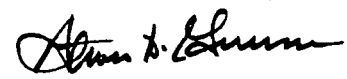


# Exhibit 2



CLERK OF THE COURT

**COMP**  
DENNIS M. PRINCE  
Nevada Bar No. 5092  
**PRINCE & KEATING**  
3230 South Buffalo Drive  
Suite 108  
Las Vegas, Nevada 89117  
Telephone: (702) 228-6800  
Facsimile: (702) 228-0443  
E-Mail: [DPrince@PrinceKeating.com](mailto:DPrince@PrinceKeating.com)  
Attorney for Plaintiffs  
*Tower Homes, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

TOWER HOMES, LLC, a Nevada limited liability  
company;

Plaintiff,

vs.

WILLIAM H. HEATON, individually;  
NITZ, WALTON & HEATON, LTD., a domestic  
professional corporation; and DOES I through X,  
inclusive,

Defendants.

CASE NO.: A - 1 2 - 6 6 3 3 4 1 - C  
DEPT. NO.: XXV I I

**COMPLAINT**

Tower Homes, LLC, a Nevada limited liability company, pursuant to Bankruptcy Court Order dated June 3, 2010, Case No. BK-07-13208, for its Complaint against the Defendants states, asserts and alleges as follows:

1. Tower Homes, LLC (hereinafter "Tower") is and was at all times relevant to these proceedings a Nevada limited liability company.

2. Upon information and belief William H. Heaton (hereinafter "Heaton") is and was

1  
2 at all times relevant to the proceedings, a resident of the state of Nevada. Additionally, Heaton is  
3 and was at all times relevant to these proceedings a licensed attorney in the state of Nevada  
4 practicing law in Clark County, Nevada.

5 3. Upon and information and belief, Nitz, Walton & Heaton, Ltd. (hereinafter  
6 "NWH") is and was a Nevada professional corporation. NWH is a law firm located at 601 South  
7 Tenth Street, Suite 201, Las Vegas, Nevada 89101. At all times relevant to these proceedings,  
8 Heaton was an employee, agent, officer, shareholder or other authorized representative of NWH.

9  
10 4. The true names and capacities of Defendants named herein as DOES I through X,  
11 whether individual, corporate, associate, or otherwise, are presently unknown to the Plaintiff,  
12 who, therefore, sues said defendants by such fictitious names. The Plaintiff is informed and  
13 believes and, therefore, alleges that each of the Defendants so designated herein is responsible in  
14 some manner for the events and occurrences referred to herein alleged, and the Plaintiff will  
15 request leave of the Court to amend this Complaint to insert the true names and capacities of  
16 DOES I through X, when the same have been ascertained and to join such Defendants in this  
17 action.  
18

19  
20 5. Rodney C. Yanke (hereinafter "Yanke") is a longtime client of Heaton and NWH.  
21 Upon information and belief, Yanke is a licensed contractor in the state of Nevada. In addition,  
22 Yanke began investing and developing real property in and around Clark County, Nevada.

23 6. On or about April 3, 2004, NWH caused or assisted in the formation of Tower at  
24 the request of Yanke. At that time, Yanke informed Heaton and NWH of his intent to construct a  
25 residential common interest ownership project known as Spanish View Towers Project  
26 (hereinafter the "Project").  
27

28 7. Yanke was the managing member of Tower. Yanke, in his capacity as the

1  
2 manager of Tower, informed Heaton and NWH that the Project was to consist of three 18 story  
3 condominium towers combining for a total of 405 units located generally at the southwest corner  
4 of Interstate 215 and south Buffalo Drive in Las Vegas, Nevada.

5 8. NWH and Heaton knew or should have known that the Project was a common  
6 interest community governed by the requirements of Chapter 116 of the Nevada Revised Statutes.  
7

8 9. In addition to other legal services, Yanke, as the manager of Tower, requested that  
9 Heaton and NWH draft purchase contracts for the individual units. Prior to and during the initial  
10 phases of construction, Tower marketed the individual units for sale to members of the public.  
11 Heaton and NWH were obligated to properly advise Tower of all applicable legal requirements  
12 concerning the sale of the individual units, including the applicability of Chapter 116 of the  
13 Nevada Revised Statutes. Heaton and NWH knew or reasonably should have known that the  
14 purchase contracts they drafted would be utilized by Tower for the sale of the individual units.  
15 Heaton and NWH also knew that each pre-construction purchaser would be required to put up a  
16 substantial earnest money deposit toward the purchase price of the individual unit.  
17

18 10. Heaton and NWH knew that Tower had a legal obligation to each individual  
19 purchaser to properly safeguard the earnest money deposits from mismanagement, theft or  
20 unlawful use as required by Chapter 116 of the Nevada Revised Statutes.  
21

