

Official Record

Recording requested By
NATIONWIDE LEGAL NEVADA LLC

Lincoln County - NV

Leslie Boucher - Recorder

Fee: \$30.00

Page 1 of 17

RPTT:

Recorded By: AE

Book- 298 Page- 0254



0148318

APN _____

APN _____

APN _____

Application for Foreign Judgment and Affidavit of Cross-Compliant/Judgment Creditor

Title of Document

Affirmation Statement

XX I, the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted for recording **does not contain** the social security number, driver's license or identification card number, or any "Personal Information" (as defined by NRS 603A.040) of any person or persons. (Per NRS 239B.030)

_____ I, the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted for recording **does contain** the social security number, driver's license or identification card number, or any "Personal Information" (as defined by NRS 603A.040) of a person or persons as required by law: _____
(State specific law)


Signature _____ Title **Attorney**

Print Matthew W. Park

9-10-15
Date

Grantees address and mail tax statement:
Bond Safeguard Insurance Company
12890 Lebanon Road
Mount Juliet, TN 37122-2870



1 **AFJ**
2 LEWIS ROCA ROTHGERBER LLP
3 Matthew W. Park (SBN 12062)
4 MPark@LRRLaw.com
5 3993 Howard Hughes Pkwy, Suite 600
6 Las Vegas, NV 89169-5996
7 Telephone: 702.949.8200
8 Fax: 702.949.8398


CLERK OF THE COURT

9 Attorneys for Cross-Complainant/Judgment Creditor
10 Bond Safeguard Insurance Company

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

13 BOND SAFEGUARD INSURANCE COMPANY,
14 Cross-Complainant/Judgment Creditor,

Case No. A-15-724202-F
Dept. No. XIII

15 vs.

**APPLICATION OF FOREIGN
JUDGMENT AND AFFIDAVIT OF
CROSS-COMPLAINANT/
JUDGMENT CREDITOR**

16 ANDREWGLEN DEVELOPMENT, LLC, a
17 Nevada limited liability company;
18 ANDREWGLEN HOLDINGS, LLC, a Nevada
19 limited liability company; GLEN TULK, an
20 individual,

21 Cross-Defendants/Judgment Debtors.

22 COMES NOW Cross-Complainant/Judgment Creditor BOND SAFEGUARD
23 INSURANCE COMPANY ("BOND SAFEGUARD"), by and through undersigned counsel, and
24 hereby files its Foreign Judgment pursuant to NRS 17, specifically NRS 17.350, and registers an
25 exemplified copy of the Judgment, attached hereto as Exhibit "1" as follows:

26 Findings and Judgment on Bond Safeguard's Cross-Complaint filed on March 13, 2015 in
27 the case titled *Granite Construction Company v. Andrewglen Development, LLC, et al.*; Case No.
28 MC 024325, Superior Court of the State of California, County of Los Angeles - North District,
signed by the Honorable Randolph A. Rogers.

3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

**LEWIS ROCA
ROTHGERBER**



1 I declare under penalty of perjury under the law of the State of Nevada that the foregoing is
2 true and correct.

3 DATED this 4th day of September, 2015.

6 Matthew W. Park, Esq. (SBN 12062)
7 LEWIS ROCA ROTHGERBER LLP
8 MPark@LRRLaw.com
9 3993 Howard Hughes Pkwy, Suite 600
10 Las Vegas, NV 89169-5996

11 Attorneys for Cross-Complainant/Judgment Creditor
12 Bond Safeguard Insurance Company

13 3993 Howard Hughes Pkwy, Suite 600
14 Las Vegas, NV 89169-5996

15 LEWIS ROCA
16 ROTHGERBER

17
18
19
20
21
22
23
24
25 CERTIFIED COPY
26 DOCUMENT ATTACHED IS A
27 TRUE AND CORRECT COPY
28 OF THE ORIGINAL ON FILE

CLERK OF THE COURT

SEP 11 2015



EXHIBIT 1

COPY

EXHIBIT 1



RECEIVED
MAR 13 2015
NORTH DISTRICT

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

MAR 13 2015
Sherri A. Carley, Executive Officer/Clock
By [Signature] Deputy

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES - NORTH DISTRICT

Granite Construction Company

Plaintiff,

vs.

