

IN THE SUPREME COURT OF THE STATE OF NEVADA

VINCENT HESSER

Petitioner,

vs.

KENNEDY FUNDING, INC.

Respondent

Electronically Filed
Sep 15 2021 11:11 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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 VI

LAW OFFICES OF BYRON THOMAS
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BAR NO: 8906
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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
Summons Vincent W. Hesser Affidavit of Service	3/19/2009	VH000020- VH000021	I
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
Reply in Support of Motion for Summary Judgement	10/20/2009	VH000256- VH000266	II
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
Court Minutes / Journal Entries	11/05/2009	VH000336	II

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
Order Denying Plaintiff's Order to Strike	12/22/2009	VH000414- VH000415	II
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
Notice of Examination of Judgement Debtor Notice of Continued Examination of Judgement Debtor	5/14/2015	VH000527- VH000528	III
Affidavit of Service Affidavit of Service by Hand Delivery	5/15/2015	VH000529- VH000531	III
Affidavit of Service Affidavit of Service by Mail	5/15/2015	VH000532- VH000535	III
Affidavit Affidavits of Service by Posting and Mailing: of Certified Mailing	5/18/2015	VH000536- VH000542	III

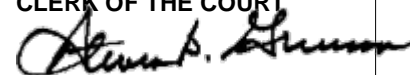
Ex-Parte Motion for Protective Order	6/15/2015	VH000543- VH000546	III
Motion Defendant Vincent Hesser's Motion Pursuant to NRCP 60(b) to Vacate Judgement	6/15/2015	VH000547- VH000656	III
Court Minutes / Journal Entries	6/16/15	VH000657	III
Stipulation and Order Stipulation and Order to Extend Time for 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
Court Minutes / Journal Entries	11/15/19	VH000877	IV
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
Opposition to Motion For a Court Order Declaring Judgement Expired	9/06/19	VH000916- VH001011	VI



OPPM

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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

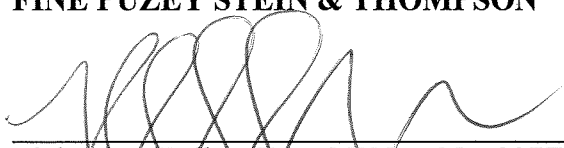
¹ Although no certificate of service accompanies the Motion attesting that service of the Motion was properly effected to parties in interest such as Kennedy, the first page of the Motion bears a file stamp of August 27, 2019, at 2:58 p.m. Nevada Electronic Filing and Conversion Rule 9(e) provides in 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


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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 EDCR^[3] 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.

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Attorneys for Defendant Vincent W. Hesser

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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).

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

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

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

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

Regarding recording (the “Third Requirement”⁶), the statute reads:

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

⁴ 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. *Compare Ex. 3* to Langsner Decl., *with Ex. 5* to Langsner Decl.

⁵ *See* Motion at 2:3.

⁶ Together with the First Requirement and Second Requirement, the “Requirements”.

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

Although NRS 17.214(1)(b) provides that renewing a recorded judgment include recording its affidavit of renewal, the word “shall” and the word “must” do not appear in this provision—a noticeable distinction from the First Requirement (in which the word must appears twice with respect to the renewal affidavit⁷) and the Second Requirement (in which the word shall appears once, with respect to service of the renewal affidavit⁸).

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

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

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

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

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

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

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

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

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

As such, Movant’s representations that “The facts are analogous in the instant matter here before the Court[.]”⁹ is not correct.

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

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

⁹ *See* Motion at p.5, n.1.

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

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

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

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

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

¹⁰ See Motion, 5:20 to 6:3.

¹¹ Later substantially amended upon passage of A.B. 273 in the 77th Regular Session of the Nevada 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).

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

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

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

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

4. The Policy of NRS 17.214 Has Been Met.

Movant’s position does not comport with the policy underlying NRS 17.214. Setting aside Movant’s confusion over the record and when the Judgment Renewal Affidavit was filed, the primary issue raised by Movants is one of form over substance—namely, that, although the 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)
 400 South Fourth Street, Third Floor
 Las Vegas, Nevada 89101

Attorneys for Kennedy Funding, Inc.

