

IN THE SUPREME COURT OF THE STATE OF NEVADA

<p>LARRY J. WILLARD, individually and as Trustee of the Larry James Willard Trust Fund; and OVERLAND DEVELOPMENT CORPORATION, a California corporation,</p> <p style="text-align: center;">Appellants,</p> <p>vs.</p> <p>BERRY-HINCKLEY INDUSTRIES, a Nevada corporation; and JERRY HERBST, an individual,</p> <p style="text-align: center;">Respondents.</p>	<p>SUPREME COURT NO. 77780</p> <p>Electronically Filed Jun 03 2019 04:54 p.m. Elizabeth A. Brown Clerk of Supreme Court</p> <p>REQUEST FOR TRANSCRIPT OF PROCEEDINGS</p>
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**TO: Sunshine Litigation Services, Court Reporter Eisenberg,
 Department 9 of Second Judicial District Court,
 75 Court Street, Reno, NV 89501**

Respondents request preparation of transcript of proceedings before the District Court, as follows:

Judge or office hearing the proceedings:	Honorable Lynne Simons Second Judicial District Court, Washoe County, Department 6
Date/Time of Proceedings:	January 10, 2017, 9:30 a.m.
Portions of the transcript requested:	Entire Transcript of Oral Arguments re: Motion for Partial Summary Judgment
Number of copies required:	Original and 2 copies

Minutes of the Hearing are attached hereto as **Exhibit 1**.

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I hereby certify that on the 3rdth day of June, 2019, I ordered the transcript(s) listed above from the Court Reporter named above, no deposit required.

AFFIRMATION
NRS 239B.030 Certification

Pursuant to NRS 239B.030, the undersigned hereby affirms that this document does not contain the Social Security Number of any person.

DATED this 3rd day of June, 2019.

DICKINSON WRIGHT, PLLC

By /s/ Brian R. Irvine

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*Attorneys for BERRY-HINCKLEY
INDUSTRIES and JERRY HERBST*

Respondents

CERTIFICATE OF SERVICE

I certify that I am an employee of DICKINSON WRIGHT, PLLC, and that on this date, pursuant to NRAP 25(d), I am serving the attached **REQUEST FOR TRANSCRIPT OF PROCEEDINGS** 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, Reno, Nevada, postage prepaid, following ordinary business practices.
- By electronic service by filing the foregoing with the Clerk of Court using the ECF Electronic Filing System, which will electronically mail the filing to the following individuals.
- (BY PERSONAL DELIVERY) by causing a true copy thereof to be hand delivered this date to the addressee(s) set forth below.

Robert L. Eisenberg
LEMONS, GRUNDY & EISENBERG
6005 Plumas Street 3rd Floor
Reno, NV 89519
Tel. (775) 786-6868
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Richard D. Williamson, Esq.,
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By email to the email addresses below.

Margaret Crowley
121 Washington Street
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mcrowleymediation@gmail.com

Sunshine Litigation Services
151 Country Estates Cir
Reno, NV 89511
Renoreception@litigationservices.com

DATED this 3rd day of June, 2019

/s/ Mina Reel _____
An Employee of Dickinson Wright PLLC

EXHIBIT TABLE

Exhibit	Description	Pages¹
1	Minutes of the Hearing on 01/10/17	2

RENO 65540-1 40646v1

¹ Exhibit Page counts are exclusive of exhibit slip sheets.

FILED
Electronically
CV14-01712
2019-06-03 02:54:16 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7300871 : yvitoria

EXHIBIT 1

EXHIBIT 1

CASE NO. CV14-01712 LARRY WILLARD ET AL V BERRY-HINCKLEY ETAL

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES - HEARING

CONT'D TO

1/10/17

HONORABLE
LYNNE SIMONS
DEPT. NO. 6
Y. GENTRY
(Clerk)
Eisenberg
(Reporter)
Masters
(Bailliff)

ORAL ARGUMENTS RE: MOTION FOR PARTIAL SUMMARY JUDGMENT

Attorneys David O'Mara and Brian Moquin were present on behalf of Plaintiffs. Plaintiffs Larry Willard and Edward Wooley were present. Attorney Brian Irvine was present on behalf of Defendants, Berry-Hinckley et al.
Appearances put on the record.

