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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

GLOBAL EXPRESS CAPITAL REAL
ESTATE INVESTMENT FUND I, LLC, *et*
al.,

Defendants.

Case No. 2:03-CV-01514-KJD-LRL

**FINDINGS OF FACT AND CONCLUSIONS
OF LAW RE: GALAXY CONSTRUCTION
LITIGATION (CASE NO. A470858)**

The trial of the claims set forth in the complaint filed in the Eighth Judicial District Court in Case Nos. A470858 came on before this Court, the Honorable Kent J. Dawson, United States District Judge, presiding. This Court having heard and considered the evidence presented during the course of said trial, the argument of counsel, and being fully advised in the premises, makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Black Tie Investments (“Black Tie”), became the record title holder of certain real property located in Clark County, Nevada, commonly known as 1660 S. Valadez, Las Vegas, Nevada, Assessor’s Parcel Number 163-04-605-009 (the “Property”) by Grant,

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Bargain, Sale Deed – In Lieu of Foreclosure (the “Deed”) dated February 15, 2002, recorded on February 15, 2002 in Book 20020215 as Instrument No. 01928 in the official records of the Clark County Recorder.

2. The Deed was executed by Robert and Deborah Holgate as the managers of Chinook, LLC, a Nevada limited liability company.
3. On or about March 7, 2003, FRED HANS MAHLSTEDT dba GALAXY CONSTRUCTION (“Galaxy Construction”) recorded a mechanic’s lien against the Property in the amount of \$122,000.00 in Book 20030307 as Instrument No. 02811 in the official records of the Clark County Recorder (the “Galaxy Lien”).
4. The Galaxy Lien states that the work of improvement was performed at the request of Robert Holgate.
5. On or about July 21, 2003, Black Tie initiated litigation against Galaxy regarding the Galaxy Lien in Department XVII of the Eighth Judicial District Court, Clark County, Nevada as Case No. A470858 (the “Galaxy Litigation”).
6. On December 18, 2003, this Court entered a Preliminary Injunction and appointed James H. Donell as the Permanent Receiver for various entities. The Court’s Preliminary Injunction also included a provision that stayed all pending litigation against the entities included in the Receivership Estate.
7. On or about July 12, 2004, this Court entered its Order Amending the Preliminary Injunction to include additional entities within the Receivership Estate, including Black Tie.
8. As a result of the Preliminary Injunction, the Galaxy Litigation was stayed.
9. Galaxy Construction ceased work at the Property on or before October 8, 2002.
10. At the time that Galaxy Construction ceased work at the Property, the 2002 version of Nevada’s mechanic’s lien laws was in effect.

1 (a) The occupation or use of a building, improvement or structure by the owner,
2 his agent or his representative and accompanied by cessation of labor thereon.

3 (b) The acceptance by the owner, his agent or his representative of the building,
4 improvement or structure.

5 (c) The cessation from labor for 30 days upon any building, improvement or
6 structure, or the alteration, addition to or repair thereof.

7 (d) The recording of the notice of completion provided in NRS 108.228.

8 See NEV. REV. STAT. § 108.226(3)(a)-(d) (2002).

9 3. Based on the facts and evidence presented at the trial, Galaxy Construction's work at
10 the Property ceased on October 8, 2002.

11 4. Pursuant to the prior version of NEV. REV. STAT. § 108.226(3)(c) (2002) in effect at
12 that time, the "completion of the work" occurred thirty (30) days later, or November
13 7, 2002, at which time Galaxy had ninety (90) days to record its mechanic's lien, *i.e.*,
14 on or before February 5, 2003.

15 5. The Galaxy Lien was not recorded until March 7, 2003.

16 6. As a result, the Galaxy Lien was not recorded in a timely manner under Nevada law
17 applicable at that time.

18 7. Nevada law provides that "[i]f the plain meaning of a statute is clear on its face, then
19 [this court] will not go beyond the language of the statute to determine its meaning."

20 See Beazer Homes Nevada, Inc. v. Eighth Judicial District Court, 120 Nev. 575, 579-
21 80, 97 P.3d 1132, 1135 (2004).

22 8. NEV. REV. STAT. § 108.226(3)(c) (2002) clearly contains a 90-day window after the
23 "completion of the work" for the recording of mechanic's liens.

24 9. This Court finds no ambiguity regarding the 90-day time period set forth in of NEV.
25 REV. STAT. § 108.226(3)(c) (2002).

26

- 1 10. Nevada courts have long held that mechanic’s liens are not properly perfected where
2 the subject lien was not recorded within the statutorily prescribed time period, such as
3 the ninety (90) day requirement of the prior version of NEV. REV. STAT. §
4 108.226(3)(c) (2002).
- 5 11. The Nevada Supreme Court has previously granted relief to property owners where
6 lien claimants failed to fully comply with the applicable lien laws. See, e.g.,
7 Schofield v. Copeland Lumber Yards, Inc., 101 Nev. 83, 86, 692 P.2d 519, 521 (1985)
8 (“Since respondent did not fully or substantially comply with the lien statutes, the lien
9 is invalid as a matter of law…”).
- 10 12. “Strict compliance with the statutes creating the remedy is therefore required before a
11 party is entitled to any benefits occasioned by its existence …. If one pursues his
12 statutory remedy by filing a complaint to perfect a mechanic's lien, he necessarily
13 implies full compliance with the statutory prerequisites giving rise to the cause of
14 action.” See id. at 84, 692 P.2d at 520 (quoting Fisher Bros., Inc. v. Harrah Realty
15 Co., 92 Nev. 65, 67, 545 P.2d 203 (1976)).
- 16 13. Galaxy argues that the work of improvement was not complete because future work
17 was contemplated by Holgate and Galaxy. However, Holgate no longer owned the
18 property, and, no work was performed by Galaxy after October 8, 2002. Holgate
19 certified that all work for which he had authorized Galaxy to proceed was completed
20 by that date.
- 21 14. Galaxy urges that “substantial compliance” is sufficient for the time requirements of
22 the mechanic’s lien statute. However, Nevada’s statutory prescribed window of
23 ninety (90) days leaves little room for judicial construction or “substantial
24 compliance” analysis. Leven v. Frey, 123 Nev. 399, 168 P.3d 712, 718, n.31
25 (2007)(citing Regency Invs. v. Inlander Ltd., 855 A.2d 75, 79 (Pa. Super. Ct. 2004)).
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IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the surety bond for release of court-ordered deposit posted by First American, Bond No. 7586816, on file herein as Exhibit A to Document No. 693 is hereby discharged and First American is hereby released from further responsibility in connection with said bond.

DATED this 17th day of December 2010.



Kent J. Dawson
United States District Judge