Andrewglen Development, LLC a Nevada limited liability company, Andrewglen Holdings LLC, a Nevada limited liability company, Glen Tulk, an individual, et al.

Defendants.

Bond Safeguard Insurance Company

Cross-complainant,

vs.

Andrewglen Development, LLC a Nevada limited liability company, Andrewglen Holdings LLC, a Nevada limited liability company, Glen Tulk, an individual, and Roes 1 - 20

Cross-defendants

CASE NO. MC 024325
Assigned to Hon. Randolph A. Rogers
Dept. A-11

~~Proposed~~
Findings and Judgment on Bond
Safeguard's Cross-Complaint

Trial Information
Date: March 13, 2015
Time: 8:30 a.m.
Dept.: A-11

Trial was held on the above matter on March 13, 2014 in Department A-11 of the above entitled court on both the complaint and cross-complaint listed above. Having considered all admitted evidence and argument offered, this court finds and rules as follows on the cross-complaint of Bond Safeguard Insurance Company ("BST") as against Andrewglen Development, LLC ("Andrewglen"), Andrewglen Holdings LLC, ("Holdings) and Glen Tulk ("Tulk.")

1 Defendant/cross-complainant BSI entered into a written construction contract
2 with cross-defendant Andrewglen which was signed by cross-defendant Tulk as
3 Andrewglen's managing member. Under the contract Andrewglen was to construct
4 highway improvements that BSI was obligated to complete for the City of Palmdale.

5 Andrewglen hired plaintiff Granite Construction Company to perform the work,
6 and told Granite that Andrewglen was acting as the "construction manager" for BSI.
7 BSI paid Andrewglen in full (\$3,794,904.90) on its contract with Andrewglen. But
8 Andrewglen did not make full payment to Granite.

9 Granite sued Andrewglen, Holdings, and Tulk, as well as BSI for the unpaid fees,
10 interest and penalties. Prior to trial, BSI settled with Granite and paid Granite \$525,000.
11 Granite has now dismissed BSI from the complaint.

12 When answering the complaint, BSI also brought a cross-complaint against
13 Andrewglen, Tulk, and Holdings which is the subject of this judgment.

14 15 FINDINGS

16 Having considered all admitted evidence and argument offered entered, this
17 court finds as follows.

18 **1. Breach of Contract (First Cause of Action) and Breach of Fiduciary Duty**
19 **(Fourth Cause of Action.)**

20 The court finds that a written construction contract was entered between
21 Andrewglen and BSI, which Tulk signed for Andrewglen. Tulk admitted in his
22 deposition testimony as the person most qualified for Andrewglen, that the written
23 construction contract was a binding commitment between the parties. Andrewglen is
24 designated as the "Contractor" under the contract.

25 The construction contract expressly provides in paragraph 8(a) that "Contractor
26 agrees to furnish sufficient business administration and superintendence as necessary to
27 fulfill its obligations under this Agreement."

28 Andrewglen and Tulk also agreed in the construction contract to act in a



1 fiduciary capacity to BSI. The construction contract expressly provides in paragraph
 2 8(a) that "The parties accept the relationship of trust and confidence established
 3 between Bond Safeguard and Contractor under this Agreement." Further, in
 4 Andrewglen's contract with Granite, Andrewglen claims to be acting as a "Construction
 5 Manager" for its "Client" BSI.

6 Andrewglen and Tulk breached the construction contract with BSI and breached
 7 their fiduciary duties to BSI under that contract by not properly administering the
 8 contract, and instead by taking money paid by BSI for the construction, and not using
 9 that money to pay Granite for its construction work on the project. BSI paid
 10 Andrewglen in full (\$3,794,904.90) but Andrewglen and Tulk failed to pay Granite in
 11 full, and left Granite owed approximately \$700,000. Andrewglen falsely told Granite
 12 that the hold-up in getting the payment to Granite was BSI and that Andrewglen had
 13 not yet been paid by BSI.

