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**IN THE SUPREME COURT
FOR THE STATE OF NEVADA**

PHILIP J. FAGAN, JR., an individual,
and as Trustee of the PHILIP J.
FAGAN, JR. 2001 TRUST,
Appellant,
v.
AAL-JAY, INC., a Nevada corporation;
CHRISTIANO DE CARLO, an
individual; and LAIL LEONARD, an
individual,
Respondents.

Case No. A-21-832379-C

Dept. No.: 24

Electronically Filed
Sep 09 2022 06:06 p.m.

Elizabeth A. Brown
Clerk of Supreme Court

**REPLY IN SUPPORT OF MOTION
PURSUANT TO NRAP 27 TO
REQUIRE BOND**

**Relief Originally Requested by
August 15, 2022**

Appellants PHILIP J. FAGAN, JR., an individual, and as Trustee of the
PHILIP J. FAGAN, JR. 2001 TRUST, hereinafter collectively referred to as
“Fagan” replies in support of his motion for Order Requiring Respondents to post a
bond to support the *de facto* injunction issued by the lower court.

INTRODUCTION

Respondents’ opposition, like most of the documents they have filed in the
action below, contain demonstrably false facts and absolutely no evidence to
support their factual assertions. However, the facts germane to Fagan’s motion are
not in dispute: (1) the lower court has issued an order prohibiting Fagan from
evicting respondents (and particularly violent felon Christian DeCarlo) from his
home; (2) there has been no judgment of any sort issued by the lower court on any
claim; (3) Respondents have not paid rent in approximately 18 months; and (4)
Respondents have been entirely unable to tender the alleged “purchase price” to
support their request for specific performance.

1 The lower court's order prohibiting Fagan from having access or any rights
2 whatsoever to *his property that he currently owns*, is by definition, a preliminary
3 injunction restraining the exercise of Fagan's property rights. Such an injunction
4 requires a bond as a matter of law.
5

6 **DISPUTED FACTS**
7

8 Fagan denies the following unsupported "facts" in Respondents' opposition:

9 1. Respondents claim they engaged in discussions with Richard Scott in
10 December 2020, who they claim was Richard Scott. *See* Opp. at p. 2. Respondent
11 further claims that its "Corporate Director" engaged in the discussions with
12 Richard Scott. First, Richard Scott had ceased practicing law in the State of CA in
13 2019 as a result of Dementia, as of May 2020 he was committed to a memory care
14 facility. *See* Declaration of Cassandra Marino, **EX. A**. Interestingly, in the
15 eviction case, Respondent's claim that it was AAL-Jay's attorney, Ogonna Brown,
16 that spoke with Mr. Scott. *See* Opposition to Eviction, **EX. B**. Now they claim it
17 was an unnamed "corporate director." No correspondence between anyone with
18 AAL-Jay and Richard Scott has ever been produced.
19

20 2. Respondents claim Fagan attempted to "renege" on the purchase contract
21 they admit they signed on January 11, 2021. *See* Opp. at p. 2. Fagan did not
22 renege. Fagan never sent the document to Respondents, First American Title,
23 which Fagan has no relationship sent the documents to them on January 6, 2021
24 (which Respondents to not dispute). *Id.* The purchase offer expired by its own
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1 terms on December 17, 2020 – and the parties do not dispute that Fagan never
2 signed the purchase agreement at all. *See Ex. C* (the copy was signed by the clerk
3 of the court in August of 2021, because, oddly – the lower court judge required the
4 clerk to sign it in the space designated for Fagan).

5
6 3. An unnamed attorney “tricked” Lail Leonard into signing the 2021 lease
7 agreements. *See Opp* at p. 3. There is simply no evidence to support this. Ms.
8 Leonard is the president of AAL-Jay, as well as (according to NV SOS records)
9 Santini Transport (a crane and trucking business), Rideshare Leasing, Inc.,
10 Kaleidoscope Inc., and Fanculo Holdings, LLC. *See Ex. D*. Leonard is a
11 sophisticated business woman who has negotiated all the contracts between the
12 parties. AAL-Jay only seems to cry foul when it doesn’t like the terms of the
13 contract Ms. Leonard signs.

14
15 4. “Respondent made two additional payments of \$6,800” for the lease of the
16 property for March and April of 2021. *See Opp.* at p. 4. AAL-Jay must have
17 forgotten that it admitted, in the eviction action, that they placed stopped payment
18 orders on the check right after they gave it to Fagan. *See Ex. B* at p. 10 paragraph
19 72. Aal-Jay’s claim that it “made” these payments are an absolute falsehood.

20 **PROCEDURAL POSTURE**

21
22 There has been no discovery in this case. Fagan obtained a stay of
23 enforcement the order that denied his request for a preliminary injunction and
24 forced him to sign “Whatever documents AAL-Jay’s counsel sends him” against
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1 his will or fact contempt. *See* **Ex. E**, stay order. Since there has been no discovery
2 and absolutely no admissible evidence supporting AAL-Jay's claims submitted in
3 the lower court, Fagan attempted to begin discovery, however, when Fagan issued
4 a subpoena to First American to obtain AAL-Jay's communications with First
5 American so that it could disprove Aal-Jay's bogus claims, AAL-Jay filed a
6 motion objecting to the subpoena, and objecting to **any discovery whatsoever**.
7
8 Their objection was granted by the lower court, which said the case would be
9 stayed in its entirety pending the outcome of this appeal. *See* **Ex. F**. So to
10 summarize, Fagan is being denied his property rights, Fagan must still pay the
11 \$12,000 a month payments on the mortgage even though he has no rights to the
12 property, Fagan has no right to discovery to disprove the claims and must wait
13 until this appeal concludes (which could be 12-18 months) to even pursue any
14 discovery or file any motions, while evidence may be destroyed in the interim,
15 violent felon Christiano DeCarlo gets to continue living in the property rent-free,
16 and AAL-Jay is not so much as required to tender the purchase price they claim
17 was agreed to, or, at a minimum, deposit the past due rents, which are (assuming
18 the below-market rent of \$7,000 per month) in excess of \$130,000. This is an
19 absolute denial of Fagan's due process rights, unsupported by law or common
20 sense, and a blatant violation of NRCP 65. Dr. Fagan absolutely needs this court's
21 intervention as he can no longer afford the payments on the home.
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LEGAL ARGUMENT

AAL-Jay's "legal argument" is virtually devoid of any citation to authority, other than a cursory discussion of injunction rules. They don't present much argument, other than to say that, its not AAL-Jay that has the injunction, but rather Fagan who has the injunction, because he "seek[s] to continue to hold title to the property against the terms of the Purchase Agreement." This argument is easily disposed of, even assuming the specific performance order was enforced, AAL-Jay would still be required to pay the purchase price - \$800,000 – title doesn't transfer in a sale agreement until payment is received. AAL-Jay should have been required to tender the claimed purchase price when it filed suit years ago, but has never done so, and admits that it cannot find financing. *See Ex. G.* AAL-Jay has even gotten their earnest money refunded by the lower court! AAL-Jay has not one dime in the deal. AAL-Jay continues to argue that it also made rental payments in March of 2021, but neglect to inform this court that the payments were stopped. Bond should be required in the amount of the purchase price, or at a minimum in the amount of past due rent plus 12 additional months rent at \$7,000 per month to cover the length of this appeal. For a total (as of the date of this reply) of \$217,000.

DATED this 9th day of September, 2022

BLACK & WADHAMS

s/ Allison R. Schmidt

Allison R. Schmidt, Esq.

Nevada Bar No.10743

Attorneys for Appellants

CERTIFICATE OF SERVICE

I certify that on **September 9, 2022**, I submitted for filing and service the foregoing Reply in Support of Motion to Require Bond via this Court's eFlex system. Electronic notification will be sent to the following:

Ogonna M. Brown
Adrienne R. Brantley-Lomelli
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169
Attorneys for Respondents

s/ Allison R Schmidt

EXHIBIT A

DECLARATION OF CASSANDRA MARINO

I, Cassandra Marino, hereby declare as follows:

1. That I am over the age of eighteen and currently reside in the State of California.

2. That I am the daughter of Richard Scott, Esq.

3. That my father, Richard Scott, was a practicing attorney in the State of California and represented Dr. Philip Fagan from 1971 to early 2019.

4. In January of 2019, my father was diagnosed with a neurological condition that compromised his ability to practice law, and at this time, my father reduced and restricted his practice of law.

5. That on or around November of 2019, due to the neurologic condition that continually affected my father's memory, my father, Richard Scott, retired from the practice of law and closed his office and discontinued his working telephone number.

6. That since November of 2019, my father, Richard Scott, has not practiced law on behalf of any former clients, including Dr. Philip Fagan.

7. That on or around December of 2019, my father checked into the Brookdale Ocean House assisted living facility in Santa Monica, California.

