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Elizabeth A. Brown  
Clerk of Supreme Court

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF DOUGLAS  
BEFORE THE HONORABLE STEVEN R. KOSACH, SENIOR DISTRICT JUDGE

HELMUT KLEMENTI,	:	
	:	
Plaintiff,	:	
	:	Case No. 14-CV-0260
-vs-	:	
	:	Dept. No. II
JEFFREY D. SPENCER & DOES 1-5,	:	
	:	
Defendants.	:	
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JEFFREY D. SPENCER & DOES 1-5,	:	
	:	
Counterclaimant,	:	
	:	
-vs-	:	
	:	
HELMUT KLEMENTI, an individual,	:	
EGON KLEMENTI, an individual,	:	
MARY ELLEN KINION, an	:	
individual, and DOES 1-5,	:	
	:	
Counterdefendants.	:	
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HEARING  
July 12, 2018  
Minden, Nevada

Reported by: Lesley A. Clarkson, CCR #182

A\_P\_P\_E\_A\_R\_A\_N\_C\_E\_S

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COUNTERCLAIMANT:

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1 MINDEN, NEVADA, THURSDAY, JULY 12, 2018, 10:05 A.M.

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4 THE COURT: We are on case number CV -- excuse me,  
5 14-CV-0260. The balance of the case is the third amended  
6 counterclaim and third-party complaint filed on March 3, 2017, by  
7 Mr. Jeffrey Spencer.

8 Good morning to you, Mr. Spencer.

9 MR. SPENCER: Good morning, Judge.

10 THE COURT: Good morning to you, Mr. Routsis.

11 MR. ROUTSIS: Good morning to you.

12 THE COURT: Good morning to you, Miss Pierce.

13 MS. PIERCE: Good morning, Your Honor.

14 THE COURT: Beautiful morning. Mr. Spencer was as the  
15 counterclaimant in this case versus Helmut Klementi. Is  
16 Mr. Klementi present? Wait a minute. Hang on, don't tell me,  
17 because I don't want to mix up the person that died. Egon passed  
18 away.

19 MR. BROWN: Yes, Your Honor.

20 THE COURT: Yes. Forgive me. So Mr. Klementi is  
21 represented by Mr. Michael Pintar. Good morning to you, Mr.  
22 Pintar.

23 MR. PINTAR: Thank you, Your Honor. I am here on  
24 behalf of Egon Klementi deceased, his wife, Elfie Klementi, and  
25 Mary Ellen Kinion.

1 THE COURT: Forgive me. I'm really sorry. That's why  
2 I hesitated at first. Egon passed away, and we have the notice  
3 of the death and we have a motion pending and all that. And I  
4 understand that. We will get to it. Egon passed away. But  
5 Helmut I don't see is present.

6 MR. BROWN: He is not present.

7 THE COURT: But you are representing him, Mr. Brown?

8 MR. BROWN: Correct. He's in Austria.

9 THE COURT: Oh, is he?

10 MR. BROWN: Yes.

11 THE COURT: In Austria. The hills are alive right now  
12 in Austria.

13 There's Mrs. Klementi.

14 MR. BROWN: Right.

15 THE COURT: And then we have -- where's Miss Capers,  
16 Tanika?

17 MR. BROWN: We assume she won't, we know she was  
18 planning on attending. None of us have seen her this morning,  
19 Your Honor. We have had communications with her this morning.

20 THE COURT: She usually flies in of course to Reno and  
21 then drives down.

22 MR. BROWN: Right.

23 THE COURT: Well, and we have, good morning to you  
24 Mrs. Spencer. I see you out there.

25 MS. SPENCER: Good morning, Judge.

1 THE COURT: We have, Mr. Spencer has alleged in the  
2 third amended complaint, remember there was a second amended  
3 complaint, but then when we cleaned things up it became a third  
4 amended complaint, and the causes of action are defamation,  
5 malicious prosecution, civil conspiracy, defamation and malicious  
6 prosecution, punitive damages, and infliction of emotional  
7 distress. The prayer was for special, general, and punitive  
8 damages, prejudgment interest, attorney's fees, and costs.

9 Now, there IS a motion for summary judgment pending  
10 fully briefed, and that's one of the reasons we are having a  
11 hearing today.

12 Good morning, Miss Capers.

13 MS. CAPERS: Good morning.

14 THE COURT: How are you. Come on forward. I just was  
15 in the process of identifying, and I said where's Tanika. So  
16 here you are. Good morning to you.

17 MS. CAPERS: Good morning.

18 THE COURT: And Miss Capers has a summary judgment  
19 motion that I granted against Mary Ellen Kinion, the allegations  
20 against Mary Ellen Kinion, I granted that previously.

21 So we have Dr. and Mrs. Shaw's motion for summary  
22 judgment. I just saw Mrs. Shaw come in, Dr. Shaw and Mrs. Shaw  
23 come in. Good morning to you.

24 And we have Helmut Klementi's motion for summary  
25 judgment, and we have Mary Kinion's summary judgment on

1 everything but the malicious prosecution. You might remember I  
2 dismissed the malicious prosecution before. And Elfriede's  
3 motion for summary judgment. And today's hearing, because I have  
4 everything, seek dispositive rulings regarding all the cases.

5 And we also have a motion for spoliation of evidence  
6 that's fully briefed. We also have a motion to strike  
7 plaintiff's expert witness, and again plaintiffs are referred to  
8 as Mr. Spencer in that sense.

9 So, and then as I mentioned before, Mr. Pintar, we have  
10 got a motion to dismiss for failing to timely substitute a party  
11 after death, which was very well taken, by the way.

12 So what I'd like to do is go through and have the  
13 moving party briefly, once you identify the case, the section of  
14 the case, briefly, very briefly, just give me a summary, and then  
15 the opposition summary. We don't need a reply, unless I ask for  
16 it, because I feel that I'm ready.

17 I want to show everybody, just so you know, when it  
18 takes the judge five minutes to introduce the case, why it takes  
19 five minutes. This is file one through four. This is file five  
20 through -- that's one through three, this is file four through  
21 six, and this is file five -- no, that was three and four, and  
22 this is five and six. And I have had this case since the  
23 beginning of the civil case after the criminal trial when Judge  
24 Young was challenged and he removed himself and a senior judge  
25 was appointed.

1 Mr. Pintar, please.

2 MR. PINTAR: Your Honor, just for the record, and  
3 obviously in light of that, I want to also remind the Court that  
4 there is the motion for order to show cause.

5 THE COURT: I'm going to have that at the very end.  
6 And thank you, forgive me, it is on my check sheet, if you will.

7 So what I'd like to do, and I just got concerned for  
8 about two seconds when I didn't see, but what I'd like to do is  
9 start with you, Miss Capers, in regards to Rowena and Peter  
10 Shaw's motion for summary judgment. And again a brief, just a  
11 brief summation. And I'll hear from the counterclaimant, Miss  
12 Pierce or Mr. Routsis, in response. And we will just move on.

13 So whenever you are ready, if you would, please, Miss  
14 Capers. And if you are not ready, I see you going through stuff  
15 right now --

16 MS. CAPERS: If you wouldn't mind.

17 THE COURT: -- I can ask Mr. Brown.

18 MS. CAPERS: Thank you.

19 THE COURT: Or Mr. Pintar. But go ahead, Mr. Brown,  
20 please. Your motion for --

21 MR. BROWN: Summary judgment.

22 THE COURT: Motion for summary judgment.

23 MR. BROWN: Your Honor, I'm going to try and be brief.  
24 I spent a lot of time yesterday --

25 THE COURT: Trying to be brief?

1 MR. BROWN: I did. But if I'm going too long and/or  
2 I'm getting to an area you don't think needs to be addressed, let  
3 me know and I'll move on.

4 Your Honor, thank you for scheduling this hearing  
5 today. I want to start out in this by making sure we are all  
6 clear on the standard for summary judgment. As the Court is well  
7 aware, around 13 years ago the Nevada Supreme Court in the Wood  
8 v. Safeway decision abrogated the slightest doubt standard in the  
9 motions for summary judgment, which was cited in the opposition.  
10 And so I want to make sure that we are clear on the standard  
11 going forward. And it's really, the standard is summary judgment  
12 is appropriate where the pleadings, depositions, answers to  
13 interrogatories, admissions, and affidavits, if any, demonstrate  
14 that no genuine issues of material fact exist and the moving  
15 party is entitled to summary judgment. In this case we think, we  
16 believe strongly we have established that standard.

17 Jumping to the defamation real quickly. The defamation  
18 that has been alleged in this case really centers around three  
19 areas. One is the statements made by Helmut Klementi to the  
20 police officer who investigated the incident that is the subject  
21 of this dispute. Two, the statements or the testimony given by  
22 Helmut Klementi at the criminal trial for Mr. Spencer. And  
23 three, the planning commission statements that were given by  
24 Mr. Klementi.

25 Before we get into a discussion of privilege, I want to



1 talk about the truth of these allegations. You have seen the  
2 video of the assault in this case, Your Honor. You have seen  
3 that Mr. Klementi was struck by Mr. Spencer, violently, causing  
4 him injuries. So the statements that he has stated in this case  
5 about being struck by Mr. Klementi, I mean Mr. Spencer, and being  
6 injured are true. And we think on that basis alone you can grant  
7 the motion for summary judgment. But even if you are assuming  
8 for the sake of argument that they are not, we have some  
9 privilege issues that I want to talk about.

10           With respect to the Douglas County Sheriff, the  
11 statements that Mr. Klementi made we believe fall within a  
12 qualified privilege to law enforcement, the investigating  
13 officer. Mr. Klementi reported that he had been assaulted by  
14 Mr. Spencer and that he was knocked to the ground. Even if that  
15 statement was false, which it's not, Spencer, Mr. Spencer needs  
16 to show that the statement was made with actual malice. There's  
17 no evidence in this case that there was actual malice. We have  
18 seen the video. Mr. Klementi reported that he had been  
19 assaulted, was cooperating with law enforcement. There was no  
20 malice, and there was no evidence that malice was part of that  
21 statement when it was made. In fact Helmut didn't even call the  
22 police to begin with. I understand that, based on the testimony  
23 in evidence, it was actually the Spencers that called. The  
24 statement was made in good faith.

25           Really, once we have established this and all the

1 evidence shows that it was made in good faith, there's nothing to  
2 the contrary, the burden shifts to the Spencers to show that it  
3 was made in bad faith. They haven't done so in their opposition,  
4 and they can't do so here today. They do attempt, plaintiffs  
5 attempt to cloud this issue, arguing there was no privilege,  
6 despite clear Nevada case law to the contrary. And I think you  
7 should look at the Circus Circus decision, 99 Nevada 56, which  
8 stands for the general proposition that communications uttered or  
9 published in the course of judicial proceedings are absolutely  
10 privileged. And again, in this case we are talking more about a  
11 qualified privilege, but there has been no showing of actual  
12 malice in this case or the statement was not made in good faith.  
13 So we believe the law requires a grant of summary judgment with  
14 respect to that issue.

15           Let's talk for a minute about the planning commission,  
16 which is by Douglas County code a quasi-judicial body. That's an  
17 absolute privilege. It's a judicial proceeding privilege. The  
18 statements were made about the assault in that planning  
19 commission meeting, which was there to discuss the subject matter  
20 of a code violation regarding the Spencers' fence. The Spencers  
21 have argued well, Helmut had no interest in being at the meeting  
22 and had no interest in testifying, which is patently false. This  
23 involved, this fence created a neighborhood dispute, a  
24 neighborhood in which Mr. Klementi lives in.

25           If you take the reasoning of the Spencers to the next

1 level, any witness who testifies in a trial who is not a party to  
2 the trial, witness to a car accident, for example, that was just  
3 passing by, doesn't know the two parties, comes in and testifies  
4 here's what I saw, that could subject, under their analysis, that  
5 would subject that witness to potential defamation claims, which  
6 we know is not the case. It's hornbook law that that's, in  
7 judicial proceedings that's not the case. It's protected  
8 privilege.

9           It's the same thing here. Mr. Klementi has come in to  
10 testify to the issues that resulted from the Spencers fence.  
11 It's clearly related. He enjoys an absolute protection. To hold  
12 otherwise would have a chilling effect on litigation or testimony  
13 in quasi-judicial proceedings, and it would quite frankly be  
14 against public policy of the state of Nevada.

15           Lastly, we have the testimony at trial, which again is  
16 an absolute privilege. And there's been no evidence to show  
17 otherwise, Your Honor, and we believe that summary judgment  
18 should be granted, easily granted on the defamation claims.

19           You also previously ruled on Miss Kinion's malicious  
20 prosecution claim, and we believe for the same reasons a  
21 malicious prosecution claim against Helmut should likewise be  
22 dismissed, or you should grant judgment in our favor, summary  
23 judgment in our favor. We heard Miss Pence's testimony that  
24 she's the one that decides to prosecute crimes. Helmut has no  
25 say in that. Helmut is cooperating in an investigation, telling

1 her what he knows, goes on to testify to that. That's certainly  
2 a privileged communication. In fact as we previously discussed,  
3 it's an absolute privilege.

4           The Spencers try and cloud the water, and I'm a little  
5 confused by this, but they try and cloud the water on this  
6 malicious prosecution claim by saying his testimony was false,  
7 and they used the video to say his testimony was false, he gave a  
8 conflicting statement. Again, we have seen the video, we have  
9 seen Mr. Spencer coming out of his house, violently colliding,  
10 knock down, assaulting Mr. Spencer, stand over him, yell at him.  
11 All the evidence in this case shows Mr. Klementi's testimony has  
12 been consistent with what we have all seen on that video, Your  
13 Honor. He certainly had a good-faith belief when he was  
14 testifying that he had been assaulted. And I think that based on  
15 those facts the malicious prosecution claims should die.

16           Likewise, I'm going to jump to the civil conspiracy  
17 claims. Again, we have this general allegation that there's been  
18 a conspiracy amongst the defendants in this case to commit the  
19 underlying torts, and as we have already discussed, the  
20 underlying torts of defamation and malicious prosecution. In  
21 order to have the malicious prosecution claim you got to, one,  
22 show an agreement between the actors and the commission of the  
23 underlying tort. We have already argued and established they  
24 can't show the torts in this case are actionable. And two,  
25 there's no evidence to suggest that there's been any sort of an

1 agreement.

2           The Spencers cite to the Short case as a case where  
3 they try to defeat our arguments. The Short case is not a good  
4 case to rely on in this case, because, one, it relies on the  
5 slightest doubt standard that was shot down by the supreme court  
6 13 years ago. And in that case the nonmoving party actually  
7 offered evidence, go figure, evidence of this conspiracy in the  
8 form of depositions, affidavits, testimony taken at a hearing.  
9 We have none of that in this case, so for that reason we believe  
10 that summary judgment should be granted on the conspiracy claim  
11 as well.

12           I'm going to jump to the punitive damages, and then  
13 I'll do the infliction of emotional distress claim.

14           I have argued this before in other cases in front of  
15 you, and I know you are well aware of the standard for punitive  
16 damages, but we need clear and convincing evidence of oppression,  
17 fraud, or malice. What we have got in this case is Helmut being  
18 assaulted by Mr. Spencer, reporting it to an officer that he  
19 didn't even call in the first place, cooperating with a district  
20 attorney in this case, in the investigation of a crime, and  
21 giving a statement at a quasi-judicial body, a planning  
22 commission. There is no conceivable way that the plaintiffs can  
23 show clear and convincing evidence that any of those statements  
24 were given with malice, oppression, or fraud. And we believe  
25 that claim as well is ripe for decision and a grant of summary

1 judgment.

2 We also have the emotional distress claim again.  
3 Mr. Spencer's got a lot of problems with this claim. He's  
4 claiming that he suffered extreme or serious emotional distress  
5 as a result of these statements. He needs to show the evidence  
6 of physical injury or distress, which we contend he has not, and  
7 that my client's conduct was extreme. In this case, as we have  
8 talked about, it was reasonable for him to report the statements  
9 truthfully to the officers, testify in court and the  
10 quasi-judicial proceeding. That does not rise to the level of  
11 extreme and outrageous conduct as cited in, I believe it's the  
12 Motel 6 case, the Pranda versus Sanford case, Your Honor, where a  
13 15-year-old bus girl was working in a hotel when a celebrity  
14 confronted her and accosted her with sexual innuendoes and then  
15 verbally abused her. He screamed at her terms like "fucking  
16 bitch," "fucking cunt," "no lady." He screamed at her in front  
17 of other hotel patrons and coworkers. And the Nevada Supreme  
18 Court found that to be extreme and outrageous conduct.

19 That is not the kind of conduct we are dealing with in  
20 Mr. Klementi's case. We have established those statements were  
21 made with a good faith belief that a crime had been committed.

22 We also have Mr. Spencer claiming he's having stomach  
23 issues, hard time sleeping, anxiety, stress related to  
24 litigation. We have cited numerous cases in our brief to show  
25 that is not sufficient to carry the case.

1           Lastly, Mr. Spencer, in an attempt to defeat the motion  
2 for summary judgment, obtained new evidence that's never been  
3 disclosed in this case. I don't know if it helps his case, but  
4 it is a medical statement from a doctor saying he suffers from  
5 PTSD and has digestive issues. Not only has that not been  
6 discovered or not been disclosed in this case prior to this,  
7 which I think, I believe prevents the Court from even considering  
8 it under the Wood v. Safeway case and Rule 56 -- and I'm sorry, I  
9 lost my train of thought.

10           We haven't seen any of the medical records. The  
11 statement given by the doctor was not to a reasonable degree of  
12 medical probability, and there's been no direct causal link  
13 established other than maybe the statement made by Mr. Spencer to  
14 his doctor. And again, that's not sufficient to establish his  
15 claim, and we would ask for motion for summary judgment as to all  
16 claims.

17           THE COURT: Thank you. Mr. Routsis or Miss Pierce,  
18 respond in regards to Mr. Klementi's, the allegations against  
19 Mr. Klementi.

20           MR. ROUISIS: Judge, if we may, she's going to respond  
21 directly to the three claims, and I would like to give a short  
22 statement at the end regarding the malicious prosecution aspect.  
23 And I will be brief, and I'll just save my until the end.

24           MR. BROWN: Your Honor, I would object to that. I mean  
25 this is, typically when we go in the court, the practice in this

1 community, no matter how many attorneys you have, one person is  
2 either speaking, arguing, or objecting. In this case, they need  
3 to decide who that is. If I would have known that was the case,  
4 I would have had Miss Molleck up here with me arguing other  
5 things.

6 I would object to that, and I would just lodge that  
7 objection.

8 THE COURT: Okay. Fine. Thank you.

9 Miss Pierce, go ahead, if you would. Are you planning  
10 on responding one at a time or all three in general? That's my  
11 first question. I wish you would respond, my request is that you  
12 respond to Mr. Klementi's, Mr. Brown's argument first and then  
13 the next one and then the next one. But I want you to go ahead.

