

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.

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Nov 21 2018 11:57 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court No. 76146

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

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

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

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		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

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
		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

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
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 21st day of November, 2018, the foregoing **JOINT APPENDIX TO APPELLANT'S OPENING BRIEF, VOLUME VIII**, 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 / tra@lge.net
Attorneys for Third-Party Defendant
Hale Lane



An employee of Albright, Stoddard, Warnick & Albright

lien, and to the extent of any and all costs or damages incurred as a result of the architect's lien, and/or to the extent the Iliescus suffer the loss of their Property to foreclosure of the architect's lien, or otherwise due to the lien, and with respect to any losses suffered by the Third-Party Plaintiffs due to any bankruptcy filing, or due to the acts and omissions of the Indemnitors, and, with respect to all costs and attorneys' fees incurred by the Iliescus to date in defending against the Steppan lien; the Iliescus are entitled to be completely indemnified by Defendant Schleining, as an indemnitor, for any and all damages, including consequential damages heretofore or hereafter suffered by the Iliescus, pursuant to the December 2006 Indemnity Agreement, and pursuant to any other written Indemnity Agreements, and the Iliescus are entitled to be reimbursed and held harmless by Schleining for the Judgment in excess of \$4.5 million in favor of Steppan entered in Steppan's lien foreclosure suit.

101. Third-Party Plaintiffs are also entitled to indemnification from Schleining under principles of equity.

102. Schleining has an express contractual duty to indemnify the Iliescus, which has now become ripe, including based on the Judgment in favor of Steppan, and the Iliescus are entitled to specific performance of this obligation by Schleining.

103. As a result of Third-Party Defendant Schleining's acts and/or omissions, Third-Party Plaintiffs have been damaged in an amount in excess of Ten Thousand Dollars (\$10,000.00), and are entitled to an award as and for their damages incurred herein as against Schleining.

104. Third-Party Plaintiffs have been required to retain the services of attorneys to prosecute this action and to defend against the Steppan lien foreclosure action, and, therefore, Third-Party Plaintiffs are entitled to recover reasonable attorney's fees and costs incurred in these proceedings, including as incurred in the Steppan Lien Litigation portion of these proceedings, in accordance with the law, including, without limitation, as special damages.

WHEREFORE, the Iliescus pray for judgment against Third-Party Defendants, and each of them, jointly and severally, as follows:

- A. For damages against all Third-Party Defendants, jointly and severally, including, without limitation, direct, indirect, compensatory, and consequential damages, in an amount in excess of \$10,000.00 to compensate for the losses, damages, and expenses

- 1 incurred by the Iliescus by reason of the foregoing allegations, and also including
2 attorneys' fees and costs incurred in defending against the Steppan lien and lien lawsuit
3 as special damages;
- 4 B. For damages against the Lawyer Third-Party Defendants, including pursuant to theories
5 of malpractice and breach of contract and in indemnity, for any and all costs or
6 damages or losses or fees suffered by the Iliescus arising out of the architect's lien
7 and/or the BSC contracts or agreements with Steppan including all losses, attorneys'
8 fees, costs, and the Judgment amount entered on the Steppan lien, and any settlement
9 amount incurred by the Iliescus in the Steppan lien litigation;
- 10 C. For damages against Third-Party Defendant Schleining, including pursuant to theories
11 of equitable and contractual indemnity and breach of contract for any and all costs or
12 damages or losses or fees or judgment which have been or will be suffered by the
13 Iliescus arising out of the architect's lien and/or the BSC Financial, LLC contracts or
14 agreements with Steppan including all losses, attorneys' fees and costs incurred by the
15 Iliescus in the Steppan Lien Litigation portion of these proceedings, including as a
16 result of the judgment entered therein;
- 17 D. For a Judgment of this Court declaring and decreeing and requiring the Third-Party
18 Defendants, and each of them, to pay and satisfy the judgment which has been entered
19 against the Iliescus in the Steppan lien litigation, and/or to reimburse and pay damages
20 to the Iliescus in the amount thereof and based thereon;
- 21 E. For attorneys' fees and costs incurred in the defense of Steppan's mechanic's lien
22 foreclosure suit, and for costs and attorneys' fees incurred in the prosecution of this
23 action, sought herein both under any rule, contractual provision or statute allowing for
24 the same, and also as special damages incurred in the Steppan lien foreclosure litigation
25 and also so incurred herein;
- 26 F. For costs of suit;
- 27 G. For interest accruing at Nevada's legal rate, or any applicable contractual rate, upon the
28 Court's damages award, until paid in full;

1 H. For such other and further relief as the Court deems proper.

2 DATED this _____ day of September, 2016.

3
4 By _____

5 G. MARK ALBRIGHT, ESQ., #001394
6 D. CHRIS ALBRIGHT, ESQ., #004904
7 **ALBRIGHT, STODDARD, WARNICK & ALBRIGHT**
8 801 South Rancho Drive, Suite D-4
9 Las Vegas, Nevada 89106
10 Tel: (702) 384-7111
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12 gma@albrightstoddard.com
13 dca@albrightstoddard.com

14 C. NICHOLAS PEREOS, ESQ., #0000013
15 1610 Meadow Wood Lane, Suite 202
16 Reno, Nevada 89502
17 Tel: (775) 329-0678
18 cpereos@att.net
19 *Attorneys for Applicants/Defendants*

20 **AFFIRMATION**

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

23 DATED this _____ day of September, 2016.

24
25 By _____

26 G. MARK ALBRIGHT, ESQ., #001394
27 D. CHRIS ALBRIGHT, ESQ., #004904
28 **ALBRIGHT, STODDARD, WARNICK & ALBRIGHT**
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cpereos@att.net
Attorneys for Applicants/Defendants

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, and that on this _____ day of _____, 2016, service was made by the ECF system to the electronic service list, a true and correct copy of the foregoing **[PROPOSED] RESTATED ANSWER; RESTATED THIRD-PARTY COMPLAINT AGAINST CONSOLIDATED PACIFIC DEVELOPMENT, INC. AND DeCAL OREGON, INC., AND AMENDED THIRD-PARTY COMPLAINT AGAINST JOHN SCHLEINING, individually; HALE LANE PEEK DENNISON AND HOWARD PROFESSIONAL CORPORATION, a Nevada professional corporation, dba HALE LANE; KAREN D. DENNISON; R. CRAIG HOWARD; JERRY M. SNYDER; and JANE DOE I AND JOHN DOES II thru XX**, to the following persons:

Michael D. Hoy, Esq.
Nevada Bar No. 002723
HOY CHRISSINGER KIMMEL VALLAS, P.C.
50 West Liberty Street, Suite 840
Reno, Nevada 89501
Tel: (775) 786-8000
mhoy@nevadalaw.com
Attorney for Plaintiff Mark Steppan

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____ Electronic Filing/Service
____ Email
____ Facsimile
____ Hand Delivery
____ Regular Mail

David R. Grundy, Esq.
Todd R. Alexander, Esq.,
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*Attorneys for Third-Party Defendant
Hale Lane*

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An Employee of Albright, Stoddard, Warnick & Albright

EXHIBIT 2

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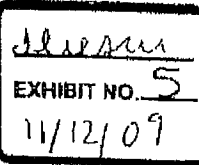
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Addendum No. 3



This Addendum No. 3 ("Third Addendum") is made by and between Consolidated Pacific Development, Inc., a Nevada corporation, ("Buyer"), and John Ilescu, Jr. and Sonnia Ilescu, individually and as Trustees of the John Ilescu, Jr. and Sonnia Ilescu 1992 Family Trust (collectively "Seller"), to amend and modify that certain Land Purchase Agreement dated July 29, 2005 ("Land Purchase Agreement"), together with Addendum No. 1 dated August 1, 2005 ("First Addendum"), and Addendum No. 2 dated August 2, 2005 ("Second Addendum"), for the sale and purchase of that certain real property located in the City of Reno, County of Washoe, State of Nevada, identified as APNs 011-112-05, 06, 07 and 12 and more particularly described in the Title Report (defined below). The Land Purchase Agreement, the First Addendum and the Second Addendum are collectively referred to herein as the "Agreement". Seller and Buyer hereby amend the Agreement as set forth below.

1. Paragraph 1.2 of the Land Purchase Agreement is hereby amended and restated as follows:

1.2 Additional Cash Deposit:

\$475,000.00

The deposit described in Paragraph 1.1 hereof shall be increased in the form of cash or cashier's check to be deposited with escrow holder for immediate disbursement to the Seller and Seller's agent proportionately, as follows.

- an additional \$75,000.00 within 30 days from August 3, 2005;
- an additional \$100,000.00 within 90 days from August 3, 2005;
- an additional \$100,000.00 within 150 days from August 3, 2005;
- an additional \$100,000.00 within 210 days from August 3, 2005;
- and
- an additional \$100,000.00 within 270 days from August 3, 2005.

Provided that Buyer has exercised reasonable diligence in obtaining the Governmental Approvals (defined in Paragraph 6 of this Third Addendum) and through no fault of Buyer, Buyer is unable to obtain all Governmental Approvals within 270 days from August 3, 2005, then Seller agrees to extend the date for close of escrow (as set forth in Section 4 hereof); provided, that, Buyer so notifies Seller in writing prior to the date or extended date for close of escrow, each such extension period shall not exceed 30 days, Buyer shall not request more than six (6) extensions, and each request for an extension shall be accompanied by an extension deposit of \$50,000.00 in immediately available funds. All deposits described in Section 1.1 and 1.2 hereof are collectively referred to as the "Deposit". The Deposit shall be non-refundable and shall be credited to the purchase price for the Property upon close of escrow. Buyer shall have a 15 day grace period to pay any of the aforesaid Deposits.

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2. The first paragraph under Section 5 of the Land Purchase Agreement is hereby amended and restated as follows:

On the date of closing, Title Company shall issue a CLTA or an ALTA policy of title insurance as determined by Buyer, which may include appropriate endorsements as desired by Buyer and to be paid by Buyer, insuring Buyer's title in the Property in an amount equal to the purchase price for the Property. Said title policy shall insure that Buyer has good and marketable title to the Property, subject only to the Permitted Exceptions. As used herein, "Permitted Exceptions" shall mean the standard form printed title exceptions of the form of policy chosen by Buyer and the following Schedule B exceptions shown on the Preliminary Report ("Title Report") of First Centennial Title Company of Nevada ("Title Company") No. 145279-MI, dated as of July 13, 2003, a copy of which is attached hereto as Exhibit "A": Item Nos. 1 through 6, inclusive (showing none due or payable) and 7 through 13, inclusive, any encumbrances to be created pursuant to this Agreement and any encumbrances created by Buyer. Buyer's inability to obtain any title policy endorsements requested by Buyer shall not affect Buyer's obligation to close escrow.

3. The following sentence of Paragraph 6.21 (Additional Inspections) of the Land Purchase Agreement is hereby deleted:

However, if repair expenses are considered excessive by Buyer, then Buyer may terminate this agreement at Buyer's discretion unless Seller agrees to repair at Seller's expense by written addendum.

4. Paragraph 12 (Encumbrances) of the Land Purchase Agreement is hereby amended and restated as follows:

Buyer shall take title to the property, subject to the Permitted Exceptions.

5. Paragraph 31 is hereby amended to add the following paragraph:

Buyer agrees to keep the Property free from all liens and to indemnify, defend and hold harmless Seller, and its successors and assigns, from and against any and all claims, actions, losses, liabilities, damages, costs and expenses (including, but not limited to, attorneys' fees, charges and disbursements) incurred, suffered by, or claimed against Seller by reason of any work performed with respect to the Property at the instance or request of Buyer or any damage to the Property or injury to persons caused by Buyer and/or its agents, employees or contractors arising out of or in any way connected with their entry upon the Property and/or the performance of any inspections, tests or other activities thereon. Buyer's obligations under this paragraph shall survive the Closing or termination of the Agreement.

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6. Paragraph 36 is hereby amended to add the following:

As used in this paragraph "Existing Impact Fees" shall not include any impact fees which result from the Project.

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;
- (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.

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

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

8. Paragraph 39(B) as amended by Addendum No. 1 is hereby amended and fully restated as follows:

The Project will include a number of condominium penthouses located on the upper floors of the Project. It is agreed and understood that as part of the purchase price of the Property, the Seller shall have the first right to select a penthouse condominium unit from all penthouse condominium units to be constructed on the Property and Seller shall receive a credit of \$2,200,000.00, of Actual Hard Costs, toward the purchase and ownership of all right, title and interest in one of the penthouses ("Seller's Penthouse Unit") which shall be 3,750+ square feet in size with a minimum ceiling height throughout of nine feet (9'), together with (a) an exclusive easement to four (4) parking spaces of Seller's choice within the parking garage of the Project, which parking spaces shall be limited common elements appurtenant to Seller's Penthouse Unit and which shall be maintained by the owner of the Property, the operator of the parking garage, if any, or the homeowners association to be formed for the Project ("Association") in the same manner that other parking spaces are maintained, and (b) an exclusive easement to an enclosed unfinished storage space within the Project having a floor

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(1) When the Project has progressed to a point where the architect is designing the preliminary floor plans for the penthouses, Seller shall meet with the architect and participate in the selection and design of Seller's Penthouse Unit. Seller's Penthouse Unit shall meet the specifications set forth in the preceding paragraph and Seller shall be entitled to choose the location, floor plan and overall design of the Seller's Penthouse Unit and the amenities which Seller desires be added to the basic unit plans. Seller shall be entitled to select the finish improvements to Seller's Penthouse Unit. From the time the preliminary plans have been reviewed by Seller, Seller shall have thirty (30) days to choose Seller's Penthouse Unit. Seller shall be entitled to review and approve the final building plans for Seller's Penthouse Unit prior to submittal of such plans to the City of Reno Building Department, which approval shall not be unreasonably withheld or delayed. Seller shall provide Buyer with any changes to the final plans within ten (10) business days after receiving the same, and Buyer shall make reasonable efforts to accommodate Seller's changes. In the event Buyer does not receive Seller's changes to the final plans within such ten (10) business day period, then Seller shall be deemed to have approved the same.

(2) Within thirty (30) days after Seller's approval or deemed approval of the final plans for Seller's Penthouse Unit, Buyer shall provide Seller with an estimated statement of the estimated hard costs related to the construction of Seller's Penthouse Unit, which statement shall be updated from time to time as construction progresses to reflect the Actual Hard Costs. "Actual Hard Costs" shall mean Buyer's actual out-of-pocket costs for labor, materials and other tangible items to be installed in or on Seller's Penthouse Unit and the limited common elements appurtenant to Seller's Penthouse Unit, together with a pro rata share of costs incurred by Buyer for construction of the common elements of the Project (excluding Seller's limited common elements), which pro rata share shall be equal to Seller's undivided interest in the common elements of the Project ("Seller's Pro Rata Share"). "Actual Hard Costs" shall also include Seller's Pro Rata Share of the following out-of-pocket costs: reasonable fees paid to architects, engineers, appraisers, real estate taxes and insurance. "Reasonable fees" shall mean the fees generally charged for similar services in the community. In the event Seller submits any written change orders to the final plans which increase the cost of construction as estimated on the original statement, then "Actual Hard Costs" shall include such increased costs. Upon written request, Buyer shall provide Seller a written itemization and receipts for all Actual Hard

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Costs. The cumulative total of the Actual Hard Costs shall be the purchase price for Seller's Penthouse Unit ("Penthouse Purchase Price").

(3) Close of escrow for Seller's Penthouse Unit shall occur, at Seller's election, (i) within five (5) business days after the date Seller is notified in writing that a certificate of occupancy is issued for Seller's Penthouse Unit or (ii) on such earlier date which Seller may elect in writing. In the event the Penthouse Purchase Price exceeds \$2,200,000.00, Seller shall pay the difference between the Penthouse Purchase Price and \$2,200,000.00 in full at the close of the escrow transferring Seller's Penthouse Unit to Seller. In the event the Penthouse Purchase Price is less than \$2,200,000.00, then Buyer shall pay Seller the difference between \$2,200,000.00 and the Penthouse Purchase Price at the close of such escrow. The closing costs for Seller's Penthouse Unit shall be paid by Seller and Buyer as follows: Buyer shall pay any real estate broker's commission owed to any real estate broker which Buyer has engaged. Buyer shall pay for the cost of a CLTA title insurance policy and one-half (1/2) of the real property transfer tax. Seller shall pay any real estate broker's commission owed to any real estate broker which Seller has engaged. Seller shall pay one-half (1/2) of the real property transfer tax and the additional cost of any ALTA policy and any title endorsements requested by Seller. Buyer and Seller shall each pay one-half (1/2) of the remaining costs and fees of the escrow related to the transfer of Seller's Penthouse Unit.

(4) As soon as practicable after determination of which unit is Seller's Penthouse Unit, and in any event prior to the close of escrow on Seller's Penthouse Unit, Seller shall choose which four (4) parking spaces shall be designated for Seller's Penthouse Unit. Seller and Buyer shall mutually determine the location of Seller's Storage Unit which Storage Unit shall be constructed by the date of the close of escrow on Seller's Penthouse Unit.

(5) Seller shall acquire its right, title and interest in Seller's Penthouse Unit, together with the four (4) parking spaces and the Storage Unit by grant bargain and sale deed (the "Deed"), and title thereto shall be free of all liens and encumbrances, except taxes paid current, the Permitted Exceptions (excluding monetary encumbrances created by Buyer) and the Declaration. To ensure that Seller receives either (a) title to Seller's Penthouse Unit within three (3) years after the close of escrow for the Property, or (b) if the Project and Seller's Penthouse Unit is not constructed within three (3) years after close of such escrow, \$3,000,000.00 in cash, Buyer agrees as follows:

(a) Concurrently with the close of escrow for the Property, a Memorandum of Agreement, in a form acceptable to Seller, shall be recorded memorializing of record Seller's right to Seller's Penthouse Unit on the Property; and

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(b) Buyer shall post a bond in the amount of \$3,000,000.00 wherein Seller is the obligee insuring either (i) the lien-free completion of Seller's Penthouse Unit within three (3) years after close of the escrow for the Property or (ii) in the alternative, the payment to Seller of the cash sum of \$3,000,000.00 on the date which is three (3) years after close of such escrow.

Seller may extend the date for completion of Seller's Penthouse Unit, in Seller's sole discretion, from time to time.

9. Paragraph 39(I) as amended by Addendum No. 1 is hereby amended and fully restated as follows:

Seller owns the adjoining parcel commonly known as 260 Island Avenue, Reno, Nevada ("Island Property"). Seller intends, but shall not be obligated, to convert the building located on the Island Property into a restaurant/bar business or, in the event a restaurant/bar business is not permitted by city, county or state regulations or is not feasible in Seller's sole judgment, then Seller may convert the Island Property to another use of Seller's choice ("Seller's Business"). Buyer and Seller each agree to the following terms and conditions related to the Island Property:

(1) Seller agrees to place a deed restriction on the Island Property at close of escrow, providing that Seller shall not, in any way, construct any structure or add to the existing structure to increase the existing height of the building located on the Island Property, which is _____ feet above street level and shall further not install any equipment or items which exceed fifteen feet (15') above the current height of the existing building located on the Island Property. Such deed restriction shall terminate by its terms if construction of the Project is not commenced on the Property within one (1) year after close of escrow for the Property.

(2) Buyer agrees to obtain, at Buyer's sole cost and expense, all approvals necessary for a boundary line adjustment ("Boundary Line Adjustment") which will add to the Island Property a strip of land along the entire east boundary of the Island Property which strip shall be ten feet (10') in width or wider if required to meet additional city, county, state or other governmental requirements for the conversion of the existing building on the Island Property, as provided above. The Boundary Line Adjustment shall be recorded at close of escrow.

(3) At close of escrow for the Property, Seller shall reserve in the Deed conveying title to the Property a perpetual exclusive easement for fifty-one (51) contiguous full size parking spaces (as required by the applicable parking ordinance), including required ADA spaces ("Island Property Parking Spaces") on the Property, which Island Property Parking Spaces shall be appurtenant to, and for the benefit of, the Island Property. The Island Property Parking Spaces shall be located within the parking garage of the Project on the ground level (Island

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p. 7

Avenue street level) convenient to Seller's Business with signage indicating that such spaces are for the exclusive use of the Island Property, including, but not limited to, the owner, the operator, the business invitees and guests of the Island Property. Buyer shall further provide Seller a non-exclusive ingress and egress easement to the Island Property Parking Spaces providing access from Island Avenue, and a reasonable pedestrian ingress and egress access easement from the Island Property Parking Spaces to the Island Property, in a location to be mutually agreed upon by Seller and Buyer, which is convenient to the Seller's Business. Seller and Buyer shall reasonably cooperate to design such parking entrance to discourage unauthorized parking. The reservation in the Deed for the Island Property Parking Spaces shall include a provision that in the event the Project is not built, Seller shall nevertheless be entitled to a perpetual exclusive easement for the Island Property Parking Spaces on the Property (contiguous to the Island Property) for the benefit of the Island Property, together with vehicular and pedestrian access easements at locations to be selected by Seller.

(4) During such time as the Island Property Parking Spaces are used for the benefit of the Island Property, Seller, and any successor owners of the Island Property agree to maintain, at their sole cost and expense, liability insurance for the Island Property Parking Spaces in the initial amount of \$1,000,000.00 per person and \$3,000,000.00 per occurrence, as may be determined by Seller or its successors using prudent business judgment, which insurance shall be issued by an insurance company licensed to issue insurance in the State of Nevada, subject to Buyer's approval, which approval shall not be unreasonably withheld. Seller further agrees to keep the Island Property Parking Spaces in a clean and orderly condition. At the sole discretion of Seller, Seller may provide a parking attendant and/or parking valet, at Seller's sole cost and expense. Except as otherwise provided herein, all costs of repair and maintenance of the Island Property Parking Spaces shall be borne by the owner of the Property, the operator of the parking garage, if any, or the Association, and the Declaration shall provide for the maintenance of the Island Property Parking Spaces to the same standard as the other parking spaces within the Project.

10. Paragraph 39 (J) is hereby amended to add the following sentence:

All signs which Buyer places on the Property shall comply with all applicable sign ordinances.

11. The following paragraphs are hereby added to the Agreement:

48. Miscellaneous.

(a) All of Seller's representations, warranties and covenants set forth in the Agreement which are made to "Seller's knowledge" or "Seller's actual knowledge" are made without any duty of inquiry or investigation on the part of Seller.

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Richard L. Johnson

(b) Time is of the essence of this Agreement.

(c) Buyer shall not assign this Agreement without Seller's prior written consent, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Buyer shall be entitled to assign this Agreement to an entity in which Buyer owns no less than thirty-three and one-third percent (33.33%) of the ownership interests, without Seller's consent.

Except as modified herein, all other terms and conditions of the Land Purchase Agreement are hereby ratified and affirmed.

This Addendum No. 3 is dated this 8 day of October, 2005.

Seller:

John Ilescu Jr.
John Ilescu Jr.
Sonia Santee Ilescu
Sonia Santee Ilescu

John Ilescu Jr. Trustee
John Ilescu Jr., as Trustee of the John Ilescu Jr.
and Sonia Ilescu 1992 Family Trust
Sonia Santee Ilescu
Sonia Santee Ilescu, as Trustee of the John
Ilescu Jr. and Sonia Ilescu 1992 Family Trust

Buyer:

Consolidated Pacific Development, Inc.,
a Nevada corporation

By: Sam A. Caniglia
Sam A. Caniglia, President

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p. 9

Exhibit "A"
Preliminary Title Report

(See attached.)

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P-10

FIRST CENTENNIAL TITLE COMPANY OF NEVADA

- ☒ 1330 RIDGEVIEW DR., SUITE 100 * RENO, NV 89509 (775) 689-4310
- ☐ 520 DANFORTH RANCH PARKWAY, SUITE 200 * RENO, NV 89521 (775) 630-2135
- ☐ 215 NORTH CARSON STREET, #100 * CARSON CITY, NV 89701 (775) 687-4160
- ☐ 6121 LAKESIDE DR., SUITE 100 * RENO, NV 89511 (775) 689-4330
- ☐ 899 TAIHOE BLVD., SUITE 300 * P.O. BOX 1146, INCLINE VILLAGE, NV 89450 (775) 531-4300
- ☐ 1024 ROBERTA LANE, * SPARKS, NV 89434 (775) 683-2021
- ☐ 3144 LAKESIDE DR., SUITE 100 * RENO, NV 89509 (775) 689-4330
- ☐ 6130 MAEANNIE AVENUE, SUITE 1 * RENO, NV 89521 (775) 746-7080

Issuing Policies Of

First American Title Insurance Company

Today's Date:
August 18, 2005

PRELIMINARY REPORT

PROPOSED BUYER: Consolidated Pacific Development, Inc.
PROPERTY ADDRESS: APN 811-112-03, 06, 07 and 12,
Reno, NV

Metzger Johnson Group
Richard K. Johnson
6490 S. McCarran Boulevard
Suite 10
Reno, NV 89509

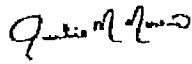
Examine Officer: Maryann Infante

Our No.: 145279-MI

The information contained in this report is through the date of
July 13, 2005 at 7:30 A.M.

In response to the above referenced application for a policy of title insurance, First Centennial Title Company of Nevada, Inc. hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a California Land Title Association Standard Coverage Policy of Title Insurance describing the land and the estate or interest therein set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said Policy form.

This report (and any supplements or amendments thereof) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby.

by: 
Julie Moreno, Title Officer

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Rich K. Johnson

775-823-8848

P. J.

SCHEDULE A

The estate or interest in the land hereinafter described or referred to covered by this report is:

Fee Simple

Title to said estate or interest at the date hereof is vested in:

Sonia Santos Diez, John Diez, John Diez Jr. and John Diez Jr. and Sonia Diez
as Trustees of the John Diez Jr. and Sonia Diez 1992 Family Trust all as their
interests appear of record

The land referred to in this Report is situate in the State of NEVADA, County of Washoe.

See Exhibit "A" Attached Hereto And Made A Part Hereof

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Rich: K. Johnson

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P. 12

SCHEDULE B

At the date hereof Exceptions to coverage in addition to the printed exceptions and exclusions in said policy form would be as follows:

1. General and Special Taxes for the fiscal year, 2005-2006, including any secured personal property taxes, a lien due and payable.
Total Amount: \$1,501.77
First Installment: \$376.77, Unpaid
Said Installment becomes delinquent August 26, 2005.
The Second, Third and Fourth Installments: \$375.00, each, Unpaid
Assessors Parcel No.: 011-112-03
Note: The second, third and fourth installments will become delinquent if not paid on or before the first Monday in October, 2005, and January and March, 2006, respectively.

