

**IN THE SUPREME COURT OF THE STATE OF NEVADA
GENERAL INFORMATION**

INDICATE FULL CAPTION:

VINCENT HESSER, an individual

No. 81318

Electronically Filed
Aug 19 2020 10:56 p.m.

**DOCKETING STATEMENT
CIVIL APPEALS**

Elizabeth A. Brown
Clerk of Supreme Court

Appellant

vs.

KENNEDY FUNDING, INC.

Respondent

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

Revised December 2015

1. Eighth Judicial District

Department 11

County Clark

Judge Hon. Elizabeth Gonzalez

District Ct. Case No. . A-09-582746-B_____

2. Attorney filing this docketing statement:

Attorney Byron E. Thomas

Telephone 702 747-3103

Firm Law Offices of Byron Thomas.

Address: 3275 S. Jones Blvd., ste 104, Las Vegas Nevada, 89146

Client(s): Vincent Hesser

LAW OFFICES OF BYRON THOMAS: JO & MIKE PROPERTIES, LLC

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Michael F. Lynch Esq.

Telephone 702.413.8282

Firm Lynch Law Practice, PLLC

Address 3613 S. Eastern Ave., Las Vegas, NV 89169-3344

Client(s) Kennedy Funding, Inc.

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all

- ☐ Judgment after bench trial
☐ Judgment after jury verdict
☒ Summary judgment
☐ Default judgment
☐ Grant/Denial of NRCP 60(b) relief
☐ Grant/Denial of injunction
☐ Grant/Denial of declaratory relief
☐ Review of agency determination

that apply):

- ☐ Dismissal:
☐ Lack of jurisdiction
☐ Failure to state claim
☐ Failure to prosecute
☐ Other (specify): _____
☐ Divorce Decree:
☐ Original ☐ Modification
☐ Other disposition (specify): _____

5. Does this appeal raise issues concerning any of the following? No

- ☐ Child Custody
☐ Venue
☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

ONECAP PARTNERS MM, INC. VS. KENNEDY FUNDING, INC. Docket No. 55654

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal {e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None

8. Nature of the action. Briefly describe the nature of the action and the result below:

Whether the Respondents Judgment was improperly renewed and thus expired.

9. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None that Appellant counsel is aware of.

10. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

N/A

☐ Yes

☐ No

If not, explain:

11. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: .

12. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

Appellant believes this matter should be presumptively retained by the Supreme Court pursuant to NRAP 17(a)(142). It involves the proper renewal of judgment. This issue is likely to appear repeatedly throughout the State..

13. Trial. If this action proceeded to trial, how many days did the trial last? It did not proceed to

trial.

Was it a bench or jury trial? N/A _____

14. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

Appellant's counsel does not intend to file a motion to disqualify or have a justice recuse him/herself at this time.

15. TIMELINESS OF NOTICE OF APPEAL

Date of entry of written judgment or order appealed from December 3, 2019

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

16. Date written notice of entry of judgment or order was served December 3, 2019

Was service by:

☐ Delivery

☒ Mail/electronic/fax

17. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59).

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

NRCP 50(b) Date of filing _____

NRCP 52(b) Date of filing _____

NRCP 59 Date of filing December 27, 2019

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. _____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion May 21, 2020

(c) Date written notice of entry of order resolving tolling motion was served May 21, 2020

Was service by:

☐ Delivery

XMail/electronic/fa

x

19. Date notice of appeal filed June 29, 2020

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

None

.

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)(1).

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

X NRAP 3A(b)(1) ___ NRS 38.205

___ NRAP 3A(b)(2) ___ NRS 233B.150

___ NRAP 3A(b)(3) ___ NRS 703.376

___ Other (specify)

(a) Explain how each authority provides a basis for appeal from the judgment or order:

The Court's order concerning renewal of judgment disposed of all issues as to all parties, including post judgment relief. .

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Onecap Partners MM

Kennedy Funding Inc.

Vincent Hesser

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

Onecap Partners MM participated in the first appeal, but did not challenge the judgment against it after appeal was denied

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Respondent alleged breach of contract November 4, 2009.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review

(e.g., order is independently appealable under NRAP 3A(b)):

The order is independently appealed under NRAP 3A(b)(1)

27. Attach file-stamped copies of the following documents:

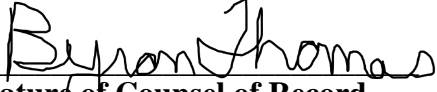
- **The latest-filed complaint, counterclaims, cross-claims, and third-party claims**
- **Any tolling motion(s) and order(s) resolving tolling motion(s)**
- **Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, crossclaims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal**
- **Any other order challenged on appeal**
- **Notices of entry for each attached order**

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Vincent Hesser
Appellant

Byron E. Thomas
Name of counsel of Record


Signature of Counsel of Record

August 17, 2020

Clark County Nevada
State and County Where Signed

EXHIBIT “1” TO DOCKETING STATEMENT

glon,

ORIGINAL

FILED

FEB 13 3 06 PM '09

Ed [Signature]
CLERK OF THE COURT

COMP
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Attorneys for Kennedy Funding, Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

KENNEDY FUNDING, INC., a New Jersey
corporation,

Plaintiff,

v.

ONECAP PARTNERS MM, INC, a Nevada
corporation; VINCENT W. HESSER, an
individual; DOE INDIVIDUALS I through X;
and ROE CORPORATIONS I through X,

Defendants.

Case No.:
Dept. No.:

A582746
XI

COMPLAINT

BUSINESS COURT REQUESTED

(Arbitration Exemption Requested:
Damages Exceed \$50,000)

COMES NOW, Kennedy Funding, Inc., a New Jersey corporation ("Plaintiff" or
"Kennedy Funding"), by and through its undersigned counsel, and hereby submits the following
Complaint against Defendants and states and alleges as follows:

PARTIES

1. Kennedy Funding is a New Jersey corporation conducting business in the State of
Nevada.

2. Vincent W. Hesser ("Hesser" or "Guarantor") is, and at all relevant times was, an
individual residing in Las Vegas, Clark County, Nevada, and a Guarantor of the underlying Loan
of OneCap Partners 2, LLC, a Nevada limited liability company, also known as Nevada Ueno
Mita, LLC (alternatively "OneCap", "Nevada Ueno" or "Borrower"). At the time of the
transaction between OneCap and Kennedy Funding, Hesser was the President of OneCap.

