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CERTIFICATE OF SERVICE

I certify that I am an employee of the Adams Law Group, Ltd. and that on this date, I served the following **NOTICE OF ENTRY OF JUDGMENT** on all parties to this action by:

X	Placing an original or true copy thereof in a sealed envelope place for collection and mailing in the United States Mail, at Las Vegas, Nevada, postage paid, following the ordinary business practices;
	Hand Delivery
	Facsimile
	Overnight Delivery
	Certified Mail, Return Receipt Requested.

addressed as follows:

Patrick Reilly, Esq.
Holland & Hart
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Attorney for Defendant

Kurt Bonds, Esq.
Alverson Taylor Mortensen and Sanders
7401 W. Charleston Blvd.
Las Vegas, NV 89117-1401
Attorney for Defendant

Dated the 12th day of April, 2013.



An employee of Adams Law Group, Ltd.


CLERK OF THE COURT

JUDG
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Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

IKON HOLDINGS, LLC, a Nevada limited liability
company,

Plaintiff,

vs.

HORIZONS AT SEVEN HILLS HOMEOWNERS
ASSOCIATION, and DOES 1 through 10 and ROE
ENTITIES 1 through 10 inclusive,

Defendant.

Case No: A-11-647850-C
Dept: No. 13

FINAL JUDGMENT

This matter came before the Court for trial on March 12, 2013 at 9:00 a.m. James R. Adams, Esq., of Adams Law Group, Ltd., and Puoy K. Premsrirut, Esq., of Puoy K. Premsrirut, Esq., Inc., appeared on behalf of the Plaintiff. Eric Hinckley, Esq., and Kurt Bonds, Esq., of Alverson, Taylor, Mortensen & Sanders, and Patrick Reilly, Esq., of Holland & Hart, LLP appeared on behalf of the Defendant. The Honorable Court, having considered the matter, for good cause appearing hereby enters judgment and finds as follows:

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DISTRICT COURT DEPT# 13

1 WHEREAS, Plaintiff purchased certain real estate in a common interest community as an
2 investment property at the nonjudicial foreclosure auction of the property's first trust deed holder,
3 said property being located within Defendant Horizon at Seven Hills Homeowners' Association;
4 and

5 WHEREAS, the primary issue in this case was what was the amount of Defendant's "super
6 priority" lien against Plaintiff's property which survived the foreclosure of the property's first trust
7 deed holder pursuant to NRS 116.3116(2) and Defendant's covenants, conditions and restrictions
8 ("CC&RS"); and

9 WHEREAS, it was the position of Plaintiff that the amount of such lien which survived the
10 foreclosure of the property's first trust deed holder did not exceed a figure equaling 6 months of
11 Defendant's monthly assessments based upon its periodic budget and as provided in Section 7.8 and
12 7.9 of Defendant's CC&RS; and

13 WHEREAS, it was the also the position of Plaintiff that regardless of the CC&RS, the
14 amount of Defendant's lien that survived the foreclosure of the property's first trust deed holder did
15 not exceed a figure equaling 9 months of Defendant's monthly assessments based upon its periodic
16 budget as provided in NRS 116.3116(2); and

17 WHEREAS, it was the position of the Defendant that the amount of Defendant's lien that
18 survived the foreclosure of the property's first trust deed holder was not limited to a figure equaling
19 6 or 9 months of assessments; *Defendant maintaining that the portion of the 1704 lien given
superior priority status is defined with regard to a particular time
period only, there being no mention in the statute of any
numerical limitation or mathematical calculation; and*

20 WHEREAS, the Court has already determined findings of fact and conclusions of law as
21 a result of 3 prior summary judgment orders entered by the Court which are attached hereto and
22 incorporated and restated herein (Ex. 1, "1/19/2012 Order") (Ex. 2, "4/16/2012 Order") (Ex. 3,
23 "7/20/2012 Order"); and

24 WHEREAS, it has been stipulated by all counsel that \$1,140.00 (a figure equaling 6 months
25 of assessments) has been tendered by Plaintiff and received by Defendant as that is the amount
26 Plaintiff alleges was due and owing under provisions contained in Defendant's CC&RS, said
27 amount being in conformance with this Court's 7/20/2012 Order (the "Payment"); and
28

1 WHEREAS, Defendant has stipulated¹ to record a "Release of Notice of Delinquent
2 Assessment Lien" which now renders moot Plaintiff's sole remaining cause of action for injunctive
3 relief;

4 THE COURT, THEREFORE, DECLARES, ORDERS, ADJUDGES AND DECREES as
5 follows:

6 All claims and issues in this matter have now been fully adjudicated as evidenced by the
7 above findings, and by the findings and conclusions contained in the 1/19/2012 Order, the
8 4/16/2012 Order and the 7/20/2012 Order, and by the Payment, said amount being in conformance
9 with this Court's 7/20/2012 Order. Final judgment is hereby entered in this matter pursuant to the
10 findings stated above, and pursuant to the findings of fact and conclusions of law contained in the
11 1/19/2012 Order, the 4/16/2012 Order and the 7/20/2012 Order which are hereby incorporated and
12 restated herein.

13 IT IS SO ADJUDGED.

14 
DISTRICT COURT JUDGE

4/5/13
Date
RB

16 Submitted by: 

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Attorneys for Plaintiff

1 Defendant stipulated to record the "Release of Notice of Delinquent Assessment Lien"
solely to eliminate the need for this Court to issue a permanent injunction. Defendant advised at
trial that it fully intends to appeal this Court's summary judgment orders upon the entry of this
final judgment. Accordingly, its recordation of said Release does not constitute any kind of
waiver of its substantive arguments for appellate purposes.

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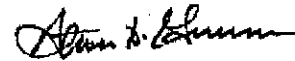
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Ex. 1


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1 **ORD**
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23 Attorneys for Plaintiff

13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 IKON HOLDINGS, LLC, a Nevada limited liability
16 company,

17 Plaintiff,

18 vs.

19 HORIZONS AT SEVEN HILLS HOMEOWNERS
20 ASSOCIATION, and DOES 1 through 10 and ROE
21 ENTITIES 1 through 10 inclusive,

22 Defendant.

Case No: A-11-647850-C
Dept: No. 13

ORDER

23 This matter came before the Court on December 12, 2011 at 9:00 a.m., upon the Plaintiff's
24 Motion for Summary Judgment on Claim of Declaratory Relief and Defendant's Counter Motion for
25 Summary Judgment on Claim of Declaratory Relief. James R. Adams, Esq., of Adams Law Group,
26 Ltd., and Puoy K. Premsrirut, Esq., of Puoy K. Premsrirut, Esq., Inc., appeared on behalf of the
27 Plaintiff. Eric Hinckley, Esq., of Alverson, Taylor, Mortensen & Sanders appeared on behalf of the
28 Defendant. The Honorable Court, having read the briefs on file and having heard oral argument, and
for good cause appearing hereby rules:

1 WHEREAS, the Court has determined that a justiciable controversy exists in this matter as
2 Plaintiff has asserted a claim of right under NRS §116.3116 (the "Super Priority Lien" statute)
3 against Defendant and Defendant has an interest in contesting said claim, the present controversy
4 is between persons or entities whose interests are adverse, both parties seeking declaratory relief
5 have a legal interest in the controversy (i.e., a legally protectible interest), and the issue involved in
6 the controversy (the meaning of NRS 116.3116) is ripe for judicial determination as between the
7 parties. *Kress v. Corey* 65 Nev. 1, 189 P.2d 352 (1948); and

8 WHEREAS Plaintiff and Defendant, the contesting parties hereto, are clearly adverse and
9 hold different views regarding the meaning and applicability of NRS §116.3116 (including whether
10 Defendant demanded from Plaintiff amounts in excess of that which is permitted under the NRS
11 §116.3116); and

12 WHEREAS Plaintiff has a legal interest in the controversy as it was Plaintiff's money which
13 had been demanded by Defendant and it was Plaintiff's property that had been the subject of a
14 homeowners' association statutory lien by Defendant; and

15 WHEREAS the issue of the meaning, application and interpretation of NRS §116.3116 is
16 ripe for determination in this case as the present controversy is real, it exists now, and it affects the
17 parties hereto; and

18 WHEREAS, therefore, the Court finds that issuing a declaratory judgment relating to the
19 meaning and interpretation of NRS §116.3116 would terminate some of the uncertainty and
20 controversy giving rise to the present proceeding; and

21 WHEREAS, pursuant to NRS §30.040 Plaintiff and Defendant are parties whose rights,
22 status or other legal relations are affected by NRS §116.3116 and they may, therefore, have
23 determined by this Court any question of construction or validity arising under NRS §116.3116 and
24 obtain a declaration of rights, status or other legal relations thereunder; and

25 WHEREAS, the Court is persuaded that Plaintiff's position is correct relative to the
26 components of the Super Priority Lien (exterior repair costs and 9 months of regular assessments)
27 and the cap relative to the regular assessments, but it is not persuaded relative to Plaintiff's position
28

1 concerning the need for a civil action to trigger a homeowners' association's entitlement to the Super
2 Priority Lien.

3 THE COURT, THEREFORE, DECLARES, ORDERS, ADJUDGES AND DECREES as
4 follows:

- 5 1. Plaintiff's Motion for Partial Summary Judgment on Declaratory Relief is granted in
6 part and Defendant's Motion for Summary Judgment on Declaratory Relief is granted
7 in part.
- 8 2. NRS §116.3116 is a statute which creates for the benefit of Nevada homeowners'
9 associations a general statutory lien against a homeowner's unit for (a) any
10 construction penalty that is imposed against the unit's owner pursuant to NRS
11 §116.310305, (b) any assessment levied against that unit, and (c) any fines imposed
12 against the unit's owner from the time the construction penalty, assessment or fine
13 becomes due (the "General Statutory Lien"). The homeowners' associations'
14 General Statutory Lien is noticed and perfected by the recording of the associations'
15 declaration and, pursuant to NRS §116.3116(4), no further recordation of any claim
16 of lien for assessment is required.
- 17 3. Pursuant to NRS §116.3116(2), the homeowners' association's General Statutory
18 Lien is junior to a first security interest on the unit recorded before the date on which
19 the assessment sought to be enforced became delinquent ("First Security Interest")
20 except for a portion of the homeowners' association's General Statutory Lien which
21 remains superior to the First Security Interest (the "Super Priority Lien").
- 22 4. Unless an association's declaration otherwise provides, any penalties, fees, charges,
23 late charges, fines and interest charged pursuant to NRS 116.3102(1)(j) to (n),
24 inclusive, are enforceable in the same manner as assessments are enforceable under
25 NRS §116.3116. Thus, while such penalties, fees, charges, late charges, fines and
26 interest are not actual "assessments," they may be enforced in the same manner as
27
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1 assessments are enforced, i.e., by inclusion in the association's General Statutory
2 Lien against the unit.

- 3 5. Homeowners' associations, therefore, have a Super Priority Lien which has priority
4 over the First Security Interest on a homeowners' unit. However, the Super Priority
5 Lien amount is not without limits and NRS §116.3116 is clear that the amount of the
6 Super Priority Lien (which is that portion of a homeowners' associations' General
7 Statutory Lien which retains priority status over the First Security Interest) is limited
8 "to the extent" of those assessments for common expenses based upon the
9 association's adopted periodic budget that would have become due in the 9 month
10 period immediately preceding an association's institution of an action to enforce its
11 General Statutory Lien (which is 9 months of regular assessments) and "to the extent
12 of" external repair costs pursuant to NRS §116.310312.

- 13 6. The base assessment figure used in the calculation of the Super Priority Lien is the
14 unit's un-accelerated, monthly assessment figure for association common expenses
15 which is wholly determined by the homeowners association's "periodic budget," as
16 adopted by the association, and not determined by any other document or statute.
17 Thus, the phrase contained in NRS §116.3116(2) which states, "... to the extent of the
18 assessments for common expenses based on the periodic budget adopted by the
19 association pursuant to NRS 116.3115 which would have become due in the absence
20 of acceleration during the 9 months immediately preceding institution of an action
21 to enforce the lien..." means a maximum figure equaling 9 times the association's
22 regular, monthly (not annual) assessments. If assessments are paid quarterly, then 3
23 quarters of assessments (i.e., 9 months) would equal the Super Priority Lien, plus
24 external repair costs pursuant to NRS §116.310312.


- 25 7. The words "to the extent of" contained in NRS §116.3116(2) mean "no more than,"
26 which clearly indicates a maximum figure or a cap on the Super Priority Lien which
27 cannot be exceeded.
28

1 8. Thus, while assessments, penalties, fees, charges, late charges, fines and interest may
2 be included within the Super Priority Lien, in no event can the total amount of the
3 Super Priority Lien exceed an amount equaling 9 times the homeowners'
4 association's regular monthly assessment amount to unit owners for common
5 expenses based on the periodic budget which would have become due immediately
6 preceding the association's institution of an action to enforce the lien, plus external
7 repair costs pursuant to NRS 116.310312.

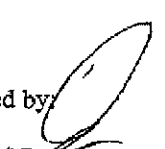
8 9. Further, if regulations adopted by the Federal Home Loan Mortgage Corporation or
9 the Federal National Mortgage Association require a shorter period of priority for the
10 lien (i.e., shorter than 9 months of regular assessments,) the shorter period shall be
11 used in the calculation of the Super Priority Lien, except that notwithstanding the
12 provisions of the regulations, that shorter period used in the calculation of the Super
13 Priority Lien must not be less than the 6 months immediately preceding institution
14 of an action to enforce the lien.

15 10. Moreover, ^{the need for the institution of an actual civil action} the Super Priority Lien can exist only if an "action" is instituted by the
16 association to enforce its General Statutory Lien. The term "action" as used in NRS
17 116.3116(2) (as opposed to the term "action" as contained in NRS §116.3116(7)), does
18 not mean a "civil action" as that phrase is defined in NRCP 2 and NRCP 3 (i.e.,
19 "action" as used in NRS §116.3116(2) does not mean the filing of a complaint with
20 the court).

21 IT IS SO ORDERED.

22 
DISTRICT COURT JUDGE

Date 

23
24
25 Submitted by: 

26 JAMES R. ADAMS, ESQ.
27 Nevada Bar No. 6874
28 ASSLY SAYYAR, ESQ.

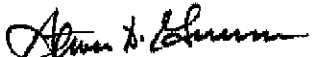
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Ex. 2


CLERK OF THE COURT

ORDER

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*Attorneys for Defendants Horizons At Seven Hills
Homeowners Association*

DISTRICT COURT

CLARK COUNTY, NEVADA

IKON HOLDINGS, LLC, a Nevada limited
liability company,

Plaintiff,

vs.

HORIZONS AT SEVEN HILLS
HOMEOWNERS ASSOCIATION; and DOES
1 through 10; and ROE ENTITIES 1 through
10 inclusive,

Defendants.

Case No. : A-11-647850-B
Dept. No.: XIII

**ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

**ORDER GRANTING DEFENDANT'S
COUNTERMOTION FOR SUMMARY
JUDGMENT**

Hearing Date: March 12, 2012

Hearing Time: 9:00 a.m.

This matter came before the Court on March 12, 2012, for hearing on Plaintiff's Motion for Summary Judgment and on Defendant's Countermotion for Summary Judgment. James R. Adams, Esq. of the Adams Law Group and Puoy Premsrut, Esq. of the law firm of Brown, Brown & Premsrut appeared on behalf of Plaintiff Ikon Holdings, LLC ("Ikon"). Patrick J.

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DISTRICT COURT DEPT# 13

1 Reilly, Esq. of the law firm of Holland & Hart LLP and Eric W. Hinckley, Esq. of the law firm
2 of Alverson, Taylor, Mortensen, and Sanders appeared on behalf of Defendant Horizons at Seven
3 Hills Homcowners Association ("Horizons"). After carefully considering the briefs and
4 arguments of counsel, this Court makes the following findings of fact and conclusions of law:

5 **I.**

6 **FINDINGS OF FACT**

7 1. On or around June 28, 2010, Scott Ludwig purchased certain real property located
8 at 950 Seven Hills Drive, Suite 1411, Henderson, Nevada 89052 (the "Property") at a foreclosure
9 sale conducted by the holder of a first deed of trust against the Property.

10 2. The Property is located within Horizons.

11 3. Horizons had previously recorded a Notice of Delinquent Assessment Lien on
12 June 17, 2009 and a Notice of Default and Election to Sell Under Homeowners Association Lien
13 on August 4, 2009. Both of these recordings occurred prior to the foreclosure sale, in the amount
14 of \$4,289.50, with the amount of the lien to increase until the amount became current.

15 4. Shortly after the foreclosure sale, on July 14, 2010, Mr. Ludwig transferred title
16 of the Property to Ikon. .

17 5. On or around September 30, 2010, Horizons recorded another Notice of
18 Delinquent Assessment Lien ("Lien") against the Property.

19 6. Ikon disputed and did not pay any of the amounts demanded by Horizons.

20 7. Ikon did not begin making payments to Horizons until May 2011 when it began
21 making regular monthly assessments to the Property.

22 8. It is undisputed that, as of the date of the hearing, Ikon had not paid any amount
23 owed.

24 **II.**

25 **CONCLUSIONS OF LAW**

26 The Nevada Rules of Civil Procedure provide, in pertinent part, as follows:

27 A party against whom a claim . . . is sought may, at any
28 time, move with or without supporting affidavits for a
summary judgment in the party's favor as to all or any part

thereof . . . the judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

NRCP 56. Summary judgment must be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” NRCP 56(c). In *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005), the Nevada Supreme Court embraced the summary judgment standard set forth in seminal United States Supreme Court cases such as *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), and *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). Under this standard, summary judgment is designed to secure the just, speedy, and inexpensive determination of every action where appropriate. *Celotex*, 477 U.S. at 327.

Once the moving party demonstrates the absence of a genuine issue of material fact, the nonmoving party must show the existence of a genuine issue of material fact to avoid summary judgment. *Cutze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 172 P.3d 131, 134 (2007). Nevada law no longer allows the nonmoving party to merely raise the “slightest doubt” about the facts. *Wood*, 121 Nev. at 731, 121 P.3d at 1031. Thus, the nonmoving party cannot merely “build a case on the gossamer threads of whimsy, speculation, and conjecture.” *Id.* at 732, 121 P.3d at 1031 (quotation omitted). The nonmoving party must present *genuine* issues of *material* fact to avoid summary judgment. *Id.*, 121 P.3d at 1031.

In the instant case, Plaintiff’s causes of action beyond those for Declaratory Relief and Injunctive Relief are not sustainable under the undisputed factual scenario involved in this case. It is undisputed that Plaintiff did not pay any of the SPL amount demanded and licned by Horizons, even the amounts it concedes it owes. As a result, Plaintiff has not suffered or incurred any damages that could be recovered under the First, Second, Third, Fourth and Fifth Causes of Action pleaded in Plaintiff’s Complaint. In sum, this is not a case seeking attorney’s fees and

1 costs for a slander of title. *See Horgan v. Felton*, 123 Nev. 577, 583-86, 170 P.3d 982 (2007).
2 Further, the Court does not consider that the theories pleaded by Plaintiff have been shown to
3 involve genuine issues of material fact as to damages that are otherwise recoverable under those
4 causes of action.

5 * * *

6 Accordingly, this Court hereby DENIES Plaintiff's Motion for Summary Judgment and
7 GRANTS Defendant's Countermotion for Summary Judgment in its entirety. This Order is
8 without prejudice to Plaintiff's effort to seek attorney's fees and costs based upon whatever
9 statutory or contractual premise that may or may not be applicable.

10 IT IS SO ORDERED.

11 DATED this 13th day of April, 2012.

12
13 
14 DISTRICT COURT JUDGE PM

15 Submitted by: 

16
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19 Nicole E. Lovelock, Esq.
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30 *Homeowners Association*

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Ex. 3


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22 Attorneys for Plaintiff

23 **DISTRICT COURT**
24 **CLARK COUNTY, NEVADA**

25 IKON HOLDINGS, LLC, a Nevada limited liability
26 company,

27 Plaintiff,

28 vs.

HORIZONS AT SEVEN HILLS HOMEOWNERS
ASSOCIATION, and DOES 1 through 10 and ROE
ENTITIES 1 through 10 inclusive,

Defendant.

Case No: A-11-647850-C
Dept: No. 13

ORDER

THIS MATTER having come before the Court on June 11, 2012, for hearing on Plaintiff's Motion for Summary Judgment on Declaratory Relief and on Defendant's Counter-Motion for Summary Judgment. James R. Adams, Esq., of Adams Law Group, Ltd., and Puoy K. Premsrirut, Esq., of Puoy K. Premsrirut, Esq., Inc., appeared on behalf of the Plaintiff. Eric Hinckley, Esq., of Alverson, Taylor, Mortensen & Sanders and Patrick Reilly, Esq., of Holland & Hart appeared on behalf of the Defendant. The Court, having considered the papers submitted in connection with such item(s) and heard the arguments made on behalf of the parties and then taken the matter under advisement for further consideration, and for good cause appearing hereby rules:

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DISTRICT COURT DEPT#13 39412

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JUL 12 2012

DISTRICT COURT DEPT#13 9412

1 **ORD**

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22 Attorneys for Plaintiff

23 **DISTRICT COURT**

24 **CLARK COUNTY, NEVADA**

25 IKON HOLDINGS, LLC, a Nevada limited liability
26 company,

27 Plaintiff,

28 vs.

29 HORIZONS AT SEVEN HILLS HOMEOWNERS
30 ASSOCIATION, and DOES 1 through 10 and ROE
31 ENTITIES 1 through 10 inclusive,

32 Defendant.

Case No: A-11-647850-C

Dept: No. 13

ORDER

33 THIS MATTER having come before the Court on June 11, 2012, for hearing on Plaintiff's
34 Motion for Summary Judgment on Declaratory Relief and on Defendant's Counter-Motion for
35 Summary Judgment. James R. Adams, Esq., of Adams Law Group, Ltd., and Puoy K. Premsrirut,
36 Esq., of Puoy K. Premsrirut, Esq., Inc., appeared on behalf of the Plaintiff. Eric Hinckley, Esq., of
37 Alverson, Taylor, Mortensen & Sanders and Patrick Reilly, Esq., of Holland & Hart appeared on
38 behalf of the Defendant. The Court, having considered the papers submitted in connection with such
item(s) and heard the arguments made on behalf of the parties and then taken the matter under
advisement for further consideration, and for good cause appearing hereby rules:

1 WHEREAS, on 7/6/2005, Defendant, a Nevada homeowners' association, recorded in the
2 Clark County, Nevada, Recorder's Office, the Declaration of Covenants Conditions & Restrictions
3 and Reservations of Easements for Horizon at Seven Hills Homeowners Association ("CC&RS");
4 and

5 WHEREAS, on 6/28/2010, Scott M. Ludwig purchased APN 177-35-610-137 (the "Unit")
6 at a foreclosure auction of the prior owner's first mortgage lender ("6/28/2010 Foreclosure
7 Auction"); and

8 WHEREAS, the Unit is located with Defendant homeowners' association; and

9 WHEREAS, on 7/14/2010, Scott M. Ludwig transferred the Unit by quit claim deed to
10 Plaintiff ("Ikon Deed"); and

11 WHEREAS, on 9/30/2010 Defendant filed a Notice of Delinquent Assessment Lien against
12 Plaintiff and the Unit for \$6,050.14 ("Notice of Delinquent Assessment Lien"); and

13 WHEREAS, on 10/18/2010 Defendant sent Plaintiff a letter stating, "Per your request, the
14 current balance for the above property is \$6,287.94." (the "10/18/10 Collection Letter"); and

15 WHEREAS, pursuant to the spreadsheet of fees and costs attached to the 10/18/10 Collection
16 Letter, Defendant's monthly assessments were \$190.00; and

17 WHEREAS, the Unit, being located within Defendant homeowners' association, is subject
18 to NRS 116 (Common Interest Ownership Uniform Act) and the CC&RS; and

19 WHEREAS, the Court has determined that a justiciable controversy exists in this matter as
20 Plaintiff has asserted a claim of right against Defendant under NRS §116.3116 and Sections 7.8 and
21 7.9 of the Defendant's CC&RS and Defendant has an interest in contesting said claim, the present
22 controversy is between persons or entities whose interests are adverse, both parties seeking
23 declaratory relief have a legal interest in the controversy (i.e., a legally protectible interest), and the
24 issue involved in the controversy (the meaning and application of NRS 116.3116 and of Sections 7.8
25 and 7.9 of the CC&RS) is ripe for judicial determination as between the parties. *Kress v. Corey* 65
26 *Nev. 1, 189 P.2d 352 (1948)*; and

1 WHEREAS, Plaintiff and Defendant, the contesting parties hereto, are clearly adverse and
2 hold different views regarding the meaning and applicability of Sections 7.8 and 7.9 of the CC&RS
3 in that Plaintiff maintains that Sections 7.8 and 7.9 of the CC&RS call for a limit on Defendant's
4 prioritized portion of its homeowners' association lien on Plaintiff's Unit to the extent of an amount
5 equal to 6 months of assessments (i.e., "The lien of the assessments, including interest and costs,
6 shall be subordinate to the lien of any First Mortgage upon the Unit (except to the extent of Annual
7 Assessments which would have become due in the absence of acceleration during the six (6) months
8 immediately preceding institution of an action to enforce the lien)") and further maintains that
9 Sections 7.8 and 7.9 of the CC&RS do not violate the statutory lien limit as noted in NRS
10 116.3116(2) as the CC&RS call for a lesser amount for the prioritized portion of the lien than does
11 NRS 116.3116(2). Conversely, Defendant maintains there are either two prioritized liens (one
12 contractual and one statutory) and/or that Sections 7.8 and 7.9 of Defendant's CC&RS violate NRS
13 116.3116(2) in that Sections 7.8 and 7.9 call for a lesser amount for the prioritized portion of the lien
14 than does NRS 116.3116(2) and, therefore, the prioritized portion of Defendant's lien must equal
15 the greater amount as noted in NRS 116.3116(2); and

16 WHEREAS, Plaintiff has a legal interest in the controversy as it was Plaintiff's money which
17 had been demanded by Defendant and it was Plaintiff's Unit that had been the subject of a
18 homeowners' association assessment lien by Defendant; and

19 WHEREAS the issue of the meaning, application and interpretation of Sections 7.8 and 7.9
20 of the CC&RS in conjunction with NRS §116.3116 is ripe for determination in this case as the
21 present controversy is real, it exists now, and it affects the parties hereto; and

22 WHEREAS, therefore, the Court finds that issuing a declaratory judgment relating to the
23 meaning and interpretation of Sections 7.8 and 7.9 of the CC&RS in conjunction with NRS
24 §116.3116 would terminate some of the uncertainty and controversy giving rise to the present
25 proceeding; and

26 WHEREAS, pursuant to NRS §30.040 Plaintiff and Defendant are parties whose rights,
27 status or other legal relations are affected by Sections 7.8 and 7.9 of the CC&RS and they may,
28

1 therefore, have determined by this Court any question of construction or validity arising under said
2 Sections and obtain a declaration of rights, status or other legal relations thereunder; and

3 WHEREAS, regarding priority of homeowner association assessment liens, Section 7.8 and
4 7.9 of the CC&RS state the following:

5 Section 7.8 Mortgagee Protection. Notwithstanding all other
6 provisions hereof, no lien created under this Article 7, nor the
7 enforcement of any provision of this Declaration shall defeat or
8 render invalid the rights of the Beneficiary under any Recorded First
9 Deed of Trust encumbering a Unit, made in good faith and for value;
10 provided that after such Beneficiary or some other Person obtains title
11 to such Unit by judicial foreclosure, other foreclosure, or exercise of
12 power of sale, such Unit shall remain subject to this Declaration and
13 the payment of all installments of assessments accruing subsequent
14 to the date such Beneficiary or other Person obtains title, subject to
15 the following. The lien of the assessments, including interest and
16 costs, shall be subordinate to the lien of any First Mortgage upon
17 the Unit (except to the extent of Annual Assessments which would
18 have become due in the absence of acceleration during the six (6)
19 months immediately preceding institution of an action to enforce
20 the lien). The release or discharge of any lien for unpaid assessments
21 by reason of the foreclosure or exercise of power of sale by the First
22 Mortgagee shall not relieve the prior Owner of his personal obligation
23 for the payment of such unpaid assessments.

24 Section 7.9 Priority of Assessment Lien. Recording of the
25 Declaration constitutes Record notice and perfection of a lien for
26 assessments. A lien for assessments, including interest, costs, and
27 attorneys' fees, as provided for herein, shall be prior to all other
28 liens and encumbrances on a Unit, except for: (a) liens and
encumbrances Recorded before the Declaration was Recorded; (b) a
first Mortgage Recorded before the delinquency of the
assessment sought to be enforced (except to the extent of Annual
Assessments which would have become due in the absence of
acceleration during the six (6) months immediately preceding
institution of an action to enforce the lien), and (c) liens for real
estate taxes and other governmental charges, and is otherwise subject
to NRS § 116.3116. The sale or transfer of any Unit shall not affect
an assessment lien. However, subject to foregoing provision of this
Section 7.9, the sale or transfer of any Unit pursuant to judicial or
non-judicial foreclosure of a First Mortgage shall extinguish the lien
of such assessment as to payments which became due prior to such
sale or transfer. No sale or transfer shall relieve such Unit from lien
rights for any assessments which thereafter become due. Where the
Beneficiary of a First Mortgage of Record or other purchaser of
a Unit obtains title pursuant to a judicial or nonjudicial
foreclosure or "deed in lieu thereof," the Person who obtains title
and his or her successors and assigns shall not be liable for the
share of the Common Expenses or assessments by the Association
chargeable to such Unit which became due prior to the

1 acquisition of title to such Unit by such Person (except to the
2 extent of Annual Assessments which would have become due in
3 the absence of acceleration during the six (6) months immediately
4 preceding institution of an action to enforce the lien). Such
5 unpaid share of Common Expenses and assessments shall be
6 deemed to become expenses collectible from all of the Units,
7 including the Unit belonging to such Person and his or her
8 successors and assigns.

9 WHEREAS, the Court is persuaded that Plaintiffs position is correct relative to the
10 component and ceiling issues contained in its Motion relating to Sections 7.8 and 7.9 of the CC&RS
11 in that pursuant to said Sections, Defendant's prioritized portion of its lien may include assessments
12 and "... interest, costs, and attorneys' fees..." but, pursuant to Sections 7.8 and 7.9 of the CC&RS,
13 is only prior to the first mortgage holder, "... to the extent of Annual Assessments which would have
14 become due in the absence of acceleration during the six (6) months immediately preceding
15 institution of an action to enforce the lien..."

16 THE COURT, THEREFORE, DECLARES, ORDERS, ADJUDGES AND DECREES as
17 follows:

- 18 1. Defendant's Counter-Motion for Summary Judgment is DENIED and Plaintiff's Motion for
19 Partial Summary Judgment on Declaratory Relief is GRANTED IN PART to the extent that
20 it seeks the following declarations:

21 Defendant, in contravention of Nevada Revised Statutes §116.3116,
22 has unlawfully demanded from Plaintiff amounts in excess of the
23 Super Priority Lien to which it has no legal entitlement.

24 Pursuant to Sections 7.8 and 7.9 of the Defendant's CC&RS,
25 Defendant's lien was junior to the first security interest of the Unit's
26 first mortgage lender except for a certain, limited and specified
27 portion of the lien as defined in Sections 7.8 and 7.9 of the CC&RS
28 (i.e., an amount equal to 6 months of assessments,) and

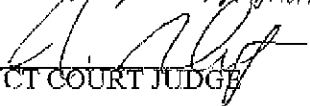
Defendant, in contravention of Sections 7.8 and 7.9 of the
Defendant's CC&RS has improperly demanded monies from Plaintiff
in order to satisfy Defendant's claimed liens or demands which
exceeded a figure equaling 6 months of assessments, thereby
violating the CC&RS.

2. NRS 116.3116(1) states what can be the subject of a homeowners' association's general
assessment lien on a unit and NRS 116.3116(2) states what the statutory limits are to the
prioritized portion of the assessment lien, i.e., that portion of a homeowners' association's

- 1 lien which, after the foreclosure of a unit's first trust deed holder, is superior to the first trust
2 deed as a matter of law (See Order entered January 19, 2012).
- 3 3. A homeowners' association's lien against a unit located within its association is contractually
4 created, perfected and noticed by the recording of the CC&RS (See NRS 116.3116(4)).
- 5 4. To the extent that provisions of CC&RS call for a lesser amount for the prioritized portion
6 of the assessment lien than does NRS 116.3116(2), the lesser amount shall be utilized as the
7 prioritized portion of the lien.
- 8 5. NRS 116.1206 states:
- 9 NRS 116.1206 Provisions of governing documents in violation of
10 chapter deemed to conform with chapter by operation of law;
11 procedure for certain amendments to governing documents.
- 12 1. Any provision contained in a declaration, bylaw or other
13 governing document of a common-interest community that violates
14 the provisions of this chapter:
- 15 (a) Shall be deemed to conform with those provisions by
16 operation of law, and any such declaration, bylaw or other governing
17 document is not required to be amended to conform to those
18 provisions.
- 19 (b) Is superseded by the provisions of this chapter, regardless of
20 whether the provision contained in the declaration, bylaw or other
21 governing document became effective before the enactment of the
22 provision of this chapter that is being violated.
- 23 6. Defendant maintains that NRS 116.3116(2) and Sections 7.8 and 7.9 are conceptually
24 separate and, in effect, create two separate liens. The Court disagrees. There is but a single
25 lien which is created, perfected and noticed by the recording of the CC&RS (See NRS
26 116.3116(4)).
- 27 7. The Court further disagrees with Defendant's position that the provisions of NRS 116.1206
28 are to the effect that lesser amounts for the prioritized portion of the Defendant's lien which
is called for by the CC&RS (Sections 7.8 and 7.9) are automatically elevated to the limits
provided for by NRS 116.3116(2) if such lesser amounts are inconsistent with what is
permitted by NRS 116.3116(2). The Court disagrees because the language of subsection (1)
of NRS 116.1206 refers to any provision in the CC&RS that " ... violates the provisions of

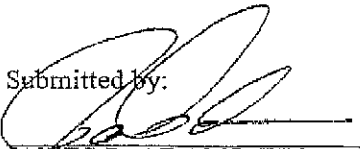
1 this chapter" The Court determines that the language in Defendant's CC&RS (Section
2 7.8 and 7.9) which calls for a lesser amount for the prioritized portion of the lien than does
3 NRS 116.3116(2) does not "violate" the statutory prioritized lien limit as provided for in
4 NRS 116.3116(2) because the amounts called for in the CC&RS do not exceed the limit
5 called for by NRS 116.3116(2), but in fact are within the limit. Thus, the amount of the
6 prioritized portion of a homeowners' association's lien as called for in CC&RS does not need
7 to rise to the maximum level as noted in NRS 116.3116(2), as a lesser amount as called for
8 in the CC&RS does not "violate" NRS 116.3116(2).

- 9 8. While the Court has ruled that interest, costs and other fees may be included in the prioritized
10 portion of the lien as long as the prioritized portion of the lien does not exceed an amount
11 equal to 6 months of assessments as noted in Section 7.8 and 7.9 of the CC&RS, at this time;
12 however, the Court is not extending its declaratory relief ruling to the specific monetary
13 amounts referenced in Plaintiff's Motion for Summary Judgment at pages 9 and 10. *for*
14 *is the Court at this time addressing issue of attorney's fees and costs allowable under NRS 18.010(2),*
was 18.010(2) or NRS 116.3116(2) without regard to superpriority. 2
IT IS SO ORDERED.

15 
16 DISTRICT COURT JUDGE

17 7/19/12
18 Date *fm*

19 Submitted by:

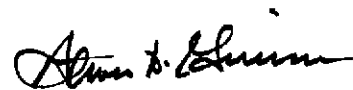
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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

IKON HOLDINGS, LLC, a Nevada limited liability
company,

Plaintiff,

vs.

HORIZONS AT SEVEN HILLS HOMEOWNERS
ASSOCIATION, and DOES 1 through 10 and ROE
ENTITIES 1 through 10 inclusive,

Defendant.

Case No: A-11-647850-C

Dept: No. 13

FINAL JUDGMENT

This matter came before the Court for trial on March 12, 2013 at 9:00 a.m. James R. Adams, Esq., of Adams Law Group, Ltd., and Puoy K. Premsrirut, Esq., of Puoy K. Premsrirut, Esq., Inc., appeared on behalf of the Plaintiff. Eric Hinckley, Esq., and Kurt Bonds, Esq., of Alverson, Taylor, Mortensen & Sanders, and Patrick Reilly, Esq., of Holland & Hart, LLP appeared on behalf of the Defendant. The Honorable Court, having considered the matter, for good cause appearing hereby enters judgment and finds as follows:

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DISTRICT COURT DEPT# 13

1 WHEREAS, Plaintiff purchased certain real estate in a common interest community as an
2 investment property at the nonjudicial foreclosure auction of the property's first trust deed holder,
3 said property being located within Defendant Horizon at Seven Hills Homeowners' Association;
4 and

5 WHEREAS, the primary issue in this case was what was the amount of Defendant's "super
6 priority" lien against Plaintiff's property which survived the foreclosure of the property's first trust
7 deed holder pursuant to NRS 116.3116(2) and Defendant's covenants, conditions and restrictions
8 ("CC&RS"); and

9 WHEREAS, it was the position of Plaintiff that the amount of such lien which survived the
10 foreclosure of the property's first trust deed holder did not exceed a figure equaling 6 months of
11 Defendant's monthly assessments based upon its periodic budget and as provided in Section 7.8 and
12 7.9 of Defendant's CC&RS; and

13 WHEREAS, it was the also the position of Plaintiff that regardless of the CC&RS, the
14 amount of Defendant's lien that survived the foreclosure of the property's first trust deed holder did
15 not exceed a figure equaling 9 months of Defendant's monthly assessments based upon its periodic
16 budget as provided in NRS 116.3116(2); and

17 WHEREAS, it was the position of the Defendant that the amount of Defendant's lien that
18 survived the foreclosure of the property's first trust deed holder was not limited to a figure equaling
19 6 or 9 months of assessments; *Defendant maintaining that the portion of the HOA lien given*

20 WHEREAS, the Court has already determined findings of fact and conclusions of law as *Superiority Status is defined with regard to a particular time*
Periodically, there being no mention in the statute of any
numerical limitation for mathematical calculations; and
21 a result of 3 prior summary judgment orders entered by the Court which are attached hereto and
22 incorporated and restated herein (Ex. 1, "1/19/2012 Order") (Ex. 2, "4/16/2012 Order") (Ex. 3,
23 "7/20/2012 Order"); and

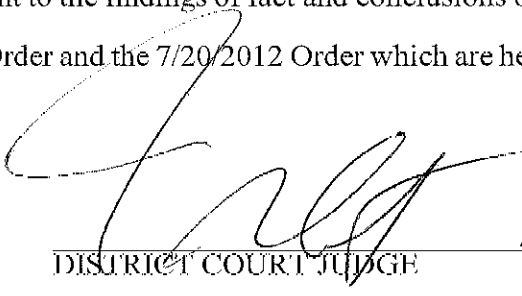
24 WHEREAS, it has been stipulated by all counsel that \$1,140.00 (a figure equaling 6 months
25 of assessments) has been tendered by Plaintiff and received by Defendant as that is the amount
26 Plaintiff alleges was due and owing under provisions contained in Defendant's CC&RS, said
27 amount being in conformance with this Court's 7/20/2012 Order (the "Payment"); and
28

1 WHEREAS, Defendant has stipulated¹ to record a "Release of Notice of Delinquent
2 Assessment Lien" which now renders moot Plaintiff's sole remaining cause of action for injunctive
3 relief;

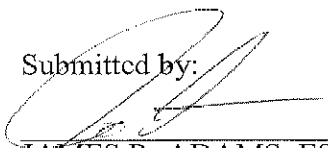
4 THE COURT, THEREFORE, DECLARES, ORDERS, ADJUDGES AND DECREES as
5 follows:

6 All claims and issues in this matter have now been fully adjudicated as evidenced by the
7 above findings, and by the findings and conclusions contained in the 1/19/2012 Order, the
8 4/16/2012 Order and the 7/20/2012 Order, and by the Payment, said amount being in conformance
9 with this Court's 7/20/2012 Order. Final judgment is hereby entered in this matter pursuant to the
10 findings stated above, and pursuant to the findings of fact and conclusions of law contained in the
11 1/19/2012 Order, the 4/16/2012 Order and the 7/20/2012 Order which are hereby incorporated and
12 restated herein.

