



Honorable Mike K. Nakagawa  
United States Bankruptcy Judge



Entered on Docket  
July 07, 2022

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

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In re:

NINETY-FIVE/TWO-FIFTEEN CENTER PART II, LLC,  
Debtor.

Case No. 19-16396-mkn  
Chapter 7

GUY SHANI, Trustees of the Shani Investments Inc.  
Defined Benefit Pension Plan and Trust; NITZAN SHANI,  
Trustees of the Shani Investments Inc. Defined Benefit  
Pension Plan and Trust,

Adv. Proc. No. 20-01098-mkn

Plaintiffs,

Date: June 1, 2022  
Time: 9:30 a.m.

vs.

NINETY-FIVE/TWO-FIFTEEN CENTER PART II, LLC,  
a Nevada limited liability company; STAR ONE  
PROPERTIES, a Texas general partnership; SPRING  
VALLEY DEVELOPMENT, LLC, a Nevada limited  
liability company; RAKESH PATEL, an individual;  
REENA PATEL, an individual; DONALD J. KUNKLE, an  
individual; INGRID M. KUNKLE, an individual; DI  
KUNKLE SECOND FAMILY LIMITED  
PARTNERSHIP, a Nevada limited partnership, ARTS  
DISTRICT REAL ESTATE #1, LLC, a Nevada limited  
liability company; LAS VEGAS BOULEVARD HIGH  
RISE, LLC, a Nevada limited liability company; OSSO  
BLANCA ST. LAS VEGAS G.P., a California general  
partnership; LIBERTY TOWER CONDOMINIUMS, LLC,  
a Nevada limited liability company; and AKM GRADING,  
a Nevada sole proprietorship,

Defendants.

1 RAKESH PATEL, an individual,  
2  
3 Counter-Claimant,  
4 vs.  
5 GUY SHANI, Trustee of the SHANI INVESTMENTS  
6 INC. DEFINED BENEFIT PENSION PLAN AND TRUST  
7  
8 Counter-Defendant.

9 **ORDER ON PLAINTIFFS’ APPLICATION FOR DEFAULT JUDGMENT BY THE**  
10 **COURT PURSUANT TO FED. R. CIV. P. 55(b)(2) AGAINST DEFENDANT ARTS**  
11 **DISTRICT REAL ESTATE #1, LLC AND DEFENDANT ARTS DISTRICT REAL**  
12 **ESTATE #1, LLC’S COUNTERMOTION TO SET ASIDE ENTRY OF DEFAULT<sup>1</sup>**

13 On June 1, 2022, the court heard the Plaintiffs’ Application for Default Judgment by the  
14 Court Pursuant to Fed. R. Civ. P. 55(b)(2) Against Defendant Arts District Real Estate #1, LLC  
15 (“Default Judgment Application”) and Defendant Arts District Real Estate #1, LLC’s  
16 Counter-motion to Set Aside Entry of Default (“Default Relief Counter-motion”). The  
17 appearances of counsel were noted on the record. After arguments were presented, the matter  
18 was taken under submission.

19 **BACKGROUND<sup>2</sup>**

20 On October 2, 2019, a voluntary “skeleton” Chapter 7 petition (“Petition”) was filed on  
21 behalf of Ninety-Five/Two Fifteen Center Part II, LLC (“Debtor”). (ECF No. 1). The Petition

22 <sup>1</sup> In this Order, all references to “ECF No.” are to the number assigned to the documents  
23 filed in the above-captioned bankruptcy case as they appear on the docket maintained by the  
24 clerk of court. All references of “AECF No.” are to the documents filed in the above-captioned  
25 adversary proceeding. All references to “Section” or “§§ 101-1532” are to the provisions of the  
26 Bankruptcy Code. All references to “FRE” are to the Federal Rules of Evidence. All references  
27 to “Bankruptcy Rule” shall be to the Federal Rules of Bankruptcy Procedure. All references to  
28 “Civil Rule” shall be to the Federal Rules of Civil Procedure. All references to “NRS” are to the  
Nevada Revised Statutes.

<sup>2</sup> Pursuant to FRE 201(b), the court takes judicial notice of all materials appearing on the  
docket in the above-captioned adversary proceeding and the above-captioned Bankruptcy Case  
See U.S. v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980); see also Bank of Am., N.A. v. CD-04,  
Inc. (In re Owner Mgmt. Serv., LLC Trustee Corps.), 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015)  
 (“The Court may consider the records in this case, the underlying bankruptcy case and public  
records.”).

1 was signed by Daniel Barness (“Barness”) who attested that he is the “duly authorized  
2 representative” of the Debtor. The Petition describes the Debtor’s business as a “single asset real  
3 estate” under Section 101(51B). The case is assigned for administration to Chapter 7 panel  
4 trustee Shelley D. Krohn (“Trustee”). Attached to the Petition is a list of nine other Chapter 7  
5 cases pending in this district filed by related entities, all of which apparently are assigned to the  
6 Trustee. The debtor in one of those other cases is identified as Ninety-Five/Two-Fifteen Center,  
7 LLC, denominated Case No. 19-15837-mkn.<sup>3</sup> Also attached is a List of Equity Security Holders  
8 identifying eighteen individual and non-individual members of the limited liability company that  
9 is the Debtor in the instant case (“Equity Holders List”). According to that list, the largest  
10 percentage (24.9%) membership interest in the Debtor is held by DI Kunkle Second Family  
11 LTD. PTNSHP.<sup>4</sup>

12 On October 29, 2019, schedules of assets and liabilities (“Schedules”) and a statement of  
13 financial affairs (“SOFA”) was filed on behalf of the Debtor. (ECF No. 14). Part 9 of property  
14 Schedule “A/B” attests that the Debtor has an interest in one parcel of real property identified as  
15 APN 125-21-301-002, legally described as: PT NE4 SW4 SEC 21 19 60, Las Vegas, Clark  
16 County, State of Nevada (“Parcel 002”). Part 11 of the same Schedule attests that the Debtor  
17 owns a cause of action against third parties described as “Possible quiet title and claims for  
18 preferential judicial sale of Debtor’s interest in real property (APN 125-21-301-002) against LLC  
19 members Kunkle and/or Fidler, et al.” Part 2 of creditor Schedule “E/F” includes non-priority  
20 unsecured claims for all of the parties appearing on the Equity Holders List, based on “possible  
21 claims arising from wrongful acts in connection with investments in company.”

