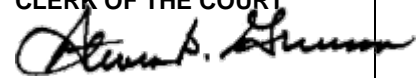


SEMENZA KIRCHER RICKARD
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145

Electronically Filed
10/15/2021 4:47 PM
Steven D. Grierson
CLERK OF THE COURT



Electronically Filed
Oct 25 2021 01:45 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Lawrence J. Semenza, III, Esq., Bar No. 7174
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Facsimile: (702) 920-8669

*Attorneys for Defendants James M. Rhodes
and EB Acquisitions, LLC*

DISTRICT COURT

CLARK COUNTY, NEVADA

ELIOT A. ALPER, an individual, and as
Trustee of THE ELIOT A. ALPER
REVOCABLE TRUST DATED MARCH 22,
1999, and SUSAN J. VERMILLION, an
individual, and as Trustee of SUSAN J.
VERMILLION SEPARATE PROPERTY
TRUST DATED APRIL 24, 1997,

Plaintiffs,

v.

JAMES M. RHODES, individually and as
President of EB ACQUISITIONS, LLC, EB
ACQUISITIONS, LLC, a Nevada Limited
Liability Company, DOES I through X,
inclusive, and ROE CORPORATIONS I
through X, inclusive,

Defendants.

Case No. A-19-804338-C
Dept. No. XXIX

NOTICE OF APPEAL

Notice is hereby given that Defendants James M. Rhodes and EB Acquisitions, LLC
(together, "Defendants") hereby appeal to the Supreme Court of Nevada from the following
orders: (1) the Order Granting In Part and Denying In Part Defendants Motion to Set Aside

1 Judgment and Defaults entered in this action on December 23, 2020; (2) the Order Granting
2 Plaintiffs' Application for Deficiency Judgment Pursuant to NRS 40.455 and Denying
3 Defendants' Countermotion to Extend Briefing Schedule and Hearing Date entered in this action
4 on July 20, 2021; (3) the Order Denying Defendants' Motion for Reconsideration Pursuant to
5 NRCP 59(e) entered in this action on September 23, 2021; (4) the Order Granting Plaintiffs'
6 Motion for Attorneys Fees and Costs entered in this action on September 23, 2021, as well as any
7 orders, judgments and rulings made appealable by the foregoing, including but not limited to any
8 award of fees, costs and/or interest to the Plaintiffs in this case.

9 DATED this 15th day of October, 2021.

10 SEMENZA KIRCHER RICKARD

11 /s/ Lawrence J. Semenza, III

12 Lawrence J. Semenza, III, Esq., Bar No. 7174
13 Christopher D. Kircher, Esq., Bar No. 11176
14 Jarrod L. Rickard, Esq., Bar No. 10203
15 Katie L. Cannata, Esq., Bar No. 14848
16 10161 Park Run Drive, Suite 150
17 Las Vegas, Nevada 89145

18 *Attorneys for Defendants James M. Rhodes*
19 *and EB Acquisitions, LLC*
20
21
22
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28

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b) and NEFCR 9, I certify that I am an employee of Semenza Kircher Rickard, and that on this 15th day of October, 2021, I sent via Odyssey's online e-file and serve system, a true and correct copy of the above and foregoing **NOTICE OF APPEAL** to the following:

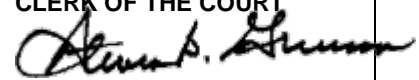
LEWIS ROCA ROTHBERGER CHRISTIE, LLP
Ogonna M. Brown, Esq., obrown@lrrc.com
Patricia Grijalva, PGrijalva@lewisroca.com
Nicole Lord, nlord@lewisroca.com

Attorneys for Plaintiffs

/s/ Olivia A. Kelly

An Employee of Semenza Kircher Rickard

SEMENZA KIRCHER RICKARD
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*Attorneys for Defendants James M. Rhodes
and EB Acquisitions, LLC*

DISTRICT COURT

CLARK COUNTY, NEVADA

ELIOT A. ALPER, an individual, and as
Trustee of THE ELIOT A. ALPER
REVOCABLE TRUST DATED MARCH 22,
1999, and SUSAN J. VERMILLION, an
individual, and as Trustee of SUSAN J.
VERMILLION SEPARATE PROPERTY
TRUST DATED APRIL 24, 1997,

Plaintiffs,

v.

JAMES M. RHODES, individually and as
President of EB ACQUISITIONS, LLC, EB
ACQUISITIONS, LLC, a Nevada Limited
Liability Company, DOES I through X,
inclusive, and ROE CORPORATIONS I
through X, inclusive,

Defendants.

Case No. A-19-804338-C
Dept. No. XXIX

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement: **James M. Rhodes**
("**Rhodes**") and **EB Acquisitions, LLC** ("**EB Acquisitions**") (together, "**Defendants**")

2. Identify the judge issuing the decision, judgment, or order appealed from: **The Honorable Judge David M. Jones of the Eighth Judicial District Court of Nevada.**

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

James M. Rhodes ("Rhodes")
c/o SEMENZA KIRCHER RICKARD
Lawrence J. Semenza, III, Esq., Bar No. 7174
E-mail: ljs@skrlawyers.com
Christopher D. Kircher, Esq., Bar No. 11176
Email: cdk@skrlawyers.com
Jarrold L. Rickard, Esq., Bar No. 10203
Email: jlr@skrlawyers.com
Katie L. Cannata, Esq., Bar No. 14848
Email: klc@skrlawyers.com
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145

EB Acquisitions, LLC ("EB Acquisitions")
c/o SEMENZA KIRCHER RICKARD
Lawrence J. Semenza, III, Esq., Bar No. 7174
E-mail: ljs@skrlawyers.com
Christopher D. Kircher, Esq., Bar No. 11176
Email: cdk@skrlawyers.com
Jarrold L. Rickard, Esq., Bar No. 10203
Email: jlr@skrlawyers.com
Katie L. Cannata, Esq., Bar No. 14848
Email: klc@skrlawyers.com
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):

Eliot A. Alper, an individual and as Trustee of the Eliot A. Alper Revocable Trust Dated March 22, 1999 ("Alper")
c/o LEWIS ROCA ROTHGERBER CHRISTIE LLP
Ogonna M. Brown, Esq., Bar No. 7589
Email: obrown@lewisroca.com
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89168

///

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///

Susan J. Vermillion, an individual and as Trustee of the Susan J. Vermillion
Separate Property Trust Dated April 24, 1997 ("Vermillion")
c/o LEWIS ROCA ROTHGERBER CHRISTIE LLP
Ogonna M. Brown, Esq., Bar No. 7589
Email: obrown@lewisroca.com
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89168

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

6. Indicate whether appellant was represented by appointed counsel in the district court: **Semenza Kircher Rickard was not appointed, but retained by the Defendants in this case.**

7. Indicate whether appellant is represented by appointed counsel on appeal: **Semenza Kircher Rickard was not appointed, but retained by the Plaintiff for the appeal.**

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

9. Indicate the date the proceedings commenced in the district court (e.g., date complaint, indictment, information, or petition was filed): **October 25, 2019**

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

This matter centered around upon a Loan Agreement between Plaintiffs and Defendants for the principal amount of \$3,700,000.00 (the "Loan"). The Loan was evidenced by a Promissory Note Secured by Deed of Trust in the same amount, which was further secured by a Security Agreement. The property securing the loan is specifically described as Arizona Assessor's Parcel Number ("APN") 341-15-012 – Sections 19, 21 & 29 (the "Property"). The Loan was subsequently modified on two occasions.

1 Plaintiffs allege that Defendants breached the Loan Agreement, as modified.
2 According to Plaintiffs, Defendants owed an outstanding balance of \$4,720,182.21 as a
3 result of the alleged breach. Plaintiffs thereby moved to foreclose on the Property. On
4 August 28, 2019, Plaintiffs conducted a foreclosure sale, during which they submitted a
5 credit bid in the amount of \$3,700,000.00 (*i.e.* the originating principal amount of the
6 Loan). Given that the foreclosure sale was less than the purported outstanding amount
7 owed by Defendants, Plaintiffs brought this action to seek a deficiency in the amount of
8 \$1,020,182.21, plus various late charges, fees, costs and interest. Defendants maintain that
9 Plaintiffs are not entitled to a deficiency judgment, given that the property at issue in this
10 matter was significantly undervalued at the time of its foreclosure sale.

11 During the litigation of this matter, the Court entered defaults and a default
12 judgment against Defendants. However, Defendants had not received notice of most, if not
13 all, of the filings in this action. As such, Defendants filed a Motion to Set Aside Judgment
14 and Defaults on September 19, 2020 (the "Motion to Set Aside"). The Court ultimately set
15 aside the default judgment. However, despite the fact that Plaintiffs failed to file and serve
16 (1) a notice of intent to take default and (2) a notice of entry of default, the Court declined
17 to set aside the defaults entered against Defendants. An Order Granting in Part and
18 Denying in Part the Motion to Set Aside was entered on December 23, 2020.

19 Plaintiffs subsequently filed an Application for Deficiency Judgment on April 30,
20 2021 (the "Application"). Upon the filing of Plaintiffs' Application, Defendants
21 immediately sought an appraisal of the Property. Beginning the week of May 24, 2021,
22 counsel for Defendants began inquiring on the status of the appraisal. Defendants learned
23 that the appraisal would not be completed prior to the deadline to file an opposition to the
24 Application. The delay in obtaining the appraisal was largely due to the state of the
25 current real estate environment, which was completely outside of Defendants' control.

26 Accordingly, on May 31, 2021, Defendants filed an Opposition to Plaintiffs'
27 Application for Deficiency Judgment and Countermotion to Extend Briefing Schedule and
28 Hearing Date (the "Countermotion"), requesting an additional 28 days to obtain their

1 appraisal and file a substantive opposition. On June 15, 2021, the Court held a hearing on
2 Plaintiffs' Application and Defendants' Countermotion. The Court ultimately granted the
3 Application and Denied Defendants' Countermotion. As a result, Plaintiffs were awarded a
4 deficiency judgment totaling \$1,468,575.19, which included interest and late fees. The
5 Order Granting Plaintiffs' Application and Denying Defendants' Countermotion was
6 subsequently entered on July 20, 2021 (the "July 20, 2021 Order").

7 On August 11, 2021, Plaintiffs filed a Motion for Attorneys' Fees and Costs. Shortly
8 thereafter, on August 13, 2021, Defendants filed a Motion for Reconsideration Pursuant to
9 NRCP 59(e) (the "Motion for Reconsideration"). Defendants sought reconsideration of the
10 July 20, 2021 Order on the grounds that the Court's denial of Defendants' Countermotion
11 was both factually and legally erroneous, since Defendants' appraisal of the Property (1)
12 confirmed that the Property's fair market value significantly exceeds the purported
13 balance owed to Plaintiffs and (2) would have rendered Plaintiffs' Application as moot.
14 Defendants also argued that the Court erred in denying their request to set aside the
15 defaults entered against them, which Defendants maintain are void.

16 During a September 14, 2021 hearing on the Motion for Reconsideration and
17 Motion for Fees and Costs, the Court denied Defendants' request for reconsideration of the
18 July 20, 2021 Order and granted Plaintiffs' request for fees and costs. The Order Denying
19 Defendants' Motion for Reconsideration Pursuant to NRCP 59(e) and Order Granting
20 Plaintiffs' Motion for Fees and Costs were entered thereafter on September 23, 2021.

21 On September 20, 2021, Plaintiffs filed a Motion to Strike Defendants' Appraisal of
22 Evan Ranes on an Order Shortening Time ("Motion to Strike"). Defendants filed an
23 Opposition on September 27, 2021, arguing – among other things – that the Motion to
24 Strike was moot by virtue of the Court's denial of Defendants' Motion for Reconsideration.
25 At the September 29, 2021 hearing on the matter, the Court granted Plaintiffs' request to
26 strike Defendants' appraisal. An Order Granting the Motion to Strike has since been
27 submitted to the Court, but has yet to be entered.
28

Defendants appeal from the following orders: (1) the Order Granting In Part and Denying In Part Defendants Motion to Set Aside Judgment and Defaults entered in this action on December 23, 2020; (2) the Order Granting Plaintiffs' Application for Deficiency Judgment Pursuant to NRS 40.455 and Denying Defendants' Countermotion to Extend Briefing Schedule and Hearing Date entered in this action on July 20, 2021; (3) the Order Denying Defendants' Motion for Reconsideration Pursuant to NRCP 59(e) entered in this action on September 23, 2021; (4) the Order Granting Plaintiffs' Motion for Attorneys' Fees and Costs entered in this action on September 23, 2021 as well as any orders, judgments and rulings made appealable by the foregoing.

11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding: **This case has not previously been the subject of an appeal to or original writ proceeding in the Supreme Court.**

12. Indicate whether this appeal involves child custody or visitation: **This appeal does not involve a child custody or visitation issue.**

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement: **This is a civil case, but Defendants do not believe that there is a possibility of settlement at this time.**

DATED this 15th day of October, 2021.

SEMENZA KIRCHER RICKARD

/s/ Lawrence J. Semenza, III

Lawrence J. Semenza, III, Esq., Bar No. 7174
Christopher D. Kircher, Esq., Bar No. 11176
Jarrod L. Rickard, Esq., Bar No. 10203
Katie L. Cannata, Esq., Bar No. 14848
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145

*Attorneys for Defendants James M. Rhodes
and EB Acquisitions, LLC*

SEMENZA KIRCHER RICKARD
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b) and NEFCR 9, I certify that I am an employee of Semenza Kircher Rickard, and that on this 15th day of October, 2021, I sent via Odyssey's online e-file and serve system, a true and correct copy of the above and foregoing **CASE APPEAL STATEMENT** to the following:

LEWIS ROCA ROTHBERGER CHRISTIE, LLP
Ogonna M. Brown, Esq., obrown@lrrc.com
Patricia Grijalva, PGrijalva@lewisroca.com
Nicole Lord, nlord@lewisroca.com
Attorneys for Plaintiffs

/s/ Olivia A. Kelly
An Employee of Semenza Kircher Rickard

CASE SUMMARY**CASE NO. A-19-804338-C**

Eliot Alper, Plaintiff(s)
vs.
EB Acquisitions, LLC, Defendant(s)

§
§
§
§
§

Location: **Department 29**
 Judicial Officer: **Jones, David M**
 Filed on: **10/25/2019**
 Cross-Reference Case Number: **A804338**

CASE INFORMATION**Statistical Closures**

10/18/2021 Summary Judgment
 04/02/2020 Default Judgment

Case Type: **Other Contract**

Case Status: **10/18/2021 Closed**

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

Case Number A-19-804338-C
 Court Department 29
 Date Assigned 10/25/2019
 Judicial Officer Jones, David M

PARTY INFORMATION

		<i>Lead Attorneys</i>
Plaintiff	Alper, Eliot	Brown, Ogonna M. <i>Retained</i> 702-949-8200(W)
	Eliot A. Alper Revocable Trust Dated March 22, 1999	Brown, Ogonna M. <i>Retained</i> 702-949-8200(W)
	Susan J Vermillion Separate Property Trust	Brown, Ogonna M. <i>Retained</i> 702-949-8200(W)
	Vermillion, Susan J	Brown, Ogonna M. <i>Retained</i> 702-949-8200(W)
Defendant	EB Acquisitions, LLC	Semenza, Lawrence J., III <i>Retained</i> 702-835-6803(W)
	Rhodes, James M	Semenza, Lawrence J., III <i>Retained</i> 702-835-6803(W)
Trustee	Alper, Eliot	Brown, Ogonna M. <i>Retained</i> 702-949-8200(W)
	Vermillion, Susan J	Brown, Ogonna M. <i>Retained</i> 702-949-8200(W)

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

10/25/2019




Complaint

Filed By: Trustee Alper, Eliot; Plaintiff Eliot A. Alper Revocable Trust Dated March 22,

CASE SUMMARY

CASE NO. A-19-804338-C

	1999; Plaintiff Susan J Vermillion Separate Property Trust; Trustee Vermillion, Susan J <i>[1] Complaint</i>
10/25/2019	 Initial Appearance Fee Disclosure Filed By: Trustee Alper, Eliot <i>[2] Initial Appearance Fee Disclosure</i>
10/25/2019	 Summons Electronically Issued - Service Pending Party: Trustee Alper, Eliot; Plaintiff Eliot A. Alper Revocable Trust Dated March 22, 1999; Plaintiff Susan J Vermillion Separate Property Trust; Trustee Vermillion, Susan J <i>[3] Summons - James M. Rhodes</i>
10/25/2019	 Summons Electronically Issued - Service Pending Party: Trustee Alper, Eliot; Plaintiff Eliot A. Alper Revocable Trust Dated March 22, 1999; Plaintiff Susan J Vermillion Separate Property Trust; Trustee Vermillion, Susan J <i>[4] Summons - EB Acquisitions, LLC</i>
10/30/2019	 Clerk's Notice of Nonconforming Document <i>[5] Clerk's Notice of Nonconforming Document</i>
11/01/2019	 Notice <i>[7] Clerk's Notice of Curative Action</i>
01/02/2020	 Acceptance of Service Filed By: Trustee Alper, Eliot; Plaintiff Eliot A. Alper Revocable Trust Dated March 22, 1999; Plaintiff Susan J Vermillion Separate Property Trust; Trustee Vermillion, Susan J <i>[8] Acknowledgement, Waiver, and Acceptance of Service - James Rhodes</i>
01/02/2020	 Acceptance of Service Filed By: Trustee Alper, Eliot; Plaintiff Eliot A. Alper Revocable Trust Dated March 22, 1999; Plaintiff Susan J Vermillion Separate Property Trust; Trustee Vermillion, Susan J <i>[9] Acknowledgement, Waive and Acceptance of Service for EB Acquisitions, LLC</i>
01/02/2020	 Default Filed By: Trustee Alper, Eliot; Plaintiff Eliot A. Alper Revocable Trust Dated March 22, 1999; Plaintiff Susan J Vermillion Separate Property Trust; Trustee Vermillion, Susan J <i>[10] CLERK S ENTRY OF DEFAULT AGAINST JAMES RHODES</i>
01/02/2020	 Default Filed By: Trustee Alper, Eliot; Plaintiff Eliot A. Alper Revocable Trust Dated March 22, 1999; Plaintiff Susan J Vermillion Separate Property Trust; Trustee Vermillion, Susan J <i>[11] CLERK S ENTRY OF DEFAULT AGAINST EB ACQUISITIONS, LLC</i>
01/31/2020	 Application for Default Judgment <i>[12] Plaintiffs' Application For Default Judgment Against Defendants James M. Rhodes And EB Acquisitions, LLC</i>
01/31/2020	 Declaration Filed By: Trustee Alper, Eliot; Plaintiff Eliot A. Alper Revocable Trust Dated March 22, 1999; Plaintiff Susan J Vermillion Separate Property Trust; Trustee Vermillion, Susan J <i>[13] Declaration of Eliot A. Alper In Support Of Plaintiffs' Application For Default Judgment Against Defendants James M. Rhodes And EB Acquisitions, LLC</i>
01/31/2020	 Declaration Filed By: Trustee Alper, Eliot; Plaintiff Eliot A. Alper Revocable Trust Dated March 22,