13 **IT IS SO ADJUDGED.**

14 
15 DISTRICT COURT JUDGE

16 4/5/13
17 Date
18 FB

19 Submitted by: 

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¹Defendant stipulated to record the "Release of Notice of Delinquent Assessment Lien" solely to eliminate the need for this Court to issue a permanent injunction. Defendant advised at trial that it fully intends to appeal this Court's summary judgment orders upon the entry of this final judgment. Accordingly, its recordation of said Release does not constitute any kind of waiver of its substantive arguments for appellate purposes.

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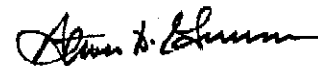
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Ex. 1



CLERK OF THE COURT

1 **ORD**

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13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 IKON HOLDINGS, LLC, a Nevada limited liability
16 company,

17 Plaintiff,

18 vs.

19 HORIZONS AT SEVEN HILLS HOMEOWNERS
20 ASSOCIATION, and DOES 1 through 10 and ROE
21 ENTITIES 1 through 10 inclusive,

22 Defendant.

Case No: A-11-647850-C
Dept: No. 13

ORDER

23 This matter came before the Court on December 12, 2011 at 9:00 a.m., upon the Plaintiff's
24 Motion for Summary Judgment on Claim of Declaratory Relief and Defendant's Counter Motion for
25 Summary Judgment on Claim of Declaratory Relief. James R. Adams, Esq., of Adams Law Group,
26 Ltd., and Puoy K. Premsrirut, Esq., of Puoy K. Premsrirut, Esq., Inc., appeared on behalf of the
27 Plaintiff. Eric Hinckley, Esq., of Alverson, Taylor, Mortensen & Sanders appeared on behalf of the
28 Defendant. The Honorable Court, having read the briefs on file and having heard oral argument, and
for good cause appearing hereby rules:

1 WHEREAS, the Court has determined that a justiciable controversy exists in this matter as
2 Plaintiff has asserted a claim of right under NRS §116.3116 (the "Super Priority Lien" statute)
3 against Defendant and Defendant has an interest in contesting said claim, the present controversy
4 is between persons or entities whose interests are adverse, both parties seeking declaratory relief
5 have a legal interest in the controversy (i.e., a legally protectible interest), and the issue involved in
6 the controversy (the meaning of NRS 116.3116) is ripe for judicial determination as between the
7 parties. *Kress v. Corey* 65 Nev. 1, 189 P.2d 352 (1948); and

8 WHEREAS Plaintiff and Defendant, the contesting parties hereto, are clearly adverse and
9 hold different views regarding the meaning and applicability of NRS §116.3116 (including whether
10 Defendant demanded from Plaintiff amounts in excess of that which is permitted under the NRS
11 §116.3116); and

12 WHEREAS Plaintiff has a legal interest in the controversy as it was Plaintiff's money which
13 had been demanded by Defendant and it was Plaintiff's property that had been the subject of a
14 homeowners' association statutory lien by Defendant; and

15 WHEREAS the issue of the meaning, application and interpretation of NRS §116.3116 is
16 ripe for determination in this case as the present controversy is real, it exists now, and it affects the
17 parties hereto; and

18 WHEREAS, therefore, the Court finds that issuing a declaratory judgment relating to the
19 meaning and interpretation of NRS §116.3116 would terminate some of the uncertainty and
20 controversy giving rise to the present proceeding; and

21 WHEREAS, pursuant to NRS §30.040 Plaintiff and Defendant are parties whose rights,
22 status or other legal relations are affected by NRS §116.3116 and they may, therefore, have
23 determined by this Court any question of construction or validity arising under NRS §116.3116 and
24 obtain a declaration of rights, status or other legal relations thereunder; and

25 WHEREAS, the Court is persuaded that Plaintiff's position is correct relative to the
26 components of the Super Priority Lien (exterior repair costs and 9 months of regular assessments)
27 and the cap relative to the regular assessments, but it is not persuaded relative to Plaintiff's position
28

1 concerning the need for a civil action to trigger a homeowners' association's entitlement to the Super
2 Priority Lien.

3 THE COURT, THEREFORE, DECLARES, ORDERS, ADJUDGES AND DECREES as
4 follows:

- 5 1. Plaintiff's Motion for Partial Summary Judgment on Declaratory Relief is granted in
6 part and Defendant's Motion for Summary Judgment on Declaratory Relief is granted
7 in part.
- 8 2. NRS §116.3116 is a statute which creates for the benefit of Nevada homeowners'
9 associations a general statutory lien against a homeowner's unit for (a) any
10 construction penalty that is imposed against the unit's owner pursuant to NRS
11 §116.310305, (b) any assessment levied against that unit, and (c) any fines imposed
12 against the unit's owner from the time the construction penalty, assessment or fine
13 becomes due (the "General Statutory Lien"). The homeowners' associations'
14 General Statutory Lien is noticed and perfected by the recording of the associations'
15 declaration and, pursuant to NRS §116.3116(4), no further recordation of any claim
16 of lien for assessment is required.
- 17 3. Pursuant to NRS §116.3116(2), the homeowners' association's General Statutory
18 Lien is junior to a first security interest on the unit recorded before the date on which
19 the assessment sought to be enforced became delinquent ("First Security Interest")
20 except for a portion of the homeowners' association's General Statutory Lien which
21 remains superior to the First Security Interest (the "Super Priority Lien").
- 22 4. Unless an association's declaration otherwise provides, any penalties, fees, charges,
23 late charges, fines and interest charged pursuant to NRS 116.3102(1)(j) to (n),
24 inclusive, are enforceable in the same manner as assessments are enforceable under
25 NRS §116.3116. Thus, while such penalties, fees, charges, late charges, fines and
26 interest are not actual "assessments," they may be enforced in the same manner as
27
28

1 assessments are enforced, i.e., by inclusion in the association's General Statutory
2 Lien against the unit.

- 3 5. Homeowners' associations, therefore, have a Super Priority Lien which has priority
4 over the First Security Interest on a homeowners' unit. However, the Super Priority
5 Lien amount is not without limits and NRS §116.3116 is clear that the amount of the
6 Super Priority Lien (which is that portion of a homeowners' associations' General
7 Statutory Lien which retains priority status over the First Security Interest) is limited
8 "to the extent" of those assessments for common expenses based upon the
9 association's adopted periodic budget that would have become due in the 9 month
10 period immediately preceding an association's institution of an action to enforce its
11 General Statutory Lien (which is 9 months of regular assessments) and "to the extent
12 of" external repair costs pursuant to NRS §116.310312.

- 13 6. The base assessment figure used in the calculation of the Super Priority Lien is the
14 unit's un-accelerated, monthly assessment figure for association common expenses
15 which is wholly determined by the homeowners association's "periodic budget," as
16 adopted by the association, and not determined by any other document or statute.
17 Thus, the phrase contained in NRS §116.3116(2) which states, "... to the extent of the
18 assessments for common expenses based on the periodic budget adopted by the
19 association pursuant to NRS 116.3115 which would have become due in the absence
20 of acceleration during the 9 months immediately preceding institution of an action
21 to enforce the lien..." means a maximum figure equaling 9 times the association's
22 regular, monthly (not annual) assessments. If assessments are paid quarterly, then 3
23 quarters of assessments (i.e., 9 months) would equal the Super Priority Lien, plus
24 external repair costs pursuant to NRS §116.310312.

- 25 7. The words "to the extent of" contained in NRS §116.3116(2) mean "no more than,"
26 which clearly indicates a maximum figure or a cap on the Super Priority Lien which
27 cannot be exceeded.
28

1 8. Thus, while assessments, penalties, fees, charges, late charges, fines and interest may
2 be included within the Super Priority Lien, in no event can the total amount of the
3 Super Priority Lien exceed an amount equaling 9 times the homeowners'
4 association's regular monthly assessment amount to unit owners for common
5 expenses based on the periodic budget which would have become due immediately
6 preceding the association's institution of an action to enforce the lien, plus external
7 repair costs pursuant to NRS 116.310312.

8 9. Further, if regulations adopted by the Federal Home Loan Mortgage Corporation or
9 the Federal National Mortgage Association require a shorter period of priority for the
10 lien (i.e., shorter than 9 months of regular assessments,) the shorter period shall be
11 used in the calculation of the Super Priority Lien, except that notwithstanding the
12 provisions of the regulations, that shorter period used in the calculation of the Super
13 Priority Lien must not be less than the 6 months immediately preceding institution
14 of an action to enforce the lien.

15 10. Moreover, ^{the need for the institution of an actual civil action} the Super Priority Lien can exist only if an "action" is instituted by the
16 association to enforce its General Statutory Lien. The term "action" as used in NRS
17 §116.3116(2) (as opposed to the term "action" as contained in NRS §116.3116(7)), does
18 not mean a "civil action" as that phrase is defined in NRCP 2 and NRCP 3 (i.e.,
19 "action" as used in NRS §116.3116(2) does not mean the filing of a complaint with
20 the court).

21 IT IS SO ORDERED.

22 DISTRICT COURT JUDGE

23 Date

24 Submitted by

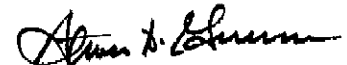
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Ex. 2


CLERK OF THE COURT

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*Attorneys for Defendants Horizons At Seven Hills
Homeowners Association*

DISTRICT COURT

CLARK COUNTY, NEVADA

IKON HOLDINGS, LLC, a Nevada limited
liability company,

Plaintiff,

vs.

HORIZONS AT SEVEN HILLS
HOMEOWNERS ASSOCIATION; and DOES
1 through 10; and ROE ENTITIES 1 through
10 inclusive,

Defendants.

Case No. : A-11-647850-B
Dept. No.: XIII

**ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

**ORDER GRANTING DEFENDANT'S
COUNTERMOTION FOR SUMMARY
JUDGMENT**

Hearing Date: March 12, 2012

Hearing Time: 9:00 a.m.

This matter came before the Court on March 12, 2012, for hearing on Plaintiff's Motion for Summary Judgment and on Defendant's Countermotion for Summary Judgment. James R. Adams, Esq. of the Adams Law Group and Puoy Premsrirut, Esq. of the law firm of Brown, Brown & Premsrirut appeared on behalf of Plaintiff Ikon Holdings, LLC ("Ikon"). Patrick J.

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DISTRICT COURT DEPT#13

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1 Reilly, Esq. of the law firm of Holland & Hart LLP and Eric W. Hinckley, Esq. of the law firm
2 of Alverson, Taylor, Mortensen, and Sanders appeared on behalf of Defendant Horizons at Seven
3 Hills Homowners Association ("Horizons"). After carefully considering the briefs and
4 arguments of counsel, this Court makes the following findings of fact and conclusions of law:

5 **I.**

6 **FINDINGS OF FACT**

7 1. On or around June 28, 2010, Scott Ludwig purchased certain real property located
8 at 950 Seven Hills Drive, Suite 1411, Henderson, Nevada 89052 (the "Property") at a foreclosure
9 sale conducted by the holder of a first deed of trust against the Property.

10 2. The Property is located within Horizons.

11 3. Horizons had previously recorded a Notice of Delinquent Assessment Lien on
12 June 17, 2009 and a Notice of Default and Election to Sell Under Homeowners Association Lien
13 on August 4, 2009. Both of these recordings occurred prior to the foreclosure sale, in the amount
14 of \$4,289.50, with the amount of the lien to increase until the amount became current.

15 4. Shortly after the foreclosure sale, on July 14, 2010, Mr. Ludwig transferred title
16 of the Property to Ikon.

17 5. On or around September 30, 2010, Horizons recorded another Notice of
18 Delinquent Assessment Lien ("Lien") against the Property.

19 6. Ikon disputed and did not pay any of the amounts demanded by Horizons.

20 7. Ikon did not begin making payments to Horizons until May 2011 when it began
21 making regular monthly assessments to the Property.

22 8. It is undisputed that, as of the date of the hearing, Ikon had not paid any amount
23 owed.

24 **II.**

25 **CONCLUSIONS OF LAW**

26 The Nevada Rules of Civil Procedure provide, in pertinent part, as follows:

27 A party against whom a claim . . . is sought may, at any
28 time, move with or without supporting affidavits for a
summary judgment in the party's favor as to all or any part

thereof . . . the judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

NRCP 56. Summary judgment must be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” NRCP 56(c). In *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005), the Nevada Supreme Court embraced the summary judgment standard set forth in seminal United States Supreme Court cases such as *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), and *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). Under this standard, summary judgment is designed to secure the just, speedy, and inexpensive determination of every action where appropriate. *Celotex*, 477 U.S. at 327.

Once the moving party demonstrates the absence of a genuine issue of material fact, the nonmoving party must show the existence of a genuine issue of material fact to avoid summary judgment. *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 172 P.3d 131, 134 (2007). Nevada law no longer allows the nonmoving party to merely raise the “slightest doubt” about the facts. *Wood*, 121 Nev. at 731, 121 P.3d at 1031. Thus, the nonmoving party cannot merely “build a case on the gossamer threads of whimsy, speculation, and conjecture.” *Id.* at 732, 121 P.3d at 1031 (quotation omitted). The nonmoving party must present *genuine* issues of *material* fact to avoid summary judgment. *Id.*, 121 P.3d at 1031.

In the instant case, Plaintiff’s causes of action beyond those for Declaratory Relief and Injunctive Relief are not sustainable under the undisputed factual scenario involved in this case. It is undisputed that Plaintiff did not pay any of the SPL amount demanded and licned by Horizons, even the amounts it concedes it owes. As a result, Plaintiff has not suffered or incurred any damages that could be recovered under the First, Second, Third, Fourth and Fifth Causes of Action pleaded in Plaintiff’s Complaint. In sum, this is not a case seeking attorney’s fees and

1 costs for a slander of title. *See Horgan v. Felton*, 123 Nev. 577, 583-86, 170 P.3d 982 (2007).
2 Further, the Court does not consider that the theories pleaded by Plaintiff have been shown to
3 involve genuine issues of material fact as to damages that are otherwise recoverable under those
4 causes of action.

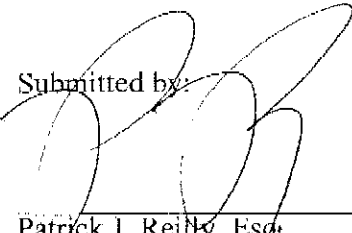
5 * * *

6 Accordingly, this Court hereby DENIES Plaintiff's Motion for Summary Judgment and
7 GRANTS Defendant's Countermotion for Summary Judgment in its entirety. This Order is
8 without prejudice to Plaintiff's effort to seek attorney's fees and costs based upon whatever
9 statutory or contractual premise that may or may not be applicable.

10 IT IS SO ORDERED.

11 DATED this 13th day of April, 2012.

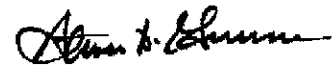
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14 DISTRICT COURT JUDGE PM

15 Submitted by: 

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28 Homeowners Association

Ex. 3



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23 **DISTRICT COURT**
24 **CLARK COUNTY, NEVADA**

25 **IKON HOLDINGS, LLC, a Nevada limited liability**
26 **company,**

27 **Plaintiff,**
28 **vs.**

29 **HORIZONS AT SEVEN HILLS HOMEOWNERS**
30 **ASSOCIATION, and DOES 1 through 10 and ROE**
31 **ENTITIES 1 through 10 inclusive,**

32 **Defendant.**

Case No: A-11-647850-C
Dept: No. 13

ORDER

33 THIS MATTER having come before the Court on June 11, 2012, for hearing on Plaintiff's
34 Motion for Summary Judgment on Declaratory Relief and on Defendant's Counter-Motion for
35 Summary Judgment. James R. Adams, Esq., of Adams Law Group, Ltd., and Puoy K. Premsrirut,
36 Esq., of Puoy K. Premsrirut, Esq., Inc., appeared on behalf of the Plaintiff. Eric Hinckley, Esq., of
37 Alverson, Taylor, Mortensen & Sanders and Patrick Reilly, Esq., of Holland & Hart appeared on
38 behalf of the Defendant. The Court, having considered the papers submitted in connection with such
39 item(s) and heard the arguments made on behalf of the parties and then taken the matter under
40 advisement for further consideration, and for good cause appearing hereby rules:

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ORD

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DISTRICT COURT

CLARK COUNTY, NEVADA

IKON HOLDINGS, LLC, a Nevada limited liability
company,

Plaintiff,

vs.

HORIZONS AT SEVEN HILLS HOMEOWNERS
ASSOCIATION, and DOES 1 through 10 and ROE
ENTITIES 1 through 10 inclusive,

Defendant.

Case No: A-11-647850-C
Dept: No. 13

ORDER

THIS MATTER having come before the Court on June 11, 2012, for hearing on Plaintiff's Motion for Summary Judgment on Declaratory Relief and on Defendant's Counter-Motion for Summary Judgment. James R. Adams, Esq., of Adams Law Group, Ltd., and Puoy K. Premsrirut, Esq., of Puoy K. Premsrirut, Esq., Inc., appeared on behalf of the Plaintiff. Eric Hinckley, Esq., of Alverson, Taylor, Mortensen & Sanders and Patrick Reilly, Esq., of Holland & Hart appeared on behalf of the Defendant. The Court, having considered the papers submitted in connection with such item(s) and heard the arguments made on behalf of the parties and then taken the matter under advisement for further consideration, and for good cause appearing hereby rules:

1 WHEREAS, on 7/6/2005, Defendant, a Nevada homeowners' association, recorded in the
2 Clark County, Nevada, Recorder's Office, the Declaration of Covenants Conditions & Restrictions
3 and Reservations of Easements for Horizon at Seven Hills Homeowners Association ("CC&RS");
4 and

5 WHEREAS, on 6/28/2010, Scott M. Ludwig purchased APN 177-35-610-137 (the "Unit")
6 at a foreclosure auction of the prior owner's first mortgage lender ("6/28/2010 Foreclosure
7 Auction"); and

8 WHEREAS, the Unit is located with Defendant homeowners' association; and

9 WHEREAS, on 7/14/2010, Scott M. Ludwig transferred the Unit by quit claim deed to
10 Plaintiff ("Ikon Deed"); and

11 WHEREAS, on 9/30/2010 Defendant filed a Notice of Delinquent Assessment Lien against
12 Plaintiff and the Unit for \$6,050.14 ("Notice of Delinquent Assessment Lien"); and

13 WHEREAS, on 10/18/2010 Defendant sent Plaintiff a letter stating, "Per your request, the
14 current balance for the above property is \$6,287.94." (the "10/18/10 Collection Letter"); and

15 WHEREAS, pursuant to the spreadsheet of fees and costs attached to the 10/18/10 Collection
16 Letter, Defendant's monthly assessments were \$190.00; and

17 WHEREAS, the Unit, being located within Defendant homeowners' association, is subject
18 to NRS 116 (Common Interest Ownership Uniform Act) and the CC&RS; and

19 WHEREAS, the Court has determined that a justiciable controversy exists in this matter as
20 Plaintiff has asserted a claim of right against Defendant under NRS §116.3116 and Sections 7.8 and
21 7.9 of the Defendant's CC&RS and Defendant has an interest in contesting said claim, the present
22 controversy is between persons or entities whose interests are adverse, both parties seeking
23 declaratory relief have a legal interest in the controversy (i.e., a legally protectible interest), and the
24 issue involved in the controversy (the meaning and application of NRS 116.3116 and of Sections 7.8
25 and 7.9 of the CC&RS) is ripe for judicial determination as between the parties. *Kress v. Corey* 65
26 *Nev. 1, 189 P.2d 352 (1948)*; and

1 WHEREAS, Plaintiff and Defendant, the contesting parties hereto, are clearly adverse and
2 hold different views regarding the meaning and applicability of Sections 7.8 and 7.9 of the CC&RS
3 in that Plaintiff maintains that Sections 7.8 and 7.9 of the CC&RS call for a limit on Defendant's
4 prioritized portion of its homeowners' association lien on Plaintiff's Unit to the extent of an amount
5 equal to 6 months of assessments (i.e., "The lien of the assessments, including interest and costs,
6 shall be subordinate to the lien of any First Mortgage upon the Unit (except to the extent of Annual
7 Assessments which would have become due in the absence of acceleration during the six (6) months
8 immediately preceding institution of an action to enforce the lien)") and further maintains that
9 Sections 7.8 and 7.9 of the CC&RS do not violate the statutory lien limit as noted in NRS
10 116.3116(2) as the CC&RS call for a lesser amount for the prioritized portion of the lien than does
11 NRS 116.3116(2). Conversely, Defendant maintains there are either two prioritized liens (one
12 contractual and one statutory) and/or that Sections 7.8 and 7.9 of Defendant's CC&RS violate NRS
13 116.3116(2) in that Sections 7.8 and 7.9 call for a lesser amount for the prioritized portion of the lien
14 than does NRS 116.3116(2) and, therefore, the prioritized portion of Defendant's lien must equal
15 the greater amount as noted in NRS 116.3116(2); and

16 WHEREAS, Plaintiff has a legal interest in the controversy as it was Plaintiff's money which
17 had been demanded by Defendant and it was Plaintiff's Unit that had been the subject of a
18 homeowners' association assessment lien by Defendant; and

19 WHEREAS the issue of the meaning, application and interpretation of Sections 7.8 and 7.9
20 of the CC&RS in conjunction with NRS §116.3116 is ripe for determination in this case as the
21 present controversy is real, it exists now, and it affects the parties hereto; and

22 WHEREAS, therefore, the Court finds that issuing a declaratory judgment relating to the
23 meaning and interpretation of Sections 7.8 and 7.9 of the CC&RS in conjunction with NRS
24 §116.3116 would terminate some of the uncertainty and controversy giving rise to the present
25 proceeding; and

26 WHEREAS, pursuant to NRS §30.040 Plaintiff and Defendant are parties whose rights,
27 status or other legal relations are affected by Sections 7.8 and 7.9 of the CC&RS and they may,
28

1 therefore, have determined by this Court any question of construction or validity arising under said
2 Sections and obtain a declaration of rights, status or other legal relations thereunder; and

3 WHEREAS, regarding priority of homeowner association assessment liens, Section 7.8 and
4 7.9 of the CC&RS state the following:

5 Section 7.8 Mortgagee Protection. Notwithstanding all other
6 provisions hereof, no lien created under this Article 7, nor the
7 enforcement of any provision of this Declaration shall defeat or
8 render invalid the rights of the Beneficiary under any Recorded First
9 Deed of Trust encumbering a Unit, made in good faith and for value;
10 provided that after such Beneficiary or some other Person obtains title
11 to such Unit by judicial foreclosure, other foreclosure, or exercise of
12 power of sale, such Unit shall remain subject to this Declaration and
13 the payment of all installments of assessments accruing subsequent
14 to the date such Beneficiary or other Person obtains title, subject to
15 the following. The lien of the assessments, including interest and
16 costs, shall be subordinate to the lien of any First Mortgage upon
17 the Unit (except to the extent of Annual Assessments which would
18 have become due in the absence of acceleration during the six (6)
19 months immediately preceding institution of an action to enforce
20 the lien). The release or discharge of any lien for unpaid assessments
21 by reason of the foreclosure or exercise of power of sale by the First
22 Mortgagee shall not relieve the prior Owner of his personal obligation
23 for the payment of such unpaid assessments.

24 Section 7.9 Priority of Assessment Lien. Recording of the
25 Declaration constitutes Record notice and perfection of a lien for
26 assessments. A lien for assessments, including interest, costs, and
27 attorneys' fees, as provided for herein, shall be prior to all other
28 liens and encumbrances on a Unit, except for: (a) liens and
encumbrances Recorded before the Declaration was Recorded; (b) a
first Mortgage Recorded before the delinquency of the
assessment sought to be enforced (except to the extent of Annual
Assessments which would have become due in the absence of
acceleration during the six (6) months immediately preceding
institution of an action to enforce the lien), and (c) liens for real
estate taxes and other governmental charges, and is otherwise subject
to NRS § 116.3116. The sale or transfer of any Unit shall not affect
an assessment lien. However, subject to foregoing provision of this
Section 7.9, the sale or transfer of any Unit pursuant to judicial or
non-judicial foreclosure of a First Mortgage shall extinguish the lien
of such assessment as to payments which became due prior to such
sale or transfer. No sale or transfer shall relieve such Unit from lien
rights for any assessments which thereafter become due. Where the
Beneficiary of a First Mortgage of Record or other purchaser of
a Unit obtains title pursuant to a judicial or nonjudicial
foreclosure or "deed in lieu thereof," the Person who obtains title
and his or her successors and assigns shall not be liable for the
share of the Common Expenses or assessments by the Association
chargeable to such Unit which became due prior to the

1 acquisition of title to such Unit by such Person (except to the
2 extent of Annual Assessments which would have become due in
3 the absence of acceleration during the six (6) months immediately
4 preceding institution of an action to enforce the lien). Such
5 unpaid share of Common Expenses and assessments shall be
6 deemed to become expenses collectible from all of the Units,
7 including the Unit belonging to such Person and his or her
8 successors and assigns.

9 WHEREAS, the Court is persuaded that Plaintiff's position is correct relative to the
10 component and ceiling issues contained in its Motion relating to Sections 7.8 and 7.9 of the CC&RS
11 in that pursuant to said Sections, Defendant's prioritized portion of its lien may include assessments
12 and "... interest, costs, and attorneys' fees..." but, pursuant to Sections 7.8 and 7.9 of the CC&RS,
13 is only prior to the first mortgage holder, "... to the extent of Annual Assessments which would have
14 become due in the absence of acceleration during the six (6) months immediately preceding
15 institution of an action to enforce the lien...."

16 THE COURT, THEREFORE, DECLARES, ORDERS, ADJUDGES AND DECREES as
17 follows:

- 18 1. Defendant's Counter-Motion for Summary Judgment is DENIED and Plaintiff's Motion for
19 Partial Summary Judgment on Declaratory Relief is GRANTED IN PART to the extent that
20 it seeks the following declarations:

21 Defendant, in contravention of Nevada Revised Statutes §116.3116,
22 has unlawfully demanded from Plaintiff amounts in excess of the
23 Supcr Priority Lien to which it has no legal entitlement.

24 Pursuant to Sections 7.8 and 7.9 of the Defendant's CC&RS,
25 Defendant's lien was junior to the first security interest of the Unit's
26 first mortgage lender except for a certain, limited and specified
27 portion of the lien as defined in Sections 7.8 and 7.9 of the CC&RS
28 (i.e., an amount equal to 6 months of assessments,) and

 Defendant, in contravention of Sections 7.8 and 7.9 of the
 Defendant's CC&RS has improperly demanded monies from Plaintiff
 in order to satisfy Defendant's claimed liens or demands which
 exceeded a figure equaling 6 months of assessments, thereby
 violating the CC&RS.

2. NRS 116.3116(1) states what can be the subject of a homeowners' association's general
 assessment lien on a unit and NRS 116.3116(2) states what the statutory limits are to the
 prioritized portion of the assessment lien, i.e., that portion of a homeowners' association's

1 lien which, after the foreclosure of a unit's first trust deed holder, is superior to the first trust
2 deed as a matter of law (See Order entered January 19, 2012).

3 3. A homeowners' association's lien against a unit located within its association is contractually
4 created, perfected and noticed by the recording of the CC&RS (See NRS 116.3116(4)).

5 4. To the extent that provisions of CC&RS call for a lesser amount for the prioritized portion
6 of the assessment lien than does NRS 116.3116(2), the lesser amount shall be utilized as the
7 prioritized portion of the lien.

8 5. NRS 116.1206 states:

9 NRS 116.1206 Provisions of governing documents in violation of
10 chapter deemed to conform with chapter by operation of law;
procedure for certain amendments to governing documents.

11 1. Any provision contained in a declaration, bylaw or other
12 governing document of a common-interest community that violates
the provisions of this chapter:

13 (a) Shall be deemed to conform with those provisions by
14 operation of law, and any such declaration, bylaw or other governing
document is not required to be amended to conform to those
15 provisions.

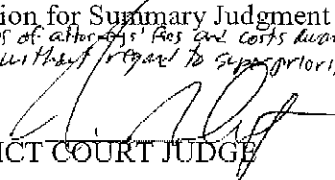
16 (b) Is superseded by the provisions of this chapter, regardless of
17 whether the provision contained in the declaration, bylaw or other
governing document became effective before the enactment of the
provision of this chapter that is being violated.

18 6. Defendant maintains that NRS 116.3116(2) and Sections 7.8 and 7.9 are conceptually
19 separate and, in effect, create two separate liens. The Court disagrees. There is but a single
20 lien which is created, perfected and noticed by the recording of the CC&RS (See NRS
21 116.3116(4)).

22 7. The Court further disagrees with Defendant's position that the provisions of NRS 116.1206
23 are to the effect that lesser amounts for the prioritized portion of the Defendant's lien which
24 is called for by the CC&RS (Sections 7.8 and 7.9) are automatically elevated to the limits
25 provided for by NRS 116.3116(2) if such lesser amounts are inconsistent with what is
26 permitted by NRS 116.3116(2). The Court disagrees because the language of subsection (1)
27 of NRS 116.1206 refers to any provision in the CC&RS that " ... violates the provisions of
28

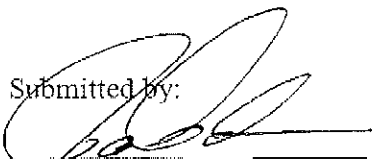
1 this chapter" The Court determines that the language in Defendant's CC&RS (Section
2 7.8 and 7.9) which calls for a lesser amount for the prioritized portion of the lien than does
3 NRS 116.3116(2) does not "violate" the statutory prioritized lien limit as provided for in
4 NRS 116.3116(2) because the amounts called for in the CC&RS do not exceed the limit
5 called for by NRS 116.3116(2), but in fact are within the limit. Thus, the amount of the
6 prioritized portion of a homeowners' association's lien as called for in CC&RS does not need
7 to rise to the maximum level as noted in NRS 116.3116(2), as a lesser amount as called for
8 in the CC&RS does not "violate" NRS 116.3116(2).

- 9 8. While the Court has ruled that interest, costs and other fees may be included in the prioritized
10 portion of the lien as long as the prioritized portion of the lien does not exceed an amount
11 equal to 6 months of assessments as noted in Section 7.8 and 7.9 of the CC&RS, at this time;
12 however, the Court is not extending its declaratory relief ruling to the specific monetary
13 amounts referenced in Plaintiff's Motion for Summary Judgment at pages 9 and 10. *For*
14 *is the Court at this time addressing issues of attorney's fees and costs pursuant to NRS 18.010(2),*
NRS 18.010(2), or NRS 116.3116(7) without regard to superpriority? 2-
IT IS SO ORDERED.

15 
16 DISTRICT COURT JUDGE

17 Date 7/19/12
18 *pm*

19 Submitted by:

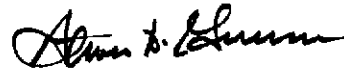
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11 Attorney for Plaintiff

7 EIGHTH JUDICIAL DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 IKON HOLDINGS, LLC, a Nevada limited
10 liability company,

11 Plaintiff,

12 vs.

13 HORIZONS AT SEVEN HILLS
14 HOMEOWNERS ASSOCIATION, and
15 DOES 1 through 10 and ROE ENTITIES 1
16 through 10 inclusive,

17 Defendant.

Case No.: A-11-647850-C


Dept. No.: 13

**NOTICE OF ENTRY OF FINAL
JUDGMENT.**

17 PLEASE TAKE NOTICE that on the 1st of May, 2013 a NOTICE of ENTRY of FINAL
18 JUDGMENT was entered in the above referenced matter, a copy of which is attached hereto.

19 Dated this 6 of May, 2013.

20 ADAMS LAW GROUP, LTD.

21
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28 Las Vegas, Nevada 89117
Attorneys for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 6 day of May 2013, a copy of the NOTICE
3 OF ENTRY of FINAL JUDGMENT was served on the following party by:

4

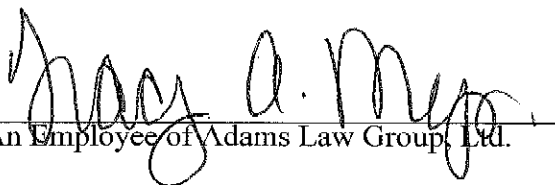
5 X	Placing an original or true copy thereof in a sealed enveloped place for collection and mailing in the United States Mail, at Las Vegas, Nevada, postage paid, following the ordinary business practices;
6	Hand Delivery
7	Facsimile
8	Overnight Delivery
	Certified Mail, Return Receipt Requested.
	Electronic Mailing or Email, Delivery Receipt Requested

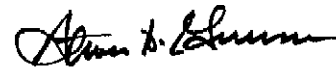
9

10 addressed as follows:

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14 Kurt Bonds, Esq.
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20 An Employee of Adams Law Group, Ltd.
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DISTRICT COURT
CLARK COUNTY, NEVADA

IKON HOLDINGS, LLC, a Nevada limited liability
company,

Plaintiff,

vs.

HORIZONS AT SEVEN HILLS HOMEOWNERS
ASSOCIATION, and DOES 1 through 10 and ROE
ENTITIES 1 through 10 inclusive,

Defendant.

Case No: A-11-647850-C
Dept: No. 13

FINAL JUDGMENT

This matter came before the Court for trial on March 12, 2013 at 9:00 a.m. James R. Adams, Esq., of Adams Law Group, Ltd., and Puoy K. Premsrirut, Esq., of Puoy K. Premsrirut, Esq., Inc., appeared on behalf of the Plaintiff. Eric Hinckley, Esq., and Kurt Bonds, Esq., of Alverson, Taylor, Mortensen & Sanders, and Patrick Reilly, Esq., of Holland & Hart, LLP appeared on behalf of the Defendant. The Honorable Court, having considered the matter, for good cause appearing hereby enters judgment and finds as follows:

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DISTRICT COURT DEPT# 13

1 WHEREAS, Plaintiff purchased certain real estate in a common interest community as an
2 investment property at the nonjudicial foreclosure auction of the property's first trust deed holder,
3 said property being located within Defendant Horizon at Seven Hills Homeowners' Association;
4 and

5 WHEREAS, the primary issue in this case was what was the amount of Defendant's "super
6 priority" lien against Plaintiff's property which survived the foreclosure of the property's first trust
7 deed holder pursuant to NRS 116.3116(2) and Defendant's covenants, conditions and restrictions
8 ("CC&RS"); and

9 WHEREAS, it was the position of Plaintiff that the amount of such lien which survived the
10 foreclosure of the property's first trust deed holder did not exceed a figure equaling 6 months of
11 Defendant's monthly assessments based upon its periodic budget and as provided in Section 7.8 and
12 7.9 of Defendant's CC&RS; and

13 WHEREAS, it was the also the position of Plaintiff that regardless of the CC&RS, the
14 amount of Defendant's lien that survived the foreclosure of the property's first trust deed holder did
15 not exceed a figure equaling 9 months of Defendant's monthly assessments based upon its periodic
16 budget as provided in NRS 116.3116(2); and

17 WHEREAS, it was the position of the Defendant that the amount of Defendant's lien that
18 survived the foreclosure of the property's first trust deed holder was not limited to a figure equaling
19 6 or 9 months of assessments; *Defendant maintaining that the portion of the lien given*

20 WHEREAS, the Court has already determined findings of fact and conclusions of law as *Superiority Status is defined with regard to a particular time*
period only, there being no mention in the statute of any
numerical limitation or mathematical calculation; and
21 a result of 3 prior summary judgment orders entered by the Court which are attached hereto and
22 incorporated and restated herein (Ex. 1, "1/19/2012 Order") (Ex. 2, "4/16/2012 Order") (Ex. 3,
23 "7/20/2012 Order"); and

24 WHEREAS, it has been stipulated by all counsel that \$1,140.00 (a figure equaling 6 months
25 of assessments) has been tendered by Plaintiff and received by Defendant as that is the amount
26 Plaintiff alleges was due and owing under provisions contained in Defendant's CC&RS, said
27 amount being in conformance with this Court's 7/20/2012 Order (the "Payment"); and
28

1 WHEREAS, Defendant has stipulated¹ to record a "Release of Notice of Delinquent
2 Assessment Lien" which now renders moot Plaintiff's sole remaining cause of action for injunctive
3 relief;

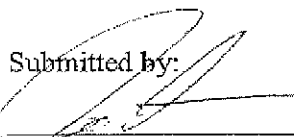
4 THE COURT, THEREFORE, DECLARES, ORDERS, ADJUDGES AND DECREES as
5 follows:

6 All claims and issues in this matter have now been fully adjudicated as evidenced by the
7 above findings, and by the findings and conclusions contained in the 1/19/2012 Order, the
8 4/16/2012 Order and the 7/20/2012 Order, and by the Payment, said amount being in conformance
9 with this Court's 7/20/2012 Order. Final judgment is hereby entered in this matter pursuant to the
10 findings stated above, and pursuant to the findings of fact and conclusions of law contained in the
11 1/19/2012 Order, the 4/16/2012 Order and the 7/20/2012 Order which are hereby incorporated and
12 restated herein.

13 IT IS SO ADJUDGED.

14 
DISTRICT COURT JUDGE

4/5/13
Date
JB

16
17 Submitted by: 

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26 ¹Defendant stipulated to record the "Release of Notice of Delinquent Assessment Lien"
27 solely to eliminate the need for this Court to issue a permanent injunction. Defendant advised at
28 trial that it fully intends to appeal this Court's summary judgment orders upon the entry of this
final judgment. Accordingly, its recordation of said Release does not constitute any kind of
waiver of its substantive arguments for appellate purposes.

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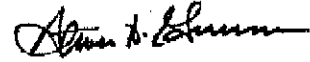
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Ex. 1



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DISTRICT COURT
CLARK COUNTY, NEVADA

IKON HOLDINGS, LLC, a Nevada limited liability
company,

Plaintiff,

vs.

HORIZONS AT SEVEN HILLS HOMEOWNERS
ASSOCIATION, and DOES 1 through 10 and ROE
ENTITIES 1 through 10 inclusive,

Defendant.

Case No: A-11-647850-C
Dept: No. 13

ORDER

This matter came before the Court on December 12, 2011 at 9:00 a.m., upon the Plaintiff's Motion for Summary Judgment on Claim of Declaratory Relief and Defendant's Counter Motion for Summary Judgment on Claim of Declaratory Relief. James R. Adams, Esq., of Adams Law Group, Ltd., and Puoy K. Premsrirut, Esq., of Puoy K. Premsrirut, Esq., Inc., appeared on behalf of the Plaintiff. Eric Hinckley, Esq., of Alverson, Taylor, Mortensen & Sanders appeared on behalf of the Defendant. The Honorable Court, having read the briefs on file and having heard oral argument, and for good cause appearing hereby rules:

1 WHEREAS, the Court has determined that a justiciable controversy exists in this matter as
2 Plaintiff has asserted a claim of right under NRS §116.3116 (the "Super Priority Lien" statute)
3 against Defendant and Defendant has an interest in contesting said claim, the present controversy
4 is between persons or entities whose interests are adverse, both parties seeking declaratory relief
5 have a legal interest in the controversy (i.e., a legally protectible interest), and the issue involved in
6 the controversy (the meaning of NRS 116.3116) is ripe for judicial determination as between the
7 parties. *Kress v. Corey* 65 Nev. 1, 189 P.2d 352 (1948); and

8 WHEREAS Plaintiff and Defendant, the contesting parties hereto, are clearly adverse and
9 hold different views regarding the meaning and applicability of NRS §116.3116 (including whether
10 Defendant demanded from Plaintiff amounts in excess of that which is permitted under the NRS
11 §116.3116); and

12 WHEREAS Plaintiff has a legal interest in the controversy as it was Plaintiff's money which
13 had been demanded by Defendant and it was Plaintiff's property that had been the subject of a
14 homeowners' association statutory lien by Defendant; and

15 WHEREAS the issue of the meaning, application and interpretation of NRS §116.3116 is
16 ripe for determination in this case as the present controversy is real, it exists now, and it affects the
17 parties hereto; and

18 WHEREAS, therefore, the Court finds that issuing a declaratory judgment relating to the
19 meaning and interpretation of NRS §116.3116 would terminate some of the uncertainty and
20 controversy giving rise to the present proceeding; and

21 WHEREAS, pursuant to NRS §30.040 Plaintiff and Defendant are parties whose rights,
22 status or other legal relations are affected by NRS §116.3116 and they may, therefore, have
23 determined by this Court any question of construction or validity arising under NRS §116.3116 and
24 obtain a declaration of rights, status or other legal relations thereunder; and

25 WHEREAS, the Court is persuaded that Plaintiff's position is correct relative to the
26 components of the Super Priority Lien (exterior repair costs and 9 months of regular assessments)
27 and the cap relative to the regular assessments, but it is not persuaded relative to Plaintiff's position
28

1 concerning the need for a civil action to trigger a homeowners' association's entitlement to the Super
2 Priority Lien.

