

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

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SEAN EVENDEN, an individual;  
ROGER AYALA, an individual;

Appellants

v.

NANCY HAACK, an individual; and  
NRS REALTY GROUP, LLC, a  
Nevada Limited Liability Company,  
d/b/a LIFE REALTY,

Respondents.

Case No. 81473

Electronically Filed  
Oct 21 2020 07:59 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**RESPONDENTS' MOTION TO  
DISMISS APPEAL**

Respondents Nancy Haack (“Ms. Haack”) and NRS Realty Group, LLC (“NRSRG” and collectively with Ms. Haack “Respondents”) move to dismiss Appellants Sean Evenden (“Mr. Evenden”) and Roger Ayala (“Mr. Ayala” and collectively with Mr. Evenden, “Appellants”) appeal. Appellants appeal is premature as there is no final judgment pursuant to NRAP 3(A)(b)(1) because the Decision and Order from which Appellants seek relief from this Court did not dispose of all issues presented in the case, and instead left the critical issue of damages to be determined. As this Court has made clear in prior rulings, the Court lacks jurisdiction to hear an appeal in the absence of a final judgement. Because no such final judgment has been rendered by the trial court below, and damages have yet to be determined, this Court lacks jurisdiction to hear Appellants’ appeal. Accordingly, Appellants’ appeal should be dismissed.

**I. BACKGROUND**

Appellants’ appeal seeks to challenge the District Court’s Decision and Order entered on June 17, 2020 following a four-day bench trial (the “Decision and Order”).<sup>1</sup> However, Appellants’ appeal is premature in that the Decision and Order

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<sup>1</sup> For the Court’s convenience, a copy of the June 17, 2020 Decision and Order is attached hereto as **Exhibit 1**.

did not conclusively affix the damages awarded to Respondents, instead it simply set parameters from which a final judgment awarding damages could be fashioned after a court appointed-accounting took place.<sup>2</sup>

In relevant part, the Decision and Order awarded judgment in favor of Ms. Haack on her claims of (1) breach of the implied covenant of good faith and fair dealing and (2) breach of fiduciary duty against Defendants Sean Evenden and Roger Ayala.<sup>3</sup> As damages for these claims, the District Court set damages as “an equivalent amount of money in salary that they were paid after amending the Operating Agreement of NRS Realty Group, LLC.” However, due to discovery having closed in August of 2018, the record is limited as to how much salary Appellants have taken in salary for the years 2018 – 2020.

The District Court also ordered that Appellants reimburse NRS Realty Group, LLC “any monies provided by NRS Realty Group, LLC, used towards Defendants’ legal representation in this matter.”<sup>4</sup> It is presumed that fees were also advanced well after the close of discovery and perhaps through trial, but thus far Respondents and the District Court have only a limited picture of the fees advanced by NRSRG.

Apparently in recognition of these ambiguities, the District Court ordered Respondents to submit a list of three proposed independent accountants to Appellants who were to choose one of the proposed accountants to provide an independent accounting of NRSRG, “including but not limited to the profitability of the company from 2016 until the closing of NRS[RG].”<sup>5</sup> The District Court further instructed that the accountant was also to “determine the value of [NRSRG] at the time of its closing,” and ordered Respondents to bear the costs of the accounting.<sup>6</sup> Finally, the District Court ordered Respondents to pay Nancy Haack “one-third of

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<sup>2</sup> *Id.* at 26.

<sup>3</sup> *Id.* at 26:6-12.

<sup>4</sup> *Id.* at 26:13-15.

<sup>5</sup> *Id.* at 26:16-25.

<sup>6</sup> *Id.*

the profits and value, minus any distribution that [Ms.]Haack already received, based on the independent accounting.<sup>7</sup>

Accordingly, by its own terms, the Decision and Order does not dispose of all of the issues in the case, as it does not conclusively affix damages, instead it sets guidelines from which the damages may be calculated, presumably through further action of the District Court. Although Respondents have submitted the names of three accountants to Appellants, Appellants have yet to select from the accountants provided, further illustrating that there is a lack of finality, as the very issue complained of by Appellants, according to their Docketing Statement, has yet to occur.<sup>8</sup> Furthermore, as the case now sits, Respondents have no means to enforce the judgment, nor is there is a judgment award for which Appellants could use as a basis to post a supersedeas bond to stay enforcement of the judgment. As such, Appellants' present appeal is premature, as this Court lacks jurisdiction any of the issues presented by Appellants because the decision being appealed is not a final judgment pursuant to NRAP 3(A)(b)(1).

## **II. LEGAL ARGUMENT**

### **a. Legal Standard**

It is well established under this Court's precedent that the Court lacks jurisdiction to hear an appeal in the absence of a final judgment. NRAP 3(A)(b)(1); Lee v. GNLV Corp., 116 Nev. 424 (2000); *see also* Reno Hilton Resort Corp. V. Verderber, 106 P.3d 134 (2005) (granting respondents motion to dismiss for lack of jurisdiction on the grounds that an interlocutory class action judgment did not meet the threshold for finality). Generally speaking, "a final judgment is one that disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court, except post-judgment issues such as attorney's fees and costs." Lee v.

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<sup>7</sup> *Id.*

<sup>8</sup> Appellants' Docketing Statement, filed August 10, 2020, at 4:20-26, 5:23-6:9. On file herein.

GNLV Corp., 116 Nev. 424, 436 (2000). When analyzing whether a contested judgment meets this finality threshold, the court will disregard the label and look instead to see if the order/judgment itself acts as a final judgment. Valley Bank of Nev. V. Ginsburg, 110 Nev. 440, 445 (1994). The court undergoes this rigorous finality analysis in order to promote “judicial economy by avoiding the specter of piecemeal appellate review.” Id. at 444.

Although a judgment that leaves issues such as attorney’s fees and costs can meet the threshold finality standard, a judgment that leaves pending, undecided issues unresolved cannot rise to this threshold. *See* Nadler v. Eighth Judicial District Court, 462 P.3d 677, 684 (2020). As sister State Supreme Court language embraced by this Court illustrates, this concept of “issue pendency” means that ““a judgment . . . must confer some right ***that may be enforced without further orders of the court and which puts an end to the litigation.***” (emphasis added). Simmons Self-Storage Partners, LLC v. Rib Roof, Inc., 127 Nev. 86 (2011) *quoting* McCormack v. Moore, 273 Ky. 724 (1938). Pending issues that do not constitute a continuation of the case are not “pending issues” sufficient to quash finality. *See* Bradford v. Eighth Jud. Dist. Ct., 129 Nev. 584, 587 (2013) (Pending sperate custody dispute does not render ongoing the issues involved in the divorce, a separate action is not a continuation of a case).

