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 12:57 p.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 IX

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

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Counsel for Appellants

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		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 IX**, 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

CODE: 1950
G. MARK ALBRIGHT, ESQ., #001394
D. CHRIS ALBRIGHT, ESQ., #004904
ALBRIGHT, STODDARD, WARNICK & ALBRIGHT
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Attorneys for Defendants

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

JOHN ILIESCU, JR.; SONNIA SANTEE ILIESCU; and JOHN ILIESCU, JR. and SONNIA ILIESCU, as Trustees of the JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT, Applicants, vs. MARK B. STEPPAN, Respondent.	CASE NO. CV07-00341 (Consolidated w/CV07-01021) DEPT NO. 10 **THE ILIESCUS' VERIFIED MEMORANDUM OF COSTS**
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 all original prior consolidated case(s).	

COME NOW, John Iliescu, Jr. and Sonnia Santee Iliescu, Individually and as Trustees of the John Iliescu Jr. and Sonnia Iliescu 1992 Family Trust, the Applicants in Case No. CV07-00341 and the Defendants in Case No. CV07-01021, consolidated therewith (hereinafter the "Iliescus" or "Movants"), and being entitled to costs which "must" be awarded as a matter "of course" pursuant to

NRS 18.020(1) and (5), inasmuch as these consolidated mechanic's lien expungement and foreclosure suits dealt with title to real property; and also being so entitled under NRS 18.020(3), as this action involved attempts by Mark Steppan to obtain more than $2,500.00 via a lien foreclosure sale as to a mechanic's lien in excess of that amount; the Iliescus, by and through their undersigned counsel of record hereby file this Verified Memorandum of Costs pursuant to NRS 18.110 and NRS 18.005. The Iliescus reserve all rights, if any, to supplement or revise this memorandum as additional information, if any, becomes available to them:

COSTS INCURRED WITH ALBRIGHT STODDARD:[1]

STATUTE	DESCRIPTION	AMOUNT
NRS 18.005(1)	Clerk's Fees [Washoe Court Clerk (Notice of Appeal)]	$ 34.00
NRS 18.005(2)	Deposition Reporter's Fees	N/A
NRS 18.005(3)	Juror's Fees	N/A
NRS 18.005(4)	Trial Witness Fees	N/A
NRS 18.005(5)	Expert Witness Fees up to $1,500.00	N/A
NRS 18.005(6)	Interpreter	N/A
NRS 18.005(7)	Service of Process Fees	N/A
NRS 18.005(8)	Court Reporter/Transcript Fees [*See also* NRAP 39(e)]	473.25
NRS 18.005(9)	Bond Fees	N/A
NRS 18.005(10)	Overtime Bailiff Fees	N/A
NRS 18.005(11)	Telecopy/Fax Costs	N/A
NRS 18.005(12)	Photocopies	2,147.30
NRS 18.005(13)	Long Distance Call Charges	N/A
NRS 18.005(14)	Postage (Including FedEx)	218.31
NRS 18.005(15)	Deposition Travel and Lodging	N/A
NRS 18.005(16)	State IAFD Fees	N/A
NRS 18.005(17)	Westlaw (On-line research)	11,889.89
NRS 18.005(17)	Travel Expenses for Attendance at Reno Hearings	2,599.36
NRAP 39(e)	Notice of Appeal Supreme Court Filing Fee	250.00
NRAP 39(e)	Appellate Cost Bond Fee	500.00[2]
	TOTAL	$ 18,112.11

COSTS INCURRED WITH ATTORNEY C. NICHOLAS PEREOS:[3]

STATUTE	DESCRIPTION	AMOUNT
NRS 18.005(2)	Deposition Reporter's Fees	$ 390.00
NRS 18.005(4)	Trial Witness Fees	1,476.71

[1]Excluding costs relating to claims against Hale Lane or other current or former third party Defendants.

[2]Unless refunded, in which event this $500.00 will be withdrawn from this bill of costs.

[3]Pereos' representation did not include substantive involvement in third party (Hale Lane etc.) claims, which were stayed during the pendency of his representation.

STATUTE	DESCRIPTION	AMOUNT
NRS 18.005(5)	Reasonable Expert Witness Fees	$ 4,940.00[4]
NRS 18.005(7)	Service of Process Fees	460.00
NRS 18.005(8)	Court Reporter/Transcript Fees [*See also* NRAP 39(e)]	3,861.48
NRS 18.005(11)	Telecopy/Fax Costs	86.00
NRS 18.005(12)	Photocopies	2,179.75
NRS 18.005(13)	Long Distance Call Charges	10.05
NRS 18.005(14)	Postage [Including FedEx]	94.84
	TOTAL	$ 13,498.83

COSTS INCURRED WITH ATTORNEY STEVEN C. MOLLATH:

STATUTE	DESCRIPTION	AMOUNT
NRS 18.005(2) and (8)	Deposition Reporter's Fees/Court Reporter Transcript Fees *See also* NRAP 39(e)	$ 4,478.05
NRS 18.005(12)	Photocopies (x .5)[5]	1,184.56
NRS 18.005(14)	Postage/Shipping (x .5)	7.95
NRS 18.005(17)	Courier Expenses (x .5)	36.62
	TOTAL	$ 5,707.18

COSTS INCURRED WITH ATTORNEYS AT DOWNEY BRAND:[6]

STATUTE	DESCRIPTION	AMOUNT
NRS 18.005(1)	Initial Answer Filing Fee	$ 135.00
NRS 18.005(8)	Court Reporter/Transcript Fees [*See also* NRAP 39(e)]	228.00
NRS 18.005(11)	Telecopy/Fax Costs (x .5)	16.36
NRS 18.005(12)	Photocopies (x .5)	834.99
NRS 18.005(13)	Long Distance Call Charges (x .5)	10.03
NRS 18.005(14)	Postage [Including FedEx] (x .5)	40.70
NRS 18.005(17)	Westlaw (On-line research) (x .5)	110.99
	TOTAL	$ 1,376.07

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[4]It is hereby averred that the circumstances surrounding this expert entitle the Iliescus to more than $1,500.00.

[5]All costs which are reduced by 50% herein are so reduced in order to account for and deduct costs possibly related solely to claims against Hale Lane and other third party defendants. Deposition and transcript costs were utilized in both matters and are not reduced.

[6]Costs clearly related to claims against Hale Lane and other third party defendants, such as Service of Process expenses for attempts to serve Hale Lane and other third-party defendants, have been excluded.

COSTS INCURRED WITH ATTORNEY THOMAS J. HALL:[7]

STATUTE	DESCRIPTION	AMOUNT
NRS 18.005(11)	Telecopy/Fax Costs	$ 2.25
NRS 18.005(12)	Photocopies	418.50
NRS 18.005(14)	Postage [Including FedEx]	9.68
NRS 18.005(17)	Westlaw (On-line research)	2,035.17
	TOTAL	$ 2,465.60

COSTS INCURRED WITH HALE LANE:

UNKNOWN[8]

TOTAL OF ALL COSTS **$ 41,159.79**

VERIFICATION PURSUANT TO NRS 18.110

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

G. MARK ALBRIGHT, being first duly sworn, states: that affiant is the attorney for the Defendants JOHN ILIESCU, JR. and SONNIA ILIESCU, individually and as Trustees of the JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT; and has personal knowledge of the above costs and disbursements incurred by the Iliescus during their representation by the law firm of Albright Stoddard, and verifies the accuracy of the same, and that, as to the other items of cost listed above, he has reviewed the invoices received by his clients (copies of which invoices were provided to him by his clients, or, as to the Mollath invoices, from their prior counsel), in order to verify and calculate the same; that the items contained in the above memorandum are true

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[7]Attorney Hall provided separate invoices for the Steppan matter vs. the claims against Hale Lane, et al., and these costs are taken solely from Hall's Steppan matter invoices.

[8]The Iliescus' initial, litigation invoices, received from Hale Lane, did not arrive until after the second or later month of representation, and set forth a prior outstanding amount which was not broken down into costs vs. fees, and for which the Iliescus have never received an allocated or hourly breakdown. The Iliescus reserve the right to supplement this Memorandum to the extent further information becomes available, but the undersigned is not able to contact Hale Lane (now Holland & Hart) directly about this matter, given that they are represented by counsel as a party herein.

and correct to the best of this affiant's knowledge and belief; and that the said disbursements are a minimum of the costs which have been necessarily incurred and paid by the Iliescus in this action.

DATED this 24th day of October, 2017.

ALBRIGHT, STODDARD, WARNICK & ALBRIGHT

G. MARK ALBRIGHT, ESQ.
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801 South Rancho Drive, Suite D-4
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gma@albrightstoddard.com
Attorney for Defendants

SUBSCRIBED and SWORN to before me this 24th day of October, 2017

ANN VITALE
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 01-09-20
Certificate No: 00-60536-1

NOTARY PUBLIC in and for said County and State

AFFIRMATION

The undersigned does hereby affirm this 24th day of October, 2017, that the preceding document filed in the Second Judicial District Court does not contain the social security number of any person.

By

G. MARK ALBRIGHT, ESQ.
Nevada Bar No. 001394
D. CHRIS ALBRIGHT, ESQ.
Nevada Bar No. 004904
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Attorneys for Defendants

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and NEFCR 9, I hereby certify that I am an employee of ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, and that on this 24th day of October, 2017, service was made by the ECF system to the electronic service list, a true and correct copy of the foregoing **VERIFIED MEMORANDUM OF COSTS**, to the following person:

Michael D. Hoy, Esq. HOY CHRISSINGER KIMMEL VALLAS, P.C. 50 West Liberty Street, Suite 840 Reno, Nevada 89501 Tel: (775) 786-8000 mhoy@nevadalaw.com *Attorney for Plaintiff Mark Steppan*	____ Certified Mail __X__ Electronic Filing/Service ____ Email ____ Facsimile ____ Hand Delivery ____ Regular Mail
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*	____ Certified Mail __X__ Electronic Filing/Service ____ Email ____ Facsimile ____ Hand Delivery ____ Regular Mail

An Employee of Albright, Stoddard, Warnick & Albright

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Attorneys for Applicants/Defendants

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

JOHN ILIESCU, JR.; SONNIA SANTEE ILIESCU; JOHN ILIESCU, JR. and SONNIA 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, 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 all pending third-party claims.

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

DEPT NO. 10

DEFENDANTS' MOTION FOR AN AWARD OF COSTS AND ATTORNEY'S FEES AND INTEREST THEREON

COME NOW, JOHN ILIESCU, JR. and SONNIA SANTEE ILIESCU, individually, and/or as Trustees of the JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT, as Applicants in Case No. CV07-00341 and as Defendants in Case No. CV07-01021 (hereinafter the "Iliescus" or "Movants"), by and through their undersigned counsel of record,

ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, and, pursuant to NRS 18.010(2)(a); NRS 108.237(3); NRS 108.2275, NRCP 68, and (former) NRS 17.115 (subsequently repealed), and NRS 17.130 hereby move for an award of their costs and attorney's fees, incurred herein, together with pre-judgment and post-judgment interest thereon.[1]

This Motion is made and based upon the following Points and Authorities, all papers and pleadings on file herein, and previously filed on appeal, and the Exhibits attached hereto, including the (previously filed) Verified Memorandum of Costs, and the Affidavit of D. Chris Albright attached herewith.

DATED this 3rd day of November, 2017.

ALBRIGHT, STODDARD, WARNICK & ALBRIGHT

By _____
G. MARK ALBRIGHT, ESQ.
Nevada Bar No. 001394
D. CHRIS ALBRIGHT, ESQ.
Nevada Bar No. 004904
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Attorneys for Applicants/Defendants

I.

STATEMENT OF FACTS

A. Procedural History.

On November 7, 2006 a mechanic's lien notice was recorded in the name of Mark B. Steppan ("Steppan") against the Iliescus' property as described therein, located in Reno, Nevada, for moneys allegedly due and owing to Steppan for architectural services provided by his employer (California architectural firm Fisher Friedman & Associates) to BSC Consolidated, an entity which had received an assignment of purchase rights under a purchase agreement between the Iliescus, as sellers, and a

[1]In addition to the costs sought via this Motion, the Iliescus have also sought their costs in the due and ordinary course under NRS 18.020(1)(3) and (5), via the filing of a Verified Memorandum of Costs filed herein under NRS 18.110 and NRS 18.005, on October 24, 2017. To the extent that costs are awarded under NRS 18.005 through NRS 18.110, those costs need not be duplicated and this Motion may to that extent be treated as a Motion solely for fees, and for interest on costs and fees awarded.

purchaser originally known as Consolidated Pacific Development. Steppan would amend this lien twice. The services had been provided while the property was in escrow, for a planned development to be developed by the purchaser after escrow closed, which closing never occurred, causing the Iliescus to receive their still unimproved property back out of escrow subject to Steppan's lien claim. *See, generally, Iliescu v. Steppan*, 133 Nev.Adv.Op. 25,[2] 394 P.3d 930[3] (May 25, 2017), *reh'g denied*, September 21, 2017.

On February 14, 2007, the Iliescus filed an Application for Release of the Mechanic's Lien (initiating Case No. CV07-00341), arguing, inter alia, that Steppan had failed to provide the notice of right-to-lien, required by NRS 108.245 within 31 days after commencement of any work for which a lien may later be sought, rendering the lien invalid under NRS 108.245(3). This Application initiated the first of these two consolidated cases. Steppan then filed a separate lawsuit, on May 4, 2007 (Case No. CV07-01021), to foreclose on his lien. The two suits were then consolidated.

Litigation proceeded, including various rulings on partial summary judgment motions, and the like, an interim appeal which was dismissed, and a four day bench trial, following which this District Court entered its Findings of Fact, Conclusions of Law, and Decision on May 28, 2014 (Transaction #4451229). These rulings were challenged by the Iliescus, in a Rule 60(b) Motion (Transaction #4669480) on which this Court allowed several hours of oral argument, over the course of two mornings, before the same was denied (Transaction #4860752). A final Judgment, Decree and Order for Foreclosure of Mechanic's Lien (Transaction #4836215), upholding the Steppan Mechanic's Lien, setting forth the amount of such lien, including every dime of costs, attorneys' fees, and interest sought by Steppan to be included therewith, and ordering the lien foreclosure sale of the Iliescu property, as defined in Steppan's lien, was then entered on February 26, 2015. A Motion to Alter or Amend the Judgment (Transaction #4854109) was denied (Transaction #4971032), and a Notice of Appeal to the Nevada Supreme Court followed (Transaction #5012224).

In conjunction with their anticipated appeal, the Iliescus had sought an Order from this District Court staying the mechanic's lien foreclosure sale, pending the appeal, without the necessity of posting

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[2]**Exhibit "A"** hereto.

[3]**Exhibit "B"** hereto.

any further bond (beyond the lien itself) (Transaction #5000619) which motion this District Court denied. (Transaction #5069048). This same relief was then sought from the Nevada Supreme Court, and was granted. *See*, Nev. Sup. Ct. Order to Show Cause attached as **Exhibit "C"** hereto, at first paragraph thereof.[4]

The appeal then proceeded. The first issue presented for review to the Nevada Supreme Court was as follows:

> Whether the district court erred in excusing mechanic's lien claimant Steppan's failure to provide the Iliescus, as property owners, with the Pre-Lien Notice required by NRS 108.245, by relying on the "actual notice" exception to that statute, established in *Fondren v. K.L. Complex Ltd. Co.*, 106 Nev. 750, 800 P.2d 719 (1990), even though no actual notice by the Iliescus of the *identity* of lien claimant Steppan was demonstrated, and the lien was solely for *offsite* design services, with no construction commencing "upon" the property as had occurred in *Fondren*.

See, Iliescus' Appellants Opening Brief, attached as **Exhibit "D"** hereto, at p. 1. Although mechanic's lien cases are presumed to be under the initial appellate jurisdiction of Nevada's intermediate appellate Court of Appeals, pursuant to NRAP 17(b)(3) (as noted in the Routing Statement of the Appellants' Opening Brief, at p. 1), the Nevada Supreme Court routed this appeal to itself, bypassing the intermediate court of appeals. The high court also bypassed the panel assignment system and scheduled an initial *en banc* hearing, on January 3, 2017, not before the Northern Panel, but before the entire 7-Member Court, without the necessity of any prior arguments to the intermediate appellate court or to a 3-justice regional panel.

On May 25, 2017, the Nevada Supreme Court, reviewing the legal issues *de novo*, unanimously reversed this district court's ruling, and remanded, with instructions for this Court to enter a new judgment in favor of the Iliescus. *See*, *Iliescu v. Steppan*, 133 Nev. Adv. Op. 25, 394 P.3d 930 (2017). The high court's 7-0 decision was essentially based on Appellants' first issue on appeal, and cited "NRS 108.245(1) [which] 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" (*Iliescu*, at pp. 1-2, 394 P.3d at 932 [bracketed language added]). The Decision also referenced NRS 108.245(3), under which "[n]o lien . . . can be perfected or enforced unless the

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[4]The Order to Show Cause portion of this **Exh. "C"** Order was subsequently responded to, and the Nevada Supreme Court determined that this Court's February 26, 2015 Judgment was properly certified and was final and appealable, and allowed the appeal to proceed thereon.

claimant gives the property owner the required notice." *Id.* at p. 6; 394 P.3d at 934. Steppan had, at the trial court level, successfully invoked certain of the Nevada cases which have created an "actual notice" exception to this statutory mandate (herein, the "actual notice cases").[5] However, all of these actual notice cases, which had created and upheld this exception, dealt with actual notice of work being performed *upon the property*, and the Supreme Court declined to extend this exception to offsite design work, such as the work for which Steppan was liening, ruling instead as follows:

> 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 the prospective buyer when no onsite work of improvement has been performed on the property.
>
> . . . .
>
> 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.

Id. at 11, 394 P.3d at 935-36.

Because its conclusion on the actual notice issue was dispositive, the Nevada Supreme Court declined to reach the appellants' remaining arguments on appeal, reversed this Court's Judgment, and remanded the matter back to this District Court "for it to enter judgment in favor of Iliescu." *Id.* Steppan filed a Petition for Rehearing which the Nevada Supreme Court denied, on a 5-2 vote, without explanation by the two dissenting justices, on September 21, 2017; and Remittitur thereafter issued and was filed with the Washoe County Clerk, on October 17, 2017.

B. <u>The Offer of Judgment</u>.

During the litigation, the Iliescus submitted and served an Offer of Judgment, attached hereto as **Exhibit "E"** in the amount of $25,000.00, for the purposes specified in NRCP 68 and NRS 17.115 (prior to its repeal), dated September 13, 2011. The Offer of Judgment attached hereto as **Exh. "E"** was signed by the Iliescus' then attorney Thomas J. Hall, and was served on Plaintiff's counsel, Michael D. Hoy, by hand-delivery to Mr. Hoy's office on September 13, 2011. **Exh. "E"** at p. 3.

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[5] *Board of Trustees v. Durable Developers*, 102 Nev. 401, 724 P.2d 736 (1986); *Fondren v. KL Complex, Ltd.*, 106 Nev. 705, 800 P.2d 719 (1990); and *Hardy Companies Inc. vs. SNMARK, LLC*, 126 Nev. 528, 540 245 P.3d 1149, 1157 (2010).

C. **Attorneys' Fees and Costs.**

Dr. Iliescu is now 91 years old. He and Mr. Iliescu have been involved in this dispute since 2006, over a decade. During that time, for pre-trial procedures and motions, a full trial on the merits, post-trial motions, and the appeal, the Iliescus have incurred at least $654,947.62 in attorneys' fees, as shown by the Affidavit of D. Chris Albright regarding attorneys' fees attached as **Exhibit "F"** hereto, and $41,072.59 in costs, as shown by the Verified Memorandum of Costs, attached as **Exhibit "G"** hereto (subtracting one inadvertent error from that Verified Memorandum, and excluding certain of the costs and fees incurred pursuing claims relating to or against third-parties). The **Exh. "F"** Affidavit also indicates that, following service of the Offer of Judgment, $509,295.62 in fees and $35,310.75 in costs were incurred. Interest on Iliescus' costs and fees incurred, calculated at Nevada's current legal rate of 6.25% from the end of the year(s) on which the same were incurred, would be calculated as is set forth in the **Exh. "F"** Affidavit, at paragraphs 11 and 12, and equals $183,950.51 in interest sought by the Iliescus herein, through October 31, 2017, with interest to continue to accrue on any costs and fees award at Nevada's legal rate, until paid in full.

II.

LEGAL ANALYSIS

This Motion for the Iliescus' costs and attorneys' fees, incurred prior to judgment finally entered in their favor, is based on the following statutory provisions: (i) NRS 18.010(2)(a); (ii) on Nevada's mechanic's lien statutes, at NRS 108.237(2), and NRS 108.2275(6); and finally (iii) on Nevada's Offer of Judgment rules, NRCP 68 and (prior) NRS 17.115 (applicable based on the September 13, 2011 date of the Offer of Judgment, prior to that statute's repeal). Each of these bases for the Iliescus' requested award of costs and attorneys' fees is explained in greater detail below. (In addition to the costs sought via this Motion, the Iliescus have also sought their costs in the due and ordinary course under NRS 18.020(1), (3) and (5), via the filing of a Verified Memorandum of Costs filed herein under NRS 18.110 and NRS 18.005, on October 24, 2017. To the extent that costs are awarded under NRS 18.005 through NRS 18.110, those costs need not be duplicated and the instant Motion may to that extent be treated as a Motion solely for fees, and for any costs not already otherwise awarded, and for interest thereon.)

A. NRS 18.010(2)(a).

This statute provides that "the court may make an allowance of attorney's fees to a prevailing party" when that party "has not recovered more than $20,000.00." The Iliescus are the prevailing parties in this matter. However (other than any costs and fees which may be awarded them) they have recovered no principal moneys (*i.e.*, they have recovered less than $20,000.00) from Steppan herein, and, thus, may be awarded their fees under this provision.

B. NRS 108.237 and NRS 108.2275(6) Arguments.

The second basis upon which to award fees to Movants is found in Nevada's mechanic's lien statutes, NRS 108.237(3). Subsection (3) of that statute provides as follows:

> **NRS 108.237 Award of lienable amount, cost of preparing and recording notice of lien, costs of proceedings and representation and other amounts to prevailing lien claimant; calculation of interest; award of costs and attorney's fees when lien claim not upheld.**
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> . . . .
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> 3. If the lien claim is not upheld, the court may award costs and reasonable attorney's fees to the owner or other person defending against the lien claim if the court finds that the notice of lien was pursued by the lien claimant without a reasonable basis in law or fact.

Similarly, NRS 108.2275(6)(a), allows the prevailing petitioner in an NRS 108.2275 action to pursue its costs and fees, if the lien is found to have been "frivolous and made without reasonable cause." The Iliescus are now the prevailing party in Steppan's lien foreclosure suit, and in their original NRS 108.2275 proceeding.

(i) *Steppan's Lien Was Pursued Without a Reasonable Basis in Law or Fact.*

It should first of all be noted that the Iliescus are entitled to their fees under NRS 108.237(3) (and under the similar standard set forth in NRS 108.2275(6)(a)), because Steppan pursued his notice of lien without a reasonable basis in law or fact.

Only lien claimants who substantially comply with the lien statute are entitled to a lien. *See, e.g., Hardy*, supra, 126 Nev. at 536, 245 P.3d at 1155 ("Failure to . . . substantially comply with the mechanic's lien statute will render a mechanic's lien invalid as a matter of law."). Steppan failed however to comply with NRS 108.245(1), by providing the Iliescus with a written notice of his potential lien rights, as required by that statute, within 31 days after commencing any work on which

a lien might later be claimed. This rendered his lien unenforceable, including under NRS 108.245(3). Steppan's lien thus had no basis in fact.

Steppan relied on certain Nevada Supreme Court cases (the actual notice cases identified in footnote 5 above), to claim that he did not have to provide NRS 108.245 notice to the owners of his lien claim, if he could establish actual notice of the architectural work by the Iliescus. However, the two (2) cases he initially relied on, and the third case he eventually also relied on[6] each involved work performed "upon" property, whereas the design work for which his lien was claimed was *not* performed upon the property, but was performed offsite. Steppan's lien thus could not and did not ultimately withstand legal scrutiny, as he violated NRS 108.245(1); as that violation rendered his lien unenforceable under NRS 108.245(3); and as the case-law exception to that statute, on which Steppan attempted to rely, simply did not apply to the facts of this case. *Iliescu v. Steppan*, 133 Nev. Adv. Op. 25, 394 P.3d 930 (2017). Steppan's claims were, therefore, from the outset, without basis on any Nevada law, or on any fact, existing at any time during this litigation, which continued to be the case after appeal. The *Iliescu* Decision of the Nevada Supreme Court did not change Nevada law, but merely *declined to extend* a case law exception to the statutory mandate of NRS 108.245, decided under very different facts to Steppan's scenario, and then simply and merely upheld NRS 108.245 as the same has long existed.