14 Granite claimed in its complaint in this matter that BSI was responsible for the
 15 unpaid fees on theories including that Andrewglen was acting as agent for BSI when it
 16 entered the contract with Granite, and that BSI was also responsible for the payment
 17 under bonds BSI had issued. BSI paid \$525,000 to Granite to settle Granite's claim as
 18 against BSI.

19 BSI has been damaged by cross-defendants' breach of contract and breach of
 20 fiduciary duty in the amount of \$525,000.

21

22 **2. Fraud (Second Cause of Action)**

23 The court finds that Tulk for himself and as representative of Andrewglen,
 24 falsely represented to Mr. Sentman at BSI (1) that Andrewglen had or would have a
 25 California Contractor's license before the start of any construction of the project and (2)
 26 that Granite was being paid as owed, and had been paid in full when both theses
 27 representations were false and Tulk knew they were false at the time he told them.

28 As to the first misrepresentation, neither Tulk nor Andrewglen had a California



1 Contractor's license at any time. There was no evidence that Tulk or Andrewglen ever
2 sought to obtain a California Contractor's license. To the contrary, Andrewglen hired
3 Granite to perform the construction services under the contract, and Andrewglen
4 represented to Granite that it was acting as the "construction manager" for BSI on the
5 construction.

6 BSI was unaware of the falsity of the representation about the contractor's
7 license, and relied on the representation, entering into the construction contract with
8 Andrewglen, and paying Andrewglen under that contract.

9 Tulk and Andrewglen also made misrepresentations to BSI about its payments to
10 Granite. First they did not inform BSI that Andrewglen was not paying its suppliers
11 and subcontractors in full. Then, when Sentman asked Tulk about Granite's claim that it
12 was being paid, Tulk falsely stated that Granite had been paid all moneys owed to it.
13 BSI reasonably relied on the representations and thereon paid Andrewglen under the
14 contract, rather than making payments to Granite.

15 These above representations were known by Tulk and Andrewglen to be false at
16 the time they were made, and were made with intent to deceive BSI.

17 BSI was damaged by these false representations in the amount of \$525,000 which
18 is the amount BSI had to pay Granite to resolve Granite's claims against BSI due to
19 Andrewglen's failure to pay Granite for the construction work.

20 21 **3. Breach of Licensing Laws (Fifth Cause of Action.)**

22 By the terms of the construction contract, Andrewglen had agreed to provide
23 construction services for which a contractor's license is required. The term "contractor"
24 is defined to include "any person who undertakes to or offers to undertake to, or
25 purports to have the capacity to undertake to, or submits a bid to, or does himself or
26 herself or by or through others, construct ... any building ..., project, development or
27 improvement, or to do any part thereof." (Bus. & Prof. Code §7026.) California courts
28 have long held that those who enter into construction contracts must be licensed, even

1 when they themselves do not do the actual work under the contract, thus both the
2 person who provides construction services himself and one who does so through others
3 qualifies as a "contractor" under the statute authorizing reimbursement of
4 compensation for work performed as unlicensed contractor. *Ahdout v. Hekmatjah* (2013)
5 213 Cal.App.4th 21, 31-32.

6 Neither Tulk nor Andrewglen has ever held a California contractor's license, and
7 thus are unlicensed contractors.

8 California Business and Professions Code §7031(b) provides: "Except as provided
9 in subdivision (e), a person who utilizes the services of an unlicensed contractor may
10 bring an action in any court of competent jurisdiction in this state to recover all
11 compensation paid to the unlicensed contractor for performance of any act or contract."
12 Subdivision (e) provides a substantial compliance exception to this rule for persons who
13 had California contractor's licenses but did not know he or she was no longer duly
14 licensed. Tulk and Andrewglen cannot fall within that exception because they never
15 had a California contractor's license.

