

APN# 1318-25-111-017

**Recording Requested by:**

Name: Leverty & Associates Law

Address: 832 Willow St.

City/State/Zip: Reno, NV 89502



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KAREN ELLISON, RECORDER

**When Recorded Mail to:**

Name: Leverty & Associates Law

Address: 832 Willow St.

City/State/Zip: Reno, NV 89502

( for Recorder's use only )

**Mail Tax Statement to:**

Name: N/A

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Notice of Appeal

**( Title of Document )**

**Please complete Affirmation Statement below:**

I the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted for recording does not contain the personal information of any person or persons.  
(Per NRS 239B.030)

**-OR-**

I the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted for recording does contain the personal information of a person or persons as required by law:

\_\_\_\_\_  
(State specific law)

*Jess P. Rinehart*

Signature

Title

Jess P. Rinehart  
Printed Name

This page added to provide additional information required by NRS 111.312 Sections 1-2 and NRS 239B.030 Section 4.

This cover page must be typed or printed in black ink.

(Additional recording fee applies)

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NO

MAR - 5 2020

Douglas County  
District Court Clerk

20 MAR -5 P2:26

Electronically Filed  
Mar 27 2020 03:23 p.m.

Elizabeth A. Williams  
Clerk of the Court  
Deputy

1 Case No: 19-CV-0299

2 Dept No.: II

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

LEVERTY & ASSOCIATES LAW  
CHARTERED, a Nevada corporate entity,

7

8

Plaintiff,

9

10 vs.

11 RAY WARREN EXLEY, an individual and  
12 judgment debtor, also known as Ray Warren  
13 Exley, M.D.; THE RAY WARREN EXLEY,  
14 M.D. NEVADA FAMILY TRUST, Ray Warren  
15 Exley, Trustee; THE NOVASEL &  
16 SCHWARTE INVESTMENTS, INC. PROFIT  
17 SHARING PLAN, ROBERT I. NOVASEL and  
18 RICHARD W. SCHWARTE, CO-TRUSTEES;  
19 ATHENA MEDICAL GROUP INC. . E.R.I.S.A.  
20 RETIREMENT TRUST; ATHENA MEDICAL  
21 GROUP INC. DEFINED BENEFIT PENSION  
22 PLAN CHTD; ATHENA MEDICAL GROUP  
23 DEFINED CONTRIBUTION PENSION PLAN  
24 AND TRUST NUMBER THREE; ATHENA  
25 MEDICAL GROUP DEFINED  
26 CONTRIBUTION PENSION PLAN AND  
27 TRUST NUMBER 3; DOUGLAS COUNTY  
28 TREASURER; KINGSBURY GENERAL  
IMPROVEMENT DISTRICT; GREGORY  
OCHOA, an individual; and DOES 1-10,  
inclusive,

Defendants.

NOTICE OF APPEAL

26

27

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1 Notice is hereby given that Leverty and Associates Law Chartered, a  
2 Nevada corporate entity, hereby appeals to the Nevada Supreme Court from that  
3 certain Order Granting Motion to Dismiss Complaint filed February 4, 2020 in this  
4 matter.

5  
6 DATED this 5<sup>th</sup> day of March, 2020.

7  
8 BY: William A. Baker  
9 William A. Baker, Esq.  
10 State Bar No. 001352  
11 Attorneys for Plaintiff

12 **AFFIRMATION PURSUANT TO NRS 239b.030**

13  
14 THE UNDERSIGNED DOES HEREBY AFFIRM THAT THE PRECEDING DOCUMENT  
15 DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY PERSON.  
16

17  
18 DATED THIS 5<sup>th</sup> day of March, 2020.

19 /s/ William A. Baker

20 William A. Baker, Esq.  
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## CERTIFICATE OF SERVICE

Pursuant to NRCPC 5(b), I certify that I am an employee of WALSH BAKER & ROSEVEAR, PC and that on this date, I served the foregoing document as follows:

<b>Notice of Appeal</b>
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on all parties to this action by:

<b>XXX</b>	Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage paid, following the ordinary business practices.
	Personal Delivery
	Telephonic Facsimile
	Federal Express or other overnight delivery
	Reno-Carson Messenger Service
	Certified Mail as detailed above, return receipt requested.

addressed as follows:

MOBO LAW, LLP  
Cameron D. Boardner, Esq.  
527 S. Arlington Ave.  
Reno, NV. 89509

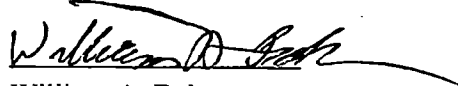
MOBO LAW, LLP  
Robin D. Shofner, Esq.  
1830 15<sup>th</sup> Street, St. 100  
Sacramento, Ca. 95811

Lemons, Grundy  
Todd Alexander, Esq.  
6005 Plumas Street, #300  
Reno, Nevada 89519

Minden Lawyers, LLC  
Charles S. Zumpft, Esq.  
990 Ironwood Dr., St. 300  
Minden, Nevada 89423

Zachary Wadle  
Deputy District Attorney  
PO Box 218  
Minden, Nv. 89423

Dated this 5<sup>th</sup> day of March, 2020.