14 I don't mind Mr. Routsis -- the objection is overruled.  
15 You go ahead and sum up.

16 MR. ROUTSIS: Thank you very much.

17 THE COURT: But you said on the malicious prosecution,  
18 right?

19 MR. ROUTSIS: Correct.

20 THE COURT: All right. That's fine.

21 MS. PIERCE: Okay.

22 THE COURT: Please, go ahead, Miss Pierce, and respond  
23 briefly to Mr. Brown's comments if you will.

24 MS. PIERCE: Very briefly, Your Honor. And I have  
25 fully briefed, and I know that's a lot of reading, you showed us



1 the number of stacks. But in terms of the standard for summary  
2 judgment, the question is not whether there remains, to what  
3 extent the doubt is removed. If there's the slightest doubt,  
4 which there is in a number of these, the jury should have the  
5 opportunity to rule upon it. And we can show that there is good  
6 grounds for going forward to trial.

7 In terms of the defamation claim, and it also applies  
8 to malicious prosecution. The privilege is in respect to  
9 malicious prosecution. Specifically it only qualified prior to  
10 the initiation of criminal proceedings. So statements that were  
11 made prior to the initiation of the criminal proceeding are not  
12 fully qualified. They are only qualified, I mean they are not  
13 fully privileged. They are only qualified privilege.

14 And with respect to defamation, one of the  
15 qualifications is was it relevant to what was being addressed.  
16 To stand up in a hearing about whether a fence should go up or  
17 not in variance of a fence standard and say I was battered, and  
18 this man committed this crime against me is totally irrelevant to  
19 that. There's no privilege for that. It's a totally irrelevant  
20 subject to even be raised there, and it should not have been.

21 Now, as far as the basis in truth and good faith.  
22 Malice can be shown by evidence of motive and intent. And  
23 recklessness in things that are said is grounds for a finding of  
24 malice. That's something that the jury needs to be able to look  
25 at, because there's plenty of evidence in this case that there

1 was bad faith, not good faith, and that things that were said  
2 were not true.

3           There was a collision, that's been seen on the video.  
4 A collision does not equal a battering. Just because there is  
5 some kind of connection between two people or two cars or two  
6 whatever that causes damage does not mean there was criminal  
7 action there that was intentional, which is what Mr. Spencer was  
8 charged with. That's a battery.

9           And in terms of the conspiracy, that can be inferred  
10 from the combined actions. That's not just what Mr. Helmut  
11 Klementi did, but what all the parties that are in this action  
12 did. And it's not necessary to show by direct evidence that they  
13 sat down and discussed it and proceeded from there. It can be  
14 inferred from the combined actions that these parties took.

15           And in Mr. Helmut Klementi's case, Mr. Brown is right,  
16 he's not the one who called the police. The Spencers called the  
17 police because they thought somebody was invading their property  
18 and possibly damaging their vehicle, because there had been other  
19 circumstances of that. So they called the police. Then the  
20 things that happened after that, the statements that were made,  
21 the behaviors of both Egon and Elfie Klementi, the subsequent  
22 statements of other parties. When you take them collectively, it  
23 shows there was a conspiracy here at various times with various  
24 parties, not all of them together at one time, but their  
25 collective actions show an intent to cause harm to Mr. Spencer,

1 both by proceeding in prosecution against him, and there were  
2 other claims added later by two of these other parties, and by  
3 the defamatory statements, which were made by all of these  
4 parties at one time or another in no connection to the actual  
5 criminal proceeding or prior to the initiation of a proceeding.  
6 And they were statements that were not based on truth, and as a  
7 general rule of law, credibility is an issue for the jury.

8           In terms of emotional distress claims, which is a  
9 matter basically of damages, and it's set out as a separate  
10 claim, but it's also a matter of damages in the other claims, the  
11 parties all requested releases of medical records, which  
12 Mr. Spencer signed. According to what his doctors told him, they  
13 received those medical records. So they were on notice of what  
14 his medical problems were. And it was not, there were, there is  
15 evidence in there of physical manifestations from what he was  
16 going through.

17           And he was accused of heinous crimes. He was accused  
18 of assaulting elderly people, including Helmut Klementi, and  
19 that's a horrible thing to be accused of. He was found innocent  
20 of that. There was so much put out there.

21           And I, to use an example, Your Honor, there's a story  
22 in Jewish writings about a man who was slandering a rabbi of his  
23 community for many years, and then one day he woke up and  
24 realized what he was doing, and he went to the rabbi and asked  
25 for forgiveness for what he had done. The rabbi said fine, if

1 you will do a couple of things for me. First go home and get  
2 your feather pillow and cut it open and shake all the feathers  
3 out and come back. The man did what the rabbi said. He came  
4 back, and the rabbi said fine, now go pick up all those feathers.

5 Thank you.

6 THE COURT: I got to remember that. That's good.

7 I know that you wanted to --

8 MR. ROUTSIS: I would just wait to the end.

9 THE COURT: I understand. I'm talking to Miss Pierce.  
10 I'm going to turn to the next motion, and then I'll have Miss  
11 Pierce respond.

12 And Miss Capers, are you ready?

13 MS. CAPERS: Yes, sir.

14 THE COURT: Very briefly, go ahead on behalf of, and  
15 remember only Miss Kinion, everything but the malicious  
16 prosecution, because the malicious prosecution has already been  
17 dealt with.

18 MS. CAPERS: Right. So just clarification, though. We  
19 never got an order that it didn't apply to my client, so that was  
20 the first issue I was going to address, and the malicious  
21 prosecution would be dismissed against the Shaws as well.

22 THE COURT: There was no order.

23 MS. CAPERS: No, sir.

24 THE COURT: I didn't give you an order on that.

25 MS. CAPERS: No, sir.

1 THE COURT: My wife said never say sorry on the bench  
2 or that you made a mistake, but I just did. My bad.

3 MS. CAPERS: It happens. No problem.

4 THE COURT: So here we go with the others.

5 MS. PIERCE: Your Honor, excuse me. Could I interrupt  
6 for a minute? I didn't understand what that --

7 THE COURT: There was a hearing earlier on Miss --

8 MS. CAPERS: In January 2017.

9 THE COURT: Right. Miss Capers filed a motion for  
10 summary judgment that I granted on behalf of Mary Ellen Kinion in  
11 regards to the motion for summary judgment on malicious  
12 prosecution.

13 MS. PIERCE: That was Mr. Pintar's motion that was  
14 granted, and at the same time you gave us the opportunity to file  
15 an amended counterclaim and third-party complaint, with the only  
16 limitation that we could not file again against Miss Kinion on  
17 the malicious prosecution.

18 MS. CAPERS: But I think the facts and the law remain  
19 the same, so I don't know how it wouldn't be dismissed against my  
20 clients when it was dismissed against Miss Kinion. We relied on  
21 the same information.

22 MR. ROUSIS: That was never brought before the court.

23 MS. CAPERS: I was there that day and argued and asked  
24 the questions.

25 THE COURT: All right. Wait a minute, let me get it

1 straight. I could have been confused.

2 Mr. Pintar, you, I granted a motion on your client's  
3 behalf.

4 MR. PINTAR: Correct.

5 THE COURT: So when Miss Capers is talking about a, I'm  
6 very sorry, on behalf of the Shaws.

7 MS. CAPERS: Shaws, yes, sir.

8 THE COURT: Oh, my bad. That's why I said my mistake.  
9 You argue for summary judgment on behalf of the Shaws.

10 MS. CAPERS: Right.

11 THE COURT: For malicious prosecution and everything  
12 else.

13 MS. CAPERS: Yes, sir.

14 THE COURT: I just put it down in the wrong column in  
15 my program if you will.

16 MS. CAPERS: I thought you did when you were speaking  
17 earlier. No problem.

18 THE COURT: Do we understand now that that was my  
19 problem?

20 So Miss Capers, please, I want you to summarize it very  
21 similarly in time to what Mr. Brown, kind of like in time to what  
22 Mr. Brown took, and give me a summary of all of your thoughts and  
23 in regards to backing up the motion for summary judgment on  
24 behalf of the Shaws.

25 MS. CAPERS: Yes, sir. The first thing I just wanted

1 to mention, going back to the standard for summary judgment, it's  
2 no longer the slightest doubt standard. Submitted evidence,  
3 there must be submitted evidence to negate an essential element.  
4 And also if there's absence of information to support an element.  
5 And that's important, because let's look at the civil conspiracy.

6 For the civil conspiracy claim, that must fail because  
7 what they must show is that there was a lawful agreement, and a  
8 lawful agreement between what parties, I don't know if it's all  
9 the parties or was it just between Kinion and or was it the  
10 Shaws? We don't have any evidence specifically who they are  
11 alleging the civil conspiracy was with. We can assume they are  
12 saying that all of them got together and agreed to do what? To  
13 defame Mr. Spencer, in what capacity, and saying that he  
14 assaulted Mr. Klementi. I don't know. And that is important,  
15 because what we would have to do as defense counsel is speculate  
16 as to what facts they have to support that there is a civil  
17 conspiracy.

18 So number one, what was the civil conspiracy? Number  
19 two, who was it with? And also when you look at that, that  
20 becomes very important when we get to whether or not the civil  
21 conspiracy claim can stay. Because when we look at what  
22 statements were made, it has to be, if they were talking about  
23 statements made in a defaming manner, they have to show what  
24 those statements are. And I think generally if I guess or  
25 speculate as to what those statements are, it's a reference to

1 the assault as well as the statements that were made before the  
2 planning commission. And again, my co-counsel has already argued  
3 the quasi proceedings, the absolutely privilege.

4 But what I'm getting to with the civil conspiracy is  
5 you have a malicious prosecution claim that is gone, so then for  
6 the civil conspiracy, what else, what is the underlying tort? It  
7 would have to be the defamation, right? Because the defamation  
8 is covered under privilege, therefore the civil conspiracy claim  
9 cannot stay, because they don't have an underlying tort. The two  
10 being defamation or the malicious prosecution.

11 Next, if you go to just simply the punitive damages  
12 claim. What is important is that if you take away the civil  
13 conspiracy, the malicious prosecution, and the defamation,  
14 punitive damages can't stand alone. So the only thing we have  
15 left is the intentional infliction of emotional distress.

16 So as we know, in the intentional infliction of  
17 emotional distress, there must be a physical manifestation.  
18 Again, as my colleague stated, the letter claiming posttraumatic  
19 stress disorder, we think that should be stricken because it  
20 wasn't given timely. So when you look at the actual, look at the  
21 medical records and what physical manifestations that Mr. Spencer  
22 had, they are very general. We are talking about tummy aches, we  
23 are talking about stress, we are talking about anxiety. And the  
24 Court has clearly addressed these issues in Nelson v. City of Las  
25 Vegas and also in Ailem v. Reno Hilton Corporation. And talking



1 about general, physical, or emotional discomfort are insufficient  
2 to satisfy the physical impact requirement. Also, when you look  
3 at the intentional infliction of emotional distress, it has to be  
4 severe or extreme actions, those that are unconscionable.

5           So the actions of what my clients, the Shaws, in  
6 speaking at the commission meetings, how was that unconscionable  
7 conduct? How was it them speaking to police officers  
8 unconscionable conduct? How was it them talking to the district  
9 attorney unconscionable conduct? How was it when law enforcement  
10 asked them to turn over computer, a computer drive, how was that  
11 unconscionable conduct? And so that's the standard that must be  
12 met for the intentional infliction of emotional distress.

13           And again, just some other symptoms that the court has  
14 said are insufficient is thoughts, difficulty sleeping, lack of  
15 concentration, inability to deal with stressful situations,  
16 negative thoughts, depression, anxiety, of which Mr. Spencer says  
17 he has, are not sufficient to, is not sufficient for the element  
18 of the physical manifestation under the emotional distress.

19           So Your Honor, looking at these overall, again,  
20 malicious probation should be out the door. When we look at the  
21 defamation, that should be covered under privilege. And when you  
22 kick out the defamation and the malicious prosecution, then you  
23 don't have a civil conspiracy. So the only thing you have left  
24 is an intentional infliction of emotional distress, you have the  
25 two prongs looking at the behavior by my clients, and then number

1 two, whether or not they can satisfy the physical manifestation  
2 element.

3 THE COURT: Thank you.

4 Miss Pierce.

5 MS. PIERCE: Summary judgment is fact driven, Your  
6 Honor, and it requires the party present facts with citations to  
7 actual evidence, whether it's a statement of the party or it's a  
8 letter or it's a prior testimony or it's a transcript of a  
9 deposition. In this case, with respect to the Shaws, they don't  
10 go through a recitation of here's facts and here's the basis for  
11 the facts in their motion in terms of the summary judgment for  
12 malicious prosecution.

13 Their involvement in this case, because they weren't  
14 even around when any of these things supposedly happened, their  
15 involvement in this case was that they had cameras that taped  
16 what happened in that initial evening when there was the  
17 collision between Helmut Klementi and Jeff Spencer. They were  
18 specifically told by law enforcement to preserve that tape. They  
19 did not. Worse, they presented a copy of it to the Klementis  
20 before they presented a copy of it to law enforcement, and with  
21 the copy they presented to law enforcement was missing time.

22 Now, malice can be inferred by their failure to  
23 preserve that evidence, and conspiracy can be inferred why would  
24 they be giving copies of it to someone else involved here prior  
25 to giving a copy to law enforcement. That doesn't even make

1 sense, unless there was a concerted effort to try and get  
2 Mr. Spencer prosecuted.

3 In terms of the letters and the speeches they made,  
4 they were, they were not witness to anything that they were  
5 saying. They were passing on gossip from other parties. That's  
6 all it was. And it was gossip that was targeted at Mr. Spencer  
7 to diminish him in the standing of the community, to attempt to  
8 get him fired from his job, and to support the criminal  
9 prosecution against him.

10 So there's no basis for dismissal of the Shaws from  
11 this action.

12 THE COURT: Thank you.

13 MS. CAPERS: Judge, I know you said no reply. I  
14 apologize. But I think it's kind of important, because I'm not  
15 sure what facts she was referencing, but there's absolutely no  
16 evidence of my clients tampering with evidence. They were asked  
17 to present a video with the cameras, and it was done per  
18 instruction and guidance of law enforcement. So I'm sorry, but I  
19 just think that's a very important fact.

20 MR. ROUTSIS: Judge, I think she's correct in that  
21 regard, that our position was they doctored the tapes that were  
22 presented and took about three minutes out. But she's correct in  
23 terms of the procedure. That was a misstatement. The tape --

24 THE COURT: I got you. Thank you. I understand. I  
25 obviously immediately started thinking, and you helped me,

1 Mr. Routsis, three minutes, three minutes versus an 18-minute  
2 gap.

3 MR. ROUSIS: Correct.

4 THE COURT: Hello. Anybody understand that? How many  
5 years ago? 1974, 18-minute gap, resignation. Ooh, ooh, ooh.  
6 The conspiracy. I'm not a crook. That's just me. That's just a  
7 little bit of histrionics on my part because of what was going on  
8 back in 1974.

9 Mr. Pintar, let's do yours in regards to motion for  
10 summary judgment on Elfriede and also the balance of Mary Ellen  
11 Kinion.

12 MR. PINTAR: Your Honor, I'm going to be short. The  
13 reason that the time has been spent on the burden of proof is  
14 that, as the Court knows, Mr. Spencer has the burden to prove his  
15 various claims, so he has the burden to prove that certain  
16 statements that were made are defamatory in nature. And that's  
17 kind of the source of the issue in this case, because they have  
18 never identified what those claimed defamatory statements are.

19 For example, in his deposition, Mr. Spencer on, and I'm  
20 quoting from his, this is Exhibit 3 to Mr. Brown's motion for  
21 summary judgment, it's the deposition transcript of Jeffrey  
22 Spencer dated July 28, 2016.

23 "Question: What statements?

24 "Answer: Derogatory stuff against me.

25 "Answer: I'm sorry.

1 "Answer: Derogatory stuff against me."

2 And then it goes on, and it says, and then he goes on  
3 to say, "Question, okay. Which ones? That's what I'm trying to  
4 get at is where, where can I look? You have alleged that my  
5 client made false statements. I'm entitled know when those  
6 statements were made and who they were made to, and so I'm trying  
7 to get a better on handle on who, what, when, and where with  
8 respect to those statements during the time frame that we just  
9 talked about.

10 "Answer, correct. So I need to add those to discovery,  
11 I guess.

12 "Question: What do you mean? Those statements that  
13 you haven't provided yet?

14 "Answer: There is a lot of stuff I haven't provided  
15 yet.

16 "Question: Like what?

17 "There's a lot of video, a lot of statements.

18 "Question: Why haven't you provided it?

19 "Answer: Because I think we went over this this  
20 morning. I work, and I haven't had time to do it."

21 So the point being, Judge, is that what's we are faced  
22 with. They have these, they have made these accusations, but  
23 they have no beef. There's no patty there. There's nothing  
24 behind them. So what we are left to do is address the context in  
25 which the statements were made, and the context in which the

1 statements were made are either quasi-judicial or judicial  
2 proceedings, which has the privilege.

3           So that's, so basically that's our position.  
4 Everything that Miss Klementi, everything that Miss Kinion said  
5 were all done in either a quasi or a judicial proceeding and  
6 therefore are privileged.

7           THE COURT: Thank you.

8           Miss Pierce.

9           MS. PIERCE: Your Honor, the quotations from that  
10 deposition are correct, but as the parties should all know,  
11 Mr. Spencer was ill that day and was not functioning very well.  
12 But there's been plenty of production and responses and  
13 discussions and evidence that he was accused of supposedly  
14 creating berms in the driveways of elderly people to trap them in  
15 and/or in retaliation for them opposing his fence. There was no  
16 evidence of that. Not one of the parties that accused him of  
17 that ever was capable of saying under oath yes, I saw him do it.  
18 It was always, oh, I think it was him, or it must have been him.  
19 But there was no evidence of that.

20           There was a supposed snowplow attack on Egon Klementi,  
21 of his Miss Kinion claims she was a witness, and then she  
22 backtracked on that later from saying she clearly saw his face to  
23 saying well, I think it was him. And that was one of the claims  
24 that ended up in the criminal trial, of which Mr. Spencer was  
25 acquitted.

1           There was a supposed assault and perhaps even battery,  
2 depending on which story you listen to, of Egon Klementi by  
3 Mr. Spencer going back into the, I think it was May, before the,  
4 the year before the actual collision between Helmut Klementi and  
5 Jeff Spencer. And that never happened. And none of these  
6 parties were a witness to it, and yet they were all talking about  
7 it and making accusations about it, and it even ended up as part  
8 of the criminal proceeding of which he was acquitted.

9           So there has been, starting in the May before this  
10 December collision between Helmut Klementi and Mr. Spencer, there  
11 were accusations being made, stories being told, things being  
12 said, and admitted attempt to get him fired from his job. And  
13 the variance on the fence had nothing to do with any of these  
14 things other than the initial encounter where Jeff Spencer called  
15 the police to say Egon Klementi keeps coming on our property, and  
16 he's taking pictures, and we have got a couple of young boys here  
17 with their shirts off, and he needs to stop this behavior.