22 11. Heaton and NWH knew or should have known about the strict requirements of  
23 Chapter 116 of the Nevada Revised Statutes relating to the usage of the earnest money deposits by  
24 Tower. Heaton and NWH should have advised Tower pursuant to NRS 116.411 that the earnest  
25 money deposits were required to be held by a third party and could only be released for very  
26 limited purposes as allowed by the statute.  
27

28 12. Heaton and NWH had a duty and obligation to advise Tower of the requirements

1  
2 of NRS 116.411 and draft the contracts in strict accordance with the statute. Instead of properly  
3 advising Tower of the legal requirements of NRS 116.411 and drafting the purchase contracts in  
4 strict accordance therewith, Heaton and NWH drafted the purchase contracts in specific  
5 contravention of the strict requirements of NRS 116.411 which is designed for the protection of  
6 purchasers of common interest units such as the Project.  
7

8 13. Based on the manner in which Heaton and NWH drafted the contracts, Tower was  
9 in violation of NRS 116.411. Moreover, by reason of the failure to properly advise Tower and  
10 draft contracts in strict accordance with NRS 116.411, Heaton and NWH created the risk that the  
11 earnest money deposits would be used for unlawful purposes to the detriment of Tower.  
12

13 14. Heaton and NWH knew that Yanke and/or others at Tower were using the deposit  
14 for unlawful purposes and in contravention of Nevada law.  
15

16 15. On or about May 23, 2007, certain Tower Purchasers filed a Complaint in the  
17 Eighth Judicial District Court, Case No. A541668, against, among others, Tower and Yanke  
18 seeking the return of their earnest money deposits. On or about October 23, 2007, the Tower  
19 Purchasers filed a First Amended Complaint against Tower, Yanke and others seeking return of  
20 the earnest money deposits. On or about March 31, 2009, Tower Purchasers filed a Second  
21 Amended Complaint against Tower, Yank and others seeking return of their earnest money  
22 deposits. The allegations contained in the Complaint, First Amended Complaint and Second  
23 Amended Complaint in Case No. A541668 are incorporated herein by reference as though fully  
24 set forth herein.  
25

26 16. On May 31, 2007, Tower filed a Petition in the United States Bankruptcy Court in  
27 the District of Nevada pursuant to Chapter 11 of the United States Bankruptcy Code. Among  
28 Towers' creditors were the individual Tower Purchasers. The Tower Purchasers collectively filed

1  
2 Proofs of Claims totaling \$3,560,000.00. There was no timely objection to the amount of the  
3 Tower Purchasers Proofs of Claims. William A. Leonard, Jr. is the post-confirmation Chapter 11  
4 Trustee of the Tower bankruptcy estate.

5 17. During the bankruptcy proceeding, the Trustee, the law firm Marquis Aurbach  
6 Coffing as well as the Tower Purchasers entered into a stipulation to release and assign certain  
7 claims of the debtor and allow Marquis Aurbach Coffing as counsel for the Tower Purchasers to  
8 pursue claims on behalf of the debtor. Pursuant to the stipulation of the parties which was entered  
9 as an Order on June 3, 2010, Marquis Aurbach Coffing and the Trustee signed and agreed to  
10 allow Marquis Aurbach Coffing as counsel for the Tower Purchasers to pursue any and all claims  
11 on behalf of the debtor against any individual or entity who may have any liability, owed any to  
12 the debtor or others for the loss of the earnest money deposits provided by the purchasers of the  
13 units at Spanish View and the Project.  
14

15  
16 18. The trial in Case No. A541668 was scheduled to commence on May 9, 2011. In  
17 advance of the trial, a settlement agreement was reached between the Tower Purchasers and  
18 Yanke, individually.  
19

20 19. On or about May 2, 2011, a Stipulation to Entry of Order Granting Judgment  
21 Against Yanke and dismissing claims against Yanke was entered in Case No. A541668.  
22

#### 23 FIRST CAUSE OF ACTION

24 20. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1  
25 through 19 of this Complaint and incorporates them by reference.

26 21. Heaton and NWH provided legal representation to Tower concerning the Spanish  
27 View Project, including providing legal advice and drafting the purchase contracts.

28 22. Heaton and NWH breached their duty of care by failing to perform as a reasonable

1  
2 attorney and law firm would relating to its representation of Tower.

3 23. As a result of the failure to perform and provide advice as a reasonable attorney  
4 and law firm would under the same or similar circumstances, Heaton and NWH breached their  
5 duty of care owed to Tower.

6 24. As a direct and proximate result of Defendants' breach of duty and care to Tower,  
7  
8 Tower has been damaged in an amount in excess of \$10,000.00.