EXHIBIT “A”

DECL

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

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

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

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

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.

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

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

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

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

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

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

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

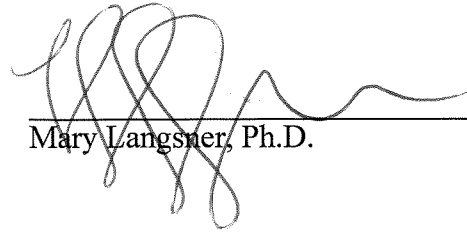
11. Attached hereto as **Exhibit “8”** is a true and correct copy of the documentation recorded on January 8, 2016 (the “Recorded Renewed Judgment”), with the Clark County Recorder and in the Official Records of the Clark County Recorder as Instrument No. 20160108-0000229.

12. Attached hereto as **Exhibit “9”** is a true and correct copy of the Court’s Notice of 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”

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

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

Allen 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

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.

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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 EKE

7
8 Submitted by:

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

11 By 

12 Richard F. Holley, Esq.

13 Nevada Bar No. 3077

Ogonna M. Atamoh, Esq.

14 Nevada Bar No. 7589

400 S. Fourth Street, Third Floor

Las Vegas, NV 89101

Attorneys for Plaintiff

EXHIBIT “1”

ORDR

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

Alvin J. Blum
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



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.

District Court
Clark County, Nevada

Exemplification Certificate

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, Steven D. Grierson, the duly appointed Clerk of the Eighth
Judicial District of the State of Nevada, in and for the County of Clark, do hereby certify and attest the
document(s) attached hereto, "JUDGMENT AGAINST ONECAP PARTNERS MM, INC, AND
VINCENT W. HESSER dated FEBRUARY 17, 2010",

IN THE ENTITLED ACTION;

KENNEDY FUNDING, INC., A NEW JERSEY CORPORATION;

PLAINTIFF,

v.

ONECAP PARTNERS MM, INC, A NEVADA CORPORATION; VINCENT W. HESSER,)

A582746

to be a full and correct copy of the official document(s) now on file in my office


AN INDIVIDUAL, DOE INDIVIDUALS

I THROUGH X; AND ROE

CORPORATIONS I THROUGH X,

DEFENDANTS,

IN WITNESS WHEREOF, I have hereunto set my hand and
annexed the Seal of the District Court of the Eighth Judicial
District of the State of Nevada, in and for the County of Clark
this 10 day of MARCH, 2010.


CLERK OF THE DISTRICT COURT OF THE EIGHTH
JUDICIAL DISTRICT OF THE STATE OF NEVADA, IN
AND FOR THE COUNTY OF CLARK.

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, T. Arthur Ritchie, Jr., Judge of the District Court of the Eighth Judicial District of the State of Nevada, in
and for the County of Clark, do hereby certify that Steven D. Grierson is Clerk of the District Court of the
Eighth Judicial District of the State of Nevada, in and for the County of Clark (which Court is a Court of
Record having a seal) and that the signature to the foregoing certificate and attestation is the genuine
signature of the said Steven D. Grierson, as such officer and that such attestation is in due form according
to the laws of the State of Nevada.

IN WITNESS WHEREOF, I have hereunto set my hand at Las Vegas, Clark County, Nevada,
this 10 day of MARCH, 2010.



JUDGE OF THE DISTRICT COURT OF THE
EIGHTH JUDICIAL DISTRICT OF THE STATE OF
NEVADA, IN AND FOR THE COUNTY OF CLARK.

EXHIBIT “2”

13

Inst #: 201003290000871

Fees: \$26.00

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/ownr.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

NEOJ
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

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
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and ROE CORPORATIONS I through X,

Defendants.

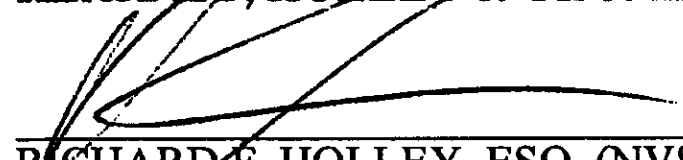
Case No: A582746
Dept. No.: XI

NOTICE OF ENTRY OF JUDGMENT

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

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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JUDG
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



CLERK OF THE COURT

Attorneys for Kennedy Funding, Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

KENNEDY FUNDING, INC., a New Jersey
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Plaintiff,

v.