2. General and Special Taxes for the fiscal year, 2005-2006, including any secured personal property taxes, a lien due and payable.
Total Amount: \$2,010.02
First Installment: \$504.02, Unpaid
Said Installment becomes delinquent August 26, 2005.
The Second, Third and Fourth Installments: \$502.00, each, Unpaid
Assessors Parcel No.: 011-112-06
Note: The second, third and fourth installments will become delinquent if not paid on or before the first Monday in October, 2005, and January and March, 2006, respectively.

3. General and Special Taxes for the fiscal year, 2005-2006, including any secured personal property taxes, a lien due and payable.
Total Amount: \$3,341.47
First Installment: \$836.47, Unpaid
Said Installment becomes delinquent August 26, 2005.
The Second, Third and Fourth Installments: \$825.00, each, Unpaid
Assessors Parcel No.: 011-112-07
Note: The second, third and fourth installments will become delinquent if not paid on or before the first Monday in October, 2005, and January and March, 2006, respectively.

4. General and Special Taxes for the fiscal year, 2005-2006, including any secured personal property taxes, a lien due and payable.
Total Amount: \$4,984.02
First Installment: \$1,276.02, Unpaid
Said Installment becomes delinquent August 26, 2005.
The Second, Third and Fourth Installments: \$1,236.00, each, Unpaid
Assessors Parcel No.: 011-112-12
Note: The second, third and fourth installments will become delinquent if not paid on or before the first Monday in October, 2005, and January and March, 2006, respectively.

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J. J. [Signature]
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[Signature]
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Rich A K. Johnson

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p. 13

SCHEDULE B
(Continued)

5. Any additional tax that may be levied against said land due to the supplemental tax roll, by reason of a change in ownership or completion of new construction thereon.
6. Liens for delinquent sewage charges, if it be determined that the same has attached to said premises, pursuant to Ordinance No. 51096, amending Section 9, Article XIV of the Reno Municipal Code.
7. Any facts, rights, interests, easements, encroachments or claims which a correct survey would show.
8. Easements for any and all ditches, pipe and pipe lines, conduits, transmission lines, poles, roads, trails, and fences on or traversing said land which would be disclosed and located by an accurate survey.
9. Terms and conditions as contained in an agreement for an open driveway, recorded May 29, 1926, in Book L, Page 97, as Document No. 37015, Bonds and Agreements.
AFFECTS PARCEL 1
10. An exclusive easement for the installation, maintenance and use of street light poles and incidental purposes as granted to CITY OF RENO, a Nevada municipal corporation, by instrument recorded September 16, 1992, in Book 3566, Page 281, as Document No. 1605637, Official Records, located along a portion of the Northerly and Easterly boundaries of said land.
AFFECTS PARCELS 1 & 4
11. The terms, covenants, conditions and provisions as contained in an instrument, entitled "An ordinance of the City Council of The City of Reno Amending Ordinance No. 4041, as amended, to extend the duration of the redevelopment plan for the downtown redevelopment area, and providing for other matters relating thereto," recorded July 8, 2005, as Document No. 3242447, of Official Records.
12. Except all water, claims or rights to water, in or under said land.
13. Any rights, interest or claims of parties in possession of the land not disclosed by the public records.
14. Prior to the close of escrow this office will require:
 - a. A Copy of the Trust Agreement, or a Notarized Certificate of Trust, for the trust set forth in the vesting herein.

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Richa K. Johnson

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P. 14

EXHIBIT "A"
Legal Description

All that certain real property situate in the City of Reno, County of Washoe, State of NEVADA,
described as follows:

PARCEL 1:
Commencing at the intersection of the East line of Flint Street (if said Flint Street were
constructed Northerly) with the North line of Court Street, in the City of Reno, Nevada;
thence Easterly along the North line of Court Street 125 feet, more or less, to the Westerly
line of what is known as and called "The Gregory" property; thence at an angle of $89^{\circ}58'$
Northerly 148 feet to the Northwestern corner of the aforesaid "Gregory" property;
thence Easterly along the Northerly line of the said "Gregory" property a distance of 25
feet, said last point being the place of beginning; thence at an angle of $90^{\circ}5'$ Easterly a
distance of 50 feet; thence at a right angle Northerly a distance of 136 feet, more or less, to
the South bank of the South channel of the Truckee River; thence Westerly along the
South bank of said Truckee River to a point on a line drawn Northerly and parallel with
the Easterly line of said property from the point of beginning; thence Southerly and
parallel with the said Easterly line of said property to the point of beginning.

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

APN: 011-112-03

PARCEL 2:

Commencing at a point 129.6 feet West of where the center line of Hill Street projected
Northerly will intersect the North line of Court Street; thence running Westerly along the
North line of Court Street, 75 feet; thence running Northerly at an angle of $89^{\circ}58'$ 140
feet; thence running Easterly at an angle of $90^{\circ}05'$ 75 feet; thence running Southerly at
an angle $80^{\circ}35'$, 140 feet to the place of beginning, comprising a parcel of land 75 by 140
feet.

APN: 011-112-06

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P. 13

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Richa K. Johnson

PARCEL 3:

BEGINNING at the intersection of the Northerly extension of the Eastern line of Flint Street with the Northern line of Court Street, in the City of Reno, County of Washoe, State of Nevada; thence Easterly along the Northern line of Court Street, 125 feet, more or less, to the Western line of the parcel conveyed to WALKER J. BOUDWIN, et ux, by Deed recorded in Book 143, File No. 160219, Deed Records; thence Northerly along said last mentioned line 140 feet; thence Westerly parallel to the Northern line of Court Street, 125 feet; thence Southerly parallel to the Western line of said Boudwin parcel 140 feet to the point of beginning.

APN: 011-112-07

PARCEL 4:

Commencing on the North line of Court Street, at the intersection of the North line of Court Street with the West line of Hill Street, if said Hill Street was protracted Northerly to said point of intersection, according to the official plat of LAKE'S SOUTH ADDITION TO RENO, Washoe County, State of Nevada; thence running Westerly and along the North line of said Court Street 100 feet; thence Northerly and parallel with the West line of said Hill Street, if protracted, 276 feet, more or less to the South bank of the Truckee River; thence Easterly and along the South bank of the Truckee River to the West line of Hill Street, protracted Northerly to said Truckee River; thence Southerly and along the West line of Hill Street, protracted, 324 feet, more or less to the North line of Court Street and the place of beginning, being the same lands conveyed by Antonio Rehori and Charlotte Rehori, his wife, to Charles Snyder, May 27, 1907, and by Antonio Rehori to Charles Snyder, January 12, 1905, by deed duly recorded in Book 32 of Deeds, Page 405, and Book 26 of Deeds, Page 296, Records of said Washoe County.

EXCEPTING THEREFROM that portion of the hereinabove described parcel conveyed to the City of Reno, a municipal corporation, in an instrument recorded August 4, 1922, as Document No. 26097, in Book 61, Page 288, of Deeds.

FURTHER EXCEPTING THEREFROM that portion of the hereinabove described parcel conveyed to the City of Reno, a municipal corporation, in an instrument recorded December 17, 1971, as Document No. 229332, in Book 640, Page 753, of Official Records.

APN: 011-112-17

The above legal description was taken from previous Document No. 2472304.

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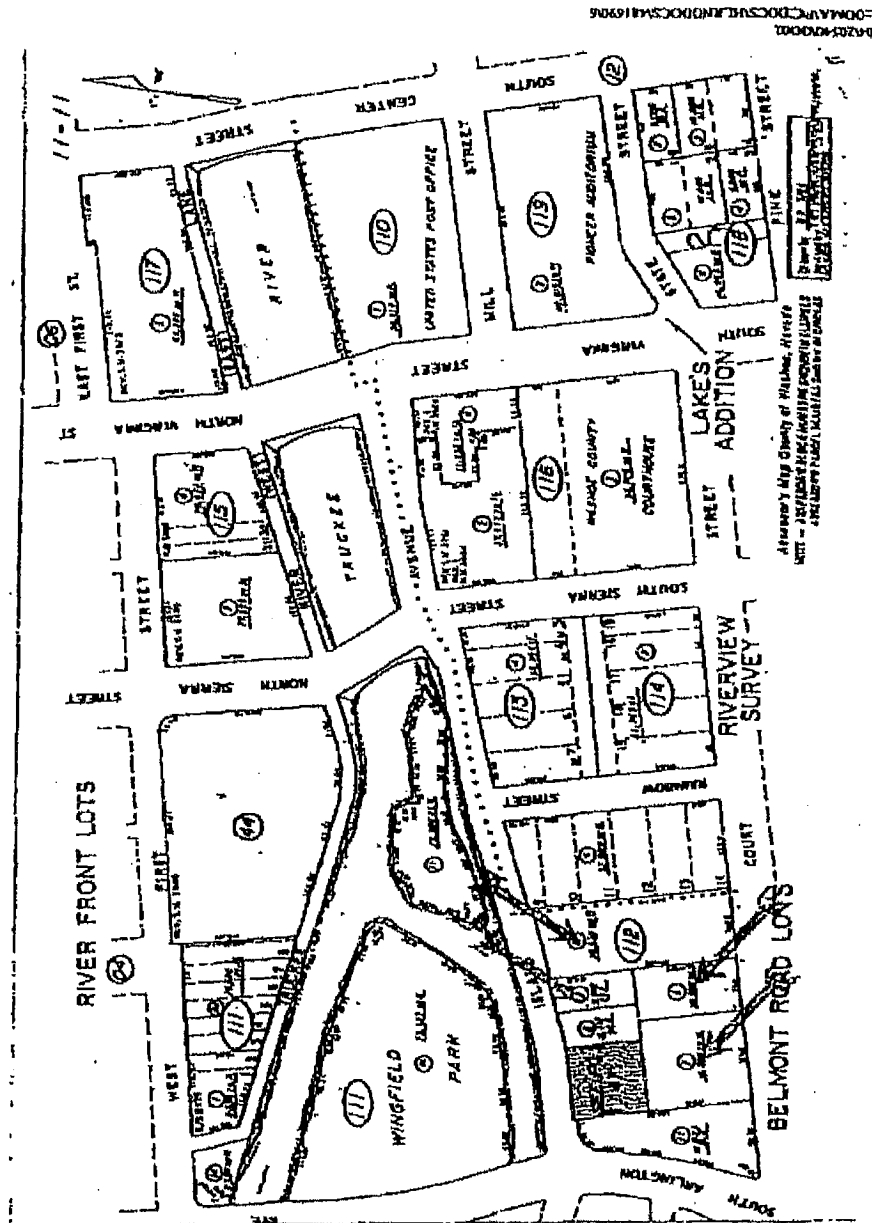
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Ric and K. Johnson

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P. 15



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EXHIBIT 3

EXHIBIT 3

Case No. CV07-00341 (CONSOLIDATED)

Dept. No. B6

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

-oOo-

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 ACTIONS

=====

DEPOSITION OF R. CRAIG HOWARD

Wednesday, February 10, 2010

Reno, Nevada

Reported By:

MARIAN S. BROWN PAVA, CCR #169
CALIFORNIA CSR #4525

1 Dr. Iliescu and Dick Johnson and you were present?

2 A I don't recall. It could be, I don't recall.

3 Q Okay. Have you ever met Dr. Iliescu's wife?

4 A Yes.

5 Q Were those occasions when Dr. Iliescu was also
6 present?

7 A Yes.

8 Q Is it true that every time you met Dr. Iliescu,
9 his wife was also present?

10 A I believe that's true, to the best of my
11 recollection.

12 Q Have you ever met Sam Caniglia?
13 C-a-n-i-g-l-i-a.

14 A Yes.

15 Q When was the first time you met him?

16 A That would have been in November of '05.

17 Q What was the occasion for first meeting Sam
18 Caniglia?

19 A Sam called me and said that he was working on a
20 project, and he wanted to have Hale Lane do some technical
21 revisions to an AIA formal contract. And somewhere in
22 that process, we had a meeting.

23 And actually, I did that meeting. I introduced
24 myself; we talked real briefly; and I introduced him to
25 associate, Sarah Class. So I did not stay in the meeting,

1 I was more or less introducing her.

2 Q It was a meeting -- there was an event at the
3 Hale Lane office where Sam Caniglia came to the office,
4 you spoke to him briefly, introduced him to Sarah Class --

5 A Yes.

6 Q -- and then you left?

7 A Yes.

8 Q And your best recollection of that -- we'll get
9 to the bills in a minute -- is about what time?

10 A In November, mid November.

11 Q 2005?

12 A Yes.

13 Q Okay. What's your understanding of how it came
14 about that Sam Caniglia called or otherwise contacted you
15 and asked for legal services?

16 A He said he was working with Calvin Baty on a
17 project, and that's all he said. And he said he wanted --
18 he had a lot of familiarity with the AIA contracts, but he
19 had some modifications he wanted done. And he said -- he
20 was a humorous guy, and he says: I would like one of your
21 talented, you know, someone with skill sets, associates.
22 Translated, I think he was sensitive to billing rates.

23 Q You weren't offended that he didn't want you?

24 A No. I understand that type of description
25 perfectly. He had experience, he's sophisticated, and we

1 had somebody that could fit the bill.

2 Q Prior to this first contact that you just
3 described, had you ever spoken to Sam Caniglia before?

4 A I could have, but I don't recall. He -- most
5 of our discussions were about old memories and -- not with
6 me, but he had known the Hale of Hale Lane, which was
7 Edward Hale.

8 Q All right.

9 A And so, really, that was 90 percent of the
10 discussion when I introduced him to Sarah.

11 Q Did you gain an understanding that Sam Caniglia
12 had retained Hale Lane in prior years for other work?

13 A No. Well, he might -- he said he worked with
14 Edward, but he -- or he met Edward. It was really a met.
15 This is a description of a person, not anything to do with
16 legal work.

17 Q After that first meeting with Sam Caniglia, how
18 many other times had you met him?

19 A I believe he may have been there the day
20 before. We thought we were in a position to close the
21 purchase on the property.

22 Q And during the course of this deposition, we
23 might as well use a nomenclature for the property. Should
24 we call that "Court Street"?

25 A That's fine.

1 not opening files, but 14 different numbers, we just have
2 the billing -- that's the billing customer, and it's -- it
3 was BSC is my understanding.

4 Q When you say "customer," do you also mean
5 client?

6 A Yes.

7 Q All right. I'll use "client."

8 A I know, I just saw the word "customer," and it
9 came out "customers."

10 Q All right. As of November 2005 was BSC -- and
11 by that I mean BSC Financial, LLC, an Oregon limited
12 liability company -- a client of Hale Lane?

13 A They were when they opened this file. And we
14 saw that they entered into the -- they didn't enter into,
15 but BSC was the party that Sam Caniglia was asking for the
16 review of the AIA contract.

17 I would say that the day that the file opened,
18 we probably didn't know that, we didn't have -- but we
19 opened up under "DeCal" instead of "BSC."

20 But that goes back to my explanation before:
21 We didn't always run back and change it. But Calvin Baty
22 was sort of the main player on that -- not Calvin, but
23 DeCal.

24 Q Was DeCal Custom Homes, which appears at the
25 top of Bates 2505, a client of Hale Lane in November of

1 2005?

2 A Yes.

3 Q All right. Was DeCal, Inc., which also appears
4 after a slash mark at the top of 2505, also a client of
5 Hale Lane as of November 2005?

6 A If we've got the nomenclature right, yes.

7 Q Sitting here today, can you tell me the
8 difference between DeCal Custom Homes and DeCal, Inc.?

9 A No.

10 Q When you use the term "DeCal," to which entity
11 or entities do you refer?

12 A Do you mean as between DeCal Custom Homes and
13 DeCal, Inc.?

14 Q Yes.

15 A I didn't know -- at the time we would start
16 something, we just used both of those, until we found --
17 in this one, it turned out to be BSC.

18 Q When you say "we," do you mean Hale Lane?

19 A Yes.

20 Q In this deposition, when you or I use the term
21 "DeCal," should we understand that we're referring to
22 DeCal Custom Homes and DeCal, Inc.?

23 A That would be good with me.

24 Q All right. And that's because that has been
25 your understanding?

1 with Calvin Baty?

2 A Not synonymous, no. That he was the major
3 developer in DeCal. I didn't know anything more. He was
4 a major builder up in Oregon, but I didn't know any of the
5 specifics. But it's the first name we had, so we -- we
6 often open it up under that, the one we were first
7 introduced to. And when these single-purpose entities
8 came up, we understood the relationship.

9 Q The person that is the human being that Hale
10 Lane took direction from to do legal work regarding DeCal,
11 was Calvin Baty?

12 A That's correct.

13 Q We're looking at Exhibit 14, Bates 2505, and
14 the first time entry, sir, is November 9, 2005, and it
15 reflects, "Meeting with Attorney R. Craig Howard to
16 discuss research/AIA contract issues." Do you see that?

17 A Yes.

18 Q In your meeting with Sarah Class that's
19 reflected on the time sheet on November 9th, did you relay
20 to Sarah Class, the request for services made earlier to
21 you by Sam Caniglia?

22 A I did.

23 Q Was this also the date where you passed off Sam
24 Caniglia's assignment to Sarah?

25 A Yes, that is.

1 Q Did Sam Caniglia meet with Sarah Class and you
2 that date?

3 A I don't know if it was that date or a later
4 date, which is reflected -- it's been some time ago --
5 reflected later on in a separate invoice.

6 Q And we'll get to that.

7 Was it your understanding, then, that when Sam
8 Caniglia came and asked you to perform legal services
9 regarding an AIA contract, he did that on behalf of Calvin
10 Baty?

11 A On behalf of BSC. He didn't make it clear, but
12 when we started the process, that's the entity that he was
13 talking about, and he was -- he was not a member of DeCal,
14 Sam Caniglia. He was a member of BSC through Consolidated
15 Pacific.

16 Q Did you understand, then, that Sam Caniglia was
17 authorized to have Hale Lane perform legal services to be
18 billed to DeCal?

19 A That's my understanding.

20 Q All right. And is that what he told you in
21 November 2005?

22 A It must have been.

23 Q All right. And when you say "must have been,"
24 do I understand that to mean you have no present
25 recollection of that?

1 You told me you didn't know that Karen Dennison
2 was working for Dr. Iliescu in October of 2005.

3 A That's correct.

4 Q When did you find out that Karen Dennison, in
5 fact, in October 2005, was working for Dr. Iliescu?

6 A I don't recall specifically, because there was
7 no event or disclosures, so I don't recall. I would say
8 November/December of that year.

9 MR. GRUNDY: I'm sorry, you said
10 November/December of what?

11 THE WITNESS: Of that year, 2005.

12 MR. GRUNDY: 2005.

13 BY MR. WILSON:

14 Q And as best you recall, sir, tell us how it
15 came about that you came to understand that Karen Dennison
16 was working for Dr. Iliescu at that time.

17 A I -- I don't recall the specifics, but I think
18 it was probably some discussion in -- in the office that
19 I -- that was made, that I heard that. It was informal,
20 so I didn't -- don't recall.

21 Q Do you remember anything that was said among
22 Karen Dennison, Dr. Iliescu and you, at a time when you
23 were introduced to Dr. Iliescu by Karen Dennison at the
24 Hale Lane office?

25 A Not at all, other than pleasantries.

1 ever talk to Sarah Class about the fact that Karen
2 Dennison of Hale Lane was representing Dr. Iliescu on
3 Court Street?

4 A No, none that I can recall.

5 Q The same question as to Doug Flowers.

6 A I think I did discuss it with Doug, yes.

7 Q And tell me what you said to him and what he
8 said to you on that subject.

9 A I think the subject was that it came to our
10 attention that Karen was representing Dr. Iliescu and his
11 wife, and that was on the same property that -- that the
12 BSC contract was about, the AIA. And I think that was
13 just the revelation of that, yes.

14 MR. MOLLATH: Excuse me. What was the date of
15 that?

16 MR. WILSON: The question is October/
17 November/December 2005.

18 MR. MOLLATH: Okay.

19 THE WITNESS: And I was responding to like
20 December '05.

21 BY MR. WILSON:

22 Q That's all right. The follow-up question is
23 going to be: When within that time frame do you best
24 recall you had that discussion with Doug Flowers?

25 A I believe that was in December of '05, to the

1 best of my recollection.

2 Q Between Doug Flowers and you, who brought the
3 matter up? That is, did you discover this matter and tell
4 Doug, or vice versa?

5 A I do not recall.

6 Q And what, if anything, did you do when you had
7 that discussion with Doug and found out that Karen
8 Dennison was representing Dr. Iliescu on Court Street?

9 A Discussed -- excuse me.

10 Q Go ahead.

11 A Discussed it with Karen Dennison.

12 Q What did Karen Dennison say to you and what did
13 you say to her on that subject?

14 A I don't recall the particulars. That's -- I
15 just don't recall the particulars.

16 Q Do you recall anything about that discussion?

17 A Just what I had said before, that sort of a
18 revelation that we were on the same property. And I think
19 we also discussed the future work, if we were going to do
20 something, that we get a conflict letter for any
21 entitlement work, if we were going to do that.

22 MR. WILSON: Can you read that back?

23 (Answer read.)

24 BY MR. WILSON:

25 Q Prior to your discussion with Karen Dennison

1 A Yes.

2 Q Does Hale Lane have a conflicts manual, memo,
3 or other written document that recites when a conflict
4 letter needs to be prepared?

5 A No, just the Nevada Rules of Professional
6 Conduct.

7 Q Has it ever had such a memo or internal
8 document?

9 A I don't believe so. None that I can recall.

10 Q Would you look at Exhibit 20, sir. That's the
11 next tab.

12 MR. LUKAS: 21?

13 MR. WILSON: 20.

14 MR. LUKAS: 20.

15 BY MR. WILSON:

16 Q I can't reach anymore, so I am going to have
17 you turn it.

18 Looking at Exhibit 20, sir, this is a letter
19 dated December 14, 2005, Bates HL 83 through 87. Have you
20 ever seen the original or a copy of this before?

21 A Yes.

22 Q When was the first time you saw it?

23 A I don't recall the first time I saw it.

24 Q Before its date, December 14, 2005, did you
25 have a discussion with Sarah Class or Karen Dennison or

1 anyone at Hale Lane about the sending of such a letter?

2 A That was what I was responding to in a prior
3 question, that we had a general informal conversation --

4 Q All right.

5 A -- with Karen Dennison and Craig Howard, and I
6 believe Doug Flowers.

7 Q All right. Other than the informal
8 conversation that you discussed or testified to, you had
9 no other discussion with Karen Dennison or Sarah Class
10 about the subject matter of the December 14, 2005 letter?
11 In other words, you weren't given prior notice, "We're
12 doing a conflict letter, it's going out," et cetera?

13 A That's correct.

14 Q All right. Did they copy you on the letter?

15 A I don't recall.

16 Q All right. Is it true that the first time you
17 saw it was in preparation for your deposition?

18 A I don't recall that. I think I saw it earlier,
19 but I don't recall.

20 Q Sir, looking at Exhibit 20, the second
21 paragraph on the first page, it recites in part: "We will
22 represent Calvin Baty, an individual, and Consolidated
23 Pacific Development, Inc., a Nevada corporation." Do you
24 see that?

25 A Yes.

EXHIBIT 4

EXHIBIT 4

TRIAL EXHIBIT 10

HALE LANE

ATTORNEYS AT LAW

5441 Kietzke Lane | Second Floor | Reno, Nevada 89511
Telephone (775) 327-3000 | Facsimile (775) 786-6179
www.halolane.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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STEPPAN 2769

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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. ✓
- 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. (2)
- 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.

TRIAL EXHIBIT 11

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-

As indicated in my last message, the AIA B ¹⁴¹ 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. OK
only
that
11/21/05
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. 11/21/05
- ✓ 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 11/21/05

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@decalcustomhomes.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

TRIAL EXHIBIT 12

Danielle Bacus-Aragon

From: Sarah Class
Sent: Tuesday, November 29, 2005 2:58 PM
To: 'samcaniglia@sbcglobal.net'
Cc: Danielle Bacus-Aragon
Subject: AIA Contract -- Additional Language

Sam:

I enjoyed meeting you this morning. As discussed, below is suggested language to add to section 1.3.2.2 of the B141:

For purposes of this Section 1.3.2.2, Architect shall be deemed in default if: (a) Architect shall fail to keep or perform any of the terms, obligations covenants, agreements or conditions contained herein, and such default continues for a period of thirty (30) days after notice by Owner or beyond the time reasonably necessary for cure if such default is of a nature to require in excess of thirty (30) days to remedy; (b) Architect shall become bankrupt or insolvent or make a transfer in defraud of creditors, or make an assignment for the benefit of creditors, or be the subject of any proceedings of any kind under any provision of the Federal Bankruptcy Act or under any other insolvency, bankruptcy or reorganization act; or (c) a receiver is appointed for a substantial part of the assets of Architect.

I will call Nathan when I receive the proposed modifications to the building code. Please let me know if you have any questions or need further assistance.

Sarah

Sarah E.L. Class, Esq.
Hale Lane Peek Dennison and Howard
5441 Kietzke Lane, Second Floor
Reno, Nevada 89511
Telephone: (775) 327-3000
Facsimile: (775) 786-6179

Visit our website: www.halelane.com

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EXHIBIT 5

EXHIBIT 5

CODE: 4185
MARIAN S. BROWN PAVA, CCR #169
Peggy Hoogs & Associates
435 Marsh Avenue
Reno, Nevada 89509
(775) 327-4460
Court Reporter

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE ELLIOTT A. SATTLER, DISTRICT JUDGE

--oOo--

MARK B. STEPPAN,

Case No. CV07-00341

Plaintiff,

Dept. No. 10

vs.

JOHN ILIESCU et al.,

Defendants.

