

IN THE SUPREME COURT OF THE STATE OF NEVADA

SPANISH HEIGHTS ACQUISITION
COMPANY, LLC; SJC VENTURES
HOLDING COMPANY, LLC,

Appellants

vs.

CBC PARTNERS I, LLC; CBC
PARTNERS, LLC; 5148 SPANISH
HEIGHTS, LLC; KENNETH ANTOS
AND SHEILA NEUMAN-ANTOS;
DACIA, LLC

Respondents.

Case No. 82868

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Elizabeth A. Brown
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APPEAL

from a decision in favor of Respondent
entered by the Eighth Judicial District Court, Clark County, Nevada
The Honorable Elizabeth Gonzalez, District Court Judge
District Court Case No. A-20-813439-B

APPELLANTS' APPENDIX VOLUME XVIII

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CERTIFICATE OF SERVICE

I certify that on the 10th day of November, 2021, this document was electronically filed with the Nevada Supreme Court. Electronic service of the foregoing: **APPELLANTS' OPENING BRIEF** and **VOLUMES I – XIX** of the **APPENDIX** shall be made in accordance with the Master Service List as follows:

Michael R. Mushkin, Esq.
MUSHKIN & COPPEDGE
6070 S. Eastern Avenue, Suite 270
Las Vegas, Nevada 89119
Attorney for Respondents

DATED this 10th day of November, 2021.

/s/ Natalie Vazquez

An Employee of MAIER GUTIERREZ & ASSOCITES

1 there may have been supplemental payments as well.

2 Q And your testimony is you've produced that second
3 check in this lawsuit?

4 A It would have been a check or a wire transfer. But
5 my testimony is that it was provided to CBC. I don't know
6 about the document productions.

7 Q Oh, you don't know if you produced anything. Okay.
8 So now let's take a look at the next part of the investor
9 covenants. So, number (ii) is the second funding. We've
10 talked about that. Item 3 is to service the receivable
11 against the subject property commencing 90 days. You have
12 never done that; have you?

13 A I think that's what the previous payments were.

14 Q Is it your testimony that this somehow relates to
15 the lease?

16 A No. It would relate to the payments by SHAC, either
17 directly or indirectly by SJC, for SHAC's obligations to CBC.

18 Q Well, SHAC doesn't have any obligations to CBC; does
19 it?

20 A Well, SHAC was making the payments. Yes, SHAC does
21 have an obligation to CBC.

22 Q But Antos was the borrower; correct?

23 A Right.

24 Q So SHAC is not a party to the note?

25 A SHAC is not a party to the note.

1 Q But SJCV undertakes obligations under the note
2 pursuant to these covenants; don't they? That's a yes or no
3 question, sir.

4 A I'm processing your question to make sure I fully
5 understand it. Would you be able to repeat your question?

6 Q SJCV undertakes to pay obligations under the note
7 pursuant to this operating agreement; doesn't it?

8 A I'm not sure I understand which obligations of the
9 note that you're referring to.

10 Q All of them.

11 A SJC is not a debtor under the note, so no.

12 Q That's not what I said, sir. I'm asking a yes or no
13 question.

14 A I'm trying to understand your question, Mr. Mushkin.

15 Q Well, actually, sir, you're trying to avoid
16 answering it.

17 THE COURT: Mr. Mushkin.

18 MR. GUTIERREZ: Objection, Your Honor. Argumentative.

19 THE COURT: Sustained.

20 MR. MUSHKIN: You're right, counsel. I withdraw.

21 THE COURT: All right.

22 BY MR. MUSHKIN:

23 Q Mr. Bloom, I'm going to ask you a yes or no
24 question. Isn't it true that SJCV undertakes to pay the
25 obligations under the note pursuant to the investor member

1 covenants?

2 A Again, I don't understand the question as it relates
3 to the obligations under the note. SJC is not a borrower
4 under the note. Maybe I'm just misunderstanding your
5 question, but your question as posed seems to --

6 Q It's a simple yes or no, sir. Either SJCVC agreed
7 to pay or SJCVC didn't agree to pay. The question is, did they
8 agree to pay? The obvious answer is pretty clear, Mr. Bloom.

9 A Well, SJC agreed to make certain payments.

10 Q Thank you.

11 A I wouldn't characterize them as obligations under
12 the note, as you posed in your question.

13 Q Well, what obligations are they?

14 A Well, it made obligations as an investor member into
15 SHAC, right. It's not a borrower or a guarantor under the
16 CBC note.

17 Q Well, let's go through this a little further, Mr.
18 Bloom and see if you might have a different testimony.

19 A Okay.

20 Q 8.02, Investor Member Covenants. Do you see that?

21 A I do.

22 Q And then under (a) it says, "Investor member shall."
23 Do you see that?

24 A I do.

25 Q That obligates the investor member. Do you

1 understand that to do that?

2 A I do.

3 Q And do you know who the investor member is?

4 A I do.

5 Q Who is the investor member?

6 A The investor member is SJC Ventures.

7 Q Okay. And the first one talks about the \$150,000?

8 A Correct.

9 Q The second one talks about the next \$150,000?

10 A Correct.

11 Q The third one says, "Cause the company to service
12 the non-member CBC Partners' receivable against the subject
13 property commencing 90 days after the closing of this
14 agreement." Do you see that?

15 A I do.

16 Q Did you service that receivable?

17 A I think so. I think that reflects the payments
18 under the 150,000 from SJC on behalf of SHAC to CBC.

19 Q Sir, the 150,000 is in the paragraph before. This
20 one is talking about the CBC receivable. Did you pay anything
21 on -- do you know what the CBC receivable is?

22 A I believe you're referring in your question to the
23 CBC commercial restaurant loan to KCI. Or is there a
24 different receivable that you're asking about? I'm just
25 asking you for clarification so I can get to a yes or a no.

1 Q Do you know what the CBC receivable is?

2 A I'm not sure.

3 Q Okay, I'll move on. "Cause the company to effect

4 repairs to the premises to bring it back to top quality

5 standards." Do you see that?

6 A I do.

7 Q And is it your representation you did that?

8 A Yes.

9 Q Do you recall in discovery we asked you for the

10 100,000 in repairs? Did you provide those documents?

11 A I believe so.

12 Q You did?

13 A Yes.

14 Q Again, can you show me those documents?

15 A I don't recall which exhibits they were, but we went

16 over the air conditioning repair. There was a smart home

17 system that went in. But, yes, the repairs were done,

18 substantial --

19 Q And are you representing -- sorry.

20 THE COURT: You've got to let him finish.

21 MR. MUSHKIN: Sorry.

22 THE WITNESS: Substantial repairs were completed.

23 BY MR. MUSHKIN:

24 Q That's not what I'm asking you, sir.

25 A You asked me if we --

1 Q I'm asking you if you provided evidence of \$100,000
2 in repairs. Yes or no?

3 A There is an estimate -- there was an estimated
4 \$100,000 that was committed to it. It wasn't a minimum
5 hundred, but I think the repairs that were submitted were
6 over \$100,000.

7 MR. MUSHKIN: Your Honor, I -- never mind. Sorry.

8 THE COURT: It's okay. Mr. Gutierrez has written
9 down that he needs to tell you what those are when you ask.

10 MR. MUSHKIN: I mean, there's twenty thousand bucks
11 worth.

12 THE COURT: It's okay. Mr. Gutierrez has written
13 down a note. I can tell from looking through you.

14 MR. MUSHKIN: Unbelievable.

15 THE COURT: Mr. Mushkin, we're going to not have
16 any editorial comments. We're going to try and get the
17 information from a factual standpoint that we need from Mr.
18 Bloom as an individual.

19 BY MR. MUSHKIN:

20 Q I'd like for you to look at Number 7, and it says,
21 "Cause the company to pay for all real property insurance."
22 Do you see that?

23 A I do.

24 Q And you ultimately did that; is that correct?

25 A Some of the real property taxes were paid by the

1 company, some were advanced by City National Bank.

2 Q Sir, I was asking about insurance.

3 A Oh, I'm sorry. I thought you were asking about --

4 THE COURT: You were on taxes.

5 THE WITNESS: Taxes.

6 THE COURT: You were still on taxes.

7 MR. MUSHKIN: Okay.

8 BY MR. MUSHKIN:

9 Q But there is in fact 100,000 in taxes due on the
10 real property today; isn't that correct?

11 A I believe it's a little over that, yes.

12 Q You paid the insurance; is that correct?

13 A I did.

14 Q And you did not pay all of the HOA assessments and
15 fines; did you?

16 A No.

17 Q Eleven. "At the earlier of two years upon
18 collection of the judgment proceeds, pay off in full CBC
19 receivable as it relates to the property." Do you see that?

20 A I do.

21 Q Now, we know there's an amended forbearance that
22 extends it another three months to March of -- the end of
23 March of 2020. But I want to ask you the question all the
24 way to the end of March of 2020 because it didn't amend this
25 provision, did you ever pay off the CBC receivable?

1 A No.

2 Q "At the earlier of two years upon collection of the
3 judgment, assume servicer, retiree or both of the first and
4 second positions." You did not do that until ordered by this
5 Court; did you?

6 A I believe -- I don't remember the order, but we
7 picked up service of the first and second check, picked up
8 service of the first and second starting in March or April,
9 April of 2020.

10 Q And that was after this Court directed you to make
11 those payments; correct?

12 A I don't recall if it was before or after.

13 Q Okay. "At the earlier of two years or upon
14 collection of the judgment, pay off past due accrued property
15 tax assessments, if not already addressed." We already talked
16 about that. You didn't do that; did you?

17 A Certain property tax payments were made by SHAC,
18 certain property tax payments were made by CBC. I'm sorry,
19 not CBC.

20 Q Yes or no, again, isn't it true that the only tax
21 payments made by SHAC were done so at the order of this Court?

22 A I don't believe so.

23 Q Well, what -- do you have any proof of tax payments
24 made before the order of the Court that directed you to pay
25 them?

1 A I don't know which exhibits they would be or if
2 they're in the exhibit pack.

3 Q It's a yes or no. Do you have proof?

4 A Yes.

5 Q Show me. I'm going to stay right here and wait for
6 you, sir, because that's what's called perjury.

7 MR. MUSHKIN: Your Honor, I'd like to have a brief
8 recess so that he can look through the exhibit.

9 THE COURT: Wait. Hold on. Mr. Mushkin, let's not
10 make any editorial comments. Mr. Gutierrez can assist Mr.
11 Bloom in finding it, is that correct, if we take a recess?

12 MR. MUSHKIN: Absolutely, Judge.

13 MR. GUTIERREZ: Your Honor, I'd like to just make
14 an objection. Mr. Bloom has zero exhibits in front of him
15 and Mr. Mushkin is asking him to comb through exhibits that
16 he has no access to.

17 THE COURT: No. You do.

18 MR. MUSHKIN: You have them right there.

19 MR. GUTIERREZ: Counsel, let me finish. If Mr.
20 Bloom had the binders in front of him and can plough through
21 them --

22 THE COURT: We can't do binders because of Covid.
23 Remember?

24 MR. GUTIERREZ: Hundred percent agree, but for Mr.
25 Mushkin to ask him a question to say I want you to comb

1 through exhibits that aren't even in front of him, the record
2 needs to be clear that he has no access to these exhibits as
3 we're sitting here today.

4 MR. MUSHKIN: Your Honor, that's why I'm asking --

5 THE COURT: Wait, guys. We're going to take a short
6 recess. Mr. Gutierrez, you have access to the exhibits, so
7 I'm going to allow you to assist Mr. Bloom in finding the
8 document, even though we are mid-question. How long do you
9 think you need to assist Mr. Bloom in looking through the
10 exhibits to find that?

11 MR. GUTIERREZ: A few minutes. I have a list here.

12 THE WITNESS: Can I clarify my answer? That might --
13 This is why a yes or no question is problematic. Can I
14 clarify my answer? That may negate the need for the recess.

15 THE COURT: Sure. It may still need a recess, but
16 okay.

17 THE WITNESS: So the payments for the taxes were
18 made by City National Bank and were added to the City National
19 Bank balance, which is an obligation of SHAC and SJC, which
20 I'm interpreting as SHAC and SJC paying the first -- paying
21 the taxes.

22 THE COURT: Do you still want him to now look for
23 those documents with that clarification?

24 MR. MUSHKIN: I'm not even sure what he said, Judge.
25 I'm thoroughly confused.

1 THE COURT: He said they didn't -- SJC and SHAC
2 didn't pay them, they were paid by the bank. And he believes
3 since they were paid on behalf of SHAC and SJC's obligations
4 under their lending agreement with that bank that they're on
5 behalf of.

6 Is that what you said, sir?

7 THE WITNESS: It is.

8 THE COURT: Okay.

9 THE WITNESS: So the document I'd be looking for
10 would be the City National Bank payment of the taxes and
11 adding it to the balance that's the obligation of SJC and
12 SHAC.

13 BY MR. MUSHKIN:

14 Q I'm going to try and do this one more time. Did
15 Jay Bloom sign a check for property taxes before this judge
16 ordered you to do so?

17 A I can't recall if there was any property tax payment
18 made directly.

19 Q Thank you.

20 THE COURT: So I guess we don't need to recess.
21 Let's keep going.

22 BY MR. MUSHKIN:

23 Q So now let's go to Number 14. "Utilize its lawyers
24 to effectuate a quiet title action for the purpose of
25 extinguishing any and all judgment creditor liens against the

1 property." You didn't do that, did you, sir?

2 A No, we did not.

3 Q So you knew that the loan was from KCI to Preferred
4 Brands -- I mean, from CBC I to KCI and Preferred Brands when
5 you entered into this agreement; isn't that correct?

6 A My testimony was not -- was actually the opposite.
7 We did not know that.

8 Q So let's go to -- Court's indulgence just one
9 minute, please.

10 THE COURT: It's all right.

11 MR. MUSHKIN: I'm sorry, Judge. I'm just trying to
12 find --

13 THE COURT: It's all right, Mr. Mushkin.

14 MR. MUSHKIN: -- the first reference to KCI and it's
15 in the closing documents.

16 BY MR. MUSHKIN:

17 Q Before we get to that, let's take a look at the
18 Amended Forbearance Agreement so I can go back to my timeline.
19 That first appears at Exhibit 16. Do you recall this document?

20 A I do.

21 Q And your signature appears at the end of this
22 document?

23 A It does.

24 Q And at this time you reaffirmed the note and
25 security agreement; is that correct?

1 A I believe so.

2 Q And you also reaffirmed the pledge agreement; didn't
3 you?

4 A Not by intention.

5 Q Well, you signed this document; didn't you?

6 A Yes. I'm making the assumption you're asking about
7 SJC's pledge agreement, not the Antoses' trust pledge
8 agreement. We would reaffirm the Antos Trust pledge agreement
9 and the authority to do the pledge for their 49 percent
10 interest.

11 Q Sir, I'm talking about SJC parties. It's at
12 paragraph 19 on page 6. Would you take a minute and read
13 that, please.

14 THE COURT: Can you read it on the screen, sir, or
15 do you need to --

16 THE WITNESS: It's a little rough.

17 THE COURT: Can you blow it up, Mr. Mushkin?
18 Is that better, Mr. Bloom, or do you need it bigger?

19 THE WITNESS: No, that's fine. Thank you.

20 THE COURT: Okay.

21 THE WITNESS: Okay. I can read it.

22 BY MR. MUSHKIN:

23 Q So you pledged your stock in January of '20;
24 correct?

25 A No. The Antos Trust pledged its stock for 49 percent

1 interest in SHAC, and SJC as the manager approved that pledge,
2 as required under the operating agreement.

3 Q Come on, Mr. Bloom. Let's read it together. "The
4 Antos parties and the SJCVC parties represent they continue to
5 acknowledge that they continue to pledge their stock in SHAC
6 as collateral for the forbearance agreement. The Antos
7 parties and the SJCVC parties represent and warrant they have
8 not issued any new shares of the stock that are not collateral
9 for their obligation under the forbearance agreement." Do you
10 see that?

11 A I do.

12 Q That, in fact, says the SJCVC parties pledge their
13 stock; does it not?

14 A That was not my understanding at the time.

15 Q So your testimony under oath is that this doesn't
16 pledge SJCVC's stock in SHAC?

17 A It does not.

18 Q So let's take a look at Exhibit 17. Do you see that
19 note?

20 A I do.

21 Q The first --

22 MR. GUTIERREZ: Object. For the record, counsel,
23 I think this is Exhibit 18, if you're looking at the secured
24 promissory note.

25 MR. MUSHKIN: I'm sorry. He's correct, it is

1 Exhibit 18. I apologize.

2 THE COURT: Thank you. Mr. Gutierrez, thank you
3 very much.

4 MR. MUSHKIN: Thank you, counsel.

5 BY MR. MUSHKIN:

6 Q 5148SH000223. Now, you've already testified that
7 you got all these documents at the time of the closing.

8 A No. I testified the opposite, that I'd never
9 received the notes. The half dozen documents that you went
10 through looking for the name -- for KCI and couldn't find it,
11 are the documents that I got at closing. The notes were only
12 provided in discovery.

13 Q Mr. Bloom, the document has been admitted. It was
14 part of the closing package, along with the deed of trust.
15 You can argue that and your counsel can argue what they want,
16 but on the very first line of the secured deed of trust it
17 says, "For value received, KCI Investments, a Nevada limited
18 liability company;" doesn't it?

19 A It does.

20 Q And you've known that this was a loan that's secured
21 by this house because Mr. Antos told you this at the very
22 beginning; didn't he?

23 A They told me that it was a third mortgage, not a
24 commercial restaurant loan. These documents were not
25 disclosed at the inception of the transaction and only came

1 to light in 2020, the second quarter of 2020.

2 Q So your testimony is that somehow Mr. Antos, in
3 creating this deed of trust and promissory note, gave you a
4 defense to the forbearance agreement?

5 A My understanding --

6 Q Yes or no question, sir.

7 A Could you repeat the question, because it's a little
8 unclear how you asked it.

9 Q It's your testimony that Mr. Antos, in creating the
10 note and deed of trust on the property, is a defense to your
11 payment under the forbearance agreement?

12 A There are so many factual misstatements in the
13 question, I don't even know how to begin to answer it.

14 Q What factual misstatements are there, sir?

15 A Mr. Antos' testimony is that he didn't create the
16 note or the deed of trust, CBC did.

17 Q He signed it, didn't he, sir?

18 A Okay.

19 Q So that creates the security interest -- that
20 creates the obligation under the note and the recordability
21 of the deed of trust; doesn't it?

22 A The other issue in your question is that Mr. Antos
23 signed the note on behalf of a commercial restaurant as the
24 borrower and himself individually as the guarantor, but the
25 deed of trust on behalf of the Antos Trust, which is not a

1 borrower or guarantor. So my -- and I'll try and answer your
2 question. Yes, it's a defense because the Antos Trust as the
3 pledger of the deed of trust has no obligation to secure.

4 Q And what facts or law do you have to support the
5 notion that they don't have the ability to bind the Trust?

6 A I didn't suggest that they don't have the ability to
7 bind the Trust. A lot of your questions seem to misstate my
8 testimony. My testimony is that the Trust doesn't have an
9 obligation to secure by pledging a deed of trust. It's not a
10 borrower and it's not a guarantor. Without an obligation to
11 secure, pledging a deed of trust which secures its obligation
12 without an obligation creates a defect in the deed of trust.

13 Q And what is that defect, sir?

14 A There's no obligation by the Antos Trust to secure.

15 Q But the Antos Trust has the ability to give
16 collateral; correct?

17 A To secure its obligations, yes.

18 Q And the grantor is a guarantor of the note; correct?

19 A My understanding is that the guarantors of the note
20 are the Antoses individually.

21 Q And the Antoses individually are the grantors of the
22 living trust; correct?

23 A They're beneficiaries, yes. I believe they are.

24 Q And the grantors?

25 A Okay.

1 Q Okay. And we showed you the trust provision that
2 says that during the term of their lives it's for their
3 benefit.

4 A Okay.

5 Q And then we showed you the two documents that
6 associate with the note, one that created the Trust as a
7 creditor and the other that authorized the Trust to enter into
8 the note and the deed of trust. Do you recall those
9 documents?

10 A Yes.

11 Q And in spite of all of that, you still believe that
12 somehow there's a defect in this note and deed of trust?

13 A I do.

14 Q Okay. I just wanted to make sure. So now we've
15 answered the question of when you decided you didn't have to
16 pay. Is that fair? It was sometime during the course of
17 this litigation; is that correct?

18 A Yes.

19 Q So you learned of this defense during this
20 litigation. Is that fair?

21 A I learned of the defect in the deed of trust during
22 this litigation and that it was misrepresented as a -- the
23 obligation was misrepresented as a third mortgage, when it was
24 in fact a commercial loan.

25 Q So I'd like to take you back to -- this is part of

1 Exhibit 104.

2 THE CLERK: Mr. Mushkin, what's the Bates number?

3 It's a large exhibit.

4 MR. MUSHKIN: I'm going to go right to that page.

5 THE CLERK: Okay.

6 THE COURT: Yeah, but you've got to tell her so she
7 can send it to me.

8 MR. MUSHKIN: Certainly. And it's page 001614.

9 THE COURT: Thank you.

10 BY MR. MUSHKIN:

11 Q So, Mr. Bloom, do you see -- this is dated August
12 12th of '17. Do you see that?

13 A I do.

14 Q And I'm going to show you down in the middle of the
15 page where it says, "CBC Partners proposed 11th modification
16 to the secured promissory note."

17 A I do.

18 Q Do you see that?

19 A I do.

20 Q Mr. Bloom, how would you know there was an 11th
21 modification if you hadn't seen the note and the ten others?

22 A Because Mr. Hallberg told me that there were ten
23 modifications.

24 Q And it's your testimony that no one told you that
25 this was a commercial loan in the very beginning?

1 A Nobody told me that. You just went through six
2 documents looking for it and it's not in any of them.

3 Q Okay.

4 A Nobody told me that.

5 Q Let's go a little further. Now, you've promised to
6 pay this obligation off a bunch of times; haven't you?

7 A So, SHAC promised to pay off a third mortgage that
8 turned out not to exist.

9 Q That's not true, is it, Mr. Bloom?

10 A I believe it is.

11 Q Jay Bloom sent emails telling Mr. Hallberg he had
12 money ready to pay, over and over; didn't you?

13 A Not in an individual capacity.

14 Q I don't -- I'm not arguing about whose capacity it
15 is, sir. I'm just asking that you did it; didn't you?

16 A Yes. I represented that the entity believed that
17 it had funds coming in that would satisfy a third mortgage.

18 Q And you said so in August of '17; didn't you?

19 A Can you blow the exhibit up so I can read what
20 you're referencing?

21 Q 01958.

22 A Okay. Can you ask the question again with that
23 document having been read now?

24 Q You're telling Mr. Hallberg that you're attaching
25 money to pay him; isn't that correct?

1 A No. What I told Mr. Hallberg in that email is that
2 we located funds that belonged to our judgment debtor and we
3 were trying to pursue collection of those funds.

4 Q And why would you be telling him that, sir?

5 A Because at the time we believed that there was a
6 third mortgage that we were going to satisfy.

7 Q You were telling him that because you were planning
8 to pay him; correct?

9 A Yes. SHAC was planning on paying CBC. I'm not
10 paying Alan Hallberg. SHAC is paying CBC.

11 Q Now let's take a look at -- so we've gone around
12 and around about Mr. Gutierrez being your counsel and you keep
13 saying he's not your counsel; right?

14 MR. GUTIERREZ: Objection. Misstates the testimony.

15 THE COURT: Overruled. You can explain when he was
16 your counsel and for what purpose as we go, sir.

17 BY MR. MUSHKIN:

18 Q You keep saying he was not your counsel for this
19 transaction; correct?

20 A He was not SJC's counsel for this transaction.

21 Q So on September 4 of '17, why did you write this
22 email to Vernon Nelson and Alan Hallberg?

23 A So, I sent this email to Vernon Nelson because he
24 was representing CBC and I sent this to Mr. Gutierrez because
25 he was representing First 100 on the judgment collection and

1 he would be responsible for the distribution to CBC of any
2 obligations through an assignment of any proceeds realized
3 under collection efforts against that judgment.

4 Q So that's your testimony, in light of the final
5 sentence that says, "I'll circle back around with Joe, but I
6 think we are there from our side on everything"?

7 A Yes.

8 Q Wow.

9 A Wow, what?

10 THE COURT: No editorial comments, please.

11 THE WITNESS: Mr. Gutierrez was the attorney for
12 First 100. He was involved in the transaction on behalf of
13 First 100 under the assignment of any proceeds realized from
14 the collection efforts.

15 BY MR. MUSHKIN:

16 Q So, I'd like to direct your attention --

17 A That doesn't make him SJC's counsel.

18 Q Is there any email that says that?

19 A That he's not the counsel for SJC? No, there's no
20 email to the negative.

21 Q And is there any email that says that he is First
22 100's counsel and not your counsel?

23 A Yeah. I believe there's a payment directive letter
24 in the closing documents directing Maier Gutierrez as the
25 law firm for First 100 to direct payments upon collection of

1 the judgment.

2 Q That's not my question, sir.

3 A You asked me --

4 Q My question is, is there a document that says that
5 he's not your counsel?

6 A I answered that question that there's no document
7 to prove the negative, but there is a document that evidences
8 his participation as representation of First 100, almost in
9 the capacity of a pay master upon the collection --

10 Q I understand that, sir.

11 A -- upon the collection --

12 THE COURT: You've got to let him finish.

13 THE WITNESS: Upon the collection of judgment
14 proceeds.

15 BY MR. MUSHKIN:

16 Q I'd like to direct your attention to 2177. Updated
17 report. This is January 11th -- I'm sorry, September 11th of
18 '17. Do you see that?

19 A I do.

20 Q And why did you send that to Mr. Hallberg?

21 A For the same reason I sent the previous email. I
22 was updating him on First 100's collection efforts against its
23 judgment debtor, which would effectuate a payment of what we
24 believed to be a third mortgage at the time.

25 Q So let's take a look at 2191. Again from you to Mr.

1 Hallberg. "We signed on Friday for the \$25 million facility.
2 Attached document is confidential. Definitive financing
3 agreement is expected to be signed by month end and then 15
4 business days to fund. We are pulling just under 15 million
5 on our initial takedown, as set forth in Section 12(b)."

6 Did you send that to my client?

7 A To CBC. You have many clients. Yes.

8 Q Did you send it to Alan Hallberg?

9 A Yes.

10 Q And I don't want to go over the entire document,
11 but was there attached a document from Longford Capital?

12 A I believe so.

13 Q And did this funding ever take place?

14 A It did not.

15 Q I'd like to direct your attention to 2211. As you
16 can see there, this is Vernon finalizing documents. Do you
17 see that?

18 A I do.

19 Q And these are going to Mr. Gutierrez as well; is
20 that correct?

21 A I believe so.

22 Q Now, I would direct your attention a little further
23 down in the page where you're okay on the operating agreement.
24 Operating agreement doesn't have anything to do with First
25 100. Why would you be copying Mr. Gutierrez?

1 A Because I have Mr. Gutierrez in the loop on the
2 transaction for First 100's benefit.

3 Q So, I would just direct your attention to 2296.
4 This is 9/25. The one I'm looking at is September 25th from
5 you to Mr. Antos. You're directing him to come to your
6 attorney's office to execute the documents. That's Mr.
7 Gutierrez' office; is that correct?

8 A Yes.

9 Q And we've already provided you with the information
10 on the notary and things like that that dictate collection to
11 Mr. Gutierrez' office; is that correct?

12 A I believe so.

13 Q I'd like to go forward to November of '17. And this
14 is you sending to Mr. Hallberg a Merrill Lynch -- something
15 from Merrill Lynch in response to our judgment subpoena. Do
16 you see that?

17 A I do.

18 Q And at the bottom it says, "These statements will
19 trigger our \$4 million advance against our judgment." Do you
20 see that?

21 A I do.

22 Q And what \$4 million advance were you talking about?

23 A I don't remember who we were talking to at the time,
24 but we were of the understanding that we'd be able to borrow
25 against our judgment debtor's assets that were located at

1 Merrill Lynch.

2 THE CLERK: Mr. Mushkin, what number is that? What
3 page?

4 MR. MUSHKIN: 2626.

5 THE CLERK: Thank you.

6 MR. MUSHKIN: Sorry.

7 BY MR. MUSHKIN:

8 Q Now, do you recall your testimony at the time of
9 your deposition regarding the commission agreement for the
10 sale of this property?

11 A Not with specificity, no.

12 Q Well, I asked you who was supposed to pay the
13 commission, and do you recall what your answer was?

14 A No.

15 Q Do you know today what the answer is?

16 A No.

17 Q I'll represent to you that you testified at the time
18 that it was the seller's obligation to pay the commission.
19 Do you recall that testimony?

20 A I don't.

21 MR. MUSHKIN: Your Honor, I don't know how we use
22 depositions at this point. We've tried to publish. You wouldn't
23 take it, so --

24 THE COURT: No, we did. We took it. We just didn't
25 take the paper copy.

1 MR. MUSHKIN: Oh.

2 THE CLERK: I printed your electronic copy.

3 THE COURT: We can't take your paper.

4 MR. MUSHKIN: Oh. I'll represent to the Court that

5 I could point out the spot in the deposition where he said it

6 was the seller.

7 THE COURT: You're welcome to say it. You can show

8 it to him on the ELMO.

9 MR. MUSHKIN: Let me see if I can get it real quick.

10 THE COURT: And we're going to break until 1:15 when

11 we break for lunch because I have a meeting at one o'clock

12 with my new Discovery Commissioner. I've got Jay Young.

13 MS. FOLEY: Oh.

14 THE COURT: They split discovery between the two

15 people.

16 MR. GUTIERREZ: He's the Discovery Commissioner for

17 business court? Not business court; just other civil stuff?

18 THE COURT: Civil.

19 BY MR. MUSHKIN:

20 Q So then after you so testified, and we'll show you

21 your testimony in a minute, I showed you what is part of

22 Exhibit 104, which is the Commission Agreement. Do you recall

23 that?

24 A Again, I'm not denying it, I just don't recall.

25 Q You've seen this before?

1 A The Commissioner Agreement or the email that's on
2 the ELMO?

3 Q The Commission Agreement.

4 A I may have. I don't remember.

5 Q And I now would direct your attention to 2656 where
6 it says at paragraph C, "Buyer shall pay the commission
7 directly to Ernstone & Sher; payment made as follows." Do you
8 see that?

9 A I do.

10 Q So the buyer was to pay and you were the buyer or
11 SHAC was the buyer; correct? No. SJCv.

12 MR. GUTIERREZ: Objection, Your Honor.

13 MR. MUSHKIN: Strike that. SJCv is the buyer; is
14 that right?

15 THE COURT: Mr. Gutierrez, do you still have an
16 objection?

17 MR. GUTIERREZ: The objection would be to the extent
18 he's asking questions about SHAC.

19 THE COURT: He can ask all the questions he wants
20 about SHAC. The issue is me entering any orders related to
21 SHAC. Or him asking for any relief against SHAC.

22 Keep going.

23 BY MR. MUSHKIN:

24 Q So, SHAC was the buyer; right? The Antos parties
25 were the sellers; right? I'm sorry, I said that again wrong.

1 SJCVC, the investor member, is the buyer?

2 A No. In A-5 it says SHAC, a Nevada limited liability
3 company, is the buyer.

4 Q Okay. They hold title?

5 A Right.

6 Q Okay. Have you ever seen this email before? 2679
7 is the Bates number.

8 THE COURT: Thank you.

9 THE WITNESS: I'm having difficulty reading it.
10 Could you zoom in, please?

11 MS. FOLEY: It's pretty blurry.

12 THE WITNESS: Was there a focus?

13 MR. MUSHKIN: Let me see if I can make this work a
14 little better.

15 THE COURT: If you move your book off of the ELMO,
16 you'll be able to focus. Wow, you are very adept at that,
17 Mr. Mushkin.

18 MR. MUSHKIN: Are we focused in now?

19 THE WITNESS: Yes.

20 THE COURT: Can you read it now better, sir?

21 THE WITNESS: I can. Thank you.

22 THE COURT: Okay, good.

23 THE WITNESS: Okay.

24 BY MR. MUSHKIN:

25 Q Does that clear up your understanding regarding the

1 tax obligation?

2 A Yeah, that's my understanding.

3 Q Okay. So you were paying that money over to CBC,
4 but they didn't have to pay the taxes. That was just
5 additional money so more accrual wouldn't take place on their
6 nickel. Is that fair?

7 A No. Either CBC would pay the taxes from the tax
8 money remitted to them or SHAC would pay the taxes directly,
9 or the first mortgage would pay the taxes and add it to the
10 balance that SHAC would be addressing in the first mortgage.
11 Those were my discussions with Mr. Hallberg.

12 Q Now, there came a time in December of '17 when you
13 sent another email to Mr. Hallberg regarding the sale of your
14 judgment; is that correct?

15 A That's correct.

16 Q And did that sale ever take place?

17 A I don't believe that sale consummated.

18 Q Well, you don't believe or you know that it did or
19 did not?

20 A No, it did not consummate.

21 MR. MUSHKIN: I'm just about done, Judge.

22 BY MR. MUSHKIN:

23 Q So this is January 3rd of '18. Do you see that?

24 A I do.

25 Q So this is January of '18 and you're telling Mr.

1 Hallberg that you're waiting on the Antoses to set up the
2 reserve account; isn't that correct?

3 A No. I don't believe we ever contemplated the
4 Antoses setting up the reserve account. I went to --

5 Q Sir, that's not what I said.

6 A You asked me if I'm waiting for the Antoses to set
7 up the reserve account.

8 Q No, sir, that's not what I said.

9 THE COURT: Can you rephrase your question.

10 MR. MUSHKIN: It may be the mask. I'm sorry.

11 THE COURT: It may be.

12 BY MR. MUSHKIN:

13 Q Mr. Bloom, in this email you're telling Mr. Hallberg
14 that you're waiting on information from the Antoses in order
15 for you to set up the reserve account; correct?

16 A It says -- No, that's not exactly what it says.
17 It says, "I haven't received the Antos Trust documents, so
18 I am going to set up an account and fund the 150 into SJC as
19 tenant and just pay all the bills directly from SJC." This
20 is actually -- this is when we went away from the \$150,000
21 reserve account.

22 Q Did you ever set up such an account, sir?

23 A Yes. SJC has an account.

24 Q And did you produce it in this court?

25 A I think you subpoenaed it, but I don't think we

1 produced it.

2 Q You did not produce it and there is no --

3 THE COURT: Mr. Mushkin, no editorial comments right
4 now, please.

5 BY MR. MUSHKIN:

6 Q So at least in January of '18 people were still
7 talking about reserve accounts; right?

8 A Well, it looks like that's when the decision not to
9 do a reserve account was made.

10 Q I see.

11 MR. MUSHKIN: Court's indulgence. I may be through
12 with the witness.

13 THE COURT: Okay.

14 BY MR. MUSHKIN:

15 Q Mr. Bloom, you provided exhibits regarding checks
16 and they start at Exhibit 128. Can you tell me why the checks
17 are of differing amounts? In other words, most of the checks
18 to City National are \$19,181.07, but there's one that's for
19 14,000 and change. Why did you do that?

20 A Any payments I made were either based on what I
21 understood the amount due to be as a standard or on request
22 of City National or Northern Trust. Northern Trust would
23 frequently give me a balance every month. City National, I
24 had to estimate because they really weren't communicating with
25 me very well.

1 Q I'm really just asking about the one check. If you
2 don't recall why, I guess I will understand. But do you
3 recall why you wrote one check for 14,000 and change?

4 A Could I see the check?

5 Q I'm looking for it. I thought I had it marked.

6 A Oh, I think I may know what that is. Fourteen
7 thousand is the amount of a quarterly tax payment.

8 Q Sorry?

9 A Fourteen thousand is the amount of a quarterly tax
10 payment. So that could have been a payment to City National
11 to reimburse them for taxes advanced.

12 Q It shows loan payment on the check.

13 A Okay. I don't have the document in front of me.

14 Q Let me see if I can find it real quick. If not,
15 I'll get it after lunch. I can't find it so fast. Okay.
16 So I just want to make sure that I understand because your
17 defense is that there is no third deed of trust. Is that your
18 defense, there is no valid third deed of trust?

19 A There's a defect in the deed of trust because it has
20 no obligation to secure. The pledger has no obligation to
21 secure.

22 Q So you're not arguing that you didn't get notice of
23 default. You got the notice of default. You filed a motion
24 for preliminary injunction; right?

25 A I got a notice of default from CBC three months

1 after it sold its note.

2 Q You got a notice of default in March; didn't you?

3 A I believe so.

4 Q Okay. And it didn't sell its note until April; did
5 it?

6 A Correct.

7 Q Okay.

8 A You weren't clear on which notice of default you
9 were asking about.

10 Q Oh. So you have -- you clearly got notice of the
11 assignment of deed of trust; correct?

12 A In what time frame and from who to who? Because I
13 don't recall any assignment of the deed of trust. And again,
14 I'm not --

15 Q I'm not asking you -- I'm sorry.

16 A I'm not denying that I saw one, I just don't recall.

17 Q Well, there was a recorded assignment; correct?

18 A I don't know.

19 Q Okay. You don't know that there wasn't one; do you?

20 A I'm not familiar with an assignment of the deed of
21 trust.

22 Q Okay. And you don't have -- you don't make any
23 claim that there's somehow a waiver of any claims from CBC
24 as a result of the assignment; do you?

25 A I'm not familiar with any waivers that they make

1 as a result of the assignment.

2 Q So at the time of your deposition I asked you if
3 you had any recollection of the Trust signing off on the
4 documentation. Do you recall that question?

5 A No.

6 Q So I asked you, "And then looking through these
7 documents, do you have any recollection of the Trust signing
8 off on any -- on any of these modifications? And do you know
9 what your answer was?

10 A I do not.

11 Q Your answer was "No." Now, we've produced
12 documentation that shows otherwise; isn't that correct?

13 A You're asking me -- I'm not sure I'm following your
14 line of questioning.

15 Q Let me ask it real clearly. Isn't it true that we
16 have provided -- we, the defendants; you're the plaintiff,
17 we're the defendants/counterclaimants -- that the defendants
18 have provided you documents that show that the Trust did sign
19 off on the credit instrument?

20 A The deed of trust?

21 Q Yes.

22 A Yes.

23 Q Okay. So now the only argument you're making is
24 somehow that even though the documents exist and even though
25 the trust signed off on the documents, that those documents

1 are defective. That's your claim before this Court?

