion to Amend	XI	JA2240-2300
81	01/12/18	Reply Points and Authorities [filed by Iliescus] in Support of Countermotion to Amend Third-Party Complaint and in Support of Countermotion for Further Time to Complete Discovery	XII XIII	JA2301-2374 JA2375-2405
82	04/10/18	Order Denying [Iliescus'] Motion for an Award of Costs and Attorney's Fees and Interest Thereon	XIII	JA2406-2412
83	04/10/18	Order Granting Steppan's Motion to Deny or Retax Costs, and Vacating the Iliescus' Verified Memorandum of Costs	XIII	JA2413-2417
84	04/10/18	Notice of Entry of Order Denying Defendants' Motion for an Award of Costs and Attorney's Fees and Interest Thereon	XIII	JA2418-2427
85	04/10/18	Notice of Entry of Order Granting Steppan's Motion to Deny or Retax Costs	XIII	JA2428-2435
86	05/25/18	Supplemental Brief [filed by Third Party Defendant Hale Lane] re: Iliescu's Decision Not to Appeal Denial of Fees and Costs	XIII	JA2436-2438

<b>DOC.</b>	<b>FILE/HRG. DATE</b>	<b>DOCUMENT DESCRIPTION</b>	<b>VOL.</b>	<b>BATES NOS.</b>
87	05/25/18	Court Directed Supplemental Brief in Opposition to Hale Lane's Motion for Summary Judgment and in Support of Countermotion to Amend and for More Discovery	XIII	JA2439-2444
88	06/06/18	Transcript of Proceedings of Third-Party Defendant Hale Lane's Motion For Summary Judgment of Third-Party Claims, filed June 21, 2018	XIII	JA2445-2496
89	06/12/18	Order Granting Third-Party Defendant Hale Lane's Motion for Summary Judgment	XIII	JA2497-2511
90	06/12/18	Notice of Entry of Order Granting Third-Party Defendant Hale Lane's Motion for Summary Judgment	XIII	JA2512-2530
91	06/15/18	Notice of Appeal [filed by the Iliescus] of Summary Judgment Dismissal of Third-Party Claims against Hale Lane	XIII	JA2531-2533
92	06/15/18	Case Appeal Statement	XIII	JA2534-2539
93	12/11/13	Trial Transcript – Day 3, pages 811-815	XIII	JA2540-2545

### **ALPHABETICAL INDEX**

<b>DOC.</b>	<b>FILE/HRG. DATE</b>	<b>DOCUMENT DESCRIPTION</b>	<b>VOL.</b>	<b>BATES NOS.</b>
1	02/14/07	Application for Release of Mechanic's Lien (Case No. CV07-0341)	I	JA0001-0006
44	07/19/13	Affidavit of C. Nicholas Pereos in Support of Motion for Continuance and Motion to Extend Expert Disclosure Dates	VI	JA1105-1107
45	07/19/13	Affidavit of Gordon Cowan in Support of Motion for Continuance and Motion to Extend Expert Disclosure Dates	VI	JA1108-1110

<b>DOC.</b>	<b>FILE/HRG. DATE</b>	<b>DOCUMENT DESCRIPTION</b>	<b>VOL.</b>	<b>BATES NOS.</b>
61	12/16/15	Amended Notice of Appeal [filed by Iliescu]	VII	JA1410-1414
19	10/07/09	Answer [by Hale Lane et al.] to [Iliescus'] Third Party Complaint	IV	JA0851-0857
13	09/27/07	Answer to Complaint to Foreclose Mechanic's Lien and Third Party Complaint (Case No. CV07-01021)	II	JA0220-0253
63	05/12/16	Appellants' Opening Brief (NV Sup. Ct. Case 68346)	VII	JA1418-1484
92	06/15/18	Case Appeal Statement	XIII	JA2534-2539
6	05/04/07	Complaint To Foreclose Mechanic's Lien and For Damages (Case CV07-01021)	I	JA0170-0175
87	05/25/18	Court Directed Supplemental Brief in Opposition to Hale Lane's Motion for Summary Judgment and in Support of Countermotion to Amend and for More Discovery	XIII	JA2439-2444
60	11/17/15	Decision and Order Granting Motion Seeking Clarification of Finality of Judgment	VII	JA1406-1409
2	02/14/07	Declaration of John Iliescu in Support of Application for Release of Mechanic's Lien	I	JA0007-0013
49	12/02/13	Defendant's Trial Statement	VI	JA1153-1163
75	11/14/17	Errata to Iliescus' Motion for an Award of Costs and Attorney's Fees and Interest Thereon	IX	JA1919-1922
77	12/15/17	Errata to the Iliescus' Verified Memorandum of Costs; and Errata to [their] Motion for an Award of Costs and Attorney's Fees and Interest Thereon	X	JA2051-2054
52	05/28/14	Findings of Fact, Conclusions of Law and Decision	VII	JA1334-1346

<b>DOC.</b>	<b>FILE/HRG. DATE</b>	<b>DOCUMENT DESCRIPTION</b>	<b>VOL.</b>	<b>BATES NOS.</b>
79	01/03/18	Judgment Upon Remand in Favor of the Iliescus Releasing Steppan's Mechanic's Lien and Vacating Prior Judgment Thereon	XI	JA2235-2239
53	02/26/15	Judgment, Decree and Order for Foreclosure of Mechanic's Lien	VII	JA1347-1349
15	04/17/08	Motion [by Iliescus] for Partial Summary Judgment on Mark B. Steppan's Claim for Foreclosure of Mechanic's Lien	II III IV	JA0257-0445 JA0446-0671 JA0672-0708
55	03/10/15	Motion [filed by Iliescus] for Court to Alter or Amend its Judgment and Related Prior Orders	VII	JA1353-1389
20	08/18/11	Motion [filed by Iliescus] to Amend Third Party Complaint Against Defendant Hale Lane	V	JA0858-0910
64	09/16/16	Motion [filed by Iliescus] to Amend Third-Party Complaint and Motion for Clarification as to Stay	VII VIII	JA1485-1532 JA1533-1693
32	06/28/12	Motion [filed by Iliescus'] to Remand (NV Sup. Ct. Case 60036)	V	JA1045-1059
76	11/17/17	Motion [filed by Third Party Defendant Hale Lane] for Summary Judgment of Third-Party Claims	X	JA1923-2050
74	11/03/17	Motion for an Award of Costs and Attorney's Fees and Interest Thereon	IX	JA1762-1918
43	07/19/13	Motion for Continuance and Motion to Extend Expert Disclosure Dates	VI	JA1096-1104
26	11/08/11	Motion for Leave to file Motion for Reconsideration [filed by Steppan]	V	JA0978-1004
30	03/01/12	Motion for Leave to File Motion for Reconsideration; or, Alternatively, Motion for Relief from Order Entered September 1, 2011 Granting Third-Party Defendant's Motion for Summary Judgment	V	JA1017-1040

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29	02/17/12	Motion for Remand [filed by Steppan] (NV Sup. Ct. Case 60036)	V	JA1011-1016
69	05/27/17	Nevada Supreme Court (en banc) Decision and Opinion reversing district court Judgment, Decree and Order for Foreclosure of Mechanic's Lien	VIII	JA1721-1732
70	09/22/17	Nevada Supreme Court Order denying rehearing	VIII	JA1733-1734
91	06/15/18	Notice of Appeal [filed by the Iliescus] of Summary Judgment Dismissal of Third- Party Claims against Hale Lane	XIII	JA2531-2533
57	06/23/15	Notice of Appeal filed by Iliescu	VII	JA1394-1398
11	08/13/07	Notice of Association of Counsel	I	JA0212-0215
41	04/09/13	Notice of Entry of [Stipulation and] Order [to Stay Claim against Hale Lane]	VI	JA1088-1091
54	02/27/15	Notice of Entry of Judgment	VII	JA1350-1352
8	05/11/07	Notice of Entry of Order	I	JA0179-0184
68	02/27/17	Notice of Entry of Order [Denying Third- Party Plaintiff's Motion to Amend]	VIII	JA1712-1720
84	04/10/18	Notice of Entry of Order Denying Defendants' Motion for an Award of Costs and Attorney's Fees and Interest Thereon	XIII	JA2418-2427
85	04/10/18	Notice of Entry of Order Granting Steppan's Motion to Deny or Retax Costs	XIII	JA2428-2435
90	06/12/18	Notice of Entry of Order Granting Third- Party Defendant Hale Lane's Motion for Summary Judgment	XIII	JA2512-2530
16	02/03/09	Opposition [by Steppan] to Motion for Partial Summary Judgment and Cross- Motion for Partial Summary Judgment	IV	JA0709-0802
65	10/06/16	Opposition [filed by Hale Lane] to Motion to Amend and for Clarification as to Stay	VIII	JA1694-1699

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78	12/18/17	Opposition [filed by Iliescu] to Third-Party Defendant Hale Lane's Motion for Summary Judgment Dismissal of Third-Party Claims; and Countermotion to Amend Third-Party Complaint and for Further Time to Complete Discovery	X XI	JA2055-2148 JA2149-2234
22	09/06/11	Opposition [filed by Third Party Defendant Hale Lane] to Motion to Amend Third-Party Complaint by John and Sonnia Iliescu	V	JA0921-0946
67	12/19/16	Order [Denying Motion to Amend Third-Party Complaint]	VIII	JA1706-1711
36	09/27/12	Order [Granting Iliescu's and Steppan's Motions for Reconsideration and Revoking earlier Summary Judgment in favor of Hale Lane]	V	JA1067-1072
18	06/22/09	Order [Granting Partial Summary Judgment to Steppan and Denying Iliescu's Motion]	IV	JA0847-0850
38	01/02/13	Order [Nevada Supreme Court] Dismissing Appeal and Remanding to the District Court	V	JA1080-1081
33	08/02/12	Order [Nevada Supreme Court] Granting Motions for Remand (NV Sup. Ct. Case 60036)	V	JA1060-1062
58	07/29/15	Order [of district court Denying Motion for Stay Without Bond]	VII	JA1399-1402
59	10/28/15	Order [of Nevada Supreme Court] Granting Motion for Stay without Posting Any Further Security and Order to Show Cause	VII	JA1403-1405
5	05/03/07	Order [Scheduling discovery on Application for Release of Mechanic's Lien]	I	JA0167-0169
28	02/07/12	Order Certifying Intent to Grant Motion for Reconsideration	V	JA1008-1010

<b>DOC.</b>	<b>FILE/HRG. DATE</b>	<b>DOCUMENT DESCRIPTION</b>	<b>VOL.</b>	<b>BATES NOS.</b>
31	06/07/12	Order Certifying Intent to Grant Motion for Reconsideration	V	JA1041-1044
82	04/10/18	Order Denying [Iliescus'] Motion for an Award of Costs and Attorney's Fees and Interest Thereon	XIII	JA2406-2412
56	05/27/15	Order Denying Defendants' Motion for Court to Alter or Amend its Judgment and Related Prior Orders	VII	JA1390-1393
24	10/19/11	Order Denying Motion to Amend Third Party Complaint Against Defendant Hale Lane	V	JA0967-0969
62	01/26/16	Order Dismissing Appeal in Part and Reinstating Briefing	VII	JA1415-1417
42	05/09/13	Order Granting [Steppan's] Motion for Partial Summary Judgment	VI	JA1092-1095
25	10/25/11	Order Granting Defendants Iliescus' Motion to Dismiss	V	JA0970-0977
46	08/23/13	Order Granting Motion to Strike or Limit Jury Demand	VI	JA1111-1113
83	04/10/18	Order Granting Steppan's Motion to Deny or Retax Costs, and Vacating the Iliescus' Verified Memorandum of Costs	XIII	JA2413-2417
21	09/01/11	Order Granting Third-Party Defendant Hale Lane's Motion for Summary Judgment Regarding Third-Party Claims by John Iliescu	V	JA0911-0920
89	06/12/18	Order Granting Third-Party Defendant Hale Lane's Motion for Summary Judgment	XIII	JA2497-2511
7	05/08/07	Original Verification of Complaint to Foreclose Mechanic's Lien and for Damages	I	JA0176-0178
50	12/04/13	Plaintiff's Trial Statement	VI	JA1164-1200
72	10/17/17	Proof of Electronic Service of Remittitur	VIII	JA1753-1755

<b>DOC.</b>	<b>FILE/HRG. DATE</b>	<b>DOCUMENT DESCRIPTION</b>	<b>VOL.</b>	<b>BATES NOS.</b>
71	10/17/17	Remittitur	VIII	JA1735-1752
17	03/31/09	Reply [by Iliescus] in Support of Motion for Partial Summary Judgment and Opposition to [Steppan's] Cross-Motion for Partial Summary Judgment	IV	JA0803-0846
80	01/08/18	Reply [filed by Third Party Defendant Hale Lane] in Support of Motion for Summary Judgment and Opposition to Countermotion to Amend	XI	JA2240-2300
23	09/22/11	Reply in Support of Motion to Amend Third Party Complaint	V	JA0947-0966
81	01/12/18	Reply Points and Authorities [filed by Iliescus] in Support of Countermotion to Amend Third-Party Complaint and in Support of Countermotion for Further Time to Complete Discovery	XII XIII	JA2301-2374 JA2375-2405
66	10/17/16	Reply Points and Authorities in Support of Third-Party Plaintiffs' Motion to Amend Third-Party Complaint and Motion for Clarification as to Stay	VIII	JA1700-1705
3	05/03/07	Response to Application for Release of Mechanic's Lien	I	JA0014-0106
40	02/14/13	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	VI	JA1085-1087
48	09/18/13	Second Supplement to Case Conference Report	VI	JA1150-1152
51		<u>Selected Trial Exhibits</u> [Listed by Exhibit Number] 1 Notice and Claim of Lien recorded November 7, 2006 2 Amended Notice and Claim of Lien recorded May 3, 2007	VI	JA1201-1204 JA1205-1209

<b>DOC.</b>	<b>FILE/HRG. DATE</b>	<b>DOCUMENT DESCRIPTION</b>	<b>VOL.</b>	<b>BATES NOS.</b>
		3 Second Amended Notice and Claim of Lien recorded November 8, 2013	VI	JA1210-1218
		6 Standard Form of Agreement (AIA B141)		JA1219-1237
		7 Addendum No. 1 to Design Contract		JA1238-1240
		8 Waiver of Conflict Letter, dated 12/14/05		JA1241-1245
		9 Letter Proposal - Architectural Design Services, dated 10/25/05		JA1246-1265
		10 Memo from Sarah Class to Calvin Baty, dated 11/14/05		JA1266-1267
		11 Email memo from Sarah Class to Calvin Baty, dated 11/18/05		JA1268-1269
		12 Email memo from Sarah Class to Calvin Baty, dated 11/29/05		JA1270
		13 Steppan Response to Owner Issues on AIA Contract, dated 12/20/05		JA1271-1273
		14 Architectural Design Services Agreement, dated 11/15/05		JA1274-1275
		15 Design Services Continuation Letter, dated 12/14/05		JA1276
		16 Design Services Continuation Letter, dated 2/7/06		JA1277
		17 Design Services Continuation Letter, dated 3/24/06		JA1278
		67 Proposal from Consolidated Pacific Development to Richard Johnson with handwriting, dated 7/14/05		JA1279-1280
		68 Land Purchase Agreement Signed by Seller, dated 7/25/05		JA1281-1302
		69 Addendum No. 1 to Land Purchase Agreement, dated 8/1/05		JA1303-1306
		70 Addendum No. 2 to Land Purchase Agreement, dated 8/2/05	VII	JA1307-01308
		71 Addendum No. 3 to Land Purchase Agreement, dated 10/9/05		JA1309-1324
		72 Addendum No. 4 to Land Purchase Agreement, dated 9/18/06		JA1325-1326

<b>DOC.</b>	<b>FILE/HRG. DATE</b>	<b>DOCUMENT DESCRIPTION</b>	<b>VOL.</b>	<b>BATES NOS.</b>
		76 Indemnity Agreement, dated 12/8/06 77 Waiver of Conflict Letter, dated 1/17/07	VII	JA1327-1328 JA1329-1333
35	09/04/12	Status Report [filed by Iliescu] (NV Sup. Ct. Case 60036)	V	JA1065-1066
34	08/31/12	Status Report [filed by Steppan] (NV Sup. Ct. Case 60036)	V	JA1063-1064
27	11/22/11	Stipulation	V	JA1005-1007
39	01/09/13	Stipulation and Order	VI	JA1082-1084
12	09/24/07	Stipulation to Consolidate Proceedings; Order Approving Stipulation	I	JA0216-0219
37	11/09/12	Stipulation to Dismiss Appeal (NV Sup. Ct. Case 60036)	V	JA1073-1079
14	03/07/08	Stipulation to Stay Proceedings Against Defendant Hale Lane and to Dismiss Claims Against Defendants Dennison, Howard and Snyder without Prejudice	II	JA0254-0256
10	08/03/07	Substitution of Counsel	I	JA209-0211
86	05/25/18	Supplemental Brief [filed by Third Party Defendant Hale Lane] re: Iliescu's Decision Not to Appeal Denial of Fees and Costs	XIII	JA2436-2438
9	07/30/07	Supplemental Response to Application for Release of Mechanic's Lien	I	JA0185-0208
4	05/03/07	Transcript of Proceedings – Application for Release of Mechanic's Lien held on May 3, 2007 [Transcript filed on June 29, 2007]	I	JA0107-0166
47	09/09/13	Transcript of Proceedings of Hearing regarding Motion for Continuance and to Extend Expert Disclosures	VI	JA1114-1149
88	06/06/18	Transcript of Proceedings of Third-Party Defendant Hale Lane's Motion For Summary Judgment of Third-Party Claims, filed June 21, 2018	XIII	JA2445-2496

<b>DOC.</b>	<b>FILE/HRG. DATE</b>	<b>DOCUMENT DESCRIPTION</b>	<b>VOL.</b>	<b>BATES NOS.</b>
93	12/11/13	Trial Transcript – Day 3, pages 811-815	XIII	JA2540-2545
73	10/24/17	Verified Memorandum of Costs [filed by Iliescus]	IX	JA1756-1761

### **CERTIFICATE OF SERVICE**

Pursuant to NRAP 25(c), I hereby certify that I am an employee of ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, and that on this 21<sup>st</sup> day of November, 2018, the foregoing **JOINT APPENDIX TO APPELLANT'S OPENING BRIEF, VOLUME V**, was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

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](mailto:drg@lge.net) / [tra@lge.net](mailto:tra@lge.net)  
*Attorneys for Third-Party Defendant*  
*Hale Lane*



---

An employee of Albright, Stoddard, Warnick & Albright

**Code 2490**

Thomas J. Hall, Esq.  
Nevada State Bar No. 675  
305 South Arlington Avenue  
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Attorney 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,

Case No.: CV07-00341

Plaintiff,

Dept. No.: 1

v.

Consolidated with:

JOHN ILIESCU, JR. and SONNIA  
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,

Case No.: CV07-00341

Dept. No.: 1

Defendants.

AND RELATED CROSS-CLAIMS AND  
THIRD-PARTY CLAIMS. /

**MOTION TO AMEND THIRD PARTY COMPLAINT AGAINST****DEFENDANT HALE LANE**

COME NOW, Defendants John Iliescu, Jr., and Sonnia Iliescu,  
individually, and as Trustees of the John Iliescu, Jr. and  
Sonnia Iliescu 1992 Family Trust ("Iliescu"), by and through

1 their counsel, Thomas J. Hall, Esq., and pursuant to Rule 15 of  
2 the Nevada Rules of Civil Procedure, Rule 13 of the Second  
3 Judicial District Court Rules and the Pre-trial Order entered  
4 November 6, 2007, move the Court for leave to file their First  
5 Amended Third Party Complaint to clarify existing claims and to  
6 include additional claims for relief.  
7

8 **I. Background and Preliminary Statement:**

9 On September 27, 2007, Iliescu filed an Answer and Third  
10 Party Complaint against the Hale Lane law firm and three (3)  
11 individual attorneys employed by that firm (collectively "Hale  
12 Lane law firm"). Since the filing of the Third Party Complaint,  
13 several events have occurred that have mandated clarification  
14 and exposition of the principal claims against the Hale Lane law  
15 firm, specifically the Fifth Claim for Relief, Professional  
16 Malpractice, and the Sixth Claim for Relief, Negligence.  
17

18 As a result of these recent events, it is also necessary to  
19 state a claim against the Hale Lane law firm to include a  
20 Seventh Claim for Relief expounding on the concept of negligence  
21 for failure to advise Iliescu regarding liability that would  
22 legally flow as a result of the extent of an owner's  
23 participation in the development of the Property in the manner  
24 provided for in the Iliescu sale documents prepared by the Hale  
25 Lane law firm.  
26  
27  
28

1 Furthermore, it is necessary to allege a claim for  
2 indemnity that consequently arises from the negligence of the  
3 Hale Lane law firm under the facts and circumstances presented  
4 herein.

5 A revised and augmented First Amended Third Party  
6 Complaint, including Seventh and Eighth Claims for Relief, is  
7 attached hereto as Exhibit 1. No amendments are sought to the  
8 First through Fourth Claims.  
9

10 **II. Analysis and Discussion:**

11 **A. General Facts.**

12 Iliescu owns four parcels of real property situated between  
13 Court Street in the City of Reno, County of Washoe, State of  
14 Nevada, known as APN 011-112-03, 011-112-07 and 011-112-12 and  
15 Defendant John Iliescu, Jr., is the owner of APN 011-112-06 as  
16 his sole and separate property (collectively the "Property").  
17 See, Complaint ¶ 6.  
18

19 Iliescu desired to sell this Property.

20 On July 29, 2005, Iliescu entered into a Purchase Agreement  
21 for the sale of the Property. See Exhibit 1 attached to the  
22 Motion for Partial Summary Judgment filed April 17, 2008. The  
23 Purchase Agreement was subsequently amended by four addendums<sup>1</sup>.  
24 See Purchase Agreement and Addendums, attached as Exhibit 1 to  
25

26  
27 <sup>1</sup> Addendum No. 1 was entered into on August 1, 2005. Addendum No. 2 was  
28 entered into on August 2, 2005. Addendum No. 3 was entered into on October  
8, 2005. Addendum No. 4 was entered into on September 18, 2006.

1 the Motion for Partial Summary Judgment filed April 17, 2008.  
2 Pursuant to the Land Purchase Agreement, Iliescu agreed to sell  
3 the Property to Consolidated Pacific Development, Inc., ("CPD"),  
4 for \$7,500,000.00, plus other consideration. The cash amount was  
5 later increased to \$7,876,000.00 by Addendum No. 4.

6  
7 As part of the Purchase Agreement, Iliescu was to receive a  
8 condominium located within the Project CPD proposed to build and  
9 several parking spaces. Id at ¶ 39(H). The Purchase Agreement  
10 was made expressly contingent on the Buyer obtaining certain  
11 Governmental Approvals. Specifically, the Hale Lane law firm  
12 drafted Addendum No. 3, which expressly provided under paragraph  
13 39(F) the following conditions and requirements:

14  
15 7. Paragraph 39(F) is hereby amended and restated as  
16 follows:

17 This offer is conditioned upon, as conditions  
18 precedent ("Conditions Precedent"), Buyer obtaining,  
19 at Buyer's expense, all necessary approvals  
20 ("Governmental Approvals") for the construction of a  
21 mixed use residential and commercial high rise  
22 condominium project on the Property approximately 28  
23 stories in height (the "Project") within 270 days  
24 after August 3, 2005, as such time period may be  
25 extended pursuant to Paragraph 1.2 above, including  
26 but not limited to:

- 27  
28 (1) Any required height, setback or other variances;  
(2) Any required special use permit;  
(3) Any required zoning or land use designation  
changes;  
(4) Any required master plan amendment;  
(5) An approved tentative condominium map for the  
Project; and  
(6) Any required design approvals.

1 In addition, Buyer shall obtain, at Buyer's sole cost  
2 and expense, all approvals for the Boundary Line  
3 Adjustment (as defined in Paragraph 8 of this Third  
4 Addendum).

5 Buyer shall use its best efforts and reasonable  
6 diligence to satisfy all Conditions Precedent  
7 described in this Paragraph 39(F) prior to close of  
8 escrow.

9 [Emphasis added.]

10 Iliescu understood that the Buyer of the Property intended  
11 to construct residential condominium units and in pursuit of  
12 paragraph 39(F) quoted above, Iliescu did execute Owner  
13 Affidavits on January 17, 2006, appointing and authorizing Sam  
14 Caniglia, a principal within the Buyer's group, to file  
15 development applications with and obtain Governmental Approval  
16 from the City of Reno for the Property. See, Exhibit 9 to Third  
17 Party Defendant Hale Lane's Motion for Summary Judgment  
18 Regarding Third Party Claims by John Iliescu filed on March 30,  
19 2011.

20 As stated in Hale Lane's Motion for Summary Judgment, Karen  
21 D. Dennison of the Hale Lane law firm prepared Addendum No. 3,  
22 (Motion, page 3, lines 14-19):

23 Ms. Dennison prepared Addendum No. 3, which sought to  
24 clarify the agreement in several respects. (Ex. 1, at  
25 ¶¶ 18 through 19; see also Addendum No. 3 attached as  
26 Exhibit 7.) Of particular importance for purposes of  
27 this motion, Addendum No. 3 explained that obtaining  
28 the necessary entitlements was a "condition  
precedent." (Ex. 7, at no. 7.) It also mandated that  
the developer "use its best efforts and reasonable  
diligence to satisfy all Conditions Precedent."

1 In addition, John Iliescu attended the City of Reno  
2 Planning Commission and City of Reno Council meetings where the  
3 Project was reviewed and approved, thereby gaining all  
4 Governmental Approvals as called for in paragraph 39(F).

5 In the meantime, once the Purchase Agreement was signed,  
6 Caniglia, for the Buyer, sought out a reputable architect to  
7 help obtain the Governmental Approvals. Nevada Architect Mark B.  
8 Steppan and his California firm, Fisher-Friedman & Associates,  
9 were retained by Caniglia on a time and materials basis to  
10 conceptually design the project, to prepare certain schematic  
11 plans and to present these plans to the Reno Planning Commission  
12 and the Reno City Council in support of gaining the Governmental  
13 Approvals.  
14

15 The Buyer paid \$430,870.00 to Fisher-Friedman & Associates  
16 on a time and materials basis. The Buyer later signed a more  
17 extensive architectural agreement with Steppan that gave rise to  
18 the filing of the Notice of Lien herein on November 7, 2006, as  
19 Document 3460499, Washoe County Recorder, in the amount of  
20 \$1,783,548.85. An Amended Notice of Claim and Lien was recorded  
21 on May 3, 2007, as Document 3528313, Washoe County Recorder.  
22 See, Plaintiff's Complaint ¶ 12.  
23

24 At no time did the Hale Lane law firm discuss with or  
25 advise Iliescu as to the effect or implication of requiring  
26 Iliescu to become a Participating Seller in this sales  
27  
28

1 transaction. Moreover, the Hale Lane law firm was specifically  
2 retained to "fine tune" the sales agreement originally prepared  
3 by Realtor Dick Johnson to "better reflect the parties'  
4 intentions". Hale Lane Motion for Summary Judgment, page 3,  
5 lines 10-12. Iliescu's intention was to sell the Property, not  
6 to expose the Property to lien caused by the Buyer. See  
7 Affidavit of John Iliescu attached hereto as Exhibit 1.  
8

9 As set forth in the instant Motion for Summary Judgment and  
10 the Motion to Amend filed concurrently herewith, once Iliescu,  
11 as Seller, actively participated in the effort to gain  
12 Governmental Approvals, the Property was lienable. That is  
13 exactly what the Hale Lane law firm drafted Addendum No. 3  
14 provided for. Iliescu was not advised otherwise, to his  
15 substantial damage.  
16

17 While Iliescu believes that Stepan's lien claim is  
18 unfounded and that Stepan has been sufficiently paid for all  
19 the services he rendered, nevertheless, a lien still exists on  
20 the Property and must be dealt with. The Court by its Order  
21 entered June 22, 2009, found:  
22

23 The Applicants, specifically Iliescu, viewed the  
24 architectural drawings as well as attended meetings  
25 where the design team presented the drawings. The  
26 Court finds even though Iliescu alleges he did not  
27 know the identity of the architects who were working  
28 on the project, he had actual knowledge that the  
Respondent and his firm were performing architectural  
services on the project.

1 Accordingly, the motion for partial summary judgment  
2 is denied. The cross motion for summary judgment is  
3 granted.

4 Because the Court has determined on cross-motions for  
5 summary judgment that Iliescu had actual knowledge that a  
6 designer and his firm were performing architectural services for  
7 the Project, Iliescu, as owner of the Property, could not avoid  
8 a lien by simply recording a Notice of Non-Responsibility.  
9 Further, because Iliescu participated in obtaining Governmental  
10 Approvals, he became what is known as a Participating Seller.  
11 By the very cases Hale Lane cites in the Motion for Summary  
12 Judgment, and cited in the Motion to Amend filed herewith, the  
13 Property became lienable. Iliescu was unprotected and unguarded.  
14 Because of the fault of the Hale Lane law firm, the Property has  
15 been liened and, therefore, the Hale Lane law firm must  
16 indemnify Iliescu.  
17

18 The recording of a Notice of Non-Responsibility by a  
19 Participating Seller is ineffective. The Hale Lane law firm did  
20 not inform Iliescu of this result at the time the Addendum No. 3  
21 was drafted, presented to Iliescu and signed.  
22

23 \\\

24 \\\

25 \\\

26 \\\

27

28

1           B.   By the Advice or Lack of Advice, Iliescu Unknowingly  
2           Became a Participating Seller, Exposing the Property to Lien.

3           It is provided generally in 53 Am.Jur.2d 227-228,  
4           Mechanic's Liens §173 (2006), as follows:

5           A person who caused the building to be constructed or  
6           who contracted for the improvements, directly or  
7           indirectly, cannot relieve his or her interest from  
8           liability by giving a statutory notice of  
            nonresponsibility.

9           It is further explained in R. Diepenbrock, D. Schoenfeld  
10          and T. Spencer, Lessor Liability for Mechanics' Liens Under the  
11          California Participating Owner Doctrine, 24 Pacific Law Journal  
12          83, 85-86 (1992), as follows:

13          It was once a rather clear rule in a majority of  
14          states that the "voluntary" installation or provision  
15          of leasehold improvements by a lessee or tenant did  
16          not subject the lessor's interest in leased property  
17          to a mechanics' lien imposed by virtue of the lessee's  
18          contract with suppliers of labor or materials, even  
19          when the improvements permanently improve the  
20          leasehold property. However, the breadth of this  
21          general rule has caused a majority of states to limit  
22          its application by providing a laundry list of  
23          exceptions. Under these exceptions, a mechanics' lien  
24          will attach to the lessor's [here vendor's] interest  
25          in the lease [here sale] of property if either: (1)  
26          the lessor required, as a condition of granting the  
27          lease, the installation of substantial leasehold  
28          improvements, or (2) the lessor has played an active  
            and substantial role in the installation of the  
            leasehold improvements.

24          See, Quality Foods, Inc., v. Holloway Associates  
25          Professional Engineers and Land Surveyors, Inc., 852 N.E.2d 27,  
26          34 (Ind. App. 2006), where the Court held that the landowner's

1 real property was lienable for services rendered by a registered  
2 land surveyor upon a zoning amendment application promoted by  
3 their agent and signed by the landowner. The Indiana Appellate  
4 Court stated as follows:

5 A contractor may attach a mechanic's lien to real  
6 estate in order to recover his wages and costs.  
7 Ind.Code § 32-28-3-1 et seq. Before this lien may  
8 attach, however, "it is necessary that such materials  
9 should be furnished or labor performed by the  
10 authority and direction of the owner, and something  
11 more than mere inactive consent on the part of such  
12 owner is necessary in order that such lien may be  
13 acquired against him." [Citations.] "The consent must  
14 be more than inactive or passive consent, and the lien  
15 claimant's burden to prove active consent is  
16 especially important when the improvements are  
17 requested by someone other than the landowner." *Cho*  
18 *v. Purdue Research Found.*, 803 N.E.2d 1161, 1168  
19 (Ind.Ct.App. 2004); *Stern & Son, Inc., v. Gary Joint*  
20 *Venture*, 530 N.E.2d 306, 308 (Ind.Ct.App.1988).  
21 Additionally, a court may consider "how closely the  
22 improvements in question resemble a directly  
23 bargained-for benefit." *Stern*, 530 N.E.2d at 309.  
24 *Gill*, 810 N.E.2d at 1058-1059. The court also  
25 observed: The exact nature and content of the owner's  
26 active consent in this context will vary from case to  
27 case; however, case law makes clear that the focus is  
28 not only on the degree of the owner's active  
participation in the decisions and the actual  
construction. Instead, the focus is also on how  
closely the improvements in question resemble a  
directly bargained-for-benefit.

22 Nevada case law is similar and controlling. In Verdi Lumber  
23 Co. v. Bartlett, 40 Nev. 317, 324-325, 161 P. 933 (1916), the  
24 Nevada Supreme Court held that a landowner who employed a  
25 contractor to build a structure on his property would be liable  
26  
27  
28

1 for materials supplied to the contractor as the owner's agent  
2 and his Property would be lienable. The Court stated:

3 We are clearly of the opinion that by section 2221,  
4 supra, it was not the intention of the Legislature  
5 that an owner might exempt his property from a lien  
6 for material furnished for improvements, alterations,  
7 or additions upon his property, no matter whether the  
8 materials were ordered by himself or by his legally  
9 constituted agent, but that it was the intention of  
10 the Legislature that the owner might be enabled to  
11 exempt his property from a lien in cases where  
12 improvements were made by one who occupied a  
13 relationship to the owner pursuant to which the owner  
was not charged with knowledge that improvements were  
to be made at the time the relationship was created,  
but became aware of the making of improvements  
thereafter. Any other construction of the section in  
question would necessitate our holding that section  
2221 substantially repeals section 2213, so far as  
they are in conflict.

14 Other cases that follow the majority rule are Ott Hardware  
15 Co. v. Yost, 159 P.2d 663, 667 (Cal.App.1945) and Guam Pacific  
16 Enterprise, Inc., v. Guam Poresia Corp., 2007 Westlaw 4689003  
17 (Guam 2007). In fact, this is the rule that Iliescu's former  
18 attorneys are now unequivocally stating is the controlling law  
19 in this jurisdiction. See, generally, Third Party Defendant Hale  
20 Lane's Motion for Summary Judgment Regarding Third-Party Claims  
21 by John Iliescu, filed herein on March 30, 2011. The point is  
22 that the Hale Lane law firm knew or should have known of the  
23 effects of this controlling law, which it now elucidates and  
24 which it relies upon to support its pending Motion for Summary  
25 Judgment. Instead of so advising Iliescu previously and offering  
26  
27  
28

1 commercially reasonable alternatives, the Hale Lane law firm  
2 negligently led its client into the unwanted situation in which  
3 Iliescu is now entangled.

4 As set forth in the attached Affidavit of John Iliescu, the  
5 Hale Lane law firm did not advise him as to the perils, risks or  
6 rewards, if any, of entering into Addendum No. 3. As alleged in  
7 paragraph 18 and 19 of the Third Party Complaint:  
8

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

14 19. An Addendum No. 3 to the Purchase Agreement was  
15 thereafter prepared by Karen D. Dennison of the Hale  
16 Lane law firm. Addendum No. 3 was executed by Iliescu  
17 and CPD on or about October 8, 2005. . . .

18 Addendum No. 3 prepared by the Hale Lane law firm contains  
19 paragraph 7, which provides as follows:

20 7. Paragraph 39(F) is hereby amended and restated as  
21 follows:

22 This offer is conditioned upon, as conditions  
23 precedent ("Conditions Precedent"), Buyer obtaining,  
24 at Buyer's expense, all necessary approvals  
25 ("Governmental Approvals") for the construction of a  
26 mixed use residential and commercial high rise  
27 condominium project on the Property approximately 28  
28 stories in height (the "Project") within 270 days  
after August 3, 2005, as such time period may be  
extended pursuant to Paragraph 1.2 above, including  
but not limited to:

- (1) Any required height, setback or other variances;
- (2) Any required special use permit;
- (3) Any required zoning or land use designation changes;

- 1 (4) Any required master plan amendment;  
2 (5) An approved tentative condominium map for the  
3 Project; and  
4 (6) Any required design approvals.

5 In addition, Buyer shall obtain, at Buyer's sole cost  
6 and expense, all approvals for the Boundary Line  
7 Adjustment (as defined in Paragraph 8 of this Third  
8 Addendum).

9 Buyer shall use its best efforts and reasonable  
10 diligence to satisfy all Conditions Precedent  
11 described in this Paragraph 39(F) prior to close of  
12 escrow.

13 [Emphasis added.]

14 The effect on Iliescu, as Seller, of requiring the Buyer to  
15 obtain all necessary Governmental Approvals was to render  
16 Iliescu a Participating Seller and the Property lienable, under  
17 the very authorities now cited to the Court by the Hale Lane law  
18 firm.

