

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 12:58 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 XI**

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

G. MARK ALBRIGHT, ESQ.

Nevada Bar No. 001394

D. CHRIS ALBRIGHT, ESQ.

Nevada Bar No. 004904

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Counsel for Appellants

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		12 Email memo from Sarah Class to Calvin Baty, dated 11/29/05		JA1270
		13 Steppan Response to Owner Issues on AIA Contract, dated 12/20/05		JA1271-1273
		14 Architectural Design Services Agreement, dated 11/15/05		JA1274-1275
		15 Design Services Continuation Letter, dated 12/14/05		JA1276
		16 Design Services Continuation Letter, dated 2/7/06		JA1277
		17 Design Services Continuation Letter, dated 3/24/06		JA1278
		67 Proposal from Consolidated Pacific Development to Richard Johnson with handwriting, dated 7/14/05		JA1279-1280
		68 Land Purchase Agreement Signed by Seller, dated 7/25/05		JA1281-1302
		69 Addendum No. 1 to Land Purchase Agreement, dated 8/1/05		JA1303-1306
		70 Addendum No. 2 to Land Purchase Agreement, dated 8/2/05	VII	JA1307-01308
		71 Addendum No. 3 to Land Purchase Agreement, dated 10/9/05		JA1309-1324
		72 Addendum No. 4 to Land Purchase Agreement, dated 9/18/06		JA1325-1326

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

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

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c), I hereby certify that I am an employee of ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, and that on this 21st day of November, 2018, the foregoing **JOINT APPENDIX TO APPELLANT'S OPENING BRIEF, VOLUME XI**, 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

A handwritten signature in blue ink, appearing to read "Charitta Gray", is written above a horizontal line.

An employee of Albright, Stoddard, Warnick & Albright

samcaniglia

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

Calvin-

141

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

1. Paragraph 2.2.1 -- You may not want to have to furnish financial information to the contractor. Also under paragraph 14.1.1 the owner's failure to provide this information may entitle contractor to terminate the contract. OS
11/21/05
2. Paragraph 3.2.3 -- You should delete the word knowingly from the last line of this paragraph (as it would seem to preclude recovery for the contractor's negligence).
3. Paragraph 3.3.1 -- This paragraph gives the architect authority to direct the contractor to proceed with work even if the contractor determines it is unsafe, but makes the owner solely responsible for any resulting damage. This paragraph should be revised so that either the architect should be responsible for the damage, or the owner should have the authority to direct the contractor to proceed with work. ✓
4. Paragraph 3.10.3 -- Contractor should perform the work in accordance with the most recent approved schedule submitted to owner and architect.
5. Paragraph 3.18.1 -- The contractor's indemnity in this paragraph should cover loss of use in addition to the other delineated items; also, we should remove the limitation that restricts the indemnity to negligent acts of the contractor. 11/21/05
- ✓ 6. Paragraph 4.3.10 -- This paragraph limiting the owner's recovery of consequential damages should be deleted; you may want to include in your construction contract a provision for liquidated damages in the event the contractor fails to perform on time and in accordance with the construction contract. ✓
7. Paragraph 4.6.4 -- The owner should be able to join the contractor and the architect in a single action. The language in this paragraph precluding joinder should be deleted, and the paragraph should provide that joinder is permitted. The same changes should be made to paragraph 1.3.5.4 of the AIA B151. ✓
- ✓ 8. Paragraph 5.2 -- This provision should be redrafted so that the owner has the absolute right to approve or disapprove the subcontractors performing work on the project (the language referring to reasonable objection should be removed). ?
9. Paragraph 6.2.3 -- The owner is assuming responsibility for the costs incurred by the contractor for the acts of a separate contractor. This should be acceptable only if the owner can recover the cost from 11/21/05

11/21/2005

JA2149

STEPPAN 2772

the contractor that causes the loss.

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

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

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

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

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

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

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

Thanks

Sarah

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

From: Calvin Baty [mailto:calvin@decalcustomhomes.com]

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

To: 'Sarah Class'

Cc: 'samcaniglia'

Subject: RE: AIA Contract

Sarah,

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

Thanks,

Calvin

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

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

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

11/21/2005

Danielle Bacus-Aragon

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

Sam:

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

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

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

Sarah

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

Visit our website: www.halelane.com

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EXHIBIT “5”

JA2152

HALE LANE

ATTORNEYS AT LAW

5441 Kietzke Lane | Second Floor | Reno, Nevada 89521
Telephone: (775) 327-3000 | Facsimile: (775) 786-6179
www.halelane.com

December 14, 2005

EXHIBIT NO. 1a

11/12/09

Edward Everett Hale
(1929-1993)
Steve Lamm
J. Stephen Peck
Karen D. Derwin
R. Craig Howard
Stephen V. Wenzel
Richard L. Elton
Richard Bennett
Robert C. Anderson
Alex J. Flanagan
James L. Kelly
Kelly Tardien
M. Patrick Flanagan
Matthew E. Woodhead
Michelle D. Mylrea
Roger W. Toppin
Lance C. Hall
Jeremy J. Nash
David A. Garcia
Elton F. Calish
Theodore A. Lake
Frederick J. Schmidt
James Newman
Terry A. Sanders
Patrick J. Bailey
Sam D. Fleming
Scott Scherer
Anthony L. Hall
Jerry M. Snyder
Brent C. Eckert
Frederick R. Rauscher
Paula C. Haines
Matthew J. Krasner
Matthew B. Hight
Brad M. Johnson
Bryan K. Kordman
Douglas C. Flannery
Jordan C. Jones
Helen M. Vance
Katherine Roddy
Dore V. Dikmen
Sister Johnson
Sarah E. L. Chen
Helen E. Mandrolian

Of Counsel

Ray Furrow
Pauline Ng Lee
Andrew Peart

*Admitted to New York
and New Jersey only

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

Calvin Baty, an individual
c/o Consolidated Pacific Development, Inc.
932 Parker Street
Berkeley, California 94710-2524

Consolidated Pacific Development, Inc.
932 Parker Street
Berkeley, California 94710-2524

Re: Court Street/Island Avenue Condominium Project

Lady and Gentlemen:

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

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

HALE LANE PEEK DENNISON AND HOWARD

LAS VEGAS OFFICE: 2300 West Sahara Avenue | Eighth Floor | Box 2 | Las Vegas, Nevada 89102 | Phone: (702) 322-1300 | Facsimile: (702) 385-0940
CARSON CITY OFFICE: 777 East William Street | Suite 100 | Carson City, Nevada 89701 | Phone: (775) 684-6000 | Facsimile: (775) 684-6001

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ILIESCU000133

JA2153

December 14, 2005
Page 2

HALE LANE
ATTORNEYS AT LAW

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

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

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

Very truly yours,



Karen D. Dennison

KDD:csr

00MA1PCDDCSVLRN0DOCSAM12#1

ILIESCU000134

JA2154

ATTORNEYS AT LAW

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

FROM:	Sarah E. L. Class, Esq.	DATE:	December 15, 2005
OUR FILE NO.:	20540-0002	TOTAL NO. OF PAGES INCLUDING COVER:	4
RE:	Court Street/Island Avenue		

SEND TO (NAME/COMPANY)	FACSIMILE NO.	TELEPHONE NO.
John and Sonnia Diescu	775-322-4112	775-771-6263

RETURN TO: Danielle Aragon

Greetings:

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

HALE LANE PEEK DENNISON AND HOWARD

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

==ODMAIPDUC5VHLRNDUC5M973H41

ILIESCU000135

JA2155

December 14, 2005
Page 3

*O regem
mailed 12/22/0*
HALE LANE
ATTORNEYS AT LAW

Acknowledgement

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

Ilescu:

Date: 12-15-05

John Ilescu, Jr.
John Ilescu, Jr.

Date: 12-15-05

Sonia Santee Ilescu
Sonia Santee Ilescu

Date: 12-15-05

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

Date: 12-15-05

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

Baty:

Date: _____

Calvin Baty

Consolidated:

Consolidated Pacific Development, Inc.,
a Nevada corporation

Date: _____

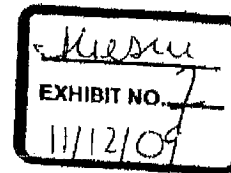
By: _____
Sara A. Caniglia, President

EXHIBIT “6”

JA2157

METZKER JOHNSON GROUP
COMMERCIAL * RESIDENTIAL * INVESTMENT * REALTY

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



ADDENDUM No. 4.

