

FILED

2013 JUL -3 PM 3:26

ELKO CO DISTRICT COURT

Electronically Filed
Jun 07 2013 09:56 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

1 CASE NO. CV-C-12-175

2 DEPT. 2

3 Affirmation: This document does
4 not contain the social security
5 number of any person.

6 **IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

7 **IN AND FOR THE COUNTY OF ELKO**

8
9 ARTEMIS EXPLORATION COMPANY, a
10 Nevada corporation,

11 Plaintiff,

12 vs.

13 RUBY LAKE ESTATES HOMEOWNER'S
ASSOCIATION AND DOES I-X,

14 Defendants.

15 **NOTICE OF APPEAL**

16 RUBY LAKE ESTATES HOMEOWNER'S
ASSOCIATION,

17 Counterclaimant,

18 vs.

19 ARTEMIS EXPLORATION COMPANY, a
20 Nevada corporation,

21 Counterdefendant.

22 Notice is hereby given that ARTEMIS EXPLORATION COMPANY, a Nevada corporation,
23 Plaintiff above named, hereby appeals to the Supreme Court of Nevada from Order Granting
24 Defendant's Motion for Confirmation and Judgment on Arbitration Award and Award of Attorney's

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1 Fees and Costs entered in this action on the 15th day of May, 2013.

2 **GERBER LAW OFFICES, LLP**

3
4 By: 
5 TRAVIS W. GERBER, ESQ.
6 Nevada State Bar No. 8083
7 491 4th Street
8 Elko, Nevada 89801
9 (775) 738-9258
10 ATTORNEYS FOR PLAINTIFF/
11 COUNTERDEFENDANT/
12 APPELLANT
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of GERBER LAW OFFICES,
3 LLP, and that on the 30 day of June, 2013, I deposited for mailing, postage prepaid, at Elko,
4 Nevada, a true and correct copy of the foregoing *Notice of Appeal* addressed as follows:

5 Gayle A. Kern, Esq.
6 KERN & ASSOCIATES, LTD.
7 5421 Kietzke Lane, Suite 200
8 Reno, Nevada 89511

9 
10 SAMANTHA MORGAN

1 CASE NO. CV-C-12-175

2 DEPT. 2

3 Affirmation: This document does
4 not contain the social security
5 number of any person.

FILED

2013 JUN -3 PM 3:29

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY *for*

6 **IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

7 **IN AND FOR THE COUNTY OF ELKO**

8
9 ARTEMIS EXPLORATION COMPANY, a
10 Nevada Corporation,

11 Plaintiff

12 vs.

13 RUBY LAKE ESTATES HOMEOWNER'S
14 ASSOCIATION AND DOES I-X,

15 Defendants.
16

17 **CASE APPEAL STATEMENT**

18 **1. Name of appellant filing this case appeal statement:**

19 Artemis Exploration Company, a Nevada corporation.

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

21 Honorable Alvin R. Kacin, Fourth Judicial District Court, Department 2.

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

23 Artemis Exploration Company, a Nevada corporation is the appellant in this case. Counsel
24 for appellant is as follows:

25 Travis W. Gerber, Esq.
26 Gerber Law Offices, LLP
27 491 4th Street
28 Elko, Nevada 89801
(775) 738-9258.

1 **4. Identify each respondent and the name and address of appellate counsel, if known, for**
2 **each respondent (if the name respondent's appellate counsel is unknown, indicate as much and**
3 **provide the name and address of that respondent's trial counsel):**

4 Ruby Lake Estates Homeowner's Association is the respondent in this case. Respondent's
5 appellate counsel is as follows:

6 Gayle A. Kern, Esq.
7 Kern & Associates, Ltd.
8 5421 Kietzke Lane, Suite 200
Reno, Nevada 89511
(775) 324-5930.

9 **5. Indicate whether any attorney identified above in response to question 3 or 4 is not**
10 **licensed to practice law in Nevada and, if so, whether the district court granted that attorney**
11 **permission to appear under SCR 42 (attach a copy of any district court order granting such**
12 **permission):**

13 No. Appellant and respondent's counsel are licensed to practice law in the State of Nevada.

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

16 Appellant was represented by retained counsel in the district court.

17 **7. Indicate whether appellant is represented by appointed or retained counsel on appeal:**
18 Appellant is represented by retained counsel on appeal.

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

21 No. Appellant is not proceeding in forma pauperis.

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

24 Plaintiff/Appellant filed its Complaint on March 2, 2012.

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

28 Artemis Exploration Company ("ARTEMIS") is a lot owner in the Ruby Lake Estates, a rural

1 subdivision of 51 lots that was subdivided in 1989. The recorded Declaration, Restrictions and
2 Covenants of Ruby Lake Estates subdivision does not contain any covenant or provision for the
3 organization of a homeowner's association or for the payment of dues or any common expenses.
4 Ruby Lake Estates Homeowner's Association ("RLEHOA") was organized by a group of lot owners
5 in Ruby Lake Estates in 2006, 17 years after the conveyance of lots, and RLEHOA began assessing
6 mandatory dues and compelling payment under threat of liens.

7 The matter was submitted for non-binding arbitration through the Nevada Real Estate Division
8 pursuant to NRS 38.300 - NRS 38.360. An Arbitration Award was granted in RLEHOA's favor
9 denying ARTEMIS's claims for relief on February 7, 2012.

10 ARTEMIS filed the instant case for judicial review on March 2, 2012, pursuant to NRS
11 38.330(5) seeking a declaratory judgment establishing that Ruby Lake Estates Homeowner's
12 Association is not authorized by the Declaration, Restrictions and Covenants of Ruby Lake Estates
13 to assess or compel the payment of dues.

14 Both parties submitted Motions for Summary Judgment in the District Court action. The
15 District Court denied ARTEMIS's Motion for Summary Judgment and entered its Order Granting
16 Defendant's Motion for Summary Judgment on February 14, 2013, in favor of RLEHOA.

17 The central issues in this case are whether Ruby Lake Estates subdivision is a
18 common-interest community under NRS 116.021, and whether Ruby Lake Estates Homeowner's
19 Association has authority to levy mandatory assessments against lot owners.

20 In its Order Granting Defendant's Motion for Summary Judgment, the District Court
21 concluded that Ruby Lake Estates is a common-interest community because "1) the CC&R's are 'real
22 estate' within the meaning of NRS 116.081; and 2) the CC&Rs constitute contractual interests for
23 which Ruby Lake Estates lot owners were obligated to pay at the time of the HOA's incorporation."
24 The District Court also concluded that Ruby Lake Estates Homeowner's Association is a valid
25 homeowner's association because it was not bound by NRS 116.3101(1), which requires that "[a]
26 unit-owner's association must be organized no later than the date the first unit in the common-interest
27 community is conveyed." NRS 116.3101 (1).

28 On May 15, 2013, the District Court entered its final Order Granting Defendant's Motion for

1 Confirmation and Judgment on an Arbitration Award and Award of Attorney's Fees and Costs, from
2 which this appeal is taken. The District Court confirmed the award of the arbitrator, although on
3 different grounds, and awarded RLEHOA total of attorney's fees in the amount of \$53,904.00 and
4 additional costs in the amount of \$1,536.14.