2 A That's a claim before this Court.

3 Q What is that claim? Why?

4 A Why what?

5 Q Why do you think that deed of trust is defective?

6 A Because the deed of trust is pledged by the Antos
7 Trust as pledgeor and the Antos Trust is not a borrower or
8 guarantor under the note.

9 Q You believe in spite of the documents acknowledging
10 consideration and in spite of the authorization by the Trust
11 that somehow there's a defect?

12 A I believe the Trust authorized the deed of trust to
13 be issued, but that deed of trust has no obligation against
14 which it can provide security, so that creates a defect.

15 Q And do you have any legal authority for that, sir,
16 or just your opinion?

17 A That's my understanding from being with the real
18 estate group at JP Morgan Chase and how deeds of trust work.

19 Q And is it your testimony that you never saw the
20 deed of trust, either, at the time of entering into the
21 document?

22 A I don't remember if they showed me the deed of trust
23 or not.

24 Q In fact, they did; didn't they?

25 A I don't remember whether they showed me the deed of

1 trust or not. The deed of trust --

2 Q And they gave you a preliminary title report, too;

3 didn't they?

4 A I do remember a preliminary title report.

5 Q And on that preliminary title report --

6 MR. MUSHKIN: Pull that up for me, please.

7 THE COURT: What exhibit number?

8 MR. MUSHKIN: I'll get it for you, Judge.

9 MS. FOLEY: It's going to be 104.

10 BY MR. MUSHKIN:

11 Q And as a part of that preliminary title report,

12 which you saw before the documents were signed, it showed

13 KCI as the obligor under the note; didn't it?

14 A I don't recall seeing that.

15 Q Well, we're going to show it to you.

16 THE CLERK: Which Bates number is it?

17 MS. FOLEY: Exhibit 104. I'm sorry. He's got the

18 number.

19 MR. MUSHKIN: 3682.

20 THE COURT: Thank you.

21 MS. FOLEY: That's where it begins.

22 THE COURT: And how many pages is it, about?

23 MS. FOLEY: Roughly 25.

24 THE COURT: So we'll go with 30.

25 MS. FOLEY: Thank you.

1 THE COURT: Good luck, Dulce. I didn't know you
2 could screenshot them. It's been really interesting.
3 BY MR. MUSHKIN:
4 Q Do you ever recall seeing this document, sir?
5 A I can't -- I don't know if this is a document I saw
6 or not.
7 Q So, note that the date of this document is August
8 2nd, 2017. Do you see that?
9 A I see the date, yes.
10 Q The first deed of trust, do you see that, at
11 Item 33?
12 A I do.
13 Q And do you see a revolving line of credit, Item 32?
14 A 34, I do.
15 Q Or 34. I'm sorry.
16 A Yes.
17 Q And then a deed of trust, three million dollars,
18 dated December 17th of '14. Do you see that?
19 A I do not.
20 THE COURT: Can you raise it up so he can see that?
21 MR. MUSHKIN: Sorry.
22 THE COURT: Thank you. That would be 35.
23 THE WITNESS: Can you slide it up a little more,
24 please? Yes, I see that.
25 ////

1 BY MR. MUSHKIN:

2 Q Okay. I'll just flip the page over.

3 A I'm sorry, did you point out --

4 Q I've got these pages out of order here. Give me one
5 second. I want to get them in order.

6 THE COURT: Hold on a second. Let's be patient with
7 Mr. Mushkin.

8 MR. MUSHKIN: There's the rest of that.

9 THE COURT: So we've got 37 on the top. The rest of
10 36. There you go. All right.

11 MR. MUSHKIN: There's the rest of 36.

12 THE COURT: The rest of 35 and then 36. Do you see
13 those, sir, or do you need them blown up bigger?

14 THE WITNESS: No, no, I see them. Thank you.

15 BY MR. MUSHKIN:

16 Q Okay. So all the way back then we knew about this
17 note and deed of trust; correct?

18 A Well, you just referenced that it mentioned KCI.
19 I didn't see that, so if you could point that out for me.
20 I saw CBC and I saw the deed of trust, but KCI I didn't see
21 mentioned there anywhere and you just represented that it did.

22 Q I'm afraid you are right. It still does not
23 reference KCI in that document. I will find you the one where
24 it does. But certainly you knew the note was in existence and
25 the deed of trust was in existence; correct?

1 A I believed that there was a third mortgage in
2 existence and I believed that the third mortgage --

3 Q I got that. You knew there was --

4 A I'm sorry. I'm answering your question.

5 THE COURT: One at a time. You've got to let Mr.
6 Bloom finish.

7 Mr. Bloom, please finish.

8 THE WITNESS: Thank you. I believed that a third
9 mortgage existed and I believed that the third mortgage that
10 existed was secured by a deed of trust.

11 BY MR. MUSHKIN:

12 Q Now, you have alleged that there is no nexus
13 whatsoever between the obligations of the Trust and the
14 obligations of the Antoses; is that correct?

15 A With respect to this note, the Trust is not a party.
16 So, yes.

17 Q But there is a clear nexus; correct?

18 A The Trust is not a party to the note, so my
19 understanding is that the Trust doesn't have an obligation
20 under the note. That's the whole purpose of having a Trust,
21 as I understand it.

22 Q Okay. I'm asking you a different question. I'd
23 appreciate an answer to my question. I'm going to phrase it
24 as a yes or no. Isn't it true that Mr. Antos is the grantor
25 of the -- Mr. and Mrs. Antos are the grantors of the Antos

1 Living Trust?

2 A That's my understanding.

3 Q And isn't it true that they are the lifetime
4 beneficiaries of that trust?

5 A That's my understanding.

6 Q And isn't it also true that they are guarantors of
7 this obligation to CBC, now the property of 5148?

8 A The Antoses individually, yes.

9 Q Okay. And so, therefore, there is a nexus between
10 the Antoses and this note; correct?

11 A The Antoses individually, yes. The Antos Trust,
12 to the extent it's a separate entity, no.

13 Q And how would -- you believe that the living trust
14 of Ken and Sheila Antos is a separate entity?

15 A From the Antoses individually, that's my
16 understanding.

17 Q And where do you gain that understanding?

18 A That's my understanding of why you establish a trust
19 in the first place.

20 Q Well, what if it's a living trust, sir? Do you know
21 the difference between a revocable trust and an irrevocable
22 trust?

23 A Somewhat.

24 Q Why don't you tell me what the difference is?

25 A A revocable trust can be terminated and the property

1 can be reclaimed by the grantors of the trust. An irrevocable
2 trust cannot.

3 MR. MUSHKIN: Excuse me, Judge.

4 THE COURT: It's okay.

5 BY MR. MUSHKIN:

6 Q And where do you learn this?

7 A I've spoken with trust and estate attorneys.

8 Q And in these discussions you believe that you
9 garnered enough information to determine that the revocable
10 trust is a separate entity?

11 A I'm just offering you my understanding --

12 Q Thank you.

13 A -- not a legal conclusion.

14 Q So you've somehow alleged that the Doctrine of
15 Merger applies?

16 A Correct.

17 Q Do you have any facts that would support a
18 conclusion that title to the property is held by CBC Partners?

19 A Title to the property is held by SHAC --

20 Q Thank you. So --

21 A Which is --

22 MR. GUTIERREZ: Your Honor, objection.

23 THE COURT: Were you finished?

24 THE WITNESS: No.

25 THE COURT: Okay. Let him finish, please.

1 THE WITNESS: Title to the property is held by SHAC,
2 which is owned 49 percent by CBC Partners. We had this
3 discussion at inception when CBC Partners was originally a
4 partner and then asked to change the documents, saying they
5 couldn't be both a partner and a lender at the inception of
6 the transaction.

7 BY MR. MUSHKIN:

8 Q I'm asking a yes or no question. Do you have any
9 proof that CBC Partners has taken an interest in title to
10 5148 Spanish Heights Drive?

11 A Yes.

12 Q What evidence?

13 A Your letter saying that they took a 49 percent
14 interest from the Antoses in the entity that owns the
15 property.

16 Q So that's not the question I asked you. I asked
17 you, has CBC Partners taken an interest in title?

18 A Yes.

19 Q And you're sure that's your answer, sir?

20 A Yes.

21 Q Show me. Show me where CBC Partners has gone onto
22 the title of this property.

23 A In your letter you say that the CBC entities took
24 under a transfer agreement, under the pledge agreement from
25 the Antoses a 49 percent interest in the entity that owns

1 the property. That gives them a beneficial interest in the
2 property, which is what they were trying to avoid from the
3 inception of the transaction --

4 Q Sir --

5 A -- because they understood they couldn't hold both
6 the title to the property, either directly or indirectly, and
7 at the same time be a lender to themselves.

8 THE COURT: Okay. Now you can ask your next
9 question.

10 BY MR. MUSHKIN:

11 Q Isn't it true that the only thing Mr. Hallberg told
12 you, after you put him in the LLC without his permission, was
13 that he didn't want to be a lender and an owner at the same
14 time? Isn't that correct?

15 A No, that's not true. And --

16 Q And isn't it also correct --

17 A Hang on a second.

18 THE COURT: You've got to let him finish, Mr.
19 Mushkin.

20 MR. MUSHKIN: Judge, we'll be here for three days.

21 THE COURT: We may. I reserved the whole week.

22 MR. MUSHKIN: Okay.

23 THE COURT: Okay. Keep going, sir.

24 THE WITNESS: No, it's not true that it was put in
25 without his permission. That was by discussion of the parties.

1 He changed his mind after speaking to his attorneys. And I
2 forgot the second part of your compound question.

3 BY MR. MUSHKIN:

4 Q Mr. Bloom, I'm going to ask you again. Today, as we
5 sit here, Spanish Heights Acquisition Company is the record
6 owner of the property?

7 A Correct.

8 Q Are there any other record owners of the property?

9 A Not directly, no.

10 Q Okay. So this indirect stuff, I'm not interested in
11 indirect. I'm only interested in direct.

12 A Okay.

13 Q Okay. Now, do you have any proof, any document that
14 shows that CBC Partners has become a record owner on title?

15 A Through their interest in Spanish Heights
16 Acquisition Company, my understanding is they have a
17 beneficial interest in the property.

18 MR. MUSHKIN: So, Your Honor, I would ask that you
19 instruct the witness to answer my question. He is not
20 answering my question.

21 THE COURT: That request is denied. He provided you
22 with an answer that said it was a beneficial owner, which we
23 all know means they are not a direct holder of the interest.

24 BY MR. MUSHKIN:

25 Q And have you provided this Court with any

1 information to support your allegation that as a beneficial
2 owner the Merger Doctrine applies?

3 A I can't speak to case law and statute that support
4 that contention, but that's my understanding of the effect.
5 And that was Mr. Hallberg's understanding of the effect at
6 inception. That's why he came off.

7 MR. MUSHKIN: Objection, Your Honor.

8 THE COURT: Overruled.

9 THE WITNESS: And that's why he came -- and that's
10 why CBC came off ownership of SHAC in the beginning.

11 THE COURT: Okay.

12 BY MR. MUSHKIN:

13 Q You know that it is not the claim of 5148 that they
14 hold a beneficial interest in the real property; correct? Let
15 me strike that question. Mr. Bloom, do you have any evidence
16 that 5148 LLC -- I'm sorry, 5148 Spanish Heights LLC has
17 become an owner of record on title to the subject property?

18 A I don't know who owns the 49 percent. The
19 communication has been very poor.

20 Q Well, that doesn't answer my question. All I'm
21 asking is do you have any information that 5148 has an
22 ownership interest in the title to the property?

23 A No, I don't.

24 Q Thank you. Now, you've received a copy of the
25 assignment from Antos to CBC partners; correct?

1 A Correct.

2 Q So you know who's got the 49 percent?

3 A I know that CBC had it. There's been conversations
4 where it sounded like it was transferred to 5148, but I have
5 not seen any documentation to that effect and I'm unsure if
6 that transaction took place.

7 Q So the only document you know about is the
8 assignment to CBC Partners; correct?

9 A That's correct.

10 Q And all the pleadings in this case say that CBC
11 Partners is the holder; correct?

12 A That was the last document we saw. That was the
13 last communication we received in writing.

14 Q So, in your prior testimony you testified that SJC
15 completed its obligations. That wasn't true; was it?

16 A To the best of my understanding it's completed all
17 of its material obligations.

18 Q Well, I just went through the operating agreement
19 that had set out all of the investor obligations, and you
20 haven't done any of them.

21 A That's not true.

22 Q Well, you haven't put up 150,000 in an account.

23 A That's not true.

24 Q You haven't done -- you haven't kept the liens and
25 assessments off. You haven't shown proof of 100,000 in

1 repairs.

2 A That's not true.

3 Q Obviously you've received the inspection report,
4 so the place isn't in top quality condition.

5 A That's not true.

6 Q You've not filed suit to remove the liens.

7 A Correct.

8 Q Sir, you testified that SJC completed its
9 obligations. That wasn't true; was it?

10 A SJC completed all of the material obligations. CBC
11 never raised an issue of breach in the two years of their
12 relationship prior to the sale of the note.

13 Q Sir, in the Amended Forbearance Agreement in January
14 of '20, CBC called out the very same obligations that you were
15 required to do; isn't that correct?

16 A I'd have to look again at the -- when we did the
17 operating agreement.

18 Q Well, let's look again.

19 THE COURT: So let's break for lunch now and then
20 we'll come back at 1:15 and we'll start with the Amended
21 Forbearance Agreement and go through the obligations you'd
22 like to discuss with him.

23 MR. MUSHKIN: Thank you, Your Honor.

24 THE COURT: Do you have any homework assignments
25 that anybody needs to find any particular documents over the

1 lunch break? Anybody need research done by the other side
2 before we get back from lunch? All right. You guys have --

3 MR. MUSHKIN: They were supposed to show us the
4 tax payment. That's the only thing I'm aware of, Judge.

5 THE COURT: Okay. So, Mr. Gutierrez wrote down
6 notes on that. Remember, I said he was writing that down
7 long, long ago.

8 MR. GUTIERREZ: The note I had was --

9 THE COURT: That was about 10:45.

10 MR. GUTIERREZ: Yeah. The note I had was the
11 payment of the repairs, which we showed before. It's Exhibit
12 92. We'll show it again on redirect.

13 THE COURT: Okay. Repair payments were 92.

14 MR. GUTIERREZ: I'm sorry, 98.

15 THE COURT: Thank you. Ninety what?

16 MR. GUTIERREZ: 98, Your Honor. I'm sorry.

17 THE COURT: 98.

18 MR. GUTIERREZ: 98. That's correct.

19 THE COURT: I wrote it down. All right.

20 MR. MUSHKIN: Can we just have one minute before we
21 break, Judge?

22 THE COURT: Uh-huh.

23 MR. MUSHKIN: Because I feel like the village idiot.
24 I looked three times at this.

25 THE COURT: That's why you have a very capable

1 legal assistant who is here to help you today.

2 BY MR. MUSHKIN:

3 Q Mr. Bloom, before we let you have your break --

4 THE COURT: So you can sit down for a second, sir,
5 if you can. Or if not, that's okay, too. It's up to you.

6 BY MR. MUSHKIN:

7 Q Let's take a look at the very first paragraph.

8 THE COURT: Leave your mask on. Thank you.

9 BY MR. MUSHKIN:

10 Q Paragraph A-1.

11 THE COURT: In Exhibit 1?

12 MR. MUSHKIN: In Exhibit 1.

13 THE COURT: Thank you.

14 MR. MUSHKIN: I knew it was there, Judge. I was
15 losing my mind.

16 BY MR. MUSHKIN:

17 Q "All of which have been executed by KCI Investments,
18 LLC and Preferred Brands, Inc." Do you see that, Mr. Bloom?

19 A I do see it.

20 Q Why have you been lying to the Court?

21 MR. GUTIERREZ: Objection, Your Honor. Argumentative.

22 THE COURT: Sustained.

23 THE WITNESS: Mr. Mushkin, I have not been lying to
24 the Court.

25 MR. MUSHKIN: Every step -- Your Honor, I would ask

1 that I be allowed to ask that question because this gentleman
2 has stood her effectively denying that he knew that KCI was
3 the maker of the note. It's the first document, the first
4 page.

5 THE COURT: I understand that, Mr. Mushkin, and you
6 are able to ask him all the factual questions that you want
7 and then you are able to argue his veracity in either motion
8 practices or in closing argument. Okay.

9 THE COURT: Can I respond to the question?

10 THE COURT: Do you need to answer A on -- Exhibit 1,
11 Section A, where we were looking at it?

12 THE WITNESS: Yes.

13 THE COURT: Okay.

14 THE WITNESS: That exhibit referenced that KCI and
15 Preferred Restaurant Brands were the signers on all ten
16 modifications. I don't believe that's a true statement in
17 that document. I think Preferred Restaurant Brands was added
18 later.

19 THE COURT: Okay.

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: Anything else before we break for
22 lunch?

23 MR. MUSHKIN: We'll go back to it. We'll let him --
24 we'll let him misrepresent further to the Court.

25 THE COURT: Okay.

1 MR. GUTIERREZ: Your Honor, speaking of
2 misrepresentations, I want to just make sure counsel's
3 statement -- going back to the stay issue. On February 17th
4 he informed the Court that he wouldn't respond to the Court's
5 entry of sanctions because of the stay. That's a non-party.
6 That's a non-debtor party. He believed -- he represented to
7 the Court that he would not respond to the issue of sanctions
8 and attorney fees because of the stay. How is it any
9 different from proceeding here?

10 THE COURT: Mr. Gutierrez.

11 MR. GUTIERREZ: That's my position.

12 THE COURT: Remember, I stayed the whole case --

13 MR. MUSHKIN: Thank you.

14 THE COURT: -- for a temporary period of time so
15 that somebody could seek relief from the bankruptcy stay.

16 MR. GUTIERREZ: And that relief hasn't been granted.

17 THE COURT: Yeah. But my stay --

18 MR. GUTIERREZ: As we sit here today, that relief
19 has not been granted.

20 THE COURT: Absolutely.

21 MR. GUTIERREZ: That's what I want to be clear.

22 THE COURT: But I did not stay the case as to the
23 other parties for a period of time beyond that temporary
24 stay.

25 MR. MUSHKIN: Exactly.

1 MR. GUTIERREZ: Then that's --

2 THE COURT: Wait. Don't argue with me.

3 MR. GUTIERREZ: Understood. But the stay has not

4 been lifted. Nothing has changed. Nothing's changed.

5 THE COURT: My -- absolutely the stay I entered has

6 been lifted.

7 MR. GUTIERREZ: No, no. The stay by the bankruptcy

8 court has not been lifted.

9 MR. MUSHKIN: Right.

10 THE COURT: But that is a stay only to Spanish Hills

11 (sic), the entity who filed bankruptcy.

12 MR. GUTIERREZ: So then --

13 THE COURT: It does not apply to any other party

14 unless the court ordered it.

15 MR. GUTIERREZ: So the issue of sanctions on the

16 attorney fees for the non-debtor party is now before the

17 Court, or should be, at least?

18 THE COURT: Absolutely. Mr. Mushkin needs to

19 respond.

20 MR. GUTIERREZ: Thank you, Your Honor.

21 MR. MUSHKIN: I believe I did, Judge.

22 THE COURT: Did you? I haven't seen it. I think

23 it's on my calendar to do on Friday, so I may not have looked

24 yet, but I haven't seen it.

25 Okay. I'm going to go to lunch and then I'm going

1 to meet with the Discovery Commissioner and then I'm going to
2 be back here at 1:15.

3 Have a nice lunch, sir.

4 THE WITNESS: Thank you.

5 MR. GUTIERREZ: Thank you, Judge.

6 MR. MUSHKIN: Thank you, Your Honor.

7 [Court recessed from 12:04 p.m. until 1:15 p.m.]

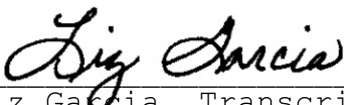
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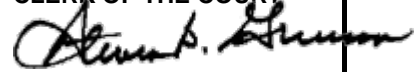
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ATTEST: I do hereby certify that I have truly and correctly
transcribed the audio/video proceedings in the above-entitled
case to the best of my ability.



Liz Garcia, Transcriber
LGM Transcription Service



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SPANISH HEIGHTS ACQUISITION)
COMPANY LLC,)

Plaintiff,)

vs.)

CBC PARTNERS I LLC,)

Defendant.)

AND RELATED PARTIES)

CASE NO. A-20-813439-B
DEPT NO. XI

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

MONDAY, MARCH 15, 2021

PRELIMINARY INJUNCTION HEARING AND TRIAL - DAY 4

VOLUME II

APPEARANCES:

FOR THE PLAINTIFFS: JOSEPH A. GUTIERREZ, ESQ.

FOR CBC PARTNERS I: MICHAEL R. MUSHKIN, ESQ.

RECORDED BY: JILL HAWKINS, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

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1 **LAS VEGAS, CLARK COUNTY, NEVADA, MARCH 15, 2021, 1:07 P.M.**

2 * * * * *

3 (Pause in the proceedings.)

4 THE COURT: All right. Mr. Bloom, come back up. I'd
5 like to remind you, you're still under oath.

6 THE WITNESS: Of course.

7 THE COURT: Okay.

8 **JAY BLOOM**

9 (having been recalled as a witness and previously sworn,
10 testified as follows:)

11 CONTINUED DIRECT EXAMINATION

12 BY MR. MUSHKIN:

13 Q Good afternoon, Mr. Bloom.

14 So you've made a claim in this matter that somehow
15 the one-action rule bars recovery. Can you explain the basis
16 of your claims in fact?

17 A My understanding is that the one-action rule provides
18 a lender against real property the opportunity to claim one
19 remedy. In this particular case, the CBC entity took the
20 equitable interest in the entity that holds title to the
21 property which would preclude a subsequent foreclosure action
22 or -- well, I guess it would preclude the foreclosure action
23 against the property.

24 Q I'd like to direct your attention to Exhibit 39,
25 page 21. You may recall that before we left, I showed you the

1 title -- or the preliminary title report that showed the deed
2 of trust of record in '14, long before you arrived; correct?

3 A Yep.

4 Q And I direct your attention to paragraph 6.21. Let
5 me just find it for you.

6 I'm sorry. I thought I had the right provision. Oh,
7 here it is. Do you see paragraph A?

8 A I do.

9 Q Is that not a written waiver of the one-action rule,
10 sir?

11 A It appears to be.

12 Q And you saw earlier where I referenced in the
13 forbearance agreements that the remedies were cumulative? Do
14 you recall that? We talked about that a little earlier.

15 A I believe I recall that.

16 Q Okay. Do you have any other support for your
17 argument?

18 A I don't know the applicability of -- or the ability
19 to waive the one-action rule for a primary residence. But, no,
20 I can just testify as to my understanding of the one-action
21 rule and its applicability.

22 Q So we talked about the doctrine of merger before you
23 left. Have you found any other documents or do you have any
24 other facts that support your claim that there's somehow a
25 merger here, other than the fact that stock was taken pursuant

1 to a pledge agreement?

2 A Well, it's the stock that was taken pursuant to the
3 pledge agreement from the anti-trust --

4 Q I'm asking for anything other than that, sir.

5 A In addition to that, it's my understanding that
6 Mr. Hallberg's advice from counsel in the beginning of the
7 transaction was not to do that. So it would be -- the
8 performance of the parties is additional evidence.

9 Q Your testimony is that because Mr. Hallberg didn't
10 want to be a member of SHAC, that that's a fact in support of
11 the merger doctrine? Is that your testimony?

12 A My conversations with Mr. Hallberg was that CBC,
13 although it originally intended to be a one-third owner of
14 SHAC, upon advice of counsel, came back and said that they
15 couldn't be an owner in SHAC and at the same time be a lender
16 to SHAC or to -- against -- a lender against the property.

17 Q Okay. So that was not in response to my question.
18 It didn't have anything to do with my question, sir.

19 My question is, is it your testimony that because
20 Mr. Hallberg didn't want to be a member of SHAC, that that
21 supports your merger doctrine claim? Yes or no.

22 A Yes. Correct.

23 Q Thank you.

24 Anything else that you have that supports your claim?

25 A That's all that I can recall at the moment.

1 Q Thank you.

2 Now, there's been a lot of testimony about that
3 pledge agreement, that you claim that that wasn't supposed to
4 be the agreement. Is that still your testimony?

5 A It is.

6 Q And have you been able to produce any document that
7 supports your claim of legacy language?

8 A I recall from my previous testimony about the lease
9 where there was legacy language where there was --

10 Q Sir, I'm not talking about --

11 MR. GUTIERREZ: Objection, Your Honor.

12 THE COURT: You've got to let him finish,
13 Mr. Mushkin.

14 MR. MUSHKIN: Okay.

15 THE COURT: I know it's going to take longer, but I'm
16 prepared.

17 You can finish, Mr. Bloom.

18 THE WITNESS: In previous testimony, you showed a
19 document that -- where the title wasn't changed, where the
20 lease was removed but the language acknowledges the lease
21 extension, the lease renewal, for two subsequent two-year
22 periods. So that is -- to answer your question, that is in
23 response to your question, yes, there's legacy language that's
24 not appropriate in these documents.

25 The extension -- the title of the extension of the

1 lease is one example and the conflicting language of the pledge
2 agreement where SJC is not -- doesn't even have a signature
3 block, much less as a signatory, is another example.

4 BY MR. MUSHKIN:

5 Q Okay. So I'm not even sure what question you
6 answered. But my question is, do you have any drafts or any
7 documents that are unexecuted or e-mails that reflect this
8 change in terms that you've testified to?

9 A The executed document itself doesn't have a signature
10 block and isn't signed --

11 Q Sir --

12 A -- by SJC.

13 Q -- you can keep answering wrong questions, and we're
14 going to be here all week, sir. I'm not asking about that.

15 I'm asking about other evidence, any e-mail -- is
16 there an e-mail that talks about legacy language?

17 A I don't believe there is.

18 Q Can you tell me a date and time of a phone call that
19 talks about legacy language?

20 A Not from recollection.

21 Q Is there anything that Mr. Gutierrez can provide from
22 his review of the contracts that shows that there's legacy
23 language?

24 A The contract itself includes legacy language that's
25 in contradiction to the document signature block and lack of a

1 signature by the SJC party.

2 Q So your total claim is that because that last page of
3 the pledge agreement is not executed properly, that's the only
4 evidence that you have that SJCV didn't agree to it?

5 A Well, aside from a party not signing an agreement,
6 that it can't be bound by an agreement it's not a signatory to,
7 I'd have to go through the document and look through the
8 language to be sure if there's any other language besides, It's
9 just not a signatory to the agreement.

10 Q Well, let's take a look at the pledge agreement, sir,
11 and let you go through it page by page and see if you can tell
12 me. Because you acknowledge that you ratified the pledge
13 agreement twice; right?

14 A I acknowledge that on behalf of SJC as the manager,
15 it ratified the Antoses' ability to pledge their 49 percent
16 interest.

17 Q Oh. Oh, no, sir. You ratified the actual
18 forbearance -- the actual pledge agreement right in the
19 forbearance agreement, didn't you? Let's go take a look. This
20 is Exhibit 1, page 16. Let's go to paragraph 9:

21 Antos parties and SJCV parties acknowledge.

22 Do you see that?

23 A I do.

24 Q No breach by CBC. Do you see that?

25 A I do.

1 Q Interest fees and other charges. Do you see that?

2 A I do.

3 Q So you've agreed to the amounts; is that fair?

4 A Referencing the amounts stated elsewhere in the
5 agreement, yes.

6 Q Yeah, the note.

7 Now let's look at 8, their representations and
8 warranties, 8.3:

9 To the extent applicable, the Antos
10 parties and SJC parties lawfully possessable
11 [sic] the hundred percent ownership interest
12 in the property and collateral for the
13 forbearance agreement.

14 Do you see that?

15 A I do.

16 Q Let's take a look at the next section of Section 9.
17 9.3:

18 There's no waiver.

19 Do you see that?

20 A I do not. It's off the page. If you could slide the
21 page --

22 Q I'm sorry. I'm getting better.

23 Is it on there now?

24 A Yes. Yes, I see that.

25 Q 9.6, The loan balance is true and correct.

1 Do you see that?

2 A I do.

3 Q 9.7, Fair consideration.

4 Do you see that?

5 A It's off the page. If you could slide the page up.

6 Q Do you see that?

7 A I do.

8 Q Thank you.

9 I direct your attention to page 23 of Exhibit 1,
10 paragraph 25. Do you see that, The remedies are cumulative?

11 A I do.

12 Q And you signed this agreement, did you not?

13 A In an official capacity, yes.

14 Q Let's just be absolutely certain. That's your
15 signature for SJC Ventures LLC; correct?

16 A Correct.

17 Q And note there's nowhere on here where SHAC signs;
18 correct?

19 A Correct.

20 Q Okay. Now, there is an amendment; correct?

21 A I believe so.

22 Q And the amendment has a series of exhibits; is that
23 correct?

24 A I'd have to see what the exhibits are, but I believe
25 so.

1 Q Well, we went through them before. One of them was a
2 limited liability company operating agreement. Do you recall
3 that document?

4 A I do.

5 Q In fact, you testified you prepared it; is that
6 correct?

7 A Yes.

8 Q Did anybody else help you?

9 A No.

10 Q Now let's go to --

11 A Well, let me -- let me amend that answer. Vernon
12 Nelson, I believe, would have participated on behalf of CBC.

13 Q I didn't hear a word you said.

14 THE COURT: Vernon Nelson would have participated on
15 behalf of CBC.

16 MR. MUSHKIN: I'm aware of that, Your Honor. Thank
17 you.

18 THE COURT: Well, that was his --

19 THE WITNESS: That was my testimony.

20 THE COURT: That was what he said. I was trying to
21 help.

22 MR. MUSHKIN: I asked if anybody helped.

23 THE COURT: I was like a read-back.

24 MR. MUSHKIN: I asked if anybody helped him.

25 THE COURT: And that was what he said when he

1 modified his answer.

2 BY MR. MUSHKIN:

3 Q Okay. So now we go to the --

4 THE COURT: Did I get it right, sir?

5 THE WITNESS: Yes. Yes, that is correct.

6 BY MR. MUSHKIN:

7 Q Now we'll take a look at the investor member
8 covenants. Do you recall signing this?

9 A I believe so.

10 Q And you're going to provide that \$150,000 funding;
11 right?

12 A Correct.

13 Q And then you're supposed to do it a second time;
14 right?

15 A Correct.

16 Q And then you're going to service the CBC Partners
17 receivable. Didn't do that, did you?

18 A Well, I think that's what the use of the 150,000 was
19 for.

20 Q Okay. We went through this. We don't need to do it
21 again. Let me get to the pledge.

22 MR. MUSHKIN: What exhibit is the pledge agreement,
23 please?

24 THE CLERK: 8.

25 MR. MUSHKIN: Thank you. I was only two away.

1 BY MR. MUSHKIN:

2 Q Before we get there, you were to maintain books and
3 records for the company; is that correct?

4 A Correct.

5 Q And part of the books and records of the company
6 would be the maintaining of tax records and tax returns;
7 correct?

8 A Correct.

9 Q And have you ever filed a tax return for this
10 matter -- for this -- for SHAC?

11 A No.

12 Q Why?

13 A Because it would only have losses. There was no tax
14 liability.

15 Q Can't you pass those losses through to the members so
16 they can use them?

17 A There wasn't any material loss. The cost of
18 preparation would have been more than the losses realized.

19 Q So you just decided on your own not to file tax
20 returns?

21 A Yeah. There was nothing to report. There was no net
22 income.

23 Q Now, 11.02 calls for reports to members. Did you
24 ever file a -- fill out a report to the members?

25 A I don't have the document, so I'm not sure what 11.02

1 is.

2 Oh. No.

3 Q Why?

4 A Because the reports to members would have been
5 reported as to profits or losses, and there was no material
6 profits or losses that warranted a tax return which would have
7 issued a K-1 against.

8 Q So it's your testimony that the depreciation and
9 interest losses are not deductible?

10 A Good -- good question.

11 Q Thank you.

12 A I don't know. I'm not an accountant.

13 Q Now let's take a look at 12.04. You agreed that this
14 was a binding agreement, did you not, sir?

15 A Yes.

16 Q Let's take a look at Exhibit 8, which is 5148 Spanish
17 Heights 000089. This agreement -- and it's -- the first page
18 says it's between the Kenneth and Sheila Antos Living Trust,
19 SJC Ventures, pledgeors, to CBC Partners I, secured party, or
20 CBC I.

21 Do you see -- do you recall that?

22 A If you could put it on the --

23 Q I'm asking if you recall it, sir.

24 A I don't recall the language of every agreement.
25 There's a lot of them.

1 Q Do you recall that the pledge agreement was between
2 CBC and the Antoses and SJCV?

3 A I believe so.

4 Q So there it is.

5 THE COURT: Can you zoom out so we can see it --

6 MR. MUSHKIN: Oops. Sorry.

7 THE COURT: -- or move it down. Thank you.

8 BY MR. MUSHKIN:

9 Q Do you see that?

10 A I do.

11 Q And is it your testimony that SJCV did not agree to
12 pledge its stock?

13 A Yes.

14 Q What was your answer?

15 A My answer was, "Yes."

16 Q Okay. Now, you say that in spite of the forbearance
17 agreement which says it, the amended forbearance agreement
18 which says it, and the pledge agreement itself that says
19 they're a party. Is that your testimony?

20 A Those are some of the relevant documents, yes.

21 Q Let's take a look at Exhibit 16, 5148 Spanish Heights
22 00014, the amendment to the forbearance agreement. Do you
23 recall signing that?

24 A If you could show me the document.

25 Q I'm just asking you if you recall signing the amended

1 forbearance agreement, sir.

2 A I believe so.

3 Q Does that document refresh your recollection?

4 A Yes.

5 Q And this extension is until March 31st of 2020; is
6 that correct?

7 A I think you just had that up. I think that's the
8 date that I saw below. Yes.

9 Q You don't have any independent recollection of that,
10 sir?

11 A I do after reviewing that document.

12 Q So you have testified a number of times that somehow
13 the security agreement was a replacement for the pledge
14 agreement. Do you recall that testimony?

15 A Yes.

16 Q Do you have any e-mails that support that allegation?

17 A I don't recall any e-mails. I think most of it was
18 telephone conversations that culminated in the final documents.

19 Q And you're aware that on the 17th of July, you sent
20 an e-mail that laid out the basic terms of the transaction;
21 right?

22 A Would that be -- what year would that be?

23 Q '17.

24 A Yeah. That was the initial proposal.

25 Q And within that document, it specifically said

1 additional collateral for the loan, didn't it?

2 A I think that was part of the initial proposal.

3 Q Thank you.

4 Paragraph 12 of the amendment says, The security
5 agreement will remain in effect --

6 THE COURT: Exhibit number?

7 BY MR. MUSHKIN:

8 Q -- right?

9 THE COURT: 16.

10 THE CLERK: Yes. We're still on --

11 MR. MUSHKIN: Yes.

12 THE COURT: Thank you.

13 MR. MUSHKIN: 000156.

14 THE COURT: Great.

15 BY MR. MUSHKIN:

16 Q Do you see paragraph 12 there, sir?

17 A I do.

18 Q And it also says that the pledge agreement remains in
19 effect, doesn't it?

20 A It does.

21 Q And you signed this agreement?

22 A Which agreement is this?

23 Q The amendment to the forbearance agreement that
24 extends it to March 31st of 2020.

25 A Yes.

1 Q So as late as January, you're still pledging your
2 stock in SHAC; right?

3 A No. That misstates what my testimony was.

4 Q Well, that's what it says here, doesn't it?

5 A No.

6 Q Tell me what that says, sir.

7 A What this document does is it extends the security
8 agreement which gives a security interest in any proceeds
9 (indiscernible) the judgment by SJC, and it extends the pledge
10 agreement from the Antoses, which was approved to be pledged by
11 SJC in its capacity as a manager.

12 Q It doesn't say that, does it, sir?

13 A That's my understanding of what it says.

14 Q Okay. It says, SJCV pledges here, doesn't it?

15 THE COURT: Can you read it or do you need to move it
16 over?

17 THE WITNESS: I think you need to move it over.

18 THE COURT: There you go.

19 Thank you, Mr. Mushkin.

20 THE WITNESS: So it says, The security agreement
21 shall remain in effect. And that's referencing SJC's security
22 agreement.

23 BY MR. MUSHKIN:

24 Q -- to the effect that the judgment lien pledge
25 agreement, one, constitute a valeting obligation of SJCV and

1 First 100 Holdings in accordance with the terms; two, properly
2 evidenced is CBC's first priority position on the collection
3 professionals, no one given notice.

4 A All of that --

5 Q Do you see that?

6 A I do. All of that refers to the security agreement
7 which collateralizes it with an interest in the proceeds
8 realized under SJC's portion of the judgments.

9 Q It says right there "pledge agreement," doesn't it,
10 sir?

11 A It says "judgment lien and pledge agreement." The
12 only judgment relates to the security agreement which pledges
13 First 100's interest in proceeds realized under the judgment.

14 Q And then if we turn to 162 of that exhibit, that is
15 your signature, both as Spanish Heights manager and SJCv;
16 correct?

17 A Correct.

18 MR. MUSHKIN: Your Honor, I believe I'll pass the
19 witness.

20 THE COURT: Thank you.

21 Mr. Gutierrez, I know that you are not appearing to
22 examine Mr. Bloom on behalf of Spanish Heights Acquisition.
23 But on behalf of SJC Ventures, would you like to inquire?

24 MR. GUTIERREZ: I do, Your Honor.

25 THE COURT: Okay. How's that, keeping our record

1 clean.

2 MR. GUTIERREZ: I'll wipe this cabinet down, Your
3 Honor.

4 THE COURT: Do we have any more of those, Ramsey, or
5 are we running out?

6 THE MARSHAL: We should have two more over there.
7 I'll double check.

8 THE COURT: Okay. All right. Mr. Gutierrez, you're
9 up.

10 MR. GUTIERREZ: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. GUTIERREZ:

13 Q Mr. Bloom, do you recall being questioned about
14 whether you had any written documents to dispute the validity
15 of the pledge agreement against SJC as a non-signatory
16 agreement?

17 A I think so, yes.

18 Q And do you recall being asked whether or not you
19 ever, as -- on behalf of SJC ever sent notice to CBC that you
20 disputed the validity of the pledge agreement?

21 A Yes.

22 Q Okay. I'm going to show you Exhibit 92. Can you see
23 that, Mr. Bloom?

24 A I do.

25 Q And can you tell me what this letter is?

1 A This is a letter to Mr. Mushkin on behalf of Spanish
2 Heights Acquisition Company addressing a special meeting under
3 the operating agreement and calling that meeting in SJC's
4 capacity as a managing member for April 13th, 2020, at
5 1:00 p.m.