19 The Hale Lane law firm owed an independent duty to Iliescu  
20 to protect their interests in the Property and to fully disclose  
21 and discuss the risks attendant to and entailed in becoming a  
22 Participating Seller. Therefore, it is appropriate to amend the  
23 Third Party Complaint to further clarify the negligence claims  
24 already made in the Fifth and Sixth Claims for Relief and to  
25 clearly set forth and restate this cause of action.

26 **C. Indemnity Against the Hale Lane Law Firm.**

27 Iliescu also seeks to amend the Third Party Complaint to  
28 allege a claim for indemnity against the Hale Lane law firm. It

1 is generally stated in 41 Am.Jur.2d 436, Indemnity §20 (2005),  
2 as follows:

3 In addition to express contractual indemnity, there  
4 also exists two other classes of noncontractual  
5 indemnity, those being: (1) implied contractual  
6 indemnity, also known as implied in fact indemnity,  
7 that arises from the contractual or legal relationship  
8 between the parties; and (2) equitable implied  
9 indemnity, also known as implied in law indemnity or  
10 common-law indemnity, that is created by a  
11 relationship implied in law. Where there is no  
12 express contractual duty to indemnify another,  
13 indemnity nevertheless may be recovered if the  
14 evidence establishes an implied contract or if one  
15 party is exposed to liability by the action of another  
16 party who, in law or in equity, should make good the  
17 loss of the other. Implied indemnity claims are  
18 distinct, separate causes of action from any  
19 underlying contractual relationship between the  
20 parties.

21 Nevada case law recognizes implied indemnity that largely  
22 refers to noncontractual indemnity as "equitable indemnity."  
23 See, Medallion Dev. v. Converse Consultants, 113 Nev. 27, 33,  
24 930 P.2d 115 (1997), superseded by statute on other grounds as  
25 stated in Doctors Company v. Vincent, 120 Nev. 644, 654, 98 P.3d  
26 681 (2004).

27 It is further observed in 3 R. Mallen and J. Smith, Legal  
28 Malpractice, 25 Damages §21:6 (2011 Edition):

29 A frequent result of negligent advice is that the  
30 client is sued, and can incur the cost of defense and,  
31 of course, liability. The cost of avoidable litigation  
32 or unnecessary legal services ultimately may be  
33 chargeable to the attorney as damages.

1 Many cases are cited in support of this proposition  
2 including the case of Temple Hoyne Buell Foundation v. Holland &  
3 Hart, 851 P.2d 192 (Colo. App. 1992). There, the lawyer and law  
4 firm had drafted an option agreement without protecting their  
5 former client, the Plaintiff, from loss by failing to research  
6 and analyze the application of a rule in the context of the  
7 option agreement. The determination that the option was not  
8 subject to the rule against perpetuities did not conclusively  
9 resolve the issue of whether the attorneys met applicable  
10 standard of care in preparing the option, where the option would  
11 have been protected from any rule dispute if the attorneys had  
12 actually considered the rule, had recognized clear potential for  
13 a good-faith dispute arising over enforceability of the option  
14 under the rule and had either included savings clause or  
15 excluded language making the option binding on heirs, successors  
16 and assigns.

17 So here too, the Hale Lane law firm failed to fully discuss  
18 with and advise Iliescu that the rule of Participating Seller  
19 may subject the Property to lien and Iliescu to loss.

20 A claim for indemnity arising from legal malpractice even  
21 remains when there have been waivers of conflicts of interest.  
22 Thus, in the case of Marsh v. Wallace, 666 F.Supp.2d 651  
23 (S.D.Miss. 2009), attorney Howell represented both buyer and  
24 seller in a land sale transaction and obtained waivers of  
25  
26  
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28

1 conflicts of interest. However, the attorney's former clients  
2 were entitled to indemnity based on the attorney's negligence in  
3 causing his former clients to become double encumbered on  
4 properties which were included in the transaction.

5 The Federal District Court held that if the Marshes, as  
6 former clients, are held liable to a third party on promissory  
7 notes prepared by Howell, then they are entitled to indemnity  
8 from Howell (666 F.Supp.2d at 680):

9  
10 In the court's view, the documentary evidence of  
11 record, most of which was generated by Howell himself,  
12 indicates that [his former clients] the Marshes were  
13 double encumbered, and as there is no documentary  
14 proof to the contrary, the court accepts that this, in  
15 fact, occurred. Therefore, if the Marshes are  
16 properly to be held liable to Wright and the Estate of  
17 Nell Wallace on the promissory notes prepared by  
18 Howell, then they are entitled to indemnity from  
19 Howell. [Emphasis added.]

20 In this instance, because of the conduct of Hale Lane law  
21 firm in making Iliescu a Participating Seller by virtue of  
22 Addendum No. 3, and not advising Iliescu of viable options which  
23 would have still resulted in the same potential sale of the  
24 Property but absent the Property's exposure to lien claims of  
25 those employed by the Buyer as alleged in the Seventh Claim for  
26 Relief, then if Iliescu is found liable to Stepan under his  
27 lien, indemnity should flow from the Hale Lane law firm.

28 \\\

1     **III. Attorney's Fees are Also Compensable as Consequential**

2     **Damages:**

3             Iliescu is entitled to be made whole from all damages  
4     occasioned by the Hale Lane law firm, including consequential  
5     damages consisting of legal fees, expert witness fees and  
6     related expenses. In Ruldof v. Shayne, Dachs, Stanisci, Corker &  
7     Sauer, 867 N.E.2d 385 (N.Y.App. 2007), the Court recognized a  
8     claim for consequential damages resulting from legal  
9     malpractice:  
10

11             Damages in a legal malpractice case are designed "to  
12     make the injured client whole" (*Campagnola v.*  
13     *Mulholland, Minion & Roe*, 76 N.Y.2d 38, 42, 556  
14     N.Y.S.2d 239, 555 N.E.2d 611 [1990]). A plaintiff's  
15     damages may include "litigation expenses incurred in  
16     an attempt to avoid, minimize or reduce the damage  
17     caused by the attorney's wrongful conduct" (*DePinto v.*  
18     *Rosenthal & Curry*, 237 A.D.2d 482, 482, 655 N.Y.S.2d  
19     102 [2d Dept.1997]; see also *Baker v. Dorfman*, 239  
20     F.35 415, 426 [2d Cir.2000]; 3 *Mallen and Smith*, Legal  
21     Malpractice §§20:6, 20:10 [2007]).

22             The Federal District Court in Marsh v. Wallace, supra, (666  
23     F.Supp.2d at 677-678), also sustained indemnity for  
24     consequential damages:

25             As damages, the Marshes point out that in addition to  
26     having paid for Howell's erroneous title certificates,  
27     for which they contend they are entitled to  
28     reimbursement from Howell, they have incurred  
attorney's fees and costs seeking a settlement with  
Commercial Bank and defending the bank's claims  
against them on their guaranty, damages which they  
submit are directly attributable to Howell's  
negligence. The court agrees, and concludes they are  
entitled to recover these costs. [Emphasis added.]

1 In Sandy Valley Assocs. V. Sky Ranch Estates, 117 Nev. 948,  
2 957, 35 P.3d 964 (2003), the Nevada Supreme Court stated:

3 Attorney fees may be an element of damage in cases  
4 when a plaintiff becomes involved in a third-party  
5 legal dispute as a result of a breach of contract or  
6 tortious conduct by the defendant. Citing *Clark County*  
7 *Sch. Dist. v. Rolling Plains*, 117 Nev. 101, 16 P.3d  
8 1079 (2001); see *Restatement (Second of Torts* § 914(2)  
9 (1979); Robert L. Rossi, *Attorneys' Fees* § 8:3 (2d ed.  
10 1995).

11 In Clark County Sch. Dist. v. Rolling Plains, 117 Nev. 101,  
12 105, 16 P.2d 1079 (2001), the Nevada Supreme Court also held  
13 that attorney fees can be awarded as damages in third party  
14 litigation, to wit:

15 . . .[i]t is appropriate in some cases to consider  
16 attorney fees as an item of damage. American Fed.  
17 Musicians v. Reno's Riverside, 86 Nev. 695, 699, 475  
18 P.2d 220, 222 (1970) (citing McIntosh v. Knox, 40 Nev.  
19 403, 413, 165 P. 337, 338-39 (1917)). More  
20 specifically, we have determined that when a  
21 defendant's conduct causes litigation between the  
22 plaintiff and a third party, attorney fees may be  
23 recoverable as damages caused by that conduct. See  
24 Lowden Investment Co. v. General Electric, 103 Nev.  
25 374, 380, 741 P.2d 806, 809 (1987).

#### 26 IV. Conclusion:

27 In this case, Iliescu requests leave to clarify and more  
28 completely set forth the attorneys' fees and costs they have  
incurred as an element of damages, setting forth with  
particularity the consequential damages in compliance with NRCP  
9(g). The Motion to Amend is further sought to clarify that,

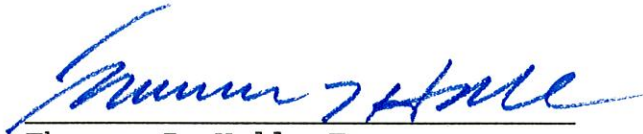
1 pursuant to paragraph 5 of the prayer contained in the Third  
2 Party Complaint, Iliescu is seeking attorney fees and costs as  
3 damages and to specify the same.

4 WHEREFORE, it is respectfully requested that Iliescu be  
5 granted leave to file the First Amended Third Party Complaint as  
6 proposed in the attached Exhibit 2.  
7

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

11 DATED this 18<sup>th</sup> day of August, 2011.

12 LAW OFFICES OF THOMAS J. HALL

13  
14 

15 Thomas J. Hall, Esq.  
16 Law Offices of Thomas J. Hall  
17 305 South Arlington Avenue  
18 Post Office Box 3948  
19 Reno, Nevada 89505  
20 Telephone: (775)348-7011  
21 Facsimile: (775)348-7211

22 Attorney for Iliescu  
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David R. Grundy, Esq.  
6005 Plumas Street, 3<sup>rd</sup> Floor  
Reno, Nevada 89519

Michael D. Hoy, Esq.  
Hoy & Hoy, P.C.  
4741 Caughlin Parkway, Suite Four  
Reno, Nevada 89519

DATED this 18<sup>th</sup> day of August, 2011.

  
Misti A. Hale

1                                    **CERTIFICATE OF SERVICE BY MAIL**

2                    I certify that I am an employee of Thomas J. Hall, Esq., and  
3                    that on this date, pursuant to NRCP 5(b), I deposited in the  
4                    United States mail at Reno, Nevada, a true copy of the attached  
5                    **Motion to Amend Third Party Complaint**, addressed to:  
6

7                                    John Iliescu, Jr., M.D.  
8                                    Sonnia Iliescu  
9                                    200 Court Street  
                                  Reno, Nevada 89501

10                   DATED this 18th day of August, 2011.

11                                      
12                                    \_\_\_\_\_  
13                                    Misti A. Hale

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EXHIBIT LIST

EXHIBIT 1: Affidavit of John Iliescu, Jr.

EXHIBIT 2: [Draft] First Amended Third Party Complaint Against Hale Lane.

**EXHIBIT 1**

**EXHIBIT 1**

1 **Code 1030**

2 Thomas J. Hall, Esq.  
3 Nevada State Bar No. 675  
4 305 South Arlington Avenue  
5 Post Office Box 3948  
6 Reno, Nevada 89505  
7 Telephone: 775-348-7011  
8 Facsimile: 775-348-7211

6 Attorney for John Iliescu, Jr.  
7 and Sonnia Iliescu and The John  
8 Iliescu, Jr. and Sonnia Iliescu  
1992 Family Trust

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

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

11  
12 MARK B. STEPPAN,

Case No.: CV07-00341

13 Plaintiff,

Dept. No.: 1

14 v.

Consolidated with:

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

Case No.: CV07-00341

Dept. No.: 1

20 Defendants.

21 AND RELATED CROSS-CLAIMS AND  
22 THIRD-PARTY CLAIMS. /

23 **AFFIDAVIT OF JOHN ILIESCU, JR., IN SUPPORT OF**  
24 **MOTION TO AMEND THIRD PARTY COMPLAINT AND IN OPPOSITION AND**  
25 **RESPONSE TO HALE LANE'S MOTION FOR SUMMARY JUDGMENT**

26 \\\

1 JOHN ILIESCU, JR., being duly sworn upon his oath, deposes  
2 and says:

3 1. I am one of the Defendants in the above reference  
4 matter. I have personal knowledge of the matters stated herein,  
5 except to those matters stated upon information and belief, and  
6 to those matters, I believe them to be true. If called as a  
7 witness, I would be competent to testify as to the matters  
8 stated in this Affidavit.

9 2. Along with Sonnia Santee Iliescu, as Trustee, and the  
10 John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust, I am the  
11 owner of the land located between Court Street and Island  
12 Avenue, in Reno, Nevada, APNs 011-112-05, 011-112-06, 011-112-07  
13 and APN 011-112-12 (the "Property").

14 3. On July 29, 2005, I entered into a contract with  
15 Consolidated Pacific Development, Inc., ("CPD") for the sale of  
16 the Property. I understand that CPD subsequently transferred its  
17 interest in this property to BCS Financial, Inc., ("BCS"). As of  
18 this date, this sale has not closed.

19 4. On or before September 22, 2005, I retained the Hale  
20 Lane law firm to review, "fine tune", clarify, prepare Addendum  
21 No. 3 to the Purchase Agreement and in all respects advise me  
22 relative to the Purchase Agreement.

23 \\\

24 \\\

1           5. Addendum No. 3 was thereafter prepared by Karen D.  
2           Dennison, of the Hale Lane law firm. Addendum No. 3 was executed  
3           by CPD and myself on or about October 8, 2005.

4           6. The Hale Lane law firm never discussed with or advised  
5           me at any time as to the effect or non-effect of recording a  
6           Notice of Non-Responsibility with the Washoe County Recorder to  
7           ensure the Property would not be encumbered by mechanic's or  
8           architect's liens recorded by individuals or firm hired by CPD  
9           or BCS as contemplated by the Purchase Agreement.

11           7. On or before December 14, 2005, the Hale Lane law firm  
12           undertook representation of CPD and BCS, as Buyer, and myself,  
13           as Seller, in relation to obtaining the necessary Governmental  
14           Approvals and entitlements for the Property as contemplated by  
15           the Purchase Agreement.

17           8. At no time during the Hale Lane law firm's "fine  
18           tuning" of the Purchase Agreement or thereafter did I intend to  
19           become a Participating Seller.

20           9. My intention was to sell the Property. I did not  
21           intend to subject the Property to lien by participating in any  
22           of the Buyer's actions to development of the Property.

24           10. At no time did Karen D. Dennison, or any other  
25           attorney at Hale Lane law firm, advise me that by entering into  
26           Addendum No. 3, particularly with reference to paragraph 37(F),  
27           that I was becoming a Participating Seller and thereby

1     subjecting the Property to lien from vendors and service  
2     providers employed by CPD or BCS.

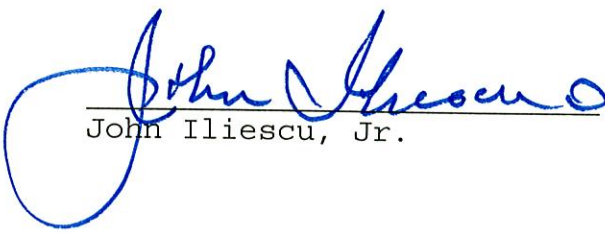
3             11. At no time did Karen D. Dennison, or any other  
4     attorney at the Hale Lane law firm, advise me of the  
5     consequences associated with becoming a Participating Seller.

6             12. At no time did Karen D. Dennison, or any other  
7     attorney at the Hale Lane law firm, advise me of the term  
8     "Participating Seller".

9             13. On November 7, 2006, an architect named Mark B.  
10     Steppan recorded a Mechanic's Lien against the Property claiming  
11     to be owed \$1,783,548.85.

12             14. I have personal knowledge of the statements contained  
13     in this Affidavit and could testify under oath and at hearing  
14     concerning these matters.

15             Further, your Affiant saeth naught.

16  
17  
18  
19                               
20                             John Iliescu, Jr.

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

4 On August 18, 2011, before me, the undersigned, a Notary  
5 Public in and for said State, personally appeared JOHN ILIESCU,  
6 JR., personally known to me or proved to me on the basis of  
7 satisfactory evidence to be the person who executed the above  
8 instrument.

9 I certify under penalty of perjury under the laws of the  
10 State of Nevada that the foregoing paragraph is true and  
11 correct.

12 WITNESS my hand and official seal.

13 Sharon M. Knudson  
14 NOTARY PUBLIC



**FILED**  
Electronically  
08-18-2011:02:59:03 PM  
Howard W. Conyers  
Clerk of the Court  
Transaction # 2417216

**EXHIBIT 2**

**EXHIBIT 2**

1 **Code 2280**

2 Thomas J. Hall, Esq.  
3 Nevada State Bar No. 675  
4 305 South Arlington Avenue  
5 Post Office Box 3948  
6 Reno, Nevada 89505  
7 Telephone: 775-348-7011  
8 Facsimile: 775-348-7211

6 Attorney for John Iliescu, Jr.  
7 and Sonnia Iliescu and The John  
8 Iliescu, Jr. and Sonnia Iliescu  
1992 Family Trust

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

12 MARK B. STEPPAN,

Case No.: CV07-00341

13 Plaintiff,

Dept. No.: B6

14 v.

Consolidated with:

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

Case No.: CV07-00341

Dept. No.: B6

20 Defendants.

21 AND RELATED CROSS-CLAIMS AND  
22 THIRD-PARTY CLAIMS. /

23 **[DRAFT] FIRST AMENDED THIRD PARTY COMPLAINT**

24 **AGAINST DEFENDANT HALE LANE**

25 COME NOW, Defendants John Iliescu, Jr., and Sonnia Iliescu,  
26 individually, and as Trustees of the John Iliescu, Jr. and  
27 Sonnia Iliescu 1992 Family Trust ("Iliescu"), by and through  
28

1 their counsel Thomas J. Hall, Esq., and file their First Amended  
2 Third Party Complaint as set forth below:

3 **The Parties**

4 1. Third Party Plaintiffs John Iliescu, Jr. and Sonnia  
5 Iliescu (hereinafter referred to as Iliescu or Third Party  
6 Plaintiffs) are residents of Washoe County, Nevada, and are the  
7 Trustees of the John Iliescu, Jr., and Sonnia Iliescu 1992  
8 Family Trust Agreement.  
9

10 2. Third Party Plaintiff John Iliescu, Jr. is an individual  
11 and a resident of Washoe County, Nevada.

12 3. Third Party Plaintiff Sonnia Iliescu is an individual  
13 and a resident of Washoe County, Nevada.

14 4. Third Party Defendant Consolidated Pacific Development,  
15 Inc. is a Nevada corporation.  
16

17 5. Third Party Defendant DeCal Oregon, Inc. is an Oregon  
18 corporation and the successor, by name, to DeCal Custom Homes  
19 and Construction, Inc.

20 6. Third Party Defendant Indemnitor Calvin Baty is an  
21 individual and a resident of Oregon.

22 7. Third Party Defendant Indemnitor John Schleining is an  
23 individual and a resident of Oregon.  
24

25 8. Third Party Defendant Hale Lane Peek Dennison and  
26 Howard, a Nevada professional corporation, dba Hale Lane, are  
27  
28

1 attorneys licensed to practice law in the State of Nevada  
2 (hereinafter referred to as the "Hale Lane law firm").

3 9. Third Party Defendants Karen D. Dennison, R. Craig  
4 Howard and Jerry M. Snyder are attorneys licensed to practice  
5 law in the State of Nevada and are partners and associates of  
6 the Hale Lane law firm (hereafter referred to individually as  
7 "Dennison", "Howard" and "Snyder").  
8

9 10. Third Party Defendants, Does I through X, are persons  
10 or entities who participated in the acts alleged herein, or  
11 received the proceeds of the acts alleged herein, whose names or  
12 identities are not yet known to Third Party Plaintiffs. Third  
13 Party Plaintiffs reserve the right to amend this complaint after  
14 the identities and nature of their involvement becomes known.  
15

16 11. Third Party Plaintiffs are informed and believe, and  
17 based thereon allege, that at all times relevant herein, all  
18 Third Party Defendants, including Does I through X (collectively  
19 "Third Party Defendants"), were and are the agents, employees  
20 and partners of each of the remaining Third Party Defendants,  
21 and were, in performing the acts complained of herein, acting  
22 within the scope of such agency, employment, or partnership  
23 authority.  
24

### 25 General Allegations

26 12. Third Party Plaintiffs are the owners of the real  
27 property assigned Washoe County Assessor's Parcel Numbers 011-  
28

1 112-03, 011-112-06, 011-112-07, and 011-112-12, also commonly  
2 known as 219 Court Street, Reno, Nevada, 0 Court Street, Reno,  
3 Nevada and 223 Court Street, Reno, Nevada (all collectively, the  
4 "Property").

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

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

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

18 16. The Purchase Agreement also incorporated an Addendum  
19 No. 1 dated August 1, 2005, and executed by Iliescu on August 3,  
20 2005, and an Addendum No. 2 dated August 2, 2005, and executed  
21 by Iliescu on August 3, 2005. Addendum No. 2 specifically  
22 provided, and the parties contemplated, that the Purchase  
23 Agreement would be reviewed, "fine tuned" and clarified by legal  
24 counsel retained by Iliescu before finalization.

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

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

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

17        20. On or before December 14, 2005, the Hale Lane law firm  
18 undertook to represent both Iliescu and Purchasers Calvin Baty  
19 and Consolidated Pacific Development, Inc., in relation to  
20 obtaining the necessary entitlements on the property as  
21 contemplated by the Purchase Agreement. A copy of the Waiver of  
22 Conflict letter executed December 14, 2005, is attached as  
23 Exhibit "1". A major component of the entitlement was the work  
24 and drawings of an architect.

1           21. The Hale Lane law firm never discussed with or advised  
2           Iliescu at any time to record a Notice of Non-Responsibility  
3           with the Washoe County Recorder to ensure the Property would not  
4           be encumbered by mechanics or architect's liens recorded by  
5           individuals hired by CPD as contemplated by the Purchase  
6           Agreement. On October 31, 2005, unbeknownst to Iliescu, an  
7           architect, Mark B. Steppan, AIA, entered into a contract with  
8           BSC Financial, LLC in relation to the Property subject to the  
9           Purchase Agreement.  
10

11           22. Despite being aware of and/or involved in the purported  
12           assignment to DeCal and representing the purchaser in connection  
13           with the entitlement process, the Hale Lane law firm never  
14           advised or discussed with Iliescu the assignment, whether DeCal  
15           was an appropriate assignee and purchaser of the Property,  
16           whether it had the means and financial viability to close the  
17           sale, whether or how the purported assignment to DeCal affected  
18           Iliescu's interests under the Purchase Agreement and the  
19           existence of BSC Financial, LLC as it may relate to the Property  
20           and Purchase Agreement and the October 31, 2005 contract with  
21           Mark B. Steppan, AIA.  
22  
23

24           23. Iliescu first became aware of the DeCal assignment on  
25           or about October 2, 2006 in connection with a TMWA consent form  
26           related to the development application for the Property with the  
27           City of Reno (Case No. LDC06-00321, Wingfield Towers). The  
28

1 original Owner's Affidavit of Iliescu that accompanied the City  
2 of Reno application made reference to only CPD and Sam Caniglia.

3 24. On November 7, 2006, Mark B. Steppan, AIA recorded a  
4 mechanic's lien on the property in the sum of \$1,783,548.85. A  
5 copy of said Notice and Claim of Lien is attached as Exhibit  
6 "2". The Hale Lane law firm never informed Iliescu that there  
7 was a dispute with the project architect over non-payment for  
8 his services.  
9

10 25. On November 28, 2006, the Wingfield Towers project  
11 (Case No. LDC06-00321) was approved by the Reno City Council.  
12 The Clerk's Letter of Approval was issued November 30, 2006.  
13

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

22 27. At some point subsequent to August 10, 2005, without  
23 the knowledge and/or consent of Iliescu, Consolidated Pacific  
24 Development, Inc. and DeCal Custom Homes & Construction  
25 transferred or assigned their interest in the Land Purchase  
26 Agreement to BSC Financial, LLC. The Hale Lane law firm never  
27  
28

1 informed Iliescu of any such assignment or even the existence of  
2 BSC Financial, LLC.

3 28. As of December 14, 2005, and at all times thereafter,  
4 BSC Financial, LLC, Consolidated Pacific Development, Inc.,  
5 DeCal Custom Homes & Construction, Calvin Baty and John  
6 Schleining (all related entities or persons) were represented in  
7 connection with the property and project referred to in this  
8 litigation by the Hale Lane law firm. At the same time, the Hale  
9 Lane law firm represented Iliescu.  
10

11 29. An Addendum No. 4 to the Purchase Agreement was  
12 prepared by the Hale Lane law firm on or about September 18,  
13 2006, and executed by Iliescu and CPD on or about September 19,  
14 2006. Again, in said Addendum, there was no disclosure of or  
15 reference to DeCal or BSC Financial, LLC.  
16

17 30. The Hale Lane law firm also represented Iliescu in  
18 regard to a) the Mechanic's Lien recorded by Mark B. Steppan,  
19 AIA, and b) closing the Land Purchase Agreement. During said  
20 time, the Hale Lane law firm did not advise Iliescu of the  
21 nature and extent of the problems that existed relative to the  
22 transaction, the Purchase Agreements, the Mechanic's Lien filed  
23 by Mark B. Steppan, AIA, the inherent conflicts that now existed  
24 between Iliescu, the inter-related Buyers as referred to above,  
25 and the complications of the transaction.  
26  
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1        31. On or about December 8, 2006, as a result of the  
2 recordation of the Mechanic's Lien by Mark B. Steppan, AIA, the  
3 Hale Lane law firm and R. Craig Howard prepared an Indemnity  
4 Agreement for their clients referred to in Paragraph 28 above. A  
5 copy of said Indemnity Agreement is attached as Exhibit "3".  
6 Said Indemnity Agreement was submitted to Iliescu on December  
7 12, 2006. Again, the Hale Lane law firm did not advise Iliescu  
8 of the problems that existed as set forth in the above  
9 paragraphs.  
10

11        32. On or about December 26, 2006, the Hale Lane law firm  
12 drafted a Conflict of Interest Waiver Agreement and submitted it  
13 to Iliescu and BSC Financial, LLC for signature. The Agreement  
14 was executed by the parties. A copy of said Agreement is  
15 attached as Exhibit "4". The Hale Lane law firm never advised  
16 Iliescu that the conflict of interest that existed might not be  
17 waivable, nor did it advise Iliescu of the problems that now  
18 existed as set forth in the above paragraphs.  
19

20        33. Thereafter, the Hale Lane law firm embarked upon a  
21 course of advising Iliescu and preparing documents so as to  
22 allow the Purchase Agreement to close with BSC Financial, LLC.  
23 Such conduct included dealing with the Mechanic's Lien of Mark  
24 B. Steppan, AIA, recommending to and obtaining Iliescu's consent  
25 to the assignment of the Land Purchase Agreement to BSC  
26 Financial, LLC. Such consent was not in the best legal interests  
27  
28

1 of Iliescu, given the existence of the Mechanic's Lien and other  
2 problems as set forth in the above paragraphs.

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

9  
10 35. BSC Financial, LLC filed for Chapter 11 bankruptcy  
11 protection on April 25, 2007.

12 36. The Architect's Lien remains a cloud on Iliescu's  
13 title, Steppan has filed suit for foreclosure of the Architect's  
14 Lien and seeks judicial foreclosure of his purported Architect's  
15 Lien upon Iliescu's real property.  
16

17 **FIRST CLAIM FOR RELIEF**

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

19 37. Iliescu realleges and incorporates by reference  
20 Paragraphs 1 through 36 of this Complaint, as if fully set forth  
21 herein.  
22

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

26 39. Specifically, Iliescu is informed and believes, and  
27 based thereon alleges, that the Indemnitors, both pursuant to  
28

1 the Indemnity Agreement and an implied indemnity, owe Iliescu a  
2 duty to defend this action and make Iliescu whole for any and  
3 all costs, damages, claims, or losses suffered as a result of  
4 the Architect's Lien and the BSC Financial, LLC contract or  
5 agreement with Steppan and its bankruptcy filing.

6  
7 40. Iliescu is informed and believes, and based thereon  
8 allege, that the Indemnitors dispute Iliescu's interpretation  
9 and assertion of rights.

10 41. In view of the actual conflict and controversy between  
11 the parties, Iliescu desires a judicial determination of the  
12 respective rights, duties, and obligations of Iliescu, and the  
13 Indemnitors.

14  
15 **SECOND CLAIM FOR RELIEF**

16 (Indemnification—Against the Indemnitors Batty and Schleining)

17 42. Iliescu realleges and incorporates by reference  
18 Paragraphs 1 through 41 of this Complaint, as if fully set forth  
19 herein.

20 43. To the extent Iliescu is held liable for any and all  
21 costs or damages incurred as a result of the Architect's Lien,  
22 and/or the loss of the Property to foreclosure, the bankruptcy  
23 filing, and the acts and omissions of the Indemnitors, Iliescu  
24 is entitled to be completely indemnified by the Indemnitors for  
25 any and all damages, including consequential, suffered by  
26 Iliescu.  
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1 **FOURTH CLAIM FOR RELIEF**

2 (Specific Performance – Against CPD and DeCal)

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

6 52. The Purchase Contract is a valid and binding contract,  
7 and is binding on both CPD and DeCal.

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

10 54. Iliescu is entitled to a decree of specific performance  
11 from the Court, requiring CPD and DeCal to perform as required  
12 under the terms of the Purchase Agreement, by (1) tendering the  
13 remainder of the purchase price due to Iliescu and (2)  
14 indemnifying Iliescu for any damages, costs, or attorneys' fees  
15 arising out of the contract with Steppan and the Architect's  
16 Lien.

17 **FIFTH CLAIM FOR RELIEF**

18 (Professional Malpractice - Against the Hale Lane law firm,  
19 Dennison, Howard and Snyder)

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

23 56. The Hale Lane law firm and Dennison, Howard and Snyder,  
24 as licensed attorneys and counselors at law, owe Iliescu a duty  
25

1 to have a degree of learning and skill ordinarily possessed by  
2 reputable licensed attorneys engaged in the type of transaction  
3 addressed herein, and owe Iliescu a duty to use reasonable  
4 diligence and their best judgment in the exercise of skill and  
5 the application of learning held by reputable licensed attorneys  
6 in Northern Nevada engaged in the type of business and  
7 transactions described herein.  
8

9 57. The Hale Lane law firm breached the duties enumerated  
10 above, and failed to perform these duties, as addressed herein.  
11

12 **SIXTH CLAIM FOR RELIEF**

13 (Negligence - Against the Hale Lane law firm)

14 58. Iliescu realleges and incorporates by reference 1  
15 through 57 of this Complaint, as if fully set forth herein.  
16

17 59. As a result of the attorney-client relationship  
18 recreated by amending the Land Purchase Agreement of the  
19 parties, the Hale Lane law firm, who held themselves out to the  
20 public as possessing ordinary and greater than ordinary  
21 knowledge and particular skill in the field of real estate law,  
22 condominium law and real estate development, had a duty to  
23 represent Iliescu with the reasonable care, skill and diligence  
24 ordinarily possessed and exercised by attorneys specializing in  
25 the field of real estate law, condominium law and real estate  
26 development, under similar circumstances.  
27  
28

1       60.    The Hale Lane law firm and its members, Dennison,  
2   Howard and Snyder, were negligent because, among other things,  
3   they failed to properly advise Iliescu of the consequence of  
4   their conflicts of interest in representing both the Seller and  
5   the Buyer in the sale transaction addressed herein, continued to  
6   represent Iliescu in the face of a non-waivable conflicts of  
7   interest and failed to advise Iliescu of the consequences of  
8   recording or failing to record a Notice of Non-Responsibility.  
9

10       61.   The Hale Lane law firm owed a duty to Iliescu to  
11   exercise reasonable care in how they handled the sale  
12   transaction, the Land Purchase Agreement, the Amendments to the  
13   Land Purchase Agreement and their advice to Iliescu regarding  
14   the Property, and the law firm breached that duty by way of the  
15   failures and omissions set forth above.  
16

17       62.   The Hale Lane law firm's negligence has damaged  
18   Iliescu, has caused them to incur attorneys' fees and other  
19   expenses, and has resulted in the recording of the Mechanic's  
20   Lien and the potential loss of the Property through foreclosure.  
21

22       63.   Because of said negligence, Iliescu has suffered  
23   special damages in excess of \$150,000 in defending against the  
24   Plaintiff's claims and in attempting to remove the Mechanic's  
25   Lien from the Property. At the time of filing this First Amended  
26   Third Party Complaint, the following fees and costs have been  
27   incurred:  
28

Hale Lane law firm	\$ 16,255.75
Stephen C. Mollath, Esq., Prezant & Mollath	\$ 77,937.83
Sallie B. Armstrong, Esq., Downey Brand, LLP	\$ 74,496.69
Law Offices of Thomas J. Hall	\$ 30,455.99
Total August 18, 2011	\$ 199,146.26

64. Additional fees and costs will be incurred herein, will be continue to be incurred and will be claimed against the Hale Lane law firm according to proof at trial.

#### **SEVENTH CLAIM FOR RELIEF**

(Negligence - Against the Hale Lane law firm)

65. Iliescu realleges and incorporates by reference Paragraphs 1 through 64 of this Complaint, as if fully set forth herein.

66. At the time the Hale Lane law firm prepared Addendum No. 3 to the Land Purchase Agreement, the following terms and conditions were included:

7. Paragraph 39(F) is hereby amended and restated as follows:

This offer is conditioned upon, as conditions precedent ("Conditions Precedent"), Buyer obtaining, at Buyer's expense, all necessary approvals ("Governmental Approvals") for the construction of a mixed use residential and commercial high rise condominium project on the Property approximately 28 stories in height (the "Project") within 270 days after August 3, 2005, as such time period may be extended pursuant to Paragraph 1.2 above, including but not limited to:

- (1) Any required height, setback or other variances;
- (2) Any required special use permit;

- 1 (3) Any required zoning or land use designation  
changes;  
2 (4) Any required master plan amendment;  
3 (5) An approved tentative condominium map for the  
Project; and  
4 (6) Any required design approvals.

5 In addition, Buyer shall obtain, at Buyer's sole cost  
and expense, all approvals for the Boundary Line  
6 Adjustment (as defined in Paragraph 8 of this Third  
Addendum).

7  
8 Buyer shall use its best efforts and reasonable  
9 diligence to satisfy all Conditions Precedent  
10 described in this Paragraph 39(F) prior to close of  
escrow. [Emphasis added.]

11 67. The Hale Lane law firm failed to advise Iliescu of the  
12 effect of the Purchase Agreement prepared by Realtor Richard K.  
13 Johnson. While the law firm was hired to "fine tune" the  
14 Purchase Agreement and better reflect the parties' intentions,  
15 the Hale Lane law firm did not advise Iliescu that the Purchase  
16 Agreement, as drafted by Johnson and as fined tuned by the Hale  
17 Lane law firm to reflect the parties' intentions, the Purchase  
18 Agreement exposed the Property to potential lien claims for  
19 debts incurred by the Buyer, which potential for lien claims was  
20 certainly not the intent of Iliescu the Seller. The Hale Lane  
21 law firm failed to so advise Iliescu and failed to recommend  
22 alternatives to Iliescu which would have eliminated the  
23 potential for liens to be recorded against the Property, should  
24 the Buyer not pay its vendors, architects and other qualified  
25 claimants.  
26  
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1           68. As a necessary and foreseeable result and consequence  
2 of the provisions of new Paragraph 39(F), Iliescu was required  
3 to and did sign Owner Affidavits granting authority to Sam  
4 Cagniglia, as principal for and on behalf of the Buyer, to  
5 request Governmental Approvals for development of the Property.

6  
7           69. As a necessary and foreseeable result and consequence  
8 of the provisions of new paragraph 39(F), the Buyer of the  
9 Property employed architects, engineers and land planners to  
10 prepare and submit development applications seeking Governmental  
11 Approvals from the City of Reno for the Property.

12           70. As a necessary and foreseeable result and consequence  
13 of the provisions of new paragraph 39(F) described above,  
14 Iliescu attended two hearings on the applications for  
15 Governmental Approvals held before the Reno Planning Commission  
16 and the Reno City Council.

17  
18           71. The Hale Lane law firm never discussed with or advised  
19 Iliescu at any time that as a result of the actions considered,  
20 permitted and undertaken under Paragraph 39(F), Iliescu became a  
21 Participating Seller in the development of the Property in  
22 seeking Governmental Approvals, and as a necessary consequence  
23 thereof, the Property may become subject to liens.

24  
25           72. The Hale Lane law firm never advised Iliescu that  
26 there were other alternatives available to them which would have  
27 protected the Property from liens as a result of services

1 rendered and to be rendered by architects, engineers and land  
2 planners.

3 73. The Hale Lane law firm never advised Iliescu to  
4 withhold active participation in seeking Governmental Approvals  
5 for the Property and, thereby, to protect the Property from  
6 liens.