However, this Court’s precedent supports the contention that when the resolution of damages (not just costs and fees) is not settled in the challenged order/judgment, this issue constitutes a pending issue constituting a continuation of the case, thereby rendering said challenged order/judgment non-final. For example, in Reno Hilton Resort Corp. V. Verderber, 106 P.3d 134 (2005), the district court split a class action into two “phases,” the first phase consisting of a jury trial on liability and class wide punitive damages, the second constituting individual class member compensatory damages. Id. at 135. After the district court entered a verdict

against them on phase one (and unsuccessful attempts to move for judgment notwithstanding the verdict or a new trial) the appellants appealed the “judgment.” Id. This Court granted the respondent’s motion to dismiss the appeal for lack of jurisdiction, stating that “NRAP 3A(b)(2) does not permit appeals from an order granting or denying a new trial addressed on an interlocutory order or judgment.” Id. at 137. In short, because phase two on compensatory damages remained to be settled, the appellants appeal could not withstand scrutiny under the finality rule.

**b. Here, the Appeal from the District Court’s Order of Judgment was Improper Under the Finality Rule.**

The Appellants’ appeal cannot withstand scrutiny under this Court’s precedent. The fatal flaw in the Appellant’s appeal is that the order entered in favor of Respondents is not a final judgment because, most crucially, the order leaves significant issues surrounding damages unresolved, issues that will almost certainly require further intervention and orders from the District Court. Summarized, the Order settles the issues of liability in favor of Respondents, but it does not in any way establish a concrete amount of damages. Instead, the order merely sets loose guidelines for how said damages will be determined, guidelines that will almost certainly be further issues of litigation requiring more intervention from the District Court.

Ultimately, this lack of set damages is a crucial and insurmountable flaw to any claim that the order is a final judgment, meaning that this Court lacks jurisdiction to hear the appeal. Unlike Bradford v. Eighth Jud. Dist. Ct., the damages issues remaining here are not issues arising from a separate cause of action that do not represent a continuation of the case. Instead, the damages issues remaining to be resolved are far more akin to Reno Hilton Resort Corp. v. Verderber. Like that case, a huge element of damages remains unresolved by the Court, and the element of damages is directly tied to the claims in the court’s order. Therefore, because the

crucial issue of damages remains almost entirely unresolved, the court's order cannot constitute a final judgment, and appellate jurisdiction cannot be found.

This conclusion is supported by the simple fact that, as discussed in Nadler v. Eighth Judicial District Court, *a final judgment must be one that can be enforced without further orders from this court*, thereby putting an end to the litigation at hand. Here, Appellants can raise no real argument that that is the case. The current order, merely laying out loose guidelines on calculating damages, will inevitably require further orders from the District Court to enforce and end the litigation. Therefore, because significant judicial intervention is still required by the District Court, the judgment cannot be considered final.

### **III. CONCLUSION**

Appellants' appeal should be dismissed because it flies in the face of the basic premise of the finality rule which, as discussed above, is primarily grounded in avoiding piecemeal litigation that burdens the appellate system. Here, this appeal is a direct affront to this policy. Rather than waiting for the damages issue to be resolved and District Court litigation to end, the Appellants "jumped the gate" and brought an appeal on an incomplete action. This piecemeal litigation, only contesting part of the litigation below, is the exact type of piecemeal litigation the finality rule is intended to prevent. Accordingly, Appellants' appeal must be dismissed.

DATED this 21st day of October, 2020.

**SHUMWAY VAN**

By: /s/ Karl A. Shelton,  
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KARL A. SHELTON, ESQ.  
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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Shumway Van and pursuant to NRAP 25(b) and NEFCR 9, that on this 21<sup>st</sup> day of October, 2020, I electronically filed the foregoing **RESPONDENTS' MOTION TO DISMISS APPEAL** with the Clerk of Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-filing system (Eflex), participants in the case who are registered with Eflex as users will be served by the Eflex system as follows:

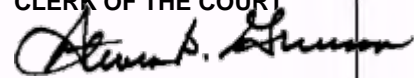
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John R. Holiday, Esq.

/s/ Paula Lamprea  
An employee of Shumway Van

# EXHIBIT 1





DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*

NANCY HAACK, an individual; and  
NRS REALTY GROUP, LLC, a Nevada  
Limited Liability Company, d/b/a LIFE  
REALTY

Plaintiffs,

v.

SEAN EVENDEN, an individual; ROGER  
AYALA, an individual; DOE Individuals  
I through X; and ROE CORPORATIONS  
and ORGANIZATIONS I through X,  
inclusive,

Defendants,

SEAN EVENDEN, an individual; ROGER  
AYALA, an individual; DOE Individuals  
I through X; and ROE CORPORATIONS  
and ORGANIZATIONS I through X,  
inclusive,

Counterclaimants,

v.

NANCY HAACK, an individual.

Counter-defendants.

CASE NO.: A-17-753435-C

DEPARTMENT XXIII

DECISION & ORDER

I. INTRODUCTION

THIS MATTER having been scheduled for bench trial before this Court from  
February 18, 2020 through February 21, 2020 with Plaintiff Nancy Haack representing  
herself in pro per, John R. Holiday, Esq. appearing on behalf of Plaintiff NRS Realty  
Group, LLC, Patrick J. Sheehan, Esq. appearing on behalf of Defendants Sean Evenden  
and Roger Ayala. Plaintiff pled the following claims against Defendants: (1) Breach of

1 Contract; (2) Breach of the Implied Covenant of Good Faith and Fair Dealing; (3) Breach  
2 of Fiduciary Duty; (4) Conversion; (5) Indemnity; and (6) Accounting. At the start of trial,  
3 Plaintiff withdrew her claims of (7) Interference with Prospective Economic Advantage  
4 Against All Defendant; and (8) Usurpation of Corporate Opportunities. Defendants pled  
5 the following counterclaims against Plaintiff: (1) Breach of Contract; (2) Breach of the  
6 Implied Covenant of Good Faith and Faith Dealing Both Tortious and Contractual, (3)  
7 Tortious Interference with Contract and Prospective Economic Advantage; and (4)  
8 Declaratory Relief. The first and second counterclaims were also brought as derivative  
9 actions against Nancy Haack on behalf of NRS Realty Group, LLC.  
10  
11

12 Having considered the testimony of the witnesses, having reviewed the exhibits,  
13 and having heard the arguments of counsel, the Court enters the following Decision and  
14 Order.  
15

## 16 II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

17 1. Nancy L. Haack ("Haack"), Sean Evenden ("Evenden"), and Roger Ayala ("Ayala")  
18 (Collectively "members") formed a real estate brokerage firm, NRS Realty Group, LLC  
19 ("NRS"), in May 2010.

20 2. Each member owns an equal 1/3 interest in NRS.

21 3. When the members formed NRS, they agreed that they would pay themselves a  
22 salary when NRS became profitable.

23 4. NRS's Operating Agreement ("Agreement") was executed by all members on  
24 August 5, 2010.

25 5. NRS's primarily generates its revenue through: (1) office rental fees from its  
26 agents, (2) transaction fees on its agents' real estate sales, and (3) commission splits on  
27 property management fees.  
28



1  
2 6. NRS maintained bank accounts for its operations; most of the funds in these  
3 accounts were commissions owed to agents and other third parties.

4 7. NRS achieved profitability for the first time in 2016.

5 8. In 2016, the members began negotiations to expand NRS by leasing an office  
6 across the hall from their original office.

7 9. Multiple agents, including existing agents as well as new agents, were shown the  
8 new space and informed about the members' plan to expand NRS.

