

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2
3 NITZ, WALTON & HEATON, LTD.;
4 WILLIAM H. HEATON,

5 Petitioners,

6 vs.

7 EIGHTH JUDICIAL DISTRICT
8 COURT FOR THE STATE OF
9 NEVADA IN AND FOR THE
10 COUNTY OF CLARK; THE
11 HONORABLE GLORIA STURMAN,
12 DISTRICT COURT JUDGE,

13 Respondents,

14 and

15 TOWER HOMES, LLC,

16 Real Party in Interest.

Supreme Court No.

Electronically Filed
District Court No. May 16 2013 3:41 p.m.
Department No. 26
Tracee K. Lindeman
Clerk of Supreme Court

17 PETITIONERS' SECOND SUPPLEMENTAL APPENDIX

18
19
20 V. Andrew Cass

21 Nevada Bar No. 005246

cass@lbbslaw.com

22 Jeffrey D. Olster

23 Nevada Bar No. 008864

olster@lbbslaw.com

24 Lewis Brisbois Bisgaard & Smith LLP

25 6385 S. Rainbow Boulevard, Suite 600

Las Vegas, Nevada 89118

26 Tel: 702.893.3383

27 Fax: 702.893.3789

Attorneys for Petitioners

28 *NITZ, WALTON & HEATON, LTD. and WILLIAM H. HEATON*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INDEX TO PETITIONERS' SECOND SUPPLEMENTAL APPENDIX		
DOCUMENT	DATE	PAGE
Defendants' Motion to Stay Pending Completion of Writ Proceedings	4/30/2013	549

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

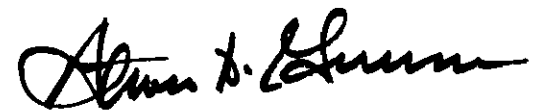
I hereby certify that I am an employee of LEWIS BRISBOIS BISGAARD & SMITH LLP and, pursuant to N.R.C.P. 5(b), that on the 1st day of May, 2013, I deposited for first class United States mailing, postage prepaid, at Las Vegas, Nevada, a true and correct copy of the foregoing **PETITIONERS’ SECOND SUPPLEMENTAL APPENDIX** addressed as follows:

The Honorable Gloria Sturman
District Court Judge
Clark County District Court, Dept. 26
200 Lewis Avenue
Las Vegas, Nevada 89155
Respondent Court

Dennis Prince
Prince & Keating
3230 South Buffalo Drive
Las Vegas, Nevada 89169
*Attorneys for Plaintiff/Real Party
Tower Homes, LLC*

/s/ Nicole Etienne

An Employee of LEWIS BRISBOIS
BISGAARD & SMITH LLP



CLERK OF THE COURT

1 V. ANDREW CASS
Nevada Bar No. 005246
2 cass@lbbslaw.com
JEFFREY D. OLSTER
3 Nevada Bar No. 008864
olster@lbbslaw.com
4 LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Boulevard, Suite 600
5 Las Vegas, Nevada 89118
Tel: 702.893.3383
6 Fax: 702.893.3789
Attorneys for Defendants
7 *William H. Heaton and Nitz, Walton & Heaton,*
Ltd.

8
9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11
12 TOWER HOMES, LLC, a Nevada limited
liability company;

13 Plaintiff,

14 vs.

15 WILLIAM H. HEATON, individually; NITZ,
16 WALTON & HEATON, LTD., a domestic
professional corporation; and DOES I through
17 X, inclusive,

18 Defendants.
19

Case No.: A-12-663341-C
Dept. No.: 26

**DEFENDANTS' MOTION TO STAY
PENDING COMPLETION OF WRIT
PROCEEDINGS**

20
21 Defendants William H. Heaton and Nitz, Walton & Heaton, Ltd. (collectively referred to
22 hereafter as "NWH"), by and through their attorneys, Lewis Brisbois Bisgaard & Smith, LLP, and
23 pursuant to N.R.A.P. 8, move to stay the proceedings in this Court until the Nevada Supreme
24 Court rules on NWH's pending Petition for Writ of Mandamus, or, Alternatively, for Writ of
25 Prohibition.