16 BSI is entitled to recover the \$3,794,904.90 it paid in compensation to
17 Andrewglen for the construction services under the contract, for which neither Tulk nor
18 Andrewglen were licensed.

19 20 4. Alter Ego

21 The court finds that Tulk and Holdings are both the alter ego of Andrewglen and
22 that they as well as Andrewglen are jointly liable for the debts of Andrewglen and
23 damages caused by Andrewglen as set forth below.

24 The finding of alter ego liability is based, in part, on the evidence of fraudulent
25 practices by Tulk and Andrewglen, and also on the unity of ownership and operation of
26 the entities. Tulk is the sole member and owner of Holdings, which is the sole member
27 and owner of Andrewglen. Tulk solely decides when and what distributions will be
28 made from Andrewglen to Holdings, and then from Holdings to himself. Tulk is the



1 person who keeps the financial books and records for the entities. Further, although
 2 Andrewglen was paid in full for the construction work, Andrewglen failed to pay
 3 Granite approximately \$675,000, and yet as of the deposition of Tulk in July 2014
 4 Andrewglen had only \$85,000, which indicates that Tulk and Holdings siphoned the
 5 money away from Andrewglen, leaving Andrewglen unable to pay its obligations.

6 The court finds (1) that there is such unity of interest, ownership, and control,
 7 that the separate personalities of the Andrewglen entities and the individual Mr. Tulk
 8 does not exist and (2) that, if the acts of Andrewglen are treated as those of the
 9 Andrewglen alone, an inequitable result will follow. *Automotriz etc. de California v.*
 10 *Resnick* (1957) 47 Cal.2d 792, 796.

11
 12
 13 **JUDGMENT**


14 The court finds for cross-complainant Bond Safeguard Insurance Company and
 15 against cross-defendants Andrewglen Development LLC, Andrewglen Holdings LLC,
 16 and Glen Tulk, jointly and severally, in the amount of \$525,000 in damages and
 17 \$3,794,904.90 as recovery of compensation under Bus. Prof. Code §7031(b) for a total
 18 award of \$4,319,904.90.

19 Bond Safeguard Insurance Company is further entitled to recover costs of suit as
 20 the prevailing party against cross-defendants.

21
 22
 23
 24
 25
 26
 27
 28

Dated: March 13th, 2015

By: _____


 RANDOLPH A. ROGERS, JUDGE

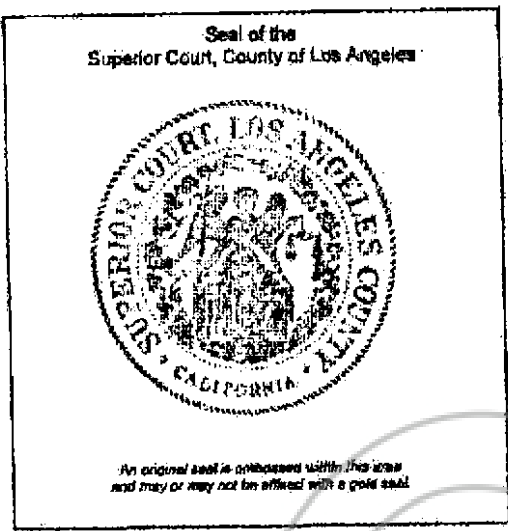


EXEMPLIFICATION

CASE TITLE: Bond Safeguard Insurance Co. v. Andrewglen Development, LLC	CASE NUMBER: MC024325
---	---------------------------------

**SUPERIOR COURT FOR THE
STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES**

I, **SHERRI R. CARTER**, Executive Officer/Clerk of the Superior Court of the State of California for the County of Los Angeles do hereby certify and attest that I am the custodian of records of the said Court, and that the foregoing document is a full, true and correct copy of the original
Filed March 13, 2015 - Finding and Judgment on Bond Safeguard's Cross-Complaint



on file or of record in my office, and that I have carefully compared the same with the original.