Fees are therefore awardable under NRS 108.237(3) (as well as under the similar provisions of NRS 108.2275(6)(a)).

This fact is even more clearly demonstrated when Steppan's other failures to substantially comply with the mechanic's lien statute, which the Nevada Supreme Court did not even bother to reach, are also considered. For example, even if Steppan were entitled to rely on the actual notice exception to NRS 108.245 for his off-site work (which, legally, he was not), he did not establish when the Iliescus purportedly received actual notice of the architectural work commencing, or when the work was performed, for purposes of demonstrating whether any of the work performed was lienable under NRS 108.245(6), as having been performed after a date falling not more than 31 days before,

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[6]The third actual notice case, the *Hardy* case, was decided after entry of partial summary judgment, but before the trial, in this instant action.

the actual notice date. *See*, Appellants Opening Brief, **Exh. "D"** hereto, at pp. 39-42. Moreover, Steppan also failed to comply with NRS 108.226, in that he provided no 15 day notice of intent to lien before recording his original lien, an error he attempted to correct after the fact, but which failure to provide mandatory *prior notice*, could not be remedied *subsequently*. **Exh. "D"** at pp. 42–43. Steppan's failures also included failure to comply with the timing requirements to file his lien foreclosure suit, and other failures. *Id.* The State Supreme Court determined it did not even need to reach these multiple issues given Steppan's clear-cut failure to abide by NRS 108.245(1). **Exh. "A"** hereto at pg. 11, footnote 4. Nor did that Court even need to reach the issue of Steppan's failure to prove that he was liening for work performed by or through him. *Id.* **Exh. "D"** at pp. 6-22; 43-50.

Nevertheless, *all* of these failures demonstrate that the Iliescus are entitled to recover their fees and costs under NRS 108.237(3) (and under the similar provisions of NRS 108.2275(6)(a)), as Steppan's lien was pursued without a reasonable basis in law or in fact.

(ii) *Any Contrary Ruling Would Render the Lien Statute's Costs and Fees Provisions Unconstitutional, as Violating the Equal Protection Clause of the U.S. Constitution and the General and Uniform Operation Clause of the Nevada Constitution.*

It is anticipated that Steppan will claim his lien was pursued with at least a reasonable basis, as demonstrated by the success he initially enjoyed throughout the District Court's proceedings, even though he ultimately lost on appeal, for his clear failure to comply with NRS 108.245. However, any acceptance of this argument would render the costs and fee provisions of Nevada's mechanic's lien statute unconstitutional, as applied to this case.

A successful mechanic's lien claimant is required to be awarded its fees, as a matter of course, under NRS 108.237(1).

> 1. The court **shall award** to a **prevailing lien claimant**, whether on its lien or on a surety bond, the lienable amount found due to the lien claimant by the court and the cost of preparing and recording the notice of lien, including, without limitation, *attorney's fees*, if any, and interest. The court **shall also award** to the prevailing lien claimant, whether on its lien or on a surety bond, the costs of the proceedings, including, without limitation, *reasonable attorney's fees*, the costs for representation of the lien claimant in the proceedings, and any other amounts as the court may find to be justly due and owing to the lien claimant. [Emphasis added.]

On the other hand, as was already quoted previously, a property owner who successfully defends against a mechanic's lien case "may" receive such fees, only "if" the lien claim was pursued

without a reasonable basis in law or fact, under the current version of the statute. NRS 108.237(3). Applying an overly deferential (to the lien claimant) analysis to this statutory structure would erect a strangely high barrier to successful mechanic's lien defendants, which is not also placed before successful lien claimants under the statute. This is obviously unfair and obviously unequal treatment, on its face. For example, when Steppan was the prevailing party, he appears to have received every last dime of costs, fees, and interest he sought, as the prevailing party, which, taken together, resulted in his lien growing from $1,753,403.73 in principal, to $4,536,263,45, *i.e.*, involving an award of over $2,782,859.72 above and beyond the principal amount of the lien, solely for Steppan's claimed costs, interest, and fees! By contrast, if Steppan's anticipated arguments were to be accepted, the Iliescus, now that they are the prevailing party, could conceivably be awarded zero fees or costs (and thus, also no interest, thereon). Thus, after Steppan received $2,782,859.72 in fees, costs and interests, the Iliescus would be denied their far more modest claim, seeking only $879,970.72 in fees, costs, and interest. A more clear-cut example of a violation of the equal protection clause would be difficult to imagine. Thus, any such outcome in this case would mean that the statute, as applied to this case, was in violation of the U.S. and Nevada Constitution.

With respect to our Nevada Constitution, such unfair and unequal treatment violates Article IV, Section 21, thereof, which requires that all laws be "general and of uniform operation throughout the state." This clause has been treated by the Nevada Supreme Court as equivalent to the "equal protection" clause of the 14th Amendment in the U.S. Constitution, with the same standard, for testing the validity of legislation, to be applied to both clauses, as that standard has been enunciated by the U.S. Supreme Court. *See Laakonen v. District Court*, 91 Nev. 506, 538 P.2d 574 (1975)(equating the "general and . . . uniform operation" clause of the Nevada Constitution, Article IV Section 21, to the "equal protection" clause of the 14th Amendment to the U.S. Constitution, and striking down Nevada's former guest statute as in violation of both provisions, under the U.S. Supreme Court's "equal protection" case law standards).

Under that U.S. Supreme Court standard, it is a violation of equal protection principles for states to adopt provisions creating private causes of action, wherein the prevailing litigants are provided unequal access to attorneys' fees and similar relief. For example, in *Gulf C&SF Railway Co.*

v. Ellis, 165 U.S. 150, 17 S.Ct. 255 (1900), the U.S. Supreme Court reviewed a Texas statute which provided a private right of action against railway companies for various types of railway shipping debts or railway caused damage to livestock or other personal property. The statute allowed a successful claimant in such a suit to obtain its attorneys' fees, with no similar provision in favor of the railway if it should prevail in defending such a suit. The unconstitutionality of this unequal treatment was explained by the U.S. Supreme Court as follows:

> **If litigation terminates adversely to [the railway companies], they are mulcted in the attorney's fees of the successful plaintiff; if it terminates in their favor, they recover no attorney's fees.** It is no sufficient answer to say that they are punished only when adjudged to be in the wrong. **They do not enter the courts upon equal terms. They must pay attorney's fees if wrong. They do not recover any if right; while their adversaries recover if right, and pay nothing if wrong.** In the suits, therefore, to which they are parties, they are discriminated against, and are not treated as others. **They do not stand equal before the law. They do not receive its equal protection.** All this is obvious from a mere inspection of the statute.

Id. at 153; 256 [emphasis added].

Similarly, in the present case, a mechanic's lien claimant, and the owner affected by such a mechanic's lien "do not enter the courts upon equal terms." Rather, the lien claimant "shall" be awarded costs and attorneys' fees if he or she prevails, as a matter of right, but the property owners are given no such guaranty if they prevail in their defense, and are instead required to overcome an incredibly high bar to recover any costs or attorneys' fees in such a case (unless this Court correctly awards fees and costs under NRS Chapter 18, which applies regardless of NRS 108.237, or awards costs and fees under NRS 108.237(3), based on the analysis providing a rationale for doing so, set forth above). Thus, the property owner defendants "are discriminated against, and are not treated as others. They do not stand equal before the law. They do not receive its equal protection. All this is obvious from a mere inspection of the statute" which, on its face, indicates that a prevailing lien claimant "shall" be afforded attorneys' fees, but a prevailing defendant "may" be granted its fees thereunder, only in certain limited circumstances. Successful mechanic's lien claimants are not required to show that the defense to their claims was without any reasonable basis, in order to automatically obtain their attorneys' fees. As such, owners who successfully defend against mechanic's lien claims should not

be required to do so either, and any contrary statutory language must be stricken.[7]

Any other outcome would be unconstitutional under equal protection principles. *See, e.g., Openshaw v. Halfin*, 68 P. 138, 139 (Ut. 1902) (accepting argument that statute allowing recovery of attorney's fees in an action by a plaintiff mortgagor, for failure to release a satisfied mortgage, but not allowing fees to a successful defendant, was "unconstitutional and void, because it denies to the defendant the equal protection of the law, in that it gives the plaintiff an attorney's fee if he obtains judgment, but it does not make the same provision for the defendant if he secures judgment against the plaintiff."); *Randolph v. Builder's Electric Supply, Co.* 17 So. 721 (Ala. 1895) (mechanic's lien statute which allowed only successful lien claimants to recover fees, but not a prevailing defendant, was unconstitutional under equal protection clause of Alabama constitution); *Merced Lumber Co. v. Bruschi*, 92 P. 844 (Cal. 1907) (unconstitutional to allow fees only for prevailing lien claimants); *Davidson v. Jennings*, 60 P. 354 (Colorado 1900) (Lien statute discriminatory where "like fee" is not allowed to defendant owners as to plaintiff lien claimants); *Atkinson v. Woodmansee*, 74 P. 640 (Kan. 1903) (allowing prevailing lien claimants to recover attorneys' fees not awarded to prevailing owners violates equal protection).

However, a statute which creates a private right of action, and allows recovery of attorney's fees by *either* a *prevailing plaintiff* **or** a *prevailing defendant*, on equal grounds, does not raise these constitutional concerns. For example, in 1929 the Nevada Supreme Court, in reviewing an earlier version of the Nevada mechanic's lien statute then in effect (Section 2224, Rev. Laws), upheld the validity of the attorney's fee provisions therein (which indicated the court "shall . . . allow to the prevailing party reasonable attorney's fees") because they applied equally to either party, if it ultimately prevailed. More particularly, in *Hobart Estate Co. v. Jones*, 51 Nev. 315, 274 P. 921 (1929) the Nevada Supreme Court upheld this mechanic's lien statute, and rejected an argument that it should apply a California case, which had overturned a statute allowing only the prevailing lien claimant to obtain its attorneys' fees, reasoning in pertinent part: "The [California] case is not in point, **since our**

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[7]The arguments set forth in this portion of the brief apply to NRS 108.237(1) and (3) as read by Steppan and are made without waiving any claim to fees or costs which may be awarded by this Court under the Iliescus' argued for application of NRS 108.237 or under other statutory provisions, which might, to the extent of any such award, render this portion of this brief moot.

[mechanic's lien] statute authorizes an allowance of an attorney's fee to the prevailing party, **whether plaintiff or defendant**."). *Id.* [Emphasis added.]

Unfortunately, this earlier version of the statute is no longer in effect, and has been replaced by the current version, **which no longer meets this *Hobart* test.** Rather, in 2003, NRS 108.237 was amended to arbitrarily and capriciously treat defendant owners differently than plaintiff lien claimants, when it comes to awarding costs and fees.

This change was part of a series of statutory revisions to the lien statute, SB 206 (2003), which resulted from intense lobbying on behalf of construction industry interests, the Bill's sponsors including the Associated Builders and Contractors; Associated General Contractors; the National Association of Minority Contractors; the National Association of Women in Construction; the National Electric Contractors Association; the Nevada Association of Mechanical Contractors; etc. *See*, **Exhibit "H"** hereto, selected portions of Legislative History of SB 206 (2003), at pp. 3 and 7.

None of these Bill sponsors, obviously, had any concern for the rights of owners defending against lien claims. The legislature does not appear to have fully realized the implications of how the bill would change that section of the statute which governs attorneys' fees. For example, in testimony discussing how the new statute would allow lien claimants to be awarded their fees, while also allowing the court, in its discretion, to award fees to the prevailing party, this (new) distinction was not emphasized and this (new) distinction between the standard for awarding owners vs. lien claimants their fees was quickly and briefly noted by the witness without explaining why such different treatment was now to be made. Nor did this testimony draw any questions from the legislature, on this point, who asked instead about other revisions. **Exh. "H"** at p. 11. Likewise, in reviewing the proposed legislative revisions to the mechanic's lien statute, other summary testimony merely noted that: "Section 41, p. 26 confirms that a prevailing lien claimant shall be awarded attorney's fees, court costs and interest, *and that a prevailing owner or owner's agent may be awarded court costs and reasonable fees*" (**Exh. "H"** at p. 59, emphasis added), without any pause to determine whether the legislators had caught this "shall" vs. "may" distinction, let alone for any meaningful discussion of that distinction to take place, and without any reference to Nevada Supreme Court precedent (such as *Hobart Estate Co. v. Jones*, 51 Nev. 315, 274 P.921, 922 (1929)), upholding prior versions of the attorneys' fees

language in the statute because those prior versions of the statute treated either prevailing party equally. This summary completely fails to address why there will be any differentiation whatsoever between prevailing lien claimants vs. prevailing defendant property owners, nor does this new distinction seem to have even been noticed, let alone emphasized as worthy of legislative attention, at least based on the legislative history.

In any event, in order to meet a constitutional challenge, differential treatment to different classes of persons "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." *Laakonen*, 91 Nev. at 509. Applying this test, the Nevada Supreme Court, in *State Farm Fire and Cas. Co. v. All Elec., Inc.*, 99 Nev. 222, 660 P.2d 995 (1983), struck down, in part, a Nevada statute of repose which insulated architects and contractors from liability six years after substantial completion of a project, but provided no similar protections to other similarly situated potential defendants, such as property owners.[8]

Applying this rational basis test to the fees provisions now existing in Nevada's mechanic's lien statute, it is clear that the statutory provisions which treat defendant owners differently than plaintiff lien claimants must be rejected. For example, in *Southeastern Home Building and Refurbishing Inc. v. Platt*, 325 S.E. 2d 328 (S.C. 1985), the Court, applying this same equal protection rational basis test, overturned a statutory provision allowing solely mechanic's lien claimants, but not owner defendants, to be awarded their costs and fees, ruling that there *was absolutely no rational relationship to any legitimate state goal*, to support the preferential treatment given to prevailing plaintiffs (mechanic's lien claimants) over defendants (owners), with respect to the award of fees. The *Platt* court explained its rationale as follows:

> The Fourteenth Amendment to the United States Constitution and Art. 1, § 111, of the South Carolina Constitution forbid denial by the State of equal protection of the laws. . . . .

[8]In a later case, the Nevada Supreme Court partially abrogated this ruling, but only as to material suppliers (not property owners), to uphold a statute of repose which still excluded material suppliers from its purview, but now treated property owners and contractors and architects similarly. *Wise v. Bechtel Corp.*, 766 P.2d 1317 (1988). The Court found that a rational basis existed for excluding material suppliers from the protections of the statute, given the extensive statutory and common law which has developed to address product liability manufacturers and resellers, which is not equivalent to construction services.

> The statutes granting attorney's fees to successful plaintiffs and denying fees to prevailing defendants [owners] in mechanic's lien actions *create a classification of otherwise similarly situated parties to a private contract. The classification, however, has no rational relationship to any legitimate state goal.* The appellant contends that the goal of giving priority to claims regarding work performed and materials furnished justifies the classification. We disagree. *Allowing attorney's fees only to successful lien claimants bears no reasonable relationship to that goal.* Indeed, authorizing fee awards to prevailing defendants, as well as plaintiffs, would not chill the laborer's right to seek relief in court.

Id. [Emphasis added.] Significantly, the *Platt* decision also noted that the subject statute was illegitimate where "no bad faith on the Defendant's part is required before the [challenged South Carolina mechanic's lien] statute authorizes fees" in favor of a lien claimant. *Id.* Similarly, the Nevada mechanic's lien statute automatically authorizes fees in favor of a lien claimant without requiring any showing that the Defendants' defenses were raised in good faith or bad faith, but only imposes a reasonable basis test on the Defendants' attempts to procure fees.

See also, Residents Ad Hoc Stadium Committee v. Board of Trustees, 152 Cal. Rpt. 585, 596 (Ct. App. 1979) (a provision which allows attorneys' fees to be awarded to either party who is the "prevailing party is not susceptible to a constitutional attack on equal protection grounds."); *Solberg v. Sunburst Oil and Gas Co.*, 235 P. 761 (Mont. 1925) (award of attorney's fees to successful plaintiff with no reciprocal right for successful defendant denies equal protection of the law).

In order to allow a constitutionally equal treatment of Steppan and the Iliescus in this case, the Iliescus, who are now the prevailing parties, must be treated just as Steppan was treated when he was the prevailing party, and must be awarded their fees and costs (and interest thereon) and the reasonable basis test must be stricken from NRS 108.237(3), as unconstitutional.

C. <u>The Offer of Judgment Rules Allow Fees and Costs to Now Be Awarded</u>.

NRCP 68 reads, in pertinent part, as follows:

> (a) **The Offer.** At any time more than 10 days before trial, any party may serve an offer in writing to allow judgment to be taken in accordance with its terms and conditions.
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> . . . .
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> (d) **Judgment Entered Upon Acceptance.** If within 10 days after the service of the offer, the offeree serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service. The clerk shall enter judgment accordingly. . . .

(e) **Failure to Accept Offer.** If the offer is not accepted within 10 days after service, it shall be considered rejected by the offeree and deemed withdrawn by the offeror. Evidence of the offer is not admissible except in a proceeding to determine costs and fees. The fact that an offer is made but not accepted does not preclude a subsequent offer. With offers to multiple offerees, each offeree may serve a separate acceptance of the apportioned offer, but if the offer is not accepted by all offerees, the action shall proceed as to all. Any offeree who fails to accept the offer may be subject to the penalties of this rule.

(f) **Penalties for Rejection of Offer.** If the offeree rejects an offer and fails to obtain a more favorable judgment,

(1) the offeree cannot recover any costs or attorney's fees and shall not recover interest for the period after the service of the offer and before the judgment; and

(2) the offeree shall pay the offeror's post-offer costs, applicable interest on the judgment from the time of the offer to the time of entry of the judgment and reasonable attorney's fees, if any be allowed, actually incurred by the offeror from the time of the offer. . . .

NRS 17.115 was repealed from Nevada's statutes, effective as of October 1, 2015. 442 Statutes of Nevada 2015, 2569. Nevertheless, the statute existed at the time the Iliescus' Offer of Judgment to Steppan was made, and the Nevada Supreme Court has continued to apply NRS 17.115 to Offers of Judgment made before the repeal date. *See, e.g., WPH Architecture, Inc. v. Vegas VP, LP*, 131 Nev. Adv. Op. 88, 360 P.3d 1145, 1146, n.1 (2015). The statute read in pertinent part as follows:

NRS 17.115 Offer of judgment.

1. At any time more than 10 days before trial, any party may serve upon one or more other parties a written offer to allow judgment to be taken in accordance with the terms and conditions of the offer of judgment.

2. Except as otherwise provided in subsection 7, if, within 10 days after the date of service of an offer of judgment, the party to whom the offer was made serves written notice that the offer is accepted, the party who made the offer or the party who accepted the offer may file the offer, the notice of acceptance and proof of service with the clerk. Upon receipt by the clerk:

(a) The clerk shall enter judgment according to the terms of the offer unless:

(1) A party who is required to pay the amount of the offer requests dismissal of the claim instead of entry of the judgment; and

(2) The party pays the amount of the offer within a reasonable time after the offer is accepted.

. . . .

Any judgment entered pursuant to this section shall be deemed a compromise settlement.

3. If the offer of judgment is not accepted pursuant to subsection 2 within 10 days after the date of service, the offer shall be deemed rejected by the party to whom it was made and withdrawn by the party who made it. The rejection of an offer does not preclude any party from making another offer pursuant to this section. Evidence of a rejected offer is not admissible in any proceeding other than a proceeding to determine costs and fees.

4. Except as otherwise provided in this section, if a party who rejects an offer of judgment fails to obtain a more favorable judgment, the court:

(a) May not award to the party any costs or attorney's fees;

(b) May not award to the party any interest on the judgment for the period from the date of service of the offer to the date of entry of the judgment;

(c) Shall order the party to pay the taxable costs incurred by the party who made the offer; and

(d) May order the party to pay to the party who made the offer any or all of the following:

(1) A reasonable sum to cover any costs incurred by the party who made the offer for each expert witness whose services were reasonably necessary to prepare for and conduct the trial of the case.

(2) Any applicable interest on the judgment for the period from the date of service of the offer to the date of entry of the judgment.

(3) Reasonable attorney's fees incurred by the party who made the offer for the period from the date of service of the offer to the date of entry of the judgment. . . .

Based on this Rule of Civil Procedure, and this statute: "In Nevada, it is well settled that a party who makes an unimproved upon offer of judgment in a district court action may recover attorney fees and costs incurred after the offer of judgment was made." *WPH Architecture, Inc. v. Vegas VP, LP*, 131 Nev. Adv. Op. 88, 360 P.3d 1145, 1146 (2015). *See also*, *Schouweiler v. Yancey Co.*, 101 Nev. 827, 712 P.2d 786 (1985) (amount of offer of judgment is not relevant to reasonable amount of attorneys' fees); *Albios v. Horizon Communities, Inc.*, 122 Nev. 409, 132 P.3d 1022 (2006) (upholding offer of judgment rules in construction defect case notwithstanding NRS Chapter 40 also including attorney fee rules).

It is true that, in applying Nevada's offer of judgment rules, the Court must evaluate the following factors: "(1) whether the plaintiff's claim was brought in good faith; (2) whether the

defendants' offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether the plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the fees sought by the offeror are reasonable and justified in amount." *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983).

In the present case, as noted above, these factors weigh in favor of the Iliescus, as Steppan's lien claim foreclosure suit was brought notwithstanding his violation of NRS 108.245, which rendered his claim invalid thereunder, and as no cases existed in Nevada to claim an exception to that statutory mandate based on "actual notice" other than cases involving notice of work performed upon the property, which facts did not exist in this case. Thus, the offer of judgment was reasonable and in good faith both in its timing and amount, and the plaintiff's decision to reject the same was not reasonable. As to the reasonableness of the fees sought by the offeror at this juncture, that question is examined below, under the *Brunzell* factors applicable thereto.

D. Analysis of the *Brunzell* Factors.

In *Schouweiler v. Yancey, Co.*, 101 Nev. 827, 712 P.2d 786 (1985), the court explained that, when awarding attorneys' fees, what have come to be known as the *Brunzell* factors, must always be reviewed, as follows:

> We have previously outlined the proper factors to consider, in a discretionary award of attorney's fees: (1) the qualities of the advocate: his ability, training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, intricacy, importance, the time and skill required, the responsibility imposed and the prominence and character of the parties when they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; and (4) the result: whether the attorney was successful and what benefits were derived. *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349 455 P.2d 31 (1969).

Id. at 790.

In reviewing these factors, it is apparent that the fees sought herein should be awarded.

As to the first *Brunzell* factor, the qualities of the advocate, attached hereto as **Exhibit "I"** is a copy of the firm resume of Albright, Stoddard, Warnick & Albright, an AV-rated Nevada law firm, which has been providing high quality legal services to Nevada residents for over 46 years. Also attached are the biographies of the Iliescus' counsel G. Mark Albright and D. Chris Albright. These attorneys have been successfully practicing law in Nevada for over 35 years (Mark) and over 23 years

(Chris) respectively. In all those years, neither attorney has ever been the subject of any ethical complaints or grievance letters or ever been sued for malpractice. Chris Albright interned for U.S. District Court Judge Lloyd D. George during law school and clerked for the Nevada Supreme Court after law school, and has lectured extensively on mechanic's lien issues. These attorneys have successfully prosecuted and defended a variety of civil jury trials, bench trials, private arbitrations, court-directed arbitrations and the like. G. Mark Albright has a Martindale-Hubbell AV rating. D. Chris Albright has been appointed for several years as an Arbitrator in the Court Annexed Arbitration Program. This Court is more familiar with some of the other Northern Nevada law firms who have represented the Iliescus herein, and whose fees are set forth in the Affidavit attached as **Exh. "F"** hereto, who the Court knows to also be highly reputable firms in the Reno, Washoe County area.

As to the second *Brunzell* factor, the importance of this case may be demonstrated by the Nevada Supreme Court's decision to set this matter for *en banc* hearing, despite the fact that mechanic's lien cases are typically to be routed to the intermediate court of appeals, as outlined above. The vast majority of appeals to the Nevada Supreme Court do not result in an oral argument before the full seven-member Court, but are resolved via the Court's issuance of an order (such as an order dismissing the appeal) without an oral argument. Those cases that are heard are typically heard either by the intermediate court of appeals or by a panel of three Justices, before possible rehearing before the entire panel *if* requested and *if* allowed. This case, however, was immediately assigned to an *en banc* hearing, shortly after all of the briefs were on file, bypassing both the intermediate and the panel appellate court system. Clearly, this was an important case. Attached hereto as **Exh. "D"** is a copy of the Appellants 57 page Opening Brief to the Nevada Supreme Court outlining the 10 highly significant issues on appeal in this important case.

