

CV15-00826  
DC-09900072498-005  
DAVID DEZZANI ETAL VS. KERN & 1 Page  
District Court 12/14/2015 03:44 PM  
Washoe County \$2515  
VULNERABLE

David and Rochelle Dezzani  
17 Camino Lienzo  
SanClemente, CA 92673  
(808) 291-2302

FILED

2015 DEC 14 PM 3:44

CLERK OF THE COURT  
Electronically Filed  
Dec 18 2015 03:45 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

DAVID DEZZANI and  
ROCHELLE DEZZANI,  
Plaintiffs

vs.

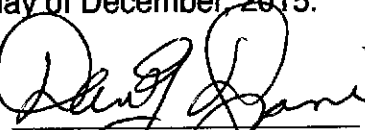
Case No. CV15 00826  
Dept. No. 10

KERN & ASSOCIATES, LTD; GAYLE KERN;  
KAREN HIGGINS; JOHN DOES 1-10;  
JANE DOES 1-10; DOE BUSINESSES 1-5

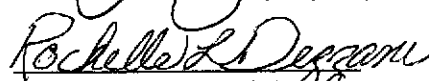
#### NOTICE OF APPEAL

Notice is hereby given that David Dezzani and Rochelle Dezzani, Plaintiffs above named, hereby appeal to the Supreme Court of Nevada from the ORDER signed by District Judge Elliot Sattler on November 19, 2015, entered in this action on the 19th day of November, 2015.

Signed, in San Clemente, California, this 16 day of December, 2015.



David Dezzani, in proper person



Rochelle Dezzani, in proper person

1 **Code 1310**

2  
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5  
6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

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

8 **DAVID DEZZANI and ROCHELLE**  
9 **DEZZANI,**

10 **Plaintiffs,**

11 **vs.**

**Case No. CV15-00826**

**Dept. No. 10**

12 **KERN & ASSOCIATES, LTD; GAYLE KERN;**  
13 **KAREN HIGGINS; JOHN DOES 1-10; JANE**  
14 **DOES 1-10; DOE BUSINESSES 1-5,**

15 **Defendants.**

16 **CASE APPEAL STATEMENT**

17 This case appeal statement is filed pursuant to NRAP 3(f).

- 18 1. Appellants are David Dezzani and Rochelle Dezzani.
- 19 2. This appeal is from an order entered by the Honorable Judge Elliott Sattler.
- 20 3. Appellants are representing themselves in Proper Person on appeal, the Appellant's
- 21 address is:
- 22 David and Rochelle Dezzani
- 23 17 Camino Lienzo
- 24 San Clemente, CA 92673
- 25 4. Respondents are Kern & Associates, LTD and Gayle Kern. Respondents were
- 26 represented in District Court by:
- 27 Gayle A. Kern, Esq. #1620
- 28 5421 Kietzke Lane Suite 200
- Reno, Nevada 89511

5. Respondent's attorney is not licensed to practice law in Nevada: n/a
6. Appellants were not represented by counsel in District Court.
7. Appellants are not represented by counsel on appeal.
8. Appellants were not granted leave to proceed in forma pauperis in the District Court.
9. Proceeding commenced by the filing of a Civil Complaint filed on May 4, 2015.
10. This is a civil proceeding and the Appellants are appealing the Order filed  
November 19, 2015.
11. The case has not been the subject of a previous appeals to the Supreme Court.
12. This case does not involve child custody or visitation.
13. It is unknown if the case involves the possibility of a settlement.

Dated this 15th day of December, 2015.

Jacqueline Bryant  
Clerk of the Court

By: /s/ Yvonne Vilorio  
Yvonne Vilorio  
Deputy Clerk

**SECOND JUDICIAL DISTRICT COURT****STATE OF NEVADA****COUNTY OF WASHOE****Case History - CV15-00826****Case Description: DAVID DEZZANI ETAL VS. KERN & ASSOC (D10)****Case Number: CV15-00826 Case Type: OTHER TORT - Initially Filed On: 5/4/2015****Parties**

<u>Party Type &amp; Name</u>	<u>Party Status</u>
JUDG - ELLIOTT A. SATTLER - D10	Active
PLTF - DAVID DEZZANI - @1275717	Active
PLTF - ROCHELLE DEZZANI - @1275719	Active
DEFT - KERN & ASSOCIATES, LTD - @1237990	Active
DEFT - KAREN HIGGINS - @1275723	Active
DEFT - GAYLE A. KERN - @1283389	Active
ATTY - Gayle A. Kern, Esq. - 1620	Active