8. That on or around May of 2020, due to the worsening of my father's neurological condition, and the ultimate and formal diagnosis of *Louie Body Dementia*, our family checked my father, Richard Scott, into the Gables of Ojai 24-hour memory assisted living and senior care facility, in Ojai, California.

9. That since May of 2020, my father, Richard Scott, has lived and continues to live in the Gables of Ojai facility, and is restricted to the property.

10. That since May of 2020, my father, Richard Scott, has had limited access in

1 communicating with any person, other than family, outside of the Gables of Ojai facility.

2 11. That since May of 2020, my father, Richard Scott, has had no office phone or email
3 address in which to communicate to anyone in a professional capacity.

4 12. That it is my belief, based upon my personal knowledge of my father's neurological
5 condition and living arrangements, he did not communicate with any person associated with Dr.
6 Fagan or his tenants at Dr. Fagan's residence at 1 Grand Anacapri, in Henderson, Nevada, in
7 November of 2020.

8 13. That my father, Richard Scott, has not mentioned to me of him speaking to anyone
9 or acting in his professional legal capacity on behalf of any former client since November of 2019.

10 I declare under penalty of perjury of the State of Nevada that the foregoing is true and
11 correct.
12

13 EXECUTED this 3rd day of June, 2021

14 
15
16 Cassandra Marino

EXHIBIT B

I DECLARE UNDER PENALTY OF PERJURY under the law of the State of Nevada that the foregoing is true and correct.

(SIGNATURE UNDER PENALTY OF PERJURY)

EXECUTED ON (Date)

FOR COURT USE ONLY

NOTICE OF HEARING

THIS MATTER IS SET FOR THE 14 DAY OF April, 2021 AT 9:30 A.M.
IN DEPARTMENT NO: 1 LOCATED AT 243 WATER STREET, HENDERSON, NEVADA 89015 (702) 455-7951

DATE: 4.8.21 CLERK'S INITIALS: AP

- ☒ Copy of Affidavit/Notice of Hearing given to Plaintiff/Landlord (at the counter).
- ☐ Copy of Affidavit/Notice of Hearing mailed to Plaintiff/Landlord.
- ☒ Copy of Affidavit/Notice of Hearing mailed to Defendant/Tenant(s). *mailed to tenants atty*
- ☒ Landlord notified by telephone of hearing date/time. *Spoke w/ Diane @ 1:59 pm*
- ☒ Tenant(s) notified by telephone of hearing date/time. *Spoke w/ Atty Brown @ 1:56 pm*

NRS 40.253 requires a copy of the Tenant's Affidavit be provided to the Landlord or Agent to avoid non-admittance to the premises.

PROPER ATTIRE IS REQUIRED. NO TANK TOPS, HALTER TOPS, OR SHORTS ARE ALLOWED IN THE COURTROOM.

Ogonna Brown, Esq.
Nevada Bar No. 7589
OBrown@lewisroca.com
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169
Tel: 702.949.8200
Fax: 702.949.8398

Attorneys for Plaintiffs AAL-JAY, INC

IN THE JUSTICE COURT OF HENDERSON
COUNTY OF CLARK, STATE OF NEVADA

PHILIP J. FAGAN, JR., an individual, and as
Trustee of the PHILIP J. FAGAN, JR. 2001
TRUST,

Landlord,

v.

AAL-JAY, INC., a Nevada Corporation,

Tenant.

Case No. 21EH000680

Dept No. 1

**TENANT'S AFFIDAVIT IN
OPPOSITION TO SEVEN (7) DAY
NOTICE TO PAY OR QUIT
PURSUANT TO NRS 40.253**

I, **CHRISTIANO DECARLO**, state as follows:

1. I am over the age of eighteen and I am competent to make this Affidavit, and have personal knowledge of the facts contained herein.

2. I am the Director of AAL-JAY, Inc. ("Tenant"), the Tenant of the residential property located at 1 Grand Anacapri, Henderson, Nevada, 89011, APN 162-22-810-011 (the "Property") in the above-captioned matter, and as such, I am fully familiar with the facts and circumstances stated herein.

3. I am also the current occupant of the Property.

4. On March 26, 2021, Tenant was served with a Seven (7) Day Notice To Pay Or Quit pursuant to NRS § 40.253 ("Notice") from Philip J. Fagan, Jr., Trustee of the Philip J. Fagan, JR 2011 Trust ("Landlord"), the owner of the Property. Service was effectuated by posting a copy of the Notice on the Property. A true and correct copy of the Notice is attached hereto as **Exhibit "1"**.

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5. Landlord is alleging a default in payment of rent and late charges due under the terms of the Residential Lease Agreement dated March 2, 2021 ("Second Lease Agreement") in the amount of \$15,100.00. A true and correct copy of the Second Lease Agreement is attached hereto as **Exhibit "2"**.

CONTRACT FOR DEED AND ADDENDUM

6. Between August 2014 and November 2016, Tenant leased the Property from the owner, Philip J. Fagan, Jr., Trustee of the Philip J. Fagan, JR 2011 Trust ("Landlord").

7. On December 8, 2016, Landlord and Tenant (collectively, the "Parties") entered into a Contract for Deed ("Contract"). The Contract was signed by Philip J. Fagan ("Dr. Fagan") as Seller and Lail Leonard ("Ms. Leonard") as President of AAL-JAY as Purchaser. A true and correct copy of the Contract is attached hereto as **Exhibit "3"**.

8. Pursuant to the terms of the Contract, Landlord agreed to sell the Property to the Tenant for the purchase price of \$1,050,000.00 ("Purchase Price"). *See Ex. "3"*.

9. The Purchase Price was to be paid on a schedule agreed by and between the Parties, as set forth in the Contract. *See Ex. "3"*.

10. Specifically, upon execution of the Contract, Tenant paid a lump sum of \$50,000 ("Down Payment") to the Landlord. *See Ex. "3"*.

11. The balance of \$1,000,000 was to be due and payable as follows:

Balance payable, together with interest on the whole sum that shall be from time to time unpaid at the rate of 3.25 per cent, per annum, payable in the amount of Five Thousand Six Hundred Seventy-one and 96/100 dollars (\$5,671.96) per month beginning on the 1st day of December, 2016, and continuing on the same day of each month thereafter until the 31st day of October, 2019, when all remaining principal and interest shall be paid. Interest shall be computed monthly and deducted from payment and the balance of payment shall be applied on principal.

See Ex. "3" at pg. 2. Also attached hereto as **Exhibit "4"** is a reconciliation schedule spreadsheet ("Reconciliation") setting forth the Tenant's payments for the Property beginning in December 2016.

...

12. The interest rate was set at 3.25% for the term of the Contract, and was not variable.
See Ex. "3".

13. In addition to the Purchase Price, the first year's Property taxes were to be paid by the Landlord and then added to the Purchase Price. After the first year, Tenant would assume responsibility for the Property taxes for each subsequent year. *See Ex. "2" at pg. 3.*

14. Despite this provision in the executed Contract, Landlord failed to add the 2017 Property taxes to the Purchase Price until March 2021.

15. Each party to the Contract agreed to insure their own contents of the Property. *See Ex. "2" at pg. 3.*

16. Under the terms of the Contract, Tenant also assumed responsibility for liability and hazard insurance for the duration of the Contract. Landlord agreed to purchase fire, hazard and windstorm insurance but Tenant was to "repay the amount so paid by Seller within ten (10) days of demand for same by Seller." *See Ex. "2" at pg. 3.*

17. In January 2018, the Parties entered into Addendum No. 1 to the Contract ("Addendum"). The Addendum was signed by Dr. Fagan on behalf of the Landlord and Ms. Leonard on behalf of the Tenant. A true and correct copy of the Addendum is attached hereto as **Exhibit "5"**.

18. Under the terms of the Addendum, Tenant agreed to cure defaults for January, February and March 2018. *See Ex. "5".*

19. Specifically, Tenant agreed to pay Landlord \$12,340.97 on or before February 2, 2018, but ultimately paid \$12,437.75. *See Ex. "5".*

20. Pursuant to the Addendum, the Parties further agreed that Tenant would pay to Landlord on or before February 20, 2018 the monthly payments due under the Contract for April and May 2018. *See Ex. "5".*

21. Thereafter, the Tenant would make each monthly payment due on the first day of each month under the Contract and continue said monthly payments four (4) months in advance until the amount due under the Contract was paid in full. *See Ex. "5".*

22. Tenant was also required to remain current on the payments due under the Contract for the insurance and property taxes. *See Ex. "5"*.

23. The Addendum further set forth provisions for future defaults: "In the event Purchaser fails to timely make payment of the Deferred Amount to Seller or any of the payments due under Section 4 and 5 of this Addendum or Purchaser otherwise defaults under the terms of the Contract in the future, Purchaser agrees to immediately vacate the Property, deliver possession of the Property to Seller and cooperate with Seller in terminating the Contract." *See Ex. "5"*.