Executed and Seal of said Court affixed in the County of Los Angeles, California on April 3, 2015

Sherrri R. Carter (DATE)
EXECUTIVE OFFICER/CLERK OF THE SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

**SUPERIOR COURT FOR THE
STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES**

I, **CAROLYN B. KUHL**, Presiding Judge of the Superior Court of the State of California for the County of Los Angeles do hereby certify that **SHERRI R. CARTER** is Executive Officer/Clerk of the Superior Court of the State of California for the County of Los Angeles (which is a court of record having by law a seal); that the signature to the foregoing certificate and attestation is the genuine signature of the said **SHERRI R. CARTER** as such officer, that the seal annexed thereto is the seal of said Superior Court, that said **SHERRI R. CARTER** as such officer is the legal custodian of the original records or documents described and referred to in the foregoing certificate; is the proper officer having the authority to execute said certificate and attestation, and that said attestation is in due and proper form according to the laws of the State of California. I further certify that my oath of office as a Judge of the Superior Court of California and handwritten signature, or a true and correct copy thereof, is on file or of record with the Secretary of State for the State of California for the purposes of authentication.

Executed at Los Angeles, California on April 3, 2015 (DATE)

Carolyn B. Kuhl
PRESIDING JUDGE OF THE SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES



1 **AFFT**
 2 LEWIS ROCA ROTHGERBER LLP
 3 Matthew W. Park (SBN 12062)
 4 MPark@LRRLaw.com
 5 3993 Howard Hughes Pkwy, Suite 600
 6 Las Vegas, NV 89169-5996
 7 Telephone: 702.949.8200
 8 Fax: 702.949.8398

9 Attorneys for Cross-Complainant/Judgment Creditor
 10 Bond Safeguard Insurance Company

11 DISTRICT COURT
 12 CLARK COUNTY, NEVADA

13 BOND SAFEGUARD INSURANCE COMPANY,
 14 Cross-Complainant/Judgment Creditor,

Case No.
 Dept. No.

15 vs.

16 ANDREW GLEN DEVELOPMENT, LLC, a
 17 Nevada limited liability company;
 18 ANDREW GLEN HOLDINGS, LLC, a Nevada
 19 limited liability company; GLEN TULK, an
 20 individual,

**AFFIDAVIT OF CROSS-
 COMPLAINANT/ JUDGMENT
 CREDITOR IN SUPPORT OF
 FILING FOREIGN JUDGMENT**

21 Cross-Defendants/Judgment Debtors.

22 STATE OF NEVADA)
 23) ss
 24 COUNTY OF CLARK)

25 MATTHEW W. PARK, being first duly sworn, deposes and says:

26 1. I am an attorney with the law firm of Lewis Roca Rothgerber LLP and licensed to
 27 practice in the State of Nevada. Lewis Roca Rothgerber LLP is counsel for Bond Safeguard
 28 Insurance Company, the Judgment Creditor in this action. I am over the age of 18 and am
 competent and willing to testify regarding the matters asserted herein, which are based on my
 own personal knowledge, unless stated upon information and belief, and those statements I am
 informed and believe to be true.

3993 Howard Hughes Pkwy, Suite 600
 Las Vegas, NV 89169-5996

**LEWIS ROCA
 ROTHGERBER**



1 2. The Findings and Judgment on Bond Safeguard's Cross-Complaint was filed on
2 March 13, 2015 in the case titled *Granite Construction Company v. Andrewglen Development,*
3 *LLC, et al.*; Case No. MC 024325, Superior Court of the State of California, County of Los
4 Angeles - North District, in favor of Bond Safeguard Insurance Company.