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

SDS

RECEIVED
FEB 13 2009
CLERK OF THE COURT

3. OneCap Partners MM, Inc. ("OneCap Partners MM, Inc." or "Guarantor") is, and at all relevant times was, a Nevada corporation doing business in Las Vegas, Clark County, Nevada, and a Guarantor of the underlying Loan of OneCap. At the time of the transaction between OneCap and Kennedy Funding, OneCap Partners MM, Inc. held a 1% interest in the OneCap.

4. The true names and capacities, whether individual, corporate, associate, or otherwise of Defendants herein designated as Does I through X, inclusive, and Roe Corporations I through X, inclusive, are not known to Plaintiff at this time and are therefore named as fictitious defendants. Plaintiff will seek to amend this Complaint to allege the true names and capacities of Does I through X and Roe Corporations I through X when and as ascertained.

GENERAL ALLEGATIONS APPLICABLE TO ALL CLAIMS FOR RELIEF

5. Plaintiff incorporates by reference Paragraphs 1 through 4 of this Complaint as though fully set forth herein.

6. On June 15, 2006, OneCap and Kennedy Funding entered into a Loan and Security Agreement ("Loan Agreement"), pursuant to which Kennedy Funding made the Loan to OneCap to facilitate the purchase of the Property.

7. According the Paragraph 6(h) of the Loan Agreement, the members of OneCap at the time of the loan transaction were Ascendant Universal Fund I, LLC (25 Units), Namale Limited Partnership (74 Units) and OneCap Partners MM Inc. (1 Unit).

8. The Loan is evidenced by a Promissory Note dated June 15, 2006 in the original principal sum of Twelve Million and 00/100 Dollars (\$12,000,000.00) ("Note"), from Lender to Borrower.

9. Under the Note, OneCap promised to pay Kennedy Funding monthly installments of accrued interest only at a rate of Eleven and One Half (11 ½ %) percent per annum, to accrue from July 1, 2006 through June 1, 2007, to be paid monthly on the last day of the month prior to when the interest is due.

10. Under the Note, OneCap promised to pay Kennedy Funding monthly installments of accrued interest only at a rate of Eighteen (18%) percent per annum, to accrue from July 1,

2007 through the Maturity Date, to be paid monthly commencing August 1, 2007, and continuing on the first day of each month thereafter until the Maturity Date.

11. Pursuant to the Note, OneCap agreed to pay all principal, interest and other sums due under the Note in full on the Maturity Date. Pursuant to extensions and amendments to the Loan Documents, the Maturity Date is June 30, 2009 (the "Maturity Date").

12. In the event of a late payment under the Note, OneCap agreed to pay a late charge equal to ten percent (10%) of the overdue payment.

13. In the event of a default under the Note, OneCap agreed to pay a default rate of twenty-five percent (25.0%) per annum.

14. As further security for the Loan, Borrower executed and delivered to Lender that certain Deed of Trust with Security Agreement, Financing Statement for Fixture Filing and Assignment of Rents (the "Deed of Trust") against the Property dated June 15 2006, and recorded on June 15, 2006, with the Clark County Recorder's Office ("Recorder") as Instrument No. 20060615-0005324.

15. On June 15, 2006, Kennedy Funding, Gary Owen II, LLC ("Option Holder"), and OneCap executed that certain Subordination and Attornment Agreement ("Subordination Agreement") dated June 15, 2006. Under the Option Agreement, the Option Holder agreed to subordinate its limited option to purchase the Property for \$30,000,000 pursuant to that certain First Amended Purchase and Sale Agreement dated June 9, 2006, to Kennedy Funding's Deed of Trust.

16. As security for the Loan, Borrower executed and delivered to Lender that certain Assignment of Leases and Rents on the Property dated June 14, 2006, and recorded on June 15, 2006, with the Recorder as Instrument No. 20060615-0005325.

17. As additional security for the Loan, OneCap executed in favor of Kennedy Funding that certain Assignment of Licenses, Contracts, Plans, Specifications, Surveys, Drawings and Report ("Assignment of Licenses") dated June 15, 2006.

...

...

1 18. To further secure payment of the Note, on June 14, 2006, Vincent W. Hesser and
2 OneCap Partners MM, Inc. (the "Guarantors") executed personal unconditional guaranties of the
3 Note to Kennedy Funding (the "Guaranty").

4 19. OneCap granted a properly perfected security interest to Kennedy Funding by
5 way of that certain UCC-1 Financing Statement ("UCC-1") filed with the Recorder on June 15,
6 2006 as Instrument No. 20060615-0005326.

7 20. OneCap and the Guarantors executed an Environmental Indemnity Agreement in
8 favor of Kennedy Funding, under which they agreed to indemnify Kennedy Funding for
9 noncompliance of Environmental Laws, and reimburse Kennedy Funding for all reasonable costs
10 and expenses in the event OneCap failed to fully comply with Environmental Law.

11 **Defaults**

12 21. OneCap defaulted under the Loan and Deed of Trust, including, but not limited to,
13 OneCap's failure to make monthly installment payment under the Note in the amount of
14 \$250,000 due April 1, 2008.

15 22. OneCap is also in default for failure to timely pay its tax obligations relating to
16 the Property. State and County Taxes are outstanding for the fiscal period 2008 to 2009 in the
17 total amount of \$25,086.45 on the Property.

18 23. OneCap is also in default for the apparent unauthorized transfer of OneCap's
19 assets to Nevada Ueno Mita, LLC and/or name change from OneCap to Nevada Ueno Mita, LLC
20 ("Nevada Ueno Mita, LLC"), purportedly effectuated pursuant to an Amendment to the Articles
21 of Incorporation of OneCap.

22 24. As set forth in the Declaration of Default and Notice of Breach dated August 14,
23 2008, OneCap was in default for failure to make the April 1, 2008 installment.

24 25. In connection with OneCap's default under the Loan and Deed of Trust, the
25 Notice of Breach and Election to Sell Under Deed of Trust was recorded with the Clark County
26 Recorder's Office on August 20, 2008.

27 26. Kennedy Funding scheduled the foreclosure sale for December 29, 2008.

28 ...

