

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

_____)
TOM GONZALES,)
)
Plaintiff,)
)
vs.)
)
DESERT LAND, LLC et al.,)
)
Defendants.)
_____)
TOM GONZALES,)
)
Plaintiff,)
)
vs.)
)
SHOTGUN NEVADA INVESTMENTS,)
LLC et al.,)
)
Defendants.)
_____)

2:15-cv-00915-RCJ-VPC

2:13-cv-00931-RCJ-VPC

ORDER

This case is the third action in this Court by Plaintiff Tom Gonzales concerning his entitlement to a fee under a plan of confirmation the undersigned entered years ago while sitting as a bankruptcy judge. In the present case, No. 2:15-cv-915, Gonzales sued the Desert Entities; SkyVue Las Vegas, LLC, Howard Bulloch, and David Gaffin for breach of contract, breach of the covenant of good faith and fair dealing, and conspiracy. The Court solicited summary judgment motions on contractual interpretation issues and ruled that: (1) Defendants were

1 entitled to summary judgment against all claims except the claim for breach of contract; (2)
2 Plaintiff was entitled to summary judgment on liability for breach of contract; and (3)
3 Defendants were entitled to summary judgment on the issue of money damages. The Court
4 ordered briefing on equitable remedies. After considering the various suggestions, the Court
5 ruled that in the event of a sale, transfer, or other conveyance of Parcel A (or any part of it), the
6 proceeds were to be applied as follows: first, to pay the first \$25 million in principal secured by
7 Parcel A (or any part of it, and only to the extent the relevant obligation was incurred before the
8 date of breach) plus interest accruing on any such principal until the date of breach; second, to
9 pay the \$10 million Parcel A Transfer Fee plus interest accruing from the date of breach; and
10 third, to pay any remaining encumbrances in accordance with law and contract. The Court
11 ordered Plaintiff to submit a proposed judgment, and he did. Defendants objected and asked the
12 Court to reconsider, and the Shotgun Entities moved to intervene. The Court reconsidered (and
13 therefore denied the motion to intervene), finding that the re-subordination of some portion of
14 the loans to the Parcel A Transfer Fee was not permitted under state law. The Court granted
15 Plaintiff a money judgment, instead, and instructed him to file a new proposed judgment, which
16 he has.

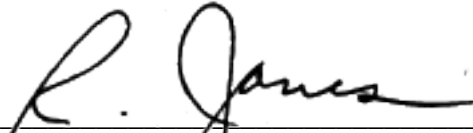
17 Plaintiff has filed an emergency motion, because a foreclosure sale of Parcel A is
18 scheduled for May 1, 2018, and he believes Parcel A is over-encumbered such that he will not
19 receive any portion of the Parcel A Transfer Fee after the sale (which will trigger the fee). As
20 noted at the hearing, the Court finds that it has no jurisdiction to directly interfere with a
21 foreclosure sale or to reorder the priority of encumbrances against Parcel A. The Court will
22 immediately enter the proposed judgment. Defendants' objections thereto are overruled for the
23 reasons given in Plaintiff's reply.

1 **CONCLUSION**

2 IT IS HEREBY ORDERED that the Motion for Reconsideration (ECF No. 34) is
3 DENIED.

4 IT IS SO ORDERED.

5 Dated this 2nd day of May, 2018.

6 
7 _____
8 ROBERT C. JONES
9 United States District Judges
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24