Date Prepared: September 18, 2006

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

RECITALS:

A. Seller and Buyer entered into that certain Land Purchase Agreement dated July 29, 2005 ("Land Purchase Agreement"), together with Addendum No. 1 dated August 1, 2005 ("First Addendum"), and Addendum No. 2 dated August 2, 2005 ("Second Addendum"), and Addendum No. 3 dated October 8, 2005 ("Third Addendum"). The Land Purchase Agreement, the First Addendum, the Second Addendum, and the Third Addendum are collectively referred herein as the "Agreement". The Agreement is for the sale and purchase of that certain real property located in the City of Reno, County of Washoe, State of Nevada, identified as APNs 011-112-05, 06, 07 and 12 and more particularly described in the Title Report attached to the Third Addendum. *03*

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

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

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

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

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

Seller:

John Ilescu
John Ilescu Jr.

Sonia Santee Ilescu
Sonia Santee Ilescu

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

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

Buyer:

Consolidated Pacific Development, Inc.,
a Nevada corporation

By: Sam A Caniglia
Sam A Caniglia, President

EXHIBIT “7”

JA2160

BK1
Requested By
GAYLE A KERN LTD
Washoe County Recorder
Kathryn L. Burke - Recorder
Pg 1 of 4 RPTT 0.00



When Recorded Mail To:

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

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

GRANTEE'S ADDRESS:

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

NOTICE AND CLAIM OF LIEN

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

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

Claimant further states:

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

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

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

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

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

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

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

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



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

APN: 011-112-03

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

APN: 011-112-06

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

APN: 011-112-07

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

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

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

APN: 011-112-12



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

DATED: This 7th day of November, 2006.

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

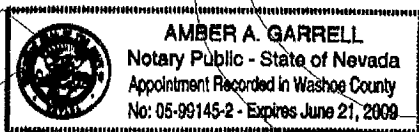
STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

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

Gayle A. Kern
Gayle A. Kern, Esq.

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

Amber A. Garrell
Notary Public



FILED
Electronically
CV07-00341
2017-12-18 09:00:31 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 6442526 : pmsewell

EXHIBIT “8”

JA2165

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

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

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

DOC # 3528313

05/03/2007 11:32:12 AM

Requested By

GAYLE A KERN

Washoe County Recorder

Kathryn L. Burke - Recorder

Fee: \$18.00 RPTT: \$0.00

Page 1 of 5



AMENDED NOTICE AND CLAIM OF LIEN

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

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

Signature

AIA, CSI, NCARB

Title

Mark Steppan

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

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

When Recorded Mail To:

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

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

GRANTEE'S ADDRESS:

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

AMENDED NOTICE AND CLAIM OF LIEN

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

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

Claimant further states:

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

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

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

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

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

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

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

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

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

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

APN: 011-112-03

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

APN: 011-112-06

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

APN: 011-112-07

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

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

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

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

APN: 011-112-12

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

DATED: This 3rd day of May, 2007.

By

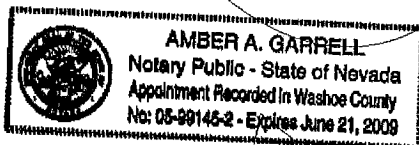
Mark Steppan, AIA, CSI, NCARB

STATE OF NEVADA)

) ss.

COUNTY OF WASHOE)

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



NOTARY PUBLIC

EXHIBIT “9”

JA2171

DOC # 4297751

11/08/2013 11:26:26 AM

Requested By

MICHAEL D HOY

Washoe County Recorder

Lawrence R. Burtness - Recorder

Fee: \$50.00 RPTT: \$0.00

Page 1 of 9

When recorded, mail to:

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



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

Second Amended Notice and Claim of Lien

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

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

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

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

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

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

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

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

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

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

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

(continues)

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

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

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

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

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

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

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

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

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

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

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

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

Design Agreement

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

Reimbursable Expenses

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

Adjacent Church Parking Studies

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

City Staff comment studies.

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

Project fly-through.

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

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

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

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

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

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

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

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

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

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

Total: \$35,585.27

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

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

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

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

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

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

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

Invoice	Date	Amount
22431	08/23/2006	22,100.00
22453	09/21/2006	10,675.00
22469	10/25/2006	1,800.00
22482	11/21/2006	1,980.00
Total:		36,555.00

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

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

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

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

Parcel 1.

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

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

APN: 011-112-03

Parcel 2.

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

APN: 011-112-06

Parcel 3.

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

APN: 011-112-07

Parcel 4.

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

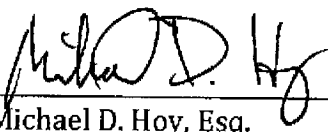
EXCEPTING THEREFROM that portion of the hereinabove described parcel conveyed to the City of Reno, a municipal corporation, in an instrument recorded August 4, 1922, as Document No. 26097, in Book 61, Page 280, of Deeds.

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

APN: 011-112-12

(Continues)

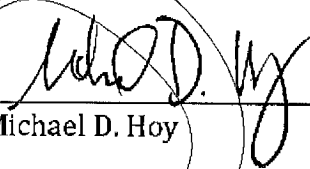
Dated November 8, 2013.


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

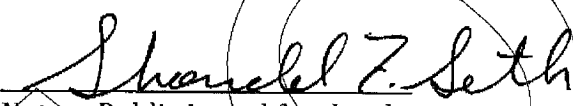
Verification

State of Nevada)
) ss
County of Washoe)

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


Michael D. Hoy

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


Notary Public in and for the above
referenced county and state

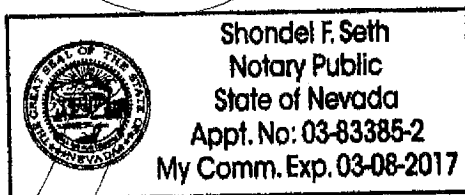


EXHIBIT “10”

JA2181

HALE LANE

ATTORNEYS AT LAW

3441 Kietzke Lane | Second Floor | Reno, Nevada 89511
Telephone: (775) 327-3000 | Facsimile: (775) 786-8179
www.halelane.com

December 26, 2006

John Iliescu, Jr., individually
Sonia Santee Iliescu, individually
John Iliescu, Jr. and Sonia Iliescu,
as Trustees of the John Iliescu, Jr.
and Sonia Iliescu 1992 Family Trust

200 Court Street
Reno, Nevada 89501

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

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

Re: Wingfield Towers
Court Street/Island Avenue Condominium Project

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

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

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

HALE LANE PEEK DENNISON AND HOWARD

LAS VEGAS OFFICE: 3930 Howard Hughes Parkway | Fourth Floor | Las Vegas, Nevada 89169 | Phone (702) 222-2300 | Facsimile (702) 365-6940
CARSON CITY OFFICE: 777 East William Street | Suite 200 | Carson City, Nevada 89701 | Phone (775) 684-6000 | Facsimile (775) 684-6001

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ILIESCU000338

December 26, 2006
Page 2

HALE LANE
ATTORNEYS AT LAW

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

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

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

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

Sincerely,

R. Craig Howard

RCH:dvt

December 26, 2006
Page 3

HALE LANE
ATTORNEYS AT LAW

Acknowledgement

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

Iliescu:

Date: _____

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

Date: _____

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

BSC Financial LLC:

BSC Financial LLC, a limited liability company

Date: _____

By: _____
Calvin Baty, Manager

EXHIBIT “11”

JA2185

Case Information

Case Description: CV05-00842 - PINECREST CONST & DEVELOP VS LIFT LOUNGE ETAL (B6)
Filing Date: 15-Apr-2005
Case Type: LE - LIENS
Status: Case Disposed

Case Cross Reference

Cross Reference Number

Case Parties (top)

Seq	Type	Name
2	PLTF - Plaintiff	PINECREST CONSTRUCTION & DEVELOPMENT CO.,
3	PATY - Attorney-Pltf/Pet/Appli/Appell	Snyder, Esq., Jerry M.
4	DEFT - Defendant	LIFT LOUNGE, LLC (THE),
5	DEFT - Defendant	ILIESCU, JOHN
6	DEFT - Defendant	ILIESCU, SONNIA
7	JUDG - Judge	SIMONS, LYNNE K.
8	DATY - Attorney - Deft/Adverse/Resp	Mollath, Esq., Stephen C.
9	DATY - Attorney - Deft/Adverse/Resp	Mollath, Esq., Stephen C.