7  
8 74. The Hale Lane law firm did not advise or recommend the  
9 securing of lien releases from the Purchaser's architect nor  
10 require the same as part of the purchaser's/architect agreement  
11 in a manner which would have released the Property from  
12 potential liens.

13 75. The Hale Lane law firm owed a duty to Iliescu to  
14 exercise reasonable care in how the law firm and Iliescu handled  
15 the sale transaction, the Purchase Agreement, the Amendments to  
16 the Purchase Agreement, and their advice to Iliescu regarding  
17 the Property, and breached that duty by way of the acts,  
18 omissions and neglect set forth above.

19  
20 76. The Hale Lane law firm owed an independent duty to  
21 Iliescu to protect their interests relating to the sale of the  
22 Property irrespective to any waivers of conflict of interest  
23 that may have been executed.

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1 EIGHTH CLAIM FOR RELIEF

2 (Indemnity - Against Hale Lane law firm)

3 77. Iliescu realleges and incorporates by reference  
4 Paragraphs 1 through 76 of this Complaint, as if fully set forth  
5 herein.

6  
7 78. If the Court determines that Plaintiff is entitled to  
8 recovery and if the Court finds that Iliescu or their Property  
9 is liable under the Mechanic's Lien to the Plaintiff, then in  
10 that event, Iliescu has a right of action for indemnity against  
11 their former attorneys and the Hale Lane law firm because they  
12 engaged in legal malpractice as alleged above.

13 79. Iliescu is entitled to indemnify from Hale Lane law  
14 firm for all claims, losses, expenses, damages, attorney fees  
15 and liabilities in connection with the claims under the  
16 Mechanic's Lien described in Plaintiff's Complaint.  
17

18 WHEREFORE, Iliescu prays for judgment as follows:

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

23 2. For a declaration that the law firm of Hale Lane as the  
24 Indemnitors are fully responsible for any and all costs or  
25 damages suffered by Iliescu arising out of the Plaintiff's  
26  
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1 Architect's Lien and/or the BSC Financial, LLC, contract or  
2 agreement with Steppan;

3 3. For a declaration finding and awarding Iliescu  
4 indemnification from their former attorneys;

5 4. For all claims, losses, expenses, damages and  
6 liabilities in connection with the Plaintiff's claims.  
7

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

11 6. For an award of the Iliescu costs and disbursements;

12 7. For an award of reasonable attorneys' fees in the  
13 prosecution of this action; and

14 8. For such other and further relief as the Court deems  
15 just and proper.  
16

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

20 DATED this 18<sup>th</sup> day of August, 2011.

21 LAW OFFICES OF THOMAS J. HALL  
22

23 Thomas J. Hall, Esq.  
24 Law Offices of Thomas J. Hall  
25 305 South Arlington Avenue  
26 Post Office Box 3948  
27 Reno, Nevada 89505  
28 Telephone: (775)348-7011  
Facsimile: (775)348-7211  
Attorney for Iliescu

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1                                    **CERTIFICATE OF SERVICE BY MAIL**

2            I certify that I am an employee of Thomas J. Hall, Esq., and  
3            that on this date, pursuant to NRCP 5(b), I deposited in the  
4            United States mail at Reno, Nevada, a true copy of the attached  
5            **First Amended Third Party Complaint**, addressed to:  
6

7                                    John Iliescu, Jr., M.D.  
8                                    Sonnia Iliescu  
9                                    200 Court Street  
                                  Reno, Nevada 89501

10           DATED this 18th day of August, 2011.

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12                                    \_\_\_\_\_  
13                                    Misti A. Hale  
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**EXHIBIT LIST**

**EXHIBIT 1:** Waiver of Conflict letter executed December 14, 2005.

**EXHIBIT 2:** Notice and Claim of Lien recorded November 7, 2006.

**EXHIBIT 3:** Indemnity Agreement dated December 8, 2006.

**EXHIBIT 4:** Conflict of Interest Waiver Agreement dated December 26, 2006.

1 Code: **3095**

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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,

Case No: CV07-00341  
(Consolidated with CV07-01021)

11  
12 vs.

Dept. No.: 10

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

18 Defendants.

19  
20 AND RELATED MATTERS.

21 **ORDER GRANTING THIRD-PARTY DEFENDANT HALE LANE'S MOTION FOR**  
22 **SUMMARY JUDGMENT REGARDING THIRD-PARTY CLAIMS BY JOHN ILIESCU**

23 Presently before the Court is a Motion for Summary Judgment Regarding Third-Party  
24 Claims by John Iliescu, filed by Third-Party Defendants HALE LANE PEEK DENNISON AND  
25 HOWARD PROFESSIONAL CORPORATION, KAREN D. DENNISON, R. CRAIG HOWARD, and  
26 JERRY M. SNYDER (hereinafter collectively referred to as "Defendants") on March 30, 2011.  
27 Following, on July 22, 2011, Defendants filed a Supplement to Third-Party Defendant Hale  
28 Lane's Motion for Summary Judgment Regarding Third-Party Claims by John Iliescu.

1           Thereafter, on August 18, 2011, Third-Party Plaintiffs JOHN ILIESCU, JR. and  
2 SONNIA ILIESCU, individually, and as Trustee of the John Ilescu, Jr. and Sonnia Ilescu  
3 1992 Family Trust (hereinafter collectively referred to as "Plaintiffs") filed an Opposition  
4 and Response to Third-Party Defendant Hale Lane's Motion for Summary Judgment  
5 Regarding Third-Party Claims by John Ilescu. Subsequently, on August 29, 2011,  
6 Defendants filed a Reply in Support of Motion for Summary Judgment Regarding Third-  
7 Party Claims by John Ilescu. Contemporaneously with their Reply, Defendants also filed a  
8 Request for Submission, thereby submitting the matter for the Court's consideration. Later  
9 that same day, Plaintiffs filed an Opposition to Supplement to Third-Party Defendant Hale  
10 Lane's Motion for Summary Judgment Regarding Third-Party Claims by John Ilescu.

11           **I. Factual & Procedural Background**

12           This matter comes before the Court as the result of a 2005 property transaction that  
13 fell through, involving a parcel of property located in downtown Reno, which Plaintiffs  
14 owned and was to be developed by a group of developers headed by Consolidated Pacific  
15 Development, Inc. (hereinafter "Developers"). As part of that transaction, Plaintiffs agreed  
16 to sell the parcel of property at issue to the Developers, who would then use the property  
17 to construct a high-rise condominium project known as Wingfield Tower.

18           The Developers first contacted Plaintiffs about purchasing the parcel of property in  
19 July of 2005, when the Developers contacted Plaintiffs through their broker, Sam Canglia.  
20 Following this contact, on July 29, 2005, the Developers and Plaintiffs, acting without the  
21 assistance of counsel, executed a form agreement prepared by Dick Johnson in order to  
22 facilitate the sale of the property. That contract provided that Developers would purchase  
23 the property from Plaintiffs for \$7.5 million, with a \$500,000 non-refundable cash deposit  
24 to be paid to Plaintiffs in advance, as well as Plaintiffs receiving a 3,750 square foot  
25 penthouse and four parking spaces, valued at \$2.2 million, upon the completion of  
26 construction. However, the sale was contingent upon Developers obtaining the necessary  
27 entitlement and permits from the City of Reno, with which Plaintiffs were to assist.  
28 Furthermore, the Contract afforded Developers 270 days to obtain the requisite

1 entitlements, while allowing an extension of time at the cost of \$50,000 per 30 days;  
2 otherwise, the Developers would forfeit their \$500,000 deposit.

3       Following the execution of the form contract, the Parties realized that it was  
4 inadequate for the magnitude of the deal they were entering into. Consequently, the  
5 Parties elected to hire legal counsel to assist in supplementing the contract. As a result,  
6 Dick Johnson brought the contract to Ms. Dennison, who then prepared Addendum No. 3,  
7 which sought to clarify the contract and its terms. Included in these clarifications was a  
8 clause that recognized obtaining the necessary entitlements was a condition precedent to  
9 the completion of the sale, and that the Developers would use their "best efforts and  
10 reasonable diligence to satisfy all Conditions Precedent." Addendum No. 3 further specified  
11 Plaintiffs' interest in completing the sale because of their ability to select the penthouse of  
12 their choice. Following, on October 8, 2005, the Parties executed Addendum No. 3.

13       Thereafter, the Developers sought an architect to help in obtaining the required  
14 entitlements. In doing so, the Developers hired Fisher Friedman & Associates, to design  
15 the building, prepare the architectural plans, and present the information to the Reno City  
16 Council for approval, which it did. Nevertheless, during this process, Plaintiffs signed a  
17 conflict waiver permitting Defendants to assist Developers in obtaining the necessary  
18 entitlements. Moreover, Plaintiffs actively participated in the application process by  
19 submitting an affidavit permitting Developers to submit an application to the City of Reno  
20 on Plaintiffs' behalf and by attending all public hearings on the matter. Subsequently, the  
21 City acted to approve the project and authorized the necessary entitlements.

22       Then, some sixteen months following the commencement of the project, Developers  
23 defaulted when they were unable to obtain the necessary financing to conclude the sale of  
24 the property. As a consequence of this default, Developers were unable to pay Fisher  
25 Friedman & Associates for the services rendered. This caused Fisher Friedman &  
26 Associates to file a \$1.8 million mechanics lien against the property.

27       Following the recording of this lien, the Parties approached Defendants to help  
28 resolve the issue. In doing so, the Parties executed a second conflict waiver. Defendants

1 then brokered an indemnity agreement between the Parties, whereby Developers,  
2 including Co-Third Party Defendant John Schleining, agreed to indemnify Plaintiffs against  
3 any harm that might occur as a result of the lien. Furthermore, the indemnity agreement  
4 also provided that Developers would work to discharge the lien on Plaintiffs' behalf at no  
5 expense to Plaintiffs. As a result, acting on Plaintiffs' behalf, Defendants then filed an  
6 application for release of the lien. This in turn caused Fisher Friedman & Associates to file  
7 a complaint against Plaintiffs in order to foreclose on the lien.

8 Subsequently, on September 27, 2007, Plaintiffs filed their third-party complaint  
9 against Defendants, alleging causes of action for legal malpractice and negligence.  
10 Plaintiffs premised their third-party complaint on allegations that Defendants committed  
11 legal malpractice by failing to file a Notice of Nonresponsibility pursuant to NRS 108.234.  
12 Defendants have now moved for summary judgment on the matter, arguing that Plaintiffs'  
13 claims fail as a matter of law, as there is no evidence of causation or that Plaintiffs suffered  
14 damages. Moreover, Defendants assert that because Plaintiffs executed two conflict  
15 waivers, any claim relating to a conflict of interest must fail. Finally, Defendants assert that  
16 the Court should dismiss Plaintiffs' claims for failure to comply with NRCP 16.1.

## 17 **II. Standard of Review**

18 A court should only grant summary judgment when, based upon the pleadings and  
19 discovery on file, no genuine issue of material fact exists for trial and the moving party is  
20 entitled to judgment as a matter of law. NRCP 56(c). A genuine issue of material fact  
21 exists when a reasonable jury could return a verdict in favor of the nonmoving party.  
22 *Kopicko v. Young*, 114 Nev. 1333, 1336, 971 P.2d 789, 790 (1998). Summary judgment is  
23 properly regarded not as a disfavored procedural shortcut, but rather as an integral part of  
24 civil procedure as a whole. *Celotex Corp. v. Catrett*, 477 U.S. 317, 327, 106 S.Ct. 2548,  
25 2555 (1986).

26 In reviewing a motion for summary judgment, the Court must view the evidence,  
27 and any reasonable inference drawn there from, in the light most favorable to the  
28 nonmoving party. *Lipps v. S. Nev. Paving*, 116 Nev. 497, 498, 998 P.2d 1183, 1184

1 (2000). However, the nonmoving party may not avoid summary judgment by relying "on  
2 the gossamer threads of whimsy, speculation, and conjecture." *Pegasus v. Reno*  
3 *Newspapers, Inc.*, 118 Nev. 706, 713-14, 57 P.3d 82, 87 (2002) (quoting *Collins v. Union*  
4 *Fed. Sav. & Loan*, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983). Rather, the nonmoving  
5 party must, by affidavit or otherwise, set forth specific facts demonstrating the existence of  
6 a genuine issue for trial. *Pegasus*, 118 Nev. at 713, 57 P.3d at 87.

### 7 **III. Legal Analysis**

8 As noted above, Defendants presently seek an order from the Court granting  
9 summary judgment on Plaintiffs' claims for legal malpractice and negligence. Specifically,  
10 Defendants argue that the claims of Plaintiffs fail as a matter of law because Plaintiffs were  
11 not eligible to file a Notice of Nonresponsibility as they were "Interested Owners," and  
12 thus, no evidence of causation exists. In addition, Defendants assert that even if Plaintiffs  
13 were not "Interested Owners," no evidence of damages exists because Plaintiffs received a  
14 substantial benefit from the actions of Fisher Friedman & Associates, and because  
15 Defendants and Mr. Schleining have reached an agreement releasing the lien without any  
16 cost to Plaintiffs. Furthermore, Defendants assert that because Plaintiffs executed two  
17 conflict waivers, any claim relating to a conflict of interest must fail. Finally, as an  
18 alternative theory, Defendants assert that pursuant to NRCP 16.1(e), the Court should  
19 dismiss Plaintiffs' claims as Plaintiffs failed to file a case conference report within 240 days  
20 following Defendants' appearance as required by NRCP 16.1(c).

21 In opposition to Defendants' arguments, Plaintiffs merely assert that Defendants  
22 breached the legal duties owed to Plaintiffs by failing to advise Plaintiffs to avoid actively  
23 participating in the sale of the property. In addition, Plaintiffs assert that the Court should  
24 not dismiss their claims pursuant to NRCP 16.1 because this matter has been ongoing for  
25 the past four years and there is still time to hold a case conference report. The Court will  
26 address each matter as follows:

27 ///

28 ///

1                   **a. Conflict of Interest**

2           As it pertains to Plaintiffs' claims regarding a conflict of interest, Defendants argue  
3 that such claims must fail as a matter of law because Plaintiffs suffered no compensable  
4 harm as a result of the conflict and because Plaintiffs knowingly executed two conflict  
5 waivers in accordance with NRPC 1.7(b), waving the conflict of which Plaintiffs now  
6 complain. To this argument, Plaintiffs have not raised any opposition. Accordingly, the  
7 Court must find that Defendants' Motion, as it relates to the conflict of interest claims, is  
8 meritorious. Accordingly, to the extent Defendants seek summary judgment on this issue,  
9 their Motion shall be granted.

10                   **b. Legal Malpractice & Negligence**

11           In order to recover under the theories of legal malpractice and negligence, Plaintiffs  
12 must demonstrate: (1) the existence of an attorney client relationship; (2) a duty owed to  
13 the client by the attorney to use such skill prudence, and diligence as lawyers of ordinary  
14 skill and capacity possess in exercising and performing the tasks which they undertake; (3)  
15 a breach of that duty; (4) that the lawyer's negligence was the proximate cause of the  
16 client's damages; and (5) actual loss or damage resulting from the negligence. *Mainor v.*  
17 *Nault*, 120 Nev. 750, 774, 101 P.3d 308, 324 (2004). Accordingly, where there is no  
18 evidence of causation or damages, a claim for legal malpractice or negligence must fail as  
19 a matter of law.

20           In the instant case, Plaintiffs assert that Defendants breached the duty of care owed  
21 to Plaintiffs by failing to file a Notice of Nonresponsibility and by failing to advise Plaintiffs  
22 not to actively participate in the sale of the property at issue. Plaintiffs further assert that  
23 this caused them to suffer damages, in that Defendants' failure permitted Fisher Friedman  
24 & Associates to file a lien against Plaintiffs' property and forced Plaintiffs to incur the legal  
25 expenses of fighting that lien. In contrast, Defendants assert that when they became  
26 involved in the matter, Plaintiffs had already become active participants in the sale of the  
27 property, and therefore, there is nothing Defendants could have done to protect Plaintiffs'  
28 interests. Accordingly, the proper question before the Court is whether Plaintiffs were

1 eligible for the protections afforded by a Notice of Nonresponsibility at the time Defendants  
2 became involved in the case.

3 Pursuant to NRS 108.234(2), a "disinterested owner" can avoid a lien from attaching  
4 to his property by filing a Notice of Nonresponsibility within three days after learning that  
5 improvements are being made to his property. However, in order to qualify as a  
6 "disinterested owner" the property owner must be one who: "(a) Does not record a notice  
7 of waiver as provided in NRS 108.2405; and (b) Does not personally or through an agent  
8 or representative, directly or indirectly, contract for or cause a work of improvement, or  
9 any portion thereof, to be constructed, altered or repaired upon the property or an  
10 improvement of the owner." NRS 108.234(7).

11 As applied to the instant matter, this Court must find that Plaintiffs were no longer  
12 "disinterested owners" at the time Defendants became involved in the case. This is  
13 because the undisputed evidence before the Court demonstrates that Plaintiffs entered into  
14 a contract with Developers for improvements to the property even before Defendants  
15 became involved in the matter. Plaintiffs negotiated and signed this contract by  
16 themselves. Furthermore, that contract contained language that required Plaintiffs to  
17 participate actively in the development of the property. Specifically, the language within  
18 the original contract made the offer contingent upon obtaining the necessary government  
19 approvals, with which Plaintiffs were required to assist. Moreover, the Court will note that  
20 as a result of those negotiations, Plaintiffs were to receive some \$7.5 million in payments  
21 and a penthouse valued at approximately \$2.2 million. Accordingly, these actions clearly  
22 demonstrate that Plaintiffs personally contracted for and were to benefit from the  
23 improvements to their property, thus making Plaintiffs "interested owners" before  
24 Defendants had any part in the matter.

25 It was only after Plaintiffs and Developers completed their negotiations that  
26 Defendants became involved in the matter in order to "fine tune" the agreement.  
27 However, because Plaintiffs had already become "interested owners" at that point in time,  
28 there is nothing Defendants could have said or done to avoid the existing contract. *See*

1 *Howard S. Wright Construction Co. v. Superior Court*, 106 Cal.App.4th 314, 321, 130  
2 Cal.Rptr.2d 641 (2003); *see also Verdi Lumber Co. v. Bartlett*, 40 Nev. 317, 161 P. 933,  
3 934-35 (1916). Therefore, the Court must conclude that Defendants' alleged malpractice  
4 was not the cause of Plaintiffs' injuries. Furthermore, there is nothing more Plaintiffs could  
5 allege to fix this problem. Consequently, the Court believes that the grant of summary  
6 judgment in favor of Defendants is appropriate.

7 **c. NRCP 16.1**

8 As a final matter, the Court will turn its attention to those NRCP 16.1 arguments  
9 raised by Defendants. Under this rule, once the parties hold their early case conference,  
10 the plaintiff must file a case conference report within 30 days thereof. NRCP 16.1(c); *see*  
11 *also Moon v. McDonald Carano & Wilson*, 245 P.3d 1138, 1139 (Nev. 2010). If the plaintiff  
12 fails to make such a filing within 240 days following the defendant's first appearance, upon  
13 motion or its own initiative, the Court may dismiss the case without prejudice as to that  
14 defendant. NRCP 16.1 (e)(2).

15 As applied to the instant matter, this Court must find that the claims of Plaintiffs are  
16 subject to dismissal pursuant to NRCP 16.1(e)(2). As the Court recognized above, it was  
17 on September 27, 2007, that Plaintiffs filed their third-party complaint against Defendants.  
18 However, because of a stipulation between the Parties, Defendants did not file their answer  
19 until October 7, 2009. Based on this date, Plaintiffs had at the latest, until June 4, 2010, to  
20 file their case conference report. Nevertheless, as of August 30, 2011, Plaintiffs have yet  
21 to file the required report. Accordingly, more than 690 days have passed since Defendants'  
22 appearance without Plaintiffs having filed their case conference report as required by NRCP  
23 16.1(c). Furthermore, Plaintiffs have not offered a single reason for their failure to do so.  
24 Instead, Plaintiffs merely assert that this matter has been ongoing for more than four years  
25 and that there is still time to file a report following another case conference. In the Court's  
26 view, such an argument is unpersuasive and fails to justify Plaintiffs' failure. Given this  
27 analysis, the Court is inclined to grant Defendants' Motion.

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**CERTIFICATE OF MAILING**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

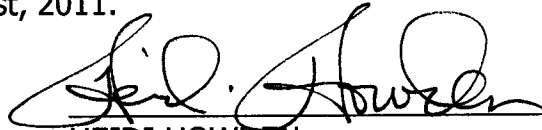
GREGORY WILSON, ESQ. for JOHN SCHLEINING

THOMAS HALL, ESQ. for TRUSTEE OF THE JOHN ILIESCU, JR. & SONNIA ILLIESCU, JOHN ILIESCU, JR., SONNIA ILIESCU

DAVID GRUNDY, ESQ. for KAREN DENNISON, HOLLAND & HART, LLP, JERRY SNYDER, R. HOWARD, HALE LANE PEEK DENNISON HOWARD

MICHAEL HOY, ESQ. for MARK STEPPAN

**DATED** this 31 day of August, 2011.



HEIDI HOWDEN  
Judicial Assistant

1 **2645**

2 David R. Grundy, Esq., NSB #864  
3 Christopher Rusby, Esq., NSB #11452  
4 Lemons, Grundy & Eisenberg  
5 6005 Plumas Street, Third Floor  
6 Reno, Nevada 89519  
7 (775) 786-6868

8 Attorneys for Third Party Defendant

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  
16 SONNIA ILIESCU 1992 FAMILY TRUST  
17 AGREEMENT; JOHN ILIESCU, individually;  
18 DOES I-V, inclusive; and ROE CORPORATIONS  
19 VI-X, inclusive,

20 Defendants.

21 AND RELATED CLAIMS

CONSOLIDATED

Case No. CV07-00341

Dept. No.: 10

**THIRD PARTY DEFENDANT HALE LANE'S  
OPPOSITION TO MOTION TO AMEND  
THIRD-PARTY COMPLAINT BY JOHN AND  
SONNIA ILIESCU**

22 Third Party Defendant, HALE LANE PEEK DENNISON AND HOWARD PROFESSIONAL  
23 CORPORATION, KAREN D. DENNISON, R. CRAIG HOWARD, and JERRY M. SNYDER (collectively,  
24 "Hale Lane"), by and through their undersigned attorneys, Lemons, Grundy & Eisenberg,  
25 hereby submit their opposition to third-party plaintiffs motion to amend their third-party  
26 complaint. This opposition is based on the following Memorandum of Points and Authorities  
27 and upon such other matters as the court may consider.

28 ///

///

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. PROCEDURALLY, THIS COURT'S SEPTEMBER 1, 2011 ORDER GRANTING SUMMARY**  
3 **JUDGMENT RENDERS ILIESCU'S PRESENT MOTION TO AMEND MOOT AND FUTILE**

4 As the court is aware, on March 30, 2011, Hale Lane filed a motion for summary  
5 judgment on the third-party claims asserted by Iliescu. Iliescu filed the present motion amend  
6 in conjunction with his opposition to the motion for summary judgment on August 18, 2011.  
7 Iliescu's present motion to amend is merely an attempt to recast the allegations in different  
8 terms consistent with the legal arguments asserted in his opposition to the motion for  
9 summary judgment, but does not substantively change the nature of his claims.

10 On September 1, 2011, the court granted summary judgment on all his claims for  
11 relief. In the order, the court made certain findings of fact and conclusions of law which  
12 render Iliescu's present motion to amend moot and futile. For instance, the court found that  
13 based upon the undisputed evidence, Iliescu entered into the contract at issue by himself,  
14 before any involvement by Hale Lane. (September 1, 2011 Order, p. 7, attached as **Exhibit 1.**)  
15 The court then found that by entering into this contract, Iliescu became an "interested owner"  
16 and could not invoke the protection of NRS 108.234. (*Id.*) The court also found that because  
17 Iliescu became an "interested owner" before Hale Lane had any part in the matter, its alleged  
18 malpractice could not have caused Iliescu's injuries. (*Id.*, p. 8.) Thus, the court found that  
19 summary judgment was appropriate. (*Id.*)

20 Iliescu's present motion to amend is based on the same arguments put forth in his  
21 opposition to the motion for summary. Accordingly, the court's order granting summary  
22 judgment renders the motion to amend moot and futile. *See e.g. Lindgren v. Kan. Animal*  
23 *Health Dept.*, 2011 WL 3794279 (D.Kan. 2011). The court expressly recognized this when it  
24 concluded "there is nothing more Plaintiffs could allege to fix this problem."

25 **II. SUBSTANTIVELY, ILIESCU'S MOTION TO AMEND DOES NOT CURE THE DEFICIENCIES**  
26 **IN HIS ALLEGATIONS**

27 NRCP 15(a) provides that leave to amend a pleading "shall be freely given when justice  
28 so requires." Denial of leave to amend is proper when any proposed amendment would be

1 futile. *Allum v. Valley Bank of Nev.*, 109 Nev. 280, 287, 849 P.2d 297 (1993).

2 As discussed in Hale Lane's reply in support of the motion for summary judgment,  
3 Iliescu's motion to amend is futile because under no circumstances could Hale Lane have  
4 prevented a lien from being recorded against his property. In the interests of brevity and  
5 because Hale Lane has previously addressed all Iliescu's arguments, Hale Lane hereby  
6 incorporates in whole its August 29, 2011 reply in support of the motion for summary  
7 judgment. (See August 29, 2011 Reply, attached hereto as **Exhibit 2.**) The arguments asserted  
8 therein are dispositive on Iliescu's claims, to which no amendment could cure. Therefore,  
9 Iliescu's motion to amend should be denied.

10 **III. CONCLUSION**

11 For the foregoing reasons, third party defendant, Hale Lane respectfully requests that  
12 Iliescu's motion to amend be denied in its entirety.

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

15 DATED: September 6, 2011.

16 Lemons, Grundy & Eisenberg  
17 6005 Plumas Street, Third Floor  
18 Reno, Nevada 89519  
19 (775) 786-6868

20 By: 

21 David R. Grundy, Esq.  
22 Christopher Rusby, Esq.  
23 Attorneys for Third Party Defendant  
24 Hale Lane Peek Dennison and Howard  
25  
26  
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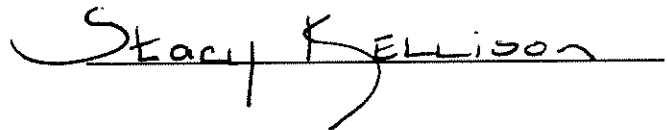
CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of Lemons, Grundy & Eisenberg and that on September 6, 2011, I e-filed a true and correct copy of the foregoing THIRD PARTY DEFENDANT HALE LANE'S OPPOSITION TO MOTION TO AMEND THIRD-PARTY COMPLAINT BY JOHN AND SONNIA ILIESCU with the Clerk of the Court through the Court's electronic filing system and notice will be sent electronically by the Court to the following:

Thomas J. Hall, Esq.  
305 South Arlington Ave.  
P.O. Box 3948  
Reno, Nevada 89505

Michael D. Hoy, Esq.  
4741 Caughlin Parkway, Suite Four  
Reno, Nevada 89519

Gregory Wilson, Esq.  
417 West Plumb Lane  
Reno, Nevada 89509



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EXHIBIT LIST

EXHIBIT #	DESCRIPTION	# OF PAGES
1	Order Granting Third-Party Defendant Hale Lane's Motion for Summary Judgment Regarding Third-Party Claims by John Iliescu	10
2	Third Party Defendant Hale Lane's Reply in Support of Motion for Summary Judgment Regarding Third-Party Claims by John Iliescu	9

# EXHIBIT 1

# EXHIBIT 1

FILED

Electronically  
09-01-2011:08:30:02 AM  
Howard W. Conyers  
Clerk of the Court  
Transaction # 2444422

Code: 3095

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

\* \* \*

MARK B. STEPPAN,

Plaintiff,

vs.

Case No: CV07-00341  
(Consolidated with CV07-01021)

Dept. No.: 10

JOHN ILIESCU, JR. and SONNIA 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.

AND RELATED MATTERS.

**ORDER GRANTING THIRD-PARTY DEFENDANT HALE LANE'S MOTION FOR  
SUMMARY JUDGMENT REGARDING THIRD-PARTY CLAIMS BY JOHN ILIESCU**

Presently before the Court is a Motion for Summary Judgment Regarding Third-Party Claims by John Iliescu, filed by Third-Party Defendants HALE LANE PEEK DENNISON AND HOWARD PROFESSIONAL CORPORATION, KAREN D. DENNISON, R. CRAIG HOWARD, and JERRY M. SNYDER (hereinafter collectively referred to as "Defendants") on March 30, 2011. Following, on July 22, 2011, Defendants filed a Supplement to Third-Party Defendant Hale Lane's Motion for Summary Judgment Regarding Third-Party Claims by John Iliescu.

1        Thereafter, on August 18, 2011, Third-Party Plaintiffs JOHN ILIESCU, JR. and  
2 SONNIA ILIESCU, individually, and as Trustee of the John Iliescu, Jr. and Sonnia Iliescu  
3 1992 Family Trust (hereinafter collectively referred to as "Plaintiffs") filed an Opposition  
4 and Response to Third-Party Defendant Hale Lane's Motion for Summary Judgment  
5 Regarding Third-Party Claims by John Iliescu. Subsequently, on August 29, 2011,  
6 Defendants filed a Reply in Support of Motion for Summary Judgment Regarding Third-  
7 Party Claims by John Iliescu. Contemporaneously with their Reply, Defendants also filed a  
8 Request for Submission, thereby submitting the matter for the Court's consideration. Later  
9 that same day, Plaintiffs filed an Opposition to Supplement to Third-Party Defendant Hale  
10 Lane's Motion for Summary Judgment Regarding Third-Party Claims by John Iliescu.

11        **I. Factual & Procedural Background**

12        This matter comes before the Court as the result of a 2005 property transaction that  
13 fell through, involving a parcel of property located in downtown Reno, which Plaintiffs  
14 owned and was to be developed by a group of developers headed by Consolidated Pacific  
15 Development, Inc. (hereinafter "Developers"). As part of that transaction, Plaintiffs agreed  
16 to sell the parcel of property at issue to the Developers, who would then use the property  
17 to construct a high-rise condominium project known as Wingfield Tower.

18        The Developers first contacted Plaintiffs about purchasing the parcel of property in  
19 July of 2005, when the Developers contacted Plaintiffs through their broker, Sam Canglia.  
20 Following this contact, on July 29, 2005, the Developers and Plaintiffs, acting without the  
21 assistance of counsel, executed a form agreement prepared by Dick Johnson in order to  
22 facilitate the sale of the property. That contract provided that Developers would purchase  
23 the property from Plaintiffs for \$7.5 million, with a \$500,000 non-refundable cash deposit  
24 to be paid to Plaintiffs in advance, as well as Plaintiffs receiving a 3,750 square foot  
25 penthouse and four parking spaces, valued at \$2.2 million, upon the completion of  
26 construction. However, the sale was contingent upon Developers obtaining the necessary  
27 entitlement and permits from the City of Reno, with which Plaintiffs were to assist.  
28 Furthermore, the Contract afforded Developers 270 days to obtain the requisite

1 entitlements, while allowing an extension of time at the cost of \$50,000 per 30 days;  
2 otherwise, the Developers would forfeit their \$500,000 deposit.

3       Following the execution of the form contract, the Parties realized that it was  
4 inadequate for the magnitude of the deal they were entering into. Consequently, the  
5 Parties elected to hire legal counsel to assist in supplementing the contract. As a result,  
6 Dick Johnson brought the contract to Ms. Dennison, who then prepared Addendum No. 3,  
7 which sought to clarify the contract and its terms. Included in these clarifications was a  
8 clause that recognized obtaining the necessary entitlements was a condition precedent to  
9 the completion of the sale, and that the Developers would use their "best efforts and  
10 reasonable diligence to satisfy all Conditions Precedent." Addendum No. 3 further specified  
11 Plaintiffs' interest in completing the sale because of their ability to select the penthouse of  
12 their choice. Following, on October 8, 2005, the Parties executed Addendum No. 3.

13       Thereafter, the Developers sought an architect to help in obtaining the required  
14 entitlements. In doing so, the Developers hired Fisher Friedman & Associates, to design  
15 the building, prepare the architectural plans, and present the information to the Reno City  
16 Council for approval, which it did. Nevertheless, during this process, Plaintiffs signed a  
17 conflict waiver permitting Defendants to assist Developers in obtaining the necessary  
18 entitlements. Moreover, Plaintiffs actively participated in the application process by  
19 submitting an affidavit permitting Developers to submit an application to the City of Reno  
20 on Plaintiffs' behalf and by attending all public hearings on the matter. Subsequently, the  
21 City acted to approve the project and authorized the necessary entitlements.

22       Then, some sixteen months following the commencement of the project, Developers  
23 defaulted when they were unable to obtain the necessary financing to conclude the sale of  
24 the property. As a consequence of this default, Developers were unable to pay Fisher  
25 Friedman & Associates for the services rendered. This caused Fisher Friedman &  
26 Associates to file a \$1.8 million mechanics lien against the property.

27       Following the recording of this lien, the Parties approached Defendants to help  
28 resolve the issue. In doing so, the Parties executed a second conflict waiver. Defendants

1 then brokered an indemnity agreement between the Parties, whereby Developers,  
2 including Co-Third Party Defendant John Schleining, agreed to indemnify Plaintiffs against  
3 any harm that might occur as a result of the lien. Furthermore, the indemnity agreement  
4 also provided that Developers would work to discharge the lien on Plaintiffs' behalf at no  
5 expense to Plaintiffs. As a result, acting on Plaintiffs' behalf, Defendants then filed an  
6 application for release of the lien. This in turn caused Fisher Friedman & Associates to file  
7 a complaint against Plaintiffs in order to foreclose on the lien.

8 Subsequently, on September 27, 2007, Plaintiffs filed their third-party complaint  
9 against Defendants, alleging causes of action for legal malpractice and negligence.  
10 Plaintiffs premised their third-party complaint on allegations that Defendants committed  
11 legal malpractice by failing to file a Notice of Nonresponsibility pursuant to NRS 108.234.  
12 Defendants have now moved for summary judgment on the matter, arguing that Plaintiffs'  
13 claims fail as a matter of law, as there is no evidence of causation or that Plaintiffs suffered  
14 damages. Moreover, Defendants assert that because Plaintiffs executed two conflict  
15 waivers, any claim relating to a conflict of interest must fail. Finally, Defendants assert that  
16 the Court should dismiss Plaintiffs' claims for failure to comply with NRCP 16.1.

## 17 **II. Standard of Review**

18 A court should only grant summary judgment when, based upon the pleadings and  
19 discovery on file, no genuine issue of material fact exists for trial and the moving party is  
20 entitled to judgment as a matter of law. NRCP 56(c). A genuine issue of material fact  
21 exists when a reasonable jury could return a verdict in favor of the nonmoving party.  
22 *Kopicko v. Young*, 114 Nev. 1333, 1336, 971 P.2d 789, 790 (1998). Summary judgment is  
23 properly regarded not as a disfavored procedural shortcut, but rather as an integral part of  
24 civil procedure as a whole. *Celotex Corp. v. Catrett*, 477 U.S. 317, 327, 106 S.Ct. 2548,  
25 2555 (1986).

26 In reviewing a motion for summary judgment, the Court must view the evidence,  
27 and any reasonable inference drawn there from, in the light most favorable to the  
28 nonmoving party. *Lipps v. S. Nev. Paving*, 116 Nev. 497, 498, 998 P.2d 1183, 1184

1 (2000). However, the nonmoving party may not avoid summary judgment by relying "on  
2 the gossamer threads of whimsy, speculation, and conjecture." *Pegasus v. Reno*  
3 *Newspapers, Inc.*, 118 Nev. 706, 713-14, 57 P.3d 82, 87 (2002) (quoting *Collins v. Union*  
4 *Fed. Sav. & Loan*, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983). Rather, the nonmoving  
5 party must, by affidavit or otherwise, set forth specific facts demonstrating the existence of  
6 a genuine issue for trial. *Pegasus*, 118 Nev. at 713, 57 P.3d at 87.

### 7 **III. Legal Analysis**

8 As noted above, Defendants presently seek an order from the Court granting  
9 summary judgment on Plaintiffs' claims for legal malpractice and negligence. Specifically,  
10 Defendants argue that the claims of Plaintiffs fail as a matter of law because Plaintiffs were  
11 not eligible to file a Notice of Nonresponsibility as they were "Interested Owners," and  
12 thus, no evidence of causation exists. In addition, Defendants assert that even if Plaintiffs  
13 were not "Interested Owners," no evidence of damages exists because Plaintiffs received a  
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15 Defendants and Mr. Schleining have reached an agreement releasing the lien without any  
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19 dismiss Plaintiffs' claims as Plaintiffs failed to file a case conference report within 240 days  
20 following Defendants' appearance as required by NRCP 16.1(c).