22 Part 3 of the SOFA attests that within one year before the Debtor filed the Petition, it was  
23 involved in two actions that had been commenced in the Eighth Judicial District Court, Clark  
24 County, Nevada (“State Court”): (1) Rakesh Patel and Reena Patel (“Patels”) v. Ninety Five Two  
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26 <sup>3</sup> According to Part 9 of property Schedule “A/B” at ECF No. 9 in the latter proceeding,  
27 that entity has a joint tenancy interest in “3.14 acres of unimproved land located at 6705 US Hwy  
28 95, APN 125-21-301-003.”

<sup>4</sup> It is not clear what source of information was used to prepare the Equity Holders List.

1 Fifteen Center, LLC, Ninety Five Two Fifteen Center Part II, LLC, Star One Properties, David  
2 A. Rifkind, Helen R. Rifkind, Guy Shani, and Nitzan Shani, denominated Case No. A-18-  
3 785851-C, and (2) Marla Fidler, Jonathan Fidler, and Harriet Fidler (“Fidlers”) v. Michael Bash,  
4 Havard Oxford, LLC, Emerson Twain, LLC, Ninety-Five Fort Apache Complex, LLC, Ninety-  
5 Five/Two Fifteen Center Part II, LLC, Palm Eight Land Development, LLC, and Berkley  
6 Enterprises, Inc., denominated Case No. 18-771426-B (“Fidler Action”). The first action is  
7 described as “Pending” while the latter action is described as “Concluded.” Part 6 of the SOFA  
8 attests that on August 27, 2019, Arts District Real Estate #1 LLC (“Arts District”) received from  
9 the Debtor “3.79 acres of land located on West Frontage Road/OSO Blanca Road adjacent to  
10 [the] Oran K. Gragson Freeway/US Highway No. 95 in Las Vegas, NV 89149; APN 125-21-  
11 301-002; purchased for \$10,000.00.”

12 On November 27, 2019, the Trustee filed a notice of assets that included a March 5,  
13 2020, bar date for proofs of claim to be filed. (ECF No. 21).

14 On December 9, 2019, Spring Valley Development, LLC (“Spring Valley”), timely filed  
15 a proof of claim in the amount of \$1,159,860, allegedly based on a development agreement that  
16 limits its claim to a maximum of 39 percent of the value of Parcel 002 (“Spring Valley POC”).<sup>5</sup>

17 On December 10, 2019, Arts District timely filed a proof of claim in the amount of  
18 \$1,000,000, allegedly based on a recorded judgment entitling it to priority under Section  
19 507(a)(2).<sup>6</sup> On the same date, Arts District filed a separate proof of claim in the same amount  
20 alleging the same priority, to which is attached a copy of a “Writ of Execution” entered by the  
21 State Court in the Fidler Action. The writ indicates that it was issued to collect a judgment  
22 entered on April 12, 2019, in favor of the Fidlers (“Fidler Judgment”),<sup>7</sup> in the principal amount

23 \_\_\_\_\_  
24 <sup>5</sup> The Spring Valley POC is signed by Spring Valley’s counsel as its authorized agent.

25 <sup>6</sup> These proofs of claim identify the claimant as “Art District” rather than “Arts District.”  
26 The claimant is not an individual and these proofs of claim are not executed by an authorized  
agent on behalf of the claimant as required by Bankruptcy Rule 3001(b).

27 <sup>7</sup> “There is no dispute that on August 22, 2019, the Fidlers assigned all of their rights  
28 under the Fidler Judgment to Arts District. There is no dispute that on August 27, 2019, the  
Debtor’s interest in Parcel 002 was acquired by Arts District at a sheriff’s sale through a credit

1 of \$160,000.<sup>8</sup>

2 On January 13, 2020, the Trustee filed an application to employ a real estate agent to sell  
3 Parcel 002. (ECF No. 31). The Trustee's declaration in support of the application states that "I  
4 have determined that the assets of this estate consist of real property legally described as PT NE4  
5 SW4 SEC 21 19 60, Las Vegas, Clark County, State of Nevada, APN 125-21-301-002..." The  
6 declaration does not indicate the basis for that determination, i.e., whether it is based on the  
7 representation in Schedule "A/B," or, on a title report.

8 On January 31, 2020, an order was entered granting the Trustee's application to employ a  
9 real estate agent to sell Parcel 002 under an exclusive real estate listing agreement. (ECF No.  
10 42). Under Section 2 of the listing agreement, the listing agreement expires six months after  
11 entry of the order, i.e., approximately July 31, 2020.

