IN THE SUPREME COURT OF THE STATE OF NEVADA

NITZ, WALTON & HEATON, LTD.; WILLIAM H. HEATON,

Petitioners,

vs.

EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK; THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE,

Respondents,

and

TOWER HOMES, LLC,

Real Party in Interest.

Supreme Court No. 62252

District Court No. A-12-663341-C
Department No. 26

PETITIONERS' REPLY TO ANSWER TO PETITION FOR WRIT OF MANDAMUS, OR ALTERNATIVELY, FOR WRIT OF PROHIBITION

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Petitioners Nitz, Walton & Heaton, Ltd. and William H. Heaton (collectively referred to hereafter as "NWH"), by and through their attorneys, Lewis Brisbois Bisgaard & Smith LLP, and pursuant to NRS 34.150 *et seq.*, NRS 34.320 *et seq.* and Nevada Rule of Appellate Procedure ("N.R.A.P.") 21, submit the following reply to Real Party in Interest Tower Homes, LLC's Answering Brief (hereafter the "Answer").

I. INTRODUCTION

Tower Homes' primary argument is that the statute of limitations did not commence running until July 5, 2011, which is the date the Underlying Lawsuit was formally dismissed. This argument is fundamentally flawed because it disregards both well-established Nevada law as to the distinction between transactional and litigation representation for purposes of applying the statute of limitations, as well as the undisputed facts of this case,[1] which show that Tower Homes was well aware of the facts constituting its alleged malpractice cause of action as early as 2006.[2] In other words, Tower Homes' complaint, filed almost *six years later*, is time-barred as a matter of law, under either of NRS 11.207's triggering measures or limitations periods. Finally, Tower Homes' arguments as to any purported suspension of the running of the statute of limitations due to the bankruptcy proceedings are red

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[1] Notably, nowhere in its Answer does Tower Homes contend that there are disputed issues of fact material to the statute of limitations analysis. When the facts are not disputed, the appropriate accrual date for the statute of limitations presents a question of law. *See, e.g., Day v. Zubel*, 112 Nev. 972, 977, 922 P.2d 536, 539 (1996).

[2] Again, though any statute of limitations argument necessarily involves a discussion of when *alleged* wrongdoing, or damages from alleged wrongdoing, was apparent, NWH strongly denies Tower Homes' substantive malpractice allegations. In this regard, the unsupported opinions and factual assertions by Tower Homes' counsel as to what NWH did or did not do, including the reference to allegedly "poor legal advice," are wholly inappropriate. (Answer at 8:15-26.) There is no evidence in this summary judgment record that NWH failed to properly prepare the purchase contracts or advise Tower Homes.

herrings because (1) under both Nevada law and the undisputed facts, the statute of limitations commenced running *before* the bankruptcy proceedings were initiated; and (2) nothing in the bankruptcy plan or federal bankruptcy law somehow insulates Tower Homes, or its bankruptcy trustee, from the requirement that legal malpractice actions be filed within the limitations periods provided by NRS 11.207.

II. REPLY ARGUMENT

Tower Homes argues that the statute of limitations did not commence running until the Underlying Lawsuit was formally dismissed on July 5, 2011. The fundamental problem with Tower Homes' argument is that it utilizes the statute of limitations analysis that applies ***only*** to malpractice arising out of an attorney's representation of client during ***litigation***. *See, e.g., Hewitt v. Allen*, 118 Nev. 216, 221, 43 P.3d 345, 348 ("In the context of litigation malpractice, that is, legal malpractice committed in the representation of a party to a lawsuit, damages do not begin to accrue until the underlying legal action has been resolved.") Here, however, it remains entirely ***undisputed*** that Tower Homes' malpractice allegations against NWH ***arise out of transactional representation***.[3] Not only does Tower Homes concede this material fact, it also makes no attempt to defend the district court's erroneous finding that NWH's representation of Tower Homes was some kind of "hybrid." (App. at 504.)

