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

APPELLANT'S RESPONSE TO RESPONDENT'S NOTICE OF SUPPLEMENTAL AUTHORITY

Patrick J. Reilly, Esq.
Nevada Bar No. 6103
Nicole E. Lovelock, Esq.
Nevada Bar No. 11187
Holland & Hart LLP
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134
(702) 669-4600

Kurt R. Bonds, Esq.
Nevada Bar No. 6228
Alverson, Taylor, Mortensen & Sanders
7401 West Charleston Boulevard
Las Vegas, Nevada 89117
(702) 385-7000

Attorneys for Appellant
Horizons At Seven Hills Homeowners Association

Pursuant to Rule 31(e) of the Nevada Rules of Appellate Procedure, Appellant Horizons At Seven Hills Homeowners Association hereby responds to the Notice of Supplemental Authority ("Notice") filed by Respondent Ikon Holdings, LLC.

First, despite the contention set forth in the Notice, the Nevada Supreme Court[1] has never rendered a decision that collection fees and costs are not included in the super-priority lien created by NRS 116.3116[2] (the "Super-Priority Lien").[3] The Notice inaccurately represents that the Nevada Supreme Court case *SFR Investments Pool 1 v. U.S. Bank*, 130 Nev. Adv. Op. 75, 334 P.3d 408 (2014) held that the "Super Priority Lien is limited to 9 months of assessments, plus nuisance abatement charges, and no more." Notice at 2. Yet, *SFR Investments* dealt only with "**whether this [the Super-Priority Lien] is a true priority lien such that its foreclosure extinguishes a first deed of trust on the property and, if so, whether it can be foreclosed nonjudicially**." *SFR Invs. Pool 1, L.L.C. v. U.S. Bank, N.A.*, 130 Nev. Adv. Op. 75, 334 P.3d 408, 408 (2014). The *SFR Investments* case did not consider or decide what amounts are

[1] The Notice cites to two Nevada federal district court unpublished opinions. Because this issue is not a matter of constitutional import, the Nevada Supreme Court is free to interpret state law and decisions of the federal district court and panels of the federal circuit court of appeals are not binding upon the Nevada Supreme Court. *See, e.g., Blanton v. North Las Vegas Mun. Ct.*, 103 Nev. 623, 633, 748 P.2d 494, 500 (1987), aff'd sub nom. Blanton v. North Las Vegas, 489 U.S. 538, 109 S.Ct. 1289, 103 L.Ed.2d 550 (1989); *see also Rahn v. Warden*, 88 Nev. 429, 498 P.2d 1344 (1972).

[2] The statute that is the subject of this appeal, NRS 116.3112, was amended by 2015 Nev. Stat., Ch. 266 (S.B. 306).

[3] The Nevada Supreme Court has heard oral argument on the issue of whether collection fees and costs are included in the Super-Priority Lien in *Shadow Wood Homeowners v New York Community Bancorp*, Case No. 63180, on October 6, 2014 and the matter has been submitted for a decision. Yet, as of today, no decision has been rendered.

included, and are not included, within the Super-Priority lien. Indeed, the language cited from *SFR Investments* is, at best, described as *dicta* that is neither controlling nor persuasive.[4]

Next, while the Notice properly informs this Court that NRS 116.3116 was amended by the Nevada Legislature in 2015 during the 78th Legislature, the Notice incorrectly implies that said amendment supports Respondent's position that the Super-Priority Lien was capped at nine-months of assessments prior to said amendment.[5] Notice at 4-7. Not only is Respondent's implication not supported by legal authority, it contradicts the fundamental maxims of statutory interpretation which support Appellant's interpretation that the Super-Priority Lien includes costs of collection.

Indeed, the amendment is persuasive evidence that collection fees and costs were included in the Super-Priority Lien when the Nevada Legislature amended NRS 116.3116 to specifically include the "costs incurred by the association to enforce the lien in an amount not to exceed the amounts set forth in subsection 5." *See* Senate Bill 306 (78th Leg), Exhibit 4 to Notice at 3-4. Where a former statute is amended, *or a doubtful interpretation of a former statute is rendered certain by subsequent legislation*, such amendment is persuasive

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[4] A statement in a case is dictum when it is "unnecessary to a determination of the questions involved." *See St. James Village, Inc. v. Cunningham*, 125 Nev. ——, ——, 210 P.3d 190, 193 (2009) (quoting *Stanley v. Levy & Zentner Co.*, 60 Nev. 432, 448, 112 P.2d 1047, 1054 (1941)). Dicta is not controlling. *Kaldi v. Farmers Ins. Exch.*, 117 Nev. 273, 282, 21 P.3d 16, 22 (2001).

[5] There is nothing in the Notice, or in the minutes of the 78th Legislature, to support the contention that fees and costs of collection being included in the Super-Priority Lien was new. Rather, the Legislative history demonstrates that the purpose of the Super-Priority Lien was always meant to ensure that HOAs would be able to effectively preserve and maintain the community. *See, e.g.*, Senate Committee on Judiciary, April 7, 2015, Exhibit 5 to Notice at 3

evidence of what the legislature intended by the original statute. *See In re Estate of Thomas*, 116 Nev. 492, 495, 998 P.2d 560, 562 (2000) (quoting *Sheriff, Washoe Cnty. v. Smith*, 91 Nev. 729, 734, 542 P.2d 440, 443 (1975)); *see also Public Emps. Benefits Program v. Las Vegas Metro. Police Dep't*, 124 Nev. 138, 157, 179 P.3d 542, 554–55 (2008) (stating that "when a statute's doubtful interpretation is made clear through subsequent legislation, we may consider the subsequent legislation persuasive evidence of what the Legislature originally intended") (internal quotation marks omitted); *Metz v. Metz*, 120 Nev. 786, 792, 101 P.3d 779, 783–84 (2004) (noting that the Legislature's change to a statute demonstrates legislative intent).

Appellant again thanks this Court for its time and attention to this matter.

DATED this 6th day of January, 2015.

HOLLAND & HART LLP

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

Attorneys for Appellant Horizons At Seven Hills Homeowners Association

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I electronically filed the forgoing **APPELLANT'S RESPONSE TO RESPONDENT'S NOTICE OF SUPPLEMENTAL AUTHORITY** with the Clerk of Court for the Supreme Court of Nevada by using the Supreme Court of Nevada's E-filing system on January 6, 2016.

I further certify that all participants in this case are registered with the Supreme Court of Nevada's E-filing system, and that service has been accomplished to the following individuals through the Court's E-filing System:

James R. Adams, Esq.
ADAMS LAW GROUP, LTD.
5420 W. Sahara Avenue, Suite 202
Las Vegas, Nevada 89146
Email:
james@adamslawnevada.com

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

Attorneys for Plaintiff

Adam Paul Laxalt
Attorney General
Michelle D. Briggs
Senior Deputy Attorney General
2501 E. Sahara Ave., Suite 201
Las Vegas, Nevada 89104
Email: mbriggs@ag.nv.gov

Attorneys for The State of Nevada, Department Of Business And Industry, Real Estate Division

J. Randall Jones, Esq.
Carol L. Harris, Esq.
Nathanael R. Rulis
KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
17th Floor
Las Vegas, Nevada 89169
Email: clh@kempjones.com
jrj@kempjones.com
nrr@kempjones.com
Attorneys for Community Association Management Executive Officers, Inc.

Susann Thompson
An Employee of Holland & Hart LLP