Bankruptcy of Nevada Ueno Mita, LLC, formerly known as OneCap

27. On December 26, 2008 ("Petition Date"), three (3) days before the foreclosure sale, Nevada Ueno, formerly known as OneCap, filed a Chapter 11 Bankruptcy Petition in the United States Bankruptcy for the District of Nevada, Case No. BK-S-08-25487-BAM (the "Bankruptcy").

28. In accordance with the information provided in the Bankruptcy Petition, it appears that OneCap transferred its interest in the Property to Nevada Ueno. Specifically, the first page of the Bankruptcy Petition identifies the debtor as "NEVADA UENO MITA, LLL...FKA OneCap Partners 2, LLC". The Bankruptcy Petition includes Kennedy Funding in the list of creditors.

29. Under the Bankruptcy Petition, Nevada Ueno purports to hold a fee simple interest in the Property.

30. Under Sections 2.20(a) and (c) of the Deed of Trust, in the event of a transfer of the Property, the principle balance becomes due upon the sale of the Property. The Deed of Trust defines which actions constitute a "transfer" as follows:

(c) Any sale, assignment, lease, transfer, pledge, or other disposition, whether voluntary or involuntary, by operation of law or otherwise, of any partnership, membership or other ownership interest or shares of stock in the Trustor, shall be deemed to be a transfer of the Property for the purposes of this Section 2.20; provided, however, that Trustor shall be permitted to sell, assign or transfer any membership or other ownership interest in the Trustor if such sale, assignment or transfer does not change the control, management or majority ownership of Trustor.

31. Pursuant to the Deed of Trust, an event of default arises under Section 3.01 in the event OneCap transfers to a third party its beneficial interest in the Property or other collateral of Kennedy Funding.

32. As set forth on page 19, Section 10(e) of the Loan Agreement, the transfer of title to the collateral, among other things, constitutes an event of default under the following provision of the Loan Agreement:

...

...

10. Events of Default. The occurrence of any of the following shall constitute an Event of Default hereunder:

- (e) the sale, conveyance, assignment, transfer or other disposition or divestiture of Borrower's title to any of the Collateral, or the mortgage or other conveyance of a security interest in, or other encumbrance on any of the Collateral or any interest therein, whether voluntary or involuntary, except provided herein;

33. OneCap's apparent transfer of its interest in the Property to OneCap, including OneCap's title to the Property, is in direct violation of the provisions of the Loan Agreement and Deed of Trust.

34. On page 2 of the Guaranty, the Guarantors, Vincent W. Hesser and OneCap Partners MM, Inc., expressly waived the applicability of the one-action-rule for Kennedy Funding's efforts to commence an action on OneCap's obligations due and owing to Kennedy Funding under the Loan Documents:

Without limiting the generality of the foregoing, Guarantor expressly waives, to the fullest extent allowed by law, any and all rights and benefits provided to guarantors under Nevada Revised Statutes Section 40.430 through 40.495, inclusive, and Guarantor agrees that Lender shall be entitled to commence and maintain an action for the enforcement of this Guaranty separately and independently from any action to enforce Borrower's obligations under the Loan Documents, any action to foreclose the lien of the Deed of Trust, or any other action or proceeding to enforce the Lender's legal rights and remedies under the Loan Documents, all as authorized pursuant to Nevada Revised Statutes Section 40.495...

35. As of the date of the filing of this Complaint, One Cap is in default under the Loan and Deed of Trust.

36. As of February 12, 2009, a total of \$14,644,898.45 in principal, accrued interest and other charges are due and payable by OneCap to Kennedy Funding, and now the Guarantors. This outstanding balance is comprised of the following amounts:

- i. \$12,000,000.00, representing principal due under the Note;

...

- ii. \$2,600,000.00, representing interest accrued under the Note at the default rate as of April 1, 2008;
- iii. \$18,000.00, representing late charges accrued under the Note from October 2007;
- iv. \$24,142.95, representing a foreclosures costs and appraisal costs incurred as of February 12, 2009; and
- v. \$2,755.50, representing attorney's fees and costs.

37. The commencement of this action does not constitute the bringing of an "action" as contemplated by NRS 40.430(4)(a), because NRS 40.430(4)(i) expressly provides for the commencement of an action against a guarantor of an underlying debt upon the bankruptcy of the primary obligor. See NEV. REV. STAT. 40.430(4)(i).

38. Thus, given existing defaults under Loan, Note, First Deed of Trust (collectively, the "Loan Documents"), the Guaranties of the Guarantors, Vincent W. Hesser and OneCap Partners MM, Inc., and Nevada Ueno's, formerly OneCap, recent bankruptcy, Kennedy Funding is entitled to pursue the Guarantors for repayment of the outstanding loan.

FIRST CLAIM FOR RELIEF

(Breach of Contract – Against Vincent W. Hesser for Guaranty)

39. Plaintiff realleges and incorporates by this reference Paragraphs 1 through 38 of this Complaint with the same force and effect as though the allegations were specifically stated herein.

40. Pursuant to the Guaranty, Defendant Vincent W. Hesser agreed to fully, faithfully and unconditionally perform and pay all of the obligations of the Borrower OneCap to Plaintiff Kennedy Funding under the Loan Documents.

41. The Borrower, OneCap, defaulted under the Loan Documents.

42. Subsequent to default of the Borrower, OneCap, under the Loan Documents, Plaintiff Kennedy Funding made demand upon Defendant Vincent W. Hesser to honor his guaranty and fully and faithfully perform and pay all obligations, including, but not limited to, the outstanding balance due of the Borrower, OneCap, under the Loan Document.

43. To date, Defendant Vincent W. Hesser has failed and refused to honor his obligations under the Guaranty.

44. The Guaranty constitutes a valid and enforceable contract between Plaintiff and Defendant Vincent W. Hesser, the Guarantor.

45. Despite demand being made by Plaintiff for repayment, the Guarantor, Vincent W. Hesser, has breached the Guaranty by, among other things, failing to pay the Plaintiff amounts owed and payable under the Guaranty.

46. Plaintiff has been damaged by Vincent W. Hesser's breaches of the Guaranty in an amount in excess of \$10,000.00.

47. Plaintiff has been required to retain the services of counsel to prosecute this matter and, as such, Plaintiff is entitled to an award for their costs and attorney's fees incurred as a result.

SECOND CLAIM FOR RELIEF

(Breach of Contract – Against OneCap Partners MM, Inc. for Guaranty)

48. Plaintiff realleges and incorporates by this reference Paragraphs 1 through 47 of this Complaint with the same force and effect as though the allegations were specifically stated herein.