Accordingly, under this Court's clear authority, a different statute of limitations analysis applies. Specifically, as detailed in the Petition and in the proceedings below, this Court has established that a client who has retained an attorney for transactional legal work "***necessarily*** discovers the material facts which

[3] *See, e.g.*, Answer at 2:27 – 3:14 ("Yanke retained Defendants to provide legal services necessary to form Tower . . . [and] Defendants drafted Purchase Contracts for the sale of the individual condominium units.") Tower Homes maintains that the alleged malpractice occurred in connection with NWH's preparation of the Purchase Contracts and related consultation regarding the safeguarding of the Purchasers' deposits. (Answer at 8:5 – 9:10.)

constitute the cause of action" within the meaning of NRS 11.207 ***when a lawsuit caused by the allegedly negligent transactional work is filed.*** *See Gonzales v. Stewart Title*, 111 Nev. 1350, 1354, 905 P.2d 176 (1995) (emphasis added); *see also Kopicko v. Young*, 114 Nev. 1333, 1337 n. 3, 971 P.2d 789, 791 (1998) (reaffirming distinction between transactional and litigation malpractice for determining commencement of running of statute of limitations).

Additionally, as this Court further established in *Gonzales*, a client who has retained an attorney for transactional legal work "'sustains damage' *by assuming the expense, inconvenience and risk of having to maintain such litigation*, even if he wins it." *Gonzales, supra*, 111 Nev. at 1354 (emphasis added). In other words, the filing of *any* lawsuit arising out of transactional malpractice causes the client to sustain damages. Here, Tower Homes sustained damages by virtue of the Underlying Lawsuit, not just by incurring fees prior to the bankruptcy, but also by the "inconvenience and risk" presented by the Underlying Lawsuit. For example, despite the filing of the bankruptcy, Tower Homes still faced the inconvenience of the Underlying Lawsuit in the bankruptcy proceedings and its effect on the administration of the bankruptcy estate. There was also the risk that the bankruptcy stay could have been lifted, and/or that some or all of the claims asserted in the Underlying Lawsuit could have been deemed to be non-dischargeable.[4]

Thus, ***as a pure matter of Nevada law***, the statute of limitations in this case began to run by May 23, 2007 when the Underlying Lawsuit was filed. That is, on May 23, 2007, Tower Homes "necessarily" discovered the material facts constituting its cause of action within the meaning of NRS 11.207 and also "sustained damages" within the meaning of NRS 11.207. *See Gonzales, supra*, 111 Nev. at 1354. To avoid this conclusion, Tower Homes argues that, because

[4] In the Underlying Lawsuit (and the amended pleading thereto), the Purchasers asserted causes of action based on intentional wrongdoing. (App. at 42, 280-81.)

bankruptcy proceedings were initiated shortly after the Underlying Lawsuit was filed, Tower Homes never "sustained damages" because the Underlying Lawsuit as to Tower Homes was stayed. For the numerous reasons discussed below, Tower Homes' contention is misplaced.

A. Tower Homes misinterprets *Gonzales* and *Kopicko*.

Tower Homes asserts in its Answer that "this Court has never gone so far as to rule that in the transactional malpractice context, a plaintiff always sustain [sic] damages prior to the conclusion of the underlying litigation." (Answer at 23:28 – 24:3.) In fact, ***this is precisely what this Court has ruled.*** When read together, *Gonzales* and *Kopicko* do in fact establish a clear, bright-line rule – when malpractice arises out of transactional representation, the statute of limitations on any legal malpractice action "necessarily" begins to run when a lawsuit arising out that malpractice is filed, not completed. *Gonzales, supra*, 111 Nev. at 1354. This Court's use of the word "necessarily" in *Gonzales*, as well as the rationale set forth in subsequent cases (all of which have dealt with malpractice in the litigation context), demonstrate that this Court has indeed established a reliable *rule of law*, not a factual or evidentiary conclusion.