12 On February 6, 2020, a motion to dismiss the Chapter 7 case ("Kunkle Dismissal  
13 Motion") was filed on behalf of DI Kunkle Second Family LTD Partnership ("Kunkle"). (ECF  
14 No. 46). The motion asserts that the filing of the Chapter 7 petition was unauthorized.<sup>9</sup>

15 On February 26, 2020, the Trustee filed opposition to the Kunkle Dismissal Motion,  
16 accompanied by the Declaration of Daniel I. Barness. (ECF Nos. 59 and 60). On the same date,  
17

18 bid of \$10,000. There is no dispute that under Nevada law, the Debtor has a one-year right of  
19 redemption ("Redemption Rights") commencing from the date of the sheriff's sale, i.e., through  
20 August 27, 2020. There is no dispute that the Redemption Rights constitute a legal interest held  
21 by the Debtor when the Chapter 7 was commenced, and therefore constitutes property of the  
22 estate under Section 541(a)(1). There is no dispute that the Trustee has exclusive authority to  
23 exercise the Redemption Rights on behalf of the bankruptcy estate, but currently does not have  
24 funds available to do so." See Order on Motion for Approval of Settlement Agreement with Arts  
25 District Real Estate #1, LLC, at 7:9-18, entered June 16, 2020 (ECF No. 133). Redemption  
Rights under Nevada law are provided by NRS 21.210. Under that statute, a judgment debtor  
generally may redeem property from a purchaser within one year of the sale by paying the  
purchaser the amount of the purchase price with an additional one percent per month, plus any  
assessments, taxes or lien payments made by the purchaser, as well as interest thereon.

26 <sup>8</sup> On March 28, 2020, Arts District filed two separate proofs of claim in the amount of  
27 \$160,000, representing that they are not amendments to a prior claim, but which also represent  
that they are replacing a previous claim as "overstated."

28 <sup>9</sup> The Kunkle Dismissal Motion originally was noticed to be heard on March 11, 2020  
(ECF No. 48), but was continued to June 17, 2020.

1 Barnes filed a separate opposition (ECF No. 61) to which he attaches an additional declaration,  
2 in addition to a separate request for judicial notice. (ECF No. 62).

3 On March 4, 2020, Kunkle filed an omnibus reply in support of the Kunkel Dismissal  
4 Motion that was accompanied by the Declaration of Rakesh Patel (“Patel Declaration”). (ECF  
5 Nos. 66 and 67).

6 On March 5, 2020, Guy Shani and Nitzan Shani as Trustees of Shani Investments, Inc.  
7 Defined Benefit Pension Plan & Trust (“Shani Trust”), timely filed a proof of claim in the  
8 amount of \$380,750, allegedly secured by a deed of trust against Parcel 002 (“Shani POC”).  
9 Shani Trust alleges that the value of Parcel 002 is \$1,327,000 and that the entire amount of its  
10 claim is secured. Attached as Exhibit “1” to the Shani POC is a copy of a Promissory Note  
11 Secured by Deed of Trust dated May 12, 2017 (“Note”), in the principal amount of \$300,000.  
12 The Note has a maturity date of May 12, 2019, and requires monthly interest payments of \$3,000  
13 commencing June 1, 2017. Attached as Exhibit “2” to the Shani POC is a copy of a Deed of  
14 Trust, Assignment of Leases and Rents, Security Agreement, and Fixture Filing with respect to  
15 Parcel 002 in favor of Shani Trust evidencing that it was recorded in Clark County on May 12,  
16 2017. Attached as Exhibit “3” to the Shani POC is a copy of a separate deed of trust securing the  
17 Note on an adjacent parcel of real property identified as APN 125-21-301-003 (“Parcel 003”).  
18 The latter deed of trust was recorded on April 12, 2018.

19 On March 6, 2020, Barnes filed an objection to the Patel Declaration. (ECF No. 69).

20 On March 10, 2020, a motion for relief from stay (“Shani RAS Motion”) was filed on  
21 behalf of Shani Trust, accompanied by the Declaration of Guy Shani and a request for judicial  
22 notice. (ECF Nos. 74, 75, and 76). The Shani RAS Motion was noticed to be heard on April 15,  
23 2020. (ECF No. 77).

24 On March 11, 2020, a separate Declaration of George Smith (“Smith Declaration”) was  
25 filed in support of the Shani RAS Motion, and further amended on March 12, 2020. (ECF Nos.  
26 82 and 83). According to page 1 of the appraisal report attached to the Smith Declaration  
27 (“Smith Appraisal”), two adjacent parcels of land totaling approximately 6.93 net acres (i.e.,  
28 Parcel 002 and Parcel 003) were appraised as of February 26, 2020, at a total value of

1 \$3,019,000. At page 27, the Smith Appraisal separately values Parcel 002 at \$1,327,000 and  
2 Parcel 003 at \$1,505,000.

3 On March 30, 2020, Rick Patel (“Patel”), filed an untimely proof of claim in a  
4 nonpriority unsecured amount of \$175,000, based on an alleged ownership interest in the Debtor  
5 (“Patel POC”).<sup>10</sup>

6 On March 30, 2020, Kunkle filed an untimely proof of claim in the amount of \$750,000,  
7 allegedly based on a deed recorded on November 14, 2018, with respect to unidentified real  
8 property (“Kunkle POC”).<sup>11</sup>

9 On April 3, 2020, the Trustee filed her opposition to the Shani RAS Motion and related  
10 documents. (ECF Nos. 87, 88, and 89).

11 On April 9, 2020, the Shani Trust filed its reply in support of the Shani RAS Motion.  
12 (ECF No. 93).

13 On April 14, 2020, the Trustee filed a supplement to her opposition to the Shani RAS  
14 Motion. (ECF No. 98).

15 On April 30, 2020, the Trustee filed a motion to approve a certain settlement agreement  
16 (“Settlement Motion”) reached with Arts District. (ECF No. 102).

17 On May 4, 2020, an order was entered shortening time so that the Settlement Motion  
18 could be heard on May 27, 2020. (ECF No. 111).

19 On May 6, 2020, a joinder to the Settlement Motion was filed by Arts District. (ECF No.  
20 113).

21 On May 14, 2020, an opposition to the Settlement Motion was filed by Spring Valley  
22 (“Spring Valley Opposition”). (ECF No. 117).

23 On May 15, 2020, an opposition to the Settlement Motion was filed by Guy Shani and  
24 Nitzan Shani, as Trustees of Shani Investments, Inc. (“Shani Opposition”), along with a  
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26 <sup>10</sup> The Patel POC is electronically signed by the individual claimant. Patel’s name,  
27 however, does not appear on the Equity Holders List attached to the Petition.