49. Pursuant to the Guaranty, Defendant OneCap Partners MM, Inc. agreed to fully, faithfully and unconditionally perform and pay all of the obligations of the Borrower OneCap to Plaintiff Kennedy Funding under the Loan Documents.

50. The Borrower, OneCap, defaulted under the Loan Documents.

51. Subsequent to default of the Borrower, OneCap, under the Loan Documents, Plaintiff Kennedy Funding made demand upon Defendant OneCap Partners MM, Inc. to honor its guaranty and fully and faithfully perform and pay all obligations, including, but not limited to, the outstanding balance due of the Borrower, OneCap, under the Loan Document.

52. To date, Defendant OneCap Partners MM, Inc. has failed and refused to honor its obligations under the Guaranty.

...

53. The Guaranty constitutes a valid and enforceable contract between Plaintiff and Defendant OneCap Partners MM, Inc., the Guarantor.

54. Despite demand being made by Plaintiff for repayment, the Guarantor, OneCap Partners MM, Inc., has breached the Guaranty by, among other things, failing to pay the Plaintiff amounts owed and payable under the Guaranty.

55. Plaintiff has been damaged by OneCap Partners MM, Inc.'s breaches of the Guaranty in an amount in excess of \$10,000.00.

56. Plaintiff has been required to retain the services of counsel to prosecute this matter and, as such, Plaintiff is entitled to an award for their costs and attorney's fees incurred as a result.

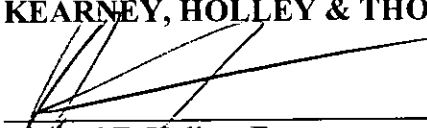
DEMAND

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. With respect to the First Claim of Relief (Breach of Contract – Against Vincent W. Hesser for Guaranty), judgment in an amount in excess of \$10,000.00;
2. With respect to the Second Claim of Relief (Breach of Contract – Against OneCap Partners MM, Inc. for Guaranty), judgment in an amount in excess of \$10,000.00;
3. For attorney's fees and costs incurred by Plaintiffs in enforcing it rights under the Note and Guaranty, including but not limited to, attorney's fees and costs incurred in bringing this action; and
4. For such other and further relief as the Court may deem just and proper.

DATED this 13th day of February, 2009.

**SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON**


Richard F. Holley, Esq.
Nevada Bar No. 3077
Ogenna M. Atamoh, Esq.
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Las Vegas, Nevada 89101
Attorneys for Plaintiff Kennedy Funding, Inc.

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KEARNEY, HOLLEY & THOMPSON

STW

1 **ORDR**

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12 *Attorneys for Kennedy Funding, Inc.*

FILED

NOV - 4 2009

John A. Hoffman
CLERK OF COURT

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 KENNEDY FUNDING, INC., a New Jersey
16 corporation,

17 Plaintiff,

18 v.

19 ONECAP PARTNERS MM, INC, a Nevada
20 corporation; VINCENT W. HESSER, an
21 individual; DOE INDIVIDUALS I through X;
22 and ROE CORPORATIONS I through X,

23 Defendants.

Case No.: A582746
Dept. No.: XI

24 **ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

25 Plaintiff KENNEDY FUNDING, INC.'s, ("Plaintiff") Motion for Summary Judgment
26 ("Motion for Summary Judgment"), having come on for hearing on October 27, 2009, at 9:00
27 a.m. Harold P. Gewerter, Esq. of the law firm Harold P. Gewerter, Esq., Ltd., appeared on
28 behalf of Defendants ONECAP PARTNERS MM, INC. ("Onecap") and VINCENT W.
HESSER ("Defendants"), and Ogonna M. Atamoh, Esq. of the law firm of Santoro, Driggs,
Walch, Kearney, Holley & Thompson appeared on behalf of Plaintiff, with no other appearances
having been made. The Court having heard the argument of counsel and having reviewed and
examined the papers, pleadings and records on file in the above-entitled matter, including
Plaintiff's Motion for Summary Judgment and the supporting Affidavit of Kevin Wolfer, filed

1 September 22, 2009, Defendants' Opposition to Motion for Summary Judgment, filed on or
2 about October 6, 2009, and Plaintiff's Reply in Support of the Motion for Summary Judgment,
3 filed October 20, 2009, and good cause appearing therefore;

4 Pursuant to the findings of fact and conclusions of law placed on the record at the hearing
5 and incorporated herein pursuant to Rule 52 of the Nevada Rules of Civil Procedure, and good
6 cause appearing, this Court enters summary judgment against Defendants and rules as follows:

7 **FINDINGS OF UNDISPUTED FACTS**

8 1. The Court makes these findings of fact by construing the pleadings and proof in
9 the light most favorable to the non-moving party, drawing all reasonable inference in their favor.

10 2. There is no genuine issue of material fact that there was a binding contract
11 between Plaintiff Kennedy Funding, Inc. and OneCap Partners 2, LLC ("OneCap Partners"),
12 entitled the "Loan and Security Agreement" (the "Loan Agreement") dated June 15, 2006, for
13 OneCap Partners' purchase of unimproved real property consisting of 78.74+ acres of raw land
14 located along Casino Drive and the Colorado River in Laughlin, Nevada 89029, Clark County
15 Assessor Parcel Numbers 264-25-101-001 and 264-25-201-001 (the "Property") for a purchase
16 price of TWELVE MILLION DOLLARS (\$12,000,000.00).

17 3. There is no genuine issue of material fact that the Loan Agreement is evidenced
18 by a Promissory Note dated June 15, 2006, in the amount of \$12,000,000.00, made by OneCap
19 Partners payable to Kennedy Funding as agent of the Lenders.

20 4. There is no genuine issue of material fact that OneCap Partners executed and
21 delivered to Kennedy Funding a Deed of Trust with Security Agreement, Financing Statement
22 for Fixture Filing and Assignment of Rents ("Deed of Trust") against the Property, which was
23 recorded on June 15, 2006, with the Clark County Recorder's Office as Instrument No.
24 20060615-0005324.

25 5. There is no genuine issue of material fact that Kennedy Funding, Gary Owen II,
26 LLC ("Option Holder") and OneCap Partners executed a Subordination and Attornment
27 Agreement ("Subordination Agreement") in which the Option Holder agreed to subordinate its
28 limited option to purchase the Property to Kennedy Funding's Deed of Trust.