21 In opposition to Defendants' arguments, Plaintiffs merely assert that Defendants  
22 breached the legal duties owed to Plaintiffs by failing to advise Plaintiffs to avoid actively  
23 participating in the sale of the property. In addition, Plaintiffs assert that the Court should  
24 not dismiss their claims pursuant to NRCP 16.1 because this matter has been ongoing for  
25 the past four years and there is still time to hold a case conference report. The Court will  
26 address each matter as follows:

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1                   **a. Conflict of Interest**

2           As it pertains to Plaintiffs' claims regarding a conflict of interest, Defendants argue  
3 that such claims must fail as a matter of law because Plaintiffs suffered no compensable  
4 harm as a result of the conflict and because Plaintiffs knowingly executed two conflict  
5 waivers in accordance with NRPC 1.7(b), waving the conflict of which Plaintiffs now  
6 complain. To this argument, Plaintiffs have not raised any opposition. Accordingly, the  
7 Court must find that Defendants' Motion, as it relates to the conflict of interest claims, is  
8 meritorious. Accordingly, to the extent Defendants seek summary judgment on this issue,  
9 their Motion shall be granted.

10                   **b. Legal Malpractice & Negligence**

11           In order to recover under the theories of legal malpractice and negligence, Plaintiffs  
12 must demonstrate: (1) the existence of an attorney client relationship; (2) a duty owed to  
13 the client by the attorney to use such skill prudence, and diligence as lawyers of ordinary  
14 skill and capacity possess in exercising and performing the tasks which they undertake; (3)  
15 a breach of that duty; (4) that the lawyer's negligence was the proximate cause of the  
16 client's damages; and (5) actual loss or damage resulting from the negligence. *Mainor v.*  
17 *Nault*, 120 Nev. 750, 774, 101 P.3d 308, 324 (2004). Accordingly, where there is no  
18 evidence of causation or damages, a claim for legal malpractice or negligence must fail as  
19 a matter of law.

20           In the instant case, Plaintiffs assert that Defendants breached the duty of care owed  
21 to Plaintiffs by failing to file a Notice of Nonresponsibility and by failing to advise Plaintiffs  
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23 this caused them to suffer damages, in that Defendants' failure permitted Fisher Friedman  
24 & Associates to file a lien against Plaintiffs' property and forced Plaintiffs to incur the legal  
25 expenses of fighting that lien. In contrast, Defendants assert that when they became  
26 involved in the matter, Plaintiffs had already become active participants in the sale of the  
27 property, and therefore, there is nothing Defendants could have done to protect Plaintiffs'  
28 interests. Accordingly, the proper question before the Court is whether Plaintiffs were

1 eligible for the protections afforded by a Notice of Nonresponsibility at the time Defendants  
2 became involved in the case.

3 Pursuant to NRS 108.234(2), a "disinterested owner" can avoid a lien from attaching  
4 to his property by filing a Notice of Nonresponsibility within three days after learning that  
5 improvements are being made to his property. However, in order to qualify as a  
6 "disinterested owner" the property owner must be one who: "(a) Does not record a notice  
7 of waiver as provided in NRS 108.2405; and (b) Does not personally or through an agent  
8 or representative, directly or indirectly, contract for or cause a work of improvement, or  
9 any portion thereof, to be constructed, altered or repaired upon the property or an  
10 improvement of the owner." NRS 108.234(7).

11 As applied to the instant matter, this Court must find that Plaintiffs were no longer  
12 "disinterested owners" at the time Defendants became involved in the case. This is  
13 because the undisputed evidence before the Court demonstrates that Plaintiffs entered into  
14 a contract with Developers for improvements to the property even before Defendants  
15 became involved in the matter. Plaintiffs negotiated and signed this contract by  
16 themselves. Furthermore, that contract contained language that required Plaintiffs to  
17 participate actively in the development of the property. Specifically, the language within  
18 the original contract made the offer contingent upon obtaining the necessary government  
19 approvals, with which Plaintiffs were required to assist. Moreover, the Court will note that  
20 as a result of those negotiations, Plaintiffs were to receive some \$7.5 million in payments  
21 and a penthouse valued at approximately \$2.2 million. Accordingly, these actions clearly  
22 demonstrate that Plaintiffs personally contracted for and were to benefit from the  
23 improvements to their property, thus making Plaintiffs "interested owners" before  
24 Defendants had any part in the matter.

25 It was only after Plaintiffs and Developers completed their negotiations that  
26 Defendants became involved in the matter in order to "fine tune" the agreement.  
27 However, because Plaintiffs had already become "interested owners" at that point in time,  
28 there is nothing Defendants could have said or done to avoid the existing contract. *See*

1 *Howard S. Wright Construction Co. v. Superior Court*, 106 Cal.App.4th 314, 321, 130  
2 Cal.Rptr.2d 641 (2003); *see also Verdi Lumber Co. v. Bartlett*, 40 Nev. 317, 161 P. 933,  
3 934-35 (1916). Therefore, the Court must conclude that Defendants' alleged malpractice  
4 was not the cause of Plaintiffs' injuries. Furthermore, there is nothing more Plaintiffs could  
5 allege to fix this problem. Consequently, the Court believes that the grant of summary  
6 judgment in favor of Defendants is appropriate.

7 **c. NRCP 16.1**

8 As a final matter, the Court will turn its attention to those NRCP 16.1 arguments  
9 raised by Defendants. Under this rule, once the parties hold their early case conference,  
10 the plaintiff must file a case conference report within 30 days thereof. NRCP 16.1(c); *see*  
11 *also Moon v. McDonald Carano & Wilson*, 245 P.3d 1138, 1139 (Nev. 2010). If the plaintiff  
12 fails to make such a filing within 240 days following the defendant's first appearance, upon  
13 motion or its own initiative, the Court may dismiss the case without prejudice as to that  
14 defendant. NRCP 16.1 (e)(2).

15 As applied to the instant matter, this Court must find that the claims of Plaintiffs are  
16 subject to dismissal pursuant to NRCP 16.1(e)(2). As the Court recognized above, it was  
17 on September 27, 2007, that Plaintiffs filed their third-party complaint against Defendants.  
18 However, because of a stipulation between the Parties, Defendants did not file their answer  
19 until October 7, 2009. Based on this date, Plaintiffs had at the latest, until June 4, 2010, to  
20 file their case conference report. Nevertheless, as of August 30, 2011, Plaintiffs have yet  
21 to file the required report. Accordingly, more than 690 days have passed since Defendants'  
22 appearance without Plaintiffs having filed their case conference report as required by NRCP  
23 16.1(c). Furthermore, Plaintiffs have not offered a single reason for their failure to do so.  
24 Instead, Plaintiffs merely assert that this matter has been ongoing for more than four years  
25 and that there is still time to file a report following another case conference. In the Court's  
26 view, such an argument is unpersuasive and fails to justify Plaintiffs' failure. Given this  
27 analysis, the Court is inclined to grant Defendants' Motion.


28 ///

#### IV. Conclusion

After reviewing the Parties' arguments, this Court must conclude that the undisputed evidence, when viewed in the light most favorable to Plaintiffs, demonstrates that Defendants' Motion should be granted in its entirety. Accordingly, the Court shall enter the following order:

**NOW, THEREFORE, IT IS HEREBY ORDERED** that Defendants' Motion for Summary Judgment Regarding Third-Party Claims by John Iliescu is **GRANTED**.

**DATED** this 31 day of August 2011.

  
STEVEN P. ELLIOTT  
District Judge

**CERTIFICATE OF MAILING**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

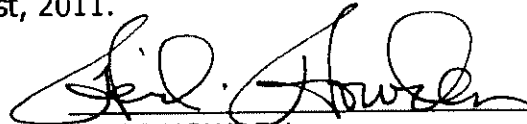
GREGORY WILSON, ESQ. for JOHN SCHLEINING

THOMAS HALL, ESQ. for TRUSTEE OF THE JOHN ILIESCU, JR. & SONNIA ILLIESCU, JOHN ILIESCU, JR., SONNIA ILIESCU

DAVID GRUNDY, ESQ. for KAREN DENNISON, HOLLAND & HART, LLP, JERRY SNYDER, R. HOWARD, HALE LANE PEEK DENNISON HOWARD

MICHAEL HOY, ESQ. for MARK STEPPAN

**DATED** this 31 day of August, 2011.



HEIDI HOWDEN  
Judicial Assistant

**FILED**

Electronically

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Howard W. Conyers

Clerk of the Court

Transaction # 2450897

**EXHIBIT 2**

**EXHIBIT 2**

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Clerk of the Court  
Transaction # 2435606

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David R. Grundy, Esq., NSB #864  
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Attorneys for Third Party Defendant

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

**IN AND FOR THE COUNTY OF WASHOE**

MARK B. STEPPAN,

Plaintiff,

vs.

JOHN ILIESCU JR. and SONNIA 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.

AND RELATED CLAIMS

CONSOLIDATED

Case No. CV07-00341

Dept. No.: 10

**THIRD PARTY DEFENDANT HALE LANE'S  
REPLY IN SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT REGARDING  
THIRD-PARTY CLAIMS BY JOHN ILIESCU**

Third Party Defendant, HALE LANE PEEK DENNISON AND HOWARD PROFESSIONAL CORPORATION, KAREN D. DENNISON, R. CRAIG HOWARD, and JERRY M. SNYDER (collectively, "Hale Lane"), by and through their undersigned attorneys, Lemons, Grundy & Eisenberg, hereby submit their reply in support of their motion for summary judgment filed on March 30, 2011. This reply is based on the following Memorandum of Points and Authorities and upon such other matters as the court may consider.

///

///

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1 wholly fails to address other independent dispositive grounds for summary judgment. Where  
2 Iliescu does attempt to draw distinctions, his analysis falls short of identifying any factual  
3 disputes that would preclude summary judgment. Because the essential elements of  
4 causation and damages are clearly lacking, Hale Lane is entitled to judgment as a matter of  
5 law.

6 **I. OBJECTIONS**

7 **1. Iliescu's affidavit should be excluded or otherwise disregarded by the court  
because Iliescu has failed to comply with NRCP 16.1(a)**

8 Iliescu attaches an affidavit by himself in support of his opposition to summary  
9 judgment. (Iliescu Opposition, Exhibit 1.) Iliescu should be prohibited from submitting this  
10 affidavit or otherwise testifying in this matter pursuant to NRCP 16.1(e)(3)(B), because he has  
11 not been disclosed as a witness in this case.

12 NRCP 16.1(a) provides that a party must, without awaiting a discovery request,  
13 disclose and identify all witnesses that have discoverable information and who may be called  
14 to testify at trial. If a party or their lawyer fails to reasonably comply with NRCP 16.1(a), the  
15 court shall impose upon the party appropriate sanctions, including an order prohibiting the  
16 use of any witness who should have been disclosed pursuant to NRCP 16.1(a). NRCP  
17 16.1(e)(3)(B).

18 Here, Iliescu has never served formal NRCP 16.1(a) initial disclosures upon Hale Lane.  
19 (See Affidavit of Chris Rusby, ¶ , attached as Exhibit 17.) Dr. John Iliescu has therefore never  
20 been disclosed as a potential witness by Iliescu in this case. Because Dr. John Iliescu, or any  
21 other witness for that matter, has not been disclosed by Iliescu, he should be prohibited from  
22 offering witness testimony in opposition to Hale Lane's motion for summary judgment or at  
23 trial. NRCP 16.1(e)(3)(B).

24 **2. Iliescu has waived the arguments in his opposition by failing to cite any  
25 authority in support thereof**

26 Both DCR 13(3) and WDCR 12(2) require a party to support an opposition to a motion  
27 with citation to facts and legal authority. The absence of such support "may be construed as  
28 an admission that the motion is meritorious and a consent to granting the same." DCR 13(3).

1 Even though Iliescu is making legal arguments which he contends preclude summary  
2 judgment, not a single case is referenced or cited in Iliescu's opposition. Such arguments  
3 should be disregarded by the court and should be deemed waived. *U.S. v. Calabrese*, 825 F.2d  
4 1342, 1346-47 (9th Cir. 1987) (failure to support argument by reason or authority waived  
5 argument).

6 **II. ILIESCU HAS FAILED TO OPPOSE HALE LANE'S MOTION IN SEVERAL RESPECTS**

7 **1. Iliescu Does Not Oppose Dismissal of His Action for Failure to Comply with**  
8 **NRCP 16.1(c)**

9 On July 22, 2011 Hale Lane filed supplemental points and authorities in support of its  
10 motion for summary judgment. (See Supplement to Motion for Summary Judgment, on file  
11 with the court.) Iliescu had not responded to the motion at the time, even though the motion  
12 had been filed 114 days prior.

13 The supplemental points and authorities cited NRCP 16.1(e)(2) as another independent  
14 and dispositive ground for dismissal. According to NRCP 16.1(e)(2), "if the plaintiff does not  
15 file a case conference report within 240 days after an appearance by a defendant, the case  
16 may be dismissed as to that defendant." The supplemental points and authorities  
17 demonstrated that more than 640 days had lapsed since Hale Lane filed its answer in this case  
18 and Iliescu had not filed a case conference report. To this day, Iliescu still has not filed a case  
19 conference report. Accordingly, Iliescu's claims should be dismissed pursuant to NRCP  
20 16.1(e)(2). *See also Moon v. McDonald, Carano & Wilson*, 126 Nev. \_\_\_, 245 P.3d 1138, 1139  
21 (2010); and *Arnold v. Kip*, 123 Nev. 410, 414, 168 P.3d 1050 (2007).

22 Despite being served with a copy of the supplemental points and authorities and the  
23 same being on file with the court, Iliescu's opposition does not address this basis for the  
24 dismissal of his action. The failure to respond to or oppose a dispositive basis for dismissal  
25 constitutes an admission that the motion is meritorious and his consent to granting the same.  
26 DCR 13(3). Therefore, Hale Lane's motion must be granted on this independent and  
27 dispositive ground for dismissal. *See Foster v. Dingwall*, \_\_ Nev. \_\_\_, 227 P.3d 1042, 1049  
28 (2010), (citing *King v. Cartlidge*, 121 Nev. 926, 927, 124 P.3d 1161 (2005) (stating that an

1 unopposed motion may be considered as an admission of merit and consent to grant the  
2 motion)).

3           **2. Iliescu Does Not Dispute that Summary Judgment Should Be Entered on his**  
4           **Claims Related to an Alleged Conflict of Interest**

5           On pages 11 and 12 of Hale Lane's motion for summary judgment, Hale Lane  
6 contended that summary judgment should be granted on Iliescu's claims related to a conflict  
7 of interest. Iliescu's opposition does not address or oppose this point. Iliescu's opposition  
8 only discusses his contention that Hale Lane's actions caused him to be a "Participating  
9 Owner." Accordingly, Iliescu's failure to oppose this portion of Hale Lane's motion constitutes  
10 an admission that the motion is meritorious and his consent to grant the motion in this  
11 respect. DCR 13(2); *Foster v. Dingwall*, 227 P.3d at 1049.

12           **3. Iliescu Does Not Dispute that Summary Judgment Should Be Entered on his**  
13           **Claim for Attorney's Fees as Damages**

14           On pages 10 and 11 of Hale Lane's motion for summary judgment, Hale Lane  
15 contended that attorney's fees are not allowable damages in this case. As discussed in the  
16 motion, it is well-established in Nevada that "in the absence of a rule, statute, or contract  
17 authorizing an award of attorney's fees, such fees may not be allowed." See *Lubritz v. Circus*  
18 *Circus Hotels*, 101 Nev. 109, 112, 693 P.2d 1261 (1985). Iliescu does not oppose this  
19 contention in his opposition. Nor does Iliescu identify any rule, statute, or contract which  
20 authorizes recovery of attorney's fees as damages in this case. Accordingly, Iliescu's failure to  
21 oppose this portion of Hale Lane's motion constitutes an admission that the motion is  
22 meritorious and his consent to grant the motion in this respect. DCR 13(2); *Foster v. Dingwall*,  
23 227 P.3d at 1049.

24           **III. THE UNDISPUTED FACTS ESTABLISH THAT HALE LANE DID NOT CAUSE ILIESCU HARM**  
25           **AND, THEREFORE, HALE LANE IS ENTITLED TO JUDGMENT AS A MATTER OF LAW ON**  
26           **ALL ILIESCU'S CLAIMS FOR RELIEF**

27           Iliescu's complaint asserts two claims for relief against Hale Lane: (1) professional  
28 malpractice; and (2) negligence. His claims are rooted in the misguided notion that Hale Lane

1 could have protected Iliescu from Steppen's lien by recording a Notice of Nonresponsibility  
2 pursuant to NRS 108.234. As demonstrated in Hale Lane's motion for summary judgment,  
3 Iliescu as an "interested owner" is not eligible for the protection of a Notice of  
4 Nonresponsibility and, thus, could not avoid a lien from being asserted against his property.  
5 Iliescu's opposition concedes this dispositive fact and, in fact, agrees to withdraw these  
6 allegations from his complaint. (Iliescu Opposition, pp. 2:8-12; 7:12-19; 8:1-2; and 8:11-14.)  
7 This concession by itself, warrants the entry of summary judgment on all Iliescu's claims for  
8 relief, because under no circumstances could Hale Lane have prevented a lien from being  
9 recorded against Iliescu's property.

10 Even though Iliescu concedes that he was not entitled to the protection of a Notice of  
11 Nonresponsibility, he contends that Hale Lane should be liable for the lien because it "failed to  
12 advise him that by signing Addendum No. 3, Iliescu became a Participating Seller and  
13 therefore subjecting the Property to lien." (*Id.*, p. 2:15-19.) This contention is apparently  
14 based on the language in Addendum No. 3 which states that (1) the offer is contingent upon  
15 the buyer obtaining all the necessary government approvals; and (2) that the offer requires  
16 buyer to use its best efforts to obtain the government approvals. (*Id.*, pp. 3:18-4:15.)  
17 According to Iliescu's opposition, it was at this point that Iliescu became a "participating  
18 seller," and not at any time prior thereto. (*Id.*, pp. 2:16-19; 6:18-25; and 8:8-11.) This  
19 contention is unsupportable for two reasons.

20 First, this contention overlooks the fact that the original Purchase Agreement signed  
21 and negotiated by Iliescu himself, before Hale Lane was even involved, made Iliescu an  
22 "interested owner" and "participating seller." Page 14 of the July 21, 2005, Purchase  
23 Agreement contains the language: "This offer is contingent upon Buyer at Buyer's expense,  
24 obtaining the following governmental approvals within 270 days of acceptance of this  
25 agreement." (See Exhibit 5 to Hale Lane's Motion.) Iliescu himself negotiated the July 21  
26 Purchase Agreement, without any involvement by Hale Lane. Hale Lane was engaged several  
27 months later merely to fine tune the Purchase Agreement which was already in place and  
28 agreed to the by parties. (Exhibit 6 to Hale Lane's Motion.) Therefore, Iliescu was a

1 "participating seller" long before any participation by Hale Lane.

2        Additionally, the inclusion in Addendum No. 3 of the language "Buyer shall use its best  
3 efforts and reasonable diligence to satisfy all Conditions Precedent" is not the triggering  
4 language that made Iliescu a participating seller as Iliescu contends. The requirement that the  
5 Buyer use its best efforts is implied, even though not explicitly stated, in the original Purchase  
6 Agreement. It is well-established that a party to a contract has an implied obligation to use  
7 reasonable efforts to satisfy any conditions precedent. *See Western Hills v. Pfau*, 508 P.2d 201,  
8 203 (Or. 1973) (court held that defendants had a similar duty, arising by implication, to make a  
9 reasonable effort to secure the city's approval of a planned development). Accordingly, the  
10 addition of this language by Addendum No. 3 did not add anything to the Purchase Agreement  
11 that was not already a material term.

12        Furthermore, the nature of the Purchase Agreement required Iliescu to assist the  
13 buyer in obtaining the necessary government approvals, thereby requiring his participation as  
14 the property owner. Because the purchase was contingent and title did not pass with the  
15 Purchase Agreement, Iliescu was required to authorize any application for the governmental  
16 approvals. Without such authorization, the Buyer would not even be allowed to apply for the  
17 entitlements. Iliescu satisfied this obligation by executing the necessary Owner Affidavits  
18 which are attached as Exhibit 9 to Hale Lane's motion. (*See also* Iliescu Opposition, p. 4:16-23.)  
19 Iliescu also attended the City of Reno Planning Commission meetings to ensure that the  
20 entitlements would be obtained. (*Id.*, p. 5:10-13.) Thus, by the very essence of the transaction  
21 Iliescu was required to become a "participating seller." Iliescu could not have escaped this  
22 obligation without breaching the terms of the Purchase Agreement which he negotiated and  
23 agreed upon prior to Hale Lane's involvement. Accordingly, Iliescu was at all times a  
24 participating seller and Hale Lane's fine tuning of the Purchase Agreement did not trigger the  
25 right to lien his property.

26        Second, Nevada's lien statute makes it clear that the only way a property owner may  
27 avoid liability for improvements made to the property at the request of another, is by being a  
28 "disinterested owner" and by recording a Notice of Nonresponsibility. NRS 108.234(1). By

1 definition, Iliescu was not a "disinterested owner" because he had a real and substantial  
2 interest in the completion of the sale which required the entitlements to be obtained. He  
3 stood to gain approximately \$7.5 million cash from the sale of the property, as well as a 3,750  
4 sq. ft. penthouse overlooking all of Reno with four street level parking spots (valued at over  
5 \$2.2 million dollars). Even though the contract ultimately fell through, he received  
6 approximately \$876,000 in cash and continues to hold title to the property. Valuable  
7 entitlements were also obtained for his property, which greatly increased its value and which  
8 remain valid to this day. Iliescu admits all of these facts. (Iliescu Opposition, pp. 3:2-18 and  
9 5:10-14.) Therefore, by definition, Iliescu was at all times an "interested owner" and could not  
10 have prevented a lien for the improvements which he agreed to.

11 Iliescu's own actions and what he stood to gain from the transaction subjected him to  
12 liability for Steppan's lien, not any alleged subsequent negligence by Hale Lane. Iliescu would  
13 be liable for Steppan's lien by the very nature of the Purchase Agreement. Consequentially,  
14 Hale Lane is entitled to judgment as a matter of law because the essential elements of  
15 causation and damages are clearly lacking.

16 **IV. CONCLUSION**

17 For the foregoing reasons, third party defendant, Hale Lane respectfully requests that  
18 summary judgment be entered dismissing all of Iliescu's third party claims against Hale Lane.

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

21 DATED: August 29, 2011.

22 Lemons, Grundy & Eisenberg  
23 6005 Plumas Street, Third Floor  
24 Reno, Nevada 89519  
25 (775) 786-6868

26 By: 

27 David R. Grundy, Esq.  
28 Christopher Rusby, Esq.  
Attorneys for Third Party Defendant  
Hale Lane Peek Dennison and Howard

CERTIFICATE OF MAILING

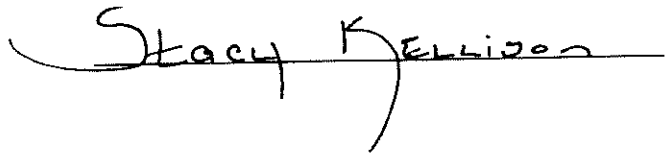
Pursuant to NRCP 5(b), I certify that I am an employee of Lemons, Grundy & Eisenberg and that on August 29, 2011, I deposited for mailing in the United States Mail, postage prepaid, a true and correct copy of the within THIRD PARTY DEFENDANT HALE LANE'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT REGARDING THIRD-PARTY CLAIMS BY

JOHN ILIESCU, addressed to the following:

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**Code 3785**

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Attorney 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,

Case No.: CV07-00341

Plaintiff,

Dept. No.: 10

v.

Consolidated with:

JOHN ILIESCU, JR. and SONNIA  
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,

Case No.: CV07-01021

Dept. No.: 10

Defendants.

AND RELATED CROSS-CLAIMS AND  
THIRD-PARTY CLAIMS. /

**REPLY IN SUPPORT OF MOTION TO AMEND THIRD PARTY COMPLAINT**

COME NOW, Defendants/Third Party Plaintiffs John Iliescu, Jr.,  
and Sonnia Iliescu, individually, and as Trustees of the John Iliescu,  
Jr. and Sonnia Iliescu 1992 Family Trust ("Iliescus"), by and through  
their counsel, Thomas J. Hall, Esq., and hereby file their Reply in  
Support of their Motion to Amend Third Party Complaint.

\\\\\\

1     **I.     THE MOTION TO AMEND IS NEITHER MOOT NOR FUTILE.**

2             Iliescus' Motion to Amend was filed prior to the Court's Order  
3     granting summary judgment. Iliescus' proposed Amended Complaint  
4     revises and augments Iliescus' claims against Hale Lane by adding  
5     Seventh and Eighth Claims for Relief ("Claims"). (Motion to Amend, p.  
6     3, ll. 6-9). These Claims expand the factual basis for the alleged  
7     malpractice and negligence, along with pleading a separate  
8     indemnification claim and a legal basis for consequential damages.

9             Iliescus' Motion for Leave to File Motion for Reconsideration and  
10     draft Motion ("Motion for Reconsideration") is now pending. In the  
11     Motion for Reconsideration, Iliescus identify errors in (1) the  
12     Court's conclusion that Hale Lane's alleged malpractice was not the  
13     cause of Iliescus' injuries; (2) the Court's conclusion that Iliescus  
14     were "interested owners" prior to Hale Lane's involvement; and (3) the  
15     Court's conclusion that there was nothing Hale Lane could do to  
16     rectify Iliescus' status as "interested owners".

17             Pending the Court's ruling on Iliescus' Motion for  
18     Reconsideration, the Motion to Amend is neither moot nor futile.

19             **II.   THE MOTION TO AMEND CONTAINS ALLEGATIONS AND CLAIMS UNAFFECTED BY**  
20     **THE COURT'S ORDER REGARDING SUMMARY JUDGMENT.**

21             Hale Lane states that "Iliescu's present motion to amend is based  
22     on the same arguments put forth in his opposition to the motion for  
23     summary [judgment]". (Opp., p. 2, ll. 21-22). That statement ignores  
24     the fact that the Motion to Amend seeks to add the Seventh and Eighth  
25     Claims for Relief Against Hale Lane that contain additional basis for  
26     liability against Hale Lane.

27     \\\\\\

1 The Seventh Claim for Relief includes allegations of negligence  
2 by Hale Lane that would be unaffected by the Court's Order. For  
3 example, the Seventh Claim for Relief alleges as follows:

4 74. The Hale Lane law firm did not advise or recommend the  
5 securing of lien releases from the Purchaser's architect  
6 nor require the same as part of the purchaser's/architect  
7 agreement in a manner which would have released the  
8 Property from potential liens." (Motion to Amend, Ex. 2).

9 The allegations relate to Hale Lane's legal representation  
10 following execution of Addendum No. 3 to the Original Purchase  
11 Agreement. Specifically, Hale Lane represented Iliescus and the  
12 Developer simultaneously, an issue addressed in the Waiver of Conflict  
13 letter dated December 14, 2005. (See Exhibit 1). While Hale Lane was  
14 representing Iliescus regarding the Purchase Agreement, it was also  
15 assisting the Developer in its preparation of an AIA Contract with the  
16 Architect Steppan. (See Exhibit 2). Hale Lane billed and was  
17 presumably paid by the Developer for this work. (See Exhibit 3). As  
18 part of the preparation of the AIA Contract, Hale Lane could have  
19 secured lien releases or fashioned additional protections for its  
20 clients, the Iliescus.

21 During the course of its ongoing representation, Hale Lane  
22 oversaw multiple assignments of the Original Purchase Agreement  
23 (Motion to Amend, Ex. 2, ¶¶ 22-23, 27-28, 33). Hale Lane also provided  
24 legal advice to Iliescus following the recordation of Steppan's lien,  
25 including drafting an Indemnity Agreement and a Conflict of Interest  
26 Waiver Agreement allowing Hale Lane to represent the parties  
27 collectively in resolving the Steppan lien issue. (Motion to Amend,  
28 Ex. 2, ¶¶ 31-32). The Indemnity Agreement and Conflict of Interest

1 Waiver Agreement were executed based upon the advice of Hale Lane,  
2 resulting in an agreement with Hale Lane's existing client, BSC  
3 Financial, LLC ("BSC"), who filed for bankruptcy protection less than  
4 five (5) months thereafter. (Motion to Amend, Ex. 2, ¶ 35). In  
5 addition, Hale Lane drafted and recommended that Iliescu sign the  
6 Indemnity Agreement even though it did not include indemnification by  
7 Sam Caniglia, a principal of BSC and President of the original  
8 contract purchaser, Consolidated Pacific Development, Inc.

9 Hale Lane states in its Opposition that "Iliescu's motion to  
10 amend is futile because under no circumstances could Hale Lane have  
11 prevented a lien from being recorded against his property." (Opp., p.  
12 3, ll. 3-4). While that contention is disputed by Iliescus in the  
13 Motion for Reconsideration, the amended claims also include  
14 allegations of malpractice, negligence and indemnity based in part  
15 upon actions of Hale Lane even following the lien recordation.  
16

17 It is clear that the Court's Order specifically addresses the  
18 issue of causation and focuses on the Original Purchase Agreement and  
19 its effects on Iliescus' ability to seek lien protection under NRS  
20 108.234. However, the Order does not address the issue of Hale Lane's  
21 negligent actions alleged in the Amended Complaint that are unrelated  
22 to the lien protection provisions of NRS 108.234.

23 NRCP 15(a) permits such amendment by leave of court which "shall  
24 be freely given when justice so requires." The Claims arose out of the  
25 conduct, transaction and occurrences set forth in the original  
26 Complaint, therefore the Amended Complaint relates back to the date of  
27 the original Complaint. NRCP 15(c); Bozelli v. Bozelli, 85 Nev. 525,  
28

1 527, 458 P.2d 356 (1969). The additional allegations of negligence,  
2 malpractice and indemnity unaffected by the Court's Order provide a  
3 basis upon which the Court should permit Iliescus' amendment of the  
4 Complaint.

5 **III. CONCLUSION.**

6 Iliescus' Motion to Amend is neither moot nor futile, as its  
7 Motion for Reconsideration is pending. Beyond that, Iliescus' Motion  
8 to Amend contains allegations and claims unaffected by the Court's  
9 Order regarding summary judgment. The interests of justice demand that  
10 Iliescus' be permitted to amend their Complaint accordingly.

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

13 DATED this 22nd day of September, 2011.

14 LAW OFFICES OF THOMAS J. HALL

15  
16   
17 Thomas J. Hall, Esq.

18 Law Offices of Thomas J. Hall  
19 305 South Arlington Avenue  
20 Post Office Box 3948  
21 Reno, Nevada 89505  
22 Telephone: (775)348-7011  
23 Facsimile: (775)348-7211

24 Attorney for Iliescus  
25  
26  
27  
28

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LIST OF EXHIBITS

- Exhibit 1:** Hale Lane Letter, dated December 14, 2005.
- Exhibit 2:** Hale Lane Memorandum, dated November 14, 2005.
- Exhibit 3:** Hale Lane Invoice 185946, dated December 23, 2005.

**EXHIBIT 1**

**EXHIBIT 1**

# 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. Novosack  
Richard L. Elmore  
Richard Bennett  
Robert C. Anderson  
Alex J. Flanagan  
James L. Kelly  
Kelly Tienolin  
N. Patrick Plummer  
Matthew E. Woodhead  
Michelle D. Mullins  
Roger W. Jeppson  
Lance C. Earl  
Jacory J. Hork  
David A. Garcia  
Elissa F. Cadish  
Timothy A. Lukas  
Frederick J. Schmidt  
James Newman  
Terry R. Sanders  
Patrick J. Kelly  
Sean D. Fleming  
Scott Scherer  
Anthony L. Hall  
Jerry M. Snyder  
Grant C. Eckenrode  
Frederick R. Raucher  
Patricia C. Halstead  
Matthew J. Kretzer  
Matthew B. Hippler  
Brad M. Johnston  
Bryce K. Kurland  
Douglas C. Flowers  
Justin C. Jones  
Nicole M. Vance  
Kimberlee Rotsky  
Dora V. Djikova  
Simon Johnson  
Sarah E. L. Chao  
Helen E. Mardirosian

## 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) 312-3500 | 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 14, 2005  
Page 2

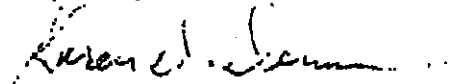
**HALE LANE**  
ATTORNEYS AT LAW

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

# HALE LANE

ATTORNEYS AT LAW

100 West Liberty Street | Tenth Floor | Reno, Nevada 89501

Telephone (775) 3273000 | Facsimile (775) 7866179

Website: <http://www.halelane.com>

## FACSIMILE TRANSMITTAL SHEET

FROM: Sarah E. L. Class, Esq. DATE: December 15, 2005

OUR FILE NO.: 20540-0002

TOTAL NO. OF  
PAGES INCLUDING  
COVER:

4

RE: Court Street/Island Avenue

SEND TO (NAME/COMPANY)

FACSIMILE NO.

TELEPHONE NO.

John and Sonia Ilescu

775-322-4112

775-771-6263

MESSAGE:

RETURN TO:

Danielle Aragon

Greetings:

Once you have both executed the attached letter, please forward a copy by facsimile to 775-786-6179 and the original letter to us by U.S. Mail at your earliest convenience. If you have any questions, please do not hesitate to call. Thank you and have a wonderful trip.

HALE LANE PEEK DENNISON AND HOWARD

**CONFIDENTIALITY NOTICE:** The information contained in this facsimile message is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or as the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this message in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. postal service. We will gladly reimburse your telephone and postage expenses. Thank you.

ODMA\PCDOCS\HLR\NODCS\49730411

JA0957

ILIESCU000135

**Acknowledgement**

The foregoing waiver of conflict is hereby given as of the date set forth below.

**Iliescu:**

Date: 12-15-05

*John Iliescu, Jr.*  
John Iliescu, Jr.

Date: 12-15-05

*Sonnica Santee Iliescu*  
Sonnica Santee Iliescu

Date: 12-15-05

*John Iliescu Jr. Trustee*  
John Iliescu Jr., as Trustee of the John Iliescu, Jr.  
and Sonnica Iliescu 1992 Family Trust

Date: 12-15-05

*Sonnica Santee Iliescu*  
Sonnica Santee Iliescu, as Trustee of the John  
Iliescu Jr. and Sonnica Iliescu 1992 Family Trust

**Baty:**

Date: \_\_\_\_\_

\_\_\_\_\_  
Calvin Baty

**Consolidated:**

Consolidated Pacific Development, Inc.,  
a Nevada corporation

Date: \_\_\_\_\_

**By:**

\_\_\_\_\_  
Sam A. Caniglia, President

**EXHIBIT 2**

**EXHIBIT 2**

# HALE LANE

ATTORNEYS AT LAW

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

FILE / COPY

## MEMORANDUM

RECEIVED  
NOV 30 2005  
FISHER FRIEDMAN ASSOCIATES

TO: Calvin Baty  
FROM: Sarah Class  
DATE: November 14, 2005  
SUBJECT: AIA Contract Review -- Owner's Issues  
Our File No. 20606-0004

This memorandum identifies provisions of the AIA Contract between BSC Financial ("Owner") and Mark Steppan ("Architect") which disfavor the Owner and suggests possible revisions to these provisions.

- Section 1.1: Under Section 1.1.6, the information in Article 1.1 may be relied upon in determining the Architect's compensation, and in the event that the information changes, adjustments to the Architect's compensation may be made. Specifically, a change to the information set forth in Article 1.1 will constitute a "Change in Services" entitling the Architect to an adjustment in compensation. See Section 1.3.3.2 (stating that a change in the information contained in Article 1.1 is a change in service entitling the Architect to adjustment in compensation).

Except for general information about the project, Article 1.1 presently either omits the information regarding the Project or leaves it to further agreement. Because a change in this information could lead to compensating the Architect using the method described in Exhibit "A" (which is the method utilized for a Change in Service under Section 1.5.2), it may be advisable at this point to include more detail as to the project information, so as to avoid the classification of additional information as a "Change in Service," entitling the Architect to (presumably) increased compensation.

