

JUL 17 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Maccagnolo*
DEPUTY CLERK

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARTEMIS EXPLORATION
COMPANY, a Nevada corporation,
Appellant

Supreme Court No. 63338
District Court Case No. CV-C-12-175

vs.
RUBY LAKE ESTATES
HOMEOWNER'S ASSOCIATION,
Respondent

FIRST SUPPLEMENT TO DOCKETING STATEMENT

ARTEMIS EXPLORATION COMPANY, a Nevada corporation, by and through its undersigned counsel, TRAVIS W. GERBER, ESQ., of GERBER LAW OFFICES, LLP, makes the following supplement to Appellant's Docketing Statement filed herein on June 25, 2013, as follows:

On July 10, 2013, a Notice of Entry of (1) Order Granting Defendant's Motion for Confirmation of Judgment on an Arbitration Award and Award of Attorney's Fees and Costs; and 2) Judgment on an Arbitration Award and Award of Attorney's fees and Costs was served in district court action.

Therefore, Appellant amends and supplements paragraphs 16 and 17(c) of Appellant's Docketing Statement filed herein on June 25, 2013, as follows:

16. Date written notice of entry of judgment or order was served July 10, 2013

Was service by:
 Delivery
 Mail/electronic/fax

17. (c) Date written notice of entry of order resolving tolling motion was served July 10, 2013

Was service by:

~~Delivery~~
RECEIVED
Mail
JUL 17 2013
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

13-20982

1 Attached hereto as Exhibit 11 is a copy of Notice of Entry of (1) Order
2 Granting Defendant's Motion for Confirmation of Judgment on an Arbitration Award
3 and Award of Attorney's Fees and Costs; and (2) Judgment on an Arbitration Award
4 and Award of Attorney's Fees and Costs to supplement Appellant's Docketing
5 Statement filed herein on June 25, 2013.

6 DATED this 12th day of July, 2013.

7 GERBER LAW OFFICES, LLP

8
9 By: 

10 TRAVIS W. GERBER, ESQ.
11 Nevada State Bar No. 8083
12 491 4th Street
13 Elko, Nevada 89801
14 (775) 738-9258
15 ATTORNEY FOR
16 APPELLANT
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRAP 25(c), I hereby certify that I am an employee of GERBER
3 LAW OFFICES, LLP, and that on the 15th day of July, 2013, I deposited for mailing,
4 postage prepaid, at Elko, Nevada, a true and correct copy of the foregoing *First*
5 *Supplement to Docketing Statement* addressed as follows:

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

10 
11 SAMANTHA MORGAN

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INDEX OF EXHIBITS

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Exhibit	Description	Pages
11	Notice of Entry of (1) Order Granting Defendant’s Motion for Confirmation of Judgment on an Arbitration Award and Award of Attorney’s Fees and Costs; and (2) Judgment on an Arbitration Award and Award of Attorney’s Fees and Costs	16



1 CASE NO. CV-C-12-175

2 DEPT. NO. I

3

4

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

6

IN AND FOR THE COUNTY OF ELKO

7

ARTEMIS EXPLORATION COMPANY, a
8 Nevada Corporation,

9

Plaintiffs,

10

vs.

**NOTICE OF ENTRY OF (1) ORDER
GRANTING DEFENDANT'S MOTION FOR
CONFIRMATION OF JUDGMENT ON AN
ARBITRATION AWARD AND AWARD OF
ATTORNEY'S FEES AND COSTS; AND (2)
JUDGMENT ON AN ARBITRATION
AWARD AND AWARD OF ATTORNEY'S
FEES AND COSTS**

11

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

12

Defendants.

13

RUBY LAKE ESTATES HOMEOWNER'S
ASSOCIATION,

14

Counterclaimant,

15

vs.

16

ARTEMIS EXPLORATION COMPANY, a
Nevada Corporation,

17

Counterdefendant.

18

19

20

PLEASE TAKE NOTICE that on May 15, 2013, an Order Granting Defendant's Motion for
21 Confirmation and Judgment on an Arbitration Award and Award of Attorney's Fees and Costs
22 ("Order") was entered by the Court. A copy of the Order is attached hereto as Exhibit "1".

23

On June 6, 2013, the Order was corrected by the Court, as to the total award of fees, and a
24 Judgment on an Arbitration Award and Award of Attorney's Fees and Costs was entered by the
25 Court. A copy of the Judgment on an Arbitration Award and Award of Attorney's Fees and Costs
26 is attached hereto as Exhibit "2".