1 6. There is no genuine issue of material fact that as additional security for the loan,
2 OneCap Partners executed and delivered to Kennedy Funding, an Assignment of Leases and
3 Rents dated June 14, 2006 and recorded June 15, 2006, with the Clark County Recorder's Office
4 as Instrument No. 20060615-0005325, and an Assignment of Licenses, Contracts, Plans,
5 Specifications, Surveys, Drawings and Report dated June 15, 2006 (Assignment of Licenses").

6 7. There is no genuine issue of material fact that to further secure payment of the
7 Note, on June 14, 2006, Defendant Vincent Hesser ("Hesser") and Defendant OneCap Partners
8 MM, Inc. ("OneCap Partners MM") ("collectively "Defendants") executed personal
9 unconditional guaranties of the loan to Kennedy Funding.

10 8. There is no genuine issue of material fact that at the time of the transaction
11 between OneCap Partners, Hesser was the President of OneCap Partners and OneCap Partners
12 MM.

13 9. There is no genuine issue of material fact that OneCap Partners also granted a
14 properly perfected security interest to Kennedy Funding by way of a UCC-1 Financing
15 Statement filed with the Clark County Recorder's Office on June 15, 2006 as Instrument No.
16 20060615-0005326.

17 10. There is no genuine issue of material fact that OneCap Partners and Defendants
18 executed an Environmental Indemnity Agreement in favor of Kennedy Funding, under which
19 they agreed to indemnify Kennedy Funding for noncompliance of environmental laws.

20 11. There is no genuine issue of material fact that OneCap Partners defaulted under
21 the Note and Deed of Trust by failing to make its monthly installment payment of \$250,000.00.

22 12. There is no genuine issue of material fact that OneCap Partners is in default under
23 the Deed of Trust for failure to provide Kennedy Funding with current proof of liability
24 insurance and for failure to timely pay its tax obligations relating to the Property.

25 13. There is no genuine issue of material fact that OneCap Partners transferred its
26 interest in the Property to Nevada Ueno Mita, LLC ("Nevada Ueno"), and under the Deed of
27 Trust and Loan Agreement, OneCap Partner's transfer of the Property to Nevada Ueno was a
28 default.

SDW

1 14. Plaintiff's Motion for Summary Judgment was properly served on September 23,
2 2009, Defendants' Opposition to Plaintiff's Motion for Summary Judgment was properly served
3 on or about October 6, 2009, and Plaintiff's Reply in Support of Motion for Summary Judgment
4 was properly served on October 20, 2009.

5 CONCLUSIONS OF LAW

6 1. Nevada law requires that to show a breach of contract, one must show (1) the
7 existence of a valid contract, (2) a breach, and (3) damages as a result of the breach. See
8 Richardson v. Jones, 1 Nev. 405 (Nev. 1865); see also Saini v. Int'l Game Tech, 434 F.Supp.2d
9 913, 923 (D. Nev. 2006) (holding that "the failure to perform one's obligations within the
10 express terms of an agreement constitutes a literal breach of contract.").

11 2. In this case, the contract was clear and unambiguous, and Defendants breached
12 the contract entered into with Defendants OneCap Partners MM and Hesser.

13 3. The contract between Plaintiff and Defendants was valid, binding, and
14 enforceable.

15 4. Defendants breached the contract by failing to make the April 2008 payment, and
16 failing to make any payments since defaulting on the Note in satisfaction of the Loan
17 Agreement..

18 5. Defendants' conduct was a material breach of the contract and Plaintiff has been
19 damaged by said breaches.

20 ORDER GRANTING SUMMARY JUDGMENT

21 1. Based upon the foregoing, IT IS HEREBY ORDERED, ADJUDGED, AND
22 DECREED THAT Plaintiff's Motion for Summary Judgment is GRANTED as to liability only.

23 ...

24 ...

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28 ...

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

SDW

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2. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED THAT an evidentiary hearing will be scheduled to address the exact amount of damages to be assessed against Defendants and in favor of Plaintiff.

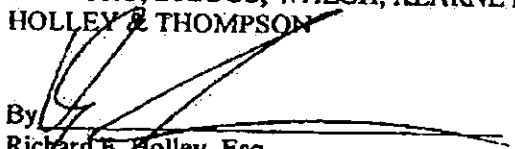
IT IS SO ORDERED.

Dated this 4 day of November, 2009.

ELIZABETH GOFF GONZALEZ
DISTRICT COURT JUDGE

Submitted by:

SANTORO, DRIGGS, WALCH, KEARNEY,
HOLLEY & THOMPSON

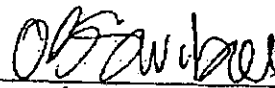
By 
Richard F. Holley, Esq.
Nevada Bar No. 3077
Ogonna M. Atamoh, Esq.
Nevada Bar No. 7589
400 S. Fourth Street, Third Floor
Las Vegas, NV 89101
Attorneys for Plaintiff

CERTIFICATE OF MAILING

I HEREBY CERTIFY that, on the 22nd day of February, 2010, and pursuant to NRC
5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **NOTICE**
OF ENTRY OF JUDGMENT, postage prepaid and addressed to:

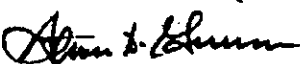
Harold P. Gewerter
Harold P. Gewerter, Esq., Ltd.
2705 Airport Drive
North Las Vegas, NV 89032

Attorneys for Defendants


An employee of Santoro, Driggs, Walch,
Kearney, Holley & Thompson

ORIGINAL

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02/18/2010 02:59:38 PM


CLERK OF THE COURT

1 **ORDR**
2 RICHARD F. HOLLEY, ESQ.
3 Nevada Bar No. 3077
4 OGONNA M. ATAMOH, ESQ.
5 Nevada Bar No. 7589
6 SANTORO, DRIGGS, WALCH,
7 KEARNEY, HOLLEY & THOMPSON
8 400 South Fourth Street, Third Floor
9 Las Vegas, Nevada 89101
10 Telephone: 702/791-0308
11 Facsimile: 702/791-1912

12 *Attorneys for Kennedy Funding, Inc.*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 KENNEDY FUNDING, INC., a New Jersey
16 corporation,

17 Plaintiff,

18 v.