3 THE COURT, THEREFORE, DECLARES, ORDERS, ADJUDGES AND DECREES as
4 follows:

- 5 1. Plaintiff's Motion for Partial Summary Judgment on Declaratory Relief is granted in
6 part and Defendant's Motion for Summary Judgment on Declaratory Relief is granted
7 in part.
- 8 2. NRS §116.3116 is a statute which creates for the benefit of Nevada homeowners'
9 associations a general statutory lien against a homeowner's unit for (a) any
10 construction penalty that is imposed against the unit's owner pursuant to NRS
11 §116.310305, (b) any assessment levied against that unit, and (c) any fines imposed
12 against the unit's owner from the time the construction penalty, assessment or fine
13 becomes due (the "General Statutory Lien"). The homeowners' associations'
14 General Statutory Lien is noticed and perfected by the recording of the associations'
15 declaration and, pursuant to NRS §116.3116(4), no further recordation of any claim
16 of lien for assessment is required.
- 17 3. Pursuant to NRS §116.3116(2), the homeowners' association's General Statutory
18 Lien is junior to a first security interest on the unit recorded before the date on which
19 the assessment sought to be enforced became delinquent ("First Security Interest")
20 except for a portion of the homeowners' association's General Statutory Lien which
21 remains superior to the First Security Interest (the "Super Priority Lien").
- 22 4. Unless an association's declaration otherwise provides, any penalties, fees, charges,
23 late charges, fines and interest charged pursuant to NRS 116.3102(1)(j) to (n),
24 inclusive, are enforceable in the same manner as assessments are enforceable under
25 NRS §116.3116. Thus, while such penalties, fees, charges, late charges, fines and
26 interest are not actual "assessments," they may be enforced in the same manner as
27
28

1 assessments are enforced, i.e., by inclusion in the association's General Statutory
2 Lien against the unit.

- 3 5. Homeowners' associations, therefore, have a Super Priority Lien which has priority
4 over the First Security Interest on a homeowners' unit. However, the Super Priority
5 Lien amount is not without limits and NRS §116.3116 is clear that the amount of the
6 Super Priority Lien (which is that portion of a homeowners' associations' General
7 Statutory Lien which retains priority status over the First Security Interest) is limited
8 "to the extent" of those assessments for common expenses based upon the
9 association's adopted periodic budget that would have become due in the 9 month
10 period immediately preceding an association's institution of an action to enforce its
11 General Statutory Lien (which is 9 months of regular assessments) and "to the extent
12 of" external repair costs pursuant to NRS §116.310312.

- 13 6. The base assessment figure used in the calculation of the Super Priority Lien is the
14 unit's un-accelerated, monthly assessment figure for association common expenses
15 which is wholly determined by the homeowners association's "periodic budget," as
16 adopted by the association, and not determined by any other document or statute.
17 Thus, the phrase contained in NRS §116.3116(2) which states, "... to the extent of the
18 assessments for common expenses based on the periodic budget adopted by the
19 association pursuant to NRS 116.3115 which would have become due in the absence
20 of acceleration during the 9 months immediately preceding institution of an action
21 to enforce the lien..." means a maximum figure equaling 9 times the association's
22 regular, monthly (not annual) assessments. If assessments are paid quarterly, then 3
23 quarters of assessments (i.e., 9 months) would equal the Super Priority Lien, plus
24 external repair costs pursuant to NRS §116.310312.


- 25 7. The words "to the extent of" contained in NRS §116.3116(2) mean "no more than,"
26 which clearly indicates a maximum figure or a cap on the Super Priority Lien which
27 cannot be exceeded.
28

1 8. Thus, while assessments, penalties, fees, charges, late charges, fines and interest may
2 be included within the Super Priority Lien, in no event can the total amount of the
3 Super Priority Lien exceed an amount equaling 9 times the homeowners'
4 association's regular monthly assessment amount to unit owners for common
5 expenses based on the periodic budget which would have become due immediately
6 preceding the association's institution of an action to enforce the lien, plus external
7 repair costs pursuant to NRS 116.310312.

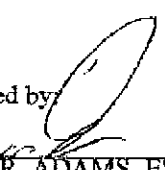
8 9. Further, if regulations adopted by the Federal Home Loan Mortgage Corporation or
9 the Federal National Mortgage Association require a shorter period of priority for the
10 lien (i.e., shorter than 9 months of regular assessments,) the shorter period shall be
11 used in the calculation of the Super Priority Lien, except that notwithstanding the
12 provisions of the regulations, that shorter period used in the calculation of the Super
13 Priority Lien must not be less than the 6 months immediately preceding institution
14 of an action to enforce the lien.

15 10. Moreover, ^{the need for the institution of an actual civil action} the Super Priority Lien can exist only if an "action" is instituted by the
16 association to enforce its General Statutory Lien. The term "action" as used in NRS
17 §116.3116(2) (as opposed to the term "action" as contained in NRS §116.3116(7)), does
18 not mean a "civil action" as that phrase is defined in NRCP 2 and NRCP 3 (i.e.,
19 "action" as used in NRS §116.3116(2) does not mean the filing of a complaint with
20 the court).

21 IT IS SO ORDERED.

22  1/12/12
DISTRICT COURT JUDGE

Date

23
24
25 Submitted by 

26 JAMES R. ADAMS, ESQ.
27 Nevada Bar No. 6874
28 ASSLY SAYYAR, ESQ.

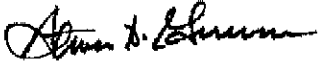
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Ex. 2



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*Attorneys for Defendants Horizons At Seven Hills
Homeowners Association*

DISTRICT COURT

CLARK COUNTY, NEVADA

IKON HOLDINGS, LLC, a Nevada limited
liability company,

Plaintiff,

vs.

HORIZONS AT SEVEN HILLS
HOMEOWNERS ASSOCIATION; and DOES
1 through 10; and ROE ENTITIES 1 through
10 inclusive,

Defendants.

Case No. : A-11-647850-B
Dept. No.: XIII

**ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

**ORDER GRANTING DEFENDANT'S
COUNTERMOTION FOR SUMMARY
JUDGMENT**

Hearing Date: March 12, 2012

Hearing Time: 9:00 a.m.

This matter came before the Court on March 12, 2012, for hearing on Plaintiff's Motion for Summary Judgment and on Defendant's Countermotion for Summary Judgment. James R. Adams, Esq. of the Adams Law Group and Puoy Premsrirut, Esq. of the law firm of Brown, Brown & Premsrirut appeared on behalf of Plaintiff Ikon Holdings, LLC ("Ikon"). Patrick J.

Holland & Hart LLP
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APR 12 2012

DISTRICT COURT DEPT# 13

1 Reilly, Esq. of the law firm of Holland & Hart LLP and Eric W. Hinckley, Esq. of the law firm
2 of Alverson, Taylor, Mortensen, and Sanders appeared on behalf of Defendant Horizons at Seven
3 Hills Homeowners Association ("Horizons"). After carefully considering the briefs and
4 arguments of counsel, this Court makes the following findings of fact and conclusions of law:

5 **I.**

6 **FINDINGS OF FACT**

7 1. On or around June 28, 2010, Scott Ludwig purchased certain real property located
8 at 950 Seven Hills Drive, Suite 1411, Henderson, Nevada 89052 (the "Property") at a foreclosure
9 sale conducted by the holder of a first deed of trust against the Property.

10 2. The Property is located within Horizons.

11 3. Horizons had previously recorded a Notice of Delinquent Assessment Lien on
12 June 17, 2009 and a Notice of Default and Election to Sell Under Homeowners Association Lien
13 on August 4, 2009. Both of these recordings occurred prior to the foreclosure sale, in the amount
14 of \$4,289.50, with the amount of the lien to increase until the amount became current.

15 4. Shortly after the foreclosure sale, on July 14, 2010, Mr. Ludwig transferred title
16 of the Property to Ikon.

17 5. On or around September 30, 2010, Horizons recorded another Notice of
18 Delinquent Assessment Lien ("Lien") against the Property.

19 6. Ikon disputed and did not pay any of the amounts demanded by Horizons.

20 7. Ikon did not begin making payments to Horizons until May 2011 when it began
21 making regular monthly assessments to the Property.

22 8. It is undisputed that, as of the date of the hearing, Ikon had not paid any amount
23 owed.

24 **II.**

25 **CONCLUSIONS OF LAW**

26 The Nevada Rules of Civil Procedure provide, in pertinent part, as follows:

27 A party against whom a claim . . . is sought may, at any
28 time, move with or without supporting affidavits for a
summary judgment in the party's favor as to all or any part

thereof . . . the judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

NRCP 56. Summary judgment must be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." NRCP 56(c). In *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005), the Nevada Supreme Court embraced the summary judgment standard set forth in seminal United States Supreme Court cases such as *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), and *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). Under this standard, summary judgment is designed to secure the just, speedy, and inexpensive determination of every action where appropriate. *Celotex*, 477 U.S. at 327.

Once the moving party demonstrates the absence of a genuine issue of material fact, the nonmoving party must show the existence of a genuine issue of material fact to avoid summary judgment. *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 172 P.3d 131, 134 (2007). Nevada law no longer allows the nonmoving party to merely raise the "slightest doubt" about the facts. *Wood*, 121 Nev. at 731, 121 P.3d at 1031. Thus, the nonmoving party cannot merely "build a case on the gossamer threads of whimsy, speculation, and conjecture." *Id.* at 732, 121 P.3d at 1031 (quotation omitted). The nonmoving party must present *genuine* issues of *material* fact to avoid summary judgment. *Id.*, 121 P.3d at 1031.

In the instant case, Plaintiff's causes of action beyond those for Declaratory Relief and Injunctive Relief are not sustainable under the undisputed factual scenario involved in this case. It is undisputed that Plaintiff did not pay any of the SPL amount demanded and lien by Horizons, even the amounts it concedes it owes. As a result, Plaintiff has not suffered or incurred any damages that could be recovered under the First, Second, Third, Fourth and Fifth Causes of Action pleaded in Plaintiff's Complaint. In sum, this is not a case seeking attorney's fees and

1 costs for a slander of title. *See Horgan v. Felton*, 123 Nev. 577, 583-86, 170 P.3d 982 (2007).
2 Further, the Court does not consider that the theories pleaded by Plaintiff have been shown to
3 involve genuine issues of material fact as to damages that are otherwise recoverable under those
4 causes of action.

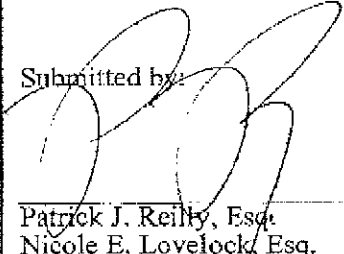
5 * * *

6 Accordingly, this Court hereby DENIES Plaintiff's Motion for Summary Judgment and
7 GRANTS Defendant's Countermotion for Summary Judgment in its entirety. This Order is
8 without prejudice to Plaintiff's effort to seek attorney's fees and costs based upon whatever
9 statutory or contractual premise that may or may not be applicable.

10 IT IS SO ORDERED.

11 DATED this 13th day of April, 2012.

12
13 
14 DISTRICT COURT JUDGE 

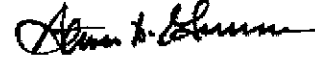
15 Submitted by: 

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Ex. 3



CLERK OF THE COURT

1 **ORD**
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22 Attorneys for Plaintiff

23 **DISTRICT COURT**
24 **CLARK COUNTY, NEVADA**

25 IKON HOLDINGS, LLC, a Nevada limited liability
26 company,

27 Plaintiff,

28 vs.

29 HORIZONS AT SEVEN HILLS HOMEOWNERS
30 ASSOCIATION, and DOES 1 through 10 and ROE
31 ENTITIES 1 through 10 inclusive,

32 Defendant.

Case No: A-11-647850-C
Dept: No. 13

ORDER

33 THIS MATTER having come before the Court on June 11, 2012, for hearing on Plaintiff's
34 Motion for Summary Judgment on Declaratory Relief and on Defendant's Counter-Motion for
35 Summary Judgment. James R. Adams, Esq., of Adams Law Group, Ltd., and Puoy K. Premsrirut,
36 Esq., of Puoy K. Premsrirut, Esq., Inc., appeared on behalf of the Plaintiff. Eric Hinckley, Esq., of
37 Alverson, Taylor, Mortensen & Sanders and Patrick Reilly, Esq., of Holland & Hart appeared on
38 behalf of the Defendant. The Court, having considered the papers submitted in connection with such
item(s) and heard the arguments made on behalf of the parties and then taken the matter under
advisement for further consideration, and for good cause appearing hereby rules:

RECEIVED

JUL 17 2012

DISTRICT COURT DEPT# 13 9412

RECEIVED

JUL 17 2012

DISTRICT COURT DEPT# 13 39412

1 **ORD**
2 ADAMS LAW GROUP, LTD.
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23 **DISTRICT COURT**
24 **CLARK COUNTY, NEVADA**

25 IKON HOLDINGS, LLC, a Nevada limited liability
26 company,

27 Plaintiff,

28 vs.

HORIZONS AT SEVEN HILLS HOMEOWNERS
ASSOCIATION, and DOES 1 through 10 and ROE
ENTITIES 1 through 10 inclusive,

Defendant.

Case No: A-11-647850-C
Dept: No. 13

ORDER

THIS MATTER having come before the Court on June 11, 2012, for hearing on Plaintiff's Motion for Summary Judgment on Declaratory Relief and on Defendant's Counter-Motion for Summary Judgment. James R. Adams, Esq., of Adams Law Group, Ltd., and Puoy K. Premsrirut, Esq., of Puoy K. Premsrirut, Esq., Inc., appeared on behalf of the Plaintiff. Eric Hinckley, Esq., of Alverson, Taylor, Mortensen & Sanders and Patrick Reilly, Esq., of Holland & Hart appeared on behalf of the Defendant. The Court, having considered the papers submitted in connection with such item(s) and heard the arguments made on behalf of the parties and then taken the matter under advisement for further consideration, and for good cause appearing hereby rules:

1 WHEREAS, on 7/6/2005, Defendant, a Nevada homeowners' association, recorded in the
2 Clark County, Nevada, Recorder's Office, the Declaration of Covenants Conditions & Restrictions
3 and Reservations of Easements for Horizon at Seven Hills Homeowners Association ("CC&RS");
4 and

5 WHEREAS, on 6/28/2010, Scott M. Ludwig purchased APN 177-35-610-137 (the "Unit")
6 at a foreclosure auction of the prior owner's first mortgage lender ("6/28/2010 Foreclosure
7 Auction"); and

8 WHEREAS, the Unit is located with Defendant homeowners' association; and

9 WHEREAS, on 7/14/2010, Scott M. Ludwig transferred the Unit by quit claim deed to
10 Plaintiff ("Ikon Deed"); and

11 WHEREAS, on 9/30/2010 Defendant filed a Notice of Delinquent Assessment Lien against
12 Plaintiff and the Unit for \$6,050.14 ("Notice of Delinquent Assessment Lien"); and

13 WHEREAS, on 10/18/2010 Defendant sent Plaintiff a letter stating, "Per your request, the
14 current balance for the above property is \$6,287.94." (the "10/18/10 Collection Letter"); and

15 WHEREAS, pursuant to the spreadsheet of fees and costs attached to the 10/18/10 Collection
16 Letter, Defendant's monthly assessments were \$190.00; and

17 WHEREAS, the Unit, being located within Defendant homeowners' association, is subject
18 to NRS 116 (Common Interest Ownership Uniform Act) and the CC&RS; and

19 WHEREAS, the Court has determined that a justiciable controversy exists in this matter as
20 Plaintiff has asserted a claim of right against Defendant under NRS §116.3116 and Sections 7.8 and
21 7.9 of the Defendant's CC&RS and Defendant has an interest in contesting said claim, the present
22 controversy is between persons or entities whose interests are adverse, both parties seeking
23 declaratory relief have a legal interest in the controversy (i.e., a legally protectible interest), and the
24 issue involved in the controversy (the meaning and application of NRS 116.3116 and of Sections 7.8
25 and 7.9 of the CC&RS) is ripe for judicial determination as between the parties. *Kress v. Corey* 65
26 Nev. 1, 189 P.2d 352 (1948); and

1 WHEREAS, Plaintiff and Defendant, the contesting parties hereto, are clearly adverse and
2 hold different views regarding the meaning and applicability of Sections 7.8 and 7.9 of the CC&RS
3 in that Plaintiff maintains that Sections 7.8 and 7.9 of the CC&RS call for a limit on Defendant's
4 prioritized portion of its homeowners' association lien on Plaintiff's Unit to the extent of an amount
5 equal to 6 months of assessments (i.e., "The lien of the assessments, including interest and costs,
6 shall be subordinate to the lien of any First Mortgage upon the Unit (except to the extent of Annual
7 Assessments which would have become due in the absence of acceleration during the six (6) months
8 immediately preceding institution of an action to enforce the lien)") and further maintains that
9 Sections 7.8 and 7.9 of the CC&RS do not violate the statutory lien limit as noted in NRS
10 116.3116(2) as the CC&RS call for a lesser amount for the prioritized portion of the lien than does
11 NRS 116.3116(2). Conversely, Defendant maintains there are either two prioritized liens (one
12 contractual and one statutory) and/or that Sections 7.8 and 7.9 of Defendant's CC&RS violate NRS
13 116.3116(2) in that Sections 7.8 and 7.9 call for a lesser amount for the prioritized portion of the lien
14 than does NRS 116.3116(2) and, therefore, the prioritized portion of Defendant's lien must equal
15 the greater amount as noted in NRS 116.3116(2); and

16 WHEREAS, Plaintiff has a legal interest in the controversy as it was Plaintiff's money which
17 had been demanded by Defendant and it was Plaintiff's Unit that had been the subject of a
18 homeowners' association assessment lien by Defendant; and

19 WHEREAS the issue of the meaning, application and interpretation of Sections 7.8 and 7.9
20 of the CC&RS in conjunction with NRS §116.3116 is ripe for determination in this case as the
21 present controversy is real, it exists now, and it affects the parties hereto; and

22 WHEREAS, therefore, the Court finds that issuing a declaratory judgment relating to the
23 meaning and interpretation of Sections 7.8 and 7.9 of the CC&RS in conjunction with NRS
24 §116.3116 would terminate some of the uncertainty and controversy giving rise to the present
25 proceeding; and

26 WHEREAS, pursuant to NRS §30.040 Plaintiff and Defendant are parties whose rights,
27 status or other legal relations are affected by Sections 7.8 and 7.9 of the CC&RS and they may,
28

1 therefore, have determined by this Court any question of construction or validity arising under said
2 Sections and obtain a declaration of rights, status or other legal relations thereunder; and

3 WHEREAS, regarding priority of homeowner association assessment liens, Section 7.8 and
4 7.9 of the CC&RS state the following:

5 Section 7.8 Mortgagee Protection. Notwithstanding all other
6 provisions hereof, no lien created under this Article 7, nor the
7 enforcement of any provision of this Declaration shall defeat or
8 render invalid the rights of the Beneficiary under any Recorded First
9 Deed of Trust encumbering a Unit, made in good faith and for value;
10 provided that after such Beneficiary or some other Person obtains title
11 to such Unit by judicial foreclosure, other foreclosure, or exercise of
12 power of sale, such Unit shall remain subject to this Declaration and
13 the payment of all installments of assessments accruing subsequent
14 to the date such Beneficiary or other Person obtains title, subject to
15 the following. The lien of the assessments, including interest and
16 costs, shall be subordinate to the lien of any First Mortgage upon
17 the Unit (except to the extent of Annual Assessments which would
18 have become due in the absence of acceleration during the six (6)
19 months immediately preceding institution of an action to enforce
20 the lien). The release or discharge of any lien for unpaid assessments
21 by reason of the foreclosure or exercise of power of sale by the First
22 Mortgagee shall not relieve the prior Owner of his personal obligation
23 for the payment of such unpaid assessments.

24 Section 7.9 Priority of Assessment Lien. Recording of the
25 Declaration constitutes Record notice and perfection of a lien for
26 assessments. A lien for assessments, including interest, costs, and
27 attorneys' fees, as provided for herein, shall be prior to all other
28 liens and encumbrances on a Unit, except for: (a) liens and
encumbrances Recorded before the Declaration was Recorded; (b) a
first Mortgage Recorded before the delinquency of the
assessment sought to be enforced (except to the extent of Annual
Assessments which would have become due in the absence of
acceleration during the six (6) months immediately preceding
institution of an action to enforce the lien), and (c) liens for real
estate taxes and other governmental charges, and is otherwise subject
to NRS § 116.3116. The sale or transfer of any Unit shall not affect
an assessment lien. However, subject to foregoing provision of this
Section 7.9, the sale or transfer of any Unit pursuant to judicial or
non-judicial foreclosure of a First Mortgage shall extinguish the lien
of such assessment as to payments which became due prior to such
sale or transfer. No sale or transfer shall relieve such Unit from lien
rights for any assessments which thereafter become due. Where the
Beneficiary of a First Mortgage of Record or other purchaser of
a Unit obtains title pursuant to a judicial or nonjudicial
foreclosure or "deed in lieu thereof," the Person who obtains title
and his or her successors and assigns shall not be liable for the
share of the Common Expenses or assessments by the Association
chargeable to such Unit which became due prior to the

1 acquisition of title to such Unit by such Person (except to the
2 extent of Annual Assessments which would have become due in
3 the absence of acceleration during the six (6) months immediately
4 preceding institution of an action to enforce the lien). Such
5 unpaid share of Common Expenses and assessments shall be
6 deemed to become expenses collectible from all of the Units,
7 including the Unit belonging to such Person and his or her
8 successors and assigns.

9 WHEREAS, the Court is persuaded that Plaintiff's position is correct relative to the
10 component and ceiling issues contained in its Motion relating to Sections 7.8 and 7.9 of the CC&RS
11 in that pursuant to said Sections, Defendant's prioritized portion of its lien may include assessments
12 and "... interest, costs, and attorneys' fees..." but, pursuant to Sections 7.8 and 7.9 of the CC&RS,
13 is only prior to the first mortgage holder, "... to the extent of Annual Assessments which would have
14 become due in the absence of acceleration during the six (6) months immediately preceding
15 institution of an action to enforce the lien...."

16 THE COURT, THEREFORE, DECLARES, ORDERS, ADJUDGES AND DECREES as
17 follows:

- 18 1. Defendant's Counter-Motion for Summary Judgment is DENIED and Plaintiff's Motion for
19 Partial Summary Judgment on Declaratory Relief is GRANTED IN PART to the extent that
20 it seeks the following declarations:

21 Defendant, in contravention of Nevada Revised Statutes §116.3116,
22 has unlawfully demanded from Plaintiff amounts in excess of the
23 Super Priority Lien to which it has no legal entitlement.

24 Pursuant to Sections 7.8 and 7.9 of the Defendant's CC&RS,
25 Defendant's lien was junior to the first security interest of the Unit's
26 first mortgage lender except for a certain, limited and specified
27 portion of the lien as defined in Sections 7.8 and 7.9 of the CC&RS
28 (i.e., an amount equal to 6 months of assessments,) and

Defendant, in contravention of Sections 7.8 and 7.9 of the
Defendant's CC&RS has improperly demanded monies from Plaintiff
in order to satisfy Defendant's claimed liens or demands which
exceeded a figure equaling 6 months of assessments, thereby
violating the CC&RS.

2. NRS 116.3116(1) states what can be the subject of a homeowners' association's general
assessment lien on a unit and NRS 116.3116(2) states what the statutory limits are to the
prioritized portion of the assessment lien, i.e., that portion of a homeowners' association's

1 lien which, after the foreclosure of a unit's first trust deed holder, is superior to the first trust
2 deed as a matter of law (See Order entered January 19, 2012).

3 3. A homeowners' association's lien against a unit located within its association is contractually
4 created, perfected and noticed by the recording of the CC&RS (See NRS 116.3116(4)).

5 4. To the extent that provisions of CC&RS call for a lesser amount for the prioritized portion
6 of the assessment lien than does NRS 116.3116(2), the lesser amount shall be utilized as the
7 prioritized portion of the lien.

8 5. NRS 116.1206 states:

9 NRS 116.1206 Provisions of governing documents in violation of
10 chapter deemed to conform with chapter by operation of law;
procedure for certain amendments to governing documents.

11 1. Any provision contained in a declaration, bylaw or other
12 governing document of a common-interest community that violates
the provisions of this chapter:

13 (a) Shall be deemed to conform with those provisions by
14 operation of law, and any such declaration, bylaw or other governing
document is not required to be amended to conform to those
15 provisions.

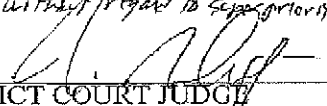
16 (b) Is superseded by the provisions of this chapter, regardless of
17 whether the provision contained in the declaration, bylaw or other
governing document became effective before the enactment of the
provision of this chapter that is being violated.

18 6. Defendant maintains that NRS 116.3116(2) and Sections 7.8 and 7.9 are conceptually
19 separate and, in effect, create two separate liens. The Court disagrees. There is but a single
20 lien which is created, perfected and noticed by the recording of the CC&RS (See NRS
21 116.3116(4)).

22 7. The Court further disagrees with Defendant's position that the provisions of NRS 116.1206
23 are to the effect that lesser amounts for the prioritized portion of the Defendant's lien which
24 is called for by the CC&RS (Sections 7.8 and 7.9) are automatically elevated to the limits
25 provided for by NRS 116.3116(2) if such lesser amounts are inconsistent with what is
26 permitted by NRS 116.3116(2). The Court disagrees because the language of subsection (1)
27 of NRS 116.1206 refers to any provision in the CC&RS that " ... violates the provisions of

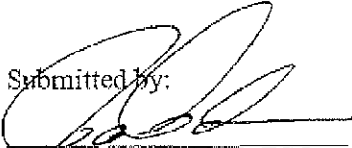
1 this chapter" The Court determines that the language in Defendant's CC&RS (Section
2 7.8 and 7.9) which calls for a lesser amount for the prioritized portion of the lien than does
3 NRS 116.3116(2) does not "violate" the statutory prioritized lien limit as provided for in
4 NRS 116.3116(2) because the amounts called for in the CC&RS do not exceed the limit
5 called for by NRS 116.3116(2), but in fact are within the limit. Thus, the amount of the
6 prioritized portion of a homeowners' association's lien as called for in CC&RS does not need
7 to rise to the maximum level as noted in NRS 116.3116(2), as a lesser amount as called for
8 in the CC&RS does not "violate" NRS 116.3116(2).

- 9 8. While the Court has ruled that interest, costs and other fees may be included in the prioritized
10 portion of the lien as long as the prioritized portion of the lien does not exceed an amount
11 equal to 6 months of assessments as noted in Section 7.8 and 7.9 of the CC&RS, at this time;
12 however, the Court is not extending its declaratory relief ruling to the specific monetary
13 amounts referenced in Plaintiff's Motion for Summary Judgment at pages 9 and 10. *Now*
is the Court at this time addressing issues of attorney's fees and costs allowable under NRS 18.010(2),
14 *NRS 18.010(2), or NRS 116.3116(2) without regard to Superpriority. 2*
IT IS SO ORDERED.

15 
DISTRICT COURT JUDGE

7/19/12
Date

16
17
18 Submitted by:

19 
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20 Nevada Bar No. 6874
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Business Court

COURT MINUTES

December 12, 2011

A-11-647850-B Ikon Holdings LLC, Plaintiff(s)
vs.
Horizon at Seven Hills Homeowners Association, Defendant(s)

December 12, 2011 9:00 AM All Pending Motions

HEARD BY: Denton, Mark R. **COURTROOM:** RJC Courtroom 12A

COURT CLERK: Linda Denman

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- James Adams, Esq., and Puonyarat Premsrirut, Esq., for Plaintiff
Eric Hinckley, Esq., for Defendant

MOTION FOR PARTIAL SUMMARY JUDGMENT ON ISSUE OF DECLARATORY RELIEF . . .
DEFENDANT HORIZONS AT SEVEN HILLS HOMEOWNERS' ASSOCIATION'S OPPOSITION TO
PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT and COUNTERMOTION FOR
SUMMARY JUDGMENT

Mr. Adams accompanied his arguments with a power point presentation that was lodged with the Court and identified as Court Exhibit 1. Mr. Adams explained the evolvement of the Super Priority Lien (SPL) given to HOAs over first mortgage holders in Nevada and other states. He stressed that NRS 116.3116 caps the amount of such liens to nine (9) months of assessments and any charges incurred on external improvements. He added that the HOA can civilly sue the former homeowner for any additional fees owed but the amount over the stated term should not be enforced against a subsequent purchaser.

Mr. Hinckley argued that including costs and attorney fees within this same capped limit seriously harms HOA's in their ability to keep to their annual budgets and recommended improvements. The purpose of the SPL was to enable the HOA to get the monies owed to them without having to file a

PRINT DATE: 05/09/2013

Page 1 of 18

Minutes Date:

December 12, 2011

Complaint and become embroiled in an expensive court proceeding. He concluded that had the Legislature intended to limit the total amount of a SPL to nine months of assessment, they would have explicitly stated their intentions in the revised statute.

Following argument, COURT ORDERED matter TAKEN UNDER ADVISEMENT.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Business Court

COURT MINUTES

December 16, 2011

A-11-647850-B Ikon Holdings LLC, Plaintiff(s)
vs.
Horizon at Seven Hills Homeowners Association, Defendant(s)

December 16, 2011 11:20 AM Decision

HEARD BY: Denton, Mark R.

COURTROOM: RJC Courtroom 12A

COURT CLERK: Sharry Frascarelli

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- HAVING further reviewed the matter relative to Plaintiff's Motion for Partial Summary Judgment heard and taken under advisement on December 12, 2011, the Court is persuaded that Plaintiff's position is correct relative to the components of the superpriority lien (exterior repair costs and 9 months of regular assessments) and the cap relative to the regular assessments, but it is not persuaded relative to Plaintiff's position concerning the need for a civil action to trigger the entitlement to the superpriority. Therefore, the Motion is GRANTED IN PART to the extent indicated, and Defendant's Countermotion is GRANTED IN PART relative to the civil-action issue. Counsel for Plaintiff is directed to submit a proposed order after passing the same by Defendant's counsel. Instead of seeking to litigate any disapproval through correspondence directed to the Court or to counsel with copies to the Court, any such disapproval should be the subject of motion practice following entry of order.
IT IS SO ORDERED.

CLERK'S NOTE: A copy of this minute order was provided to: James R. Adams, Esq. (Adams Law Group); Puonyarat Premsrirut, Esq. and Eric Hinckley, Esq. (Alverson, Taylor, Mortensen & Sanders

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Business Court

COURT MINUTES

January 09, 2012

A-11-647850-B Ikon Holdings LLC, Plaintiff(s)
vs.
Horizon at Seven Hills Homeowners Association, Defendant(s)

**January 09, 2012 2:45 PM Mandatory Rule 16
Conference**

HEARD BY: Denton, Mark R.

COURTROOM: RJC Courtroom 12A

COURT CLERK: Linda Denman

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Puonyarat Premsrirut, Esq., for Plaintiff
Eric Hinckley, Esq., for Defendant

MANDATORY RULE 16 CONFERENCE

IN CHAMBERS: Counsel advised this is a superpriority lien claim. Competing proposed Orders as to the Court's ruling of Plaintiff's Motion for Summary Judgment were provided for the Court's consideration with the parties in dispute as to the whether the language should be specific or general.

Court urged the parties to conduct the 16.1 Conference within the next few weeks and ORDERED that the Case Conference Report (CCR) be filed by February 10, 2012, with a follow-up Status Check to ensure same to which the parties do not need to attend if the CCR has been filed. A copy of the CCR must be provided to Discovery Commissioner Bulla for preparation of the scheduling order and then this Department will process the trial order. All Discovery will be heard by the Department.

Court stated that if and when there is a consensus that the matter was ripe for a settlement conference, counsel should contact the Department's JEA as to scheduling; however, if there is no consensus, either party can file a motion for same.

PRINT DATE: 05/09/2013

Page 4 of 18

Minutes Date:

December 12, 2011

There were no issues of confidential documents or other business to discuss.

2/16/2012 AT 9:00AM STATUS CHECK: CASE CONFERENCE REPORT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Business Court

COURT MINUTES

March 07, 2012

A-11-647850-B Ikon Holdings LLC, Plaintiff(s)
vs.
Horizon at Seven Hills Homcowners Association, Defendant(s)

March 07, 2012 3:00 AM Minute Order

HEARD BY: Denton, Mark R. **COURTROOM:** RJC Courtroom 12A

COURT CLERK: Linda Denman

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- DEFENDANT'S MOTION FOR CLARIFICATION OR, IN THE ALTERNATIVE, FOR RECONSIDERATION OF ORDER GRANTING SUMMARY JUDGMENT ON CLAIM OF DECLARATORY RELIEF

Pursuant to EDCR 2.23(c), the Court DENIES Defendant s Motion For Clarification Or, In The Alternative, For Reconsideration Of Order Granting Summary Judgment On Claim Of Declaratory Relief, without oral argument. The Court ORDERS such motion removed from its Civil Law and Motion Calendar of March 12, 2012.

Plaintiffs counsel to submit a proposed order consistent with the foregoing.

IT IS SO ORDERED.

Attorneys/Parties: Patrick J. Reilly, Esq.

Nicole E. Lovelock, Esq.
(HOLLAND & HART LLP)

Fax: 702-669-4650

PRINT DATE: 05/09/2013

Page 6 of 18

Minutes Date:

December 12, 2011

James R. Adams, Esq.
Assly Sayyar, Esq.
(ADAMS LAW GROUP, LTD.)
Fax: 702-838-3636

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Business Court

COURT MINUTES

March 12, 2012

A-11-647850-B	Ikon Holdings LLC, Plaintiff(s) vs. Horizon at Seven Hills Homeowners Association, Defendant(s)
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March 12, 2012	9:00 AM	All Pending Motions
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HEARD BY: Denton, Mark R.	COURTROOM: RJC Courtroom 12A
---------------------------	------------------------------

COURT CLERK: Linda Denman

RECORDER: Patti Slattery

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- James Adams, Esq., and Puonyarat Premsrirut, Esq., for Plaintiff
Patrick Reilly, Esq., and Eric Hinckley, Esq., for Defendant

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT . . . DEFENDANT HORIZONS AT SEVEN HILLS HOMEOWNER ASSOCIATION'S OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND COUNTERMOTION FOR SUMMARY JUDGMENT

Mr. Adams argued that Plaintiff's Motion for Summary Judgment was brought in order to take the Court's previous Decision and Order one step further. While the Court's decision confirmed a HOA's super-priority lien in a foreclosure, it also limited such lien to nine (9) times the monthly assessments. In this case, Defendant's have filed liens in excess of their limited assessment and, in doing so, have damaged Plaintiff in the amount of that difference. He concluded that the Court's Order states what the law is with respect to assessments and now the Court needs to state that Defendant is in violation of the law by filing a lien against the property exceeding the allowed assessment.

Mr. Reilly incorporated all arguments raised in his Counter-motion by reference and added that Plaintiff has paid no assessments, either pre or post foreclosure, and therefore has suffered no damages. He argued there is no standing for Plaintiff's claim that the filing of the lien has in any way reduced the equity in the property. Upon inquiry of the Court, he advised that the granting of

Defendant's Counter-motion would remove all remaining claims.

Mr. Adams rebutted by stating that Plaintiff cannot sell or refinance unless it first pays the Defendant's lien so until the amount of the lien is resolved by the Court, the case cannot be resolved.

Court stated its findings and ORDERED Plaintiff's Motion for Summary Judgment DENIED; Court FURTHER ORDERED Defendant's Counter-Motion UNDER ADVISEMENT on the question of whether the re-recording of the super priority lien following foreclosure caused damages to the Plaintiff as to equity.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Business Court

COURT MINUTES

March 28, 2012

A-11-647850-B Ikon Holdings LLC, Plaintiff(s)
vs.
Horizon at Seven Hills Homeowners Association, Defendant(s)

March 28, 2012 4:08 PM Decision

HEARD BY: Denton, Mark R. **COURTROOM:** RJC Courtroom 12A

COURT CLERK: Linda Denman

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- DEFENDANT'S COUNTERMOTION FOR SUMMARY JUDGMENT

This matter came before the Court on the 12th of March, 2012. Counsel presented their arguments and submitted; Court took the matter under advisement.

DECISION:

After considering papers submitted and hearing arguments, Court issued its Decision this 28th day of March, 2012. COURT ORDERED Countermotion for Summary Judgment is GRANTED. (See Decision for full context.)

Plaintiff for defendant is directed to submit a proposed Order consistent with the foregoing and which sets forth the factual and legal underpinnings of same in accordance herewith and with counsel s briefing and argument.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Business Court

COURT MINUTES

May 07, 2012

A-11-647850-B Ikon Holdings LLC, Plaintiff(s)
vs.
Horizon at Seven Hills Homeowners Association, Defendant(s)

May 07, 2012 9:00 AM All Pending Motions

HEARD BY: Denton, Mark R. **COURTROOM:** RJC Courtroom 12A

COURT CLERK: Linda Denman

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- James Adams, Esq., for Plaintiff

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ON DECLARATORY RELIEF . . .
OPPOSITION TO PLAINTIFF'S THIRD MOTION FOR SUMMARY JUDGMENT AND
COUNTERMOTION FOR SUMMARY JUDGMENT

Mr. Adams advised the parties had a stipulation and order to continue this matter. COURT SO ORDERED.

Order SIGNED IN OPEN COURT.

(CONTINUED TO 5/24/2012 AT 9:00AM)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Business Court

COURT MINUTES

June 11, 2012

A-11-647850-B Ikon Holdings LLC, Plaintiff(s)
vs.
Horizon at Seven Hills Homeowners Association, Defendant(s)

June 11, 2012 9:00 AM All Pending Motions

HEARD BY: Denton, Mark R. **COURTROOM:** RJC Courtroom 12A

COURT CLERK: Linda Denman

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- James Adams, Esq., and Puonyarat Premsrirut, Esq., for Plaintiff
Patrick Reilly, Esq., and Eric Hinckley, Esq., for Defendant

DEFENDANT'S OPPOSITION TO PLAINTIFF'S THIRD MOTION FOR SUMMARY JUDGMENT
AND COUNTERMOTION FOR SUMMARY JUDGMENT PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT ON DECLARATORY RELIEF

Counsel argued as to the different between statutory and contractual liens and how extinguishment
of assessments versus non-assessments differ and whether or not a recent Nevada Supreme Court
ruling has any impact on the issues in this case.

COURT ORDERED motions TAKEN UNDER ADVISEMENT.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Business Court

COURT MINUTES

June 22, 2012

A-11-647850-B Ikon Holdings LLC, Plaintiff(s)
vs.
Horizon at Seven Hills Homeowners Association, Defendant(s)

June 22, 2012 12:36 AM Decision

HEARD BY: Denton, Mark R. **COURTROOM:** RJC Courtroom 12A

COURT CLERK: Linda Denman

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- This matter came before the Court on June 11, 2012, for hearing on PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ON DECLARATORY RELIEF and DEFENDANT'S COUNTERMOTION FOR SUMMARY JUDGMENT. Counsel presented their case and submitted to the Court, which took the matter under advisement.

DECISION: After careful consideration of the papers submitted and hearing arguments, Court issued its Decision this 22nd day of June, 2012. COURT ORDERED Plaintiff's Motion GRANTED IN PART and Defendant's Countermotion DENIED. See Court's Decision for full context.