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

8 No.

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

10 No.

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

12 No.

13 **DATED** this 3rd day of June, 2013

14 **GERBER LAW OFFICES, LLP**

15
16 By: 

17 TRAVIS W. GERBER, ESQ.

18 Nevada State Bar No. 8083

19 491 4th Street

20 Elko, Nevada 89801

21 (775) 738-9258

22 ATTORNEY FOR PLAINTIFF/
23 COUNTERDEFENDANT/APPELLANT
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Gayle A. Kern, Esq.
KERN & ASSOCIATES, LTD.
5421 Kietzke Lane, Suite 200
Reno, Nevada 89511

Samantha Morgan
SAMANTHA MORGAN

1 CASE NO. CV-C-12-175

2 DEPT. 2

FILED

2013 JUN -3 PM 3:32

ELKO CO DISTRICT COURT

CLERK DEPUTY *fo*

3
4
5
6 **IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF ELKO**
8

9 ARTEMIS EXPLORATION COMPANY, a
10 Nevada Corporation,

11 Plaintiff,

12 vs.

13 RUBY LAKE ESTATES HOME OWNER'S
ASSOCIATION AND DOES I-X,

14 Defendants.

15 **RECEIPT OF SUPERSEDEAS BOND**

16 RUBY LAKES ESTATES HOMEOWNER'S
ASSOCIATION,

17 Counterclaimant,

18 vs.

19 ARTEMIS EXPLORATION COMPANY, a
20 Nevada Corporation,

21 Counterdefendant.
22 /

23 I hereby certify receipt of the Supersedeas Bond required in the above-referenced matter in
24 the amount of FIFTY-FIVE THOUSAND FOUR HUNDRED FORTY DOLLARS and 14/100
(\$55,440.14).

25 DATED this 3 day of June, 2013.

26 *Carol Joanne*
County Clerk

27 By: *Brenda Rodriguez*
Deputy Clerk
28

1 CASE NO. CV-C-12-175

2 DEPT. 2

3 Affirmation: This document does
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FILED
2013 JUN -3 PM 3:33
ELKO CO DISTRICT COURT
CLERK _____ DEPUTY *Ba*

6 **IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF ELKO**

8 _____
9 ARTEMIS EXPLORATION COMPANY, a
10 Nevada Corporation,

11 Plaintiff,

12 vs.

13 RUBY LAKE ESTATES HOME OWNER'S
14 ASSOCIATION AND DOES I-X,

15 Defendants.

NOTICE OF POSTING SUPERSEDEAS
BOND

16 RUBY LAKE ESTATES HOMEOWNER'S
17 ASSOCIATION,

18 Counterclaimant,

19 vs.

20 ARTEMIS EXPLORATION COMPANY, a
21 Nevada Corporation,

22 Counterdefendant.
23 _____ /

24 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

25 **PLEASE TAKE NOTICE** that, pursuant to NRCP 62, Plaintiff has posted herewith a
26 supersedeas cash bond in the sum of FIFTY-FIVE THOUSAND FOUR HUNDRED FORTY
27 DOLLARS and 14/100 (\$55,440.14) with the Clerk of the Fourth Judicial District Court of the State
28 of Nevada.


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DATED this 3rd day of June, 2013.

GERBER LAW OFFICES, LLP

By: 

TRAVIS W. GERBER, ESQ.
Nevada State Bar No. 8083
491 4th Street
Elko, Nevada 89801
(775) 738-9258
ATTORNEYS FOR PLAINTIFF/
COUNTERDEFENDANT

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of GERBER LAW OFFICES,
3 LLP, and that on the 3rd day of June, 2013, I deposited for mailing, postage prepaid, at Elko,
4 Nevada, a true and correct copy of the foregoing *Notice of Posting Supersedeas Bond* addressed as
5 follows:

6 Gayle A. Kern, Esq.
7 Kern & Associates, Ltd.
8 5421 Kietzke Lane, Suite 200
9 Reno, Nevada 89511

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SAMANTHA MORGAN

1 CASE NO. CV-C-12-175

2 DEPT. 2

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FILED

2013 JUN -3 PM 3:30

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY *Pa*

6 **IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF ELKO**

8
9 ARTEMIS EXPLORATION COMPANY, a
10 Nevada Corporation,

11 Plaintiff,

12 vs.

13 RUBY LAKE ESTATES HOME OWNER'S
14 ASSOCIATION AND DOES I-X,

15 Defendants.

COST BOND

16 RUBY LAKE ESTATES HOMEOWNER'S
17 ASSOCIATION,

18 Counterclaimant,

19 vs.

20 ARTEMIS EXPLORATION COMPANY, a
21 Nevada Corporation,

22 Counterdefendant.

23 Appellants, ARTEMIS EXPLORATION COMPANY, hereby post a cost bond of \$500.00,
24 pursuant to Rule 7 of the Nevada Rules of Appellate Procedure, along with their Notice of Appeal
25 filed concurrently herewith.


26 ///

27 ///

28 ///

1 DATED this 3rd day of June, 2013.

2 GERBER LAW OFFICES, LLP

3
4 By: 
5 TRAVIS W. GERBER, ESQ.
6 Nevada State Bar No. 8083
7 491 4th Street
8 Elko, Nevada 89801
9 (775) 738-9258
10 ATTORNEYS FOR APPELLANTS
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of GERBER LAW OFFICES,
3 LLP, and that on the 3rd day of June, 2013, I deposited for mailing, postage prepaid, at Elko,
4 Nevada, a true and correct copy of the foregoing *Cost Bond* addressed as follows:

5 Gayle A. Kern, Esq.
6 Kern & Associates, Ltd.
7 5421 Kietzke Lane, Suite 200
8 Reno, Nevada 89511

9 
10 SAMANTHA MORGAN

PGM ID-DSPDOC
DATE 6/06/13

ELKO COUNTY COURT SYSTEM
CASE#: EC DC CV-C -12-0000175

PAGE 1
TIME 9:56

TYPE: CIVIL STATUS: CLOSED
ARTEMIS EXPLORATION COMPANY VS. RUBY LAKE

6/06/13

-----JUDGE -----
CURRENT: KACIN, ALVIN R
INAC 3/05/12: NO JUDGE ASSIGNED
INAC 8/15/12: PORTER, NANCY

--PARTY #--

000
000

PC 001: ARTEMIS EXPLORATION COMPANY
VS.