ONECAP PARTNERS MM, INC, a Nevada
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and ROE CORPORATIONS I through X,

Defendants.

Case No.: A582746
Dept. No.: XI

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

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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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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
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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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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, 2009.¹⁰


DISTRICT COURT JUDGE *ene*

Submitted by:

SANTORO, DRIGGS, WALCH, KEARNEY,
HOLLEY & THOMPSON

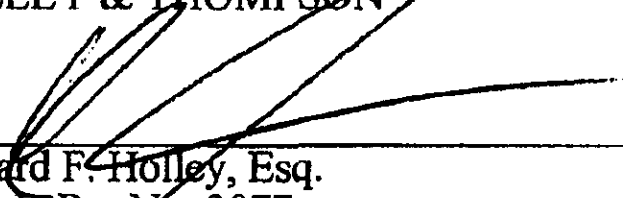
By 
Richard F. Holley, Esq.
Nevada Bar No. 3077
Ogonna M. Atamoh, Esq.
Nevada Bar No. 7589
400 S. Fourth Street, Third Floor
Las Vegas, NV 89101
Attorneys for Plaintiff

EXHIBIT “1”

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

SDW

ORDR

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

Clara A. Johnson
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



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.



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

SDW

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.

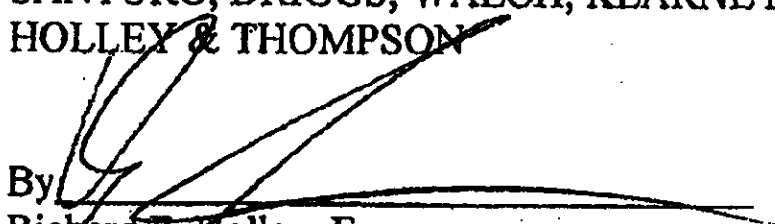
4 **IT IS SO ORDERED.**

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

CERTIFICATE OF MAILING

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

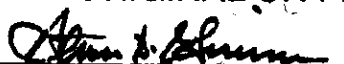
Harold P. Gewerter
Harold P. Gewerter, Esq., Ltd.
2705 Airport Drive
North Las Vegas, NV 89032

Attorneys for Defendants



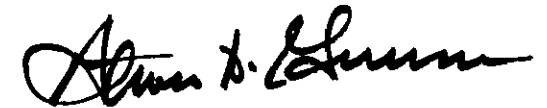
An employee of Santoro, Driggs, Walch,
Kearney, Holley & Thompson

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


CLERK OF THE COURT

3-24-2010

EXHIBIT “3”



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,

11 Plaintiff,

12 v.

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

17 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 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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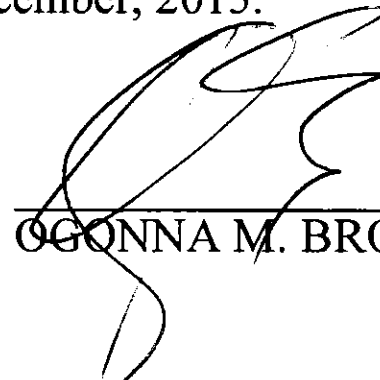
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1 9. As of December 24, 2015, the amount owing on the judgment is \$34,585,351.86.
2 I declare under penalty of perjury under the laws of the United States that the foregoing is
3 true and correct.

4 Dated this 24th day of December, 2015.

5
6
7 STATE OF NEVADA
8 County of Clark


OGONNA M. BROWN, ESQ.

