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ORDER EXPUNGING LIS PENDENS

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1 CASE NO.: *13-cv-0148*
13000148

2 DEPT NO.: II

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

8 CHRIS CROWLEY, an individual,

9 Plaintiff,

ORDER EXPUNGING LIS PENDENS

10 vs.

11 STEWART TITLE COMPANY, a Texas
12 corporation; JOHN CONNOLLY and ROSEMARIE
13 CONNOLLY, individually, and as Husband and
14 Wife; MARILYN A. SPENCER, an individual;
15 JAMES D. TRUSSELL and MARLENA P.
16 TRUSSELL, individually, and as Husband and Wife;
17 DOES 1 through X, inclusive; and Roe Business
18 Entities, 1 through X, inclusive.

19 Defendants.

20
21 THIS MATTER comes before the Court at the request of Defendants MARILYN A. SPENCER,
22 an individual, and JAMES D. TRUSSELL and MARLENA P. TRUSSELL, individually and as Husband
23 and Wife (hereinafter "OWNER-DEFENDANTS") on their Request for Hearing on Notice of Lis Pendens,
24 filed with the court June 26, 2013.

25 On June 4, 2013, Plaintiff, CHRIS CROWLEY (hereinafter "CROWLEY"), filed and recorded a
26 Notice of Lis Pendens, affecting real property described as follows: Douglas County APN 1318-10-417-
27 036, commonly known as 628 Don Drive, Zephyr Cove. That same day, CROWLEY filed a Complaint
28 for Quiet Title, Wrongful Foreclosure, Breach of Contract, Unjust Enrichment and Declaratory Relief.
Subsequently, STEWART TITLE COMPANY, and Suzanne Haskins, individually and as an Officer
and/or Agent of STEWART TITLE COMPANY (hereinafter "STC DEFENDANTS"), filed a Motion to
Dismiss, Request for Oral Argument, and Request for Judicial Notice on July 2, 2013. On July 3, 3013
the Court issued and Order Setting Hearing Re: Notice of Lis Pendens and Any Other Pending Motions.
OWNER-DEFENDANTS filed a Motion to Dismiss and Joinder on July 16, 2013. On July 24, 2013,

1 CROWLEY, having obtained counsel, filed a Notice of Appearance and Verified First Amended
2 Complaint, which no longer named as defendants Inez Tuttle and Suzanne Haskins. Shortly before the
3 hearing held on July 25, 2013, Inez Tuttle, not having been served with CROWLEY'S Amended
4 Complaint, filed an Answer and Cross Complaint to Complaint for Quiet Title, Wrongful Foreclosure,
5 Breach of Contract, Unjust Enrichment and Declaratory Relief.

6 On July 25, 2013, the Court held a hearing concerning OWNER-DEFENDANTS' Request and the
7 Motions filed thereafter. CROWLEY was present and represented by counsel, Rick R. Hsu, Esq.;
8 OWNER-DEFENDANTS were represented by counsel, Gregory D. Ott, Esq. and Richard J. McGuffin,
9 Esq.; STC DEFENDANTS were represented by Aaron R. Maurice, Esq.; and Inez Tuttle ("Tuttle") and
10 John Connolly appeared in Proper Person. At the outset of the hearing, Tuttle made an oral motion to
11 intervene. Whereas Tuttle is no longer a named defendant in this case, and she is currently a plaintiff in
12 a matter pending in the United States District Court for the District of Nevada involving the same of
13 similar issues, the Court denied the motion without prejudice. Tuttle is free to seek intervention via written
14 motion. Furthermore, by CROWLEY having filed his Verified First Amended Complaint, the parties
15 stipulated the Motions to Dismiss previously filed were rendered moot; therefore, the Court denies said
16 Motions without prejudice, and OWNER-DEFENDANTS and STC DEFENDANTS are free to file similar
17 motions in response to CROWLEY'S Amended Complaint. During the hearing the Court heard the
18 testimony of two witnesses and various exhibits were admitted into evidence.