TENANT MAKES PAYMENTS FOR ARREARS

24. On February 12, 2018, after the Parties executed the Addendum, I contacted Landlord's accountant, Michael Noll at Lorenzen & Noll, CPAs ("Mr. Noll") to request documentation for the insurance amounts in arrears as well as the amounts billed in advance pursuant to the agreed terms of the Addendum, including statements of all premiums paid for 2017 and 2018. Mr. Noll provided the requested information (copies of insurance policies, invoices and receipts for payment) on February 21, 2018. A true and correct copy of the February 12, 2018 email exchange with Mr. Noll, including attachments, is attached hereto as **Exhibit "6"**.

25. On March 9, 2018, Mr. Noll emailed Ms. Leonard advising that "[u]pon receipt of the balance due of \$12,437.75, this will bring Mr. Decarlo [*sic*] fully paid up through June 30, 2018." A true and correct copy of the March 9, 2018 email exchange with Mr. Noll is attached hereto as **Exhibit "7"**.

26. In his March 9, 2018 email, Mr. Noll further stated that in order "[t]o stay 3+ months ahead, Mr. Decarlo [*sic*] is required to pay the July loan payment of \$5,671.96 on April 1, 2018." *See Ex. "7"*.

27. On March 10, 2018, Tenant paid Landlord \$12,437.75, the total amount of the outstanding arrears pursuant to the Addendum. A true and correct copy of Check No. 2141 is attached hereto as **Exhibit "8"**.

...

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PROPERTY DAMAGE AND INSURANCE CLAIM

36. In 2019 the Property sustained significant water damage as a result of a pipe burst.

37. In connection with the water damage, a claim was filed against the Property insurance carrier, Chubb, under policy number 1019823002.

38. On May 28, 2020, Chubb approved the claim in the amount of approximately \$33,000, and withheld the \$10,000 deductible from the claim payments. Ultimately, the contractors were paid approximately \$77,000 to make the necessary repairs to make the Property habitable.

39. Beginning in July 2020, Landlord again increased the interest rate on the payments from 4.85% to 5.125%. Again, this rate increase was never fully explained to the Tenant until August 2020, at which time Landlord retroactively assessed the higher interest rate. At that time, Dr. Fagan claimed that the increased interest rate was not a variable rate, but a "sliding scale" and "is what it is." Neither the Contract nor the Addendum included provisions for changes to the interest rate.

40. On July 2, 2020, Kendrah Hardin, Dr. Fagan's bookkeeper, ("Ms. Hardin") sent the breakdown of the principal and interest payments for the Property to Ms. Leonard. A true and correct copy of the July 2, 2020 email exchange and the attachments is attached hereto as **Exhibit "11"**.

41. On July 16, 2020, Ms. Hardin sent a summary of the 2020 payments to Ms. Leonard. A true and correct copy of the July 16, 2020 email exchange and the attachments is attached hereto as **Exhibit "12"**.

42. On August 11, 2020, Ms. Hardin sent an email to Ms. Leonard regarding past due payments from April 2020 through August 2020. A true and correct copy of the August 11, 2020 email is attached hereto as **Exhibit "13"**.

43. In response, on August 15, 2020, Ms. Leonard sent an email to Ms. Hardin explaining that the prior advance payments had been applied to the rent for February, March and April 2020. Ms. Leonard further stated that the payment for May 2020 was being sent. A true and correct copy of the August 15, 2020 email is attached hereto as **Exhibit "14"**.

1 44. Ms. Leonard also requested an update on the status of the Chubb insurance payments
2 for the water damage claim, to which no response was provided by Ms. Hardin or Dr. Fagan. *See*
3 **Ex. "14"**.

4 **NEW PURCHASE AGREEMENT**

5 45. In January 2021, I engaged in discussions with Dr. Fagan's attorney, Richard Scott,
6 Esq. ("Attorney Scott") on behalf of the Tenant regarding the existing terms of the Property
7 purchase.

8 46. As a result of these conversations, on January 6, 2021, an Escrow Officer at First
9 American Title Insurance Company ("First American") sent a Residential Purchase Agreement
10 ("Purchase Agreement") to Ms. Leonard. A true and correct copy of the January 6, 2021 email
11 and attachments is attached hereto as **Exhibit "15"**.

12 47. According to the terms of the Purchase Agreement, the new Purchase Price for the
13 Property was \$800,000.00 ("New Purchase Price"), with a stipulation for \$5,000 to be placed in
14 escrow as Earnest Money Deposit ("EMD"). The New Purchase Price reflected the (35) prior
15 payments made under the terms of the original Contract and Addendum. *See Ex. "15"*.

16 48. On January 11, 2021, Ms. Leonard sent the signed Purchase Agreement to the First
17 American Escrow Officer. A true and correct copy of the January 11, 2021 email and attachments
18 is attached hereto as **Exhibit "16"**.

19 49. On January 12, 2021, Tenant wired \$50,000 into an escrow account. A true and
20 correct copy of the January 12, 2021 U.S. Bank General Wire Transfer Request is attached hereto
21 as **Exhibit "17"**.

22 **LANDLORD RESCINDS EXISTING OFFER AND DRAFTS REVISED PURCHASE AGREEMENT**

23 50. On January 12, 2021, Dr. Fagan contacted Ms. Leonard to dispute the New Purchase
24 Price, and formally withdrew the offer to sell the Property at the New Purchase Price of \$800,000.

25 51. On January 13, 2021, the First American Escrow Officer presented Ms. Leonard
26 with a revised Residential Purchase Agreement ("Revised Purchase Agreement") with a new
27 Purchase Price of \$895,000 instead of the previously agreed-upon Purchase Price of \$800,000. A
28

1 true and correct copy of the January 13, 2021 email and attachments is attached hereto as **Exhibit**
2 **"18"**.

3 52. As a result of the retroactive interest rate increases, the revised Purchase Price was
4 overvalued at \$871,560.01 as opposed to \$848,304.44, which would have been the price as of
5 December 31, 2020 had the rate interest rate remained at the contractual rate of 3.25% This
6 represented an increase to the original contract purchase price of \$36,695.56.

7 53. The Revised Purchase Agreement also required a \$50,000 EMD. *See Ex. "18"*.

8 54. On January 15 2021, Ms. Leonard rejected the Landlord's Revised Purchase
9 Agreement on behalf of the Tenant.

10 55. On January 22, 2021, Landlord presented a second revised Residential Purchase
11 Agreement ("Second Revised Purchase Agreement") with a new purchase price of \$885,000
12 ("Modified Purchase Price"). A true and correct copy of the Second Revised Purchase Agreement
13 is attached hereto as **Exhibit "19"**.

14 56. Under the proposed terms of the Second Revised Purchase Agreement, the Modified
15 Purchase Price was to be funded as follows:

16 The Purchase Price shall be paid as follows: (i) Buyer shall deliver to Seller
17 a promissory note in the amount of \$70,000, secured by a second deed of
18 trust against the Property (hereinafter referred to as the "Note" and "Second
19 Deed of Trust"), wherein only an amount of \$60,000 of such Note shall be
20 credited against the Purchase Price; and (ii) the remaining amount of the
21 Purchase Price of \$825,000 (\$885,000 - \$60,000) to be paid by Buyer in
22 Good Funds, on or before the Close of Escrow. The Purchase Price does not
23 include closing costs, prorations, or other fees and costs associated with the
24 purchase of the Seller's Property Interest, shall be paid for in addition to the
25 Purchase Price and as set forth in Section 8 of this Agreement.

26 *See Ex. "19" at age 2. See also the proposed Secured Promissory Note dated March 1, 2021 in the*
27 *amount of \$70,000 attached hereto as **Exhibit "20"**.*

28 57. To permit time to negotiate the terms of the Second Revised Purchase Agreement
and the Modified Purchase Price, the Landlord agreed to lease the Property to the Tenant for the
month of February 2021.

...

1 58. To that end, the Parties entered into a Residential Lease Agreement dated January
2 22, 2021 for the term of February 2021 for the agreed rent amount of \$7,000 ("First Lease
3 Agreement"). A true and correct copy of the January 22, 2021 First Lease Agreement executed by
4 Ms. Leonard is attached hereto as **Exhibit "21"**.

5 59. On February 23, 2021, at Tenant's request, Ms. Hardin sent to Tenant the
6 amortization schedule for the Property payments ("Amortization Schedule") which included the
7 increased interest rate. A true and correct copy of the February 23, 2021 email and attachment is
8 attached hereto as **Exhibit "22"**.

9 60. Tenant was current on the payments due and owing under the Amortization
10 Schedule through March 2021, based upon the credit of the \$30,000 payment made under the
11 Promissory Note.

12 61. On March 12, 2021, Landlord filed a Five-Day Notice to Quit for Tenancy At Will.
13 A true and correct copy of the Five-Day Notice to Quit for Tenancy At Will is attached hereto as
14 **Exhibit "23"**.

15 62. On March 15, 2021, Tenant and Landlord conferred regarding the updated
16 Amortization Schedule.

17 63. During this discussion, Landlord agreed to have his staff itemize all payments.