18           And the law enforcement officer went out to the  
19 Klementis' house and said you have got to stop this behavior, and  
20 if you keep doing it you are going to be arrested for trespass.  
21 And at that time there was nothing stated about supposedly Egon  
22 was threatened or punched in the face or anything. That came up  
23 later.

24           So this has been a pattern of attack all going back to  
25 a handful of neighbors didn't want them to build a fence they

1 were building. And instead of following the proper procedure in  
2 doing it, simply addressing the fence issue alone in the proper  
3 forum, they accused him of a whole slew of heinous crimes, and  
4 none of it was true, and most of the people repeating these  
5 stories weren't witnesses to anything that they claimed. They  
6 were just passing on stories.

7           And as they were not witnesses, unless there was some  
8 kind of conspiracy, where did they even get the stories? How  
9 does someone show up and say oh, yes, Jeff Spencer did this.  
10 They weren't a witness. They weren't even in town. They were  
11 nowhere around. They were simply passing on gossip. And they  
12 used that gossip to try and get him fired, they used that gossip  
13 to get him prosecuted, and they used that gossip to try and  
14 diminish his standing in the community. And that's all it was,  
15 was gossip. And he had to go through all of that. And he still  
16 has to live with the fact that there's records of all of  
17 that.

18           THE COURT: We heard, thank you Miss Pierce, we heard  
19 about, I'm going to say Elfriede. Tell me about Mary Ann Kinion,  
20 the balance of those motions.

21           MR. PINTAR: The only thing that I understand that with  
22 regard to Mary Ellen are twofold. One, her testimony which she  
23 made at deposition and in open court that she saw or she thinks  
24 she saw Mr. Spencer in a snowplow driving down the street, lower  
25 the blade, and the snow was thrown on him. Mr. Klementi is the



1 one who called in the initial complaint, and Miss Kinion was  
2 simply a witness to that. She testified to that. I mean she  
3 stands by her testimony, it's true, it's accurate.

4 And anything else, I don't know what it's to say. The  
5 other thing that Miss Kinion did, which we talked about at the  
6 last hearing with Miss Pence, was that Miss Kinion wrote the  
7 letter at Miss Pence's request that you probably remember, asking  
8 her what she remembers or she can account.

9 So those are two things that Miss Kinion has supposedly  
10 said that I assume they are claiming are defamatory in nature.  
11 So they are both done in the course of made to either a police  
12 officer or the district attorney. So they are absolutely  
13 privileged.

14 THE COURT: Thank you. I have to ask this before  
15 Mr. Routsis sums up. I honestly have to ask this out of  
16 curiosity, out of probably legal curiosity. But why, why was  
17 Elfriede Klementi sued? Why? Tell me. I want either Miss  
18 Pierce or Mr. Routsis to answer. If you don't want to answer, I  
19 mean it's on paper, I understand that. But I'm really curious  
20 why now.

21 MR. ROUSIS: I'll address, Judge, in my summation.

22 Judge, what's interesting is, I want to give a  
23 summation on malicious prosecution, because I tried the case, and  
24 we hear bits and pieces, and it's, you know, the old expression,  
25 the elephant in the room has not been dealt with. This is a

1 clearcut case where every party, including Mary Ellen Kinion, we  
2 are going to ask you to reconsider based on proof at trial is  
3 part and parcel of clearcut malicious prosecution.

4           What has not been pieced together or put in any  
5 coherent form for the Court was Jeff Spencer was originally  
6 arrested on the evening in question on a misdemeanor battery for  
7 running into a man, maybe intentionally, at night. Those charges  
8 were then changed, amended to felony charges because of the  
9 alleged injuries, which we believe were untrue based on what was  
10 alleged at trial. The injuries elevated it to felony.  
11 Substantial bodily injury.

12           What this Court never understood, in my humble opinion,  
13 regarding Mary Ellen Kinion, when you let her out of the case,  
14 was after that Mary Ellen Kinion and Egon Klementi, who were  
15 never part of the criminal proceedings regarding Helmut,  
16 interjected themselves into the legal situation and to say on  
17 December 18 this man here drove down the street in a giant  
18 snowplow and physically assaulted Egon Klementi. And then on  
19 Memorial Day another false statement was given, which I will get  
20 into. And as a result of that, Judge, the district attorney  
21 filed elderly abuse charges alleging Egon Klementi as a victim  
22 not related to Helmut, and these charges were based on, we know  
23 it was perjury, and let me explain why, and malicious prosecution  
24 is clearcut, and Miss Mary Ellen Kinion.

25           It's declared if we go to jury trial on it, and I'm

1 saying this -- so what do we know about the 18th of December? We  
2 know that Egon Klementi, Mary Ellen Kinion says she saw Jeff  
3 driving in front of her with a giant snowplow. She testifies  
4 under oath, interjects herself to the D.A. and says I saw Jeffrey  
5 Spencer driving the snowplow and taking debris and speeding up  
6 and turning into Egon Klementi and committing assault and battery  
7 on an elderly man. But she never called the police. She went  
8 back into her house that day and waited two hours. Egon Klementi  
9 then contacts her, and she becomes a part of this conspiracy.

10 Now, the police come out, the officer testifies under  
11 oath, I didn't even write a report because what Egon told me,  
12 there was debris, rubbish, all this stuff that was shot into the  
13 driveway. Nothing was in the driveway. The conditions that day  
14 of the plow was that there was almost no snow on the ground. So  
15 the officer said there just wasn't factual enough information to  
16 even file a police report, let alone file charges.

17 Now --

18 THE COURT: Go ahead. Tell me. Hang on. Tell me,  
19 Mr. Pintar, you are standing.

20 MR. PINTAR: I have no idea what Mr. Routsis is talking  
21 about. None of the stuff he's talking about is in evidence in  
22 this case.

23 MR. ROUSIS: It's all in evidence.

24 THE COURT: You didn't even answer my question. What  
25 does this have to do with Elfriede?

1 MR. BROWN: I would join in the objection. He's  
2 testifying as a witness.

3 THE COURT: I understand. I addressed Mr. Pintar  
4 because he was standing and interrupted.

5 MR. ROUSIS: He did it again, and he makes a statement  
6 that's untruthful. It's all in the pleadings. He does it all  
7 the time, Judge. That's all in the pleadings.

8 THE COURT: Mr. Routsis, please.

9 MR. ROUSIS: Okay.

10 THE COURT: If you want to answer, Miss Pierce can  
11 answer.

12 MR. ROUSIS: I'll get there.

13 THE COURT: If you wanted to answer on behalf, what,  
14 she is Egon's wife?

15 MR. ROUSIS: Why can't I make my argument and let me  
16 get there, Judge. Because he objects I got to jump into it right  
17 now? I'll lead into it.

18 THE COURT: Okay.

19 MR. ROUSIS: So first of all, she testified, if you  
20 want to know the truth, Elfie Klementi testified at the  
21 preliminary examination, she had made allegations that on certain  
22 days my client bermed her into her residence so she couldn't get  
23 out, later were withdrawn and found to be completely unreliable  
24 and untrue because she went to work. And then we finally got  
25 admissions in court that that is commonplace, that everybody gets

1 a berm, and he had done no extra berming than was originally  
2 done.

3           Secondly, and I will get to that, I was going to get to  
4 that, Judge, what happened on Memorial Day. But we talk about  
5 malicious prosecution. We have Mr. Spencer that had charges  
6 trumped up against him on, Judge, she testified under oath, it's  
7 in the pleadings, at trial that she saw my client driving by with  
8 a big smile on his face, and then she saw, we took pictures of  
9 the snowplow. She saw him swerve in, speeding, and dumping  
10 debris and committing a battery. It got so embarrassing for her,  
11 and her later testimony was she didn't know if it was Jeff. She  
12 did that, she changed her testimony at the depositions. She  
13 wasn't sure it was Jeff. But criminal charges were brought  
14 against him based on the perjury she committed. And if that  
15 isn't malicious prosecution, Judge, I don't know what is. She  
16 interjected herself.

17           And the D.A. gets on the stand and says well, nothing  
18 that she said or that Egon said affected my desire, that changed  
19 my position. She never filed elderly abuse charges until this  
20 evidence came forward.

21           Now, Mary Ellen Kinion asserted herself and called law  
22 enforcement, but she admitted Egon contacted her after that  
23 alleged snowplow incident, she did nothing about it until that  
24 conversation. We believe, as the jury found, that's clear  
25 conspiracy. They got together and they created a crime that the

1 jury, now look at the implicit finding of the jury, Judge. Mary  
2 Ellen Kinion testified to that, Egon Klementi testified to that  
3 December 18 snowplow incident, and Jeff Spencer testified. And  
4 they found them not to be credible. It got so bad, I asked her  
5 do you have X-ray vision, Miss Kinion? Because the snowplow was  
6 so big that from her position she could not see debris going into  
7 the driveway of Egon Klementi. We had picture after picture done  
8 by my investigator. She could not see it. And I asked her, I  
9 said you must have X-ray vision, because it's impossible to see.  
10 Well, later she's changed her testimony.

11 And we are going to ask the Court to reverse your  
12 decision, and let's go to trial on malicious prosecution. Let's  
13 see how good these attorneys really are, because they will lose  
14 on it. They will lose. They will get hammered. Because it gets  
15 worse.

16 Then we come up to Memorial Day. On Memorial Day Egon  
17 Klementi, these are all the bases for the enhanced charges of  
18 elderly abuse. My client, they pumped this in -- on Memorial Day  
19 my client is there with guests. Egon Klementi is apparently out  
20 taking pictures. They have a disagreement. Jeff comes out and  
21 asks him not to take pictures. The Spencers call law enforcement  
22 because of the conduct of the picture taking. Law enforcement  
23 comes out, it's all in the briefs, interviews the Spencers,  
24 knocks on the Klementis' door and said look, are you taking  
25 pictures? They've got young kids over there, et cetera,

1 et cetera, they don't want to be harassed. We are giving you  
2 notice we don't want you to do that. Okay?

3           The Klementis, they don't say at that point officer,  
4 Jeff Spencer threatened to punch my husband in the face, which is  
5 what they alleged at trial. We put the police officer on the  
6 stand. After that the cops came out and gave them a notice,  
7 don't take pictures. The Klementis go to the sheriff's  
8 department and start amending what happened. And then it moves  
9 into Jeff Spencer threatened to beat him up that day and assault  
10 him. Elderly abuse.

11           Goes to trial on it, put the police officer on the  
12 stand, I said officer, interesting the Spencers called you that  
13 day, right? And now they are alleging that Jeff Spencer  
14 threatened to battery them so they can put elderly abuse charges  
15 and make him look real bad and convict him of everything. You  
16 knocked on the door. Did they ever mention that Jeff Spencer did  
17 anything to him on the day in question? No. Why, if he was just  
18 assaulted, these people made complaints about a fence being six  
19 inches too long, and he was just assaulted, and they don't even  
20 mention it. Oh. So the jury had all that before them.

21           Reality is that that's malicious prosecution. They  
22 interjected themselves, there was no pending case, they contacted  
23 the D.A., the D.A. filed charges. And the D.A. that testified in  
24 this case, Judge, didn't just lose the case, it was a two-week  
25 war of attrition. And I knew when you called her to the stand

1 she was as biased as can be. But we could get her transcripts.  
2 They virtually make no sense at all. She actually testified that  
3 nothing that these people did led to the charges.

4 Those were the two witnesses of the elderly abuse, Egon  
5 Klementi and Mary Ellen Kinion, and on both situations the jury  
6 heard the evidence. But not only is it perjury, and not only if  
7 we go to trial on a civil suit will the jury, I mean forget the  
8 summary judgment standard. A man was brought to trial on two  
9 claims that perjury has been committed on them, they were found  
10 un -- is it a triable issue? It's a compelling issue. I mean I  
11 don't know what their defense is going to be. I mean she's  
12 committed two different statements, I saw him driving, I think it  
13 was him. The jury is going to hammer. Punitive damages. I  
14 think that could get a half a million dollars on that when you  
15 take a man to trial on elderly abuse charges and then you add in  
16 the Helmut Klementi case.

17 What this Court doesn't understand is that Helmut  
18 Klementi and what happened that night, the jury, wasn't just  
19 peculiar, it looks like it was a setup from the get-go, because  
20 Helmut Klementi, they had just taken pictures earlier that day,  
21 they go to a meeting, Helmut Klementi walks up the street late at  
22 night, when there's evidence there's car thefts going on in the  
23 neighborhood, is taking pictures for no reason right on Jeff's  
24 property. Jeff yells out who are you, what are you doing. He  
25 doesn't say I'm Helmut. He denied, he walks back, and Jeff runs



1 out and hits him, knocks him down and says I'm sorry, and then a  
2 lot of shenanigans go on.

3           Number one, the Shaws present a video with enhanced  
4 camera that is far lighter than the Spencers. The Spencers had  
5 cameras that showed, that showed that Klementi was right near or  
6 on his property. The Shaw video of the same time, which is a  
7 clear light, doesn't show Helmut there, and we know Helmut was  
8 there. We know it. Helmut admits it. He got knocked down  
9 there. He's never on the video. Never on the video. How can  
10 that be? Their video was better than the Spencers.

11           Judge, where there's perception there's deception. You  
12 have seen a bunch of people come in against the Spencers. We  
13 went to trial, and we put on the community, and these were the  
14 people that were listened to, that were believed, that were  
15 trusted. Where there's perception there's deception, and the  
16 Court should reverse its ground, let us go to trial on malicious  
17 prosecution, and let these three high-end civil attorneys, let's  
18 go, let's stand up and go to trial. Because clearly it's  
19 malicious prosecution. There's no question about it. And they  
20 don't want to address the facts. They piecemeal it.

21           Well, Judge, but that's the facts of the case. They  
22 amended the charges. They interjected themselves into a criminal  
23 proceeding. They committed perjury. The jury didn't believe  
24 them.

25           You know, there are implicit findings, Judge, where the

1 jury heard the testimony of Egon Klementi and Mary Ellen Kinion  
2 about what happened on that Memorial Day, and I'm saying Egon,  
3 why didn't you tell the officer that this man assaulted you on  
4 that day? He knocked on your door. Why didn't you call the  
5 police? It got so bizarre. Well, we don't know how to do things  
6 like that. What do you mean you don't know how? We don't make  
7 complaints. Judge, it was transparent, it was obvious.

8           A jury should hear the case. Summary judgment is a  
9 vehicle to take away fraud where there's no case. Not only do we  
10 have a case, we have a compelling case. And it's been tested on  
11 the man that was accused of multiple heinous crimes, and even  
12 though it was a different standard of review, the jury implicitly  
13 did not believe them. It was a credibility issue, and they found  
14 for the defendant. That's why they are so afraid, and that's why  
15 this whole story gets morphed into tidbits.

16           Well, Judge, that's the malicious prosecution. You  
17 know, you take away malicious prosecution, defamation, it ain't  
18 worth the trouble, because you take away the truth of the case.  
19 The truth of the case we don't have anymore. So it's like go to  
20 trial for what? The damages aren't going to be as great as the  
21 problems and the risk of trial. The case has always been about  
22 malicious prosecution. And the damages of them are  
23 straightforward. A man went to trial, he paid for an attorney,  
24 he was in trial for two weeks. And give us a chance to go to  
25 trial, and we will win the trial.

1 THE COURT: Thank you, Mr. Routsis.

2 MR. PINTAR: Your Honor, may I just address one short  
3 thing? I think that Mr. Routsis' diatribe shows the reason why  
4 Elfie Klementi should not only be dismissed from this case, but  
5 she should be awarded her fees and costs under 18.010. Your  
6 Honor simply asked Mr. Routsis why is Elfie Klementi in this  
7 case, and he can't say it. He stands up here ten minutes, and he  
8 didn't give you a single reason as to why Elfie Klementi should  
9 be in this case. He addressed Mary Ellen Kinion, he addressed  
10 Egon Klementi. He did not --

11 MR. ROUSIS: That's not true. I'm going to object to  
12 a misstatement of record. I --

13 MR. PINTAR: He did not address --

14 MR. ROUSIS: I specifically --

15 THE REPORTER: I'm sorry, I didn't get all that.

16 MR. PINTAR: It was a simple question, and he goes on  
17 this diatribe. Elfie Klementi has done absolutely nothing.  
18 Absolutely nothing. And yet she's been dragged through this case  
19 for three years. She's got into a dispute with her homeowner's  
20 insurance company, who denied coverage for a number of years. I  
21 mean the carnage that these people are causing to everybody  
22 simply because --

23 MR. ROUSIS: Your Honor, I'm going to object to the  
24 reply. There's no reply you said.

25 THE COURT: Overruled.

1 MR. PINTAR: I mean this is outrageous what they are  
2 doing. And to claim that Mr. Spencer is a victim is beyond  
3 belief. The facts, the video shows that he's the perpetrator  
4 here. And he subjected all of these neighbors, nice people, to  
5 this circus, if you will. I mean this case needs to end. He  
6 needs to pay fees and costs for the carnage that he has invoked.

7 MR. ROUTSIS: If I could reply to that. That's a  
8 complete misstatement. Elfie Klementi testified at the trial  
9 that Jeff Spencer threatened Egon Klementi on Memorial Day, and  
10 then we found out she wasn't even present. She said that it  
11 happened, but then we found out it was a statement made by Egon.  
12 So Elfie Klementi had testified about, at the prelim, getting  
13 elderly abuse charges presented against my client, that Jeff was  
14 berming people in, and then that turned out not to be the case.  
15 Elfie Klementi cooperated in Egon's statements that what happened  
16 on Memorial Day was an assault when she wasn't present.

17 We think these are very important issues that a jury  
18 would love to look at to see if they maliciously prosecuted the  
19 man. Because in sum and total, we have a man that was tried on  
20 perjury by people interjecting themselves into the court system,  
21 and that shouldn't happen, and the jury should be able to decide  
22 what if any damages are appropriate.

23 THE COURT: Thank you. We are going to take just a  
24 ten-minute stretch break. Let's be back at 11:30.

25 (Recess taken.)

1 THE COURT: We are back on the record in Case No.  
2 14-CV-0260. Let the record show that the parties are present  
3 with counsel. And we can proceed.

4 So we have done the Shaws, we have done Helmut motions,  
5 we have done Mary Kinion's motion, we have done Elfriede's  
6 motion. We have before us a motion to reconsider on Mary  
7 Kinion's, the Court granted Mary Kinion's motion for summary  
8 judgment in regards to malicious prosecution.

9 Now, what we have next is Mary Kinion and Elfriede's  
10 joint motions for sanctions based on spoliation of evidence. And  
11 what I want you to do, Mr. Pintar, please, and of course I want  
12 the Spencers' attorneys to reflect on Mr. Pintar's motion for  
13 sanctions based on that particular spoliation of evidence, that  
14 particular piece of evidence, of course. So if you would,  
15 please.