- Section 1.2.2.2: The Owner cannot significantly alter the budget or the budget allocated for the Cost of Work without the Architect's agreement to a corresponding change in the Project scope and quality. This gives the Architect some control over budget changes; thus the budgets should be thought through prior to signing the contract.
- Section 1.3.2: The Owner has the right to use the Architect's drawings only for purposes of "constructing, using and maintaining the project." However, if the agreement is terminated,

HALE LANE PEEK DENNISON AND HOWARD

LAS VEGAS OFFICE: 2300 West Sahara Avenue | Eighth Floor | Box 8 | Las Vegas, Nevada 89102 | Phone (702) 222-2500 | Fax (702) 365-6940  
CARSON CITY OFFICE: 777 East William Street | Suite 200 | Carson City, Nevada 89701 | Phone (775) 684-6000 | Fax (775) 684-6001

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the owner's right to use the drawings terminates, and it is only if the architect is "adjudged" in default that the owner may use the documents. Thus, in the event that the architect defaults (but is not adjudged in default), the Owner will not have the right to use the documents to complete the project. This language should be revised to provide that the Owner may use the documents upon any default by the Architect. ✓

- Section 1.3.6. This provision provides for a waiver of consequential damages and would preclude, for example, recovery of damages by the Owner against the Architect for items such as loss resulting from the Architect's delay. This paragraph should be deleted. ★
- Section 1.3.7.1. You may want to consider having the contract governed by Nevada law. OK ✓
- Section 1.3.7.6. You may consider making the Architect and its consultants liable for hazardous waste if caused by the Architect or the consultants. ?
- Section 1.3.7.9. If you anticipate assigning the agreement, we will need to change the language in this section which prohibits assignment. ✓
- Section 1.5. The terms used in the first paragraph should be defined so as to provide clarity to third parties as to their meaning.
- Section 1.5.9. If the architect's services extend beyond 32 months of the date the agreement is signed, those services will be additional costs to the Owner (presumably not included in the 5.75 percent cost). This could significantly increase the Architect's fees. OK
- Section 2.4.1. You may want to expand on what is meant by "normal structural, mechanical and electrical engineering services." More specificity will lessen the likelihood of litigation over these points.
- Section 2.8. The Owner should ensure this accurately reflects the desired services to be provided by the Architect, as any change in these services will entitle the Architect to additional compensation.

As a final note, the contract incorporates by reference the AIA Document A201, which we should also therefore review prior to signing the contract. See Section 1.1.5 and Section 2.6.1.1. We have a copy of this document from the AIA website, which we will review and let you know if we have additional suggestions.

**samcaniglia**

---

**From:** "Sarah Class" <sclass@halelane.com>  
**To:** "Calvin Baty" <calvin@decalcustomhomes.com>  
**Cc:** "samcaniglia" <samcaniglia@sbcglobal.net>; "Danielle Bacus-Aragon" <dbacusaragon@halelane.com>; "Doug Flowers" <dflowers@halelane.com>  
**Sent:** Friday, November 18, 2005 12:01 PM  
**Subject:** RE: AIA Contract

Calvin-

141

As indicated in my last message, the AIA B151 contract that you sent us incorporates additional terms and conditions from a separate AIA document (the A201). This is the "General Conditions" contract, which, in addition to the B151 and the construction contract, forms part of the agreement between the parties. My assistant Danielle will be emailing you a sample of this document for your reference. My comments on the A201 are as follows:

1. Paragraph 2.2.1 -- You may not want to have to furnish financial information to the contractor. Also under paragraph 14.1.1 the owner's failure to provide this information may entitle contractor to terminate the contract. ✓
2. Paragraph 3.2.3 -- You should delete the word knowingly from the last line of this paragraph (as it would seem to preclude recovery for the contractor's negligence). ✓
3. Paragraph 3.3.1 -- This paragraph gives the architect authority to direct the contractor to proceed with work even if the contractor determines it is unsafe, but makes the owner solely responsible for any resulting damage. This paragraph should be revised so that either the architect should be responsible for the damage, or the owner should have the authority to direct the contractor to proceed with work. ✓
4. Paragraph 3.10.3 -- Contractor should perform the work in accordance with the most recent approved schedule submitted to owner and architect. ✓
5. Paragraph 3.18.1 -- The contractor's indemnity in this paragraph should cover loss of use in addition to the other delineated items; also, we should remove the limitation that restricts the indemnity to negligent acts of the contractor. ✓
6. Paragraph 4.3.10 -- This paragraph limiting the owner's recovery of consequential damages should be deleted; you may want to include in your construction contract a provision for liquidated damages in the event the contractor fails to perform on time and in accordance with the construction contract. ✓
7. Paragraph 4.6.4 -- The owner should be able to join the contractor and the architect in a single action. The language in this paragraph precluding joinder should be deleted, and the paragraph should provide that joinder is permitted. The same changes should be made to paragraph 1.3.5.4 of the AIA B151. ✓
8. Paragraph 5.2 -- This provision should be redrafted so that the owner has the absolute right to approve or disapprove the subcontractors performing work on the project (the language referring to reasonable objection should be removed). ✓
9. Paragraph 6.2.3 -- The owner is assuming responsibility for the costs incurred by the contractor for the acts of a separate contractor. This should be acceptable only if the owner can recover the cost from

11/21/2005

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the contractor that causes the loss.

10. Paragraph 10.3.3 -- The owner's indemnity should not include losses in any way caused by the indemnified parties (the language presently only excludes owner's indemnity from losses caused by the negligence of the indemnified parties). In paragraph 10.5 the language referring to negligence should also include gross negligence or willful misconduct.

11. Paragraph 11.4.1.1 -- It may or may not be feasible for the owner to obtain the insurance coverage required by this paragraph.

12. Paragraph 12.2.2.1 -- This paragraph provides that if the owner does not make a claim against the contractor within the first year following substantial completion of the project, the owner waives the right to do so. This provision should be deleted. The reference to the 1-year period in paragraph 4.2.1 should also be deleted.

13. Paragraph 13.2.1 -- If you want to have the flexibility to assign the contract, this provision prohibiting assignment will need to be removed.

14. Paragraph 14.2.1 -- I would delete the language "persistently and repeatedly" in subsection 1, the word "persistently" in subsection 3, and the word "substantial" in subsection 4.

15. Paragraph 14.2.4. If the owner terminates for cause, any savings in completing the work should not have to be paid to the defaulting contractor.

Also I have an additional comment on the B151: you may want to require that the architect design the project within the budget (i.e. that he redraft the plans at no additional cost if the lowest bid exceeds the budget). This may take some negotiation with the architect if it is something that you want (since presumably he purposely did not include this provision). As requested below, I will work with Sam in implementing any changes that you would like.

Thanks

Sarah

-----Original Message-----

**From:** Calvin Baty [mailto:calvin@decacustomhomes.com]

**Sent:** Wednesday, November 16, 2005 5:01 PM

**To:** 'Sarah Class'

**Cc:** 'samcaniglia'

**Subject:** RE: AIA Contract

Sarah,

Thank you for the noted suggestions. I will have my partner Sam Caniglia contact you directly about implementing your suggestions in final form.

Thanks,

Calvin

-----Original Message-----

**From:** Sarah Class [mailto:sclass@halelane.com]

**Sent:** Monday, November 14, 2005 6:04 PM

11/21/2005

JA0963

**EXHIBIT 3**

**EXHIBIT 3**

# HALE LANE

ATTORNEYS AT LAW

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

Amount Enclosed \$ \_\_\_\_\_

Questions may be directed  
to: [billing@halelane.com](mailto:billing@halelane.com)

DeCal Custom Homes/DeCal Inc.  
Calvin Baty  
440 Columbia Blvd.  
St. Helens, OR 97051

Tax ID: 88-0213319

Client # 20606-0004/RCH

Invoice Number 185946

Invoice Date December 23, 2005

Billing To December 15, 2005

Regarding: Project #2 - Arlington Avenue Condo/Mixed Use - Project Documents

<u>Fees</u>	<u>Atty</u>	<u>Services rendered</u>	<u>Hours</u>	<u>Amount</u>
11/09/05	SLC	Meeting with Atty. R. Craig Howard to discuss research/AIA contract issues.	0.30	60.00
11/13/05	SLC	Reviewing AIA contract.	0.50	100.00
11/14/05	SLC	Reviewing AIA Contract, draft memo and send to client.	4.00	800.00
11/17/05	SLC	Reviewing AIA A201 contract and drafting email to client regarding same.	2.50	500.00
11/18/05	SLC	Finish reviewing A201 and finish drafting email to client regarding same.	2.00	400.00
11/29/05	SLC	Meeting with Sam; email additional language for AIA contract.	2.40	480.00
11/30/05	SLC	Phone calls with Sam and Nathan regarding code revisions.	0.40	80.00
12/06/05	SLC	Correspondence with Sam regarding code issues.	0.10	20.00
12/08/05	SLC	Phone calls with architect and client, meeting with Atty. Doug C. Flowers to discuss project entitlements.	1.20	240.00
12/12/05	SLC	Conference call with architect's counsel regarding AIA contract.	0.40	80.00
12/13/05	SLC	Review consequential damages provisions of AIA contract; phone call with client regarding consequential damages provisions.	0.50	100.00
Total for professional services 12/15/2005			14.30	\$2,860.00

HALE LANE PEEK DENNISON AND HOWARD

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# HALE LANE

ATTORNEYS AT LAW

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

DeCal Custom Homes/DeCal Inc.  
Calvin Baty

Regarding: Project #2 - Arlington Avenue Condo/Mixed Use -  
Project Documents

Client # 20606-0004/RCH  
Invoice Number 185946  
Invoice Date December 23, 2005  
Page: 2

<u>SUMMARY</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Sarah E. Class	14.30	200.00	2,860.00

<u>Advanced Costs</u>	<u>Amount</u>
Long Distance Telephone	42.21

Total advanced costs 12/15/2005	\$42.21
---------------------------------	---------

Total current fees and costs	\$2,902.21
------------------------------	------------

Prior Balance	\$0.00
---------------	--------

Delinquent Finance Charges - 10% per annum	\$0.00
--	--------

<b>TOTAL AMOUNT DUE (INCLUDES ANY UNPAID PRIOR BALANCE)</b>	<b>\$2,902.21</b>
---	-------------------

HALE LANE PEEK DENNISON AND HOWARD

HL - 2506

JA0966

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

\* \* \*

MARK B. STEPPAN,

Plaintiff,

vs.

Case No: CV07-00341  
(Consolidated with CV07-01021)

Dept. No.: 10

JOHN ILIESCU, JR. and SONNIA 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.

AND RELATED MATTERS.

**ORDER DENYING MOTION TO AMEND THIRD PARTY COMPLAINT AGAINST  
DEFENDANT HALE LANE**

The Iliescus filed their Motion to Amend Third Party Complaint on August 18, 2011. Hale Lane filed its Opposition on September 6, 2011. A Reply was filed on September 22, 2011 and the matter was submitted for decision the same day.

It should be noted that this Court granted summary judgment regarding the third party claims by the Iliescus against Hale Lane on September 1, 2011. The Iliescus Motion for Reconsideration has been denied. This Court found that the Iliescus were "interested

1 owners" in the development of their land and could not gain the protection of NRS 108.234  
2 according to the original written contract.

3 The proposed amendment to the third party complaint would be futile since Hale  
4 Lane did not convert the Iliescus from "disinterested owners" to "interested owners". Hale  
5 Lane could not have prevented a lien from being recorded against the subject real  
6 property. In light of the Order for Summary Judgment and denial of reconsideration, the  
7 issue is moot and futile.

8 **NOW, THEREFORE, IT IS HEREBY ORDERED** that the Iliescus' Motion to Amend  
9 Third Party Complaint Against Defendant Hale Lane is denied.

10  
11 **DATED** this 19 day of October, 2011.

12  
13   
14 STEVEN P. ELLIOTT  
15 District Judge  
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**CERTIFICATE OF MAILING**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

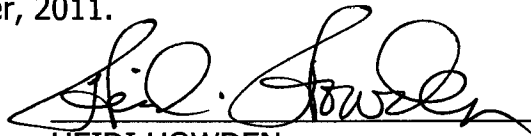
GREGORY WILSON, ESQ. for JOHN SCHLEINING

THOMAS HALL, ESQ. for TRUSTEE OF THE JOHN ILIESCU, JR. & SONNIA ILLIESCU, JOHN ILIESCU, JR., SONNIA ILIESCU

DAVID GRUNDY, ESQ. for KAREN DENNISON, HOLLAND & HART, LLP, JERRY SNYDER, R. HOWARD, HALE LANE PEEK DENNISON HOWARD

MICHAEL HOY, ESQ. for MARK STEPPAN

**DATED** this 19 day of October, 2011.



HEIDI HOWDEN  
Judicial Assistant

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

\* \* \*

MARK B. STEPPAN,

Plaintiff,

vs.

Case No: CV07-00341  
(Consolidated with CV07-01021)

Dept. No.: 10

JOHN ILIESCU, JR. and SONNIA 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.

AND RELATED MATTERS.

**ORDER GRANTING DEFENDANTS ILIESCUS' MOTION TO DISMISS**

Presently before the Court is a Motion to Dismiss filed by Defendants JOHN ILIESCU, JR. AND SONNIA ILIESCU, AS TRUSTEES OF THE JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT AND JOHN ILIESCU, INDIVIDUALLY (hereinafter collectively referred to as "Defendants"), filed on September 3, 2011. The Motion to Dismiss seeks dismissal of all claims against Defendants by Plaintiff Mark B. Steppan (hereinafter referred to as "Plaintiff"). Plaintiff filed an Opposition to Iliescu's

1 Motion to Dismiss on September 16, 2011. Subsequently, Defendants filed a Reply in  
2 Support of Motion to Dismiss on September 22, 2011. Contemporaneously with their  
3 Reply, Defendants also filed a Request for Submission.

4 **I. Factual and Procedural Background.**

5 This matter comes before the Court as the result of a 2005 property transaction that  
6 failed to close. The transaction involved several parcels of real property located in  
7 downtown Reno (hereinafter the "Property"), which Defendants owned and were to be sold  
8 to or developed by a group of developers headed by Consolidated Pacific Development,  
9 Inc. (hereinafter the "Developers").

10 On July 29, 2005, Defendants entered into a Purchase Agreement (hereinafter the  
11 "Agreement") with Developers for the sale of the Property. The parties intended that after  
12 purchasing the Property, the Developers would develop the Property into a high-rise  
13 condominium project to be known as Wingfield Tower (hereinafter the "Project"). The sale  
14 was expressly contingent upon Developers obtaining all the necessary entitlements and  
15 permits for the project from the City of Reno (hereinafter the "Governmental Approvals").

16 Following various modifications to the Agreement by addenda, the Developers  
17 sought assistance from an architect to help obtain the Governmental Approvals. Plaintiff,  
18 an architect licensed in Nevada, and his California firm, Fisher-Friedman & Associates, were  
19 retained by Developers on a time and materials basis to conceptually design the Project, to  
20 prepare certain schematic drawings and to present these drawings to the Reno Planning  
21 Commission and to the Reno City Council in support of gaining Governmental Approvals for  
22 the Project.

23 The Developers paid some \$430,870.00 to Plaintiff as full compensation for the work  
24 done on a time and materials basis. The Developers later signed a more extensive  
25 architectural agreement with Plaintiff which included a percentage-based form of  
26 compensation for the Project to be built in the future.

27 At some point during the entitlement phase of the Project, Developers defaulted on  
28 the Agreement when they were unable to obtain the necessary financing to conclude the

1 purchase of the Property. This gave rise to a Notice of Lien filed by Plaintiff on November  
2 7, 2006, in the amount of \$1,783,548.85, which was later amended on May 3, 2007, to  
3 reflect an amount claimed of \$1,939,347.51.

4 Defendants filed an Application for Release of Mechanic's Lien in Case No. CV07-  
5 00341 on February 14, 2007. Plaintiff in turn filed a Complaint against Defendants to  
6 Foreclose Mechanic's Lien in Case No. CV07-01021 on May 4, 2007, (hereinafter the  
7 "Complaint"). The cases were consolidated by Court Order on September 24, 2007.  
8 Defendants filed an Answer to the Complaint on September 27, 2007 (hereinafter the  
9 "Answer").

10 The parties held an Early Case Conference on February 21, 2008, followed by an off-  
11 the-record Case Management Conference with District Judge Brent Adams the following  
12 day. Plaintiff failed to file a Case Conference Report at any time following the Early Case  
13 Conference held on February 21, 2008. The parties then filed cross motions for partial  
14 summary judgment, and following the Court's grant of partial summary judgment in favor  
15 of Plaintiff on June 22, 2009, the parties held a second Early Case Conference on October  
16 13, 2009. Plaintiff failed to file a Case Conference Report at any time following the October  
17 13, 2009 Case Conference. These facts led to the Court's consideration of Defendant's  
18 Motion to Dismiss pursuant to NRCP 16.1(e)(2).

## 19 **II. Legal Analysis.**

20 NRCP 16.1(b)(1) requires the parties to complete an Early Case Conference within  
21 30 days after the filing of an answer by the first answering defendant, unless the case is  
22 either in the court annexed arbitration program or in the short trial program. Under certain  
23 circumstances, the Early Case Conference may be continued up to 180 days following an  
24 appearance by the defendant. *Id.* NRCP 16.1(c) requires the filing of a Case Conference  
25 Report by the parties within 30 days after each Case Conference to facilitate discovery  
26 among the parties. *Moon v. McDonald Carano & Wilson*, 126 Nev. Adv. Op. 47, 245 P.3d  
27 1138, 1139 (Nev. 2010).

1 NRCP 16.1(e)(2) provides as follows:

2 **(e) Failure or Refusal to Participate in Pretrial Discovery;**  
3 **Sanctions.**

4 (2) If the plaintiff does not file a case conference report within 240  
5 days after an appearance by a defendant, the case may be dismissed as to  
6 that defendant upon motion or on the court's own initiative, without  
7 prejudice.  
8

9 Plaintiff has not filed a Case Conference Report at any time since Defendants filed  
10 an Answer on September 27, 2007. A Case Conference Report should have been filed on  
11 or before March 22, 2008, or 30 days following the Early Case Conference held on February  
12 21, 2008. In addition, a Case Conference Report should also have been filed on or before  
13 November 12, 2009 (within 30 days following the October 13, 2009 Case Conference).  
14 More than 1,489 days have passed since Defendants' first appearance in this matter. More  
15 than 1,312 days have passed since the initial Case Conference Report was due. More than  
16 712 days have passed since the subsequent Case Conference Report was due. A Case  
17 Conference Report has yet to be filed. Thus, as of October 25, 2011, the Plaintiff is  
18 exceedingly delinquent with respect to his obligations to file Case Conference Reports  
19 under NRCP 16.1(c).

20 The decision to dismiss an action without prejudice for a plaintiff's failure to comply  
21 with the timing requirements of NRCP 16.1(e)(2) remains within the district court's  
22 discretion. *Arnold v. Kip*, 123 Nev. 410, 415, 168 P.3d 1050, 1053 (2007). NRCP  
23 16.1(e)(2) was adopted to promote the prosecution of litigation within adequate timelines  
24 and the sanctions exist to ensure compliance with the specific deadlines identified in the  
25 Rule. *Id.*

26 In this case, the Court finds that Plaintiff's lengthy delay in filing the required Case  
27 Conference Reports, which have never been filed, is excessive and is a gross violation of  
28 the requirements of NRCP 16.1. The Court finds that the delay in filing is the responsibility

1 of Plaintiff and that the Defendants have neither induced nor caused the delay. The Court  
2 further finds that nearly four and one-half years have passed since Plaintiff filed his  
3 Complaint without resolution, adversely impacting the timely prosecution of the case.

4 Plaintiff presents, as evidence of good cause for the absence of filing Case  
5 Conference Reports, several arguments. Plaintiff first argues that dismissal of his  
6 Complaint, without prejudice, is improper, because the case has, for all practical purposes,  
7 been conducted as "complex litigation" under NRCP 16.1(f), which states as follows:

8 **(f) Complex Litigation.**

9 In a potentially difficult or protracted action that may involve complex issues,  
10 multiple parties, difficult legal questions, or unusual proof problems, the court  
11 may, upon motion and for good cause shown, waive any or all of the  
12 requirements of this rule. If the court waives all the requirements of this  
13 rule, it shall also order a conference pursuant to Rule 16 to be conducted by  
14 the court or the discovery commissioner.  
15

16 The Court finds that while the present case includes several parties, it does not  
17 involve complex issues, difficult legal questions or unusual problems of proof. The primary  
18 issue in the case between Plaintiff and Defendants centers around an uncomplicated  
19 mechanic's lien claim and third party claims of malpractice and indemnification flowing  
20 from the underlying mechanic's lien claim. Furthermore, the malpractice and  
21 indemnification claims are collateral to the Plaintiff's mechanic's lien case and beyond its  
22 focus. No party to the action has filed a motion requesting that the Court waive any  
23 requirements of NRCP 16.1, nor has good cause for such waiver been demonstrated. No  
24 designation of Complex Litigation has been sought or made. The Court finds that the  
25 requirements of NRCP 16.1 are applicable to Plaintiff's case.

26 Plaintiff also claims that dismissal without prejudice is improper as discovery was  
27 stayed by the Court as to the Defendants' claims against third-party defendant Hale Lane.  
28 The Court finds this argument to be unpersuasive. The stay only applied to Defendants'

1 third-party claims against Hale Lane and did not affect discovery between Plaintiff and  
2 Defendants in the prosecution of Plaintiff's primary claim. As such, Plaintiff was required to  
3 comply with the requirements of NRCP 16.1 at all times during the case, including any stay  
4 of the discovery period for the collateral issues between Defendants and Hale Lane.

5 On September 1, 2011, this Court dismissed Defendants' Third Party Complaint  
6 against their former attorneys, Hale Lane, for a significantly less flagrant violation of Rule  
7 16.1. The Court's determination in this Motion to Dismiss is consistent with that ruling, and  
8 the Court disagrees with Plaintiff's argument that neither party should be subject to  
9 dismissal without prejudice under NRCP 16.1(e)(2).

10 Plaintiff also seeks to exonerate his noncompliance with NRCP 16.1(c) by claiming  
11 that Defendants waived their right to seek dismissal by participating in case management  
12 conferences and by otherwise failing to raise the issue prior to the filing of their Motion to  
13 Dismiss. Plaintiff's argument is also unpersuasive, as its acceptance by the Court would  
14 create a situation where the requirements of NRCP 16.1(c) would be rendered largely  
15 meaningless if the Defendants' acquiescent conduct exonerated Plaintiff's compliance with  
16 NRCP 16.1. This conclusion is inconsistent with case law interpreting the purpose and  
17 application of the rule, and the Plaintiff's obligation to comply therewith. *Arnold v. Kip*, 123  
18 Nev. 410, 415, 168 P.3d 1050, 1053 (2007) (noting that dismissal under NRCP 16.1(e)(2)  
19 does not require a defendant to demonstrate prejudice, as such result would largely  
20 eviscerate the rule because it would allow plaintiffs to exceed the deadline for filing a case  
21 conference report as long as the defendant could not demonstrate prejudice).

22 Plaintiff finally argues that dismissal of his Complaint, without prejudice, would be  
23 unjust as it would effectively bar Plaintiff's claims by virtue of the expired statute of  
24 limitations for Plaintiff's claims. NRS 108.233(1)(a). Plaintiff's argument incorporates the  
25 premise that dismissal of the claims based upon a violation of NRCP 16.1(e)(2) "elevates  
26 technical form over equity and substantive justice." The Court is similarly unpersuaded by  
27 Plaintiff's argument. This Court's consideration of a motion to dismiss without prejudice  
28 under NRCP 16.1(e)(2) should address factors that promote the purpose of the rule, rather

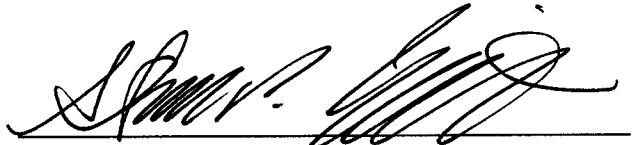
1 than factors that focus on the consequences to the plaintiff resulting from his or her failure  
2 to comply with the rule. *Arnold v. Kip*, 123 Nev. at 416 ("neither is the district court  
3 required to consider the plaintiff's inability to pursue his claim after an NRCP 16.1(e)(2)  
4 dismissal because the statute of limitations may expire").

5 **III. Conclusion.**

6 In its Order Granting Third-Party Defendant Hale Lane's Motion for Summary  
7 Judgment Regarding Third-Party Claims by John Ilescu dated September 1, 2011, this  
8 Court found it appropriate to dismiss Ilescu's Third-Party Complaint against Hale Lane for  
9 failure to timely file a Case Conference Report. Here, 1,489 days have passed since  
10 Defendants' filing of their Answer and 712 days have passed since Plaintiff was required to  
11 file its last Case Conference Report. The Court, as a proper exercise of its discretion,  
12 hereby enters the following order:

13 **NOW, THEREFORE, IT IS HEREBY ORDERED** that Defendants' Motion to  
14 Dismiss Plaintiff's claims is **GRANTED**. Plaintiff's claims are hereby **DISMISSED**  
15 **WITHOUT PREJUDICE** pursuant to NRCP 16.1(e)(2).

16 DATED this 25 day of October, 2011.

17  
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20 STEVEN P. ELLIOTT  
21 District Judge  
22  
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**CERTIFICATE OF MAILING**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

GREGORY WILSON, ESQ. for JOHN SCHLEINING

THOMAS HALL, ESQ. for JOHN ILIESCU, JR. and SONNIA ILIESCU, as Trustees of the JOHN ILIESCU, JR. & SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT, and JOHN ILIESCU, JR., individually

DAVID GRUNDY, ESQ. for KAREN DENNISON, HOLLAND & HART, LLP, JERRY SNYDER, R. HOWARD, HALE LANE PEEK DENNISON HOWARD

MICHAEL HOY, ESQ. for MARK STEPPAN

DATED this 25 day of October, 2011.



HEIDI HOWDEN  
Judicial Assistant

Document Code: 2490

**HOY & HOY, P.C.**

Michael D. Hoy (NV Bar 2723)  
4741 Caughlin Parkway, Suite Four  
Reno, Nevada 89519  
775.7868000 (voice)  
775.786.7426 (fax)

Attorneys for: Mark B. Steppan

**In the Second Judicial District Court of the State of Nevada  
In and for the County of Washoe**

JOHN ILIESCU, JR.; SONNIA SANTEE ILIESCU;  
John Iliescu, Jr. and Sonnia Santee Iliescu, as  
trustees of the JOHN ILIESCU, JR. AND SONNIA  
ILIESCU 1992 FAMILY TRUST,

Plaintiffs,

vs.

MARK B. STEPPAN,

Defendant.

Consolidated Case Nos. CV07-00341 and  
CV07-01021

Dept. No. 10

And Consolidated Action and Related Third-  
party Claims.

**Motion for Leave to File  
Motion for Reconsideration**

Mark B. Steppan ("Steppan" or "Architect") moves for leave to file a motion for reconsideration of the Court's October 25, 2011 "Order Granting Defendants Iliescus' Motion to Dismiss" in the form attached as Exhibit 1. This motion is based upon the affidavit of Hon. Brent Adams attached as Exhibit 2, the following Memorandum of Points and Authorities, all papers and pleadings before the Court, and all further arguments and evidence that the Court entertains in support of this motion.

## Memorandum of Points and Authorities

The Nevada Supreme Court noted:

[A] court may, for sufficient cause shown, amend, correct, resettle, modify or vacate, as the case may be, an order previously made and entered on the motion in the progress of the cause or proceeding.

*Trail v. Faretto*, 91 Nev. 401, 403, 536 P.2d 1026 (1975). Reconsideration and rehearing is appropriate when a prior decision is clearly erroneous. *Masonry & Tile Contractors Association of Southern Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 941 P.2d 486 (1997).

Before this case was transferred from Department Six, the Court held that Steppan's lien was perfected and valid. The only issue remaining for trial was the amount secured by the mechanic's lien. The District Judge of Department Six directly managed the case, including discovery, and has now provided an affidavit stating:

At all times, your undersigned District Court Judge and the lawyers practicing before me treated the case as one managed by the Court under Rule 16. The Court did not expect any party to file an early case conference report under Rule 16.1(e)(2).

Exhibit 2, Affidavit of Hon. Brent Adams, ¶ 4.

Dr. and Ms. Iliescu ("Iliescu") own the parcels encumbered by the lien. For nearly four years, Iliescu actively participated in case management and "additional" discovery. Technically, Iliescu commenced this action and is the "plaintiff" responsible for filing the case conference report. But Iliescu, Steppan, and the other parties (including a large litigation firm) never suggested the need for an early case conference report. This is so because the District Judge of Department Six managed the discovery process in the February 22, 2008 pretrial hearing.

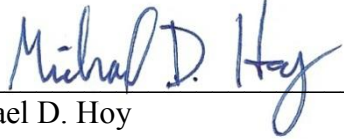
Your undersigned counsel rarely files motions for reconsideration. This is a special case. The October 25, 2011 Order of dismissal for failing to file an early case conference report elevates form over substance in order to avoid a decision of the case on the merits. And, while the Order properly asserts the Court's interest in enforcing the rules for the better administration

1 of justice, that consideration or should be trumped by the manner in which the Court has handled  
2 the case. Here is the crux of this motion: a litigant appearing before one judge should not worry  
3 that the rules of the game will change if a new judge is assigned to preside over the case.  
4 Changing the rules mid-case does not just elevate form over substance; it erodes confidence in  
5 the administration of justice and may also constitute a deprivation of procedural due process.  
6

7 Respectfully, we submit that the Court should, at a minimum, grant leave to file the  
8 attached Motion for Reconsideration, allow the adverse parties to respond, and then consider the  
9 motion on its merits.<sup>1</sup>

10 Dated November 8, 2011.

Hoy & Hoy, PC

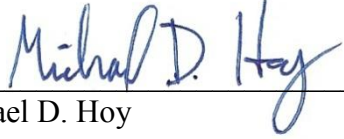
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13 Michael D. Hoy

14 **Privacy Certification**

15 Undersign certifies that the foregoing points and authorities, and the attached declarations  
16 and exhibits do not contain any social security numbers.

17 Dated November 8, 2011.

Hoy & Hoy, PC

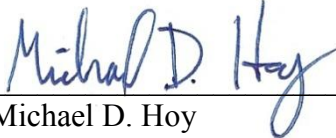
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20 Michael D. Hoy

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28 <sup>1</sup> Movant reserves the right to file a separate motion under NRCP 60(b). Our request for relief is based on  
mistake and upon new evidence. A party is not required to seek leave before filing a Rule 60 motion.

## Certificate of Service

Pursuant to NRCP 5(b), I certify that I am an attorney representing Mark B. Steppan in this litigation and that on November 8, 2011, I electronically filed and true and correct copy of the foregoing Motion for Leave to File Motion for Reconsideration by using the ECF system, which served the following counsel electronically: Thomas J. Hall and Gregory F. Wilson.

Dated November 8, 2011

  
Michael D. Hoy

Hoy & Hoy

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**Index to Exhibits**

- 1 Proposed Motion for Reconsideration
- 2 Affidavit of Hon. Brent Adams

# Exhibit 1

Document Code: 2175

**HOY & HOY, P.C.**

Michael D. Hoy (NV Bar 2723)  
4741 Caughlin Parkway, Suite Four  
Reno, Nevada 89519  
775.7868000 (voice)  
775.786.7426 (fax)

Attorneys for: Mark B. Steppan

**In the Second Judicial District Court of the State of Nevada  
In and for the County of Washoe**

JOHN ILIESCU, JR.; SONNIA SANTEE ILIESCU;  
John Iliescu, Jr. and Sonnia Santee Iliescu, as  
trustees of the JOHN ILIESCU, JR. AND SONNIA  
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Plaintiffs,

vs.

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Defendant.

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CV07-01021

Dept. No. 10

And Consolidated Action and Related Third-  
party Claims.

**Motion for Reconsideration**

Mark B. Steppan ("Steppan" or "Architect") moves for reconsideration of the Court's October 25, 2011 "Order Granting Defendants Iliescus' Motion to Dismiss" ("Order of Dismiss"). This motion is based upon the attached affidavit of Hon. Brent Adams, the following Memorandum of Points and Authorities, all papers and pleadings before the Court, and all further arguments and evidence that the Court entertains in support of this motion.

## Memorandum of Points and Authorities

For four years, the District Judge in Department Six managed this litigation in a series of hearings and pretrial conferences. In order to avoid the expense of unnecessary discovery, the District Judge specifically phased discovery to meet the threshold issues first, and reserving discovery for a later date. All of this procedural history was laid out in Steppan's Opposition to Iliescu's Motion to Dismiss.

In its Order of Dismissal, this Court said, "A Case Conference Report should have been filed on or before March 22, 2008...." Order of Dismissal, page 4, lines 10-11. But the decision overlooks the undisputed **fact** that, on February 22, 2008, the District Judge in Department Six conducted a pre-trial conference with all of the parties to phase the litigation, including discovery. After a discussion with counsel, the District Judge went on the record to recapitulate:

THE COURT: The record should reflect that counsel and the Court have discussed an appropriate process for proceeding in this case. We've agreed that the plaintiff and the defendant, Iliescu parties and Mr. Steppan, will each prepare motions for summary judgment or partial summary judgment directed to the issue of the validity of the lien which is the subject of this case.

Counsel for those parties will also confer concerning the nature, extent and timing of any additional discovery which appears to be appropriate for presentation and submission of that issue to the Court.

The matter will then be submitted to the Court on the competing summary judgment motions according to a schedule that counsel will agree upon. And the Court will either decide the submitted motion or advise counsel if an oral argument or evidentiary hearing is warranted in this case.

Upon disposition of the summary judgment motions, it is agreed that counsel and the parties will meet with the Court to discuss the appropriate process—processing of the case thereafter including issues such as mediation or arbitration provisions in the agreement, terms of guarantees applicable to some of the parties and also claims that were asserted or may hereafter be asserted concerning the prior counsel of the plaintiff. If counsel believes they need the Court's assistance in scheduling any of these matters, we'll conduct an on-the-record telephone conference for that purpose.

1 Transcript of Pretrial Hearing, Exhibit 2, pages 3-4. The Order of Dismissal does not address  
2 this proceeding at all.

3 The Order of Dismissal dismisses the contention that the case was managed as “complex  
4 litigation,” finding that the case is not “complex.” Notwithstanding one District Judge’s opinion  
5 about the complexity of the case, the District Judge of Department Six clearly managed the case  
6 as “complex litigation,” and did not expect an early case conference report:  
7

8 Although the Court did not enter a written order under NRCP 16.1(f) designating  
9 the case as “complex litigation,” the February 22, 2008 conference was a NRCP  
10 16 pretrial conference for purpose of managing the consolidated cases and staging  
11 discovery. At all times, your undersigned District Court Judge and the lawyers  
12 practicing before me treated the case as one managed by the Court under Rule  
13 16. The Court did not expect any party to file an early case conference report  
14 under Rule 16.1(e)(2).

15 Affidavit of Hon. Brent Adams, ¶ 4.

16 Movant certainly understands and appreciates the concept of enforcing procedural rules.  
17 But, in order to comply with procedural due process, those rules should be applied uniformly  
18 across cases and must apply uniformly within a single case. Here, after four years of litigation,  
19 the Court suddenly changed the applicability of NRCP 16.1 based on no change other than a  
20 transfer of the case from one department to another.

21 The Order of Dismissal argues that dismissal under NRCP 16.1(e)(2) “should address  
22 factors that promote the purpose of the rule, rather than factors that focus on the consequences to  
23 the plaintiff resulting from his or her failure to comply with the rule.” But, on the other hand, the  
24 prime directive of the Nevada Rules of Civil Procedure is contained in Rule 1: “[These rules]  
25 shall be construed and administered to secure the just, speedy, and inexpensive determination of  
26 every action.” (Emphasis added). Nevada has a long-standing policy of adjudicating cases on  
27 their merits rather than on procedural grounds. *Kahn v. Orme*, 108 Nev. 510, 516, 835 P.2d 790,  
28 794 (1992).

1  
2 Under the circumstances of this case, a complete forfeiture of a substantive right is so  
3 harsh that it constitutes an abuse of discretion, if not an outright denial of procedural due process.  
4 First, Steppan's former counsel acted based upon the District Judge in Department Six managing  
5 discovery. The District Judge in Department Six did not require an early case conference report.  
6 Second, the District Judge in Department Six has stated that an early case conference report was  
7 not required. Thus, it appears that counsel correctly and reasonably followed the requirements of  
8 the District Judge in Department Six in accordance with the discovery management controlled by  
9 the Court. It would be unreasonable to expect counsel to act contrary to the requirements of the  
10 District Judge in Department Six and unreasonable to dismiss a case when counsel acted  
11 in accordance with the requirements of the District Judge in Department Six.  
12

13  
14 If the Court now finds that, despite the subjective intent of both counsel and the presiding  
15 judge, it was objectively unreasonable not to file the early case conference report, then the Court  
16 should fashion some sanction against counsel that is far short of an outright forfeiture of  
17 substantive lien rights:

18 Inherent in courts is the power to dismiss a case for failure to prosecute or  
19 to comply with its orders. To prevent undue delays and to control their calendars,  
20 courts may exercise this power within the bounds of sound judicial discretion,  
21 independent of any authority granted under statutes or court rules. []

22 However, dismissal with prejudice is a harsh remedy to be utilized only in  
23 extreme situations. [] It must be weighed against the policy of law favoring the  
24 disposition of cases on their merits. [] Because dismissal with prejudice 'is the  
25 most severe sanction that a court may apply . . . its use must be tempered by a  
26 careful exercise of judicial discretion.' []

27 **In keeping with the trend to adjudicate a case on its merits rather than**  
28 **by summary procedures, the trial judge in this case could have assessed lesser**  
**penalties against appellants and their attorney and granted their motion for a**  
**new trial.** However, on appeal we are limited to the narrow question of whether  
the trial judge abused his discretion by denying the motion.