19 ONECAP PARTNERS MM, INC, a Nevada
20 corporation; VINCENT W. HESSER, an
21 individual; DOE INDIVIDUALS I through X;
22 and ROE CORPORATIONS I through X,

23 Defendants.

Case No.: A582746
Dept. No.: XI

24 **ORDER AWARDING DAMAGES PURSUANT TO PLAINTIFF'S MOTION FOR**
25 **SUMMARY JUDGMENT**

26 Plaintiff KENNEDY FUNDING, INC.'s ("Plaintiff's") evidentiary hearing for damages
27 arising from Plaintiff's Motion for Summary Judgment ("Motion for Summary Judgment") came
28 before the Court on November 5, 2009, at 9:00 a.m. Harold P. Gewerter, Esq. of the law firm
Harold P. Gewerter, Esq., Ltd., appeared on behalf of Defendants ONECAP PARTNERS MM,
INC. ("Onecap") and VINCENT W. HESSER ("Hesser") (collectively "Defendants"), and
Ogonna M. Atamoh, Esq. of the law firm of Santoro, Driggs, Walch, Kearney, Holley &
Thompson appeared on behalf of Plaintiff, with no other appearances having been made.

1 Kim Vaccarella testified at the evidentiary hearing on behalf of Plaintiff regarding
2 Plaintiff's calculations of damages, and Defendants cross-examined Ms. Vaccarella. Matthew
3 Lubawy testified on behalf of Defendants and Plaintiff cross-examined Mr. Lubawy. During
4 oral argument at the hearing, Defendants raised for the first time the propriety of Plaintiff's
5 authorization to commence the above-captioned action on behalf of the Co-Lenders. At the
6 conclusion of the hearing, this Court ordered further briefing on the issue of Plaintiff's authority
7 to proceed on behalf of the Co-Lenders and ordered supplemental briefing on that issue to be
8 filed by Plaintiff no later than November 19, 2009, and any responsive pleading on that issue
9 from Defendants no later than December 3, 2009. This Court scheduled an in-chambers hearing
10 for December 4, 2009, to address the issue of Plaintiff's authority to proceed on behalf of the Co-
11 Lenders.

12 On November 19, 2009, Plaintiff filed the Supplemental Declaration of Kevin Wolfer in
13 support of its position that Plaintiff had authority to proceed on behalf of the Co-Lenders, and on
14 or about December 2, 2009, Defendants filed their Clarified Supplemental Damages Submission.

15 The Court having heard the argument of counsel and testimony of witnesses, and having
16 reviewed and examined the papers, pleadings and records on file in the above-entitled matter,
17 including Plaintiff's Motion for Summary Judgment and the supporting Affidavit of Kevin
18 Wolfer, filed September 22, 2009, Defendants' Opposition to Motion for Summary Judgment,
19 filed on or about October 6, 2009, Plaintiff's Reply in Support of the Motion for Summary
20 Judgment, filed October 20, 2009, the Affidavit of Ogonna M. Atamoh, Esq., filed November 3,
21 2009, the Declaration of Kim Vaccarella filed November 3, 2009, the memorandum of Costs and
22 Disbursements filed November 3, 2009, the Supplemental Declaration of Kevin Wolfer filed
23 November 19, 2009, and Defendants Clarified Supplemental Damages Submission filed on or
24 about December 2, 2009, and good cause appearing therefore;

25 Pursuant to the findings of fact and conclusions of law placed on the record at the
26 Evidentiary Hearing and incorporated herein pursuant to Rule 52 of the Nevada Rules of Civil
27 Procedure, and good cause appearing, and this Court having previously entered an Order
28

Granting Plaintiff's Motion for Summary Judgment as to liability only on November 4, 2009, this Court enters summary judgment against Defendants as to damages and rules as follows:

FINDINGS OF FACTS

1. The Court makes these findings of fact by construing the pleadings and proof in the light most favorable to the non-moving party, drawing all reasonable inference in their favor.

2. This order incorporates by reference the Findings of Undisputed Facts previously entered by this Court on November 4, 2009, pursuant to the Order Granting Motion for Summary Judgment in favor of Plaintiff.

3. There is no genuine issue of material fact that Plaintiff has the express authority to act on behalf of the Co-Lenders pursuant to the respective Co-Lenders Agreements as referenced in and submitted with the Supplemental Declaration of Ken Wolfer filed on November 19, 2009, and that Plaintiff has kept the Co-Lenders apprised of the status of the Borrower's bankruptcy case and the above-captioned Guarantor Action.

4. This order incorporates the Court's previous determination that the above-captioned action against the Defendants is not limited due to the inability of the lender to proceed with foreclosure as a result of the settlement in the bankruptcy proceeding with Debtor Nevada Ueno Mita, LLC ("Debtor in bankruptcy"), Bankruptcy Case No. 08-25487-BAM.

5. There is no genuine issue of material fact that the deficiency damages to be awarded to plaintiff consist of general damages in the amount of \$16,802,025.64, attorneys fees in the amount of \$39,755.00 and costs in the amount of \$2,131.45, for a total judgment in favor of Plaintiff and against Defendants in the amount of \$16,843,912.09.

CONCLUSIONS OF LAW

1. Plaintiff established the amount of damages due and owing from Defendants in the amount of \$16,802,025.64, attorneys fees in the amount of \$39,755.00 and costs in the amount of \$2,131.45, for a total amount of \$16,843,912.09.

2. Plaintiff has the express authority to act on behalf of the Co-Lenders pursuant to the Co-Lenders Agreement as referenced in the Supplemental Declaration of Ken Wolfer filed on November 19, 2009.

ORDER GRANTING SUMMARY JUDGMENT

1. Based upon the foregoing, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT Plaintiff's Motion for Summary Judgment is GRANTED in its entirety.

2. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED THAT Plaintiff is awarded monetary damages against Defendants and in favor of Plaintiff consisting of damages in the amount of \$16,802,025.64, attorneys fees in the amount of \$39,755.00 and costs in the amount of \$2,131.45, for a total judgment in favor of Plaintiff and against Defendants in the amount of \$16,843,912.09.

3. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED THAT in the event the Debtor in bankruptcy satisfies the indebtedness owing to Plaintiff, Plaintiff will cease its efforts to enforce the judgment against Defendants.

4. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED THAT Defendants' ability to make a claim against the Debtor in bankruptcy is not impeded as a result of the Defendants' satisfaction of the obligation to Plaintiff.