Nothing in *Gonzales* indicates, as Tower Homes suggests, that a client must actually incur litigation expenses to "sustain damages" by virtue of having to defend a lawsuit.[5] Rather, *it is the mere existence* of a lawsuit arising out of the transactional malpractice that (1) provides the client with actual notice of the potential negligence by the transactional lawyer and the damages caused by the negligence;[6] and (2) constitutes damage in and of itself – not just because of the

[5] Tower Homes, in any event, did incur legal fees in the course of analyzing and responding to the underlying complaint and related preliminary injunction proceedings prior to the filing of the bankruptcy.

[6] Here, the Underlying Lawsuit made it clear that the Purchasers were seeking damages in excess of $10,000. (App. at 37-38, 42-43.)

expense of defending the lawsuit – but also because of the "inconvenience and risk" that is inherent in any litigation. *See Gonzales, supra*, 111 Nev. at 1354. In other words, the filing of the lawsuit against the transactional lawyer satisfies the triggers of *both* the two *and* four-year limitations measures provided by NRS 11.207.[7]

This important distinction between transactional and litigation malpractice for statute of limitations purposes is relied upon by Nevada practitioners and courts, including the federal court in Nevada. *See New Albertson's, Inc. v. Brady, Vorwerck, Ryder & Capino*, 2012 U.S. Dist. Lexis 42369 at *14-*15 (D. Nev. 2012) (recognizing distinction last year). As implicitly recognized by this Court, a bright-line rule benefits the entire Nevada legal community – practitioners, their insurers, clients and Nevada courts – by providing certainty on statute of limitations, which, as this Court is well-aware, can lead to a quagmire of collateral litigation as to what clients knew or should have known. A bright-line rule avoids this collateral litigation and the associated uncertainty.

Ultimately, ***there are really only two dispositive material facts in this case.*** One, NWH's underlying representation was transactional in nature. This is undisputed. Two, the Underlying Lawsuit against Tower Homes was filed more than four years before the instant action was filed. This is also undisputed. *The*

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[7] Notably, the 1997 amendments to NRS 11.207 further solidify the vitality of the *Gonzales* transactional malpractice statute of limitations rule. As noted by Tower Homes in its Answer, the pre-1997 version of NRS 11.207 required a client to both sustain damage "and" discover the material facts constituting the cause of action. (Answer at 14 n. 2.) It was this pre-1997 version of NRS 11.207 that this Court construed in *Gonzales*. Under the current version of NRS 11.207, *either one* of these triggers, on its own, will suffice to commence the running of the statute of limitations. Accordingly, the current version of NRS 11.207 liberalizes the commencement rules, thereby demonstrating a legislative intent to create greater certainty and reduce stale claims. In any event, this distinction between the pre and post-1997 versions of the statute is immaterial to the instant case, as Tower Homes both sustained damages *and* discovered the material facts constituting its cause of action when the Underlying Lawsuit was filed.

inquiry ends here. This Court should therefore direct the District Court to enter summary judgment in favor of NWH.

B. <u>Two other additional and independent triggers also establish that Tower Homes' action is time-barred</u>.

Though applying the *Gonzales* transactional malpractice rule to this case ends the need for any further analysis, there are two ***additional*** *and* ***independent*** triggers for the statute of limitations, both of which *also* mandate the conclusion that this action is time-barred. The first is Tower Homes' undisputed receipt of the 2006 demand letters from counsel for two of the Purchasers. The second is the Purchasers' filing of the claims in the bankruptcy proceedings.

1. Tower Homes discovered the material facts constituting its cause of action in August 2006 when it received the two demand letters.