26 ///

27 ///

28 ///

1 This motion is based on the following memorandum of points and authorities, all pleadings
2 and records in this matter (including the briefs and records on file with the Nevada Supreme
3 Court) and any further argument and/or evidence that may be presented at the hearing of this
4 motion.

5 DATED this 30th day of April, 2013

6 LEWIS BRISBOIS BISGAARD & SMITH LLP

7
8 By /s/ Jeffrey D. Olster

9 V. Andrew Cass

10 Nevada Bar No. 005246

Jeffrey D. Olster

11 Nevada Bar No. 008864

6385 S. Rainbow Boulevard, Suite 600

12 Las Vegas, Nevada 89118

Attorneys for Defendants

13 *William H. Heaton and Nitz, Walton & Heaton,*
14 *Ltd.*

15 **NOTICE OF MOTION**

16 PLEASE TAKE NOTICE that the undersigned will bring this Motion to Stay on for
17 hearing in Department 26 of this Court on the 4 day of June, 2013 at
18 In Chambers, or as soon thereafter as counsel may be heard.

19 DATED this 30th day of April, 2013

20 LEWIS BRISBOIS BISGAARD & SMITH LLP

21
22 By /s/ Jeffrey D. Olster

23 V. Andrew Cass

Nevada Bar No. 005246

Jeffrey D. Olster

24 Nevada Bar No. 008864

25 6385 S. Rainbow Boulevard, Suite 600

26 Las Vegas, Nevada 89118

Attorneys for Defendants

27 *William H. Heaton and Nitz, Walton & Heaton,*
28 *Ltd.*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to this Court's "Order Regarding Defendants' Motion to Dismiss, or,
4 alternatively, Motion for Summary Judgment" (hereafter the "MSJ Order," a true and correct copy
5 of which is attached as **Exhibit A**), "this matter *shall be stayed* until Plaintiff obtains the requisite
6 authority for this action from the bankruptcy trustee and order from the Bankruptcy Court." (Ex.
7 A at 2:16-18 [emphasis added].) While Plaintiff has obtained a new order from the Bankruptcy
8 Court, it still does not authorize Plaintiff to bring this action. As such, the stay issued by this
9 Court remains in place.

10 Moreover, even if the new Bankruptcy Court order did somehow authorize this action, the
11 stay issued by this Court should remain in place pending the final disposition of Defendants' Writ,
12 which is pending before the Nevada Supreme Court. The Writ is potentially dispositive of the
13 entire case. It therefore makes no sense for the parties to continue to litigate the case before the
14 Writ proceedings are completed.

15 **II. BACKGROUND**

16 This action arises out of an attorney-client relationship between NWH and plaintiff Tower
17 Homes, LLC (hereafter "Tower"). (Complaint ¶¶ 5-7.) In particular, NWH represented and
18 advised Tower with respect to a residential common interest ownership development known as
19 Spanish View Towers (hereafter the "Project"). (Complaint ¶ 6.) As part of this representation,
20 NWH prepared the purchase contracts for the individual condominium units. (Complaint ¶ 9.) In
21 this action, Tower takes issue with the purchase contracts and the advice rendered to Tower by
22 NWH in connection with the Project.

23 **A. NWH's Motion for Summary Judgment**

24 NWH denies Tower's substantive allegations. In addition to the substantive allegations,
25 however, this action has two glaring procedural deficiencies: (1) Tower, which was forced into
26 Chapter 11 bankruptcy proceedings after the Project failed, is not authorized by federal bankruptcy
27 law or by the bankruptcy court to bring this action (rather, this action belongs exclusively to the
28 bankruptcy estate under federal law); and (2) the statute of limitations bars this action as a matter

1 of law.

