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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

\* \* \*

MORRIS SCHNEIDER WITTSTADT, LLC, a  
 Georgia Limited Liability Company,  
  
 Plaintiff,  
  
 vs.  
  
 NEVADA PROPERTY 1 LLC, a Delaware  
 Limited Liability Company doing business as  
 THE COSMOPOLITAN OF LAS VEGAS,  
  
 Defendant.

CASE NO. 2:15-cv-01175-RFB-VCF  
  
**STIPULATION AND ORDER**  
**GRANTING MORRIS SCHNEIDER**  
**WITTSTADT, LLC LEAVE TO FILE**  
**ITS FIRST AMENDED COMPLAINT**

IT IS HEREBY STIPULATED between Plaintiff Morris Schneider Wittstadt, LLC (“MSW” or “Plaintiff”), and Defendant Nevada Property 1, LLC dba The Cosmopolitan of Las Vegas (“the Cosmopolitan of Las Vegas” or “Defendant”), by and through their respective counsel, that MSW may amend its Complaint [Doc. 1] to add Landcastle Acquisition Corp. (“Landcastle”) as a plaintiff to this litigation.

MSW has assigned to Landcastle all of MSW’s claims involving Nathan E. Hardwick, IV’s (hereinafter “Hardwick”) alleged improper transfers of funds from MSW’s IOLTA accounts

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1 and other MSW bank accounts to the Cosmopolitan of Las Vegas (the "Claims"). This  
2 assignment permits Landcastle to bring suit in MSW's name when prosecuting the Claims. Due  
3 to this assignment, it is proper to add Landcastle as a plaintiff to the above captioned litigation.

4 The Cosmopolitan of Las Vegas has no personal knowledge of the facts surrounding  
5 MSW's alleged assignment of the Claims to Landcastle and reserves the right to dispute said  
6 assignment. However, the Cosmopolitan of Las Vegas and MSW hereby agree, consent and  
7 stipulate that MSW may amend its Complaint [Doc. 1] to add Landcastle as a plaintiff to this  
8 action.

9 A copy of MSW's proposed First Amended Complaint is attached hereto as **Exhibit 1**.  
10 This stipulation is made in accordance with FED. R. CIV. P. 15(a)(2).

11  
12 Dated this 17th day of September, 2015.

Dated this 17th day of September, 2015

13 **KOLESAR & LEATHAM**

**WEINBERG, WHEELER, HUDGINS, GUNN &  
DIAL, LLC**

14  
15 */s/ Colby L. Balkenbush*

*/s/ D. Lee Roberts*

16 \_\_\_\_\_  
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23 *Attorneys for Plaintiff*  
24 *Morris Schneider Wittstadt, LLC*

*Attorney for Defendant*  
*Nevada Property 1, LLC dba The Cosmopolitan*  
*of Las Vegas*

25 \* \* \* \* \*

26 **ORDER**

27 IT IS SO ORDERED:

28 

RICHARD F. BOULWARE, II  
United States District Judge  
DATED this 20th day of September, 2015.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Kolesar & Leatham and that on the 17th day of  
3 September, 2015, I caused to be served a true and correct copy of foregoing **STIPULATION**  
4 **AND ORDER GRANTING MORRIS SCHNEIDER WITTSTADT, LLC LEAVE TO**  
5 **FILE ITS FIRST AMENDED COMPLAINT** in the following manner:

6 (ELECTRONIC SERVICE) Pursuant to Rule 5-4 of the Local Rules of Civil Practice of  
7 the United States District Court for the District of Nevada, the above-referenced document was  
8 electronically filed on the date hereof and served through the Notice of Electronic Filing  
9 automatically generated by that Court's facilities.

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12 An Employee of KOLESAR & LEATHAM

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**EXHIBIT "1"**

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7 Attorneys for Plaintiff,  
8 MORRIS SCHNEIDER WITTSTADT, LLC,  
and LANDCASTLE ACQUISITION, CORP.  
9

10 **UNITED STATES DISTRICT COURT**

11 **DISTRICT OF NEVADA**

12 \* \* \*

13 MORRIS SCHNEIDER WITTSTADT, LLC, a  
Georgia Limited Liability Company; and  
14 LANDCASTLE ACQUISITION, CORP., a  
Delaware Corporation,

15 Plaintiffs,

16 vs.