In the proceedings below, and in its Petition, NWH demonstrated how the two August 2006 demand letters from counsel for two of the Purchasers provided Tower Homes with "the material facts which constitute the [legal malpractice] cause of action" within the meaning of NRS 11.207. (App. at 22, 29-30, 148-151, 190-195 and 438-440; Pet. at 17:7 – 20:5.) In its Answer, Tower Homes argues that the first demand letter, dated August 11, 2006 (App. at 148-151), did not sufficiently apprise Tower Homes of its failure to comply with Nevada law (NRS 116.411). (Answer at 30:13-21.) In the second letter, however (dated August 23, 2006 letter, App. at 192-94), the Purchasers' counsel unambiguously detailed the theories as to how Tower Homes' handling and loss of the purchasers' deposits *violated NRS 116.411* (including quoting NRS 116.411 and the escrow account requirement).

It is difficult to conceive of a more crystal clear "discovery" of facts constituting a cause of action than the August 23, 2006 demand letter. If, as Tower Homes now alleges in the instant case, NWH failed to advise it as to the proper handling of the Purchasers' deposits as required by NRS 116.411, and this failure to

advise was the cause of the loss of the deposits, then Tower Homes was expressly and undisputedly notified of this alleged malpractice in 2006. In other words, the August 23, 2006 demand letter provided Tower Homes with actual notice of duty, breach, causation and damages.[8]

With respect to damages, both August 2006 letters made it clear that the Purchasers (the Muellers) were seeking the whereabouts and a return of their $219,000 deposit, and that they imminently intended to exhaust all civil (and criminal) means of recovering the monies. (App. at 148-151 and 192-194.) Specifically, in the August 11, 2006 letter, the Purchasers' counsel notified Tower Homes, and its sole principal, Yanke, that they intended to treat the disappearance of the earnest money deposits as a "criminal matter." (App. at 150.) In his August 23, 2006 letter, counsel notified Tower Homes that this second demand letter was copied to the Nevada Real Estate Division, the federal Department of Housing and Urban Development and the Nevada Attorney General's Office (Bureau of Consumer Protection). (App. at 194.)

In other words, it is undisputed that, by August 2006, (1) some of the Purchasers were alleging that Tower Homes failed to comply with Nevada law relating to the handling of the deposits; (2) Tower Homes had retained NWH to prepare the purchase contracts for the units and advise it regarding the handling of earnest money deposits; and (3) some of the Purchasers were threatening imminent civil and criminal action to recover hundreds of thousands of dollars due to Tower Homes' loss of the deposits and failure to comply with Nevada law. If Tower

[8] In fact, the circumstances here are more compelling than those in *Charleson v. Hardesty*, 108 Nev. 878, 839 P.2d 1303 (1992). In *Charleson*, this Court held that the plaintiff clients discovered their legal malpractice cause of action arising out of a negligently drafted trust instrument when the clients consulted with other attorneys about the trust. *Id.* at 883-84. Based on the facts provided in the *Charleson* opinion, the August 2006 letters here provided even clearer notice to Tower Homes of alleged malpractice than the attorney consultations in *Charleson*.

Homes, as it now apparently maintains, dutifully followed the advice rendered by NWH with respect to the handling of the Purchasers' deposits, and yet it still found itself facing imminent civil, administrative and/or criminal liability for the reasons stated in the 2006 demand letters, then it knew ***in 2006*** that NWH had rendered bad legal advice.

Tower Homes' final fall-back contention is that, if the August 2006 letters did in fact trigger NRS 11.207's two-year provision, the running of the statute of limitations period was somehow suspended or halted by the bankruptcy proceedings. As addressed in Section C below, this contention also lacks any legal support. Nothing about the bankruptcy proceedings stopped the running of the statute of limitations period in August 2008 (two years after Tower's receipt of the 2006 demand letters).

2. Tower Homes discovered the material facts constituting its cause of action in September 2007 when the Purchasers' claims were filed in the bankruptcy proceedings.