Event Information

(top)

Date/Time	Hearing Judge	Event Description	Outcome
1. 26-Mar-2007 at 09:00	Honorable LYNNE SIMONS	H844 - TRIAL - NON JURY	D865 - Vacated - Settled filed on: 03-Nov-2006 <i>Extra Text:</i>
2. 03-Nov-2006 at 13:30	Honorable LYNNE SIMONS	H811 - MAND PRETRIAL STATUS CONF	D495 - Heard-Settled filed on: 03-Nov-2006 <i>Extra Text:</i>

Docket Entry Information (top)

Docket Description	Date Filed	Extra Text
1. REF - **Refund Issued	20-Aug-2009	<i>Extra Text:</i>
7/1/03-6/30/05		
2. F120 - Stipulated Dismissal	20-Mar-2007	<i>Extra Text:</i>
3. 3985 - Stip & Ord for Dismissal	20-Mar-2007	<i>Extra Text:</i>
4. 3370 - Order ...	06-Mar-2007	<i>Extra Text: FOR RESPONSE OR DISMISSAL</i>
5. 1835 - Joint Case Conference Report	03-Nov-2006	<i>Extra Text:</i>
6. 1250 - Application for Setting	12-Oct-2006	<i>Extra Text: MPTSC - 11/3/06</i>
7. 1250 - Application for Setting	31-May-2006	<i>Extra Text: BENCH TRIAL - 3/26/07</i>
8. 2605 - Notice to Set	19-May-2006	<i>Extra Text:</i>
9. 2605 - Notice to Set	17-Apr-2006	<i>Extra Text: RE-NOTICE TO SET FOR TRIAL</i>
10. 2605 - Notice to Set	27-Mar-2006	<i>Extra Text: RE-NOTICE TO SET FOR TRIAL</i>
11. 2605 - Notice to Set	28-Feb-2006	<i>Extra Text: NOTICE TO SET FOR TRIAL</i>
12. 3347 - Ord to Set	01-Feb-2006	<i>Extra Text:</i>
13. 3696 - Pre-Trial Order	14-Dec-2005	<i>Extra Text:</i>
14. 2529 - Notice of Early Case Conferenc	14-Oct-2005	<i>Extra Text:</i>
15. 3790 - Reply to/in Opposition	17-Aug-2005	<i>Extra Text: REPLY TO COUNTERCLAIM</i>
16. \$DEFT - \$Addl Def/Answer - Prty/Appear	26-Jul-2005	<i>Extra Text: SONNIA S. ILIESCU</i>
17. PAYRC - **Payment Received	26-Jul-2005	<i>Extra Text: A Payment of -\$300.00 was made on receipt DCDC145951.</i>
18. 1137 - Answer and Counterclaim	26-Jul-2005	<i>Extra Text: JOHN ILIESCU AND SONNIA S. ILIESCU</i>

Notice: This is NOT an Official Court Record

JA2186

19. PAYVD - **Payment Voided	26-Jul-2005	<i>Extra Text: Receipt Number DCDC145951 has been voided.</i>
20. PAYRC - **Payment	26-Jul-2005	<i>Extra Text: A Payment of -\$119.00 was made on receipt DCDC145949.</i>
Received		
21. \$1560 - \$Def 1st Appearance	26-Jul-2005	<i>Extra Text: JOHN ILIESCU</i>
- CV		
22. 4085 - Summons Filed	10-Jun-2005	<i>Extra Text: (2) JOHN ILIESCU 6/3/05 JOHN ILIESCU ACCEPTED ON</i>
		<i>BEHALF OF SONNIA S. ILIESCU 6/3/05</i>
23. B112 - Order Accept	19-Apr-2005	<i>Extra Text:</i>
Assign/Business C		
24. \$1425 - \$Complaint - Civil	15-Apr-2005	<i>Extra Text: PINECREST CONSTRUCTION AND DEVELOPMENT</i>
		<i>COMPANY</i>
25. PAYRC - **Payment	15-Apr-2005	<i>Extra Text: A Payment of -\$150.00 was made on receipt DCDC140427.</i>
Received		
26. 4090 - ** Summons Issued	15-Apr-2005	<i>Extra Text: (3)</i>

EXHIBIT “12”

JA2188

1 Code 3370
2
3
4
5

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

9 JOHN ILIESCU JR., et al.,

Case No. CV07-00341

10
11 Plaintiffs,

Dept. No. 6

12 vs.

13 MARK B. STEPPAN,

14
15 Respondent.
16 _____ /

17 AND ALL RELATED MATTERS.
18 _____ /

ORDER

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

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

//

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

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

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

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

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

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

DATED: This 12 day of June, 2009.

DISTRICT JUDGE

CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;
that on the 11 day of June, 2009, I electronically filed the foregoing with the
Clerk of the Court system which will send a notice of electronic filing to the following:

SALLIE ARMSTRONG, ESQ.

GAYLE KERN, ESQ.

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

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

Heidi Boe
Heidi Boe
Judicial Assistant

EXHIBIT “13”

JA2193

1880

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

MARK B. STEPPAN,

Plaintiff,

v.

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

Defendants.

Consolidated Case Nos. CV07-00341 and
CV07-01021

Dept. No. 10

And Related cross-claims and third-party
claims.

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

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

1 IT HEREBY IS ORDERED, ADJUDGED, AND DECREED:

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

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

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

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

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

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

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

3 6. If the Net Sale Proceeds are less than the Lienable Amount, then all of the Net
4 Sale Proceeds shall be disbursed to Plaintiff Mark B. Steppan. Within 30 calendar days after
5 the sale, Steppan may by motion seek additional relief pursuant to NRS 108.239(12).

6 Defendants reserve all rights regarding any additional relief including, but not limited to,
7 the arguments in the Defendants' Motion for Relief From Court's Attorneys' Fees and Costs
8 Orders and For Correction, Reconsideration, or Clarification of Such Orders to Comply with
9 Nevada Mechanic's Lien Law (filed September 15, 2014, e-Flex Transaction 4606433).

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

17 DATED February 26, 2015.

18
19 

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

EXHIBIT “14”

JA2197

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 *[Signature]*
CHIEF DEPUTY CLERK

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

Reversed and remanded.

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

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

BEFORE THE COURT EN BANC.

OPINION

By the Court, HARDESTY, J.:

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

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

FACTS AND PROCEDURAL HISTORY

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

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

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

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

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

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

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

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

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

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

DISCUSSION

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

Standard of review

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

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

Pre-lien notice under NRS 108.245

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

While we have recognized in a lease context that the "knowledge of . . . intended construction" language is satisfied when the owner leases property with terms requiring the lessee to make all necessary repairs and improvements, we have only determined as such when the agreement was actually completed. *See Gould v. Wise*, 18 Nev. 253, 259, 3 P. 30, 31 (1884). Unlike a completed lease agreement, the agreement between Iliescu and BSC was contingent upon completion of the purchase of the property. Because Iliescu was not a disinterested owner, and the agreement was contingent upon completion of the purchase of the property, Iliescu was unable to give a notice of non-

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

responsibility to protect himself from mechanics' liens for offsite architectural work performed pursuant to a contract with the prospective buyer. Were we to apply the actual notice exception in these circumstances, a notice of non-responsibility may not protect property owners from costs incurred by prospective buyers when there has been no enhancement or improvement to the property.

In furtherance of the protections for property owners contemplated in NRS 108.245, we decline to extend the actual notice exception to the circumstances in this case. We thus conclude that the actual notice exception does not extend to offsite architectural work performed pursuant to an agreement with a prospective buyer when no onsite work of improvement has been performed on the property.