17 NEVADA PROPERTY 1 LLC, a Delaware  
Limited Liability Company doing business as  
18 THE COSMOPOLITAN OF LAS VEGAS,

19 Defendant.  
20

CASE NO. 2:15-cv-01175-RFB-VCF

**FIRST AMENDED COMPLAINT**

21 Plaintiffs MORRIS SCHNEIDER WITTSTADT, LLC and LANDCASTLE  
22 ACQUISITION CORP. ("Plaintiffs"), by and through their undersigned counsel of record,  
23 hereby complain, alleging as follows:

24 **JURISDICTION AND PARTIES**

25 1. Plaintiff Morris Schneider Wittstadt, LLC (hereinafter the "Firm"), is a Georgia  
26 limited liability company. The Firm's sole member is MHSLAW, Inc., which is a Georgia  
27 corporation with its principal place of business in Georgia. Thus, for purposes of diversity, the  
28 Firm is a citizen of Georgia. At all times relevant herein, the Firm was a law firm whose practice

1 primarily involved real estate transactions, including real estate closings, foreclosures, and title  
2 insurance.

3 2. Plaintiff Landcastle Acquisition Corp. (hereinafter “Landcastle”), is a Delaware  
4 corporation with its principal place of business in Florida. Thus, for purposes of diversity,  
5 Landcastle is a citizen of Delaware. Landcastle is also a citizen of Florida, its principal place of  
6 business.

7 3. Upon information and belief, Defendant Nevada Property 1 LLC (hereinafter “the  
8 Cosmopolitan”) is a Delaware limited liability company. Defendant operates a hotel and casino  
9 on the Las Vegas Strip under the fictitious name “The Cosmopolitan of Las Vegas.” Upon  
10 information and belief, the Cosmopolitan is owned by Blackstone Real Estate Partners VII-NQ  
11 L.P., a division of the New York City based Blackstone Group private equity firm. Upon  
12 information and belief, the Cosmopolitan is therefore a citizen of New York. The Cosmopolitan  
13 is also a citizen of Nevada, its principal place of business.

14 4. Jurisdiction is proper in this Court under 28 U.S.C. § 1332(a) because there is  
15 complete diversity of citizenship between Plaintiffs and Defendant, and the amount in  
16 controversy, exclusive of interest, costs, and attorneys’ fees, exceeds the sum of \$75,000.00.

17 5. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) because a substantial  
18 part of the events giving rise to this action occurred in Nevada.

19 **GENERAL ALLEGATIONS**

20 6. Nathan E. Hardwick, IV (hereinafter “Hardwick”) is a lawyer licensed to practice  
21 law in the State of Georgia. Hardwick was a partner at the Firm and directly oversaw the Firm’s  
22 corporate accounting, as well as the financial management and accounting matters for the real  
23 estate closing practice.

24 7. As part of its real estate closing practice, the Firm regularly received funds to be  
25 held in trust and disbursed in accordance with the instructions of the parties to each transaction.  
26 Pursuant to Georgia Bar Rules, these funds were held in properly created Interest on Lawyers  
27 Trust Accounts (hereinafter the “Firm’s IOLTA Accounts”).

28 8. In early 2012, the Cosmopolitan solicited Hardwick to establish a casino account

1 at the Cosmopolitan for Hardwick's use while gambling in Las Vegas.

2 9. Hardwick agreed to do so and began wiring funds to the Cosmopolitan.

3 10. The funds Hardwick caused to be wired to the Cosmopolitan were not his own;  
4 rather, they were funds Hardwick misappropriated from the Firm's IOLTA Accounts and other  
5 bank accounts of the Firm.

6 11. Hardwick caused funds from the Firm's IOLTA Accounts and the Firm's other  
7 bank accounts (hereinafter collectively the "Firm's Accounts") to be transferred to the  
8 Cosmopolitan's Wells Fargo Bank Account.

9 12. Hardwick caused no fewer than twelve wire transfers to be made from the Firm's  
10 Accounts to the Cosmopolitan, with the first transfer taking place on June 29, 2012.

11 13. In total, Hardwick transferred \$3,350,000.00 from the Firm's Accounts to the  
12 Cosmopolitan's Wells Fargo Bank Account (hereinafter "the \$3.35 million").

13 14. Hardwick's transfer of the \$3.35 million to the Cosmopolitan was improper and  
14 unauthorized.

15 15. The Firm has had no prior business dealings with the Cosmopolitan and owed no  
16 money to the Cosmopolitan during the time period during which Hardwick was making the wire  
17 transfers from the Firm's Accounts to the Cosmopolitan.

18 16. Were it not for Hardwick's improper and unauthorized wire transfers to the  
19 Cosmopolitan, the Firm would never have wired any money from the Firm's Accounts to the  
20 Cosmopolitan.

21 17. The Cosmopolitan had no right to retain the \$3.35 million that Hardwick  
22 improperly transferred to the Cosmopolitan as such funds were either (1) held in trust by the  
23 Firm for the benefit of the Firm's clients or (2) held for the benefit of the Firm itself.

24 18. All of the wire transfers from the Firm's Accounts to the Cosmopolitan contained  
25 information that put the Cosmopolitan on notice of the improper nature of the wire transfers and  
26 the fact that the Cosmopolitan was not entitled to accept or retain the transferred funds.