6 Q And did you send an agenda along with this notice?

7 A I believe I did, yes.

8 Q Okay. And here's a page number, 945, on this same
9 exhibit. Do you see this document, Mr. Bloom?

10 A I do.

11 Q And is this the agenda for the special meeting you
12 had?

13 MR. MUSHKIN: Excuse me. I'm just sneaking up for a
14 second.

15 THE COURT: You're not allowed to speak up.

16 MR. MUSHKIN: Oh, I'm sneaking. Sue me.

17 THE COURT: Only lawyers. You've got to leave your
18 mask on. Judge Bell said we're not allowed to take it off for
19 any reason or any purpose. She gave us a lecture.

20 MR. MUSHKIN: What if I have a drink of water?

21 THE COURT: I know. We're not even supposed to drink
22 water anymore.

23 Come on. Get your mask back on.

24 MR. MUSHKIN: I think there's some constitutional
25 issues involved here, Judge.

1 THE COURT: I do too, but I'm trying to comply.
2 All right.

3 MR. GUTIERREZ: Thank you, Judge.

4 BY MR. GUTIERREZ:

5 Q Mr. Bloom, we were looking at page 945 of this
6 Exhibit 92. Can you tell me what this document is?

7 A This is the agenda for the special meeting of the
8 members of Spanish Heights Acquisition Company.

9 Q And can you look -- and I'm on page 946 -- that Item
10 Number 7, and tell me what that is.

11 A Item 6?

12 Q Item 7.

13 A Item 7. Oh.

14 Yes, one of the agenda items was to address the
15 validity of the pledge agreement claim.

16 Q Okay. So as of April 10th, 2020, SJC was disputing
17 the validity of the pledge agreement and gave notice to CBC
18 about that dispute; correct?

19 A Right. Subsequent to the note sale, Mr. Mushkin
20 became involved, and that's the first time the pledge agreement
21 was tried to -- was attempted to be asserted against SJC, and
22 we raised the issue on April 10th.

23 Q That was after -- and let me show you Exhibit 74,
24 Mr. Bloom.

25 Have you seen this letter before? April 1st, 2020.

1 A Yes.

2 Q And this is the letter you're talking about, about
3 being put on notice of the interest by CBC into SHAC?

4 A Correct.

5 Q Okay. Now, Mr. Bloom, did SJC, as manager of SHAC,
6 send out a notice of a capital call to the Antos Trust, CBC,
7 and its successors recently?

8 A Yes.

9 Q And tell us, when was that done?

10 A I think we sent out a capital call on March 1st.

11 Q And what was the reason for the capital call?

12 THE COURT: March 1st of this year?

13 THE WITNESS: Yeah, I'm sorry. Yes, March 1st of
14 2021.

15 THE COURT: Thank you.

16 THE WITNESS: The company needed capital. The way
17 the company's been addressing its cash flow requirements to
18 make payments under the first and second for the past 12 months
19 has been by taking a prepayment of rent for several months, by
20 SJC as tenant, for each month of payment obligations of SHAC.
21 So SHAC would have to collect, you know, \$30,000 a month to
22 make \$30,000 in payments. So SJC -- for SJC, \$30,000 in rent
23 payments is four or five, six months.

24 So we've gotten to the point now where we've
25 extended -- we've prepaid the lease through the end of the two

1 two-year extensions, and SHAC continues to need money to make
2 post-petition payments under its obligations to the first and
3 second. Insurance company -- the insurance was just renewed on
4 the real property and prepaid for a year. So there's all kinds
5 of capital requirements.

6 BY MR. GUTIERREZ:

7 Q How much money was being requested?

8 A SJC requested capital contributions of \$100,000,
9 \$51,000 from SJC as the investor member and \$49,000 from
10 whoever the Antos Trust successor is for its 49 percent.

11 Q And did you receive a response from -- on behalf of
12 the SJC parties?

13 A Yes.

14 Q And what was that response?

15 A On March 2nd of 2021, SJC wired its \$51,000 capital
16 contribution to SHAC.

17 Q And did CBC parties or 5148 or the Antos Trust
18 provide any money as part of the capital call?

19 A On March 10th, which was the deadline for the capital
20 call, I got a very pointed letter from Mr. Mushkin that
21 indicated that they wouldn't -- they would not be participating
22 in the capital call, and somehow he construed that as -- the
23 capital call as being a fraud.

24 MR. GUTIERREZ: And, Your Honor, at this time, we'd
25 move to admit Exhibits 146, 147, and 148, which are the

1 letters.

2 THE COURT: Have you showed them to Mr. Mushkin?

3 MR. GUTIERREZ: Yes, Your Honor. We disclosed them
4 last week in a supplement and added them to the next set of
5 exhibits in line.

6 THE COURT: Mr. Mushkin, any objection?

7 MR. MUSHKIN: I object. Beyond the scope and beyond
8 discovery.

9 THE COURT: They'll be admitted. We've got to give
10 them electronically to Dulce though.

11 THE CLERK: I have them.

12 THE COURT: Okay. Sweet.

13 (Exhibit Number(s) 146-148 admitted.)

14 THE COURT: So I take it they didn't pay on the
15 capital call?

16 THE WITNESS: They did not.

17 THE COURT: Okay. That was really all I needed to
18 know.

19 MR. GUTIERREZ: That's all. Okay. That's it. There
20 you go. Okay.

21 MR. MUSHKIN: No argument.

22 BY MR. GUTIERREZ:

23 Q So, Mr. Bloom, you were also asked repeatedly about
24 potential defaults in the forbearance agreement. Did CBC at
25 any point from 2017 to 2019 ever send you a notice of default?

1 A No.

2 Q Did CBC ever contact you from 2017 to 2019 -- ever
3 talk to you about filing a quiet title action?

4 A No.

5 Q And did CBC ever contact you to discuss why the
6 reserve account was not funded?

7 A Only at inception and then on renewal when we elected
8 to -- we weren't able to -- Bank of America wasn't able to open
9 the kind of account that they wanted, so we just agreed to
10 prepay CBC and the expenses for the year, which negated the
11 need for that account.

12 Q And how would you describe your relationship with CBC
13 from 2017 to 2019?

14 A It was good. Alan -- Alan Hallberg was my guest at a
15 Vegas Golden Knights game, and we would socialize.

16 Q And were you working together with Mr. Hallberg to
17 ensure compliance with the agreements?

18 A Yes.

19 Q Okay. Were you providing communication with
20 Mr. Hallberg to update him on the collection efforts
21 (indiscernible) nonjudgment?

22 A Yes. Every time there was an update, I would share
23 it with Alan Hallberg.

24 Q At any point, did you ever misrepresent the status of
25 the non-collection efforts to Mr. Hallberg?

1 A No. I would share with him the updates we got
2 verbally, and I would share with him documents we received by
3 e-mail.

4 Q Mr. Bloom, you were also asked about some renovations
5 to the property. I think over lunch you were able to find a
6 repair invoice, is that right, from Home Automation Repair?

7 A Yes.

8 Q What was that document?

9 A That was an estimate or a bill for improvements to
10 the home early on. The home automation system in the house was
11 fried by a power surge from construction, is what I was told
12 was the cause, but nothing worked. So I brought in a home
13 automation company to effectuate repair and replacement of
14 components.

15 Q And when was that?

16 A I don't remember the dates, but it would be on the --
17 on the invoices.

18 Q Okay. And if the invoice stated it was October 5th,
19 2019, does that sound right?

20 A Yeah.

21 Q Okay. And was that paid, that invoice?

22 A Yes.

23 Q And do you recall how much the total was for that
24 invoice?

25 A There were two invoices. The work was done in two

1 phases. One was in the 50-something thousand and the second
2 one was 40-something thousand.

3 MR. GUTIERREZ: Okay. Your Honor, we'd move at this
4 time to admit Exhibit 149, which is the Home Automation Repair
5 invoices. We found them over lunch and had them disclosed and
6 sent to Dulce electronically and counsel.

7 MR. MUSHKIN: Your Honor --

8 THE COURT: Have you ever seen them before?

9 MR. MUSHKIN: Your Honor, I have to object. First of
10 all --

11 THE COURT: No, I'm just asking. The first question
12 is, have you ever seen them before?

13 MR. MUSHKIN: Never saw them before.

14 THE COURT: Okay.

15 MR. MUSHKIN: When I saw them -- the first time I saw
16 them, Judge, is when I looked, at lunch, at their filings today
17 and saw that they had filed it this morning.

18 THE COURT: Okay.

19 MR. GUTIERREZ: The question was asked of Mr. Bloom
20 during his examination whether he has documents --

21 THE COURT: So he's used it to refresh his
22 recollection.

23 MR. GUTIERREZ: Yes.

24 THE COURT: We will mark them as offered. We're not
25 going to mark them as admitted.

1 MR. GUTIERREZ: Fair enough. Thank you, Your Honor.

2 THE COURT: So they're part of the record, and he's
3 used them to refresh his recollection, which is permissible
4 even if they weren't disclosed.

5 MR. MUSHKIN: I appreciate that, Your Honor. I'll
6 just have one follow-up question because there's no --

7 THE COURT: Sure.

8 MR. MUSHKIN: -- proof of payment.

9 THE COURT: Mr. Mushkin, we can argue whatever you
10 want to argue.

11 BY MR. GUTIERREZ:

12 Q Mr. Bloom, could you just walk us through the status
13 of the foreclosure notices that you received on the property
14 from CBC and 5148?

15 A Yes. I believe there was a March 2020 -- was it
16 March or April -- maybe April 2020 notice of default. That was
17 rescinded and there was another CBC notice of default that was
18 issued several months later, subsequent to the note being sold.
19 So CBC sold its note and then several months later issued
20 another notice of default.

21 Then there was a 5148 notice of breach and election
22 to sell. Then there was a 5148 notice of sale. Each of those
23 notices predicated on the prior. I believe this Court
24 ordered -- found the notices improper. And then I think 5148
25 issued, for the first time, a notice of default as the most

1 recent notice. And then there were no subsequent notice of
2 breaches or notice of sale from 5148. They just wanted to jump
3 straight to sale without the statutory required notices.

4 Q Is there a pending sale date notice now?

5 A I didn't receive notice, but a marketing firm
6 contacted me and said that there's a sale date set for
7 March 30th in about -- what is that, two weeks or something.

8 MR. GUTIERREZ: Thank you, Mr. Bloom. I don't have
9 any other questions.

10 THE COURT: Anything further?

11 MR. GUTIERREZ: I'm wiping down the...

12 THE COURT: I know. I'm watching you.

13 REDIRECT EXAMINATION

14 BY MR. MUSHKIN:

15 Q Mr. Bloom, have you provided any proof of payment of
16 this alleged invoice for the home automation system?

17 A The payment was made by credit card --

18 Q Yes-or-no answer. Have you provided any proof of
19 payment?

20 A I'd have to pull the credit card statement and then
21 the bank statement paying the credit card to provide that.

22 Q Mr. Bloom, this is much easier than that.

23 Have you provided evidence in this case of payment of
24 this alleged invoice or -- it says it's a -- the document on
25 its face is an estimate. It's not even an invoice.

1 But I'm asking you if you have provided evidence to
2 this Court of your payment of those estimates.

3 A I don't know what's been submitted in the exhibit
4 pack, but those invoices were paid.

5 MR. MUSHKIN: Your Honor, I have no further questions
6 of this witness.

7 THE COURT: Thank you.

8 Ramsey --

9 Sir, you can step down.

10 Ramsey, will you close the wipes so they don't dry
11 out.

12 THE MARSHAL: Yes.

13 THE COURT: Your next witness.

14 MR. MUSHKIN: Mr. Hallberg, would you now dial into
15 the --

16 THE COURT: So, Mr. Hallberg, we're going to send you
17 to the video now. So hang up on us on the phone and go --

18 MR. HALLBERG: Okay. Will do.

19 THE COURT: And then we'll talk to you on video in a
20 minute, sir.

21 MR. HALLBERG: Thank you.

22 THE COURT: All right. Is he your only additional
23 witness?

24 MR. MUSHKIN: That's it, Judge. Just a few questions
25 of Mr. Hallberg, and we'll rest.

1 THE COURT: That's fine.

2 And then after Mr. Mushkin goes, are you going to
3 have a rebuttal case?

4 MR. GUTIERREZ: No, Your Honor.

5 THE COURT: Okay.

6 MR. GUTIERREZ: We can go to closing arguments.

7 (Pause in the proceedings.)

8 THE COURT: Mr. Hallberg, are you there?

9 MR. HALLBERG: Hello. I am here.

10 THE COURT: All right. I've got audio.

11 MR. MUSHKIN: There he is.

12 THE COURT: Now we've got video.

13 It's nice to see you again, sir. Sorry you didn't
14 want to come back to Vegas.

15 MR. HALLBERG: Oh, I did want to come back.
16 Mr. Mushkin told me not to come back.

17 THE COURT: Okay. Well, we'll hold him accountable
18 for that.

19 MR. MUSHKIN: Wait. I want to just take the bus off
20 of me just for a second. I'm going to push the bus away.

21 THE COURT: Since this is a new day from when you
22 testified previously, I need you to be re-sworn again. It's my
23 understanding you've consented to be sworn over the video line;
24 is that correct?

25 MR. HALLBERG: That's correct.

1 THE COURT: Would you raise your right hand, please.

2 **ALAN HALLBERG**

3 [having been called as a witness and being first duly sworn,
4 testified as follows:]

5 THE CLERK: Thank you.

6 Please state and spell your name for the record.

7 THE WITNESS: Alan Hallberg, A-l-a-n,
8 H-a-l-l-b-e-r-g.

9 THE CLERK: Thank you.

10 THE COURT: All right. Mr. Mushkin, you're up.

11 DIRECT EXAMINATION

12 BY MR. MUSHKIN:

13 Q Mr. Hallberg, you heard Mr. Bloom's testimony today;
14 is that correct?

15 A Yes.

16 Q Do you believe that Mr. Bloom testified truthfully?

17 A No.

18 Q Can you tell me, just quickly, just certain areas
19 that you think Mr. Bloom was not truthful?

20 A I'll start with a couple. The first is Ken Antos and
21 I on the introductory call, the first call we had with
22 Mr. Bloom, it was made clear what the genesis of our loan was
23 and that this had always started out as a commercial loan. So
24 that was made aware to Mr. Bloom.

25 Q And just to follow up --

1 A Secondly --

2 Q Sorry. Go ahead.

3 A No, it's okay. Go ahead.

4 Q Just to follow up on that, I would direct your
5 attention to the forbearance agreement, page 1.

6 A Just a minute, please.

7 Q Paragraph -- oh, I can't use this.

8 THE CLERK: Is that Exhibit 1, Mr. Mushkin?

9 MR. MUSHKIN: Yes. The forbearance agreement is
10 Exhibit 1. And this is F148 -- "F148" -- 5148 Spanish Heights,
11 it looks like, five zeros and a one.

12 THE WITNESS: Yes, I've got it.

13 BY MR. MUSHKIN:

14 Q And at paragraph A, subparagraph (1), it discloses
15 right in there that this is KCI Investments and Preferred
16 Brands, that the original -- collectively the amended note; is
17 that correct?

18 A That's correct.

19 Q Go ahead. Now tell me about the second one.

20 A The second one, when we were -- Mr. Bloom and I were
21 negotiating, you know, we talked about what would happen if the
22 judgment -- if monies from that judgment were not to come
23 through that he would not, you know, receive any liquidity.
24 And Mr. Bloom's answer was: Well, it's simple. We'll form an
25 LLC. We're going to pledge the equity in the LLC as security

1 for the obligation. So if, you know, there's no liquidity from
2 this judgment, then the equity in SHAC, you know, reverts to
3 CBC.

4 Q And it was always your --

5 A And that was always the agreement.

6 Q And it was always your understanding that 100 percent
7 of the stock in SHAC was pledged pursuant to the pledge
8 agreement?

9 A Absolutely. Otherwise, we're releasing a portion of
10 our collateral. There's no way we do that.

11 Q And there was -- you heard Mr. Bloom's testimony, not
12 only today but I believe at the original motion for preliminary
13 injunction, where he kept -- he keeps insisting on some legacy
14 language. Do you recall that testimony?

15 A I recall the testimony, yes.

16 Q Are you aware of any such legacy language?

17 A No.

18 Q Are you aware of any circumstance where the security
19 agreement in the judgment replaced the pledge of 100 percent
20 interest in SHAC?

21 A Absolutely not, because you're -- they're apples and
22 oranges.

23 Q In fact --

24 A The security agreement, you know, is additional
25 collateral. We, in no way, shape, or form, would release, you

1 know, any portion of that original collateral that we already
2 have in the form of the third position on a house.

3 Q So but for the pledge agreement, you would not have
4 allowed the transfer into SHAC; is that fair?

5 A Correct.

6 Q You've seen this notice -- strike that.

7 In the deed of trust itself, there's a waiver of the
8 one-action rule; is that a fair statement?

9 A Yes, I believe so.

10 Q And it was intentionally drafted that way; correct?

11 A Yes.

12 Q This is a commercial transaction with guarantors and
13 other collateral; is that fair?

14 A Yes.

15 Q So it would have had to be there; is that -- it would
16 be logical for it to be there; is that a fair statement?

17 A Yes.

18 Q Now, there's also -- you've heard this testimony of
19 the merger doctrine. Did the merger doctrine ever come up in
20 discussions in this case before the case was filed?

21 A No.

22 Q You never discussed merger with Mr. Bloom?

23 A No.

24 Q And so to the best of your knowledge, title has never
25 rested in either CBC or 5148; is that correct?

1 A Correct.

2 MR. MUSHKIN: No further questions of this witness,
3 Your Honor.

4 THE COURT: Cross-examination.

5 Mr. Mushkin, you've got to wipe down. I haven't been
6 making you do it, but you've got to do it this time. I've got
7 to have you do it at least once.

8 MR. MUSHKIN: I'm sorry.

9 THE COURT: That's okay. These are the kinder,
10 gentler wipes, not the bleach ones the county buys.

11 Thank you.

12 MR. MUSHKIN: I want to do like Rudy Gobert and now
13 go back and touch everything though, which is bad. I'm sorry.
14 I can't help it. I'm caged up for a year. (Indiscernible).

15 Sorry. I'm losing it here.

16 MR. GUTIERREZ: Just briefly, Your Honor.

17 THE COURT: That's why I set aside a whole week for
18 you guys.

19 Mr. Gutierrez, would you like to examine
20 Mr. Hallberg --

21 MR. GUTIERREZ: Just briefly, Your Honor.

22 THE COURT: -- who doesn't have to wear a mask, is
23 able to be easily understood, and is having a wonderful day not
24 in the courtroom?

25 MR. MUSHKIN: And whose glasses aren't fogging up.

1 THE WITNESS: Exactly.

2 CROSS-EXAMINATION

3 BY MR. GUTIERREZ:

4 Q Can you hear me and see me, Mr. Hallberg?

5 A Hello?

6 Q Can you hear me and see me, Mr. Hallberg?

7 A Yes, yes.

8 Q Okay. I just have a few questions for you.

9 In 2017, did you ever provide the commercial note
10 with -- between KCI and the Antoses to Jay Bloom?

11 A I believe I indicated to Mr. Bloom that all the
12 original documents were available at Vernon Nelson's office.

13 Q My question is, though --

14 A And Mr. Bloom --

15 Q My question, did you provide the actual documents to
16 Mr. Bloom in 2017?

17 A Not personally, no.

18 Q Okay. Did you ever provide the amendments to the KCI
19 note to Mr. Bloom in 2017?

20 A I don't recall. I believe all the documents are with
21 Mr. Nelson who Mr. Bloom already knows and had a relationship
22 with.

23 Q My question was, did you send them, though,
24 Mr. Hallberg? Did you ever send --

25 A I don't believe so.

1 Q Do you have any proof of sending those documents to
2 Mr. Bloom?

3 A I -- I don't remember.

4 Q Now, you testified previously about the equity in the
5 pledge agreement for CBC. You were asked some questions about
6 that. Do you recall that?

7 A Yes.

8 Q Why was that -- why wasn't CBC placed in the pledge
9 agreement for the equity to revert to CBC as opposed to the
10 Antoses?

11 A I don't understand your question. Can you please
12 rephrase it?

13 Q Sure will.

14 Was it your understanding in the pledge agreement
15 that CBC would obtain the equity from SJC?

16 A That's my understanding, yes.

17 Q And you testified that the security agreement
18 involving the First 100 judgment was additional collateral; is
19 that correct?

20 A Yes, yes.

21 Q Okay. Why wasn't SJC a signatory to that pledge
22 agreement if it was pledging its collateral to CBC?

23 A I -- I -- I don't know. I did not draft the
24 agreement. An attorney did.

25 MR. GUTIERREZ: Thank you, Your Honor. No further

1 questions.

2 THE COURT: Anything else, Mr. Mushkin?

3 MR. MUSHKIN: No, Your Honor.

4 Defendant/counter-claimant rests.

5 THE COURT: Thank you, sir. You can call us back on
6 the phone if you'd like.

7 THE WITNESS: Okay. Thank you, Your Honor.

8 THE COURT: All right. Okay. So Mr. Mushkin's
9 rested.

10 Okay. Now, Mr. Mushkin, are you certain that every
11 exhibit you want in is in?

12 MR. MUSHKIN: I believe so, Your Honor.

13 THE COURT: Okay.

14 MR. MUSHKIN: I believe all the exhibits are in.

15 THE COURT: No, not all the exhibits are in.

16 MR. MUSHKIN: Well, then the only thing that I
17 believe are not in are the discovery responses.

18 THE CLERK: (Indiscernible.)

19 MR. MUSHKIN: It's not at issue today. The only
20 thing that was not in is the calculation, and that's not at
21 issue today, Judge.

22 THE COURT: Okay. All right. Mr. Gutierrez, do you
23 have any additional evidence to present at this time?

24 MR. GUTIERREZ: No, Your Honor.

25 THE COURT: Okay. Before you start arguing, because

1 I have no life, during the lunch hour, I pulled the first
2 amended complaint where SJC Ventures is a plaintiff and went
3 through the allegations. And if you need a short break while
4 you do this, let me know.

5 As part of our discussions today under the five areas
6 that are stipulated to be discussed, understanding there is an
7 avenue of discussion about the impact of what I should be doing
8 given the bankruptcy status, what claims for relief in your
9 amended complaint related to SJC are impacted by A, the five
10 stipulated items?

11 And if you need a few minutes to sit and look at your
12 amended complaint, please do it. Because I'm going to turn to
13 Mr. Mushkin now, and say, "Mr. Mushkin, I still don't have a
14 life and printed your counterclaim over the lunch hour. And
15 for those that are not related directly to Spanish Hills [sic],
16 can you identify for me the claims for relief in your
17 counterclaim that are?"

18 And do you have your counterclaim with you?

19 MR. MUSHKIN: We'll have the claims in just a moment,
20 Judge.

21 THE COURT: Okay. So I'm going to step away --

22 MR. MUSHKIN: Thank you, Your Honor.

23 THE COURT: -- for a minute so you guys don't feel
24 pressured to hurry, that you can take your time to make sure
25 you can frame it. It's only 2:00 o'clock so we've got plenty

1 of time to do arguments.

2 Do you anticipate being done with argument today?

3 MR. GUTIERREZ: I don't think I'll be more than
4 20 minutes, Your Honor.

5 MR. MUSHKIN: I don't think I'll be much more than a
6 half an hour, Judge.

7 THE COURT: Well, I'm going to then go offer my
8 courtroom to the kind folks in Department 18.

9 (Pause in the proceedings.)

10 THE COURT: Okay. Mr. Gutierrez, you're first.

11 (Pause in the proceedings.)

12 THE COURT: Okay. Mr. Gutierrez, you're first.

13 MR. GUTIERREZ: Your Honor, we went through the first
14 amended complaint to I think -- so the question was which
15 claims would --

16 THE COURT: Remember, we advanced the trial and the
17 matter for stipulated issues. There were five stipulated
18 issues. I'm just trying to make sure that since I'm dealing
19 with SJC as the party who is not in bankruptcy that I make sure
20 that I'm in the right causes of action from your perspective.

21 MR. GUTIERREZ: Okay. In walking through each one of
22 these causes of action, Your Honor, I think all of them --

23 THE COURT: So we don't have to worry about 1. We're
24 not worrying about 1.

25 MR. GUTIERREZ: 1 would apply to SHAC.

1 THE COURT: But we are not worrying about 1.

2 MR. GUTIERREZ: Understood.

3 THE COURT: Because it wasn't part of what was part
4 of the stipulation.

5 MR. GUTIERREZ: The same with Number 2.

6 THE COURT: Okay.

7 MR. GUTIERREZ: Number 3 has to do with the
8 one-action rule, but it's our position that obviously affects
9 SHAC and also the property.

10 THE COURT: Well, it says plaintiffs. So...

11 MR. GUTIERREZ: It does. Well, it does.

12 THE COURT: It does.

13 MR. GUTIERREZ: That's been my objection all along,
14 that we have two plaintiffs, and one which is Spanish Heights
15 Acquisition Company and the other in SJC Ventures Holdings that
16 can have a cause of action; however, one is a bankrupt party.
17 And I understand Your Honor's position in trying to effectuate
18 a ruling on the nonbankrupt party, but I still think it'll
19 affect SHAC and its property, and that's been our that we've
20 maintained.

21 THE COURT: Okay.

22 MR. GUTIERREZ: So and that was one of the issues
23 that's outlined in the five points, the application of the
24 one-action rule.

25 THE COURT: Okay.

1 MR. GUTIERREZ: The fourth cause of action has to do
2 with the doctrine of merger, which is also part of the
3 stipulation for this hearing, Your Honor. And I believe that
4 one also applies to SHAC property the same way the third cause
5 of action would.

6 THE COURT: Okay. And it's alleged by plaintiffs.
7 So I understand your position.

8 MR. GUTIERREZ: The fifth cause of action discusses
9 the manager of SHAC is SJC Ventures --

10 THE COURT: Right.

11 MR. GUTIERREZ: -- and the declaratory relief. I
12 don't believe that was subject to the terms of this hearing,
13 Your Honor.

14 THE COURT: I didn't see that as part of our
15 stipulation.

16 MR. GUTIERREZ: No. So I don't know that that would
17 apply to the terms of this proceeding.

18 The sixth cause of action is the restraining order
19 that I don't believe applied here as well.

20 THE COURT: Well, it does because we are in an
21 injunctive relief hearing.

22 MR. GUTIERREZ: Well, I don't know if this one
23 applied differently to -- yeah, okay. So this one would apply
24 here, Your Honor, Cause of Action Number 6.

25 THE COURT: Okay.

1 MR. GUTIERREZ: Cause of Action Number 7 is regarding
2 the Antos's trust assignment of membership interest and
3 references the merger doctrine, paragraph 102.

4 THE COURT: So that's D. Okay.

5 MR. GUTIERREZ: The eighth cause of action we don't
6 believe applies at this stage, Your Honor, which is a breach of
7 the forbearance agreement against CBC.

8 THE COURT: Okay.

9 MR. GUTIERREZ: Same with 9, which is a breach of the
10 implied covenant related to the same contract.

11 THE COURT: Okay.

12 MR. GUTIERREZ: Number 10 and Number 11 and Number 12
13 all relate to Dacia.

14 THE COURT: Okay.

15 MR. GUTIERREZ: And I don't believe they apply here
16 as well.

17 THE COURT: We're not on that yet.

18 Contribution also not. That's 12.

19 MR. GUTIERREZ: Yes. That's correct.

20 THE COURT: Okay. All right. So now that I've
21 disrupted your argument, if you'd like to go to your argument.

22 And then, Mr. Mushkin, when it's your turn to argue,
23 I'll ask you to go through the same process with me.

24 MR. GUTIERREZ: Closing argument, Your Honor?

25 THE COURT: Yes, please.

1 MR. GUTIERREZ: Thank you.

2 **CLOSING ARGUMENT FOR THE PLAINTIFFS**

3 MR. GUTIERREZ: Your Honor, I think we've already
4 made our position clear on the actual position that we are
5 taking with the stay. I don't need to reiterate that. And,
6 I'm glad Your Honor went through each claim; that was where I
7 was going to start as to what -- so we had some clarification
8 what we believed was going forward.

9 But, Your Honor, I think we started this case, this
10 hearing with going with five discrete issues that Your Honor
11 was going to look at for purposes of the defenses that were
12 raised to the foreclosure and part of the motion for
13 preliminary injunction.

14 The first one, Your Honor, was contractual
15 interpretation, validity of the secured promissory note between
16 CBC, KCI and all modifications. Early on, Your Honor, I think
17 we started this on February 1st, and we heard from Ken Antos
18 and Alan Hallberg that day. They both testified that the note
19 was never amended to add Antos trust, the owner of the
20 property, as a borrower. They added Preferred Restaurants
21 Brand as an additional borrower but never the Antos trust.

22 We heard from Mr. Hallberg today that those documents
23 were never sent to Mr. Bloom. And we'll get to that later.

24 But with the note never amended to add the Antos
25 trust as a guarantor prior to the issuance of the deed of

1 trust, the notes, the amendments and the guarantees were all
2 drafted by CBC.

3 Alan Hallberg testified that he had over 30 years of
4 experience with promissory notes and guarantees. Any ambiguity
5 should be construed against the drafter.

6 Antos testified he no longer -- that he had no legal
7 counsel to advise him during this transaction. And there is
8 and never was an obligation of the Antos trust for which the
9 Antoses could secure a deed of trust as a pledgor.

10 There is also no guarantee by the Antos trust that
11 coincides with the deed of trust. Mr. Bloom testified about
12 this as well, that the consent and the reaffirmation of the
13 guarantee never occurred.

14 The second issue, Your Honor, goes to the
15 interpretation and validity of the third position deed of
16 trust, including the modifications and whether consideration
17 was provided. Your Honor, for this issue, you have to look at
18 the timing of when the deed of trust was issued in December of
19 '14 and what guarantee was provided by the Antos trust at that
20 time. And the testimony was there was nothing. Even Alan
21 Hallberg testified that the December 2014 document signed by
22 the Antos trust was not a guarantee.

23 When you look at the validity of the deed of trust,
24 Your Honor, you have to look at the purpose of a deed of trust,
25 which is (indiscernible) a deed or legal title, and the

1 property is transferred to a trustee which holds that as
2 security to a borrowing lender.

3 There's no debt for the Antos trust at the time the
4 deed of trust was issued.

5 The third position deed of trust issued on December
6 29th, 2014.

7 The amended deed of trust was issued on December
8 19th, 2016.

9 It's undisputed there is no other deeds of trust
10 issued following these dates or no other obligation that was
11 created for these -- for this deed of trust.

12 The first obligation is created September 2017, which
13 brings us to our point, Your Honor. This is an unsecured debt
14 by the Antos trust. That's been our position. We're not
15 saying the money is not owed. We're just saying there is no
16 guarantee to protect the debt that was signed.

17 Your Honor heard evidence of a lack of consideration
18 for the deed of trust: There was testimony of Ken Antos on
19 behalf of the deed of the Antos trust; also testimony of Alan
20 Hallberg of CBC who said no benefit was conferred to the Antos
21 trust to pledge the deed of trust on the property; no money was
22 exchanged with the Antos trust.

23 And, Your Honor, that brings us to our third issue
24 which is the contractual interpretation or validity of the
25 forbearance agreement, the amended forbearance agreement and

1 all contracts associated to that.

2 The September 27, 2017, forbearance agreement,
3 Exhibit 1, Your Honor, it's predicated, you know, upon a
4 misrepresentation that there was a third mortgage, and that was
5 covered during Mr. Bloom's testimony.

6 The issue of whether CBC breached first will be dealt
7 with at another date, but that is a position that the SJC will
8 be taking in this case.

9 The December 1st, 2019, amended forbearance
10 agreement states CBC was to pay the first and second mortgage
11 on the property. CBC, Your Honor, it's our position breached
12 these agreements when it failed to make the payments to the
13 first and second lien holders in January, February, March of
14 2020.

15 The fourth issue, Your Honor, is whether the doctrine
16 of merger applies to the claims in this case. We've got cases
17 we've cited, Your Honor, in our briefing and proposed findings
18 of facts and conclusions of law. It is *First National Bank*
19 *versus Kreig*, K-r-e-i-g, 32 P 641. The Nevada courts have held
20 that when legal title and equitable title is held by the same
21 person those interests merge. Your Honor, it's our position
22 that the doctrine of merger extinguished the note when the
23 noteholder CBC took an equitable position in the collateral at
24 the time the Antoses transferred their interest in SHAC to CBC
25 in April of 2020.

1 CBC knew at this inception -- knew this as at the
2 inception, as the evidence initially showed that CBC was
3 intended to be and actually was an equity holder and then
4 resigned its membership interest precisely because of the
5 doctrine of merger issues. And Mr. Hallberg testified about
6 that back in February.

7 CBC can't be a borrower and lender under the same
8 deal. The interests merged in April of 2020 when CBC acquired
9 the Antos trust interest in SHAC.

10 And, Your Honor, there has also been no evidence of
11 any intent to disclaim the merger doctrine by any party. Both
12 Mr. Antos and Mr. Hallberg testified they had no idea what the
13 doctrine of merger even was.

14 And, finally, Your Honor, going to the one-action
15 rule, the one-action rule prevents foreclosure as the lender
16 CBC already elected its remedy in taking possession of an
17 equitable interest in SHAC. CBC exercised equitable rights
18 when it selected the remedy of obtaining legal title to the
19 property. The one-action rule in Nevada is codified in
20 NRS 40.430. And, Your Honor, it's our position the one-action
21 rule in this case would prevent foreclosure as the lender CBC
22 already elected its remedy to take possession. So, Your Honor,
23 CBC cannot take possession of the house or interest in the
24 house and also pursue a foreclosure action.

25 Mr. Hallberg testified that CBC owned 49 percent

1 interest in SHAC. And it's our position CBC could look to the
2 Antoses or the Antos trust or KCI for any deficiencies.

3 We've discussed, Your Honor, that there has been no
4 waiver of the one-action rule. And under NRS 40.495,
5 Subsection (5), the one-action rule may not be waived by a
6 guarantor if the mortgage or lien under Section D is secured by
7 real property upon which the owner maintains the owner's
8 principal residence, there is not more than one residential
9 structure, and not more than four families reside.

10 Mr. Bloom testified that he is the only family living
11 at this property, the 5148 property. And it's his principal
12 place of residence. So therefore, Your Honor, this exception
13 to NRS 40.495, Subsection (5), would apply, that there couldn't
14 be a waiver of this statute.

15 Your Honor, in conclusion, the defendants have
16 remedies, like we said. They just don't like the remedies they
17 have. We're asking the Court to find the note is valid with
18 the exception of the attempt to incorporate the property as
19 security in that note. So the forbearance agreement and
20 amended forbearance agreement are not valid with respect to the
21 attempt to incorporate the invalid third position deed of trust
22 into that agreement.

23 And, alternatively, if the Antos trust is found to be
24 liable as a guaranty for the KCI debt, that the merger doctrine
25 applies for the reasons we stated, and the one-action rule

1 would prevent any foreclosure.

2 Your Honor, if you have any questions, especially in
3 light of the bankruptcy and clarifying the position, I'd be
4 more than happy to answer any questions from Your Honor.

5 THE COURT: So basically it's your position with
6 respect to the merger doctrine that the proceeding under the
7 pledge agreement to obtain the 49 percent interest in Spanish
8 Hills -- Heights --

9 MR. GUTIERREZ: Heights. Heights.

10 THE COURT: -- Spanish Heights acted as an ownership
11 interest in the real property itself rather than an ownership
12 interest in an LLC?

13 MR. MUSHKIN: Yeah. And I understand --

14 THE COURT: So why on earth would anybody ever set up
15 an LLC to own property then?

16 MR. GUTIERREZ: Well, I believe there's provisions --
17 there's circumstances they can. Because if you're going to set
18 up an -- well, why they would do it was for a number of
19 reasons: To protect themselves from liability, from -- any
20 number of reasons. They have multiple people as owners and
21 have that documented properly. But I think --

22 THE COURT: A lot like First 100, huh?

23 MR. MUSHKIN: First 100, that's a --

24 THE COURT: (Indiscernible) know that.

25 MR. GUTIERREZ: First --

1 THE COURT: Sorry.

2 MR. MUSHKIN: So, but it is. But you think about
3 whether when they go to take a specific action and they acquire
4 equity versus -- versus actually going in and saying, well, you
5 know -- because what happened here, I believe, is that they --
6 once they acquired the equity interest, they chose that
7 particular remedy, and their interests merged. And I don't
8 believe that they have the ability to now go ahead and say
9 we're going to foreclose and move forward with that provision.

10 THE COURT: So you're essentially asking me to ignore
11 the separateness of the LLC then and find that it is a direct
12 ownership interest even if it's only a partial interest?

13 MR. GUTIERREZ: No. I believe that -- I believe
14 that -- no, we're not asking that all.

15 THE COURT: Okay.

16 MR. GUTIERREZ: We're not saying that. We're not
17 saying to ignore any corporate formalities. We're saying that
18 there was a reason why CBC did not want to be on the initial
19 pledge agreement to have an interest in the property, and that
20 reason was because of concerns of merging equity and their
21 debt. And they can't be a lender and the actual owner at the
22 same time is what we're saying unless -- and there was no clear
23 waiver of that issue it's our position.

24 THE COURT: Okay.

25 MR. GUTIERREZ: I believe that had things been

1 done -- this is a sloppy transaction. If you go back to look
2 at the history, I think that's undisputed. You're having a
3 commercial loan that's never disclosed, 10 amendments that are
4 never disclosed. And you get to the position where now, CBC,
5 the one change they have, the one material change they have is
6 to make sure that they are not included as both a lender and
7 the equity holder.

8 And then when they go and exercise that option on
9 April 2020, well, now they become both. Unless the doctrine of
10 merger is clearly waived, which parties do that routinely, then
11 they -- those interests merge is our position.

12 THE COURT: Okay.

13 MR. GUTIERREZ: Because you can't be an equity holder
14 and a borrower on the same note.

15 Any questions, Your Honor, about the bankruptcy?
16 Anything about it related to procedurally?

17 THE COURT: No.

18 MR. GUTIERREZ: I still haven't heard anything from
19 the bankruptcy court as we sit here today. So...

20 THE COURT: We're going to do what we're going to do,
21 and I'm going to try real hard to navigate what I am allowed to
22 do.