It does not appear from the record before us that any onsite work had begun on Iliescu's property at the time Steppan recorded his mechanic's lien for the offsite work and services he performed. And the record fails to reveal any benefit or improvement to Iliescu's property resulting from the architectural services Steppan provided. As such, the actual notice exception does not apply. Because the actual notice exception does not apply and there is no dispute that Steppan did not otherwise provide Iliescu with the required pre-lien notice, we conclude that the district court erroneously found that Steppan had substantially complied with NRS 108.245's pre-lien notice requirements.⁴

⁴Based on our conclusion that the actual notice exception does not apply in this case, we do not reach Iliescu's argument regarding the applicability of NRS 108.245(6) when the actual notice exception does apply. Similarly, as our conclusion on the actual notice issue is dispositive, we decline to reach the parties' remaining arguments on appeal.

Accordingly, we reverse the district court's order foreclosing Steppan's mechanic's lien and remand this matter to the district court for it to enter judgment in favor of Iliescu.

Hardesty, J.
Hardesty

We concur:

Cherry, C.J.
Cherry

Gibbons, J.
Gibbons

Parraguirre, J.
Parraguirre

Douglas, J.
Douglas

Pickering, J.
Pickering

Stiglich, J.
Stiglich

EXHIBIT “15”

JA2210

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

SEP 21 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c).

It is so ORDERED.

Cherry C.J.
Cherry

Gibbons J.
Gibbons

Parraguirre J.
Parraguirre

Hardesty J.
Hardesty

Stiglich J.
Stiglich

DOUGLAS, J., with whom PICKERING, J., agrees, dissenting:

We would grant rehearing of this matter.

Douglas, J.
Douglas

Pickering, J.
Pickering

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

EXHIBIT “16”

JA2213

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Supreme Court No. 68346
District Court Case No. CV0700341

DIO

REMITTITUR

TO: Jacqueline Bryant, Washoe District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: October 16, 2017

Elizabeth A. Brown, Clerk of Court

By: Niki Wilcox
Deputy Clerk

cc (without enclosures):

Hon. Elliott A. Sattler, District Judge
Second Judicial District Court Dept. 6
Albright Stoddard Warnick & Albright \ G. Mark Albright
Albright Stoddard Warnick & Albright \ D. Chris Albright
Hoy Chrissinger Kimmel Vallas PC \ Michael D. Hoy
Lewis Roca Rothgerber Christie LLP/Reno \ Paul A. Matteoni
Jacqueline Bryant, Washoe District Court Clerk

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on OCT 17 2017

[Signature]
District Court Clerk

133 Nev., Advance Opinion 25

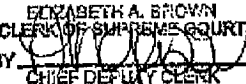
IN THE SUPREME COURT OF THE STATE OF NEVADA

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.

CV07-00341
No. 68346 OIO

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 Ilescu, Jr., individually, and Sonnia Ilescu and John Ilescu, Jr., as trustees of the John Ilescu, Jr., and Sonnia Ilescu 1992 Family Trust Agreement (collectively, Ilescu) 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 Ilescu to over \$7 million, a condominium in the development, and several other inducements.

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

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

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

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

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

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

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

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

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

DISCUSSION

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

Standard of review

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

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

Pre-lien notice under NRS 108.245

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

While we have recognized in a lease context that the "knowledge of . . . intended construction" language is satisfied when the owner leases property with terms requiring the lessee to make all necessary repairs and improvements, we have only determined as such when the agreement was actually completed. *See Gould v. Wise*, 18 Nev. 253, 259, 3 P. 30, 31 (1884). Unlike a completed lease agreement, the agreement between Iliescu and BSC was contingent upon completion of the purchase of the property. Because Iliescu was not a disinterested owner, and the agreement was contingent upon completion of the purchase of the property, Iliescu was unable to give a notice of non-

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

responsibility to protect himself from mechanics' liens for offsite architectural work performed pursuant to a contract with the prospective buyer. Were we to apply the actual notice exception in these circumstances, a notice of non-responsibility may not protect property owners from costs incurred by prospective buyers when there has been no enhancement or improvement to the property.

In furtherance of the protections for property owners contemplated in NRS 108.245, we decline to extend the actual notice exception to the circumstances in this case. We thus conclude that the actual notice exception does not extend to offsite architectural work performed pursuant to an agreement with a prospective buyer when no onsite work of improvement has been performed on the property.

It does not appear from the record before us that any onsite work had begun on Iliescu's property at the time Steppan recorded his mechanic's lien for the offsite work and services he performed. And the record fails to reveal any benefit or improvement to Iliescu's property resulting from the architectural services Steppan provided. As such, the actual notice exception does not apply. Because the actual notice exception does not apply and there is no dispute that Steppan did not otherwise provide Iliescu with the required pre-lien notice, we conclude that the district court erroneously found that Steppan had substantially complied with NRS 108.245's pre-lien notice requirements.⁴

⁴Based on our conclusion that the actual notice exception does not apply in this case, we do not reach Iliescu's argument regarding the applicability of NRS 108.245(6) when the actual notice exception does apply. Similarly, as our conclusion on the actual notice issue is dispositive, we decline to reach the parties' remaining arguments on appeal.

Accordingly, we reverse the district court's order foreclosing Steppan's mechanic's lien and remand this matter to the district court for it to enter judgment in favor of Iliescu.

Hardesty, J.
Hardesty

We concur:

Cherry, C.J.
Cherry

Gibbons, J.
Gibbons

Parraguirre, J.
Parraguirre

Douglas, J.
Douglas

Pickering, J.
Pickering

Stiglich, J.
Stiglich

CERTIFIED COPY

This document is a full, true and correct copy of
the original on file and of record in my office.

DATE: 10/17/17

Supreme Court Clerk, State of Nevada

By Milca Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

CV07-60341
No. 68346 DID

FILED

SEP 21 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c).

It is so ORDERED.

Cherry C.J.
Cherry

Gibbons J.
Gibbons

Parraguirre J.
Parraguirre

Hardesty J.
Hardesty

Stiglich J.
Stiglich

DOUGLAS, J., with whom PICKERING, J., agrees, dissenting:

We would grant rehearing of this matter.

Douglas, J.
Douglas

Pickering, J.
Pickering

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

CERTIFIED COPY

This document is a full, true and correct copy of
the original on file and of record in my office.

DATE: 10/17/17

Supreme Court Clerk, State of Nevada

By *Amelia* Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Supreme Court No. 68346
District Court Case No. CV0700341
DIO

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"Reversed and remanded."

Judgment, as quoted above, entered this 25th day of May, 2017.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"Rehearing Denied."

Judgment, as quoted above, entered this 21st day of September, 2017.

IN WITNESS WHEREOF, I have subscribed my
name and affixed the seal of the Supreme Court at
my Office in Carson City, Nevada this October 16,
2017.

Elizabeth A. Brown, Supreme Court Clerk

By: Niki Wilcox
Deputy Clerk



EXHIBIT “17”

JA2232

CODE: 1030

D. CHRIS ALBRIGHT, ESQ., #004904

G. MARK ALBRIGHT, ESQ., #001394

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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


**RULE 56(f) SWORN DECLARATION
OF JOHN ILIESCU, JR. IN
SUPPORT OF COUNTERMOTION
FOR FURTHER TIME TO
COMPLETE DISCOVERY**

STATE OF NEVADA)
COUNTY OF CLARK) ss:

JOHN ILIESCU, JR., under penalty of perjury declares as follows:

1. I make this declaration in conformance with NRCP 56(f), in order to seek additional time to complete discovery in this matter prior to any summary judgment orders issuing as to the third party claims which are the subject of Hale Lane's Motion for Summary Judgment.

Further declarant sayeth naught.


JOHN ILIESCU, JR.

1 **CODE: 1880**

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

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

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

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

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

17 Applicants,

18 vs.

19 MARK B. STEPPAN,

20 Respondent.

21 MARK B. STEPPAN,

22 Plaintiff,

23 vs.

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

Defendants.

And all pending third-party claims.

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

DEPT NO. 10

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

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

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

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

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

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

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

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

1 aforestated Property.