CASE SUMMARY

CASE NO. A-19-804338-C

1999; Plaintiff Susan J Vermillion Separate Property Trust; Trustee Vermillion, Susan J
[14] Declaration of Ogonna M. Brown, Esq. In Support Of Plaintiffs' Application For Default
Judgment Against Defendants James M. Rhodes And EB Acquisitions, LLC

01/31/2020



Clerk's Notice of Hearing
[15] Notice of Hearing

02/21/2020



Notice of Non Opposition
Filed By: Trustee Alper, Eliot; Plaintiff Eliot A. Alper Revocable Trust Dated March 22,
1999; Plaintiff Susan J Vermillion Separate Property Trust; Trustee Vermillion, Susan J
[16] Notice Of Non-Opposition To Plaintiff's Application For Default Judgment Against
Defendants James M. Rhodes And EB Acquisitions, LLC

03/11/2020



Order Granting Motion
Filed By: Trustee Alper, Eliot; Plaintiff Eliot A. Alper Revocable Trust Dated March 22,
1999; Plaintiff Susan J Vermillion Separate Property Trust; Trustee Vermillion, Susan J
[17] Order Granting Plaintiffs' Application for Default Judgment Against Defendants James
M. Rhodes and EB Acquisition, LLC

03/11/2020



Notice of Entry
Filed By: Trustee Alper, Eliot; Plaintiff Eliot A. Alper Revocable Trust Dated March 22,
1999; Plaintiff Susan J Vermillion Separate Property Trust; Trustee Vermillion, Susan J
[18] Notice of Entry of Order Granting Plaintiffs' Application For Default Judgment Against
Defendants James M. Rhodes And EB Acquisitions, LLC

03/17/2020



Motion for Attorney Fees and Costs
Filed By: Trustee Alper, Eliot; Plaintiff Eliot A. Alper Revocable Trust Dated March 22,
1999; Plaintiff Susan J Vermillion Separate Property Trust; Trustee Vermillion, Susan J
[19] Plaintiffs' Motion for Attorney Fees and Costs

03/17/2020



Memorandum of Costs and Disbursements
Filed By: Trustee Alper, Eliot; Plaintiff Eliot A. Alper Revocable Trust Dated March 22,
1999; Plaintiff Susan J Vermillion Separate Property Trust; Trustee Vermillion, Susan J
[20] Verified Memorandum of Costs and Disbursements

03/18/2020



Clerk's Notice of Hearing
[21] Notice of Hearing

04/01/2020



Notice of Non Opposition
Filed By: Trustee Alper, Eliot; Defendant EB Acquisitions, LLC; Plaintiff Eliot A. Alper
Revocable Trust Dated March 22, 1999; Plaintiff Susan J Vermillion Separate Property
Trust; Trustee Vermillion, Susan J
[22] Notice Of Non-Opposition To Plaintiff's Motion For Attorneys Fees And Costs

04/02/2020



Order to Statistically Close Case
[23] Civil Order to Statistically Close Case

04/10/2020



Order Granting Motion
[24] ORDER GRANTING PLAINTIFFS MOTION FOR ATTORNEYS' FEES AND COSTS

04/11/2020



Judgment
[25] JUDGMENT












04/14/2020



Notice of Entry
Filed By: Trustee Alper, Eliot; Defendant EB Acquisitions, LLC; Plaintiff Eliot A. Alper
Revocable Trust Dated March 22, 1999; Plaintiff Susan J Vermillion Separate Property

CASE SUMMARY

CASE NO. A-19-804338-C

	Trust; Trustee Vermillion, Susan J <i>[26] Notice of Entry of Order Granting Plaintiffs' Motion for Attorneys' Fees and Cost</i>
04/14/2020	 Notice of Entry of Judgment Filed By: Trustee Alper, Eliot; Plaintiff Eliot A. Alper Revocable Trust Dated March 22, 1999; Plaintiff Susan J Vermillion Separate Property Trust; Trustee Vermillion, Susan J <i>[27] Notice of Entry of Judgment</i>
08/19/2020	 Filing Fee Remittance Filed By: Trustee Alper, Eliot; Plaintiff Eliot A. Alper Revocable Trust Dated March 22, 1999; Plaintiff Susan J Vermillion Separate Property Trust; Trustee Vermillion, Susan J <i>[28] Filing Fee Remittance</i>
09/10/2020	 Initial Appearance Fee Disclosure Filed By: Defendant EB Acquisitions, LLC; Defendant Rhodes, James M <i>[29] Initial Appearance Fee Disclosure</i>
09/10/2020	 Notice of Appearance Party: Defendant EB Acquisitions, LLC; Defendant Rhodes, James M <i>[30] Notice of Appearance</i>
09/10/2020	 Motion to Set Aside Filed By: Defendant EB Acquisitions, LLC; Defendant Rhodes, James M <i>[31] Defendants James M. Rhodes and EB Acquisitions, LLC's Motion to Set Aside Judgment and Defaults</i>
09/10/2020	 Clerk's Notice of Hearing <i>[32] Clerk's Notice of Hearing</i>
09/30/2020	 Stipulation and Order Filed by: Trustee Alper, Eliot; Plaintiff Eliot A. Alper Revocable Trust Dated March 22, 1999; Plaintiff Susan J Vermillion Separate Property Trust; Trustee Vermillion, Susan J <i>[33] Stipulation and Order to Continue Briefing and Hearing on Defendants' Motion to Set Aside Judgment and Defaults and Stay Plaintiffs' Enforcement of Judgment</i>
09/30/2020	 Notice of Entry of Stipulation and Order Filed By: Trustee Alper, Eliot; Plaintiff Eliot A. Alper Revocable Trust Dated March 22, 1999; Plaintiff Susan J Vermillion Separate Property Trust; Trustee Vermillion, Susan J <i>[34] Notice of Entry of Stipulation And Order To Continue Briefing And Hearing On Defendants Motion To Set Aside Judgment And Defaults And Stay Plaintiffs Enforcement Of Judgment</i>
10/20/2020	 Stipulation and Order Filed by: Trustee Alper, Eliot; Plaintiff Eliot A. Alper Revocable Trust Dated March 22, 1999; Plaintiff Susan J Vermillion Separate Property Trust; Trustee Vermillion, Susan J <i>[35] First Amended Stipulation and Order to Continue Briefing and Hearing on Defendants' Motion to Set Aside Judgment and Defaults and Stay Plaintiffs' Enforcement of Judgment</i>
10/21/2020	 Notice of Entry of Stipulation and Order Filed By: Trustee Alper, Eliot; Plaintiff Eliot A. Alper Revocable Trust Dated March 22, 1999; Plaintiff Susan J Vermillion Separate Property Trust; Trustee Vermillion, Susan J <i>[36] Notice of Entry of First Amended Stipulation And Order To Continue Briefing And Hearing On Defendants Motion To Set Aside Judgment And Defaults And Stay Plaintiffs Enforcement Of Judgment</i>
11/16/2020	 Stipulation and Order

CASE SUMMARY

CASE NO. A-19-804338-C

11/16/2020



Notice of Entry of Stipulation and Order

Filed By: Trustee Alper, Eliot; Plaintiff Eliot A. Alper Revocable Trust Dated March 22, 1999; Plaintiff Susan J Vermillion Separate Property Trust; Trustee Vermillion, Susan J
[37] *Second Amended Stipulation and Order to Continue Briefing and hearing on Defendants' Motion to Set Aside Judgment and Defaults and Stay Plaintiff's Enforcement of Judgment*

11/16/2020



Opposition

Filed By: Trustee Alper, Eliot; Plaintiff Eliot A. Alper Revocable Trust Dated March 22, 1999; Plaintiff Susan J Vermillion Separate Property Trust; Trustee Vermillion, Susan J
[39] *Opposition to Defendants James M. Rhodes and EB Acquisitions, LLC's Motion to Set Aside Judgment and Defaults*

11/23/2020



Reply in Support

Filed By: Defendant EB Acquisitions, LLC; Defendant Rhodes, James M
[40] *Defendants' Reply in Support of Motion to Set Aside Judgment and Defaults*

12/08/2020



Recorders Transcript of Hearing

[41] *Recorders Transcript of Hearing Re: December 2, 2020*

12/23/2020



Order

Filed By: Plaintiff Eliot A. Alper Revocable Trust Dated March 22, 1999
[42] *Order Granting In part and Denying in Part Defendants James M. Rhodes and EB Aquitions, LLC' Judgment and Defaults*

12/24/2020



Notice of Entry of Order

Filed By: Trustee Alper, Eliot; Defendant EB Acquisitions, LLC; Plaintiff Eliot A. Alper Revocable Trust Dated March 22, 1999; Plaintiff Susan J Vermillion Separate Property Trust; Trustee Vermillion, Susan J
[43] *Notice Of Entry Of Order Granting In Part And Denying In Part Defendants James M. Rhodes And EB Acquisitions, LLC s Judgment And Defaults*

04/30/2021



Application

Filed By: Trustee Alper, Eliot; Plaintiff Eliot A. Alper Revocable Trust Dated March 22, 1999; Plaintiff Susan J Vermillion Separate Property Trust; Trustee Vermillion, Susan J
[44] *Application For Deficiency Judgment Pursuant To NRS 40.455*

05/03/2021



Clerk's Notice of Hearing

[45] *Notice of Hearing*

05/18/2021



Stipulation and Order

Filed by: Defendant EB Acquisitions, LLC; Defendant Rhodes, James M
[46] *Stipulation and Order to Continue Briefing Schedule on Plaintiffs Application for Deficiency Judgment Pursuant to NRS 40.455*

05/18/2021



Notice of Entry of Stipulation and Order

Filed By: Defendant EB Acquisitions, LLC; Defendant Rhodes, James M
[47] *NOTICE OF ENTRY OF STIPULATION AND ORDER TO CONTINUE BRIEFING SCHEDULE ON PLAINTIFFS' APPLICATION FOR DEFICIENCY JUDGMENT PURSUANT TO NRS 40.455*

05/31/2021

CASE SUMMARY

CASE NO. A-19-804338-C

	 Opposition and Countermotion Filed By: Defendant EB Acquisitions, LLC; Defendant Rhodes, James M <i>[48] Opposition to Application for Deficiency Judgment Pursuant to NRS 40.455 and Countermotion to Extend Briefing Schedule and Hearing Date</i>
06/08/2021	 Reply Filed by: Trustee Alper, Eliot; Plaintiff Eliot A. Alper Revocable Trust Dated March 22, 1999; Plaintiff Susan J Vermillion Separate Property Trust; Trustee Vermillion, Susan J <i>[49] Reply In Support Of Application For Deficiency Judgment Pursuant To NRS 40.455 And Opposition To Countermotion To Extend Briefing Schedule And Hearing Date</i>
07/20/2021	 Order Granting Motion Filed By: Trustee Alper, Eliot; Plaintiff Eliot A. Alper Revocable Trust Dated March 22, 1999; Plaintiff Susan J Vermillion Separate Property Trust; Trustee Vermillion, Susan J <i>[50] Order Granting Plaintiffs Application for Deficiency Judgment Pursuant to NRS 40.455 and Denying Defendants Countermotion to Extend Briefing Date</i>
07/20/2021	 Notice of Entry of Order <i>[51] Notice of Entry of Order Granting Plaintiffs Application for Deficiency Judgment Pursuant to NRS 40.455 and Denying Defendants Countermotion to Extend Briefing Schedule and Hearing Date</i>
08/04/2021	 Recorders Transcript of Hearing <i>[52] Recorders Transcript of Hearing Re: December 11, 2020</i>
08/04/2021	 Recorders Transcript of Hearing <i>[53] Recorders Transcript of Hearing Re: June 15, 2021</i>
08/09/2021	 Order Granting Filed By: Trustee Alper, Eliot; Trustee Vermillion, Susan J <i>[54] Order Granting Plaintiffs Application for Deficiency Judgment Pursuant to NRS 40.455 and Denying Defendants Countermotion to Extend Briefing Schedule and Hearing Date</i>
08/11/2021	 Motion for Attorney Fees and Costs Filed By: Plaintiff Eliot A. Alper Revocable Trust Dated March 22, 1999; Plaintiff Susan J Vermillion Separate Property Trust; Trustee Vermillion, Susan J <i>[55] Plaintiffs' Motion for Attorneys' Fees and Costs</i>
08/11/2021	 Affidavit in Support Filed By: Plaintiff Eliot A. Alper Revocable Trust Dated March 22, 1999; Plaintiff Susan J Vermillion Separate Property Trust; Trustee Vermillion, Susan J <i>[56] Affidavit of Ogonna M. Brown in Support of Plaintiffs' Motion for Attorneys' Fees and Costs</i>
08/11/2021	 Memorandum of Costs and Disbursements Filed By: Plaintiff Eliot A. Alper Revocable Trust Dated March 22, 1999; Plaintiff Susan J Vermillion Separate Property Trust; Trustee Vermillion, Susan J <i>[57] Verified Memorandum of Costs and Disbursements</i>
08/11/2021	 Clerk's Notice of Hearing <i>[58] Notice of Hearing</i>
08/13/2021	 Motion to Reconsider Filed By: Defendant EB Acquisitions, LLC; Defendant Rhodes, James M <i>[59] Defendants James M. Rhodes and EB Aquisitions, LLC's Motion for Reconsideration Pursuant to NRCP 59(e)</i>

CASE SUMMARY

CASE NO. A-19-804338-C

08/13/2021	 Clerk's Notice of Hearing <i>[60] Notice of Hearing</i>
08/25/2021	 Opposition to Motion Filed By: Defendant EB Acquisitions, LLC; Defendant Rhodes, James M <i>[61] Defendants' Opposition to Plaintiffs' Motion for Fees and Costs</i>
08/27/2021	 Opposition to Motion <i>[62] Opposition to Defendants' James M. Rhodes and EB Acquisitions, LLC's Motion for Reconsideration Pursuant to NRCP 59(e)</i>
09/07/2021	 Reply in Support Filed By: Defendant EB Acquisitions, LLC; Defendant Rhodes, James M <i>[63] DEFENDANTS JAMES M. RHODES AND EB ACQUISITIONS, LLC'S REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION PURSUANT TO NRCP 59(e)</i>
09/07/2021	 Reply <i>[64] Reply in Support of Plaintiffs' Motion for Attorneys' Fees and Costs</i>
09/13/2021	 Supplement Filed by: Trustee Alper, Eliot; Trustee Vermillion, Susan J <i>[65] Supplement to Plaintiffs' Motion for Attorneys' Fees and Costs</i>
09/20/2021	 Order Shortening Time <i>[66] Plaintiffs' Motion to STRIKE Defendants' Appraisal of Evan Ranes on an Order Shortening Time</i>
09/23/2021	 Order Denying Motion Filed By: Plaintiff Eliot A. Alper Revocable Trust Dated March 22, 1999 <i>[67] Order Denying Defendants' James M. Rhodes and EB Acquisitions, LLC's Motion for Reconsideration Pursuant to NRCP 59(e)</i>
09/23/2021	 Order Granting Motion <i>[68] Order Granting Plaintiffs' Motion for Attorneys' Fees and Costs</i>
09/24/2021	 Notice of Entry of Order <i>[69] Notice of Entry of Order Denying Defendants James M. Rhodes and EB Acquisitions, LLC's Motion for Reconsideration Pursuant to NRCP 59(e)</i>
09/24/2021	 Notice of Entry of Order <i>[70] Notice of Entry of Order Granting Plaintiffs' Motion for Attorneys' Fees and Costs</i>
09/27/2021	 Opposition to Motion Filed By: Defendant EB Acquisitions, LLC; Defendant Rhodes, James M <i>[71] Defendants' Opposition to Plaintiffs' Motion to Strike Defendants' Appraisal of Evan Ranes on an Order Shortening Time</i>
09/28/2021	 Reply in Support Filed By: Plaintiff Eliot A. Alper Revocable Trust Dated March 22, 1999 <i>[72] Reply in Support of Plaintiffs' Motion to Strike Defendants' Appraisal of Evan Ranes on an Order Shortening Time</i>
10/15/2021	 Notice of Appeal

CASE SUMMARY

CASE NO. A-19-804338-C

Filed By: Defendant EB Acquisitions, LLC; Defendant Rhodes, James M
[73] Notice of Appeal

10/15/2021



Case Appeal Statement

Filed By: Defendant EB Acquisitions, LLC; Defendant Rhodes, James M
[74] Case Appeal Statement

10/18/2021



Judgment

Filed By: Trustee Alper, Eliot; Trustee Vermillion, Susan J
[75] Final Judgment After Deficiency Hearing on Motion for Fees

10/18/2021



Order Granting Motion

Filed By: Trustee Alper, Eliot; Trustee Vermillion, Susan J
[76] Order Granting Plaintiffs' Motion to Strike Defendants' Appraisal of Evan Ranes on an Order Shortening Time

10/19/2021



Notice of Entry of Order

Filed By: Trustee Alper, Eliot; Trustee Vermillion, Susan J
[77] Notice of Entry of Order Granting Plaintiffs' Motion to Strike Defendants' Appraisal of Evan Ranes on an Order Shortening Time

10/19/2021



Notice of Entry of Judgment

Filed By: Trustee Alper, Eliot; Trustee Vermillion, Susan J
[78] Notice of Entry of Final Judgment After Deficiency Hearing and Motion for Fees

DISPOSITIONS

03/11/2020

Default Judgment Plus Legal Interest (Judicial Officer: Jones, David M)

Debtors: EB Acquisitions, LLC (Defendant), James M Rhodes (Defendant)
Creditors: Eliot Alper (Plaintiff), Eliot A. Alper Revocable Trust Dated March 22, 1999 (Plaintiff), Susan J Vermillion Separate Property Trust (Plaintiff), Susan J Vermillion (Plaintiff)
Judgment: 03/11/2020, Docketed: 03/12/2020
Total Judgment: 1,144,041.48

04/10/2020

Judgment for Attorney's Fees (Judicial Officer: Jones, David M)

Debtors: EB Acquisitions, LLC (Defendant), James M Rhodes (Defendant)
Creditors: Eliot Alper (Plaintiff), Eliot A. Alper Revocable Trust Dated March 22, 1999 (Plaintiff), Susan J Vermillion Separate Property Trust (Plaintiff), Susan J Vermillion (Plaintiff)
Judgment: 04/10/2020, Docketed: 04/10/2020
Total Judgment: 12,552.00

04/11/2020

Judgment Plus Interest (Judicial Officer: Jones, David M)

Debtors: EB Acquisitions, LLC (Defendant), James M Rhodes (Defendant)
Creditors: Eliot Alper (Plaintiff), Eliot A. Alper Revocable Trust Dated March 22, 1999 (Plaintiff), Susan J Vermillion Separate Property Trust (Plaintiff), Susan J Vermillion (Plaintiff)
Judgment: 04/11/2020, Docketed: 04/14/2020
Total Judgment: 1,188,488.39
Comment: Set Aside In Part / per order

09/23/2021

Order (Judicial Officer: Jones, David M)