16 MR. PINTAR: Thank you, Your Honor. The spoliation  
17 motion basically boils down, what we are talking about is events  
18 that occurred on December 18 of 2012. At his deposition, at the  
19 criminal trial, and in his statement to the police Mr. Spencer  
20 made repeated representations that he had video evidence that  
21 showed that he inadvertently collided with Mr. Klementi in the  
22 street while he was trying to effect a citizen's arrest, and also  
23 that he has video evidence that shows Mr. Klementi being in his  
24 driveway near his truck on that evening, that's what made him  
25 think he was protecting his property and was defending his

1 property when he assaulted Mr. Klementi. He, at his criminal  
2 trial Mr. Spencer specifically stated as follows: Question, this  
3 is from his criminal trial transcript at page 287. Question of  
4 Mr. Spencer: "And what happened, what happened next? I think  
5 you said you heard something.

6 "Answer: I heard somebody walking on the snow, on the  
7 ice, the crunching from walking on it, so I looked out over my  
8 deck, and that's when I saw a figure in my driveway.

9 "Question: And do you have video of that?

10 "Answer, yes."

11 So based on that testimony, which Mr. Spencer said  
12 under oath, I did a follow-up request for production of  
13 documents, give us the video.

14 THE COURT: Hang on a second. Miss Pierce, will you  
15 break that up, please. It's rude. Neither one of them are  
16 listening.

17 MS. SPENCER: I apologize, Your Honor.

18 THE COURT: Please.

19 MR. PINTAR: So we ask for the video. We are told oh,  
20 we don't have it, our hard drive has been corrupted. So the very  
21 essence of the case is caught on video. Mr. Spencer admits under  
22 oath that he has it, and yet they don't produce it. And now they  
23 are claiming that it is corruption. That is simply  
24 straightforward spoliation of evidence. They knew it, they had  
25 it, and they have destroyed it.

1 THE COURT: But it's their, I got to get it straight.  
2 Earlier, and help me with this, when Mr. Routsis was speaking,  
3 and when Miss Pierce was speaking, there is evidence that the  
4 three-minute gap, that's not the tape that you are talking about.

5 MR. PINTAR: No. And that's, as Miss Molleck pointed  
6 out, the pot calling the kettle black. What the Spencers are  
7 claiming is that Miss Shaw, in her video from across the street  
8 and around the corner, that's the missing three minutes from that  
9 one.

10 THE COURT: Three minutes. That's not what Spencer is  
11 talking about.

12 MR. PINTAR: We are talking about video from the  
13 Spencers' camera that they used at their criminal trial, which  
14 they have not produced in this case. That's, so the evidence,  
15 the video that they had as the moving party, that they are  
16 obligated to preserve has not been produced.

17 The second thing is the notes which we have asked  
18 produced. And again I go back to Mr. Spencer's testimony at his  
19 criminal trial. And I'm looking at page 265 from his trial. On  
20 line 265: Question: Okay let's go ahead and put that on. Thank  
21 you. And this is all going to be on the same flash drive,  
22 correct?

23 "Answer: I sure hope so. So which one do you want?

24 "Question: We want the -- you have your notes there,  
25 Mr. Spencer?

1 "Answer: The file folders tell you what's going on  
2 that day.

3 So basically at the criminal trial Mr. Spencer is  
4 testifying from notes, and so again, as part of my case, I have  
5 asked in a request for production for those notes. We got no  
6 response. And now they are claiming that it's attorney-client  
7 privilege.

8 Again, they needed to produce this stuff, and they  
9 needed to produce it years ago, and they haven't. And their  
10 entire case is prefaced on the lack of production, and their case  
11 should be dismissed because they haven't produced this  
12 information.

13 THE COURT: Let's address Mr. Pintar's motion. When I  
14 identify with the attorneys, I should obviously identify the  
15 party that he's filing the motion on behalf of. Mary Kinion and  
16 Elfriede. How come just Elfriede as far as the motion for  
17 spoliation?

18 MR. PINTAR: It wasn't. It was on behalf of Miss  
19 Kinion as well.

20 THE COURT: Right. But how come just Mrs. Klementi as  
21 opposed to Mr. Klementi?

22 MR. PINTAR: Your Honor, that was my oversight. I had  
23 assumed that Mr. Klementi, he had been deceased by that time, and  
24 so I was just going forward with representing Miss Klementi. I  
25 filed the motion --



1 THE COURT: Okay. Now I know why, in my mind, why.  
2 The motion was filed later. I understand.

3 MR. PINTAR: Yeah. So that's the only reason why.

4 THE COURT: Thank you for clearing that up on  
5 Mrs. Klementi. It's a technicality, and I understand. Okay.  
6 Miss Pierce, please.

7 MS. PIERCE: Your Honor, first of all, the, and this  
8 is, a lot of this is prior to when I got involved in the case.  
9 And David Zaniel produced a video, which I then filed with the  
10 court as a, under separate, a separate pleading entitled video  
11 exhibit in support of responses to motions for summary judgment,  
12 motion for sanctions based on spoliation of evidence. And that  
13 was a copy of the video that had already been produced by David  
14 Zaniel long before I was involved in this case.

15 THE COURT: Identical copy.

16 MS. PIERCE: Pardon me?

17 THE COURT: Identical copy.

18 MS. PIERCE: Oh, yes. Oh, absolutely.

19 In terms of the deposition testimony, the question  
20 about the time log and the notes. At the time that Mr. Spencer  
21 was questioned about that, he said I believe it's a  
22 client-attorney privilege and I shouldn't have to tell you.  
23 Well, let your attorney make that objection. Well, the attorney  
24 did make the objection. In the request for the production, the,  
25 and this is all part of my objection, or my response to this, is

1 that, and this was from David Zaniel, that he produced the video,  
2 and that the request for notes was being rejected on the grounds  
3 that it was attorney-client privilege. There were notes that he  
4 made for purposes of his defense in the, first of all, for his  
5 defense in the underlying criminal matter. And then he made  
6 additional notes in the representation that he was receiving from  
7 Mr. Zaniel and Mr. Routsis.

8           One of the things that was requested was notes relative  
9 to what was said at a KGID meeting at which Mr. Spencer wasn't  
10 even present. And the minutes of that meeting speak for  
11 themselves. So he did comply with the request. He did produce  
12 what was outside of the attorney-client privilege.

13           And you may recall the last time we had a hearing on  
14 this he freely admitted his hard drive got corrupted. He had  
15 saved it onto a flash drive, but he didn't have the hard drive  
16 anymore, and he took it to experts to try and get the tape that  
17 was on it retrieved.

18           And part of my response is a declaration under oath  
19 from an expert, who then also referred it to another expert, and  
20 they couldn't retrieve anything. And when we were here in court  
21 the last time, there was discussion of having a mutual expert  
22 look at the hard drives, both of my client and of the Shaws, to  
23 try and get this matter resolved. And it has not been a  
24 deliberate spoliation. It has been, it was preserved, it was  
25 preserved in the format in which it was originally taped. Not in

1 any kind of a modifiable or, what's the word, editable software,  
2 and the only notes beyond what would be attorney-client privilege  
3 were some notes that were at the front of each section saying  
4 this is what the tape shows. And that was produced. There's no  
5 spoliation here.

6 THE COURT: Thank you. Only if you feel the need. I  
7 mean I wasn't inviting it when I looked up.

8 Hang on a second. I'm just writing notes.

9 The next thing I have in order is the defendants'  
10 motion to strike plaintiff's expert witness designation. This  
11 was joint, am I correct?

12 MR. BROWN: Your Honor, I think all the motions have  
13 been joint.

14 THE COURT: That's right.

15 MR. BROWN: So the answer to your question, yes.

16 THE COURT: No opposition. Time went by and that type  
17 of thing. You don't have to say anything, Miss Pierce or  
18 Mr. Routsis, but my conclusion is no opposition is no opposition.  
19 So that's granted.

20 The motion to dismiss based on failure to timely  
21 substitute a party after death, that's unopposed also, so that's  
22 granted. And that's what I meant when I first came on. And I  
23 totally understand, it's happened before, obviously. So no harm  
24 no foul at all.

25 And now, we set the order to show cause for failure to

1 pay the award of attorney's fees, and then I started, then I said  
2 let's get it all done in one day, because we are, when is the  
3 trial going to be? October? Right? When is the trial date?

4 THE CLERK: It starts October 8.

5 THE COURT: So let's get it done. So if we go to  
6 trial, we can have enough time to prepare. And so the order to  
7 show cause is still pending, Mr. Spencer's failure to pay the  
8 award of attorney's fees and partial costs. Mr. Routsis just now  
9 asked that Mary Kinion's motion for summary judgment that I  
10 granted be reconsidered.

11 So again, it's last, and I will address that today.  
12 But what I'm going to say right now is anything, is there  
13 anything else anybody wants to put forward on the record in  
14 regards to what we have talked about for this last hour and 45  
15 minutes? In summary, anybody want to correct, cross the Ts, dot  
16 the Is? Anybody dying to say anything that we really need to  
17 say, you feel that you need to say?

18 Miss Capers.

19 MS. CAPERS: Yes, Your Honor. I just made a mistake  
20 when I was originally arguing in regards to the intentional  
21 infliction of emotional distress, that it would be unconscionable  
22 conduct. That was actually the standard for punitive damages.  
23 But either way, I still wanted to address both again, just to put  
24 forth to the Court how case law has interpreted the conduct for  
25 punitive damages and the conduct for intentional infliction of

1 emotional distress.

2           So when we look at the claim of the intentional  
3 infliction of emotional distress, it must be extreme and  
4 outrageous. Okay? And when we look at case law, a prima facie  
5 case of infliction of emotional distress requires a plaintiff to  
6 prove that the conduct was extremely outrageous. However, I  
7 would turn your attention to a case called, I may pronounce it,  
8 M-a-d-u-i-k-e versus Agency Rent-a-Car. And the court in  
9 evaluating this case said extreme and outrageous conduct is that  
10 which is outside all possible bounds of decency and is regarded  
11 as utterly intolerable in a civilized community. That's  
12 important for this case. The court also said that the behavior  
13 should be atrocious, intolerable, or outside all possible bounds  
14 of decency.

15           And I bring that up, because what struck me when Miss  
16 Pierce was responding, I don't remember to whomever's motion, is  
17 that she said they participated in gossip. She said it at least  
18 three times, that the behavior was gossip. Gossip does not rise  
19 to the level of conduct for an intentional infliction of  
20 emotional distress claim.

21           Also, when you look at the punitive damages, beyond the  
22 fact that there's no underlying tort that we believe should go  
23 forth to have this claim survive, there must be malice, a  
24 despicable conduct, and malice can be express or implied, which  
25 means conduct that is intended to injure a person or despicable

1 conduct which is engaged in with conscious disregard of the  
2 rights or safety of others.

3           Also the court said, excuse me, it has been said that  
4 in accordance with the statutory language in regards to express  
5 or implied malice, that the conscious disregard of malice denotes  
6 that at a minimum the conduct must exceed mere recklessness or  
7 gross negligence.

8           I think that's important again for us to evaluate this  
9 case in regards to, in a means of analyzing the standards that  
10 the courts have promulgated. And the gossip that was said was I  
11 guess the unconscionable conduct or the extreme or outrageous  
12 conduct for infliction of emotional distress or punitive damages  
13 claim, it doesn't hold water. Because at the end of the day  
14 people gossip all the time. But that isn't a basis for punitive  
15 damages or extreme or emotional conduct, excuse me, or the  
16 infliction of emotional distress.

17           And the last thing I just wanted to bring to your  
18 attention again in regards to the civil conspiracy, especially as  
19 it relates to the Shaws. A lot hasn't been said in regards to  
20 the Shaws, but I just want to make sure I hit this again so the  
21 Court wouldn't be misled, but I'm pretty sure you aren't because  
22 of all of the information that the Court has read, that the video  
23 that was given to law enforcement was asked from law enforcement  
24 to my clients. It's not as if my clients went out to the court  
25 or anything of that nature, to the police station, and said hey,

1 I have this video which may cover the incident on the night in  
2 question, let alone the fact that they weren't even there. But I  
3 just want to make it clear that the video that they gave was at  
4 the request of law enforcement. Not only the request to give it,  
5 but the amount of time that should be on the video. That's very  
6 important, because I don't want the Court to go away thinking  
7 there was some malfeasance on behalf of the Shaws.

8 In addition, we hear about the conspiracy or alleged  
9 conspiracy with the other defendants, but with regards to the  
10 Shaws, I'm not quite sure what unlawful agreement they made with  
11 anyone, when it was made, who it was made with, and what was it.

12 So if you allow this claim to survive, what's going to  
13 happen is the jurors are going to have to speculate and guess as  
14 to what did the Shaws do. Mr. Shaw didn't even testify. So what  
15 actions did Mr. Shaw take? You have heard none. And what  
16 actions did Mrs. Shaw take? None. However, if I'm going to  
17 guess as to their theory of the case, it would be they made the  
18 statements at the commission hearing. That's what we can guess  
19 or speculate at this point. And if that's the case, absolute  
20 privilege.

21 THE COURT: Is your motion submitted?

22 MS. CAPERS: Yes, sir.

23 THE COURT: Is your motion submitted, Mr. Brown?

24 MR. BROWN: It is, Your Honor.

25 THE COURT: Is your motion, motions plural, submitted?

1 MR. PINTAR: They are, Your Honor.

2 THE COURT: Miss Pierce, anything to add or any  
3 comment?

4 MS. PIERCE: No, Your Honor.

5 THE COURT: Mr. Routsis, any comments, anything to add?

6 MR. ROUSIS: No, Your Honor.

7 THE COURT: Therefore, both of you submit it?

8 MR. ROUSIS: Yes.

9 THE COURT: In regards to the motion for summary  
10 judgment on behalf of Helmut Klementi by Mr. Brown, I see no  
11 malice whatsoever. I see true statements given to the police,  
12 given at trial, given to TGI, what is it?

13 MR. BROWN: The Douglas County Planning Commission.

14 THE COURT: I do not see that they led to any  
15 defamation whatsoever. I do not see there's a civil conspiracy  
16 amongst the neighbors, and especially on behalf of Mr. Helmut  
17 Klementi. I do not see any evidence whatsoever in regards to  
18 malice, fraud, nothing in regards to punitive damages,  
19 intentional infliction of emotional distress, I think is all, all  
20 one-sided on behalf of Mr. Spencer.

21 I can totally understand why Mr. Spencer is upset,  
22 distressed. I know that people get themselves into this. It's  
23 almost like, like I said to you personally, with Mr. Routsis and  
24 Miss Pierce present, the worst thing that ever happened to you  
25 was getting acquitted, because it just gave you a license to



1 think that you could just strike out.

2 So the case against Mr. Helmut Klementi is dismissed.

3 In regards to Miss Kinion, the motion to reconsider is  
4 denied. I do not see any new evidence whatsoever for me to  
5 reconsider Miss Kinion. It's an emotional state on behalf of  
6 Mr. and Mrs. Spencer. It's an emotional state on behalf of  
7 Mr. Routsis because he tried the case. I can totally understand  
8 someone that has tried and defended and acquitted on a two-week  
9 case can get so emotionally involved.

10 But by the same token, when the pleadings were cleaned  
11 up, my words, there was just these bare allegations without any  
12 proof whatsoever. I can't even call a fact, I can't even say  
13 that there is any facts that could go forward, because there have  
14 been no facts proven. None. And the only thing I can go on  
15 slightly is an absolute privilege or a qualified privilege to  
16 speak, because I cannot say in any way, shape, or form that it's  
17 not an absolute privilege to talk to the cops, to speak under  
18 oath at a trial. And I don't know what happened, because as you  
19 said, Miss Pierce, the minutes speak for themselves at the  
20 Douglas County Planning Commission.

21 So no facts. There are no facts to take forward to the  
22 jury in regards to any of the allegations on behalf of, against  
23 Mr. Klementi and Miss Kinion.

24 Miss Kinion, especially Miss Kinion, Mr. Pintar said  
25 it, where's the beef, that old, old commercial, where's the beef?

1 I do not see one scintilla of evidence except for allegations  
2 that have not been brought out, and of course will not be able to  
3 be proved because her case is dismissed also.

4 In regards to the Shaws. What evidence? There is no,  
5 there are no facts. There are no civil conspiracies. And this  
6 is not to be used against you, Miss Pierce, but I really thought  
7 of it when you were talking. Yeah, it's only gossip. And I  
8 think the Spencers are suing the neighbors based on the way they  
9 feel about gossip. That just doesn't hold it to go to a jury to  
10 ask for damages in that regard. So the Shaws are dismissed in  
11 this case.

12 In regards to Mrs. Klementi, Elfriede Klementi, that's  
13 why I asked the question. Why was she sued? Because she's the  
14 wife of, I just, I don't get that at all. There's no facts.  
15 Allegations only. Allegations only. Not proved, not brought  
16 out, no facts.

17 In regards to spoliation, button, button, who's got the  
18 button. Where's the tape, three-minute gap, 18-minute gap, who's  
19 zooming who, who's seeing what. I think the motion is well  
20 taken. But, you know, enough, enough, enough.

21 The motion on spoliation is denied, Mr. Pintar. I kind  
22 of got lost in regards, that's why I asked you the question, in  
23 good faith, by the way, good faith denial on my part. You know,  
24 because if I thought for one second that Mr. Spencer hid the tape  
25 because it's self-incriminatory, of course the motion would have

1 been granted. But you know, I'm just piling on right now. And  
2 so that's why I'm denying that motion.

3 As far as the other tape, it's not an issue, so I'm not  
4 even going to bring it up, the one that David Zaniel produced.  
5 We saw it. You know, one person can take that one way, the other  
6 person could take it another way. But it's not an issue.

7 In regards to the order to show cause, I know that you  
8 asked, Mr. Routsis, on behalf of Spencers, and Miss Pierce, I  
9 know that you asked for a time for me to decide that, and this  
10 indeed was the order to show cause hearing, but I'm right at that  
11 stage where I really must say this. I'm going to ask counsel,  
12 Miss Capers, Mr. Brown, and Mr. Pintar, to draft the orders  
13 granting summary judgment. And I am inviting attorney's fees, of  
14 course. And I don't want, I really mean this professionally,  
15 because I practiced law for a long time before I took the bench,  
16 I don't want you to have to spend time on your own, by the way, I  
17 know this, I feel I know it, to respond to the attorney's fees.  
18 And I'm talking Miss Pierce and Mr. Routsis, because I want this  
19 over, go on with your lives, and forget this and become  
20 neighbors. God bless you.

21 What I'm saying is if there's any attorney's fees, that  
22 should be about the same amount, around the same amount that I  
23 granted to Mr. Pintar. I think he asked something to the effect  
24 of \$20,000. And I respect it. I cut it down to I think 16 plus  
25 costs or 14 plus costs. And I'm really saying, you know, I just

1 dismissed the case, a very emotional case that I have had for  
2 four years, and so be careful. Because I'm the one that decides  
3 the attorney's fees, and I know that Mr. Routsis and Miss Pierce  
4 really worked hard and, you know, I have been there. So really  
5 be careful with the attorney's fees. Of course I will grant  
6 them, but I'm just warning you just to be careful.

