

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
May 04 2021 05:39 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

VINCENT HESSER

Case No. 81383

Petitioner,

vs.

District Court

KENNEDY FUNDING, INC.

Case No. 09A582746

Respondent

APPEAL

From the Eighth Judicial District Court

Department XI

Clark County Nevada

HONORABLE ELIZABETH GONZALEZ

APPELLANT'S APPENDIX VOL IV

LAW OFFICES OF BYRON THOMAS

BYRON THOMAS, ESQ.

BAR NO: 8906

Attorney for

VINCENT HESSER

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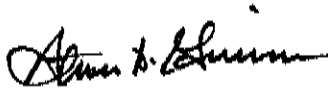
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CLERK OF THE COURT

1 **ARJ**
2 RICHARD F. HOLLEY, ESQ. (Nevada Bar No. 3077)
3 E-mail: rholley@nevadafirm.com
4 Ogonna M. Brown, ESQ. (Nevada Bar No. 7589)
5 E-mail: obrown@nevadafirm.com
6 HOLLEY DRIGGS WALCH
7 FINE WRAY PUZEY & THOMPSON
8 400 South Fourth Street, Third Floor
9 Las Vegas, Nevada 89101
10 Telephone: 702/791-0308
11 Facsimile: 702/791-1912
12 Attorney 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 **AFFIDAVIT FOR RENEWAL OF JUDGMENT AGAINST VINCENT W. HESSER**

25 STATE OF NEVADA)
26) ss.
27 COUNTY OF CLARK)

28 I, Ogonna M. Brown, Esq., hereby declare as follows:

1. I am over the age of 18 and mentally competent. Except where stated on information and belief, I have personal knowledge of the facts in this matter and if called upon to testify, could and would do so.

2. I am an attorney licensed to practice law in the State of Nevada and admitted to practice before this Court.

3. I am a shareholder with the law firm of Holley Driggs Walch Fine Wray Puzey & Thompson (the "Firm"), counsel of record for Kennedy Funding, Inc., a New Jersey corporation

1 ("Plaintiff" or "Judgment Creditor"). The Firm maintains offices at 400 South Fourth Street,
2 Third Floor, Las Vegas, Nevada 89101.

3 4. On or about February 18, 2010, a Judgment Against Onecap Partners MM, Inc.
4 and Vincent W. Hesser ("Judgment") was entered in the District Court of Clark County, Nevada,
5 in favor of the Plaintiff against Vincent W. Hesser ("Judgment Debtor") in the total amount of
6 amount of \$16,802,025.64, excluding attorney's fees and costs, consisting of the principle
7 balance of \$12,000,000.00 due under the Loan and Security Agreement, accruing interest as of
8 October 31, 2009 in the amount of \$4,768,000.00, foreclosure costs in the amount of \$19,024.50,
9 appraisal fees in total amount of \$9,500.00 (CBRE in the amount of \$7,500.00 and Vernon
10 Martin \$2,000.00), miscellaneous costs in the amount of \$5,501.14. Post-judgment interest
11 continues to accrue on the principal balance at a default rate of twenty-five percent (25%) per
12 annum, or \$8,333.33 per diem. Judgment Creditor is entitled to augment the Judgment for
13 additional attorneys' fees and costs in pursuing this litigation, a true and correct copy of the
14 Judgment is attached hereto as Exhibit "1".

15 5. On or about March 29, 2010, the Original Certified Notice of Entry of Judgment
16 against Onecap Partners MM, Inc. and Vincent W. Hesser was recorded with the Clark County
17 Recorders' Office as Instrument No. 201003290000871.

18 6. There are no outstanding writs of execution for enforcement of the judgment.

19 7. There have been no payments on the Judgment.

20 8. There are no setoffs or counterclaims in favor of the Judgment Debtor.

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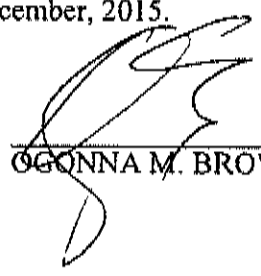
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9. As of December 24, 2015, the amount owing on the judgment is \$34,585,351.86.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated this 24th day of December, 2015.



OGONNA M. BROWN, ESQ.

STATE OF NEVADA
County of Clark

SIGNED AND SWORN to before me this
24th day of December, 2015,
by Ogonna M. Brown, Esq.

Evelyn M. Pastor
NOTARY SIGNATURE

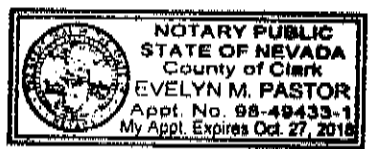


EXHIBIT “1”

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Inst #: 201003290000871
Fees: \$25.00
N/C Fee: \$0.00
03/29/2010 10:34:10 AM
Receipt #: 288468
Requestor:
SANTOTO DRIGGS ET AL
Recorded By: BGN Pgs: 13
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN# _____
11-digit Assessor's Parcel Number may be obtained at:
<http://redrock.co.clark.nv.us/assrrealprop/owner.aspx>

Notice of Entry of Judgment against Onecap Partners MM,
Inc. and Vincent W. Hesser

Type of Document
(Example: Declaration of Homestead, Quit Claim Deed, etc.)

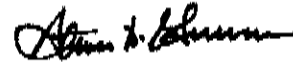
Recording Requested By:
Santoro Driggs Walch Kearney Holley & Thompson

Return Documents To:
Name Ogonna M. Atamoh, Esq.
Address 400 South Fourth Street, Third Floor
City/State/Zip Las Vegas, NV 89101

This page added to provide additional information required by NRS 111.312 Section 1-2

(An additional recording fee of \$1.00 will apply)

This cover page must be typed or printed clearly in black ink only.


CLERK OF THE COURT

1 **NEOJ**
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 *Attorney 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.**

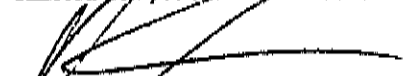
Case No: A582746
Dept. No.: XI

NOTICE OF ENTRY OF JUDGMENT

24 **YOU, and each of you, will please take notice that a JUDGMENT AGAINST ONECAP**
25 **PARTNERS MM, INC. AND VINCENT W. HESSER in the above-entitled matter was filed and**
26 **entered by the Clerk of the above-entitled Court on the 18th day of February, 2010, a copy of**
27 **which is attached hereto**

28 **Dated this 22nd day of February, 2010.**

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON


RICHARD F. HOLLEY, ESQ. (NVSB #3077)
OGONNA M. ATAMOH, ESQ. (NVSB #7589)
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Attorneys for Kennedy Funding, Inc.

ORIGINAL

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Adam L. Johnson
CLERK OF THE COURT

JUDGE
RICHARD F. HOLLEY, ESQ.
Nevada Bar No. 3077
OGONNA M. ATAMOH, ESQ.
Nevada Bar No. 7589
SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON
400 South Fourth Street, Third Floor
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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.: A582746
Dept. No.: XI

JUDGMENT AGAINST ONECAP PARTNERS MM, INC. AND VINCENT W. HESSER

This matter came before the Court on Plaintiff Kennedy Funding, Inc.'s ("Plaintiff") evidentiary hearing on damages arising from the Motion for Summary Judgment Against Defendants ONECAP PARTNERS MM, INC. ("Onecap") and VINCENT W. HESSER ("Defendants") (the "Motion"), filed with the Court on September 22, 2009, and came on for evidentiary hearing as to damages on November 5, 2009, at 9:30 a.m. before the Honorable Elizabeth Gonzalez.

The Court having read and considered the papers and pleadings on file herein and having heard the testimony of Kim Vaccarella, Controller for Plaintiff, and the testimony of Matthew Lubway, appraiser for Defendants, and consistent with the Order Granting Motion for Summary

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VH000674

1 Judgment as to liability entered November 4, 2009, against Defendants, attached hereto as
2 Exhibit "1", and the subsequent Order Awarding Damages Pursuant to Plaintiff's Motion for
3 Summary Judgment entered concurrently herewith, and the Court being fully advised, and good
4 cause appearing therefor,

5 IT IS HEREBY ORDERED, ADJUDGED and DECREED that Plaintiff shall recover
6 from DEFENDANTS ONECAP PARTNERS MM, INC. and VINCENT W. HESSER, jointly
7 and severally, the amount of \$16,802,025.64, excluding attorney's fees and costs, consisting of
8 the principle balance of \$12,000,000.00 due under the Loan and Security Agreement, accruing
9 interest as of October 31, 2009 in the amount of \$4,768,000.00, foreclosure costs in the amount
10 of \$19,024.50, appraisal fees in total amount of \$9,500.00 (CBRE in the amount of \$7,500.00
11 and Vernon Martin \$2,000.00), miscellaneous costs in the amount of \$5,501.14. Post-judgment
12 interest continues to accrue on the principal balance at a default rate of twenty-five percent
13 (25%) per annum, or \$8,333.33 per diem.

14 IT IS HEREBY ORDERED, ADJUDGED and DECREED that Plaintiff shall recover
15 from DEFENDANTS ONECAP PARTNERS MM, INC. and VINCENT W. HESSER attorney's
16 fees as of November 3, 2009 in the amount of \$39,755.00, and costs as of November 3, 2009 in
17 the amount of \$2,131.45 incurred by Santoro, Driggs, Walch, Kearney, Holley & Thompson.

18 IT IS FURTHER ORDERED that Plaintiff is entitled to recover post-judgment attorney's
19 fees and costs incurred in executing and enforcing the Judgment.

20 IT IS FURTHER ORDERED that Plaintiff is entitled to recover post-judgment interest
21 on the principal balance of \$16,802,025.64 at the rate of 25% per annum or \$8,333.33 per diem.

22 IT IS FURTHER ORDERED that to the extent the real property securing Plaintiff's Loan
23 is sold or refinanced and such proceeds are paid to Plaintiff, any such proceeds shall be deducted
24 from the judgment amount and accruing interest entered herein against DEFENDANTS
25 ONECAP PARTNERS MM, INC. and VINCENT W. HESSER in favor of Plaintiff.

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SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

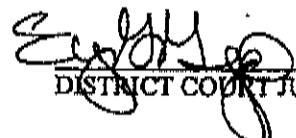


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IT IS FURTHER ORDERED that the Court expressly directs the entry of a final judgment, as there is no just reason for delay.

IT IS SO ORDERED.

Dated this 17 day of February 2010.


DISTRICT COURT JUDGE *ene*

Submitted by:

SANTORO, DRIGGS, WALCH, KEARNEY,
HOLLEY & THOMPSON

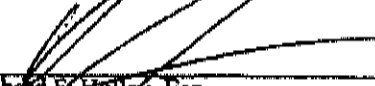
By 
Richard F. Holley, Esq.
Nevada Bar No. 3077
Ogonna M. Atamoh, Esq.
Nevada Bar No. 7589
400 S. Fourth Street, Third Floor
Las Vegas, NV 89101
Attorneys for Plaintiff

EXHIBIT “1”

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

SW

1 **ORDER**
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.*

FILED

NOV - 4 2009

John J. [Signature]
CLERK OF COURT

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

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff KENNEDY FUNDING, INC.'s, ("Plaintiff") Motion for Summary Judgment ("Motion for Summary Judgment"), having come on for hearing on October 27, 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 ("Defendants"), and Ogonna M. Atamoh, Esq. of the law firm of Santoro, Driggs, Watch, 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

00209-09/319467

VH000678

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.

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

SDV

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 ...
25 ...
26 ...
27 ...
28 ...

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

52118

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

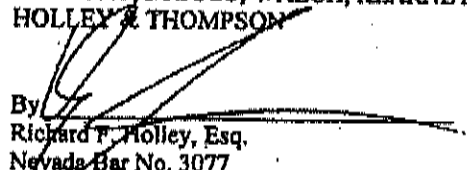
4 IT IS SO ORDERED.

5 Dated this 4 day of November, 2009.

6
7 ELIZABETH GOFF GONZALEZ
8 DISTRICT COURT JUDGE

9 Submitted by:

10 SANTORO, DRIGGS, WALCH, KEARNEY,
11 HOLLEY & THOMPSON

12 By 
13 Richard F. Holley, Esq.
14 Nevada Bar No. 3077
15 Ogonna M. Atamoh, Esq.
16 Nevada Bar No. 7589
17 400 S. Fourth Street, Third Floor
18 Las Vegas, NV 89101
19 Attorneys for Plaintiff
20
21
22
23
24
25
26
27
28

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 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

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE


CLERK OF THE COURT

3-24-2010

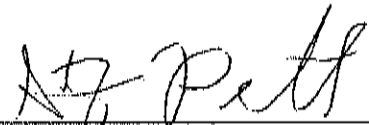
VH000684

CERTIFICATE OF MAILING

I HEREBY CERTIFY that, on the 24th day of December, 2015, pursuant to EDCR 8.05 and NRCP 5(b), I caused to be served electronically using the Court's E-Filing System, a true and correct copy of the AFFIDAVIT FOR RENEWAL OF JUDGMENT AGAINST VINCENT W. HESSER addressed to the parties below. Pursuant to EDCR 8.05(i) the date and time of the electronic service is in place of the date and place of deposit in the mail.

A.M. Santos Law, Chtd.
Antony Santos tony@amsantoslaw.com
Melissa Burczyk melissa@amsantoslaw.com
Attorneys for Defendant Vincent W. Hesser

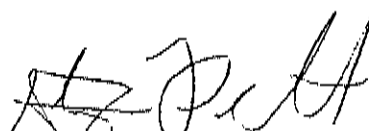
Timothy S. Cory & Associates
Timothy S. Cory tim.cory@corylaw.us
Attorney for Defendant Vincent W. Hesser


An employee of Holley Driggs Walch
Fine Wray Puzey & Thompson

I HEREBY CERTIFY that, on the 24th day of December, 2015 and pursuant to NRCP 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **AFFIDAVIT FOR RENEWAL OF JUDGMENT AGAINST VINCENT W. HESSER**, via (1) regular mail, first class postage prepaid, and, pursuant to NRS 17.214, (2) certified mail, return receipt requested, to the last known address as follows:

Vincent W. Hesser
6242 Coley Avenue
Las Vegas, Nevada 89146
Defendant

Vincent W. Hesser
3275 South Jones Boulevard, Suite 104
Las Vegas, Nevada 89146
Defendant


An employee of Holley Driggs Walch
Fine Wray Puzey & Thompson

Steven D. Grierson

1 **A.M. SANTOS LAW, CHTD.**
2 Antony M. Santos, Esq.
3 Nevada Bar No. 11265
4 3275 South Jones Blvd., Ste. 104
5 Las Vegas, Nevada 89146
6 Phone: (702) 560-2409
7 Facsimile: (702) 543-4855
8 ams@lawlvnv.com
9 Attorney for Vincent Hesser

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

11 ****

11 KENNEDY FUNDING, INC., a New
12 Jersey corporation.

13 Plaintiff,

14 vs.

15
16 ONECAP PARTNERS MM. INC. a Nevada
17 corporation; VINCENT W. HESSER, an
18 individual; DOE INDIVIDUALS I through
19 X; and ROE CORPORATIONS I through
20 X,

21 Defendants

Case No.: A582746

Dept. No.: XI

(Business Court)

22 **MOTION FOR A COURT ORDER
DECLARING JUDGMENT
EXPIRED**

23 Comes now, **DEFENDANT VINCENT HESSER**, by and through legal
24 counsel, AM Santos, Esq. and hereby files this Motion for (Partial) Summary
25 Judgment based upon the following points and authorities; the exhibits and
26 affidavits attached hereto, (and those pleadings, papers, exhibits, declarations and
27 affidavits as filed by with the Court together with any argument which the Court may
28 consider at any hearing as to this motion as may be scheduled by regular order.
29
30
31



1
2 **I. SUMMARY**

3 Plaintiff missed the deadline to renew its judgment. Therefore, by operation of
4 law, Plaintiff's judgment expired and the Court should find that the judgment is no
5 longer enforceable. Pursuant to NRS 11.190(1)(a), Plaintiff had six years within
6 which to enforce said judgment ("Judgment"). Moreover, pursuant to NRS 17.214,
7 Plaintiff had the ability to renew it. However, to renew the Judgment, Plaintiff had
8 to **strictly comply** with the straightforward requirements of NRS 17.214. Plaintiff
9 had to file an affidavit of judgment renewal within ninety days before the
10 Judgment's expiration, as well as record (and serve) the affidavit within three days
11 of the filing. Plaintiff failed to observe these last two requirements. Since there is no
12 grace period under NRS 17.214, Plaintiff's Judgment has expired and is void.
13 Defendant Hesser thus moves this Court for an order declaring same.
14
15
16

17 **II. FACTS**

18
19 1. Kennedy Funding is a New Jersey Corporation that is located and
20 headquartered in New Jersey.
21

22 2. On June 15, 2006, OneCap Partners 2, LLC (alternatively "Borrower"
23 or "OneCap") and Kennedy, as agent of the Kennedy Co-Lenders, entered into a
24 Loan and Security Agreement ("Loan Agreement"), pursuant to which Kennedy
25 made a \$12 million loan to OneCap to facilitate the purchase of unimproved real
26 property consisting of 78.74± acres of raw land .
27
28

29 3. The loan was evidenced by a Promissory Note dated June 15, 2006, in
30 the original principal sum of \$12 million ("Note"), made by OneCap to pay to the
31



1 order of Kennedy as agent of the lenders.
2

3 4. To further secure payment of the Note, on June 14, 2006, Hesser and
4 OneCap MM executed personal guaranties of the loan to Kennedy ("Guaranty"). At
5 the time of the transaction between OneCap and Kennedy, Hesser was the President
6 of OneCap and OneCap MM.
7
8

9 5. On April 1, 2008, OneCap defaulted under the Note and Deed of Trust.
10

11 6. On February 13, 2009, Kennedy filed a Complaint against Hesser for
12 breach of the Guaranty.
13

14 7. On September 22, 2009, Kennedy filed a Motion for Summary
15 Judgment against Defendants in the Guarantor Action.
16

17 8. On or around October 6, 2009, the Defendants filed an Opposition to
18 the Motion Summary Judgment (the "Opposition").
19

20 9. On November 4, 2009, the Court granted the Plaintiff's Motion for
21 Summary Judgment
22

23 10. Thereafter, on February 17, 2009, the Court entered Judgment against
24 each of the Defendants in the amount of \$16,802,025.64, excluding attorneys' fees
25 and costs which amount was to be determined (the "Judgment"). The Plaintiff
26 provided Defendants with notice of entry of judgment on February 23, 2010.
27
28

29 11. On February 18, 2010, the Court entered an Order Awarding Judgment
30 in favor of Plaintiff and against Defendants in the amount of \$18,843,912.09.
31



12. After the guarantee judgment was entered, a foreclosure sale went forward on June 17, 2010, and Kennedy credit bid against the Property. See Notice of Trustee's Sale dated May 25, 2010, recorded in Clark County Recorder's Office on May 27, 2010, as Instrument No. 20100527-0000200. E.R. Tab 9 at 00228-29; see also Trustee's Deed Upon Sale recorded July 16, 2010, recorded in the Clark County Recorder's Office as Instrument No. 2010716-0000364. E.R. Tab 10 at 00230-00234.

13. Plaintiff filed an Affidavit of Renewal of Judgment on December 24, 2015 to renew the judgment.

14. Plaintiff was required to record the Affidavit of Renewal of Judgment within a mandatory three (3) day deadline as set forth in NRS 17.214(1)(b). Plaintiff failed to do so and recorded it fifteen (15) days later on January 8, 2016 with the Clark County Recorder's Office as Instrument No. 20160108-000229. (See Exhibit "1").

15. Plaintiff was required to send the Affidavit of Renewal of Judgment by certified mail within a mandatory three (3) day deadline as set forth in NRS 17.214(3). Plaintiff attached a Certificate of Mailing that stated the Affidavit of Renewal of Judgment was sent to Defendant Hesser on December 24, 2015, but the last page of the Affidavit of Renewal of Judgment shows a signature and notary dated January 7, 2016 (well after the 3-day deadline).



1
2 **III. LAW**

3 Defendant Hesser seeks the extinguishment of said judgment and a public
4 recording of same. Over six (6) years expired on the statute for renewal of such
5 judgment and Plaintiff failed to observe the strict mandate of the judgment renewal
6 statute(s) (NRS 11.190(1)(a) and NRS 17.214)¹. Judgment was first entered
7 2/23/2010 mandating renewal by 2/23/2016.
8
9

10 NRS 17.214 mandates strict compliance of the following three requirements:
11

- 12 • The Affidavit of Renewal of Judgment must be filed with
13 the court within 90 days of expiration (with specific
14 terms and conditions).
- 15 • If the judgment is recorded, recording the affidavit of
16 renewal in the office of the county recorder in which the
17 original judgment is filed within 3 days after the
18 affidavit of renewal is filed.
- 19 • The affidavit of renewal needs to be sent by certified
20 mail, return receipt requested, to the judgment debtor
21 at his or her last known address within 3 days after filing
22 the affidavit.

23 The Nevada Supreme Court has addressed this timing issue specifically, in
24
25

26 ¹ In Nevada, judgments generally expire six years after the date of their entry. However,
27 NRS 17.214 allows for a judgment's renewal as long as there is strict compliance with the
28 statute. That is, under the express terms of NRS 17.214, to effectively renew a judgment, the
29 judgment creditor must first file an affidavit of judgment renewal within ninety days before the
30 judgment's expiration, as well as record (and serve) the affidavit within three days of the filing.
31 *Leven v. Frey*, 123 Nev. 399, 168 P.3d 712, (2007); *O'Lane v. Spinney*, 110 Nev. 496, 874P.2d
754 (1994). In *Leven*, while the judgment creditor timely filed the affidavit of judgment renewal,
the Nevada Supreme Court found that the judgment creditor failed to timely serve or
record the affidavit. The facts are analogous in the instant matter here before the court.
The Nevada Supreme Court concluded that a judgment creditor must strictly comply
with all of these conditions or the judgment is expired and cannot be renewed.



1 *Leven v. Frey*, 123 Nev. 399, 168 P.3d 712, (2007) (See also, *O'Lane v. Spinney* 110
2 Nev. 496, 874 P2d 754). The Supreme Court holds that the statutory timeframes for
3 judgment renewal are mandatory. The Leven Court determined that in Nevada:
4

- 5
- 6 • NRS 17.214's mandatory requirements of filing, recording, and
7 service of the affidavit are plainly set forth and must be strictly
8 followed for judgment renewal.
- 9 • Under the statute's express terms, a judgment may be renewed by
10 filing an affidavit with the district court within ninety days before
11 the judgment's expiration, recording the affidavit within three
12 days of filing, and serving the affidavit on the debtor within three
13 days of filing.
- 14 • NRS 17.214's timeframe requirements, are unambiguous and
15 **MUST** be strictly complied with.
- 16 • An action on a judgment or its renewal must be commenced
17 within six years under NRS 11.190(1)(a); thus a judgment expires
18 by limitation in six years. The requirement that an affidavit be
19 filed within ninety days of the expiration of this six-year period
20 provides a clear first step in the procedure for renewing
21 judgments.

22 *Leven*, 123 Nev. 399, 168 P.3d at 715.