9 10. Certain NRS agents were promised offices at the new location.

10 11. Nancy Haack, Sean Evenden, Roger Ayala, and their spouses would have to sign  
11 personal guarantees to lease the new office; they also originally had to sign personal  
12 guarantees to lease NRS's original office.

13 12. In January 2017, NRS's landlord provided Defendants with a copy of the lease for  
14 the new office.

15 13. The members met at Balboa Pizza on January 31, 2017. The nature of the  
16 discussions at Balboa were disputed at trial.

17 14. After the Balboa meeting, Haack told Defendants via text message that they could  
18 form a separate company without her so long as they moved to the new office and did not  
19 use NRS's assets.

20 15. Defendants limited Haack's access to the bank accounts but ultimately gave her  
21 view-only access.

22 16. Defendants initially filed dissolution papers with the Secretary of State for NRS  
23 but decided to unwind the dissolution and form a new company.

24 17. Defendants created Life Real Estate around February 2017 across the hall from  
25 NRS.  
26  
27  
28



1  
2 18. Defendants met to amend the Agreement to pay themselves a salary in April 2017.  
3 Haack was not present at the meeting.

4 19. Defendants passed a resolution to pay themselves a salary of \$50,000.00 each.  
5 Haack did not receive a salary.

6 20. Plaintiff filed the Complaint in this matter on April 3, 2017.

7 21. Before signing the new lease in August 2017, Defendants wrote to Haack and  
8 asked her if she wanted NRS to take over the new space with her involvement. Through  
9 her attorney, Haack declined the offer and stated that NRS was not permitted to sign a  
10 lease for the new space.  
11

12 22. More than \$200,000.00 was spent to build out the new office. The source of the  
13 funds was disputed at trial although it was undisputed that Haack never contributed to the  
14 new company.

15 23. NRS continued to operate after Defendants formed the new company; Haack  
16 remained a member of NRS and received a share of the profits.  
17

18 24. Haack sought from this Court an appointment of a receiver to protect the safety and  
19 well-being of NRS' assets. In a Decision issued on January 26, 2018, this Court denied  
20 Haack's Motion but held that beginning February 1, 2018, Defendants were to provide  
21 Haack with monthly disclosures of any and all financial documents relating to NRS Realty  
22 Group, LLC.

23 25. On September 13, 2018, Plaintiff filed two Motions for Partial Summary  
24 Judgment; one motion was as to her claims and the other as to Defendants' counterclaims.  
25 On October 8, 2018, Defendants submitted their opposition as well as a Countermotion for  
26 Summary Judgment on all claims. In a decision issued December 17, 2018, this Court  
27 denied all the pending motions finding that there remained genuine issues of material fact  
28



1  
2 regarding all claims for both parties, especially those involving the Agreement between  
3 the parties.

4 **III. TESTIMONY FROM WITNESSES**

5 Six witnesses testified in this Matter. The following witnesses testified at the bench  
6 trial.

7 **A. Sean Evenden**

8 NRS was formed in 2010 by Plaintiff Haack and Defendants Ayala and Evenden.  
9  
10 Evenden testified that each of the parties owned one-third of NRS per the Partnership  
11 Agreement (“Agreement”). Evenden was asked numerous questions about his  
12 understanding of the Agreement. On direct examination, Evenden acknowledged that  
13 Section 6.8 (Voting) of the Agreement in states “[T]he unanimous vote of all of the LLC  
14 interests shall be required to approve any action, unless a greater or lesser vote is required  
15 pursuant to this Agreement or by Statute.” However, Evenden testified this section is  
16 vague to him and questions on interpretations would need to be referred to the drafting  
17 attorney.  
18

19 Regarding meetings, Evenden acknowledged that the language of Section 6.10  
20 (Waiver of Notice or Consent by Absent Members) of the Agreement requires an  
21 individual entitled to vote, but who is not present, to sign a “written waiver of notice, a  
22 consent to the holding of the meeting, or any approval of the minutes thereof.” Further,  
23 pursuant to Section 6.11 (Member Action by Written Consent Without a Meeting), if all  
24 the members give written permission, any action may be taken without a meeting and  
25 without formal notice. Evenden testified that at a May 2017 meeting he and Ayala  
26 amended the Agreement, pursuant to Section 13’s language requiring a “majority (or all)  
27 of the LLC interests” to allow for he and Ayala to begin receiving a \$50,000.00 annual  
28



1 salary. He stated that because Haack breached the contract and abandoned her duties that  
2 she was not entitled to receive the salary.  
3

4 Evenden testified that per Section 10 (Indemnification) of the Agreement he and  
5 Ayala held a meeting to award them both legal fees. Evenden agreed that Section 10.5  
6 (Required Approval) states there must be a majority vote of members to approve  
7 indemnification however he never received consent from Plaintiff for the meetings on  
8 indemnification. Evenden testified that he notified Haack of the meetings by email, by  
9 placing notices on her home, and by possibly even texting her. Per Evenden, Haack never  
10 responded to any of these notifications.  
11

12 Evenden testified that there was a substantial profit for NRS in 2016. After 2016  
13 the numbers began to drop, including a drop of \$70,000.00 in profit in 2017, and an  
14 additional drop of about \$92,000.00 in profit in 2018. He acknowledged that the salaries  
15 provided for Evenden and Ayala, as well as legal fees for this matter, could have led to the  
16 drop in profits in 2017.  
17

18 Evenden testified that until 2016 Plaintiff Haack maintained the books and paid  
19 payroll and taxes. Haack was also responsible for the business licenses of the two NRS  
20 offices and was the only licensed realtor at the China Town office and was responsible to a  
21 certain extent for the operation of this second office.  
22

23 Evenden, Ayala, and Haack had a meeting at Balboa Pizza on January 31, 2017  
24 regarding the plan to expand NRS into the space across the hall from the current office.  
25 Following the January 31, 2017 Balboa meeting there were a flurry of text messages that  
26 were sent between the parties. He acknowledged there was a text message to Haack stating  
27 that it was time for them to buy her out as well as one trying to get her to meet with them  
28 to remove her from NRS. He testified that he had originally wanted the three of them to



1 meet during this time without lawyers and to figure out a solution that mutually worked  
2 for all three parties, but that Haack wanted to have her attorney involved in the process.  
3 Although Evenden testified repeatedly that Haack verbally stated she was resigning at the  
4 Balboa meeting, he acknowledged that there was no evidence in writing. Although Haack  
5 was not prevented from working as an agent during this time, after the Balboa meeting she  
6 no longer wanted to put money into the business or be a part of its operations.  
7

8 Evenden stated that Haack breached the Operating Agreement when she failed to  
9 follow up on her promise to move the company forward and expand. Evenden testified  
10 that once Haack breached the Agreement, he and Ayala began noticing themselves and  
11 Haack for special meetings. This was not common practice prior to Haack's breach but she  
12 was noticed for the special meeting in May. It was at the meeting in May 2017 where  
13 Evenden and Ayala amended the Agreement; Haack never showed up to the meeting and  
14 thus written consent was never received. Further, Haack's breach, along with a cease and  
15 desist letter she sent, led to Evenden and Ayala deciding it would be best to dissolve the  
16 company before they ultimately decided to unwind that decision.  
17

18 In May 2017, NRS had between 30 and 40 agents. The new entity, Life Real  
19 Estate, had about 104 agents at the time of the trial. Evenden noted that the agents Haack  
20 recruited were at NRS until that entity's lease expired.  
21

22 Once Haack was no longer handling the bookkeeping for NRS, the books were  
23 audited to ensure that Life Real Estate employees were not paid out of NRS. Evenden was  
24 unsure if NRS paid the Secretary of State fees for Life Real Estate. However, Evenden and  
25 Ayala did vote to pay the legal fees out of NRS funds for this action. Further, while  
26 Evenden testified that he did not specifically know why certain checks were paid to  
27 himself directly, he asserted that he would sometimes pay for business expenses out of his  
28



1 own pocket and reimburse himself from NRS. To this day, Evenden asserted, Haack is still  
2  
3 a one-third owner of the NRS entity.