2 Based on these procedural grounds, NWH filed a “Motion to Dismiss, or, alternatively,
3 Motion for Summary Judgment” (hereafter the “MSJ”) on July 19, 2012. At the hearing on the
4 MSJ on October 3, 2012, this Court (1) agreed with NWH that the bankruptcy court order
5 purportedly authorizing Tower to file and maintain this action (i.e., the “Marquis Aurbach Order”) was
6 deficient; and (2) rejected NWH’s statute of limitations arguments.

7 Specifically, with respect to the bankruptcy court authorization issues, this Court “agree[d]
8 with Defendants that the ‘Marquis Aurbach Order’ does not authorize Plaintiff bring this action
9 through the law firm of Prince & Keating against Mr. Heaton and Nitz, Walton & Heaton, Ltd.”
10 (Ex. A, MSJ Order at 2:11-13.) This Court nevertheless believed that this defect was procedural,
11 and further ruled that “Plaintiff may attempt to remedy this procedural defect by obtaining the
12 requisite authority from the Tower Homes, LLC bankruptcy trustee and order from the Bankruptcy
13 Court.” (Ex. A, MSJ Order at 2:14-15.) This Court further ordered that “*this matter shall be*
14 *stayed until Plaintiff obtains the requisite authority for this action from the bankruptcy trustee*
15 *and order from the Bankruptcy Court.*” (Ex. A, MSJ Order at 2:16-18 [emphasis added].)

16 With respect to the statute of limitations issue, this Court denied the MSJ “because the
17 bankruptcy trustee could not have known what the claims against Tower Homes, LLC were until
18 the underlying state court litigation was resolved. The stipulation and order dismissing the
19 underlying state court litigation was filed on July 5, 2011.” (Ex. A, MSJ Order at 2:6-9.)

20 **B. The pending Writ**

21 NWH respectfully disagrees with this Court’s ruling on the dispositive statute of
22 limitations issue. On or about December 11, 2012, NWH filed a Petition for Writ of Mandamus
23 (hereafter the “Writ”) with the Nevada Supreme Court. In the Writ, NWH maintains that this
24 action is barred as a matter law by both the four-year and two-year measures established by NRS
25 11.207 based on three independent statute of limitations triggers.

1 On February 20, 2013, the Nevada Supreme Court issued an “Order Directing Supplement
2 to Petition and Directing Answer.”¹ In this Order, the Court stated: “Having reviewed the petition
3 and appendices, it appears that petitioner has set forth issues of arguable merit.” (Ex. B at 1.) The
4 Court also took note of the bankruptcy court authorization issue (even though NWH does not seek
5 relief on this issue in the Writ) and requested a supplement from NWH addressing this point.
6 NWH complied and filed its supplement on or about March 1, 2013.² On or about April 12, 2013,
7 Tower filed its Answering Brief to the Writ.

8 As of the filing of this instant motion, no further orders have been issued by the Nevada
9 Supreme Court, and no oral argument has been scheduled.

10 **C. The new Bankruptcy Court Order**

11 On April 8, 2013, Tower served notice of entry of an “Order Granting Motion to Approve
12 Amended Stipulation to Release Claims and Allow Marquis Aurbach Coffing, as Counsel for the
13 Tower Homes Purchasers, to Pursue Claims on Behalf of Debtor” (hereafter the “New Bankruptcy
14 Court Order”).³ Presumably Tower maintains that this New Bankruptcy Court Order constitutes
15 the “requisite authority” to lift the stay of these proceedings as required by this Court’s MSJ
16 Order.

17 **III. ARGUMENT**

18 **A. The stay issued by this Court in its MSJ Order should remain in place because**
19 **the New Bankruptcy Court Order still does not provide authorization for this**
20 **action.**

21 Again, pursuant to this Court’s MSJ Order, this case “shall be stayed until Plaintiff obtains
22 the requisite authority for this action from the bankruptcy trustee and order from the Bankruptcy
23 Court.” (Ex. A, MSJ Order at 2:16-18.) Presumably Tower maintains that the New Bankruptcy
24 Court Order constitutes the “requisite authority” to lift the stay of this case.