23 Finally, it is important to note that the Nevada Supreme made clear its view that
24 17.214 timing requirements are unambiguous and exacting, taking care to point out
25 the the Court has ruled that *substantial compliance* with specific timing
26 requirements is NOT sufficient for renewal in the context of recording and service
27 under NRS 17.214. Since the statute includes no built-in grace period or safety valve
28 provision, its explicit and mandatory three-day language leaves no room for judicial
29 construction or "substantial compliance" analysis. (*Leven*, 718.)²
30

31 ² The Court found all three requirements of NRS 17.214, concerning filing, recording,
and serving the affidavit, clear and unambiguous, and must be strictly complied with.



1 As for the instant matter, Plaintiff Kennedy Funding filed an Affidavit of
2
3 Renewal on 12/24/2015. But, said filing was recorded on January 8, 2016 (15 days
4 after filing with the Court). This does not comport with the statute as recording
5 transpired 12 days too late. Moreover, Plaintiff stated the Affidavit of Renewal was
6 mailed on the same day as the court filing (12/24/15) but the attached last page of
7 the Affidavit is signed and notarized on 1/07/16 (14 days after the purported mailing
8 date). Although Plaintiff did file the Affidavit of Renewal within the time period
9 specified by NRS 17.214, Plaintiff failed to record (and serve) the Affidavit within the
10 required three (3) day deadline.
11
12

13 14 IV. CONCLUSION

15 For these reasons, Defendant Hesser now seeks to extinguish the Judgment.
16

17 Dated, this 14th day of August 2019
18

19 A.M. SANTOS LAW, CHTD.
20

21
22 Antony M. Santos, Esq.
23 Nevada Bar No. 11265
24 3275 S. Jones Blvd. Ste. 104
25 Las Vegas, Nevada 89146
26 Telephone: (702) 560-2409
27 Email: ams@amlawlvnv.com
28 Attorney for Vincent Hesser

29 As we have previously explained, "shall" is a mandatory term indicative of the
30 Legislature's intent that the statutory provision be compulsory, thus creating a duty
31 rather than conferring discretion. *Washoe Med. Ctr. v. Dist. Ct.*, 122 Nev. 1298, ___148
P.3d 790, 793 (2006).



1 **A.M. SANTOS LAW, CHTD.**
2 Antony M. Santos, Esq.
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5 Las Vegas, Nevada 89146
6 Phone: (702) 560-2409
7 Facsimile: (702) 543-4855
8 ams@lawlvnv.com
9 Attorney for Vincent Hesser

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 KENNEDY FUNDING, INC., a New
13 Jersey corporation.

14 Plaintiff,

15 vs.

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

21 Defendants

Case No.: A582746

Dept. No.: XI

(Business Court)

22 **DECLARATION OF**
23 **VINCENT HESSER**

24 **DECLARATION**

25 I, VINCENT HESSER, declare and state as follows:

26 1. I am over the age 18 and I have personal knowledge of the following facts and
27 circumstances relevant to the above captioned matter and the issue(s) before the above-
captioned court (the "Court").

28 2. If called upon to testify on any of these matters, I could and would competently
29 testify thereto.

30 3. Kennedy Funding is a New Jersey Corporation that is located and headquartered
31



1 in New Jersey.

2
3 4. On June 15, 2006, OneCap Partners 2, LLC (alternatively "Borrower" or
4 "OneCap") and Kennedy, as agent of the Kennedy Co-Lenders, entered into a Loan and
5 Security Agreement ("Loan Agreement"), pursuant to which Kennedy made a \$12
6 million loan to OneCap to facilitate the purchase of unimproved real property consisting
7 of 78.74± acres of raw land .

8 5. The loan was evidenced by a Promissory Note dated June 15, 2006, in the original
9 principal sum of \$12 million ("Note"), made by OneCap to pay to the order of Kennedy
10 as agent of the lenders.

11 6. To further secure payment of the Note, on June 14, 2006, Hesser and OneCap
12 MM executed personal guaranties of the loan to Kennedy ("Guaranty"). At the time of
13 the transaction between OneCap and Kennedy, Hesser was the President of OneCap
14 and OneCap MM.

15 7. On April 1, 2008, OneCap defaulted under the Note and Deed of Trust.

16 8. On February 13, 2009, Kennedy filed a Complaint against Hesser for breach of
17 the Guaranty.
18

19 9. On September 22, 2009, Kennedy filed a Motion for Summary Judgment against
20 Defendants in the Guarantor Action.

21 10. On or around October 6, 2009, the Defendants filed an Opposition to the Motion
22 Summary Judgment (the "Opposition").

23 11. On November 4, 2009, the Court granted the Plaintiff s Motion for Summary
24 Judgment

25 12. Thereafter, on February 17, 2009, the Court entered Judgment against each of
26 the Defendants in the amount of \$16,802,025.64, excluding attorneys' fees and costs
27 which amount was to be determined (the "Judgment"). The Plaintiff provided
28 Defendants with notice of entry of judgment on February 23, 2010.
29

30 13. On February 18, 2010, the Court entered an Order Awarding Judgment in favor
31 of Plaintiff and against Defendants in the amount of \$18,843,912.09.



1
2 14. After the guarantee judgment was entered, a foreclosure sale went forward on
3 June 17, 2010, and Kennedy credit bid against the Property. See Notice of Trustee's Sale
4 dated May 25, 2010, recorded in Clark County Recorder's Office on May 27, 2010, as
5 Instrument No. 20100527-0000200. E.R. Tab 9 at 00228-29; see also Trustee's Deed
6 Upon Sale recorded July 16, 2010, recorded in the Clark County Recorder's Office as
7 Instrument No. 2010716-0000364. E.R. Tab 10 at 00230-00234.

8 15. Plaintiff filed an Affidavit of Renewal of Judgment on December 24, 2015 to
9 renew the judgment.

10 16. Plaintiff was required to record the Affidavit of Renewal of Judgment within a
11 mandatory three (3) day deadline as set forth in NRS 17.214(1)(b). Plaintiff failed to do
12 so and recorded it fifteen (15) days later on January 8, 2016 with the Clark County
13 Recorder's Office as Instrument No. 20160108-000229. (See Exhibit "1").

14 17. Plaintiff was required to send the Affidavit of Renewal of Judgment by certified
15 mail within a mandatory three (3) day deadline as set forth in NRS 17.214(3). Plaintiff
16 attached a Certificate of Mailing that stated the Affidavit of Renewal of Judgment was
17 sent to Defendant Hesser on December 24, 2015, but the last page of the Affidavit of
18 Renewal of Judgment shows a signature and notary dated January 7, 2016 (well after
19 the 3-day deadline).
20

21 18. I declare the foregoing to be true and correct under penalty of perjury of the laws
22 of the state of Nevada.

23
24 Dated: August 14, 2019

25
26 By 

27 VINCENT HESSER
28
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EXHIBIT "1"



**Clark County Recorder's Office**

Modify Date:	1/26/2016
Record Date:	1/8/2016 8:01 AM
Number of Pages:	20
Book Type:	OR
Document Type:	(J) JUDGMENT
Modifier:	RENEW
1st Party	BROWN, OGONNA M
	ONECAP PARTNERS MM INC
	HESSER, VINCENT W
2nd Party	KENNEDY FUNDING INC

Inst #: 20160108-0000229

Fees: \$36.00

N/C Fee: \$0.00

01/08/2016 08:01:10 AM

Receipt #: 2662944

Requestor:

HOLLEY DRIGGS WALCH FINE WR

Recorded By: ANI Pgs: 20

DEBBIE CONWAY

CLARK COUNTY RECORDER

RECORDING COVER PAGE

(Must be typed or printed clearly in BLACK ink only
and avoid printing in the 1" margins of document)

APN# _____

(11 digit Assessor's Parcel Number may be obtained at:
<http://redrock.co.clark.nv.us/assrealprop/owner.aspx>)

TITLE OF DOCUMENT

(DO NOT Abbreviate)

Affidavit for Renewal of Judgment against Vincent W. Hesser

Document Title on cover page must appear EXACTLY as the first page of the document
to be recorded.

RECORDING REQUESTED BY:

Holley Driggs Walch Fine Wray Puzey & Thompson

RETURN TO: Name Ogonna M. Brown, Esq.

Address 400 S 4th Street, Third Floor

City/State/Zip Las Vegas, Nevada 89101

MAIL TAX STATEMENT TO: (Applicable to documents transferring real property)

Name _____

Address _____

City/State/Zip _____

This page provides additional information required by NRS 111.312 Sections 1-2.

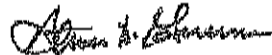
An additional recording fee of \$1.00 will apply.

To print this document properly, do not use page scaling.

Using this cover page does not exclude the document from assessing a noncompliance fee.

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VH000698


CLERK OF THE COURT

1 ARJ
2 RICHARD F. HOLLEY, ESQ. (Nevada Bar No. 3077)
3 E-mail: rholley@nevadafirm.com
4 OGONNA M. BROWN, ESQ. (Nevada Bar No. 7589)
5 E-mail: obrown@nevadafirm.com
6 HOLLEY DRIGGS WALCH
7 FINE WRAY PUZEY & THOMPSON
8 400 South Fourth Street, Third Floor
9 Las Vegas, Nevada 89101
10 Telephone: 702/791-0308
11 Facsimile: 702/791-1912
12 Attorney for Kennedy Funding, Inc.

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants.

Case No: A582746
Dept. No.: XI

AFFIDAVIT FOR RENEWAL OF JUDGMENT AGAINST VINCENT W. HESSER

18 STATE OF NEVADA

19 COUNTY OF CLARK

} ss.

20 I, Ogonna M. Brown, Esq., hereby declare as follows:

21 1. I am over the age of 18 and mentally competent. Except where stated on
22 information and belief, I have personal knowledge of the facts in this matter and if called upon to
23 testify, could and would do so.

24 2. I am an attorney licensed to practice law in the State of Nevada and admitted to
25 practice before this Court.

26 3. I am a shareholder with the law firm of Holley Driggs Walch Fine Wray Puzey &
27 Thompson (the "Firm"), counsel of record for Kennedy Funding, Inc., a New Jersey corporation
28

1 ("Plaintiff" or "Judgment Creditor"). The Firm maintains offices at 400 South Fourth Street,
2 Third Floor, Las Vegas, Nevada 89101.

3 4. On or about February 18, 2010, a Judgment Against Onecap Partners MM, Inc.
4 and Vincent W. Hesser ("Judgment") was entered in the District Court of Clark County, Nevada,
5 in favor of the Plaintiff against Vincent W. Hesser ("Judgment Debtor") in the total amount of
6 amount of \$16,802,025.64, excluding attorney's fees and costs, consisting of the principle
7 balance of \$12,000,000.00 due under the Loan and Security Agreement, accruing interest as of
8 October 31, 2009 in the amount of \$4,768,000.00, foreclosure costs in the amount of \$19,024.50,
9 appraisal fees in total amount of \$9,500.00 (CBRE in the amount of \$7,500.00 and Vernon
10 Martin \$2,000.00), miscellaneous costs in the amount of \$5,501.14. Post-judgment interest
11 continues to accrue on the principal balance at a default rate of twenty-five percent (25%) per
12 annum, or \$8,333.33 per diem. Judgment Creditor is entitled to augment the Judgment for
13 additional attorneys' fees and costs in pursuing this litigation, a true and correct copy of the
14 Judgment is attached hereto as Exhibit "1".

15 5. On or about March 29, 2010, the Original Certified Notice of Entry of Judgment
16 against Onecap Partners MM, Inc. and Vincent W. Hesser was recorded with the Clark County
17 Recorders' Office as Instrument No. 201003290000871.

- 18 6. There are no outstanding writs of execution for enforcement of the judgment.
19 7. There have been no payments on the Judgment.
20 8. There are no setoffs or counterclaims in favor of the Judgment Debtor.

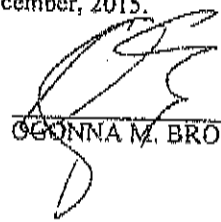
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9. As of December 24, 2015, the amount owing on the judgment is \$34,585,351.86.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated this 24th day of December, 2015.



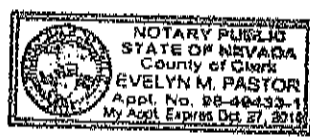
OGONNA M. BROWN, ESQ.

STATE OF NEVADA
County of Clark


SIGNED AND SWORN to before me this
24th day of December, 2015,
by Ogonna M. Brown, Esq.



NOTARY SIGNATURE



CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE


CLERK OF THE COURT

JAN - 6 2016

EXHIBIT "1"

13

Inst #: 201003290000871
Fee: \$25.00
N/C Fee: \$0.00
05/29/2010 10:34:10 AM
Receipt #: 258488
Requestor:
SANTOTO DRIGGS ET AL
Recorded By: BDN Pgs: 13
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN#

11-digit Assessor's Parcel Number may be obtained at:
<http://redrock.co.clark.nv.us/assrealprop/owner.aspx>

Notice of Entry of Judgment against Onecap Partners MM,
Inc. and Vincent W. Hesser

Type of Document

(Example: Declaration of Homestead, Quit Claim Deed, etc.)

Recording Requested By:

Santoro Driggs Walch Kearney Holley & Thompson

Return Documents To:

Name Ogonna M. Atamoh, Esq.

Address 400 South Fourth Street, Third Floor

City/State/Zip Las Vegas, NV 89101

This page added to provide additional information required by NRS 111.312 Section 1-2

(An additional recording fee of \$1.00 will apply)

This cover page must be typed or printed clearly in black ink only.

John A. Johnson
CLERK OF THE COURT

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON



1 NEOV
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 Attorney for Kennedy Funding, Inc.

DISTRICT COURT
CLARK COUNTY, NEVADA

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

12 Plaintiff,

13 v.

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

18 Defendants.

Case No: A582746
Dept. No.: XI

NOTICE OF ENTRY OF JUDGMENT

18 YOU, and each of you, will please take notice that a JUDGMENT AGAINST ONECAP
19 PARTNERS MM, INC. AND VINCENT W. HESSER in the above-entitled matter was filed and
20 entered by the Clerk of the above-entitled Court on the 18th day of February, 2010, a copy of
21 which is attached hereto

22 Dated this 22nd day of February, 2010.

23 SANTORO, DRIGGS, WALCH,
24 KEARNEY, HOLLEY & THOMPSON

25 *[Signature]*
26 RICHARD F. HOLLEY, ESQ. (NVSB #3077)
27 OGONNA M. ATAMOH, ESQ. (NVSB #7589)
28 400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Attorneys for Kennedy Funding, Inc.

ORIGINAL

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02/18/2010 03:05:16 PM

Alfonso J. Salazar
CLERK OF THE COURT

JUDGE
RICHARD F. HOLLEY, ESQ.
Nevada Bar No. 3077
OGONNA M. ATAMOH, ESQ.
Nevada Bar No. 7389
SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
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.: A582746
Dept. No.: XI

JUDGMENT AGAINST ONECAP PARTNERS MM, INC. AND VINCENT W. HESSER

This matter came before the Court on Plaintiff Kennedy Funding, Inc.'s ("Plaintiff") evidentiary hearing on damages arising from the Motion for Summary Judgment Against Defendants ONECAP PARTNERS MM, INC. ("Onecap") and VINCENT W. HESSER ("Defendants") (the "Motion"), filed with the Court on September 22, 2009, and came on for evidentiary hearing as to damages on November 5, 2009, at 9:30 a.m. before the Honorable Elizabeth Gonzalez.

The Court having read and considered the papers and pleadings on file herein and having heard the testimony of Kim Vaccarella, Controller for Plaintiff, and the testimony of Matthew Lubway, appraiser for Defendants, and consistent with the Order Granting Motion for Summary

06209-01N50899.doc

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

Superior Court
Case No. A582746
Dept. No. XI
Date Filed 02/18/2010
Filed by [Signature]
Judge [Signature]
Clerk [Signature]

VH000705

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

3711

1 Judgment as to liability entered November 4, 2009, against Defendants, attached hereto as
2 Exhibit "1", and the subsequent Order Awarding Damages Pursuant to Plaintiff's Motion for
3 Summary Judgment entered concurrently herewith, and the Court being fully advised, and good
4 cause appearing therefor,

5 IT IS HEREBY ORDERED, ADJUDGED and DECREED that Plaintiff shall recover
6 from DEFENDANTS ONECAP PARTNERS MM, INC. and VINCENT W. HESSER, jointly
7 and severally, the amount of \$16,802,025.64, excluding attorney's fees and costs, consisting of
8 the principle balance of \$12,000,000.00 due under the Loan and Security Agreement, accruing
9 interest as of October 31, 2009 in the amount of \$4,768,000.00, foreclosure costs in the amount
10 of \$19,024.50, appraisal fees in total amount of \$9,500.00 (CBRE in the amount of \$7,500.00
11 and Vernon Martin \$2,000.00), miscellaneous costs in the amount of \$3,501.14. Post-judgment
12 interest continues to accrue on the principal balance at a default rate of twenty-five percent
13 (25%) per annum, or \$8,333.33 per diem.

14 IT IS HEREBY ORDERED, ADJUDGED and DECREED that Plaintiff shall recover
15 from DEFENDANTS ONECAP PARTNERS MM, INC. and VINCENT W. HESSER attorney's
16 fees as of November 3, 2009 in the amount of \$39,755.00, and costs as of November 3, 2009 in
17 the amount of \$2,131.45 incurred by Santoro, Driggs, Walch, Kearney, Holley & Thompson.

18 IT IS FURTHER ORDERED that Plaintiff is entitled to recover post-judgment attorney's
19 fees and costs incurred in executing and enforcing the Judgment.

20 IT IS FURTHER ORDERED that Plaintiff is entitled to recover post-judgment interest
21 on the principal balance of \$16,802,025.64 at the rate of 25% per annum or \$8,333.33 per diem.

22 IT IS FURTHER ORDERED that to the extent the real property securing Plaintiff's Loan
23 is sold or refinanced and such proceeds are paid to Plaintiff, any such proceeds shall be deducted
24 from the judgment amount and accruing interest entered herein against DEFENDANTS
25 ONECAP PARTNERS MM, INC. and VINCENT W. HESSER in favor of Plaintiff.

26 ...

27 ...

28 ...

00200-097561109.doc

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON



1 IT IS FURTHER ORDERED that the Court expressly directs the entry of a final
2 judgment, as there is no just reason for delay.

3 IT IS SO ORDERED.

4 Dated this 17 day of February, 2009.

5
6 
7 DISTRICT COURT JUDGE *etc*

8 Submitted by:

9 SANTORO, DRIGGS, WALCH, KEARNEY,
10 HOLLEY & THOMPSON

11 By 

12 Richard P. Holley, Esq.

13 Nevada Bar No. 3077

14 Ogonne M. Atamoh, Esq.

15 Nevada Bar No. 7589

16 400 S. Fourth Street, Third Floor

17 Las Vegas, NV 89101

18 Attorneys for Plaintiff

EXHIBIT "1"

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

1 ORDER
2 RICHARD F. HOLLEY, ESQ.
3 Nevada Bar No. 3077
4 OGONNA M. ATAMOH, ESQ.
5 Nevada Bar No. 7569
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

FILED

NOV - 4 2009

CLERK OF COURT

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. Gewertex, Esq. of the law firm Harold P. Gewertex, 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 Wolfert, filed

03180-07/01/0467

VH000709

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

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. 20060615-0005323, 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.

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 Saint 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 Heiser.

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 ...

25 ...

26 ...

27 ...

28 ...

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

4 IT IS SO ORDERED.

5 Dated this 4 day of November, 2009.

6
7 ELIZABETH GOEL GONZALEZ
8 DISTRICT COURT JUDGE

9 Submitted by:

10 SANTORO, DRIGGS, WALCH, KEARNEY,
11 HOLLEY & THOMPSON

12 By [Signature]
13 Richard F. Holley, Esq.
14 Nevada Bar No. 3077
15 Ogonna M. Atamoh, Esq.
16 Nevada Bar No. 7589
17 400 S. Fourth Street, Third Floor
18 Las Vegas, NV 89101
19 Attorneys for Plaintiff

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON



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 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

A handwritten signature in dark ink, appearing to read "O. G. Walch".

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

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE

Cheryl L. Williams
CLERK OF THE COURT

3-24-2010

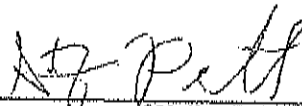
VH000715

CERTIFICATE OF MAILING

I HEREBY CERTIFY that, on the 24th day of December, 2015, pursuant to EDCR 8.05 and NRCF 5(b), I caused to be served electronically using the Court's E-Filing System, a true and correct copy of the AFFIDAVIT FOR RENEWAL OF JUDGMENT AGAINST VINCENT W. HESSER addressed to the parties below. Pursuant to EDCR 8.05(i) the date and time of the electronic service is in place of the date and place of deposit in the mail.

A.M. Santos Law, Chtd.
Antony Santos tony@amsantoslaw.com
Melissa Burczyk melissa@amsantoslaw.com
Attorneys for Defendant Vincent W. Hesser

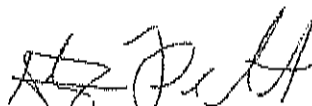
Timothy S. Cory & Associates
Timothy S. Cory tim.cory@corylaw.us
Attorney for Defendant Vincent W. Hesser


An employee of Holley Driggs Walch
Fine Wray Puzey & Thompson

I HEREBY CERTIFY that, on the 24th day of December, 2015 and pursuant to NRCF 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing AFFIDAVIT FOR RENEWAL OF JUDGMENT AGAINST VINCENT W. HESSER, via (1) regular mail, first class postage prepaid, and, pursuant to NRS 17.214, (2) certified mail, return receipt requested, to the last known address as follows:

Vincent W. Hesser
6242 Coley Avenue
Las Vegas, Nevada 89146
Defendant

Vincent W. Hesser
3275 South Jones Boulevard, Suite 104
Las Vegas, Nevada 89146
Defendant


An employee of Holley Driggs Walch
Fine Wray Puzey & Thompson

AFFIDAVIT PURSUANT TO NRS 17.150 REGARDING

JUDGMENT DEBTOR VINCENT W. HESSER

I, Ogonna M. Brown, Esq., being first duly sworn under all penalties of perjury, do hereby depose and state:

1. I am an attorney at law, duly licensed to practice before all Courts of the State of Nevada and am employed with the law firm of Holley Driggs Watch Fine Wray Puzey & Thompson, counsel for Plaintiff Kennedy Funding, Inc., a New Jersey corporation.

2. The judgment debtor's name is Vincent W. Hesser.

3. The judgment debtor's last known addresses:

Vincent W. Hesser
6242 Coley Avenue
Las Vegas, Nevada 89146

Vincent W. Hesser
10758 Rivendell Avenue
Las Vegas, Nevada 89135

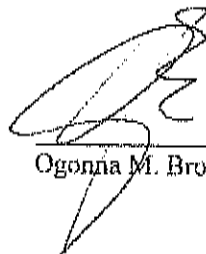
Vincent W. Hesser
3275 South Jones, Suite 104
Las Vegas, Nevada 89146

4. The judgment debtor's last four digits of his driver's license number: Unknown.

5. The judgment debtor's last four digits of his SSN: XXX-XX-5161.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Dated this 7th day of January, 2016.



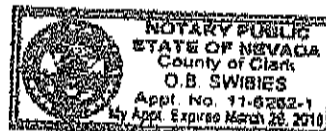
Ogonna M. Brown, Esq.

State of Nevada
County of Clark

Signed and sworn to before me on January 7, 2016 by Ogonna M. Brown.



