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LAS VEGAS DEVELOPMENT GROUP, LLC
7

Electronically Filed
Aug 25 2020 05:00 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

8
9 IN THE SUPREME COURT OF THE STATE OF NEVADA

10 ***

11 LAS VEGAS DEVELOPMENT GROUP, LLC,)
a Nevada limited liability company,)
12)
Appellant,)
13 vs.)
14 JAMES R. BLAHA, an individual; BANK OF)
AMERICA, NA, a National Banking)
15 Association, as successor by merger to BAC)
HOME LOANS SERVICING, LP;)
16 RECONTRUST COMPANY NA, a Texas)
corporation; EZ PROPERTIES, LLC, a Nevada)
17 limited liability company; K&L BAXTER)
FAMILY LIMITED PARTNERSHIP, a Nevada)
18 limited partnership; FCH FUNDING, INC, an)
unknown corporate entity,)
19 Respondents.)
20

Supreme Court No. 79055

District Court Case No. A-15-715532-C

21 **JOINT MOTION FOR REMAND TO EIGHTH JUDICIAL DISTRICT COURT**
22 **AND REQUEST FOR DISMISSAL OF APPEAL**

23 COMES NOW, Appellant, LAS VEGAS DEVELOPMENT GROUP, LLC, and
24 Respondents, JAMES R. BLAHA; BANK OF AMERICA, NA; RECONTRUST COMPANY
25 NA; EZ PROPERTIES, LLC; K&L BAXTER FAMILY LIMITED PARTNERSHIP; and
26 NOBLE HOME LOANS, INC. fka FCH FUNDING, INC, by and through their respective
27 undersigned counsel, and jointly move this Court, pursuant to *Foster v. Dingwall*, 126 Nev. 49,
28 228 P.3d 453 (2010), for an Order remanding this matter back to the District Court and

1 dismissing this appeal. The parties also jointly move the Court to suspend the briefing schedule
2 until it decides the Motion to Remand, as further briefing will be unnecessary if the Court
3 remands the case. The Opening Brief is presently due on August 31, 2020, pursuant to this
4 Court's Order dated July 31, 2020. This Motion is made and based upon the attached
5 Memorandum of Points and Authorities and all papers and pleadings on file herein.

6 DATED this 25th day of August, 2020.

7 ROGER P. CROTEAU &
8 ASSOCIATES, LTD.

MAURICE WOOD

9 /s/ Timothy E. Rhoda
10 ROGER P. CROTEAU, ESQ.
11 Nevada Bar No. 4958
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14 2810 West Charleston Blvd., Suite 75
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16 (702) 254-7775
17 **Attorney for Plaintiff**
18 **Las Vegas Development Group, LLC**

/s/ Brittany Wood
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9525 Hillwood Drive, Suite 140
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Attorney for Defendants
James R. Blaha and Noble Home Loans
formerly known as FCH Funding, Inc.

15 LAW OFFICES OF KEVIN R. HANSEN

AKERMAN, LLP

17 /s/ Amy M. Wilson
18 KEVIN R. HANSEN, ESQ.
19 Nevada Bar No. 6336
20 AMY M. WILSON, ESQ.
21 Nevada Bar No. 13421
22 5440 West Sahara Avenue, Suite 206
23 Las Vegas, Nevada 89146
24 **Attorney for Defendants**
25 **EZ Properties, LLC and K&L Baxter**
26 **Family Partnership**

/s/ Lilith V. Xara
LILITH V. XARA, ESQ.
Nevada Bar No. 13138
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134
Attorney for Defendants
Bank of America, N.A. and Recontrust
Company

24 MEMORANDUM OF POINTS AND AUTHORITIES

25 A. STATEMENT OF THE FACTS

26 The instant appeal involves a quiet title related to real property commonly known as 7639
27 Turquoise Stone Court, Las Vegas, Nevada 89113 (*the "Property"*). The Property is located
28 within a common interest community known as Nevada Trails II Community Association