9 SIGNED AND SWORN to before me this
10 24th day of December, 2015,
11 by Ogonna M. Brown, Esq.

12 
13 NOTARY SIGNATURE

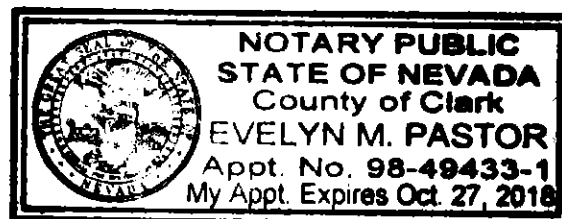


EXHIBIT “1”

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Inst #: 201003290000871

Fees: \$26.00

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/ownr.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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Alvin D. Lamm

CLERK OF THE COURT

1 JUDGE
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
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9 Las Vegas, Nevada 89101
10 Telephone: 702/791-0308
11 Facsimile: 702/791-1912

12 *Attorneys for Kennedy Funding, Inc.*

13 DISTRICT COURT

14 CLARK COUNTY, NEVADA

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

17 Plaintiff,

18 v.

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

23 Defendants.

Case No.: A582746
Dept. No.: XI

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

25 This matter came before the Court on Plaintiff Kennedy Funding, Inc.'s ("Plaintiff")
26 evidentiary hearing on damages arising from the Motion for Summary Judgment Against
27 Defendants ONECAP PARTNERS MM, INC. ("Onecap") and VINCENT W. HESSER
28 ("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

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 *EKE*

7
8 Submitted by:

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

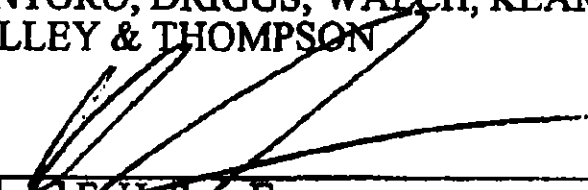
11 By 
12 Richard F. Holley, Esq.
13 Nevada Bar No. 3077
14 Ogonna M. Atamoh, Esq.
15 Nevada Bar No. 7589
16 400 S. Fourth Street, Third Floor
17 Las Vegas, NV 89101
18 Attorneys for Plaintiff

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. 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 A. Hanning
CLERK OF COURT

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

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

17 Plaintiff,

18 v.

19 ONECAP PARTNERS MM, INC, a Nevada
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21 individual; DOE INDIVIDUALS I through X;
22 and ROE CORPORATIONS I through X,

23 Defendants.

Case No.: A582746
Dept. No.: XI

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

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

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

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

7 **FINDINGS OF UNDISPUTED FACTS**

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

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

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

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

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



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

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

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

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

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

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

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

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

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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.

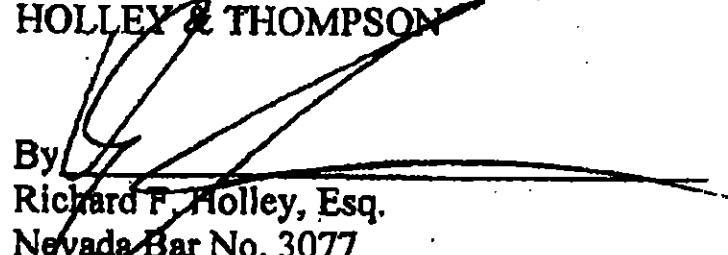
IT IS SO ORDERED.

Dated this 4 day of November, 2009.

ELIZABETH GOFF GONZALEZ
DISTRICT COURT JUDGE

Submitted by:

SANTORO, DRIGGS, WALCH, KEARNEY,
HOLLEY & THOMPSON

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



CERTIFICATE OF MAILING

I HEREBY CERTIFY that, on the 22nd day of February, 2010, and pursuant to NRCP 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **NOTICE OF ENTRY OF 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 black ink, appearing to read "O. B. Driggs", is written over a horizontal line.

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

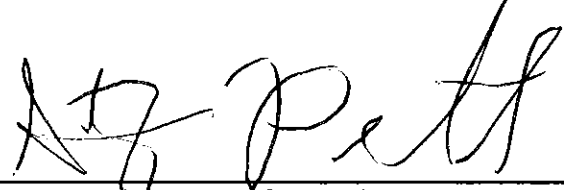
3-24-2010

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
10 *Attorneys for Defendant Vincent W. Hesser*

