

Electronically Filed
Nov 04 2020 11:12 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Robert W. Hernquist; Nevada Bar No. 10616
Brian J. Pezzillo; Nevada Bar No. 7136
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Attorneys for Defendant Omni Financial, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY NEVADA

KAL-MOR-USA, LLC, a Nevada limited
liability company,

Plaintiffs,

vs.

OMNI FINANCIAL, LLC, a foreign limited
liability company; FIRST 100, LLC, a
Nevada limited liability company; DOES I
through X and ROE ENTITIES I through X;

Defendants.

And all related actions.

Case No.: A-17-757061-C

Dept. 2

NOTICE OF APPEAL

1 Notice is hereby given that Defendant Omni Financial, LLC (“Omni”) hereby appeals to
2 the Supreme Court of Nevada from the Order Granting Partial Summary Judgment entered by the
3 District Court on October 2, 2018. Notice of Entry of the Order Granting Partial Summary
4 Judgment was entered on October 3, 2018. The Court entered an order on September 30, 2020
5 pursuant to NRCP 54(b) certifying the October 2, 2018 order as final for purposes of appeal.
6 Notice of Entry of the September 30, 2020 Order was entered on the same day – September 30,
7 2020.

8
9
10 HOWARD & HOWARD ATTORNEYS PLLC

11 Dated: October 27, 2020

By: /s/ Brian J. Pezzillo

Robert Hernquist, Nevada Bar No. 10616

Brian J. Pezzillo; Nevada Bar No. 7136

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Las Vegas, Nevada 89169

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Attorneys for Defendant Omni Financial, LLC

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Howard & Howard Attorneys PLLC, and that on the 27th day of October 2020, I caused to be served a copy of foregoing Notice of Appeal in the following manner:

(ELECTRONIC SERVICE). The above-referenced document was electronically filed and served upon the parties listed below through the Court's Case Management and Electronic Case Filing system:

Joseph A. Gutierrez, Esq.
MAIER GUTIERREZ AYON
400 South Seventh Street, Suite 400
Las Vegas, NV 89101

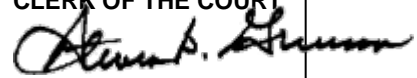
Attorneys for First 100 LLC

Bart K. Larsen, Esq.
SHEA & LARSEN
1731 Village Center Circle, Suite 150
Las Vegas, Nevada 89134

*Attorney for Plaintiff Kal-Mor-USA,
LLC*

/s/ Anya Ruiz
Howard & Howard Attorneys PLLC

4825-2938-7981, v. 1



Robert W. Hernquist; Nevada Bar No. 10616
Brian J. Pezzillo; Nevada Bar No. 7136
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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY NEVADA

KAL-MOR-USA, LLC, a Nevada limited
liability company,

Plaintiffs,

vs.

OMNI FINANCIAL, LLC, a foreign limited
liability company; FIRST 100, LLC, a
Nevada limited liability company; DOES I
through X and ROE ENTITIES I through X;

Defendants.

Case No.: A-17-757061-C

Dept. 2

CASE APPEAL STATEMENT

1. Name of the appellant filing this appeal: Omni Financial, LLC

2. Identify the judge issuing the decision, judgment, or order appealed from:

Honorable Richard Scotti; Order Granting Partial Summary Judgment entered on October 2, 2018.

3. Identify each appellant and the name and address of counsel for each appellant:

Omni Financial, LLC. Counsel for Appellant is Robert W. Hernquist, Esq. and Brian J. Pezzillo, Esq., HOWARD & HOWARD ATTORNEYS PLLC, 3800 Howard Hughes Pkwy, Suite 1000, Las Vegas, NV 89169.

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel): Kal-Mor-USA, LLC. Counsel for Respondent is Bart K. Larsen, Esq., SHEA & LARSEN, 1731 Village Center Circle, Suite 150, Las Vegas, Nevada 89134.

First 100, LLC. First 100, LLC is represented by Joseph A. Gutierrez, Esq., MAIER GUTIERREZ AYON, 400 South Seventh Street, Suite 400, Las Vegas, NV 89101.

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission): All attorneys listed in this Case Appeal Statement are licensed Nevada attorneys.

6. Indicate whether appellant was represented by appointed or retained counsel in the district court: Retained counsel.

7. Indicate whether appellant is represented by appointed or retained counsel on appeal: Retained counsel.

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave: N/A.

9. Indicate the date the proceedings commenced in the district court (e.g., date complaint, indictment, information, or petition was filed): The Complaint was filed by Kal-Mor-USA, LLC on June 19, 2017.

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

In 2014, Omni agreed to loan up to \$5 million to Defendant First 100, LLC ("First 100") to finance the purchase and enforcement of homeowner association ("HOA") receivables (the

1 “Loan”). On May 27, 2014, (i) the two entered into a Loan Agreement; (ii) First 100 executed a
2 Promissory Note, Security Agreement, and multiple Deeds of Trust in Omni’s favor; and (iii)
3 certain First 100 principals issued Guarantees in Omni’s favor. First 100 also executed multiple
4 deeds of trust in Omni’s favor (the “Deeds of Trust”). Those Deeds of Trust encumbered, as
5 security for the Loan, approximately thirty properties in the State of Nevada. This action arises
6 from Kal-Mor’s contention it subsequently purchased and owns nine of those thirty parcels (the
7 “Kal-Mor Real Properties”).
8

9 First 100 eventually defaulted under the agreement with Omni. Litigation was initiated
10 between First 100 and Omni to which First 100 was also a party. The litigation was eventually
11 settled through the execution of settlement agreements between Omni and First 100 and Omni
12 and Kal-Mor-USA, LLC. Kal-Mor-USA, LLC asserted in the Complaint in this action that its
13 interest in the subject properties was superior to those of Omni. By way of a motion for partial
14 summary judgment, Kal-Mor-USA, in part, argued that the settlement agreement entered into
15 between Omni and First 100 acted as a novation of any other agreements and eliminated Omni’s
16 interest in the real properties. The Court granted the motion for partial summary judgment on the
17 grounds that the settlement agreement between Omni and First 100 did, in fact, operate as a
18 novation of any other existing agreements and rendered Omni without any interest in the real
19 properties at issue. It is the Court’s October 2, 2018 Order granting partial summary judgment
20 that is appealed from.
21

22 11. Indicate whether the case has previously been the subject of an appeal to or original
23 writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number
24 of the prior proceeding: N/A.
25

26 12. Indicate whether this appeal involves child custody or visitation: This proceeding
27 does not involve child custody or visitation.
28

11. If this is a civil case, indicate whether this appeal involves the possibility of settlement: At this time, it does not appear that settlement is likely in this matter.

HOWARD & HOWARD ATTORNEYS PLLC

Dated: October 27, 2020

By: /s/ Brian J. Pezzillo

Robert Hernquist, Nevada Bar No. 10616

Brian J. Pezzillo; Nevada Bar No. 7136

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Attorneys for Defendant Omni Financial, LLC

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Howard & Howard Attorneys PLLC, and that on the 27th day of October 2020, I caused to be served a copy of foregoing Case Appeal Statement in the following manner:

(ELECTRONIC SERVICE). The above-referenced document was electronically filed and served upon the parties listed below through the Court's Case Management and Electronic Case Filing system:

Joseph A. Gutierrez, Esq.
MAIER GUTIERREZ AYON
400 South Seventh Street, Suite 400
Las Vegas, NV 89101

Attorneys for First 100 LLC

Bart K. Larsen, Esq.
SHEA & LARSEN
1731 Village Center Circle, Suite 150
Las Vegas, Nevada 89134

*Attorney for Plaintiff Kal-Mor-USA,
LLC*

/s/ Anya Ruiz
Howard & Howard Attorneys PLLC

4825-2938-7981, v. 1

CASE SUMMARY**CASE NO. A-17-757061-C**

Kal-Mor-USA, Inc., Plaintiff(s)
vs.
Omni Financial, LLC, Defendant(s)

§
§
§
§
§

Location: **Department 2**
 Judicial Officer: **Scotti, Richard F.**
 Filed on: **06/19/2017**
 Case Number History:
 Cross-Reference Case Number: **A757061**

CASE INFORMATION**Statistical Closures**

09/26/2017 Transferred (before trial)

Case Type: **Other Title to Property**

Case Status: **07/12/2018 Reopened**

DATE**CASE ASSIGNMENT****Current Case Assignment**

Case Number A-17-757061-C
 Court Department 2
 Date Assigned 08/21/2017
 Judicial Officer Scotti, Richard F.

PARTY INFORMATION

		<i>Lead Attorneys</i>
Plaintiff	Kal-Mor-USA, Inc.	Larsen, Bart K. <i>Retained</i> 702-471-7432(W)
Defendant	First 100, LLC	Gutierrez, Joseph A. <i>Retained</i> 702-629-7900(W)
	Omni Financial, LLC	Hernquist, Robert, ESQ <i>Retained</i> 702-257-1483(W)
Counter Claimant	Omni Financial, LLC	Hernquist, Robert, ESQ <i>Retained</i> 702-257-1483(W)
Counter Defendant	Kal-Mor-USA, Inc.	Larsen, Bart K. <i>Retained</i> 702-471-7432(W)
Cross Claimant	Omni Financial, LLC	Hernquist, Robert, ESQ <i>Retained</i> 702-257-1483(W)
Cross Defendant	First 100, LLC	Gutierrez, Joseph A. <i>Retained</i> 702-629-7900(W)
Other	Chersus Holdings, LLC	Nelson, Vernon A. <i>Retained</i> 702-476-2500(W)

DATE**EVENTS & ORDERS OF THE COURT****INDEX**

06/19/2017

EVENTS

Complaint

CASE SUMMARY

CASE NO. A-17-757061-C

Filed By: Counter Defendant Kal-Mor-USA, Inc.
Complaint

06/19/2017



Initial Appearance Fee Disclosure

Filed By: Counter Defendant Kal-Mor-USA, Inc.
Initial Appearance Fee Disclosure

06/19/2017



Summons Electronically Issued - Service Pending

Party: Counter Defendant Kal-Mor-USA, Inc.
Summons - Defendant, Omni Financial, LLC

06/19/2017



Summons Electronically Issued - Service Pending

Party: Counter Defendant Kal-Mor-USA, Inc.
Summons - Defendant, First 100, LLC

07/20/2017



Acceptance of Service

Filed By: Counter Defendant Kal-Mor-USA, Inc.
Acceptance of Service

08/07/2017



Acceptance of Service

Filed By: Counter Defendant Kal-Mor-USA, Inc.
Acceptance of Service

08/18/2017



Motion for Temporary Restraining Order

Filed By: Counter Defendant Kal-Mor-USA, Inc.
Plaintiff's Motion for Temporary Restraining Order and for Order to Show Cause why a Preliminary Injunction Should Not Issue and Ex-Parte Application for Order Shortening Time

08/21/2017

Case Reassigned to Department 2

Civil Case Reassignment to Judge Richard F. Scotti

08/21/2017



Notice of Appearance

Party: Cross Defendant First 100, LLC
Notice of Appearance of Counsel

08/21/2017



Initial Appearance Fee Disclosure

Initial Appearance Fee Disclosure (NRS Chapter 19)

08/22/2017



Notice of Pendency of Action

Filed By: Counter Defendant Kal-Mor-USA, Inc.
Notice of Pendency of Action Affecting Title to Real Property

08/22/2017



Notice of Pendency of Action

Filed By: Counter Defendant Kal-Mor-USA, Inc.
Notice of Pendency of Action Affecting Title to Real Property

08/22/2017



Notice of Pendency of Action

Filed By: Counter Defendant Kal-Mor-USA, Inc.
Notice of Pendency of Action Affecting Title to Real Property

08/22/2017



Notice of Pendency of Action

Filed By: Counter Defendant Kal-Mor-USA, Inc.
Notice of Pendency of Action Affecting Title to Real Property

CASE SUMMARY


CASE NO. A-17-757061-C


08/22/2017	 Notice of Pendency of Action Filed By: Counter Defendant Kal-Mor-USA, Inc. <i>Notice of Pendency of Action Affecting Title to Real Property</i>
08/22/2017	 Notice of Pendency of Action Filed By: Counter Defendant Kal-Mor-USA, Inc. <i>Notice of Pendency of Action Affecting Title to Real Property</i>
08/22/2017	 Notice of Pendency of Action Filed By: Counter Defendant Kal-Mor-USA, Inc. <i>Notice of Pendency of Action Affecting Title to Real Property</i>
08/22/2017	 Notice of Pendency of Action Filed By: Counter Defendant Kal-Mor-USA, Inc. <i>Notice of Pendency of Action Affecting Title to Real Property</i>
08/25/2017	 Motion for Partial Summary Judgment Filed By: Counter Defendant Kal-Mor-USA, Inc. <i>Plaintiff's Motion for Partial Summary Judgment</i>
08/25/2017	 Motion to Seal/Redact Records <i>Plaintiff's Motion to Seal Exhibit 28 in Support of Plaintiff's Motion for Partial Summary Judgment</i>
08/29/2017	 Notice of Removal Filed By: Cross Claimant Omni Financial, LLC <i>Notice of Removal To The United States District Court For The District of Nevada</i>
09/26/2017	 Order to Statistically Close Case <i>Civil Order to Statistically Close Case</i>
07/12/2018	 Order of Remand from Federal Court
07/24/2018	 Notice of Entry of Order Filed By: Counter Defendant Kal-Mor-USA, Inc. <i>Notice of Entry of Order</i>
07/25/2018	 Order Scheduling Status Check <i>Order Scheduling Status Check</i>
07/26/2018	 Declaration Filed By: Counter Defendant Kal-Mor-USA, Inc. <i>Declaration of Greg Darroch</i>
07/26/2018	 Motion for Partial Summary Judgment Filed By: Counter Defendant Kal-Mor-USA, Inc. <i>Plaintiff's Motion for Partial Summary Judgment</i>
08/15/2018	 Opposition Filed By: Cross Claimant Omni Financial, LLC <i>Opposition to Plaintiff's Motion for Partial Summary Judgment</i>
08/22/2018	 Reply in Support


CASE SUMMARY


CASE NO. A-17-757061-C


Filed By: Counter Defendant Kal-Mor-USA, Inc.
Reply in Support of Plaintiff's Motion for Partial Summary Judgment


10/02/2018  Findings of Fact, Conclusions of Law and Order
Filed By: Counter Defendant Kal-Mor-USA, Inc.
Findings of Fact, Conclusions of Law, and Order Granting Plaintiff's Motion for Partial Summary Judgment

10/03/2018  Notice of Entry
Filed By: Counter Defendant Kal-Mor-USA, Inc.
Notice of Entry of Findings of Fact, Conclusions of Law, and Order Granting Plaintiff's Motion for Partial Summary Judgment


10/22/2018  Initial Appearance Fee Disclosure
Filed By: Cross Claimant Omni Financial, LLC
Initial Appearance Fee Disclosure

10/22/2018  Motion
Filed By: Cross Claimant Omni Financial, LLC
Motion for Reconsideration of Order Granting Partial Summary Judgment

