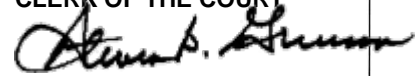


ANOA
BLACK & WADHAMS
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Attorneys for Defendants/Counterclaimants
Bour Enterprises, LLC, Mulugeta Bour and
Hilena Mengesha

Electronically Filed
6/22/2021 4:52 PM
Steven D. Grierson
CLERK OF THE COURT



Electronically Filed
Jun 23 2021 01:51 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

DISTRICT COURT

CLARK COUNTY, NEVADA

4520 ARVILLE, a California general partnership;
MCKINLEY MANOR, an Idaho general
partnership,

Plaintiffs,

v.

BOUR ENTERPRISES, LLC, a Nevada limited
liability company; MULUGETA BOUR, an
individual; HILENA MENGESHA, an
individual; DOES 1 through 100, inclusive,

Defendants.

BOUR ENTERPRISES, LLC, a Nevada limited
liability company; MULUGETA BOUR, an
individual; HILENA MENGESHA, an
individual; DOES 1 through 100, inclusive,

Counterclaimants,

v.

4520 ARVILLE, a California general partnership;
MCKINLEY MANOR, an Idaho general
partnership, DOES I-X; and ROE
CORPORATIONS I-X;

Counter Defendants.

Case No.: A-19-794864-C
Dept. No.: 8

AMENDED NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Defendants Bour Enterprises, LLC, a Nevada liability company, Mulugeta Bour and Hilena Mengesha, by and through their attorney of record, Rusty Graf, Esq. of the law firm Black & Wadhams, appeal to the Supreme Court of the State of Nevada from:

1. The Order granting Plaintiffs' Motion for Entry of Judgment filed on March 9, 2021, with Notice of Entry of Judgment and Notice of Entry of Order filed March 9, 2021.

2. The First Supplemental Judgment against Defendants entered May 24, 2021, which constitutes a supplement to the previous Judgment entered by this Court on March 9, 2021, with Notice of Entry of Judgment filed May 27, 2021.

3. The Order granting in part Plaintiffs' Motion for Fees and Defendants' Motion to Retax Costs filed May 27, 2021, with Notice of Entry of Order filed May 27, 2021.

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This Amended Notice of Appeal supplements the previously filed Notice of Appeal and includes the following documents:

1. March 9, 2021, Order granting Plaintiffs' Motion for Entry of Judgment.
2. March 9, 2021, Judgment against Defendants
3. March 9, 2021, with Notice of Entry of Judgment.
4. March 9, 2021, with Notice of Entry of Order.
5. May 24, 2021, First Supplemental Judgment.
6. May 27, 2021, Notice of Entry of First Supplemental Judgment.
7. May 27, 2021, granting in part Plaintiffs' Motion for Fees and Defendants' Motion to Retax Costs.
8. May 27, 2021, Notice of Entry of Order granting in part Plaintiffs' Motion for Fees and Defendants' Motion to Retax Costs.

Dated this 22nd day of June 2021.

BLACK & WADHAMS

#15271 

RUSTY GRAF, ESQ.

Nevada Bar No. 6322

10777 W. Twain Ave., 3rd Fl.

Las Vegas, Nevada 89135

(702) 869-8801

(702) 869-2669 (fax)

rgraf@blackwadhamslaw.com

Attorney for Defendants/Appellants

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of BLACK & WADHAMS and that on the 22nd day of June 2021, I caused the above and foregoing document entitled **AMENDED NOTICE OF APPEAL** to be served as follows:

☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and

☒ by electronic service through Odyssey, Clark County Eighth Judicial District Court's electronic filing/service system;

☐ pursuant to EDCR 7.26, to be sent via facsimile;

☐ hand delivered to the party or their attorney(s) listed below at the address and/or facsimile number indicated below:

F. Thomas Edwards, Esq.
HOLLEY DRIGGS WALCH FINE
PUZEY STEIN & THOMPSON
400 South Fourth Street, Third Floor
Las Vegas, NV 89101

and that there is regular communication by mail between the place of mailing and the place(s) so addressed.

/s/ Diane Meeter
An Employee of Black & Wadhams

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY**CASE NO. A-19-794864-C****4520 Arville, Plaintiff(s)****vs.****Bour Enterprises LLC, Defendant(s)**§
§
§
§
§
§Location: **Department 5**Judicial Officer: **Barisich, Veronica M.**Filed on: **05/15/2019**

Case Number History:

Cross-Reference Case **A794864**

Number:

Supreme Court No.: **82699****CASE INFORMATION****Statistical Closures**

03/09/2021 Summary Judgment

Case Type: **Other Landlord Tenant**Case
Status: **03/09/2021 Closed****DATE****CASE ASSIGNMENT****Current Case Assignment**

| | |
|------------------|-----------------------|
| Case Number | A-19-794864-C |
| Court | Department 5 |
| Date Assigned | 01/04/2021 |
| Judicial Officer | Barisich, Veronica M. |

PARTY INFORMATION

| | | |
|--------------------------|-----------------------------|---|
| | | <i>Lead Attorneys</i> |
| Plaintiff | 4520 Arville | Edwards, F. Thomas <i>Retained</i> 702-791-0308(W) |
| | McKinley Manor | Edwards, F. Thomas <i>Retained</i> 702-791-0308(W) |
| Defendant | Bour Enterprises LLC | Carson, Brent A <i>Retained</i> 7024711111(W) |
| | Bour, Mulugeta | Carson, Brent A <i>Retained</i> 7024711111(W) |
| | Mengesha, Hilena | Carson, Brent A <i>Retained</i> 7024711111(W) |
| Counter Claimant | Bour Enterprises LLC | Carson, Brent A <i>Retained</i> 7024711111(W) |
| | Bour, Mulugeta | Carson, Brent A <i>Retained</i> 7024711111(W) |
| | Mengesha, Hilena | Carson, Brent A <i>Retained</i> 7024711111(W) |
| Counter Defendant | 4520 Arville | Edwards, F. Thomas <i>Retained</i> 702-791-0308(W) |
| | McKinley Manor | Edwards, F. Thomas |

CASE SUMMARY**CASE NO. A-19-794864-C**Retained
702-791-0308(W)

| DATE | EVENTS & ORDERS OF THE COURT | INDEX |
|------------|--|-------|
| | <u>EVENTS</u> | |
| 05/15/2019 |  Complaint Filed By: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor <i>Complaint</i> | |
| 05/15/2019 |  Peremptory Challenge Filed by: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor <i>Peremptory Challenge of Judge</i> | |
| 05/15/2019 |  Initial Appearance Fee Disclosure Filed By: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor <i>Initial Appearance Fee Disclosure</i> | |
| 05/16/2019 |  Notice of Department Reassignment <i>Notice of Department Reassignment</i> | |
| 05/16/2019 |  Summons Electronically Issued - Service Pending Party: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor <i>Summons</i> | |
| 05/16/2019 |  Summons Electronically Issued - Service Pending Party: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor <i>Summons</i> | |
| 05/16/2019 |  Summons Electronically Issued - Service Pending Party: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor <i>Summons</i> | |
| 06/20/2019 |  Initial Appearance Fee Disclosure Filed By: Counter Claimant Bour Enterprises LLC; Counter Claimant Bour, Mulugeta; Counter Claimant Mengesha, Hilena <i>Initial Appearance Fee Disclosure</i> | |
| 06/20/2019 |  Demand for Security of Costs Filed By: Counter Claimant Bour Enterprises LLC; Counter Claimant Bour, Mulugeta; Counter Claimant Mengesha, Hilena <i>Demand for Security Costs 4520 Arville</i> | |
| 06/20/2019 |  Demand for Security of Costs Filed By: Counter Claimant Bour Enterprises LLC; Counter Claimant Bour, Mulugeta; Counter Claimant Mengesha, Hilena <i>Demand for Security Costs McKinley Manor</i> | |
| 06/26/2019 |  Notice of Posting of Cost Bond Filed By: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor <i>Notice of Posting of Cost Bond</i> | |
| 06/26/2019 |  Notice of Posting of Cost Bond Filed By: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor <i>Notice of Posting of Cost Bond</i> | |













CASE SUMMARY

CASE NO. A-19-794864-C

| | |
|------------|---|
| 07/09/2019 |  Notice of Intent to Take Default Party: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor <i>Seven Day Notice of Intent to Take Default</i> |
| 07/16/2019 |  Answer and Counterclaim Filed By: Counter Claimant Bour Enterprises LLC; Counter Claimant Bour, Mulugeta; Counter Claimant Mengesha, Hilena <i>Defendants' Answer and Counterclaim</i> |
| 07/16/2019 |  Exhibits Filed By: Counter Claimant Bour Enterprises LLC; Counter Claimant Bour, Mulugeta; Counter Claimant Mengesha, Hilena <i>Exhibit 1 - 6</i> |
| 07/16/2019 |  Initial Appearance Fee Disclosure Filed By: Counter Claimant Bour Enterprises LLC; Counter Claimant Bour, Mulugeta; Counter Claimant Mengesha, Hilena <i>Initial Appearance Fee Disclosures</i> |
| 08/01/2019 |  Motion to Dismiss Filed By: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor <i>Plaintiff/Counterdefendants' Motion to Dismiss Counterclaims</i> |
| 08/01/2019 |  Clerk's Notice of Hearing <i>Notice of Hearing</i> |
| 08/12/2019 |  Opposition to Motion Filed By: Counter Claimant Bour Enterprises LLC; Counter Claimant Bour, Mulugeta; Counter Claimant Mengesha, Hilena <i>Defendants and Counterclaimants Opposition to Motion to Dismiss Counterclaims and Defendants and Counterclaimants Motion for Summary Judgment</i> |
| 08/16/2019 |  Errata Filed By: Counter Claimant Bour Enterprises LLC <i>Notice of Errata Re Declaration of Anthony Bour</i> |
| 08/22/2019 |  Opposition to Motion For Summary Judgment Filed By: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor <i>Plaintiffs' Opposition to Defendants' Countermotion for Summary Judgment</i> |
| 08/27/2019 |  Clerk's Notice of Hearing <i>Notice of Hearing</i> |
| 08/27/2019 |  Reply in Support Filed By: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor <i>Plaintiffs/Counterdefendants' Reply In Support Of Motion To Dismiss Counterclaims</i> |
| 08/29/2019 |  Reply in Support Filed By: Counter Claimant Bour Enterprises LLC; Counter Claimant Bour, Mulugeta; Counter Claimant Mengesha, Hilena <i>Defendants/CounterClaimant's Reply In Support of Countermotion for Summary Judgment</i> |
| 09/04/2019 |  Joint Case Conference Report |

CASE SUMMARY

CASE NO. A-19-794864-C

| | |
|------------|--|
| | Filed By: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor <i>Joint Case Conference Report</i> |
| 09/06/2019 |  Order <i>Order to Appear for Scheduling Conference</i> |
| 09/12/2019 |  Order Denying Motion Filed By: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor <i>Order Denying Without Prejudice Plaintiffs/Counterdefendants' Motion to Dismiss Counterclaims and Defendants/Counterclaimants' Countermotion for Summary Judgment</i> |
| 09/13/2019 |  Notice of Entry of Order Filed By: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor <i>Notice of Entry of Order</i> |
| 09/30/2019 | Administrative Reassignment - Judicial Officer Change <i>From Vacant DC8 to Judge Trevor L. Atkin</i> |
| 10/14/2019 |  Answer to Counterclaim Filed By: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor <i>Answer to Counterclaim</i> |
| 10/18/2019 |  Scheduling and Trial Order <i>Scheduling Order and Order Setting Civil Bench Trial</i> |
| 10/22/2019 |  Scheduling and Trial Order <i>Amended Scheduling Order and Order Setting Civil Bench Trial</i> |
| 10/30/2019 |  Offer of Judgment Filed By: Counter Claimant Bour Enterprises LLC; Counter Claimant Bour, Mulugeta; Counter Claimant Mengesha, Hilena <i>Defendants/Counterclaimants Offer of Judgment</i> |
| 12/05/2019 |  Motion to Compel Filed By: Counter Defendant 4520 Arville <i>Plaintiffs/Counterdefendants' Motion to Compel Discovery</i> |
| 12/06/2019 |  Clerk's Notice of Hearing <i>Notice of Hearing</i> |
| 12/20/2019 |  Opposition and Countermotion Filed By: Counter Claimant Bour Enterprises LLC; Counter Claimant Bour, Mulugeta; Counter Claimant Mengesha, Hilena <i>Opposition to Motion to Compel Discovery And Counter-Motion to Extend The Time To Disclose Expert Witnesses</i> |
| 01/07/2020 |  Reply in Support Filed By: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor <i>Reply in Support of Plaintiffs' Motion to Compel Discovery and Opposition to Defendants' Counter-Motion to Extend Time to Disclose Expert Witnesses</i> |
| 01/17/2020 |  Notice of Hearing Filed By: Counter Claimant Bour Enterprises LLC; Counter Claimant Bour, Mulugeta; Counter Claimant Mengesha, Hilena <i>Motion to Continue Expert Disclosure Deadline on an Order Shortening Time</i> |

CASE SUMMARY

CASE NO. A-19-794864-C

| | |
|------------|--|
| 01/24/2020 |  Order Shortening Time Filed By: Counter Claimant Bour Enterprises LLC; Counter Claimant Bour, Mulugeta; Counter Claimant Mengesha, Hilena <i>Defendants / Counter Claimants' Motion to Continue Expert Disclosure on Order Shortening Time</i> |
| 01/28/2020 |  Response Filed by: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor <i>Plaintiffs' Response to Defendants' Motion to Continue on Order Shortening Time</i> |
| 01/28/2020 |  Reply Filed by: Counter Claimant Bour Enterprises LLC; Counter Claimant Bour, Mulugeta; Counter Claimant Mengesha, Hilena <i>Reply to Plaintiffs' Response to Defendants' Motion to Continue on Order Shortening Time</i> |
| 01/30/2020 |  Discovery Commissioners Report and Recommendations Filed By: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor <i>Discovery Commissioner s Report and Recommendations</i> |
| 02/20/2020 |  Order Filed By: Counter Claimant Bour Enterprises LLC; Counter Claimant Bour, Mulugeta; Counter Claimant Mengesha, Hilena <i>Order from January 30, 2020 Hearing</i> |
| 02/20/2020 |  Notice of Entry of Order Filed By: Counter Claimant Bour Enterprises LLC; Counter Claimant Bour, Mulugeta; Counter Claimant Mengesha, Hilena <i>Notice of Entry of Order from January 30, 2020 Hearing</i> |
| 02/21/2020 |  Miscellaneous Filing Filed by: Counter Claimant Bour Enterprises LLC; Counter Claimant Bour, Mulugeta; Counter Claimant Mengesha, Hilena <i>Defendant's Production - 2nd Supp to NRCP 16.1</i> |
| 02/21/2020 |  Supplement Filed by: Counter Claimant Bour Enterprises LLC; Counter Claimant Bour, Mulugeta; Counter Claimant Mengesha, Hilena <i>Defendant's Second Supplement To NRCP 16.1 Initial List of Witnesses And Documents</i> |
| 02/21/2020 |  Miscellaneous Filing Filed by: Counter Claimant Bour Enterprises LLC; Counter Claimant Bour, Mulugeta; Counter Claimant Mengesha, Hilena <i>Log of Priveleged Documents</i> |
| 02/21/2020 |  Designation of Expert Witness Filed By: Counter Claimant Bour Enterprises LLC; Counter Claimant Bour, Mulugeta; Counter Claimant Mengesha, Hilena <i>Defendants' Designation of Expert Witnesses</i> |
| 02/27/2020 |  Stipulation and Order Filed by: Counter Claimant Bour Enterprises LLC; Counter Claimant Bour, Mulugeta; Counter Claimant Mengesha, Hilena <i>Stipulation and Order to Continue Deadlines</i> |
| 02/28/2020 | |

CASE SUMMARY

CASE NO. A-19-794864-C

| | |
|------------|--|
| |  Notice of Entry of Stipulation and Order Filed By: Counter Claimant Bour Enterprises LLC; Counter Claimant Bour, Mulugeta; Counter Claimant Mengesha, Hilena <i>Notice of Entry of Stipulation and Order to Continue Deadlines</i> |
| 03/16/2020 |  Addendum Filed By: Counter Claimant Bour Enterprises LLC <i>Defendants Addendum to Designation of Expert Witnesses</i> |
| 04/06/2020 |  Order Setting Civil Bench Trial <i>Order Setting Civil Bench Trial</i> |
| 04/07/2020 |  Order Filed By: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor <i>Order Re: Discovery Commissioner's Report and Recommendations</i> |
| 04/09/2020 |  Notice of Entry of Order Filed By: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor <i>Notice of Entry of Order</i> |
| 04/27/2020 |  Stipulation and Order Filed by: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor <i>Stipulation and Order to Continue Deadlines (Second Request)</i> |
| 04/28/2020 |  Notice of Entry of Order Filed By: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor <i>Notice of Entry of Order</i> |
| 07/13/2020 |  Filing Fee Remittance Filed By: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor <i>Filing Fee Remittance</i> |
| 07/29/2020 |  Stipulation and Order to Extend Discovery Deadlines Filed By: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor <i>Stipulation And Order to Continue Deadlines (Third Request)</i> |
| 07/29/2020 |  Order Setting Civil Bench Trial <i>Order Setting Civil Bench Trial</i> |
| 07/29/2020 |  Notice of Entry of Order Filed By: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor <i>Notice of Entry of Order</i> |
| 11/10/2020 |  Motion for Summary Judgment Filed By: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor <i>Plaintiffs' Motion for Summary Judgment Regarding Counterclaim Damages</i> |
| 11/10/2020 |  Clerk's Notice of Hearing <i>Notice of Hearing</i> |
| 11/19/2020 |  Amended Order Setting Jury Trial <i>Amended Order Setting Civil Jury Trial</i> |