TRANSCRIPT OF PROCEEDINGS
TRIAL - DAY 3
Wednesday, December 11, 2013

1 KAREN DENNISON,
2 called as a witness herein, being first duly
3 sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. PEREOS:

6 Q. Please state your name.

7 A. Karen Dennison, D-e-n-n-i-s-o-n.

8 Q. The nature of your occupation or profession?

9 A. I'm a lawyer.

10 Q. And how long have you been so engaged?

11 A. Since April of 1972.

12 Q. Are you currently affiliated with a law firm?

13 A. Yes.

14 Q. The name of the law firm to which you are currently
15 affiliated?

16 A. Holland & Hart.

17 Q. Is there a relationship between the law firm of Hale,
18 Lane, Peek, Dennison & Howard and Holland & Hart?

19 A. Yes.

20 Q. What is the nature of that relationship?

21 A. The two firms combined in mid 2008.

22 Q. Okay. Were you the "Dennison" in the law firm of
23 Hale, Lane, Peek, Dennison & Howard?

24 A. Yes.

1 Q. All right. In the last quarter of 2005, did you have
2 occasion to counsel with John Iliescu in connection with the
3 sale of land located on Court Street?

4 A. I had occasion to counsel John Iliescu in 2005. I'm
5 not sure that it was the last quarter of 2005.

6 Q. Okay. Was it within the last half of 2005?

7 A. That sounds right.

8 Q. Okay. All right. At that time were you affiliated
9 with a law firm?

10 A. Yes.

11 Q. And the law firm you were then affiliated with was
12 what?

13 A. Hale, Lane, Peek, Dennison & Howard.

14 Q. At any time during your counseling, did you ever
15 advise John Iliescu that Mark Steppan was an architect working
16 on the project --

17 A. No.

18 Q. -- on the project at Court Street?

19 A. No.

20 Q. Okay. At any time that you counseled with John
21 Iliescu, did you ever advise Mr. Iliescu that Fisher-Friedman
22 Associates was an architectural firm working on the property,
23 on Court Street?

24 A. No.

1 Q. Did you ever come to learn whether or not, okay, a
2 pre-lien notice was recorded in connection with -- in
3 connection with the work that was done by Mark Steppan on the
4 subject property?

5 A. No, I was not aware of that.

6 Q. Okay. Are you familiar with the case of Fondren
7 versus K/L Complex?

8 A. Yes.

9 Q. Are you familiar with the pre-lien notice as it
10 existed in the -- strike that -- the statutes regarding a
11 pre-lien notice as they existed in the year 2005?

12 A. Yes.

13 Q. Okay. Did the Fondren versus K/L Complex case predate
14 the pre-lien notice statute as it -- as it existed in 2005?

15 A. I don't know.

16 MR. PEREOS: Fine. No further questions.

17 THE COURT: Any cross-examination?

18 MR. HOY: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. HOY:

21 Q. Ms. Dennison, was there an associate at your firm
22 called Sarah Class?

23 A. In 2005?

24 Q. Yes.

1 A. Yes.

2 Q. All right. Do you know whether or not Ms. Class did
3 any work for the developers named Sam Caniglia, Mr. Bosma,
4 Mr. Baty and so forth?

5 Do you know whether or not Sarah Class looked at a
6 design contract on behalf of those developers?

7 A. I came to find out after this particular lawsuit was
8 filed that Sarah Class had looked at a form of architectural
9 contract, which was later, apparently, used in connection with
10 the Court Street property.

11 Q. But Ms. Class never told you about that -- that work
12 assignment?

13 A. No.

14 Q. And so Ms. Class never told you that Mark Steppan and
15 Fisher-Friedman were negotiating with your other client for an
16 architectural design agreement?

17 A. No, she did not.

18 MR. HOY: All right. Nothing further. Thank you.

19 THE COURT: So just so I'm clear, Ms. Dennison, you
20 were unaware that your -- strike that.

21 Were you unaware that your firm was providing legal
22 advice both to Dr. Iliescu and to the other party at the same
23 time?

24 THE WITNESS: Yes. At the time Sarah Class was doing

1 her work, I was unaware that she was doing that work.

2 THE COURT: Thank you.

3 Any redirect?

4 MR. PEREOS: No, no redirect.

5 THE COURT: Any recross, based on my question?

6 MR. HOY: Nothing further, your Honor.

7 THE COURT: Mr. Grundy, I don't think anyone was
8 abused, and I appreciate your being here today.

9 MR. GRUNDY: It was a pleasant variation from what
10 I've been doing all day.

11 THE COURT: Thank you.

12 And thank you, as well, Ms. Dennison, I appreciate
13 your time. Hopefully you didn't have to wait too long.

14 MR. PEREOS: Is Don Clark outside?

15 Okay. The next witness will be Sonia Iliescu.

16 THE COURT: Okay.

17 SONNIA ILIESCU,
18 called as a witness herein, being first duly
19 sworn, was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. PEREOS:

22 Q. Please state your name.

23 A. Sonnia Santee Iliescu. Sonnia is spelled with two Ns,
24 S-o-n-n-i-a; Santee, S-a-n-t-e-e; Iliescu.

EXHIBIT 6

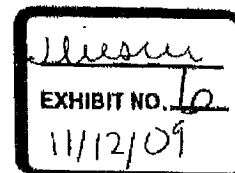
EXHIBIT 6

HALE LANE

ATTORNEYS AT LAW

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Telephone: (775) 327-3000 | Facsimile: (775) 786-6179
www.halelane.com

December 14, 2005



Edward Everett Hale
(1929-1993)

Steve Laine

J. Stephen Pratt

Karen D. Dornier

R. Craig Stewart

Stephen V. Muncie

Richard L. Elton

Richard Bennett

Robert C. Anderson

Alan J. Pineson

James L. Kelly

Kelly Tanslin

N. Patrick Thompson

Matthew E. Woodhead

Michelle D. Mullins

Roger W. Jeyson

Laura C. Zent

Jeremy J. Mark

David A. Garcia

Ellen F. Cadish

Timothy A. Loka

Frederick J. Schmidt

James Newman

Terry R. Sanders

Patrick J. Bailey

Sam D. Fleming

Scott Schauer

Anthony L. Hall

Jerry M. Snyder

Bruce C. Eckert

Frederick R. Henshaw

Pauline C. Halstead

Matthew J. Kruse

Matthew R. Hyslop

Bruce M. Johnson

Bryan R. Kunkel

Donna C. Plowry

James C. Jones

Michael M. Vance

Kimberlee Roddy

Dore V. Djikouros

Sandra Johnson

Sarah E. L. Cline

Helen E. Martinson

Of Counsel

Ray Furrow

Pauline Ng Lee

Andrew Pratt

*Admitted to New York
and other bars only

John Ilescu, Jr., an individual
Sonnia Santee Ilescu, an individual
John Ilescu, Jr. and Sonnia Ilescu,
as Trustees of the John Ilescu, Jr. and Sonnia Ilescu 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 Ilescu, Jr., an individual, and Sonnia Santee Ilescu, an individual, and John Ilescu, Jr. and Sonnia Ilescu, as Trustees of the John Ilescu, Jr. and Sonnia Ilescu 1992 Family Trust (collectively "Ilescu") the owners of property located between Court Street and Island Avenue in Reno, Nevada (the "Property"). Our law firm 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 PEEK DEWISON AND BOWARD

LAS VEGAS OFFICE: 2300 West Sahara Avenue | Eighth Floor | Box 8 | Las Vegas, Nevada 89102 | Phone: (702) 332-2300 | Facsimile: (702) 365-6540
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Page 2

HALE LANE

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.

Very truly yours,

Armed & Dangerous

Karen D. Dennison

KDD:CST

2:0DMA1PCTDOCSVTLANDDOCSV4M17#1

ILIESCU000134

JA1586

ATTORNEYS AT LAW

100 West Liberty Street | Third Floor | Reno, Nevada 89501
Telephone: (775) 327-3000 | Fax: (775) 786-6179
Website: <http://www.halejane.com>

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.

HALL LANE PEER DENNISON AND HOWARD

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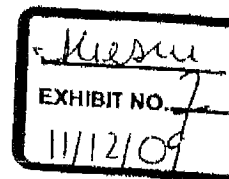
ATTORNEY AT LAW

EXHIBIT 7

EXHIBIT 7

METZKER JOHNSON GROUP
COMMERCIAL * RESIDENTIAL * INVESTMENT * REALTY

6490 S. McCarran Blvd., RENO, NEVADA, 89502 PHONE: (775) 823-8877 FAX: (775) 823-8848



ADDENDUM No. 4.

Date Prepared: September 18, 2006

This Addendum No. 4 ("Fourth Addendum") is made by and between Consolidated Pacific Development, Inc., a Nevada corporation, ("Buyer"), and John Iliescu, Jr. and Sonnia Santee Iliescu, individually and as Trustees of the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust (collectively "Seller") with reference to the following facts and is as follows:

RECITALS:

A. Seller and Buyer entered into that certain Land Purchase Agreement dated July 29, 2005 ("Land Purchase Agreement"), together with Addendum No. 1 dated August 1, 2005 ("First Addendum"), and Addendum No. 2 dated August 2, 2005 ("Second Addendum"), and Addendum No. 3 dated October 8, 2005 ("Third Addendum"). The Land Purchase Agreement, the First Addendum, the Second Addendum, and the Third Addendum are collectively referred herein as the "Agreement". The Agreement is for the sale and purchase of that certain real property located in the City of Reno, County of Washoe, State of Nevada, identified as APNs 011-112-05, 06, 07 and 12 and more particularly described in the Title Report attached to the Third Addendum.

B. Seller and Buyer desire to amend the Agreement as set forth below.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, Seller and Buyer hereby amend the Agreement as follows:

1. Seller and Buyer hereby agree to extend the date for Close of Escrow (as set forth in the Agreement) to on or before April 25, 2007. In consideration of such extension, Buyer agrees to pay, on or before October 15, 2006, through escrow at First Centennial Title Company of Nevada, an additional sum of \$376,000 (Three Hundred Seventy Six Thousand Dollars) in immediately available funds ("Additional Extension Deposit"), which Additional Extension Deposit shall be added to the Purchase Price, as set forth below, and shall be credited to the Purchase Price. Three Hundred Sixty Five Thousand Dollars (\$365,000.00) of such sum shall be released immediately to Seller and Eleven Thousand Dollars (\$11,000.00) of such sum shall be payable immediately to Metzker Johnson Group as partial payment of its broker's commission. The Additional Extension Deposit is non-refundable.

2. The Additional Extension Deposit shall be in addition to all other sums payable under the Agreement, including, but not limited to, the extension deposits described in the Agreement.
3. The purchase price of \$7,500,000.00 (Seven Million Five Hundred Thousand Dollars) as set forth in the Agreement shall be increased to Seven Million Eight Hundred Seventy Six Thousand Dollars (\$7,876,000) (herein "Purchase Price").
4. Except as modified by this Addendum No. 4, all other terms and conditions of the Agreement shall remain in full force and effect.

This Addendum No. 4 is dated this 19TH day of September, 2006.

Seller:

John Iliescu
John Iliescu Jr.

Sonia Santee Iliescu
Sonia Santee Iliescu

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

Sonia Santee Iliescu, Trustee
Sonia Santee Iliescu, as Trustee of the John Iliescu Jr.
And Sonia Iliescu 1992 Family Trust

Buyer:

Consolidated Pacific Development, Inc.,
a Nevada corporation

By: Sam A. Caniglia
Sam A Caniglia, President

EXHIBIT 8

EXHIBIT 8

TRIAL EXHIBIT 1

When Recorded Mail To:

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

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

GRANTEE'S ADDRESS:

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

NOTICE AND CLAIM OF LIEN

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

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

Claimant further states:

1. That the name of the owner or reputed owner of the premises sought to be charged is as follows: 011-112-03; 011-112-07; 011-112-12 - JOHN ILIESCU, JR., and SONNIA ILIESCU, as Trustees of the JOHN ILIESCU, JR., AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT; and 011-112-06 - John Iliescu, a married man as his sole and separate property.

2. That the name of the person by whom lien claimant was employed and to whom lien claimant furnished work, labor, materials and/or services in connection with the project is: BSC Financial, LLC, c/o Consolidated Pacific Development, Inc., 932 Parker Street, Berkley, CA 94710; Job name: Residential Project, Reno, Nevada, Job Address: North Arlington Avenue, Island Avenue and Court Street; Owner's Designated Representative: Sam Caniglia.

3. That the terms, time given and conditions of the contract were: Payments on account of services rendered and for Reimbursable Expenses incurred shall be made monthly upon presentation of the Statement of services for the building, structure or other work of improvement located at North Arlington Avenue, Island Avenue and Court Street, Reno, Nevada. All services were to be invoiced based on work performed as reflected in applications for payment, no retainage to be withheld from monthly progress payments. All invoices are due in fifteen days.



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

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

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

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

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



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

APN: 011-112-03

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

APN: 011-112-06

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

APN: 011-112-07

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

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

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

APN: 011-112-12



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

DATED: This 7th day of November, 2006.

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

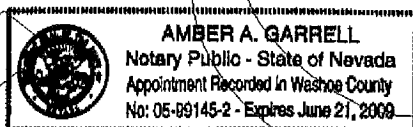
STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

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

Gayle A. Kern
Gayle A. Kern, Esq.

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

Amber A. Garrell
Notary Public



TRIAL EXHIBIT 2

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

Recording Requested by:
Gayle A. Kern, Esq.
Gayle A. Kern, Ltd.
5421 Kietzke Lane, Suite 200
Reno, NV 89511

When Recorded Mail to:
Gayle A. Kern, Esq.
Gayle A. Kern, Ltd.
5421 Kietzke Lane, Suite 200
Reno, NV 89511

DOC # 3528313

05/03/2007 11:32:12 AM
Requested By
GAYLE A KERN
Washoe County Recorder
Kathryn L. Burke - Recorder
Fee: \$18.00 RPTT: \$0.00
Page 1 of 5



AMENDED NOTICE AND CLAIM OF LIEN

☒ I the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted for recording does not contain the social security number of any person or persons. (Per NRS 239B.030)

☐ I the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted for recording does contain the social security number of a person or persons as required by law: _____ (state specific law)

Signature

AIA, CSI, NCARB

Title

Mark Steppan

This page added to provide additional information required by NRS 111.312 Sections 1-2 and NRS 239B.030, Section 4.

This cover page must be typed or printed in black ink.

When Recorded Mail To:

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

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

GRANTEE'S ADDRESS:

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

AMENDED NOTICE AND CLAIM OF LIEN

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

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

Claimant further states:

1. That the name of the owner or reputed owner of the premises sought to be charged is as follows: 011-112-03; 011-112-07; 011-112-12 - JOHN ILIESCU, JR., and SONNIA ILIESCU, as Trustees of the JOHN ILIESCU, JR., AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT; and 011-112-06 - John Iliescu, a married man as his sole and separate property.

2. That the name of the person by whom lien claimant was employed and to whom lien claimant furnished work, labor, materials and/or services in connection with the project is: BSC Financial, LLC, c/o Consolidated Pacific Development, Inc., 932 Parker Street, Berkley, CA 94710; Job name: Residential Project, Reno, Nevada, Job Address: North Arlington Avenue, Island Avenue and Court Street; Owner's Designated Representative: Sam Caniglia.

3. That the terms, time given and conditions of the contract were: Payments on account of services rendered and for Reimbursable Expenses incurred shall be made monthly upon presentation of the Statement of services for the building, structure or other work of improvement located at North Arlington Avenue, Island Avenue and Court Street, Reno, Nevada. All services were to be invoiced based on work performed as reflected in applications for payment, no retainage to be withheld from monthly progress payments. All invoices are due in fifteen days.

4. That work, labor, materials and/or services have been furnished to and actually used upon the above-described project in the remaining amount of ONE MILLION SIX-HUNDRED THIRTY-NINE THOUSAND ONE-HUNDRED THIRTY AND NO/100 DOLLARS (\$1,639,130.00), reimbursable expenses of ONE-HUNDRED FIFTEEN THOUSAND THREE HUNDRED SIXTY-TWO AND NO/100 DOLLARS (\$115,362.00) plus interest through October 31, 2006 in the amount of TWENTY-NINE THOUSAND FIFTY-SIX DOLLARS AND 85/100 (\$29,056.85), for a total principal balance of ONE MILLION SEVEN-HUNDRED EIGHTY-THREE THOUSAND FIVE-HUNDRED FORTY-EIGHT AND 85/100 DOLLARS (\$1,783,548.85) continuing interest, attorney's fees and costs and the amount is now due and owing to lien claimant.

5. That the first labor and materials furnished by lien claimant to and incorporated in the project was on or about April 21, 2006 and that the last labor and materials furnished by lien claimant and incorporated in the project was within the past ninety days; that there are no other just credits or off-sets to be deducted and the total amount due and owing to lien claimant as of April 19, 2007, is the sum of ONE MILLION NINE-HUNDRED THIRTY-NINE THOUSAND THREE HUNDRED FORTY-SEVEN AND 51/100 DOLLARS (\$1,939,347.51), plus continuing interest, attorney's fees and costs.

6. That a demand for payment has been made by lien claimant and that no part or portion of the amount due and owing has been paid; that there are no further off-sets to the claim and that as of April 19, 2007, the sum of ONE MILLION NINE-HUNDRED THIRTY-NINE THOUSAND THREE HUNDRED FORTY-SEVEN AND 51/100 DOLLARS (\$1,939,347.51), plus continuing interest, attorney's fees and costs is now due and owing to lien claimant on account of the work, labor, materials and/or services furnished as above specified and that the undersigned claims a lien upon the real property particularly described herein for said sum, together with continuing interest and attorney's fees as provided by law.

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

Commencing at a point formed by the intersection of the East line of Flint Street (if protracted Northerly) with the North line of Court Street in the City of Reno; running thence Easterly, along the North line of Court Street, a distance of 100 feet, thence at a right angle Northerly, a distance of 140 feet to the true point of

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

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

APN: 011-112-03

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

APN: 011-112-06

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

APN: 011-112-07

Commencing on the North line of Court Street, at the intersection of the North line of Court Street with the West line of Hill Street, if said Hill Street was protracted Northerly to said point of inter-section according to the official plat of Lake's South Addition to Reno, Washoe County, State of Nevada; thence running westerly and along the North line of said Court Street 100 feet; thence Northerly and parallel with the West line of said Hill Street, if protracted, 276 feet more or less to the South Bank of the Truckee River; thence Easterly and along the south

bank of the Truckee River to the West line of Hill Street, protracted, 324 feet more or less to the North line of Court Street and the place of beginning, being the same lands conveyed by Antonio Robori and Carlotta Robori, his wife, to Charles Snyder, May 27, 1907, and by Antonio Robori to Charles Snyder, January 12, 1905, by deeds duly recorded in Book 32 of Deeds, page 405, and book 26 of deeds, page 296, Records of said Washoe County.

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

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

APN: 011-112-12

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

DATED: This 3rd day of May, 2007.

By

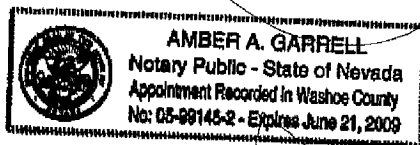
Mark Steppan, AIA, CSI, NCARB

STATE OF NEVADA

COUNTY OF WASHOE

) ss.
)

This instrument was acknowledged before me on May 3rd, 2007 by Mark Steppan, AIA, CSI, NCARB.



NOTARY PUBLIC

TRIAL EXHIBIT 3

DOC # 4297751

11/08/2013 11:26:26 AM

Requested By

MICHAEL D HOY

Washoe County Recorder

Laurence R. Burtress - Recorder

Fee: \$50.00 RPTT: \$0.00

Page 1 of 9

When recorded, mail to:

Michael D. Hoy
Hoy Chrissinger Kimmel, PC
50 West Liberty Street, Suite 840
Reno, Nevada 89501
(775) 786-8000



APN:

011-112-03

011-112-06

011-112-07

011-112-12

Second Amended Notice and Claim of Lien

Pursuant to NRS 108.229(1), Mark B. Steppan hereby amends the Notice and Claim of Lien recorded November 7, 2006 as Document 3460499 in the Official Records of the Washoe County Recorder and the Amended Notice and Claim of Lien recorded May 3, 2007 as Document 3528313 in the Official Records of the Washoe County Recorder.

NOTICE IS HEREBY GIVEN that Mark B. Steppan ("Lien Claimant") claims a lien upon the property described in this notice for work, materials or equipment furnished or to be furnished for the improvement of the property, as follows:

1. The amount of the original contracts: Lien Claimant entered into several different contracts to provide services as an architect in relation to the improvement, property or work of improvement described below. NRS 108.2214(1).

A. Design Agreement. Effective October 31, 2005, Lien Claimant entered into a Standard form of Agreement Between Owner and Architect based upon the AIA Document B141 - 1997 Part 1 and Part 2 ("Design Agreement"). On April 21, 2006, the Owner and Lien Claimant executed Addendum No. 1 Contractual Changes to AIA B141 Standard Agreement between Owner and Architect.

Parties to the Design Agreement agreed upon the material terms in October, 2005. While the formal Design Agreement was under legal review, the Owner directed the Lien Claimant to commence work. This work was billed on an hourly basis pursuant to a letter agreement dated November 5, 2005. After the Design Agreement was formalized, Lien Claimant changed the billing to reflect the fixed-fee in the Design Contract, and gave credit for payments previously received under the November 5, 2005 letter agreement.

The Design Agreement provides for a fixed fee computed by multiplying the anticipated construction cost (\$180 million) by 5.75 percent, for a total fee of \$10,350,000. The Design Agreement allocates this fee among various phases of the work covered by the Design Agreement. The Design Agreement allocates 20 percent of the overall fee to the Schematic Design phase. Lien Claimant completed the Schematic Design phase as defined in the Design Agreement. The Design Agreement also provides that any unpaid contract balance bears simple interest at the rate of one and one-half percent per month (or 18 percent per annum).

B. Reimbursable Items. Under the Design Agreement, Lien Claimant was entitled to receive 115 percent of the Lien Claimant's actual cost for defined Reimbursable Expenses including fees paid to certain sub-consultants, including a landscape architect. Lien Claimant billed a total of \$35,585.27 for these Reimbursable Expenses.

C. Adjacent Church Parking Studies. In relation to the property, on or about June 14, 2006, Lien Claimant entered into a separate letter agreement with BSC Financial, LLC to provide design services for a parking layout configurations and parking structure.

D. City Staff comment studies. In relation to the property, Lien Claimant entered into a separate agreement with BSC Financial, LLC to provide design recommendations to respond to inquiries from the City of Reno staff regarding applications by BSC Financial, LLC and its affiliates, and the Property Owner. For this work, Lien Claimant was entitled to be paid hourly rates agreed between the parties. The work performed under this agreement was billed at \$36,555.

E. Project fly-through. In relation to the property, Lien Claimant entered into a separate agreement with BSC Financial, LLC to create a computerized, three-dimensional model of downtown Reno with the proposed improvements, and to create and edit a video fly-through of downtown Reno with the improvements designed for the property. For this work, Lien Claimant was entitled to be paid hourly rates agreed between the parties. The work performed under this agreement was billed at \$66,620.

F. Other agreements. Lien Claimant entered into separate agreements with BSC Financial, LLC in relation to the property. In order to simplify this Notice of Lien and the litigation to foreclose the lien, Lien Claimant does not claim that the amounts due under those other contracts are secured by this lien.

(continues)

2. Payments. The total amount of all payments received to date is below listed separately under each agreement:

A. Design Agreement. The payments received are as follows:

02/16/2006	\$254,990.00
03/21/2006	8,230.00
05/16/2006	15,490.00
06/16/2006	102,160.00
09/16/2006	50,000.00
Total	<u>\$430,870.00</u>

B. Reimbursable items. The payments received are as follows:

02/16/2006	\$11,460.65
04/18/2006	3,224.87
05/16/2006	101.12
06/21/2006	16,264.87
07/12/2006	1,557.53
Total	<u>32,609.04</u>

C. Adjacent Church Parking Studies. The payments received are as follows:

07/12/2006	<u>3,255.00</u>
------------	-----------------

D. City Staff comment studies. Lien Claimant has received no payments for this work.

E. Project fly-through. Lien Claimant has received no payments for this work.

Total of all payments received on contracts that Lien Claimant asserts are secured by this lien:

<u>\$466,734.04</u>

3. Amount of lienable amount after deducting all just credits and offsets, is as follows:

Design Agreement

Fee earned	\$2,070,000.00	
Payments:	430,870.00	
Principal due:		\$1,639,130.00

Reimbursable Expenses

Amount earned:	\$37,411.53	
Payments:	32,609.04	
Principal due:		4,802.49

Adjacent Church Parking Studies

Fee earned:	\$11,377.50	
Payments:	3,255.00	
Principal due:		8,122.50

City Staff comment studies.

Fee earned:	\$36,555.00	
Payments:	0.00	
Principal due:		36,555.00

Project fly-through.

Fee earned:	\$66,620.00	
Payments:	0.00	
Principal due:		66,620.00

Total principal claimed:		<u>\$1,755,229.99</u>
--------------------------	--	-----------------------

4. Interest. Pursuant to NRS 108.237(1) and (2), Lien Claimant claims interest. With respect to the principal amounts due for fees and reimbursable expenses under the Primary Design Contract, interest is computed as simple interest at the rate of one and one-half percent per month. Interest on amounts due under other agreements shall be the legal rate of interest at the time judgment is entered.

5. Ownership. For assessor's parcel numbers 011-112-03, 011-112-07, 011-112-12, the owner of record is John Iliescu, Jr. and Sonnia Iliescu, as trustees of the Iliescu Family Trust. For assessor's parcel number 011-112-06, the owner of record is John Iliescu, a married man as his sole and separate property.

6. Name of person by whom Lien Claimant was employed. Lien Claimant was employed by and supplied services, work, labor and materials to BSC Financial,

LLC c/o Consolidated Pacific Development, Inc., 932 Parker Street, Berkley, California 94710.

7-A. Terms of payment – Design Agreement (0515). The Primary Architectural Design Services Agreement provides in relevant part: "Payments on account of services rendered and for Reimbursable Expenses incurred shall be made monthly upon presentation of Architect's statement of services." Lien Claimant billed for fees in the following invoices:

Invoice	Date	Amount
22258	11/22/2005	\$39,190.00 (paid)
22282	12/20/2005	\$72,700.00 (paid)
22299	01/12/2006	\$91,035.00 (paid)
22300	01/13/2006	\$52,065.00 (paid)
22384	05/18/2006	\$100,405.00
22408	07/19/2006	\$100,395.00
22430	08/23/2006	\$324,171.00
22452	09/21/2006	\$342,171.00
22468	10/25/2006	\$342,171.00
22481	11/21/2006	\$461,817.00
Schematic Design		\$2,070,000.00
Less: Prior progress billings		1,926,120.00
Final progress billing		\$143,880.00

7-B. Terms of payment – Reimbursables (0515-R). Payment terms for reimbursables are included in the primary architectural design agreement. Lien Claimant billed for reimbursables in the following invoices:

Invoice	Date	Amount
22259	11/22/2005	\$257.38
22283	12/20/2005	811.13
22301	01/18/2006	9,036.64
22316	02/23/2006	5,718.37
22332	05/16/2006	87.93
22368	05/18/2006	382.21
22400	06/22/2006	1,354.37
22353	04/19/2006	13,761.16
22412	07/19/2006	869.08
22432	08/23/2006	523.70
22454	09/21/2006	943.87
22484	11/21/2006	1,153.00
22499	12/22/2006	553.81
22518	02/28/2007	132.62

Total: \$35,585.27

7-C. Terms of payment – Adjacent Church Parking Studies (0515-03). The letter agreement for adjacent church parking studies provides in relevant part:

Fees and reimburseable invoiced amounts shall be billed on a monthly basis. All invoiced amounts not in dispute are due and payable within 30 (thirty) days from the date of the invoice.