NOTARY PUBLIC



Steven D. Grlerson

A.M. SANTOS LAW, CHTD.
Antony M. Santos, Esq.
Nevada Bar No. 11265
3275 South Jones Blvd., Ste. 104
Las Vegas, Nevada 89146
Phone: (702) 560-2409
Facsimile: (702) 543-4855
ams@lawlvnv.com
Attorney for Vincent Hesser

DISTRICT COURT

CLARK COUNTY, NEVADA

KENNEDY FUNDING, INC., a New
Jersey corporation.

Plaintiff,

vs.

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

HEARING DATE REQUESTED

(Business Court)

**MOTION FOR A COURT ORDER
DECLARING JUDGMENT
EXPIRED**

ERRATA

Date: _____

Time: _____

Comes now, **DEFENDANT VINCENT HESSER**, by and through legal
counsel, AM Santos, Esq. and hereby files this Motion for (Partial) Summary
Judgment based upon the following points and authorities; the exhibits and
affidavits attached hereto, (and those pleadings, papers, exhibits, declarations and
affidavits as filed by with the Court together with any argument which the Court may
consider at any hearing as to this motion as may be scheduled by regular order.



1
2 **I. SUMMARY**

3 Plaintiff missed the deadline to renew its judgment. Therefore, by operation of
4 law, Plaintiff's judgment expired and the Court should find that the judgment is no
5 longer enforceable. Pursuant to NRS 11.190(1)(a), Plaintiff had six years within
6 which to enforce said judgment ("Judgment"). Moreover, pursuant to NRS 17.214,
7 Plaintiff had the ability to renew it. However, to renew the Judgment, Plaintiff had
8 to ***strictly comply*** with the straightforward requirements of NRS 17.214. Plaintiff
9 had to file an affidavit of judgment renewal within ninety days before the
10 Judgment's expiration, as well as record (and serve) the affidavit within three days
11 of the filing. Plaintiff failed to observe these last two requirements. Since there is no
12 grace period under NRS 17.214, Plaintiff's Judgment has expired and is void.
13 Defendant Hesser thus moves this Court for an order declaring same.
14
15
16

17 **II. FACTS**

18
19 1. Kennedy Funding is a New Jersey Corporation that is located and
20 headquartered in New Jersey.
21

22 2. On June 15, 2006, OneCap Partners 2, LLC (alternatively "Borrower"
23 or "OneCap") and Kennedy, as agent of the Kennedy Co-Lenders, entered into a
24 Loan and Security Agreement ("Loan Agreement"), pursuant to which Kennedy
25 made a \$12 million loan to OneCap to facilitate the purchase of unimproved real
26 property consisting of 78.74± acres of raw land .
27
28

29 3. The loan was evidenced by a Promissory Note dated June 15, 2006, in
30 the original principal sum of \$12 million ("Note"), made by OneCap to pay to the
31



1 order of Kennedy as agent of the lenders.
2

3 4. To further secure payment of the Note, on June 14, 2006, Hesser and
4 OneCap MM executed personal guaranties of the loan to Kennedy ("Guaranty"). At
5 the time of the transaction between OneCap and Kennedy, Hesser was the President
6 of OneCap and OneCap MM.
7

8
9 5. On April 1, 2008, OneCap defaulted under the Note and Deed of Trust.
10

11 6. On February 13, 2009, Kennedy filed a Complaint against Hesser for
12 breach of the Guaranty.
13

14 7. On September 22, 2009, Kennedy filed a Motion for Summary
15 Judgment against Defendants in the Guarantor Action.
16

17 8. On or around October 6, 2009, the Defendants filed an Opposition to
18 the Motion Summary Judgment (the "Opposition").
19

20 9. On November 4, 2009, the Court granted the Plaintiff's Motion for
21 Summary Judgment
22

23 10. Thereafter, on February 17, 2009, the Court entered Judgment against
24 each of the Defendants in the amount of \$16,802,025.64, excluding attorneys' fees
25 and costs which amount was to be determined (the "Judgment"). The Plaintiff
26 provided Defendants with notice of entry of judgment on February 23, 2010.
27
28

29 11. On February 18, 2010, the Court entered an Order Awarding Judgment
30 in favor of Plaintiff and against Defendants in the amount of \$18,843,912.09.
31



1 12. After the guarantee judgment was entered, a foreclosure sale went
2 forward on June 17, 2010, and Kennedy credit bid against the Property. See Notice
3 of Trustee's Sale dated May 25, 2010, recorded in Clark County Recorder's Office on
4 May 27, 2010, as Instrument No. 20100527-0000200. E.R. Tab 9 at 00228-29; see
5 also Trustee's Deed Upon Sale recorded July 16, 2010, recorded in the Clark County
6 Recorder's Office as Instrument No. 2010716-0000364. E.R. Tab 10 at 00230-
7 00234.

8
9
10
11 13. Plaintiff filed an Affidavit of Renewal of Judgment on December 24,
12 2015 to renew the judgment.

13
14 14. Plaintiff was required to record the Affidavit of Renewal of Judgment
15 within a mandatory three (3) day deadline as set forth in NRS 17.214(1)(b). Plaintiff
16 failed to do so and recorded it fifteen (15) days later on January 8, 2016 with the
17 Clark County Recorder's Office as Instrument No. 20160108-000229. (See
18 Exhibit "1").

19
20
21 15. Plaintiff was required to send the Affidavit of Renewal of Judgment by
22 certified mail within a mandatory three (3) day deadline as set forth in NRS
23 17.214(3). Plaintiff attached a Certificate of Mailing that stated the Affidavit of
24 Renewal of Judgment was sent to Defendant Hesser on December 24, 2015, but the
25 last page of the Affidavit of Renewal of Judgment shows a signature and notary
26 dated January 7, 2016 (well after the 3-day deadline).
27
28
29
30
31



1
2 **III. LAW**

3 Defendant Hesser seeks the extinguishment of said judgment and a public
4 recording of same. Over six (6) years expired on the statute for renewal of such
5 judgment and Plaintiff failed to observe the strict mandate of the judgment renewal
6 statute(s) (NRS 11.190(1)(a) and NRS 17.214)¹. Judgment was first entered
7 2/23/2010 mandating renewal by 2/23/2016.
8

9
10 NRS 17.214 mandates strict compliance of the following three requirements:
11

- 12 • The Affidavit of Renewal of Judgment must be filed with
13 the court within 90 days of expiration (with specific
14 terms and conditions).
- 15 • If the judgment is recorded, recording the affidavit of
16 renewal in the office of the county recorder in which the
17 original judgment is filed within 3 days after the
18 affidavit of renewal is filed.
- 19 • The affidavit of renewal needs to be sent by certified
20 mail, return receipt requested, to the judgment debtor
21 at his or her last known address within 3 days after filing
22 the affidavit.

23 The Nevada Supreme Court has addressed this timing issue specifically, in
24

25 ¹ In Nevada, judgments generally expire six years after the date of their entry. However,
26 NRS 17.214 allows for a judgment's renewal as long as there is strict compliance with the
27 statute. That is, under the express terms of NRS 17.214, to effectively renew a judgment, the
28 judgment creditor must first file an affidavit of judgment renewal within ninety days before the
29 judgment's expiration, as well as record (and serve) the affidavit within three days of the filing.
30 *Leven v. Frey*, 123 Nev. 399, 168 P.3d 712, (2007); *O'Lane v. Spinney*, 110 Nev. 496, 874 P.2d
31 754 (1994). In *Leven*, while the judgment creditor timely filed the affidavit of judgment renewal,
the Nevada Supreme Court found that the judgment creditor failed to timely serve or
record the affidavit. The facts are analogous in the instant matter here before the court.
The Nevada Supreme Court concluded that a judgment creditor must strictly comply
with all of these conditions or the judgment is expired and cannot be renewed.



1 *Leven v. Frey*, 123 Nev. 399, 168 P.3d 712, (2007) (See also, *O'Lane v. Spinney* 110
2 Nev. 496, 874 P2d 754). The Supreme Court holds that the statutory timeframes for
3 judgment renewal are mandatory. The Leven Court determined that in Nevada:
4

- 5
- 6 • NRS 17.214's mandatory requirements of filing, recording, and
7 service of the affidavit are plainly set forth and must be strictly
8 followed for judgment renewal.
- 9 • Under the statute's express terms, a judgment may be renewed by
10 filing an affidavit with the district court within ninety days before
11 the judgment's expiration, recording the affidavit within three
12 days of filing, and serving the affidavit on the debtor within three
13 days of filing.
- 14 • NRS 17.214's timeframe requirements, are unambiguous and
15 **MUST** be strictly complied with.
- 16 • An action on a judgment or its renewal must be commenced
17 within six years under NRS 11.190(1)(a); thus a judgment expires
18 by limitation in six years. The requirement that an affidavit be
19 filed within ninety days of the expiration of this six-year period
20 provides a clear first step in the procedure for renewing
21 judgments.

22 *Leven*, 123 Nev. 399, 168 P.3d at 715.

23 Finally, it is important to note that the Nevada Supreme made clear its view that
24 17.214 timing requirements are unambiguous and exacting, taking care to point out
25 the the Court has ruled that *substantial compliance* with specific timing
26 requirements is NOT sufficient for renewal in the context of recording and service
27 under NRS 17.214. Since the statute includes no built-in grace period or safety valve
28 provision, its explicit and mandatory three-day language leaves no room for judicial
29 construction or "substantial compliance" analysis. (*Leven*, 718.)²

30 ² The Court found all three requirements of NRS 17.214, concerning filing,
31 recording, and serving the affidavit, clear and unambiguous, and must be strictly

1 As for the instant matter, Plaintiff Kennedy Funding filed an Affidavit of
2
3 Renewal on 12/24/2015. But, said filing was recorded on January 8, 2016 (15 days
4 after filing with the Court). This does not comport with the statute as recording
5 transpired 12 days too late. Moreover, Plaintiff stated the Affidavit of Renewal was
6 mailed on the same day as the court filing (12/24/15) but the attached last page of
7 the Affidavit is signed and notarized on 1/07/16 (14 days after the purported mailing
8 date). Although Plaintiff did file the Affidavit of Renewal within the time period
9 specified by NRS 17.214, Plaintiff failed to record (and serve) the Affidavit within the
10 required three (3) day deadline.
11
12

13 14 IV. CONCLUSION

15 For these reasons, Defendant Hesser now seeks to extinguish the Judgment.
16

17 Dated, this 27th day of August 2019
18

19 A.M. SANTOS LAW, CHTD.
20

21
22 Antony M. Santos, Esq.
23 Nevada Bar No. 11265
24 3275 S. Jones Blvd. Ste. 104
25 Las Vegas, Nevada 89146
26 Telephone: (702) 560-2409
27 Email: ams@amlawlv.com
28 Attorney for Vincent Hesser
29
30
31

32 complied with. As we have previously explained, "shall" is a mandatory term indicative
33 of the Legislature's intent that the statutory provision be compulsory, thus creating a
34 duty rather than conferring discretion. *Washoe Med. Ctr. v. Dist. Ct.*, 122 Nev.
35 1298, ___148 P.3d 790, 793 (2006).
36
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38
39
40
41



1 **A.M. SANTOS LAW, CHTD.**
2 Antony M. Santos, Esq.
3 Nevada Bar No. 11265
4 3275 South Jones Blvd., Ste. 104
5 Las Vegas, Nevada 89146
6 Phone: (702) 560-2409
7 Facsimile: (702) 543-4855
8 ams@lawlvnv.com
9 Attorney for Vincent Hesser

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 KENNEDY FUNDING, INC., a New
13 Jersey corporation.

14 Plaintiff,

15 vs.

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

21 Defendants

Case No.: A582746

Dept. No.: XI

(Business Court)

22 **DECLARATION OF**
23 **VINCENT HESSER**

24 **DECLARATION**

25 I, VINCENT HESSER, declare and state as follows:

26 1. I am over the age 18 and I have personal knowledge of the following facts and
27 circumstances relevant to the above captioned matter and the issue(s) before the above-
28 captioned court (the "Court").

29 2. If called upon to testify on any of these matters, I could and would competently
30 testify thereto.

31 3. Kennedy Funding is a New Jersey Corporation that is located and headquartered



1 in New Jersey.

2
3 4. On June 15, 2006, OneCap Partners 2, LLC (alternatively "Borrower" or
4 "OneCap") and Kennedy, as agent of the Kennedy Co-Lenders, entered into a Loan and
5 Security Agreement ("Loan Agreement"), pursuant to which Kennedy made a \$12
6 million loan to OneCap to facilitate the purchase of unimproved real property consisting
7 of 78.74± acres of raw land .

8 5. The loan was evidenced by a Promissory Note dated June 15, 2006, in the original
9 principal sum of \$12 million ("Note"), made by OneCap to pay to the order of Kennedy
10 as agent of the lenders.

11 6. To further secure payment of the Note, on June 14, 2006, Hesser and OneCap
12 MM executed personal guaranties of the loan to Kennedy ("Guaranty"). At the time of
13 the transaction between OneCap and Kennedy, Hesser was the President of OneCap
14 and OneCap MM.

15 7. On April 1, 2008, OneCap defaulted under the Note and Deed of Trust.

16 8. On February 13, 2009, Kennedy filed a Complaint against Hesser for breach of
17 the Guaranty.

18 9. On September 22, 2009, Kennedy filed a Motion for Summary Judgment against
19 Defendants in the Guarantor Action.

20 10. On or around October 6, 2009, the Defendants filed an Opposition to the Motion
21 Summary Judgment (the "Opposition").

22 11. On November 4, 2009, the Court granted the Plaintiff s Motion for Summary
23 Judgment

24 12. Thereafter, on February 17, 2009, the Court entered Judgment against each of
25 the Defendants in the amount of \$16,802,025.64, excluding attorneys' fees and costs
26 which amount was to be determined (the "Judgment"). The Plaintiff provided
27 Defendants with notice of entry of judgment on February 23, 2010.

28 13. On February 18, 2010, the Court entered an Order Awarding Judgment in favor
29 of Plaintiff and against Defendants in the amount of \$18,843,912.09.
30
31



1
2 14. After the guarantee judgment was entered, a foreclosure sale went forward on
3 June 17, 2010, and Kennedy credit bid against the Property. See Notice of Trustee's Sale
4 dated May 25, 2010, recorded in Clark County Recorder's Office on May 27, 2010, as
5 Instrument No. 20100527-0000200. E.R. Tab 9 at 00228-29; see also Trustee's Deed
6 Upon Sale recorded July 16, 2010, recorded in the Clark County Recorder's Office as
7 Instrument No. 2010716-0000364. E.R. Tab 10 at 00230-00234.

8 15. Plaintiff filed an Affidavit of Renewal of Judgment on December 24, 2015 to
9 renew the judgment.

10 16. Plaintiff was required to record the Affidavit of Renewal of Judgment within a
11 mandatory three (3) day deadline as set forth in NRS 17.214(1)(b). Plaintiff failed to do
12 so and recorded it fifteen (15) days later on January 8, 2016 with the Clark County
13 Recorder's Office as Instrument No. 20160108-000229. (See Exhibit "1").

14 17. Plaintiff was required to send the Affidavit of Renewal of Judgment by certified
15 mail within a mandatory three (3) day deadline as set forth in NRS 17.214(3). Plaintiff
16 attached a Certificate of Mailing that stated the Affidavit of Renewal of Judgment was
17 sent to Defendant Hesser on December 24, 2015, but the last page of the Affidavit of
18 Renewal of Judgment shows a signature and notary dated January 7, 2016 (well after
19 the 3-day deadline).
20

21 18. I declare the foregoing to be true and correct under penalty of perjury of the laws
22 of the state of Nevada.
23

24 Dated: August 14, 2019

25
26 By: 

27 VINCENT HESSER
28
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30
31



**Clark County Recorder's Office**

Modify Date:	1/26/2016
Record Date:	1/8/2016 8:01 AM
Number of Pages:	20
Book Type:	OR
Document Type:	(J) JUDGMENT
Modifier:	RENEW
1st Party	BROWN, OGONNA M
	ONECAP PARTNERS MM INC
	HESSER, VINCENT W
2nd Party	KENNEDY FUNDING INC

Inet #: 20160108-0000229

Fees: \$36.00

N/C Fee: \$0.00

01/08/2016 08:01:10 AM

Receipt #: 2652944

Requestor:

HOLLEY DRIGGS WALCH FINE WR

Recorded By: ANI Pgs: 20

DEBBIE CONWAY

CLARK COUNTY RECORDER

RECORDING COVER PAGE

(Must be typed or printed clearly in BLACK ink only
and avoid printing in the 1" margins of document)

APN#

(11 digit Assessor's Parcel Number may be obtained at:
<http://redrock.co.clark.nv.us/assrcalprop/owner.aspx>)

TITLE OF DOCUMENT

(DO NOT Abbreviate)

Affidavit for Renewal of Judgment against Vincent W. Hesser

Document Title on cover page must appear EXACTLY as the first page of the document
to be recorded.

RECORDING REQUESTED BY:

Holley Driggs Walch Fine Wray Puzey & Thompson

RETURN TO: Name Ogonna M. Brown, Esq.

Address 400 S 4th Street, Third Floor

City/State/Zip Las Vegas, Nevada 89101

MAIL TAX STATEMENT TO: (Applicable to documents transferring real property)

Name

Address

City/State/Zip

This page provides additional information required by NRS 111.312 Sections 1-2.

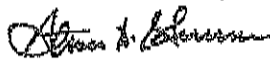
An additional recording fee of \$1.00 will apply.

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VH000729


CLERK OF THE COURT

1 ARJ
2 RICHARD F. HOLLEY, ESQ. (Nevada Bar No. 3077)
E-mail: rholley@nevadafirm.com
3 OGONNA M. BROWN, ESQ. (Nevada Bar No. 7589)
E-mail: obrown@nevadafirm.com
4 HOLLEY DRIGGS WALCH
FINE WRAY PUZEY & THOMPSON
400 South Fourth Street, Third Floor
5 Las Vegas, Nevada 89101
Telephone: 702/791-0308
6 Facsimile: 702/791-1912
Attorney for Kennedy Funding, Inc.

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants.

Case No: A582746
Dept. No.: XI

AFFIDAVIT FOR RENEWAL OF JUDGMENT AGAINST VINCENT W. HESSER

18 STATE OF NEVADA

19 COUNTY OF CLARK

} ss.

20 I, Ogonna M. Brown, Esq., hereby declare as follows:

21 1. I am over the age of 18 and mentally competent. Except where stated on
22 information and belief, I have personal knowledge of the facts in this matter and if called upon to
23 testify, could and would do so.

24 2. I am an attorney licensed to practice law in the State of Nevada and admitted to
25 practice before this Court.

26 3. I am a shareholder with the law firm of Holley Driggs Walch Fine Wray Puzey &
27 Thompson (the "Firm"), counsel of record for Kennedy Funding, Inc., a New Jersey corporation
28

1 ("Plaintiff" or "Judgment Creditor"). The Firm maintains offices at 400 South Fourth Street,
2 Third Floor, Las Vegas, Nevada 89101.

3 4. On or about February 18, 2010, a Judgment Against Onecap Partners MM, Inc.
4 and Vincent W. Hesser ("Judgment") was entered in the District Court of Clark County, Nevada,
5 in favor of the Plaintiff against Vincent W. Hesser ("Judgment Debtor") in the total amount of
6 amount of \$16,802,025.64, excluding attorney's fees and costs, consisting of the principle
7 balance of \$12,000,000.00 due under the Loan and Security Agreement, accruing interest as of
8 October 31, 2009 in the amount of \$4,768,000.00, foreclosure costs in the amount of \$19,024.50,
9 appraisal fees in total amount of \$9,500.00 (CBRE in the amount of \$7,500.00 and Vernon
10 Martin \$2,000.00), miscellaneous costs in the amount of \$5,501.14. Post-judgment interest
11 continues to accrue on the principal balance at a default rate of twenty-five percent (25%) per
12 annum, or \$8,333.33 per diem. Judgment Creditor is entitled to augment the Judgment for
13 additional attorneys' fees and costs in pursuing this litigation, a true and correct copy of the
14 Judgment is attached hereto as Exhibit "1".

15 5. On or about March 29, 2010, the Original Certified Notice of Entry of Judgment
16 against Onecap Partners MM, Inc. and Vincent W. Hesser was recorded with the Clark County
17 Recorders' Office as Instrument No. 201003290000871.

18 6. There are no outstanding writs of execution for enforcement of the judgment.

19 7. There have been no payments on the Judgment.

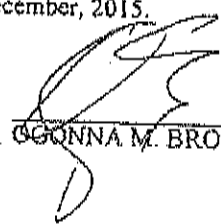
20 8. There are no setoffs or counterclaims in favor of the Judgment Debtor.

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9. As of December 24, 2015, the amount owing on the judgment is \$34,585,351.86.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated this 24th day of December, 2015.

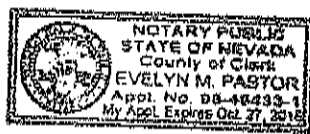


STATE OF NEVADA
County of Clark

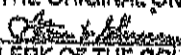
OGONNA M. BROWN, ESQ.

SIGNED AND SWORN to before me this
24th day of December, 2015,
by Ogonna M. Brown, Esq.


NOTARY SIGNATURE



CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE


CLERK OF THE COURT

JAN 6 2016

EXHIBIT "1"

13

Inst #: 201003290000871
Fees: \$28.00
N/C Fee: \$0.00
03/29/2010 10:34:10 AM
Receipt #: 288468
Requestor:
SANTOTO DRIGGS ET AL
Recorded By: BSN Pgs: 13
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN#

11-digit Assessor's Parcel Number may be obtained at:
<http://rcdrock.co.clark.nv.us/assrealprop/owner.aspx>

Notice of Entry of Judgment against Onecap Partners MM,

Inc. and Vincent W. Hesser

Type of Document

(Example: Declaration of Homestead, Quit Claim Deed, etc.)

Recording Requested By:

Santoto Driggs Walch Kearney Holley & Thompson

Return Documents To:

Name Ogonna M. Atamoh, Esq.

Address 400 South Fourth Street, Third Floor

City/State/Zip Las Vegas, NV 89101

This page added to provide additional information required by NRS 111.312 Section 1-2

(An additional recording fee of \$1.00 will apply)

This cover page must be typed or printed clearly in black ink only.

OR Form 108 - 06/08/2007
Coversheet.pdf

VH000734

Alfonso L. Salazar
CLERK OF THE COURT

1 NEOJ
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 Attorney 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

NOTICE OF ENTRY OF JUDGMENT

24 YOU, and each of you, will please take notice that a JUDGMENT AGAINST ONECAP
25 PARTNERS MM, INC. AND VINCENT W. HESSER in the above-entitled matter was filed and
26 entered by the Clerk of the above-entitled Court on the 18th day of February, 2010, a copy of
27 which is attached hereto

28 Dated this 22nd day of February, 2010.

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

RICHARD F. HOLLEY, ESQ. (NVSB #3077)
OGONNA M. ATAMOH, ESQ. (NVSB #7589)
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Attorneys for Kennedy Funding, Inc.