9 25. As a direct and proximate result of Heaton and NWH's actions and/or omissions,  
10 Tower has been required to retain the services of an attorney to prosecute this action, and is,  
11 therefore, entitled to reasonable attorney's fees and costs incurred herein.

12 SECOND CAUSE OF ACTION

13 (Breach of Fiduciary Duty)

14  
15 26. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1  
16 through 25 of this Complaint and incorporates them by reference.

17 27. A fiduciary duty existed between Tower and Heaton/NWH as their client.

18 28. By virtue of the breach of this fiduciary duty, Heaton and NWH were under a duty  
19 and obligation to act for the specific benefit of Tower and its legal obligations concerning the sale  
20 of the individual units.

21  
22 29. Heaton and NWH had a duty to act with the utmost good faith trust and candor  
23 toward Tower.

24 30. Heaton and NWH breached their fiduciary duty owed to Tower.

25 31. As a result of Heaton and NWH's breach of fiduciary duty, Tower has been  
26 damaged in an amount in excess of \$10,000.00.  
27  
28

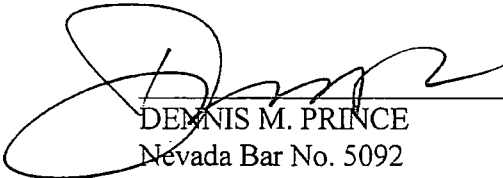
1  
2 32. As a direct and proximate result of Heaton and NWH's actions and/or omissions,  
3 Tower has been required to retain the services of an attorney to prosecute this action, and is,  
4 therefore, entitled to reasonable attorney's fees and costs incurred herein.

5 WHEREFORE, Plaintiff pray for a judgment against Defendants as follows:

- 6  
7 1. General and special damages in an amount in excess of \$10,000.00;  
8 2. Costs of suit incurred including reasonable attorney's fees; and  
9 3. For such other relief as the Court deems just and proper.

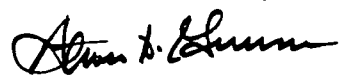
10 DATED this 11 day of June, 2012.

11 **PRINCE & KEATING**

12  
13  
14   
15 DENNIS M. PRINCE  
16 Nevada Bar No. 5092  
17 3230 South Buffalo Drive  
18 Suite 108  
19 Las Vegas, Nevada 89117  
20 Attorney for Plaintiff  
21 *Tower Homes, LLC*  
22  
23  
24  
25  
26  
27  
28



# Exhibit 1



CLERK OF THE COURT

1 **NEOJ**  
2 DENNIS M. PRINCE  
3 Nevada Bar No. 5092  
4 ERIC N. TRAN  
5 Nevada Bar No. 11876  
6 **PRINCE & KEATING**  
7 3230 South Buffalo Drive  
8 Suite 108  
9 Las Vegas, Nevada 89117  
10 Telephone: (702) 228-6800  
11 Facsimile: (702) 228-0443  
12 **E-Mail: DPrince@PrinceKeating.com**  
13 **E-Mail: ETran@PrinceKeating.com**  
14 Attorneys for Plaintiffs  
15 Tower Homes, LLC

11 DISTRICT COURT

12 CLARK COUNTY, NEVADA

14 TOWER HOMES, LLC, a Nevada limited  
15 liability company;

16 Plaintiff,

17 vs.

18 WILLIAM H. HEATON, individually; NITZ,  
19 WALTON & HEATON, LTD., a domestic  
20 professional corporation; and DOES I  
21 through X, inclusive,

22 Defendants.

CASE NO.: A-12-663341-C  
DEPT. NO.: XXVI

NOTICE OF ENTRY OF ORDER

22 TO: WILLIAM H. HEATON individually and NITZ, WALTON & HEATON, Defendants;  
23 and

24 TO: JEFFREY OLSTER ESQ., attorney for Defendants:

25 / / /

26 / / /

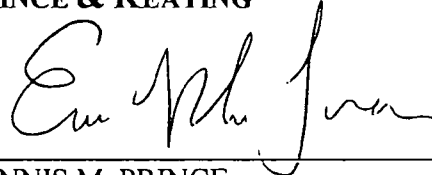
27 / / /

28

1 PLEASE TAKE NOTICE that the attached Order Granting Defendants' Motion for  
2 Summary Judgment was entered on May 12, 2014, a copy of which is attached hereto.