4 **B. Jefrie Felton**

5 Jefrie Felton ("Felton") is a realtor who had been with NRS since 2010 but has  
6 since left. He testified that he was under the impression that Haack left the company  
7 because she was tired and ready to retire for health reasons. Felton testified that in April  
8 2017 he attended a meeting and received an email NRS was being dissolved. Thereafter, a  
9 contract with the new company was placed on his desk with a 10-day deadline of March  
10 26, 2017 saying that licenses would be returned to the agents if they chose not to sign.  
11

12 Felton acknowledged that he ultimately left NRS because of infighting among the  
13 partners and worried about the viability of the company. He testified that he is unaware of  
14 who caused the issues but was aware that the intent was for NRS to expand across the hall.  
15

16 **C. Roger Ayala**

17 Defendant Roger Ayala, like Evenden, testified that sometimes he would be  
18 reimbursed for expenses that he incurred on behalf of the company. This could include  
19 charitable contributions in addition to other business expenses.

20 Regarding the space across the hall from NRS, Ayala testified that he remembered  
21 Haack giving permission to open the new office in early 2017. Ayala sent the March 10,  
22 2017 letter threatening to send Haack's license back to the Real Estate Division because  
23 she continuously changed her mind on whether Evenden and Ayala could open the new  
24 business without her.  
25

26 When asked about the March 10, 2017 letter Evenden and Ayala sent to Haack  
27 stating that Haack had been removed from NRS, Ayala testified that he never fully  
28 understood the contents of it at the time and still does not today. He noted that they



1  
2 presented the circumstances to their attorney, they paid the attorney with NRS funds, and  
3 the attorney drafted the letter. It was the fear of litigation, Ayala testified, that ultimately  
4 led he and Evenden to withdraw the dissolution.

5 Ayala testified that he believes he told the agents at NRS that they had to move to  
6 Life Real Estate because Evenden was stepping down as broker of NRS to assume that  
7 role at Life Real Estate. However, Ayala did not believe that any of NRS's agents left  
8 before the March 10, 2017 letter to Haack.  
9

10 Ayala ended up becoming the broker of record for NRS. Ayala testified that during  
11 his time as broker of record for NRS he is unsure about how much money NRS made. He  
12 did note, however, that lease payments for the Life Real Estate location have never been  
13 paid out of the NRS funds and that one particular large payment had to be paid out of NRS  
14 to pay the back dues of about seven months of CAMs for the NRS location.

15 Regarding Haack's share of the distribution, Ayala testified that she was given one  
16 check for \$32,000.00 and one check for \$29,000. The original offer to her was for one-  
17 third of the cash on hand and one-third of the profits going forward. He acknowledged that  
18 this was not based on a formal evaluation of the company.  
19

20 **D. Nancy Haack**

21 Plaintiff Nancy Haack testified that negotiations for the expansion began in 2016  
22 and continued into 2017. She acknowledged that her husband did not want to sign a  
23 personal guarantee for either the new space across the hall or to extend the current NRS  
24 lease beyond its expiration<sup>1</sup>. Haack testified that her husband was worried about her  
25  
26  
27

28 <sup>1</sup> Sean Evenden, Roger Ayala, Nancy Haack, and their spouses had to sign personal guarantees for the NRS lease. To extend the NRS lease beyond its expiration would again require personal guarantees from all of the parties.



1 health, due to a previous heart attack, and that she was doing too much work for the NRS  
2 business without being properly compensated.  
3

4 Haack testified that she was originally told by Evenden that their spouses would  
5 only need to sign a two year personal guarantee but that she later found out the guarantee  
6 was for the length of the contract. She stated that she had originally wanted a lawyer to  
7 look at the lease but that Evenden and Ayala felt that was unnecessary. Following the  
8 contentious negotiations during and after the Balboa meeting, Haack's attorney advised  
9 her to have them open the new company in the space across from NRS while she would  
10 stay on at NRS; eventually the two entities would merge after two years. One of her  
11 concerns was that after seven years of not making money she did not want to use the  
12 profits NRS finally made and invest that into a new location.  
13

14 Haack asserted that she never wanted to leave NRS and wanted to maintain her  
15 role at NRS but would not be an owner of the new company across the hall. She was  
16 worried about Evenden and Ayala removing her from NRS. However, at her deposition,  
17 Haack testified that she would not go back to NRS. Haack denied ever saying she would  
18 quit at the Balboa meeting but testified that it was uncomfortable going into work after  
19 that meeting and that she "didn't want to be there." Haack wanted to keep NRS running  
20 until she was off the lease.  
21

22 Haack also asserted that after she started this litigation she was never given access  
23 to all of the accounting records that she needed. The forensic accountant had access, but  
24 Haack testified that January 2020 was the first time she got access to the information and  
25 was only given a login for QuickBooks, rather than for the other software including  
26 Loanwolf and ADP. ADP was used for payroll while Loanwolf was used for tax purposes.  
27  
28



1 And while she did receive a distribution in 2017, based on 2016 being profitable, there  
2 have been no further distributions after January 2018.  
3

4 Haack testified that the Agreement always required unanimous consent for major  
5 changes as well as decisions related to finances and ownership. She acknowledged that it  
6 says majority in the Agreement but that is not her interpretation of the Agreement. Further,  
7 Haack asserted that Section 10.5 (Required Approval) of the Agreement prohibited  
8 members from voting for indemnification if they are parties to the proceeding. She further  
9 testified that she never saw the May 2017 amendment so she could not have agreed on the  
10 change but did acknowledge that she received the notices posted on her home. Haack  
11 testified, "Why would I go to a meeting if every item is against me." Haack stated that she  
12 did not believe the Agreement could be amended to benefit only two of the members.  
13

14 Haack stated that she always envisioned the members would get salaries once the  
15 company was profitable. She also testified that she initially agreed to expand NRS across  
16 the hall because the current office lacked sufficient offices and desk space for all of the  
17 agents. Haack asserted that while she was fine signing the personal agreement on the new  
18 space, it was her husband who did not want to sign himself. However, in a text message  
19 Haack sent on February 6, 2017 she mentioned that she wanted to ensure she "wasn't tied  
20 to a lease until I was 72 years old." On February 8, 2017, Haack had her lawyer send a  
21 letter to Ayala and Evenden stating that she had no interest in renewing the lease for the  
22 NRS location. Haack did not dispute saying she was going to retire at one point, but noted  
23 that Evenden had regularly threatened to leave the business as well. She acknowledged  
24 that she told them to just create the new business across the hall but that they were not to  
25 use any of her or NRS's money for the project.  
26  
27  
28



1  
2 NRS had about 40-45 agents the day Haack left the company and about 50 agents  
3 in November 2017 per Haack. NRS existed through October 2019 up to the expiration of  
4 its lease. She testified that she went to the office in 2019 to retrieve her possessions and  
5 that the core group of agents were still at NRS.