11/09/2018  Opposition to Motion
Filed By: Counter Defendant Kal-Mor-USA, Inc.
Plaintiff's Opposition to Motion for Reconsideration of Order Granting Partial Summary Judgment


11/27/2018  Reply in Support
Filed By: Cross Claimant Omni Financial, LLC
Reply in Support of Motion for Reconsideration of Order Granting Partial Summary Judgment


11/27/2018  Stipulation and Order
Filed by: Cross Claimant Omni Financial, LLC
Stipulation and Order to Continue Hearing on Defendant Omni Financial LLC's Motion for Reconsideration

11/28/2018  Notice of Entry of Stipulation and Order
Filed By: Cross Claimant Omni Financial, LLC
Notice of Entry of Stipulation and Order

01/31/2019  Notice of Hearing
Notice of Hearing

02/07/2019  Motion to Intervene
Party: Other Chersus Holdings, LLC
Chersus Holdings, LLC's Motion to Intervene on an Order Shortening Time

02/07/2019  Declaration
Filed By: Other Chersus Holdings, LLC
Declaration of Jagdish Mehta in Support of Motion to Intervene

02/19/2019  Opposition
Filed By: Cross Claimant Omni Financial, LLC
Opposition to Chersus Holdings, LLC's Motion to Intervene on Order Shortening Time

02/19/2019













CASE SUMMARY

CASE NO. A-17-757061-C

	 Joinder to Opposition to Motion Filed by: Counter Defendant Kal-Mor-USA, Inc. <i>Plaintiff's Joinder to Defendant Omni Financial, LLC's Opposition to Chersus Holdings, LLC's Motion to Intervene on Order Shortening Time</i>
04/19/2019	 Order <i>Order Denying Defendant Omni Financial LLC's Motion For Reconsideration</i>
05/01/2019	 Order Filed By: Cross Claimant Omni Financial, LLC <i>Order Denying Chersus Holdings, LLC's Motion to Intervene</i>
05/01/2019	 Notice of Entry of Order Filed By: Cross Claimant Omni Financial, LLC <i>Notice of Entry of Order</i>
05/29/2019	 Motion Filed By: Cross Claimant Omni Financial, LLC <i>Motion to Certify Order Granting Partial Summary Judgment as Final Pursuant to NRCP 54 (B)</i>
05/29/2019	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
06/10/2019	 Opposition to Motion Filed By: Counter Defendant Kal-Mor-USA, Inc. <i>Plaintiff's Opposition to Motion to Certify Order Granting Partial Summary Judgment as Final Pursuant to NRCP 54(b)</i>
06/13/2019	 Notice of Change of Address Filed By: Other Chersus Holdings, LLC <i>Notice of Change of Address</i>
06/21/2019	 Reply Filed by: Cross Claimant Omni Financial, LLC <i>Reply in Support of Motion to Certify Order Granting Partial Summary Judgment as Final Pursuant to NRCP 54(B)</i>
07/15/2019	 Order Scheduling Status Check <i>Order Scheduling Status Check</i>
08/12/2019	 Answer Filed By: Cross Claimant Omni Financial, LLC <i>Answer to Complaint, Counterclaim and Cross Claim of Omni Financial, LLC</i>
08/22/2019	 Summons Electronically Issued - Service Pending Party: Cross Claimant Omni Financial, LLC <i>Summons</i>
09/03/2019	 Answer to Counterclaim Filed By: Counter Defendant Kal-Mor-USA, Inc. <i>Kal-Mor-USA, LLC's Answer to Omni Financial, LLC's Counterclaim</i>
09/03/2019	 Motion to Dismiss-Alternative Mtn Partial Summary Judgment















CASE SUMMARY

CASE NO. A-17-757061-C

	<p>Filed By: Cross Defendant First 100, LLC <i>First 100, LLC's Motion To Dismiss Omni Financial, LLC's Crossclaim Pursuant To NRCP 12(B)(5) Or In The Alternative Motion For Summary Judgment</i></p>
09/04/2019	<p> Clerk's Notice of Hearing <i>Notice of Hearing</i></p>
09/17/2019	<p> Opposition <p>Filed By: Cross Claimant Omni Financial, LLC <i>Opposition to First 100, LLC's Motion to Dismiss Omni Financial, LLC's Crossclaim Pursuant to NRCP 12(B)(5) or in the Alternative Motion for Summary Judgment</i></p> </p>
10/07/2019	<p> Reply in Support <p>Filed By: Cross Defendant First 100, LLC <i>First 100, LLC's Reply in Support of Motion to Dismiss Omni Financial, LLC's Crossclaim Pursuant to NRCP 12(b)(5) or in the Alternative Motion for Summary Judgment</i></p> </p>
10/21/2019	<p> Order <p>Filed By: Cross Claimant Omni Financial, LLC <i>Order Denying First 100, LLC's Motion to Dismiss Omni Financial, LLC's Crossclaim Pursuant to NRCP 12(B)(5) or in the Alternative Motion for Summary Judgment</i></p> </p>
10/21/2019	<p> Notice of Entry of Order <p>Filed By: Cross Claimant Omni Financial, LLC <i>Notice of Entry of Order</i></p> </p>
10/31/2019	<p> Amended <p>Filed By: Cross Claimant Omni Financial, LLC <i>First Amended Cross Claim of Omni Financial, LLC</i></p> </p>
11/25/2019	<p> Answer to Crossclaim <p>Filed By: Cross Defendant First 100, LLC <i>First 100, LLC's Answer to Omni Financial LLC's First Amended Cross Claim</i></p> </p>
11/26/2019	<p> Answer to Complaint <p>Filed by: Cross Defendant First 100, LLC <i>First 100, LLC's Answer to Plaintiff's Complaint</i></p> </p>
02/05/2020	<p> Notice <p>Filed By: Counter Defendant Kal-Mor-USA, Inc. <i>Notice of Change of Firm Affiliation</i></p> </p>
04/23/2020	<p> Order Scheduling Status Check <i>Order Scheduling Status Check</i></p>
06/16/2020	<p> Memorandum <i>Blue Jeans Hearing Information for Department 2</i></p>
06/16/2020	<p> Motion for Partial Summary Judgment <p>Filed By: Counter Defendant Kal-Mor-USA, Inc. <i>Plaintiff's Motion for Partial Summary Judgment</i></p> </p>
06/17/2020	<p> Clerk's Notice of Hearing <i>Notice of Hearing</i></p>

CASE SUMMARY

CASE NO. A-17-757061-C

06/30/2020	 Opposition to Motion For Summary Judgment Filed By: Cross Claimant Omni Financial, LLC <i>Opposition to Plaintiff's Motion for Partial Summary Judgment</i>
06/30/2020	 Motion Filed By: Cross Claimant Omni Financial, LLC <i>Renewed Motion to Certify Order Granting Partial Summary Judgment as Final Pursuant to NRCP 54(B)</i>
06/30/2020	 Opposition Filed By: Cross Defendant First 100, LLC <i>First 100, LLC's Limited Opposition to Plaintiff's Motion for Partial Summary Judgment</i>
07/01/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
07/09/2020	 Memorandum <i>07/20/20 Blue Jeans Hearing Information for Department 2</i>
07/14/2020	 Opposition Filed By: Cross Defendant First 100, LLC <i>First 100, LLC's Limited Opposition to Owni Financial LLC's Renewed Motion to Certify Order Granting Partial Summary Judgment as Final Pursuant to NRCP 54 (B)</i>
07/17/2020	 Memorandum <i>07/20/20 Blue Jeans Hearing Information for Department 2</i>
07/17/2020	 Order Scheduling Status Check <i>Status Check Regarding Joint Case Conference Report</i>
07/20/2020	 Notice of Non Opposition Filed By: Cross Claimant Omni Financial, LLC <i>Notice of Non-Opposition to Renewed Motion to Certify Order Granting Partial Summary Judgment as Final Pursuant to NRCP 54(B)</i>
08/06/2020	 Joint Case Conference Report Filed By: Counter Defendant Kal-Mor-USA, Inc. <i>Joint Case Conference Report</i>
08/11/2020	 Memorandum <i>08/17 Blue Jeans Hearing Information for Department 2</i>
09/30/2020	 Order Granting Motion Filed By: Cross Claimant Omni Financial, LLC; Cross Defendant First 100, LLC <i>Order Granting Renewed Motion to Certify Order Granting Partial Summary Judgment as Final Pursuant to NRCP 54(B)</i>
09/30/2020	 Notice of Entry of Order Filed By: Cross Claimant Omni Financial, LLC <i>Notice of Entry of Order</i>
10/27/2020	 Notice of Appeal Filed By: Cross Claimant Omni Financial, LLC

CASE SUMMARY

CASE NO. A-17-757061-C

Notice of Appeal

10/27/2020



Case Appeal Statement

Filed By: Cross Claimant Omni Financial, LLC

Case Appeal Statement

DISPOSITIONS

09/30/2020

Amended Partial Summary Judgment (Judicial Officer: Scotti, Richard F.)

Debtors: Omni Financial, LLC (Defendant)

Creditors: Kal-Mor-USA, Inc. (Plaintiff)

Judgment: 09/30/2020, Docketed: 10/03/2018

Comment: Certain Causes

HEARINGS

08/30/2017



Motion for Temporary Restraining Order (9:00 AM) (Judicial Officer: Scotti, Richard F.)

Motion for TRO & for OSC Why a Prelim. Inj. Should Not Issue on OST

Moot;

Journal Entry Details:

Matter called. No parties present. COURT advised it will resolve the matter without oral argument pursuant to EDCR 2.23 and ordered matter UNDER ADVISEMENT.;

09/26/2017



Minute Order (2:00 PM) (Judicial Officer: Scotti, Richard F.)

Minute Order - No Hearing Held;

Journal Entry Details:

The Court took Plaintiff Kal-Mor-USA, LLC s Motion for Temporary Restraining Order and for Order to Show Cause Why a Preliminary Injunction Should Not Issue and Ex Parte Application for Order Shortening Time under advisement during its 8/30/2017 Oral Calendar. However, a Notice of Removal to the United States District Court for the District of Nevada was filed 8/29/2017. As such, COURT ORDERS, this Motion is hereby VACATED AS MOOT. CLERK'S NOTE: The above minute order has been distributed to: Bart Larsen, Esq. (blarsen@klnevada.com), Joseph Gutierrez, Esq. (jag@mgallaw.com), and Robert Hernquist, Esq. (rhernquist@howardandhoward.com). /mlt;

09/27/2017

CANCELED Motion to Seal/Redact Records (3:00 AM) (Judicial Officer: Scotti, Richard F.)

Vacated

Plaintiff's Motion to Seal Exhibit 28 in Support of Plaintiff's Motion for Partial Summary Judgment

10/02/2017

CANCELED Motion for Partial Summary Judgment (10:30 AM) (Judicial Officer: Scotti, Richard F.)

Vacated

Plaintiff's Motion for Partial Summary Judgment

08/27/2018



Motion for Partial Summary Judgment (10:30 AM) (Judicial Officer: Scotti, Richard F.)

Plaintiff's Motion for Partial Summary Judgment

Motion Granted;

Journal Entry Details:

Following argument by counsel regarding the stipulated judgment, rights of the Deed of Trust, one action rule, and the 2016 settlement agreement. COURT ORDERED, matter UNDER ADVISEMENT and will issue a written order from Chambers.;

08/31/2018



Minute Order (3:00 AM) (Judicial Officer: Scotti, Richard F.)

Minute Order - No Hearing Held;

Journal Entry Details:


The Court GRANTS Plaintiff Kal-Mor-USA, LLC's Motion for Partial Summary Judgment, as to the 4th and 5th causes of action. It is undisputed that Omni and First 100 entered into a Settlement and Mutual General Release Agreement, dated January 16, 2017 (the so-called


CASE SUMMARY

CASE NO. A-17-757061-C


First 100 Settlement) (Exh. 30 to Declaration of Greg Darroch, submitted in support of Plaintiff's Motion for Summary Judgment). The First 100 Settlement expressly and unambiguously extinguished the Omni Loan (as defined in the Recitals, para. B) and substituted in the place of such Loan First 100's new obligations under the First 100 Settlement. Id at para. 15(a). As a matter of law, this substitution of the one agreement for another constituted a novation. See United Fire Ins. Co. v. McClelland, 105 Nev. 504 (1989). The Omni Loan originated from that certain Loan Agreement which was comprised of a Promissory Note and Security Agreement. Id. The extinguishment of the Omni Loan, logically extinguished the security for such loan that no longer existed. See, e.g., Walker v. Shrake, 75 Nev. 2241, 247 (1959) (holding that the satisfaction of the judgment destroyed the security incidental to said obligation). Further, in Paragraph 15(a) of the First 100 Settlement Omni expressly released all Liabilities and Claims arising out of, concerning, or in any manner relating to, the Omni Loan. The term Claims was defined to include all remedies to enforce repayment of the Omni Loan. Id. at para. 1(b) and 14(a). One such remedy was the right to foreclose on the security. Waiver and release of such remedies necessarily meant waiver and release of the security. The terms of the First 100 Settlement are clear and unambiguous. The court cannot consider extrinsic evidence to construe the unambiguous terms of a contract. The subjective intent of the parties is not relevant. The prior dealings of the parties are not relevant. In fact, the First 100 Settlement contained a standard merger clause that prohibited this Court from looking to any prior dealings and communications between the parties in construing its meaning. Id. at para. 20(b). The Court makes no ruling as to the applicability of the one-action rule. The Court directs Kal-Mor to prepare the proposed Order in this matter, consistent herewith, adding appropriate context and authorities, and correcting for any scrivener errors. CLERK'S NOTE: A copy of this minute order was placed in the attorney folders of the following: Joseph Gutierrez, Esq., Bart Larson, Esq. and Robert Hernquist, Esq.// 8/31/18 lk;


09/05/2018 **CANCELED Status Check** (9:00 AM) (Judicial Officer: Scotti, Richard F.)
Vacated

11/26/2018  **Motion For Reconsideration** (3:00 AM) (Judicial Officer: Scotti, Richard F.)
*Motion for Reconsideration of Order Granting Partial Summary Judgment
Off Calendar;
Journal Entry Details:
This matter OFF CALENDAR.;*

02/27/2019  **Motion For Reconsideration** (3:00 AM) (Judicial Officer: Scotti, Richard F.)
*Hearing Set;
Journal Entry Details:
The Court will issue a Minute Order resolving this matter.;*

02/27/2019 **Motion to Intervene** (9:00 AM) (Judicial Officer: Scotti, Richard F.)
*Chersus Holding s LLC's Motion to Intervene on an Order Shortening Time
Denied;*

02/27/2019  **All Pending Motions** (9:00 AM) (Judicial Officer: Scotti, Richard F.)
*Matter Heard;
Journal Entry Details:
MOTION TO INTERVENE....MOTION FOR RECONSIDERATION Following arguments by
counsel regarding their respective position, COURT ORDERED, matter UNDER
ADVISEMENT; it will issue a decision within a couple of days.;*

03/12/2019  **Minute Order** (10:00 AM) (Judicial Officer: Scotti, Richard F.)
*Minute Order - No Hearing Held; Cherus Holdings LLC s Motion to Intervene on Order
Shortening Time
Journal Entry Details:
The Court DENIES Chersus Holdings, LLC's Motion to Intervene. Chersus' intervention would
result in inappropriate claim splitting and forum shopping. Chersus already has claims in
A784910 against Omni, and seeks to bring these same claims into this action (A757061). If
Chersus wants to bring its existing claims into this action, it must file a Motion to Consolidate,
and apply the appropriate standards for consolidation. The Court finds no good cause to grant
permissive intervention under NRCP 24(b). Chersus' Motion is untimely; Cherus has not*

CASE SUMMARY

CASE NO. A-17-757061-C

convinced the Court that there are common questions of law or fact because the Court has already resolved all issues between Omni and Kal-Mor. The Court finds that Chersus is not entitled to intervention pursuant to NRCP 24(a)(2) because: Chersus' motion is untimely; The Subject matter of Chersus claims are its interests in properties 665 Mountain Point, and 7533 Lintwhite-which are not the subject of this case (A757061); Chersus would not suffer an impairment in its ability to protect its interests in its properties if not granted intervention; and Chersus intervention here would either prejudicially interfere with Kal-Mor conclusion of this action-despite having been granted Summary Judgment, or interfere with Omni s rights to commence an appeal from the Order Granting Summary Judgment. The Court directs Kal-Mor-USA, LLC to prepare to the Order DENYING Chersus' Motion. CLERK'S NOTE: A copy of this Minute Order has been emailed to the following: Bart Larsen, Esq. (blarsen@klnevada.com), Joseph Gutierrez, Esq.(jag@mgalaw.com), Vernon Nelson, Esq. (vnelson@nelsonlawfirmly.com) and Robert Hernquist, Esq. (rhernquist@howardandhoward.com). //ev 3/12/19;

03/12/2019



Minute Order (10:00 AM) (Judicial Officer: Scotti, Richard F.)