26 ¹ A true and correct copy of this Order issued by the Nevada Supreme Court is attached as **Exhibit B**.

27 ² At the time NWH filed the supplement, no further bankruptcy court authorization had been obtained.

28 ³ A true and correct copy of the New Bankruptcy Court Order is attached as **Exhibit C**.

1 The New Bankruptcy Court Order, however, does not provide authority for *Tower* to
2 maintain this action, and therefore does not operate to lift the stay. Rather, the New Bankruptcy
3 Court Order only:

4 [A]uthorizes the Trustee to permit *the Tower Homes Purchasers* to
5 pursue any and all claims on behalf of Tower Homes, LLC (the
6 “Debtor”) against any individual or entity which has or may have
7 any liability or owed any duty to Debtor or others for loss of the
8 earnest money deposits provided by purchasers for units in the
Spanish View Tower Homes condominium project which shall
specifically include, but may not be limited to, pursuing the action
currently filed in the Clark County District Court styled as Tower
Homes, LLC v William H. Heaton et al. Case No. A-12-663341-C.

9 (Ex. C at 2:8-14 [emphasis added].) This language purports to authorize the “Tower Homes
10 Purchasers” to bring the instant action. It does not authorize *Tower* to bring this action. The
11 Tower Homes Purchasers are not parties to this action.⁴ The New Bankruptcy Court Order
12 further:

13 [A]uthorizes the law firm of Marquis Aurbach Coffing and/or Prince
14 & Keating, LLP, or successive counsel, *retained on behalf of Tower*
15 *Homes Purchasers* to recover any and all earnest money deposits,
damages, attorneys fees and costs, and interest thereon on behalf of
Debtor and the Tower Homes Purchasers and that any such
recoveries shall be *for the benefit of the Tower Homes Purchasers*.

16 (Ex. C at 2:8-14 [emphasis added].) This provision, again, merely authorizes Prince & Keating, *as*
17 *counsel retained on behalf the Tower Homes Purchasers*, to bring the instant action *on behalf of*
18 *and for the benefit of* the Tower Homes Purchasers. It does not authorize Tower to bring this
19 action, through its own retained counsel and for its own benefit.

20 In other words, *the New Bankruptcy Court Order does nothing to alter the status quo*,
21 which is that Tower remains unauthorized to bring this action. (See MSJ at 8-12 and MSJ Reply
22 at 3-6.) Accordingly, because Tower has not obtained the “requisite authority” for this action, the
23 stay issued by this Court should remain in place. (Ex. A, MSJ Order at 2:16-18.)
24

25
26
27 ⁴ Even if the Tower Homes Purchasers were the named parties, this action still would be subject to
28 dismissal as a matter of Nevada law because legal malpractice claims cannot be assigned. *See Chaffee v.*
Smith, 98 Nev. 222, 223-24, 645 P.2d 966 (1982).

1 **B. Even if the New Bankruptcy Court Order did provide authorization for this**
2 **action, the stay should still remain in place until the Writ proceedings are**
3 **completed.**

4 An application for a stay pending the outcome of writ petition must ordinarily be made in
5 the first instance in the district court. *See* N.R.A.P. 8(a)(1)(A); *Fritz Hansen v. Eighth Jud. Dist.*
6 *Ct.*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000). In determining whether to issue a stay, four
7 factors should be considered: (1) Whether the object of the appeal or writ petition will be defeated
8 if the stay is denied; (2) Whether appellant/petitioner will suffer irreparable or serious injury if the
9 stay is denied; (3) Whether respondent/real party in interest will suffer irreparable or serious injury
10 if the stay is granted; and (4) Whether appellant/petitioner is likely to prevail on the merits in the
11 appeal or writ petition. *Id.* As discussed below, these factors militate in favor of a stay in this
12 case.

