

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2 *Supreme Court Case No. 65456*
3 *District Court Case No. 07-A542616*

4 HIGH NOON AT ARLINGTON RANCH HOMEOWNERS ASSOCIATION,

5 *Petitioner,*

6 v.

7 EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
8 IN AND FOR THE COUNTY OF CLARK;
9 THE HONORABLE SUSAN H. JOHNSON

10 *Respondents,*

11 And

12 D.R. HORTON, INC.N,

13 *Real Party in Interest*

14 **PETITIONER'S EMERGENCY MOTION FOR STAY OF DISTRICT**
15 **COURT PROCEEDINGS PENDING RESOLUTION OF ALL PARTIES'**
16 **PETITIONS FOR WRIT OF MANDAMUS; REQUEST FOR EXPEDITED**
17 **CONSIDERATION PURSUANT TO NRAP 8(2)(D)**

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20 Scott P. Kelsey, SBN 7770
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Attorneys for Petitioner High Noon
At Arlington Ranch Homeowners Assn.

Electronically Filed
Aug 07 2014 02:50 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

1 **I. INTRODUCTION AND FACTUAL SUMMARY**

2 This Motion to Stay presents a straightforward proposition in that there are
3 currently two (2) Petitions for Writ of Mandamus pending before the Supreme
4 Court¹ that require resolution before the underlying lawsuit can proceed to trial.
5
6 Petitioner High Noon at Arlington Ranch Homeowners Association's (the
7 "Association") Petition for Writ of Mandamus has been fully briefed by all
8 interested parties and is currently under consideration by the Supreme Court.
9
10 *Affidavit of David Bray, Esq.* at ¶ 3. Significantly, in a March 27, 2014 Order, the
11 District Court granted the Association's Motion for Stay of Proceedings until the
12 August 5, 2014 Status Check Conference. *Affidavit of David Bray, Esq.* at ¶ 4,
13 Exhibit A. At the August 5, 2014 Status Check Conference, the District Court
14 ordered that the stay be lifted and advised the Association that it should seek a
15 further stay from the Supreme Court. *Affidavit of David Bray, Esq.* at ¶ 5, Exhibit
16
17
18 B.

19
20 The Association respectfully disagrees with the District Court's decision to
21 lift the stay given the fact that the Supreme Court has accepted the Association's
22 request for extraordinary writ relief. Moreover, petitioner/real party in interest
23 D.R. Horton, Inc. ("DRH") has a pending request before the Supreme Court for
24

25
26 ¹ Petitioner and Real Party in Interest D.R. Horton, Inc. has filed a Petition on April 14, 2014 that was subsequently
27 denied, and filed another Petition on July 16, 2014 that is currently awaiting the Supreme Court's decision on
28 whether to accept or deny the requested writ relief.

1 extraordinary writ relief. *Affidavit of David Bray, Esq.* at ¶ 6. Without a further
2 stay, trial is set to commence on October 13, 2014. *Affidavit of David Bray, Esq.* at
3 ¶ 7, Exhibit B. Indeed, the District Court has ordered that all motions in limine
4 are due on August 29, 2014 and that said motions will be decided on September
5 11, 2014, and jury questionnaires are due by August 18, 2014. *Affidavit of David*
6 *Bray, Esq.* at ¶ 8, Exhibit C. It is patently unreasonable to expect both the
7 Association and DRH to incur the extreme costs of trial preparation when the
8 critical issues of standing are under review by the Supreme Court. *Affidavit of*
9 *David Bray, Esq.* at ¶ 9. Irrespective of the District Court's decisions, these basic
10 facts support the Association's request to the Supreme Court for the issuance of a
11 stay pending the resolution and conclusion of the Association's writ petition.
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16 **II. RELIEF SOUGHT**

17 Pursuant to NRAP 8 and NRAP 27, the Association seeks a stay of all
18 proceedings before the District Court in the action entitled *High Noon at Arlington*
19 *Ranch Homeowners Association v. D.R. Horton, Inc., et al.*, Clark County District
20 Court Case No. 07-A542616. The requested stay should remain in effect until the
21 Supreme Court resolves the pending petitions before it and remands the action to
22 the District Court with further instructions.
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26 ///

1 **III. LEGAL ARGUMENT**

2 **A. The Criteria For Rule 8 Of The Nevada Rules Of Appellate**
3 **Procedure Are Fully Satisfied In This Matter And A Stay Or**
4 **Injunctive Relief Is Appropriate Pending The Resolution Of The**
5 **Association’s Original Writ Proceedings**

6 NRAP 8(a)(1) was satisfied when the Association made a motion on
7 shortened time to stay the action pending resolution of the writ proceedings.
8 *Affidavit of David Bray, Esq.* at ¶ 10, Exhibit D. The District Court granted the
9 unopposed motion but in an unusual procedure, the District Court proceeded to
10 hand-write into the proposed order that the stay would only stay in effect until the
11 August 5, 2015 Status Check Conference. *Affidavit of David Bray, Esq.* at ¶ 11,
12 Exhibit A. The Association anticipated that the District Court would continue its
13 stay given the status of proceedings before the Supreme Court but was surprised by
14 the District Court’s refusal to do so stating words to the effect that we are out of
15 time – referring to the 5 year mandatory dismissal statute. *Affidavit of David Bray,*
16 *Esq.* at ¶ 12. NRAP 8(a)(2)(A)(ii) is satisfied because the District Court’s decision
17 failed to afford the relief requested by the Association which was a stay until the
18 writ proceedings concluded. The District Court indicated that a further stay was
19 inappropriate because the October 13, 2014 trial date was quickly approaching and
20 that it “determined that the 5 year rule runs on October 30, 2014.” *Affidavit of*
21 *David Bray, Esq.* at ¶ 13, Exhibit C.
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1 The District Court’s rationale does not appear to comport with the purpose
2 and intent of NRAP 8 since its express language states that the stay is to be ordered
3 “*pending . . . resolution* of a petition to the Supreme Court for an extraordinary
4 writ.” NRAP 8(a)(1), italics added. The District Court’s concern with the running
5 of NRCP 41(c)’s five (5) year dismissal rule is also misplaced because the law is
6 clear: any stay order issued by a district court effectively stays NRCP 41(c)’s
7 prescriptions. *Boren v. City of Las Vegas*, 98 Nev. 5, 6 (1982); *Baker v. Noback*,
8 112 Nev. 1106, 1110 (1996); *Kopicko v. Young*, 114 Nev. 1333, 1337, fn. 3 (1998).
9 Indeed, the District Court issued an Order on February 27, 2014 denying a
10 defendant’s motion to dismiss pursuant to NRCP 41(c) and the Order’s
11 Conclusions of Law section conceded that *Boren* and *Baker* was applicable to
12 district court ordered stays. *Affidavit of David Bray, Esq.* at ¶ 14, Exhibit E.
13 Therefore, had the District Court simply allowed its stay to remain in place, there
14 would be no NRCP 41(c) issue to be concerned about.
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20 Furthermore, since the Association’s petition for extraordinary writ relief is
21 now fully briefed and pending before the Supreme Court, the lifting of the stay is
22 inappropriate under these circumstances. *Affidavit of David Bray, Esq.* at ¶ 3.
23 Therefore, the Supreme Court’s exercise of its power to stay the proceedings
24 before the District Court is appropriate in this action because the writ petition is
25 unresolved. Finally, pursuant to NRAP 8(a)(2)(D), the Association requests that
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1 this Motion for Stay be considered on an expedited basis by the Supreme Court.
2 Expedited consideration is appropriate because this is an exceptional situation
3
4 caused by the District Court's unusual decision to lift a stay prior to the resolution
5 of writ proceedings and implementing trial deadlines that defeat the original
6 purpose of the stay order.
7

8 NRAP 8(c) prescribes that:

9 In deciding whether to issue a stay or injunction, the Supreme Court
10 will generally consider the following factors:

11 (1) whether the object of the appeal or writ petition will be defeated if
12 the stay or injunction is denied;

13 (2) whether appellant/petitioner will suffer irreparable or serious injury
14 if the stay or injunction is denied;

15 (3) whether respondent/real party in interest will suffer irreparable or
16 serious injury if the stay or injunction is granted; and

17 (4) whether appellant/petitioner is likely to prevail on the merits in the
18 appeal or writ petition.