23 MR. GUTIERREZ: Understood. Thank you, Your Honor,
24 for your time and for getting us back in.

25 THE COURT: Okay.

1 Mr. Mushkin.

2 **CLOSING ARGUMENT FOR THE DEFENSE**

3 MR. MUSHKIN: Your Honor, I'd like to thank you first
4 and foremost for advancing the trial on the merits to the time
5 of the preliminary injunction. What you've done is put the
6 plaintiff on the spot, and I appreciate that.

7 Plaintiffs carry the burden --

8 THE COURT: Well, before you start, I need you --

9 MR. MUSHKIN: Oh, I'm sorry. I have it right here.

10 THE COURT: -- to go through the counterclaim.

11 MR. MUSHKIN: I'm sorry. I have it right here.

12 THE COURT: I made Mr. Gutierrez go through it. I'm
13 going to make you do the same thing.

14 MR. MUSHKIN: Breach of contract, forbearance
15 agreement; breach of covenant and good faith, forbearance
16 agreement; breach of fiduciary duty --

17 THE COURT: Not part of this. It's not part of this;
18 right?

19 MR. MUSHKIN: No, they are. This is against SJCv.

20 THE COURT: No. But I mean which -- under my five
21 categories, breach of the contract --

22 MR. MUSHKIN: Breach of the forbearance agreement
23 would be affected by finding that the forbearance agreement is
24 a binding obligation.

25 THE COURT: So you're asking me to include that under

1 the contractual interpretation and/or validity of the
2 underlying secured promissory note?

3 MR. MUSHKIN: And that would be first cause of
4 action, the second cause of action.

5 THE COURT: Okay.

6 MR. MUSHKIN: And then the unlawful detainer, fraud
7 in the inducement and abusive process would not be affected at
8 this time.

9 And then the breach of fiduciary duty, breach of the
10 operating agreement, breach of the good faith and fair dealing
11 of the operating agreement, breach of the pledge agreement,
12 breach of covenant and fair dealing of the pledge agreement
13 would all be affected as would -- and I suppose the dec relief
14 at the end is also affected.

15 Unjust enrichment is a damage claim.

16 THE COURT: Okay. So for your part, I am looking at,
17 just so I'm clear, my first three items were connected with
18 your first and second claims for relief?

19 MR. MUSHKIN: Yes, ma'am.

20 THE COURT: Okay. And the rest of them are matters
21 to handle some other date with a different fact finder maybe.

22 MR. MUSHKIN: The other breach of contract claims
23 would also be affected because the agreements are part of the
24 forbearance agreement. It has all those attachments and
25 exhibits. So all of those -- the operating agreement, pledge

1 agreement and the good faith and fair dealing -- all flow out
2 of the same thing.

3 THE COURT: But not the breach of the good faith and
4 fair dealing; right? Those were later.

5 MR. MUSHKIN: As to SJCv, sure.

6 THE COURT: Well, even as to my -- that wasn't part
7 of the scope of my -- breach of covenant of good faith and fair
8 dealing was not --

9 MR. MUSHKIN: I took your question to mean how
10 will -- do those five issues affect those causes of action, and
11 I'm saying that those five issues affect causes of action that
12 I've set forth: The fiduciary duty, operating agreement; good
13 faith and fair dealing, operating agreement; breach of
14 contract, pledge agreement; breach of good faith and fair
15 dealing, pledge agreement. Because they are all attachments to
16 the forbearance agreement.

17 THE COURT: Okay.

18 MR. MUSHKIN: Okay. So now, wow, have we heard some
19 testimony, Judge. It's the plaintiffs' burden to show that
20 they have a likelihood of success on the merits of their claim
21 with competent and admissible evidence. I will submit to the
22 Court that they have failed to do that.

23 MR. GUTIERREZ: Excuse me, Counsel.

24 Your Honor, I don't mean to interrupt. I just wanted
25 or maybe ask counsel what did he -- was he also going to look

1 through the Antoses' --

2 THE COURT: No. We didn't --

3 MR. GUTIERREZ: -- answer and counterclaim?

4 THE COURT: No.

5 MR. GUTIERREZ: Okay. I just wanted to make sure
6 that wasn't part of it.

7 THE COURT: I'm not doing the Antoses. They have a
8 summary judgment motion on Friday.

9 MR. GUTIERREZ: Okay. All right.

10 THE COURT: Because I wanted to finish the evidence
11 in here before I decide.

12 MR. MUSHKIN: So, Your Honor, I think that you have a
13 pretty easy course to follow. Because if you look at the parol
14 evidence rule, I believe that all of Mr. Bloom's testimony
15 should be eliminated from consideration. He hasn't raised one
16 issue, one, he hasn't pointed to one document that isn't
17 excluded by the parol evidence rule.

18 Your Honor, I'm troubled by some of the pleadings in
19 this case. I pointed out to you in a prior motion that counsel
20 had challenged the authenticity of the documents in their
21 pleading. When I deposed Mr. Bloom, no challenge to the
22 authenticity. I have a problem with that, Judge. So if there
23 is no problem with the authenticity to the documents, there has
24 been no claim that they were vague or ambiguous, and all of
25 this nonsense from Mr. Bloom should not be brought into the

1 record. It should not be considered.

2 Plaintiffs challenge the deed of trust that was in
3 place years before Mr. Bloom's arrival, and they claim a lack
4 of consideration somehow. Yet both Mr. Antos and Mr. Hallberg
5 testified that they got exactly what was anticipated.
6 Mr. Bloom -- I mean, sorry, Mr. Antos was able to liquidate
7 other collateral, and he replaced it with this. He received
8 additional funding, and he put up additional collateral.
9 Pretty straightforward stuff.

10 And even if there were a problem, it would not be a
11 defense that Mr. Bloom can put forward because Mr. Bloom in the
12 forbearance agreement contracted with the Antoses to pay that
13 debt, contracted with CBC to pay that debt. He does not come
14 before you and say that a single number is wrong. He just
15 somehow claims that he doesn't have to pay.

16 Plaintiff is fully aware that this is a commercial
17 loan, and I pointed out to the very first document the very
18 first page. This individual has filed false declarations. He
19 has testified falsely before this Court with reckless intent.
20 He knows better. On the very first page.

21 Somehow this plaintiff would have to prove that the
22 loan made to a restaurant and guaranteed by the Antoses is
23 somehow invalid. They just argued that it's not invalid, but
24 the deed of trust is invalid. It's the most -- they have no
25 law, no fact. They just want to say it over and over again.

1 Plaintiffs' claims have been a moving target. When
2 he testified on May 20th last year, he knew it was a commercial
3 transaction, hadn't even come up with this crazy defense yet,
4 just wanted to stop an eviction that hadn't been filed.

5 We sent a letter, Judge, that asked for information
6 that was due, and they said, no, there can't be a default.
7 You're not allowed. That's their counsel that did that, Judge,
8 Mr. Gutierrez's office. But somehow they want to testify that
9 Mr. Gutierrez wasn't his attorney even though all the emails,
10 all of the back-and-forth, I'm going to circle back with
11 Mr. Gutierrez. I would suggest to the Court that Mr. Bloom has
12 perjured himself again.

13 First they wanted dec relief. Then they argued
14 merger and one-action rule. Now they have fraud and
15 misrepresentation. So they just can't have any of those claims
16 without clear and convincing evidence.

17 To make a claim of fraud or misrepresentation, they
18 have to have clear and convincing evidence. They can't even
19 tell you what somebody did or didn't do. They want to tell you
20 that they didn't know it was a commercial loan when it's on the
21 first page of the first forbearance agreement. Just
22 unbelievable.

23 Your Honor, we pointed out where the one-action rule
24 had been waived in writing.

25 Mr. Bloom may reside in the house, but SHAC doesn't

1 reside in the house. The Antos trust didn't reside in the
2 house. And SJCV doesn't reside in the house. Mr. Bloom does.
3 So all of these machinations are just that. They're just an
4 attempt to steal the house. That's what this is. They don't
5 want to pay.

6 The merger doctrine, Your Honor, does not apply to
7 this case because, as you've pointed out, title is held by an
8 LLC, and no one but the LLC is of title. So taking stock in an
9 LLC does not -- does not cause the merger doctrine to apply.

10 I took testimony from Mr. Hallberg. Did he intend to
11 merge? No, of course not. And the Nevada law is pretty clear.
12 The creditor has to intend if he wants a merger to take place,
13 and they clearly didn't.

14 If the merger doctrine applied as Mr. Gutierrez wants
15 this Court to believe, then if I have an interest in the debt
16 of MGM and I own stock in MGM, then the merger doctrine would
17 apply to there as well. It's just a preposterous argument.
18 There's no basis in the law. There is no basis in fact. They
19 cannot show that equitable title. They can show that a
20 beneficial interest, but they cannot show that an interest in
21 title passed. No interest in title has changed.

22 Now, as I said earlier, this somehow claim that there
23 was a misrepresentation to them, there simply is no evidence,
24 and there's certainly no clear and convincing evidence. So any
25 likelihood of success based upon that claim is completely

1 without merit.

2 What did the evidence show? Well, Judge, it's pretty
3 straightforward. And I want to specifically point out that
4 through the course of this, these proceedings, Mr. Bloom has
5 stood before this Court and ignored his obligation to the Antos
6 parties. The forbearance agreement is with three folks: The
7 Antos parties, CBC and SJCV. So he not only owes the
8 obligations set forth in the note and deed of trust; he made a
9 separate promise to the Antos parties to pay the debt. And
10 it's that promise that gave him occupancy of the house. That's
11 how he got possession. That promise was an inducement to CBC I
12 to allow the transfer of the property from the Antos trust to
13 SHAC. But for that promise, Mr. Bloom has nothing.

14 Mr. Bloom in his deposition and even I believe in
15 front of the Court, I think I counted them for you, there were
16 50 some occasions where Mr. Bloom testified -- refused to
17 answer my question and said that the documents speak for
18 themselves. I'm sorry. It was 26 times. And he couldn't
19 recall answers to my question on 51 occasions, including who
20 his attorney was.

21 Your Honor, the relief that I request of this Court
22 is real simple. We want you to deny the preliminary
23 injunction, vacate the TRO, find that the notice of default and
24 election to sell are adequate notice, and find that the note
25 and deed of trust are valid and enforceable as a commercial

1 obligation.

2 Court's indulgence for just a minute.

3 We have five issues: Contractual interpretation,
4 secured promissory note; contractual interpretation, the deed
5 of trust; contractual interpretation, forbearance agreement and
6 amended forbearance agreement; doctrine of merger; one-action
7 rule.

8 So here's what the evidence does show, Judge. The
9 evidence shows and has been admitted to show that in 2010
10 Mr. Antos started a business relationship and ultimately
11 transferred the real property to the Antos trust.

12 In 2012, KCI Investments and -- entered into the
13 secured promissory note with CBC Partners. That's June of '12.
14 The note was guaranteed by the Antoses. The note was modified
15 a number of times, including modifications that added the
16 trust, on three separate occasions. Exhibit --

17 (Pause in the proceedings.)

18 THE COURT: Sorry.

19 MR. MUSHKIN: No problem.

20 THE COURT: Keep going.

21 MR. MUSHKIN: Exhibit 26 is the first modification
22 that references the trust.

23 Exhibit 34 authorizes the deed of trust.

24 And Exhibit 50 is a consent and reaffirmation and
25 even a release of any other prior problem, and it adds the -- I

1 want to make sure I give you the right cite -- the trust as a
2 creditor.

3 Court's indulgence just a second.

4 Yes. And that is Exhibit 50, Section 8, of the
5 agreement, applicable as though the trust were a credit party.

6 And, again, these are all documents -- this is about
7 2016 -- that happened well before Mr. Bloom arrives on the
8 site.

9 So the security agreement not only granted a security
10 interest in a settlement agreement but also concerned
11 representations and warranties and covenants of the Antos
12 parties, including that they would not sell or encumber the
13 property without further consent.

14 KCI was acquired by Preferred Brands International.
15 That's why you see their name that appears.

16 The note was assumed by Dixie, and the Antos party
17 continuing to guarantee the obligation.

18 On October 31st of '14, a seventh modification and
19 waiver of default was entered into. That's Exhibit 33.
20 Paragraph 18F of the seventh modification sets forth the living
21 trust and any amendments thereto. So the notion that there is
22 not adequate documentation or disclosure is clearly belied by
23 the documents themselves.

24 And then I think I've referenced that Exhibit 34 has
25 the certificate of trust which sets forth the specific

1 authority, and the certificate of trust provides various
2 representations and warranties regarding the effect and the
3 validity of the deed of trust.

4 We've talked about the other notes and deeds of trust
5 on the property, and I think it's important for the Court to
6 look at the two, if you will, smoking guns, Judge. It's the
7 July 17th email from Bloom. And it is a part of Exhibit 104,
8 specifically page thirty-six, eighteen. And it's pretty clear.
9 He invented this deal. SHAC is created to allow the --
10 facilitate him to pay off CBC I.

11 And most important, at the fourth to the last
12 paragraph,

13 My thought is that this proposal gets
14 the third lender a full recovery of its note
15 balance plus all protective advances, past
16 and future, interim cash flow and provides
17 interim additional full collateral where
18 given the current value of the property the
19 third-position lender is currently unsecured.

20 Mr. Bloom knew exactly what he was doing. He knew
21 that KCI was the lender. He designed this process, and now he
22 falsely testifies before this Court in an attempt to avoid
23 payment. Pure and simple.

24 As a part of the forbearance agreement, both the
25 original forbearance agreement and the amended forbearance

1 agreement, both the Antos parties and SJCV acknowledge the
2 debt, acknowledge that there were no defaults by CBC and
3 receive the benefit of the forbearance.

4 Mr. Bloom doesn't understand. He got what he
5 bargained for. He got possession of the house. He got
6 forbearance. And when the lender decided that a forbearance of
7 two years and another three months -- the whole thing is almost
8 three years because he took possession in August even though
9 the document isn't executed until September, and he doesn't
10 start paying until the first of the year because he gets
11 90 days for nothing, in spite of all of that time, he's not
12 ready to pay. March 31. And when he's told no more
13 extensions, now he starts making accusations.

14 The veracity of Mr. Bloom is what we have to deal
15 with, Judge. I appreciate that you wouldn't grant my 50(b)
16 motion. I went and read the case. And if you have to take a
17 look at Mr. Bloom and his veracity, 50(b) isn't the appropriate
18 remedy.

19 I probably shouldn't have questioned him at all, but
20 I did, and now he has proven himself to be untruthful over and
21 over, intentionally, again and again. It cannot be by
22 accident. His refusal to answer questions yes or no, his
23 attitude on the stand and gloating when I couldn't find KCI at
24 first. Oh, it wasn't in the document. Imagine that. Page 1,
25 paragraph A1, KCI, not Mr. Antos is the maker of the note, KCI.

1 Comes before this Court and lies within impunity.

2 So now we go through the documents. We get the
3 forbearance agreement executed. Again, they affirm no default.
4 They don't dispute the amount. The only dispute they have is
5 that somehow the trust was not allowed to give this collateral.

6 So now let's take a look at the pledge agreement
7 because the allegation is that they didn't sign it. Well, if
8 you look at that signature page, SHAC didn't sign it either.
9 It says SHAC, but it doesn't say SJCVC as manager. It says Jay
10 Bloom. Jay Bloom is the manager of SJCVC, not the manager of
11 SHAC. However, as the Court is well aware, under Nevada law
12 you can ratify these types of defects, and that's exactly what
13 they did first in the forbearance agreement, which had all of
14 this stuff attached to it, and then in the amended forbearance
15 agreement two years later. They acknowledge a hundred percent
16 pledge.

17 He comes before this Court and says, No, that's
18 legacy language.

19 Do you have any evidence of that?

20 No.

21 Got no evidence. This Court must deal with the
22 evidence before it. The evidence before it is Mr. Bloom didn't
23 tell the truth. Those agreements are binding.

24 Now, let's talk about First 100 just for a minute. I
25 took the time to go through email after email of Mr. Bloom

1 telling Mr. Hallberg that he was going to pay him, but somehow,
2 even though the document was executed -- everything will be
3 done next week. We sold this. We found this -- not a dime.
4 Not one dime has this man paid as contracted.

5 And I hope after all this evidence that you've heard,
6 Judge, it will put you in a position to grant summary judgment
7 for the Antos parties because the Antos parties didn't get
8 anything they bargained for. Zip. Mr. Bloom got what he
9 wanted.

10 No tax returns, no reports, no quiet title, no
11 repairs, the lien, the health and safety lien, over and over
12 again, item after item, no performance. And it's admitted. He
13 admits it. Didn't do it.

14 So the notices, Judge, Mr. Bloom received more than
15 the statutory notice that he's required. All that is required
16 of this loan is under the nonresidential portion because
17 Mr. Bloom is not the maker or the obligor, and he's the
18 occupant of the house. So we gave him the pre-notice pursuant
19 to 107, which was not required. We did put CBC I on that
20 notice because CBC I is the person that's on the note.

21 And I believe that it is clear that the notice of
22 default and election to sell contained the proper disclosure of
23 the assignment and that therefore the notice of default and
24 election to sell are proper under 108.

25 And this party has received adequate notice. They've

1 provided you no evidence to the contrary.

2 And I want to just touch base on two things, Judge.
3 First, we started this case because they wanted a TRO and
4 preliminary injunction to stop an eviction that hadn't been
5 started. They had received a notice, and the notice predated
6 Emergency Directive 008, but it did overlap, no question about
7 it. The directive came out about a week or 10 days afterwards.
8 And so the Court entered that order that said you can't evict
9 him. And I appreciate that, Judge, but there wasn't on
10 eviction proceeding pending.

11 Then they came back before you and sought to have the
12 foreclosure enjoined, and I believe your exact information was
13 that Mr. Mushkin knows how to start a foreclosure, and I'm not
14 enjoining the foreclosure. And when he does start the
15 foreclosure, you can come back.

16 I did start the foreclosure, and we've come back.

17 THE COURT: Darn.

18 MR. MUSHKIN: Darn. The governor allowed us to go
19 forward at long last.

20 And so, Judge, I think you have been more than
21 generous. You have let these people stay in this house by
22 posting a thousand dollar bond and paying zero on the third,
23 zero. You required them to pay the first and the second. They
24 were required under contract after March 31st to do that, and
25 you've let them stay there, and they have paid us bubkes.

1 And interestingly enough, now they come before you
2 and they want to say we don't owe the money. At least I think
3 that's what they want to say.

4 Or maybe what they want to say, Judge, is they owe
5 it, but they don't want to pay it.

6 Or maybe what they're saying, Judge, is they owe it
7 but not against the house and only against their cockamamie
8 judgment that they've been telling people all over town that
9 they're going to collect to billions, and they got zip.

10 And I apologize if I get exercise, Judge. I've been
11 42 years practicing law, and never in my career have I seen
12 anyone testify intentionally falsely like this before, never,
13 in the face of documents, in the face of contradictory
14 witnesses, never.

15 The conclusions of law that we are asking for the
16 Court is that they have not met their standard for preliminary
17 injunction. 31.010 sets it out. They haven't even sniffed it,
18 Judge.

19 When a document is clear and unambiguous
20 on its face, the Court must construe it from
21 the language therein.

22 *Southwest Trust Mortgage Company versus K&B Door.*
23 That's a 1988 case, Judge.

24 They have given you no opportunity to do anything but
25 enforce these contracts. They haven't provided you a scintilla

1 of evidence that would lead to any other conclusion.

2 The Court has no power to create a new
3 contract or new duties for the parties which
4 they have not created or intended themselves.
5 That's *Old Aztec Mine versus Brown*. That's a 1981
6 case.

7 And the parties are free to contract,
8 and the courts will enforce the contracts if
9 they are not unconscionable, illegal or in
10 violation of public policy.

11 That's *Rivera versus Rivero* -- I'm sorry. *Rivero*
12 *versus Rivero*. And that's a 2009 case.

13 The Nevada Supreme Court has held in *Pioneer Title*
14 that

15 It is not proper function of a court to
16 rewrite or distort a contract under the guise
17 of judicial construction. But when all --
18 the law will not make a better contract for
19 the parties than they themselves have seen
20 fit to enter into, nor alter it for the
21 benefit of one party and to the detriment of
22 the other. The judicial function of a court
23 of law is to enforce the contract as it is
24 written.

25 *Pioneer Title versus Cantrell*. That's a 1955 case.

1 The relevant documents, including but not limited to
2 the 2017 forbearance agreement and the amended forbearance
3 agreement dated December of '19 are clear and unambiguous as a
4 matter of law. They have not even alleged that they were
5 ambiguous. The only allegation is that somehow SJCVC didn't
6 sign the pledge agreement, not that it didn't say what it said,
7 just that somehow they didn't sign it. I submit to the Court
8 they did sign it, Judge. Jay Bloom signed it.

9 There's no evidence to show you that the note isn't
10 secured by the property. It clearly is.

11 The plaintiffs have waived any defects on two
12 occasions, first in the forbearance agreement and then in the
13 amended forbearance agreement.

14 They now come before you and say that CBC was in
15 default, but they can -- they have no proof of it. CBC
16 provided you through my office evidence of checks from January,
17 February and March of 2020. Mr. Bloom has not provided you
18 checks to show payment for those months. He told you that, but
19 he didn't do it.

20 He told you he was going to abide by your order, but
21 he didn't do it. You held him in contempt for failure to pay
22 timely. Seems like a repetitive theme here, Judge.

23 Plaintiff agreed in the 2017 forbearance agreement to
24 pay the amounts in question by a separate promise to the Antos
25 parties. That's Exhibit 1 and Exhibit 16. They have provided

1 you know defense to that obligation.

2 Your Honor, NRS 107.400 through 107.560 was codified
3 by Senate Bill 321 on March 18th of 2013, the Homeowner's
4 Bill of Rights. It does not apply to this transaction. The
5 owner of the property is not living in the house. Pure and
6 simple.

7 The doctrine of merger provides that

8 Whenever a greater and a less estate
9 coincide and meet in one and the same person
10 without any intermediate estate, the less is
11 immediately merged into the greater and thus
12 annihilated.

13 And that is 31 CJS Estate, Section 153.

14 Your Honor, that is exactly the code section that
15 shows that their allegation of merger is false. There is no
16 merger. There is no legal title that has been consumed as a
17 matter of law. Legal title has always been in SHAC. The only
18 interest that CBC took was in stock, and CBC was never the
19 holder of the note. The holder of the note was either CBC I or
20 after the assignment 5148. But there's no evidence to show
21 that either of those entities has any interest in the property
22 either by way of stock or equity. Thus the doctrine of merger
23 does not apply.

24 And I cite in my proposed findings several cases for
25 the Court:

1 *Citizens State Bank versus Countrywide*. That's an
2 Indiana case.

3 And the Nevada courts have held similarly to the
4 Indiana courts in the *Aladdin Heating Corp. versus Trustees of*
5 *Central States*. That's 93 Nevada 257, a '77 case. In that
6 case the appellants argued that the respondents could not
7 foreclose on their deed of trust because that deed had been
8 extinguished by merger. When the respondents received the deed
9 of sale, the court held that a merger had not occurred for two
10 reasons: The party did not intend for the merger to take
11 place, and the interests that said to merge were not
12 coextensive and commensurate. They don't have facts for merger
13 here. Pure and simple. They've never made a statement --
14 they've never been able to show it. They haven't shown it by
15 way of this evidence, Judge.

16 The one-action rule, very quickly, Judge, has been
17 waived. And we cited the *Bonnecamp* (phonetic) case because the
18 one-action rule doesn't get you out from under the note. The
19 one-action rule requires that you get credit for whatever you
20 get. So if the creditor sues the debtor personally on the
21 debt, the debtor may then either assert the one-action rule,
22 forcing the creditor to proceed against the security first
23 before seeking a deficiency from the debtor; or decline to
24 assert the one-action rule, accepting a personal judgment and
25 depriving the creditor of its ability to proceed against the

1 security. That's again NRS 40.435, Section 3, and this
2 *Bonnecamp* case. Those facts do not exist here, Judge. Pure
3 and simple. They do not have a case for the one-action rule.
4 For one, it was waived in writing. And, two, it does not get
5 them out from under it.

6 And I show you in 6.21 where the deed of trust
7 specifically talks about NRS 40.430 and allows for the waiver
8 of that.

9 And then we talked about cumulative remedies, Judge,
10 and that's in the forbearance agreement, Section 25.

11 And I'm hoping, Your Honor, that you will conclude as
12 a matter of law that the plaintiffs have not established facts
13 or law to support the claim of the one-action barring recovery
14 under the defaulted note and security documents. It simply
15 does not.

16 Judge, it's kind of interesting what they come before
17 this court and ask you to do. They want to steal the house.
18 They don't want to pay. It's preposterous. They ignore the
19 promises to the Antos parties, focus solely on this mythical
20 defense to the note and deed of trust. Mr. Antos doesn't claim
21 a defense to the note and deed of trust. They want to claim a
22 defense after they entered into a forbearance agreement where
23 they promised to pay.

24 They were provided a preliminary title report. It
25 showed the first. It showed the second. It showed the third,

1 and it showed all those goofy judgments, but they didn't do
2 what they contracted. They didn't file a quiet-title action.
3 They didn't adequately maintain the house. They didn't pay the
4 real estate taxes. They didn't take care of the HOA lien.
5 They didn't do what they contracted for in the forbearance
6 agreement, in the amended forbearance agreement and the
7 operating agreement. They simply ignored it.

8 And, Judge, the temerity of this is beyond pale. I
9 am stunned that when they are finally, after the negotiations
10 break down and we finally go into them and say okay, March
11 31st, that's it, we're not granting any more extensions to
12 the forbearance agreement, can't be a default. Can't be a
13 default even though the document says this is limited relief.
14 The forbearance agreement only forebears certain defaults. You
15 still have to do this. You still have to do that. You still
16 have to provide the information. And the attorneys write the
17 letter. Can't be in default. It's unbelievable. It is
18 absolutely unbelievable, Judge.

19 Respectfully, Your Honor, I think, as you said, we're
20 going to stop beating this dead horse. This -- this witness
21 lied to you over and over. And, Judge, you should be as angry
22 as I am.

23 Thank you very much for your time, Judge.

24 THE COURT: Thank you, Mr. Mushkin.

25 Mr. Gutierrez.

REBUTTAL ARGUMENT FOR THE PLAINTIFFS

MR. GUTIERREZ: Thank you, Judge.

I think the relief the defendants are asking the Court to make is a clear violation of the automatic stay. The first thing that Mr. Mushkin requested was for this Court to deny the preliminary injunction -- that would affect SHAC, the debtor and its properties, the 5148 house -- and vacate the pending TRO in place. To take action directly would violate the stay, which affects SHAC, is exactly the request, the relief that Mr. Mushkin asked this Court.

We'll be seeking relief in front of the bankruptcy court on violation of the stay, and we believe that's a clear violation.

And exactly what I pointed out earlier today is we can't go forward on this because of that. That's exactly what this whole case is about is about the Spanish Heights Acquisition Company property, the defenses to foreclosure that were raised, there was a stay in place, and now the exact action is to -- there's no way to parse it -- to remove any order from this Court that was in here previously to allow foreclosure to proceed. It's clear what the defendant's actions and intent --

THE COURT: So your position is that regardless of what factual findings I enter I can't vacate the injunction because of how the injunction is currently framed?

1 MR. GUTIERREZ: That's exactly it, Your Honor.

2 THE COURT: Okay. I just wanted to make sure it was
3 clear on the record what you were saying.

4 MR. GUTIERREZ: That's exactly it. Thank you.

5 MR. MUSHKIN: And, Your Honor, I'd like to address
6 that issue at some point.

7 THE COURT: In a little bit. I've got to let him go.

8 MR. MUSHKIN: No. No. Thank you.

9 MR. GUTIERREZ: Thank you.

10 Judge, the defendants want a clear path to move
11 against the debtor's property. You hit the nail on the head as
12 far as what the position is. That's why we believe we couldn't
13 go forward today.

14 Your Honor, there was some other issues raised by
15 Mr. Mushkin. The first of which, and he keeps raising this,
16 was that my firm was counsel for First 100 and also counsel on
17 this transaction in 2017 because we were CCed on an email.
18 Well, Mr. Bloom clearly testified the reason I was CCed on an
19 email was because, as counsel for First 100 and one of the lead
20 attorneys out of the nine other firms that are helping on
21 collecting on this judgment, I was the one in charge with
22 making sure that if anything was collected pursuant to the
23 security agreement they would be paid. That's why I was being
24 CCed. Mr. Bloom clearly testified about that.

25 But Mr. Mushkin has other ideas that Mr. Bloom

1 perjured himself by saying I wasn't counsel. Well, where's my
2 emails with Bernie Nelson on these transactions? There are
3 none. That is clearly a red herring, Your Honor. There is
4 zero relevance for this, but I wanted to make sure the record
5 is clear because Mr. Bloom clarified that during his
6 examination.

7 Mr. Mushkin also said that Mr. Bloom's testimony was
8 a moving target, and he said, quote, "He knew it was a
9 commercial transaction when he testified in May of 2020." But
10 again he doesn't provide a cite. He just makes it up. He just
11 kind of pulled it out of thin air and say you said it, and if
12 you deny it, well, then I'm just going to leave that out there.
13 This is repeated conduct by counsel to make a statement with no
14 factual assertion and nothing to back it up. There is nothing
15 that shows that Mr. Bloom knew this was a commercial
16 transaction in May of 2020.

17 But the evidence showed that CBC sold its note to
18 5148. That was only found out after the litigation started.
19 When we were here in front of Your Honor on the TRO, we found
20 out about it.

21 There's a lot of things that were found out during
22 the first time during this because none of the documents were
23 provided to Mr. Bloom. That was clear today. Mr. Hallberg
24 agreed. Listen, we didn't provide the loan documents to
25 Mr. Bloom. We didn't provide the 10 amendments to Mr. Bloom.

1 So there's certain things that were discovered during the
2 course of this litigation that were never previously disclosed.

3 Your Honor, counsel also used an analogy about owning
4 MGM stock and how that wouldn't apply if he had some type of
5 loan and the merger doctrine wouldn't apply. That analogy
6 doesn't apply at all because the merger doctrine is a real
7 property construct. It doesn't have to do with this personal
8 debt. So it's a real property construct, and that analogy
9 regarding MGM stock and potentially having a loan and that
10 would extinguish does not apply in this scenario, Your Honor.

11 And, Your Honor, I think it's pretty -- if the Antos
12 trust was added as an additional borrower or guarantor, we
13 wouldn't be here. The fact of the matter is it's undisputed;
14 they were never added to the note. They were never added to
15 the amendments. It was always with the Antoses individually.
16 That testimony is clear. And it's undisputed.

17 And you start to look at, okay, if that's the case
18 well, then what's the validity of this third deed of trust?
19 You know, now that -- what is it actually securing? What debt
20 does the Antos trust have that own the property that's actually
21 security? That was never -- counsel and the defense never was
22 able to articulate exactly that. They've been trying to parse
23 things together when (indiscernible) the documents, when you
24 review them, show that there was a commercial loan to KCI that
25 was guarantor -- guaranteed by the Antoses individually for

1 several years. And it was only towards the end when they try
2 to add this as some type of guarantee, and the documents do not
3 support them.

4 So, Your Honor, given that, I think we've made our
5 position clear on the legal issues and our position as far as
6 the effect of this hearing. And, Your Honor, we'll
7 (indiscernible), but if you have any questions, Your Honor, you
8 wanted to ask, I'd be happy to answer.

9 THE CLERK: No. You answered my questions earlier.

10 MR. MUSHKIN: Thank you.

11 THE COURT: Mr. Mushkin, you wanted to be heard
12 related to whether a vacating -- or I'm sorry, a modification
13 of the current existing preliminary injunction may violate the
14 bankruptcy stay.

15 **REBUTTAL ARGUMENT FOR THE DEFENSE**

16 MR. MUSHKIN: So, Your Honor, it will not, and here's
17 why. The bankruptcy stay is in place. So anything that's done
18 by this Court will have no effect.

19 THE COURT: Well --

20 MR. MUSHKIN: One thing Mr. --

21 THE COURT: I don't think you understand. I'm not
22 allowed to do anything that may violate the bankruptcy stay as
23 well --

24 MR. MUSHKIN: That's correct, Your Honor.

25 THE COURT: -- which means that if I vacate an order

1 that directly affects Spanish Heights Acquisition, the debtor
2 in bankruptcy, means that I would be in trouble too.

3 MR. MUSHKIN: I would agree with that except Spanish
4 Heights Acquisition Company is not a party to the agreements.
5 The agreements are between --

6 THE COURT: They're a party to my preliminary
7 injunction.

8 MR. MUSHKIN: You're right, Judge. But if your
9 preliminary injunction is based upon facts that are false, then
10 your preliminary -- your TRO, there is no preliminary
11 injunction, which should expire of its own accord, will expire
12 of its own accord.

13 So what I'm asking you to do is deny the preliminary
14 injunction. The TRO expires of its own accord. I may have
15 spoken a little in a -- a little off.

16 THE COURT: I understand what you're saying.

17 MR. MUSHKIN: Yes. So and because the bankruptcy
18 stay is in place, you are not impacting the estate. The estate
19 has a stay. They're protected.

20 Counsel is correct. I am trying to get a straight
21 line to foreclose. And as soon as I get the relief that I need
22 from the bankruptcy court, then I'll have that ability to go
23 forward. That relief will have to go through the bankruptcy
24 court, not through this Court, but your TRO should expire.

25 Your Honor, I am troubled that they stand before you

1 and say they didn't know when the first page of the forbearance
2 agreement says KCI. That's a real problem for me, Judge.

3 And my analogy about MGM is pretty simple. The bonds
4 of MGM are secured by their real property. The stock of the
5 company which owns that real property is the exact analogous
6 situation to here. If I were a stockholder in MGM and a
7 bondholder at MGM, oh, merger. That doesn't happen, Judge.
8 Major institutions play both sides.

9 And, finally, this notion that they can come before
10 you and say that the trust wasn't added as a borrower and the
11 trust wasn't added as a party, Your Honor, I cited the
12 documents, 34 and 50. And let's see if I can -- 26, 34 and 50.
13 And those all took place well before Mr. Bloom comes onto the
14 site. It's way before him by -- the last document I think is
15 11 months before him, and the other ones are years before him.
16 It is simply false testimony and false argument. The trust is
17 a party to the note and deed of trust. The party did give the
18 deed of trust. It was specifically authorized by the trustees.
19 And it's just not even at issue. I'm stunned that they make
20 such a specious argument.

21 And I thank you again for your time, Judge.

22 THE COURT: Mr. Gutierrez, anything else you'd like
23 to add?

24 MR. GUTIERREZ: No, Your Honor. Thank you.

25 THE COURT: The matter will stand submitted.

1 Put it on my chambers calendar for Friday.

2 I don't know if I'll get it done by Friday, but I'm
3 going to do my best.

4 If anybody hears something from the bankruptcy court,
5 please send a copy to Dan.

6 MR. GUTIERREZ: Thank you, Judge.

7 MR. MUSHKIN: Thank you very much, Your Honor.

8 THE COURT: Everybody be well.

9 (Proceedings concluded at 3:21 p.m.)

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CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

DANA L. WILLIAMS
LAS VEGAS, NEVADA 89183

A handwritten signature in dark ink that reads "Dana L. Williams". The signature is written in a cursive, flowing style. Below the signature is a solid horizontal line.

DANA L. WILLIAMS, TRANSCRIBER

03/16/2021

DATE

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BY MR. GUTIERREZ:	'	2010 [1] 63/9	7	45/1 45/5 50/14 50/15
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25/22 29/11 38/3	'14 [3] 4/2 47/19 64/18	2013 [1] 73/3	8	51/5 51/25 53/3 56/4
BY MR. MUSHKIN:	'14 and [1] 47/19	2014 [2] 47/21 48/6	8.3 [1] 9/8	56/4 57/10 57/11 60/14
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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA (LAS VEGAS)

IN RE: . Case No. 21-10501-nmc
.
SPANISH HEIGHTS . Chapter 11
ACQUISITION COMPANY, LLC, .
. 300 Las Vegas Blvd. South
. Las Vegas, NV 89101
Debtor. .
. Monday, March 22, 2021
. 10:30 a.m.
.

TRANSCRIPT OF ORAL RULING RE: FIRST MOTION TO DISMISS CASE
WITH CERTIFICATE OF SERVICE FILED BY MICHAEL R. MUSHKIN
ON BEHALF OF 5148 SPANISH HEIGHTS, LLC [17]
BEFORE THE HONORABLE NATALIE M. COX (VIA TELECONFERENCE)
UNITED STATES BANKRUPTCY COURT JUDGE

TELEPHONIC APPEARANCES:

For the Debtor: Greene Infuso, LLP
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1 (Proceedings commence at 10:30 a.m.)

2 THE CLERK: Good morning. This is Benji Rawling
3 speaking from the courtroom. We are now on record on the --
4 pardon me -- Judge Natalie M. Cox's 10:30 calendar. The matter
5 on calendar is in regards to Spanish Heights Acquisition
6 Company, LLC, Case Number 21-10501. May we have an appearance,
7 or appearances, in the matter.

8 MR. GREENE: This is James Greene for the
9 debtor-in-possession, and I believe my client representative,
10 Jay Bloom, is also on the line.

11 MR. MUSHKIN: Morning. This is Mike Mushkin, Bar
12 Number 2421. I'm here on behalf of movant.

13 MS. GANDARA: And this is Andrea Gandara appearing on
14 behalf of City National Bank.

15 MS. GRIFFITH: Good morning. This is Blakeley
16 Griffith on behalf of Northern Trust.

17 THE COURT: Good morning, everyone. I think we've
18 obtained all of the appearances. Is there anything that we
19 need to discuss before I give my oral ruling?

20 MR. MUSHKIN: Your Honor, the only thing that might
21 be relevant is the representation by the debtor that the
22 investor member had funds necessary to reorganize. We've
23 received a cash call about a week or ten days ago, maybe two
24 weeks, from Mr. Bloom, which contradicts the declaration that
25 was made to the Court because he sought capital from the



1 non-investor member. Aside from that, Judge, we're ready to
2 go.

3 THE COURT: That's Mr. Mushkin speaking, correct?

4 MR. MUSHKIN: Yes, Your Honor. I'm sorry for not
5 identifying myself.

6 MR. GREENE: Your Honor, this is James Greene. I do
7 have one quick point. The -- we filed a motion Friday
8 regarding what we believe was the violation of the automatic
9 stay with the litigation -- hearing in the litigation, state
10 court litigation proceeding on the 15th, which is last week.
11 The motion speaks for itself. I just want to make sure the
12 court was aware that that motion had been filed. I'm not going
13 to argue anything about it, just wanted to note the fact that
14 it had been filed on Friday.