CASE SUMMARY

CASE NO. A-19-794864-C

| | |
|------------|--|
| 11/20/2020 |  Amended Order Setting Civil Non-Jury Trial <i>2nd Amended Order Setting Civil Bench Trial</i> |
| 11/25/2020 |  Opposition to Motion For Summary Judgment Filed By: Counter Claimant Bour Enterprises LLC; Counter Claimant Bour, Mulugeta; Counter Claimant Mengesha, Hilena <i>Opposition to Plaintiffs' Motion for Summary Judgment Regarding Countereclaim Damages</i> |
| 12/01/2020 |  Motion for Summary Judgment Filed By: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor <i>Plaintiffs' Motion for Summary Judgment Regarding Their Breach of Contract Claims</i> |
| 12/02/2020 |  Clerk's Notice of Hearing <i>Notice of Hearing</i> |
| 12/08/2020 |  Reply in Support Filed By: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor <i>Plaintiffs' Reply In Support Of Motion For Summary Judgment Regarding Counterclaim Damages</i> |
| 12/17/2020 |  Opposition to Motion For Summary Judgment Filed By: Counter Claimant Bour Enterprises LLC; Counter Claimant Bour, Mulugeta; Counter Claimant Mengesha, Hilena <i>Opposition to Plaintiffs' Motion for Summary Judgment Regarding Breach of Contract Claims</i> |
| 01/04/2021 | Case Reassigned to Department 5 <i>Judicial Reassignment to Judge Veronica M. Barisich</i> |
| 01/05/2021 |  Reply in Support Filed By: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor <i>Plaintiffs' Reply In Support Of Motion for Summary Judgment Regarding Breach of Contract Claims</i> |
| 01/28/2021 |  Order Granting Motion Filed By: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor <i>Order Granting Plaintiffs' Motion for Summary Judgment on Breach of Contract Claims</i> |
| 01/28/2021 |  Notice of Entry of Order Filed By: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor <i>Notice of Entry of Order</i> |
| 02/09/2021 |  Motion to Adjudicate Attorney's Lien Filed by: Counter Claimant Bour Enterprises LLC <i>Black & LoBello's Motion to Adjudicate Attorneys' Lien for Plaintiff's Failure to Pay Fees and Costs</i> |
| 02/09/2021 |  Clerk's Notice of Hearing <i>Notice of Hearing</i> |
| 02/10/2021 |  Motion for Entry of Judgment Filed By: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor <i>Plaintiffs' Motion for Entry of Judgment</i> |
| 02/11/2021 |  Clerk's Notice of Hearing |

CASE SUMMARY

CASE NO. A-19-794864-C

Clerk's Notice of Hearing

02/11/2021



Order Setting Civil Bench Trial

Order Setting Civil Bench Trial, Pretrial, and Calendar Call

02/17/2021



Order Shortening Time

Filed By: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor
Plaintiff's Ex Parte Motion for Order Shortening Time on Plaintiff's Motion for entry of Judgment Pursuant to EDCR 2.26

02/18/2021



Notice of Entry of Order

Filed By: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor
Notice of Entry of Order Shortening Time and Notice of Hearing

02/22/2021



Notice of Change of Hearing

Notice of Change of Hearing

02/24/2021



Opposition to Motion

Filed By: Counter Claimant Bour Enterprises LLC; Counter Claimant Bour, Mulugeta; Counter Claimant Mengesha, Hilena
Opposition to Plaintiffs' Motion For Entry of Judgment on OST

02/26/2021



Reply in Support

Filed By: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor
Plaintiffs' Reply In Support Of Motion For Entry of Judgment

03/02/2021



Notice of Non Opposition

Filed By: Counter Claimant Bour Enterprises LLC; Counter Claimant Bour, Mulugeta; Counter Claimant Mengesha, Hilena
Notice of Non-Opposition to Black & Lobello Notice of Motion; Notice of Attorneys' Lien and Motion to Adjudicate Attorneys' Lien for Defendants' Failure to Pay Fees and Costs, to Perfect Attorneys' Lien and Foreclosure on Attorneys' Lien

03/04/2021



Order

Filed By: Counter Claimant Bour, Mulugeta
Order Granting Black and Lobello Notice of Attorney's Lien and Motion to Adjudicate Attorneys' Lien for Client's Failure to Pay Fees and Costs to Perfect Attorneys' Lien and Foreclose on Attorney's Lien

03/08/2021



Notice of Entry of Order

Filed By: Counter Claimant Bour Enterprises LLC; Counter Claimant Bour, Mulugeta; Counter Claimant Mengesha, Hilena
Notice of Entry of Order Granting Black and Lobello Notice of Attorneys' Lien' and Motion to Adjudicate Attorneys' Lien for Client's Failure to Pay Fees and Costs, to Perfect Attorneys' Lien and Foreclose on Attorney's Lien

03/09/2021



Order Granting Motion

Order Granting Motion for Entry of Judgment

03/09/2021



Judgment

Filed By: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor
Judgment Against Defendants Bour Enterprises, LLC, Mulugeta Bour and Hilena Mengesha

03/09/2021



Notice of Entry of Order

Filed By: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor

CASE SUMMARY

CASE NO. A-19-794864-C

Notice of Entry of Order

03/09/2021



Notice of Entry of Judgment

Filed By: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor

Notice of Entry of Judgment

03/15/2021



Memorandum of Costs and Disbursements

Filed By: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor

Memorandum of Costs and Disbursements

03/18/2021



Motion to Retax

Filed By: Counter Claimant Bour Enterprises LLC; Counter Claimant Bour, Mulugeta; Counter Claimant Mengesha, Hilena

Defendants' Motion to Retax

03/18/2021



Clerk's Notice of Hearing

Notice of Hearing

03/18/2021



Motion to Retax

Filed By: Counter Claimant Bour Enterprises LLC; Counter Claimant Bour, Mulugeta; Counter Claimant Mengesha, Hilena

Defendants' Amended Motion to Retax

03/24/2021



Notice of Appeal

Filed By: Counter Claimant Bour Enterprises LLC; Counter Claimant Bour, Mulugeta; Counter Claimant Mengesha, Hilena

Notice of Appeal

03/24/2021



Case Appeal Statement

Filed By: Counter Claimant Bour Enterprises LLC; Counter Claimant Bour, Mulugeta; Counter Claimant Mengesha, Hilena

Case Appeal Statement

03/26/2021



Opposition to Motion

Filed By: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor

Plaintiffs' Opposition to Defendants' Motion to Retax Costs

03/29/2021



Motion for Attorney Fees

Filed By: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor

Plaintiffs' Motion for Attorneys' Fees

03/29/2021



Clerk's Notice of Hearing

Notice of Hearing

03/31/2021



Notice of Posting Bond

Filed By: Counter Claimant Bour Enterprises LLC; Counter Claimant Bour, Mulugeta; Counter Claimant Mengesha, Hilena

Notice of Posting Cash Bond

04/01/2021



Reply to Opposition


Filed by: Counter Claimant Bour Enterprises LLC; Counter Claimant Bour, Mulugeta; Counter Claimant Mengesha, Hilena

Reply to Plaintiffs' Opposition to Defendants' Motion to Retax

04/06/2021

CASE SUMMARY

CASE NO. A-19-794864-C

| | |
|------------|--|
| |  Writ Electronically Issued Party: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor <i>Writ of Execution</i> |
| 04/06/2021 |  Writ Electronically Issued Party: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor <i>Writ of Execution</i> |
| 04/06/2021 |  Writ Electronically Issued Party: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor <i>Writ of Execution</i> |
| 04/06/2021 |  Writ Electronically Issued Party: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor <i>Writ of Execution</i> |
| 04/06/2021 |  Writ Electronically Issued Party: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor <i>Writ of Execution</i> |
| 04/06/2021 |  Writ Electronically Issued Party: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor <i>Writ of Execution</i> |
| 04/12/2021 |  Opposition to Motion Filed By: Counter Claimant Bour Enterprises LLC; Counter Claimant Bour, Mulugeta; Counter Claimant Mengesha, Hilena <i>Opposition to Plaintiff's Motion for Attorneys' Fees</i> |
| 04/14/2021 |  Transcript of Proceedings Party: Counter Claimant Bour Enterprises LLC; Counter Claimant Bour, Mulugeta; Counter Claimant Mengesha, Hilena <i>Defendants/Counterclaimants Request for Transcripts of Proceedings</i> |
| 04/28/2021 |  Reply in Support Filed By: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor <i>Plaintiffs' Reply In Support Of Motion For Attorneys' Fees</i> |
| 05/24/2021 |  Judgment Filed By: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor <i>First Supplemental Judgment Against Defendants Bour enterprises, LLC Mulugeta Bour, and Hilena Mengesha</i> |
| 05/27/2021 |  Order Filed By: Counter Defendant 4520 Arville <i>See 5/24/21 Order Granting in Part Plaintiffs' Motion for Fees and Defendants' Motion to Retax Costs</i> |
| 05/27/2021 |  Notice of Entry of Order Filed By: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor <i>Notice of Entry of Order</i> |
| 05/27/2021 |  Notice of Entry Filed By: Counter Defendant 4520 Arville; Counter Defendant McKinley Manor |

CASE SUMMARY

CASE NO. A-19-794864-C

Notice of Entry of First Supplemental Judgment Against Defendants Bour Enterprises, LLC, Mulugeta Bour and Hilena Mengesha




- 06/15/2021  **Recorders Transcript of Hearing**
Party: Counter Claimant Bour Enterprises LLC
Recorders Transcript of Hearing Re: 09.03.19 - Plaintiff/Counter-Defendants' Motion to Dismiss Counterclaims
- 06/15/2021  **Recorders Transcript of Hearing**
Party: Counter Claimant Bour Enterprises LLC
Recorders Transcript of Hearing Re: Plaintiffs' Motion for Summary Judgment Regarding Counterclaim Damages December 15, 2020
- 06/15/2021  **Recorders Transcript of Hearing**
Party: Counter Claimant Bour Enterprises LLC
Recorders Transcript of Hearing: Plaintiffs' Motion for Summary Judgment Regarding their Breach of Contract Claims January 12, 2021
- 06/15/2021  **Recorders Transcript of Hearing**
Party: Counter Claimant Bour Enterprises LLC
Recorders Transcript of Hearing Re: 03.02.21 - Plaintiffs' Motion for Entry of Judgment
- 06/22/2021  **Amended Notice of Appeal**
Party: Counter Claimant Bour Enterprises LLC; Counter Claimant Bour, Mulugeta; Counter Claimant Mengesha, Hilena
Amended Notice of Appeal
- 06/22/2021  **Exhibits**
Filed By: Counter Claimant Bour Enterprises LLC; Counter Claimant Bour, Mulugeta; Counter Claimant Mengesha, Hilena
Exhibit 1 - 4
- 06/22/2021  **Exhibits**
Filed By: Counter Claimant Bour Enterprises LLC; Counter Claimant Bour, Mulugeta; Counter Claimant Mengesha, Hilena
Exhibit 5 - 8

DISPOSITIONS

- 01/28/2021 **Summary Judgment** (Judicial Officer: Barisich, Veronica M.)
Debtors: Bour Enterprises LLC (Defendant), Mulugeta Bour (Defendant), Hilena Mengesha (Defendant)
Creditors: 4520 Arville (Plaintiff), McKinley Manor (Plaintiff)
Judgment: 01/28/2021, Docketed: 01/29/2021
Comment: Certain Claims
- 03/04/2021 **Judgment** (Judicial Officer: Barisich, Veronica M.)
Debtors: Bour Enterprises LLC (Defendant), Mulugeta Bour (Defendant), Hilena Mengesha (Defendant)
Creditors: Black & Lobello (Other)
Judgment: 03/04/2021, Docketed: 03/05/2021
Total Judgment: 27,517.72
- 03/09/2021 **Judgment Plus Interest** (Judicial Officer: Barisich, Veronica M.)
Debtors: Bour Enterprises LLC (Defendant), Mulugeta Bour (Defendant), Hilena Mengesha (Defendant)
Creditors: 4520 Arville (Plaintiff), McKinley Manor (Plaintiff)
Judgment: 03/09/2021, Docketed: 03/10/2021
Total Judgment: 162,756.77

CASE SUMMARY

CASE NO. A-19-794864-C

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| 05/24/2021 | <p>Judgment Plus Interest (Judicial Officer: Barisich, Veronica M.) Debtors: Bour Enterprises LLC (Defendant), Mulugeta Bour (Defendant), Hilena Mengesha (Defendant) Creditors: 4520 Arville (Plaintiff), McKinley Manor (Plaintiff) Judgment: 05/24/2021, Docketed: 05/25/2021 Total Judgment: 66,307.71</p> |
| | <p>HEARINGS</p> |
| 09/03/2019 | <p>Motion to Dismiss (8:30 AM) (Judicial Officer: Vacant, DC 8) <i>Plaintiffs/Counterdefendants' Motion to Dismiss Counterclaims</i></p> |
| 09/03/2019 | <p>Opposition and Countermotion (8:30 AM) (Judicial Officer: Vacant, DC 8) <i>Defendants and Counterclaimants Opposition to Motion to Dismiss Counterclaims and Defendants and Counterclaimants Motion for Summary Judgment</i></p> |
| 09/03/2019 | <p> All Pending Motions (8:30 AM) (Judicial Officer: Bixler, James) Matter Heard; Journal Entry Details: PLAINTIFFS/COUNTERDEFENDANTS' MOTION TO DISMISS COUNTERCLAIMS...DEFENDANTS AND COUNTERCLAIMANTS OPPOSITION TO MOTION TO DISMISS COUNTERCLAIMS AND DEFENDANTS AND COUNTERCLAIMANTS MOTION FOR SUMMARY JUDGMENT COURT NOTED <i>this case was not ripe for Summary Judgment, it was premature, as there were too many matters to be examined. Moreover, summary judgment could be continued until after discovery or the matter could be denied without prejudice and allow for discovery. Furthermore, the Court suggested a settlement conference. COURT ORDERED, Motion to Dismiss and Motion for Summary Judgment DENIED WITHOUT PREJUDICE. Counsel indicated they submitted a Joint Case Conference Report.;</i></p> |
| 10/11/2019 | <p> Mandatory Rule 16 Conference (8:30 AM) (Judicial Officer: Bixler, James) Scheduling Order Will Issue; Journal Entry Details: COURT FINDS, discovery CLOSES ON 03/02/2020; dispositive motions TO BE FILED BY 04/02/2020; and, case will be trial ready on or after 08/03/2020. Deadlines will commence from the close of discovery or the Case Conference report unless otherwise designated. TRIAL ORDER WILL ISSUE.;</p> |
| 01/14/2020 | <p>Motion to Compel (9:00 AM) (Judicial Officer: Truman, Erin) <i>Plaintiffs/Counterdefendants' Motion to Compel Discovery</i> Granted in Part;</p> |
| 01/14/2020 | <p>Opposition and Countermotion (9:00 AM) (Judicial Officer: Truman, Erin) <i>Deft's Opposition to Motion to Compel Discovery and Counter-Motion to Extend The Time To Disclose Expert Witnesses</i> Off Calendar;</p> |
| 01/14/2020 | <p> All Pending Motions (9:00 AM) (Judicial Officer: Truman, Erin) Matter Heard; Journal Entry Details: <i>Plaintiffs/Counterdefendants' Motion to Compel Discovery Deft's Opposition to Motion to Compel Discovery and Counter-Motion to Extend The Time To Disclose Expert Witnesses</i> MATTER TRAILED AND RECALLED: COMMISSIONER RECOMMENDED, Deft's Counter-Motion to Extend The Time To Disclose Expert Witnesses is OFF CALENDAR as discovery deadlines are addressed with the Judge pursuant to the Rules change on 3-1-19. <i>Commissioner stated discovery for Hilena Mengesha was not included in the body of the Motion. However, counsel can work out the discovery based on Commissioner's Recommendations today. Arguments by counsel. COMMISSIONER RECOMMENDED, Plaintiffs/Counterdefendants' Motion to Compel Discovery is GRANTED IN PART and DENIED IN PART; Request for Production 1 is PROTECTED, but a copy of Defts' new Lease is allowed, and where the alleged breaching entity went including size of location; if Defts</i></p> |

CASE SUMMARY

CASE NO. A-19-794864-C

have information in their possession, custody, or control, or Defts can obtain it without burden or undue expense, the information must be provided; RFP 2 PROTECTED as written, but alternative relief was provided, and any documents/communications in Defts' possession, custody, or control must be provided (or provide an explanation); RFP 16 is PROTECTED; RFP 17 alternative relief provided, and re-write #17; RFP 19 produce any and all documents or correspondence for sub-Leasing or taking over the Lease; RFP 20 re-write as Directed on the record; RFP 4 PROTECTED as written; colloquy; RFP 4 as Directed on the record. Mr. Edwards to prepare the Report and Recommendations, and Mr. Graf to approve as to form and content. A proper report must be timely submitted within 14 days of the hearing. Otherwise, counsel will pay a contribution. If a dispute arises on language in the Report and Recommendations, do not submit competing DCRRs. Commissioner advised counsel to contact the Discovery office to set up a conference call with the Commissioner. ;

01/30/2020



Motion to Continue (10:00 AM) (Judicial Officer: Atkin, Trevor)

Motion to Continue Expert Disclosure Deadlines on Order Shortening Time

Granted; Motion to Continue Expert Disclosure Deadlines on Order Shortening Time

Journal Entry Details:

Arguments by counsel. Court Finds no bad faith, motion having been duly filed and served, for good cause shown, COURT ORDERED, Defendants' Motion to Continue Expert Disclosure Deadlines is GRANTED. FURTHER, trial date STANDS. Mr. Graf to prepare the Stipulation and Order within 10 days and distribute a filed copy to all parties involved in this matter.;

02/20/2020

CANCELED Status Check: Compliance (3:00 AM) (Judicial Officer: Truman, Erin)

Vacated

Status Check: Compliance / 1-14-2020

10/13/2020

CANCELED Pre Trial Conference (8:30 AM) (Judicial Officer: Atkin, Trevor)

Vacated - Superseding Order

11/09/2020

CANCELED Calendar Call (8:30 AM) (Judicial Officer: Atkin, Trevor)

Vacated - Superseding Order

11/16/2020

CANCELED Bench Trial (9:00 AM) (Judicial Officer: Atkin, Trevor)

Vacated - Superseding Order

12/09/2020



At Request of Court (3:00 AM) (Judicial Officer: Atkin, Trevor)

BlueJeans Notice for Department 8 on December 15, 2020

Hearing Set;

Journal Entry Details:

BLUEJEANS NOTICE for DEPT. 8 SHOW CAUSE HRGs/ STATUS CHECKS on - DEC 15, 2020, AT 9:00 AM and LAW AND MOTION CALENDAR DEC 15, 2020, AT 9:30 AM Department 8 Request to Appear Telephonically Pursuant to Administrative Order 20-10, Department 8 will temporarily request all matters be heard via telephone conference ONLY. We will NOT be utilizing video conferencing. The court has set up an appearance through BlueJeans, which can accommodate multiple callers at no cost to participants. To use BlueJeans, please call in prior to the hearing at 1-888-748-9073. To connect to your hearing, simply input the assigned meeting ID number provided immediately below, followed by #. Your Meeting ID: 875 455 541 (NOTE: The meeting number will be different for each day's court session.) For your hearing, PLEASE observe the following protocol: Place your telephone on mute while waiting for your matter/case to be called. Do not place the conference on hold as it may play wait/hold music to others. Identify yourself before speaking each time as a record is being made. Please be mindful of sounds of rustling of papers or coughing.;

12/15/2020



Motion for Summary Judgment (9:30 AM) (Judicial Officer: Atkin, Trevor)

Plaintiffs' Motion for Summary Judgment Regarding Counterclaim Damages

Dismissed;

Journal Entry Details:

COURT ORDERED, Plaintiff's Motion for Summary Judgment Regarding Counterclaim Damages is DENIED. Mr. Graf to prepare the order within 10 days and distribute a filed copy to all parties involved in this matter.;

01/05/2021

CANCELED Pre Trial Conference (8:30 AM) (Judicial Officer: Atkin, Trevor)

CASE SUMMARY

CASE NO. A-19-794864-C

Vacated - per Order

01/08/2021



Minute Order (11:50 AM) (Judicial Officer: Barisich, Veronica M.)