Counsel for Plaintiff is directed to submit a proposed order consistent with the foregoing and which sets forth the factual and legal underpinnings of the same in accordance herewith and with counsel's briefing and argument.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Business Court

COURT MINUTES

July 12, 2012

A-11-647850-B Ikon Holdings LLC, Plaintiff(s)
vs.
Horizon at Seven Hills Homeowners Association, Defendant(s)

**July 12, 2012 3:00 AM Motion For
Reconsideration**

HEARD BY: Denton, Mark R.

COURTROOM: RJC Courtroom 12A

COURT CLERK: Linda Denman

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- MINUTE ORDER

Pursuant to EDCR 2.23(c), the Court DENIES Defendant s Motion For C Reconsideration Of Order Granting Summary Judgment On Claim Of Declaratory Relief, without oral argument. The Court ORDERS such motion removed from its Civil Law and Motion Calendar of July 16, 2012.

Plaintiffs counsel to submit a proposed order consistent with the foregoing.

IT IS SO ORDERED.

Attorneys/Parties:

Patrick J. Reilly, Esq.

Nicole E. Lovelock, Esq.

(HOLLAND & HART LLP)

Fax: 702-669-4650

James R. Adams, Esq.
Assly Sayyar, Esq.
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Puoy K. Premsrirut, Esq.
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Kurt Bonds, Esq.
Eric Hinckley, Esq.
(ALVERSON TAYLOR MORTENSEN & SANDERS)
Fax: 702-385-7000

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Business Court

COURT MINUTES

February 19, 2013

A-11-647850-B Ikon Holdings LLC, Plaintiff(s)
vs.
Horizon at Seven Hills Homcowners Association, Defendant(s)

February 19, 2013 2:00 PM Calendar Call

HEARD BY: Denton, Mark R. **COURTROOM:** RJC Courtroom 12A

COURT CLERK: Linda Denman

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES

PRESENT: Adams, James R. Attorney
 Hinckley, Eric W. Attorney
 Premsrirut, Puonyarat K. Attorney

JOURNAL ENTRIES

- At CALENDAR CALL, Counsel announced ready to proceed with Bench Trial. Due to a narrowing of the issues, Mr. Adams advised and opposing Counsel concurred that the trial should only take one-half (1/2) day. Colloquy on submitting matter on trial briefs. Court directed Counsel to file their pre-trial memorandums by close of business on Friday, March 8, 2013 and offered that if they would like a settlement conference, to see the Department's JEA.

3/12/2013 AT 9:00AM BENCH TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Business Court

COURT MINUTES

March 12, 2013

A-11-647850-B Ikon Holdings LLC, Plaintiff(s)
vs.
Horizon at Seven Hills Homeowners Association, Defendant(s)

March 12, 2013 9:00 AM Bench Trial

HEARD BY: Denton, Mark R. **COURTROOM:** RJC Courtroom 12A

COURT CLERK: Sharon Chun

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES

PRESENT:	Adams, James R.	Attorney
	Bonds, Kurt	Attorney
	Hinckley, Eric W.	Attorney
	Premisrirut, Puonyarat K.	Attorney
	Reilly, Patrick J	Attorney

JOURNAL ENTRIES

- At request of Court Counsel met with the Court in Chambers prior to trial start. They advised that they have stipulated to several matters and will place it on record without calling witnesses.

ON THE RECORD at 9:10 A.M. - All counsel stipulated that pursuant to the Court's prior decisions the only remaining issue is for Injunctive Relief. Mr. Bond and Mr. Reilly noted that although the HOA is not stipulating to the amount of the pre-acquisition foreclosure amount, but, will abide by the Court's decision of a \$190.00 monthly assessment for a period of six (6) months, Totaling \$1,140.00 to be paid by Plaintiff Ikon Holdings LLC. Mr. Reilly reiterated that the lien will now be released and will prevent the necessity for the Preliminary Injunction, now rendered moot.

Counsel confirmed that the \$1,140.00 has been paid and the Court can now enter that amount as final judgment. Mr. Reilly noted they will be filing an Appeal pursuant to NRS 116.

COURT NOTED the resolution of parties. It was also noted that the issue of attorney fees is one for post-judgment relief and is not before the Court today.

PRINT DATE: 05/09/2013

Page 17 of 18

Minutes Date:

December 12, 2011

Counsel stipulated to the admission of Joint Exhibits 1-45, lodged with the Clerk.

Mr. Adams confirmed he will prepare a proposed Judgment with the Final Order and present it to opposing counsel prior to submission to the Court.

EXHIBITS LODGED WITH THE CLERK'S OFFICE (JOINT 1-45)

Exhibit List

Case: **A-11-647850-B** Party: Sort Order: **Status** Case vs. Ikon Holdings LLC, Plaintiff(s)
Horizon at Seven Hills Homeowners Association, Defendant(s)

Exhibit ID	On Behalf Of	Status/Date	Return/Destroy Date	Type and Description	Exhibit Flag	Source	In Custody Of	Location
Court 1	Plaintiff	Admitted 12/12/2011	Destroy 12/13/2013	Document Plff power point presentation		Adams, James R.		
1	Plaintiff	Admitted 03/12/2013	Destroy 03/12/2015	Document Declaration of Covenants		Adams, James R.		

Comment: see complete list in evenst tab

CASE NO. A647850	Hearing Date: March 12, 2013
DEPT. XIII	Judge: Mark Denton
Plaintiff: Ikon Holdings, LLC	Counsel For Plaintiff: Kurt Bonds, Pat Reilly
Defendant: Horizons at Seven Hills HOA	Counsel For Defendants: James Adams

Joint

	Date Offered	Objection	Date Admitted
1. Declaration of Covenants, Conditions & Restrictions and Reservation of Easements for Horizons at Seven Hills, dated July 6, 2005, bates stamped 1001-1049.	3-12-13	Stip	3-12-13
2. Grant, Bargain and Sale Deed from Goose Development, LLC to Hawley McIntosh, dated September 15, 2005, bates stamped 1050-1055.			
3. Deed of Trust for Hawley McIntosh, dated September 15, 2005, bates stamped 1056-1086.			
4. Notice of Default and Election to Sell Under Deed of Trust, dated June 3, 2009, bates stamped 1087-1088			
5. Notice of Default and Election to Sell Under Homeowners Association Lien, dated July 28, 2009, bates stamp 1089-1090.			
6. Trustee's Deed Upon Sale to Scott Ludwig, dated July 6, 2010, bates stamped 1091-1095.			
7. Quit Claim Deed from Scott Ludwig to Ikon Holdings, LLC, dated July 14, 2010, bates stamped 106-1099.			
8. Notice of Delinquent Assessment Lien, dated September 28, 2010, bates stamped 1100.			
9. NAS Demand and spreadsheet, dated October 18, 2010, bates stamped 1101-1103	✓	✓	✓

All 45 Joint Exhibits stipulated for Admission 3-12-13

Joint A647850

10. Notice of Default and Election to Sell Under Homeowners Association Lien, dated November 16, 2010, bates stamped 1104-1105.	3-12-13	Stipulated 3-12-13		
11. NAS Spreadsheet, as of December 28, 2012				
12. Ikon Holdings, LLC's payment record				
13. Consent and Authorization for Nevada Association Services, dated September 2, 2009				
14. Consent and Authorization for Nevada Association Services, dated October 8, 2007				
15. Clark County Assessor print out for the property located at 950 Seven Hills Drive #1411, dated May 12, 2009				
16. Letter to Hawley McIntosh from Nevada Association Services, dated June 2, 2009				
17. Letter to Hawley McIntosh from Nevada Association Services, dated June 19, 2009				
18. Notice of Delinquent Assessment Lien for parcel number 177-35-610-137, dated June 15, 2009				
19. Facsimile coversheet to Nevada Association Services from Stacy Aune, dated June 15, 2009				
20. Notice required by the Fair Debt Collection Practice Act, dated June 11, 2009				
21. Servicemembers Civil Relief Act Notification, dated June 15, 2009				
22. Letter to Hawley McIntosh from Nevada Association Services, dated July 10, 2009				
23. Horizons at Seven Hills Financial Transactions Report for Unit 1411, dated July 24, 2009				
24. Ten Day Letter for Homeowners from North American Title Company for Unit 1411				

Joint A647850

25. Letter to Horizons at Seven Hills from Nevada Association Services, dated September 14, 2009	3-12-13	Stipulated	3-12-13
26. Notice of Trustee's Sale for parcel number 177-35-610-137, dated September 4, 2009			
27. Email to Jennifer Peace from Angie Kluska, dated January 22, 2010			
28. Letter to Horizons at Seven Hills from Nevada Association Services, dated June 3, 2010			
29. Notice of Trustee's Sale for parcel number 177-35-610-137			
30. Clark County Assessor print out for the property located at 950 Seven Hills Drive #1411, dated August 2, 2010			
31. Nevada Association Services Request for Payment Plan form			
32. First American Title Insurance Company Report, dated November 23, 2010			
33. Letter to Horizons at Seven Hills from Nevada Association Services, dated July 1, 2009			
34. Letter to Ikon Holdings, LLC from Nevada Association Services, dated August 25, 2010			
35. Notice of Delinquent Assessment Lien for parcel #177-35-610-137, dated August 16, 2010			
36. Release of Notice Delinquent Assessment Lien for parcel #177-35-610-137, dated August 25, 2010			
37. Letter to 'Whom it may concern' from Konnel Peterson			
38. Letter to Ikon Holdings, LLC from Nevada Association Services, dated September 20, 2010			

Joint A647850

39.	Horizons at Seven Hills Financial Balance Sheet for account t0016551 with outstanding balance of \$5,651.14	3-12-13	Stipulated 3-12-13		
40.	Letter to Ikon Holdings, LLC from Nevada Association Services, dated October 14, 2010				
41.	Letter to Ikon Holdings, LLC from Nevada Association Services, dated November 3, 2010				
42.	Horizons at Seven Hills HOA Financial Transaction Report, dated May 25, 2011				
43.	Horizons at Seven Hills HOA Ledger for account t0016551, dated May 7, 2009				
44.	Horizons at Seven Hills HOA Ledger for account t0016551, dated June 30, 2009				
45.	Adams Law Group, Ltd Check # 6346 - Copy, to Alverson Taylor, et al				

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL AND NOTICE OF RELATED CASES; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER; NOTICE OF ENTRY OF ORDER; ORDER; NOTICE OF ENTRY ORDER; ORDER; NOTICE OF ENTRY ORDER; FINAL JUDGMENT; NOTICE OF ENTRY OF JUDGMENT; FINAL JUDGMENT; NOTICE OF ENTRY OF JUDGMENT.; DISTRICT COURT MINUTES; EXHIBITS LIST

IKON HOLDINGS, LLC,

Plaintiff(s),

vs.

HORIZONS AT SEVEN HILLS
HOMEOWNERS ASSOCIATION,

Defendant(s),

Case No: A647850

Dept No: XIII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 9 day of May 2013.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

UMB BANK, N.A.
36-1901/1012

HOLLAND & HART LLP
ATTORNEYS AT LAW
PROFESSIONAL ACCOUNT
9555 Hillwood Drive
Suite 200
Las Vegas, Nevada 89134

66005458

DATE May 8, 2013

PAY Two hundred fifty and 00/100*****

\$ ***250.00***

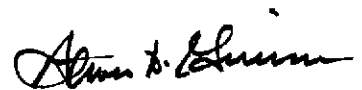
PAY
TO THE
ORDER OF

HOLLAND & HART LLP

Clerk of the Supreme Court of Nevada
200 Lewis Ave., 17th Floor
Las Vegas, NV 89101


VOID AFTER 6 MONTHS

⑈66005458⑈ ⑆101219017⑆ ⑈5008016038⑈



CLERK OF THE COURT

Electronically Filed
May 13 2013 11:41 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

1 **NOAS**
2 Patrick J. Reilly, Esq.
3 Nevada Bar No. 6103
4 Nicole E. Lovelock, Esq.
5 Nevada Bar No. 11187
6 **HOLLAND & HART LLP**
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13 *Attorneys for Defendants Horizons At*
14 *Seven Hills Homeowners Association*

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 **IKON HOLDINGS, LLC, a Nevada limited**
18 **liability company,**

19 **Plaintiff,**

20 **vs.**

21 **HORIZONS AT SEVEN HILLS**
22 **HOMEOWNERS ASSOCIATION; and**
23 **DOES 1 through 10; and ROE ENTITIES 1**
24 **through 10 inclusive,**

25 **Defendants.**

Case No. : A-11-647850-B
Dept. No.: XIII

**NOTICE OF APPEAL AND NOTICE OF
RELATED CASES**

26 PLEASE TAKE NOTICE that Defendant Horizons At Seven Hills Homeowners
27 Association ("Horizons") hereby appeals to the Supreme Court of the State of Nevada from
28 judgment entered in the above-entitled action, including the following:

- 29 1. Order (January 19, 2012), a copy of which is attached hereto as **Exhibit "1"**;
- 30 2. Order (March 16, 2012), a copy of which is attached hereto as **Exhibit "2"**;
- 31 3. Order (July 24, 2012), a copy of which is attached hereto as **Exhibit "3"**; and
- 32 4. Final Judgment (April 11, 2013), a copy of which is attached hereto as **Exhibit**
33 **"4"**.
- 34 5. Final Judgment (May 1, 2013), a copy of which is attached hereto as **Exhibit "5"**.

35 ///

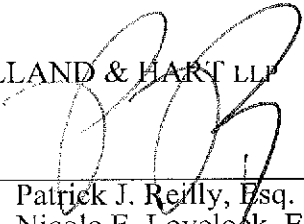
1 This appeal is related to several other appellate matters before the Nevada Supreme
2 Court, including the following:

- 3 1. Nevada Ass'n Servs., Inc. v. District Ct., NSC Case No. 62748 (writ petition);
- 4 2. Southern Highlands Community Ass'n v. District Ct., NSC Case No. 61940 (writ
5 petition);
- 6 3. Prem Deferred Trust v. District Ct., NSC Case No. 62587 (writ petition); and
- 7 4. Hampton & Hampton, PC v. Appleton Properties, LLC, NSC Case Nos. 60000,
8 60423, and 60476 (consolidated appeals).

9 DATED this 8th day of May, 2013.

10 HOLLAND & HART LLP

11 By

12 
13 Patrick J. Reilly, Esq.
14 Nicole E. Lovelock, Esq.
15 9555 Hillwood Drive, Second Floor
16 Las Vegas, Nevada 89134

17 *Attorneys for Defendants Horizons At Seven*
18 *Hills Homeowners Association*

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I hereby certify that on the 8th day of May, 2012, I served a true and correct copy of the foregoing **NOTICE OF APPEAL AND NOTICE OF RELATED CASES** by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

James R. Adams, Esq.
Assly Sayyar, Esq.
Adams Law Group, Ltd.
8010 West Sahara Avenue, Suite 260
Las Vegas, Nevada 89117

Don Springmeyer, Esq.
Michael J. Lemcool, Esq.
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Schulman & Rabkin, LLP
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Las Vegas, Nevada 89120

Puoy K. Premsrirut, Esq.
Puoy K. Premsrirut, Esq. Inc.
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Las Vegas, Nevada 89101

Attorney for Peccole Ranch Community Association

Attorneys for Plaintiff

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Attorneys for Hampton & Hampton, PC

Attorneys for Southern Highlands Community Association


An Employee of Holland & Hart LLP

Holland & Hart LLP
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134
Phone: (702) 669-4600 ♦ Fax: (702) 669-4650

EXHIBIT “1”


CLERK OF THE COURT

ORD
ADAMS LAW GROUP, LTD.
JAMES R. ADAMS, ESQ.
Nevada Bar No. 6874
ASSLY SAYYAR, ESQ.
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Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

IKON HOLDINGS, LLC, a Nevada limited liability
company,

Plaintiff,

vs.

HORIZONS AT SEVEN HILLS HOMEOWNERS
ASSOCIATION, and DOES 1 through 10 and ROE
ENTITIES 1 through 10 inclusive,

Defendant.

Case No: A-11-647850-C
Dept: No. 13

ORDER

This matter came before the Court on December 12, 2011 at 9:00 a.m., upon the Plaintiff's Motion for Summary Judgment on Claim of Declaratory Relief and Defendant's Counter Motion for Summary Judgment on Claim of Declaratory Relief. James R. Adams, Esq., of Adams Law Group, Ltd., and Puoy K. Premsrirut, Esq., of Puoy K. Premsrirut, Esq., Inc., appeared on behalf of the Plaintiff. Eric Hinckley, Esq., of Alverson, Taylor, Mortensen & Sanders appeared on behalf of the Defendant. The Honorable Court, having read the briefs on file and having heard oral argument, and for good cause appearing hereby rules:

1 WHEREAS, the Court has determined that a justiciable controversy exists in this matter as
2 Plaintiff has asserted a claim of right under NRS §116.3116 (the "Super Priority Lien" statute)
3 against Defendant and Defendant has an interest in contesting said claim, the present controversy
4 is between persons or entities whose interests are adverse, both parties seeking declaratory relief
5 have a legal interest in the controversy (i.e., a legally protectible interest), and the issue involved in
6 the controversy (the meaning of NRS 116.3116) is ripe for judicial determination as between the
7 parties. *Kress v. Corey* 65 Nev. 1, 189 P.2d 352 (1948); and

8 WHEREAS Plaintiff and Defendant, the contesting parties hereto, are clearly adverse and
9 hold different views regarding the meaning and applicability of NRS §116.3116 (including whether
10 Defendant demanded from Plaintiff amounts in excess of that which is permitted under the NRS
11 §116.3116); and

12 WHEREAS Plaintiff has a legal interest in the controversy as it was Plaintiff's money which
13 had been demanded by Defendant and it was Plaintiff's property that had been the subject of a
14 homeowners' association statutory lien by Defendant; and

15 WHEREAS the issue of the meaning, application and interpretation of NRS §116.3116 is
16 ripe for determination in this case as the present controversy is real, it exists now, and it affects the
17 parties hereto; and

18 WHEREAS, therefore, the Court finds that issuing a declaratory judgment relating to the
19 meaning and interpretation of NRS §116.3116 would terminate some of the uncertainty and
20 controversy giving rise to the present proceeding; and

21 WHEREAS, pursuant to NRS §30.040 Plaintiff and Defendant are parties whose rights,
22 status or other legal relations are affected by NRS §116.3116 and they may, therefore, have
23 determined by this Court any question of construction or validity arising under NRS §116.3116 and
24 obtain a declaration of rights, status or other legal relations thereunder; and

25 WHEREAS, the Court is persuaded that Plaintiff's position is correct relative to the
26 components of the Super Priority Lien (exterior repair costs and 9 months of regular assessments)
27 and the cap relative to the regular assessments, but it is not persuaded relative to Plaintiff's position
28

1 concerning the need for a civil action to trigger a homeowners' association's entitlement to the Super
2 Priority Lien.

3 THE COURT, THEREFORE, DECLARES, ORDERS, ADJUDGES AND DECREES as
4 follows:

- 5 1. Plaintiff's Motion for Partial Summary Judgment on Declaratory Relief is granted in
6 part and Defendant's Motion for Summary Judgment on Declaratory Relief is granted
7 in part.
- 8 2. NRS §116.3116 is a statute which creates for the benefit of Nevada homeowners'
9 associations a general statutory lien against a homeowner's unit for (a) any
10 construction penalty that is imposed against the unit's owner pursuant to NRS
11 §116.310305, (b) any assessment levied against that unit, and (c) any fines imposed
12 against the unit's owner from the time the construction penalty, assessment or fine
13 becomes due (the "General Statutory Lien"). The homeowners' associations'
14 General Statutory Lien is noticed and perfected by the recording of the associations'
15 declaration and, pursuant to NRS §116.3116(4), no further recordation of any claim
16 of lien for assessment is required.
- 17 3. Pursuant to NRS §116.3116(2), the homeowners' association's General Statutory
18 Lien is junior to a first security interest on the unit recorded before the date on which
19 the assessment sought to be enforced became delinquent ("First Security Interest")
20 except for a portion of the homeowners' association's General Statutory Lien which
21 remains superior to the First Security Interest (the "Super Priority Lien").
- 22 4. Unless an association's declaration otherwise provides, any penalties, fees, charges,
23 late charges, fines and interest charged pursuant to NRS 116.3102(1)(j) to (n),
24 inclusive, are enforceable in the same manner as assessments are enforceable under
25 NRS §116.3116. Thus, while such penalties, fees, charges, late charges, fines and
26 interest are not actual "assessments," they may be enforced in the same manner as
27
28

1 assessments are enforced, i.e., by inclusion in the association's General Statutory
2 Lien against the unit.

3 5. Homeowners' associations, therefore, have a Super Priority Lien which has priority
4 over the First Security Interest on a homeowners' unit. However, the Super Priority
5 Lien amount is not without limits and NRS §116.3116 is clear that the amount of the
6 Super Priority Lien (which is that portion of a homeowners' associations' General
7 Statutory Lien which retains priority status over the First Security Interest) is limited
8 "to the extent" of those assessments for common expenses based upon the
9 association's adopted periodic budget that would have become due in the 9 month
10 period immediately preceding an association's institution of an action to enforce its
11 General Statutory Lien (which is 9 months of regular assessments) and "to the extent
12 of" external repair costs pursuant to NRS §116.310312.

13 6. The base assessment figure used in the calculation of the Super Priority Lien is the
14 unit's un-accelerated, monthly assessment figure for association common expenses
15 which is wholly determined by the homeowners association's "periodic budget," as
16 adopted by the association, and not determined by any other document or statute.
17 Thus, the phrase contained in NRS §116.3116(2) which states, "... to the extent of the
18 assessments for common expenses based on the periodic budget adopted by the
19 association pursuant to NRS 116.3115 which would have become due in the absence
20 of acceleration during the 9 months immediately preceding institution of an action
21 to enforce the lien..." means a maximum figure equaling 9 times the association's
22 regular, monthly (not annual) assessments. If assessments are paid quarterly, then 3
23 quarters of assessments (i.e., 9 months) would equal the Super Priority Lien, plus
24 external repair costs pursuant to NRS §116.310312.

25 7. The words "to the extent of" contained in NRS §116.3116(2) mean "no more than,"
26 which clearly indicates a maximum figure or a cap on the Super Priority Lien which
27 cannot be exceeded.
28

1 8. Thus, while assessments, penalties, fees, charges, late charges, fines and interest may
2 be included within the Super Priority Lien, in no event can the total amount of the
3 Super Priority Lien exceed an amount equaling 9 times the homeowners'
4 association's regular monthly assessment amount to unit owners for common
5 expenses based on the periodic budget which would have become due immediately
6 preceding the association's institution of an action to enforce the lien, plus external
7 repair costs pursuant to NRS 116.310312.

8 9. Further, if regulations adopted by the Federal Home Loan Mortgage Corporation or
9 the Federal National Mortgage Association require a shorter period of priority for the
10 lien (i.e., shorter than 9 months of regular assessments,) the shorter period shall be
11 used in the calculation of the Super Priority Lien, except that notwithstanding the
12 provisions of the regulations, that shorter period used in the calculation of the Super
13 Priority Lien must not be less than the 6 months immediately preceding institution
14 of an action to enforce the lien.

15 10. Moreover, ^{the need for the institution of an actual civil action} the Super Priority Lien can exist only if an "action" is instituted by the
16 association to enforce its General Statutory Lien. ^{An order to enforce the Super Priority Lien can be obtained if the} The term "action" as used in NRS
17 ^{issue is otherwise properly raised in the court, as is the situation here where} §116.3116(2) (as opposed to the term "action" as contained in NRS §116.3116(1)), does
18 ^{foreclosure in effect constitute an action within the meaning of} not mean a "civil action" as that phrase is defined in NRCP 2 and NRCP 3 (i.e.,
19 ^{NRS 116.3116(2)(c)).} "action" as used in NRS §116.3116(2) does not mean the filing of a complaint with
20 the court).

21 IT IS SO ORDERED.

22  1/12/12
DISTRICT COURT JUDGE

Date 

23
24
25 Submitted by 

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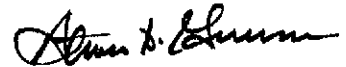
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19 Approved:

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EXHIBIT “2”



CLERK OF THE COURT

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23 **DISTRICT COURT**

24 **CLARK COUNTY, NEVADA**

25 IKON HOLDINGS, LLC, a Nevada limited liability
26 company,

27 Plaintiff,

28 vs.

29 HORIZONS AT SEVEN HILLS HOMEOWNERS
30 ASSOCIATION, and DOES 1 through 10 and ROE
31 ENTITIES 1 through 10 inclusive,

32 Defendant.

Case No: A-11-647850-C
Dept. No. 13

ORDER

33 This matter came before the Court on March 7, 2012, in chambers, upon the Defendant's
34 Motion for Clarification or, in the Alternative, for Reconsideration of Order Granting Summary
35 Judgment on Claim of Declaratory Relief. James R. Adams, Esq., of Adams Law Group, Ltd., and
36 Puoy K. Premsrirut, Esq., of Puoy K. Premsrirut, Esq., Inc., filed briefs on behalf of the Plaintiff.
37 Kurt Bonds, Esq., of Alverson, Taylor, Mortensen & Sanders and Patrick Reilly, Esq., of Holland
38 and Hart filed briefs on behalf of the Defendant. The Honorable Court, having read the briefs on file
and for good cause appearing hereby orders:

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DISTRICT COURT DEPT#13 3/16/12

1 Pursuant to EDCR 2.23(c), Defendant's Motion for Clarification or, in the Alternative, for
2 Reconsideration of Order Granting Summary Judgment on Claim of Declaratory Relief is denied
3 without hearing.

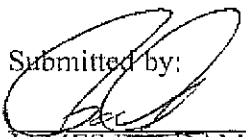
4 Further, the hearing on Defendant's Motion for Clarification or, in the Alternative, for
5 Reconsideration of Order Granting Summary Judgment on Claim of Declaratory Relief shall be
6 removed from the motion calendar currently set for March 12, 2012.

7 **IT IS SO ORDERED.**

8 
DISTRICT COURT JUDGE

3/15/12
Date *pm*

9
10
11 Submitted by:

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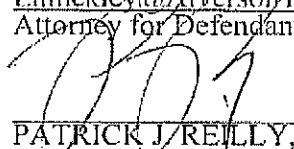
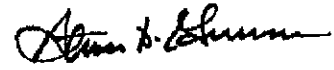
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EXHIBIT “3”


CLERK OF THE COURT

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23 **DISTRICT COURT**
24 **CLARK COUNTY, NEVADA**

25 IKON HOLDINGS, LLC, a Nevada limited liability
26 company,

Case No: A-11-647850-B
Dept: No. 13

27 Plaintiff,
28 vs.

ORDER

29 HORIZONS AT SEVEN HILLS HOMEOWNERS
30 ASSOCIATION, and DOES 1 through 10 and ROE
31 ENTITIES 1 through 10 inclusive,

32 Defendant.

33 This matter came before the Court on 7/12/2012, in chambers, on Defendant s Motion For
34 Reconsideration Of Order Granting Summary Judgment On Claim Of Declaratory Relief. The
35 Court, having reviewed the briefs and papers in this matter, for good cause hereby orders, adjudges
36 and decrees:

37 That for the reasons particularly stated in Plaintiff's Opposition to Motion to
38 Reconsideration, and pursuant to EDCR 2.23(c), the Court DENIES Defendant s Motion For
39 Reconsideration Of Order Granting Summary Judgment On Claim Of Declaratory Relief, without
40 oral argument.

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DISTRICT COURT DEPT# 13

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DISTRICT COURT DEPT# 13

1 **ORD**
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23 **DISTRICT COURT**
24 **CLARK COUNTY, NEVADA**

25 IKON HOLDINGS, LLC, a Nevada limited liability
26 company,

27 Plaintiff,

28 vs.

29 HORIZONS AT SEVEN HILLS HOMEOWNERS
30 ASSOCIATION, and DOES 1 through 10 and ROE
31 ENTITIES 1 through 10 inclusive,

32 Defendant.

Case No: A-11-647850-B
Dept: No. 13

ORDER

33 This matter came before the Court on 7/12/2012, in chambers, on Defendant s Motion For
34 Reconsideration Of Order Granting Summary Judgment On Claim Of Declaratory Relief. The
35 Court, having reviewed the briefs and papers in this matter, for good cause hereby orders, adjudges
36 and decrees:

37 That for the reasons particularly stated in Plaintiff's Opposition to Motion to
38 Reconsideration, and pursuant to EDCR 2.23(c), the Court DENIES Defendant s Motion For
39 Reconsideration Of Order Granting Summary Judgment On Claim Of Declaratory Relief, without
40 oral argument.

1 The Court further ORDERS such motion removed from its Civil Law and Motion Calendar
2 of July 16, 2012.

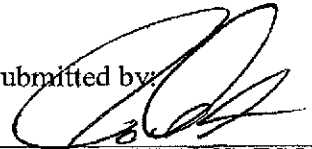
3 IT IS SO ORDERED.

4 
DISTRICT COURT JUDGE

Date

pm

5
6
7 Submitted by:

8 
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EXHIBIT “4”

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19 Attorneys for Plaintiff

20 **DISTRICT COURT**
21 **CLARK COUNTY, NEVADA**

22 IKON HOLDINGS, LLC, a Nevada limited liability
23 company,

24 Plaintiff,

25 vs.

26 HORIZONS AT SEVEN HILLS HOMEOWNERS
27 ASSOCIATION, and DOES 1 through 10 and ROE
28 ENTITIES 1 through 10 inclusive,

Defendant.

Case No: A-11-647850-C
Dept: No. 13

NOTICE OF ENTRY OF JUDGMENT

PLEASE TAKE NOTICE that Judgment has been entered in the above captioned matter
on this 11th day of April, 2013, a copy of which is attached hereto.

Dated this 12th day April, 2013.



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CERTIFICATE OF SERVICE

I certify that I am an employee of the Adams Law Group, Ltd. and that on this date, I served the following **NOTICE OF ENTRY OF JUDGMENT** on all parties to this action by:


X	Placing an original or true copy thereof in a sealed enveloped place for collection and mailing in the United States Mail, at Las Vegas, Nevada, postage paid, following the ordinary business practices;
	Hand Delivery
	Facsimile
	Overnight Delivery
	Certified Mail, Return Receipt Requested.

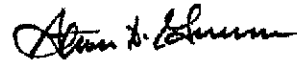
addressed as follows:

Patrick Reilly, Esq.
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Attorney for Defendant

Kurt Bonds, Esq.
Alverson Taylor Mortensen and Sanders
7401 W. Charleston Blvd.
Las Vegas, NV 89117-1401
Attorney for Defendant

Dated the 12th day of April, 2013.


An employee of Adams Law Group, Ltd.



CLERK OF THE COURT

1 JUDGE

ADAMS LAW GROUP, LTD.

2 JAMES R. ADAMS, ESQ.

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12 Attorneys for Plaintiff

13 DISTRICT COURT

14 CLARK COUNTY, NEVADA

15 IKON HOLDINGS, LLC, a Nevada limited liability
16 company,

17 Plaintiff,

18 vs.

19 HORIZONS AT SEVEN HILLS HOMEOWNERS
ASSOCIATION, and DOES 1 through 10 and ROE
ENTITIES 1 through 10 inclusive,

20 Defendant.

Case No: A-11-647850-C

Dept: No. 13

21 FINAL JUDGMENT

22 This matter came before the Court for trial on March 12, 2013 at 9:00 a.m. James R.
23 Adams, Esq., of Adams Law Group, Ltd., and Puoy K. Premsrirut, Esq., of Puoy K. Premsrirut,
24 Esq., Inc., appeared on behalf of the Plaintiff. Eric Hinckley, Esq., and Kurt Bonds, Esq., of
25 Alverson, Taylor, Mortensen & Sanders, and Patrick Reilly, Esq., of Holland & Hart, LLP appeared
26 on behalf of the Defendant. The Honorable Court, having considered the matter, for good cause
27 appearing hereby enters judgment and finds as follows:

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MAR 27 2013

DISTRICT COURT DEPT# 13

1 WHEREAS, Plaintiff purchased certain real estate in a common interest community as an
2 investment property at the nonjudicial foreclosure auction of the property's first trust deed holder,
3 said property being located within Defendant Horizon at Seven Hills Homeowners' Association;
4 and

5 WHEREAS, the primary issue in this case was what was the amount of Defendant's "super
6 priority" lien against Plaintiff's property which survived the foreclosure of the property's first trust
7 deed holder pursuant to NRS 116.3116(2) and Defendant's covenants, conditions and restrictions
8 ("CC&RS"); and

9 WHEREAS, it was the position of Plaintiff that the amount of such lien which survived the
10 foreclosure of the property's first trust deed holder did not exceed a figure equaling 6 months of
11 Defendant's monthly assessments based upon its periodic budget and as provided in Section 7.8 and
12 7.9 of Defendant's CC&RS; and

13 WHEREAS, it was the also the position of Plaintiff that regardless of the CC&RS, the
14 amount of Defendant's lien that survived the foreclosure of the property's first trust deed holder did
15 not exceed a figure equaling 9 months of Defendant's monthly assessments based upon its periodic
16 budget as provided in NRS 116.3116(2); and

17 WHEREAS, it was the position of the Defendant that the amount of Defendant's lien that
18 survived the foreclosure of the property's first trust deed holder was not limited to a figure equaling
19 6 or 9 months of assessments *Defendant maintaining that the portion of the 100% lien given*
periodically, status is defined with regard to a particular time

20 WHEREAS, the Court has already determined findings of fact and conclusions of law as *periodically, there being no mention in the statute of any*
numerical limitation or mathematical calculation, and
21 a result of 3 prior summary judgment orders entered by the Court which are attached hereto and
22 incorporated and restated herein (Ex. 1, "1/19/2012 Order") (Ex. 2, "4/16/2012 Order") (Ex. 3,
23 "7/20/2012 Order"); and

24 WHEREAS, it has been stipulated by all counsel that \$1,140.00 (a figure equaling 6 months
25 of assessments) has been tendered by Plaintiff and received by Defendant as that is the amount
26 Plaintiff alleges was due and owing under provisions contained in Defendant's CC&RS, said
27 amount being in conformance with this Court's 7/20/2012 Order (the "Payment"); and
28

1 WHEREAS, Defendant has stipulated¹ to record a "Release of Notice of Delinquent
2 Assessment Lien" which now renders moot Plaintiff's sole remaining cause of action for injunctive
3 relief;

4 THE COURT, THEREFORE, DECLARES, ORDERS, ADJUDGES AND DECREES as
5 follows:

6 All claims and issues in this matter have now been fully adjudicated as evidenced by the
7 above findings, and by the findings and conclusions contained in the 1/19/2012 Order, the
8 4/16/2012 Order and the 7/20/2012 Order, and by the Payment, said amount being in conformance
9 with this Court's 7/20/2012 Order. Final judgment is hereby entered in this matter pursuant to the
10 findings stated above, and pursuant to the findings of fact and conclusions of law contained in the
11 1/19/2012 Order, the 4/16/2012 Order and the 7/20/2012 Order which are hereby incorporated and
12 restated herein.

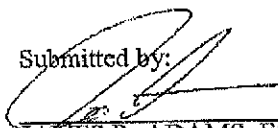
13 IT IS SO ADJUDGED.

14 
DISTRICT COURT JUDGE

15 Date

16 4/5/13
RB

17 Submitted by:

18 
19 JAMES R. ADAMS, ESQ.
20 Nevada Bar No. 6874
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Attorneys for Plaintiff

25
26 ¹Defendant stipulated to record the "Release of Notice of Delinquent Assessment Lien"
27 solely to eliminate the need for this Court to issue a permanent injunction. Defendant advised at
28 trial that it fully intends to appeal this Court's summary judgment orders upon the entry of this
final judgment. Accordingly, its recordation of said Release does not constitute any kind of
waiver of its substantive arguments for appellate purposes.

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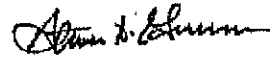
10 Approved:

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Ex. 1


CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

23 IKON HOLDINGS, LLC, a Nevada limited liability
24 company,

25 Plaintiff,

26 vs.

27 HORIZONS AT SEVEN HILLS HOMEOWNERS
28 ASSOCIATION, and DOES 1 through 10 and ROE
ENTITIES 1 through 10 inclusive,

Defendant.

Case No: A-11-647850-C
Dept: No. 13

ORDER

21 This matter came before the Court on December 12, 2011 at 9:00 a.m., upon the Plaintiff's
22 Motion for Summary Judgment on Claim of Declaratory Relief and Defendant's Counter Motion for
23 Summary Judgment on Claim of Declaratory Relief. James R. Adams, Esq., of Adams Law Group,
24 Ltd., and Puoy K. Premsrirut, Esq., of Puoy K. Premsrirut, Esq., Inc., appeared on behalf of the
25 Plaintiff. Eric Hinckley, Esq., of Alverson, Taylor, Mortensen & Sanders appeared on behalf of the
26 Defendant. The Honorable Court, having read the briefs on file and having heard oral argument, and
27 for good cause appearing hereby rules:
28

1 WHEREAS, the Court has determined that a justiciable controversy exists in this matter as
2 Plaintiff has asserted a claim of right under NRS §116.3116 (the "Super Priority Lien" statute)
3 against Defendant and Defendant has an interest in contesting said claim, the present controversy
4 is between persons or entities whose interests are adverse, both parties seeking declaratory relief
5 have a legal interest in the controversy (i.e., a legally protectible interest), and the issue involved in
6 the controversy (the meaning of NRS 116.3116) is ripe for judicial determination as between the
7 parties. *Kress v. Corey* 65 Nev. 1, 189 P.2d 352 (1948); and

8 WHEREAS Plaintiff and Defendant, the contesting parties hereto, are clearly adverse and
9 hold different views regarding the meaning and applicability of NRS §116.3116 (including whether
10 Defendant demanded from Plaintiff amounts in excess of that which is permitted under the NRS
11 §116.3116); and

12 WHEREAS Plaintiff has a legal interest in the controversy as it was Plaintiff's money which
13 had been demanded by Defendant and it was Plaintiff's property that had been the subject of a
14 homeowners' association statutory lien by Defendant; and

15 WHEREAS the issue of the meaning, application and interpretation of NRS §116.3116 is
16 ripe for determination in this case as the present controversy is real, it exists now, and it affects the
17 parties hereto; and

18 WHEREAS, therefore, the Court finds that issuing a declaratory judgment relating to the
19 meaning and interpretation of NRS §116.3116 would terminate some of the uncertainty and
20 controversy giving rise to the present proceeding; and

21 WHEREAS, pursuant to NRS §30.040 Plaintiff and Defendant are parties whose rights,
22 status or other legal relations are affected by NRS §116.3116 and they may, therefore, have
23 determined by this Court any question of construction or validity arising under NRS §116.3116 and
24 obtain a declaration of rights, status or other legal relations thereunder; and

25 WHEREAS, the Court is persuaded that Plaintiff's position is correct relative to the
26 components of the Super Priority Lien (exterior repair costs and 9 months of regular assessments)
27 and the cap relative to the regular assessments, but it is not persuaded relative to Plaintiff's position
28

1 concerning the need for a civil action to trigger a homeowners' association's entitlement to the Super
2 Priority Lien.

3 THE COURT, THEREFORE, DECLARES, ORDERS, ADJUDGES AND DECREES as
4 follows:

- 5 1. Plaintiff's Motion for Partial Summary Judgment on Declaratory Relief is granted in
6 part and Defendant's Motion for Summary Judgment on Declaratory Relief is granted
7 in part.
- 8 2. NRS §116.3116 is a statute which creates for the benefit of Nevada homeowners'
9 associations a general statutory lien against a homeowner's unit for (a) any
10 construction penalty that is imposed against the unit's owner pursuant to NRS
11 §116.310305, (b) any assessment levied against that unit, and (c) any fines imposed
12 against the unit's owner from the time the construction penalty, assessment or fine
13 becomes due (the "General Statutory Lien"). The homeowners' associations'
14 General Statutory Lien is noticed and perfected by the recording of the associations'
15 declaration and, pursuant to NRS §116.3116(4), no further recordation of any claim
16 of lien for assessment is required.
- 17 3. Pursuant to NRS §116.3116(2), the homeowners' association's General Statutory
18 Lien is junior to a first security interest on the unit recorded before the date on which
19 the assessment sought to be enforced became delinquent ("First Security Interest")
20 except for a portion of the homeowners' association's General Statutory Lien which
21 remains superior to the First Security Interest (the "Super Priority Lien").
- 22 4. Unless an association's declaration otherwise provides, any penalties, fees, charges,
23 late charges, fines and interest charged pursuant to NRS 116.3102(1)(j) to (n),
24 inclusive, are enforceable in the same manner as assessments are enforceable under
25 NRS §116.3116. Thus, while such penalties, fees, charges, late charges, fines and
26 interest are not actual "assessments," they may be enforced in the same manner as
27
28

1 assessments are enforced, i.e., by inclusion in the association's General Statutory
2 Lien against the unit.

