IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

MABRY CONSTRUCTION, INC., FFT LLC, PLACITA DE LA TIERRA, LLC, FKA TOWN CENTER AT LAS CAMPANAS LLC and OSO 3 INVESTMENTS LLC,

Appellants-Plaintiffs,

v. **COA No. 32,731**

LAS CAMPANAS LIMITED PARTNERSHIP, LAS CAMPANAS CORPORATION, OASIS MANAGEMENT RESOURCES, LLC, STEPHEN MAROTTA and RICHARD ALTMAN,

Appellees-Defendants.

CIVIL APPEAL FROM THE FIRST JUDICIAL DISTRICT COURT
The Honorable Sarah M. Singleton
First Judicial Dist. Ct. No. D-0101-CV-2010-01766

APPELLANTS' REPLY BRIEF

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ORAL ARGUMENT IS REQUESTED

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Rule 12-213(G) NMRA Statement of Compliance

I HEREBY CERTIFY that this Reply Brief complies with the type-volume limitation under Rule 12-213 and was prepared using proportionally-spaced, 14-point, Times New Roman typeface in the Microsoft Word 2013 word-processing program. The body of the brief contains 4,379 words according to Microsoft Word's word-count function.

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Pursuant to Rule 12-213(A)(1)(a)&(b) NMRA, the digital audio recordings in this matter were cited using FTR Gold Digital Court Recording software. The references to each digitally recorded transcript are by elapsed time from the start of the recording.

A. Plaintiffs timely filed their Notice of Appeal.

Contrary to Oasis Management Resources, LLC's ("OMR") argument, AB 15-22, Plaintiffs-Appellants ("Plaintiffs") timely filed their Notice of Appeal because under New Mexico law "a motion to reconsider filed within the permissible appeal period suspends the finality of an appealable order or judgment and tolls the time to appeal until the district court has ruled on the motion." *State v. Suskiewich*, No. 34,187, ¶ 17, 2013 WL 5025289, at *4 (N.M. Sup. Ct. Sept. 12, 2013) (unpublished). Plainitffs' Motion to Reconsider was filed within ten days of the entry of the district court's judgment, therefore the Motion to Reconsider in this case should be considered a Rule 1-059(E) NMRA motion to alter or amend the judgment.[1] The New Mexico Supreme Court has explicitly held that "a motion for reconsideration filed within ten days of judgment is a motion to alter or amend a judgment under Rule 1-059(E)." *Albuquerque Redi-Mix, Inc. v. Scottsdale Ins. Co.*, 2007-NMSC-051, ¶ 7, 142 N.M. 527, 168 P.3d 99. Plaintiffs filed their motion to reconsider within ten days of the judgment on the order granting OMR's motion to dismiss on personal jurisdiction grounds, and Plaintiffs timely filed their Notice of Appeal based on the order denying Plaintiffs' Motion to Reconsider.[2]

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[1] *See* BIC 3 (citing record proper reflecting that the Order on OMR's Motion to Dismiss on personal jurisdiction grounds was filed on Apr. 20, 2012, and that Plaintiffs' Motion to Reconsider was timely filed within ten days, on Apr. 30, 2012). *Compare* 6 RP 1370 *with* 6 RP 1380.

[2] 9 RP 2058 (Notice of Appeal).

OMR maintains that the language Plaintiffs rely on in *Redi-Mix* is dicta and therefore not a binding rule of law, AB 18, 21, yet the opinion states: "[W]e ***hold***, like our Court of Appeals and several federal circuit courts of appeals, ***that a motion challenging a judgment, filed within ten days of the judgment, should be considered a Rule 1-059(E) motion to alter or amend a judgment. '[N]omenclature is not controlling***.'" *Redi-Mix*, 2007-NMSC-051, ¶ 10 (second bracket in original) (emphasis added) (quoted authority omitted). The Court in *Redi-Mix* explicitly held as Plaintiffs argue here, discussing its reasoning in an entire section devoted to the issue. *Id.* ¶¶ 7-10. OMR is wrong that this language is dicta. *See State v. Sims*, 2010-NMSC-027, ¶ 20, 148 N.M. 330, 236 P.3d 642 (explaining "dicta is language unnecessary to the decision of the issues before the court and is not binding as a rule of law"). This language (and holding) is necessary to the decision because the *Redi-Mix* Court had to decide, as a preliminary matter, whether to characterize the motion filed as a motion for reconsideration under Rule 1-059(E) or a motion under NMSA 1978, Section 39-1-1 (1917). *Redi-Mix*, 2007-NMSC-051, ¶ 7.