19 The Association's request for a stay of proceedings satisfies each and every factor
20 set forth above.
21

22 **1. The Object of the Petition for Writ of Mandamus will be**
23 **Defeated if a Stay of Proceedings is not Immediately**
24 **Implemented**

25 The impetus, catalyst and gist of the Association's writ petition was the
26 District Court's erroneous summary judgment ruling that the Association's
27 standing under Chapter 40 and the Uniform Common Interest Ownership Act was
28

1 conditioned upon unit owners not selling their units during the pendency of a
2 lawsuit. *Affidavit of David Bray, Esq.* at ¶ 15. The District Court's ruling gutted
3 the Association's lawsuit by barring 2/3rds of the Association's residential units
4 from seeking relief at trial. *Affidavit of David Bray, Esq.* at ¶ 16. The District
5 Court's decision to lift the stay of proceedings effectively undermines many of the
6 primary reasons why the Association sought extraordinary writ relief: (1)
7 protection from the extreme expense of trial preparation; (2) unsettled issues of law
8 that affect the selection and presentation of evidence at trial; and (3) the prospect
9 that the entire trial must be redone if the Supreme Court resolved the writ petition
10 in favor of the Association. *Affidavit of David Bray, Esq.* at ¶ 17.
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15 Indeed, the dispositive fact supporting a stay order is that the trial in this
16 action will proceed under the District Court's erroneous ruling regarding the
17 Association's standing. Thus, if trial were to commence, the Association would be
18 limited to presentation of claims on only 1/3rd of the residential units at the High
19 Noon at Arlington Ranch common-interest community. Furthermore, DRH
20 currently recently filed a writ petition with the Supreme Court and it belies
21 principles of judicial economy and fairness to require that all parties invest extreme
22 resources into trial preparations when critical issues of law are unresolved and
23 currently pending before the Supreme Court. Therefore, this factor is satisfied by
24 the circumstances of this case.
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1 **2. The Association will Suffer Irreparable or Serious Injury if**
2 **the Stay is Denied**

3 The Association highlights the salient fact that the District Court’s removal
4 of the stay of proceedings a mere two months before trial is a highly unusual
5 decision that does not comport with NRCP 8 or accepted judicial norms. The
6 Association and all defendants are now placed in the unenviable position of having
7 to prepare for trial without clear guidance on the critical issues of law raised by the
8 Association’s writ petition. *Affidavit of David Bray, Esq.* at ¶ 18. The limited and
9 valuable resources of the District Court and the Association will not be reimbursed
10 or recovered should a second trial become necessary after the Supreme Court
11 resolves the writ petition. *Affidavit of David Bray, Esq.* at ¶ 19. Furthermore,
12 traditional notions of fair play and justice are violated where the Association is
13 forced to craft a trial strategy and expend resources on experts, witnesses, evidence
14 and exhibits that may or may not be relevant or effective depending on the
15 resolution of its writ petition. In sum, there is no good reason why trial should be
16 ramrodded forward under these circumstances.

17 **3. The Real Parties in Interest will not Suffer Irreparable or**
18 **Serious Injury if the stay is Granted**

19 The irony of the situation caused by the District Court’s lift of its stay of
20 proceedings is that it will cause DRH and other defendants in the action the same
21 irreparable and/or serious injury that will befall the Association. *Affidavit of David*

1 *Bray, Esq.* at ¶ 20. They too will be placed in the unenviable position of having to
2 prepare for trial without knowing whether the potential verdict for damages affects
3 all residential units in the common-interest community or only 1/3rd of the
4 residential units, thereby affecting decisions relating to trial preparation and
5 settlement. *Affidavit of David Bray, Esq.* at ¶ 21. Regarding the empanelled jury,
6 they also suffer because if the October 13, 2014 trial must be redone, then it would
7 be a critical waste of the jurors' time and efforts. Indeed, even the District Court
8 would suffer because its limited resources are better expended on trials where
9 critical issues of law are well-established and settled.
10
11

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13 **4. The Association is Likely to Prevail on the Merits of the**
14 **Writ of Mandamus**

15 The Association will likely prevail on its writ petition because Nevada law
16 compels a singular result, to wit: the Association's standing is not conditioned
17 upon its members refraining from selling their units during the pendency of a
18 lawsuit. For the sake of brevity, the Association refers the Supreme Court to its
19 writ petition but for the purposes of this motion, it plain and clear that the District
20 Court's interpretation of standing principles under the Uniform Common Interest
21 Ownership Act and Chapter 40 cannot withstand the light of scrutiny. Indeed,
22 under DRH's strained interpretation of association standing under the Uniform
23 Common Interest Ownership Act and Chapter 40, the entire Chapter 40 pre-
24 litigation process restarts every time an association member sells his or her unit.
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1 Such an absurd interpretation of standing has never been adopted by any district
2 court since the inception of Chapter 40 – that is until the District Court made its
3 erroneous ruling in this action.
4

5 **IV. CONCLUSION**

6 For the foregoing reasons, the Association respectfully requests that the
7 Supreme Court issue a stay of all proceedings in this action currently before the
8 District Court pending a determination and resolution of all writ petitions.
9

10 Dated: August 1, 2014

ANGIUS & TERRY LLP

11
12
13 By: 

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15 Scott P. Kelsey, SBN 7770
16 David M. Bray, SBN 12706
17 1120 N. Town Center Dr, Ste 260
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19 *Attorneys for Petitioner High Noon at*
20 *Arlington Ranch Homeowners Assn.*
21
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1 4. Significantly, in a March 27, 2014 Order, the District Court granted
2 the Association's Motion for Stay of Proceedings until the August 5, 2014 Status
3 Check Conference. Attached as Exhibit A to this Affidavit is a true and correct
4 copy of the District Court's March 27, 2014 Order granting the Association's
5 request for a stay of proceedings.
6
7

8 5. At the August 5, 2014 Status Check Conference, the District Court
9 ordered that the stay be lifted and advised the Association that it should seek a
10 further stay from the Supreme Court. Attached as Exhibit B to this Affidavit is a
11 true and correct copy of the District Court's Minute Order from the August 5, 2014
12 Status Check Conference.
13

14 6. Petitioner/Real Party in Interest D.R. Horton, Inc. ("DRH") has a
15 pending request before the Supreme Court for extraordinary writ relief.
16

17 7. Without a further stay, trial is set to commence on October 13, 2014.
18

19 8. Indeed, the District Court has ordered that all motions in limine are
20 due on August 29, 2014 and that said motions will be decided on September 11,
21 2014, and jury questionnaires are due by August 18, 2014. Attached as Exhibit C
22 to this Affidavit is a true and correct copy of the District Court's August 5, 2014
23 facsimile electronic notice.
24
25
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28