Minute Order - No Hearing Held;

Journal Entry Details:

Department 5 Formal Request to Appear REMOTELY for the January 12, 2021 Hearing Calendar. Please double check the docket for your start time. Please be advised that due to the COVID-19 pandemic, Department 5 will continue to conduct Court hearings REMOTELY using the Blue Jeans Video Conferencing system. You have the choice to appear either by phone or computer/video. Dial the following number: 1-408-419-1715 Meeting ID: 160 402 357 Meeting URL: <https://bluejeans.com/160402357> To connect by phone dial the number provided and enter the meeting ID followed by # To connect by computer if you do NOT have the app, copy the URL link into a web browser. Google Chrome is preferred but not required. Once you are on the BlueJeans website click on Join with Browser which is located on the bottom of the page. Follow the instructions and prompts given by BlueJeans. You may also download the Blue Jeans app and join the meeting by entering the meeting ID PLEASE NOTE the following protocol each participant will be required to follow: Place your phone on MUTE while waiting for your matter to be called. Do NOT place the call on hold since some phones may play wait/hold music. Please do NOT use speaker phone as it causes a loud echo/ringing noise. Please state your name each time you speak so that the court recorder can capture a clear record. Please be mindful of rustling papers, background noise, and coughing or loud breathing. We encourage you to visit the [Bluejeans.com](https://bluejeans.com) website to get familiar with the Blue Jeans phone/videoconferencing system before your hearing. If your hearing gets continued to a different date after you have already received this minute order please note a new minute order will issue with a different meeting ID since the ID number changes with each meeting/hearing. Please be patient if you call in and we are in the middle of oral argument from a previous case. Your case should be called shortly. Again, please keep your phone or computer mic on MUTE until your case is called. CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. 1/08/21/ds;

01/12/2021



Motion for Summary Judgment (9:30 AM) (Judicial Officer: Cherry, Michael A.)

Plaintiffs' Motion for Summary Judgment Regarding Their Breach of Contract Claims

Granted;

Journal Entry Details:

Counsel appearing via BlueJeans. Arguments by Mr. Edwards regarding the merits of and by Mr. Graf in the opposition to the motion. COURT stated its findings and ORDERED, motion for summary judgment GRANTED. Mr. Edwards to prepare the order.;

02/01/2021

CANCELED Calendar Call (8:30 AM) (Judicial Officer: Atkin, Trevor)

Vacated

02/04/2021



Minute Order (3:00 AM) (Judicial Officer: Barisich, Veronica M.)





Minute Order - No Hearing Held;

Journal Entry Details:

Department 5 s Formal Request to Appear REMOTELY for the February 9, 2021, Pretrial Conference Please be advised that due to the COVID-19 pandemic, Department 5 will continue to conduct Court hearings REMOTELY using the Blue Jeans Video Conferencing system. You have the choice to appear either by phone or computer/video. Meeting ID: 491 458 660 Meeting URL: <https://bluejeans.com/491458660> To connect by phone dial 1-408-419-1715 and enter the meeting ID followed by # To connect by computer if you do NOT have the app, copy the URL link into a web browser. Google Chrome is preferred but not required. Once you are on the BlueJeans website click on Join with Browser which is located on the bottom of the page. Follow the instructions and prompts given by BlueJeans. You may also download the Blue Jeans app and join the meeting by entering the meeting ID PLEASE NOTE the following protocol each participant will be required to follow: Place your phone on MUTE while waiting for your matter to be called. Do NOT place the call on hold since some phones may play wait/hold music. Please do NOT use speaker phone as it causes a loud echo/ringing noise. Please state your name each time you speak so that the court recorder can capture a clear record. We encourage you to visit the [Bluejeans.com](https://bluejeans.com) website to get familiar with the Blue Jeans phone/videoconferencing system before your hearing. If your hearing gets continued to a different date after you have already received this minute order please note a new minute order will issue with a different meeting ID since the ID number changes with each meeting/hearing. Please be patient if you call in and we are in the middle of oral argument

CASE SUMMARY

CASE NO. A-19-794864-C

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| | <p>from a previous case. Your case should be called shortly. Again, please keep your phone or computer mic on MUTE until your case is called. CLERKS NOTE: This Minute Order was electronically served by Courtroom Clerk, Grecia Snow, to all registered parties for Odyssey File & Serve. 2/4/21 gs CLERK'S NOTE: The above minute order has been updated to include the hearing date and has been redistributed to counsel by the Court Clerk via electronic service. kc/02-08-21;</p> |
| 02/08/2021 | <p>CANCELED Jury Trial (9:00 AM) (Judicial Officer: Atkin, Trevor)</p> <p><i>Vacated - per Order</i></p> |
| 02/09/2021 | <p> Pre Trial Conference (8:30 AM) (Judicial Officer: Barisich, Veronica M.)</p> <p>Matter Heard;</p> <p>Journal Entry Details:</p> <p><i>Counsel agreed to reset the trial pending the outcome of the Motion for Summary Judgment. Trial dates RESET. 3/16/21 8:30 AM PRETRIAL CONFERENCE 4/12/21 8:30 AM CALENDAR CALL 4/19/21 9:00 AM BENCH TRIAL ;</i></p> |
| 02/25/2021 | <p> Minute Order (3:00 AM) (Judicial Officer: Barisich, Veronica M.)</p> <p>Minute Order - No Hearing Held;</p> <p>Journal Entry Details:</p> <p><i>Department 5 Formal Request to Appear REMOTELY for the March 2, 2021, hearing calendar. Please double check the docket for your start time. Please be advised that due to the COVID-19 pandemic, Department 5 will continue to conduct Court hearings REMOTELY using the Blue Jeans Video Conferencing system. You have the choice to appear either by phone or computer/video. Meeting ID: 979 802 354 Meeting URL: https://bluejeans.com/979802354 To connect by phone dial 1-408-419-1715 and enter the meeting ID followed by # To connect by computer if you do NOT have the app, copy the URL link into a web browser. Google Chrome is preferred but not required. Once you are on the BlueJeans website click on Join with Browser which is located on the bottom of the page. Follow the instructions and prompts given by BlueJeans. You may also download the Blue Jeans app and join the meeting by entering the meeting ID PLEASE NOTE the following protocol each participant will be required to follow: Place your phone on MUTE while waiting for your matter to be called. Do NOT place the call on hold since some phones may play wait/hold music. Please do NOT use speaker phone as it causes a loud echo/ringing noise. Please state your name each time you speak so that the court recorder can capture a clear record. We encourage you to visit the Bluejeans.com website to get familiar with the Blue Jeans phone/videoconferencing system before your hearing. If your hearing gets continued to a different date after you have already received this minute order please note a new minute order will issue with a different meeting ID since the ID number changes with each meeting/hearing. Please be patient if you call in and we are in the middle of oral argument from a previous case. Your case should be called shortly. Again, please keep your phone or computer mic on MUTE until your case is called. ;</i></p> |
| 03/02/2021 | <p> Motion for Judgment (9:00 AM) (Judicial Officer: Barisich, Veronica M.)</p> <p><i>Plaintiffs' Motion for Entry of Judgment</i></p> <p>Granted;</p> <p>Journal Entry Details:</p> <p><i>Arguments by counsel regarding whether or not Defendant breach its contract and the damages incurred by the Plaintiff due to the breach. Further arguments by counsel regarding and whether there were material issue of fact as to the counterclaim as to the constructive eviction and the failure of Plaintiffs to mitigate its damages. Following arguments of counsel, COURT ORDERED, matter taken UNDER ADVISEMENT. A written Order will ISSUE.;</i></p> |
| 03/03/2021 | <p> Minute Order (3:00 AM) (Judicial Officer: Barisich, Veronica M.)</p> <p><i>Plaintiff's Motion for Entry of Judgment</i></p> <p>Minute Order - No Hearing Held;</p> <p>Journal Entry Details:</p> <p><i>The Court notes that Plaintiff's Motion for Entry of Judgment was heard on March 2, 2021. After hearing the oral arguments, the Court took the matter UNDER ADVISEMENT. After carefully considering the evidence and arguments submitted, COURT ORDERS that Plaintiff's Motion shall be GRANTED. Per January 28, 2021 order, the Court granted summary judgment on Plaintiff's breach of contract claims. Per this order, the Court concluded that</i></p> |

CASE SUMMARY

CASE NO. A-19-794864-C

there was sufficient evidence that Defendants breached the leases and personal guaranties. The Court rejected Defendant s argument as to constructive eviction as the implied warranty of habitability was deemed inapplicable in commercial leases and that even if such warranty is applicable, it was specifically waived by the Defendants in the lease. The Court FINDS and CONCLUDES that the only remaining dispute is whether a trial is necessary to prove Plaintiff s damages. Plaintiff s damages sought were set forth in the exhibits 5 and 6 of the motion for summary judgment, wherein Plaintiff sought \$62,223.08 for lot C23 and \$77,231.42 for lot C10, for total of \$139,454.50. Defendants did not challenge the appropriateness of the amounts when the Plaintiff filed its motion for summary judgment and they did not raise the applicable affirmative defenses with regards to the damages sought. Under Shuck v. Signature Flight Support of Nevada, Inc., 126 Nev. 434, 245 P.3d 542 (2010), the argument that was not raised in the original motion must be deemed to have been waived and cannot be subsequently considered. Thus, the motion should be granted. The Court ORDERS that Plaintiff s Motion shall be GRANTED. The Pre Trial Conference, Calendar Call and the Bench Trial shall be VACATED. Counsel for Plaintiff is directed to submit a proposed Order and Judgment consistent with this Minute Order and the submitted briefing. Counsel may add language to further supplement the proposed Order in accordance with the Court s findings and any submitted arguments. Defendants counsel is to review and countersign as to form and content. Counsel is directed to have the proposed Order submitted to chambers within 10 days consistent with AO 20-17. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Jennifer Lott, to all registered parties for Odyssey File & Serve. jl;

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| 03/08/2021 | CANCELED Calendar Call (8:30 AM) (Judicial Officer: Atkin, Trevor) <i>Vacated</i> |
| 03/15/2021 | CANCELED Bench Trial (9:00 AM) (Judicial Officer: Atkin, Trevor) <i>Vacated - per Order</i> |
| 03/16/2021 | CANCELED Motion (9:00 AM) (Judicial Officer: Barisich, Veronica M.) <i>Vacated - per Order</i> <i>Black & LoBello's Motion to Adjudicate Attorneys' Lien for Plaintiff's Failure to Pay Fees and Costs</i> |
| 03/16/2021 | CANCELED Pre Trial Conference (11:00 AM) (Judicial Officer: Barisich, Veronica M.) <i>Vacated - per Order</i> |
| 04/12/2021 | CANCELED Calendar Call (8:30 AM) (Judicial Officer: Barisich, Veronica M.) <i>Vacated - per Order</i> |
| 04/14/2021 |  Minute Order (12:15 PM) (Judicial Officer: Barisich, Veronica M.) Minute Order - No Hearing Held; Journal Entry Details: <i>The Court FINDS that Defendant s Motion to Retax is set for a hearing on April 20, 2021 and Plaintiffs Motion for Attorneys Fees is set for a hearing on May 5, 2021. At the request of the Court, for judicial economy, the hearings shall be CONSOLIDATED and RESCHEDULED to May 5, 2021 in chambers. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Jennifer Lott, to all registered parties for Odyssey File & Serve. jl;</i> |
| 04/19/2021 | CANCELED Bench Trial (9:00 AM) (Judicial Officer: Barisich, Veronica M.) <i>Vacated - per Order</i> |
| 05/05/2021 | Motion to Retax (3:00 AM) (Judicial Officer: Barisich, Veronica M.) <i>Defendants' Motion to Retax</i> Granted in Part; See 05/06/21 MO |
| 05/05/2021 | Motion for Attorney Fees (3:00 AM) (Judicial Officer: Barisich, Veronica M.) <i>Plaintiffs' Motion for Attorneys' Fees</i> Granted in Part; See 05/06/21 MO |
| 05/06/2021 |  Minute Order (3:00 AM) (Judicial Officer: Barisich, Veronica M.) <i>Plaintiffs' Motion for Attorneys' Fees ; Defendants' Motion to Retax</i> Minute Order - No Hearing Held; |

CASE SUMMARY

CASE NO. A-19-794864-C

Journal Entry Details:

The Court notes that Defendants' Motion to Retax and Plaintiff's Motion for Attorney's Fees are set on the Court's chamber calendar. After a review of the pleadings, and good cause appearing, pursuant to EDCR 2.23 and the Administrative Order 21-03, the Court FINDS and ORDERS as follows: Per January 28, 2021 order, the Court granted summary judgment on Plaintiffs' breach of contract claims, concluding that there was sufficient evidence that Defendants breached the leases and personal guaranties. The Court rejected Defendant's argument as to constructive eviction as the implied warranty of habitability was deemed inapplicable in commercial leases and that even if such warranty is applicable, it was specifically waived by the Defendants in the lease. Thereinafter, per March 9, 2021 order, the Court granted Plaintiffs' Motion for Entry of Judgment, concluding that trial was not necessary to prove Plaintiffs' damages because Defendants failed to challenge the amount owed or the applicable affirmative defenses with regard to the damages sought. Thus, trial was vacated and Judgment against Defendants was entered on March 9, 2021, in the amount of \$162,756.77, which included applicable interest, was entered. Thereinafter, Plaintiffs filed a Memorandum of Costs and Disbursements on March 15, 2021, seeking to recoup costs of \$8,536.29. NRS 18.005 defines the term "costs" to include the following: 1. Clerks' fees. 2. Reporters' fees for depositions, including a reporter's fee for one copy of each deposition. 3. Jurors' fees and expenses, together with reasonable compensation of an officer appointed to act in accordance with NRS 16.120. 4. Fees for witnesses at trial, pretrial hearings and deposing witnesses, unless the court finds that the witness was called at the instance of the prevailing party without reason or necessity. 5. Reasonable fees of not more than five expert witnesses in an amount of not more than \$1,500 for each witness, unless the court allows a larger fee after determining that the circumstances surrounding the expert's testimony were of such necessity as to require the larger fee. 6. Reasonable fees of necessary interpreters. 7. The fee of any sheriff or licensed process server for the delivery or service of any summons or subpoena used in the action, unless the court determines that the service was not necessary. 8. Compensation for the official reporter or reporter pro tempore. 9. Reasonable costs for any bond or undertaking required as part of the action. 10. Fees of a court bailiff or deputy marshal who was required to work overtime. 11. Reasonable costs for telecopies. 12. Reasonable costs for photocopies. 13. Reasonable costs for long distance telephone calls. 14. Reasonable costs for postage. 15. Reasonable costs for travel and lodging incurred taking depositions and conducting discovery. 16. Fees charged pursuant to NRS 19.0335. 17. Any other reasonable and necessary expense incurred in connection with the action, including reasonable and necessary expenses for computerized services for legal research. NRS 18.020(1) states that "[c]osts must be allowed of course to the prevailing party against any adverse party against whom judgment is rendered: (a) When the prevailing party has not recovered more than \$20,000; or (b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party." However, the costs must be expressly authorized under NRS 18.005. *Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 971 P.2d 383 (1998). The costs must also be substantiated by sufficient documentation and itemization. *Id.* The costs must be actual and reasonable. *Id.* Although the determination of allowable costs is within the sound discretion of the trial court, the statutes permitting recovery of costs must be strictly construed. *Gibellini v. Klindt*, 110 Nev. 1201, 885 P.2d 540 (1994). NRS 18.010(2) provides that "the court may make an allowance of attorney's fees to a prevailing party: (a) When the prevailing party has not recovered more than \$20,000; or (b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party." Whenever a district court awards attorney's fees and costs, the reasonability of the award must always be a consideration. *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). The Nevada Supreme Court has provided factors to be utilized in determining whether the fees requested are reasonable, as follows: (1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived. *Id.* After analyzing the Brunzell factors, the Court may award up to the full amount of fees requested. The Court FINDS and CONCLUDES that out \$8,536.29 in costs initially sought, Plaintiffs conceded that service of process costs were inaccurate and reduced their costs demand to \$7,972.93. Although Defendants argue that delivery charges are not recoverable costs, at a minimum, such charges must be deemed other reasonable and necessary expenses incurred in connection with the action under NRS 18.005(17). Defendants also questioned the legal research costs of \$3,665.22 and under *Berosini*, the costs sought cannot be deemed to have been sufficient documentation and itemization. Thus, the costs sought for legal research

