

EXHIBIT “3”

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1 **OFF**

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21 ppremsrirut@brownlawlv.com
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

OFFER OF JUDGMENT

TO: HORIZONS AT SEVEN HILLS HOMEOWNERS ASSOCIATION, Defendant;

TO: KURT BONDS, ESQ; its Counsel

TO: PATRICK REILLY, ESQ, its Counsel

Pursuant to NRCP 68 and NRS 17.115, Plaintiff, IKON HOLDINGS, LLC, (hereinafter the
"Plaintiff"), hereby offers to allow judgment to be taken in this action against HORIZONS AT
SEVEN HILLS HOMEOWNERS ASSOCIATION, in favor of the Plaintiff in the above-entitled

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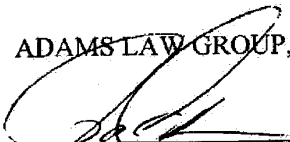
1 case, in the total sum of Seventeen Thousand Dollars and 00/100 (\$17,000.00), in the above-entitled
2 case, which is inclusive of all claims and counterclaims, and third-party claims for damages, costs,
3 and attorneys' fees and any future claims that may arise in this matter.

4 Defendant shall release any and all liens against the property subject to this action upon
5 payment to Plaintiff.

6 This Offer of Judgment is made for the purpose specified in N.R.C.P. 68 and NRS 17.115,
7 and is not to be used for any other purpose. If not accepted within ten (10) days from service hercof,
8 this Offer of Judgment shall be deemed withdrawn. Defendant may elect to vacate the judgment upon
9 payment to Plaintiff and satisfaction of the terms herein.

10 DATED this 8 day of February, 2012.

11
12 ADAMS LAW GROUP, LTD.

13
14 
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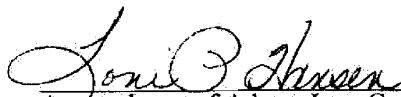
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of February, 2012, a copy of the OFFER OF JUDGMENT was served on the following party by mailing a copy thereof, first class mail, postage prepaid, to:

Kurt Bonds, Esq.
Alverson, Taylor, Mortensen & Sanders
7401 West Charleston Boulevard
Las Vegas, NV 89117-1401
Ph: 702-384-7000
Fax: 702-385-7000

PATRICK J. REILLY, ESQ.
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An employee of Adams Law Group, Ltd.

EXHIBIT “4”

1 **MEMO**
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9 james@adamslawnevada.com
10 Attorneys for Plaintiff
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12 PUOY K. PREMSRIRUT, ESQ., INC.
13 Puoy K, Premsrirut, Esq.
14 Nevada Bar No. 7141
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19 pppremsrirut@brownlawlv.com
20 Attorneys for Plaintiff

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

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

16 Plaintiff,

17 vs.

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

21 Defendant.

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

22 **MEMORANDUM OF COSTS AND DISBURSEMENTS**

23 Process service:	\$135.00
24 Court Filing Fees:	\$2,341.40
25 Runner:	\$61.00
26 Copies:	\$26.00
27 TOTAL	\$ 2,563.40

1 STATE OF NEVADA)

2)ss:

3 COUNTY OF CLARK)

4 James R. Adams, Esq., being duly sworn, states: that affiant is the attorney for Plaintiff and
5 has personal knowledge of the above costs and disbursements expended; that the items contained
6 in the above memorandum are true and correct to the best of this affiant's knowledge and belief; and
7 that the said disbursements have been necessarily incurred and paid in this action.

8 I declare under penalty, under the laws of the State of Nevada, that the forgoing is true and correct.

9 EXECUTED this 16th day of April, 2013.

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By: 

JAMES R. ADAMS, ESQ.
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8010 W Sahara Avenue, Suite 260
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(702) 838.3636 fax
james@adamslawnevada.com
Attorneys for Plaintiff

18

Subscribed and Sworn to before me
on this 16th day of April, 2013.

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22

23

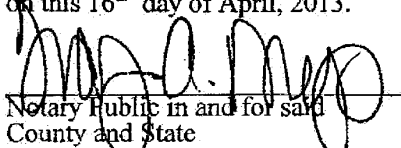
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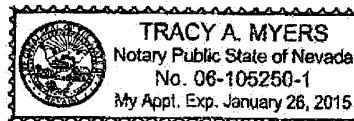
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Notary Public in and for said
County and State




CERTIFICATE OF SERVICE

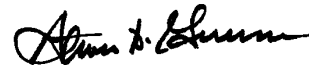
Pursuant to NRCP 5(b), I certify that I am an employee of ADAMS LAW GROUP, LTD., and that on this 16TH day of April, 2013, I caused the above and foregoing document entitled: MEMORANDUM OF COSTS AND DISBURSEMENTS to be served as follows:

- ☒ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☐ by facsimile or email transmission pursuant to EDCR 7.26, to the facsimile number(s) and/or email address shown below and in the confirmation sheet herewith. Consent to service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by facsimile transmission is made in writing and sent to the sender via facsimile within 24 hours of receipt of this Certificate of Service; and/or
- ☐ to be hand-delivered; to the attorneys listed below at the address and/or facsimile number indicated below:

Patrick Reilly, Esq.
Holland & Hart
9555 Hillwood Dr., Second Floor
Las Vegas, NV 89134
Attorney for Defendant

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


An Employee of ADAMS LAW GROUP, LTD.



CLERK OF THE COURT

1 **NOAS**
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Nicole E. Lovelock, Esq.
3 Nevada Bar No. 11187
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6 Email: preilly@hollandhart.com
nelovelock@hollandhart.com

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**
16 **HOMEOWNERS ASSOCIATION; and**
17 **DOES 1 through 10; and ROE ENTITIES 1**
18 **through 10 inclusive,**

19 **Defendants.**

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

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

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

- 23 1. Order (January 19, 2012), a copy of which is attached hereto as **Exhibit "1"**;
- 24 2. Order (March 16, 2012), a copy of which is attached hereto as **Exhibit "2"**;
- 25 3. Order (July 24, 2012), a copy of which is attached hereto as **Exhibit "3"**; and
- 26 4. Final Judgment (April 11, 2013), a copy of which is attached hereto as **Exhibit**
27 **"4"**.
- 28 5. Final Judgment (May 1, 2013), a copy of which is attached hereto as **Exhibit "5"**.

///

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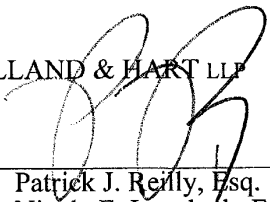
1 This appeal is related to several other appellate matters before the Nevada Supreme
2 Court, including the following:

- 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
19
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Las Vegas, Nevada 89134
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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.
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Las Vegas, Nevada 89117

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Puoy K. Premsrirut, Esq. Inc.
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Attorneys for Plaintiff

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Jeffrey Hulet, Esq.
Gordon Silver
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Las Vegas, Nevada 89169

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

Robert A. Massi, Esq.
Kristie L. Reber, Esq.
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Henderson, Nevada 89052

Attorneys for Hampton & Hampton, PC

Don Springmeyer, Esq.
Michael J. Lemcool, Esq.
Gregory P. Kerr, Esq.
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Schulman & Rabkin, LLP
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Attorney for Peccole Ranch Community Association

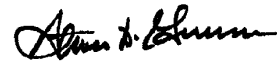
Lance W. Johns, Esq.
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Tamara Beatty Peterson, Esq.
Anthony R. Sassi, Esq.
Brownstein Hyatt Farber Schreck, LLP
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Las Vegas, NV 89106

Attorneys for Southern Highlands Community Association


An Employee of Holland & Hart LLP

EXHIBIT “1”



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.**

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 December 12, 2011 at 9:00 a.m., upon the Plaintiff's
30 Motion for Summary Judgment on Claim of Declaratory Relief and Defendant's Counter Motion for
31 Summary Judgment on Claim of Declaratory Relief. James R. Adams, Esq., of Adams Law Group,
32 Ltd., and Puoy K. Premsrirut, Esq., of Puoy K. Premsrirut, Esq., Inc., appeared on behalf of the
33 Plaintiff. Eric Hinckley, Esq., of Alverson, Taylor, Mortensen & Sanders appeared on behalf of the
34 Defendant. The Honorable Court, having read the briefs on file and having heard oral argument, and
35 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.

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 obtained 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 
23 DISTRICT COURT JUDGE

24 Date

25 Submitted by: 

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

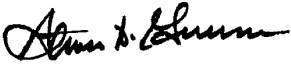
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9 Attorneys for Plaintiff

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18 Attorneys for Plaintiff

19 Approved:

20 NOT APPROVED
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22 Alverson Taylor Mortensen and Sanders
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27 Ehinckley@AlversonTaylor.com
28 Attorney for Defendant

EXHIBIT “2”



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.

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:

RECEIVED

MAR 14 2012

DISTRICT COURT DEPT#13 21617

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.

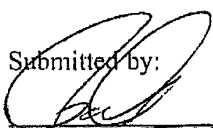
4 Further, the hearing on Defendant's Motion for Clarification or, in the Alternative, for
5 Reconsideration of Order Granting Summary Judgment on Claim of Declaratory Relief shall be
6 removed from the motion calendar currently set for March 12, 2012.

7 **IT IS SO ORDERED.**

8 
DISTRICT COURT JUDGE


3/15/12
Date *pm*

9
10
11 Submitted by:

12 
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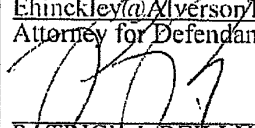
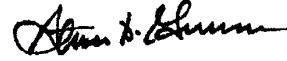
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EXHIBIT “3”



CLERK OF THE COURT

1 **ORD**
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16 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-B
Dept: No. 13

ORDER

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

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

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DISTRICT COURT DEPT# 13

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1 **ORD**

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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
20 ENTITIES 1 through 10 inclusive,

21 Defendant.

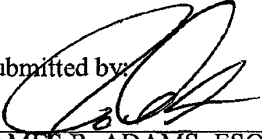
Case No: A-11-647850-B

Dept: No. 13

ORDER

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

26 That for the reasons particularly stated in Plaintiff's Opposition to Motion to
27 Reconsideration, and pursuant to EDCR 2.23(c), the Court DENIES Defendant s Motion For
28 Reconsideration Of Order Granting Summary Judgment On Claim Of Declaratory Relief, without
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
5
6
7 Submitted by: 
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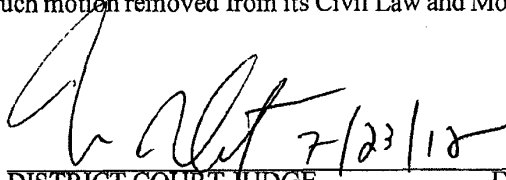

DISTRICT COURT JUDGE Date
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EXHIBIT “4”

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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,

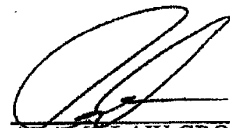
Defendant.

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:


<input checked="" type="checkbox"/>	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;
<input type="checkbox"/>	Hand Delivery
<input type="checkbox"/>	Facsimile
<input type="checkbox"/>	Overnight Delivery
<input type="checkbox"/>	Certified Mail, Return Receipt Requested.

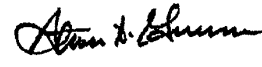
addressed as follows:

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Attorney for Defendant

Kurt Bonds, Esq.
Alverson Taylor Mortensen and Sanders
7401 W. Charleston Blvd.
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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 11049 lien given
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.*

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:

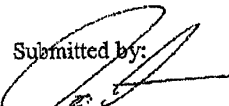
6 All claims and issues in this matter have now been fully adjudicated as evidenced by the
7 above findings, and by the findings and conclusions contained in the 1/19/2012 Order, the
8 4/16/2012 Order and the 7/20/2012 Order, and by the Payment, said amount being in conformance
9 with this Court's 7/20/2012 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

15
16
17 Submitted by:

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24 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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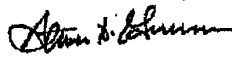
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Ex. 1

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CLERK OF THE COURT

1 **ORD**
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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
22 This matter came before the Court on December 12, 2011 at 9:00 a.m., upon the Plaintiff's
23 Motion for Summary Judgment on Claim of Declaratory Relief and Defendant's Counter Motion for
24 Summary Judgment on Claim of Declaratory Relief. James R. Adams, Esq., of Adams Law Group,
25 Ltd., and Puoy K. Premsrirut, Esq., of Puoy K. Premsrirut, Esq., Inc., appeared on behalf of the
26 Plaintiff. Eric Hinckley, Esq., of Alverson, Taylor, Mortensen & Sanders appeared on behalf of the
27 Defendant. The Honorable Court, having read the briefs on file and having heard oral argument, and
28 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 obtained if the} The term "action" as used in NRS
17 §116.3116(2) (as opposed 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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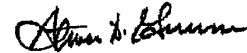
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30 Attorney for Defendant

Ex. 2

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CLERK OF THE COURT

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22 *Attorneys for Defendants Horizons At Seven Hills*
23 *Homeowners Association*

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

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

28 **Plaintiff,**

29 **vs.**

30 **HORIZONS AT SEVEN HILLS**
31 **HOMEOWNERS ASSOCIATION; and DOES**
32 **1 through 10; and ROE ENTITIES 1 through**
33 **10 inclusive,**

34 **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.

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.

Page 1 of 4

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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 **L**

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

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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 lienied 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

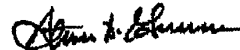
15 Submitted by:
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DISTRICT COURT
CLARK COUNTY, NEVADA

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

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

Plaintiff,

vs.

ORDER

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

Defendant.

28 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. Premsrut,
Esq., of Puoy K. Premsrut, 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
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 Plaintiffs 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 ("Lkon 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
25 Beneficiary of a First Mortgage of Record or other purchaser of
26 a Unit obtains title pursuant to a judicial or nonjudicial
27 foreclosure or "deed in lieu thereof," the Person who obtains title
28 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.

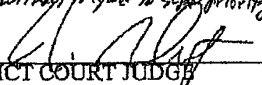
2. NRS 116.3116(1) states what can be the subject of a homeowners' association's general
assessment lien on a unit and NRS 116.3116(2) states what the statutory limits are to the
prioritized portion of the assessment lien, i.e., that portion of a homeowners' association's

- 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).

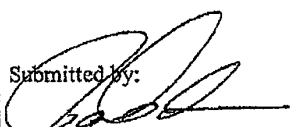
- 9 8. While the Court has ruled that interest, costs and other fees may be included in the prioritized
10 portion of the lien as long as the prioritized portion of the lien does not exceed an amount
11 equal to 6 months of assessments as noted in Section 7.8 and 7.9 of the CC&RS, at this time;
12 however, 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. *Now*
14 *is the Court at this time addressing issue of attorney fees and costs pursuant to NRS 18.010(2),*
IT IS SO ORDERED.

15 
DISTRICT COURT JUDGE

16 Date 7/19/12
17 pm

18 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.

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27
28

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Nevada Bar No. 6874
ASSLY SAYYAR, ESQ.
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CERTIFICATE OF SERVICE

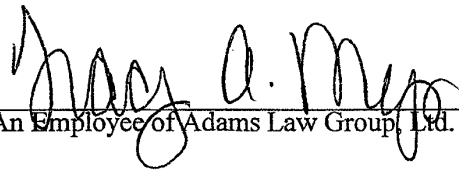
I HEREBY CERTIFY that on the 6 day of May 2013, a copy of the NOTICE OF ENTRY of FINAL JUDGMENT was served on the following party by:

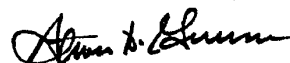
<input checked="" type="checkbox"/>	Placing an original or true copy thereof in a sealed enveloped place for collection and mailing in the United States Mail, at Las Vegas, Nevada, postage paid, following the ordinary business practices;
<input type="checkbox"/>	Hand Delivery
<input type="checkbox"/>	Facsimile
<input type="checkbox"/>	Overnight Delivery
<input type="checkbox"/>	Certified Mail, Return Receipt Requested.
<input type="checkbox"/>	Electronic Mailing or Email, Delivery Receipt Requested

addressed as follows:

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Holland & Hart
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Alverson Taylor Mortensen and Sanders
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Attorney for Defendant


An Employee of Adams Law Group, Ltd.



CLERK OF THE COURT

1 JUDGE
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3 ASSLY SAYYAR, 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

FINAL JUDGMENT

21
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 HOA lien given*
periodically, 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.

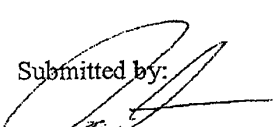
13 IT IS SO ADJUDGED.