6 **E. Crystal Elijah-Ramos**

7  
8 Crystal Elijah-Ramos ("Elijah-Ramos") is a realtor who started with NRS in  
9 January 2016. She testified that she moved her license to NRS because of a good rapport  
10 she had with Haack when they met. Elijah-Ramos stated that when she was presented with  
11 the offer to go over to the new space or have her license returned to the division, she felt  
12 like she was being intimidated but nonetheless signed the new agreement with Life Real  
13 Estate.

14 **F. Joseph Leauanae**

15  
16 Joseph Leauanae ("Leauanae") is a forensic accountant, accredited in business  
17 evaluation and accounting forensics. He was retained by Plaintiff in May 2018 for the  
18 purpose of calculating the economic damages incurred by NRS and/or Haack.

19 When analyzing the seven bank accounts attached to NRS, Leauanae testified that  
20 transfers were seen between accounts he did not have access to. He noted that two  
21 accounts had been opened after Haack's departure and that this is unusual. After  
22 completing his report at some point in 2019 his online access to the databases was stopped.

23  
24 Leauanae stated that he was provided statements from January 2016 up through  
25 May 2018 that was missing some information. Over 23,000 transactions were compared to  
26 the flow of funds through the accounts. He noted transactions to the US Treasury for  
27 approximately \$102,694 paid by NRS on behalf of Evenden. Leauanae testified that these  
28 payments would be for tax obligations by or on behalf of Evenden and while the



1 Quickbooks account referenced the amount, it did not specify how it was recorded. A  
2 company like NRS, per Leauanae, would require the individual rather than the company  
3 be responsible for the tax obligations. While Leauanae noted in his expert report that there  
4 may be (1) damages related to alleged accounting/Operating Agreement-based  
5 improprieties as well as (2) damages related to defendants' alleged misappropriation of  
6 corporate assets and the formation of Life Real Estate, a competing entity, Leauanae  
7 testified he did not have all the information he needed to formulate a final conclusion on  
8 many of the allegations. Further, Leauanae was unable to reconcile the differences  
9 between the profit and losses shown in Quickbooks and Loanwolf<sup>2</sup>.  
10  
11

12 Leauanae noted that the salaries paid to Evenden and Ayala, along with various  
13 payments to Evenden and the landlord Vestar Property Management were transactions that  
14 caught his attention. The payments to Vestar had been \$7,500 per month before Haack's  
15 departure and that went up to \$11,000.00 following her departure. Leauanae testified that  
16 the increase in payments could have been for the missing CAM payments but he has no  
17 information to agree or disagree with that assessment.  
18

#### 19 IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

20 Ultimately, what came before this Court were the intimate details of a business  
21 relationship that had rotted to its core. As disagreement arose between the members  
22 regarding how to properly move the business forward, evidence was presented to this  
23 Court that showed resentment had set in, threats were made to one another, and the parties  
24 all made comments evincing their desires to go their separate ways. Beyond the mere  
25 words of the parties, their respective actions among one another are critical to this Court.  
26

27 ///

28 <sup>2</sup> In 2017 NRS showed income of \$709,021.00 in Loanwolf and \$214,000.00 in Quickbooks. In 2018 the numbers showed \$709,000.00 in Loanwolf and a loss of \$121,000.00 in Quickbooks.



1  
2 **A. Plaintiff's Breach of Contract Claim**

3 To prevail on a breach of contract claim, the plaintiff must demonstrate: (1) the  
4 existence of a valid contract; (2) a breach by the defendant; and (3) damages caused by the  
5 breach. *Cohen-Breen v. Gray Television Grp., Inc.*, 661 F. Supp. 2d 1158, 1171 (D. Nev.  
6 2009). A person breaches a contract when they fail to perform a "duty arising under or  
7 imposed by an agreement." *State Dep't of Transportation v. Eighth Judicial Dist. Court in*  
8 *& for Cty. Of Clark*, 133 Nev. 549, 554 (2017). A party does not have to perform under a  
9 contract if the other party materially breaches their duty to perform first. *Cain v. Price*, 134  
10 Nev. 193, 196 (2018). Here, both plaintiff and defendants have asserted claims for breach  
11 of contract.  
12

13 Plaintiff claimed Defendants breached the Agreement in a myriad of ways.  
14 Meetings were conducted without Haack. Amendments to the Agreement were made  
15 without her written consent, including an amendment providing salaries to Evenden and  
16 Ayala, but not Haack, and an amendment that was made involving the addition of a  
17 provision for capital calls that was never exercised. Plaintiff also claimed that Defendants  
18 breached the Agreement when they dissolved NRS, however, that dissolution was  
19 promptly reversed, as noted by Defendants. Most critical to Plaintiff's arguments is the  
20 assertion that Defendants breached the Agreement by forming the new company, Life Real  
21 Estate, and appropriating NRS's assets, goodwill, intellectual property, and real estate  
22 agents.  
23

24 Further compounding the issues at NRS, Plaintiff alleged that Defendants breached  
25 the contract when they excluded Haack from the office. Plaintiff also asserted that  
26 Defendants' threats to fire NRS's agents if they did not sign independent contract with  
27 Life Real estate constituted a breach. Per Haack, this amounted to taking NRS's agents to  
28



1 better the new company. Plaintiff's damages are from the loss of agents, resulting in a loss  
2 of transactions and diminished profitability for NRS.  
3

4 Defendants noted that Section 6.3 of the Agreement allowed for special meetings  
5 as long as two-thirds of the holding interests are represented and all of NRS's members are  
6 notified of the special meeting. Haack was notified of the meetings. She acknowledged at  
7 trial the notices that were left at her home. Further, Section 6.11 of the Agreement allows  
8 for actions to be taken on behalf of the corporation through a vote of a majority of the  
9 members. Defendants again noted that Evenden and Ayala make up a majority of the  
10 members.  
11

12 Regarding the creation of Life Real Estate, Defendants asserted that Haack  
13 expressly authorized Defendants to start their own company as evidenced by text  
14 messages, deposition testimony, and Haack's own testimony at trial. Defendants noted that  
15 this did not alter Haack's one-third interest in NRS, an interest that still remains today.  
16 Defendants argued that because they funded the company independently, not relying on  
17 any of NRS's assets, that their actions were consistent with the Agreement and with  
18 Haack's own demands. In addition, Haack has received over \$60,000.00 in profits from  
19 her share of NRS since the alleged breaches. Furthermore, in conjunction with Haack's  
20 undisputed distribution profits, Plaintiff never proved any damages<sup>3</sup>. The Forensic  
21 Accountant was unable to specify damages due to his repeated testimony that he needed  
22 more documents and information to make a conclusion. His report only noted possible  
23 areas of misappropriation.  
24  
25

26 Defendants noted that only a few agents ultimately left NRS. Further, those that  
27 left because of the dispute between the members was caused by Haack and a number of  
28

---

<sup>3</sup> Defendants argued that Plaintiff failed to prove damages on each of her claims.