Debtors: EB Acquisitions, LLC (Defendant), James M Rhodes (Defendant)
Creditors: Eliot Alper (Plaintiff), Eliot A. Alper Revocable Trust Dated March 22, 1999 (Plaintiff), Susan J Vermillion Separate Property Trust (Plaintiff), Susan J Vermillion (Plaintiff)
Judgment: 09/23/2021, Docketed: 09/24/2021
Total Judgment: 57,918.24

10/18/2021

Judgment for Attorney's Fees (Judicial Officer: Jones, David M)

Debtors: EB Acquisitions, LLC (Defendant), James M Rhodes (Defendant)
Creditors: Eliot Alper (Plaintiff), Eliot A. Alper Revocable Trust Dated March 22, 1999 (Plaintiff), Susan J Vermillion (Trustee, Plaintiff)

CASE SUMMARY

CASE NO. A-19-804338-C

Judgment: 10/18/2021, Docketed: 10/19/2021
Total Judgment: 1,595,071.86

HEARINGS

03/11/2020



Motion for Default Judgment (9:00 AM) (Judicial Officer: Jones, David M)

Plaintiffs' Application For Default Judgment Against Defendants James M. Rhodes And EB Acquisitions, LLC

Default Entered;

Journal Entry Details:

Argument in support of Plaintiff Application for Default Judgment. Court noted for the record it has a brother-in-law who works as an independent contractor with Harmony. Ms. Brown indicated her husband knows the Court. There being no issues, COURT ORDERED, default against Defendants James M. Rhodes & EB Acquisitions GRANTED; outstanding principle in the amount of \$1,223,343.68 with interest after foreclosure of \$120,697.80 for a total amount of \$1,144,041.48. Order signed and returned to counsel IN OPEN COURT.;

04/29/2020

CANCELED Motion for Attorney Fees and Costs (9:00 AM) (Judicial Officer: Jones, David M)

Vacated

Plaintiffs' Motion for Attorney Fees and Costs

11/04/2020



Minute Order (3:00 AM) (Judicial Officer: Jones, David M)

Minute Order - No Hearing Held;

Journal Entry Details:

At the request of the Court, the matter scheduled for Wednesday, November 25, 2020 at 9:00 a.m. has been RESCHEDULED to Wednesday, December 2, 2020 at 9:00 a.m. CLERK'S

NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. /mt;

12/02/2020



Motion to Set Aside Default Judgment (9:00 AM) (Judicial Officer: Jones, David M)

12/02/2020, 12/11/2020

Defendant's Rhodes and EB Acquisitions LLC's Motion to Set Aside Judgment and Defaults

Matter Continued;

Granted in Part;

Matter Continued;

Granted in Part;

Journal Entry Details:

Argument by Mr. Semenza regarding procedural deficiencies regarding how the default was obtained. Argument by Ms. Brown that Mr. Gillette accepted service. Court noted there was no proof Mr. Gillette was registered under the e-mail provided. Colloquy. COURT ORDERED, matter SET for Evidentiary Hearing regarding the service issue. Mr. Filette to be present. 12/11/20 9:00 AM EVIDENTIARY HEARING ... ALL PENDING MOTIONS;

12/11/2020

Evidentiary Hearing (9:00 AM) (Judicial Officer: Jones, David M)

Matter Heard;

12/11/2020



All Pending Motions (9:00 AM) (Judicial Officer: Jones, David M)

Matter Heard;

Journal Entry Details:

Ronald Gillette sworn and testified. Ms. Brown argued the deadlines for responsive pleadings; that Judgment was mailed to Mr. Gillette; therefore, the Default was valid. Mr. Semenza argued to set aside the Default and Judgment as Mr. Gillette did not received them; was unaware; and that he had separated from the firm. Furthermore, that Plaintiff did no present and certificate of service that it was mailed. Request to file an Answer. COURT ORDERED, matter UNDER ADVISEMENT and will issue a written decision from Chambers. Preliminary Injunction STANDS.;

12/15/2020



Minute Order (3:00 AM) (Judicial Officer: Jones, David M)

Minute Order - No Hearing Held;

CASE SUMMARY

CASE NO. A-19-804338-C

Journal Entry Details:

Upon review of the documentation provided, and input from counsel, this Court hereby DENIES Motion to Set Aside Default. Additionally, the Motion to set Aside Default Judgment is GRANTED. Counsel for Plaintiff is to prepare the order and run it by Defense counsel. CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. /mt;

06/15/2021

Motion (9:00 AM) (Judicial Officer: Jones, David M)
Application For Deficiency Judgment Pursuant To NRS 40.455
Motion Granted;

06/15/2021

Opposition and Countermotion (9:00 AM) (Judicial Officer: Jones, David M)
Defendant's Opposition to Application for Deficiency Judgment Pursuant to NRS 40.455 and Countermotion to Extend Briefing Schedule and Hearing Date
Denied;

06/15/2021



All Pending Motions (9:00 AM) (Judicial Officer: Jones, David M)
Matter Heard;
Journal Entry Details:
APPLICATION FOR DEFICIENCY JUDGMENT PURSUANT TO NRS 40.455 ... DEFENDANT'S OPPOSITION TO APPLICATION FOR DEFICIENCY JUDGMENT PURSUANT TO NRS 40.455 AND COUNTERMOTION TO EXTEND BRIEFING SCHEDULE AND HEARING DATE Following arguments by counsel, COURT ORDERED, Countermotion DENIED. Testimony and exhibits presented (see worksheets). COURT ORDERED, deficiency judgment GRANTED in the amount of \$1,468,575.19, which includes the \$5,000.00 in costs for Mr. Jacks' appraisal fee; future motion regarding attorney's fees may be filed. Mr. Semenza maintained his position the default should have been set aside. Mr. Semenza argued the amounts set forth in the loan documents would unconstitute unlawful penalties, and requested the Court utilize its discretion to reduce those amounts. COURT ORDERED, Mr. Semenza's request DENIED. Ms. Brown to prepare the order.;

09/14/2021

Motion for Attorney Fees and Costs (9:00 AM) (Judicial Officer: Jones, David M)
Plaintiffs' Motion for Attorneys' Fees and Costs
Granted in Part;

09/14/2021

Motion For Reconsideration (9:00 AM) (Judicial Officer: Jones, David M)
Events: 08/13/2021 Motion to Reconsider
Defendants James M. Rhodes and EB Aquisitions, LLC's Motion for Reconsideration Pursuant to NRCP 59(e)
Motion Denied;

09/14/2021



All Pending Motions (9:00 AM) (Judicial Officer: Jones, David M)
Matter Heard;
Journal Entry Details:
DEFENDANTS JAMES M. RHODES AND EB AQUISITIONS, LLC'S MOTION FOR RECONSIDERATION PURSUANT TO NRCP 59(E) ... PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND COSTS Following arguments by counsel, COURT ORDERED, Motion for Reconsideration DENIED. Ms. Brown to prepare the order. Argument by Ms. Brown in support of the Motion for Fees and Costs. Argument by Mr. Semenza. COURT ORDERED, motion GRANTED as to fees and costs except the \$64.41 in overtime staff charges. Ms. Brown to prepare the order.;

09/28/2021



Minute Order (3:00 AM) (Judicial Officer: Jones, David M)
Minute Order - No Hearing Held;
Journal Entry Details:
At the request of the Court, for judicial economy, COURT ORDERED, the hearing set for September 29, 2021 at 9:00 a.m. is hereby RESCHEDULED to September 29, 2021 at 8:30 a.m. BLUEJEANS INFORMATION To connect for an audio/video appearance, go to Bluejeans.com and click on Join Meeting, enter the meeting ID and your name or clink on the link provided below. <https://bluejeans.com/188933357> Meeting ID: 188933357 Want to dial in from a phone? Dial one of the following numbers: +1.408.419.1715 (United States(San Jose)) +1.408.915.6290 (United States(San Jose)) (see all numbers -

CASE SUMMARY**CASE NO. A-19-804338-C**

<https://www.bluejeans.com/numbers>) Enter the meeting ID. PLEASE CONSIDER THE FOLLOWING DURING YOUR HEARING Place your telephone on mute while waiting for your matter to be called; Do not place your call on hold as it may play wait/hold music to others; Identify yourself each and every time before speaking. THE MEETING ID NUMBER FOR ALL DC29 CALENDARS WILL REMAIN THE SAME UNTIL FURTHER NOTICE. CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. /mt;

09/29/2021

**Motion to Strike** (8:30 AM) (Judicial Officer: Jones, David M)*Motion to Strike Defendant's Appraisal of Evan Ranes*

Motion Granted;

Journal Entry Details:

*Following arguments by counsel, COURT ORDERED, motion GRANTED. Ms. Brown to prepare the order.;***DATE****FINANCIAL INFORMATION****Attorney** Brown, Ogonna M.

Total Charges 24.00

Total Payments and Credits 24.00

Balance Due as of 10/20/2021 0.00**Defendant** Rhodes, James M

Total Charges 277.00

Total Payments and Credits 277.00

Balance Due as of 10/20/2021 0.00**Trustee** Alper, Eliot

Total Charges 437.00

Total Payments and Credits 437.00

Balance Due as of 10/20/2021 0.00**Plaintiff** Eliot A. Alper Revocable Trust Dated March 22, 1999

Total Charges 24.50

Total Payments and Credits 24.50

Balance Due as of 10/20/2021 0.00**Plaintiff** Susan J Vermillion Separate Property Trust

Total Charges 0.00

Total Payments and Credits 0.00

Balance Due as of 10/20/2021 0.00**Trustee** Vermillion, Susan J

Total Charges 0.00

Total Payments and Credits 0.00

Balance Due as of 10/20/2021 0.00

DISTRICT COURT CIVIL COVER SHEET

Clark

County, Nevada

Case No. _____

(Assigned by Clerk's Office)

Electronically Filed

10/25/2019 3:05 PM

Steven D. Grierson

CLERK OF THE COURT

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

Plaintiff(s) (name/address/phone): ELIOT A. ALPER, an individual, and as Trustee of THE ELIOT A. ALPER REVOCABLE TRUST DATED MARCH 22, 1999 SUSAN J. VERMILLION; an individual and as Trustee of SUSAN J. VERMILLION SEPARATE PROPERTY TRUST DATED APRIL 24, 1997	Defendant(s) (name/address/phone): JAMES M. RHODES, individually EB ACQUISITIONS, LLC DOES I through X; and ROE CORPORATIONS I through X
Attorney (name/address/phone): Ogonna Brown (702) 949-8200 Lewis Roca Rothgerber Christie LLP 3993 Howard Hughes Pkwy, Ste. 600, Las Vegas, NV 89169	Attorney (name/address/phone):

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

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input 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 (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Surviving Spouse <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Greater than \$300,000 <input type="checkbox"/> \$200,000-\$300,000 <input type="checkbox"/> \$100,001-\$199,999 <input type="checkbox"/> \$25,001-\$100,000 <input type="checkbox"/> \$20,001-\$25,000 <input type="checkbox"/> \$2,501-20,000 <input type="checkbox"/> \$2,500 or less	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 checked="" 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.

10/31/2019

Date

/s/ Ogonna M. Brown

Signature of initiating party or representative

See other side for family-related case filings.

ORDR

Ogonna M. Brown, Esq.
Nevada Bar No. 7589

LEWIS ROCA ROTHGERBER CHRISTIE LLP

3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169
Tel: 702.949.8200
Fax: 702.949.8398
OBrown@lrrc.com
Attorneys for Plaintiffs

*The Eliot A. Alper Revocable Trust Dated March 22, 1999
and Susan J. Vermillion Separate Trust Dated April 24, 1997*

DISTRICT COURT

CLARK COUNTY, NEVADA

ELIOT A. ALPER, an individual, and as
Trustee of THE ELIOT A. ALPER
REVOCABLE TRUST DATED MARCH 22,
1999, and SUSAN J. VERMILLION, an
individual, and as Trustee of SUSAN J.
VERMILLION SEPARATE PROPERTY
TRUST DATED APRIL 24, 1997,

Plaintiffs,

vs.

JAMES M. RHODES, individually and as
President of EB ACQUISITIONS, LLC, EB
ACQUISITIONS, LLC, a Nevada Limited
Liability Company, DOES I through X,
inclusive, and ROE CORPORATIONS I
through X, inclusive,

Defendants.

Case No.: A-19-804338-C

Dept. No.: 29

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS
JAMES M. RHODES AND EB
ACQUISITIONS, LLC'S JUDGMENT
AND DEFAULTS**

Hearing Date: December 11, 2020

Hearing Time: 9:00 a.m.

On December 2, 2020, this matter came on for hearing on Defendants James M. Rhodes and EB Acquisitions, LLC's ("Defendants") Motion to Set Aside Judgment and Defaults ("Motion") in Department 29 of the Eighth Judicial District Court, in and for Clark County, Nevada, with Judge David Jones presiding. Lawrence J. Semenza, III, Esq. of the law firm of Semenza Kircher Rickard appeared on behalf of the Defendants, and Ogonna M. Brown, Esq. of the law firm of Lewis Roca Rothgerber Christie LLP appeared on behalf of Plaintiffs, Eliot A. Alper, an

individual, and as Trustee of The Eliot A. Alper Revocable Trust Dated March 22, 1999, and Susan J. Vermillion, an individual, and as Trustee of Susan J. Vermillion Separate Property Trust Dated April 24, 1997 (collectively, "Plaintiffs"). At the conclusion of the hearing, the Court continued the hearing and set an evidentiary hearing for December 11, 2020, at 9:00 a.m. ("Evidentiary Hearing") to hear testimony from Ronald Gillette, Esq. of the law office of Gillette Law, PLLC.

On December 11, 2020, the evidentiary hearing was held before Judge Jones. Mr. Semenza appeared on behalf of the Defendants, Ms. Brown appeared on behalf of Plaintiffs, and Mr. Gillette appeared and provided sworn testimony under oath. The Court having considered the Motion and filings related thereto, having heard the arguments presented by the Parties concerning the Motion, and having heard the testimony elicited from Mr. Gillette during the Evidentiary Hearing, hereby finds the following:

IT IS HEREBY ORDERED that Defendants' Motion is **GRANTED IN PART** and **DENIED IN PART**.

IT IS FURTHER ORDERED that Defendants' Motion to Set Aside the Defaults is **DENIED**.

IT IS FURTHER ORDERED that Defendants' Motion to Set Aside Default Judgment is **GRANTED**.

IT IS SO ORDERED.

DATED this ____ day of December, 2020.

Dated this 23rd day of December, 2020



C2B 6F9 ED5B 0F8A
David M Jones
District Court Judge

Respectfully submitted by:

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Ogonna Brown
Ogonna M. Brown, Esq. (NBN 7589)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

*Attorneys for Plaintiffs The Eliot A. Alper Revocable Trust Dated March 22, 1999
and Susan J. Vermillion Separate Trust Dated April 24, 1997*

1 Approved as to form/content:

2 **SEMENZA KIRCHER RICKARD**

3 /s/ Lawrence J. Semenza

4 Lawrence J. Semenza, Esq. (NBN 7174)
5 10161 Park Run Drive, Suite 150
6 Las Vegas, Nevada 89145

7 *Attorneys for Defendants*
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From: Lawrence J. Semenza, III <ljs@skrlawyers.com>
Sent: Friday, December 18, 2020 8:11 AM
To: Brown, Ogonna
Cc: Jackson, Kennya; Dale, Margaret; Lawrence J. Semenza, III
Subject: RE: Alper v. EB Acquisitions/Rhodes - Order Regarding Motion to Set Aside Default & Judgment

[EXTERNAL]

Ogonna, the proposed order for the C case is acceptable and you may affix my electronic signature. L.J.

Lawrence J. Semenza, III, Esq.
Semenza Kircher Rickard
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
E-mail: ljs@skrlawyers.com
Website: www.skrlawyers.com
Telephone: 702-835-6803
Cellular: 702-612-9813
Facsimile: 702-920-8669

To ensure compliance with the requirements imposed by the IRS, we inform you that any federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for purposes of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any transaction or tax-related matter addressed herein.

This transmission and any attachment is attorney privileged and confidential. Any dissemination or copying of this communication is prohibited. If you are not the intended recipient, please notify us immediately by replying and delete the message. Thank you.

From: Brown, Ogonna <OBrown@lrrc.com>
Sent: Wednesday, December 16, 2020 11:34 AM
To: Lawrence J. Semenza, III <ljs@skrlawyers.com>
Cc: Jackson, Kennya <KJackson@lrrc.com>; Dale, Margaret <MDale@lrrc.com>
Subject: Alper v. EB Acquisitions/Rhodes - Order Regarding Motion to Set Aside Default & Judgment

Dear L.J.:

Attached please find the draft order for your review and comment. If you have no comments, please authorize me to affix your electronic signature for submission to the court today. Thank you.

Ogonna Brown
Partner
702.474.2622 office
702.949.8398 fax
OBrown@lrrc.com

COVID-19 questions?
Connect to our **Rapid Response Team**
for answers and resources.

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Eliot Alper, Plaintiff(s)

CASE NO: A-19-804338-C

7 vs.

DEPT. NO. Department 29

8 EB Acquisitions, 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
14 recipients registered for e-Service on the above entitled case as listed below:

Service Date: 12/23/2020

15 Jarrod Rickard

jl原因@skrlawyers.com

16 Christopher Kircher

cdk@skrlawyers.com

17 Olivia Kelly

oak@skrlawyers.com

18 Lawrence Semenza, III

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19 Teresa Beiter

tnb@skrlawyers.com

20 Angie Barreras

alb@skrlawyers.com

21 Ogonna Brown

obrown@lrrc.com

22 Katie Cannata

klc@skrlawyers.com

23 Kennya Jackson

kjackson@lrrc.com

24 Peggy Dale

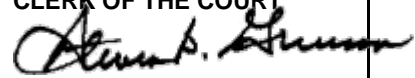
Mdale@lrrc.com

25

26

27

28



1 **NEOJ**

2 Ogonna M. Brown, Esq.
3 Nevada Bar No. 7589

4 **LEWIS ROCA ROTHGERBER CHRISTIE LLP**

5 3993 Howard Hughes Parkway, Suite 600

6 Las Vegas, NV 89169

7 Tel: 702.949.8200

8 Fax: 702.949.8398

9 OBrown@lrrc.com

10 *Attorneys for Plaintiffs*

11 *The Eliot A. Alper Revocable Trust Dated March 22, 1999*

12 *and Susan J. Vermillion Separate Trust Dated April 24, 1997*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 ELIOT A. ALPER, an individual, and as
16 Trustee of THE ELIOT A. ALPER
17 REVOCABLE TRUST DATED MARCH 22,
18 1999, and SUSAN J. VERMILLION, an
19 individual, and as Trustee of SUSAN J.
20 VERMILLION SEPARATE PROPERTY
21 TRUST DATED APRIL 24, 1997,

22 Plaintiffs,

23 vs.

24 JAMES M. RHODES, individually and as
25 President of EB ACQUISITIONS, LLC, EB
26 ACQUISITIONS, LLC, a Nevada Limited
27 Liability Company, DOES I through X,
28 inclusive, and ROE CORPORATIONS I
through X, inclusive,

Defendants.

