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ALLISON MACKENZIE PAVLAKIS

Douglas County - NV
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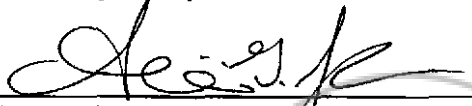
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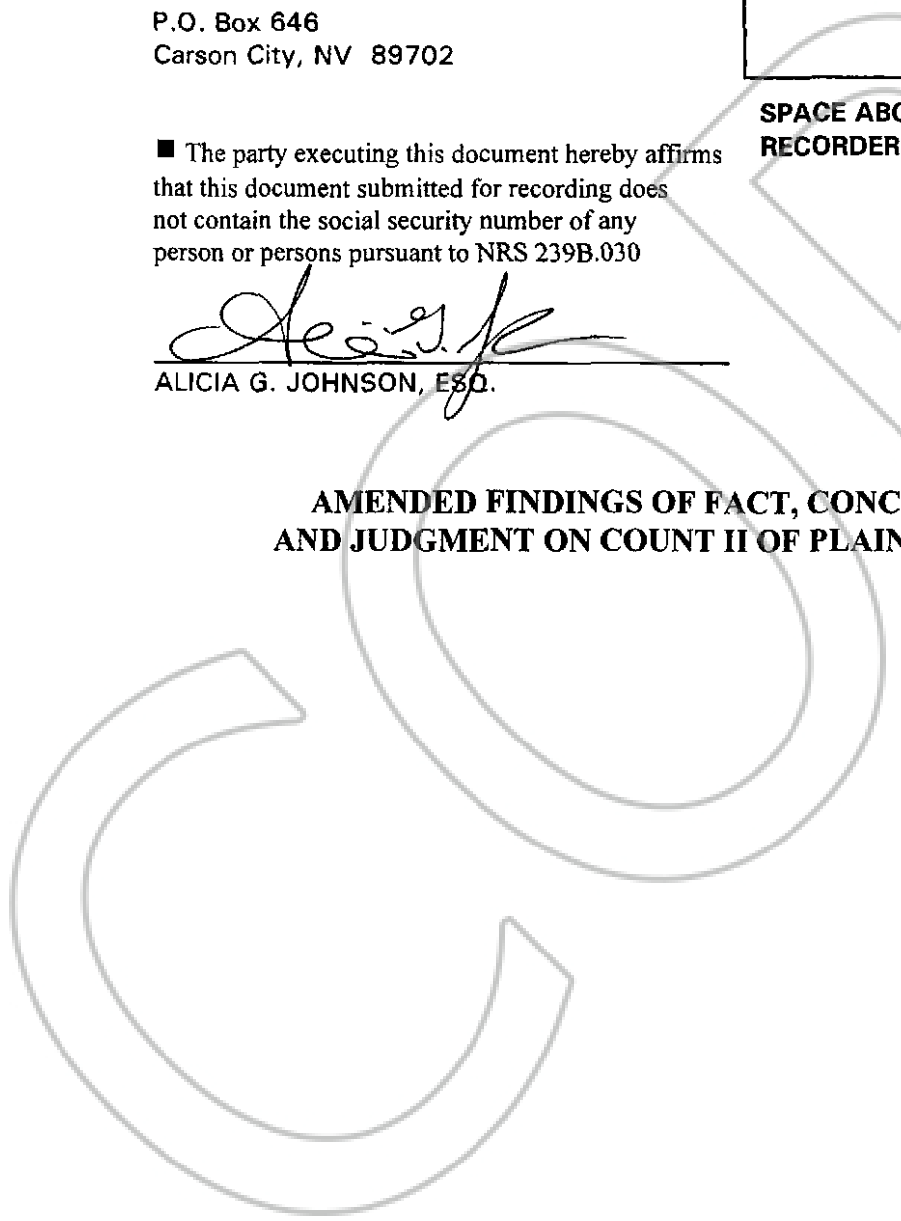
ALICIA G. JOHNSON, ESQ.
MIKE PAVLAKIS, ESQ.
✓ ALLISON, MacKENZIE, PAVLAKIS,
WRIGHT & FAGAN, LTD.
402 North Division Street
P.O. Box 646
Carson City, NV 89702

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■ The party executing this document hereby affirms
that this document submitted for recording does
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ALICIA G. JOHNSON, ESQ.

**AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW
AND JUDGMENT ON COUNT II OF PLAINTIFF'S COMPLAINT**



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1 Case No. 08-CV-0389

2 Dept. No. I

JUN 17 2009

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DOUGLAS COUNTY DISTRICT COURT CLERK

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BY *[Signature]* DEPUTY

6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF DOUGLAS

-o0o-

9 CITY NATIONAL BANK, a national
10 banking association,

11 Plaintiff,

11 vs.

12 WILLIAM V. MERRILL, individually,
13 KATHY LYNN MERRILL, individually,
14 WILLIAM V. MERRILL and KATHY
15 LYNN MERRILL, trustees of the BILL &
16 KATHY MERRILL FAMILY TRUST dated
17 August 23, 2000, and MERRILL
18 CONSTRUCTION, INC., a Nevada
19 corporation.