7 Thank you all sincerely for your presentations. I know  
8 it was difficult. I know it was hard for the defense to  
9 speculate, to put together, to try to piecemeal, just like Mr.  
10 Routsis said. But you had to, you had to piecemeal, you had to  
11 follow the bouncing ball. Sincerely, when you cleaned it up, I  
12 know you had to do what you did. But, you know, when you start  
13 charging neighbors conspiracy and malicious prosecution and  
14 everything else based on rumors, it just doesn't pack it.

15 And I just wish that somehow Mr. and Mrs. Spencer can  
16 go on with their life understanding that they got a guy to look  
17 at this case in the most objective, fair-minded way that you  
18 possibly could, and that's what I came up with after all the hard  
19 work that both sides put into this.

20 Everybody have a pleasant day, sincerely, the rest of  
21 your stay on earth. And let's just remember that this is  
22 civility versus, well, you weren't either involved with civility  
23 for a year, where the resolution of something is on the other end  
24 of an AK47 or an M16. And thank God we don't have that.

25 Thank you very much for everybody's attention. And we

1 will be in recess.

2 (12:00 p.m., proceedings concluded.)

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I, LESLEY A. CLARKSON, Official Reporter of the  
 Second Judicial District Court of the State of Nevada, in  
 and for the County of Washoe, DO HEREBY CERTIFY:

That I was present in Department No. II of the  
 within-entitled Court on Thursday, July 12, 2018, and took  
 stenotype notes of the proceedings entitled herein and  
 thereafter transcribed them into typewriting as herein appears;

That the foregoing transcript is a full, true and  
 correct transcription of my stenotype notes of said hearing.

Dated this 18th day of August, 2018.



Lesley A. Clarkson, CCR #182

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JUL 18 2018

Douglas County  
District Court Clerk

2018 JUL 18 PM 3:41

CLERK  
Douglas County

1 CASE NO. 14-CV-0260

2 Dept. No. II

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5 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF DOUGLAS

7

8 HELMUT KLEMENTI,

9 Plaintiff,

10

vs.

SUBSTITUTION OF COUNSEL

11

JEFFREY D. SPENCER

12

Defendant.

13

JEFFREY D. SPENCER,

14

Counterclaimant &  
Third Party Plaintiff,

15

16

vs.

17

HELMUT KLEMENTI, an individual,  
EGON KLEMENTI, an individual,  
18 ELFRIEDE KLEMENTI, an individual,  
MARY ELLEN KINION, an individual,  
19 ROWENA SHAW, an individual, PETER  
SHAW, an individual, & DOES 1-5,

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Counterdefendant &  
Third Party Defendants.

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22

Counterclaimant and Third Party Plaintiff JEFFREY SPENCER requests and consents that  
23 he be substituted at this time to act pro per in place and in stead of his attorneys WILLIAM J.  
24 ROUTSIS II, Esq. and LYNN G. PIERCE, Esq. in the above entitled action. This pleading is made  
25 and based upon the following Points & Authorities, Declaration Under Oath, and upon all other  
26 pleadings and papers and record of the Court herein.

27

///

28

POINTS & AUTHORITIES

Nevada Supreme Court Rules of Professional Conduct, Rule 1.16(a) mandates that an attorney shall withdraw from representation of a client if:

- (1) The representation will result in violation of the Rules of Professional Conduct or other law;
- (2) The lawyer’s physical or mental condition materially impairs the lawyer’s ability to represent the client; or
- (3) The lawyer is discharged.

In addition, Nevada Supreme Court Rules of Professional Conduct, Rule 1.16(b) permits an attorney to withdraw if:

- ...
- (4) A client insists upon taking action that the lawyer considers repugnant or with which the lawyer has fundamental disagreement;
- (5) The client fails substantially to fulfill an obligation to the lawyer regarding the lawyer’s services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
- (6) The representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
- (7) Other good cause for withdrawal exists.

WILLIAM J. ROUTSIS II, Esq. and LYNN G. PIERCE, Esq. advised JEFFREY SPENCER in or about December 2017 that they would have to withdraw from representation based upon Nevada Supreme Court Rules of Professional Conduct, Rule 1.16(a)(1) & (2), and that he would have to retain replacement counsel. WILLIAM J. ROUTSIS II, Esq. and LYNN G. PIERCE, Esq. made a commitment to JEFFREY SPENCER to continue in representation through their: continued timely preparing and filing of oppositions to all of the defendants’ motions; appearance at any scheduled Court hearings or meeting; making serious efforts toward settlement of the claims; requesting and participating in settlement mediation; and, taking whatever other steps were necessary to move the case forward. When settlement mediation failed, WILLIAM J. ROUTSIS II, Esq. and LYNN G. PIERCE, Esq. made a further commitment to JEFFREY SPENCER to continue in representation through the hearing by the Court of the series of motions which were pending while settlement was sought, and to continue in further efforts outside of mediation to settle the case up until time of such hearing.

WILLIAM J. ROUTSIS II, Esq. and LYNN G. PIERCE, Esq. continued to work diligently and professionally on behalf of JEFFREY SPENCER during this intervening time between when JEFFREY SPENCER was first put on notice to the present. During this intervening time, JEFFREY



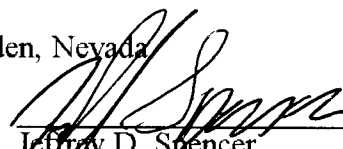
1 SPENCER was reminded a number of time that he would have to obtain replacement counsel. At the  
 2 time set for settlement mediation, JEFFREY SPENCER was served in a related case in federal court.  
 3 WILLIAM J. ROUTSIS II, Esq. and LYNN G. PIERCE, Esq. both advised JEFFREY SPENCER  
 4 that they could not appear on his behalf in that federal court matter, so in the efforts to settle this  
 5 underlying case, they would seek a settlement which included a dismissal of that federal case against  
 6 him. They also advised this if this underlying case did not settle, JEFFREY SPENCER would also  
 7 have to obtain counsel in that federal matter. It was suggested to JEFFREY SPENCER that if he  
 8 could not quickly obtain counsel in the federal case, he should request an extension of time to respond  
 9 in the federal case. Thereafter, the settlement discussions of WILLIAM J. ROUTSIS II, Esq. and  
 10 LYNN G. PIERCE, Esq. in this underlying case were based upon a request that any settlement of this  
 11 matter would include JEFFREY SPENCER' dismissal from that federal case.

12 WILLIAM J. ROUTSIS II, Esq. and LYNN G. PIERCE, Esq. have fulfilled all of the  
 13 commitments made to JEFFREY SPENCER since he was first advised that he would need to obtain  
 14 new counsel. JEFFREY SPENCER understands that the reasons for his counsels' obligation to  
 15 withdrawal is in keeping with the rules governing their professional conduct. Wherefore, JEFFREY  
 16 SPENCER requests and consents to be substituted at this time to act pro per in place and in stead of  
 17 his attorneys WILLIAM J. ROUTSIS II, Esq. and LYNN G. PIERCE, Esq. in the above entitled  
 18 action.

19 The undersigned affirms pursuant to NRS §239B.030 that this pleading does not contain the  
 20 social security number of any person.

21 Pursuant to NRS §53.045(1), I, JEFFREY SPENCER, Counterclaimant and Third Party  
 22 Plaintiff in the above entitled action, declare under penalty of perjury that the foregoing is true and  
 23 correct.

24 Executed on this 12<sup>th</sup> day of July, 2018, in Minden, Nevada

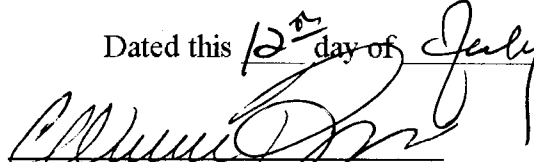
25   
 26 \_\_\_\_\_  
 27 Jeffrey D. Spencer  
 28 PO BOX 2326  
 Stateline, N.V. 89449  
 Phone: 530-318-1876


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WILLIAM J. ROUTSIS II, Esq. and LYNN G. PIERCE, Esq. accept and approve this Substitution of for JEFFREY SPENCER to act in our place and stead in the above entitled matter.

Dated this 12<sup>th</sup> day of July, 2018.

  
WILLIAM J. ROUTSIS, II, Esq.  
Nevada State Bar No. 5474  
1070 Monroe Street  
Reno, Nevada 89509  
Phone 775-337-2609/Fax 775-737-9321

  
LYNN G. PIERCE, Esq.  
Nevada State Bar No. 3567  
515 Court Street, Suite 2f  
Reno, Nevada 89501  
Phone 775-785-9100/Fax 775-785-9110

IT IS SO ORDERED.

Dated this \_\_\_ day of \_\_\_, 2018.

  
STEVEN R. KOSACH  
Senior District Judge

CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I certify that on this date I served a true and correct copy of this pleading by deposit into the U.S. Postal Service, first class postage pre-paid, addressed to:

Douglas R. Brown, Esq.  
Christian L. Moore, Esq.  
6005 Plumas Street, Suite 300  
Reno, NV 89519  
*Attorneys for Helmut Klementi*


Tanika M. Capers, Esq.  
6750 Via Austi Parkway, Suite 310  
Las Vegas, NV 89119  
*Attorney for Rowena and Peter Shaw*

Michael A. Pintar, Esq.  
427 W. Plumb Lane  
Reno, Nevada 89509  
*Attorney for Mary Ellen Kinion,  
Elfride Klementi and Egon Klementi*

David M. Zaniel, Esq.  
50 W. Liberty Street, Suite 1050  
Reno, NV 89501

Jeffrey D. Spencer  
PO BOX 2326  
Stateline, N.V. 89449

DATED this 12<sup>th</sup> day of July, 2018.

  
Elizabeth Martinez  
Assistant to,  
William J. Rauts'is III

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SEP 27 2018

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District Court Clerk

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2018 SEP 27 PM 3:56

BOBBIE R. WILLIAMS  
CLERK

BY AWOMR DEPUTY

1 CASE NO.: 14-CV-0260  
2 DEPT. NO.: II

3  
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5  
6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF DOUGLAS

8 HELMUT KLEMENTI,

9 Plaintiff,

10 vs.

11 JEFFREY D. SPENCER & DOES 1-5,

12 Defendants.

REQUEST FOR SUBMISSION

13  
14 JEFFREY D. SPENCER,

15 Counterclaimant,

16 vs.

17 HELMUT KLEMENTI, an individual,  
18 EGON KLEMENTI, an individual,  
19 ELFRIEDE KLEMENTI, an individual,  
20 MARY ELLEN KINION, an individual,  
21 ROWENA SHAW, an individual, PETER  
22 SHAW, an individual, and DOES 1-5,

23 Counterdefendants & Third Party  
24 Defendants.

25 IT IS HEREBY REQUESTED that Third-Party Defendant, Elfriede Klementi's  
26 ("Klementi"), Motion for Attorney's Fees and Costs filed on September 7, 2018, be  
27 submitted to this Court for decision.

28 The undersigned attorney certifies that a true copy of this request has been  
served on all counsel and parties.

///

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

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

DATED this 24<sup>th</sup> day of September, 2018.

GLOGOVAC & PINTAR

By:   
MICHAEL A. PINTAR, ESQ.  
Nevada Bar No. 003789  
Attorneys for Third-Party Defendant,  
Elfriede Klementi

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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Glogovac & Pintar, 427 W. Plumb Lane, Reno, NV 89509, I served the foregoing document(s) described as follows:

**REQUEST FOR SUBMISSION**

On the party(s) set forth below by:

  X   Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

       Personal delivery.

       Facsimile (FAX).

       Federal Express or other overnight delivery.


addressed as follows:

Tanika Capers, Esq.  
6750 Via Austi Parkway, Suite 310  
Las Vegas, NV 89119  
***Attorneys for Rowena Shaw and Peter Shaw***

Douglas R. Brown, Esq.  
Lemons, Grundy & Eisenberg  
6005 Plumas St., 3rd Floor  
Reno, NV 89519  
***Attorneys for Helmut Klementi***

Kerry Doyle, Esq.  
4600 Kietzke Lane, Suite I-207  
Reno, Nevada 89502  
***Attorney for Jeffrey Spencer***

Dated this 25<sup>th</sup> day of September, 2018.

  
\_\_\_\_\_  
Employee of Glogovac & Pintar

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SEP 27 2018

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Douglas County  
District Court Clerk

2018 SEP 27 PM 3:57

BOBBIE R. WILLIAMS  
CLERK

BY ANOWA DEPUTY

1 CASE NO.: 14-CV-0260  
2 DEPT. NO.: II

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6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF DOUGLAS  
8

9 HELMUT KLEMENTI,

10 Plaintiff,

11 vs.

12 JEFFREY D. SPENCER & DOES 1-5,

13 Defendants.

REQUEST FOR SUBMISSION

14 \_\_\_\_\_ /  
15 JEFFREY D. SPENCER,

16 Counterclaimant,

17 vs.

18 HELMUT KLEMENTI, an individual,  
19 EGON KLEMENTI, an individual,  
20 ELFRIDE KLEMENTI, an individual,  
21 MARY ELLEN KINION, an individual,  
22 ROWENA SHAW, an individual, PETER  
23 SHAW, an individual, and DOES 1-5,

24 Counterdefendants & Third Party  
25 Defendants.

26 IT IS HEREBY REQUESTED that defendant, Mary Ellen Kinion's ("Kinion"),  
27 Motion for Attorney's Fees and Costs filed on September 7, 2018, be submitted to this  
28 Court for decision.

The undersigned attorney certifies that a true copy of this request has been served on all counsel and parties.

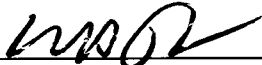
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**AFFIRMATION**  
**Pursuant to NRS 239B.030**

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

DATED this 24<sup>th</sup> day of September, 2018.

GLOGOVAC & PINTAR

By:   
MICHAEL A. PINTAR, ESQ.  
Nevada Bar No. 003789  
Attorneys for Counterdefendant,  
Mary Ellen Kinion



**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Glogovac & Pintar, 427 W. Plumb Lane, Reno, NV 89509, and that I served the foregoing document(s) described as follows:

**REQUEST FOR SUBMISSION**

On the party(s) set forth below by:

- Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.
- Personal delivery.
- Facsimile (FAX).
- Federal Express or other overnight delivery.

addressed as follows:

Douglas R. Brown, Esq.  
Sarah M. Molleck, Esq.  
Lemons, Grundy & Eisenberg  
6005 Plumas St., 3rd Floor  
Reno, NV 89519

Kerry Doyle, Esq.  
4600 Kietzke Lane, Suite I-207  
Reno, Nevada 89502  
**Attorney for Jeffrey Spencer**

**Attorneys for Helmut Klementi**

Tanika Capers, Esq.  
6750 Via Austi Parkway, Suite 310  
Las Vegas, NV 89119  
**Attorneys for Rowena Shaw and Peter Shaw**

Dated this 30<sup>th</sup> day of September, 2018.

  
\_\_\_\_\_  
Employee of Glogovac & Pintar

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SEP 28 2018

Douglas County  
Clerk

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2018 SEP 28 PM 3:29

BOBBIE R. WILLIAMS  
CLERK

1 CASE NO. 14-CV-0260

2 DEPT. NO. II

3  
4 **IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
5 **IN AND FOR THE COUNTY OF DOUGLAS**

6 HELMUT KLEMENTI;

7 Plaintiff,

8 vs.

9 JEFFREY D. SPENCER & DOES 1-5;

10 Defendant.

Case No. 14-CV-0260

Dept. II

**NOTICE OF ENTRY OF ORDER**

11 JEFREY D. SPENCER,

12 Counterclaimant,

13 vs.

14  
15  
16 HELMUT KLEMENTI, an individual,  
17 EGON KLEMENTI, an individual, ELFRIDE  
18 KLEMENTI, an individual, MARY ELLEN  
19 KINION, an individual, ROWENA SHAW,  
20 and individual, PETER SHAW, an individual,  
& DOES 1-5,

21 Counterdefendants &  
22 Third Party Defendants.

23  
24 PLEASE TAKE NOTICE that on the 17<sup>th</sup> day of August, 2018, the above-entitled court  
25 entered its Order granting summary judgment on behalf of Defendants Rowena Shaw and Peter  
26 Shaw. A copy of said Order is attached hereto.

27 ///

Dated this \_\_\_ day of September, 2018



TANIKA M. CAPERS  
Nevada Bar No. 10867  
6750 Via Austi Parkway, Suite 310  
Las Vegas, NV 89119  
*Attorney for Defendants Rowena Shaw and Peter Shaw*

**CERTIFICATE OF SERVICE**

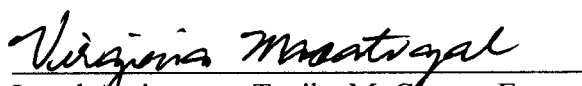
I hereby certify that on the \_\_\_ day of September, 2018, the foregoing **NOTICE OF ENTRY OF ORDER** was served pursuant to NRCP 5(b) via the following method indicated below:

- ELECTRONIC Filing & Service System (Odyssey) to all the parties on the current service list;
- U.S. MAIL by placing an original or true copy thereof in a postage prepaid sealed envelope placed for collection and mailing in Las Vegas, Nevada, and addressed to the following:

Douglas R. Brown, Esq.  
Lemons, Grundy & Eisenberg  
6005 Plumas St Ste 300  
Reno, NV 89509  
*Attorneys for Helmut Klementi*

Jeffrey Spencer  
PO Box 2326  
Stateline, NV 89449

Michael A. Pintar, Esq.  
Glogovac & Pintar  
427 West Plumb Lane  
Reno, NV 89509

  
Legal Assistant to Tanika M. Capers, Esq.

**COPY  
RECEIVED**

AUG 09 2018

Douglas County  
District Court Clerk

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2018 AUG 17 AM 9:50

BOBBIE R. WILLIAMS  
CLERK

K. WILFERT DEPUTY

TANIKA M. CAPERS  
Nevada Bar No. 10867  
6750 Via Austi Parkway, Suite 310  
Las Vegas, NV 89119  
Phone: (702) 733-4989, Ext. 51652  
Fax: (877) 888-1396  
tcapers@amfam.com  
Attorney for Defendants Rowena Shaw and Peter Shaw

**IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF DOUGLAS**

HELMUT KLEMENTI;

Plaintiff,

vs.

JEFFREY D. SPENCER & DOES 1-5;

Defendant.

Case No. 14-CV-0260  
Dept. II

ORDER

JEFRFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual,  
EGON KLEMENTI, an individual, ELFRIDE  
KLEMENTI, an individual, MARY ELLEN  
KINION, an individual, ROWENA SHAW,  
and individual, PETER SHAW, an individual,  
& DOES 1-5,

Counterdefendants &  
Third Party Defendants.