  
William A. Baker

## Douglas County District Court Case Summary Report

Case #: 2019-CV-00299  
 Case Title: Leverty & Associates vs. Ray Warren Exley  
 Filed: 10/24/2019  
 Cause: Real Property: Judicial Foreclosure DV: N

Case Status: Reopened Date: 03/11/2020

### Parties

<u>Party</u>	<u>Name</u>	<u>Status</u>		
Plaintiff	Leverty & Associates			
Defendant	Exley, Ray Warren			
Defendant	The Ray Warren Exley M.D. Nevada Family Trust			
Defendant	The Novasel & Schwarte Investments, Inc.			
Defendant	Novasel, Robert			
Defendant	Schwarte, Richard C.			
Defendant	Athena Medical Group			
Defendant	E.R.I.S.A. Retirement Trust			
Defendant	Athena Medical Group Inc. Defined Benefit Pension Plan			
Defendant	Athena Medical Group Defined Contribution Pension Plan And Trust Number 3			
Defendant	Douglas County Treasurer			
Defendant	Kingsbury General Improvement District			
Defendant	Ochoa, Gregory			
<u>Party</u>	<u>Name</u>	<u>Bar #</u>	<u>Status</u>	<u>Representing</u>
Attorney	Baker, William A.	1352	Current	
Attorney	Zumpft, Charles S.	4804	Current	
Attorney	Alexander, Todd	10846	Current	
Attorney	Shofner, Robin D.	13758	Current	
Attorney	Bordner, Cameron D.	13831	Current	
Attorney	Fox, Marissa C Esq	15223	Current	

### Documents

<u>Date</u>	<u>Code</u>	<u>Description</u>
10/24/2019	DCOM	Complaint
10/24/2019	DCOM	Complaint - for Judicial Foreclosure of Plaintiffs Judgment Lien by Forced Sale of the Subject Real Property and Distribution of the Proceeds Thereof Pursuant to Statute
10/24/2019	DSBA	Summons Issued - Athena Medical Group
10/24/2019	DSBA	Summons Issued - Novasel & Schwarte
10/24/2019	DSBA	Summons Issued - Ray Warren Exley
10/24/2019	DSBA	Summons Issued - Douglas County Treasurer
10/24/2019	DSBA	Summons Issued - Kingsbury General Improvement
10/24/2019	DSBA	Summons Issued - Gregory Ochoa
10/24/2019	DSBA	Summons Issued - All Persons Interested
11/05/2019	DPRS	Proof of Service - Upon Defendant Athena Medical Group, Inc., Representative of E.R.I.S.A Retirement Trust; Defined Benefit Pension Plan Chartered; Defined Contribution Pension Plan and Trust Number Three; Defined Contribution Pension Plan and Trust Number 3
11/07/2019	DPRF	Proof of - Posting the Real Property The Subject of This Action With a Copy of The Summons and Complaint
11/07/2019	DPRS	Proof of Service - Upon Defendant Kingsbury Grade Improvement District of the Summons and Complaint

<u>Date</u>	<u>Code</u>	<u>Description</u>
11/18/2019	DPRS	Proof of Service - Upon Defendant Douglas County Treasurer Kathy Lewis of the Summons and Complaint
11/26/2019	DDEF	Default - Clerk's Default of Defendant Kingsbury Grade Improvement District
11/26/2019	DDEF	Default - Clerk's Default of Athena Medical Group Inc.
11/26/2019	DDEF	Default - Clerk's Default of Defendant Douglas County Treasurer Kathy Lewis
12/03/2019	DASR	Answer
12/05/2019	MMOT	Motion - to Allow Service of Process by Publication Points and Authorities
12/05/2019	DSUO	Submission of - Motion to Allow Service of Process by Publication
12/10/2019	DSTI	Stipulation - To Set Aside Clerk's Default - Athena Medical Group, Inc.
12/11/2019	DPRS	Proof of Service - Upon Defendant Gregory Ochoa of the Summons and Complaint
12/11/2019	DAOS	Acceptance of Service - of Summons and Complaint by Defendant Ray Warren Exley, M.D., an individual, and as Trustee of the Ray Warren Exley M.D. Nevada Family Trust
12/12/2019	DASR	Answer - Douglas County Treasurer's Answer to Complaint
12/16/2019	DORD	Order - Granting Motion to Allow Service of Process by Publication
12/18/2019	DNAC	Notice of Appearance of Counsel - Defendant Gregory Ochoa's Notice of Appearance
12/18/2019	DCOS	Certificate of Service
12/26/2019	MMOT	Motion - Ochoa's Motion to Consolidate Related Actions; Memorandum of Point and Authorities
12/26/2019	DN	Notice of - Ochoa's Notice of Motion to Consolidate Related Actions
12/26/2019	DASR	Answer - Defendant Gregory Ochoa's Answer to Complaint
12/26/2019	DCOS	Certificate of Service
12/30/2019	DMFD	Motion for Dismissal - Motion to Dismiss Complaint
01/03/2020	DOPP	Opposition to Motion - Opposition to Ochoa Motion to Consolidate Related Actions: Points and Authorities
01/06/2020	DPRS	Proof of Service - Upon Defendant the Novasel & Schwarte Investments, Inc. Profit Sharing Plan, Robert I. Novasel and Richard W. Schwarte, Co-Trustees by Certified Mail in Compliance with Court Order of December 16, 2019
01/10/2020	DREP	Reply to - Reply in Support of Motion to Consolidate Related Actions and in Response to Leverty's Opposition Thereo
01/14/2020	DOPP	Opposition to Motion - Opposition to Exley and Athena Motion to Dismiss Complaint; Points and Authorities in Support of Opposition Motion
01/15/2020	DRSU	Request for Submission - Submission of Motion to Consolidate, Opposition Thereto and Reply to Opposition for Decision by the Court
01/16/2020	DOPP	Opposition to Motion - Opposition to Ochoa's Motion to Consolidate Related Actions
01/21/2020	DREP	Reply to - Reply in Support of Motion to Dismiss Complaint
01/24/2020	DREP	Reply to - Ochoa's Reply in Support of Motion to Consolidate Related Actions and in Response to Exley's and the Athena Trusts' Opposition Thereto
01/30/2020	DASR	Answer - Defendants the Novasel & Schwarte Investments, Inc. Profit Sharing Plan, Robert I. Novasel and Richard W. Schwarte, Co-Trustees' Answer to Complaint
02/04/2020	DORD	Order - Granting Motion to Dismiss Complaint
02/04/2020	DODE	Order Denying - Motion to Consolidate Related Actions
02/07/2020	DNEO	Notice of Entry of Order
02/07/2020	DNEO	Notice of Entry of Order
03/05/2020	DNOA	Notice of Appeal
03/11/2020	MMOT	Motion - to Withdraw as Attorney Pursuant to SCR 46, NJDCR 21, and NRPC 1.16
03/13/2020	DAFS	Affidavit of Service