**Disposed Hearings**

- 1 Department: D10 -- Event: Request for Submission -- Scheduled Date & Time: 10/13/2015 at 11:36:00  
Extra Event Text: MOTION TO DISMISS COMPLAINT ON SEPTEMBER 17, 2015 (NO PAPER ORDER PROVIDED) -  
Event Disposition: S200 - 11/19/2015
- 2 Department: D10 -- Event: Request for Submission -- Scheduled Date & Time: 11/12/2015 at 08:27:00  
Extra Event Text: MOTION TO POSTPONE AND/OR TEMPORARILY STAY PROCEEDINGS (NO PAPER ORDER)  
Event Disposition: S200 - 11/19/2015

**Actions**

- |   | <u>Filing Date</u> | <u>-</u> | <u>Docket Code &amp; Description</u>   |
|---|--------------------|----------|--|
| 1 | 5/4/2015           | -        | COV - **Civil Cover Sheet<br><i>No additional text exists for this entry.</i>                          |
| 2 | 5/4/2015           | -        | \$1425 - \$Complaint - Civil<br><i>No additional text exists for this entry.</i>                       |
| 3 | 5/4/2015           | -        | \$PLTF - \$Addl Plaintiff/Complaint<br><i>No additional text exists for this entry.</i>                |
| 4 | 5/4/2015           | -        | FIE - **Document Filed in Error<br><i>No additional text exists for this entry.</i>                    |
| 5 | 5/4/2015           | -        | PAYRC - **Payment Receipted<br>Additional Text: A Payment of -\$290.00 was made on receipt DCDC498788. |
| 6 | 5/4/2015           | -        | PAYVD - **Payment Voided<br>Additional Text: Receipt Number DCDC498788 has been voided.                |
| 7 | 5/4/2015           | -        | PAYRC - **Payment Receipted<br>Additional Text: A Payment of -\$290.00 was made on receipt DCDC498791. |

**Report Does Not Contain Sealed Cases or Confidential Information**

- 8 9/2/2015 - 4085 - Summons Filed  
Additional Text: SERVED TERESA GEARHART OBO GAYLE KERN, ESQ. ON 8/28/15
- 9 9/2/2015 - 4085 - Summons Filed  
Additional Text: SERVED TERESA GEARHART OBO KERN & ASSOCIATES, LTD ON 8/28/15
- 10 9/17/2015 - 2490 - Motion ...  
Additional Text: DEFENDANTS, KERN & ASSOCIATES LTD AND KAYLE KERN'S MOTION TO DISMISS COMPLAINT - Transaction 5146157 - Approved By: CSULEZIC : 09-17-2015:13:22:30
- 11 9/17/2015 - \$1560 - \$Def 1st Appearance - CV  
Additional Text: KERN & ASSOCIATES - Transaction 5146157 - Approved By: CSULEZIC : 09-17-2015:13:22:30
- 12 9/17/2015 - \$DEFT - \$Addl Def/Answer - Prty/Appear  
Additional Text: GAYLE KERN - Transaction 5146157 - Approved By: CSULEZIC : 09-17-2015:13:22:30
- 13 9/17/2015 - PAYRC - \*\*Payment Receipted  
Additional Text: A Payment of \$243.00 was made on receipt DCDC514727.
- 14 9/17/2015 - NEF - Proof of Electronic Service  
Additional Text: Transaction 5146272 - Approved By: NOREVIEW : 09-17-2015:13:23:28
- 15 10/6/2015 - 1960 - Memorandum ...  
Additional Text: IN DEFENDANTS, KERN AND GAYLE KERN'S MOTION
- 16 10/12/2015 - 3795 - Reply...  
Additional Text: DEFENDANTS, KERN & ASSOCIATES, LTD. AND GAYLE KERN'S REPLY IN SUPPORT OF MOTION TO DISMISS COMPLAINT - Transaction 5184808 - Approved By: CCOVINGT : 10-13-2015:08:58:19
- 17 10/13/2015 - NEF - Proof of Electronic Service  
Additional Text: Transaction 5185127 - Approved By: NOREVIEW : 10-13-2015:08:59:12
- 18 10/13/2015 - 3860 - Request for Submission  
Additional Text: MOTION TO DISMISS COMPLAINT ON SEPTEMBER 17, 2015 (NO PAPER ORDER PROVIDED) - Transaction 5185421 - Approved By: MCHOLICO : 10-13-2015:11:15:38  
PARTY SUBMITTING: GAYLE KERN, ESQ.  
DATE SUBMITTED: 10/13/15  
SUBMITTED BY: MCHOLICO  
DATE RECEIVED JUDGE OFFICE:
- 19 10/13/2015 - NEF - Proof of Electronic Service  
Additional Text: Transaction 5185692 - Approved By: NOREVIEW : 10-13-2015:11:16:36
- 20 10/20/2015 - 2490 - Motion ...  
Additional Text: MOTION TO POSTPONE AND/ TEMPORARILY STAY AFFIDAVIT OF DAVID CERTIFICATE OF SERVICE; AFFIRMATION
- 21 10/22/2015 - 2645 - Opposition to Mtn ...  
Additional Text: DEFENDANTS, KERN & ASSOCIATES, LTD. AND GAYLE KERN'S OPPOSITION TO MOTION TO POSTPONE AND TEMPORARILY STAY PROCEEDINGS - Transaction 5201878 - Approved By: CSULEZIC : 10-22-2015:14:48:57
- 22 10/22/2015 - NEF - Proof of Electronic Service  
Additional Text: Transaction 5202142 - Approved By: NOREVIEW : 10-22-2015:14:50:03
- 23 11/3/2015 - 2610 - Notice ...  
Additional Text: NOTICE OF CORRECTION AFFIDAVIT, CERTIFICATE OF SERVICE; AFFIRMATION