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**ORDER GRANTING MOTION FOR SUMMARY JUDGMENT**

Defendant's Motion for Summary Judgment came before this Court for hearing and oral argument on July 12, 2018, the Court having considered the pleadings and arguments submitted by counsel for the parties and being fully advised, enters the following findings and orders:

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**FINDINGS OF UNDISPUTED FACTS**

1. This is an action stemming from disputes in the Kingsbury Grade General Improvement District ("KGID") on the south shore of Lake Tahoe.

2. Peter and Rowena Shaw ("Shaws") have lived in the KGID neighborhood for over thirty-seven (37) years. During the summer of 2012, Helmut and Egon Klementi also lived in the neighborhood. Since then, Mr. Egon Klementi has passed. His brother Helmut still lives in the neighborhood with his wife Elfie Klementi. Helmut and Elfie Klementi live across the street from Defendant/Third-Party Plaintiff Jeffrey Spencer ("Spencer").

3. Spencer is employed as a snowplow operator during winter months.

4. In the summer of 2012, a dispute arose between the aforementioned neighbors including Mary Ellen Kinion ("Kinion") and Spencer. The dispute escalated to the point that in 2013, Spencer was criminally prosecuted for assault on Helmut Klementi. In response, Spencer asserted a counterclaim against Helmut Klementi, Kinion, Egon and Elfie Klementi and the Shaws.

5. During the spring of 2012, Spencer built a six foot tall fence around his property.

6. The height of the fence created a blind intersection in front of the Shaws residence and created a public safety risk. Due to her belief of the risk factor the fence presented, Rowena Shaw contacted KGID because she believed they were responsible for code enforcement and was eventually referred to the DA's Office and the Planning

1 Commission.

2 7. The Shaws wrote a letter to the Planning Commission regarding the risk the  
3 fence presented and was informed the Spencers requested a variance.

4 8. Eventually, the fence was required to be removed.

5 9. The Shaws have approximately 6 security cameras on their property. The hard  
6 drive stores what the video records. Mrs. Shaw is not sure if the storage is 15 or 30 days.

7 10. Around December of 2012, the Shaws installed the cameras because of  
8 difficulties between the Spencers and neighbors.

9 11. In mid-December 2012, the Shaws' driveway was bermed and their flower bed  
10 was destroyed by the plow.

11 12. On December 18, 2012, the Shaws went to a KGID meeting for the first time  
12 due to concerns regarding their driveway being bermed and flowerbed being destroyed.  
13 They spoke at the meeting during the public comment portion and also commented on the  
14 Spencer's fence.

15 13. The Board President at the KGID meeting, Dr. Norman suggested the Shaws  
16 "keep documenting and to take pictures."

17 14. After the KGID meeting, the Shaws went out of town and have no first-hand  
18 knowledge of the incident involving Spencer and Helmut Klementi.

19 15. When the Shaws returned home two days after the KGID meeting, a voicemail  
20 from Elfie Klementi informed them that Helmut had been assaulted.

21 16. Around two weeks after the incident, a police agency contacted the Shaws and  
22 asked to look at any videos from their cameras from the night of the incident.

23 17. The DA's office eventually contacted the Shaws and asked for a copy of their  
24 video.

25 18. Mrs. Shaw made a copy of the video and Officer Schultz picked it up at her  
26 home.

27 19. There is no evidence that the Shaws had any involvement in Deputy McKone's  
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decision to arrest Spencer on December 18, 2012.

20. The Shaws were not involved in the criminal prosecution against Spencer until the Deputy District Attorney contacted them and requested they provide any information that they may have regarding the incident and events relevant to the neighborhood.

21. As part of Spencer's trial, only Mrs. Shaw was subpoenaed and required to provide testimony. Her only testimony was regarding her security cameras.

22. During a January 30, 2017 hearing before this Court, Deputy District Attorney Maria Pence testified that the Shaws had no involvement in her charging decisions regarding Spencer.

23. The Court finds no evidence to support Spencer's claim for malicious prosecution.

24. The Court could not identify any defamatory statements or untrue statements made by Peter or Rowena Shaw.

24. The Court finds that any statements made by Peter or Rowena Shaw to the Douglas County Sheriff's Department, Douglas County District Attorney, KGID and the Douglas County Planning Commission are protected by a qualified and absolute privilege.

25. The Court finds that because Spencer's claims for defamation and malicious prosecution fail as a matter of law, his claims for civil conspiracy likewise must fail because he is unable to prove the commission of the underlying tort.

26. The Court finds that there is no evidence to demonstrate that Rowena or Peter Shaw engaged in any conduct that was "extreme and outrageous" nor any conduct that was intended to cause Spencer emotional distress.

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**CONCLUSION**

This Court having considered the pleadings, exhibits, and the record in its entirety, and good cause appearing, grants Rowena and Peter Shaw's Motion for Summary Judgment.

**IT IS SO ORDERED**

Dated this 15 day of August, 2018



DISTRICT COURT JUDGE

Submitted by:

TANIKA M. CAPERS  
Nevada Bar No. 10867  
6750 Via Austi Parkway, Suite 310  
Las Vegas, NV 89119  
Phone: (702) 733-4989, Ext. 51652  
*Attorney for Defendant Rowena and Peter Shaw*

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OCT 12 2018

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2018 OCT 12 PM 3:39

BOBBIE R. WILLIAMS  
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A. NEWTON DEPUTY

1 Case No. 14-CV-0260

2 Dept. No. 1

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IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7

IN AND FOR THE COUNTY OF DOUGLAS

8

9 HELMUT KLEMENTI,

Plaintiff,

10

vs.

11

12 JEFFREY D. SPENCER, & DOES 1-5,

Defendant

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JEFFREY D. SPENCER,

14

Counterclaimant,

15

vs.

16

HELMUT KLEMENTI, an individual, EGON  
17 KLEMENTI, an individual, ELFRIDE  
KLEMENTI, an individual, MARY ELLEN  
18 KINION, an individual, ROWENA SHAW, an  
individual, PETER SHAW, an individual, and  
19 DOES 1-5,

19

Counter-defendants & Third-  
20 Party Defendants.

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IT IS HEREBY REQUESTED that Counter-defendant HELMUT KLEMENTI'S *Motion for*  
23 *Attorney's Fees* filed September 20, 2018 be submitted for decision, as no opposition has been  
24 filed and the time to do so has expired. It is further requested costs be taxed in favor of  
25 HELMUT KLEMENTI pursuant to his *Verified Memorandum of Costs* timely filed and  
26 unopposed.

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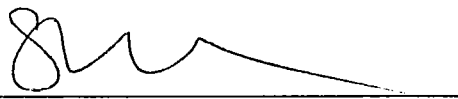
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1 The undersigned attorney certifies that a true copy of this request has been served on  
2 all counsel and parties.

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

5 Dated: October 11<sup>th</sup>, 2018.

6 Lemons, Grundy & Eisenberg

7  
8 BY: 

Douglas R. Brown, Esq.  
Sarah M. Molleck, Esq.  
*Attorneys for Counterdefendant  
Helmut Klementi*

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CERTIFICATE OF MAILING

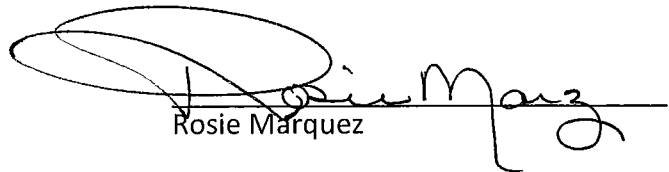
Pursuant to NRCP 5(b), I certify that I am an employee of Lemons, Grundy & Eisenberg and that on October 11, 2018, I deposited in the United States Mail, with postage fully prepaid, a true and correct copy of the within Request for Submission, addressed to the following:

Kerry S. Doyle, Esq.  
4600 Kietzke Lane, Suite I-207  
Reno, Nevada 89502  
*Attorney for Jeffrey Spencer*

David M. Zaniel, Esq.  
Ranalli & Zaniel, LLC  
50 West Liberty Street, Suite 1050  
Reno, Nevada 89501  
*Attorney for Jeffrey Spencer*

Michael A. Pintar, Esq.  
Glogovac & Pintar  
427 West Plumb Lane  
Reno, Nevada 89509  
*Attorney for Mary Ellen Kinion,  
Egon Klementi and Elfriede Klementi*

Tanika Capers, Esq.  
6750 Via Austi Parkway, Suite 310  
Las Vegas, Nevada 89119  
*Attorneys for Rowena Shaw and Peter Shaw*

  
Rosie Marquez

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OCT 18 2018

Douglas County  
District Court Clerk

FILED

2018 OCT 18 PM 3:54

BOBBIE R. WILLIAMS  
D. GOELZ

BY \_\_\_\_\_ DEPUTY

1 Case No. 14-CV-0260

2 Dept. No. 1

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5  
6 **IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
7 **IN AND FOR THE COUNTY OF DOUGLAS**

8  
9 HELMUT KLEMENTI,

10 Plaintiff,

11 vs.

12 JEFFREY D. SPENCER, & DOES 1-5,

13 Defendant

14 JEFFREY D. SPENCER,

15 Counterclaimant,

16 vs.

17 HELMUT KLEMENTI, an individual, EGON  
18 KLEMENTI, an individual, ELFRIDE  
19 KLEMENTI, an individual, MARY ELLEN  
KINION, an individual, ROWENA SHAW, an  
individual, PETER SHAW, an individual, and  
DOES 1-5,

20 Counter-defendants & Third-  
21 Party Defendants.

**AFFIDAVIT OF MAILING**

22 STATE OF NEVADA )  
23 ) ss.  
24 COUNTY OF WASHOE )

25 I, Susan G. Davis, do hereby depose and state under penalty of perjury that the  
26 assertions of this affidavit are true.

27 That affiant is, and was when the herein described mailing took place, a citizen of the  
28 United States, over 21 years of age, and not a party to, nor interested in, the within action;

1 that on the 17th day of October 2018, affiant deposited into the United States mail at a  
2 United States post office in Reno, Nevada, a file-stamped copy of **Request for Submission**,  
3 enclosed in a sealed envelope upon which first class mail postage was fully prepaid, addressed  
4 to the following at the addresses shown, and that there is a regular communication by mail  
5 between the places of mailing and the places as addressed:

6                   Jeffry D. Spencer  
7                   P. O. Box 2326  
8                   Stateline, Nevada 89449

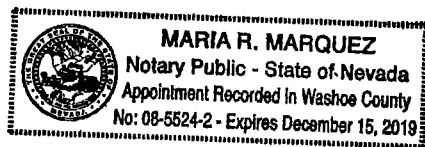
9                   The undersigned does hereby affirm that the preceding document does not contain  
10 the social security number of any person.

11                   Dated: October 17, 2018.

12  
13                   *Susan G. Davis*  
14                   Susan G. Davis

15 Subscribed and sworn to before me  
16 this 17<sup>th</sup> day of October 2018.

17                   *Maria R. Marquez*  
18                   Notary Public



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Case No. 14-CV-0260

Dept. No. I

**RECEIVED**

NOV 19 2018

Douglas County  
District Court Clerk

**FILED**

2018 NOV 19 AM 10:30

DOBBIE R. WILLIAMS  
**A. NEWTON**  
BY \_\_\_\_\_ DEPUTY

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

**IN AND FOR THE COUNTY OF DOUGLAS**

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER,

Defendant

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON  
KLEMENTI, an individual, MARY ELLEN  
KINION, an individual, and DOES 1-5

Counterdefendants.

**NOTICE OF ENTRY OF ORDER**

**PLEASE TAKE NOTICE** that an *Order* was entered November 5, 2018, that granted the following: Counter-defendant HELMUT KLEMENTI's *Motion for Attorney's Fees and Verified Memorandum of Costs*, Third-Party Defendant ELFRIEDE KLEMENTI's *Motion for Attorneys' Fees and Costs*, and Third-Party Defendant MARY ELLEN KINION's *Motion for Attorneys' Fees and Costs*.

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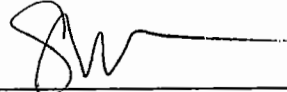
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A copy of said Order is attached hereto as **Exhibit 1**.

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

Dated: November 16<sup>th</sup>, 2018.

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

By: 

Douglas R. Brown, Esq.  
Christian L. Moore, Esq.  
Sarah M. Molleck, Esq.  
*Attorneys for Counter-Defendant  
Helmut Klementi*



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**CERTIFICATE OF MAILING**

Pursuant to NRCF 5(b), I certify that I am an employee of Lemons, Grundy & Eisenberg and that on November 16, 2018, I deposited in the United States Mail, with postage fully prepaid, a true and correct copy of the within **NOTICE OF ENTRY OF ORDER**, addressed to the following:

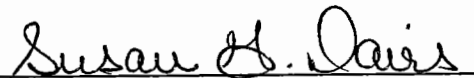
Jeffrey D. Spencer  
P. O. Box 2326  
Stateline, Nevada 89449  
*In Pro Per*

Michael A. Pintar, Esq.  
Glogovac & Pintar  
427 West Plumb Lane  
Reno, Nevada 89509  
*Attorney for Mary Ellen Kinion,  
Egon Klementi and Elfriede Klementi*

Kerry S. Doyle, Esq.  
4600 Kietzke Lane, Suite I-207  
Reno, Nevada 89502  
*Attorney for Jeffrey Spencer*

Tanika Capers, Esq.  
6750 Via Austi Parkway, Suite 310  
Las Vegas, Nevada 89119  
*Attorneys for Rowena Shaw and Peter Shaw*

David M. Zaniel, Esq.  
Ranalli & Zaniel, LLC  
50 West Liberty Street, Suite 1050  
Reno, Nevada 89501  
*Attorney for Jeffrey Spencer*

  
Susan G. Davis

# EXHIBIT 1

# EXHIBIT 1

RECEIVED

NOV 05 2018

1 Case No. 14-CV-0260

2 Dept. No. I

Douglas County  
District Court Clerk

FILED

2018 NOV -5 PM 3:29

A. NEWTON WILLIAMS

BY \_\_\_\_\_ DEPUTY

5 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF DOUGLAS

8 HELMUT KLEMENTI,

9 Plaintiff,

vs.

10 JEFFREY D. SPENCER & DOES 1-5,

11 Defendant.

12 JEFFREY D. SPENCER,

13 Counterclaimant,

14 vs.

**ORDER**

15 HELMUT KLEMENTI, an individual,  
16 EGON KLEMENTI, an individual, ELFRIEDE  
17 KLEMENTI, an individual, MARY ELLEN  
18 KINION, an individual, ROWENA SHAW,  
19 an individual, PETER SHAW, an individual,  
& DOES 1-5,

Counterdefendants &  
Third Party Defendants.

20 THIS MATTER comes before the court upon three unopposed motions for attorney fees  
21 following entry of summary judgment. All three motions rely upon NRS 18.010(2)(b) as authority  
22 for issuing an award of attorney's fees. The moving parties also have provided their memoranda of  
23 costs; no objection or motion to retax costs has been received.

24 Having now examined all relevant pleadings and papers on file herein, the court enters the  
25 following order, good cause appearing:

26 THAT the unopposed motions are GRANTED; costs are also awarded as set forth herein.

27 Nevada Revised Statute 18.010(2)(b) provides that "the court may make an allowance of  
28 attorney's fees to a prevailing party:"

1 Without regard to the recovery sought, when the court finds that the claim, counterclaim,  
2 cross-claim or third-party complaint or defense of the opposing party was brought or maintained  
3 without reasonable ground or to harass the prevailing party. The court shall liberally construe the  
4 provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations.

5 / / /

6 Furthermore, DCR 13(3) notes that "failure of the opposing party to serve and file his  
7 written opposition may be construed as an admission that [a] motion is meritorious and a consent  
8 to granting the same." The court construes Jeffrey Spencer's failure to oppose the motions as a  
9 concession that his counterclaims should not have been brought given the applicable privileges and  
10 the lack of admissible evidence produced, as reflected within the written orders issued following  
11 the summary judgment hearing of July 12, 2018. As reflected within those resulting written orders,  
12 Jeffrey Spencer's counterclaims were not alleged upon reasonable ground. Liberally construing  
13 NRS 18.010(2)(b), and hearing no objection via opposition to the motions, the court finds  
14 awarding movants' attorney's fees appropriate for having to defend against Jeffrey Spencer's  
15 counterclaims and third party claims.

#### 16 **Counter-Defendant Helmut Klementi's Motion for Attorney's Fees**

17 An Order Granting Counter-Defendant Helmut Klementi's Motion for Summary Judgment  
18 on All Claims was entered on August 23, 2018, following oral argument heard on July 12, 2018.  
19 After ruling from the bench, the court invited motions for attorney's fees, emphasizing that any  
20 amount sought should be reasonable. Helmut Klementi's motion seeks an award of \$30,000.00,  
21 reducing the amount actually billed by his attorney's from \$48,787.00.

22 In determining whether an award of attorneys' fees is reasonable, four factors are to be  
23 considered, as provided within *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d  
24 31, 33 (1969):

25 1. Professional Qualities: The law firm of Lemons, Grundy & Eisenberg is a well-  
26 established firm, having practiced in many different areas of law in Northern Nevada for decades.  
27 As attached to the motion, the resumes of the three attorneys representing Helmut Klementi's  
28 interests in this matter speak for themselves, reflecting qualified and well-trained advocates and  
litigators.

2. Character Of Work To Be Done: Obtaining entry of summary judgment successfully

1 resolving causes of action for defamation, malicious prosecution, civil conspiracy, punitive  
2 damages, and intentional infliction of emotional distress presents a challenge for any attorney,  
3 requiring gathering of factual support during the discovery process and the application of the law to  
4 those facts, conveyed concisely via advocacy set forth before the court in writing and during oral  
5 argument.

6       3. The Work Actually Performed: Based upon the quality of the analysis and advocacy  
7 contained within the pleadings and presented on behalf of Helmut Klementi during oral arguments,  
8 both of which have been observed by the court, the court finds the work presented on behalf of  
9 Helmut Klementi to be excellent.

10       4. The Result Obtained: Summary judgment was entered entirely in favor of Helmut  
11 Klementi, a high value achievement by counsel.

12       Furthermore, as reflected within the billing attached to the motion, billing nearly 300 hours  
13 results in a more than reasonable rate of \$100 per hour to reach the \$30,000.00 total requested.  
14 Paralegals now often bill at a rate of more than \$100 per hour, further demonstrating the inherent  
15 reasonableness of the award sought for having to defend against Jeffrey Spencer's unfounded  
16 counterclaims. Three attorneys billing a total of two and a half weeks each during the course of a  
17 nearly four year old case is not unexpected given the nature of the counterclaims; Jeffrey Spencer  
18 himself retained multiple attorneys. Therefore, balancing all the factors set forth above, as well as  
19 the overall reasonableness of the fee requested, the full \$30,000.00 is awarded to Helmut Klementi.