CASE SUMMARY**CASE NO. A-19-794864-C**

should be reduced to \$2,000. Thus, the final costs to be awarded to Plaintiffs shall be reduced to \$6,307.71. The Court FINDS and CONCLUDES that pursuant to the parties' lease agreements, Plaintiffs are entitled to fees because they obtained a judgment against Defendants in their action for breach of contracts and also successfully defended the counterclaims raised by Defendants. Thus, the question centers on whether the fees sought by Plaintiffs in the amount of \$88,145 are reasonable under Brunzell. The Court FINDS and CONCLUDES that overall, there is dispute over the qualities of Plaintiffs' attorneys. Although Defendants point out there are billing entries for unknown "RVG" and various "no charge" transactions, Plaintiffs did not seek to recover on "no charge" transactions and entries by "RVG", who was later identified as Robin V. Gonzales, Esq. As to the character of the work, despite Defendants' arguments, must be deemed in favor of Plaintiffs. As to the work actually performed, work done throughout the course of this lengthy case, also militates in favor of Plaintiffs. Lastly, the result obtained was favorable to Plaintiffs. After an overall analysis of the Brunzell factors, the appropriate attorney's fees appear to be \$60,000. The Court ORDERS that Defendants' motion shall be granted in part, denied in part. Plaintiffs' motion shall be granted in part, denied in part. Counsel for Plaintiffs is directed to submit a proposed Order and Judgment consistent with this Minute Order and the submitted briefing. Counsel may add language to further supplement the proposed Order in accordance with the Court's findings and any submitted arguments. Defendants' counsel is to review and countersign as to form and content. Counsel is directed to have the proposed Order submitted to chambers within 14 days consistent with AO 21-03 and EDCR 7.21. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Carolyn Jackson, to all registered parties for Odyssey File & Serve. /cj 05/06/21;

DATE**FINANCIAL INFORMATION****Counter Claimant** Bour Enterprises LLC

Total Charges 560.00

Total Payments and Credits 560.00

Balance Due as of 6/23/2021 0.00**Counter Defendant** 4520 Arville

Total Charges 1,210.00

Total Payments and Credits 1,210.00

Balance Due as of 6/23/2021 0.00**Counter Defendant** McKinley Manor

Total Charges 0.00

Total Payments and Credits 0.00

Balance Due as of 6/23/2021 0.00**Counter Claimant** Bour Enterprises LLC

Appeal Bond Balance as of 6/23/2021 500.00

Counter Defendant 4520 Arville

Security Cost Bond Balance as of 6/23/2021 500.00

Counter Defendant McKinley Manor

Security Cost Bond Balance as of 6/23/2021 500.00

DISTRICT COURT CIVIL COVER SHEET

Clark County, Nevada
 Case No. _____
(Assigned by Clerk's Office)

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

| | |
|---|---|
| Plaintiff(s) (name/address/phone): 4520 Arville, a California general partnership; MCKINLEY MANOR, an Idaho general partnership | Defendant(s) (name/address/phone): BOUR ENTERPRISES, LLC, a Nevada limited liability company; MULUGETA BOUR, an individual; HILENA MENGESHA, an individual |
| Attorney (name/address/phone): Holley Driggs Walch Fine Puzey Stein & Thompson 400 S. Fourth Street, 3rd Floor Las Vegas NV 89101 (702) -791-0308 | Attorney (name/address/phone): |

CASE NO: A-19-794864-C
Department 1

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


Civil Case Filing Types

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

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

05/15/19

Date


 Signature of initiating party or representative

See other side for family-related case filings.

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JESSICA M. LUJAN, ESQ.
Nevada Bar No. 14913
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HOLLEY DRIGGS
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Las Vegas, Nevada 89101
Telephone: 702/791-0308
Facsimile: 702/791-1912

Attorneys for Plaintiffs/Counterdefendants

DISTRICT COURT

CLARK COUNTY, NEVADA

4520 ARVILLE, a California general
partnership; MCKINLEY MANOR, an Idaho
general partnership,

Plaintiffs,

v.

BOUR ENTERPRISES, LLC, a Nevada limited
liability company; MULUGETA BOUR, an
individual; HILENA MENGESHA, an
individual; DOES 1 through 100, inclusive,

Defendants.

BOUR ENTERPRISES, LLC, a Nevada limited
liability company; MULUGETA BOUR, an
individual; HILENA MENGESHA, an
individual; DOES 1 through 100, inclusive,

Counterclaimants.

v.

4520 ARVILLE, a California general
partnership; MCKINLEY MANOR, an Idaho
general partnership, DOES I-X; and ROE
CORPORATIONS I-X,

Counterdefendants,

Case No: A-19-794864-C
Dept. No.: 5

**ORDER GRANTING PLAINTIFFS'
MOTION FOR ENTRY OF JUDGMENT**

Date of Hearing: March 2, 2021
Time of Hearing: 9:00 a.m.

///

///

This matter came before the Court upon Plaintiffs' Motion for Entry of Judgment on March 2, 2021 at 9:00 a.m. F. Thomas Edwards, Esq., appeared on behalf of Plaintiffs. Rusty Graf, Esq., appeared on behalf of Defendants. The Court carefully reviewed and considered the relevant briefs and documents on file in this case and considered the oral arguments of counsel. After taking the matter under advisement, the Court FINDS and CONCLUDES as follows:

Per the Court's order entered January 28, 2021, the Court granted Plaintiffs' Motion For Summary Judgment Regarding Their Breach of Contract Claims. Per that order, the Court concluded that the undisputed material facts established that Defendants breached the leases and personal guaranties. The Court rejected Defendant's argument as to constructive eviction as the implied warranty of habitability was deemed inapplicable in commercial leases and that even if such warranty is applicable, it was specifically waived by the Defendants in the subject leases.

Therefore, the only remaining issue is whether a trial is necessary to prove Plaintiffs' damages. The damages Plaintiffs sought were set forth in the Exhibits 5 and 6 of the Plaintiffs' Motion For Summary Judgment Regarding Their Breach of Contract Claims, wherein Plaintiffs sought \$62,223.08 for Units C-23/24 and \$77,231.42 for Units C-10/29, for a total of \$139,454.50. In response to Plaintiffs' Motion For Summary Judgment Regarding Their Breach of Contract Claims, Defendants did not challenge the appropriateness of the amounts and did not raise the applicable affirmative defenses with regard to the damages sought. Under *Shuck v. Signature Flight Support of Nevada, Inc.*, 126 Nev. 434, 436, 245 P.3d 542, 544 (2010), the arguments that were not raised in response to the original motion must be deemed to have been waived and cannot be subsequently considered. Thus, there are no issues of material fact with regard to Plaintiffs' damages and Plaintiffs' Motion for Entry of Judgment should be granted.

Good cause appearing, the Court ORDERS as follows:

1. IT IS HEREBY ORDERED that Plaintiffs' Motion for Entry of Judgment is hereby GRANTED in its entirety;

2. IT IS FURTHER ORDERED that a separate judgment shall issue in favor of Plaintiffs and against Defendants, jointly and severally, in the amount of \$139,454.50, plus pre- and post-judgment interest at the rate provided for in the subject leases; and

HOLLEY DRIGGS

3. IT IS FURTHER ORDERED that the Pre-Trial Conference, Calendar Call and Bench Trial shall be VACATED.

IT IS SO ORDERED.

Dated this 9th day of March, 2021



99B 7B4 1827 0BBB
Veronica M. Barisich
District Court Judge

Respectfully submitted by:

HOLLEY DRIGGS

/s/ F. Thomas Edwards
F. THOMAS EDWARDS, ESQ. (NBN 9549)
JESSICA M. LUJAN, ESQ. (NBN 14913)
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101

Attorneys for Plaintiffs/Counter-defendants

Approved as to form and content by:

BLACK & WADHAMS

/s/ Rusty Graf
RUSTY GRAF, ESQ. (NBN 6322)
10777 W. Twain Ave., Suite 300
Las Vegas, NV 89135

Attorneys for Defendants/Counterclaimants

Sandy Sell

Subject: FW: Bour

From: Rusty Graf <rgraf@blackwadhams.law>

Sent: Monday, March 8, 2021 8:07:15 AM

To: Tom Edwards <tedwards@nevadafirm.com>

Cc: Jessica M. Lujan <jlujan@nevadafirm.com>; Diane Meeter <dmeeter@blackwadhams.law>; Mark Lounsbury <mlounsbury@blacklobello.law>

Subject: RE: Bour

No changes to either.

Thank you and Stay safe!

Rusty Graf, Esq.

Partner



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E: rgraf@blackwadhams.law (Effective August 1, 2020)



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From: Tom Edwards <tedwards@nevadafirm.com>

Sent: Friday, March 5, 2021 12:44 PM

To: Rusty Graf <rgraf@blackwadhams.law>

Cc: Jessica M. Lujan <jlujan@nevadafirm.com>

Subject: Bour

Rusty,

Attached for your review are the order and judgment. The only change to the judgement from the last one you saw is that we updated the prejudgment interest amount. Please let me know if we can affix your electronic signature and submit.

Thanks
Tom

F. Thomas Edwards
Shareholder
Las Vegas Office

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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 4520 Arville, Plaintiff(s)

CASE NO: A-19-794864-C

7 vs.

DEPT. NO. Department 5

8 Bour Enterprises LLC,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 3/9/2021

15 Tom Edwards, Esq.

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19 Sandra Sell

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20 Jessica Lujan

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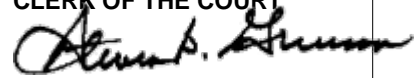
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Facsimile: 702/791-1912

Attorneys for Plaintiffs/Counterdefendants

DISTRICT COURT

CLARK COUNTY, NEVADA

4520 ARVILLE, a California general
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general partnership,

Plaintiffs,

v.

BOUR ENTERPRISES, LLC, a Nevada limited
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individual; DOES 1 through 100, inclusive,

Defendants.

BOUR ENTERPRISES, LLC, a Nevada limited
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general partnership, DOES I-X; and ROE
CORPORATIONS I-X,

Counterdefendants,

Case No: A-19-794864-C
Dept. No.: 5

NOTICE OF ENTRY OF ORDER

YOU, and each of you, will please take notice that an Order Granting Plaintiffs' Motion
for Entry of Judgment in the above-entitled matter was filed and entered by the Clerk of the above-

///

entitled Court on the 9th day of March, 2021, a copy of which is attached hereto.

Dated this 9thth day of March, 2021.

HOLLEY DRIGGS

/s/ F. Thomas Edwards

F. Thomas Edwards, Esq. (NBN 9549)

Jessica M. Lujan, Esq. (NBN 14913)

400 S. Fourth Street, Third Floor

Las Vegas, NV 89101

Attorney for Plaintiffs/Counter-defendants

CERTIFICATE OF SERVICE

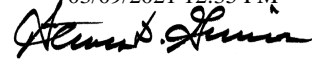
Pursuant to NRCP 5(b), I certify that I am an employee of Holley Driggs and that on this 9th day of March, 2021, I did cause a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER**, to be served upon each of the parties listed below via electronic service through the Court's Odyssey File and Service System:

Rusty Graf, Esq.
BLACK & LOBELLO
10777 W. Twain Ave., Suite 300
Las Vegas, NV 89135

Brent Carson, Esq.
WINNER & CARSON
7935 W. Sahara Ave., Suite 101
Las Vegas, NV 89117

/s/ Sandy Sell

An employee of HOLLEY DRIGGS



CLERK OF THE COURT

F. THOMAS EDWARDS, ESQ.
Nevada Bar No. 9549
E-mail: tedwards@nevadafirm.com
JESSICA M. LUJAN, ESQ.
Nevada Bar No. 14913
E-mail: jlujan@nevadafirm.com
HOLLEY DRIGGS
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Telephone: 702/791-0308
Facsimile: 702/791-1912

Attorneys for Plaintiffs/Counterdefendants

DISTRICT COURT

CLARK COUNTY, NEVADA

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Case No: A-19-794864-C
Dept. No.: 5

**ORDER GRANTING PLAINTIFFS'
MOTION FOR ENTRY OF JUDGMENT**

Date of Hearing: March 2, 2021
Time of Hearing: 9:00 a.m.

///

///

This matter came before the Court upon Plaintiffs' Motion for Entry of Judgment on March 2, 2021 at 9:00 a.m. F. Thomas Edwards, Esq., appeared on behalf of Plaintiffs. Rusty Graf, Esq., appeared on behalf of Defendants. The Court carefully reviewed and considered the relevant briefs and documents on file in this case and considered the oral arguments of counsel. After taking the matter under advisement, the Court FINDS and CONCLUDES as follows:

Per the Court's order entered January 28, 2021, the Court granted Plaintiffs' Motion For Summary Judgment Regarding Their Breach of Contract Claims. Per that order, the Court concluded that the undisputed material facts established that Defendants breached the leases and personal guaranties. The Court rejected Defendant's argument as to constructive eviction as the implied warranty of habitability was deemed inapplicable in commercial leases and that even if such warranty is applicable, it was specifically waived by the Defendants in the subject leases.

Therefore, the only remaining issue is whether a trial is necessary to prove Plaintiffs' damages. The damages Plaintiffs sought were set forth in the Exhibits 5 and 6 of the Plaintiffs' Motion For Summary Judgment Regarding Their Breach of Contract Claims, wherein Plaintiffs sought \$62,223.08 for Units C-23/24 and \$77,231.42 for Units C-10/29, for a total of \$139,454.50. In response to Plaintiffs' Motion For Summary Judgment Regarding Their Breach of Contract Claims, Defendants did not challenge the appropriateness of the amounts and did not raise the applicable affirmative defenses with regard to the damages sought. Under *Shuck v. Signature Flight Support of Nevada, Inc.*, 126 Nev. 434, 436, 245 P.3d 542, 544 (2010), the arguments that were not raised in response to the original motion must be deemed to have been waived and cannot be subsequently considered. Thus, there are no issues of material fact with regard to Plaintiffs' damages and Plaintiffs' Motion for Entry of Judgment should be granted.

Good cause appearing, the Court ORDERS as follows:

1. IT IS HEREBY ORDERED that Plaintiffs' Motion for Entry of Judgment is hereby GRANTED in its entirety;

2. IT IS FURTHER ORDERED that a separate judgment shall issue in favor of Plaintiffs and against Defendants, jointly and severally, in the amount of \$139,454.50, plus pre- and post-judgment interest at the rate provided for in the subject leases; and

HOLLEY DRIGGS

3. IT IS FURTHER ORDERED that the Pre-Trial Conference, Calendar Call and Bench Trial shall be VACATED.

IT IS SO ORDERED.

Dated this 9th day of March, 2021



99B 7B4 1827 0BBB
Veronica M. Barisich
District Court Judge

Respectfully submitted by:

HOLLEY DRIGGS

/s/ F. Thomas Edwards
F. THOMAS EDWARDS, ESQ. (NBN 9549)
JESSICA M. LUJAN, ESQ. (NBN 14913)
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101

Attorneys for Plaintiffs/Counter-defendants

Approved as to form and content by:

BLACK & WADHAMS

/s/ Rusty Graf
RUSTY GRAF, ESQ. (NBN 6322)
10777 W. Twain Ave., Suite 300
Las Vegas, NV 89135

Attorneys for Defendants/Counterclaimants

Sandy Sell

Subject: FW: Bour

From: Rusty Graf <rgraf@blackwadhams.law>

Sent: Monday, March 8, 2021 8:07:15 AM

To: Tom Edwards <tedwards@nevadafirm.com>

Cc: Jessica M. Lujan <jlujan@nevadafirm.com>; Diane Meeter <dmeeter@blackwadhams.law>; Mark Lounsbury <mlounsbury@blacklobello.law>

Subject: RE: Bour

No changes to either.

Thank you and Stay safe!

Rusty Graf, Esq.

Partner



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E: rgraf@blackwadhams.law (Effective August 1, 2020)



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From: Tom Edwards <tedwards@nevadafirm.com>

Sent: Friday, March 5, 2021 12:44 PM

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Cc: Jessica M. Lujan <jlujan@nevadafirm.com>

Subject: Bour

Rusty,

Attached for your review are the order and judgment. The only change to the judgement from the last one you saw is that we updated the prejudgment interest amount. Please let me know if we can affix your electronic signature and submit.

Thanks
Tom

F. Thomas Edwards
Shareholder
Las Vegas Office

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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 4520 Arville, Plaintiff(s)

CASE NO: A-19-794864-C

7 vs.

DEPT. NO. Department 5

8 Bour Enterprises LLC,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 3/9/2021

15 Tom Edwards, Esq.

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19 Sandra Sell

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20 Jessica Lujan

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21 Marsha Stallsworth

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Las Vegas, Nevada 89101
Telephone: 702/791-0308
Facsimile: 702/791-1912
Attorneys for Plaintiffs/Counterdefendants

DISTRICT COURT

CLARK COUNTY, NEVADA

4520 ARVILLE, a California general
partnership; MCKINLEY MANOR, an Idaho
general partnership,

Plaintiffs,

v.

BOUR ENTERPRISES, LLC, a Nevada limited
liability company; MULUGETA BOUR, an
individual; HILENA MENGESHA, an
individual; DOES 1 through 100, inclusive,

Defendants.

BOUR ENTERPRISES, LLC, a Nevada limited
liability company; MULUGETA BOUR, an
individual; HILENA MENGESHA, an
individual; DOES 1 through 100, inclusive,

Counterclaimants.

v.