1 those agents who left went with Haack to the competing brokerage she formed.

2  
3 Defendants felt they had to restrict Haack's access to the office and to the bank accounts  
4 because her vindictive behavior towards Defendants threatened NRS and its agents. Her  
5 testimony that she preferred a "pound of flesh" to money is evidence of this. Further, it  
6 was only after Haack breached the Agreement by reneging on her promise to help expand  
7 NRS that Defendants chose to restrict her access to the bank accounts.

8  
9 COURT FINDS, Defendants Sean Evenden and Roger Ayala did not breach their  
10 contract with Plaintiff Nancy Haack. There undisputedly was a contract between the  
11 parties in the form of the Operating Agreement for NRS. While amending the Agreement  
12 without Plaintiff Nancy Haack's signature may have been done to better their positions, it  
13 was compliant with the language of the Agreement only requiring a majority vote.

14  
15 Further, COURT FINDS, the correspondence between Defendants and the NRS  
16 agents did not constitute a breach of contract. Defendants were acting on the express  
17 consent of Nancy Haack to open the new space across the hall and provided the agents an  
18 alternative option to moving their license to the new space. While Defendants did initially  
19 begin dissolution of NRS, they promptly reversed that action and the action did not rise to  
20 a breach of contract.

21 **B. Plaintiff's Breach of the Implied Covenant of Good Faith and Fair Dealing**

22 Pursuant to Nevada Revised Statute § 104.1304, every contract in Nevada contains  
23 an implied covenant that requires all parties to act in good faith. Nev. Rev. Stat. §  
24 104.1304. A party acts in good faith by acting honestly and by observing reasonable  
25 commercial standards of fair dealing. Nev. Rev. Stat. § 104.1201(t). To establish a claim  
26 for breach of the implied covenant of good faith and fair dealing, a plaintiff must prove:  
27 (1) existence of a valid contract; (2) plaintiff had a justifiable expectation to receive certain  
28



1  
2 benefits consistent with the spirit of the contract; (3) defendant performed in a manner that  
3 violated or was unfaithful to the spirit of the contract; (4) the defendant's unfaithful action  
4 was deliberate; and (5) causation and damages. *Hilton Hotels Corp. v. Butch Lewis*  
5 *Productions, Inc.*, 107 Nev. 226, (1991). A party can breach the implied covenant of good  
6 faith and fair dealing even if they comply with all the terms of the contract in question. *Id.*  
7 *at* 233. Again, both parties have asserted a claim for breach of contract against one  
8 another.  
9

10 Plaintiff asserted the same arguments for this cause of action as she did for the  
11 breach of contract claim. She argued that Defendants breached the implied covenant by  
12 breaching the Agreement. Defendants asserted that they never breached the Agreement in  
13 the first place; Haack was the breaching party.

14 COURT FINDS, Defendants did breach the implied covenant of good faith and fair  
15 dealing. The actions of the Defendants in this matter violated the spirit of the Agreement  
16 between themselves and Nancy Haack, even if they did not technically violate the terms of  
17 the Agreement. While Plaintiff may not have originally pled the loss of salary in her  
18 Second Amended Complaint, the salary taken by Sean Evenden and Roger Ayala is  
19 evidence of damages suffered by Nancy Haack in this matter. They deliberately amended  
20 the Agreement to provide a salary for themselves on account of the work they had to do  
21 for NRS after Nancy Haack was no longer involved in the office. The parties agreed that  
22 salaries would be appropriate once the business was profitable. The business was  
23 profitable, Nancy Haack was and is still a member of NRS, and she was entitled to any  
24 salary that Sean Evenden and Roger Ayala amended the Agreement to provide.  
25  
26

27 ///

28 ///



1  
2 **C. Plaintiff's Breach of Fiduciary Duty Claim**

3 To prevail on a breach of fiduciary duty claim a Plaintiff must prove the following  
4 elements at trial: (1) the defendant had a fiduciary duty; (2) the defendant breached the  
5 duty; and (3) the breach caused the plaintiff damages. *Klein v. Freedom Strategic*  
6 *Partners, LLC*, 595 F. Supp. 2d 1152, 1162 (D. Nev. 2009). Among partners, there is a  
7 fiduciary duty to provide full and frank disclosure of all relevant information. *Clark v.*  
8 *Lubritz*, 95 Nev. 45, 48 (1979). Excessive salaries taken by corporate officers is a breach  
9 of those officers' fiduciary duty. *Bedore v. Familian*, 122 Nev. 5, 12 (2006).  
10

11 Plaintiff argued that Defendants breached their fiduciary duty by forming the new  
12 business Life Real Estate and using the Life Realty Trademark. At trial, Plaintiff also  
13 raised the issue of Defendants taking a salary for themselves and not extending that salary  
14 to Haack. Those actions, Plaintiff asserted, breached the fiduciary duty that Evenden and  
15 Ayala had to Haack and to NRS.  
16

17 Defendants noted the correspondence from Haack to Evenden and Ayala that she  
18 consented to Defendants' use of the Life Realty Trademark so long as they did not use any  
19 NRS assets. They argued that this showed consent on Haack's behalf and thus, they did  
20 not breach their fiduciary duty<sup>4</sup>. Regarding the allegation that the amendment to the  
21 Agreement providing salary to Evenden and Ayala, but not Haack, breached Defendants'  
22 fiduciary duties, Defendants first noted that this claim was never part of Plaintiff's  
23 complaint and should not be considered by this Court. Further, they argued that this action  
24 complied with Section 13 of the Agreement because only a majority is needed to amend  
25 the Agreement. This was confirmed, under oath, by the drafter of the Agreement.  
26 Defendants argued that they had a right to pay themselves a salary so long as it was  
27

28  
<sup>4</sup> See *Doe v. Round Valley Unified School Dist.*, 873 F. Supp. 2d 1124, 1130 (D. Ariz. 2012) (Citing  
Restatement (Second) of Torts § 892 (1965) to note that consent is a defense to tort claims.)



1 reasonable and commiserate with the market. Defendants noted Haack's own testimony  
2 that the industry standard was above the \$50,000.00 salary Defendants provided for  
3 themselves. Further, once Haack left the Company and no longer provided her one-third of  
4 the services to NRS, she was no longer entitled to the compensation.