18 64. It was further agreed to enter into another lease agreement for the months of March
19 and April while discussions regarding the purchase of the Property continued.

20 65. On March 9, 2021, Landlord presented a second lease agreement which was dated
21 March 2, 2021. A true and correct copy of the March 9, 2021 email exchange and attachments is
22 attached hereto as **Exhibit "24"**.

23 66. Landlord also sent an unsigned Letter of Agreement attached to the March 9, 2021
24 email. The Letter of Agreement stated that, upon execution of the March Lease Agreement that
25 "all other agreements are terminated and of no further force or effect." There were also additional
26 provisions based on proposed closing dates. *See Ex. "24"*.

27 . . .

67. Under the terms of the Second Lease Agreement, Tenant would make (2) monthly payments in the amount of \$6,800 for the months of March and April 2021, of which \$3,000 of the payment amount would be applied to the Modified Purchase Price. *See Ex. "2"*.

68. Accordingly, Tenant submitted two checks to Landlord, each in the amount of \$6,800. A true and correct copy of the check numbers 3276 and 3277 representing payment for the March and April 2021 rent are attached hereto as **Exhibit "25"**.

69. After submission of the March and April rent payments, Tenant signed the March 2021 lease. *See Ex. "2"*.

70. Once the Second Lease Agreement was executed by the Tenant, the Landlord agreed to not pursue the March 12, 2021 Five-Day Notice to Quit for Tenancy At Will. Landlord further agreed that a new Purchase Agreement which would correctly reflect and apply all prior Property payments would be completed and submitted expeditiously ("Third Revised Purchase Agreement").

71. However, shortly thereafter, Tenant was informed by Landlord that the Third Revised Purchase Agreement would not be executed until the end of the lease term.

72. On March 17, 2021, as a result of this new information, Tenant decided to put a stop payment order on check numbers 3276 and 3277.

73. On March 26, 2021, Tenant was served with the Landlord's Notice. *See Ex. "1"*.

74. As of the date of this declaration, Tenant has paid \$283,598.00 in payments for the Property, current through April 2021, of which \$155,149.17 has been applied to the interest and \$128,439.48 has been applied to the principal. *See Ex. "4"*.

75. In addition to the Property payments, Tenant has also paid \$23,661.06 in insurance payments. *See Ex. "4"*.

76. Tenant has also paid \$20,393.36 in tax payments for the years 2017 through January 2021. *See Ex. "4"*.

77. Tenant has also funded \$50,000 for the Earnest Money Deposit in escrow for the purchase of the Property.

TENANT FILES COMPLAINT AGAINST LANDLORD

78. On April 5, 2021, Tenant filed a Verified Complaint in the Eighth Judicial District Court for Clark County against the Landlord, pending as *AAL-JAY, Inc. v. Fagan*, Case No. A-21-832379-C, Dept Department 24.¹ A true and correct copy of the Verified Complaint (without exhibits) is attached hereto as **Exhibit "26"**.

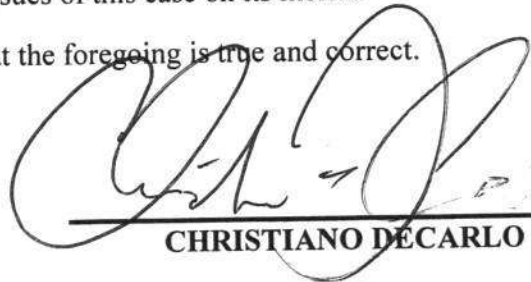
79. In the Complaint, Tenant is seeking an Order from the Court to enforce the existing Purchase Agreement, and the Tenant is seeking specific performance to enforce its rights to purchase the Property.

80. NRS § 40.253(6) states that after a hearing "to determine the truthfulness and sufficiency of [the affidavits and notices filed, summary eviction will be granted] [i]f the court determines that there is no legal defense ... and the tenant is guilty of an unlawful detainer." In considering summary eviction a Court must consider raised legal defenses. *Anvui, LLC v. G.L. Dragon, LLC*, 123 Nev. 212, 215-16, 163 P.3d 405, 407 (2007).

81. As set forth in this Affidavit, genuine questions of material fact exist between the Parties, and therefore Tenant asks that the Court deny the Landlord's request for summary eviction and permit the District Court to decide the issues of this case on its merits.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 6th day of April, 2021.


CHRISTIANO DECARLO

¹ Plaintiff requests that this Court take judicial notice of the Justice Court docket. This Court may take judicial notice pursuant to Chapter 47 of the Nevada Revised Statutes under the Nevada Rules of Evidence. *See* NEV. REV. STAT. §§ 47.130-.170; *see also* *Brelant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993) (allowing Nevada courts to take judicial notice of matters of public record); *FGA, Inc. v. Giglio*, 128 Nev. 271, 286, 278 P.3d 490, 500 (2012) (same).

EXHIBIT C

RESIDENTIAL PURCHASE AGREEMENT

This Residential Purchase Agreement ("Agreement") is entered into on this 14th day of December, 2020, ("Effective Date") by and between the Philip J. Fagan, Jr., as Trustee for the Philip J. Fagan, JR. 2001 Trust ("Buyer") and AAL-JAY, Inc., a Nevada corporation ("Seller"). Buyer and Seller may collectively be referred to herein as Parties.

RECITALS

WHEREAS, Seller owns the residential real property located 1 Grand Anacapri, Henderson, Nevada 89011, assessor parcel number 162-22-810-011, (the "Property");

WHEREAS, on or around November 2016, Seller and Buyer entered into that certain Contract for Deed (the "Previous Contract"), wherein Seller agreed to sell, and Buyer agreed to Buy, the Property;

WHEREAS, the Previous Contract provided that the purchase price was to be \$1,050,000, in which Buyer was to pay to Seller approximately thirty five (35) monthly payments of principal and interest, with the remaining balance of principal and interest of the purchase price to be paid on or before October 31, 2019;

WHEREAS, Buyer has made monthly payments, but has failed to pay the remaining principal balance, with accrued interest thereon, on or before October 31, 2019;

WHEREAS, Seller is willing to give to Buyer credit for the principal portion of the monthly payments made to Seller in establishing the Purchase Price (as defined below) of this Agreement;

WHEREAS, based upon the terms and conditions set forth below, Buyer wishes to purchase all of Seller's right, title, and interest in and to the Property, and Seller wishes to sell all of Seller's right, title, and interest in and to the Property.

AGREEMENT

NOW THEREFORE, for good cause and valuable consideration, the receipt and sufficiency of which is hereby agreed upon, the Parties agree as follows:

1. The Previous Contract is hereby terminated, and all terms and conditions expressed therein are of no longer force or effect on either Party.
2. Purchase Price:
 - a. The Purchase Price for the Property shall be Eight Hundred Thousand and NO/100ths Dollars (\$800,000.00) ("Purchase Price").

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum of counteroffer.

Buyer's Initials:

Seller's Initials:

- b. The Purchase Price shall be paid by Buyer in Good Funds on or before the Close of Escrow. The Purchase Price does not include closing costs, prorations, or other fees and costs associated with the purchase of the Seller's Property Interest. Closing costs, prorations and all fees and costs associated with the purchase of Seller's Property Interest shall be paid for as set forth in Section 7 of this Agreement.
- c. Upon the opening of escrow, Buyer shall deposit the sum of Five Thousand and No/100ths Dollars (\$5,000.00) as and for its Earnest Money Deposit ("EMD"). The EMD shall be credited toward the Purchase Price at Close of Escrow, as defined below, or delivered to Seller in the event of Buyer's default as set forth herein.

3. **FIXTURES AND PERSONAL PROPERTY:** The following items will be transferred to Buyer, free of liens, with the sale of the Property with no real value unless stated otherwise herein. Unless an item is covered under Section 7(F) of this Agreement, all items are transferred in an "AS IS" condition. All fixtures, fittings and furniture including, but not limited to: electrical, mechanical, lighting, plumbing and heating fixtures, ceiling fan(s), fireplace insert(s), gas logs and grates, solar power system(s), built-in appliance(s) including ranges/ovens, window and door screens, awnings, shutters, window coverings, attached floor covering(s), television antenna(s), satellite dish(es), private integrated telephone systems, air coolers/conditioner(s), pool/spa equipment, garage door opener(s)/remote control(s), mailbox, in-ground landscaping, trees/shrub(s), water softener(s), water purifiers, security systems/alarm(s) and furniture remaining at the Property upon COE.