Case No.: A-19-804338-C

Dept. No.: 29

**NOTICE OF ENTRY OF ORDER
GRANTING IN PART AND DENYING
IN PART DEFENDANTS JAMES M.
RHODES AND EB ACQUISITIONS,
LLC'S JUDGMENT AND DEFAULTS**

Hearing Date: December 11, 2020

Hearing Time: 9:00 a.m.

23 NOTICE IS HEREBY GIVEN that the *Order Granting In Part And Denying In Part*
24 *Defendants James M. Rhodes And EB Acquisitions, LLC's Judgment And Defaults ("Order")* was
25 entered on December 23, 2020.

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A copy of said Order is attached hereto as **Exhibit “1”**.

DATED December 24, 2020.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Ogonna Brown

Ogonna Brown, Esq.
Nevada Bar No. 7589)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to NEFCR 9, NRCP 5(b), and EDCR 7.26, I certify that on December 24, 2020, I served a copy of **NOTICE OF ENTRY OF ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS JAMES M. RHODES AND EB ACQUISITIONS, LLC'S JUDGMENT AND DEFAULTS** on all parties via:

☒ Electronic Service – By serving a copy thereof through the Court's electronic service system;

SEMENZA KIRCHER RICKARD

Angie Barreras	alb@skrlawyers.com
Teresa N Beiter	tnb@skrlawyers.com
Katie Cannata	klc@skrlawyers.com
Olivia A Kelly	oak@skrlawyers.com
Christopher D Kircher	cdk@skrlawyers.com
Jarrold L Rickard	jlrl@skrlawyers.com
Lawrence J Semenza, III	ljs@skrlawyers.com

☐ E-mail – By serving a copy thereof at the email addresses listed below; and/or

☐ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below.

/s/ *Kennya Jackson*
An employee of
Lewis Roca Rothgerber Christie LLP

EXHIBIT “1”

Heather S. Linn
CLERK OF THE COURT

ORDER

Ogonna M. Brown, Esq.
Nevada Bar No. 7589

LEWIS ROCA ROTHGERBER CHRISTIE LLP

3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169
Tel: 702.949.8200
Fax: 702.949.8398
OBrown@lrrc.com
Attorneys for Plaintiffs

*The Eliot A. Alper Revocable Trust Dated March 22, 1999
and Susan J. Vermillion Separate Trust Dated April 24, 1997*

DISTRICT COURT

CLARK COUNTY, NEVADA

ELIOT A. ALPER, an individual, and as
Trustee of THE ELIOT A. ALPER
REVOCABLE TRUST DATED MARCH 22,
1999, and SUSAN J. VERMILLION, an
individual, and as Trustee of SUSAN J.
VERMILLION SEPARATE PROPERTY
TRUST DATED APRIL 24, 1997,

Plaintiffs,

vs.

JAMES M. RHODES, individually and as
President of EB ACQUISITIONS, LLC, EB
ACQUISITIONS, LLC, a Nevada Limited
Liability Company, DOES I through X,
inclusive, and ROE CORPORATIONS I
through X, inclusive,

Defendants.

Case No.: A-19-804338-C

Dept. No.: 29

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS
JAMES M. RHODES AND EB
ACQUISITIONS, LLC'S JUDGMENT
AND DEFAULTS**

Hearing Date: December 11, 2020

Hearing Time: 9:00 a.m.

On December 2, 2020, this matter came on for hearing on Defendants James M. Rhodes and EB Acquisitions, LLC's ("Defendants") Motion to Set Aside Judgment and Defaults ("Motion") in Department 29 of the Eighth Judicial District Court, in and for Clark County, Nevada, with Judge David Jones presiding. Lawrence J. Semenza, III, Esq. of the law firm of Semenza Kircher Rickard appeared on behalf of the Defendants, and Ogonna M. Brown, Esq. of the law firm of Lewis Roca Rothgerber Christie LLP appeared on behalf of Plaintiffs, Eliot A. Alper, an

individual, and as Trustee of The Eliot A. Alper Revocable Trust Dated March 22, 1999, and Susan J. Vermillion, an individual, and as Trustee of Susan J. Vermillion Separate Property Trust Dated April 24, 1997 (collectively, "Plaintiffs"). At the conclusion of the hearing, the Court continued the hearing and set an evidentiary hearing for December 11, 2020, at 9:00 a.m. ("Evidentiary Hearing") to hear testimony from Ronald Gillette, Esq. of the law office of Gillette Law, PLLC.

On December 11, 2020, the evidentiary hearing was held before Judge Jones. Mr. Semenza appeared on behalf of the Defendants, Ms. Brown appeared on behalf of Plaintiffs, and Mr. Gillette appeared and provided sworn testimony under oath. The Court having considered the Motion and filings related thereto, having heard the arguments presented by the Parties concerning the Motion, and having heard the testimony elicited from Mr. Gillette during the Evidentiary Hearing, hereby finds the following:

IT IS HEREBY ORDERED that Defendants' Motion is **GRANTED IN PART** and **DENIED IN PART**.

IT IS FURTHER ORDERED that Defendants' Motion to Set Aside the Defaults is **DENIED**.

IT IS FURTHER ORDERED that Defendants' Motion to Set Aside Default Judgment is **GRANTED**.

IT IS SO ORDERED.

DATED this ____ day of December, 2020.

Dated this 23rd day of December, 2020



C2B 6F9 ED5B 0F8A
David M Jones
District Court Judge

Respectfully submitted by:

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Ogonna Brown
Ogonna M. Brown, Esq. (NBN 7589)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

*Attorneys for Plaintiffs The Eliot A. Alper Revocable Trust Dated March 22, 1999
and Susan J. Vermillion Separate Trust Dated April 24, 1997*

1 Approved as to form/content:

2 **SEMENZA KIRCHER RICKARD**

3 /s/ Lawrence J. Semenza

4 Lawrence J. Semenza, Esq. (NBN 7174)
5 10161 Park Run Drive, Suite 150
6 Las Vegas, Nevada 89145

7 *Attorneys for Defendants*
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From: Lawrence J. Semenza, III <ljs@skrlawyers.com>
Sent: Friday, December 18, 2020 8:11 AM
To: Brown, Ogonna
Cc: Jackson, Kennya; Dale, Margaret; Lawrence J. Semenza, III
Subject: RE: Alper v. EB Acquisitions/Rhodes - Order Regarding Motion to Set Aside Default & Judgment

[EXTERNAL]

Ogonna, the proposed order for the C case is acceptable and you may affix my electronic signature. L.J.

Lawrence J. Semenza, III, Esq.
Semenza Kircher Rickard
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
E-mail: ljs@skrlawyers.com
Website: www.skrlawyers.com
Telephone: 702-835-6803
Cellular: 702-612-9813
Facsimile: 702-920-8669

To ensure compliance with the requirements imposed by the IRS, we inform you that any federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for purposes of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any transaction or tax-related matter addressed herein.

This transmission and any attachment is attorney privileged and confidential. Any dissemination or copying of this communication is prohibited. If you are not the intended recipient, please notify us immediately by replying and delete the message. Thank you.

From: Brown, Ogonna <OBrown@lrrc.com>
Sent: Wednesday, December 16, 2020 11:34 AM
To: Lawrence J. Semenza, III <ljs@skrlawyers.com>
Cc: Jackson, Kennya <KJackson@lrrc.com>; Dale, Margaret <MDale@lrrc.com>
Subject: Alper v. EB Acquisitions/Rhodes - Order Regarding Motion to Set Aside Default & Judgment

Dear L.J.:

Attached please find the draft order for your review and comment. If you have no comments, please authorize me to affix your electronic signature for submission to the court today. Thank you.

Ogonna Brown
Partner
702.474.2622 office
702.949.8398 fax
OBrown@lrrc.com

COVID-19 questions?
Connect to our [Rapid Response Team](#)
for answers and resources.

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Eliot Alper, Plaintiff(s)

CASE NO: A-19-804338-C

7 vs.

DEPT. NO. Department 29

8 EB Acquisitions, 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
14 recipients registered for e-Service on the above entitled case as listed below:

Service Date: 12/23/2020

15 Jarrod Rickard

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16 Christopher Kircher

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22 Katie Cannata

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ORDR

Ogonna M. Brown, Esq.

Nevada Bar No. 7589

LEWIS ROCA ROTHGERBER CHRISTIE LLP

3993 Howard Hughes Pkwy, Suite 600

Las Vegas, NV 89169-5996

Tel: (702) 949-8200

Email: obrown@lewisroca.com

Attorneys for Plaintiffs

The Eliot A. Alper Revocable Trust Dated March 22, 1999

and Susan J. Vermillion Separate Trust Dated April 24, 1997

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ELIOT A. ALPER, an individual, and as Trustee
of THE ELIOT A. ALPER REVOCABLE
TRUST DATED MARCH 22, 1999, and
SUSAN J. VERMILLION, an individual, and as
Trustee of SUSAN J. VERMILLION
SEPARATE PROPERTY TRUST DATED
APRIL 24, 1997,

Plaintiffs,

vs.

JAMES M. RHODES, individually and as
President of EB ACQUISITIONS, LLC, EB
ACQUISITIONS, LLC, a Nevada Limited
Liability Company, DOES I through X,
inclusive, and ROE CORPORATIONS I through
X, inclusive,

Defendants.

Case No. A-19-804338-C

Dept. No. 29

**ORDER GRANTING PLAINTIFFS'
APPLICATION FOR DEFICIENCY
JUDGMENT PURSUANT TO NRS §
40.455 AND DENYING
DEFENDANTS' COUNTERMOTION
TO EXTEND BRIEFING SCHEDULE
AND HEARING DATE**

Date of Hearing: June 15, 2021

Time of Hearing: 9:00 a.m.

Judge: Hon. David M. Jones

On June 15, 2021, this matter came on for hearing before the Honorable David M. Jones, District Court Judge, in Department 29 of the Eighth Judicial District Court, in and for Clark County, Nevada, on Plaintiffs ELIOT A. ALPER, an individual, and as Trustee of THE ELIOT A. ALPER REVOCABLE TRUST DATED MARCH 22, 1999, and SUSAN J. VERMILLION, an individual, and as Trustee of SUSAN J. VERMILLION SEPARATE PROPERTY TRUST DATED APRIL 24, 1997's (collectively, "Plaintiffs") Application For Deficiency Judgment Pursuant To NRS § 40.455 ("Application for Deficiency") and Defendants' Countermotion to Extend Briefing Scheduling and Hearing Date ("Countermotion to Extend"). Lawrence J. Semenza, III, Esq. of the law firm of Semenza Kircher Rickard appeared on behalf of the

Defendants JAMES RHODES and EB ACQUISITIONS, LLC (collectively, “Defendants”), and Ogonna M. Brown, Esq. of the law firm of Lewis Roca Rothgerber Christie LLP appeared on behalf of Plaintiffs, Eliot A. Alper, an individual, and as Trustee of The Eliot A. Alper Revocable Trust Dated March 22, 1999 (“Alper Trust”), and Susan J. Vermillion, an individual, and as Trustee of Susan J. Vermillion Separate Property Trust Dated April 24, 1997.

The Court having considered the Application for Deficiency (“Application for Deficiency”), the Declaration of Eliot Alper, the Declaration of Charles Jack, IV, MAI appraiser, Defendants’ Opposition to the Application for Deficiency, Plaintiffs’ Reply in support of the Application for Deficiency, the papers and pleadings on file hearing, the testimony of Justin Alper, one of the beneficiaries of the Alper Trust, the testimony of Charles Jack, IV, MAI, the oral argument of counsel during the evidentiary hearing on the Application for Deficiency, hereby finds and concludes as follows:

FINDINGS OF FACT

1. Plaintiffs made a loan to the Defendants in or about June 2016.
2. Defendants have defaulted on the loan at issue.
3. Defendants failed to cure these defaults and has, as a result, breached the loan agreements, defined herein.
4. As a result of the defaults, and pursuant to the various loan documents and NRS § 40.455 et. seq., Plaintiffs are entitled to a deficiency judgment.

LOAN FOR \$3,700,000

5. On June 25, 2016, Borrower and The Alper Trust and the Vermillion Trust (collectively, the “Lenders”) entered into a Loan Agreement (“Loan Agreement”) in the original principal amount of Three Million Seven Hundred Thousand and 00/100 Dollars (\$3,700,000.00) (the “Loan”) executed by James M. Rhodes, as the President of Truckee Springs Holdings, Inc., the manager of EB Acquisitions, LLC.

6. The Loan was for the stated purpose of developing the property.

7. The Loan is evidenced by a Promissory Note Secured by Deed of Trust dated June 25, 2016 (“Note”), in the amount of Three Million Seven Hundred Thousand and 00/100 Dollars (\$3,700,000.00).

8. The Note is secured by a Security Agreement dated June 25, 2016, in favor of the Lenders.

9. The Loan was guaranteed by James M. Rhodes, individually, as reflected in the Unconditional and Continuing Guaranty (“Guaranty”) dated June 25, 2016.

10. The Property secures the Loan as evidenced by the Deed of Trust and Assignment of Rents (“Deed”), Security Agreement, and Promissory Note from Borrower to Lenders dated June 25, 2016, relating to real property Mohave County, Arizona Assessor’s Parcel Number (“APN”) 341-15-012 – Sections 19, 21 & 29 (“Property”¹), and served as Lenders’ Collateral for the Loan. The Deed of Trust was recorded with the Mohave County Recorder’s Office as Document Number 2016028820.

11. The Loan was modified as set forth in the Modification Agreement dated July 17, 2018, extending the maturity date from July 1, 2018 to August 1, 2018 on the condition that the Borrower pay \$8,750.00, representing 0.25% of the outstanding principal balance, as an extension fee to exercise the option (“First Modification Agreement”).

12. Borrower subsequently failed to meet the financial conditions of the Loan Agreement. A foreclosure sale of the Property was scheduled for February 13, 2019.

13. The Loan was modified a second time as set forth in the February 11, 2019 Second Modification Agreement extending the maturity date and foreclosure sale to March 31, 2019 on the condition that the Borrower pay the overdue September 1, 2018 monthly interest in the amount of \$35,000 on or before February 12, 2019, in addition to an agreed extension fee in the amount of \$52,500 at the conclusion of the loan (“Second Modification Agreement”).

¹ Exhibit A to the Loan Agreement further describes the Property: “Sections 19, 21 and 29, Township 27 North, Range 17 West of the Gila and Salt River Base and Meridian, Mohave County, Arizona. EXCEPT that portion thereof dedicated for a public road and more fully described in Book 168 of Official Records, page 436, records of Mohave County, Arizona (Affects Section 29). EXCEPT therefrom, all coal, oil, gas and minerals deposits as reserved in instrument recorded in Bok 79 of Deeds, page 221, records of Mohave County, Arizona.”

14. Under the Second Modification Agreement, Borrower had the option to exercise its right to extend the maturity date from February 12, 2019, for four (4) additional extensions of one (1) month each on the condition that the Borrower pay the Monthly Extension Fee of 0.25% of the outstanding principal balance. However, Borrower could only exercise the option to extend the maturity date as long as the Borrower remained current with its monthly interest payment obligations due under the Loan Documents.

15. A Memorandum dated February 11, 2019, was signed by Plaintiffs and Ron Gillette, Esq., in-house counsel for EB Acquisitions, LLC, which further clarified the Second Modification Agreement (“Memorandum”). Pursuant to the Memorandum, once the February 11, 2019 monthly interest payment in the amount of \$35,000 was paid in full, the Property would not be foreclosed upon. The next interest payment was due April 1, 2019, and if not paid in full by that date, the property would be foreclosed on April 2, 2019. This agreement was ongoing for all future monthly interest deadlines.

16. Pursuant to the Loan Documents², Borrower and Guarantor are responsible for the legal fees and costs incurred by Lenders in collecting under and enforcing the Loan Documents, as set forth in Section 14 of the Note on page 6.

17. Borrower failed to meet the terms set forth in the Second Modification Agreement and the Memorandum, defaulting on the Loan. A foreclosure sale of the Property was scheduled for April 3, 2019.

18. On April 2, 2019, Borrower and Lenders entered into a Forbearance Agreement pursuant to which the Lender agreed to continue the foreclosure sale scheduled for April 3, 2019 to April 17, 2019, in exchange for an immediate payment in the amount of \$7,000.00.

19. The Forbearance Agreement also required an extension fee in the amount of \$28,000.00 due by April 16, 2019, in exchange for continuing the foreclosure sale to May 1, 2019.

² The collective “Loan Documents” reference the Loan Agreement (“Loan Agreement”), Promissory Note (“Note”), Deed of Trust (“Deed”), Unconditional and Continuing Guaranty (“Guaranty”), Security Agreement (“Security Agreement”), and Continuing Indemnity Agreement (“Indemnity Agreement”) dated June 25, 2016, in addition to any amendments and/or modifications thereto, and all other documents and instruments in connection therewith executed in connection with the Loan.

20. Borrower failed to meet the revised terms set forth in the April 2, 2019 Forbearance Agreement, and once again defaulted on the Loan.

DEFAULT AND FORECLOSURE

21. Borrower was in default under the Loan Documents as a result of, among other things, failure to timely pay the monthly payments of principal and accrued interest due on the Loan by April 16, 2019, as agreed to under the Loan Documents, and failure to make the balloon payment due and owing to Lender by the Maturity Date.

22. On May 9, 2019, Lenders caused to be sent to Borrower EB Acquisitions a Notice of Intent to Foreclose on the Property ("Notice of Intent").

23. The Notice of Intent informed Borrower that the amount of \$4,366,272.19, representing the principal balance, fees and interest, was due by May 20, 2019. Failure to cure the loan by that date would result in subsequent foreclosure of the Property.

24. Borrower failed to cure the loan by May 20, 2019, and therefore the foreclosure sale of the Property was scheduled for August 28, 2019.

25. On August 28, 2019, the Lenders conducted a foreclosure sale against the Property in connection with the outstanding balance due under the Note in the amount of \$4,720,182.21.

26. Lender submitted a credit bid in the amount of \$3,700,000.00 at the foreclosure sale, resulting in a deficiency in the amount of \$1,020,182.21 ("Deficiency").

27. On the same day, a Trustee's Deed Upon Sale was recorded electronically with the Mohave County Recorder's Office as Document Number 2019047839 ("Trustee's Deed").

DEMAND

28. On September 19, 2019, Plaintiffs, through counsel, sent a Demand Letter to Defendants ("Demand Letter") providing notice of the Deficiency and demanding the outstanding balance be cured before the expiration of the 5-day cure period set forth in the Demand Letter ("Deadline").

29. As set forth in the Demand Letter, Defendants were to respond within five (5) days from the date of the letter pursuant to the cure provisions set forth in Section 6.1(b) on page 10 of

the Loan Agreement, and Section 10(b) on page 4 of the Note, which cure includes the monetary defaults of failing to timely pay the indebtedness due and owing as of the Maturity Date as set forth in the Loan Documents.

30. Defendants failed to timely cure the Borrower's defaults as set forth under the Demand Letter, in that Defendants failed and/or refused to pay the outstanding Loan obligation due and owing by Borrower.