1 9. It is patently unreasonable to expect both the Association and DRH to
2 incur the extreme costs of trial preparation when the critical issues of standing are
3 under review by the Supreme Court.
4

5 10. NRAP 8(a)(1) was satisfied when the Association made a motion on
6 shortened time to stay the action pending resolution of the writ proceedings.
7 Attached as Exhibit D to this Affidavit is a true and correct copy of the
8 Association's Motion for Stay filed with the District Court.
9

10 11. The District Court granted the unopposed motion but in an unusual
11 procedure, the District Court proceeded to hand-write into the proposed order that
12 the stay would only stay in effect until the August 5, 2015 Status Check
13 Conference.
14

15 12. The Association anticipated that the District Court would continue its
16 stay given the status of proceedings before the Supreme Court but was surprised by
17 the District Court's refusal to do so stating words to the effect that we are out of
18 time – referring to the 5 year mandatory dismissal statute.
19

20 13. The District Court indicated that a further stay was inappropriate
21 because the October 13, 2014 trial date was quickly approaching and that it
22 "determined that the 5 year rule runs on October 30, 2014."
23

24 14. The District Court issued an Order on February 27, 2014 denying a
25 defendant's motion to dismiss pursuant to NRCP 41(c) and the Order's
26
27
28

1 Conclusions of Law section conceded that *Boren* and *Baker* was applicable to
2 district court ordered stays. Attached as Exhibit E to this Affidavit is a true and
3 correct copy of the District Court's February 27, 2014 Order denying dismissal
4 based on NRCP 41.
5

6 15. The impetus, catalyst and gist of the Association's writ petition was
7 the District Court's erroneous summary judgment ruling that the Association's
8 standing under Chapter 40 and the Uniform Common Interest Ownership Act was
9 conditioned upon unit owners not selling their units during the pendency of a
10 lawsuit.
11
12

13 16. The District Court's ruling gutted the Association's lawsuit by barring
14 2/3rds of the Association's residential units from seeking relief at trial.
15

16 17. The District Court's decision to lift the stay of proceedings effectively
17 undermines many of the primary reasons why the Association sought extraordinary
18 writ relief: (1) protection from the extreme expense of trial preparation; (2)
19 unsettled issues of law that affect the selection and presentation of evidence at trial;
20 and (3) the prospect that the entire trial must be redone if the Supreme Court
21 resolved the writ petition in favor of the Association.
22

23 18. The Association and all defendants are now placed in the unenviable
24 position of having to prepare for trial without clear guidance on the critical issues
25 of law raised by the Association's writ petition.
26
27
28

1 19. The limited and valuable resources of the District Court and the
2 Association will not be reimbursed or recovered should a second trial become
3 necessary after the Supreme Court resolves the writ petition.
4


5 20. The irony of the situation caused by the District Court's lift of its stay
6 of proceedings is that it will cause DRH and other defendants in the action the
7 same irreparable and/or serious injury that will befall the Association.
8

9 21. DRH and defendants will be placed in the unenviable position of
10 having to prepare for trial without knowing whether the potential verdict for
11 damages affects all residential units in the common-interest community or only
12 1/3rd of the residential units, thereby affecting decisions relating to trial
13 preparation and settlement.
14
15

16 Further, Affiant sayeth not.

17
18 
19 David M. Bray, Esq.

20 SUBSCRIBED AND SWORN to before
21 me this 7th day of August 2014 by

22 
23 NOTARY PUBLIC in and for
24 said County and State of Nevada

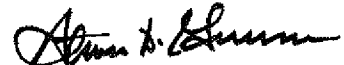


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2 Victoria Hightower, Esq.
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8 Employee of ANGIUS & TERRY, LLP
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EXHIBIT A

EXHIBIT A



CLERK OF THE COURT

1 NEO
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4 David Bray (Nev. Bar 12706)
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11 Attorneys for Plaintiffs

12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 HIGH NOON AT ARLINGTON RANCH
15 HOMEOWNERS ASSOCIATION, a Nevada
16 non-profit corporation, for itself and for all
17 others similarly situated,

18 Plaintiffs

19 v.

20 D.R. HORTON, INC. a Delaware Corporation
21 DOE INDIVIDUALS, 1-100, ROE
22 BUSINESSES or GOVERNMENTAL
23 ENTITIES 1-100 inclusive

24 Defendants.

25 And Related Third Party Actions, Cross Claims,
26 and Consolidated Actions.

Case No. A542616
Dept. XXII

[ELECTRONIC FILING CASE]

**NOTICE OF ENTRY OF ORDER
GRANTING PLAINTIFF'S MOTION FOR
STAY OF PROCEEDINGS ON ORDER
SHORTENING TIME**

27 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

28 PLEASE TAKE NOTICE that an Order Granting Plaintiff's Motion for Stay of
Proceedings on Order Shortening Time in the above-entitled action was entered into and filed

///

1 on the 31st day of March 2013, a copy of which is attached hereto.

2

3

4

Dated: April 1, 2014.

ANGIUS & TERRY LLP

5

/s/ David Bray

6

By: _____

7

Paul P. Terry, Jr., SNB 7192

John J. Stander, SNB 9198

8

David Bray, SNB 12706

9

ANGIUS & TERRY LLP

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1120 N. Town Center Dr., Ste. 260

Las Vegas, NV 89144

11

Attorneys for Plaintiff

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CLERK OF THE COURT

1 **ORDG**
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7 Attorneys for Plaintiffs

8
9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 HIGH NOON AT ARLINGTON RANCH
12 HOMEOWNERS ASSOCIATION, a Nevada
non-profit corporation, for itself and for all
13 others similarly situated,

14 Plaintiffs

15 v.

16 D.R. HORTON, INC. a Delaware Corporation
17 DOE INDIVIDUALS, 1-100, ROE
18 BUSINESSES or GOVERNMENTAL
ENTITIES 1-100 inclusive

19 Defendants.

20
21 And Related Third Party Actions, Cross Claims,
22 and Consolidated Actions.

Case No. A542616
Dept. XXII

[ELECTRONIC FILING CASE]

ORDER GRANTING PLAINTIFF'S
MOTION FOR STAY OF PROCEEDINGS
ON ORDER SHORTENING TIME

Date: March 27, 2014
Time: 9:00 a.m.

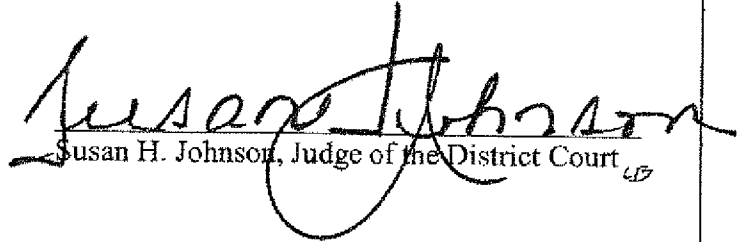
23
24 Plaintiff HIGH NOON AT ARLINGTON RANCH HOMEOWNERS
25 ASSOCIATION'S MOTION FOR STAY OF PROCEEDINGS ON ORDER SHORTENING
26 TIME came on regularly for hearing on March 27, 2014 at 9:00 a.m. before the Honorable
27 Susan H. Johnson presiding. After consideration of the pleadings and files on record, the
28

1 argument of counsel, and GOOD CAUSE APPEARING, IT IS HEREBY ORDERED THAT
2 THE MOTION IS GRANTED, and the stay is in effect until the August 5, 2014
3 status check.