4. **ESCROW:**

- a. **OPENING OF ESCROW:** The purchase of the Property shall be consummated through Escrow ("Escrow"). Opening of Escrow shall take place by the end of one (1) business day after Acceptance of this Agreement ("Opening of Escrow"), at First American Title Company ("Escrow Company" or "Escrow Holder") with Michele Eaton ("Escrow Officer") (or such other escrow officer as Escrow Company may assign). Opening of Escrow shall occur upon Escrow Company's receipt of this fully accepted Agreement. Escrow Holder is instructed to notify the Parties (through their respective Agents) of the opening date and the Escrow Number.
- b. **CLOSE OF ESCROW:** Close of Escrow shall be on or before 5:00 pm PST on Thursday, December 17, 2020 ("COE").
- c. **IRS DISCLOSURE:** Seller is hereby made aware that there is a regulation that requires all Escrow Holders to complete a modified 1099 form, based upon specific information known only between parties in this transaction and the Escrow Holder. Seller is also made aware that Escrow Holder is required by federal law to provide

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum of counteroffer.

Buyer's Initials:

Seller's Initials:

this information to the Internal Revenue Service after COE in the manner prescribed by federal law.

5. **PRELIMINARY TITLE REPORT:** The Title Company shall provide Buyer with a Preliminary Title Report ("PTR") to review, which must be approved or rejected prior to Close of Escrow (the "Title Review Period"). If Buyer does not object to the PTR prior to Close of Escrow, the PTR shall be deemed accepted. If Buyer makes an objection to any item(s) contained within the PTR, Seller shall have five (5) business days after receipt of objections to correct or address the objections. If, within the time specified, Seller fails to have each such exception removed or to correct each such objection, Buyer shall have the option to: (a) terminate this Agreement by providing notice to Seller and Escrow Officer, or (b) elect to accept title to the Property as is. All title exceptions approved or deemed accepted are hereafter collectively referred to as the "Permitted Exceptions." Buyer and Seller agree that the Deed of Trust recorded on May 09, 2006, in Book 20060509, as Instrument No. 04291, to secure an original indebtedness of \$1,400,000, is NOT a Permitted Exception, and Seller agrees to remove such exception to title of the Property at Close of Escrow.

6. Intentionally deleted.

7. **TITLE INSURANCE:** This Purchase Agreement is contingent upon the Buyer's ability to receive, good and marketable title to Seller's Property Interest on COE as evidenced by a policy of title insurance, naming Buyer as the insured in an amount equal to the purchase price, furnished by the title company identified in Section 3. Said policy shall be in the form necessary to effectuate marketable title or its equivalent and shall be paid for as set forth in Section 7.

8. **FEES, AND PRORATIONS:** The fees and costs associated with the closing shall be paid by the Parties as follows:

Loan Costs	Paid by Buyer
Escrow Company Fees:	Paid by Buyer
Title Policy:	Paid by Buyer
Real Property Transfer Tax:	Paid by Seller

PRORATIONS: Any and all rents, taxes, interest, homeowner association fees, trash service fees, payments on bonds, SIDs, LIDs, and assessments assumed by the Buyer, and other expenses of the property shall be prorated as of the date of the recordation of the deed.

ATTORNEYS FEES: Each Party shall pay its own attorneys' fees associated with and respect to this transaction.

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum of counteroffer.

Buyer's Initials: _____

Seller's Initials:

9. **TRANSFER OF TITLE:** Upon COE, Buyer shall tender to Seller the agreed upon Purchase Price, and Seller shall tender to Buyer marketable title to the Property free of all encumbrances other than (1) current real property taxes, (2) covenants, conditions and restrictions (CC&R's) and related restrictions, (3) zoning or master plan restrictions and public utility easements; and (4) any obligations assumed and encumbrances accepted by Buyer prior to COE. Buyer is advised the Property may be reassessed after COE which may result in a real property tax increase or decrease.

10. **COMMON-INTEREST COMMUNITIES:** If the Property is subject to a Common Interest Community ("CIC"), Seller is required to provide at Buyer's expense the CIC documents as required by NRS 116.4109 (collectively, the "Resale Package"). Buyer waives any rights to CIC documents, to the extent such apply, as Buyer has been in possession of the Property and should be aware of the status of the CIC. To the extent there are CIC Capital Contributions or CIC Transfer Fees related to the Property in connection with the transaction contemplated by this Agreement, those contributions and transfer fees shall be paid by Seller.

11. **DELIVERY OF POSSESSION:** Seller shall deliver the Property along with any keys, alarm codes, garage door opener/controls and title or bill of sale related to any other item listed under Section 2 above, upon COE, if requested by Buyer.

12. **RISK OF LOSS:** Risk of loss shall be governed by NRS 113.040. This law provides generally that if all or any material part of the Property is destroyed before transfer of legal title or possession, Seller cannot enforce the Agreement and Buyer is entitled to recover any portion of the sale price paid. If legal title or possession has transferred, risk of loss shall shift to Buyer.

13. **ASSIGNMENT OF THIS AGREEMENT:** This Agreement is non-assignable unless agreed upon in writing by the Parties.

14. **DEFAULT:**

a. **MEDIATION:** Before any legal action is taken to enforce any term or condition under this Agreement, the parties agree to engage in mediation, a dispute resolution process, through a mediator mutually agreed upon by the parties, except in the case of a claim of specific performance. Mediation fees, if any, shall be divided equally among the Parties. Each party has consulted with an independent lawyer of their choice to review this mediation provision and this Agreement before agreeing thereto. By initialing below, the parties confirm that they have read and understand this section and voluntarily agree to the provisions thereof.

BUYER(S) INITIALS: XX / SELLER(S) INITIALS: /

b. **IF SELLER DEFAULTS:** If Seller defaults in performance under this Agreement, Buyer may, at Buyer's option, (i) terminate this Agreement and receive the

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum of counteroffer.

Buyer's Initials: XX

Seller's Initials: XX

EMD, or (ii) take legal action for specific performance, including the claim for attorneys' fees and costs in taking such action of specific performance.

c. IF BUYER DEFAULTS: If Buyer defaults in performance under this Agreement, Seller may retain, as liquidated damages, the EMD and shall keep title to the Property. In this respect, the Parties agree that Seller's actual damages would be difficult to measure and that the EMD is in fact a reasonable estimate of the damages that Seller would suffer as a result of Buyer's default.

15. CANCELLATION OF AGREEMENT: In the event this Agreement is properly cancelled in accordance with Section 5, neither Buyer nor Seller will be reimbursed for any expenses incurred in conjunction with due diligence, inspections, appraisals or any other matters pertaining to this transaction (unless otherwise provided herein or except as otherwise provided by law) and both Parties shall be obligated to pay, equally, any costs set forth herein associated with this transaction and such cancellation.

16. ESCROW INSTRUCTIONS: If this Agreement or any matter relating hereto shall become the subject of any litigation or controversy, Buyer and Seller agree, jointly and severally, to hold Escrow Holder free and harmless from any loss or expense, except losses or expenses as may arise from Escrow Holder's negligence or willful misconduct.

17. BROKER'S COMPENSATION/FEEs: Buyer and Seller agree that the sale of the Property is not subject to any Broker's fees.

18. DEFINITIONS: "Acceptance" means the date that both parties have consented to a final, binding contract by affixing their signatures to this Agreement and all counteroffers and said Agreement and all counteroffers have been delivered to both parties pursuant to Section 24 herein. "Agreement" includes this document as well as all accepted counteroffers and addenda. "Appraisal" means a written appraisal or Notice of Value as required by any lending institution prepared by a licensed or certified professional. "Bona Fide" means genuine. "Broker" means the Nevada licensed real estate broker listed herein representing Seller and/or Buyer (and all real estate agents associated therewith). "Business Day" excludes Saturdays, Sundays, and legal holidays. "Calendar Day" means a calendar day from/to midnight unless otherwise specified. "CIC" means Common Interest Community (formerly known as "HOA" or homeowners' associations). "CIC Capital Contribution" means a one-time non-administrative fee, cost or assessment charged by the CIC upon change of ownership. "CIC Transfer Fees" means the administrative service fee charged by a CIC to transfer ownership records. "Close of Escrow (COE)" means the time of recordation of the deed in Buyer's name. "Default" means the failure of a Party to observe or perform any of its material obligations under this Agreement. "Delivered" means personally delivered to Parties or respective Agents, transmitted by facsimile machine, electronic means, overnight delivery, or mailed by regular mail. "Escrow Holder" means the neutral party that will handle the closing. "Good Funds" means an acceptable form of payment determined by Escrow Holder in accordance with NRS 645A.171. "IRC" means the Internal Revenue Code (tax code). "N/A" means not

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum of counteroffer.

Buyer's Initials:

Seller's Initials:

applicable. "NAC" means Nevada Administrative Code. "NRS" means Nevada Revised Statutes as Amended. "Party" or "Parties" means Buyer and Seller. "PITI" means principal, interest, taxes, and hazard insurance. "PST" means Pacific Standard Time, and includes daylight savings time if in effect on the date specified. "PTR" means Preliminary Title Report. "Property" means the real property and any personal property included in the sale as provided herein. "Receipt" means delivery to the party or the party's agent. "RPA" means Residential Purchase Agreement.