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

14 
15 An employee of Holley Driggs Walch
16 Fine Wray Puzey & Thompson

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

22 Vincent W. Hesser
23 6242 Coley Avenue
24 Las Vegas, Nevada 89146
25 *Defendant*

26 Vincent W. Hesser
27 3275 South Jones Boulevard, Suite 104
28 Las Vegas, Nevada 89146
Defendant

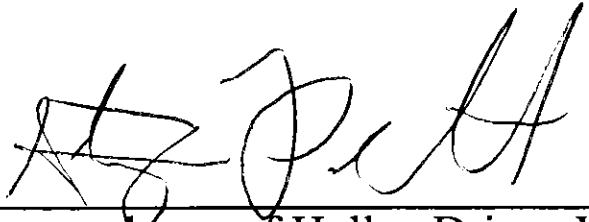

An employee of Holley Driggs Walch
Fine Wray Puzey & Thompson

EXHIBIT “4”

Details of filing: Affidavit for Renewal of Judgment Against Vincent W. Hesser
Filed in Case Number: 09A582746

E-File ID: 7707089

Lead File Size: 537320 bytes

Date Filed: 2015-12-24 10:02:44.0

Case Title: 09A582746

Case Name: Kennedy Funding Inc vs Onecap Partners MM Inc, Vincent Hesser

Filing Title: Affidavit for Renewal of Judgment Against Vincent W. Hesser

Filing Type: EFS

Filer's Name: Timora A. Cereghino

Filer's Email: TCereghino@nevadafirm.com

Account Name: Timora A. Cereghino

Filing Code: ARJ

Amount: \$ 3.50

Court Fee: \$ 0.00

Card Fee: \$ 0.00

Payment: Filing still processing. Payment not yet captured.

Comments:

Courtesy Copies: apestonit@nevadafirm.com

Firm Name: Holley Driggs Walch Fine Wray Puzey & Thompson

Your File Number: 06209-09

Status: Submitted - (T)

Date Accepted:

Review Comments:

Reviewer:

File Stamped Copy:

Documents: Cover Document:
Lead Document: [Affidavit for Renewal of Judgment Against Vincent W Hesser.pdf](#) 537320 bytes

Data Reference ID:

Credit Card Response: System Response: 0
Reference:

EXHIBIT “5”

From: no-reply@tylerhost.net
Sent: Thursday, December 24, 2015 11:05 AM
To: Olivia Swibies
Subject: Service Notification of Filing Case(Kennedy Funding Inc vs Onecap Partners MM Inc, Vincent Hesser) Document Code:(ARJ) Filing Type:(EFS) Repository ID(7707089)

This is a service filing for Case No. 09A582746, Kennedy Funding Inc vs Onecap Partners MM Inc, Vincent Hesser

This message was automatically generated; do not reply to this email. Should you have any problems viewing or printing this document, please call (800)297-5377.

Submitted: 12/24/2015 10:10:44 AM

Case title: Kennedy Funding Inc vs Onecap Partners MM Inc, Vincent Hesser
Document title: Affidavit for Renewal of Judgment Against Vincent W. Hesser
Document code: ARJ Filing Type: EFS
Repository ID: 7707089
Number of pages: 18
Filed By: Holley Driggs Walch Fine Wray Puzey & Thompson

To download the document, click on the following link shown below or copy and paste it into your browser's address bar.

<https://wiznet.wiznet.com/clarknv/SDSubmit.do?code=e689f2f6b6277404608e541210eefd97074a744f876844b3a3eae341f7385cd2a684f715221f4e46af1a960d0929f570>

This link will be active until 01/03/2016 10:10:44 AM.

Service List Recipients:
A.M. Santos Law, Chtd.
Antony Santos
Melissa Burczyk

Holley Driggs Walch Fine Wray Puzey & Thompson
Alejandro
Ogonna M. Brown
Olivia
Richard F. Holley

Timothy S. Cory & Associates
Timothy S. Cory

Non Consolidated Cases

EFO \$3.50EFS \$5.50
SO \$3.50

E689F2F6B6277404608E541210EEFD97074A744F876844B3A3EAE341F7385CD2A684F715221F4E46BCD6BD90575DD59
905D8F0EC43A3ABA1
mail.tylerhost.net

EXHIBIT “6”