27 19. Upon information and belief, the Cosmopolitan was aware of other information,  
28 in addition to the information provided through the wire transfers, which put the Cosmopolitan

1 on notice that the wire transfers from the Firm's Accounts were improper.

2 20. The Cosmopolitan knew and/or should have known that the transfer of the \$3.35  
3 million was improper and unauthorized by the Firm.

4 21. Despite having knowledge of the improper nature of the wire transfers from the  
5 Firm's Accounts, the Cosmopolitan elected to retain the transferred funds.

6 22. Despite having knowledge of the improper nature of the wire transfers from the  
7 Firm's Accounts, the Cosmopolitan allowed Hardwick to withdraw some or all of the funds from  
8 his Cosmopolitan account for his personal use and benefit, thus aiding Hardwick in his scheme to  
9 defraud the Firm.

10 23. Hardwick's improper transfers of funds to the Cosmopolitan created shortfalls in  
11 the Firm's IOLTA Accounts in the amounts that had been so transferred to the Cosmopolitan out  
12 of the Firm's IOLTA Accounts, which such shortfalls had to be restored, and were restored, by  
13 the Firm in the Firm's IOLTA Accounts in order for the Firm to meet its fiduciary obligations to  
14 its clients and continue in operation.

15 24. To enable the Firm to restore all of the shortfalls in the Firm's IOLTA Accounts  
16 caused by the improper transfers from such accounts to the Cosmopolitan in order that the Firm  
17 could meet its fiduciary obligations to its clients and continue in operation, the Firm entered into  
18 an agreement with Landcastle, whereby Landcastle, in exchange for various consideration,  
19 provided the funds for the restoration of all of the shortfalls in the Firm's IOLTA Accounts  
20 created by the improper transfers from such accounts to the Cosmopolitan.

21 25. An assignment to Landcastle of the Firm's claims involving Hardwick's improper  
22 transfers from the Firm's Accounts to the Cosmopolitan (the "Claims") was included as part of  
23 that consideration.

24 26. That assignment permits Landcastle to bring suit in the Firm's name when  
25 prosecuting the Claims. Thus, Landcastle now stands in the shoes of the Firm and is entitled to  
26 raise and prosecute the same causes of action and defenses that the Firm could have raised and  
27 prosecuted absent the assignment of the Claims.

28 27. Pursuant to the assignment, the Firm will share in a portion of the funds recovered



1 as a result of the prosecution of the Claims.

2 28. Plaintiffs are entitled to recover the \$3.35 million in funds that Hardwick caused  
3 to be improperly transferred to the Cosmopolitan.

4 29. Despite a formal demand that the Cosmopolitan return the \$3.35 million in funds  
5 received as a result of the improper wire transfers, the Cosmopolitan has refused to return the  
6 \$3.35 million, or any portion thereof, to the Firm or Landcastle

7 **FIRST CLAIM FOR RELIEF**

8 **(Money Had and Received)**

9 30. Plaintiffs repeat and re-allege the allegations previously set forth in above  
10 paragraphs 1-29 of this Complaint and incorporate the same by reference as though set forth  
11 herein in full.

12 31. The Cosmopolitan received \$3.35 million in funds from the Firm's Accounts that  
13 in equity and good conscience the Cosmopolitan should return to Plaintiffs.

14 32. No legal or equitable basis exists that would allow the Cosmopolitan to retain the  
15 \$3.35 million.

16 33. Plaintiffs were damaged as a result of the Cosmopolitan's receipt and retention of  
17 the \$3.35 million.

18 34. Plaintiffs are entitled to recover all funds improperly wired from the Firm's  
19 Accounts that were had and received by the Cosmopolitan (an amount in excess of \$75,000.00),  
20 plus any costs, fees or interest associated with pursuing this claim.

21 **SECOND CLAIM FOR RELIEF**

22 **(Unjust Enrichment)**

23 35. Plaintiffs repeat and re-allege the allegations previously set forth in above  
24 paragraphs 1-29 of this Complaint and incorporate the same by reference as though set forth  
25 herein in full.

26 36. The Firm conferred a substantial benefit upon the Cosmopolitan in the form of the  
27 \$3.35 million in funds that were wired from the Firm's Accounts to the Cosmopolitan, for which  
28 the Cosmopolitan has not reimbursed Plaintiffs.

1 37. The Cosmopolitan appreciated the benefit conferred on it by the Firm.

2 38. The Cosmopolitan has accepted and retained the benefit conferred on it by the  
3 Firm under circumstances such that it would be inequitable for the Cosmopolitan to retain the  
4 benefit without compensating or reimbursing Plaintiffs.