31. Charles E. Jack, IV, MAI, who was designated by Plaintiffs as a qualified appraiser, testified during the evidentiary hearing on the Application for Deficiency Judgment, that the fair market value of the Property as of the date of the foreclosure sale on August 28, 2019, was \$1,250,000.00.

DEFICIENCY LIABILITY AFTER FORECLOSURE SALE

32. After application of the credit bid in the amount of \$3,700,000.00 at the foreclosure sale, there remained a deficiency in the amount of \$1,020,182.21, to which interest, late charges, and the appraiser's fees were incurred after the credit bid was applied as follows:

Loan Deficiency	\$1,020,182.21
Default Interest (through June 15, 2021)	\$403,991.94
Late Charge (through June 2021)	\$39,401.04
Appraiser's Fees and Costs (as of 4/29/21)	\$5,000.00
TOTAL	\$1,468,575.19

CONCLUSIONS OF LAW

1. Default interest continues to accrue on the balance of the Loan from and after August 28, 2019 at the default rate of 22% per annum as set forth in Section 8 of the Promissory Note.

2. Lender is entitled to late charges and attorneys' fees arising out of Borrower's default under the Loan Documents, and in turn, under the Guaranty of the Loan Documents. Pursuant to Section 6.2(d) of the Loan Agreement under "Remedies:" "Borrower shall pay all arbitration costs charged by the arbitrator(s) and all Lender's costs and attorney's fees incurred in connection with the arbitration." See Loan Agreement, p. 11, §6.2(d), attached as **Exhibit "1"** to

1 the Alper Decl., Section 12, page 3 of the Guaranty further provides for repayment of Lender's
2 attorney's fees and costs, as follows:

3 Guarantor agrees to pay a reasonable attorneys' fees, paralegals' fees, and other
4 expense incurred by Lender in the enforcement of its rights hereunder, including
5 such expenses incurred before legal action, during the pendency of any such legal
6 action, during the enforcement of Lender's rights in the bankruptcy or insolvency
proceedings, and continuing to all such expenses in connection with any appeal to
higher courts arising out of matters associated herewith.

7 See Guaranty, p. 3, §12, attached as **Exhibit "4"** to the Alper Decl.

8 3. By virtue of the Clerk's Entry of Defaults entered against Defendant EB
9 Acquisitions, LLC and Defendant James M. Rhodes, respectively, each of the Defendants are
10 deemed to have admitted the allegations asserted in the Complaint, and liability is established
11 against each of them. *See Benny v. Pipes*, 799 F.2d 489, 495 (9th Cir. 1986), modified, 807 F.2d
12 1514 (1987).

13 4. Plaintiffs are entitled to an entry of a judgement against the Defendants, jointly and
14 severally pursuant to Nevada Revised Statute § 40.455, which provides in relevant part:

15 Except as otherwise provided in subsection 3, upon application of the
16 judgment creditor or the beneficiary of the deed of trust within 6 months
17 after the date of the foreclosure sale, and after the required hearing, the
18 court shall award a deficiency judgment to the judgment creditor or the
beneficiary of the deed of trust if it appears from the sheriff's return or the
recital of consideration in the trustee's deed that there is a deficiency of the
proceeds of the sale and a balance remaining due to the judgment creditor
or the beneficiary of the deed of trust, respectively.

19 NRS § 40.455(1).

20 5. The foreclosure sale of the Property was held on August 28, 2019 in connection with
21 the outstanding balance due under the Note in the amount of \$4,720,182.21.

22 6. Lender submitted a credit bid in the amount of \$3,700,000.00 at the foreclosure
23 sale.

24 7. After application of the credit bid, the resulting amounts due and owing to Plaintiffs
25 from Defendants relating to the Loan Documents was \$1,020,182.21, excluding accrued interest,
26 late charges, legal fees and costs incurred after the August 28, 2019 foreclosure sale.

8. At the time of the August 28, 2019 Foreclosure Sale, the fair market value of the Property was \$1,250,000, which valuation is based upon the Appraisal Report of Charles E. Jack, IV, MAI dated April 16, 2021 (“Appraisal Report”).

9. In the present case, under NRS § 40.459, which governs the limitation of damages for a deficiency, the deficiency amount due and owing is \$1,020,182.21 based upon the following:

(a) The amount by which the amount of the indebtedness which was secured exceeds the fair market value of the property sold at the time of the sale, with interest from the date of the sale (**\$4,720,182.21 - \$1,250,000 = \$3,470,182.21**); or

(b) The amount which is the difference between the amount for which the property was actually sold and the amount of the indebtedness which was secured, with interest from the date of sale (**\$4,720,182.21 - \$3,700,000 = \$1,020,182.21**)

↳ whichever is the lesser amount.

10. In accordance with NRS § 40.459, Plaintiffs are entitled to a deficiency judgment of at least **\$1,020,182.21** as of the date of the foreclosure sale and after application of the credit bid, excluding attorneys’ fees and interest accrued after the foreclosure sale.

JUDGMENT

Based upon the above Findings of Fact and Conclusions of Law, and good cause appearing therefore,

IT IS HEREBY ORDERED that Plaintiffs’ Application for Deficiency is **GRANTED**.

IT IS FURTHER ORDERED that Defendants’ Countermotion to Extend Briefing Scheduling and Hearing Date is **DENIED** for failure to demonstrate cause.

IT IS FURTHER ORDERED that Defendants’ Opposition on the basis that Plaintiffs’ voluntary reduction of the in a wholly unrelated case pending before Judge Denton in the Eighth Judicial District Court is not binding on this Court or preclusive on Plaintiffs as it relates to interest and late fees sought in connection with the Application for Deficiency pending before this Court is **OVERRULED**.

IT IS FURTHER ORDERED that Defendants’ Opposition on the basis that the interest charges and late fee charges assessed as of the date of the foreclosure sale are excessive or usurious,

and the post-foreclosure interest and late charges assess on the deficiency balance are excessive or
usurious is **OVERRULED**.


IT IS FURTHER ORDERED the post-foreclosure deficiency amount totals
\$1,468,575.19, consisting of the following through June 15, 2021:

Loan Deficiency Under NRS Chapter 40	\$1,020,182.21
Interest (9/1/19 – 6/15/201 @ \$623.44 per diem) ³	\$403,991.94
Late Charge ⁴ (through June 2021)	\$39,401.04
Appraiser's Fees and Costs (through 4/29/21)	\$5,000.00

IT IS FURTHER ORDERED that Plaintiffs shall submit a motion for attorneys' fees and
A memorandum of costs, subject to this Court's approval and any opposition from Defendants,
after approval of which Plaintiffs shall submit a final judgement to be entered by this Court.

IT IS SO ORDERED.

Dated this 20th day of July, 2021



Respectfully submitted by:

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Ogonna Brown
Ogonna M. Brown, Esq. (NBN 7589)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

*Attorneys for Plaintiffs The Eliot A. Alper Revocable Trust Dated March 22, 1999
and Susan J. Vermillion Separate Trust Dated April 24, 1997*

D6B A8F FB75 9854
David M Jones
District Court Judge

Approved as to form/content:

SEMENZA KIRCHER RICKARD

NOT APPROVED

Lawrence J. Semenza, Esq. (NBN 7174)
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Attorneys for Defendants

³ Per annum default interest of 22.0% on the deficiency amount of 1,020,182.21, calculated on a
360 day year, for the period September 1, 2019 to June 15, 2021 at a per diem of \$623.44.

⁴ Late charge rate of 10% assessed for August 29, 2019 to June, 2021. *See Alper Decl.*

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Eliot Alper, Plaintiff(s)

CASE NO: A-19-804338-C

7 vs.

DEPT. NO. Department 29

8 EB Acquisitions, 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: 7/20/2021

15 Jarrod Rickard

jl原因@skrlawyers.com

16 Christopher Kircher

cdk@skrlawyers.com

17 Olivia Kelly

oak@skrlawyers.com

18 Lawrence Semenza, III

ljs@skrlawyers.com

19 Angie Barreras

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20 Ogonna Brown

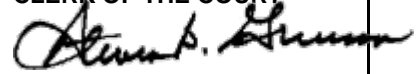
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Ogonna M. Brown, Esq.

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LEWIS ROCA ROTHGERBER CHRISTIE LLP

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Attorneys for Plaintiffs

The Eliot A. Alper Revocable Trust Dated March 22, 1999

and Susan J. Vermillion Separate Trust Dated April 24, 1997

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ELIOT A. ALPER, an individual, and as Trustee
of THE ELIOT A. ALPER REVOCABLE
TRUST DATED MARCH 22, 1999, and
SUSAN J. VERMILLION, an individual, and as
Trustee of SUSAN J. VERMILLION
SEPARATE PROPERTY TRUST DATED
APRIL 24, 1997,

Plaintiffs,

vs.

JAMES M. RHODES, individually and as
President of EB ACQUISITIONS, LLC, EB
ACQUISITIONS, LLC, a Nevada Limited
Liability Company, DOES I through X,
inclusive, and ROE CORPORATIONS I through
X, inclusive,

Defendants.

Case No. A-19-804338-C

Dept. No. 29

**NOTICE OF ENTRY OF ORDER
GRANTING PLAINTIFFS'
APPLICATION FOR DEFICIENCY
JUDGMENT PURSUANT TO NRS §
40.455 AND DENYING
DEFENDANTS' COUNTERMOTION
TO EXTEND BRIEFING SCHEDULE
AND HEARING DATE**

Judge: Hon. David M. Jones

NOTICE IS HEREBY GIVEN that an Order Granting Plaintiffs' Application for
Deficiency Judgment Pursuant to NRS § 40.455 and Denying Defendants' Countermotion to
Extend Briefing Schedule and Hearing Date ("Order") was entered on July 20, 2021. A copy of the
Order is attached.

DATED this 20th day of July, 2021.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Ogonna M. Brown

Ogonna M. Brown, Esq. (NBN 7589)

3993 Howard Hughes Pkwy., Suite 600

Las Vegas, Nevada 89169

*Attorneys for Plaintiffs The Eliot A. Alper Revocable
Trust Dated March 22, 1999 and Susan J.*

Vermillion Separate Trust Dated April 24, 1997

CERTIFICATE OF SERVICE

Pursuant to NEFCR 9, NRCP 5(b), and EDCR 7.26, I certify that on July 19, 2021, I served a copy of **NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFFS' APPLICATION FOR DEFICIENCY JUDGMENT PURSUANT TO NRS § 40.455 AND DENYING DEFENDANTS' COUNTERMOTION TO EXTEND BRIEFING SCHEDULE AND HEARING DATE** on all parties via the Odyssey Court e-file system

☒ Electronic Service – By serving a copy thereof through the Court's electronic service system:

Lawrence J. Semenza, Esq.
Nevada Bar No. 7174
SEMENZA KIRCHER RICKARD
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
ljs@skrlawyers.com
Attorneys for Defendants

☐ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below.



An employee of Lewis Roca Rothgerber Christie LLP

Heather S. Smith
CLERK OF THE COURT

ORDR

Ogonna M. Brown, Esq.

Nevada Bar No. 7589

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Attorneys for Plaintiffs

The Eliot A. Alper Revocable Trust Dated March 22, 1999

and Susan J. Vermillion Separate Trust Dated April 24, 1997

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ELIOT A. ALPER, an individual, and as Trustee
of THE ELIOT A. ALPER REVOCABLE
TRUST DATED MARCH 22, 1999, and
SUSAN J. VERMILLION, an individual, and as
Trustee of SUSAN J. VERMILLION
SEPARATE PROPERTY TRUST DATED
APRIL 24, 1997,

Plaintiffs,

vs.

JAMES M. RHODES, individually and as
President of EB ACQUISITIONS, LLC, EB
ACQUISITIONS, LLC, a Nevada Limited
Liability Company, DOES I through X,
inclusive, and ROE CORPORATIONS I through
X, inclusive,

Defendants.

Case No. A-19-804338-C

Dept. No. 29

**ORDER GRANTING PLAINTIFFS'
APPLICATION FOR DEFICIENCY
JUDGMENT PURSUANT TO NRS §
40.455 AND DENYING
DEFENDANTS' COUNTERMOTION
TO EXTEND BRIEFING SCHEDULE
AND HEARING DATE**

Date of Hearing: June 15, 2021

Time of Hearing: 9:00 a.m.

Judge: Hon. David M. Jones

On June 15, 2021, this matter came on for hearing before the Honorable David M. Jones, District Court Judge, in Department 29 of the Eighth Judicial District Court, in and for Clark County, Nevada, on Plaintiffs ELIOT A. ALPER, an individual, and as Trustee of THE ELIOT A. ALPER REVOCABLE TRUST DATED MARCH 22, 1999, and SUSAN J. VERMILLION, an individual, and as Trustee of SUSAN J. VERMILLION SEPARATE PROPERTY TRUST DATED APRIL 24, 1997's (collectively, "Plaintiffs") Application For Deficiency Judgment Pursuant To NRS § 40.455 ("Application for Deficiency") and Defendants' Countermotion to Extend Briefing Scheduling and Hearing Date ("Countermotion to Extend"). Lawrence J. Semenza, III, Esq. of the law firm of Semenza Kircher Rickard appeared on behalf of the

114802037.1

Defendants JAMES RHODES and EB ACQUISITIONS, LLC (collectively, “Defendants”), and Ogonna M. Brown, Esq. of the law firm of Lewis Roca Rothgerber Christie LLP appeared on behalf of Plaintiffs, Eliot A. Alper, an individual, and as Trustee of The Eliot A. Alper Revocable Trust Dated March 22, 1999 (“Alper Trust”), and Susan J. Vermillion, an individual, and as Trustee of Susan J. Vermillion Separate Property Trust Dated April 24, 1997.

The Court having considered the Application for Deficiency (“Application for Deficiency”), the Declaration of Eliot Alper, the Declaration of Charles Jack, IV, MAI appraiser, Defendants’ Opposition to the Application for Deficiency, Plaintiffs’ Reply in support of the Application for Deficiency, the papers and pleadings on file hearing, the testimony of Justin Alper, one of the beneficiaries of the Alper Trust, the testimony of Charles Jack, IV, MAI, the oral argument of counsel during the evidentiary hearing on the Application for Deficiency, hereby finds and concludes as follows:

FINDINGS OF FACT

1. Plaintiffs made a loan to the Defendants in or about June 2016.
2. Defendants have defaulted on the loan at issue.
3. Defendants failed to cure these defaults and has, as a result, breached the loan agreements, defined herein.
4. As a result of the defaults, and pursuant to the various loan documents and NRS § 40.455 et. seq., Plaintiffs are entitled to a deficiency judgment.

LOAN FOR \$3,700,000

5. On June 25, 2016, Borrower and The Alper Trust and the Vermillion Trust (collectively, the “Lenders”) entered into a Loan Agreement (“Loan Agreement”) in the original principal amount of Three Million Seven Hundred Thousand and 00/100 Dollars (\$3,700,000.00) (the “Loan”) executed by James M. Rhodes, as the President of Truckee Springs Holdings, Inc., the manager of EB Acquisitions, LLC.

6. The Loan was for the stated purpose of developing the property.

7. The Loan is evidenced by a Promissory Note Secured by Deed of Trust dated June 25, 2016 (“Note”), in the amount of Three Million Seven Hundred Thousand and 00/100 Dollars (\$3,700,000.00).

8. The Note is secured by a Security Agreement dated June 25, 2016, in favor of the Lenders.

9. The Loan was guaranteed by James M. Rhodes, individually, as reflected in the Unconditional and Continuing Guaranty (“Guaranty”) dated June 25, 2016.

10. The Property secures the Loan as evidenced by the Deed of Trust and Assignment of Rents (“Deed”), Security Agreement, and Promissory Note from Borrower to Lenders dated June 25, 2016, relating to real property Mohave County, Arizona Assessor’s Parcel Number (“APN”) 341-15-012 – Sections 19, 21 & 29 (“Property”¹), and served as Lenders’ Collateral for the Loan. The Deed of Trust was recorded with the Mohave County Recorder’s Office as Document Number 2016028820.

11. The Loan was modified as set forth in the Modification Agreement dated July 17, 2018, extending the maturity date from July 1, 2018 to August 1, 2018 on the condition that the Borrower pay \$8,750.00, representing 0.25% of the outstanding principal balance, as an extension fee to exercise the option (“First Modification Agreement”).

12. Borrower subsequently failed to meet the financial conditions of the Loan Agreement. A foreclosure sale of the Property was scheduled for February 13, 2019.

13. The Loan was modified a second time as set forth in the February 11, 2019 Second Modification Agreement extending the maturity date and foreclosure sale to March 31, 2019 on the condition that the Borrower pay the overdue September 1, 2018 monthly interest in the amount of \$35,000 on or before February 12, 2019, in addition to an agreed extension fee in the amount of \$52,500 at the conclusion of the loan (“Second Modification Agreement”).

¹ Exhibit A to the Loan Agreement further describes the Property: “Sections 19, 21 and 29, Township 27 North, Range 17 West of the Gila and Salt River Base and Meridian, Mohave County, Arizona. EXCEPT that portion thereof dedicated for a public road and more fully described in Book 168 of Official Records, page 436, records of Mohave County, Arizona (Affects Section 29). EXCEPT therefrom, all coal, oil, gas and minerals deposits as reserved in instrument recorded in Bok 79 of Deeds, page 221, records of Mohave County, Arizona.”

14. Under the Second Modification Agreement, Borrower had the option to exercise its right to extend the maturity date from February 12, 2019, for four (4) additional extensions of one (1) month each on the condition that the Borrower pay the Monthly Extension Fee of 0.25% of the outstanding principal balance. However, Borrower could only exercise the option to extend the maturity date as long as the Borrower remained current with its monthly interest payment obligations due under the Loan Documents.

15. A Memorandum dated February 11, 2019, was signed by Plaintiffs and Ron Gillette, Esq., in-house counsel for EB Acquisitions, LLC, which further clarified the Second Modification Agreement (“Memorandum”). Pursuant to the Memorandum, once the February 11, 2019 monthly interest payment in the amount of \$35,000 was paid in full, the Property would not be foreclosed upon. The next interest payment was due April 1, 2019, and if not paid in full by that date, the property would be foreclosed on April 2, 2019. This agreement was ongoing for all future monthly interest deadlines.

16. Pursuant to the Loan Documents², Borrower and Guarantor are responsible for the legal fees and costs incurred by Lenders in collecting under and enforcing the Loan Documents, as set forth in Section 14 of the Note on page 6.

17. Borrower failed to meet the terms set forth in the Second Modification Agreement and the Memorandum, defaulting on the Loan. A foreclosure sale of the Property was scheduled for April 3, 2019.

18. On April 2, 2019, Borrower and Lenders entered into a Forbearance Agreement pursuant to which the Lender agreed to continue the foreclosure sale scheduled for April 3, 2019 to April 17, 2019, in exchange for an immediate payment in the amount of \$7,000.00.

19. The Forbearance Agreement also required an extension fee in the amount of \$28,000.00 due by April 16, 2019, in exchange for continuing the foreclosure sale to May 1, 2019.