Lien Claimant billed for work performed under this letter agreement as follows:

Invoice	Date	Amount
22386	06/20/2006	\$3,255.00 (paid)
22410	07/19/2006	6,730.00
22467	09/21/2006	1,392.50
Total:		11,377.50

7-D. Terms of Payment - City Staff Comments (0515-05). The letter agreement to respond to City of Reno staff comments provides in relevant part:

Fees and reimburseable invoiced amounts shall be billed on a monthly basis. All invoiced amounts not in dispute are due and payable within 30 (thirty) days from the date of the invoice.

Lien Claimant billed for work performed under this letter agreement as follows:

Invoice	Date	Amount
22431	08/23/2006	22,190.00
22453	09/21/2006	10,675.00
22469	10/25/2006	1,800.00
22482	11/21/2006	1,980.00
Total:		36,555.00

7-E. Terms of Payment – Project Fly-through (0515-06). (Note: I have not located the contract for this billing project.)

Lien Claimant billed for work performed under this letter agreement as follows:

Invoice	Date	Amount
22498	11/21/2006	66,620.00

8. Property encumbered by lien. A description of the property to be charged with the lien follows:

Parcel 1.

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

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

APN: 011-112-03

Parcel 2.

Commencing at the point 129.6 feet West of where the center line of Hill Street projected Northerly will intersect the North line of Court Street thence running Westerly along the North line of Court Street, 75 feet; thence running Northerly at an angle of 89°58' 140 feet; thence running Easterly at an angle of 90°05' 75 feet; thence running Southerly at an angle 80°55', 140 feet to the place of beginning, comprising a parcel of land 75 by 140 feet.

APN: 011-112-06

Parcel 3.

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

APN: 011-112-07

Parcel 4.

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

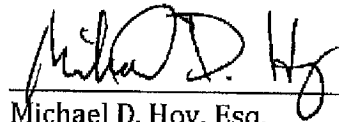
EXCEPTING THEREFROM that portion of the hereinabove described parcel conveyed to the City of Reno, a municipal corporation, in an instrument recorded August 4, 1922, as Document No. 26097, in Book 61, Page 280, of Deeds.

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

APN: 011-112-12

(Continues)

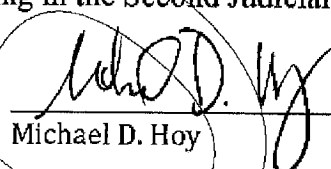
Dated November 8, 2013.


Michael D. Hoy, Esq.
Counsel to Mark B. Steppan

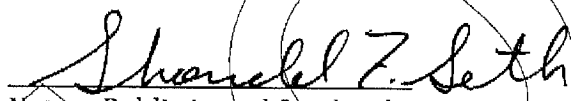
Verification

State of Nevada)
) ss
County of Washoe)

Michael D. Hoy, being first duly sworn on oath according to law, deposes and says: I have read the foregoing Second Amended Notice and Claim of Lien, know the contents thereof and state that the same is true based upon review of contracts, deeds, invoices, and other relevant documents produced in Consolidated Case Nos. CV07-00341 and CV07-01021 pending in the Second Judicial District Court of the State of Nevada, Washoe County.


Michael D. Hoy

Subscribed and sworn to before me,
this Ninth day of November, 2013.


Notary Public in and for the above
referenced county and state

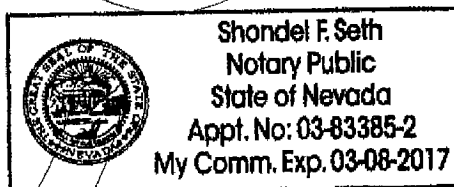


EXHIBIT 9

EXHIBIT 9

INDEMNITY

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

RECITALS:

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

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

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

D. Baty and Schleining are principals of BSC.

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

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

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

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


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

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

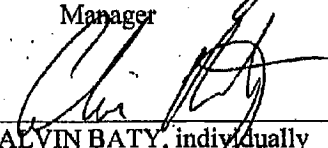
BSC FINANCIAL, LLC, a limited liability company

Dated: December 8, 2006

By:


Calvin Baty
Manager

Dated: December 8, 2006


CALVIN BATY, individually

Dated: December 8, 2006


JOHN SCHLEINING, individually

EXHIBIT 10

EXHIBIT 10

HALE LANE

ATTORNEYS AT LAW

5441 Kietzke Lane | Second Floor | Reno, Nevada 89511
Telephone: (775) 327-3000 | Facsimile: (775) 786-8179
www.halelane.com

December 26, 2006

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

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

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

Re: Wingfield Towers
Court Street/Island Avenue Condominium Project

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

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

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

HALE LANE PECK DENNISON AND HOWARD

LAS VEGAS OFFICE: 3930 Howard Hughes Parkway | Fourth Floor | Las Vegas, Nevada 89169 | Phone (702) 222-2300 | Facsimile (702) 363-6940
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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JA1618

December 26, 2006
Page 2

HALE LANE
ATTORNEYS AT LAW

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

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

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

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

Sincerely,

R. Craig Howard

RCH:dvt

Acknowledgement

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

Iliescu:

Date: _____

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

Date: _____

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

BSC Financial LLC:

BSC Financial LLC, a limited liability company

Date: _____

By: _____
Calvin Baty, Manager

EXHIBIT 11

EXHIBIT 11

1 Code 3370
2
3
4
5

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., et al.,

Case No. CV07-00341

10
11 Plaintiffs,

Dept. No. 6

12 vs.

13 MARK B. STEPPAN,

14
15 Respondent.
16 _____/

17 AND ALL RELATED MATTERS.
18 _____/

ORDER

19 The action stems from a question of if the Applicants had knowledge the
20 Respondent and his firm were performing architectural services for the benefit of the project
21 in question. The Applicants ("Applicants" or "Iliescu") filed a motion for partial summary
22 judgment on Mark Steppan's ("Respondent") claim for foreclosure of mechanic's lien. The
23 Respondent opposed the motion and filed a cross motion for partial summary judgment to
24 foreclose on the mechanic's lien.

25 The Applicants argue that they were never served with notice of right to lien as
26 required under NRS 108.245(1). They further argue the Applicants did not have actual
27 notice of construction on the project or of the identify of the Respondent. *Fondren v. K/L*
28 *Complex Ltd.*, 106 Nev. 75, 800 P.2d 719 (1990).

//

1 The Respondent argues that Iliescu did have actual notice from the land sale
2 agreement that the buyer would be hiring several design professionals, including architects.
3 Iliescu was also made aware at the public meetings that the Respondent was the architect
4 for this project. Since the Applicants knew that the construction project was underway, they
5 should have filed a notice of non-responsibility as required under NRS 108.234. See
6 *Fondren supra* at 721. The Respondent also alleges that the Applicants' counsel reviewed
7 the contract on the project and therefore had knowledge of the architect's identity and this
8 knowledge is imputed to the Applicants. *Lange v. Hickman*, 92 Nev. 41, 544 P.2d 1208
9 (1976).

10 The Applicants respond that the Respondent did not even attempt to comply with the
11 statutory requirements which results in a lack of substantial compliance. *Las Vegas*
12 *Convention & Visitors Auth. v. Miller*, 124 Nev. Adv. Rep.62, 191 P.3d 1138 (2008). The
13 Applicants further argue that there has been no evidence to prove that Iliescu has actual
14 knowledge of the Respondent's architectural services. Iliescu also argues that there is a
15 question whether Iliescu's prior counsel had Respondent's information in mind when it was
16 acting on Iliescu's behalf.

17 "Summary judgment is appropriate under NRCP 56 when the pleadings, depositions,
18 answers to interrogatories, admissions, and affidavits, if any, that are properly before the
19 court demonstrate that no genuine issue of material fact exists, and the moving party is
20 entitled to judgment as a matter of law." *Wood v. Safeway, Inc.*, 121 P.3d 1026, 1031 (Nev.
21 2005).

22 "A factual dispute is genuine when the evidence is such that a rational trier of fact
23 could return a verdict for the nonmoving party." *Id.*

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

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

DATED: This 22 day of June, 2009.


DISTRICT JUDGE

CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;
that on the 17 day of June, 2009, I electronically filed the foregoing with the
Clerk of the Court system which will send a notice of electronic filing to the following:

SALLIE ARMSTRONG, ESQ.

GAYLE KERN, ESQ.

Further, I certify that I deposited in the county mailing system for postage and
mailing with the U.S. Postal Service in Reno, Nevada, a true copy of the foregoing
addressed to:

Stephen C. Mollath, Esq.
Prezant & Mollath
6560 SW McCarran Blvd., Ste. A
Reno NV 89509

Heidi Boe
Heidi Boe
Judicial Assistant

EXHIBIT 12

EXHIBIT 12

ORIGINAL

FILED

2007 SEP 27 PM 3:59

RONALD A. LONGSTIN, JR.

BY

DEPUTY

1 CODE \$1130
CODE 4180
PREZANT & MOLLATH
STEPHEN C. MOLLATH (BAR NO. 922)
6560 S.W. McCarran Boulevard, Suite A
Reno, NV 89509
Telephone: (775) 786-3011
Facsimile: (775) 786-1354

DOWNEY BRAND LLP
SALLIE ARMSTRONG (BAR NO. 1243)
427 W. Plumb Lane
Reno, NV 89509
Telephone: (775) 329-5900
Facsimile: (775) 786-5443

9 Attorneys for John Iliescu, Jr. and Sonnia Iliescu and The
10 John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust

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

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

13 MARK B. STEPPAN,

14 Plaintiff,

15 v.

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

20 Defendants.

21
22 JOHN ILIESCU, JR. and SONIA
23 ILIESCU, as Trustees of the JOHN
24 ILIESCU, JR. AND SONNIA ILIESCU
25 1992 FAMILY TRUST AGREEMENT;
26 JOHN ILIESCU, JR., individually;
27 SONNIA ILIESCU, individually,

28 Third-Party Plaintiffs,

v.

CONSOLIDATED PACIFIC
DEVELOPMENT, INC., a Nevada

Case No. ~~CV07-01021~~

Department No. B6

Consolidated with:

Case No. CV07-00341

Department No. B6

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

11
12 Third-Party Defendants.

13
14 **ANSWER AND THIRD PARTY COMPLAINT**

15
16 **ANSWER TO COMPLAINT TO FORECLOSE MECHANIC'S LIEN AND
17 FOR DAMAGES**

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

23
24 **GENERAL ALLEGATIONS**

- 25 1. Defendants are without knowledge or information sufficient to form a belief as to
26 the truth of the allegations of Paragraph 1 of the Complaint, and they are therefore denied.
- 27 2. Admitted.
- 28 3. The allegations of Paragraph 3 are legal conclusions to which no response is
required and/or Defendants are without knowledge or information sufficient to form a belief as to
the truth of the allegations of Paragraph 3 of the Complaint, and they are therefore denied.
4. The allegations of Paragraph 4 are legal conclusions to which no response is
required and/or Defendants are without knowledge or information sufficient to form a belief as to
the truth of the allegations of Paragraph 4 of the Complaint, and they are therefore denied.

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

FIRST CLAIM FOR RELIEF
(FORECLOSURE OF MECHANIC'S LIEN)

5. Defendants restate their responses to Paragraphs 1 - 4 above as though fully set forth herein.

6. The allegations of Paragraph 6 are legal conclusions to which no response is required. To the extent a response is required, Defendants admit that they currently hold legal title to the Real Property.

7. Answering paragraph 7, Defendants admit that the referenced Land Purchase Agreement and associated documents contain certain terms that speak for themselves. Defendants lack sufficient information or knowledge to either admit or deny the allegations contained in said paragraph relating to characterization of the agreement, and thus, specifically and generally deny said allegations at this time.

8. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8 of the Complaint, and they are therefore denied.

9. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 9 of the Complaint, and they are therefore denied.

10. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 10 of the Complaint, and they are therefore denied.

11. Denied.

12. Answering paragraph 12, Defendants admit that the referenced documents contain certain terms that speak for themselves, and may have been recorded or served by Plaintiff. Defendants lack sufficient information or knowledge to either admit or deny the allegations contained in said paragraph relating to characterization of the documents and who recorded or served them, and thus, specifically and generally deny said allegations at this time.

13. Denied.

AFFIRMATIVE DEFENSES

(Each of the separate and distinct affirmative defenses hereinafter set forth has a descriptive heading. Such descriptive heading is for convenience only and it is not intended to

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

3 **FIRST AFFIRMATIVE DEFENSE**

4 (Failure to State Any Claim For Relief)

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

7 **SECOND AFFIRMATIVE DEFENSE**

8 (Lack of Standing)

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

11 **THIRD AFFIRMATIVE DEFENSE**

12 (Statute of Limitations and Statutory Requirements)

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

17 **FOURTH AFFIRMATIVE DEFENSE**

18 (Laches)

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

21 **FIFTH AFFIRMATIVE DEFENSE**

22 (Privilege)

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

26 **SIXTH AFFIRMATIVE DEFENSE**

27 (Justification)

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

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

3 **SEVENTH AFFIRMATIVE DEFENSE**

4 (Equity)

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

8 **EIGHTH AFFIRMATIVE DEFENSE**

9 (Unclean Hands)

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

13 **NINTH AFFIRMATIVE DEFENSE**

14 (Consent)

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

18 **TENTH AFFIRMATIVE DEFENSE**

19 (Estoppel)

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

23 **ELEVENTH AFFIRMATIVE DEFENSE**

24 (Failure to Mitigate)

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

1 **TWELFTH AFFIRMATIVE DEFENSE**

2 (Failure to Join Indispensable Parties)

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

5 **THIRTEENTH AFFIRMATIVE DEFENSE**

6 (Waiver)

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

9 **FOURTEENTH AFFIRMATIVE DEFENSE**

10 (Uncertainty)

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

14 **FIFTEENTH AFFIRMATIVE DEFENSE**

15 (Intentional Acts)

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

20 **SIXTEENTH AFFIRMATIVE DEFENSE**

21 (Failure To Do Equity)

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

25 **SEVENTEENTH AFFIRMATIVE DEFENSE**

26 (Attorneys' Fees and Costs)

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

CONCLUDING PRAYER FOR RELIEF

WHEREFORE, Defendants pray for judgment as follows:

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

THIRD PARTY COMPLAINT

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

The Parties

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

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

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

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

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

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

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

8. Third Party Defendant Hale Lane Peek Dennison and Howard, a Nevada professional corporation, dba Hale Lane, are attorneys licensed to practice law in the State of Nevada (hereinafter referred to as the "Hale Lane law firm").

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

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

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

General Allegations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 **FIRST CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

46. CPD is obligated under the terms of the contract as the original contracting party.

48. Iliescu has performed, stands ready to perform, and has the ability to perform as required under the terms of the Purchase Agreement.

50. Iliescu has been harmed by CPD and DeCal's breaches of the Purchase Agreement because they have been unable to obtain the benefit of their bargain, which includes, among other things, consequential damages, interest on, and the principal of, the remainder of the purchase price for the Property due under the terms of the Purchase Agreement and CPD and DeCal's actions causing recordation of the Steppan Mechanic's Lien and their failure to indemnify Iliescu therefrom.

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

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

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

12 WHEREFORE, Iliescu prays for judgment as follows:

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

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

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

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

22 ///

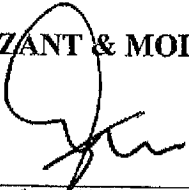
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1 6. For costs of suit; and,

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

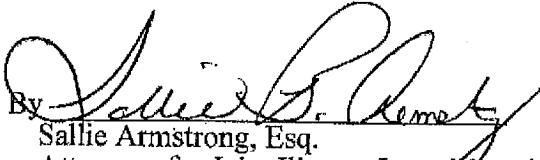
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4 DATED this 27th day of September, 2007.

5 **PREZANT & MOLLATH**

6
7 By 
 Stephen C. Mollath, Esq.

8 and


9 **DOWNEY BRAND LLP**

10
11 By 
12 Sallie Armstrong, Esq.
13 Attorneys for John Ilescu, Jr. and Sonnia Ilescu
14 and The John Ilescu, Jr. and Sonnia Ilescu
 1992 Family Trust

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

3
4 JOHN ILIESCU, JR., being duly sworn, deposes and says:

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

7
8 
9 JOHN ILIESCU, JR.

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

12
13 
14 NOTARY PUBLIC



EXHIBIT 13

EXHIBIT 13

United States Bankruptcy Court District of Oregon				Voluntary Petition	
Name of Debtor (if individual, enter Last, First, Middle): Baty, Calvin Eugene Jr.			Name of Joint Debtor (Spouse) (Last, First, Middle):		
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names):			All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names):		
Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all): 8812			Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all):		
Street Address of Debtor (No. & Street, City, State & Zip Code): 2408 SW 15th Ave Portland, OR			Street Address of Joint Debtor (No. & Street, City, State & Zip Code):		
ZIPCODE 97201-7600			ZIPCODE		
County of Residence or of the Principal Place of Business: Multnomah			County of Residence or of the Principal Place of Business:		
Mailing Address of Debtor (if different from street address):			Mailing Address of Joint Debtor (if different from street address):		
ZIPCODE			ZIPCODE		
Location of Principal Assets of Business Debtor (if different from street address above):					
ZIPCODE					
Type of Debtor (Form of Organization) (Check one box.) <input checked="" type="checkbox"/> Individual (includes Joint Debtors) <i>See Exhibit D on page 2 of this form.</i> <input type="checkbox"/> Corporation (includes LLC and LLP) <input type="checkbox"/> Partnership <input type="checkbox"/> Other (If debtor is not one of the above entities, check this box and state type of entity below.) 		Nature of Business (Check one box.) <input type="checkbox"/> Health Care Business <input type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101(51B) <input type="checkbox"/> Railroad <input type="checkbox"/> Stockbroker <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Clearing Bank <input checked="" type="checkbox"/> Other Tax-Exempt Entity (Check box, if applicable.) <input type="checkbox"/> Debtor is a tax-exempt organization under Title 26 of the United States Code (the Internal Revenue Code).		Chapter of Bankruptcy Code Under Which the Petition is Filed (Check one box.) <input checked="" type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 9 <input type="checkbox"/> Chapter 11 <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Chapter 13 <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Main Proceeding <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding Nature of Debts (Check one box.) <input type="checkbox"/> Debts are primarily consumer debts, defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or house- hold purpose." <input checked="" type="checkbox"/> Debts are primarily business debts.	
Filing Fee (Check one box) <input checked="" type="checkbox"/> Full Filing Fee attached <input type="checkbox"/> Filing Fee to be paid in installments (Applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form 3A. <input type="checkbox"/> Filing Fee waiver requested (Applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.			Chapter 11 Debtors Check one box: <input type="checkbox"/> Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D). <input type="checkbox"/> Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D). Check if: <input type="checkbox"/> Debtor's aggregate noncontingent liquidated debts owed to non-insiders or affiliates are less than \$2,190,000. Check all applicable boxes: <input type="checkbox"/> A plan is being filed with this petition <input type="checkbox"/> Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).		
Statistical/Administrative Information <input type="checkbox"/> Debtor estimates that funds will be available for distribution to unsecured creditors. <input checked="" type="checkbox"/> Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.					THIS SPACE IS FOR COURT USE ONLY
Estimated Number of Creditors <input type="checkbox"/> 1-49 <input type="checkbox"/> 50-99 <input type="checkbox"/> 100-199 <input checked="" type="checkbox"/> 200-999 <input type="checkbox"/> 1,000-5,000 <input type="checkbox"/> 5,001-10,000 <input type="checkbox"/> 10,001-25,000 <input type="checkbox"/> 25,001-50,000 <input type="checkbox"/> 50,001-100,000 <input type="checkbox"/> Over 100,000					
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Estimated Liabilities <input type="checkbox"/> \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1 million <input type="checkbox"/> \$1,000,001 to \$10 million <input checked="" type="checkbox"/> \$10,000,001 to \$50 million <input type="checkbox"/> \$50,000,001 to \$100 million <input type="checkbox"/> \$100,000,001 to \$500 million <input type="checkbox"/> \$500,000,001 to \$1 billion <input type="checkbox"/> More than \$1 billion					

Voluntary Petition*(This page must be completed and filed in every case)*

Name of Debtor(s):

Baty, Calvin Eugene Jr.**Prior Bankruptcy Case Filed Within Last 8 Years** (If more than two, attach additional sheet)

Location

Where Filed: **None**

Case Number:

Date Filed:

Location

Where Filed:

Case Number:

Date Filed:

Pending Bankruptcy Case Filed by any Spouse, Partner or Affiliate of this Debtor (If more than one, attach additional sheet)

Name of Debtor:

None

Case Number:

Date Filed:

District:

Relationship:

Judge:

Exhibit A

(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.)

☐ Exhibit A is attached and made a part of this petition.

Exhibit B

(To be completed if debtor is an individual whose debts are primarily consumer debts.)

I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I delivered to the debtor the notice required by § 342(b) of the Bankruptcy Code.

X

Signature of Attorney for Debtor(s)

Date

Exhibit C

Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?

☐ Yes, and Exhibit C is attached and made a part of this petition.

☒ No

Exhibit D

(To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.)

☒ Exhibit D completed and signed by the debtor is attached and made a part of this petition.

If this is a joint petition:

☐ Exhibit D also completed and signed by the joint debtor is attached and made a part of this petition.

Information Regarding the Debtor - Venue

(Check any applicable box.)

☒ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.

☐ There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.

☐ Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.

Certification by a Debtor Who Resides as a Tenant of Residential Property

(Check all applicable boxes.)

☐ Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.)

(Name of landlord or lessor that obtained judgment)

(Address of landlord or lessor)

☐ Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and

☐ Debtor has included in this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition.

☐ Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(l)).

Voluntary Petition*(This page must be completed and filed in every case)*

Name of Debtor(s):

Baty, Calvin Eugene Jr.**Signatures****Signature(s) of Debtor(s) (Individual/Joint)**

I declare under penalty of perjury that the information provided in this petition is true and correct.

[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under Chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.

[If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. § 342(b).

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X /s/ Calvin Baty, Jr.

Signature of Debtor

Calvin Baty, Jr.

X _____

Signature of Joint Debtor

Telephone Number (If not represented by attorney)

May 30, 2008

Date

Signature of a Foreign Representative

I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.

(Check only **one** box.)

☐ I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by 11 U.S.C. § 1515 are attached.

☐ Pursuant to 11 U.S.C. § 1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.

X _____

Signature of Foreign Representative

Printed Name of Foreign Representative

Date

Signature of Attorney*

X /s/ Robert J Vanden Bos

Signature of Attorney for Debtor(s)

Robert J Vanden Bos 78100

Printed Name of Attorney for Debtor(s)

Vanden Bos & Chapman

Firm Name

319 SW Washington Ste 520

Address

Portland, OR 97204

Telephone Number

May 30, 2008

Date

*In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X _____

Signature of Authorized Individual

Printed Name of Authorized Individual

Title of Authorized Individual

Date

Signature of Non-Attorney Petition Preparer

I declare under penalty of perjury that: 1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; 2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h) and 342(b); 3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19 is attached.

Printed Name and title, if any, of Bankruptcy Petition Preparer

Social Security Number (If the bankruptcy petition preparer is not an individual, state the Social Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)

Address

X _____

Signature of Bankruptcy Petition Preparer or officer, principal, responsible person, or partner whose social security number is provided above.

Date

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both 11 U.S.C. § 110; 18 U.S.C. § 156.

EXHIBIT 14

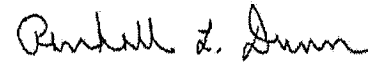
EXHIBIT 14

FILED

September 4, 2008

Clerk, U.S. Bankruptcy Court

Below is an order of the Court.


U.S. Bankruptcy Judge

DN7 (12/6/07)

UNITED STATES BANKRUPTCY COURT
District of Oregon

In re

Calvin Eugene Baty Jr., xxx-xx-8812

Debtor(s)

} Case No. **08-32573-rld7**

} CHAPTER 7 ORDER RE:
} DISCHARGE OF DEBTOR(S)
}

It appearing that on 5/30/08 a bankruptcy petition was filed by the debtor(s); timely complaints filed pursuant to 11 USC §523(a) could be pending and the court could still order that any affected debt is nondischargeable, however no complaint objecting to the debtor's discharge pursuant to 11 USC §727 was timely filed (or such complaint was filed, and after due notice and hearing, was not sustained); each timely filed written reaffirmation agreement was either rescinded or not approved by the court; and therefore,

IT IS ORDERED the debtor(s) shall be granted a discharge under §727 of Title 11, United States Code (the Bankruptcy Code).

EXPLANATION OF BANKRUPTCY DISCHARGE IN A CHAPTER 7 CASE

This court order grants a discharge to the person(s) named as a debtor. It is not a dismissal of the case and it does not determine how much money, if any, the trustee will pay to creditors.

Collection of Discharged Debts Prohibited. The discharge prohibits any attempt to collect from a debtor a debt that has been discharged. For example, a creditor is not permitted to contact a debtor by mail, phone, or otherwise, to file or continue a lawsuit, to attach wages or other property, or to take any other action to collect a discharged debt from the debtor. (If applicable there are also special rules that protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.) A creditor who violates this order can be required to pay damages and attorney's fees to the debtor.

However, a creditor may have the right to enforce a valid lien, such as a mortgage or security interest, against the debtor's property after the bankruptcy, if that lien was not avoided or eliminated in the bankruptcy case. Also, a debtor may voluntarily pay any debt that has been discharged.