1 (“HOA”) and was the subject of a homeowners association lien foreclosure sale conducted by
2 Absolute Collection Services, LLC (“ACS”) on behalf of HOA (“HOA Foreclosure Sale”). Las
3 Vegas Development Group, LLC (“LVDG”) purchased the Property on April 12, 2011, by
4 successfully bidding at the HOA Foreclosure Sale in accordance with N.R.S. 116.3116, *et seq.*
5 On August 29, 2011, the Property was then sold at a deed of trust foreclosure sale to third-party
6 purchaser, EZ Properties LLC (“EZ”). One-month later, on September 30, 2011, James R.
7 Blaha, the current record property owner, purchased the Property from EZ. Following his
8 purchase of the Property, Blaha obtained a loan from Noble Home Loans, Inc. (formerly known
9 as FCH Funding, Inc.). The primary issues in the case involve the force and effect of the HOA
10 Foreclosure Sale upon a deed of trust recorded against the Property and held by Bank of
11 America, N.A. (“BANA”), the validity of a subsequent foreclosure sale conducted by BANA
12 based upon that deed of trust, and the subsequent sale of the Property to the current record
13 property owner, James R. Blaha.

14 On March 19, 2019, Blaha and Noble Home Loans, Inc. (collectively, the “Blaha
15 Defendants”) filed a Motion for Summary Judgment asserting that LVDG’s claims – which seek
16 to remove Blaha from title to the Property by rescinding two sales of the property – fail as a
17 matter of law based on *Bank of Am., N.A. v. Thomas Jessup, LLC Series VII*, 135 Nev. 42, 435
18 P.3d 1217 (2019) (“*Jessup I*”). On March 25, 2019, the HOA filed a Limited Opposition to the
19 Blaha Defendants’ Motion for Summary Judgment. The Opposition filed by the HOA objected to
20 three of the statements of undisputed fact identified in the Blaha Defendant’s Motion (none of
21 which were material to the Motion), but conceded that *Jessup I* controlled the case and
22 acknowledged that the Deed of Trust survived the HOA Foreclosure Sale such that title to the
23 Property should be quieted in favor of the Blaha Defendants. Subsequent to filing its limited
24 Opposition, the claims against the HOA and ACS were dismissed without prejudice. The
25 defendants anticipate that the HOA and ACS will need to be rejoined as parties to this action.

1 On or about May 24, 2019, the district court entered an Order Granting Summary
2 Judgment in favor of the Defendants. The primary basis for the Order Granting Summary
3 Judgment was the Nevada Supreme Court's decision in the matter of *Jessup 1*. LVDG appealed
4 the Order granting Summary Judgment on June 18, 2019. The Blaha Defendants filed a Notice
5 of Cross Appeal on July 2, 2019.

6 On May 7, 2020, this Court issued an Order vacating its prior Order in *Jessup 1* and
7 replacing it with an Order Affirming in Part, Reversing in Part and Remanding to the district
8 court. *Bank of Am. v. Jessup*, No. 73785, 2020 Nev. Unpub. LEXIS 471 (May 7, 2020) ("*Jessup*
9 *2*"). Pursuant to *Jessup 2*, the *en banc* Supreme Court wholly reversed the Panel's decision in
10 *Jessup 1*. The parties agree that the final disposition of *Jessup* warrants the remand of this matter
11 for further proceedings. To that end, the parties requested that the District Court certify its intent
12 to vacate the Order appealed from herein. The District Court did so on August 18, 2020. *See*
13 Exhibit 1, attached hereto and incorporated herein by reference.

14 **B. LEGAL ARGUMENT**

15 The timely filing of a notice of appeal "divests the district court of jurisdiction to act and
16 vests jurisdiction in this court." *See Foster v. Dingwall*, 126 Nev. at 52, 228 P.3d at 454-455,
17 citing *Mack-Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d 525, 529 (2006) (quoting *Rust v.*
18 *Clark Cty. School District*, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987)). A District Court,
19 however, retains limited jurisdiction to review motions seeking to alter, vacate, or otherwise
20 change or modify an order or judgment challenged on appeal. *See Foster*, 228 P.3d at 455 citing
21 *Mack-Manley*, 122 Nev. At 855-56, 138 P.3d at 529-30 and *Huneycutt v. Huneycutt*, 94 Nev. 78,
22 80-81, 575 P.2d 585, 585-86 (1978). This limited jurisdiction allows the District Court to direct
23 briefing on the motion, hold a hearing regarding the motion, and enter an order denying the
24 motion, but does not allow it to enter an order granting such a motion. *See Foster*, 228 P.3d at
25 455 citing *Huneycutt*, 94 Nev. 78, 575 P.2d 585 (1978).