4520 ARVILLE, a California general
partnership; MCKINLEY MANOR, an Idaho
general partnership, DOES I-X; and ROE
CORPORATIONS I-X,

Counterdefendants,

Case No: A-19-794864-C
Dept. No.: 5

**FIRST SUPPLEMENTAL JUDGMENT
AGAINST DEFENDANTS BOUR
ENTERPRISES, LLC, MULUGETA
BOUR, AND HILENA MENGESHA**

Based on the Court's Order Granting in Part Plaintiffs' Motion for Fees and Defendant's
Motion to Retax Costs, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that judgment be entered in
favor of Plaintiffs/Counter-defendants 4520 Arville and McKinley Manor ("Plaintiffs") and
against Defendants/Counterclaimants Bour Enterprises, LLC, Mulugeta Bour, and Hilena

HOLLEY DRIGGS

Mengesha (“Defendants”), jointly and severally, for \$60,000.00 in actually and reasonably incurred attorneys’ fees and \$6,307.71 in actually and reasonably incurred costs, for a total of **\$66,307.71**, plus interest at 7.25% (Wall Street Journal prime rate of 3.25% published on 3/16/20 plus 4%, per Section 13.5 of the subject Leases) in the amount of \$13.17 per day until satisfied in full.

IT IS FURTHER ORDERED that the instant First Supplemental Judgment constitutes a supplement to the previous Judgment entered by this Court on March 9, 2021, which is otherwise unaffected and remains in full force and effect from its date of issuance.

IT IS SO ORDERED.

Dated this 24th day of May, 2021



**56B AFD 4A7D 88BF
Veronica M. Barisich
District Court Judge**

Respectfully submitted by:

Approved as to form and content by:

HOLLEY DRIGGS

BLACK & WADHAMS

/s/ F. Thomas Edwards

F. THOMAS EDWARDS, ESQ. (NBN 9549)
JESSICA M. LUJAN, ESQ. (NBN 14913)
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101

Declined to sign

RUSTY GRAF, ESQ. (NBN 6322)
10777 W. Twain Ave., Suite 300
Las Vegas, NV 89135

Attorneys for Plaintiffs/Counter-defendants

Attorneys for Defendants/Counterclaimants

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 4520 Arville, Plaintiff(s)

CASE NO: A-19-794864-C

7 vs.

DEPT. NO. Department 5

8 Bour Enterprises LLC,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 5/24/2021

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19 Sandra Sell

ssell@nevadafirm.com

20 Jessica Lujan

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21 Marsha Stallsworth

mstallsworth@blackwadhams.law

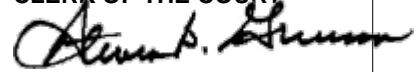
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Telephone: 702/791-0308
Facsimile: 702/791-1912

Attorneys for Plaintiffs/Counterdefendants

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Counterdefendants,

Case No: A-19-794864-C
Dept. No.: 5

**NOTICE OF ENTRY OF FIRST
SUPPLEMENTAL JUDGMENT
AGAINST DEFENDANTS BOUR
ENTERPRISES, LLC, MULUGETA
BOUR AND HILENA MENGESHA**

YOU, and each of you, will please take notice that a First Supplemental Judgment Against
Defendants Bour Enterprises, LLC, Mulugeta Bour and Hilena Mengesha in the above-entitled

///

matter was filed and entered by the Clerk of the above-entitled Court on the 24th day of May, 2021, a copy of which is attached hereto.

Dated this 27th day of May, 2021.

HOLLEY DRIGGS

/s/ F. Thomas Edwards

F. Thomas Edwards, Esq. (NBN 9549)
Jessica M. Lujan, Esq. (NBN 14913)
400 S. Fourth Street, Third Floor
Las Vegas, NV 89101

Attorney for Plaintiffs/Counter-defendants

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Holley Driggs and that on this 27th day of May, 2021, I did cause a true and correct copy of the foregoing **NOTICE OF ENTRY OF FIRST SUPPLEMENTAL JUDGMENT AGAINST DEFENDANTS**, to be served upon each of the parties listed below via electronic service through the Court's Odyssey File and Service System:

Rusty Graf, Esq.
BLACK & LOBELLO
10777 W. Twain Ave., Suite 300
Las Vegas, NV 89135

Brent Carson, Esq.
WINNER & CARSON
7935 W. Sahara Ave., Suite 101
Las Vegas, NV 89117

/s/ Sandy Sell

An employee of HOLLEY DRIGGS

F. THOMAS EDWARDS, ESQ.
Nevada Bar No. 9549
E-mail: tedwards@nevadafirm.com
JESSICA M. LUJAN, ESQ.
Nevada Bar No. 14913
E-mail: jlujan@nevadafirm.com
HOLLEY DRIGGS
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Telephone: 702/791-0308
Facsimile: 702/791-1912
Attorneys for Plaintiffs/Counterdefendants

DISTRICT COURT

CLARK COUNTY, NEVADA

4520 ARVILLE, a California general
partnership; MCKINLEY MANOR, an Idaho
general partnership,

Plaintiffs,

v.

BOUR ENTERPRISES, LLC, a Nevada limited
liability company; MULUGETA BOUR, an
individual; HILENA MENGESHA, an
individual; DOES 1 through 100, inclusive,

Defendants.

BOUR ENTERPRISES, LLC, a Nevada limited
liability company; MULUGETA BOUR, an
individual; HILENA MENGESHA, an
individual; DOES 1 through 100, inclusive,

Counterclaimants.

v.

4520 ARVILLE, a California general
partnership; MCKINLEY MANOR, an Idaho
general partnership, DOES I-X; and ROE
CORPORATIONS I-X,

Counterdefendants,

Case No: A-19-794864-C
Dept. No.: 5

**FIRST SUPPLEMENTAL JUDGMENT
AGAINST DEFENDANTS BOUR
ENTERPRISES, LLC, MULUGETA
BOUR, AND HILENA MENGESHA**

Based on the Court's Order Granting in Part Plaintiffs' Motion for Fees and Defendant's
Motion to Retax Costs, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that judgment be entered in
favor of Plaintiffs/Counter-defendants 4520 Arville and McKinley Manor ("Plaintiffs") and
against Defendants/Counterclaimants Bour Enterprises, LLC, Mulugeta Bour, and Hilena

Mengesha (“Defendants”), jointly and severally, for \$60,000.00 in actually and reasonably incurred attorneys’ fees and \$6,307.71 in actually and reasonably incurred costs, for a total of **\$66,307.71**, plus interest at 7.25% (Wall Street Journal prime rate of 3.25% published on 3/16/20 plus 4%, per Section 13.5 of the subject Leases) in the amount of \$13.17 per day until satisfied in full.

IT IS FURTHER ORDERED that the instant First Supplemental Judgment constitutes a supplement to the previous Judgment entered by this Court on March 9, 2021, which is otherwise unaffected and remains in full force and effect from its date of issuance.

IT IS SO ORDERED.

Dated this 24th day of May, 2021



56B AFD 4A7D 88BF
Veronica M. Barisich
District Court Judge

Respectfully submitted by:

Approved as to form and content by:

HOLLEY DRIGGS

BLACK & WADHAMS

/s/ F. Thomas Edwards

F. THOMAS EDWARDS, ESQ. (NBN 9549)
JESSICA M. LUJAN, ESQ. (NBN 14913)
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101

Declined to sign

RUSTY GRAF, ESQ. (NBN 6322)
10777 W. Twain Ave., Suite 300
Las Vegas, NV 89135

Attorneys for Plaintiffs/Counter-defendants

Attorneys for Defendants/Counterclaimants

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 4520 Arville, Plaintiff(s)

CASE NO: A-19-794864-C

7 vs.

DEPT. NO. Department 5

8 Bour Enterprises LLC,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 5/24/2021

15 Tom Edwards, Esq.

tedwards@nevadafirm.com

16 BRENT CARSON

bac@winnercarson.com

17 Diane Meeter

dmeeter@blacklobello.law

18 J. Graf

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19 Sandra Sell

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20 Jessica Lujan

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21 Marsha Stallsworth

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22 Marsha Stallsworth

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23 Corinne Montana

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Attorneys for Plaintiffs/Counterdefendants

DISTRICT COURT

CLARK COUNTY, NEVADA

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Plaintiffs,

v.

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Defendants.

BOUR ENTERPRISES, LLC, a Nevada limited
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4520 ARVILLE, a California general
partnership; MCKINLEY MANOR, an Idaho
general partnership, DOES I-X; and ROE
CORPORATIONS I-X,

Counterdefendants,

Case No: A-19-794864-C
Dept. No.: 5

**ORDER GRANTING IN PART
PLAINTIFFS' MOTION FOR FEES AND
DEFENDANTS' MOTION TO RETAX
COSTS**

**Hearing Date: May 6, 2021
Hearing Time: In Chambers**

This matter came before the Court on May 6, 2021 in Chambers upon
Plaintiffs/Counterdefendants, 4520 Arville and McKinley Manor (collectively "Plaintiffs")
Motion for Attorneys' Fees (the "Motion for Fees") and Defendants/Counterclaimants Bour

1 Enterprises, LLC, Mulugeta Bour, and Hilena Mengesha's ("Defendants") Motion to Retax Costs,
2 the Honorable Veronica M. Barisich presiding.

3 The Court, having considered the papers and pleadings on file herein, and good cause
4 appearing therefor, hereby enters the following findings of fact and conclusions of law pursuant to
5 EDCR 2.23 and Administrative Order 21-03. To the extent any finding of fact should properly be
6 designated a conclusion of law, it shall be deemed a conclusion of law. To the extent any
7 conclusion of law should properly be designated a finding of fact, it shall be deemed a finding of
8 fact.

9 FINDINGS OF FACT

10 1. On January 28, 2021, the Court granted summary judgment in favor of Plaintiffs
11 on their breach of contract claims, concluding that there was sufficient evidence that Defendants
12 breached the subject Leases and personal Guaranties. *See* Order Granting Summary Judgment, on
13 file herein.

14 2. The Court rejected Defendant's sole argument as to constructive eviction, as the
15 implied warranty of habitability (upon which Defendant's constructive eviction defense relied) is
16 inapplicable in commercial leases. *Id.* at 8–9, ¶ 6. Even if such warranty is applicable, it was
17 specifically waived by the Defendants in the Leases. *Id.* at 9, ¶ 7.

18 3. Thereafter, on March 9, 2021, the Court granted Plaintiffs' Motion for Entry of
19 Judgment, concluding that trial was not necessary to prove Plaintiffs' damages because Defendants
20 failed to challenge the amount owed or raise any applicable affirmative defenses with regard to the
21 damages sought. *See* Order Granting Motion for Entry of Judgment at 2, on file herein. Thus, trial
22 was vacated and Judgment against Defendants was entered on March 9, 2021, in the amount of
23 \$162,756.77, which included applicable interest. *Id.* at 2–3.

24 4. The subject Leases contain identical fee-shifting provisions (the "Fee-Shifting
25 Provisions"), which state, in pertinent part:

26 Attorneys' Fees. If any Party or Broker brings an action or proceeding involving
27 the Premises whether founded in tort, contract or equity, or to declare rights
28 hereunder, the Prevailing Party (as hereafter defined) in any such proceeding,
action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees
may be awarded in the same suit or recovered in a separate suit, whether or not such

action or proceeding is pursued to decision or judgment. The term, “Prevailing Party” shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys’ fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys’ fees reasonably incurred. . .

See Leases, Motion for Summary Judgment (“MSJ”) Exs. 3 and 4 at 18 (Section 31).

5. The subject Leases further provide the rate of interest (the “Interest Rate”) that shall apply to an award of attorneys’ fees and costs awarded pursuant to the Leases:

13.5 Interest. Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due as to scheduled payments (such as Base Rent) or within 30 days following the date on which it was due for non-scheduled payment, shall bear interest from the date when due, as to scheduled payments, or the 31st day after it was due as to non-scheduled payments. The interest (“Interest”) charged shall be equal to the primate rate reported in the Wall Street Journal as published closest prior to the date when due plus 4%, but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

See Leases, Motion for Summary Judgment (“MSJ”) Exs. 3 and 4 at 14–15 (Section 13.5).

6. On March 15, 2021, Plaintiffs timely filed a Memorandum of Costs and Disbursements on March 15, 2021. *See Memorandum of Costs, on file herein.*

7. On March 18, 2021, Defendants timely filed a Motion to Retax Costs. *See Motion to Retax Costs, on file herein.*

8. Thereafter, on March 29, 2021, Plaintiffs timely filed their motion for attorneys’ fees. *See Motion for Fees, on file herein.*

CONCLUSIONS OF LAW

Plaintiffs’ Motion for Fees

1. “Attorney fees are . . . available when authorized by rule, statute, or contract.” *Henry Prods. Inc. v. Tarmu*, 114 Nev. 1017, 1020, 967 P.2d 444, 446 (1998). “The compensation of an attorney and counselor for his services is governed by agreement, express or implied, which is not restrained by law.” NRS 18.010(1). The Supreme Court of Nevada noted, with respect to the language above, “[i]t is the rule that provisions in contracts for the payment of attorney’s fees in the event it is necessary to resort to aid of counsel for enforcement or collection are valid and

enforceable.” *Bates v. Chronister*, 100 Nev. 675, 683, 691 P.2d 865, 871 (1984).

2. Because Plaintiffs obtained a judgment against Defendants in this action for their breach of the Leases, and also successfully defended the counterclaims lodged by Defendants, Plaintiffs are entitled to recover their reasonably and necessarily incurred attorneys’ fees pursuant to the Fee-Shifting Provisions in the Leases. *See* MSJ Exs. 3 and 4 at 18 (Section 31).

3. Whenever a district court awards attorney’s fees, the reasonability of the award must always be a consideration. *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). The Nevada Supreme Court has provided factors to be utilized in determining whether the fees requested are reasonable, as follows: (1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived. *Id.* After analyzing the *Brunzell* factors, the Court may award up to the full amount of fees requested.

4. The attorneys’ fees sought by Plaintiffs are reasonable under the factors set forth in *Brunzell v. Golden Gate Nat’l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

- a. Although Defendants point out the billing entries for unknown “RVG” and various “no charge” transactions, Plaintiffs did not seek to recover on “no charge” transactions and entries by “RVG”, who was later identified as Robin V. Gonzales, Esq. Thus, the factor regarding the qualities of the advocates weighs in favor of Plaintiffs. Moreover, Holley Driggs is “AV” rated by Martindale-Hubbell and has practiced in the Nevada courts for more than two decades.
- b. The character of the work must be deemed in favor of Plaintiffs, given Plaintiffs’ success at summary judgment.
- c. As to the work actually performed, work done throughout the course of this lengthy case also militates in favor of Plaintiffs.

///

d. The result obtained was favorable to Plaintiffs, and thus this factor also weighs in Plaintiffs' favor.

5. After an overall analysis of the *Brunzell* factors, the appropriate attorney's fees appear to be \$60,000.00.

Defendants' Motion to Retax Costs

6. NRS 18.020(1) states that "[c]osts must be allowed of course to the prevailing party against any adverse party against whom judgment is rendered: (a) When the prevailing party has not recovered more than \$20,000; or (b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party."

7. However, the costs must be expressly authorized under NRS 18.005. *Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 971 P.2d 383 (1998). The costs must also be substantiated by sufficient documentation and itemization. *Id.* The costs must be actual and reasonable. *Id.* Although the determination of allowable costs is within the sound discretion of the trial court, the statutes permitting recovery of costs must be strictly construed. *Gibellini v. Klindt*, 110 Nev. 1201, 885 P.2d 540 (1994).

8. NRS 18.005 defines "costs" as

1. Clerks' fees.
2. Reporters' fees for depositions, including a reporter's fee for one copy of each deposition.
- ...
7. The fee of any sheriff or licensed process server for the delivery or service of any summons or subpoena used in the action, unless the court determines that the service was not necessary.
- ...
12. Reasonable costs for photocopies.
- ...
17. Any other reasonable and necessary expense incurred in connection with the action, including reasonable and necessary expenses for computerized services for legal research.

9. The Court finds that out of \$8,536.29 in costs initially sought, Plaintiffs conceded that service of process costs were inaccurate and reduced their costs demand to \$7,972.93. Although Defendants argue that delivery charges are not recoverable costs, at a minimum, such

charges must be deemed other reasonable and necessary expenses incurred in connection with the action under NRS 18.005(17).

10. Defendants also questioned the legal research costs of \$3,665.22 and under *Berosini*, the costs sought cannot be deemed to have been supported by sufficient documentation and itemization. Thus, the costs sought for legal research should be reduced to \$2,000.00.

11. The final costs to be awarded to Plaintiffs shall be reduced to \$6,307.71.

Based on the foregoing, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion for Fees is GRANTED IN PART, and Plaintiffs are awarded \$60,000.00 in actually and reasonably incurred attorneys' fees, plus interest as provided by the subject Leases, consistent with the prior Judgment entered on March 9, 2021.¹

IT IS FURTHER ORDERED that Defendants' Motion to Retax Costs is GRANTED IN PART, and Plaintiffs are awarded \$6,307.71 in actually and reasonably incurred costs, plus interest as provided in the subject Leases, consistent with the prior Judgment entered on March 9, 2021.

IT IS FURTHER ORDERED that separate supplemental judgment for these amounts, plus interest until paid in full, shall issue.

IT IS SO ORDERED.

Dated this 27th day of May, 2021



**D2A BA4 9809 CBF2
Veronica M. Barisich
District Court Judge**

Respectfully submitted by:

Approved as to form and content by:

HOLLEY DRIGGS

BLACK & WADHAMS

/s/ F. Thomas Edwards
F. THOMAS EDWARDS, ESQ. (NBN 9549)
JESSICA M. LUJAN, ESQ. (NBN 14913)
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Attorneys for Plaintiffs/Counter-defendants

Declined to sign
RUSTY GRAF, ESQ. (NBN 6322)
10777 W. Twain Ave., Suite 300
Las Vegas, NV 89135
Attorneys for Defendants/Counterclaimants

¹ The Interest Rate applicable to the First Supplemental Judgment awarding fees and costs shall be updated to reflect the most recent prime interest rate published by the Wall Street Journal, plus 4%, per Section 13.5 of the Leases.

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 4520 Arville, Plaintiff(s)

CASE NO: A-19-794864-C

7 vs.

