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7 HENDERSON MUNICIPAL COURT
8 CLARK COUNTY, NEVADA

9 CITY OF HENDERSON,

10 Plaintiff,

11 vs.

12 ROBERT EUGENE FRANK,

13 Defendant,

14 TIM STEBBINS,

15 Co-Defendant.

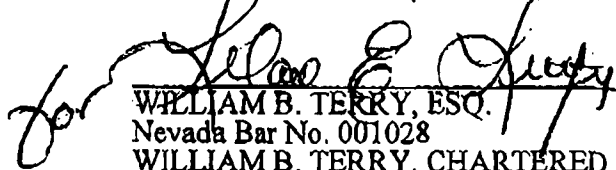
CASE NO. 10CR2318
DEPT. NO. 3

HEARING DATE: 10/27/11
HEARING TIME: 1:00 P.M.

16 MOTION TO DISMISS

17 COMES NOW the Defendants, ROBERT FRANK and TIM STEBBINS, by and through
18 their respective attorneys, WILLIAM B. TERRY, ESQ., of the law offices WILLIAM B. TERRY,
19 CHARTERED, and CAL J. POTTER, ESQ., III, and moves that this Court dismiss any and all
20 charges currently pending against both Defendants based upon NRS 171.102, the attached points and
21 authorities set forth herein as well as the factual representations set forth.

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1 **INTRODUCTION**

2 Prior to this Honorable Court sitting on the instant case and the appointment of the Special
3 Prosecutor, the City Attorney's office filed a Complaint against both Mr. Stebbins and Mr. Frank.
4 The Defendants thereafter moved to dismiss the charge based on the failure to state a criminal cause
5 of action. As a result, an amended or separate complaint was filed which is currently before the
6 Court. Additionally, at that point in time, the defense requested copies of any and all documents
7 provided to the Henderson Police Department since that had not been provided in the original
8 discovery. The City Attorney's office eventually complied with that directive. Eventually, both the
9 City Attorneys office and the Court were recused from further consideration of the instant case.

10 On July 27, 2011, Counsel for Mr. Frank filed his Motion to Dismiss. The instant Motion
11 to Dismiss is filed for an on behalf of both Defendants and is simply meant to supplement the prior
12 Motion. The Court's attention is also drawn to the fact that the factual representations set forth
13 herein are based on the facts produced by the City of Henderson in the requested discovery. The City
14 no doubt will argue that the Motion to Dismiss should not be granted because some court found
15 probable cause to issue the warrant. First of all, it is questionable how a warrant would have been
16 issued based upon the affidavit in support of probable cause and, secondly, that document did not
17 contain anything close to what all the discovery maintained. Basically what the officer did was pick
18 and choose what he wanted in an effort to bring the instant case. Again, the facts set forth herein are
19 set forth within the discovery.

20 **SUPPLEMENTAL FACTUAL ANALYSIS**

21 Attorney, Cal Potter, on behalf of his client has already filed certain exhibits which the
22 Defendant Stebbins incorporates by reference herein since they are relevant to instant factual
23 analysis. In setting forth the factual analysis the Court is reminded that both Defendants in the
24 instant case are lay people. They have no law enforcement background and they like most people
25 rely upon law enforcement. As an example, if an individual goes into the police department and
26 indicates that he wishes to file a report because someone robbed his house and thereafter puts robber
27 on the report and fills out the report and it turns out it was not a robbery but in fact was a burglary
28 this is simply a layperson's misconception of what the facts are. It is up to law enforcement to