Defendants Motion for Reconsideration of Order Granting Partial Summary Judgment
Minute Order - No Hearing Held;

Journal Entry Details:

The Court sets a hearing on Defendant s Motion for Reconsideration of Order Granting Partial Summary Judgment on Wednesday March 20, 2019. CLERK'S NOTE: A copy of this Minute Order has been emailed to the following: Bart Larsen, Esq. (blarsen@klnevada.com), Joseph Gutierrez, Esq.(jag@mgalaw.com), Vernon Nelson, Esq. (vnelson@nelsonlawfirmly.com) and Robert Hernquist, Esq. (rhernquist@howardandhoward.com). //ev 3/12/19;

03/20/2019



Motion For Reconsideration (9:00 AM) (Judicial Officer: Scotti, Richard F.)

Motion For Reconsideration of Order Granting Partial Summary Judgment
Denied;

Journal Entry Details:

Mr. Pezzillo argued reasons the Motion for Summary Judgment should be reconsidered based on claim of breach, standing, and an invalid settlement agreement, and reviewed applicable case law. Mr. Larsen argued the settlement agreement was drafted by competent law firms, there was no ambiguity, and the contract is valid and enforceable, notwithstanding breach. Court noted there was case law stating that the contract was not valid if there was breach. Mr. Pezzillo argued and reviewed the contents of the settlement agreement and stated it lacked waiver; stated the intent of counsel was clear, and there was an issue of ambiguity. COURT ORDERED, matter TAKEN UNDER ADVISEMENT.;

07/01/2019



Motion (3:00 AM) (Judicial Officer: Scotti, Richard F.)

Motion to Certify Order Granting Partial Summary Judgment as Final Pursuant to NRCP 54 (B)

Denied;

Journal Entry Details:

The Court DENIES Defendant OMNI Financial s Motion to Certify Order Granting Summary Judgment As Final Pursuant to NRCP 54(B). Under the circumstances of this case, the Court cannot certify that there is no just reason to delay Omni s appeal of the Court s prior Order. Despite the Court s Order granting Summary Judgment on the Fourth (Declaratory Relief) and Fifth (Quiet Title) causes of action against Omni, Omni still remains a party involved in the remaining causes of action against it: Sixth, Seventh, Eighth, Ninth, and Tenth. Further, the issues that are the subject of the Court s prior Order of partial summary judgment are very closely related to the issues that would be the subject of Omni s appeal. For instance, the subject of Omni s appeal of the partial judgment of the Fourth and Fifth causes of Action is the existence, enforceability, and notice of the Omni Deeds of Trust. In Plaintiff s Complaint, the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Tenth causes of action also all expressly reference the existence, enforceability, and/or notice of the Omni Deeds of Trust, and issues relating thereto. The Supreme Court must necessarily decide these issues below in order to decide the issues appealed. The Supreme Court needs the context of the Omni/First 100 litigation to resolve the appeal on the Fourth and Fifth causes of action against Omni. Omni s rights cannot be determined to be superior to Kal-Mor s rights until Omni and First 100 litigate dispute to determine the nature of the rights then transferred from First 100 to Kal-Mor. Further, a delay in the Omni appeal would avoid piecemeal litigation. Further, Omni has already delayed Kal-Mor s progression of this action for many months through its unmeritorious attempted removal to Federal Court. An appeal by Omni now would probably

CASE SUMMARY

CASE NO. A-17-757061-C

result in a stay of the progress of Kal-Mors remaining claims against Omni, and perhaps its other claims as well. It would be unfairly prejudicial for Omni's actions to now cause a further delay in Kal-Mor's efforts to obtain its day in Court on all of the remaining claims, including the remaining claims against Omni. Omni's involvement in the remaining claims would not change at all if Omni is granted Certification, or denied Certification. For these reasons, there is no valid basis to Certify the partial summary judgment for appeal ;

07/29/2019



Status Check (9:00 AM) (Judicial Officer: Scotti, Richard F.)

07/29/2019, 08/26/2019

Re: Answer and Joint Case Conference Report

Set Status Check;

Matter Heard;

Journal Entry Details:

Upon Court's inquiry, Mr. Pezzillo stated the Answer was filed a couple weeks ago and he anticipated a notice for the Early Case Conference soon. Mr. Pezzillo stated he did not see the need for a Mandatory Settlement Conference.;

Set Status Check;

Matter Heard;

Journal Entry Details:

Court stated there was no Answer or a Joint Case Conference Report on file. Mr. Larsen stated he submitted a 54(b) Motion and it was denied. Court advised it did not have enough information to rule on the 54(b) Motion. Mr. Pezzillo provided a history of the case. Court encouraged parties to engage in further discussion before submitting a 54(b) certification. Court inquired if a Mandatory Settlement Conference would be beneficial. Mr. Pezzillo stated he would need to talk to his client. COURT ORDERED, Status Check CONTINUED. CONTINUED TO: 8/26/19 9:00 AM;

10/14/2019



Motion to Dismiss (9:00 AM) (Judicial Officer: Scotti, Richard F.)

First 100, LLC's Motion To Dismiss Omni Financial, LLC's Crossclaim Pursuant To NRCP 12 (B)(5) Or In The Alternative Motion For Summary Judgment

Motion Denied;

Journal Entry Details:

Arguments by Ms. Barraza and Mr. Pezzillo regarding the merits of the Motion to Dismiss. COURT ORDERED, Motion DENIED. Court directed Omni to plead with specificity the facts that would establish a valid claim for intentional misrepresentation, and specifically who, to whom, and when representations were made to be amended within 10 days.;

01/27/2020



Status Check (3:00 AM) (Judicial Officer: Scotti, Richard F.)

ISC - JCCR

Matter Heard;

Journal Entry Details:

Matter heard.;

06/17/2020



Status Check (9:00 AM) (Judicial Officer: Scotti, Richard F.)

06/17/2020, 07/15/2020

Continued;

Minute Order - No Hearing Held;

Journal Entry Details:

Matter heard (OSCH issued).;

Continued;

Minute Order - No Hearing Held;

Journal Entry Details:

Mr. Larsen stated this was a several property HOA foreclosure sale case; a Summary Judgement could possibly resolve several issues; will work on a Joint Case Conference Report with counsel and get the case moving along. COURT ORDERED, matter SET for further status check in Chambers 7/15/20.;

07/20/2020



Motion for Partial Summary Judgment (9:00 AM) (Judicial Officer: Scotti, Richard F.)

07/20/2020, 07/29/2020



Plaintiff's Motion for Partial Summary Judgment

Granted in Part;

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-17-757061-C

	<p>Minute Order - No Hearing Held; Journal Entry Details: <i>The Court GRANTS Plaintiff's Motion for Partial Summary Judgment on Kal-Mor's sixth claim of unjust enrichment, and seventh claim of conversion, but DENIES the motion as to the ninth claim of intentional interference with contractual relations. There is no genuine issue of material fact that OMNI had no legal right to collect rents from the tenants of the subject Kal-Mor properties in which OMNI held no valid security interest. However, there is a genuine issue of material fact whether OMNI had an intent to disrupt the relationship between Kal-Mor and its tenants. The intent element for conversion is different than the intent element for interference with contractual relationship. Kal-Mor shall prepare and submit the Order, pursuant to the requirements of AO 20-17. **CLERK'S NOTE: Minute order sent via e-mail to parties registered on the e-service master list. ;</i> Granted in Part; Minute Order - No Hearing Held; Journal Entry Details: <i>Counsel confirmed no reply briefs were filed. Arguments by counsel regarding their respective positions as to rents paid to Omni instead of Kal-Mor. Mr. Larsen requested an award in the amount of \$6,290.00 to compensate Kal-Mor for the rents collected and withheld by Omni. Ms. Barraza had limited opposition. Colloquy regarding timeline and delay in discovery. COURT ORDERED, matter TAKEN UNDER ADVISEMENT. Court will issue its decision from Chambers. ;</i></p>
08/03/2020	<p> Motion (3:00 AM) (Judicial Officer: Scotti, Richard F.) <i>Defendant's Renewed Motion to Certify Order Granting Partial Summary Judgment as Final Pursuant to NRCP 54(B)</i> Motion Granted; See 8/10/20 Minute Order Journal Entry Details: <i>The Court will issue a Minute Order resolving this matter.;</i></p>
08/10/2020	<p> Minute Order (3:00 AM) (Judicial Officer: Scotti, Richard F.) <i>Minute Order re: Defendant's Renewed Motion to Certify Order Granting Partial Summary Judgment as Final Pursuant to NRCP 54(B)</i> Minute Order - No Hearing Held; Journal Entry Details: <i>The Court GRANTS Defendant's Renewed Motion to Certify Order Granting Partial Summary Judgment as Final Pursuant to NRCP 54(B) as unopposed, pursuant to EDCR 2.20. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Christopher Darling, to all registered parties for Odyssey File & Serve. /cd 8-10-20/;</i></p>
08/17/2020	<p>CANCELED Status Check (9:00 AM) (Judicial Officer: Scotti, Richard F.) <i>Vacated</i></p>
DATE	FINANCIAL INFORMATION

Cross Defendant First 100, LLC

Total Charges	646.00
Total Payments and Credits	646.00
Balance Due as of 10/28/2020	0.00

Cross Claimant Omni Financial, LLC

Total Charges	247.00
Total Payments and Credits	247.00
Balance Due as of 10/28/2020	0.00

Counter Defendant Kal-Mor-USA, Inc.

Total Charges	1,141.00
Total Payments and Credits	1,141.00
Balance Due as of 10/28/2020	0.00

Cross Claimant Omni Financial, LLC

Appeal Bond Balance as of 10/28/2020	500.00
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CASE SUMMARY

CASE NO. A-17-757061-C

DISTRICT COURT CIVIL COVER SHEET

County, Nevada
 Case No. **A-17-757061-C** Department 18
(Assigned by Clerk's Office)

I. Party Information *(provide both home and mailing addresses if different)*

Plaintiff(s) (name/address/phone): <p style="text-align: center;">Kal-Mor-USA, LLC</p>	Defendant(s) (name/address/phone): <p style="text-align: center;">Omni Financial, LLC; First 100, LLC</p>
Attorney (name/address/phone): <p style="text-align: center;">Bart K. Larsen, Esq./Eric D. Walther, Esq. Kolesar & Leatham, 400 S. Rampart Blvd. #400, Las Vegas, NV 89145 (702) 362-7800</p>	Attorney (name/address/phone):

II. Nature of Controversy *(please select the one most applicable filing type below)*

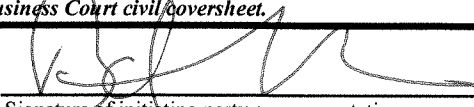
Civil Case Filing Types

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input checked="" type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate <i>(select case type and estate value)</i> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

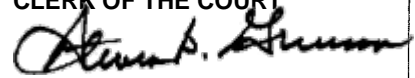
Business Court filings should be filed using the Business Court civil coversheet.

June 19, 2017

Date


 Signature of initiating party or representative

See other side for family-related case filings.



BART K. LARSEN, ESQ.
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Nevada Bar No. 13611
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Attorneys for Plaintiff
Kal-Mor-USA, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

KAL-MOR-USA, LLC, a Nevada limited
liability company,

Plaintiff,

vs.

OMNI FINANCIAL, LLC, a foreign limited
liability company; FIRST 100, LLC, a Nevada
limited liability company; DOES I through X;
and ROE ENTITIES I through X, inclusive,

Defendants.

CASE NO. A-17-757061-C

DEPT. NO. 2

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER GRANTING PLAINTIFF'S
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Date: August 27, 2018

Time: 10:30 a.m.

Plaintiff Kal-Mor-USA, LLC's ("Kal-Mor") Motion for Partial Summary Judgment (the "Motion") against Defendant Omni Financial, LLC ("Omni") as to Kal-Mor's fourth cause of action for declaratory relief and Kal-Mor's fifth cause of action for quiet title came on for hearing before the Court on August 27, 2018 (the "Hearing"). Kal-Mor appeared through its counsel of record, Bart K. Larsen, Esq. of the law firm of Kolesar & Leatham. Omni appeared through its counsel of record, Robert W. Hernquist, Esq. and Brian J. Pezzillo, Esq. of the law firm of Howard & Howard.

KOLESAR & LEATHAM
400 S. Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Tel: (702) 362-7800 / Fax: (702) 362-9472

1 Having duly considered all arguments and evidence presented by both Kal-Mor and
2 Omni, including the arguments made by counsel at the Hearing, and finding good cause for the
3 relief requested in the Motion, the Court makes the following Findings of Fact and Conclusions
4 of Law:

5 **FINDINGS OF FACT**

6 **A. The Omni Loan Transaction**

7 1. On May 27, 2014, First 100 and Omni entered into a Loan Agreement under
8 which Omni agreed to loan up to \$5,000,000 to First 100 (the "Omni Loan Agreement"). In
9 connection therewith, First 100 executed a Promissory Note dated May 27, 2014 in favor of
10 Omni (the "Omni Note"). First 100 and Omni also entered into a Security Agreement dated May
11 27, 2014 (the "Security Agreement" and together with the Omni Loan Agreement, the Omni
12 Note, and other loan documents, the "Omni Loan") under which First 100 pledged certain real
13 and personal property as collateral for the Omni Note.