DEPT. NO. Department 5

8 Bour Enterprises LLC,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 5/27/2021

15 Tom Edwards, Esq.

tedwards@nevadafirm.com

16 BRENT CARSON

bac@winnercarson.com

17 Diane Meeter

dmeeter@blacklobello.law

18 J. Graf

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19 Sandra Sell

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20 Jessica Lujan

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21 Marsha Stallsworth

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22 Marsha Stallsworth

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23 Corinne Montana

cmontana@blackwadhams.law

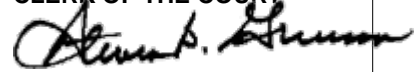
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27

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JESSICA M. LUJAN, ESQ.
Nevada Bar No. 14913
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HOLLEY DRIGGS
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Telephone: 702/791-0308
Facsimile: 702/791-1912

Attorneys for Plaintiffs/Counterdefendants

DISTRICT COURT

CLARK COUNTY, NEVADA

4520 ARVILLE, a California general
partnership; MCKINLEY MANOR, an Idaho
general partnership,

Plaintiffs,

v.

BOUR ENTERPRISES, LLC, a Nevada limited
liability company; MULUGETA BOUR, an
individual; HILENA MENGESHA, an
individual; DOES 1 through 100, inclusive,

Defendants.

BOUR ENTERPRISES, LLC, a Nevada limited
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4520 ARVILLE, a California general
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general partnership, DOES I-X; and ROE
CORPORATIONS I-X,

Counterdefendants,

Case No: A-19-794864-C
Dept. No.: 5

NOTICE OF ENTRY OF ORDER

YOU, and each of you, will please take notice that an Order Granting in Part Plaintiffs'
Motion for Fees and Defendants' Motion to Retax Costs in the above-entitled matter was filed and

///

HOLLEY DRIGGS

1 entered by the Clerk of the above-entitled Court on the 27th day of May, 2021, a copy of which is
2 attached hereto.

3 Dated this 27th day of May, 2021.

4 **HOLLEY DRIGGS**

5
6 /s/ F. Thomas Edwards

7 F. Thomas Edwards, Esq. (NBN 9549)

8 Jessica M. Lujan, Esq. (NBN 14913)

9 400 S. Fourth Street, Third Floor

10 Las Vegas, NV 89101

11 *Attorney for Plaintiffs/Counter-defendants*

12 **CERTIFICATE OF SERVICE**

13 Pursuant to NRCP 5(b), I certify that I am an employee of Holley Driggs and that on this
14 27th day of May, 2021, I did cause a true and correct copy of the foregoing **NOTICE OF ENTRY**
15 **OF ORDER**, to be served upon each of the parties listed below via electronic service through the
16 Court's Odyssey File and Service System:

17 Rusty Graf, Esq.
18 BLACK & LOBELLO
19 10777 W. Twain Ave., Suite 300
20 Las Vegas, NV 89135

21 Brent Carson, Esq.
22 WINNER & CARSON
23 7935 W. Sahara Ave., Suite 101
24 Las Vegas, NV 89117

25
26 /s/ Sandy Sell

27 An employee of HOLLEY DRIGGS
28

F. THOMAS EDWARDS, ESQ.
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JESSICA M. LUJAN, ESQ.
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Counterdefendants,

Case No: A-19-794864-C
Dept. No.: 5

**ORDER GRANTING IN PART
PLAINTIFFS' MOTION FOR FEES AND
DEFENDANTS' MOTION TO RETAX
COSTS**

**Hearing Date: May 6, 2021
Hearing Time: In Chambers**

This matter came before the Court on May 6, 2021 in Chambers upon
Plaintiffs/Counterdefendants, 4520 Arville and McKinley Manor (collectively "Plaintiffs")
Motion for Attorneys' Fees (the "Motion for Fees") and Defendants/Counterclaimants Bour

1 Enterprises, LLC, Mulugeta Bour, and Hilena Mengesha's ("Defendants") Motion to Retax Costs,
2 the Honorable Veronica M. Barisich presiding.

3 The Court, having considered the papers and pleadings on file herein, and good cause
4 appearing therefor, hereby enters the following findings of fact and conclusions of law pursuant to
5 EDCR 2.23 and Administrative Order 21-03. To the extent any finding of fact should properly be
6 designated a conclusion of law, it shall be deemed a conclusion of law. To the extent any
7 conclusion of law should properly be designated a finding of fact, it shall be deemed a finding of
8 fact.

9 FINDINGS OF FACT

10 1. On January 28, 2021, the Court granted summary judgment in favor of Plaintiffs
11 on their breach of contract claims, concluding that there was sufficient evidence that Defendants
12 breached the subject Leases and personal Guaranties. *See* Order Granting Summary Judgment, on
13 file herein.

14 2. The Court rejected Defendant's sole argument as to constructive eviction, as the
15 implied warranty of habitability (upon which Defendant's constructive eviction defense relied) is
16 inapplicable in commercial leases. *Id.* at 8–9, ¶ 6. Even if such warranty is applicable, it was
17 specifically waived by the Defendants in the Leases. *Id.* at 9, ¶ 7.

18 3. Thereafter, on March 9, 2021, the Court granted Plaintiffs' Motion for Entry of
19 Judgment, concluding that trial was not necessary to prove Plaintiffs' damages because Defendants
20 failed to challenge the amount owed or raise any applicable affirmative defenses with regard to the
21 damages sought. *See* Order Granting Motion for Entry of Judgment at 2, on file herein. Thus, trial
22 was vacated and Judgment against Defendants was entered on March 9, 2021, in the amount of
23 \$162,756.77, which included applicable interest. *Id.* at 2–3.

24 4. The subject Leases contain identical fee-shifting provisions (the "Fee-Shifting
25 Provisions"), which state, in pertinent part:

26 Attorneys' Fees. If any Party or Broker brings an action or proceeding involving
27 the Premises whether founded in tort, contract or equity, or to declare rights
28 hereunder, the Prevailing Party (as hereafter defined) in any such proceeding,
action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees
may be awarded in the same suit or recovered in a separate suit, whether or not such

action or proceeding is pursued to decision or judgment. The term, “Prevailing Party” shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys’ fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys’ fees reasonably incurred. . .

See Leases, Motion for Summary Judgment (“MSJ”) Exs. 3 and 4 at 18 (Section 31).

5. The subject Leases further provide the rate of interest (the “Interest Rate”) that shall apply to an award of attorneys’ fees and costs awarded pursuant to the Leases:

13.5 Interest. Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due as to scheduled payments (such as Base Rent) or within 30 days following the date on which it was due for non-scheduled payment, shall bear interest from the date when due, as to scheduled payments, or the 31st day after it was due as to non-scheduled payments. The interest (“Interest”) charged shall be equal to the primate rate reported in the Wall Street Journal as published closest prior to the date when due plus 4%, but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

See Leases, Motion for Summary Judgment (“MSJ”) Exs. 3 and 4 at 14–15 (Section 13.5).

6. On March 15, 2021, Plaintiffs timely filed a Memorandum of Costs and Disbursements on March 15, 2021. *See Memorandum of Costs, on file herein.*

7. On March 18, 2021, Defendants timely filed a Motion to Retax Costs. *See Motion to Retax Costs, on file herein.*

8. Thereafter, on March 29, 2021, Plaintiffs timely filed their motion for attorneys’ fees. *See Motion for Fees, on file herein.*

CONCLUSIONS OF LAW

Plaintiffs’ Motion for Fees

1. “Attorney fees are . . . available when authorized by rule, statute, or contract.” *Henry Prods. Inc. v. Tarmu*, 114 Nev. 1017, 1020, 967 P.2d 444, 446 (1998). “The compensation of an attorney and counselor for his services is governed by agreement, express or implied, which is not restrained by law.” NRS 18.010(1). The Supreme Court of Nevada noted, with respect to the language above, “[i]t is the rule that provisions in contracts for the payment of attorney’s fees in the event it is necessary to resort to aid of counsel for enforcement or collection are valid and

enforceable.” *Bates v. Chronister*, 100 Nev. 675, 683, 691 P.2d 865, 871 (1984).

2. Because Plaintiffs obtained a judgment against Defendants in this action for their breach of the Leases, and also successfully defended the counterclaims lodged by Defendants, Plaintiffs are entitled to recover their reasonably and necessarily incurred attorneys’ fees pursuant to the Fee-Shifting Provisions in the Leases. *See* MSJ Exs. 3 and 4 at 18 (Section 31).

3. Whenever a district court awards attorney’s fees, the reasonability of the award must always be a consideration. *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). The Nevada Supreme Court has provided factors to be utilized in determining whether the fees requested are reasonable, as follows: (1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived. *Id.* After analyzing the *Brunzell* factors, the Court may award up to the full amount of fees requested.

4. The attorneys’ fees sought by Plaintiffs are reasonable under the factors set forth in *Brunzell v. Golden Gate Nat’l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

- a. Although Defendants point out the billing entries for unknown “RVG” and various “no charge” transactions, Plaintiffs did not seek to recover on “no charge” transactions and entries by “RVG”, who was later identified as Robin V. Gonzales, Esq. Thus, the factor regarding the qualities of the advocates weighs in favor of Plaintiffs. Moreover, Holley Driggs is “AV” rated by Martindale-Hubbell and has practiced in the Nevada courts for more than two decades.
- b. The character of the work must be deemed in favor of Plaintiffs, given Plaintiffs’ success at summary judgment.
- c. As to the work actually performed, work done throughout the course of this lengthy case also militates in favor of Plaintiffs.

///

d. The result obtained was favorable to Plaintiffs, and thus this factor also weighs in Plaintiffs' favor.

5. After an overall analysis of the *Brunzell* factors, the appropriate attorney's fees appear to be \$60,000.00.

Defendants' Motion to Retax Costs

6. NRS 18.020(1) states that "[c]osts must be allowed of course to the prevailing party against any adverse party against whom judgment is rendered: (a) When the prevailing party has not recovered more than \$20,000; or (b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party."

7. However, the costs must be expressly authorized under NRS 18.005. *Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 971 P.2d 383 (1998). The costs must also be substantiated by sufficient documentation and itemization. *Id.* The costs must be actual and reasonable. *Id.* Although the determination of allowable costs is within the sound discretion of the trial court, the statutes permitting recovery of costs must be strictly construed. *Gibellini v. Klindt*, 110 Nev. 1201, 885 P.2d 540 (1994).

8. NRS 18.005 defines "costs" as

1. Clerks' fees.
2. Reporters' fees for depositions, including a reporter's fee for one copy of each deposition.
- ...
7. The fee of any sheriff or licensed process server for the delivery or service of any summons or subpoena used in the action, unless the court determines that the service was not necessary.
- ...
12. Reasonable costs for photocopies.
- ...
17. Any other reasonable and necessary expense incurred in connection with the action, including reasonable and necessary expenses for computerized services for legal research.

9. The Court finds that out of \$8,536.29 in costs initially sought, Plaintiffs conceded that service of process costs were inaccurate and reduced their costs demand to \$7,972.93. Although Defendants argue that delivery charges are not recoverable costs, at a minimum, such

charges must be deemed other reasonable and necessary expenses incurred in connection with the action under NRS 18.005(17).

10. Defendants also questioned the legal research costs of \$3,665.22 and under *Berosini*, the costs sought cannot be deemed to have been supported by sufficient documentation and itemization. Thus, the costs sought for legal research should be reduced to \$2,000.00.

11. The final costs to be awarded to Plaintiffs shall be reduced to \$6,307.71.

Based on the foregoing, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion for Fees is GRANTED IN PART, and Plaintiffs are awarded \$60,000.00 in actually and reasonably incurred attorneys' fees, plus interest as provided by the subject Leases, consistent with the prior Judgment entered on March 9, 2021.¹

IT IS FURTHER ORDERED that Defendants' Motion to Retax Costs is GRANTED IN PART, and Plaintiffs are awarded \$6,307.71 in actually and reasonably incurred costs, plus interest as provided in the subject Leases, consistent with the prior Judgment entered on March 9, 2021.

IT IS FURTHER ORDERED that separate supplemental judgment for these amounts, plus interest until paid in full, shall issue.

IT IS SO ORDERED.

Dated this 27th day of May, 2021



**D2A BA4 9809 CBF2
Veronica M. Barisich
District Court Judge**

Respectfully submitted by:

Approved as to form and content by:

HOLLEY DRIGGS

BLACK & WADHAMS

/s/ F. Thomas Edwards
F. THOMAS EDWARDS, ESQ. (NBN 9549)
JESSICA M. LUJAN, ESQ. (NBN 14913)
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Attorneys for Plaintiffs/Counter-defendants

Declined to sign
RUSTY GRAF, ESQ. (NBN 6322)
10777 W. Twain Ave., Suite 300
Las Vegas, NV 89135
Attorneys for Defendants/Counterclaimants

¹ The Interest Rate applicable to the First Supplemental Judgment awarding fees and costs shall be updated to reflect the most recent prime interest rate published by the Wall Street Journal, plus 4%, per Section 13.5 of the Leases.

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 4520 Arville, Plaintiff(s)

CASE NO: A-19-794864-C

7 vs.

DEPT. NO. Department 5

8 Bour Enterprises LLC,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 5/27/2021

15 Tom Edwards, Esq.

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19 Sandra Sell

ssell@nevadafirm.com

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jlujan@nevadafirm.com

21 Marsha Stallsworth

mstallsworth@blackwadhams.law

22 Marsha Stallsworth

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23 Corinne Montana

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HOLLEY DRIGGS
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Telephone: 702/791-0308
Facsimile: 702/791-1912

Attorneys for Plaintiffs/Counter-defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

4520 ARVILLE, a California general
partnership; MCKINLEY MANOR, an Idaho
general partnership,

Plaintiffs,

v.

BOUR ENTERPRISES, LLC, a Nevada limited
liability company; MULUGETA BOUR, an
individual; HILENA MENGESHA, an
individual; DOES 1 through 100, inclusive,

Defendants.

BOUR ENTERPRISES, LLC, a Nevada limited
liability company; MULUGETA BOUR, an
individual; HILENA MENGESHA, an
individual; DOES 1 through 100, inclusive,

Counterclaimants.

v.

4520 ARVILLE, a California general
partnership; MCKINLEY MANOR, an Idaho
general partnership, DOES I-X; and ROE
CORPORATIONS I-X,

Counter-defendants,

Case No: A-19-794864-C
Dept. No.: 5

**JUDGMENT AGAINST DEFENDANTS
BOUR ENTERPRISES, LLC,
MULUGETA BOUR, AND HILENA
MENGESHA**

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Judgment is entered in
favor of Plaintiffs 4520 Arville, a California general partnership, and McKinley Manor, an Idaho
general partnership (together, "Plaintiffs") and against Defendants Bour Enterprises, LLC, a

Nevada limited liability company, Mulugeta Bour, and Hilena Mengesha (together, “Defendants”), jointly and severally, as follows:

1. As to the Lease of Units C-23/24, the principal sum of \$62,223.08 in outstanding rent, CAM charges and late fees (*see* Tenant Ledger, attached as Exhibit 5 to Plaintiffs’ Motion for Summary Judgment, filed 12/1/20 (the “Motion”));
2. As to the Lease of Units C-10/29, the principal sum of \$77,231.42 in outstanding rent, CAM charges and late fees (*see* Tenant Ledger, attached as Exhibit 6 to the Motion);
3. Pre-judgment interest at 9.5% (Wall Street Journal prime rate of 5.5% published on 12/20/18 plus 4%, per Section 13.5 of the Leases, attached as Exhibits 2 and 3 to the Motion) since the expiration of the Leases on May 31, 2019 through March 2, 2021 in the amount of \$23,302.27;
4. Post-judgment interest at 9.5% (Wall Street Journal prime rate of 5.5% published on 12/20/18 plus 4%, per Section 13.5 of the Leases, attached as Exhibits 2 and 3 to the Motion) in the amount of \$36.30 per day from March 3, 2021, until satisfied in full;
5. **For a total amount of \$162,756.77, plus post-judgment interest at \$36.30 per day from March 3, 2021, until satisfied in full.**

Dated this 9th day of March, 2021

IT IS SO ORDERED.



A0B B87 1ECA 45B5
Veronica M. Barisich
District Court Judge

Respectfully submitted by:

Approved as to form and content by:

HOLLEY DRIGGS

BLACK & WADHAMS

/s/ F. Thomas Edwards
F. THOMAS EDWARDS, ESQ. (NBN 9549)
JESSICA M. LUJAN, ESQ. (NBN 14913)
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101

/s/ Rusty Graf
RUSTY GRAF, ESQ. (NBN 6322)
10777 W. Twain Ave., Suite 300
Las Vegas, NV 89135

Attorneys for Plaintiffs/Counter-defendants

Attorneys for Defendants/Counterclaimants

Sandy Sell

Subject: FW: Bour

From: Rusty Graf <rgraf@blackwadhams.law>

Sent: Monday, March 8, 2021 8:07:15 AM

To: Tom Edwards <tedwards@nevadafirm.com>

Cc: Jessica M. Lujan <jlujan@nevadafirm.com>; Diane Meeter <dmeeter@blackwadhams.law>; Mark Lounsbury <mlounsbury@blacklobello.law>

Subject: RE: Bour

No changes to either.

Thank you and Stay safe!

Rusty Graf, Esq.

Partner



p: (702)869-8801

f: (702)869-2669

a: 10777 W. Twain Ave., Suite 300
Las Vegas, NV 89135

W: www.blackwadhams.law

E: rgraf@blacklobello.law (Effective until August 1, 2020)

E: rgraf@blackwadhams.law (Effective August 1, 2020)



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From: Tom Edwards <tedwards@nevadafirm.com>

Sent: Friday, March 5, 2021 12:44 PM

To: Rusty Graf <rgraf@blackwadhams.law>

Cc: Jessica M. Lujan <jlujan@nevadafirm.com>

Subject: Bour

Rusty,

Attached for your review are the order and judgment. The only change to the judgement from the last one you saw is that we updated the prejudgment interest amount. Please let me know if we can affix your electronic signature and submit.

Thanks
Tom

F. Thomas Edwards
Shareholder
Las Vegas Office

HOLLEY DRIGGS

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400 S. 4th Street, Suite 300, Las Vegas NV 89101

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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 4520 Arville, Plaintiff(s)

CASE NO: A-19-794864-C

7 vs.

