

APN# 1318-23-202-001

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KAREN ELLISON, RECORDER

Order Expunging Notice of Lis Pendens

Title of Document (required)

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The undersigned hereby affirms that the document submitted for recording
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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)

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BOB E. R. WILLIAMS
CLERK

BY ANOWA DEPUTY

1 Case No 18-CV-0089

2 Dept No I

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

7
8 SILVER STATE INVESTORS, LLC,)

9 Plaintiff,)

10 vs)

11 THE DOUGLAS COUNTY SCHOOL)
12 DISTRICT, THE BOARD OF TRUSTEES)
13 OF THE DOUGLAS COUNTY SCHOOL)
14 DISTRICT, TERI WHITE,)
15 SUPERINTENDENT OF THE DOUGLAS)
16 COUNTY SCHOOL DISTRICT, PIONEER)
17 MOUNTAIN, LLC, a California Limited)
18 Liability Company, DOES 1 though XX,)
19 inclusive, ABC CORPORATIONS I through)
20 XX, inclusive, ROE LIMITED LIABILITY)
21 COMPANIES 1 through XX, inclusive, and)
22 BLACK AND WHITE COMPANIES I)
23 thought XX, inclusive,)

24 Defendants)

**ORDER GRANTING MOTION TO
EXPUNGE NOTICE OF LIS PENDENS**

19 THIS MATTER comes before the Court upon the Motion to Expunge Lis Pendens filed
20 April 24, 2018 by Defendants Douglas County School District ("DCSD"), its Board of Trustees
21 ("Board"), and its Superintendent, Teri White, which has been fully briefed and submitted to the
22 Court for review Having examined all relevant pleadings and papers on file herein, including
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1 the First Amended Complaint filed May 22, 2018, and based on matters presented at the
2 continued hearing held on May 24, 2018, upon 15 days' notice pursuant to NRS 14 015(2), the
3 Court now enters the following order, good cause appearing

4 THAT the Motion to Expunge Lis Pendens is GRANTED

5 Defendant DCSD and Pioneer Mountain, LLC ("*Pioneer*") entered into a Purchase and
6 Sale Agreement dated January 10, 2018 ("*PSA*") for DCSD to sell the real property and
7 improvements formerly known as Kingsbury Middle School ("*KMS Property*") The PSA was
8 entered after the Board adopted a resolution on December 18, 2017 declaring its intent to sell the
9 KMS Property for a minimum price of \$3,450,000 pursuant to NRS 393 250 DCSD received
10 two written bids above the minimum price, and accepted Pioneer's bid at the Board meeting of
11 January 9, 2018 for \$3,750,000 On April 16, 2018, DCSD and Pioneer entered into a Third
12 Amendment of the PSA, which among other things, reduced the purchase price to \$3,525,000, a
13 sum higher than the minimum price and the second highest bidder's offer, and changed the
14 allocation of insurance awards for DCSD to retain for damage to the Property
15

16 Plaintiff Silver State Investors, LLC did not submit a written bid to purchase the KMS
17 Property at the January 9, 2018 meeting Although Plaintiff sent a representative to that meeting,
18 Plaintiff did not submit a written or an oral bid pursuant to NRS 393 220 *et seq* Shortly before
19 the sale to Pioneer was scheduled to close, Plaintiff filed its Verified Complaint for Declaratory
20 Relief on April 23, 2018 and a Notice of Lis Pendens against the KMS Property, which was
21 recorded in Douglas County as Document No 2018-913329 After the hearing on this motion
22 commenced on May 16, 2018 and was continued, Plaintiff filed its First Amended Complaint on
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1 May 22, 2018, which added a second claim for relief for alleged violations of the Open Meeting
2 Law

3 The purpose of the lis pendens is to provide constructive notice to a purchaser or
4 encumbrancer of the affected property that the title to the property is disputed *Coury v Tran*,
5 111 Nev 652, 655, 895 P 2d 650 (1995) Under NRS 14 015(2), Plaintiff must establish to the
6 satisfaction of the Court that

7 (a) The action is for the foreclosure of a mortgage upon the real property
8 described in the notice or affects the title or possession of the real property
9 described in the notice,

10 (b) The action was not brought in bad faith or for an improper motive,

11 (c) The party who recorded the notice will be able to perform any conditions
12 precedent to the relief sought in the action insofar as it affects the title or
possession of the real property, and