- 24 11/5/2015 - 2610 - Notice ...  
*No additional text exists for this entry.*
- 25 11/5/2015 - 3795 - Reply...  
*No additional text exists for this entry.*
- 26 11/10/2015 - 3860 - Request for Submission  
Additional Text: REQUEST FOR SUBMISSION; NOTICE OF ERRATA AND CORRECTION; CERTIFICATE OF SERVICE; AFFIRMATION  
DOCUMENT TITLE: MOTION TO POSTPONE AND/OR TEMPORARILY STAY PROCEEDINGS (NO PAPER ORDER)  
PARTY SUBMITTING: DAVID AND ROCHELLE DEZZANI  
DATE SUBMITTED: 11/12/2015  
SUBMITTED BY: BRAMIREZ  
DATE RECEIVED JUDGE OFFICE:
- 27 11/19/2015 - 2900 - Ord for Dismissal of Case  
Additional Text: ORDER DENYING MOTION TO POSTPONE AND/TEMPORARILY STAY; CASE IS DISMISSED - Transaction 5243232 -  
Approved By: NOREVIEW : 11-19-2015:11:13:16
- 28 11/19/2015 - NEF - Proof of Electronic Service  
Additional Text: Transaction 5243234 - Approved By: NOREVIEW : 11-19-2015:11:14:08
- 29 11/19/2015 - S200 - Request for Submission Complet  
*No additional text exists for this entry.*
- 30 11/19/2015 - S200 - Request for Submission Complet  
*No additional text exists for this entry.*
- 31 11/19/2015 - 2540 - Notice of Entry of Ord  
Additional Text: Transaction 5244444 - Approved By: NOREVIEW : 11-19-2015:15:41:28
- 32 11/19/2015 - NEF - Proof of Electronic Service  
Additional Text: Transaction 5244447 - Approved By: NOREVIEW : 11-19-2015:15:42:16
- 33 11/20/2015 - 1950 - Memorandum of Costs  
Additional Text: Transaction 5246523 - Approved By: MFERNAND : 11-20-2015:15:59:07
- 34 11/20/2015 - NEF - Proof of Electronic Service  
Additional Text: Transaction 5246690 - Approved By: NOREVIEW : 11-20-2015:16:00:09
- 35 12/2/2015 - 2010 - Mtn for Attorney's Fee  
Additional Text: MOTION FOR ATTORNEY'S FEES & COSTS - Transaction 5259062 - Approved By: MCHOLICO : 12-02-2015:10:26:53
- 36 12/2/2015 - NEF - Proof of Electronic Service  
Additional Text: Transaction 5259070 - Approved By: NOREVIEW : 12-02-2015:10:27:57
- 37 12/14/2015 - 1960 - Memorandum ...  
Additional Text: OF ANSWERING POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR ATTORNEY'S FEES AND COSTS;  
COUNTER-AFFIDAVIT AND AFFIRMATION
- 38 12/14/2015 - \$2515 - \$Notice/Appeal Supreme Court  
Additional Text: DAVID & ROCHELLE DEZZANI
- 39 12/14/2015 - 1830 - Joinder...  
Additional Text: PLAINTIFF ROCHELLE DEZZANI'S JOINDER IN MEMORANDUM OF ANSWERING POINTS AND AUTHORITIES IN  
OPPOSITION TO MOTION FOR ATTORNEY'S FEES AND COSTS; COUNTER-AFFIDAVIT AND AFFIRMATION

40 12/14/2015 - PAYRC - \*\*Payment Receipted

Additional Text: A Payment of -\$34.00 was made on receipt DCDC523882.