This Court has also recently noted that "the time for filing notices of appeal runs from the entry of an order expressly disposing of the post-judgment motions." *Litteral v. GEO Group, Inc.*, No. 32,718, 2013 WL 4541647, at *1 (N.M. Ct. App. May 7, 2013) (unpublished); *see Grygorwicz v. Trujillo*, 2009-NMSC-009, ¶ 8, 145

N.M. 650, 203 P.3d 865 (explaining that "if a party makes a post-judgment motion directed at the final judgment . . . the time for filing an appeal does not begin to run until the district court enters an express disposition on that motion"); *Suskiewich*, No. 34,187, ¶ 17, 2013 WL 5025289, at *4 (affirming a motion to reconsider filed within the permissible appeal period tolls the time to appeal because this rule is consistent with our Rules of Appellate Procedure in which post-judgment motions suspend the time to appeal until such motions have been determined by the district court).

Indeed, the most recent amendments to our appellate rules, as ordered by the New Mexico Supreme Court, reflect this longstanding practice (as identified in *Redi-Mix*) and have been tailored to remedy any outstanding confusion for practitioners. *See* Rule 12-201(D)(1) NMRA & Committee Commentary (approved Nov. 1, 3013); Rule 12-208(B) NMRA & Committee Commentary (approved Nov. 1, 3013). "The 2013 amendments were prepared in conjunction with amendments to the rules of civil procedure that address motions for reconsideration specifically and [now] provide for a uniform 30-day filing period for post-trial or post-judgment motions brought under a procedural rule or under Section 39-1-1 NMSA 1978." Rule 12-201 Committee Commentary.

Because Plaintiffs' Motion to Reconsider was a motion challenging the judgment granting OMR's Motion to Dismiss and was filed no later than ten days

after entry of judgment by the district court, the Motion to Reconsider ("MTR") in this case is a Rule 1-059(E) motion to alter or amend the judgment, from which Plaintiffs timely filed their Notice of Appeal after their MTR was denied by the district court.

B. OMR cannot overcome the evidence showing reasonable minds can believe OMR had management responsibilities at Las Campanas.

A de novo review of the evidence demonstrates that Plaintiffs established a prima facie case for personal jurisdiction over OMR. OMR's Answer Brief fails to look at the totality of the evidence, which is the standard, and instead focuses on discrete pieces of evidence in a vacuum. AB 29-31; *see Sproul v. Rob & Charlies, Inc.*, 2013-NMCA-072, ¶ 6, 304 P.3d 18. The totality of the evidence reflects that OMR purposefully availed itself of the privilege of conducting activities in New Mexico.

OMR incorrectly maintains that Plaintiffs' argument is that "overlapping directorships of OMR, LC, and every other Anderson company, subjects OMR to suit in New Mexico." AB 31. Plaintiffs and OMR agree that the focus must be on whether OMR had sufficient contacts with the forum, as argued by Plaintiffs in their briefing below and in the Brief in Chief in this Court. BIC 24-40. Plaintiffs' focus has never been on the overlapping directorships. In fact, only OMR has consistently attempted to distract the court below, and now this Court, into believing that the corporate forms (i.e., overlapping directorships) reflect that OMR had no authority

to manage Las Campanas and therefore no reasonable juror could possibly believe that OMR had any management responsibilities. *See* BIC 14-15, 30-31.

OMR argues, as it did below, that "OMR is a separate company" from Las Campanas and that it has no "control or right to control [Las Campanas] in any manner." AB 32. OMR continues to focus on corporate forms rather than confront and explain how OMR's particular contacts somehow do not reflect that it had the minimum contacts necessary to confer jurisdiction. Providing separation of formal corporate identities does not impose a constitutional barrier to the exercise of jurisdiction over a non-resident corporation. What is necessary to establish jurisdiction is what is necessary in any and all cases, whether the defendant had such "minimum contacts" with the forum state to satisfy due process. *Alto Eldorado P'ship v. Amrep Corp.*, 2005-NMCA-131, ¶¶ 25, 31, 138 N.M. 607, 124 P.3d 585.