As to the third *Brunzell* factor, this Court is aware of the lengthy briefs filed in respect to this matter since the retention of the undersigned. This Court has also noted, at prior hearings, that it felt trial counsel, Nicholas Pereos, did an outstanding job at the trial of this matter. In its successful briefs on appeal to the Nevada Supreme Court, and in its successful Answer to Steppan's Petition for Rehearing, the undersigned law firm relied on the record established by earlier attorneys to successfully argue this case on appeal, and to refute various inaccurate claims made by Steppan during

appeal that various issues had not been preserved for appeal, or had only been raised in post trial briefs, which the record revealed had in fact been raised by earlier lawyers. For example, in response to a Steppan appellate claim that the onsite-offsite distinction had only been raised for the first-time after trial, the undersigned was able to point out Downey Brand having raised this same distinction in its pre-trial briefing in this matter, preserving the argument for appeal. Thus, the work of the various prior lawyers who worked on this case and whose fees are sought herein[9] was important to the final appellate victory achieved by the law firm of Albright Stoddard.

As to the final *Brunzell* factor, the result, attached hereto as **Exh. "A"** is a copy of the Decision from the Nevada Supreme Court dated May 25, 2017. This ruling overturned a Mechanic's Lien and Judgment thereon, in the amount of over $4.5 million dollars, which Steppan would no doubt have claimed was continuing to earn interest at an exorbitant rate of 18% per annum, until paid, based on the interest rate set forth in a contract to which the Iliescus were not a party. Thus, although the attorneys' fees and costs sought herein are quite substantial, they are a fraction of the amount in controversy, and are a fraction of the amount of fees, costs, and interest previously obtained by Steppan, and proved well worth every dime of fees incurred by the Iliescus to obtain the hard-fought ultimate result.

Not only has the multi-million dollar Mechanic's Lien Judgment now been reversed and vacated, such that it no longer encumbers valuable real property belonging to the Iliescus, but other important results were also reached by the undersigned for the Iliescus as well. For example, had Steppan been able to foreclose on his lien claim while the appeal was pending, thereby selling off the Iliescus' property to a third-party, the Iliescus' appeal may very well have become moot while it was pending, as no property would have remained in the Iliescus' possession to preserve via their ultimately successful appeal. The Iliescus attempted to obtain a ruling from this District Court staying enforcement of the mechanic's lien foreclosure judgment, and delaying the sale, pending the outcome of the appeal, without the need to post additional security, since the Judgment being appealed was by definition already secured by the mechanic's lien against the property upheld thereby, but they were

[9]No Hale Lane fees are sought in this Motion, and no *Brunzell* analysis of Hale Lane's work is proffered herein.

unsuccessful. The Iliescus therefore sought this same relief from the Nevada Supreme Court, which recognized the validity of the arguments, and granted the relief sought. This stay was vital to the Iliescus' final victory, which would have been hollow without it, as obtaining a stay would otherwise have required the Iliescus to post a bond in the amount of 1.5x the judgment, or in excess of $6,750,000.00, which would have been cost-prohibitive, and the property would have been lost to an intermediate foreclosure sale without this relief being obtained, rendering the Iliescus' ultimate appellate victory hollow and pyrrhic.

It should also be remembered that Steppan was claiming the right, in the event his judgment lien was not satisfied from a sale of the liened property, to pursue the Iliescus personally for any deficiency not realized from the sale of their valuable property under foreclosure sale conditions. Although this relief was directly contrary to longstanding Nevada case law (*see* **Exh. "D"** hereto, the Appellant's Opening Brief at pp. 50-55), this Court had held any decision on that question in abeyance until after the foreclosure sale occurred. And this Court's decision denying the Iliescus' motion for stay without the need to post an additional supercedeas bond (which motion was based in large part upon Nevada's longstanding case law on this point), indicated at least the possibility that this Court might have granted such relief to Steppan. Thus, the result on appeal not only freed the Iliescus from a $4.5+ million lien (plus interest accruing at a rate far beyond current market rates) against real property into which they had invested a substantial portion of their life savings, but also freed them from the threat that even more of their life savings, beyond the real property, might be lost to them, and prevented the now reversed judgment against them from being treated as a judgment lien against other assets owned by the Iliescus, beyond that which was specifically referenced therein, as subject to the mechanic's lien.

In short, the result was worth at least $4.5 million plus to the Iliescus, and this and the other victories also ultimately achieved for the Iliescus, were clearly worth the money and fees charged and spent to obtain said result.

D. <u>Interest Award</u>.

This Court should also award interest on its costs and fees award, pursuant to NRS 17.130. Normally, this would be calculated from the date of the filing and service of Steppan's Complaint,

which occurred on or around May 4, 2007. However, to avoid a claim of unjust enrichment, the Iliescus seek only interest on fees and costs amounts as they were incurred. *See*, **Exh. "F"** hereto at ¶¶11-12. Under NRS 17.130, said interest should be calculated based on the Nevada interest rate currently in effect, which is 6.25% (prime of 4.25% plus two), as shown by **Exhibit "J"** hereto. Assuming that this Court grants the relief sought herein, in full, then interest at that rate should be applied to the costs and fees, as they were incurred, through October 31, 2017 (with interest continuing thereon until paid in full). As set forth in **Exh. "F"** hereto, this results in total interest of $183,950.51, a fraction of the interest previously awarded to Steppan.

III.

CONCLUSION

Based on the foregoing, the Iliescus ask that they be awarded their fees in the amount of $654,947.62, their costs in the amount of $41,072.59, and interest thereon in the amount of $183,950.51, all through October 31, 2017, with any such award to continue to incur interest at Nevada's legal rate from that date until paid in full.

DATED this 3rd day of November, 2017.

ALBRIGHT, STODDARD, WARNICK & ALBRIGHT

By _____
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Attorneys for Applicants/Defendants

AFFIRMATION

The undersigned does hereby affirm this 3rd day of November, 2017, that the preceding document filed in the Second Judicial District Court does not contain the social security number of any person.

By _____

G. MARK ALBRIGHT, ESQ.
Nevada Bar No. 001394
D. CHRIS ALBRIGHT, ESQ.
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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 3rd day of November, 2017, service was made by the ECF system to the electronic service list, a true and correct copy of the foregoing **DEFENDANTS' MOTION FOR AN AWARD OF COSTS AND ATTORNEY'S FEES AND INTEREST THEREON**, to the following person:

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An Employee of Albright, Stoddard, Warnick & Albright

INDEX OF EXHIBITS

A	*Iliescu v. Steppan*, Nevada Advanced Opinion copy
B	*Iliescu v. Steppan*, Pacific Report copy
C	Order Granting Motion for Stay Without Posting Any Further Security and Order to Show Case, October 23, 2015
D	Appellants' Opening Brief (Supreme Court), filed May 12, 2016
E	Offer of Judgment, dated September 13, 2011
F	Affidavit of D. Chris Albright Regarding Attorneys' Fees, dated November 3, 2017
G	Verified Memorandum of Costs, dated October 24, 2017
H	Legislative History - Senate Bill 206
I	Albright, Stoddard, Warnick & Albright Firm Resume
J	Nevada Prime Interest Rate Charts

EXHIBIT "A"

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

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[1]The 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.

[2]It 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-

[3]A "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]

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[4]Based 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.

_____, J.
Hardesty

We concur:

_____, C.J.
Cherry

_____, J.
Douglas

_____, J.
Gibbons

_____, J.
Pickering

_____, J.
Parraguirre

_____, J.
Stiglich

EXHIBIT "B"

394 P.3d 930
Supreme Court 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,
v.
Mark B. STEPPAN, Respondent.

No. 68346
|
FILED MAY 25, 2017

Synopsis

Background: Landowner applied for release of mechanic's lien, and architect filed a complaint to foreclose the lien. The cases were consolidated. Parties filed cross-motions for summary judgment regarding the necessity of pre-lien notice. The Second Judicial District Court, Washoe County, Elliott A. Sattler, J., denied landowner's motion and granted architect's, and, after a bench trial, entered judgment foreclosing the mechanic's lien. Landowner appealed.

Holdings: The Supreme Court, Hardesty, J., held that:

[1] as a matter of first impression, the actual notice exception to the statutorily required notice of right to mechanic's lien 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; and

[2] actual notice exception to pre-lien notice did not apply to architect's mechanic's lien.

Reversed and remanded.

West Headnotes (6)

[1] **Appeal and Error**
Cases Triable in Appellate Court

30Appeal and Error
30XVIReview
30XVI(F)Trial De Novo
30k892Trial De Novo
30k893Cases Triable in Appellate Court
30k893(1)In general

The appellate court reviews the district court's legal conclusions de novo.

Cases that cite this headnote

[2] **Appeal and Error**
Substantial evidence

30Appeal and Error
30XVIReview
30XVI(I)Questions of Fact, Verdicts, and Findings
30XVI(I)3Findings of Court
30k1010Sufficiency of Evidence in Support
30k1010.1In General
30k1010.1(6)Substantial evidence

The appellate court will not disturb the district court's factual determinations if substantial evidence supports those determinations.

Cases that cite this headnote

[3] **Mechanics' Liens**
Nature and form in general

257Mechanics' Liens
257IIIProceedings to Perfect
257k116Nature and form in general

Failure to either fully or substantially comply with the mechanic's lien statute will render a mechanic's lien invalid as a matter of law. Nev. Rev. St. § 108.221 et seq.

Cases that cite this headnote

[4] **Mechanics' Liens**
Nature and form in general

257Mechanics' Liens
257IIIProceedings to Perfect
257k116Nature and form in general

A mechanic's lien claimant has not "substantially complied" with the mechanic's lien statutes, rendering the lien invalid, when the property owner is prejudiced by the absence of strict compliance. Nev. Rev. St. § 108.221 et seq.

Cases that cite this headnote

[5] **Mechanics' Liens**
Notice to owners

257Mechanics' Liens
257IIRight to Lien
257II(E)Subcontractors, and Contractors' Workers and Materialmen
257k99Notice to owners

The actual notice exception to the statutorily required notice of right to mechanic's lien 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. Nev. Rev. St. § 108.245.

Cases that cite this headnote

[6] **Mechanics' Liens**
Notice to owners

257Mechanics' Liens
257IIRight to Lien
257II(E)Subcontractors, and Contractors' Workers and Materialmen
257k99Notice to owners

Actual notice exception to statutorily required pre-lien notice did not apply to architect's mechanic's lien against landowner's property, and thus, because architect did not otherwise provide landowner with required notice, the lien was invalid; architect did not contract directly with landowner, no onsite work had begun on landowner's property at time architect recorded his mechanic's lien for offsite work and services he performed, and there was no benefit or improvement to the property resulting from the architectural service architect provided. Nev. Rev. St. § 108.245 (2005).

Cases that cite this headnote

West Codenotes

Recognized as Unconstitutional
Nev. Rev. St. § 108.245

***931** 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.

Attorneys and Law Firms

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.

***932** *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 ***933** 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

[1] [2]"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 *934 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).

1 The 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.

2 It 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.

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

[4] ***935** 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. 211 Mont. 303, 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.

3 A "disinterested owner" must also not have recorded a notice of waiver pursuant to NRS 108.2405. NRS 108.234(7)(a).

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-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.

[5]In furtherance of the protections for property owners contemplated in *936 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.

[6]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]

4 Based 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.

We concur:

Cherry, C.J.

Gibbons, J.

Parraguirre, J.

Douglas, J.

Pickering, J.

Stiglich, J.

All Citations

394 P.3d 930

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EXHIBIT "C"

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN ILIESCU, JR., INDIVIDUALLY; AND JOHN ILIESCU, JR. AND SONNIA ILIESCU, AS TRUSTEES OF THEJOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT,

Appellants,

vs.

MARK B. STEPPAN,

Respondent.

No. 68346

FILED

OCT 23 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER GRANTING MOTION FOR STAY WITHOUT POSTING ANY FURTHER SECURITY AND ORDER TO SHOW CAUSE

This is an appeal from numerous district court orders entered in consolidated actions regarding a mechanic's lien. Appellants have filed a motion for a stay of the execution of judgment or foreclosure pending appeal without posting any further security. Respondent opposes the motion and appellants have filed a reply. Having considered the parties' arguments, we conclude that the existing lien adequately protects respondent from prejudice due to a stay and preserves the status quo. *See Nelson v. Heer*, 121 Nev. 832, 835, 122 P.3d 1252, 1254 (2005). Accordingly, we grant the motion and stay the foreclosure proceedings pending further order of this court. Appellants shall not be required to post a supersedeas bond or any other bond.

Our initial review of the docketing statement and documents submitted to this court reveals potential jurisdictional defects. First, it

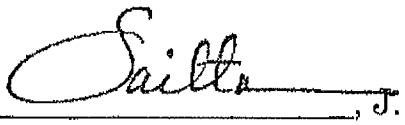
appears that the district court's February 26, 2015, order is independently appealable pursuant to NRS 108.2275(8) to the extent it resolves appellants' motion to release the lien. However, the February 26, 2015, order also resolves respondent's complaint to foreclose on the lien. To the extent the order resolves the foreclosure complaint, it is not appealable as a final judgment pursuant to NRAP 3A(b)(1) because third party claims remain pending. And it is unclear whether the order resolves all of the cross-clams because appellants have not included a copy of the September 2, 2009, third party complaint with the docketing statement. The district court purported to certify the February 26, 2015, order as final pursuant to NRCP 54(b), however, the certification appears improper because the district court did not make an express direction for the entry of judgment. *See* NRCP 54(b); *Knox v. Dick*, 99 Nev. 514, 516, 665 P.2d 267, 268 (1983). Further, in the absence of the September 2, 2009, third party complaint it is not clear whether appellants or respondent have been completely removed from the action. *See Mallin v. Farmers Ins. Exch.*, 106 Nev. 606, 797 P.2d 978 (1990).

Second, appellants identify the district court's May 27, 2015, order denying a motion to alter or amend as an order challenged on appeal. But an order denying a motion to alter or amend is not appealable. *Uniroyal Goodrich Tire v. Mercer*, 111 Nev. 318, 320 n.1, 890 P.2d 785, 787 n.1 (1995), *superseded on other grounds by statute as stated in RTTC Communications, LLC v. Saratoga Flier, Inc.*, 121 Nev. 34, 110 P.3d 24 (2005).

Accordingly, appellants shall have 30 days from the date of this order to show cause why this appeal should not be dismissed in part

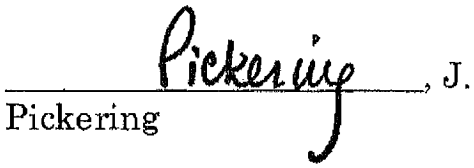
for lack of jurisdiction. We caution appellants that failure to demonstrate that this court has jurisdiction may result in the dismissal of this appeal.

It is so ORDERED.[1]



_____, J.
Saitta

_____, J.
Gibbons



_____, J.
Pickering

cc: Hon. Elliott A. Sattler, District Judge
Second Judicial District Court Dept. 6
J. Douglas Clark, Settlement Judge
Albright Stoddard Warnick & Albright
Hoy Chrissinger Kimmel, PC
Washoe District Court Clerk

[1]We note that the settlement judge has filed a report indicating that the parties were unable to agree to a settlement of this matter. The requesting of transcripts and the briefing schedule in this matter shall remain stayed pending resolution of the jurisdictional issue.

EXHIBIT "D"

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN ILIESCU, JR., individually, JOHN ILIESCU, JR. and SONNIA SANTEE 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
Washoe County Case No. CV07-00341
(Consolidated w/CV07-01021)

APPELLANTS' OPENING BRIEF

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RULE 26.1 DISCLOSURE STATEMENT

I certify that the following are persons and entities described in NRAP 26.1, that must be disclosed:

The Appellants are 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 (the "Iliescus").

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These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

DATED this 12th day of May, 2016.

ALBRIGHT, STODDARD, WARNICK & ALBRIGHT

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JURISDICTIONAL STATEMENT

This is an appeal from a final Judgment. The basis for appellate jurisdiction herein is NRAP 3A(b)(1). Notice of Entry of the final Judgment was served on February 27, 2015. X AA2381-2383. A Motion to Alter or Amend under NRCP 52 and 59 was then filed on March 10, 2015 (X AA2384-2420), delaying the Notice of Appeal deadline under NRAP 4(a)(4)(B) and (C). Notice of Entry of an Order denying this Motion was served on May 28, 2015. X AA2447-2448. Notice of Appeal was then filed within thirty (30) days on June 23, 2015. X AA2449-2453. Finality of the Judgment and appellate jurisdiction was recognized by prior Order of this Court. XI AA2490-2492.

ROUTING STATEMENT

This case is presumptively assigned to the Court of Appeals pursuant to NRAP 17(b)(3).

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Whether the district court erred in excusing mechanic's lien claimant Steppan's failure to provide the Iliescus, as property owners, with the Pre-lien Notice required by NRS 108.245, by relying on the "actual notice" exception to that statute, established in *Fondren v. K.L. Complex Limited Co.*, 106 Nev. 705, 800 P.2d 719 (1990), even though no actual notice by the Iliescus of the *identity* of lien claimant Steppan was demonstrated, and the lien was solely for *offsite* design services, with no construction commencing "upon" the property, as had occurred in *Fondren*.

II. Whether the district court erred in failing to identify the

date on which actual notice purportedly occurred, while still upholding the entirety of the lien, without addressing whether any of the allegedly lienable work had occurred after 31 days before that date, pursuant to NRS 108.245(6).

III. Whether the district court erred in excusing Steppan's other numerous failures to substantially comply with Nevada's lien statutes.

IV. Whether the district court erred in upholding Respondent Steppan's mechanic's lien, which was manifestly not for services performed "by or through" Steppan, as required by NRS 108.222(1)(a) and (b), but was a lien for the unpaid invoices of, and alleged value of services provided directly for the customer by, Steppan's employer, Fisher Friedman Associates ("FFA"), a foreign architectural firm not registered to provide licensed architectural services in Nevada, working directly for the customer and not as a subprovider of Steppan, which had not been hired by Steppan, and whose unlicensed services were in any event not legally provided.

V. Whether the district court erred by including language in its Judgment suggesting that the Iliescus might be personally liable to Steppan for amounts beyond the value of their liened Property.

STATEMENT OF THE CASE

This is the Iliescu property owners' appeal from a Judgment upholding a $4,536,263.45 mechanic's lien in favor of Mark Steppan against their property, for the unpaid invoices of Steppan's employer, a non-Nevada licensed California architectural firm, for offsite architectural services performed for a would-be purchaser and developer of the liened property, during an escrow which never closed.

On November 7, 2006, a mechanic's lien notice was recorded in Steppan's name against the Iliescus' "Property" as described therein. VIII AA1730-1734.

The Iliescus filed an Application for Release of Mechanic's Lien on February 14, 2007 (I AA0001-0007) initiating the first of these two consolidated cases, and arguing that Steppan had failed to provide the required pre-lien notices under the mechanic's lien statute. Steppan's initial lien was replaced by an amended lien (VIII AA1735-1740) and a separate lawsuit, to foreclose thereon, was then filed in Steppan's name on May 4, 2007. I AA0172-0177. The two suits were then consolidated. I AA0205-0212.

On June 22, 2009 the district court issued a partial summary judgment Order (III AA0508-0511), which excused Steppan from his failure to ever serve the Iliescus with the pre-lien notice required by NRS 108.245(1), ruling that such notice was not required due to the Iliescus' having actual notice of architectural work being performed. On May 9, 2013, another partial summary judgment Order issued (III AA0578-0581) holding that the amount of Steppan's lien would be based on a flat fee percentage-based AIA Agreement signed by the customer, claimed as controlling by lien claimant Steppan. Steppan later filed a "Second Amended Notice and Claim of Lien" (VIII AA1741-1750) prior to a four day bench trial held in December 2013, which trial did not allow for any possible reconsideration of the prior Summary Judgment Orders. III AA0643; IV AA0770 ll. 3-20, VI AA1468 ll. 15-18. Six months after trial, the district court entered its Findings of Fact, Conclusions of Law, and Decision (hereinafter the "Decision") in

favor of Steppan. VIII AA1911-1923. No Judgment having yet been entered on this Decision five months thereafter, a motion to set aside this Decision was filed under Rule 60(b) (IX AA1964-2065), but denied (X AA2425-2431), and the district court entered its final Judgment on February 26, 2015 (X AA2378-2380). A motion to alter or amend this Judgment (X AA2384-2424; X AA2436-2442) was then filed, which was also denied (X AA2443-2446). This appeal followed.

SUMMARY OF THE ARGUMENT

Steppan's lien should have been repudiated due to his failure to abide by NRS 108.245 requiring a right to lien notice to be sent, within 31 days of any work for which a lien is later sought.[1] The Iliescus were deprived of their statutory protections to such notice on the basis of their alleged awareness that offsite design work was being performed, without any finding as to when such knowledge on their part had allegedly occurred, for purposes of allowing a lien for only such work as was performed after 31 days before said date (pursuant to NRS 108.245(6)), and without any finding that the Iliescus knew of the *identity* of the lien claimant who would pursue a lien for the performance of this work, as required by Nevada case law.

Steppan also failed to substantially comply with Nevada's lien perfection

[1] As this section of the brief is intended solely as argument, citations to the record on appeal are not included, but are set forth below, in the more detailed recitation of facts.

statutes in other regards, beyond his failure to serve an NRS 108.245 Notice.

Furthermore, a mechanic's lien claimant may only lien for the value of services provided "by or through" the lien claimant. NRS 108.222(1)(a) and (b). Thus, a Nevada mechanic's lien claimant may lien for moneys owed to him for his own work, or for the work of his employees or of his subcontractors, but not for money owed to another party, for that party's and its employees' and its subproviders' work, or for such other party's unpaid direct invoices to its customer. The "Steppan" lien was, however, not for Steppan's work, or for that of his employees or his subcontractors, but was for unpaid invoices sent by his employer, a foreign architectural firm, Fisher Friedman and Associates ("FFA"), which was not licensed to perform work in Nevada, for the services provided by it and by its employees, and its subcontractors, directly to the customer, under its own direct relationship with that customer. There was no evidence, let alone the substantial evidence required, to reasonably support the court's finding that Steppan had hired this foreign architectural firm to work as Steppan's subprovider. The Judgment based on that finding, and the other Orders based on that inaccurate ruling, must therefore be set aside. Furthermore, even if Steppan had retained FFA to work under Steppan, the unlicensed work performed by FFA was not lienable as part of Steppan's lien, and its claims to be exempt from Nevada's architectural licensing statutes, because it acted as a mere "consultant," are preposterous.

The Judgment is also erroneous in that it suggests the possibility that, following any lien foreclosure sale of the Iliescus' Property, by Steppan, the Iliescus may be personally liable for amounts unable to be satisfied by the value of the Property, which is directly contrary to Nevada's mechanic's lien statute and the Nevada case law explaining the same.

STATEMENT OF FACTS

A. The Iliescus Agreed to Sell their Property, and the Purchaser Retained FFA.

The Iliescu Appellants are the owners of vacant and unimproved real property in downtown Reno, as described in the mechanics lien at issue herein (the "Property"). VIII AA1748-1749. Appellants entered into a Land Purchase Agreement and Addendums (I AA0024 *et seq.*) to sell the Property to a purchaser, Consolidated Pacific Development, which, unbeknownst to the Iliescus (I AA0008) eventually assigned its rights to purchase the Property to an entity known as BSC. VIII AA1913. (Consolidated Pacific Development and BSC are jointly hereinafter referred to as "BSC," and are sometimes described as the "purchaser" or "developer"). BSC planned to develop a multi-use high-rise development to be known as the "Wingfield Towers" at the Property. *Id.* IV AA0957-0958.

During escrow (which would never close), BSC negotiated with Rodney Friedman ("Friedman"), to have his California architectural firm, Fisher Friedman Associates ("FFA") design the Wingfield Towers. IV AA0948 at ll. 14-16; 0957 at

l. 24; AA0962-0966. Friedman was the sole owner of FFA (Fisher having retired). V AA1003-1004; 1085; IX AA2029. FFA was not registered to perform licensed architectural services in Nevada (VI AA1481-VII AA1482), nor could it be, as its sole owner Friedman was not licensed in Nevada (VIII AA1913, at ¶9), such that it lacked the 2/3 Nevada licensee ownership required by NRS 623.349 to become so registered. IX AA2044. *See also*, *DTJ Design Inc. v. First Republic Bank*, 318 P.3d 709, 711, 130 Nev. Adv. Op. 5 (2014) (foreign architectural firm, not registered in Nevada, and not 2/3 owned by Nevada licensees, could not lien for its improperly performed unlicensed Nevada work).

B. FFA Directed Steppan to Sign the Initial Contract on its behalf and Work Began, Without Any Pre-Lien Notice Being Provided.

Steppan, who was Friedman's son-in-law, and had worked for FFA in California his entire career, was the only FFA employee with a Nevada architectural license. VIII AA1913, at ¶9; IX AA2030; III AA0698;VI AA1377-1378; IX AA2029. Thus, Friedman had Steppan sign the contract(s) for FFA's services to BSC (V AA1089 at l. 23 thru 1090 at l. 2) beginning with an hourly fee letter agreement dated November 15, 2005 (VIII AA1751-1752), which the FFA firm decided to enter into (IV AA0978 at ll. 2-5), as an initial "stop-gap" until a later AIA Agreement would be signed. VIII AA1914 at l. 26 - 1915 at l. 8.