14 2. Among other things, the collateral purportedly pledged pursuant to the Security
15 Agreement was evidenced by (i) a Deed of Trust dated May 27, 2014 (the "May 2014 Deed of
16 Trust"), (ii) a Deed of Trust dated June 17, 2014 (the "June 2014 Deed of Trust"), and a Deed of
17 Trust dated August 21, 2014 (the "August 2014 Deed of Trust" and together with the May 2014
18 Deed of Trust and June 2014 Deed of Trust, including any subsequent amendments thereto, the
19 "Omni Deeds of Trust").

20 3. The May 2014 Deed of Trust was recorded in the official records of the Clark
21 County, Nevada Recorder (the "Official Records") as instrument number 20140529-0001342 on
22 May 29, 2014. Under the May 2014 Deed of Trust, First 100 purported to pledge various real
23 properties as collateral for the Omni Note, including, but not limited to:

24 a. The property commonly known as 1217 Neva Ranch Avenue, North Las
25 Vegas, Nevada 89081, also designated as Clark County Assessor Parcel
26 Number ("APN") 124-26-311-029 (the "Neva Ranch Property");

27 b. The property commonly known as 230 East Flamingo Road #330, Las Vegas,
28 Nevada 89169, also designated as APN 162-16-810-355 (the "East Flamingo");

Property”);

c. The property commonly known as 2615 West Gary Avenue #1065, Las Vegas, Nevada 89123, also designated as APN 177-20-813-127 (the “West Gary Property”); and

d. The property commonly known as 6575 Shining Sand Avenue, Las Vegas, Nevada 89142, also designated as APN 161-10-511-072 (the “Shining Sand Property”).

4. The June 2014 Deed of Trust was recorded in the Official Records as instrument number 20140718-0001253 on July 18, 2014. Under the June 2014 Deed of Trust, First 100 purported to pledge certain additional real properties as collateral for the Omni Note, including, but not limited to:

a. The property commonly known as 4921 Indian River Drive #112, Las Vegas, Nevada 89103, also designated as APN 163-24-612-588 (the (“4921 Indian River Property”);

b. The property commonly known as 5009 Indian River Drive #155, Las Vegas, Nevada 89103, also designated as APN 163-24-612-639 (the “5009 Indian River Property”);

c. The property commonly known as 5295 Indian River Drive #314, Las Vegas, Nevada 89103, also designated as APN 163-24-612-798 (the “5295 Indian River Property”); and

d. The property commonly known as 4400 Sandy River Drive #16, Las Vegas, Nevada 89103, also designated as APN 163-24-612-500 (the “Sandy River Property”).

5. The August 2014 Deed of Trust was recorded in the Official Records as instrument number 20140826-0001916 on August 26, 2014. Under the August 2014 Deed of Trust, First 100 purported to pledge as collateral for the Omni No the real property commonly known as 5782 Camino Ramon Avenue, Las Vegas, Nevada 89156, also designated as APN 140-21-611-018 (the “Camino Ramon Property” and together with the Neva Ranch Property, the

1 East Flamingo Property, the West Gary Property, the Shining Sand Property, the 4921 Indian
2 River Property, the 5009 Indian River Property, the 5295 Indian River Property, and the Sandy
3 River Property, the "Kal-Mor Properties").

4 6. On October 5, 2016, Omni re-recorded the August 2014 Deed of Trust in the
5 Official Records as instrument number 20161005-0002287.

6 7. On April 24, 2017, Omni re-recorded the May 2014 Deed of Trust in the Official
7 Records as instrument number 20170424-0000178.

8 8. On April 24, 2017, Omni re-recorded the June 2014 Deed of Trust in the Official
9 Records as instrument number 20170424-0000179.

10 **B. The PrenPoinciana Transactions**

11 9. On or around February 2, 2015 and with Omni's consent, First 100 entered into a
12 Proceeds Purchase Sharing Agreement ("PPSA") with PrenPoinciana, LLC ("PrenPoinciana")
13 under which PrenPoinciana purchased certain rights to share in the proceeds of certain
14 receivables, and First 100 granted PrenPoinciana a junior security interest in such receivables,
15 which had previously been pledged as collateral for the Omni Note.

16 10. On or around April 20, 2015, PrenPoinciana affiliate, Prentice Lending II, LLC
17 ("Prentice"), loaned \$150,000 (the "Prentice Loan") to First 100 and also received a junior
18 security interest in certain receivables that had previously been pledged as collateral for the
19 Omni Note.

20 **C. Kal-Mor's Purchase of the Kal-Mor Properties**

21 11. First 100's business operations include, among other things, the purchase and sale
22 of residential real properties in Clark County, Nevada that are acquired by First 100 as a result of
23 homeowner association ("HOA") assessment lien foreclosure sales conducted pursuant to the
24 provisions of Chapter 116 of Nevada Revised Statutes. During 2014 and 2015, Kal-Mor
25 purchased several such real properties from First 100, including the nine (9) Kal-Mor Properties
26 that First 100 had previously pledged as collateral for the Omni Note under the Omni Deeds of
27 Trust.

D. The First 100 Action

12. During 2015, First 100 failed to pay amounts due and owing under the Omni Note and failed to perform other obligations required of it in connection with the Omni Loan. First 100 similarly failed to perform as agreed in connection with the PPSA. As a result, Omni and PrenPoinciana issued a joint Notification of Disposition of Collateral on January 8, 2016 in which they identified certain personal property subject to their security interests and scheduled a sale of such collateral to take place in accordance with NRS Chapter 104 on January 21, 2016 (the "UCC Sale").

13. On January 15, 2016, First 100 filed a complaint in the Eighth Judicial District Court in Clark County, Nevada (Case No. A-16-730374-C) (the "First 100 Action") in which it asserted various claims against Omni and PrenPoinciana, and sought an injunction to prevent Omni and PrenPoinciana from proceeding with the UCC Sale. On January 18, 2016, Omni removed the First 100 Action to the United States District Court for the District of Nevada (the "District Court") (Case No. 2:16-cv-00099).

14. After several months of litigation in the First 100 Action, Omni completed the UCC Sale on May 25, 2016 and purchased certain First 100 personal property that had been pledged as collateral for the Omni Note under the Security Agreement through a successful credit bid.

15. On or about May 31, 2016, Omni paid \$800,000 to PrenPoinciana and Prentice to purchase their respective interests under the PPSA and the Prentice Loan.

16. Various disputes subsequently arose between First 100 and Omni as to, among other things, the outstanding balance of the Omni Note, the reasonableness of the UCC Sale, the value of the personal property purchase by Omni through the UCC Sale, possession and control of the personal property purchase by Omni through the UCC Sale, First 100's liability for the remaining balance of the Omni Note, First 100's liability to Omni for amounts owed in connection with the PPSA and the Prentice Loan, and Omni's rights and interests under the Omni Deeds of Trust.

1 17. Omni filed a counterclaim against First 100 and others in the First 100 Action in
2 which it alleged, among other things, that the unpaid balance of the Omni Note was \$4.1 million
3 as of June 15, 2016.

4 **E. The First 100 Settlement**

5 18. After several additional months of litigation in the First 100 Action, Omni and
6 First 100 reached an agreement to resolve their various disputes and entered into a written
7 settlement agreement (the “First 100 Settlement”) on January 16, 2017.¹

8 19. Section 15(a) of the First 100 Settlement provides in part:

9 Omni Release. Except for the rights and obligations of the Parties under this
10 Agreement, and effective immediately upon the exchange of fully executed
11 counterparts of this Agreement ... Omni hereby unconditionally relieves, releases,
12 acquits and forever discharges First 100 ... of and from any and all Liabilities²
13 and Claims³ arising out of, concerning, or in any manner relating to ... the
14 Parties’ prior settlement efforts and negotiations, and Enforcement Actions⁴
15 undertaken by Omni with respect to the Omni Loan (including without limitation
16 the UCC Sale and exercise of the assignment of rents).

17 20. At the time the First 100 Settlement was executed, First 100 held no legal or
18 equitable interest of any kind in any of the Kal-Mor Properties.

19 21. Pursuant to § 15(e) the First 100 Settlement, the District Court entered a
20 Stipulated Judgment on February 16, 2017 (the “First 100 Judgment”) in the First 100 Action
21 through which it entered judgment in favor of Omni and against First 100 in the amount of \$4.8

22 ¹ A copy of the First 100 Settlement is attached to Omni’s Opposition to Plaintiff’s Motion for Partial Summary
23 Judgment as “Exhibit A-4.”

24 ² Section 14(a) of the First 100 Settlement defines “Liabilities” as “any and all liabilities, losses, promises,
25 obligations, agreements, compensation, damages, accounts, liens, fines, assessments, indebtedness, costs, charges, or
26 other expenses, including, but not limited to, reasonable attorney fees and costs, including but not limited to any
27 claims that may be brought by Prentice Lending or PrenPoinciana or their respective positions, and whether of any
28 kind or nature, liquidated or unliquidated, suspected or unsuspected, or fixed or contingent.”

³ Section 14(a) of the First 100 Settlement defines and defines “Claims” as “claims, controversies, causes of action,
 lawsuits, choses in action, arbitrations, administrative actions or proceedings, judgments, order, and remedies.”

⁴ Section 1(b) of the First 100 Settlement defines “Enforcement Actions” as “Omni letters dated April 8, 2015 and
 November 2, 2015 claiming First 100 to be in default of the Omni Loan; Omni asserting that it had accelerated that
 Loan; Omni commencing foreclosure actions which are the subject of this dispute; and Omni’s response to the filing
 of lawsuits related to its claims.”

1 million, but which amount could increase by a specific sum if certain conditions subsequent are
2 not met.⁵

3 22. Among other things, the First 100 Judgment provides that the First 100 Action
4 “and any and all Disputes, Claims, Counterclaims, and Third-Party Claims are hereby dismissed
5 with prejudice. This judgment shall not preclude or otherwise impair any claim or defense that
6 may exist or arise between or among the Parties with respect to a breach of the Settlement
7 Agreement.”⁶

8 23. The term “Disputes” as used in the First 100 Judgment is defined in the recitals to
9 the First 100 Judgment to include “numerous disputes ... between Plaintiffs, Defendants, and
10 Guarantors⁷” regarding, among other things: “(a) First 100’s default on a line of credit loan
11 extended by Omni pursuant to a loan agreement and other transaction documents dated May 27,
12 2014; ... and (f) Omni’s first-priority security interest, as beneficiary, under deeds of trust in
13 various real properties previously or currently owned by First 100.”

14 CONCLUSIONS OF LAW

15 1. Summary judgment is proper under Nev. R. Civ. P. 56(c) when there is no
16 genuine issue of material fact and the moving party is entitled to judgment as to all or some part
17 of its claims as a matter of law. *See Cuzze v. Univ. and Comm. College Sys. of Nev.*, 123 Nev.
18 598, 172 P.3d 131, 134 (2007). To defeat a motion for summary judgment, the non-moving
19 party must introduce specific evidence, through affidavit or otherwise, that demonstrates the
20 existence of a genuine issue of material fact. *Id.*

21 2. “The substantive law controls which factual disputes are material and will
22 preclude summary judgment; other factual disputes are irrelevant. A factual dispute is genuine
23 when the evidence is such that a rational trier of fact could return a verdict for the nonmoving
24 party.” *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005).

25
26 ⁵ A copy of the First 100 Judgment is attached to Omni’s Opposition to Plaintiff’s Motion for Partial Summary
Judgment as “Exhibit D.”

27 ⁶ First 100 Judgment, ¶¶ 5 and 6.

28 ⁷ Kal-Mor is not identified as either a Plaintiff, a Guarantor, or a Defendant in the First 100 Judgment.

3. In considering a motion for summary judgment, the court must view the evidence presented in a light most favorable to the non-moving party. *Fire Ins. Exchange v. Cornwell*, 120 Nev. 303, 305 (2004).

4. “A novation, or substituted contract, ‘is a contract that is itself accepted ... in satisfaction of [an] existing duty’ which ‘discharges the original duty.’” *Granite Construction Company v. Remote Energy Solutions, LLC*, 2017 WL 2334516 (Nev. May 25, 2017) (citing Restatement (Second) of Contracts § 279 (Am. Law Inst. 1981)).

5. “A novation consists of four elements: (1) there must be an existing valid contract; (2) all parties must agree to a new contract; (3) the new contract must extinguish the old contract; and (4) the new contract must be valid.” *United Fire Ins. Co. v. McClelland*, 105 Nev. 504, 508, 780 P.2d 193, 195 (1989). “If all four elements exist, a novation occurred.” *Id.*

6. A novation must be established by clear and convincing evidence. *Id.* at 509.

7. “Whether a novation occurred is a question of fact if the evidence is such that reasonable persons can draw more than one conclusion.” *Id.* at 508.

8. Novation can be determined as a matter of law “when the agreement and consent of the parties are unequivocal.” *Lazovich & Lazovich v. Harding*, 86 Nev. 434, 470 P.2d 125 (1970).

9. The proper interpretation of a contract is a question of law. *Dickenson v. State, Dept. of Wildlife*, 110 Nev. 934, 877 P.2d 1059 (1994). If no ambiguity exists, the words of the contract must be taken in their usual and ordinary significance. *Parsons Drilling, Inc. v Polar Resources*, 98 Nev. 374, 376, 649 P.2d 1360, 1362 (1982).

10. It is undisputed that the Omni Note constituted a valid contract between First 100 and Omni. Likewise, it is undisputed that the First 100 Settlement constitutes a valid, new contract between First 100 and Omni. Accordingly, to determine whether a novation occurred, the Court must determine whether the First 100 Settlement extinguished the Omni Note.

11. The undisputed facts set forth in the record unequivocally demonstrate that the First 100 Settlement expressly and unambiguously extinguished and discharged the Omni Note and substituted in place of the Omni Note the new and materially different obligations owed by

1 First 100 under the First 100 Settlement. As a matter of law, the substitution of one agreement
2 for another constitutes a novation. *United Fire Ins. Co. v. McClelland*, 105 Nev. 504, 780 P.2d
3 193 (1989).

4 12. The extinguishment and discharge of the Omni Note logically extinguished and
5 discharged the Omni Deeds of Trust, which stood as the security for the Omni Note. *See, e.g.,*
6 *Walker v. Shrake*, 75 Nev. 241, 247 (1959) (holding that the satisfaction of a judgment destroyed
7 the security incidental to the judgment obligation).

8 13. Furthermore, the plain and unambiguous language of sections 1(b), 14(a), and
9 15(a) of the First 100 Settlement clearly provides that, upon execution of the First 100
10 Settlement, Omni unconditionally waived, released, and discharged all liabilities, claims, and
11 remedies arising out of, concerning, or in any manner relating to First 100's default under the
12 Omni Loan. Thus, the claims and remedies expressly discharged and released under the First
13 100 Settlement included Omni's rights to enforce payment of the Omni Note through foreclose
14 under the Omni Deeds of Trust.

15 14. The terms of the First 100 Settlement are clear and unambiguous. The subjective
16 intent of Omni and First 100 and their prior dealings are irrelevant. The Court cannot consider
17 extrinsic evidence to construe the unambiguous terms of a contract. "[W]hen a contract is clear
18 on its face, it will be construed from the written language and enforced as written." *Canfora v.*
19 *Coast Hotels & Casinos, Inc.*, 121 Nev. 771, 776 (2005) (internal quotation marks and citation
20 omitted).

