

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2
3 HIGH NOON AT ARLINGTON RANCH
4 HOMEOWNERS ASSOCIATION, a
Nevada non-profit corporation,

5 Petitioner,

6 v.

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

10 Respondents,

11 and

12 D.R. HORTON, INC.,

13 Real Party in Interest.

14 D.R. HORTON, INC., a Delaware
Corporation,

15 Petitioner,

16 v.

17 THE EIGHTH JUDICIAL DISTRICT
18 COURT OF THE STATE OF NEVADA,
19 IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
ALLAN R. EARL, DISTRICT JUDGE,

20 Respondents,

21 and

22 FIRST LIGHT HOMEOWNERS
23 ASSOCIATION, a Nevada non-profit
corporation, for itself and for all others
similarly situated,

24 Real Party in Interest.
25

Supreme Court Case No.: 65456

Electronically Filed

Apr 03 2015 12:13 p.m.

Tracie K. Lindeman

Clerk of Supreme Court

Supreme Court Case No.: 65993

District Court Case No.: A499743

**REAL PARTY IN INTEREST
FIRST LIGHT HOMEOWNERS
ASSOCIATION'S MOTION TO
SUPPLEMENT APPENDIX**

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Exhibits 1 and 2 detached and

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returned unfiled per order 5-8-15.

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1 **REAL PARTY IN INTEREST FIRST LIGHT HOMEOWNERS**
2 **ASSOCIATION'S MOTION TO SUPPLEMENT APPENDIX**

3 Real Party in Interest, FIRST LIGHT HOMEOWNERS' ASSOCIATION,
4 ("Association"), by and through its attorneys of record, the law firms of Maddox,
5 Isaacson & Cisneros LLP, and James R. Christensen, P.C., respectfully requests this
6 Court to enter an Order granting leave to supplement Appendix with the document
7 entitled Value Diminution Study ("Study"), attached hereto as **Exhibit 1**. The
8 Association further requests permission to file a Revised Appendix, attached as
9 **Exhibit 2**, to reflect the additional supplement. The Association files this Motion for
10 Leave pursuant to NRAP 27(a)(1) which allows for "application for an order or other
11 relief."

12 The Opening Brief and Answering Brief on Dr. Horton's ("Horton's") Writ
13 have been filed in this matter, and oral argument has been heard. "Issue One" in
14 Horton's Writ concerns "[w]hether the District Court erred in determining the
15 Association, in its representative capacity, may represent current owners for claims
16 in the Complaint who purchased their property after the Complaint was filed without
17 a valid assignment." Horton's Petition for Writ of Prohibition and/or Mandamus
18 ("Writ") at 6:2-7. On the other hand, the Association has taken the position that its
19 standing to represent all its members is not divested by changes of unit ownership.
20 *See Answering Brief at 3.*

21 The Study should be part of the Court's record, as the evidence is highly
22 relevant to the veracity of statements made by Horton in both the written pleadings
23 and at oral argument. Specifically, one of the grounds of Horton's arguments before
24 this Court is that "all Subsequent Purchasers bought with notice of the claimed
25 defects" Writ at 2:6-19. *See also id.* at 37:12-13 (Horton alleging that "[T]here
26 may be unit owners who purchased their home at a reduced purchase price due to the
27 existence of the defect. . . ."). Horton further developed the argument as follows:

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1 [A] seller is required by law to disclose the Complaint and the existence
2 of the constructional defects to prospective purchasers. Accordingly,
3 upon the sale of a home during the pendency of the Chapter 40 process
4 or during the pendency of an action for construction defects, the parties
5 have two options: the parties can chose [sic] not to reduce the purchase
6 price of the home due to the existence of defects and the seller can
7 assign his claims and/or causes of actions to the prospective purchaser
8 who will be made whole for the defects through the outcome of the
9 litigation; or, **the seller can reduce the purchase price of the home
10 and maintain the right to recover his damages including the value
11 of the reduction in the purchase price from the contractor.**

12 *Id.* at 38:6-19 (emphasis added).