5  
6 COURT FINDS, Defendants breached their fiduciary duty to Nancy Haack.  
7 Plaintiff did testify that the amount of salary taken by Defendants was below the industry  
8 standard, but it was excessive in comparison to her allotted salary of zero dollars. While  
9 Defendants did provide notice to Nancy Haack of the special meeting, this Court looks at  
10 the totality of Defendants' actions once conflict began among the parties and concludes  
11 that Defendants intended to provide themselves a benefit that they were unwilling to  
12 provide to Nancy Haack.  
13

#### 14 **D. Plaintiff's Conversion Claim**

15 The elements a Plaintiff must prove on a conversion claim are: (1) defendant  
16 wrongfully exerted a distinct and intentional act of dominion over plaintiff's property; (2)  
17 defendant acted in denial of or inconsistent with the plaintiff's use and enjoyment of the  
18 property, or in derogation, exclusion, or defiance of the plaintiff's rights or title in the  
19 property; and (3) causation and damages. *See M.C. Multi-Family Dev., L.L.C. v. Crestdale*  
20 *Assocs., Ltd.*, 124 Nev. 901, 910 (2008). Consent is a defense to conversion *Rajala v.*  
21 *Allied Corp.*, 919 F.2d 610 632 (10th Cir. 1990) (citing Restatement (Second) of Torts §  
22 252 (1965)).  
23

24 Plaintiff argued that Defendants converted the assets of NRS, and deprived Haack  
25 of her rights under the Agreement. By opening up Life Real Estate across the hall from  
26 NRS, and restricting Haack from the NRS premises, Defendants exerted dominion over  
27  
28



1 Haack's membership in NRS. Further, Plaintiff argued that Defendants Evenden and  
2  
3 Ayala used NRS funds to finance Life Real Estate.

4 Defendants again noted that Haack consented to opening the new company and  
5 using the Life name. She gave sworn testimony that she wanted Evenden and Ayala to run  
6 their own separate company in the new space while allowing NRS to continue running in  
7 its space until that lease expired. More importantly, they asserted that Haack's  
8 membership was never interfered with as she remained a member of NRS and still does to  
9 this day.  
10

11 COURT FINDS, Defendants did not convert any assets from NRS. The forensic  
12 accountant was unable to specify damages for this Court during his testimony or in his  
13 report. He laid out potential misappropriations but admitted that in at least one of these  
14 alleged misappropriations the money could have been used to pay the owed CAM fees for  
15 the NRS space.  
16

#### 17 **E. Plaintiff's Indemnity Claim**

18 Where two or more parties agree on a contractual provision that one party will  
19 reimburse the other party for liability resulting from one party's work there is contractual  
20 indemnity. *United Rentals Hwy. Techs. v. Wells Cargo*, 128 Nev. 666, 673 (2012). "When  
21 the duty to indemnify arises from contractual language, it generally is not subject to  
22 equitable considerations; rather it is enforced in accordance with the terms of the  
23 contracting parties agreement." *Id.* This Court must strictly construe indemnity clauses. *Id.*  
24

25 Here, Plaintiff argued that Defendants wrongfully used NRS funds to pay for these  
26 legal proceedings in violation of the Agreement. Plaintiff noted that Section 10.5 of the  
27 Agreement states that any indemnification requires a majority vote of the "LLC Interests  
28 of Members who were not parties to the proceeding at a duly held meeting of the Members



1 at which a quorum is present.” Here, the only members who voted in favor of  
2 Indemnification, Evenden and Ayala, are both parties to this proceeding and thus  
3 improperly indemnified themselves. Defendants’ argument against this claim was that the  
4 legal fees were properly advanced and that Defendants are only required to reimburse  
5 NRS if they lose.  
6

7 COURT FINDS, pursuant to Section 10 of the Agreement, and consistent with  
8 Defendants’ own concessions, Defendants are responsible to reimburse NRS for the funds  
9 utilized to pay for the legal defense of Sean Evenden and Roger Ayala as they breached  
10 the implied covenant of good faith and fair dealing as well as their fiduciary duties.  
11

#### 12 **F. Plaintiff’s Accounting Claim**

13 “Before a claim for accounting can be pursued, Nevada law requires that the  
14 parties to such a claim must first and foremost be partners.” *G.K. Las Vegas Limited*  
15 *P’ship v. Simon Prop. Grp., Inc.*, 460 F. Supp.2d 1246, 1262 (D. Nev. 2006). Every  
16 partner in a business is entitled to an accounting. *State v. Elsbury*, 63 Nev. 463, 467-68  
17 (1946). Here, there is no dispute among the parties that Haack, Evenden, and Ayala were  
18 partners of NRS.  
19

20 Plaintiff argued that she was never provided all the books and records of NRS.  
21 Haack asserted that she needed a proper accounting to ensure she was given a proper  
22 distribution based on NRS’s profits. Further, a true accounting was necessary to show  
23 whether Defendants converted the assets, intellectual property, good will, etc. from NRS.  
24

25 Defendants argued that they have fully complied with their duty to provide Haack  
26 with an accounting. She was given full access to NRS’s books and records and her  
27 independent forensic accountant could review all of NRS’s records. They note that the  
28 accountant failed to find any monies that were wrongfully taken from the Company.



1  
2 Rather, the forensic accountant only noted discrepancies and possible areas of  
3 misappropriation.

4 COURT FINDS, Defendants did provide a proper accounting of NRS to Plaintiff  
5 during the course of discovery. While Plaintiff regularly challenged the sufficiency of the  
6 documentation up and through trial, Plaintiff's own forensic accounting expert testified  
7 that he received the information from NRS's accounts. What he lacked was information on  
8 the unknown accounts outside of the sphere of NRS itself. He even acknowledged in his  
9 testimony that he was provided follow up information from Sean Evenden when he  
10 requested it.  
11

12 However, COURT FINDS, this Court is not able to make a valuation of the  
13 company or assess whether the profit distributions were paid proportionately. An  
14 independent accounting of the company, at Defendants' expense, is necessary to establish  
15 whether Nancy Haack was paid appropriately. This accounting should cover 2016 until the  
16 close of NRS. The reimbursement of Defendants' legal fees must be accounted for to  
17 determine what the profitability of the company would have been without this matter  
18 solely based on the inclusion of those fees and not any collateral impact from the law suit.  
19

20 **G. Defendants' Breach of Contract Counterclaim**

21 Defendants' counterclaim alleged that it was Haack who initially breached the  
22 Agreement by reneging on her promise to expand NRS. She specifically reneged on  
23 signing the new lease, refused to allow NRS money to be used for the build out of the new  
24 space, and refused to be responsible for her share of any losses at the new space.  
25 Regarding the new lease, Defendants asserted that it was both Haack and her husband who  
26 did not want to sign the personal guarantee. The rift between the members, Defendants  
27  
28



1 argued, led to the loss of agents at NRS and the inevitable income and profits that would  
2 have been received had they stayed with NRS.