It is undisputed that, as work began, neither FFA nor Steppan sent any Notice to the Iliescus that rights to lien their Property were being created due to

offsite architectural work being performed, as required by NRS 108.245. I AA0004; AA0019-0020; VIII AA1916, at ll. 9-11. Pursuant to NRS 108.245(3), where no such notice is provided, "[n]o [mechanics] lien for . . . work or services performed . . . may be perfected or enforced." If notice is given, then a lien may be pursued for work performed commencing 31 days prior to the date on which the notice was provided. NRS 108.245(6).

Dr. Iliescu was aware that architectural work would take place during escrow, but understood that the purchaser had an in-house architect. VI AA1277. He was never told (prior to receiving the lien)[2] that Mark Steppan was the architect and did not know of his identity. VI AA1311; 1347.

C. Steppan Did Not Retain FFA to Work for Him, but FFA Provided Its Services Directly to BSC, Under a Direct Relationship with BSC, and Was Paid Directly by BSC, until Payments Ceased, Whereupon "Steppan's" Lien Was Recorded and this Suit Pursued for *FFA's* Unpaid Invoices to BSC.

A key question for this Court will be to determine whether it was appropriate to allow Steppan to lien for FFA's and its employees' work product. It is anticipated that Steppan will argue that this was appropriate because FFA was retained by Steppan, who employed FFA to work as a subprovider to him on his work for BSC (such that FFA's work was provided "by or through the lien claimant" Steppan, and is therefore lienable by him, under the language of NRS

[2] Trial testimony regarding subsequent communications with the architect are in regard to later events, after the initial, November 2006 lien. VI AA1350.

108.222(1) (a) and (b)). This is the position taken by Steppan in post-trial filings (IX AA2082 at ll. 9-11) and accepted by the district court in an oral post-trial statement. X AA2363 at l. 20 – AA2364 at l. 4. However, as will be shown herein, this position is completely unsupportable: FFA was not retained by Steppan (who remained FFA's employee), but, rather, FFA had its own direct contractual relationship with BSC, worked directly for BSC, communicated directly with BSC, and was paid directly by BSC until payments ceased, at which point FFA sent invoices to BSC, on FFA letterhead, which *FFA* invoices are the basis of the "Steppan" lien, and of this suit to foreclose thereon. Thus, the district court's oral finding at a hearing on a post-trial motion that Steppan was employing FFA during the project, was clearly erroneous as a matter of law, as shown by the following demonstrated facts:

(i) <u>The Contract Facts</u>. Evidence of three types of contract with BSC were presented at trial, and will be discussed herein: an hourly fee agreement, pending the later execution of an AIA Agreement; various side or add-on agreements (some of them never signed) for miscellaneous extra-contractual work; and, finally, the AIA Agreement. As to the relationship between Steppan and FFA, **no written agreement was ever entered into between Steppan and FFA**, by which Steppan hired FFA, either as his design consultant or in any other capacity. IX AA2045. This fact alone is legally fatal to the claim that Steppan retained FFA as his client,

because: (a) the AIA Agreement was to be in effect for at least 32 months (II AA0259 at § 1.5.9 and II AA0274),[3] such that any oral subcontract for FFA to sub-provide services to Steppan thereunder would be void under Nevada's statute of frauds for contracts to last more than one year (NRS 111.220(i)). (b) NRS 623.325, would also require any such architectural services contract (for FFA to act as a sub-architect to Steppan), to be in writing.

The hourly agreement. Although the initial hourly agreement which Friedman had negotiated was signed by Steppan, as the purported "Contract Architect", this document listed 28 categories of the Contract Architect's employees (VIII AA1752-1753). Steppan, however, continued to be employed by FFA (VIII AA1913 at ll. 16-20), and therefore had no employees of his own, such that these 28 categories of employees were in fact FFA employees/employee categories, and FFA was the contract architect in all but name, whose employees were billing under this hourly agreement. Indeed, Friedman testified that the initial hourly agreement authorized not Steppan, but Friedman ["you"] to proceed with the work, after "the firm decided to proceed" on that basis. IV AA0978 at ll. 3-9, and 22.

The side agreements. As the work was being performed, certain extra-

[3] The time parameters under the AIA Agreement were "negotiated between Fisher-Friedman and the client" and the 32 month time frame was the "expected" duration "pending normal situations" for this project. VI AA1461-1462.

contractual work allegedly came to be requested of or volunteered by FFA such as responding to city staff questions, reviewing information as to an adjacent church parking lot, etc., and letter proposals for this side work were generated, including as presented to BSC by Nathan Ogle of FFA (VIII AA1771), some of which were never signed by BSC. VIII AA1758-1771; VIII AA1743. Steppan has verified (under questioning by his own counsel) that "Fisher Friedman" performed this side work, and "Fisher Friedman" billed the client for it, and did not receive any objections about its invoices for the same. VI AA1404, 1408. Based thereon, the district court understood, and Steppan confirmed, that the question before the court was whether "Fisher Friedman Associates" would be "reimbursed" for the work performed under these side add-on agreements. IV AA1402, 1405.

Friedman also acknowledged that these side agreements were between FFA and BSC, testifying for example, as to one of these agreements, that the purchaser BSC asked *Friedman* ["you"] to go study city staff questions and his firm FFA ["your firm"], billed BSC for doing so. V AA0986 at l. 19, and 0988 at l. 11. Nevertheless, the district court upheld the entirety of the Steppan lien (compare VIII AA1742-1750 with X AA2378-2380) which included a lien claim for these side projects (VIII AA1747-48), and thereby allowed *Steppan*, rather than FFA, to lien for these FFA side agreements, which FFA was asked to perform, and which were performed by FFA, and which were invoiced by FFA. XI AA2557-2571.

The AIA. This final form AIA Agreement (II AA0250-0274), calling for a flat fee tied to the anticipated cost of construction (which never commenced), was ultimately signed on April 21, 2006 (II AA0265; 0271) but was allegedly to be treated as effective October 31, 2005 (II AA0250; III AA0524, AA0528) in order to supplant the earlier hourly fee agreement. FFA employee Nathan Ogle, rather than Steppan, would have been involved in negotiating the language of this AIA Agreement. VII AA1520. Steppan cannot remember any communications with BSC, regarding the language of the AIA Agreement. VII AA1527-1528. This Agreement allowed flat fee invoices to be sent, but apparently no work was performed under this document after it was signed. IX AA2052. The Iliescus were not parties to any of these contracts, which each listed BSC as the "owner" based on an anticipated closing. VIII AA1914 ll. 4-5.

FFA was not listed in the AIA Agreement as a subcontracting consultant to Steppan, the location for such a designation being left blank (II AA0252 at § 1.1.3.3.), but was instead listed in the Addendum to the AIA, as a direct party thereto (II AA0272) (namely as BSC's "Design Consultants"), such that the AIA was between BSC, on the one hand, and both Steppan and FFA, on the other. This conforms with Steppan's testimony, that "both" he and FFA were working for BSC (IX AA2053-2054), and with Friedman's testimony, that "the **developer agency** or entity with respect to the Wingfield Towers project in Reno [*i.e.*, BSC] did actually

commit to pay a fee" not to Steppan but "**to [his, Friedman's] firm** based on a percentage" flat fee as called for in the AIA Agreement. IV AA0973 at ll. 3-7 (emphasis added). Friedman repeatedly confirmed his position that FFA (and or he, himself) was a direct party to the AIA Agreement, which he repeatedly described as "our" or "my" agreement, which "we" had "signed" under which "I would be entitled to my compensation" based on the terms thereof. V AA1063, 1081-82, 1155, 1165. Friedman also acknowledged the identity of his "client" as "the developer" [*i.e.*, BSC] which developer was not the Iliescus, as owners of the property. V AA1111 at ll. 13-15. Thus, FFA's client, who employed FFA, was not Steppan, but BSC.

(ii) <u>The Work Performance Facts.</u> As the district court noted in its initial post-trial Decision, rather than FFA performing its work by or through lien claimant Steppan (as required by NRS 108.222(1)(a) and (b)), the work product the court attributed to Steppan was provided "at or through FFA." VIII AA1916 at ll. 2-3. The district court did not however correctly apply the law to this factual finding. Moreover, Steppan did not himself create the designs or the drawings attributed to him by the district court's Decision, which were FFA's work product, primarily created by FFA sole owner Friedman and FFA employee David Tritt. IX AA2053-2054. Friedman admitted that the work product belonged to FFA and could not be obtained without FFA's –"our"– permission. V AA1107.

Steppan's hourly involvement in the project was minimal, his counsel conceding that almost ninety-five percent (95%) of the work thereon was performed by FFA employees other than Steppan, including over 90% of the architects' work. X AA2339 at ll. 5-12. It is respectfully submitted that this work, performed by non-Nevada licensed architects, employed by a non-Nevada registered architectural firm, was, however, illegal, under NRS 623.180(1) and NRS 623.360(1)(c) for the reasons set forth at IX AA1988-1992, and at IX AA2199-2203. Nevertheless, Steppan admitted in post-trial briefs that *FFA's* employees, including its "unlicensed designers" performed the vast majority of the design work for which Steppan now liens. IX AA2079, ll. 8-13; IX AA2083 at ll. 11-13; IX AA2084 at l.1; IX AA2201.

Steppan did not treat his work on this project any differently from his other work for and as an employee of FFA, but handled himself "the same way" as on other FFA projects (VI AA639), even though this was the first time he had ever signed as the purported architect for FFA's work. VI AA1481; IX AA2038 at ll. 19-21. Steppan presented no evidence that he obtained any local business license, or registered with the State's taxation department, or took any other steps to fulfill the purported role of a Nevada independent contractor, reaching out to and subcontracting with other entities such as FFA. Instead, Steppan remained an FFA employee throughout the project (IX AA2017), receiving his regular salary, and

not anticipating any special bonuses or profit sharing on this job. IX AA2040-2041.

Steppan maintained no independent project files for this project, but rather, FFA maintained all such files, and the "Steppan" bates-labelled file documents produced during discovery were provided by FFA, as Steppan had no separate files of his own. IX AA2057. Steppan did not seek out and hire the other subcontractors, which was done by Friedman/FFA. V AA0999-1000.

Although Steppan had only two real roles, to sign the contracts and to someday sign and stamp the final architectural renderings (VIII AA1526), he never performed the second role, as the day for doing so never arrived. VIII AA1531; V AA1006. This is important because Steppan did not believe his own involvement as the person with alleged responsible control over the documents he would sign and seal would need to become more substantive until shortly before the time approached for signing and sealing the documents (VI AA1385) (a claim which is inaccurate under uniform architectural regulations --IX AA2197-2198-- but which for present purposes further confirms Steppan's own lack of material involvement in comparison to others at FFA).

Contrary to the district court's finding (VIII AA1913 at 11.21-21), FFA's employee Nathan Ogle, not Steppan, was listed on the invoices as the Project Manager (VIII AA1781; 1783; 1785; 1787; 1789; 1791 *et seq.*), which Ogle role

Steppan confirmed. IX AA2031, at 11. 23-25. Although they had no Nevada license, submissions to local Nevada entities, such as use permit applications, listed FFA and Ogle as the architectural contacts for this Nevada project, and Friedman as an applicant. I AA00189; 0195; VIII AA1851; 1862; 1867; 1879; IV AA0919; 1058; VII AA1510. Steppan did not contest the accuracy of such submissions, based on Ogle and Friedman's primary involvement as designer and project manager. VII AA1512. FFA and Ogle were so listed because they had done the primary work. V AA1192, at ll. 21-24.

Steppan did not attend the Reno City Council Planning Commission meetings at which these applications were addressed. VII AA1515. Steppan could not remember if he, Steppan, even reviewed such applications, but recognized Nathan Ogle's handwriting on the drafts. VII AA1490-1491. "Fisher Friedman" worked with another BSC contractor (David Snelgrove of Woods Rogers) (V AA1187) to prepare submittals to the City of Reno, and Snelgrove testified that "Fisher Friedman" did a "substantial portion" of this work (V AA1198), including architectural elevations provided by "Fisher Friedman" (V AA1199) and fly over visuals and power-points created by "Fisher Friedman." V AA1202.

Friedman testified that he, Friedman, supervised the work (V AA0995), and Steppan would only have played such a supervisory role on this project if Friedman were to have become unavailable, due to illness or vacation. V AA1006-

1007. Given that Friedman's time on the project far exceeded Steppan's (IX AA1985; AA2059), this obviously did not occur. Steppan also acknowledged that the project, like every FFA project, was done under Friedman's ultimate purveyance. IX AA2033. Nathan Ogle, of FFA, rather than Steppan, was present during Reno, Nevada meetings to present information about the project, where either Nathan Ogle or FFA would be identified as the "project architect." V AA1206. Nor was it even anticipated that Steppan would necessarily have been the one to move from California to be the on-site supervising architect had construction ever commenced at the Nevada site. V AA1159, ll. 16-19.

(iii) The Communication Facts. Steppan may not have sent a single e-mail communicating with anyone external from FFA, such as Reno, Nevada governmental entities or the client BSC, about the project. VII AA1503. Friedman, on the other hand, communicated directly with BSC's principals, such as Cal Bosma, including even to orally amend the contract (V AA1173 at l. 20 through AA1174 at l. 2) which Friedman obviously could not have done if his company FFA was not a direct party thereto. Nathan Ogle of FFA also communicated directly with BSC, not necessarily bothering to even copy Steppan. VIII AA1771. Ogle sometimes signed letters on Steppan letterhead (VIII AA1755), and when such an Ogle-authored letter was instead signed by Steppan, this was simply because Ogle, was "not around" to sign it instead. VI AA1390 at ll. 21-22.

The City of Reno "cc-ed" its communications with BSC (or its predecessor) not to Steppan, but to FFA and Ogle (II AA0385), as Reno officials had apparently been told to do (such that, when the Iliescus were also copied thereon, they would not thereby have learned Steppan's identity). Sam Caniglia (of developer BSC), rather than Steppan, was "the main contact person between Fisher-Friedman and Associates and the developer on the other hand" (VII AA1530 at ll. 3-6) and if Steppan ever had a phone conversation with Caniglia, it would only have been with Friedman also on the line. VII AA1529 at l. 24 - AA1530 at l. 2.

FFA was the party BSC was to contact with disputes over invoices. IV AA0968.

(iv) The FFA Invoices and Direct Payment Facts. No evidence was provided that any invoices were ever delivered from FFA to its purported customer, Steppan. Nor were any payments ever claimed to have been made by Steppan to his purported retained subprovider FFA. Nor were any W2's or 1099s from Steppan, to FFA or its employees, ever produced or claimed to exist. No demands or suits for payment were ever shown to have been asserted by FFA against Steppan for non-payment to his purported vendor FFA. Rather all of the invoices were sent directly to BSC, by FFA, and all of the payments from BSC were made directly to FFA, as shown below:

Four types of invoices to BSC were provided at trial; namely, $380,870.00

in Hourly Fee Invoices through May of 2006 (Trial Exhibit –"TE"- 24, VIII AA1779-1796); Post AIA-execution Flat Fee Invoices, treated as cumulative up to $2,070,000.00 allegedly superceding and replacing the hourly invoices, based on FFA having signed the AIA Agreement and allegedly completed the "Schematic Design" (or "SD") phase of the work (TE 25, VIII AA1797-1815); Reimbursable Expense Invoices (TE 26, VIII AA1816-1843) in the amount of $37,411.50 (VIII AA1745) (admitted by the court in order to determine whether "Fisher Friedman" was entitled to payment thereunder (VI AA1423)); and, finally, invoices for claimed add-on side agreements (XI AA2555-2571). A review of these exhibits demonstrates that, initially, the hourly fee and reimbursables invoices were sent on phonied-up "Mark A. Steppan" letterhead, rather than FFA, letterhead, but eventually these invoices were sent on FFA letterhead, beginning in February of 2006. VIII AA1789; 1799; 1824. This was more accurate, based on Friedman's testimony that the invoices were in fact sent by his firm (IV AA0968), that BSC assisted FFA by locating mistakes in its invoices (IV AA0968-0970) and that FFA never received any complaint or objection that its invoices were too high, or to the billing methodology employed therein. IV AA0970 at ll. 13-15; V AA1071.

Steppan admits that use of the "Steppan" letterhead on the initial hourly and reimbursable invoices was merely to maintain **"the form"** that Steppan was the

Contract Architect. VI AA1419 at ll. 2-4. The truth, as opposed to the form, is shown by the Steppan letterhead invoices being sent from FFA's address, shown (together with FFA's phone and fax number) at the bottom thereof (VIII AA1781-1788), which match the address and numbers of FFA as shown on its own letterhead invoices. VIII AA1789-1796. The billing number on all of the invoices was an FFA invoice numbering system number (IX AA2036) and the invoices were generated internally at FFA based on its employees' work, and the "FFA general time" which was tracked for these billings. VI AA1413-1416; VI AA1397. Steppan provided no testimony, to support "his" lien, with respect to how "he" calculated "his" invoices, but testified instead on the system utilized by FFA for that "firm to generate invoices for the company." VI AA1412-1416. Nevertheless, the district court accepted this testimony as somehow upholding a Steppan, rather than an FFA lien. VIII AA1917 at ll. 18-22.

Significantly, **$480,000 in payments were made by BSC on the hourly fee invoices. V AA1081. Thus, more than the entirety of the hourly invoices and more than the entirety of the reimbursables invoices, combined, was paid. All of these payments all of which BSC payments were made directly to FFA**, and not to or through Steppan, it being understood from the outset that *FFA* would receive all BSC payment moneys directly from BSC. VI AA1416-1417, 1419; V AA1080-1081; IX AA2040.

Nor was FFA treated as a subprovider to Steppan on the invoices. For example, moneys owed or paid to actual consultants or subproviders (such as landscape architects or renderers) who did not have a direct relationship with BSC, were referenced and treated as a separate cost to be reimbursed by BSC, primarily, but not solely, on the reimbursables invoices. *See, e.g.*, VIII AA1793, AA1822, 1827; VI AA1421-23. Tellingly, Steppan had "no personal knowledge" and could not say whether or not these subproviders had or had not been paid (VI AA1422-1427) even though a lien in his name was upheld by the trial court, which included reimbursable expenses, as though he was the one who had incurred these subprovider bills, which was clearly not so. Indeed, had the subprovider not been paid, any complaint in that regard would have been as likely to be made to Ogle or to Friedman or to the FFA accounting department, as to Steppan (VI AA1425-1426) further verifying that these were FFA subproviders not Steppan subproviders. No evidence was presented at trial that *Steppan* had paid these subproviders himself, nor was any suggestion that he might have done so even made. Nor could he have, as he was not receiving the payments to do so from BSC, but rather FFA was.

Unlike the actual subproviders, FFA was not treated on the invoices as a subprovider to a contract architect, whose billings were shown as a "reimbursable" expense on that entity's invoices. In other words, Steppan did not receive invoices

from FFA, which were then shown as a cost or reimbursable advance on the Steppan invoices to BSC; rather, the hourly invoices to BSC (whether on Steppan or FFA letterhead) like the initial letter agreement, listed several categories of FFA employees performing the work whose time was billed directly to BSC, pursuant to the FFA firm titles and hierarchy (VIII AA1781-1788; IX AA2031). Thus, by way of illustration, on hourly Invoice No. 22282 (VIII AA1783), Steppan, who was the Executive Vice President and second highest ranking official of FFA (IX AA2030 at ll. 7-17), billed 11 hours to BSC at $200.00 an hour (the second highest rate billed, even on his own letterhead), under that title, whereas the "Principal/Officer" (*i.e.* Friedman) billed 124 hours at $220.00 an hour, the highest rate billed, and other FFA employees similarly billed in accordance with their FFA titles and rates, none of which were however separately called out or treated as a reimbursable sub-cost to or advance from Steppan, being forwarded to the client. *See also*, VI AA1413-1416; VI AA1397.

Steppan's final lien, upheld by the Court's Judgment was based on (1) the unpaid reimbursable invoices, (2) the unpaid side-agreement invoices, and (3) the post-AIA flat fee invoices. VIII AA1742-1750. **Significantly, all of the unpaid invoices, for which Steppan claimed "his" lien were on FFA letterhead.** (1) For example, only $4,802.49 of the $37,411.53 in reimbursable invoices was not paid. VIII AA1745. Thus, only post February 2006 reimbursable invoices (on FFA

letterhead) would have been involved. Specifically (if one does the math from the invoice list in the final lien notice), those sent after, and including part of, the April 19, 2006, invoice. VIII AA1744-1746; AA1827-1843. (2) The add-on agreement invoices included in the lien were likewise all after February of 2006, commencing no earlier than June 2006 (VIII AA1747-1748) and were all on FFA letterhead. XI AA2555-2571. (3) *All* of the post-AIA Agreement TE 25 flat-fee invoices were also sent **solely** on FFA letterhead. VIII AA1797-1815.

The vast majority of the lien was for unpaid amounts due and owing on these flat-fee Trial Exhibit 25 invoices: When FFA procured BSC's April 21, 2006 signature on the AIA Agreement (II AA0329, IX AA2052) this document called for flat fee payments on a percentage basis, which were to accrue as various design phases were completed. FFA avers that, before ceasing its design work, it first completed the "schematic design" phase thereof, so as to reach the "SD" milestone in order to seek flat fee compensation up to that phase. III AA0525, 0597; VIII AA1914-1915. The post-AIA Agreement flat fee invoices were to supplant the much lower hourly fee invoices, based on the SD phase completion. IV AA0762-0765; VIII AA1797-1815. As shown by the notation on the cover sheet (VIII AA1798) of TE 25 ("% SD complete"), this exhibit was provided at trial to establish that 100% of the Schematic Design was allegedly completed and that the amounts shown in the flat fee invoices (rather than the lower earlier hourly

invoices) were owed based thereon.[4]

The amount of the lien claim pursued and upheld after trial was therefore not based on any of the hourly fee invoices (some of which were on Steppan letterhead), but was based on a ruling that this SD phase had been completed (VIII AA1914; 1920), together with the earlier second Summary Judgment Order that the (flat fee) AIA Agreement controlled the calculation of the lien amount (III AA0578-0580) such that the flat-fee invoices were treated as supplanting the earlier hourly fee invoices, as controlling,[5] and as allowing a flat fee through the SD phase, although BSC was given credit for the payments it had made to FFA under those earlier invoices.

Thus, **all of the invoices** being liened for in the "Steppan" lien **are on FFA letterhead**, including all of the relevant reimbursable invoices, side agreement

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[4] It should be noted that the expert witness who testified that the SD work had been completed did not differentiate between Steppan and FFA in his testimony, that "Steppan and FFA" had completed the work to this phase (IV AA0877; 0883; 0910; 0912-13; 0938-39) and had no opinion as to whether FFA was licensed to perform the work (IV AA0919) such that his opinion did not support the district court's finding (VIII AA1915, at ¶13) referencing this testimony, and giving credit solely to Steppan for this work based thereon.

[5] The correspondence between the TE 25 flat fee FFA invoices and the vast majority of the final lien (other than the reimbursables and side agreement invoices) is also demonstrated by a comparison of (i) the final flat fee invoice (VIII AA1814-15), showing the total fees for "Professional Services" earned standing at $2,070,000.00 before add-ons and deductions, with (ii) the final Steppan amended lien (at VIII AA1745) which likewise shows the "Fee earned" before other add-ons or deductions, as $2,070,000.00.

invoices, and flat fee invoices, such that the **entirety of the "Steppan" lien amount ultimately upheld was based on moneys owed to FFA, for unpaid FFA invoices, sent from FFA, on FFA letterhead**, with the invoices also showing the prior payments that had been made directly **to FFA** by BSC.

(v) **The Facts that the Lien and the Suit Were on Behalf of FFA.** Although recorded in Steppan's name (because it would be illegal for the non-Nevada licensed FFA to lien for Nevada architectural work under NRS 108.222(2) and NRS 623.360(c)), the "Steppan" lien, as amended, was in fact filed by and on behalf of FFA, as was this suit to foreclose thereon. Indeed, Steppan admitted that, notwithstanding the use of "Steppan" letterhead (and even Steppan business cards) by some FFA employees working on the project, FFA was the firm expecting payment, and which was hurt by nonpayment (IX AA2052-2056). Steppan further admitted that, when the sham Steppan letterhead was utilized by Friedman, to write payment demand letters to BSC, he was actually writing on behalf of FFA. IX AA2054-2055; including AA2055 at ll. 6-9. It was FFA, not Steppan, which caused the "Steppan" lien to be recorded (V AA1074, AA1081-1088) because FFA's owner, Friedman, came to fear that FFA might not be paid by BSC. V AA1073.