26 Where the District Court has exercised that limited jurisdiction and indicated its intention
27 to grant the requested relief, the appropriate procedure is for the District Court to certify its
28 intention to grant the requested relief. *Foster*, 126 Nev. at 55, 228 P.3d at 455 citing *Mack-*

1 *Manley*, 122 Nev. at 855, 138 P.3d at 530 and *Huneycutt*, 94 Nev. At 81, 575 P.2d at 587. After
2 the District Court certifies its intent to grant the requested relief, it is appropriate for the moving
3 party to file a motion - to which the District Court's certification of its intent to grant relief is
4 attached – with this Court seeking remand to the District Court for entry of an order granting the
5 requested relief. *See Foster*, 126 Nev. at 55, 228 P.3d at 455-56 citing *Mack-Manley*, 122 Nev.
6 at 855-56, 138 P.3d at 530 and *Huneycutt*, 94 Nev. At 81, 575 P.2d at 586.

7 Here, a timely appeal and cross-appeal were filed. After the release of the *Jessup 2*
8 decision, the parties conferred and determined that the intervening change in the law upon which
9 the Order appealed from was based warrants the remand of this matter. After considering the
10 parties' stipulation, the District Court certified its intent to vacate the Order appealed from. The
11 Certification was filed in the District Court on August 18, 2020. *See Exhibit 1.*

12 The parties recognize that it is within this Court's discretion to grant the instant Motion
13 for Remand. In the interest of judicial economy, and for the reasons expressed in the District
14 Court's Certification, the parties respectfully request that this Court exercise that discretion and
15 remand this matter back to the District Court so that the District Court may vacate its Order
16 Granting Summary Judgment and the case may move forward and be decided based upon the law
17 as it currently stands.

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CONCLUSION

This case is appropriate for remand based on *Huneycutt v. Huneycutt* and *Foster v. Dingwall*, *supra*, because the District Court has certified its intent to vacate the Order appealed from. Accordingly, the parties hereto respectfully request that this Court remand the matter for further proceedings. The parties further request that the briefing schedule herein be suspended until this Court rules on this Motion, as further briefing will be unnecessary if the Court remands the case.

DATED this 25th day of August, 2020.

ROGER P. CROTEAU &
ASSOCIATES, LTD.

MAURICE WOOD

/s/ Timothy E. Rhoda
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formerly known as FCH Funding, Inc.

LAW OFFICES OF KEVIN R. HANSEN

AKERMAN, LLP

/s/ Amy M. Wilson
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EZ Properties, LLC and K&L Baxter
Family Partnership

/s/ Lilith V. Xara
LILITH V. XARA, ESQ.
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Las Vegas, Nevada 89134
Attorney for Defendants
Bank of America, N.A. and Recontrust
Company

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of ROGER P. CROTEAU & ASSOCIATES, LTD.
and that on the 25th day of August, 2020, I caused a true and correct copy of the
foregoing document to be served on all parties as follows:

X VIA ELECTRONIC SERVICE: through the Nevada Supreme Court's efile and
serve system.

 VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with
postage thereon fully prepaid, addressed as indicated on service list below in the United
States mail at Las Vegas, Nevada.

 VIA FACSIMILE: by causing a true copy thereof to be telecopied to the number indicated
on the service list below.

 VIA PERSONAL DELIVERY: by causing a true copy hereof to be hand delivered on this
date to the addressee(s) at the address(es) set forth on the service list below.

/s/ Timothy E. Rhoda
An employee of ROGER P. CROTEAU &
ASSOCIATES, LTD.

EXHIBIT 1

EXHIBIT 1

CERT
ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
TIMOTHY E. RHODA, ESQ.
Nevada Bar No. 7878
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croteaulaw@croteaulaw.com
Attorney for Plaintiff
LAS VEGAS DEVELOPMENT GROUP, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS DEVELOPMENT GROUP, LLC,)
a Nevada limited liability company,)
Plaintiff,)
vs.)
JAMES R. BLAHA, an individual; BANK OF)
AMERICA, NA, a National Banking)
Association, as successor by merger to BAC)
HOME LOANS SERVICING, LP;)
RECONTRUST COMPANY NA, a Texas)
corporation; JOSE PEREZ, JR. an individual;)
EZ PROPERTIES, LLC, a Nevada limited)
liability company; K&L BAXTER FAMILY)
LIMITED PARTNERSHIP, a Nevada limited)
partnership; FCH FUNDING, INC, an unknown)
corporate entity; DOE individuals I through)
XX; and ROE CORPORATIONS I through)
XX,)
Defendants.)