DEPT. NO. Department 5

8 Bour Enterprises LLC,
9 Defendant(s)

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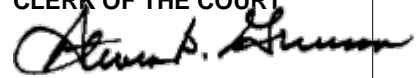
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JESSICA M. LUJAN, ESQ.
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E-mail: jlujan@nevadafirm.com
HOLLEY DRIGGS
400 South Fourth Street, Third Floor
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Telephone: 702/791-0308
Facsimile: 702/791-1912

Attorneys for Plaintiffs/Counterdefendants

DISTRICT COURT

CLARK COUNTY, NEVADA

4520 ARVILLE, a California general
partnership; MCKINLEY MANOR, an Idaho
general partnership,

Plaintiffs,

v.

BOUR ENTERPRISES, LLC, a Nevada limited
liability company; MULUGETA BOUR, an
individual; HILENA MENGESHA, an
individual; DOES 1 through 100, inclusive,

Defendants.

BOUR ENTERPRISES, LLC, a Nevada limited
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Counterclaimants.

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CORPORATIONS I-X,

Counterdefendants,

Case No: A-19-794864-C
Dept. No.: 5

NOTICE OF ENTRY OF JUDGMENT

YOU, and each of you, will please take notice that a Judgment Against Defendants Bour
Enterprises, LLC, Mulugeta Bour and Hilena Mengesha in the above-entitled matter was filed and

///

HOLLEY DRIGGS

entered by the Clerk of the above-entitled Court on the 9th day of March, 2021, a copy of which is attached hereto.

Dated this 9thth day of March, 2021.

HOLLEY DRIGGS

/s/ F. Thomas Edwards

F. Thomas Edwards, Esq. (NBN 9549)

Jessica M. Lujan, Esq. (NBN 14913)

400 S. Fourth Street, Third Floor

Las Vegas, NV 89101

Attorney for Plaintiffs/Counter-defendants

CERTIFICATE OF SERVICE

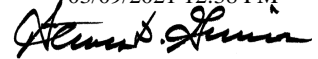
Pursuant to NRCP 5(b), I certify that I am an employee of Holley Driggs and that on this 9th day of March, 2021, I did cause a true and correct copy of the foregoing **NOTICE OF ENTRY OF JUDGMENT**, to be served upon each of the parties listed below via electronic service through the Court's Odyssey File and Service System:

Rusty Graf, Esq.
BLACK & LOBELLO
10777 W. Twain Ave., Suite 300
Las Vegas, NV 89135

Brent Carson, Esq.
WINNER & CARSON
7935 W. Sahara Ave., Suite 101
Las Vegas, NV 89117

/s/ Sandy Sell

An employee of HOLLEY DRIGGS



CLERK OF THE COURT

F. THOMAS EDWARDS, ESQ.
Nevada Bar No. 9549
E-mail: tedwards@nevadafirm.com
JESSICA M. LUJAN, ESQ.
Nevada Bar No. 14913
E-mail: jlujan@nevadafirm.com
HOLLEY DRIGGS
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Telephone: 702/791-0308
Facsimile: 702/791-1912

Attorneys for Plaintiffs/Counter-defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

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Case No: A-19-794864-C
Dept. No.: 5

**JUDGMENT AGAINST DEFENDANTS
BOUR ENTERPRISES, LLC,
MULUGETA BOUR, AND HILENA
MENGESHA**

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Judgment is entered in
favor of Plaintiffs 4520 Arville, a California general partnership, and McKinley Manor, an Idaho
general partnership (together, "Plaintiffs") and against Defendants Bour Enterprises, LLC, a

Nevada limited liability company, Mulugeta Bour, and Hilena Mengesha (together, “Defendants”), jointly and severally, as follows:

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5. **For a total amount of \$162,756.77, plus post-judgment interest at \$36.30 per day from March 3, 2021, until satisfied in full.**

Dated this 9th day of March, 2021

IT IS SO ORDERED.



A0B B87 1ECA 45B5
Veronica M. Barisich
District Court Judge

Respectfully submitted by:

Approved as to form and content by:

HOLLEY DRIGGS

BLACK & WADHAMS

/s/ F. Thomas Edwards
F. THOMAS EDWARDS, ESQ. (NBN 9549)
JESSICA M. LUJAN, ESQ. (NBN 14913)
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101

/s/ Rusty Graf
RUSTY GRAF, ESQ. (NBN 6322)
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Las Vegas, NV 89135

Attorneys for Plaintiffs/Counter-defendants

Attorneys for Defendants/Counterclaimants

Sandy Sell

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Sent: Monday, March 8, 2021 8:07:15 AM

To: Tom Edwards <tedwards@nevadafirm.com>

Cc: Jessica M. Lujan <jlujan@nevadafirm.com>; Diane Meeter <dmeeter@blackwadhams.law>; Mark Lounsbury <mlounsbury@blacklobello.law>

Subject: RE: Bour

No changes to either.

Thank you and Stay safe!

Rusty Graf, Esq.

Partner



p: (702)869-8801

f: (702)869-2669

a: 10777 W. Twain Ave., Suite 300
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Rusty,

Attached for your review are the order and judgment. The only change to the judgement from the last one you saw is that we updated the prejudgment interest amount. Please let me know if we can affix your electronic signature and submit.

Thanks
Tom

F. Thomas Edwards
Shareholder
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1 **CSERV**

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3 DISTRICT COURT
CLARK COUNTY, NEVADA

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6 4520 Arville, Plaintiff(s)

CASE NO: A-19-794864-C

7 vs.

DEPT. NO. Department 5

8 Bour Enterprises LLC,
9 Defendant(s)

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ssell@nevadafirm.com

20 Jessica Lujan

jlujan@nevadafirm.com

21 Marsha Stallsworth

mstallsworth@blackwadhams.law

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mstallsworth@blackwadhams.law

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Landlord Tenant

COURT MINUTES

September 03, 2019

A-19-794864-C 4520 Arville, Plaintiff(s)
vs.
Bour Enterprises LLC, Defendant(s)

September 03, 2019 8:30 AM All Pending Motions

HEARD BY: Vacant, DC 8; Bixler, James **COURTROOM:** Phoenix Building 11th Floor
110

COURT CLERK: Natalie Ortega

RECORDER: Gail Reiger

REPORTER:

PARTIES

PRESENT: Edwards, F. Thomas Attorney
 Graf, J. Rusty Attorney

JOURNAL ENTRIES

- PLAINTIFFS/COUNTERDEFENDANTS' MOTION TO DISMISS
COUNTERCLAIMS...DEFENDANTS AND COUNTERCLAIMANTS OPPOSITION TO MOTION TO
DISMISS COUNTERCLAIMS AND DEFENDANTS AND COUNTERCLAIMANTS MOTION FOR
SUMMARY JUDGMENT

COURT NOTED this case was not ripe for Summary Judgment, it was premature, as there were too many matters to be examined. Moreover, summary judgment could be continued until after discovery or the matter could be denied without prejudice and allow for discovery. Furthermore, the Court suggested a settlement conference. COURT ORDERED, Motion to Dismiss and Motion for Summary Judgment DENIED WITHOUT PREJUDICE. Counsel indicated they submitted a Joint Case Conference Report.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Landlord Tenant

COURT MINUTES

October 11, 2019

| | |
|---------------|------------------------------------|
| A-19-794864-C | 4520 Arville, Plaintiff(s) |
| | vs. |
| | Bour Enterprises LLC, Defendant(s) |

| | | |
|-------------------------|----------------|---|
| October 11, 2019 | 8:30 AM | Mandatory Rule 16 Conference |
|-------------------------|----------------|---|

HEARD BY: Bixler, James

COURTROOM: Phoenix Building 11th Floor
110

COURT CLERK: Alan Castle

RECORDER: Jessica Kirkpatrick

REPORTER:

PARTIES

| | | |
|-----------------|--------------------|----------|
| PRESENT: | Carson, Brent A | Attorney |
| | Edwards, F. Thomas | Attorney |
| | Graf, J. Rusty | Attorney |

JOURNAL ENTRIES

- COURT FINDS, discovery CLOSES ON 03/02/2020; dispositive motions TO BE FILED BY 04/02/2020; and, case will be trial ready on or after 08/03/2020. Deadlines will commence from the close of discovery or the Case Conference report unless otherwise designated. TRIAL ORDER WILL ISSUE.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Landlord Tenant

COURT MINUTES

January 14, 2020

| | |
|---------------|------------------------------------|
| A-19-794864-C | 4520 Arville, Plaintiff(s) |
| | vs. |
| | Bour Enterprises LLC, Defendant(s) |

January 14, 2020 9:00 AM All Pending Motions

HEARD BY: Truman, Erin **COURTROOM:** RJC Level 5 Hearing Room

COURT CLERK: Jennifer Lott

RECORDER: Francesca Haak

REPORTER:

PARTIES

| | | |
|-----------------|--------------------|----------|
| PRESENT: | Edwards, F. Thomas | Attorney |
| | Graf, J. Rusty | Attorney |
| | Lujan, Jessica M | Attorney |

JOURNAL ENTRIES

- Plaintiffs/Counterdefendants' Motion to Compel Discovery

Deft's Opposition to Motion to Compel Discovery and Counter-Motion to Extend The Time To Disclose Expert Witnesses

MATTER TRAILED AND RECALLED: COMMISSIONER RECOMMENDED, Deft's Counter-Motion to Extend The Time To Disclose Expert Witnesses is OFF CALENDAR as discovery deadlines are addressed with the Judge pursuant to the Rules change on 3-1-19. Commissioner stated discovery for Hilena Mengesha was not included in the body of the Motion. However, counsel can work out the discovery based on Commissioner's Recommendations today.

Arguments by counsel. COMMISSIONER RECOMMENDED, Plaintiffs/Counterdefendants' Motion

PRINT DATE: 06/23/2021

Page 3 of 24

Minutes Date: September 03, 2019

to Compel Discovery is GRANTED IN PART and DENIED IN PART; Request for Production 1 is PROTECTED, but a copy of Defts' new Lease is allowed, and where the alleged breaching entity went including size of location; if Defts have information in their possession, custody, or control, or Defts can obtain it without burden or undue expense, the information must be provided; RFP 2 PROTECTED as written, but alternative relief was provided, and any documents/communications in Defts' possession, custody, or control must be provided (or provide an explanation); RFP 16 is PROTECTED; RFP 17 alternative relief provided, and re-write #17; RFP 19 produce any and all documents or correspondence for sub-Leasing or taking over the Lease; RFP 20 re-write as Directed on the record; RFP 4 PROTECTED as written; colloquy; RFP 4 as Directed on the record. Mr. Edwards to prepare the Report and Recommendations, and Mr. Graf to approve as to form and content. A proper report must be timely submitted within 14 days of the hearing. Otherwise, counsel will pay a contribution. If a dispute arises on language in the Report and Recommendations, do not submit competing DCRRs. Commissioner advised counsel to contact the Discovery office to set up a conference call with the Commissioner.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

| | | |
|------------------------------|----------------------|-------------------------|
| Other Landlord Tenant | COURT MINUTES | January 30, 2020 |
|------------------------------|----------------------|-------------------------|

| | |
|---------------|---|
| A-19-794864-C | 4520 Arville, Plaintiff(s) vs. Bour Enterprises LLC, Defendant(s) |
|---------------|---|

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|-------------------------|-----------------|---------------------------|--|
| January 30, 2020 | 10:00 AM | Motion to Continue | Motion to Continue Expert Disclosure Deadlines on Order Shortening Time |
|-------------------------|-----------------|---------------------------|--|

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| HEARD BY: Atkin, Trevor | COURTROOM: Phoenix Building 11th Floor 110 |
|--------------------------------|--|

COURT CLERK: Alan Castle

RECORDER: Jessica Kirkpatrick

REPORTER:

PARTIES

| | | |
|-----------------|--------------------------------------|----------------------|
| PRESENT: | Edwards, F. Thomas Graf, J. Rusty | Attorney Attorney |
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JOURNAL ENTRIES

- Arguments by counsel. Court Finds no bad faith, motion having been duly filed and served, for good cause shown, COURT ORDERED, Defendants' Motion to Continue Expert Disclosure Deadlines is GRANTED. FURTHER, trial date STANDS. Mr. Graf to prepare the Stipulation and Order within 10 days and distribute a filed copy to all parties involved in this matter.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

| Other Landlord Tenant | COURT MINUTES | December 09, 2020 |
|------------------------------|----------------------|--------------------------|
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| | | |
|---------------|---|--|
| A-19-794864-C | 4520 Arville, Plaintiff(s) vs. Bour Enterprises LLC, Defendant(s) | |
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|-------------------|---------|---------------------|
| December 09, 2020 | 3:00 AM | At Request of Court |
|-------------------|---------|---------------------|

HEARD BY: Atkin, Trevor **COURTROOM:** Chambers

COURT CLERK: Alan Castle

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- BLUEJEANS NOTICE for DEPT. 8 SHOW CAUSE HRGs/ STATUS CHECKS on - DEC 15, 2020,
AT 9:00 AM

and

LAW AND MOTION CALENDAR DEC 15, 2020, AT 9:30 AM

Department 8 Request to Appear Telephonically

Pursuant to Administrative Order 20-10, Department 8 will temporarily request all matters be heard via telephone conference ONLY. We will NOT be utilizing video conferencing. The court has set up an appearance through BlueJeans, which can accommodate multiple callers at no cost to participants.

To use BlueJeans, please call in prior to the hearing at 1-888-748-9073.

To connect to your hearing, simply input the assigned meeting ID number provided immediately below, followed by #.

Your Meeting ID: 875 455 541 (NOTE: The meeting number will be different for each day's court session.)

For your hearing, PLEASE observe the following protocol:

Place your telephone on mute while waiting for your matter/case to be called.

Do not place the conference on hold as it may play wait/hold music to others.

Identify yourself before speaking each time as a record is being made.

Please be mindful of sounds of rustling of papers or coughing.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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|------------------------------|----------------------|--------------------------|
| Other Landlord Tenant | COURT MINUTES | December 15, 2020 |
|------------------------------|----------------------|--------------------------|

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|---------------|---|
| A-19-794864-C | 4520 Arville, Plaintiff(s) vs. Bour Enterprises LLC, Defendant(s) |
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|-------------------|---------|--------------------------------|
| December 15, 2020 | 9:30 AM | Motion for Summary Judgment |
|-------------------|---------|--------------------------------|

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| HEARD BY: Atkin, Trevor | COURTROOM: Phoenix Building 11th Floor 110 |
|--------------------------------|--|

COURT CLERK: Alan Castle

RECORDER: Jessica Kirkpatrick

REPORTER:

PARTIES

| | | |
|-----------------|--------------------|----------|
| PRESENT: | Edwards, F. Thomas | Attorney |
| | Graf, J. Rusty | Attorney |

JOURNAL ENTRIES

- COURT ORDERED, Plaintiff's Motion for Summary Judgment Regarding Counterclaim Damages is DENIED. Mr. Graf to prepare the order within 10 days and distribute a filed copy to all parties involved in this matter.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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|------------------------------|----------------------|-------------------------|
| Other Landlord Tenant | COURT MINUTES | January 08, 2021 |
|------------------------------|----------------------|-------------------------|

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|---------------|---|
| A-19-794864-C | 4520 Arville, Plaintiff(s) vs. Bour Enterprises LLC, Defendant(s) |
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| January 08, 2021 | 11:50 AM | Minute Order |
|------------------|----------|--------------|

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|---------------------------------|---|
| HEARD BY: Barisich, Veronica M. | COURTROOM: Phoenix Building 11th Floor 110 |
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COURT CLERK: Dauriana Simpson

RECORDER:

REPORTER:

PARTIES
PRESENT:

JOURNAL ENTRIES

- Department 5 Formal Request to Appear REMOTELY for the January 12, 2021 Hearing Calendar.
Please double check the docket for your start time.

Please be advised that due to the COVID-19 pandemic, Department 5 will continue to conduct Court hearings REMOTELY using the Blue Jeans Video Conferencing system. You have the choice to appear either by phone or computer/video.

Dial the following number: 1-408-419-1715
Meeting ID: 160 402 357
Meeting URL: <https://bluejeans.com/160402357>

To connect by phone dial the number provided and enter the meeting ID followed by #
To connect by computer if you do NOT have the app, copy the URL link into a web browser. Google Chrome is preferred but not required. Once you are on the BlueJeans website click on Join with Browser which is located on the bottom of the page. Follow the instructions and prompts given by

BlueJeans.

You may also download the Blue Jeans app and join the meeting by entering the meeting ID

PLEASE NOTE the following protocol each participant will be required to follow:

Place your phone on MUTE while waiting for your matter to be called.

Do NOT place the call on hold since some phones may play wait/hold music.

Please do NOT use speaker phone as it causes a loud echo/ringing noise.

Please state your name each time you speak so that the court recorder can capture a clear record.

Please be mindful of rustling papers, background noise, and coughing or loud breathing.

We encourage you to visit the [Bluejeans.com](https://bluejeans.com) website to get familiar with the Blue Jeans phone/videoconferencing system before your hearing.

If your hearing gets continued to a different date after you have already received this minute order please note a new minute order will issue with a different meeting ID since the ID number changes with each meeting/hearing.

Please be patient if you call in and we are in the middle of oral argument from a previous case. Your case should be called shortly. Again, please keep your phone or computer mic on MUTE until your case is called.

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. 1/08/21/ds

**DISTRICT COURT
CLARK COUNTY, NEVADA**

| | | |
|------------------------------|----------------------|-------------------------|
| Other Landlord Tenant | COURT MINUTES | January 12, 2021 |
|------------------------------|----------------------|-------------------------|

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|---------------|---|
| A-19-794864-C | 4520 Arville, Plaintiff(s) vs. Bour Enterprises LLC, Defendant(s) |
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|-------------------------|----------------|--|
| January 12, 2021 | 9:30 AM | Motion for Summary Judgment |
|-------------------------|----------------|--|

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| HEARD BY: Cherry, Michael A. | COURTROOM: Phoenix Building 11th Floor 110 |
|-------------------------------------|--|

COURT CLERK: Cynthia Moleres

RECORDER: Christine Erickson

REPORTER:

PARTIES

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|-----------------|--------------------|----------|
| PRESENT: | Edwards, F. Thomas | Attorney |
| | Graf, J. Rusty | Attorney |

JOURNAL ENTRIES

- Counsel appearing via BlueJeans.