13 **1. Whether the object of the Writ will be defeated if the stay is denied.**

14 If the stay of this case is lifted, then the object of the Writ will be defeated. Again, in the
15 Writ, NWH seeks summary judgment from the Nevada Supreme Court on the grounds that this
16 action is time-barred as a matter of law. It makes no sense for the parties and this Court to expend
17 resources on further litigation in this Court when the Nevada Supreme Court may enter judgment
18 in favor of NWH on the statute of limitations issue, which is dispositive of the entire case,
19 *regardless of whether Tower (or anyone else) may have, or may later obtain, lawful authority to*
20 *bring this action.*

21 **2. Whether Petitioners will suffer irreparable or serious injury if the stay**
22 **is denied.**

23 If the stay is lifted, all parties, Plaintiff included, will be forced to spend time and money to
24 litigate a case that could be fully and finally resolved in the pending Nevada Supreme Court
25 proceedings.

1 **3. Whether Tower will suffer irreparable or serious injury if the stay is**
2 **granted.**

3 Tower waited nearly six years from the time it first discovered the alleged “malpractice” to
4 file his action. There is clearly no urgency to Tower’s claims. As such, Tower will not suffer any
5 injury, let alone irreparable or serious injury, if the stay remains in place pending a decision by the
6 Nevada Supreme Court on the Writ.

7 **4. Whether Petitioners are likely to prevail on the merits of the Writ.**

8 NWH maintains that it is likely to prevail on the merits. Nevada law is clear – the statute
9 of limitations for a legal malpractice claim *arising out of transactional work* begins to run when a
10 lawsuit arising out that alleged malpractice is filed. *See Gonzales v. Stewart Title*, 111 Nev. 1350,
11 905 P.2d 176 (1995) (granting attorney’s motion to dismiss based on statute of limitations
12 pursuant to NRS 11.207(1)); *see also Kopicko v. Young*, 114 Nev. 1333, 1337 n. 3, 971 P.2d 789,
13 791 (1998) (reaffirming distinction between transactional and litigation malpractice for
14 determining commencement of running of statute of limitations). It is undisputed here that the
15 underlying lawsuit filed by the Tower Homes Purchasers was filed on May 23, 2007, which is
16 more than four years before this action was filed on June 12, 2012.

17 Additionally, the August 2006 demand letters submitted with the MSJ show that Tower
18 undisputedly had notice of “the material facts which constitute the [legal malpractice] cause of
19 action.” (MSJ at 13:1-7.) Accordingly, under alternative the two-year measure provided by NRS
20 11.207(1), Tower had until August 2008 to file this action. Because Tower did not file its
21 complaint until June 12, 2012, it was nearly four years too late under this two-year measure.

22 In its recent Order, the Nevada Supreme Court stated: “Having reviewed the petition and
23 appendices, *it appears that petitioner has set forth issues of arguable merit.*” (Ex. B at 1
24 [emphasis added].)

25
26
27
28

1 **IV. CONCLUSION**

2 The statute of limitations issues which are currently before the Nevada Supreme Court are
3 dispositive of this entire case. Accordingly, this Court need not even resolve the issue of whether
4 the New Bankruptcy Court Order authorizes this action, as it should simply continue the stay of
5 this case which is already in place until the Nevada Supreme Court resolves the statute of
6 limitations issues. Accordingly, NWH respectfully requests that this action be stayed (or that the
7 stay already in place be continued) until the pending Writ proceedings are completed.

8
9 DATED this 30th day of April, 2013

10 LEWIS BRISBOIS BISGAARD & SMITH LLP

11
12 By /s/ Jeffrey D. Olster
13 V. Andrew Cass
14 Nevada Bar No. 005246
15 Jeffrey D. Olster
16 Nevada Bar No. 008864
17 6385 S. Rainbow Boulevard, Suite 600
18 Las Vegas, Nevada 89118
19 Attorneys for Defendants
20 *William H. Heaton and Nitz, Walton & Heaton,*
21 *Ltd.*
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF JEFFREY D. OLSTER

I, Jeffrey D. Olster, do hereby declare,

1. I am a partner at the firm Lewis Brisbois Bisgaard & Smith LLP, counsel of record for defendants William H. Heaton and Nitz, Walton & Heaton, Ltd. I have personal knowledge of the matters set forth herein, and if called upon to do so, I would testify competently to these matters.