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> ■ Complete Items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 		A. Signature X <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to: Vincent W. Hesser 3275 S. Jones Blvd. Suite 104 Las Vegas, NV 89146		B. Received by (Printed Name)	C. Date of Delivery
		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
2. Article Number (Transfer from service label)		7007 2560 0001 6639 3902	

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

CERTIFIED MAIL™



7007 2560 0001 6639 3902
7007 2560 0001 6639 3902

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com**OFFICIAL USE**

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	
Sent To Vincent W. Hesser 3275 S. Jones Blvd. Suite 104 Las Vegas, NV 89146 Street, Ap or PO Box City, State		
PS Form		

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

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

2. Article Number

(Transfer from service label)

7007 2560 0001 6639 3889

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☒ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE
CERTIFIED MAIL™



7007 2560 0001 6639 3889
7007 2560 0001 6639 3889

U.S. Postal Service™

CERTIFIED MAIL™ RECEIPT

(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage

\$

Certified Fee

Return Receipt Fee
(Endorsement Required)

Restricted Delivery Fee
(Endorsement Required)

Total Postage

\$

Postmark
Here

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

Sent To

Street, Apt. No.
or PO Box No.

City, State, Zi

PS Form 3800

VH000984

EXHIBIT “7”

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

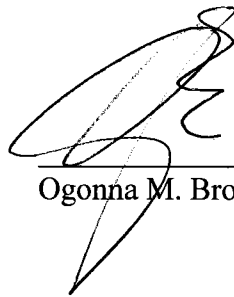
Vincent W. Hesser
3275 South Jones, Suite 104
Las Vegas, Nevada 89146

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

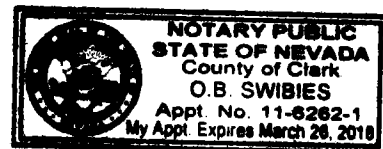


EXHIBIT “8”

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


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,

11 Plaintiff,

12 v.

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

17 Defendants.

Case No: A582746
Dept. No.: XI

AFFIDAVIT FOR RENEWAL OF JUDGMENT AGAINST VINCENT W. HESSER

18 STATE OF NEVADA)
19) ss.
20 COUNTY OF CLARK)

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

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

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

27 3. I am a shareholder with the law firm of Holley Driggs Walch Fine Wray Puzey &
28 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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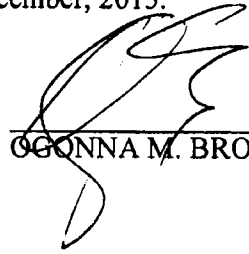
06209-09/1627427

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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.

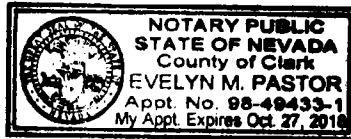
Dated this 24th day of December, 2015.



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: \$26.00

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.

OR Form 108 ~ 06/06/2007
Coversheet.pdf


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

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

Alvin L. Schuman

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

06209-09/563899.doc

VH000995

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 ...


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 
DISTRICT COURT JUDGE *etc*

7
8 Submitted by:

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

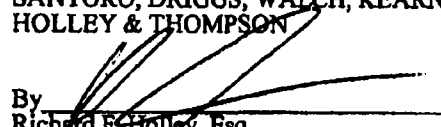
11 By 
12 Richard F. Holley, Esq.
13 Nevada Bar No. 3077
14 Ogonna M. Atamoh, Esq.
15 Nevada Bar No. 7589
16 400 S. Fourth Street, Third Floor
17 Las Vegas, NV 89101
18 Attorneys for Plaintiff

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. 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. Williams
CLERK OF COURT

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

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

17 Plaintiff,

18 v.

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

23 Defendants.

Case No.: A582746
Dept. No.: XI

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

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

06209-09/319467

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.

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.

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24 ...

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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.

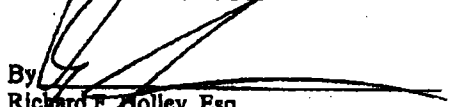
4 IT IS SO ORDERED.