41 12/15/2015 - 1350 - Certificate of Clerk

Additional Text: CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 5279713 - Approved By: NOREVIEW : 12-15-2015:14:21:57

42 12/15/2015 - 1310E - Case Appeal Statement

Additional Text: Transaction 5279713 - Approved By: NOREVIEW : 12-15-2015:14:21:57

43 12/15/2015 - NEF - Proof of Electronic Service

Additional Text: Transaction 5279714 - Approved By: NOREVIEW : 12-15-2015:14:22:46

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

DAVID DEZZANI and ROCHELLE  
DEZZANI,

Plaintiffs,

vs.

Case No.: CV15-00826

Dept. No: 10

KERN & ASSOCIATES, LTD; GAYLE KERN;  
KAREN HIGGINS; JOHN DOES 1-10; JANE  
DOES 1-10; DOE BUSINESSES 1-5;  
Defendants.

**ORDER**

Presently before the Court is DEFENDANTS, KERN & ASSOCIATES, LTD. AND  
GAYLE KERN'S MOTION TO DISMISS COMPLAINT ("the Motion") filed by Defendants  
GAYLE A. KERN, DBA KERN & ASSOCIATES, LTD. ("Kern") on September 17, 2015.  
Plaintiffs DAVID DEZZANI and ROCHELLE DEZZANI (collectively "the Plaintiffs") filed a  
MEMORANDUM IN DEFENDANTS, KERN AND GAYLE KERN'S MOTION<sup>1</sup> ("the  
Opposition") on October 6, 2015. Kern filed DEFENDANTS, KERN & ASSOCIATES, LTD.

<sup>1</sup>. The Reply asserts the Opposition was required to be filed no later than October 5, 2015, pursuant to WDCR 12(2). The Reply further argues the Opposition should not be considered by the Court for failure to contain a valid certificate of service. The Court finds refusing to consider the Opposition would be contrary to the strong policy in the State of Nevada to resolve cases on their merits. *Kahn v. Orme*, 108 Nev. 510, 516, 835 P.2d 790, 794 (1992); *Yochum v. Davis*, 98 Nev. 484, 487, 653 P.2d 1215, 1217 (1982) (holding "the court must give due consideration to the state's underlying basic policy of resolving cases on their merits wherever possible."). Accordingly, the Court will consider the Opposition.



1 AND GAYLE KERN'S REPLY IN SUPPORT OF MOTION TO DISMISS COMPLAINT on  
2 October 12, 2015. Kern submitted the matter for the Court's consideration on October 13, 2015.

3 The Plaintiffs filed a COMPLAINT ("the Complaint") on May 4, 2015. The Complaint  
4 alleges four causes of action for various violations of Chapter 116 of the Nevada Revised Statutes.  
5 The Complaint alleges Kern engaged in retaliatory action against the Plaintiffs. This case arises  
6 out of a dispute between the Plaintiffs and the McCloud Condominium Homeowner's Association  
7 ("the HOA"). The Plaintiffs' property contains a rear deck extended from original dimensions by  
8 a previous owner. The HOA cited the Plaintiffs for a violation indicating the deck extension was  
9 contrary to the Covenants Conditions and Restrictions ("CC&Rs") of the HOA. Kern engaged in  
10 correspondence between the Plaintiffs and the HOA as the HOA's counsel. A hearing regarding  
11 the violation was conducted and a RESULT OF HEARING was issued by the HOA on September  
12 5, 2014. At all times relevant to this matter Kern was acting as an attorney for the HOA.

13 The Motion seeks an order from the Court dismissing the Complaint as to Kern pursuant to  
14 NRCp 12(b)(1), NRCp 12(b)(5), NRCp 12(h)(3), and NRS 38.310. The Motion alleges the  
15 Plaintiffs have failed to assert any claims against Kern for which relief may be granted because  
16 there is no theory of liability by which Kern could be independently liable to the Plaintiffs. The  
17 Motion asserts, as a matter of law, no cause of action can be asserted against her because she was  
18 acting as an attorney for the HOA and owed no duty to Plaintiffs in their individual capacities. Any  
19 communication between Kern and the Plaintiffs was communicated on behalf of the HOA, not for  
20 the benefit of the Plaintiffs.

