

1 **ORDR**

  
CLERK OF THE COURT

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4 **DISTRICT COURT**

5 **CLARK COUNTY, NEVADA**

6 PATRICK A. MISSUD and JULIE )  
MISSUD, husband and wife )

7 )  
8 Plaintiffs, )

9 vs. )

10 D. R. HORTON, INC.; DHI MORTGAGE )  
COMPANY LTD. LP; and ROE )  
11 CORPORATIONS I THROUGH X, )

12 Defendants, )  
13 )

Case No. **07 A 551662**

Dept. No. **XI**

14 **DECISION AND ORDER**

15 The Court conducted an evidentiary hearing<sup>1</sup> on July 20, 2010 regarding Defendant's  
16 Motion Requesting that the Court Issue an Order to Show Cause as to Why the Plaintiffs Should  
17 Not be Held in Contempt of Court for Violating the Court's April 19, 2010 Stipulated Protective  
18 Order and Request for Evidentiary and Monetary Sanctions filed on April 29, 2010 and  
19 Defendants Motion for Terminating Sanctions and Costs and Fees for Plaintiffs' Continued  
20 Discovery Abuses,<sup>2</sup> Plaintiffs' Personal Treats Against Defense Counsel and for Plaintiffs'  
21 Retaliation for the Defendants' Attempt to Engage in Discovery filed on January 29, 2010.<sup>3</sup>  
22  
23  
24  
25

26 <sup>1</sup> The Court heard this matter following a initial determination by the Discovery  
27 Commissioner. See Discovery Commissioner's Report and Recommendations, dated July 13,  
28 2010.

<sup>2</sup> Other than the Stipulated Protective Order, no prior orders were issued as a result of  
discovery violations.

<sup>3</sup> The Court declines to address the issues related to unauthorized practice of law.

1 Plaintiff PATRICK MISSUD<sup>4</sup> appearing in proper person; Defendants were represented by Joel  
2 D. Odou, Esq. of the law firm of Wood, Smith, Henning & Berman. The Court having  
3 considered the briefing, arguments, and the evidence presented and the testimony of witnesses  
4 the Court makes the following findings of fact and conclusions of law:  
5

6 1. Plaintiff PATRICK MISSUD admitted to sending threatening communications to  
7 witnesses and counsel in connection with this litigation.

8 2. Defendant's counsel represented that former employees have refused to cooperate as a  
9 result of Plaintiff PATRICK MISSUD's conduct.  
10

11 3. The irreplaceable loss of witness testimony was not due to the conduct of the  
12 Defendants.

13 4. The Defendants are entitled to defend these claims by presenting evidence that the  
14 Plaintiffs' allegations are incorrect; and/or, to present an alternate explanation for the claims.  
15

16 5. The Defendants have argued that they are hindered and prejudiced in investigating this  
17 case.

18 6. The Defendants are prejudiced in their ability to defend and present evidence regarding  
19 this case.  
20

21 7. Nevada has long recognized that under the law of agency, the actions of an agent in  
22 destroying or spoliating evidence are imputed to the principal for the purposes of sanctions. See  
23 Fire Insurance Exchange v. Zenith Radio Corp., 103 Nev. 648 (1987) (investigator); Stubli v.  
24 Big D International Trucks, 107 Nev. 309 (1991) (investigator/expert and counsel); and, Bass-  
25 Davis v. Davis, 122 Nev. 442 (2006) (franchisor).  
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<sup>4</sup> Patrick Missud is an attorney licensed to practice in California, Bar No. 219614.

1 8. Plaintiff PATRICK MISSUD acted as an agent on behalf of Plaintiff JULIE MISSUD<sup>5</sup>  
2 for purposes of this action.

3 9. In evaluating the seriousness of the prejudice as a result of the threats, the Court has  
4 evaluated the factors enunciated in Young v. Ribiero, 106 Nev. 88 (1990) and concludes:  
5

- 6 a. There are varying degrees of willfulness of the Plaintiffs ranging from  
7 knowing, willful and intentional conduct with an intent to prevent the  
8 Defendants' being able to identify the true facts and interview witnesses and  
9 more simple intimidation. However, the multiple incidents of threats are so  
10 pervasive as to exacerbate the prejudice rather than if each instance were  
11 treated as an isolated incident.  
12
- 13 b. As a result of this conduct, relevant evidence, i.e. witness testimony, has  
14 been irreparably lost.  
15
- 16 c. Given the numerous instances of threats, the prejudice to the Defendants in  
17 preparing their defense and the intentional nature of Plaintiff PATRICK  
18 MISSUD's conduct (taken in conjunction with the intentional violation of the  
19 Stipulated Protective Order, *infra*), a sanction less severe than dismissal of  
20 Plaintiffs' claims is not sufficient to protect the rights of the Defendants.  
21
- 22 d. A fair adjudication on the merits cannot be achieved given the numerous  
23 instances of threats to witnesses and prevents the Defendants in preparing a  
24 defense in this action.  
25
- 26 e. Given the numerous instances of threats, the prejudice to the Defendants in  
27 preparing their defense and the repeated nature of Plaintiffs and Plaintiffs'  
28

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<sup>5</sup> Plaintiff JULIE MISSUD did not participate in the hearing, but her husband Plaintiff PATRICK MISSUD indicated that his wife was unavailable due to a serious medical condition. None of the affirmative conduct which is a part of this Court's findings was actually performed by Plaintiff JULIE MISSUD.