21 15. Furthermore, § 20(b) of the First 100 Settlement contains a standard merger
22 clause that provides that the First 100 Settlement is the entire agreement of the parties and
23 replaces all prior agreements. The parol evidence rule precludes the admission of extrinsic
24 "evidence that would change the contract terms when the terms of a written agreement are clear,
25 definite, and unambiguous." *Ringle v. Bruton*, 120 Nev. 82, 91, 86 P.3d 1032, 1037 (2004).

26 16. Through its Motion and the evidence and arguments presented in support thereof,
27 Kal-Mor has demonstrated by clear and convincing evidence that the First 100 Settlement was a
28 novation of the Omni Loan. As such, Kal-Mor is entitled, as a matter of law, to the relief

1 requested in connection with its fourth cause of action for declaratory relief and fifth cause of
2 action for quiet title.

3 17. Omni has failed to demonstrate the existence of any genuine issue of material fact
4 that would prevent this Court from granting partial summary judgment in favor of Kal-Mor as to
5 Kal-Mor's fourth cause of action for declaratory relief and fifth cause of action for quiet title.

6 18. The Court makes no determination concerning Kal-Mor's alternative argument
7 that the Omni Deeds of Trust were discharged and released under Nevada's one action rule⁸ as a
8 result of the entry of the First 100 Judgment.

9 19. If any Conclusion of Law set forth herein is determined to properly constitute a
10 Finding of Fact (or vice versa), such shall be treated as if appropriately identified and designated.

11 **ORDER**

12 Based on the foregoing Findings of Fact and Conclusions of Law, THE COURT
13 HEREBY ORDERS AS FOLLOWS:

14 1. Kal-Mor's Motion for Partial Summary Judgment against Omni as to Kal-Mor's
15 fourth cause of action for declaratory relief and Kal-Mor's fifth cause of action for quiet title is
16 GRANTED;

17 2. Omni's request for relief pursuant to Nev. R. Civ. P. 56(f) is DENIED as Omni
18 has failed to demonstrate the existence of or need for discovery concerning any genuine issue of
19 material fact that would prevent this Court from granting partial summary judgment as requested
20 in Kal-Mor's Motion;

21 3. The execution of the First 100 Settlement on or about January 16, 2017 satisfied
22 and discharged the Omni Note;

23 4. The satisfaction and discharge of the Omni Note pursuant to the First 100
24 Settlement satisfied and discharged the Omni Deeds of Trust as to the Kal-Mor Properties;

25
26
27
28 ⁸ Nev. Rev. Stat. §§ 40.430 and 435.

5. Kal-Mor's rights, title, and interests in each of the Kal-Mor Properties exist free and clear of any lien, mortgage, security interest, or other encumbrance that might be claimed under the Omni Deeds of Trust; and

6. A certified copy of this Order may be recorded in the Official Records as proof and confirmation that any lien, mortgage, security interest, or other encumbrance that might be claimed against any of the Kal-Mor Properties under any of the Omni Deeds of Trust has been fully released and discharged.


IT IS SO ORDERED.

DATED this 26 day of September, 2018.


DISTRICT JUDGE

Submitted by:


KOLESAR & LEATHAM


Bart K. Larsen, Esq.
Nevada Bar No. 8538
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145

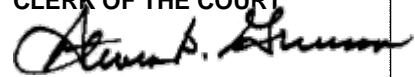
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Kal-Mor-USA, LLC*

Approved as to form by:

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10 *Attorneys for Plaintiff*
11 *Kal-Mor-USA, LLC*

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 * * *

15 KAL-MOR-USA, LLC, a Nevada limited
16 liability company,

17 Plaintiff,

18 vs.

19 OMNI FINANCIAL, LLC, a foreign limited
20 liability company; FIRST 100, LLC, a Nevada
21 limited liability company; DOES I through X;
22 and ROE ENTITIES I through X,

23 Defendants.

CASE NO. A-17-757061-C

DEPT NO. 2

**NOTICE OF ENTRY OF FINDINGS
OF FACT, CONCLUSIONS OF LAW,
AND ORDER GRANTING
PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

24 Please take notice that Findings of Fact, Conclusions of Law, and Order Granting
25 Plaintiff's Motion for Partial Summary Judgment was entered with the above court on the 2nd
26 day of October, 2018, a copy of which is attached hereto.

27 DATED this 3rd day of October, 2018.

28 **KOLESAR & LEATHAM**

By



BART K. LARSEN, ESQ.
Nevada Bar No. 008538
400 South Rampart Boulevard, Suite 400
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Attorneys for Plaintiff
Kal-Mor-USA, LLC

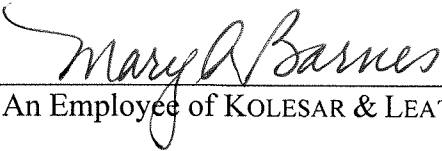
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Kolesar & Leatham, and that on the 3rd day of October, 2018, I caused to be served a true and correct copy of foregoing NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by that Court's facilities to those parties listed on the Court's Master Service List.


An Employee of KOLESAR & LEATHAM

KOLESAR & LEATHAM
400 S. Rampart Boulevard, Suite 400
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Attorneys for Plaintiff
Kal-Mor-USA, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

KAL-MOR-USA, LLC, a Nevada limited
liability company,

Plaintiff,

vs.

OMNI FINANCIAL, LLC, a foreign limited
liability company; FIRST 100, LLC, a Nevada
limited liability company; DOES I through X;
and ROE ENTITIES I through X, inclusive,

Defendants.

CASE NO. A-17-757061-C

DEPT. NO. 2

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER GRANTING PLAINTIFF'S
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Date: August 27, 2018

Time: 10:30 a.m.

Plaintiff Kal-Mor-USA, LLC's ("Kal-Mor") Motion for Partial Summary Judgment (the "Motion") against Defendant Omni Financial, LLC ("Omni") as to Kal-Mor's fourth cause of action for declaratory relief and Kal-Mor's fifth cause of action for quiet title came on for hearing before the Court on August 27, 2018 (the "Hearing"). Kal-Mor appeared through its counsel of record, Bart K. Larsen, Esq. of the law firm of Kolesar & Leatham. Omni appeared through its counsel of record, Robert W. Hernquist, Esq. and Brian J. Pezzillo, Esq. of the law firm of Howard & Howard.

1 Having duly considered all arguments and evidence presented by both Kal-Mor and
2 Omni, including the arguments made by counsel at the Hearing, and finding good cause for the
3 relief requested in the Motion, the Court makes the following Findings of Fact and Conclusions
4 of Law:

5 **FINDINGS OF FACT**

6 **A. The Omni Loan Transaction**

7 1. On May 27, 2014, First 100 and Omni entered into a Loan Agreement under
8 which Omni agreed to loan up to \$5,000,000 to First 100 (the "Omni Loan Agreement"). In
9 connection therewith, First 100 executed a Promissory Note dated May 27, 2014 in favor of
10 Omni (the "Omni Note"). First 100 and Omni also entered into a Security Agreement dated May
11 27, 2014 (the "Security Agreement") and together with the Omni Loan Agreement, the Omni
12 Note, and other loan documents, the "Omni Loan") under which First 100 pledged certain real
13 and personal property as collateral for the Omni Note.

14 2. Among other things, the collateral purportedly pledged pursuant to the Security
15 Agreement was evidenced by (i) a Deed of Trust dated May 27, 2014 (the "May 2014 Deed of
16 Trust"), (ii) a Deed of Trust dated June 17, 2014 (the "June 2014 Deed of Trust"), and a Deed of
17 Trust dated August 21, 2014 (the "August 2014 Deed of Trust") and together with the May 2014
18 Deed of Trust and June 2014 Deed of Trust, including any subsequent amendments thereto, the
19 "Omni Deeds of Trust").

20 3. The May 2014 Deed of Trust was recorded in the official records of the Clark
21 County, Nevada Recorder (the "Official Records") as instrument number 20140529-0001342 on
22 May 29, 2014. Under the May 2014 Deed of Trust, First 100 purported to pledge various real
23 properties as collateral for the Omni Note, including, but not limited to:

- 24 a. The property commonly known as 1217 Neva Ranch Avenue, North Las
25 Vegas, Nevada 89081, also designated as Clark County Assessor Parcel
26 Number ("APN") 124-26-311-029 (the "Neva Ranch Property");
27 b. The property commonly known as 230 East Flamingo Road #330, Las Vegas,
28 Nevada 89169, also designated as APN 162-16-810-355 (the "East Flamingo");

1 Property”);

2 c. The property commonly known as 2615 West Gary Avenue #1065, Las
3 Vegas, Nevada 89123, also designated as APN 177-20-813-127 (the “West
4 Gary Property”); and

5 d. The property commonly known as 6575 Shining Sand Avenue, Las Vegas,
6 Nevada 89142, also designated as APN 161-10-511-072 (the “Shining Sand
7 Property”).

8 4. The June 2014 Deed of Trust was recorded in the Official Records as instrument
9 number 20140718-0001253 on July 18, 2014. Under the June 2014 Deed of Trust, First 100
10 purported to pledge certain additional real properties as collateral for the Omni Note, including,
11 but not limited to:

12 a. The property commonly known as 4921 Indian River Drive #112, Las Vegas,
13 Nevada 89103, also designated as APN 163-24-612-588 (the (“4921 Indian
14 River Property”);

15 b. The property commonly known as 5009 Indian River Drive #155, Las Vegas,
16 Nevada 89103, also designated as APN 163-24-612-639 (the “5009 Indian
17 River Property”);

18 c. The property commonly known as 5295 Indian River Drive #314, Las Vegas,
19 Nevada 89103, also designated as APN 163-24-612-798 (the “5295 Indian
20 River Property”); and

21 d. The property commonly known as 4400 Sandy River Drive #16, Las Vegas,
22 Nevada 89103, also designated as APN 163-24-612-500 (the “Sandy River
23 Property”).

24 5. The August 2014 Deed of Trust was recorded in the Official Records as
25 instrument number 20140826-0001916 on August 26, 2014. Under the August 2014 Deed of
26 Trust, First 100 purported to pledge as collateral for the Omni No the real property commonly
27 known as 5782 Camino Ramon Avenue, Las Vegas, Nevada 89156, also designated as APN
28 140-21-611-018 (the “Camino Ramon Property” and together with the Neva Ranch Property, the

1 East Flamingo Property, the West Gary Property, the Shining Sand Property, the 4921 Indian
2 River Property, the 5009 Indian River Property, the 5295 Indian River Property, and the Sandy
3 River Property, the "Kal-Mor Properties").

4 6. On October 5, 2016, Omni re-recorded the August 2014 Deed of Trust in the
5 Official Records as instrument number 20161005-0002287.

6 7. On April 24, 2017, Omni re-recorded the May 2014 Deed of Trust in the Official
7 Records as instrument number 20170424-0000178.

8 8. On April 24, 2017, Omni re-recorded the June 2014 Deed of Trust in the Official
9 Records as instrument number 20170424-0000179.

10 **B. The PrenPoinciana Transactions**

11 9. On or around February 2, 2015 and with Omni's consent, First 100 entered into a
12 Proceeds Purchase Sharing Agreement ("PPSA") with PrenPoinciana, LLC ("PrenPoinciana")
13 under which PrenPoinciana purchased certain rights to share in the proceeds of certain
14 receivables, and First 100 granted PrenPoinciana a junior security interest in such receivables,
15 which had previously been pledged as collateral for the Omni Note.

16 10. On or around April 20, 2015, PrenPoinciana affiliate, Prentice Lending II, LLC
17 ("Prentice"), loaned \$150,000 (the "Prentice Loan") to First 100 and also received a junior
18 security interest in certain receivables that had previously been pledged as collateral for the
19 Omni Note.

20 **C. Kal-Mor's Purchase of the Kal-Mor Properties**

21 11. First 100's business operations include, among other things, the purchase and sale
22 of residential real properties in Clark County, Nevada that are acquired by First 100 as a result of
23 homeowner association ("HOA") assessment lien foreclosure sales conducted pursuant to the
24 provisions of Chapter 116 of Nevada Revised Statutes. During 2014 and 2015, Kal-Mor
25 purchased several such real properties from First 100, including the nine (9) Kal-Mor Properties
26 that First 100 had previously pledged as collateral for the Omni Note under the Omni Deeds of
27 Trust.

28

D. The First 100 Action

12. During 2015, First 100 failed to pay amounts due and owing under the Omni Note and failed to perform other obligations required of it in connection with the Omni Loan. First 100 similarly failed to perform as agreed in connection with the PPSA. As a result, Omni and PrenPoinciana issued a joint Notification of Disposition of Collateral on January 8, 2016 in which they identified certain personal property subject to their security interests and scheduled a sale of such collateral to take place in accordance with NRS Chapter 104 on January 21, 2016 (the "UCC Sale").

13. On January 15, 2016, First 100 filed a complaint in the Eighth Judicial District Court in Clark County, Nevada (Case No. A-16-730374-C) (the "First 100 Action") in which it asserted various claims against Omni and PrenPoinciana, and sought an injunction to prevent Omni and PrenPoinciana from proceeding with the UCC Sale. On January 18, 2016, Omni removed the First 100 Action to the United States District Court for the District of Nevada (the "District Court") (Case No. 2:16-cv-00099).

14. After several months of litigation in the First 100 Action, Omni completed the UCC Sale on May 25, 2016 and purchased certain First 100 personal property that had been pledged as collateral for the Omni Note under the Security Agreement through a successful credit bid.

15. On or about May 31, 2016, Omni paid \$800,000 to PrenPoinciana and Prentice to purchase their respective interests under the PPSA and the Prentice Loan.

16. Various disputes subsequently arose between First 100 and Omni as to, among other things, the outstanding balance of the Omni Note, the reasonableness of the UCC Sale, the value of the personal property purchase by Omni through the UCC Sale, possession and control of the personal property purchase by Omni through the UCC Sale, First 100's liability for the remaining balance of the Omni Note, First 100's liability to Omni for amounts owed in connection with the PPSA and the Prentice Loan, and Omni's rights and interests under the Omni Deeds of Trust.

1 17. Omni filed a counterclaim against First 100 and others in the First 100 Action in
2 which it alleged, among other things, that the unpaid balance of the Omni Note was \$4.1 million
3 as of June 15, 2016.

4 **E. The First 100 Settlement**

5 18. After several additional months of litigation in the First 100 Action, Omni and
6 First 100 reached an agreement to resolve their various disputes and entered into a written
7 settlement agreement (the "First 100 Settlement") on January 16, 2017.¹

8 19. Section 15(a) of the First 100 Settlement provides in part:

9 Omni Release. Except for the rights and obligations of the Parties under this
10 Agreement, and effective immediately upon the exchange of fully executed
11 counterparts of this Agreement ... Omni hereby unconditionally relieves, releases,
12 acquits and forever discharges First 100 ... of and from any and all Liabilities²
13 and Claims³ arising out of, concerning, or in any manner relating to ... the
14 Parties' prior settlement efforts and negotiations, and Enforcement Actions⁴
15 undertaken by Omni with respect to the Omni Loan (including without limitation
16 the UCC Sale and exercise of the assignment of rents).