-----ATTORNEYS-----
GERBER, TRAVIS
GERBER, TRAVIS INAC

DN 002: RUBY LAKE ESTATES HOMEOWNER'S ASSO KERN, GAYLE A

ISSUES

ISSUE 1: BREACH OF CONTRACT CV CVC01

MAJOR EVENTS

7/05/12	FILE CHECKED OUT BY:	ANTONUCCI000
8/14/12	FILE CHECKED IN BY:	ANTONUCCI000
8/14/12	FILE CHECKED OUT BY:	ANTONUCCI000
8/16/12	FILE CHECKED IN BY:	FLEURY 000
8/20/12	HEARING ON MOTION	FOR: 10/10/12 9:00 DC2SEC 000
9/13/12	FILE CHECKED OUT BY:	COOK 000
9/14/12	FILE CHECKED IN BY:	JAKEMAN 000
10/04/12	FILE CHECKED OUT BY:	COOK 000
2/14/13	FILE CHECKED IN BY:	PECK 000
4/04/13	FILE CHECKED OUT BY:	ANTONUCCI000
5/15/13	FILE CHECKED IN BY:	RODRIGUEZ000
6/05/13	FILE CHECKED OUT BY:	ANTONUCCI000
6/06/13	FILE CHECKED IN BY:	PECK 000
6/06/13	DATE CLOSED	DISPOSITION: JUDGMENT

FILING DATE	EVENT	COMMENT	PROCEEDINGS	EVENT DATE	ENTRY PERSON/P
3/02/12	FILE OPENED - DC				PECK 000
3/02/12	JUDGE ASSIGNED				PECK 000
	EVENT JUDGE: PORTER, NANCY				
3/02/12	COMPLAINT				PECK 001

PGM ID-DSPDOC
DATE 6/06/13

ELKO COUNTY COURT SYSTEM
CASE#: EC DC CV-C -12-0000175

PAGE 2
TIME 9:56

3/21/12 ACCEPTANCE OF SERVIC GAYLE A KERN ACCEPTANCE OF SERVICE ON MARCH 20, 2012	PECK	001
3/28/12 CERT OF MAILING	ANTONUCCI	001
4/02/12 ANSWER - CIVIL	PECK	002
4/16/12 ANSWER & COUNTRCLAIM	PECK	001
4/30/12 MOT FOR SUMMARY JUDG	ANTONUCCI	001
5/02/12 NOTICE OF EARLY CASE CONFERENCE (AS TO COUNTERCLAIM)	WAND	002
5/14/12 NOTICE OF NRCP 16.1	ANTONUCCI	001
5/30/12 OPPOSITION TO PLAINTIFFS MOT FOR SUMMARY JUDGMENT	FLEURY	002
5/30/12 MOT FOR SUMMARY JUDG	FLEURY	002
5/30/12 EXHIBIT(S) IN SUPPORT OF OPPOSITION TO PLAINTIFFS MOT FOR SUM JUDGMENT AND MOT FOR SUM JUDGMENT	FLEURY	002
5/30/12 NOTE ADDED TO FILE CREATED VOL 2	FLEURY	000
5/31/12 AFFID OF ROBERT WINES	ANTONUCCI	002
6/15/12 JOINT CASE CONF RPT	WAND	000
6/15/12 NOTE ADDED TO FILE VOL. 3 STARTED	WAND	000
6/15/12 REPLY TO OPPOSITION TO PL'S MOT FOR SUMMARY JUDGMENT	ANTONUCCI	001
6/22/12 OPPOSITION TO MOTION FOR SUMMARY JUDGMENT	ANTONUCCI	001
7/05/12 REPLY TO OPPOSITION TO RELEHOA'S MOT FOR SUMMARY JUDGMENT	ANTONUCCI	002
7/05/12 REQUEST FOR REVIEW MOT FOR SUMMARY JUDGMENT	ANTONUCCI	002
7/05/12 FILE CHECKED OUT BY: DC I for review/signature VOL 3 ONLY	ANTONUCCI	000

PGM ID-DSPDOC
DATE 6/06/13

ELKO COUNTY COURT SYSTEM
CASE#: EC DC CV-C -12-0000175

PAGE 3
TIME 9:56

7/05/12 NOTE ADDED TO FILE VOL 4 CREATED	ANTONUCCI000
7/09/12 REQUEST for oral argument to be set on df's mot for summary judgement (07/09 sent plead to dc 1 file ckout)	ANTONUCCI002
7/11/12 REQUEST FOR REVIEW FILE CHECKED OUT SENT PLEADING UP TO DC 1	PECK 001
8/09/12 SUPPLEMENTAL RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION'S SUPPLEMENT TO EXHIBITS TO MOTION FOR SUMMARY JUDGMENT (copy ret'd to attorney, original to DC1)	JAKEMAN 002
8/14/12 SUPPLEMENTAL SECOND SUPPLEMENTAL TO EXHIBITS TO MOT FOR SUMMARY JUDGEMENT (08/14 SENT PLEAD TO DC 1 FILE CKOUT)	ANTONUCCI002
8/14/12 FILE CHECKED IN BY:	ANTONUCCI000
8/14/12 ORD OF RECUSAL	ANTONUCCI000
8/14/12 FILE CHECKED OUT BY: DC 2 for review/signature VOL 1, 2, 3 AND 4	ANTONUCCI000
8/16/12 FILE CHECKED IN BY: VOL 1-4	FLEURY 000
8/20/12 HEARING ON MOTION -hearing on motion for summary judgment -gerber to prepare order setting hearing on motion	FOR: 10/10/12 9:00 DC2SEC 000
8/23/12 AFFIDAVIT ORIGINAL AFFIDAVITS OF MICHAEL WAYNE MASON AND SHELLY RENEE MASON PREVIOUSLY FILED AS EXHIBITS TO RUBY LAKE ESTATES HOMEOWNER'S ASSOC'S 2ND SUPPLEMENTAL TO EXHIBITS TO MOT FOR SUMMARY JUDGMENT	RODRIGUEZ002
9/13/12 FILE CHECKED OUT BY: DC 2 for review/signature Vol. 4	COOK 000
9/14/12 FILE CHECKED IN BY:	JAKEMAN 000
9/14/12 ORD SETTING HEARING ON MOTIONS FOR SUMMARY JUDGMENT (2 copies Gerber's box)	JAKEMAN 000

PGM ID-DSPDOC
DATE 6/06/13

ELKO COUNTY COURT SYSTEM
CASE#: EC DC CV-C -12-0000175

PAGE 4
TIME 9:56

10/04/12 FILE CHECKED OUT BY: DC 2 for review/signature	COOK	000
10/10/12 HRG - CV	COOK	001
2/12/13 ORD DENYING MOTION ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMT (FILE STILL CHECKED OUT SENT PLEADING UP TO DC 2)	PECK	000
2/14/13 FILE CHECKED IN BY: VOL 1-4	PECK	000
2/14/13 ORD GRANTING MOTION ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT	PECK	000
3/01/13 MOTION FOR CONFIRMATION AND JUDGMENT ON AN ARBITRATION AWARD (NRS 38.239 AND NRS 38.330(5) AND AWARD OF ATTORNEY'S FEES AND COSTS (copy ret'd to Kern)	JAKEMAN	002
3/01/13 AFFID OF GAYLE A KERN IN SUPPORT OF ATTORNEY'S FEES AND COSTS (copy ret'd to Kern)	JAKEMAN	002
3/01/13 MEMO OF COSTS (copy ret'd to Kern)	JAKEMAN	002
3/01/13 NOTICE OF ENTRY ORDR ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (copy ret'd to Kern)	JAKEMAN	002
3/01/13 NOTICE OF ENTRY ORDR ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT (copy ret'd to Kern)	JAKEMAN	002
3/15/13 OPPOSITION TO MOTION FOR CONFIRMATION & JUDGMENT ON AN ARBITRATION AWARD & AWARD OF ATTORNEY FEES & COSTS	RODRIGUEZ	001
3/29/13 REPLY TO OPPOSITION TO MOT FOR CONFIRMATION AND JUDGMENT	RODRIGUEZ	002
3/29/13 SUPPLEMENTAL AFFIDAVIT OF GAYLE KERN IN SUPPPORT OF ATTORNEY'S FEES AND COSTS	RODRIGUEZ	002
3/29/13 SUPPLEMENTAL MEMORANDUM OF COSTS	RODRIGUEZ	002
4/04/13 REQUEST FOR REVIEW	ANTONUCCI	002