28 <sup>11</sup> The Kunkle POC is not executed by an authorized agent on behalf of the claimant as  
required by Bankruptcy Rule 3001(b).

1 supplemental request for judicial notice and a declaration of Guy Shani. (ECF Nos. 118, 119,  
2 and 120).

3 On May 21, 2020, the Trustee filed a reply to the Spring Valley Opposition as well as the  
4 Shani Opposition. (ECF No. 122). On the same date, a joinder to the reply was filed by Arts  
5 District. (ECF No. 123).

6 On May 26, 2020, an interim order was entered on the Shani RAS Motion directing the  
7 Trustee and the Shani Trust to jointly submit a copy of a title report or equivalent documentary  
8 evidence establishing the Debtor's legal title to Parcel 002 ("Interim RAS Order"). (ECF No.  
9 126).

10 On June 10, 2020, the Trustee and Shani Trust filed status reports as required by the  
11 Interim RAS Order. (ECF Nos. 129 and 130).

12 On June 16, 2020, an order was entered denying approval of the Settlement Motion.  
13 (ECF No. 133). Approval of the Settlement Motion was denied by the court without prejudice to  
14 the Trustee seeking to sell the Redemption Rights and certain avoidance claims on a lien free  
15 basis.

16 On June 22, 2020, a final order was entered conditionally granting the Shani RAS Motion  
17 by allowing the Trustee until August 31, 2020, to commence appropriate avoidance actions or  
18 take other steps to administer the estate's interests in the subject property. (ECF No. 137).

19 On July 31, 2020, the Trustee filed a motion to approve a sale of the bankruptcy estate's  
20 Redemption Rights as well as certain designated avoidance actions ("Sale Motion"). (ECF No.  
21 142). The Sale Motion was set to be heard on August 19, 2020, pursuant to an order shortening  
22 time. (ECF No. 148).

23 On August 10, 2020, Arts District filed a joinder in support of the Sale Motion. (ECF  
24 No. 150).

25 On August 17, 2020, an order was entered approving a stipulation to withdraw the  
26 Kunkel Dismissal Motion. (ECF No. 154).

27 On August 19, 2020, Guy Shani and Nitzan Shani, Trustees of the Shani Investments Inc.  
28 Defined Benefit Pension Plan and Trust ("Plaintiffs") commenced the above-captioned adversary



1 proceeding (“Adversary Proceeding”) by filing an adversary complaint (“Complaint”). (AECF  
2 No. 1). Defendants named in the Complaint include the above-captioned Debtor, as well as the  
3 following parties: Star One Properties; Spring Valley Development, LLC; Rakesh Patel; Reena  
4 Patel<sup>12</sup>; Donald J. Kunkle; Ingrid M. Kunkle; DI Kunkle Second Family Limited Partnership<sup>13</sup>;  
5 Arts District; Las Vegas Boulevard High Rise, LLC; Osso Blanca St. Las Vegas G.P.; Liberty  
6 Tower Condominiums, LLC; AKM Grading; and various fictitiously named entities.<sup>14</sup> The  
7 Complaint alleges that the Adversary Proceeding arises out of and is related to the Chapter 7  
8 case, that the bankruptcy court has subject matter jurisdiction under 28 U.S.C. §§ 157 and 1334,  
9 and that the Adversary Proceeding is a core proceeding under 28 U.S.C. § 157(b)(2)(K) seeking  
10 to determine the validity, extent or priority of liens. See Complaint at ¶¶ 1, 3, and 4.

11 Plaintiffs allege that each of the named defendants have or may assert an interest in  
12 Parcel 002 that is adverse to the interest of the Plaintiffs. Plaintiffs allege that they are the  
13 beneficiaries of a Deed of Trust, Assignment of Leases and Rents, Security Agreement, and  
14 Fixture Filing (“Shani Deed of Trust”) recorded against Parcel 002 on May 12, 2017. See  
15 Complaint at ¶ 25. They also allege that there were no other liens against Parcel 002 at the time  
16 the Shani Deed of Trust was recorded, see id. at ¶¶ 26 and 55, and that the obligation has not  
17 been paid. Id. at ¶ 27. Plaintiffs allege that the Shani Deed of Trust includes an incorrect legal  
18 description of Parcel 002, see id. at ¶¶ 29 and 56, but does include the correct Assessor’s Parcel  
19 Number. Id. at ¶¶ 30 and 59. They also allege that because the Shani Deed of Trust contains the  
20 correct Assessor’s Parcel Number and was properly recorded under the Plaintiffs’ name, all other  
21 parties had either actual, constructive, and/or inquiry notice of the Shani Deed of Trust. Id. at ¶

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23 <sup>12</sup> Unless otherwise indicated, hereafter defendants Rakesh Patel and Reena Patel will be  
24 referenced as the “Patel Defendants.”

25 <sup>13</sup> Unless otherwise indicated, hereafter defendants Donald J. Kunkle, Ingrid M. Kunkle,  
26 and DI Kunkle Second Family Limited Partnership will be referenced as the “Kunkle  
27 Defendants.”

28 <sup>14</sup> The court is uncertain whether at the time the Adversary Proceeding was commenced  
there already was a pending action in another court where the claims between all of the parties  
were being adjudicated.

1 58. Plaintiffs, therefore, allege three separate claims: (1) Quiet Title to Parcel 002 based on the  
2 Shani Deed of Trust recorded on May 12, 2017; (2) Reformation of the Shani Deed of Trust to  
3 include the correct legal description; and (3) imposition of an Equitable Lien against Parcel 002  
4 in the event quiet title or reformation is not granted.

5 On August 20, 2020, an order was entered granting the Sale Motion (“Sale Order”). The  
6 Sale Order approves a Purchase Agreement for the Redemption Rights and certain avoidance  
7 claims to be acquired by Arts District for the total amount of \$251,000, with the full purchase  
8 price to be paid no later than December 31, 2021. (ECF No. 158).