- 3 5. Homeowners' associations, therefore, have a Super Priority Lien which has priority
4 over the First Security Interest on a homeowners' unit. However, the Super Priority
5 Lien amount is not without limits and NRS §116.3116 is clear that the amount of the
6 Super Priority Lien (which is that portion of a homeowners' associations' General
7 Statutory Lien which retains priority status over the First Security Interest) is limited
8 "to the extent" of those assessments for common expenses based upon the
9 association's adopted periodic budget that would have become due in the 9 month
10 period immediately preceding an association's institution of an action to enforce its
11 General Statutory Lien (which is 9 months of regular assessments) and "to the extent
12 of" external repair costs pursuant to NRS §116.310312.

- 13 6. The base assessment figure used in the calculation of the Super Priority Lien is the
14 unit's un-accelerated, monthly assessment figure for association common expenses
15 which is wholly determined by the homeowners association's "periodic budget," as
16 adopted by the association, and not determined by any other document or statute.
17 Thus, the phrase contained in NRS §116.3116(2) which states, "... to the extent of the
18 assessments for common expenses based on the periodic budget adopted by the
19 association pursuant to NRS 116.3115 which would have become due in the absence
20 of acceleration during the 9 months immediately preceding institution of an action
21 to enforce the lien..." means a maximum figure equaling 9 times the association's
22 regular, monthly (not annual) assessments. If assessments are paid quarterly, then 3
23 quarters of assessments (i.e., 9 months) would equal the Super Priority Lien, plus
24 external repair costs pursuant to NRS §116.310312.

- 25 7. The words "to the extent of" contained in NRS §116.3116(2) mean "no more than,"
26 which clearly indicates a maximum figure or a cap on the Super Priority Lien which
27 cannot be exceeded.
28

1 8. Thus, while assessments, penalties, fees, charges, late charges, fines and interest may
2 be included within the Super Priority Lien, in no event can the total amount of the
3 Super Priority Lien exceed an amount equaling 9 times the homeowners'
4 association's regular monthly assessment amount to unit owners for common
5 expenses based on the periodic budget which would have become due immediately
6 preceding the association's institution of an action to enforce the lien, plus external
7 repair costs pursuant to NRS 116.310312.

8 9. Further, if regulations adopted by the Federal Home Loan Mortgage Corporation or
9 the Federal National Mortgage Association require a shorter period of priority for the
10 lien (i.e., shorter than 9 months of regular assessments,) the shorter period shall be
11 used in the calculation of the Super Priority Lien, except that notwithstanding the
12 provisions of the regulations, that shorter period used in the calculation of the Super
13 Priority Lien must not be less than the 6 months immediately preceding institution
14 of an action to enforce the lien.

15 10. Moreover, ^{the need for the institution of an actual civil action} the Super Priority Lien can exist only if an "action" is instituted by the
16 association to enforce its General Statutory Lien. ^{As under the Super Priority Lien can be obtained by the}
17 ^{association to enforce its General Statutory Lien. The term "action" as used in NRS}
18 ^{§116.3116(2) (as opposed to the term "action" as contained in NRS §116.3116(1)), does}
19 ^{not mean a "civil action" as that phrase is defined in NRCP 2 and NRCP 3 (i.e.,}
20 ^{NRS 116.3116(2)(c)).}
21 "action" as used in NRS §116.3116(2) does not mean the filing of a complaint with
22 the court).

21 IT IS SO ORDERED.

22 DISTRICT COURT JUDGE

22 Date

23 Submitted by

24
25
26 JAMES R. ADAMS, ESQ.
27 Nevada Bar No. 6874
28 ASSLY SAYYAR, ESQ.

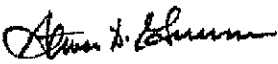
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Ex. 2


CLERK OF THE COURT

ORDER

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*Attorneys for Defendants Horizons At Seven Hills
Homeowners Association*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

IKON HOLDINGS, LLC, a Nevada limited
liability company,

Plaintiff,

vs.

**HORIZONS AT SEVEN HILLS
HOMEOWNERS ASSOCIATION**; and **DOES**
1 through 10; and **ROE ENTITIES** 1 through
10 inclusive,

Defendants.

Case No. : A-11-647850-B
Dept. No.: XIII

**ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

**ORDER GRANTING DEFENDANT'S
COUNTERMOTION FOR SUMMARY
JUDGMENT**

Hearing Date: March 12, 2012

Hearing Time: 9:00 a.m.

This matter came before the Court on March 12, 2012, for hearing on Plaintiff's Motion for Summary Judgment and on Defendant's Countermotion for Summary Judgment. James R. Adams, Esq. of the Adams Law Group and Puoy Premsrirut, Esq. of the law firm of Brown, Brown & Premsrirut appeared on behalf of Plaintiff Ikon Holdings, LLC ("Ikon"). Patrick J.

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DISTRICT COURT DEPT# 13

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1 Reilly, Esq. of the law firm of Holland & Hart LLP and Eric W. Hinckley, Esq. of the law firm
2 of Alverson, Taylor, Mortensen, and Sanders appeared on behalf of Defendant Horizons at Seven
3 Hills Homeowners Association ("Horizons"). After carefully considering the briefs and
4 arguments of counsel, this Court makes the following findings of fact and conclusions of law:

5 I.

6 FINDINGS OF FACT

7 1. On or around June 28, 2010, Scott Ludwig purchased certain real property located
8 at 950 Seven Hills Drive, Suite 1411, Henderson, Nevada 89052 (the "Property") at a foreclosure
9 sale conducted by the holder of a first deed of trust against the Property.

10 2. The Property is located within Horizons.

11 3. Horizons had previously recorded a Notice of Delinquent Assessment Lien on
12 June 17, 2009 and a Notice of Default and Election to Sell Under Homeowners Association Lien
13 on August 4, 2009. Both of these recordings occurred prior to the foreclosure sale, in the amount
14 of \$4,289.50, with the amount of the lien to increase until the amount became current.

15 4. Shortly after the foreclosure sale, on July 14, 2010, Mr. Ludwig transferred title
16 of the Property to Ikon.

17 5. On or around September 30, 2010, Horizons recorded another Notice of
18 Delinquent Assessment Lien ("Lien") against the Property.

19 6. Ikon disputed and did not pay any of the amounts demanded by Horizons.

20 7. Ikon did not begin making payments to Horizons until May 2011 when it began
21 making regular monthly assessments to the Property.

22 8. It is undisputed that, as of the date of the hearing, Ikon had not paid any amount
23 owed.

24 II.

25 CONCLUSIONS OF LAW

26 The Nevada Rules of Civil Procedure provide, in pertinent part, as follows:

27 A party against whom a claim . . . is sought may, at any
28 time, move with or without supporting affidavits for a
summary judgment in the party's favor as to all or any part

thereof . . . the judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

NRCP 56. Summary judgment must be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." NRCP 56(c). In *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005), the Nevada Supreme Court embraced the summary judgment standard set forth in seminal United States Supreme Court cases such as *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), and *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). Under this standard, summary judgment is designed to secure the just, speedy, and inexpensive determination of every action where appropriate. *Celotex*, 477 U.S. at 327.

Once the moving party demonstrates the absence of a genuine issue of material fact, the nonmoving party must show the existence of a genuine issue of material fact to avoid summary judgment. *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 172 P.3d 131, 134 (2007). Nevada law no longer allows the nonmoving party to merely raise the "slightest doubt" about the facts. *Wood*, 121 Nev. at 731, 121 P.3d at 1031. Thus, the nonmoving party cannot merely "build a case on the gossamer threads of whimsy, speculation, and conjecture." *Id.* at 732, 121 P.3d at 1031 (quotation omitted). The nonmoving party must present *genuine* issues of *material* fact to avoid summary judgment. *Id.*, 121 P.3d at 1031.

In the instant case, Plaintiff's causes of action beyond those for Declaratory Relief and Injunctive Relief are not sustainable under the undisputed factual scenario involved in this case. It is undisputed that Plaintiff did not pay any of the SPL amount demanded and lien by Horizons, even the amounts it concedes it owes. As a result, Plaintiff has not suffered or incurred any damages that could be recovered under the First, Second, Third, Fourth and Fifth Causes of Action pleaded in Plaintiff's Complaint. In sum, this is not a case seeking attorney's fees and

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1 costs for a slander of title. *See Horgan v. Felton*, 123 Nev. 577, 583-86, 170 P.3d 982 (2007).
2 Further, the Court does not consider that the theories pleaded by Plaintiff have been shown to
3 involve genuine issues of material fact as to damages that are otherwise recoverable under those
4 causes of action.

5 * * *

6 Accordingly, this Court hereby DENIES Plaintiff's Motion for Summary Judgment and
7 GRANTS Defendant's Countermotion for Summary Judgment in its entirety. This Order is
8 without prejudice to Plaintiff's effort to seek attorney's fees and costs based upon whatever
9 statutory or contractual premise that may or may not be applicable.

10 IT IS SO ORDERED.

11 DATED this 13th day of April, 2012.

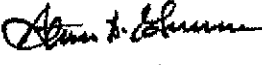
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13 
DISTRICT COURT JUDGE PM

14
15 Submitted by: 
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Ex. 3


CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

23 IKON HOLDINGS, LLC, a Nevada limited liability
24 company,

25 Plaintiff,

26 vs.

27 HORIZONS AT SEVEN HILLS HOMEOWNERS
28 ASSOCIATION, and DOES 1 through 10 and ROE
ENTITIES 1 through 10 inclusive,

Defendant.

Case No: A-11-647850-C
Dept: No. 13

ORDER

THIS MATTER having come before the Court on June 11, 2012, for hearing on Plaintiff's Motion for Summary Judgment on Declaratory Relief and on Defendant's Counter-Motion for Summary Judgment. James R. Adams, Esq., of Adams Law Group, Ltd., and Puoy K. Premsrirut, Esq., of Puoy K. Premsrirut, Esq., Inc., appeared on behalf of the Plaintiff. Eric Hinckley, Esq., of Alverson, Taylor, Mortensen & Sanders and Patrick Reilly, Esq., of Holland & Hart appeared on behalf of the Defendant. The Court, having considered the papers submitted in connection with such item(s) and heard the arguments made on behalf of the parties and then taken the matter under advisement for further consideration, and for good cause appearing hereby rules:

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23 DISTRICT COURT
24 CLARK COUNTY, NEVADA

25 IKON HOLDINGS, LLC, a Nevada limited liability
26 company,

27 Plaintiff,

28 vs.

HORIZONS AT SEVEN HILLS HOMEOWNERS
ASSOCIATION, and DOES 1 through 10 and ROE
ENTITIES 1 through 10 inclusive,

Defendant.

Case No: A-11-647850-C
Dept: No. 13

ORDER

THIS MATTER having come before the Court on June 11, 2012, for hearing on Plaintiff's Motion for Summary Judgment on Declaratory Relief and on Defendant's Counter-Motion for Summary Judgment. James R. Adams, Esq., of Adams Law Group, Ltd., and Puoy K. Premsrirut, Esq., of Puoy K. Premsrirut, Esq., Inc., appeared on behalf of the Plaintiff. Eric Hinckley, Esq., of Alverson, Taylor, Mortensen & Sanders and Patrick Reilly, Esq., of Holland & Hart appeared on behalf of the Defendant. The Court, having considered the papers submitted in connection with such item(s) and heard the arguments made on behalf of the parties and then taken the matter under advisement for further consideration, and for good cause appearing hereby rules:

1 WHEREAS, on 7/6/2005, Defendant, a Nevada homeowners' association, recorded in the
2 Clark County, Nevada, Recorder's Office, the Declaration of Covenants Conditions & Restrictions
3 and Reservations of Easements for Horizon at Seven Hills Homeowners Association ("CC&RS");
4 and

5 WHEREAS, on 6/28/2010, Scott M. Ludwig purchased APN 177-35-610-137 (the "Unit")
6 at a foreclosure auction of the prior owner's first mortgage lender ("6/28/2010 Foreclosure
7 Auction"); and

8 WHEREAS, the Unit is located with Defendant homeowners' association; and

9 WHEREAS, on 7/14/2010, Scott M. Ludwig transferred the Unit by quit claim deed to
10 Plaintiff ("Ikon Deed"); and

11 WHEREAS, on 9/30/2010 Defendant filed a Notice of Delinquent Assessment Lien against
12 Plaintiff and the Unit for \$6,050.14 ("Notice of Delinquent Assessment Lien"); and

13 WHEREAS, on 10/18/2010 Defendant sent Plaintiff a letter stating, "Per your request, the
14 current balance for the above property is \$6,287.94." (the "10/18/10 Collection Letter"); and

15 WHEREAS, pursuant to the spreadsheet of fees and costs attached to the 10/18/10 Collection
16 Letter, Defendant's monthly assessments were \$190.00; and

17 WHEREAS, the Unit, being located within Defendant homeowners' association, is subject
18 to NRS 116 (Common Interest Ownership Uniform Act) and the CC&RS; and

19 WHEREAS, the Court has determined that a justiciable controversy exists in this matter as
20 Plaintiff has asserted a claim of right against Defendant under NRS §116.3116 and Sections 7.8 and
21 7.9 of the Defendant's CC&RS and Defendant has an interest in contesting said claim, the present
22 controversy is between persons or entities whose interests are adverse, both parties seeking
23 declaratory relief have a legal interest in the controversy (i.e., a legally protectible interest), and the
24 issue involved in the controversy (the meaning and application of NRS 116.3116 and of Sections 7.8
25 and 7.9 of the CC&RS) is ripe for judicial determination as between the parties. *Kress v. Corey* 65
26 Nev. 1, 189 P.2d 352 (1948); and

1 WHEREAS, Plaintiff and Defendant, the contesting parties hereto, are clearly adverse and
2 hold different views regarding the meaning and applicability of Sections 7.8 and 7.9 of the CC&RS
3 in that Plaintiff maintains that Sections 7.8 and 7.9 of the CC&RS call for a limit on Defendant's
4 prioritized portion of its homeowners' association lien on Plaintiff's Unit to the extent of an amount
5 equal to 6 months of assessments (i.e., "The lien of the assessments, including interest and costs,
6 shall be subordinate to the lien of any First Mortgage upon the Unit (except to the extent of Annual
7 Assessments which would have become due in the absence of acceleration during the six (6) months
8 immediately preceding institution of an action to enforce the lien)") and further maintains that
9 Sections 7.8 and 7.9 of the CC&RS do not violate the statutory lien limit as noted in NRS
10 116.3116(2) as the CC&RS call for a lesser amount for the prioritized portion of the lien than does
11 NRS 116.3116(2). Conversely, Defendant maintains there are either two prioritized liens (one
12 contractual and one statutory) and/or that Sections 7.8 and 7.9 of Defendant's CC&RS violate NRS
13 116.3116(2) in that Sections 7.8 and 7.9 call for a lesser amount for the prioritized portion of the lien
14 than does NRS 116.3116(2) and, therefore, the prioritized portion of Defendant's lien must equal
15 the greater amount as noted in NRS 116.3116(2); and

16 WHEREAS, Plaintiff has a legal interest in the controversy as it was Plaintiff's money which
17 had been demanded by Defendant and it was Plaintiff's Unit that had been the subject of a
18 homeowners' association assessment lien by Defendant; and

19 WHEREAS the issue of the meaning, application and interpretation of Sections 7.8 and 7.9
20 of the CC&RS in conjunction with NRS §116.3116 is ripe for determination in this case as the
21 present controversy is real, it exists now, and it affects the parties hereto; and

22 WHEREAS, therefore, the Court finds that issuing a declaratory judgment relating to the
23 meaning and interpretation of Sections 7.8 and 7.9 of the CC&RS in conjunction with NRS
24 §116.3116 would terminate some of the uncertainty and controversy giving rise to the present
25 proceeding; and

26 WHEREAS, pursuant to NRS §30.040 Plaintiff and Defendant are parties whose rights,
27 status or other legal relations are affected by Sections 7.8 and 7.9 of the CC&RS and they may,
28

1 therefore, have determined by this Court any question of construction or validity arising under said
2 Sections and obtain a declaration of rights, status or other legal relations thereunder; and

3 WHEREAS, regarding priority of homeowner association assessment liens, Section 7.8 and
4 7.9 of the CC&RS state the following:

5 Section 7.8 Mortgagee Protection. Notwithstanding all other
6 provisions hereof, no lien created under this Article 7, nor the
7 enforcement of any provision of this Declaration shall defeat or
8 render invalid the rights of the Beneficiary under any Recorded First
9 Deed of Trust encumbering a Unit, made in good faith and for value;
10 provided that after such Beneficiary or some other Person obtains title
11 to such Unit by judicial foreclosure, other foreclosure, or exercise of
12 power of sale, such Unit shall remain subject to this Declaration and
13 the payment of all installments of assessments accruing subsequent
14 to the date such Beneficiary or other Person obtains title, subject to
15 the following. The lien of the assessments, including interest and
16 costs, shall be subordinate to the lien of any First Mortgage upon
17 the Unit (except to the extent of Annual Assessments which would
18 have become due in the absence of acceleration during the six (6)
19 months immediately preceding institution of an action to enforce
20 the lien). The release or discharge of any lien for unpaid assessments
21 by reason of the foreclosure or exercise of power of sale by the First
22 Mortgagee shall not relieve the prior Owner of his personal obligation
23 for the payment of such unpaid assessments.

24 Section 7.9 Priority of Assessment Lien. Recording of the
25 Declaration constitutes Record notice and perfection of a lien for
26 assessments. A lien for assessments, including interest, costs, and
27 attorneys' fees, as provided for herein, shall be prior to all other
28 liens and encumbrances on a Unit, except for: (a) liens and
encumbrances Recorded before the Declaration was Recorded; (b) a
first Mortgage Recorded before the delinquency of the
assessment sought to be enforced (except to the extent of Annual
Assessments which would have become due in the absence of
acceleration during the six (6) months immediately preceding
institution of an action to enforce the lien), and (c) liens for real
estate taxes and other governmental charges, and is otherwise subject
to NRS § 116.3116. The sale or transfer of any Unit shall not affect
an assessment lien. However, subject to foregoing provision of this
Section 7.9, the sale or transfer of any Unit pursuant to judicial or
non-judicial foreclosure of a First Mortgage shall extinguish the lien
of such assessment as to payments which became due prior to such
sale or transfer. No sale or transfer shall relieve such Unit from lien
rights for any assessments which thereafter become due. Where the
Beneficiary of a First Mortgage of Record or other purchaser of
a Unit obtains title pursuant to a judicial or nonjudicial
foreclosure or "deed in lieu thereof," the Person who obtains title
and his or her successors and assigns shall not be liable for the
share of the Common Expenses or assessments by the Association
chargeable to such Unit which became due prior to the

1 acquisition of title to such Unit by such Person (except to the
2 extent of Annual Assessments which would have become due in
3 the absence of acceleration during the six (6) months immediately
4 preceding institution of an action to enforce the lien). Such
5 unpaid share of Common Expenses and assessments shall be
6 deemed to become expenses collectible from all of the Units,
7 including the Unit belonging to such Person and his or her
8 successors and assigns.

9 WHEREAS, the Court is persuaded that Plaintiff's position is correct relative to the
10 component and ceiling issues contained in its Motion relating to Sections 7.8 and 7.9 of the CC&RS
11 in that pursuant to said Sections, Defendant's prioritized portion of its lien may include assessments
12 and "... interest, costs, and attorneys' fees..." but, pursuant to Sections 7.8 and 7.9 of the CC&RS,
13 is only prior to the first mortgage holder, "... to the extent of Annual Assessments which would have
14 become due in the absence of acceleration during the six (6) months immediately preceding
15 institution of an action to enforce the lien..."

16 THE COURT, THEREFORE, DECLARES, ORDERS, ADJUDGES AND DECREES as
17 follows:

- 18 1. Defendant's Counter-Motion for Summary Judgment is DENIED and Plaintiff's Motion for
19 Partial Summary Judgment on Declaratory Relief is GRANTED IN PART to the extent that
20 it seeks the following declarations:

21 Defendant, in contravention of Nevada Revised Statutes §116.3116,
22 has unlawfully demanded from Plaintiff amounts in excess of the
23 Super Priority Lien to which it has no legal entitlement.

24 Pursuant to Sections 7.8 and 7.9 of the Defendant's CC&RS,
25 Defendant's lien was junior to the first security interest of the Unit's
26 first mortgage lender except for a certain, limited and specified
27 portion of the lien as defined in Sections 7.8 and 7.9 of the CC&RS
28 (i.e., an amount equal to 6 months of assessments,) and

Defendant, in contravention of Sections 7.8 and 7.9 of the
Defendant's CC&RS has improperly demanded monies from Plaintiff
in order to satisfy Defendant's claimed liens or demands which
exceeded a figure equaling 6 months of assessments, thereby
violating the CC&RS.

2. NRS 116.3116(1) states what can be the subject of a homeowners' association's general
assessment lien on a unit and NRS 116.3116(2) states what the statutory limits are to the
prioritized portion of the assessment lien, i.e., that portion of a homeowners' association's

1 lien which, after the foreclosure of a unit's first trust deed holder, is superior to the first trust
2 deed as a matter of law (See Order entered January 19, 2012).

3 3. A homeowners' association's lien against a unit located within its association is contractually
4 created, perfected and noticed by the recording of the CC&RS (See NRS 116.3116(4)).

5 4. To the extent that provisions of CC&RS call for a lesser amount for the prioritized portion
6 of the assessment lien than does NRS 116.3116(2), the lesser amount shall be utilized as the
7 prioritized portion of the lien.

8 5. NRS 116.1206 states:

9 NRS 116.1206 Provisions of governing documents in violation of
10 chapter deemed to conform with chapter by operation of law;
procedure for certain amendments to governing documents.

11 1. Any provision contained in a declaration, bylaw or other
12 governing document of a common-interest community that violates
the provisions of this chapter:

13 (a) Shall be deemed to conform with those provisions by
14 operation of law, and any such declaration, bylaw or other governing
document is not required to be amended to conform to those
15 provisions.

16 (b) Is superseded by the provisions of this chapter, regardless of
17 whether the provision contained in the declaration, bylaw or other
governing document became effective before the enactment of the
provision of this chapter that is being violated.

18 6. Defendant maintains that NRS 116.3116(2) and Sections 7.8 and 7.9 are conceptually
19 separate and, in effect, create two separate liens. The Court disagrees. There is but a single
20 lien which is created, perfected and noticed by the recording of the CC&RS (See NRS
21 116.3116(4)).

22 7. The Court further disagrees with Defendant's position that the provisions of NRS 116.1206
23 are to the effect that lesser amounts for the prioritized portion of the Defendant's lien which
24 is called for by the CC&RS (Sections 7.8 and 7.9) are automatically elevated to the limits
25 provided for by NRS 116.3116(2) if such lesser amounts are inconsistent with what is
26 permitted by NRS 116.3116(2). The Court disagrees because the language of subsection (1)
27 of NRS 116.1206 refers to any provision in the CC&RS that " ... violates the provisions of
28

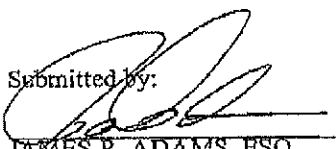
1 this chapter" The Court determines that the language in Defendant's CC&RS (Section
2 7.8 and 7.9) which calls for a lesser amount for the prioritized portion of the lien than does
3 NRS 116.3116(2) does not "violate" the statutory prioritized lien limit as provided for in
4 NRS 116.3116(2) because the amounts called for in the CC&RS do not exceed the limit
5 called for by NRS 116.3116(2), but in fact are within the limit. Thus, the amount of the
6 prioritized portion of a homeowners' association's lien as called for in CC&RS does not need
7 to rise to the maximum level as noted in NRS 116.3116(2), as a lesser amount as called for
8 in the CC&RS does not "violate" NRS 116.3116(2).

9 8. While the Court has ruled that interest, costs and other fees may be included in the prioritized
10 portion of the lien as long as the prioritized portion of the lien does not exceed an amount
11 equal to 6 months of assessments as noted in Section 7.8 and 7.9 of the CC&RS, at this time,
12 however, the Court is not extending its declaratory relief ruling to the specific monetary
13 amounts referenced in Plaintiff's Motion for Summary Judgment at pages 9 and 10. *Now*
14 *is the Court at this time addressing issues of attorney's fees and costs pursuant to NRS 18.010(2),*
IT IS SO ORDERED.

15 
DISTRICT COURT JUDGE

16 Date
17 7/19/12
18 pm

19 Submitted by:

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EXHIBIT “5”

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12 EIGHTH JUDICIAL DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 IKON HOLDINGS, LLC, a Nevada limited
15 liability company,

16 Plaintiff,

17 vs.

18 HORIZONS AT SEVEN HILLS
19 HOMEOWNERS ASSOCIATION, and
20 DOES 1 through 10 and ROE ENTITIES 1
21 through 10 inclusive,

22 Defendant.

Case No.: A-11-647850-C


Dept. No.: 13

**NOTICE OF ENTRY OF FINAL
JUDGMENT.**

23 PLEASE TAKE NOTICE that on the ~~1st~~ of May, 2013 a NOTICE of ENTRY of FINAL
24 JUDGMENT was entered in the above referenced matter, a copy of which is attached hereto.

25 Dated this 6 of May, 2013.

ADAMS LAW GROUP, LTD.

26
27
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Attorneys for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 6 day of May 2013, a copy of the NOTICE
3 OF ENTRY of FINAL JUDGMENT was served on the following party by:

4

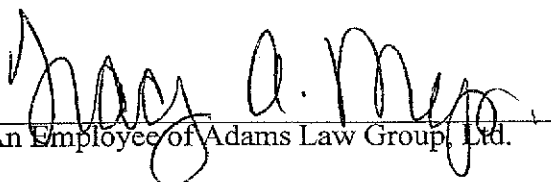
5 X	Placing an original or true copy thereof in a sealed enveloped place for collection and mailing in the United States Mail, at Las Vegas, Nevada, postage paid, following the ordinary business practices;
6	Hand Delivery
7	Facsimile
8	Overnight Delivery
	Certified Mail, Return Receipt Requested.
	Electronic Mailing or Email, Delivery Receipt Requested

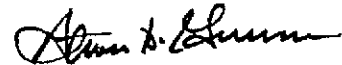
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An Employee of Adams Law Group, Ltd.
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CLERK OF THE COURT

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Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

IKON HOLDINGS, LLC, a Nevada limited liability
company,

Plaintiff,

vs.

HORIZONS AT SEVEN HILLS HOMEOWNERS
ASSOCIATION, and DOES 1 through 10 and ROE
ENTITIES 1 through 10 inclusive,

Defendant.

Case No: A-11-647850-C
Dept: No. 13

FINAL JUDGMENT

This matter came before the Court for trial on March 12, 2013 at 9:00 a.m. James R. Adams, Esq., of Adams Law Group, Ltd., and Puoy K. Premsrirut, Esq., of Puoy K. Premsrirut, Esq., Inc., appeared on behalf of the Plaintiff. Eric Hinckley, Esq., and Kurt Bonds, Esq., of Alverson, Taylor, Mortensen & Sanders, and Patrick Reilly, Esq., of Holland & Hart, LLP appeared on behalf of the Defendant. The Honorable Court, having considered the matter, for good cause appearing hereby enters judgment and finds as follows:

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DISTRICT COURT DEPT# 13

1 WHEREAS, Plaintiff purchased certain real estate in a common interest community as an
2 investment property at the nonjudicial foreclosure auction of the property's first trust deed holder,
3 said property being located within Defendant Horizon at Seven Hills Homeowners' Association;
4 and

5 WHEREAS, the primary issue in this case was what was the amount of Defendant's "super
6 priority" lien against Plaintiff's property which survived the foreclosure of the property's first trust
7 deed holder pursuant to NRS 116.3116(2) and Defendant's covenants, conditions and restrictions
8 ("CC&RS"); and

9 WHEREAS, it was the position of Plaintiff that the amount of such lien which survived the
10 foreclosure of the property's first trust deed holder did not exceed a figure equaling 6 months of
11 Defendant's monthly assessments based upon its periodic budget and as provided in Section 7.8 and
12 7.9 of Defendant's CC&RS; and

13 WHEREAS, it was the also the position of Plaintiff that regardless of the CC&RS, the
14 amount of Defendant's lien that survived the foreclosure of the property's first trust deed holder did
15 not exceed a figure equaling 9 months of Defendant's monthly assessments based upon its periodic
16 budget as provided in NRS 116.3116(2); and

17 WHEREAS, it was the position of the Defendant that the amount of Defendant's lien that
18 survived the foreclosure of the property's first trust deed holder was not limited to a figure equaling
19 6 or 9 months of assessments; *Defendant maintaining that the portion of the HOA lien given*
periodically, there being no mention in the statute of any
numerical limitation for mathematical calculation, and

20 WHEREAS, the Court has already determined findings of fact and conclusions of law as
21 a result of 3 prior summary judgment orders entered by the Court which are attached hereto and
22 incorporated and restated herein (Ex. 1, "1/19/2012 Order") (Ex. 2, "4/16/2012 Order") (Ex. 3,
23 "7/20/2012 Order"); and

24 WHEREAS, it has been stipulated by all counsel that \$1,140.00 (a figure equaling 6 months
25 of assessments) has been tendered by Plaintiff and received by Defendant as that is the amount
26 Plaintiff alleges was due and owing under provisions contained in Defendant's CC&RS, said
27 amount being in conformance with this Court's 7/20/2012 Order (the "Payment"); and
28

1 WHEREAS, Defendant has stipulated¹ to record a "Release of Notice of Delinquent
2 Assessment Lien" which now renders moot Plaintiff's sole remaining cause of action for injunctive
3 relief;

4 THE COURT, THEREFORE, DECLARES, ORDERS, ADJUDGES AND DECREES as
5 follows:

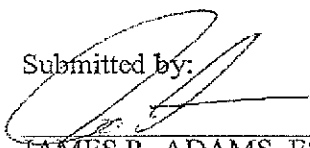
6 All claims and issues in this matter have now been fully adjudicated as evidenced by the
7 above findings, and by the findings and conclusions contained in the 1/19/2012 Order, the
8 4/16/2012 Order and the 7/20/2012 Order, and by the Payment, said amount being in conformance
9 with this Court's 7/20/2012 Order. Final judgment is hereby entered in this matter pursuant to the
10 findings stated above, and pursuant to the findings of fact and conclusions of law contained in the
11 1/19/2012 Order, the 4/16/2012 Order and the 7/20/2012 Order which are hereby incorporated and
12 restated herein.

13 IT IS SO ADJUDGED.

14 
DISTRICT COURT JUDGE

4/5/13
Date

7B

16
17 Submitted by: 

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26 ¹Defendant stipulated to record the "Release of Notice of Delinquent Assessment Lien"
27 solely to eliminate the need for this Court to issue a permanent injunction. Defendant advised at
28 trial that it fully intends to appeal this Court's summary judgment orders upon the entry of this
final judgment. Accordingly, its recordation of said Release does not constitute any kind of
waiver of its substantive arguments for appellate purposes.

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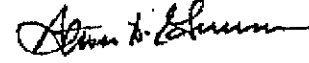
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Ex. 1


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**DISTRICT COURT
CLARK COUNTY, NEVADA**

IKON HOLDINGS, LLC, a Nevada limited liability
company,

Plaintiff,

vs.

HORIZONS AT SEVEN HILLS HOMEOWNERS
ASSOCIATION, and DOES 1 through 10 and ROE
ENTITIES 1 through 10 inclusive,

Defendant.

Case No: A-11-647850-C
Dept: No. 13

ORDER

This matter came before the Court on December 12, 2011 at 9:00 a.m., upon the Plaintiff's Motion for Summary Judgment on Claim of Declaratory Relief and Defendant's Counter Motion for Summary Judgment on Claim of Declaratory Relief. James R. Adams, Esq., of Adams Law Group, Ltd., and Puoy K. Premsrirut, Esq., of Puoy K. Premsrirut, Esq., Inc., appeared on behalf of the Plaintiff. Eric Hinckley, Esq., of Alverson, Taylor, Mortensen & Sanders appeared on behalf of the Defendant. The Honorable Court, having read the briefs on file and having heard oral argument, and for good cause appearing hereby rules:

1 WHEREAS, the Court has determined that a justiciable controversy exists in this matter as
2 Plaintiff has asserted a claim of right under NRS §116.3116 (the "Super Priority Lien" statute)
3 against Defendant and Defendant has an interest in contesting said claim, the present controversy
4 is between persons or entities whose interests are adverse, both parties seeking declaratory relief
5 have a legal interest in the controversy (i.e., a legally protectible interest), and the issue involved in
6 the controversy (the meaning of NRS 116.3116) is ripe for judicial determination as between the
7 parties. *Kress v. Corey* 65 Nev. 1, 189 P.2d 352 (1948); and

8 WHEREAS Plaintiff and Defendant, the contesting parties hereto, are clearly adverse and
9 hold different views regarding the meaning and applicability of NRS §116.3116 (including whether
10 Defendant demanded from Plaintiff amounts in excess of that which is permitted under the NRS
11 §116.3116); and

12 WHEREAS Plaintiff has a legal interest in the controversy as it was Plaintiff's money which
13 had been demanded by Defendant and it was Plaintiff's property that had been the subject of a
14 homeowners' association statutory lien by Defendant; and

15 WHEREAS the issue of the meaning, application and interpretation of NRS §116.3116 is
16 ripe for determination in this case as the present controversy is real, it exists now, and it affects the
17 parties hereto; and

18 WHEREAS, therefore, the Court finds that issuing a declaratory judgment relating to the
19 meaning and interpretation of NRS §116.3116 would terminate some of the uncertainty and
20 controversy giving rise to the present proceeding; and

21 WHEREAS, pursuant to NRS §30.040 Plaintiff and Defendant are parties whose rights,
22 status or other legal relations are affected by NRS §116.3116 and they may, therefore, have
23 determined by this Court any question of construction or validity arising under NRS §116.3116 and
24 obtain a declaration of rights, status or other legal relations thereunder; and

25 WHEREAS, the Court is persuaded that Plaintiff's position is correct relative to the
26 components of the Super Priority Lien (exterior repair costs and 9 months of regular assessments)
27 and the cap relative to the regular assessments, but it is not persuaded relative to Plaintiff's position
28

1 concerning the need for a civil action to trigger a homeowners' association's entitlement to the Super
2 Priority Lien.

3 THE COURT, THEREFORE, DECLARES, ORDERS, ADJUDGES AND DECREES as
4 follows:

- 5 1. Plaintiff's Motion for Partial Summary Judgment on Declaratory Relief is granted in
6 part and Defendant's Motion for Summary Judgment on Declaratory Relief is granted
7 in part.
- 8 2. NRS §116.3116 is a statute which creates for the benefit of Nevada homeowners'
9 associations a general statutory lien against a homeowner's unit for (a) any
10 construction penalty that is imposed against the unit's owner pursuant to NRS
11 §116.310305, (b) any assessment levied against that unit, and (c) any fines imposed
12 against the unit's owner from the time the construction penalty, assessment or fine
13 becomes due (the "General Statutory Lien"). The homeowners' associations'
14 General Statutory Lien is noticed and perfected by the recording of the associations'
15 declaration and, pursuant to NRS §116.3116(4), no further recordation of any claim
16 of lien for assessment is required.
- 17 3. Pursuant to NRS §116.3116(2), the homeowners' association's General Statutory
18 Lien is junior to a first security interest on the unit recorded before the date on which
19 the assessment sought to be enforced became delinquent ("First Security Interest")
20 except for a portion of the homeowners' association's General Statutory Lien which
21 remains superior to the First Security Interest (the "Super Priority Lien").
- 22 4. Unless an association's declaration otherwise provides, any penalties, fees, charges,
23 late charges, fines and interest charged pursuant to NRS 116.3102(1)(j) to (n),
24 inclusive, are enforceable in the same manner as assessments are enforceable under
25 NRS §116.3116. Thus, while such penalties, fees, charges, late charges, fines and
26 interest are not actual "assessments," they may be enforced in the same manner as
27
28

1 assessments are enforced, i.e., by inclusion in the association's General Statutory
2 Lien against the unit.

3 5. Homeowners' associations, therefore, have a Super Priority Lien which has priority
4 over the First Security Interest on a homeowners' unit. However, the Super Priority
5 Lien amount is not without limits and NRS §116.3116 is clear that the amount of the
6 Super Priority Lien (which is that portion of a homeowners' associations' General
7 Statutory Lien which retains priority status over the First Security Interest) is limited
8 "to the extent" of those assessments for common expenses based upon the
9 association's adopted periodic budget that would have become due in the 9 month
10 period immediately preceding an association's institution of an action to enforce its
11 General Statutory Lien (which is 9 months of regular assessments) and "to the extent
12 of" external repair costs pursuant to NRS §116.310312.

13 6. The base assessment figure used in the calculation of the Super Priority Lien is the
14 unit's un-accelerated, monthly assessment figure for association common expenses
15 which is wholly determined by the homeowners association's "periodic budget," as
16 adopted by the association, and not determined by any other document or statute.
17 Thus, the phrase contained in NRS §116.3116(2) which states, "... to the extent of the
18 assessments for common expenses based on the periodic budget adopted by the
19 association pursuant to NRS 116.3115 which would have become due in the absence
20 of acceleration during the 9 months immediately preceding institution of an action
21 to enforce the lien..." means a maximum figure equaling 9 times the association's
22 regular, monthly (not annual) assessments. If assessments are paid quarterly, then 3
23 quarters of assessments (i.e., 9 months) would equal the Super Priority Lien, plus
24 external repair costs pursuant to NRS §116.310312.



25 7. The words "to the extent of" contained in NRS §116.3116(2) mean "no more than,"
26 which clearly indicates a maximum figure or a cap on the Super Priority Lien which
27 cannot be exceeded.
28

1 8. Thus, while assessments, penalties, fees, charges, late charges, fines and interest may
2 be included within the Super Priority Lien, in no event can the total amount of the
3 Super Priority Lien exceed an amount equaling 9 times the homeowners'
4 association's regular monthly assessment amount to unit owners for common
5 expenses based on the periodic budget which would have become due immediately
6 preceding the association's institution of an action to enforce the lien, plus external
7 repair costs pursuant to NRS 116.310312.

8 9. Further, if regulations adopted by the Federal Home Loan Mortgage Corporation or
9 the Federal National Mortgage Association require a shorter period of priority for the
10 lien (i.e., shorter than 9 months of regular assessments,) the shorter period shall be
11 used in the calculation of the Super Priority Lien, except that notwithstanding the
12 provisions of the regulations, that shorter period used in the calculation of the Super
13 Priority Lien must not be less than the 6 months immediately preceding institution
14 of an action to enforce the lien.

15 10. Moreover, ^{the need for the institution of an actual civil action} the Super Priority Lien can exist only if an "action" is instituted by the
16 association to enforce its General Statutory Lien. The term "action" as used in NRS
17 §116.3116(2) (as opposed to the term "action" as contained in NRS §116.3116(1)), does
18 not mean a "civil action" as that phrase is defined in NRCP 2 and NRCP 3 (i.e.,
19 "action" as used in NRS §116.3116(2) does not mean the filing of a complaint with
20 the court).

21 IT IS SO ORDERED.

22  1/12/12
23 DISTRICT COURT JUDGE Date 

24
25 Submitted by 

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Ex. 2


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23 *Homeowners Association*

24 **DISTRICT COURT**

25 **CLARK COUNTY, NEVADA**

26 IKON HOLDINGS, LLC, a Nevada limited
27 liability company,

28 Plaintiff,

vs.