PGM ID-DSPDOC
DATE 6/06/13

ELKO COUNTY COURT SYSTEM
CASE#: EC DC CV-C -12-0000175

PAGE 5
TIME 9:56

DISPOSITION: RESPONSE/ORDER ORD GRANTING MOTION
MOTION FOR CONFIRMATION & JUDGMENT ON AN ARBITRATION
AWARD AND AWARD OF ATTORNEY FEES AND COSTS

4/04/13 FILE CHECKED OUT BY: DC 2 for review/signature	ANTONUCCI000
5/15/13 FILE CHECKED IN BY: VOL 4 ONLY	RODRIGUEZ000
5/15/13 ORD GRANTING MOTION FOR CONFIRMATION AND JUDGMENT ON AN ARBITRATION AWARD AND AWARD OF ATTORNEY FEES AND COSTS (4 PGS)	RODRIGUEZ000
5/20/13 REQUEST FOR AMENDED ORDER GRANTING DEF MOTION FOR CONFIRMATION AND JUDGEMENT ON A ARBITRATION AWARD OF ATTORNEYS FEES AND COSTS	PLUNKETT 002
5/29/13 OPPOSITION TO DF'S RQST FOR AMENDED ORDER	RODRIGUEZ001
6/03/13 NOTICE OF APPEAL-CV NOTICE OF APPEAL-CIVIL W/APPEAL BOND	RODRIGUEZ001
6/03/13 FILING FEE PAID	RODRIGUEZ001
6/03/13 CASE APPEAL STATEMNT	RODRIGUEZ001
6/03/13 BOND ON APPEAL COST BOND FILED BY GERBER'S LAW OFFICE GERBER'S LAW OFFICE CHECK #2904 IN THE AMOUNT OF \$500.00	RODRIGUEZ001
6/03/13 NOTICE OF POSTING SUPERSEDEAS BOND	RODRIGUEZ001
6/03/13 RECEIPT(S) OF SUPERSEDEAS BOND CK # 1128 IN THE AMOUNT OF \$55,440.14 REC'D FROM ARTEMIS EXPLORATION CO THROUGH GERBER'S LAW OFFICE	RODRIGUEZ001
6/05/13 FILE CHECKED OUT BY: DC 2 for review/signature	ANTONUCCI000
6/05/13 REPLY TO OPPOSITION	PLUNKETT 002
6/05/13 REQUEST FOR REVIEW REQUEST FOR AMENDED ORDER GRANTING DEF MOTION FOR CONFIRMATION AND JUDGEMENT ON AN ARBITRATION AWARD OF ATTORNEY'S FEES AND COSTS (PLEADING PUT IN DC2 BOX)	PLUNKETT 002

PGM ID-DSPDOC
DATE 6/06/13

ELKO COUNTY COURT SYSTEM
CASE#: EC DC CV-C -12-0000175

PAGE 6
TIME 9:56

6/06/13 FILE CHECKED IN BY:	PECK	000
6/06/13 LETTER FROM KERN & ASSOCIATES LTD	PECK	000
6/06/13 JUDGMENT ON AN ARBITRATION AWARD AND AWARD OF ATTORNEY'S FEES AND COSTS	PECK	000

PEOPLE INVOLVED

ENTERED	PERSON	PERSON TYPE	STATUS	ENTRY PERSON
3/05/12	NO JUDGE ASSIGNED	JUD	INACTIVE	PECK
8/15/12	PORTER, NANCY	JUD	INACTIVE	ANTONUCCI
4/16/12	GERBER, TRAVIS	ATT	INACTIVE	PECK

PAYMENTS

DATE	TYPE	RECPT	COMMENT	AMOUNT	CODE	ENTRY PER
3/02/12	CHECK	261935	NEW CASE	275.00	004	PECK
			POSTED BY: GERBER, TRAVIS			
4/30/12	CHECK	262722	MOT SUMMARY JUDGEMENT	200.00	022	ANTONUCCI
			POSTED BY: GERBER, TRAVIS W			
6/03/13	CHECK	267253	ARTEMIS'S NTC OF APPEA	24.00	013	RODRIGUEZ
			POSTED BY: GERBER LAW OFFICES, LLP			
4/02/12	CHECK	262312	ANSWER	198.00	010	PECK
			POSTED BY: KERN, GAYLA			
5/30/12	CREDIT C	263187		200.00	022	FLEURY
			POSTED BY: KERN, GAYLE			

1 CASE NO. CV-C-12-175

2 DEPT. NO. 1

3 Affirmation Pursuant to NRS 239B.030

4 SSN Does Appear X

5 SSN Does Not Appear

FILED

2013 MAY 29 PM 3:22

ELKO CO DISTRICT COURT

CLERK DEPUTY Bn

6 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF ELKO

8
9 ARTEMIS EXPLORATION COMPANY,
10 a Nevada Corporation,

11 Plaintiff,

12 vs.

13 RUBY LAKE ESTATES HOMEOWNER'S
ASSOCIATION AND DOES I-X,

14 Defendants.

15
16 RUBY LAKE ESTATES
HOMEOWNER'S ASSOCIATION,

17 Counterclaimant,

18 vs.

19 ARTEMIS EXPLORATION COMPANY,
20 a Nevada Corporation,

21 Counterdefendant.

OPPOSITION TO DEFENDANT'S
REQUEST FOR AMENDED ORDER
GRANTING DEFENDANT'S MOTION
FOR CONFIRMATION AND
JUDGMENT ON AN ARBITRATION
AWARD AND AWARD OF
ATTORNEY'S FEES AND COSTS

22
23 COMES NOW, Plaintiff, ARTEMIS EXPLORATION COMPANY, by and through its
24 attorney of record, TRAVIS W. GERBER, ESQ., of GERBER LAW OFFICES, LLP, and
25 presents its Opposition to Defendant's Request for Amended Order Granting Defendant's Motion
26 for Confirmation and Judgment on an Arbitration Award of Attorney's Fees and Costs as follows:

27 ///

28 ///

GERBER LAW OFFICES, LLP

491 4th Street

Elko, Nevada 89801

1 **I. PROCEDURAL POSTURE**

2 This matter was submitted for non-binding arbitration through the Nevada Real Estate
3 Division pursuant to NRS 38.300 - NRS 38.360. An Arbitration Award was granted in
4 RLEHOA's favor denying ARTEMIS's claims for relief on February 7, 2012, and granting RUBY
5 LAKE ESTATES HOMEOWNER'S ASSOCIATION (RLEHOA) an award of attorney's fees
6 and costs in the amount of \$26,810.67.