1 *Moore v. Cherry*, 90 Nev. 390, 393-94, 528 P.2d 1018, 1020-21 (1974)(citations omitted,  
2 emphasis added). Like Nevada, Washington requires that its trial courts consider lesser  
3 sanctions before ordering dismissal for a discovery violation:

4       When the trial court selects one of the “ ‘harsher remedies’ ” under CR 37(b), it  
5 must be apparent from the record that the trial court explicitly considered whether  
6 a lesser sanction would probably have sufficed,’ and whether it found that the  
7 disobedient party’s refusal to obey a discovery order was willful or deliberate and  
substantially prejudiced the opponent’s ability to prepare for trial.

8       [] Further, as a default judgment for discovery violations raises due process  
concerns, the court must first find willfulness and substantial prejudice.

9 *Smith v. Behr Process Corp.*, 113 Wash. App. 306, 324-25, 54 P.3d 665, 675-76 (2002).

10 Likewise, the Alaska Supreme Court said, (1) a party should not be barred from his day in court  
11 where an alternative remedy would suffice to make the adverse party whole, (2) before a court  
12 can impose litigation-ending sanctions for discovery violations, the record must indicate a  
13 reasonable exploration of possible and meaningful alternatives to dismiss, and (3) dismissal is  
14 inappropriate unless the discovery violation deprives a litigant of the ability to prove an element  
15 of a case. *Hughes v. Bobich*, 875 P.2d 749, 752 (Alaska 1994).

16       Here, the Court made no record that it considered any sanctions short of the forfeiture of  
17 a multi-million dollar claim. Had the Court determined that it was going to reverse the  
18 requirements of the District Judge in Depart Six, the Court could have ordered Steppan to file an  
19 early case conference report within ten days (even though Steppan is technically not even the  
20 plaintiff who commenced this consolidated action). Frankly, that would not accomplish much  
21 because discovery is already completed in the case.

22       The Court could have awarded a monetary sanction against a party or counsel, ordered  
23 attendance at CLE courses on discovery, or imposed some other remedy commensurate with the  
24 alleged infraction, which caused absolutely no harm to anybody. But an outright dismissal and  
25 forfeiture is so disproportionate with the supposed crime, that it violates due process.  
26  
27  
28

1 Finally, under the precedents above, the Court should have fashioned a sanction only  
2 after determining that Steppan's counsel willfully violated an order or rule. The record makes  
3 clear that Steppan's counsel and the District Judge of Department Six both understood that no  
4 early case conference report was required for this case.

### 5 **Conclusions and Request for Relief**

6 The penalty of forfeiture is completely disproportionate to the infraction here. The  
7 presiding District Judge did not require an early case conference report. It is certainly true that  
8 the lawyers could have been more diligent and sought entry of a formal order that no early case  
9 conference report was required. It is understandable how the current presiding District Judge did  
10 not fully appreciate and therefore honor the procedural history before the transfer to his  
11 department. But none of this warrants dismissal and the outright forfeiture of a multi-million  
12 dollar claim.

13  
14 Movant submits that the Court must reconsider its October 25, 2011 Order of Dismissal.<sup>1</sup>

15 Dated November \_\_\_, 2011.

Hoy & Hoy, PC

16  
17 Proposed Form of Motion

18 \_\_\_\_\_  
Michael D. Hoy

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26 <sup>1</sup> Movant recognizes that the Court also dismissed Iliescu's claims against Hale Lane, and that the Court  
27 wants to ensure uniformity in the treatment of the parties. Hale Lane initially moved for summary  
28 judgment on the substance of the malpractice claims against it. Seeking dismissal under NRCP 16.1(e)(2)  
was an afterthought, brought to the Court's attention in the form of a "supplement" to Hale Lane's motion  
for summary judgment. Reconsideration of orders of dismissal based on NRCP 16.1(e)(2) would not upset  
the Court's ruling exonerating Hale Lane from malpractice claims on the merits.

# Exhibit 1

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IN THE SECOND JUDICIAL DISTRICT COURT

7

STATE OF NEVADA, COUNTY OF WASHOE

8

THE HONORABLE BRENT ADAMS, DISTRICT JUDGE

9

JOHN ILIESCU, ET AL,

10

Plaintiffs,

CV07-00341

11

vs.

Dept. 6

12

MARK STEPPAN,

13

Defendant.

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Pages 1 to 6, inclusive.

15

16

## TRANSCRIPT OF PROCEEDINGS

17

PRE-TRIAL CONFERENCE

18

Friday, February 22, 2008

19

### A P P E A R A N C E S:

20

FOR HALE, LANE:

DAVE GRUNDY, ESQUIRE

FOR ILIESCU:

STEVEN MOLLATH, ESQUIRE

21

SALLIE ARMSTRONG, ESQUIRE

FOR SCHLEINING AND DECAL:

GREG WILSON, ESQUIRE

22

FOR STEPPAN:

STEVEN HARRIS, ESQUIRE

23

CALIF. PACIFIC CONSOLIDATED:

GAYLE A. KERN, ESQUIRE

24

JUDITH OTTO, ESQUIRE

25

26

REPORTED BY:

Christina Herbert, CCR #641

Molezzo Reporters, 322.3334

1 RENO, NEVADA -- FRIDAY, FEBRUARY 22, 2008 -- 1:30 P.M.

2 -o0o-

3 THE COURT: This proceeding is in Case CV07-00341,  
4 John Iliescu, Et al versus Mark Stepan and related claims  
5 and parties. The record should reflect the Court has  
6 conducted an off-the-record case management conference with  
7 counsel. And also present is Mr. Stepan, who is one of the  
8 parties in this case.

9 And, counsel, briefly would you just state your  
10 appearances and clients for the record, please, beginning  
11 with Mr. Mollath.

12 MR. MOLLATH: Steven Mollath on behalf of Dr.  
13 Iliescu and the 1992 Iliescu Family Trust.

14 MS. ARMSTRONG: Sallie Armstrong on behalf of the  
15 same parties.

16 MS. KERN: Gayle Kern on behalf of Mark Stepan.

17 MR. WILSON: Greg Wilson and Steve Harris as well  
18 as Mr. Al Kennedy from Portland, Oregon for individual  
19 third-party defendant, John Schleining.

20 MR. HARRIS: Steve Harris also for Decal.

21 THE COURT: Thank you.

22 MR. GRUNDY: David Grundy on behalf of third-party  
23 defendant, Hale, Lane, Dennison, Howard and three  
24 individually named lawyers.

1 MS. OTTO: Judith Otto on behalf of Consolidated  
2 Pacific Corporation.

3 MICHELLE: On behalf of Iliescu.

4 THE COURT: The record should reflect that counsel  
5 and the Court have discussed an appropriate process for  
6 proceeding in this case. We've agreed that the plaintiff and  
7 the defendant, Iliescu parties and Mr. Steppan, will each  
8 prepare motions for summary judgment or partial summary  
9 judgment directed to the issue of the validity of the lien  
10 which is the subject of this case.

11 Counsel for those parties will also confer  
12 concerning the nature, extent and timing of any additional  
13 discovery which appears to be appropriate for presentation  
14 and submission of that issue to the Court.

15 The matter will be then submitted to the Court on  
16 the competing summary judgment motions according to a  
17 schedule that counsel will agree upon. And the Court will  
18 either decide the submitted motion or advise counsel if an  
19 oral argument or evidentiary hearing is warranted in this  
20 case.

21 Upon disposition of the summary judgment motions,  
22 it is agreed that counsel and the parties will meet with the  
23 Court to discuss the appropriate process -- processing of the  
24 case thereafter including issues such as mediation or

1 arbitration provisions in the agreement, terms of guarantees  
2 applicable to some of the parties and also claims that were  
3 asserted or may hereafter be asserted concerning the prior  
4 counsel of the plaintiff. If counsel believes they need the  
5 Court's assistance in scheduling any of these matters, we'll  
6 conduct an on-the-record telephone conference for that  
7 purpose.

8 Is there anything further, counsel?

9 UNIDENTIFIED SPEAKER: I believe, your Honor, we  
10 were going -- to use your term -- park the further pleadings  
11 of the third-party defendants until after your motion for  
12 summary judgment.

13 THE COURT: That's true. I think it is agreed that  
14 other pleadings in this case adding additional claims or  
15 parties will be stayed without prejudice until the  
16 disposition of the summary judgment motion.

17 UNIDENTIFIED SPEAKER: Would that include answers  
18 and --

19 THE COURT: Off the record.

20 (Discussion off the record.)

21 THE COURT: Yes, that would include answers or  
22 other responses.

23 MS. ARMSTRONG: We also agree that we can submit  
24 our motion for authorization to serve Mr. Bailey by

1 publication without waiting for an opposition because --

2 THE COURT: That is true. That will be submitted  
3 ex parte by counsel for the plaintiff and will be entered by  
4 the Court. Thank you. Court is in recess.

5 (Whereupon, proceedings were concluded at  
6 2:07 p.m.)

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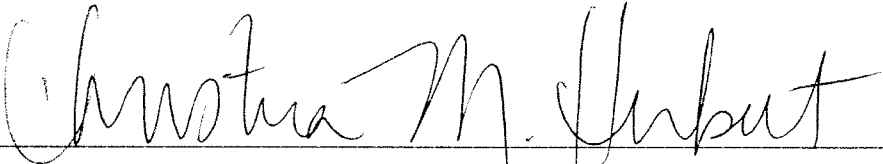
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1 STATE OF NEVADA )  
2 ) ss.  
3 COUNTY OF WASHOE )  
4

5 I, CHRISTINA MARIE HERBERT, a Certified Court Reporter  
6 in and for the states of Nevada and California, do hereby  
7 certify:

8 That I was personally present for the purpose of acting  
9 as Certified Court Reporter in the matter entitled herein;

10 That said transcript which appears hereinbefore was  
11 taken in verbatim stenotype notes by me and thereafter  
12 transcribed into typewriting as herein appears to the best of  
13 my knowledge, skill, and ability and is a true record  
14 thereof.

15  
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17

18 Christina Marie Herbert, CCR #641 (NV)  
19 CSR #11883 (CA)

20 -o0o-

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# Exhibit 2

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

9 JOHN ILIESCU JR., SONNIA SANTEE  
10 ILIESCU, AND JOHN ILIESCU JR. AND  
11 SONNIA ILIESCU AS TRUSTEES OF  
12 THE JOHN ILIESCU, JR. AND SONNIA  
13 ILIESCU 1992 FAMILY TRUST,

14 Applicants,

15 vs.

16 MARK B. STEPPAN,

17 Respondent.  
18 \_\_\_\_\_/

19 MARK STEPPAN,

20 Plaintiff,

21 vs.

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

29 Defendants.  
30 \_\_\_\_\_/

31 AND RELATED ACTIONS.  
32 \_\_\_\_\_/

33 ///

34 ///

CASE NO.: CV07-00341  
(Consolidated with Case No. CV07-01021)

DEPT. NO.: 6

**AFFIDAVIT OF HON. BRENT ADAMS IN  
SUPPORT OF MOTION FOR  
RECONSIDERATION**

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

3           I, Brent Adams, affiant herein, do hereby swear under penalty of perjury that the assertions  
4 of this Affidavit are true.

5  
6           1.       I am a Judge in Department 6 of the Second Judicial District Court of the State of  
7 Nevada.

8           2.       On February 22, 2008, I conducted an in-chambers case management conference in  
9 the above-referenced consolidated cases. Counsel representing all parties were present. After  
10 discussion off the record, I ordered that: (a) the issue whether the property owner was entitled to a  
11 pre-lien notice would be determined by cross-motions for partial summary judgment; (2) that counsel  
12 for the property owner and lien claimant would confer about additional discovery on the pre-lien  
13 issue; (3) upon disposition of the cross-motions for partial summary judgments, the lawyers would  
14 discuss additional case management; and (4) the property owner's claims against third-parties (for  
15 indemnity and professional negligence) were stayed pending disposition of the cross-motions for  
16 partial summary judgment.  
17

18  
19           3.       As discussed in the February 22, 2008 pretrial conference, on March 7, 2008, counsel  
20 filed a stipulation, upon which I entered an order, that claims against individual lawyers sued for  
21 professional negligence were dismissed, and that claims against the defendant law firm was stayed  
22 "for all purposes, including discovery and trial, pending the final resolution of all claims asserted by  
23 plaintiffs against defendants."

24           4.       Although the Court did not enter a written order under NRCP 16.1(f) designating the  
25 case as "complex litigation," the February 22, 2008 conference was a NRCP 16 pretrial conference  
26 for purpose of managing the consolidated cases and staging discovery. At all times, your  
27  
28

undersigned District Court Judge and the lawyers practicing before me treated the case as one managed by the Court under Rule 16. The Court did not expect any party to file an early case conference report under Rule 16.1(e)(2).

5. When the Court entered its Order granting Steppan's motion for summary judgment, it meant that Steppan prevailed substantively on the main issue presented to the Court in both of the cases that had been consolidated. That is, the Court found that the Mechanic's Lien should not be released as it was a valid and lawful lien on the real property and the only issue remaining was the amount of the Mechanic's Lien.

6. Consistent with the February 22, 2008 order in chambers, the parties set a settlement/status conference for January 14, 2010.


7. On August 31, 2010, in accordance with the Court's order regarding the management of the case and counsel agreement, counsel set the matter for trial.

#### AFFIRMATION

#### Pursuant to NRS 239B.030

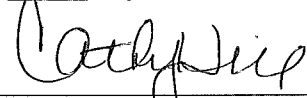
The undersigned does hereby affirm that the preceding document filed in the above-entitled case does not contain the social security number of any person.

DATED this \_\_\_\_ day of November, 2011.

  
HON. BRENT ADAMS

SUBSCRIBED AND SWORN to before me

this 8th day of November, 2011.

  
NOTARY PUBLIC



**FILED**  
Electronically  
11-08-2011:04:11:36 PM  
Craig Franden  
Clerk of the Court  
Transaction # 2578958

# Exhibit 2

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

9 JOHN ILIESCU JR., SONNIA SANTEE  
10 ILIESCU, AND JOHN ILIESCU JR. AND  
11 SONNIA ILIESCU AS TRUSTEES OF  
12 THE JOHN ILIESCU, JR. AND SONNIA  
13 ILIESCU 1992 FAMILY TRUST,

14 Applicants,

15 vs.

16 MARK B. STEPPAN,

17 Respondent.  
18 \_\_\_\_\_/

19 MARK STEPPAN,

20 Plaintiff,

21 vs.

22 JOHN ILIESCU, JR. and SONNIA  
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24 ILIESCU, JR., AND SONNIA ILIESCU  
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26 JOHN ILIESCU, individually; DOES I-  
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28 CORPORATIONS VI-X, inclusive.

29 Defendants.  
30 \_\_\_\_\_/

31 AND RELATED ACTIONS.  
32 \_\_\_\_\_/

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34 ///

CASE NO.: CV07-00341  
(Consolidated with Case No. CV07-01021)

DEPT. NO.: 6

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SUPPORT OF MOTION FOR  
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#### AFFIRMATION

#### Pursuant to NRS 239B.030

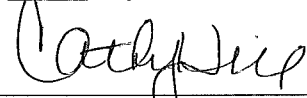
The undersigned does hereby affirm that the preceding document filed in the above-entitled case does not contain the social security number of any person.

DATED this \_\_\_\_ day of November, 2011.

  
HON. BRENT ADAMS

SUBSCRIBED AND SWORN to before me

this 8th day of November, 2011.

  
NOTARY PUBLIC



Document Code:

**HOY & HOY, P.C.**

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Reno, Nevada 89519  
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775.786.7426 (fax)

Attorneys for: Mark B. Steppan

Law Offices of Thomas J. Hall  
Thomas J. Hall  
305 South Arlington Avenue  
P.O. Box 3949  
Reno, Nevada 89505  
775.348.7011

Attorneys for John and Sonnia Iliescu

**In the Second Judicial District Court of the State of Nevada  
In and for the County of Washoe**

JOHN ILIESCU, JR.; SONNIA SANTEE ILIESCU;  
John Iliescu, Jr. and Sonnia Santee Iliescu, as  
trustees of the JOHN ILIESCU, JR. AND SONNIA  
ILIESCU 1992 FAMILY TRUST,

Plaintiffs,

vs.

MARK B. STEPPAN,

Defendant.

Consolidated Case Nos. CV07-00341 and  
CV07-01021

Dept. No. 10

And Consolidated Action and Related Third-  
party Claims.

**Stipulation**

Mark B. Steppan ("Steppan") and John Iliescu, Jr. and Sonnia S. Iliescu ("Iliescu")  
stipulate as follows:

1. On October 25, 2011, the Court entered an Order Granting Defendants Iliescus'  
Motion to Dismiss. On November 3, 2011, Iliescu filed a Motion to Cancel and Expunge Notice

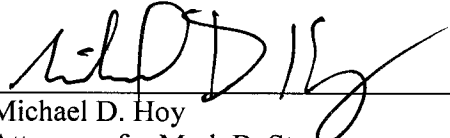
1 of Lis Pendens and Motion to Release Mechanic's Liens. On November 14, 2011, Iliescu filed a  
2 Motion for Attorney Fees.

3 2. On November 8, 2011, Steppan filed a Motion for Leave to File Motion for  
4 Reconsideration. Disposition of this motion could make moot Iliescu's motions to release the  
5 lien, expunge the notice of *lis pendens*, and for attorney fees.

6  
7 3. Steppan's opposition to the motions to release the lien, expunge the notice of lis  
8 pendens, and for attorney fees should be held in abeyance until five Court days after disposition  
9 of Steppan's Motion for Leave to File Motion for Reconsideration or, if leave is granted,  
10 Steppan's Motion for Reconsideration.

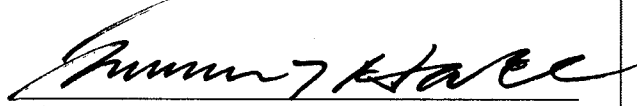
11 November 21, 2011.

Hoy & Hoy, PC

12  
13   
14 Michael D. Hoy  
Attorneys for Mark B. Steppan

15 November 21, 2011.

Law Office of Thomas J. Hall

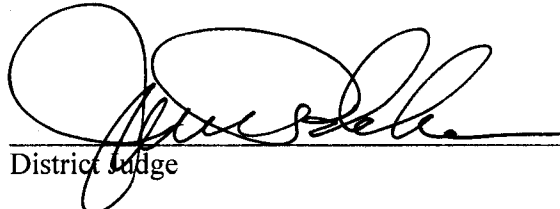
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18 Thomas J. Hall  
19 Attorneys for John Iliescu, Jr. and Sonnia  
20 Iliescu

21 **Order**

22 Good cause appearing therefore,

23 IT IS SO ORDERED.

24 November 22<sup>nd</sup>, 2011.

25   
26 District Judge  
27  
28

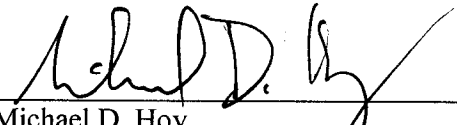
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**Privacy Certification**

Undersigned certify that the foregoing stipulation points and authorities do not contain any social security numbers.

November 21, 2011.

Hoy & Hoy, PC

  
\_\_\_\_\_  
Michael D. Hoy  
Attorneys for Mark B. Steppen

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

\* \* \*

MARK B. STEPPAN,

Plaintiff,

Case No: CV07-00341  
(Consolidated with CV07-01021)

vs.

Dept. No.: 10

JOHN ILIESCU, JR. and SONNIA 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.

AND RELATED MATTERS.

**ORDER CERTIFYING INTENT TO GRANT MOTION FOR RECONSIDERATION**

Presently before the Court is a Motion for Leave to File Motion for Reconsideration, filed by Plaintiff MARK B. STEPPAN (hereafter "Plaintiff") on November 8, 2011. Following, on November 21, 2011, Defendants JOHN ILIESCU, JR. and SONNIA ILIESCU, as Trustees of the JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT, and JOHN ILIESCU (hereafter, collectively, "Defendants") filed an Opposition to Steppan's Motion for Leave to File Motion for Reconsideration. Thereafter, on December 1, 2011, Plaintiff filed a Reply in Support of Motion for Leave to File Motion for Reconsideration.

1 The following day, on December 1, 2011, Plaintiff filed a Request for Submission, thereby  
2 submitting the matter for the Court's consideration. However, on December 22, 2011,  
3 Plaintiff filed a Notice of Appeal, appealing this Court's Order Granting Defendants Iliescus'  
4 Motion to Dismiss.

5 Pursuant to NRS 177.155, the Nevada Supreme Court has sole jurisdiction over a  
6 matter from the time an appellant files a Notice of Appeal until the Remittitur issues to the  
7 district court. *Buffington v. State*, 110 Nev. 124, 126, 686 P.2d 643, 644 (1994). A motion  
8 for reconsideration is not a tolling motion pursuant to NRAP 4(a)(2), and the district court  
9 thus lacks jurisdiction to grant a motion for reconsideration after a timely notice of appeal  
10 has been filed. *Chapman Industries v. United Ins. Co. of America*, 110 Nev. 454, 458, 874  
11 P.2d 739, 741 (1994) (citing *Alvis v. State, Gaming Control Bd.*, 99 Nev. 184, 660 P.2d 980  
12 (1983)).

13 Based on the above, it is clear that this Court lacks jurisdiction to grant Plaintiff's  
14 Motion for Reconsideration. Nonetheless, the Nevada Supreme Court has held that a  
15 district court may certify its intent to grant a motion for reconsideration if it would be  
16 inclined to do so following remand by the Nevada Supreme Court. *See Huneycutt v.*  
17 *Huneycutt*, 94 Nev. 79, 575 P.2d 585 (1978); *Foster v. Dingwall*, \_\_\_ Nev. \_\_\_, 228 P.3d  
18 453 (2010) (clarifying and more fully explaining the certification process announced in  
19 *Huneycutt*).

20 After reviewing the pleadings and arguments of the parties, the Court is inclined to  
21 grant reconsideration of its October 25, 2011 Order Granting Defendants Iliescus' Motion to  
22 Dismiss. Accordingly, the Court hereby certifies its intent to grant the requested relief  
23 pursuant to *Huneycutt v. Huneycutt*, 94 Nev. 79, 575 P.2d 585.

24  
25 **DATED** this 7 day of February, 2012.

26   
27 STEVEN P. ELLIOTT  
28 District Judge

**CERTIFICATE OF MAILING**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

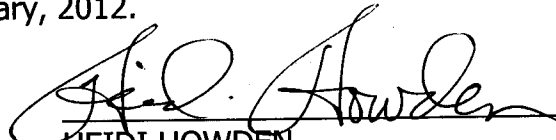
GREGORY WILSON, ESQ. for JOHN SCHLEINING

THOMAS HALL, ESQ. for TRUSTEE OF THE JOHN ILIESCU, JR. & SONNIA ILLIESCU, JOHN ILIESCU, JR., SONNIA ILIESCU

DAVID GRUNDY, ESQ. for KAREN DENNISON, HOLLAND & HART, LLP, JERRY SNYDER, R. HOWARD, HALE LANE PEEK DENNISON HOWARD

MICHAEL HOY, ESQ. for MARK STEPPAN

**DATED** this 7 day of February, 2012.

  
HEIDI HOWDEN  
Judicial Assistant

**HOY & HOY, P.C.**

Michael D. Hoy (NV Bar 2723)  
Michael S. Kimmel (NV Bar 9081)  
4741 Caughlin Parkway, Suite Four  
Reno, Nevada 89519  
775.786.8000 (voice)  
775.786.7426 (fax)

Attorneys for: Mark B. Steppan

Electronically Filed  
Feb 17 2012 03:32 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

**In the Supreme Court of the State of Nevada**

MARK B. STEPPAN,

Appellant,

vs.

JOHN ILIESCU, JR.; SONNIA SANTEE ILIESCU;  
John Iliescu, Jr. and Sonnia Santee Iliescu, as  
trustees of the JOHN ILIESCU, JR. AND SONNIA  
ILIESCU 1992 FAMILY TRUST,

Respondents.

And Related Cross-Appeal.

Case No. 60036

**Motion for Remand**

Mark B. Steppan ("Steppan"), by and through his undersigned counsel, hereby moves for an order remanding this matter to Department Ten of the Second Judicial District Court, in and for the County of Washoe, for entry of order by the District Court consistent with its February 7, 2012 Order Certifying Intent to Grant Motion for Reconsideration. Exhibit 1. This motion is made pursuant to *Foster v. Dingwall*, 228 P.3d 453, 455-56 (2010).

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///

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

These consolidated cases involve a mechanics lien securing payment of an architect's fees and costs. After the architect recorded his lien, the landowner (Respondents John Iliescu, Jr., Sonnia Santee Iliescu John Iliescu, Jr. and Sonnia Santee Iliescu, as trustees of the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust's, collectively, "Iliescu") filed an action to expunge the lien. Appellant then filed a separate action to foreclose the lien. The Second Judicial District Court consolidated the two cases, and assigned them to Department Six. After discovery, case management conferences, and cross-motions for summary judgment, the District Court ruled that the architect had perfected a mechanics lien securing his right to payment. The only remaining trial issue between the lien claimant and land owner is computation of the amount that is secured by the lien. Other claims exist between the landowner and his legal counsel and developers who indemnified the landowner against liens.

In the Spring of 2010, Department Six then conducted a settlement conference between the parties. By July of 2011, it was clear that the case would not settle. At that point, the judge in Department Six recused himself because he had formed opinions about the witnesses and claims that would make it improper for him to preside over a bench trial. After Department Six had managed discovery for four years, and after the case was transferred to a different department, the District Court dismissed the case without prejudice for failure to file an early case conference report. The District Court did not enter judgment or otherwise declare that one party is a "prevailing party", and the Court's order of dismissal did not contain NRCP 54(b) certification.

On November 8, 2011, Steppan filed his Motion for Leave to File Motion for Reconsideration.<sup>1</sup> That motion was fully briefed and submitted to Department Ten for decision. Before Department Ten issued its decision, however, it issued additional orders effectively resolving all remaining claims as between the remaining parties active in the case. As a result, Appellant Steppan was compelled to file his Notice of Appeal and Amended Notice of Appeal to protect his appellate rights.

On February 8, 2012, the judge in Department Ten filed its Order Certifying Intent to Grant Motion for Reconsideration.

## II. ARGUMENT

### A. LEGAL STANDARD

This Court recently clarified the remand procedure to be employed by a party where it has become clear that the District Court is inclined to grant relief requested. *Foster v. Dingwall*, 228 P.3d 453, 455-56 (Nev. 2010). Once the District Court has certified its intent to grant the requested relief, it is appropriate to move the Nevada Supreme Court for remand to allow the District Court to enter an order granting the requested relief. *Id.* It is within the Nevada Supreme Court's discretion to then remand the matter to the District Court for a determination consistent with its certification. *Mack-Manley v. Manley*, 122 Nev. 849, 856, 138 P.3d 525, 530 (2006). If the only issue on appeal is the issue for which certification occurred, the appeal may

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<sup>1</sup> The extent to which Steppan's Motion for Leave to File a Motion for Reconsideration would be considered a tolling motion as explained by this Court in AA Primo Builders, LLC v. Washington, 245 P.3d 1190, 1194-95 (Nev. 2010) is unclear. In Primo, this Court addressed the effects of a post-judgment motion for reconsideration on the time to file an appeal. Here, the District Court's November 22, 2011 Order was not a final judgment and did not dispose of all claims as between all parties. It was the entry of subsequent orders disposing the claims as between the remaining parties which put Steppan in a position of having to file his notice of appeal to protect his appellate rights.

1 be dismissed. *Id.* Otherwise, where the appeal has raised additional issues, the Nevada Supreme  
2 Court may order a limited remand solely to address the certified issue. *Id.*

3 **B. DISCUSSION**

4 Remand is appropriate in this case. The sole issue for which Steppan filed his Notice of  
5 Appeal and Amended Notice of Appeal is the dismissal of his claims by way of the District  
6 Court's November 22, 2011 Order. That Order dismissed claims by Steppan to foreclose a  
7 mechanic's lien (which had already been adjudicated as valid by the Department Six judge who  
8 presided over the case for four years) on the basis that a NRCP 16.1 Early Case Conference  
9 Report had not been filed. In reaching that result, however, the judge in Department 10 was  
10 without the benefit of knowledge as to what the judge in Department Six had intended when he  
11 actively managed and directed the progression of the case, including discovery, for a period of  
12 many years. Steppan's Motion for Leave to File Motion for Reconsideration provided the judge  
13 in Department 10 that information, not the least of which was an Affidavit of Hon. Brent Adams  
14 in Support of Motion for Reconsideration. Clearly the judge in Department 10 found that new  
15 evidence compelling and entered the February 8, 2012 Order Certifying Intent to Grant Motion  
16 for Reconsideration.  
17  
18

19 **III. CONCLUSION**

20 Based on the foregoing, Steppan respectfully requests the Court remand his appeal for  
21 entry of Order on Steppan's Motion for Leave to file Motion for Reconsideration.  
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## Privacy Certification

Undersigned hereby certifies that the foregoing document does not contain any social security numbers.

February 17, 2012.

Hoy & Hoy, PC

/s/ Michael S. Kimmel  
 Michael D. Hoy (NV Bar 2723)  
 Michael S. Kimmel (NV Bar 9081)  
 4741 Caughlin Parkway, Suite Four  
 Reno, Nevada 89519  
 775.786.8000 (voice)  
 775.786.7426 (fax)

Attorneys for: Mark B. Steppan

**Certificate of Service**

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Hoy & Hoy, PC, and that on the 17th day of February 2012, I electronically filed a true and correct copy of the foregoing document with the Clerk of the Court by using the ECF system, which served the following parties electronically:

DAVID R. GRUNDY

ALICE CAMPOS MERCADO

GREGORY F. WILSON

Further, I hereby certify that, on the date below, I served a true and correct copy of the foregoing document by depositing a copy of the same for mailing enclosed in a sealed envelope upon which first class postage was fully prepaid addressed to the following:

Gordon Cowan  
10775 Double R. Blvd.  
Reno, Nevada 89521

David Wasick  
879 Mahogany Drive  
Minden, Nevada 89423

DATED this 17th day of February, 2012.

/s/ Kelly Anderson  
An employee of Hoy & Hoy

**2490**

Gordon M. Cowan (SBN# 1781)

Law Office of Gordon M. Cowan

Mailing: P.O. 17952

Reno, NV 89511

Phone 775 786 6111

Fax 775 786 9797

*Attorney for Plaintiffs* JOHN & SONNIA  
ILIESCU and ILIESCU FAMILY TRUST**IN THE SECOND JUDICIAL DISTRICT COURT  
WASHOE COUNTY, NEVADA**

---

JOHN ILIESCU, JR.; SONNIA SANTEE  
ILIESCU; JOHN ILIESCU JR. and  
SONNIA SANTEE ILIESCU as TRUSTEES  
of the JOHN ILIESCU, JR. and SONNIA  
ILIESCU 1992 FAMILY TRUST,

Consolidated Case Nos.

**CV07-00341** and**CV07-01021**Dept No. **10**

Plaintiffs,

vs.

MARK B. STEPPAN,

---

Defendant. /AND CONSOLIDATED ACTION AND  
RELATED THIRD-PARTY CLAIMS  

---

**MOTION FOR LEAVE TO FILE MOTION FOR RECONSIDERATION;  
OR, ALTERNATIVELY, MOTION FOR RELIEF FROM ORDER  
ENTERED SEPTEMBER 1, 2011 GRANTING THIRD-PARTY  
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Plaintiffs JOHN ILIESCU, JR.; SONNIA SANTEE ILIESCU; JOHN ILIESCU JR.  
and SONNIA SANTEE ILIESCU as TRUSTEES of the JOHN ILIESCU, JR. and  
SONNIA ILIESCU 1992 FAMILY TRUST ("Iliescu") move for leave to file their Motion  
for Reconsideration; or alternatively, Motion for Relief from Order Entered September 1,  
2011 Granting Third-Party Defendant's Motion for Summary Judgment ("Motion for  
Reconsideration, Etc" or "Order of September 1, 2011").

This Motion is based on the Hon. Brent Adams' affidavit at EXHIBIT 2 attached,  
this Court's "Order Certifying Intent to Grant Motion for Reconsideration" filed February  
7, 2012, the accompanying Memorandum of Points and  
Authorities, the papers and pleadings before the Court, and on other matters as may

1 come before the court via argument or evidence, or both.

2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 The accompanying Motion for Reconsideration, Etc., provides two reasons why  
4 the court should reconsider its Order of September 1, 2011.<sup>1</sup>

5 First and foremost, Judge Adams' recent affidavit confirms the following:

6 [t]hat claims against individual lawyers sued for professional  
7 negligence were dismissed, and that ***claims against the***  
8 ***defendant law firm was stayed "for all purposes,***  
9 ***including discovery and trial, pending the final***  
10 ***resolution of all claims asserted by plaintiffs against***  
11 ***defendants."***

12 Adams affidavit, p.2, Exhibit 2. Emphasis added.

13 Because Iliescu's Third Party Complaint was "stayed," (according to Judge  
14 Adams) until the underlying mechanics lien matter is resolved in its entirety, the filing of  
15 summary judgment by Hale Lane ran afoul of a rule of the case remaining effective at  
16 all times. The stay remained effective not just when Judge Adams retained the case,  
17 but at all times thereafter until the stay became lifted, or until the lien claim became  
18 resolved in its entirety. The stay imposed by Judge Adams was never lifted before Hale  
19 Lane sought its definitive relief against Iliescu, contrary to Judge Adams' stay. See  
20 Judge Adams' affidavit, p.2, Exhibit 2.

21 The second reason offered for reconsideration in the accompanying motion is  
22 likewise, based on Judge Adams' "stay," of the Third Party Complaint. With the Third  
23 Party Complaint "stayed," "*for all purposes, including discovery and trial . . .*" (Judge  
24 Adams affidavit, p.2 with emphasis) there was no reason to file a joint case conference  
25 report. Discovery was "stayed." (Judge Adams affidavit, p.2). The mechanics lien  
26 complaint was to proceed for all concerns while the Third party complaint for  
27

28 <sup>1</sup> The accompanying motion does *not* address any issue raised in the motion for reconsideration sought September 15, 2011 by Iliescu.

1 professional negligence was to remained stayed.

2 Also, to the limited extent Judge Adams' statement, that he, "did not expect any  
3 party to file an early case conference report under Rule 16.1(e)(2)," reinforces the stay  
4 of discovery proceedings in the Third Party Complaint for professional negligence,  
5 including the filing of a joint case conference report by Iliescu in that matter.

6 In *Trail v. Faretto*, 91 Nev. 401, 536 P.2d 1026 (1975) the Nevada Supreme  
7 court noted the following:

8 [A] court may, for sufficient cause shown, amend, correct,  
9 resettle, modify or vacate, as the case may be, an order  
10 previously made and entered on the motion in the progress  
11 of the cause or proceeding.

12 *Id.* at 403.

13 Where a prior decision is clearly erroneous, reconsideration and rehearing is  
14 appropriate. See, *Masonry & Tile Contractors Association of Southern Nevada v.*  
15 *Jolley, Urga & Wirth, Ltd.*, 113 Nev 737, 941 P.2d 486 (1997).

16 The Order of September 1, 2011 is on appeal with the Nevada Supreme Court.  
17 To the extent the court is inclined to grant the filing of Iliescus' proposed Motion for  
18 Reconsideration, to ensure the court does not run afoul of jurisdictional matters such as  
19 those raised in NRS § 177.155, Iliescus respectfully ask that the court follow the  
20 process set forth in *Huneycutt v. Huneycutt*, 94 Nev. 79, 575 P.2d 585 (1978) and in  
21 following cases, to certify an intent to grant the filing of Iliescus' motion, during the  
22 pendency of the appeal from the Order of September 1, 2011.

23 Where relief under NRCP Rule 60(b) becomes unavailing following six months  
24 after the entry of an order from which relief is sought, and as of this moment, where  
25 only one day remains to file such a motion under NRCP Rule 60(b), Iliescus respectfully  
26 ask the following: should the Supreme Court remand the matter back to this court  
27 based on the court's intended inclination to grant the requested relief, that the court  
28 specify that the filing of the reconsideration motion dates back in time to the date this

1 instant motion is being filed.

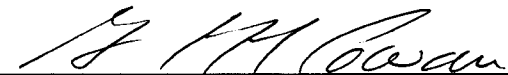
2 RESPECTFULLY, this 1<sup>st</sup> day of March 2012

3 GORDON M. COWAN, ESQ. (Nev. 1781)  
4 LAW OFFICE OF GORDON M. COWAN

5   
6 Attorneys for Plaintiffs

7 **AFFIRMATION**  
8 **Pursuant to NRS 239B.030**

9 The undersigned does hereby affirm that the within document does NOT  
10 contain the social security number of any person.