As explained, OMR purposefully solicited the members of Las Campanas and intentionally reached out to the forum as the liaison or contact point between Las Campanas and the members in the aftermath of Lyle Anderson's default and the Bank stripping him of any further management responsibilities. BIC 24-40. OMR attempts to downplay the OMR letter to over 900 Las Campanas members, signed by Defendant Marotta as the Chief Operating Officer ("CEO") of OMR, on OMR letterhead, as a letter merely "introducing [Marotta] to members of the golf community as a director of [Las Campanas]." AB 34. OMR maintains that the

correspondence "clearly identifies LC's *new directors* and their management team from MGBD as the persons responsible for the management of LC." AB 34-35. OMR fails to address, however, that Defendant Marotta, on OMR letterhead and signed in his capacity as CEO of OMR, knowingly solicited over 900 members of Las Campanas. Mr. Marotta did not sign the letter as a principal of MGBD, or as a "director" of Las Campanas, or use Las Campanas or MGBD letterhead. OMR's CEO explained that OMR has "created a centralized communications system to collect your questions, concerns and suggestions," and instructed members to send all communications to an OMR email address.[3] This solicitation was for the purpose of addressing the owners' and members' "most pressing issues" in light of the bank default. Mr. Marotta stated: "In our effort to address owners' and members' most pressing issues, we have also created a centralized communications system to collect your questions, concerns and suggestions. Please address these questions to OMR@LasCampanas.com."[4]

The evidence reflects that OMR intended to develop a relationship with members of Las Campanas and, at a minimum, reasonable minds could differ as to whether OMR did exercise management responsibilities at Las Campanas. Because a reasonable juror could believe that OMR had management responsibilities, it was

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[3] 7 RP 1398, 1404.
[4] 7 RP 1398.

in error for the district court to rule that Plaintiffs did not establish a prima facie case for personal jurisdiction.

OMR also states, as it did below, that "nowhere on [its] website does it disclose what services it has provided for [Las Campanas]," AB 33, yet Janele Bergstrom, who is the Director of Retail Operations for OMR, explains on the OMR website that she is one of the premier retailers in the golf and spa industry and has "operated as the Director of Retail for the Lyle Anderson communities," including Las Campanas.[5] The website, moreover, is but one example of many demonstrating OMR had management responsibilities at Las Campanas beyond mere "back office services." "[E]ven if the defendant's website is not sufficient in and of itself to establish jurisdiction, it may be an additional contact that facilitates a finding that the defendant's cumulative contacts with the forum state are sufficiently continuous and systematic to subject the defendant to the federal court's general jurisdiction." 4A Arthur R. Miller & Mary Kay Kane, et al., *Fed. Pract. & Proced.* § 1073.1 (2013).

Contrary to OMR maintaining there was no evidence of OMR controlling Las Campanas' bank accounts and evidence of payments to OMR, AB 33-34, the evidence reflects otherwise and the district court expressed concern at the Motion to

[5] 3 RP 661; *see* BIC 31-32.

Dismiss hearing on this point.[6] Plaintiffs presented evidence, inter alia, showing that OMR represented that it provided executive oversight in addition to back office services, that Las Campanas had paid management fees to OMR, reimbursed OMR officers and employees for various expenses, and that the operating account of Las Campanas was controlled by OMR.[7] Plaintiffs additionally provided correspondence from OMR to a Las Campanas' homeowner, in which OMR's own logo states it was "providing community and club management services" to Las Campanas.[8]

Further, OMR's cursory argument regarding the evidence pertaining to Michelle Hoeft is nothing new.[9] OMR attempts to dismiss Ms. Hoeft's affidavit and corresponding newspaper article as biased and merely her "belief" that OMR was managing Las Campanas after Lyle Anderson defaulted on his loans and lost the right and ability to manage the property. AB 36. But OMR ignores that Michelle Hoeft, in her capacity as a spokesperson handling public relations and marketing for Las Campanas, explained to the newspaper that OMR was "the company appointed to run the [Las Campanas] development."[10] The purpose of including the newspaper

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[6] TR 36 (4/10/12).
[7] 3 RP 629 (Plf's MTD Response Mot.); 4 RP 709 (Plf's MTD Response Brief in Support of Mot.).
[8] 3 RP 700.
[9] OMR fails to address or so much as mention Plaintiffs' evidence pertaining to Bob Buddendorf and Caroline Stevenson. BIC at 27-28.
[10] 7 RP 1417; AB 36.

article, in addition to her affidavit, was to show that when Ms. Hoeft made this statement to the newspaper she was working for Las Campanas and therefore had no reason to lie about who was managing the Las Campanas development.[11]