15 THE COURT: Okay. All right, thank you.

16 MR. MUSHKIN: Your Honor, obviously, our position is
17 that nothing could be further from the truth.

18 THE COURT: And I'm not going to be considering it at
19 all. I've not even seen it, so I'm not going to be giving any
20 type of opinion with respect to that motion. But I am going to
21 go forward with my oral ruling in the motion to dismiss, or
22 motion for stay relief that was filed at ECF Number 17, filed
23 by 5148 Spanish Heights, LLC, which I'm just going to refer to
24 in the decision as "movant."

25 And in that motion, the movant requested dismissal of



1 the Chapter 11 case under 11 U.S.C. Sections 1112(b)
2 (indiscernible) movant asked for relief from the automatic stay
3 under 11 U.S.C. Sections 252(b)(1), (2), and (3). I'm going to
4 first address the request for dismiss.

5 Section 1112(b)(1) states, in pertinent part, that on
6 request of a party in interest, and after notice and a hearing,
7 the court shall convert a case under this chapter, whichever is
8 in the best interest of creditors and the estate, for cause.

9 Section 1112(b)(4) provides a non-exclusive list of
10 factors that constitute cause.

11 As movant correctly argues, the debtor does not --
12 and the debtor does not dispute a bad faith bankruptcy filing
13 may also constitute cause under Section 1112(b). Movant
14 alleges that debtor's bankruptcy filing is a product of bad
15 faith and must be dismissed for cause. Encompassed within
16 movant's allegations is that this bankruptcy case was filed to
17 thwart a two-party dispute between it and the debtor.

18 Movant bears the burden of establishing cause by a
19 preponderance of the evidence. In its motion, movant
20 identifies and focuses on five factors cited in In re St. Paul
21 Self Storage Ltd. Partnership -- That is a BAP -- 9th Circuit
22 BAP case from 1995 -- in support of its bad faith argument.
23 The only factor on which movant has arguably satisfied its
24 burden is the first one, i.e. whether the debtor has only one
25 asset. Debtor's amended Schedule A/B at ECF Number 53



1 identifies approximately \$61 in a checking account and some
2 furniture valued at \$17,200, but the main asset debtor holds is
3 the real property located at 5148 Spanish Height Drive, Las
4 Vegas, Nevada, which movant asserts an interest. Debtor has
5 not satisfied its burden on the other four factors on which it
6 focuses.

7 Movant relies on counsel's declaration in support of
8 its order shortening time, in which counsel asserts in a
9 conclusory fashion that there is no record before the Court
10 that there is a legitimate business operation relating to
11 debtor's ownership of the property. That's at ECF Number 20,
12 Paragraph 11.

13 Yet debtor's schedules and SOFA, at ECF Numbers 52 to
14 54, signed under penalty of perjury lists a lease with SJC
15 Ventures, LLC, a tenant, and correction one to debtor's amended
16 SOFA (indiscernible) \$29,421.90 in revenue from SJC for the
17 period from January 1st, 2021 to February 3rd, 2021, the
18 petition date. This provides some admissible evidence of a
19 legitimate business operation that essentially did not overcome
20 the movant's counsel's conclusory statements in a declaration
21 filed in support of an order shortening time.

22 The third factor is whether debtor has any unsecured
23 creditors. Debtor's amended Schedule E/F at ECF Number 52,
24 again signed under penalty of perjury, lists 18 creditors with
25 aggregate claims of \$1,721,483.68, and movant has not presented



1 the Court with any admissible evidence to overcome this
2 admissible representation.

3 The fourth factor is whether debtor has any cash flow
4 or sources of income to sustain a plan of reorganization or
5 make adequate protection payments. As previously noted,
6 question one to debtor's SOFA identifies revenue from SJC, i.e.
7 debtor's tenant on its real property. With supplemental
8 declaration at ECF Number 52, Jay Bloom avers that are on
9 March 2nd, 2021, SJC also provided debtor with a capital
10 contribution of \$51,000. In that same declaration, Jay Bloom
11 attests in Paragraph 22 through 24 regarding debtor's payment
12 of what he deemed to be adequate protection payments to two
13 other lienholders and a payment for an insurance policy.
14 Again, movant has not provided admissible evidence to satisfy
15 its duty to show otherwise as to the fourth factor.

16 The fifth factor is whether this case involved a
17 two-party dispute. Movant itself concedes that there are deeds
18 of trust held by two other lienholders, i.e. City National Bank
19 and Northern Trust. Debtor's schedules also identify liens
20 held by the Spanish Hills Community Association and the Clark
21 County Treasurer. Debtor's schedules also identify 18
22 unsecured creditors. Therefore, this is not a case that on
23 involves a two-party dispute. For these reasons, I find and
24 conclude that movant has failed to sustain its burden to show
25 cause under Section 1112(b) to dismiss or convert the case.



1 Although not highlighted as a basis for dismissal,
2 movant also appears to allege that debtor did not have the
3 authority to file this bankruptcy case pursuant to Paragraph
4 6.01(f) of its operating agreement, which states at Subsection
5 9 that the manager may not take any of the following actions
6 without the prior approval of the seller's members
7 (indiscernible) CBC Partners: Cause a material change in the
8 strategic direction or nature of the business of the company
9 unless such action results in the satisfaction of the lender's,
10 CBC Partners, receivable secured by the property.

11 This statement in the operating agreement is likely
12 insufficient to prohibit debtor from filing a bankruptcy case
13 without its lender's prior approval. But even if it did, such
14 a prohibition would be violative of federal policy and
15 unenforceable. The case of In re Lake Michigan Beach
16 Pottawattamie Resort, LLC (Bankr. N.D. Ill. 2016), as well as
17 In re Bay Club Partners-472, LLC, (Bankr. D. Or. May 6, 2014),
18 are -- would illustrate the federal policy that I just
19 mentioned.

20 Regarding the (audio interference), movant asks for
21 relief under Sections 362(d)(1), (2), and (3). In a hearing
22 under Section 362(d) concerning relief from stay of an act
23 under Subsection (a) of this section: one, the party
24 requesting such relief has the burden of proof on the issue of
25 the debtor's equity in property; and two, the party opposing



1 such relief has the burden of proof on all other issues. The
2 movant must first establish a prima facie case, however, that
3 cause exists for relief under Section 362(d)(1). So although
4 the debtor has the ultimate burden of proof on the cause issue,
5 the movant must provide some evidence in the first instance to
6 support the cause allegation.

7 With respect to Section 362(d)(2)(B), in the early
8 stage of the case, the burden of proof is satisfied if the
9 debtor can offer sufficient evidence to indicate that a
10 successful reorganization within a reasonable time is
11 plausible. Near the expiration of the exclusivity period, the
12 debtor must demonstrate that a successful reorganization within
13 a reasonable time is probable. After the expiration of the
14 exclusivity period, the debtor must offer sufficient evidence
15 to indicate that a successful reorganization within a
16 reasonable time is assured. Regardless of the amount of time a
17 case has been pending, if the evidence indicates that a
18 successful reorganization within a reasonable time is
19 impossible, the Court must grant relief from stay.

20 As for movant's request for stay relief pursuant to
21 Section 362(d)(3), movant has not presented a prima facie case
22 that Section 362(d)(3) applies. Section 101(51B) defines a
23 single asset real estate case as -- I'm sorry, single asset
24 real estate as "property constituting a single property or
25 project, other than residential real property with fewer than 4



1 residential units, which generates substantially all of the
2 gross income of a debtor who is not a family farmer and on
3 which no substantial business is being conducted by a debtor
4 other than the business of operating the real property and
5 activities incidental thereto."

6 Debtor did not identify itself as a single asset real
7 estate debtor in its bankruptcy petition. Movant has not
8 presented a prima facie case that debtor's real property is
9 anything other than a residential property that contains four
10 or less residential units, which disqualifies it from being a
11 single asset real estate debtor.

12 Section 362(d)(2) -- regarding Section 362(d)(2),
13 movant has satisfied its burden regarding lack of equity. I
14 find and conclude that debtor has satisfied its burden in this
15 early stage of the case to show that a reorganization is
16 plausible. Debtor has presented admissible evidence
17 identifying a stream of revenue and/or capital infusion from
18 SJC, as well as payments for secured creditors whose liens
19 debtor does not dispute.

20 Regarding Section 362(b)(1), movant alleges bad faith
21 and a lack of adequate protection. However, movant has not
22 presented a prime facie case of bad faith for all the reasons
23 previously discussed. Movant has also not provided any
24 evidence to indicate that the value of its interest in the
25 collateral is depreciating in value, especially in the face of



1 debtor's admissible evidence that it has sent what it deems to
2 be adequate protection payments to other senior lienholders.

3 "When adequate protection is required under Section
4 362 of the Bankruptcy Code, such adequate protection
5 must be provided by:

6 "(1) requiring the trustee" -- or in this case, the
7 debtor-in-possession -- "to make periodic cash
8 payments to such entity, to the extent that the stay
9 under Section 362 of this title results in a decrease
10 in the value of such entity's interest in such
11 property."

12 "Adequate protection is provided to safeguard the
13 creditor against depreciation of the value of its
14 collateral during the reorganization process. If the
15 value of the collateral decreases, the creditor is
16 entitled to cash payments so that the value of its
17 interest in the collateral remains constant. Thus,
18 the amount by which the collateral depreciates is the
19 amount of adequate protection to which the secured
20 creditor is entitled. As the Supreme Court explained
21 in Timers, adequate protection payments cannot be
22 used to compensate the creditor for lost interest or
23 to provide lost opportunity costs."

24 For all of these reasons, I deny debtor's motion to
25 dismiss -- I'm sorry, not debtor's -- I deny movant's motion to



1 dismiss or for stay relief without prejudice. With respect to
2 the City National Bank joinder to the motion, supported only by
3 counsel's declaration, although it is not necessarily
4 required -- a motion requesting -- it's not a motion requesting
5 affirmative relief, to the extent necessary, it is also denied
6 without prejudice.

7 Mr. Greene, I would like for you to prepare the order
8 and reference my oral ruling.

9 MR. GREENE: I will do that, Your Honor, and
10 circulate it to all counsel and then submit it when it's
11 approved.

12 THE COURT: Okay. All right, thank you.

13 Is there anything else that we need to cover?

14 MR. MUSHKIN: Yes, Your Honor.

15 MR. GREENE: No, Your Honor.

16 MR. MUSHKIN: You haven't addressed the state court
17 action in any way. Is the judge still enjoined or may the
18 judge complete her findings in that case and bring it to you
19 for further relief?

20 THE COURT: I have denied the stay relief that your
21 client requested, so the stay is still in place.

22 MR. MUSHKIN: Thank you, Your Honor.

23 MR. GREENE: Thank you, Your Honor.

24 THE COURT: All right, thank you.

25 (Proceedings concluded at 10:46 a.m.)



C E R T I F I C A T I O N1
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I, Alicia Jarrett, court-approved transcriber, hereby
certify that the foregoing is a correct transcript from the
official electronic sound recording of the proceedings in the
above-entitled matter.

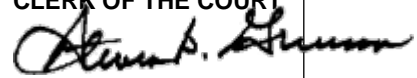
Alicia J. Jarrett

ALICIA JARRETT, AAERT NO. 428

DATE: March 26, 2021

ACCESS TRANSCRIPTS, LLC





1 FFCL

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3 **DISTRICT COURT**

4 **CLARK COUNTY, NEVADA**

5 SPANISH HEIGHTS ACQUISITION
6 COMPANY, LLC, a Nevada Limited Liability
7 Company; SJC VENTURES HOLDING
8 COMPANY, LLC, d/b/a SJC VENTURES,
9 LLC, a Delaware Limited Liability Company,

Case No. A-20-813439-B

Dept. No.: XI

10 Plaintiffs,

11 v.

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

12 CBC PARTNERS I, LLC, a foreign Limited
13 Liability Company; CBC PARTNERS, LLC, a
14 foreign Limited Liability Company; 5148
15 SPANISH HEIGHTS, LLC, a Nevada Limited
16 Liability Company; KENNETH ANTOS AND
17 SHEILA NEUMANN-ANTOS, as Trustees of
18 the Kenneth & Sheila Antos Living Trust and
19 the Kenneth M. Antos & Sheila M. Neumann-
20 Antos Trust; DACIA, LLC, a foreign Limited
21 Liability Company; DOES I through X; and
22 ROE CORPORATIONS I through X,
23 inclusive,

24 Defendants.

25 5148 SPANISH HEIGHTS, LLC, a Nevada
26 limited liability company; and CBC
27 PARTNERS I, LLC, a Washington limited
28 liability company,

Counterclaimants,

v.

SPANISH HEIGHTS ACQUISITION
COMPANY, LLC, a Nevada Limited Liability
Company; SJC VENTURES, LLC, a Delaware
limited liability company; SJC VENTURES
HOLDING COMPANY, LLC, a Delaware
limited liability company; JAY BLOOM,
individually and as Manager, DOE

1 DEFENDANTS 1-10; and ROE
2 DEFENDANTS 11-20,
3 Counterdefendants.

4 FINDINGS OF FACT AND CONCLUSIONS OF LAW

5 This matter having come on for preliminary injunction and consolidated non-jury trial on
6 related issues pursuant to NRCP 65(a)(2)¹ before the Honorable Elizabeth Gonzalez beginning
7 on February 1, 2021, February 2, 2021 , February 3, 2021,² and March 15, 2021; Plaintiffs
8 SPANISH HEIGHTS ACQUISITION COMPANY, LLC, (“Spanish Heights”)³ and SJC
9 VENTURES HOLDING COMPANY, LLC, d/b/a SJC VENTURES, LLC (“SJCVC”) appearing
10 by and through their representative Jay Bloom and their counsel of record JOSEPH A.
11 GUTIERREZ, ESQ. and DANIELLE J. BARRAZA, ESQ. of the law firm of MAIER
12

13
14
15 ¹ Pursuant to NRCP 65(a)(2), the parties have stipulated that the following legal issues surrounding the
16 claims and counterclaims are advanced for trial to be heard in conjunction with the hearing on the preliminary
17 injunction hearing:

- 18 a) Contractual interpretation and/or validity of the underlying “Secured Promissory Note” between
19 CBC Partners I, LLC, and KCI Investments, LLC, and all modifications (Counterclaim First, Fourth,
20 Ninth, and Twelfth Claim for Relief);
21 b) Interpretation and/or validity of the claimed third-position Deed of Trust and all modifications
22 thereto, and determination as to whether any consideration was provided in exchange for the Deed of Trust
23 (Counterclaim First, Fourth, Ninth, and Twelfth Claim for Relief);
24 c) Contractual interpretation and/or validity of the Forbearance Agreement, Amended Forbearance
25 Agreement and all associated documents/contracts (Counterclaim First, Fourth, Ninth, and Twelfth Claim
26 for Relief);
27 d) Whether the Doctrine of Merger applies to the claims at issue (Amended Complaint Fourth,
28 Seventh Cause of Action); and
e) Whether the One Action Rule applies to the claims at issue (Amended Complaint Third Cause of
Action).

The injunctive relief claims are contained in the Amended Complaint Sixth Cause of Action.

² The Court was advised on February 3, 2021, that Spanish Heights filed for bankruptcy protection. The
Court suspended these proceedings and stayed the matter for 30 days as to all parties for Defendants to seek relief
from the stay. As no order lifting the stay has been entered by the Bankruptcy Court, nothing in this order creates
any obligations or liabilities directly related to Spanish Heights; however, factual findings related to Spanish Heights
are included in this decision. The term “Plaintiffs” as used in these Findings of fact and Conclusions of Law is not
intended to imply any action by this Court against the debtor, Spanish Heights.

³ As a result of the bankruptcy filing, Spanish Heights did not participate in these proceedings on March 15,
2021.

1 GUTIERREZ & ASSOCIATES and Defendants CBC PARTNERS I, LLC, CBC PARTNERS,
2 LLC, appearing by and through its representative Alan Hallberg (“Hallberg”); 5148 SPANISH
3 HEIGHTS, LLC, KENNETH ANTOS and SHEILA NEUMANN-ANTOS, as Trustees of the
4 Kenneth & Sheila Antos Living Trust and the Kenneth M. Antos & Sheila M. Neumann-Antos
5 Trust; DACIA, LLC, (collectively “Defendants”) all Defendants appearing by and through their
6 counsel of record MICHAEL R. MUSHKIN, ESQ. and L. JOE COPPEDGE, ESQ. of the law
7 firm of MUSHKIN & COPPEDGE; the Court having read and considered the pleadings filed by
8 the parties; having reviewed the evidence admitted during the trial; having heard and carefully
9 considered the testimony of the witnesses called to testify and weighing their credibility; having
10 considered the oral and written arguments of counsel, and with the intent of rendering a decision
11 on the limited claims before the Court at this time, pursuant to NRCP 52(a) and 58; the Court
12 makes the following findings of fact and conclusions of law:

15 **I. Procedural Posture**

16 On April 9, 2020, the original complaint was filed and a Temporary Restraining Order
17 was issued without notice by the then assigned judge.⁴

19 Spanish Heights and SJCV initiated this action against CBC PARTNERS I, LLC, CBC
20 PARTNERS, LLC, 5148 SPANISH HEIGHTS, LLC, KENNETH ANTOS AND SHEILA
21 NEUMANN-ANTOS, as Trustees of the Kenneth & Sheila Antos Living Trust and the Kenneth
22 M. Antos & Sheila M. Neumann-Antos Trust (“Antos Trust”); DACIA, LLC, with the First
23 Amended Complaint being filed on May 15, 2020.

25 By Order filed May 29, 2020, the Court granted Plaintiffs’ Motion for Preliminary
26 Injunction on a limited basis that remained in effect until after expiration of the Governor’s
27

28 ⁴ This matter was reassigned to this department after an April 13, 2020, Request for Transfer to Business Court was made by the Defendants.

Emergency Directive 008.

On June 10, 2020, defendants CBC PARTNERS I, LLC, CBC PARTNERS, LLC, and 5148 Spanish Heights, LLC, filed their answer to the first amended complaint.

Defendants CBC PARTNERS I, LLC, and 5148 Spanish Heights, LLC, have also filed a counterclaim against plaintiffs, and Jay Bloom.

On September 3, 2020, Defendant Antos Trust filed an answer and counterclaim against SJCVC, which SJCVC answered on September 28, 2020.⁵

II. Findings of Fact

1. This action involves residential real property located at 5148 Spanish Heights Drive, Las Vegas, Nevada 89148, with Assessor's Parcel Number 163-29-615-007 ("Property").

2. The original owners of the Property were Kenneth and Sheila Antos as joint tenants, with the original deed recorded in April 2007.

3. On or about October 14, 2010, Kenneth M. Antos and Sheila M. Neumann-Antos (collectively, "Antos") transferred the Property to Kenneth M. Antos and Sheila M. Neumann-Antos, as Trustees of the Kenneth and Shelia Antos Living Trust dated April 26, 2007 (the "Antos Trust", and together with "Antos", the "Antos Parties").

4. Nonparty City National Bank is the beneficiary of a first-position Deed of Trust recorded on the Property.

5. Nonparty Northern Trust Bank is the beneficiary of a second-position Deed of Trust recorded on the Property.

6. The Property is currently owned by Spanish Heights⁶ which has entered into a

⁵ The Antos have a pending motion for summary judgment.

⁶ The manager of Spanish Heights is SJCVC.

1 written lease agreement with SJC.V.⁷

2 7. Although the Property is residential, it is not owner occupied, but is occupied by
3 Jay Bloom (“Mr. Bloom”) and his family.

4 8. On or about June 22, 2012, nonparty KCI entered into a Secured Promissory Note
5 (the “Note”) with CBC Partners I, LLC, a Washington limited liability company (“CBCI”).
6

7 9. The Note memorialized a \$300,000 commercial loan that CBCI made to Antos’
8 restaurant company KCI to be used for the restaurant business.

9 10. On or around June 22, 2012, Kenneth and Sheila Antos, in their individual
10 capacities, signed a “Guaranty” in which they personally guaranteed payment of the Note.
11

12 11. The Note was secured by a “Security Agreement” dated June 22, 2012, where the
13 security interest includes KCI’s intellectual property, goods, tools, furnishings, furniture,
14 equipment and fixtures, accounts, deposit accounts, chattel paper, and receivables.

15 12. The Property was not included as collateral for the original Note.

16 13. The Note was modified and amended several times.

17 14. On November 13, 2013, a Fourth Modification to Secured Promissory Note
18 (“Fourth Modification”) was executed.
19

20 15. Paragraph 4 of the Fourth Modification amended Paragraph 6.12 of the Note as
21 follows:
22

23 6.12 Antos Debt. Permit guarantor Kenneth M. Antos (“Antos”) to incur,
24 create, assume or permit to exist any debt secured by the real property
located at 5148 Spanish Heights Drive, Las Vegas, Nevada 89148.

25 16. Along with the Fourth Modification, the Antos Trust provided a Security
26 Agreement with Respect to Interest in Settlement Agreement and Mutual Release (the “Security
27

28 ⁷ The manager of SJC.V. is Bloom.

1 Agreement”).

2 17. This Security Agreement not only granted a security interest in a Settlement
3 Agreement, but also contained certain Representations, Warranties and Covenants of the Antos
4 Parties, including:

5 3.3 Sale, Encumbrance or Disposition. Without the prior written consent
6 of the Secured Party, Antos will not (a) allow the sale or encumbrance of
7 any portion of the Collateral and (b) incur, create, assume or permit to
8 exist any debt secured by the real property located at 5148 Spanish
9 Heights Drive, Las Vegas, NV 89148, other than the first and second
position deeds of trust or mortgages...

10 18. KCI was acquired by Preferred Restaurant Brands, Inc. formerly known as Dixie
11 Foods International, Inc. (“Dixie”).

12 19. The Note was assumed by Dixie with the Antos Parties continuing to guaranty the
13 obligation.

14 20. On or about October 31, 2014, a Seventh Modification to Secured Promissory
15 Note and Waiver of Defaults (“Seventh Modification”) was entered.

16 21. CBCI determined that prior to extension of additional credit; additional security
17 was required to replace a previously released security interest in other collateral.
18

19 22. Paragraph 18(f) of the Seventh Modification provided for a condition precedent:

20 Execution and delivery by Kenneth M. Antos and Sheila M. Neumann-
21 Antos, as Trustees of the Kenneth and Sheila Antos Living Trust dated
22 April 26, 2007, and any amendments thereto (the “Antos Trust”) to Lender
23 of a Deed of Trust on the real property located at 5148 Spanish Heights
24 Drive, Las Vegas, Nevada 89148 (the “Real Property”), in form and
substance satisfactory to Lender in its sole discretion.

25 23. On or about December 17, 2014, the Antos Trust delivered to CBCI a Certificate
26 of Trust Existence and Authority (“Certificate of Trust”).

27 24. The Certificate of Trust provides in part:

28 Kenneth M. Antos and Sheila M. Neumann-Antos, as trustees (each, a

1 “Trustee”) acting on behalf of the Trust, are each authorized and
2 empowered in the name of the Trust without the approval or consent of the
other Trustee, the beneficiaries, or any other person:

3 To execute and deliver a Deed of Trust, Assignment of Rents,
4 Security Agreement and Fixture Filing (the “Deed of Trust”), to
5 secure (i) obligations owing to Lender by KCI Investments, LLC, a
6 Nevada limited liability company, and Preferred Restaurant
7 Brands, Inc., a Florida corporation (individually and collectively,
8 “Borrower”), (ii) that certain Secured Promissory Note dated as of
9 June 22, 2012, in the maximum principal amount of \$3,250,000.00
10 (the “Note”) executed by Borrower in favor of Lender, (iii) that
11 certain Guaranty dated June 22, 2012, executed by the Grantors as
12 individuals and not in their capacity as trustees, and (iv) the other
13 documents and instruments executed or delivered in connection
14 with the foregoing.

15 25. The Certificate of Trust further provides:

16 The Deed of Trust and Lender’s provision of credit under the terms of the
17 Note will directly and indirectly benefit the Trust and its beneficiaries.

18 The Trustees of the Trust have the authority to enter into the transactions
19 with respect to which this Certificate is being delivered, and such
20 transactions will create binding obligations on the assets of the Trust.

21 26. On or about December 29, 2014, a Deed of Trust, Assignment of Rents, Security
22 Agreement and Fixture Filing (the “Deed of Trust”) was recorded against the Property in the
23 Clark County Recorder’s Office as Instrument No. 201412290002856 for the purpose of
24 securing the Note.

25 27. The revocable trust indirectly benefitted from this additional credit that was
26 issued to Antos and his business by CBCI.

27 28. The Deed of Trust is subordinate to the first mortgage to City National in the
28 principal amount of approximately \$3,240,000.00 with a monthly payment of \$19,181.07, and a
second mortgage to Northern Trust Bank in the principal amount of approximately \$599,000.00
with monthly payments of \$3,034.00.

29. On or about April 30, 2015, a Ninth Modification to Secured Promissory Note

1 and Waiver of Defaults (“Ninth Modification”) was executed.

2 30. Paragraph 14(c) of the Ninth Modification provides for a condition precedent as
3 follows:

4 Execution by the Trustees of the Kenneth and Sheila Antos Living Trust
5 dated April 26, 2007, and any amendments thereto, and delivery to Lender
6 of the Correction to Deed of Trust Assignment of Rents, Security
7 Agreement and Fixture Filing, in form and substance satisfactory to
8 Lender.

9 31. On July 22, 2015, a Correction to Deed of Trust, Assignment of Rent, Security
10 Agreement and Fixture Filing (“Correction to Deed of Trust”) was recorded in the Clark County
11 Recorder’s Office as Instrument No. 201507220001146.

12 32. This Correction to Deed of Trust modified Paragraph One of the Deed of Trust to
13 read:

14 One: Payment of any and all amounts (collectively, the “Guarantied
15 Obligations”) due and owing by Trustor under that certain Guaranty from
16 Kenneth Antos and Sheila Antos (individually and collectively,
17 “Guarantor”) dated June 22, 2012, in favor of Beneficiary (the
18 “Guaranty”), guarantying the indebtedness evidenced by that certain
19 Secured Promissory Note (and any renewals, extensions, modifications
20 and substitutions thereof) (collectively, the “Note”), executed by KCI
21 Investments, LLC, a Nevada limited liability company, and Preferred
22 Restaurant Brands, Inc., a Florida corporation (individually and
23 collectively, “Borrower”), dated June 22, 2012, as modified, in the
24 maximum principal sum of THREE MILLION AND NO/100 DOLLARS
25 (\$3,000,000.00), together with interest thereon, late charges and collection
26 costs as provided in the Note.

27 33. On or about December 2, 2016, CBCI sold a portion of the monetary obligations
28 of the Note in the amount of \$15,000.00 to Southridge Partners II, LP.

34. On or about December 2, 2016, CBCI and KCI entered into a Forbearance
Agreement.

35. As part of the Forbearance Agreement, the Antos Trust executed a Consent,
Reaffirmation, and General Release by the Trust wherein the Antos Trust agreed

1 to join in and be bound to the terms of the Representations and Warranties
2 contained in Sections 4 and 7, and the General Release contained in
3 Section 8 of the Agreement applicable as though the Trust were a Credit
4 Party.

5 36. On or about December 2, 2016, a Tenth Modification to Secured Promissory Note
6 (“Tenth Modification”) was entered into.

7 37. Paragraph 6(e) of the Tenth Modification provides for a condition precedent as
8 follows:

9 Delivery to Lender of a duly executed First Modification to Deed of Trust,
10 Assignment of Rents, Security Agreement and Fixture Filing, by Kenneth
11 M. Antos and Sheila M. Neumann-Antos, Trustees of the Kenneth and
12 Sheila Antos Living Trust dated April 26, 2007, and any amendments
13 thereto, as trustor, related to that certain Deed of Trust, Assignment of
14 Rents, Security Agreement and Fixture Filing made December 17, 2014,
15 and recorded in the Official Records of Clark County, Nevada, on
16 December 29, 2014, as instrument number 20141229-0002856.

17 38. On December 19, 2016, the First Modification to Deed of Trust, Assignment of
18 Rents, Security Agreement and Fixture Filing was recorded in the Clark County Recorder’s
19 Office as Instrument No. 201612190002739.

20 39. On or about July 21, 2017, Mr. Bloom proposed to service the CBCI Note in
21 exchange for the ownership in the Property. Specifically, Mr. Bloom wrote,

22 My thought is that this proposal gets the 3rd lender:

- 23 • a full recovery of its Note balance plus all protective advances past and future,
- 24 • interim cash flow and
- 25 • provides interim additional full collateral where, given the current value of the
26 property, the 3rd position lender is currently unsecured.

27 As to the Seller, he:

- 28 • gets out from under a potential deficiency judgment from the 3rd position
lender and
- unburdens himself from any additional assets that may have been pledged.

40. Spanish Heights was created to facilitate this transaction.

41. On September 27, 2017, CBCI, the Antos Trust, Spanish Heights and Mr.

1 Bloom's company, SJCVC, entered into the 2017 Forbearance Agreement.

2 42. The September 27, 2017 Forbearance Agreement indicates that Mr. Bloom's
3 company Spanish Heights intends to acquire the Property and make certain payments to CBCI
4 pursuant to the terms of the 2017 Forbearance Agreement.

5 43. Mr. Bloom testified that he was not provided with a complete set of documents
6 reflecting the prior transactions between the Antos and KCI⁸ and that misrepresentations were
7 made regarding the prior transactions by CBCI.

8
9 44. In the 2017 Forbearance Agreement, the Antos Parties, Spanish Heights and
10 SJCVC acknowledged default and affirmed CBCI has fully performed.

11 45. The 2017 Forbearance Agreement contains an acknowledgement that the prior
12 agreements between the Antos and CBCI are valid.

13
14 Par. 8.7 Enforceable Amended Note and Modified Deed of Trust/No Conflicts. The
15 Amended Note and Modified Deed of Trust and the Forbearance Agreement, are legal,
16 valid, and binding agreements of Antos Parties and the SJCVC Parties, enforceable in
17 accordance with their respective terms, and any instrument or agreement required
18 hereunder or thereunder, when executed and delivered, is (or will be) similarly legal,
valid, binding and enforceable. This Forbearance Agreement does not conflict with any
law, agreement, or obligation by which Antos Parties and the SJCVC parties is bound.

19 46. In connection with the 2017 Forbearance Agreement, on November 3, 2017, the
20 Antos Trust conveyed the Property to Spanish Heights.

21 47. A lease agreement between Spanish Heights as the Landlord, and SJCVC as the
22 Tenant, was executed by both Spanish Heights and SJCVC on or around August 15, 2017.

23 48. The lease agreement between Spanish Heights and SJCVC indicates that the lease
24 term is two years, with an option for SJCVC to exercise two additional consecutive lease
25

26
27 ⁸ The Court finds that regardless of whether all of the prior transactional documents were provided to Mr.
28 Bloom, Mr. Bloom was on notice of the prior transactions. The 2017 Forbearance Agreement clearly identifies the
nature of the prior transactions in the section entitled "The Parties and Background" which begins on page 1 of the
document.

1 extensions.

2 49. Pursuant to the terms of the 2017 Forbearance Agreement, Spanish Heights was
3 to make certain payments to CBCI and other parties. In addition, a balloon payment of the total
4 amount owing, under the Note, was due on August 31, 2019.

5 50. Pursuant to the 2017 Forbearance Agreement, SJCVC affirmed all obligations due
6 to CBCI under the Note and Modified Deed of Trust.

7 51. The 2017 Forbearance Agreement provides in pertinent part, "CBCI is free to
8 exercise all of its rights and remedies under the Note and Modified Deed of Trust..."

9 52. The 2017 Forbearance Agreement states the rights and remedies are cumulative
10 and not exclusive, and may be pursued at any time.

11 53. As part of the 2017 Forbearance Agreement, there were certain requirements of
12 Spanish Heights attached as Exhibit B to the 2017 Forbearance Agreement.

13 54. Among the requirements was the understanding that the First Lien holder would
14 pay the real property taxes, that CBCI would pay the 1st and 2nd Mortgage payments to prevent
15 default, that Spanish Heights would make certain repairs and improvements to the Property,
16 Spanish Heights would maintain the Property, and Spanish Heights would pay for a customary
17 homeowner's insurance policy and all Homeowner's Association dues.

18 55. In addition to the requirements of the 2017 Forbearance Agreement, there was
19 additional security to be provided by Spanish Heights, SJCVC, and others.

20 56. Among the additional security was a Pledge Agreement, through which the
21 members of Spanish Heights pledged 100% of the membership interest in Spanish Heights.⁹

22
23
24
25
26
27
28 ⁹ The Pledge Agreement states in pertinent part:

THIS PLEDGE AGREEMENT dated 27th (sic)(this "Agreement") is made by Kenneth & Sheila Antos

1 57. The Pledge Agreement provides in pertinent part, “Secured Party shall have the
2 right, at any time in Secured Party’s discretion after a Non-Monetary Event of Default ... to
3 transfer to or to register in the name of Secured Party or any of Secured Party’s nominees any or
4 all of the Pledged Collateral.”

5 58. Pursuant to the Pledge Agreement, upon an event of default, Pledgors (SJCVC and
6 Antos) appointed CBCI as Pledgors’ attorney-in-fact to execute any instrument which Secured
7 Party may deem necessary or advisable to accomplish the purposes of the Pledge Agreement.
8

9 59. The Pledge Agreement was signed on September 27, 2017, by the Antos and Mr.
10 Bloom as purported manager on behalf of Spanish Heights. No separate signature block for
11 SJCVC appears on the Pledge Agreement.
12

13 60. Paragraph 17 of the Pledge Agreement contained a notice provision which
14 required notice to the Pledgors to be given to Pledgors through Plaintiffs’ current counsel, Maier
15 Gutierrez & Associates.
16

17 61. As additional required security, SJCVC agreed to a Security Agreement to grant
18 CBCI a Security Interest in a Judgment described as:

19 SJCVC represents that First 100, LLC, and 1st One Hundred Holdings,
20 LLC, obtained a Judgment in the amount of \$2,221,039,718.46 against
21 Raymond Ngan and other Defendants in the matter styled *First 100, LLC,*
22 *Plaintiff(s) vs. Raymond Ngan, Defendant(s)*, Case No, A-17-753459-C in
23 the 8th Judicial District Court for Clark County, Nevada (the “Judgment”),
SJCVC represents It holds a 24,912% Membership Interest in 1st One
Hundred Holdings, LLC. SJCVC represents and warrant that no party, other

24 Living Trust (the Antos Trust”), SJC Ventures, LLC (“SJCVC”)(collectively the “Pledgors”) to CBC
25 Partners I, LLC, a Washington limited-liability company (“Secured Party” or “CBCI”).

26 ***

27 WHEREAS, Pledgors are the owners of 100%, of the membership interests (the “Membership Interests”)
28 of Spanish Heights Acquisition Company, LLC, a Nevada limited liability company (“SHAC”), which has
been organized pursuant to the terms of the Limited Liability Company Agreement of Spanish Heights
Acquisition Company, LLC.

1 than the Collection Professionals engaged to collect the Judgment, have a
2 priority to receive net Judgment proceeds attributable to SJCVC before
3 SJCVC; and that SJCVC shall receive Its interest at a minimum in pari passu
4 with other parties who hold interests in the Judgment. 1st One Hundred
5 Holdings, LLC, represents and warrant that no party, other than the
6 Collection Professionals engaged to collect the Judgment and certain other
7 creditors of 1st One Hundred Holdings, have a priority to receive net
8 Judgment proceeds prior to distributions to 1st One Hundred Holdings
9 Members; and that SJCVC shall receive Its interest at a minimum in pari
10 passu with other parties who hold interests in the Judgment.

11 62. In addition to the other consideration in the 2017 Forbearance Agreement, the
12 Antos Trust signed a Personal Guaranty Agreement, guaranteeing to CBCI the full and punctual
13 performance of all the obligations described in the 2017 Forbearance Agreement.

14 63. Pursuant to the Amendment to Forbearance Agreement and Related Agreements,
15 dated December 1, 2019 (the "Amendment to 2017 Forbearance Agreement"), SJCVC¹⁰
16 acknowledged that it pledged its membership interest in Spanish Heights as collateral for the
17 2017 Forbearance Agreement.¹¹

18 ¹⁰ An argument has been made that SJCVC did not pledge its stock under the original Pledge Agreement.
19 Given the notice provision in the original Pledge Agreement, Mr. Bloom's signature as manager on behalf of
20 Spanish Heights, rather than SJCVC, and the language of the Pledge Agreement reflecting a pledge of 100% of the
interest in membership of Spanish Heights, it appears the signature line for Mr. Bloom may have been incorrect.
Mr. Bloom is not the manager of Spanish Heights; Mr. Bloom is the manager of SJCVC, which serves as the manager
of Spanish Heights. The language in paragraphs 5 and 9 of the Amendment to the 2017 Forbearance Agreement
reaffirms SJCVC's pledge of its membership interest.

21 ¹¹ The Amendment to the 2017 Forbearance Agreement states in pertinent part:

22 WHEREAS, on or about September 27, 2017, the parties executed a Forbearance Agreement whereby
23 CBCI agreed to forbear from exercising the rights and remedies under certain loan documents executed by
24 the "Antos Parties." In addition to the Forbearance Agreement, the parties executed "Exhibit B" to the
Forbearance Agreement, a Lease Agreement, an Account Control Agreement, a Membership Pledge
Agreement, an Assignment of Rents, and a Security Agreement (collectively "the Related Agreements").

25 ***

26 5. The Membership Pledge Agreement executed by SJCVC and the Antos Trust shall remain in effect and
27 the execution of this Amendment shall not be considered a waiver of CBCI's rights under the Membership
Pledge Agreement.

28 ***

1 64. On or about December 1, 2019, CBCI, the Antos, Spanish Heights and SJC
2 entered into an Amendment to the 2017 Forbearance Agreement, extending the date of the
3 balloon payment to March 31, 2020.

4 65. The Amendment to 2017 Forbearance Agreement was signed by the Antos,
5 Bloom as purported manager on behalf of Spanish Heights, and Bloom as manager of SJC.
6

7 66. Pursuant to the Amendment to 2017 Forbearance Agreement, the Security
8 Agreement “shall remain in effect and the execution of this Amendment shall not be considered
9 a waiver of CBCI’s rights under the Security Agreement...”

10 67. Pursuant to the Amendment to 2017 Forbearance Agreement, any amendment
11 must be in writing.
12

13 68. On March 12, 2020, Spanish Hills Community Association recorded a Health and
14 Safety Lien against the Property. This Lien was for Nuisances and Hazardous Activities.