Arguments by Mr. Edwards regarding the merits of and by Mr. Graf in the opposition to the motion. COURT stated its findings and ORDERED, motion for summary judgment GRANTED. Mr. Edwards to prepare the order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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|------------------------------|----------------------|--------------------------|
| Other Landlord Tenant | COURT MINUTES | February 04, 2021 |
|------------------------------|----------------------|--------------------------|

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|---------------|------------------------------------|
| A-19-794864-C | 4520 Arville, Plaintiff(s) |
| | vs. |
| | Bour Enterprises LLC, Defendant(s) |

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|-------------------|---------|--------------|
| February 04, 2021 | 3:00 AM | Minute Order |
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|---------------------------------|---------------------|
| HEARD BY: Barisich, Veronica M. | COURTROOM: Chambers |
|---------------------------------|---------------------|

COURT CLERK: Grecia Snow

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Department 5 s Formal Request to Appear REMOTELY for the February 9, 2021, Pretrial Conference

Please be advised that due to the COVID-19 pandemic, Department 5 will continue to conduct Court hearings REMOTELY using the Blue Jeans Video Conferencing system. You have the choice to appear either by phone or computer/video.

Meeting ID: 491 458 660

Meeting URL: <https://bluejeans.com/491458660>

To connect by phone dial 1-408-419-1715 and enter the meeting ID followed by #

To connect by computer if you do NOT have the app, copy the URL link into a web browser. Google Chrome is preferred but not required. Once you are on the BlueJeans website click on Join with Browser which is located on the bottom of the page. Follow the instructions and prompts given by BlueJeans.

You may also download the Blue Jeans app and join the meeting by entering the meeting ID

PLEASE NOTE the following protocol each participant will be required to follow:

Place your phone on MUTE while waiting for your matter to be called.

Do NOT place the call on hold since some phones may play wait/hold music.

Please do NOT use speaker phone as it causes a loud echo/ringing noise.

Please state your name each time you speak so that the court recorder can capture a clear record.

We encourage you to visit the [Bluejeans.com](https://bluejeans.com) website to get familiar with the Blue Jeans phone/videoconferencing system before your hearing.

If your hearing gets continued to a different date after you have already received this minute order please note a new minute order will issue with a different meeting ID since the ID number changes with each meeting/hearing.

Please be patient if you call in and we are in the middle of oral argument from a previous case. Your case should be called shortly. Again, please keep your phone or computer mic on MUTE until your case is called.

CLERKS NOTE: This Minute Order was electronically served by Courtroom Clerk, Grecia Snow, to all registered parties for Odyssey File & Serve. 2/4/21 gs

CLERK'S NOTE: The above minute order has been updated to include the hearing date and has been redistributed to counsel by the Court Clerk via electronic service. kc//02-08-21

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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|------------------------------|----------------------|--------------------------|
| Other Landlord Tenant | COURT MINUTES | February 09, 2021 |
|------------------------------|----------------------|--------------------------|

| | |
|---------------|---|
| A-19-794864-C | 4520 Arville, Plaintiff(s) vs. Bour Enterprises LLC, Defendant(s) |
|---------------|---|

February 09, 2021 8:30 AM Pre Trial Conference

HEARD BY: Barisich, Veronica M. **COURTROOM:** Phoenix Building 11th Floor
110

COURT CLERK: Alice Jacobson

RECORDER: Christine Erickson

REPORTER:

PARTIES

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|-----------------|--------------------------------------|----------------------|
| PRESENT: | Edwards, F. Thomas Graf, J. Rusty | Attorney Attorney |
|-----------------|--------------------------------------|----------------------|

JOURNAL ENTRIES

- Counsel agreed to reset the trial pending the outcome of the Motion for Summary Judgment. Trial dates RESET.

3/16/21 8:30 AM PRETRIAL CONFERENCE
4/12/21 8:30 AM CALENDAR CALL
4/19/21 9:00 AM BENCH TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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|------------------------------|----------------------|--------------------------|
| Other Landlord Tenant | COURT MINUTES | February 25, 2021 |
|------------------------------|----------------------|--------------------------|

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|---------------|---|
| A-19-794864-C | 4520 Arville, Plaintiff(s) vs. Bour Enterprises LLC, Defendant(s) |
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February 25, 2021 3:00 AM Minute Order

HEARD BY: Barisich, Veronica M. **COURTROOM:** Phoenix Building 11th Floor
110

COURT CLERK: Alice Jacobson

RECORDER: Christine Erickson

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Department 5 Formal Request to Appear REMOTELY for the March 2, 2021, hearing calendar.
Please double check the docket for your start time.

Please be advised that due to the COVID-19 pandemic, Department 5 will continue to conduct Court hearings REMOTELY using the Blue Jeans Video Conferencing system. You have the choice to appear either by phone or computer/video.

Meeting ID: 979 802 354

Meeting URL: <https://bluejeans.com/979802354>

To connect by phone dial 1-408-419-1715 and enter the meeting ID followed by #

To connect by computer if you do NOT have the app, copy the URL link into a web browser. Google Chrome is preferred but not required. Once you are on the BlueJeans website click on Join with

Browser which is located on the bottom of the page. Follow the instructions and prompts given by BlueJeans.

You may also download the Blue Jeans app and join the meeting by entering the meeting ID

PLEASE NOTE the following protocol each participant will be required to follow:

Place your phone on MUTE while waiting for your matter to be called.

Do NOT place the call on hold since some phones may play wait/hold music.

Please do NOT use speaker phone as it causes a loud echo/ringing noise.

Please state your name each time you speak so that the court recorder can capture a clear record.

We encourage you to visit the [Bluejeans.com](https://bluejeans.com) website to get familiar with the Blue Jeans phone/videoconferencing system before your hearing.

If your hearing gets continued to a different date after you have already received this minute order please note a new minute order will issue with a different meeting ID since the ID number changes with each meeting/hearing.

Please be patient if you call in and we are in the middle of oral argument from a previous case. Your case should be called shortly. Again, please keep your phone or computer mic on MUTE until your case is called.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Landlord Tenant

COURT MINUTES

March 02, 2021

| | |
|---------------|------------------------------------|
| A-19-794864-C | 4520 Arville, Plaintiff(s) |
| | vs. |
| | Bour Enterprises LLC, Defendant(s) |

March 02, 2021 9:00 AM Motion for Judgment

HEARD BY: Barisich, Veronica M. **COURTROOM:** Phoenix Building 11th Floor
110

COURT CLERK: Carolyn Jackson

RECORDER: Christine Erickson

REPORTER:

PARTIES

| | | |
|-----------------|--------------------|----------|
| PRESENT: | Edwards, F. Thomas | Attorney |
| | Graf, J. Rusty | Attorney |

JOURNAL ENTRIES

- Arguments by counsel regarding whether or not Defendant breach its contract and the damages incurred by the Plaintiff due to the breach. Further arguments by counsel regarding and whether there were material issue of fact as to the counterclaim as to the constructive eviction and the failure of Plaintiffs to mitigate its damages.

Following arguments of counsel, COURT ORDERED, matter taken UNDER ADVISEMENT. A written Order will ISSUE.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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|------------------------------|----------------------|-----------------------|
| Other Landlord Tenant | COURT MINUTES | March 03, 2021 |
|------------------------------|----------------------|-----------------------|

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|---------------|---|
| A-19-794864-C | 4520 Arville, Plaintiff(s) vs. Bour Enterprises LLC, Defendant(s) |
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|-----------------------|----------------|---------------------|
| March 03, 2021 | 3:00 AM | Minute Order |
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| HEARD BY: Barisich, Veronica M. | COURTROOM: Phoenix Building 11th Floor 110 |
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COURT CLERK: Jennifer Lott

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- The Court notes that Plaintiff s Motion for Entry of Judgment was heard on March 2, 2021. After hearing the oral arguments, the Court took the matter UNDER ADVISEMENT. After carefully considering the evidence and arguments submitted, COURT ORDERS that Plaintiff s Motion shall be GRANTED.

Per January 28, 2021 order, the Court granted summary judgment on Plaintiff s breach of contract claims. Per this order, the Court concluded that there was sufficient evidence that Defendants breached the leases and personal guaranties. The Court rejected Defendant s argument as to constructive eviction as the implied warranty of habitability was deemed inapplicable in commercial leases and that even if such warranty is applicable, it was specifically waived by the Defendants in the lease.

The Court FINDS and CONCLUDES that the only remaining dispute is whether a trial is necessary to prove Plaintiff s damages. Plaintiff s damages sought were set forth in the exhibits 5 and 6 of the motion for summary judgment, wherein Plaintiff sought \$62,223.08 for lot C23 and \$77,231.42 for lot

C10, for total of \$139,454.50. Defendants did not challenge the appropriateness of the amounts when the Plaintiff filed its motion for summary judgment and they did not raise the applicable affirmative defenses with regards to the damages sought. Under *Shuck v. Signature Flight Support of Nevada, Inc.*, 126 Nev. 434, 245 P.3d 542 (2010), the argument that was not raised in the original motion must be deemed to have been waived and cannot be subsequently considered. Thus, the motion should be granted.

The Court ORDERS that Plaintiff s Motion shall be GRANTED. The Pre Trial Conference, Calendar Call and the Bench Trial shall be VACATED.

Counsel for Plaintiff is directed to submit a proposed Order and Judgment consistent with this Minute Order and the submitted briefing. Counsel may add language to further supplement the proposed Order in accordance with the Court s findings and any submitted arguments. Defendants counsel is to review and countersign as to form and content. Counsel is directed to have the proposed Order submitted to chambers within 10 days consistent with AO 20-17.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Jennifer Lott, to all registered parties for Odyssey File & Serve. jl

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Landlord Tenant

COURT MINUTES

April 14, 2021

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|---------------|------------------------------------|
| A-19-794864-C | 4520 Arville, Plaintiff(s) |
| | vs. |
| | Bour Enterprises LLC, Defendant(s) |

April 14, 2021 12:15 AM Minute Order

HEARD BY: Barisich, Veronica M. **COURTROOM:** Phoenix Building 11th Floor
110

COURT CLERK: Jennifer Lott

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- The Court FINDS that Defendant s Motion to Retax is set for a hearing on April 20, 2021 and Plaintiffs Motion for Attorneys Fees is set for a hearing on May 5, 2021. At the request of the Court, for judicial economy, the hearings shall be CONSOLIDATED and RESCHEDULED to May 5, 2021 in chambers.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Jennifer Lott, to all registered parties for Odyssey File & Serve. jl

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Landlord Tenant**COURT MINUTES****May 06, 2021**

A-19-794864-C 4520 Arville, Plaintiff(s)
vs.
Bour Enterprises LLC, Defendant(s)

May 06, 2021**3:00 AM****Minute Order****HEARD BY:** Barisich, Veronica M.**COURTROOM:** Chambers**COURT CLERK:** Carolyn Jackson**RECORDER:****REPORTER:****PARTIES****PRESENT:**

JOURNAL ENTRIES

- The Court notes that Defendants' Motion to Retax and Plaintiff's Motion for Attorney's Fees are set on the Court's chamber calendar. After a review of the pleadings, and good cause appearing, pursuant to EDCR 2.23 and the Administrative Order 21-03, the Court FINDS and ORDERS as follows:

Per January 28, 2021 order, the Court granted summary judgment on Plaintiffs' breach of contract claims, concluding that there was sufficient evidence that Defendants breached the leases and personal guaranties. The Court rejected Defendant's argument as to constructive eviction as the implied warranty of habitability was deemed inapplicable in commercial leases and that even if such warranty is applicable, it was specifically waived by the Defendants in the lease. Thereinafter, per March 9, 2021 order, the Court granted Plaintiffs' Motion for Entry of Judgment, concluding that trial was not necessary to prove Plaintiffs' damages because Defendants failed to challenge the amount owed or the applicable affirmative defenses with regard to the damages sought. Thus, trial was vacated and Judgment against Defendants was entered on March 9, 2021, in the amount of \$162,756.77, which included applicable interest, was entered. Thereinafter, Plaintiffs filed a Memorandum of Costs and Disbursements on March 15, 2021, seeking to recoup costs of \$8,536.29.

PRINT DATE: 06/23/2021

Page 21 of 24

Minutes Date: September 03, 2019

NRS 18.005 defines the term "costs" to include the following:

1. Clerks' fees.
2. Reporters' fees for depositions, including a reporter's fee for one copy of each deposition.
3. Jurors' fees and expenses, together with reasonable compensation of an officer appointed to act in accordance with NRS 16.120.
4. Fees for witnesses at trial, pretrial hearings and deposing witnesses, unless the court finds that the witness was called at the instance of the prevailing party without reason or necessity.
5. Reasonable fees of not more than five expert witnesses in an amount of not more than \$1,500 for each witness, unless the court allows a larger fee after determining that the circumstances surrounding the expert's testimony were of such necessity as to require the larger fee.
6. Reasonable fees of necessary interpreters.
7. The fee of any sheriff or licensed process server for the delivery or service of any summons or subpoena used in the action, unless the court determines that the service was not necessary.
8. Compensation for the official reporter or reporter pro tempore.
9. Reasonable costs for any bond or undertaking required as part of the action.
10. Fees of a court bailiff or deputy marshal who was required to work overtime.
11. Reasonable costs for telecopies.
12. Reasonable costs for photocopies.
13. Reasonable costs for long distance telephone calls.
14. Reasonable costs for postage.
15. Reasonable costs for travel and lodging incurred taking depositions and conducting discovery.
16. Fees charged pursuant to NRS 19.0335.
17. Any other reasonable and necessary expense incurred in connection with the action, including reasonable and necessary expenses for computerized services for legal research.

NRS 18.020(1) states that "[c]osts must be allowed of course to the prevailing party against any adverse party against whom judgment is rendered: (a) When the prevailing party has not recovered more than \$20,000; or (b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party." However, the costs must be expressly authorized under NRS 18.005. *Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 971 P.2d 383 (1998). The costs must also be substantiated by sufficient documentation and itemization. *Id.* The costs must be actual and reasonable. *Id.* Although the determination of allowable costs is within the sound discretion of the trial court, the statutes permitting recovery of costs must be strictly construed. *Gibellini v. Klindt*, 110 Nev. 1201, 885 P.2d 540 (1994).

NRS 18.010(2) provides that "the court may make an allowance of attorney's fees to a prevailing party: (a) When the prevailing party has not recovered more than \$20,000; or (b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party

complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party."

Whenever a district court awards attorney's fees and costs, the reasonability of the award must always be a consideration. *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). The Nevada Supreme Court has provided factors to be utilized in determining whether the fees requested are reasonable, as follows: (1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived. *Id.* After analyzing the Brunzell factors, the Court may award up to the full amount of fees requested.

The Court FINDS and CONCLUDES that out \$8,536.29 in costs initially sought, Plaintiffs conceded that service of process costs were inaccurate and reduced their costs demand to \$7,972.93. Although Defendants argue that delivery charges are not recoverable costs, at a minimum, such charges must be deemed other reasonable and necessary expenses incurred in connection with the action under NRS 18.005(17). Defendants also questioned the legal research costs of \$3,665.22 and under Berosini, the costs sought cannot be deemed to have been sufficient documentation and itemization. Thus, the costs sought for legal research should be reduced to \$2,000. Thus, the final costs to be awarded to Plaintiffs shall be reduced to \$6,307.71.

The Court FINDS and CONCLUDES that pursuant to the parties' lease agreements, Plaintiffs are entitled to fees because they obtained a judgment against Defendants in their action for breach of contracts and also successfully defended the counterclaims raised by Defendants. Thus, the question centers on whether the fees sought by Plaintiffs in the amount of \$88,145 are reasonable under Brunzell.

The Court FINDS and CONCLUDES that overall, there is dispute over the qualities of Plaintiffs' attorneys. Although Defendants point out there are billing entries for unknown "RVG" and various "no charge" transactions, Plaintiffs did not seek to recover on "no charge" transactions and entries by "RVG", who was later identified as Robin V. Gonzales, Esq. As to the character of the work, despite Defendants' arguments, must be deemed in favor of Plaintiffs. As to the work actually performed, work done throughout the course of this lengthy case, also militates in favor of Plaintiffs. Lastly, the result obtained was favorable to Plaintiffs. After an overall analysis of the Brunzell factors, the appropriate attorney's fees appear to be \$60,000.

The Court ORDERS that Defendants' motion shall be granted in part, denied in part. Plaintiffs' motion shall be granted in part, denied in part.

Counsel for Plaintiffs is directed to submit a proposed Order and Judgment consistent with this

Minute Order and the submitted briefing. Counsel may add language to further supplement the proposed Order in accordance with the Court's findings and any submitted arguments. Defendants' counsel is to review and countersign as to form and content. Counsel is directed to have the proposed Order submitted to chambers within 14 days consistent with AO 21-03 and EDCR 7.21.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Carolyn Jackson, to all registered parties for Odyssey File & Serve. /cj 05/06/21

Certification of Copy

State of Nevada }
County of Clark } SS:

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

AMENDED NOTICE OF APPEAL; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER GRANTING PLAINTIFFS' MOTION FOR ENTRY OF JUDGMENT; NOTICE OF ENTRY OF ORDER; FIRST SUPPLEMENTAL JUDGMENT AGAINST DEFENDANTS BOUR ENTERPRISES, LLC, MULUGETA BOUR, AND HILENA MENGESHA; NOTICE OF ENTRY OF FIRST SUPPLEMENTAL JUDGMENT AGAINST DEFENDANT BOUR ENTERPRISES, LLC, MULUGETS BOUR AND HILENA MENGESHA; ORDER GRANTING IN PART PLAINTIFFS' MOTION FOR FEES AND DEFENDANTS' MOTION TO RETAX COSTS; NOTICE OF ENTRY OF ORDER; JUDGMENT AGAINST DEFENDANTS BOUR ENTERPRISES, LLC, MULUGETA BOUR, AND HILENA MENGESHA; NOTICE OF ENTRY OF JUDGMENT; DISTRICT COURT MINUTES

4520 ARVILLE; MCKINLEY MANOR ,

Plaintiff(s),

vs.

BOUR ENTERPRISES, LLC; MULUGETA
BOUR; HILENA MENGESHA,

Defendant(s),

Case No: A-19-794864-C

Dept No: V

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 23 day of June 2021.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk