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

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

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

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

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

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

10 
11
12 DISTRICT COURT JUDGE

13 Submitted By:

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

15 

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AFFIRMATION

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

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

IN AND FOR THE COUNTY OF WASHOE

MARK B. STEPPAN,

Plaintiff,

vs.

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

Defendants.

AND RELATED CLAIMS

CONSOLIDATED

Case No. CV07-00341

Dept. No. 10

**THIRD PARTY DEFENDANT HALE LANE'S
REPLY IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT AND OPPOSITION
TO COUNTERMOTION TO AMEND**

Third Party Defendant, HALE LANE PEEK DENNISON AND HOWARD PROFESSIONAL CORPORATION ("Hale Lane"), by and through its undersigned attorneys, Lemons, Grundy & Eisenberg, hereby replies in support of its motion for summary judgment of the third-party claims asserted against it by JOHN ILIESCU, JR. and SONNIA ILIESCU, individually and as trustees of the ILIESCU 1992 FAMILY TRUST (collectively, "Iliescu"). Hale Lane also hereby opposes Iliescu's countermotion to amend his third-party complaint. This reply and opposition brief is based on the following Memorandum of Points and Authorities, the exhibits attached hereto, and upon such other matters as the Court may consider.

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1 element of Iliescu's legal malpractice claims is lacking, Hale Lane is entitled to judgment as a
2 matter of law. For these same reasons, Iliescu's motion for leave to amend his third-party
3 complaint must be denied as futile.

4 **II. LEGAL ARGUMENT**

5 **A. The District Court's judicial error was an intervening and superseding cause of**
6 **Iliescu's claimed damages.**

7 Iliescu's opposition to Hale Lane's motion repeatedly argues that Hale Lane could have
8 taken various steps to preclude Steppan from asserting his invalid and unenforceable lien.
9 Remarkably, however, Iliescu fails to address the fundamental concept, previously recognized
10 by the Nevada Supreme Court, that judicial error can be a superseding cause that relieves an
11 allegedly negligent attorney from liability for legal malpractice. *Hewitt v. Allen*, 118 Nev. 216,
12 222, 43 P.3d 345, 348-49 (2002) (recognizing that the proximate cause of a plaintiff's claimed
13 damages may not have been the attorney's negligence, "but judicial error that could have
14 been corrected on appeal").

15 Rather than addressing this argument, Iliescu first asserts in his opposition section,
16 entitled "Third Element: Causation," that Hale Lane could have taken "any number of
17 approaches" to protect against an architect's lien (Opposition, 23:10-28; 24:1-7) and that
18 "[j]ust because the Steppan lien foreclosure lawsuit was defended successfully, this does not
19 mean that Hale Lane had no duty to warn the Iliescus how to avoid such a claim in the first
20 instance." (Opposition, 24:14-16). Iliescu's argument confuses the element of causation with
21 the element of breach. "Breach of the standard of care and causation are sperate inquiries,
22 however, and an abundance of evidence as to one cannot substitute for a deficiency of
23 evidence as to the other." *Alexander v. Turtur & Associates, Inc.*, 146 S.W.3d 113, 119 (Tex.
24 2004).

25 The causation element of a negligence action has two components: actual cause and
26 proximate cause. *Clark County School District v. Payo*, 403 P.3d 1270, 1279 (Nev. 2017).
27 Proximate cause is defined as "any cause which in natural [foreseeable] and continuous
28 sequence unbroken by any efficient intervening cause, produces the injury complained of and

1 without which the result would not have occurred.” *Id.* In a negligence action, including
2 professional negligence, an intervening or superseding cause breaks the chain of causation
3 and relieves the alleged tortfeasor of liability. *Wood v. Safeway, Inc.*, 121 Nev. 724, 740-41,
4 121 P.3d 1026, 1037 (2005). An intervening act is a superseding cause only if it is
5 unforeseeable. *Id.* at 741, 121 P.3d at 1037.

6 Before this case was transferred or reassigned to Department 10, the Honorable Brent
7 Adams (Ret.) in Department 6 determined that Steppan’s lien may be upheld, despite the lack
8 of a pre-lien notice, if it was shown that Iliescu had “actual notice” of Steppan’s architectural
9 services. (See May 3, 2007 Order, attached hereto as **Exhibit 1**). Over 10 years later, on
10 May 25, 2017, the Nevada Supreme Court held that Steppan was not entitled to rely on the
11 actual-notice exception to the pre-lien notice requirement. Thus, Judge Adams’ ruling was
12 judicial error and was reversed. The issue now presented to this Court is to determine the
13 legal (i.e., causal) effect of Judge Adams’ judicial error on this legal malpractice action.
14 Fortunately, the appropriate determination of this issue is clear under the law.

15 Although the issue does not appear to have been squarely addressed by a Nevada
16 appellate court, exhaustive research reveals that there are two prevailing approaches for
17 determining the legal effect of a judicial error in a legal malpractice action. Under *either*
18 approach, Judge Adams’ judicial error in this case was an intervening and superseding cause,
19 relieving Hale Lane of liability for Iliescu’s claimed damages and warranting summary
20 judgment in Hale Lane’s favor.

21 Under the first approach, “judicial error resulting in an adverse ruling is a superseding
22 cause that relieves a negligent attorney from liability for legal malpractice *without regard to*
23 *whether the judicial error was foreseeable.*” *Kiribati Seafood Co. v. Dechert LLP*, 2016 WL
24 1426297, *12 (Mass. 2016) (emphasis added). This approach applies “where the attorney has
25 presented the necessary legal arguments and the judge, albeit in error, rejects them.” *Id.*
26 (quoting *Crestwood Cove Apartments Business Trust v. Turner*, 164 P.3d 1247, 1256 (Utah
27 2007).

28 In *Crestwood Cove*, just as in *Kiribati Seafood*, the Utah Supreme Court also recognized

1 that a plaintiff cannot establish a claim for legal malpractice where judicial error was the
2 proximate cause of the adverse result. *Crestwood Cove*, 164 P.3d at 1255. It held that judicial
3 error is the proximate cause of an adverse result “where the attorney has presented the
4 necessary arguments and the judge, albeit in error, rejects them.” *Id.* at 1256. In finding that
5 judicial error, rather than an attorney’s alleged malpractice, caused the plaintiff’s loss, the
6 court in *Crestwood Cove* explained the importance of its logic by noting “[w]ere it otherwise,
7 an attorney would be subject to liability every time a judge erroneously ruled against the
8 attorney’s client. In effect, an attorney would become a guarantor of correct judicial decision
9 making – a result we cannot accept.” *Id.* at 1256. Although the *Crestwood Cove* Court
10 stopped short of holding that judicial error always forecloses a plaintiff from bringing a
11 malpractice suit, it did observe that “when an attorney has raised the appropriate arguments
12 and the court nevertheless commits judicial error, a plaintiff’s suit can be appropriately
13 dismissed on summary judgment.” *Id.* at 1256.

14 In other words, as long as the attorney asserts the appropriate legal arguments,
15 judicial error is regarded as a *per se* superseding cause in a legal malpractice action. *Id.* The
16 Nevada Supreme Court would likely apply this approach for two reasons: (1) requiring
17 attorneys to foresee the potential for judicial error would hold the legal profession to a
18 daunting and exceedingly difficult standard, and (2) it establishes an easily-applicable, bright-
19 line rule.

20 In this case, it is undisputed that Hale Lane asserted the appropriate argument that a
21 pre-lien notice was a necessary predicate to Steppan’s lien, and that the lien was invalid
22 specifically because of Steppan’s failure to provide such a notice. (Hale Lane’s Application for
23 Release of Lien, dated February 14, 2007, attached hereto as **Exhibit 2**). Shortly thereafter,
24 Hale Lane was replaced as Iliescu’s counsel and was sued by Iliescu for legal malpractice. (See
25 Substitution of Counsel and Iliescu’s Third-Party Complaint, attached hereto, respectively, as
26 **Exhibits 3 and 4**). Because Hale Lane presented the appropriate legal argument, but Judge
27 Adams rejected it in error, such a judicial error should be regarded as a *per se* superseding
28 cause, relieving Hale Lane of liability for Iliescu’s legal malpractice allegations.