7 ARTEMIS filed the instant case for judicial review pursuant to NRS 38.330(5).

8 Both parties submitted Motions for Summary Judgment in the instant action. The issues
9 of law were decided without a trial in the matter. The Court entered its Order Granting
10 Defendant's Motion for Summary Judgment on February 14, 2013, in favor of RLEHOA.
11 Pursuant to the procedure provided for in NRS 38.239, RLEHOA then filed its motion to confirm
12 the arbitration award under NRS 38.239 and requested additional attorney's fees and costs
13 incurred in the instant action under NRS 38.243, which provides:

14 NRS 38.243 Judgment on award; attorney's fees and litigation expenses.

15 1. Upon granting an order confirming, vacating without directing a rehearing,
16 modifying or correcting an award, the court shall enter a judgment in conformity
17 therewith. The judgment may be recorded, docketed and enforced as any other
judgment in a civil action.

18 2. A court may allow reasonable costs of the motion and subsequent judicial
proceedings.

19 3. On application of a prevailing party to a contested judicial proceeding under
20 NRS 38.239, 38.241 or 38.242, the court may add reasonable attorney's fees and
21 other reasonable expenses of litigation incurred in a judicial proceeding after the
award is made to a judgment confirming, vacating without directing a rehearing,
modifying or correcting an award.

22 The Court then determined that NRS 38.243 was the specific statute that governs the
23 confirmation of an arbitration award and the granting of attorneys fees and costs in a judicial
24 proceeding after an arbitration award is made. Furthermore, the Court granted RLEHOA's
25 Motion in the Order Granting Defendant's Motion for Confirmation and Judgment on an
26 Arbitration Award and Award of Attorney's Fees and Costs. The Court's Order granted
27 reasonable attorney's fees of \$31,812.00 and costs of \$1,536.14 under an analysis of the *Brunzell*
28 *v. Golden Gate National Bank*, 85 Nev. 345, 349 (1969) factors. Thus, the Court granted a total

1 fee award of \$53,904.00 attorney's fees and costs of \$1,536.14 to RLEHOA. RLEHOA has now
2 filed its Request for Amended Order Granting Defendant's Motion for Confirmation and
3 Judgment on an Arbitration Award and Award of Attorney's Fees and Costs requesting an
4 additional award of attorney's fees in the amount of \$22,092, claiming that an "error was
5 included" and "[t]he Association mistakenly failed to add the fees and costs together from this
6 action." (RLEHOA's Request for Amended Order 1.)

7 RLEHOA presents the instant motion for amended order in the form of a "Request" for an
8 amended order, which is procedurally incorrect. NRCP 59(e) is entitled "Motion to Alter or
9 Amend a Judgment," and specifies that the proper pleading to request the amendment of a
10 judgment is by filing a motion. "A motion to alter or amend the judgment shall be filed no later
11 than 10 days after service of written notice of entry of the judgment." NRCP 59(e).

12
13 **II. AWARDING \$22,092.00 OR 69.5% MORE ATTORNEY'S FEES TO AN**
14 **EXISTING ATTORNEY'S FEES AWARD IS UNREASONABLE**

15 Adding \$22,092.00 or 69.5% additional attorney's fees to an existing attorney's fees award
16 of \$31,812.00, for the same "character" of "work performed" by the same "attorney" with the
17 same "result" is unreasonable. *Brunzell*, 85 Nev. at 349 (1969). The Court has determined that an
18 attorney's fee award of \$31,812.00 and \$1,536.14 costs meets the *Brunzell* reasonableness factors.
19 After the Court has analyzed the *Brunzell* factors and granted RLEHOA "reasonable" attorney's
20 fees, RLEHOA requests that the Court reconsider its award and increase attorney's fees by an
21 exorbitant 69.5%. This request clearly is unreasonable when the Court has already analyzed the
22 party's attorney's work product and determined a reasonable award.

23 After a Court has determined that attorney's fees and costs are to be allowed, the Court
24 must then determine the reasonableness of the fees and costs to be awarded. 1 Nevada Civil
25 Practice Manual, § 25.11[4]. This Court has stated that the "factors established in *Brunzell* . . ."
26 are the appropriate factors to determine "reasonableness of attorney's fees." (Order Granting
27 Defendant's Motion for Confirmation and Judgment 2.) The *Brunzell* factors include:
28

1 (1) the qualities of the advocate: his ability, his training, education, experience, professional
2 standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its
3 importance, time and skill required, the responsibility imposed and the prominence and
4 character of the parties where they affect the importance of the litigation; (3) the work
5 actually performed by the lawyer: the skill, time and attention given to the work; (4) the
6 result: whether the attorney was successful and what benefits were derived.

7 *Brunzell*, 85 Nev. at 349.

8 This Court has applied these factors to the case at hand and awarded attorney's fees in the
9 specific sum of \$31,812.00. The Court determined that based on counsel's expertise, the work
10 performed, and the disposition of the matter, an award of additional attorney's fees in the amount
11 of \$31,812.00 was reasonable and "satisfie[d] the *Brunzell* reasonableness factors." (Order
12 Granting Defendant's Motion for Confirmation and Judgment 2.)

13 Now, RLEHOA seeks to increase the total attorney's fees award of \$53,904.00 by an
14 additional \$22,092.00 without providing any further facts for the Court to determine that this
15 award is "reasonable" under the *Brunzell* reasonableness factors. Statute and case law are clear
16 that attorney's fees must be analyzed for reasonableness and the *Brunzell* factors provide a
17 framework to determine reasonableness. Thus, even RLEHOA's request for additional attorney's
18 fees must be analyzed for reasonableness, and more specifically under the *Brunzell* factors.

19 Yet, as stated, this Court has already analyzed RLEHOA's attorney, the work product, and
20 the disposition of the case, and determined what is a reasonable award under the circumstances.
21 That award is \$31,812.00 attorney's fees and \$1,536.14 costs. Increasing the award by an
22 additional \$22,092.00 in attorney's fees or by 69.5% would be an unreasonable increase given the
23 prior consideration and analysis of the Court. In other words, no fair and reasonable analysis
24 could be said to have been undertaken when the exact same facts have been analyzed under the
25 same test and increased an award already determined to be reasonable by an additional \$22,092.00
26 or 69.5% increase.