Debts that are Discharged. The Chapter 7 discharge order eliminates a debtor's legal obligation to pay a debt that is discharged. Most, but not all, types of debts are discharged if the debt existed on the date the bankruptcy case was filed. (If this case was begun under a different chapter of the Bankruptcy Code and converted to Chapter 7, the discharge applies to debts owed when the bankruptcy case was converted.)

Debts that are Not Discharged. Some of the common types of debts which are not discharged in a Chapter 7 bankruptcy case are:

- a. Debts for most taxes;
- b. Debts incurred to pay nondischargeable taxes;
- c. Debts that are for domestic support obligations, or debts to a spouse or former spouse for property settlement;
- d. Debts for most student loans;
- e. Debts for most fines, penalties, forfeitures, or criminal restitution obligations;
- f. Debts for personal injuries or death caused by the debtor's operation of a motor vehicle, vessel, or aircraft while intoxicated;
- g. Some debts which were not properly listed by the debtor;
- h. Debts the bankruptcy court specifically has decided or will decide in this case are not discharged;
- i. Debts for which the debtor has given up the discharge protections by signing a reaffirmation agreement in compliance with the Bankruptcy Code requirements for reaffirmation of debts; and
- j. Debts owed to certain pension, profit sharing, stock bonus, other retirement plans, or to the Thrift Savings Plan for federal employees for certain types of loans from these plans.

This information is only a general summary of the bankruptcy discharge. There are exceptions to these general rules. Because the law is complicated, you may want to consult an attorney to determine the exact effect of the discharge in this case.

EXHIBIT 15

EXHIBIT 15

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

Defendants.

Case No. CV07-00341

(Consolidated with
Case No. CV07-01021)

Dept. No. 10

AND RELATED CROSS-CLAIMS AND
THIRD-PARTY CLAIMS.

ORDER GRANTING THIRD PARTY DEFENDANT JOHN SCHLEINING'S

MOTION TO DISMISS

Presently before the Court is a Motion to Dismiss Third Party Complaint ("Motion") filed by Third Party Defendant John Schleining ("Schleining") on November 2, 2011. The Motion seeks dismissal without prejudice of all claims against Schleining filed by John Iliescu, Jr. and Sonnia Iliescu, as Trustees of the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust Agreement and John Iliescu individually (collectively "Iliescu").

1 The Motion is made on grounds that more than 750 days have passed since Schleining
2 made his first appearance in this action, that Iliescu never filed a Case Conference Report as
3 required by NRCP Rule 16.1 and that Iliescu's Third Party Complaint should therefore be
4 dismissed without prejudice pursuant to NRCP Rule 16.1(e)(2).

5 On November 16, 2011, Iliescu filed his Response to Motion to Dismiss ("Response").
6 Iliescu's Response stated that "Iliescu has no substantive legal defense to the position of Third
7 Party Defendant John Schleining" and that "the Court should grant the Motion and dismiss
8 Iliescu's claims against John Schleining, all without prejudice."

9 Later on November 16, 2011, Schleining filed his Request for Submission ("Request").
10 Schleining's Request stated that "[b]ased upon Iliescu's Response, John Schleining elects not to file
11 a reply in support of the Motion and requests that the Motion be submitted to the Court for
12 decision." For the reasons set out below, the Court grants the Motion.

13
14
15 **I. Procedural and Factual Background**

16 The pleadings and papers on file herein reflect that this matter arises from a failed real
17 property development and recordation of a mechanic's lien on the subject property. Plaintiff Mark
18 B. Steppan ("Steppan") is an architect licensed in Nevada and an employee of the California
19 architectural firm Fisher-Friedman & Associates ("Fisher-Friedman"). Third Party Plaintiff Iliescu
20 is the owner of the subject undeveloped real property in downtown Reno (the "Iliescu Property").
21 A group of developers headed by non-party Consolidated Pacific Development, Inc. (collectively
22 "Developers") planned to purchase and develop the Iliescu Property. Third-Party Defendants Hale
23 Lane Peek Dennison & Howard, Professional Corporation, Karen Dennison, Craig Howard and
24 Jerry Snyder and cross-defendants Holland & Hart LLP and Craig Howard (collectively "Hale
25 Lane") represented numerous persons and entities regarding development of the Iliescu Property.
26
27
28

1 Third-Party Defendant Schleining, a part owner of one of the non-party Developers, signed a
2 December 8, 2006 indemnity agreement prepared by Hale Lane in favor of Iliescu.

3 In July 2005, Iliescu entered into a written contract with Developers for the sale of the
4 Iliescu Property. The proposed sale was contingent upon Developers obtaining the necessary
5 entitlements and permits from the City of Reno ("Governmental Approvals"). The Developers
6 planned to develop the Iliescu Property into a high-rise condominium project to be known as
7 Wingfield Towers ("the Project").
8

9 Developers sought the assistance of architects to help obtain the Governmental Approvals.
10 The California based architectural firm Fisher-Friedman worked on a time and materials basis to
11 conceptually design the Project, prepare certain schematic drawings and make presentations to the
12 Reno Planning Commission and to the Reno City Council in support of Developers' applications
13 for Governmental Approvals. Developers paid some \$430,870 as compensation for this
14 architectural work done on a time and materials basis.
15

16 Developers later signed a more extensive architectural agreement with Steppan, a licensed
17 Nevada architect and employee of Fisher-Friedman, that included a percentage-based form of
18 compensation for the Project to be built in the future. By fall of 2006, disputes had arisen between
19 the architects and Developers. On November 7, 2006, Steppan recorded a Notice of Lien on the
20 Iliescu Property in the amount of \$1,783,548.85.
21

22 This litigation commenced over four and a half years ago when Iliescu filed an Application
23 for release of Steppan's lien in Case No. CV07-00341 on February 14, 2007. On May 4, 2007,
24 Steppan filed his Complaint to foreclose mechanic's lien against Iliescu in Case No. CV07-01021.
25 These cases were consolidated by the Court's September 14, 2007 Order.
26

27 On September 27, 2007, Iliescu filed his Answer and Third-Party Complaint. Iliescu's
28 Third-Party Complaint against Schleining alleged claims for indemnity based upon a written

1 indemnity agreement dated December 8, 2006 prepared by Hale Lane and signed by Schleining.
2 Iliescu's Third-Party Complaint against Hale Lane alleged claims of legal malpractice and
3 negligence.

4 The first Early Case Conference in this matter was held on February 21, 2008. The next
5 day, February 22, 2008, Judge Adams held an off-the-record Case Management Conference.
6 Steppan and Iliescu subsequently filed cross-motions for partial summary judgment. On June 22,
7 2009, Judge Adams granted Steppan's partial motion for summary judgment.

9 Schleining and Hale Lane, each named in Iliescu's Third-Party Complaint, then filed their
10 responsive pleadings. On September 2, 2009, Schleining made his first appearance and filed both
11 his Answer to Iliescu's Third-Party Complaint and his own Third-Party Complaint and Cross-
12 Claim against Hale Lane. On October 7, 2009, Hale Lane filed its Answer to Iliescu's Third-Party
13 Complaint and Answer to Schleining's Third-Party Complaint and Cross-Claim.

15 By October 7, 2009, all parties had made their first appearances. A second Early Case
16 Conference was held on October 13, 2009. NRCP Rule 16.1(c) mandates the filing of a Case
17 Conference Report by plaintiffs, including third party plaintiffs, within 30 days after each Early
18 Case Conference. Iliescu therefore was required to file a Case Conference Report by November
19 12, 2009. Iliescu never filed a Case Conference Report.

21 II. Legal Analysis

22 NRCP Rule 16.1(b) requires the parties, with exceptions not applicable here, to conduct an
23 Early Case Conference within 30 days after the filing of an answer by the first answering
24 defendant. NRCP Rule 16.1(c) requires that a Case Conference Report be filed within 30 days
25 after each Early Case Conference. *Moon v. McDonald, Carano & Wilson*, 126 Nev. ___, 245 P.3d
26 1138, 1139 (2010). The plaintiff bears the burden to file the Case Conference Report. NRCP
27 Rule 16.1(e)(2) and *Arnold v. Kip*, 123 Nev. 410, 414, 168 P.3d 1050 (2007).

1 //

2 NRCP Rule 16.1(e)(2) states "[i]f the plaintiff does not file a case conference report within
3 240 days after an appearance by a defendant, the case may be dismissed as to that defendant upon
4 motion or on the court's own initiative, without prejudice."

5 The Nevada Supreme Court has confirmed that cases should be dismissed where a plaintiff
6 fails to file a Case Conference Report within the required 240 days. See, Arnold, 123 Nev. 410;
7 and Moon, 245 P.3d 1138. In this case, Schleining made his first appearance on September 2,
8 2009 by filing his Answer to Iliescu's Third-Party Complaint. Iliescu thereafter had 240 days, or
9 until April 30, 2010, to file his Case Conference Report and avoid the consequences of Rule
10 16.1(e)(2). Iliescu failed to file a Case Conference Report during that time or at any time
11 thereafter.
12

13
14 The Motion was filed on November 2, 2011, more than 750 days after Schleining made his
15 first appearance in this action on September 2, 2009 and over 500 days after expiration of Rule
16 16.1(e)(2)'s 240 day deadline for filing a Case Conference Report.

17 The decision to dismiss an action without prejudice for a plaintiff's failure to comply with
18 requirements of NRCP Rule 16.1(e)(2) is within the sound discretion of the District Court. Arnold
19 v. Kip, supra at 415, 1053. NRCP Rule 16.1(e)(2) was adopted to promote the prosecution of
20 litigation within adequate timelines. The sanctions set out in Rule 16.1 exist to ensure compliance
21 with the specific deadlines identified in the Rule. *Id.*
22

23 In this case, the Court finds that Schleining made his first appearance in this litigation over
24 two years ago, that Iliescu never filed a Case Conference Report and that Iliescu's failure to do so
25 constitutes a gross violation of the requirements of NRCP Rule 16.1. The Court further finds that
26 Iliescu's failure to file the required Case Conference Report is unexcused and is the fault of Iliescu.
27
28

1 The Court has reviewed Iliescu's November 16, 2011 Response to the Motion. The Court
2 further finds that Iliescu had admitted that Iliescu has no substantive legal defense to the Motion.

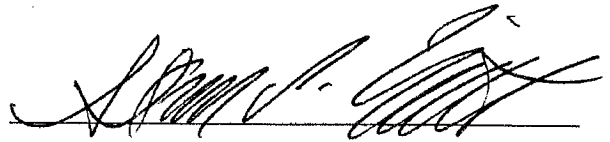
3 The Court further finds that Iliescu consents to the grant of the Motion and to the dismissal
4 of Iliescu's claims against Schleining without prejudice.

5 **III. Conclusion**

6 For each of the foregoing reasons, the Court, in proper exercise of its discretion, hereby
7 enters the following order:

9 **NOW, THEREFORE, IT IS HEREBY ORDERED** that the Motion to Dismiss Third
10 Party Complaint filed by Third-Party Defendant Schleining on November 2, 2011 is **GRANTED**
11 and Third Party Plaintiff Iliescu's claims against Schleining are hereby **DISMISSED WITHOUT**
12 **PREJUDICE** pursuant to NRCP Rule 16.1(e)(2).
13

14
15 Dated this 22 day of November 2011.

16
17 
18

19 STEVEN P. ELLIOTT

20 District Court Judge
21
22
23
24
25
26
27
28

EXHIBIT 16

EXHIBIT 16

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. Stepan 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.¹

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.

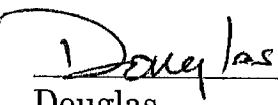
The respondents to the Iliescu parties' appeal have filed an opposition to their motion. Those respondents note that the Iliescu parties had filed an opposition to Mr. Steppan's motion for remand. Respondents also note that this court has the discretion to grant or deny a motion for remand, even if the district court has certified that it is inclined to grant the relief requested. Id.

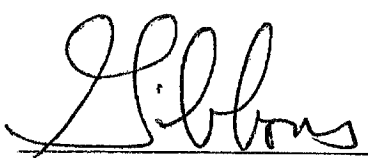
¹As all relevant filings regarding the motion for remand have been filed, we deny as moot Mr. Steppan's motion requesting "an order to shorten the time within which briefing must occur" for that motion. See NRAP 27.

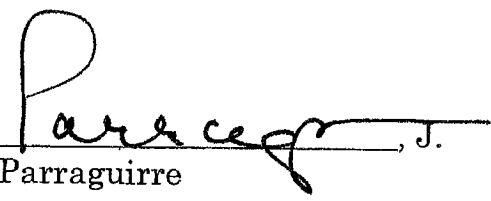
Cause appearing, we grant both motions for remand. Accordingly, this matter is remanded to the district court, pursuant to its certifications. Mr. Steppan and the Iliescu parties shall each file a status report regarding the proceedings on remand within 30 days from the date of this order.²

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 ✓

²If 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.

EXHIBIT 17

EXHIBIT 17

FILED

Electronically

01-04-2013:10:40:46 AM

Joey Orduna Hastings

Clerk of the Court

INVEST # 3441775

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.

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.

No. 60036

FILED

JAN 02 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

CW07-60341

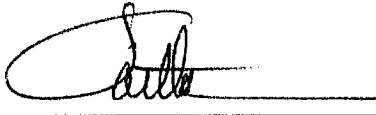
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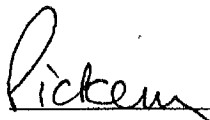
ORDER DISMISSING APPEAL
AND REMANDING TO THE DISTRICT COURT

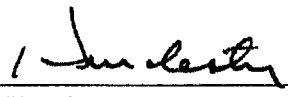
Pursuant to the settlement conference, the stipulation of the parties and cause appearing, we dismiss this appeal. NRAP 42(b). This matter is remanded to the district court to conduct appropriate proceedings, if any, to alter, amend, or vacate its order or judgment as

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.¹

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 ✓

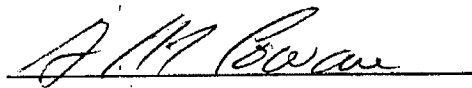
¹Any such motion to reinstate the appeal must be filed within 60 days of entry of the district court's order denying the requested relief.

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

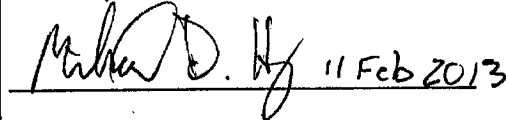
The undersigned affirm that this document does not contain the social security number of any person.

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

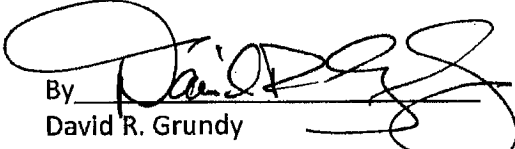
GORDON COWAN, ESQ.
Attorney for Third Party Plaintiffs



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

 11 Feb 2013

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

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

ORDER

It is ordered:

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

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

DATED: February 13, 2013


DISTRICT JUDGE

EXHIBIT 18

EXHIBIT 18

1 **4050**

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

8 Attorneys for Third Party Defendants

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

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

11 MARK B. STEPPAN,

12 Plaintiff,

13 vs.

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

18 Defendants.

19 **CONSOLIDATED**

20 Case No.: CV07-00341

21 Dept. No.: 10

22 JOHN ILIESCU, JR. and SONNIA ILIESCU, as
23 Trustees of the JOHN ILIESCU, JR. AND SONNIA
24 ILIESCU 1992 FAMILY TRUST AGREEMENT, et al.,

25 Third-Party Plaintiffs,

26 vs.

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

Third-Party Defendants.

**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**

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

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

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

4 **RECITALS**

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

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

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

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

20 **STIPULATION**

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

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

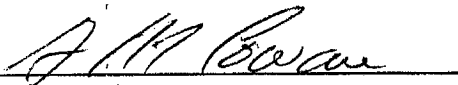
LEMONS, GRUNDY
& EISENBERG
5005 PLUMAS ST.
THIRD FLOOR
RENO, NV 89519
(775) 786-6868

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

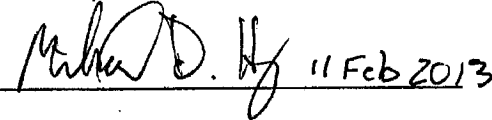
The undersigned affirm that this document does not contain the social security number of any person.

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

GORDON COWAN, ESQ.
Attorney for Third Party Plaintiffs

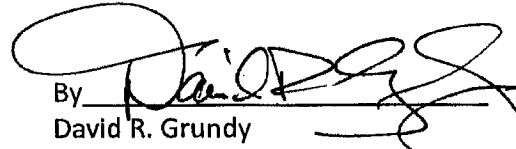


MICHAEL D. HOY, ESQ.
Attorney for Plaintiff Mark Stepan



11 Feb 2013

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

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

ORDER

It is ordered:

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

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

DATED: February 13, 2013


DISTRICT JUDGE

EXHIBIT 19

EXHIBIT 19

1 CODE: 3370

2
3 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
4 IN AND FOR THE COUNTY OF WASHOE

5 JOHN ILIESCU, ET AL.,

6 Plaintiff,

7 vs.

Case No. CV07-00341
Dept. No. 10

8 MARK STEPPAN,

9 Defendants.
10 _____/

11
12 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION**

13 A four day bench trial was conducted beginning on December 9, 2013, in the above
14 entitled matter. The Plaintiff, MARK B. STEPPAN ("Steppan") was suing to foreclose on a
15 mechanics lien for architectural services provided to, among other parties, the Defendants JOHN
16 ILIESCU, JR. and SONNIA ILIESCU, as Trustees of the JOHN ILIESCU, JR. AND SONNIA
17 ILIESCU 1992 FAMILY TRUST ("Iliescu"). The trial concluded on December 12, 2013. The
18 parties were permitted to submit post-trial briefs no later than January 3, 2014. Steppan and
19 Iliescu both submitted post-trial briefs. The transcript of the proceedings was available to the
20 Court at the end of February, 2014. The Court has received and reviewed all the exhibits
21 admitted during the trial, the testimony of the witnesses, the stipulations entered into by the
22 parties, and all of the other pleadings, papers, and orders previously entered in these proceedings
23 and makes the following findings of fact, conclusions of law and decision following bench trial
24 pursuant to NRCP 52.
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I. FINDINGS OF FACT

1. Iliescu owned four parcels of land in downtown Reno, Washoe County, Nevada, ("the property") as more fully described by the parties in the TRIAL STIPULATION filed on December 6, 2013. Iliescu desired to sell and/or develop the property.
2. Illiescu retained the services of Richard K. Johnson ("Johnson") to act as his broker in the sale and/or development of the property. Johnson has been licensed as a real estate broker for over 25 years. He has been a member of the Nevada Real Estate Commission and is a principle in the Johnson Group, a real estate firm in Washoe County, Nevada.
3. Johnson had worked for Illiescu for over five years. Johnson had sold property for Illiescu prior to the deal that became the subject of the matter *sub judice*. Johnson worked for Illiescu on a commission basis.
4. Johnson was in contact with Sam Caniglia ("Caniglia") regarding the purchase of the property. Caniglia represented Consolidated Pacific Development, Inc. ("CPD"). CPD wanted to purchase the property and develop it by placing mixed-use structures on the land. The property would be both commercial and residential.
5. Johnson received a letter from Caniglia on behalf of CPD proposing a purchase of the property. The letter was marked and admitted as exhibit 66. Johnson had been speaking with Caniglia on behalf of Illiescu prior to the receipt of the letter. The letter describes the numerous "advantages" of dealing with CPD, including financing "tentatively arranged and * * * in place well before the project is approved (by the City of Reno)" and "Architect and Engineers in place ready to start work." The parties agreed on a purchase price of \$7,500,000.00 and Illiescu would be entitled to a condominium in the development as well as other inducements. Illiescu and CPD executed numerous

1 addendums to the land purchase agreement that increased the sales price of the property
2 and provided additional inducements to Illiescu. Illiescu was represented by both
3 Johnson and legal counsel at various times during the negotiations for the sale of the
4 property.

- 5
- 6 6. The development contemplated by Illiescu, Caniglia, and CPD was known as Wingfield
7 Towers.
- 8 7. The sale of the property never came to pass. The property was in escrow on a number of
9 occasions and non-refundable deposits were paid to Illiescu; however, CPD and/or its
10 assigns were never able to secure funding for the purchase of the property or the
11 development contemplated thereon.
- 12 8. CPD transferred its interest in the property to Baty Schleming Investments, LLC
13 ("BSC"). Caniglia represented both CPD and BSC during times relevant to these
14 proceedings. Johnson believed that BSC and CPD were all the same people.
- 15 9. Stepan is, and at all times relevant to these proceedings was, an architect licensed to
16 practice in the State of Nevada. Stepan was employed at all times relevant to these
17 proceedings by the firm of Fisher Friedman Associates ("FFA"). FFA's offices were in
18 California. Stepan was the only architect at FFA licensed to practice in Nevada. FFA
19 was an internationally recognized architectural firm. FFA had developed many mixed-
20 use, residential and commercial properties. Stepan was the project manager of the
21 Wingfield Towers project. Stepan provided project management and oversaw the staff
22 at FFA in preparing the instruments of service for the Wingfield Towers project.
- 23 10. Stepan entered into an AIA Document B141 Agreement ("the contract") with BSC to
24 design Wingfield Towers. The contract had one addendum. Of note, the contract called
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1 for an overall estimated construction cost of \$160,000,000.00. The addendum increased
2 the estimated construction cost to \$180,000,000.00. The Court finds that the later fee is a
3 conservative estimate given the scope of the project and the testimony of the witnesses
4 during the trial. The contract was signed by Steppan and BSC. Illiescu is not a party to
5 the contract. The responsibilities of the parties in the event of failure to complete the
6 project are clearly set out in § 1.3.8 of the contract.
7

8 11. Steppan would be paid based on a schedule established in § 1.5.1 of the contract.

9 Specifically, Steppan would be entitled to 5.75% of the total construction cost including
10 contractors profit and overhead. Steppan would earn his fee at the completion of five
11 separate stages of design and construction. Steppan would earn 20 % of his fee at the
12 completion of the schematic design phase ("SD")(this stage includes the City of Reno
13 entitlement process); 22 % at the completion of the design development phase ("DD");
14 40 % at the construction documents phase ("CD"); 1% at the bid/negotiate phase; and
15 17 % at the construction administration phase ("CA"). The criteria for the SD phase were
16 established § 2.4.2.1. The "cost of the work" as defined in § 1.3.1.1 of the contract is the
17 total cost or, to the extent the project is not completed, the estimated cost to the owner of
18 all the elements of the project designed or specified by the architect. The contract was
19 signed executed on October 31, 2005. There was an Addendum to the contract executed
20 on April 21, 2006. Steppan worked on the Wingfield Towers project prior to the signing
21 of the contract and the signing of the addendum. The parties were concerned about
22 losing the opportunity for certain entitlements on the project; therefore, Steppan worked
23 on an hourly basis pursuant to certain "stop gap" agreements entered into between
24 himself and Caniglia. The SD phase was completed and Wingfield Towers was able to
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1 secure the required entitlements and project approval from the Reno Planning
2 Commission and the Reno City Council.

3 12. Rodney Friedman ("Friedman") testified at the trial. Friedman is a principal at FFA. FFA
4 was a design consultant on the Wingfield Towers project. Friedman initially had contact
5 with Caniglia about the Wingfield Towers project. Friedman established that the 5.75%
6 fee was discussed from the inception of the project. The billing for the project was on an
7 hourly basis while the parties finalized the details of the contract.
8

9 13. Kenneth VanWoert ("VanWoert") testified at the trial. VanWoert is an architect. The
10 Court found that VanWoert was qualified to testify as an expert in the proceedings.
11 VanWoert reviewed all the work done by Steppan and determined that the SD phase of
12 the project had been completed. VanWoert opined that even though the documents were
13 "prepared" by a firm other than Steppan they would go toward the SD phase because the
14 design was done by Steppan. VanWoert opined that the instruments of service (those
15 items that represent the design of the building) were done by Steppan. VanWoert did
16 acknowledge that there were changes in the overall composition of the building (the size
17 and composition of units for example); however, these modifications did not alter his
18 belief that Steppan had completed the SD phase.
19

20 14. Illiescu was aware that the instruments of service were being produced. Illiescu may not
21 have known, at all times, Steppan's name; however, there is no doubt in the Court's mind
22 that Illiescu was aware of the work being done by Steppan (a third party) on behalf of
23 Caniglia, CPD and/or BSC. Specifically, Illiescu was present when a video showing the
24 impact of the project was shown to the Reno City Council. He was aware of the nature
25 and scope of the project to include the production of models and drawings that evidenced
26

1 how the buildings would look and the impact they would have on the surrounding
2 community. All of the instruments of service were produced by Stepan at or through
3 FFA.

4 15. Illiescu consented to the request and/or extension of the entitlements granted to build
5 Wingfield Towers. The entitlements were extended numerous times.

6
7 16. Stepan was not paid for his services as contemplated by the contract. There were
8 numerous emails sent to Caniglia and others detailing the failure to pay the sums due. On
9 November 7, 2006, Stepan filed a mechanic's lien against the property. Stepan did not
10 provide Illiescu with pre-lien notice. The lien was removed at the request of the
11 developers so the project could go forward before the Reno Planning Commission and/or
12 the Reno City Council for approval with no encumbrances on the property.

13
14 17. Illiescu acknowledged during the trial that in the land purchase agreement between
15 Illiescu and Caniglia, that Caniglia had the authority to act in a way that may expose the
16 property in question to a mechanics lien. *See*, exhibit 68, ¶31. Illiescu knew that there
17 would be architects, engineers, and other service providers in order to get the Wingfield
18 Towers process underway. Illiescu acknowledged that he was at the homeowner's
19 association meetings, *infra*, the Reno Planning Committee meeting and the Reno City
20 Council meeting regarding the Wingfield Towers project. Illiescu is an experienced real
21 estate owner. He is familiar with the notice of non-responsibility process and mechanic's
22 liens based on previous business dealings as a landlord.