1 determine whether probable cause exists to commit a crime not necessarily the crime that was
2 reported. In this hypothetical situation the individual who reported the robbery would not be charged
3 with filing a false police report, he simply would be told that this case was not a robbery but was a
4 burglary or a larceny. On August 28, 2008, the Board passed a resolution which turned out not to
5 be accurate. It stated that the members had desired that certain actions be taken and this was false.
6 The membership had never been asked about the topic in any way nor were they allowed to express
7 their desires. The 2007 tax return contained a statement under penalty of perjury indicating "the
8 Association elects to use the provisions of IRC Revenue Rule 70-604 for the current tax year..." It
9 was in the Board resolution that they also added the statement that the members had participated in
10 that decision making process. It was this which was false. The 2007 tax return also contained a
11 statement under penalty of perjury that indicated "The members of the Association specifically
12 empower the signer of this return in making this election in their behalf." This again was a false
13 statement since the membership had never been asked about it. Thus if the police officer or the
14 Henderson Police Department had looked further they would have at a minimum determined that
15 the probable cause existed that perjury had been committed. It also demonstrated that the officers
16 of the associations had made false and untrue statements about the members did and desired. The
17 Executive Board does have the authority to act on behalf of the Association but does not have the
18 authority to act on behalf of the members. Nor do they have the authority to indicate in any
19 document what the members decided when the members had not even considered it. Mr. Stebbins
20 had been advised that this false statement and this perjurous statement might also be considered a
21 forgery under NRS 205.095. The Court should look at NRS 205.095 because it is an exceedingly
22 broad document. Initially, Mr. Stebbins met with two metro officers from the detective division.
23 He was advised that there did appear to be a case and that more likely than not the Clark County
24 District Attorney's office would be involved. They indicated, however, that the matter had to be
25 initiated in Henderson because it was Henderson who had jurisdiction over the case. Mr. Stebbins
26 then went to the Green Valley Henderson Police Department and filed a report. He was advised that
27 any matter that involved the Home Owner's Association had to be submitted to the ombudsman
28 being an Officer Kohlmeier. A meeting was in fact held between Officer Kohlmeier, Bruce Alt,

1 Chief Investigator of the Real Estate Division and the Defendants. It was explained to them that the
2 matter did not fall under the jurisdiction of the ombudsman but that they should go to the Henderson
3 Police Department and file a report. That is precisely what was done. The initial report was filed
4 with Officer Ramona Walls along with documents. The report indicated that suspicions had arisen
5 that a crime had been committed and it requested a police investigation. The report itself made no
6 accusations. It simply asked for an investigation. At the first meeting with Sergeant Jeffrey Farley
7 the report itself was discussed but Sergeant Farley moved from the false statement in the Board
8 resolution to another section of the Board resolution that declared the surplus funds of 2007 were
9 returned to the members. Mr. Stebbins was asked whether or not the surplus funds had been returned
10 and he indicated that they had not. Further documentation was obtained and provided to Sergeant
11 Farley within a period of two to three weeks. In the police reports and the arrest reports Sergeant
12 Farley indicates that the surplus monies were returned and that Mr. Stebbins knew that his allegation
13 that they were not returned was false. This obviously turned out to be absolutely incorrect in that
14 there in fact was never was a return of surplus funds. It was explained to Sergeant Farley that at a
15 tax planning meeting it was explained that large sums of surplus money had been accumulated over
16 several years and not returned to the members. The documents obtained by Sergeant Farley show
17 that the assessments for 2008 were increased \$160 per unit over the 2007 rate. It indicates that \$60
18 of that increase was to fund the operation of a new recreation building expected to open in July of
19 2008. The budget expenses for the new facility was \$430. The \$60 per unit times 7,144 units would
20 have been over \$429,000. By March of 2008 it was determined that the new facility would not be
21 open as expected and the Executive Board decided to cancel the \$60 per unit increase of the 2008
22 assessments and reduce the budgeted assessments in the fourth quarter of 2008 by that \$60 per unit.
23 This was documented in the minutes of the meeting. This was a reduction in the 2008 assessments
24 but had nothing to do with any refund or application of the 2007 surplus. In August of 2008 the
25 Executive Board discussed the assessment for 2008 and the fact that they were running higher than
26 needed for operation and reserves. The Executive Board decided to increase the reduction of the
27 2008 assessments increase by an additional \$40 per unit. The total of the previous \$60 per unit
28 reduction and the new \$40 per unit reduction equaled \$100 per unit and was applied as a reduction

1 of the budgeted assessments on the fourth quarter of 2008. Again, this is documented in the minutes
2 of that meeting. The \$100 per unit amount was a reduction in the 2008 assessment and not a refund
3 of anything pertaining to 2007 assessment. All of this was told to Sergeant Farley but he seemed
4 uninterested.

5 The tax return of 2007 is particularly relevant to the issue before this Court. Again, the
6 members had never participated in any decision making process in reference to the Associations
7 "election" to use the provisions of IRS Revenue Rule 70-604. Had there been such a membership
8 consideration, obviously, many members would have disagreed with this. Their disagreement would
9 have turned out to be absolutely accurate. In the letter of November 2, 2009, from the Department
10 of Treasury it was pointed out that a home owner's association has taxable income to the extent it's
11 income exceeds it's expenses and is therefore generally taxable. The relevancy of Revenue Rule 70-
12 604 is that the corporation is not taxable on the excess assessments because the excess has been
13 returned in effect to the stockholder owners. Again, the letter of November 2, 2009, clearly indicates
14 that the Revenue ruling does not provide that a condominium management corporation may avoid
15 recognizable taxable income by accumulating the excess amount in a working capital reserve.