9 On September 21, 2020, a copy of the Complaint and summons was served on Arts  
10 District. (AECF No. 21).

11 On September 23, 2020, a copy of the Complaint and summons was served on the Patel  
12 Defendants. (AECF Nos. 29 and 30).

13 On September 29, 2020, the Kunkle Defendants filed an answer to the Complaint.  
14 (AECF No. 34).

15 On October 28, 2020, defendant Spring Valley Development, LLC, filed an answer to the  
16 Complaint. (AECF No. 36).

17 On November 20, 2020, Plaintiffs filed an application for entry of default against the  
18 Patel Defendants along with a supporting declaration of their counsel (“Patel Defendants’  
19 Default Application”). (AECF Nos. 40 and 41). On the same date, a certificate of service was  
20 filed attesting that the Patel Defendants’ Default Application was served by first class mail.  
21 (AECF No. 42).

22 On November 20, 2020, Plaintiffs filed an application for entry of default against Arts  
23 District along with a supporting declaration of their counsel (“Arts District Default  
24 Application”). (AECF Nos. 46 and 47). On the same date, a certificate of service was filed  
25 attesting that the Arts District Default Application was served by first class mail. (AECF No.  
26 48).

27 On November 23, 2020, default was entered on the Complaint against Arts District.  
28 (AECF No. 55).

1 On December 2, 2020, default was entered on the Complaint against the Patel  
2 Defendants. (AECF No. 78 and 80).

3 On December 2, 2020, default was entered on the Complaint against Arts District.  
4 (AECF No. 81).

5 On December 23, 2020, Arts District filed a Motion to Set Aside Default and Dismiss  
6 Case on Behalf of Arts District Real Estate #1, LLC (“Set Aside and Dismissal Motion”).  
7 (AECF No. 97). Attached to the Set Aside and Dismissal Motion is a copy of the Sale Order.  
8 The motion sought to set aside the default for failure to answer the Complaint, and also to  
9 dismiss the Complaint for failure to state a claim for relief apparently based on a lack of  
10 jurisdiction to consider a quiet title action.

11 On December 29, 2020, Arts District noticed its Set Aside and Dismissal Motion to be  
12 heard on February 3, 2021. (AECF No. 102).

13 On January 20, 2021, Plaintiffs filed an opposition to the Set Aside and Dismissal  
14 Motion, supported by a declaration of Guy Shani and a request for judicial notice. (AECF Nos.  
15 105, 106, and 107).

16 On February 22, 2021, an order was entered denying the Set Aside and Dismissal  
17 Motion (“Set Aside Order”). (AECF No. 113).

18 On March 9, 2021, the Patel Defendants filed a Motion to Set Aside Defaults and noticed  
19 it for hearing on April 14, 2021. (AECF Nos. 119 and 120).

20 On June 17, 2021, an order was entered granting the Patel Defendants’ Motion to Set  
21 Aside Defaults conditioned on the payment of attorney’s fees to the Plaintiffs. (AECF No. 131).

22 On July 1, 2021, the Patel Defendants filed an answer to the Complaint which included a  
23 counterclaim. (AECF No. 139). The answer specifically admits the allegations of paragraphs 1,  
24 3, and 4 of the Complaint.

25 On July 2, 2021, the Patel Defendants amended their answer and counterclaim. (AECF  
26 No. 141). The amended answer specifically admits the allegations of paragraphs 1, 3, and 4 of  
27 the Complaint.

28

1 On July 6, 2021, an order was entered regarding the Patel Defendants’ Motion to Set  
2 Aside Defaults. (AECF No. 142).

3 On September 15, 2021, the Patel Defendants filed another amended answer that does not  
4 include a counterclaim.<sup>15</sup> (AECF No. 146). The amended answer specifically admits the  
5 allegations of paragraphs 1, 3, and 4 of the Complaint.

6 On September 22, 2021, the Patel Defendants filed a further amended answer that does  
7 not include a counterclaim. (AECF No. 150). The amended answer specifically admits the  
8 allegations of paragraphs 1, 3, and 4 of the Complaint.

9 On October 7, 2021, Plaintiffs filed a notice of subpoena duces tecum issued to the  
10 Custodian of Records of the Clark County Recorder’s Office, along with a certificate of service  
11 showing service to all attorneys of record. (AECF Nos. 159 and 160).

12 On January 19, 2022, the Trustee filed a report of receipt of \$251,000.00 as a result of the  
13 Purchase Agreement approved by the Sale Order. (ECF No. 173).

14 On April 20, 2022, Plaintiffs filed a motion seeking partial summary judgment against  
15 the Kunkle Defendants and Patel Defendants (“Partial MSJ”). (AECF No. 175). The motion is  
16 supported by a Statement of Undisputed Facts, and the declarations of Guy Shani and J.  
17 Bushnell Nielsen. (AECF Nos. 176, 177, and 178). The motion was noticed to be heard on June  
18 2, 2022. (AECF No. 179).<sup>16</sup> Opposition to the Partial MSJ was required to be filed by no later  
19 than May 19, 2022, under LR 9014(d)(3).

20 On April 20, 2022, Plaintiffs filed the instant Default Judgment Application against Arts  
21 District along with the supporting declarations of Guy Shani and J. Bushnell Nielsen (“Nielsen  
22  
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24 <sup>15</sup> A response to the counterclaim had never been filed by the Plaintiffs at the time of this  
25 amended answer, so it may be that the Patels were attempting to amend their answer “as a matter  
26 of course” to withdraw the counterclaim under FRCP 15(a)(1). It appears that the parties have  
27 treated the amendment as an effective withdrawal of the counterclaim because there is no  
28 response to the counterclaim that appears on the docket.

<sup>16</sup> On May 16, 2022, the court ordered that the Partial MSJ be heard on June 15, 2022,  
instead of June 2, 2022.