RECEIVED

JAN 21 2020

Douglas County  
District Court Clerk

FILED

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COLLEEN WILLIAMS  
CLERK

DEPUTY

1 Case No.: 19-CV-0299

2 Dept. No.: II

3  
4  
5 **IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
6 **IN AND FOR THE COUNTY OF DOUGLAS**

7 \*\*\*

8  
9 LEVERTY & ASSOCIATES LAW  
10 CHARTERED, a Nevada corporate entity,

11 Plaintiff,

12 vs.

~~PROPOSED~~ ORDER GRANTING  
MOTION TO DISMISS COMPLAINT

13 RAY WARREN EXLEY, an individual and  
14 judgment debtor, also known as Ray Warren  
15 Exley, M.D.; THE RAY WARREN  
16 EXLEY, M.D. NEVADA FAMILY  
17 TRUST, Ray Warren Exley, Trustee; THE  
18 NOVASEL & SCHWARTE  
19 INVESTMENTS, INC. PROFIT SHARING  
20 PLAN, ROBERT I. NOVASEL and  
21 RICHARD W. SCHWARTE, CO-  
22 TRUSTEES; ATHENA MEDICAL  
23 GROUP INC., E.R.I.S.A. RETIREMENT  
24 TRUST; ATHENA MEDICAL GROUP  
25 INC. DEFINED BENEFIT PENSION  
26 PLAN CHTD; ATHENA MEDICAL  
27 GROUP DEFINED CONTRIBUTION  
28 PENSION PLAN AND TRUST NUMBER  
THREE; ATHENA MEDICAL GROUP  
DEFINED CONTRIBUTION PENSION  
PLAN AND TRUST NUMBER 3;  
DOUGLAS COUNTY TREASURER;  
KINGSBURY GENERAL  
IMPROVEMENT DISTRICT; GREGORY  
OCHOA, an individual; and DOES 1-10,  
inclusive,

Defendants.

1 Before this Court is a *Motion to Dismiss Complaint* filed on December 30, 2019 by  
2 Defendants RAY WARREN EXLEY, RAY WARREN EXLEY as Trustee of the RAY  
3 WARREN EXLEY, M.D. NEVADA FAMILY TRUST, ATHENA MEDICAL GROUP,  
4 INC., ERISA RETIREMENT TRUST, ATHENA MEDICAL GROUP INC. DEFINED  
5 BENEFIT PENSION PLAN CHTD., ATHENA MEDICAL GROUP DEFINED  
6 CONTRIBUTION PENSION PLAN AND TRUST NUMBER THREE, and ATHENA  
7 MEDICAL GROUP DEFINED CONTRIBUTION PENSION PLAN AND TRUST  
8 NUMBER 3 (collectively "Exley") through their counsel, Todd R. Alexander and Sarah M.  
9 Molleck of Lemons, Grundy & Eisenberg. On January 2, 2020, Plaintiff Leverty &  
10 Associates, Chtd. ("Leverty") filed its *Opposition to Exley and Athena Motion to Dismiss*  
11 *Complaint; Points and Authorities in Support of Opposition Motion*. On January 21, 2020,  
12 Exley filed its *Reply in Support of Motion to Dismiss Complaint*.

13 This action is a judicial foreclosure action that seeks to enforce a judgment lien  
14 Leverty obtained against Ray Warren Exley in case no. 14-CV-0130 on May 24, 2017.  
15 Leverty filed this action on October 24, 2019, seeking judicial foreclosure upon the judgment  
16 lien that secures real property commonly known as 429 Panorama Drive, Stateline, Nevada.

17 Having reviewed the moving papers, points and authorities, and exhibits attached  
18 thereto, and for the foregoing reasons, the Court finds that the Motion to Dismiss should be  
19 granted and enters the following findings, conclusions, and order.

20 **FINDINGS OF FACT**

21 1. On January 31, 2017, Leverty served a Notice of Attorney Lien in 14-CV-  
22 0130, *Ray Warran Exley v. Lois O'Brien* (the "O'Brien matter"). Leverty's lien sought the  
23 amount of \$151,226.76 for its fees and costs.

24 2. Leverty filed this lien on real property commonly known as 429 Panorama  
25 Drive, Stateline, Nevada (the "Panorama Property") and retained possession of a Quitclaim  
26 Deed to the Panorama Property executed by Lois O'Brien as part of its lien. (See *Motion to*  
27 *Dismiss*, "Exhibit 2," *Complaint* filed in CV17-00311, ¶¶ 46-47).