Case No. A-15-715532-C
Dept. No. XXX

CERTIFICATION OF INTENT TO VACATE

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

The court, upon the joint request of the parties hereto, has reviewed and considered the papers on file herein, pursuant to NRCP 60 and its inherent power to manage litigation, finds as follows:

- 1 1. On or about May 24, 2019, this Court entered an Order Granting Summary
2 Judgment in favor of the Defendants herein.
- 3 2. The primary basis for the Order Granting Summary Judgment was the Nevada
4 Supreme Court's prior decision in the matter of *Bank of Am., N.A. v. Thomas*
5 *Jessup, LLC Series VII*, 135 Nev. 42, 435 P.3d 1217 (2019) ("*Jessup 1*").
- 6 3. Plaintiff, Las Vegas Development Group, LLC, appealed the Order granting
7 Summary Judgment on June 18, 2019. Defendants, James R. Blaha and Noble
8 Home Loans, Inc. f/k/a FCH Funding, Inc., filed a Notice of Cross Appeal on July
9 2, 2019.
- 10 4. The appeal and cross-appeal divested this Court of jurisdiction unless remanded
11 pursuant to *Huneycutt v. Huneycutt*, 94 Nev. 79, 575 P.2d 585 (1978),
12 disapproved on other grounds by *Foster v. Dingwall*, 126 Nev. ____, 228 P.3d
13 453 (2010).
- 14 5. On May 7, 2020, the Nevada Supreme Court issued an Order vacating its prior
15 Order in *Jessup 1* and replacing it with an Order Affirming in Part, Reversing in
16 Part and Remanding to the district court. *Bank of Am. v. Jessup*, No. 73785, 2020
17 Nev. Unpub. LEXIS 471 (May 7, 2020) ("*Jessup 2*"). Pursuant to *Jessup 2*, the
18 *en banc* Supreme Court wholly reversed the Panel's decision in *Jessup 1*.
- 19 6. Accordingly, the stated basis on which the Order granting Motion for Summary
20 Judgment herein was granted is no longer valid.

21 GOOD CAUSE APPEARING THEREFOR, this Court hereby certifies that if the case on
22 appeal is remanded to this Court, it would vacate its Order granting Summary Judgment dated on
23 or about May 24, 2019, and enter an Order directing that this matter move forward with the

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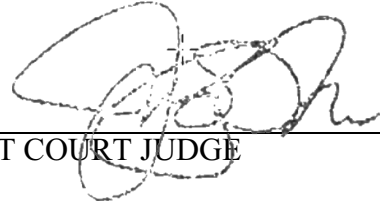
27 //

28 //

parties being granted leave to file new motions for summary judgment based upon the current state of the law and/or such other relief upon which the parties and the Court may agree.

DATED this _____ day of August, 2020.

Dated this 18th day of August, 2020



DISTRICT COURT JUDGE

Respectfully submitted by:

ROGER P. CROTEAU &
ASSOCIATES, LTD.

6EB A1D BCD4 AFAB
Jerry A. Wiese
District Court Judge

MAURICE WOOD

/s/ Timothy E. Rhoda
ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
TIMOTHY E. RHODA, ESQ.
Nevada Bar No. 7878
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Attorney for Plaintiff
Las Vegas Development Group, LLC

LAW OFFICES OF KEVIN R. HANSEN

/s/ Amy M. Wilson
KEVIN R. HANSEN, ESQ.
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EZ Properties, LLC and K&L Baxter
Family Partnership

/s/ Brittany Wood
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Nevada Bar No. 6412
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Attorney for Defendants
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AKERMAN, LLP

/s/ Lilith V. Xara
LILITH V. XARA, ESQ.
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Attorney for Defendants
Bank of America, N.A. and Recontrust
Company

Tim Rhoda

From: Amy Wilson <amy@kevinrhansen.com>
Sent: Monday, August 10, 2020 4:23 PM
To: Tim Rhoda; lilith.xara@akerman.com; bwood@mauricewood.com
Cc: Receptionist; ariel.stern@akerman.com; melanie.morgan@akerman.com; Kevin R. Hansen
Subject: RE: Las Vegas Development Group v. Blaha - No. 79055 - Perez

Tim,

On behalf of our clients EZ Properties, LLC and K&L Baxter Family Partnership I confirm my authorization for my E-signature on your proposed Certification of Intent to Vacate Order Granting Motion for Summary Judgment and Stipulation for Reconsideration and Certification.