20       Regarding Helmut Klementi's memorandum of costs filed on September 10, 2018,  
21 NRS 18.020(3) requires costs be allowed to the prevailing party against any adverse party against  
22 whom judgment is rendered in an action for the recovery of money or damages, where the plaintiff  
23 seeks to recover more than \$2,500. Reviewing the memorandum of costs from the prevailing  
24 party, without opposition or a motion to retax costs the court accepts all costs presented as falling  
25 within the definitions provided within NRS 18.005, including the settlement conference related fee  
26 constituting a reasonable and necessary expense pursuant to NRS 18.005(17). The presented costs  
27 total \$12,820.30, the full amount of which are also awarded to Helmut Klementi.

28 / / /

**Third Party Defendants' Motions for Attorney's Fees and Costs**

1  
2 Third party defendants Elfriede Klementi and Mary Ellen Kinion seek an award of roughly  
3 \$20,000 each for fees incurred during this round of motion practice resulting in the entry of  
4 summary judgment against third party plaintiff Jeffrey Spencer. This is in addition to the award of  
5 attorney's fees issued previously in favor of Mary Ellen Kinion in the amount of \$14,870.00.

6 As stated previously regarding the same counsel while issuing the earlier award benefiting  
7 Mary Ellen Kinion:

8 1. Professional Qualities: The law firm of Glogovac & Pintar is known to practice  
9 regularly and successfully in the State of Nevada, serving clients well during formal litigation of  
10 disputes. Based upon the quality of the pleadings contained within the record and the breadth of  
11 knowledge required to properly conduct the motion practice and defense conducted in this matter,  
12 the court finds the professional qualities of the primary billing attorney, Michael Pintar, as well as  
13 the law firm of Glogovac & Pintar, to be quite satisfactory and reasonable, particularly considering  
14 the maximum billing rate of only \$150.00 per hour or less reflected within the supporting affidavit  
15 from counsel.

16 2. Character Of Work To Be Done: The motions for summary judgment, opposition, reply,  
17 and supporting documentation reflect the substance of the disputes between the parties, with the  
18 nature of the matter being important to both sides. The legal work necessary consisted of  
19 conducting and participating in contested litigation, which in turn required legal analysis and  
20 research in preparation for, and specific to, this matter as it has progressed now to the conclusion  
21 of the matter. Motion practice is an acquired skill possessed by the parties' counsel, including the  
22 presentation of oral arguments during multiple hearings in this instance. Pursuit of discovery in  
23 factual support of the analyses presented has also been necessary.

24 3. The Work Actually Performed: Based upon the court's observations during oral  
25 argument and while analyzing the substance of the pleadings during the course of the most recent  
26 motion practice, the court finds the work presented by Glogovac & Pintar to continually be  
27 excellent and reasonable.

28 4. The Result Obtained: After pursuit of discovery, submission of written briefs, and oral

1 arguments in open court, summary judgment was entered against Jeffrey Spencer regarding all of  
2 his remaining claims. Entry of summary judgment entirely resolving a case is a result not often  
3 achieved in litigation practice.

4 “[G]ood judgment would dictate that each of these factors be given consideration by the  
5 trier of fact and that no one element should predominate or be given undue weight.” *Brunzell*, 85  
6 Nev. at 349, 455 P.2d at 33. Considering the subject matter presented during the motion practice,  
7 the quality and character of the work, the work actually performed, and the result achieved, the  
8 court finds the amount of attorney’s fees now requested to be reasonable and in accordance with  
9 the *Brunzell* factors.

10 Furthermore, comparing the billing in support of the two motions, along with the billing  
11 supporting the prior award of attorney’s fees, the attorney appears to have split his billing  
12 appropriately where work overlapped, with no recurring bills from the prior award being present.  
13 The same holds true for costs also sought.

14 Regarding the requested award of costs, NRS 18.020(3) requires costs be allowed to the  
15 prevailing party against any adverse party against whom judgment is rendered in an action for the  
16 recovery of money or damages, where the plaintiff seeks to recover more than \$2,500. Reviewing  
17 the two memoranda of costs, without opposition or a motion to retax costs, the court accepts all  
18 costs presented pursuant to the definitions contained within NRS 18.005, including the settlement  
19 conference related court reporter fees as a reasonable and necessary expense pursuant to NRS  
20 18.005(17) and NRS 18.005(8).

21 Therefore, Mary Ellen Kinion is awarded her costs of \$601.23, separate from the costs  
22 awarded previously, and attorney’s fees in the amount of \$20,398.50 in addition to the \$14,870.00  
23 awarded previously. Elfriede Klementi is awarded her costs of \$581.23 and attorney’s fees in the  
24 amount of \$20,500.00.

#### 25 Conclusion

26 With no basis factually or legally to bring his claims, the court finds and concludes that  
27 Jeffrey Spencer’s counterclaims and third party claims were alleged without reasonable basis.  
28 Therefore, pursuant to NRS 18.010(2)(b), reasonable attorney’s fees have been awarded to the

1 prevailing parties as set forth herein. Costs have also been awarded pursuant to NRS 18.020(3).

2 IT IS SO ORDERED.

3 Dated this 2 day of November, 2018.

4  
5   
6 STEVEN R. KOSACH  
7 Senior District Judge

8 Copies served by mail this 5 day of November, 2018, to:

9 Douglas R. Brown, Esq.  
10 Lemons, Grundy & Eisenberg  
11 6005 Plumas St., 3<sup>rd</sup> Floor  
12 Reno, NV 89519

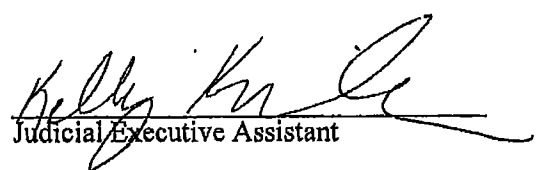
13 David Zaniel, Esq.  
14 Ranalli & Zaniel, LLC  
15 50 W. Liberty St., Ste. 1050  
16 Reno, NV 89509

17 Michael A. Pintar, Esq.  
18 Glogovac & Pintar  
19 427 West Plumb Lane  
20 Reno, NV 89509

21 Tanika M. Capers, Esq.  
22 6750 Via Austi Parkway, Ste. 310  
23 Las Vegas, NV 89119

24 Kerry S. Doyle, Esq.  
25 4600 Kietzke Ln., Ste. I-207  
26 Reno, NV 89502

27 Jeffrey D. Spencer  
28 P.O. Box 2326  
Stateline, NV 89449

29   
30 Judicial Executive Assistant



RECEIVED

NOV 28 2018

Douglas County  
District Court Clerk

FILED

2018 NOV 28 PM 3:35

BOBBIE R. WILLIAMS  
CLERK  
BY A. NEWTON DEPUTY

1 Case No. 14-CV-0260

2 Dept. No. I

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6

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7

IN AND FOR THE COUNTY OF DOUGLAS

8

HELMUT KLEMENTI,

9

Plaintiff,

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vs.

11

JEFFREY D. SPENCER,

12

Defendant

13

JEFFREY D. SPENCER,

14

Counterclaimant,

15

vs.

16

HELMUT KLEMENTI, an individual, EGON  
KLEMENTI, an individual, MARY ELLEN  
KINION, an individual, and DOES 1-5

17

Counterdefendants.

18

19

**REQUEST FOR ENTRY OF JUDGMENT PURSUANT TO NRCPC 58 AND NRS 17.130**

20

Counter-defendant HELMUT KLEMENTI, by and through his counsel, Lemons, Grundy & Eisenberg, hereby requests this Court enter judgment in his favor in accordance with NRCPC 58(a) pursuant to the Court's *Order* entered November 5, 2018.

23

Pursuant to NRS 17.130 and *Albios v. Horizon Communities, Inc.*, 122 Nev. 409, 429, 132 P.3d 1022, 1035 (2006), Mr. Klementi requests this Court provide for prejudgment interest on his costs awarded at the legal rate from the date the cost was incurred, as permitted by Nevada law. For ease of calculation, Mr. Klementi has grouped costs together by the last date the cost was incurred during a certain timeframe.

28

///

1 Mr. Klementi submits that interest on his attorney's fees awarded accrues from the  
2 date of entry of judgment, as provided by Nevada law. See NRS 17.130.


3 A copy of the proposed Judgment is attached hereto as **Exhibit 1**.

4 The undersigned does hereby affirm that a copy of this Request has been served on all  
5 parties pursuant to NJDCR 12(b).

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

8 Dated: November 27<sup>th</sup>, 2018.

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

By: 

Douglas R. Brown, Esq.  
Christian L. Moore, Esq.  
Sarah M. Molleck, Esq.  
*Attorneys for Counter-Defendant  
Helmut Klementi*

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CERTIFICATE OF MAILING


Pursuant to NRCF 5(b), I certify that I am an employee of Lemons, Grundy & Eisenberg and that on November 27, 2018, I deposited in the United States Mail, with postage fully prepaid, a true and correct copy of the within **REQUEST FOR ENTRY OF JUDGMENT PURSUANT TO NRCF 58 AND NRS 17.130**, addressed to the following:

Jeffrey D. Spencer  
P. O. Box 2326  
Stateline, Nevada 89449  
*In Pro Per*

Michael A. Pintar, Esq.  
Glogovac & Pintar  
427 West Plumb Lane  
Reno, Nevada 89509  
*Attorney for Mary Ellen Kinion,  
Egon Klementi and Elfriede Klementi*

Kerry S. Doyle, Esq.  
4600 Kietzke Lane, Suite I-207  
Reno, Nevada 89502  
*Attorney for Jeffrey Spencer*

Tanika Capers, Esq.  
6750 Via Austi Parkway, Suite 310  
Las Vegas, Nevada 89119  
*Attorneys for Rowena Shaw and Peter Shaw*

  
Susan G. Davis

# EXHIBIT 1

# EXHIBIT 1

1 Case No. 14-CV-0260

2 Dept. No. I

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6

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

7

**IN AND FOR THE COUNTY OF DOUGLAS**

8

HELMUT KLEMENTI,

9

Plaintiff,

10

vs.

11

JEFFREY D. SPENCER,

12

Defendant

13

JEFFREY D. SPENCER,

14

Counterclaimant,

15

vs.

16

HELMUT KLEMENTI, an individual, EGON  
KLEMENTI, an individual, MARY ELLEN  
KINION, an individual, and DOES 1-5

17

18

Counterdefendants.

19

**JUDGMENT**

20

Counter-defendant HELMUT KLEMENTI, by and through his counsel, Lemons, Grundy & Eisenberg, having filed a *Motion for Summary Judgment on All Claims*, a *Motion for Attorney's Fees*, and a *Verified Memorandum of Costs*, and all motions having been granted pursuant to this Court's *Order Granting Motion for Summary Judgment on All Claims* entered August 23, 2018 and the Court's *Order* entered November 5, 2018 granting the request for attorney's fees and costs; and no legal reason why judgment should not be entered,

26

///

27

///

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///

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

1 Judgment is entered in favor of Counter-defendant HELMUT KLEMENTI and  
2 against Counterclaimant JEFFREY D. SPENCER in the total amount of \$42,820.30.

3  
4 2. Of the total amount of \$42,820.30, \$12,820.30 is comprised of costs. Pursuant  
5 to NRS 17.130 and *Albios v. Horizon Communities, Inc.*, 122 Nev. 409, 429, 132 P.3d 1022,  
6 1035 (2006), interest on costs shall accrue at the legal rate from the date the cost was  
7 incurred, as follows:

Cost Amount	Date from which cost shall accrue interest
\$491.25	9/26/13
\$152.45	8/28/15
\$171.76	3/9/2016
\$3,513.56	6/13/16
\$2,400.00	10/10/16
\$2,042.75	7/28/16
\$4,230.65	6/9/17
\$693.70	8/31/18

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18 3. Of the total amount of \$42,820.30, \$30,000 is comprised of attorney's fees,  
19 which shall accrue interest at the legal rate from the date of entry of this Judgment until paid  
20 in full.

21 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

22  
23 \_\_\_\_\_  
24 DISTRICT JUDGE

Submitted by:

25  
26 Lemons, Grundy & Eisenberg  
27 Douglas R. Brown, Esq.  
28 Sarah M. Molleck, Esq.  
6005 Plumas Street, Third Floor  
Reno, Nevada 89511  
(775) 786-6868

FILED

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CASE NO.: 14-CV-0260

NO \_\_\_\_\_

DEPT. NO.: I

DEC - 6 2018

Douglas County  
District Court Clerk

18 DEC -6 A10:09

BOBBIE R. WILLIAMS  
CLERK  
*[Signature]* DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER & DOES 1-5,

Defendants.

**THIRD-PARTY DEFENDANT**  
**ELFRIEDE KLEMENTI'S REQUEST**  
**FOR ENTRY OF JUDGMENT**  
**PURSUANT TO NRCP 58**  
**AND NRS 17.130**

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual,  
EGON KLEMENTI, an individual,  
ELFRIDE KLEMENTI, an individual,  
MARY ELLEN KINION, an individual,  
ROWENA SHAW, an individual, PETER  
SHAW, an individual, and DOES 1-5,

Counter-defendants & Third-Party  
Defendants.

Third-party defendant, Elfriede Klementi ("Elfie"), by and through her attorneys of record, Glogovac & Pintar, hereby requests this Court enter judgment in her favor in accordance with NRCP 58(a) pursuant to the Court's Order entered November 5, 2018.

Pursuant to NRS 17.130 and Alboios v. Horizon Communities, Inc., 122 Nev. 409, 429, 132 P.3d 1022, 1035 (2006), Elfie requests this Court provide for prejudgment interest

1 on her costs awarded at the legal rate from the date the cost was incurred, as permitted by  
2 Nevada law.

3 Elfie submits that interest on her attorney's fees awarded accrues from the date of  
4 entry of judgment, as provided by Nevada law. See, NRS 17.130.

5 A copy of the proposed judgment is attached hereto as Exhibit 1.

6 The undersigned does hereby affirm that a copy of this Request has been served on  
7 all parties pursuant to NJDCR 12(b).

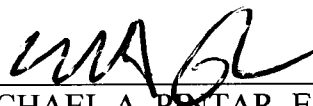
8 **AFFIRMATION**

9 **Pursuant to NRS 239B.030**

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

12 DATED this 5 day of December, 2018.

13 GLOGOVAC & PINTAR

14  
15 By:   
16 MICHAEL A. PINTAR, ESQ.  
17 Nevada Bar No. 003789  
18 Attorneys for Elfriede Klementi  
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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Glogovac & Pintar, 427 W. Plumb Lane, Reno, NV 89509, and that I served the foregoing document(s) described as follows:

**THIRD-PARTY DEFENDANT ELFRIEDE KLEMENTI'S REQUEST FOR ENTRY OF JUDGMENT PURSUANT TO NRCP 58 AND NRS 17.130**

On the party(s) set forth below by:

- Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.
- Personal delivery.
- Facsimile (FAX).
- Federal Express or other overnight delivery.

addressed as follows:

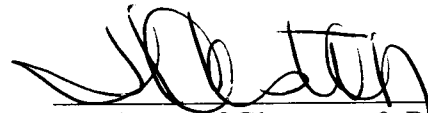
Douglas R. Brown, Esq.  
Lemons, Grundy & Eisenberg  
6005 Plumas St., 3rd Floor  
Reno, NV 89519  
*Attorneys for Counter-Defendant Helmut Klementi*

Tanika M. Capers, Esq.  
6750 Via Austi Parkway, Suite 310  
Las Vegas, NV 89119  
*Attorneys for Defendants Rowena Shaw and Peter Shaw*

Jeffrey Spencer  
P. O. Box 2326  
Stateline, NV 89449  
*In-Pro Per*

Kerry S. Doyle, Esq.  
4600 Kietzke Lane, Suite I-207  
Reno, Nevada 89502  
*Attorney for Jeffrey Spencer*

Dated this 5th day of December, 2018.

  
\_\_\_\_\_  
Employee of Glogovac & Pintar

**EXHIBIT 1**

**EXHIBIT 1**

1 CASE NO.: 14-CV-0260

2 DEPT. NO.: I

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6

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF DOUGLAS

7

8

HELMUT KLEMENTI,

9

Plaintiff,

**JUDGMENT**

10

vs.

11

JEFFREY D. SPENCER & DOES 1-5,

12

Defendants.

13

14

JEFFREY D. SPENCER,

15

Counterclaimant,

16

vs.

17

HELMUT KLEMENTI, an individual,  
EGON KLEMENTI, an individual,  
ELFRIDE KLEMENTI, an individual,  
MARY ELLEN KINION, an individual,  
ROWENA SHAW, an individual, PETER  
SHAW, an individual, and DOES 1-5,

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Counter-defendants & Third-Party  
Defendants.

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Third-party defendant, Elfriede Klementi (“Elfie”), by and through her attorneys of record, Glogovac & Pintar, having filed a Motion for Summary Judgment, a Motion for Attorney’s Fees and Costs, and a Verified Memorandum of Costs and Disbursements, and all motions having been granted pursuant to the Court’s Order dated August 29, 2018 and the Court’s Order dated November 5, 2018 granting the request for attorney’s fees and costs; and no legal reason why judgment should not be entered.

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Judgment is entered in favor of Third-party defendant Elfriede Klementi and against Third-party claimant Jeffrey D. Spencer in the total amount of \$21,030.00.

2. Of the total amount of \$21,030.00, \$530.00 is comprised of costs. Pursuant to NRS 17.130 and Alboios v. Horizon Communities, Inc., 122 Nev. 409, 429, 132 P.3d 1022, 1035 (2006), interest on costs shall accrue at the legal rate from the date the cost was incurred, as follows:

Cost	Cost Amount	Date Cost Was Incurred
Clerks' Fees – Motion for Summary Judgment	\$200.00	4/24/18
Court Reporters' Fees	\$330.00	7/12/18

3. Of the total amount of \$21,030.00, \$20,500.00 is comprised of attorney's fees, which shall accrue interest at the legal rate from the date of entry of this Judgment until paid in full.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
DISTRICT JUDGE

1 CASE NO.: 14-CV-0260  
2 DEPT. NO.: I

RECEIVED

NO \_\_\_\_\_

DEC - 6 2018

18 DEC -6 A10:09

Douglas County  
District Court Clerk

BOBBIE R. WILLIAMS  
CLERK  
*[Signature]* DEPUTY

6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF DOUGLAS

8 HELMUT KLEMENTI,

9 Plaintiff,

10 vs.

11 JEFFREY D. SPENCER & DOES 1-5,

12 Defendants.

**THIRD-PARTY DEFENDANT**  
**MARY ELLEN KINION'S REQUEST**  
**FOR ENTRY OF JUDGMENT**  
**PURSUANT TO NRCP 58**  
**AND NRS 17.130**

13 \_\_\_\_\_ /  
14 JEFFREY D. SPENCER,

15 Counterclaimant,

16 vs.

17 HELMUT KLEMENTI, an individual,  
18 EGON KLEMENTI, an individual,  
19 ELFRIDE KLEMENTI, an individual,  
20 MARY ELLEN KINION, an individual,  
21 ROWENA SHAW, an individual, PETER  
22 SHAW, an individual, and DOES 1-5,

23 Counter-defendants & Third-Party  
24 Defendants.

25 Third-party defendant, Mary Ellen Kinion ("Kinion"), by and through her attorneys  
26 of record, Glogovac & Pintar, hereby requests this Court enter judgment in her favor in  
27 accordance with NRCP 58(a) pursuant to the Court's Order entered November 5, 2018.