15 69. On or about March 16, 2020, CBCI mailed a Notice of Non-Monetary Defaults to
16 Spanish Heights and SJC. This Notice of Non-Monetary Default delineated the following
17 defaults:
18

- 19 1. Evidence of homeowner’s insurance coverage Pursuant to Paragraph
20 1(A)(6) of Amendment to Forbearance Agreement and Related
21 Agreements;
- 22 2. Evidence of repairs pursuant to Paragraph 3(c)(1) of Exhibit B to
23 Forbearance Agreement;
- 24 3. Evidence of Bank of America account balance of \$150,000.00
25 pursuant to Paragraph 6(c) of Exhibit B to Forbearance Agreement;
- 26 4. Opinion letter from SJC Ventures and 1st One Hundred Holdings
27 counsel regarding the Judgment and Security Agreement pursuant to
28 Paragraph 1(A)(12) of Amendment to Forbearance Agreement and
 Related Agreements;

9. The Membership Pledge Agreement executed by SJC and the Antos Trust shall remain in effect and
the execution of this Amendment shall not be considered a waiver of CBCI’s rights under the Membership
Pledge Agreement.

5. Evidence of corporate authority for SJC Ventures and 1st One Hundred Holdings pursuant to Paragraph 1(A)(13) of Amendment to Forbearance Agreement and Related Agreements; and
6. Evidence of SJC Ventures filing of applications for mortgages to refinance 5148 Spanish Heights Drive, pursuant to paragraph 1(C) of Amendment to Forbearance Agreement and Related Agreements.

70. On April 1, 2020, a Notice of Default and Demand for Payment was sent to Spanish Heights and SJCVC. This letter had a typo on the date of final balloon payment being due on March 31, 2021. This was corrected and emailed to Spanish Height's and SJCVC's counsel noting that the default date was corrected to March 31, 2020.

71. On April 1, 2020, under separate cover, counsel for CBCI sent a Notice to Spanish Heights, SJCVC, and Antos that CBCI would exercise its rights under the Pledge Agreement by transferring the pledged collateral to CBCI's nominee CBC Partners, LLC.

72. On April 1, 2020, CBC Partners received the Assignment of Company and Membership Interest of Spanish Heights from the Antos Trust.

73. On April 3, 2020, a Notice to Vacate was sent to SJCVC.

74. On April 6, 2020, CBCI sold the Note and security associated with the Note, to 5148 Spanish Heights, LLC.

75. On May 28, 2020, the Assignment of Interest in Deed of Trust was recorded in the Clark County Recorder's Office as Instrument No 202005280002508.

76. On September 15, 2020, Notice of Breach and Election to Sell Under Deed of Trust was recorded in the Clark County Recorder's Office as Instrument No 202009150001405.

77. On December 15, 2020, Notice of Trustee's Sale was recorded in the Clark County Recorder's Office Instrument No 20201215-0000746. The Sale was scheduled for January 5, 2021.

78. CBCI, through Hallberg, and Mr. Antos, both individually and as Trustee of the

1 revocable living trust as makers; confirm the original debt and the Deed of Trust as collateral for
2 the Note.

3 79. 5148 Spanish Heights, LLC, issued a new Notice of Default on January 4, 2021.

4 80. NRS 107.080 sets forth the notice requirements that were followed by 5148
5 Spanish Heights, LLC, and Nevada Trust Deed Services.

6 81. Plaintiff has shown no defect or lack of adequate statutory notice in the current
7 notice.
8

9 82. NRS 47.240 provides for conclusive presumptions relevant to certain provisions
10 of the relevant documents.¹²

11 83. Nothing in the evidence presented during these proceedings provides any basis for
12 departure from the conclusive presumptions recited in the agreements between the parties.¹³
13

14 84. At this time, CBCI has acquired the Antos interest in Spanish Heights through the
15 Pledge Agreement. The membership interest in a limited liability company is not an interest in
16

17 ¹² **NRS 47.240 Conclusive presumptions.** The following presumptions, and no others, are conclusive:

18 ***

19 2. The truth of the fact recited, from the recital in a written instrument between the parties thereto, or their
20 successors in interest by a subsequent title, but this rule does not apply to the recital of a consideration.

21 ¹³ For purposes of this proceeding, the Court applies the conclusive presumptions of NRS 47.240 to the
22 following :

23 From the Pledge Agreement:

24 WHEREAS, Pledgors are the owners of 100%, of the membership interests (the "Membership Interests")
25 of Spanish Heights Acquisition Company, LLC, a Nevada limited liability company ("SHAC"), which has
26 been organized pursuant to the terms of the Limited Liability Company Agreement of Spanish Heights
27 Acquisition Company, LLC.

28 From the Amendment to the 2017 Forbearance Agreement:

WHEREAS, on or about September 27, 2017, the parties executed a Forbearance Agreement whereby
CBCI agreed to forbear from exercising the rights and remedies under certain loan documents executed by
the "Antos Parties." In addition to the Forbearance Agreement, the parties executed "Exhibit B" to the
Forbearance Agreement, a Lease Agreement, an Account Control Agreement, a Membership Pledge
Agreement, an Assignment of Rents, and a Security Agreement (collectively "the Related Agreements").

1 real property. Title to the Property remains in Spanish Heights.

2 85. Plaintiff has not established unanimity of interest in title to the Property.

3 86. Plaintiff has not established an intent on behalf of the creditor to merge their lien
4 with equitable title.

5 87. Plaintiff has provided no evidence that the 2017 Forbearance Agreement and
6 Amendment to the 2017 Forbearance Agreement are vague or ambiguous.

7
8 88. Plaintiff has provided no evidence of fraud or misrepresentation by any
9 Defendant.

10 89. If any findings of fact are properly conclusions of law, they shall be treated as if
11 appropriately identified and designated.
12

13 **III. Conclusions of Law**

14
15 1. The legal standard for granting injunctive relief is set forth in NRS 33.010, which
16 provides:

17 Cases in which injunction may be granted. An injunction may be
18 granted in the following cases:

19 1. When it shall appear by the complaint that the plaintiff is
20 entitled to the relief demanded, and such relief or any part thereof
21 consists in restraining the commission or continuance of the act
complained of, either for a limited period or perpetually.

22 2. When it shall appear by the complaint or affidavit that the
23 commission or continuance of some act, during the litigation,
would produce great or irreparable injury to the plaintiff.

24 3. When it shall appear, during the litigation, that the
25 defendant is doing or threatens, or is about to do, or is procuring or
26 suffering to be done, some act in violation of the plaintiff's rights
27 respecting the subject of the action, and tending to render the
judgment ineffectual.

28 2. Given the current bankruptcy stay, the Court extends the existing injunctive relief

1 entered January 5, 2021, pending further order from the Bankruptcy Court.

2 3. The relevant documents, including, but not limited to, the 2017 Forbearance
3 Agreement and Amendment to Forbearance Agreement and Related Agreements, dated
4 December 1, 2019, are clear and unambiguous as a matter of law

5 4. The Note is secured by the Property.

6 5. As a condition precedent to the Fourth, Seventh, Ninth, and Tenth Modifications
7 to the Note, a Deed of Trust encumbering the Property was required.
8

9 6. The Antos Parties had authority, individually and as Trustees of the Antos Trust,
10 to encumber the Property with the Deed of Trust to CBCI.

11 7. Plaintiffs have waived any defects, acknowledged the encumbrance and agreed, in
12 writing to pay twice; first in the 2017 Forbearance Agreement and second, in the Amendment to
13 the 2017 Forbearance Agreement.
14

15 8. Plaintiffs agreed in the 2017 Forbearance Agreements to pay the amounts in
16 question by separate promise to the Antos Parties.
17

18 9. The Antos Trust received an indirect benefit from the transactions related to the
19 Deed of Trust.

20 10. Mr. Antos testified that the Property was used as security in exchange for
21 additional capital and release of other collateral from CBCI .
22

23 11. Mr. Antos agrees with CBCI that Plaintiffs have failed to perform.

24 12. NRS 107.500 is only required of owner-occupied housing.

25 13. The doctrine of merger provides that “[w]hen a greater and a less estate
26 coincide and meet in one and the same person, without any intermediate estate, the less is
27 immediately merged in the greater, and thus annihilated.” 31 C.J.S. Estates § 153.
28

1 14. Plaintiffs have made no showing of the applications of the doctrine of merger in
2 this case. As no interests have merged, and there is no showing of intent to merge

3 15. The one-action rule “does not excuse the underlying debt.” *Bonicamp v. Vazquez*,
4 120 Nev. 377, 382-83, 91 P.3d 584, 587 (2004).

5 16. The One-Action Rule prohibits a creditor from “first seeking the personal
6 recovery and then attempting, in an additional suit, to recover against the collateral.” *Bonicamp*,
7 120 Nev. at 383, 91 P.3d at 587 (2004). When suing a debtor on a secured debt, a creditor may
8 initially elect to proceed against the debtor or the security. If the creditor sues the debtor
9 personally on the debt, the debtor may then either assert the one-action rule, forcing the creditor
10 to proceed against the security first before seeking a deficiency from the debtor, or decline to
11 assert the one-action rule, accepting a personal judgment and depriving the creditor of its ability
12 to proceed against the security. NRS 40.435(3); *Bonicamp*, 120 Nev. at 383, 91 P.3d at 587
13 (2004).

14 17. The “One-Action Rule” was specifically waived by the debtor. The Deed of Trust
15 paragraph 6.21(a) states:
16

17 Trustor and Guarantor each waive all benefits of the one-action
18 rule under NRS 40.430, which means, without limitation, Trustor
19 and Guarantor each waive the right to require Lender to (i) proceed
20 against Borrower, any other guarantor of the Loan, any pledgor of
21 collateral for any person’s obligations to Lender or any other
22 person related to the Note and Loan Documents, (ii) proceed
23 against or exhaust any other security or collateral Lender may
24 hold, or (iii) pursue any other right or remedy for Guarantors’
benefit.

25 18. The 2017 Forbearance Agreement paragraph 25 gives the benefit of cumulative
26 remedies.

27 The rights and remedies of CBCI under this Forbearance
28 Agreement and the Amended Note and Modified Deed of Trust are

1 cumulative and not exclusive of any rights or remedies that CBCI
2 would otherwise have, and may be pursued at any time and from
3 time to time and in such order as CBCI shall determine in its sole
4 discretion.

5 19. The Court concludes as a matter of law that the Plaintiffs have not established
6 facts or law to support the claim that the One-Action Rule bars recovery under the defaulted
7 Note and Security documents.

8 20. The Court's Temporary Restraining Order, filed January 5, 2021, will remain in
9 place pending further order of the Bankruptcy Court.

10 21. If any conclusions of law are properly findings of fact, they shall be treated as if
11 appropriately identified and designated.

12 JUDGMENT

13 Based upon the foregoing Findings of Fact and Conclusions of Law, and other good
14 cause appearing:

15 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that as to the
16 Claims for Declaratory Relief, the Court declares the third position Deed of Trust is a valid
17 existing obligation against the Property.


18 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that as to the
19 Claims for Declaratory Relief, the Court declares that the Note is a valid existing obligation.
20

21 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that as to the
22 Claims for Declaratory Relief, the Court declares that the Pledge Agreement is a valid existing
23 obligation of SJCVC.
24

25 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that as to the
26 Claims for Declaratory Relief, the Court declares that the acquisition of a membership interest in
27 Spanish Heights does not merge the Defendants interests.
28

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that as to the Claims for Declaratory Relief, the Court declares that there has been a valid waiver of the One-Action Rule.

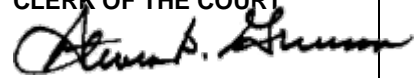
Dated this 6th day of April, 2021


Elizabeth Gonzalez, District Court Judge

Certificate of Service

I hereby certify that on the date filed, a copy of the foregoing Findings of Fact and Conclusions of Law was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court Electronic Filing Program.

/s/ *Dan Kutinac*
Dan Kutinac, JEA



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7 *Attorneys for Plaintiffs*

8
9
10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 SPANISH HEIGHTS ACQUISITION
13 COMPANY, LLC, a Nevada Limited Liability
Company; SJC VENTURES HOLDING
14 COMPANY, LLC, d/b/a SJC VENTURES, LLC,
a Delaware Limited Liability Company,

15 Plaintiffs,

16 vs.

17 CBC PARTNERS I, LLC, a foreign Limited
Liability Company; CBC PARTNERS, LLC, a
18 foreign Limited Liability Company; 5148
SPANISH HEIGHTS, LLC, a Nevada Limited
19 Liability Company; KENNETH ANTOS AND
SHEILA NEUMANN-ANTOS, as Trustees of
20 the Kenneth & Sheila Antos Living Trust and the
Kenneth M. Antos & Sheila M. Neumann-Antos
21 Trust; DACIA, LLC, a foreign Limited Liability
Company; DOES I through X; and ROE
22 CORPORATIONS I through X, inclusive,

23 Defendants.

24 AND RELATED CLAIMS.
25

Case No.: A-20-813439-B
Dept. No.: XI

NOTICE OF ENTRY OF ORDER

26 TO: ALL PARTIES AND THEIR COUNSEL OF RECORD.

27 YOU AND EACH OF YOU will please take notice that a **FINDINGS OF FACT AND**
28

1 **CONCLUSIONS OF LAW** was hereby entered on the 6th day of April, 2021. A copy of which is
2 attached hereto.

3 DATED this 20th day of April, 2021.

4 Respectfully submitted,

5 **MAIER GUTIERREZ & ASSOCIATES**

6 /s/ Danielle J. Barraza

7 JOSEPH A. GUTIERREZ, ESQ.

8 Nevada Bar No. 9046

9 DANIELLE J. BARRAZA, ESQ.

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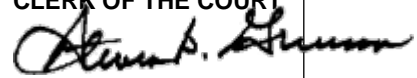
12 Las Vegas, Nevada 89148

13 *Attorneys for Plaintiffs*

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An Employee of MAIER GUTIERREZ & ASSOCIATES



1 FFCL

2
3 **DISTRICT COURT**

4 **CLARK COUNTY, NEVADA**

5 SPANISH HEIGHTS ACQUISITION
6 COMPANY, LLC, a Nevada Limited Liability
7 Company; SJC VENTURES HOLDING
8 COMPANY, LLC, d/b/a SJC VENTURES,
9 LLC, a Delaware Limited Liability Company,

10 Plaintiffs,

11 v.

12 CBC PARTNERS I, LLC, a foreign Limited
13 Liability Company; CBC PARTNERS, LLC, a
14 foreign Limited Liability Company; 5148
15 SPANISH HEIGHTS, LLC, a Nevada Limited
16 Liability Company; KENNETH ANTOS AND
17 SHEILA NEUMANN-ANTOS, as Trustees of
18 the Kenneth & Sheila Antos Living Trust and
19 the Kenneth M. Antos & Sheila M. Neumann-
20 Antos Trust; DACIA, LLC, a foreign Limited
21 Liability Company; DOES I through X; and
22 ROE CORPORATIONS I through X,
23 inclusive,

24 Defendants.

Case No. A-20-813439-B

Dept. No.: XI

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

25 5148 SPANISH HEIGHTS, LLC, a Nevada
26 limited liability company; and CBC
27 PARTNERS I, LLC, a Washington limited
28 liability company,

Counterclaimants,

v.

SPANISH HEIGHTS ACQUISITION
COMPANY, LLC, a Nevada Limited Liability
Company; SJC VENTURES, LLC, a Delaware
limited liability company; SJC VENTURES
HOLDING COMPANY, LLC, a Delaware
limited liability company; JAY BLOOM,
individually and as Manager, DOE

1 DEFENDANTS 1-10; and ROE
2 DEFENDANTS 11-20,
3 Counterdefendants.

4 FINDINGS OF FACT AND CONCLUSIONS OF LAW

5 This matter having come on for preliminary injunction and consolidated non-jury trial on
6 related issues pursuant to NRCP 65(a)(2)¹ before the Honorable Elizabeth Gonzalez beginning
7 on February 1, 2021, February 2, 2021 , February 3, 2021,² and March 15, 2021; Plaintiffs
8 SPANISH HEIGHTS ACQUISITION COMPANY, LLC, (“Spanish Heights”)³ and SJC
9 VENTURES HOLDING COMPANY, LLC, d/b/a SJC VENTURES, LLC (“SJCVC”) appearing
10 by and through their representative Jay Bloom and their counsel of record JOSEPH A.
11 GUTIERREZ, ESQ. and DANIELLE J. BARRAZA, ESQ. of the law firm of MAIER
12

13
14
15 ¹ Pursuant to NRCP 65(a)(2), the parties have stipulated that the following legal issues surrounding the
16 claims and counterclaims are advanced for trial to be heard in conjunction with the hearing on the preliminary
17 injunction hearing:

- 18 a) Contractual interpretation and/or validity of the underlying “Secured Promissory Note” between
19 CBC Partners I, LLC, and KCI Investments, LLC, and all modifications (Counterclaim First, Fourth,
20 Ninth, and Twelfth Claim for Relief);
21 b) Interpretation and/or validity of the claimed third-position Deed of Trust and all modifications
22 thereto, and determination as to whether any consideration was provided in exchange for the Deed of Trust
23 (Counterclaim First, Fourth, Ninth, and Twelfth Claim for Relief);
24 c) Contractual interpretation and/or validity of the Forbearance Agreement, Amended Forbearance
25 Agreement and all associated documents/contracts (Counterclaim First, Fourth, Ninth, and Twelfth Claim
26 for Relief);
27 d) Whether the Doctrine of Merger applies to the claims at issue (Amended Complaint Fourth,
28 Seventh Cause of Action); and
e) Whether the One Action Rule applies to the claims at issue (Amended Complaint Third Cause of
Action).

The injunctive relief claims are contained in the Amended Complaint Sixth Cause of Action.

² The Court was advised on February 3, 2021, that Spanish Heights filed for bankruptcy protection. The
Court suspended these proceedings and stayed the matter for 30 days as to all parties for Defendants to seek relief
from the stay. As no order lifting the stay has been entered by the Bankruptcy Court, nothing in this order creates
any obligations or liabilities directly related to Spanish Heights; however, factual findings related to Spanish Heights
are included in this decision. The term “Plaintiffs” as used in these Findings of fact and Conclusions of Law is not
intended to imply any action by this Court against the debtor, Spanish Heights.

³ As a result of the bankruptcy filing, Spanish Heights did not participate in these proceedings on March 15,
2021.

1 GUTIERREZ & ASSOCIATES and Defendants CBC PARTNERS I, LLC, CBC PARTNERS,
2 LLC, appearing by and through its representative Alan Hallberg (“Hallberg”); 5148 SPANISH
3 HEIGHTS, LLC, KENNETH ANTOS and SHEILA NEUMANN-ANTOS, as Trustees of the
4 Kenneth & Sheila Antos Living Trust and the Kenneth M. Antos & Sheila M. Neumann-Antos
5 Trust; DACIA, LLC, (collectively “Defendants”) all Defendants appearing by and through their
6 counsel of record MICHAEL R. MUSHKIN, ESQ. and L. JOE COPPEDGE, ESQ. of the law
7 firm of MUSHKIN & COPPEDGE; the Court having read and considered the pleadings filed by
8 the parties; having reviewed the evidence admitted during the trial; having heard and carefully
9 considered the testimony of the witnesses called to testify and weighing their credibility; having
10 considered the oral and written arguments of counsel, and with the intent of rendering a decision
11 on the limited claims before the Court at this time, pursuant to NRCP 52(a) and 58; the Court
12 makes the following findings of fact and conclusions of law:

15 **I. Procedural Posture**

16 On April 9, 2020, the original complaint was filed and a Temporary Restraining Order
17 was issued without notice by the then assigned judge.⁴

19 Spanish Heights and SJCV initiated this action against CBC PARTNERS I, LLC, CBC
20 PARTNERS, LLC, 5148 SPANISH HEIGHTS, LLC, KENNETH ANTOS AND SHEILA
21 NEUMANN-ANTOS, as Trustees of the Kenneth & Sheila Antos Living Trust and the Kenneth
22 M. Antos & Sheila M. Neumann-Antos Trust (“Antos Trust”); DACIA, LLC, with the First
23 Amended Complaint being filed on May 15, 2020.

25 By Order filed May 29, 2020, the Court granted Plaintiffs’ Motion for Preliminary
26 Injunction on a limited basis that remained in effect until after expiration of the Governor’s
27

28 ⁴ This matter was reassigned to this department after an April 13, 2020, Request for Transfer to Business Court was made by the Defendants.

1 Emergency Directive 008.

2 On June 10, 2020, defendants CBC PARTNERS I, LLC, CBC PARTNERS, LLC, and
3 5148 Spanish Heights, LLC, filed their answer to the first amended complaint.

4 Defendants CBC PARTNERS I, LLC, and 5148 Spanish Heights, LLC, have also filed a
5 counterclaim against plaintiffs, and Jay Bloom.

6
7 On September 3, 2020, Defendant Antos Trust filed an answer and counterclaim against
8 SJCVC, which SJCVC answered on September 28, 2020.⁵

9 **II. Findings of Fact**

10 1. This action involves residential real property located at 5148 Spanish Heights
11 Drive, Las Vegas, Nevada 89148, with Assessor's Parcel Number 163-29-615-007 ("Property").

12 2. The original owners of the Property were Kenneth and Sheila Antos as joint
13 tenants, with the original deed recorded in April 2007.

14 3. On or about October 14, 2010, Kenneth M. Antos and Sheila M. Neumann-Antos
15 (collectively, "Antos") transferred the Property to Kenneth M. Antos and Sheila M. Neumann-
16 Antos, as Trustees of the Kenneth and Shelia Antos Living Trust dated April 26, 2007 (the
17 "Antos Trust", and together with "Antos", the "Antos Parties").

18 4. Nonparty City National Bank is the beneficiary of a first-position Deed of Trust
19 recorded on the Property.

20 5. Nonparty Northern Trust Bank is the beneficiary of a second-position Deed of
21 Trust recorded on the Property.

22 6. The Property is currently owned by Spanish Heights⁶ which has entered into a
23
24

25
26
27 _____
28 ⁵ The Antos have a pending motion for summary judgment.

⁶ The manager of Spanish Heights is SJCVC.

1 written lease agreement with SJC.V.⁷

2 7. Although the Property is residential, it is not owner occupied, but is occupied by
3 Jay Bloom (“Mr. Bloom”) and his family.

4 8. On or about June 22, 2012, nonparty KCI entered into a Secured Promissory Note
5 (the “Note”) with CBC Partners I, LLC, a Washington limited liability company (“CBCI”).
6

7 9. The Note memorialized a \$300,000 commercial loan that CBCI made to Antos’
8 restaurant company KCI to be used for the restaurant business.

9 10. On or around June 22, 2012, Kenneth and Sheila Antos, in their individual
10 capacities, signed a “Guaranty” in which they personally guaranteed payment of the Note.
11

12 11. The Note was secured by a “Security Agreement” dated June 22, 2012, where the
13 security interest includes KCI’s intellectual property, goods, tools, furnishings, furniture,
14 equipment and fixtures, accounts, deposit accounts, chattel paper, and receivables.

15 12. The Property was not included as collateral for the original Note.

16 13. The Note was modified and amended several times.

17 14. On November 13, 2013, a Fourth Modification to Secured Promissory Note
18 (“Fourth Modification”) was executed.
19

20 15. Paragraph 4 of the Fourth Modification amended Paragraph 6.12 of the Note as
21 follows:
22

23 6.12 Antos Debt. Permit guarantor Kenneth M. Antos (“Antos”) to incur,
24 create, assume or permit to exist any debt secured by the real property
located at 5148 Spanish Heights Drive, Las Vegas, Nevada 89148.

25 16. Along with the Fourth Modification, the Antos Trust provided a Security
26 Agreement with Respect to Interest in Settlement Agreement and Mutual Release (the “Security
27

28 ⁷ The manager of SJC.V. is Bloom.

1 Agreement”).

2 17. This Security Agreement not only granted a security interest in a Settlement
3 Agreement, but also contained certain Representations, Warranties and Covenants of the Antos
4 Parties, including:

5 3.3 Sale, Encumbrance or Disposition. Without the prior written consent
6 of the Secured Party, Antos will not (a) allow the sale or encumbrance of
7 any portion of the Collateral and (b) incur, create, assume or permit to
8 exist any debt secured by the real property located at 5148 Spanish
9 Heights Drive, Las Vegas, NV 89148, other than the first and second
position deeds of trust or mortgages...

10 18. KCI was acquired by Preferred Restaurant Brands, Inc. formerly known as Dixie
11 Foods International, Inc. (“Dixie”).

12 19. The Note was assumed by Dixie with the Antos Parties continuing to guaranty the
13 obligation.

14 20. On or about October 31, 2014, a Seventh Modification to Secured Promissory
15 Note and Waiver of Defaults (“Seventh Modification”) was entered.

16 21. CBCI determined that prior to extension of additional credit; additional security
17 was required to replace a previously released security interest in other collateral.
18

19 22. Paragraph 18(f) of the Seventh Modification provided for a condition precedent:
20

21 Execution and delivery by Kenneth M. Antos and Sheila M. Neumann-
22 Antos, as Trustees of the Kenneth and Sheila Antos Living Trust dated
23 April 26, 2007, and any amendments thereto (the “Antos Trust”) to Lender
24 of a Deed of Trust on the real property located at 5148 Spanish Heights
Drive, Las Vegas, Nevada 89148 (the “Real Property”), in form and
substance satisfactory to Lender in its sole discretion.

25 23. On or about December 17, 2014, the Antos Trust delivered to CBCI a Certificate
26 of Trust Existence and Authority (“Certificate of Trust”).

27 24. The Certificate of Trust provides in part:

28 Kenneth M. Antos and Sheila M. Neumann-Antos, as trustees (each, a

1 “Trustee”) acting on behalf of the Trust, are each authorized and
2 empowered in the name of the Trust without the approval or consent of the
other Trustee, the beneficiaries, or any other person:

3 To execute and deliver a Deed of Trust, Assignment of Rents,
4 Security Agreement and Fixture Filing (the “Deed of Trust”), to
5 secure (i) obligations owing to Lender by KCI Investments, LLC, a
6 Nevada limited liability company, and Preferred Restaurant
7 Brands, Inc., a Florida corporation (individually and collectively,
8 “Borrower”), (ii) that certain Secured Promissory Note dated as of
9 June 22, 2012, in the maximum principal amount of \$3,250,000.00
10 (the “Note”) executed by Borrower in favor of Lender, (iii) that
11 certain Guaranty dated June 22, 2012, executed by the Grantors as
12 individuals and not in their capacity as trustees, and (iv) the other
13 documents and instruments executed or delivered in connection
14 with the foregoing.

15 25. The Certificate of Trust further provides:

16 The Deed of Trust and Lender’s provision of credit under the terms of the
17 Note will directly and indirectly benefit the Trust and its beneficiaries.

18 The Trustees of the Trust have the authority to enter into the transactions
19 with respect to which this Certificate is being delivered, and such
20 transactions will create binding obligations on the assets of the Trust.

21 26. On or about December 29, 2014, a Deed of Trust, Assignment of Rents, Security
22 Agreement and Fixture Filing (the “Deed of Trust”) was recorded against the Property in the
23 Clark County Recorder’s Office as Instrument No. 201412290002856 for the purpose of
24 securing the Note.

25 27. The revocable trust indirectly benefitted from this additional credit that was
26 issued to Antos and his business by CBCI.

27 28. The Deed of Trust is subordinate to the first mortgage to City National in the
28 principal amount of approximately \$3,240,000.00 with a monthly payment of \$19,181.07, and a
second mortgage to Northern Trust Bank in the principal amount of approximately \$599,000.00
with monthly payments of \$3,034.00.

29. On or about April 30, 2015, a Ninth Modification to Secured Promissory Note

1 and Waiver of Defaults (“Ninth Modification”) was executed.

2 30. Paragraph 14(c) of the Ninth Modification provides for a condition precedent as
3 follows:

4 Execution by the Trustees of the Kenneth and Sheila Antos Living Trust
5 dated April 26, 2007, and any amendments thereto, and delivery to Lender
6 of the Correction to Deed of Trust Assignment of Rents, Security
7 Agreement and Fixture Filing, in form and substance satisfactory to
8 Lender.

9 31. On July 22, 2015, a Correction to Deed of Trust, Assignment of Rent, Security
10 Agreement and Fixture Filing (“Correction to Deed of Trust”) was recorded in the Clark County
11 Recorder’s Office as Instrument No. 201507220001146.

12 32. This Correction to Deed of Trust modified Paragraph One of the Deed of Trust to
13 read:

14 One: Payment of any and all amounts (collectively, the “Guarantied
15 Obligations”) due and owing by Trustor under that certain Guaranty from
16 Kenneth Antos and Sheila Antos (individually and collectively,
17 “Guarantor”) dated June 22, 2012, in favor of Beneficiary (the
18 “Guaranty”), guarantying the indebtedness evidenced by that certain
19 Secured Promissory Note (and any renewals, extensions, modifications
20 and substitutions thereof) (collectively, the “Note”), executed by KCI
21 Investments, LLC, a Nevada limited liability company, and Preferred
22 Restaurant Brands, Inc., a Florida corporation (individually and
23 collectively, “Borrower”), dated June 22, 2012, as modified, in the
24 maximum principal sum of THREE MILLION AND NO/100 DOLLARS
25 (\$3,000,000.00), together with interest thereon, late charges and collection
26 costs as provided in the Note.

27 33. On or about December 2, 2016, CBCI sold a portion of the monetary obligations
28 of the Note in the amount of \$15,000.00 to Southridge Partners II, LP.

34. On or about December 2, 2016, CBCI and KCI entered into a Forbearance
Agreement.

35. As part of the Forbearance Agreement, the Antos Trust executed a Consent,
Reaffirmation, and General Release by the Trust wherein the Antos Trust agreed

1 to join in and be bound to the terms of the Representations and Warranties
2 contained in Sections 4 and 7, and the General Release contained in
3 Section 8 of the Agreement applicable as though the Trust were a Credit
4 Party.

5 36. On or about December 2, 2016, a Tenth Modification to Secured Promissory Note
6 (“Tenth Modification”) was entered into.

7 37. Paragraph 6(e) of the Tenth Modification provides for a condition precedent as
8 follows:

9 Delivery to Lender of a duly executed First Modification to Deed of Trust,
10 Assignment of Rents, Security Agreement and Fixture Filing, by Kenneth
11 M. Antos and Sheila M. Neumann-Antos, Trustees of the Kenneth and
12 Sheila Antos Living Trust dated April 26, 2007, and any amendments
13 thereto, as trustor, related to that certain Deed of Trust, Assignment of
14 Rents, Security Agreement and Fixture Filing made December 17, 2014,
15 and recorded in the Official Records of Clark County, Nevada, on
16 December 29, 2014, as instrument number 20141229-0002856.

17 38. On December 19, 2016, the First Modification to Deed of Trust, Assignment of
18 Rents, Security Agreement and Fixture Filing was recorded in the Clark County Recorder’s
19 Office as Instrument No. 201612190002739.

20 39. On or about July 21, 2017, Mr. Bloom proposed to service the CBCI Note in
21 exchange for the ownership in the Property. Specifically, Mr. Bloom wrote,

22 My thought is that this proposal gets the 3rd lender:

- 23 • a full recovery of its Note balance plus all protective advances past and future,
- 24 • interim cash flow and
- 25 • provides interim additional full collateral where, given the current value of the
26 property, the 3rd position lender is currently unsecured.

27 As to the Seller, he:

- 28 • gets out from under a potential deficiency judgment from the 3rd position
lender and
- unburdens himself from any additional assets that may have been pledged.

40. Spanish Heights was created to facilitate this transaction.

41. On September 27, 2017, CBCI, the Antos Trust, Spanish Heights and Mr.

1 Bloom's company, SJCVC, entered into the 2017 Forbearance Agreement.

2 42. The September 27, 2017 Forbearance Agreement indicates that Mr. Bloom's
3 company Spanish Heights intends to acquire the Property and make certain payments to CBCI
4 pursuant to the terms of the 2017 Forbearance Agreement.

5 43. Mr. Bloom testified that he was not provided with a complete set of documents
6 reflecting the prior transactions between the Antos and KCI⁸ and that misrepresentations were
7 made regarding the prior transactions by CBCI.

8 44. In the 2017 Forbearance Agreement, the Antos Parties, Spanish Heights and
9 SJCVC acknowledged default and affirmed CBCI has fully performed.

10 45. The 2017 Forbearance Agreement contains an acknowledgement that the prior
11 agreements between the Antos and CBCI are valid.

12 Par. 8.7 Enforceable Amended Note and Modified Deed of Trust/No Conflicts. The
13 Amended Note and Modified Deed of Trust and the Forbearance Agreement, are legal,
14 valid, and binding agreements of Antos Parties and the SJCVC Parties, enforceable in
15 accordance with their respective terms, and any instrument or agreement required
16 hereunder or thereunder, when executed and delivered, is (or will be) similarly legal,
17 valid, binding and enforceable. This Forbearance Agreement does not conflict with any
18 law, agreement, or obligation by which Antos Parties and the SJCVC parties is bound.

19 46. In connection with the 2017 Forbearance Agreement, on November 3, 2017, the
20 Antos Trust conveyed the Property to Spanish Heights.

21 47. A lease agreement between Spanish Heights as the Landlord, and SJCVC as the
22 Tenant, was executed by both Spanish Heights and SJCVC on or around August 15, 2017.

23 48. The lease agreement between Spanish Heights and SJCVC indicates that the lease
24 term is two years, with an option for SJCVC to exercise two additional consecutive lease
25

26
27 ⁸ The Court finds that regardless of whether all of the prior transactional documents were provided to Mr.
28 Bloom, Mr. Bloom was on notice of the prior transactions. The 2017 Forbearance Agreement clearly identifies the
nature of the prior transactions in the section entitled "The Parties and Background" which begins on page 1 of the
document.

1 extensions.

2 49. Pursuant to the terms of the 2017 Forbearance Agreement, Spanish Heights was
3 to make certain payments to CBCI and other parties. In addition, a balloon payment of the total
4 amount owing, under the Note, was due on August 31, 2019.

5 50. Pursuant to the 2017 Forbearance Agreement, SJCVC affirmed all obligations due
6 to CBCI under the Note and Modified Deed of Trust.

7 51. The 2017 Forbearance Agreement provides in pertinent part, "CBCI is free to
8 exercise all of its rights and remedies under the Note and Modified Deed of Trust..."

9 52. The 2017 Forbearance Agreement states the rights and remedies are cumulative
10 and not exclusive, and may be pursued at any time.

11 53. As part of the 2017 Forbearance Agreement, there were certain requirements of
12 Spanish Heights attached as Exhibit B to the 2017 Forbearance Agreement.

13 54. Among the requirements was the understanding that the First Lien holder would
14 pay the real property taxes, that CBCI would pay the 1st and 2nd Mortgage payments to prevent
15 default, that Spanish Heights would make certain repairs and improvements to the Property,
16 Spanish Heights would maintain the Property, and Spanish Heights would pay for a customary
17 homeowner's insurance policy and all Homeowner's Association dues.

18 55. In addition to the requirements of the 2017 Forbearance Agreement, there was
19 additional security to be provided by Spanish Heights, SJCVC, and others.

20 56. Among the additional security was a Pledge Agreement, through which the
21 members of Spanish Heights pledged 100% of the membership interest in Spanish Heights.⁹

22
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28 ⁹ The Pledge Agreement states in pertinent part:

THIS PLEDGE AGREEMENT dated 27th (sic)(this "Agreement") is made by Kenneth & Sheila Antos

1 57. The Pledge Agreement provides in pertinent part, “Secured Party shall have the
2 right, at any time in Secured Party’s discretion after a Non-Monetary Event of Default ... to
3 transfer to or to register in the name of Secured Party or any of Secured Party’s nominees any or
4 all of the Pledged Collateral.”

5 58. Pursuant to the Pledge Agreement, upon an event of default, Pledgors (SJCVC and
6 Antos) appointed CBCI as Pledgors’ attorney-in-fact to execute any instrument which Secured
7 Party may deem necessary or advisable to accomplish the purposes of the Pledge Agreement.

8 59. The Pledge Agreement was signed on September 27, 2017, by the Antos and Mr.
9 Bloom as purported manager on behalf of Spanish Heights. No separate signature block for
10 SJCVC appears on the Pledge Agreement.

11 60. Paragraph 17 of the Pledge Agreement contained a notice provision which
12 required notice to the Pledgors to be given to Pledgors through Plaintiffs’ current counsel, Maier
13 Gutierrez & Associates.

14 61. As additional required security, SJCVC agreed to a Security Agreement to grant
15 CBCI a Security Interest in a Judgment described as:

16 SJCVC represents that First 100, LLC, and 1st One Hundred Holdings,
17 LLC, obtained a Judgment in the amount of \$2,221,039,718.46 against
18 Raymond Ngan and other Defendants in the matter styled *First 100, LLC,*
19 *Plaintiff(s) vs. Raymond Ngan, Defendant(s)*, Case No, A-17-753459-C in
20 the 8th Judicial District Court for Clark County, Nevada (the “Judgment”),
21 SJCVC represents It holds a 24,912% Membership Interest in 1st One
22 Hundred Holdings, LLC. SJCVC represents and warrant that no party, other

23
24
25 Living Trust (the Antos Trust”), SJC Ventures, LLC (“SJCVC”)(collectively the “Pledgors”) to CBC
26 Partners I, LLC, a Washington limited-liability company (“Secured Party” or “CBCI”).

27 ***

28 WHEREAS, Pledgors are the owners of 100%, of the membership interests (the “Membership Interests”) of Spanish Heights Acquisition Company, LLC, a Nevada limited liability company (“SHAC”), which has been organized pursuant to the terms of the Limited Liability Company Agreement of Spanish Heights Acquisition Company, LLC.

1 than the Collection Professionals engaged to collect the Judgment, have a
2 priority to receive net Judgment proceeds attributable to SJCVC before
3 SJCVC; and that SJCVC shall receive Its interest at a minimum in pari passu
4 with other parties who hold interests in the Judgment. 1st One Hundred
5 Holdings, LLC, represents and warrant that no party, other than the
6 Collection Professionals engaged to collect the Judgment and certain other
7 creditors of 1st One Hundred Holdings, have a priority to receive net
8 Judgment proceeds prior to distributions to 1st One Hundred Holdings
9 Members; and that SJCVC shall receive Its interest at a minimum in pari
10 passu with other parties who hold interests in the Judgment.