14 
DISTRICT COURT JUDGE

4/5/13
Date

PB

16
17 Submitted by:

18 
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20 Nevada Bar No. 6874
21 ASSLY SAYYAR, ESQ.
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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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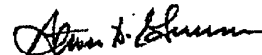
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Attorneys for Defendant

Ex. 1


CLERK OF THE COURT

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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 December 12, 2011 at 9:00 a.m., upon the Plaintiff's
34 Motion for Summary Judgment on Claim of Declaratory Relief and Defendant's Counter Motion for
35 Summary Judgment on Claim of Declaratory Relief. James R. Adams, Esq., of Adams Law Group,
36 Ltd., and Puoy K. Premsrirut, Esq., of Puoy K. Premsrirut, Esq., Inc., appeared on behalf of the
37 Plaintiff. Eric Hinckley, Esq., of Alverson, Taylor, Mortensen & Sanders appeared on behalf of the
38 Defendant. The Honorable Court, having read the briefs on file and having heard oral argument, and
39 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

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 DISTRICT COURT JUDGE

23 Date

24 Submitted by

25 JAMES R. ADAMS, ESQ.
26 Nevada Bar No. 6874
27 ASSLY SAYYAR, ESQ.
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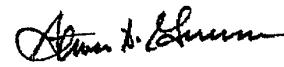
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Ex. 2


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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 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 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 L

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

1 thereof . . . the judgment sought shall be rendered forthwith
2 if the pleadings, depositions, answers to interrogatories, and
3 admissions on file, together with the affidavits, if any, show
4 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.

5 NRCP 56. Summary judgment must be granted "if the pleadings, depositions, answers to
6 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no
7 genuine issue as to any material fact and that the moving party is entitled to judgment as a matter
8 of law." NRCP 56(c). In *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031
9 (2005), the Nevada Supreme Court embraced the summary judgment standard set forth in seminal
10 United States Supreme Court cases such as *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242
11 (1986), *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), and *Matsushita Elec. Indus. Co. v. Zenith*
12 *Radio Corp.*, 475 U.S. 574 (1986). Under this standard, summary judgment is designed to secure
13 the just, speedy, and inexpensive determination of every action where appropriate. *Celotex*, 477
14 U.S. at 327.

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

23 In the instant case, Plaintiff's causes of action beyond those for Declaratory Relief and
24 Injunctive Relief are not sustainable under the undisputed factual scenario involved in this case.
25 It is undisputed that Plaintiff did not pay any of the SPL amount demanded and lienied by
26 Horizons, even the amounts it concedes it owes. As a result, Plaintiff has not suffered or incurred
27 any damages that could be recovered under the First, Second, Third, Fourth and Fifth Causes of
28 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.

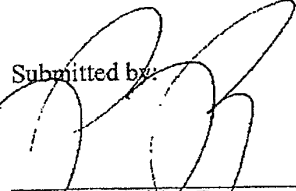
5 * * *

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

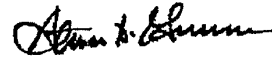
15 Submitted by: 
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22 *Homeowners Association*
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Ex. 3

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1 **ORD**
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22 Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

23 IKON HOLDINGS, LLC, a Nevada limited liability
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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. Premsrut, Esq., of Puoy K. Premsrut, 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:

RECEIVED

JUL 17 2012

DISTRICT COURT DEPT# 13 9412

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JUL 17 2012

DISTRICT COURT DEPT# 13 39412

1 **ORD**
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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:

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

27
28

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

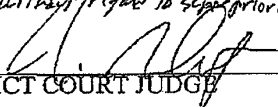
Defendant, in contravention of Sections 7.8 and 7.9 of the
Defendant's CC&RS has improperly demanded monies from Plaintiff
in order to satisfy Defendant's claimed liens or demands which
exceeded a figure equaling 6 months of assessments, thereby
violating the CC&RS.

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 1. Any provision contained in a declaration, bylaw or other
12 governing document of a common-interest community that violates
13 the provisions of this chapter:
14 (a) Shall be deemed to conform with those provisions by
15 operation of law, and any such declaration, bylaw or other governing
16 document is not required to be amended to conform to those
17 provisions.
18 (b) Is superseded by the provisions of this chapter, regardless of
19 whether the provision contained in the declaration, bylaw or other
20 governing document became effective before the enactment of the
21 provision of this chapter that is being violated.
- 22 6. Defendant maintains that NRS 116.3116(2) and Sections 7.8 and 7.9 are conceptually
23 separate and, in effect, create two separate liens. The Court disagrees. There is but a single
24 lien which is created, perfected and noticed by the recording of the CC&RS (See NRS
25 116.3116(4)).
- 26 7. The Court further disagrees with Defendant's position that the provisions of NRS 116.1206
27 are to the effect that lesser amounts for the prioritized portion of the Defendant's lien which
28 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

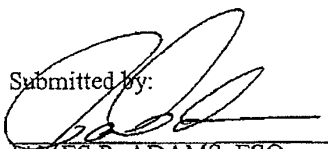
1 this chapter" The Court determines that the language in Defendant's CC&RS (Section
2 7.8 and 7.9) which calls for a lesser amount for the prioritized portion of the lien than does
3 NRS 116.3116(2) does not "violate" the statutory prioritized lien limit as provided for in
4 NRS 116.3116(2) because 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. *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. *was 18.010(2) by NRS 116.3116(2) without regard to superpriority.*

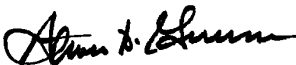
15 
16 DISTRICT COURT JUDGE

17 7/19/12
18 Date
19 pm

20 Submitted by:

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22 JAMES R. ADAMS, ESQ.
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CLERK OF THE COURT

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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

CASE APPEAL STATEMENT

CASE APPEAL STATEMENT

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

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

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

Honorable Mark Denton.

3. Identify each respondent and the name and address of appellate counsel, if known, for each 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. 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
29 held a residual super-priority lien over the property that remained even after lender's foreclosure,
30 and that Ikon, as the new owner, was required to pay a certain amount to have the residual lien
31 removed. The dispute in this case is how much was still owed after foreclosure.

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

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

Holland & Hart LLP
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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.

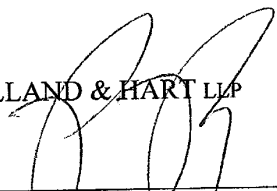
15 **11. If this is a civil case, indicate whether this appeal involves the possibility of
16 settlement:**

17 No.

18 DATED this 8th day of May, 2013.

19 HOLLAND & HART LLP

20 By

21 
22 Patrick J. Reilly, Esq.
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26 *Attorneys for Defendants Horizons At Seven
27 Hills Homeowners Association*

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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:

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Gregory P. Kerr, Esq.
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Anthony R. Sassi, Esq.
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Las Vegas, NV 89106

Attorneys for Southern Highlands Community Association


An Employee of Holland & Hart LLP


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,

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

Plaintiff,

vs.

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

**NOTICE OF FILING COST BOND ON
APPEAL**

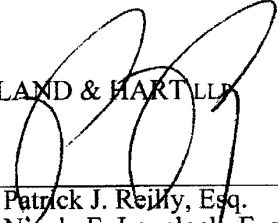
Defendants.

NOTICE IS HEREBY GIVEN that Defendants Horizons At Seven Hills Homeowners Association filed the requisite cost bond regarding the above-entitled matter, a copy of which is attached hereto.

DATED this 9th day of May, 2013.

HOLLAND & HART LLP

By


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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I hereby certify that on the 10th day of May, 2013, I served a true and correct copy of the foregoing **NOTICE OF FILING COST BOND ON APPEAL** by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

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Las Vegas, Nevada 89101

Attorneys for Plaintiff


An Employee of Holland & Hart LLP

OFFICIAL RECEIPT

District Court Clerk of the Court 200 Lewis Ave, 3rd Floor Las Vegas, NV 89101

Payor
[Redacted] & Hart LLP

Receipt No.
2013-56601-CCCLK

Transaction Date
05/8/2013

Description	Amount Paid
On Behalf Of Horizon at Seven Hills Homeowners Association A-11-647850-B Ikon Holdings LLC, Plaintiff(s) vs. Horizon at Seven Hills Homeowners Association, Defendant(s) APPEAL BOND	
APPEAL BOND	500.00
SUBTOTAL	500.00
PAYMENT TOTAL	500.00
Check (Ref #66005457) Tendered	500.00
Total Tendered	500.00
Change	0.00
05/08/2013 03:14 PM	Cashier Station AIKO
	Audit 31503572

OFFICIAL RECEIPT

UMB BANK N.A.
36-1901/1032

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

66005457

DATE May 8, 2013

PAY

Five hundred and 00/100

\$

500.00

PAY
TO THE
ORDER OF

HOLLAND & HART LLP

Clark County Clerk
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155

VOID AFTER 6 MONTHS

⑆66005457⑆ ⑆101219017⑆ ⑆5008016038⑆

Payee: Clark County Clerk

Holland & Hart LLP

Check #:

66005457

Vendor: 40954

Check Date: 5/8/2013

<u>Invoice Number</u>	<u>Invoice Date</u>	<u>Invoice Amount</u>	<u>Amount Paid</u>	<u>Discount Taken</u>	<u>Payment Amt</u>
050813	5/8/2013	500.00	500.00		500.00

File Notice of Appeal

Totals	500.00	500.00			500.00
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Print this page and deliver it to Accounting with applicable signatures. Please have request to Accounting ½ hour prior to the selected Check Run Time. Your Check Request will be complete 1 ½ hours after the time you selected (12pm or 4pm).

[Click here to create new check request](#)

Holland & Hart Check Request		
Originator Name: Reilly, Pat	Date: 5/8/2013	Routing: Internal Messenger
Timekeeper ID: 5528	Date/Time Required: 5/8/2013 2:30pm	Payee ID#: 40954
Originator Phone Ext: 662542		

Payee Name and Address:
**Clark County Clerk
Regional Justice Center
200 Lewis Avenue
Las Vegas NV 89155**

Payee Phone:

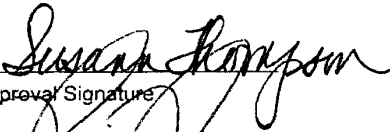
Description for Check:
File Notice of Appeal

Other Comments:

CHARGE TO				
Client/Matter	GL	Cost Type	Office-Dept	Amount
80155.0001 Horizons At Seven Hills Homeowners Assoc - Horizons At Seven Hills Homeowners Assoc Reilly, Patrick J.		10 Filing, Recording, Docket Fees	66	500.00
Total AR 0-90: 1,912.50 Total AR Over 90: 41.00 Trust Balance: 0.00				
Total:				500.00

Originator Signature:

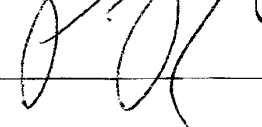
Counter Signature - over \$500

X 

Approval Signature

X _____

Counter Signature - over \$10,000

X 

X _____



May 8, 2013

Five hundred and 00/100*****

***500.00**

Clark County Clerk
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155

639461

Payee: Clark County Clerk
Vendor: 40954

Holland & Hart LLP

Check #:

66005457

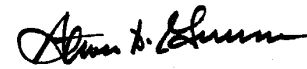
Check Date: 5/8/2013

<u>Invoice Number</u>	<u>Invoice Date</u>	<u>Invoice Amount</u>	<u>Amount Paid</u>	<u>Discount Taken</u>	<u>Payment Amt</u>
050813	5/8/2013	500.00	500.00		500.00

File Notice of Appeal

Totals	500.00	500.00			500.00
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Electronically Filed
05/23/2013 04:53:16 PM



CLERK OF THE COURT

OPPM

ADAMS LAW GROUP, LTD.
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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

**OPPOSITION TO MOTION TO RETAX
COSTS**

Plaintiff, IKONS HOLDINGS, LLC, a Nevada limited liability company, by and through its
counsel of record, JAMES R. ADAMS, ESQ., and PUOY K. PREMSRIRUT, ESQ., hereby files this
Opposition to Defendant's Motion To Retax Costs against Defendant, HORIZONS AT SEVEN
HILLS HOMEOWNERS ASSOCIATION.

///

///

1 This Opposition is made and based upon the attached Memorandum of Points and
2 Authorities, the pleadings and papers on file herein, and any argument of counsel the Court may
3 consider at the hearing of this Motion.

4 DATED this 24th day of May, 2013.

5 PUOY K. PREMSRIRUT, ESQ., INC.

6
7 BY: /s/ Puoy Premsrirut

8 520 S. Fourth St., Second Floor
9 Las Vegas, Nevada 89101
10 (702) 384-5563
(702)-385-1752 Fax
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11 JAMES R. ADAMS, ESQ.
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14 Nevada Bar No. 9178
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16 8010 W. Sahara Ave., Suite 260
17 Las Vegas, Nevada 89117
18 Tel: 702-838-7200
19 Fax: 702-838-3600
20 james@adamslawnevada.com
21 assly@adamslawnevada.com
22 Attorneys for Plaintiff

23 **NOTICE OF MOTION**

24 PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion for Attorney
25 Fees and Costs, for hearing in Department 13 of the above-entitled Court, on the 24 day of
26 June, 2013, at the hour of 9:00 a.m., or as soon thereafter as counsel may be heard.

27 DATED this 24th day of May, 2013.

28 PUOY K. PREMSRIRUT, ESQ., INC.

BY: /s/ Puoy Premsrirut

520 S. Fourth St., Second Floor
Las Vegas, Nevada 89101
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **BRIEF STATEMENT OF PROCEEDINGS**

4 When Plaintiff purchased certain real estate in Defendant Horizon at Seven Hills
5 Homeowners' Association, it was presented with an excessive "super priority lien" demand that was
6 greater than what NRS 116.3116(2) and Defendant's covenants, conditions and restrictions
7 ("CC&RS") provided. Contrary to Defendant's lien and collection letters demanding more than the
8 legal limit, Plaintiff was adamant that the balance **did not exceed a figure equaling 6 months of**
9 **Defendant's monthly assessments** as provided in Section 7.8 and 7.9 of Defendant's CC&RS.
10 From the inception of this dispute, like the thousands of other claims being asserted against Nevada
11 HOAs, Plaintiff at all times asserted that the super priority lien was capped.

12 Despite the law and its own CC&Rs, Defendant maintained its firm and unwavering position
13 that its super priority lien was not limited to a figure equaling 6 or 9 months of assessments, but
14 instead could far exceed that figure through the inclusion of collection costs and fees. Defendant
15 had liened Plaintiff's property and demanded amounts that exceeded what was owed.

16 As a result, 3 summary judgment orders entered by the Court (**Ex. 1**, "1/19/2012 Order")
17 (**Ex. 2**, "4/16/2012 Order") (**Ex. 3**, "7/20/2012 Order"), the Court ruled in Plaintiff's favor on the
18 fundamental issues in the case. In the 1/19/2012 Order, the Court ruled that the super priority lien
19 was capped pursuant to NRS 116.3116(2) at a figure equaling 9 months of assessments based upon
20 the Defendant's periodic budget. As advocated by Plaintiff, the Court ruled that the words "to the
21 extent of" contained in NRS §116.3116(2) mean "no more than," which clearly indicates a maximum
22 figure or a cap on the super priority lien which cannot be exceeded. The Court's 1/19/2012 Order
23 was consistent with Plaintiff's position.

24 Because Plaintiff correctly had not paid any portion of the excessive lien demanded by
25 Defendant as a result of the dispute over the lien's proper amount, the 4/16/2012 Order dismissed
26 Plaintiff's First through Fifth causes of action ruling that because no excessive payment had actually
27 been made by Plaintiff, Plaintiff had incurred no damages. The Court did include however that,
28

1 "This Order is without prejudice to Plaintiff's effort to seek attorney's fees and costs based upon
2 whatever statutory or contractual premise that may or may not be applicable."

3 Contained in the 7/20/2012 Order, the Court considered Plaintiff's claim that Defendant
4 contravened Sections 7.8 and 7.9 of the CC&RS by demanding more than a figure equaling 6 months
5 of assessments for the prioritized lien. In defense of the Motion for Summary Judgment, Defendant
6 not only argued that Sections 7.8 and 7.9 violated NRS 116.3116(2) and, therefore, was superceded
7 by NRS 116.3116(2), but there were in fact two separate liens against Plaintiff's property: one
8 statutory, and one created by the CC&RS. The Court disagreed with Defendant and ruled:

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

12 * * *

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

15 Again, consistent with Plaintiff's position that Defendant had contravened NRS 116.3116(2) and
16 provisions of the CC&RS, the Court ruled:

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

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

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

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

1 In short, by liening Plaintiff's property and demanding more than 6 or 9 months of assessments for
 2 the super priority lien, the Court ruled that Defendant had contravened NRS 116.3116 and had
 3 violated the CC&RS.

4 On March 12, 2013, a bench trial was held. Because the Court had previously ruled that
 5 Plaintiff was correct, and that only 6 months of assessments comprised the prioritized lien, the
 6 parties stipulated that \$1,140.00 (a figure equaling 6 months of assessments) was the proper amount
 7 and said amount was tendered by Plaintiff and received by Defendant. Defendant also stipulated to
 8 record the "Release of Notice of Delinquent Assessment Lien" solely to eliminate the need for the
 9 Court to issue a permanent injunction (the remaining claim for trial). On April 11, 2013, a Final
 10 Judgment in favor of Plaintiff was entered and incorporated the 3 prior summary judgment orders.