3 DATED this 15 day of May, 2014.

4 PRINCE & KEATING

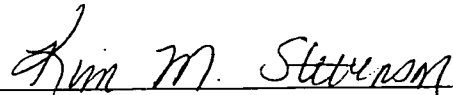
5 

6 DENNIS M. PRINCE  
7 Nevada Bar No. 5092  
8 ERIC N. TRAN  
9 Nevada Bar No. 11876  
10 3230 South Buffalo Drive, Suite 108  
11 Las Vegas, Nevada 89117  
12 Attorneys for Plaintiff  
13 Tower Homes, LLC

14 **CERTIFICATE OF MAILING**

15 I hereby certify that on the 15<sup>th</sup> day of May, 2014, I caused service of the foregoing  
16 **NOTICE OF ENTRY OF ORDER** to be made by depositing a true and correct copy of same  
17 in the United States Mail, postage fully prepaid, addressed to the following:

18 Jeffrey Olster, Esq.  
19 LEWIS BRISBOIS BISGAARD & SMITH, LLP  
20 6385 South Rainbow Boulevard, Suite 600  
21 Las Vegas, Nevada 89118  
22 Facsimile: (702) 893-3789  
23 Attorneys for Defendants

24 

25 An employee of PRINCE & KEATING  
26  
27  
28

<input type="checkbox"/> Voluntary Dis	<input type="checkbox"/> 31st Dis	<input checked="" type="checkbox"/> 1st Jdgmt	18
<input type="checkbox"/> Inventory (stat) Dis	<input type="checkbox"/> 31st Jdgmt	<input type="checkbox"/> Non-Jury Trial	19
<input type="checkbox"/> Jdgmt on Auto Award	<input type="checkbox"/> Default Jdgmt	<input type="checkbox"/> Jury Trial	20
<input type="checkbox"/> 1st to Dis (by client)	<input type="checkbox"/> Transferred		21
<input type="checkbox"/> 2nd to Dis (by client)			22
<input type="checkbox"/> 3rd to Dis (by client)			23
<input type="checkbox"/> 4th to Dis (by client)			24
<input type="checkbox"/> 5th to Dis (by client)			25

1       **I. FACTS**

2           1. This case arises out of an attorney-client relationship between Defendants and  
3 Plaintiff Tower Homes, LLC ("Tower Homes") in connection with a residential common  
4 interest ownership development known as Spanish View Tower Homes (the "Development").  
5 Defendants handled transactional and litigation matters on behalf of Tower Homes in  
6 connection with the Development.

7           2. Many of the individuals and entities that agreed to purchase units in the  
8 Development (the "Tower Homes Purchasers") paid earnest money deposits. The  
9 Development was not successful, and construction was never completed. The earnest money  
10 deposits were not returned to the Tower Homes Purchasers. Consequently, many of the  
11 Tower Homes Purchasers filed lawsuits in Clark County District Court against Tower Homes,  
12 Rodney Yanke (Tower Homes' sole owner and manager) and other individuals and entities  
13 involved in the sale of the units.

14           3. On May 31, 2007, various creditors of Tower Homes initiated involuntary Chapter  
15 11 bankruptcy proceedings against Tower Homes in the United States Bankruptcy Court,  
16 District of Nevada (Case No. BK-S-07-13208-BAM).

17           4. On December 8, 2008, the Bankruptcy Court entered an "Order Approving  
18 Disclosure Statement and Confirming Plan of Reorganization." See Defendants' **Exhibit A** to  
19 MSJ. Pursuant to the Order, "the Trustee and the Debtor's (Tower's) bankruptcy estate shall  
20 retain all Claims or Causes of Action that they have or hold against any party . . . whether  
21 arising pre- or post-petition, subject to the applicable state law statutes of limitation and  
22 related decision law, whether sounding in tort, contract or other theory or doctrine of law or  
23 equity."

24           5. On June 3, 2010, during the bankruptcy proceeding, the Bankruptcy Court  
25 entered an "Order Granting Motion to Approve Stipulation to Release Claims and Allow  
26  
27  
28

1 Marquis & Aurbach, as Counsel for the Tower Homes Purchasers, To Pursue Claims on  
2 Behalf of Debtor" (hereinafter referred to as the "Marquis Aurbach Order" attached as  
3 Defendants' **Exhibit B** to MSJ).