11 62. In addition to the other consideration in the 2017 Forbearance Agreement, the
12 Antos Trust signed a Personal Guaranty Agreement, guaranteeing to CBCI the full and punctual
13 performance of all the obligations described in the 2017 Forbearance Agreement.

14 63. Pursuant to the Amendment to Forbearance Agreement and Related Agreements,
15 dated December 1, 2019 (the "Amendment to 2017 Forbearance Agreement"), SJCVC¹⁰
16 acknowledged that it pledged its membership interest in Spanish Heights as collateral for the
17 2017 Forbearance Agreement.¹¹

18 ¹⁰ An argument has been made that SJCVC did not pledge its stock under the original Pledge Agreement.
19 Given the notice provision in the original Pledge Agreement, Mr. Bloom's signature as manager on behalf of
20 Spanish Heights, rather than SJCVC, and the language of the Pledge Agreement reflecting a pledge of 100% of the
interest in membership of Spanish Heights, it appears the signature line for Mr. Bloom may have been incorrect.
Mr. Bloom is not the manager of Spanish Heights; Mr. Bloom is the manager of SJCVC, which serves as the manager
of Spanish Heights. The language in paragraphs 5 and 9 of the Amendment to the 2017 Forbearance Agreement
reaffirms SJCVC's pledge of its membership interest.

21 ¹¹ The Amendment to the 2017 Forbearance Agreement states in pertinent part:

22 WHEREAS, on or about September 27, 2017, the parties executed a Forbearance Agreement whereby
23 CBCI agreed to forbear from exercising the rights and remedies under certain loan documents executed by
24 the "Antos Parties." In addition to the Forbearance Agreement, the parties executed "Exhibit B" to the
Forbearance Agreement, a Lease Agreement, an Account Control Agreement, a Membership Pledge
Agreement, an Assignment of Rents, and a Security Agreement (collectively "the Related Agreements").

25 ***

26 5. The Membership Pledge Agreement executed by SJCVC and the Antos Trust shall remain in effect and
27 the execution of this Amendment shall not be considered a waiver of CBCI's rights under the Membership
Pledge Agreement.

28 ***

1 64. On or about December 1, 2019, CBCI, the Antos, Spanish Heights and SJC
2 entered into an Amendment to the 2017 Forbearance Agreement, extending the date of the
3 balloon payment to March 31, 2020.

4 65. The Amendment to 2017 Forbearance Agreement was signed by the Antos,
5 Bloom as purported manager on behalf of Spanish Heights, and Bloom as manager of SJC.
6

7 66. Pursuant to the Amendment to 2017 Forbearance Agreement, the Security
8 Agreement “shall remain in effect and the execution of this Amendment shall not be considered
9 a waiver of CBCI’s rights under the Security Agreement...”

10 67. Pursuant to the Amendment to 2017 Forbearance Agreement, any amendment
11 must be in writing.
12

13 68. On March 12, 2020, Spanish Hills Community Association recorded a Health and
14 Safety Lien against the Property. This Lien was for Nuisances and Hazardous Activities.

15 69. On or about March 16, 2020, CBCI mailed a Notice of Non-Monetary Defaults to
16 Spanish Heights and SJC. This Notice of Non-Monetary Default delineated the following
17 defaults:
18

- 19 1. Evidence of homeowner’s insurance coverage Pursuant to Paragraph
20 1(A)(6) of Amendment to Forbearance Agreement and Related
21 Agreements;
- 22 2. Evidence of repairs pursuant to Paragraph 3(c)(1) of Exhibit B to
23 Forbearance Agreement;
- 24 3. Evidence of Bank of America account balance of \$150,000.00
25 pursuant to Paragraph 6(c) of Exhibit B to Forbearance Agreement;
- 26 4. Opinion letter from SJC Ventures and 1st One Hundred Holdings
27 counsel regarding the Judgment and Security Agreement pursuant to
28 Paragraph 1(A)(12) of Amendment to Forbearance Agreement and
 Related Agreements;

9. The Membership Pledge Agreement executed by SJC and the Antos Trust shall remain in effect and
the execution of this Amendment shall not be considered a waiver of CBCI’s rights under the Membership
Pledge Agreement.

5. Evidence of corporate authority for SJC Ventures and 1st One Hundred Holdings pursuant to Paragraph 1(A)(13) of Amendment to Forbearance Agreement and Related Agreements; and
6. Evidence of SJC Ventures filing of applications for mortgages to refinance 5148 Spanish Heights Drive, pursuant to paragraph 1(C) of Amendment to Forbearance Agreement and Related Agreements.

70. On April 1, 2020, a Notice of Default and Demand for Payment was sent to Spanish Heights and SJCVC. This letter had a typo on the date of final balloon payment being due on March 31, 2021. This was corrected and emailed to Spanish Height's and SJCVC's counsel noting that the default date was corrected to March 31, 2020.

71. On April 1, 2020, under separate cover, counsel for CBCI sent a Notice to Spanish Heights, SJCVC, and Antos that CBCI would exercise its rights under the Pledge Agreement by transferring the pledged collateral to CBCI's nominee CBC Partners, LLC.

72. On April 1, 2020, CBC Partners received the Assignment of Company and Membership Interest of Spanish Heights from the Antos Trust.

73. On April 3, 2020, a Notice to Vacate was sent to SJCVC.

74. On April 6, 2020, CBCI sold the Note and security associated with the Note, to 5148 Spanish Heights, LLC.

75. On May 28, 2020, the Assignment of Interest in Deed of Trust was recorded in the Clark County Recorder's Office as Instrument No 202005280002508.

76. On September 15, 2020, Notice of Breach and Election to Sell Under Deed of Trust was recorded in the Clark County Recorder's Office as Instrument No 202009150001405.

77. On December 15, 2020, Notice of Trustee's Sale was recorded in the Clark County Recorder's Office Instrument No 20201215-0000746. The Sale was scheduled for January 5, 2021.

78. CBCI, through Hallberg, and Mr. Antos, both individually and as Trustee of the

1 revocable living trust as makers; confirm the original debt and the Deed of Trust as collateral for
2 the Note.

3 79. 5148 Spanish Heights, LLC, issued a new Notice of Default on January 4, 2021.

4 80. NRS 107.080 sets forth the notice requirements that were followed by 5148
5 Spanish Heights, LLC, and Nevada Trust Deed Services.

6 81. Plaintiff has shown no defect or lack of adequate statutory notice in the current
7 notice.
8

9 82. NRS 47.240 provides for conclusive presumptions relevant to certain provisions
10 of the relevant documents.¹²

11 83. Nothing in the evidence presented during these proceedings provides any basis for
12 departure from the conclusive presumptions recited in the agreements between the parties.¹³
13

14 84. At this time, CBCI has acquired the Antos interest in Spanish Heights through the
15 Pledge Agreement. The membership interest in a limited liability company is not an interest in
16

17 ¹² **NRS 47.240 Conclusive presumptions.** The following presumptions, and no others, are conclusive:

18 ***

19 2. The truth of the fact recited, from the recital in a written instrument between the parties thereto, or their
20 successors in interest by a subsequent title, but this rule does not apply to the recital of a consideration.

21 ¹³ For purposes of this proceeding, the Court applies the conclusive presumptions of NRS 47.240 to the
22 following :

23 From the Pledge Agreement:

24 WHEREAS, Pledgors are the owners of 100%, of the membership interests (the "Membership Interests")
25 of Spanish Heights Acquisition Company, LLC, a Nevada limited liability company ("SHAC"), which has
26 been organized pursuant to the terms of the Limited Liability Company Agreement of Spanish Heights
27 Acquisition Company, LLC.

28 From the Amendment to the 2017 Forbearance Agreement:

WHEREAS, on or about September 27, 2017, the parties executed a Forbearance Agreement whereby
CBCI agreed to forbear from exercising the rights and remedies under certain loan documents executed by
the "Antos Parties." In addition to the Forbearance Agreement, the parties executed "Exhibit B" to the
Forbearance Agreement, a Lease Agreement, an Account Control Agreement, a Membership Pledge
Agreement, an Assignment of Rents, and a Security Agreement (collectively "the Related Agreements").

1 real property. Title to the Property remains in Spanish Heights.

2 85. Plaintiff has not established unanimity of interest in title to the Property.

3 86. Plaintiff has not established an intent on behalf of the creditor to merge their lien
4 with equitable title.

5 87. Plaintiff has provided no evidence that the 2017 Forbearance Agreement and
6 Amendment to the 2017 Forbearance Agreement are vague or ambiguous.

7
8 88. Plaintiff has provided no evidence of fraud or misrepresentation by any
9 Defendant.

10 89. If any findings of fact are properly conclusions of law, they shall be treated as if
11 appropriately identified and designated.
12

13 **III. Conclusions of Law**

14
15 1. The legal standard for granting injunctive relief is set forth in NRS 33.010, which
16 provides:

17 Cases in which injunction may be granted. An injunction may be
18 granted in the following cases:

19 1. When it shall appear by the complaint that the plaintiff is
20 entitled to the relief demanded, and such relief or any part thereof
21 consists in restraining the commission or continuance of the act
complained of, either for a limited period or perpetually.

22 2. When it shall appear by the complaint or affidavit that the
23 commission or continuance of some act, during the litigation,
would produce great or irreparable injury to the plaintiff.

24 3. When it shall appear, during the litigation, that the
25 defendant is doing or threatens, or is about to do, or is procuring or
26 suffering to be done, some act in violation of the plaintiff's rights
27 respecting the subject of the action, and tending to render the
judgment ineffectual.

28 2. Given the current bankruptcy stay, the Court extends the existing injunctive relief

1 entered January 5, 2021, pending further order from the Bankruptcy Court.

2 3. The relevant documents, including, but not limited to, the 2017 Forbearance
3 Agreement and Amendment to Forbearance Agreement and Related Agreements, dated
4 December 1, 2019, are clear and unambiguous as a matter of law

5 4. The Note is secured by the Property.

6 5. As a condition precedent to the Fourth, Seventh, Ninth, and Tenth Modifications
7 to the Note, a Deed of Trust encumbering the Property was required.
8

9 6. The Antos Parties had authority, individually and as Trustees of the Antos Trust,
10 to encumber the Property with the Deed of Trust to CBCI.

11 7. Plaintiffs have waived any defects, acknowledged the encumbrance and agreed, in
12 writing to pay twice; first in the 2017 Forbearance Agreement and second, in the Amendment to
13 the 2017 Forbearance Agreement.
14

15 8. Plaintiffs agreed in the 2017 Forbearance Agreements to pay the amounts in
16 question by separate promise to the Antos Parties.
17

18 9. The Antos Trust received an indirect benefit from the transactions related to the
19 Deed of Trust.

20 10. Mr. Antos testified that the Property was used as security in exchange for
21 additional capital and release of other collateral from CBCI .
22

23 11. Mr. Antos agrees with CBCI that Plaintiffs have failed to perform.

24 12. NRS 107.500 is only required of owner-occupied housing.

25 13. The doctrine of merger provides that “[w]henver a greater and a less estate
26 coincide and meet in one and the same person, without any intermediate estate, the less is
27 immediately merged in the greater, and thus annihilated.” 31 C.J.S. Estates § 153.
28

1 14. Plaintiffs have made no showing of the applications of the doctrine of merger in
2 this case. As no interests have merged, and there is no showing of intent to merge

3 15. The one-action rule “does not excuse the underlying debt.” *Bonicamp v. Vazquez*,
4 120 Nev. 377, 382-83, 91 P.3d 584, 587 (2004).

5 16. The One-Action Rule prohibits a creditor from “first seeking the personal
6 recovery and then attempting, in an additional suit, to recover against the collateral.” *Bonicamp*,
7 120 Nev. at 383, 91 P.3d at 587 (2004). When suing a debtor on a secured debt, a creditor may
8 initially elect to proceed against the debtor or the security. If the creditor sues the debtor
9 personally on the debt, the debtor may then either assert the one-action rule, forcing the creditor
10 to proceed against the security first before seeking a deficiency from the debtor, or decline to
11 assert the one-action rule, accepting a personal judgment and depriving the creditor of its ability
12 to proceed against the security. NRS 40.435(3); *Bonicamp*, 120 Nev. at 383, 91 P.3d at 587
13 (2004).

14 17. The “One-Action Rule” was specifically waived by the debtor. The Deed of Trust
15 paragraph 6.21(a) states:
16
17
18

19 Trustor and Guarantor each waive all benefits of the one-action
20 rule under NRS 40.430, which means, without limitation, Trustor
21 and Guarantor each waive the right to require Lender to (i) proceed
22 against Borrower, any other guarantor of the Loan, any pledgor of
23 collateral for any person’s obligations to Lender or any other
24 person related to the Note and Loan Documents, (ii) proceed
25 against or exhaust any other security or collateral Lender may
26 hold, or (iii) pursue any other right or remedy for Guarantors’
27 benefit.

28 18. The 2017 Forbearance Agreement paragraph 25 gives the benefit of cumulative
remedies.

 The rights and remedies of CBCI under this Forbearance
Agreement and the Amended Note and Modified Deed of Trust are

1 cumulative and not exclusive of any rights or remedies that CBCI
2 would otherwise have, and may be pursued at any time and from
3 time to time and in such order as CBCI shall determine in its sole
4 discretion.

5 19. The Court concludes as a matter of law that the Plaintiffs have not established
6 facts or law to support the claim that the One-Action Rule bars recovery under the defaulted
7 Note and Security documents.

8 20. The Court's Temporary Restraining Order, filed January 5, 2021, will remain in
9 place pending further order of the Bankruptcy Court.

10 21. If any conclusions of law are properly findings of fact, they shall be treated as if
11 appropriately identified and designated.

12 JUDGMENT

13 Based upon the foregoing Findings of Fact and Conclusions of Law, and other good
14 cause appearing:

15 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that as to the
16 Claims for Declaratory Relief, the Court declares the third position Deed of Trust is a valid
17 existing obligation against the Property.


18 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that as to the
19 Claims for Declaratory Relief, the Court declares that the Note is a valid existing obligation.
20

21 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that as to the
22 Claims for Declaratory Relief, the Court declares that the Pledge Agreement is a valid existing
23 obligation of SJCVC.
24

25 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that as to the
26 Claims for Declaratory Relief, the Court declares that the acquisition of a membership interest in
27 Spanish Heights does not merge the Defendants interests.
28

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that as to the Claims for Declaratory Relief, the Court declares that there has been a valid waiver of the One-Action Rule.

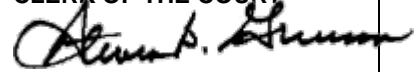
Dated this 6th day of April, 2021


Elizabeth Gonzalez, District Court Judge

Certificate of Service

I hereby certify that on the date filed, a copy of the foregoing Findings of Fact and Conclusions of Law was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court Electronic Filing Program.

/s/ *Dan Kutinac*
Dan Kutinac, JEA



NOAS

JOSEPH A. GUTIERREZ, ESQ.

Nevada Bar No. 9046

DANIELLE J. BARRAZA, ESQ.

Nevada Bar No. 13822

MAIER GUTIERREZ & ASSOCIATES

8816 Spanish Ridge Avenue

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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

SPANISH HEIGHTS ACQUISITION
COMPANY, LLC, a Nevada Limited Liability
Company; SJC VENTURES HOLDING
COMPANY, LLC, d/b/a SJC VENTURES, LLC,
a Delaware Limited Liability Company,

Plaintiffs,

vs.

CBC PARTNERS I, LLC, a foreign Limited
Liability Company; CBC PARTNERS, LLC, a
foreign Limited Liability Company; 5148
SPANISH HEIGHTS, LLC, a Nevada Limited
Liability Company; KENNETH ANTOS AND
SHEILA NEUMANN-ANTOS, as Trustees of
the Kenneth & Sheila Antos Living Trust and the
Kenneth M. Antos & Sheila M. Neumann-Antos
Trust; DACIA, LLC, a foreign Limited Liability
Company; DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

Defendants.

AND RELATED CLAIMS.

Case No.: A-20-814541-B

Dept. No.: XI

NOTICE OF APPEAL

NOTICE IS HEREBY given that plaintiffs, Spanish Heights Acquisition Company, LLC and SJC Ventures Holding Company, LLC, d/b/a SJC Ventures, LLC, by and through their attorneys of record, the law firm MAIER GUTIERREZ & ASSOCIATES, appeal to the Supreme Court of Nevada from

1 the Order entered by the Eighth Judicial District Court on April 6, 2021, with notice of entry filed on
2 April 20, 2021, a copy of which is attached hereto as **Exhibit 1**.

3 DATED this 29th day of April, 2021.

4 Respectfully submitted,

5 **MAIER GUTIERREZ & ASSOCIATES**

6 /s/ Joseph A. Gutierrez

7 JOSEPH A. GUTIERREZ, ESQ.

8 Nevada Bar No. 9046

9 DANIELLE J. BARRAZA, ESQ.

10 Nevada Bar No. 13822

11 8816 Spanish Ridge Avenue

12 Las Vegas, Nevada 89148

13 *Attorneys for Plaintiffs*

1 **CERTIFICATE OF SERVICE**

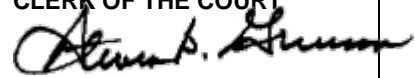
2 Pursuant to Administrative Order 14-2, a copy of the **NOTICE OF APPEAL** was
3 electronically filed on the 29th day of April, 2021, and served through the Notice of Electronic
4 Filing automatically generated by the Court's facilities to those parties listed on the Court's Master
5 Service List, as follows:

6 Michael R. Mushkin, Esq.
7 MUSHKIN & COPPEDGE
8 6070 South Eastern Avenue, Suite 270
9 Las Vegas, Nevada 89119
10 *Attorneys for Defendants CBC Partners I, LLC, CBC Partners, LLC,*
11 *5148 Spanish Heights, LLC, and Dacia LLC*

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/s/ Natalie Vazquez
An Employee of MAIER GUTIERREZ & ASSOCIATES

EXHIBIT 1

EXHIBIT 1



NEO
JOSEPH A. GUTIERREZ, ESQ.
Nevada Bar No. 9046
DANIELLE J. BARRAZA, ESQ.
Nevada Bar No. 13822
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Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

SPANISH HEIGHTS ACQUISITION
COMPANY, LLC, a Nevada Limited Liability
Company; SJC VENTURES HOLDING
COMPANY, LLC, d/b/a SJC VENTURES, LLC,
a Delaware Limited Liability Company,

Plaintiffs,

vs.

CBC PARTNERS I, LLC, a foreign Limited
Liability Company; CBC PARTNERS, LLC, a
foreign Limited Liability Company; 5148
SPANISH HEIGHTS, LLC, a Nevada Limited
Liability Company; KENNETH ANTOS AND
SHEILA NEUMANN-ANTOS, as Trustees of
the Kenneth & Sheila Antos Living Trust and the
Kenneth M. Antos & Sheila M. Neumann-Antos
Trust; DACIA, LLC, a foreign Limited Liability
Company; DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

Defendants.

AND RELATED CLAIMS.

Case No.: A-20-813439-B
Dept. No.: XI

NOTICE OF ENTRY OF ORDER

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD.

YOU AND EACH OF YOU will please take notice that a **FINDINGS OF FACT AND**

1 **CONCLUSIONS OF LAW** was hereby entered on the 6th day of April, 2021. A copy of which is
2 attached hereto.

3 DATED this 20th day of April, 2021.

4 Respectfully submitted,

5 **MAIER GUTIERREZ & ASSOCIATES**

6 /s/ Danielle J. Barraza

7 JOSEPH A. GUTIERREZ, ESQ.

8 Nevada Bar No. 9046

9 DANIELLE J. BARRAZA, ESQ.

10 Nevada Bar No. 13822

11 8816 Spanish Ridge Avenue

12 Las Vegas, Nevada 89148

13 *Attorneys for Plaintiffs*

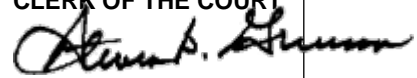
1 **CERTIFICATE OF SERVICE**

2 Pursuant to Administrative Order 14-2, a copy of the **NOTICE OF ENTRY OF ORDER**
3 was electronically filed on the 20th day of April, 2021, and served through the Notice of Electronic
4 Filing automatically generated by the Court's facilities to those parties listed on the Court's Master
5 Service List as follows:

6 Michael R. Mushkin, Esq.
7 MUSHKIN & COPPEDGE
8 6070 South Eastern Avenue, Suite 270
9 Las Vegas, Nevada 89119
10 *Attorneys for Defendants CBC Partners I, LLC, CBC Partners, LLC,*
11 *5148 Spanish Heights, LLC, and Dacia LLC*

12 /s/ Natalie Vazquez

13 An Employee of MAIER GUTIERREZ & ASSOCIATES
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1 FFCL

2 **DISTRICT COURT**

3 **CLARK COUNTY, NEVADA**

4
5 SPANISH HEIGHTS ACQUISITION
6 COMPANY, LLC, a Nevada Limited Liability
7 Company; SJC VENTURES HOLDING
8 COMPANY, LLC, d/b/a SJC VENTURES,
9 LLC, a Delaware Limited Liability Company,

Case No. A-20-813439-B

Dept. No.: XI

10 Plaintiffs,

11 v.

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

12 CBC PARTNERS I, LLC, a foreign Limited
13 Liability Company; CBC PARTNERS, LLC, a
14 foreign Limited Liability Company; 5148
15 SPANISH HEIGHTS, LLC, a Nevada Limited
16 Liability Company; KENNETH ANTOS AND
17 SHEILA NEUMANN-ANTOS, as Trustees of
18 the Kenneth & Sheila Antos Living Trust and
19 the Kenneth M. Antos & Sheila M. Neumann-
20 Antos Trust; DACIA, LLC, a foreign Limited
21 Liability Company; DOES I through X; and
22 ROE CORPORATIONS I through X,
23 inclusive,

24 Defendants.

25 5148 SPANISH HEIGHTS, LLC, a Nevada
26 limited liability company; and CBC
27 PARTNERS I, LLC, a Washington limited
28 liability company,

Counterclaimants,

v.

SPANISH HEIGHTS ACQUISITION
COMPANY, LLC, a Nevada Limited Liability
Company; SJC VENTURES, LLC, a Delaware
limited liability company; SJC VENTURES
HOLDING COMPANY, LLC, a Delaware
limited liability company; JAY BLOOM,
individually and as Manager, DOE

1 DEFENDANTS 1-10; and ROE
2 DEFENDANTS 11-20,
3 Counterdefendants.

4 FINDINGS OF FACT AND CONCLUSIONS OF LAW

5 This matter having come on for preliminary injunction and consolidated non-jury trial on
6 related issues pursuant to NRCP 65(a)(2)¹ before the Honorable Elizabeth Gonzalez beginning
7 on February 1, 2021, February 2, 2021 , February 3, 2021,² and March 15, 2021; Plaintiffs
8 SPANISH HEIGHTS ACQUISITION COMPANY, LLC, (“Spanish Heights”)³ and SJC
9 VENTURES HOLDING COMPANY, LLC, d/b/a SJC VENTURES, LLC (“SJCVC”) appearing
10 by and through their representative Jay Bloom and their counsel of record JOSEPH A.
11 GUTIERREZ, ESQ. and DANIELLE J. BARRAZA, ESQ. of the law firm of MAIER
12

13
14
15 ¹ Pursuant to NRCP 65(a)(2), the parties have stipulated that the following legal issues surrounding the
16 claims and counterclaims are advanced for trial to be heard in conjunction with the hearing on the preliminary
17 injunction hearing:

- 18 a) Contractual interpretation and/or validity of the underlying “Secured Promissory Note” between
19 CBC Partners I, LLC, and KCI Investments, LLC, and all modifications (Counterclaim First, Fourth,
20 Ninth, and Twelfth Claim for Relief);
21 b) Interpretation and/or validity of the claimed third-position Deed of Trust and all modifications
22 thereto, and determination as to whether any consideration was provided in exchange for the Deed of Trust
23 (Counterclaim First, Fourth, Ninth, and Twelfth Claim for Relief);
24 c) Contractual interpretation and/or validity of the Forbearance Agreement, Amended Forbearance
25 Agreement and all associated documents/contracts (Counterclaim First, Fourth, Ninth, and Twelfth Claim
26 for Relief);
27 d) Whether the Doctrine of Merger applies to the claims at issue (Amended Complaint Fourth,
28 Seventh Cause of Action); and
e) Whether the One Action Rule applies to the claims at issue (Amended Complaint Third Cause of
Action).

The injunctive relief claims are contained in the Amended Complaint Sixth Cause of Action.

² The Court was advised on February 3, 2021, that Spanish Heights filed for bankruptcy protection. The
Court suspended these proceedings and stayed the matter for 30 days as to all parties for Defendants to seek relief
from the stay. As no order lifting the stay has been entered by the Bankruptcy Court, nothing in this order creates
any obligations or liabilities directly related to Spanish Heights; however, factual findings related to Spanish Heights
are included in this decision. The term “Plaintiffs” as used in these Findings of fact and Conclusions of Law is not
intended to imply any action by this Court against the debtor, Spanish Heights.

³ As a result of the bankruptcy filing, Spanish Heights did not participate in these proceedings on March 15,
2021.

1 GUTIERREZ & ASSOCIATES and Defendants CBC PARTNERS I, LLC, CBC PARTNERS,
2 LLC, appearing by and through its representative Alan Hallberg (“Hallberg”); 5148 SPANISH
3 HEIGHTS, LLC, KENNETH ANTOS and SHEILA NEUMANN-ANTOS, as Trustees of the
4 Kenneth & Sheila Antos Living Trust and the Kenneth M. Antos & Sheila M. Neumann-Antos
5 Trust; DACIA, LLC, (collectively “Defendants”) all Defendants appearing by and through their
6 counsel of record MICHAEL R. MUSHKIN, ESQ. and L. JOE COPPEDGE, ESQ. of the law
7 firm of MUSHKIN & COPPEDGE; the Court having read and considered the pleadings filed by
8 the parties; having reviewed the evidence admitted during the trial; having heard and carefully
9 considered the testimony of the witnesses called to testify and weighing their credibility; having
10 considered the oral and written arguments of counsel, and with the intent of rendering a decision
11 on the limited claims before the Court at this time, pursuant to NRCP 52(a) and 58; the Court
12 makes the following findings of fact and conclusions of law:

15 **I. Procedural Posture**

16 On April 9, 2020, the original complaint was filed and a Temporary Restraining Order
17 was issued without notice by the then assigned judge.⁴

19 Spanish Heights and SJCV initiated this action against CBC PARTNERS I, LLC, CBC
20 PARTNERS, LLC, 5148 SPANISH HEIGHTS, LLC, KENNETH ANTOS AND SHEILA
21 NEUMANN-ANTOS, as Trustees of the Kenneth & Sheila Antos Living Trust and the Kenneth
22 M. Antos & Sheila M. Neumann-Antos Trust (“Antos Trust”); DACIA, LLC, with the First
23 Amended Complaint being filed on May 15, 2020.

25 By Order filed May 29, 2020, the Court granted Plaintiffs’ Motion for Preliminary
26 Injunction on a limited basis that remained in effect until after expiration of the Governor’s
27

28 ⁴ This matter was reassigned to this department after an April 13, 2020, Request for Transfer to Business Court was made by the Defendants.

Emergency Directive 008.

On June 10, 2020, defendants CBC PARTNERS I, LLC, CBC PARTNERS, LLC, and 5148 Spanish Heights, LLC, filed their answer to the first amended complaint.

Defendants CBC PARTNERS I, LLC, and 5148 Spanish Heights, LLC, have also filed a counterclaim against plaintiffs, and Jay Bloom.

On September 3, 2020, Defendant Antos Trust filed an answer and counterclaim against SJCVC, which SJCVC answered on September 28, 2020.⁵

II. Findings of Fact

1. This action involves residential real property located at 5148 Spanish Heights Drive, Las Vegas, Nevada 89148, with Assessor's Parcel Number 163-29-615-007 ("Property").

2. The original owners of the Property were Kenneth and Sheila Antos as joint tenants, with the original deed recorded in April 2007.

3. On or about October 14, 2010, Kenneth M. Antos and Sheila M. Neumann-Antos (collectively, "Antos") transferred the Property to Kenneth M. Antos and Sheila M. Neumann-Antos, as Trustees of the Kenneth and Shelia Antos Living Trust dated April 26, 2007 (the "Antos Trust", and together with "Antos", the "Antos Parties").

4. Nonparty City National Bank is the beneficiary of a first-position Deed of Trust recorded on the Property.

5. Nonparty Northern Trust Bank is the beneficiary of a second-position Deed of Trust recorded on the Property.

6. The Property is currently owned by Spanish Heights⁶ which has entered into a

⁵ The Antos have a pending motion for summary judgment.

⁶ The manager of Spanish Heights is SJCVC.

1 written lease agreement with SJC.V.⁷

2 7. Although the Property is residential, it is not owner occupied, but is occupied by
3 Jay Bloom (“Mr. Bloom”) and his family.

4 8. On or about June 22, 2012, nonparty KCI entered into a Secured Promissory Note
5 (the “Note”) with CBC Partners I, LLC, a Washington limited liability company (“CBCI”).
6

7 9. The Note memorialized a \$300,000 commercial loan that CBCI made to Antos’
8 restaurant company KCI to be used for the restaurant business.

9 10. On or around June 22, 2012, Kenneth and Sheila Antos, in their individual
10 capacities, signed a “Guaranty” in which they personally guaranteed payment of the Note.
11

12 11. The Note was secured by a “Security Agreement” dated June 22, 2012, where the
13 security interest includes KCI’s intellectual property, goods, tools, furnishings, furniture,
14 equipment and fixtures, accounts, deposit accounts, chattel paper, and receivables.

15 12. The Property was not included as collateral for the original Note.

16 13. The Note was modified and amended several times.

17 14. On November 13, 2013, a Fourth Modification to Secured Promissory Note
18 (“Fourth Modification”) was executed.
19

20 15. Paragraph 4 of the Fourth Modification amended Paragraph 6.12 of the Note as
21 follows:
22

23 6.12 Antos Debt. Permit guarantor Kenneth M. Antos (“Antos”) to incur,
24 create, assume or permit to exist any debt secured by the real property
located at 5148 Spanish Heights Drive, Las Vegas, Nevada 89148.

25 16. Along with the Fourth Modification, the Antos Trust provided a Security
26 Agreement with Respect to Interest in Settlement Agreement and Mutual Release (the “Security
27

28 ⁷ The manager of SJC.V. is Bloom.

1 Agreement”).

2 17. This Security Agreement not only granted a security interest in a Settlement
3 Agreement, but also contained certain Representations, Warranties and Covenants of the Antos
4 Parties, including:

5 3.3 Sale, Encumbrance or Disposition. Without the prior written consent
6 of the Secured Party, Antos will not (a) allow the sale or encumbrance of
7 any portion of the Collateral and (b) incur, create, assume or permit to
8 exist any debt secured by the real property located at 5148 Spanish
9 Heights Drive, Las Vegas, NV 89148, other than the first and second
position deeds of trust or mortgages...

10 18. KCI was acquired by Preferred Restaurant Brands, Inc. formerly known as Dixie
11 Foods International, Inc. (“Dixie”).

12 19. The Note was assumed by Dixie with the Antos Parties continuing to guaranty the
13 obligation.

14 20. On or about October 31, 2014, a Seventh Modification to Secured Promissory
15 Note and Waiver of Defaults (“Seventh Modification”) was entered.

16 21. CBCI determined that prior to extension of additional credit; additional security
17 was required to replace a previously released security interest in other collateral.
18

19 22. Paragraph 18(f) of the Seventh Modification provided for a condition precedent:

20 Execution and delivery by Kenneth M. Antos and Sheila M. Neumann-
21 Antos, as Trustees of the Kenneth and Sheila Antos Living Trust dated
22 April 26, 2007, and any amendments thereto (the “Antos Trust”) to Lender
23 of a Deed of Trust on the real property located at 5148 Spanish Heights
24 Drive, Las Vegas, Nevada 89148 (the “Real Property”), in form and
substance satisfactory to Lender in its sole discretion.

25 23. On or about December 17, 2014, the Antos Trust delivered to CBCI a Certificate
26 of Trust Existence and Authority (“Certificate of Trust”).

27 24. The Certificate of Trust provides in part:

28 Kenneth M. Antos and Sheila M. Neumann-Antos, as trustees (each, a

1 “Trustee”) acting on behalf of the Trust, are each authorized and
2 empowered in the name of the Trust without the approval or consent of the
other Trustee, the beneficiaries, or any other person:

3 To execute and deliver a Deed of Trust, Assignment of Rents,
4 Security Agreement and Fixture Filing (the “Deed of Trust”), to
5 secure (i) obligations owing to Lender by KCI Investments, LLC, a
6 Nevada limited liability company, and Preferred Restaurant
7 Brands, Inc., a Florida corporation (individually and collectively,
8 “Borrower”), (ii) that certain Secured Promissory Note dated as of
9 June 22, 2012, in the maximum principal amount of \$3,250,000.00
10 (the “Note”) executed by Borrower in favor of Lender, (iii) that
11 certain Guaranty dated June 22, 2012, executed by the Grantors as
12 individuals and not in their capacity as trustees, and (iv) the other
13 documents and instruments executed or delivered in connection
14 with the foregoing.

15 25. The Certificate of Trust further provides:

16 The Deed of Trust and Lender’s provision of credit under the terms of the
17 Note will directly and indirectly benefit the Trust and its beneficiaries.

18 The Trustees of the Trust have the authority to enter into the transactions
19 with respect to which this Certificate is being delivered, and such
20 transactions will create binding obligations on the assets of the Trust.

21 26. On or about December 29, 2014, a Deed of Trust, Assignment of Rents, Security
22 Agreement and Fixture Filing (the “Deed of Trust”) was recorded against the Property in the
23 Clark County Recorder’s Office as Instrument No. 201412290002856 for the purpose of
24 securing the Note.

25 27. The revocable trust indirectly benefitted from this additional credit that was
26 issued to Antos and his business by CBCI.

27 28. The Deed of Trust is subordinate to the first mortgage to City National in the
28 principal amount of approximately \$3,240,000.00 with a monthly payment of \$19,181.07, and a
second mortgage to Northern Trust Bank in the principal amount of approximately \$599,000.00
with monthly payments of \$3,034.00.

29. On or about April 30, 2015, a Ninth Modification to Secured Promissory Note

1 and Waiver of Defaults (“Ninth Modification”) was executed.

2 30. Paragraph 14(c) of the Ninth Modification provides for a condition precedent as
3 follows:

4 Execution by the Trustees of the Kenneth and Sheila Antos Living Trust
5 dated April 26, 2007, and any amendments thereto, and delivery to Lender
6 of the Correction to Deed of Trust Assignment of Rents, Security
7 Agreement and Fixture Filing, in form and substance satisfactory to
8 Lender.

9 31. On July 22, 2015, a Correction to Deed of Trust, Assignment of Rent, Security
10 Agreement and Fixture Filing (“Correction to Deed of Trust”) was recorded in the Clark County
11 Recorder’s Office as Instrument No. 201507220001146.

12 32. This Correction to Deed of Trust modified Paragraph One of the Deed of Trust to
13 read:

14 One: Payment of any and all amounts (collectively, the “Guaranteed
15 Obligations”) due and owing by Trustor under that certain Guaranty from
16 Kenneth Antos and Sheila Antos (individually and collectively,
17 “Guarantor”) dated June 22, 2012, in favor of Beneficiary (the
18 “Guaranty”), guarantying the indebtedness evidenced by that certain
19 Secured Promissory Note (and any renewals, extensions, modifications
20 and substitutions thereof) (collectively, the “Note”), executed by KCI
21 Investments, LLC, a Nevada limited liability company, and Preferred
22 Restaurant Brands, Inc., a Florida corporation (individually and
23 collectively, “Borrower”), dated June 22, 2012, as modified, in the
24 maximum principal sum of THREE MILLION AND NO/100 DOLLARS
25 (\$3,000,000.00), together with interest thereon, late charges and collection
26 costs as provided in the Note.

27 33. On or about December 2, 2016, CBCI sold a portion of the monetary obligations
28 of the Note in the amount of \$15,000.00 to Southridge Partners II, LP.

34. On or about December 2, 2016, CBCI and KCI entered into a Forbearance
Agreement.

35. As part of the Forbearance Agreement, the Antos Trust executed a Consent,
Reaffirmation, and General Release by the Trust wherein the Antos Trust agreed

1 to join in and be bound to the terms of the Representations and Warranties
2 contained in Sections 4 and 7, and the General Release contained in
3 Section 8 of the Agreement applicable as though the Trust were a Credit
4 Party.

5 36. On or about December 2, 2016, a Tenth Modification to Secured Promissory Note
6 (“Tenth Modification”) was entered into.

7 37. Paragraph 6(e) of the Tenth Modification provides for a condition precedent as
8 follows:

9 Delivery to Lender of a duly executed First Modification to Deed of Trust,
10 Assignment of Rents, Security Agreement and Fixture Filing, by Kenneth
11 M. Antos and Sheila M. Neumann-Antos, Trustees of the Kenneth and
12 Sheila Antos Living Trust dated April 26, 2007, and any amendments
13 thereto, as trustor, related to that certain Deed of Trust, Assignment of
14 Rents, Security Agreement and Fixture Filing made December 17, 2014,
15 and recorded in the Official Records of Clark County, Nevada, on
16 December 29, 2014, as instrument number 20141229-0002856.

17 38. On December 19, 2016, the First Modification to Deed of Trust, Assignment of
18 Rents, Security Agreement and Fixture Filing was recorded in the Clark County Recorder’s
19 Office as Instrument No. 201612190002739.

20 39. On or about July 21, 2017, Mr. Bloom proposed to service the CBCI Note in
21 exchange for the ownership in the Property. Specifically, Mr. Bloom wrote,

22 My thought is that this proposal gets the 3rd lender:

- 23 • a full recovery of its Note balance plus all protective advances past and future,
- 24 • interim cash flow and
- 25 • provides interim additional full collateral where, given the current value of the
26 property, the 3rd position lender is currently unsecured.

27 As to the Seller, he:

- 28 • gets out from under a potential deficiency judgment from the 3rd position
lender and
- unburdens himself from any additional assets that may have been pledged.

40. Spanish Heights was created to facilitate this transaction.

41. On September 27, 2017, CBCI, the Antos Trust, Spanish Heights and Mr.

1 Bloom's company, SJCVC, entered into the 2017 Forbearance Agreement.

2 42. The September 27, 2017 Forbearance Agreement indicates that Mr. Bloom's
3 company Spanish Heights intends to acquire the Property and make certain payments to CBCI
4 pursuant to the terms of the 2017 Forbearance Agreement.