13 The Study demonstrates that Horton made this argument without any
14 foundation. Horton specifically designated Mike Sanders of Bell Anderson &
15 Sanders, LLC as an expert "to testify regarding real estate appraisal and loss of value,
16 if any" See Declaration of Troy L. Isaacson, Esq. ("Declaration"), below. The
17 purpose of the Study by Mr. Sanders was to "conduct[] investigation and analyses
18 necessary to form opinions as to diminution in value, if any, associated with alleged
19 construction defects affecting homes in the referenced project." **Exhibit 1** at 1. Mr.
20 Sanders further stated that the "Intended Use" of the Study was, "Evidence of value
21 and/or diminution in value for purposes of litigation proceedings." *Id.* at 2. After
22 performing a comprehensive analysis, Mr. Sanders concluded:

23 Based on available data, none of the analyses performed would suggest
24 that First Light at Boulder Ranch has under-performed in the market,
25 indicating no apparent reduction in value. Price trends are consistent
26 with the market and three similar projects by the same builder, none with
27 any known issues related to construction litigation.

28 *Id.* at 8.

29 The fact that Mr. Sanders concludes, for purposes of this litigation, that the
30 existence of constructional defects has no effect on the values of properties within the
31 First Light community, speaks to the veracity of Horton's arguments made in its
32 Writ. The Study supported Horton's position that the values were not affected and
33 that therefore, the homeowners had suffered no harm. Now, Horton is taking the
34 opposite stance and asserting the subsequent purchasers obtained a reduction in the

1 price because they purchased with disclosure. The Study shows the disingenuousness
2 and convenient nature of Horton's argument.

3 The Study is highly relevant to the Court's determination of the Writ, as the
4 Study demonstrates that Horton's argument that "[T]here may be unit owners who
5 purchased their home at a reduced purchase price due to the existence of the defect.
6 . . .", *supra*, is false. Thus the Court should grant this Motion on grounds of good
7 cause. See NRAP 26 (b)(1)(A) ("For good cause, the court may extend the time
8 prescribed by these Rules or by its order to perform any act, **or may permit an act to**
9 **be done after that time expires.**") (emphasis added).

10 Due to excusable neglect, the Study was not submitted as part of the
11 Association's Appendix. The Study was dated September 24, 2008, a date that
12 occurred well before the substitution of Maddox, Isaacson & Cisneros as counsel in
13 this matter on June 12, 2009. See Declaration. As such, this law firm was not aware
14 of the Study until very recently. *Id.*

15 Furthermore, though Mr. Sanders was previously disclosed, this law firm did
16 not know until yesterday, April 2, 2015, that Horton would be calling Mr. Sanders as
17 an expert in this matter as an updated report was not produced upon the deadline for
18 production of the expert reports and the deadline for identifying experts to be called
19 at the time of trial was set for yesterday. See Declaration.

20 This law firm therefore has just received notification that Horton intends to call
21 Mr. Sanders as an expert in this matter. See *id.* That said, the fact that Horton intends
22 to call Mr. Sanders to testify in a manner that is directly contradictory to the Writ
23 arguments is important for the Court's consideration.

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1 Given the excusable neglect, the importance of the evidence, and the
2 Association's intention to provide a clear record of the applicable facts, the Court
3 should grant this Motion. Horton fully intends to call Mr. Sanders as an expert.

4 Respectfully submitted this 3rd day of April, 2015.

5 **MADDOX, ISAACSON & CISNEROS, LLP**

6
7 By: 

8 Robert C. Maddox, Esq., NV Bar No. 4002
9 Troy L. Isaacson, Esq., NV Bar No. 6690
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22 Attorneys for Real Party in Interest
23 First Light Homeowners Association
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1 **DECLARATION OF TROY L. ISAACSON, ESQ. IN SUPPORT OF REAL**
2 **PARTY IN INTEREST FIRST LIGHT HOMEOWNERS ASSOCIATION's**
3 **MOTION TO SUPPLEMENT APPENDIX**

4 I, Troy L. Isaacson, declare under penalty of perjury as follows:

5 1. I am over the age of eighteen and competent to testify as to the matters set forth
6 herein, which are stated upon personal knowledge, except for the those matters stated
7 upon information and belief, if any, and as to those matters, I believe them to be true.