11 II.

12 LEGAL ARGUMENT

13 A. **SINCE PLAINTIFF'S FINAL RECOVERY EXCEEDED THE AMOUNT OFFERED IN PLAINTIFF'S 14 OFFER OF JUDGMENT, PLAINTIFFS ARE ENTITLED TO COSTS PURSUANT TO THE 15 PENALTIES PROVIDED IN NRCP RULE 68.**

16 A party that rejects an offer of judgment is subject to the penalties set forth in NRCP Rule
 17 68(f) / NRCP 68(f)(2) provides that "the offered shall pay the offer or's post-offer costs." The rule
 18 does not provide any monetary limits.

19 On February 8, 2012, Ikon served an Offer of Judgment upon Defendant Horizon at
 20 Seven Hills in the amount of \$17,000.00. *See*, "Offer of Judgment", **Ex. 4**. Defendant rejected the
 21 Offer of Judgment as a matter of law by failing to accept it within the time prescribed by NRCP 68
 22 and NRS 17.115(3). Therefore, Plaintiff is entitled to all of its costs incurred after February 8, 2012,
 23 which is the amount sought in the Memorandum of Costs.

24 1. Attorneys Fees Included within the Offer of Judgment Was Appropriate.

25 The Supreme Court has held attorneys' fees are to be included as costs when attorneys' fees
 26 are awardable under the relevant statute upon which the plaintiff's claim is based. *See Marek v.*
 27 *Chesny*, 473 U.S. 1, 8, 105 S.Ct. 3012, 3016 (1985). If an offer of judgment states costs are included
 28

1 or specifies the amount of costs and plaintiff accepts the offer of judgment, the offer will necessarily
2 include costs.

3 If the offer of judgment does not state costs are included and an amount for costs is not
4 specified, then the court will be obliged by the terms of Rule 68 to include in its judgment an
5 additional amount it determines to be sufficient to cover the costs. *Marek*, 473 U.S. at 7, 105 S.Ct.
6 3815. In either case, the offer of judgment has allowed judgment to be entered against the defendant
7 both for damages caused by the challenged conduct and for costs. Attorneys' fees will be included
8 as costs if the statute upon which Plaintiff's cause of action is based permits recovery of reasonable
9 attorneys' fees if Plaintiff is successful. Here, the NRS 17.115 allows for reasonable attorneys fees.

10 NRS 17.115(4) states:

11
12 **4. Except as otherwise provided in this section, if a party who rejects an
offer of judgment fails to obtain a more favorable judgment, the court:**

13 1. (a) May not award to the party any costs or attorney's fees;

14 (b) May not award to the party any interest on the judgment for the period
15 from the date of service of the offer to the date of entry of the judgment;

16 © Shall order the party to pay the taxable costs incurred by the party who
made the offer; and

17 (d) May order the party to pay to the party who made the offer any or all of the
18 following:

19 (1) A reasonable sum to cover any costs incurred by the party who made the
offer for each expert witness whose services were reasonably necessary to
20 prepare for and conduct the trial of the case.

21 (2) Any applicable interest on the judgment for the period from the date of
service of the offer to the date of entry of the judgment.

22 **(3) Reasonable attorney's fees incurred by the party who made the offer
for the period from the date of service of the offer to the date of entry of
23 the judgment. If the attorney of the party who made the offer is collecting
a contingent fee, the amount of any attorney's fees awarded to the party
24 pursuant to this subparagraph must be deducted from that contingent
fee. [Emphasis Added]**

25
26 Since the Plaintiff has been successful, and NRS 17.115 allows for costs, Plaintiff is entitled to
27 include "reasonable attorneys fees" as costs in this case.
28

1 2. Attorneys Fees Were Properly Included in the offer of Judgment Pursuant to NRS
2 116.3116(7).

3 Under NRS 116.3116(7), "A judgment or decree in any action brought under this section
4 must include costs and reasonable attorney's fees for the prevailing party." Plaintiff prevailed in this
5 action because consistent with his position (and contrary to the position of Defendant,) this Court
6 found the statutory super priority lien amount was limited to a figure equaling 9 months of
7 assessments based upon Defendant's periodic budget. In short, Plaintiff did not have to pay the
8 excessive amounts demanded, but only was required to pay that which Plaintiff argued was the
9 correct amount. Thus, Plaintiff received a declaratory judgment in his favor and is the prevailing
10 party under NRS 116.3116(7). Under said statute, the Court must award costs and reasonable
11 attorney's fees.

12 3. Attorneys Fees Were Properly Included in the Offer of Judgment Per the CC&RS

13 Section 17.4 (b) of Defendant's CC&RS also includes a sum for attorneys' fees in such
14 amount as the court may deem reasonable, in favor of the prevailing party. The Court ruled in its
15 7/20/2012 Order that Defendant violated the CC&RS by improperly demanding monies from
16 Defendant for the prioritized lien which exceeded amounts permitted in the CC&RS:

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

22 As Plaintiff was enforcing its rights under Sections 7.8 and 7.9 of the CC&RS, Plaintiff
23 correctly included the attorneys fees as a recoverable amount in the Offer of Judgment. Again, the
24 Honorable Court ruled that only 6 months of assessments for the prioritized lien was owed.
25 Therefore, Plaintiff tendered to Defendant \$1,140.00 (a figure equaling 6 months of assessments)
26 and further notes that Defendant also stipulated to record the "Release of Notice of Delinquent
27 Assessment Lien" solely to eliminate the need for the Court to issue a permanent injunction (the
28 remaining claim for trial). On April 11, 2013, a Final Judgment in favor of Plaintiff was entered and
incorporated the 3 prior summary judgment orders.

B. COSTS INCURRED WERE REASONABLY AND NECESSARILY AND ITEMIZED.

In determining when and how to exercise discretion in awarding attorneys fees and costs, the Court should consider that the plaintiff acted reasonably to not only try to compromise this case at every turn, to prevent this case from having to be duplicated. This is evidenced by communications between counsel throughout the litigation. As painstakingly detailed in Plaintiff's Motion for Attorneys Fees, Plaintiff's counsel spent approximately 97.3 hours on this matter to date, reviewing pleadings, conducting legal research, preparation and filing of pleadings, attending hearings, conferences with client, conferences with opposing counsel, preparation of the Orders and comment and review from Defendant's counsel, preparation and service of the Offer of Judgment.

The Costs in the amount of \$2,563.40 associated with this Matter pale in comparison to the nearly 100 attorney hours and proceedings that took place over an issue that Defendant still does not intend to concede. (*See*, Notice of Appeal, filed on May 8, 2013). All that is sought to be recovered are filing fees that were paid directly to the court, runner fees and nominal copy fees. The costs are customary, simple, identifiable, correctly itemized and adequately supported via Affidavit.

Process service:	\$135.00
Court Filing Fees:	\$2,341.40
Runner:	\$61.00
Copies:	\$26.00
TOTAL	\$ 2,563.40

///

///

1 **C. DEFENDANT ERRS IN ITS DEFINITION OF PREVAILING PARTY.**

2 Defendant makes the absurd argument that Plaintiff did not prevail in this litigation because
3 it 'only obtained declaratory relief as to the amount of the Association's lien against its property.
4 (See, Motion to Retax, p. 3:23-24). Defendant misconstrues the victory over the key issues fought
5 in this case, on the basis that Ikon paid assessments that Ikon from day one contended was owed.
6 For example, if a Lender is contending a Borrower owes \$35,000 secured by real property, and the
7 Borrower contends it owes only \$18,000 and withholds payment based upon the dispute, the
8 Borrower prevails in the amount of \$17,000 if a decision is in favor of Borrower's legal merits. That
9 is precisely what happened here.

10 Had the sole relief been simply declaratory relief, that case would have naturally ended upon
11 this Honorable Court's grant of Summary Judgment For Declaratory Relief on the CC&RS and NRS
12 116.3116. However, discovery and factual underpinnings were still required by the Court to actually
13 apply the correct super priority cap to the facts of the case. Ikon prevailed after a vigorously fought
14 case with extensive briefing and motions practice. Defendant did not want to lose this case, as it
15 would mean other Super Priority Lien claimants may be vindicated at some later point in time.
16 Defendant defended it's position as such, and now must accept the consequences as the losing party.

17 **III.**

18 **CONCLUSION**

19
20 Based on the foregoing, the court should deny Defendant's motion to retax all costs in its
21 entirety.

22 DATED this 24th day of May, 2013.

BROWN BROWN & PREMSRIRUT

23
24 BY: /s/ Puoy Premsrirut
25 PUOY K. PREMSRIRUT, ESQ.
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Attorneys for Plaintiff

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 24th day of May, 2013, I mailed a true and correct copy of the foregoing OPPOSITION TO MOTION TO RETAX COSTS in an envelope, postage fully paid, addressed as follows:

Patrick J. Reilly, Esq.
HOLLAND & HART
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

Kurt Bonds, Esq.
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/s/ Brandon Dalby
An Employee of Adams Law Group

Holland & Hart LLP
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IN THE SUPREME COURT OF THE STATE OF NEVADA

HORIZONS AT SEVEN HILLS
HOMEOWNERS ASSOCIATION,

Appellant,

v.

IKON HOLDINGS, LLC, a Nevada
limited liability company,

Respondent.

Supreme Court No. 63178

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

Electronically Filed
Nov 21 2013 10:34 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

APPELLANT'S APPENDIX

VOLUME 10 OF 11

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*Attorneys for Appellant
Horizons at Seven Hills Homeowners Association*

Ex.	Pleading	Date	Vol.	Pages
2	Answer to Complaint	11/3/2011	I	0099-0105
16	Appendix of Exhibits to Defendant's Motion for Clarification or, in the alternative, for Reconsideration of Order Granting Summary Judgment on Claim of Declaratory Relief	2/6/2012	V	1002-1172
7	Business Court Order	12/8/2011	IV	0781-0785
1	Complaint	9/6/2011	I	0001-0098
49	Correspondence dated 3/28/13 re: Proposed Final Judgment	4/10/2013	X	2114-2140
10	Court Minutes: Decision re: Plaintiff's Motion for Partial Summary Judgment & Defendant's Countermotion	12/16/2011	IV	0833-0834
9	Court Minutes: All Pending Motions	12/12/2011	IV	0831-0832
27	Court Minutes: All Pending Motions	3/12/2012	VII	1538-1539
34	Court Minutes: All Pending Motions	5/7/2012	VIII	1755
38	Court Minutes: All Pending Motions	6/11/2012	IX	1888
63	Court Minutes: All Pending Motions	6/3/2013	XI	2464
48	Court Minutes: Bench Trial	3/12/2013	X	2112-2113
46	Court Minutes: Calendar Call	2/19/2013	IX	2101
30	Court Minutes: Decision	3/28/2012	VII	1550
40	Court Minutes: Decision	6/22/2012	IX	1893
11	Court Minutes: Mandatory Rule 16 Conference	1/9/2012	IV	0835-0836
25	Court Minutes: Minute Order	3/7/2012	VII	1511-1512
64	Court Minutes: Minute Order – Decisions re: 6/3/13 Motion for Attorney Fees and Costs	6/28/2013	XI	2465
43	Court Minutes: Motion for Reconsideration	7/12/2012	IX	2081-2082
60	Court Minutes: Motion to Retax	5/28/2013	XI	2427
29	Decision	3/28/2012	VII	1547-

				1549
39	Decision	6/22/2012	IX	1889-1892
65	Decision	6/28/2013	XI	2466-2470
56	Defendant's Case Appeal Statement	5/8/2013	X	2328-2331
70	Defendant's Case Appeal Statement	9/5/2013	XI	2505-2508
15	Defendant's Motion for Clarification or, in the alternative, for Reconsideration of Order Granting Summary Judgment on Claim of Declaratory Relief	2/6/2012	V	0975-1001
37	Defendant's Motion for Reconsideration of Order Granting Summary Judgment on Claim of Declaratory Relief	6/8/2012	VIII-IX	1774-1887
52	Defendant's Motion to Retax Costs	4/25/2013	X	2173-2186
69	Defendant's Notice of Appeal and Notice of Related Case	9/5/2013	XI	2485-2504
55	Defendant's Notice of Appeal and Notice of Related Cases	5/8/2013	X	2253-2327
57	Defendant's Notice of Filing Cost Bond on Appeal	5/10/2013	X	2332-2337
59	Defendant's Opposition to Motion for Attorney's Fees and Costs	5/24/2013	XI	2377-2426
5	Defendant's Opposition to Plaintiff's Motion for Partial Summary Judgment and Counter-Motion for Summary Judgment	11/30/2011	III-IV	0544-0756
18	Defendant's Opposition to Plaintiff's Motion for Summary Judgment and Counter-Motion for Summary Judgment	2/14/2012	VI-VII	1181-1433
33	Defendant's Opposition to Plaintiff's Third Motion for Summary Judgment / Countermotion for Summary Judgment	4/25/2012	VIII	1668-1754
23	Defendant's Reply In Support of Motion for Clarification or, in the alternative, Reconsideration of Order Granting Summary Judgment on Claim of Declaratory Relief	3/6/2012	VII	1486-1507

42	Defendant's Reply in Support of Motion for Reconsideration of Order Granting Summary Judgment on Claim of Declaratory Relief	7/9/2012	IX	1952-2080
36	Defendant's Reply Memorandum in Support of Countermotion for Summary Judgment	6/4/2012	VIII	1766-1773
22	Defendant's Reply to Plaintiff's Opposition to Defendant's Counter-Motion for Summary Judgment	3/6/2012	VII	1477-1485
50	Final Judgment	4/11/2013	X	2141-2168
53	Final Judgment	5/1/2013	X	2187-2212
17	Joint Case Conference Report	2/10/2012	VI	1173-1180
47	Joint Pre-Trial Memorandum	3/11/2013	IX	2102-2111
68	Judgment	8/18/2013	XI	2481-2484
54	Motion for Attorney Fees and Costs	5/2/2013	X	2213-2252
66	Order Denying Motion to Retax Costs	7/3/2013	XI	2471-2475
32	Order Denying Plaintiff's Motion for Summary Judgment/Order Granting Defendant's Countermotion for Summary Judgment	4/16/2012	VIII	1661-1667
71	Order for Return of Monies on Deposit	9/9/2013	XI	2509-2510
28	Order re: Defendant's Motion for Clarification	3/16/2012	VII	1540-1546
45	Order re: Defendant's Motion for Reconsideration of Order Granting Summary Judgment on Claim of Declaratory Relief	7/24/2012	IX	2095-2100
67	Order re: Plaintiff's Motion for Attorney Fees and Costs and Defendant's Motion to Retax Costs	7/23/2013	XI	2476-2480
14	Order re: Plaintiff's Motion for Summary Judgment on Claim of Declaratory Relief	1/19/2012	V	0967-0974

	and Defendant's Counter Motion for Summary Judgment on Claim of Declaratory Relief			
44	Order re: Plaintiff's Motion for Summary Judgment on Declaratory Relief and Defendant's Counter-Motion for Summary Judgment	7/20/2012	IX	2083-2094
13	Order re: Rule 16 Conference	1/18/2012	V	0964-0966
24	Order Setting Civil Non-Jury Trial and Calendar Call	3/6/2012	VII	1508-1510
51	Plaintiff's Memorandum of Costs and Disbursements	4/16/2013	X	2169-2172
4	Plaintiff's Motion for Partial Summary Judgment on Issue of Declaratory Relief	11/7/2011	I-III	0108-0543
12	Plaintiff's Motion for Summary Judgment	1/16/2012	IV-V	0837-0963
31	Plaintiff's Motion for Summary Judgment on Issue of Declaratory Relief	3/30/2012	VII-VIII	1551-1660
19	Plaintiff's Opposition to Motion for Clarification or in the alternative for Reconsideration of Order Granting Summary Judgment	2/27/2012	VII	1434-1472
41	Plaintiff's Opposition to Motion for Reconsider [sic] of Order Granting Summary Judgment on Claim of Declaratory Relief	6/27/2012	IX	1894-1951
58	Plaintiff's Opposition to Motion to Retax Costs	5/23/2013	X-XI	2338-2376
62	Plaintiff's Reply to Opposition to Motion for Attorney Fees and Costs	5/29/2013	XI	2444-2463
35	Plaintiff's Reply to Opposition to Motion for Partial Summary Judgment on Issue of Declaratory Relief & Opposition to Counter Motion for Summary Judgment	5/18/2012	VIII	1756-1765
3	Plaintiff's Request to Transfer to Business Court	11/4/2011	I	0106-0107
61	Plaintiff's Supplement to Memorandum of Costs and Disbursements	5/29/2013	XI	2428-2443
26	Recorder's Transcript of Proceedings: Plaintiff's Motion for Summary	3/12/2012	VII	1513-1537

	Judgment/Defendant's Opposition to Plaintiff's Motion for Summary Judgment and Countermotion for Summary Judgment			
6	Reply to Opposition to Motion for Partial Summary Judgment on Issue of Declaratory Relief & Opposition to Counter Motion for Summary Judgment	12/7/2011	III-IV	0757-0780
21	Scheduling Memo	2/28/2012	VII	1476
20	Scheduling Order	2/28/2012	VII	1473-1475
8	Transcript of Proceedings: Motions	12/12/2011	IV	0786-0830

A-11-647850-B

**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 for Plaintiff

Bonds, Kurt

Attorney for Defendant

Hinckley, Eric W.