19. SIGNATURES, DELIVERY, AND NOTICES:

- a. This Agreement may be signed by the parties on more than one copy, which, when taken together, each signed copy shall be read as one complete form. This Agreement (and documents related to any resulting transaction) may be signed by the parties manually or digitally. Facsimile signatures may be accepted as original.
- b. When a Party wishes to provide notice as required in this Agreement, such notice shall be sent regular mail, personal delivery, overnight delivery, by facsimile, and/or by electronic transmission to the Agent for that Party. The notification shall be effective when postmarked, received, faxed, delivery confirmed, and/or read receipt confirmed in the case of email. Delivery of all instruments or documents associated with this Agreement shall be delivered to the Agent for Seller or Buyer if represented. Any cancellation notice shall be contemporaneously delivered to Escrow in the same manner.

20. MISCELLANEOUS: Time is of the essence. No change, modification or amendment of this Agreement shall be valid or binding unless such change, modification or amendment shall be in writing and signed by each party. This Agreement will be binding upon the heirs, beneficiaries and devisees of the parties hereto. This Agreement is executed and intended to be performed in the State of Nevada, and the laws of that state shall govern its interpretation and effect. The parties agree that the county and state in which the Property is located is the appropriate forum for any action relating to this Agreement. Should any party hereto retain counsel for the purpose of initiating litigation to enforce or prevent the breach of any provision hereof, or for any other judicial remedy, then the prevailing party shall be entitled to be reimbursed by the losing party for all costs and expenses incurred thereby, including, but not limited to, reasonable attorney's fees and costs incurred by such prevailing party.

(signatures follow on next page)

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum of counteroffer.

Buyer's Initials:

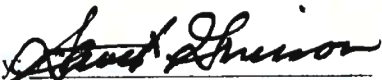
Seller's Initials:

IN WITNESS WHEREOF, each of the persons executing this Agreement has authority on behalf of the respective party to do so and has had the opportunity to review this Agreement with counsel of their choosing and based upon their review and understanding of this Agreement, agrees to the terms and conditions set forth herein as of the Effective Date set forth above.

Dated this 14th day of December, 2020.


SELLER

Philip J. Fagan, JR. 2011 Trust


By: 
Philip J. Fagan, Jr., its Trustee

BUYER

AAL-JAY, Inc.
a Nevada corporation

By: 
Lail Leonard, its President

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum of counteroffer.

Buyer's Initials: 

Seller's Initials: 

EXHIBIT D

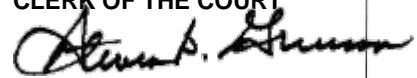
BUSINESS ENTITY AND MARK SEARCH RESULT

Name	Status	Filing Date	Type	NV Business ID	Entity Number	Mark Number	Action
AAL-JAY, INC.	Active	12/16/1965	Domestic Corporation (78)	NV19651001783	C1975-1965		Make
ALL STATE TRAFFIC CONTROL	Permanently Revoked	07/09/2001	Domestic Corporation (78)	NV20011357808	C18136-2001		Make
CKC MANAGEMENT COMPANY	Permanently Revoked	09/11/1987	Domestic Corporation (78)	NV19871032922	C7030-1987		Make
DECARLO HOLDINGS, LLC	Permanently Revoked	06/28/2006	Domestic Limited-Liability Company (86)	NV20061112027	E0484892006-9		Make
FANCULO HOLDINGS, LLC	Active	08/10/2016	Domestic Limited-Liability Company (86)	NV20161471534	E0353342016-8		Make
GALE ENTERPRISES, INC.	Permanently Revoked	07/15/1976	Domestic Corporation (78)	NV19761004316	C2660-1976		Make
KALEIDOSCOPE, INC.	Active	02/16/1988	Domestic Corporation (78)	NV19881008246	C1227-1988		Make
MIMAC, INC.	Permanently Revoked	07/31/1978	Domestic Corporation (78)	NV19781006765	C3868-1978		Make

Name	Status	Filing Date	Entity Type	NV Business ID	Entity Number	Mark Number	Action
NORTON CREATIVE ENTERTAINMENT, INC.	Permanently Revoked	05/11/1997	Domestic Corporation (78)	NV19971315827	E01740-1997		Ma
PETRO GROUP, LLC	Dissolved	05/22/2009	Domestic Limited-Liability Company (86)	NV20091165382	E0279482009-4		Ma
RIDESHARE LEASING, INC.	Active	12/01/2016	Domestic Corporation (78)	NV20161700300	E0519492016-5		Ma
SANTINI TRANSPORT	Active	04/12/2013	Domestic Corporation (78)	NV20131224150	E0183982013-5		Ma
SOCIETY OF SEVEN, LAS VEGAS	Permanently Revoked	03/20/2001	Domestic Corporation (78)	NV20011244763	C6816-2001		Ma
TOTALLY UNIQUE, INC.	Permanently Revoked	03/30/2006	Domestic Corporation (78)	NV20061605667	E0240002006-0		Ma
Page 1 of 1, records 1 to 14 of 14							

[Return To Search](#)

EXHIBIT E



NOE
BLACK & WADHAMS
Allison R. Schmidt, Esq.
Nevada Bar No. 10743
10777 West Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
Telephone: (702) 869-8801
Facsimile: (702) 869-2669
E-mail: Allison R. Schmidt@blackwadhams.law
Attorneys for Defendants/Counterclaimants

DISTRICT COURT
CLARK COUNTY, NEVADA

<p>AAL-JAY, INC., a Nevada corporation,</p> <p>Plaintiff,</p> <p>v.</p> <p>PHILLIP J. FAGAN, JR., an individual, and as Trustee of the PHILIP J. FAGAN, JR. 2001 TRUST,</p> <p>Defendants.</p>	<p>Case No. A-21-832379-C Dept. No.: 24</p> <p>NOTICE OF ENTRY OF ORDER GRANTING IN PART MOTION TO STAY PENDING APPEAL ON SHORTENING TIME</p>
<p>PHILLIP J. FAGAN, JR., as Trustee of the PHILIP J. FAGAN, JR. 2001 TRUST,</p> <p>Counterclaimant,</p> <p>v.</p> <p>AAL-JAY, INC., a Nevada corporation; CHRISTIANO DE CARLO, an individual; and LAIL LEONARD, an individual,</p> <p>Counter-Defendants.</p>	

PLEASE TAKE NOTICE that an ORDER GRANTING IN PART
MOTION TO STAY PENDING APPEAL ON SHORTENING TIME was entered

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on the 3rd day of June 2022. A copy of which is attached.

Dated: June 6th, 2022

BLACK & WADHAMS

By: /s/ Allison R. Schmidt
Allison R. Schmidt, Esq.
10777 West Twain Avenue, Suite 300
Las Vegas, NV 89135

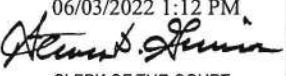
Attorneys for Defendants/Counterclaimants

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am employee of Black & Wadhams, and that on the 6th day of June 2022, I served the above and foregoing NOTICE OF ENTRY OF ORDER GRANTING IN PART MOTION TO STAY PENDING APPEAL ON SHORTENING TIME on the following parties in compliance with the Nevada Electronic Filing and Conversion Rules:

Oganna Brown, Esq.
LEWIS ROCA ROTHERGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Ste. 600
Las Vegas, NV 89169
OBrown@lewisroca.com

/s/ Diane Meeter
An Employee of Black & Wadhams


CLERK OF THE COURT

ORDR

Allison R. Schmidt, Esq.
BLACK & WADHAMS
Nevada Bar No. 10743
10777 West Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
Telephone: (702) 869-8801
Facsimile: (702) 869-2669
E-mail: aschmidt@blackwadhamslaw.com
Attorney for Defendants/Counterclaimants

DISTRICT COURT

CLARK COUNTY, NEVADA

<p>AAL-JAY, INC., a Nevada corporation,</p> <p>Plaintiff,</p> <p>v.</p> <p>PHILIP J. FAGAN, JR., an individual, and as Trustee of the PHILIP J. FAGAN, JR. 2001 TRUST,</p> <p>Defendants.</p>	<p>Case No. A-21-832379-C Dept. No.: 24</p> <p>ORDER GRANTING IN PART MOTION TO STAY PENDING APPEAL ON SHORTENING TIME</p>
<p>PHILIP J. FAGAN, JR., as Trustee of the PHILIP J. FAGAN, JR. 2001 TRUST,</p> <p>Counterclaimant,</p> <p>v.</p> <p>AAL-JAY, INC., a Nevada corporation; CHRISTIANO DE CARLO, an individual; and LAIL LEONARD, an individual,</p> <p>Counter-Defendants.</p>	<p>Date of Hearing: April 5, 2022 Time of Hearing: 9:00 a.m.</p> <p>Judge: Hon. Erika Ballou</p>

Defendants/Counterclaimants PHILIP J. FAGAN, JR., as Trustee of the PHILIP J. FAGAN, JR., 2001 TRUST's (hereinafter "Fagan" or "Defendants/Movants") Motion for Stay