Steppan, in trial testimony, did not refer to BSC as "my" client, but as "our" client, and did not refer to the architect as "I" or "me" but as "we" and "us" or the

"firm," clearly referring to FFA. VI AA1393, 1394, 1396, 1397 *et seq*. VI AA1444 *et seq*. Nowhere in his testimony did Steppan suggest that FFA was working for him, as opposed to his employer firm, FFA, working for the client BSC. *See, e.g.*, VI AA1402 at ll. 11-20. Steppan, for example, testified as to whether FFA had billed separately for the add-on side-work, and whether FFA had received any objections to those billings from its client, rather than testifying as to whether he had billed BSC separately, or whether he (as FFA's purported client, who the district court found had been employed by Steppan) had ever objected to bills from FFA that he received. VI AA1408.[6]

While this suit was pending, but two years before trial, FFA was sold to a new owner, but Friedman retained the mechanic's lien rights at issue in this suit *from FFA* (not from Steppan) as part of that sale. V AA1086. Therefore, Friedman understood all along that FFA, not Steppan, was the owner of the lien rights, and non-Nevada licensed architect Friedman is the person financing this suit (*id.*), as the real party in interest with a financial stake herein, having retained that interest from non-Nevada registered architectural firm FFA. Steppan confirmed Friedman's testimony regarding FFA's retention of the lien foreclosure lawsuit claims at the time of the sale of FFA (VI AA1383 ll. 12-21) even though that sale

[6] All evidence at trial regarding BSC never objecting to the FFA invoices, and/or asking FFA to do certain add-on work, is hearsay. No one from BSC testified on Steppan's or FFA's behalf at trial.

of FFA should have been irrelevant, and no such retention from FFA of the lien claims needed, if Steppan were the true lien claimant, as "Steppan" was never sold, and "Steppan" was the purported Plaintiff.

D. The Steppan Lien Was Not Properly Recorded or Pursued.

Financing for the project was never obtained, escrow never closed, and no on-site improvements ever commenced. VIII AA1913 at ll. 8-11. Thus, when the Iliescus received their completely unimproved Property back out of escrow, it was now subject to Steppan's multi-million dollar lien claim, for the unpaid FFA invoices to BSC, and the moneys owed to FFA thereon, leading to the instant litigation.

Although the Wingfield Towers was to include residential condominiums, no notice of intent to lien was provided 15 days before the November 7, 2006 lien's recordation, as required by NRS 108.226(6). Steppan attempted to remedy this failure after the fact, by sending a subsequent 15-day lien notice, followed by an amended lien. I AA0100-0107. However, failure to send a required *prior* notice cannot, by definition, be remedied *after* the fact. The district court ignored this failure without explanation, although it was referenced in the Iliescus' original lien expungement application. I AA0005. Steppan's lien, as amended, also violated numerous other provisions of NRS Chapter 108 (IX AA2003-2008) which were also ignored.

ARGUMENT

A. The District Court's Decisions and Orders and Judgment Should Be Reversed, Based on the Applicable Standards of Review.

The key elements of Steppan's claims were treated as established based on Summary Judgment rulings (III AA0508-0511, and III AA0578-0581) which the district court indicated it would not upend or reconsider during or as the result of trial, leaving the same for appellate review (IV AA0770; VI AA1468), such that the trial was of uncertain purpose, with a predetermined outcome. Based thereon, this Court should review at least the summary judgment rulings, as well as the final Judgment which was based thereon, *de novo*. *MB America Inc. v. Alaska Pacific Leasing Co.*, 132 Nev. Adv. Op. 8, 367 P.3d 1286, 1287 (Nev. 2016) (a district court's order granting summary judgment is reviewed *de novo*).

Furthermore, both the first Order for Summary Judgment (III AA0508-510) and the second (III AA0578-580), should be reversed because they failed to "set forth" a recitation of "the undisputed material facts and legal determinations" on which they were based, as required by NRCP 52(a), as they instead merely described the parties' arguments and counterarguments, and the court's ultimate ruling, without clearly indicating whether certain arguments were accepted as the grounds for the same.

These orders prejudiced the Iliescus, by creating ambiguity as to what the purpose of the trial even was, and by foreclosing for review at trial, certain issues

on which genuine issues of material fact existed. For example, in opposing the second Motion for Summary Judgment, the Iliescus argued that Steppan was actually trying to lien for FFA's unlicensed work (III AA0532) which contention was ignored when the second summary judgment was granted. This issue was then raised again in the Iliescus' opposition to a motion to strike their jury demand (III AA0588-0589) and the district court treated this argument as an attempt to re-litigate a matter which had been adjudicated in the prior summary judgment rulings. III AA0626 at ll. 12-15. It was therefore understood that review of the propriety of Steppan liening for FFA's unlicensed work had been cut off by the second summary judgment ruling and would not be considered at trial. III AA0632-33. (Indeed, Steppan claimed that the *first* Summary Judgment Order precluded any further adjudication of the validity of the lien. II AA0540.)

Given this broad scope, the summary judgment rulings were obviously premature, as there were in fact substantial genuine issues of material fact regarding the propriety of Steppan liening for FFA's unlicensed work. *Tom v. Innovative Home Systems, LLC*, 132 Nev. Adv. Op. 15, __ P.3d __ (2016)(genuine issue of material fact as to whether mechanic's lien claimant's lien should have been stricken due to work being performed without a license should have precluded summary judgment in his favor). The Iliescus were prevented during trial from providing expert witness testimony that the AIA Agreement upheld by

the second summary judgment ruling (allowing for much higher-than-hourly flat fee bills) would not have been considered effective, pursuant to industry standards, until entitlements had been received and financing for the project was obtained. VII 1629-31. However, the testimony which would have been presented on that point (VIII AA1898-1892) demonstrates that there was a genuine issue of material fact with respect thereto, such that summary judgment should not have been granted, and this testimony not precluded (especially as no one from BSC testified at trial as to what BSC understood about its own contractual obligations). Despite the existence of the second summary judgment, however, Steppan was allowed to provide evidence of additional amounts due and owing for extra-contractual work, outside the AIA Agreement, which the Iliescus understood to have been cutoff by the second summary judgment ruling. VI AA1428-1430.

To the extent that the court's final Judgment rulings were also based on trial evidence, beyond the Summary Judgment rulings, this Court reviews the same, in a mechanic's lien case, to determine whether the findings were supported by "substantial evidence" meaning evidence "which a reasonable mind might accept as adequate to support a conclusion." *Simmons Self Storage Partners, LLC v. Rib Roof, Inc.,* 130 Nev. Adv. Op. 57, 331 P.3d 850, 855-56 (2014). As set forth above, the district court's post-Decision oral finding, that Steppan "employed" FFA was not based on any such substantial evidence, on which any such reasonable

conclusion could be drawn, as there simply is no such evidence of any agreement by which Steppan hired FFA to work under him, or that the parties acted as though he had done so in their dealings. Instead, voluminous truckloads of evidence exist that FFA worked directly for BSC, was a party to the contract with BSC, invoiced BSC directly, communicated directly with BSC, and was paid directly by BSC, for work performed by FFA's employees and FFA's subcontractors, none of whom were paid by or treated as employees of Steppan.

To the extent that this Court bases its decision to reverse on a review of the post-trial motion for relief under NRCP 60(b), an abuse of discretion standard would apply, under which however some "competent evidence" must exist "to justify the court's decision" *Stoecklein v. Johnson Electric, Inc.*, 109 Nev. 268, 272, 849 P.2d 305, 307 (1993). In this case, the district court's decision to find, at the hearing on the motion for NRCP 60(b) relief, that Steppan had "employed" FFA, is not based on any competent evidence of any such agreement having been reached pursuant to which Steppan hired FFA. As to the second of the two post-trial motions, to alter or amend the Judgment, including under NRCP 59(e) (X AA2384) it should be noted that, "although not separately appealable as a special order after judgment" and therefore stricken from the Notice of Appeal herein (XI AA2491) the order denying this NRCP 59(e) motion "is reviewable for abuse of discretion on appeal from the underlying judgment." *AA Primo Builders, LLC v.*

Washington, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010). Because the motion to alter or amend clearly demonstrated a manifest error in law and fact by the district court, it should have been granted, and its arguments are therefore submitted to this Court for this Court's review on an abuse of discretion standard, if the Judgment is not simply set aside on its face without the need to reach these post-Judgment motions. *See* X AA2384-2420 and X 2346-2442.

B. Steppan's Failure to Provide the Requisite NRS 108.245 Notice Should Have Been Fatal to His Claims.

(i) The *Fondren* actual notice exception does not apply to off-site work, nor to unknown information.

It is undisputed that Steppan failed to abide by NRS 108.245 and never sent the Iliescus any 31-day right-to-lien notice, so as to advise them of potential lien rights against their Property arising due to FFA's California work. The first Summary Judgment ruling determined that no such notice was needed, because the Iliescus allegedly had sufficient actual knowledge that an architect was performing work, to qualify Steppan for the exception to NRS 108.245 created by *Bd. of Trustees v. Durable Developers*, 102 Nev. 401, 724 P.2d 736 (1986) as further set forth in *Fondren v. K.L. Complex Ltd.*, 106 Nev. 705, 800 P.2d 719 (1990).

Three primary arguments were advanced to support this claim: first, that Dr. Iliescu was aware of his purchaser's plans to seek approval for a development at the project, which would necessitate architectural work, because the contract

indicated that this would occur; secondly, that the Iliescus attended certain meetings where the architectural work product was shown; and, finally, that certain lawyers at the Iliescus' law firm were also representing BSC, and knew of BSC's retention of FFA/Steppan, which knowledge should be imputed to the Iliescus. III AA0509.

However, the district court erred in accepting these arguments. *Fondren* should be strictly construed, given that it strips property owners of the protections afforded them by NRS 108.245, the language of which requires a notice not only that work has been performed, but that a "RIGHT TO LIEN" may have arisen, and that a lien claimant may therefore "record" a lien in the future. In this case, where the work was being performed offsite, such that there was no reason for the Iliescus to even be aware of when it commenced or to be focused on its legal implications (VI AA1264-1265), they were entitled to the notice.

Moreover, given the off-site nature of the work, *Fondren* does not apply. As footnote 2 of the *Fondren* decision states, the reason a pre-lien notice is even important, is because, within three days of an owner becoming aware of construction work being performed *upon* her property, if she does not take steps to protect herself by recording a notice of non-responsibility (under NRS 108.234(2)), then, under NRS 108.234(1) the "improvement **constructed, altered or repaired upon property** shall be deemed to have been constructed, altered or repaired **at**

the instance of each owner having or claiming any interest therein." [Emphasis added.] This, in turn, matters, because work must be performed "at the instance of the owner" in order for lien rights to arise. NRS 108.222(1). However, the subject work herein was *off-site* design work, not performed "upon" the property. (By contrast, in *Fondren*, there was "construction on [owner *Fondren's*] property" of which she was aware, as it was regularly "inspected" for her. *Id.* at 709, 721.) Based thereon, NRS 108.234(1) does not even apply to this case, and the *Fondren* rationale collapses, since, even if Iliescu did have notice of architectural services, those services did not involve on-site construction, and therefore the services were not statutorily deemed to have been performed "at the instance" of the Iliescus, absent timely action to avoid that result. Based thereon, the Iliescus' Property did not suddenly become statutorily subject to a lien upon either of the Iliescus developing an alleged awareness of the work being performed *off-site*, in any case. Indeed, the lien may be expunged on this additional basis: that the value of FFA's services did not become lienable, as the work was not performed at the Property owners' real or constructive instance.

As noted in *Fondren*, "The purpose underlying the notice requirement is to provide the owner with knowledge that work and materials are being *incorporated into the property*." *Fondren*, 106 Nev. at 710, 800 P.2d at 721-22 [emphasis added]. Recognition of this distinction between offsite and on-site work for

purposes of the *Fondren* actual notice exception to NRS 108.245, would be in line with other cases which have differentiated between the effect of on-site construction and off-site design work under the lien statutes. *See, e.g., J.E. Dunn Northwest, Inc. v. Corus Constr. Venture*, 49 P.3d 501, 508, 127 Nev. Adv. Op. 5 (2011) (rejecting architect's argument that its lien's priority vested, vis-a-vis a lender's deed of trust, before on-site construction work had occurred, even where the bank had actual knowledge of the offsite work, given statutes' indication that a lien vests upon commencement of visible **on-site** construction.) Thus, the *Fondren* exception to the requirements of NRS 108.245, should not have been applied herein. NRS 108.245(3) *does* therefore apply, which indicates that "[n]o [mechanic's] lien for ... services performed . . . may be perfected or enforced pursuant to [the mechanic's lien statutes] unless the [right to lien] notice has been given [by the potential lien claimant]." This dispositive point requires reversal.

It is also troubling that the district court apparently accepted an argument that the Iliescus should be treated as having notice of the architectural work because some lawyers at the Iliescus' law firm were aware of Steppan or FFA being hired (III AA0509; VII AA1557-1560), which knowledge, it was argued, should be imputed to the Iliescus, in order for this "imputed" knowledge to be treated as "actual" knowledge by the Iliescus. II AA0356-0359. However, there is no evidence that any of their lawyers ever shared this information with the Iliescus,

but, instead, just the opposite testimony exists. VII AA1558 at l. 24; VIIAA1560-1561, 1618. Indeed, the Steppan Summary Judgment briefs admitted that Iliescu had not been provided with this information by his attorneys. II AA0358 at l. 10.

By contrast, as noted by the Nevada Supreme Court in *Hardy Companies, Inc. v. SNMARK, LLC*, 126 Nev. 528, 540, 245 P.3d 1149, 1157 (2010): "In *Fondren,* the property owner received regular updates from her lawyer and approved specific construction activities" such that it was appropriate to impute the lawyer's knowledge to the client. However, where no such facts exist, "we will not impute knowledge when there is no evidence that [the property owner] knew of both the existence and the identity of" the third party who will assert the lien. *Id.*

Based thereon, the summary judgment ruling should not have been issued before trial on this issue.

(ii) The District Court failed to make the necessary finding to uphold the Steppan lien despite the violation of NRS 108.245, under Nevada case law.

After Summary Judgment on this issue was entered in this case, this Court issued its *Hardy Companies, Inc. v. SNMARK, LLC*, 126 Nev. 1149, 245 P.3d 1149, 1157 (2010) decision. That case clarified that, in addition to notice of work being performed, the *Fondren* actual notice exception to NRS 108.245 requires the owner to be "made aware **of the identity** of the third party **seeking to record and enforce a lien** [*i.e.*, in this case, Steppan]." *Id.* 126 Nev. At 1157, 245 P.3d at 540.

[Emphasis added.] This requires "more than mere knowledge of construction occurring on [the owner's] property" but "requires . . . knowledge as to the identity" of the potential lien claimant. *Id.* at 542, 1158. Indeed, "mere knowledge of construction" without knowing "of **both** the existence **and the identity** of" the third party who will be liening for the work, is insufficient. *Id.* at 542, 1159 [emphasis added]. Otherwise, "the exception would swallow the rule." *Id.* Moreover, whether such actual knowledge exists is "a question of fact" such that Summary Judgment is inappropriate. *Id.* at 542, 1158.

In the present case, given the lack of involvement by Steppan in the work actually being performed by FFA, and its owner Friedman, and its employees Tritt, Ogle, and others, it should come as no surprise that no persuasive evidence exists that the Iliescus ever learned of Steppan's identity as the party who would someday "seek to record and enforce a lien." Steppan admitted he had no basis to assert any such knowledge of his identity by the Iliescus. II AA0464 at p.69 ll. 24-25. Indeed, the key testimony which was repeatedly utilized against Dr. Iliescu (II AA0464 at p. 69 ll. 1-2; III AA0481, 0486) to claim he would have had knowledge of Steppan's identity, namely a July 30, 2007 affidavit from David Snelgrove, regarding Iliescu seeing plan documents which had Steppan's name on them (III AA0572-0574), was ultimately shown to be meaningless, when Mr. Snelgrove was deposed on November 18, 2008, and admitted he had no knowledge of whether Dr.

Iliescu ever saw the relevant pages of the documents in question, and he did not discuss Steppan's name with Dr. Iliescu. II AA0468-0470; XI AA2524-2525. Based thereon, the original summary judgment ruling was issued despite serious questions of fact as to the basis thereof, and certainly should have been overturned on the basis of the *Hardy Companies* ruling, decided thereafter, such that it was error for the district court to instead insist that said ruling would not be reconsidered as part of the trial, which is the only explanation for the district court's Decision, which does not comport with *Hardy Companies*.

Indeed, Snelgrove's trial testimony, as to certain of the meetings which the Iliescus allegedly attended [another point emphasized in his assertions], such as an Arlington Towers HOA meeting, at which architectural plans were allegedly discussed,[7] indicated that Nathan Ogle of FFA, rather than Steppan, was the architect's representative in attendance. V AA1206-1209.

Nevertheless, the district court upheld the earlier summary judgment, despite acknowledging the lack of evidence as to when, if ever, either of the Iliescus knew of Steppan's identity, as follows: "Iliescu was aware that . . . instruments of service were being produced. **Iliescu may not have known**, at all times, **Steppan's name**; however, there is no doubt in the Court's mind that Iliescu was **aware of the work being done** by Steppan" (VIII AA1915) Decision at ¶ 14. This

[7] Dr. Iliescu does not recall whether he actually attended such meeting, more than momentarily. VI AA1299-1301.

finding (of awareness that work was being done, without a clear finding of when, if ever, Dr. Iliescu [let alone Mrs. Iliescu],[8] knew *the identity* of the potential lien claimant performing the work) is precisely what the *Hardy Companies* decision repeatedly indicated was **insufficient** to invoke the *Fondren* exception! Indeed, the district court's finding on this point almost reads as an illustrative example of the type of finding which *Hardy Companies* explicitly deemed insufficient, and expressly warned against: stripping a property owner of his NRS 108.245 rights by a finding of awareness of work being performed (which in this case is not even the type of on-site *construction* work that *Fondren* and *Hardy* discuss), without any determination that the property owner knew the identity of the person performing the work! As such, the district court's decision must be overturned, and the Steppan lien revoked, under the plain language of *Hardy Companies*.

Similarly, and significantly, a pre-lien notice allows a lien claimant to lien only for any work performed within a time period commencing 31 days prior to the date on which the notice was provided (NRS 108.245(6)). Therefore, the district court's failure to indicate when, if ever, the Iliescus may have learned of Steppan's identity (as a judicially created substitute for the statutorily required Notice

[8] Where property is owned by more than one owner, NRS 108.245 must be satisfied as to both, and notice "to one owner is not sufficient to affect the interest of other owners." *DTJ Design*, at 1159, 543. No competent evidence was provided at trial to suggest that Mrs. Iliescu was aware of Steppan's identity. *See* VII AA1561-1571.

Steppan failed to give, despite the legislature's clear indication that this is a prerequisite to his statutory rights) means that the court erred when it nevertheless upheld the entirety of the Steppan lien, for **all of the unpaid work,** without making any finding as to how much of the liened work was performed after 31 days before that knowledge was received (if ever). Nothing in the district court's Decision or Judgment explains how the court determined that all of the unpaid invoices were entirely lienable under NRS 108.245(6), where no date of the "actual notice" event has been provided. The district court's rulings must also be set aside on this basis, and should be vacated with prejudice, given Steppan's failure (as the lien claimant with the burden of proof on his claims) to produce sufficient evidence to allow a determination of the date on which the alleged knowledge of Steppan's name, if any, ever occurred.

For example, much was made in the Summary Judgment briefs regarding Dr. Iliescu's attendance at an October 4, 2006 Reno City Planning Commission meeting, at which a single power point slide containing Steppan's name was apparently presented. II AA0344; IV AA0733-34. A November 15, 2006 Reno City Council meeting has also received much attention IV AA0734; VIII AA1916 even though, by that date, the first "Steppan" lien had already been recorded (VIII AA1731), such that any information learned at that meeting is irrelevant. (Steppan, of course, did not attend these meetings. VII AA1515.) However, David

Snelgrove, who was retained by BSC in early 2006 (XI AA2500-2501), testified that by the time of his involvement (for February 2006 submissions by his firm Wood Rogers VIII AA2519) FFA's architectural work was already substantially completed (VI AA1246) with only "tweaks" later that year, in May (VI AA1254).

Thus, long before the October 2006 date of the first of these Reno City government meetings, the vast majority of FFA's work was complete. Indeed, the flat fee invoices show 77.69% completion of the Schematic Design phase prior to October 25, 2006, and 100% completion before November 21. VIII AA1813; VIII AA1810. Thus, even assuming for the sake of argument that these invoices were accurate, if the Iliescus had learned of Steppan's identity at one of these meetings, this would not have entitled Steppan to lien for the vast majority of the work, which had been completed more than 31 days before said meeting, such that the vast majority of the work was not lienable. However, there is no reason to assume that even these invoices bore any relation to reality. Expert testimony was presented at trial indicating that no further work was done by FFA, and its instruments of service were essentially complete, before the April 2006 execution of the AIA Agreement. VII AA1619-28; 1636-1638. (*See also*, VIIIAA 1889-91 for a further written explanation of the expert's position on this issue which was not however admitted at trial.) This analysis accords with certain of Snelgrove's and Steppan's testimony cited above. On cross-examination of this expert,

Steppan's counsel suggested that further work may have been done in May of 2006, based on amendments to the earlier use permit applications. VII AA1640. However, even if this claim were accepted, work which was completed in May of 2006 still wouldn't be lienable if the Iliescus only learned of the identity of the lien claimant in October or November of 2006. No such analysis was however performed by the district court, as it didn't bother to identify whether the Iliescus ever learned of Steppan's identity before the lien was recorded, or, if so, when.

It was therefore error for the district court to uphold the earlier summary judgment, and enter a Judgment upholding the entire lien, without even reaching and addressing these questions of fact and law, as to when the Iliescus (if ever) learned of Steppan's identity as a potential lien claimant, and how much work had been completed 31 days prior to said date, so as to be lienable under NRS 108.245(6) (assuming it was otherwise lienable, which it was not, for other reasons). To the extent that the court's inability to reach this determination was based on a failure by Steppan to sufficiently plead and prove this element of his claim, on which he bore the burden of proof, the Judgment must be reversed and vacated with prejudice.

C. Steppan's Other Failures to Abide By the Lien Statutes Should Also Have Been Fatal to His Claims.

The Iliescus argued that Steppan's failure to provide the 15 day notice required by NRS 108.226, before recording his initial lien, was fatal to his claims. I

AA0005. This argument has never been directly addressed in any of the court orders. Further failures to properly comply with the lien statutes were also presented to the court in the Rule 60 Motion, including verification failures, violation of the timing requirements for the suit to foreclose, mis-timed amendments, etc. IX AA2004-2008. These arguments were likewise simply ignored in the Order denying the motion. X AA2425-2433. This was an abuse of discretion.

D. Steppan Also Failed to Meet His Burden to Prove the Key Element of His Case, That He Was Liening for Work Performed By or Through Him.

(i) Steppan failed to demonstrate that his lien was in compliance with NRS 108.222.

Under NRS 108.222, a mechanic's lien claimant may only lien for the value of services provided "by or through" the lien claimant. Thus, a mechanic's lien claimant may lien for his own work, or that of his employees, or that of his hired subcontractors, but he cannot lien for someone else's work, or for that of someone else's hired employees or hired subcontractors. This is simply axiomatic and self-evident: If Jack's Framing Company and Jill's Framing Company both provide framing to a project under their own direct relationship with the customer, Jack cannot lien for Jill's work. In this case, likewise, Steppan cannot lien for FFA's work, which FFA was performing directly for the customer.

For example, in *Nevada National Bank v. Snyder*, 108 Nev. 151, 157, 826

P.2d 560, 562-64 (1992) (partially abrogated on other grounds by *Executive Mgmt. Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 38 P.3d 872 (2002)) a district court was reversed after it allowed an individual member of a foreign architectural firm to act as the plaintiff foreclosing the firm's mechanic's lien, including because the relevant "invoices were submitted . . . on behalf of the corporation; the construction drawings for the proposed project were prepared by the corporation; [and] the individuals who worked on the drawings were employees of the corporation" not of the individual lien claimant, who thus had no right to prosecute the corporation's lien. *Id.* Similarly, herein, each of these facts is also true, together with dozens of other factors demonstrating that Steppan is liening for a foreign firm's work, not his own, as demonstrated above. *See also, DTJ Design, Inc. v. First Republic Bank*, 318 P.3d 709, 711, 130 Nev. Adv. Op. 5 (2014) [which was decided after the Steppan trial] (rejecting mechanic's lien of unlicensed foreign architectural firm for unlicensed work performed in Nevada, and noting that it could not substitute its Nevada licensed employee as the lien claimant to overcome this ruling, where he owned less than 2/3 of the company, as would be required for the company to become licensed in Nevada).

"Lien claimant" Steppan failed, in this case, to prove up a valid lien at trial, in that he failed to demonstrate that the lien was for unpaid amounts owed *to Steppan* for *his* services (as alleged in Paragraph 9 of "Steppan's" Complaint) (I

AA0174) "furnished by" him or furnished by *his* employees or *his* subproviders, acting "through" him as their customer or employer. As the *DTJ* decision notes, Steppan had a duty to "plead and prove" his *prima facie* case under the lien statutes. *DTJ*, at 318 P.3d at 710. Steppan's failure to demonstrate any basis for being allowed to lien for FFA's work, therefore requires the district court's Judgment upholding the lien to be overturned. (For further legal analysis on this point see, IX AA1992- 2008; VIII AA2190-2203; X AA2387-2398.)