11   
12

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(d), I certify that I am employed at 10775 Double R Blvd.,  
3 Reno, Nevada 89521, and on this date I served the foregoing document(s) on all  
parties to this action by:

4  X  Placing an original or true copy thereof in a sealed envelope with postage  
5 prepaid in the United States Mail at Reno, Nevada, following ordinary business  
practices;

6   Personal delivery;

7   Facsimiles to:

8 Mike Hoy, Esq., Mike Kimmel, Esq. 775.786.7426  
David Grundy, Esq., Alice Mercado, Esq. 775.786.9716  
9 Gregory Wilson, Esq. 775.786.7764

10   Reno-Carson Messenger Service;

11   Certified Mail with Return Receipt Requested.

12 addressed as follows:

13 Michael D. Hoy Esq.  
14 Michael S. Kimmel  
Hoy & Hoy P.C.  
4741 Caughlin Parkway Ste. 4  
15 Reno, NV 89519

16 Gregory F. Wilson  
417 W. Plumb Ln.  
17 Reno NV 89509

18 David Grundy, Esq.  
Lemons Grundy Eisenberg  
6005 Plumas St 3<sup>rd</sup> Floor  
19 Reno NV 89519

20 David Wasick  
879 Mahogany Dr.  
21 Minden NV 89423

22 DATED March 1, 2012

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**SCHEDULE OF EXHIBITS**

<b><i>Exhibit No</i></b>	<b><i>Description</i></b>	<b><i>No. Pages</i></b>
1.	Proposed Motion for Reconsideration	9
2.	Affidavit of Hon. Brent Adams	4
	<b><i>Total Pages</i></b>	<b>13</b>

# Exhibit 1

**FILED**  
Electronically  
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Joey Orduna Hastings  
Clerk of the Court  
Transaction # 2799021

# Exhibit 1

1 **2490**

2 Gordon M. Cowan (SBN# 1781)  
3 Law Office of Gordon M. Cowan  
4 Mailing: P.O. 17952  
5 Reno, NV 89511  
6 Phone 775 786 6111  
7 Fax 775 786 9797

8 *Attorney for Plaintiffs* JOHN & SONNIA  
9 ILIESCU and ILIESCU FAMILY TRUST

10 **IN THE SECOND JUDICIAL DISTRICT COURT**  
11 **WASHOE COUNTY, NEVADA**

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

Consolidated Case Nos.  
**CV07-00341** and  
**CV07-01021**

Dept No. **10**

17 Plaintiffs,

18 vs.

19 MARK B. STEPPAN,

20 Defendant. /

21 AND CONSOLIDATED ACTION AND  
22 RELATED THIRD-PARTY CLAIMS

23 **PROPOSED**

24 **MOTION FOR RECONSIDERATION;**  
25 **OR, ALTERNATIVELY, MOTION FOR RELIEF FROM ORDER**  
26 **ENTERED SEPTEMBER 1, 2011 GRANTING THIRD-PARTY**  
27 **DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

28 Attached

1 **2490**

2 Gordon M. Cowan (SBN# 1781)  
3 Law Office of Gordon M. Cowan  
4 Mailing: P.O. 17952  
5 Reno, NV 89511  
6 Phone 775 786 6111  
7 Fax 775 786 9797

8 *Attorney for Plaintiffs* JOHN & SONNIA  
9 ILIESCU and ILIESCU FAMILY TRUST

10 **IN THE SECOND JUDICIAL DISTRICT COURT**  
11 **WASHOE COUNTY, NEVADA**

12 JOHN ILIESCU, JR.; SONNIA SANTEE  
13 ILIESCU; JOHN ILIESCU JR. and  
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Consolidated Case Nos.  
**CV07-00341** and  
**CV07-01021**

Dept No. **10**

Plaintiffs,

vs.

17 MARK B. STEPPAN,

Defendant. /

18 AND CONSOLIDATED ACTION AND  
19 RELATED THIRD-PARTY CLAIMS

20 **MOTION FOR RECONSIDERATION;**  
21 **OR, ALTERNATIVELY, MOTION FOR RELIEF FROM ORDER**  
22 **ENTERED SEPTEMBER 1, 2011 GRANTING THIRD-PARTY**  
23 **DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

24 Plaintiffs JOHN ILIESCU, JR.; SONNIA SANTEE ILIESCU; JOHN ILIESCU JR.  
25 and SONNIA SANTEE ILIESCU as TRUSTEES of the JOHN ILIESCU, JR. and  
26 SONNIA ILIESCU 1992 FAMILY TRUST ("Iliescu") move both, under the inherent  
27 power of the court to reconsider its order entered September 1, 2011 wherein the court  
28 granted Third Party Defendant Hale Lane's Motion for Summary Judgment, depriving  
Iliescu of substantive rights, potentially in violation of *Due Process* notions.

Alternatively, Iliescu moves for relief under NRCP Rule 60(b) based on notions of  
surprise, mistake, inadvertence, excusable neglect and new evidence not available to  
the parties before the time specified in NRCP Rule 59(b).

This Motion is based on the Hon. Brent Adams' affidavit at EXHIBIT 1 attached,

1 this Court's "Order Certifying Intent to Grant Motion for Reconsideration" filed February  
2 7, 2012, the accompanying Memorandum of Points and Authorities, the papers and  
3 pleadings before the Court, and on other matters as may come before the court via  
4 argument or evidence, or both.

## 5 **MEMORANDUM OF POINTS AND AUTHORITIES**

### 6 ***Background***

7 The Plaintiff Mark Stepan ("Stepan"), a California based architect, seeks \$2+  
8 million in professional architectural fees in a mechanics' lien claim he filed against the  
9 Respondents, John and Sonnia Iliescu and their family trust ("Iliescu"). Iliescu never  
10 contracted for Stepan's services. Iliescu merely owns the property against which  
11 Stepan pursues his mechanics lien.

12 Stepan's \$2+ million claim is not based on the "value of services." The \$2+  
13 million sum is, instead, based on a contract sum agreed to by those who purchased  
14 Iliescu's property, who were considered the property's "owner" when they contracted  
15 with Stepan.

16 Stepan and the new owner envisioned a top-end, high-rise development. But,  
17 the development never came to pass. The project was never built. Ground breaking  
18 never took place.

19 The property reverted back to Iliescu when the purchasers could no longer  
20 perform. At that point, Iliescu also inherited Stepan's lien.

21 Although the anticipated future design work would not come to pass, Stepan  
22 nevertheless, sharply insists on his \$2+ million fee claim against Iliescu, based on a  
23 contract sum rather than on the true "value of services" that had been completed.

24 The architectural services actually rendered were completed by the California  
25 firm, Fisher Friedman, not Stepan. Stepan merely held the Nevada architect's  
26 license under which the architectural work was to have been completed.

1 **Discussion**

2 There remain two principal reasons why the court should reconsider its Order of  
3 September 1, 2011.<sup>1</sup>

4 First and foremost, Judge Adams' recent affidavit confirms the following:

5 [t]hat claims against individual lawyers sued for professional  
6 negligence were dismissed, and that ***claims against the***  
7 ***defendant law firm was stayed "for all purposes,***  
8 ***including discovery and trial, pending the final***  
9 ***resolution of all claims asserted by plaintiffs against***  
10 ***defendants."***

11 Adams affidavit, p.2, Exhibit 2. Emphasis added.

12 Because Iliescu's Third Party Complaint was "stayed," (according to Judge  
13 Adams) until the underlying mechanics lien matter is resolved in its entirety, the filing of  
14 summary judgment by Hale Lane ran afoul of a rule of the case remaining effective at  
15 all times. This is particularly so where the motion seeking summary judgment against  
16 Iliescu was filed against them when Iliescu were not represented by counsel.

17 Meanwhile, the stay remained effective not just when Judge Adams retained the  
18 case, but at all times thereafter until the stay became lifted, or until the lien claim  
19 became resolved in its entirety. The stay imposed by Judge Adams was never lifted  
20 before Hale Lane sought its definitive relief against Iliescu, contrary to Judge Adams'  
21 stay. See Judge Adams' affidavit, p.2, Exhibit 2.

22 The stay judge Adams imposed as against proceeding on matters involving  
23 professional negligence involving the third party defendants, was commensurate with  
24 the ruling in *Semenza v. Nevada Med. Liability Ins. Co.*, 104 Nev. 666, 667–68, 765  
25 P.2d 184, 185 (1988) where damages in the professional negligence claim are not  
26 known until after the resolution of the underlying claim giving rise to the professional

---

27  
28 <sup>1</sup> The accompanying motion does *not* address any issue raised in the motion for  
reconsideration sought September 15, 2011 by Iliescu.

1 negligence. Judge Adams stay of the professional negligence matter, **"for all**  
2 **purposes, including discovery and trial,"** (Judge Adams' affidavit, Exhibit 1) was  
3 appropriate under the circumstance.

4 There appears to be no lifting of Judge Adams' stay. The mechanics lien claim  
5 remains unresolved or is currently pending on appeal.

6 The Third Party Defendants' motion was not authorized and violates the Judge's  
7 stay, particularly where Judge Adams confirms that the stay was **"for all purposes . . .**  
8 **including . . . trial,"** meaning, proceedings on the merits which would include the Third  
9 Party Defendants' Motion for Summary Judgment.

10 The second reason offered for reconsideration in the accompanying motion is  
11 likewise, based on Judge Adams' "stay," of the Third Party Complaint. With the Third  
12 Party Complaint "stayed," *"for all purposes, including discovery and trial . . ."* (Judge  
13 Adams affidavit, p.2 with emphasis) there was no reason to file a joint case conference  
14 report. Discovery was "stayed" as well as matters determining "merits" before the  
15 mechanics lien matters were determined. (Judge Adams affidavit, p.2). Although the  
16 mechanics lien complaint was to proceed, Judge Adams' affidavit makes patently clear,  
17 no action should be taken on the Third Party Complaint for professional negligence.

18 In *Trail v. Faretto*, 91 Nev. 401, 536 P.2d 1026 (1975) the Nevada Supreme  
19 court noted the following:

20 [A] court may, for sufficient cause shown, amend, correct,  
21 resettle, modify or vacate, as the case may be, an order  
22 previously made and entered on the motion in the progress  
23 of the cause or proceeding.

24 *Id.* at 403.

25 Where a prior decision is clearly erroneous, reconsideration and rehearing is  
26 appropriate. See, *Masonry & Tile Contractors Association of Southern Nevada v.*  
27 *Jolley, Urga & Wirth, Ltd.*, 113 Nev 737, 941 P.2d 486 (1997).

1 In view of Judge Adams' affidavit, the summary process initiated by the third  
2 party defendants against Iliescu, much like an outright dismissal, arguably causes a  
3 forfeiture of a substantive right.

4 Inherent in courts is the power to dismiss a case for  
5 failure to prosecute or to comply with its orders. To prevent  
6 undue delays and to control their calendars, courts may  
7 exercise this power within the bounds of sound judicial  
8 discretion, independent of any authority granted under  
9 statutes or court rules.[]

10 However, dismissal with prejudice is a harsh remedy  
11 to be utilized only in extreme situations. [] ***It must be***  
12 ***weighed against the policy of law favoring the***  
13 ***disposition of cases on their merits.*** [] Because  
14 dismissal with prejudice "is the most severe sanction that a  
15 court may apply . . . its use must be tempered by a careful  
16 exercise of judicial discretion." []

17 ***In keeping with the trend to adjudicate a case on***  
18 ***its merits rather than by summary procedures, the trial***  
19 ***judge in this case could have assessed lesser penalties***  
20 ***against appellants and their attorney and granted their***  
21 ***motion for a new trial . . . .***

22 *Moore v. Cherry*, 90 Nev. 390, 393-94, 528 P. 2d 1018, 1020-21 (1974)  
23 (Citations omitted). (Emphasis added).

#### 24 ***NRCP Rule 60(b) Relief***

25 Iliescus were completely caught off guard as was this court, when no one  
26 considered or advised this court that Judge Adams had stayed all matters as against  
27 the Third Party professional negligence complaint brought by Iliescu. Such a motion,  
28 brought contrary to a rule of the case, would appear to fit that which NRCP Rule 60(b)  
was meant to correct.

On motion and upon such terms as are just, the court may  
relieve a party or a party's legal representative from a final  
judgment, order, or proceeding for the following reasons: (1)  
mistake, inadvertence, surprise, or excusable neglect; (2)  
newly discovered evidence which by due diligence could not  
have been discovered in time to move for a new trial under  
Rule 59(b). . . .

NRCP Rule 60(b).

1 Judge Adams' affidavit which clarifies prior proceedings in the case, was just  
2 recently obtained by Steppan to support his own Motion for Reconsideration. In fact,  
3 this court apparently found persuasive, Judge Adams' affidavit where the court certified  
4 its intent to grant Steppan's Motion for Reconsideration. See this court's Order entered  
5 February 7, 2012, stating the following:

6 After reviewing the pleadings and arguments of parties, the  
7 Court is inclined to grant reconsideration of its October 25,  
8 2011 Order Granting Defendants Iliescus' Motion to Dismiss.

9 (Order, Feb. 7, 2012).

10 **Conclusion**

11 The prime directive of the Nevada Rules of Civil Procedure is found in the first  
12 rule which states the following: "[These rules] shall be construed and administered to  
13 secure the *just*, speedy, and inexpensive determination of every action." NRCP Rule 1.  
14 (Emphasis added).

15 For reasons stated, Iliescus respectfully request the court reverse its order  
16 granting summary judgment in favor of the Third Party Defendants.

17 RESPECTFULLY, this 1<sup>st</sup> day of March 2012

18 GORDON M. COWAN, ESQ. (Nev. 1781)  
19 LAW OFFICE OF GORDON M. COWAN

20   
21 Attorneys for Plaintiffs

22 **AFFIRMATION**  
23 **Pursuant to NRS 239B.030**

24 The undersigned does hereby affirm that the within document does NOT  
25 contain the social security number of any person.

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27  
28

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(d), I certify that I am employed at 10775 Double R Blvd., Reno, Nevada 89521, and on this date I served the foregoing document(s) on all parties to this action by:

☒ Placing an original or true copy thereof in a sealed envelope with postage prepaid in the United States Mail at Reno, Nevada, following ordinary business practices;

☐ Personal delivery;

☐ Facsimiles to:

Mike Hoy, Esq., Mike Kimmel, Esq.	775.786.7426
David Grundy, Esq., Alice Mercado, Esq.	775.786.9716
Gregory Wilson, Esq.	775.786.7764

☐ Reno-Carson Messenger Service;

☐ Certified Mail with Return Receipt Requested.

addressed as follows:

Michael D. Hoy Esq.  
Michael S. Kimmel  
Hoy & Hoy P.C.  
4741 Caughlin Parkway Ste. 4  
Reno, NV 89519

Gregory F. Wilson  
417 W. Plumb Ln.  
Reno NV 89509

David Grundy, Esq.  
Lemons Grundy Eisenberg  
6005 Plumas St 3<sup>rd</sup> Floor  
Reno NV 89519

David Wasick  
879 Mahogany Dr.  
Minden NV 89423

DATED March 1, 2012

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**SCHEDULE OF EXHIBITS**

<b><i>Exhibit No</i></b>	<b><i>Description</i></b>	<b><i>No. Pages</i></b>
1.	Affidavit of Hon. Brent Adams	4
	<b><i>Total Pages</i></b>	4

# Exhibit 1

Exhibit 1

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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,

Applicants,

vs.

MARK B. STEPPAN,

Respondent.

MARK STEPPAN,

Plaintiff,

vs.

JOHN ILIESCU, JR. and SONNIA  
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.

AND RELATED ACTIONS.

///

///

CASE NO.: CV07-00341  
(Consolidated with Case No. CV07-01021)

DEPT. NO.: 6

**AFFIDAVIT OF HON. BRENT ADAMS IN  
SUPPORT OF MOTION FOR  
RECONSIDERATION**

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

3           I, Brent Adams, affiant herein, do hereby swear under penalty of perjury that the assertions  
4 of this Affidavit are true.  
5

6           1.     I am a Judge in Department 6 of the Second Judicial District Court of the State of  
7 Nevada.

8           2.     On February 22, 2008, I conducted an in-chambers case management conference in  
9 the above-referenced consolidated cases. Counsel representing all parties were present. After  
10 discussion off the record, I ordered that: (a) the issue whether the property owner was entitled to a  
11 pre-lien notice would be determined by cross-motions for partial summary judgment; (2) that counsel  
12 for the property owner and lien claimant would confer about additional discovery on the pre-lien  
13 issue; (3) upon disposition of the cross-motions for partial summary judgments, the lawyers would  
14 discuss additional case management; and (4) the property owner's claims against third-parties (for  
15 indemnity and professional negligence) were stayed pending disposition of the cross-motions for  
16 partial summary judgment.  
17

18           3.     As discussed in the February 22, 2008 pretrial conference, on March 7, 2008, counsel  
19 filed a stipulation, upon which I entered an order, that claims against individual lawyers sued for  
20 professional negligence were dismissed, and that claims against the defendant law firm was stayed  
21 "for all purposes, including discovery and trial, pending the final resolution of all claims asserted by  
22 plaintiffs against defendants."  
23

24           4.     Although the Court did not enter a written order under NRCP 16.1(f) designating the  
25 case as "complex litigation," the February 22, 2008 conference was a NRCP 16 pretrial conference  
26 for purpose of managing the consolidated cases and staging discovery. At all times, your  
27  
28

undersigned District Court Judge and the lawyers practicing before me treated the case as one managed by the Court under Rule 16. The Court did not expect any party to file an early case conference report under Rule 16.1(e)(2).

5. When the Court entered its Order granting Steppan's motion for summary judgment, it meant that Steppan prevailed substantively on the main issue presented to the Court in both of the cases that had been consolidated. That is, the Court found that the Mechanic's Lien should not be released as it was a valid and lawful lien on the real property and the only issue remaining was the amount of the Mechanic's Lien.

6. Consistent with the February 22, 2008 order in chambers, the parties set a settlement/status conference for January 14, 2010.


7. On August 31, 2010, in accordance with the Court's order regarding the management of the case and counsel agreement, counsel set the matter for trial.

#### AFFIRMATION

#### Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document filed in the above-entitled case does not contain the social security number of any person.

DATED this \_\_\_\_ day of November, 2011.

  
HON. BRENT ADAMS

SUBSCRIBED AND SWORN to before me

this 8th day of November, 2011.

  
NOTARY PUBLIC



# Exhibit 2

**FILED**  
Electronically  
03-01-2012:05:07:34 PM  
Joey Orduna Hastings  
Clerk of the Court  
Transaction # 2799021

# Exhibit 2

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

9 JOHN ILIESCU JR., SONNIA SANTEE  
10 ILIESCU, AND JOHN ILIESCU JR. AND  
11 SONNIA ILIESCU AS TRUSTEES OF  
12 THE JOHN ILIESCU, JR. AND SONNIA  
13 ILIESCU 1992 FAMILY TRUST,

14 Applicants,

15 vs.

16 MARK B. STEPPAN,

17 Respondent.

18 \_\_\_\_\_ /  
19 MARK STEPPAN,

20 Plaintiff,

21 vs.

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

29 Defendants.

30 \_\_\_\_\_ /  
31 AND RELATED ACTIONS.  
32 \_\_\_\_\_ /

33 ///

34 ///

CASE NO.: CV07-00341  
(Consolidated with Case No. CV07-01021)

DEPT. NO.: 6

**AFFIDAVIT OF HON. BRENT ADAMS IN  
SUPPORT OF MOTION FOR  
RECONSIDERATION**

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

3           I, Brent Adams, affiant herein, do hereby swear under penalty of perjury that the assertions  
4 of this Affidavit are true.  
5

6           1.     I am a Judge in Department 6 of the Second Judicial District Court of the State of  
7 Nevada.

8           2.     On February 22, 2008, I conducted an in-chambers case management conference in  
9 the above-referenced consolidated cases. Counsel representing all parties were present. After  
10 discussion off the record, I ordered that: (a) the issue whether the property owner was entitled to a  
11 pre-lien notice would be determined by cross-motions for partial summary judgment; (2) that counsel  
12 for the property owner and lien claimant would confer about additional discovery on the pre-lien  
13 issue; (3) upon disposition of the cross-motions for partial summary judgments, the lawyers would  
14 discuss additional case management; and (4) the property owner's claims against third-parties (for  
15 indemnity and professional negligence) were stayed pending disposition of the cross-motions for  
16 partial summary judgment.  
17

18           3.     As discussed in the February 22, 2008 pretrial conference, on March 7, 2008, counsel  
19 filed a stipulation, upon which I entered an order, that claims against individual lawyers sued for  
20 professional negligence were dismissed, and that claims against the defendant law firm was stayed  
21 "for all purposes, including discovery and trial, pending the final resolution of all claims asserted by  
22 plaintiffs against defendants."  
23

24           4.     Although the Court did not enter a written order under NRCP 16.1(f) designating the  
25 case as "complex litigation," the February 22, 2008 conference was a NRCP 16 pretrial conference  
26 for purpose of managing the consolidated cases and staging discovery. At all times, your  
27  
28

undersigned District Court Judge and the lawyers practicing before me treated the case as one managed by the Court under Rule 16. The Court did not expect any party to file an early case conference report under Rule 16.1(e)(2).

5. When the Court entered its Order granting Steppan's motion for summary judgment, it meant that Steppan prevailed substantively on the main issue presented to the Court in both of the cases that had been consolidated. That is, the Court found that the Mechanic's Lien should not be released as it was a valid and lawful lien on the real property and the only issue remaining was the amount of the Mechanic's Lien.

6. Consistent with the February 22, 2008 order in chambers, the parties set a settlement/status conference for January 14, 2010.


7. On August 31, 2010, in accordance with the Court's order regarding the management of the case and counsel agreement, counsel set the matter for trial.

#### AFFIRMATION

#### Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document filed in the above-entitled case does not contain the social security number of any person.

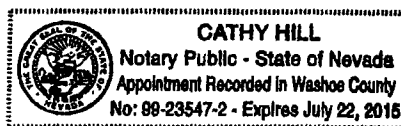
DATED this \_\_\_\_ day of November, 2011.

  
HON. BRENT ADAMS

SUBSCRIBED AND SWORN to before me

this 8th day of November, 2011.

  
NOTARY PUBLIC



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

\* \* \*

JOHN ILIESCU, JR. and SONNIA 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,

Plaintiffs,

vs.

MARK B. STEPPAN,

Defendant.

Case No: CV07-00341  
(Consolidated with CV07-01021)

Dept. No.: 10

AND RELATED MATTERS.

**ORDER CERTIFYING INTENT TO GRANT MOTION FOR RECONSIDERATION**

Presently before the Court is a Motion for Leave to file Motion for Reconsideration; or, Alternatively, Motion for Relief from Order entered September 1, 2011 Granting Third-Party Defendant's Motion for Summary Judgment filed by Plaintiffs JOHN ILIESCU, JR. AND SONNIA ILIESCU, AS TRUSTEES OF THE JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT AND JOHN ILIESCU, INDIVIDUALLY ("Iliescu"), on March 1, 2012. Following, on March 30, 2012, Third Party Defendant HALE LANE PEEK DENNISON AND HOWARD PROFESSIONAL CORPORATION ("Hale Lane") filed an Opposition to

1 Iliescus' Second Motion for Leave to File Motion for Reconsideration. Thereafter, on April  
2 24, 2012, Plaintiffs filed a Reply in Support of Motion for Leave to File Motion for  
3 Reconsideration. That same day, on April 24, 2012, Plaintiffs filed a Request for  
4 Submission, thereby submitting the matter for the Court's consideration.

5 On December 22, 2011, Defendant Stepan filed a Notice of Appeal, appealing this  
6 Court's Order Granting Third-Party Defendant Hale Lane's Motion for Summary Judgment  
7 Regarding Third-Party Claims by John Iliescu entered in this action September 1, 2011.

8 Pursuant to NRS 177.155, the Nevada Supreme Court has sole jurisdiction over a  
9 matter from the time an appellant files a Notice of Appeal until the Remittitur issues to the  
10 district court. *Buffington v. State*, 110 Nev. 124, 126, 686 P.2d 643, 644 (1994). A motion  
11 for reconsideration is not a tolling motion pursuant to NRAP 4(a)(2), and the district court  
12 thus lacks jurisdiction to grant a motion for reconsideration after a timely notice of appeal  
13 has been filed. *Chapman Industries v. United Ins. Co. of America*, 110 Nev. 454, 458, 874  
14 P.2d 739, 741 (1994) (citing *Alvis v. State, Gaming Control Bd.*, 99 Nev. 184, 660 P.2d 980  
15 (1983)).

16 Based on the above distinctions, this Court lacks jurisdiction to grant Plaintiffs'  
17 Motion for Reconsideration. Nonetheless, the Nevada Supreme Court has held that a  
18 district court may certify its intent to grant a motion for reconsideration if it would be  
19 inclined to do so following remand by the Nevada Supreme Court. *See Huneycutt v.*  
20 *Huneycutt*, 94 Nev. 79, 575 P.2d 585 (1978); *Foster v. Dingwall*, \_\_\_ Nev. \_\_\_, 228 P.3d  
21 453 (2010) (clarifying and more fully explaining the certification process announced in  
22 *Honeycutt*).

23 After having reviewed the evidence presented in Judge Adams' Affidavit, the Court is  
24 inclined to Grant Leave to File Motion for Reconsideration of its September 1, 2011 Order  
25 Granting Third-Party Defendants' Motion for Summary Judgment. Accordingly, the Court  
26 hereby certifies its intent to grant the requested relief pursuant to *Huneycutt v. Huneycutt*,  
27 94 Nev. 79, 575 P.2d 585.

**NOW, THEREFORE, IT IS HEREBY ORDERED** that the Court certifies its intent to **GRANT** Plaintiffs' Request for Leave to File Motion for Reconsideration.

**DATED** this 7 day of June, 2012.

STEVEN P. ELLIOTT  
District Judge

**CERTIFICATE OF MAILING**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

GREGORY WILSON, ESQ. for JOHN SCHLEINING

ALICE CAMPOS MERCADO, ESQ. for KAREN DENNISON, JERRY SNYDER, R. HOWARD,  
HALE LANE PEEK DENNSION HOWARD

THOMAS HALL, ESQ. for TRUSTEE OF THE JOHN ILIESCU, JR. & SONNIA ILLIESCU, JOHN  
ILIESCU, JR., SONNIA ILIESCU

DAVID GRUNDY, ESQ. for KAREN DENNISON, HOLLAND & HART, LLP, JERRY SNYDER, R.  
HOWARD, HALE LANE PEEK DENNISON HOWARD

MICHAEL HOY, ESQ. for MARK STEPPAN

STEPHEN MOLLATH, ESQ. for JOHN ILIESCU, JR., SONNIA ILIESCU

**DATED** this 7 day of June, 2012.

  
HEIDI HOWDEN  
Judicial Assistant

1 GORDON M. COWAN, ESQ. (SBN 1781)  
2 Law Office of Gordon M. Cowan  
3 P.O. Box 17952  
4 Reno, NV 89511  
Voice 775.786.6111  
Fax 775.786.9797

Electronically Filed  
Jun 28 2012 03:06 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

5 *Attorney for John Iliescu, Jr., Sonnia Iliescu*  
6 *individually and as Trustees of the John Iliescu,*  
7 *Jr. & Sonnia Iliescu 1992 Family Trust*

8 **IN THE SUPREME COURT of the STATE OF NEVADA**

9  
10 JOHN ILIESCU, JR.; SONNIA SANTEE  
11 ILIESCU; JOHN ILIESCU JR. and  
12 SONNIA SANTEE ILIESCU as TRUSTEES  
of the JOHN ILIESCU, JR. and SONNIA  
ILIESCU 1992 FAMILY TRUST

13 Cross-Appellants,

**Case No 60036**

14 vs.

15 HALE LANE PEEK DENNISON &  
16 HOWARD PROFESSIONAL CORP.,

17 Cross-Respondents. /

AND RELATED APPEAL /

18 **MOTION TO REMAND**

19 Cross-Appellants above-named, through counsel, Gordon M. Cowan, Esq.,  
20 move to remand the Cross Appeal filed January 19, 2012 in the Nevada Supreme Court  
21 by JOHN ILIESCU, JR., SONNIA SANTEE ILIESCU, JOHN ILIESCU JR. and SONNIA  
22 SANTEE ILIESCU as TRUSTEES of the JOHN ILIESCU, JR. and SONNIA ILIESCU  
23 1992 FAMILY TRUST JOHN ("Iliescu"), back to the Second Judicial District Court, Case  
24 No. CV07-00341, Dept. 10 ("District Court"), for decision.<sup>1</sup>

25 This motion is based on the "Order Certifying Intent to Grant Motion for  
26 \_\_\_\_\_

27 <sup>1</sup> Iliescu's Notice of Cross Appeal was filed January 17, 2012 in the Second  
28 Judicial District Court in consolidated case no. CV07-00341 (consolidated with CV10-  
01012) and was transmitted to the Nevada Supreme Court January 19, 2012.

1 Reconsideration” entered June 7, 2012 in District Court, a copy of which is  
2 at **EXHIBIT 1** attached. This motion is made in accordance with *Foster v. Dingwell*, 228  
3 P.3d 453, 455-56 (2010).

4  
5 ***Background***

6 These consolidated cases were initiated when a California based architect  
7 (Steppan) sought \$2+ million in professional architectural fees (on a “contract” not  
8 “earned” basis) in a mechanics’ lien claim he pursued against Iliescu. Iliescu never  
9 contracted for Steppan’s services. Iliescu merely owns the property against which  
10 Steppan pursues his mechanics lien. Iliescu had sold the property to the one who dealt  
11 directly with Steppan. Iliescu received the property back when the purchaser could not  
12 perform the terms of the purchase. Iliescu received it back with the lien in place.

13 Iliescu had hired purportedly top-notch real estate transaction lawyers to help  
14 protect his interests in the sale of the property. The lawyers neglected to cause a  
15 “notice of nonresponsibility” to be filed which could have protected their clients’  
16 (Iliescu’s) interests against the very mechanics’ lien that Iliescu now faces. The lawyers  
17 also made changes in the sales transaction which transformed their clients Iliescu into  
18 persons who were no longer considered “disinterested” and who could no longer obtain  
19 protection against a lien from such a notice.

20 Following the filing of the mechanics’ lien claim against Iliescu, Iliescu answered  
21 the complaint and filed a third party action against the lawyers for professional  
22 negligence. The lawyer defendants remaining in the case are the cross-respondents  
23 above-named (“Hale Lane”).

24 The Hon. Brent Adams stayed the professional negligence matter against Hale  
25 Lane until the underlying mechanics lien claim was completely litigated. In a recent  
26 affidavit by the Hon. Brent Adams, he states,

27 “[t]hat claims against individual lawyers sued for professional  
28 negligence were dismissed, and that ***claims against the***

1                    ***defendant law firm was stayed “for all purposes,***  
2                    ***including discovery and trial, pending the final***  
3                    ***resolution of all claims asserted by plaintiffs against***  
4                    ***defendants.”***

5                    See Judge Adams’ Affidavit at **EXHIBIT 2** attached. Emphasis added.

6                    But the underlying lien claim was never fully litigated before Hale Lane’s counsel  
7                    sought summary judgment on the professional negligence claims after the matter was  
8                    reassigned from the Hon. Brent Adams to the Hon. Steve Elliott. Judge Elliott granted  
9                    Hale Lane’s summary judgment motion September 2, 2011 not knowing of the “stay.”<sup>1</sup>

10                  When Judge Elliott was recent advised of Judge Adams’ “stay” of the  
11                  professional negligence matter against Hale Lane, Judge Elliott entered the order  
12                  certifying his intent to grant Iliescu’s Motion for Reconsideration on the subject. See  
13                  Judge Elliott’s Order at **EXHIBIT 1** attached.

#### 14 15                  ***Reviewing Standard***

16                  The Nevada Supreme Court maintains discretion to grant or deny a motion  
17                  seeking remand of an appeal back to the district court. See *Mack-Manley v. Manley*,  
18                  122 Nev. 849, 856, 138 P.3d 525, 530 (2006).

19                  This Court recently clarified the remand procedure to be employed by a party  
20                  where it has become clear that the District Court is inclined to grant relief requested.  
21                  *Foster v. Dingwall*, 228 P.3d 453, 455-56 (Nev. 2010). Once the District Court has  
22                  certified its intent to grant the requested relief, it remains appropriate to move the  
23                  Nevada Supreme Court for remand to allow the District Court to enter its order granting  
24                  the requested relief. *Id.* If the only issue on appeal is the issue for which certification  
25                  occurred, the appeal may be dismissed. *Id.* Otherwise, where the appeal has raised

---

26  
27                  <sup>2</sup> Judge Elliott also denied Iliescu’s Motion for Reconsideration (brought for other  
28                  reasons by prior counsel) on October 19, 2011.

1 additional issues, the Nevada Supreme Court may order a limited remand solely to  
2 address the certified issue. *Id.*

3  
4 ***Discussion***

5 When Judge Elliott (in Dept. 10) entered summary judgment in favor of the  
6 cross-respondent, he was without the benefit of knowledge as to what Judge Adams  
7 (Dept 6) intended when he managed the progression of the case when in his  
8 department many years. Judge Adams stayed the professional negligence third party  
9 suit commensurate with the ruling in *Semenza v. Nevada Med. Liability Ins. Co.*, 104  
10 Nev. 666, 667–68, 765 P.2d 184, 185 (1988) where damages in a professional  
11 negligence claim are not known until after the resolution of the underlying claim giving  
12 rise to the professional negligence.

13 Judge Adams' stay remained effective not just when Judge Adams retained the  
14 case but also at all times thereafter until the lien claim would become resolved in its  
15 entirety. The stay imposed by Judge Adams was never lifted before Hale Lane sought  
16 its definitive relief against Iliescu, contrary to Judge Adams' stay.

17 The district court's advisory order at **EXHIBIT 1** follows the process set forth in  
18 *Huneycutt v. Huneycutt*, 94 Nev. 79, 575 P.2d 585 (1978). The district court recognized  
19 its lack of jurisdiction to rule on Iliescu's reconsideration motion while divested of  
20 authority during this appeal. See NRS § 177.155. Yet, the district court (Judge Elliott,  
21 Dept. 10) has stated his clear intent to grant reconsideration once the case is remanded  
22 from this Court, back to district court.

23 Iliescu's Motion for Leave to File Motion for Reconsideration provided Judge  
24 Elliott (Dept. 10) the new evidence establishing a necessary reason to reconsider his  
25 summary judgment order against Iliescu, which principally came from the Affidavit of  
26 Hon. Brent Adams.

27 ///

28 ///

1 **Conclusion**

2 Although Iliescu did nothing wrong, nor did they harm others, the Iliescu family is,  
3 nevertheless, being called upon to pay the debts of others. Iliescus' lawyers, who did  
4 not advise them on how best to protect themselves from liens, unfairly skirted  
5 responsibility when obtaining summary judgment on that part of the case that was to  
6 have remained "stayed" to the conclusion of the architect's lien claim, according to  
7 Judge Adams. The Iliescus are not deserving of such harsh results from Nevada  
8 courts.

9 For these reasons, Iliescu respectfully requests the Court remand his appeal  
10 back to district court based on Judge Elliott's order certifying his intent to grant Iliescu's  
11 Motion for Reconsideration on the subject. See **EXHIBIT 1** attached.

12 RESPECTFULLY, this 28th day of June 2012

13 GORDON M. COWAN, ESQ. (Nev. 1781)  
14 LAW OFFICE OF GORDON M. COWAN

15 s/

16 \_\_\_\_\_  
17 *Attorneys for Plaintiffs*

18 **PRIVACY AFFIRMATION**

19 The undersigned does hereby affirm that the within document does NOT  
20 contain the social security number of any person.

21 s/

22 \_\_\_\_\_  
23 Gordon M. Cowan

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRAP 25(d), I certify that I am employed at 10775 Double R Blvd.,  
3 Reno, Nevada 89521, and on this date I electronically filed a true and correct copy of  
4 the foregoing document with the Clerk of the Court by using the ECF system, which  
5 served the following parties electronically:

6 MICHAEL D. HOY  
7 DAVID R. GRUNDY  
8 ALICE CAMPOS MERCADO  
9 GREGORY F. WILSON

and, on this date I served the individuals / parties listed below by:

10  X  Placing an original or true copy thereof in a sealed envelope with postage  
11 prepaid in the United States Mail at Reno, Nevada, following ordinary business  
practices;

12   Personal delivery;

13   Facsimiles to:

Mike Hoy, Esq., Mike Kimmel, Esq. 775.786.7426  
David Grundy, Esq., Alice Mercado, Esq. 775.786.9716  
Gregory Wilson, Esq. 775.786.7764

15   Reno-Carson Messenger Service;

16   Certified Mail with Return Receipt Requested.

17 addressed as follows:

18  
19 David Wasick  
20 879 Mahogany Dr.  
Minden NV 89423

21 DATED June 28, 2012

s/

22 \_\_\_\_\_  
G.M. Cowan

# Exhibit 1

# Exhibit 1

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

\* \* \*

JOHN ILIESCU, JR. and SONNIA 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,

Plaintiffs,

vs.

MARK B. STEPPAN,

Defendant.

Case No: CV07-00341  
(Consolidated with CV07-01021)

Dept. No.: 10

AND RELATED MATTERS.