2. Attached as **Exhibit A** is a true and correct copy of this Court’s “Order Regarding Defendants’ Motion to Dismiss, or, alternatively, Motion for Summary Judgment.”

3. Attached as **Exhibit B** is a true and correct copy of the Nevada Supreme Court’s February 20, 2013 “Order Directing Supplement to Petition and Directing Answer.”

4. Attached as **Exhibit C** is a true and correct copy of the “Order Granting Motion to Approve Amended Stipulation to Release Claims and Allow Marquis Aurbach Coffing, as Counsel for the Tower Homes Purchasers, to Pursue Claims on Behalf of Debtor” from the Bankruptcy Court.

I declare under penalty of perjury and pursuant to the laws of Nevada and the United States that the foregoing is true and correct and, if sworn as a witness, I would testify competently thereto.

DATED on this 30th day of April, 2013.

/s/ Jeffrey D. Olster
Jeffrey D. Olster

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(b), I certify that I am an employee of Lewis Brisbois Bisgaard & Smith LLP, and that on this 30th day of April, 2013, a true and correct copy of the foregoing **DEFENDANTS’ MOTION TO STAY PENDING COMPLETION OF WRIT PROCEEDINGS** was placed in an envelope, postage prepaid, addressed as stated below.

Dennis M. Prince
Eric N. Tran
Prince & Keating
3230 South Buffalo Drive, Suite 108
Las Vegas, Nevada 89117
dprince@princekeating.com
P: (702) 228-6800
F: (702) 228-0443
Attorneys for Plaintiff

By: /s/ Nicole Etienne .
An Employee of LEWIS BRISBOIS
BISGAARD & SMITH LLP

EXHIBIT "A"



CLERK OF THE COURT

1 V. ANDREW CASS
Nevada Bar No. 005246
2 cass@lbbslaw.com
JEFFREY D. OLSTER
3 Nevada Bar No. 008864
olster@lbbslaw.com
4 LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Boulevard, Suite 600
5 Las Vegas, Nevada 89118
Tel: 702.893.3383
6 Fax: 702.893.3789
Attorneys for Defendants
7 *William H. Heaton and*
Nitz, Walton & Heaton, Ltd.
8

DISTRICT COURT

CLARK COUNTY, NEVADA

9
10
11 TOWER HOMES, LLC, a Nevada limited
12 liability company;

13 Plaintiff,

14 vs.

15 WILLIAM H. HEATON, individually; NITZ,
WALTON & HEATON, LTD., a domestic
16 professional corporation; and DOES I through
X, inclusive,

17 Defendants.
18
19

Case No.: A-12-663341-C
Dept. No.: 26

ORDER REGARDING DEFENDANTS'
MOTION TO DISMISS, OR
ALTERNATIVELY, MOTION FOR
SUMMARY JUDGMENT

Date of Hearing: October 3, 2012
Time of Hearing: 9:00 a.m.

20 The Motion to Dismiss, or alternatively, Motion for Summary Judgment by defendants
21 William H. Heaton and Nitz, Walton & Heaton, Ltd. came on for hearing in Department 26 before
22 the Hon. Gloria Sturman on October 3, 2012. Jeffrey Olster of Lewis Brisbois Bisgaard & Smith
23 LLP appeared on behalf of defendants William H. Heaton and Nitz, Walton & Heaton, Ltd.
24 Demais Prince of Prince & Keating appeared on behalf of plaintiff Tower Homes, LLC.