29 HORIZONS AT SEVEN HILLS
30 HOMEOWNERS ASSOCIATION; and DOES
31 1 through 10; and ROE ENTITIES 1 through
32 10 inclusive,

33 Defendants.

Case No.: A-11-647850-B
Dept. No.: XIII

**ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

**ORDER GRANTING DEFENDANT'S
COUNTERMOTION FOR SUMMARY
JUDGMENT**

Hearing Date: March 12, 2012

Hearing Time: 9:00 a.m.

34
35 This matter came before the Court on March 12, 2012, for hearing on Plaintiff's Motion
36 for Summary Judgment and on Defendant's Countermotion for Summary Judgment. James R.
37 Adams, Esq. of the Adams Law Group and Puoy Premsrut, Esq. of the law firm of Brown,
38 Brown & Premsrut appeared on behalf of Plaintiff Ikon Holdings, LLC ("Ikon"). Patrick J.

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DISTRICT COURT DEPT# 13

1 Reilly, Esq. of the law firm of Holland & Hart LLP and Eric W. Hinckley, Esq. of the law firm
2 of Alverson, Taylor, Mortensen, and Sanders appeared on behalf of Defendant Horizons at Seven
3 Hills Homeowners Association ("Horizons"). After carefully considering the briefs and
4 arguments of counsel, this Court makes the following findings of fact and conclusions of law:

5 I.

6 FINDINGS OF FACT

7 1. On or around June 28, 2010, Scott Ludwig purchased certain real property located
8 at 950 Seven Hills Drive, Suite 1411, Henderson, Nevada 89052 (the "Property") at a foreclosure
9 sale conducted by the holder of a first deed of trust against the Property.

10 2. The Property is located within Horizons.

11 3. Horizons had previously recorded a Notice of Delinquent Assessment Lien on
12 June 17, 2009 and a Notice of Default and Election to Sell Under Homeowners Association Lien
13 on August 4, 2009. Both of these recordings occurred prior to the foreclosure sale, in the amount
14 of \$4,289.50, with the amount of the lien to increase until the amount became current.

15 4. Shortly after the foreclosure sale, on July 14, 2010, Mr. Ludwig transferred title
16 of the Property to Ikon. .

17 5. On or around September 30, 2010, Horizons recorded another Notice of
18 Delinquent Assessment Lien ("Lien") against the Property.

19 6. Ikon disputed and did not pay any of the amounts demanded by Horizons.

20 7. Ikon did not begin making payments to Horizons until May 2011 when it began
21 making regular monthly assessments to the Property.

22 8. It is undisputed that, as of the date of the hearing, Ikon had not paid any amount
23 owed.

24 II.

25 CONCLUSIONS OF LAW

26 The Nevada Rules of Civil Procedure provide, in pertinent part, as follows:

27 A party against whom a claim . . . is sought may, at any
28 time, move with or without supporting affidavits for a
summary judgment in the party's favor as to all or any part

thereof . . . the judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

NRCP 56. Summary judgment must be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” NRCP 56(c). In *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005), the Nevada Supreme Court embraced the summary judgment standard set forth in seminal United States Supreme Court cases such as *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), and *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). Under this standard, summary judgment is designed to secure the just, speedy, and inexpensive determination of every action where appropriate. *Celotex*, 477 U.S. at 327.

Once the moving party demonstrates the absence of a genuine issue of material fact, the nonmoving party must show the existence of a genuine issue of material fact to avoid summary judgment. *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 172 P.3d 131, 134 (2007). Nevada law no longer allows the nonmoving party to merely raise the “slightest doubt” about the facts. *Wood*, 121 Nev. at 731, 121 P.3d at 1031. Thus, the nonmoving party cannot merely “build a case on the gossamer threads of whimsy, speculation, and conjecture.” *Id.* at 732, 121 P.3d at 1031 (quotation omitted). The nonmoving party must present *genuine* issues of *material* fact to avoid summary judgment. *Id.*, 121 P.3d at 1031.

In the instant case, Plaintiff’s causes of action beyond those for Declaratory Relief and Injunctive Relief are not sustainable under the undisputed factual scenario involved in this case. It is undisputed that Plaintiff did not pay any of the SPL amount demanded and lien by Horizons, even the amounts it concedes it owes. As a result, Plaintiff has not suffered or incurred any damages that could be recovered under the First, Second, Third, Fourth and Fifth Causes of Action pleaded in Plaintiff’s Complaint. In sum, this is not a case seeking attorney’s fees and

1 costs for a slander of title. *See Horgan v. Felton*, 123 Nev. 577, 583-86, 170 P.3d 982 (2007).
2 Further, the Court does not consider that the theories pleaded by Plaintiff have been shown to
3 involve genuine issues of material fact as to damages that are otherwise recoverable under those
4 causes of action.

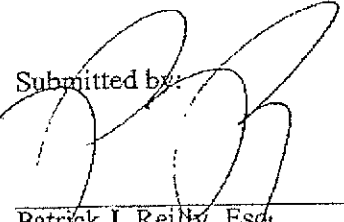
5 * * *

6 Accordingly, this Court hereby DENIES Plaintiff's Motion for Summary Judgment and
7 GRANTS Defendant's Countermotion for Summary Judgment in its entirety. This Order is
8 without prejudice to Plaintiff's effort to seek attorney's fees and costs based upon whatever
9 statutory or contractual premise that may or may not be applicable.

10 IT IS SO ORDERED.

11 DATED this 13th day of April, 2012.

12
13 
14 DISTRICT COURT JUDGE 

15 Submitted by: 

16
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29 *Attorneys for Defendants Horizons At Seven Hills*
30 *Homeowners Association*

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Ex. 3


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16 Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

15 IKON HOLDINGS, LLC, a Nevada limited liability
16 company,

17 Plaintiff,

18 vs.

19 HORIZONS AT SEVEN HILLS HOMEOWNERS
20 ASSOCIATION, and DOES 1 through 10 and ROE
21 ENTITIES 1 through 10 inclusive,

22 Defendant.

Case No: A-11-647850-C
Dept: No. 13

ORDER

23 THIS MATTER having come before the Court on June 11, 2012, for hearing on Plaintiff's
24 Motion for Summary Judgment on Declaratory Relief and on Defendant's Counter-Motion for
25 Summary Judgment. James R. Adams, Esq., of Adams Law Group, Ltd., and Puoy K. Premsrirut,
26 Esq., of Puoy K. Premsrirut, Esq., Inc., appeared on behalf of the Plaintiff. Eric Hinckley, Esq., of
27 Alverson, Taylor, Mortensen & Sanders and Patrick Reilly, Esq., of Holland & Hart appeared on
28 behalf of the Defendant. The Court, having considered the papers submitted in connection with such
item(s) and heard the arguments made on behalf of the parties and then taken the matter under
advisement for further consideration, and for good cause appearing hereby rules:

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23 **DISTRICT COURT**

24 **CLARK COUNTY, NEVADA**

25 IKON HOLDINGS, LLC, a Nevada limited liability
26 company,

27 Plaintiff,

28 vs.

29 HORIZONS AT SEVEN HILLS HOMEOWNERS
30 ASSOCIATION, and DOES 1 through 10 and ROE
31 ENTITIES 1 through 10 inclusive,

32 Defendant.

Case No: A-11-647850-C

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ORDER

33 THIS MATTER having come before the Court on June 11, 2012, for hearing on Plaintiff's
34 Motion for Summary Judgment on Declaratory Relief and on Defendant's Counter-Motion for
35 Summary Judgment. James R. Adams, Esq., of Adams Law Group, Ltd., and Puoy K. Premsrirut,
36 Esq., of Puoy K. Premsrirut, Esq., Inc., appeared on behalf of the Plaintiff. Eric Hinckley, Esq., of
37 Alverson, Taylor, Mortensen & Sanders and Patrick Reilly, Esq., of Holland & Hart appeared on
38 behalf of the Defendant. The Court, having considered the papers submitted in connection with such
item(s) and heard the arguments made on behalf of the parties and then taken the matter under
advisement for further consideration, and for good cause appearing hereby rules:

1 WHEREAS, on 7/6/2005, Defendant, a Nevada homeowners' association, recorded in the
2 Clark County, Nevada, Recorder's Office, the Declaration of Covenants Conditions & Restrictions
3 and Reservations of Easements for Horizon at Seven Hills Homeowners Association ("CC&RS");
4 and

5 WHEREAS, on 6/28/2010, Scott M. Ludwig purchased APN 177-35-610-137 (the "Unit")
6 at a foreclosure auction of the prior owner's first mortgage lender ("6/28/2010 Foreclosure
7 Auction"); and

8 WHEREAS, the Unit is located with Defendant homeowners' association; and

9 WHEREAS, on 7/14/2010, Scott M. Ludwig transferred the Unit by quit claim deed to
10 Plaintiff ("Ikon Deed"); and

11 WHEREAS, on 9/30/2010 Defendant filed a Notice of Delinquent Assessment Lien against
12 Plaintiff and the Unit for \$6,050.14 ("Notice of Delinquent Assessment Lien"); and

13 WHEREAS, on 10/18/2010 Defendant sent Plaintiff a letter stating, "Per your request, the
14 current balance for the above property is \$6,287.94." (the "10/18/10 Collection Letter"); and

15 WHEREAS, pursuant to the spreadsheet of fees and costs attached to the 10/18/10 Collection
16 Letter, Defendant's monthly assessments were \$190.00; and

17 WHEREAS, the Unit, being located within Defendant homeowners' association, is subject
18 to NRS 116 (Common Interest Ownership Uniform Act) and the CC&RS; and

19 WHEREAS, the Court has determined that a justiciable controversy exists in this matter as
20 Plaintiff has asserted a claim of right against Defendant under NRS §116.3116 and Sections 7.8 and
21 7.9 of the Defendant's CC&RS and Defendant has an interest in contesting said claim, the present
22 controversy is between persons or entities whose interests are adverse, both parties seeking
23 declaratory relief have a legal interest in the controversy (i.e., a legally protectible interest), and the
24 issue involved in the controversy (the meaning and application of NRS 116.3116 and of Sections 7.8
25 and 7.9 of the CC&RS) is ripe for judicial determination as between the parties. *Kress v. Corey* 65
26 Nev. 1, 189 P.2d 352 (1948); and

1 WHEREAS, Plaintiff and Defendant, the contesting parties hereto, are clearly adverse and
2 hold different views regarding the meaning and applicability of Sections 7.8 and 7.9 of the CC&RS
3 in that Plaintiff maintains that Sections 7.8 and 7.9 of the CC&RS call for a limit on Defendant's
4 prioritized portion of its homeowners' association lien on Plaintiff's Unit to the extent of an amount
5 equal to 6 months of assessments (i.e., "The lien of the assessments, including interest and costs,
6 shall be subordinate to the lien of any First Mortgage upon the Unit (except to the extent of Annual
7 Assessments which would have become due in the absence of acceleration during the six (6) months
8 immediately preceding institution of an action to enforce the lien)") and further maintains that
9 Sections 7.8 and 7.9 of the CC&RS do not violate the statutory lien limit as noted in NRS
10 116.3116(2) as the CC&RS call for a lesser amount for the prioritized portion of the lien than does
11 NRS 116.3116(2). Conversely, Defendant maintains there are either two prioritized liens (one
12 contractual and one statutory) and/or that Sections 7.8 and 7.9 of Defendant's CC&RS violate NRS
13 116.3116(2) in that Sections 7.8 and 7.9 call for a lesser amount for the prioritized portion of the lien
14 than does NRS 116.3116(2) and, therefore, the prioritized portion of Defendant's lien must equal
15 the greater amount as noted in NRS 116.3116(2); and

16 WHEREAS, Plaintiff has a legal interest in the controversy as it was Plaintiff's money which
17 had been demanded by Defendant and it was Plaintiff's Unit that had been the subject of a
18 homeowners' association assessment lien by Defendant; and

19 WHEREAS the issue of the meaning, application and interpretation of Sections 7.8 and 7.9
20 of the CC&RS in conjunction with NRS §116.3116 is ripe for determination in this case as the
21 present controversy is real, it exists now, and it affects the parties hereto; and

22 WHEREAS, therefore, the Court finds that issuing a declaratory judgment relating to the
23 meaning and interpretation of Sections 7.8 and 7.9 of the CC&RS in conjunction with NRS
24 §116.3116 would terminate some of the uncertainty and controversy giving rise to the present
25 proceeding; and

26 WHEREAS, pursuant to NRS §30.040 Plaintiff and Defendant are parties whose rights,
27 status or other legal relations are affected by Sections 7.8 and 7.9 of the CC&RS and they may,
28

1 therefore, have determined by this Court any question of construction or validity arising under said
2 Sections and obtain a declaration of rights, status or other legal relations thereunder; and

3 WHEREAS, regarding priority of homeowner association assessment liens, Section 7.8 and
4 7.9 of the CC&RS state the following:

5 Section 7.8 Mortgagee Protection. Notwithstanding all other
6 provisions hereof, no lien created under this Article 7, nor the
7 enforcement of any provision of this Declaration shall defeat or
8 render invalid the rights of the Beneficiary under any Recorded First
9 Deed of Trust encumbering a Unit, made in good faith and for value;
10 provided that after such Beneficiary or some other Person obtains title
11 to such Unit by judicial foreclosure, other foreclosure, or exercise of
12 power of sale, such Unit shall remain subject to this Declaration and
13 the payment of all installments of assessments accruing subsequent
14 to the date such Beneficiary or other Person obtains title, subject to
15 the following. The lien of the assessments, including interest and
16 costs, shall be subordinate to the lien of any First Mortgage upon
17 the Unit (except to the extent of Annual Assessments which would
18 have become due in the absence of acceleration during the six (6)
19 months immediately preceding institution of an action to enforce
20 the lien). The release or discharge of any lien for unpaid assessments
21 by reason of the foreclosure or exercise of power of sale by the First
22 Mortgagee shall not relieve the prior Owner of his personal obligation
23 for the payment of such unpaid assessments.

24 Section 7.9 Priority of Assessment Lien. Recording of the
25 Declaration constitutes Record notice and perfection of a lien for
26 assessments. A lien for assessments, including interest, costs, and
27 attorneys' fees, as provided for herein, shall be prior to all other
28 liens and encumbrances on a Unit, except for: (a) liens and
encumbrances Recorded before the Declaration was Recorded; (b) a
first Mortgage Recorded before the delinquency of the
assessment sought to be enforced (except to the extent of Annual
Assessments which would have become due in the absence of
acceleration during the six (6) months immediately preceding
institution of an action to enforce the lien), and (c) liens for real
estate taxes and other governmental charges, and is otherwise subject
to NRS § 116.3116. The sale or transfer of any Unit shall not affect
an assessment lien. However, subject to foregoing provision of this
Section 7.9, the sale or transfer of any Unit pursuant to judicial or
non-judicial foreclosure of a First Mortgage shall extinguish the lien
of such assessment as to payments which became due prior to such
sale or transfer. No sale or transfer shall relieve such Unit from lien
rights for any assessments which thereafter become due. Where the
Beneficiary of a First Mortgage of Record or other purchaser of
a Unit obtains title pursuant to a judicial or nonjudicial
foreclosure or "deed in lieu thereof," the Person who obtains title
and his or her successors and assigns shall not be liable for the
share of the Common Expenses or assessments by the Association
chargeable to such Unit which became due prior to the

1 acquisition of title to such Unit by such Person (except to the
2 extent of Annual Assessments which would have become due in
3 the absence of acceleration during the six (6) months immediately
4 preceding institution of an action to enforce the lien). Such
5 unpaid share of Common Expenses and assessments shall be
6 deemed to become expenses collectible from all of the Units,
7 including the Unit belonging to such Person and his or her
8 successors and assigns.

9 WHEREAS, the Court is persuaded that Plaintiff's position is correct relative to the
10 component and ceiling issues contained in its Motion relating to Sections 7.8 and 7.9 of the CC&RS
11 in that pursuant to said Sections, Defendant's prioritized portion of its lien may include assessments
12 and "... interest, costs, and attorneys' fees..." but, pursuant to Sections 7.8 and 7.9 of the CC&RS,
13 is only prior to the first mortgage holder, "... to the extent of Annual Assessments which would have
14 become due in the absence of acceleration during the six (6) months immediately preceding
15 institution of an action to enforce the lien...."

16 THE COURT, THEREFORE, DECLARES, ORDERS, ADJUDGES AND DECREES as
17 follows:

- 18 1. Defendant's Counter-Motion for Summary Judgment is DENIED and Plaintiff's Motion for
19 Partial Summary Judgment on Declaratory Relief is GRANTED IN PART to the extent that
20 it seeks the following declarations:

21 Defendant, in contravention of Nevada Revised Statutes §116.3116,
22 has unlawfully demanded from Plaintiff amounts in excess of the
23 Super Priority Lien to which it has no legal entitlement.

24 Pursuant to Sections 7.8 and 7.9 of the Defendant's CC&RS,
25 Defendant's lien was junior to the first security interest of the Unit's
26 first mortgage lender except for a certain, limited and specified
27 portion of the lien as defined in Sections 7.8 and 7.9 of the CC&RS
28 (i.e., an amount equal to 6 months of assessments,) and

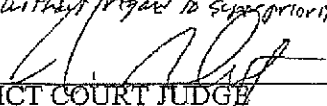
 Defendant, in contravention of Sections 7.8 and 7.9 of the
 Defendant's CC&RS has improperly demanded monies from Plaintiff
 in order to satisfy Defendant's claimed liens or demands which
 exceeded a figure equaling 6 months of assessments, thereby
 violating the CC&RS.

2. NRS 116.3116(1) states what can be the subject of a homeowners' association's general
 assessment lien on a unit and NRS 116.3116(2) states what the statutory limits are to the
 prioritized portion of the assessment lien, i.e., that portion of a homeowners' association's

- 1 lien which, after the foreclosure of a unit's first trust deed holder, is superior to the first trust
2 deed as a matter of law (See Order entered January 19, 2012).
- 3 3. A homeowners' association's lien against a unit located within its association is contractually
4 created, perfected and noticed by the recording of the CC&RS (See NRS 116.3116(4)).
- 5 4. To the extent that provisions of CC&RS call for a lesser amount for the prioritized portion
6 of the assessment lien than does NRS 116.3116(2), the lesser amount shall be utilized as the
7 prioritized portion of the lien.
- 8 5. NRS 116.1206 states:
- 9 NRS 116.1206 Provisions of governing documents in violation of
10 chapter deemed to conform with chapter by operation of law;
11 procedure for certain amendments to governing documents.
- 12 1. Any provision contained in a declaration, bylaw or other
13 governing document of a common-interest community that violates
14 the provisions of this chapter:
- 15 (a) Shall be deemed to conform with those provisions by
16 operation of law, and any such declaration, bylaw or other governing
17 document is not required to be amended to conform to those
18 provisions.
- 19 (b) Is superseded by the provisions of this chapter, regardless of
20 whether the provision contained in the declaration, bylaw or other
21 governing document became effective before the enactment of the
22 provision of this chapter that is being violated.
- 23 6. Defendant maintains that NRS 116.3116(2) and Sections 7.8 and 7.9 are conceptually
24 separate and, in effect, create two separate liens. The Court disagrees. There is but a single
25 lien which is created, perfected and noticed by the recording of the CC&RS (See NRS
26 116.3116(4)).
- 27 7. The Court further disagrees with Defendant's position that the provisions of NRS 116.1206
28 are to the effect that lesser amounts for the prioritized portion of the Defendant's lien which
is called for by the CC&RS (Sections 7.8 and 7.9) are automatically elevated to the limits
provided for by NRS 116.3116(2) if such lesser amounts are inconsistent with what is
permitted by NRS 116.3116(2). The Court disagrees because the language of subsection (1)
of NRS 116.1206 refers to any provision in the CC&RS that " ... violates the provisions of

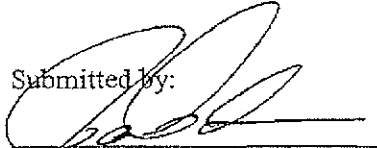
1 this chapter" The Court determines that the language in Defendant's CC&RS (Section
2 7.8 and 7.9) which calls for a lesser amount for the prioritized portion of the lien than does
3 NRS 116.3116(2) does not "violate" the statutory prioritized lien limit as provided for in
4 NRS 116.3116(2) because the amounts called for in the CC&RS do not exceed the limit
5 called for by NRS 116.3116(2), but in fact are within the limit. Thus, the amount of the
6 prioritized portion of a homeowners' association's lien as called for in CC&RS does not need
7 to rise to the maximum level as noted in NRS 116.3116(2), as a lesser amount as called for
8 in the CC&RS does not "violate" NRS 116.3116(2).

- 9 8. While the Court has ruled that interest, costs and other fees may be included in the prioritized
10 portion of the lien as long as the prioritized portion of the lien does not exceed an amount
11 equal to 6 months of assessments as noted in Section 7.8 and 7.9 of the CC&RS, at this time,
12 however, the Court is not extending its declaratory relief ruling to the specific monetary
13 amounts referenced in Plaintiff's Motion for Summary Judgment at pages 9 and 10. *As*
14 *is the Court at this time addressing issues of attorney's fees and costs pursuant to NRS 18.010(2),*
IT IS SO ORDERED. *IT IS SO ORDERED.* *IT IS SO ORDERED.*

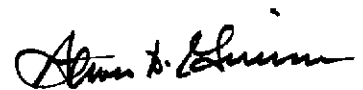
15 
16 DISTRICT COURT JUDGE

17 7/19/12
18 Date

19 Submitted by:

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7 *Attorneys for Defendants Horizons At*
8 *Seven Hills Homeowners Association*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 IKON HOLDINGS, LLC, a Nevada limited
12 liability company,

13 Plaintiff,

14 vs.

15 HORIZONS AT SEVEN HILLS
HOMEOWNERS ASSOCIATION; and
16 DOES 1 through 10; and ROE ENTITIES 1
through 10 inclusive,

17 Defendants.
18

Case No. : A-11-647850-B
Dept. No.: XIII

CASE APPEAL STATEMENT

19 **CASE APPEAL STATEMENT**

20 **1. Identify each appellant and the name and address of appellate counsel:**

21 Horizons at Seven Hills Homeowners Association ("Appellant") is represented by Patrick
22 Reilly, Esq., Holland & Hart, LLP, 9555 Hillwood Drive, 2nd Floor, Las Vegas, Nevada 89134.

23 **2. Identify the judge issuing the decision, judgment, or order appealed from:**

24 Honorable Mark Denton.

25 **3. Identify each respondent and the name and address of appellate counsel, if known,
for each respondent:**

26 Ikon Holdings, LLC is represented by James R. Adams, Esq., Adams Law Group, Ltd.,
27 8010 W. Sahara Ave., Suite 260, Las Vegas, NV 89117; and Puoy K. Premsrirut, Esq., Puoy K.
Premsrirut, Esq. Inc., 520 S. Fourth Street, 2nd Floor, Las Vegas, Nevada 89101.

1 **4. Identify any attorney that is not licensed to practice law in Nevada and, if so,**
2 **whether the district court granted that attorney permission to appear under SCR**
3 **42:**

4 All attorneys are licensed in the State of Nevada.

5 **5. Indicate whether appellant was represented by appointed or retained counsel in the**
6 **district court:**

7 Appellants were represented by counsel identified in Section 1 in the district court.
8 Appellant was additionally represented in the district court by Kurt R. Bonds, Esq. and
9 Eric W. Hinckley, Esq., Alverson, Taylor, Mortensen & Sanders, 7401 W. Charleston
10 Blvd., Las Vegas, Nevada 89117.

11 **6. Indicate whether appellant was granted leave to proceed in forma pauperis, and**
12 **the date of entry of the district court order granting such leave:**

13 Appellant is not proceeding in forma pauperis.

14 **7. Indicate the date the proceedings commenced in the district court (e.g., date**
15 **complaint, indictment, information, or petition was filed):**

16 The complaint was filed on September 6, 2011.

17 **8. Provide a brief description of the nature of the action and result in the district**
18 **court, including the type of judgment or order being appealed and the relief**
19 **granted by the district court:**

20 The district court action principally concerned the scope and amount of a residual "super-
21 priority" lien created in favor of Appellant by both NRS Chapter 116 and underlying Covenants,
22 Conditions & Restrictions ("CC&Rs") after foreclosure by a unit owner's first deed of trust
23 holder. Appellant Horizons is a common interest community as defined by NRS 116.021.
24 Respondent Ikon ("Ikon") is a real estate investment company that purchases distressed
25 residential properties at auction and quickly resells ("flips") them for a profit.

26 Ikon purchased the underlying real property (which was part of Horizons's common
27 interest community) after a non-judicial foreclosure sale conducted by the first trust deed holder.
28 The parties agree that, pursuant to both NRS 116.3116 and the underlying CC&Rs, Horizons
held a residual super-priority lien over the property that remained even after lender's foreclosure,
and that Ikon, as the new owner, was required to pay a certain amount to have the residual lien
removed. The dispute in this case is how much was still owed after foreclosure.

Ikon maintained *inter alia* before the lower court that the Horizons super-priority lien
was strictly limited to and could not exceed "nine times monthly assessments"; (2) the CC&Rs
limited the lien no more than "six times monthly assessments"; and (3) that the CC&Rs prevailed
over NRS 116.3116 to the extent there was a conflict between the two. Respondent sought
declaratory relief as well as contract and tort damages for alleged "overcharging" of its lien.

The Association maintained that the residual lien was not limited numerically (*i.e.*, 6
months or 9 months worth of assessments), and that both NRS 116.3116 and the CC&Rs also
allowed for the recovery of reasonable collection fees and costs incurred during that six or nine
month period prior to foreclosure, consistent with NRS 116.3116, NRS 116.310313, NAC

1 116.470, and public policy. The Association also challenged the notion that Ikon had suffered
2 any damages, as it had never even paid the disputed amounts.

3 The district court summarily adjudicated all damage claims against Ikon, which was not
4 entitled to monetary recovery. As to the scope of the residual super-priority lien, the Court
5 concluded that: (1) NRS 116.3116 strictly limited the Association's lien to "nine times monthly
6 assessments" and no more; (3) the CC&Rs strictly limited Appellant's residual lien to "six times
7 monthly assessments" and no more; and (4) the shorter "6 month" period contained in the
8 CC&Rs prevailed over the "9 month" statutory lien period.

9 **9. Indicate whether the case has previously been the subject of an appeal to or
10 original writ proceeding in the Supreme Court and, if so, the caption and Supreme
11 Court docket number of the prior proceeding:**

12 No.

13 **10. Indicate whether this appeal involves child custody or visitation:**

14 No.

15 **11. If this is a civil case, indicate whether this appeal involves the possibility of
16 settlement:**

17 No.

18 DATED this 8th day of May, 2013.

19 HOLLAND & HART LLP

20 By

21 Patrick J. Reilly, Esq.
22 Nicole E. Lovelock, Esq.
23 9555 Hillwood Drive, Second Floor
24 Las Vegas, Nevada 89134

25 *Attorneys for Defendants Horizons At Seven
26 Hills Homeowners Association*

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I hereby certify that on the 8th day of May, 2013, I served a true and correct copy of the foregoing **CASE APPEAL STATEMENT** by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

James R. Adams, Esq.
Assly Sayyar, Esq.
Adams Law Group, Ltd.
8010 West Sahara Avenue, Suite 260
Las Vegas, Nevada 89117

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Gregory P. Kerr, Esq.
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Puoy K. Premsrirut, Esq. Inc.
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Las Vegas, Nevada 89101

Attorney for Peccole Ranch Community Association

Attorneys for Plaintiff

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Attorneys for Silver State Trustee Services, LLC Attorney for G.J.L. Incorporated

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Henderson, Nevada 89052

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Anthony R. Sassi, Esq.
Brownstein Hyatt Farber Schreck, LLP
100 N. City Parkway, Suite 1600
Las Vegas, NV 89106

Attorneys for Hampton & Hampton, PC

Attorneys for Southern Highlands Community Association


An Employee of Holland & Hart LLP

Holland & Hart LLP
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134
Phone: (702) 669-4600 ♦ Fax: (702) 669-4650

DISTRICT COURT
CASE SUMMARY
CASE NO. A-11-647850-B

Ikon Holdings LLC, Plaintiff(s)
vs.
Horizon at Seven Hills Homeowners Association,
Defendant(s)

§
§
§
§
§

Location: **Department 13**
Judicial Officer: **Denton, Mark R.**
Filed on: **09/06/2011**
Case Number History:
Conversion Case Number: **A647850**

CASE INFORMATION

Case Type: **Business Court**
Case Flags: **Appealed to Supreme Court**
Business Court
Automatically Exempt from Arbitration

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-11-647850-B
Court Department 13
Date Assigned 11/04/2011
Judicial Officer Denton, Mark R.

PARTY INFORMATION

Plaintiff

Ikon Holdings LLC

Lead Attorneys

Adams, James R.
Retained
7028387200(W)

Defendant






Horizon at Seven Hills Homeowners Association

Bonds, Kurt
Retained
7023847000(W)

DATE

EVENTS & ORDERS OF THE COURT

INDEX

09/06/2011	 Complaint Filed By: Plaintiff Ikon Holdings LLC <i>Complaint</i>
09/06/2011	Case Opened
09/08/2011	 Initial Appearance Fee Disclosure Filed By: Plaintiff Ikon Holdings LLC <i>Initial Appearance Fee Disclosure</i>
09/23/2011	 Affidavit of Service Filed By: Plaintiff Ikon Holdings LLC <i>Affidavit of Service of Horizons at Seven Hills Homeowners Association</i>
11/03/2011	 Answer Filed By: Defendant Horizon at Seven Hills Homeowners Association <i>Answer to Complaint</i>
11/03/2011	 Initial Appearance Fee Disclosure Filed By: Defendant Horizon at Seven Hills Homeowners Association <i>Initial Appearance Fee Disclosure</i>













DISTRICT COURT
CASE SUMMARY
CASE NO. A-11-647850-B

11/03/2011	 Initial Appearance Fee Disclosure Filed By: Plaintiff Ikon Holdings LLC <i>Initial Appearance Fee Disclosure</i>
11/04/2011	 Request to Transfer to Business Court Filed by: Plaintiff Ikon Holdings LLC <i>Request to Transfer to Business Court</i>
11/07/2011	 Motion for Partial Summary Judgment Filed By: Plaintiff Ikon Holdings LLC <i>Motion for Partial Summary Judgment on Issue of Declaratory Relief</i>
11/08/2011	 Certificate of Service Filed by: Plaintiff Ikon Holdings LLC <i>Certificate of Service re: Motion for Partial Summary Judgment on Issue of Declaratory Relief</i>
11/30/2011	 Countermotion For Summary Judgment Filed By: Defendant Horizon at Seven Hills Homeowners Association <i>Defendant Horizons at Seven Hills Homeowners' Association's Opposition to Plaintiff's Motion for Partial Summary Judgment and Countermotion For Summary Judgment</i>
12/07/2011	 Reply Filed by: Plaintiff Ikon Holdings LLC <i>Reply to Opposition to Motion for Partial Summary Judgment and Opposition to Counter Motion for Summary Judgment</i>
12/08/2011	 Business Court Order <i>Business Court Order</i>
12/12/2011	Motion for Partial Summary Judgment (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Motion for Partial Summary Judgment on Issue of Declaratory Relief</i> MINUTES Granted in Part; <i>Granted in Part</i>
12/12/2011	Opposition and Countermotion (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Defendant Horizons at Seven Hills Homeowners' Association's Opposition to Plaintiff's Motion for Partial Summary Judgment and Countermotion For Summary Judgment</i> MINUTES Under Advisement; <i>Under Advisement</i>
12/12/2011	 All Pending Motions (9:00 AM) (Judicial Officer: Denton, Mark R.) Matter Heard; <i>Matter Heard</i>
12/16/2011	 Decision (11:20 AM) (Judicial Officer: Denton, Mark R.) <i>Decision - Plaintiff's Motion for Partial Summary Judgment and Defendant's Countermotion - 12-12-11</i> Granted in Part; <i>Granted in Part</i>
01/09/2012	 Mandatory Rule 16 Conference (2:45 PM) (Judicial Officer: Denton, Mark R.) Matter Heard; <i>Matter Heard</i>









DISTRICT COURT
CASE SUMMARY
CASE NO. A-11-647850-B

01/16/2012	 Motion for Summary Judgment Filed By: Plaintiff Ikon Holdings LLC <i>Motion for Summary Judgment</i>
01/18/2012	 Certificate of Service Filed by: Plaintiff Ikon Holdings LLC <i>Certificate of Service</i>
01/18/2012	 Order Filed By: Plaintiff Ikon Holdings LLC <i>Order Re Rule 16 Conference</i>
01/19/2012	 Order Filed By: Plaintiff Ikon Holdings LLC <i>Order</i>
01/20/2012	 Notice of Entry of Order Filed By: Plaintiff Ikon Holdings LLC <i>Notice of Entry of Order</i>
01/30/2012	 Notice of Early Case Conference Filed By: Plaintiff Ikon Holdings LLC <i>Notice of Early Case Conference</i>
02/06/2012	 Motion for Clarification Filed By: Defendant Horizon at Seven Hills Homeowners Association <i>Motion For Clarification Or, In The Alternative, For Reconsideration Of Order Granting Summary Judgment On Claim Of Declaratory Relief</i>
02/06/2012	 Appendix Filed By: Defendant Horizon at Seven Hills Homeowners Association <i>Appendix of Exhibits To Motion For Clarification Or, In The Alternative, For Reconsideration of Order Granting Summary Judgment on Claim of Declaratory Relief</i>
02/06/2012	 Notice of Association of Counsel Filed By: Defendant Horizon at Seven Hills Homeowners Association <i>Notice of Association of Counsel</i>
02/08/2012	 Amended Notice Filed By: Plaintiff Ikon Holdings LLC <i>Amended Notice of Early Case Conference</i>
02/09/2012	 Change of Address Filed By: Plaintiff Ikon Holdings LLC <i>Notice of Change of Firm Address</i>
02/09/2012	 Notice of Hearing Filed By: Plaintiff Ikon Holdings LLC <i>Notice of Hearing</i>
02/10/2012	 Joint Case Conference Report Filed By: Plaintiff Ikon Holdings LLC <i>Joint Case Conference Report</i>

DISTRICT COURT
CASE SUMMARY
CASE NO. A-11-647850-B

02/14/2012	 Countermotion For Summary Judgment Filed By: Defendant Horizon at Seven Hills Homeowners Association <i>Defendant Horizons at Seven Hills Homeowners' Association's Opposition to Plaintiff's Motion for Summary Judgment and Countermotion For Summary Judgment</i>
02/16/2012	CANCELED Status Check: Compliance (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Vacated - per Secretary</i> <i>Joint Case Conference Report filed 2/10/12</i>
02/17/2012	 Stipulation and Order Filed by: Plaintiff Ikon Holdings LLC <i>Stipulation & Order to Continue Hearing</i>
02/23/2012	 Notice of Entry of Order Filed By: Plaintiff Ikon Holdings LLC <i>Notice of Entry of Order</i>
02/27/2012	 Stipulation and Order Filed by: Plaintiff Ikon Holdings LLC <i>Stipulation & Order to Continue Hearing</i>
02/27/2012	 Opposition Filed By: Plaintiff Ikon Holdings LLC <i>Opposition to Motion for Reconsideration</i>
02/28/2012	 Scheduling Order <i>Scheduling Order</i>
03/01/2012	 Certificate of Service Filed by: Plaintiff Ikon Holdings LLC <i>Certificate of Service re: Stipulation and Order to Continue Hearing Date</i>
03/01/2012	 Notice of Entry of Order Filed By: Plaintiff Ikon Holdings LLC <i>Notice of Entry of Order</i>
03/02/2012	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Ikon Holdings LLC <i>Notice of Entry of Stipulation and Order</i>
03/02/2012	 Stipulation and Order Filed by: Defendant Horizon at Seven Hills Homeowners Association <i>Stipulation and Order to Continue Hearing on Plaintiff's Motion for Summary Judgment and Defendants' Countermotion for Summary Judgment</i>
03/06/2012	 Reply to Opposition Filed by: Defendant Horizon at Seven Hills Homeowners Association <i>Reply to Plaintiff's Opposition to Defendant's Counter-Motion for Summary Judgment</i>
03/06/2012	 Reply in Support Filed By: Defendant Horizon at Seven Hills Homeowners Association <i>Reply in Support of Motion For Clarification Or, In the Alternative, For Reconsideration of Order Granting Summary Judgment on Claim of Declaratory Relief</i>

DISTRICT COURT
CASE SUMMARY
CASE NO. A-11-647850-B

03/06/2012	 Order Setting Civil Non-Jury Trial Filed By: Plaintiff Ikon Holdings LLC <i>Order Setting Civil Non-Jury Trial And Calendar Call</i>
03/07/2012	 Minute Order (3:00 AM) (Judicial Officer: Denton, Mark R.) <i>Minute Order Re Defendant's Motion for Clarification Or, in the alternative, For Reconsideration of Order Granting Summary Judgment</i> Minute Order - No Hearing Held; <i>Minute Order - No Hearing Held</i>
03/12/2012	Motion for Summary Judgment (9:00 AM) (Judicial Officer: Denton, Mark R.) Events: 01/16/2012 Motion for Summary Judgment <i>Plaintiff's Motion for Summary Judgment</i> Motion Denied; <i>Motion Denied</i>
03/12/2012	CANCELED Motion to Clarify (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Vacated - per Judge</i> <i>Denied Per Minute Order 3/7/2012 Defendant's Motion For Clarification Or, In The Alternative, For Reconsideration Of Order Granting Summary Judgment On Claim Of Declaratory Relief</i>
03/12/2012	Opposition and Countermotion (9:00 AM) (Judicial Officer: Denton, Mark R.) Events: 02/14/2012 Countermotion For Summary Judgment <i>Defendant Horizons at Seven Hills Homeowners' Association's Opposition to Plaintiff's Motion for Summary Judgment and Countermotion For Summary Judgment</i> MINUTES Motion Granted; <i>Motion Granted</i>
03/12/2012	 All Pending Motions (9:00 AM) (Judicial Officer: Denton, Mark R.) Matter Heard; <i>Matter Heard</i>
03/16/2012	 Order Filed By: Plaintiff Ikon Holdings LLC <i>Order</i>
03/20/2012	 Notice of Entry of Order Filed By: Plaintiff Ikon Holdings LLC <i>Notice of Entry of Order</i>
03/27/2012	 Reporters Transcript Filed By: Defendant Horizon at Seven Hills Homeowners Association <i>Recorder's Transcript of Proceedings Plaintiff's Motion for Summary Judgment/Defendant Horizons at Seven Hills Homeowners Association's Opposition to Plaintiff's Motion for Summary Judgment and Countermotion for Summary Judgment March 12, 2012</i>
03/28/2012	 Decision Filed By: Plaintiff Ikon Holdings LLC <i>Decision</i>
03/28/2012	 Decision (4:08 PM) (Judicial Officer: Denton, Mark R.) <i>Decision on Defendant's Countermotion for Summary Judgment</i> Motion Granted; <i>Motion Granted</i>

DISTRICT COURT
CASE SUMMARY
CASE NO. A-11-647850-B

03/30/2012	 Motion for Summary Judgment Filed By: Plaintiff Ikon Holdings LLC <i>Motion for Summary Judgment on Declaratory Relief</i>
04/16/2012	 Order Denying Motion Filed By: Defendant Horizon at Seven Hills Homeowners Association <i>Order Denying Plaintiff's Motion For Summary Judgment and Order Granting Defendant's Countermotion For Summary Judgment</i>
04/17/2012	 Notice of Entry of Order Filed By: Defendant Horizon at Seven Hills Homeowners Association <i>Notice of Entry of Order</i>
04/18/2012	 Stipulation and Order Filed by: Defendant Horizon at Seven Hills Homeowners Association <i>Stipulation and Order To Continue Hearing and Reset Briefing Schedule</i>
04/19/2012	 Notice of Entry of Stipulation and Order Filed By: Defendant Horizon at Seven Hills Homeowners Association <i>Notice of Entry of Stipulation and Order</i>
04/19/2012	 Transcript of Proceedings <i>Transcript Of Proceedings Motions December 12, 2011</i>
04/25/2012	 Countermotion For Summary Judgment Filed By: Defendant Horizon at Seven Hills Homeowners Association <i>Opposition To Plaintiff's Third Motion For Summary Judgment and Countermotion For Summary Judgment</i>
05/07/2012	 Stipulation and Order Filed by: Plaintiff Ikon Holdings LLC <i>Stipulation and Order to Continue Hearing</i>
05/07/2012	Motion for Summary Judgment (9:00 AM) (Judicial Officer: Denton, Mark R.) 05/07/2012, 06/11/2012 Events: 03/30/2012 Motion for Summary Judgment <i>Plaintiff's Motion for Summary Judgment on Declaratory Relief</i> MINUTES Matter Continued; Granted in Part; Matter Continued; Granted in Part; <i>Matter Continued</i>
05/07/2012	Opposition and Countermotion (9:00 AM) (Judicial Officer: Denton, Mark R.) 05/07/2012, 06/11/2012 <i>Defendant's Opposition To Plaintiff's Third Motion For Summary Judgment and Countermotion For Summary Judgment</i> MINUTES Matter Continued; Denied; Matter Continued; Denied; <i>Matter Continued</i>