23
24 18. Both Dr. John Illiescu and Sonnia Illiescu signed an "OWNER AFFIDAVIT" that were
25 part of the applications presented to the various agencies that evidence that Caniglia had
26 authorization to act as agent in the development of their property. The affidavits were

1 included along with the instruments of service produced by Steppan as part of the overall
2 application for Wingfield Towers. The affidavits were part of the Special Use Permit
3 Application and the Tentative Map & Special Use Permit Application. Ronald David
4 Snelgrove ("Snelgrove") was employed at Wood Rogers during the times relevant to
5 these proceedings. Snelgrove was present when Illiescu signed the affidavits. Snelgrove
6 discussed the project with Illiescu and showed him pictures from the instruments of
7 service. Illiescu was present with Snelgrove at downtown homeowner's association
8 meetings to discuss the impact of the Wingfield Towers project. During these
9 presentations a "PowerPoint" demonstration was shown with FFA and Steppan's name
10 present as the architects. The "fly through" of the impacted area and the "PowerPoint"
11 were admitted into evidence. Snelgrove was also present at a party thrown by Illiescu
12 after the successful presentation to the Reno City Council. Friedman and Steppan were
13 present at this party.
14

- 15
16 19. Steppan established that there were agreements between himself and the developer that
17 were outside both the contract and the "stop gap" agreement. These documents were
18 admitted at the trial. Steppan also established the billing system used by FFA during the
19 "stop gap" period and for the non-contract services provided. The description of the non-
20 contract services and the billing statements were admitted as exhibits 19 through 30.
21 Caniglia never objected to any of the billing provided by Steppan, to include the "stop
22 gap" billing and the non-contract services. Further, Caniglia never objected to the
23 amount of the mechanic's lien, *supra*. Steppan waived any right to additional fees that
24 may have been earned pursuant to § 1.3.8.7 as "Termination Expenses". Steppan is only
25
26

1 requesting payment for those sums due as a result of completing the SD phase of the
2 project and those other sums billed for non-contract services.

3 20. Stepan's first contact with Illiescu was during the special use permit application.
4

5 II. CONCLUSIONS OF LAW

- 6
- 7 1. "A mechanic's lien is a statutory creature established to help ensure payment for work or
8 materials provided for construction or improvements on land." In re: Fountainebleau Las
9 Vegas Holdings, 128 Nev. Adv. Op. 53, 289 P.3d 1199, 1210 (2012). The statutory
10 framework applicable to the mechanic's and material man's liens is codified in chapter
11 108 of the Nevada Revised Statutes.
- 12 2. "[T]he mechanic's lien statutes are remedial in character and should be liberally
13 construed." Leher McGovern Bovis, Inc. v. Bullock Insulation, Inc., 124 Nev. 1102,
14 1115, 197 P.3d 1032, 1041 (2008)(citing, Las Vegas Plywood v. D&D Enterprises, 98
15 Nev. 378, 380, 649 P.2d 1367, 1368 (1982)).
- 16 3. The legislative purpose behind the mechanic's lien is to ensure payment for services
17 provided. "[P]ublic policy strongly supports the preservation of laws which give the
18 laborer and material man security for their claims." Lehrer, 124 Nev. at 116, 197 P.3d at
19 1041(citing, Wm. R. Clarke Corp. v. Safeco Ins. Co., 15 Cal.4th 882, 64 Cal.Rptr.2d 578,
20 938 P.2d 372, 375-76 (1997)).
21

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23 Underlying the policy in favor of preserving laws that provide contractors secured
24 payment for their work and materials is the notion that contractors are generally in
25 a vulnerable position because they extend large blocks of credit; invest significant
26 time, labor, and materials into a project; and have any number of workers vitally
depend upon them for eventual payment. We determine that this reasoning is
persuasive as it accords with Nevada's policy favoring contractors' rights to
secured payment for labor, materials, and equipment furnished.

Id.

- 1 4. "Substantial compliance with the technical requirements of the lien statutes is sufficient
2 to create a lien on the property where * * * the owner of the property receives actual
3 notice of the potential lien claim and is not prejudiced." Fronden v. K/L Complex, LTD.,
4 106 Nev. 705, 709, 800 P.2d 719, 721 (1990)(citing, Board of Trustees v. Durable
5 Developers, Inc., 102 Nev. 401, 410, 724 P.2d 736, 743 (1986)). Accord, Hardy
6 Companies Inc. v. SNMARK, LLC, 126 Nev. Adv. Op. 49, 245 P.3d 1149 (2010).
- 7 5. "The purpose of the pre-lien statute is to put the owner on notice of work and materials
8 furnished by *third persons* with whom he has no direct contact. If the owner fails to file a
9 notice of non-responsibility within the time provided in the law, *after knowledge of the*
10 *construction*, the statute provides that the construction is at the instance of the owner."
11 Fronden, 102 Nev. at 709, 800 P.2d at 721(citing, Matter of Stanfield, 6 B.R. 265, 269
12 (Bankr.D.Nev. 1980)(emphasis in the original).
- 13 6. "... [A]ctual knowledge requires that the owner has to have been reasonably made aware
14 of the identity of the third party seeking to record and enforce a lien." Hardy, 126 Nev.
15 Adv. Op. 49, 245 P.3d at 1157.
- 16 7. "The purpose underlying the notice requirement is to provide the owner with knowledge
17 that work and materials are being incorporated into the property. The failure to serve the
18 pre-lien notice does not invalidate a mechanics' or materialmen's lien where the owner
19 received actual notice." Fronden, 106 Nev. at 710, 800 P.2d at 721.
- 20 8. "Failure to either fully or substantially comply with the mechanic's lien statute will
21 render a mechanic's lien invalid as a matter of law." Hardy, 126 Nev. Adv. Op. 49, 245
22 P.3d at 1155 (citing, Schofield v. Copeland Lumber, 101 Nev. 83, 86, 692 P.2d 519, 521
23 (1985)).
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- 1 9. "Fronden is still good law." Hardy, 126 Nev. Adv. Op. 49, 245 P.3d at 1154. 2003 and
2 2005 legislative amendments to NRS chapter 108 have not altered the validity of the pre-
3 lien notice analysis previously announced by the Nevada Supreme Court. *See generally*,
4 Hardy, supra.
- 5
6 10. "An owner who witnesses the construction, either firsthand or through an agent, cannot
7 later claim a lack of knowledge regarding future lien claims." Hardy, 126 Nev. Adv. Op.
8 49, 245 P.3d at 1157 (*citing, Fronden, supra*).
- 9
10 11. A contract that is unambiguous shall not be the subject of parole evidence. "Under the
11 parole evidence rule, extrinsic evidence cannot be introduced to aid the court in
12 interpreting a contract unless the contract contains ambiguities." Margrave v. Dermody
13 Properties, Inc., 110 Nev. 824, 829, 878 P.2d 291, 294 (1994)(internal citations omitted).
14 "A contract is ambiguous when it is subject to more than one *reasonable* interpretation."
15 Anvui, LLC v. G.L. Dragon, LLC, 123 Nev. 212, 215, 163 P.3d 405, 407
16 (2007)(emphasis added)(*citing, Shelton v. Shelton*, 119 Nev. 492, 497, 78 P.3d 507, 510
17 (2003)).
- 18
19 12. The Court finds that the contract admitted during the trial is clear on their face and
20 unambiguous in its terms. The Court further finds that the terms of that contract
21 contemplate Steppan being entitled to 20 % of 5.75 % of \$180,000,000.00 (the agreed
22 upon estimated cost of service) at the conclusion of the SD phase. The Court finds by a
23 preponderance of the evidence that the SD phase was completed. To interpret the
24 contract in any other way would be unreasonable. Steppan would have to wait until the
25 completion of all stages of the contract prior to determining the amount owed if the Court
26 were to give the terms the meaning suggested by Illiescu. Further, that would place the

1 obligation to pay completely in the hands of the developer: should the developer
2 abandon the project at any time the actual amount of construction would never be known,
3 and Steppan would never be able to establish his lien amount. This is unreasonable. The
4 parties agreed on an approximate amount as the basis for the services provided. Further,
5 the Court finds that the parties contemplated an adjustment (up or down) depending on
6 the actual cost of the completed development. The Court finds that the \$180,000,000.00
7 estimate to be conservative based on the testimony of the experts at the trial. The Court
8 further finds that Steppan has proven the non-contract expenses by a preponderance of
9 the evidence. Steppan is entitled to those sums as more fully set out in the Second
10 Amended Notice and Claim of Lien filed with the Washoe County Recorder on
11 November 8, 2013, and admitted during the trial as exhibit 3. Steppan has established
12 that he is entitled to a mechanic's lien.
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- 15 13. The Court finds by a preponderance of the evidence that Steppan has proven that Illiescu
16 was aware of the third party services he was providing. Illiescu was in attendance during
17 numerous presentations where the instruments of service containing Steppan's name were
18 presented. He personally saw the instruments of service. Illiescu negotiated repeatedly
19 for specific inducements in Wingfield Towers. Further, Illiescu knew that an architect
20 would be employed to design Wingfield Towers. Illiescu signed affidavits giving
21 Caniglia the right to negotiate on his behalf. While there was no pre-lien notice provided,
22 none was required.
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2 **IT IS ORDERED**, that the parties shall contact the Judicial Assistant for Department 10
3 within 5 days from the date of this ORDER to set a hearing to establish the final amount
4 owed as a result of the mechanic's lien, to include applicable interest.
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6 DATED this 28 day of May, 2014.

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8 DISTRICT JUDGE
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CERTIFICATE OF MAILING

Pursuant to NRCp 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 28 day of May, 2014, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

C. Nicholas Pereos, Esq.
1610 Meadow Wood Lane, Suite 202
Reno, NV 89502

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 28 day of May, 2014, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

MICHAEL D. HOY, ESQ.


Sheila Mansfield

EXHIBIT 20

EXHIBIT 20

1880

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

MARK B. STEPPAN,

Plaintiff,

v.

JOHN ILIESCU, JR.; SONNIA SANTEE ILIESCU; JOHN
ILIESCU, JR. and SONNIA SANTEE ILIESCU, as
trustees of the John Iliescu, Jr. and Sonnia
Iliescu 1992 Family Trust,

Defendants.

Consolidated Case Nos. CV07-00341 and
CV07-01021

Dept. No. 10

And Related cross-claims and third-party
claims.

**Judgment, Decree and Order for
Foreclosure of Mechanics Lien**

Based upon the Findings of Fact, Conclusions of Law, and Decision (May 28, 2014, E-flex Transaction #4451229), Order Regarding Plaintiff's Motion for Costs (September 5, 2014, E-flex Transaction #4594487), Order Regarding Plaintiff's Motion for Attorney Fees (September 8, 2014, E-flex Transaction #4595799), Order Regarding Reconsideration of Attorney Fees (December 10, 2014, E-flex Transaction 4729999), and the rulings regarding the computation of prejudgment interest during the June 12, 2014 hearing reflected in the hearing transcript at pages 21 and 22.

1 IT HEREBY IS ORDERED, ADJUDGED, AND DECREED:

2 1. Plaintiff Mark B. Steppan shall take judgment on the Notice and Claim of Lien
3 recorded on November 7, 2006 as Document 3460499 in the official records of the Washoe
4 County Recorder, as amended by the Amended Notice and Claim of Lien recorded May 3,
5 2007 as Document 3528313, and as further amended by the Second Amended Notice and
6 Claim of Lien recorded November 8, 2013 as Document 4297751 for the following
7 amounts:

8

9 A.	Principal.....	\$1,753,403.73
10 B.	Prejudgment interest.....	\$2,527,329.23
11 C.	Attorney fees.....	\$233,979.50
12 D.	Costs	<u>\$21,550.99</u>
	Total	\$4,536,263.45

13 2. Pursuant to NRS 108.239(10), the real property described as Assessor Parcel
14 Number 011-112-03, 011-112-06, 011-112-07, and 011-112-12, and more particularly
15 described in Exhibit A hereto (the "Property") shall be sold in satisfaction of the Plaintiff's
16 mechanics lien in the amounts specified herein.

17 3. Pursuant to NRS 108.239(10), Plaintiff Mark B. Steppan shall cause the
18 Property to be sold within the time and in the manner provided for sales on execution for
19 the sale of real property.

20 4. The costs of the sale shall be deducted from the gross proceeds, and the
21 balance shall constitute the Net Sale Proceeds.

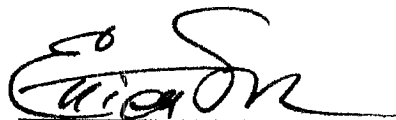
22 5. Pursuant to NRS 108.239(11), if the Net Sale Proceeds are equal to or exceed
23 the Liable Amount, then the Liable Amount shall be disbursed to Plaintiff Mark B.
24
25

1 Steppan, and the surplus shall be disbursed to Defendants John Iliescu, Jr. and Sonnia
2 Iliescu as trustees of the John Iliescu Jr. and Sonnia Iliescu Trust.

3 6. If the Net Sale Proceeds are less than the Lienable Amount, then all of the Net
4 Sale Proceeds shall be disbursed to Plaintiff Mark B. Steppan. Within 30 calendar days after
5 the sale, Steppan may by motion seek additional relief pursuant to NRS 108.239(12).
6 Defendants reserve all rights regarding any additional relief including, but not limited to,
7 the arguments in the Defendants' Motion for Relief From Court's Attorneys' Fees and Costs
8 Orders and For Correction, Reconsideration, or Clarification of Such Orders to Comply with
9 Nevada Mechanic's Lien Law (filed September 15, 2014, e-Flex Transaction 4606433).
10

11 7. Certain third party claims by the Defendants, against a third-party
12 defendants, remain pending in this lawsuit, which have been stayed by prior stipulations of
13 the parties. The Court determines that there is no just reason for delay and,
14 notwithstanding any remaining claims against other parties herein, this Judgment is
15 certified as final pursuant to NRCP 54(b) with respect to the parties hereto and the claims
16 between them.

17 DATED February 26, 2015.

18
19 

20 Hon. Elliott A. Sattler,
21 District Judge
22
23
24
25

EXHIBIT 21

EXHIBIT 21

CODE: \$2515
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Attorneys for Appellants/Applicants/Defendants

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

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

vs.

MARK B. STEPPAN, Respondent.

MARK B. STEPPAN,

Plaintiff,

vs.

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

Defendants.

AND RELATED CLAIMS.

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

DEPT NO. 10

**NOTICE OF APPEAL
BY JOHN ILIESCU, JR.,
INDIVIDUALLY, and JOHN ILIESCU,
JR. AND SONNIA SANTEE ILIESCU, AS
TRUSTEES OF THE JOHN ILIESCU,
JR. AND SONNIA ILIESCU 1992
FAMILY TRUST AGREEMENT**

NOTICE is hereby given that JOHN ILIESCU, JR., individually, and JOHN ILIESCU AND
SONNIA SANTEE ILIESCU as Trustees of the JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992
FAMILY TRUST AGREEMENT, the Applicants in Case No. CV07-00341 and the Defendants in
Case No. CV07-01021 consolidated therewith (jointly hereinafter the "Appellants" or the "Iliescus")
hereby appeal to the Supreme Court of the State of Nevada from the following orders, judgments and

1 rulings entered against them and in favor of Mark B. Steppan, the Respondent in Case No. CV07-
2 00341, and the Plaintiff in Case No. CV07-01021 consolidated therewith (hereinafter "Respondent"
3 or "Steppan") in these proceedings:

- 4 (i) the "Judgment, Decree and Order for Foreclosure of Mechanic's Lien" entered by the
5 District Court on February 26, 2015 (Washoe County Clerk Transaction No. 4836215);
- 6 (ii) the June 22, 2009 "Order" denying a Motion for Partial Summary Judgment filed by
7 the Iliescus, and granting a Cross-Motion for Partial Summary Judgment filed by
8 Steppan (Transaction 850528);
- 9 (iii) the May 9, 2013 "Order Granting Motion for Partial Summary Judgment" in favor of
10 Steppan (Transaction 3715397);
- 11 (iv) the August 23, 2013 "Order Granting Motion to Strike or Limit Jury Demand"
12 (Transaction 3946236);
- 13 (v) the May 28, 2014 post-trial "Findings of Fact, Conclusions of Law and Decision"
14 (Transaction 4451229);
- 15 (vi) the March 13, 2015 "Decision and Order Denying NRCP 60(b) Motion" (Transaction
16 4860752);
- 17 (vii) the May 27, 2015 "Order Denying Defendants' Motion for Court to Alter or Amend
18 Its Judgment and Related Prior Orders" (Transaction 4971032);
- 19 (viii) any and all other orders, judgments, decisions, or rulings of the District Court during
20 this litigation which led to or resulted from any of the foregoing orders, rulings, and
21 partial or full summary or final judgments, or which would need to be overturned in
22 order to afford the Iliescus, as Appellants, full and adequate appellate relief herein,
23 such as, without limitation: any oral rulings from the bench regarding the admissibility
24 of evidence during trial (including the Court's ruling excluding and limiting certain
25 expert testimony as described in the Iliescus' Offer of Proof, filed on October 2, 2013);
26 any oral decisions from the bench in response to oral motions (such as motions to
27 dismiss) during trial or during other pre-trial or post-trial appearances, together with
28 any follow-up written orders on such matters; the Amended Order regarding Plaintiff's

1 Motion for Attorneys' Fees and the Amended Order regarding Plaintiff's Motion for
2 Costs, both entered on December 12, 2014 (Transactions 4734845 and 4734821), as
3 well as the original versions of said Orders amended thereby, and the intervening
4 orders on motions to clarify or reconsider said original versions of the subsequently
5 amended orders.

6 DATED this 23rd day of June, 2015.

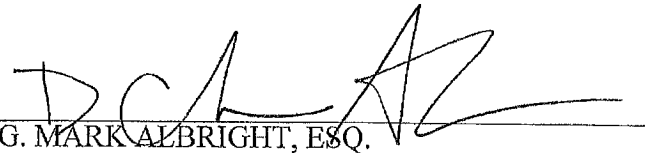
7
8 By 
9 G. MARK ALBRIGHT, ESQ.
10 Nevada Bar No. 001394
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21 *Counsel for Appellants*
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28

AFFIRMATION

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

DATED this 23rd day of June, 2015.

By



G. MARK ALBRIGHT, ESQ.

Nevada Bar No. 001394

D. CHRIS ALBRIGHT, ESQ.

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CERTIFICATE OF SERVICE

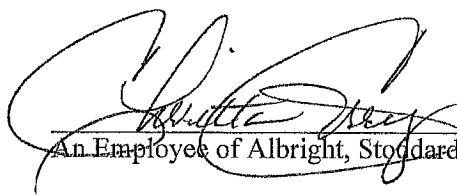
Pursuant to NRCF 5(b) and NEFCR 9, I hereby certify that I am an employee of ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, and that on this 23rd day of June 2015, service was made by the ECF system to the electronic service list, a true and correct copy of the foregoing **NOTICE OF APPEAL BY JOHN ILIESCU, JR., INDIVIDUALLY, and JOHN ILIESCU, JR. AND SONNIA SANTEE ILIESCU, AS TRUSTEES OF THE JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT**, and a copy mailed to the following person(s):

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An Employee of Albright, Stoddard, Warnick & Albright

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8 *Attorneys for Third-Party Defendant*

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

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

12 MARK B. STEPPAN,

13 Plaintiff,

14 vs.

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

21 Defendants.

22 AND RELATED CLAIMS

Case No.: CV07-00341

Dept. No.: 10

23 **OPPOSITION TO PLAINTIFFS' MOTION TO AMEND AND FOR CLARIFICATION AS TO STAY**

24 Third-Party Defendant, HALE LANE PEEK DENNISON AND HOWARD PROFESSIONAL
25 CORPORATION ("Hale Lane"), by and through its undersigned attorneys, Lemons, Grundy &
26 Eisenberg, hereby oppose the *Third-Party Plaintiffs' Motion to Amend Third-Party Complaint*
27 *and Motion for Clarification as to Stay*, filed by JOHN ILIESCU, JR. and SONNIA ILIESCU,
28 individually and as trustees of the ILIESCU 1992 FAMILY TRUST (collectively, "Iliescu"). This
opposition brief is based on the following Memorandum of Points and Authorities and upon
such other matters and information as the Court may deem it appropriate to consider.

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1 allegations as those already pending in the Third-Party Complaint in this case. On motion filed
2 by the individual Hale Lane attorneys, this Court dismissed the new complaint. During those
3 proceedings, however, Iliescu argued, just as he does now, that his third-party claims are no
4 longer stayed because the stipulation and order implementing the stay was only applicable until
5 “final judgment” is entered in the primary case between Iliescu and Steppan. (Iliescu’s
6 Opposition to Motion to Dismiss, filed on October 9, 2015 in Case No. CV15-01388, pgs. 8-9).

7 Contradicting his own argument, Iliescu quoted and even emphasized Nevada Supreme
8 Court precedent to the effect that “*a legal malpractice action does not accrue until the plaintiff’s*
9 *damages are certain and not contingent upon the outcome of an appeal....*” (Iliescu’s
10 Opposition to Motion to Dismiss, filed October 9, 2015 in Case No. CV15-01388, pg. 11, lines
11 25-26) (emphasis in original) (quoting *Semenza v. Nev. Med. Liab. Ins. Co.*, 104 Nev. 666, 668,
12 765 P.2d 184, 186 (1988)). In the order dismissing Iliescu’s new complaint, entered on March
13 14, 2016, this Court found that Iliescu’s “third-party complaint remains pending and was stayed
14 against [...] the Law Firm of Hale Lane et al.” (Order dated March 14, 2016, pg. 2, ¶ 2).

15 Iliescu has not moved to lift the stay, but in his latest motion he asks this Court to “clearly
16 establish” whether a stay remains in effect. (Iliescu’s Motion, pg. 18:18-20). He then suggests
17 that the stay should be lifted because of the Iliescus’ advanced age. (Iliescu’s Motion, pg. 18:20-
18 22). Specifically, without formally moving to lift the stay, Iliescu suggests that the litigation as
19 to the third-party defendants’ alleged liability should now proceed, and “an ultimate
20 determination as to the amount of damages” should be stayed or bifurcated for a later
21 proceeding after the appeal has been resolved. (Iliescu’s Motion, pgs. 18-19).

22 Iliescu’s suggestion is, to say the least, short-sighted. As noted above, if Iliescu is
23 successful on appeal, and depending on the degree of his success, it may become clear that
24 Iliescu has sustained no damages caused by what he alleges to have been malpractice on the
25 part of Hale Lane and its individual attorneys. Such a result on appeal may render this entire
26 action wholly unnecessary. Thus, the parties should not now start spending time and money
27 litigating a case that may hereafter be rendered entirely moot. The stay should remain in effect
28 until a decision is rendered on Iliescu’s appeal.

1 Undoubtedly, Iliescu will argue that even if he is completely successful on appeal, Hale
2 Lane's alleged errors or omissions caused him to incur costs and attorney's fees in disputing
3 Steppan's lien. If the Nevada Supreme Court determines, however, that Steppan's lien was
4 never valid and should not have been recorded in the first place, exactly as Iliescu now argues
5 on appeal, it will thus be clear that Hale Lane's alleged errors or omissions were not the cause
6 of Iliescu's claimed damages, if any. In any event, this is yet another reason this matter must
7 remain stayed until Iliescu's appeal is decided.

8 **II. LEGAL ARGUMENT**

9 As explicitly stated in the stipulation and order implementing the stay, "[q]uestions have
10 arisen regarding whether any of these [third-party legal malpractice] claims have "accrued" so
11 as to allow this present filing, or rather, whether the claims are premature in light of the
12 uncertainty of the outcome of the claims by and between [Steppan] and Iliescu who ha[s]
13 asserted these third-party claims." (Second Stipulation to Stay Proceedings between Iliescu and
14 Hale Lane, attached as Exhibit 18 to Iliescu's current motion, at pg. 2, ¶ B.). The parties even
15 went so far as to cite the three Nevada Supreme Court opinions that gave rise to the uncertainty
16 as to the accrual of the legal malpractice claims. (Second Stipulation to Stay Proceedings
17 between Iliescu and Hale Lane, attached as Exhibit 18 to Iliescu's current motion, at pg. 2, ¶ C.)
18 (citing *Semenza v. Nev. Med. Liab. Ins. Co.*, 104 Nev. 666, 765 P.2d 184 (1988); *K.J.B., Inc. v.*
19 *Drakulich*, 107 Nev. 367, 811 P.2d 1305 (1991); and *Kopicko v. Young*, 114 Nev. 1333, 971 P.2d
20 789 (1998)).

21 The crux of the cited Nevada Supreme Court decisions is that, with only certain limited
22 exceptions, an attorney malpractice action does not accrue until the damages resulting from
23 the alleged malpractice are no longer premature and speculative. More specifically, as noted
24 above, the *Semenza* Court held that "a legal malpractice action does not accrue until the
25 plaintiff's damages are certain and not contingent upon the outcome of an appeal." *Semenza*,
26 104 Nev. at 668, 765 P.2d at 186. Moreover, "[a]pparent damage may vanish with successful
27 prosecution of an appeal and ultimate vindication of an attorney's conduct by an appellate
28 court." *Id.*

1 Due to the uncertainty as to the accrual of Iliescu's third-party claims, the parties agreed,
2 with the Court's approval, that the claims are stayed "pending the final resolution of all claims
3 asserted by [Steppan] against [Iliescu]." (Second Stipulation to Stay Proceedings between
4 Iliescu and Hale Lane, attached as Exhibit 18 to Iliescu's current motion, at pg. 2, ¶ 2) (emphasis
5 added). Because Iliescu elected to appeal this Court's ruling regarding Steppan's lien, there is
6 as yet no final resolution of that claim. Consequently, Iliescu's claimed damages in this legal
7 malpractice action, if any, remain contingent on the outcome of his appeal and thus completely
8 premature and speculative. Accordingly, Iliescu's third-party claims remain stayed, and must
9 remain stayed, pending the outcome of his appeal.

10 **III. CONCLUSION**

11 For the foregoing reasons, Defendant Hale Lane respectfully request that the *Third-Party*
12 *Plaintiffs' Motion to Amend Third-Party Complaint and Motion for Clarification as to Stay* be
13 denied, and that this Court reiterate to Iliescu that his third-party legal malpractice action
14 remains stayed pending the outcome of his current appeal.