5 39. Plaintiffs were damaged as a result of the Cosmopolitan's receipt and retention of  
6 the \$3.35 million.

7 40. As a result of the foregoing, the Cosmopolitan has been unjustly enriched, to the  
8 detriment of the Plaintiffs – and Plaintiffs have a right to recover from the Cosmopolitan – an  
9 amount in excess of \$75,000.00, plus any costs, fees, or interest associated with pursuing this  
10 claim.

11 **THIRD CLAIM FOR RELIEF**

12 **(Constructive Trust)**

13 41. Plaintiffs repeat and re-allege the allegations previously set forth in above  
14 paragraphs 1-29 of this Complaint and incorporate the same by reference as though set forth  
15 herein in full.

16 42. The Cosmopolitan wrongly received the \$3.35 million from the Firm's Accounts.

17 43. The Cosmopolitan accepted the funds with notice that Hardwick was violating his  
18 fiduciary duty to the Firm and its clients.

19 44. The Cosmopolitan received these funds as the result of commission of a wrong,  
20 unconscionable conduct, artifice, concealment, or questionable means and/or in a manner that is  
21 against equity and good conscience.

22 45. Although not required to recover, a confidential relationship exists between the  
23 parties.

24 46. No legal or equitable basis exists that would allow the Cosmopolitan to retain the  
25 funds.

26 47. The existence of a constructive trust on the \$3.35 million is essential to the  
27 effectuation of justice.

28 48. Plaintiffs were damaged as a result of the Cosmopolitan's receipt and retention of

1 the \$3.35 million.

2 49. The Cosmopolitan is a trustee of property belonging to Plaintiffs that is valued at  
3 in excess of \$75,000.00, which in equity and good conscience should be returned to Plaintiffs.

4 50. Plaintiffs are also entitled to recover any fees and costs associated with pursuing  
5 this claim.

6  
7 **FOURTH CLAIM FOR RELIEF**

8 **(Conversion)**

9 51. Plaintiffs repeat and re-allege the allegations previously set forth in above  
10 paragraphs 1-29 of this Complaint and incorporate the same by reference as though set forth  
11 herein in full.

12 52. The Cosmopolitan committed a distinct act of dominion – wrongfully exerted  
13 over the \$3.35 million – which is the Firm’s property.

14 53. The act was in denial of, or inconsistent with, the Firm’s title or rights to the  
15 \$3.35 million.

16 54. The act was in derogation, exclusion, or defiance of the Firm’s title or rights to  
17 the \$3.35 million.

18 55. Plaintiffs were damaged as a result of the Cosmopolitan’s receipt and retention of  
19 the \$3.35 million.

20 56. The Cosmopolitan’s actions have damaged Plaintiffs in an amount in excess of  
21 \$75,000.00, plus any costs, fees, or interest associated with pursuing this claim.

22 **FIFTH CLAIM FOR RELIEF**

23 **(Aiding and Abetting the Breach of a Fiduciary Duty)**

24 57. Plaintiffs repeat and re-allege the allegations previously set forth in above  
25 paragraphs 1-29 of this Complaint and incorporate the same by reference as though set forth  
26 herein in full.

27 58. A fiduciary relationship existed between Hardwick and the Firm.

28 59. Hardwick breached that fiduciary relationship by causing improper and

1 unauthorized wire transfers to be made from the Firm's Accounts to the Cosmopolitan.

2 60. The Cosmopolitan knowingly aided and abetted Hardwick's breach of fiduciary  
3 duty by receiving and retaining the funds improperly wired from the Firm's Accounts and then  
4 allowing Hardwick to withdraw some or all of the funds for his personal use and benefit.

5 61. Hardwick's breach of fiduciary duty and the Cosmopolitan's knowing  
6 participation in that breach has resulted in damages to Plaintiffs in an amount in excess of  
7 \$75,000.00, plus any costs, fees, or interest associated with pursuing this claim.

8 **WHEREFORE**, Plaintiffs pray for judgment as follows:

9 1. For judgment in favor of Plaintiffs and against the Cosmopolitan on all counts  
10 asserted herein;

11 2. For actual, compensatory, consequential, and special damages in an amount in  
12 excess of \$75,000.00;

13 3. For pre- and post-judgment interest on any money judgment;

14 4. For attorneys' fees and costs incurred by Plaintiffs as a result of bringing this  
15 action;

16 5. For a declaration of rights and obligations between the Parties;

17 6. For equitable relief as plead herein; and

18 7. For such other further relief as this Court may deem just and proper.

19 DATED this \_\_\_\_ day of September, 2015.

20 **KOLESAR & LEATHAM**

21  
22 By \_\_\_\_\_  
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27 MORRIS SCHNEIDER WITTSTADT, LLC, and  
28 LANDCASTLE ACQUISITION CORP.