28 ///



1           3.     On February 14, 2017, while still counsel for Exley, Leverty filed a Complaint  
2 in the Second Judicial District Court (the "CV17-00311 action") for breach of contract, unjust  
3 enrichment/quantum meruit/account stated, interpleader of Panorama Property Quitclaim  
4 Deed, and declaratory relief. (*Id.*).

5           4.     On March 22, 2017, Exley removed the CV17-00311 action to Federal Court  
6 on the basis of diversity (the "Federal Court Action"). No further litigation occurred in  
7 CV17-00311 because of the removal, and all subsequent litigation took place in federal court.  
8 (See Motion to Dismiss, "Exhibit 2," *Notice of Removal*).

9           5.     On May 3, 2017, in the O'Brien matter in state court, Leverty filed its "Motion  
10 to Adjudicate Leverty's Rights and to Enforce a Lien for Attorney's Fees," against Exley.  
11 (See Motion to Dismiss, "Exhibit 3").

12           6.     Leverty obtained a Judgment Lien on the Panorama Property in the amount of  
13 \$150,780.76 on May 24, 2017 in the O'Brien matter. (See Motion to Dismiss, "Exhibit 4").

14           7.     Leverty did not take any enforcement action on this Judgment Lien after  
15 obtaining it.

16           8.     Instead, Leverty litigated the Federal Court Action against Exley, seeking its  
17 attorney's fees arising from the O'Brien matter. (See Motion to Dismiss, "Exhibit 2" and  
18 *Reply in Support of Motion to Dismiss*, "Exhibit 1," federal court docket for case no. 3:17-cv-  
19 00175).

20           9.     In the Federal Court Action, the parties engaged in settlement negotiations and  
21 on November 9, 2017, Leverty filed a Motion to Enforce Settlement Agreement. (See Reply in  
22 *Support of Motion to Dismiss*, Federal Court Action docket, case no. 3:17-cv-00175 [ECF 53,  
23 54, 55, and 102]).

24           10.    On May 11, 2018, the Federal Court entered its Order granting Leverty's  
25 Motion to Enforce Settlement Agreement. (See Reply in Support of Motion to Dismiss,  
26 "Exhibit 2" [ECF 102]).

27           11.    On January 14, 2019, Leverty moved for a judgment on the settlement  
28 agreement, seeking a "single non-confidential document to allow Leverty to begin to execute

1 the judgment against Exley.” (See *Reply in Support of Motion to Dismiss*, “Exhibit 3,”  
2 *Judgment in a Civil Case* [ECF 141] and *Reply in Support of Issuance of a Judgment in a*  
3 *Civil Case* [ECF 143]).

4 12. On February 22, 2019, the Federal Court granted Leverty’s motion for  
5 judgment and on February 25, 2019, entered Judgment in favor of Leverty on the settlement  
6 amount of \$161,000. (See *Motion to Dismiss*, “Exhibit 5” and “Exhibit 6”).

7 13. Eight months after Leverty obtained a personal judgment against Exley in the  
8 Federal Court Action, Leverty filed this Complaint for Judicial Foreclosure on October 24,  
9 2019, seeking to foreclose upon the Panorama Property that secured its judgment lien.

10 **CONCLUSIONS OF LAW**

11 To the extent any of the foregoing findings of fact constitute conclusions of law, they  
12 are incorporated herein.

13 1. Nevada’s one-action rule, NRS 40.430, “requires that creditors seeking to  
14 enforce obligations secured by real property do so in a single action.” *Bonicamp v. Vazquez*,  
120 Nev. 377, 379, 91 P.3d 584, 585 (2004).

15 2. The one-action rule reads, in pertinent part, as follows:

16 [T]here may be but one action for the recovery of any debt, or for the  
17 enforcement of any right secured by a mortgage or other lien upon real  
18 estate.... In that action, the judgment must be rendered for the amount found  
19 due the plaintiff, and the court, by its decree or judgment, may direct a sale of  
the encumbered property, or such part thereof as is necessary, and apply the  
proceeds of the sale as provided in NRS 40.462.

20 NRS 40.430(1).

21 3. “As a general matter, should the creditor fail to follow the single action  
22 procedure by bringing a separate action directly on the obligation, the one-action rule dictates  
23 the creditor’s loss of rights in the real estate collateral securing the debt in question.”  
24 *Bonicamp*, 120 Nev. at 380, 91 P.3d at 586; see also *Nevada Wholesale Lumber Co. v. Myers*  
25 *Realty, Inc.*, 92 Nev. 24, 30, 544 P.2d 1204, 1208 (1976) (superseded by statute) (creditor’s  
26 failure to exhaust its security before bringing action on underlying debt placed into operation  
27 the sanctions aspect of the one-action rule so that creditor lost all security rights in the real  
28 property regarding the debt in question).

1           4.       The one-action rule is an affirmative defense that must be made or it is waived.  
2 NRS 40.435(3); *Hefetz v. Beavor*, 133 Nev. 323, 330, 397 P.3d 472, 478 (2017) (discussing  
3 waiver of the one-action rule). The Exley defendants' *Motion to Dismiss* as a responsive  
4 pleading to Levery's Complaint for Judicial Foreclosure is proper.