DISTRICT COURT
CASE SUMMARY
CASE NO. A-11-647850-B

05/07/2012	 All Pending Motions (9:00 AM) (Judicial Officer: Denton, Mark R.) Matter Heard; <i>Matter Heard</i>
05/09/2012	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Ikon Holdings LLC <i>Notice of Entry Order re Stipulation and Order to Continue Hearing</i>
05/15/2012	 Certificate of Service Filed by: Plaintiff Ikon Holdings LLC <i>Certificate of Service re Efiled Notice of Entry of Order</i>
05/17/2012	 Stipulation and Order Filed by: Defendant Horizon at Seven Hills Homeowners Association <i>Stipulation and Order to Continue Hearing</i>
05/18/2012	 Reply to Opposition Filed by: Plaintiff Ikon Holdings LLC <i>Reply to Opposition to Motion for Partial Summary Judgment on Issue of Declaratory Relief & Opposition to Counter Motion for Summary Judgment</i>
05/18/2012	 Notice of Entry of Order Filed By: Defendant Horizon at Seven Hills Homeowners Association <i>Notice of Entry of Order</i>
05/25/2012	 Stipulation and Order Filed by: Defendant Horizon at Seven Hills Homeowners Association <i>Stipulation and Order To Continue Hearing</i>
05/29/2012	 Notice of Entry of Stipulation and Order Filed By: Defendant Horizon at Seven Hills Homeowners Association <i>Notice of Entry of Stipulation And Order To Continue Hearing</i>
06/04/2012	 Reply in Support Filed By: Defendant Horizon at Seven Hills Homeowners Association <i>Reply Memorandum in Support of Countermotion for Summary Judgment</i>
06/08/2012	 Motion to Reconsider Filed By: Defendant Horizon at Seven Hills Homeowners Association <i>Motion For Reconsideration Of Order Granting Summary Judgment on Claim of Declaratory Relief</i>
06/11/2012	 All Pending Motions (9:00 AM) (Judicial Officer: Denton, Mark R.) Matter Heard; <i>Matter Heard</i>
06/22/2012	 Decision <i>Decision</i>
06/22/2012	 Decision (12:36 PM) (Judicial Officer: Denton, Mark R.) <i>Decision on Plt's Motion for Summary Judgment; Deft's Countermotion for Summary Judgment</i> Decision Made;

DISTRICT COURT
CASE SUMMARY
CASE NO. A-11-647850-B

Decision Made

06/27/2012	 Opposition to Motion For Summary Judgment Filed By: Plaintiff Ikon Holdings LLC <i>Opposition to Motion for Reconsider of Order Granting Summary Judgment on Claim of Declaratory Relief</i>
07/05/2012	 Stipulation and Order Filed by: Defendant Horizon at Seven Hills Homeowners Association <i>Stipulation and Order to Continue Hearing</i>
07/09/2012	 Notice of Entry of Order Filed By: Defendant Horizon at Seven Hills Homeowners Association <i>Notice of Entry of Order</i>
07/09/2012	 Reply in Support Filed By: Defendant Horizon at Seven Hills Homeowners Association <i>Reply in Support of Motion for Reconsideration of Order Granting Summary Judgment on Claim of Declaratory Relief</i>
07/12/2012	 Motion For Reconsideration (3:00 AM) (Judicial Officer: Denton, Mark R.) <i>Defendant's Motion For Reconsideration Of Order Granting Summary Judgment on Claim of Declaratory Relief</i> Motion Denied; <i>Motion Denied</i>
07/20/2012	 Order Filed By: Plaintiff Ikon Holdings LLC <i>Order</i>
07/24/2012	 Order Filed By: Plaintiff Ikon Holdings LLC <i>Order</i>
07/25/2012	 Notice of Entry of Order Filed By: Plaintiff Ikon Holdings LLC <i>Notice of Entry of Order</i>
07/27/2012	 Notice of Entry of Order Filed By: Plaintiff Ikon Holdings LLC <i>Notice of Entry Order</i>
10/11/2012	 Notice of Taking Deposition Filed By: Defendant Horizon at Seven Hills Homeowners Association <i>Notice of Taking Deposition</i>
10/31/2012	 Amended Notice of Taking Deposition Filed By: Defendant Horizon at Seven Hills Homeowners Association <i>Amended Notice of Taking Deposition</i>
10/31/2012	 Amended Notice of Taking Deposition Filed By: Defendant Horizon at Seven Hills Homeowners Association <i>Amended Notice of Taking Deposition of PMK of Ikon Holding, LLC</i>

DISTRICT COURT
CASE SUMMARY
CASE NO. A-11-647850-B

10/31/2012	 Amended Notice of Taking Deposition Filed By: Defendant Horizon at Seven Hills Homeowners Association <i>Second Amended Notice of Taking Deposition of PMK of Ikon Holdings, LLC</i>
11/01/2012	 Amended Notice of Taking Deposition Filed By: Defendant Horizon at Seven Hills Homeowners Association <i>Third Amended Notice of Taking Deposition of PMK of Ikon Holdings, LLC</i>
11/06/2012	 Notice to Vacate Deposition Filed by: Defendant Horizon at Seven Hills Homeowners Association <i>Notice to Vacate Deposition</i>
12/11/2012	 Subpoena Filed by: Defendant Horizon at Seven Hills Homeowners Association <i>Subpoena</i>
12/11/2012	 Affidavit of Non-Service Filed By: Defendant Horizon at Seven Hills Homeowners Association <i>Affidavit of Non-Service</i>
12/11/2012	 Subpoena Filed by: Defendant Horizon at Seven Hills Homeowners Association <i>Subpoena</i>
12/11/2012	 Affidavit of Non-Service Filed By: Defendant Horizon at Seven Hills Homeowners Association <i>Affidavit of Non-Service</i>
12/11/2012	 Affidavit of Non-Service Filed By: Defendant Horizon at Seven Hills Homeowners Association <i>Affidavit of Non-Service</i>
12/11/2012	 Subpoena Filed by: Defendant Horizon at Seven Hills Homeowners Association <i>Subpoena</i>
02/19/2013	 Calendar Call (2:00 PM) (Judicial Officer: Denton, Mark R.) Matter Heard; <i>Matter Heard</i>
03/11/2013	 Joint Pre-Trial Memorandum Filed By: Plaintiff Ikon Holdings LLC <i>Joint Pre-Trial Memorandum</i>
03/12/2013	 Bench Trial (9:00 AM) (Judicial Officer: Denton, Mark R.) Case Settled; <i>Case Settled</i>
04/11/2013	 Judgment Filed By: Plaintiff Ikon Holdings LLC <i>Final Judgment</i>
04/11/2013	Judgment (Judicial Officer: Denton, Mark R.) Debtors: Ikon Holdings LLC (Plaintiff)

DISTRICT COURT
CASE SUMMARY
CASE NO. A-11-647850-B

Creditors: Horizon at Seven Hills Homeowners Association (Defendant)
Judgment: 04/11/2013, Docketed: 04/18/2013
Total Judgment: 1,140.00

04/12/2013	 Notice of Entry of Judgment Filed By: Plaintiff Ikon Holdings LLC
04/16/2013	 Memorandum of Costs and Disbursements Filed By: Plaintiff Ikon Holdings LLC <i>Memo of Costs and Disbursements</i>
04/25/2013	 Motion to Retax Filed By: Defendant Horizon at Seven Hills Homeowners Association <i>Motion to Retax to Costs</i>
05/01/2013	 Judgment Filed By: Plaintiff Ikon Holdings LLC <i>Final Judgment</i>
05/02/2013	 Motion for Attorney Fees and Costs Filed By: Plaintiff Ikon Holdings LLC <i>Motion for Attorney Fees and Costs</i>
05/07/2013	 Notice of Entry of Judgment Filed By: Plaintiff Ikon Holdings LLC <i>Notice of Entry of Final Judgment</i>
05/08/2013	 Certificate of Service Filed by: Defendant Horizon at Seven Hills Homeowners Association <i>Certificate of Mailing</i>
05/08/2013	 Notice of Appeal Filed By: Defendant Horizon at Seven Hills Homeowners Association <i>Notice of Appeal And Notice of Related Cases</i>
05/08/2013	 Case Appeal Statement Filed By: Defendant Horizon at Seven Hills Homeowners Association <i>Case Appeal Statement</i>
05/28/2013	Motion to Retax (9:00 AM) (Judicial Officer: Denton, Mark R.) Events: 04/25/2013 Motion to Retax <i>Motion to Retax to Costs</i>
06/03/2013	Motion for Attorney Fees and Costs (9:00 AM) (Judicial Officer: Denton, Mark R.) Events: 05/02/2013 Motion for Attorney Fees and Costs

DATE

FINANCIAL INFORMATION

Defendant Horizon at Seven Hills Homeowners Association	
Total Charges	999.00
Total Payments and Credits	999.00
Balance Due as of 5/9/2013	0.00
Plaintiff Ikon Holdings LLC	
Total Charges	2,137.00
Total Payments and Credits	2,137.00
Balance Due as of 5/9/2013	0.00

DISTRICT COURT
CASE SUMMARY
CASE NO. A-11-647850-B

Defendant Horizon at Seven Hills Homeowners Association
APPEAL BOND Balance as of 5/9/2013

500.00

CIVIL COVER SHEET A - 11 - 647850 - C

County, Nevada

XXVIII

Case No.

(Assigned by Clerk's Office)

I. Party Information

Plaintiff(s) (name/address/phone): Ikon Holdings, LLC, a Nevada Limited Liability company

Defendant(s) (name/address/phone): Horizon at Seven Hills Homeowners Association, and Does 1 through 10 and ROE Entities, 1 through 10 inclusive.

Attorney (name/address/phone):

James R Adams 8330 W Sahara Avenue Ste 290 LV NV 89117 Bar No. 9178 Tele: 702.838.7200 Fax: 838.3636

Attorney (name/address/phone):

UNKNOWN

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)☐ **Arbitration Requested****Civil Cases**

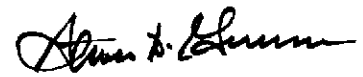
Real Property	Torts	
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> Negligence <input type="checkbox"/> Negligence – Auto <input type="checkbox"/> Negligence – Medical/Dental <input type="checkbox"/> Negligence – Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence – Other	<input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (Wrongful termination) <input type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition
Probate	Other Civil Filing Types	
<input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	<input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input checked="" type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input checked="" type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Act/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment – Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters

III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only.)

- | | | |
|---|--|---|
| <input type="checkbox"/> NRS Chapters 78-88 | <input type="checkbox"/> Investments (NRS 104 Art. 8) | <input type="checkbox"/> Enhanced Case Mgmt/Business |
| <input type="checkbox"/> Commodities (NRS 90) | <input type="checkbox"/> Deceptive Trade Practices (NRS 598) | <input type="checkbox"/> Other Business Court Matters |
| <input type="checkbox"/> Securities (NRS 90) | <input type="checkbox"/> Trademarks (NRS 600A) | |

9/6/2011
Date

Signature of initiating party or representative



CLERK OF THE COURT

ORD

ADAMS LAW GROUP, LTD.
JAMES R. ADAMS, ESQ.
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ASSLY SAYYAR, ESQ.
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ppremsrirut@brownlawlv.com
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

IKON HOLDINGS, LLC, a Nevada limited liability
company,

Plaintiff,

vs.

HORIZONS AT SEVEN HILLS HOMEOWNERS
ASSOCIATION, and DOES 1 through 10 and ROE
ENTITIES 1 through 10 inclusive,

Defendant.

Case No: A-11-647850-C
Dept: No. 13

ORDER

This matter came before the Court on December 12, 2011 at 9:00 a.m., upon the Plaintiff's Motion for Summary Judgment on Claim of Declaratory Relief and Defendant's Counter Motion for Summary Judgment on Claim of Declaratory Relief. James R. Adams, Esq., of Adams Law Group, Ltd., and Puoy K. Premsrirut, Esq., of Puoy K. Premsrirut, Esq., Inc., appeared on behalf of the Plaintiff. Eric Hinckley, Esq., of Alverson, Taylor, Mortensen & Sanders appeared on behalf of the Defendant. The Honorable Court, having read the briefs on file and having heard oral argument, and for good cause appearing hereby rules:

1 WHEREAS, the Court has determined that a justiciable controversy exists in this matter as
2 Plaintiff has asserted a claim of right under NRS §116.3116 (the "Super Priority Lien" statute)
3 against Defendant and Defendant has an interest in contesting said claim, the present controversy
4 is between persons or entities whose interests are adverse, both parties seeking declaratory relief
5 have a legal interest in the controversy (i.e., a legally protectible interest), and the issue involved in
6 the controversy (the meaning of NRS 116.3116) is ripe for judicial determination as between the
7 parties. *Kress v. Corey* 65 Nev. 1, 189 P.2d 352 (1948); and

8 WHEREAS Plaintiff and Defendant, the contesting parties hereto, are clearly adverse and
9 hold different views regarding the meaning and applicability of NRS §116.3116 (including whether
10 Defendant demanded from Plaintiff amounts in excess of that which is permitted under the NRS
11 §116.3116); and

12 WHEREAS Plaintiff has a legal interest in the controversy as it was Plaintiff's money which
13 had been demanded by Defendant and it was Plaintiff's property that had been the subject of a
14 homeowners' association statutory lien by Defendant; and

15 WHEREAS the issue of the meaning, application and interpretation of NRS §116.3116 is
16 ripe for determination in this case as the present controversy is real, it exists now, and it affects the
17 parties hereto; and

18 WHEREAS, therefore, the Court finds that issuing a declaratory judgment relating to the
19 meaning and interpretation of NRS §116.3116 would terminate some of the uncertainty and
20 controversy giving rise to the present proceeding; and

21 WHEREAS, pursuant to NRS §30.040 Plaintiff and Defendant are parties whose rights,
22 status or other legal relations are affected by NRS §116.3116 and they may, therefore, have
23 determined by this Court any question of construction or validity arising under NRS §116.3116 and
24 obtain a declaration of rights, status or other legal relations thereunder; and

25 WHEREAS, the Court is persuaded that Plaintiff's position is correct relative to the
26 components of the Super Priority Lien (exterior repair costs and 9 months of regular assessments)
27 and the cap relative to the regular assessments, but it is not persuaded relative to Plaintiff's position
28

1 concerning the need for a civil action to trigger a homeowners' association's entitlement to the Super
2 Priority Lien.

3 THE COURT, THEREFORE, DECLARES, ORDERS, ADJUDGES AND DECREES as
4 follows:

- 5 1. Plaintiff's Motion for Partial Summary Judgment on Declaratory Relief is granted in
6 part and Defendant's Motion for Summary Judgment on Declaratory Relief is granted
7 in part.
- 8 2. NRS §116.3116 is a statute which creates for the benefit of Nevada homeowners'
9 associations a general statutory lien against a homeowner's unit for (a) any
10 construction penalty that is imposed against the unit's owner pursuant to NRS
11 §116.310305, (b) any assessment levied against that unit, and (c) any fines imposed
12 against the unit's owner from the time the construction penalty, assessment or fine
13 becomes due (the "General Statutory Lien"). The homeowners' associations'
14 General Statutory Lien is noticed and perfected by the recording of the associations'
15 declaration and, pursuant to NRS §116.3116(4), no further recordation of any claim
16 of lien for assessment is required.
- 17 3. Pursuant to NRS §116.3116(2), the homeowners' association's General Statutory
18 Lien is junior to a first security interest on the unit recorded before the date on which
19 the assessment sought to be enforced became delinquent ("First Security Interest")
20 except for a portion of the homeowners' association's General Statutory Lien which
21 remains superior to the First Security Interest (the "Super Priority Lien").
- 22 4. Unless an association's declaration otherwise provides, any penalties, fees, charges,
23 late charges, fines and interest charged pursuant to NRS 116.3102(1)(j) to (n),
24 inclusive, are enforceable in the same manner as assessments are enforceable under
25 NRS §116.3116. Thus, while such penalties, fees, charges, late charges, fines and
26 interest are not actual "assessments," they may be enforced in the same manner as
27
28

assessments are enforced, i.e., by inclusion in the association's General Statutory Lien against the unit.

5. Homeowners' associations, therefore, have a Super Priority Lien which has priority over the First Security Interest on a homeowners' unit. However, the Super Priority Lien amount is not without limits and NRS §116.3116 is clear that the amount of the Super Priority Lien (which is that portion of a homeowners' associations' General Statutory Lien which retains priority status over the First Security Interest) is limited "to the extent" of those assessments for common expenses based upon the association's adopted periodic budget that would have become due in the 9 month period immediately preceding an association's institution of an action to enforce its General Statutory Lien (which is 9 months of regular assessments) and "to the extent of" external repair costs pursuant to NRS §116.310312.

6. The base assessment figure used in the calculation of the Super Priority Lien is the unit's un-accelerated, monthly assessment figure for association common expenses which is wholly determined by the homeowners association's "periodic budget," as adopted by the association, and not determined by any other document or statute. Thus, the phrase contained in NRS §116.3116(2) which states, "... to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien..." means a maximum figure equaling 9 times the association's regular, monthly (not annual) assessments. If assessments are paid quarterly, then 3 quarters of assessments (i.e., 9 months) would equal the Super Priority Lien, plus external repair costs pursuant to NRS §116.310312.

7. The words "to the extent of" contained in NRS §116.3116(2) mean "no more than," which clearly indicates a maximum figure or a cap on the Super Priority Lien which cannot be exceeded.

1 8. Thus, while assessments, penalties, fees, charges, late charges, fines and interest may
2 be included within the Super Priority Lien, in no event can the total amount of the
3 Super Priority Lien exceed an amount equaling 9 times the homeowners'
4 association's regular monthly assessment amount to unit owners for common
5 expenses based on the periodic budget which would have become due immediately
6 preceding the association's institution of an action to enforce the lien, plus external
7 repair costs pursuant to NRS 116.310312.

8 9. Further, if regulations adopted by the Federal Home Loan Mortgage Corporation or
9 the Federal National Mortgage Association require a shorter period of priority for the
10 lien (i.e., shorter than 9 months of regular assessments,) the shorter period shall be
11 used in the calculation of the Super Priority Lien, except that notwithstanding the
12 provisions of the regulations, that shorter period used in the calculation of the Super
13 Priority Lien must not be less than the 6 months immediately preceding institution
14 of an action to enforce the lien.

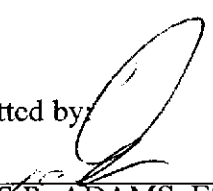
15 10. Moreover, ^{the need for the institution of an actual civil action} the Super Priority Lien can exist only if an "action" is instituted by the
16 association to enforce its General Statutory Lien. ^{in order to enforce the Super Priority Lien can be obviated if the} The term "action" as used in NRS
17 ^{issue is otherwise properly raised in the court, as is the situation here where} §116.3116(2) (as opposed to the term "action" as contained in NRS §116.3116(7)), does
18 ^{foreclosure in effect constitute an action within the meaning of} not mean a "civil action" as that phrase is defined in NRCP 2 and NRCP 3 (i.e.,
19 ^{NRS 116.3116(2)(c),} "action" as used in NRS §116.3116(2) does not mean the filing of a complaint with
20 the court).

21 IT IS SO ORDERED.

22  1/12/12
DISTRICT COURT JUDGE

Date

23
24
25 Submitted by

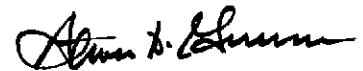
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16 Attorneys for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

15 IKON HOLDINGS, LLC,)
16 a Nevada limited liability company,)

17 Plaintiff,

18 vs.

18 HORIZONS AT SEVEN HILLS)
19 HOMEOWNERS ASSOCIATION,)
20 and DOES 1 through 10 and ROE)
21 ENTITIES 1 through 10 inclusive,)


22 Defendant.

Case No. A-11-647850-C
Dept No. 13

NOTICE OF ENTRY OF ORDER

22 PLEASE TAKE NOTICE that on the 1st day, January 2012, the attached
23 Order was entered in the above referenced matter.

24 Dated this 20th day of January, 2012.

25 
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CERTIFICATE OF SERVICE

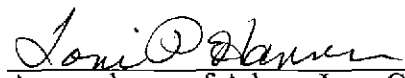
Pursuant to NRCP 5(b), I certify that I am an employee of the Adams Law Group, Ltd., and that on this date, I served the following **NOTICE OF ENTRY OF ORDER** upon all parties to this action by:

X	Placing an original or true copy thereof in a sealed enveloped place for collection and mailing in the United States Mail, at Las Vegas, Nevada, postage paid, following the ordinary business practices;
	Hand Delivery
	Facsimile
	Overnight Delivery
	Certified Mail, Return Receipt Requested.

addressed as follows:

Eric Hinckley, Esq.
Alverson Taylor
Mortensen and Sanders
7401 W Charleston Blvd.
Las Vegas, NV 89117-1401

Dated the 20th day of January, 2012.


An employee of Adams Law Group, Ltd.


CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

IKON HOLDINGS, LLC, a Nevada limited liability
company,

Plaintiff,
vs.

HORIZONS AT SEVEN HILLS HOMEOWNERS
ASSOCIATION, and DOES 1 through 10 and ROE
ENTITIES 1 through 10 inclusive,

Defendant.

Case No: A-11-647850-C
Dept: No. 13

ORDER

This matter came before the Court on December 12, 2011 at 9:00 a.m., upon the Plaintiff's Motion for Summary Judgment on Claim of Declaratory Relief and Defendant's Counter Motion for Summary Judgment on Claim of Declaratory Relief. James R. Adams, Esq., of Adams Law Group, Ltd., and Puoy K. Premsrirut, Esq., of Puoy K. Premsrirut, Esq., Inc., appeared on behalf of the Plaintiff. Eric Hinckley, Esq., of Alverson, Taylor, Mortensen & Sanders appeared on behalf of the Defendant. The Honorable Court, having read the briefs on file and having heard oral argument, and for good cause appearing hereby rules:

1 WHEREAS, the Court has determined that a justiciable controversy exists in this matter as
2 Plaintiff has asserted a claim of right under NRS §116.3116 (the "Super Priority Lien" statute)
3 against Defendant and Defendant has an interest in contesting said claim, the present controversy
4 is between persons or entities whose interests are adverse, both parties seeking declaratory relief
5 have a legal interest in the controversy (i.e., a legally protectible interest), and the issue involved in
6 the controversy (the meaning of NRS 116.3116) is ripe for judicial determination as between the
7 parties. *Kress v. Corey* 65 Nev. 1, 189 P.2d 352 (1948); and

8 WHEREAS Plaintiff and Defendant, the contesting parties hereto, are clearly adverse and
9 hold different views regarding the meaning and applicability of NRS §116.3116 (including whether
10 Defendant demanded from Plaintiff amounts in excess of that which is permitted under the NRS
11 §116.3116); and

12 WHEREAS Plaintiff has a legal interest in the controversy as it was Plaintiff's money which
13 had been demanded by Defendant and it was Plaintiff's property that had been the subject of a
14 homeowners' association statutory lien by Defendant; and

15 WHEREAS the issue of the meaning, application and interpretation of NRS §116.3116 is
16 ripe for determination in this case as the present controversy is real, it exists now, and it affects the
17 parties hereto; and

18 WHEREAS, therefore, the Court finds that issuing a declaratory judgment relating to the
19 meaning and interpretation of NRS §116.3116 would terminate some of the uncertainty and
20 controversy giving rise to the present proceeding; and

21 WHEREAS, pursuant to NRS §30.040 Plaintiff and Defendant are parties whose rights,
22 status or other legal relations are affected by NRS §116.3116 and they may, therefore, have
23 determined by this Court any question of construction or validity arising under NRS §116.3116 and
24 obtain a declaration of rights, status or other legal relations thereunder; and

25 WHEREAS, the Court is persuaded that Plaintiff's position is correct relative to the
26 components of the Super Priority Lien (exterior repair costs and 9 months of regular assessments)
27 and the cap relative to the regular assessments, but it is not persuaded relative to Plaintiff's position
28

1 concerning the need for a civil action to trigger a homeowners' association's entitlement to the Super
2 Priority Lien.

3 THE COURT, THEREFORE, DECLARES, ORDERS, ADJUDGES AND DECREES as
4 follows:

- 5 1. Plaintiff's Motion for Partial Summary Judgment on Declaratory Relief is granted in
6 part and Defendant's Motion for Summary Judgment on Declaratory Relief is granted
7 in part.
- 8 2. NRS §116.3116 is a statute which creates for the benefit of Nevada homeowners'
9 associations a general statutory lien against a homeowner's unit for (a) any
10 construction penalty that is imposed against the unit's owner pursuant to NRS
11 §116.310305, (b) any assessment levied against that unit, and (c) any fines imposed
12 against the unit's owner from the time the construction penalty, assessment or fine
13 becomes due (the "General Statutory Lien"). The homeowners' associations'
14 General Statutory Lien is noticed and perfected by the recording of the associations'
15 declaration and, pursuant to NRS §116.3116(4), no further recordation of any claim
16 of lien for assessment is required.
- 17 3. Pursuant to NRS §116.3116(2), the homeowners' association's General Statutory
18 Lien is junior to a first security interest on the unit recorded before the date on which
19 the assessment sought to be enforced became delinquent ("First Security Interest")
20 except for a portion of the homeowners' association's General Statutory Lien which
21 remains superior to the First Security Interest (the "Super Priority Lien").
- 22 4. Unless an association's declaration otherwise provides, any penalties, fees, charges,
23 late charges, fines and interest charged pursuant to NRS 116.3102(1)(j) to (n),
24 inclusive, are enforceable in the same manner as assessments are enforceable under
25 NRS §116.3116. Thus, while such penalties, fees, charges, late charges, fines and
26 interest are not actual "assessments," they may be enforced in the same manner as
27
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assessments are enforced, i.e., by inclusion in the association's General Statutory Lien against the unit.

5. Homeowners' associations, therefore, have a Super Priority Lien which has priority over the First Security Interest on a homeowners' unit. However, the Super Priority Lien amount is not without limits and NRS §116.3116 is clear that the amount of the Super Priority Lien (which is that portion of a homeowners' associations' General Statutory Lien which retains priority status over the First Security Interest) is limited "to the extent" of those assessments for common expenses based upon the association's adopted periodic budget that would have become due in the 9 month period immediately preceding an association's institution of an action to enforce its General Statutory Lien (which is 9 months of regular assessments) and "to the extent of" external repair costs pursuant to NRS §116.310312.
6. The base assessment figure used in the calculation of the Super Priority Lien is the unit's un-accelerated, monthly assessment figure for association common expenses which is wholly determined by the homeowners association's "periodic budget," as adopted by the association, and not determined by any other document or statute. Thus, the phrase contained in NRS §116.3116(2) which states, "... to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien..." means a maximum figure equaling 9 times the association's regular, monthly (not annual) assessments. If assessments are paid quarterly, then 3 quarters of assessments (i.e., 9 months) would equal the Super Priority Lien, plus external repair costs pursuant to NRS §116.310312.
7. The words "to the extent of" contained in NRS §116.3116(2) mean "no more than," which clearly indicates a maximum figure or a cap on the Super Priority Lien which cannot be exceeded.

1 8. Thus, while assessments, penalties, fees, charges, late charges, fines and interest may
2 be included within the Super Priority Lien, in no event can the total amount of the
3 Super Priority Lien exceed an amount equaling 9 times the homeowners'
4 association's regular monthly assessment amount to unit owners for common
5 expenses based on the periodic budget which would have become due immediately
6 preceding the association's institution of an action to enforce the lien, plus external
7 repair costs pursuant to NRS 116.310312.

8 9. Further, if regulations adopted by the Federal Home Loan Mortgage Corporation or
9 the Federal National Mortgage Association require a shorter period of priority for the
10 lien (i.e., shorter than 9 months of regular assessments,) the shorter period shall be
11 used in the calculation of the Super Priority Lien, except that notwithstanding the
12 provisions of the regulations, that shorter period used in the calculation of the Super
13 Priority Lien must not be less than the 6 months immediately preceding institution
14 of an action to enforce the lien.

15 10. Moreover, ^{the need for the institution of an actual civil action} the Super Priority Lien can exist only if an "action" is instituted by the
16 association to enforce its General Statutory Lien. ^{In order to enforce the Super Priority Lien, can be obligated if the} The term "action" as used in NRS
17 116.3116(2) (as opposed to the term "action" as contained in NRS §116.3116(1)), does
18 not mean a "civil action" as that phrase is defined in NRCP 2 and NRCP 3 (i.e.,
19 "action" as used in NRS §116.3116(2) does not mean the filing of a complaint with
20 the court).

21 IT IS SO ORDERED.

22  1/12/12
23 DISTRICT COURT JUDGE

Date 

24 Submitted by: 

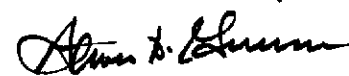
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23 **DISTRICT COURT**

24 **CLARK COUNTY, NEVADA**

25 IKON HOLDINGS, LLC, a Nevada limited liability
26 company,

27 Plaintiff,

28 vs.

HORIZONS AT SEVEN HILLS HOMEOWNERS
ASSOCIATION, and DOES 1 through 10 and ROE
ENTITIES 1 through 10 inclusive,

Defendant.

Case No: A-11-647850-C
Dept: No. 13

ORDER

29 This matter came before the Court on March 7, 2012, in chambers, upon the Defendant's
30 Motion for Clarification or, in the Alternative, for Reconsideration of Order Granting Summary
31 Judgment on Claim of Declaratory Relief. James R. Adams, Esq., of Adams Law Group, Ltd., and
32 Puoy K. Premsrirut, Esq., of Puoy K. Premsrirut, Esq., Inc., filed briefs on behalf of the Plaintiff.
33 Kurt Bonds, Esq., of Alverson, Taylor, Mortensen & Sanders and Patrick Reilly, Esq., of Holland
34 and Hart filed briefs on behalf of the Defendant. The Honorable Court, having read the briefs on file
35 and for good cause appearing hereby orders:

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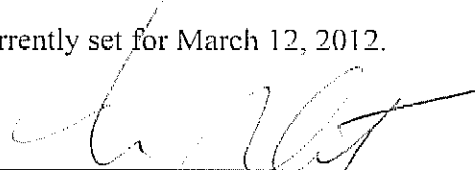
MAR 14 2012

DISTRICT COURT DEPT#13 3/16/12

1 Pursuant to EDCR 2.23(c), Defendant's Motion for Clarification or, in the Alternative, for
2 Reconsideration of Order Granting Summary Judgment on Claim of Declaratory Relief is denied
3 without hearing.

4 Further, the hearing on Defendant's Motion for Clarification or, in the Alternative, for
5 Reconsideration of Order Granting Summary Judgment on Claim of Declaratory Relief shall be
6 removed from the motion calendar currently set for March 12, 2012.

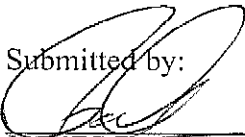
7 **IT IS SO ORDERED.**

8 
DISTRICT COURT JUDGE

3/15/12
Date


pm

10 Submitted by:

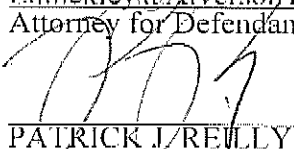
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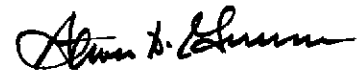
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22 Attorneys for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

23 IKON HOLDINGS, LLC,)
24 a Nevada limited liability company,)

25 Plaintiff,

26 vs.

27 HORIZONS AT SEVEN HILLS)
28 HOMEOWNERS ASSOCIATION,)
29 and DOES 1 through 10 and ROE)
30 ENTITIES 1 through 10 inclusive,)

31 Defendant.

Case No. A-11-647850-C
Dept No. 13

NOTICE OF ENTRY ORDER

32 PLEASE TAKE NOTICE that on the 16th day of March 2012, the attached

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Notice of Entry of Order to was entered in the above referenced matter.

Dated this 20 day of March, 2012.



ADAMS LAW GROUP, LTD
JAMES R. ADAMS, ESQ.
Nevada Bar No. 6874
ASSLY SAYYAR, ESQ.
Nevada Bar No. 9178
8010 W Sahara Ave. Ste. 260
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LAS VEGAS, NEVADA 89117
TELEPHONE (702) 838-7200
FACSIMILE (702) 838-3636

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Adams Law Group, Ltd., and that on this date, I served the following **NOTICE OF ENTRY OF ORDER** upon all parties to this action by:

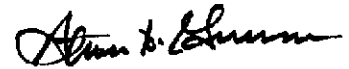
X	Placing an original or true copy thereof in a sealed enveloped place for collection and mailing in the United States Mail, at Las Vegas, Nevada, postage paid, following the ordinary business practices;
	Hand Delivery
	Facsimile
	Overnight Delivery
	Certified Mail, Return Receipt Requested.

addressed as follows:

Eric Hinckley, Esq.
Alverson Taylor
Mortensen and Sanders
7401 W Charleston Blvd.
Las Vegas, NV 89117-1401

Dated the 20 day of March 2012.


An employee of Adams Law Group, Ltd.



CLERK OF THE COURT

1 **ORD**
2 ADAMS LAW GROUP, LTD.
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21 ppremsrirut@brownlawlv.com
22 Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

IKON HOLDINGS, LLC, a Nevada limited liability
company,

Plaintiff,

vs.

HORIZONS AT SEVEN HILLS HOMEOWNERS
ASSOCIATION, and DOES 1 through 10 and ROE
ENTITIES 1 through 10 inclusive,

Defendant.

Case No: A-11-647850-C
Dept: No. 13

ORDER

This matter came before the Court on March 7, 2012, in chambers, upon the Defendant's Motion for Clarification or, in the Alternative, for Reconsideration of Order Granting Summary Judgment on Claim of Declaratory Relief. James R. Adams, Esq., of Adams Law Group, Ltd., and Puoy K. Premsrirut, Esq., of Puoy K. Premsrirut, Esq., Inc., filed briefs on behalf of the Plaintiff. Kurt Bonds, Esq., of Alverson, Taylor, Mortensen & Sanders and Patrick Reilly, Esq., of Holland and Hart filed briefs on behalf of the Defendant. The Honorable Court, having read the briefs on file and for good cause appearing hereby orders:

RECEIVED

MAR 14 2012

DISTRICT COURT DEPT#13 31617

1 **ORD**

2 ADAMS LAW GROUP, LTD.
3 JAMES R. ADAMS, ESQ.
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22 Attorneys for Plaintiff

23 **DISTRICT COURT**

24 **CLARK COUNTY, NEVADA**

25 IKON HOLDINGS, LLC, a Nevada limited liability
26 company,

27 Plaintiff,

28 vs.

29 HORIZONS AT SEVEN HILLS HOMEOWNERS
30 ASSOCIATION, and DOES 1 through 10 and ROE
31 ENTITIES 1 through 10 inclusive,

32 Defendant.

Case No: A-11-647850-C
Dept: No. 13

ORDER

33 This matter came before the Court on March 7, 2012, in chambers, upon the Defendant's
34 Motion for Clarification or, in the Alternative, for Reconsideration of Order Granting Summary
35 Judgment on Claim of Declaratory Relief. James R. Adams, Esq., of Adams Law Group, Ltd., and
36 Puoy K. Premsrirut, Esq., of Puoy K. Premsrirut, Esq., Inc., filed briefs on behalf of the Plaintiff.
37 Kurt Bonds, Esq., of Alverson, Taylor, Mortensen & Sanders and Patrick Reilly, Esq., of Holland
38 and Hart filed briefs on behalf of the Defendant. The Honorable Court, having read the briefs on file
and for good cause appearing hereby orders:

RECEIVED

MAR 14 2012


DISTRICT COURT DEPT# 13

3/6/12

1 Pursuant to EDCR 2.23(c), Defendant's Motion for Clarification or, in the Alternative, for
2 Reconsideration of Order Granting Summary Judgment on Claim of Declaratory Relief is denied
3 without hearing.

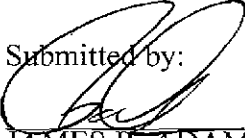
4 Further, the hearing on Defendant's Motion for Clarification or, in the Alternative, for
5 Reconsideration of Order Granting Summary Judgment on Claim of Declaratory Relief shall be
6 removed from the motion calendar currently set for March 12, 2012.

7 **IT IS SO ORDERED.**

8 
DISTRICT COURT JUDGE


3/15/12
Date *pm*

10
11 Submitted by:

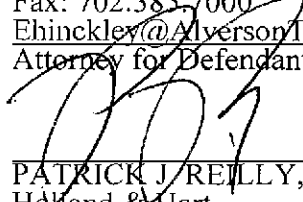
12 
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18 Attorneys for Plaintiff

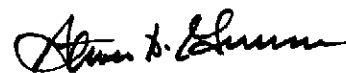
19 PUOY K. PREMSRIRUT, ESQ., INC.
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23 Attorneys for Plaintiff

24 Approved:

25  #12799 for
26 KURT BONDS, ESQ.
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CLERK OF THE COURT

ORD

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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

IKON HOLDINGS, LLC, a Nevada limited liability
company,

Plaintiff,

vs.

HORIZONS AT SEVEN HILLS HOMEOWNERS
ASSOCIATION, and DOES 1 through 10 and ROE
ENTITIES 1 through 10 inclusive,

Defendant.

Case No: A-11-647850-B

Dept: No. 13

ORDER

This matter came before the Court on 7/12/2012, in chambers, on Defendant s Motion For Reconsideration Of Order Granting Summary Judgment On Claim Of Declaratory Relief. The Court, having reviewed the briefs and papers in this matter, for good cause hereby orders, adjudges and decrees:

That for the reasons particularly stated in Plaintiff's Opposition to Motion to Reconsideration, and pursuant to EDCR 2.23(c), the Court DENIES Defendant s Motion For Reconsideration Of Order Granting Summary Judgment On Claim Of Declaratory Relief, without oral argument.

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JUL 23 2012

DISTRICT COURT DEPT#13

1 The Court further ORDERS such motion removed from its Civil Law and Motion Calendar
2 of July 16, 2012.

3 **IT IS SO ORDERED.**

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DISTRICT COURT JUDGE

Date

7/23/12
pm

Submitted by:

JAMES R. ADAMS, ESQ.

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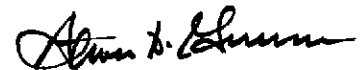
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Attorneys for Plaintiff



CLERK OF THE COURT

1 NEOJ
2 ADAMS LAW GROUP, LTD.
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16 Attorneys for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

15 IKON HOLDINGS, LLC,)
16 a Nevada limited liability company,)

Plaintiff,

17 vs.)

18 HORIZONS AT SEVEN HILLS)
19 HOMEOWNERS ASSOCIATION,)
20 and DOES 1 through 10 and ROE)
21 ENTITIES 1 through 10 inclusive,)

Defendant.)

Case No. A-11-647850-C
Dept No. 13

NOTICE OF ENTRY ORDER

22 PLEASE TAKE NOTICE that on the 24th day of July 2012, the attached

23 / / /

24 / / /

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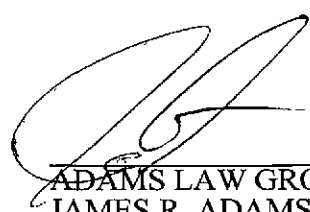
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Notice of Entry of Order to was entered in the above referenced matter.

Dated this 27 day of July, 2012.