13 (d) The party who recorded the notice would be injured by any transfer of an
14 interest in the property before the action is concluded

15 In addition to the requirements of NRS 14 015(2), Plaintiff must establish to the
16 satisfaction of the Court under NRS 14 015(3)

17 (a) That the party who recorded the notice is likely to prevail in the action, or

18 (b) That the party who recorded the notice has a fair chance of success on the
19 merits in the action and the injury described in paragraph (d) of subsection 2 would
20 be sufficiently serious that the hardship on him or her in the event of a transfer
would be greater than the hardship on the defendant resulting from the notice of
pendency,

21 and that if the party who recorded the notice prevails he or she will be entitled to
22 relief affecting the title or possession of the real property

1 Plaintiff has failed to meet its burden of establishing all four requirements under NRS
2 14 015(2) First, under subpart (2)(a), Plaintiff's action does not involve the foreclosure of a
3 mortgage on real property and Plaintiff has not established to the satisfaction of the Court any
4 claim of entitlement to the title or possession of the KMS Property "There must be some claim
5 of entitlement to the real property affected by the lis pendens" *Levinson v Eighth Judicial Dist*
6 *Court*, 109 Nev 747, 752, 857 P 2d 18 (1993) It is fundamental to the filing and recordation of
7 a lis pendens that the action involve *some legal interest* in the challenged property *Weddell v*
8 *H2O, Inc* , 128 Nev 94, 106, 271 P 3d 743 (2012) Plaintiff is a stranger to the contract between
9 DCSD and Pioneer "Before a stranger can avail himself of the exceptional privilege of suing for
10 a breach of an agreement to which he is not a party, he must at a minimum show that it was
11 intended for his direct benefit" *Olsen v Iacometti*, 91 Nev 241, 246, 533 P 2d 1360 (1975)
12 Section 11 15 of the PSA states it is not to be construed to give any legal or equitable rights,
13 remedy or claim to third parties If this Court granted declaratory relief to Plaintiff and voided
14 the PSA under Plaintiff's first claim for relief, Plaintiff would still be unable to claim any actual
15 entitlement to title or possession of the KMS Property to justify a lis pendens *See Doughty v*
16 *Birkholtz*, 964 P 2d 1108, 1111 (Or Ct App 1998) (subject of the suit under Oregon lis pendens
17 statutes must involve an actual interest in real property, not merely a speculative future one)
18 Similarly, if this Court voided any amendments to the PSA under the Open Meeting Law as
19 alleged in Plaintiff's second claim for relief, Plaintiff cannot demonstrate it is entitled to title or
20 possession of the KMS Property as a result thereof Plaintiff's expressed willingness to submit a
21 bid to buy the KMS Property in excess of \$3,525,000 does not create such an entitlement It is
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1 speculative whether the Board would rebid the property under NRS 393 245(1) or whether
2 Plaintiff would be the highest bidder accepted by the Board to create an actual legal interest in
3 the KMS Property

4 Second, Plaintiff has not demonstrated that the action was not brought for an improper
5 motive under NRS 14 015(2)(b) Even if this Court exercised its equitable powers to declare
6 rights under the PSA or voided the amendments to the PSA under the Open Meeting Law,
7 Plaintiff has cited no authority to support its request for the Court to order DCSD to “put the
8 project out to rebid ” Under NRS 393 245(1), DCSD and its Board have the option to sell the
9 KMS Property either through the bidding process or through a real estate broker
10

11 Third, under NRS 14 015(2)(c), Plaintiff has not demonstrated that it will be able to
12 “perform any conditions precedent to the relief sought in the action insofar as it affects the title
13 or possession of the real property ” Unlike *NGA #2 Liab Co v Rains*, 113 Nev 1151, 946 P 2d
14 163, 171 (1997), this is not a case where one party to a real property sale contract terminated it
15 while the other filed a lis pendens and demonstrated a willingness to perform As a stranger to
16 the PSA, Plaintiff has not legally committed to any conditions precedent to buy the KMS
17 Property In contrast to Plaintiff’s expressed willingness to submit a bid, Pioneer has vested
18 contract rights where all conditions to close have been satisfied, and Pioneer is ready to close
19 Plaintiff’s stated willingness to submit a separate bid, presumably with a new due diligence
20 period and new conditions precedent to close, is not comparable to Pioneer’s readiness to close
21 to satisfy the requirements under NRS 14 015(2)(c)
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1 Fourth, Plaintiff has not demonstrated any injury that would occur if the sale of the KMS
2 Property closes, as required under NRS 14 015(2)(d) While the loss of real property rights
3 generally results in irreparable harm, *Dixon v Thatcher*, 103 Nev 414, 416, 742 P 2d 1029
4 (1987), Plaintiff has not demonstrated to the Court's satisfaction that it has any real property
5 rights in the KMS Property that might be lost if the Property is transferred to Pioneer