4 IT IS SO ORDERED.

5 *March 27,*

6 Dated: ~~April~~ _____, 2014

7 
Susan H. Johnson, Judge of the District Court

8 Respectfully submitted.

9 ANGIUS & TERRY LLP

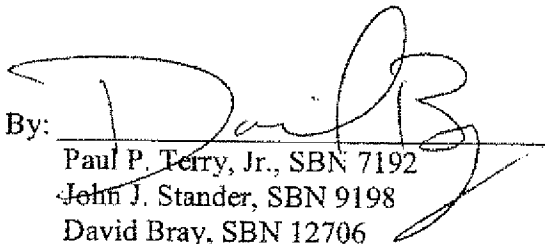
10
11 
12 By: _____
13 Paul P. Terry, Jr., SBN 7192
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EXHIBIT B

EXHIBIT B

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Location : District Court Civil/Criminal [Help](#)

REGISTER OF ACTIONS

CASE NO. 07A542616

High Noon At Arlington Ranch Homeowner vs D R Horton Inc

§
§
§
§
§
§

Case Type: **Construction Defect**

Subtype: **General**

Date Filed: **06/07/2007**

Location: **Department 22**

Cross-Reference Case **A542616**

Number:

PARTY INFORMATION

Lead Attorneys

Defendant D R Horton Inc

Joel D. Odou
Retained
702-251-4100(W)

Plaintiff High Noon At Arlington Ranch Homeowner

Paul P. Terry, Jr.
Retained
7029902017(W)

Third Party Allard Enterprises Inc *Doing Business*
Defendant As Iron Specialists

Third Party Anse Inc *Doing Business As* Nevada
Defendant State Plastering

Annalisa N Grant
Retained
702-382-4002(W)

Third Party Brandon LLC *Doing Business*
Defendant As Summit Drywall & Paint LLC

Charlie H. Luh
Retained
7023678899(W)

Third Party Bravo Underground Inc
Defendant

Third Party Campbell Concrete Of Nevada Inc
Defendant

Jeffrey H. Ballin
Retained
7028933383(W)

Third Party Circle S Development Corp *Doing*
Defendant *Business As* Deck Systems

Bradley V. Gibbons
Retained
7028040706(W)

Third Party Efficient Enterprises LLC *Doing*
Defendant *Business As* Efficient Electric

Theodore Parker III
Retained
7028688000(W)

Third Party Firestop Inc
Defendant

Nicholas B Salerno
Retained
7022571997(W)

Third Party Harrison Door Company
Defendant

Shannon G. Rooney
Retained
7022571997(W)

Third Party
Defendant **Infinity Building Products LLC**

Third Party
Defendant **Integrity Wall Systems LLC**

Third Party
Defendant **Lukestar Corp**

Third Party
Defendant **National Builders Inc**

Leonard T. Fink
Retained
7028040706(W)

Third Party
Defendant **O P M Inc *Doing Business*
As Consolidated Roofing**

Tomas V Mazeika
Retained
7023844048(W)

Third Party
Defendant **Quality Wood Products Ltd**

Peter C. Brown
Retained
702-258-6665(W)

Third Party
Defendant **RCR Plumbing And Mechanical Inc**

Third Party
Defendant **Rising Sun Plumbing LLC *Doing
Business As* RSP Inc**

Charlie H. Luh
Retained
7023678899(W)

Third Party
Defendant **Southern Nevada Cabinets Inc**

Third Party
Defendant **Summit Drywall & Paint, LLC**

Peter C. Brown
Retained
702-258-6665(W)

Third Party
Defendant **Sunrise Mechanical Inc**

Annalisa N Grant
Retained
702-382-4002(W)

Third Party
Defendant **Sunstate Companies Inc *Doing
Business As* Sunstate Landscape**

KIRK WALKER, ESQ
Retained
702-462-6300(W)

Third Party
Defendant **United Electric Inc *Doing Business
As* United Home Electric**

Lucian J. Greco
Retained
702-258-6665(W)

Third Party
Defendant **Walldesign Inc**

Third Party Western Shower Door Inc
Defendant

Third Party D R Horton Inc
Plaintiff

Joel D. Odou
Retained
702-251-4100(W)

EVENTS & ORDERS OF THE COURT

08/05/2014 **Status Check** (8:30 AM) (Judicial Officer Johnson, Susan)
STATUS CHECK: STAY

Minutes

08/05/2014 8:30 AM

- Colloquy regarding status of the Writs pending before the Supreme Court. Arguments regarding whether the stay should be extended. COURT ORDERED, STAY LIFTED; Pltfs to seek a stay with the Supreme Court should they desire. Colloquy regarding the 5 year rule; counsel estimated, with the stay lifted, it would run within 4 months. COURT ORDERED, trial SET. Colloquy regarding pending Motions in Limine and discovery; Court directed counsel to deliver the motion in limine binders to the Court on or before 08/29/14 and ORDERED, Motions to be SET for 09/11/14 (hearing closed to accommodate the filings).
10/01/14 8:30 AM - CALENDAR CALL 10/13/14 8:30 AM - JURY TRIAL

Parties Present

[Return to Register of Actions](#)

EXHIBIT C

EXHIBIT C

Department XXII District Court
Regional Justice Center
200 S. Lewis
Las Vegas, NV 89155
702-671-0547
702-671-0571 (FAX)

**Department XXII
District Court**

ELECTRONICALLY SERVED
08/05/2014 03:27:06 PM

Electronic notice

To: ALL INTERESTED PARTIES **Fax:**

From: Laura Banks – JEA to Judge Susan Johnson
Dept. XXII **Pages:** 3

Phone: (702) 671-0547 **Date:** 8/5/2014

Re: High Noon at Arlington Ranch HOA v. DR Horton **CC:**
A542616

Urgent For Review Please Comment Please Reply Please Recycle

◆ **Comments:**

Pursuant to the hearing this morning, the Court advised that the Motions in Limine and Joinders that were previously scheduled on April 3, 2014, will now be heard on September 11, 2014. However, as we are unsure as to whether some of the matters may have settled, please provide a facsimile of any of the Motions that DO NOT need to be reset no later than close of business on August 7, 2014, otherwise the Clerk will reset them all. Also, as Jennifer Fometti, Esq. of Springel and Fink is to provide the binders to the Department on or before 8/29/14, all courtesy copies of motions, joinders, oppositions and replies are to be provided to her office no later than August 26, 2014. DO NOT DELIVER COPIES TO THE DEPARTMENT.

The binders are to include an index indicating the titles of the motions (ie Plaintiff's Motion in Limine No. 1 **and name of Motion**) and to have tabs dividing them. Please prepare the binders as follows:

Motion #1/Joinders
Opposition/Joinders
Reply/Joinders

Motion #2/Joinders
Opposition/Joinders
Reply/Joinders

August 5, 2014

If you are submitting a jury questionnaire, an **agreed upon questionnaire** is due to the Department no later than Monday, August 18, 2014. Attached is a sample cover sheet.

Also, FYI, after calendar this morning, it was determined that the 5 year rule runs on October 30, 2014.

*****THE CONTENTS OF THIS FAX ARE CONFIDENTIAL. IF YOU
RECEIVE THIS FAX BY MISTAKE, CONTACT THE SENDER
IMMEDIATELY*****

JUROR ID NO.: _____ BADGE NO.: _____

Dear Prospective Juror:

You have been summoned to appear as a prospective juror in the case of (enter case name). Please read all questions in this questionnaire carefully and answer all of these questions truthfully and honestly. Please print or write each of the answers legibly. Your answers are being given under penalty of perjury and will be initialed by you on the final page of this document.

