



constructive trust be imposed on the properties held by the Plaintiff throughout the United States and that the Plaintiff be named a constructive trustee of said properties for the benefit of the Defendant.

5. On December 28, 2007, Defendant filed a Lis Pendens Notice in the Office of the Clerk of Superior Court of Haywood County by and through its CEO Kevin West and in care of the Frizzell Law Firm, 602 South Broadway, Tyler, Texas 75701.

6. The Complaint filed in the District Court of Clark County, Nevada, Case No: A538649, does not reference with any particularity the property owned by the Plaintiff and situated within Haywood County, North Carolina.

7. The description of the property attached to the Lis Pendens Notice describes the property of the Plaintiff as a 28.313 acre tract.

8. The Plaintiff is not the owner of a 28.313 acre tract in Haywood County, North Carolina, having conveyed a substantial portion of said 28.313 acre tract by Deed dated January 12, 2006, and recorded on January 23, 2006, in Deed Book 656, Page 421, Haywood County Registry.

9. More than sixty (60) days have passed since the filing of the Lis Pendens Notice and, pursuant to North Carolina General Statute §1-119, the Lis Pendens Notice is void unless an action is prosecuted by the entity filing the Lis Pendens Notice within sixty (60) days after the cross-indexing of the Lis Pendens Notice.

10. Upon information and belief, more than sixty (60) sixty have passed since the cross-indexing of the Lis Pendens Notice.

11. The Defendant's action in the District Court of Clark County, Nevada, is not one that affects title to real property nor is it an action to foreclosure any mortgage or deed of trust or to enforce any lien on real property, nor is it an action in which any order of attachment has been issued and real property attached.

**FIRST CLAIM FOR RELIEF**

**Declaratory Judgment  
Dissolving the Lis Pendens Notice**

**For Lack of Jurisdiction, Failure to Prosecute the Action  
in the State of North Carolina, and Failure to Describe  
the Property within the Complaint, and Failure to**

**Bring an Action in the State of Nevada for  
Any of the Three Purposes Allowing the Filing  
Of a Lis Pendens Notice Pursuant to NCGS 1-1-16**

12. Plaintiff realleges and incorporates Paragraphs 1 through 11 above as if the same were more fully set forth herein.
13. As a result of the foregoing, there is an actual controversy between the Plaintiff and Defendant related to the Defendant's filing of a Lis Pendens Notice without having legal authority to do so in the Office of the Clerk of Superior Court of Haywood County, North Carolina.
- WHEREFORE, the Plaintiff prays of the Court that:
- a. The Court declare that the Lis Pendens Notice filed in the Office of the Clerk of Superior Court, File No: 07-M-592, is null and void.
  - b. Plaintiff recover the costs and expenses of this action from Defendant.
  - c. Plaintiff recover any further relief that the Court deems just and proper.

**SECOND CLAIM FOR RELIEF**

**Declaratory Judgment  
to Remove Cloud on Title**

14. Plaintiff realleges and incorporates Paragraphs 1 through 13 above as if the same were more fully set forth herein.
15. Plaintiff has an interest in that certain tract or parcel of real property located in Haywood County, North Carolina, being more particularly described in Paragraph 1 above.
16. Defendant claims an estate or interest in the land alleging a constructive trust in the Clark County, Nevada, District Court action adverse to Plaintiff's estate and interest in the land, and by the filing of a Lis Pendens Notice as referenced herein.
17. Defendant's claim is valid neither in law nor in fact and said adverse claim is a cloud upon Plaintiff's title to the property.

18. As a result of the foregoing, there is an actual controversy between the Plaintiff and Defendant relating to the title of the property described in Paragraph 1 above.

WHEREFORE, Plaintiff prays the Court that:

- a. The Court declares that Plaintiff is fully vested in fee simple title to the disputed property, and the Lis Pendens Notice is null and void.
- b. The cloud of the Defendant's Lis Pendens Notice be removed from the title to the Plaintiff's property and that Plaintiff be declared the owner in fee simple of the property and clear of any claim of Defendant.
- c. Plaintiff recover the cost and expenses of this action from Defendant.
- d. Plaintiff recover any further relief that the Court deems just and proper.