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

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

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

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

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

27 In their defense of the malpractice action, the attorney-defendants maintained that
28

1 the trial court's error in the underlying usury case was an intervening and superseding cause
2 of the Neubaums' damages. *Stanfield*, 494 S.W.3d at 95-96. The Supreme Court of Texas
3 agreed. The court held that "[t]o break the causal connection between an attorney's
4 negligence and the plaintiff's harm, the judicial error must not be foreseeable." *Id.* at 99. It
5 explained that a judicial error is reasonably foreseeable if an "unbroken connection" exists
6 between the attorney's negligence and the judicial error, "such as when the attorney's
7 negligence directly contributed to and cooperated with the judicial error, rendering the error
8 part of 'a continuous succession of events' that foreseeably resulted in the harm." *Id.* at 100.

9 Importantly, **"merely furnishing a condition that allows judicial error to occur does**
10 **not establish the ensuing harm was a reasonably foreseeable result of the defendant's**
11 **negligence."** *Id.* (emphasis added). Thus, for a judicial error to be foreseeable, the attorney
12 must have done more than merely furnish a condition that allows the judicial error to occur;
13 the attorney must have directly contributed to and cooperated with the judicial error. *Id.*
14 *Stanfield's* explanation of when judicial error is foreseeable applies where a legal malpractice
15 defendant has, in effect, invited the judicial error by advocating a legally erroneous principle
16 that the court accepts. Essentially, a lawyer cannot invite judicial error and then escape
17 responsibility for the financial consequences thereof by disavowing the attorney's inducement
18 or encouragement of that error.

19 In this case, as in *Stanfield*, Hale Lane raised the appropriate argument (that Steppan's
20 lien was invalid because Steppan had not provided Iliescu a prelien notice) which, although
21 rejected by the District Court Judge at the time, was ultimately deemed correct by the Nevada
22 Supreme Court. Moreover, Hale Lane cannot be said to have contributed to or cooperated
23 with Judge Adams' error. Instead, it is undisputed that Hale Lane argued directly against the
24 Court's ruling that was determined to have been in error.

25 All of Iliescu's hindsight-based arguments, that Hale Lane could have taken steps to
26 prevent Steppan from recording a lien in the first place, may amount to factual disputes, but
27 they are immaterial to the determination of this issue—they do not present genuine issues of
28 material fact. NRCP 56(c); *Wood v. Safeway, Inc.*, 121 Nev. 724, 732, 121 P.3d 1026 (2005).

1 By filing its application to release Steppan's lien, it is clear and unequivocal that Hale Lane did
2 not contribute to or coordinate with the District Court's erroneous ruling adverse to Iliescu.
3 Accordingly, Judge Adams' judicial error was an intervening and superseding cause of Iliescu's
4 claimed damages in this case, and Hale Lane is therefore entitled to judgment as a matter of
5 law.

6 **B. Iliescu's countermotion for leave to amend his pleading should be denied as**
7 **futile.**

8 NRCP 15(a) provides that leave to amend a complaint shall be freely given when justice
9 so requires. "However, leave to amend should not be granted if the proposed amendment
10 would be futile." *Halcrow, Inc. v. Eighth Judicial District Court*, 129 Nev. Adv. Op. 42, 302 P.3d
11 1148, 1152 (2013). The futility exception to NRCP 15(a) "is intended to mean that an
12 amendment should not be allowed if it inevitably will be considered a waste of time and
13 resources on which the movant has no realistic chance of prevailing at trial." *Nutton v. Sunset*
14 *Station, Inc.*, 131 Nev. Adv. Op. 34, 357 P.3d 966, 973 (2015).

15 The above-outlined issue (judicial error as an intervening and superseding cause) is
16 purely an issue of law, and the facts bearing on the issue are undisputed. Iliescu's proposed
17 amended third-party complaint, insofar as it pertains to Hale Lane, is essentially a list of steps
18 Hale Lane allegedly could have or should have taken to protect Iliescu from the possibility that
19 Steppan would later assert a lien against Iliescu's property. (See Exhibit 1 to Iliescu's
20 Opposition/Countermotion, pp. 18-21, ¶¶ 97(i) – (xvii)). As shown above, even if Iliescu's
21 amended allegations are accepted as true, the fact remains that Hale Lane's application to
22 release Steppan's lien should have been granted.

23 No matter what Hale Lane allegedly could have done to preclude Steppan from
24 asserting a lien, the District Court's judicial error will always constitute an intervening and
25 superseding cause of Iliescu's claimed damages. Accordingly, as a matter of law, Iliescu
26 cannot establish the causation element of his legal malpractice claim against Hale Lane.

27 Furthermore, Iliescu's inclusion of a separate breach of contract claim against Hale
28 Lane in his proposed amended pleading (See Exhibit 1 to Iliescu's Opposition/Countermotion,

1 pp. 23-24) does not relieve Iliescu of the requirement that he prove the element of causation.
2 Claims not labeled "legal malpractice" are still regarded under the law as legal malpractice
3 claims if they are "premised on [an attorney] allegedly breaching 'duties that would not exist
4 but for the attorney-client relationship.'" *Stoffel v. Eighth Judicial District Court*, 2017 WL
5 1078662, *1 (Nev. 2017) (quoting *Stalk v. Mushkin*, 125 Nev. 21, 29, 199 P.3d 838, 843
6 (2009)). Thus, Iliescu cannot get around the obligation to prove the element of causation
7 simply by labeling one of his claims something other than "legal malpractice." Iliescu's
8 inability to prove the element of causation is fatal to all his claims against Hale Lane, no
9 matter what he labels those claims and regardless of whether his pleading is amended.
10 Iliescu's countermotion for leave to amend should therefore be denied as futile.


11 **III. CONCLUSION**

12 In this case, 10 years ago, Hale Lane asserted the same argument that formed the basis
13 of the Nevada Supreme Court's recent decision in Iliescu's favor. Hale Lane's Application for
14 release of Steppan's lien should have been granted. Accordingly, the proximate cause of
15 Iliescu's claimed damages is not any alleged negligence on Hale Lane's part, but judicial error
16 that has now been corrected on appeal. Because the proximate cause element of Iliescu's
17 legal malpractice claim is lacking as a matter of law, Hale Lane is entitled to summary
18 judgment in its favor and any amendment of Iliescu's pleading would be futile. Accordingly,
19 Hale Lane respectfully requests that summary judgment of Iliescu's third-party legal
20 malpractice claims be entered in Hale Lane's favor.

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

23 DATED: January 8, 2018.

24 Lemons, Grundy & Eisenberg

25
26 By: 
27 Todd R. Alexander, Esq.
28 Attorneys for Third Party Defendant
Hale Lane Peek Dennison and Howard

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the law office of Lemons, Grundy & Eisenberg and that on January 8, 2018, I e-filed a true and correct copy of the foregoing **THIRD PARTY DEFENDANT HALE LANE'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO COUNTERMOTION TO AMEND**, with the Clerk of the Court through the Court's eFlex electronic filing system and notice will be sent electronically by the Court to the following:

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

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

Michael D. Hoy, Esq.
Hoy Chrissinger Kimmel, P.C.
50 West Liberty Street, Suite 840
Reno, Nevada 89501
Attorney for Mark Steppan

Gregory F. Wilson, Esq.
Gregory F. Wilson & Associates, PC
1495 Ridgeview Drive, Suite 120
Reno, Nevada 89519
Attorney for John Schleining



Susan G. Davis

INDEX OF EXHIBITS

<i>Exhibit No.</i>	<i>Description</i>	<i>Length of Exhibit</i>
1	May 3, 2007 Order	3 pages
2	Hale Lane's Application for Release of Lien	6 pages
3	Substitution of Counsel	3 pages
4	Answer Iliescu Third-Party Complaint	34 pages

FILED
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CV07-00341
2018-01-08 01:21:31 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6470368 : pmsewell

EXHIBIT 1

EXHIBIT 1

1 CODE NO. 3370

FILED

MAY 03 2007

RONALD A. MARTIN, JR., CLERK
By: [Signature]
DEPUTY

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

* * *

9
10
11 JOHN ILIESCU JR., SONNIA SANTEE
12 ILIESCU, AND JOHN ILIESCU, JR. AND
13 SONNIA ILIESCU AS TRUSTEES OF THE
14 JOHN ILIESCU, JR. AND SONNIA ILIESCU
15 1992 FAMILY TRUST,

Case No. CV07-00341

Dept. No. 6

13 Plaintiffs,

14 vs.