16 The Court is also asked to look at the letter forwarded by Mr. Stebbins to the Board of
17 Directors of Sun City Anthem Community Association dated August 27, 2009. It sets forth the same
18 concerns Mr. Stebbins had when he presented himself to the Henderson Police Department.

19 **I. PROBABLE CAUSE EXISTED TO BELIEVE A CRIME HAD BEEN COMMITTED**
20 **AND AS SUCH ALL CRIMINAL CHARGES AGAINST BOTH DEFENDANTS**
MUST BE DISMISSED.

21 The Court is reminded of the Defendant's hypothetical in reference to burglary versus
22 robbery set forth within the instant points and authorities. A different hypothetical is posed to the
23 Court, however. Let us say an individual named Joe Smith goes into the Henderson Police
24 Department and indicates that he wishes to file charges against Sam Jones for battery and he
25 indicates in a police report that the complainant was struck by the other individual. This would be
26 a citizen's complaint but probable cause would have been shown merely based upon the fact that the
27 complainant indicated that he was struck. It is up to the District Attorney's office or the City
28 Attorney's office to decide whether to go forward. It is also up to the police agency to determine

1 what specific crime if any has been committed. When people file complaints or reports with the
2 police department it may be civil in nature. Again, we are dealing with lay people. As a further
3 hypothetical, let us say an individual goes into the police department and says that another individual
4 called him a thief. This would not be criminal in nature but may be a form of defamation, slander
5 or liable. Police would merely tell that complainant that the matter was not actionable under any
6 provisions. The forgery statute under consideration in the case at bar is simply one statute. It does
7 not mean that that would have been the only thing that the Henderson Police Department could have
8 proceeded under. Perjury is also a crime. They could have proceeded under that theory.

9 The Defendants are charged with a violation of NRS 207.208. This requires that an
10 individual knowingly file a police report and the knowingly must be that he knows that it is false.
11 That is not what occurred herein. The efforts of the Defendants were for an investigation. It was
12 for the police to determine whether or not a crime existed or any crime. Originally, the Henderson
13 City Attorney's office and/or the Henderson Police Department filed what can only be referred to
14 as a fatally vague complaint. That is acknowledged because the City Attorney was forced to file an
15 amended charging document. Is Sergeant Farley or the City Attorney's office going to be charged
16 with filing a false criminal complaint? Not likely. The Defendants in fact advised the Henderson
17 Police Department that their was a failure to refund excessive revenues and this in fact was true.
18 Even if the Home Owner's Association Board did not refund the money it does not mean that the
19 statements given by the Defendants were inaccurate. In fact, if you look at the charging document
20 the City has to concede that there was in fact no refund of excessive or surpluses revenues. Whether
21 this was a forgery, a perjury, a misrepresentation based on the larceny statute or what, was up to the
22 police department to determine. Again, they may have determined that there was no crime but that
23 is completely different then filing a false police report.

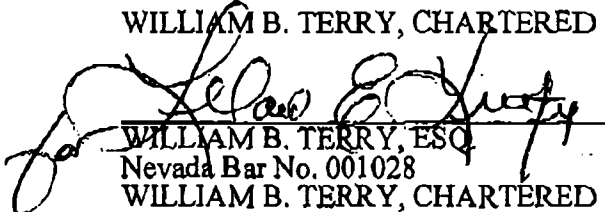
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CONCLUSION

As such, it is respectfully submitted that the Motion to Dismiss should be granted.

DATED this 22 day of August, 2011.

WILLIAM B. TERRY, CHARTERED



WILLIAM B. TERRY, ESQ

Nevada Bar No. 001028

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Attorney for Defendant, Tim Stebbins

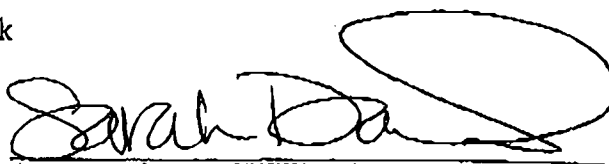
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that pursuant to the Amended EDCR 7.26 and to NRCP 5(b) on the 22nd day of August, 2011, I, as an employee of WILLIAM B. TERRY, CHARTERED, caused to be served via facsimile and regular mail a true and correct copy of the **MOTION TO DISMISS** to the following:

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Attorney for Plaintiff

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Attorney for Defendant, Robert Frank



As an employee of William B. Terry, Chartered