The district court's oral finding that Steppan had retained FFA, to work under Steppan, was not based on substantial evidence, or any real evidence, with both FFA owner Friedman, and Steppan, instead conceding repeatedly that the lien was being pursued on behalf of FFA, who had interacted directly with BSC. At the very least, given the substantial evidence that FFA's work was performed directly for the customer, any Steppan lien should have been limited to the value of his own performance, exclusive of the performance of FFA and its other employees.

Moreover, given the substantial evidence that Steppan's involvement in the project was *de minimis*, the lien in his name should not have been allowed under *DTJ*, which noted that, even had the Colorado architectural firm in that case done what FFA did here, and had its one Nevada licensed employee put the contract and the lien claim in his name, this would have been inappropriate where the work was actually performed by others: "to the extent that DTJ argues that Thorpe should

individually be able to foreclose on the lien as a registered architect, we disagree" including because Thorpe was not truly involved as a co-principal on the project for much of the time it was underway, "until nearly a year after the development contract was signed." *DTJ Design*, 318 P.3d at 711. *See also, Snodgrass v. Immler*, 194 A.2d 103 (Md. Ct. App. 1963) (refusing to enforce architectural services contract where the "evidence shows that in reality it was [the unlicensed party] that performed the functions of an architect, and [the licensee] was used as a mere strawman to allow [him] to do indirectly what he could not do directly."); *Dalton, Dalton, Little, Inc. v. Mirandi*, 412 F. Supp. 1001, 1004) (D. N.J. 1976) (Maryland architect could not provide architectural plans for a New Jersey building merely by utilizing its New Jersey licensed employee to seal and certify the plans; "subterfuge, pretense, or improper circumvention of the law" warrants "penetration of the form to reach the substance.").

(ii) FFA's Work Was in any event Illegally Performed, and Could Not Be the Basis for a Steppan Lien.

Even if it were hired by Steppan as his subcontractor, FFA was not authorized to perform architectural work in Nevada, in any event, for any customer, including Steppan. NRS 623.180(1)(a) (only Nevada registered architects may practice architecture in Nevada); NRS 623.360(1)(c) (practicing architecture without a license is prohibited). *DTJ Design Inc.*, 318 P.3d at 710-712, 130 Nev. Adv. Op. 5 (2014) (foreign architectural firm which was not registered in

Nevada and [like FFA] was not owned by 2/3 Nevada licensees so as to become so registered, could not legally provide and lien for architectural services in Nevada). In order to overcome this problem, FFA asserts that "FFA only worked as a design consultant to Steppan and is therefore exempt from NRS Chapter 623" pursuant to NRS 623.330(1)(a), which exempts from Nevada licensure "a consultant retained by a registered architect." VIII AA2086 at ll. 2-4. FFA's invocation of this exemption, because it claims to have acted as a "design consultant" (although accepted by the district court (VIII AA1915 at ¶12)) is preposterous. A "design consultant" is not even a category of design professional recognized by NRS Chapter 623; and FFA should not have been treated below as though it were providing mere "consulting" services, just because of what it called itself. *See*, AGO 19 (4-1-1963) [VIII AA2207-2208] (a party "cannot legally" exempt itself from the requirements of NRS Chapter 623 "merely by refraining from calling [itself] an architect, if [it], in fact, accepts work which falls within the purview" of the practice of architecture). The State Architectural Board may only issue prescribed certificates, not make up its own. AGO 305 (11-24-1953). *See also* VIII AA2200 at n. 5.

NRS 623.023 defines the practice of architecture as "rendering services . . . embracing the scientific, esthetic and orderly coordination" for the "production of a completed structure [for] human habitation or occupancy" including by

producing "plans [and] specifications". A consultant, by contrast, is a person who merely gives advice to the professional actually performing substantive work, whereas a person actually producing the essential work product is acting as more than a consultant. *See, e.g.*, the New Webster's Encyclopedic Dictionary of the English Language (1992) at p. 210 ("con·sult·ant . . . a person (engineer, doctor etc.) giving expert or professional advice."); *Gleeson M.D. v. State Bd. of Medicine*, 900 A.2d 430, 437-38 (Penn. 2006)(unlicensed out-of-state medical doctor did not merely "consult" and, thus, was not statutorily exempt from licensure requirement, where he physically touched patient and performed a procedure); *Bilazzo v. Portfolio Recovery Assoc., LLC,* 876 F.Supp.2d 452, 462-465 (D. N.J. 2012)(unlicensed attorneys from another state were not acting merely as "consulting attorneys" to licensed lead attorney who signed the pleadings, where they billed far more hours than he, worked independently, and had substantial direct contact with opposing counsel and agency); *Gsell v. Yates*, 41 F. Supp. 3d 443 (E.D. Penn 2014) (out-of-state attorney wishing to fulfill a "consulting" role must refrain from direct contact with client, from significant contact with opposing counsel, and should not draft substantial portions of pleadings, but may only engage in advisory activities such as editing motions prepared by lead counsel, while recording only a modest number of hours compared to the licensed attorneys). FFA clearly fails all of these tests, or any other reasonable test for being

able to claim it was acting as Steppan's or BSC's mere consultant, as shown by the statement of facts above, which demonstrate that FFA and its owners and employees produced the work product, billed the vast majority of hours, and maintained all contact with the client and Nevada officials, directly, rather than did Steppan.

Indeed, Steppan repeatedly admitted, in post-trial briefs, **that FFA and its employees were engaged in the direct production of architectural designs and plans and work product**, and were not merely providing advice. *See, e.g.*, VIII AA 2079 ll. 9-13 (purported Contract Architect "Steppan could not accomplish" the services he was to provide without the help of "other designers" because the scope of the project was "much too large to expect" a "single architect [to] design it" instead requiring more than "3,396 billable hours" recorded, from all of FFA's other architects and designers.); 2081, l. 10 (FFA's work described as "design services") 2083-2084 (Steppan was merely to "sign and seal technical submissions **prepared by Fisher Friedman Associates**" including "drawings **prepared by unlicensed designers.**") [Emphasis added.] Clearly, by Steppan's own admission, FFA and its employees were not acting as mere "consultants" but as designers and providers of architectural instruments of service and work product including technical submissions and drawings and instruments of service, etc.

Because FFA's work was performed improperly without the requisite

Nevada license, and in violation of NRS 623.160(1)(c) and NRS 623.180(1), Steppan cannot lien for the same, even if the district court's unsupportable finding that Steppan employed FFA were upheld. *See, e.g., Holm v. Bramwell*, 67 P.2d 114 (Cal. Ct. App. 1937) (prime contractor's mechanic's lien claim could not include advances which had been paid by prime contractor to an unlicensed subcontractor).

E. Paragraph 6 of the Final Judgment should be reversed and rejected, to prevent any future misapplication of Nevada Law.

The district court's final Judgment indicates in Paragraph 6 that, upon some future lien foreclosure sale of the subject Property, which does not result in sale proceeds sufficient to pay off Steppan's multi-million dollar lien, Steppan retains the right to ask the court to rule on theories he asserted in his pre-trial statement, that he should be allowed to collect any deficiency from the Iliescus personally. X AA2380; X AA2369-2371; 2374. This provision of the Judgment should be stricken, as no such possibility of personal liability against the Iliescus exists, beyond Steppan's claim to foreclose on the Mechanic's Lien in his name for FFA's work (if the district court's Judgment were to be upheld after this Appeal, which it should not be).

Steppan claims that the Iliescus might be subject to personal liability beyond the value of their liened Property (III AA0709), based on a misinterpretation of NRS 108.239(12), which Plaintiff contends means that "[if] the proceeds from the [Mechanic's Lien foreclosure] sale do not satisfy the amount of the judgment, then

the judgment creditor is entitled to personal judgment against the property owner for the deficiency (or 'residue') if the property owner has been personally summoned or appeared in the action" such that, after any lien foreclosure sale, Steppan contends that he may "apply to the court for a personal judgment against Iliescu" if "the net sale proceeds [from the mechanic's lien foreclosure sale] are less than the monetary amount of the judgment." *See*, II AA0709 ll. 16-24. The final paragraph of the Judgment was meant to allow Steppan to preserve this claim, subject to the Iliescus' rights to contend otherwise. In the unlikely event the lien is upheld (which it should not be), the Iliescus should not then have to also face this uncertainty as to the result of any foreclosure sale.

Steppan's contentions are simply untrue, and no Nevada case law or statute supports the same. To claim otherwise, Plaintiff's above-quoted Trial Statement misconstrued NRS 108.239(12) by omitting its key passage. That statute actually reads, in full, as follows: "12. Each party whose claim is not satisfied in the manner provided in this section is entitled to personal judgment for the residue **against the party legally liable for it** [*i.e.*, the defaulting customer of the lien claimant, with whom it had privity of contract in this case BSC] *if* that person has been personally summoned or has appeared in the action [which Steppan did not do, as to BSC, herein, although most mechanic's lien lawsuits also name the defaulting customer for breach of contract]." [Bracketed language added.]

The fact that a mechanic's lien proves insufficient to pay the contractor does not prevent the contractor from nevertheless seeking personal judgment for any post-foreclosure residue or deficiency still owed, as against the party with whom he contracted, as the person who is and has always been "legally liable for" payment to the contractor, or as against other liable parties, such as the contractor's guarantor. This simple principle was clarified by subsection 12 of the statute merely in order to avoid any confusion or any claim that mechanic's lien rights somehow supplant a contractor's other rights to seek other more traditional remedies, such as by simply suing for a money judgment against his or her breaching contract customer. This simple principle is also clarified by NRS 108.238, with NRS 108.239(12) providing further procedural instruction, that the party legally liable to the lien claimant for the debt, such as the claimant's customer, should also be named and sued for breach of the underlying contract, as part of the lien foreclosure suit, which Steppan did not do here.

NRS 108.239(12) does not magically transform the owner of liened real property into defendants who are themselves now legally and personally liable for any amounts owed the lien claimant, and unable to be satisfied from the Property's sale, simply by being summoned and appearing in the lien foreclosure action. This is not what the statute says, on its face, or by any reasonable construction.

Nor does the relevant case law support this contention. *See, e.g., Didier v.*

Webster Mines Corp., 49 Nev. 5, 234 Pac. 520 (1925) (property owner was not personally liable for any amount of a miner's lien claim which could not be satisfied from the property, in the absence of privity of contract between the real property owner and the lien claimant.); *Milner et al. v. Shuey,* 57 Nev. 159, 179, 69 P.2d 771, 772 (1937) (there must be a contractual relationship regarding the furnishing of labor and materials between the party foreclosing the lien and the party against whom personal liability is sought. "[S]uch a relation is essential to establish personal liability against the owner of the property in addition to a judgment foreclosing a lien...."); *Nevada National Bank v. Snyder*, 108 Nev. 151, 157, 826 P.2d 560, 563-64 (1992) (partially abrogated on other grounds by *Executive Mgmt Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 38 P.3d 872 (2002)("The district court judgment stated that [the mechanic's lien claimants] were entitled to a 'personal judgment for the residue against [the property owner].' The [property owner] asserts that the remedy to enforce a mechanic's lien is to force a sale of the property and that it is not liable for any deficiency if the monies from the sale do not cover the amount of . . . [the] liens. We agree. . . . It is unjust to hold the [property owner] personally liable for a deficiency when it was not a party to the contract, and because [it] is not the person liable for the debt under NRS 108.238."). *Reeder Lathing Co., Inc. v. Allen*, 425 P.2d 785, 786 (Cal. 1967)("The part of the judgment that defendant is personally liable to plaintiff is clearly

erroneous. In the absence of a contract between a lien claimant and the property owner, the right to enforce a mechanic's lien against real property does not give rise to personal liability of the owner.")

The Nevada Supreme Court in *Snyder* also rejected the argument that the owner of liened real property could be held liable for the residue beyond the value of the liened property on an "unjust enrichment" theory, even where the work had benefitted the property, and therefore its owner. *Snyder*, 108 Nev. at 157, 826 P.2d at 563. In the present case, Steppan's complaint contains but one cause of action, for the foreclosure of a mechanic's lien against the Iliescu Property, and does not assert any unjust enrichment theory (or any other claims) against the Iliescus in any event, such that allowing such a claim at this late date would be a violation of due process. This is especially true given that **Steppan *successfully* struck the Iliescus' Jury Demand, on the grounds that his suit was solely for foreclosure of a mechanic's lien, on which no jury is allowed**. III AA0582-0584; III AA0625-627. Steppan is not entitled to have his cake and eat it too, and, having successfully insisted that his case was solely for a non-jury mechanic's lien claim, should not now be heard to contend that he has other personal claims against the Iliescus as well.

Moreover, the Property was not improved to the unjust enrichment of the Iliescus, as it is now just as vacant and unimproved as it was the day it went into

escrow, at which time it was not subject to a seven figure Mechanic's Lien claim.

F. Summation.

The court erred in ruling, on a summary judgment basis, that Steppan could be excused for his failure to comply with a statutory prerequisite to his lien claims, namely, providing notice of his right to lien under NRS 108.245, where there remain genuine issues of material fact with regard to the Iliescus' alleged notice of Steppan's identity as the party who would lien for the work, which remained unresolved even after trial. The court therefore erred in upholding this earlier summary judgment ruling, while simultaneously acknowledging that Steppan's identity may not have been known to the Iliescus, as expressly required by Nevada case law to invoke the subject statutory exception. The district court further erred by declining to identify a date on which any notice occurred, and to then analyze whether any work had been performed within 31 days prior to that date, instead allowing the entirety of the lien claim to stand, for all of the unpaid work performed, even while acknowledging insufficient basis to determine at what times, if any, the work became lienable. Because Steppan had the burden of presenting evidence which would have allowed the necessary rulings on these issues, the court's inability to make complete findings prevents any award in his favor.

Furthermore, the court erred in determining that Steppan had "retained"

FFA, even though no evidence exists of any such retention, in the form of any written agreement (as would have been required under Nevada law) or in the form of any course of dealing, payments or invoices between Steppan and FFA to even suggest that FFA was working for Steppan as its client, and given the volumes of evidence that in fact FFA was working directly for the customer, such that Steppan's lien should have been invalidated, or at the very least restricted to the value of his own services, as opposed to that performed by the unlicensed FFA. The court also erred in accepting an argument that FFA's architectural services for this Nevada project were appropriate under the "consultant" exemption to Nevada's architectural licensing statutes, where FFA's own testimony clearly admits that FFA was doing far more work than Steppan was, and was not merely a consultant to Steppan, or to BSC, under any stretch of the imagination. The court also erred in upholding a lien in Steppan's name which was entirely for unpaid FFA invoices, on FFA letterhead, crediting prior direct payments to FFA, and which included claimed payments (not from Steppan but from FFA) to FFA's subproviders, which were not substantiated by Steppan, except by reference to *FFA's* invoicing procedures, and which also included invoices for add-on work performed by FFA, for which the customer agreed to pay FFA.

Finally, the district court erred in retaining language in its Judgment which suggests the possibility that the Iliescus may somehow be personally liable for

some portion of the Judgment beyond the value of their Property, should the Property be foreclosed upon and not sell for a price adequate to fully satisfy the lien, given that the only cause of action claimed against the Iliescus was for foreclosure of a mechanic's lien, and the lien statutes do not allow for any claim against the Property owner in these circumstances (where no privity of contract exists) beyond the value of the Property itself.

CONCLUSION

Based on the foregoing, the court's pre-trial Summary Judgment Orders should be reversed, and its Judgment entered after trial (at which those Orders were not subject to reconsideration) should also be reversed. The district court's post-trial Orders denying an NRCP 60 Motion for relief and an NRCP 52 and 59(e) Motion for relief, should likewise be reviewed and reversed, as not based on evidence and as legally erroneous, and therefore an abuse of discretion.

DATED this 12th day of May, 2016.

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ATTORNEYS' RULE 28.2 CERTIFICATE

1. I certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point Times New Roman font.

2. I further certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points and contains 13,873 words.

3. Finally, I certify that I have read this appellate brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event the

accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 12th day of May, 2016.

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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 12th day of May, 2016, service was made by the following mode/method a true and correct copy of the foregoing **APPELLANTS' OPENING BRIEF**, to the following person(s):

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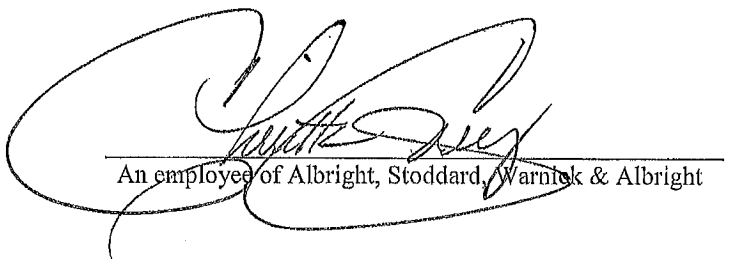
____ Regular Mail



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

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

MARK B. STEPPAN,

Plaintiff,

v.

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

Defendants.

AND RELATED CROSS-CLAIMS AND THIRD-PARTY CLAIMS.

Case No.: CV07-00341

Dept. No.: 10

Consolidated with:
Case No.: CV07-01021

Dept. No.: 10

OFFER OF JUDGMENT

Pursuant to Rule 68 of the Nevada Rules of Civil Procedure, and Nevada Revised Statute 17.115, Defendants John Iliescu, Jr., and Sonnia Iliescu, individually, and as Trustees of the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust ("Iliescu"),

THOMAS J. HALL,
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COUNSELOR AT LAW
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hereby offer to allow judgment to be taken against them and in favor of Plaintiff MARK B. STEPPAN in this action, in the amount of $25,000.00, inclusive of all taxable costs, attorney's fees and prejudgment interest accrued to date. This Offer of Judgment is made for the purposes specified in NRCP 68 and Nevada Revised Statute 17.115, and is not to be construed as an admission of any kind whatsoever.

If this offer is accepted, Plaintiff should send the original of his written acceptance to Defendants' attorney at 305 South Arlington Avenue, Reno, Nevada 89501.

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

DATED this 13th day of September, 2011.

LAW OFFICES OF THOMAS J. HALL

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Law Offices of Thomas J. Hall, and pursuant to NRCP 5(b), and on this date I hand delivered a true and correct copy of the foregoing Offer of Judgment to:

Michael D. Hoy, Esq.
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Reno, Nevada 89519

DATED this 13th day of September, 2011.

Emily A. Heavrin

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(b) When it is admitted by the pleading or examination of a party, that the party has possession or control of any money or other thing capable of delivery, which, being the subject of litigation, is held by the party as trustee for another party, or which belongs or is due to another party, the court may order the same, upon motion, to be deposited in court, or deposited in an interest-bearing account or invested in an interest-bearing instrument, or delivered to such party, upon such conditions as may be just, subject to the further direction of the court. (Amended eff. 1-1-05.)

Editor's Note. — The subdivisions are changed from (1) and (2) to (a) and (b) to maintain consistency with the format of the other rules. The rule is also amended to permit a deposit in an interest-bearing account or investment in an interest-bearing instrument consistent with provisions in the federal rule.

CASE NOTES

In civil actions prosecuted within this State's jurisdiction the deposit of money in court must be made pursuant to subsection (1) [now (a)] of this rule. Petri v. Sheriff of Washoe County, 87 Nev. 549, 491 P.2d 43 (1971).

Plaintiffs' use of this rule as a vehicle to preserve assets to satisfy a potential judgment was inappropriate. The court rejected the plaintiffs' argument that district courts should have broad discretion to order deposits in court where movants under this rule appear to have a strong likelihood of success on the merits, or where those movants allege that absent such an order they will be unable to recover any judgment received. These factors are not relevant to an analysis under this rule. Poke Resources, Inc. v. Fifth Judicial Dist. Court ex rel. County of Esmeralda, 113 Nev. 1062, 944 P.2d 843 (1997).

Cited in: Kassabian v. Jones, 72 Nev. 314, 304 P.2d 962 (1956); Sherman Gardens Co. v. Longley, 87 Nev. 556, 491 P.2d 43 (1971); State v. Capital Convalescent Ctr., Inc., 92 Nev. 147, 547 P.2d 677 (1976); Harris v. Shell Dev. Corp., 95 Nev. 348, 594 P.2d 731 (1979).

Rule 68. Offers of judgment.

(a) *The Offer.* At any time more than 10 days before trial, any party may serve an offer in writing to allow judgment to be taken in accordance with its terms and conditions.

(b) *Apportioned Conditional Offers.* An apportioned offer of judgment to more than one party may be conditioned upon the acceptance by all parties to whom the offer is directed.

(c) *Joint Unapportioned Offers.*

(1) *Multiple Offerors.* A joint offer may be made by multiple offerors.

(2) *Offers to Multiple Defendants.* An offer made to multiple defendants will invoke the penalties of this rule only if (A) there is a single common theory of liability against all the offeree defendants, such as where the liability of some is entirely derivative of the others or where the liability of all is derivative of common acts by another, and (B) the same entity, person or group is authorized to decide whether to settle the claims against the offerees.

(3) *Offers to Multiple Plaintiffs.* An offer made to multiple plaintiffs will invoke the penalties of this rule only if (A) the damages claimed by all the offeree plaintiffs are solely derivative, such as that the damages claimed by some offerees are entirely derivative of an injury to the others or that the damages claimed by all offerees are derivative of an injury to another, and (B)

the same entity, person or group is authorized to decide whether to settle the claims of the offerees.

(d) *Judgment Entered Upon Acceptance.* If within 10 days after the service of the offer, the offeree serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service. The clerk shall enter judgment accordingly. The court shall allow costs in accordance with NRS 18.110 unless the terms of the offer preclude a separate award of costs. Any judgment entered pursuant to this section shall be expressly designated a compromise settlement. At its option, a defendant may within a reasonable time pay the amount of the offer and obtain a dismissal of the claim, rather than a judgment.

(e) *Failure to Accept Offer.* If the offer is not accepted within 10 days after service, it shall be considered rejected by the offeree and deemed withdrawn by the offeror. Evidence of the offer is not admissible except in a proceeding to determine costs and fees. The fact that an offer is made but not accepted does not preclude a subsequent offer. With offers to multiple offerees, each offeree may serve a separate acceptance of the apportioned offer, but if the offer is not accepted by all offerees, the action shall proceed as to all. Any offeree who fails to accept the offer may be subject to the penalties of this rule.

(f) *Penalties for Rejection of Offer.* If the offeree rejects an offer and fails to obtain a more favorable judgment,

(1) the offeree cannot recover any costs or attorney's fees and shall not recover interest for the period after the service of the offer and before the judgment; and

(2) the offeree shall pay the offeror's post-offer costs, applicable interest on the judgment from the time of the offer to the time of entry of the judgment and reasonable attorney's fees, if any be allowed, actually incurred by the offeror from the time of the offer. If the offeror's attorney is collecting a contingent fee, the amount of any attorney's fees awarded to the party for whom the offer is made must be deducted from that contingent fee.

(g) *How Costs Are Considered.* To invoke the penalties of this rule, the court must determine if the offeree failed to obtain a more favorable judgment. Where the offer provided that costs would be added by the court, the court must compare the amount of the offer with the principal amount of the judgment, without inclusion of costs. Where a defendant made an offer in a set amount which precluded a separate award of costs, the court must compare the amount of the offer together with the offeree's pre-offer taxable costs with the principal amount of the judgment.

(h) *Offers After Determination of Liability.* When the liability of one party to another has been determined by verdict, order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before the trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability. (Adopted eff. 10-27-98.)

FAX COVER SHEET

TO:	Chris Albright	FAX (702) 384-0605
FROM:	John Iliescu	FAX (775) 322-4112 E-mail: sonnlasl@sbcglobal.net

Date: June 4, 2017

RE: Offer of Judgment, dated September 13, 2011

(7 pages total)

Dear Chris,

We are sending the Offer of Judgment you requested that was filed by Tom Hall. Also find some clarifying notes that were provided to us in that timeframe. I hope this will be helpful to you.

We are in the process of gathering billing statements together for the attorneys who worked on the case before you. I don't believe you would need copies from us of your office's billing. Please keep me informed of any impending deadlines.

After all of the years of financial and emotional turmoil with such staggering claims against us, we are slowly unwinding. We look at the property and recall our history going back in part to the 1970s and remember the years and effort and cost of putting it together. And then how someone with nothing vested in it tried to claim it as their own. We are thankful to you and Mark for taking on the challenge and to Judge Hardesty and the Court for their wisdom and clarity.