17 20. At the time the First 100 Settlement was executed, First 100 held no legal or
18 equitable interest of any kind in any of the Kal-Mor Properties.

19 21. Pursuant to § 15(e) the First 100 Settlement, the District Court entered a
20 Stipulated Judgment on February 16, 2017 (the "First 100 Judgment") in the First 100 Action
21 through which it entered judgment in favor of Omni and against First 100 in the amount of \$4.8

22 ¹ A copy of the First 100 Settlement is attached to Omni's Opposition to Plaintiff's Motion for Partial Summary
23 Judgment as "Exhibit A-4."

24 ² Section 14(a) of the First 100 Settlement defines "Liabilities" as "any and all liabilities, losses, promises,
25 obligations, agreements, compensation, damages, accounts, liens, fines, assessments, indebtedness, costs, charges, or
26 other expenses, including, but not limited to, reasonable attorney fees and costs, including but not limited to any
27 claims that may be brought by Prentice Lending or PrenPoinciana or their respective positions, and whether of any
28 kind or nature, liquidated or unliquidated, suspected or unsuspected, or fixed or contingent."

³ Section 14(a) of the First 100 Settlement defines and defines "Claims" as "claims, controversies, causes of action,
lawsuits, choses in action, arbitrations, administrative actions or proceedings, judgments, order, and remedies."

⁴ Section 1(b) of the First 100 Settlement defines "Enforcement Actions" as "Omni letters dated April 8, 2015 and
November 2, 2015 claiming First 100 to be in default of the Omni Loan; Omni asserting that it had accelerated that
Loan; Omni commencing foreclosure actions which are the subject of this dispute; and Omni's response to the filing
of lawsuits related to its claims."

1 million, but which amount could increase by a specific sum if certain conditions subsequent are
2 not met.⁵

3 22. Among other things, the First 100 Judgment provides that the First 100 Action
4 “and any and all Disputes, Claims, Counterclaims, and Third-Party Claims are hereby dismissed
5 with prejudice. This judgment shall not preclude or otherwise impair any claim or defense that
6 may exist or arise between or among the Parties with respect to a breach of the Settlement
7 Agreement.”⁶

8 23. The term “Disputes” as used in the First 100 Judgment is defined in the recitals to
9 the First 100 Judgment to include “numerous disputes ... between Plaintiffs, Defendants, and
10 Guarantors⁷” regarding, among other things: “(a) First 100’s default on a line of credit loan
11 extended by Omni pursuant to a loan agreement and other transaction documents dated May 27,
12 2014; ... and (f) Omni’s first-priority security interest, as beneficiary, under deeds of trust in
13 various real properties previously or currently owned by First 100.”

14 CONCLUSIONS OF LAW

15 1. Summary judgment is proper under Nev. R. Civ. P. 56(c) when there is no
16 genuine issue of material fact and the moving party is entitled to judgment as to all or some part
17 of its claims as a matter of law. *See Cuzze v. Univ. and Comm. College Sys. of Nev.*, 123 Nev.
18 598, 172 P.3d 131, 134 (2007). To defeat a motion for summary judgment, the non-moving
19 party must introduce specific evidence, through affidavit or otherwise, that demonstrates the
20 existence of a genuine issue of material fact. *Id.*

21 2. “The substantive law controls which factual disputes are material and will
22 preclude summary judgment; other factual disputes are irrelevant. A factual dispute is genuine
23 when the evidence is such that a rational trier of fact could return a verdict for the nonmoving
24 party.” *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005).

25
26 ⁵ A copy of the First 100 Judgment is attached to Omni’s Opposition to Plaintiff’s Motion for Partial Summary
Judgment as “Exhibit D.”

27 ⁶ First 100 Judgment, ¶¶ 5 and 6.

28 ⁷ Kal-Mor is not identified as either a Plaintiff, a Guarantor, or a Defendant in the First 100 Judgment.

3. In considering a motion for summary judgment, the court must view the evidence presented in a light most favorable to the non-moving party. *Fire Ins. Exchange v. Cornwell*, 120 Nev. 303, 305 (2004).

4. “A novation, or substituted contract, ‘is a contract that is itself accepted ... in satisfaction of [an] existing duty’ which ‘discharges the original duty.’” *Granite Construction Company v. Remote Energy Solutions, LLC*, 2017 WL 2334516 (Nev. May 25, 2017) (citing Restatement (Second) of Contracts § 279 (Am. Law Inst. 1981)).

5. “A novation consists of four elements: (1) there must be an existing valid contract; (2) all parties must agree to a new contract; (3) the new contract must extinguish the old contract; and (4) the new contract must be valid.” *United Fire Ins. Co. v. McClelland*, 105 Nev. 504, 508, 780 P.2d 193, 195 (1989). “If all four elements exist, a novation occurred.” *Id.*

6. A novation must be established by clear and convincing evidence. *Id.* at 509.

7. “Whether a novation occurred is a question of fact if the evidence is such that reasonable persons can draw more than one conclusion.” *Id.* at 508.

8. Novation can be determined as a matter of law “when the agreement and consent of the parties are unequivocal.” *Lazovich & Lazovich v. Harding*, 86 Nev. 434, 470 P.2d 125 (1970).

9. The proper interpretation of a contract is a question of law. *Dickenson v. State, Dept. of Wildlife*, 110 Nev. 934, 877 P.2d 1059 (1994). If no ambiguity exists, the words of the contract must be taken in their usual and ordinary significance. *Parsons Drilling, Inc. v Polar Resources*, 98 Nev. 374, 376, 649 P.2d 1360, 1362 (1982).

10. It is undisputed that the Omni Note constituted a valid contract between First 100 and Omni. Likewise, it is undisputed that the First 100 Settlement constitutes a valid, new contract between First 100 and Omni. Accordingly, to determine whether a novation occurred, the Court must determine whether the First 100 Settlement extinguished the Omni Note.

11. The undisputed facts set forth in the record unequivocally demonstrate that the First 100 Settlement expressly and unambiguously extinguished and discharged the Omni Note and substituted in place of the Omni Note the new and materially different obligations owed by

1 First 100 under the First 100 Settlement. As a matter of law, the substitution of one agreement
2 for another constitutes a novation. *United Fire Ins. Co. v. McClelland*, 105 Nev. 504, 780 P.2d
3 193 (1989).

4 12. The extinguishment and discharge of the Omni Note logically extinguished and
5 discharged the Omni Deeds of Trust, which stood as the security for the Omni Note. *See, e.g.,*
6 *Walker v. Shrake*, 75 Nev. 241, 247 (1959) (holding that the satisfaction of a judgment destroyed
7 the security incidental to the judgment obligation).

8 13. Furthermore, the plain and unambiguous language of sections 1(b), 14(a), and
9 15(a) of the First 100 Settlement clearly provides that, upon execution of the First 100
10 Settlement, Omni unconditionally waived, released, and discharged all liabilities, claims, and
11 remedies arising out of, concerning, or in any manner relating to First 100's default under the
12 Omni Loan. Thus, the claims and remedies expressly discharged and released under the First
13 100 Settlement included Omni's rights to enforce payment of the Omni Note through foreclose
14 under the Omni Deeds of Trust.

15 14. The terms of the First 100 Settlement are clear and unambiguous. The subjective
16 intent of Omni and First 100 and their prior dealings are irrelevant. The Court cannot consider
17 extrinsic evidence to construe the unambiguous terms of a contract. "[W]hen a contract is clear
18 on its face, it will be construed from the written language and enforced as written." *Canfora v.*
19 *Coast Hotels & Casinos, Inc.*, 121 Nev. 771, 776 (2005) (internal quotation marks and citation
20 omitted).

21 15. Furthermore, § 20(b) of the First 100 Settlement contains a standard merger
22 clause that provides that the First 100 Settlement is the entire agreement of the parties and
23 replaces all prior agreements. The parol evidence rule precludes the admission of extrinsic
24 "evidence that would change the contract terms when the terms of a written agreement are clear,
25 definite, and unambiguous." *Ringle v. Bruton*, 120 Nev. 82, 91, 86 P.3d 1032, 1037 (2004).

26 16. Through its Motion and the evidence and arguments presented in support thereof,
27 Kal-Mor has demonstrated by clear and convincing evidence that the First 100 Settlement was a
28 novation of the Omni Loan. As such, Kal-Mor is entitled, as a matter of law, to the relief

1 requested in connection with its fourth cause of action for declaratory relief and fifth cause of
2 action for quiet title.

3 17. Omni has failed to demonstrate the existence of any genuine issue of material fact
4 that would prevent this Court from granting partial summary judgment in favor of Kal-Mor as to
5 Kal-Mor's fourth cause of action for declaratory relief and fifth cause of action for quiet title.

6 18. The Court makes no determination concerning Kal-Mor's alternative argument
7 that the Omni Deeds of Trust were discharged and released under Nevada's one action rule⁸ as a
8 result of the entry of the First 100 Judgment.

9 19. If any Conclusion of Law set forth herein is determined to properly constitute a
10 Finding of Fact (or vice versa), such shall be treated as if appropriately identified and designated.

11 **ORDER**

12 Based on the foregoing Findings of Fact and Conclusions of Law, THE COURT
13 HEREBY ORDERS AS FOLLOWS:

14 1. Kal-Mor's Motion for Partial Summary Judgment against Omni as to Kal-Mor's
15 fourth cause of action for declaratory relief and Kal-Mor's fifth cause of action for quiet title is
16 GRANTED;

17 2. Omni's request for relief pursuant to Nev. R. Civ. P. 56(f) is DENIED as Omni
18 has failed to demonstrate the existence of or need for discovery concerning any genuine issue of
19 material fact that would prevent this Court from granting partial summary judgment as requested
20 in Kal-Mor's Motion;

21 3. The execution of the First 100 Settlement on or about January 16, 2017 satisfied
22 and discharged the Omni Note;

23 4. The satisfaction and discharge of the Omni Note pursuant to the First 100
24 Settlement satisfied and discharged the Omni Deeds of Trust as to the Kal-Mor Properties;

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28 ⁸ Nev. Rev. Stat. §§ 40.430 and 435.

KOLESAR & LEATHAM
400 S. Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Tel: (702) 362-7800 / Fax: (702) 362-9472

5. Kal-Mor's rights, title, and interests in each of the Kal-Mor Properties exist free and clear of any lien, mortgage, security interest, or other encumbrance that might be claimed under the Omni Deeds of Trust; and

6. A certified copy of this Order may be recorded in the Official Records as proof and confirmation that any lien, mortgage, security interest, or other encumbrance that might be claimed against any of the Kal-Mor Properties under any of the Omni Deeds of Trust has been fully released and discharged.

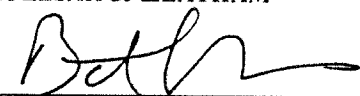
IT IS SO ORDERED.

DATED this 26 day of September, 2018.


DISTRICT JUDGE

Submitted by:

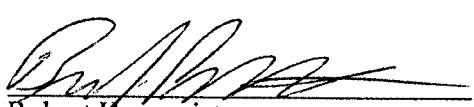
KOLESAR & LEATHAM


Bart K. Larsen, Esq.
Nevada Bar No. 8538
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145

*Attorneys for Plaintiff
Kal-Mor-USA, LLC*

Approved as to form by:

HOWARD & HOWARD ATTORNEYS PLLC


Robert Hernquist
Nevada Bar No. 10616
Brian J. Pezzillo
Nevada Bar No. 7136
3800 Howard Hughes Parkway, Suite 1000
Las Vegas, Nevada 89169

Attorneys for Defendant Omni Financial, LLC

OGM

Robert W. Hernquist; Nevada Bar No. 10616
Brian J. Pezzillo; Nevada Bar No. 7136
HOWARD & HOWARD ATTORNEYS PLLC
3800 Howard Hughes Parkway, Suite 1000
Las Vegas, Nevada 89169
Telephone: (702) 257-1483
Facsimile: (702) 567-1568
Email: rwh@h2law.com; bjp@h2law.com

Attorneys for Defendant Omni Financial, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY NEVADA

KAL-MOR-USA, LLC, a Nevada limited
liability company,

Plaintiffs,

vs.

OMNI FINANCIAL, LLC, a foreign limited
liability company; FIRST 100, LLC, a
Nevada limited liability company; DOES I
through X and ROE ENTITIES I through X;

Defendants.

Case No.: A-17-757061-C

Dept. 2

**ORDER GRANTING RENEWED
MOTION TO CERTIFY ORDER
GRANTING PARTIAL SUMMARY
JUDGMENT AS FINAL PURSUANT
TO NRCP 54(B)**

This matter came before the Court upon Defendant Omni Financial, LLC's ("Omni") Renewed Motion to Certify as Final the Court's Order Granting Kal-Mor-USA, LLC ("Kal-Mor") Motion for Partial Summary Judgment ("Order") filed on October 2, 2018¹ as well as the Court's Order Denying Omni's Request for Reconsideration of the Order that was entered on April 19, 2019. The Court being fully advised and having reviewed the Renewed Motion finds as follows:

1. On June 19, 2017, Kal-Mor commenced this action.
2. The matter was initially removed to federal court on August 25, 2017.

¹ Notice of Entry of the Order was entered on October 3, 2018.

- 1 3. On July 12, 2018 the federal court remanded the matter to this Court.
- 2 4. Subsequently, on July 26, 2018, Kal-Mor filed a Motion for Partial Summary
- 3 Judgment (“Motion”).
- 4 5. The Court granted the Motion for Partial Summary Judgment on October 2, 2018.
- 5 6. Omni subsequently filed a motion for reconsideration of the Court’s Order on
- 6 October 22, 2018.
- 7 7. After briefing and oral argument, the Court issued an Order on April 19, 2019
- 8 denying the Motion for Reconsideration.
- 9 8. In response to the denial of the Motion for Reconsideration, Omni filed a motion
- 10 on May 29, 2019 seeking to certify the Court’s partial summary judgment order as final for
- 11 purposes of appeal pursuant to NRCP 54(b).
- 12 9. After briefing the Court denied Omni’s Rule 54(b) motion.
- 13 10. Omni filed a renewed Motion to Certify the Partial Summary Judgment as final for
- 14 purposes of appeal on June 30, 2020.
- 15 11. No party opposed the Renewed Motion.
- 16 12. There is no reason to delay certification of the Partial Summary Judgment Ruling
- 17 of October 2, 2018 as the issue decided is essentially dispositive of the underlying case and it
- 18 would serve judicial economy and conserve the resources of the party to have any potential appeal
- 19 decided at an early juncture.
- 20 13. Currently no trial date has been set.