21 The Opposition contends Kern mischaracterizes the claims as those which required privity  
22 of contract. The Opposition asserts NRS 116.3118 authorizes civil complaints against agents of  
23 an association. The Opposition asserts Kern admitted to being an agent of the HOA and therefore  
24 can be liable for retaliatory action. The Reply contends Kern cannot be liable for actions taken  
25 solely in connection with her representation of the HOA.

26 N.R.C.P. 12(b)(5) provides that a defendant may make a motion for dismissal on the  
27 grounds of failure to state a claim upon which relief can be granted. Nevada is a notice-pleading  
28 jurisdiction, and its "courts liberally construe pleadings to place into issues matters which are

1 fairly noticed to the adverse party.” *Hay v Hay*, 100 Nev. 196, 198, 678 P.2d 672, 674 (1984).  
2 The Court must construe the pleadings liberally and draw every fair inference in favor of the non-  
3 moving party when considering a motion to dismiss on the grounds of failure to state a claim  
4 upon which relief can be granted. *Hampe v. Foote*, 118 Nev. 405, 408, 47 P.3d 438, 439 (2002),  
5 citing *Blackjack Bonding v. Las Vegas Mun. Ct.*, 116 Nev. 1213, 1217, 14 P.3d 1275, 1278  
6 (2000).

7 The Court finds there is no basis in law or fact to support the causes of action alleged  
8 against Kern. The Court finds to permit such causes of action against Kern would result in a  
9 chilling effect on individuals’ ability to hire and retain counsel. NRS 116.3118 does not permit  
10 attorneys to be personally liable for actions taken on behalf of an association.

11 IT IS HEREBY ORDERED the DEFENDANTS, KERN & ASSOCIATES, LTD. AND  
12 GAYLE KERN’S MOTION TO DISMISS COMPLAINT is GRANTED.

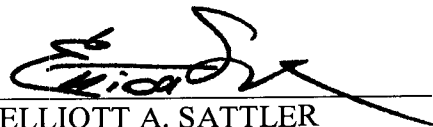
13 The Court notes the Plaintiffs filed a MOTION TO POSTPONE AND/TEMPORARILY  
14 STAY (“the Motion for Stay”) on October 20, 2015. Kern filed DEFENDANTS, KERN &  
15 ASSOCIATES, LTD. AND GAYLE KERN’S OPPOSITION TO MOTION TO POSTPONE AND  
16 TEMPORARILY STAY PROCEEDINGS (“the Opposition to Stay”) on October 22, 2015. The  
17 Plaintiff filed a REPLY IN SUPPORT OF MOTION TO POSTPONE AND/OR TEMPORARILY  
18 STAY PROCEEDINGS on November 5, 2015. The Plaintiffs submitted the matter for the Court’s  
19 consideration on November 10, 2015.

20 The Motion for Stay seeks an order from the Court staying all proceedings until December  
21 1, 2015, based upon the medical treatment of Plaintiff Mr. Dezzani. The Opposition to Stay  
22 contends there are no grounds on which this Court may render a decision to stay this matter. The  
23 Opposition to Stay asserts the Plaintiffs had ample opportunity to secure local counsel to ensure all  
24 proceedings in this matter could be conducted in a timely fashion. The Opposition to Stay further  
25 points out the Plaintiffs have not made any specified requests regarding what should be stayed.  
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1 The Court finds the Plaintiffs have not provided legal authority warranting a stay, or what  
2 proceedings the Plaintiffs seek to have stayed. Further, the Court finds Defendant KAREN  
3 HIGGINS has not been served in this matter. The 120 days for service has lapsed. NRCP 4(i).

4 IT IS HEREBY ORDERED the MOTION TO POSTPONE AND/TEMPORARILY STAY  
5 is denied. IT IS FURTHER ORDERED the above-captioned matter is DISMISSED in its entirety.

6 DATED this 19 day of November, 2015.

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9 ELLIOTT A. SATTLER  
10 District Judge  
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David and Rochelle Dezzani  
17 Camino Lienzo  
San Clemente, CA 92673

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Gayle Kern, Esq.

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2 GAYLE A. KERN, ESQ.  
3 Nevada Bar No. 1620  
4 KERN & ASSOCIATES, LTD.  
5 5421 Kietzke Lane Suite 200  
6 Reno, Nevada 89511  
7 Telephone: (775) 324-5930  
8 Telefax: (775) 324-6173  
9 E-mail: [gaylekern@kernltd.com](mailto:gaylekern@kernltd.com)

10 *Attorneys for Kern & Associates, Ltd.*  
11 *and Gayle Kern*

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

15 DAVID DEZZANI and ROCHELLE CASE NO.: CV15-00826  
16 DEZZANI,

DEPT. NO.: 10

17 Plaintiffs,

18 **NOTICE OF ENTRY OF ORDER**

19 vs.