Attorney for Defendant

Premssirut, Puonyarat K.

Attorney for Plaintiff

Reilly, Patrick J

Attorney for Defendant

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: 03/19/2013

Page 1 of 2

Minutes Date:

March 12, 2013

A-11-647850-B

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)

ALVERSON, TAYLOR,
MORTENSEN & SANDERS

MAR 29 2013

S15

J. BRUCE ALVERSON
ERIC TAYLOR
DAVID J. MORTENSEN
LEANN SANDERS
KURT R. BONDS
NATHAN R. REINMILLER
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OF COUNSEL
JACK C. CHERRY

March 28, 2013

Via Hand Delivery

LEFT SIDE
OF FILE PLEASE

Roman Borisov
Law Clerk Department 13
200 Lewis Avenue
Las Vegas, NV 89155

Re: Horizons at Seven Hills adv. Ikon Holdings, LLC
Case No. A647850
Our File No: 19223

Dear Mr. Borisov:

It is my understanding that Plaintiff's counsel has already provided the Court with a proposed final Judgment in the above referenced matter. Enclosed please find the proposed final Judgment from the Defendant. The reason for the competing Orders is that the parties could not agree on certain language to be included regarding the Defendant's position in the litigation.

In Plaintiff's proposed final Judgment, Plaintiff attempts to describe Defendant's position but does not describe the entirety of Defendant's position. Plaintiff's description of the Defendant's position can be found on page 2, lines 17-19 of the Plaintiff's proposed final Judgment.

The entirety of Defendant's position in the instant matter is more appropriately found on page 2, lines 24-26; and page 3, lines 1-6, of Defendant's proposed final judgment. In fact, Defendant's description of its position comes directly from pleadings in the case (Defendant's Motion for Reconsideration), whereas Plaintiff's description appears to be a summary of what it believed Defendant's position to be.

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ALVERSON, TAYLOR, MORTENSEN & SANDERS

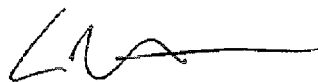
Page Number: 2

Continuing Letter: March 28, 2013

Please note that the aforementioned difference should be the only difference between the two proposed final Judgments. Should you have any questions or concerns, please do not hesitate to contact me at your convenience.

Very truly yours,

ALVERSON, TAYLOR,
MORTENSEN & SANDERS



Eric W. Hinckley, Esq.

EWH:tj

Enclosure

cc: James Adams, Esq.

Pat Reilly, Esq.

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ORIGINAL

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RECEIVED
MAR 29 2013

DISTRICT COURT DEPT# 13

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Attorney for Defendant Horizons At
Seven Hills Homeowners' Association

DISTRICT COURT
CLARK COUNTY, NEVADA

LEFT SIDE
OF FILE PLEASE

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. XIII

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
LAWYERS
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1 Alverson, Taylor, Mortensen & Sanders, and Patrick Reilly, Esq., of Holland & Hart, LLP
2 appeared on behalf of the Defendant. The Honorable Court, having considered the matter, for
3 good cause appearing hereby enters judgment and finds as follows:

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

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

12 WHEREAS, it was the position of Plaintiff that the amount of such lien which survived
13 the foreclosure of the property's first trust deed holder did not exceed a figure equaling 6 months
14 of Defendant's monthly assessments based upon its periodic budget and as provided in Section
15 7.8 and 7.9 of Defendant's CC&RS; and

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

20 WHEREAS, it was the position of Defendant that the amount of Defendant's lien that
21 survived the foreclosure of the property's first trust deed holder was not limited numerically (i.e.,
22 6 months or 9 months' worth of assessments). Rather, Defendants maintain that the only
23 material proviso placed on the amount of the HOA's super-priority lien is that any assessment
24 for common expenses "based on the periodic budget adopted by the Association pursuant to NRS
25
26
27
28

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1 1116.3115” be limited to a period of “9 months preceding institution of an action to enforce the
2 lien.” According to Defendant, the portion of the HOA lien given super-priority status is defined
3 with regard to a particular time period only – there is no mention in the statute of any numerical
4 limitation or simple mathematical calculation; and

5 WHEREAS, the Court has already determined findings of fact and conclusions of law as
6 a result of 3 prior summary judgment orders entered by the Court which are attached hereto and
7 incorporated and restated herein (Ex. 1, “1/19/2012 Order”) (Ex. 2, “4/16/2012 Order”) (Ex. 3,
8 “7/20/2012 Order”); and

9 WHEREAS, it has been stipulated by all counsel that \$1,140.00 (a figure equaling 6
10 months of assessments) has been tendered by Plaintiff and received by Defendant as that is the
11 amount Plaintiff alleges was due and owing under provisions contained in Defendant’s
12 CC&RS, said amount being in conformance with this Court’s 7/20/2012 Order (the “Payment”);
13 and
14

15 WHEREAS, Defendant has stipulated¹ to record a “Release of Notice of Delinquent
16 Assessment Lien” which now renders moot Plaintiff’s sole remaining cause of action for
17 injunctive relief;
18

19 THE COURT, THEREFORE, DECLARES, ORDERS, ADJUDGES AND DECREES as
20 follows:
21

22 All claims and issues in this matter have now been fully adjudicated as evidenced by the
23 above findings, and by the findings and conclusions contained in the 1/19/2012 Order, the
24 4/16/2012 Order and the 7/20/2012 Order, and by the Payment, said amount being in
25 conformance with this Court’s 7/20/2012 Order. Final judgment is hereby entered in this matter
26

27 ¹Defendant stipulated to record the “Release of Notice of Delinquent Assessment Lien” solely to eliminate the need for this Court to issue a
28 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.

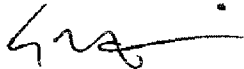
1 pursuant to the findings stated above, and pursuant to the findings of fact and conclusions of law
2 contained in the 1/19/2012 Order, the 4/16/2012 Order and the 7/20/2012 Order which are
3 hereby incorporated and restated herein.

4 **IT IS SO ADJUDGED.**

5 _____
6 DISTRICT COURT JUDGE

Date

7
8 Submitted by:

9 
10

11 Kurt Bonds, Esq.
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13 Eric Hinckley, Esq.
14 Nevada Bar No. 12398
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28 Attorneys for Defendant

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EXHIBIT 1

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22 Attorneys for Plaintiff

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

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.

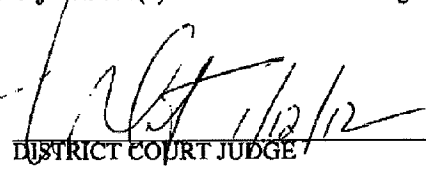
25 7. The words "to the extent of" contained in NRS §116.3116(2) mean "no more than,"
26 which clearly indicates a maximum figure or a cap on the Super Priority Lien which
27 cannot be exceeded.
28

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 ^{in order to enforce the Super Priority Lien, can be construed if the} association to enforce its General Statutory Lien. 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 ^{not mean a "civil action" as that phrase is defined in NRCP 2 and NRCP 3 (i.e.,} 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 
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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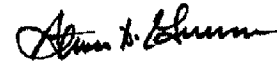
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EXHIBIT 2

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22 *Attorneys for Defendants Horizons At Seven Hills*
23 *Homeowners Association*

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

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

28 Plaintiff,

29 vs.

30 HORIZONS AT SEVEN HILLS
31 HOMEOWNERS ASSOCIATION; and DOES
32 1 through 10; and ROE ENTITIES 1 through
33 10 inclusive,

34 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.

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

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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

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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 liened 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 
DISTRICT COURT JUDGE 

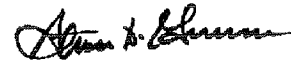
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15 Submitted by: 

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21 Attorneys for Defendants Horizons At Seven Hills
22 Homeowners Association
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EXHIBIT 3

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CLERK OF THE COURT

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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
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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DISTRICT COURT DEPT# 13 9412

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
25 Beneficiary of a First Mortgage of Record or other purchaser of
26 a Unit obtains title pursuant to a judicial or nonjudicial
27 foreclosure or "deed in lieu thereof," the Person who obtains title
28 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. *Not*
14 *is the Court at this time addressing issues of attorneys' fees and costs pursuant to NRS 18.010(2),*
NRS 18.010, or NRS 116.3116(7) without regard to superpriority.
IT IS SO ORDERED.

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DISTRICT COURT JUDGE

7/19/12
Date *pm*

Submitted by:

[Signature]
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11 Attorney for Plaintiff

12 EIGHTH JUDICIAL DISTRICT COURT
13 CLARK COUNTY, NEVADA

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

Case No.: A-11-647850-C

16 Plaintiff,

Dept. No.: 13

17 vs.

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


**NOTICE OF ENTRY OF FINAL
JUDGMENT.**

22 Defendant.

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.

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27
28

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ASSLY SAYYAR, ESQ.
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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

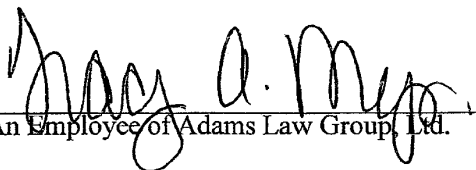
I HEREBY CERTIFY that on the 6 day of May 2013, a copy of the NOTICE OF ENTRY of FINAL JUDGMENT was served on the following party by:

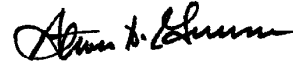
<input checked="" type="checkbox"/>	Placing an original or true copy thereof in a sealed enveloped place for collection and mailing in the United States Mail, at Las Vegas, Nevada, postage paid, following the ordinary business practices;
<input type="checkbox"/>	Hand Delivery
<input type="checkbox"/>	Facsimile
<input type="checkbox"/>	Overnight Delivery
<input type="checkbox"/>	Certified Mail, Return Receipt Requested.
<input type="checkbox"/>	Electronic Mailing or Email, Delivery Receipt Requested

addressed as follows:

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Kurt Bonds, Esq.
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Attorney for Defendant


An Employee of Adams Law Group, Ltd.



CLERK OF THE COURT

1 JUDGE
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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

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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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 *super 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
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:

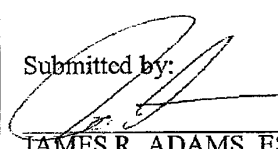
6 All claims and issues in this matter have now been fully adjudicated as evidenced by the
7 above findings, and by the findings and conclusions contained in the 1/19/2012 Order, the
8 4/16/2012 Order and the 7/20/2012 Order, and by the Payment, said amount being in conformance
9 with this Court's 7/20/2012 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

4/5/13
Date
RB

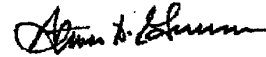
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17 Submitted by:

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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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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 
DISTRICT COURT JUDGE

Date 

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25 Submitted by 

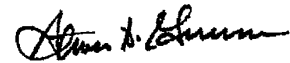
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Ex. 2



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.

12 
13 DISTRICT COURT JUDGE PM
14

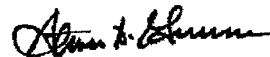
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24 *Homeowners Association*
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Ex. 3

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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,

17 vs.

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

20 Defendant.

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

ORDER

21
22 THIS MATTER having come before the Court on June 11, 2012, for hearing on Plaintiff's
23 Motion for Summary Judgment on Declaratory Relief and on Defendant's Counter-Motion for
24 Summary Judgment. James R. Adams, Esq., of Adams Law Group, Ltd., and Puoy K. Premsrirut,
25 Esq., of Puoy K. Premsrirut, Esq., Inc., appeared on behalf of the Plaintiff. Eric Hinckley, Esq., of
26 Alverson, Taylor, Mortensen & Sanders and Patrick Reilly, Esq., of Holland & Hart appeared on
27 behalf of the Defendant. The Court, having considered the papers submitted in connection with such
28 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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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 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:

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).

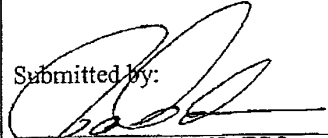
9 8. While the Court has ruled that interest, costs and other fees may be included in the prioritized
10 portion of the lien as long as the prioritized portion of the lien does not exceed an amount
11 equal to 6 months of assessments as noted in Section 7.8 and 7.9 of the CC&RS, at this time;
12 however, 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. *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. *2*

15 
16 DISTRICT COURT JUDGE

17 7/19/12
18 Date
19 fm

20 Submitted by:

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1 **MEMO**
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9 (702) 384-5563
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10 pppremsrirut@brownlawlv.com
Attorneys for Plaintiff

11 **DISTRICT COURT**
12
13 **CLARK COUNTY, NEVADA**

14 IKON HOLDINGS, LLC, a Nevada limited liability company, 15 16 Plaintiff, 17 vs. 18 HORIZONS AT SEVEN HILLS HOMEOWNERS ASSOCIATION, and DOES 1 through 10 and ROE ENTITIES 1 through 10 inclusive, 19 Defendant.	Case No: A-11-647850-C Dept: No. 13
--	--

20 **MEMORANDUM OF COSTS AND DISBURSEMENTS**


21 Process service:	\$135.00
22 Court Filing Fees:	\$2,341.40
23 Runner:	\$61.00
24 Copies:	\$26.00
25 TOTAL -----	\$ 2,563.40

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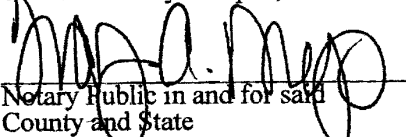
1 STATE OF NEVADA)
2)ss:
3 COUNTY OF CLARK)

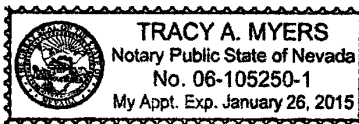
4 James R. Adams, Esq., being duly sworn, states: that affiant is the attorney for Plaintiff and
5 has personal knowledge of the above costs and disbursements expended; that the items contained
6 in the above memorandum are true and correct to the best of this affiant's knowledge and belief; and
7 that the said disbursements have been necessarily incurred and paid in this action.
8 I declare under penalty, under the laws of the State of Nevada, that the forgoing is true and correct.

9 EXECUTED this 16th day of April, 2013.

10
11 
12 By: JAMES R. ADAMS, ESQ.
13 Nevada Bar No. 6874
14 8010 W Sahara Avenue, Suite 260
15 Las Vegas, Nevada 89117
16 (702) 838.7200
17 (702) 838.3636 fax
18 james@adamslawnevada.com
19 Attorneys for Plaintiff

18 Subscribed and Sworn to before me
19 on this 16th day of April, 2013.

20 
21 Notary Public in and for said
22 County and State




1
2 **CERTIFICATE OF SERVICE**

3 Pursuant to NRCP 5(b), I certify that I am an employee of ADAMS LAW GROUP,
4 LTD., and that on this 16TH day of April, 2013, I caused the above and foregoing document
5 entitled: MEMORANDUM OF COSTS AND DISBURSEMENTS to be served as follows:

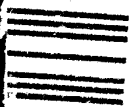
- 6 ☒ by placing same to be deposited for mailing in the United States Mail, in a sealed
7 envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
8 ☐ by facsimile or email transmission pursuant to EDCR 7.26, to the facsimile number(s)
9 and/or email address shown below and in the confirmation sheet herewith. Consent to
10 service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by
11 facsimile transmission is made in writing and sent to the sender via facsimile within 24
12 hours of receipt of this Certificate of Service; and/or
13 ☐ to be hand-delivered; to the attorneys listed below at the address and/or facsimile number
14 indicated below:

15 Patrick Reilly, Esq.
16 Holland & Hart
17 9555 Hillwood Dr., Second Floor
18 Las Vegas, NV 89134
19 Attorney for Defendant

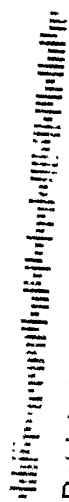
20 Kurt Bonds, Esq.
21 Alverson Taylor Mortensen and Sanders
22 7401 W. Charleston Blvd.
23 Las Vegas, NV 89117-1401
24 Attorney for Defendant

25
26
27
28

An Employee of ADAMS LAW GROUP, LTD.

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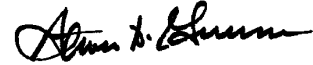


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Las Vegas NV 89134-0532

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CLERK OF THE COURT

1 **ALVERSON, TAYLOR,**
2 **MORTENSEN & SANDERS**
3 **KURT R. BONDS, ESQ.**
4 Nevada Bar #6228
5 **ERIC W. HINCKLEY, ESQ.**
6 Nevada Bar #12398
7 7401 W. Charleston Boulevard
8 Las Vegas, NV 89117
9 (702) 384-7000
10 Attorney for Defendant Horizons At
11 Seven Hills Homeowners' Association

DISTRICT COURT

CLARK COUNTY, NEVADA

*

12 IKON HOLDINGS, LLC, a Nevada limited liability)
13 company,)

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

14 Plaintiff,)

15 vs.)