1 pending appeal came on for hearing before this Court on shortened time on May 31, 2022, at
2 9:00 a.m. before Department 24 of the Eighth Judicial District Court, in and for Clark County,
3 Nevada, with the Honorable Erika Ballou presiding. Allison R. Schmidt, Esq. of the law firm of
4 Black & Wadhams appeared on behalf of Defendants/Movants and Ogonna M. Brown, Esq.
5 from the law firm of Lewis Roca Rothgerber Christie LLP appeared on behalf of Plaintiff AAL-
6 JAY, INC. ("Plaintiff"). The Court, having reviewed the Motion, Opposition, and Reply, and
7 having heard the oral arguments of counsel, and good cause appearing therefor, finds as follows:
8

9 In assessing a motion for stay pending appeal, Nevada courts assess the four factors: (1)
10 whether the object of the appeal will be defeated if the stay is denied, (2) whether [the moving
11 party] will suffer irreparable or serious injury if the stay is denied, (3) whether [the responding
12 party] will suffer irreparable or serious injury if the stay is granted, and (4) whether [the moving
13 party] is likely to prevail on the merits in the appeal. *Mikohn Gaming Corp. v. McCrea*, 120
14 Nev. 248, 251, 89 P. 3d 36, 38 (2004). In assessing these factors, this Court finds that
15 Defendants will suffer irreparable harm and the object of Defendants' appeal will be defeated
16 through the loss of Defendants' rights in the property if a stay is not entered. A balance of the
17 hardships favors the Defendants, as Plaintiff will only suffer a delay in having titled ownership
18 of the property. Further, this Court is imposing a stay, in part, to maintain the status quo pending
19 the adjudication of the appeal.
20

21
22 Based on the foregoing, **IT IS HEREBY ORDERED** that Defendants' motion for stay
23 pending appeal is **GRANTED IN PART**;

24 **IT IS FURTHER ORDERED** that the Order Granting Plaintiff's Emergency Motion for
25 First American Title Insurance Company to Turnover Funds in Escrow to the Buyer AAL-JAY,
26 INC. entered on May 6, 2022; is **MOOT IN PART** because First American Title Insurance
27 Company turned over the funds in escrow in the amount of \$170,000 to the Buyer AAL-JAY,
28

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

1 INC. and obtained its discharge of liability prior to the hearing on the Motion to Stay

2 **IT IS FURTHER ORDERED** that remainder of the Order Granting Plaintiff's
3 Emergency Motion for First American Title Insurance Company to Turnover Funds in Escrow to
4 the Buyer AAL-JAY, INC. is **STAYED** subject to the Defendants' posting of the Bond as
5 defined below.
6

7 **IT IS FURTHER ORDERED** that the Order Denying Defendants' Motion For
8 Injunctive Relief and Request for Relief From Specific Performance Order is **STAYED** subject
9 to Defendants' posting of the Bond as defined below.

10 **IT IS FURTHER ORDERED** that the Defendants shall not commence or resume any
11 efforts to evict Plaintiff during the stay of the above-referenced Orders.

12 **IT IS FURTHER ORDERED** that Plaintiff shall not be required to pay any rent to
13 Defendants during the stay of the above-referenced Orders.

14 **IT IS FURTHER ORDERED** that Defendants shall post a bond in the amount of
15 \$25,000.00 (TWENTY FIVE THOUSAND DOLLARS AND NO CENTS) ("Bond") with the
16 Clark County District Court Clerk as a condition of the imposition of the Stay of the above-
17 referenced Orders, and that the Stay shall become effective upon the issuance of this order AND
18 the filing and service of Notice of Posting of the required Bond by Defendants.
19

20 **IT IS SO ORDERED.**

Dated this 3rd day of June, 2022



21
22
23 Respectfully submitted by:
24 **BLACK & WADHAMS**

A5B 641 8D24 7652
Erika Ballou
District Court Judge

25 s/ Allison R. Schmidt
26 Allison R. Schmidt, Esq.
27 Nevada Bar No. 10743
28 10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
E-mail: aschmidt@blackwadhams.law
Attorney for Defendants/Counterclaimants

1 Reviewed and approved as to form and content, all rights reserved by:

2 **LEWIS ROCA ROTHERGERBER**
3 **CHRISTIE LLP**

4
5 /s/ Ogonna M. Brown

6 Ogonna M. Brown, Esq.

7 Nevada Bar No. 7589

8 3993 Howard Hughes Parkway, Ste. 600

9 Las Vegas, NV 89169

10 *Attorneys for Plaintiff/Counterdefendant*

Diane Meeter

From: Allison Schmidt
Sent: Thursday, June 2, 2022 9:07 AM
To: Diane Meeter
Subject: Fwd: Fagan - proposed order on stay (AAL-Jay Revisions).doc
Attachments: image001.png; image002.png; Fagan - proposed order on stay.doc

Follow Up Flag: Follow up
Flag Status: Flagged

Can we submit this to the court

Allison R. Schmidt, Esq.

Begin forwarded message:

From: "Brown, Ogonna" <OBrown@lewisroca.com>
Date: June 2, 2022 at 8:58:13 AM PDT
To: Allison Schmidt <Aschmidt@blackwadhamslaw.com>
Cc: "Lord, Nicole" <NLord@lewisroca.com>, "Lopez, Kim" <KLopez@lewisroca.com>, "Hess, Jennifer" <JHess@lewisroca.com>
Subject: Re: Fagan - proposed order on stay (AAL-Jay Revisions).doc

Thank you, you are authorized to affix my electronic signature.

Ogonna Brown
Partner
702.474.2622
702.949.8298
OBrown@lrrc.com

Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
LRRC.com

On Jun 2, 2022, at 7:55 AM, Allison Schmidt <Aschmidt@blackwadhamslaw.com> wrote:

[EXTERNAL]

Thank you. I will submit with your proposed changes. Please confirm I can submit your version with your e-signature. Thank you!

Allison R. Schmidt, Esq.

On Jun 1, 2022, at 10:59 PM, Brown, Ogonna
<OBrown@lewisroca.com> wrote:

Dear Allison:

Attached please find my proposed revisions of the order for your review and consideration. Thank you.

Ogonna Brown
Partner

OBrown@lewisroca.com
D. 702.474.2622

This message and any attachments are intended only for the use of the individual or entity to which they are addressed. If the reader of this message or an attachment is not the intended recipient or the employee or agent responsible for delivering the message or attachment to the intended recipient you are hereby notified that any dissemination, distribution or copying of this message or any attachment is strictly prohibited. If you have received this communication in error, please notify us immediately by replying to the sender. The information transmitted in this message and any attachments may be privileged, is intended only for the personal and confidential use of the intended recipients, and is covered by the Electronic Communications Privacy Act, 18 U.S.C. §2510-2521.

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1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 AAL-JAY, INC., Plaintiff(s)

CASE NO: A-21-832379-C

7 vs.

DEPT. NO. Department 24

8 Philip Fagan, Jr., Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 6/3/2022

15 Ogonna Brown	obrown@lewisroca.com
16 Diane Meeter	dmeeter@blackwadham.s.law
17 Chris Yergensen	cyergensen@blackwadham.s.law
18 Jerri Hunsaker	jhunsaker@blackwadham.s.law
19 Marsha Stallsworth	mstallsworth@blackwadham.s.law
20 Kim Lopez	klopez@lewisroca.com
21 OMB Calendar	ombcalendar@lewisroca.com
22 Allison Schmidt	aschmidt@blackwadham.s.law
23 Allison Schmidt	aschmidt@blackwadham.s.law
24 Allison Schmidt	aschmidt@blackwadham.s.law
25 Jennifer Hess	jhess@lewisroca.com

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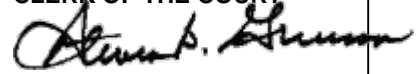
Nicole Lord

nlord@lewisroca.com

Dibora Berhanu

dberhanu@lewisroca.com

EXHIBIT F



1 **NEOJ**
2 OGONNA BROWN, ESQ.
3 Nevada Bar No. 7589
4 OBrown@lewisroca.com
5 LEWIS ROCA ROTHGERBER CHRISTIE LLP
6 3993 Howard Hughes Parkway, Suite 600
7 Las Vegas, Nevada 89169
8 Telephone (702) 949-8200
9 Facsimile: (702) 949-8398
10 *Attorneys for Plaintiff AAL-JAY, INC.*

7 **DISTRICT COURT**
8 **COUNTY OF CLARK, NEVADA**

9 AAL-JAY, INC., a Nevada Corporation.

10 Plaintiff,

11 v.

12 PHILIP J. FAGAN, JR., an individual, and
13 as Trustee of the PHILIP J. FAGAN, JR.
14 2001 TRUST; DOES I through X, inclusive,
15 and ROE CORPORATIONS I through X,
16 inclusive,

17 Defendants.

Case No. A-21-832379-C

Dept. No. 24

**NOTICE OF ENTRY OF ORDER
GRANTING PLAINTIFF'S MOTION TO
QUASH AND OBJECTION TO
DEFENDANTS' ISSUANCE OF SUBPOENA
TO FIRST AMERICAN TITLE COMPANY**

16 NOTICE IS HEREBY GIVEN that an Order Granting Plaintiff's Motion to Quash and
17 Objection to Defendants' Issuance to Subpoena to First American Title Company ("Order") was
18 entered on August 25, 2022. A copy of the Order is attached hereto as **Exhibit A**.