As established in the proceedings below and in the Petition, the statute of limitations additionally and independently commenced running (under both the four-year and two-year measures) on September 10, 2007 (i.e., more than four years before Tower Homes filed its complaint in this case), when at least eleven of the Purchasers' filed claims (ranging in amounts from approximately $82,000 to $353,000) against Tower Homes in the bankruptcy proceedings to recover their earnest money deposits. (App. at 433-34 [n. 8] and 445-460; Petition at 22:21 – 23:12.) These claims provided still more express notice to Tower Homes of the facts constituting its cause of action, and further caused Tower Homes to sustain damages. Tower Homes was undisputedly aware, based on the August 2006 demand letters and the complaints in the Underlying Lawsuit, that the Purchasers were alleging that Tower Homes failed to comply with Nevada law with respect to the handling of the deposits – the bankruptcy claims constituted merely an

additional remedy sought by the Purchasers.

In its Answer, Tower Homes' only response to this additional and independent grounds for commencing the statute of limitations is the erroneous assertion that all claims against Tower Homes were stayed by the operation of federal bankruptcy law. (Answer at 32:17-28.) While it is true that civil lawsuits against a debtor are generally stayed when a defendant enters into bankruptcy, statutory claims filed by creditors in the bankruptcy proceeding itself are obviously not "stayed" – they are processed and paid (if assets are available) through the course of administering the debtor's estate.

In other words, Tower Homes effectively ignores the fact that the bankruptcy claims, in and of themselves, constituted an independent grounds for damages that the Tower Homes bankruptcy estate was obligated to pay, *regardless of the outcome of the Underlying Lawsuit*. Not only was Tower Homes aware of these claims, the bankruptcy trustee was also obviously and undisputedly aware of these claims. This takes us to the final issue – whether the bankruptcy proceedings have any effect at all on the otherwise clear statute of limitations issues.

C. The Bankruptcy proceedings do not affect the Statute of Limitations analysis.

Tower Homes maintains that, once bankruptcy proceedings were initiated, the statute of limitations issue must be "judged from the perspective of the Trustee." (Answer at 18-19.) *Tower notably cites no legal authority for this argument,* which only serves to confuse the otherwise straightforward statute of limitations analysis. Again, the Tower Homes Bankruptcy Plan made it clear that the Trustee retained all of Tower Homes' causes of action "***subject to applicable state law statutes of limitation and related decisional law***." (Petition at 8:11-19; App. 109 [Bankruptcy Plan at 48:18-22].) Accordingly, in the absence of some other overriding statute or case law, the bankruptcy proceedings did not somehow operate to suspend or stop the running of the statute of limitations, or shift the statute of limitations

"perspective" from Tower Homes to the bankruptcy Trustee. The Plan provides precisely the opposite.[9]

As comprehensively discussed in the Petition and in the briefing in the court below, Section 108 only potentially precluded the limitations period that had already commenced running (by virtue of the August 2006 letters or the filing of the Underlying Lawsuit) from expiring prior to August 21, 2009 (if, and only if, the instant lawsuit had been brought by the Trustee). (Petition at 23:13 – 25:11; App. at 435-438.) *This deadline ran nearly three years before Tower Homes filed its complaint against NWH on June 12, 2012.* (App. at 2.) Tower Homes notably does not dispute this Section 108 analysis, and, in fact, has never even argued that Section 108 affects the statute of limitations calculation in this case. In other words, Tower Homes cites no law to support its theory as to how the bankruptcy proceedings affect the statute of limitations analysis, and ignores the one law that actually speaks to the issue (although it doesn't change the outcome here).

Additionally, as discussed in NWH's Petition and briefing in the proceedings below, federal courts have enforced state law statutes of limitations in response to legal malpractice actions brought by bankruptcy debtors for acts or omissions occurring prior to the bankruptcy. *See, e.g., Laddin v. Belden (In re Verilink)*, 408 B.R. 420 (N.D. Ala. 2009) (defendant attorneys' motion to dismiss debtor's legal malpractice claims granted based on statute of limitations), *reversed on other grounds in later proceeding*, 410 B.R. 697 (N.D. Ala. 2009); *Ranasinghe v. Compton*, 341 B.R. 556 (E.D. Va. 2006) (same); *see also Bruce v. Homefield Financial*, 2011 U.S. Dist. Lexis 110243 at *5-*6 (D. Nev. 2011) (plaintiff bankruptcy debtor's claims under Truth-in-Lending Act barred by the statute of

