

1319-03-811-022
1420-07-101-004
APN# 1318-03-110-008



KAREN ELLISON, RECORDER

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Findings of Fact, Conclusions of Law, and Judgment

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Affidavit of Death – NRS 440.380(1)(A) & NRS 40.525(5)

Judgment – NRS 17.150(4)

Military Discharge – NRS 419.020(2)

Signature

Courtney Miller O'Mara, Attorney

Printed Name

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

FIRST FINANCIAL BANK, N.A.,

Case No. CV11-01205

Plaintiff,

Dept. No. 3

vs.

GORDON R. LANE and CAROL LANE,
individually and as Trustees of the LANE
FAMILY TRUST; and JOHN C. SERPA,
individually and as Trustee of the JOHN
C. SERPA TRUST,

Defendants.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

A nonjury trial in this matter took place before the Court on December 15, 2015. Courtney Miller O'Mara, Esq. and Leslie Bryan Hart, Esq. were present as Counsel for the Plaintiff and Greg Spradlin was present as a representative of the Plaintiff corporation, First Financial Bank, N.A. ("FFB") The Defendants in this matter were represented by Douglas R. Brown, Esq. and Mir Saied Kashani, Esq. who appeared before the Court *pro hac vice*.

Based on the evidence presented through the Plaintiff's witness Mr. Spradlin, a review of the evidentiary items submitted and the arguments of counsel, the Court finds that the Plaintiff has met its burden of establishing by a preponderance of the evidence that it has prevailed at this trial and the Plaintiff is entitled to judgment against the Defendants.

1 **FINDINGS OF FACT**

2 1. On or about September 28, 2007, the Lane Defendants obtained a \$3,000,000.00
3 business loan (the "Loan") through FFB's predecessor, Irwin Union Bank and Trust ("Lender").
4 The Loan was scheduled to mature on September 26, 2008. The Loan explicitly provides that it will
5 be governed by the laws of the State of Nevada.

6 2. On or about September 28, 2007, John C. Serpa, individually and as Trustee of the Serpa
7 Family Trust, executed two Personal Guarantees ("Guarantees"), promising to make timely
8 payment of up to \$1,570,000.00 of the sums due or to become due or in connection with the
9 promissory note in the principal sum of \$3,000,000.00.

10 3. The Guarantees, which are identical other than the name of the guarantor, explicitly
11 provide that they shall be interpreted in accordance with the laws of the State of Nevada.

12 4. The Guaranty recites, and Mr. Serpa agreed, that the Guarantees shall terminate upon
13 payment of the loan in full.

14 5. The Guaranty clearly states that the Guarantor shall pay to the Lender up to
15 \$1,570,000.00 in the event all indebtedness in connection with the Loan if the Loan is not timely
16 repaid.

17 6. The Guaranty states that an interest rate of 12% will be charged against any amount
18 required to be paid by the Guarantor.

19 7. Regarding the interest rate applicable through the Guarantees, the Court finds in favor of
20 Defendant Serpa. There is an ambiguity and the Court resolves it in the Defendant's favor:
21 Defendant Serpa will be subject to a default interest rate of 5% on any sum required to be paid by
22 Guarantor to Lender to the time of judgment at which time he will be required to pay at a 12%
23 interest rate.

24 8. The Court finds that the Guaranty is a valid, binding contract.

25 9. On or about September 28, 2007, the Lane Defendants executed a Deed of Trust and
26 Assignment of Rents in favor of Lender, granting to Lender a security interest in property in El
27 Dorado County, California (the "Property"), including the land, improvements, leases and rents and
28 other rights in the property described in a deed of trust (the "Deed of Trust").

1 10. The Deed of Trust explicitly provides that it will be governed by the laws of the State of
2 Nevada.

3 11. On or about September 27, 2007, the Lane Defendants executed a Promissory Note (the
4 "Note") that required them to make monthly loan payments on interest only to Lender. The maturity
5 date of the note was September 26, 2008.

6 12. On or about September 26, 2008, the maturity date of the Note was extended by
7 agreement of the parties to December 26, 2008.

8 13. On or about December 26, 2008, the maturity date of the note was again extended, this
9 time to June 26, 2009. The interest rate was adjusted to a fixed rate of 5% by this modification.