**THIRD CLAIM FOR RELIEF**  
**Slander of Title**

19. Plaintiff realleges and incorporates Paragraphs 1 through 18 above as if the same were more fully set forth herein.
20. Said Lis Pendens Notice here and above identified and alleged was wrongfully filed by the Defendant.
21. Said Lis Pendens Notice here and above identified and alleged is a burden upon the said real property owned by the Plaintiff, Eton Properties Corp.
22. Said Lis Pendens Notice constitutes a restraint upon the said Plaintiff's ability to alienate its property.
23. Said Lis Pendens Notice impairs the Plaintiff's ability to sell and market its property.
24. Said Lis Pendens Notice here and above identified and alleged depreciates the market value of the Plaintiff's property preventing Plaintiff from handling said realty and marketing said realty in the manner most beneficial to said Plaintiff.
25. Information set forth in said Lis Pendens Notice is false.
26. Said Lis Pendens Notice here and above identified and alleged is a slander upon the title of the Plaintiff, Eton Properties Corp.
27. By filing and publishing said Lis Pendens Notice, the Defendant committed said

slander of the Plaintiff's title.

28. In view of the fact that title to the Plaintiff's property is not in dispute, there was absolutely no probable cause for the Defendant to publish, record and utter said Lis Pendens Notice thereby giving notice to all the world of said false statements contained therein.

29. The Defendant filed said Lis Pendens Notice in order to accomplish an unlawful purpose for which a Lis Pendens Notice was never intended, to wit: to prevent the Plaintiff from having the ability to market said land, to prevent the said Plaintiff from having the ability to use said land as collateral with which to obtain financing for any purpose and to use the leverage thereby obtained by preventing the Plaintiff from handling said realty and marketing said realty in the manner most beneficial to said Plaintiff.

30. Publication by the Defendant of said statements contained in said Lis Pendens Notice was willful, intentional and malicious and was published with absolute actual knowledge of the misrepresentations of said statements.

31. As a direct and proximate result of the actions of the Defendant in slandering the title to the real property owned by the Plaintiff, said wrongful actions of the Defendant have caused said Plaintiff to lose its ability to market and/or use its land for its own beneficial purposes, and the Plaintiff has incurred and will continue to incur damages including special damages of more than One Dollar (\$1.00), expenses and attorney's fees, all of which are in an amount greater than Ten Thousand Dollars (\$10,000.00). for compensatory damages upon information and belief and in an amount greater than Ten Thousand Dollars (\$10,000.00), and punitive damages in an amount greater than Ten Thousand Dollars (\$10,000.00).

WHEREFORE the Plaintiff prays the Court as follows:

1. That the Plaintiff, Eton Properties Corp., have and recover of and from the Defendant special damages in an amount greater than One Dollar (\$1.00).
2. That the Plaintiff, Eton Properties Corp., have and recover of and from the Defendant compensatory damages in an amount greater than Ten Thousand Dollars (\$10,000.00).
3. That the Plaintiff, Eton Properties Corp., have and recover of and from the Defendant punitive damages in an amount greater than Ten Thousand Dollars (\$10,000.00).
4. That the Plaintiff, Eton Properties Corp., have and recover of and from the Defendant

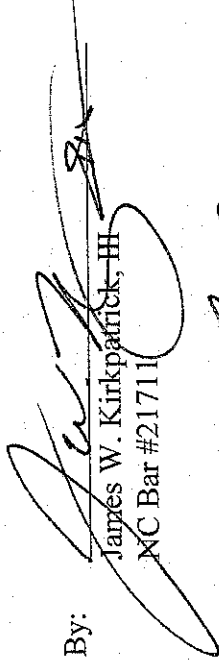
all attorney's fees and costs incurred by the Plaintiff in this action.

5. That the cost of this action be taxed against the Defendant.
6. For trial by jury.
7. That the Plaintiff has such other and further relief as this Court may deem just and proper.

Dated this the 3<sup>rd</sup> day of June, 2008.

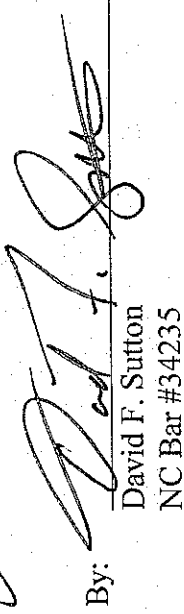
JAMES W. KIRKPATRICK, III, P.A.  
Attorneys for Plaintiff  
37 Branner Avenue  
Waynesville, NC 28786  
Tel: 828-452-0801

By:



James W. Kirkpatrick, III  
NC Bar #21711

By:



David F. Sutton  
NC Bar #34235