27

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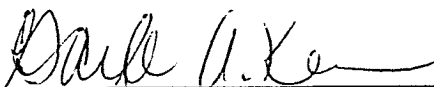
AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document filed in the above-entitled case does not contain the social security number of any person.

DATED this 9th day of July, 2013.

KERN & ASSOCIATES, LTD.



GAYLE A. KERN, ESQ.
NEVADA BAR #1620
5421 Kietzke Lane, Suite 200
RENO, NEVADA 89511
Telephone: 775-324-5930
Fax: 775-324-6173
Email: gaylekern@kernltd.com
Attorneys for Ruby Lake Estates

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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 NOTICE OF ENTRY OF (1) ORDER GRANTING DEFENDANT'S MOTION FOR
5 CONFIRMATION OF JUDGMENT ON AN ARBITRATION AWARD AND AWARD OF
6 ATTORNEY'S FEES AND COSTS; AND (2) JUDGMENT ON AN ARBITRATION
7 AWARD AND AWARD OF ATTORNEY'S FEES AND COSTS

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

- 9 Placing an original or true copy thereof in a sealed envelope place for collection and
10 mailing in the United States Mail, at Reno, Nevada, first class mail, postage paid,
11 following ordinary business practices, addressed to:
- 12 Via facsimile transmission
- 13 Via e-mail.
- 14 Personal delivery, upon:
- 15 United Parcel Service, Next Day Air, addressed to:

16 Travis Gerber, Esq.
17 Gerber Law Offices, LLP
18 491 4th Street
19 Elko, NV 89801

20 DATED this 10th day of July, 2013.

21 
22 TERESA A. GEARHART

EXHIBIT "1"

EXHIBIT "1"

FILED

2013 MAY 15 PM 4:03

ELKO CO DISTRICT COURT *BL*

CLERK _____ DEPUTY _____

1 Case No. CV-C-12-175
2 Dept. No. 2

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

9 ARTEMIS EXPLORATION COMPANY,
10 a Nevada Corporation,

11 Plaintiff,

12 v.

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

15 Defendants.

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

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

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

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

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

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

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

26 **1. Confirmation of Arbitration Award**

27 NRS 38.243 provides that upon granting an order confirming an arbitration award, "the court
28 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.

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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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CERTIFICATE OF MAILING

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

- | | |
|---|---|
| <input checked="" type="checkbox"/> Regular US Mail | <input type="checkbox"/> Overnight UPS |
| <input type="checkbox"/> Certified US Mail | <input type="checkbox"/> Overnight Federal Express |
| <input type="checkbox"/> Registered US Mail | <input type="checkbox"/> Fax to # _____ |
| <input type="checkbox"/> Overnight US Mail | <input type="checkbox"/> Hand Delivery |
| <input type="checkbox"/> Personal Service | <input checked="" type="checkbox"/> Box in Clerk's Office |

a true copy of the foregoing document addressed to:

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

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

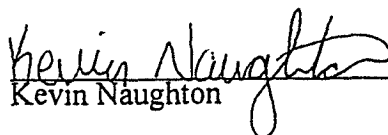

Kevin Naughton

EXHIBIT "2"

EXHIBIT "2"

1 CASE NO. CV-C-12-175

2 DEPT. NO. I

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5

IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6

IN AND FOR THE COUNTY OF ELKO

7

ARTEMIS EXPLORATION COMPANY, a
Nevada Corporation,

8

9

Plaintiffs,

10

vs.

**JUDGMENT ON AN ARBITRATION
AWARD AND AWARD OF ATTORNEY'S
FEES AND COSTS**

11

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

12

Defendants.

13

RUBY LAKE ESTATES HOMEOWNER'S
ASSOCIATION,

14

15

Counterclaimant,

16

vs.

17

ARTEMIS EXPLORATION COMPANY, a
Nevada Corporation,

18

19

Counterdefendant.

20

Upon reading the Motion for Confirmation and Judgment on an Arbitration Award [NRS
38.239 and NRS 38.330(5)], Plaintiff's Opposition, Defendant's Reply, the Supplemental Affidavit
of Gayle A. Kern in Support of Attorney's Fees and Costs, and the Court being fully informed in the
premises;

24

NOW THEREFORE:

25

IT IS ORDERED AND ADJUDGED that the Arbitration Award attached hereto as Exhibit

26

"1" is hereby confirmed, incorporated and adopted in its entirety.