16 HORIZONS AT SEVEN HILLS HOMEOWNERS)
17 ASSOCIATION, and DOES 1 through 10 and ROE)
18 ENTITIES 1 through 10 inclusive,)

19 Defendant.)

CERTIFICATE OF MAILING

20 I HEREBY CERTIFY that on the 9th day of May, 2013, service of the foregoing
21 Motion to Retax Costs was made this date by depositing a true copy of the same for mailing, first
22 class mail at Las Vegas, Nevada, addressed as follows:

23 James R. Adams, Esq.
24 Assly Sayyar, Esq.
25 ADAMS LAW GROUP, LTD.
26 8010 W. Sahara Ave., Suite 260
27 Las Vegas, NV 89117

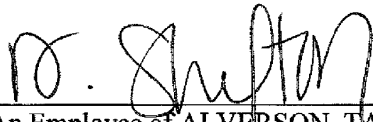
28 Puoy K. Premsrirut, Esq.
PUOY K. PREMSRIRUT, ESQ., INC.
520 S. Fourth Street, 2nd Floor
Las Vegas, NV 89101

ALVERSON, TAYLOR, MORTENSEN & SANDERS

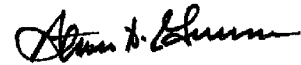
LAWYERS
7401 WEST CHARLESTON BOULEVARD
LAS VEGAS, NEVADA 89117-1401
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HOLLAND & HART
PATRICK REILLY, ESQ.
Nevada Bar #6103
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Second Floor
Las Vegas, NV 89134


An Employee of ALVERSON, TAYLOR,
MORTENSEN & SANDERS

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CLERK OF THE COURT

1 **ALVERSON, TAYLOR,**
2 **MORTENSEN & SANDERS**
3 **KURT R. BONDS, ESQ.**

4 Nevada Bar #6228
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14 Las Vegas, Nevada 89134
15 Telephone (702) 222-2542

16 Attorney for Defendant Horizons At
17 Seven Hills Homeowners' Association

18 **DISTRICT COURT**

19 **CLARK COUNTY, NEVADA**

20 **-*-**

21 **IKON HOLDINGS, LLC, a Nevada limited liability)**
22 **company,**

23 **Plaintiff,**

24 **vs.**

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

28 **Defendant.)**

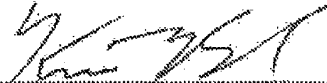
Case No. A-11-647850-B
Dept. No. XIII

MOTION TO RETAX COSTS

Defendant, Horizons at Seven Hills Homeowners Association (hereinafter "Horizons" or
the "Association") moves the Court for an order to retax and settle the costs claimed by Plaintiff

1 Ikon Holding, LLC in its Memorandum of Costs and Disbursements. This Motion is made
2 pursuant to NRS 18.110, and the following points and authorities.

3
4 ALVERSON, TAYLOR,
MORTENSEN & SANDERS


5
6 
7 KURT R. BONDS, ESQ.
8 Nevada Bar #6228
9 ERIC W. HINCKLEY, ESQ.
10 Nevada Bar #12398
11 7401 W. Charleston Boulevard
12 Las Vegas, NV 89117
13 Attorney for Defendant, Horizons At
14 Seven Hills Homeowners' Association

15 NOTICE OF MOTION

16 TO: ALL PARTIES AND THEIR COUNSEL OF RECORD

17 PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion to Retax
18 Costs for hearing before Department XIII of the Eighth Judicial District Court at the Regional
19 Justice Center, 200 Lewis Avenue, Las Vegas, Nevada at 9:00 a.m. on
20 May 28, 2013 or as soon thereafter as counsel may be heard.

21
22 ALVERSON, TAYLOR,
MORTENSEN & SANDERS

23 
24 KURT R. BONDS, ESQ.
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26 ERIC W. HINCKLEY, ESQ.
27 Nevada Bar #12398
28 7401 W. Charleston Boulevard
Las Vegas, NV 89117
Attorney for Defendant, Horizons At
Seven Hills Homeowners' Association

MEMORANDUM OF POINTS AND AUTHORITIES**I.****STATEMENT OF FACTS**

On or around July 14, 2010, Plaintiff, Ikon Holdings, LLC ("Ikon Holdings"), a real estate speculator, purchased the property located at 950 Seven Hills Drive, Unit 1411. The property is located within the Defendant homeowners association. When Ikon Holdings purchased this property, the property was subject to past due fees assessed by Horizons pursuant to the Association's covenants, conditions, and restrictions ("CC&Rs"). However, Plaintiff did not make any payments to Horizons for the past due fees that were owed to the Association but instead brought the instant lawsuit.

Ikon Holdings filed its Complaint against the Association on or around September 6, 2011. Plaintiff's Complaint contained seven (7) causes of action. Although this Court agreed with part of Ikon Holdings' interpretation of the Association's super priority lien pursuant to NRS 116.3116¹, the Court also granted summary judgment in favor of the Association on five (5) of the Plaintiff's causes of action. The final cause of action, which was actually a requested remedy in the form of injunctive relief, became moot as the Association agreed to release its lien in excess of this Court's determination of the amount of the Association's super priority lien. Ikon Holdings did not recover real property or a monetary judgment. To the contrary, the result of the lawsuit was that Plaintiff was eventually forced to pay the Association for the unpaid assessments. Ikon Holdings only obtained declaratory relief as to the amount of the Association's lien against its property.

1 In Ikon Holdings' first Motion for Summary Judgment, it requested declaratory relief on two issues. First, Ikon Holdings requested declaratory relief on the scope of the Association's super priority lien. Second, Ikon Holdings requested declaratory relief on the issue of whether the Association needed to file a civil action in order to institute collection proceedings on its super priority lien. The Association filed a Counter-Motion for Summary Judgment on both requests. The Court granted Ikon Holdings' Motion as to the interpretation of NRS 116.3116 and granted the Association's Counter-Motion in regards to the civil action.

1 Final judgment in this case was entered on April 11, 2013. Shortly thereafter, on or
2 around April 16, 2013, Plaintiff filed its Memorandum of Costs and Disbursements. See
3 Memorandum of Costs and Disbursements attached hereto as Exhibit 1. However, there is no
4 statutory basis for this Court to award Ikon Holdings the costs it allegedly incurred in
5 prosecuting this case. Further, aside from having no statutory basis to obtain its costs incurred in
6 the litigation, Ikon Holdings' Memorandum of Costs and Disbursements failed to properly
7 itemize the costs for which it seeks reimbursement and failed to provide any backup
8 documentation to demonstrate that the alleged costs were actually incurred and are reasonable.
9 Even if this Court finds that Ikon Holdings has a statutory basis to recover its costs, without the
10 missing documentation, this Court cannot award Ikon Holdings any of the costs it has requested
11 through the Memorandum of Costs and Disbursement.
12

13
14 II.

15 **LEGAL AUTHORITY**

16 A. **THERE IS NO STATUTORY BASIS FOR IKON HOLDINGS TO**
17 **RECOVER ITS COSTS**

18 Nevada law only permits prevailing parties to tax and recover costs that are expressly
19 permitted by statute. However, Ikon Holdings seeks to recover costs for which it is not entitled.
20 NRS 18.020 provides:

21 Costs must be allowed of course to the prevailing party against any
22 adverse party against whom judgment is rendered, in the following cases:

- 23 1. In an action for the recovery of real property or a possessory right
24 thereto.
25 2. In an action to recover the possession of personal property, where the
26 value of the property amounts to more than \$2,500. The value must be
27 determined by the jury, court or master by whom the action is tried.
28 3. In an action for the recovery of money or damages, where the plaintiff
seeks to recover more than \$2,500.
4. In a special proceeding, except a special proceeding conducted
pursuant to NRS 306.040.

1 5. In an action which involves the title or boundaries of real estate, or the
2 legality of any tax, impost, assessment, toll or municipal fine, including
the costs accrued in the action if originally commenced in a Justice Court.

3 "Statutes permitting the recovery of costs are to be strictly construed because they are in
4 derogation of the common law." *Gibellini v. Klindt*, 110 Nev. 2101, 1205, 885 P.2d 540, 543
5 (1994).
6

7 For obvious reasons, NRS 18.020 provides no basis for Ikon Holdings to receive
8 reimbursement for the costs it allegedly incurred in this litigation. The instant matter was not an
9 action for the recovery of real property or a possessory right thereto. The instant matter was not
10 an action to recover the possession of personal property. The instant matter was not an action for
11 the recovery of money or damages. The instant matter was not a special proceeding. Finally, the
12 instant matter was not an action which involved the title or boundaries of real estate, or the
13 legality of any tax, impost, assessment, toll or municipal fine. Therefore, there is no basis for
14 Ikon Holdings to request its costs pursuant to NRS 18.020.
15

16 Instead, as noted above and as this Court found through its various summary judgment
17 rulings, Ikon Holdings did not prevail on any substantive cause of action against the Association.
18 Ikon Holdings only obtained partial declaratory relief as to the amount of the Association's lien
19 against Ikon Holdings' property. NRS 18.020 does not provide such a party a basis to recover
20 the costs it incurred in obtaining declaratory relief. As a result, even if this Court finds that Ikon
21 Holdings is the "prevailing party," there is no statutory basis for this Court to award Ikon
22 Holdings the costs it allegedly incurred in this litigation.
23

24 **B. IKON HOLDINGS CANNOT RECOVER ITS COSTS BECAUSE THERE**
25 **IS NO SUPPORTING DOCUMENTATION**

26 "Pursuant to NRS 18.005, costs must be reasonable. We have held that 'reasonable costs'
27 must be actual and reasonable, 'rather than a reasonable estimate or calculation of such costs . .
28 . .'" *Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1352,

1 971 P.2d 383, 386 (1998) (emphasis added), citing *Gibellini*, 110 Nev. at 1206, 885 P.2d at 543.
2 In *Berosini*, the Nevada Supreme Court reversed the District Court's award of costs based on the
3 Plaintiff's failure to itemize certain costs and the failure to provide sufficient justifying
4 documentation to demonstrate that certain costs were actually incurred. *Id.*

5
6 In this case, Ikon Holdings submitted a bare Memorandum of Costs and Disbursements
7 which did not itemize any costs and which failed to include any backup documentation to
8 demonstrate that the costs were reasonable and to demonstrate that the costs were actually
9 incurred. Because Ikon Holdings did not itemize its costs and do not provide backup
10 documentation for the costs it allegedly incurred, the "reasonableness" of Ikon Holdings' costs
11 cannot be determined and should not be awarded. *Berosini*, 114 Nev. at 1352, 971 P.2d at 386
12 (1998) (there is not "sufficient justifying documentation" for a determination that costs are
13 "reasonable" if the memorandum of costs does not itemize those expense).

14
15 C. IKON HOLDINGS CANNOT RECOVER ITS COSTS BECAUSE THE
16 ALLEGED COSTS ARE NOT PROPERLY ITEMIZED

17 NRS 18.005 allows recovery of "reasonable costs" for certain items including
18 photocopies, long distance telephone calls, and postage. But to recover such cost, the prevailing
19 party must provide "sufficient justifying documentation: that its cost are reasonable. *Berosini*,
20 114 Nev. 1348, 1352, 971 P.2d 383 (1998). In this case, Ikon Holdings' Memorandum of Costs
21 and Disbursements includes total alleged costs for photocopies, filing fees, process service and
22 runner services. However, nowhere are the alleged costs itemized within the Memorandum of
23 Costs and Disbursements.

24
25 Costs for items such as photocopies must be itemized so that a court can determine their
26 reasonableness. *Id.* (holding that the district court abused its discretion in awarding costs
27 because "PETA failed to provide any itemization with respect to its request for long distance
28

1 costs"). It is insufficient for a party to merely provide "the date of each photocopy and the total
2 photocopying charge." *Gibellini*, 110 Nev. At 1205, 885 P.2d at 543 (plaintiffs could not
3 recover cost of photocopying, telephone, and postage expenses where it did not itemize those
4 expenses but charged a percentage of billable hours fee).

5
6 In the *Berosini* case, PETA provided the date of each copy and the total photocopying
7 charge and the Supreme Court still reversed the award of the photocopying costs. Here, Ikon
8 Holdings failed to even include the amount of copies, date of copies or charge for each copy.
9 Instead, Ikon Holdings simply submitted a Memorandum of Costs including a total amount of
10 charges for photocopying which it allegedly incurred (without any backup documentation). Ikon
11 Holdings' failure to itemize the photocopying charges does not meet the standard required by the
12 Nevada Supreme Court in *Gibellini*. A similar standard exists for the other remaining charges
13 Ikon Holdings seeks to recover. Without itemization, the Court cannot determine their
14 reasonableness and the request for the same should be denied.

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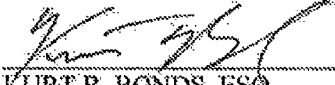
III.

CONCLUSION

For these reasons, the Court should grant this motion and enter an order retaxing all costs claimed by Ikon Holdings as there is no statutory basis for this Court to provide Ikon Holdings with its costs. However, even if this Court finds that it has discretion to award Ikon Holdings its costs, this Court should retax all costs claimed by Ikon Holdings for failure to include any sufficient justifying documentation to demonstrate that the costs were actually incurred and are reasonable.

DATED this 25 day of April, 2013.

ALVERSON, TAYLOR,
MORTENSEN & SANDERS


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Attorney for Defendant, Horizons At
Seven Hills Homeowners' Association

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EXHIBIT 1

1 **MEMO**

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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,**

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

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.

MEMORANDUM OF COSTS AND DISBURSEMENTS

21	Process service:	\$135.00
22	Court Filing Fees:	\$2,341.40
23	Runner:	\$61.00
24	Copies:	\$26.00
25	TOTAL -----	\$ 2,563.40

LD to object/move to return/settle costs 4/24/13

ad

KS 19223
J

1 STATE OF NEVADA)

2)ss:


3 COUNTY OF CLARK)

4 James R. Adams, Esq., being duly sworn, states: that affiant is the attorney for Plaintiff and
5 has personal knowledge of the above costs and disbursements expended; that the items contained
6 in the above memorandum are true and correct to the best of this affiant's knowledge and belief; and
7 that the said disbursements have been necessarily incurred and paid in this action.

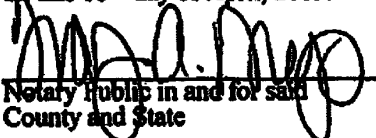
8 I declare under penalty, under the laws of the State of Nevada, that the forgoing is true and correct.

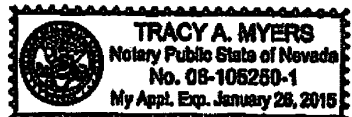
9 EXECUTED this 16th day of April, 2013.

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25
26
27
28

By: 
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Attorneys for Plaintiff

Subscribed and Sworn to before me
on this 16th day of April, 2013.


Notary Public in and for said
County and State



1
2 **CERTIFICATE OF SERVICE**

3 Pursuant to NRCP 5(b), I certify that I am an employee of ADAMS LAW GROUP,
4 LTD., and that on this 16TH day of April, 2013, I caused the above and foregoing document
5 entitled: MEMORANDUM OF COSTS AND DISBURSEMENTS to be served as follows:

- 6 ☒ by placing same to be deposited for mailing in the United States Mail, in a sealed
7 envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
8 ☐ by facsimile or email transmission pursuant to EDCR 7.26, to the facsimile number(s)
9 and/or email address shown below and in the confirmation sheet herewith. Consent to
10 service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by
11 facsimile transmission is made in writing and sent to the sender via facsimile within 24
12 hours of receipt of this Certificate of Service; and/or
13 ☐ to be hand-delivered; to the attorneys listed below at the address and/or facsimile number
14 indicated below:

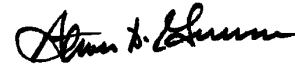
15 Patrick Reilly, Esq.
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19 Attorney for Defendant

20 Kurt Bonds, Esq.
21 Alverson Taylor Mortensen and Sanders
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24 Attorney for Defendant

25
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27
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An Employee of ADAMS LAW GROUP, LTD.