20 KERN & ASSOCIATES, LTD; GAYLE KERN;  
21 KAREN HIGGINS; JOHN DOES 1-10; JANE  
22 DOES 1-10; DOE BUSINESSES 1-5,

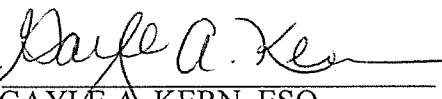
23 Defendants.  
24 \_\_\_\_\_ /

25 PLEASE TAKE NOTICE that on the 19<sup>th</sup> day of November, 2015, an Order (dismissing case in  
26 its entirety) ("Order"), was entered in the above-captioned matter. A copy of the Order is attached hereto.

27 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document filed  
28 in the above-entitled case does not contain the social security number of any person.

DATED this 19<sup>th</sup> day of November, 2015.

KERN & ASSOCIATES, LTD.

By   
GAYLE A. KERN, ESQ.  
*Attorneys for Kern & Associates, Ltd.*  
*and Gayle Kern*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Kern & Associates,  
3 Ltd., 5421 Kietzke Lane, Suite 200, Reno, NV 89511, and that on this date, I served the foregoing  
4 document(s) described as follows:

5 **NOTICE OF ENTRY OF ORDER**

6 On the party(s) set forth below by:

- 7 ☒ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in  
8 the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.  
9 ☐ Personal delivery.  
10 ☐ Facsimile (FAX).  
11 ☐ Federal Express or other overnight delivery.  
12 ☐ Reno-Carson Messenger Service.

13 addressed as follows:

14 David and Rochelle Dezzani  
15 17 Camino Lienzo  
San Clemente, CA 92673

16 DATED this 19<sup>th</sup> day of November, 2015.

17   
18 TERESA A. GEARHART

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

DAVID DEZZANI and ROCHELLE  
DEZZANI,

Plaintiffs,

vs.

Case No.: CV15-00826

Dept. No: 10

KERN & ASSOCIATES, LTD; GAYLE KERN;  
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DOES 1-10; DOE BUSINESSES 1-5;  
Defendants.

ORDER

Presently before the Court is DEFENDANTS, KERN & ASSOCIATES, LTD. AND  
GAYLE KERN'S MOTION TO DISMISS COMPLAINT ("the Motion") filed by Defendants  
GAYLE A. KERN, DBA KERN & ASSOCIATES, LTD. ("Kern") on September 17, 2015.  
Plaintiffs DAVID DEZZANI and ROCHELLE DEZZANI (collectively "the Plaintiffs") filed a  
MEMORANDUM IN DEFENDANTS, KERN AND GAYLE KERN'S MOTION<sup>1</sup> ("the  
Opposition") on October 6, 2015. Kern filed DEFENDANTS, KERN & ASSOCIATES, LTD.

<sup>1</sup>. The Reply asserts the Opposition was required to be filed no later than October 5, 2015, pursuant to WDCR 12(2). The Reply further argues the Opposition should not be considered by the Court for failure to contain a valid certificate of service. The Court finds refusing to consider the Opposition would be contrary to the strong policy in the State of Nevada to resolve cases on their merits. *Kahn v. Orme*, 108 Nev. 510, 516, 835 P.2d 790, 794 (1992); *Yochum v. Davis*, 98 Nev. 484, 487, 653 P.2d 1215, 1217 (1982) (holding "the court must give due consideration to the state's underlying basic policy of resolving cases on their merits wherever possible."). Accordingly, the Court will consider the Opposition.

1 AND GAYLE KERN'S REPLY IN SUPPORT OF MOTION TO DISMISS COMPLAINT on  
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5 The Complaint alleges Kern engaged in retaliatory action against the Plaintiffs. This case arises  
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20 the benefit of the Plaintiffs.

21 The Opposition contends Kern mischaracterizes the claims as those which required privity  
22 of contract. The Opposition asserts NRS 116.3118 authorizes civil complaints against agents of  
23 an association. The Opposition asserts Kern admitted to being an agent of the HOA and therefore  
24 can be liable for retaliatory action. The Reply contends Kern cannot be liable for actions taken  
25 solely in connection with her representation of the HOA.