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON



ORIGINAL

Electronically Filed
02/18/2010 03:05:10 PM

Alan T. Johnson
CLERK OF THE COURT

JUDGE
RICHARD F. HOLLEY, ESQ.
Nevada Bar No. 3077
OGONNA M. ATAMOH, ESQ.
Nevada Bar No. 7589
SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
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.: A582746
Dept. No.: XI

JUDGMENT AGAINST ONECAP PARTNERS MM, INC. AND VINCENT W. HESSER

This matter came before the Court on Plaintiff Kennedy Funding, Inc.'s ("Plaintiff") evidentiary hearing on damages arising from the Motion for Summary Judgment Against Defendants ONECAP PARTNERS MM, INC. ("Onecap") and VINCENT W. HESSER ("Defendants") (the "Motion"), filed with the Court on September 22, 2009, and came on for evidentiary hearing as to damages on November 5, 2009, at 9:30 a.m. before the Honorable Elizabeth Gonzalez.

The Court having read and considered the papers and pleadings on file herein and having heard the testimony of Kim Vaccarella, Controller for Plaintiff, and the testimony of Matthew Lubway, appraiser for Defendants, and consistent with the Order Granting Motion for Summary

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SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

Summary Judgment

VH000736

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON



1 Judgment as to liability entered November 4, 2009, against Defendants, attached hereto as
2 Exhibit "I", and the subsequent Order Awarding Damages Pursuant to Plaintiff's Motion for
3 Summary Judgment entered concurrently herewith, and the Court being fully advised, and good
4 cause appearing therefor,

5 IT IS HEREBY ORDERED, ADJUDGED and DECREED that Plaintiff shall recover
6 from DEFENDANTS ONECAP PARTNERS MM, INC. and VINCENT W. HESSER, jointly
7 and severally, the amount of \$16,802,025.64, excluding attorney's fees and costs, consisting of
8 the principle balance of \$12,000,000.00 due under the Loan and Security Agreement, accruing
9 interest as of October 31, 2009 in the amount of \$4,768,000.00, foreclosure costs in the amount
10 of \$19,024.50, appraisal fees in total amount of \$9,500.00 (CBRE in the amount of \$7,500.00
11 and Vernon Martin \$2,000.00), miscellaneous costs in the amount of \$5,501.14. Post-judgment
12 interest continues to accrue on the principal balance at a default rate of twenty-five percent
13 (25%) per annum, or \$8,333.33 per diem.

14 IT IS HEREBY ORDERED, ADJUDGED and DECREED that Plaintiff shall recover
15 from DEFENDANTS ONECAP PARTNERS MM, INC. and VINCENT W. HESSER attorney's
16 fees as of November 3, 2009 in the amount of \$39,755.00, and costs as of November 3, 2009 in
17 the amount of \$2,131.45 incurred by Santoro, Driggs, Walch, Kearney, Holley & Thompson.

18 IT IS FURTHER ORDERED that Plaintiff is entitled to recover post-judgment attorney's
19 fees and costs incurred in executing and enforcing the Judgment.

20 IT IS FURTHER ORDERED that Plaintiff is entitled to recover post-judgment interest
21 on the principal balance of \$16,802,025.64 at the rate of 25% per annum or \$8,333.33 per diem.

22 IT IS FURTHER ORDERED that to the extent the real property securing Plaintiff's Loan
23 is sold or refinanced and such proceeds are paid to Plaintiff, any such proceeds shall be deducted
24 from the judgment amount and accruing interest entered herein against DEFENDANTS
25 ONECAP PARTNERS MM, INC. and VINCENT W. HESSER in favor of Plaintiff.

26 ...

27 ...

28 ...

SANTORO, DRIGOS, WALCH,
KEARNEY, HOLLEY & THOMPSON



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IT IS FURTHER ORDERED that the Court expressly directs the entry of a final judgment, as there is no just reason for delay.

IT IS SO ORDERED.

Dated this 17 day of February, 2008.


DISTRICT COURT JUDGE *etc*

Submitted by:

SANTORO, DRIGOS, WALCH, KEARNEY,
HOLLEY & THOMPSON

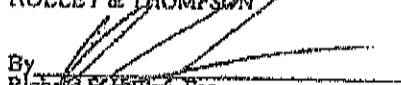
By 
Richard P. Holiday, Esq.
Nevada Bar No. 3077
Ogonne M. Atamoh, Esq.
Nevada Bar No. 7589
400 S. Fourth Street, Third Floor
Las Vegas, NV 89101
Attorneys for Plaintiff

EXHIBIT "1"

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

ORDER
RICHARD F. HOLLEY, ESQ.
Nevada Bar No. 3077
OGONNA M. ATAMOH, ESQ.
Nevada Bar No. 7589
SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Telephone: 702/791-0308
Facsimile: 702/791-1912

Attorneys for Kennedy Funding, Inc.

FILED

NOV - 4 2009

Clerk of Court

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

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff KENNEDY FUNDING, INC., ("Plaintiff") Motion for Summary Judgment ("Motion for Summary Judgment"), having come on for hearing on October 27, 2009, at 9:00 a.m. Harold P. Gewanter, Esq. of the law firm Harold P. Gewanter, Esq., Ltd., appeared on 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, Elmer

00259-02/119467

VH000740

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 32 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 inferences 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 20060615-0065324.

25 5. There is no genuine issue of material fact that Kennedy Funding, Gary Owen B,
26 LLC ("Option Holder") and OneCap Partners executed a Subordination and Assignment
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 guarantees 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 Uno Mita, LLC ("Nevada Uno"), and under the Deed of
27 Trust and Loan Agreement, OneCap Partner's transfer of the Property to Nevada Uno was a
28 default.

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 NDM and Haaser.

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 ...

25 ...

26 ...

27 ...

28 ...

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

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

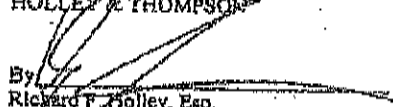
4 IT IS SO ORDERED.

5 Dated this 14 day of November, 2009.

6
7 ELIZABETH GOFF GONZALEZ
8 DISTRICT COURT JUDGE

9 Submitted by:

10 SANTORO, DRIGGS, WALCH, KEARNEY,
11 HOLLEY & THOMPSON

12 By: 
13 Richard F. Holley, Esq.
14 Nevada Bar No. 3077
15 Ogeana M. Aurnoh, Esq.
16 Nevada Bar No. 7589
17 400 S. Fourth Street, Third Floor
18 Las Vegas, NV 89101
19 Attorneys for Plaintiff
20
21
22
23
24
25
26
27
28

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON



CERTIFICATE OF MAILING

I HEREBY CERTIFY that, on the 22nd day of February, 2010, and pursuant to NRCF
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. Gowerter
Harold P. Gowerter, Esq., Ltd.
2705 Airport Drive
North Las Vegas, NV 89032

Attorneys for Defendants

O. B. Swales

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

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE


CLERK OF THE COURT

3-24-2010

VH000746

1 CERTIFICATE OF MAILING

2 I HEREBY CERTIFY that, on the 24th day of December, 2015, pursuant to EDCR 8.05
3 and NRCP 5(b), I caused to be served electronically using the Court's E-Filing System, a true
4 and correct copy of the AFFIDAVIT FOR RENEWAL OF JUDGMENT AGAINST VINCENT
5 W. HESSER addressed to the parties below. Pursuant to EDCR 8.05(i) the date and time of the
6 electronic service is in place of the date and place of deposit in the mail.

7 A.M. Santos Law, Chtd.
8 Antony Santos tony@amsantoslaw.com
9 Melissa Burczyk melissa@amsantoslaw.com
Attorneys for Defendant Vincent W. Hesser

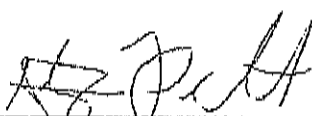
10 Timothy S. Cory & Associates
11 Timothy S. Cory tim.cory@corylaw.us
Attorney for Defendant Vincent W. Hesser

12 
13 An employee of Holley Driggs Walch
14 Fine Wray Puzey & Thompson

15 I HEREBY CERTIFY that, on the 24th day of December, 2015 and pursuant to NRCP
16 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing
17 AFFIDAVIT FOR RENEWAL OF JUDGMENT AGAINST VINCENT W. HESSER, via
18 (1) regular mail, first class postage prepaid, and, pursuant to NRS 17.214, (2) certified mail,
19 return receipt requested, to the last known address as follows:

20 Vincent W. Hesser
21 6242 Coley Avenue
22 Las Vegas, Nevada 89146
Defendant

23 Vincent W. Hesser
24 3275 South Jones Boulevard, Suite 104
Las Vegas, Nevada 89146
Defendant

25 
26 An employee of Holley Driggs Walch
27 Fine Wray Puzey & Thompson
28

AFFIDAVIT PURSUANT TO NRS 17.150 REGARDING

JUDGMENT DEBTOR VINCENT W. HESSER

I, Ogonna M. Brown, Esq., being first duly sworn under all penalties of perjury, do hereby depose and state:

1. I am an attorney at law, duly licensed to practice before all Courts of the State of Nevada and am employed with the law firm of Holley Driggs Walch Fine Wray Puzey & Thompson, counsel for Plaintiff Kennedy Funding, Inc., a New Jersey corporation.

2. The judgment debtor's name is Vincent W. Hesser.

3. The judgment debtor's last known addresses:

Vincent W. Hesser
6242 Coley Avenue
Las Vegas, Nevada 89146

Vincent W. Hesser
10758 Rivendell Avenue
Las Vegas, Nevada 89135

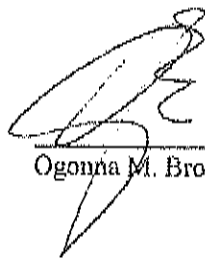
Vincent W. Hesser
3275 South Jones, Suite 104
Las Vegas, Nevada 89146

4. The judgment debtor's last four digits of his driver's license number: Unknown.

5. The judgment debtor's last four digits of his SSN: XXX-XX-5161.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Dated this 7th day of January, 2016.



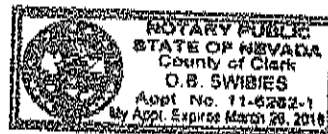
Ogonna M. Brown, Esq.

State of Nevada
County of Clark

Signed and sworn to before me on January 7, 2016 by Ogonna M. Brown.



NOTARY PUBLIC



Steven D. Grierson

1 **A.M. SANTOS LAW, CHTD.**
2 Antony M. Santos, Esq.
3 Nevada Bar No. 11265
4 3275 South Jones Blvd., Ste. 104
5 Las Vegas, Nevada 89146
6 Phone: (702) 560-2409
7 Facsimile: (702) 543-4855
8 ams@lawlvnv.com
9 Attorney for Vincent Hesser

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

11 KENNEDY FUNDING, INC., a New
12 Jersey corporation.

13 Plaintiff,

14 vs.

15
16 ONECAP PARTNERS MM. INC. a Nevada
17 corporation; VINCENT W. HESSER, an
18 individual; DOE INDIVIDUALS I through
19 X; and ROE CORPORATIONS I through
20 X,

21 Defendants

Case No.: A582746

Dept. No.: XI

(Business Court)

22 **MOTION FOR A COURT ORDER
DECLARING JUDGMENT
EXPIRED**

23 Comes now, **DEFENDANT VINCENT HESSER**, by and through legal
24 counsel, AM Santos, Esq. and hereby files this Motion for (Partial) Summary
25 Judgment based upon the following points and authorities; the exhibits and
26 affidavits attached hereto, (and those pleadings, papers, exhibits, declarations and
27 affidavits as filed by with the Court together with any argument which the Court may
28 consider at any hearing as to this motion as may be scheduled by regular order.
29
30
31



1
2 **I. SUMMARY**

3 Plaintiff missed the deadline to renew its judgment. Therefore, by operation of
4 law, Plaintiff's judgment expired and the Court should find that the judgment is no
5 longer enforceable. Pursuant to NRS 11.190(1)(a), Plaintiff had six years within
6 which to enforce said judgment ("Judgment"). Moreover, pursuant to NRS 17.214,
7 Plaintiff had the ability to renew it. However, to renew the Judgment, Plaintiff had
8 to ***strictly comply*** with the straightforward requirements of NRS 17.214. Plaintiff
9 had to file an affidavit of judgment renewal within ninety days before the
10 Judgment's expiration, as well as record (and serve) the affidavit within three days
11 of the filing. Plaintiff failed to observe these last two requirements. Since there is no
12 grace period under NRS 17.214, Plaintiff's Judgment has expired and is void.
13 Defendant Hesser thus moves this Court for an order declaring same.
14
15
16

17 **II. FACTS**

18
19 1. Kennedy Funding is a New Jersey Corporation that is located and
20 headquartered in New Jersey.
21

22 2. On June 15, 2006, OneCap Partners 2, LLC (alternatively "Borrower"
23 or "OneCap") and Kennedy, as agent of the Kennedy Co-Lenders, entered into a
24 Loan and Security Agreement ("Loan Agreement"), pursuant to which Kennedy
25 made a \$12 million loan to OneCap to facilitate the purchase of unimproved real
26 property consisting of 78.74± acres of raw land .
27
28

29 3. The loan was evidenced by a Promissory Note dated June 15, 2006, in
30 the original principal sum of \$12 million ("Note"), made by OneCap to pay to the
31



1 order of Kennedy as agent of the lenders.
2

3 4. To further secure payment of the Note, on June 14, 2006, Hesser and
4 OneCap MM executed personal guaranties of the loan to Kennedy ("Guaranty"). At
5 the time of the transaction between OneCap and Kennedy, Hesser was the President
6 of OneCap and OneCap MM.
7
8

9 5. On April 1, 2008, OneCap defaulted under the Note and Deed of Trust.
10

11 6. On February 13, 2009, Kennedy filed a Complaint against Hesser for
12 breach of the Guaranty.
13

14 7. On September 22, 2009, Kennedy filed a Motion for Summary
15 Judgment against Defendants in the Guarantor Action.
16

17 8. On or around October 6, 2009, the Defendants filed an Opposition to
18 the Motion Summary Judgment (the "Opposition").
19

20 9. On November 4, 2009, the Court granted the Plaintiff's Motion for
21 Summary Judgment
22

23 10. Thereafter, on February 17, 2009, the Court entered Judgment against
24 each of the Defendants in the amount of \$16,802,025.64, excluding attorneys' fees
25 and costs which amount was to be determined (the "Judgment"). The Plaintiff
26 provided Defendants with notice of entry of judgment on February 23, 2010.
27
28

29 11. On February 18, 2010, the Court entered an Order Awarding Judgment
30 in favor of Plaintiff and against Defendants in the amount of \$18,843,912.09.
31



1 12. After the guarantee judgment was entered, a foreclosure sale went
2 forward on June 17, 2010, and Kennedy credit bid against the Property. See Notice
3 of Trustee's Sale dated May 25, 2010, recorded in Clark County Recorder's Office on
4 May 27, 2010, as Instrument No. 20100527-0000200. E.R. Tab 9 at 00228-29; see
5 also Trustee's Deed Upon Sale recorded July 16, 2010, recorded in the Clark County
6 Recorder's Office as Instrument No. 2010716-0000364. E.R. Tab 10 at 00230-
7 00234.

8
9
10
11 13. Plaintiff filed an Affidavit of Renewal of Judgment on December 24,
12 2015 to renew the judgment.

13
14 14. Plaintiff was required to record the Affidavit of Renewal of Judgment
15 within a mandatory three (3) day deadline as set forth in NRS 17.214(1)(b). Plaintiff
16 failed to do so and recorded it fifteen (15) days later on January 8, 2016 with the
17 Clark County Recorder's Office as Instrument No. 20160108-000229. (See
18 Exhibit "1").

19
20
21 15. Plaintiff was required to send the Affidavit of Renewal of Judgment by
22 certified mail within a mandatory three (3) day deadline as set forth in NRS
23 17.214(3). Plaintiff attached a Certificate of Mailing that stated the Affidavit of
24 Renewal of Judgment was sent to Defendant Hesser on December 24, 2015, but the
25 last page of the Affidavit of Renewal of Judgment shows a signature and notary
26 dated January 7, 2016 (well after the 3-day deadline).
27
28
29
30
31



1
2 **III. LAW**

3 Defendant Hesser seeks the extinguishment of said judgment and a public
4 recording of same. Over six (6) years expired on the statute for renewal of such
5 judgment and Plaintiff failed to observe the strict mandate of the judgment renewal
6 statute(s) (NRS 11.190(1)(a) and NRS 17.214)¹. Judgment was first entered
7 2/23/2010 mandating renewal by 2/23/2016.
8

9
10 NRS 17.214 mandates strict compliance of the following three requirements:
11

- 12 • The Affidavit of Renewal of Judgment must be filed with
13 the court within 90 days of expiration (with specific
14 terms and conditions).
- 15 • If the judgment is recorded, recording the affidavit of
16 renewal in the office of the county recorder in which the
17 original judgment is filed within 3 days after the
18 affidavit of renewal is filed.
- 19 • The affidavit of renewal needs to be sent by certified
20 mail, return receipt requested, to the judgment debtor
21 at his or her last known address within 3 days after filing
22 the affidavit.

23 The Nevada Supreme Court has addressed this timing issue specifically, in
24

25 ¹ In Nevada, judgments generally expire six years after the date of their entry. However,
26 NRS 17.214 allows for a judgment's renewal as long as there is strict compliance with the
27 statute. That is, under the express terms of NRS 17.214, to effectively renew a judgment, the
28 judgment creditor must first file an affidavit of judgment renewal within ninety days before the
29 judgment's expiration, as well as record (and serve) the affidavit within three days of the filing.
30 *Leven v. Frey*, 123 Nev. 399, 168 P.3d 712, (2007); *O'Lane v. Spinney*, 110 Nev. 496, 874 P.2d
31 754 (1994). In *Leven*, while the judgment creditor timely filed the affidavit of judgment renewal,
the Nevada Supreme Court found that the judgment creditor failed to timely serve or
record the affidavit. The facts are analogous in the instant matter here before the court.
The Nevada Supreme Court concluded that a judgment creditor must strictly comply
with all of these conditions or the judgment is expired and cannot be renewed.



1 *Leven v. Frey*, 123 Nev. 399, 168 P.3d 712, (2007) (See also, *O'Lane v. Spinney* 110
2 Nev. 496, 874 P2d 754). The Supreme Court holds that the statutory timeframes for
3 judgment renewal are mandatory. The Leven Court determined that in Nevada:
4

- 5
- 6 • NRS 17.214's mandatory requirements of filing, recording, and
7 service of the affidavit are plainly set forth and must be strictly
8 followed for judgment renewal.
- 9 • Under the statute's express terms, a judgment may be renewed by
10 filing an affidavit with the district court within ninety days before
11 the judgment's expiration, recording the affidavit within three
12 days of filing, and serving the affidavit on the debtor within three
13 days of filing.
- 14 • NRS 17.214's timeframe requirements, are unambiguous and
15 **MUST** be strictly complied with.
- 16 • An action on a judgment or its renewal must be commenced
17 within six years under NRS 11.190(1)(a); thus a judgment expires
18 by limitation in six years. The requirement that an affidavit be
19 filed within ninety days of the expiration of this six-year period
20 provides a clear first step in the procedure for renewing
21 judgments.

22 *Leven*, 123 Nev. 399, 168 P.3d at 715.

23 Finally, it is important to note that the Nevada Supreme made clear its view that
24 17.214 timing requirements are unambiguous and exacting, taking care to point out
25 the the Court has ruled that *substantial compliance* with specific timing
26 requirements is NOT sufficient for renewal in the context of recording and service
27 under NRS 17.214. Since the statute includes no built-in grace period or safety valve
28 provision, its explicit and mandatory three-day language leaves no room for judicial
29 construction or "substantial compliance" analysis. (*Leven*, 718.)²

30 ² The Court found all three requirements of NRS 17.214, concerning filing,
31 recording, and serving the affidavit, clear and unambiguous, and must be strictly

1 As for the instant matter, Plaintiff Kennedy Funding filed an Affidavit of
2
3 Renewal on 12/24/2015. But, said filing was recorded on January 8, 2016 (15 days
4 after filing with the Court). This does not comport with the statute as recording
5 transpired 12 days too late. Moreover, Plaintiff stated the Affidavit of Renewal was
6 mailed on the same day as the court filing (12/24/15) but the attached last page of
7 the Affidavit is signed and notarized on 1/07/16 (14 days after the purported mailing
8 date). Although Plaintiff did file the Affidavit of Renewal within the time period
9 specified by NRS 17.214, Plaintiff failed to record (and serve) the Affidavit within the
10 required three (3) day deadline.
11
12

13 14 IV. CONCLUSION

15 For these reasons, Defendant Hesser now seeks to extinguish the Judgment.
16

17 Dated, this 27th day of August 2019
18

19 A.M. SANTOS LAW, CHTD.
20

21
22 Antony M. Santos, Esq.
23 Nevada Bar No. 11265
24 3275 S. Jones Blvd. Ste. 104
25 Las Vegas, Nevada 89146
26 Telephone: (702) 560-2409
27 Email: ams@law1vny.com
28 Attorney for Vincent Hesser

29
30 complied with. As we have previously explained, "shall" is a mandatory term indicative
31 of the Legislature's intent that the statutory provision be compulsory, thus creating a
duty rather than conferring discretion. *Washoe Med. Ctr. v. Dist. Ct.*, 122 Nev.
1298, 148 P.3d 790, 793 (2006).



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6 Phone: (702) 560-2409
7 Facsimile: (702) 543-4855
8 ams@lawlvnv.com
9 Attorney for Vincent Hesser

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 KENNEDY FUNDING, INC., a New
13 Jersey corporation.

14 Plaintiff,

15 vs.

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

21 Defendants

Case No.: A582746

Dept. No.: XI

(Business Court)

22 **DECLARATION OF**
23 **VINCENT HESSER**

24 **DECLARATION**

25 I, VINCENT HESSER, declare and state as follows:

26 1. I am over the age 18 and I have personal knowledge of the following facts and
27 circumstances relevant to the above captioned matter and the issue(s) before the above-
captioned court (the "Court").

28 2. If called upon to testify on any of these matters, I could and would competently
29 testify thereto.

30 3. Kennedy Funding is a New Jersey Corporation that is located and headquartered
31



1 in New Jersey.

2
3 4. On June 15, 2006, OneCap Partners 2, LLC (alternatively "Borrower" or
4 "OneCap") and Kennedy, as agent of the Kennedy Co-Lenders, entered into a Loan and
5 Security Agreement ("Loan Agreement"), pursuant to which Kennedy made a \$12
6 million loan to OneCap to facilitate the purchase of unimproved real property consisting
7 of 78.74± acres of raw land .

8 5. The loan was evidenced by a Promissory Note dated June 15, 2006, in the original
9 principal sum of \$12 million ("Note"), made by OneCap to pay to the order of Kennedy
10 as agent of the lenders.

11 6. To further secure payment of the Note, on June 14, 2006, Hesser and OneCap
12 MM executed personal guaranties of the loan to Kennedy ("Guaranty"). At the time of
13 the transaction between OneCap and Kennedy, Hesser was the President of OneCap
14 and OneCap MM.

15 7. On April 1, 2008, OneCap defaulted under the Note and Deed of Trust.

16 8. On February 13, 2009, Kennedy filed a Complaint against Hesser for breach of
17 the Guaranty.

18 9. On September 22, 2009, Kennedy filed a Motion for Summary Judgment against
19 Defendants in the Guarantor Action.

20 10. On or around October 6, 2009, the Defendants filed an Opposition to the Motion
21 Summary Judgment (the "Opposition").