Jury Questionnaires are considered public documents and may be accessed by the media per *Stephens Media LLC v. Eighth Judicial District Court, 125 Nev. 849, 221 P.3d 1240 (2009)*.

The parties to this matter and the Court believe that the trial will start on (date) and will take approximately (# of weeks or months) to complete. The following factual synopsis will provide you with some information regarding this case:

This case involves claims of.....

Is there any reason why you cannot serve your community for approximately (# weeks or months) beginning on (date) by serving on a jury in this case?

_____ yes _____ no

If you answered "yes", please explain the circumstances.

You are instructed not to discuss this questionnaire or any aspect of this case with anyone, including other prospective jurors. You are further instructed not to view, read or listen to any media account of these proceedings.

Dated this _____ day of _____, 2013

Susan H. Johnson, District Court Judge

* NOTE: Last page of jury questionnaire should contain the following (no signature):

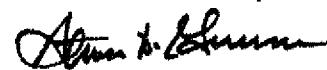
JUROR ID NO:

BADGE NO:

Please check back through this form to be certain you have left nothing blank. To certify you have left nothing blank, as well as affirm that you have answered all questions truthfully and honestly, please initial here _____.

EXHIBIT D

EXHIBIT D



CLERK OF THE COURT

1 MOT
Paul P. Terry, Jr. (Nev. Bar 7192)
2 John Stander (Nev. Bar 9198)
3 David Bray (Nev. Bar 12706)
ANGIUS & TERRY LLP
4 1120 N. Town Center Dr., Suite 180
Las Vegas, NV 89144
5 Telephone: (702) 990-2017
6 Facsimile: (702) 990-2018
dbray@angius-terry.com

7 Attorneys for Plaintiff

8
9 DISTRICT COURT
10 CLARK COUNTY, NEVADA FILE WITH
MASTER CALENDAR

11 HIGH NOON AT ARLINGTON RANCH)
12 HOMEOWNERS ASSOCIATION, a Nevada)
13 non-profit corporation, for itself and for all)
others similarly situated,

14 Plaintiff

15 v.

16 D.R. HORTON, INC. a Delaware Corporation)
17 DOE INDIVIDUALS, 1-100, ROE)
18 BUSINESSES or GOVERNMENTAL)
ENTITIES 1-100 inclusive

19 Defendants.

Case No. 07A542616
Dept. XXII

(Electronic Filing Case)

PLAINTIFF'S MOTION FOR STAY OF
PROCEEDINGS ON ORDER
SHORTENING TIME

Date: HEARING REQUIRED

Time: Date: 3/27/14

Time: 9:00 a.m.

20
21 And Related Cross-Actions
22
23
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1 **PLAINTIFF'S MOTION FOR STAY OF PROCEEDINGS ON ORDER SHORTENING TIME**

2 COMES NOW, Plaintiff, HIGH NOON AT ARLINGTON RANCH HOMEOWNERS
3 ASSOCIATION (hereinafter "HIGH NOON" or "Plaintiff"), a Nevada non-profit mutual benefit
4 corporation, by and through its attorneys, and hereby files this Motion for Stay of Proceedings on
5 Order Shortening Time to enable Plaintiff to file an Application for Writ of Mandamus.

6
7 This Motion is made and based upon the following memorandum of Points and Authorities,
8 the papers and pleadings on file herein, the Affidavit of John J. Stander, Esq., and any oral arguments
9 this Court deems necessary.

10
11 Dated: March 20, 2014

ANGIUS & TERRY LLP

12
13
14 By: 

15 Paul P. Terry, Jr., SBN 7192
16 John J. Stander, SBN 9198
17 David Bray, SBN 12706
18 1120 N. Town Center Dr., # 260
19 Las Vegas, Nevada 89144
20 Attorneys for Plaintiff
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AFFIDAVIT OF JOHN J. STANDER, ESQ.

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, John J. Stander, Esq., being first duly sworn, deposes and states that:


1. I am an attorney licensed to practice in the State of Nevada and before this Court. I am a partner with the law firm of Angius & Terry, LLP, and counsel of record for Plaintiff herein. I am familiar with the pleadings and files in this matter and I can and will testify competently to the facts set forth below.
2. On January 24, 2014, Defendant D.R. Horton, Inc. filed a Motion for Partial Summary Judgment to preclude Plaintiff from making and litigating claims for constructional defects that continue to exist within the building envelopes and interior units on behalf of owners who no longer own units within the development.
3. On February 10, 2014, Plaintiff filed a written Opposition to Defendant D.R. Horton, Inc.'s Motion for Partial Summary Judgment.
4. On February 27, 2014, the Court heard Defendant D.R. Horton, Inc.'s Motion for Partial Summary Judgment and took the matter under advisement.
5. On March 18, 2014, the Court issued an Order granting Defendant D.R. Horton, Inc.'s Motion for Partial Summary Judgment with respect to claims maintained by prior owners for continuing or remaining constructional defects existing within the interiors of units and the building envelopes housing the units, as well as striking from the litigation the claims of current owners who did not reside at the development at the time this matter was filed with the Court.

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6. The Plaintiff respectfully believes that the Court's ruling in this matter is in error and is currently preparing an application for Writ of Mandamus to the Nevada Supreme Court asking to vacate this Court's Order on numerous legal grounds.
7. That pursuant to Nevada Rule of Appellate Procedure 8(a), before filing a Writ, the party must move the District Court for a stay of proceedings. That because the Order related to this matter was prepared in Chambers; Plaintiff was unable to orally request a stay at that time and that the Court's Order substantially negates the claims that have been pursued by Plaintiff for many years and approximately one (1) month before trial is scheduled to begin in this matter.
8. An Order Shortening Time is necessary to allow for this litigation to be immediately stayed and to allow Plaintiff's counsel with time to file the Writ of Mandamus in a timely manner as this matter has April 21, 2014 trial date.
9. Therefore, Affiant requests that the instant Motion be set for hearing on an Order Shortening Time on the Court's earliest available date.
10. The instant request is made in good faith and not for the purposes of harassment or delay.

Further, Affiant sayeth not.

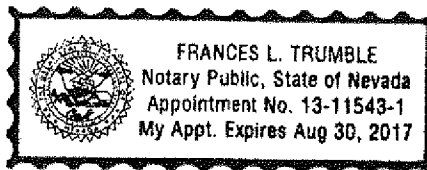


 JOHN J. STANDERS, ESQ.

SUBSCRIBED and SWORN to
before me this 20th day of March, 2014.



NOTARY PUBLIC in and for
 County of Clark, State of Nevada



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ORDER SHORTENING TIME

It appearing to the satisfaction of the Court, and good cause appearing therefore,

IT IS HEREBY ORDERED that the foregoing Motion for Stay of Proceedings on an Order Shortening Time shall be heard on the 27th day of March, 2014, at the hour of 9:00 a.m. in Department XXII.

IT IS SO ORDERED this 21st day of March 2014.