5           5.       This action violates NRS 40.430 because Levery seeks to enforce by judicial  
6 foreclosure the same underlying debt upon which it has obtained a personal judgment against  
7 Exley in the Federal Court Action – payment of its attorney's fees arising from the O'Brien  
8 matter.

9           6.       This action to foreclose upon the Panorama Property is untimely and violates  
10 the one-action rule because Levery has already obtained a personal judgment against Exley in  
11 the Federal Court Action well before seeking to foreclose upon the collateral securing the  
12 underlying debt.

13           7.       NRS 40.435(1) does not apply because this case (19-CV-0299) was not "stayed  
14 or dismissed" before entry of final judgment in Federal Court.

15           8.       This Court also cannot convert this action into "an action which does not  
16 violate NRS 40.430," as Levery's remedy against Exley in state court for enforcement of its  
17 Judgment Lien can only be a judicial foreclosure action because the Judgment Lien is secured  
18 by real property – not personal collateral. Levery cannot transfer or transmute its Judgment  
19 Lien against the Panorama Property into a personal judgment against Exley. Similarly,  
20 Levery cannot execute or enforce its personal Judgment in Federal Court against Exley in  
21 this case. Enforcement proceedings on the federal Judgment must take place in federal court.  
22 Thus, this action cannot be converted under 40.435(1)(b).

23           9.       Instead, the Court finds that NRS 40.430 and NRS 40.435 apply to waive  
24 Levery's rights in the security and deprive Levery of its ability to proceed against the  
25 security in this case, the Panorama Property. *See Hefetz v. Beavor*, 133 Nev. 323, 328, 397  
26 P.3d 472, 476 (2017) (discussing the sanctions of the one-action rule).

27           10.      That the Athena entities were not parties to the Federal Court Action is not a  
28 bar to dismissal, as set forth in *Bonicamp* because the Athena entities are merely in the chain

1 of title for purposes of this Judicial Foreclosure Action as the Vasquez defendants were in  
2 *Bonicamp*. 120 Nev. at 379, 91 P.3d at 585.

3 11. Instead, the Court concludes this action must be dismissed as to all defendants  
4 because Leverty's attempt to foreclose on the Panorama Property violates Nevada's one-action  
5 rule.

6 Good cause appearing therefor,

7 **IT IS HEREBY ORDERED** that Leverty has legally forfeited its security in the  
8 Panorama Property and its right to judicially foreclose against the Panorama Property.

9 **IT IS FURTHER ORDERED** that this case is dismissed with prejudice as to all  
10 defendants.

11 Dated this 27<sup>th</sup> day of January, 2020.

12  
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15 \_\_\_\_\_  
16 DISTRICT COURT JUDGE  
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23 Submitted By:  
24 Todd R. Alexander, Esq. (SBN 10846)  
25 Sarah M. Molleck, Esq. (SBN 13830)  
26 6005 Plumas Street, Third Floor  
27 Reno, Nevada 89519  
28 (775) 786-6868  
*Attorneys for Exley and Athena Trusts*

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Case No.: 19-CV-0299

Dept. No.: II

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FEB - 7 2020

Douglas County  
District Court Clerk

**FILED**

2020 FEB - 7 PM 4: 21

ROSEMARY WILLIAMS

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

\*\*\*

LEVERTY & ASSOCIATES LAW  
CHARTERED, a Nevada corporate entity,

Plaintiff,

vs.

**NOTICE OF ENTRY OF ORDER**

RAY WARREN EXLEY, an individual  
and judgment debtor, also known as Ray  
Warren Exley, M.D.; THE RAY  
WARREN EXLEY, M.D. NEVADA  
FAMILY TRUST, Ray Warren Exley,  
Trustee; THE NOVASEL & SCHWARTE  
INVESTMENTS, INC. PROFIT  
SHARING PLAN, ROBERT I.  
NOVASEL and RICHARD W.  
SCHWARTE, CO-TRUSTEES; ATHENA  
MEDICAL GROUP INC., E.R.I.S.A.  
RETIREMENT TRUST; ATHENA  
MEDICAL GROUP INC. DEFINED  
BENEFIT PENSION PLAN CHTD;  
ATHENA MEDICAL GROUP DEFINED  
CONTRIBUTION PENSION PLAN AND  
TRUST NUMBER THREE; ATHENA  
MEDICAL GROUP DEFINED  
CONTRIBUTION PENSION PLAN AND  
TRUST NUMBER 3; DOUGLAS  
COUNTY TREASURER, KINGSBURY  
GENERAL IMPROVEMENT DISTRICT;  
GREGORY OCHOA, an individual; and  
DOES 1-10, inclusive,

Defendants.

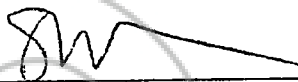
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PLEASE TAKE NOTICE that the *Order Granting Motion to Dismiss Complaint* was entered on February 4, 2020 in the above-captioned matter. A copy of said Order is attached hereto as Exhibit 1.

*The undersigned does hereby affirm that the preceding document does not contain the social security number or personal information of any person.*

Dated this 6<sup>th</sup> day of February, 2020.