1 Declaration”).<sup>17</sup> (AECF Nos. 181-183). Attached to the Default Judgment Application are 10  
2 documents marked as exhibits.<sup>18</sup> The Default Judgment Application was noticed to be heard on  
3 June 1, 2022. (AECF No. 184).

4 On May 3, 2022, the Patel Defendants filed a motion to dismiss the adversary proceeding  
5 for lack of jurisdiction pursuant to Civil Rule 12(b)(1) (“12(b)(1) Motion”). (AECF No. 188).  
6 That motion was noticed to be heard on June 15, 2022. (AECF No. 189).

7 On May 12, 2022, the Patel Defendants filed a limited opposition to the Partial MSJ.  
8 (AECF No. 197). The opposition is based on the 12(b)(1) Motion, i.e., that partial summary  
9 judgment cannot be granted because the Adversary Proceeding must be dismissed for lack of  
10 jurisdiction.

11 On May 17, 2022, Plaintiffs filed an opposition to the 12(b)(1) Motion supported by the  
12 Declaration of Guy Shani. (AECF Nos. 202 and 203).

13 On May 18, 2022, defendant Arts District filed its Opposition to Application for Default  
14 Judgment and Countermotion to Set Aside Entry of Default (“Default Relief Countermotion”),  
15 along with a supporting Declaration of Robert Ford (“Ford Declaration”). (AECF Nos. 206 and  
16 207).<sup>19</sup>

17  
18  
19 <sup>17</sup> Nielsen is offered as an expert witness in land title matters and was retained to examine  
20 the chain of title for Parcel 002. No objection has been raised as to Nielsen’s qualifications as an  
expert or to consideration of his testimony.

21 <sup>18</sup> Plaintiffs request that the court take judicial notice of exhibits 1 through 8. See Default  
22 Judgment Application at 3 n.1. Those exhibits consist of copies of (1) the grant deed by which  
23 the Debtor took title to Parcel 002 in April 2005, (2) the grant deed by which the Debtor  
24 allegedly transferred an interest in Parcel 002 to Star One Properties in September 2005, (3) the  
25 acknowledgement of disclaimer of interest by Star One Properties in September 2020, (4) the  
26 Shani Deed of Trust, (5) a notice of entry of the Fidler Judgment, (6) the notice of Sheriff’s Sale,  
27 (7) the recorded Sheriff’s Certificate of Sale, and (8) a mechanic lien notice by AKM Grading.  
A Certificate of Custodian of Records executed by Lenora Soil-Alia on October 26, 2021, is  
attached as exhibit 9. Attached as exhibit 10 is a transcript of a deposition taken March 9, 2022,  
of Lenora Soil-Ali (“Soil-Ali Deposition”) who is the Assistant County Recorder of the Clark  
County Recorder’s Office.

28 <sup>19</sup> The Default Relief Countermotion and supporting declaration subsequently were  
refiled by Arts District due to errors in having them docketed. (AECF Nos. 211, 212, 215, and

1 On May 19, 2022, the deadline to file opposition to the Partial MSJ expired with no  
2 opposition having been filed by the Kunkle Defendants.

3 On May 25, 2022, Plaintiffs filed a reply in support of its Default Judgment Application  
4 and opposition to the Default Relief Countermotion, along with the supporting declarations of  
5 Guy Shani and Andrew J. Glendon (“Glendon Declaration”). (AECF Nos. 217-219).

### 6 DISCUSSION<sup>20</sup>

7 There is no dispute that the Complaint was filed on August 19, 2020. There is no dispute  
8 that the Complaint and summons were served on Arts District on September 21, 2020. There is  
9 no dispute that Plaintiffs filed the Default Judgment Application and served the Default  
10 Judgment Application on Arts District on November 20, 2020. There is no dispute that default  
11 was entered against Arts District on November 23, 2020.<sup>21</sup>

12 There is no dispute that Arts District filed its Set Aside and Dismissal Motion on  
13 December 23, 2020.<sup>22</sup> There is no dispute that Plaintiffs filed opposition to the Set Aside and  
14  
15 216). Attached to the Default Judgment Countermotion are copies of documents marked as 11  
16 separate exhibits (“Arts Ex. \_\_\_\_”).

17 <sup>20</sup> Copies of multiple documents are attached to the written arguments and declarations  
18 submitted in connection with the Default Judgment Application and the Default Relief  
19 Countermotion. No objections have been raised to the court’s consideration of any of the  
20 documents. Likewise, no objections have been raised to any documents for which the court has  
21 been requested to take judicial notice. Accordingly, all of the documents offered as exhibits by  
22 the parties are admitted for their full probative value.

23 <sup>21</sup> Pursuant to Civil Rule 55, made applicable in this bankruptcy proceeding through  
24 Bankruptcy Rule 7055, “a default may be entered against a party when that party fails to plead or  
25 otherwise defend an action.” Jones-Theophilious v. Avery (In re Jones), 2015 WL 1544524, at  
26 \*4 (B.A.P. 9th Cir. Apr. 7, 2015).

27 <sup>22</sup> Under Civil Rule 55(c), a bankruptcy court may set aside an entry for default for good  
28 cause. See FED. R. CIV. P. 55(c). The good cause standard under Civil Rule 55(c) for setting  
aside a default is the same standard which governs vacating a default judgment under Civil Rule  
60(b). See Franchise Holding II, LLC v. Huntington Restaurants Group, Inc., 375 F.3d 922, 925  
(9th Cir. 2004). When determining whether good cause exists to set aside a default, a  
bankruptcy court shall consider the following three factors: “1) whether the defaulting party  
engaged in culpable conduct that led to the default; 2) whether the defaulting party had no  
meritorious defense; or 3) whether reopening the default judgment would prejudice the other  
party[.]” In re Jones, 2015 WL 1544524, at \*4. Because the factors are in the disjunctive, the  
presence of any factor is sufficient for the court to exercise its discretion to refuse to set aside a

1 Dismissal Motion on January 20, 2021. There is no dispute that the Set Aside and Dismissal  
2 Motion was heard on February 3, 2021. There is no dispute that the Set Aside and Dismissal  
3 Motion was denied and that the Set Aside Order denying the motion was entered on February 22,  
4 2021. In view of this record, the inescapable conclusion is that the Default Relief Countermotion  
5 now before the court is nothing more than a do-over for the relief denied by the Set Aside Order.