Our kindest regards,
John and Sonnia

LAW OFFICES OF
THOMAS J. HALL
ATTORNEY AND COUNSELOR AT LAW
305 SOUTH ARLINGTON AVENUE
POST OFFICE BOX 3948
RENO, NEVADA 89505

THOMAS J. HALL

TELEPHONE
(775) 348-7011
FAX (775) 348-7211
E-MAIL: tjhlaw@sbcglobal.com

September 13, 2011

VIA HAND DELIVERY
Dr. John Iliescu, Jr., Trustee
Sonnia S. Iliescu, Trustee
Iliescu Family Trust
200 Court Street
Reno, Nevada 89501

RE: Iliescu v. Steppan

Dear Dr. Iliescu and Sonnia:

Enclosed please find copy of correspondence received from Michael Hoy, Esq., in regards to the above matter.

We have also enclosed a copy of the Offer of Judgment which will be delivered today.

Please review and call to discuss.

Best regards.

Sincerely,

Thomas J. Hall, Esq.

TJH:mh
Enclosures

EXHIBIT "F"

CODE: 1075
G. MARK ALBRIGHT, ESQ., #001394
D. CHRIS ALBRIGHT, ESQ., #004904
ALBRIGHT, STODDARD, WARNICK & ALBRIGHT
801 South Rancho Drive, Suite D-4
Las Vegas, Nevada 89106
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gma@albrightstoddard.com
dca@albrightstoddard.com
Attorneys for Defendants

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

Applicants,

vs.

MARK B. STEPPAN,

Respondent.

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 all original prior consolidated case(s).

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

DEPT NO. 10

AFFIDAVIT OF D. CHRIS ALBRIGHT, ESQ. IN SUPPORT OF MOTION FOR AN AWARD OF COSTS AND ATTORNEY'S FEES AND INTEREST THEREON

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

D. CHRIS ALBRIGHT, ESQ., being first duly sworn on oath, deposes and states as follows:

1. Affiant has personal knowledge of the matters set forth herein and is competent to provide this testimony, or, as to matters stated upon information and belief, believes the factual

assertions stated herein to be accurate.

2. Affiant and his law firm, Albright, Stoddard, Warnick & Albright ("**Albright Stoddard**"), are current counsel of record for JOHN ILIESCU, JR. and SONNIA SANTEE ILIESCU, individually, and as Trustees of the JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT; who were the Applicants in the first of these two consolidated cases, and who were the Defendants in the second of these two consolidated cases (the "**Iliescus**"), as referenced in this above-captioned matter.

3. The Iliescus were originally represented in these proceedings by the law firm of Hale, Lane, Peek, Dennison & Howard, who filed the Iliescus' original Application initiating the first of these two cases on February 14, 2007 ("**Hale Lane**"). For a variety of reasons, the Motion to which this Affidavit is attached does not seek any fees relating to Hale Lane's services. Then, on or about August 3, 2007, the Iliescus came to be represented by Sallie B. Armstrong and Jamie P. Dreher of the law firm of Downey Brand, LLP ("**Downey Brand**") via a Substitution of Counsel filed on that date. During the time period of June 1, 2007 through December 1, 2010, lawyer Stephen C. Mollath ("**Mollath**") also represented the Iliescus, concurrently with the Iliescus' other then lawyers, such as Downey Brand. On July 15, 2011, the Iliescus came to be represented by Thomas J. Hall, Esq. ("**Hall**") based on a Notice of Appearance filed on that date, and based on a substitution of counsel filed on August 29, 2011. Attorney Michael B. Springer ("**Springer**") was utilized as a consultant by Mr. Hall, who was paid directly by the Iliescus.[1] On or about February 14, 2012, Gordon M. Cowan of the Cowan Law Office ("**Cowan**") became counsel of record via another substitution of counsel. On or about July 17, 2013, attorney C. Nicholas Pereos began representing the Iliescus, and represented them through trial ("**Pereos**"). **Albright Stoddard**, the law firm to which the undersigned belongs, then became involved in this matter on or about June 16, 2014, and became primary counsel as to the post-trial filings after that time, and on appeal.

4. Based on a review of this office's invoices, since beginning to represent the Defendants and their interests herein, commencing on or about June 17, 2014 through October 31, 2017, the Affiant and the other lawyers of this **Albright Stoddard** firm have expended approximately 1,197.5 hours on this case, and have billed $325,965.62 in attorneys' fees, after all courtesy or negotiated

[1]However, all of Mr. Springer's time entries relate to the third-party claims and as such are not further referenced or added herein.

discounts, representing an effective fee rate of approximately $272.21 per hour, far lower than their normal hourly rate, or the rate for other comparably experienced litigation attorneys. These fees do not include fees incurred by the Iliescus with **Albright Stoddard** on third-party matters (such as the Iliescus' third-party or separate malpractice claims against Hale Lane, or other claims against third-parties, as those matters have not yet been adjudicated) and is based instead on the **Albright Stoddard** fees incurred in the Steppan/Iliescu dispute, the undersigned having reviewed **Albright Stoddard's** invoices and made, to the best of his ability, appropriate deductions for work clearly and solely related to third-party claims. Similar reviews and deductions were made by the undersigned of the other lawyer invoices.

5. The work performed on this action by **Albright Stoddard** includes, without limitation, services provided by **Albright Stoddard** in preparing, filing, and arguing the following:

07-16-14	Defendants' Motion for Stay of Execution (1) Pending Disposition of Alteration or New Trial Motion and (2) Pending Appeal, Without the Necessity of Any Bond
07-17-14	Iliescus' Ex Parte Application for Leave to File a Single Consolidated Post-Trial Brief Not to Exceed 45 Pages
09-15-14	Defendants' Motion for Relief from Court's Attorneys' Fees and Costs Orders and for Correction, Reconsideration, or Clarification of such Orders to Comply with Nevada Mechanic's Lien Law
09-26-14	Notice of Non-Opposition to Mark B. Steppan's Motion for Leave to File Motion for Reconsideration of Order Granting Plaintiff's Motion for Attorney Fees
10-10-14	Opposition to Mark B. Steppan's Motion for Reconsideration of Order Granting Plaintiff's Motion for Attorney Fees
10-13-14	Request for Submission of Defendants' Motion for Relief from Court's Attorneys' Fees and Costs Orders and for Correction, Reconsideration, or Clarification of Such Orders to Comply with Nevada Mechanic's Lien Law
10-27-14	Defendants' Motion for NRCP 60(b) Relief from Court's Findings of Fact, Conclusions of Law and Decision and Related Orders [This Rule 60(b) Motion was a 45-page Motion on which the Court allowed the parties a second one-half day of argument a week after the first morning of arguments, such that it involved two trips by D. Chris Albright to Reno, Nevada, including a stay-over after the first day of hearing was bumped one day.]
12-12-14	Joint Stipulation and Order Re Enlargement of Briefs
12-16-14	Defendants' Reply Points and Authorities in Support of Their Motion for NRCP 60(b) Relief from Court's Findings of Fact, Conclusions of Law and Decision and Related Orders
12-17-14	Defendants' Partial Joinder in Plaintiffs Request for Submission of Defendants' Motion for NRCP 60(b) Relief from Court's Findings of Fact, Conclusions of Law and Decision and Related Orders
03-10-15	Defendants' Motion for Court to Alter or Amend its Judgment and Related Prior Orders

03-20-15	Reply Points and Authorities in Support of Defendants' Motion to Alter or Amend Judgment and Related Orders
03-26-15	Defendant's Request for Submission of Defendants' Motion for Court to Alter or Amend its Judgment and Related Prior Orders
06-01-15	Defendants' Motion for Stay of Execution of "Judgment, Decree, and Order for Foreclosure of Mechanic's Lien" Pending Appeal, Without the Necessity of Any Bond This Motion was intended to ensure that the appeal did not become moot due to the Iliescus' losing the property at issue in their appeal.]
06-12-15	Defendants' Reply Points and Authorities in Support of Their Motion for Stay of Execution of Judgment Without the Necessity of Any Bond
06-15-15	Defendants' Request for Submission of Defendants' Motion for Stay of Execution Pending Appeal Without the Necessity of Any Bond
06-23-15	Notice of Appeal
06-23-15	Case Appeal Statement
07-06-15	Notice of Posting Bond for Costs on Appeal
07-15-15	Notice of Entry of Various Orders [for purposes of completing docketing statement]
07-16-15	Docketing Statement Civil Appeals
07-16-15	Appellants' Confidential Settlement Statement
07-16-15	Defendants' Motions with the Nevada Supreme Court for Stay of Execution (1) Pending Disposition of Alteration or New Trial Motion and (2) Pending Appeal, Without the Necessity of Any Bond
10-29-15	Defendants Motion Seeking Clarification of Finality of Court's Recent Judgment for Purposes of Maintaining Appeal; and Motion for Expedited Decision on Shortened Time Basis
11-02-15	Defendants' Motion Seeking Clarification of Finality of Court's Recent Judgment for Purposes of Maintaining Appeal
11-04-15	Reply Points and Authorities in Support of Defendants' Motion Seeking Clarification on Finality of Court's Recent Judgment for Purposes of Maintaining Appeal
11-04-15	Defendants' Request for Submission of Defendants' Motion Seeking Clarification of Finality of Court's Recent Judgment for Purposes of Maintaining Appeal' and Motion for Expedited Decision on Shortened Time Basis
11-19-15	Response to the Nevada Supreme Court's Order to Show Cause filed with the Nevada Supreme Court
12-16-15	Notice of Entry of Decision and Order Granting Motion Seeking Clarification of Finality of Judgment
12-16-15	Amended Notice of Appeal
12-16-15	Amended Case Appeal Statement
05-12-16	Appellant's Opening Brief
08-11-16	Appellant's Reply Brief
01-03-17	Attendance and oral argument at En Banc Supreme Court Hearing
08-08-17	Appellant's Answer to Petition for Rehearing

6. Based on my review of billing statements and invoices from the Iliescus' prior counsel, received from the Iliescus, or, in Mollath's case, from Mollath, it appears to the undersigned and I attest upon information and belief that the following fees (exclusive of costs and advances), have been

incurred by the Iliescus with their prior counsel, herein:

A. Any fees charged to the Iliescus by Hale Lane for its work on the litigation is not sought by the Iliescus at this time;

B. The Iliesucs incurred $45,184.00 in fees with Downey Brand, excluding certain of the fees for entries clearly relating solely to third-party claims;

C. The Iliesucs incurred $75,085.50 in fees with Steve C. Mollath, excluding certain of the fees for entries clearly relating solely to third-party claims;

D. The Iliesucs incurred $55,447.50 in fees with attorney Thomas J. Hall (exclusive of Hall's separate invoices as to the Iliescus' claims against Hale Lane or other third-party Defendants);

E. The Iliescus incurred $0.00 with attorney Michael B. Springer, which are attributable to this matter and sought at this time herein (all of his fee entries appearing to be related to third-party claims, rather than to the direct Iliescu-Steppan conflict);

F. The Iliescus incurred a $37,500.00 flat fee with attorney Gordan Cowan; and

G. The Iliescus incurred $115,765.00 in fees with attorney C. Nicholas Pereos. (The full amount of which is sought herein, as the claims regarding Hale Lane and other third-party defendants were stayed or otherwise not pending during this time period, Pereos would have invoiced no material amounts with respect to pursuit of the same, other than as ancillary to his trial preparation and trial counsel work.)

7. Thus, together with the $325,965.62 Albright Stoddard fees outlined above, the Iliescus have incurred total fees of $654,947.62 in this matter.

8. An Offer of Judgment was served on Steppan on September 13, 2011, agreeing to allow Judgment to be entered against the Iliescus, on Steppan's claims, for $25,000.00, which was not accepted within ten (10) days thereafter, or indeed at any time. The fees which were incurred after that date would include all of Thomas J. Hall's fees from October 2011 onwards, comprising $30,065.00 of his fees, together with all of the aforestated fees of Gordon Cowan, comprising $37,500.00, as well as all of the fees incurred with attorney Pereos, of $115,765.00, together with all of Albright Stoddard's fees set forth above, of $325,965.62. Thus, the total fees incurred by the Iliescus after the Offer of Judgment was sent equals $509,295.62.

9. Furthermore, the costs incurred by the Iliescus after the Offer of Judgment was sent,

would comprise all of Thomas J. Hall's costs from October 2011 forward (consisting of $1,199.09),[2] together with all of the costs incurred with attorney Pereos ($13,458.83) and with Albright Stoddard ($20,652.83) as shown in that certain Verified Memorandum of Costs filed on October 24, 2017, equaling $35,310.75.

10. Thus a total of $544,606.37 of post Offer of Judgment fees and costs have been incurred.

11. Applying interest at 6.25% to the fees and costs incurred by the Iliescus, from the end of the month in which any such fees/costs were incurred, through October 31, 2017, would mean $28,038.45 in interest has been incurred on Downey Brand's fee invoices, and $890.94 has been incurred on Downey Brand's costs. $39,794.77 in interest has been incurred on Mollath's fees, and $2,960.14 has been incurred on Mollath's costs. $21,132.16 in interest has been incurred on Hall's fees; and $441.63 has been incurred on Hall's costs. $28,143.10 has been incurred on Pereos' fees and $3,217.79 has been incurred as to Pereos' costs. The flat fee payment to Gordon Cowan has incurred $13,426.80 at 6.25% interest since the date of its February 9, 2012 payment, through October 31, 2017. $43,003.39 in interest at 6.25% has been incurred on **Albright Stoddard's** fees through October 31, 2017, and $2,901.34 has been incurred on **Albright Stoddard's** costs through October 31, 2017. Thus, total interest of $183,950.51 in interest is claimed and sought herein, through October 31, 2017.

12. As an illustrative example of how these calculations were derived, **Albright Stoddard's** November 30, 2014 invoice contained $4,430.00 in fees attributable to the direct Steppan-Iliescu dispute. An online calculation tool was utilized, applying 6.25% simple interest from that November 30, 2014 date, through October 31, 2017, to calculate interest at $808.63, having been incurred between these two dates. This figure was then added to the other interest amounts incurred,

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[2]After taking a deduction for one invoice which was inadvertently inaccurately included in the original Verified Memorandum of Costs.

using that same method, to other monthly invoice fee amounts, to arrive at the tally of all interest sought to be awarded in **Albright Stoddard** fees through that same October 31, 2017 date. This same methodology was also applied to monthly cost assessments, and to the fees and costs of other counsel, and then added together to reach the amounts set forth above.

Further Affiant sayeth not.

D. CHRIS ALBRIGHT, ESQ.

SUBSCRIBED and SWORN to before me this 2 day of November, 2017

NOTARY PUBLIC in and for said County and State

BARBARA CLARK
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 7-27-2019
Certificate No: 95-0371-1

EXHIBIT "G"

CODE: 1950
G. MARK ALBRIGHT, ESQ., #001394
D. CHRIS ALBRIGHT, ESQ., #004904
ALBRIGHT, STODDARD, WARNICK & ALBRIGHT
801 South Rancho Drive, Suite D-4
Las Vegas, Nevada 89106
Tel: (702) 384-7111 / Fax: (702) 384-0605
gma@albrightstoddard.com
dca@albrightstoddard.com
Attorneys for Defendants

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

JOHN ILIESCU, JR.; SONNIA SANTEE ILIESCU; and JOHN ILIESCU, JR. and SONNIA ILIESCU, as Trustees of the JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT, Applicants, vs. MARK B. STEPPAN, Respondent.	CASE NO. CV07-00341 (Consolidated w/CV07-01021) DEPT NO. 10 **THE ILIESCUS' VERIFIED MEMORANDUM OF COSTS**
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 all original prior consolidated case(s).	

COME NOW, John Iliescu, Jr. and Sonnia Santee Iliescu, Individually and as Trustees of the John Iliescu Jr. and Sonnia Iliescu 1992 Family Trust, the Applicants in Case No. CV07-00341 and the Defendants in Case No. CV07-01021, consolidated therewith (hereinafter the "Iliescus" or "Movants"), and being entitled to costs which "must" be awarded as a matter "of course" pursuant to

NRS 18.020(1) and (5), inasmuch as these consolidated mechanic's lien expungement and foreclosure suits dealt with title to real property; and also being so entitled under NRS 18.020(3), as this action involved attempts by Mark Steppan to obtain more than $2,500.00 via a lien foreclosure sale as to a mechanic's lien in excess of that amount; the Iliescus, by and through their undersigned counsel of record hereby file this Verified Memorandum of Costs pursuant to NRS 18.110 and NRS 18.005. The Iliescus reserve all rights, if any, to supplement or revise this memorandum as additional information, if any, becomes available to them:

COSTS INCURRED WITH ALBRIGHT STODDARD:[1]

STATUTE	DESCRIPTION	AMOUNT
NRS 18.005(1)	Clerk's Fees [Washoe Court Clerk (Notice of Appeal)]	$ 34.00
NRS 18.005(2)	Deposition Reporter's Fees	N/A
NRS 18.005(3)	Juror's Fees	N/A
NRS 18.005(4)	Trial Witness Fees	N/A
NRS 18.005(5)	Expert Witness Fees up to $1,500.00	N/A
NRS 18.005(6)	Interpreter	N/A
NRS 18.005(7)	Service of Process Fees	N/A
NRS 18.005(8)	Court Reporter/Transcript Fees [*See also* NRAP 39(e)]	473.25
NRS 18.005(9)	Bond Fees	N/A
NRS 18.005(10)	Overtime Bailiff Fees	N/A
NRS 18.005(11)	Telecopy/Fax Costs	N/A
NRS 18.005(12)	Photocopies	2,147.30
NRS 18.005(13)	Long Distance Call Charges	N/A
NRS 18.005(14)	Postage (Including FedEx)	218.31
NRS 18.005(15)	Deposition Travel and Lodging	N/A
NRS 18.005(16)	State IAFD Fees	N/A
NRS 18.005(17)	Westlaw (On-line research)	11,889.89
NRS 18.005(17)	Travel Expenses for Attendance at Reno Hearings	2,599.36
NRAP 39(e)	Notice of Appeal Supreme Court Filing Fee	250.00
NRAP 39(e)	Appellate Cost Bond Fee	500.00[2]
	TOTAL	$ 18,112.11

COSTS INCURRED WITH ATTORNEY C. NICHOLAS PEREOS:[3]

STATUTE	DESCRIPTION	AMOUNT
NRS 18.005(2)	Deposition Reporter's Fees	$ 390.00
NRS 18.005(4)	Trial Witness Fees	1,476.71

[1]Excluding costs relating to claims against Hale Lane or other current or former third party Defendants.

[2]Unless refunded, in which event this $500.00 will be withdrawn from this bill of costs.

[3]Pereos' representation did not include substantive involvement in third party (Hale Lane etc.) claims, which were stayed during the pendency of his representation.

STATUTE	DESCRIPTION	AMOUNT
NRS 18.005(5)	Reasonable Expert Witness Fees	$ 4,940.00[4]
NRS 18.005(7)	Service of Process Fees	460.00
NRS 18.005(8)	Court Reporter/Transcript Fees [*See also* NRAP 39(e)]	3,861.48
NRS 18.005(11)	Telecopy/Fax Costs	86.00
NRS 18.005(12)	Photocopies	2,179.75
NRS 18.005(13)	Long Distance Call Charges	10.05
NRS 18.005(14)	Postage [Including FedEx]	94.84
	TOTAL	$ 13,498.83

COSTS INCURRED WITH ATTORNEY STEVEN C. MOLLATH:

STATUTE	DESCRIPTION	AMOUNT
NRS 18.005(2) and (8)	Deposition Reporter's Fees/Court Reporter Transcript Fees *See also* NRAP 39(e)	$ 4,478.05
NRS 18.005(12)	Photocopies (x .5)[5]	1,184.56
NRS 18.005(14)	Postage/Shipping (x .5)	7.95
NRS 18.005(17)	Courier Expenses (x .5)	36.62
	TOTAL	$ 5,707.18

COSTS INCURRED WITH ATTORNEYS AT DOWNEY BRAND:[6]

STATUTE	DESCRIPTION	AMOUNT
NRS 18.005(1)	Initial Answer Filing Fee	$ 135.00
NRS 18.005(8)	Court Reporter/Transcript Fees [*See also* NRAP 39(e)]	228.00
NRS 18.005(11)	Telecopy/Fax Costs (x .5)	16.36
NRS 18.005(12)	Photocopies (x .5)	834.99
NRS 18.005(13)	Long Distance Call Charges (x .5)	10.03
NRS 18.005(14)	Postage [Including FedEx] (x .5)	40.70
NRS 18.005(17)	Westlaw (On-line research) (x .5)	110.99
	TOTAL	$ 1,376.07

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[4]It is hereby averred that the circumstances surrounding this expert entitle the Iliescus to more than $1,500.00.

[5]All costs which are reduced by 50% herein are so reduced in order to account for and deduct costs possibly related solely to claims against Hale Lane and other third party defendants. Deposition and transcript costs were utilized in both matters and are not reduced.

[6]Costs clearly related to claims against Hale Lane and other third party defendants, such as Service of Process expenses for attempts to serve Hale Lane and other third-party defendants, have been excluded.

COSTS INCURRED WITH ATTORNEY THOMAS J. HALL:[7]

STATUTE	DESCRIPTION	AMOUNT
NRS 18.005(11)	Telecopy/Fax Costs	$ 2.25
NRS 18.005(12)	Photocopies	418.50
NRS 18.005(14)	Postage [Including FedEx]	9.68
NRS 18.005(17)	Westlaw (On-line research)	2,035.17
	TOTAL	$ 2,465.60

COSTS INCURRED WITH HALE LANE:

UNKNOWN[8]

TOTAL OF ALL COSTS **$ 41,159.79**

VERIFICATION PURSUANT TO NRS 18.110

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

G. MARK ALBRIGHT, being first duly sworn, states: that affiant is the attorney for the Defendants JOHN ILIESCU, JR. and SONNIA ILIESCU, individually and as Trustees of the JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT; and has personal knowledge of the above costs and disbursements incurred by the Iliescus during their representation by the law firm of Albright Stoddard, and verifies the accuracy of the same, and that, as to the other items of cost listed above, he has reviewed the invoices received by his clients (copies of which invoices were provided to him by his clients, or, as to the Mollath invoices, from their prior counsel), in order to verify and calculate the same; that the items contained in the above memorandum are true

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[7]Attorney Hall provided separate invoices for the Steppan matter vs. the claims against Hale Lane, et al., and these costs are taken solely from Hall's Steppan matter invoices.

[8]The Iliescus' initial, litigation invoices, received from Hale Lane, did not arrive until after the second or later month of representation, and set forth a prior outstanding amount which was not broken down into costs vs. fees, and for which the Iliescus have never received an allocated or hourly breakdown. The Iliescus reserve the right to supplement this Memorandum to the extent further information becomes available, but the undersigned is not able to contact Hale Lane (now Holland & Hart) directly about this matter, given that they are represented by counsel as a party herein.

and correct to the best of this affiant's knowledge and belief; and that the said disbursements are a minimum of the costs which have been necessarily incurred and paid by the Iliescus in this action.

DATED this 24th day of October, 2017.

ALBRIGHT, STODDARD, WARNICK & ALBRIGHT

G. MARK ALBRIGHT, ESQ.
Nevada Bar No. 001394
801 South Rancho Drive, Suite D-4
Las Vegas, Nevada 89106
Tel: (702) 384-7111 / Fax: (702) 384-0605
gma@albrightstoddard.com
Attorney for Defendants

SUBSCRIBED and SWORN to before me this 24th day of October, 2017

NOTARY PUBLIC in and for said County and State

ANN VITALE
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 01-09-20
Certificate No: 00-60536-1

AFFIRMATION

The undersigned does hereby affirm this 24th day of October, 2017, that the preceding document filed in the Second Judicial District Court does not contain the social security number of any person.

By

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

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and NEFCR 9, I hereby certify that I am an employee of ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, and that on this 24th day of October, 2017, service was made by the ECF system to the electronic service list, a true and correct copy of the foregoing **VERIFIED MEMORANDUM OF COSTS**, to the following person:

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

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An Employee of Albright, Stoddard, Warnick & Albright

EXHIBIT "H"

PREPARED BY
RESEARCH DIVISION
LEGISLATIVE COUNSEL BUREAU
Nonpartisan Staff of the Nevada State Legislature

BILL SUMMARY

72nd REGULAR SESSION
OF THE NEVADA STATE LEGISLATURE

SENATE BILL 206
(Enrolled)

Topic

Senate Bill 206 relates to liens.

Summary

This bill prohibits the prospective waiver of a claimant's rights under a mechanics' or materialmen's lien. The bill also contains provisions to confirm, clarify, standardize, and expedite: (1) the procedures and forms required for a waiver and release upon payment; (2) the procedures for recording a notice of lien and a surety bond to release a lien; and (3) the proceedings to adjudicate a lien.

Effective Date

This measure is effective October 1, 2003.

Background Information

Testimony indicated that the authors and sponsors of this bill included: the Associated Builders and Contractors, Associated General Contractors, Framing Contractors Association, Mechanical Contractors Association, National Association of Minority Contractors, National Association of Women in Construction, National Electrical Contractors Association, Nevada Association of Mechanical Contractors, Plumbing and Mechanical Contractors of Nevada, Sheet Metal & Air Contractors National Association, Southern Nevada Air Conditioning Refrigeration Service Contractors Association, and the Southern Nevada Home Builders Association.