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CLERK OF THE COURT

1 JUDGE

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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
20 ENTITIES 1 through 10 inclusive,

21 Defendant.

Case No: A-11-647850-C

Dept: No. 13

22 FINAL JUDGMENT

23 This matter came before the Court for trial on March 12, 2013 at 9:00 a.m. James R.
24 Adams, Esq., of Adams Law Group, Ltd., and Puoy K. Premsrirut, Esq., of Puoy K. Premsrirut,
25 Esq., Inc., appeared on behalf of the Plaintiff. Eric Hinckley, Esq., and Kurt Bonds, Esq., of
26 Alverson, Taylor, Mortensen & Sanders, and Patrick Reilly, Esq., of Holland & Hart, LLP appeared
27 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*
superior 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:

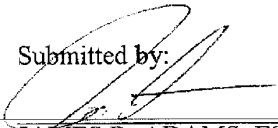
6 All claims and issues in this matter have now been fully adjudicated as evidenced by the
7 above findings, and by the findings and conclusions contained in the 1/19/2012 Order, the
8 4/16/2012 Order and the 7/20/2012 Order, and by the Payment, said amount being in conformance
9 with this Court's 7/20/2012 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

4/5/13
Date
RB

15
16
17 Submitted by:

18 
19 JAMES R. ADAMS, ESQ.
20 Nevada Bar No. 6874
21 ASSLY SAYYAR, ESQ.
22 Nevada Bar No. 9178
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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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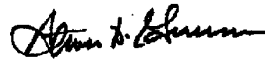
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Attorneys for Defendant

Ex. 1

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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

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

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

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

IT IS SO ORDERED.

DISTRICT COURT JUDGE

Date

Submitted by

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ASSLY SAYYAR, ESQ.

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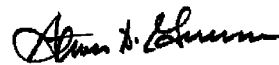
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19 Approved:

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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 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

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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

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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 PM

15 Submitted by: 

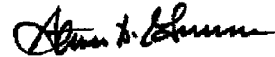
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23 **DISTRICT COURT**

24 **CLARK COUNTY, NEVADA**

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

27 **Plaintiff,**

28 **vs.**

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:

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DISTRICT COURT DEPT# 13 39412

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

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

28 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:

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DISTRICT COURT DEPT#13 39412

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

27
28

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

acquisition of title to such Unit by such Person (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). Such unpaid share of Common Expenses and assessments shall be deemed to become expenses collectible from all of the Units, including the Unit belonging to such Person and his or her successors and assigns.

WHEREAS, the Court is persuaded that Plaintiff's position is correct relative to the component and ceiling issues contained in its Motion relating to Sections 7.8 and 7.9 of the CC&RS in that pursuant to said Sections, Defendant's prioritized portion of its lien may include assessments and "... interest, costs, and attorneys' fees..." but, pursuant to Sections 7.8 and 7.9 of the CC&RS, is only prior to the first mortgage holder, "... 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..."

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

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

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

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

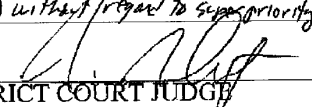
Defendant, in contravention of Sections 7.8 and 7.9 of the Defendant's CC&RS has improperly demanded monies from Plaintiff in order to satisfy Defendant's claimed liens or demands which exceeded a figure equaling 6 months of assessments, thereby violating the CC&RS.

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

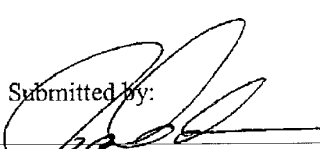
1 this chapter" The Court determines that the language in Defendant's CC&RS (Section
2 7.8 and 7.9) which calls for a lesser amount for the prioritized portion of the lien than does
3 NRS 116.3116(2) does not "violate" the statutory prioritized lien limit as provided for in
4 NRS 116.3116(2) because 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. *Not*
14 *is the Court at this time addressing issues of attorney's fees and costs pursuant to NRS 18.010(2),*
NRS 18.095, or NRS 116.3116(7) without regard to superpriority.
IT IS SO ORDERED.

15 
16 DISTRICT COURT JUDGE

7/19/12
Date

17
18 Submitted by:

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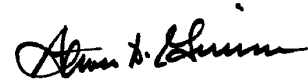
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Attorneys for Plaintiff

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13
14 **IKON HOLDINGS, LLC, a Nevada limited**
liability company,

15
16 Plaintiff,

17 vs.

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

20 Defendant.

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

**MOTION FOR ATTORNEY FEES AND
COSTS**

21 Plaintiff, IKONS HOLDINGS, LLC, a Nevada limited liability company, by and through its
22 counsel of record, JAMES R. ADAMS, ESQ., and PUOY K. PREMSRIRUT, ESQ., hereby files this
23 Motion for Attorney Fees and Costs against Defendant, HORIZONS AT SEVEN HILLS
24 HOMEOWNERS ASSOCIATION.

25 ///

26 ///

1 This Motion is made and based upon the attached Memorandum of Points and Authorities,
2 the pleadings and papers on file herein, and any argument of counsel the Court may consider at the
3 hearing of this Motion.

4 DATED this 2nd day of May, 2013.

5 PUOY K. PREMSRIRUT, ESQ., INC.

6
7 BY: /s/ Puoy Premsrirut

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18 8010 W. Sahara Ave., Suite 260
19 Las Vegas, Nevada 89117
20 Tel: 702-838-7200
21 Fax: 702-838-3600
22 james@adamslawncvada.com
23 assly@adamslawnevada.com
24 *Attorneys for Plaintiff*

25 **NOTICE OF MOTION**

26 PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion for Attorney
27 Fees and Costs, for hearing in Department 13 of the above-entitled Court, on the 3 day of
28 June, 2013, at the hour of 9:00 a.m., or as soon thereafter as counsel may be heard.

DATED this 2nd day of May, 2013.

PUOY K. PREMSRIRUT, ESQ., INC.

BY: /s/ Puoy Premsrirut

520 S. Fourth St., Second Floor
Las Vegas, Nevada 89101
(702) 384-5563
(702)-385-1752 Fax
ppremsrirut@brownlawlv.com

AFFIDAVIT OF PUOY K. PREMSRIRUT , ESQ. IN SUPPORT OF MOTION

STATE OF NEVADA)

) ss.

COUNTY OF CLARK)

PUOY K. PREMSRIRUT, ESQ., being first duly sworn deposes and says:

1. I am an attorney duly licensed to practice law in the State of Nevada and maintains law offices at 520 South Fourth Street, Second Floor, Las Vegas, NV.

2. James Adams, Esq. Puoy K. Premsrirutis co-counsel in the present action and is also licensed in the State of Nevada. and am an attorney of the law firm ADAMS LAW GROUP, LTD., which maintains law offices at 8010 W. Sahara Ave., Suite 260, Las Vegas, Nevada 89117. Assly Sayyar, Esq. Is an associate at the Adams Law Group, LTD. that participated prior to my involvement as supporting counsel during April - June of 2011 when the case was in NRED arbitration and discovery was ongoing. I am aware that Attorney Sayar has been practicing commercial litigation for approximately 9 years due to my being a practitioner in Las Vegas since 1999.

3. Both Adams (Sayyar) and Premsrirut have served as counsel for Plaintiff, Ikon Holdings, in the above captioned case.

4. Both Attorney Adams and I have been practicing as litigation attorneys for over a dozen years and have taken part in a number of bench and jury trials, perform frequent motion practice, and have handled homeowners' association super priority lien issues numerous times before.

5. Ms. Premsrirut's normal billing rate in this matter from \$400 to \$350.00 per hour and Mr. Adams' billing rate was reduced from \$425-\$450 to \$365.00 per hour. These rates are more than reasonable given the years of experience counsel possess, especially in the specialized area of association super priority lien law.

6. Attorneys Adams and Premsrirut have dedicated much of the last 3 years of their respective law practices to vindicating the rights of homeowners' association collections

1 and lien victims. Collectively, Plaintiff's counsel have prosecuted approximately thirty
2 (30) proceedings (mediations and arbitrations) before the Nevada Real Estate Division.
3 Counsel have also collectively litigated over twenty (25) lawsuits in District Court in their
4 effort to vindicate what counsel and their clients believe are grave violations of NRS
5 116.3116(2), the respective CC&RS of the homeowners' associations and collection
6 agencies, and a widespread practice that has resulted in the overcharging of banks,
7 mortgage pooling trusts, investors, and governmental agencies.

8 7. Further, counsel have been class certified in 3 separate actions regarding the homeowners
9 association liens and collections.

10 8. On a non-class action basis, Attorneys Premsrirut and Adams have been retained by
11 multiple clients who themselves have over 2,000 individual lien and collection claims,
12 which continue to grow with each passing day. Counsels' efforts have been widely
13 recognized not only by local media (Las Vegas Business Press, Review Journal, and Las
14 Vegas Sun), but Counsel has garnered nationwide attention from the Wall Street Journal,
15 Fannie Mae and FHFA counsel, as well as UCIOA practitioners and legal scholars.
16 Further, counsel has been successful in obtaining favor rulings from 4 District Court
17 judges and have petitioned the Department of Business and Industry for an Advisory
18 Opinion

19 9. Moreover, Attorneys Premsrirut and Adams have been retained by multiple clients who
20 themselves have over 2,000 individual lien and collection claims, which continue to grow
21 with each passing day.

22 10. Counsel has been successful in obtaining favor rulings from 4 District Court judges and
23 have petitioned the Department of Business and Industry for an Advisory Opinion. As a
24 result, the Nevada Real Estate Division has published an Advisory Opinion which
25 support this Court's findings of fact and conclusions of law that the Super Priority Lien is
26 capped at a figure equaling 9 months of assessments.

27 11. In what will presumed to be labeled a "matter of first impression" by Defendant in its
28 inevitable appeal, counsel for Plaintiff has devoted thousands of hours in the research,

1 investigation, and drafting of dozens of motions, oppositions, replies and oral arguments
2 in support of its position.... a position which has been, thus far, well accepted by the
3 Eighth Judicial District Court.

4 12. This matter originated in the first quarter of 2011 in NRED arbitration as compelled by
5 Defendant per NRS 38.310.

6 13. Following prosecution and completion of Plaintiff's claims, Plaintiff to obtain relief was
7 compelled to file an action in District Court.

8 14. It was presumed by both parties to this action, that the present matter might be the first
9 appeal on the substantive issue of the Super Priority Lien and the relation to CC&RS to
10 the Super Priority Lien Statute.

11 15. In the present action, Defendants were represented not only by the Kurt Bonds, Esq. and
12 Eric Hinckley, Esq. of the reputable law firm of Alverson Taylor, but Patrick Reilly of the
13 esteemed Holland and Hart also represented the interests of Defendant. Attorney Reilly
14 zealously represents the interest of homeowner association collection agencies also, and
15 associated in with the Alverson Taylor attorneys to advocate the position of the
16 Defendant. As a result, multiple motions, counter motions, motions for clarification and
17 reconsideration were filed and argued and discovery was conducted and concluded as
18 necessary. Numerous exchanges of correspondence, communications and calls were
19 endured among Plaintiff's and Defendant's counsel.

20 16. In so litigating, counsel for Plaintiff achieved the exact result for which the litigation was
21 filed. Plaintiff's goal was to obtain a ruling from the Court that the prioritized lien was
22 limited to either 6 months (per the CC&RS) or 9 months (per NRS 116.3116(2)) of the
23 Defendant's assessments based upon the periodic budget. The Court so ruled and
24 Plaintiff has, therefore, prevailed in this action.

25 17. To achieve this result, Attorney Adams as set forth in invoices attached as Exhibit "A"
26 has spent approximately 97.3 hours at \$365 per hour for a total attorneys fees amount of
27 \$35,514.50 as detailed therein with Attorney Sayyar solely providing legal services during
28

1 April - June of 2011 for 5.5 hours at \$365 per hour \$2,007.50. Copies of Adams Law
2 Group invoices are attached hereto as **Exhibit "1"**.

3 18. So as not to duplicate efforts but still make a meaningful contribution the litigation of this
4 case as required, I entered the case in December of 2011 and have spent 22.5 hours on
5 briefing, court attendance, legal research, litigation strategy, discovery and pretrial
6 matters, as well as client coordination, at a rate of \$350 , with 5 hours of paralegal
7 support from Brandon Dalby at \$90 per hour totaling \$8,325.00. My legal fees ledger is
8 attached hereto as **Exhibit "2"**.

9 19. The total amount of attorneys fees incurred in this case is \$45,847.00.

10 20. Costs in the amount of **\$3,353.00** was incurred as a result of payment of arbitrator fees
11 and costs, runner and service fees, District Court filing fees, legal research fees, copying
12 costs. .

13 21. While the amount in controversy may appear as nominal in the traditional context of
14 monetary damages, to the wide-reaching implications of a potential Supreme Court ruling
15 on appeal to serve as precedent against Defendant HOA, mandated thorough briefing,
16 lawyering, and extensive argument on both sides.

17 22. In early 2012, Attorney Adams and I, with approval and authorization of our client served
18 an Offer of Judgment pursuant to NRCp 68 and NRS 17.115 to resolve all claims and
19 disputes, as well as any claim for attorneys fees and costs as permitted by NRS 116.4117
20 and Defendant's CC&RS. A true and correct copy of the "Offer of Judgment" is attached
21 hereto as **Exhibit "3."**

22 23. As the case had already endured arbitration and commenced in District Court with
23 substantial briefing and motions practice, the Offer of Judgment Amount inclusive of all
24 fees and costs totaled \$17,000.

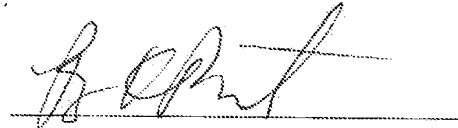
25 24. Defendant and counsel rejected the Offer of Judgment, and opted to proceed to trial.

26 25. Reciprocally, Defendant and its 3 attorneys zealously litigated the less than \$2,000 lien
27 claim in lock-step with Plaintiff's counsel versus any capitulation or agreement to
28 compromise.

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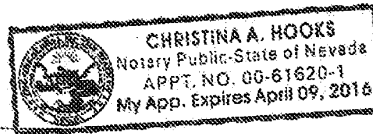
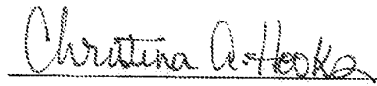
26. While litigating the superpriority lien claims are costly in light of the underlying amount in controversy, the lien presents a cloud on title compelling Plaintiffs counsel to prosecute vigorously to removal.

FURTHER AFFIANT SAYETH NAUGHT.



PUOY K. PREMSRIRUT, , ESQ.

SUBSCRIBED AND SWORN TO before me
this 2nd day of May, 2013.



NOTARY PUBLIC

MEMORANDUM OF POINTS AND AUTHORITIES

I.

BRIEF STATEMENT OF PROCEEDINGS

Plaintiff purchased certain real estate in a common interest community as an investment property at the nonjudicial foreclosure auction of the property's first trust deed holder, said property being located within Defendant Horizon at Seven Hills Homeowners' Association. The primary issue in this case concerned the amount of Defendant's "super priority" lien against Plaintiff's property which survived the foreclosure of the property's first trust deed holder pursuant to NRS 116.3116(2) and Defendant's covenants, conditions and restrictions ("CC&RS").

Contrary to Defendant's lien and letters demanding more, it was the position of Plaintiff that the amount of such super priority lien which survived the foreclosure of the property's first trust deed holder did not exceed a figure equaling 6 months of Defendant's monthly assessments as provided in Section 7.8 and 7.9 of Defendant's CC&RS. It was also the position of Plaintiff that regardless of the CC&RS, the amount of Defendant's super priority lien that could survive the foreclosure of the property's first trust deed holder could not exceed a figure equaling 9 months of Defendant's monthly assessments based upon its periodic budget as provided in NRS 116.3116(2). In other words, the super priority lien was capped.

In contrast, it was the position of the Defendant that the amount of Defendant's super priority lien that survived the foreclosure of the property's first trust deed holder was not limited to a figure equaling 6 or 9 months of assessments, but could exceed that figure through the inclusion of collection costs and fees. Thus, Defendant had liened Plaintiff's property and demanded amounts which exceeded either 6 or 9 months of Defendant's assessments.

As a result of 3 summary judgment orders entered by the Court (Ex. 1, “1/19/2012 Order”) (Ex. 2, “4/16/2012 Order”) (Ex. 3, “7/20/2012 Order”), the Court ruled in Plaintiff’s favor on the fundamental issues in the case. In the 1/19/2012 Order, the Court ruled that the super priority lien was capped pursuant to NRS 116.3116(2) at a figure equaling 9 months of assessments based upon the Defendant’s periodic budget. As advocated by Plaintiff, the Court ruled that the words “to the extent of” contained in NRS §116.3116(2) mean “no more than,” which clearly indicates a maximum

1 figure or a cap on the super priority lien which cannot be exceeded. The Court's 1/19/2012 Order
2 was consistent with Plaintiff's position.

3 Because Plaintiff had not paid any portion of the excessive lien demanded by Defendant
4 (there being a dispute over the lien's proper amount,) in the 4/16/2012 Order the Court dismissed
5 Plaintiff's first through fifth causes of action ruling that because no excessive payment had actually
6 been made by Plaintiff, Plaintiff had incurred no damages. The Court also ruled that, "This Order
7 is without prejudice to Plaintiffs effort to seek attorney's fees and costs based upon whatever
8 statutory or contractual premise that may or may not be applicable."