DISTRICT COURT JUDGE _{LS}

Submitted by:

ANGIUS & TERRY, LLP



Paul P. Terry, Jr., SBN 7192
John J. Stander, SBN 9198
David Bray, SBN 12706
1120 N. Town Center Dr., # 260
Las Vegas, Nevada 89144
Attorneys for Plaintiff

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND RELEVANT FACTS**

3 On June 7, 2007 Plaintiff filed a Complaint against D.R. Horton, Inc. (hereinafter "DRH") for
4 Breach of Implied Warranties of Workmanlike Quality and Habitability, Breach of Contract, Breach of
5 Express Warranties, and Breach of Fiduciary Duty. Plaintiff alleges claims of Construction Defects
6 including claims involving the common interest community, as well as with the individual units of the
7 High Noon at Arlington Ranch project.
8

9 On January 24, 2014, DRH filed a Motion for Partial Summary Judgment to preclude Plaintiff
10 from making and litigating claims for constructional defects that continue to exist within the building
11 envelopes and interior on behalf of owners who no longer owned units within the development at the
12 time the June 2007 Complaint was filed. On February 10, 2014, Plaintiff filed a written Opposition to
13 the Motion. On February 27, 2014, this Honorable Court heard DRH's Motion for Partial Summary
14 Judgment and took the matter under advisement. On March 18, 2014, this Honorable Court granted
15 DRH's Motion for Partial Summary Judgment with respect to claims maintained by prior owners for
16 continuing or remaining constructional defects existing within the interiors of units and the building
17 envelopes housing the units, as well as striking from the litigation the claims of current owners who
18 did not reside at the development at the time this matter was filed with the Court. Plaintiff is moving
19 for a stay in order to file an Application for Writ of Mandamus with the Nevada Supreme Court.
20

21 **II. ARGUMENT**

22 Pursuant to EDCR 7.30(a), "[a]ny party may, for good cause, move the court for an order
23 continuing the day set for trial of any cause." In this matter, good cause exists for the Plaintiff to file
24 an Application for Writ of Mandamus to the Nevada Supreme Court, as Plaintiff believes that the
25 recent Order granting DRH's Motion for Partial Summary Judgment was in error and in direct
26 contradiction to the plain language and legislative intent of NRS §116.3102, NRCP 17, NRCP 19, and
27 recent decisions from this Court and the Nevada Supreme Court.
28

1 NRS §34.150 establishes that a “writ of mandamus, or writ of mandate, is a proper remedy to
2 compel performance of a judicial act.” NRS §34.170 states that a “writ of mandamus shall be issued
3 where there is no plain, speedy and adequate remedy in the ordinary court of law.” The Supreme Court
4 will exercise its discretion to consider writ petitions, despite the existence of an otherwise adequate
5 legal remedy, when an important issue of law needs clarification and its review would serve
6 consideration of public policy, sound judicial economy, and administration. *Dayside Inc. v. Dist. Ct.*,
7 119 Nev. 404, 407, 75 P.3d 384, 386 (2003).
8

9 Plaintiff asserts that issues presented by way of writ petition constitute an important issue of
10 law that requires clarification. The provisions of NRS §116.3102, NRCP 17, NRCP 19 and recent
11 decisions from this Court and the Nevada Supreme Court need to be interpreted to resolve ambiguities
12 in the statute that relate to a homeowners association’s standing to maintain continuing or existing
13 claims of construction defects upon the subsequent change in ownership of the individual units.
14

15 Nevada Rule of Appellate Procedure requires the party seeking a writ petition to move for a
16 stay, before proceeding before the Nevada Supreme Court. NRAP 8 provides in pertinent part:

17 **a) Motion for Stay.**

18 1) **Initial Motion in the District Court.** A party must ordinarily move first in the district
19 court for the following relief:

20 (A) A stay of the judgment or order of, or proceedings in, a district court
21 pending appeal or resolution of a petition to the Supreme Court for an
22 extraordinary writ;

(B) Approval of a supersedeas bond; or

(C) An order suspending, modifying, restoring or granting an injunction while
an appeal or original writ petition is pending.

23 Therefore, Plaintiff files this Motion for Stay of Proceedings on an Order Shortening Time
24 pending a Writ of Mandamus with the Nevada Supreme Court to determine the issues regarding
25 Plaintiff’s preclusion from making and litigating claims for constructional defects that continue to
26 exist within the building envelopes and unit interiors on behalf of owners who no longer own units and
27 now currently own units within the development.
28

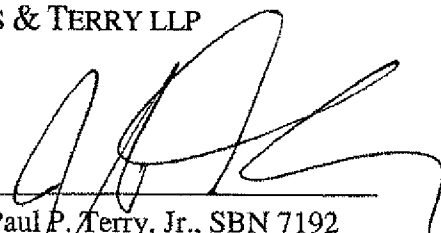
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III. CONCLUSION

Plaintiff respectfully requests that this Honorable Court hear this matter on an Order Shortening Time and grant Plaintiff's Motion for a Stay of all proceedings in order to file an Application for Writ of Mandamus. In this alternative, if this Honorable Court is not inclined to grant a Stay, then Plaintiff requests that the matter be heard on the Court's next available calendar date, so as to address this request as soon as possible.

Dated: March 20, 2014

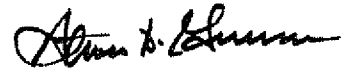
ANGIUS & TERRY LLP

By: 

Paul P. Terry, Jr., SBN 7192
John J. Stander, SBN 9198
David Bray, SBN 12706
1120 N. Town Center Dr., # 260
Las Vegas, Nevada 89144
Attorneys for Plaintiff

EXHIBIT E

EXHIBIT E


CLERK OF THE COURT

1 ODM

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DISTRICT COURT

5

CLARK COUNTY, NEVADA

6

HIGH NOON AT ARLINGTON RANCH
HOMEOWNERS ASSOCIATION, a
Nevada non-profit corporation, for itself
and for all others similarly situated,

Case No. 07A542616
Dept. No. XXII

9

Plaintiff,

Electronic Filing Case

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Vs.

11

D.R. HORTON, INC., a Delaware
Corporation; DOE INDIVIDUALS 1-100;
ROE BUSINESS or GOVERNMENTAL
ENTITIES 1-100, inclusive,

**ORDER DENYING THIRD-
PARTY DEFENDANT
FIRESTOP, INC.'S MOTION TO
DISMISS PLAINTIFF'S
COMPLAINT PURSUANT TO
NRCP 41(e)**

14

Defendants.

15

D.R. HORTON, INC.,

16

Third-Party Plaintiff,

17

Vs.

18

ALLARD ENTERPRISES, INC. d/b/a
IRON SPECIALISTS; ANSE, INC. d/b/a
NEVADA STATE PLASTERING;
BRANDON, LLC d/b/a SUMMIT
DRYWALL & PAINT, LLC; BRAVO
DRYWALL & PAINT, LLC; BRAVO
UNDERGROUND, INC.; CAMPBELL
CONCRETE OF NEVADA, INC.;
CIRCLE S DEVELOPMENT
CORPORATION d/b/a DECK SYSTEMS;
EFFICIENT ENTERPRISES, LLC, d/b/a
EFFICIENT ELECTRIC; FIRESTOP,
INC.; HARRISON DOOR COMPANY;
INFINITY BUILDING PRODUCTS, LLC;
INFINITY WALL SYSTEMS, LLC;
LUKESTAR CORPORATION;

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SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

1 NATIONAL BUILDERS, INC.; O.P.M.,
2 INC. d/b/a CONSOLIDATED ROOFING;
3 QUALITY WOOD PRODUCTS, LTD.,
4 RCR PLUMBING AND MECHANICAL,
5 INC.; REYBURN LAWN & LANDSCAPE
6 DESIGNERS, INC.; RISING SUN
7 PLUMBING, LLC d/b/a RSP, INC.;
8 SOUTHERN NEVADA CABINETS, INC.;
9 SUNRISE MECHANICAL, INC.;
10 SUNSTATE COMPANIES, INC. d/b/a
11 SUNSTATE LANDSCAPE; THE
12 SYLVANIE COMPANIES, INC. d/b/a
13 DRAKE ASPHALT & CONCRETE;
14 UNITED ELECTRIC, INC. d/b/a UNITED
15 HOME ELECTRIC; WALL DESIGN,
16 INC.; WESTERN SHOWER DOOR, INC.;
17 DOES 1 through 150,