21 Based upon the foregoing the Court finds as follows:

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1 It is hereby ORDERED, ADJUDGED and DECREED that Omni Financial, LLC's
2 Renewed Motion To Certify Order Granting Partial Summary Judgment As Final Pursuant To
3 NRCP 54(B) is **GRANTED**.
4

Dated this 30th day of September, 2020

5 Dated: _____


District Court Judge

6 RESPECTFULLY SUBMITTED:

CD8 F10 654A E8C2
Richard F. Scotti
District Court Judge

8 HOWARD & HOWARD ATTORNEYS PLLC

9 Dated: September 29, 2020

By: /s/ Brian J. Pezzillo

10 Robert Hernquist, Nevada Bar No. 10616

11 Brian J. Pezzillo; Nevada Bar No. 7136

12 3800 Howard Hughes Pkwy., Ste. 1000

13 Las Vegas, NV 89169

14 *Attorneys for Defendant Omni Financial, LLC*
15
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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

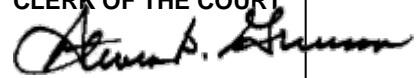
5
6 Kal-Mor-USA, Inc., Plaintiff(s) | CASE NO: A-17-757061-C
7 vs. | DEPT. NO. Department 2
8 Omni Financial, LLC,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 9/30/2020

16 Mark Gardberg mg@h2law.com
17 Robert Hernquist rwh@h2law.com
18 MGA Docketing docket@mgalaw.com
19 Angela Westlake arw@h2law.com
20 Brian Pezzillo bpezzillo@howardandhoward.com
21 Anya Ruiz ar@h2law.com
22 Amber Clayton amc@h2law.com
23 Bart Larsen blarsen@shea.law
24
25
26
27
28



NOE

Robert W. Hernquist; Nevada Bar No. 10616
Brian J. Pezzillo; Nevada Bar No. 7136
HOWARD & HOWARD ATTORNEYS PLLC
3800 Howard Hughes Parkway, Suite 1000
Las Vegas, Nevada 89169
Telephone: (702) 257-1483
Facsimile: (702) 567-1568
Email: rwh@h2law.com; bjp@h2law.com

Attorneys for Defendant Omni Financial, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY NEVADA

KAL-MOR-USA, LLC, a Nevada limited
liability company,

Plaintiffs,

vs.

OMNI FINANCIAL, LLC, a foreign limited
liability company; FIRST 100, LLC, a
Nevada limited liability company; DOES I
through X and ROE ENTITIES I through X;

Defendants.

Case No.: A-17-757061-C

Dept. 2

NOTICE OF ENTRY OF ORDER

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PLEASE TAKE NOTICE that an Order Granting Renewed Motion to Certify Order Granting Partial Summary Judgment as Final Pursuant to NRCP 54(B) was filed in the above-captioned matter on September 30, 2019. A true and correct copy of said order is attached hereto.

HOWARD & HOWARD ATTORNEYS PLLC

Dated: September 30, 2020

By: /s/ Brian J. Pezzillo

Robert Hernquist, Nevada Bar No. 10616

Brian J. Pezzillo; Nevada Bar No. 7136

3800 Howard Hughes Parkway, Suite 1000

Las Vegas, Nevada 89169

Telephone: (702) 257-1483

Facsimile: (702) 567-1568

Email: rwh@h2law.com; bjp@h2law.com

Attorneys for Defendant Omni Financial, LLC

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Howard & Howard Attorneys PLLC, and that on the 30th day of September 2020, I caused to be served a copy of foregoing Notice of Entry of Order in the following manner:

(ELECTRONIC SERVICE). The above-referenced document was electronically filed and served upon the parties listed below through the Court's Case Management and Electronic Case Filing system:

Joseph A. Gutierrez, Esq.
MAIER GUTIERREZ AYON
400 South Seventh Street, Suite 400
Las Vegas, NV 89101

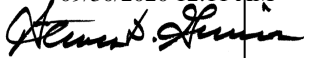
Attorneys for First 100 LLC

Bart K. Larsen, Esq.
SHEA & LARSEN
1731 Village Center Circle, Suite 150
Las Vegas, Nevada 89134

*Attorney for Plaintiff Kal-Mor-USA,
LLC*

/s/ Anya Ruiz
Howard & Howard Attorneys PLLC

4825-2938-7981, v. 1


CLERK OF THE COURT

OGM

Robert W. Hernquist; Nevada Bar No. 10616
Brian J. Pezzillo; Nevada Bar No. 7136
HOWARD & HOWARD ATTORNEYS PLLC
3800 Howard Hughes Parkway, Suite 1000
Las Vegas, Nevada 89169
Telephone: (702) 257-1483
Facsimile: (702) 567-1568
Email: rwh@h2law.com; bjp@h2law.com

Attorneys for Defendant Omni Financial, LLC

EIGHTH JUDICIAL DISTRICT COURT

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KAL-MOR-USA, LLC, a Nevada limited
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Plaintiffs,

vs.

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liability company; FIRST 100, LLC, a
Nevada limited liability company; DOES I
through X and ROE ENTITIES I through X;

Defendants.

Case No.: A-17-757061-C

Dept. 2

**ORDER GRANTING RENEWED
MOTION TO CERTIFY ORDER
GRANTING PARTIAL SUMMARY
JUDGMENT AS FINAL PURSUANT
TO NRCP 54(B)**

This matter came before the Court upon Defendant Omni Financial, LLC's ("Omni") Renewed Motion to Certify as Final the Court's Order Granting Kal-Mor-USA, LLC ("Kal-Mor") Motion for Partial Summary Judgment ("Order") filed on October 2, 2018¹ as well as the Court's Order Denying Omni's Request for Reconsideration of the Order that was entered on April 19, 2019. The Court being fully advised and having reviewed the Renewed Motion finds as follows:

1. On June 19, 2017, Kal-Mor commenced this action.
2. The matter was initially removed to federal court on August 25, 2017.

¹ Notice of Entry of the Order was entered on October 3, 2018.

- 1 3. On July 12, 2018 the federal court remanded the matter to this Court.
- 2 4. Subsequently, on July 26, 2018, Kal-Mor filed a Motion for Partial Summary
- 3 Judgment (“Motion”).
- 4 5. The Court granted the Motion for Partial Summary Judgment on October 2, 2018.
- 5 6. Omni subsequently filed a motion for reconsideration of the Court’s Order on
- 6 October 22, 2018.
- 7 7. After briefing and oral argument, the Court issued an Order on April 19, 2019
- 8 denying the Motion for Reconsideration.
- 9 8. In response to the denial of the Motion for Reconsideration, Omni filed a motion
- 10 on May 29, 2019 seeking to certify the Court’s partial summary judgment order as final for
- 11 purposes of appeal pursuant to NRCP 54(b).
- 12 9. After briefing the Court denied Omni’s Rule 54(b) motion.
- 13 10. Omni filed a renewed Motion to Certify the Partial Summary Judgment as final for
- 14 purposes of appeal on June 30, 2020.
- 15 11. No party opposed the Renewed Motion.
- 16 12. There is no reason to delay certification of the Partial Summary Judgment Ruling
- 17 of October 2, 2018 as the issue decided is essentially dispositive of the underlying case and it
- 18 would serve judicial economy and conserve the resources of the party to have any potential appeal
- 19 decided at an early juncture.
- 20 13. Currently no trial date has been set.

21 Based upon the foregoing the Court finds as follows:

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1 It is hereby ORDERED, ADJUDGED and DECREED that Omni Financial, LLC's
2 Renewed Motion To Certify Order Granting Partial Summary Judgment As Final Pursuant To
3 NRCP 54(B) is **GRANTED**.
4

Dated this 30th day of September, 2020

5 Dated: _____


District Court Judge

6 RESPECTFULLY SUBMITTED:

CD8 F10 654A E8C2
Richard F. Scotti
District Court Judge

8 HOWARD & HOWARD ATTORNEYS PLLC

9 Dated: September 29, 2020

By: /s/ Brian J. Pezzillo
Robert Hernquist, Nevada Bar No. 10616
Brian J. Pezzillo; Nevada Bar No. 7136
3800 Howard Hughes Pkwy., Ste. 1000
Las Vegas, NV 89169
Attorneys for Defendant Omni Financial, LLC

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Kal-Mor-USA, Inc., Plaintiff(s) CASE NO: A-17-757061-C
7 vs. DEPT. NO. Department 2
8 Omni Financial, LLC,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 9/30/2020

15 Mark Gardberg mg@h2law.com
16 Robert Hernquist rwh@h2law.com
17 MGA Docketing docket@mgalaw.com
18 Angela Westlake arw@h2law.com
19 Brian Pezzillo bpezzillo@howardandhoward.com
20 Anya Ruiz ar@h2law.com
21 Amber Clayton amc@h2law.com
22 Bart Larsen blarsen@shea.law
23
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25
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

August 30, 2017

A-17-757061-C	Kal-Mor-USA, Inc., Plaintiff(s)
	vs.
	Omni Financial, LLC, Defendant(s)

August 30, 2017	9:00 AM	Motion for Temporary Restraining Order
------------------------	----------------	---

HEARD BY: Scotti, Richard F.

COURTROOM: RJC Courtroom 11D

COURT CLERK: Denise Duron

RECORDER: Dalyne Easley

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Matter called. No parties present. COURT advised it will resolve the matter without oral argument pursuant to EDCR 2.23 and ordered matter UNDER ADVISEMENT.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

September 26, 2017

A-17-757061-C Kal-Mor-USA, Inc., Plaintiff(s)
vs.
Omni Financial, LLC, Defendant(s)

September 26, 2017 2:00 PM Minute Order

HEARD BY: Scotti, Richard F.

COURTROOM: RJC Courtroom 11D

COURT CLERK: Michele Tucker

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- The Court took Plaintiff Kal-Mor-USA, LLC s Motion for Temporary Restraining Order and for Order to Show Cause Why a Preliminary Injunction Should Not Issue and Ex Parte Application for Order Shortening Time under advisement during its 8/30/2017 Oral Calendar. However, a Notice of Removal to the United States District Court for the District of Nevada was filed 8/29/2017. As such, COURT ORDERS, this Motion is hereby VACATED AS MOOT.

CLERK'S NOTE: The above minute order has been distributed to: Bart Larsen, Esq. (blarsen@klnevada.com), Joseph Gutierrez, Esq. (jag@mgalaw.com), and Robert Hernquist, Esq. (rhernquist@howardandhoward.com). /mlt

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

August 27, 2018

A-17-757061-C Kal-Mor-USA, Inc., Plaintiff(s)
vs.
Omni Financial, LLC, Defendant(s)

**August 27, 2018 10:30 AM Motion for Partial
Summary Judgment**

HEARD BY: Scotti, Richard F. **COURTROOM:** RJC Courtroom 03B

COURT CLERK: Alice Jacobson

RECORDER: Sandra Pruchnic

REPORTER:

PARTIES

PRESENT: Hernquist, Robert, ESQ Attorney
 Larsen, Bart K. Attorney
 Pezzillo, Brian J. Attorney

JOURNAL ENTRIES

- Following argument by counsel regarding the stipulated judgment, rights of the Deed of Trust, one action rule, and the 2016 settlement agreement. COURT ORDERED, matter UNDER ADVISEMENT and will issue a written order from Chambers.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property**COURT MINUTES****August 31, 2018**

A-17-757061-C Kal-Mor-USA, Inc., Plaintiff(s)
 vs.
 Omni Financial, LLC, Defendant(s)

August 31, 2018 3:00 AM Minute Order

HEARD BY: Scotti, Richard F. **COURTROOM:** Chambers

COURT CLERK: Lauren Kidd

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- The Court GRANTS Plaintiff Kal-Mor-USA, LLC's Motion for Partial Summary Judgment, as to the 4th and 5th causes of action.

It is undisputed that Omni and First 100 entered into a Settlement and Mutual General Release Agreement, dated January 16, 2017 (the so-called First 100 Settlement) (Exh. 30 to Declaration of Greg Darroch, submitted in support of Plaintiff's Motion for Summary Judgment). The First 100 Settlement expressly and unambiguously extinguished the Omni Loan (as defined in the Recitals, para. B) and substituted in the place of such Loan First 100's new obligations under the First 100 Settlement. Id at para. 15(a). As a matter of law, this substitution of the one agreement for another constituted a novation. See United Fire Ins. Co. v. McClelland, 105 Nev. 504 (1989).

The Omni Loan originated from that certain Loan Agreement which was comprised of a Promissory Note and Security Agreement. Id. The extinguishment of the Omni Loan, logically extinguished the security for such loan that no longer existed. See, e.g., Walker v. Shrake, 75 Nev. 2241, 247 (1959) (holding that the satisfaction of the judgment destroyed the security incidental to said obligation).

Further, in Paragraph 15(a) of the First 100 Settlement Omni expressly released all Liabilities and Claims arising out of, concerning, or in any manner relating to, the Omni Loan. The term Claims

was defined to include all remedies to enforce repayment of the Omni Loan. Id. at para. 1(b) and 14(a). One such remedy was the right to foreclose on the security. Waiver and release of such remedies necessarily meant waiver and release of the security.

The terms of the First 100 Settlement are clear and unambiguous. The court cannot consider extrinsic evidence to construe the unambiguous terms of a contract. The subjective intent of the parties is not relevant. The prior dealings of the parties are not relevant. In fact, the First 100 Settlement contained a standard merger clause that prohibited this Court from looking to any prior dealings and communications between the parties in construing its meaning. Id. at para. 20(b).

The Court makes no ruling as to the applicability of the one-action rule.

The Court directs Kal-Mor to prepare the proposed Order in this matter, consistent herewith, adding appropriate context and authorities, and correcting for any scrivener errors.

CLERK'S NOTE: A copy of this minute order was placed in the attorney folders of the following: Joseph Gutierrez, Esq., Bart Larson, Esq. and Robert Hernquist, Esq. // 8/31/18 lk

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

November 26, 2018

A-17-757061-C	Kal-Mor-USA, Inc., Plaintiff(s)
	vs.
	Omni Financial, LLC, Defendant(s)

**November 26, 2018 3:00 AM Motion For
Reconsideration**

HEARD BY: Scotti, Richard F.

COURTROOM: RJC Courtroom 03B

COURT CLERK: Louisa Garcia

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- This matter OFF CALENDAR.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

February 27, 2019

A-17-757061-C	Kal-Mor-USA, Inc., Plaintiff(s)
	vs.
	Omni Financial, LLC, Defendant(s)

February 27, 2019	3:00 AM	Motion For Reconsideration
--------------------------	----------------	---------------------------------------

HEARD BY: Scotti, Richard F.	COURTROOM: Chambers
-------------------------------------	----------------------------

COURT CLERK: Louisa Garcia

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- The Court will issue a Minute Order resolving this matter.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

February 27, 2019

A-17-757061-C Kal-Mor-USA, Inc., Plaintiff(s)
vs.
Omni Financial, LLC, Defendant(s)

February 27, 2019 9:00 AM All Pending Motions

HEARD BY: Scotti, Richard F. **COURTROOM:** RJC Courtroom 03B

COURT CLERK: Louisa Garcia

RECORDER: Dalayne Easley

REPORTER:

PARTIES

PRESENT: Larsen, Bart K. Attorney
Nelson, Vernon A. Attorney
Pezzillo, Brian J. Attorney

JOURNAL ENTRIES

- MOTION TO INTERVENE....MOTION FOR RECONSIDERATION

Following arguments by counsel regarding their respective position, COURT ORDERED, matter UNDER ADVISEMENT; it will issue a decision within a couple of days.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property**COURT MINUTES****March 12, 2019**

A-17-757061-C Kal-Mor-USA, Inc., Plaintiff(s)
vs.
Omni Financial, LLC, Defendant(s)

March 12, 2019	10:00 AM	Minute Order	Cherus Holdings LLC s Motion to Intervene on Order Shortening Time
-----------------------	-----------------	---------------------	---

HEARD BY: Scotti, Richard F.**COURTROOM:** Chambers**COURT CLERK:** Elizabeth Vargas**RECORDER:****REPORTER:****PARTIES****PRESENT:**

JOURNAL ENTRIES

- The Court DENIES Chersus Holdings, LLC's Motion to Intervene. Chersus' intervention would result in inappropriate claim splitting and forum shopping. Chersus already has claims in A784910 against Omni, and seeks to bring these same claims into this action (A757061). If Chersus wants to bring its existing claims into this action, it must file a Motion to Consolidate, and apply the appropriate standards for consolidation. The Court finds no good cause to grant permissive intervention under NRCP 24(b). Chersus' Motion is untimely; Cherus has not convinced the Court that there are common questions of law or fact because the Court has already resolved all issues between Omni and Kal-Mor. The Court finds that Chersus is not entitled to intervention pursuant to NRCP 24(a)(2) because: Chersus' motion is untimely; The Subject matter of Chersus' claims are its interests in properties 665 Mountain Point, and 7533 Lintwhite-which are not the subject of this case (A757061); Chersus would not suffer an impairment in its ability to protect its interests in its properties if not granted intervention; and Chersus intervention here would either prejudicially interfere with Kal-Mor conclusion of this action-despite having been granted Summary Judgment, or interfere with Omni's rights to commence an appeal from the Order Granting Summary Judgment. The Court directs Kal-Mor-USA, LLC to prepare to the Order DENYING Chersus' Motion.