9 Lastly, in its 7/20/2012 Order, the Court considered Plaintiff's claim that Defendant
10 contravened Sections 7.8 and 7.9 of the CC&RS by demanding more than a figure equaling 6 months
11 of assessments for the prioritized lien. In defense of the Motion for Summary Judgment, Defendant
12 not only argued that Sections 7.8 and 7.9 violated NRS 116.3116(2) and, therefore, was superceded
13 by NRS 116.3116(2), but there were in fact two separate liens against Plaintiff's property: one
14 statutory and one created by the CC&RS. The Court disagreed with Defendant and ruled:

15 Defendant maintains that NRS 116.3116(2) and Sections 7.8 and 7.9
16 are conceptually separate and, in effect, create two separate liens. The
17 Court disagrees. There is but a single lien which is created, perfected
18 and noticed by the recording of the CC&RS (See NRS116.3116(4)).

17 * * *

18 To the extent that provisions of CC&RS call for a lesser amount for
19 the prioritized portion of the assessment lien than does NRS
20 116.3116(2), the lesser amount shall be utilized as the prioritized
21 portion of the lien.

21 Again, consistent with Plaintiff's position that Defendant had contravened NRS 116.3116(2) and
22 provisions of the CC&RS, the Court ruled:

23 Defendant's Counter-Motion for Summary Judgment is DENIED and
24 Plaintiff's Motion for Partial Summary Judgment on Declaratory
25 Relief is GRANTED IN PART to the extent that it seeks the
26 following declarations:

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

Pursuant to Sections 7.8 and 7.9 of the Defendant's CC&RS, Defendant's lien was junior to the first security interest of the Unit's first mortgage lender except for a certain, limited and specified portion of the lien as defined in Sections 7.8 and 7.9 of the CC&RS (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.

In short, by liening Plaintiff's property and demanding more than 6 or 9 months of assessments for the super priority lien, the Court ruled that Defendant had contravened NRS 116.3116 and had violated the CC&RS.

On March 12, 2013, a bench trial was held. Because the Court had previously ruled that Plaintiff was correct, and that only 6 months of assessments comprised the prioritized lien, the parties stipulated that \$1,140.00 (a figure equaling 6 months of assessments) was the proper amount and said amount was tendered by Plaintiff and received by Defendant. Defendant also stipulated to record the "Release of Notice of Delinquent Assessment Lien" solely to eliminate the need for the Court to issue a permanent injunction (the remaining claim for trial). On April 11, 2013, a Final Judgment in favor of Plaintiff was entered and incorporated the 3 prior summary judgment orders.

II.

LEGAL ARGUMENT

A. LEGAL STANDARD

In Nevada, "the method upon which a reasonable fee is determined is subject to the discretion of the court, which "is tempered only by reasons and fairness." *Shuette v. Beazer Home Holding Corp.*, 121 Nev. 837, 864, 124 Pjd 530, 548-49 (2005). The lodestar approach is the most appropriate approach for this case, and involves the multiplying the number of hours reasonably spent on the case by the reasonable hourly rate. *Herbst v. Humana Health Ins. of Nevada*, 105 Nev. 586, 590, 781 P.2d 762, 764 (1989). The factors the court must consider its analysis of the required amount of attorney fees include:

1. The qualities of the advocate: his ability, training, education, experience, professional standing and skills;

1 2. The character of the work done; its difficulty, intricacy,
2 importance, time and skill required, the responsibility imposed and
3 the prominence and character of the parties where they affect the
4 importance of the litigation;

5 3. The work actually performed by the lawyer, the skill, time and
6 attention given to the work; and

7 4. The result; whether the attorney was successful and what benefits
8 were derived.

9 *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P2d 31,33 (1969).

10 In the present action, the experience and quality of Plaintiff's counsel would suggest the
11 Court should award attorney's fees in this matter. Attorneys Adams and Premsrirut have dedicated
12 the last 3 years of their respective law practices to vindicating the rights of homeowners' association
13 collections and lien victims. Collectively, Plaintiff's counsel have prosecuted approximately thirty
14 (30) proceedings (mediations and arbitrations) before the Nevada Real Estate Division. Counsel
15 have also collectively litigated over twenty (25) lawsuits in District Court in their effort to vindicate
16 what counsel and their clients believe are grave violations of NRS 116.3116(2), the respective
17 CC&RS of the homeowners' associations and collection agencies, and a widespread practice that
18 has resulted in the fleecing of banks, mortgage pooling trusts, investors, and governmental agencies.
19 Further, counsel have been class certified in 3 separate actions regarding the homeowners association
20 liens and collections.¹ (*See* Affidavit of Puoy K. Premsrirut, paras 1-10). On a non-class action
21 basis, Attorneys Premsrirut and Adams have been retained by multiple clients who themselves have
22 over 2,000 individual lien and collection claims, which continue to grow with each passing day.
23 Counsel's efforts have been widely recognized not only by local media (Las Vegas Business Press,
24 Review Journal, and Las Vegas Sun), but Counsel has garnered nationwide attention from the Wall
25 Street Journal, Fannie Mae and FHFA counsel, as well as UCIOA practitioners and legal scholars.
26 Further, counsel has been successful in obtaining favor rulings from 4 District Court judges and have
27 petitioned the Department of Business and Industry for an Advisory Opinion. *Id.* As a result, the

28

 ¹ A-12-658044-B Peccole Ranch Community Association, Plaintiff(s) vs. Elsinore LLC, Defendant(s);
A-11-651107-B Prem Deferred Trust, Plaintiff(s) vs. Aliante Master Association, Defendant(s); A-11-648835-B Prem
Deferred Trust, Plaintiff(s) vs. Southern Highlands Community Association, Defendant(s).

1 Nevada Real Estate Division has published an Advisory Opinion which support this Court's findings
2 of fact and conclusions of law that the Super Priority Lien is capped at a figure equaling 9 months
3 of assessments. (Premsrirut Affidavit, para. 10).

4 Further, the character of the work done; its difficulty, intricacy, importance, time and skill
5 required all suggest this Court should grant the attorney's fees requested. In what will presumed to
6 be labeled a "matter of first impression" by Defendant in its inevitable appeal, counsel for Plaintiff
7 has devoted thousands of hours in the research, investigation, and drafting of dozens of motions,
8 oppositions, replies and oral arguments in support of its position.... a position which has been, thus
9 far, well accepted by the Eighth Judicial District Court. While not all such hours have been
10 exclusively devoted to the present matter, since this action was one of the first District Court cases
11 to address the fundamental issues, this case was of particular importance. It was presumed by both
12 parties to this action, that the present matter might be the first appeal on the substantive issue of the
13 Super Priority Lien and the relation to CC&RS to the Super Priority Lien Statute. Multiple motions,
14 counter motions, motions for clarification and reconsideration were filed and argued. (Premsrirut
15 Affidavit, paras 11-20). Indeed, considering the importance of the issues to hundreds of thousands
16 of Nevada homeowners and the likelihood of appeal, it is surprising that the attorney's fees expended
17 in this case were not far greater. In short, the work actually performed by the Adams and Premsrirut,
18 the unique skill and knowledge required in this most particularized field of law, and the significant
19 time and attention given to the work all suggest that the Court should grant Plaintiff's Motion for
20 Attorney's fees.

21 Moreover, Plaintiff achieved the exact result for which the litigation was filed. Plaintiff's
22 goal was to obtain a ruling from the Court that the prioritized lien was limited to either 6 months (per
23 the CC&RS) or 9 months (per NRS 116.3116(2)) of the Defendant's assessments based upon the
24 periodic budget. For example, a review of the breakdown of the fees and costs on Defendant's cost
25 spreadsheet revealed that Defendant was demanding a total of \$3,684.52 for a time period prior to
26 Plaintiff obtaining title at the 6/28/10 foreclosure auction. But since Defendant's monthly
27 assessments were \$190.00, Plaintiff argued at that it only owed 6 times \$190.00 (or \$1,140.00)
28 pursuant to the CC&RS for that time period. This Court ruled that Plaintiff was correct. Therefore,

1 Plaintiff submitted the \$1,140.00 Defendant stipulated to remove the excessive lien. Ultimately, on
 2 the day of trial, there was nothing left to litigate. All issues had been resolved by this Court's orders
 3 granting Plaintiff's declaratory relief motions for summary judgment. In short, Plaintiff achieved
 4 the goal of its litigation... to pay only that amount which the law and the CC&RS required, and not
 5 the excessive amount that Defendant demanded.

6 **B. ATTORNEYS FEES SHOULD BE AWARDED PURSUANT TO NRS 116.3116(7)**

7 This action concerned the meaning, interpretation and application of the super priority lien
 8 statute (NRS 116.3116(2)). This action also concerned Defendant's violation of it by the filing of
 9 liens and the making of demands in contravention to the limits placed upon it by the super priority
 10 lien statute. As determined by this Court:

11 Defendant, in contravention of Nevada Revised
 12 Statutes §116.3116, has unlawfully demanded from
 13 Plaintiff amounts in excess of the Super Priority Lien
 to which it has no legal entitlement. (See 7/20/2012
 Order).

14 Pursuant to NRS 116.3116(7), "A judgment or decree in any action brought under this section must
 15 include costs and reasonable attorney's fees for the prevailing party." Plaintiff prevailed in this
 16 action because consistent with his position (and contrary to the position of Defendant,) this Court
 17 found the statutory super priority lien amount was limited to a figure equaling 9 months of
 18 assessments based upon Defendant's periodic budget. In short, Plaintiff did not have to pay the
 19 excessive amounts demanded, but only was required to pay that which Plaintiff argued was the
 20 correct amount. Thus, Plaintiff received a declaratory judgment in his favor and is the prevailing
 21 party under NRS 116.3116(7). Under said statute, the Court must award costs and reasonable
 22 attorney's fees.

23 **C. ATTORNEYS FEES SHOULD BE AWARDED PURSUANT TO THE CC&RS**

24 Pursuant to Section 17.4 (b) of Defendant's CC&RS:

25 Breach of any of the provisions contained in this Declaration or the
 26 Bylaws and the continuation of any such breach may be enjoined,
 27 abated or remedied by appropriate legal or equitable proceedings
 28 instituted, in compliance with applicable Nevada law, by any Owner,
 including Declarant so long as Declarant owns a Unit, by the
 Association, or by the successors in interest of the Association. Any
 judgment rendered in any action or proceeding pursuant hereto shall

1 include a sum for attorneys' fees in such amount as the court may
2 deem reasonable, in favor of the prevailing party....

3 The Court ruled in its 7/20/2012 Order that Defendant violated the CC&RS by improperly
4 demanding monies from Defendant for the prioritized lien which exceeded amounts permitted in the
5 CC&RS:

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

11 Indeed, under Sections 7.8 and 7.9 of the CC&RS (and consistent with Plaintiff's declaratory relief
12 claim) the Court ruled that only 6 months of assessments for the prioritized lien was owed.
13 Therefore, Plaintiff tendered to Defendant \$1,140.00 (a figure equaling 6 months of assessments).
14 Defendant also stipulated to record the "Release of Notice of Delinquent Assessment Lien" solely
15 to eliminate the need for the Court to issue a permanent injunction (the remaining claim for trial).
16 On April 11, 2013, a Final Judgment in favor of Plaintiff was entered and incorporated the 3 prior
17 summary judgment orders.

18 **D. ATTORNEYS FEES ARE WARRANTED TO DEFENDANT PURSUANT TO NRS 17.115 AND**
19 **NRCP 68**

20 Ikon is entitled to reasonable attorneys fees in accordance with the Offer of Judgment that
21 was submitted to, and rejected by the Defendant, on February 8, 2012. *See*, "Offer of Judgment",
22 **Ex. 3.** The Supreme Court has held attorneys' fees are to be included as costs when attorneys'
23 fees are awardable under the relevant statute upon which the plaintiff's claim is based. *See*
24 *Marek v. Chesny*, 473 U.S. 1, 8, 105 S.Ct. 3012, 3016 (1985). If an offer of judgment states
25 costs are included or specifies the amount of costs and plaintiff accepts the offer of judgment, the
26 offer will necessarily include costs.

27 If the offer of judgment does not state costs are included and an amount for costs is not
28 specified, then the court will be obliged by the terms of Rule 68 to include in its judgment an
additional amount it determines to be sufficient to cover the costs. *Marek*, 473 U.S. at 7, 105 S.Ct.
3815. In either case, the offer of judgment has allowed judgment to be entered against the defendant

1 both for damages caused by the challenged conduct and for costs. Attorneys' fees will be included
2 as costs if the statute upon which Plaintiff's cause of action is based permits recovery of reasonable
3 attorneys' fees if Plaintiff is successful. Here, the NRS 17.115 allows for reasonable attorneys fees.

4 **NRS 17.115(4)** states:

5 **4. Except as otherwise provided in this section, if a party who rejects an**
6 **offer of judgment fails to obtain a more favorable judgment, the court:**

7 1. (a) May not award to the party any costs or attorney's fees;

8 (b) May not award to the party any interest on the judgment for the period
9 from the date of service of the offer to the date of entry of the judgment;

10 (c) Shall order the party to pay the taxable costs incurred by the party who
11 made the offer; and

12 (d) May order the party to pay to the party who made the offer any or all of the
13 following:

14 (1) A reasonable sum to cover any costs incurred by the party who made the
15 offer for each expert witness whose services were reasonably necessary to
16 prepare for and conduct the trial of the case.

17 (2) Any applicable interest on the judgment for the period from the date of
18 service of the offer to the date of entry of the judgment.

19 **(3) Reasonable attorney's fees incurred by the party who made the offer**
20 **for the period from the date of service of the offer to the date of entry of**
21 **the judgment. If the attorney of the party who made the offer is collecting**
22 **a contingent fee, the amount of any attorney's fees awarded to the party**
23 **pursuant to this subparagraph must be deducted from that contingent**
24 **fee. [Emphasis Added]**

25 Since the Plaintiff has been successful, and NRS 17.115 allows for costs, Plaintiff is entitled to
26 include "reasonable attorneys fees" as costs in this case.

27 **E. PLAINTIFF ACTED REASONABLY AND NECESSARILY.**

28 In determining when and how to exercise discretion in awarding attorneys fees and costs,
the Court should consider that the plaintiff acted reasonably to not only try to compromise this
case at every turn, to prevent this case from having to be duplicated. This is evidenced by
communications between counsel throughout the litigation. See Premsrirut Affidavit, para 12.

Attorney James Adams, Esq., a partner of Adams Law Group, LTD., spent approximately
97.3 hours on this matter to date, reviewing pleadings, conducting legal research, preparation and

filing of pleadings, attending hearings, conferences with client, conferences with opposing counsel, preparation of the Orders and comment and review from Defendant's counsel, preparation and service of the Offer of Judgment.

Attorneys Puoy Premsrirut, Esq., a partner in the Brown Brown and Premsrirut Firm, spent approximately 22.5 hours on this matter to date, reviewing pleadings, conducting legal research, preparation and filing of pleadings, attending hearings, conferences with client, conferences with opposing counsel, preparation of the Orders and comment and review from Defendant's counsel, preparation and service of the Offer of Judgment, and an addition 1-2 hours preparing this Motion for Fees and Costs. (See Premsrirut Affidavit, para 11-20). 5 .hours of paralegal support was required through efforts of Brandon Dalby. *Id.*

Counsel has attached substantially redacted client fees listing for review. However, at the request of the court, (See Exhibits 1 & 2), however, counsel may can submit complete legal invoices for review "in camera" if redactions prove limiting to its review.

ATTORNEYS FEES

James R. Adams, Esq.	Rate \$365/ hr	x	97.3	hours	\$35,514.50
Assly Sayyar, Esq,	Rate \$365 / hr		(April - June 2011 services provided only)		
		X	5.5	hours	\$2,007.50
Puoy K. Premsrirut, Esq.	Rate \$350 / hr		(Dec. 2011 forward)		
		x	22.5	hours	\$7,875.00
Brandon Dalby (paralegal)	Rate \$90		5	hours	\$450
		<u>TOTAL:</u>			<u>\$45,847.00</u>

Cost being sought are included pursuant to the memorandum of costs and disbursements and total **\$3,353.00**.

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III.

CONCLUSION

Based on the foregoing, Plaintiff IKON HOLDINGS, LLC respectfully requests this Court to award attorneys' fees in the amount of \$45,847.00 and costs in the amount of \$ 3,353.00 for a total amount of \$49,200.00.

DATED this 2nd day of May, 2013.