Sincerely,

Amy M. Wilson, Esq.
Law Offices of Kevin R. Hansen
5440 W. Sahara Ave., Suite 206
Las Vegas, Nevada 89146
Phone: (702) 478-7777
Fax: (702) 728-2484
amy@kevinrhansen.com

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From: Tim Rhoda <tim@croteaulaw.com>
Sent: Monday, August 10, 2020 3:27 PM
To: lilith.xara@akerman.com; bwood@mauricewood.com
Cc: Amy Wilson <amy@kevinrhansen.com>; Receptionist <receptionist@croteaulaw.com>; ariel.stern@akerman.com; melanie.morgan@akerman.com
Subject: RE: Las Vegas Development Group v. Blaha - No. 79055 - Perez

All,

In follow-up to Lilith's last email, I have updated the attached documents with e-signatures and the current date. Would you each please respond to this email in turn, confirming authorization for your e-signatures in order to conform with the district court's COVID19 rules for submitting documents? Thank you.

Tim

Timothy E. Rhoda
Of Counsel

Roger P. Croteau & Associates, Ltd.
9120 West Post Road, Suite 100
Las Vegas, Nevada 89148
Telephone: (702) 254-7775
Facsimile: (702) 228-7719
tim@croteaulaw.com

IRS Circular 230 Notice:

To ensure compliance with requirements by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

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Tim Rhoda

From: Brittany Wood <bwood@mauricewood.com>
Sent: Monday, August 10, 2020 3:29 PM
To: Tim Rhoda; lilith.xara@akerman.com
Cc: amy@kevinrhansen.com; Receptionist; ariel.stern@akerman.com; melanie.morgan@akerman.com
Subject: RE: Las Vegas Development Group v. Blaha - No. 79055 - Perez
Attachments: image001.png

I consent to the use of my electronic signature.

Brittany Wood
Partner



9525 Hillwood Drive | Suite 140
Las Vegas, Nevada | 89134
Office: (702) 463-7616 | Fax: (702) 463-6224
bwood@mauricewood.com

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Sent: Monday, August 10, 2020 3:27 PM
To: lilith.xara@akerman.com; Brittany Wood <bwood@mauricewood.com>
Cc: amy@kevinrhansen.com; Receptionist <receptionist@croteaulaw.com>; ariel.stern@akerman.com; melanie.morgan@akerman.com
Subject: RE: Las Vegas Development Group v. Blaha - No. 79055 - Perez

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To: Tim Rhoda; bwood@mauricewood.com
Cc: amy@kevinrhansen.com; Receptionist; ariel.stern@akerman.com; melanie.morgan@akerman.com
Subject: RE: Las Vegas Development Group v. Blaha - No. 79055 - Perez

Hello Tim,

Approved.

Lilith V. Xara

Associate, Consumer Financial Services Practice Group

Akerman LLP | 1635 Village Center Circle, Suite 200 | Las Vegas, NV 89134

D: 702 634 5020 | T: 702 634 5000 | F: 702 380 8572

lilith.xara@akerman.com

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From: Tim Rhoda <tim@croteaulaw.com>
Sent: Monday, August 10, 2020 3:27 PM
To: Xara, Lilith (Assoc-Las) <lilith.xara@akerman.com>; bwood@mauricewood.com
Cc: amy@kevinrhansen.com; Receptionist <receptionist@croteaulaw.com>; Stern, Ariel (Ptnr-Las) <ariel.stern@akerman.com>; Morgan, Melanie (Ptnr-Las) <melanie.morgan@akerman.com>
Subject: RE: Las Vegas Development Group v. Blaha - No. 79055 - Perez

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Timothy E. Rhoda

Of Counsel

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To ensure compliance with requirements by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Las Vegas Development Group
LLC, Plaintiff(s)

CASE NO: A-15-715532-C

7 vs.

DEPT. NO. Department 30

8
9 James Blaha, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Certificate was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 8/18/2020

15 "Aaron R. Maurice, Esq." .

amaurice@klnevada.com

16 "Amy M. Wilson, Esq" .

amy@kevinrhansen.com

17 "Darren T. Brenner, Esq." .

darren.brenner@akerman.com

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