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City/State/Zip Minden, NV 89423

Real Property Transfer Tax:

\$

DOUGLAS COUNTY, NV 2015-857221
Rec:\$19.00
Total:\$19.00 02/20/2015 09:13 AM
J D SULLIVAN Pgs=6



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KAREN ELLISON, RECORDER

JUDGMENT IN FAVOR OF: JACK WHITE AND DAYTON VALLEY ESTATES

(Title of Document)

This page added to provide additional information required by NRS 111.312 Sections 1-2. (Additional recording fee applies)

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1 Case No. 08-TRT-00067-1B

2 Dept. No. 2

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2015 FEB 19 PM 3:12

SUSAN MERRIWETHER
CLERK

BY *[Signature]*
DEPUTY

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6 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR CARSON CITY

8 *****

9
10 JACK WHITE, an individual;
11 DAYTON VALLEY ESTATES LLC, a
12 Nevada limited liability
13 company; and RETIREMEN, LLC,
14 a Nevada limited liability
15 company,

JUDGMENT IN FAVOR OF:
JACK WHITE, AND DAYTON VALLEY
ESTATES

16 Plaintiffs,

17 vs.

18 TIM EUGENE BERTAGNOLLI, an
19 individual; and T.E.
20 BERTAGNOLLI & ASSOCIATES INC.
21 dba Bertagnolli Aggregates, a
22 Nevada corporation,

23 Defendants.

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25 _____
26 /
27 Based upon the Memorandum of Decision with Findings of Fact
28 and Conclusion of Law, ("Decision") entered in this case on
December 9, 2014, and the matters argued and evidence adduced at
the Post-Trial Hearing on February 18, 2015, judgment be and
hereby is entered in favor of plaintiffs, Jack White and Dayton
Valley Estates, (collectively hereinafter, "White"), jointly and
severally, and against defendants, Tim Eugene Bertagnolli aka
Tim E. Bertagnolli fka T.E. Bertagnolli aka Tim Bertagnolli, an
individual, and T.E. Bertagnolli & Associates Inc. dba

1 Bertagnolli Aggregates, a Nevada corporation (collectively
2 hereinafter, "Bertagnolli"), jointly and severally, in the
3 amount of \$1,062,500, by way of equitable rescission. This
4 amount represents the purchase price for 125 acre feet of water
5 rights that White bought and paid for in 2004. In that the
6 Court is ordering the return of the purchase price from
7 Bertagnolli, White must effect return to Bertagnolli of the 125
8 acre feet of water rights he conveyed to White.

9 The 125 acre feet of water rights which were sold to White
10 are currently held by Dennis Smith, David Winchell, and Western
11 Engineering & Surveying Services (collectively hereinafter,
12 "Western"). Western obtained these rights as part of an earlier
13 settlement between Western and White. In that the Court is
14 awarding judgment for the purchase price of the water, the court
15 finds that it is equitable for Bertagnolli's 125 acre feet of
16 water rights to be returned to him by Western.

17 The court finds that the consideration paid to White by
18 Western was compensation for damages caused by Western for which
19 recovery could not be obtained from Bertagnolli. That is,
20 significant damages suffered by White were not foreseeable by
21 Bertagnolli and therefore not recoverable from him.

22 Bertagnolli contends that in addition to return to him of
23 the 125 acre feet of water rights, he should also be given an
24 offset for the value of the other consideration paid to White by
25 Western as a result of the Western settlement.

26 However, Western was White's project engineer, owed
27 different duties to White, and likely would have been found
28 liable for additional and different damages than those which

1 have been awarded against Bertagnolli. Provided that
2 Bertagnolli's 125 acre feet of water rights are returned, no
3 offset for the value of the Western settlement will be given to
4 Bertagnolli.

5 Bertagnolli claims that under *Elyousef v. O'Reilly &*
6 *Ferrario, LLC*, 126 Nev. Adv. Op. 43, 245 P.3d 547 (2010), he is
7 entitled to an offset, contending that otherwise White will be
8 receiving a double recovery. But the *Elyousef* case does not
9 apply where the damages recovered from the settling party do not
10 fully compensate the plaintiff. Western's settlement did not
11 fully compensate White in this case and he was entitled to
12 pursue Bertagnolli for recovery of the purchase price of the
13 water rights. It would be inequitable to force Western to bear
14 all liability, as Bertagnolli received \$1,062,500 for these
15 water rights, which were not useable by White and did not
16 satisfy the essential terms of the contract between White and
17 Bertagnolli.

18 Bertagnolli also contends that he is entitled to an offset
19 under *Western Tech. v. All-Am. Golf Ctr.*, 122 Nev. 869 (2006).
20 However, that case held that, "[a]n obligor is entitled to an
21 offset by the amount of the obligee's settlement with a
22 co-obligor in contract actions, to the extent that the judgment
23 and settlement are duplicative." *Id.*, 122 Nev. 869 at 876.

24 In the case at bar, Western was not a co-obligor on the
25 contract. Instead, it had liability arising from its
26 professional relationship with White. And the judgment against
27 Bertagnolli is therefore not duplicative of the value received
28 in the settlement with Western. Western was likely liable for

1 significant additional and different damages than those awarded
2 against Bertagnolli.

3 Thus, the court finds that the Western settlement did not
4 fully compensate White for his losses. Further, in that
5 Bertagnolli received value in the amount of the purchase price
6 of \$1,062,500, it would be an unfair windfall to Bertagnolli to
7 retain the value he received in the transaction.

8 Therefore, Bertagnolli is hereby ordered to pay White
9 \$1,062,500, and Western is ordered to convey the 125 acre feet
10 to Bertagnolli.

11 IT IS SO ORDERED.

12 Dated: February 19, 2015

James Sullivan
Judge District Court

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COPY

CERTIFIED COPY

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

Date February 19, 2015

Susan Merriwether, City Clerk and Clerk of the First Judicial District Court of the State of Nevada, in and for Carson City.

By [Signature] Deputy

Per NRS 239 Sec. 6 the SSN may be redacted, but in no way affects the legality of the document.