BROWN BROWN & PREMSRIRUT

BY: /s/ Puoy Premsrirut

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james@adamslawnevada.com
assly@adamslawnevada.com
Attorneys for Plaintiff

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 2nd day of May, 2013, I mailed a true and correct copy of the foregoing MOTION FOR ATTORNEY FEES AND COSTS in an envelope, postage fully paid, addressed as follows:

Patrick J. Reilly, Esq.
HOLLAND & HART
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

Eric Hinckley, Esq.
ALVERSON, TAYLOR, MORTENSEN & SANDERS
7401 W. Charleston Blvd.
Las Vegas, NV 89117

/s/ Brandon Dalby
An Employee of Adams Law Group

EXHIBIT “1”

Closing date: April 26, 2013

IKON Holdings
Konnel Peterson

Matter ID: 2142-001

Opened: 10/22/2010

Status: Open

YTD Billed Fees: 0.00

YTD Billed Disb: 0.00

YTD Receipts: 0.00

Managing AS
Paralegal TM
Originating JRA
Billing TLB
Responsible JRAKonnel Peterson IKON Holdings v Horizon at Seven Hills HOA/Nevada Association Services, Inc.
ADR 11-40 A-11-647850-B Dept 13

Fees			Hours	Rate	Amount
9/6/2011	109541	JRA Complete drafting district court complaint and [REDACTED] prepare motion for summary judgment on declaratory relief	6.8000	365.00	2,482.00
10/29/2011	110743	JRA Draft 3 day notice of intent to take default and draft removal to business court	0.5000	365.00	182.50
11/4/2011	110939	JRA Continue to draft motion for summary judgment	4.8000	365.00	1,752.00
11/6/2011	110958	JRA Conclude drafting MSJ of Declaratory Relief	4.2500	365.00	1,551.25
12/7/2011	111637	JRA Review pleadings and draft Reply and Opposition	9.2000	365.00	3,358.00
12/12/2011	111715	JRA Prepare for and attend hearing on motion for summary judgment	6.2500	365.00	2,281.25
12/17/2011	111830	JRA Review briefs and draft order to motion for summary judgment	2.5000	365.00	912.50
1/14/2012	112131	JRA Review, revise and supplement motion for summary judgment on breach of CC&RS and NRS 116	2.1000	365.00	766.50
2/7/2012	112743	JRA Compose initial [REDACTED]	1.2500	365.00	456.25
2/9/2012	112779	JRA Conduct early case conference with Eric Hinckley and draft Initial Disclosures and Joint Case Conference Report	2.7500	365.00	1,003.75
2/14/2012	112819	JRA Emails to [REDACTED] regarding [REDACTED] motion and [REDACTED] hearing, draft stipulation to continue	0.3500	365.00	127.75

Pre-bill

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Konnell Peterson IKON Holdings v Horizon at Seven Hills HOA/Nevada

2/23/2012	112893	JRA	Review Opposition and Counter Motion to MSJ and begin drafting reply and opposition	4.4500	365.00	1,624.25
2/28/2012	112917	JRA	2/27/12 - Review, revise and supplement opposition to motion for reconsideration	5.2500	365.00	1,916.25
2/28/2012	112926	JRA	Research and draft reply and opposition to motion for summary judgment	6.7500	365.00	2,463.75
3/5/2012	113080	JRA	Telephone call [REDACTED]	0.2500	365.00	91.25
3/9/2012	113141	JRA	Review minute order and draft order denying motion for reconsideration. Email to counsel.	0.4000	365.00	146.00
3/12/2012	113153	JRA	Prepare for and attend hearing on Motion and Counter Motion for Summary Judgment	2.2000	365.00	803.00
3/30/2012	113394	JRA	Research, draft and file motion for summary judgment on declaratory relief	3.6500	365.00	1,332.25
5/17/2012	114148	JRA	Review, revise and supplement reply to opposition to MSJ on declaratory relief	2.5000	365.00	912.50
6/11/2012	114473	JRA	Review all briefs and arguments and CC&R provisions. Prepare for and attend hearing on motion and counter motion for summary judgment	2.7500	365.00	1,003.75
6/27/2012	114722	JRA	Review, revise and supplement Opposition to Motion for Reconsideration	5.0000	365.00	1,825.00
7/2/2012	114813	JRA	Review pleadings and the court's ruling. Draft order granting motion for summary judgment. Email to Puoy and Telephone call with Puoy.	2.2500	365.00	821.25
9/19/2012	115898	JRA	Review file and draft [REDACTED]	1.2000	365.00	438.00
10/15/2012	116302	JRA	Draft subpoenas for David Stone and PMK NAS	0.5000	365.00	182.50
11/5/2012	116598	JRA	Meeting with client and co-counsel. prepare for and attend deposition of PMK Ikon	3.0000	365.00	1,095.00
11/8/2012	116657	JRA	Review case file and [REDACTED] [REDACTED] Email to Pat and Eric.	0.7500	365.00	273.75
1/14/2013	117411	JRA	Telephone call with Eric [REDACTED] Review spreadsheet and compose email to client. (left message) with client regarding same	0.5000	365.00	182.50
1/19/2013	117538	JRA	Review spreadsheets and orders and draft and send email to Eric regarding payment. draft motion for summary judgment and affidavit.	3.9000	365.00	1,423.50
2/19/2013	117957	JRA	Meet with [REDACTED] prepare for and attend calendar call	1.0000	365.00	365.00
3/12/2013	118189	JRA	Review exhibits, pleadings, motions and	2.2000	365.00	803.00



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Konnell Peterson IKON Holdings v Horizon at Seven Hills HOA/Nevada

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existing court orders. attend trial.

4/25/2013	118571	JRA	Review, revise and supplement motion for attorney's fees	2.5000	365.00	912.50
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Sub-total Fees: 33,488.75

Rate Summary

James R. Adams	91.7500 hours at \$ 365.00/hr	33,488.75
Total hours: 91.75		<u>33,488.75</u>

Expenses

		Units	Price	Amount
9/25/2011 109988	Check issued to Southern Nevada Process Service - Inv #46778 9/15/11	1.0000	45.0000	45.00
9/30/2011 110222	Monthly administrative expense	1.0000	107.4400	107.44
10/14/2011 110554	Check issued to American Express - EFILING 9/8/11	1.0000	3.5000	3.50
10/14/2011 110548	Check issued to American Express - EFILING 9/6/11	1.0000	281.6000	281.60
10/14/2011 110579	Check issued to American Express - EFILING 9/23/11	1.0000	3.5000	3.50
11/30/2011 111392	Check issued to American Express - EFiling Fee 11/3/11	1.0000	1,301.3000	1,301.30
11/30/2011 111414	Check issued to American Express EFiling Fee 11/8/11	1.0000	3.5000	3.50
11/30/2011 111413	Check issued to American Express EFiling Fee 11/7/11	1.0000	209.5000	209.50
1/17/2012 112646	Check issued to American Express - EFiling	1.0000	3.5000	3.50
1/18/2012 113062	Check issued to American Express - EFiling	1.0000	213.0000	213.00
1/19/2012 113065	Check issued to American Express - EFiling	1.0000	3.5000	3.50
1/20/2012 113088	Check issued to American Express - e-filing	1.0000	3.5000	3.50
3/7/2012 113206	Check issued to American Express - EFiling Fee	1.0000	3.5000	3.50
3/7/2012 113209	Check issued to American Express - EFiling Fee	1.0000	3.5000	3.50



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Konnel Peterson IKON Holdings v Horizon at Seven Hills HOA/Nevada

3/18/2012	113258	Check issued to Xpedient Runner Service, Inc. - Efilng Fee 2/17/12	10000	30000	3.00
3/18/2012	113249	Check issued to Xpedient Runner Service, Inc. - Efilng Fee 2/23/12	10000	30000	3.00
4/12/2012	113576	Check issued to Xpedient Runner Service, Inc. - Efilng 2/23/12	10000	30000	3.00
4/12/2012	113581	Check issued to Xpedient Runner Service, Inc. - Efilng 3/12/12	10000	30000	3.00
4/14/2012	113654	Check issued to American Express - Four Efilng Fees	10000	140000	14.00
4/14/2012	113649	Check issued to American Express - Efilng Fee 2/23/12	10000	35000	3.50
5/7/2012	114421	Check issued to Xpedient Runner Service, Inc. - Efilng Fee	10000	30000	3.00
5/19/2012	114170	Check issued to American Express - EFILING FEES	1.0000	209.5000	209.50
6/26/2012	115033	Check issued to American Express EFILING	10000	35000	3.50
6/26/2012	115027	Check issued to American Express EFILING	10000	35000	3.50
6/26/2012	115017	Check issued to American Express EFILING	10000	35000	3.50
8/12/2012	115386	Check issued to Xpedient Runner Service, Inc. - Efilng 7/11/12	10000	30000	3.00
8/12/2012	115394	Check issued to Xpedient Runner Service, Inc. - Efilng 7/23/12	10000	30000	3.00
9/30/2012	116054	Check issued to American Express - Efilng 7/12 & 8/12	10000	100000	10.00
10/2/2012	116117	Check issued to American Express EFILING	10000	35000	3.50
10/18/2012	116365	Check issued to Nevada Association Services, Inc - Witness Fee 2142-001	10000	280000	28.00
11/5/2012	116613	Check issued to Southern Nevada Process Service - Inv#51321 10/23/12	10000	450000	45.00
1/24/2013	117602	Check issued to Alverson, Taylor, Mortensen & Sanders - HOA Assessments/Costs	1.0000	1,140.0000	1,140.00

Sub-total Expenses: 3,670.84

Pre-bill

2142-001 / IKON Holdings

Konnel Peterson IKON Holdings v Horizon at Seven Hills HOA/Nevada

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Payments

10/27/2011	Payment	Konnel Peterson ck#9076	628.82
1/25/2013	Payment	Ikon Holdings LLC ck#1179	1,140.00
			<u>1,768.82</u>

TrustAccount

4/26/2013

Beginning Balance: 0.00

0.00

Ending Balance: 0.00

	Account Status			
	Fees	Disb	Total	
Current AR Balance	0.00	0.00	0.00	Total Current Billing: 37,159.59
+/- Unbilled Fees/Disb	35,912.75	3,634.25	39,547.00	Previous Balance Due: 3016.23
Balance if billed in full	35,912.75	3,634.25	39,547.00	Total Payments: 1,768.82
				Total Now Due: <u>38,804.00</u>

Adams Law Group, Ltd.

8330 W Sahara Ave Ste 290
Las Vegas, NV 89117
(702)838-7200

Statement as of April 30, 2011
Statement No. 24082

IKON Holdings
Konnel Peterson
209 S Stephanie B123
Henderson NV 89012

2142-001: Konnel Peterson IKON Holdings v Nevada Association Services, Inc.

Professional Fees				Hours	Rate	Amount
4/26/2011	AS	Draft 16.1 disclosures		1.30	365.00	474.50
4/29/2011	AS	Draft interrogatories		0.80	365.00	292.00
4/29/2011	AS	Draft requests for admissions		0.60	365.00	219.00
4/29/2011	AS	Draft requests for production of documents		0.60	365.00	219.00
4/29/2011	AS	Edit and finalize all discovery		0.40	365.00	146.00
Sub-total Fees:						1,350.50

Rate Summary

Assly Sayyar 3.70 hours at \$ 365.00/hr 1,350.50

Costs

Monthly administrative expense	18.50
Sub-total Costs:	18.50

Disbursements

4/14/2011	Check issued to Arbitration & Mediation Solutions, Inc. - Arbitrator Fees	350.00
Sub-total Disbursements:		350.00

Previous Balance Due Before Payments:	1,501.48
Payments / Credits:	0.00
Previous Balance Due After Payments:	1,501.48
Interest:	0.00
Total Current Billing:	1,719.00
Total Now Due:	3,220.48

Adams Law Group, Ltd.

8330 W Sahara Ave Ste 290
Las Vegas, NV 89117
(702)838-7200

Statement as of May 31, 2011
Statement No. 24189

IKON Holdings
Konnel Peterson
208 S Stephanie B123
Henderson NV 89012

2142-001: Konnel Peterson IKON Holdings v Nevada Association Services, Inc.

Professional Fees

			Hours	Rate	Amount
5/2/2011	AS	Review case file and public records of assessor and recorder. Draft chronology of facts for submission to arbitrator. Draft email to arbitrator and opposing counsel regarding providing them a copy of the same	1.00	365.00	365.00
5/11/2011	AS	Draft change of address notice	0.20	365.00	73.00
5/11/2011	AS	Draft PMK deposition notice for Association.	0.30	365.00	109.50
		Sub-total Fees:			547.50

Rate Summary

Assiy Sayyar	1.50 hours at \$ 365.00/hr	547.50
Total hours:	1.50	

Costs

Monthly administrative expense	7.50
Sub-total Costs:	7.50

Disbursements

5/6/2011	Check issued to Xpedient Runner Service, Inc. - Rush Delivery	32.00
Sub-total Disbursements:	32.00	

Payments

5/16/2011	Payment	K Peterson ck#5111	350.00
Sub-total Payments:			350.00

Adams Law Group, Ltd.

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Previous Balance Due Before Payments:	3,220.48
Payments / Credits:	350.00
Previous Balance Due After Payments:	2,870.48
Interest:	0.00
<hr/> Total Current Billing:	<hr/> 587.00
Total Now Due:	3,457.48

Adams Law Group, Ltd.

8330 W Sahara Ave Ste 290
Las Vegas, NV 89117
(702)838-7200

Statement as of June 28, 2011
Statement No. 24254

IKON Holdings
Konnel Peterson
209 S Stephanie B123
Henderson NV 89012

2142-001: Konnel Peterson IKON Holdings v Nevada Association Services, Inc.

Professional Fees			Hours	Rate	Amount
6/16/2011	AS	Review case status and upcoming deadlines with JRA to prepare for arbitration.	0.10	365.00	36.50
Sub-total Fees:					36.50

Rate Summary		
Assly Sayyar	0.10 hours at \$ 365.00/hr	36.50

Costs		
	Monthly administrative expense	0.50
Sub-total Costs:		0.50

Disbursements		
5/11/2011	Check issued to Xpedient Runner Service, Inc. - Rush Delivery	8.00
6/7/2011	Check issued to Litigation Services - #879909 Appearance Fee 5/31/11	150.00
Sub-total Disbursements:		158.00

Payments		
6/9/2011	Payment Konnel Peterson ck#5120	836.25
Sub-total Payments:		836.25

Adams Law Group, Ltd.

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Previous Balance Due Before Payments:	3,457.48
Payments / Credits:	836.25
Previous Balance Due After Payments:	2,621.23
Interest:	0.00
<u>Total Current Billing:</u>	<u>195.00</u>
Total Now Due:	2,816.23

EXHIBIT “2”

Goodman Brown & Premsrut

520 S. Fourth Street
 Second Floor
 Las Vegas, NV 89101

Ph:702-384-5563

Fax:702-385-1752

April 26, 2013

Attention:

File #: 7212-027

Inv #: 10988

RE: Ikon v. Horizon at Seven Hills

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Dec-12-11	preparation and attendance at MSJ for declaratory relief; notes re: same	3.50	1,225.00	PKP
Dec-16-11	receipt and review [REDACTED]	0.30	105.00	PKP
	receipt and review minute order from Judge Denton; [REDACTED]	0.50	175.00	PKP
Dec-19-11	review proposed draft Order and revise	0.60	210.00	PKP
Jan-09-12	review draft Order and [REDACTED] by [REDACTED] [REDACTED] review BUSiness COURT Order in preparation for 16.1; review NRCP 56(c)	1.00	350.00	PKP
Feb-07-12	receipt and review association of Pat Reilly; draft revised ECC notice; draft Offer of Judgment	1.00	350.00	PKP
Feb-10-12	review [REDACTED]; correspondence re: Collection Agencies; receipt and began review of Motion for Clarification	1.30	455.00	PKP
Feb-23-12	review Motion and compare with prior Horizon pleadings; outline identical arguments; review [REDACTED]	1.50	525.00	PKP
Feb-26-12	began draft Opposition to Motion for Reconsideration Clarification	3.00	1,050.00	PKP

Invoice #: 10988

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April 26, 2013

Feb-27-12	contue draft Opposition; draft final revisions to Opposition and address issues re: [REDACTED] with James Adams;	2.60	910.00	PKP
Mar-12-12	prepare Order denying motion for clarification; attend motion on summary judgment re: cc&rs and countermotion;	1.00	350.00	PKP
Jun-11-12	receipt and began review [REDACTED]	1.50	525.00	PKP
Nov-05-12	preparation and meeting with [REDACTED] for d [REDACTED] attend deposition of [REDACTED] [REDACTED] discussion [REDACTED] A; reveiw NRS [REDACTED]	2.00	700.00	PKP
Feb-13-13	draft and review pre-trial disclosures;	1.00	350.00	PKP
Feb-19-13	draft Pre-Trial Disclosures and Pre-Trial Memorandum	3.50	315.00	BD
Mar-12-13	preparation and attendance at Trial; confs re: exhibits and	1.20	420.00	PKP
Mar-25-13	draft [REDACTED] Attorney Fees	1.50	135.00	BD
	Totals	27.00	\$8,150.00	

DISBURSEMENTS

Jan-30-12	District Court Filing Fee - NECC	3.50
Feb-08-12	District Court Filing Fee - ANOT of ECC	3.50
Feb-10-12	In-house photocopies/ labor @ \$0.25/pg	26.00
	Totals	\$33.00

Total Fee & Disbursements**\$8,183.00****Balance Now Due****\$8,183.00**

TAX ID Number 71-0937899