While OMR appears to take issue with Plaintiffs' reference to other newspaper articles indicating OMR was managing various Lyle Anderson properties including Las Campanas, AB 36, n.18, this Court may take judicial notice of such information. *See* BIC 31. The articles are not hearsay because they are not being considered for the truth of the matters reported in the articles, but rather as evidence that such statements were made in the public realm and that, at a minimum, reasonable jurors could find that OMR may have had management responsibilities. *See Rozelle v. Barnard*, 1963-NMSC-101, ¶ 2, 72 N.M. 182, 382 P.2d 180 ("[C]ourts will take judicial notice of matters of common and general knowledge."); *Elane Photography, LLC v. Willock*, 2013-NMSC-040, ¶ 52, 309 P.3d 53 (taking judicial notice of discrimination against gays and lesbians from newspaper articles); Rule 11-201 NMRA; *Kosilek v. Spencer*, 889 F.Supp.2d 190, 215 n.6 (D.Mass. 2012) (compiling cases and stating that "[i]n this case, the quoted [news] article is not hearsay because it is not being considered for the truth of the matters reported in the article, but rather as evidence that such statements were made."); *Benak v. Alliance Capital Mgmt. L.P.*, 435 F.3d 396, 401 (3d Cir. 2006) (affirming district court's

[11] 7 RP 1413-14.

decision to allow [news] articles as they serve only to indicate what was available in the public realm at the time, not whether the contents of those articles were in fact true).

Finally, OMR maintains that Plaintiffs "can point to no facts that implicate OMR in any conspiracy or interference with contract," AB 37, yet Plaintiffs explained below and in their Brief in Chief that OMR was aware that its own President, Defendant Richard Altman, did not make payments on the leases at issue in this case and that OMR participated in this decision in choosing to breach the leases at issue, inter alia. BIC 38-39. New Mexico is clear that a party alleging a conspiracy "is not required to prove [the] alleged conspiracy for personal jurisdiction purposes." *Santa Fe Techs., Inc. v. Argus Networks, Inc.*, 2002-NMCA-030, ¶ 46, 131 N.M. 772, 42 P.3d 1221. The merits of the claim are for the factfinder to decide. *Id.* To assert personal jurisdiction based on a conspiracy, the party asserting jurisdiction must make a prima facie showing of conspiracy, with all factual disputes resolved in favor of the party arguing for jurisdiction. *Id.* ¶ 41. "'A conspiracy may be established by circumstantial evidence; generally, the agreement is a matter of inference from the facts and circumstances, including the acts of the persons alleged to be conspirators.'" *Id.* ¶ 46 (quoting *Morris v. Dodge Country, Inc.*, 1973-NMCA-100, ¶ 5, 85 N.M. 491, 513 P.2d 1273, 1274).

The record here reflects that OMR, Altman and Moratta caused the Las Campanas Defendants, or conspired with them, to breach the leases at issue, interfere with contractual relations, and maliciously filed allegations against Plaintiffs without cause.[12] *See* BIC 37-40. OMR purposefully reached out to New Mexico requesting that members of Las Campanas contact OMR with any questions or concerns, led people to believe they were managing Las Campanas, and knew or should have known of the leases that were breached with Plaintiffs in addition to the malicious filing of claims against Plaintiffs after Plaintiffs filed suit for breach of contract. *Id.* The evidence, including all inferences drawn from the facts and circumstances, reflect that Plaintiffs established a prima facie case for conspiracy.

The totality of the evidence supports both general and specific jurisdiction in this matter. The evidence reflects that OMR deliberately reached out to the Las Campanas community to establish a relationship and to solicit ongoing interactions with owners, members and employees of Las Campanas. OMR not only told and led people to believe it had management responsibilities at Las Campanas,[13] there is direct evidence of it having management responsibilities for the property. The evidence reflects that OMR availed itself "of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws."

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[12] 3 RP 286-302; 2 RP 290-302.
[13] 7 RP 1408-09, 1413-15, 1464-66.

Hanson v. Denckla, 357 U.S. 235, 253 (1958). A de novo review of the evidence, including all inferences therefrom, establish OMR had sufficient contacts with New Mexico to confer jurisdiction.