18 **Third-Party Defendants.**

19 **ORDER DENYING THIRD-PARTY DEFENDANT FIRESTOP, INC.'S MOTION TO**
20 **DISMISS PLAINTIFF'S COMPLAINT PURSUANT TO NRCP 41(e)**

21 This matter concerning Third-Party Defendant FIRE STOP, INC.'S Motion to Dismiss
22 Plaintiff's Complaint Pursuant to NRCP 41(e) filed January 21, 2014¹ came on for hearing on the
23 27th day of February 2014 at the hour of 9:00 a.m. before Department XXII of the Eighth Judicial
24 District Court, in and for Clark County, Nevada, with JUDGE SUSAN H. JOHNSON presiding;
25 Plaintiff NIGH NOON AT ARLINGTON RANCH HOMEOWNERS ASSOCIATION appeared by
26 and through its attorney, JOHN J. STANDER, ESQ. of the law firm, ANGIUS & TERRY;
27 Defendant/Third-Party Plaintiff D.R. HORTON, INC. appeared by and through its attorney, JOEL
28 D. ODOU, ESQ. of the law firm, WOOD SMITH HENNING & BERMAN; Third-Party Defendant
FIRESTOP, INC. appeared by and through its attorney, RANDALL D. GUSTAFSON, ESQ. and

¹This motion was joined by Defendant/Third-Party Plaintiff D.R. HORTON, INC. on January 23, 2014 and Third-Party Defendants, notably CIRCLE S. DEVELOPMENT CORP. and SUNSTATE COMPANIES, INC. (both on January 27, 2014), EFFICIENT ENTERPRISES, RISING SUN PLUMBING, LLC and ANSE, INC. (all on January 22, 2014), NATIONAL BUILDERS, INC. (on January 24, 2014), QUALITY WOOD PRODUCTS, LTD., SUMMIT DRYWALL & PAINT, LLC and UNITED ELECTRIC, INC. (all on January 23, 2014).

1 DILLON G. COIL, ESQ. of the law firm, LINCOLN GUSTAFSON & CERCOS; Third-Party
2 Defendant SUMMIT DRYWALL & PAINT, LLC appeared by and through its attorneys, ANDREW
3 CRANER, ESQ. of the law firm, BREMER WHYTE BROWN & O'MEARA, and ADAM R.
4 TRIPPIEDI, ESQ. of the law firm, LUH & ASSOCIATES; Third-Party Defendant UNITED
5 ELECTRIC, INC. appeared by and through its attorney, ANDREW CRANER, ESQ. of the law firm,
6 BREMER WHYTE BROWN & O'MEARA; Third-Party Defendant SUNSTATE COMPANIES,
7 INC. appeared by and through its attorney, KIRK WALKER, ESQ. of the law firm, BAUMAN
8 LOEWE WITT & MAXWELL; Third-Party Defendants SUNRISE MECHANICAL, INC. and
9 EFFICIENT ENTERPRISES, LLC appeared by and through their attorney, AARON M. YOUNG,
10 ESQ. of the law firm, BROWN BONN & FRIEDMAN; Third-Party Defendant RISING SUN
11 PLUMBING, LLC appeared by and through its attorneys, ADAM R. TRIPPIEDI, ESQ. of the law
12 firm, LUH & ASSOCIATES, and ANNALISA N. GRANT, ESQ. of the law firm, LINCOLN
13 GUSTAFSON & CERCOS; QUALITY WOOD PRODUCTS, LTD. appeared by and through its
14 attorneys, ANDREW CRANER, ESQ. of the law firm, BREMER WHYTE BROWN & O'MEARA,
15 and KIRK WALKER, ESQ. of the law firm, BAUMAN LOEWE WITT & MAXWELL; Third-
16 Party Defendant OPM, INC. appeared by and through its attorney, BERNADETTE S. TIONGSON,
17 ESQ.; Third-Party Defendant NATIONAL BUILDERS, INC. appeared by and through its attorney,
18 JENNIFER A. FORNETTI, ESQ. of the law firm, SPRINGEL & FINK; and Third-Party Defendant
19 ANSE, INC. appeared by and through its attorney, ANNALISA N. GRANT, ESQ. of the law firm,
20 LINCOLN GUSTAFSON & CERCOS. Having reviewed the papers and pleadings on file herein
21 and heard oral arguments of the attorneys, this Court makes the following Findings of Fact and
22 Conclusions of Law:
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FINDINGS OF FACT AND PROCEDURAL HISTORY

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2 1. As this Court has previously set forth, Plaintiff HIGH NOON AT ARLINGTON
3 RANCH HOMEOWNERS ASSOCIATION is non-profit corporation and governing body of a 342-
4 unit triplex townhouse planned development/ common-interest community created pursuant to NRS
5 Chapter 116 and located within Las Vegas, Clark County, Nevada. The community consists of
6 townhouse units, owned by the Association's members, as well as common elements owned by
7 Plaintiff over which the homeowners have easements and enjoyment.

8
9 2. The community was developed, constructed and sold by Defendant/Third-Party
10 Plaintiff D.R. HORTON, INC. in or about 2004 to 2006.²

11 3. The subject property consists of 114 buildings, containing three (3) units, for a total
12 of 342 homes. The instant action involves claims for damages arising out of constructional defects
13 within the common areas, the building envelopes in which Plaintiff has no ownership interest, and
14 within the interiors of 194 units for which Plaintiff has obtained assignments from those homes'
15 owners.³ The alleged constructional defects include, but are not limited to structural, fire safety,
16 waterproofing defects, and deficiencies in the civil engineering/landscaping, roofing, stucco and
17 drainage, architectural, mechanical, plumbing, HVAC, acoustical, electrical, and those relating to the
18 operating of windows and sliding doors.⁴ As a result of the aforementioned constructional defects,
19 HIGH NOON AT ARLINGTON RANCH HOMEOWNERS ASSOCIATION filed its lawsuit on
20 June 7, 2007 against D.R. HORTON, INC. on behalf of itself and their homeowner-members. D.R.
21 HORTON, INC., in turn, filed its Third-Party Complaint on September 23, 2011 against the
22 subcontractors who provided both labor and supplies to the project's construction. This case is
23
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26 ²See Complaint filed June 7, 2007, Paragraph 10, p. 3.

27 ³As this Court noted previously in its Order filed February 10, 2011, Defendant D.R. Horton, Inc. claims the
28 assignments actually number 193 and not 194. See Defendants' Opposition to Plaintiff's Motion for Declaratory Relief
Re: Standing Pursuant to Assignment and Pursuant to NRS 116.3102(1)(d) filed October 19, 2010, p. 11; also see
Exhibit 5 to Plaintiff's Motion for Declaratory Relief filed September 30, 2010.

⁴See Complaint filed June 7, 2007, Paragraph 16, p. 4.