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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Adams Law Group, Ltd., and that on this date, I served the following **NOTICE OF ENTRY OF ORDER** upon all parties to this action by:

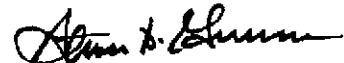
X	Placing an original or true copy thereof in a sealed enveloped place for collection and mailing in the United States Mail, at Las Vegas, Nevada, postage paid, following the ordinary business practices;
	Hand Delivery
	Facsimile
	Overnight Delivery
	Certified Mail, Return Receipt Requested.

addressed as follows:

Kurk Bonds, Esq.
Alverson Taylor
Mortensen and Sanders
7401 W Charleston Blvd.
Las Vegas, NV 89117-1401

Dated the 27th day of July 2012.


An employee of Adams Law Group, Ltd.



CLERK OF THE COURT

ORD

ADAMS LAW GROUP, LTD.
JAMES R. ADAMS, ESQ.
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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

IKON HOLDINGS, LLC, a Nevada limited liability
company,

Plaintiff,

vs.

HORIZONS AT SEVEN HILLS HOMEOWNERS
ASSOCIATION, and DOES 1 through 10 and ROE
ENTITIES 1 through 10 inclusive,

Defendant.

Case No: A-11-647850-B
Dept: No. 13

ORDER

This matter came before the Court on 7/12/2012, in chambers, on Defendant s Motion For Reconsideration Of Order Granting Summary Judgment On Claim Of Declaratory Relief. The Court, having reviewed the briefs and papers in this matter, for good cause hereby orders, adjudges and decrees:

That for the reasons particularly stated in Plaintiff's Opposition to Motion to Reconsideration, and pursuant to EDCR 2.23(c), the Court DENIES Defendant s Motion For Reconsideration Of Order Granting Summary Judgment On Claim Of Declaratory Relief, without oral argument.

RECEIVED

JUL 23 2012

DISTRICT COURT DEPT#13

40071

1 **ORD**

2 ADAMS LAW GROUP, LTD.
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22 Attorneys for Plaintiff

23 **DISTRICT COURT**
24 **CLARK COUNTY, NEVADA**

25 IKON HOLDINGS, LLC, a Nevada limited liability
26 company,

27 Plaintiff,

28 vs.

29 HORIZONS AT SEVEN HILLS HOMEOWNERS
30 ASSOCIATION, and DOES 1 through 10 and ROE
31 ENTITIES 1 through 10 inclusive,

32 Defendant.

Case No: A-11-647850-B
Dept: No. 13

ORDER

33 This matter came before the Court on 7/12/2012, in chambers, on Defendant s Motion For
34 Reconsideration Of Order Granting Summary Judgment On Claim Of Declaratory Relief. The
35 Court, having reviewed the briefs and papers in this matter, for good cause hereby orders, adjudges
36 and decrees:

37 That for the reasons particularly stated in Plaintiff's Opposition to Motion to
38 Reconsideration, and pursuant to EDCR 2.23(c), the Court DENIES Defendant s Motion For
39 Reconsideration Of Order Granting Summary Judgment On Claim Of Declaratory Relief, without
40 oral argument.

RECEIVED
JUL 23 2012

DISTRICT COURT DEPT#13

40091

1 The Court further ORDERS such motion removed from its Civil Law and Motion Calendar
2 of July 16, 2012.

3 **IT IS SO ORDERED.**

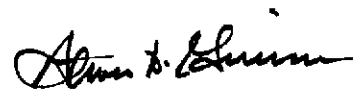
4 
DISTRICT COURT JUDGE

Date

5
6
7 Submitted by: 

8 JAMES R. ADAMS, ESQ.
9 Nevada Bar No. 6874
10 ASSLY SAYYAR, ESQ.
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28 Attorneys for Plaintiff



CLERK OF THE COURT

JUDG

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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

IKON HOLDINGS, LLC, a Nevada limited liability
company,

Plaintiff,

vs.

HORIZONS AT SEVEN HILLS HOMEOWNERS
ASSOCIATION, and DOES 1 through 10 and ROE
ENTITIES 1 through 10 inclusive,

Defendant.

Case No: A-11-647850-C
Dept: No. 13

FINAL JUDGMENT

This matter came before the Court for trial on March 12, 2013 at 9:00 a.m. James R. Adams, Esq., of Adams Law Group, Ltd., and Puoy K. Premsrirut, Esq., of Puoy K. Premsrirut, Esq., Inc., appeared on behalf of the Plaintiff. Eric Hinckley, Esq., and Kurt Bonds, Esq., of Alverson, Taylor, Mortensen & Sanders, and Patrick Reilly, Esq., of Holland & Hart, LLP appeared on behalf of the Defendant. The Honorable Court, having considered the matter, for good cause appearing hereby enters judgment and finds as follows:

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MAR 27 2013

1 WHEREAS, Plaintiff purchased certain real estate in a common interest community as an
2 investment property at the nonjudicial foreclosure auction of the property's first trust deed holder,
3 said property being located within Defendant Horizon at Seven Hills Homeowners' Association;
4 and

5 WHEREAS, the primary issue in this case was what was the amount of Defendant's "super
6 priority" lien against Plaintiff's property which survived the foreclosure of the property's first trust
7 deed holder pursuant to NRS 116.3116(2) and Defendant's covenants, conditions and restrictions
8 ("CC&RS"); and

9 WHEREAS, it was the position of Plaintiff that the amount of such lien which survived the
10 foreclosure of the property's first trust deed holder did not exceed a figure equaling 6 months of
11 Defendant's monthly assessments based upon its periodic budget and as provided in Section 7.8 and
12 7.9 of Defendant's CC&RS; and

13 WHEREAS, it was the also the position of Plaintiff that regardless of the CC&RS, the
14 amount of Defendant's lien that survived the foreclosure of the property's first trust deed holder did
15 not exceed a figure equaling 9 months of Defendant's monthly assessments based upon its periodic
16 budget as provided in NRS 116.3116(2); and

17 WHEREAS, it was the position of the Defendant that the amount of Defendant's lien that
18 survived the foreclosure of the property's first trust deed holder was not limited to a figure equaling
19 6 or 9 months of assessments; *Defendant maintaining that the portion of the HOA lien given*

20 WHEREAS, the Court has already determined findings of fact and conclusions of law as *Superiority Status is defined with regard to a particular time*
Periodically, there being no mention in the statute of any
numerical limitation for mathematical calculations; and
21 a result of 3 prior summary judgment orders entered by the Court which are attached hereto and
22 incorporated and restated herein (Ex. 1, "1/19/2012 Order") (Ex. 2, "4/16/2012 Order") (Ex. 3,
23 "7/20/2012 Order"); and

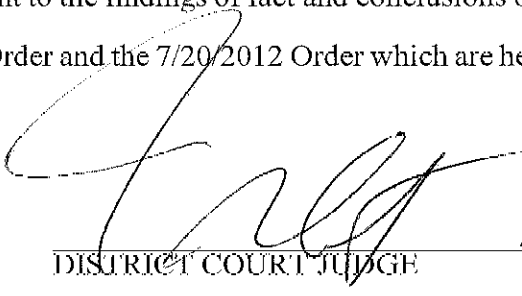
24 WHEREAS, it has been stipulated by all counsel that \$1,140.00 (a figure equaling 6 months
25 of assessments) has been tendered by Plaintiff and received by Defendant as that is the amount
26 Plaintiff alleges was due and owing under provisions contained in Defendant's CC&RS, said
27 amount being in conformance with this Court's 7/20/2012 Order (the "Payment"); and
28

1 WHEREAS, Defendant has stipulated¹ to record a "Release of Notice of Delinquent
2 Assessment Lien" which now renders moot Plaintiff's sole remaining cause of action for injunctive
3 relief;

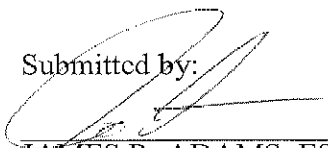
4 THE COURT, THEREFORE, DECLARES, ORDERS, ADJUDGES AND DECREES as
5 follows:

6 All claims and issues in this matter have now been fully adjudicated as evidenced by the
7 above findings, and by the findings and conclusions contained in the 1/19/2012 Order, the
8 4/16/2012 Order and the 7/20/2012 Order, and by the Payment, said amount being in conformance
9 with this Court's 7/20/2012 Order. Final judgment is hereby entered in this matter pursuant to the
10 findings stated above, and pursuant to the findings of fact and conclusions of law contained in the
11 1/19/2012 Order, the 4/16/2012 Order and the 7/20/2012 Order which are hereby incorporated and
12 restated herein.

13 **IT IS SO ADJUDGED.**

14 
15 DISTRICT COURT JUDGE

16 4/5/13
17 Date
18 FB

19 Submitted by: 

20 JAMES R. ADAMS, ESQ.
21 Nevada Bar No. 6874
22 ASSLY SAYYAR, ESQ.
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assly@adamslawnevada.com
Attorneys for Plaintiff

¹Defendant stipulated to record the "Release of Notice of Delinquent Assessment Lien" solely to eliminate the need for this Court to issue a permanent injunction. Defendant advised at trial that it fully intends to appeal this Court's summary judgment orders upon the entry of this final judgment. Accordingly, its recordation of said Release does not constitute any kind of waiver of its substantive arguments for appellate purposes.

1 PUOY K. PREMSRIRUT, ESQ., INC.
2 Puoy K. Premsrirut, Esq.
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9 Attorneys for Plaintiff

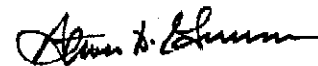
10 Approved:

11 Not Approved
12 Kurt Bonds, Esq.
13 Alverson Taylor Mortensen and Sanders
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1 **ORD**

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13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 IKON HOLDINGS, LLC, a Nevada limited liability
16 company,

17 Plaintiff,

18 vs.

19 HORIZONS AT SEVEN HILLS HOMEOWNERS
20 ASSOCIATION, and DOES 1 through 10 and ROE
21 ENTITIES 1 through 10 inclusive,

22 Defendant.

Case No: A-11-647850-C
Dept: No. 13

ORDER

23 This matter came before the Court on December 12, 2011 at 9:00 a.m., upon the Plaintiff's
24 Motion for Summary Judgment on Claim of Declaratory Relief and Defendant's Counter Motion for
25 Summary Judgment on Claim of Declaratory Relief. James R. Adams, Esq., of Adams Law Group,
26 Ltd., and Puoy K. Premsrirut, Esq., of Puoy K. Premsrirut, Esq., Inc., appeared on behalf of the
27 Plaintiff. Eric Hinckley, Esq., of Alverson, Taylor, Mortensen & Sanders appeared on behalf of the
28 Defendant. The Honorable Court, having read the briefs on file and having heard oral argument, and
for good cause appearing hereby rules:

1 WHEREAS, the Court has determined that a justiciable controversy exists in this matter as
2 Plaintiff has asserted a claim of right under NRS §116.3116 (the "Super Priority Lien" statute)
3 against Defendant and Defendant has an interest in contesting said claim, the present controversy
4 is between persons or entities whose interests are adverse, both parties seeking declaratory relief
5 have a legal interest in the controversy (i.e., a legally protectible interest), and the issue involved in
6 the controversy (the meaning of NRS 116.3116) is ripe for judicial determination as between the
7 parties. *Kress v. Corey* 65 Nev. 1, 189 P.2d 352 (1948); and

8 WHEREAS Plaintiff and Defendant, the contesting parties hereto, are clearly adverse and
9 hold different views regarding the meaning and applicability of NRS §116.3116 (including whether
10 Defendant demanded from Plaintiff amounts in excess of that which is permitted under the NRS
11 §116.3116); and

12 WHEREAS Plaintiff has a legal interest in the controversy as it was Plaintiff's money which
13 had been demanded by Defendant and it was Plaintiff's property that had been the subject of a
14 homeowners' association statutory lien by Defendant; and

15 WHEREAS the issue of the meaning, application and interpretation of NRS §116.3116 is
16 ripe for determination in this case as the present controversy is real, it exists now, and it affects the
17 parties hereto; and

18 WHEREAS, therefore, the Court finds that issuing a declaratory judgment relating to the
19 meaning and interpretation of NRS §116.3116 would terminate some of the uncertainty and
20 controversy giving rise to the present proceeding; and

21 WHEREAS, pursuant to NRS §30.040 Plaintiff and Defendant are parties whose rights,
22 status or other legal relations are affected by NRS §116.3116 and they may, therefore, have
23 determined by this Court any question of construction or validity arising under NRS §116.3116 and
24 obtain a declaration of rights, status or other legal relations thereunder; and

25 WHEREAS, the Court is persuaded that Plaintiff's position is correct relative to the
26 components of the Super Priority Lien (exterior repair costs and 9 months of regular assessments)
27 and the cap relative to the regular assessments, but it is not persuaded relative to Plaintiff's position
28

1 concerning the need for a civil action to trigger a homeowners' association's entitlement to the Super
2 Priority Lien.

3 THE COURT, THEREFORE, DECLARES, ORDERS, ADJUDGES AND DECREES as
4 follows:

- 5 1. Plaintiff's Motion for Partial Summary Judgment on Declaratory Relief is granted in
6 part and Defendant's Motion for Summary Judgment on Declaratory Relief is granted
7 in part.
- 8 2. NRS §116.3116 is a statute which creates for the benefit of Nevada homeowners'
9 associations a general statutory lien against a homeowner's unit for (a) any
10 construction penalty that is imposed against the unit's owner pursuant to NRS
11 §116.310305, (b) any assessment levied against that unit, and (c) any fines imposed
12 against the unit's owner from the time the construction penalty, assessment or fine
13 becomes due (the "General Statutory Lien"). The homeowners' associations'
14 General Statutory Lien is noticed and perfected by the recording of the associations'
15 declaration and, pursuant to NRS §116.3116(4), no further recordation of any claim
16 of lien for assessment is required.
- 17 3. Pursuant to NRS §116.3116(2), the homeowners' association's General Statutory
18 Lien is junior to a first security interest on the unit recorded before the date on which
19 the assessment sought to be enforced became delinquent ("First Security Interest")
20 except for a portion of the homeowners' association's General Statutory Lien which
21 remains superior to the First Security Interest (the "Super Priority Lien").
- 22 4. Unless an association's declaration otherwise provides, any penalties, fees, charges,
23 late charges, fines and interest charged pursuant to NRS 116.3102(1)(j) to (n),
24 inclusive, are enforceable in the same manner as assessments are enforceable under
25 NRS §116.3116. Thus, while such penalties, fees, charges, late charges, fines and
26 interest are not actual "assessments," they may be enforced in the same manner as
27
28

1 assessments are enforced, i.e., by inclusion in the association's General Statutory
2 Lien against the unit.

- 3 5. Homeowners' associations, therefore, have a Super Priority Lien which has priority
4 over the First Security Interest on a homeowners' unit. However, the Super Priority
5 Lien amount is not without limits and NRS §116.3116 is clear that the amount of the
6 Super Priority Lien (which is that portion of a homeowners' associations' General
7 Statutory Lien which retains priority status over the First Security Interest) is limited
8 "to the extent" of those assessments for common expenses based upon the
9 association's adopted periodic budget that would have become due in the 9 month
10 period immediately preceding an association's institution of an action to enforce its
11 General Statutory Lien (which is 9 months of regular assessments) and "to the extent
12 of" external repair costs pursuant to NRS §116.310312.

- 13 6. The base assessment figure used in the calculation of the Super Priority Lien is the
14 unit's un-accelerated, monthly assessment figure for association common expenses
15 which is wholly determined by the homeowners association's "periodic budget," as
16 adopted by the association, and not determined by any other document or statute.
17 Thus, the phrase contained in NRS §116.3116(2) which states, "... to the extent of the
18 assessments for common expenses based on the periodic budget adopted by the
19 association pursuant to NRS 116.3115 which would have become due in the absence
20 of acceleration during the 9 months immediately preceding institution of an action
21 to enforce the lien..." means a maximum figure equaling 9 times the association's
22 regular, monthly (not annual) assessments. If assessments are paid quarterly, then 3
23 quarters of assessments (i.e., 9 months) would equal the Super Priority Lien, plus
24 external repair costs pursuant to NRS §116.310312.

- 25 7. The words "to the extent of" contained in NRS §116.3116(2) mean "no more than,"
26 which clearly indicates a maximum figure or a cap on the Super Priority Lien which
27 cannot be exceeded.
28

1 8. Thus, while assessments, penalties, fees, charges, late charges, fines and interest may
2 be included within the Super Priority Lien, in no event can the total amount of the
3 Super Priority Lien exceed an amount equaling 9 times the homeowners'
4 association's regular monthly assessment amount to unit owners for common
5 expenses based on the periodic budget which would have become due immediately
6 preceding the association's institution of an action to enforce the lien, plus external
7 repair costs pursuant to NRS 116.310312.

8 9. Further, if regulations adopted by the Federal Home Loan Mortgage Corporation or
9 the Federal National Mortgage Association require a shorter period of priority for the
10 lien (i.e., shorter than 9 months of regular assessments,) the shorter period shall be
11 used in the calculation of the Super Priority Lien, except that notwithstanding the
12 provisions of the regulations, that shorter period used in the calculation of the Super
13 Priority Lien must not be less than the 6 months immediately preceding institution
14 of an action to enforce the lien.

15 10. Moreover, ^{the need for the institution of an actual civil action} the Super Priority Lien can exist only if an "action" is instituted by the
16 association to enforce its General Statutory Lien. The term "action" as used in NRS
17 §116.3116(2) (as opposed to the term "action" as contained in NRS §116.3116(7)), does
18 not mean a "civil action" as that phrase is defined in NRCP 2 and NRCP 3 (i.e.,
19 "action" as used in NRS §116.3116(2) does not mean the filing of a complaint with
20 the court).

21 IT IS SO ORDERED.

22 DISTRICT COURT JUDGE

23 Date

24 Submitted by

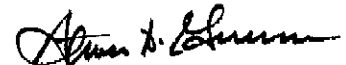
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*Attorneys for Defendants Horizons At Seven Hills
Homeowners Association*

DISTRICT COURT

CLARK COUNTY, NEVADA

IKON HOLDINGS, LLC, a Nevada limited
liability company,

Plaintiff,

vs.

HORIZONS AT SEVEN HILLS
HOMEOWNERS ASSOCIATION; and DOES
1 through 10; and ROE ENTITIES 1 through
10 inclusive,

Defendants.

Case No. : A-11-647850-B
Dept. No.: XIII

**ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

**ORDER GRANTING DEFENDANT'S
COUNTERMOTION FOR SUMMARY
JUDGMENT**

Hearing Date: March 12, 2012

Hearing Time: 9:00 a.m.

This matter came before the Court on March 12, 2012, for hearing on Plaintiff's Motion for Summary Judgment and on Defendant's Countermotion for Summary Judgment. James R. Adams, Esq. of the Adams Law Group and Puoy Premsrirut, Esq. of the law firm of Brown, Brown & Premsrirut appeared on behalf of Plaintiff Ikon Holdings, LLC ("Ikon"). Patrick J.

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DISTRICT COURT DEPT#13

1 Reilly, Esq. of the law firm of Holland & Hart LLP and Eric W. Hinckley, Esq. of the law firm
2 of Alverson, Taylor, Mortensen, and Sanders appeared on behalf of Defendant Horizons at Seven
3 Hills Homowners Association ("Horizons"). After carefully considering the briefs and
4 arguments of counsel, this Court makes the following findings of fact and conclusions of law:

5 **I.**

6 **FINDINGS OF FACT**

7 1. On or around June 28, 2010, Scott Ludwig purchased certain real property located
8 at 950 Seven Hills Drive, Suite 1411, Henderson, Nevada 89052 (the "Property") at a foreclosure
9 sale conducted by the holder of a first deed of trust against the Property.

10 2. The Property is located within Horizons.

11 3. Horizons had previously recorded a Notice of Delinquent Assessment Lien on
12 June 17, 2009 and a Notice of Default and Election to Sell Under Homeowners Association Lien
13 on August 4, 2009. Both of these recordings occurred prior to the foreclosure sale, in the amount
14 of \$4,289.50, with the amount of the lien to increase until the amount became current.

15 4. Shortly after the foreclosure sale, on July 14, 2010, Mr. Ludwig transferred title
16 of the Property to Ikon.

17 5. On or around September 30, 2010, Horizons recorded another Notice of
18 Delinquent Assessment Lien ("Lien") against the Property.

19 6. Ikon disputed and did not pay any of the amounts demanded by Horizons.

20 7. Ikon did not begin making payments to Horizons until May 2011 when it began
21 making regular monthly assessments to the Property.

22 8. It is undisputed that, as of the date of the hearing, Ikon had not paid any amount
23 owed.

24 **II.**

25 **CONCLUSIONS OF LAW**

26 The Nevada Rules of Civil Procedure provide, in pertinent part, as follows:

27 A party against whom a claim . . . is sought may, at any
28 time, move with or without supporting affidavits for a
summary judgment in the party's favor as to all or any part

thereof . . . the judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

NRCP 56. Summary judgment must be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” NRCP 56(c). In *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005), the Nevada Supreme Court embraced the summary judgment standard set forth in seminal United States Supreme Court cases such as *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), and *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). Under this standard, summary judgment is designed to secure the just, speedy, and inexpensive determination of every action where appropriate. *Celotex*, 477 U.S. at 327.

Once the moving party demonstrates the absence of a genuine issue of material fact, the nonmoving party must show the existence of a genuine issue of material fact to avoid summary judgment. *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 172 P.3d 131, 134 (2007). Nevada law no longer allows the nonmoving party to merely raise the “slightest doubt” about the facts. *Wood*, 121 Nev. at 731, 121 P.3d at 1031. Thus, the nonmoving party cannot merely “build a case on the gossamer threads of whimsy, speculation, and conjecture.” *Id.* at 732, 121 P.3d at 1031 (quotation omitted). The nonmoving party must present *genuine* issues of *material* fact to avoid summary judgment. *Id.*, 121 P.3d at 1031.

In the instant case, Plaintiff’s causes of action beyond those for Declaratory Relief and Injunctive Relief are not sustainable under the undisputed factual scenario involved in this case. It is undisputed that Plaintiff did not pay any of the SPL amount demanded and licned by Horizons, even the amounts it concedes it owes. As a result, Plaintiff has not suffered or incurred any damages that could be recovered under the First, Second, Third, Fourth and Fifth Causes of Action pleaded in Plaintiff’s Complaint. In sum, this is not a case seeking attorney’s fees and

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1 costs for a slander of title. *See Horgan v. Felton*, 123 Nev. 577, 583-86, 170 P.3d 982 (2007).
2 Further, the Court does not consider that the theories pleaded by Plaintiff have been shown to
3 involve genuine issues of material fact as to damages that are otherwise recoverable under those
4 causes of action.

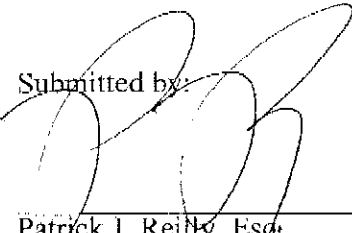
5 * * *

6 Accordingly, this Court hereby DENIES Plaintiff's Motion for Summary Judgment and
7 GRANTS Defendant's Countermotion for Summary Judgment in its entirety. This Order is
8 without prejudice to Plaintiff's effort to seek attorney's fees and costs based upon whatever
9 statutory or contractual premise that may or may not be applicable.

10 IT IS SO ORDERED.

11 DATED this 13th day of April, 2012.

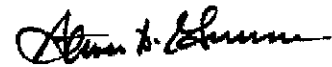
12
13 
14 DISTRICT COURT JUDGE PM

15 Submitted by: 
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Ex. 3



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23 **DISTRICT COURT**
24 **CLARK COUNTY, NEVADA**

25 **IKON HOLDINGS, LLC, a Nevada limited liability**
26 **company,**

27 **Plaintiff,**
28 **vs.**

29 **HORIZONS AT SEVEN HILLS HOMEOWNERS**
30 **ASSOCIATION, and DOES 1 through 10 and ROE**
31 **ENTITIES 1 through 10 inclusive,**

32 **Defendant.**

Case No: A-11-647850-C
Dept: No. 13

ORDER

33 THIS MATTER having come before the Court on June 11, 2012, for hearing on Plaintiff's
34 Motion for Summary Judgment on Declaratory Relief and on Defendant's Counter-Motion for
35 Summary Judgment. James R. Adams, Esq., of Adams Law Group, Ltd., and Puoy K. Premsrirut,
36 Esq., of Puoy K. Premsrirut, Esq., Inc., appeared on behalf of the Plaintiff. Eric Hinckley, Esq., of
37 Alverson, Taylor, Mortensen & Sanders and Patrick Reilly, Esq., of Holland & Hart appeared on
38 behalf of the Defendant. The Court, having considered the papers submitted in connection with such
39 item(s) and heard the arguments made on behalf of the parties and then taken the matter under
40 advisement for further consideration, and for good cause appearing hereby rules:

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1 **ORD**

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23 **DISTRICT COURT**

24 **CLARK COUNTY, NEVADA**

25 IKON HOLDINGS, LLC, a Nevada limited liability
26 company,

27 Plaintiff,

28 vs.

29 HORIZONS AT SEVEN HILLS HOMEOWNERS
30 ASSOCIATION, and DOES 1 through 10 and ROE
31 ENTITIES 1 through 10 inclusive,

32 Defendant.

Case No: A-11-647850-C
Dept: No. 13

ORDER

33 THIS MATTER having come before the Court on June 11, 2012, for hearing on Plaintiff's
34 Motion for Summary Judgment on Declaratory Relief and on Defendant's Counter-Motion for
35 Summary Judgment. James R. Adams, Esq., of Adams Law Group, Ltd., and Puoy K. Premsrirut,
36 Esq., of Puoy K. Premsrirut, Esq., Inc., appeared on behalf of the Plaintiff. Eric Hinckley, Esq., of
37 Alverson, Taylor, Mortensen & Sanders and Patrick Reilly, Esq., of Holland & Hart appeared on
38 behalf of the Defendant. The Court, having considered the papers submitted in connection with such
item(s) and heard the arguments made on behalf of the parties and then taken the matter under
advisement for further consideration, and for good cause appearing hereby rules:

1 WHEREAS, on 7/6/2005, Defendant, a Nevada homeowners' association, recorded in the
2 Clark County, Nevada, Recorder's Office, the Declaration of Covenants Conditions & Restrictions
3 and Reservations of Easements for Horizon at Seven Hills Homeowners Association ("CC&RS");
4 and

5 WHEREAS, on 6/28/2010, Scott M. Ludwig purchased APN 177-35-610-137 (the "Unit")
6 at a foreclosure auction of the prior owner's first mortgage lender ("6/28/2010 Foreclosure
7 Auction"); and

8 WHEREAS, the Unit is located with Defendant homeowners' association; and

9 WHEREAS, on 7/14/2010, Scott M. Ludwig transferred the Unit by quit claim deed to
10 Plaintiff ("Ikon Deed"); and

11 WHEREAS, on 9/30/2010 Defendant filed a Notice of Delinquent Assessment Lien against
12 Plaintiff and the Unit for \$6,050.14 ("Notice of Delinquent Assessment Lien"); and

13 WHEREAS, on 10/18/2010 Defendant sent Plaintiff a letter stating, "Per your request, the
14 current balance for the above property is \$6,287.94." (the "10/18/10 Collection Letter"); and

15 WHEREAS, pursuant to the spreadsheet of fees and costs attached to the 10/18/10 Collection
16 Letter, Defendant's monthly assessments were \$190.00; and

17 WHEREAS, the Unit, being located within Defendant homeowners' association, is subject
18 to NRS 116 (Common Interest Ownership Uniform Act) and the CC&RS; and

19 WHEREAS, the Court has determined that a justiciable controversy exists in this matter as
20 Plaintiff has asserted a claim of right against Defendant under NRS §116.3116 and Sections 7.8 and
21 7.9 of the Defendant's CC&RS and Defendant has an interest in contesting said claim, the present
22 controversy is between persons or entities whose interests are adverse, both parties seeking
23 declaratory relief have a legal interest in the controversy (i.e., a legally protectible interest), and the
24 issue involved in the controversy (the meaning and application of NRS 116.3116 and of Sections 7.8
25 and 7.9 of the CC&RS) is ripe for judicial determination as between the parties. *Kress v. Corey* 65
26 *Nev. 1, 189 P.2d 352 (1948)*; and

1 WHEREAS, Plaintiff and Defendant, the contesting parties hereto, are clearly adverse and
2 hold different views regarding the meaning and applicability of Sections 7.8 and 7.9 of the CC&RS
3 in that Plaintiff maintains that Sections 7.8 and 7.9 of the CC&RS call for a limit on Defendant's
4 prioritized portion of its homeowners' association lien on Plaintiff's Unit to the extent of an amount
5 equal to 6 months of assessments (i.e., "The lien of the assessments, including interest and costs,
6 shall be subordinate to the lien of any First Mortgage upon the Unit (except to the extent of Annual
7 Assessments which would have become due in the absence of acceleration during the six (6) months
8 immediately preceding institution of an action to enforce the lien)") and further maintains that
9 Sections 7.8 and 7.9 of the CC&RS do not violate the statutory lien limit as noted in NRS
10 116.3116(2) as the CC&RS call for a lesser amount for the prioritized portion of the lien than does
11 NRS 116.3116(2). Conversely, Defendant maintains there are either two prioritized liens (one
12 contractual and one statutory) and/or that Sections 7.8 and 7.9 of Defendant's CC&RS violate NRS
13 116.3116(2) in that Sections 7.8 and 7.9 call for a lesser amount for the prioritized portion of the lien
14 than does NRS 116.3116(2) and, therefore, the prioritized portion of Defendant's lien must equal
15 the greater amount as noted in NRS 116.3116(2); and

16 WHEREAS, Plaintiff has a legal interest in the controversy as it was Plaintiff's money which
17 had been demanded by Defendant and it was Plaintiff's Unit that had been the subject of a
18 homeowners' association assessment lien by Defendant; and

19 WHEREAS the issue of the meaning, application and interpretation of Sections 7.8 and 7.9
20 of the CC&RS in conjunction with NRS §116.3116 is ripe for determination in this case as the
21 present controversy is real, it exists now, and it affects the parties hereto; and

22 WHEREAS, therefore, the Court finds that issuing a declaratory judgment relating to the
23 meaning and interpretation of Sections 7.8 and 7.9 of the CC&RS in conjunction with NRS
24 §116.3116 would terminate some of the uncertainty and controversy giving rise to the present
25 proceeding; and

26 WHEREAS, pursuant to NRS §30.040 Plaintiff and Defendant are parties whose rights,
27 status or other legal relations are affected by Sections 7.8 and 7.9 of the CC&RS and they may,
28

1 therefore, have determined by this Court any question of construction or validity arising under said
2 Sections and obtain a declaration of rights, status or other legal relations thereunder; and

3 WHEREAS, regarding priority of homeowner association assessment liens, Section 7.8 and
4 7.9 of the CC&RS state the following:

5 Section 7.8 Mortgagee Protection. Notwithstanding all other
6 provisions hereof, no lien created under this Article 7, nor the
7 enforcement of any provision of this Declaration shall defeat or
8 render invalid the rights of the Beneficiary under any Recorded First
9 Deed of Trust encumbering a Unit, made in good faith and for value;
10 provided that after such Beneficiary or some other Person obtains title
11 to such Unit by judicial foreclosure, other foreclosure, or exercise of
12 power of sale, such Unit shall remain subject to this Declaration and
13 the payment of all installments of assessments accruing subsequent
14 to the date such Beneficiary or other Person obtains title, subject to
15 the following. The lien of the assessments, including interest and
16 costs, shall be subordinate to the lien of any First Mortgage upon
17 the Unit (except to the extent of Annual Assessments which would
18 have become due in the absence of acceleration during the six (6)
19 months immediately preceding institution of an action to enforce
20 the lien). The release or discharge of any lien for unpaid assessments
21 by reason of the foreclosure or exercise of power of sale by the First
22 Mortgagee shall not relieve the prior Owner of his personal obligation
23 for the payment of such unpaid assessments.

24 Section 7.9 Priority of Assessment Lien. Recording of the
25 Declaration constitutes Record notice and perfection of a lien for
26 assessments. A lien for assessments, including interest, costs, and
27 attorneys' fees, as provided for herein, shall be prior to all other
28 liens and encumbrances on a Unit, except for: (a) liens and
encumbrances Recorded before the Declaration was Recorded; (b) a
first Mortgage Recorded before the delinquency of the
assessment sought to be enforced (except to the extent of Annual
Assessments which would have become due in the absence of
acceleration during the six (6) months immediately preceding
institution of an action to enforce the lien), and (c) liens for real
estate taxes and other governmental charges, and is otherwise subject
to NRS § 116.3116. The sale or transfer of any Unit shall not affect
an assessment lien. However, subject to foregoing provision of this
Section 7.9, the sale or transfer of any Unit pursuant to judicial or
non-judicial foreclosure of a First Mortgage shall extinguish the lien
of such assessment as to payments which became due prior to such
sale or transfer. No sale or transfer shall relieve such Unit from lien
rights for any assessments which thereafter become due. Where the
Beneficiary of a First Mortgage of Record or other purchaser of
a Unit obtains title pursuant to a judicial or nonjudicial
foreclosure or "deed in lieu thereof," the Person who obtains title
and his or her successors and assigns shall not be liable for the
share of the Common Expenses or assessments by the Association
chargeable to such Unit which became due prior to the

1 acquisition of title to such Unit by such Person (except to the
2 extent of Annual Assessments which would have become due in
3 the absence of acceleration during the six (6) months immediately
4 preceding institution of an action to enforce the lien). Such
5 unpaid share of Common Expenses and assessments shall be
6 deemed to become expenses collectible from all of the Units,
7 including the Unit belonging to such Person and his or her
8 successors and assigns.

9 WHEREAS, the Court is persuaded that Plaintiff's position is correct relative to the
10 component and ceiling issues contained in its Motion relating to Sections 7.8 and 7.9 of the CC&RS
11 in that pursuant to said Sections, Defendant's prioritized portion of its lien may include assessments
12 and "... interest, costs, and attorneys' fees..." but, pursuant to Sections 7.8 and 7.9 of the CC&RS,
13 is only prior to the first mortgage holder, "... to the extent of Annual Assessments which would have
14 become due in the absence of acceleration during the six (6) months immediately preceding
15 institution of an action to enforce the lien...."

16 THE COURT, THEREFORE, DECLARES, ORDERS, ADJUDGES AND DECREES as
17 follows:

- 18 1. Defendant's Counter-Motion for Summary Judgment is DENIED and Plaintiff's Motion for
19 Partial Summary Judgment on Declaratory Relief is GRANTED IN PART to the extent that
20 it seeks the following declarations:

21 Defendant, in contravention of Nevada Revised Statutes §116.3116,
22 has unlawfully demanded from Plaintiff amounts in excess of the
23 Supcr Priority Lien to which it has no legal entitlement.

24 Pursuant to Sections 7.8 and 7.9 of the Defendant's CC&RS,
25 Defendant's lien was junior to the first security interest of the Unit's
26 first mortgage lender except for a certain, limited and specified
27 portion of the lien as defined in Sections 7.8 and 7.9 of the CC&RS
28 (i.e., an amount equal to 6 months of assessments,) and

 Defendant, in contravention of Sections 7.8 and 7.9 of the
 Defendant's CC&RS has improperly demanded monies from Plaintiff
 in order to satisfy Defendant's claimed liens or demands which
 exceeded a figure equaling 6 months of assessments, thereby
 violating the CC&RS.

2. NRS 116.3116(1) states what can be the subject of a homeowners' association's general
 assessment lien on a unit and NRS 116.3116(2) states what the statutory limits are to the
 prioritized portion of the assessment lien, i.e., that portion of a homeowners' association's

1 lien which, after the foreclosure of a unit's first trust deed holder, is superior to the first trust
2 deed as a matter of law (See Order entered January 19, 2012).

3 3. A homeowners' association's lien against a unit located within its association is contractually
4 created, perfected and noticed by the recording of the CC&RS (See NRS 116.3116(4)).

5 4. To the extent that provisions of CC&RS call for a lesser amount for the prioritized portion
6 of the assessment lien than does NRS 116.3116(2), the lesser amount shall be utilized as the
7 prioritized portion of the lien.

8 5. NRS 116.1206 states:

9 NRS 116.1206 Provisions of governing documents in violation of
10 chapter deemed to conform with chapter by operation of law;
procedure for certain amendments to governing documents.

11 1. Any provision contained in a declaration, bylaw or other
12 governing document of a common-interest community that violates
the provisions of this chapter:

13 (a) Shall be deemed to conform with those provisions by
14 operation of law, and any such declaration, bylaw or other governing
document is not required to be amended to conform to those
15 provisions.

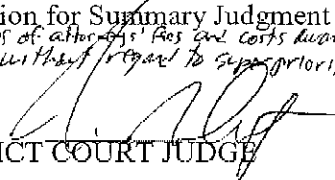
16 (b) Is superseded by the provisions of this chapter, regardless of
17 whether the provision contained in the declaration, bylaw or other
governing document became effective before the enactment of the
provision of this chapter that is being violated.

18 6. Defendant maintains that NRS 116.3116(2) and Sections 7.8 and 7.9 are conceptually
19 separate and, in effect, create two separate liens. The Court disagrees. There is but a single
20 lien which is created, perfected and noticed by the recording of the CC&RS (See NRS
21 116.3116(4)).

22 7. The Court further disagrees with Defendant's position that the provisions of NRS 116.1206
23 are to the effect that lesser amounts for the prioritized portion of the Defendant's lien which
24 is called for by the CC&RS (Sections 7.8 and 7.9) are automatically elevated to the limits
25 provided for by NRS 116.3116(2) if such lesser amounts are inconsistent with what is
26 permitted by NRS 116.3116(2). The Court disagrees because the language of subsection (1)
27 of NRS 116.1206 refers to any provision in the CC&RS that " ... violates the provisions of
28

1 this chapter" The Court determines that the language in Defendant's CC&RS (Section
2 7.8 and 7.9) which calls for a lesser amount for the prioritized portion of the lien than does
3 NRS 116.3116(2) does not "violate" the statutory prioritized lien limit as provided for in
4 NRS 116.3116(2) because the amounts called for in the CC&RS do not exceed the limit
5 called for by NRS 116.3116(2), but in fact are within the limit. Thus, the amount of the
6 prioritized portion of a homeowners' association's lien as called for in CC&RS does not need
7 to rise to the maximum level as noted in NRS 116.3116(2), as a lesser amount as called for
8 in the CC&RS does not "violate" NRS 116.3116(2).

- 9 8. While the Court has ruled that interest, costs and other fees may be included in the prioritized
10 portion of the lien as long as the prioritized portion of the lien does not exceed an amount
11 equal to 6 months of assessments as noted in Section 7.8 and 7.9 of the CC&RS, at this time;
12 however, the Court is not extending its declaratory relief ruling to the specific monetary
13 amounts referenced in Plaintiff's Motion for Summary Judgment at pages 9 and 10. *For*
14 *is the Court at this time addressing issues of attorney's fees and costs pursuant to NRS 18.010(2),*
NRS 18.010(2), or NRS 116.3116(7) without regard to superpriority? 2-
IT IS SO ORDERED.

15 
16 DISTRICT COURT JUDGE

17 7/19/12
18 Date *pm*

19 Submitted by:

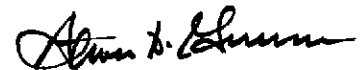
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CLERK OF THE COURT

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21
22 **DISTRICT COURT**
23
24 **CLARK COUNTY, NEVADA**

25 IKON HOLDINGS, LLC, a Nevada limited liability
26 company,

27 Plaintiff,

28 vs.

29 HORIZONS AT SEVEN HILLS HOMEOWNERS
30 ASSOCIATION, and DOES 1 through 10 and ROE
31 ENTITIES 1 through 10 inclusive,

32 Defendant.

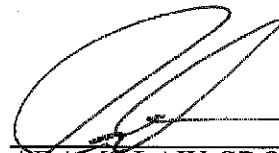
Case No: A-11-647850-C

Dept: No. 13

NOTICE OF ENTRY OF JUDGMENT

33 PLEASE TAKE NOTICE that Judgment has been entered in the above captioned matter
34 on this 11th day of April, 2013, a copy of which is attached hereto.

35 Dated this 12th day April, 2013.



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