20 Defendants.

21 AND RELATED CLAIMS.

**AMENDED
FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
JUDGMENT ON COUNT II
OF PLAINTIFF'S COMPLAINT**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

20 THIS MATTER came before the Court pursuant to a Motion for Summary Judgment filed
21 by the Plaintiff, CITY NATIONAL BANK, N.A. ("CNB"). The Defendants, WILLIAM MERRILL,
22 KATHY LYNN MERRILL, WILLIAM V. MERRILL and KATHY LYNN MERRILL, trustees of
23 the BILL & KATHY MERRILL FAMILY TRUST, and MERRILL CONSTRUCTION, INC., a
24 Nevada corporation, filed an Opposition to CNB's Motion and CNB filed a Reply. On May
25 6, 2009, the Court entered an Order granting CNB's motion for summary judgment on Count II, by
26 which Plaintiff sought recovery of the principal amount of the \$200,000, based upon the promissory
27 note and guarantees signed by Defendants on or about September 25, 2007. The Court now makes
28 Findings of Fact, Conclusions of Law and Judgment as follows:

FINDINGS OF FACT

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Count II was brought by Plaintiff to enforce a promissory note, signed by Defendant Merrill Construction, Inc. on September 25, 2007, and to enforce the guarantees of that promissory note signed by William V. Merrill, individually, and Kathy Lynn Merrill, individually, and by William V. Merrill and Kathy Lynn Merrill as trustees of the Bill and Kathy Merrill Family Trust.

Defendants claimed that an issue of fact was created when employees of Business Bank of Nevada, predecessor in interest to CNB, stated that the line of credit balance that was due in one year "could and would be extended indefinitely, as long as Merrill Construction was making the required (interest) payment." Aff. of William Merrill at ¶5.

Defendants brought a counterclaim against CNB alleging that they were led to believe the loans could always be perpetually modified or extended and that CNB breached the implied covenant of Good Faith and Fair Dealing by seeking enforcement of the loan in accordance with its terms. Defendants' affirmative defenses are similar to the allegations of the counterclaim.

CONCLUSIONS OF LAW

Nevada law precludes the Defendants' defense as to Count II of Plaintiff's Complaint. Any representations that were made by Business Bank of Nevada prior to or during the execution of a contract are merged into or superceded by the executed written documents.

The representations by Business Bank of Nevada alleged by Defendants are inconsistent with the executed documents and are barred by the parol evidence rule.

The defense of detrimental reliance on the representations is not available to Defendants when they relied upon an oral representation that was contrary to the terms of the written agreement.

Enforcing the terms of a promissory note does not as a matter of law amount to bad faith or unfair dealing and no issue of fact was presented by Defendants regarding the allegations in their counterclaims.

There are no genuine issues of material fact related to Plaintiff's Count II claims with regard to the promissory note and guarantees. Plaintiff is entitled to judgment as a matter of law against Defendants on Defendants' counterclaim and on each of Plaintiff's claims related to the promissory note and guarantees.

NRCP 54(b) Certification

Because Count II of Plaintiff's complaint is based on a different promissory note and, therefore, a different set of facts from Count I of Plaintiff's complaint, there is no just reason for delay of entry of final judgment on Count II.

JUDGMENT


GOOD CAUSE APPEARING, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

Judgment is entered in favor of CNB and against Defendants, WILLIAM MERRILL, KATHY LYNN MERRILL, individually and as trustees of the BILL & KATHY MERRILL FAMILY TRUST, and MERRILL CONSTRUCTION, INC., a Nevada corporation, in the principal amount of \$199,451.77, plus interest accrued through September 5, 2008, in the amount of \$1,362.92, together with interest accruing after September 5, 2008, at the daily variable rate of City National Bank Prime Rate, plus five (5) points. Judgment includes an award of attorney's fees in the amount of \$11,351.25 and an award of costs in the amount of \$384.80.

DATED this 26 day of June, 2009.


SENIOR JUSTICE ROSE

Submitted by:


ALICIA G. JOHNSON, ESQ.
Nevada State Bar No. 10093
MIKE PAVLAKIS, ESQ.
Nevada State Bar No. 539
Allison, MacKenzie, Pavlakis,
Wright, & Fagan, Ltd
402 N. Division Street
Carson City, NV 89703

1 Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON,
2 MacKENZIE, PAVLAKIS, WRIGHT & FAGAN, LTD., Attorneys at Law, and that on this date,
3 I caused the foregoing document to be served to all parties to this action by:

- 4 X Placing a true copy thereof in a sealed postage prepaid envelope in the United States
Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]
- 5 _____ Hand-delivery - via Reno/Carson Messenger Service [NRCP 5(b)(2)(A)]
- 6 _____ Facsimile [NRCP 5(b)(2)(D)]
- 6 _____ Federal Express, UPS, or other overnight delivery

7 fully addressed as follows:
8 J.D. SULLIVAN, ESQ.
9 SULLIVAN LAW OFFICES
10 1650 Lucerne St., Ste 201
11 Minden, NV 89423

11 DATED this 17th day of June, 2009.

Neal D. Nulls

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original in file and of record in my office.

DATE 7/6/09

TED THRAN Clerk of the 9th Judicial District Court of the State of Nevada, in and for the County of Douglas,

By m. Blaylock Deputy