5 43. Mr. Bloom testified that he was not provided with a complete set of documents
6 reflecting the prior transactions between the Antos and KCI⁸ and that misrepresentations were
7 made regarding the prior transactions by CBCI.

8 44. In the 2017 Forbearance Agreement, the Antos Parties, Spanish Heights and
9 SJCVC acknowledged default and affirmed CBCI has fully performed.

10 45. The 2017 Forbearance Agreement contains an acknowledgement that the prior
11 agreements between the Antos and CBCI are valid.

12 Par. 8.7 Enforceable Amended Note and Modified Deed of Trust/No Conflicts. The
13 Amended Note and Modified Deed of Trust and the Forbearance Agreement, are legal,
14 valid, and binding agreements of Antos Parties and the SJCVC Parties, enforceable in
15 accordance with their respective terms, and any instrument or agreement required
16 hereunder or thereunder, when executed and delivered, is (or will be) similarly legal,
17 valid, binding and enforceable. This Forbearance Agreement does not conflict with any
18 law, agreement, or obligation by which Antos Parties and the SJCVC parties is bound.

19 46. In connection with the 2017 Forbearance Agreement, on November 3, 2017, the
20 Antos Trust conveyed the Property to Spanish Heights.

21 47. A lease agreement between Spanish Heights as the Landlord, and SJCVC as the
22 Tenant, was executed by both Spanish Heights and SJCVC on or around August 15, 2017.

23 48. The lease agreement between Spanish Heights and SJCVC indicates that the lease
24 term is two years, with an option for SJCVC to exercise two additional consecutive lease
25

26
27 ⁸ The Court finds that regardless of whether all of the prior transactional documents were provided to Mr.
28 Bloom, Mr. Bloom was on notice of the prior transactions. The 2017 Forbearance Agreement clearly identifies the
nature of the prior transactions in the section entitled "The Parties and Background" which begins on page 1 of the
document.

1 extensions.

2 49. Pursuant to the terms of the 2017 Forbearance Agreement, Spanish Heights was
3 to make certain payments to CBCI and other parties. In addition, a balloon payment of the total
4 amount owing, under the Note, was due on August 31, 2019.

5 50. Pursuant to the 2017 Forbearance Agreement, SJCVC affirmed all obligations due
6 to CBCI under the Note and Modified Deed of Trust.

7 51. The 2017 Forbearance Agreement provides in pertinent part, "CBCI is free to
8 exercise all of its rights and remedies under the Note and Modified Deed of Trust..."

9 52. The 2017 Forbearance Agreement states the rights and remedies are cumulative
10 and not exclusive, and may be pursued at any time.

11 53. As part of the 2017 Forbearance Agreement, there were certain requirements of
12 Spanish Heights attached as Exhibit B to the 2017 Forbearance Agreement.

13 54. Among the requirements was the understanding that the First Lien holder would
14 pay the real property taxes, that CBCI would pay the 1st and 2nd Mortgage payments to prevent
15 default, that Spanish Heights would make certain repairs and improvements to the Property,
16 Spanish Heights would maintain the Property, and Spanish Heights would pay for a customary
17 homeowner's insurance policy and all Homeowner's Association dues.

18 55. In addition to the requirements of the 2017 Forbearance Agreement, there was
19 additional security to be provided by Spanish Heights, SJCVC, and others.

20 56. Among the additional security was a Pledge Agreement, through which the
21 members of Spanish Heights pledged 100% of the membership interest in Spanish Heights.⁹

22
23
24
25
26
27
28 ⁹ The Pledge Agreement states in pertinent part:

THIS PLEDGE AGREEMENT dated 27th (sic)(this "Agreement") is made by Kenneth & Sheila Antos

1 57. The Pledge Agreement provides in pertinent part, “Secured Party shall have the
2 right, at any time in Secured Party’s discretion after a Non-Monetary Event of Default ... to
3 transfer to or to register in the name of Secured Party or any of Secured Party’s nominees any or
4 all of the Pledged Collateral.”

5 58. Pursuant to the Pledge Agreement, upon an event of default, Pledgors (SJCVC and
6 Antos) appointed CBCI as Pledgors’ attorney-in-fact to execute any instrument which Secured
7 Party may deem necessary or advisable to accomplish the purposes of the Pledge Agreement.

8 59. The Pledge Agreement was signed on September 27, 2017, by the Antos and Mr.
9 Bloom as purported manager on behalf of Spanish Heights. No separate signature block for
10 SJCVC appears on the Pledge Agreement.

11 60. Paragraph 17 of the Pledge Agreement contained a notice provision which
12 required notice to the Pledgors to be given to Pledgors through Plaintiffs’ current counsel, Maier
13 Gutierrez & Associates.

14 61. As additional required security, SJCVC agreed to a Security Agreement to grant
15 CBCI a Security Interest in a Judgment described as:

16 SJCVC represents that First 100, LLC, and 1st One Hundred Holdings,
17 LLC, obtained a Judgment in the amount of \$2,221,039,718.46 against
18 Raymond Ngan and other Defendants in the matter styled *First 100, LLC,*
19 *Plaintiff(s) vs. Raymond Ngan, Defendant(s)*, Case No, A-17-753459-C in
20 the 8th Judicial District Court for Clark County, Nevada (the “Judgment”),
21 SJCVC represents It holds a 24,912% Membership Interest in 1st One
22 Hundred Holdings, LLC. SJCVC represents and warrant that no party, other

23
24
25 Living Trust (the Antos Trust”), SJC Ventures, LLC (“SJCVC”)(collectively the “Pledgors”) to CBC
26 Partners I, LLC, a Washington limited-liability company (“Secured Party” or “CBCI”).

27 ***

28 WHEREAS, Pledgors are the owners of 100%, of the membership interests (the “Membership Interests”) of Spanish Heights Acquisition Company, LLC, a Nevada limited liability company (“SHAC”), which has been organized pursuant to the terms of the Limited Liability Company Agreement of Spanish Heights Acquisition Company, LLC.

1 than the Collection Professionals engaged to collect the Judgment, have a
2 priority to receive net Judgment proceeds attributable to SJCVC before
3 SJCVC; and that SJCVC shall receive Its interest at a minimum in pari passu
4 with other parties who hold interests in the Judgment. 1st One Hundred
5 Holdings, LLC, represents and warrant that no party, other than the
6 Collection Professionals engaged to collect the Judgment and certain other
7 creditors of 1st One Hundred Holdings, have a priority to receive net
8 Judgment proceeds prior to distributions to 1st One Hundred Holdings
9 Members; and that SJCVC shall receive Its interest at a minimum in pari
10 passu with other parties who hold interests in the Judgment.

11 62. In addition to the other consideration in the 2017 Forbearance Agreement, the
12 Antos Trust signed a Personal Guaranty Agreement, guaranteeing to CBCI the full and punctual
13 performance of all the obligations described in the 2017 Forbearance Agreement.

14 63. Pursuant to the Amendment to Forbearance Agreement and Related Agreements,
15 dated December 1, 2019 (the "Amendment to 2017 Forbearance Agreement"), SJCVC¹⁰
16 acknowledged that it pledged its membership interest in Spanish Heights as collateral for the
17 2017 Forbearance Agreement.¹¹

18 ¹⁰ An argument has been made that SJCVC did not pledge its stock under the original Pledge Agreement.
19 Given the notice provision in the original Pledge Agreement, Mr. Bloom's signature as manager on behalf of
20 Spanish Heights, rather than SJCVC, and the language of the Pledge Agreement reflecting a pledge of 100% of the
interest in membership of Spanish Heights, it appears the signature line for Mr. Bloom may have been incorrect.
Mr. Bloom is not the manager of Spanish Heights; Mr. Bloom is the manager of SJCVC, which serves as the manager
of Spanish Heights. The language in paragraphs 5 and 9 of the Amendment to the 2017 Forbearance Agreement
reaffirms SJCVC's pledge of its membership interest.

21 ¹¹ The Amendment to the 2017 Forbearance Agreement states in pertinent part:

22 WHEREAS, on or about September 27, 2017, the parties executed a Forbearance Agreement whereby
23 CBCI agreed to forbear from exercising the rights and remedies under certain loan documents executed by
24 the "Antos Parties." In addition to the Forbearance Agreement, the parties executed "Exhibit B" to the
Forbearance Agreement, a Lease Agreement, an Account Control Agreement, a Membership Pledge
Agreement, an Assignment of Rents, and a Security Agreement (collectively "the Related Agreements").

25 ***

26 5. The Membership Pledge Agreement executed by SJCVC and the Antos Trust shall remain in effect and
27 the execution of this Amendment shall not be considered a waiver of CBCI's rights under the Membership
Pledge Agreement.

28 ***

1 64. On or about December 1, 2019, CBCI, the Antos, Spanish Heights and SJC
2 entered into an Amendment to the 2017 Forbearance Agreement, extending the date of the
3 balloon payment to March 31, 2020.

4 65. The Amendment to 2017 Forbearance Agreement was signed by the Antos,
5 Bloom as purported manager on behalf of Spanish Heights, and Bloom as manager of SJC.
6

7 66. Pursuant to the Amendment to 2017 Forbearance Agreement, the Security
8 Agreement “shall remain in effect and the execution of this Amendment shall not be considered
9 a waiver of CBCI’s rights under the Security Agreement...”

10 67. Pursuant to the Amendment to 2017 Forbearance Agreement, any amendment
11 must be in writing.
12

13 68. On March 12, 2020, Spanish Hills Community Association recorded a Health and
14 Safety Lien against the Property. This Lien was for Nuisances and Hazardous Activities.

15 69. On or about March 16, 2020, CBCI mailed a Notice of Non-Monetary Defaults to
16 Spanish Heights and SJC. This Notice of Non-Monetary Default delineated the following
17 defaults:
18

- 19 1. Evidence of homeowner’s insurance coverage Pursuant to Paragraph
20 1(A)(6) of Amendment to Forbearance Agreement and Related
21 Agreements;
- 22 2. Evidence of repairs pursuant to Paragraph 3(c)(1) of Exhibit B to
23 Forbearance Agreement;
- 24 3. Evidence of Bank of America account balance of \$150,000.00
25 pursuant to Paragraph 6(c) of Exhibit B to Forbearance Agreement;
- 26 4. Opinion letter from SJC Ventures and 1st One Hundred Holdings
27 counsel regarding the Judgment and Security Agreement pursuant to
28 Paragraph 1(A)(12) of Amendment to Forbearance Agreement and
 Related Agreements;

9. The Membership Pledge Agreement executed by SJC and the Antos Trust shall remain in effect and
the execution of this Amendment shall not be considered a waiver of CBCI’s rights under the Membership
Pledge Agreement.

5. Evidence of corporate authority for SJC Ventures and 1st One Hundred Holdings pursuant to Paragraph 1(A)(13) of Amendment to Forbearance Agreement and Related Agreements; and
6. Evidence of SJC Ventures filing of applications for mortgages to refinance 5148 Spanish Heights Drive, pursuant to paragraph 1(C) of Amendment to Forbearance Agreement and Related Agreements.

70. On April 1, 2020, a Notice of Default and Demand for Payment was sent to Spanish Heights and SJCVC. This letter had a typo on the date of final balloon payment being due on March 31, 2021. This was corrected and emailed to Spanish Height's and SJCVC's counsel noting that the default date was corrected to March 31, 2020.

71. On April 1, 2020, under separate cover, counsel for CBCI sent a Notice to Spanish Heights, SJCVC, and Antos that CBCI would exercise its rights under the Pledge Agreement by transferring the pledged collateral to CBCI's nominee CBC Partners, LLC.

72. On April 1, 2020, CBC Partners received the Assignment of Company and Membership Interest of Spanish Heights from the Antos Trust.

73. On April 3, 2020, a Notice to Vacate was sent to SJCVC.

74. On April 6, 2020, CBCI sold the Note and security associated with the Note, to 5148 Spanish Heights, LLC.

75. On May 28, 2020, the Assignment of Interest in Deed of Trust was recorded in the Clark County Recorder's Office as Instrument No 202005280002508.

76. On September 15, 2020, Notice of Breach and Election to Sell Under Deed of Trust was recorded in the Clark County Recorder's Office as Instrument No 202009150001405.

77. On December 15, 2020, Notice of Trustee's Sale was recorded in the Clark County Recorder's Office Instrument No 20201215-0000746. The Sale was scheduled for January 5, 2021.

78. CBCI, through Hallberg, and Mr. Antos, both individually and as Trustee of the

1 revocable living trust as makers; confirm the original debt and the Deed of Trust as collateral for
2 the Note.

3 79. 5148 Spanish Heights, LLC, issued a new Notice of Default on January 4, 2021.

4 80. NRS 107.080 sets forth the notice requirements that were followed by 5148
5 Spanish Heights, LLC, and Nevada Trust Deed Services.

6 81. Plaintiff has shown no defect or lack of adequate statutory notice in the current
7 notice.
8

9 82. NRS 47.240 provides for conclusive presumptions relevant to certain provisions
10 of the relevant documents.¹²

11 83. Nothing in the evidence presented during these proceedings provides any basis for
12 departure from the conclusive presumptions recited in the agreements between the parties.¹³
13

14 84. At this time, CBCI has acquired the Antos interest in Spanish Heights through the
15 Pledge Agreement. The membership interest in a limited liability company is not an interest in
16

17 ¹² **NRS 47.240 Conclusive presumptions.** The following presumptions, and no others, are conclusive:

18 ***

19 2. The truth of the fact recited, from the recital in a written instrument between the parties thereto, or their
20 successors in interest by a subsequent title, but this rule does not apply to the recital of a consideration.

21 ¹³ For purposes of this proceeding, the Court applies the conclusive presumptions of NRS 47.240 to the
22 following :

23 From the Pledge Agreement:

24 WHEREAS, Pledgors are the owners of 100%, of the membership interests (the "Membership Interests")
25 of Spanish Heights Acquisition Company, LLC, a Nevada limited liability company ("SHAC"), which has
26 been organized pursuant to the terms of the Limited Liability Company Agreement of Spanish Heights
27 Acquisition Company, LLC.

28 From the Amendment to the 2017 Forbearance Agreement:

WHEREAS, on or about September 27, 2017, the parties executed a Forbearance Agreement whereby
CBCI agreed to forbear from exercising the rights and remedies under certain loan documents executed by
the "Antos Parties." In addition to the Forbearance Agreement, the parties executed "Exhibit B" to the
Forbearance Agreement, a Lease Agreement, an Account Control Agreement, a Membership Pledge
Agreement, an Assignment of Rents, and a Security Agreement (collectively "the Related Agreements").

1 real property. Title to the Property remains in Spanish Heights.

2 85. Plaintiff has not established unanimity of interest in title to the Property.

3 86. Plaintiff has not established an intent on behalf of the creditor to merge their lien
4 with equitable title.

5 87. Plaintiff has provided no evidence that the 2017 Forbearance Agreement and
6 Amendment to the 2017 Forbearance Agreement are vague or ambiguous.

7
8 88. Plaintiff has provided no evidence of fraud or misrepresentation by any
9 Defendant.

10 89. If any findings of fact are properly conclusions of law, they shall be treated as if
11 appropriately identified and designated.
12

13 **III. Conclusions of Law**

14
15 1. The legal standard for granting injunctive relief is set forth in NRS 33.010, which
16 provides:

17 Cases in which injunction may be granted. An injunction may be
18 granted in the following cases:

19 1. When it shall appear by the complaint that the plaintiff is
20 entitled to the relief demanded, and such relief or any part thereof
21 consists in restraining the commission or continuance of the act
complained of, either for a limited period or perpetually.

22 2. When it shall appear by the complaint or affidavit that the
23 commission or continuance of some act, during the litigation,
would produce great or irreparable injury to the plaintiff.

24 3. When it shall appear, during the litigation, that the
25 defendant is doing or threatens, or is about to do, or is procuring or
26 suffering to be done, some act in violation of the plaintiff's rights
27 respecting the subject of the action, and tending to render the
judgment ineffectual.

28 2. Given the current bankruptcy stay, the Court extends the existing injunctive relief

1 entered January 5, 2021, pending further order from the Bankruptcy Court.

2 3. The relevant documents, including, but not limited to, the 2017 Forbearance
3 Agreement and Amendment to Forbearance Agreement and Related Agreements, dated
4 December 1, 2019, are clear and unambiguous as a matter of law

5 4. The Note is secured by the Property.

6 5. As a condition precedent to the Fourth, Seventh, Ninth, and Tenth Modifications
7 to the Note, a Deed of Trust encumbering the Property was required.
8

9 6. The Antos Parties had authority, individually and as Trustees of the Antos Trust,
10 to encumber the Property with the Deed of Trust to CBCI.

11 7. Plaintiffs have waived any defects, acknowledged the encumbrance and agreed, in
12 writing to pay twice; first in the 2017 Forbearance Agreement and second, in the Amendment to
13 the 2017 Forbearance Agreement.
14

15 8. Plaintiffs agreed in the 2017 Forbearance Agreements to pay the amounts in
16 question by separate promise to the Antos Parties.
17

18 9. The Antos Trust received an indirect benefit from the transactions related to the
19 Deed of Trust.

20 10. Mr. Antos testified that the Property was used as security in exchange for
21 additional capital and release of other collateral from CBCI .
22

23 11. Mr. Antos agrees with CBCI that Plaintiffs have failed to perform.

24 12. NRS 107.500 is only required of owner-occupied housing.

25 13. The doctrine of merger provides that “[w]henver a greater and a less estate
26 coincide and meet in one and the same person, without any intermediate estate, the less is
27 immediately merged in the greater, and thus annihilated.” 31 C.J.S. Estates § 153.
28

1 14. Plaintiffs have made no showing of the applications of the doctrine of merger in
2 this case. As no interests have merged, and there is no showing of intent to merge

3 15. The one-action rule “does not excuse the underlying debt.” *Bonicamp v. Vazquez*,
4 120 Nev. 377, 382-83, 91 P.3d 584, 587 (2004).

5 16. The One-Action Rule prohibits a creditor from “first seeking the personal
6 recovery and then attempting, in an additional suit, to recover against the collateral.” *Bonicamp*,
7 120 Nev. at 383, 91 P.3d at 587 (2004). When suing a debtor on a secured debt, a creditor may
8 initially elect to proceed against the debtor or the security. If the creditor sues the debtor
9 personally on the debt, the debtor may then either assert the one-action rule, forcing the creditor
10 to proceed against the security first before seeking a deficiency from the debtor, or decline to
11 assert the one-action rule, accepting a personal judgment and depriving the creditor of its ability
12 to proceed against the security. NRS 40.435(3); *Bonicamp*, 120 Nev. at 383, 91 P.3d at 587
13 (2004).

14 17. The “One-Action Rule” was specifically waived by the debtor. The Deed of Trust
15 paragraph 6.21(a) states:
16
17

18 Trustor and Guarantor each waive all benefits of the one-action
19 rule under NRS 40.430, which means, without limitation, Trustor
20 and Guarantor each waive the right to require Lender to (i) proceed
21 against Borrower, any other guarantor of the Loan, any pledgor of
22 collateral for any person’s obligations to Lender or any other
23 person related to the Note and Loan Documents, (ii) proceed
24 against or exhaust any other security or collateral Lender may
25 hold, or (iii) pursue any other right or remedy for Guarantors’
26 benefit.

27 18. The 2017 Forbearance Agreement paragraph 25 gives the benefit of cumulative
28 remedies.

 The rights and remedies of CBCI under this Forbearance
Agreement and the Amended Note and Modified Deed of Trust are

1 cumulative and not exclusive of any rights or remedies that CBCI
2 would otherwise have, and may be pursued at any time and from
3 time to time and in such order as CBCI shall determine in its sole
4 discretion.

5 19. The Court concludes as a matter of law that the Plaintiffs have not established
6 facts or law to support the claim that the One-Action Rule bars recovery under the defaulted
7 Note and Security documents.

8 20. The Court's Temporary Restraining Order, filed January 5, 2021, will remain in
9 place pending further order of the Bankruptcy Court.

10 21. If any conclusions of law are properly findings of fact, they shall be treated as if
11 appropriately identified and designated.

12 JUDGMENT

13 Based upon the foregoing Findings of Fact and Conclusions of Law, and other good
14 cause appearing:

15 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that as to the
16 Claims for Declaratory Relief, the Court declares the third position Deed of Trust is a valid
17 existing obligation against the Property.


18 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that as to the
19 Claims for Declaratory Relief, the Court declares that the Note is a valid existing obligation.
20

21 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that as to the
22 Claims for Declaratory Relief, the Court declares that the Pledge Agreement is a valid existing
23 obligation of SJCVC.
24

25 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that as to the
26 Claims for Declaratory Relief, the Court declares that the acquisition of a membership interest in
27 Spanish Heights does not merge the Defendants interests.
28

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that as to the Claims for Declaratory Relief, the Court declares that there has been a valid waiver of the One-Action Rule.

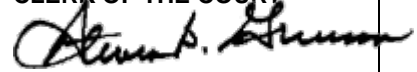
Dated this 6th day of April, 2021


Elizabeth Gonzalez, District Court Judge

Certificate of Service

I hereby certify that on the date filed, a copy of the foregoing Findings of Fact and Conclusions of Law was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court Electronic Filing Program.

/s/ *Dan Kutinac*
Dan Kutinac, JEA



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7
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9
10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 SPANISH HEIGHTS ACQUISITION
COMPANY, LLC, a Nevada Limited Liability
13 Company; SJC VENTURES HOLDING
COMPANY, LLC, d/b/a SJC VENTURES, LLC,
14 a Delaware Limited Liability Company,

15 Plaintiffs,

16 vs.

17 CBC PARTNERS I, LLC, a foreign Limited
Liability Company; CBC PARTNERS, LLC, a
18 foreign Limited Liability Company; 5148
SPANISH HEIGHTS, LLC, a Nevada Limited
Liability Company; KENNETH ANTOS AND
19 SHEILA NEUMANN-ANTOS, as Trustees of
the Kenneth & Sheila Antos Living Trust and the
20 Kenneth M. Antos & Sheila M. Neumann-Antos
Trust; DACIA, LLC, a foreign Limited Liability
21 Company; DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

22 Defendants.

23
24 **AND RELATED CLAIMS.**

Case No.: A-20-814541-B
Dept. No.: XI

CASE APPEAL STATMENT

25
26 Plaintiffs Spanish Heights Acquisition Company, LLC and SJC Ventures Holding Company,
27 LLC, d/b/a SJC Ventures, LLC (“Appellants”), by and through their attorneys of record, the law firm
28 MAIER GUTIERREZ & ASSOCIATES, submit this case appeal statement:

1 1. Name of appellant filing this case appeal statement:
2 Spanish Heights Acquisition Company, LLC and SJC Ventures Holding Company, LLC, d/b/a
3 SJC Ventures, LLC.
4 2. Identify the judge issuing the decision, judgment or order appealed from:
5 Honorable District Court Judge Elizabeth Gonzalez; Findings of Fact and Conclusions of Law,
6 notice of entry filed on April 20, 2021.
7 3. Identify each appellant and the name and address of counsel for each appellant:
8 Spanish Heights Acquisition Company, LLC and SJC Ventures Holding Company, LLC, d/b/a
9 SJC Ventures, LLC., c/o Joseph A. Gutierrez, Esq., Danielle J. Barraza, Esq., of the law firm MAIER
10 GUTIERREZ & ASSOCIATES located at 8816 Spanish Ridge Avenue, Las Vegas, Nevada 89148.
11 4. Identify each respondent and the name and address of appellate counsel, if known, for
12 each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and
13 provide the name and address of that respondent's trial counsel):
14 CBC Partners I, LLC, CBC Partners, LLC, 5148 Spanish Heights, LLC, and Dacia LLC, c/o
15 Michael R. Mushkin, Esq., of the law firm MUSHKIN & COPPEDGE located at 6070 South Eastern
16 Avenue, Suite 270, Las Vegas, Nevada 89119.
17 5. Indicate whether any attorney identified above in response to question 3 or 4 is not
18 licensed to practice law in Nevada and, if so, whether the district court granted that attorney
19 permission to appear under SCR 42 (attach a copy of any district court order granting such
20 permission):
21 N/A.
22 6. Indicate whether appellant was represented by appointed or retained counsel in the
23 district court:
24 Appellants were represented by retained counsel in the district court.
25 7. Indicate whether appellant is represented by appointed or retained counsel on appeal:
26 Appellants are represented by retained counsel on appeal.
27 ///
28 ///

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

3 Not applicable.

4 9. Indicate the date the proceedings commenced in the district court (e.g., date complaint,
5 indictment, information, or petition was filed):

6 Appellants' complaint was filed on April 9, 2020, and an amended complaint was filed on
7 May 15, 2020.

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

10 This action involves the residential property located at 5148 Spanish Heights Drive, Las
11 Vegas, Nevada 89148, with Assessor's Parcel Number 163-29-615-007 ("Property"). The Property
12 is owned by Appellant/Plaintiff Spanish Heights Acquisition Company, LLC pursuant to a recorded
13 deed, and leased by Appellant/Plaintiff SJC Ventures LLC pursuant to a valid lease agreement. Third-
14 party defendant Jay Bloom resides at the Property with his family. The Property is not used for
15 commercial purposes, nor is it allowed to be used for commercial purposes pursuant to the Property's
16 CC&Rs. The original owners of the Property were Kenneth M. Antos and Sheila M. Neumann-Antos,
17 who then transferred it to their Trust, prior to transferring the Property to Appellant/Plaintiff Spanish
18 Heights Acquisition Company, LLC.

19 CBC Partners I, LLC and/or its claimed successor in interest 5148 Spanish Heights, LLC
20 purport to be the holder of a Secured Promissory Note ("Note") issued in favor of various companies
21 associated with Kenneth Antos. According to various amendments made to the Note, CBC Partners
22 I, LLC attempted to acquire a third-position Deed of Trust against the Property as security for that
23 Note, which the actual owners of the Property (the Antos Trust) did not receive any consideration for.

24 Appellant/Plaintiff Spanish Heights Acquisition Company, LLC acquired the Property from
25 the Antos Trust and executed a Forbearance Agreement and Amended Forbearance Agreement
26 regarding the underlying Note, which claimed that CBC Partners I, LLC held a valid third-position
27 Deed of Trust against the Property.

28 Thereafter, CBC Partners I, LLC claimed that Appellant/Plaintiff Spanish Heights Acquisition

1 Company, LLC had breached the Forbearance Agreement, and attempted to foreclose on the Property
2 evict SJC Ventures Holding Company, LLC from the Property, in the midst of the pandemic and while
3 Governor Sisolak's foreclosure and eviction moratorium was in place – thus in violation of Nevada
4 law.

5 On April 9, 2020, Appellants initiated this action against CBC Partners I, LLC, CBC Partners,
6 LLC, 5148 Spanish Heights, LLC, Kenneth Antos and Sheila Neumann-Antos, as Trustees of the
7 Kenneth & Sheila Antos Living Trust and the Kenneth M. Antos & Sheila M. Neumann-Antos Trust
8 ("Antos Trust"); Dacia, LLC, with the First Amended Complaint being filed on May 15, 2020. In the
9 Amended Complaint, injunctive relief was sought regarding the interference of Plaintiffs/Appellants'
10 rights to the Property.

11 The matter proceeded to a non-jury trial and evidentiary hearing on the request for injunctive
12 relief, in which the following five legal issues were decided by the Court:

- 13 1) Contractual interpretation and/or validity of the underlying "Secured Promissory Note"
14 between CBC Partners I, LLC and KCI Investments, LLC and all modifications thereto;
- 15 2) Interpretation and/or validity of the claimed third-position Deed of Trust and all modifications
16 thereto, and determination as to whether any consideration was provided in exchange for the
17 Deed of Trust;
- 18 3) Contractual interpretation and/or validity of the Forbearance Agreement, Amended
19 Forbearance Agreement and all associated documents/contracts;
- 20 4) Whether the Doctrine of Merger applies to the claims at issue; and
- 21 5) Whether the One Action Rule applies to the claims at issue.

22 Following the trial, on April 6, 2021 the district court entered its Findings of Fact and
23 Conclusions of Law, with notice of entry filed on April 20, 2021. This appeal relates to the Findings
24 of Fact and Conclusions of Law as it affects the claim for injunctive relief.

25 11. Indicate whether the case has previously been the subject of an appeal to or original
26 writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the
27 prior proceeding:

28 Not applicable.

12. Indicate whether this appeal involves child custody or visitation:

This appeal does not involve child custody or visitation.

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

Appellants are not opposed to settlement discussions.

DATED this 29th day of April, 2021.

Respectfully submitted,

MAIER GUTIERREZ & ASSOCIATES

/s/ Joseph A. Gutierrez

JOSEPH A. GUTIERREZ, ESQ.

Nevada Bar No. 9046

DANIELLE J. BARRAZA, ESQ.

Nevada Bar No. 13822

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

Attorneys for Plaintiffs

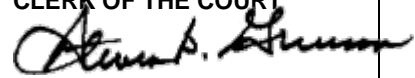
1 **CERTIFICATE OF SERVICE**

2 Pursuant to Administrative Order 14-2, a copy of the foregoing **CASE APPEAL**
3 **STATEMENT** was electronically filed on the 29th day of April, 2021, and served through the Notice
4 of Electronic Filing automatically generated by the Court's facilities to those parties listed on the
5 Court's Master Service List:

6 Michael R. Mushkin, Esq.
7 MUSHKIN & COPPEDGE
8 6070 South Eastern Avenue, Suite 270
9 Las Vegas, Nevada 89119
10 *Attorneys for Defendants CBC Partners I, LLC, CBC Partners, LLC,*
11 *5148 Spanish Heights, LLC, and Dacia LLC*

12 /s/ Natalie Vazquez

13 An Employee of MAIER GUTIERREZ & ASSOCIATES
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COAB

JOSEPH A. GUTIERREZ, ESQ.

Nevada Bar No. 9046

DANIELLE J. BARRAZA, ESQ.

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MAIER GUTIERREZ & ASSOCIATES

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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

SPANISH HEIGHTS ACQUISITION
COMPANY, LLC, a Nevada Limited Liability
Company; SJC VENTURES HOLDING
COMPANY, LLC, d/b/a SJC VENTURES, LLC,
a Delaware Limited Liability Company,

Plaintiffs,

vs.

CBC PARTNERS I, LLC, a foreign Limited
Liability Company; CBC PARTNERS, LLC, a
foreign Limited Liability Company; 5148
SPANISH HEIGHTS, LLC, a Nevada Limited
Liability Company; KENNETH ANTOS AND
SHEILA NEUMANN-ANTOS, as Trustees of
the Kenneth & Sheila Antos Living Trust and the
Kenneth M. Antos & Sheila M. Neumann-Antos
Trust; DACIA, LLC, a foreign Limited Liability
Company; DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

Defendants.

AND RELATED CLAIMS.

Case No.: A-20-813439-B

Dept. No.: XI

COST BOND ON APPEAL

Plaintiffs, Spanish Heights Acquisition Company, LLC and SJC Ventures Holding Company,
LLC, d/b/a SJC Ventures, LLC, by and through their attorneys of record, the law firm MAIER

1 GUTIERREZ & ASSOCIATES, pursuant to NRAP 7, hereby files this cost appeal bond in the amount of
2 \$500.00. A copy of the official receipt is attached hereto.

3 DATED this 4th day of May, 2021.

4 Respectfully submitted,

5 **MAIER GUTIERREZ & ASSOCIATES**

6 /s/ Joseph A. Gutierrez

7 JOSEPH A. GUTIERREZ, ESQ.

8 Nevada Bar No. 9046

9 DANIELLE J. BARRAZA, ESQ.

10 Nevada Bar No. 13822

11 8816 Spanish Ridge Avenue

12 Las Vegas, Nevada 89148

13 *Attorneys for Plaintiffs*

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CERTIFICATE OF SERVICE

Pursuant to Administrative Order 14-2, a copy of the foregoing **COST BOND ON APPEAL** electronically filed on the 4th day of May, 2021, and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List:

Michael R. Mushkin, Esq.
MUSHKIN & COPPEDGE
6070 South Eastern Avenue, Suite 270
Las Vegas, Nevada 89119
*Attorneys for Defendants/Counterclaimants
CBC Partners I, LLC and 5148 Spanish Heights, LLC
Defendants Dacia LLC and CBC Partners, LLC*

/s/ Natalie Vazquez
An Employee of MAIER GUTIERREZ & ASSOCIATES

OFFICIAL RECEIPT

District Court Clerk of the Court 200 Lewis Ave, 3rd Floor Las Vegas, NV 89101

Payor
Maier Gutierrez & Associates

Receipt No.
2021-27228-CCCLK

Transaction Date
05/3/2021

Description	Amount Paid
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On Behalf Of Spanish Heights Acquisition Company LLC

A-20-813439-B

Spanish Heights Acquisition Company LLC, Plaintiff(s) vs. CBC Partners I LLC, Defendant(s)

Appeal Bond

Appeal Bond

500.00

SUBTOTAL

500.00

PAYMENT TOTAL

500.00

Check (Ref #24991) Tendered

500.00

Total Tendered

500.00

Change

0.00

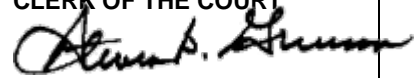
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Cashier
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Audit
37825367

OFFICIAL RECEIPT

AA4247



MRCN
JOSEPH A. GUTIERREZ, ESQ.
Nevada Bar No. 9046
DANIELLE J. BARRAZA, ESQ.
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Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

SPANISH HEIGHTS ACQUISITION
COMPANY, LLC, a Nevada Limited Liability
Company; SJC VENTURES HOLDING
COMPANY, LLC, d/b/a SJC VENTURES, LLC,
a Delaware Limited Liability Company,

Plaintiffs,

vs.

CBC PARTNERS I, LLC, a foreign Limited
Liability Company; CBC PARTNERS, LLC, a
foreign Limited Liability Company; 5148
SPANISH HEIGHTS, LLC, a Nevada Limited
Liability Company; KENNETH ANTOS AND
SHEILA NEUMANN-ANTOS, as Trustees of
the Kenneth & Sheila Antos Living Trust and the
Kenneth M. Antos & Sheila M. Neumann-Antos
Trust; DACIA, LLC, a foreign Limited Liability
Company; DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

Defendants.

AND RELATED CLAIMS.

Case No.: A-20-813439-B
Dept. No.: XI

**PLAINTIFFS' MOTION TO AMEND THE
COURT'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER,
OR ALTERNATIVELY FOR
RECONSIDERATION**

[HEARING REQUESTED]

Plaintiffs Spanish Heights Acquisition Company ("SHAC") and SJC Ventures Holding
Company, LLC, d/b/a SJC Ventures LLC ("SJC") (collectively "Plaintiffs"), by and through their

1 attorneys of record, MAIER GUTIERREZ & ASSOCIATES, hereby file this motion to amend, or
2 alternatively, for reconsideration of the Court's Findings of Fact, Conclusions of Law, and Order
3 ("FFCL") filed on April 6, 2021, with notice of entry thereof filed on April 20, 2021. Specifically,
4 the Court's FFCL did not address the March 2021 dilution of Defendants' claimed membership
5 interest in SJC, which resulted in SJC becoming the 100% owner of SHAC, and how that ownership
6 affects the declaratory relief claims that were adjudicated by the Court in the FFCL following the
7 preliminary injunction hearing and non-jury trial that was held on February 1-3, 2021, and March 15,
8 2021.

9 This motion is made and based upon the memorandum of authorities, the exhibits attached
10 hereto, and the papers and pleadings on file in this matter.

11 DATED this 4th day of May, 2021.

12 Respectfully submitted,

13 **MAIER GUTIERREZ & ASSOCIATES**

14 /s/ Danielle J. Barraza

15 JOSEPH A. GUTIERREZ, ESQ.
16 Nevada Bar No. 9046
17 DANIELLE J. BARRAZA, ESQ.
18 Nevada Bar No. 13822
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Attorneys for Plaintiffs

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20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 **I. INTRODUCTION**

22 This action involves the property located at 5148 Spanish Heights Drive, Las Vegas, Nevada
23 89148, with Assessor's Parcel Number 163-29-615-007 ("Property"). The Property is owned by
24 Plaintiff Spanish Heights Acquisition Company, LLC pursuant to a recorded deed, and leased by
25 Plaintiff SJC Ventures LLC pursuant to a valid lease agreement.

26 Following yet another attempt by the Defendants to initiate foreclosure proceedings on the
27 Property while this matter was in litigation, this Court set a preliminary injunction hearing and
28 consolidated non-jury trial on five specific legal issues:

- 1) Contractual interpretation and/or validity of the underlying “Secured Promissory Note” between CBC Partners I, LLC and KCI Investments, LLC and all modifications thereto (going to the Counterclaim, First, Fourth, Ninth, and Twelfth claims for relief);
- 2) Interpretation and/or validity of the claimed third-position Deed of Trust and all modifications thereto, and determination as to whether any consideration was provided in exchange for the Deed of Trust (going to the Counterclaim, First, Fourth, Ninth, and Twelfth claims for relief);
- 3) Contractual interpretation and/or validity of the Forbearance Agreement, Amended Forbearance Agreement and all associated documents/contracts (going to the Counterclaim, First, Fourth, Ninth, and Twelfth claims for relief);
- 4) Whether the Doctrine of Merger applies to the claims at issue (going to the Amended Complaint, Fourth and Seventh causes of action); and
- 5) Whether the One Action Rule applies to the claims at issue (going to the Amended Complaint, Third cause of action).

The Court also determined that the injunctive relief claims are contained within the Amended Complaint, Sixth cause of action. **Exhibit 1**, FFCL at p. 2.

This motion relates to the Counterclaim’s Twelfth claim for declaratory relief, which relates to “disputes and controversies relative to the contracts and agreements” at issue, and to the Counterclaim’s Ninth claim for relief regarding the Pledge Agreement. Here, because SJC issued a capital call in March of 2021 which the Defendants declined to participate in, any membership interest that Defendants (including 5148 Spanish Heights, LLC or CBC Partners I, LLC) claim to have in SJC under the Pledge Agreement has been diluted as a result of SJC becoming the 100% owner of SHAC.

Because no findings of fact were made on this issue, possibly due to the dissolution event occurring shortly before the end of the trial, reconsideration or alteration of the FFCL are in order to properly address the Defendants’ lack of membership interest in SHAC.

II. LEGAL ARGUMENT

A. LEGAL STANDARD FOR AMENDMENT AND RECONSIDERATION

Courts have the inherent and statutory authority to reconsider their prior orders. *See Trail v. Faretto*, 91 Nev. 401, 403, 536 P.2d 1026, 1027 (1975) (“a court may, for sufficient cause shown,