COURT advised it has read pleadings. Counsel may proceed with arguments.

Counsel Irvine addressed the Court regarding filing motion for summary judgment; that counsel would like to focus remaining issues to streamline presentation regarding future motions for summary judgments and trial. Counsel presented argument regarding Plaintiffs seeking damages for future restitution and unforeseeable damages in the future; damages are overreaching and Plaintiffs are not entitled. Counsel argued Willard Plaintiffs are seeking 4.4 million in earnest money; 3 million in tax consequences; and \$500k in closing costs; that Willard Plaintiffs are also seeking attorney fees damages. Counsel presented further argument regarding fee damages associated with Plaintiff's bankruptcy. Counsel presented further argument regarding Plaintiff's Baring Boulevard claim of damages; that all damages are precluded under Nevada law. Counsel cited Hilton Hotel case.

Discussion ensued between Court and Counsel Irvine regarding Hilton case.

Counsel presented further argument requesting partial summary judgment; that burden has not been met by Plaintiffs. Counsel cited Margolese, Enak Realty, and Boise cases regarding rents/leases; that summary judgment should be granted under Rule 56e.

Counsel presented argument regarding claim of damages for Baring Boulevard property and when lease was executed; that Wooley Plaintiffs did not own property at time of executed lease. Counsel Irvine presented argument regarding attorney fees damages; cited Homes v Liu. Counsel reiterated that all damages are precluded as a matter of law under Nevada law.

Discussion ensued regarding Margolese case being binding on this case.

Counsel Irving further addressed the Court regarding section 20b (of the lease) is sole source of remedy.

Further discussion ensued.

Counsel Moquin addressed the Court and presented argument in opposition of section 20b; that it is not the sole source of remedy; that section 15 also applies.

Discussion ensued between Court and Counsel Moquin regarding language in agreements and damages.

Counsel Moquin advised Court that Plaintiffs are withdrawing on closing costs and cost associated with short sale. Counsel argued further regarding tax consequences and earnest monies.

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES - HEARING

CONT'D TO

1/10/17

ORAL ARGUMENTS RE: MOTION FOR PARTIAL SUMMARY JUDGMENT

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Discussion between Court and Counsel Moquin regarding withdrawing of claims and diminution of value claim.

Counsel Moquin presented further argument opposing summary judgment and argued further regarding indemnification clause.

10:53 a.m. Court recessed for morning break.

11:25 a.m. Court reconvened. All parties present.

Counsel Moquin advised that Plaintiff Wooley paid taxes. Counsel presented further argument regarding lease agreements; subrogation agreement; damages provisions. Counsel Irvine further addressed the Court and argued further for summary judgment; argued concept of foreseeability; that Plaintiffs didn't argue attorney fees.

Counsel Irvine argued regarding indemnity provision regarding third party claims and damages. Cited Boise, May Department Store, Pacificorp, and Kmart cases. Counsel argued further opposing attorney fees; that they can only be recovered as special damages; that plaintiff should be precluded from seeking; that all damages sought by Plaintiffs are all precluded as a matter of law. Counsel further argued regarding Plaintiffs claims and 16.1 issues.

COURT advised it has applied Rule 56 standards.

COURT FOUND Motion for summary Judgment should be GRANTED: As to Willard Plaintiffs, short sale damages incurred as a result of selling property, tax consequence because of canceling mortgage debt and closing costs, and attorney fees because of voluntary bankruptcy and California action. As to Wooley Plaintiffs, the Court is considering Summary Judgment as it relates to \$600,000.00 in damages because of selling of Baring property and attorney fees in California action.

COURT FOUND Christopher Holmes v Liu case applies regarding special damages regarding attorney fees.

COURT ORDERED Counsel Irvine to prepare proposed order with conclusions of law and applicable authority. Proposed order is to be prepared within 15 days.

COURT FURTHER ORDERED Plaintiffs to serve within 15 days an entry of Summary Judgment and an updated 16.1 disclosure.

Court adjourned.