27 **III. THE ADDITIONAL ATTORNEYS FEES CLAIMED BY THE ASSOCIATION'S**
28 **COUNSEL ARE EXORBITANT AND UNREASONABLE.**

The additional attorneys fees and costs claimed by the Association's counsel are exorbitant
and unreasonable. The Motion for Confirmation and Judgment on an Arbitration Award and

1 Award of Attorney's Fees and Costs appeared to request attorneys fees in the amount of
2 \$51,288.00. The Association's counsel now claims error in failing to request a much higher
3 number of \$82,250.81.

4 The unreasonableness of this higher figure of \$82,250.81 is apparent when the awards
5 claimed by RLEHOA in the Arbitration are compared to the amounts claimed by RLEHOA in the
6 District Court action. Defendant claimed \$26,810.67 in attorneys fees and costs in the
7 Arbitration. The Arbitration included substantially all of the discovery in this case. In the
8 Arbitration, the parties conducted discovery under the Nevada Rules of Civil Procedure. During
9 Arbitration, the Association's counsel conducted full discovery, depositions, served
10 interrogatories, requests for admissions, requests for production of documents, prepared full
11 briefings, prepared witnesses, title documents, exhibits, and participated in an arbitration hearing.
12 The Arbitration was commenced on May 6, 2011, and concluded at an arbitration hearing on
13 December 14, 2011, spanning a total of 7 months.

14 By comparison, the District Court action was concerned only with two opposing Motions
15 for Summary Judgment related to the same legal issues as were litigated in the Arbitration. No
16 depositions were taken and no discovery was conducted, other than the exchange of few
17 documents. The District Court action was commenced on March 2, 2012, and was submitted for
18 decision at a hearing on the two opposing Motions for Summary Judgment on October 10, 2012,
19 spanning the same period of 7 months with little or no discovery, as compared to the Arbitration.

20 However, despite the fact that the District Court action was based on the same facts and
21 discovery, substantially all of which was conducted in the Arbitration, the Association's counsel
22 claims *more than double* the amount of fees in the District Court action than were claimed in the
23 Arbitration. Attorneys fees in the amount of \$22,092 were claimed in the Arbitration, compared
24 to the \$51,288 now being claimed in the District Court action – *a 232% increase*. This doubling
25 of fees is not reasonable when the District Court action was limited to two opposing Motions for
26 Summary Judgment, as compared to the more lengthy and time-consuming Arbitration which
27 included full discovery, depositions, interrogatories, requests for admissions, requests for
28 production of documents, full briefings, witness preparation, and an arbitration hearing. The

1 Motions for Summary Judgment in the District Court action were based on the same facts and
2 issues presented in the Arbitration and did not justify a doubling of time and attorney's fees.

3 By way of comparison, Artemis incurred \$17,538.50 in attorney's fees during the
4 Arbitration and \$18,267.50 in attorney's fees in the District Court action through February 14,
5 2013, which figures are in harmony with the actual work required in each phase of this litigation.

6 Furthermore, the billing statements presented by Defendant's counsel show irregularities
7 in the way time was computed and billed. For example, on May 23, 2012, Defendant's counsel
8 asserts that three separate time slips were imputed to billing that day. Defendant's counsel billed
9 for an 8 hour day (8 hours at \$240/hour = \$1,680), then for a second 8.5 hour day (8.5 hours at
10 \$240/hour = \$2,040). On the following day, the same irregularity is noted with Defendant's
11 counsel billing for a 6 hour day (6 hours at \$240/hour = \$1,440), then for a second 8.6 hour day
12 (8.6 hours at \$240 = \$2,064).

13 From the dates of May 14, 2012 to May 31, 2012, Defendant's counsel claims \$17,512.00,
14 which is unreasonable. The invoices and affidavit submitted to this Court by Defendant's counsel
15 do not state whether these were the invoices submitted to Ruby Lake Estates Homeowner's
16 Association, or whether the bills were paid. The Affidavit of counsel only states that, "A
17 compilation of all fees and costs is attached as Exhibit 1." The documentation submitted to the
18 Court is a list of billing entries that, without further documentation, could be arbitrarily increased
19 to claim more than was actually billed or paid by the Association. Without actual billing
20 documentation, Defendant can claim any amount and amend its invoices to an amount different
21 than was billed or paid by the Association. The amounts claimed are exorbitant and unreasonable.

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1 For the foregoing reasons, the Court should deny RLEHOA's "Request" for any increase
2 of attorneys fees and costs to RLEHOA. Increasing the award by an additional \$22,092.00 in
3 attorney's fees or by 69.5% would be an unreasonable increase given the prior consideration and
4 analysis of the Court.

5 DATED this 28th day of May, 2013.

6 **GERBER LAW OFFICES, LLP**

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8 BY:

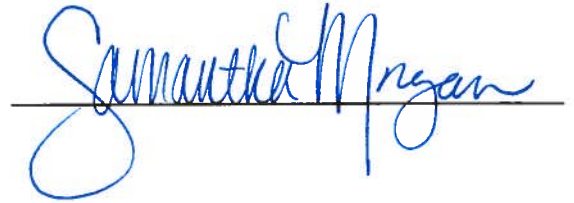

9 TRAVIS W. GERBER, ESQ.
10 State Bar No. 8083
11 491 4th Street
12 Elko, Nevada 89801
13 (775) 738-9258
14 ATTORNEYS FOR PLAINTIFF
15 ARTEMIS EXPLORATION
16 COMPANY
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1 **CERTIFICATE OF SERVICE BY MAIL**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of GERBER LAW
3 OFFICES, LLP, and that on this date I deposited for mailing, at Elko, Nevada, by regular U.S.
4 mail, a true copy of the foregoing document addressed to the following:

5 Gayle A. Kern
6 Kern & Associates, Ltd
7 5421 Kietzke Lane, Suite 200
8 Reno, Nevada 89511

9 DATED: May 29th, 2013.

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FILED

2013 MAY 20 AM 10:15

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY RP

IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF ELKO

ARTEMIS EXPLORATION COMPANY, a
Nevada Corporation,

Plaintiffs,

vs.

RUBY LAKE ESTATES HOMEOWNER'S
ASSOCIATION AND DOES I-X,

Defendants.

RUBY LAKE ESTATES HOMEOWNER'S
ASSOCIATION,

Counterclaimant,

vs.

ARTEMIS EXPLORATION COMPANY, a
Nevada Corporation,

Counterdefendant.

**REQUEST FOR AMENDED ORDER
GRANTING DEFENDANT'S MOTION FOR
CONFIRMATION AND JUDGMENT ON AN
ARBITRATION AWARD AND AWARD OF
ATTORNEY'S FEES AND COSTS**

Ruby Lake Estates Homeowner's Association ("Ruby Lake"), Defendant above-named, by and through its counsel of record, Gayle A. Kern, Esq., of Kern & Associates, Ltd., requests that the Court enter an Amended Order Granting Defendant's Motion for Confirmation and Judgment on an Arbitration Award and Award of Attorney's Fees and Costs ("Order"). It appears an error was included and the court intended to confirm the Arbitration Award and award of fees in the amount of \$26,810.67, and to award all fees and costs incurred in this district court action in the amount of \$55,440.14.¹

///

¹ The Association mistakenly failed to add the fees and costs together from this action.