5 Dated this 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
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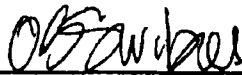
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CERTIFICATE OF MAILING

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

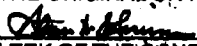
Harold P. Gewerter
Harold P. Gewerter, Esq., Ltd.
2705 Airport Drive
North Las Vegas, NV 89032

Attorneys for Defendants



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

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


CLERK OF THE COURT

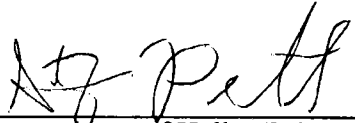
3-24-2010

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
10 *Attorneys for Defendant Vincent W. Hesser*

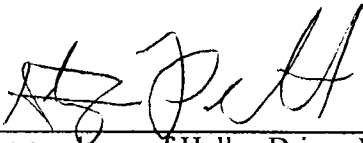
11 Timothy S. Cory & Associates
12 Timothy S. Cory tim.cory@corylaw.us
13 *Attorney for Defendant Vincent W. Hesser*

14 
15 An employee of Holley Driggs Walch
16 Fine Wray Puzey & Thompson

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

22 Vincent W. Hesser
23 6242 Coley Avenue
24 Las Vegas, Nevada 89146
25 *Defendant*

26 Vincent W. Hesser
27 3275 South Jones Boulevard, Suite 104
28 Las Vegas, Nevada 89146
Defendant

29 
30 An employee of Holley Driggs Walch
31 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

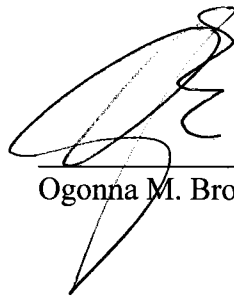
Vincent W. Hesser
3275 South Jones, Suite 104
Las Vegas, Nevada 89146

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

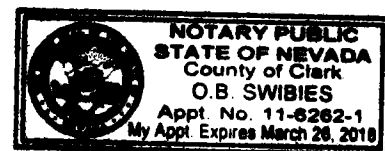


EXHIBIT “9”

From: efilngmail@tylerhost.net
Sent: Tuesday, August 27, 2019 2:59 PM
To: Alejandro Pestonit
Subject: Notification of Service for Case: 09A582746, Kennedy Funding Inc vs Onecap Partners MM Inc, Vincent Hesser for filing Motion for Order - MODR (CIV), Envelope Number: 4815298

Notification of Service

Case Number: 09A582746

Case Style: Kennedy Funding Inc vs Onecap Partners MM Inc, Vincent Hesser

Envelope Number: 4815298



This is a notification of service for the filing listed. Please click the link below to retrieve the submitted document.

Filing Details	
Case Number	09A582746
Case Style	Kennedy Funding Inc vs Onecap Partners MM Inc, Vincent Hesser
Date/Time Submitted	8/27/2019 2:58 PM PST
Filing Type	Motion for Order - MODR (CIV)
Filing Description	Motion for Court Order Declaring Judgment Expunged
Filed By	Antony Santos
Service Contacts	Other Service Contacts not associated with a party on the case: Alejandro . (apestonit@nevadafirm.com) Antony Santos . (tony@amsantoslaw.com) Melissa Burczyk . (melissa@amsantoslaw.com) Ogonna M. Brown . (obrown@nevadafirm.com) Olivia . (oswibies@nevadafirm.com) Richard F. Holley . (rholley@nevadafirm.com) Timothy S. Cory . (tim.cory@corylaw.us)

Document Details	
Served Document	Download Document

This link is active for 30 days.

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that I am an employee of Holley Driggs Walch Fine Puzey Stein & Thompson and that on the 6th day of September 2019, and pursuant to NRCP 5(b) and NEFCR 9, I caused to be served electronically using the Court's electronic filing system (EFS) the foregoing OPPOSITION TO 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

Other Service Contacts

Alejandro . apestonit@nevadafirm.com
Antony Santos . tony@amsantoslaw.com
Melissa Burczyk . melissa@amsantoslaw.com
Ogonna M. Brown . obrown@nevadafirm.com
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Richard F. Holley . rholley@nevadafirm.com
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Mary Langsner . mlangsner@nevadafirm.com



An employee of Holley Driggs Walch
Fine Puzey Stein & Thompson

HOLLEY DRIGGS
WALCH FINE PUZEY STEIN THOMPSON