In addition, testimony indicated that 36 states currently prohibit the prospective wavier of lien rights either by statute or case law.

LEGISLATIVE HEARINGS

MINUTES AND EXHIBITS

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-second Session
March 11, 2003

The Senate Committee on Judiciary was called to order by Chairman Mark E. Amodei, at 8:09 a.m., on Tuesday, March 11, 2003, in Room 2149 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Mark Amodei, Chairman
Senator Maurice E. Washington, Vice Chairman
Senator Mike McGinness
Senator Dennis Nolan
Senator Valerie Wiener
Senator Terry Care

COMMITTEE MEMBERS ABSENT:

Senator Dina Titus (Excused)

STAFF MEMBERS PRESENT:

Nicolas Anthony, Committee Policy Analyst
Bradley Wilkinson, Committee Counsel
Lora Nay, Committee Secretary

OTHERS PRESENT:

The Honorable Deborah A. Agosti, Chief Justice, Supreme Court
Judge Susan Deriso, Sparks Township (Department 1), Justice of the Peace, Washoe County
Steve G. Holloway, Lobbyist, Associated General Contractors, Framing Contractors Association, National Association of Women in Construction
Ivan R. "Renny" Ashleman, Lobbyist, Nevada Homebuilders Association, Southern Nevada Homebuilders Association
Fred L. Hillerby, Lobbyist, American Institute of Architects-Nevada (AIA)

SENATE BILL 206: Makes various changes to provisions relating to mechanics' and materialmen's liens. (BDR 9-755)

STEVE G. HOLLOWAY, LOBBYIST, ASSOCIATED GENERAL CONTRACTORS, FRAMING CONTRACTORS ASSOCIATION, NATIONAL ASSOCIATION OF WOMEN IN CONSTRUCTION:
I am the executive vice president for the Associated General Contractors in Las Vegas. I am here on behalf of the sponsors for S.B. 206. For the record, those sponsors are: Associated Builders and Contractors, Associated General Contractors in Las Vegas, Associated General Contractors in Northern Nevada, the Framing Contractors Association, the Mechanical Contractors Association of Nevada, the National Association of Minority Contractors, the National Association of Women in Construction, the National Electrical Contractors Association, the Nevada Association of Mechanical Contractors, the Plumbing and Mechanical Contractors of Nevada, the Sheet Metal and Air Conditioning Contractors' National Association, the Southern Nevada Air Conditioning Refrigeration Service Contractors Association, and the Southern Nevada Home Builders Association.

This bill has been 4 years in the works. It was introduced and then withdrawn last session at the request of the development community as they felt they had not had sufficient input. For the last 2 years, we have been meeting with that portion of the community and other interested parties to hammer out certain refinements in this bill. We believe this bill is fair to all those it affects, the owners, the developers, the general contractors, the subcontractors, the equipment rental companies, and suppliers, et cetera.

This bill is an outgrowth of the Venetian, the Aladdin, and the Regent. Even though we have been working on it 4 years, I would simply point out the actions involving the lien law claimants over the Venetian construction are still in court, and those who have not gone bankrupt have settled for 30 or 40 cents on the dollar. The purpose of this bill is to prohibit the prospective waiver of a lien claimant's rights, and to confirm, clarify, and standardize the procedures and forms required for a waiver and release upon payment. The procedures for recording notice of lien and a surety bond, to release a lien, and the proceedings to adjudicate a lien. If you would like, Mr. Chairman, I can go through section by section and briefly describe what each section does.

completed. This is to give that owner-developer an additional advance notice there is someone who intends to file a lien. It will give her or him a chance to get with the general contractor, subcontractor, or supplier and get it cleared up.

SENATOR WIENER:
In section 41 on page 27 around line 14, you have added some additional language proposed, would you explain what you are hoping to accomplish and would you be able to give us an example of what this would address?

MR. HOLLOWAY:
There has been an ongoing and continuing problem in the courts. The law was not clear and the practices of the different courts varied. We made it very clear if a lien is upheld, the lien claimant will be awarded, either on his or her lien or against the surety bond if one is filed, the lienable amount found due by the court, the cost of preparing and filing the lien including attorneys fees, and any interest that may be due on that amount. In the paragraph you are referring to, we also wanted to make sure if the lien was not upheld, the court could, at its discretion, award costs and reasonable attorneys fees to the owner or other person defending against the claim. In our amendment we say "prevailing party," rather than "owner" or "person," if the court finds the lien was not pursued by the lien claimant with reasonable costs.

SENATOR CARE:
In section 46, the preferential trial, after you have filed the Rule 16.1 mandatory pre-trial conference report, the joint case conference report, then you have the notice of demand for preferential trial setting. Looking at line 17 on page 33, it says, "Any supplemental discovery responses ..." I am wondering about the discovery requests which can be done at the case conference. I know these things are going to move quickly. What is the overall time frame for discovery? When do you actually make those first requests, and any supplemental requests and when do they have to be?

MR. HOLLOWAY:
We lengthened the time for preferential trial from 30 to 60 days and gave the court 60 days to schedule the preferential trial, as opposed to 30 days under the existing law. This extends the time you had to do whatever discovery you needed once you are notified of the lien and any request for a preferential date.

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Second Session
May 8, 2003

The Committee on Judiciary was called to order at 7:39 a.m., on Thursday, May 8, 2003. Chairman Bernie Anderson presided in Rooms 3138 and 4100 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Guest List. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

Note: *These minutes are compiled in the modified verbatim style. Bracketed material indicates language used to clarify and further describe testimony. Actions of the Committee are presented in the traditional legislative style.*

COMMITTEE MEMBERS PRESENT:

Mr. Bernie Anderson, Chairman
Mr. John Oceguera, Vice Chairman
Mrs. Sharron Angle
Mr. David Brown
Ms. Barbara Buckley
Mr. John C. Carpenter
Mr. Jerry D. Claborn
Mr. Marcus Conklin
Mr. Jason Geddes
Mr. Don Gustavson
Mr. William Horne
Mr. Garn Mabey
Mr. Harry Mortenson
Ms. Genie Ohrenschall
Mr. Rod Sherer

GUEST LEGISLATORS PRESENT:

Senator Michael Schneider, District No. 11, Clark County

Chairman Anderson:
[The Chair reminded the Committee members and those present in the audience of the Standing Rules and appropriate meeting etiquette. Roll called. A quorum was present.]

Please note the sign on the table concerning the legality of misrepresenting facts before this Legislature. Although I have the prerogative of swearing in people who give testimony, I generally don't do that. It is a misdemeanor to misrepresent a fact to a legislator either in committee or out of committee on a piece of pending legislation. Please keep that in mind when speaking to us.

We'll move with S.B. 206.

Senate Bill 206 (1st Reprint): Makes various changes to provisions relating to mechanics' and materialmen's liens. (BDR 9-755)

Steve Holloway, Executive Vice President, Associated General Contractors:
I'm here on behalf of the construction industry to speak to Senate Bill 206, a consensus bill. It has had input from just about every group and organization that has anything to do with the construction industry, it has the support of nearly every group that I know of in the industry, and it has the support of labor and management.

Senate Bill 206 prohibits the prospective waiver of a lien claimant's rights. Doing so is good public policy. There are 36 states that have already done so by either statute or case law.

Secondly, S.B. 206 clarifies and thereby expedites the procedures for filing and adjudicating a lien. Unfortunately, S.B. 206, which unanimously passed the Senate is too late for many contractors and subcontractors throughout Nevada. These contractors and subcontractors have built the Venetian, Aladdin, Regency, and numerous smaller projects throughout the state at their own expense. Because of the many inequities in Nevada's current mechanics' lien law, many of these contractors have been forced to settle their claims for 30 cents on the dollar. Many have been forced into bankruptcy; the rest are still litigating their lien claims.

After six years, those who built the Venetian, as a case in point, are still litigating their lien claims. It will be another 6 to 10 years before the Venetian is forced to pay those claims that have already been awarded by the district court.

Nearly every contractor in the state is prepared to tell you why S.B. 206 is needed. In order not to belabor the point only a few are scheduled to testify

Section 29, pages 12 to 13, specifies the priority of liens and deletes language that is now incorporated into the definitions.

Section 30, pages 13 to 16, makes certain that the time for recording liens does not begin to run until 90 days after the work of improvement is complete, or until 40 days after a notice of completion is timely recorded and served. It also establishes a standard form to be used to record a lien. It allows liens to be served by certified mail and deletes language that is now incorporated into the definitions set forth in the statute. Finally, it requires that the lien claimant provide the owner with a 15-day notice of intent to lien if the work of improvement is a multiple- or single-family residence or residences.

Section 31, pages 17 to 18, allows liens to be served by certified mail.

Section 32, pages 18 to 19, clarifies the requirements for a hearing on a frivolous or excessive lien.

Section 33, pages 19 to 20, clarifies the content and delivery requirements for a notice of completion and invalidates a notice of completion for failure to deliver.

Section 34, pages 20 to 21, confirms that lien claimants may amend their liens at any time prior to trial and requires the lien claimant to serve the owner with any amended lien.

Section 35, pages 21 to 22 clarifies how a lien against two or more pieces of property will be apportioned.

Section 36, page 22, confirms that a notice of lien must be recorded in the county in which the property subject to the lien is located.

Section 37, pages 22 to 23, confirms that a lien may not bind the subject property longer than six months unless an extension is granted by the court. That extension may not be granted for more than one year.

Section 38, pages 23 to 25, establishes the content to be included in a notice of non-responsibility and further defines a "disinterested owner."

Section 39, pages 25 to 26, clarifies the lienable amount that may be recovered by a prime contractor and the prime contractor's obligation to only defend the owner after receipt of payment.

Section 40, page 26, clarifies the rank of lien claimants and the distribution of proceeds from a judgment.

Section 41, page 26, confirms that a prevailing lien claimant shall be awarded attorney's fees, court costs, and interest, and that any prevailing owner or owner's agent may be awarded court costs and reasonable attorney's fees.

Section 42, pages 27 to 28, confirms that filing a notice of lien does not preclude a lien claimant from pursuing other remedies.

Section 43, pages 28 to 30, establishes the time period for filing a statement of facts in an ongoing foreclosure action and establishes the procedures to be followed in a complex foreclosure action involving numerous lien claimants.

Section 44, page 30, clarifies by conforming language allowing for the release of a lien upon the posting of a surety bond.

Section 45, pages 30 to 32, requires a debtor to a lien claimant to record a surety bond in the office of the county recorder in which the notice of lien was recorded. It also requires the debtor to mail a copy of the surety bond to the lien claimant.

Section 46, pages 32 to 34, extends the time period for the court to conduct preferential trials and establishes the procedures for such trials.

Section 47, page 34, subjects the principal and surety to the jurisdiction of the court in which any action or suit is pending on a notice of lien on the property described in the surety bond.

Section 48, pages 34 to 35, addresses the sufficiency of a surety bond.

Section 49, page 35 to 36, conforms language on the assignment of liens.

Section 50, page 36, conforms language on the discharge of liens.

Section 51, pages 36 to 37, also conforms language on the discharge of liens.

Section 52, page 37, clarifies by conforming language regarding the time limit for filing a foreclosure action.

Section 53, pages 38 to 39, clarifies by conforming language regarding the Notice of Right to Lien. It also allows the Notice of Right to Lien to be filed at any time after the commencement of work.

EXHIBIT "I"

ASWA

ALBRIGHT · STODDARD · WARNICK · ALBRIGHT

LAW OFFICES

A PROFESSIONAL CORPORATION

Our Attorneys

Our firm, one of the oldest law firms in Southern Nevada, was originally founded in 1970 by G. Vern Albright, a former Assistant U.S. Attorney in Nevada and Deputy District Attorney in Clark County, Nevada. William H. Stoddard joined the firm in 1976. Whitney B. Warnick (a premier artist in the Southwest) joined the firm in 1979, followed by G. Mark Albright (listed in "Outstanding Lawyers in America") in 1981. D. Chris Albright joined the firm in 1994, after graduating with honors from Law School and serving for one year as a Judicial Clerk for the Nevada Supreme Court. William Stoddard, Jr. joined the firm in 2006, after graduating first in his class from Law School. The firm enjoys the highest AV ranking by Martindale-Hubbell.

Our firm has years of experience trying cases before judges, juries and arbitrators, as well as negotiating and settling cases out of court. Over the decades, our attorneys have developed reputations as aggressive advocates and skilled trial lawyers.

Our general civil litigation department handles a wide variety of litigation matters, including commercial litigation, construction lien/contract disputes, automobile liability, premises liability, and products liability. We also handle appeals in both State and Federal courts. Our transactional attorneys handle a wide variety of complex business transactions, as well.

Our Clients

Many of the firm's clients have used the firm's services for several decades, including banks, general contractors and construction companies, title companies, real estate companies, public utility companies, and civil engineering firms.

The firm has been involved in many high profile and complex bench and jury trials in Southern Nevada, in both State and Federal court, representing contractors, lenders, and owners on large commercial projects, as well as injured parties. The firm successfully defended a general contractor in a year-long bench trial arising out of the construction of a major hotel. The firm has also represented numerous lien claimants in various hotel construction priority trials, and recently successfully defended the lender against dozens of lien claimants relating to the construction of a large hotel/mall project in Las Vegas. The firm has also successfully defended a variety of personal injury claims, and recently represented various lien clients in separate hotel construction trials. The

firm played a key role in the three-week federal jury trial against Equinox International, which resulted in the recovery of some $40 million for victims of an illegal pyramid scheme. Other trials include the Resort at Summerlin, MGM and Sunrise Suites Hotel. The firm also represented one of the main defendants (a mechanical engineer) in the famous Hilton Hotel fire cases and filed the key, summary judgment motion, which became the impetus to a global multimillion dollar settlement. The firm recently defended Bridgestone Japan from a major product liability claim and successfully represented Nevada Power in a federal case involving a multimillion dollar multi-lot auction suit.

Martindale-Hubbell AV Rating

Our firm and several of the partners have earned an AV rating (the highest rating that an attorney can achieve) in the Martindale-Hubbell Law Directory, for our legal capabilities and devotion to professional ethics. These assessments are based on surveys of members of the Bar.

Practice Areas

- Civil Trial and Appellate Practice in all State and Federal Courts
- Insurance Defense
- Construction Defect Law
- Construction Law representing Engineers, Architects, Contractors and Subcontractors
- Commercial Transactions
- Real Estate Law and Lending
- Environmental Law
- Commercial Landlord/Tenant Law
- Uniform Commercial Code
- Commercial Leases
- Bankruptcy
- Surety
- Family Law
- Legal Malpractice Defense
- Estate Planning
- Trust and Estate Administration
- Banking Law
- Probate Law
- Personal Injury Defense
- Complex Commercial Litigation
- Non-Compete/Non-Disclosure Disputes

EXHIBIT "J"

Second Judicial District Court
State of Nevada
Washoe County

As a result of Senate Bill 45, the Nevada State Legislature has revised NRS 17.130, NRS 37.175, NRS 99.040, NRS 108.237, NRS 147.220, NRS 233.170 and NRS 645.847 to read:

"When no rate of interest is provided by contract, or otherwise by law, or specified in the judgment, the judgment draws interest at a rate equal to the prime rate at the largest bank in Nevada as ascertained by the commissioner of financial institutions on January 1 or July 1, as the case may be, immediately preceding the date of judgment, plus 2 percent. The rate must be adjusted accordingly on each January 1 and July 1 thereafter until the judgment is satisfied."

On September 25, 1987, the judges voted to have this rate established by the Court Administrator in accordance with Senate Bill 45. Accordingly, I hereby establish the following.

1. If a rate of interest is stated in the judgment, that rate shall take precedence.

2. If no rate of interest is stated in actions filed on and after July 01, 2017, the rate of interest shall be 6.25% (prime rate of 4.25%, plus 2%).

3. This rate of interest shall be adjusted again on January 1, 2018.

Begin Date	End Date	Interest Rate
July 1, 2017	December 31, 2017	6.25
January 1, 2017	June 30, 2017	5.75
July 1, 2016	December 31, 2016	5.5
January 1, 2016	June 30, 2016	5.5
July1,2015	December 31, 2015	5.25
January 1, 2015	June 30, 2015	5.25
July 1, 2014	December 31, 2014	5.25
January 1, 2014	June 30, 2014	5.25
July1,2013	December 31, 2013	5.25
January 1, 2013	June 30, 2013	5.25
July1,2012	December 31, 2012	5.25
January 1, 2012	June 30, 2012	5.25
July1,2011	December 31, 2011	5.25
January 1, 2011	June 30, 2011	5.25
July1,2010	December 31, 2010	5.25
January 1, 2010	June 30, 2010	5.25
July 1, 2009	December 31 , 2009	5.25
January 1, 2009	June 30, 2009	5.25
July 1, 2008	December 31, 2008	7
January 1, 2008	June 30, 2008	9.25
July 1, 2007	December 31 , 2007	10.25
January 1, 2007	June 30, 2007	10.25
July 1, 2006	December 31 , 2006	10.25
January 1, 2006	June 30, 2006	9.2
July 1, 2005	December 31, 2005	8.25
January 1, 2005	June 30, 2005	7.25
July 1, 2004	December 31 , 2004	6.25
January 1, 2004	June 30, 2004	6
July 1, 2003	December 31 , 2003	6
January 1, 2003	June 30, 2003	6.25
July 1, 2002	December 31, 2002	6.75
January 1, 2002	June 30, 2002	6.75
July 1, 2001	December 31, 2001	8.75
January 1, 2001	June 30, 2001	11.5
July 1, 2000	December 31, 2001	11.5
January 1, 2000	June 30, 2000	10.5
July 1, 1999	December 31 , 1999	10

January 1, 1999	June 30, 1999	9.75
July 1, 1998	December 31 , 1998	10.5
January 1, 1998	June 30, 1998	10.5
July 1, 1997	December 31, 1997	10.5
January 1, 1997	June 30, 1997	10.25
July 1, 1996	December 31 , 1996	10.5
January 1, 1996	June 30, 1996	10.5
July 1, 1995	December 31 , 1995	11
January 1, 1995	June 30, 1995	10.5
July 1, 1994	December 31, 1994	9.25
January 1, 1994	June 30, 1994	8
July 1, 1993	December 31 , 1993	8

PRIME INTEREST RATE

NRS 99.040(1) requires:
*"When there is no express contract in writing fixing a different rate of interest, interest must be allowed at a rate equal to the prime rate at the largest bank in Nevada, as ascertained by the Commissioner of Financial Institutions, on January 1, or July 1, as the case may be, immediately preceding the date of the transaction, plus 2 percent, upon all money from the time it becomes due, . . . "**
Following is the prime rate as ascertained by the Commissioner of Financial Institutions:

January 1, 2017	3.75%	July 1, 2017	4.25%
January 1, 2016	3.50%	July 1, 2016	3.50%
January 1, 2015	3.25%	July 1, 2015	3.25%
January 1, 2014	3.25%	July 1, 2014	3.25%
January 1, 2013	3.25%	July 1, 2013	3.25%
January 1, 2012	3.25%	July 1, 2012	3.25%
January 1, 2011	3.25%	July 1, 2011	3.25%
January 1, 2010	3.25%	July 1, 2010	3.25%
January 1, 2009	3.25%	July 1, 2009	3.25%
January 1, 2008	7.25%	July 1, 2008	5.00%
January 1, 2007	8.25%	July 1, 2007	8.25%
January 1, 2006	7.25%	July 1, 2006	8.25%
January 1, 2005	5.25%	July 1, 2005	6.25%
January 1, 2004	4.00%	July 1, 2004	4.25%
January 1, 2003	4.25%	July 1, 2003	4.00%
January 1, 2002	4.75%	July 1, 2002	4.75%
January 1, 2001	9.50%	July 1, 2001	6.75%
January 1, 2000	8.25%	July 1, 2000	9.50%
January 1, 1999	7.75%	July 1, 1999	7.75%
January 1, 1998	8.50%	July 1, 1998	8.50%
January 1, 1997	8.25%	July 1, 1997	8.50%
January 1, 1996	8.50%	July 1, 1996	8.25%
January 1, 1995	8.50%	July 1, 1995	9.00%
January 1, 1994	6.00%	July 1, 1994	7.25%
January 1, 1993	6.00%	July 1, 1993	6.00%
January 1, 1992	6.50%	July 1, 1992	6.50%
January 1, 1991	10.00%	July 1, 1991	8.50%
January 1, 1990	10.50%	July 1, 1990	10.00%
January 1, 1989	10.50%	July 1, 1989	11.00%
January 1, 1988	8.75%	July 1, 1988	9.00%
January 1, 1987	Not Available	July 1, 1987	8.25%

*** Attorney General Opinion No. 98-20:**

If clearly authorized by the creditor, a collection agency may collect whatever interest on a debt its creditor would be authorized to impose. A collection agency may not impose interest on any account or debt where the creditor has agreed not to impose interest or has otherwise indicated an intent not to collect interest. Simple interest may be imposed at the rate established in NRS 99.040 from the date the debt becomes due on any debt where there is no written contract fixing a different rate of interest, unless the account is an open or store accounts as discussed herein. In the case of open or store accounts, interest may be imposed or awarded only by a court of competent jurisdiction in an action over the debt.

CODE: 1650
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Attorneys for Applicants/Defendants

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

JOHN ILIESCU, JR.; SONNIA SANTEE ILIESCU; JOHN ILIESCU, JR. and SONNIA 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, 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 all pending third-party claims.

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

DEPT NO. 10

ERRATA TO ILIESCUS' MOTION FOR AN AWARD OF COSTS AND ATTORNEY'S FEES AND INTEREST THEREON

COME NOW, the Applicants in Case No. CV07-00341 and the Defendants in Case No. CV07-01021, consolidated therewith (hereinafter the "Iliescus"), by and through their undersigned counsel of record ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, and hereby file the

following Errata to that certain Defendants' Motion for an Award of Costs and Attorney's Fees and Interest Thereon (Transaction #6379698) as follows.

Subsection I(C) of the filing, at page 6, lines 2 through 14, should be revised to read as follows:

C. Attorneys' Fees and Costs.

Dr. Iliescu is now 91 years old. He and ~~Mr.~~ **Mrs.** Iliescu have been involved in this dispute since 2006, over a decade. During that time, for pre-trial procedures and motions, a full trial on the merits, post-trial motions, and the appeal, the Iliescus have incurred at least $654,947.62 in attorneys' fees, as shown by the Affidavit of D. Chris Albright regarding attorneys' fees attached as **Exhibit "F"** hereto, and $41,072.59 in costs, as shown by the Verified Memorandum of Costs, attached as **Exhibit "G"** hereto (subtracting one inadvertent error from that Verified Memorandum, and excluding certain of the costs and fees incurred pursuing claims relating to or against third-parties). The **Exh. "F"** Affidavit also indicates that, following service of the Offer of Judgment, $509,295.62 in fees and $35,310.75 in costs were incurred. Interest on Iliescus' costs and fees incurred, calculated at Nevada's current legal rate of 6.25% from the end of the ~~year(s)~~ **month(s)** on which the same were incurred, would be calculated as is set forth in the **Exh. "F"** Affidavit, at paragraphs 11 and 12, and equals $183,950.51 in interest sought by the Iliescus herein, through October 31, 2017, with interest to continue to accrue on any costs and fees award at Nevada's legal rate, until paid in full.

DATED this 14th day of November, 2017.

ALBRIGHT, STODDARD, WARNICK & ALBRIGHT

By _____
G. MARK ALBRIGHT, ESQ.
Nevada Bar No. 001394
D. CHRIS ALBRIGHT, ESQ.
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dca@albrightstoddard.com
Attorneys for Applicants/Defendants

AFFIRMATION

The undersigned does hereby affirm this 14th day of November, 2017, that the preceding document filed in the Second Judicial District Court does not contain the social security number of any person.

By _____

G. MARK ALBRIGHT, ESQ.
Nevada Bar No. 001394
D. CHRIS ALBRIGHT, ESQ.
Nevada Bar No. 004904
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dca@albrightstoddard.com
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 14th day of November, 2017, service was made by the ECF system to the electronic service list, a true and correct copy of the foregoing **ERRATA TO ILIESCUS' MOTION FOR AN AWARD OF COSTS AND ATTORNEY'S FEES AND INTEREST THEREON**, to the following person:

Michael D. Hoy, Esq. HOY CHRISSINGER KIMMEL VALLAS, P.C. 50 West Liberty Street, Suite 840 Reno, Nevada 89501 Tel: (775) 786-8000 mhoy@nevadalaw.com *Attorney for Plaintiff Mark Steppan*	____ Certified Mail __X__ Electronic Filing/Service ____ Email ____ Facsimile ____ Hand Delivery ____ Regular Mail
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An Employee of Albright, Stoddard, Warnick & Albright