1 In Paragraph 1 (Confirmation of Arbitration Award) of the Order, the Court states:

2 "...the Court hereby affirms the arbitrator's award of costs and fees in the total
3 amount of \$26,810.67."

4 In Paragraph 2 (Additional Attorney's Fees and Costs) of the Order, the Court awards the
5 additional attorney's fees and costs requested by Ruby Lake, but mis-states the amount:

6 "...awards the HOA additional attorney's fees in the amount of \$31,812.00 and costs
7 in the amount of \$1,536.14."

8 In Paragraph 3 (Order) of the Order, the Court states:

9 "For all of the foregoing reasons, the Court affirms the award of the arbitrator and
10 awards the HOA total attorney's fees in the amount of \$53,904.00 and additional
11 costs in the amount of \$1,536.14."

12 The relief requested in Ruby Lake's Reply to Plaintiff's Opposition to Motion for
13 Confirmation and Judgment on an Arbitration Award [NRS 38.239 and NRS 38.330(5)] and Award
14 of Attorney's Fees and Costs stated:

15 **"C. Conclusion and Relief Requested.**

16 The Association seeks judgment as confirmation of the Arbitration Award
17 and Order of retired Judge Leonard Gang issued in NRED Control 11-82, including
18 confirmation of the **award of attorney's fees and costs incurred in the underlying**
19 **NRED action in the amount of \$26,810.67.**

20 **In addition, the Association seeks an award of attorneys fees and costs**
21 **incurred in this District Court action** in the amount of \$53,904.00. Since filing its
22 Motion for Confirmation and Judgment on Arbitration Award [NRS 38.239 and NRS
23 38.330(5)] and Award of Attorney's Fees and Costs, the Association has spent
24 additional time and incurred additional costs in preparing this Reply to Plaintiff's
25 Opposition. The Supplemental Affidavit of Gayle A. Kern in support of this Motion
26 is filed contemporaneously herewith and is incorporated by reference."

27 It was clearly the Court's intent to affirm and award the combined attorney's fees and costs
28 from the Arbitration Award in the amount of \$26,810.67, and the attorney's fees (\$53,904.00) and
costs (\$1,536.14) incurred in defending this action.

Ruby Lake respectfully requests that the Court enter an Amended Order Granting Defendant's
Motion for Confirmation and Judgment on an Arbitration Award and Award of Attorney's Fees and
Costs to correct the total attorney's fees and costs awarded to be \$82,250.81. A proposed form of
Judgment will be submitted under separate cover reflecting the Court's findings regarding the
Arbitration Award and the fees and costs incurred in this action.

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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of Kern & Associates,
3 Ltd., and that on this day I served the foregoing document described as follows:

4 **REQUEST FOR AMENDED ORDER GRANTING DEFENDANT'S MOTION FOR**
5 **CONFIRMATION AND JUDGMENT ON AN ARBITRATION AWARD AND AWARD**
6 **OF ATTORNEY'S FEES AND COSTS**

on the parties set forth below, at the addresses listed below by:

7 X Placing an original or true copy thereof in a sealed envelope place for collection and
8 mailing in the United States Mail, at Reno, Nevada, first class mail, postage paid,
following ordinary business practices, addressed to:

9 Via facsimile transmission

10 Via e-mail.

11 Personal delivery, upon:

12 United Parcel Service, Next Day Air, addressed to:

13
14 Travis Gerber, Esq.
Gerber Law Offices, LLP
15 491 4th Street
Elko, NV 89801

16 DATED this 17th day of May, 2013.

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19 TERESA A. GEARHART
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FILED

2013 MAY 15 PM 4:03

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY *fr*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

ARTEMIS EXPLORATION COMPANY,
a Nevada Corporation,

Plaintiff,

v.

RUBY LAKE ESTATES HOMEOWNER'S
ASSOCIATION AND DOES I-X,

Defendants.

**ORDER GRANTING DEFENDANT'S
MOTION FOR CONFIRMATION AND
JUDGMENT ON AN ARBITRATION
AWARD AND AWARD OF ATTORNEY'S
FEES AND COSTS**

On February 12, 2013, the Court entered an Order Denying Plaintiff's Motion for Summary Judgment.

On February 14, 2013, the Court entered an Order Granting Defendant's Motion for Summary Judgment.

On March 1, 2013, Defendant Ruby Lake Estates Homeowner's Association (HOA) filed a Motion for Confirmation and Judgment on an Arbitration Award [NRS 38.239 and NRS 38.330(5)] and Award of Attorney's Fees and Costs, a supporting Affidavit, and a Memorandum of Costs.

On March 15, 2013, Plaintiff Artemis Exploration Company (Artemis) filed an Opposition.

On March 29, 2013, the HOA filed a Reply and a Supplemental Affidavit.

On April 4, 2013, the HOA filed a Request for Review.

1. Confirmation of Arbitration Award

NRS 38.243 provides that upon granting an order confirming an arbitration award, "the court shall enter judgment in conformity therewith." NRS 38.243(2) additionally provides that "[a] court may

1 allow reasonable costs of the motion and subsequent judicial proceedings.” The arbitrator in this case,
2 Leonard Gang, entered an order on February 8, 2012, awarding the HOA attorney’s fees in the amount of
3 \$22,092.00 and costs in the amount of \$4,718.67. Because the HOA was the prevailing party at both the
4 arbitration level and before this Court, the Court hereby affirms the arbitrator’s award of costs and fees
5 in the total amount of \$26,810.67.

6 **2. Additional Attorney’s Fees and Costs**

7 NRS 38.243(3) provides:

8 On application of a prevailing party to a contested judicial proceeding under NRS 38.239,
9 38.241 or 38.242, the court may add reasonable attorney’s fees and other reasonable
10 expenses of litigation incurred in a judicial proceeding after the award is made to a
judgment confirming, vacating without directing a rehearing, modifying or correcting an
award.

11 NRS 38.239 allows a party to move for an order confirming an arbitration award after a party has
12 received notice of an arbitration award. Here, the Court entered summary judgment in the HOA’s favor,
13 thereby arriving at the same ultimate conclusion as the arbitrator. Although the Court’s analysis differed
14 from the arbitrator’s, the Court finds that it confirmed the arbitrator’s award for purposes of the statute.
15 Therefore, the Court “may add reasonable attorney’s fees and other reasonable expenses of litigation” to
16 the arbitration award. NRS 38.243(3).

17 In determining the reasonableness of attorney’s fees, the Court looks to the factors established in
18 Brunzell v. Golden Gate National Bank, 85 Nev. 345, 349 (1969). The Brunzell court held that district
19 courts should consider four factors in determining the reasonableness of attorney’s fees: 1. the qualities
20 of the attorney, 2. the character of the work to be done, 3. the actual work performed by the attorney, and
21 4. the case’s result. Haley v. District Court, 128 Nev. Adv. Op. 16 (2012) *citing* Brunzell, 85 Nev. at
22 349.