² The collective “Loan Documents” reference the Loan Agreement (“Loan Agreement”), Promissory Note (“Note”), Deed of Trust (“Deed”), Unconditional and Continuing Guaranty (“Guaranty”), Security Agreement (“Security Agreement”), and Continuing Indemnity Agreement (“Indemnity Agreement”) dated June 25, 2016, in addition to any amendments and/or modifications thereto, and all other documents and instruments in connection therewith executed in connection with the Loan.

20. Borrower failed to meet the revised terms set forth in the April 2, 2019 Forbearance Agreement, and once again defaulted on the Loan.

DEFAULT AND FORECLOSURE

21. Borrower was in default under the Loan Documents as a result of, among other things, failure to timely pay the monthly payments of principal and accrued interest due on the Loan by April 16, 2019, as agreed to under the Loan Documents, and failure to make the balloon payment due and owing to Lender by the Maturity Date.

22. On May 9, 2019, Lenders caused to be sent to Borrower EB Acquisitions a Notice of Intent to Foreclose on the Property ("Notice of Intent").

23. The Notice of Intent informed Borrower that the amount of \$4,366,272.19, representing the principal balance, fees and interest, was due by May 20, 2019. Failure to cure the loan by that date would result in subsequent foreclosure of the Property.

24. Borrower failed to cure the loan by May 20, 2019, and therefore the foreclosure sale of the Property was scheduled for August 28, 2019.

25. On August 28, 2019, the Lenders conducted a foreclosure sale against the Property in connection with the outstanding balance due under the Note in the amount of \$4,720,182.21.

26. Lender submitted a credit bid in the amount of \$3,700,000.00 at the foreclosure sale, resulting in a deficiency in the amount of \$1,020,182.21 ("Deficiency").

27. On the same day, a Trustee's Deed Upon Sale was recorded electronically with the Mohave County Recorder's Office as Document Number 2019047839 ("Trustee's Deed").

DEMAND

28. On September 19, 2019, Plaintiffs, through counsel, sent a Demand Letter to Defendants ("Demand Letter") providing notice of the Deficiency and demanding the outstanding balance be cured before the expiration of the 5-day cure period set forth in the Demand Letter ("Deadline").

29. As set forth in the Demand Letter, Defendants were to respond within five (5) days from the date of the letter pursuant to the cure provisions set forth in Section 6.1(b) on page 10 of

the Loan Agreement, and Section 10(b) on page 4 of the Note, which cure includes the monetary defaults of failing to timely pay the indebtedness due and owing as of the Maturity Date as set forth in the Loan Documents.

30. Defendants failed to timely cure the Borrower's defaults as set forth under the Demand Letter, in that Defendants failed and/or refused to pay the outstanding Loan obligation due and owing by Borrower.

31. Charles E. Jack, IV, MAI, who was designated by Plaintiffs as a qualified appraiser, testified during the evidentiary hearing on the Application for Deficiency Judgment, that the fair market value of the Property as of the date of the foreclosure sale on August 28, 2019, was \$1,250,000.00.

DEFICIENCY LIABILITY AFTER FORECLOSURE SALE

32. After application of the credit bid in the amount of \$3,700,000.00 at the foreclosure sale, there remained a deficiency in the amount of \$1,020,182.21, to which interest, late charges, and the appraiser's fees were incurred after the credit bid was applied as follows:

Loan Deficiency	\$1,020,182.21
Default Interest (through June 15, 2021)	\$403,991.94
Late Charge (through June 2021)	\$39,401.04
Appraiser's Fees and Costs (as of 4/29/21)	\$5,000.00
TOTAL	\$1,468,575.19

CONCLUSIONS OF LAW

1. Default interest continues to accrue on the balance of the Loan from and after August 28, 2019 at the default rate of 22% per annum as set forth in Section 8 of the Promissory Note.

2. Lender is entitled to late charges and attorneys' fees arising out of Borrower's default under the Loan Documents, and in turn, under the Guaranty of the Loan Documents. Pursuant to Section 6.2(d) of the Loan Agreement under "Remedies:" "Borrower shall pay all arbitration costs charged by the arbitrator(s) and all Lender's costs and attorney's fees incurred in connection with the arbitration." See Loan Agreement, p. 11, §6.2(d), attached as **Exhibit "1"** to

1 the Alper Decl., Section 12, page 3 of the Guaranty further provides for repayment of Lender's
2 attorney's fees and costs, as follows:

3 Guarantor agrees to pay a reasonable attorneys' fees, paralegals' fees, and other
4 expense incurred by Lender in the enforcement of its rights hereunder, including
5 such expenses incurred before legal action, during the pendency of any such legal
6 action, during the enforcement of Lender's rights in the bankruptcy or insolvency
proceedings, and continuing to all such expenses in connection with any appeal to
higher courts arising out of matters associated herewith.

7 See Guaranty, p. 3, §12, attached as **Exhibit "4"** to the Alper Decl.

8 3. By virtue of the Clerk's Entry of Defaults entered against Defendant EB
9 Acquisitions, LLC and Defendant James M. Rhodes, respectively, each of the Defendants are
10 deemed to have admitted the allegations asserted in the Complaint, and liability is established
11 against each of them. See *Benny v. Pipes*, 799 F.2d 489, 495 (9th Cir. 1986), modified, 807 F.2d
12 1514 (1987).

13 4. Plaintiffs are entitled to an entry of a judgement against the Defendants, jointly and
14 severally pursuant to Nevada Revised Statute § 40.455, which provides in relevant part:

15 Except as otherwise provided in subsection 3, upon application of the
16 judgment creditor or the beneficiary of the deed of trust within 6 months
17 after the date of the foreclosure sale, and after the required hearing, the
18 court shall award a deficiency judgment to the judgment creditor or the
beneficiary of the deed of trust if it appears from the sheriff's return or the
recital of consideration in the trustee's deed that there is a deficiency of the
proceeds of the sale and a balance remaining due to the judgment creditor
or the beneficiary of the deed of trust, respectively.

19 NRS § 40.455(1).

20 5. The foreclosure sale of the Property was held on August 28, 2019 in connection with
21 the outstanding balance due under the Note in the amount of \$4,720,182.21.

22 6. Lender submitted a credit bid in the amount of \$3,700,000.00 at the foreclosure
23 sale.

24 7. After application of the credit bid, the resulting amounts due and owing to Plaintiffs
25 from Defendants relating to the Loan Documents was \$1,020,182.21, excluding accrued interest,
26 late charges, legal fees and costs incurred after the August 28, 2019 foreclosure sale.

8. At the time of the August 28, 2019 Foreclosure Sale, the fair market value of the Property was \$1,250,000, which valuation is based upon the Appraisal Report of Charles E. Jack, IV, MAI dated April 16, 2021 (“Appraisal Report”).

9. In the present case, under NRS § 40.459, which governs the limitation of damages for a deficiency, the deficiency amount due and owing is \$1,020,182.21 based upon the following:

(a) The amount by which the amount of the indebtedness which was secured exceeds the fair market value of the property sold at the time of the sale, with interest from the date of the sale (**\$4,720,182.21 - \$1,250,000 = \$3,470,182.21**); or

(b) The amount which is the difference between the amount for which the property was actually sold and the amount of the indebtedness which was secured, with interest from the date of sale (**\$4,720,182.21 - \$3,700,000 = \$1,020,182.21**)

↳ whichever is the lesser amount.

10. In accordance with NRS § 40.459, Plaintiffs are entitled to a deficiency judgment of at least **\$1,020,182.21** as of the date of the foreclosure sale and after application of the credit bid, excluding attorneys’ fees and interest accrued after the foreclosure sale.

JUDGMENT

Based upon the above Findings of Fact and Conclusions of Law, and good cause appearing therefore,

IT IS HEREBY ORDERED that Plaintiffs’ Application for Deficiency is **GRANTED**.

IT IS FURTHER ORDERED that Defendants’ Countermotion to Extend Briefing Scheduling and Hearing Date is **DENIED** for failure to demonstrate cause.

IT IS FURTHER ORDERED that Defendants’ Opposition on the basis that Plaintiffs’ voluntary reduction of the in a wholly unrelated case pending before Judge Denton in the Eighth Judicial District Court is not binding on this Court or preclusive on Plaintiffs as it relates to interest and late fees sought in connection with the Application for Deficiency pending before this Court is **OVERRULED**.

IT IS FURTHER ORDERED that Defendants’ Opposition on the basis that the interest charges and late fee charges assessed as of the date of the foreclosure sale are excessive or usurious,

and the post-foreclosure interest and late charges assessed on the deficiency balance are excessive or
usurious is **OVERRULED**.


IT IS FURTHER ORDERED the post-foreclosure deficiency amount totals
\$1,468,575.19, consisting of the following through June 15, 2021:

Loan Deficiency Under NRS Chapter 40	\$1,020,182.21
Interest (9/1/19 – 6/15/201 @ \$623.44 per diem) ³	\$403,991.94
Late Charge ⁴ (through June 2021)	\$39,401.04
Appraiser's Fees and Costs (through 4/29/21)	\$5,000.00

IT IS FURTHER ORDERED that Plaintiffs shall submit a motion for attorneys' fees and
A memorandum of costs, subject to this Court's approval and any opposition from Defendants,
after approval of which Plaintiffs shall submit a final judgement to be entered by this Court.

IT IS SO ORDERED.

Dated this 20th day of July, 2021



Respectfully submitted by:

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Ogonna Brown
Ogonna M. Brown, Esq. (NBN 7589)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

*Attorneys for Plaintiffs The Eliot A. Alper Revocable Trust Dated March 22, 1999
and Susan J. Vermillion Separate Trust Dated April 24, 1997*

D6B A8F FB75 9854
David M Jones
District Court Judge

Approved as to form/content:

SEMENZA KIRCHER RICKARD

NOT APPROVED

Lawrence J. Semenza, Esq. (NBN 7174)
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Attorneys for Defendants

³ Per annum default interest of 22.0% on the deficiency amount of 1,020,182.21, calculated on a
360 day year, for the period September 1, 2019 to June 15, 2021 at a per diem of \$623.44.

⁴ Late charge rate of 10% assessed for August 29, 2019 to June, 2021. *See Alper Decl.*

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Eliot Alper, Plaintiff(s)

CASE NO: A-19-804338-C

7 vs.

DEPT. NO. Department 29

8 EB Acquisitions, 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: 7/20/2021

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Attorneys for Plaintiffs

The Eliot A. Alper Revocable Trust Dated March 22, 1999

and Susan J. Vermillion Separate Trust Dated April 24, 1997

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ELIOT A. ALPER, an individual, and as Trustee
of THE ELIOT A. ALPER REVOCABLE
TRUST DATED MARCH 22, 1999, and
SUSAN J. VERMILLION, an individual, and as
Trustee of SUSAN J. VERMILLION
SEPARATE PROPERTY TRUST DATED
APRIL 24, 1997,

Plaintiffs,

vs.

JAMES M. RHODES, individually and as
President of EB ACQUISITIONS, LLC, EB
ACQUISITIONS, LLC, a Nevada Limited
Liability Company, DOES I through X,
inclusive, and ROE CORPORATIONS I through
X, inclusive,

Defendants.

CASE NO.: A-19-804338-C

DEPT. NO.: 29

**ORDER DENYING DEFENDANTS'
JAMES M. RHODES AND EB
ACQUISITIONS, LLC'S MOTION FOR
RECONSIDERATION
PURSUANT TO NRCP 59(e)**

Date of Hearing: September 14, 2021

Time of Hearing: 9:00 a.m.

Judge: Hon. David M. Jones

On September 14, 2021, at 9:00 a.m., this matter came on for hearing before the Honorable David M. Jones, District Court Judge, in Department 29 of the Eighth Judicial District Court, in and for Clark County, Nevada, on Defendants' Motion for Reconsideration Pursuant to NRCP 59(e), filed on August 13, 2021. Plaintiffs ELIOT A. ALPER, an individual, and as Trustee of THE ELIOT A. ALPER REVOCABLE TRUST DATED MARCH 22, 1999, and SUSAN J. VERMILLION, an individual, and as Trustee of SUSAN J. VERMILLION SEPARATE PROPERTY TRUST DATED APRIL 24, 1997 (collectively, "Plaintiffs") filed an Opposition to the Motion on August 27, 2021, and Defendants filed a Reply in support of the Motion on September 7, 2021. Lawrence J. Semenza, III, Esq. of the law firm of Semenza Kircher Rickard

1 appeared on behalf of the Defendants JAMES RHODES and EB ACQUISITIONS, LLC
2 (collectively, “Defendants”), and Ogonna M. Brown, Esq. of the law firm of Lewis Roca
3 Rothgerber Christie LLP appeared on behalf of Plaintiffs, Eliot A. Alper, an individual, and as
4 Trustee of The Eliot A. Alper Revocable Trust Dated March 22, 1999 (“Alper Trust”), and Susan
5 J. Vermillion, an individual, and as Trustee of Susan J. Vermillion Separate Property Trust Dated
6 April 24, 1997.

7 The Court having considered the Motion for Reconsideration, Plaintiffs’ Opposition to the
8 Motion for Reconsideration, Defendants’ Reply in support of the Motion for Reconsideration, and
9 the papers and pleadings on file hearing, the oral argument of counsel during the hearing on the
10 Motion for Reconsideration, hereby finds and concludes as follows:

11 **IT IS HEREBY ORDERED** that Defendants’ Motion for Reconsideration is **DENIED**.

12 **IT IS FURTHER ORDERED** the Court previously held an evidentiary hearing on the
13 Application for Deficiency, which included the testimony of Justin Alper, one of the beneficiaries
14 of the Alper Trust and the testimony of Charles Jack, IV, MAI, the appraiser, during which hearing
15 Defendants had the opportunity to cross-examine both witnesses.

16 **IT IS FURTHER ORDERED** the Court has previously held an evidentiary hearing on the
17 Defendants’ Application to Set Aside the Clerk’s Entry of Defaults and Default Judgment, which
18 included an evidentiary hearing on December 11, 2020, at 9:00 a.m. to hear testimony from Ronald
19 Gillette, Esq. of the law office of Gillette Law, PLLC, during which hearing Defendants had the
20 opportunity to cross-examine Mr. Gillette and the Court had the opportunity to weigh the credibility
21 of Mr. Gillette’s testimony regarding acceptance of the Summons and Complaint of the above-
22 captioned matter.

23 **IT IS FURTHER ORDERED** that based upon the record before this Court and the
24 evidentiary hearings held by this Court, that this Court did not commit clear error in law or in fact
25 in Denying Defendants’ Motion to Set Aside the Clerk’s Entry of Defaults against Defendants, the
26 Court did not err in denying Defendants’ request to extend the briefing schedule for additional time
27 to obtain an appraisal, and that the Court did not commit clear error in granting the Application for
28 a deficiency.

1 **IT IS SO ORDERED.**

Dated this 23rd day of September, 2021

2 

3
4 **2E8 E03 C660 0A94**
5 **David M Jones**
6 **District Court Judge**

7 Respectfully submitted by:

8 **LEWIS ROCA ROTHGERBER CHRISTIE LLP**

9 By: /s/ Ogonna Brown

10 Ogonna M. Brown, Esq. (NBN 7589)

11 3993 Howard Hughes Parkway, Suite 600

12 Las Vegas, NV 89169

13 *Attorneys for Plaintiffs The Eliot A. Alper Revocable Trust Dated March 22, 1999*
14 *and Susan J. Vermillion Separate Trust Dated April 24, 1997*

15 Approved as to form/content:

16 **SEMENZA KIRCHER RICKARD**

17 By: /s/ Lawrence J. Semenza

18 Lawrence J. Semenza, Esq. (NBN 7174)

19 10161 Park Run Drive, Suite 150

20 Las Vegas, Nevada 89145

21 *Attorneys for Defendants*

From: Lawrence J. Semenza, III <ljs@skrlawyers.com>
Sent: Friday, September 17, 2021 11:56 AM
To: Brown, Ogonna
Cc: Lord, Nicole; Lopez, Kim; Grijalva, Patricia; Stanton, Heather; Gullett, Broc; Katie Cannata
Subject: RE: Order Denying Motion for Reconsideration and Order Granting Motion for Fees

[EXTERNAL]

You have my approval. L.J.

Lawrence J. Semenza, III, Esq.
Semenza Kircher Rickard
10161 Park Run Drive, Suite 150
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Facsimile: 702-920-8669

To ensure compliance with the requirements imposed by the IRS, we inform you that any federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for purposes of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any transaction or tax-related matter addressed herein.

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From: Brown, Ogonna <OBrown@lewisroca.com>
Sent: Friday, September 17, 2021 11:54 AM
To: Lawrence J. Semenza, III <ljs@skrlawyers.com>
Cc: Lord, Nicole <NLord@lewisroca.com>; Lopez, Kim <KLopez@lewisroca.com>; Grijalva, Patricia <PGrijalva@lewisroca.com>; Stanton, Heather <HStanton@lewisroca.com>; Gullett, Broc <BGullett@lewisroca.com>; Katie Cannata <klc@skrlawyers.com>
Subject: RE: Order Denying Motion for Reconsideration and Order Granting Motion for Fees

LJ:

I'm fine with all of your changes. Please confirm I may affix your electronic signature to both orders. Thank you!

Ogonna Brown
Partner

OBrown@lewisroca.com
D. 702.474.2622

LEWIS  ROCA

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Eliot Alper, Plaintiff(s)

CASE NO: A-19-804338-C

7 vs.

DEPT. NO. Department 29

8 EB Acquisitions, 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 Denying Motion was served via the court's electronic eFile
system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 9/23/2021

15 Jarrod Rickard

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16 Christopher Kircher

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17 Olivia Kelly

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18 Lawrence Semenza, III

ljs@skrlawyers.com

19 Angie Barreras

alb@skrlawyers.com

20 Ogonna Brown

obrown@lewisroca.com

21 Katie Cannata

klc@skrlawyers.com

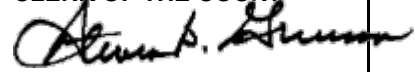
22 Nicole Lord

nlord@lewisroca.com

23 Patricia Grijalva

PGrijalva@lewisroca.com

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LEWIS ROCA ROTHGERBER CHRISTIE LLP
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Las Vegas, Nevada 89169
Telephone: (702) 949-8200
Email: obrown@lewisroca.com
Attorneys for Plaintiffs
The Eliot A. Alper Revocable Trust Dated March 22, 1999
and Susan J. Vermillion Separate Trust Dated April 24, 1997

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ELIOT A. ALPER, an individual, and as Trustee
of THE ELIOT A. ALPER REVOCABLE
TRUST DATED MARCH 22, 1999, and
SUSAN J. VERMILLION, an individual, and as
Trustee of SUSAN J. VERMILLION
SEPARATE PROPERTY TRUST DATED
APRIL 24, 1997,

Plaintiffs,

vs.

JAMES M. RHODES, individually and as
President of EB ACQUISITIONS, LLC, EB
ACQUISITIONS, LLC, a Nevada Limited
Liability Company, DOES I through X,
inclusive, and ROE CORPORATIONS I through
X, inclusive,

Defendants.

CASE NO.: A-19-804338-C
DEPT. NO.: 29

**NOTICE OF ENTRY OF ORDER
DENYING DEFENDANTS JAMES M.
RHODES AND EB ACQUISITIONS,
LLC'S MOTION FOR
RECONSIDERATION PURSUANT TO
NRCPC 59(e)**

Date of Hearing: September 14, 2021
Time of Hearing: 9:00 a.m.