3  
4 Plaintiff asserted that despite the need for additional space to accommodate NRS's  
5 growing business, there was never a formal agreement between the parties to expand into  
6 the new space. Haack, Evenden, and Ayala agreed that expansion was necessary but the  
7 offer on the new space was not amenable to Haack or her husband. Haack did not breach  
8 the Agreement when she and her husband refused to sign a lease they found unpalatable.  
9

10 COURT FINDS, Plaintiff Nancy Haack did not breach her contract with  
11 Defendants. There was substantial testimony from all three parties that involved threats to  
12 quit NRS at some point in time and threats against one another, including Defendants'  
13 threat to deliver Haack's license back to the Real Estate Division. Further, while Haack  
14 testified that she did originally intend to expand NRS, this Court is not convinced that her  
15 refusal to sign a personal guarantee on a new lease is a breach of contract. Whether it was  
16 her concern about signing a personal guarantee that would last into her seventies, or  
17 whether it was her husband's refusal to sign the personal guarantee, she was not  
18 contractually obligated to sign a personal guarantee for a lease in an effort to grow NRS.  
19

20 **H. Defendants' Breach of the Implied Covenant of Good Faith and Fair Dealing**  
21 **Counterclaim**

22 Defendants also asserted the same arguments in their counterclaim. In addition to  
23 those arguments, Defendants argued that Haack violated her duties when she filed multiple  
24 complaints against Defendants with the Real Estate Division. Her behavior towards the  
25 Defendants was another example of Haack violating her duty under the covenant.  
26 Defendants argued that this behavior was deliberate and hindered their ability to perform  
27 under the Agreement.  
28



1 Haack acknowledged that she filed complaints against Defendants Evenden and  
2 Ayala. Her testimony noted that she was angry with them, but it was because of their  
3 actions towards her. Haack also denied her behavior in the office rose to the level  
4 described by Defendants and argued that she was simply responding to their behavior and  
5 actions towards her.  
6

7 COURT FINDS, both parties demonstrated a lack of civility towards one another  
8 and one party was not more responsible than the other for the loss of current and  
9 prospective agents at NRS. The two former NRS agents who testified said that it was  
10 infighting among the members that led to their departure. This Court does not find that  
11 Defendants or Plaintiff Nancy Haack deserve more responsibility for the loss of agents in  
12 NRS. Based on the disruptive and threatening behavior of all the named parties in this  
13 matter, COURT FINDS, Nancy Haack did not breach the implied covenant of good faith  
14 and fair dealing.  
15

16 **I. Defendants' Tortious Interference with Contract and Prospective Economic**  
17 **Advantage Counterclaim**

18 To prevail on a claim for tortious interference with prospective economic  
19 advantage a plaintiff must prove: (1) plaintiff had a prospective contractual relationship  
20 with a third party; (2) defendant knew of the prospective relationship; (3) defendant  
21 intended to harm the plaintiff by preventing the prospective relationship; (4) defendant's  
22 interference with the relationship was not privileged or justified; and (5) defendant's  
23 interference caused plaintiff actual harm. *In re Amerco Derivative Litig.*, 127 Nev. 196,  
24 226 (2011).  
25

26 For this counterclaim, Defendants argued that Haack's actions interfered with  
27 Defendants' prospective contractual relationships with the agents they would have hired  
28



1 had NRS expanded. They asserted that Haack knew about these relationships and note that  
2 she even showed prospective agents the new office. Once Haack reneged on her promise  
3 to expand NRS with Defendants she prevented these relationships from materializing.  
4 Further, Defendants argued that Haack's statements that she was trying to "get back at"  
5 Defendants and that she wanted them to "start over like she had to" is evidence of their  
6 counterclaim.  
7

8 Plaintiff asserted at trial that while she had intended to expand the NRS space,  
9 Haack's husband's refusal to sign the personal guarantee resulted in Haack's refusal to  
10 sign the new lease<sup>5</sup>. Further, she argued that it was the actions by the Defendants that led  
11 to the tension in the office and ultimately harmed NRS.  
12

13 COURT FINDS, Haack's actions were no more responsible for any loss of agents  
14 than those actions of the Defendants. The former NRS agents who testified at trial both  
15 noted that infighting among the members led to their departure, not any specific actions of  
16 Haack. Further, COURT FINDS, Defendants moved forward with their plans to open the  
17 new company in the space across from NRS and any prospective agents still had the  
18 opportunity to join the company in the new space.  
19

#### 20 **J. Defendants' Declaratory Relief Counterclaim**

21 Defendants' final counterclaim asked this Court to declare that Haack abandoned  
22 NRS based on her statements and actions. She reneged on her promise to expand NRS,  
23 including refusing to sign the lease and personal guarantee for the new space belonging to  
24 Life Real Estate. Defendants pled that Haack resigned her position in NRS.  
25  
26  
27  
28

---

<sup>5</sup> Nancy Haack's husband has never been a party to this matter.



1 COURT FINDS, Plaintiff did not resign her position in NRS. Defendants testified  
2 at trial that Haack is still a member of NRS contradicting the claim that she resigned her  
3 position in NRS.  
4

5 **V. ORDER**

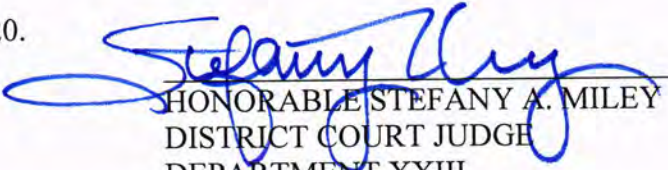
6 For the foregoing reasons, IT IS HEREBY ORDERED, judgement shall be  
7 awarded in favor of Plaintiff Nancy Haack on her claims of (1) breach of the implied  
8 covenant of good faith and fair dealing and (2) breach of fiduciary duty against Defendants  
9 Sean Evenden and Roger Ayala. Defendants Sean Evenden and Roger Ayala are required  
10 to pay Nancy Haack an equivalent amount of money in salary that they were paid after  
11 amending the Operating Agreement of NRS Realty Group, LLC.  
12

13 IT IS FURTHER ORDERED, pursuant to the Operating Agreement, Defendants  
14 shall reimburse NRS Realty Group, LLC any monies provided by NRS Realty Group,  
15 LLC, used towards Defendants' legal representation in this matter.  
16

17 IT IS FURTHER ORDERED, Plaintiff shall submit a list of three proposed  
18 independent accountants to Defendants who will choose one of the proposed accountants  
19 to provide an independent accounting of NRS Realty Group, LLC, including but not  
20 limited to, the profitability of the company from 2016 until the closing of NRS. The  
21 accountant shall also determine the value of NRS Realty Group, LLC at the time of its  
22 closing. The expense of the independent accountants shall be paid by Defendants. Further,  
23 Sean Evenden and Roger Ayala shall pay Nancy Haack one-third of the profits and value,  
24 minus any distribution that Haack already received, based on the independent accounting.  
25

26 IT IS SO ORDERED.  
27  
28

1  
2 Dated this 17th day of June, 2020.

3   
4 HONORABLE STEFANY A. MILEY  
5 DISTRICT COURT JUDGE  
6 DEPARTMENT XXIII

7 **CERTIFICATE OF SERVICE**

8 I hereby certify that on or about the date signed, a copy of this Decision and Order was  
9 electronically served and/or placed in the attorney's folders maintained by the Clerk of the  
10 Court and/or transmitted via facsimile and/or mailed, postage prepaid, by United States  
11 mail to the proper parties as follows: Nancy L. Haack, 1870 Morganton Dr., Henderson,  
12 NV, 89052, John Holiday, Esq. and Patrick J. Sheehan, Esq.

13  
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28 By: 

Carmen Alper  
Judicial Executive Assistant  
Department XXIII