19 Having considered the briefs and the exhibits and declarations attached thereto, the evidence
20 presented during the hearing, including witness testimony, the oral arguments of the parties' counsel, and
21 good cause appearing, the Court rules as follows:

22 CROWLEY has established to the satisfaction of the Court three of the four elements under NRS
23 14.015(2); therefore, the Court concludes that under subsection (2)(a), CROWLEY'S lis pendens is related
24 to an action "for the foreclosure of a mortgage upon the real property described in the notice or affects the
25 title or possession of the real property described in the notice"; under subsection (2)(b), CROWLEY was
26 not acting in bad faith or for an improper motive in filing and recording the lis pendens; and, under
27 subsection (2)(d), CROWLEY "would be injured by any transfer of an interest in the property before the
28 action is concluded." As for subsection (2)(c), both parties failed to address this issue in their written brief

1 and oral arguments; therefore, the Court has made no findings or rulings as to that issue.

2 In addition to the four factors required by NRS 14.015(2), CROWLEY must satisfy NRS
3 14.015(3). The Court focuses its attention specifically on NRS 14.015 (2)(3)(b). Here, CROWLEY must
4 show he "has a fair chance of success on the merits in the action and the injury described in paragraph (d)
5 of subsection 2 would be sufficiently serious that the hardship on him...in the event of a transfer would
6 be greater than the hardship on the defendant" that results from the lis pendens. The Court finds that
7 Crowley has failed to meet his burden to show that he has a fair chance of success on the merits of the
8 action. The Court finds that the STC DEFENDANTS' interpretation of NRS Chapter 92A is more
9 plausible than that advanced by Crowley; to wit, the merger of Stewart Title of Nevada Holdings, Inc. with
10 Stewart Title Company did not render the Substitution of Trustee invalid as argued by Crowley.
11 CROWLEY has not provided the Court with any evidence a transfer of the property would cause him to
12 suffer a hardship. Even more, CROWLEY has not provided the Court with any evidence a transfer of the
13 property would cause him to suffer a greater hardship than OWNER-DEFENDANTS. At this point, the
14 Court is unable to ascertain to what extent CROWLEY would be harmed if the property were to be
15 transferred. However, OWNER-DEFENDANTS have provided the Court with evidence that allowing the
16 lis pendens to remain in place would cause them hardship and perhaps serious injury.

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1 Based on the foregoing, IT IS HEREBY ORDERED that the OWNER-DEFENDANTS' request
2 to expunge the lis pendens filed by CROWLEY is GRANTED; this cancellation of the lis pendens has the
3 same effect as an expungement of the original notice.

4 IT IS FURTHER ORDERED that CROWLEY record a copy of this Order with the Douglas
5 County Recorder's Office no later than 5 days of the date of this Order.

6 DATED this 7 day of August, 2013.

Michael P. Gibbons

MICHAEL P. GIBBONS
DISTRICT JUDGE

10 Respectfully submitted by:

11 ALLING & JILLSON, LTD.

12
13 By: *RJ McGuffin*

14 RICHARD J. MCGUFFIN, ESQ., #12189
15 Attorneys for Defendants Marilyn A. Spencer,
16 James D Trussell and Marlena P. Trussell
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CERTIFICATE OF MAILING

Pursuant to Nevada Rules of Civil Procedure, I certify I served the **ORDER EXPUNGING LIS PENDENS** before filing it with the Court, on each attorney listed below who represents a party in this action:

Rick R. Hsu, Esq.
Post Office Box 30000
Reno, NV 89520

Brittany Wood, Esq.
Kolesar & Leatham
400 S. Rampart Boulevard, Suite 400
Las Vegas, NV 89145

John Connolly
320 Marsh Road
Carson City, NV 89701

by mailing a copy, by first class mail, postage prepaid on: July 31, 2013.

Judith Dupuy

JUDITH DUPUY
ALLING & JILLSON, LTD.

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 October 28, 2013

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

By *[Signature]* Deputy