26 N.R.C.P. 12(b)(5) provides that a defendant may make a motion for dismissal on the  
27 grounds of failure to state a claim upon which relief can be granted. Nevada is a notice-pleading  
28 jurisdiction, and its "courts liberally construe pleadings to place into issues matters which are



1 fairly noticed to the adverse party.” *Hay v Hay*, 100 Nev. 196, 198, 678 P.2d 672, 674 (1984).

2 The Court must construe the pleadings liberally and draw every fair inference in favor of the non-  
3 moving party when considering a motion to dismiss on the grounds of failure to state a claim  
4 upon which relief can be granted. *Hampe v. Foote*, 118 Nev. 405, 408, 47 P.3d 438, 439 (2002),  
5 citing *Blackjack Bonding v. Las Vegas Mun. Ct.*, 116 Nev. 1213, 1217, 14 P.3d 1275, 1278  
6 (2000).

7 The Court finds there is no basis in law or fact to support the causes of action alleged  
8 against Kern. The Court finds to permit such causes of action against Kern would result in a  
9 chilling effect on individuals’ ability to hire and retain counsel. NRS 116.3118 does not permit  
10 attorneys to be personally liable for actions taken on behalf of an association.

11 IT IS HEREBY ORDERED the DEFENDANTS, KERN & ASSOCIATES, LTD. AND  
12 GAYLE KERN’S MOTION TO DISMISS COMPLAINT is GRANTED.


13 The Court notes the Plaintiffs filed a MOTION TO POSTPONE AND/TEMPORARILY  
14 STAY (“the Motion for Stay”) on October 20, 2015. Kern filed DEFENDANTS, KERN &  
15 ASSOCIATES, LTD. AND GAYLE KERN’S OPPOSITION TO MOTION TO POSTPONE AND  
16 TEMPORARILY STAY PROCEEDINGS (“the Opposition to Stay”) on October 22, 2015. The  
17 Plaintiff filed a REPLY IN SUPPORT OF MOTION TO POSTPONE AND/OR TEMPORARILY  
18 STAY PROCEEDINGS on November 5, 2015. The Plaintiffs submitted the matter for the Court’s  
19 consideration on November 10, 2015.

20 The Motion for Stay seeks an order from the Court staying all proceedings until December  
21 1, 2015, based upon the medical treatment of Plaintiff Mr. Dezzani. The Opposition to Stay  
22 contends there are no grounds on which this Court may render a decision to stay this matter. The  
23 Opposition to Stay asserts the Plaintiffs had ample opportunity to secure local counsel to ensure all  
24 proceedings in this matter could be conducted in a timely fashion. The Opposition to Stay further  
25 points out the Plaintiffs have not made any specified requests regarding what should be stayed.  
26  
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1 The Court finds the Plaintiffs have not provided legal authority warranting a stay, or what  
2 proceedings the Plaintiffs seek to have stayed. Further, the Court finds Defendant KAREN  
3 HIGGINS has not been served in this matter. The 120 days for service has lapsed. NRCP 4(i).

4 IT IS HEREBY ORDERED the MOTION TO POSTPONE AND/TEMPORARILY STAY  
5 is denied. IT IS FURTHER ORDERED the above-captioned matter is DISMISSED in its entirety.

6 DATED this 19 day of November, 2015.

7  
8   
9 ELLIOTT A. SATTLER  
10 District Judge  
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1 CERTIFICATE OF MAILING

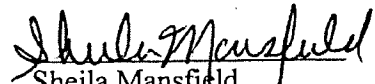
2 Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court  
3 of the State of Nevada, County of Washoe; that on this 19 day of November, 2015, I deposited in  
4 the County mailing system for postage and mailing with the United States Postal Service in Reno,  
5 Nevada, a true copy of the attached document addressed to:

6 David and Rochelle Dezzani  
7 17 Camino Lienzo  
8 San Clemente, CA 92673  
9

10 CERTIFICATE OF ELECTRONIC SERVICE

11 I hereby certify that I am an employee of the Second Judicial District Court of the State of  
12 Nevada, in and for the County of Washoe; that on the 19 day of November, 2015, I  
13 electronically filed the foregoing with the Clerk of the Court by using the ECF system which will  
14 send a notice of electronic filing to the following:  
15

16 Gayle Kern, Esq.  
17  
18  
19

20   
21 Sheila Mansfield  
22 Administrative Assistant  
23  
24  
25  
26  
27  
28

## DISTRICT COURT CIVIL COVER SHEET

WASHOE

County, Nevada

Case No.