IT IS SO ORDERED.

Dated this 17 day of February, 2010.


DISTRICT COURT JUDGE

ZKC

Submitted by:

SANTORO, DRIGGS, WALCH, KEARNEY,
HOLLEY & THOMPSON

By 

Richard F. Holley, Esq.
Nevada Bar No. 3077

Ogonna M. Atamoh, Esq.
Nevada Bar No. 7589

400 S. Fourth Street, Third Floor
Las Vegas, NV 89101
Attorneys for Plaintiff

CERTIFICATE OF MAILING

I HEREBY CERTIFY that, on the 22nd day of February 2010, and pursuant to NRCP
5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **NOTICE**

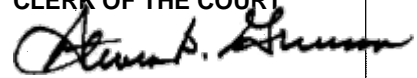
OF ENTRY OF ORDER, postage prepaid and addressed to:

Harold P. Gewerter
Harold P. Gewerter, Esq., Ltd.
2705 Airport Drive
North Las Vegas, NV 89032

Attorneys for Defendants



An employee of Santoro, Driggs, Walch,
Kearney, Holley & Thompson



NEOJ

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Telephone: 702/791-0308
Facsimile: 702/791-1912
Attorney for Kennedy Funding, Inc.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

KENNEDY FUNDING, INC., a New Jersey
corporation,

Plaintiff,

v.

ONECAP PARTNERS MM, INC, a Nevada
corporation; VINCENT W. HESSER, an
individual; DOE INDIVIDUALS I through X;
and ROE CORPORATIONS I through X,

Defendants.


Case No: A582746
Dept. No.: XI

**NOTICE OF ENTRY OF ORDER
DENYING DEFENDANT'S MOTION FOR
A COURT ORDER DECLARING
JUDGMENT EXPIRED**

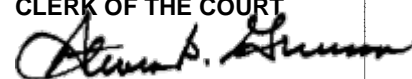
YOU, and each of you, will please take notice that an **Order Denying Defendant's Motion for a Court Order Declaring Judgment Expired** in the above-entitled matter was filed and entered by the Clerk of the above-entitled Court on the 3rd day of December 2019, a copy of which is attached hereto.

Dated this 3rd day of December 2019.

**HOLLEY DRIGGS WALCH
FINE PUZEY STEIN & THOMPSON**



Richard F. Holley, Esq. (Nevada Bar 3077)
F. Thomas Edwards, Esq. (Nevada Bar 9549)
Mary Langsner, Ph.D. (Nevada Bar 13707)
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Attorneys for Kennedy Funding, Inc.



ODM

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Facsimile: 702/791-1912

Attorneys for Kennedy Funding, Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

KENNEDY FUNDING, INC., a New Jersey
corporation,

Plaintiff,

v.

ONECAP PARTNERS MM, INC, a Nevada
corporation; VINCENT W. HESSER, an
individual; DOE INDIVIDUALS I through X;
and ROE CORPORATIONS I through X,

Defendants.

Case No.: 09A582746
Dept. No.: XI

Date of Hearing: November 15, 2019
Time of Hearing: Chambers

Judge: Hon. Elizabeth Gonzalez

**ORDER DENYING DEFENDANT'S MOTION FOR
A COURT ORDER DECLARING JUDGMENT EXPIRED**

The Motion for a Court Order Declaring Judgment Expired filed with the Court on August 27, 2019 ("Motion") filed by Defendant Vincent W. Hesser ("Defendant") came before the Court on November 15, 2019, in Chambers, and with Defendant having appeared in his moving papers through his counsel of record of the law firm A.M. Santos Law, Chtd., and with Plaintiff Kennedy Funding, Inc. ("Kennedy")¹ having appeared in its moving papers through its counsel of record,

¹ Together with Defendant, the "Parties".

12-02-19P03:09 RCVD

1 the law firm Holley Driggs Walch Fine Puzey Stein & Thompson. The Court, having reviewed
2 and considered the papers and pleadings on file in this Action (Eighth Judicial District Court Case
3 No. A-16-7362814-B) (the "Action"); and having read, reviewed, and considered the evidence and
4 argument presented by counsel to the Parties; and with good cause appearing:

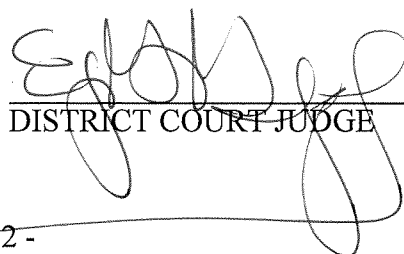
5 **THE COURT HEREBY FINDS** that Kennedy complied with the requirements for
6 renewal of the *Judgment Against OneCap Partners MM, Inc. and Vincent W. Hesser* (the
7 "Judgment"). All requisite steps to renew the Judgment, including filing, service, and recording,
8 were completed before the original underlying Judgment expired, and Defendant had actual notice
9 of the filing. Specifically: (1) On December 24, 2015, Kennedy complied with the timely filing
10 of the Affidavit For Renewal of Judgment Against Vincent W. Hesser (the "Judgment Renewal
11 Affidavit") during the ninety-day period preceding expiration of the original Judgment under NRS
12 17.214(1)(a); (2) Kennedy complied with the timely service requirements of NRS 17.214(b)(3)
13 because Defendant was served with the Judgment Renewal Affidavit via certified mail, return
14 receipt requested, on the same date that the document was filed with the Court; and (3) the
15 Judgment Renewal Affidavit and the Affidavit Pursuant to NRS 17.150 Regarding Movant
16 Vincent W. Hesser (signed under penalty of perjury by attorney Ogonna M. Brown, Esq.) were
17 together lodged with the Clark County Recorder and recorded in the Official Records of the Clark
18 County Recorder as Instrument No. 20160108-0000229, before the underlying original Judgment
19 expired.

20 **THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the
21 Motion is **DENIED**.

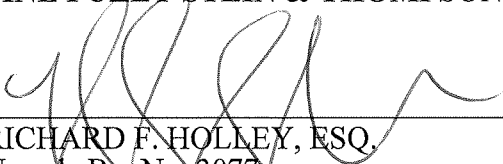
22 **IT IS FURTHER ORDERED** that the Judgment, as renewed, is **valid and enforceable**.