15 MARK B. STEPPAN,

16 Defendant.
17 _____ /

18
19 ORDER

20 For the reasons stated from the bench at the hearing this date, and good cause
21 appearing, it is hereby ordered:

22 1. The parties may conduct discovery within 90 days of the entry of this order
23 concerning whether applicants had actual knowledge of architectural services performed by
24 respondent for the benefit of the subject property.
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1 2. Counsel for the parties shall reset this matter for hearing no later than 120 days
2 from the entry of this order.

3 Dated this 3rd day of May, 2007.
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7 DISTRICT JUDGE
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Gayle A. Kern, Esq.
5421 Kietzke Lane, Suite 200
Reno NV 89511

JA2254

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Jacqueline Bryant
Clerk of the Court
Transaction # 6470368 : pmsewell

EXHIBIT 2

EXHIBIT 2

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1 \$3850

2 Jerry M. Snyder, Esq.
Nevada Bar Number 6830
Hale Lane Peek Dennison and Howard
5441 Kietzke Lane, Second Floor
Reno, Nevada 89511
(775) 327-3000; (775) 786-6179 (fax)
Attorney for Applicant

2007 FEB 14 PM 2:08

RONALD A. LONGTIN, JR.

BY  DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

10 JOHN ILIESCU JR., SONNIA SANTEE
11 ILIESCU AND JOHN ILIESCU JR. AND
12 SONNIA ILIESCU AS TRUSTEES OF THE
13 JOHN ILIESCU, JR. AND SONNIA ILIESCU
14 1992 FAMILY TRUST,

Case No.

CV07 00341

Dept. No.

15 Applicants,

16 vs.

17 MARK B. STEPPAN,

18 Respondent.

19 APPLICATION FOR RELEASE OF MECHANIC'S LIEN

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

23 I. INTRODUCTION

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

Hale Lane Peek Dennison and Howard
5441 Kietzke Lane, Second Floor
Reno, Nevada 89511
CV07-00341
DC-9900000632-292
JOHN ILIESCU ETAL VS. MARK S. G. PARES
District Court 02/14/2007 01:59 PM
\$3850
Washoe County

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

5
6 **II. STATEMENT OF FACTS**

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

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

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

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

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1 **III. ARGUMENT**

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

4 1. Standard for Removal of Lien Under NRS 108.2275

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

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

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

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

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

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

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

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

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

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

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

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

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

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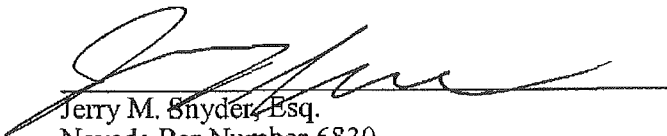
Hale Lane Peek Dennison and Howard
5441 Kietzke Lane, Second Floor
Reno, Nevada 89511

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IV. CONCLUSION

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

DATED: February 14, 2007.



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

Attorney for Applicant

EXHIBIT 3

EXHIBIT 3

ORIGINAL

FILED

2007 AUG -3 AM 11:04

RONALD A. LONGTIN, JR.

BY

NEFUNDY

4075

DOWNEY BRAND LLP

SALLIE B. ARMSTRONG (Bar No. 1243)

JAMIE P. DREHER (Bar No. 8794)

427 West Plumb Lane

Reno, NV 89509

Telephone: (775) 329-5900

Facsimile: (775) 786-5443

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

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
SONIA ILIESCU, as Trustees of the JOHN
ILIESCU, JR. AND SONNIA ILIESCU
1992 FAMILY TRUST,

CASE NO. CV07-00341

DEPT. NO. 6

Applicants,

vs.

MARK B. STEPPAN,

Respondent.

SUBSTITUTION OF COUNSEL

The law offices of HALE LANE PEEK DENNISON and HOWARD, attorneys of record
for Applicants, do hereby consent to the substitution of SALLIE B. ARMSTRONG and the law
firm of DOWNEY BRAND, in their place and stead.

DATED: 8/3/7, 2007. HALE LANE PEEK DENNISON and HOWARD

By

Jerry M. Snyder (Bar No. 6830)

5441 Kietzke Lane, Second Floor

Reno, Nevada 89511

SALLIE B. ARMSTRONG and the law firm of DOWNEY BRAND, do hereby agree to be substituted in the place and stead of HALE LANE PEEK DENNISON and HOWARD, as attorneys for Applicants in the above-captioned matter.

DATED: July 31, 2007. DOWNEY BRAND LLP

By: Sallie B. Armstrong
SALLIE B. ARMSTRONG (Bar No. 1243)

JOHN ILIESCU, JR. and SONNIA ILIESCU, individually, and as Trustees of THE JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST, consent to the above substitution of attorneys.

DATED: July 31, 2007.

John Iliescu
JOHN ILIESCU, JR., individually, and as
Trustee THE JOHN ILIESCU, JR. AND
SONNIA ILIESCU 1992 FAMILY TRUST

Sonia Iliescu
SONNIA ILIESCU, individually, and as
Trustee THE JOHN ILIESCU, JR. AND
SONNIA ILIESCU 1992 FAMILY TRUST

PROOF OF SERVICE

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

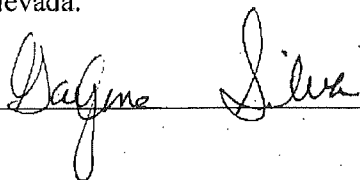
SUBSTITUTION OF COUNSEL

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

Gayle A. Kern, Esq.
Kern & Associates
5421 Kietzke Lane, Suite 200
Reno, Nevada 89511

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on August 3, 2007, at Reno, Nevada.



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Jacqueline Bryant
Clerk of the Court
Transaction # 6470368 : pmsewell

EXHIBIT 4

EXHIBIT 4

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RONALD A. LONGSTON, JR.

BY *[Signature]*
DEPUTY

1 CODE \$1130
CODE 4180
PREZANT & MOLLATH
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Facsimile: (775) 786-1354

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

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

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

12 IN AND FOR THE COUNTY OF WASHOE

13 MARK B. STEPPAN,
14
15 Plaintiff,

16 v.

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

20 Defendants.

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

28 Third-Party Plaintiffs,

v.

CONSOLIDATED PACIFIC
DEVELOPMENT, INC., a Nevada

Case No. ~~CV07-01021~~

Department No. B6

Consolidated with:

Case No. CV07-00341

Department No. B6

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

11 Third-Party Defendants.

12 ANSWER AND THIRD PARTY COMPLAINT

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

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

20 GENERAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

11. Denied.

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

13. Denied.

AFFIRMATIVE DEFENSES

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

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

3 **FIRST AFFIRMATIVE DEFENSE**

4 (Failure to State Any Claim For Relief)

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

7 **SECOND AFFIRMATIVE DEFENSE**

8 (Lack of Standing)

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

11 **THIRD AFFIRMATIVE DEFENSE**

12 (Statute of Limitations and Statutory Requirements)

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

17 **FOURTH AFFIRMATIVE DEFENSE**

18 (Laches)

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

21 **FIFTH AFFIRMATIVE DEFENSE**

22 (Privilege)

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

26 **SIXTH AFFIRMATIVE DEFENSE**

27 (Justification)

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

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

3 **SEVENTH AFFIRMATIVE DEFENSE**

4 (Equity)

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

8 **EIGHTH AFFIRMATIVE DEFENSE**

9 (Unclean Hands)

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

13 **NINTH AFFIRMATIVE DEFENSE**

14 (Consent)

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

18 **TENTH AFFIRMATIVE DEFENSE**

19 (Estoppel)

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

23 **ELEVENTH AFFIRMATIVE DEFENSE**

24 (Failure to Mitigate)