22 11. On November 4, 2009, the Court granted the Plaintiff's Motion for Summary
23 Judgment

24 12. Thereafter, on February 17, 2009, the Court entered Judgment against each of
25 the Defendants in the amount of \$16,802,025.64, excluding attorneys' fees and costs
26 which amount was to be determined (the "Judgment"). The Plaintiff provided
27 Defendants with notice of entry of judgment on February 23, 2010.

28 13. On February 18, 2010, the Court entered an Order Awarding Judgment in favor
29 of Plaintiff and against Defendants in the amount of \$18,843,912.09.
30
31



1
2 14. After the guarantee judgment was entered, a foreclosure sale went forward on
3 June 17, 2010, and Kennedy credit bid against the Property. See Notice of Trustee's Sale
4 dated May 25, 2010, recorded in Clark County Recorder's Office on May 27, 2010, as
5 Instrument No. 20100527-0000200. E.R. Tab 9 at 00228-29; see also Trustee's Deed
6 Upon Sale recorded July 16, 2010, recorded in the Clark County Recorder's Office as
7 Instrument No. 2010716-0000364. E.R. Tab 10 at 00230-00234.

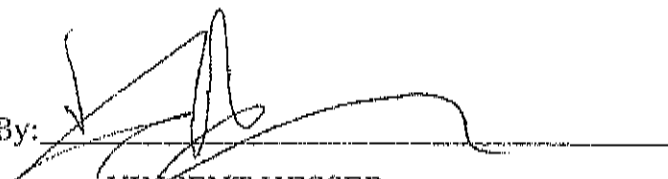
8 15. Plaintiff filed an Affidavit of Renewal of Judgment on December 24, 2015 to
9 renew the judgment.

10 16. Plaintiff was required to record the Affidavit of Renewal of Judgment within a
11 mandatory three (3) day deadline as set forth in NRS 17.214(1)(b). Plaintiff failed to do
12 so and recorded it fifteen (15) days later on January 8, 2016 with the Clark County
13 Recorder's Office as Instrument No. 20160108-000229. (See Exhibit "1").

14 17. Plaintiff was required to send the Affidavit of Renewal of Judgment by certified
15 mail within a mandatory three (3) day deadline as set forth in NRS 17.214(3). Plaintiff
16 attached a Certificate of Mailing that stated the Affidavit of Renewal of Judgment was
17 sent to Defendant Hesser on December 24, 2015, but the last page of the Affidavit of
18 Renewal of Judgment shows a signature and notary dated January 7, 2016 (well after
19 the 3-day deadline).
20

21 18. I declare the foregoing to be true and correct under penalty of perjury of the laws
22 of the state of Nevada.
23

24 Dated: August 14, 2019

25
26 By: 
27 VINCENT HESSER
28
29
30
31



**Clark County Recorder's Office**

Modify Date:	1/26/2016
Record Date:	1/8/2016 8:01 AM
Number of Pages:	20
Book Type:	OR
Document Type:	(J) JUDGMENT
Modifier:	RENEW
1st Party	BROWN, OGOONNA M ONECAP PARTNERS MM INC
2nd Party	HESSER, VINCENT W KENNEDY FUNDING INC

Inst #: 20160108-0000229

Fees: \$36.00

N/C Fee: \$0.00

01/08/2016 08:01:10 AM

Receipt #: 2652944

Requestor:

HOLLEY DRIGGS WALCH FINE WR

Recorded By: ANI Pgs: 20

DEBBIE CONWAY

CLARK COUNTY RECORDER

RECORDING COVER PAGE

(Must be typed or printed clearly in BLACK ink only
and avoid printing in the 1" margins of document)

APN#

(11 digit Assessor's Parcel Number may be obtained at:
<http://redrock.co.clark.nv.us/assrealprop/owner.aspx>)

TITLE OF DOCUMENT

(DO NOT Abbreviate)

Affidavit for Renewal of Judgment against Vincent W. Hesser

Document Title on cover page must appear EXACTLY as the first page of the document
to be recorded.

RECORDING REQUESTED BY:

Holley Driggs Walch Fine Wray Puzey & Thompson

RETURN TO: Name Ogonna M. Brown, Esq.

Address 400 S 4th Street, Third Floor

City/State/Zip Las Vegas, Nevada 89101

MAIL TAX STATEMENT TO: (Applicable to documents transferring real property)

Name _____

Address _____

City/State/Zip _____

This page provides additional information required by NRS 111.312 Sections 1-2.

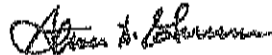
An additional recording fee of \$1.00 will apply.

To print this document properly, do not use page scaling.

Using this cover page does not exclude the document from assessing a noncompliance fee.

P:\Common\Forms & Notices\Cover Page Template Feb2014

VH000760


CLERK OF THE COURT

1 ARJ
2 RICHARD F. HOLLEY, ESQ. (Nevada Bar No. 3077)
3 E-mail: rholley@nevadafirm.com
4 OGGONNA M. BROWN, ESQ. (Nevada Bar No. 7589)
5 E-mail: obrown@nevadafirm.com
6 HOLLEY DRIGGS WALCH
7 FINE WRAY PUZEY & THOMPSON
8 400 South Fourth Street, Third Floor
9 Las Vegas, Nevada 89101
10 Telephone: 702/791-0308
11 Facsimile: 702/791-1912
12 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

AFFIDAVIT FOR RENEWAL OF JUDGMENT AGAINST VINCENT W. HESSER

STATE OF NEVADA

COUNTY OF CLARK

} ss.

I, Ogonna M. Brown, Esq., hereby declare as follows:

1. I am over the age of 18 and mentally competent. Except where stated on
information and belief, I have personal knowledge of the facts in this matter and if called upon to
testify, could and would do so.

2. I am an attorney licensed to practice law in the State of Nevada and admitted to
practice before this Court.

3. I am a shareholder with the law firm of Holley Driggs Walch Fine Wray Puzey &
Thompson (the "Firm"), counsel of record for Kennedy Funding, Inc., a New Jersey corporation

1 ("Plaintiff" or "Judgment Creditor"). The Firm maintains offices at 400 South Fourth Street,
2 Third Floor, Las Vegas, Nevada 89101.

3 4. On or about February 18, 2010, a Judgment Against Onecap Partners MM, Inc.
4 and Vincent W. Hesser ("Judgment") was entered in the District Court of Clark County, Nevada,
5 in favor of the Plaintiff against Vincent W. Hesser ("Judgment Debtor") in the total amount of
6 amount of \$16,802,025.64, excluding attorney's fees and costs, consisting of the principle
7 balance of \$12,000,000.00 due under the Loan and Security Agreement, accruing interest as of
8 October 31, 2009 in the amount of \$4,768,000.00, foreclosure costs in the amount of \$19,024.50,
9 appraisal fees in total amount of \$9,500.00 (CBRE in the amount of \$7,500.00 and Vernon
10 Martin \$2,000.00), miscellaneous costs in the amount of \$5,501.14. Post-judgment interest
11 continues to accrue on the principal balance at a default rate of twenty-five percent (25%) per
12 annum, or \$8,333.33 per diem. Judgment Creditor is entitled to augment the Judgment for
13 additional attorneys' fees and costs in pursuing this litigation, a true and correct copy of the
14 Judgment is attached hereto as Exhibit "1".

15 5. On or about March 29, 2010, the Original Certified Notice of Entry of Judgment
16 against Onecap Partners MM, Inc. and Vincent W. Hesser was recorded with the Clark County
17 Records' Office as Instrument No. 201003290000871.

18 6. There are no outstanding writs of execution for enforcement of the judgment.

19 7. There have been no payments on the Judgment.

20 8. There are no setoffs or counterclaims in favor of the Judgment Debtor.

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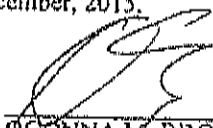
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9. As of December 24, 2015, the amount owing on the judgment is \$34,585,351.86.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

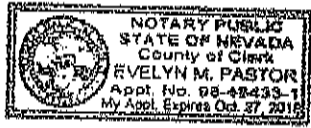
Dated this 24th day of December, 2015.



OGONNA M. BROWN, ESQ.

STATE OF NEVADA
County of Clark

SIGNED AND SWORN to before me this
24th day of December, 2015,
by Ogonna M. Brown, Esq.


NOTARY SIGNATURE



CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE

CLERK OF THE COURT

JAN 6 2016

EXHIBIT "1"

13

Inst #: 201003290000871

Fees: \$28.00

N/C Fee: \$0.00

03/29/2010 10:34:10 AM

Receipt #: 288488

Requestor:

SANTORO DRIGGS ET AL

Recorded By: BGM Pgs: 13

DEBBIE CONWAY

CLARK COUNTY RECORDER

APN#

11-digit Assessor's Parcel Number may be obtained at:
<http://redrock.co.clark.nv.us/assrealprop/owner.aspx>

Notice of Entry of Judgment against Onecap Partners MM,

Inc. and Vincent W. Hesser

Type of Document

(Example: Declaration of Homestead, Quit Claim Deed, etc.)

Recording Requested By:

Santoro Driggs Walch Kearney Holley & Thompson

Return Documents To:

Name Ogonna M. Atamoh, Esq.

Address 400 South Fourth Street, Third Floor

City/State/Zip Las Vegas, NV 89101

This page added to provide additional information required by NRS 111.312 Section 1-2

(An additional recording fee of \$1.00 will apply)

This cover page must be typed or printed clearly in black ink only.

OR Form 108 - 06/08/2007
Coversheet.pdf

VH000765

Alvin L. Holley
CLERK OF THE COURT

1 NEOJ
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 Attorney 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

NOTICE OF ENTRY OF JUDGMENT

24 YOU, and each of you, will please take notice that a JUDGMENT AGAINST ONECAP
25 PARTNERS MM, INC. AND VINCENT W. HESSER in the above-entitled matter was filed and
26 entered by the Clerk of the above-entitled Court on the 18th day of February, 2010, a copy of
27 which is attached hereto

28 Dated this 22nd day of February, 2010.

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

Richard F. Holley
RICHARD F. HOLLEY, ESQ. (NVSB #3077)
OGONNA M. ATAMOH, ESQ. (NVSB #7589)
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Attorneys for Kennedy Funding, Inc.

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON



ORIGINAL

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Alfonso L. Delacruz
CLERK OF THE COURT

JUDGE
RICHARD F. HOLLEY, ESQ.
Nevada Bar No. 3077
OGONNA M. ATAMOH, ESQ.
Nevada Bar No. 7589
SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
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.: A582746
Dept. No.: XI

JUDGMENT AGAINST ONECAP PARTNERS MM, INC. AND VINCENT W. HESSER

This matter came before the Court on Plaintiff Kennedy Funding, Inc.'s ("Plaintiff") evidentiary hearing on damages arising from the Motion for Summary Judgment Against Defendants ONECAP PARTNERS MM, INC. ("Onecap") and VINCENT W. HESSER ("Defendants") (the "Motion"), filed with the Court on September 22, 2009, and came on for evidentiary hearing as to damages on November 5, 2009, at 9:30 a.m. before the Honorable Elizabeth Gonzalez.

The Court having read and considered the papers and pleadings on file herein and having heard the testimony of Kim Vaccarella, Controller for Plaintiff, and the testimony of Matthew Lubway, appraiser for Defendants, and consistent with the Order Granting Motion for Summary

05209-09/561899.doc

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

Summary Filed

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VH000767



Judgment as to liability entered November 4, 2009, against Defendants, attached hereto as Exhibit "1", and the subsequent Order Awarding Damages Pursuant to Plaintiff's Motion for Summary Judgment entered concurrently herewith, and the Court being fully advised, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that Plaintiff shall recover from DEFENDANTS ONECAP PARTNERS MM, INC. and VINCENT W. HESSER, jointly and severally, the amount of \$16,802,025.64, excluding attorney's fees and costs, consisting of the principle balance of \$12,000,000.00 due under the Loan and Security Agreement, accruing interest as of October 31, 2009 in the amount of \$4,768,000.00, foreclosure costs in the amount of \$19,024.50, appraisal fees in total amount of \$9,500.00 (CBRE in the amount of \$7,500.00 and Vernon Martin \$2,000.00), miscellaneous costs in the amount of \$5,501.14. Post-judgment interest continues to accrue on the principal balance at a default rate of twenty-five percent (25%) per annum, or \$8,333.33 per diem.

IT IS HEREBY ORDERED, ADJUDGED and DECREED that Plaintiff shall recover from DEFENDANTS ONECAP PARTNERS MM, INC. and VINCENT W. HESSER attorney's fees as of November 3, 2009 in the amount of \$39,755.00, and costs as of November 3, 2009 in the amount of \$2,131.45 incurred by Santoro, Driggs, Walch, Kearney, Holley & Thompson.

IT IS FURTHER ORDERED that Plaintiff is entitled to recover post-judgment attorney's fees and costs incurred in executing and enforcing the Judgment.

IT IS FURTHER ORDERED that Plaintiff is entitled to recover post-judgment interest on the principal balance of \$16,802,025.64 at the rate of 25% per annum or \$8,333.33 per diem.

IT IS FURTHER ORDERED that to the extent the real property securing Plaintiff's Loan is sold or refinanced and such proceeds are paid to Plaintiff, any such proceeds shall be deducted from the judgment amount and accruing interest entered herein against DEFENDANTS ONECAP PARTNERS MM, INC. and VINCENT W. HESSER in favor of Plaintiff.

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SANTORO, DRIGGS, WALCH, KEARNEY, HOLLEY & THOMPSON




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IT IS FURTHER ORDERED that the Court expressly directs the entry of a final judgment, as there is no just reason for delay.

IT IS SO ORDERED.

Dated this 17 day of February, 2009.


DISTRICT COURT JUDGE *ene*

Submitted by:

SANTORO, DRIGGS, WALCH, KEARNEY,
HOLLEY & THOMPSON


By 
Richard P. Huddy, 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

EXHIBIT "1"

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

1 **ORDER**
2 RICHARD P. 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. HESSEK, an
21 individual; DOE INDIVIDUALS I through X;
22 and ROE CORPORATIONS I through X,

23 Defendants.

Case No.: A582746
Dept. No.: XI

FILED

NOV - 4 2009

CLERK OF COURT

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. Gewanter, Esq. of the law firm Harold P. Gewanter, Esq., Ltd., appeared on
28 behalf of Defendants ONECAP PARTNERS MM, INC. ("Onecap") and VINCENT W.
HESSEK ("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 Wolfert, filed

00758-02/11P+67

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

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 inferences 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 B,
26 LLC ("Option Holder") and OneCap Partners executed a Subordination and Assignment
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 guarantees 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 Uno Mts, LLC ("Nevada Uno"), and under the Deed of
27 Trust and Loan Agreement, OneCap Partner's transfer of the Property to Nevada Uno was a
28 default.

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

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 (Nov. 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 NIM 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 ...
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SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

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

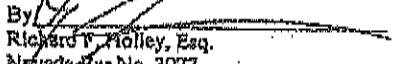
4 IT IS SO ORDERED.

5 Dated this 4 day of November, 2009.

6
7 ELIZABETH GOFF GONZALEZ
8 DISTRICT COURT JUDGE

9 Submitted by:

10 SANTORO, DRIGGS, WALCH, KEARNEY,
11 HOLLEY & THOMPSON

12 By 
13 Richard F. Holley, Esq.
14 Nevada Bar No. 3077
15 Ogonna M. Atemoh, Esq.
16 Nevada Bar No. 7589
17 400 S. Fourth Street, Third Floor
18 Las Vegas, NV 89101
19 Attorneys for Plaintiff
20
21
22
23
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26
27
28

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON



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 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

A handwritten signature in dark ink, appearing to read "O.B. Zwicker".

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

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE

[Signature]
CLERK OF THE COURT

3-24-2010

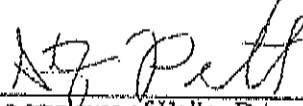
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CERTIFICATE OF MAILING

I HEREBY CERTIFY that, on the 24th day of December, 2015, pursuant to EDCR 8.05 and NRCP 5(b), I caused to be served electronically using the Court's E-Filing System, a true and correct copy of the AFFIDAVIT FOR RENEWAL OF JUDGMENT AGAINST VINCENT W. HESSER addressed to the parties below. Pursuant to EDCR 8.05(i) the date and time of the electronic service is in place of the date and place of deposit in the mail.

A.M. Santos Law, Chtd.
Antony Santos tony@amsantoslaw.com
Melissa Burczyk melissa@amsantoslaw.com
Attorneys for Defendant Vincent W. Hesser

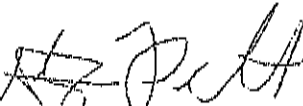
Timothy S. Cory & Associates
Timothy S. Cory tim.cory@corylaw.us
Attorney for Defendant Vincent W. Hesser


An employee of Holley Driggs Walch
Fine Wray Puzey & Thompson

I HEREBY CERTIFY that, on the 24th day of December, 2015 and pursuant to NRCP 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing AFFIDAVIT FOR RENEWAL OF JUDGMENT AGAINST VINCENT W. HESSER, via (1) regular mail, first class postage prepaid, and, pursuant to NRS 17.214, (2) certified mail, return receipt requested, to the last known address as follows:

Vincent W. Hesser
6242 Coley Avenue
Las Vegas, Nevada 89146
Defendant

Vincent W. Hesser
3275 South Jones Boulevard, Suite 104
Las Vegas, Nevada 89146
Defendant


An employee of Holley Driggs Walch
Fine Wray Puzey & Thompson

**AFFIDAVIT PURSUANT TO NRS 17.150 REGARDING
JUDGMENT DEBTOR VINCENT W. HESSER**

I, Ogonna M. Brown, Esq., being first duly sworn under all penalties of perjury, do hereby depose and state:

1. I am an attorney at law, duly licensed to practice before all Courts of the State of Nevada and am employed with the law firm of Holley Driggs Walch Fine Wray Puzey & Thompson, counsel for Plaintiff Kennedy Funding, Inc., a New Jersey corporation.

2. The judgment debtor's name is **Vincent W. Hesser.**

3. The judgment debtor's last known addresses:

Vincent W. Hesser
6242 Coley Avenue
Las Vegas, Nevada 89146

Vincent W. Hesser
10758 Rivendell Avenue
Las Vegas, Nevada 89135

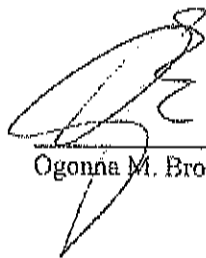
Vincent W. Hesser
3275 South Jones, Suite 104
Las Vegas, Nevada 89146

4. The judgment debtor's last four digits of his driver's license number: Unknown.

5. The judgment debtor's last four digits of his SSN: XXX-XX-5161.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Dated this 7th day of January, 2016.



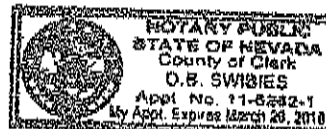
Ogonna M. Brown, Esq.

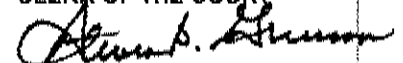
State of Nevada
County of Clark

Signed and sworn to before me on January 7, 2016 by Ogonna M. Brown.



NOTARY PUBLIC





OPPM

Richard F. Holley, Esq. (NV Bar No. 3077)
Email: rholley@nevadafirm.com
Mary Langsner, Ph.D. (NV Bar No. 13707)
mlangsner@nevadafirm.com
HOLLEY DRIGGS WALCH
FINE PUZEY STEIN & THOMPSON
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
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.: A582746
Dept. No.: XI

**OPPOSITION TO MOTION FOR A
COURT ORDER DECLARING
JUDGMENT EXPIRED**

Judgment Creditor and Plaintiff Kennedy Funding, Inc. ("Kennedy"), by and through its attorneys Richard F. Holley, Esq. and Mary Langsner, Ph.D. of the law firm Holley Driggs Walch Fine Puzey Stein & Thompson, hereby files its Opposition to Motion For a Court Order Declaring Judgment Expired ("Opposition"), which opposes the relief sought in the Motion for a Court Order Declaring Judgment Expired filed with the Court on August 27, 2019 ("Motion"), filed by Defendant and Movant Vincent W. Hesser ("Movant").¹ This Opposition is based upon the


¹ Although no certificate of service accompanies the Motion attesting that service of the Motion was properly effected to parties in interest such as Kennedy, the first page of the Motion bears a file stamp of August 27, 2019, at 2:58 p.m. Nevada Electronic Filing and Conversion Rule 9(e) provides in part, "Nothing in this rule alleviates the obligation of a party to provide proof of service." Noting that Movant failed to comply with a particular rule of practice may seem pointed, but the Motion is trying to escape liability on an eight-figure judgment by seeking to apply this principle to his judgment creditor, alleging noncompliance with the fine details of judgment renewal.

following grounds and the following reasons: (1) Kennedy complied with the timely filing of the Judgment Renewal Affidavit because the Renewed Judgment was filed during the ninety-day period preceding expiration of the original Judgment under NRS 17.214(1)(a); (2) Kennedy complied with the timely service requirements of NRS 17.214(b)(3) because Movant was served the Judgment Renewal Affidavit via certified mail, return receipt requested, on the same date the document was filed with the Court; (3) all requisite steps to renew the judgment, including recording it, were completed before the original underlying Judgment expired; (4) Movant's reliance on certain case law is inapposite as that case law addressed creditors who failed to complete all Requirements before the original Judgment expired; and (5) Movant's Motion is defective as no proof of service is provided.

This Opposition is supported by the Declaration of Mary Langsner, Ph.D. ("Langsner Decl."), attached hereto as **Exhibit "A"** and the numbered exhibits thereto; the papers and pleadings on file with this Court, judicial notice of which Kennedy respectfully requests be taken pursuant to NRS 47.130 and NRS 47.150; and any oral argument entertains at hearing² on this Motion.

Dated this 6th day of September 2019.

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


Richard F. Holley, Esq. (NV Bar No. 3077)
Mary Langsner, Ph.D. (NV Bar No. 13707)
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101

Attorneys for Kennedy Funding, Inc.

² As of the filing of this Opposition, the Movant has failed to set the Motion for a hearing before this Court.

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF RELEVANT FACTS

1. On February 18, 2010, the signed Judgment Against OneCap Partners MM, Inc. and Vincent W. Hesser ("Judgment") was filed with the Court. *See Exhibit "1"* to Langsner Decl.

2. The Judgment was recorded thereafter. *See Exhibit "2"* to Langsner Decl.

RENEWAL STEP ONE: FILING

3. Six years from February 18, 2010, is February 18, 2016.

4. Ninety days preceding February 18, 2016, is November 20, 2015.

5. On December 24, 2015, Kennedy filed its Affidavit For Renewal of Judgment Against Vincent W. Hesser (the "Judgment Renewal Affidavit"). *See Exhibit "3"* to Langsner Decl.

RENEWAL STEP TWO: SERVICE

6. The last page of the filed Judgment Renewal Affidavit provides in part as follows:

I HEREBY CERTIFY that, on the 24th day of December, 2015, pursuant to EDCR³ 8.05 and NRCP 5(b), I caused to be served electronically using the Court's E-Filing System, a true and correct copy of the AFFIDAVIT FOR RENEWAL OF JUDGMENT AGAINST VINCENT W. HESSER addressed to the parties below. Pursuant to EDCR 8.05(i) the date and time of the electronic service is in place of the date and place of deposit in the mail.