6 Even more inescapable and perhaps inexplicable is that the instant request is no more  
7 meritorious than the earlier request. It is undisputed that the only support for the prior Set Aside  
8 Motion was a copy of the Sale Order that was attached as an exhibit. At best, that Sale Order  
9 was the basis for a misguided argument that the court was divested of jurisdiction over the  
10 instant Adversary Proceeding by the Trustee's subsequent sale of the Redemption Rights and  
11 avoidance actions. However, nothing in the Sale Order even suggests that Arts District has any  
12 defense, much less a meritorious defense, to the claims set forth in the Complaint.

13 The first claim for relief in the Complaint seeks to quiet title in Parcel 002 in favor of the  
14 Plaintiffs pursuant to the Shani Deed of Trust. Plaintiffs' theory is that the document includes  
15 the correct Assessors Parcel Number and was recorded in the correct name. Based on the  
16 undisputed evidence of that recorded document, Plaintiffs argue that the recording of the Shani  
17 Deed of Trust on May 12, 2017, provided the world with record notice of their interest in Parcel  
18 002 that was superior to all interests in the property that were recorded thereafter. A quiet title  
19 action under Nevada law may be brought by any person to determine adverse claims in real  
20 property asserted by another person. See NEV.REV.STAT. 40.010. No particular pleading  
21 formalities are required to state a claim for quiet title. See Bank of New York Mellon v.  
22 Christopher Communities of Southern Highlands Golf Club Homeowners Assoc., 321 F.Supp.3d  
23 1212, 1219 (D. Nev. 2018), reconsideration denied, 2019 WL 1209082, appeal dismissed, 2020  
24 WL 1862316. Thus, it appears that a plausible basis for a quiet title claim under Nevada law has  
25 been pled. But the instant do-over is without merit for a separate reason.

26  
27  
28 default. See U.S. v. Signed Personal Check No. 730 of Yuban S. Mesle, 615 F.3d 1085, 1091  
(9th Cir. 2010). The moving party bears the burden of showing that these factors support relief  
under the circumstances. See Cassidy v. Tenorio, 856 F.2d 1412, 1415 (9th Cir. 1988).

1 Not only has Arts District failed to allege a legal basis to dispute the quiet title claim, but  
2 the evidence it provides is entirely consistent with Plaintiffs' legal theory. The manager of the  
3 Arts District attests that in September 2018, the Plaintiffs reached an agreement with the Patel  
4 Defendants and the Arts District to assign the Shani Deed of Trust and underlying promissory  
5 note to an entity described as Rockville 40, LLC. See Ford Declaration at ¶ 4. Pursuant to the  
6 alleged agreement, Plaintiffs allegedly received \$6,000 wired to their account in November  
7 2018. Id. at ¶ 6. The manager attests, however, that the Plaintiffs reneged on the agreement and  
8 never assigned the Shani Deed of Trust and promissory note. Id. at ¶ 7. He also attests to his  
9 understanding that the Plaintiffs wanted to assign the Shani Deed of Trust because they were  
10 aware of a defective legal description. Id. at ¶ 5.<sup>23</sup> Whatever the reason may have been for the  
11 Plaintiffs to make the alleged deal, the manager of Arts District acknowledges that he had actual  
12 knowledge of the Shani Deed of Trust no later than September 2018. More important, he does  
13 not suggest that the recording of the Shani Deed of Trust did not occur on May 12, 2017, or that  
14 it somehow could not be located in the county records. No meritorious defense to Plaintiffs  
15 claims is suggested and the legal expense of further litigation would prejudice the Plaintiffs.  
16 Thus, the evidence provided in support of the Default Relief Counter-motion fails to establish that  
17 the default should be set aside.

18 Inasmuch as Arts District has failed again to demonstrate a basis for relief from its  
19 default, the court considers its opposition to entry of a default judgment. Arts District relies

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21 <sup>23</sup> The only document provided with the Ford Declaration is a copy of a Wire Transfer  
22 Outgoing Request indicating that on November 9, 2018, the amount of \$6,000 was transmitted to  
23 an account for Shani Investments Inc. from an account held by an entity named Anniversary  
24 Mining Claims L.L.C. It appears that on June 23, 2021, Anniversary Mining Claims and  
25 declarant Ford commenced a civil action against the Shani parties, denominated Case No. A-21-  
26 836780-C, for recovery of the \$6,000 or other relief, but the action was dismissed. See Glendon  
27 Declaration at ¶¶ 7, 8, and 9. Moreover, declarant Ford's assertion that an agreement was  
28 reached in September 2018, to assign the Shani Deed of Trust allegedly is false. Id. at ¶¶ 3, 4, 7,  
and 10. Attached to the Glendon Declaration are 3 separately numbered documents offered as  
exhibits. A copy of the complaint filed by Anniversary Mining Claims against Shani  
Investments Inc. is included as Exhibit 3. The complaint is captioned for filing in the federal  
district court but the assigned case number is for the Eighth Judicial District Court, Clark  
County, Nevada.