1 agents conduct over a several month period, a sanction less severe than  
2 dismissal of Plaintiffs claims is not sufficient to protect the rights of the  
3 Defendants.

4  
5 f. Plaintiff PATRICK MISSUD has willfully disregarded the judicial process  
6 by his actions.

7 g. Given the involvement of Plaintiff PATRICK MISSUD, sanctions do not  
8 unfairly penalize the remaining Plaintiff for the conduct of her agent.

9 h. There is a public policy to prevent further abuses and deter litigants from  
10 threatening witnesses in an attempt to advance their claims.

11  
12 10. Plaintiff PATRICK MISSUD, became aware that the Court entered the  
13 Stipulated Protective Order on April 30, 2010. Plaintiff PATRICK MISSUD had an unsigned  
14 copy of the Court's Stipulated Protective Order prior to its entry.

15  
16 11. The Stipulated Protective Order spells out the details of compliance in clear,  
17 specific and unambiguous terms and Plaintiff PATRICK MISSUD readily knew the obligations  
18 the Stipulated Protective Order imposed upon him. Plaintiff PATRICK MISSUD's prior  
19 counsel negotiated the Stipulated Protective Order before it was signed by the Court.

20  
21 12. Plaintiff PATRICK MISSUD had the ability to comply with the Stipulated  
22 Protective Order.

23 13. Plaintiff PATRICK MISSUD has made no effort whatsoever to comply with the  
24 terms of Stipulated Protective Order.

25 14. Plaintiff PATRICK MISSUD has demonstrated a complete and knowing  
26 disregard for his obligations under the Stipulated Protective Order.

27  
28 15. Plaintiff PATRICK MISSUD has not proven any legally cognizable defense to  
the contempt of the Stipulated Protective Order.

1 16. There is clear and convincing evidence that Plaintiff PATRICK MISSUD  
2 reposted his websites in violation of the Stipulated Protective Order upon learning of its entry in  
3 direct violation of the Stipulated Protective Order.  
4

5 17. There is clear and convincing evidence that Plaintiff PATRICK MISSUD is  
6 knowingly and intentionally in violation of this Stipulated Protective Order and that he is  
7 knowingly and intentionally in contempt of Court.

8 18. The Stipulated Protective Order included a provision at paragraph 4.g. that any  
9 violation of the Order may result in the striking of the pleadings.  
10

11 19. A judgment of contempt should be issued against Plaintiff PATRICK MISSUD.

12 20. If any of the foregoing findings of fact may be deemed conclusions of law.

13 CONCLUSIONS OF LAW

14 1. As a result of those communications, Defendants' counsel represented witnesses  
15 have been unwilling to participate in discovery.  
16

17 2. Defendants have established that there has been substantial prejudice as a result  
18 of the threats to witnesses.

19 3. The Stipulated Protective Order is clear and unambiguous.

20 4. It is possible for Plaintiff PATRICK MISSUD to comply with the Stipulated  
21 Protective Order.  
22

23 5. Plaintiff PATRICK MISSUD has the ability to comply with the Stipulated  
24 Protective Order.

25 6. Defendants have demonstrated by clear and convincing evidence that Plaintiff  
26 PATRICK MISSUD has knowingly and willfully violated and refused to comply with the  
27 Stipulated Protective Order.  
28

7. As a result of the discovery abuse and the contempt, the Plaintiffs' Amended  
Complaint is stricken.

1 8. Defendants should recover their reasonable costs and attorneys' fees incurred in  
2 pursuing these proceedings to enforce the Stipulated Protective Order and to find Plaintiff  
3 PATRICK MISSUD in contempt of Court. Defendants shall file their application for costs and  
4 attorneys' fees within 30 days of entry of this Order.  
5

6 9. Accordingly Plaintiffs action against the Defendants is dismissed.

7 10. If any of the foregoing conclusions of law may be deemed findings of fact.

8 Dated this 20<sup>th</sup> day of July, 2010.  
9  
10

11   
12 Elizabeth Gonzalez, District Court Judge  
13

14 **Certificate of Service**

15 I hereby certify that on the date filed, I served by fax ~~or~~ by placing a copy of this  
16 Decision and Order in the attorney's folder in the Clerk's Office as follows:

17 Joel Odou, Esq. (Wood, Smith, et al)  
18 Fax: 253-6225

19 Patrick and Julie Missud  
20 Fax: 415-584-7251

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22 Dan Kutinac  
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