4 6. Pursuant to the Marquis Aurbach Order,

- 5
- 6 a. The "Trustee has determine that he does not intend, and in any event, does  
7 not have sufficient funds in the Estate to pursue claims on behalf of the  
8 Debtor against . . . any other individual or entity later identified through  
9 discovery which has or may have liability to Debtor or others for the loss  
10 of earnest money deposits provided by purchasers for units in the Spanish  
11 View Tower Homes condominium project."
- 12 b. The "Trustee has determine that the claims against . . . any other individual  
13 or entity later identified through discovery which has or may have liability  
14 to Debtor other others for the loss of the earnest money deposits provided  
15 by purchasers for units in the Spanish View Tower Homes condominium  
16 projects are or may be direct claims held by the Tower Homes Purchasers,  
17 and therefore, are not claims held solely and exclusively by the Estate."
- 18 c. The "Trustee hereby stipulates and agrees to release to the Tower Homes  
19 Purchasers any and all claims on behalf of the Debtor against . . . any other  
20 individual or entity later identified through discovery which has or may  
21 have liability or owed any duty to Debtor or others for the loss of the  
22 Tower Homes Purchasers earnest money deposits and all claims to any and  
23 all earnest money deposits provided by purchasers for units in the Spanish  
24 View Tower Homes Condominium projects."
- 25 d. The "Trustee hereby stipulates and agrees to allow Marquis & Aurbach, as  
26 counsel for the Tower Homes Purchasers, to pursue any and all claims on  
27  
28

1                   behalf of the Debt against . . . any other individual or entity later identified  
2                   though discovery which has or may have any liability or owed any duty to  
3                   Debtor or others for the loss earnest money deposits provided by  
4                   purchasers for units in the Spanish View Tower Homes condominium  
5                   project.”

6  
7                   e. The “Trustee hereby stipulates and agrees to allow Marquis & Aurbach, as  
8                   counsel for the Tower Homes Purchasers, to recovery any and all earnest  
9                   monies deposits, damages, attorney’s fees and costs, and interest thereon  
10                  on behalf of Debtor and the Tower Homes Purchasers with respect to those  
11                  claims release to the Tower Homes Purchasers herein.”

12  
13                  7. On April 2, 2013, the Bankruptcy Court issued an “Order Granting Motion to  
14                  Approve Amended Stipulation to Release Claims and Allow Marquis Aurbach Coffing, as  
15                  Counsel for the Tower Homes Purchasers, To Pursue Claims on Behalf of Debtor”  
16                  (hereinafter referred to as “Amended Marquis Aurbach Order”) . See Defendants’ Exhibit D  
17                  to MSJ.

18                  8. Pursuant to the Amended Marquis Aurbach Order:

19                  a. The Order “authorizes the Trustee to permit the Tower Homes Purchasers  
20                  to pursue any and all claim on behalf of Tower Homes, LLC (the “Debtor”)  
21                  against any individual or entity which has or may have liability or owed  
22                  any duty to Debtor or others for the loss of the earnest money deposits  
23                  provided by purchasers for units in the Spanish View Tower Homes  
24                  condominium project which shall specifically include, but may not be  
25                  limited to, pursuing the action currently filed in the Clark County District  
26                  Court styled as Tower Homes, LLC v. William H. Heaton et. al. Case No.  
27                  A-12-663341-C.”  
28

1 b. "[T]his Court hereby authorizes the law firm of Marquis Aurbach Coffing,  
2 and/or Prince & Keating, LLP or successive counsel, retained on behalf of  
3 Tower Homes Purchasers to recover any and all earnest money deposits,  
4 damages, attorney's fees and costs and interest thereon on behalf of Debtor  
5 and the Tower Homes Purchasers and that any such recoveries shall be for  
6 the benefit of the Tower Homes Purchasers."  
7

## 8 **II. LEGAL CONCLUSIONS**

9 9. As a general rule legal malpractice claims may not be assigned. *Chaffee v Smith*,  
10 98 Nev. 222 (1982).

11 10. The Bankruptcy Orders at issue herein did not assign the alleged malpractice  
12 claims to the Tower Homes Purchasers. Rather, the Plan approved by the Bankruptcy Court  
13 recognized that the Trustee lacked funds to pursue various claims related to the loss of earnest  
14 money deposits which the Trustee had the right to pursue upon the effective date of the Plan.  
15 See Bankruptcy Plan dated 12/08/08, Section X Miscellaneous Provisions, Paragraph C,  
16 Litigation.  
17

18 11. Subsequently, pursuant to the June 2, 2010 Marquis Aurbach Order, the Trustee  
19 "releases" to the Tower Homes Purchasers the right to pursue any person or entity who "may  
20 have any liability or owed any duty" to Tower Homes for loss of the earnest money deposits  
21 made by the Tower Homes Purchasers.  
22

23 12. The Amended Marquis Aurbach Order dated April 2, 2013 clarified that the  
24 Bankruptcy Court authorized the Trustee to "permit the Tower Homes Purchasers, to pursue  
25 any and all claims on behalf of Tower Homes, LLC (the "Debtor") . . . which shall  
26 specifically include, but may not be limited to, pursuing" the instant action, with any recovery  
27 being for the benefit of the Tower Homes Purchasers. The Trustee specifically authorized the  
28 Tower Homes Purchasers to pursue the claim in the name of Tower Homes, LLC.