28 Pursuant to NRS 17.130 and Alboios v. Horizon Communities, Inc., 122 Nev. 409,  
429, 132 P.3d 1022, 1035 (2006), Mary Ellen Kinion requests this Court provide for

1 prejudgment interest on her costs awarded at the legal rate from the date the cost was  
2 incurred, as permitted by Nevada law.

3 Kinion submits that interest on her attorney's fees awarded accrues from the date of  
4 entry of judgment, as provided by Nevada law. See, NRS 17.130.

5 A copy of the proposed judgment is attached hereto as Exhibit 1.

6 The undersigned does hereby affirm that a copy of this Request has been served on  
7 all parties pursuant to NJDCR 12(b).


8 **AFFIRMATION**

9 **Pursuant to NRS 239B.030**

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

12 DATED this 5 day of December, 2018.

13 GLOGOVAC & PINTAR

14  
15 By:   
16 MICHAEL A. PINTAR, ESQ.  
17 Nevada Bar No. 003789  
18 Attorneys for Mary Ellen Kinion  
19  
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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Glogovac & Pintar, 427 W. Plumb Lane, Reno, NV 89509, and that I served the foregoing document(s) described as follows:

**THIRD-PARTY DEFENDANT MARY ELLEN KINION'S REQUEST FOR ENTRY OF JUDGMENT PURSUANT TO NRCP 58 AND NRS 17.130**

On the party(s) set forth below by:

- Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.
- Personal delivery.
- Facsimile (FAX).
- Federal Express or other overnight delivery.

addressed as follows:

Douglas R. Brown, Esq.  
Lemons, Grundy & Eisenberg  
6005 Plumas St., 3rd Floor  
Reno, NV 89519  
*Attorneys for Counter-Defendant Helmut Klementi*

Tanika M. Capers, Esq.  
6750 Via Austi Parkway, Suite 310  
Las Vegas, NV 89119  
*Attorneys for Defendants Rowena Shaw and Peter Shaw*

Jeffrey Spencer  
P. O. Box 2326  
Stateline, NV 89449  
*In-Pro Per*

Dated this 5th day of December, 2018.

  
\_\_\_\_\_  
Employee of Glogovac & Pintar

**EXHIBIT 1**

**EXHIBIT 1**



1 CASE NO.: 14-CV-0260

2 DEPT. NO.: I

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6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF DOUGLAS

8 HELMUT KLEMENTI,

9 Plaintiff,

10 vs.

11 JEFFREY D. SPENCER & DOES 1-5,

12 Defendants.

13

14 JEFFREY D. SPENCER,

15 Counterclaimant,

16 vs.

17 HELMUT KLEMENTI, an individual,  
18 EGON KLEMENTI, an individual,  
19 ELFRIDE KLEMENTI, an individual,  
20 MARY ELLEN KINION, an individual,  
21 ROWENA SHAW, an individual, PETER  
22 SHAW, an individual, and DOES 1-5,

23 Counter-defendants & Third-Party  
24 Defendants.

25

26 Third-party defendant, Mary Ellen Kinion (“Kinion”), by and through her attorneys  
27 of record, Glogovac & Pintar, having filed Motions for Summary Judgment, Motions for  
28 Attorney’s Fees and Costs, and Verified Memorandums of Costs and Disbursements, and  
said motions having been granted pursuant to the Court’s Orders dated October 19, 2017  
and August 29, 2018 and the Court’s Order dated November 5, 2018 granting the request  
for attorney’s fees and costs; and no legal reason why judgment should not be entered.

**JUDGMENT**

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Judgment is entered in favor of Third-party defendant Mary Ellen Kinion and against Third-party claimant Jeffrey D. Spencer in the total amount of \$36,412.48.

2. Of the total amount of \$36,412.48, \$1,143.98 is comprised of costs. Pursuant to NRS 17.130 and Alboios v. Horizon Communities, Inc., 122 Nev. 409, 429, 132 P.3d 1022, 1035 (2006), interest on costs shall accrue at the legal rate from the date the cost was incurred, as follows:

Cost	Cost Amount	Date Cost Was Incurred
Sunshine Litigation – Depo of Rowena & Peter Shaw	\$262.50	4/20/16
Sunshine Litigation – Reporting Fee for Hearing	\$330.00	12/20/16
Capitol Reporter (Transcript of Marilyn & Jeffrey Spencer Trial)	\$491.25	2/6/17
Clerks’ Fees – Joinder in Motion for Summary Judgment	\$200.00	3/12/18
Clerks’ Fees – Motion for Summary Judgment	\$200.00	4/24/18
Sunshine Litigation – Reporting Fee for 5/9/18 Settlement Conference	\$150.00	5/22/18
Mileage to and from Hearing on Motions	\$51.23	7/12/18

3. Of the total amount of \$36,412.48, \$35,268.50 is comprised of attorney’s fees, which shall accrue interest at the legal rate from the date of entry of this Judgment until paid in full.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
DISTRICT JUDGE

RECEIVED

DEC 07 2018

Douglas County  
District Court Clerk

FILED

2018 DEC 20 PM 3:50

BOBBIE R. WILLIAMS  
CLERK  
A. NEWTON  
BY \_\_\_\_\_ DEPUTY

1 Case No. 14-CV-0260

2 Dept. No. I

6 **IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

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

8 HELMUT KLEMENTI,

9 Plaintiff,

10 vs.

11 JEFFREY D. SPENCER,

12 Defendant

13 JEFFREY D. SPENCER,

14 Counterclaimant,

15 vs.

16 HELMUT KLEMENTI, an individual, EGON  
17 KLEMENTI, an individual, MARY ELLEN  
KINION, an individual, and DOES 1-5

18 Counterdefendants.

19 **JUDGMENT**

20 Counter-defendant HELMUT KLEMENTI, by and through his counsel, Lemons, Grundy &  
21 Eisenberg, having filed a *Motion for Summary Judgment on All Claims*, a *Motion for Attorney's*  
22 *Fees*, and a *Verified Memorandum of Costs*, and all motions having been granted pursuant to  
23 this Court's *Order Granting Motion for Summary Judgment on All Claims* entered August 23,  
24 2018 and the Court's *Order* entered November 5, 2018 granting the request for attorney's  
25 fees and costs; and no legal reason why judgment should not be entered,

26 ///

27 ///

28 ///


**IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

1 Judgment is entered in favor of Counter-defendant HELMUT KLEMENTI and  
 2 against Counterclaimant JEFFREY D. SPENCER in the total amount of \$42,820.30.

3  
 4 2. Of the total amount of \$42,820.30, \$12,820.30 is comprised of costs. Pursuant  
 5 to NRS 17.130 and *Albios v. Horizon Communities, Inc.*, 122 Nev. 409, 429, 132 P.3d 1022,  
 6 1035 (2006), interest on costs shall accrue at the legal rate from the date the cost was  
 7 incurred, as follows:

Cost Amount	Date from which cost shall accrue interest
\$491.25	9/26/13
\$152.45	8/28/15
\$171.76	3/9/2016
\$3,513.56	6/13/16
\$2,400.00	10/10/16
\$2,042.75	7/28/16
\$4,230.65	6/9/17
\$693.70	8/31/18

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 18 3. Of the total amount of \$42,820.30, \$30,000 is comprised of attorney's fees,  
 19 which shall accrue interest at the legal rate from the date of entry of this Judgment until paid  
 20 in full.

21 DATED this 15 day of December, 2018.  
 22  
 23   
 24 DISTRICT JUDGE

25 Submitted by:  
 26 Lemons, Grundy & Eisenberg  
 27 Douglas R. Brown, Esq.  
 28 Sarah M. Molleck, Esq.  
 6005 Plumas Street, Third Floor  
 Reno, Nevada 89511  
 (775) 786-6868

1 CASE NO.: 14-CV-0260

RECEIVED

FILED

2 DEPT. NO.: I

DEC 28 2018

2018 DEC 28 AM 10:47

Douglas County  
District Court Clerk

BOBBIE R. WILLIAMS  
CLERK

*[Signature]* DEPUTY

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6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF DOUGLAS  
8

9 HELMUT KLEMENTI,

10 Plaintiff,

11 vs.

12 JEFFREY D. SPENCER & DOES 1-5,

13 Defendants.

**NOTICE OF ENTRY OF JUDGMENT**

14 \_\_\_\_\_ /  
15 JEFFREY D. SPENCER,

16 Counterclaimant,

17 vs.

18 HELMUT KLEMENTI, an individual,  
19 EGON KLEMENTI, an individual,  
20 ELFRIDE KLEMENTI, an individual,  
21 MARY ELLEN KINION, an individual,  
22 ROWENA SHAW, an individual, PATER  
23 SHAW, an individual and DOES 1-5,

24 Counterdefendants and  
25 Third-Party Defendants.

26 PLEASE TAKE NOTICE that a Judgment was entered by the Court in the above-  
27 captioned matter on December 20, 2018. A Copy of the Judgment is attached.  
28

///

///


AFFIRMATION

Pursuant to NRS 239B.030

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

DATED this 28 day of December, 2018.

GLOGOVAC & PINTAR

By:   
MICHAEL A. PINTAR, ESQ.  
Nevada Bar No. 003789  
Attorneys for Third-party Defendant Mary Ellen Kinion

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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Glogovac & Pintar, 427 W. Plumb Lane, Reno, NV 89509, and that I served the foregoing document(s) described as follows:

**NOTICE OF ENTRY OF JUDGMENT**

On the party(s) set forth below by:

  X   Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

       Personal delivery.

       Facsimile (FAX).

       Federal Express or other overnight delivery.

addressed as follows:

Douglas R. Brown, Esq.  
Lemons, Grundy & Eisenberg  
6005 Plumas St., 3rd Floor  
Reno, NV 89519  
*Attorneys for Helmut Klementi*

Jeffrey Spencer  
PO Box 2326  
Stateline, NV 89449  
*Pro Per*

Tanika Capers, Esq.  
6750 Via Austi Parkway, Suite 310  
Las Vegas, NV 89119  
*Attorneys for Rowena Shaw and Peter Shaw*

Dated this 28<sup>th</sup> day of December, 2018.

  
An Employee of Glogovac & Pintar

RECEIVED

1 CASE NO.: 14-CV-0260

DEC 20 2018

FILED

2 DEPT. NO.: I

Douglas County  
District Court Clerk

2018 DEC 20 PM 3:48

BOBBIE R. WILLIAMS  
CLERK

A. NEWTON  
BY \_\_\_\_\_

DEPUTY

6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF DOUGLAS

8 HELMUT KLEMENTI,

9 Plaintiff,

JUDGMENT

10 vs.

11 JEFFREY D. SPENCER & DOES 1-5,

12 Defendants.

14 JEFFREY D. SPENCER,

15 Counterclaimant,

16 vs.

17 HELMUT KLEMENTI, an individual,  
18 EGON KLEMENTI, an individual,  
19 ELFRIDE KLEMENTI, an individual,  
MARY ELLEN KINION, an individual,  
ROWENA SHAW, an individual, PETER  
SHAW, an individual, and DOES 1-5,

20 Counter-defendants & Third-Party  
21 Defendants.

22 Third-party defendant, Mary Ellen Kinion ("Kinion"), by and through her attorneys  
23 of record, Glogovac & Pintar, having filed Motions for Summary Judgment, Motions for  
24 Attorney's Fees and Costs, and Verified Memorandums of Costs and Disbursements, and  
25 said motions having been granted pursuant to the Court's Orders dated October 19, 2017  
26 and August 29, 2018 and the Court's Order dated November 5, 2018 granting the request  
27 for attorney's fees and costs; and no legal reason why judgment should not be entered.  
28



IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

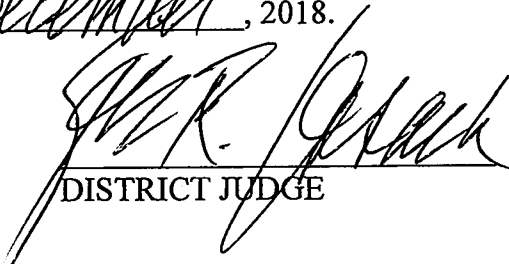
1. Judgment is entered in favor of Third-party defendant Mary Ellen Kinion and against Third-party claimant Jeffrey D. Spencer in the total amount of \$36,412.48.

2. Of the total amount of \$36,412.48, \$1,143.98 is comprised of costs. Pursuant to NRS 17.130 and Alboios v. Horizon Communities, Inc., 122 Nev. 409, 429, 132 P.3d 1022, 1035 (2006), interest on costs shall accrue at the legal rate from the date the cost was incurred, as follows:

Cost	Cost Amount	Date Cost Was Incurred
Sunshine Litigation – Depo of Rowena & Peter Shaw	\$262.50	4/20/16
Sunshine Litigation – Reporting Fee for Hearing	\$330.00	12/20/16
Capitol Reporter (Transcript of Marilyn & Jeffrey Spencer Trial)	\$491.25	2/6/17
Clerks’ Fees – Joinder in Motion for Summary Judgment	\$200.00	3/12/18
Clerks’ Fees – Motion for Summary Judgment	\$200.00	4/24/18
Sunshine Litigation – Reporting Fee for 5/9/18 Settlement Conference	\$150.00	5/22/18
Mileage to and from Hearing on Motions	\$51.23	7/12/18

3. Of the total amount of \$36,412.48, \$35,268.50 is comprised of attorney’s fees, which shall accrue interest at the legal rate from the date of entry of this Judgment until paid in full.

DATED this 19 day of December, 2018.

  
DISTRICT JUDGE

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CASE NO.: 14-CV-0260

**RECEIVED**

**FILED**

DEPT. NO.: I

**DEC 28 2018**

**2018 DEC 28 AM 10:46**

Douglas County  
District Court Clerk

**BOBBIE R. WILLIAMS**  
CLERK

*[Signature]*  
DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER & DOES 1-5,

Defendants.

**NOTICE OF ENTRY OF JUDGMENT**

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual,  
EGON KLEMENTI, an individual,  
ELFRIDE KLEMENTI, an individual,  
MARY ELLEN KINION, an individual,  
ROWENA SHAW, an individual, PATER  
SHAW, an individual and DOES 1-5,

Counterdefendants and  
Third-Party Defendants.

PLEASE TAKE NOTICE that a Judgment was entered by the Court in the above-captioned matter on December 20, 2018. A Copy of the Judgment is attached.

///

///

AFFIRMATION

Pursuant to NRS 239B.030

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

DATED this 28 day of December, 2018.

GLOGOVAC & PINTAR

By: Michael A. Pintar  
MICHAEL A. PINTAR, ESQ.  
Nevada Bar No. 003789  
Attorneys for Third-party Defendant  
Elfriede Klementi

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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Glogovac & Pintar, 427 W. Plumb Lane, Reno, NV 89509, and that I served the foregoing document(s) described as follows:

**NOTICE OF ENTRY OF JUDGMENT**

On the party(s) set forth below by:

- Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail. at Reno, Nevada. postage prepaid, following ordinary business practices.
- Personal delivery.
- Facsimile (FAX).
- Federal Express or other overnight delivery.

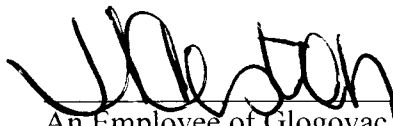
addressed as follows:

Douglas R. Brown, Esq.  
Lemons, Grundy & Eisenberg  
6005 Plumas St., 3rd Floor  
Reno, NV 89519  
*Attorneys for Helmut Klementi*

Jeffrey Spencer  
PO Box 2326  
Stateline, NV 89449  
*Pro Per*

Tanika Capers, Esq.  
6750 Via Austi Parkway, Suite 310  
Las Vegas, NV 89119  
*Attorneys for Rowena Shaw and Peter Shaw*

Dated this 28th day of December, 2018.

  
An Employee of Glogovac & Pintar

RECEIVED

FILED

1 CASE NO.: 14-CV-0260

DEC 20 2018

2 DEPT. NO.: I

Douglas County  
District Court Clerk

2018 DEC 20 PM 3:48

BOBBIE R. WILLIAMS  
CLERK

A. NEWTON DEPUTY

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6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF DOUGLAS

8 HELMUT KLEMENTI,

9 Plaintiff,

JUDGMENT

10 vs.

11 JEFFREY D. SPENCER & DOES 1-5,

12 Defendants.

13 \_\_\_\_\_ /  
14 JEFFREY D. SPENCER,

15 Counterclaimant,

16 vs.

17 HELMUT KLEMENTI, an individual,  
18 EGON KLEMENTI, an individual,  
19 ELFRIDE KLEMENTI, an individual,  
20 MARY ELLEN KINION, an individual,  
21 ROWENA SHAW, an individual, PETER  
22 SHAW, an individual, and DOES 1-5,

23 Counter-defendants & Third-Party  
24 Defendants.

25 Third-party defendant, Elfriede Klementi ("Elfie"), by and through her attorneys of  
26 record, Glogovac & Pintar, having filed a Motion for Summary Judgment, a Motion for  
27 Attorney's Fees and Costs, and a Verified Memorandum of Costs and Disbursements, and  
28 all motions having been granted pursuant to the Court's Order dated August 29, 2018 and  
the Court's Order dated November 5, 2018 granting the request for attorney's fees and  
costs; and no legal reason why judgment should not be entered.

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

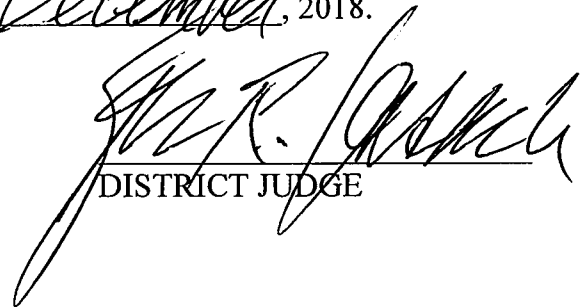
1. Judgment is entered in favor of Third-party defendant Elfriede Klementi and against Third-party claimant Jeffrey D. Spencer in the total amount of \$21,030.00.

2. Of the total amount of \$21,030.00, \$530.00 is comprised of costs. Pursuant to NRS 17.130 and Alboios v. Horizon Communities, Inc., 122 Nev. 409, 429, 132 P.3d 1022, 1035 (2006), interest on costs shall accrue at the legal rate from the date the cost was incurred, as follows:

Cost	Cost Amount	Date Cost Was Incurred
Clerks' Fees – Motion for Summary Judgment	\$200.00	4/24/18
Court Reporters' Fees	\$330.00	7/12/18

3. Of the total amount of \$21,030.00, \$20,500.00 is comprised of attorney's fees, which shall accrue interest at the legal rate from the date of entry of this Judgment until paid in full.

DATED this 18 day of December, 2018.

  
DISTRICT JUDGE