A.M. Santos Law, Chtd.
Antony Santos tony@amsantoslaw.com
Melissa Burczyk melissa@amsantoslaw.com
Attorneys for Defendant Vincent W. Hesser

Timothy S. Cory & Associates
Timothy S. Cory tim.cory@corylaw.us
Attorney for Defendant Vincent W. Hesser

See id. at last page of document ("Judgment Renewal Certificate of Service"). *See also Exhibit "4"* to Langsner Decl. (true and correct copy of e-filing electronic receipt); *see also Exhibit "5"* to Langsner Decl. (notice of electronic filing of Judgment Renewal Affidavit dated December 24, 2015, showing delivery to counsel).

³ Rule of Practice for the Eighth Judicial District Court of the State of Nevada ("EDCR").

7. As shown by the express language of Langsner Decl. **Exs. 3 and 5**, Movant's counsel A.M. Santos Law, the filer of the Motion, was noticed of the Judgment Renewal Affidavit in real time on December 24, 2015.

8. In addition, the Court's Notice of Electronic Filing indicates that both counsel identified in the Judgment Renewal Certificate of Service were among the "Service List Recipients" receiving notice of the filed Judgment Renewal Affidavit on December 24, 2015. *See Ex. 5* to Langsner Decl.

9. The electronically served file-stamped copy of the Judgment Renewal Affidavit has as its last page the Judgment Renewal Certificate of Service. *See Ex. 3* to Langsner Decl. Any other attestation by Movant's counsel would appear unsupported by the documentary record.

10. The Judgment Renewal Certificate of Service on the last page of **Ex. 3** is further supported by the information conveyed in **Exs. 4 and 5**.

11. In addition, the Judgment Renewal Certificate of Service also provides as follows:

I HEREBY CERTIFY that, on the 24th day of December, 2015 and pursuant to NRCP 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing AFFIDAVIT FOR RENEWAL OF JUDGMENT AGAINST VINCENT W. HESSER, via (1) regular mail, first class postage prepaid, and, pursuant to NRS 17.214, (2) certified mail, return receipt requested, to the last known address as follows:

Vincent W. Hesser
6242 Coley Avenue
Las Vegas, Nevada 89146
Defendant

Vincent W. Hesser
3275 South Jones Boulevard, Suite 104
Las Vegas, Nevada 89146
Defendant

See Judgment Renewal Certificate of Service, **Ex. 3** (emphases added).

12. In addition, U.S. Postal Service Certified Mail Receipts indicate that, on December 24, 2015 (the same date that the Judgment Renewal Affidavit was filed), certified mail with return receipt requested was sent to Vincent W. Hesser at the two mailing addresses identified in the Judgment Renewal Certificate of Service. *See Exhibit "6"* to Langsner Decl. (collectively, the "Certified Mail Receipts").

RENEWAL STEP THREE: RECORDATION

13. On January 7, 2016, an Affidavit Pursuant to NRS 17.150 Regarding Movant Vincent W. Hesser was signed under penalty of perjury by attorney Ogonna M. Brown, Esq. (the "Statutory Affidavit"). *See Exhibit "7"* to Langsner Decl.

14. Undersigned counsel's document identification number in the bottom left corner of the Statutory Affidavit indicates that the Statutory Affidavit was prepared as a separate, standalone document. *See id.; compare id., with Judgment Renewal Affidavit and its Judgment Renewal Certificate of Service* (each bearing the same document identification number as one another, but different than the document identification number of the Statutory Affidavit).

15. On January 8, 2016, the Judgment Renewal Affidavit and the Statutory Affidavit were together lodged with the Clark County Recorder and recorded in the Official Records of the Clark County Recorder (the "Clark Official Records") as Instrument No. 20160108-0000229. *See Exhibit "8"* to Langsner Decl. (the "Recorded Renewed Judgment").

16. On August 27, 2019, the Motion was filed. *See Exhibit "9"* to Langsner Decl. (Court's notice of electronic filing).

II. LEGAL ARGUMENT

A. Kennedy Met the Requirements for Judgment Renewal Before the Judgment Expired, and the Renewed Judgment is Valid and Enforceable.

The original Judgment appeared on the Court's docket on February 18, 2010. *See Ex. 1* to Langsner Decl. Pursuant to NRS 11.190(1), an action upon a judgment lasts for a duration of six years. Six years from February 18, 2010, is February 18, 2016.

Pursuant to NRS 17.214(1)(a), a judgment creditor may renew a judgment which has not been paid by (in addition to other requirements) "Filing an affidavit with the clerk of the court where the judgment is entered and docketed, within 90 days before the date the judgment expires by limitation." *Leven v. Frey*, 123 Nev. 399, 402 (2007) describes the statute governing renewal of judgments, NRS 17.214, as "expressly refer[ring] to these three aspects of judgment renewal—affidavit filing, recording, and service[.]"

Ninety days previous to the expiration of the Judgment is November 20, 2015. Thus, Kennedy needed to renew the Judgment between November 20, 2015, and February 18, 2016. As demonstrated by the record, Kennedy timely sought renewal of the Judgment during this period and completed all three steps necessary for renewal well in advance of February 18, 2016. Movant does not dispute that all three steps were completed before February 18, 2016.

1. Timely Filing: The First Requirement Is Met.

Regarding filing (the "First Requirement"), the statute begins with:

A judgment creditor or a judgment creditor's successor in interest may renew a judgment which has not been paid by: (a) Filing an affidavit with the clerk of the court where the judgment is entered and docketed, within 90 days before the date the judgment expires by limitation. The affidavit must be titled as an "Affidavit of Renewal of Judgment" and must specify [each of nine enumerated subprovisions and a non-enumerated provision].

See NRS 17.214(1)(a) (emphases added).

The Judgment Renewal Affidavit was filed with the Court on Thursday December 24, 2015. *See* Ex. 3 to Langsner Decl. The filing date of December 24, 2015, falls within the ninety days preceding expiration of the underlying Judgment. As such, the filing of the Judgment Renewal Affidavit was timely and in compliance with the statute.

Movant does not dispute that the Judgment Renewal Affidavit complies with the statute, does not dispute that the First Requirement was timely met, and does not dispute that Kennedy completed this requirement in advance of the original Judgment's expiration on February 18, 2016.

The record establishes that the First Requirement is met.

2. Timely Service: The Second Requirement Is Met.

Regarding service (the "Second Requirement"), the statute reads:

The judgment creditor or the judgment creditor's successor in interest shall notify the judgment debtor of the renewal of the judgment by sending a copy of the affidavit of renewal by certified mail, return receipt requested, to the judgment debtor at his or her last known address within 3 days after filing the affidavit.

See NRS 17.214(3) (emphasis added).

1 The Judgment Renewal Affidavit was served upon Movant the same date it was filed with
 2 the Court, Thursday December 24, 2015. The Judgment Renewal Certificate of Service and the
 3 Certified Mail Receipts both demonstrate this. *See Exs. 3 and 6.*

4 Movant does not contest that the Second Requirement was completed in advance of the
 5 expiration of the original Judgment or that this step was completed during the ninety days
 6 preceding expiration of the Judgment *but rather misreads the Judgment Renewal Affidavit* and
 7 fails to notice that the Judgment Renewal Certificate of Service (its last page) states clearly that
 8 the Judgment Renewal Affidavit *was served to the Movant, personally, via certified mail, return*
 9 *receipt requested.* The source of Movant's confusion on this point is unclear, as the Judgment
 10 Renewal Certificate of Service, the e-filing electronic receipt, and the notice of electronic filing⁴
 11 all show that both of his then-counsel (including counsel who filed the Motion) *received an*
 12 *electronic copy of* the Judgment Renewal Affidavit (containing the Judgment Renewal Certificate
 13 of Service) when it was filed with the Court. *See Exs. 3, 4, and 5.*

14 The record demonstrates that the timely-filed Judgment Renewal Affidavit was served on
 15 the same date it was filed with the Court, December 24, 2015. Therefore, the Second Requirement
 16 was expressly met, and Movant's statement that "Plaintiff missed the deadline to renew its
 17 judgment[.]"⁵ is simply unsupported by the record.

18 3. Recording Was Completed Well Before the Original Judgment Expired.

19 Regarding recording (the "Third Requirement"⁶), the statute reads:

20 A judgment creditor or a judgment creditor's successor in interest
 21 may renew a judgment which has not been paid by: . . . (b) If the
 22 judgment is recorded, recording the affidavit of renewal in the office
 23 of the county recorder in which the original judgment is filed within
 24 3 days after the affidavit of renewal is filed pursuant to paragraph
 25 (a).

25 ⁴ The Court's Notice of Electronic Filing indicates that both counsel identified in the Judgment
 26 Renewal Certificate of Service were among the "Service List Recipients" receiving notice of the
 27 filed Judgment Renewal Affidavit on December 24, 2015. *Compare Ex. 3 to Langsner Decl., with*
 28 *Ex. 5 to Langsner Decl.*

⁵ *See Motion at 2:3.*

⁶ Together with the First Requirement and Second Requirement, the "Requirements".

1 See NRS 17.214(1)(b). Movant essentially asks this Court to invalidate the Recorded Renewed
2 Judgment because this was recorded less than ten (10) business days after the three-day period.

3 Although NRS 17.214(1)(b) provides that renewing a recorded judgment include recording
4 its affidavit of renewal, the word “shall” and the word “must” do not appear in this provision—a
5 noticeable distinction from the First Requirement (in which the word must appears twice with
6 respect to the renewal affidavit ⁷) and the Second Requirement (in which the word shall appears
7 once, with respect to service of the renewal affidavit⁸).

8 The Judgment Renewal Affidavit and the Statutory Affidavit were together recorded
9 January 8, 2016, well in advance of the Judgment’s expiration on February 18, 2016. Movant does
10 not contest that the Third Requirement was completed in advance of the original Judgment
11 expiring nor that this step was completed during the ninety-day timeframe set forth in the statute.
12 Rather, more than three and a half years after he and his counsel each received separate notice of
13 the Judgment Renewal Affidavit—and well beyond expiration of the original Judgment—Movant
14 now contends that the Third Requirement was not met because recording occurred January 8, 2016.

15 Even though recording of the Judgment Renewal Affidavit occurred during the ninety-day
16 period established by the statute and was completed well in advance of the expiration of the
17 original Judgment, Movant now asks this Court to invalidate the Judgment Renewal Affidavit.
18 The Motion should be denied for the reasons set forth herein.

19 **a. The Instant Dispute Is Factually Distinguishable From the Precedent**
20 **Cited.**

21 **i. *Leven v. Frey* involved a creditor who completed only one**
22 **requirement before the original Judgment expired.**

23 In relying upon *Leven v. Frey*, 123 Nev. 399 (2007), Movant presents this Court with
24 authority that can be factually distinguished from the instant dispute. The judgment creditor in
25 *Leven* (identified by that Court as “Frey”) had accomplished only one of the Requirements in

26 ⁷ With respect to the First Requirement, Kennedy’s timely compliance cannot be disputed.

27 ⁸ With respect to this requirement, Kennedy’s compliance cannot be reasonably disputed, as
28 Movant’s allegations to the contrary appear to be premised upon a misreading of filed documents
and thus contradicted by the record.

1 advance of the expiration of his original judgment, filing the affidavit of renewal. *See Leven*, 123
2 Nev. at 401. Then, after his original judgment had expired, Frey sought first to notice the
3 renewal—again, after the original judgment had expired—and eventually sought to record the
4 renewal *one week after the original judgment had expired*. *Leven*, 123 Nev. at 401.

5 The Court's thorough and careful analysis in *Leven* was undertaken in a case where
6 judgment creditors had let a "gap" or lapse occur between expiration of the original judgment and
7 complete compliance with all three of the Requirements—facts which are not present here.
8 Because of these factual differences, the specific issue of a recorded judgment renewal under NRS
9 17.214(1)(b) occurring timely in advance of the six-year deadline established by NRS 11.190(1)(a)
10 and timely within the ninety-day deadline established by NRS 17.214(1)(a)(1), but more than three
11 days after the renewal affidavit was filed, was not present before the Court in *Leven*. Moreover,
12 unlike *Leven*, here there was no "lapse" or "gap" period for the underlying judgment lien because
13 all of the Requirements were completed before the original Judgment expired.

14 As such, Movant's representations that "The facts are analogous in the instant matter here
15 before the Court[.]"⁹ is not correct.

16
17 **ii. *O'Lane v. Spinney* involved a creditor who completed zero requirements before the original Judgment expired.**

18 In *O'Lane v. Spinney*, 110 Nev. 496 (1994), a judgment creditor filed her renewal affidavit
19 after the expiration of the original underlying judgment and therefore failed to renew her judgment
20 within the time period set forth in the statute. *See O'Lane*, 110 Nev. at 498. Moreover, in *O'Lane*,
21 the Supreme Court addressed the untimely creditor's arguments regarding tolling, whether renewal
22 of a judgment would be considered a ministerial act in connection with the judgment debtor's
23 bankruptcy automatic stay, and whether equitable considerations based upon the underlying
24 medical malpractice that gave rise to the judgment in the first instance merit an exception allowing
25 the untimely creditor to salvage her judgment.

26
27
28 ⁹ See Motion at p.5, n.1.

1 Not only do the factual circumstances and analysis of *O'Lane* differ from the factual
2 circumstances here, but the legal arguments addressed by the Court are not brought forth by
3 Movant here. Movant does not ask the Court to address issues of tolling, issues of the potential
4 impact of a bankruptcy automatic stay, or issues of equitable considerations premised upon
5 medical malpractice. Instead, Movant asks for relief from a judgment against him, which is a
6 judgment based upon monies which were lent, guaranteed, and never repaid to Kennedy.

7 Even though Movant points to *O'Lane* for the premise that the Nevada Supreme Court
8 specifically addressed this timing issue in that matter,¹⁰ a careful read of *O'Lane* shows otherwise.
9 As such, the Motion's reliance on *O'Lane* is misplaced, as the *O'Lane* Court did not have before
10 it a creditor who completed all steps necessary to renew a recorded judgment, before the original
11 Judgment expired.

12 **b. Other Case Law Lends Support to Kennedy's Position.**

13 In the context of *Leven*'s discussion of compliance with statutory requirements under NRS
14 17.214, Kennedy respectfully requests that this Court consider other Nevada Supreme Court
15 precedent which deals with strict compliance.

16 In *Einhorn v. BAC Home Loans Servicing LP*, 128 Nev. 689, 696 (2012), the Court was
17 faced with issues of strict compliance with a statutory provision, where the purpose undergirding
18 the provision at issue had been met even though the parties had not complied with the express
19 language "to the tee." *Einhorn* concerned a statute then-in effect regarding foreclosure mediation,
20 NRS 107.086(4),¹¹ at that time required that a beneficiary of the deed of trust bring to the parties'
21 mediation a certified or original copy of the relevant deed, note, and assignment documents. In
22 *Einhorn*, the borrower brought the missing assignment to the parties' mediation. However, the
23 Court found that there had been strict compliance with the statute and affirmed the District Court's
24 denial of sanctions, noting that strict compliance had been met when all required documentation

25
26 ¹⁰ See Motion, 5:20 to 6:3.

27 ¹¹ Later substantially amended upon passage of A.B. 273 in the 77th Regular Session of the Nevada
28 Legislature (2013) (*see* 2013 Stat. of Nev. 3480-3481), eventually repealed and superseded upon
enactment of S.B. 512 in the 78th Regular Session of the Nevada Legislature (2015) (*see* 2015
Stat. of Nev. 3334).

1 was present, and “[t]o make the outcome determinative upon who brought the documents, . . .
2 exalts literalism for no practical purpose.” *Einhorn*, 128 Nev. at 697. The Court, mindful of its
3 own precedent, also stated:

4 In general, “‘time and manner’ requirements are strictly construed,
5 whereas substantial compliance may be sufficient for ‘form and
6 content’ requirements.” *Id.* at 408, 168 P.3d at 718; *see id.* at 408
7 n.31, 168 P.3d at 718 n.31 (noting that one part of a statute can be
8 “subject to strict compliance, even though other aspects of the
9 statutory scheme were subject to review for substantial
10 compliance”). Furthermore, strict compliance does not mean absurd
11 compliance. *Pellegrini v. State*, 117 Nev. 860, 874, 34 P.3d 519,
12 528 (2001) (“[W]e must construe statutory language to avoid absurd
13 or unreasonable results....”); 2A Norman J. Singer & J.D. Shambie
14 Singer, *STATUTES AND STATUTORY CONSTRUCTION* § 46:2, at 162
15 (7th ed. 2007) (“Statutes should be read sensibly rather than literally
16 and controlling legislative intent should be presumed to be
17 consonant with reason and good discretion.”).

18 *Einhorn*, 128 Nev. at 696. In other words, when a statute requiring strict compliance was not
19 complied with “to the tee,” compliance was found when all requirements had been met.

20 The record here demonstrates that NRS 17.214’s three Requirements for judgment renewal
21 were all completed in advance of the expiration of the original Judgment. Kennedy therefore urges
22 this Court to find that NRS 17.214 was complied with because Kennedy completed all three
23 Requirements of renewal in advance of the underlying Judgment expiring.

24 4. The Policy of NRS 17.214 Has Been Met.

25 Movant’s position does not comport with the policy underlying NRS 17.214. Setting aside
26 Movant’s confusion over the record and when the Judgment Renewal Affidavit was filed, the
27 primary issue raised by Movants is one of form over substance—namely, that, although the
28 Renewed Judgment was recorded before the expiration of the six-year statutory period set forth in
NRS 11.190(1)(a), and although the Renewed Judgment was recorded during the ninety-day period
contemplated under NRS 17.214(1)(a), and although there was timely and full compliance with
the First Requirement and the Second Requirement by application of prevailing law, the Renewed
Judgment—more than three-and-a-half years after renewal—should be set aside, even though
Movants *had actual notice in advance of the Judgment’s expiration* that Kennedy sought to
renew the Judgment.

With respect to timing: Thursday December 24, 2015, the Judgment Renewal Affidavit was filed with the Court, and service of same was effected (i) upon Movant personally through first class mail and also through certified mail, return receipt requested; and (ii) upon both of his counsel in this case. Kennedy immediately mailing the Judgment Renewal Affidavit to Movants on December 24, 2015, with no delay and on the very same date it was filed with the Court, was in full compliance with the mailing requirement under NRS 17.214(3) (the Second Requirement). Thus, Movant fails to establish he did not receive timely notice of the Judgment Renewal Affidavit pursuant to NRS 17.214(b)(3). Thereafter, Tuesday December 29, 2015, would likely have been the earliest “third day” contemplated by application of then-NRCP 6(a)¹² to periods of time prescribed by statute of less than eleven days in length (such as the three days of NRS 17.214(1)(b)). On Friday January 8, 2016 (at most seven business days after Tuesday December 29, 2015), the Judgment Renewal Affidavit (together with the Statutory Affidavit) was recorded.

Movant’s reading of Nevada Supreme Court case law on the issue of timely renewal of recorded judgments would lead to an absurd result because the cases relied upon involved creditors who completed one (or none) of the renewal requirements before the underlying judgment expired. Simply put, the Supreme Court in *Leven* was not presented with facts and circumstances which are present here—namely, completion of the three Requirements timely during the ninety-day renewal period afforded by the statute and well in advance of the original Judgment expiring.

Movant’s Motion should be denied.

¹² Which, at the time, provided in pertinent part:

In computing any period of time prescribed or allowed by these rules, by the local rules of any district court, by order of court, or by any applicable statute, . . . When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and nonjudicial days shall be excluded in the computation except for those proceedings filed under Titles 12 or 13 of the Nevada Revised Statutes.


See Nevada Supreme Court ADKT 0522 at Order Amending the Rules of Civil Procedure, the Rules of Appellate Procedure, and the Nevada Electronic Filing and Conversion Rules, filed December 31, 2018, and Errata, filed January 25, 2019; see also Adopted Rules and Redlines, at https://nvcourts.gov/AOC/Committees_and_Commissions/NRCP/Adopted_Rules_and_Redlines/ (last accessed Sept. 6, 2019).

III. CONCLUSION

Kennedy hereby requests that this Court deny Movant's Motion, declare the Recorded Renewed Judgment valid, and award Kennedy and any other remedies this Court deems just. Kennedy timely filed its Judgment Renewal Affidavit, timely served the filed Judgment Renewal Affidavit to Movant in strict compliance with the statutory requirements to do so, and recorded the filed-stamped Judgment Renewal Affidavit (together with the Statutory Affidavit) all within the ninety-day period prescribed by State law. Therefore, Kennedy performed all requirements for renewal of the Judgment well in advance of its expiration, and the Motion should be denied.

Dated this 6th day of September, 2019.

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


Richard F. Holley, Esq. (NV Bar No. 3077)
Mary Langsner, Ph.D. (NV Bar No. 13707)
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Las Vegas, Nevada 89101

Attorneys for Kennedy Funding, Inc.

EXHIBIT “A”

1 **DECL**

2 Richard F. Holley, Esq. (NV Bar No. 3077)

3 Email: rholley@nevadafirm.com

4 Mary Langsner, Ph.D. (NV Bar No. 13707)

5 mlangsner@nevadafirm.com

6 HOLLEY DRIGGS WALCH

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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

**DECLARATION OF MARY LANGSNER,
Ph.D. IN SUPPORT OF OPPOSITION TO
MOTION FOR A COURT ORDER
DECLARING JUDGMENT EXPIRED**

24 I, Mary Langsner, Ph.D., hereby declare under penalty of perjury and state as follows:

25 1. I am an associate attorney at Holley Driggs Walch Fine Puzey Stein & Thompson
26 ("Firm"). In connection with my work at the Firm, I represent Plaintiff Kenney Funding, Inc.
27 ("Kennedy").

28 2. I submit this declaration in support of Kennedy's Opposition to Motion For a Court
Order Declaring Judgment Expired (the "Opposition"), which opposes the Motion For a Court
Order Declaring Judgment Expired ("Motion") filed by Defendant and Judgment Debtor Vincent
W. Hesser ("Judgment Debtor").

3. I am over the age of eighteen (18) years and am competent to make this declaration.
Except where stated on information and belief, I have personal knowledge of the facts set forth
herein and, if called upon to testify, I could and would do so.

1 4. Attached hereto as **Exhibit "1"** is a true and correct copy of the signed Judgment
2 Against OneCap Partners MM, Inc. and Vincent W. Hesser, entered on the Court's docket on
3 February 18, 2010 ("Judgment").

4 5. Attached hereto as **Exhibit "2"** is a true and correct copy of the recorded Judgment.

5 6. Attached hereto as **Exhibit "3"** is a true and correct copy of the Affidavit For
6 Renewal of Judgment Against Vincent W. Hesser (the "Judgment Renewal Affidavit") filed by
7 Kennedy on December 24, 2015, bearing a certificate of service on its last page (the "Judgment
8 Renewal Certificate of Service").

9 7. Attached hereto as **Exhibit "4"** is a true and correct copy of the e-filing electronic
10 receipt for the Judgment Renewal Affidavit.

11 8. Attached hereto as **Exhibit "5"** is a true and correct copy of the Notice of Electronic
12 Filing of the Judgment Renewal Affidavit, dated December 24, 2015, with "Service List
13 Recipients" listed.

14 9. Attached hereto as **Exhibit "6"** is a true and correct copy of U.S. Postal Service
15 Certified Mail Receipts (collectively, the "Certified Mail Receipts"), showing certified mail with
16 return receipt requested to Vincent W. Hesser at the two mailing addresses identified in the
17 Judgment Renewal Certificate of Service.