1 13. The California Supreme Court has addressed the prohibition against assignment of  
2 malpractice claims from a Bankruptcy estate. A legal malpractice claim obtained by  
3 assignment in bankruptcy was dismissed when filed in the name of the third party assignee.  
4 Baum v. Duckur, Spradling & Metzger, 72 Cal. App. 4<sup>th</sup> 54,69, 84 Cal.Rptr.2d 703,712  
5 (1999).

6  
7 14. Plaintiff argues that the instant case is distinguishable as it is brought in the name  
8 of Tower Homes, LLC. A similar attempt to sue in the name of the Debtor was disallowed in  
9 Curtis v Kellogg & Andelson, 73 Cal.App. 4th 492, 86 Cal.Rptr. 2d 536 (1999), as the Debtor  
10 was not pursuing the claim on behalf of the trustee for the benefit of the estate; instead any  
11 proceeds recovered would go directly to Dr. Curtis. In the instant claim, any recovery is  
12 expressly for the benefit of the Purchasers.

13  
14 15. Plaintiff also relies on In re AgriBioTech, Inc., 319 BR 216 (D.Nev. 2004) for the  
15 holding that a Trustee can pursue a claim which would ultimately benefit creditors, as doing  
16 so is for the benefit of the estate. Here, the Trustee is not pursuing the claim. The Trustee did  
17 not retain counsel to bring the claim in the name of the Estate for the benefit of all creditors as  
18 allowed in the Plan. The Marquis Aurbach Orders approving the agreement between the  
19 Trustee and the Towers Homes Purchasers purports to release the claim to the Tower Homes  
20 Purchasers instead of assigning the rights, which is a distinction without a difference.

21  
22 16. Recently the California Supreme Court has recognized a narrow exception to the  
23 prohibition against assignment of malpractice claims, see White Mountains Reinsurance  
24 Company v. Borton Petrini, LLP, 221 Cal. App. 4th 890 (2013), wherein the Court allowed  
25 the assignment as a small incidental part of a larger commercial transfer; the transfer was for  
26 all assets, rights, obligations and liabilities and did not treat the malpractice claim as a distinct  
27 commodity; the transfer was not to a former adversary; the malpractice claim arose from the  
28 insurance carrier's retention of defense counsel for an insured; and all communication

1 between the carrier and counsel had been conducted through a third party claims  
2 administrator. None of the factors giving rise to the exception are present here.

3 17. Based on a review of the Bankruptcy Orders, it cannot be said that the Tower  
4 Homes Purchasers are pursuing the legal malpractice claim in the name of the Debtor and for  
5 the benefit of the Bankruptcy estate. Rather the sole benefit appears to be for the Purchasers.  
6 The assignment/release was not incidental to a larger transfer of assets and liabilities,  
7 therefore, the exception does not apply. The Nevada Supreme Court has stated the assignment  
8 of legal malpractice claims is against public policy. The release at issue herein violates the  
9 general principal articulated in Chaffee v Smith, 98 Nev. 222 (1982).  
10

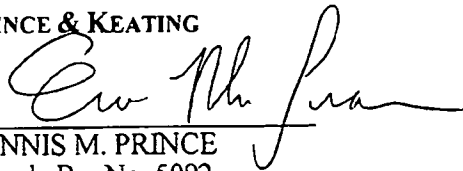
11 18. Defendant's Motion for Summary Judgment is, therefore, GRANTED.

12 DATED this 17<sup>th</sup> day of May, 2014.

13  
14   
15 DISTRICT COURT JUDGE  
16 

17 Respectfully submitted by:

18 PRINCE & KEATING

19   
20 DENNIS M. PRINCE  
21 Nevada Bar No. 5092  
22 ERIC N. TRAN  
23 Nevada Bar No. 11876  
24 3230 South Buffalo Drive, Suite 108  
25 Las Vegas, Nevada 89117  
26 Attorneys for Plaintiff  
27 Tower Homes, LLC  
28

29 Approved as to Form and Content by:

30  
31 Jeffrey Olster, Esq.  
32 LEWIS BRISBOIS BISGAARD & SMITH, LLP  
33 6385 South Rainbow Boulevard, Suite 600  
34 Las Vegas, Nevada 89118  
35 Attorneys for Defendants

# In the Supreme Court of the State of Nevada

TOWER HOMES, LLC, a Nevada limited liability company,

Appellant(s),

vs.