1 currently scheduled to be tried on this Court's April 21, 2014 five-week trial stack.⁵

2 4. On January 21, 2014, Third-Party Defendant FIRESTOP, INC. filed its motion
3 seeking dismissal of the Complaint given Plaintiff's failure to bring this matter to trial within five (5)
4 years after the Complaint was filed. In so doing, Third-Party Defendant concedes the litigation was
5 tolled four hundred sixty-four (464) days while issues relating to the standing of the homeowner's
6 association to prosecute its homeowner-member claims were pending before and ultimately decided
7 by the Nevada Supreme Court. Plaintiff HIGH NOON AT ARLINGTON RANCH
8 HOMEOWNERS ASSOCIATION opposes, arguing there were two other periods of stay ordered
9 by this Court, extending the toll of the five (5) year period by another three hundred forty-six (346)
10 days. These stays were requested and ultimately ordered by this Court on August 13, 2007 and July
11 30, 2009, respectively, to allow the parties to complete their obligations under the NRS Chapter 40
12 pre-litigation process.
13
14

15 CONCLUSIONS OF LAW

16 1. Rule 41(e) of the Nevada Rules of Civil Procedure (NRCP), which governs dismissal
17 of actions, provides in pertinent part:

18 *Want of prosecution.* ... Any action heretofore or hereafter commenced shall be
19 dismissed by the court in which the same shall have been commenced or to which it may be
20 transferred on motion of any party, or on the court's own motion, after due notice to the
21 parties, unless the action is brought to trial within 5 years after the plaintiff has filed the
22 action, except where the parties have stipulated in writing that the time may be extended. ...

23 *Quoted by Rickard v. Montgomery Ward & Co., Inc.*, 120 Nev. 493, 496, 96 P.2d 743, 746 (2004).

24 The purpose of the five-year rule is to compel expeditious determinations of legitimate claims.

25 *Baker v. Noback*, 112 Nev. 1106, 1110, 922 P.2d 1201, 1203 (1996), *citing C.R. Fedrick, Inc. v.*

26 *Nevada Tax Commission*, 98 Nev. 387, 389, 649 P.2d 1372, 1374 (1982). "The language of NRCP

27 41(e) is mandatory." *Morgan v. Las Vegas Sands, Inc.*, 118 Nev. 315, 320, 43 P.3d 1036, 1039

28 ⁵April 21, 2014 is the fourth trial setting made by this Court.

1 (2002). That is, the district court must dismiss the action if it is not brought to trial within five years
2 after the plaintiff has filed his action, unless the parties agree, *in writing*, to extend the five-year
3 period.

4 2. While the provisions of NRCP 41(e) are defining and absolute, the Nevada Supreme
5 Court has set forth certain exceptions to this rule, and allowed a tolling of this period when there
6 have been court-imposed stays. See Boren v. City of North Las Vegas, 98 Nev. 5, 638 P.2d 404
7 (1982); also see Baker, 112 Nev. 1106, 922 P.2d 1201 (time during which complaint was pending
8 before medical screening panel is excluded from five-year calculation); and Rickard, 120 Nev. 493,
9 98 P.3d 743 (bankruptcy automatic stay tolled five-year prescriptive period). As noted by the high
10 court in Boren, 98 Nev. at 5-6:
11

12 For a court to prohibit the parties from going to trial and then to dismiss their action for
13 failure to bring it to trial is so obviously unfair and unjust as to be unarguable. Appellants
14 agree, but contend that the city as plaintiff had some kind of duty of diligence in seeking
15 vacation of the stay order. The city did move to have the stay order vacated and this was
16 opposed by appellant. We consider this immaterial, however, for we would be hard-pressed
17 to formulate a rule describing the degree of diligence required under such circumstances.
18 Instead we adopt the following rule: **Any period during which the parties are prevented
19 from bringing an action to trial by reason of a stay order shall not be computed to
20 determining the five-year period of Rule 41(e).** (Emphasis added)

21 3. In this case, Plaintiff HIGH NOON AT ARLINGTON RANCH HOMEOWNERS
22 ASSOCIATION filed its lawsuit on June 7, 2007. It thereafter moved *ex parte* for this Court to stay
23 the Complaint until completion of the NRS 40.600 *et seq.* pre-litigation process. This Court ordered
24 the stay on August 13, 2007,⁶ which precluded the parties from litigating or preparing the matter for
25 trial. The prosecution of this case, in effect, remained dormant until April 14, 2008 when Defendant
26 D.R. HORTON, INC. filed various motions with the Court, some of which chided Plaintiff for not
27 cooperating in the NRS Chapter 40 pre-litigation process.

28 ⁶Unfortunately, the stay was open-ended within the Order; that is, this Court did not impose any end or sunset
provision upon the stay.

1 Subsequently, on July 30, 2009, this Court granted Defendant D.R. HORTON, INC. Motion
2 to Stay Litigation and Vacate Trial, and stayed the matter pending completion of the NRS Chapter
3 40 pre-litigation process. The stay ended November 5, 2009 when this Court approved the Special
4 Master's Case Management Order.

5 Approximately two years later, issues relating to a homeowners' association's standing to
6 represent the individual claims of its owner-members were presented to the Nevada Supreme Court
7 in this, and several other unrelated matters. As particular to this action, the high court stayed the
8 action on October 19, 2011, and such was not lifted until January 25, 2013 when the standing issues
9 were decided.
10

11 4. In light of the holding of Boren, 98 Nev. 5, 638 P.2d 404, and its progeny, this Court
12 concludes the five-year prescriptive period set forth by NRCP 41(e) is tolled eight hundred ten (810)
13 days. Given that tolling, this Court finds the five-year deadline is extended and calculated as
14 follows:
15

16 June 7, 2007 (filing of Complaint) plus five years → June 7, 2012 (original deadline)

17 June 7, 2012 plus 810 days = **August 26, 2014 (extended deadline)**

18 In rendering its decision, this Court appreciates the frustration of Defendant and Third-Party
19 Defendants with this matter not proceeding in an expeditious fashion. There is no doubt some if not
20 most of the blame for the delays rests upon Plaintiff HIGH NOON AT ARLINGTON RANCH
21 HOMEOWNERS ASSOCIATION.⁷ However, as noted in Boren, 98 Nev. at 5-6, 638 P.2d at 404-
22 405, the Nevada Supreme Court was hard-pressed to impose or describe a degree of diligence either
23 of the parties should have exercised in seeking a lift of the stay.⁸ Instead, the high court adopted the
24
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27 ⁷In so stating, this Court shares in some of the blame as it did not include an end or sunset provision in the
28 initial stay of the Complaint while the parties were completing their obligations under the NRS Chapter 40 pre-litigation
process.

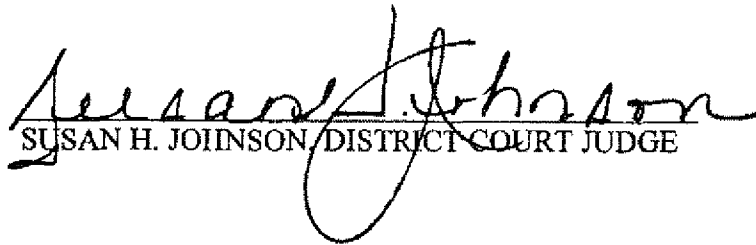
⁸In Boren, the court-imposed stay lasted approximately four (4) years.

1 simple rule without exception: "Any period during which the parties are prevented from bringing
2 an action to trial by reason of a stay order shall not be computed to determining the five-year period
3 of Rule 41(e)." This Court, likewise, concludes it is not the forum to dictate a new due diligence
4 standard, or exception to the rule expressed in Boren.

5 Accordingly, based upon the aforementioned Findings of Fact and Conclusions of Law,

6 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** Third-Party Defendant FIRE
7 STOP, INC.'S Motion to Dismiss Plaintiff's Complaint Pursuant to NRCP 41(e) filed January 21,
8 2014 is denied.
9

10 DATED this 27th day of February 2014.

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14 SUSAN H. JOINSON, DISTRICT COURT JUDGE
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