1 primarily on a companion to the Nevada quiet title statute, i.e., NRS 40.110. Subsection (2)  
2 describes the anticipated effect of a quiet title judgment on persons who receive notice of the  
3 judgment. Before reaching the effect of such a judgment, however, Subsection (1) requires the  
4 court entering a quieting title judgment to examine the evidence presented by the plaintiff  
5 establishing its title to the subject real property. In essence, Subsection (1) requires the  
6 equivalent of a prove-up hearing for the plaintiff to obtain a judgment against parties who do not  
7 respond to a quiet title complaint. See, e.g., Wood Bro Capital, LLC v. Underwood, 2017 WL  
8 2294086 (D. Nev. May 25, 2017) (judgment granted against defaulting defendants based on  
9 copies of recorded quitclaim deeds and deeds of trust).

10 For reasons already discussed, the testimony of the Arts District's manager offers no  
11 basis to disregard the Shani Deed of Trust. No one disputes that the Shani Deed of Trust was  
12 recorded by the Debtor on May 12, 2017, in favor of the Plaintiffs, to secure a contemporaneous  
13 loan obtained from the Plaintiffs. The documents attached to the Default Relief Counterclaim  
14 evidence the extent of the Debtor's legal interest in Parcel 002, see Arts Exs. 1 and 2, as well as  
15 the recording of the Shani Deed of Trust on May 12, 2017. See Arts Ex. 3. The subsequent  
16 judgment obtained by the Fidlers on April 12, 2019, the recordation of the Fidler Judgment on  
17 April 18, 2019, and the assignment of the Fidler Judgment to Arts District on August 22, 2019,  
18 also are evidenced by the documents submitted by Arts District. See Arts Exs. 4, 5, and 6. A  
19 declaration disclaiming the interest of defendant Star One Properties as of March 6, 2020, also  
20 was submitted by Arts District. See Arts Ex. 7. A copy of the Sale Order entered in this Chapter  
21 7 proceeding on August 20, 2020, and Star One Property's disclaimer recorded on September 2,  
22 2020, also are submitted by Arts District. See Arts Exs. 8 and 9. A Sheriff's Deed recorded on  
23 September 8, 2020, upon execution of the Fidler Judgment, also is submitted by Arts District.  
24 See Arts Ex. 10. Another copy of the Ford Declaration dated May 18, 2022, also is submitted by  
25 Arts District. See Arts Ex. 11.

26 The common theme of all of the documents offered into evidence by Arts District is that  
27 there is no evidence that Arts District, the Fidlers, or any other party had an interest in Parcel 002  
28 superior to the Plaintiffs. The date on which the Debtor acquired its interest in Parcel 2, the date

1 on which the Debtor transferred a subsequently disclaimed interest in Parcel 2 to Star One  
2 Properties, and the date on which the Shani Deed of Trust was recorded all preceded any interest  
3 in Parcel 002 obtained by Arts District. Moreover, none of the documents submitted by Arts  
4 District, nor the testimony of its manager, offers any evidentiary basis to conclude that Arts  
5 District lacked actual knowledge, constructive notice, or inquiry notice of the Plaintiffs' interest  
6 in Parcel 002 provided by the Shani Deed of Trust. Indeed, the undisputed testimony submitted  
7 by the Plaintiffs demonstrates that the error in the legal description found in the Shani Deed of  
8 Trust would not have eliminated the record notice provided by the names or the Assessor's  
9 Parcel Number that correctly appear in the Shani Deed of Trust. See Soil-Ali Deposition at  
10 20:20 to 24:7; Nielsen Declaration at ¶¶ 5, 6, 7, 8, 10, 11, and 12.

11 Based on the evidence in the record, there is no basis to conclude that Arts District lacked  
12 actual, constructive or inquiry notice of Plaintiffs' interest under the Shani Deed of Trust.  
13 Compare In re Crystal Cascades Civil, LLC, 398 B.R. 23, 36-37 (Bankr. D. Nev. 2008), aff'd,  
14 Buenting v. Crystal Cascades Civil, LLC (In re Crystal Cascades Civil, LLC), 415 B.R. 403,  
15 411-12 (B.A.P. 9th Cir. 2009) (IRS tax lien notices recorded in Clark County records did not  
16 have priority ahead of subsequent deeds of trust because IRS lien notices used incorrect taxpayer  
17 names). Based on the evidence in the record, there is no basis to conclude that Arts District has  
18 an interest in Parcel 002 that is superior to the Plaintiffs.

19 Under these circumstances, entry of judgment in favor of the Plaintiffs is appropriate.

20 **IT IS THEREFORE ORDERED** that the Plaintiffs' Application for Default Judgment  
21 by the Court Pursuant to Fed. R. Civ. P. 55 (b)(2) Against Defendant Arts District Real Estate  
22 #1, LLC, Adversary Docket No. 181, be, and the same hereby is, **GRANTED**.

23 **IT FURTHER SO ORDERED** that Defendant Arts District Real Estate #1, LLC's  
24 Counter-motion to Set Aside Entry of Default, Adversary Docket No. 215, be, and the same  
25 hereby is, **DENIED**.

26 Copies sent via CM/ECF ELECTRONIC FILING

27 Copies sent via BNC to:

28

1 NINETY-FIVE/TWO FIFTEEN CENTER PART II, LLC  
2 C/O DANIEL BARNES  
3 13636 VENTURA BLVD  
4 SHERMAN OAKS, CA 91423

5 ARTS DISTRICT REAL ESTATE #1  
6 c/o Attorney Douglas Gerrard  
7 Gerrard Cox Larsen  
8 2450 St. Rose Pkwy., Suite 200  
9 Henderson, NV 89074

10 ARTS DISTRICT REAL ESTATE #1  
11 c/o Registered Agent: Michael R. Mushkin  
12 6070 S. Eastern Ave., Ste. 270  
13 Las Vegas, NV 89119

14 REENA PATEL  
15 462 S. MAPLE DR., UNIT 1  
16 BEVERLY HILLS, CA 90212

17 RAKESH PATEL  
18 462 S. MAPLE DR., UNIT 1  
19 BEVERLY HILLS, CA 90212

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