5 3. Upon information and belief, the name and last known address of the Cross-
6 Defendants/Judgment Debtors are:

7 Andrewglen Development, LLC
8 c/o Kolesar & Leatham, Chtd. - Registered Agent
9 400 S. Rampart Blvd., Suite 400
10 Las Vegas, NV 89145

11 Andrewglen Holdings, LLC
12 c/o Kolesar & Leatham, Chtd. - Registered Agent
13 400 S. Rampart Blvd., Suite 400
14 Las Vegas, NV 89145

15 Andrewglen Development, LLC
16 2125 East 5th Street, Suite 111
17 Tempe, AZ 85281

18 Andrewglen Holdings, LLC
19 2125 East 5th Street, Suite 111
20 Tempe, AZ 85281

21 Glen Tulk
22 2125 East 5th Street, Suite 111
23 Tempe, AZ 85281

24 4. The name and last known address of the Cross-Complainant/Judgment Creditor
25 is:

26 Bond Safeguard Insurance Company
27 12890 Lebanon Road
28 Mount Juliet, TN 37122-2870

29 5. The foreign judgment that is attached to the Application of Foreign Judgment is
30 valid and enforceable.

31 ///
32 ///
33 ///
34 ///
35 ///

3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

**LEWIS ROCA
ROTHGERBER**



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

6. As of September 4, 2015, a total award of \$4,319,904.90 remains due and owing.

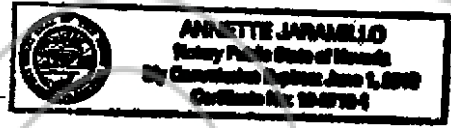
I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Matthew W. Park, Esq.

SUBSCRIBED and SWORN to before me

This 4th day of September, 2015.

NOTARY PUBLIC



3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

LEWIS ROCA
ROTHGERBER



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. The Findings and Judgment on Bond Safeguard's Cross-Complaint was filed on March 13, 2015 in the case titled *Granite Construction Company v. Andrewglen Development, LLC, et al.*; Case No. MC 024325, Superior Court of the State of California, County of Los Angeles - North District, in favor of Bond Safeguard Insurance Company.

3. Upon information and belief, the name and last known address of the Cross-Defendants/Judgment Debtors are:

Andrewglen Development, LLC
c/o Kolesar & Leatham, Chtd. - Registered Agent
400 S. Rampart Blvd., Suite 400
Las Vegas, NV 89145

Andrewglen Holdings, LLC
c/o Kolesar & Leatham, Chtd. - Registered Agent
400 S. Rampart Blvd., Suite 400
Las Vegas, NV 89145

Andrewglen Development, LLC
2125 East 5th Street, Suite 111
Tempe, AZ 85281

Andrewglen Holdings, LLC
2125 East 5th Street, Suite 111
Tempe, AZ 85281

Glen Tulk
2125 East 5th Street, Suite 111
Tempe, AZ 85281

4. The name and last known address of the Cross-Complainant/Judgment Creditor is:

Bond Safeguard Insurance Company
12890 Lebanon Road
Mount Juliet, TN 37122-2870

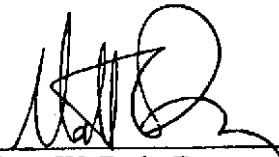
5. The foreign judgment that is attached to the Application of Foreign Judgment is valid and enforceable.

///
///
///
///
///

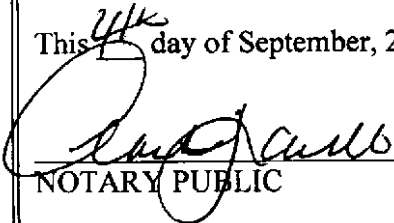
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996
LEWIS ROCA
ROTHGERBER

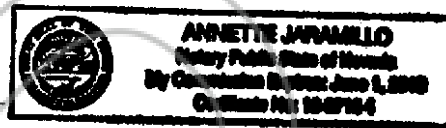


1 6. As of September 4, 2015, a total award of \$4,319,904.90 remains due and owing.
2 I declare under penalty of perjury under the law of the State of Nevada that the foregoing
3 is true and correct.

4
5 
6 _____
Matthew W. Park, Esq.

7 SUBSCRIBED and SWORN to before me
8 This ^{4th} day of September, 2015.


9 
10 _____
NOTARY PUBLIC



3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

LEWIS ROCA
ROTHGERBER

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE

CLERK OF THE COURT

SEP 10 2015