C. The district court improperly excluded evidence for consideration under Rule 1-060(B) NMRA.

While it is unnecessary for this Court to reach the Rule 1-060(B) issue as this Court conducts a de novo review of the evidence when reviewing a dismissal on personal jurisdiction grounds, *Santa Fe Techs.*, 2002-NMCA-030, ¶ 12, relief was proper under Rule 1-060 below because our courts are instructed to liberally interpret the Rule "so that the ultimate result will address the true merits and substantial justice will be done." *Phelps Dodge Corp. v. Guerra*, 1978-NMSC-053, ¶ 21, 92 N.M. 47, 582 P.2d 819, 823. Because our law requires that the substance of the relief sought is more important than the form or nomenclature of the relief requested, *id.* ¶ 18, the district court abused its discretion in refusing to consider evidence provided in Plaintiffs' MTR. Given the low burden a plaintiff has in establishing personal jurisdiction (only requiring a prima facie case be established), for the district court to have omitted from its consideration the evidence included in Plaintiffs' MTR, resulting in the extreme sanction of dismissal of this case, is unjust and does not reflect the true merits.

OMR fails to address the fact that the exclusion of the correspondence from OMR to Las Campanas members, and from Anderson to the members, for

consideration prejudiced Plaintiffs' case because the district court used the exclusion of this evidence as the basis to deny personal jurisdiction. And OMR notably does not (and cannot) state it would have suffered any prejudice if the district court had considered the evidence and granted Plaintiffs' MTR. Given Plaintiffs' MTR was timely filed within ten days of the order granting OMR's Motion to Dismiss, there was no prejudice to OMR in considering the evidence in Plaintiffs' MTR and no reason for the district court to have ruled that consideration of the evidence did an injustice to "the principle of finality."[14]

OMR's Answer Brief merely reiterates its argument that Plaintiffs' discovery request was not broad enough to include the correspondence. AB 43-44. The interrogatory at issue specifically requested all correspondence "concerning or related to any contract or any agreement among or between" MGBD, OMR, Marotta, Altman, the Bank of Scotland, Las Campanas, or any of the Lyle Anderson companies.[15] To which OMR answered: "There are no documents responsive to this request."[16] The correspondence, however, details a wealth of specifics regarding the new business agreements established to fill the void as a result of Lyle Anderson's financial collapse; therefore, the discovery request is more than broad enough to encompass the correspondence at issue.

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[14] Dec. 21, 2012, CD, 10:13:30 to 10:13:40.
[15] 9 RP 1975.
[16] 9 RP 1975.

OMR's letter was for the purpose of soothing the community's legitimate concerns as to unfinished work, ongoing maintenance, and future plans for the development. Explaining the new agreements and contracts formed in order to maintain the value and continue the stewardship of the property was an essential part of OMR's campaign to calm the uncertainty then infecting the Las Campanas community. For OMR to have withheld the correspondence from Plaintiffs permitted OMR to unfairly obtain a favorable judgment on its Motion to Dismiss; the evidence indicates reasonable people could disagree as to whether OMR had management responsibilities at Las Campanas.

OMR relies on an unrelated motion and off-the-record discovery conference regarding interrogatories that have nothing to do with the discovery request at issue in this case to support its argument that Plaintiffs' discovery request was not broad enough to encompass the correspondence. AB 43. In a summary judgment reply brief filed by Defendants Marotta and Altman,[17] the defense discusses several interrogatories regarding the amount of compensation paid to Marotta and Altman.[18] None of these interrogatories, however, are related to the discovery request at issue in this case. This unrelated argument in a summary judgment motion, which was

[17] 8 RP 1760.
[18] 8 RP 1767-69.

denied,[19] that pertains to different discovery requests and an off-the-record discussion has no relevance to the discovery request here.[20]

The correspondence addresses the agreements between the Bank of Scotland and the Lyle Anderson companies, between OMR and Las Campanas, and between MGBD and OMR, among others. OMR was created only after the Lyle Anderson default so it was unfamiliar to the Las Campanas community. OMR therefore reached out to the members in its letter to explain the new management agreements formed to preserve and protect the value of the property.[21] The letter specifically answered "Who actually 'owns' the properties now,"[22] and discussed the formation of OMR and the appointment of OMR as the "new management company."[23] Lyle Anderson's letter to the community complemented the OMR letter in reiterating the new agreements and contracts formed, such as the appointment of MGBD and the formation of OMR as the "new management company."[24]

OMR maintains, as it did below, that "at least two of the plaintiffs were recipients of the letters claimed to have been withheld in discovery," AB 42, n.21,

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[19] 8 RP 1834 (order denying summary judgment motion).
[20] *O'Neel v. USAA Ins. Co.*, 2002-NMCA-028, ¶ 27, 131 N.M. 630, 41 P.3d 356 ("'Matters outside the record present no issue for review.'") (quoting *State v. Reynolds*, 1990-NMCA-122, ¶ 16, 111 N.M. 263, 267, 804 P.2d 1082, 1086).
[21] 4 RP 730; TR 6 (4/10/12) (providing OMR was "created after the insolvency").
[22] 7 RP 1399.
[23] 7 RP 1402.
[24] 7 RP 1405-07.