CLERK'S NOTE: A copy of this Minute Order has been emailed to the following: Bart Larsen, Esq. (blarsen@klnevada.com), Joseph Gutierrez, Esq. (jag@mgalaw.com), Vernon Nelson, Esq. (vnelson@nelsonlawfirmllv.com) and Robert Hernquist, Esq. (rhernquist@howardandhoward.com).
//ev 3/12/19

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

March 12, 2019

A-17-757061-C	Kal-Mor-USA, Inc., Plaintiff(s)
	vs.
	Omni Financial, LLC, Defendant(s)

March 12, 2019 10:00 AM Minute Order

HEARD BY: Scotti, Richard F. **COURTROOM:** Chambers

COURT CLERK: Elizabeth Vargas

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- The Court sets a hearing on Defendant s Motion for Reconsideration of Order Granting Partial Summary Judgment on Wednesday March 20, 2019.

CLERK'S NOTE: A copy of this Minute Order has been emailed to the following: Bart Larsen, Esq. (blarsen@klnevada.com), Joseph Gutierrez, Esq.(jag@mgalaw.com), Vernon Nelson, Esq. (vnelson@nelsonlawfirmnv.com) and Robert Hernquist, Esq. (rhernquist@howardandhoward.com).
//ev 3/12/19

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

March 20, 2019

A-17-757061-C	Kal-Mor-USA, Inc., Plaintiff(s) vs. Omni Financial, LLC, Defendant(s)
---------------	---

March 20, 2019	9:00 AM	Motion For Reconsideration
-----------------------	----------------	---------------------------------------

HEARD BY: Scotti, Richard F.

COURTROOM: RJC Courtroom 03B

COURT CLERK:
Elizabeth Vargas

RECORDER: Dalyne Easley

REPORTER:

PARTIES

PRESENT:	Larsen, Bart K. Pezzillo, Brian J.	Attorney Attorney
-----------------	---------------------------------------	----------------------

JOURNAL ENTRIES

- Mr. Pezzillo argued reasons the Motion for Summary Judgment should be reconsidered based on claim of breach, standing, and an invalid settlement agreement, and reviewed applicable case law. Mr. Larsen argued the settlement agreement was drafted by competent law firms, there was no ambiguity, and the contract is valid and enforceable, notwithstanding breach. Court noted there was case law stating that the contract was not valid if there was breach. Mr. Pezzillo argued and reviewed the contents of the settlement agreement and stated it lacked waiver; stated the intent of counsel was clear, and there was an issue of ambiguity. COURT ORDERED, matter TAKEN UNDER ADVISEMENT.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property**COURT MINUTES****July 01, 2019**

A-17-757061-C Kal-Mor-USA, Inc., Plaintiff(s)
 vs.
 Omni Financial, LLC, Defendant(s)

July 01, 2019**3:00 AM****Motion****HEARD BY:** Scotti, Richard F.**COURTROOM:** Chambers**COURT CLERK:** Alice Jacobson**RECORDER:****REPORTER:****PARTIES****PRESENT:**

JOURNAL ENTRIES

- The Court DENIES Defendant OMNI Financial s Motion to Certify Order Granting Summary Judgment As Final Pursuant to NRCP 54(B). Under the circumstances of this case, the Court cannot certify that there is no just reason to delay Omni s appeal of the Court s prior Order. Despite the Court s Order granting Summary Judgment on the Fourth (Declaratory Relief) and Fifth (Quiet Title) causes of action against Omni, Omni still remains a party involved in the remaining causes of action against it: Sixth, Seventh, Eighth, Ninth, and Tenth. Further, the issues that are the subject of the Court s prior Order of partial summary judgment are very closely related to the issues that would be the subject of Omni s appeal. For instance, the subject of Omni s appeal of the partial judgment of the Fourth and Fifth causes of Action is the existence, enforceability, and notice of the Omni Deeds of Trust. In Plaintiff s Complaint, the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Tenth causes of action also all expressly reference the existence, enforceability, and/or notice of the Omni Deeds of Trust, and issues relating thereto. The Supreme Court must necessarily decide these issues below in order to decide the issues appealed. The Supreme Court needs the context of the Omni/First 100 litigation to resolve the appeal on the Fourth and Fifth causes of action against Omni. Omni s rights cannot be determined to be superior to Kal-Mor s rights until Omni and First 100 litigate dispute to determine the nature of the rights then transferred from First 100 to Kal-Mor. Further, a delay in the Omni appeal would avoid piecemeal litigation. Further, Omni has already delayed Kal-Mor s progression of this action for many months through its unmeritorious attempted

removal to Federal Court. An appeal by Omni now would probably result in a stay of the progress of Kal-Mors remaining claims against Omni, and perhaps its other claims as well. It would be unfairly prejudicial for Omni's actions to now cause a further delay in Kal-Mor's efforts to obtain its day in Court on all of the remaining claims, including the remaining claims against Omni. Omni's involvement in the remaining claims would not change at all if Omni is granted Certification, or denied Certification. For these reasons, there is no valid basis to Certify the partial summary judgment for appeal

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

July 29, 2019

A-17-757061-C	Kal-Mor-USA, Inc., Plaintiff(s) vs. Omni Financial, LLC, Defendant(s)
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July 29, 2019 9:00 AM Status Check

HEARD BY: Scotti, Richard F. **COURTROOM:** RJC Courtroom 03B

COURT CLERK: Elizabeth Vargas

RECORDER: Dalayne Easley

REPORTER:

PARTIES

PRESENT:	Larsen, Bart K. Attorney Pezzillo, Brian J. Attorney
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JOURNAL ENTRIES

- Court stated there was no Answer or a Joint Case Conference Report on file. Mr. Larsen stated he submitted a 54(b) Motion and it was denied. Court advised it did not have enough information to rule on the 54(b) Motion. Mr. Pezzillo provided a history of the case. Court encouraged parties to engage in further discussion before submitting a 54(b) certification. Court inquired if a Mandatory Settlement Conference would be beneficial. Mr. Pezzillo stated he would need to talk to his client. COURT ORDERED, Status Check CONTINUED.

CONTINUED TO: 8/26/19 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

August 26, 2019

A-17-757061-C Kal-Mor-USA, Inc., Plaintiff(s)
vs.
Omni Financial, LLC, Defendant(s)

August 26, 2019 9:00 AM Status Check

HEARD BY: Scotti, Richard F. **COURTROOM:** RJC Courtroom 03B

COURT CLERK: Elizabeth Vargas

RECORDER: Dalayne Easley

REPORTER:

PARTIES

PRESENT: Pezzillo, Brian J. Attorney

JOURNAL ENTRIES

- Upon Court's inquiry, Mr. Pezzillo stated the Answer was filed a couple weeks ago and he anticipated a notice for the Early Case Conference soon. Mr. Pezzillo stated he did not see the need for a Mandatory Settlement Conference.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

October 14, 2019

A-17-757061-C Kal-Mor-USA, Inc., Plaintiff(s)
vs.
Omni Financial, LLC, Defendant(s)

October 14, 2019 9:00 AM Motion to Dismiss

HEARD BY: Scotti, Richard F. **COURTROOM:** RJC Courtroom 03B

COURT CLERK: Elizabeth Vargas

RECORDER: Dalayne Easley

REPORTER:

PARTIES

PRESENT: Barraza, Danielle J. Attorney
 Pezzillo, Brian J. Attorney

JOURNAL ENTRIES

- Arguments by Ms. Barraza and Mr. Pezzillo regarding the merits of the Motion to Dismiss. COURT ORDERED, Motion DENIED. Court directed Omni to plead with specificity the facts that would establish a valid claim for intentional misrepresentation, and specifically who, to whom, and when representations were made to be amended within 10 days.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

January 27, 2020

A-17-757061-C Kal-Mor-USA, Inc., Plaintiff(s)
vs.
Omni Financial, LLC, Defendant(s)

January 27, 2020 3:00 AM Status Check

HEARD BY: Scotti, Richard F. **COURTROOM:** RJC Courtroom 03B

COURT CLERK: Elizabeth Vargas

RECORDER: Brittany Amoroso

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Matter heard.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

June 17, 2020

A-17-757061-C Kal-Mor-USA, Inc., Plaintiff(s)
vs.
Omni Financial, LLC, Defendant(s)

June 17, 2020 **9:00 AM** **Status Check**

HEARD BY: Scotti, Richard F.

COURTROOM: RJC Courtroom 03B

COURT CLERK: Alice Jacobson

RECORDER: Kaihla Berndt

REPORTER:

PARTIES

PRESENT: Barraza, Danielle J. Attorney
Larsen, Bart K. Attorney
Pezzillo, Brian J. Attorney

JOURNAL ENTRIES

- Mr. Larsen stated this was a several property HOA foreclosure sale case; a Summary Judgement could possibly resolve several issues; will work on a Joint Case Conference Report with counsel and get the case moving along. COURT ORDERED, matter SET for further status check in Chambers 7/15/20.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

July 15, 2020

A-17-757061-C	Kal-Mor-USA, Inc., Plaintiff(s)
	vs.
	Omni Financial, LLC, Defendant(s)

July 15, 2020 **3:00 AM** **Status Check**

HEARD BY: Scotti, Richard F. **COURTROOM:** RJC Courtroom 03B

COURT CLERK: Louisa Garcia

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Matter heard (OSCH issued).

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

July 20, 2020

A-17-757061-C Kal-Mor-USA, Inc., Plaintiff(s)
vs.
Omni Financial, LLC, Defendant(s)

**July 20, 2020 9:00 AM Motion for Partial
Summary Judgment**

HEARD BY: Scotti, Richard F. **COURTROOM:** RJC Courtroom 03B

COURT CLERK: Louisa Garcia

RECORDER: Brittany Amoroso

REPORTER:

PARTIES

PRESENT: Barraza, Danielle J. Attorney
 Larsen, Bart K. Attorney
 Pezzillo, Brian J. Attorney

JOURNAL ENTRIES

- Counsel confirmed no reply briefs were filed. Arguments by counsel regarding their respective positions as to rents paid to Omni instead of Kal-Mor. Mr. Larsen requested an award in the amount of \$6,290.00 to compensate Kal-Mor for the rents collected and withheld by Omni. Ms. Barraza had limited opposition. Colloquy regarding timeline and delay in discovery. COURT ORDERED, matter TAKEN UNDER ADVISEMENT. Court will issue its decision from Chambers.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

July 29, 2020

A-17-757061-C Kal-Mor-USA, Inc., Plaintiff(s)
vs.
Omni Financial, LLC, Defendant(s)

**July 29, 2020 3:00 PM Motion for Partial
Summary Judgment**

HEARD BY: Scotti, Richard F. **COURTROOM:** Chambers

COURT CLERK: Louisa Garcia

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- The Court GRANTS Plaintiff s Motion for Partial Summary Judgment on Kal-Mor s sixth claim of unjust enrichment, and seventh claim of conversion, but DENIES the motion as to the ninth claim of intentional interference with contractual relations.

There is no genuine issue of material fact that OMNI had no legal right to collect rents from the tenants of the subject Kal-Mor properties in which OMNI held no valid security interest. However, there is a genuine issue of material fact whether OMNI had an intent to disrupt the relationship between Kal-Mor and its tenants. The intent element for conversion is different than the intent element for interference with contractual relationship. Kal-Mor shall prepare and submit the Order, pursuant to the requirements of AO 20-17.

****CLERK'S NOTE:** Minute order sent via e-mail to parties registered on the e-service master list.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

August 03, 2020

A-17-757061-C Kal-Mor-USA, Inc., Plaintiff(s)
vs.
Omni Financial, LLC, Defendant(s)

August 03, 2020

3:00 AM

Motion

**See 8/10/20 Minute
Order**

HEARD BY: Scotti, Richard F.

COURTROOM: Chambers

COURT CLERK: Haly Pannullo

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- The Court will issue a Minute Order resolving this matter.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

August 10, 2020

A-17-757061-C Kal-Mor-USA, Inc., Plaintiff(s)
vs.
Omni Financial, LLC, Defendant(s)

August 10, 2020

3:00 AM

Minute Order

HEARD BY: Scotti, Richard F.

COURTROOM: Chambers

COURT CLERK: Christopher Darling

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- The Court GRANTS Defendant's Renewed Motion to Certify Order Granting Partial Summary Judgment as Final Pursuant to NRCP 54(B) as unopposed, pursuant to EDCR 2.20.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Christopher Darling, to all registered parties for Odyssey File & Serve. /cd 8-10-20/



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

ROBERT W. HERNQUIST
3800 HOWARD HUGHES PKWY., SUITE 1000
LAS VEGAS, NV 89169

DATE: October 28, 2020
CASE: A-17-757061-C

RE CASE: KAL-MOR-USA, LLC vs. OMNI FINANCIAL, LLC; FIRST 100, LLC

NOTICE OF APPEAL FILED: October 27, 2020

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS NOT TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☐ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
 - *Previously paid Bonds are not transferable between appeals without an order of the court.*
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

*****Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.***

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT; ORDER GRANTING RENEWED MOTION TO CERTIFY ORDER GRANTING PARTIAL SUMMARY JUDGMENT AS FINAL PURSUANT TO NRCP 54(B); NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

KAL-MOR-USA, LLC,

Plaintiff(s),

vs.

OMNI FINANCIAL, LLC; FIRST 100, LLC,

Defendant(s),

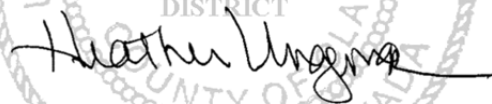
Case No: A-17-757061-C

Dept No: II

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 28 day of October 2020.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