**ORDER CERTIFYING INTENT TO GRANT MOTION FOR RECONSIDERATION**

Presently before the Court is a Motion for Leave to file Motion for Reconsideration; or, Alternatively, Motion for Relief from Order entered September 1, 2011 Granting Third-Party Defendant's Motion for Summary Judgment filed by Plaintiffs JOHN ILIESCU, JR. AND SONNIA ILIESCU, AS TRUSTEES OF THE JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT AND JOHN ILIESCU, INDIVIDUALLY ("Iliescu"), on March 1, 2012. Following, on March 30, 2012, Third Party Defendant HALE LANE PEEK DENNISON AND HOWARD PROFESSIONAL CORPORATION ("Hale Lane") filed an Opposition to

1 Iliescus' Second Motion for Leave to File Motion for Reconsideration. Thereafter, on April  
2 24, 2012, Plaintiffs filed a Reply in Support of Motion for Leave to File Motion for  
3 Reconsideration. That same day, on April 24, 2012, Plaintiffs filed a Request for  
4 Submission, thereby submitting the matter for the Court's consideration.

5 On December 22, 2011, Defendant Stepan filed a Notice of Appeal, appealing this  
6 Court's Order Granting Third-Party Defendant Hale Lane's Motion for Summary Judgment  
7 Regarding Third-Party Claims by John Iliescu entered in this action September 1, 2011.

8 Pursuant to NRS 177.155, the Nevada Supreme Court has sole jurisdiction over a  
9 matter from the time an appellant files a Notice of Appeal until the Remittitur issues to the  
10 district court. *Buffington v. State*, 110 Nev. 124, 126, 686 P.2d 643, 644 (1994). A motion  
11 for reconsideration is not a tolling motion pursuant to NRAP 4(a)(2), and the district court  
12 thus lacks jurisdiction to grant a motion for reconsideration after a timely notice of appeal  
13 has been filed. *Chapman Industries v. United Ins. Co. of America*, 110 Nev. 454, 458, 874  
14 P.2d 739, 741 (1994) (citing *Alvis v. State, Gaming Control Bd.*, 99 Nev. 184, 660 P.2d 980  
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16 Based on the above distinctions, this Court lacks jurisdiction to grant Plaintiffs'  
17 Motion for Reconsideration. Nonetheless, the Nevada Supreme Court has held that a  
18 district court may certify its intent to grant a motion for reconsideration if it would be  
19 inclined to do so following remand by the Nevada Supreme Court. *See Huneycutt v.*  
20 *Huneycutt*, 94 Nev. 79, 575 P.2d 585 (1978); *Foster v. Dingwall*, \_\_\_ Nev. \_\_\_, 228 P.3d  
21 453 (2010) (clarifying and more fully explaining the certification process announced in  
22 *Honeycutt*).

23 After having reviewed the evidence presented in Judge Adams' Affidavit, the Court is  
24 inclined to Grant Leave to File Motion for Reconsideration of its September 1, 2011 Order  
25 Granting Third-Party Defendants' Motion for Summary Judgment. Accordingly, the Court  
26 hereby certifies its intent to grant the requested relief pursuant to *Huneycutt v. Huneycutt*,  
27 94 Nev. 79, 575 P.2d 585.

**NOW, THEREFORE, IT IS HEREBY ORDERED** that the Court certifies its intent to **GRANT** Plaintiffs' Request for Leave to File Motion for Reconsideration.

**DATED** this 7 day of June, 2012.

STEVEN P. ELLIOTT  
District Judge

**CERTIFICATE OF MAILING**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

GREGORY WILSON, ESQ. for JOHN SCHLEINING

ALICE CAMPOS MERCADO, ESQ. for KAREN DENNISON, JERRY SNYDER, R. HOWARD,  
HALE LANE PEEK DENNSION HOWARD

THOMAS HALL, ESQ. for TRUSTEE OF THE JOHN ILIESCU, JR. & SONNIA ILLIESCU, JOHN  
ILIESCU, JR., SONNIA ILIESCU

DAVID GRUNDY, ESQ. for KAREN DENNISON, HOLLAND & HART, LLP, JERRY SNYDER, R.  
HOWARD, HALE LANE PEEK DENNISON HOWARD

MICHAEL HOY, ESQ. for MARK STEPPAN

STEPHEN MOLLATH, ESQ. for JOHN ILIESCU, JR., SONNIA ILIESCU

**DATED** this 7 day of June, 2012.

  
HEIDI HOWDEN  
Judicial Assistant

# Exhibit 2

# Exhibit 2

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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  
(Consolidated with Case No. CV07-01021)

DEPT. NO.: 6

**AFFIDAVIT OF HON. BRENT ADAMS IN  
SUPPORT OF MOTION FOR  
RECONSIDERATION**

Applicants,

vs.

MARK B. STEPPAN,

Respondent.

\_\_\_\_\_  
MARK STEPPAN,

Plaintiff,

vs.

JOHN ILIESCU, JR. and SONNIA  
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.

\_\_\_\_\_  
AND RELATED ACTIONS.  
\_\_\_\_\_

///

///

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

4 I, Brent Adams, affiant herein, do hereby swear under penalty of perjury that the assertions  
5 of this Affidavit are true.

6 1. I am a Judge in Department 6 of the Second Judicial District Court of the State of  
7 Nevada.

8 2. On February 22, 2008, I conducted an in-chambers case management conference in  
9 the above-referenced consolidated cases. Counsel representing all parties were present. After  
10 discussion off the record, I ordered that: (a) the issue whether the property owner was entitled to a  
11 pre-lien notice would be determined by cross-motions for partial summary judgment; (2) that counsel  
12 for the property owner and lien claimant would confer about additional discovery on the pre-lien  
13 issue; (3) upon disposition of the cross-motions for partial summary judgments, the lawyers would  
14 discuss additional case management; and (4) the property owner's claims against third-parties (for  
15 indemnity and professional negligence) were stayed pending disposition of the cross-motions for  
16 partial summary judgment.  
17

18 3. As discussed in the February 22, 2008 pretrial conference, on March 7, 2008, counsel  
19 filed a stipulation, upon which I entered an order, that claims against individual lawyers sued for  
20 professional negligence were dismissed, and that claims against the defendant law firm was stayed  
21 "for all purposes, including discovery and trial, pending the final resolution of all claims asserted by  
22 plaintiffs against defendants."  
23

24 4. Although the Court did not enter a written order under NRCP 16.1(f) designating the  
25 case as "complex litigation," the February 22, 2008 conference was a NRCP 16 pretrial conference  
26 for purpose of managing the consolidated cases and staging discovery. At all times, your  
27  
28

1 undersigned District Court Judge and the lawyers practicing before me treated the case as one  
2 managed by the Court under Rule 16. The Court did not expect any party to file an early case  
3 conference report under Rule 16.1(e)(2).

4  
5 5. When the Court entered its Order granting Steppan's motion for summary judgment,  
6 it meant that Steppan prevailed substantively on the main issue presented to the Court in both of the  
7 cases that had been consolidated. That is, the Court found that the Mechanic's Lien should not be  
8 released as it was a valid and lawful lien on the real property and the only issue remaining was the  
9 amount of the Mechanic's Lien.

10  
11 6. Consistent with the February 22, 2008 order in chambers, the parties set a  
12 settlement/status conference for January 14, 2010.

13  
14 7. On August 31, 2010, in accordance with the Court's order regarding the management  
of the case and counsel agreement, counsel set the matter for trial.

15 **AFFIRMATION**

16 **Pursuant to NRS 239B.030**

17 The undersigned does hereby affirm that the preceding document filed in the above-entitled  
18 case does not contain the social security number of any person.

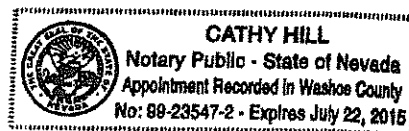
19 DATED this \_\_\_\_ day of November, 2011.

20  
21   
HON. BRENT ADAMS

22 SUBSCRIBED AND SWORN to before me

23 this 8<sup>th</sup> day of November, 2011.

24   
25 NOTARY PUBLIC



**FILED**

Electronically

08-06-2012:10:36:48 AM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3129749

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARK B. STEPPAN,

Appellant,

vs.

JOHN ILIESCU, JR. AND SONNIA  
SANTEE ILIESCU AS TRUSTEES OF  
THE JOHN ILIESCU, JR. AND SONNIA  
ILIESCU 1992 FAMILY TRUST  
AGREEMENT; HOLLAND & HART;  
KAREN DENISE DENNISON; R.  
CRAIG HOWARD; JERRY M. SNYDER;  
HALE LANE PEEK DENNISON  
HOWARD & ANDERSON; AND JOHN  
SCHLEINING,

Respondents.

No. 60036

CU07-00341

10

**FILED**

AUG 02 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

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

Appellants,

vs.

HOLLAND & HART; KAREN DENISE  
DENNISON; R. CRAIG HOWARD;  
JERRY M. SNYDER; HALE LANE  
PEEK DENNISON HOWARD &  
ANDERSON,

Respondents.

ORDER GRANTING MOTIONS FOR REMAND

Appellant Mark B. Steppan has filed a "Motion for Remand," requesting that this court remand this matter to allow the district court to resolve his pending motion for reconsideration of one of the orders he is challenging on appeal. The district court has entered an order certifying

its intent to grant the motion for reconsideration. Foster v. Dingwall, 126 Nev. \_\_\_, 228 P.3d 453 (2010).

The respondents to Mr. Steppan's appeal have filed an opposition to the motion. Respondents note that this court has the discretion to grant or deny a motion for remand, even if the district court has certified that it is inclined to grant the relief requested. Id. Otherwise, respondents primarily argue against the merits of granting the motion for reconsideration. Mr. Steppan has filed a reply to the opposition.<sup>1</sup>

Appellants John Iliescu, Jr., and Sonnia Santee Iliescu as Trustees of the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust Agreement (the Iliescu parties) have also filed a "Motion for Remand," requesting that this court remand this matter to allow the district court to resolve their pending motion for reconsideration of one of the orders they are challenging on appeal. The district court has entered an order certifying its intent to grant the motion for reconsideration. Id.

The respondents to the Iliescu parties' appeal have filed an opposition to their motion. Those respondents note that the Iliescu parties had filed an opposition to Mr. Steppan's motion for remand. Respondents also note that this court has the discretion to grant or deny a motion for remand, even if the district court has certified that it is inclined to grant the relief requested. Id.

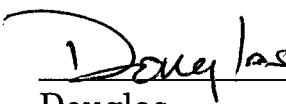
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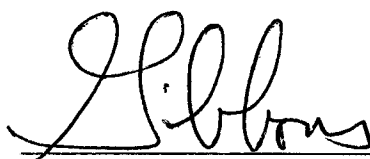
<sup>1</sup>As all relevant filings regarding the motion for remand have been filed, we deny as moot Mr. Steppan's motion requesting "an order to shorten the time within which briefing must occur" for that motion. See NRAP 27.

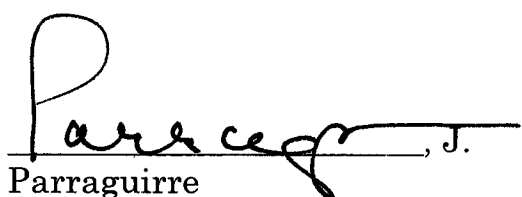
Cause appearing, we grant both motions for remand. Accordingly, this matter is remanded to the district court, pursuant to its certifications. Mr. Stepan and the Iliescu parties shall each file a status report regarding the proceedings on remand within 30 days from the date of this order.<sup>2</sup>

The settlement judge had previously filed a report indicating that settlement proceedings were postponed pending resolution of the motion for remand. The settlement judge may proceed with the settlement process as to the remaining issues in this appeal, if deemed appropriate at this time. See NRAP 16.

It is so ORDERED.

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Steven P. Elliott, District Judge  
David Wasick, Settlement Judge  
Hoy & Hoy  
Lemons, Grundy & Eisenberg  
Cowan Law Office  
Thomas J. Hall  
Wilson & Quint LLP/Reno  
Wilson & Quint/San Francisco  
Washoe District Court Clerk ✓

---

<sup>2</sup>If the proceedings on remand render any portion of this appeal moot, appellant(s) shall file stipulation or motion to dismiss the respective appeal. See NRAP 42.

## IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed  
 Aug 31 2012 12:50 p.m.  
 Tracie K. Lindeman  
 Clerk of Supreme Court

MARK B. STEPPAN,

Appellant,

vs.

JOHN ILIESCU, JR. and SONNIA SANTEE ILIESCU,  
 as Trustees of the John Iliescu, Jr. and Sonnia  
 Iliescu 1992 Family Trust Agreement;  
 HOLLAND & HART; KAREN DENISE DENNISON;  
 R. CRAIG HOWARD; JERRY M. SNYDER; HALE  
 LANE PEEK DENNISON HOWARD & ANDERSON;  
 and JOHN SCHLEINING,

Respondents.

JOHN ILIESCU, JR. and SONNIA SANTEE ILIESCU,  
 as Trustees of the John Iliescu, Jr. and Sonnia  
 Iliescu 1992 Family Trust Agreement,

Appellants,

vs.

HOLLAND & HART; KAREN DENISE DENNISON;  
 R. CRAIG HOWARD; JERRY M. SNYDER; and  
 HALE LANE PEEK DENNISON HOWARD &  
 ANDERSON,

Respondents.

## Status Report

This Court's Order Granting Motions for Remand entered August 2, 2012 ("Order") provides in relevant part:

Cause appearing, we grant both motions for remand. Accordingly, this matter is remanded to the district court, pursuant to its certifications. Mr. Stepan and the Iliescu parties shall each file a status report regarding the proceedings on remand within 30 days from the date of this order.

1 Order, page 3, first paragraph.

2 Appellant Mark B. Stepan reports the following:

3 1. The District Court has not yet entered an order granting or denying the pending  
4 motions for reconsideration.

5 2. Undersigned counsel understands that the District Court was waiting for a  
6 remittitur before taking action on the Order. Undersigned has orally advised that a remittitur is  
7 not required to confer jurisdiction to rule on the pending motions for reconsideration pursuant to  
8 the Order.  
9

### 10 Privacy Certification

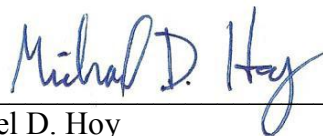
11 Counsel certifies that this Status Report does not contain any social security numbers or  
12 taxpayer identification numbers.  
13

### 14 Certificate of Service

15 Pursuant to NRAP 25(d), I certify that I am an employee of Hoy & Hoy, PC, and that on  
16 August 31, 2012 I electronically filed a true and correct copy of the foregoing Status Report with  
17 the Clerk of the Court by using the ECF system, which served the following counsel  
18 electronically: David Grundy, Alice Campos Mercado, Gregory F. Wilson, and Gordon M.  
19 Cowan. I have also provided a courtesy copy to the District Court by email addressed to  
20 Heidi.Howden@WashoeCourts.com.

21 Dated August 31, 2012.

Hoy & Hoy, PC

22  
23   
24

Michael D. Hoy

1 GORDON M. COWAN, ESQ. (SBN 1781)  
2 Law Office of Gordon M. Cowan  
3 P.O. Box 17952  
4 Reno, NV 89511  
5 Voice 775.786.6111  
6 Fax 775.786.9797

Electronically Filed  
Sep 04 2012 09:05 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

7 *Attorney for John Iliescu, Jr., Sonnia Iliescu*  
8 *individually and as Trustees of the John Iliescu,*  
9 *Jr. & Sonnia Iliescu 1992 Family Trust*

10 **IN THE SUPREME COURT of the STATE OF NEVADA**

11 JOHN ILIESCU, JR.; SONNIA SANTEE  
12 ILIESCU; JOHN ILIESCU JR. and  
13 SONNIA SANTEE ILIESCU as TRUSTEES  
14 of the JOHN ILIESCU, JR. and SONNIA  
15 ILIESCU 1992 FAMILY TRUST

16 Cross-Appellants,

**Case No 60036**

17 vs.

18 HALE LANE PEEK DENNISON &  
19 HOWARD PROFESSIONAL CORP.,

20 Cross-Respondents. /  
21 AND RELATED APPEAL /

22 **STATUS REPORT BY ILIESCU**

23 Respondents and Cross-Appellants JOHN ILIESCU, JR.; SONNIA SANTEE  
24 ILIESCU; JOHN ILIESCU JR. and SONNIA SANTEE ILIESCU as TRUSTEES of the  
25 JOHN ILIESCU, JR. and SONNIA ILIESCU 1992 FAMILY TRUST through counsel,  
26 Gordon M. Cowan, Esq. agree with the status report filed by the Appellant, Steppan.

27 RESPECTFULLY, this 31st day of August 2012

28 GORDON M. COWAN, ESQ. (Nev. 1781)  
LAW OFFICE OF GORDON M. COWAN

s/

Attorneys for Plaintiffs

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S/

## CERTIFICATE OF SERVICE

MICHAEL D. HOY  
DAVID R. GRUNDY  
ALICE CAMPOS MERCADO  
GREGORY E. WILSON

X Placing an original or true copy thereof in a sealed envelope with postage prepaid in the United States Mail at Reno, Nevada, following ordinary business practices;

\_\_\_\_\_ Personal delivery;

Facsimiles to:

Mike Hoy, Esq., Mike Kimmel, Esq.	775.786.7426
David Grundy, Esq., Alice Mercado, Esq.	775.786.9716
Gregory Wilson, Esq.	775.786.7764

Reno-Carson Messenger Service;

Certified Mail with Return Receipt Requested.

addressed as follows:

David Wasick  
879 Mahogany Dr.  
Minden NV 89423

DATED August 31, 2012

S/

---

G.M. Cowan

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

\* \* \*

JOHN ILIESCU, JR. and SONNIA 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,

Plaintiffs,

vs.

MARK B. STEPPAN,

Defendant.

Case No: CV07-00341  
(Consolidated with CV07-01021)

Dept. No.: 10

AND RELATED MATTERS.

**ORDER**

Before the Court, is an Order from The Supreme Court of Nevada Granting Two Motions for Remand filed on August 6, 2012. The first Motion for Remand was filed by Appellant MARK B. STEPPAN requesting the Supreme Court remand this matter to allow the district court to resolve his pending motion for reconsideration of one of the orders he is challenging on appeal. On February 7, 2012, this Court entered an Order Certifying Intent to Grant Motion for Reconsideration. *Foster v. Dingwall*, \_\_\_ Nev. \_\_\_, 228 P.3d 453 (2010).

1           **Reconsideration of October 25, 2011 Order**

2           The Court will address Steppan's Motion to Dismiss first. At the time this Court  
3 certified its intent to grant reconsideration of the Motion to Dismiss, this Court lacked  
4 jurisdiction. Now, having jurisdiction, and after having reviewed the evidence presented in  
5 Judge Adams' Affidavit filed November 8, 2011, the Court is inclined to grant  
6 reconsideration of the October 25, 2011 Order Granting Defendant's Motion to Dismiss. At  
7 the time the Order was entered, this Court believed that Steppan was not in compliance  
8 with NRCP 16.1.

9           NRCP 16.1(b)(1) requires the parties to complete an Early Case Conference within  
10 30 days after the filing of an answer by the first answering defendant, unless the case is  
11 either in the court annexed arbitration program or in the short trial program. Under certain  
12 circumstances, the Early Case Conference may be continued up to 180 days following an  
13 appearance by the defendant. *Id.* NRCP 16.1(c) requires the filing of a Case Conference  
14 Report by the parties within 30 days after each Case Conference to facilitate discovery  
15 among the parties. *Moon v. McDonald Carano & Wilson*, 126 Nev. Adv. Op. 47, 245 P.3d  
16 1138, 1139 (Nev. 2010).

17           NRCP 16.1(e)(2) provides as follows:

18                   **(e) Failure or Refusal to Participate in Pretrial Discovery;**  
19                   **Sanctions.**

20                   (2) If the plaintiff does not file a case conference report within 240  
21 days after an appearance by a defendant, the case may be dismissed as to  
22 that defendant upon motion or on the court's own initiative, without  
23 prejudice.

24           At the time the Order was entered, Plaintiff had not filed a Case Conference Report  
25 any time since Defendants filed an Answer on September 27, 2007. The decision to  
26 dismiss an action without prejudice for a plaintiff's failure to comply with the timing  
27 requirements of NRCP 16.1(e)(2) remains within the district court's discretion. *Arnold v.*  
28 *Kip*, 123 Nev. 410, 415, 168 P.3d 1050, 1053 (2007). NRCP 16.1(e)(2) was adopted to

1 promote the prosecution of litigation within adequate timelines and the sanctions exist to  
2 ensure compliance with the specific deadlines identified in the Rule. *Id.*

3 This Court was unaware of how Department Six was managing discovery. Judge  
4 Adams did not require an early case conference report. Therefore, Steppan did reasonably  
5 follow the requirements of Judge Adams in Department Six in accordance with the  
6 discovery management controlled by the Court. Therefore, upon reconsideration of  
7 Defendant's Motion to Dismiss, this Court does not believe this motion warrants dismissal.  
8 Accordingly, the Motion to Dismiss is denied.

9 **Reconsideration of September 1, 2011 Order**

10 The second Motion for Remand was filed by Appellants JOHN ILIESCU, JR. AND  
11 SONNIA ILIESCU, AS TRUSTEES OF THE JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992  
12 FAMILY TRUST AGREEMENT AND JOHN ILIESCU, INDIVIDUALLY ("Iliescu") requesting that  
13 the Supreme Court remand this matter to allow the district court to resolve their pending  
14 motion for reconsideration of one of the orders they are challenging on appeal.

15 On June 7, 2012, this Court entered an Order Certifying Intent to Grant Motion for  
16 Reconsideration of its September 1, 2011 Order Granting Third-Party Defendants' Motion  
17 for Summary Judgment. Iliescu's Motion for Reconsideration was filed as a result of the  
18 Court now being aware of the new evidence offered through Judge Adams' November 2011  
19 Affidavit. Judge Adams states:

20  
21 "[C]laims against the defendant law firm was stayed 'for all purposes,  
22 including discovery and trial, pending the final resolution of all claims  
23 asserted by plaintiffs against defendants.'" *Adams Affidavit.*

24  
25 When this Court entered Summary Judgment in this matter, this Court was under  
26 the impression that (1) Hale Lane's Motion for Summary Judgment was justified and (2)  
27 summary judgment was proper because the Iliescu's were required to file a case  
28 conference report.

1 A court should only grant summary judgment when, based upon the pleadings and  
2 discovery on file, no genuine issue of material fact exists for trial and the moving party is  
3 entitled to judgment as a matter of law. NRCP 56(c). A genuine issue of material fact  
4 exists when a reasonable jury could return a verdict in favor of the nonmoving party.  
5 *Kopicko v. Young*, 114 Nev. 1333, 1336, 971 P.2d 789, 790 (1998). Summary judgment is  
6 properly regarded not as a disfavored procedural shortcut, but rather as an integral part of  
7 civil procedure as a whole. *Celotex Corp. v. Catrett*, 477 U.S. 317, 327, 106 S.Ct. 2548,  
8 2555 (1986).

9 In reviewing a motion for summary judgment, the Court must view the evidence,  
10 and any reasonable inference drawn there from, in the light most favorable to the  
11 nonmoving party. *Lipps v. S. Nev. Paving*, 116 Nev. 497, 498, 998 P.2d 1183, 1184  
12 (2000). However, the nonmoving party may not avoid summary judgment by relying "on  
13 the gossamer threads of whimsy, speculation, and conjecture." *Pegasus v. Reno*  
14 *Newspapers, Inc.*, 118 Nev. 706, 713-14, 57 P.3d 82, 87 (2002) (quoting *Collins v. Union*  
15 *Fed. Sav. & Loan*, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983). Rather, the nonmoving  
16 party must, by affidavit or otherwise, set forth specific facts demonstrating the existence of  
17 a genuine issue for trial. *Pegasus*, 118 Nev. at 713, 57 P.3d at 87.

18 In their Motion for Summary Judgment, Defendants seek an order from the Court  
19 granting summary judgment on Plaintiffs' claims for legal malpractice and negligence.  
20 Specifically, Defendants argue that the claims of Plaintiffs fail as a matter of law because  
21 Plaintiffs were not eligible to file a Notice of Nonresponsibility as they were "Interested  
22 Owners," and thus, no evidence of causation exists. In addition, Defendants assert that  
23 even if Plaintiffs were not "Interested Owners," no evidence of damages exists because  
24 Plaintiffs received a substantial benefit from the actions of Fisher Friedman & Associates,  
25 and because Defendants and Mr. Schleining have reached an agreement releasing the lien  
26 without any cost to Plaintiffs. Furthermore, Defendants assert that because Plaintiffs  
27 executed two conflict waivers, any claim relating to a conflict of interest must fail. In  
28 addition, Defendants asserted that pursuant to NRCP 16.1(e), the Court should dismiss

1 Plaintiffs' claims as Plaintiffs failed to file a case conference report within 240 days  
2 following Defendants' appearance as required by NRCP 16.1(c).

3 Plaintiffs assert that the Court should not dismiss their claims pursuant to NRCP 16.1  
4 because this matter has been ongoing for the past four years and there is still time to file a  
5 case conference report.

6 At the time this Court granted summary judgment, this Court was unaware of the  
7 ongoing discussions between the parties in Department Six. Now, having jurisdiction to  
8 again review the papers and pleadings on file as well as the evidence now before the Court  
9 through Judge Adams' November 2011 Affidavit, this Court is inclined to reconsider the  
10 ruling on the Motion for Summary Judgment. As such and in light of how Department Six  
11 managed discovery in this case, the Court believes it is proper to deny the Motion for  
12 Summary Judgment entered September 1, 2011. In considering this ruling, the Court has  
13 now determined a genuine issue of material fact still exists in this case, therefore the Court  
14 cannot grant summary judgment at this time.

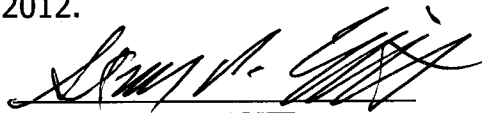
15 **NOW, THEREFORE, IT IS HEREBY ORDERED** that Plaintiff Mark Stepan's  
16 Motion for Reconsideration of the October 25, 2011 Order Granting the Motion to Dismiss is  
17 **GRANTED**.

18 **IT IS FURTHER ORDERED** that the Motion to Dismiss is **DENIED**.

19 **IT IS FURTHER ORDERED** that John Iliescu's Motion for Reconsideration of the  
20 September 1, 2011 Order Granting the Motion for Summary Judgment is **GRANTED**.

21 **IT IS FURTHER ORDERED** that the Motion for Summary Judgment is **DENIED**.

22  
23 **DATED** this 27 day of September, 2012.

24   
25 STEVEN P. ELLIOTT  
26 District Judge  
27  
28

**CERTIFICATE OF MAILING**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

GREGORY WILSON, ESQ. for JOHN SCHLEINING

ALICE CAMPOS MERCADO, ESQ. for KAREN DENNISON, JERRY SNYDER, R. HOWARD,  
HALE LANE PEEK DENNSION HOWARD

THOMAS HALL, ESQ. for TRUSTEE OF THE JOHN ILIESCU, JR. & SONNIA ILLIESCU, JOHN  
ILIESCU, JR., SONNIA ILIESCU

DAVID GRUNDY, ESQ. for KAREN DENNISON, HOLLAND & HART, LLP, JERRY SNYDER, R.  
HOWARD, HALE LANE PEEK DENNISON HOWARD

MICHAEL HOY, ESQ. for MARK STEPPAN

STEPHEN MOLLATH, ESQ. for JOHN ILIESCU, JR., SONNIA ILIESCU

**DATED** this 27 day of September, 2012.

  
HEIDI HOWDEN  
Judicial Assistant

1  
2  
3  
4 IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed  
Nov 09 2012 09:40 a.m.

Tracie K. Lindeman  
Clerk of Supreme Court

No. 60036

5 MARK B. STEPPAN,

6 Appellant,

7 vs.

8 JOHN ILIESCU, JR. and SONNIA SANTEE  
9 ILIESCU, as Trustees of the John Iliescu,  
10 Jr. and Sonnia Iliescu 1992 Family Trust  
11 Agreement; HOLLAND & HART; KAREN  
12 DENISE DENNISON; R. CRAIG HOWARD;  
13 JERRY M. SNYDER; HALE LANE PEEK  
14 DENNISON HOWARD & ANDERSON; and  
15 JOHN SCHLEINING,

16 Respondents.

17 JOHN ILIESCU, JR. and SONNIA SANTEE  
18 ILIESCU, as Trustees of the John Iliescu,  
19 Jr. and Sonnia Iliescu 1992 Family Trust  
20 Agreement,

21 Appellants,

22 vs.

23 HOLLAND & HART; KAREN DENISE  
24 DENNISON; R. CRAIG HOWARD; JERRY  
25 M. SNYDER; and HALE LANE PEEK  
26 DENNISON HOWARD & ANDERSON,

27 Respondents.  
28

**Stipulation to Dismiss Appeal**

Through undersigned counsel, the Parties hereby stipulate as follows:

## Recitals

1  
2 1. These consolidated actions arise from the recordation and foreclosure  
3 of a mechanics lien. On November 7, 2006, Mark B. Steppan ("Steppan")  
4 recorded a mechanics lien on property owned by John Iliescu, Jr., Sonnia Santee  
5 Iliescu, and the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust  
6 (collectively "Iliescu"). On February 14, 2007, Iliescu filed an "Application for  
7 Release of Mechanic's Lien" in the Second Judicial District Court ("District  
8 Court") as Case No. CV07-00341. Steppan is the sole defendant in this action.  
9

10  
11 2. On May 4, 2007, Steppan filed a "Complaint to Foreclose Mechanic's  
12 Lien and for Damages" in the District Court as Case No. CV07-01021. This lien  
13 foreclosure action names as defendants Iliescu and fictitious defendants.  
14

15 3. Based on a stipulation between Steppan and Iliescu, on September 6,  
16 2007, the District Court ordered consolidation of Case Nos. CV07-00341 and  
17 CV07-01021.  
18

19 4. On September 27, 2007, Iliescu filed a third-party action against  
20 Consolidated Pacific Development, Inc.; Decal Oregon, Inc.; Calvin Baty; John  
21 Schleining ("Schleining"); Hale Lane Peek Dennison and Howard, Professional  
22 Corporation dba Hale Lane, Karen D. Dennison, R. Craig Howard; Jerry M.  
23 Snyder (collectively, "Hale-Lane Defendants").  
24

25 5. Iliescu served the third-party complaint on Consolidated Pacific  
26 Development, Inc. ("CPD") on November 27, 2007. Through counsel, CPD filed  
27  
28

1 an answer on February 22, 2010. On March 18, 2010, the District Court granted  
2 counsel leave to withdraw. Neither the order granting withdrawal of counsel nor  
3 the motion seeking leave to withdraw provides an address for services of papers on  
4 CPD. Although CPD is a corporation, it has not represented by counsel since  
5 March 18, 2010.  
6

7  
8 6. On September 2, 2009, Schleining answered Iliescu's third-party  
9 complaint, filed a cross-claim against Hale Lane, and filed a third party claim  
10 against Holland & Hart, LLP and Craig Howard.  
11

12 7. Iliescu served Decal Oregon, Inc. and Calvin Baty by publication.  
13 Decal Oregon, Inc. or Calvin Baty never appeared in the case. Calvin Eugene Baty  
14 filed for bankruptcy on May 30, 2008 in *In re Baty*, Case No. 08-32573-rld7 (D.  
15 Or.). Mr. Baty's bankruptcy filing shows ownership of a 48% ownership interest  
16 in Decal Oregon, Inc.  
17

18 8. On March 30, 2011, Hale Lane Defendants filed a defense motion for  
19 summary judgment on Iliescu's third-party claims against Hale Lane Defendants.  
20 On July 22, 2011, Hale Lane Defendants filed a supplement to their motion for  
21 summary judgment against Iliescu. After full briefing, on September 1, 2011, the  
22 District Court entered an order granting the motion. On September 15, 2011,  
23 Iliescu filed a motion for leave to file a motion for reconsideration of the  
24 September 1, 2011 order.  
25  
26  
27  
28

1           9.     On August 15, 2011, Hale Lane Defendants and Holland & Hart filed  
2 a defense motion for summary judgment on Schleining's cross-claim against Hale  
3 Lane Defendants and third-party claim against Holland & Hart. Briefing was  
4 never completed, and the motion was never submitted. Based on a stipulation, on  
5 January 5, 2012 the District Court entered an order dismissing without prejudice  
6 Schleining's claims against certain Hale Lane Defendants and Holland & Hart,  
7 LLP.  
8

9  
10           10.    On September 6, 2011, Iliescu moved to dismiss Steppan's claims.  
11 After briefing, on October 25, 2011, the District Court entered an order granting  
12 the motion. On November 8, 2011, Steppan filed a motion for leave to file a  
13 motion for reconsideration of the October 25, 2011 order.  
14

15  
16           11.    On October 21, 2011, Steppan filed a motion for partial summary  
17 judgment against Iliescu. Because of this appeal, Iliescu has not filed an  
18 opposition to the motion, and the motion has not been submitted.  
19

20           12.    On November 2, 2011, Schleining filed a defense motion to dismiss  
21 Iliescu's third-party claim against Schleining. After briefing, on November 22,  
22 2011, the District Court entered an order granting the motion.  
23

24           13.    On December 22, 2011, Steppan appealed from the October 25, 2011  
25 order granting Iliescu's motion to dismiss Steppan's claims. On January 17, 2012,  
26 Iliescu cross-appealed from the September 1, 2011 order granting the Hale Lane  
27 Defendants' motion for summary judgment.  
28

15. On September 27, 2012, the District Court entered an order granting Stepan's motion for reconsideration of the October 25, 2011 order and Iliescu's motion for reconsideration of the September 1, 2011 order.

16. The August 2, 2012 Order Granting Motions for Remand conferred power for the District Court to consider the pending motions for reconsideration, but not the power to consider other pending motions or to conduct a trial.


## Stipulation

20 THEREFORE, the parties hereby stipulate as follows:

1. The foregoing recitals are true.
2. This appeal should be dismissed, and the matter should be remanded and remitted back to the District Court for further proceedings.


1 Dated November 05, 2012.

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2 Dated November 08, 2012.

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Attorneys for John Iliescu, Jr., Sonnia  
Iliescu, and the John Iliescu, Jr. and  
Sonnia Iliescu 1992 Family Trust  
Agreement

3 Dated November 8, 2012.

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for David R. Grundy (NV 864)  
Attorneys for Hale Lane Peek Dennison  
and Howard, P.C. dba Hale Lane, Karen  
D. Dennison, R. Craig Howard, Jerry M.  
Snyder, and Holland & Hart, LLP

## Order

Good cause appearing,

IT IS SO ORDERED.

Dated November \_\_, 2012.

\_\_\_\_\_  
Justice

\_\_\_\_\_  
Justice

\_\_\_\_\_  
Justice

FILED

Electronically

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Joey Orduna Hastings

Clerk of the Court

Transcript # 3441775

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARK B. STEPPAN,

Appellant,

vs.

JOHN ILIESCU, JR. AND SONNIA  
SANTÉE ILIESCU AS TRUSTEES OF  
THE JOHN ILIESCU, JR. AND SONNIA  
ILIESCU 1992 FAMILY TRUST  
AGREEMENT; HOLLAND & HART;  
KAREN DENISE DENNISON; R.  
CRAIG HOWARD; JERRY M. SNYDER;  
HALE LANE PEEK DENNISON  
HOWARD & ANDERSON; AND JOHN  
SCHLEINING,

Respondents.

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

Appellants,

vs.

HOLLAND & HART; KAREN DENISE  
DENNISON; R. CRAIG HOWARD;  
JERRY M. SNYDER; HALE LANE  
PEEK DENNISON HOWARD &  
ANDERSON,

Respondents.

No. 60036

FILED

JAN 02 2013

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

0007-60341

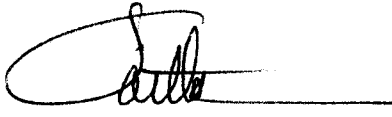
D10


ORDER DISMISSING APPEAL  
AND REMANDING TO THE DISTRICT COURT

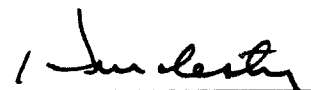
Pursuant to the settlement conference, the stipulation of the parties and cause appearing, we dismiss this appeal. NRAP 42(b). This matter is remanded to the district court to conduct appropriate proceedings, if any, to alter, amend, or vacate its order or judgment as

necessary for the parties to fulfill the terms of their settlement agreement. In the event the district court declines to grant the requested relief, the parties may file a motion to reinstate this appeal.<sup>1</sup>

It is so ORDERED.

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, J.  
Hardesty

cc: Hon. Steven P. Elliott, District Judge  
David Wasick, Settlement Judge  
Hoy & Hoy  
Lemons, Grundy & Eisenberg  
Cowan Law Office  
Thomas J. Hall  
Gregory F. Wilson  
Washoe District Court Clerk ✓

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<sup>1</sup>Any such motion to reinstate the appeal must be filed within 60 days of entry of the district court's order denying the requested relief.