10 14. On June 26, 2009, the Modified Note matured and the Lane Defendants failed to pay the
11 Loan as agreed and made no additional monthly payments to Lender.

12 15. On or about September 18, 2009, the State of Indiana Department of Financial
13 Institutions took possession of Lender and appointed the Federal Deposit Insurance Corporation as
14 Receiver for Lender ("FDIC as Receiver"). As a result of this appointment, the FDIC as Receiver
15 succeeded to all rights, titles, powers, and privileges of Lender and took over Lender's assets,
16 including the Loan.

17 16. On or about September 18, 2009, the FDIC as Receiver and First Financial Bank, N.A.
18 (noted, *supra*, "FFB"), entered into a Loan Assignment Agreement whereby the FDIC as Receiver
19 assigned all right, title and interest of, in and to the Loan, Modified Note and Deed of Trust to FFB.

20 17. On or about March 18, 2011, FFB foreclosed on the Property referenced in the Deed of
21 Trust.

22 18. FFB bid \$1,890,000.00 at the foreclosure sale whereas the indebtedness at the time of
23 the sale exceeded that amount.

24 19. There is a stipulation as to the fair market value of the secured property, which is
25 \$2,300,000.00.

26 20. Pre-foreclosure interest totaled \$233,013.70.

27 21. The combined other relevant fees – Porter Simpson's \$9,717.58; Midkiff's \$2,689.99;
28

1 Professional Services Industries' \$2,700.00; John-Perkins' \$8,500.00 were appropriate foreclosure
2 costs.

3 22. The total indebtedness at the foreclosure was \$3,272,350.40 and after foreclosure, less
4 the fair market value of \$2,300,000.00, the total indebtedness was \$972,350.40.

5 23. Per the loan agreement as modified, the Lanes are obligated to pay interest at a rate of
6 5% (\$230,833.32) for a total owing as of today, December 15, 2015, of \$1,203,183.72.

7 24. Per the Guarantees executed by Mr. Serpa, he is obligated to pay interest at a rate of 5%
8 (\$230,833.32) for a total owing as of today of \$1,203,183.72, which is an amount somewhat smaller
9 than he guaranteed.

10 25. The deficiency action in this matter was timely filed.

11 26. Mr. Spradlin was a credible witness with over 32 years of banking experience.

12 27. The Defendants presented no witnesses.

13 14 **CONCLUSIONS OF LAW**

15 28. NRS 40.451 and 40.459 (prior to the 2011 amendment) apply to this dispute. NRS
16 40.459 explains what recovery can be realized upon a foreclosure sale and NRS 40.451 defines
17 indebtedness.

18 29. The preforeclosure interest accumulation was proper.

19 30. The foreclosure sale costs were proper items of cost.

20 31. The Defendants interpretation of the Guarantees and their ambiguities is rejected by the
21 Court. The Court does not find ambiguities in the plain reading of the documents. The Court
22 concludes they mean that Mr. Serpa guaranteed he would pay to the bank any amount up to
23 \$1,570,000.00 if any monies were owed after sale and final accounting because of the Lane's
24 defaulting on the Loan. That language refers to the definition of indebtedness.

25 32. Under NRS 40.459, FFB is entitled to recover the amount by which the amount of
26 indebtedness which was secured exceeds the fair market value of the property sold at the time of the
27 sale, with interest from the date of the sale. The parties stipulated that as of March 18, 2011, the fair
28 market value of the Property was \$2,300,000.00, higher than the sales price at the Trustee's Sale. As

1 such, FFB is entitled to recover the difference between the fair market value of the Property, as
2 determined by the Court, and the amount of indebtedness, with interest from the date of the sale.
3 NRS 40.459.

4 33. The evidence at trial established by a preponderance of the evidence that FFB is entitled
5 to a deficiency judgment against each of the Lane Defendants for \$1,203,183.72.

6 34. The evidence at trial established by a preponderance of the evidence that FFB is entitled
7 to a deficiency judgment against each of the Serpa Defendants for \$1,203,183.72.

8
9 **JUDGMENT**

10 35. Judgment shall be entered in the amount of \$1,203,183.72 as to the Lane Defendants and
11 \$1,203,183.72 as to the Serpa Defendants.