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

1 **TWELFTH AFFIRMATIVE DEFENSE**

2 (Failure to Join Indispensable Parties)

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

5 **THIRTEENTH AFFIRMATIVE DEFENSE**

6 (Waiver)

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

9 **FOURTEENTH AFFIRMATIVE DEFENSE**

10 (Uncertainty)

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

14 **FIFTEENTH AFFIRMATIVE DEFENSE**

15 (Intentional Acts)

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

20 **SIXTEENTH AFFIRMATIVE DEFENSE**

21 (Failure To Do Equity)

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

25 **SEVENTEENTH AFFIRMATIVE DEFENSE**

26 (Attorneys' Fees and Costs)

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

CONCLUDING PRAYER FOR RELIEF

WHEREFORE, Defendants pray for judgment as follows:

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

THIRD PARTY COMPLAINT

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

The Parties

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

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

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

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

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

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

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

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

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

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

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

General Allegations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 **FIRST CLAIM FOR RELIEF**

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

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

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

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

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

25 41. In view of the actual conflict and controversy between the parties, Iliescu desires a
26 judicial determination of the respective rights, duties, and obligations of Iliescu, and the
27 Indemnitors.
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1 59. The Hale Lane law firm, Dennison, Howard and Snyder were negligent because,
2 among other things, they failed to advise Iliescu to record a Notice of Non-Responsibility, failed
3 to properly advise Iliescu of the consequence of their conflict of interest in representing Iliescu in
4 the transaction addressed herein, and continued to represent Iliescu in the face of a non-waivable
5 conflict of interest.

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

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

12 WHEREFORE, Iliescu prays for judgment as follows:

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

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

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

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

22 ///

23 ///

1 6. For costs of suit; and,

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

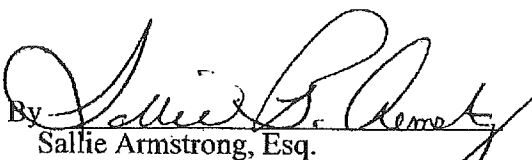
3
4 DATED this 27th day of September, 2007.

5 **PREZANT & MOLLATH**

6
7 By 
 Stephen C. Mollath, Esq.

8 and

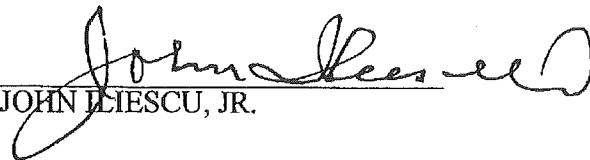
9 **DOWNEY BRAND LLP**

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

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

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

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

9 
JOHN ILIESCU, JR.

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

12
13 
14 NOTARY PUBLIC



EXHIBIT A

HALE LANE

ATTORNEYS AT LAW

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

December 14, 2005

Edward Everett Hale
(1929-1993)

Steve Lane
J. Stephen Peck
Karen D. Deming
R. Craig Howard
Stephen V. Novack
Richard L. Elmore
Richard Bennett
Robert C. Anderson
Alex J. Flanagan
James L. Kelly
Kelly Tanelin
N. Patrick Flanagan
Matthew E. Woodhead
Michelle D. Mullins
Roger W. Jeppson
Lance C. Earl
Jeremy J. Nork
David A. Garcia
Elissa F. Catlin
Timothy A. Lukes
Frederick J. Schmidt
James Newman
Terry A. Sannes
Patrick J. Kelly
Scott D. Fleming
Scott Scherer
Anthony L. Hall
Jerry M. Snyder
Brent C. Eckertley
Frederick R. Raichler
Patricia C. Hahrad
Matthew J. Kreuzer
Matthew B. Hippler
Brad M. Johnston
Bryce K. Kandeloro
Douglas C. Plovers
Justin C. Jones
Nicole M. Vance
Kimberlee Rutsky
Dora V. Djibaneva
Simon Johnson*
Sarah E. L. Cline
Nelson E. Mardrosian

Of Counsel

Roy Farrow
Pauline Ng Lee
Andrew Pearl

*Admitted in New York
and New Jersey only

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

Calvin Baty, an individual
c/o Consolidated Pacific Development, Inc.
932 Parker Street
Berkeley, California 94710-2524

Consolidated Pacific Development, Inc.
932 Parker Street
Berkeley, California 94710-2524

Re: Court Street/Island Avenue Condominium Project

Lady and Gentlemen:

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

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

HALE LANE PECK DENNISON AND HOWARD

LAS VEGAS OFFICE: 2300 West Sahara Avenue | Eighth Floor | Box 8 | Las Vegas, Nevada 89102 | Phone (702) 232-2500 | Facsimile (702) 365-6940
CARSON CITY OFFICE: 777 East William Street | Suite 200 | Carson City, Nevada 89701 | Phone (775) 684-6000 | Facsimile (775) 684-6001

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December 14, 2005
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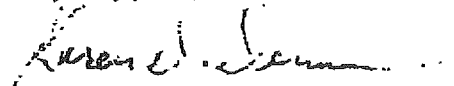
HALE LANE
ATTORNEYS AT LAW

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

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

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

Very truly yours,



Karen D. Dennison

KDD:csr

Acknowledgement

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

Iliescu:

Date: _____

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

Date: _____

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

BSC Financial LLC:

BSC Financial LLC, a limited liability company

Date: _____

By: _____
Calvin Baty, Manager

EXHIBIT B

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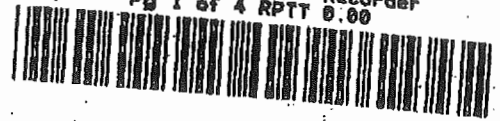
Requested By

GAYLE A KERN LTD

Washoe County Recorder

Kathryn L. Burke - Recorder

PG 1 of 4 RPTT 0.00



When Recorded Mail To:

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

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

GRANTEE'S ADDRESS:

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



NOTICE AND CLAIM OF LIEN

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

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

Claimant further states:

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

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

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



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

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

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

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

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



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

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

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

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

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

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

APN: 011-112-12



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4 of 4

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

DATED: This 7th day of November, 2006.

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

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

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

Gayle A. Kern
Gayle A. Kern, Esq.

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

Amber A. Garrell
Notary Public

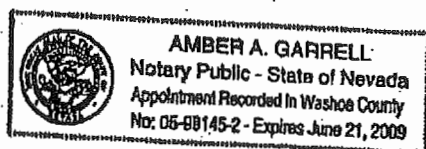


EXHIBIT C

INDEMNITY

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

RECITALS:

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

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

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

D. Baty and Schleining are principals of BSC.

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

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

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

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

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

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

BSC FINANCIAL, LLC, a limited liability company

Dated: December 8, 2006

By: _____

Calvin Baty
Manager

Dated: December 8, 2006

CALVIN BATY, individually

Dated: December 8, 2006

JOHN SCHLEINING, individually

EXHIBIT D

HALE LANE

ATTORNEYS AT LAW

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

December 26, 2006

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

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

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

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

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

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

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

HALE LANE PEEK DENNISON AND HOWARD

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

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December 26, 2006
Page 2

HALE LANE
ATTORNEYS AT LAW

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

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

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

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

Sincerely,

R. Craig Howard

RCH:dyt

1 CERTIFICATE OF SERVICE

2 I am a resident of the State of Nevada, over the age of eighteen years, and not a party to
3 the within action. My business address is Downey Brand LLP, 427 West Plumb Lane, Reno, NV
4 89509. On September 27, 2007, I served the attached document(s):

5 ANSWER AND THIRD PARTY COMPLAINT

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

18 *Gayle Kern, Esq.*
19 *5421 Kietzke Lane, Suite 200*
20 *Reno, NV 89511*

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

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

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

Kim Kakunes

Kim Kakunes

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

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

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

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

11 **-OR-**

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

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

15 **-or-**

16 ☐ For the administration of a public program

17 **-or-**


18 ☐ For an application for a federal or state grant

19 **-or-**

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

22 DATED this 22nd day of September, 2007.

23 **PREZANT & MOLLATH**
24

25 
26 By _____
27 Stephen C. Mollath, Esq.
28 Attorney for Iliescu