25 The Court has considered the moving, opposition and reply papers, as well as the oral
26 arguments of counsel, and good cause appearing therefore,
27
28

LEWIS
BRISBOIS
BISGAARD
& SMITH LLP
ATTORNEYS AT LAW

4826-0215-6305.1

1 IT IS HEREBY ORDERED that Defendant's Motion to Dismiss, or in the alternative,
2 Motion for Summary Judgment, is denied. Defendants seek dismissal (or summary judgment) on
3 two grounds: (1) Plaintiff is not authorized by its bankruptcy trustee and the Bankruptcy Court to
4 bring this action; and (2) Plaintiff's claims for relief (legal malpractice and breach of fiduciary
5 duty) are barred by the statute of limitations.

6 With respect to the statute of limitations issue, the Court denies Defendants' Motion
7 because the bankruptcy trustee could not have known what the claims against Tower Homes, LLC
8 were until the underlying state court litigation was resolved. The stipulation and order dismissing
9 the underlying state court litigation was filed on July 5, 2011.

10 With respect to the Bankruptcy Court authority issue, the Court denies Defendants' Motion
11 because this issue presents a procedural, not a fatal, defect. The Court, however, does agree with
12 Defendants that the "Marquis Aurbach Order" does not authorize Plaintiff bring this action
13 through the law firm of Prince & Keating against Mr. Heaton and Nitz, Walton & Heaton, Ltd.
14 Plaintiff may attempt to remedy this procedural defect by obtaining the requisite authority from
15 the Tower Homes, LLC bankruptcy trustee and order from the Bankruptcy Court.

16 IT IS FURTHER ORDERED, therefore, that this matter shall be stayed until Plaintiff
17 obtains the requisite authority for this action from the bankruptcy trustee and order from the
18 Bankruptcy Court.

19 Dated this 31 day of October, 2012.

20
21
22 
23 DISTRICT COURT JUDGE
24
25
26
27
28

1

2

Submitted by:

3

LEWIS BRISBOIS BISGAARD & SMITH LLP

4

5

6

V. Andrew Cass

7

Nevada Bar No. 005246

Jeffrey D. Olster

8

Nevada Bar No. 008864

6385 S. Rainbow Boulevard, Suite 600

9

Las Vegas, Nevada 89118

Attorneys for Defendants

10

William H. Heaton and

Nitz, Walton & Heaton, Ltd.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

LEWIS
BRISBOIS
BISGAARD
& SMITH LLP

4826-0215-0305 1

3

EXHIBIT "B"

IN THE SUPREME COURT OF THE STATE OF NEVADA

NITZ WALTON & HEATON, LTD.,
Petitioner,

vs.

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

Respondents,

and

TOWER HOMES, LLC,
Real Party in Interest.

No. 62252

FILED

FEB 20 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *R. Malone*
DEPUTY CLERK

ORDER DIRECTING SUPPLEMENT TO PETITION
AND DIRECTING ANSWER

This original petition for a writ of mandamus, or alternatively, prohibition, challenges a district court order denying a motion to dismiss in a legal malpractice action.

Having reviewed the petition and appendices, it appears that petitioner has set forth issues of arguable merit. Nonetheless, the district court's challenged order indicates that Tower Homes, LLC is not the proper plaintiff in this case. Consequently, petitioner shall have 11 days from the date of this order in which to file a supplement to its writ petition addressing whether the proper party issue has been resolved in the district court and, if not, whether petitioner has renewed its motion to dismiss the underlying action on this basis. Thereafter, Tower Homes shall have 20 days from the date when petitioner's supplement is served to file an answer addressing the issues raised in petitioner's original writ petition and supplement.

It is so ORDERED.