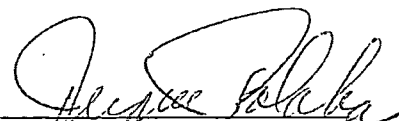
12 36. Additional interest will continue to accrue as to the Lane Defendants at the legal rate of
13 interest for the State of Nevada.

14 37. Additional interest will continue to accrue as to the Serpa Defendants until the judgment
15 is satisfied at the contracted rate of interest of 12%.

16 38. The Court enters judgment in favor of FFB on all of its claims for relief.

17 39. The Modified Note provides that the holder thereof is entitled to recover reasonable
18 attorneys' fees in the event suit is brought to collect the obligations thereunder, and FFB is entitled
19 to recover its attorneys' fees incurred herein. FFB is entitled to file a Motion for Attorneys' Fees
20 using the factors set out in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31
21 (1968).

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23 Dated this 15th day of December, 2015.

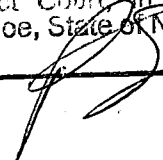
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25 JÉROME POLAHA
26 DISTRICT JUDGE
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CERTIFIED COPY

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: DEC 23 2015
JACQUELINE MRYANI, Clerk of the Second Judicial District Court, In and for the County of Washoe, State of Nevada.

By  Deputy

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Courtney Miller O'Mara, Esq. (SBN 10683)
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5 Attorneys for Plaintiff

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE

8 FIRST FINANCIAL BANK, N.A.,

CASE NO.: CV11-01205

9 Plaintiff,

DEPT. NO.: 3

10 vs.

11 GORDON R. LANE and CAROL LANE,
individually and as Trustees of the LANE
FAMILY TRUST; and JOHN C. SERPA,
12 individually and as Trustee of the JOHN
C. SERPA TRUST,

13 Defendants.
14 _____ /

15 **AFFIDAVIT OF JUDGMENT**

16 STATE OF NEVADA)
17) ss.
18 COUNTY OF WASHOE)

19 Courtney Miller O'Mara, being first duly sworn, deposes and says:

20 1. That I am an attorney for First Financial Bank, N.A. and it is in that capacity that I
21 make this affidavit.

22 2. That the names and addresses of the judgment debtors in the above action are as
23 follows:

24 A. Gordon R. Lane ("Randy")
25 642 Freel Drive
26 Zephyr Cove, NV 89448

27 Mr. Lane is a natural person and the last 4 digits his social security number are
28 7516.

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B. Carol Lane
642 Freel Drive
Zephyr Cove, NV 89448

Ms. Lane is a natural person and the last 4 digits of her social security number are 3326.

C. Gordon R. Lane and Carol Lane as Trustees of the Lane Family Trust
642 Freel Drive
Zephyr Cove, NV 89448

Mr. Lane is a natural person and the last 4 digits his social security number are 7516. Ms. Lane is a natural person and the last 4 digits of her social security number are 3326.

D. John C. Serpa, Sr.
P.O. Box 1724
Carson City, NV 89702

Mr. Serpa is a natural person and the last 4 digits of his social security number are 7678.

E. John C. Serpa as Trustee of the John C. Serpa, Sr. Trust
P.O. Box 1724
Carson City, NV 89702

Mr. Serpa is a natural person and the last 4 digits of his social security number are 7678.

3. The Assessor's Parcel Numbers and addresses of the real properties that are confirmed as owned by the judgment debtors are as follows:


A. Gordon R. Lane and Carol L. Lane
307 Genoa Springs Drive
Minden, Nevada 89423
Douglas County Nevada
APN 1319-03-811-022

B. John C. Serpa
3586 Silverado Drive
Carson City, NV 89705
Douglas County Nevada
APN 1420-07-101-004

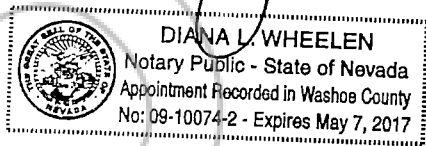
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C. John C. Serpa, Sr. Trustee
1084 Skyland Drive
Zephyr Cove, NV 89448
Douglas County Nevada
APN 1318-03-110-008

DATED: This 30th day of December, 2015


Courtney Miller O'Mara

Subscribed and sworn to before me
this 30th day of December, 2015.




Notary Public