18 10. Attached hereto as **Exhibit "7"** is a true and correct copy of executed Affidavit
19 Pursuant to NRS 17.150 Regarding Movant Vincent W. Hesser signed under penalty of perjury by
20 attorney Ogonna M. Brown, Esq. (the "Statutory Affidavit").

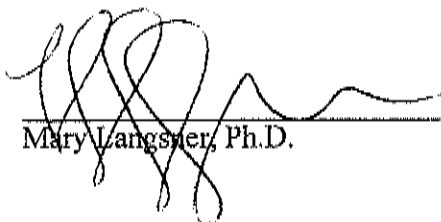
21 11. Attached hereto as **Exhibit "8"** is a true and correct copy of the documentation
22 recorded on January 8, 2016 (the "Recorded Renewed Judgment"), with the Clark County
23 Recorder and in the Official Records of the Clark County Recorder as Instrument No. 20160108-
24 0000229.

25 12. Attached hereto as **Exhibit "9"** is a true and correct copy of the Court's Notice of
26 Electronic Filing of the Motion.

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I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Dated this 6th day of September 2019.



Mary Langsner, Ph.D.

EXHIBIT “1”

ORIGINAL

Electronically Filed
02/18/2010 03:05:18 PM

JUDG
RICHARD F. HOLLEY, ESQ.
Nevada Bar No. 3077
OGONNA M. ATAMOH, ESQ.
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Alvin D. Lamm
CLERK OF THE COURT

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.: A582746
Dept. No.: XI

JUDGMENT AGAINST ONECAP PARTNERS MM, INC. AND VINCENT W. HESSER

This matter came before the Court on Plaintiff Kennedy Funding, Inc.'s ("Plaintiff") evidentiary hearing on damages arising from the Motion for Summary Judgment Against Defendants ONECAP PARTNERS MM, INC. ("Onecap") and VINCENT W. HESSER ("Defendants") (the "Motion"), filed with the Court on September 22, 2009, and came on for evidentiary hearing as to damages on November 5, 2009, at 9:30 a.m. before the Honorable Elizabeth Gonzalez.

The Court having read and considered the papers and pleadings on file herein and having heard the testimony of Kim Vaccarella, Controller for Plaintiff, and the testimony of Matthew Lubway, appraiser for Defendants, and consistent with the Order Granting Motion for Summary

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VH000798

1 Judgment as to liability entered November 4, 2009, against Defendants, attached hereto as
2 Exhibit "1", and the subsequent Order Awarding Damages Pursuant to Plaintiff's Motion for
3 Summary Judgment entered concurrently herewith, and the Court being fully advised, and good
4 cause appearing therefor,

5 IT IS HEREBY ORDERED, ADJUDGED and DECREED that Plaintiff shall recover
6 from DEFENDANTS ONECAP PARTNERS MM, INC. and VINCENT W. HESSER, jointly
7 and severally, the amount of \$16,802,025.64, excluding attorney's fees and costs, consisting of
8 the principle balance of \$12,000,000.00 due under the Loan and Security Agreement, accruing
9 interest as of October 31, 2009 in the amount of \$4,768,000.00, foreclosure costs in the amount
10 of \$19,024.50, appraisal fees in total amount of \$9,500.00 (CBRE in the amount of \$7,500.00
11 and Vernon Martin \$2,000.00), miscellaneous costs in the amount of \$5,501.14. Post-judgment
12 interest continues to accrue on the principal balance at a default rate of twenty-five percent
13 (25%) per annum, or \$8,333.33 per diem.

14 IT IS HEREBY ORDERED, ADJUDGED and DECREED that Plaintiff shall recover
15 from DEFENDANTS ONECAP PARTNERS MM, INC. and VINCENT W. HESSER attorney's
16 fees as of November 3, 2009 in the amount of \$39,755.00, and costs as of November 3, 2009 in
17 the amount of \$2,131.45 incurred by Santoro, Driggs, Walch, Kearney, Holley & Thompson.

18 IT IS FURTHER ORDERED that Plaintiff is entitled to recover post-judgment attorney's
19 fees and costs incurred in executing and enforcing the Judgment.

20 IT IS FURTHER ORDERED that Plaintiff is entitled to recover post-judgment interest
21 on the principal balance of \$16,802,025.64 at the rate of 25% per annum or \$8,333.33 per diem.

22 IT IS FURTHER ORDERED that to the extent the real property securing Plaintiff's Loan
23 is sold or refinanced and such proceeds are paid to Plaintiff, any such proceeds shall be deducted
24 from the judgment amount and accruing interest entered herein against DEFENDANTS
25 ONECAP PARTNERS MM, INC. and VINCENT W. HESSER in favor of Plaintiff.

26 ...

27 ...

28 ...

1 IT IS FURTHER ORDERED that the Court expressly directs the entry of a final
2 judgment, as there is no just reason for delay.

3 IT IS SO ORDERED.

4 Dated this 17 day of February 2009.¹⁰

5
6 
DISTRICT COURT JUDGE *ene*

7
8 Submitted by:

9 SANTORO, DRIGGS, WALCH, KEARNEY,
10 HOLLEY & THOMPSON

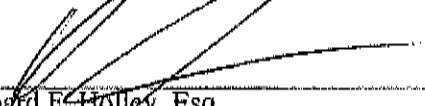
11 By 
12 Richard F. Holley, Esq.
13 Nevada Bar No. 3077
14 Ogonna M. Atamoh, Esq.
15 Nevada Bar No. 7589
16 400 S. Fourth Street, Third Floor
17 Las Vegas, NV 89101
18 Attorneys for Plaintiff
19
20
21
22
23
24
25
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27
28

EXHIBIT "1"

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON



ORDER

RICHARD F. HOLLEY, ESQ.
Nevada Bar No. 3077
OGONNA M. ATAMOH, ESQ.
Nevada Bar No. 7589
SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Telephone: 702/791-0308
Facsimile: 702/791-1912

Attorneys for Kennedy Funding, Inc.

FILED

NOV - 4 2009

Alfred J. Williams
CLERK OF COURT

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

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff KENNEDY FUNDING, INC.'s, ("Plaintiff") Motion for Summary Judgment ("Motion for Summary Judgment"), having come on for hearing on October 27, 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 ("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

06209-09/519467

VH000802



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

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

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

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

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

5. There is no genuine issue of material fact that Kennedy Funding, Gary Owen II, LLC ("Option Holder") and OneCap Partners executed a Subordination and Attornment Agreement ("Subordination Agreement") in which the Option Holder agreed to subordinate its 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.



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

CONCLUSIONS OF LAW

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

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

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

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

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

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 as to liability only.

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SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON



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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.

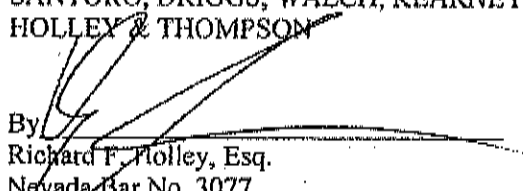
IT IS SO ORDERED.

Dated this 4 day of November, 2009.

ELIZABETH GOFF GONZALEZ
DISTRICT COURT JUDGE

Submitted by:

SANTORO, DRIGGS, WALCH, KEARNEY,
HOLLEY & THOMPSON

By 
Richard F. Polley, 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

IN THE SUPREME COURT OF THE STATE OF NEVADA

VINCENT HESSER

Petitioner,

vs.

KENNEDY FUNDING, INC.

Respondent

Case No. 81383

District Court

Case No. 09A582746

APPEAL

From the Eighth Judicial District Court

Department XI

Clark County Nevada

HONORABLE ELIZABETH GONZALEZ

APPELLANT'S APPENDIX VOL V

LAW OFFICES OF BYRON THOMAS

BYRON THOMAS, ESQ.

BAR NO: 8906

Attorney for

VINCENT HESSER

	Filing Date	Page Numbers	Volume
Complaint	2/13/2009	VH000001- VH000009	I
Initial Appearance Fee Disclosure	2/13/2009	VH000010	I
Defendants Answer to Complaint and Affirmative Defenses	3/13/2009	VH000011- VH000019	I
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Commissioners Decision On Request for Exemption	4/17/2009	VH000022- VH000028	I

Commissioners Decision on Request for Exemption - Granted	4/29/2009	VH000029- VH000030	I
Joint Case Conference Report	7/14/2009	VH000031- VH000043	I
Scheduling Order	9/08/2009	VH000044- VH000046	I
Declaration of Kevin Wolfer	9/22/2009	VH000047- VH000231	I
Motion for Summary Judgement	9/22/2009	VH000232- VH000242	I

Certificate of Mailing	9/23/2009	VH000243	I
Opposition to Motion for Summary Judgement	10/07/2009	VH000244- VH000253	II
Order Setting Non Jury Trial and Calendar Call	10/12- 2009	VH000254- VH000255	II
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Motion for Summary Judgement Result: Granted in Part	10/27/2009	VH000267	II

Affidavit of Ogonna M. Atamoh, Esq	11/03/2009	VH000268- VH000273	II
Declaration of Kim Vaccarella	11/03/2009	VH000274- VH000328	II
Memorandum of Cost and Disbursements	11/03/2009	VH000329- VH000330	II
Order Granting Plaintiff's Motion for Summary Judgement	11/04/2009	VH000331- VH000335	II
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Notice of Entry of Order	11/05/2009	VH000337- VH000343	II
Receipt of Copy	11/05/09	VH000344	II
Court Minutes / Journal Entries	11/19/09	VH000345	II
Supplemental Declaration of Kevin Wolfe	11/19/2009	VH000346- VH000389	II
Defendants Supplemental Damages Submission	12/03/2009	VH000390- VH000394	II

Request to Strike Defendant's Clarified Supplemental Damages Submission	12/03/2009	VH000395- VH000412	II
Court Minute / Journal Entries	12/04/2009	VH000413	II
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Notice of Entry of Order Denying Plaintiff's Request to Strike	1/05/2010	VH000416- VH000419	II
Court Minute / Journal Entries	2/04/2010	VH000420	II

Court Minute / Journal Entries	2/05/2010	VH000421- VH000422	II
Judgement Against OneCap Partners MM, Inc. and Vincent W. Hesser	2/18/2010	VH000423- VH000431	II
Order Awarding Damages Pursuant to Plaintiff's Motion for Summary Judgement	2/18/2010	VH000432- VH000435	II
Notice of Entry of Order	2/23/2010	VH000436- VH000441	II
Notice of Entry of Judgement	2/23/2010	VH000442- VH000452	II

Case Appeal Statement	3/15/2010	VH000453- VH000455	II
Notice of Appeal OneCap Partner MM, Inc. and Vincent Hesser's Notice of Appeal	3/15/2010	VH000456- VH000473	II
Memorandum of Costs and Disbursements Post Judgment Memorandum of Costs and Disbursements	4/23/2010	VH000474- VH000475	II
Order to Statistically Close Case	9/28/2011	VH000476	III
NV Supreme Court Clerks Certificate/Judgement - Affirmed	3/16/2012	VH000477- VH000481	III

Ex Parte Motion for Order Allowing Examination of Judgment Debtor Vincent W. Hesser	3/09/2015	VH000482- VH000487	III
Order for Judgement Debtor Examination of Judgement Debtor Vincent W. Hesser	3/12/2015	VH000488- VH000490	III
Notice of Entry of Order for Examination of Judgement Debtor Vincent W. Hesser	3/13/2015	VH000491- VH000494	III
Affidavit of Due Diligence	5/05/2015	VH000495- VH000511	III
Ex Parte Motion to Serve Judgement Debtor Vincent W. Hesser via Certified Mail	5/06/2015	VH000512- VH000523	III

Order Granting Ex Parte Motion to Serve Judgement Debtor Vincent W. Hesser via Certified Mail	5/13/2015	VH000524- VH000526	III
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Affidavit of Service Affidavit of Service by Mail	5/15/2015	VH000532- VH000535	III
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Ex-Parte Motion for Protective Order	6/15/2015	VH000543- VH000546	III
Motion Defendant Vincent Hesser's Motion Pursuant to NRCP 60(b) to Vacate Judgement	6/15/2015	VH000547- VH000656	III
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Stipulation and Order Stipulation and Order to Extend Time for Plaintiff to File and Opposition to Defendant Vincent Hesser's Motion Pursuant to NRCP 60(b) to Vacate Judgement	6/30/2015	VH000658- VH000660	III
Notice of Entry of Order to Extend Time for Plaintiff to File and Opposition to Defendant Vincent Hesser's Motion Pursuant to NRCP 60(b) to Vacate Judgement	7/01/2015	VH000661- VH000665	IV

Notice to Withdrawal of Motion	7/07/15	VH000666- VH000667	IV
Affidavit for Renewal of Judgement Against Vincent W. Hesser	12/24/15	VH000668- VH000685	IV
Motion for a Court Order Declaring Judgement Expired	8/12/19	VH000686- VH000717	IV
Motion for a Court Order Declaring Judgement Expired (Errata)	8/27/19	VH000718- VH000748	IV
Motion for a Court Order Declaring Judgement Expired	8/27/19	VH000749- VH000779	IV

Opposition to Motion For a Court Order Declaring Judgement Expired	9/06/19	VH000780- VH000875	IV
Notice of Hearing	10/09/19	VH000876	IV
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Motion to Amend, Alter, Modify (and/or Reconsider) Order Hear Date Requested	11/22/19	VH000878- VH000887	V
Plaintiffs Opposition to Hesser's Motion to Amend, Alter, Modify and/ or reconsider Order.	12/02/19	VH000888- VH000892	V

Order Denying Motion for Order Declaring Judgment Expired	12/3/19	VH000893- VH000895	V
Notice of Entry of Order Order Denying Motion for Order Declaring Judgment Expired	12/23/19	VH000896- VH999900	V
Order Granting Motion to Withdraw as Counsel of Record	2/10/20	VH000901- VH000902	V
Order Denying Defendant's Motion to Amend, Alter, Modify (and / or reconsider) Order	5/21/20	VH000903- VH000904	V
Notice of Entry of Order Denying Defendant's Motion to Amend, Alter, Modify (and / or reconsider) Order	5/21/20	VH000905- VH000908	V

Notice of Appeal	6/19/20	VH000909- VH000915	V
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Attorney for Vince Hesser

**DISTRICT COURT
CLARK COUNTY, NEVADA**

KENNEDY FUNDING, INC., a New Jersey
corporation.

Plaintiff,

vs.

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

(Business Court)

**MOTION TO AMEND, ALTER,
MODIFY (AND/OR
RECONSIDER) ORDER**

HEARING DATE REQUESTED

Comes now, **DEFENDANT VINCENT HESSER**, by and through legal
counsel, AM Santos, Esq. and hereby files this Motion to Alter or Amend a Judgment
pursuant to NRCP 59(e) or, in the alternative, Motion for Reconsideration
("Defendant's Motion") and requests that this Court amend its order, as it appears to
contradict unambiguous, binding precedent from this states highest court. Defendant's
Motion is based upon the instant points and authorities; and any prior filings, exhibits
and affidavits attached thereto, as filed with the Court together with any argument at
any hearing as to this motion as may be scheduled at the Court's discretion.



1
2 **I. SUMMARY**

3 Nevada imposes upon judgment creditors nothing short of **strict compliance**
4 with its Judgment Renewal Statute, NRS 17.214. Plaintiff failed to comply. There is no
5 grace period. Plaintiff's Judgment has expired. Candidly, An **all's-well-that ends-**
6 **well** argument cannot prevail without violating Nevada's controlling law on the
7 matter, Specifically, a Judgment Creditor **MAY NOT** argue that "notwithstanding a
8 failure to meet these deadlines, it nonetheless *substantively* complied because it
9 *ultimately* fulfilled these requirements prior to the expiration of the judgment".
10

11 Defendant respectfully submits that this Court's Order (dated November 18,
12 2019) conflicts with Nevada's Supreme Court and its ruling in *Leven v. Frey*.¹
13 Defendant thus beseeches this Court to reconsider.
14

15
16 **II. FACTS**

17 The relevant dates germane to judgment renewal as set forth in the statute (and
18 applicable to these instant facts are summarized in Defendant's prior motion) and
19 highlighted below as follows:
20

- 21 1. On February 23, 2010, Plaintiffs were awarded judgment.
- 22 2. Plaintiffs initially recorded said judgment on March 29, 2010.
- 23 3. Five years and ten months later Plaintiff sought to renew its Judgment
24 and filed an Affidavit of Renewal on December 24, 2015.
- 25 4. **Plaintiff then had three days to record** but missed that mark by
26 12 days, recording its renewal on January 8, 2016, or **15 days after**
filing with the Court. ²

27
28 ¹ 123 Nev. 399, 168 P.3d 712, (2007).

29 ² Oddly, the Affidavit of Renewal appears to have been mailed on the same day as
30 the court filing (December 24, 2015). **BUT**, the attached affidavit appears signed
31 and notarized on January 7, 2016



1
2
3 **III. LAW**

4 **A. NRCP 59**

5 “A motion to alter or amend a judgment now comes within the provisions of NRCP
6 59. The three essentials are a motion, notice of such motion, and the requirement that
7 it be served not later than ten days after written service of notice of entry of the
8 judgment. Like other motions, it must state the grounds with particularity, and the
9 relief sought.” *United Pac. Ins. Co. v. St. Denis*, 81 Nev. 103, 111,399 (1965).
10 Additionally, a court may reconsider its orders. *Trail v. Faretto*, 91 Nev. 401, 403,
11 (1975).
12

13 **B. EDCR 2.24**

14 EDCR 2.24 also permits reconsideration.”[a] party seeking reconsideration of a
15 ruling of the court, other than any order which may be addressed by motion pursuant
16 to N.R.C.P. 50(b), 52(b), 59 or 60, must file a motion for such relief within 10 days after
17 service of written notice of the order or judgment unless the time is shortened or
18 enlarged by order. A motion for rehearing or reconsideration must be served, noticed,
19 filed and heard as is any other motion. EDCR 2.24(b).
20
21

22 Furthermore, the Nevada Supreme Court has clarified that the “district court may
23 reconsider a previously decided issue if [...] the decision is clearly erroneous.” *Masonry*
24 *& Tile Contrs. v. Jolley, Urga & Wirth Ass’n*, 113 Nev. 737, 741, 941 P.2d 486, 489
25 (1997).
26

27 Additionally, Nevada does not distinguish between motions to alter or amend a
28 judgment, which toll, and motions to reconsider a judgment, which do not.” *AA Primo*
29 *Builders, LLC v. Washington*, 126 Nev. 578, 585, 245 P.3d 1190, 1194 (2010). Instead,
30 so long as the motion for reconsideration is “in writing, timely filed, states its grounds
31



1 with particularity, and “request[s] a substantive alteration of the judgment, not merely
2 the correction of a clerical error,” [...] there is no reason to deny it NRCP 59(e) status,
3 with tolling effect under NRAP 4(a)(4)(C).” *Id.* (internal citations omitted); see also
4 *Winston Products Co. v. DeBoer*, 122 Nev. 517, 134 P.3d 726 (2006).
5

6 **C. NRS 17.214**

7 NRS 17.214 mandates the following:

- 8 • The Affidavit of Renewal of Judgment **MUST** be filed
9 with the court within 90 days of expiration (with specific
10 terms and conditions).
- 11 • If the judgment is recorded and renewal is sought, the
12 affidavit of renewal **MUST BE RECORDED** in the
13 office of the county recorder in which the original
14 judgment is filed **WITHIN 3 DAYS AFTER THE**
15 **AFFIDAVIT OF RENEWAL IS FILED.**
- 16 • The judgment creditor shall notify the judgment debtor
17 of the renewal of the judgment by sending a copy of the
18 affidavit of renewal by certified mail, return receipt
19 requested, to the judgment debtor at his or her last
20 known address **WITHIN 3 DAYS AFTER FILING**
21 **THE AFFIDAVIT.**

22 Our Highest State Court declares these deadlines to be sacrosanct, stringent,
23 **mandatory**. The controlling case as noted above (and in Defendant’s prior Motion) is
24 *Leven v. Frey*, 123 Nev. 399, 168 P.3d 712, (2007).³ The *Leven* Court **dictates** that:

- 25 1) NRS 17.214's mandatory requirements of filing, recording, and
26 service of the affidavit are plainly set forth and ***must*** be followed
27 for judgment renewal.
- 28 2) Under the statute's express terms, a judgment may be renewed by:
 - 29 a) filing an affidavit with the district court within ninety
30 days before the judgment's expiration,
 - 31 b) recording the affidavit within three days of filing, and
 - c) serving the affidavit on the debtor within three days of
filing.
- 3) NRS 17.214(1)(a)'s requirement, that an affidavit of renewal be
filed with the court clerk within 90 days before the judgment

³ See also, *O’Lane v. Spinney* 110 Nev. 496, 874 P2d 754.



1 expires by limitation, is **unambiguous**.

- 2 4) An action on a judgment or its renewal **must** be commenced
3 within six years under NRS 11.190(1)(a); thus a judgment expires
4 by limitation in six years.
5 5) The requirement that an affidavit be filed within ninety days of the
6 expiration of this six-year period provides a clear first step in the
7 procedure for renewing judgments.⁴

8 Defendant respectfully emphasizes that:

- 9 • **NRS 17.214 timing requirements are unambiguous and**
10 **exacting.**
11 • **There is no grace period.**
12 • **There is no saving, safety valve provision.**
13 • **There is no allowance for a “substantial compliance” or a**
14 ***good faith* alternative.**
15 • A Party **MAY NOT** argue that, notwithstanding a failure to meet
16 these deadlines, it nonetheless **SUBSTANTIVELY** complied
17 because it ultimately fulfilled these requirements ***prior to the***
18 ***expiration of the judgment.***

19
20 ***A Court Cannot Deviate From Those Judgment Renewal***
21 ***Conditions Purposefully Stated By The Legislature***

22 NRS 17.214 was last amended in 2011, at a time when e-filing and e-service were
23 routinely available in most courts. The Legislature did not revise the statute to include
24 e-service as an alternate method of service. As recognized by this court in *Leven* because
25 “judgment renewal statutes are purely statutory in nature and are a measure of rights,
26 ***a court cannot deviate from those judgment renewal conditions***
27 ***purposefully stated by the Legislature.***” *Id.* at 409, 168 P.3d at 718 [citation
28
29
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⁴ *Leven*, 123 Nev. 399, 168 P.3d at 715.



1 omitted].

2
3 The *Leven* court specifically rejected the substantial compliance argument being
4 made by the Judgment Creditor in that case -- and by Appellant in this case --in favor⁵
5 of the strict compliance standard. As recognized by this Court:
6

7 The final requirement in the Judgment renewal process, service of the
8 renewal affidavit, implicates the Judgment Debtors due process rights. As
9 this Court stated in *Browning v. Dixon*⁶, notice is “[a]n elementary and
10 fundamental requirement of due process in any proceeding which is to be
11 accorded finality.” We agree with the Supreme Court of North Dakota that
12 because Judgment renewal statutes are purely statutory in nature and are a
13 measure of rights, a court cannot deviate from those Judgment renewal
14 conditions purposefully stated by the Legislature.”

15 [Emphasis added]. *Id.* at 409, 168 P.3d at 718.