CV15 00826

(Assigned by Clerk's Office)

## I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):

David + Rochelle Dezzani  
17 Camino Lienzo  
San Clemente CA 92673

Defendant(s) (name/address/phone):

Kern Associates LTD

Gayle Kern

Karen Higgins

John Doe 1-10, Jane Doe 1-10

Doe Businesses 1-5

Counsel (name/address/phone):

Attorney (name/address/phone):

## Nature of Controversy (please select the one most applicable filing type below)

## II Case Filing Types

## Real Property

## Landlord/Tenant

☐ Unlawful Detainer (UD)☐ Other Landlord/Tenant (LT)

## Title to Property

☐ Judicial Foreclosure (FC)☐ Other Title to Property (OT)

## Other Real Property

☐ Condemnation/Eminent Domain (CD)☐ Other Real Property (RO)

## Negligence

☐ Auto (VP)☐ Premises Liability (SF)☐ Other Negligence (NO)

## Malpractice

☐ Medical/Dental (MD)☐ Legal (LG)☐ Accounting (AG)☐ Other Malpractice (MG)

## Torts

## Other Torts

☐ Product Liability (PL)☐ Intentional Misconduct (IM)☐ Employment Tort (WT)☐ Insurance Tort (IN)☒ Other Tort (TO)

## Probate

## Probate (select case type and estate value)

☐ Summary Administration (SU)☐ General Administration (GA)☐ Special Administration (SL)☐ Set Aside (SE)☐ Trust/Conservatorship (TN)☐ Other Probate (OP)

## Estate Value

☒ Over \$200,000☐ Between \$100,000 and \$200,000☐ Under \$100,000 or Unknown☐ Under \$2,500

## Construction Defect &amp; Contract

## Construction Defect

☐ Chapter 40 (CQ)☐ Other Construction Defect (CF)

## Contract Case

☐ Uniform Commercial Code (UN)☐ Building and Construction (BC)☐ Insurance Carrier (BF)☐ Commercial Instrument (CI)☐ Collection of Accounts (CT)☐ Employment Contract (EC)☐ Other Contract (CO)

## Judicial Review/Appeal

## Judicial Review

☐ Foreclosure Mediation Case (FO)☐ Petition to Seal Records (PS)☐ Mental Competency (MT)

## Nevada State Agency Appeal

☐ Department of Motor Vehicle (DM)☐ Worker's Compensation (SI)☐ Other Nevada State Agency (ON)

## Appeal Other

☐ Appeal from Lower Court (CA)☐ Other Judicial Review/Appeal (AO)

## Civil Writ

## Civil Writ

☐ Writ of Habeas Corpus (HB)☐ Writ of Mandamus (WM)☐ Writ of Quo Warrant (WQ)☐ Writ of Prohibition (WP)☐ Other Civil Writ (WO)

## Other Civil Filing

## Other Civil Filing

☐ Compromise of Minor's Claim (CM)☐ Foreign Judgment (FJ)☐ Other Civil Matters (GC)

Business Court filings should be filed using the Business Court civil coversheet.

May 4, 2015  
Date

Signature of initiating party or representative

1 **Code 1350**

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

6 **DAVID DEZZANI and ROCHELLE**  
7 **DEZZANI,**

**Case No. CV15-00826**

8 **Plaintiffs,**

**Dept. No. 10**

9 **vs.**

10 **KERN & ASSOCIATES, LTD; GAYLE KERN;**  
11 **KAREN HIGGINS; JOHN DOES 1-10; JANE**  
12 **DOES 1-10; DOE BUSINESSES 1-5,**

13 **Defendants.**  
14 \_\_\_\_\_/

15 **CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL**

16 I certify that I am an employee of the Second Judicial District Court of the State of Nevada,  
17 County of Washoe; that on the 15th day of December, 2015, I electronically filed the Notice of  
18 Appeal in the above entitled matter to the Nevada Supreme Court.

19 I further certify that the transmitted record is a true and correct copy of the original  
20 pleadings on file with the Second Judicial District Court.

Dated this 15th day of December, 2015

21 Jacqueline Bryant  
22 Clerk of the Court

23 By /s/ Yvonne Vilorio  
24 Yvonne Vilorio  
25 Deputy Clerk  
26  
27  
28



# POSTAL MONEY ORDER

Serial Number

23442974561

Year, Month, Day

2015-12-11

Post Office

926720

U.S. Dollars and Cents

\$250.00

Amount

TWO HUNDRED FIFTY DOLLARS & 00¢ \*\*\*\*\*

Pay to

Supreme Court of Nevada

Clerk

0012

Address

From

David and Rochell Dezzani

Address

17 Camino Lienzo, San Clemente, CA 92673

Memo

Appeal of CV15 0086, Dept. 10, 2nd Judicial District Court

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