[9] Moreover, Tower Homes readily concedes that, while a bankruptcy stays actions *against* a debtor, a bankruptcy does not prevent a debtor from *bringing* a lawsuit as a plaintiff. (Answer at 19:7-10 [citing *In re Merrick*, 175 B.R. 333, 337 (9th Cir. 1994].)

limitations; no discussion of any 'perspective shifting'). The only shifting of the "perspective" to the trustee in these cases occurred in the context of discussing 11 U.S.C. § 108, which, again, does not affect this case.

For example, in *Verilink, supra*, the debtor sued its attorneys based on alleged malpractice that occurred prior the debtor's bankruptcy filing. The trustee filed the malpractice action two months after the statute of limitations had run (under Alabama law). The federal court held that the trustee's legal malpractice action was time barred (even considering any Section 108). *See Verilink, supra*, 408 B.R. at 425-28. Notably, the court also rejected the same "perspective" argument that Tower Homes raises here, reasoning as follows:

> While '[a] bankruptcy trustee stands in the shoes of the debtor and has standing to bring any suit that the debtor could have instituted when the debtor filed for bankruptcy,' ***the trustee does not acquire any 'rights [or] interests greater than those of the debtor***.' [Citation omitted.] The conduct giving rise to [debtor's] claims against [defendant law firm] occurred prior to the closing of the [subject pre-bankruptcy] transaction on July 28, 2004. At any time after July 28, 2004, [debtor] could have asserted these claims against [defendant law firm], and ***any knowledge that [debtor] had of the claims against [defendant law firm] is imputed to Plaintiff, as the Trustee for [debtor] in the bankruptcy proceeding***.

Verilink, supra, 408 B.R. at 428 (emphasis added).

Accordingly, in the instant case, Tower Homes' knowledge of the material facts constituting its cause of action and the damages it had sustained by virtue of the August 2006 demand letters and/or the filing of the underlying complaint were, as a matter of law, ***imputed to its bankruptcy Trustee***. Because, pursuant to the Bankruptcy Plan, the Trustee had control over Tower Homes' claims "subject to applicable state law statutes of limitation and related decisional law (App. 109)," and because there are no grounds for applying Section 108, the "perspective" of the Trustee is exactly the same as Tower Homes' "perspective." Therefore, nothing about the bankruptcy proceedings alters the legal conclusion that the statute of limitations as to Tower Homes' legal malpractice claims against NWH were

independently triggered in 2006 (by the demand letters), or in May 2007 (by the filing of the Underlying Lawsuit) or in September 2007 (by the filing of the Purchasers' claims in the bankruptcy case). Even if one uses the four-year measure with respect to each of these three independent triggers, the instant complaint, filed in 2012, is time-barred as a matter of law.

D. Similarly, the Bankruptcy Court authorization issues need not be addressed by this Court because the statute of limitations issue is dispositive.

Pursuant to this Court's "Order Directing Supplement to Petition and Directing Answer," dated February 20, 2013 (the "Order"), NWH submitted a Supplement to its Petition on March 1, 2013. In this Supplement, NWH advised the Court of its position that, separate and apart from the statute of limitations issue, Tower Homes is not authorized by either the Bankruptcy Plan or the Bankruptcy Court to bring the instant action. (App. at 15-21, 45, 109-110 and 141-46.) In its order on the motion to dismiss, the district court agreed with NWH. (App. at 532, lines 11-13.) Nevertheless, the district court viewed this defect as procedural, and concluded that Tower Homes could attempt to remedy the defect by obtaining the requisite authority from the bankruptcy trustee and Bankruptcy Court. (App. at 532, lines 14-15.)