Judge: Hon. David M. Jones

PLEASE TAKE NOTICE that on September 23, 2021, the Court entered an Order Denying
Defendants James M. Rhodes and EB Acquisitions, LLC's Motion for Reconsideration Pursuant to
NRCPC 59(e), a copy of which is attached hereto.

DATED September 24, 2021.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Ogonna M. Brown

Ogonna M. Brown, Esq. (NBN 7589)
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, Nevada 89169
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to NEFCR 9, NRCP 5(b), and EDCR 7.26, I certify that on September 24, 2021, I served a copy of **NOTICE OF ENTRY OF ORDER DENYING DEFENDANTS JAMES M. RHODES AND EB ACQUISITIONS, LLC'S MOTION FOR RECONSIDERATION PURSUANT TO NRCP 59(e)** on all parties via:

☒ Electronic Service – By serving a copy thereof through the Court's electronic service system on the service contacts registered to receive filings in this matter, including:

SEMENZA KIRCHER RICKARD

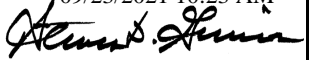
Lawrence J Semenza, III	ljs@skrlawyers.com
Christopher D Kircher	cdk@skrlawyers.com
Angie Barreras	alb@skrlawyers.com
Teresa N Beiter	tnb@skrlawyers.com
Katie Cannata	klc@skrlawyers.com
Olivia A Kelly	oak@skrlawyers.com
Jarrold L Rickard	jlr@skrlawyers.com

☐ E-mail – By serving a copy thereof at the email addresses listed below; and/or

☐ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below.

/s/Nicole N. Lord

An employee of
Lewis Roca Rothgerber Christie LLP


CLERK OF THE COURT

ORDR

Ogonna M. Brown, Esq.
Nevada Bar No. 7589

LEWIS ROCA ROTHGERBER CHRISTIE LLP

3993 Howard Hughes Pkwy, Suite 600

Las Vegas, Nevada 89169

Telephone: (702) 949-8200

Email: obrown@lewisroca.com

Attorneys for Plaintiffs

The Eliot A. Alper Revocable Trust Dated March 22, 1999

and Susan J. Vermillion Separate Trust Dated April 24, 1997

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ELIOT A. ALPER, an individual, and as Trustee
of THE ELIOT A. ALPER REVOCABLE
TRUST DATED MARCH 22, 1999, and
SUSAN J. VERMILLION, an individual, and as
Trustee of SUSAN J. VERMILLION
SEPARATE PROPERTY TRUST DATED
APRIL 24, 1997,

Plaintiffs,

vs.

JAMES M. RHODES, individually and as
President of EB ACQUISITIONS, LLC, EB
ACQUISITIONS, LLC, a Nevada Limited
Liability Company, DOES I through X,
inclusive, and ROE CORPORATIONS I through
X, inclusive,

Defendants.

CASE NO.: A-19-804338-C

DEPT. NO.: 29

**ORDER DENYING DEFENDANTS'
JAMES M. RHODES AND EB
ACQUISITIONS, LLC'S MOTION FOR
RECONSIDERATION
PURSUANT TO NRCP 59(e)**

Date of Hearing: September 14, 2021

Time of Hearing: 9:00 a.m.

Judge: Hon. David M. Jones

On September 14, 2021, at 9:00 a.m., this matter came on for hearing before the Honorable David M. Jones, District Court Judge, in Department 29 of the Eighth Judicial District Court, in and for Clark County, Nevada, on Defendants' Motion for Reconsideration Pursuant to NRCP 59(e), filed on August 13, 2021. Plaintiffs ELIOT A. ALPER, an individual, and as Trustee of THE ELIOT A. ALPER REVOCABLE TRUST DATED MARCH 22, 1999, and SUSAN J. VERMILLION, an individual, and as Trustee of SUSAN J. VERMILLION SEPARATE PROPERTY TRUST DATED APRIL 24, 1997 (collectively, "Plaintiffs") filed an Opposition to the Motion on August 27, 2021, and Defendants filed a Reply in support of the Motion on September 7, 2021. Lawrence J. Semenza, III, Esq. of the law firm of Semenza Kircher Rickard

1 appeared on behalf of the Defendants JAMES RHODES and EB ACQUISITIONS, LLC
2 (collectively, “Defendants”), and Ogonna M. Brown, Esq. of the law firm of Lewis Roca
3 Rothgerber Christie LLP appeared on behalf of Plaintiffs, Eliot A. Alper, an individual, and as
4 Trustee of The Eliot A. Alper Revocable Trust Dated March 22, 1999 (“Alper Trust”), and Susan
5 J. Vermillion, an individual, and as Trustee of Susan J. Vermillion Separate Property Trust Dated
6 April 24, 1997.

7 The Court having considered the Motion for Reconsideration, Plaintiffs’ Opposition to the
8 Motion for Reconsideration, Defendants’ Reply in support of the Motion for Reconsideration, and
9 the papers and pleadings on file hearing, the oral argument of counsel during the hearing on the
10 Motion for Reconsideration, hereby finds and concludes as follows:

11 **IT IS HEREBY ORDERED** that Defendants’ Motion for Reconsideration is **DENIED**.

12 **IT IS FURTHER ORDERED** the Court previously held an evidentiary hearing on the
13 Application for Deficiency, which included the testimony of Justin Alper, one of the beneficiaries
14 of the Alper Trust and the testimony of Charles Jack, IV, MAI, the appraiser, during which hearing
15 Defendants had the opportunity to cross-examine both witnesses.

16 **IT IS FURTHER ORDERED** the Court has previously held an evidentiary hearing on the
17 Defendants’ Application to Set Aside the Clerk’s Entry of Defaults and Default Judgment, which
18 included an evidentiary hearing on December 11, 2020, at 9:00 a.m. to hear testimony from Ronald
19 Gillette, Esq. of the law office of Gillette Law, PLLC, during which hearing Defendants had the
20 opportunity to cross-examine Mr. Gillette and the Court had the opportunity to weigh the credibility
21 of Mr. Gillette’s testimony regarding acceptance of the Summons and Complaint of the above-
22 captioned matter.

23 **IT IS FURTHER ORDERED** that based upon the record before this Court and the
24 evidentiary hearings held by this Court, that this Court did not commit clear error in law or in fact
25 in Denying Defendants’ Motion to Set Aside the Clerk’s Entry of Defaults against Defendants, the
26 Court did not err in denying Defendants’ request to extend the briefing schedule for additional time
27 to obtain an appraisal, and that the Court did not commit clear error in granting the Application for
28 a deficiency.

1 **IT IS SO ORDERED.**

Dated this 23rd day of September, 2021

2 

3
4 **2E8 E03 C660 0A94**
5 **David M Jones**
6 **District Court Judge**

7 Respectfully submitted by:

8 **LEWIS ROCA ROTHGERBER CHRISTIE LLP**

9 By: /s/ Ogonna Brown

10 Ogonna M. Brown, Esq. (NBN 7589)

11 3993 Howard Hughes Parkway, Suite 600

12 Las Vegas, NV 89169

13 *Attorneys for Plaintiffs The Eliot A. Alper Revocable Trust Dated March 22, 1999*
14 *and Susan J. Vermillion Separate Trust Dated April 24, 1997*

15 Approved as to form/content:

16 **SEMENZA KIRCHER RICKARD**

17 By: /s/ Lawrence J. Semenza

18 Lawrence J. Semenza, Esq. (NBN 7174)

19 10161 Park Run Drive, Suite 150

20 Las Vegas, Nevada 89145

21 *Attorneys for Defendants*

From: Lawrence J. Semenza, III <ljs@skrlawyers.com>
Sent: Friday, September 17, 2021 11:56 AM
To: Brown, Ogonna
Cc: Lord, Nicole; Lopez, Kim; Grijalva, Patricia; Stanton, Heather; Gullett, Broc; Katie Cannata
Subject: RE: Order Denying Motion for Reconsideration and Order Granting Motion for Fees

[EXTERNAL]

You have my approval. L.J.

Lawrence J. Semenza, III, Esq.
Semenza Kircher Rickard
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
E-mail: ljs@skrlawyers.com
Website: www.skrlawyers.com
Telephone: 702-835-6803
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To ensure compliance with the requirements imposed by the IRS, we inform you that any federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for purposes of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any transaction or tax-related matter addressed herein.

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Subject: RE: Order Denying Motion for Reconsideration and Order Granting Motion for Fees

LJ:

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Ogonna Brown
Partner

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D. 702.474.2622

LEWIS  ROCA

1 **CSERV**

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CLARK COUNTY, NEVADA

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6 Eliot Alper, Plaintiff(s)

CASE NO: A-19-804338-C

7 vs.

DEPT. NO. Department 29

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9 Defendant(s)

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20 Ogonna Brown

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21 Katie Cannata

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22 Nicole Lord

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23 Patricia Grijalva

PGrijalva@lewisroca.com

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OGM

Ogonna M. Brown, Esq.

Nevada Bar No. 7589

LEWIS ROCA ROTHGERBER CHRISTIE LLP

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Las Vegas, Nevada 89169

Telephone: (702) 949-8200

Email: obrown@lewisroca.com

Attorneys for Plaintiffs

The Eliot A. Alper Revocable Trust Dated March 22, 1999

and Susan J. Vermillion Separate Trust Dated April 24, 1997

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ELIOT A. ALPER, an individual, and as Trustee
of THE ELIOT A. ALPER REVOCABLE
TRUST DATED MARCH 22, 1999, and
SUSAN J. VERMILLION, an individual, and as
Trustee of SUSAN J. VERMILLION
SEPARATE PROPERTY TRUST DATED
APRIL 24, 1997,

Plaintiffs,

vs.

JAMES M. RHODES, individually and as
President of EB ACQUISITIONS, LLC, EB
ACQUISITIONS, LLC, a Nevada Limited
Liability Company, DOES I through X,
inclusive, and ROE CORPORATIONS I through
X, inclusive,

Defendants.

CASE NO.: A-19-804338-C

DEPT. NO.: 29

**ORDER GRANTING PLAINTIFFS'
MOTION FOR ATTORNEYS' FEES AND
COSTS**

Date of Hearing: September 14, 2021

Time of Hearing: 9:00 a.m.

Judge: Hon. David M. Jones

This matter have come on for hearing before the Honorable David M. Jones presiding, before Department 29 of the Eighth Judicial District Court, in and for Clark County, Nevada, regarding Plaintiffs Eliot A. Alper's, individually and as Trustee of The Eliot A. Alper Revocable Trust Dated March 22, 1999, and Susan J. Vermillion's, individually and as Trustee of Susan J. Vermillion Separate Property Trust Dated April 24, 1997 ("Plaintiffs") Motion for Attorneys' Fees and Costs filed on August 10, 2021, and the Supplement to the Motion for Attorneys' Fees and Costs filed on September 13, 2021, being scheduled for virtual Bluejeans hearing on September 14, 2021, at 9:00 a.m.; and the Opposition to the Motion filed by and on behalf of the Defendants James M. Rhodes and EB Acquisitions, LLC ("Defendants"), filed on August 25, 2021, and the Reply in

1 support of the Motion filed on September 7, 2021, and the Supplement with the updated attorneys’
2 fees and costs filed with the Court on September 13, 2021. Lawrence J. Semenza, III, Esq. of the
3 law firm of Semenza Kircher Rickard appeared on behalf of the Defendants JAMES RHODES and
4 EB ACQUISITIONS, LLC (collectively, “Defendants”), and Ogonna M. Brown, Esq. of the law
5 firm of Lewis Roca Rothgerber Christie LLP appeared on behalf of Plaintiffs, Eliot A. Alper, an
6 individual, and as Trustee of The Eliot A. Alper Revocable Trust Dated March 22, 1999 (“Alper
7 Trust”), and Susan J. Vermillion, an individual, and as Trustee of Susan J. Vermillion Separate
8 Property Trust Dated April 24, 1997. The Court having considered the papers and pleadings on file
9 herein, finds the following:

10 **IT IS HEREBY ORDERED** that the objection raised in Defendants’ Opposition in
11 connection with overtime charges for staff incurred by Plaintiffs in the amount of \$64.41 is
12 **SUSTAINED**, and that the amount of the award of fees and costs shall be reduced by Plaintiffs in
13 the amount of \$64.41.

14 **IT IS FURTHER ORDERED** that the Motion is **GRANTED** with the exception of the
15 reduction in the amount of \$64.41 in overtime staff charges.

16 **IT IS FURTHER ORDERED** that Plaintiffs have met their burden of establishing the
17 *Brunzell* factors and are therefore entitled to their attorneys’ fees and costs.

18 **IT IS FURTHER ORDERED** that Defendants have failed to demonstrate to this Court
19 that the Plaintiffs’ attorneys’ fees and costs sought in the Motion and Supplement are not
20 reasonable.

21 **IT IS FURTHER ORDERED** that Plaintiffs shall be awarded \$55,793.50 for attorneys’
22 fees through September 10, 2021, as set forth in the Motion and Supplement.

23 **IT IS FURTHER ORDERED** that Plaintiffs shall be awarded \$2,124.74 for costs as set
24 forth in the Motion and Supplement through September 10, 2021, which includes the deduction of
25 staff overtime charges in the amount the \$64.41 from the original costs sought in the amount of
26 \$2,189.15.

27 ...

28 ...

1 **IT IS SO ORDERED.**

Dated this 23rd day of September, 2021

2 

3
4 **A79 511 C366 3EB2**
5 **David M Jones**
6 **District Court Judge**

7 Respectfully submitted by:

8 **LEWIS ROCA ROTHGERBER CHRISTIE LLP**

9 By: /s/ Ogonna Brown

10 Ogonna M. Brown, Esq. (NBN 7589)

11 3993 Howard Hughes Parkway, Suite 600

12 Las Vegas, NV 89169

13 *Attorneys for Plaintiffs The Eliot A. Alper Revocable Trust Dated March 22, 1999*
14 *and Susan J. Vermillion Separate Trust Dated April 24, 1997*

15 Approved as to form/content:

16 **SEMENZA KIRCHER RICKARD**

17 By: /s/ Lawrence J. Semenza

18 Lawrence J. Semenza, Esq. (NBN 7174)

19 10161 Park Run Drive, Suite 150

20 Las Vegas, Nevada 89145

21 *Attorneys for Defendants*

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Subject: RE: Order Denying Motion for Reconsideration and Order Granting Motion for Fees

[EXTERNAL]

You have my approval. L.J.

Lawrence J. Semenza, III, Esq.
Semenza Kircher Rickard
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
E-mail: ljs@skrlawyers.com
Website: www.skrlawyers.com
Telephone: 702-835-6803
Cellular: 702-612-9813
Facsimile: 702-920-8669

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I'm fine with all of your changes. Please confirm I may affix your electronic signature to both orders. Thank you!

Ogonna Brown
Partner

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D. 702.474.2622

LEWIS  ROCA

1 **CSERV**

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6 Eliot Alper, Plaintiff(s)

CASE NO: A-19-804338-C

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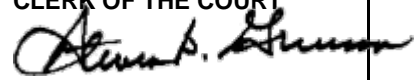
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NEOJ

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Nevada Bar No. 7589
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Telephone: (702) 949-8200
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Attorneys for Plaintiffs
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APRIL 24, 1997,

Plaintiffs,

vs.

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ACQUISITIONS, LLC, a Nevada Limited
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Defendants.

CASE NO.: A-19-804338-C
DEPT. NO.: 29

**NOTICE OF ENTRY OF ORDER
GRANTING PLAINTIFFS' MOTION
FOR ATTORNEYS' FEES AND COSTS**

Date of Hearing: September 14, 2021
Time of Hearing: 9:00 a.m.

Judge: Hon. David M. Jones

PLEASE TAKE NOTICE that on September 23, 2021, the Court entered an Order Granting
Plaintiffs' Motion for Attorneys' Fees and Costs, a copy of which is attached hereto.

DATED September 24, 2021.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Ogonna M. Brown

Ogonna M. Brown, Esq.
Nevada Bar No. 7589
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, Nevada 89169
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to NEFCR 9, NRCP 5(b), and EDCR 7.26, I certify that on September 24, 2021, I served a copy of **NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND COSTS** on all parties via:

☒ Electronic Service – By serving a copy thereof through the Court's electronic service system on the service contacts registered to receive filings in this matter, including:

SEMENZA KIRCHER RICKARD

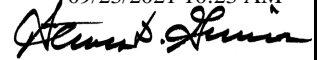
Lawrence J Semenza, III	ljs@skrlawyers.com
Christopher D Kircher	cdk@skrlawyers.com
Angie Barreras	alb@skrlawyers.com
Teresa N Beiter	tnb@skrlawyers.com
Katie Cannata	klc@skrlawyers.com
Olivia A Kelly	oak@skrlawyers.com
Jarrold L Rickard	jlr@skrlawyers.com

☐ E-mail – By serving a copy thereof at the email addresses listed below; and/or

☐ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below.

/s/Nicole N. Lord

An employee of
Lewis Roca Rothgerber Christie LLP


CLERK OF THE COURT

OGM

Ogonna M. Brown, Esq.

Nevada Bar No. 7589

LEWIS ROCA ROTHGERBER CHRISTIE LLP

3993 Howard Hughes Pkwy, Suite 600

Las Vegas, Nevada 89169

Telephone: (702) 949-8200

Email: obrown@lewisroca.com

Attorneys for Plaintiffs

The Eliot A. Alper Revocable Trust Dated March 22, 1999

and Susan J. Vermillion Separate Trust Dated April 24, 1997

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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This matter have come on for hearing before the Honorable David M. Jones presiding, before Department 29 of the Eighth Judicial District Court, in and for Clark County, Nevada, regarding Plaintiffs Eliot A. Alper's, individually and as Trustee of The Eliot A. Alper Revocable Trust Dated March 22, 1999, and Susan J. Vermillion's, individually and as Trustee of Susan J. Vermillion Separate Property Trust Dated April 24, 1997 ("Plaintiffs") Motion for Attorneys' Fees and Costs filed on August 10, 2021, and the Supplement to the Motion for Attorneys' Fees and Costs filed on September 13, 2021, being scheduled for virtual Bluejeans hearing on September 14, 2021, at 9:00 a.m.; and the Opposition to the Motion filed by and on behalf of the Defendants James M. Rhodes and EB Acquisitions, LLC ("Defendants"), filed on August 25, 2021, and the Reply in

1 support of the Motion filed on September 7, 2021, and the Supplement with the updated attorneys’
2 fees and costs filed with the Court on September 13, 2021. Lawrence J. Semenza, III, Esq. of the
3 law firm of Semenza Kircher Rickard appeared on behalf of the Defendants JAMES RHODES and
4 EB ACQUISITIONS, LLC (collectively, “Defendants”), and Ogonna M. Brown, Esq. of the law
5 firm of Lewis Roca Rothgerber Christie LLP appeared on behalf of Plaintiffs, Eliot A. Alper, an
6 individual, and as Trustee of The Eliot A. Alper Revocable Trust Dated March 22, 1999 (“Alper
7 Trust”), and Susan J. Vermillion, an individual, and as Trustee of Susan J. Vermillion Separate
8 Property Trust Dated April 24, 1997. The Court having considered the papers and pleadings on file
9 herein, finds the following:

10 **IT IS HEREBY ORDERED** that the objection raised in Defendants’ Opposition in
11 connection with overtime charges for staff incurred by Plaintiffs in the amount of \$64.41 is
12 **SUSTAINED**, and that the amount of the award of fees and costs shall be reduced by Plaintiffs in
13 the amount of \$64.41.