WILLIAM H. HEATON, individually; NITZ, WALTON & HEATON, LTD., a domestic professional corporation; and DOES I through X, inclusive,

Respondent(s)

Electronically Filed  
Jun 18 2014 04:51 p.m.  
Supreme Court No. 65755  
Tracie K. Lindeman  
District Court Case No. A663341  
Clerk of Supreme Court

## **DOCKETING STATEMENT** **CIVIL APPEALS**

### **GENERAL INFORMATION**

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

### **WARNING**

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counselor appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to attach documents as requested in this statement, completely fill out the statement, or to fail to file it in a timely manner, will constitute grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial Eighth District Department XXVI County Clark  
Judge Gloria Sturman District Ct. Docket No. A-12-663341-C

**2. Attorney filing this docketing statement:**

Attorney Dennis M. Prince & Eric N. Tran Telephone 702-288-6800  
Firm Prince & Keating  
Address 3230 South Buffalo Drive, Suite 108  
Las Vegas, Nevada 89117  
Client(s) TOWER HOMES, LLC, Appellant

If this is a joint statement completed on behalf of multiple appellants, add the names and address of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondent(s):**

Attorney : Jeffrey Olster, Esq. Telephone: (702) 383-6000  
Firm : LEWIS BRISBOIS BISGAARD & SMITH, LLP  
Address : 6385 South Rainbow Boulevard, Suite 600  
Las Vegas, Nevada 89118  
(702) 893-3383  
Client(s) : WILLIAM H. HEATON; and NITZ, WALTON & HEATON, LTD., Respondents

**4. Nature of disposition below (check all that apply):**

- |  |   |
|--|---|
| <input type="checkbox"/> Judgment after bench trial  | <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief              |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Grant/Denial of injunction                     |
| <input checked="" type="checkbox"/> Summary judgment | <input type="checkbox"/> Grant/Denial of declaratory relief             |
| <input type="checkbox"/> Default judgment            | <input type="checkbox"/> Review of agency determination                 |
| <input type="checkbox"/> Dismissal                   | <input type="checkbox"/> Divorce Decree:                                |
| <input type="checkbox"/> Lack of jurisdiction        | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Failure to state a claim    | Other disposition (specify) _____                                       |
| <input type="checkbox"/> Failure to prosecute        |   |
| <input type="checkbox"/> Other (specify) _____       |   |

**5. Does this appeal raise issues concerning any of the following:**

- |  |  |
|--|--|
| <input type="checkbox"/> Child custody | <input type="checkbox"/> Termination of parental rights    |
| <input type="checkbox"/> Venue         | <input type="checkbox"/> Grant/denial of injunction or TRO |
| <input type="checkbox"/> Adoption      | <input type="checkbox"/> Juvenile matters                  |

**6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:**

None.

7. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None.

8. **Nature of the action.** Briefly describe the nature of the action, including a list of the causes of action pleaded, and the result below:

This is a legal malpractice action arising out of the failure of attorney William Heaton (“Heaton”), and the law firm of Nitz, Walton & Heaton, Ltd. (“NWH”) (collectively referred to as “Defendants”) to properly provide legal services to their clients Rodney C. Yanke (hereinafter “Yanke”) and Plaintiff Tower Homes, LLC (“Tower”) in the drafting of Purchase Contracts for the sale of condominium units in compliance with Nevada law.

Yanke is a licensed contractor in the State of Nevada who invested and developed real property in and around Clark County, Nevada. On or about April 3, 2004, at the request of Yanke, NWH caused or assisted in the formation of Tower Homes, LLC (“Tower”). Yanke was the managing member of Tower. At that time, Yanke informed Heaton and NWH of his intent to construct a residential common interest ownership project known as Spanish View Towers Project (hereinafter referred to as the “Project”). Yanke, in his capacity as the manager of Tower, informed Heaton and NWH that the Project was to consist of three (3) 18-story condominium towers combining for a total of 405 units located generally at the southwest corner of Interstate 215 and South Buffalo Drive in Las Vegas, Nevada.

In addition to other legal services, Yanke requested that Heaton and NWH draft Purchase Contracts for the sale of the individual condominium units. Prior to and during the initial phases of construction, Tower marketed the individual units for sale to members of the public prior to the completion of construction. Accordingly, Tower entered into written Purchase Contracts with numerous individual investors (collectively referred to as the “Tower Homes Purchasers”) prior to the completion of construction. Each purchaser was to give Tower a significant earnest money deposit. The agreement between Tower, and

the Tower Home Purchasers, called for the Project to be completed within two (2) years of the date of the Purchase Contract.

Unfortunately, there was insufficient financing available for the Project's completion and thus, the Project failed. As a result of the Project's failure, there were over twenty five million dollars in mechanic's liens filed for the work on the Project. In addition, many of the Tower Homes Purchasers lost millions of dollars of their money deposits.