John S. Leach, A.C.J.

cc: Hon. Gloria Sturman, District Judge
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Prince & Keating, LLP
Eighth District Court Clerk

EXHIBIT "C"

Bruce A. Markell

Honorable Bruce A. Markell
United States Bankruptcy Judge



Entered on Docket
April 02, 2013

MARQUIS AURBACH COFFING

10001 Park Run Drive

Las Vegas, Nevada 89145

(702) 382-0711 FAX: (702) 382-5816

Marquis Aurbach Coffing
TERRY A. COFFING, ESQ.
Nevada Bar No. 4949
ZACHARIAH LARSON, ESQ.
Nevada Bar No. 7787
BRIAN HARDY, ESQ.
Nevada Bar No. 10068
10001 Park Run Drive
Las Vegas, Nevada 89145
tcoffing@maclaw.com
zlarson@maclaw.com
bhardy@maclaw.com
(702) 382-0711
Attorneys for the Tower Homes Purchasers

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA

In Re:

TOWER HOMES, LLC, a Nevada limited
liability company, dba Spanish View Tower
Homes.

Debtor.

Case No.: BK-07-13208-BAM
Chapter: 11

Hearing Date: April 1, 2013
Hearing Time: 9:00 AM
Courtroom 3

**ORDER GRANTING MOTION TO APPROVE AMENDED STIPULATION TO
RELEASE CLAIMS AND ALLOW MARQUIS AURBACH COFFING, AS COUNSEL
FOR THE TOWER HOMES PURCHASERS, TO PURSUE CLAIMS ON BEHALF OF
DEBTOR**

This matter having come before the Court for a hearing on April 1, 2013, on the Motion to Approve Amended Stipulation to Release Claims and Allow Marquis Aurbach Coffing as Counsel for the Tower Homes Purchasers to Pursue Claims on Behalf of the Debtor, Tower Homes Purchasers appearing by and through their counsel of record, Brian Hardy, Esq. of Marquis Aurbach Coffing, the Court finding based upon the reasons stated on the record, the

papers and pleadings on file herein, the Motion, the oral arguments of counsel, and good cause appearing;

IT IS HEREBY ORDERED ADJUDGED AND DECREED that the Motion to Approve the Stipulation to Release Claims and Allow Marquis Aurbach Coffing as Counsel for the Tower Homes Purchasers to Pursue Claims on Behalf of the Debtor, attached hereto as Exhibit I, is hereby granted;

IT IS FURTHER ORDERED ADJUDGED AND DECREED that this Order authorizes the Trustee to permit the Tower Homes Purchasers, to pursue any and all claims on behalf of Tower Homes, LLC (the "Debtor") against any individual or entity which has or may have any liability or owed any duty to Debtor or others for the loss of the earnest money deposits provided by purchasers for units in the Spanish View Tower Homes condominium project which shall specifically include, but may not be limited to, pursuing the action currently filed in the Clark County District Court styled as Tower Homes, LLC v William H. Heaton et. al. Case No. A-12-663341-C.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that this Court hereby authorizes the law firm of Marquis Aurbach Coffing, and/or Prince & Keating LLP, or successive counsel, retained on behalf of Tower Homes Purchasers to recover any and all earnest money deposits, damages, attorneys fees and costs, and interest thereon on behalf of Debtor and the Tower Homes Purchasers and that any such recoveries shall be for the benefit of the Tower Homes Purchasers.

IT IS SO ORDERED.

Respectfully Submitted By:

MARQUIS AURBACH COFFING

By/s/ Brian Hardy, Esq.

Brian Hardy, Esq.
Nevada Bar No. 10068
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorney(s) for Tower Homes Purchasers

LR 9021 CERTIFICATION

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that (check one):

- ☐ The court has waived the requirement set forth in LR 9021(b)(1).
- ☒ No party appeared at the hearing or filed an objection to the motion.
- ☐ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below:

--	--

☐ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

I declare under penalty of perjury that the foregoing is true and correct.

MARQUIS AURBACH COFFING

By: /s/ Brian Hardy, Esq.

Brian Hardy, Esq.
Nevada Bar No. 10068
10001 Park Run Drive
Las Vegas, NV 89145
Attorney(s) for Debtor and
Debtor-in-Possession

###