16 The *Leven* court also recognized one of the cardinal rules of statutory construction when
17 it noted:
18

19 NRS 17.214(3) provides that a creditor seeking to renew a Judgment ‘shall’ notify
20 the Judgment Debtor of the renewal by serving a copy of the affidavit of renewal
21 [by certified mail, return receipt requested to the Judgment Debtor at his or her
22 last known address] within three days after filing the affidavit. As we have
23 previously explained ‘shall’ is a mandatory term indicative of the Legislatures
24 intent that the statutory provision be compulsory, thereby creating a duty rather
25 than conferring discretion.

26 *Id.* at fn. 29. citing *Washoe Med. Ctr. v. Dist. Ct.*, 122 Nev. 1298, 1303, 148 P.3d 790,
27 793 (2006). See also, *John LYNCH, Appellant., v. Yehia AWADA, an individual,*
28 *Respondent.*, 2018 WL 4286252 (Nev.), 3-12
29

30 D. CONCLUSION

31 Kennedy Funding filed the subject Affidavit of Renewal on 12/24/2015. Said filing
was recorded on January 8, 2016, **15 days after filing with the Court.** And 12 days
too late. **THIS DOES NOT COMPORT WITH THE STATUTE (NRS 17. 214.(2)**

⁵ *Swanson v. Flynn*, 75 N.D. 597, 31 N.W.2d 320, 324 (1948).

⁶ *Browning v. Dixon*, 114 Nev. 213, 217, 954 P.2d 741, 743 (1983).

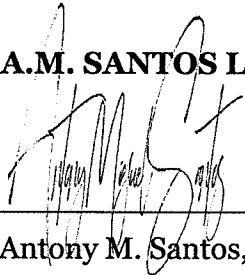


1 **and (3)).** That Plaintiff might suggest that it managed to get the job done before its
2 judgment was set to expire, makes no difference to the Nevada Supreme Court.⁷ Nor
3 does such a defense comport with the Legislature's clearly expressed intent. To the
4 contrary, since the statute includes no built-in grace period or safety valve provision, its
5 explicit three-day language leaves little room for judicial construction or "substantial
6 compliance" analysis. *Leven v. Frey*, 123 Nev. 399, 407.
7
8

9 For these reasons, Defendant respectfully beseeches this Court to reconsider its
10 order and amend accordingly.
11

12 Dated, this 22ND day of November 2019
13

14 **A.M. SANTOS LAW, CHTD.**

15 
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23 *Attorney for V. Hesser*
24
25
26
27

28 _____
29 ⁷ Moreover, the Affidavit of Renewal appears to have been *mailed* on the same day as
30 the court filing (12/24/15) but the attached affidavit appears *signed* and *notarized* on
31 1/07/16 and finally, *recorded* on 1/08/16 (subsequent to the 3-day limit). **(See Exhibit
"2" of Defendant's initial Motion).**

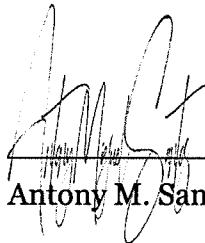


1
2
3 **CERTIFICATE OF SERVICE**

4 I hereby certify under penalty of perjury that on the this day of November 22,
5 2019, I served the foregoing **MOTION TO ALTER, AMEND, OR RECONSIDER**,
6 upon those persons designated by the parties in the E-filing Master Service List for the
7 above referenced matter in the Eighth Judicial District Court E-filing System in
8 accordance with the mandatory electronic service requirements of Administrative
9 Order 14-2 and the Nevada Electronic Filing and Conversion Rules as follows:

10 X VIA ELECTRONIC SERVICE by mandatory electronic service (e-service),
11 through the E-Filing System consents to electronic service pursuant to NRCP
12 5(b)(2)(D).

13 Holley Driggs Walch
14 Fine Puzey Stein & Thompson
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16 Las Vegas, Nevada 89101

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19 Antony M. Santos, Esq.
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EXHIBIT 1

1 John LYNCH, an individual; and Kellie Fuhr, Appellants,

2 v.

3 Yehia AWADA, an individual, Respondent.

4 No. 73561

5 FILED SEPTEMBER 28, 2018

6
7 **I. Attorneys and Law Firms**

8 Jerimy Kirschner & Associates, P.C.

9 The Wright Law Group

10 **ORDER OF AFFIRMANCE**

11 ^{*1} This is an appeal from a final judgment in an action to enforce a foreign judgment.
12 Eighth Judicial District Court, Clark County; Jerry A. Wiese, Judge.

13 Having considered the parties' arguments and the record, we conclude that the
14 district court properly denied appellants' motion for declaratory relief and application
15 to enforce a foreign judgment. *See Leven v. Frey*, 123 Nev. 399, 402, 168 P.3d 712, 714
(2007) (reviewing de novo a district court's interpretation of whether a statute's
16 procedural requirements require strict or substantial compliance).

17 Although appellants contend that the district court erred in interpreting NRS
18 17.214(3) and *Leven* to require strict compliance,¹ "a court cannot deviate from ...
19 judgment renewal conditions purposefully stated by the Legislature." *Id.* at 409, 168
20 P.3d at 719. Accordingly, "[t]he judgment creditor or the judgment creditor's
21 successor in interest *shall* notify the judgment debtor of the renewal of the judgment
22 by sending a copy of the affidavit of renewal by certified mail, return receipt
23 requested...." NRS 17.214(3) (emphasis added); *Markowitz v. Saxon Special*
24 *Servicing*, 129 Nev. 660, 665, 310 P.3d 569, 572 (2013) ("The word 'shall' is generally
25 regarded as mandatory.").

26 Because NRS 17.214(3) was not strictly complied with, the district court did not
27 err by denying appellants' motion for declaratory relief and application to enforce a
28 foreign judgment. Based on the foregoing, we

29 ORDER the judgment of the district court AFFIRMED.

30 **II. All Citations**

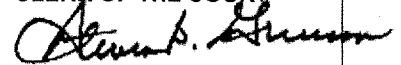
31 426 P.3d 605 (Table), 2018 WL 4697259

III. Footnotes

¹

We reject appellants' additional argument that the statutory notice requirement was
satisfied by registration through the federal court's electronic filing system
because NRS 17.214(3) requires notice by certified mail.





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17 *Attorneys for Kennedy Funding, Inc.*

18 **DISTRICT COURT**

19 **CLARK COUNTY, NEVADA**

20 KENNEDY FUNDING, INC., a New Jersey
21 corporation,

22 Plaintiff,

23 v.

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

28 Defendants.

Case No.: 09A582746

Dept. No.: XI

**PLAINTIFF'S OPPOSITION TO
HESSER'S MOTION TO AMEND,
ALTER, MODIFY (AND/OR
RECONSIDER) ORDER**

Date of Hearing: December 27, 2019

Time of Hearing: Chambers

21 Plaintiff Kennedy Funding, Inc. ("Plaintiff"), by and through its undersigned counsel,
22 hereby opposes Defendant Vincent W. Hesser's ("Hesser") Motion to Amend, Alter, Modify
23 (and/or Reconsider) Order ("Motion for Reconsideration"). This opposition to the Motion for
24 Reconsideration (the "Opposition") is made and based upon the papers and pleadings on file with
25 this Court, judicial notice of which Kennedy respectfully requests be taken pursuant to NRS 47.130
26 and NRS 47.150; the Memorandum of points and authorities herein; and any oral argument the
27 Court may entertain at hearing on the Motion.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Hesser's Motion for Reconsideration of this Court's Order denying Hesser's Motion for a
4 Court Order Declaring Judgment Expired¹ is substantively improper and fails to establish that
5 reconsideration is warranted. Hesser's Motion for Reconsideration recycles their prior arguments,
6 failing to present any newly discovered evidence or law previously unavailable to Hesser.
7 Moreover, Hesser has not established that this Court's decision was clearly erroneous. For these
8 reasons, Hesser's Motion for Reconsideration must be denied.

9 **II. ANALYSIS**

10 **A. Hesser Cannot Meet the High Burden For Reconsideration.**

11 Motions for reconsideration are disfavored. *See Huckabay Props. v. NC Auto Parts*, 130
12 Nev. 196, 201, 322 P.3d 429, 432 (2014). Reconsideration is appropriate when "substantially
13 different evidence is subsequently introduced or the decision is clearly erroneous." *See Masonry*
14 *& Tile Contractors Ass'n of Southern Nev. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941
15 P.2d 486, 489 (1997) (citations omitted). *See Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551
16 P.2d 246 (1976) ("Only in very rare instances in which new issues of fact or law are raised
17 supporting a ruling contrary to the ruling already reached should a motion for rehearing be
18 granted."); *see also* NRCP 60(b). A motion for reconsideration "should not be granted, absent
19 highly unusual circumstances," *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890
20 (9th Cir. 2000) (internal quotations and citation omitted), *distinguished on other grounds as noted*
21 *in Archer v. Silver State Helicopters, LLC*, 2007 WL 4258237 (S.D. Cal. 2007).

22 Moreover, it is improper to use a motion for reconsideration to raise issues that could have
23 been raised in the first instance. Issues not raised in the first instance cannot be raised on rehearing.
24 *Achrem v. Expressway Plaza Ltd. P'ship.*, 112 Nev. 737, 742, 917 P.2d 447, 450 (1996). Failure
25 to make the arguments in the first instance is tantamount to a waiver. *Chowdhry v. NLVH, Inc.*,

26
27 ¹ The ("Underlying Motion"). Notably, the formal Order denying the Underlying Motion has not
28 been entered, but the Motion for Reconsideration challenges the Court's Minute Order dated
November 15, 2019, which denied the Underlying Motion.

1 111 Nev. 560, 562-63, 893 P.2d 385, 387 (1995). Nevada Courts are not alone in finding that a
2 motion for reconsideration “may *not* be used to raise arguments or present evidence for the first
3 time when they could reasonably have been raised earlier in litigation.” *Kona Enters*, 229 F.3d at
4 890 (emphasis in original) (citation omitted) (finding that a Rule 59(e) motion presented argument
5 not previously raised).

6 Neither is reconsideration appropriate merely to re-litigate issues previously heard and
7 decided by the Court. “A motion for reconsideration is not an avenue to re-litigate the same issues
8 and arguments upon which the court has already ruled.” *U.S. Aviation Underwriters, Inc. v.*
9 *WesAir, LLC*, 2010 WL 1462707, *2 (D. Nev. 2010) (citation and internal quotations omitted).
10 *Maraziti v. Thorpe*, 52 F.3d 252, 255 (9th Cir. 1995) (finding no extraordinary circumstances in
11 denial of Rule 60(b)(6) motion for relief from judgment, as the “motion merely reiterated the
12 arguments that [movant] had already presented to the district court, . . .”).

13 Hesser’s Motion for Reconsideration is an improper attempt to get a second bite at the
14 apple. Hesser merely raises the same arguments already considered and rejected by this Court.
15 Oddly, Hesser attaches as purported “new law” unpublished 2018 case law that was copied onto
16 his own pleading paper. This case law clearly existed on August 27, 2019, and could have been
17 raised by Hesser in his initial motion (the Underlying Motion). Because this unpublished case law
18 was not raised in the first instance, it cannot be raised on reconsideration.

19 Moreover, because the Motion for Reconsideration merely recycles arguments that the
20 Court already considered and rejected, and because the Motion for Reconsideration does not raise
21 any new evidence or law, the Motion for Reconsideration fails as a matter of law. Rather than
22 wasting the Court’s time repeating the same arguments raised in Plaintiff’s opposition to the
23 Underlying Motion, Plaintiff incorporates by reference its Opposition to Motion for Court Order
24 Declaring Judgment Expired, filed on September 6, 2019.

25 III. CONCLUSION

26 Based on the foregoing reasons, the Motion for Reconsideration should be denied.
27 Hesser’s Motion for Reconsideration is improper, unsupported, and fails to demonstrate an
28 entitlement to the relief requested. Hesser has no bases under Nevada law to establish

1 reconsideration and/or amendment of the Court's prior decision denying the Underlying Motion.
2 Hesser has not provided substantially different evidence, cited to new case law, or established that
3 the Court's decision was clearly erroneous, and a motion for reconsideration is inappropriate when
4 it merely seeks to re-litigate issues previously decided by the Court. Accordingly, Plaintiff
5 respectfully requests this Court deny Hesser's Motion for Reconsideration in its entirety.

6 Dated this 2nd day of December, 2019.

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

9 

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18 *Attorneys for Kennedy Funding, Inc.*

HOLLEY DRIGGS
WALCH FINE PUZEY STEIN THOMPSON

Parties:

Other Service Contacts:

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

VH000892

Steven D. Grierson

HOLLEY DRIGGS
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17 *Attorneys for Kennedy Funding, Inc.*

18 **DISTRICT COURT**

19 **CLARK COUNTY, NEVADA**

20 KENNEDY FUNDING, INC., a New Jersey
21 corporation,

22 Plaintiff,

23 v.

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

28 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 Au
27, 2019 ("Motion") filed by Defendant Vincent W. Hesser ("Defendant") came before the C
on November 15, 2019, in Chambers, and with Defendant having appeared in his moving pa
through his counsel of record of the law firm A.M. Santos Law, Chtd., and with Plaintiff Kenr
Funding, Inc. ("Kennedy")¹ having appeared in its moving papers through its counsel of rec

¹ Together with Defendant, the "Parties".

12-02-19P03:09 RCVD

the law firm Holley Driggs Walch Fine Puzey Stein & Thompson. 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:

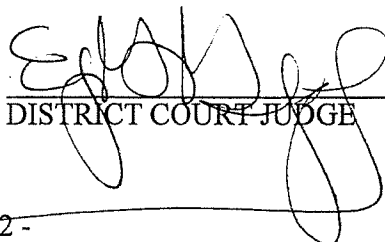
THE COURT HEREBY FINDS that Kennedy complied with the requirements for renewal of the *Judgment Against OneCap Partners MM, Inc. and Vincent W. Hesser* (the "Judgment"). All requisite steps to renew the Judgment, including filing, service, and recording, were completed before the original underlying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

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

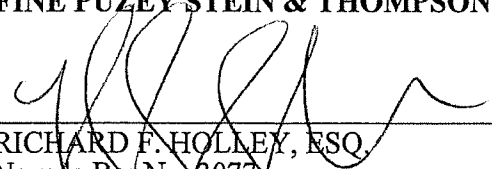
IT IS FURTHER ORDERED that the Judgment, as renewed, is **valid and enforceable**.

IT IS SO ORDERED.

Dated this 3 day of December, 2019.


DISTRICT COURT JUDGE

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

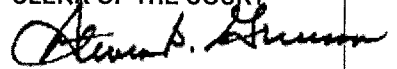


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**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

12 Plaintiff,

13 v.

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

18 Defendants.

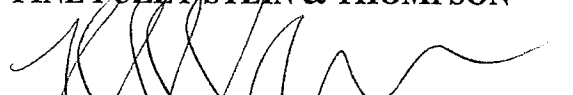
Case No: A582746
Dept. No.: XI

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

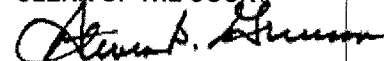
19 YOU, and each of you, will please take notice that an **Order Denying Defendant's**
20 **Motion for a Court Order Declaring Judgment Expired** in the above-entitled matter was filed
21 and entered by the Clerk of the above-entitled Court on the 3rd day of December 2019, a copy of
22 which is attached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

23 Dated this 3rd day of December 2019.

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

26 
27 Richard F. Holley, Esq. (Nevada Bar 3077)
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WALCH FINE PUZEY STEIN THOMPSON



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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.: 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

the law firm Holley Driggs Walch Fine Puzey Stein & Thompson. 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:

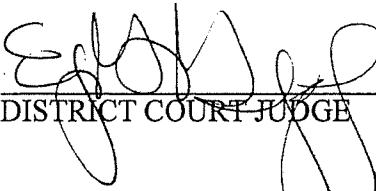
THE COURT HEREBY FINDS that Kennedy complied with the requirements for renewal of the *Judgment Against OneCap Partners MM, Inc. and Vincent W. Hesser* (the "Judgment"). All requisite steps to renew the Judgment, including filing, service, and recording, were completed before the original underlying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

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

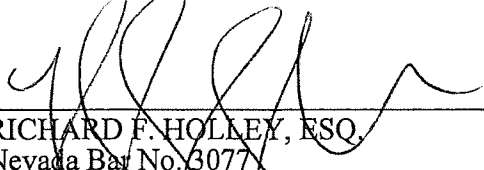
IT IS FURTHER ORDERED that the Judgment, as renewed, is **valid and enforceable**.

IT IS SO ORDERED.

Dated this 3 day of December, 2019.


DISTRICT COURT JUDGE

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



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Attorneys for Plaintiff Kennedy Funding, Inc.

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

DID NOT RESPOND

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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

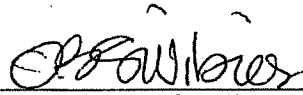
Other Service Contacts:

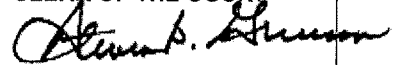
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Timothy S. Cory . tim.cory@corylaw.us

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


An employee of Holley Driggs Walch
Fine Puzey Stein & Thompson



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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: January 24, 2020

Time of Hearing: Chambers

Judge: Hon. Elizabeth Gonzalez

ORDER GRANTING MOTION TO WITHDRAW AS COUNSEL OF RECORD

This matter came on for hearing on January 24, 2020 in Chambers of the Honorable Elizabeth Gonzalez, in connection with Holley Driggs Walch Fine Wray Puzey & Thompson's (the "Firm") Motion to Withdraw as Counsel of Record (the "Motion"). Based upon review of the Firm's Motion, the exhibits attached thereto, and the papers and pleadings on file herein; it appearing that proper service has been provided with no opposition filed, and good cause appearing therefor:

IT IS HEREBY ORDERED that the Firm's Motion is GRANTED.

02-06-2020 2:23 RCVD

1 IT IF FURTHER ORDERED that the law firm of Holley Driggs Walch Fine Puzey Stein
2 & Thompson is hereby discharged as counsel of record for Plaintiff Kennedy Funding, Inc.

3 IT IS FURTHER ORDERED that as there are currently no pending deadlines or hearings
4 set in this matter, and a Substitution of Attorney having been filed on January 24, 2020 with
5 LYNCH LAW PRACTICE, PLLC, substituting in as Plaintiff's counsel, all future pleadings or
6 notices of hearing or deadlines are to be sent to the following address:

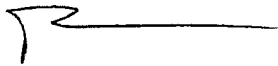
7 Michael F. Lynch, Esq.
8 Lynch Law Practice, PLLP
9 3613 S. Eastern Avenue
10 Las Vegas, Nevada 89169
11 702-684-6000
12 michael@lynchlawpractice.com

13 IT IS SO ORDERED.

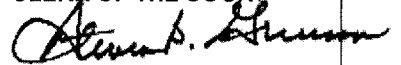
14 Dated this 7 day of Feb, 2020

15 
16 DISTRICT COURT JUDGE
17  (EH)

18 Respectfully submitted by:
19 **HOLLEY DRIGGS WALCH**
20 **FINE PUZEY STEIN & THOMPSON**

21 

22 RICHARD F. HOLLEY, ESQ.
23 Nevada Bar No. 3077
24 F. THOMAS EDWARDS, ESQ.
25 Nevada Bar No. 9549
26 MARY LANGSNER, Ph.D.
27 Nevada Bar No. 13707
28 400 South Fourth Street, Third Floor
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Attorneys for Plaintiff Kennedy Funding, Inc.



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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: 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 Puzey 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.

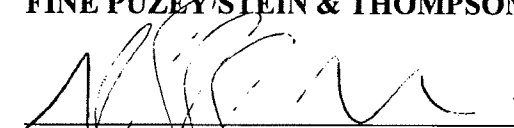
THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Motion is **DENIED**.

IT IS SO ORDERED.

Dated this 21st day of May, 2020.


DISTRICT COURT JUDGE

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

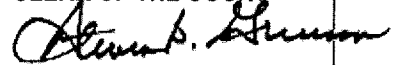


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Nevada Bar No. 9549
MARY LANGSNER, Ph.D.
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Attorneys for Plaintiff Kennedy Funding, Inc.

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

DID NOT RESPOND

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Attorneys for Defendant Vincent W. Hesser



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Michael@LynchLawPractice.com

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.: 09A582746

Dept No.: XI

NOTICE OF ENTRY OF ORDER

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

DATED May 21, 2020.

LYNCH LAW PRACTICE, PLLC

/s/ Michael F. Lynch
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702.684.6000
Attorney for Kennedy Funding, Inc.

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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):

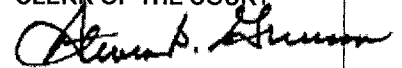
BYRON E. THOMAS. ESQ.
Law Offices of Byron Thomas
3275 S. Jones Blvd. Ste. 104
Las Vegas, Nevada 89146

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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Facsimile: 702/791-1912

Attorneys for Kennedy Funding, Inc.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

KENNEDY FUNDING, INC., a New Jersey
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Plaintiff,

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ONECAP PARTNERS MM, INC, a Nevada
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Defendants.

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

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

Judge: Hon. Elizabeth Gonzalez

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¹ Together with Defendant, the "Parties".

counsel of record, the law firm Holley Driggs Walch Fine Puzey 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.

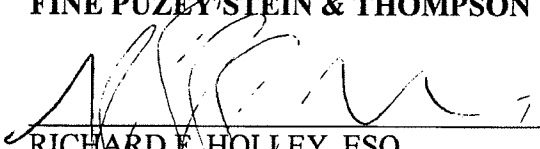
Dated this 21st day of May, 2020.


 DISTRICT COURT JUDGE

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

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

DID NOT RESPOND


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Attorneys for Plaintiff Kennedy Funding, Inc.

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 3275 S. Jones Blvd. Suite 104
 Las Vegas, Nevada 89146
Attorneys for Defendant Vincent W. Hesser

**DISTRICT COURT
CLARK COUNTY NEVADA**

VH000909

1 Defendant Vincent Hesser, by and through undersigned counsel of Law Offices of
2
3 Byron Thomas hereby gives notice of his appeal the to the Nevada Supreme Court of the Order of
4 May 21, 2020 attached hereto as Exhibit "A"

5 Dated June 19__, 2020
6

7 LAW OFFICES OF BYRON THOMAS

8 /s/ Byron E. Thomas

9 BYRON E. THOMAS, ESQ.

10 Nevada Bar No. 8906

11 3275 S. Jones Blvd., #104

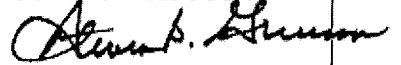
12 Las Vegas, Nevada 89146

13 702 747-3103

14 Attorney for Defendant Vincent Hesser
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EXHIBIT "A"



1 Michael F. Lynch
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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
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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
23 Nevada Bar No. 8555
24 3613 S. Eastern Ave.
25 Las Vegas, NV 89169
26 702.684.6000

Attorney for Kennedy Funding, Inc.

CERTIFICATE OF SERVICE

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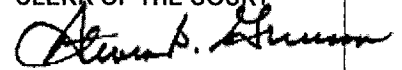
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AMSLC
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Attorneys for Vincent W. Hesser

Dated May 21, 2020.

/s/ Michael F. Lynch



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

IT IS SO ORDERED.

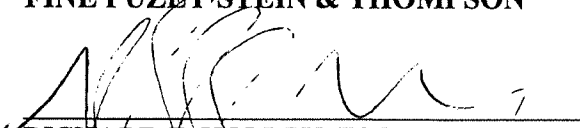
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 DISTRICT COURT JUDGE

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

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

DID NOT RESPOND


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Attorneys for Defendant Vincent W. Hesser