27

IT IS THEREFORE ORDERED that Judgment is entered in favor of Ruby Lake

28

Homeowner's Association, and against Artemis Exploration Company, as follows:

FILED

2013 JUN -6 AM 8:03

ELKO CO DISTRICT COURT

CLERK BEADA

1 1. Ruby Lake Estates is a Common-Interest Community and is subject to NRS Chapter
2 116. It was lawfully formed and is a validly existing non-profit common interest association.

3 2. As to the NRED action, Ruby Lake Estates is entitled to an award of attorney's fees
4 in the amount of \$22,092.00 and costs in the amount of \$4,718.67 for a total of \$26,810.67.

5 3. As to this action, Ruby Lake Estates is entitled to an award of attorney's fees in the
6 amount of \$53,904.00 and costs in the amount of \$1,536.14 for a total of \$55,440.14.

7 4. The total amount of the Judgment is Eighty-two Thousand Two Hundred Fifty Dollars
8 and Eighty-one Cents (\$82,250.81), plus interest at the judgment rate from the date of this Judgment
9 until paid in full.

10 DATED this 29 day of May, 2013.

11 
12 _____
13 DISTRICT COURT JUDGE

14 AFFIRMATION

15 Pursuant to NRS 239B.030

16 The undersigned does hereby affirm that the preceding document filed in the above-entitled
17 case does not contain the social security number of any person.

18 Submitted by:

19 KERN & ASSOCIATES, LTD.

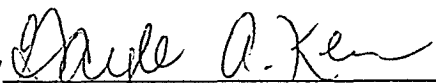
20 By 
21 _____
22 GAYLE A. KERN, ESQ.
23 Attorneys for Ruby Lake Estates
24 Homeowners Association
25
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28

EXHIBIT "1"

EXHIBIT "1"

LEONARD I. GANG
ATTORNEY AT LAW
ARTIBRATION * MEDIATION

P.O. Box 4394
Incline Village, Nevada 89450
Tel: (702) 525-2742
Fax: (775) 593-2765
Email: leonardgang@gmail.com

RECEIVED

FEB - 9 2012

GAYLE A. KERN, LTD

February 7, 2012

Travis W. Gerber, Esq.
491 Fourth Street
Elko, NV 89801

Gayle A. Kern, Esq.
5421 Kietzke Lane, #200
Reno, NV 89511

Re: Artemis Exploration Company v. Ruby Lake Estates Architectural Review
Committee & Ruby Lake Estates Homeowner's Association & Leroy Perks &
Valerie McIntyre & Dennis McIntyre & Michael Cecchi
ADR Control No. 11-82

The salient facts in this case are not in dispute. The legal effect of certain provisions of the Uniform Common-Interest Ownership Act (Chapter 116 of NRS) as applied to lots located in Ruby Lakes Estates, a subdivision located in Elko County, forms the essence of this complaint. Only the facts necessary to understanding this decision will be set forth.

FACTS

Artemis Exploration Company, the Complainant (hereinafter Artemis), owns two lots in Ruby Lakes Estates. The first was purchased in June 1994 and the second in March 2010. CC&Rs applicable to Ruby Lake Estates were recorded on October 25, 1989. The deeds clearly reflect that the property is subject to CC&Rs.

NRS 116.3101(1) entitled, "Organization of Unit-Owners Association" provides in part as follows:

"1. A unit-owners association must be organized no later than the date the first unit in the common-interest community is conveyed."

This act was passed by the Nevada legislature in 1991. The Ruby Lakes Homeowner's Association (hereinafter RLHOA or Association) filed its Articles of Incorporation on January 18, 2006. This action was taken after consulting counsel. The RLHOA assessed dues. Artemis paid dues for a period of time but now claims that the Association lacks the authority to "impose any fee, penalty, or assessment for any reason." It basis its argument on the fact that the Association was not formed prior to the conveyance of the first lot as required in NRS 116.3101(1) quoted above..

Artemis filed an "Intervention Affidavit" with the Real Estate Division on December 18, 2009, claiming that Ruby Lakes Estates Homeowner's Association was an invalid homeowner's association. After reviewing the complaint, the Ombudsman's Office of the Real Estate Division opined as follows:

"*For these reasons, we are not, as you requested, going to declare that Ruby Lakes Estates Homeowner's Association is invalid. In other words, it is our view that the Association is required to comply with the laws pertaining to homeowner's associations, specifically NRS 116 and related laws and regulations."** Emphasis added.

