

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF NEVADA

HIGH NOON AT ARLINGTON RANCH  
HOMEOWNERS ASSOCIATION, A  
NEVADA NON-PROFIT  
CORPORATION, FOR ITSELF AND  
ALL OTHERS SIMILARLY SITUATED,  
Petitioner,

Case No. A52798

Clark County District  
Court No. A542616

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK, AND THE HONORABLE  
SUSAN JOHNSON, DISTRICT JUDGE,  
Respondents,

FILED

JUN 09 2009

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

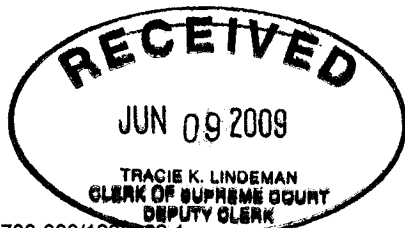
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D.R. HORTON, INC.,

Real Party in Interest

**REAL PARTY IN INTEREST D.R. HORTON'S OPPOSITION TO QUON BRUCE  
CHRISTENSEN'S MOTION TO STRIKE D.R. HORTON'S SUPPLEMENT TO ITS  
ANSWER**

JOEL D. ODOU, ESQ.  
Nevada Bar No. 7468  
THOMAS E. TROJAN, ESQ.  
Nevada Bar No. 6852  
STEPHEN N. ROSEN, ESQ.  
Nevada Bar No. 10737  
WOOD, SMITH, HENNING & BERMAN LLP  
7670 West Lake Mead Boulevard, Suite 250  
Las Vegas, Nevada 89128-6652  
Attorneys for Real Party in Interest,  
D.R. Horton, Inc.



**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

On May 29, 2009, the Quon Bruce Christensen law firm ("QBC") filed a Motion to Strike D.R. Horton's Supplement to its Answer ("Motion to Strike"). In its Motion to Strike, counsel alleges that Real Party in Interest D.R. Horton's Supplement to its Answer Opposing the Issuance of Writs of Mandamus or Prohibition ("Real Party in Interest's Supplemental Brief") does not meet the requirements of NRAP 31(d). However, Real Party in Interest's Supplemental Brief complies with NRAP 31(d) as it was timely and cited directly to the portions of D.R. Horton's Answer Opposing the Issuance of Writs of Mandamus and Prohibition ("Real Party in Interest's Answer") that it supplemented.

More importantly, QBC has no standing to bring a Motion to Strike in the instant matter, as they have withdrawn as counsel for the High Noon at Arlington Ranch Homeowners Association ("Petitioner")<sup>1</sup>. Indeed, the District Court granted QBC's withdrawal as counsel for Petitioner on March 19, 2009. QBC cites to no authority empowering it with the ability to bring the Motion to Strike on behalf of Petitioner when QBC is not counsel for Petitioner. The Motion to Strike is a fugitive pleading and should be stricken as QBC is precluded from filing pleadings on behalf of Petitioner.

Finally, QBC's Motion to Strike is nothing more than an improper and untimely attempt to oppose Real Party in Interest's Supplemental Brief. It must be noted that Petitioner's actual counsel did not file a responsive pleading to Real Party in Interest's Supplemental Brief. According to NRAP 31(d), Petitioner was required to submit any opposition to Real Party in Interest's Supplemental Brief ten (10) days prior to argument, which is acknowledged by QBC in the Motion to Strike.<sup>2</sup> There is no dispute that the Motion to Strike is a fugitive document, that it

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<sup>1</sup> Please see the Order Granting Quon Bruce Christensen's Motion to Withdraw as Counsel for the High Noon at Arlington Ranch Homeowners Association attached hereto as Exhibit "DD".

<sup>2</sup> Please see QBC's Motion to Strike at p.2, ll.8-10.

1 should be stricken from record, and given no consideration by this Honorable Court.

2 **II. ARGUMENT**

3 **A. QBC Is Without Authority to File the Motion to Strike on Behalf of Petitioner.**

4 QBC has no standing to file the Motion to Strike on behalf of Petitioner. The District  
5 Court granted QBC's Motion to Withdraw as counsel for Petitioner on March 19, 2009, with the  
6 order having been entered on March 27, 2009.<sup>3</sup> The Withdrawal Order provides that "Quon Bruce  
7 Christensen Law Firm, and Anguis & Terry LLP are withdrawn as counsel" and "[t]he Association  
8 may be contacted through general counsel: Matthew L. Grode, Gibbs, Giden, Locher, Turner &  
9 Senet, LLP." In compliance with the Order, Real Party in Interest served its Supplemental Brief  
10 on Petitioners counsel, Mr. Grode. To date, Petitioner's actual counsel has not filed a responsive  
11 pleading to Real Party in Interest's Supplemental Brief. Having withdrawn as counsel for  
12 Petitioner, QBC is without authority to file the Motion to Strike on behalf of Petitioner.