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

17 DATED: October 6, 2016.

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21 (775) 786-6868

22 By: 

23 David R. Grundy, Esq.
24 Todd R. Alexander, Esq.
25 Attorneys for Third-Party Defendant,
26 HALE LANE PEEK DENNISON AND
27 HOWARD PROFESSIONAL CORPORATION

CERTIFICATE OF MAILING


Pursuant to NRCP 5(b), I certify that I am an employee of Lemons, Grundy & Eisenberg and that on October 6th, 2016, I deposited in the United States Mail, with postage fully prepaid, a true and correct copy of the within **OPPOSITION TO PLAINTIFFS' MOTION TO AMEND AND FOR CLARIFICATION AS TO STAY**, addressed to the following:

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17 dca@albrightstoddard.com
18 *Attorneys for Applicants/Defendants*

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

21 JOHN ILIESCU, JR., et al., Applicants,
22 vs.
23 MARK B. STEPPAN, Respondent.

CASE NO. CV07-00341
(Consolidated w/CV07-01021)
DEPT NO. 10

24 MARK B. STEPPAN,
25 Plaintiff,
26 vs.

**REPLY POINTS AND AUTHORITIES
IN SUPPORT OF THIRD-PARTY
PLAINTIFFS' MOTION TO AMEND
THIRD-PARTY COMPLAINT AND
MOTION FOR CLARIFICATION AS
TO STAY**

27 JOHN ILIESCU, JR. and SONNIA ILIESCU, as
28 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.

COMES NOW, Third-Party Plaintiffs, JOHN ILIESCU, JR., and SONNIA ILIESCU,
individually and as Trustees of the JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY

1 TRUST AGREEMENT (hereinafter “Third-Party Plaintiffs” or the “Iliescus”), and hereby file these
2 Reply Points and Authorities in Support of their Motion for leave of Court to file a Restated Answer
3 containing an Amended Third-Party Complaint, and in response to Third-Party Defendant Hale Lane’s
4 Opposition to said Motion, as follows:

5 **I. No Stay Currently In Place Prevents a Ruling on the Motion to Amend**

6 Hale Lane’s Opposition does not argue against the Motion to Amend on the merits, or raise any
7 substantive arguments in response thereto, but avers that the Motion is premature and unnecessary at
8 this time, because a stay remains in effect. This response, however, ignores the actual facts.

9 **A. The Stipulated Stay Did Not Stay the Case Pending Appeal.**

10 Hale Lane first argues that a stipulation and order previously entered between the parties, on
11 February 14, 2013, which stayed the third-party claims, remains in effect pending the outcome on
12 appeal. However, the plain language of that Stipulation and Order does no such thing, and instead
13 provided that the proceedings “are hereby stayed as against Hale Lane for all purposes until such time
14 as a final judgment is entered in the primary case between Plaintiff, Steppan, and Defendant, Iliescu.”
15 See, Motion to Amend at **Exh. 18**, at p. 3, ll. 20-22.

16 Thus, if the claims against Hale Lane are to remain stayed, a new Order from this Court would
17 need to now issue setting forth such a stay, pending the appeal.

18 **B. The Case Law on Accrual of Malpractice Claims, According to this Court’s Order**
19 **in a Related Case, Has Not Stayed the Transactional Malpractice Claims Pending**
20 **Appeal.**

21 Hale Lane next argues that the claims against it should not proceed at this time because an
22 appeal of the Judgment against the Iliescus and in favor of Steppan is currently pending, such that the
23 claims against Hale Lane are stayed as a matter of law, based on Nevada cases which indicate that
24 malpractice claims should not be held to accrue or arise until any appeal from underlying litigation
25 which may cure the malpractice has run its course.

26 However, the third-party claims against Hale Lane, together with the proposed refiled and
27 amended third-party claims against the proposed individual attorney Third-Party Defendants,
28 previously dismissed by stipulation but without prejudice, are largely, although not entirely, for

1 transactional malpractice, stemming from the work done by Karen Dennison and other attorneys at the
2 Hale Lane law firm to assist the Iliescus with the purchase agreement addendums relating to the sale
3 of their property to a developer, and also for later transactions which Hale Lane worked on for the
4 Iliescus thereafter, arising from the Steppan claims. Hale Lane recently argued, in another Washoe
5 County District Court lawsuit involving these same parties, the Iliescus and the attorneys at Hale Lane,
6 Case No. CV15-01388, that claims for transactional malpractice were not subject to the legal
7 malpractice tolling or delayed accrual rules, pending appeal, to which the litigation malpractice claims
8 are subject.

9 More particularly, in a Motion to Dismiss filed in that action on September 23, 2015, Hale
10 Lane argued that “[i]n the context of alleged transactional legal malpractice, the limitation period does
11 not wait until underlying litigation is concluded before commencing.” Motion to Dismiss filed in Case
12 No. CV15-01388, at p. 8, *citing Charleson v. Hardesty*, 108 Nev. 878, 883, 839 P.2d 1303, 1307
13 (1992). Without waiving any arguments to the contrary of this position, which might be asserted
14 herein or in any other appeal or proceeding, the Iliescus hereby note that these arguments were
15 accepted by this Court, which was also assigned to adjudicate that other related case, No. CV15-01388.

16 The transactional malpractice claims against Hale Lane have been stayed by stipulation
17 heretofore, and the transactional malpractice claims against the individual Attorney Third-Party
18 Defendants at Hale Lane have previously been preserved by that stipulation, dismissing the same
19 without prejudice. However, as that stipulation and order did not indicate that it would remain in place
20 pending appeal, and, as this Court has recognized that transactional malpractice claims are not stayed
21 pending appeal, the time has now come to proceed with discovery and litigation and trial of the third-
22 party transactional malpractice claims against Hale Lane, and its individual attorneys.

23 Thus, the Iliescus’ Motion to Amend (which has not been opposed on the merits) should now
24 be granted, and the Iliescus should be allowed to proceed with litigating at least the transactional
25 malpractice claims in their third-party case, which will begin by the filing of the amended pleading,
26 unless a new tolling order is entered herein as described below. Then, after any Answer to the
27 Amended pleading has been filed, this Court may set new discovery completion dates and a trial date.

1 It is true that the transactional malpractice claims and the litigation malpractice claims in the
2 third-party Complaint are somewhat intertwined, and it is also true that the amount of damages may
3 not yet be certain pending the outcome on appeal. If the Court therefore believes that an Order further
4 staying or recognizing any ongoing stay of all pending and potential third party malpractice claims is
5 appropriate, then so be it, but such a new Order would need to in fact issue, in *this* case number,
6 recognizing the status of the claims in *this* case, and should issue quickly, *nunc pro tunc* from the time
7 of the entry of the Judgment, so as to prevent any prejudice to the Iliescus, with respect to any of their
8 claims. Alternatively, the transactional and the litigation malpractice claims (as well as adjudication
9 of the amount of damages incurred as to the transactional malpractice), could and should be bifurcated,
10 allowing at least a trial or other adjudication of liability on the transactional malpractice claims at this
11 time.

12 **II. The Motion to Amend Also Seeks to Add John Schleining, and That Portion of the**
13 **Motion to Amend Should Be Granted, Regardless of Any Other Rulings.**

14 The Hale Lane Opposition to the Motion to Amend also ignores the fact that Hale Lane is not
15 the only target thereof. The Motion to Amend also seeks to name John Schleining, previously
16 dismissed without prejudice, as a new third-party defendant, herein. The claims against Schleining
17 arise from written and equitable indemnity obligations, which would not have accrued prior to the
18 Judgment entering against the Iliescus, and which would not be subject to the same rules governing
19 attorney malpractice claim tolling or accrual rules, pending appeal, such that they should be allowed
20 to be pled at this time, for further adjudication hereafter.

21 **III. CONCLUSION.**

22 For the reasons set forth in the Motion to Amend, which were not opposed on the merits,
23 Third-Party Plaintiffs should be allowed to amend their Third Party Complaint at this time. To the
24 degree that this Court deems it necessary to then bifurcate the transactional malpractice claims, and
25 the indemnity claims against Schleining, from the litigation malpractice claims which are stayed by
26 Nevada case law pending appeal, any such Orders may be addressed and issued thereafter.

27 Alternatively, in the event the Court believes that the malpractice claims against the Third-
28 Party Defendants, consisting of intertwined litigation and transactional malpractice claims, should

1 continue to be stayed, then such an Order should issue and is needed herein, to clarify the status of this
2 case, and to prevent any future prejudice to the Iliescus herein. In any event, the request for
3 amendment to pursue claims against Schleining should be granted.

4 DATED this 17th day of October, 2016.

5
6 By 

G. MARK ALBRIGHT, ESQ.

Nevada Bar No. 001394

D. CHRIS ALBRIGHT, ESQ.

Nevada Bar No. 004904

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13 **AFFIRMATION**

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

16 DATED this 17th day of October, 2016.

17
18 By 

G. MARK ALBRIGHT, ESQ.

Nevada Bar No. 001394

D. CHRIS ALBRIGHT, ESQ.

Nevada Bar No. 004904

**ALBRIGHT, STODDARD, WARNICK
& ALBRIGHT**

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dca@albrightstoddard.com

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, and that on this 17th day of October, 2016, service was made of a true and correct copy of the foregoing **REPLY POINTS AND AUTHORITIES IN SUPPORT OF THIRD-PARTY PLAINTIFFS' MOTION TO AMEND THIRD-PARTY COMPLAINT AND MOTION FOR CLARIFICATION AS TO STAY**, upon the following persons via the following means:

Michael D. Hoy, Esq.
HOY CHRISSINGER KIMMEL P.C.
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Reno, Nevada 89501
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Attorney for Plaintiff Mark Steppan

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Todd R. Alexander, Esq.,
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An Employee of Albright, Stoddard, Warnick & Albright

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 consolidated with
CV07-01021

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 I-X, inclusive,

Defendants.

AND RELATED CLAIMS

ORDER

Presently before the Court is the THIRD-PARTY PLAINTIFFS' MOTION TO AMEND
THIRD-PARTY COMPLAINT AND MOTION FOR CLARIFICATION AS TO STAY ("the
Motion"). The Motion was filed by Third-Party Plaintiffs JOHN ILIESCU, JR., and SONNIA
ILIESCU, individually and as Trustees of the JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992
FAMILY TRUST AGREEMENT ("the Iliescus") on September 16, 2016. Third-Party Defendant
HALE LANE PEEK DENNISON AND HOWARD PROFESSIONAL CORPORATION ("Hale

1 Lane”) filed the OPPOSITION TO PLAINTIFFS’ MOTION TO AMEND AND FOR
2 CLARIFICATION AS TO STAY (“the Opposition”) on October 6, 2016. The Iliescus filed the
3 REPLY POINTS AND AUTHORITIES IN SUPPORT OF THIRD-PARTY PLAINTIFFS’
4 MOTION TO AMEND THIRD-PARTY COMPLAINT AND MOTION FOR CLARIFICATION
5 AS TO STAY (“the Reply”) on October 17, 2016. The Motion was submitted to the Court for
6 consideration on October 19, 2016.
7

8 **FACTUAL AND PROCEDURAL BACKGROUND**

9 It is alleged Hale Lane represented opposing parties in a litigation to enforce a mechanic’s
10 lien (“the Lien”)--the Iliescus and Plaintiff MARK B. STEPPAN (“Steppan”). “The Iliescus aver
11 that Hale Lane[’s] representation of the Iliescus’ interests in the litigation was inadequate, and did
12 not sufficiently draw on the firm’s knowledge....” The Motion, 12:16-17. Hale Lane was
13 “ultimately replaced as counsel of record for the Iliescus.” The Motion, 12:24-25.¹ The Iliescus
14 then brought a Third-Party Complaint against, *inter alia*, Hale Lane (“the Third-Party Complaint”).
15 The Motion, 13:1-3.² The claims against Hale Lane were for legal malpractice. *Id.* Third-Party
16 Defendant John Schleining (“Schleining”) was dismissed without prejudice from the Third Party
17 Complaint via the Court’s ORDER GRANTING THIRD PARTY DEFENDANT JOHN
18 SCHLEINING’S MOTION TO DISMISS, issued November 22, 2011. After extensive litigation,
19 including an appeal and cross-appeal to the Supreme Court of Nevada (“the Supreme Court”) the
20 parties filed the SECOND STIPULATION TO STAY PROCEEDINGS AGAINST DEFENDANT
21 HALE LANE AND ORDER TO STAY AND TO DISMISS CLAIMS AGAINST DEFENDANTS
22
23
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26 ¹ See SUBSTITUTION OF COUNSEL, filed August 3, 2007.

27 ² See ANSWER AND THIRD PARTY COMPLAINT, filed September 27, 2007.
28

1 DENNISON, HOWARD AND SNYDER WITHOUT PREJUDICE (“the Stipulation”). The
2 Stipulation was filed by the parties on January 5, 2012. The Stipulation stated:

3 Questions have arisen regarding whether any of [the malpractice claims] have “accrued” so
4 as to allow this present filing, or rather, whether the claims are premature in light of the
5 uncertainty of the outcome of claims by and between plaintiff and defendants who have
6 asserted these third party claims.

7 The Stipulation, 2:10-13. Accordingly, the Stipulation agreed:

8 [a]ll claims asserted against Hale Lane shall be stayed for all purposes, including discovery
9 and trial, pending the final resolution of all claims asserted by plaintiffs against defendants,
and the unstayed claims asserted by and among all other parties.

10 The Stipulation, 2:26-28. The Stipulation explained the claims alleged in the Third-Party Complaint
11 against Hale Lane would be dismissed, but could be refiled “only upon the entry of final judgment
12 regarding plaintiff’s claims and the claims of third party plaintiffs against all other third party
13 defendants.” The Stipulation, 2:22-25. Finally, the Stipulation ordered:

14 These proceedings are hereby stayed as against Hale Lane for all purposes until such time as
15 a final judgment is entered in the primary case between plaintiff, Steppan, and defendant,
16 Iliescu....”

17 The Stipulation, 3:20-22. Accordingly, the Stipulation created a stay of Third-Party proceedings
18 pending resolution of the underlying litigation (“the Stay”).
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20 After a bench trial in December, 2013, the Court entered its FINDINGS OF FACT,
21 CONCLUSIONS OF LAW AND DECISION (“the Findings”) on May 28, 2014. The Findings
22 ruled in favor of Steppan in the underlying action. The Iliescus filed the DEFENDANT’S MOTION
23 FOR NRCP 60(b) RELIEF FROM COURT’S FINDINGS OF FACT, CONCLUSIONS OF LAW
24 AND DECISION AND RELATED ORDERS (“the Relief Motion”) on October 27, 2014. The
25 Court denied the Relief Motion on the record on February 23, 2015. The Court issued the
26 JUDGMENT, DECREE AND ORDER FOR FORECLOSURE OF MECHANICS LIEN (“the
27 Judgment”) on February 26, 2015. The Judgment found:
28

1 Certain third party claims by the [Iliescus], against a third-party defendants [sic], remain
2 pending in this lawsuit, which have been stayed by prior stipulations of the parties. The
3 Court determines that there is no just reason for delay and, notwithstanding any remaining
claims against other parties herein, this Judgment is certified as final....”

4 The Judgment, 3:11-15.

5 The Iliescus filed the NOTICE OF APPEAL BY JOHN ILIESCU, JR. INDIVIDUALLY,
6 AND JOHN ILIESCU, JR. AND SONNIA SANTEE ILIESCU, AS TRUSTEES OF THE JOHN
7 ILIESCU JR. AND SONNIA ILIESCU 2002 FAMILY TRUST AGREEMENT (“the Appeal”) on
8 June 23, 2015. The Appeal is expansive and appeals, *inter alia*, “the Judgment, Decree and Order
9 for Foreclosure of [the Lien],” as well as “any and all orders, judgments, decisions, or rulings of the
10 District Court during this litigation...which would need to be overturned in order to afford the
11 Iliescus, as Appellants, full and adequate appellate relief...” The Appeal, 2:4-5, 19-22. The Court
12 issued the DECISION AND ORDER GRANTING MOTION SEEKING CLARIFICATION OF
13 FINALITY OF JUDGMENT (“the November Order”) on November 17, 2015. The November
14 Order clarified the finality of the Judgment and stated, “no claims remain pending herein against the
15 [Iliescus] or... [Steppan].” The November Order, 2:18-19.

18 ANALYSIS

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20 The Motion requests leave “to file an Amended Third-Party Complaint, in order to provide a
21 more definite statement of...malpractice claims against [Hale Lane], and to now re-assert the
22 previously dismissed claims against certain of the individual attorneys who were previously
23 dismissed without prejudice.” The Motion, 16:14-17. The proposed Amended Third-Party
24 Complaint would also name Schleining as a Third-Party Defendant. The Motion, 16:18-20. The
25 Opposition argues leave to amend would be improper because the “Iliescu’s Third-Party Complaint
26 against Hale Lane remains stayed pending the outcome of the Iliescu’s appeal to the Nevada
27 Supreme Court.” The Opposition, 2:5-6. The Opposition explains the Appeal concerns the
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1 “validity, enforceability and the amount, if any, of [the Lien], which, in turn, forms the basis of
2 Iliescu’s claims for damages against Hale Lane.” The Opposition, 2:6-8. In the alternative, the
3 Motion requests the Court issue an order “clearly enunciating the ongoing existence” of the Stay,
4 “including with respect to new or restated claims against third-party Defendants who were
5 previously dismissed without prejudice....” The Motion, 18:12-14.

7 The Illiescus’ legal malpractice claims against Hale Lane are at least partially dependent on
8 the Supreme Court’s findings regarding the Lien. Although final judgment has been entered in the
9 “primary case,” the case is not fully resolved. The Stipulation does not contemplate an appeal;
10 however, lifting the Stay while resolution of the primary issues of the case remain pending would be
11 contrary to its purpose. Accordingly, the Court finds the Third-Party proceedings against Hale Lane
12 shall remain stayed pending a final determination of the Appeal by the Supreme Court.
13 Accordingly, granting the Iliescus leave to amend the Third Party Complaint would be premature at
14 this time. *See* NRCP 15(a). Additionally, granting leave to amend would be antithetical to NRCP 1,
15 which states the NRCP “shall be construed and administered to secure the just, speedy, and
16 inexpensive determination of every action.”

19 **IT IS HEREBY ORDERED** the THIRD-PARTY PLAINTIFFS’ MOTION TO AMEND
20 THIRD-PARTY COMPLAINT AND MOTION FOR CLARIFICATION AS TO STAY
21 is hereby DENIED.

23 IT IS FURTHER ORDERED the stay enacted by the Stipulation will remain in place until
24 final resolution of the Appeal.

25 DATED this 19 day of December, 2016.

27 
28 ELLIOTT A. SATTLER
District Judge

1
2 **CERTIFICATE OF MAILING**

3 Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the
4 State of Nevada, County of Washoe; that on this _____ day of December, 2016, I deposited in the
5 County mailing system for postage and mailing with the United States Postal Service in Reno,
6 Nevada, a true copy of the attached document addressed to:
7
8

9 **CERTIFICATE OF ELECTRONIC SERVICE**

10 I hereby certify that I am an employee of the Second Judicial District Court of the State of
11 Nevada, in and for the County of Washoe; that on the 19 day of December, 2016, I
12 electronically filed the foregoing with the Clerk of the Court by using the ECF system which will
13 send a notice of electronic filing to the following:
14

15 C. PEREOS, ESQ.

16 G. ALBRIGHT, ESQ.

17 TODD ALEXANDER, ESQ.

18 DAVID GRUNDY, ESQ.

19 ALICE CAMPOS MERCADO, ESQ.

20 MICHAEL HOY, ESQ.
21

22 
23 Sheila Mansfield
24 Administrative Assistant
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1 **CODE: 2540**

2 G. MARK ALBRIGHT, ESQ., #001394

3 D. CHRIS ALBRIGHT, ESQ., #004904

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

5 801 South Rancho Drive, Suite D-4

6 Las Vegas, Nevada 89106

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

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

9 *Attorneys for Third-Party Plaintiffs*

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

12 MARK B. STEPPAN,

13 Plaintiff,

14 vs.

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

21 Defendants.

22 And all original prior consolidated and third-party
23 case(s).

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

DEPT NO. 10

**NOTICE OF ENTRY OF ORDER
DENYING THIRD-PARTY
PLAINTIFF'S MOTION TO AMEND
THIRD-PARTY COMPLAINT
AND MOTION FOR
CLARIFICATION AS TO STAY**

24 **PLEASE TAKE NOTICE** that an "ORDER" denying Third-Party Plaintiff's Motion to
25 Amend Third-Party Complaint and Motion for Clarification as to Stay was entered in the above-
26 captioned matter on the 19th day of December, 2016, which Order further indicated and ruled that a
27 prior stipulated stay of the third-party Complaint referenced in said Motion would remain in place
28 pending final resolution of the Iliescus' pending appeal, from an earlier Final Judgment entered in this
action in favor of Plaintiff Mark B. Steppan. A true and correct copy of the Order is attached hereto.

DATED this 27th day of February, 2017.

ALBRIGHT, STODDARD, WARNICK & ALBRIGHT

By

G. MARK ALBRIGHT, ESQ., #001394

D. CHRIS ALBRIGHT, ESQ., #004904

801 South Rancho Drive, Suite D-4

Las Vegas, Nevada 89106

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

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Attorneys for Third-Party Plaintiffs

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By

Attorneys for Third-Party Plaintiffs

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CERTIFICATE OF SERVICE

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

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Attorneys for Third-Party Defendant Hale Lane

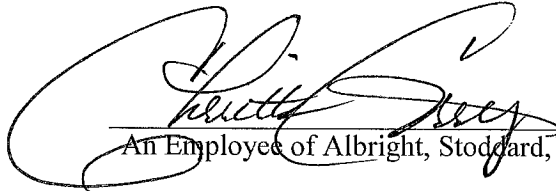
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13 Accordingly, granting the Iliescus leave to amend the Third Party Complaint would be premature at
14 this time. *See* NRCP 15(a). Additionally, granting leave to amend would be antithetical to NRCP 1,
15 which states the NRCP “shall be construed and administered to secure the just, speedy, and
16 inexpensive determination of every action.”

19 **IT IS HEREBY ORDERED** the THIRD-PARTY PLAINTIFFS’ MOTION TO AMEND
20 THIRD-PARTY COMPLAINT AND MOTION FOR CLARIFICATION AS TO STAY
21 is hereby DENIED.

23 IT IS FURTHER ORDERED the stay enacted by the Stipulation will remain in place until
24 final resolution of the Appeal.

25 DATED this 19 day of December, 2016.

26
27 
28 ELLIOTT A. SATTLER
District Judge

1
2 **CERTIFICATE OF MAILING**

3 Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the
4 State of Nevada, County of Washoe; that on this _____ day of December, 2016, I deposited in the
5 County mailing system for postage and mailing with the United States Postal Service in Reno,
6 Nevada, a true copy of the attached document addressed to:

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12 electronically filed the foregoing with the Clerk of the Court by using the ECF system which will
13 send a notice of electronic filing to the following:

14
15 C. PEREOS, ESQ.

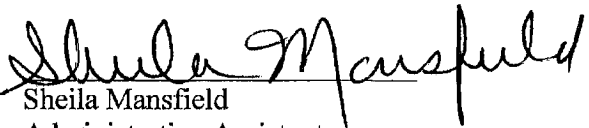
16 G. ALBRIGHT, ESQ.

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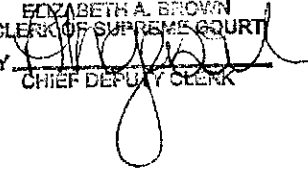
133 Nev., Advance Opinion 25
IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN ILIESCU, JR., INDIVIDUALLY;
AND JOHN ILIESCU, JR., AND
SONNIA ILIESCU, AS TRUSTEES OF
THE JOHN ILIESCU, JR., AND
SONNIA ILIESCU 1992 FAMILY
TRUST AGREEMENT,
Appellants,
vs.
MARK B. STEPPAN,
Respondent.

No. 68346

FILED

MAY 25 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

Appeal from a district court order for foreclosure of a mechanic's lien and an order denying a motion for NRCP 60(b) relief. Second Judicial District Court, Washoe County; Elliott A. Sattler, Judge.

Reversed and remanded.

Albright, Stoddard, Warnick & Albright and D. Chris Albright and G. Mark Albright, Las Vegas,
for Appellants.

Hoy Chrissinger Kimmel Vallas, PC, and Michael D. Hoy, Reno,
for Respondent.

BEFORE THE COURT EN BANC.

OPINION

By the Court, HARDESTY, J.:

NRS 108.245(1) requires mechanic's and materialmen's lien claimants to deliver a written notice of right to lien to the owner of the

property after they first perform work on or provide material to a project. In *Board of Trustees of the Vacation Trust Carpenters Local No. 1780 v. Durable Developers, Inc.*, 102 Nev. 401, 410, 724 P.2d 736, 743 (1986), this court held that “substantial compliance with the technical requirements of the lien statutes is sufficient to create a lien on the property where . . . the owner of the property receives actual notice of the potential lien claim and is not prejudiced.” And we reaffirmed this holding in *Fondren v. K/L Complex Ltd.*, 106 Nev. 705, 710, 800 P.2d 719, 721-22 (1990) (“The failure to serve the pre-lien notice does not invalidate a mechanics’ or materialmen’s lien where the owner received actual notice.”). In this appeal, we are asked to determine whether the actual notice exception should be extended to offsite work and services performed by an architect for a prospective buyer of the property. Because we hold that the actual notice exception does not apply to such offsite work and services when no onsite work has been performed on the property, we reverse.

FACTS AND PROCEDURAL HISTORY

In July 2005, appellants John Iliescu, Jr., individually, and Sonnia Iliescu and John Iliescu, Jr., as trustees of the John Iliescu, Jr., and Sonnia Iliescu 1992 Family Trust Agreement (collectively, Iliescu) entered into a Land Purchase Agreement to sell four unimproved parcels in downtown Reno to Consolidated Pacific Development (CPD) for development of a high-rise, mixed-use project to be known as Wingfield Towers. The original agreement was amended several times and, as finally amended, entitled Iliescu to over \$7 million, a condominium in the development, and several other inducements.

During escrow, CPD assigned the Land Purchase Agreement to an affiliate, BSC Investments, LLC (BSC). BSC negotiated with a California architectural firm, Fisher Friedman Associates, to design the

Wingfield Towers. Respondent Mark Steppan, a Fisher Friedman employee who is an architect licensed in Nevada, served as the architect of record for Fisher Friedman.

In October 2005, Steppan sent an initial proposal to BSC that outlined design services and compensation equal to 5.75 percent of the total construction costs, which were estimated to be \$180 million. In the interest of beginning design work, Steppan and BSC entered into an initial "stop-gap" agreement in November 2005 under which Steppan would bill hourly until an American Institute of Architects (AIA) agreement could be later signed. The AIA agreement between Steppan and BSC was signed in April 2006. The parties agreed that the final design contract would have an effective date of October 31, 2005, when Steppan began work.