23 Here, the HOA’s attorney, Gayle Kern, submitted an affidavit in support of the request for
24 attorney’s fees outlining her professional accomplishments and extensive expertise in the area of
25 common interest communities. Given Ms. Kern’s experience and having reviewed the pleadings filed in
26 this case, the Court finds that Ms. Kern is highly qualified in this area of the law. The work to be
27 performed in this case consisted of defending the HOA against a claim through several stages of
28 proceedings. The actual work performed by Ms. Kern is outlined in her affidavit and the Court adopts

1 that affidavit as a record of her work in this case. Finally, the Court notes that this case resolved in the
2 HOA's favor. Therefore, the Court finds that Ms. Kern's request for attorney's fees satisfies the
3 Brunzell reasonableness factors and awards the HOA additional attorney's fees in the amount of
4 \$31,812.00 and costs in the amount of \$1,536.14.

5 **3. Order**

6 For all of the foregoing reasons, the Court affirms the award of the arbitrator and awards the
7 HOA total attorney's fees in the amount of \$53,904.00 and additional costs in the amount of \$1,536.14.

8
9 DATED this 14 day of May, 2013.

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12 The Honorable Alvin R. Kacin
13 District Judge/Department 2
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1 CERTIFICATE OF MAILING

2 Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of Alvin R. Kacin, District
3 Judge, Fourth Judicial District Court, Department 2, and that on this 15 day of May, 2013, served by
the following method of service:

4 (X) Regular US Mail () Overnight UPS
5 () Certified US Mail () Overnight Federal Express
6 () Registered US Mail () Fax to # _____
() Overnight US Mail () Hand Delivery
() Personal Service (X) Box in Clerk's Office

7 a true copy of the foregoing document addressed to:

8 Travis Gerber, Esq.
9 491 Fourth Street
10 Elko, Nevada 89801
[Box in Clerk's Office]

11 Gayle A. Kern, Esq.
12 5421 Kietzke Lane, Suite 200
Reno, Nevada 89511
[Regular US Mail]

13 
14 Kevin Naughton

**IN THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA**

RECORD OF COURT PROCEEDINGS

Present - Honorable ALVIN R KACIN, District Judge,
and Officers of the Court.

ARTEMIS EXPLORATION COMPANY,

Plaintiff/Counter Defendant,
VS.

Date: 10/10/12
Case No.: CV-C-12-175
Dept: 2

RUBY LAKE ESTATES HOMEOWNER'S
ASSOCIATION,

Defendant/Counter Claimant.

Elizabeth Essington, president, present on behalf of Plaintiff and represented by
Travis Gerber, Esq.
Lee Perks and Aaron Yohey, directors, present on behalf of Defendant and represented by
Gayle A. Kern, Esq. and Robert J. Wines, Esq.
Court Clerk, Barbara Cook, present.
Hearing video recorded.

HEARING ON MOTION FOR SUMMARY JUDGMENT

Court convened at 9:14 a.m.

The Court noted the presence of the parties.

This was the date and time set for a hearing on a Motion for Summary Judgment filed by the Plaintiff on April 30, 2012, and a Motion for Summary Judgment filed by the Defendant on May 30, 2012.

The Court noted Artemis filed its motion first, and directed Mr. Gerber to proceed.

Mr. Gerber advised that he would be calling Elizabeth Essington, president of Artemis, as his witness. He made an opening statement.

Ms. Kern introduced Lee Perks and Aaron Yohey, who were directors of the homeowners association, and Harold and Mary Wyatt and Teri Harmon, who were association members. She made an opening statement.

Mr. Gerber clarified the issues.

The parties discussed whether there would need to be witness testimony, and how they wished to proceed.

The Court directed Mr. Gerber to proceed.

Mr. Gerber presented argument.

Ms. Kern presented argument.

Ms. Kern referred to an enlarged Plat Map that she asked to have introduced as an exhibit, and continued argument.

The parties discussed the exhibit, and concluded that since Mr. Gerber prepared it, it would be marked as Plaintiff's Exhibit 1.

Offered. No objection. Admitted.

Mr. Gerber referred to the Plaintiff's Exhibit 1 Plat Map, and gave rebuttal argument.

Ms. Kern gave additional argument.

Mr. Gerber addressed the arbitration.

Mr. Wines advised that he had an emergency guardianship hearing in Department 1, and had to leave.

Mr. Wines was excused.

Mr. Gerber gave additional argument.

The Court advised that it would take this matter under consideration. However, due to the court calendar and judicial college, it would probably not be able to issue a decision before the end of the year.

The parties had nothing further.

Court adjourned at 10:26 a.m.

PGM ID-EXEXIPS
DATE 6/06/2013

ELKO COUNTY COURT SYSTEM
EXHIBIT DATA FOR:

PAGE 1

ARTEMIS EXPLORATION COMP CVC 120000175-001

EXHIBIT #	EXHIBIT DESCRIPTION	LOCATE	LOGGED	BY	DISP
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1-MOT SUM JUDGT	PLAT MAP	ENV V	10/10/12	BC	E

Case No. CV-C-12-175

Dept. 2

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA

ARTEMIS EXPLORATION COMPANY,
Appellant,

CLERK'S CERTIFICATION

vs.

RUBY LAKE ESTATES HOMEOWNERS,
Respondent.

I, CAROL S. FOSMO, the duly elected, acting and qualified County Clerk and Ex-Officio Clerk of the District Court of the Fourth Judicial District of the State of Nevada, in and for the County of Elko, do hereby certify that the annexed are true, full and correct copies of certain documents in Civil Appeal Action No. CV-C-12-175, Department 2, ARTEMIS EXPLORATION COMPANY, Appellant, vs. RUBY LAKE ESTATES HOMEOWNERS, Respondent, as appears on file and of record in my office.

WITNESS My Hand and Seal of said Court on June 6, 2013.

CAROL S. FOSMO, ELKO COUNTY CLERK

By


Kelly J. Antonucci, Deputy Clerk

CERTIFICATE OF SERVICE

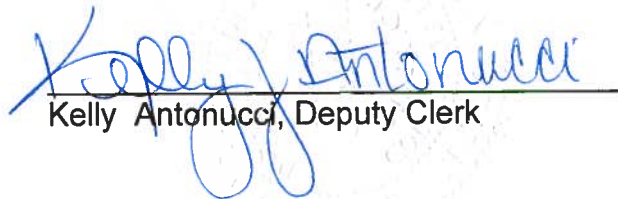
I hereby certify that I caused to be mailed a certified copy of the annexed documents in the above-entitled action, as appears on file and of record in this Court, by placing said documents in the United States mail, postage prepaid, addressed as follows:

Catherine Cortez Masto
Attorney General
100 North Carson Street
Carson City Nv 89701

Gayle A Kern, Esq
Kern & Associates, LTD
5421 Kietzke Lane, Ste 200
Reno NV 89511
(Attorney for the Respondent)

Travis W Gerber, Esq
(placed in box)

DATED this ____ day of June 6, 2013.



Kelly Antonucci, Deputy Clerk