LEMONS, GRUNDY & EISENBERG

By:   
Todd R. Alexander, Esq. (SBN 10846)  
Sarah M. Molleck, Esq. (SBN 13830)  
6005 Plumas Street, Third Floor  
Reno, Nevada 89519  
(775) 786-6868  
*Attorneys for Exley and Athena Trusts*

**CERTIFICATE OF MAILING**

Pursuant to NRCP 5(b), I certify that I am an employee of Lemons, Grundy & Eisenberg and that on February 6, 2020, I deposited in the United States Mail, with postage fully prepaid, a true and correct copy of the foregoing **Notice of Entry of Order**, addressed to the following:

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P.O. Box 33354  
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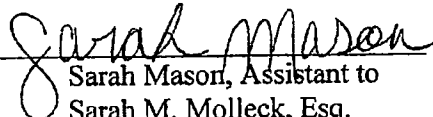
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## INDEX OF EXHIBITS

EXHIBIT	DESCRIPTION OF EXHIBITS	No. of Pages
1	2020-02-04 Order Granting Motion to Dismiss Complaint	7

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EXHIBIT 1

COPY

EXHIBIT 1

1 Case No.: 19-CV-0299

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2 Dept. No.: II

JAN 21 2020

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Douglas County  
District Court Clerk

ROBERT WILLIAMS  
CLERK

A. NEWTON  
DEPUTY

5 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF DOUGLAS

7 \*\*\*

8  
9 LEVERTY & ASSOCIATES LAW  
10 CHARTERED, a Nevada corporate entity,

11 Plaintiff,

12 vs.

**[PROPOSED] ORDER GRANTING  
MOTION TO DISMISS COMPLAINT**

13 RAY WARREN EXLEY, an individual and  
14 judgment debtor, also known as Ray Warren  
15 Exley, M.D.; THE RAY WARREN  
16 EXLEY, M.D. NEVADA FAMILY  
17 TRUST, Ray Warren Exley, Trustee; THE  
18 NOVASEL & SCHWARTE  
19 INVESTMENTS, INC. PROFIT SHARING  
20 PLAN, ROBERT I. NOVASEL and  
21 RICHARD W. SCHWARTE, CO-  
22 TRUSTEES; ATHENA MEDICAL  
23 GROUP INC., E.R.I.S.A. RETIREMENT  
24 TRUST; ATHENA MEDICAL GROUP  
25 INC. DEFINED BENEFIT PENSION  
26 PLAN CHTD; ATHENA MEDICAL  
27 GROUP DEFINED CONTRIBUTION  
28 PENSION PLAN AND TRUST NUMBER  
THREE; ATHENA MEDICAL GROUP  
DEFINED CONTRIBUTION PENSION  
PLAN AND TRUST NUMBER 3;  
DOUGLAS COUNTY TREASURER;  
KINGSBURY GENERAL  
IMPROVEMENT DISTRICT; GREGORY  
OCHOA, an individual; and DOES 1-10,  
inclusive,

Defendants.

1 Before this Court is a *Motion to Dismiss Complaint* filed on December 30, 2019 by  
2 Defendants RAY WARREN EXLEY, RAY WARREN EXLEY as Trustee of the RAY  
3 WARREN EXLEY, M.D. NEVADA FAMILY TRUST, ATHENA MEDICAL GROUP,  
4 INC., ERISA RETIREMENT TRUST, ATHENA MEDICAL GROUP INC. DEFINED  
5 BENEFIT PENSION PLAN CHTD., ATHENA MEDICAL GROUP DEFINED  
6 CONTRIBUTION PENSION PLAN AND TRUST NUMBER THREE, and ATHENA  
7 MEDICAL GROUP DEFINED CONTRIBUTION PENSION PLAN AND TRUST  
8 NUMBER 3 (collectively "Exley") through their counsel, Todd R. Alexander and Sarah M.  
9 Molleck of Lemons, Grundy & Eisenberg. On January 2, 2020, Plaintiff Leverty &  
10 Associates, Chtd. ("Leverty") filed its *Opposition to Exley and Athena Motion to Dismiss*  
11 *Complaint; Points and Authorities in Support of Opposition Motion*. On January 21, 2020,  
12 Exley filed its *Reply in Support of Motion to Dismiss Complaint*.

13 This action is a judicial foreclosure action that seeks to enforce a judgment lien  
14 Leverty obtained against Ray Warren Exley in case no. 14-CV-0130 on May 24, 2017.  
15 Leverty filed this action on October 24, 2019, seeking judicial foreclosure upon the judgment  
16 lien that secures real property commonly known as 429 Panorama Drive, Stateline, Nevada.

17 Having reviewed the moving papers, points and authorities, and exhibits attached  
18 thereto, and for the foregoing reasons, the Court finds that the Motion to Dismiss should be  
19 granted and enters the following findings, conclusions, and order.

20 **FINDINGS OF FACT**

21 1. On January 31, 2017, Leverty served a Notice of Attorney Lien in 14-CV-  
22 0130, *Ray Warran Exley v. Lois O'Brien* (the "O'Brien matter"). Leverty's lien sought the  
23 amount of \$151,226.76 for its fees and costs.

24 2. Leverty filed this lien on real property commonly known as 429 Panorama  
25 Drive, Stateline, Nevada (the "Panorama Property") and retained possession of a Quitclaim  
26 Deed to the Panorama Property executed by Lois O'Brien as part of its lien. (See Motion to  
27 Dismiss, "Exhibit 2," *Complaint* filed in CV17-00311, ¶¶ 46-47).

28 ///

1           3.     On February 14, 2017, while still counsel for Exley, Leverty filed a Complaint  
2 in the Second Judicial District Court (the "CV17-00311 action") for breach of contract, unjust  
3 enrichment/quantum meruit/account stated, interpleader of Panorama Property Quitclaim  
4 Deed, and declaratory relief. (*Id.*)

5           4.     On March 22, 2017, Exley removed the CV17-00311 action to Federal Court  
6 on the basis of diversity (the "Federal Court Action"). No further litigation occurred in  
7 CV17-00311 because of the removal, and all subsequent litigation took place in federal court.  
8 (See Motion to Dismiss, "Exhibit 2," *Notice of Removal*).

