

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

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 HORIZONS AT SEVEN HILLS
3 HOMEOWNERS ASSOCIATION,

Supreme Court No. 63178
District Court Case No. A-11-647850-B

4 Appellant,

5 v.

6 IKON HOLDINGS, LLC, a Nevada limited
liability company,

7 Respondent.

Electronically Filed
May 17 2013 03:50 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

8
9
10
11
12
13
14
15
16
17
18 **AMENDED CASE APPEAL STATEMENT**

19 Patrick J. Reilly, Esq.
Nevada Bar No. 6103
20 Nicole E. Lovelock, Esq.
Nevada Bar No. 11187
21 Holland & Hart LLP
9555 Hillwood Drive, Second Floor
22 Las Vegas, Nevada 89134
Tel: (702) 669-4600
23 Fax: (702) 669-4650
Email: preilly@hollandhart.com
24 nelovelock@hollandhart.com

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

1. Name of appellant filing this case appeal statement:

Horizons at Seven Hills Homeowners Association

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

Honorable Mark Denton.

3. Identify each appellant and the name and address of counsel for each appellant:

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

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

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

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42:

All attorneys are licensed in the State of Nevada.

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

Appellant was represented by retained counsel in the district court.

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Appellant is represented by retained counsel on appeal.

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

Appellant is not proceeding in forma pauperis.

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

The complaint was filed on September 6, 2011.

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

The district court action principally concerned the scope and amount of a residual "super-priority" lien created in favor of Appellant by both NRS Chapter 116 and underlying Covenants, Conditions & Restrictions ("CC&Rs") after foreclosure by a unit owner's first deed of trust holder. Appellant Horizons is a common interest community as defined by NRS 116.021.

Respondent Ikon ("Ikon") is a real estate investment company that purchases distressed residential properties at auction and quickly resells ("flips") them for a profit.

Ikon purchased the underlying real property (which was part of Horizons's common interest community) after a non-judicial foreclosure sale conducted by the first trust deed holder. 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 116.470, and public policy. The Association also challenged the notion that Ikon had suffered any damages, as it had never even paid the disputed amounts.

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

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

No.

12. Indicate whether this appeal involves child custody or visitation:

No.

///

///

///

///

///

///

///

///

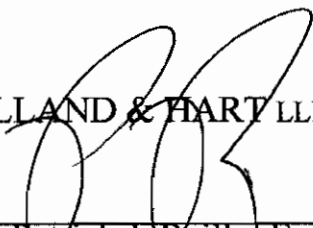
1
2 13. If this is a civil case, indicate whether this appeal involves the possibility of
3 settlement:

4 No.

5 DATED May 17, 2013.

6 HOLLAND & HART LLP

7
8 By


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

*Attorneys for Appellant Horizons At
Seven Hills Homeowners Association*

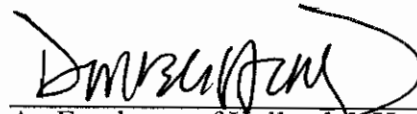
CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25(b), I hereby certify that on May 17, 2013, I served a true and correct copy of the foregoing **AMENDED 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
Tel: (702) 838-7200
Fax: (702) 838-3636
Email: james@adamslawnevada.com
assly@adamslawnevada.com

Puoy K. Premsrirut, Esq.
Puoy K. Premsrirut, Esq. Inc.
520 S. Fourth Street, 2nd Floor
Las Vegas, Nevada 89101
Tel: (702) 384-5563
Fax: (702) 385-1752
Email: ppremsrirut@brownlawlv.com

Attorneys for Respondents



An Employee of Holland & Hart LLP