As of the date of NWH's Supplement to this Court, there had been no activity in the district court since the underlying order was entered, and no documents had been filed in the bankruptcy proceedings relating to this issue until February 21, 2013 – the day after this Court issued its Order – when the Purchasers filed an amended stipulation. (See Supplemental Appendix at 534.) On February 25, 2013, the Purchasers filed a motion to approve this amended stipulation. (Supp. App. at 537.) This motion was heard on or about April 1, 2013 in the Bankruptcy Court, and has since been granted. (Supp. App. at 547.)

In its Answer, Tower Homes argues that "any issue of whether Prince & Keating and Tower may pursue this action against Defendants on behalf of the Tower Homes Purchasers to obtain recovery for the benefit of the Tower Homes Purchasers is no longer in dispute." (Answer at 12:26-28 [citing RPI 0001-3].) This assertion is false, as NWH still disputes whether Tower Homes has the requisite Bankruptcy Court authority to bring this action. In this regard, Tower Homes has filed a motion to stay the district court proceedings pending the completion of the instant writ proceedings. (See Petitioners' Second Supplemental Appendix at ____.)

The bottom line is that it is presently unnecessary for the district court (or this Court) to resolve the bankruptcy court authorization dispute. Regardless of who has or who may attempt to bring a legal malpractice action against Petitioners arising out of NWH's transactional representation of Tower Homes, it is time-barred as a matter of law based on this Court's well-established authorities.

III. CONCLUSION

"Public policy encourages litigants to bring their actions to an end as quickly as possible, hence the existence of statutes of limitation." *Gonzales, supra*, 111 Nev. at 1352. Statutes of limitations exist to preclude stale claims, which often cannot be fairly and meaningfully litigated when memories have faded and evidence has disappeared. Furthermore, statutes of limitations create certainty by preventing the assertion of stale claims. Clear rules as to when statute of limitations commence further all of these goals.

In this case, the legal representation at issue took place beginning in 2004 – ***nearly ten years ago***. As demonstrated in the proceedings below, and now before this Court, if Tower Homes believes that it was wronged in some way, shape or form by NWH's legal representation, it had until 2008 to bring this action (or, even under the most liberal calculation, until 2011). Entering summary judgment in favor of NWH is not only dictated by Nevada law, but by fundamental fairness and the purposes of statute of limitations as well.

Accordingly, this Court should issue a writ mandating that the district court enter summary judgment in favor of Petitioners mandating dismissal and prohibiting the district court from entertaining further proceedings in this case.

Dated this 1st day of May, 2013.

LEWIS BRISBOIS BISGAARD & SMITH

By /s/ Jeffrey D. Olster

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of N.R.A.P. 32(a)(4), the typeface requirements of N.R.A.P. 32(a)(5), and the type style requirements of N.R.A.P. 32(a)(6), because:

This brief has been prepared in a proportionally spaced typeface using **Microsoft Office Word 2010** in **Times New Roman** font, **size fourteen (14).**

2. I further certify that this brief complies with the page or type-volume limitations of N.R.A.P. 32(a)(7) because, excluding the parts of the brief exempted by N.R.A.P. 32(a)(7)(C), it is either:

[] Proportionately spaced, has a typeface of 14 points or more, and contains 4,989 words; or

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[] Does exceed by ____ pages.

3. Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposes for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular N.R.A.P. 29(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 1st day of May, 2013.

/s/ Jeffrey D. Olster
JEFFREY D. OLSTER

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of LEWIS BRISBOIS BISGAARD & SMITH LLP and, pursuant to N.R.C.P. 5(b), that on the 1st day of May, 2013, I deposited for first class United States mailing, postage prepaid, at Las Vegas, Nevada, a true and correct copy of the foregoing **PETITIONERS' REPLY TO ANSWER TO PETITION FOR WRIT OF MANDAMUS, OR, ALTERNATIVELY, FOR WRIT OF PROHIBITION** addressed as follows:

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