9           5.     On May 3, 2017, in the O'Brien matter in state court, Leverty filed its "Motion  
10 to Adjudicate Leverty's Rights and to Enforce a Lien for Attorney's Fees," against Exley.  
11 (See Motion to Dismiss, "Exhibit 3").

12           6.     Leverty obtained a Judgment Lien on the Panorama Property in the amount of  
13 \$150,780.76 on May 24, 2017 in the O'Brien matter. (See Motion to Dismiss, "Exhibit 4").

14           7.     Leverty did not take any enforcement action on this Judgment Lien after  
15 obtaining it.

16           8.     Instead, Leverty litigated the Federal Court Action against Exley, seeking its  
17 attorney's fees arising from the O'Brien matter. (See Motion to Dismiss, "Exhibit 2" and  
18 *Reply in Support of Motion to Dismiss*, "Exhibit 1," federal court docket for case no. 3:17-cv-  
19 00175).

20           9.     In the Federal Court Action, the parties engaged in settlement negotiations and  
21 on November 9, 2017, Leverty filed a Motion to Enforce Settlement Agreement. (See Reply in  
22 *Support of Motion to Dismiss*, Federal Court Action docket, case no. 3:17-cv-00175 [ECF 53,  
23 54, 55, and 102]).

24           10.    On May 11, 2018, the Federal Court entered its Order granting Leverty's  
25 Motion to Enforce Settlement Agreement. (See Reply in Support of Motion to Dismiss,  
26 "Exhibit 2" [ECF 102]).

27           11.    On January 14, 2019, Leverty moved for a judgment on the settlement  
28 agreement, seeking a "single non-confidential document to allow Leverty to begin to execute

1 the judgment against Exley.” (See *Reply in Support of Motion to Dismiss*, “Exhibit 3,”  
2 *Judgment in a Civil Case* [ECF 141] and *Reply in Support of Issuance of a Judgment in a*  
3 *Civil Case* [ECF 143]).

4 12. On February 22, 2019, the Federal Court granted Leverty’s motion for  
5 judgment and on February 25, 2019, entered Judgment in favor of Leverty on the settlement  
6 amount of \$161,000. (See *Motion to Dismiss*, “Exhibit 5” and “Exhibit 6”).

7 13. Eight months after Leverty obtained a personal judgment against Exley in the  
8 Federal Court Action, Leverty filed this Complaint for Judicial Foreclosure on October 24,  
9 2019, seeking to foreclose upon the Panorama Property that secured its judgment lien.

10 **CONCLUSIONS OF LAW**

11 To the extent any of the foregoing findings of fact constitute conclusions of law, they  
12 are incorporated herein.

13 1. Nevada’s one-action rule, NRS 40.430, “requires that creditors seeking to  
14 enforce obligations secured by real property do so in a single action.” *Bonicamp v. Vazquez*,  
120 Nev. 377, 379, 91 P.3d 584, 585 (2004).

15 2. The one-action rule reads, in pertinent part, as follows:

16 [T]here may be but one action for the recovery of any debt, or for the  
17 enforcement of any right secured by a mortgage or other lien upon real  
18 estate.... In that action, the judgment must be rendered for the amount found  
19 due the plaintiff, and the court, by its decree or judgment, may direct a sale of  
the encumbered property, or such part thereof as is necessary, and apply the  
proceeds of the sale as provided in NRS 40.462.

20 NRS 40.430(1).

21 3. “As a general matter, should the creditor fail to follow the single action  
22 procedure by bringing a separate action directly on the obligation, the one-action rule dictates  
23 the creditor’s loss of rights in the real estate collateral securing the debt in question.”  
24 *Bonicamp*, 120 Nev. at 380, 91 P.3d at 586; see also *Nevada Wholesale Lumber Co. v. Myers*  
25 *Realty, Inc.*, 92 Nev. 24, 30, 544 P.2d 1204, 1208 (1976) (superseded by statute) (creditor’s  
26 failure to exhaust its security before bringing action on underlying debt placed into operation  
27 the sanctions aspect of the one-action rule so that creditor lost all security rights in the real  
28 property regarding the debt in question).

1           4.     The one-action rule is an affirmative defense that must be made or it is waived.  
2     NRS 40.435(3); *Hefetz v. Beavor*, 133 Nev. 323, 330, 397 P.3d 472, 478 (2017) (discussing  
3     waiver of the one-action rule). The Exley defendants' *Motion to Dismiss* as a responsive  
4     pleading to Levery's Complaint for Judicial Foreclosure is proper.

5           5.     This action violates NRS 40.430 because Levery seeks to enforce by judicial  
6     foreclosure the same underlying debt upon which it has obtained a personal judgment against  
7     Exley in the Federal Court Action – payment of its attorney's fees arising from the O'Brien  
8     matter.

9           6.     This action to foreclose upon the Panorama Property is untimely and violates  
10    the one-action rule because Levery has already obtained a personal judgment against Exley in  
11    the Federal Court Action well before seeking to foreclose upon the collateral securing the  
12    underlying debt.

13          7.     NRS 40.435(1) does not apply because this case (19-CV-0299) was not "stayed  
14    or dismissed" before entry of final judgment in Federal Court.