19 DATED this 25th day of August, 2022.

20 LEWIS ROCA ROTHGERBER CHRISTIE LLP

21 By: /s/ Ogonna Brown

22 OGONNA BROWN, ESQ.

23 Nevada Bar No. 7589

24 OBrown@lewisroca.com

25 3993 Howard Hughes Parkway, Suite 600

26 Las Vegas, Nevada 89169

27 *Attorneys for Plaintiff AAL-JAY, Inc.*

CERTIFICATE OF SERVICE

Pursuant to NEFCR 9, NRCP 5(b), and EDCR 7.26, I certify that on August 25, 2022, I served a copy of **NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFF'S MOTION TO QUASH AND OBJECTION TO DEFENDANTS' ISSUANCE OF SUBPOENA TO FIRST AMERICAN TITLE COMPANY**, on all parties as follows:

☒ Electronic Service – By serving a copy thereof through the Court's electronic service system via the Odyssey Court e-file system

Attorneys for Defendant Philip Fagan JR, Philip J. Fagan Jr. 2001 Trust and The Trustee for Philip J. Fagan Jr. 2001 Trust

Jerri Hunsaker jhunsaker@blackwadhamslaw.com
Diane Meeter dmeeter@blackwadhamslaw.com
Chris V. Yergensen cyergensen@blackwadhamslaw.com

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

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

/s/ Gabriela Mercado

An employee of
Lewis Roca Rothgerber Christie LLP

EXHIBIT A

EXHIBIT A

Heather S. Hume
CLERK OF THE COURT

OGM

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

Email: OBrown@lewisroca.com

Attorneys for Plaintiff AAL-JAY, Inc.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

AAL-JAY, INC., a Nevada Corporation.

Plaintiff,

v.

PHILIP J. FAGAN, JR., an individual, and
as Trustee of the PHILIP J. FAGAN, JR.
2001 TRUST; DOES I through X, inclusive,
and ROE CORPORATIONS I through X,
inclusive,

Defendants.

Case No. A-21-832379-C

Dept. No. 24

**ORDER GRANTING PLAINTIFF'S
MOTION TO QUASH AND OBJECTION
TO DEFENDANTS' ISSUANCE OF
SUBPOENA TO FIRST AMERICAN
TITLE COMPANY**

Judge: Hon. Erika Ballou

This Court having read Plaintiff's Motion to Quash and Objection to Defendant/Counterclaimants' Issuance of Subpoena to First American Title Company ("Motion to Quash and Objection") filed on July 14, 2022, and Defendants/Counterclaimants' Opposition to Motion to Quash ("Opposition") filed on July 28, 2022, and having considered all papers and pleadings on file herein, and having determined that no hearing was necessary, and for good cause appearing therefore, finds the following:

This Court imposed the stay to maintain the status quo pending the adjudication of the appeal. It was the Courts understanding that this matter would be stayed until a decision was made on appeal. Further, in the Joint Case Conference Report that was submitted to the Court on January 13, 2022, both parties stipulated to: The Nevada Supreme Court's ruling on Defendant s Emergency Petition for Writ of Mandamus, or in the Alternative, Writ of Prohibition under 21(a)(6) is pending. In an effort to foster judicial efficiency and keep attorneys' fees and costs

1 from rising while the appeal is pending, the Parties requested that the requirement to proceed with
2 discovery be waived at that time until the ruling is issued by the Nevada Supreme Court, as the
3 ruling will substantially shape the remaining proceedings and the nature and scope of discovery
4 that will be necessary in connection with the case. For these reason, the Court agrees with Plaintiff
5 and finds that the subpoena violates both this Court's stay order and the agreement to waive
6 discovery until a ruling by the Supreme Court is issued.

7 Discovery in this matter will continue once a ruling has been issued by the Nevada Supreme
8 Court on the pending appeal filed by Defendants. Due to the aforementioned reasons, and good
9 cause appearing therefor, Plaintiff's Motion to Quash and Objection to
10 Defendant/Counterclaimants Issuance of Subpoena to First American Title Company is hereby
11 **GRANTED.**

12 IT IS FURTHER ORDERED that the hearing on the Motion to Quash and Objection set
13 for August 23, 2022, at 9:00 a.m. is hereby **VACATED.**

14 **IT IS SO ORDERED.**

Dated this 25th day of August, 2022



19A 66D 71BA D6BC
Erika Ballou
District Court Judge

17 **Respectfully submitted by:**

18 LEWIS ROCA ROTHGERBER CHRISTIE LLP

19 /s/ Ogonna Brown

20 OGONNA M. BROWN (SBN 7589)
21 3993 Howard Hughes Parkway, Suite 600
22 Las Vegas, Nevada 89169

23 *Attorneys for Plaintiff AAL-JAY, Inc.*

24 **Reviewed as to form and content:**

25 BLACK & WADHAMS

26 /s/ Allison Schmidt

27 ALLISON R. SCHMIDT (SBN 10743)
28 Email: aschmidt@blackwadhams.law
CHRISTOPHER YERGENSEN (SBN 6183)
10777 West Twain Avenue, 3rd Floor
Las Vegas, NV 89135
Email: aschmidt@blackwadhams.law

Attorneys for Defendants/Counterclaimants

Mercado, Gabriela

From: Allison Schmidt <Aschmidt@blackwadhams.law>
Sent: Thursday, August 25, 2022 8:30 AM
To: Brown, Ogonna
Cc: Mercado, Gabriela; Lopez, Kim; Hess, Jennifer; Brantley, Adrienne
Subject: Re: Order Granting Motion to Quash(118605607.1)8489 ars redline.docx
Attachments: image001.png; image002.png; Order Granting Motion to Quash(118605607.1)8489 ars redline.docx

[EXTERNAL]

This is approved thank you

Allison R. Schmidt, Esq.

On Aug 24, 2022, at 4:37 PM, Brown, Ogonna <OBrown@lewisroca.com> wrote:

Dear Allison:

Thanks for sending the redlines. Please see my minor revisions and the inclusion of the last paragraph, which was expressly set forth in the minute entry. If this works for you, please authorize me to affix your electronic signature for submission to the court. Thank you.

Ogonna Brown
Partner

OBrown@lewisroca.com
D. 702.474.2622

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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 AAL-JAY, INC., Plaintiff(s)

CASE NO: A-21-832379-C

7 vs.

DEPT. NO. Department 24

8 Philip Fagan, Jr., Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

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13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 8/25/2022

15 Ogonna Brown

obrown@lewisroca.com

16 Diane Meeter

dmeeter@blackwadham.s.law

17 Chris Yergensen

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18 Jerri Hunsaker

jhunsaker@blackwadham.s.law

19 Marsha Stallsworth

mstallsworth@blackwadham.s.law

20 Kim Lopez

klopez@lewisroca.com

21 OMB Calendar

ombcalendar@lewisroca.com

22 Allison Schmidt

aschmidt@blackwadham.s.law

23 Allison Schmidt

aschmidt@blackwadham.s.law

24 Allison Schmidt

aschmidt@blackwadham.s.law

25 Gabriela Mercado

gmercado1@lewisroca.com

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Jennifer Hess	jhess@lewisroca.com
Dibora Berhanu	dberhanu@lewisroca.com

EXHIBIT G

Begin forwarded message:

From: Lawrence Dingivan <Lawrence.Dingivan@zionsbancorp.com>
Date: September 7, 2021 at 7:53:02 AM PDT
To: "Brown, Ogonna" <OBrown@lewisroca.com>, Hazeer Razack <Hazeer.Razack@nsbank.com>
Subject: RE: AAL-JAY v Fagan -- Order Granting Motion for Specific Performance and Defendants' Petition for Writ filed w/Nevada Supreme Court and Stay Motion

[EXTERNAL]

Ogonna: I confirm that I have advised Zions Bancorporation, N.A. operating division Nevada State Bank not to proceed with funding its proposed mortgage loan to AAL-Jay unless and until AAL-Jay's title to the real property that will secure payment of the mortgage loan is established by a non-appealable determination by the Nevada courts.

Thank you,

Larry

From: Brown, Ogonna <OBrown@lewisroca.com>
Sent: Thursday, September 02, 2021 11:30 PM
To: Lawrence Dingivan <Lawrence.Dingivan@zionsbancorp.com>; Hazeer Razack <Hazeer.Razack@nsbank.com>
Subject: RE: AAL-JAY v Fagan -- Order Granting Motion for Specific Performance and Defendants' Petition for Writ filed w/Nevada Supreme Court and Stay Motion

🔒 EXTERNAL EMAIL! Inspect contents carefully.