14 **IT IS FURTHER ORDERED** that the Motion is **GRANTED** with the exception of the
15 reduction in the amount of \$64.41 in overtime staff charges.

16 **IT IS FURTHER ORDERED** that Plaintiffs have met their burden of establishing the
17 *Brunzell* factors and are therefore entitled to their attorneys’ fees and costs.

18 **IT IS FURTHER ORDERED** that Defendants have failed to demonstrate to this Court
19 that the Plaintiffs’ attorneys’ fees and costs sought in the Motion and Supplement are not
20 reasonable.

21 **IT IS FURTHER ORDERED** that Plaintiffs shall be awarded \$55,793.50 for attorneys’
22 fees through September 10, 2021, as set forth in the Motion and Supplement.

23 **IT IS FURTHER ORDERED** that Plaintiffs shall be awarded \$2,124.74 for costs as set
24 forth in the Motion and Supplement through September 10, 2021, which includes the deduction of
25 staff overtime charges in the amount the \$64.41 from the original costs sought in the amount of
26 \$2,189.15.

27 ...

28 ...

1 **IT IS SO ORDERED.**

Dated this 23rd day of September, 2021

2 

3
4 **A79 511 C366 3EB2**
5 **David M Jones**
6 **District Court Judge**

7 Respectfully submitted by:

8 **LEWIS ROCA ROTHGERBER CHRISTIE LLP**

9 By: /s/ Ogonna Brown

10 Ogonna M. Brown, Esq. (NBN 7589)

11 3993 Howard Hughes Parkway, Suite 600

12 Las Vegas, NV 89169

13 *Attorneys for Plaintiffs The Eliot A. Alper Revocable Trust Dated March 22, 1999*
14 *and Susan J. Vermillion Separate Trust Dated April 24, 1997*

15 Approved as to form/content:

16 **SEMENZA KIRCHER RICKARD**

17 By: /s/ Lawrence J. Semenza

18 Lawrence J. Semenza, Esq. (NBN 7174)

19 10161 Park Run Drive, Suite 150

20 Las Vegas, Nevada 89145

21 *Attorneys for Defendants*

From: Lawrence J. Semenza, III <ljs@skrlawyers.com>
Sent: Friday, September 17, 2021 11:56 AM
To: Brown, Ogonna
Cc: Lord, Nicole; Lopez, Kim; Grijalva, Patricia; Stanton, Heather; Gullett, Broc; Katie Cannata
Subject: RE: Order Denying Motion for Reconsideration and Order Granting Motion for Fees

[EXTERNAL]

You have my approval. L.J.

Lawrence J. Semenza, III, Esq.
Semenza Kircher Rickard
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
E-mail: ljs@skrlawyers.com
Website: www.skrlawyers.com
Telephone: 702-835-6803
Cellular: 702-612-9813
Facsimile: 702-920-8669

To ensure compliance with the requirements imposed by the IRS, we inform you that any federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for purposes of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any transaction or tax-related matter addressed herein.

This transmission and any attachment is attorney privileged and confidential. Any dissemination or copying of this communication is prohibited. If you are not the intended recipient, please notify us immediately by replying and delete the message. Thank you.

From: Brown, Ogonna <OBrown@lewisroca.com>
Sent: Friday, September 17, 2021 11:54 AM
To: Lawrence J. Semenza, III <ljs@skrlawyers.com>
Cc: Lord, Nicole <NLord@lewisroca.com>; Lopez, Kim <KLopez@lewisroca.com>; Grijalva, Patricia <PGrijalva@lewisroca.com>; Stanton, Heather <HStanton@lewisroca.com>; Gullett, Broc <BGullett@lewisroca.com>; Katie Cannata <klc@skrlawyers.com>
Subject: RE: Order Denying Motion for Reconsideration and Order Granting Motion for Fees

LJ:

I'm fine with all of your changes. Please confirm I may affix your electronic signature to both orders. Thank you!

Ogonna Brown
Partner

OBrown@lewisroca.com
D. 702.474.2622

LEWIS  ROCA

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Eliot Alper, Plaintiff(s)

CASE NO: A-19-804338-C

7 vs.

DEPT. NO. Department 29

8 EB Acquisitions, LLC,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 9/23/2021

15 Jarrod Rickard

jl原因@skrlawyers.com

16 Christopher Kircher

cdk@skrlawyers.com

17 Olivia Kelly

oak@skrlawyers.com

18 Lawrence Semenza, III

ljs@skrlawyers.com

19 Angie Barreras

alb@skrlawyers.com

20 Ogonna Brown

obrown@lewisroca.com

21 Katie Cannata

klc@skrlawyers.com

22 Nicole Lord

nlord@lewisroca.com

23 Patricia Grijalva

PGrijalva@lewisroca.com

24

25

26

27

28

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Contract

COURT MINUTES

March 11, 2020

A-19-804338-C Eliot Alper, Plaintiff(s)
vs.
EB Acquisitions, LLC, Defendant(s)

**March 11, 2020 9:00 AM Motion for Default
Judgment**

HEARD BY: Jones, David M **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Michaela Tapia

RECORDER: Melissa Delgado-Murphy

REPORTER:

PARTIES

PRESENT: Brown, Ogonna M. Attorney

JOURNAL ENTRIES

- Argument in support of Plaintiff' Application for Default Judgment. Court noted for the record it has a brother-in-law who works as an independent contractor with Harmony. Ms. Brown indicated her husband knows the Court. There being no issues, COURT ORDERED, default against Defendants James M. Rhodes & EB Acquisitions GRANTED; outstanding principle in the amount of \$1,223,343.68 with interest after foreclosure of \$120,697.80 for a total amount of \$1,144,041.48. Order signed and returned to counsel IN OPEN COURT.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Contract

COURT MINUTES

November 04, 2020

A-19-804338-C	Eliot Alper, Plaintiff(s)
	vs.
	EB Acquisitions, LLC, Defendant(s)

November 04, 2020 3:00 AM Minute Order

HEARD BY: Jones, David M **COURTROOM:** Chambers

COURT CLERK: Michaela Tapia

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- At the request of the Court, the matter scheduled for Wednesday, November 25, 2020 at 9:00 a.m. has been RESCHEDULED to Wednesday, December 2, 2020 at 9:00 a.m.

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Contract

COURT MINUTES

December 02, 2020

A-19-804338-C	Eliot Alper, Plaintiff(s) vs. EB Acquisitions, LLC, Defendant(s)
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December 02, 2020	9:00 AM	Motion to Set Aside Default Judgment
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HEARD BY:	Jones, David M	COURTROOM:	RJC Courtroom 15A
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COURT CLERK: Michaela Tapia

RECORDER: Melissa Delgado-Murphy

REPORTER:

PARTIES

PRESENT:	Brown, Ogonna M.	Attorney
	Semenza, Lawrence J., III	Attorney

JOURNAL ENTRIES

- Argument by Mr. Semenza regarding procedural deficiencies regarding how the default was obtained. Argument by Ms. Brown that Mr. Gilette accepted service. Court noted there was no proof Mr. Gilette was registered under the e-mail provided. Colloquy. COURT ORDERED, matter SET for Evidentiary Hearing regarding the service issue. Mr. Filette to be present.

12/11/20 9:00 AM EVIDENTIARY HEARING ... ALL PENDING MOTIONS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Contract

COURT MINUTES

December 11, 2020

A-19-804338-C	Eliot Alper, Plaintiff(s) vs. EB Acquisitions, LLC, Defendant(s)
---------------	--

December 11, 2020 9:00 AM All Pending Motions

HEARD BY: Jones, David M **COURTROOM:** RJC Courtroom 15A

COURT CLERK:

RECORDER: Melissa Delgado-Murphy

REPORTER:

PARTIES

PRESENT:	Brown, Ogonna M. Attorney Semenza, Lawrence J., III Attorney
-----------------	---

JOURNAL ENTRIES

- Ronald Gillette sworn and testified.

Ms. Brown argued the deadlines for responsive pleadings; that Judgment was mailed to Mr. Gillette; therefore, the Default was valid.

Mr. Semenza argued to set aside the Default and Judgment as Mr. Gillette did not received them; was unaware; and that he had separated from the firm. Furthermore, that Plaintiff did no present and certificate of service that it was mailed. Request to file an Answer.

COURT ORDERED, matter UNDER ADVISEMENT and will issue a written decision from Chambers. Preliminary Injunction STANDS.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Contract

COURT MINUTES

December 15, 2020

A-19-804338-C	Eliot Alper, Plaintiff(s)
	vs.
	EB Acquisitions, LLC, Defendant(s)

December 15, 2020 3:00 AM Minute Order

HEARD BY: Jones, David M **COURTROOM:** Chambers

COURT CLERK: Michaela Tapia

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Upon review of the documentation provided, and input from counsel, this Court hereby DENIES Motion to Set Aside Default. Additionally, the Motion to set Aside Default Judgment is GRANTED.

Counsel for Plaintiff is to prepare the order and run it by Defense counsel.

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

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Contract

COURT MINUTES

June 15, 2021

A-19-804338-C Eliot Alper, Plaintiff(s)
vs.
EB Acquisitions, LLC, Defendant(s)

June 15, 2021 9:00 AM All Pending Motions

HEARD BY: Jones, David M **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Michaela Tapia

RECORDER: Melissa Delgado-Murphy

REPORTER:

PARTIES

PRESENT: Brown, Ogonna M. Attorney
Semenza, Lawrence J., III Attorney

JOURNAL ENTRIES

- APPLICATION FOR DEFICIENCY JUDGMENT PURSUANT TO NRS 40.455 ... DEFENDANT'S
OPPOSITION TO APPLICATION FOR DEFICIENCY JUDGMENT PURSUANT TO NRS 40.455
AND COUNTERMOTION TO EXTEND BRIEFING SCHEDULE AND HEARING DATE

Following arguments by counsel, COURT ORDERED, Countermotion DENIED. Testimony and exhibits presented (see worksheets). COURT ORDERED, deficiency judgment GRANTED in the amount of \$1,468,575.19, which includes the \$5,000.00 in costs for Mr. Jacks' appraisal fee; future motion regarding attorney's fees may be filed. Mr. Semenza maintained his position the default should have been set aside. Mr. Semenza argued the amounts set forth in the loan documents would unconstitute unlawful penalties, and requested the Court utilize its discretion to reduce those amounts. COURT ORDERED, Mr. Semenza's request DENIED. Ms. Brown to prepare the order.

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Contract

COURT MINUTES

September 14, 2021

A-19-804338-C Eliot Alper, Plaintiff(s)
vs.
EB Acquisitions, LLC, Defendant(s)

September 14, 2021 9:00 AM All Pending Motions

HEARD BY: Jones, David M **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Michaela Tapia

RECORDER: Melissa Delgado-Murphy

REPORTER:

PARTIES

PRESENT: Brown, Ogonna M. Attorney
Semenza, Lawrence J., III Attorney

JOURNAL ENTRIES

- DEFENDANTS JAMES M. RHODES AND EB AQUISITIONS, LLC'S MOTION FOR RECONSIDERATION PURSUANT TO NRCP 59(E) ... PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND COSTS

Following arguments by counsel, COURT ORDERED, Motion for Reconsideration DENIED. Ms. Brown to prepare the order. Argument by Ms. Brown in support of the Motion for Fees and Costs. Argument by Mr. Semenza. COURT ORDERED, motion GRANTED as to fees and costs except the \$64.41 in overtime staff charges. Ms. Brown to prepare the order.

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Contract

COURT MINUTES

September 28, 2021

A-19-804338-C Eliot Alper, Plaintiff(s)
vs.
EB Acquisitions, LLC, Defendant(s)

September 28, 2021 3:00 AM Minute Order

HEARD BY: Jones, David M **COURTROOM:** Chambers

COURT CLERK: Michaela Tapia

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- At the request of the Court, for judicial economy, COURT ORDERED, the hearing set for September 29, 2021 at 9:00 a.m. is hereby RESCHEDULED to September 29, 2021 at 8:30 a.m.

BLUEJEANS INFORMATION

To connect for an audio/video appearance, go to [Bluejeans.com](https://bluejeans.com) and click on Join Meeting, enter the meeting ID and your name or click on the link provided below.

<https://bluejeans.com/188933357>

Meeting ID: 188933357

Want to dial in from a phone?

Dial one of the following numbers:

+1.408.419.1715 (United States(San Jose))

+1.408.915.6290 (United States(San Jose))

(see all numbers - <https://www.bluejeans.com/numbers>)

Enter the meeting ID.

PLEASE CONSIDER THE FOLLOWING DURING YOUR HEARING

PRINT DATE: 10/20/2021

Page 8 of 10

Minutes Date: March 11, 2020

Place your telephone on mute while waiting for your matter to be called;
Do not place your call on hold as it may play wait/hold music to others;
Identify yourself each and every time before speaking.

THE MEETING ID NUMBER FOR ALL DC29 CALENDARS WILL REMAIN THE SAME UNTIL
FURTHER NOTICE.

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Contract

COURT MINUTES

September 29, 2021

A-19-804338-C Eliot Alper, Plaintiff(s)
vs.
EB Acquisitions, LLC, Defendant(s)

September 29, 2021 8:30 AM Motion to Strike

HEARD BY: Jones, David M **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Michaela Tapia

RECORDER: Melissa Delgado-Murphy

REPORTER:

PARTIES

PRESENT: Brown, Ogonna M. Attorney
 Cannata, Katie L. Attorney

JOURNAL ENTRIES

- Following arguments by counsel, COURT ORDERED, motion GRANTED. Ms. Brown to prepare the order.



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

LAWRENCE J. SEMENZA, III, ESQ.
10161 PARK RUN DR., STE 150
LAS VEGAS, NV 89145

DATE: October 20, 2021
CASE: A-19-804338-C

RE CASE: ELIOT A. ALPER, an individual, and as Trustee of THE ELIOT A. ALPER REVOCABLE TRUST DATED MARCH 22, 1999; SUSAN J. VERMILLION; SUSAN J. VERMILLION, an individual, and as Trustee of SUSAN J. VERMILLION SEPARATE PROPERTY TRUST DATED APRIL 24, 1997 vs. JAMES M. RHODES, individually and as President of EB ACQUISITIONS, LLC; EB ACQUISITIONS, LLC

NOTICE OF APPEAL FILED: October 15, 2021

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

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

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

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

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

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

Certification of Copy

State of Nevada }
County of Clark } **SS:**

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

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS JAMES M. RHODES AND EB ACQUISITIONS, LLC'S JUDGMENT AND DEFAULTS; NOTICE OF ENTRY OF ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS JAMES M. RHODES AND EB ACQUISITIONS, LLC'S JUDGMENT AND DEFAULTS; ORDER GRANTING PLAINTIFFS' APPLICATION FOR DEFICIENCY JUDGMENT PURSUANT TO NRS 40.455 AND DENYING DEFENDANTS' COUNTERMOTION TO EXTEND BRIEFING SCHEDULE AND HEARING DATE; NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFFS' APPLICATION FOR DEFICIENCY JUDGMENT PURSUANT TO NRS 40.455 AND DENYING DEFENDANTS' COUNTERMOTION TO EXTEND BRIEFING SCHEDULE AND HEARING DATE; ORDER DENYING DEFENDANTS' JAMES M. RHODES AND EB ACQUISITIONS, LLC'S MOTION FOR RECONSIDERATION PURSUANT TO NRCP 59(E); NOTICE OF ENTRY OF ORDER DENYING DEFENDANTS JAMES M. RHODES AND EB ACQUISITIONS, LLC'S MOTION FOR RECONSIDERATION PURSUANT TO NRCP 59(E); ORDER GRANTING IN PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND COSTS; NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND COSTS; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

ELIOT A. ALPER, an individual, and as Trustee of THE ELIOT A. ALPER REVOCABLE TRUST DATED MARCH 22, 1999; SUSAN J. VERMILLION; SUSAN J. VERMILLION, an individual, and as Trustee of SUSAN J. VERMILLION SEPARATE PROPERTY TRUST DATED APRIL 24, 1997 ,

Plaintiff(s),

vs.

JAMES M. RHODES, individually and as President of EB ACQUISITIONS, LLC; EB ACQUISITIONS, LLC,

Defendant(s),

Case No: A-19-804338-C

Dept No: XXIX

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 20 day of October 2021.

Steven D. Grierson, Clerk of the Court

A handwritten signature in black ink, appearing to read 'A Hampton', is written over the circular seal of the United States District Court for the District of Nevada.

— Amanda Hampton, Deputy Clerk —
A-19-804338-C



**EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT**

REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3rd FL.
LAS VEGAS, NEVADA 89155-1160
(702) 671-4554

Steven D. Grierson
Clerk of the Court

Anntoinette Naumec-Miller
Court Division Administrator

October 20, 2021

Elizabeth A. Brown
Clerk of the Court
201 South Carson Street, Suite 201
Carson City, Nevada 89701-4702

RE: ELIOT A. ALPER, an individual, and as Trustee of THE ELIOT A. ALPER REVOCABLE TRUST DATED MARCH 22, 1999; SUSAN J. VERMILLION; SUSAN J. VERMILLION, an individual, and as Trustee of SUSAN J. VERMILLION SEPARATE PROPERTY TRUST DATED APRIL 24, 1997 vs. JAMES M. RHODES, individually and as President of EB ACQUISITIONS, LLC; EB ACQUISITIONS, LLC
D.C. CASE: A-19-804338-C

Dear Ms. Brown:

Please find enclosed a Notice of Appeal packet, filed October 15, 2021. Due to extenuating circumstances the exhibits list(s) has not been included.

We do not currently have a time frame for when the list(s) will be available.

If you have any questions regarding this matter, please contact me at (702) 671-0512.

Sincerely,
STEVEN D. GRIERSON, CLERK OF THE COURT

A handwritten signature in black ink, appearing to read "A Hampton".

Amanda Hampton, Deputy Clerk

NEVADA STATE BANK
94-771224

113584

GENERAL ACCOUNT
1118 FREMONT ST.
LAS VEGAS, NV 89101
(702) 384-0015

10/18/2021

PAY TO THE
ORDER OF Supreme Court

\$ **250.00

Two Hundred Fifty and 00/100*****

DOLLARS 

MEMO

R#1000152146 - SEMENZA - CASE # A-19-804338-



AUTHORIZED SIGNATURE 

⑈ 113584⑈ ⑆ 122400779⑆ 0822000934⑈



113584

Supreme Court

10/18/2021

R#1000152146 - SEMENZA - CASE # A-19-804338-

250.00

Legal Wings Inc - Gen R#1000152146 - SEMENZA - CASE # A-19-804

250.00