The AIA agreement provided for progressive billings based on a percentage of completion of five phases of the design work, including 20 percent of the total fee upon completion of the "schematic design" phase. Steppan completed the schematic design phase, and Wingfield Towers was able to secure the required entitlements and project approval from the Reno Planning Commission and the Reno City Council. BSC did not pay Steppan for his services under the contract, and Steppan recorded a mechanic's lien against Iliescu's property on November 7, 2006. Steppan did not provide Iliescu with a pre-lien notice.

Financing for the Wingfield Towers project was never obtained, escrow never closed, and no onsite improvements were ever performed on the property. When the escrow was canceled, Iliescu's unimproved property was subject to Steppan's multimillion dollar lien claim for the unpaid invoices submitted to BSC.

Iliescu applied to the district court for a release of Steppan's mechanic's lien, alleging that Steppan had failed to provide the required pre-lien notice before recording his lien. Steppan then filed a complaint to foreclose the lien. The two cases were consolidated, and Iliescu filed a motion for partial summary judgment on the pre-lien notice issue. Steppan filed a cross-motion for partial summary judgment, arguing that, although he failed to give the pre-lien notice required under NRS 108.245, such notice was not required under the "actual notice" exception recognized by this court in *Fondren v. K/L Complex Ltd.*, 106 Nev. 705, 710, 800 P.2d 719, 721-22 (1990). Iliescu argued that he did not have the notice required under *Fondren's* actual notice exception.

The district court denied Iliescu's motion but granted Steppan's motion, finding that no pre-lien notice was required because Iliescu had viewed the architectural drawings and attended meetings where the design team presented the drawings and thus had actual notice of the claim. The court found that even though Iliescu alleged he did not know the identity of the architects who were working on the project, he had actual knowledge that Steppan and Fisher Friedman were performing architectural services on the project.

About 18 months after the district court granted Steppan's motion on the pre-lien notice issue and while the matter was still pending in the district court, this court published its opinion in *Hardy Companies, Inc. v. SNMARK, LLC*, 126 Nev. 528, 245 P.3d 1149 (2010). *Hardy* clarified that a lien claimant cannot invoke the actual notice exception to NRS 108.245 unless the property owner (1) has actual notice of the construction on his property, and (2) knows the lien claimant's identity. *Id.* at 542, 245 P.3d at 1158.

Although the parties attempted to once again raise pre-lien notice issues after *Hardy* was published, the district court refused to revisit the issue. Following a bench trial on the consolidated cases, the district court entered its findings of fact, conclusions of law, and decision and, citing to both *Fondren* and *Hardy*, concluded that Steppan was entitled to a mechanic's lien. The district court further concluded that despite Steppan's failure to provide a pre-lien notice, none was required because Iliescu had actual knowledge; and it thus entered an order foreclosing Steppan's mechanic's lien. This appeal followed.

DISCUSSION

On appeal, the parties disagree about whether Steppan substantially complied with the mechanic's lien statutes by showing that Iliescu had actual knowledge of Steppan's work and identity. Iliescu denies having actual knowledge of Steppan's work and identity, and, in advancing his argument, asks this court to clarify whether the actual notice exception to the mechanic's lien statutes we articulated in *Fondren* applies to offsite work. He urges this court to hold that the exception does not apply to offsite work when no work has been performed on the property. Iliescu further argues that even though the district court erred in finding that he had actual knowledge of Steppan's work and identity, the court did not determine exactly when he first had that knowledge; thus, there is no way to tell how much, if any, of Steppan's work would be lienable pursuant to NRS 108.245(6). Steppan argues that the actual notice exception applies equally to onsite and offsite work and that the district court made adequate and supported findings.

Standard of review

"This court reviews . . . the district court's legal conclusions de novo." *I. Cox Constr. Co. v. CH2 Invs., LLC*, 129 Nev. 139, 142, 296 P.3d

1202, 1203 (2013). “This court will not disturb the district court’s factual determinations if substantial evidence supports those determinations.” *J.D. Constr., Inc. v. IBEX Int’l Grp., LLC*, 126 Nev. 366, 380, 240 P.3d 1033, 1043 (2010).

Pre-lien notice under NRS 108.245

Under NRS 108.245(1),¹ every lien claimant for a mechanic’s or materialmen’s lien “shall, at any time after the first delivery of material or performance of work or services under a contract, deliver” a notice of right to lien to the owner of the property. No lien for materials or labor can be perfected or enforced unless the claimant gives the property owner the required notice. NRS 108.245(3). Finally, a lien claimant “who contracts directly with an owner or sells materials directly to an owner is not required to give notice pursuant to” NRS 108.245.² NRS 108.245(5).

Despite the mandatory language of NRS Chapter 108, “[t]his court has repeatedly held that the mechanic’s lien statutes are remedial in

¹The United States District Court for the District of Nevada has recently ruled that a 2015 bill amending NRS 108.245, among other statutes unrelated to Nevada’s mechanic’s lien statutes, was non-severable and preempted. *Bd. of Trs. of the Glazing Health & Welfare Tr. v. Chambers*, 168 F. Supp. 3d 1320, 1325 (D. Nev. 2016); see S.B. 223, 78th Leg. (Nev. 2015); but see *Blanton v. N. Las Vegas Mun. Court*, 103 Nev. 623, 633, 748 P.2d 494, 500 (1987) (providing that Nevada courts are not bound by federal district court decisions). However, the mechanic’s lien in this case was filed before that bill became effective. 2015 Nev. Stat., ch. 345, § 4, at 1932-33. Thus, this case is decided under the prior version of NRS 108.245 as it existed in 2005.

²It is undisputed that Steppan did not contract directly with Iliescu. Thus, our analysis of the actual notice exception to NRS 108.245(1) is limited to situations where, as here, the lien claimant does not contract directly with the owner.

character and should be liberally construed; that substantial compliance with the statutory requirements is sufficient to perfect the lien if the property owner is not prejudiced.” *Las Vegas Plywood & Lumber, Inc. v. D & D Enters.*, 98 Nev. 378, 380, 649 P.2d 1367, 1368 (1982). However, “[f]ailure to either fully or substantially comply with the mechanic’s lien statute will render a mechanic’s lien invalid as a matter of law.” *Hardy*, 126 Nev. at 536, 245 P.3d at 1155.

We have previously determined that substantial compliance with NRS 108.245’s pre-lien notice requirements has occurred when “the owner of the property receives actual notice of the potential lien claim and is not prejudiced.” *Durable Developers*, 102 Nev. at 410, 724 P.2d at 743. This principle was reaffirmed in *Fondren*. 106 Nev. at 709, 800 P.2d at 721 (concluding that substantial compliance with the pre-lien notice requirements occurred because the property owner “had actual knowledge of the construction on her property”); see also *Hardy*, 126 Nev. at 535, 245 P.3d at 1154 (recognizing that “*Fondren* is still good law”).

However, we have not previously addressed whether the actual notice exception applies to offsite work and services performed by an architect hired by a prospective buyer when no onsite work has been performed on the property. Steppan argues that because an architect who has not contracted directly with the property owner can lien for offsite work, the actual notice exception must apply. Iliescu argues that the actual notice exception does not apply to such offsite work when that work has not been incorporated into the property. We agree with Iliescu.

The actual notice exception does not extend to offsite work when no onsite work has been performed on the property

In *Fondren*, this court determined that Fondren, the property owner,

had actual knowledge of the construction *on her property*. It was understood by both Fondren and [the lien claimant] that substantial remodeling would be required when the lease was negotiated. Additionally, Fondren's attorney regularly inspected the progress of the remodeling efforts. These inspections were on behalf of Fondren. Fondren could easily have protected herself by filing a notice of non-responsibility. She had actual knowledge of the work being performed *on her property*.

106 Nev. at 709, 800 P.2d at 721 (citation omitted) (emphasis added). We also made clear that a predominant purpose for the "notice requirement [in NRS 108.245] is to provide the owner with knowledge that work and materials are being *incorporated into the property*." *Id.* at 710, 800 P.2d at 721 (emphasis added).

Similarly, the property owner in *Hardy* "regularly inspected *the project site*." 126 Nev. at 540, 245 P.3d at 1157 (emphasis added). Indeed, we explicitly stated that "[a]ctual knowledge may be found where the owner has supervised work by the third party, reviewed billing statements from the third party, or any other means that would make the owner aware that the third-party claimant was involved with *work performed on its property*." *Id.* at 542, 245 P.3d at 1158 (emphasis added). We further explained that NRS 108.245 "protect[s] owners from hidden claims and . . . [t]his purpose would be frustrated if mere knowledge of construction is sufficient to invoke the actual knowledge exception against an owner by any contractor. Otherwise, the exception would swallow the rule." *Id.* at 542, 245 P.3d at 1159.

This rationale equally pertains to offsite architectural work performed pursuant to an agreement with a prospective buyer when there is no indication that onsite work has begun on the property, and no

showing has been made that the offsite architectural work has benefited the owner or improved its property. As this court has consistently held, a lien claimant has not substantially complied with the mechanic's lien statutes when the property owner is prejudiced by the absence of strict compliance. *Las Vegas Plywood & Lumber*, 98 Nev. at 380, 649 P.2d at 1368; *Durable Developers*, 102 Nev. at 410, 724 P.2d at 743. As the *Hardy* court recognized, to conclude otherwise would frustrate the purpose of NRS 108.245, and the actual notice exception would swallow the rule. 126 Nev. at 542, 245 P.3d at 1159.

A property owner may be prejudiced by a lien claim from an architect for a prospective buyer who has failed to provide the pre-lien notice in at least two ways under Nevada's statutory scheme. First, without a showing that the architectural work has improved the property, the property owner assumes the risk for payment of a prospective buyer's architectural services for a project that may never be constructed on the property. Other jurisdictions have recognized that mechanics' liens for offsite architectural services when no work has been incorporated into the property pose a substantial risk of prejudice to property owners. See generally Kimberly C. Simmons, Annotation, *Architect's Services as Within Mechanics' Lien Statute*, 31 A.L.R.5th 664, Art. II § 4(b) (1995). For example, in *Kenneth D. Collins Agency v. Hagerott*, the Supreme Court of Montana upheld a lower court's decision refusing to allow an architect to foreclose on a mechanic's lien. 684 P.2d 487, 490 (1984). There, the court decided that, notwithstanding Montana law allowing architects to lien for architectural work and services, the architect could not foreclose on his lien because he did not "provide[] services that contributed to structural improvement and, thus, enhancement of the property." *Id.*

Second, although NRS 108.234 generally provides that an owner with knowledge of an "improvement constructed, altered or repaired upon property" is responsible for liens on its property, NRS 108.234(1), a disinterested owner may avoid responsibility for a lien if he or she gives a notice of non-responsibility after he or she "first obtains knowledge of the construction, alteration or repair, or the intended construction, alteration or repair," NRS 108.234(2). "Disinterested owner" is defined as a property owner who "[d]oes not personally or through an agent or representative, directly or indirectly, contract for or cause a work of improvement, or any portion thereof, to be constructed, altered or repaired upon the property or an improvement of the owner."³ NRS 108.234(7)(b). In this case, Iliescu is not a disinterested owner as he indirectly caused architectural work to be performed pursuant to a contract with a prospective buyer.

While we have recognized in a lease context that the "knowledge of . . . intended construction" language is satisfied when the owner leases property with terms requiring the lessee to make all necessary repairs and improvements, we have only determined as such when the agreement was actually completed. *See Gould v. Wise*, 18 Nev. 253, 259, 3 P. 30, 31 (1884). Unlike a completed lease agreement, the agreement between Iliescu and BSC was contingent upon completion of the purchase of the property. Because Iliescu was not a disinterested owner, and the agreement was contingent upon completion of the purchase of the property, Iliescu was unable to give a notice of non-

³A "disinterested owner" must also not have recorded a notice of waiver pursuant to NRS 108.2405. NRS 108.234(7)(a).

responsibility to protect himself from mechanics' liens for offsite architectural work performed pursuant to a contract with the prospective buyer. Were we to apply the actual notice exception in these circumstances, a notice of non-responsibility may not protect property owners from costs incurred by prospective buyers when there has been no enhancement or improvement to the property.

In furtherance of the protections for property owners contemplated in NRS 108.245, we decline to extend the actual notice exception to the circumstances in this case. We thus conclude that the actual notice exception does not extend to offsite architectural work performed pursuant to an agreement with a prospective buyer when no onsite work of improvement has been performed on the property.

It does not appear from the record before us that any onsite work had begun on Iliescu's property at the time Steppan recorded his mechanic's lien for the offsite work and services he performed. And the record fails to reveal any benefit or improvement to Iliescu's property resulting from the architectural services Steppan provided. As such, the actual notice exception does not apply. Because the actual notice exception does not apply and there is no dispute that Steppan did not otherwise provide Iliescu with the required pre-lien notice, we conclude that the district court erroneously found that Steppan had substantially complied with NRS 108.245's pre-lien notice requirements.⁴

⁴Based on our conclusion that the actual notice exception does not apply in this case, we do not reach Iliescu's argument regarding the applicability of NRS 108.245(6) when the actual notice exception does apply. Similarly, as our conclusion on the actual notice issue is dispositive, we decline to reach the parties' remaining arguments on appeal.

Accordingly, we reverse the district court's order foreclosing Steppan's mechanic's lien and remand this matter to the district court for it to enter judgment in favor of Iliescu.

Hardesty, J.
Hardesty

We concur:

Cherry, C.J.
Cherry

Gibbons, J.
Gibbons

Parraguirre, J.
Parraguirre

Douglas, J.
Douglas

Pickering, J.
Pickering

Stiglich, J.
Stiglich

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CV07-00341
SIO
No. 68346

FILED

SEP 21 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c).

It is so ORDERED.

Cherry C.J.
Cherry

Gibbons, J.
Gibbons

Parraguirre, J.
Parraguirre

Hardesty, J.
Hardesty

Stiglich, J.
Stiglich

DOUGLAS, J., with whom PICKERING, J., agrees, dissenting:

We would grant rehearing of this matter.

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Elliott A. Sattler, District Judge
Second Judicial District Court Dept. 6
Albright Stoddard Warnick & Albright
Hoy Chrissinger Kimmel Vallas PC
Washoe District Court Clerk

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Supreme Court No. 68346
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DIO

REMITTITUR

TO: Jacqueline Bryant, Washoe District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: October 16, 2017

Elizabeth A. Brown, Clerk of Court

By: Niki Wilcox
Deputy Clerk

cc (without enclosures):

Hon. Elliott A. Sattler, District Judge
Second Judicial District Court Dept. 6
Albright Stoddard Warnick & Albright \ G. Mark Albright
Albright Stoddard Warnick & Albright \ D. Chris Albright
Hoy Chrissinger Kimmel Vallas PC \ Michael D. Hoy
Lewis Roca Rothgerber Christie LLP/Reno \ Paul A. Matteoni
Jacqueline Bryant, Washoe District Court Clerk

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on OCT 17 2017


District Court Clerk

133 Nev., Advance Opinion 25

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²It is undisputed that Steppan did not contract directly with Iliescu. Thus, our analysis of the actual notice exception to NRS 108.245(1) is limited to situations where, as here, the lien claimant does not contract directly with the owner.

character and should be liberally construed; that substantial compliance with the statutory requirements is sufficient to perfect the lien if the property owner is not prejudiced." *Las Vegas Plywood & Lumber, Inc. v. D & D Enters.*, 98 Nev. 378, 380, 649 P.2d 1367, 1368 (1982). However, "[f]ailure to either fully or substantially comply with the mechanic's lien statute will render a mechanic's lien invalid as a matter of law." *Hardy*, 126 Nev. at 536, 245 P.3d at 1155.

We have previously determined that substantial compliance with NRS 108.245's pre-lien notice requirements has occurred when "the owner of the property receives actual notice of the potential lien claim and is not prejudiced." *Durable Developers*, 102 Nev. at 410, 724 P.2d at 743. This principle was reaffirmed in *Fondren*. 106 Nev. at 709, 800 P.2d at 721 (concluding that substantial compliance with the pre-lien notice requirements occurred because the property owner "had actual knowledge of the construction on her property"); *see also Hardy*, 126 Nev. at 535, 245 P.3d at 1154 (recognizing that "*Fondren* is still good law").

However, we have not previously addressed whether the actual notice exception applies to offsite work and services performed by an architect hired by a prospective buyer when no onsite work has been performed on the property. Steppan argues that because an architect who has not contracted directly with the property owner can lien for offsite work, the actual notice exception must apply. Iliescu argues that the actual notice exception does not apply to such offsite work when that work has not been incorporated into the property. We agree with Iliescu.

The actual notice exception does not extend to offsite work when no onsite work has been performed on the property

In *Fondren*, this court determined that Fondren, the property owner,

had actual knowledge of the construction *on her property*. It was understood by both Fondren and [the lien claimant] that substantial remodeling would be required when the lease was negotiated. Additionally, Fondren's attorney regularly inspected the progress of the remodeling efforts. These inspections were on behalf of Fondren. Fondren could easily have protected herself by filing a notice of non-responsibility. She had actual knowledge of the work being performed *on her property*.

106 Nev. at 709, 800 P.2d at 721 (citation omitted) (emphasis added). We also made clear that a predominant purpose for the "notice requirement [in NRS 108.245] is to provide the owner with knowledge that work and materials are being *incorporated into the property*." *Id.* at 710, 800 P.2d at 721 (emphasis added).

Similarly, the property owner in *Hardy* "regularly inspected *the project site*." 126 Nev. at 540, 245 P.3d at 1157 (emphasis added). Indeed, we explicitly stated that "[a]ctual knowledge may be found where the owner has supervised work by the third party, reviewed billing statements from the third party, or any other means that would make the owner aware that the third-party claimant was involved with *work performed on its property*." *Id.* at 542, 245 P.3d at 1158 (emphasis added). We further explained that NRS 108.245 "protect[s] owners from hidden claims and . . . [t]his purpose would be frustrated if mere knowledge of construction is sufficient to invoke the actual knowledge exception against an owner by any contractor. Otherwise, the exception would swallow the rule." *Id.* at 542, 245 P.3d at 1159.

This rationale equally pertains to offsite architectural work performed pursuant to an agreement with a prospective buyer when there is no indication that onsite work has begun on the property, and no

showing has been made that the offsite architectural work has benefited the owner or improved its property. As this court has consistently held, a lien claimant has not substantially complied with the mechanic's lien statutes when the property owner is prejudiced by the absence of strict compliance. *Las Vegas Plywood & Lumber*, 98 Nev. at 380, 649 P.2d at 1368; *Durable Developers*, 102 Nev. at 410, 724 P.2d at 743. As the *Hardy* court recognized, to conclude otherwise would frustrate the purpose of NRS 108.245, and the actual notice exception would swallow the rule. 126 Nev. at 542, 245 P.3d at 1159.

A property owner may be prejudiced by a lien claim from an architect for a prospective buyer who has failed to provide the pre-lien notice in at least two ways under Nevada's statutory scheme. First, without a showing that the architectural work has improved the property, the property owner assumes the risk for payment of a prospective buyer's architectural services for a project that may never be constructed on the property. Other jurisdictions have recognized that mechanics' liens for offsite architectural services when no work has been incorporated into the property pose a substantial risk of prejudice to property owners. See generally Kimberly C. Simmons, Annotation, *Architect's Services as Within Mechanics' Lien Statute*, 31 A.L.R.5th 664, Art. II § 4(b) (1995). For example, in *Kenneth D. Collins Agency v. Hagerott*, the Supreme Court of Montana upheld a lower court's decision refusing to allow an architect to foreclose on a mechanic's lien. 684 P.2d 487, 490 (1984). There, the court decided that, notwithstanding Montana law allowing architects to lien for architectural work and services, the architect could not foreclose on his lien because he did not "provide[] services that contributed to structural improvement and, thus, enhancement of the property." *Id.*

Second, although NRS 108.234 generally provides that an owner with knowledge of an "improvement constructed, altered or repaired upon property" is responsible for liens on its property, NRS 108.234(1), a disinterested owner may avoid responsibility for a lien if he or she gives a notice of non-responsibility after he or she "first obtains knowledge of the construction, alteration or repair, or the intended construction, alteration or repair," NRS 108.234(2). "Disinterested owner" is defined as a property owner who "[d]oes not personally or through an agent or representative, directly or indirectly, contract for or cause a work of improvement, or any portion thereof, to be constructed, altered or repaired upon the property or an improvement of the owner."³ NRS 108.234(7)(b). In this case, Iliescu is not a disinterested owner as he indirectly caused architectural work to be performed pursuant to a contract with a prospective buyer.

While we have recognized in a lease context that the "knowledge of . . . intended construction" language is satisfied when the owner leases property with terms requiring the lessee to make all necessary repairs and improvements, we have only determined as such when the agreement was actually completed. *See Gould v. Wise*, 18 Nev. 253, 259, 3 P. 30, 31 (1884). Unlike a completed lease agreement, the agreement between Iliescu and BSC was contingent upon completion of the purchase of the property. Because Iliescu was not a disinterested owner, and the agreement was contingent upon completion of the purchase of the property, Iliescu was unable to give a notice of non-

³A "disinterested owner" must also not have recorded a notice of waiver pursuant to NRS 108.2405. NRS 108.234(7)(a).

responsibility to protect himself from mechanics' liens for offsite architectural work performed pursuant to a contract with the prospective buyer. Were we to apply the actual notice exception in these circumstances, a notice of non-responsibility may not protect property owners from costs incurred by prospective buyers when there has been no enhancement or improvement to the property.

In furtherance of the protections for property owners contemplated in NRS 108.245, we decline to extend the actual notice exception to the circumstances in this case. We thus conclude that the actual notice exception does not extend to offsite architectural work performed pursuant to an agreement with a prospective buyer when no onsite work of improvement has been performed on the property.

It does not appear from the record before us that any onsite work had begun on Iliescu's property at the time Steppan recorded his mechanic's lien for the offsite work and services he performed. And the record fails to reveal any benefit or improvement to Iliescu's property resulting from the architectural services Steppan provided. As such, the actual notice exception does not apply. Because the actual notice exception does not apply and there is no dispute that Steppan did not otherwise provide Iliescu with the required pre-lien notice, we conclude that the district court erroneously found that Steppan had substantially complied with NRS 108.245's pre-lien notice requirements.⁴

⁴Based on our conclusion that the actual notice exception does not apply in this case, we do not reach Iliescu's argument regarding the applicability of NRS 108.245(6) when the actual notice exception does apply. Similarly, as our conclusion on the actual notice issue is dispositive, we decline to reach the parties' remaining arguments on appeal.

Accordingly, we reverse the district court's order foreclosing Steppan's mechanic's lien and remand this matter to the district court for it to enter judgment in favor of Iliescu.

Hardesty, J.
Hardesty

We concur:

Cherry, C.J.
Cherry

Gibbons, J.
Gibbons

Parraguirre, J.
Parraguirre

Douglas, J.
Douglas

Pickering, J.
Pickering


Stiglich, J.
Stiglich

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Supreme Court Clerk, State of Nevada

By  Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

CV07-60341
No. 68346 DID

JOHN ILIESCU, JR., INDIVIDUALLY;
AND JOHN ILIESCU, JR. AND
SONNIA ILIESCU, AS TRUSTEES OF
THE JOHN ILIESCU, JR. AND SONNIA
ILIESCU 1992 FAMILY TRUST
AGREEMENT,
Appellants,
vs.
MARK B. STEPPAN,
Respondent.

FILED

SEP 21 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c).

It is so ORDERED.

Cherry C.J.
Cherry

Gibbons, J.
Gibbons

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Stiglich, J.
Stiglich

DOUGLAS, J., with whom PICKERING, J., agrees, dissenting:

We would grant rehearing of this matter.

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Elliott A. Sattler, District Judge
Second Judicial District Court Dept. 6
Albright Stoddard Warnick & Albright
Hoy Chrissinger Kimmel Vallas PC
Washoe District Court Clerk

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DATE: 10/17/17

Supreme Court Clerk, State of Nevada

By Mitcal Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN ILIESCU, JR., INDIVIDUALLY; AND JOHN
ILIESCU, JR. AND SONNIA ILIESCU, AS
TRUSTEES OF THE JOHN ILIESCU, JR. AND
SONNIA ILIESCU 1992 FAMILY TRUST
AGREEMENT,
Appellants,
vs.
MARK B. STEPPAN,
Respondent.

Supreme Court No. 68346
District Court Case No. CV0700341

DIO

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"Reversed and remanded."

Judgment, as quoted above, entered this 25th day of May, 2017.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"Rehearing Denied."

Judgment, as quoted above, entered this 21st day of September, 2017.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada this October 16, 2017.

Elizabeth A. Brown, Supreme Court Clerk

By: Niki Wilcox
Deputy Clerk



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Second Judicial District Court - State of Nevada
Civil

Case Title:

MARK STEPPAN VS. JOHN ILIESCU, ETAL
(D10)

Document(s) Submitted:

Supreme Court Remittitur
Supreme Ct Clk's Cert & Judg
Supreme Court Order Denying
Supreme Court Opinion

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ILIESCU, JR.

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PEEK DENNISON HOWARD, KAREN D.
DENNISON, HOLLAND & HART, LLP, R. CRAIG
HOWARD

DAVID R. GRUNDY, ESQ. for HALE LANE PEEK
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GREGORY FRANCIS WILSON, ESQ. for JOHN
SCHLEINING

STEPHEN C. MOLLATH, ESQ. for SONNIA
ILIESCU, JOHN ILIESCU, JR.

THOMAS J. HALL, ESQ. for JOHN &
SONNIA, TRUSTES JOHN ILIESCU, JR & SONNIA
ILLIESCU TRST, SONNIA ILIESCU, JOHN
ILIESCU, JR.

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LANE PEEK DENNISON HOWARD, JERRY M.
SNYDER, KAREN D. DENNISON, R. CRAIG
HOWARD

MICHAEL D. HOY, ESQ. for MARK B. STEPPAN
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OREGON INC., JOHN SCHLEINING

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SONNIA, TRUSTES JOHN ILIESCU, JR & SONNIA
ILLIESCU TRST

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SONNIA ILLIESCU TRST for SONNIA ILIESCU,
JOHN ILIESCU, JR.

MATTHEW F. QUINT, ESQ. for JOHN
SCHLEINING

JUDITH A. OTTO, ESQ. for CONSOLIDATED
PACIFIC DEVELOPMENT INC. (NV CORP.)

CALVIN BATY

SONNIA ILIESCU for JOHN & SONNIA, TRUSTES
JOHN ILIESCU, JR & SONNIA ILLIESCU TRST