13 **B. The Motion To Strike Is Devoid of Any Authority Permitting the Filing of the**  
14 **Motion.**

15 While the lack of standing of QBC to file the Motion to Strike on behalf of Petitioner  
16 confirms that the Motion should be stricken and ignored, there is no legal authority cited therein  
17 which permits the filing of the Motion. Even were QBC still counsel for Petitioner, the Motion to  
18 Strike must set forth the legal basis relied upon for permission to file the Motion. Review of the  
19 Motion to Strike verifies that there is no cite to any code, statute or other legal provision  
20 authorizing the filing of the Motion to Strike by Petitioner's former counsel.

21 Even had the Motion contained cite to such legal authority, the Motion is still untimely.  
22 NRAP 31(d) required that Petitioner's response be filed ten (10) days before oral argument. Oral  
23 argument is set for June 8, 2009. The Motion to Strike is not dated – there is no date above the  
24 signature line on page 4 of the Motion. The Motion to Strike served upon Real Party in Interest is  
25 not file-stamped with a date and time. Thus, there is no indication that QBC timely filed the  
26 Motion as required by NRAP 31(d). Indeed, Real Party in Interest received the Motion to Strike  
27  
28

1 on June 3, 2009, which requires an Opposition thereto. This is exactly what Nevada's Rules of  
2 Appellate Procedure are designed to protect against – ambushing a party on the eve of a hearing,  
3 and inundating the Court with last-minute filings.

4 The absence of any legal authority for the Motion to Strike, in addition to the lack of  
5 standing to file a pleading on behalf of Petitioner and failure to comply with Nevada's Rules of  
6 Appellate Procedure, confirms that striking the Motion is warranted.

7 **C. Real Party in Interest's Supplemental Brief Complies with NRAP 31(d).**

8 Nevada Rules of Appellate Procedure Rule 31(d) provides, in pertinent part:

9 Any party may supplement the party's brief or briefs with supplemental  
10 authorities... by filing and serving a supplemental memorandum not later than  
11 fifteen (15) days before the day set for oral argument, and any opposing party  
12 may respond thereto by filing and serving a supplemental memorandum no later  
13 than ten (10) days prior to the argument... All matters presented in supplemental  
14 memoranda shall be clearly referenced to the parts of the party's briefs on file  
15 which are supplemented by memorandum.

16 As delineated in Real Party in Interest's Supplemental Brief, under Rule 31(d),  
17 this honorable Court may consider supplemental authority as long as it supplements and  
18 references arguments from the party brief being supplemented. Real Party in Interest's  
19 Supplemental Brief clearly complies with this requirement as it directly references  
20 arguments from Section "D" of Real Party in Interest's Answer. As such, this timely  
21 supplementation may be considered by this honorable Court under **NRAP** 31(d).

22 The remaining arguments by QBC are likewise without merit. QBC would have  
23 this Honorable Court believe that taking out loans secured by an outcome in litigation  
24 that has yet to happen is permissible. In fact, QBC admits that its practice of financing  
25 construction defect cases secured by proceeds from litigation, which may not even be  
26 recovered as shown by the *Gunderson* trial, is a "well known common practice."  
27 Unfortunately, QBC's common practice runs afoul of Nevada's Rules of Professional  
28

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<sup>3</sup> Please see Exhibit "DD".

1 Conduct and is further evidence of the ills that can result when a homeowner's right to  
2 bring a claim for construction defects is usurped by another.

3 Rule 1.8(e) of Nevada's Rules of Professional Conduct provides in pertinent part  
4 as follows:

5 (e) A lawyer shall not provide financial assistance to a client in connection with  
6 pending or contemplated litigation, except that:

7 (1) A lawyer may advance court costs and expenses of litigation, the repayment of  
8 which may be contingent on the outcome of the matter; and

9 (2) A lawyer representing an indigent client may pay court costs and expenses of  
10 litigation on behalf of the client.

11 As shown in Real Party in Interest's Supplemental Brief, QBC has done  
12 significantly more than provide financial assistance to a client by advancing court costs  
13 and expenses of litigation with repayment contingent on the outcome of the matter. QBC  
14 has not merely advanced costs to Petitioner. QBC has instead entered into a secured  
15 transaction with a third-party lender who made a loan which must be paid back.

16 Contrary to the provisions of Rule 1.8(i), QBC has moved beyond just advancing  
17 costs, but in entering into loan agreements secured by litigation outcomes, QBC has  
18 acquired a proprietary interest in the subject matter of this litigation by virtue of the terms  
19 and conditions of the loan agreements. Rule 1.8(i) provides as follows:

20 (i) A lawyer shall not acquire a proprietary interest in the cause of action  
21 or subject matter of litigation the lawyer is conducting for a client, except  
22 that the lawyer may:

23 (1) Acquire a lien authorized by law to secure the lawyer's fee or  
24 expenses; and

25 (2) Contract with a client for a reasonable contingent fee in a civil case.