and therefore the correspondence could not be "new evidence" under Rule 1-060(B)(2). Plaintiffs' counsel, however, did not receive this "new evidence" from any of the Plaintiffs, did not learn about the correspondence through any of the Plaintiffs, did not introduce the correspondence through any of the Plaintiffs, and does not know if any of the Plaintiffs ever received the letters, which is what Plaintiffs' counsel explained to the district court.[25] It was and remains complete speculation if any of the Plaintiffs ever received these letters. Plaintiffs' counsel below, Francis J. Mathew, only discovered the correspondence when conducting an interview with Bob Buddendorf. Mr. Buddendorf introduced these letters as exhibits attached to his affidavit in Plaintiffs' Motion to Reconsider.[26]

OMR's assumption appears to stem from its belief that one of the part-owners in one of the Plaintiff-companies, Placita De La Tierra, f/k/a Town Center at Las Campanas, personally owned a lot in Las Campanas and therefore may have been among the 900 people who received the OMR correspondence.[27] OMR attached an exhibit that appears to reflect that Greg Huitfelt and his wife personally owned a lot at Las Campanas.[28] Appellate counsel does understand that Mr. Huitfelt is a part-owner in Placita De La Tierra (and Placita De La Tierra has a four-percent interest

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[25] 9 RP 1974-75.
[26] 7 RP 1464-66; BIC 27-28.
[27] 9 RP 1951, 1956; Dec. 21, 2012, CD, 10:04:12 to 10:04:48.
[28] 9 RP 1956.

in the income-producing property that is the subject of the underlying breach of contract claim). Mr. Huitfelt, from what appellate counsel has been told, has not been actively involved with this litigation and counsel below had no idea if Mr. Huitfelt ever received the OMR correspondence related to his personal ownership of a lot in Las Campanas.

Moreover, the OMR correspondence was sent to the members approximately four years prior to the Motion to Dismiss hearing and there is no evidence whatsoever that Mr. Huitfelt had or did keep a copy of this record for his personally-held lot at Las Campanas. The district court stated that the correspondence may have been sent to one of the Plaintiffs "in the ordinary course of business,"[29] yet there was no evidence that Mr. Huitfelt ever received the letters, and even if he did, it would have been sent to him personally for his personal ownership of a lot at Las Campanas. Receipt of the correspondence could not have been "in the ordinary course of business" because there is no suggestion that Plaintiff Placita De La Tierra could or should have received the correspondence. OMR's speculation that one of the part-owners of one of the Plaintiff-companies may have received the OMR correspondence for his personal ownership of a lot that is not a subject of this suit was improperly adopted by the district court in denying Plaintiffs' MTR.[30]

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[29] Dec. 21, 2012, CD, 10:12:22 to 10:12:56.
[30] Dec. 21, 2012, CD, 10:12:22 to 10:12:56.

Finally, OMR does not address the tension under New Mexico law between the liberality with which Rule 1-060(B) is to be applied, and cases applying this standard, and case law suggesting the provisions of Rule 60(B)(1)-(5) and 1-060(B)(6) are mutually exclusive. BIC 50-55. OMR did not address Plaintiffs' lengthy discussion, citing *In re Four Seasons Sec. Laws Litig.*, 502 F.2d 834, 841 (10th Cir. 1974), explaining that when a "motion is timely filed under any of the 60(b) clauses, the court should not be bound by a strict categorization of particular claims." *Id.* Because there is no untimeliness issue (since Plaintiffs' MTR was filed within 10 days of the MTD Order), no attempt to circumvent any of the time limitations under Rule 1-059 or Rule 1-060(B), and no prejudice to OMR given only 10 days had elapsed from the district court's Order, the district court abused its discretion in not granting Plaintiffs' MTR. The totality of the evidence reflects that Plaintiffs made a prima facie case for jurisdiction, with all evidence construed in Plaintiffs' favor by law. *Sproul*, 2013-NMCA-072, ¶ 6.

Conclusion

Because the evidence collectively indicates Plaintiffs established a prima facie case for personal jurisdiction over Defendant OMR, Plaintiffs respectfully request this Court reverse the district court's Order granting OMR's Motion to Dismiss on personal jurisdiction grounds and permit this case to proceed on the merits.

Respectfully submitted,

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