23 **IT IS SO ORDERED.**

24 Dated this 3 day of December, 2019.

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DISTRICT COURT JUDGE

Respectfully submitted by:
HOLLEY DRIGGS WALCH
FINE PUZEY STEIN & THOMPSON



RICHARD F. HOLLEY, ESQ.
Nevada Bar No. 3077
F. THOMAS EDWARDS, ESQ.
Nevada Bar No. 9549
MARY LANGSNER, Ph.D.
Nevada Bar No. 13707
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Attorneys for Plaintiff Kennedy Funding, Inc.

Approved as to form and content by:
A.M. SANTOS LAW, CHTD.

DID NOT RESPOND

ANTONY M. SANTOS, ESQ.
Nevada Bar No. 11265
3275 S. Jones Blvd. Suite 104
Las Vegas, Nevada 89146
Attorneys for Defendant Vincent W. Hesser

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Holley Driggs Walch Fine Puzey Stein & Thompson and that on the 3rd day of December 2019, and pursuant to NRCP 5(b) and NEFCR 9, I caused to be served electronically using the Court's electronic filing system the foregoing NOTICE OF ENTRY OF ORDER DENYING DEFENDANT'S MOTION FOR A COURT ORDER DECLARING JUDGMENT EXPIRED to all registered users on the above-captioned case in the Eighth Judicial District Court Electronic Filing System.

Parties:

Kennedy Funding, Inc. – Plaintiff

Vincent W. Hesser – Defendant and Judgment Debtor


Other Service Contacts:

Antony Santos . tony@amsantoslaw.com

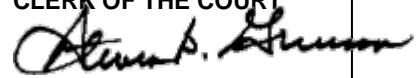
Melissa Burczyk . melissa@amsantoslaw.com

Timothy S. Cory . tim.cory@corylaw.us

A courtesy email attaching the foregoing was addressed to: ams@lawlvnv.com.



An employee of Holley Driggs Walch
Fine Puzey Stein & Thompson



1 Michael F. Lynch
Nevada Bar No. 8555
2 Lynch Law Practice, PLLC
3613 S. Eastern Ave.
3 Las Vegas, NV 89169
702.684.6000
4 Michael@LynchLawPractice.com
5 *Attorney for Kennedy Funding, Inc.*

6
7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 * * *

10 KENNEDY FUNDING, INC., a New Jersey
corporation,

11 Plaintiff,

12 v.

13 ONECAP PARTNERS MM, INC, a Nevada
corporation; VINCENT W. HESSER, an
14 individual; DOE INDIVIDUALS I through X;
15 and ROE CORPORATIONS I through X,

16 Defendants.

Case No.: 09A582746

Dept No.: XI

NOTICE OF ENTRY OF ORDER

17 **PLEASE TAKE NOTICE** that the Court has entered its Order Denying Defendant's Motion
18 to Amend, Alter, Modify (And/Or Reconsider) Order, a true, correct, and complete copy of which is
19 attached hereto.

20 DATED May 21, 2020.

21 LYNCH LAW PRACTICE, PLLC

22 /s/ Michael F. Lynch
Nevada Bar No. 8555
3613 S. Eastern Ave.
Las Vegas, NV 89169
702.684.6000
23 *Attorney for Kennedy Funding, Inc.*
24
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CERTIFICATE OF SERVICE

I hereby certify that on this day, the foregoing document was E-Filed and E-Served on all parties on the service list through the court’s electronic filing system.

I further certify that on this day, I mailed a copy of the foregoing document from Clark County, Nevada, via first class U.S. Mail postage fully prepaid, to the following party(ies) at the following address(es):

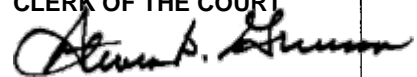
BYRON E. THOMAS. ESQ.
Law Offices of Byron Thomas
3275 S. Jones Blvd. Ste. 104
Las Vegas, Nevada 89146

ANTHONY M. SANTOS, ESQ.
AMSLC
3275 S. Jones Blvd. Ste. 104
Las Vegas, Nevada 89146

Attorneys for Vincent W. Hesser

Dated May 21, 2020.

/s/ Michael F. Lynch



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Nevada Bar No. 9549
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400 South Fourth Street, Third Floor
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Telephone: 702/791-0308
Facsimile: 702/791-1912

Attorneys for Kennedy Funding, Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

KENNEDY FUNDING, INC., a New Jersey
corporation,

Plaintiff,

v.

ONECAP PARTNERS MM, INC, a Nevada
corporation; VINCENT W. HESSER, an
individual; DOE INDIVIDUALS I through X;
and ROE CORPORATIONS I through X,

Defendants.

Case No.: 09A582746
Dept. No.: XI

Date of Hearing: December 27, 2019
Time of Hearing: Chambers

Judge: Hon. Elizabeth Gonzalez

**ORDER DENYING DEFENDANT'S MOTION TO AMEND, ALTER, MODIFY
(AND/OR RECONSIDER) ORDER**

The Motion to Amend, Alter, Modify (and/or Reconsider) Order filed with the Court on November 22, 2019 ("Motion") by Defendant judgment debtor Vincent W. Hesser ("Defendant") came before the Court on December 27, 2019, in Chambers, and with Defendant having appeared in his moving papers through his counsel of record of the law firm A.M. Santos Law, Chtd., and Plaintiff Kennedy Funding, Inc. ("Kennedy")¹ having appeared in its moving papers through its

¹ Together with Defendant, the "Parties".

counsel of record, the law firm Holley Driggs Walch Fine Puze Stein & Thompson. The Motion had challenged the Court's ruling embodied in an Order Denying Defendant's Motion for a Court Order Declaring Judgment Expired entered on December 3, 2019 ("Order"). The Court, having reviewed and considered the papers and pleadings on file in this Action (Eighth Judicial District Court Case No. A-16-7362814-B) (the "Action"); and having read, reviewed, and considered the evidence and argument presented by counsel to the Parties; and with good cause appearing:

THE COURT HEREBY FINDS that no new law or facts were presented by the Defendant which would convince the Court that a different ruling is appropriate, and therefore amendment, alteration, modification, or reconsideration of the Order are not warranted.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Motion is **DENIED**.

IT IS SO ORDERED.

Dated this 21st day of May, 2020.




 DISTRICT COURT JUDGE

Respectfully submitted by:
HOLLEY DRIGGS WALCH
FINE PUZEY STEIN & THOMPSON

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