15          8.     This Court also cannot convert this action into "an action which does not  
16    violate NRS 40.430," as Levery's remedy against Exley in state court for enforcement of its  
17    Judgment Lien can only be a judicial foreclosure action because the Judgment Lien is secured  
18    by real property – not personal collateral. Levery cannot transfer or transmute its Judgment  
19    Lien against the Panorama Property into a personal judgment against Exley. Similarly,  
20    Levery cannot execute or enforce its personal Judgment in Federal Court against Exley in  
21    this case. Enforcement proceedings on the federal Judgment must take place in federal court.  
22    Thus, this action cannot be converted under 40.435(1)(b).

23          9.     Instead, the Court finds that NRS 40.430 and NRS 40.435 apply to waive  
24    Levery's rights in the security and deprive Levery of its ability to proceed against the  
25    security in this case, the Panorama Property. *See Hefetz v. Beavor*, 133 Nev. 323, 328, 397  
26    P.3d 472, 476 (2017) (discussing the sanctions of the one-action rule).

27          10.    That the Athena entities were not parties to the Federal Court Action is not a  
28    bar to dismissal, as set forth in *Bonicamp* because the Athena entities are merely in the chain

1 of title for purposes of this Judicial Foreclosure Action as the Vasquez defendants were in  
2 *Bonicamp*. 120 Nev. at 379, 91 P.3d at 585.

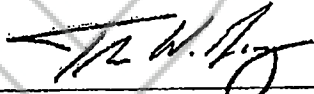
3 11. Instead, the Court concludes this action must be dismissed as to all defendants  
4 because Leverty's attempt to foreclose on the Panorama Property violates Nevada's one-action  
5 rule.

6 Good cause appearing therefor,

7 **IT IS HEREBY ORDERED** that Leverty has legally forfeited its security in the  
8 Panorama Property and its right to judicially foreclose against the Panorama Property.

9 **IT IS FURTHER ORDERED** that this case is dismissed with prejudice as to all  
10 defendants.

11 Dated this 27 day of January, 2020.

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14 \_\_\_\_\_  
DISTRICT COURT JUDGE

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22 Submitted By:  
23 Todd R. Alexander, Esq. (SBN 10846)  
24 Sarah M. Molleck, Esq. (SBN 13830)  
25 6005 Plumas Street, Third Floor  
26 Reno, Nevada 89519  
(775) 786-6868  
*Attorneys for Exley and Athena Trusts*

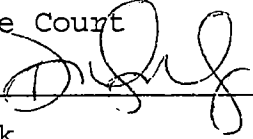
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1 STATE OF NEVADA       )  
2                               )       ss  
3 COUNTY OF DOUGLAS    )

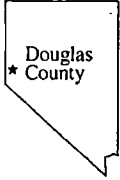
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5                   I, BOBBIE R. WILLIAMS, Clerk of the Ninth Judicial  
6 District Court, State of Nevada, in and for the said County of  
7 Douglas; said Court being a Court of Record, having common law  
8 jurisdiction, and a Clerk and a Seal, do hereby certify that the  
9 foregoing are the full, true copies of the original pleadings  
10 filed in Case No. 2019-CV-00299 (LEVERTY & ASSOCIATES LAW  
11 CHARTERED V RAY WARREN EXLEY ET AL: Notice of Appeal; District  
12 Court Docket Entries; Order Granting Motion to Dismiss Complaint;  
13 Notice of Entry of Order.

14  
15                   IN TESTIMONY WHEREOF, I have hereunto set my hand and  
16 affixed my Official Seal at Minden, in said County and State this  
17 27<sup>th</sup> day of March, A.D., 2020.

18  
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21 \_\_\_\_\_  
22 Clerk of the Court

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24 \_\_\_\_\_  
25 Deputy Clerk  
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28





**BOBBIE R. WILLIAMS**  
**CLERK OF COURT**  
**COURT ADMINISTRATOR**  
**JURY COMMISSIONER**

**District Court Clerk's Office**  
 (775) 782-9820  
**Tahoe Justice Court**  
 (775) 586-7200  
**East Fork Justice Court**  
 (775) 782-9955

**Transmittal to the Supreme Court**

To: Nevada Supreme Court  
 210 South Carson Street  
 Carson City, Nevada 89710


Date: March 27, 2020

Re: District Court Case #: 2019-CV-00299  
 District Court Case Name: LEVERTY & ASSOCIATES V EXLEY ET AL

The following documents are transmitted to the Supreme Court pursuant to the July 22, 1996 revisions to the Nevada Rules of Appellate Procedure. Checked items are NOT included in this appeal:

- Notice of Appeal
- Case Appeal Statement
- Certificate That No Transcript Is Being Requested
- Defendant's Request for Transcript of Proceedings
- Notice of Posting of Appeal Bond
- District Court Docket entries
- Judgment(s) or order(s) appealed from
- Order (NRAP FORM 4)
- Notice of entry of the judgment(s) or order(s) appealed from
- Certification order directing entry of judgment pursuant to NRCP 54(b)
- District Court Minutes
- Exhibit Lists
- Supreme Court filing fee (\$250.00), if applicable

Respectfully,  
 BOBBIE WILLIAMS  
 CLERK OF THE COURT

By:   
 Deputy Court Clerk

COPY

**CERTIFIED COPY**

This document is a full, true and correct copy of the original on file and of record in my office.

DATE: October 20, 2020

Supreme Court Clerk, State of Nevada

By R. Meeth Deputy