RLHOA filed Articles of Association Cooperative Association with the Secretary of State approximately October 27, 2005. Acting on advice of counsel, RLHOA filed its initial Association Registration Form with the Real Estate Division approximately March 31, 2006. It adopted By Laws on August 12, 2006.

DISCUSSION

Artemis interprets the Ombudsman's Office decision as, "The Ombudsman took no action," in regard to their Intervention Affidavit. It asserts a myriad of reasons why, in its opinion, the RLHOA is not valid. RLHOA continues to comply with the laws and regulations pertaining to homeowner's associations as the Real Estate Ombudsman's office opined it should, including assessing dues to pay for insurance, having a reserve study conducted, leveeing assessments in accordance with the requirements of the reserve study and, in the case of Artemis, referring it to a collection agency due to its refusal to pay its assessments.

Artemis appears to argue that since the RLHOA was not formed until after the first lot was sold, it could never thereafter be brought into compliance with the law. It takes the position even though the law, requiring it to be formed no later than the date the first lot was sold, was not passed until two years after the first lot in the Association was sold.

DECISION

It is difficult to understand why, faced with the overwhelming evidence that RLHOA is a valid HOA, any one would continue to maintain that it is not. The HOA owns property within the subdivision, it maintains roads, signs, gates, culverts and fencing. It is incorporated as required by law. Indeed, Mr. Essington was at one time on the board of directors of RLHOA and was a moving force in its formation and incorporation. He signed and filed a "Declaration of Certification Common-Interest Community Board Member" with the Real Estate Division certifying that he read and understood the governing documents of the Association and the provisions of Chapter 116 of Nevada Revised Statutes and the Administrative Code. His wife, Elizabeth Essington, apparently owns all of the stock in Artemis.

Artemis has filed a complaint against each of the members of the board alleging misrepresentation, fraud and oppression and seeks punitive damages. I have carefully considered all of the many allegations and arguments of the Claimant and find them unpersuasive. Indeed, I find the interpretation of counsel that the Real Estate Ombudsman took no action when it opined that RLHOA had to comply with the laws of Nevada pertaining to homeowner's associations

illogical. The Ombudsman clearly opined that the HOA was subject to the laws of Nevada that applied to HOA's. The Ombudsman took no action on the complaint of Artemis because the HOA was validly formed and obliged to comply with the law relating to HOA's.

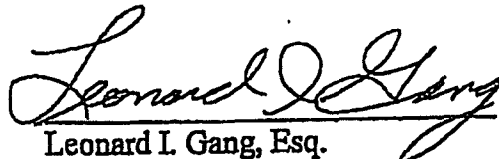
ORDER

1. Ruby Lake Estates is a Common -Interest Community and is subject to NRS Chapter 116. It was lawfully formed and is a validly existing non-profit common interest association.
2. The complaint against the individual board members is dismissed since no evidence was presented that they acted with willful or wanton misfeasance or gross negligence or were guilty of intentional misrepresentation or negligence.
3. Claimant is not entitled to punitive damages as a matter of law and no evidence was presented that would warrant such an award.
4. Respondent is entitled to an award of attorney's fees in the amount of \$22,092.00 and costs in the amount of \$4,718.67. I make this award taking into consideration the Brunzell factors. These factors were clearly articulated in the affidavit of Mrs. Kerns in support of her request for attorney's fees and costs and I find them to be accurate based upon my personal observations of Mrs. Kern's performance as an attorney representing homeowner's associations in these types of matters.

IT IS SO ORDERED.

Dated this 7th day of February, 2012.

ARBITRATOR,


Leonard I. Gang, Esq.

LIG:rg

CERTIFICATE OF MAILING

I hereby certify that on the 8th day of February, 2012 I mailed a copy of the foregoing DECISION AND AWARD in a sealed envelope to the following counsel of record and the Office of the Ombudsman, Nevada Real Estate Division and that postage was fully prepaid thereon.

Travis W. Gerber, Esq.
491 Fourth Street
Elko, NV 89801

Gayle Kern, Esq.
5421 Kietzke Lane, Ste. 200
Reno NV 89511


ROBERTA GANG