6 Plaintiff has also failed to meet its burden to the satisfaction of the Court of establishing
7 either requirement under NRS 14 015(3) Plaintiff cannot establish that it is either likely to
8 prevail or has fair chance of success on its claims for declaratory relief and alleged Open Meeting
9 Law violations Regarding Plaintiff's claim for declaratory relief, Plaintiff has not demonstrated
10 to the satisfaction of the Court that it has standing to seek a declaration of rights under the PSA
11 NRS 30 040(1) allows "interested" persons under a contract to obtain a declaration of rights,
12 status or other legal relations thereunder Plaintiff has no rights under the PSA because it has no
13 legal interest therein, as a third-party beneficiary or otherwise Moreover, Plaintiff has not
14 satisfied the Court that it will succeed on proving the premise underlying its declaratory relief
15 claim that the PSA contradicts the Board Resolution adopted December 18, 2017 Section 9 4 of
16 the PSA states that representations and warranties of the seller shall "expire and terminate on the
17 Close of Escrow" and neither the seller nor any of its agents "shall have any liability whatsoever
18 with respect to any such representation or warranty following the Close of Escrow" Such
19 language is consistent with the Board Resolution requiring the buyer to acquire the KMS
20 Property "As Is, Where Is, With All Faults" and "without representation or warranty from the
21 District"
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1 Regarding Plaintiff's Open Meeting Law claim, this Court cannot void the PSA or any
2 Board action taken in January 2018 to approve it based on the 60-day limitations period under
3 NRS 241 037(3)(b) Plaintiff has not demonstrated to the satisfaction of the Court that Open
4 Meeting Law violations exist for the Court to void any amendments to the PSA signed within
5 the 60-day limitations period

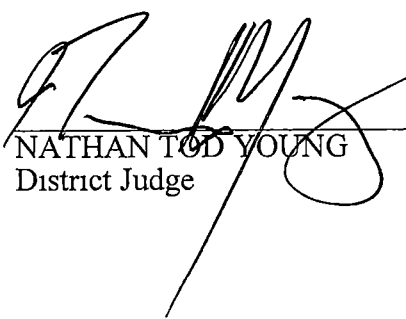
6 Finally, even if Plaintiff prevailed in either of its claims, Plaintiff cannot demonstrate to
7 the Court's satisfaction that it "will be entitled to relief affecting the title or possession of the
8 real property," as required under NRS 14 015(3) Plaintiff's willingness to submit a bid does not
9 create an actual entitlement to title or possession of the KMS Property Plaintiff having failed to
10 meet its burden required under NRS 14 015 to the satisfaction of the Court,
11

12 IT IS HEREBY ORDERED that the Notice of Lis Pendens filed and recorded April 23,
13 2018 as Document No 2018-913329 with the Douglas County Recorder is CANCELLED

14 IT IS FURTHER ORDERED that Plaintiff shall record with the Douglas County
15 Recorder a certified copy of this Order within 48 hours of entry

16 IT IS FURTHER ORDERED that the cancellation shall have the same effect as an
17 EXPUNGEMENT of the original Notice of Lis Pendens recorded as Document No 2018-
18 913329 with the Douglas County Recorder
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20 Dated this 7 day of June, 2018


NATHAN TODD YOUNG
District Judge

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Copies served by mail this 7 day of June, 2018, to

Mark A Goodman, Esq , Kalicki Collier, LLP, 401 Ryland St , Suite 200, Reno, NV 89502,
Rick R Hsu, Esq , Maupin, Cox & LeGoy, PO Box 30000, Reno, NV 89520


Judicial Executive Assistant

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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 6-8-18
BOBBIE R WILLIAMS Clerk of Court
of the State of Nevada, in and for the County of Douglas,
By ANOMAS Deputy