26 As a result of binding itself to financial transactions secured by proceeds of  
27 litigation with a third-party financial institution, QBC acquired a proprietary interest in  
28 the subject matter of this litigation. The loan agreement at issue in this matter is made by

1 and between QBC and the financial institution only, and not with Petitioner. Nevada law  
2 provides that such a transaction is automatically scrutinized for any unfairness on the part  
3 of the attorney as there is a presumption of impropriety which may be overcome only by  
4 clear and satisfactory evidence that the transaction was fundamentally fair, free of  
5 professional overreaching, and fully disclosed. *See, In re Singer*, 109 Nev. 1117, 865  
6 P.2d 315 (1993). Given the result from the *Gunderson* trial, there can be no doubt that  
7 entering into a loan agreement with a third-party financial institution secured by the  
8 proceeds of litigation fails to pass muster.  
9

10 Simply put, the Supplemental Brief is proper as it complies with NRAP 31(d).  
11 The Motion to Strike is a fugitive pleading, without authority, and should be stricken and  
12 ignored.  
13

### 14 III. CONCLUSION

15 For the foregoing reasons, QBC's Motion to Strike should be denied. Additionally, since  
16 QBC lacks standing and/or authority to bring the same, QBC's Motion to Strike is nothing more  
17 than a fugitive pleading and should be stricken from record.

18 DATED: June 5, 2009

WOOD, SMITH, HENNING & BERMAN LLP

19 By:   
20

JOEL D. ODOU, ESQ.

Nevada Bar No. 7468

THOMAS E. TROJAN, ESQ.

Nevada Bar No. 6852

STEPHEN N. ROSEN, ESQ.

Nevada Bar No. 10737

WOOD, SMITH, HENNING & BERMAN LLP

7670 West Lake Mead Boulevard, Suite 250

Las Vegas, Nevada 89128-6652

Attorneys for Real Party in Interest,

D.R. Horton, Inc.

WOOD, SMITH, HENNING & BERMAN LLP  
Attorneys at Law  
7670 WEST LAKE MEAD BOULEVARD, SUITE 250  
LAS VEGAS, NEVADA 89128-6652  
TELEPHONE 702 222 0625 • FAX 702 253 6225

1  
2 **PROOF OF SERVICE**

3 **STATE OF NEVADA, COUNTY OF CLARK**

4 I am employed in the County of Clark, State of Nevada. I am over the age of eighteen  
5 years and not a party to the within action; my business address is 7670 West Lake Mead  
6 Boulevard, Suite 250, Las Vegas, Nevada 89128-6652.

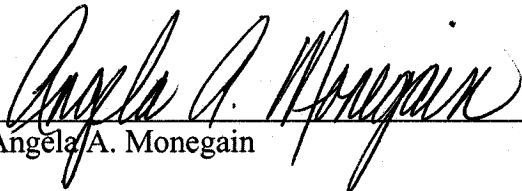
7 On June 5, 2009, I served the following document(s) described as **REAL PARTY IN**  
8 **INTEREST D.R. HORTON'S OPPOSITION TO QUON BRUCE CHRISTENSEN'S**  
9 **MOTION TO STRIKE D.R. HORTON'S SUPPLEMENT TO ITS ANSWER** on the  
10 interested parties in this action by sending copies via facsimile transmittal as follows:

11 **SEE ATTACHED LIST**

12 **BY FACSIMILE:** I caused said document(s) to be transmitted by facsimile. The telephone  
13 number of the sending facsimile machine was 702-253-6225. The names(s) and facsimile  
14 machine telephone number(s) of the person(s) served are set forth in the service list. The  
15 document was transmitted by facsimile transmission, and the sending facsimile machine properly  
16 issued a transmission report confirming that the transmission was complete and without error.

17 I declare under penalty of perjury under the laws of the United States of America that the  
18 foregoing is true and correct and that I am employed in the office of a member of the bar of this  
19 Court at whose direction the service was made.