8 2. I am a partner with the law firm of Maddox, Isaacson & Cisneros LLP, and am
9 admitted to practice before all courts within the state of Nevada.

10 3. I am able to testify as to the matters set forth in this Declaration.

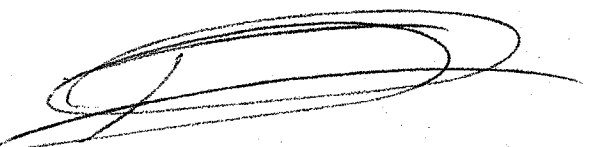
11 4. Along with co-counsel, our firm serves as counsel for Real Party in Interest,
12 FIRST LIGHT HOMEOWNERS' ASSOCIATION ("Association").

13 5. On October 2, 2008, D.R. Horton, Inc. ("Horton") filed its Designation of
14 Expert Witnesses, which included the designation of Mike Sanders of Bell Anderson
15 & Sanders, LLC, who was "expected to testify regarding real estate appraisal and loss
16 of value, if any"

17 6. This firm substituted in as counsel on June 12, 2009.

18 7. Until yesterday, April 2, 2015, this law firm did not know Horton would be
19 calling Mr. Sanders as an expert in this matter as an updated report was not produced
20 upon the deadline for production of the expert reports and the deadline for identifying
21 experts to be called at the time of trial was set for yesterday.

22 8. This law firm therefore has just received notification that Horton intends to call
23 Mr. Sanders as an expert in this matter. See April 2, 2015 Letter from Wolfenzon
24 Rolle to all counsel, attached as Exhibit 3.

25 
26 Troy L. Isaacson, Esq.

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that on the 3rd day of April, 2015, I
3 served the copies of **REAL PARTY IN INTEREST FIRST LIGHT**
4 **HOMEOWNERS ASSOCIATION'S MOTION TO SUPPLEMENT APPENDIX,**
5 via U.S. Mail, postage prepaid, to the addresses listed below:

6 Honorable Judge Allan. R. Earl
7 Regional Justice Center
8 Department XIX
9 Eighth Judicial District Court
200 Lewis Avenue
Las Vegas, Nevada 89101
Respondent

Bruno Wolfenzon, Esq.
Wolfenzon Rolle
6275 Via Austi Parkway, Suite 260
Las Vegas, Nevada 89119
Attorneys for Petitioner
D.R. Horton, Inc.

10 Megan K. Dorsey, Esq.
11 Koeller, Nebeker, Carlson & Haluck, LLP
12 300 South Fourth Street, Suite 500
13 Las Vegas, Nevada 89101
14 Attorneys for Petitioner
15 D.R. Horton, Inc.

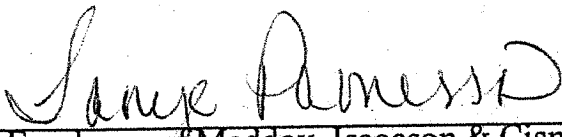
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An Employee of Maddox, Isaacson & Cisneros, LLP

Exhibit 3

WOLFENZON ROLLE

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Email: Bruno@wolfenzon.com
jrolle@wolfenzon.com

April 2, 2015

ELECTRONICALLY SERVED
04/02/2015 11:00:30 AM

Via E-service

ALL COUNSEL

Re: **First Light HOA v. D.R. Horton, Inc.**
Our Client: D.R. Horton, Inc.
Case No: A499743
Our File No. 370.002

Dear Counsel:

Pursuant to Special Master Hale's Report and Order dated March 25, 2015, please see below list of D.R. Horton's Expert Witnesses expected to testify at trial:

1. Bay Cobb – Architectural;
2. Mike Wintheiser – Plumbing;
3. Steve Burke – Electrical;
4. Peter Curry – Structural;
5. John Weeks – Statistician;
6. Ed Martinet – Cost Estimator;
7. Mike Sanders – Real Estate Appraisal;
8. Jay Hoggan – Estimator Electrical Support;
9. James Frasure – Re: His Window and Sliding Glass Door Observation & Testing.

If you have any questions, please feel free to contact our office.

Sincerely,

WOLFENZON ROLLE

/s/ Jon Rolle

Jonathan P. Rolle, Esq.

JPR/II

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