20 Executed on June 5, 2009, at Las Vegas, Nevada.

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Angela A. Monegain

WOOD, SMITH, HENNING & BERMAN LLP  
Attorneys at Law  
7670 WEST LAKE MEAD BOULEVARD, SUITE 250  
LAS VEGAS, NEVADA 89128-6652  
TELEPHONE 702 222 0625 • FAX 702 253 6225

**SERVICE LIST**  
**Case No. 52798**

- 1
- 2
- 3 Honorable Judge Susan H. Williams Respondent  
Regional Justice Center  
4 District Court, Dept. 22  
200 Lewis Avenue  
5 Las Vegas, NV 89101  
Facsimile: 702-671-0571
- 6 George T. Bochanis, Esq. Attorneys for Amicus Curiae Nevada  
Justice Association  
7 George T. Bochanis, Ltd.  
631 South Ninth Street  
8 Las Vegas, NV 89101  
Facsimile: 702-388-0484
- 9 Attorneys for Amicus Curiae Safe Homes  
Nevada
- 10 Norberto Cisneros  
Cisneros & Thompson  
630 South Third Street  
11 Las Vegas, NV 89101  
Facsimile: 702-366-1999
- 12 Attorneys for High Noon at Arlington Ranch  
Homeowners Association
- 13 Matthew L. Grode, Esq.  
Gibbs, Giden, Locher, Turner & Senet, LLP  
3993 Howard Hughes Parkway  
14 Suite 530  
Las Vegas, NV 89106  
15 Attorneys for Plaintiffs  
Facsimile: 702-836-9802
- 16 Nancy Quon, Esq.  
17 Jason W. Bruce, Esq.  
James R. Christensen, Esq.  
18 Quon Bruce Christensen  
2330 Paseo del Prado  
19 #C-101  
Las Vegas, NV 89102  
20 Facsimile: 702-942-1601
- 21
- 22
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3 Nevada Bar No. 6099  
4 JASON W. BRUCE, ESQ.  
5 Nevada Bar No. 6916  
6 JAMES R. CHRISTENSEN, ESQ.  
7 Nevada Bar No. 3861  
8 QUON BRUCE CHRISTENSEN LAW FIRM  
9 2330 Paseo Del Prado, Suite C101  
10 Las Vegas, NV 89102  
11 (702) 942-1600  
12 *Attorneys for Plaintiff*

8 DISTRICT COURT

9 CLARK COUNTY, STATE OF NEVADA

10 HIGH NOON AT ARLINGTON RANCH )  
11 HOMEOWNERS ASSOCIATION, a )  
12 Nevada non-profit corporation, for itself )  
13 and for all others similarly situated, )

13 Plaintiff,

14 v.

15 D.R. HORTON, INC., a Delaware  
16 Corporation et al.,

16 Defendants.

CASE NO.: A542616  
DEPT. NO.: XXII


**NOTICE OF ENTRY ORDER ON  
MOTION TO WITHDRAW AS  
COUNSEL**

18 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

19 **PLEASE TAKE NOTICE** that the above-entitled Court made and entered its Order on  
20 Motion to Withdraw as Counsel on March 31, 2009, a copy of which is attached and  
21 incorporated herein.

22 DATED this 1<sup>st</sup> day of April, 2009.

**QUON BRUCE CHRISTENSEN**

23  
24 By:   
25 NANCY QUON, ESQ.  
26 Nevada Bar No. 6099  
27 JASON W. BRUCE, ESQ.  
28 Nevada Bar No. 6916  
JAMES R. CHRISTENSEN, ESQ.  
Nevada Bar No. 3861  
2330 Paseo Del Prado, Suite C-101  
Las Vegas, Nevada 89102  
(702) 942-1600

1 **ORDR**  
NANCY QUON, ESQ.  
2 Nevada Bar No. 6099  
JASON W. BRUCE, ESQ.  
3 Nevada Bar No. 6916  
JAMES R. CHRISTENSEN, ESQ.  
4 Nevada Bar No. 3861  
QUON BRUCE CHRISTENSEN LAW FIRM  
5 2330 Paseo Del Prado, Suite C101  
Las Vegas, NV 89102  
6 (702) 942-1600  
*Attorneys for Plaintiff*  
7  
8

**FILED**

**Mar 31 11 21 AM '09**

*E. J. [Signature]*  
**CLERK OF THE COURT**

9 **DISTRICT COURT**

10 **CLARK COUNTY, STATE OF NEVADA**

11 HIGH NOON AT ARLINGTON RANCH )  
HOMEOWNERS ASSOCIATION, a ))  
12 Nevada non-profit corporation, for itself )  
and for all others similarly situated, )  
13 )  
Plaintiff, )  
14 )  
v. )  
15 )  
D.R. HORTON, INC., a Delaware )  
16 Corporation DOE INDIVIDUALS 1-100, )  
ROE BUSINESS or GOVERNMENTAL )  
17 ENTITIES 1-100, inclusive, )  
18 )  
Defendants. )  
19

CASE NO.: A542616  
DEPT. NO.: XXII

**ORDER ON MOTION TO  
WITHDRAW AS COUNSEL**

DATE: March 24, 2009  
TIME: 8:30 a.m.

20 **THIS MATTER** having come before the Court, with no opposition having been filed  
21 pursuant to EDCR 2.23, and the Court having reviewed the papers and pleadings on file herein,

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- DATED this 27 day of March, 2009.

HONORABLE SUSAN H. JOHNSON  
DISTRICT COURT JUDGE



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