Heaton and NWH were obligated to properly advise Tower of all applicable legal requirements concerning the sale of the individual units, including the applicability of Chapter 116 of the Nevada Revised Statutes. In the manner in which Heaton and NWH drafted the contracts, Tower was in violation of NRS 116.411. In addition, Heaton and NWH failed to carry out their legal obligation to each individual purchaser to properly safeguard the earnest money deposits from mismanagement, theft, or unlawful use as required by Chapter 116 of the Nevada Revised Statutes.

On February 18, 2014, Defendants Heaton and NWH filed their Motion for Summary Judgment. On March 7, 2014, Plaintiff Tower Homes, LLC filed its Opposition to Defendants' Motion for Summary Judgment; Defendants filed their Reply on March 14, 2014.

On March 25, 2014, the District Court issued a Minute Order Granting Defendants' Motion for Summary Judgment. On May 15, 2014, the District Court signed the Order Granting Defendants' Motion for Summary Judgment. Notice of Entry of Order Granting Defendants' Motion for Summary Judgment was entered on May 15, 2014.

On May 28, 2014 Plaintiff filed its Notice of Appeal and Case Appeal Statement.

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal:

1. Whether the District Court erred in granting Defendants' Motion for Summary Judgment by ruling that the real parties in interest are the Tower Homes Purchaser.
2. Whether Tower Homes has standing to bring this legal malpractice action against Defendants.

10. **Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceeding presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket number and identify the same or similar issues raised:

None.

11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

N/ A     X     Yes            No           

If not, explain \_\_\_\_\_

12. **Other issues.** Does this appeal involve any of the following issues?

- ☐ Reversal of well-settled Nevada precedent (on an attachment, identify the case(s))  
☐ An issue arising under the United States and/or Nevada Constitutions  
☐ A substantial issue of first-impression  
☒ An issue of public policy  
☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions  
☐ A ballot question

If so, explain:

This is an important issue of public policy because this case speaks directly to the issue of who can bring forth a legal malpractice action against an attorney and law firm. The central issue in this case is whether Tower Homes may bring forth this legal malpractice action against Defendants. Tower Homes is the only party with the attorney client relationship with Defendants. Under the District Court's ruling, Tower Homes cannot bring forth this legal malpractice action against Defendant because the real parties in interest are the Tower Homes Purchasers. Also, Tower Homes cannot bring forth this legal malpractice action against Defendants despite the fact that Tower Homes is the only party that had an attorney client relationship with Defendants. Under the District Court's ruling, even the Tower Homes Purchasers cannot bring forth this legal malpractice action because a legal malpractice action cannot be released or assigned. Thus, under the District Court's ruling, no one can bring forth this legal malpractice claim against Defendants.

13. **Trial.** If this action proceeded to trial, how many days did the trial last? N/A

Was it a bench or jury trial?

14. **Judicial disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal. If so, which Justice? No.

#### **TIMELINESS OF NOTICE OF APPEAL**

15. **Date of entry of written judgment or order appealed from: May 15, 2014**

- **Exhibit 1-** Notice of Entry of Order Granting Defendants' Motion for Summary Judgment.

16. **Date written notice of entry of judgment or order served: May 15, 2014**

**Attach a copy, including proof of service, for each order or judgment appealed from.**

- **Exhibit 1** Notice of Entry of Order Granting Defendants' Motion for Summary Judgment by US Mail on May 15, 2014;

(a) Was service by delivery \_\_\_\_\_ or by mail by U.S. Mail (specify).

**17. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59),**

(a) Specify the type of motion, and the date and method of service of the motion, and date of filing.

NRCP 50(b) \_\_\_\_\_ Date served \_\_\_\_\_ By delivery \_\_\_\_\_ or by mail \_\_\_\_\_ Date of filing: \_\_\_\_\_  
NRCP 52(b) \_\_\_\_\_ Date served \_\_\_\_\_ By delivery \_\_\_\_\_ or by mail \_\_\_\_\_ Date of filing \_\_\_\_\_  
NRCP 59 \_\_\_\_\_ Date served \_\_\_\_\_ By delivery or by mail \_\_\_\_\_ Date of filing \_\_\_\_\_.

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration do not toll the time for filing a notice of appeal.**

(b) Date of entry of written order resolving tolling motion.

(c) Date written notice of entry of order resolving motion served \_\_\_\_\_

Was service by delivery \_\_\_\_\_ or by mail \_\_\_\_\_ (specify).

**18. Date notice(s) of appeal was filed May 28, 2014.**

(a) If more than one party has appealed from the judgment or order, list date each notice of appeal was filed and identify by name the party filing the notice of appeal:

**19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a), NRS 155.190, or other NRAP 4(a).**

### **SUBSTANTIVE APPEALABILITY**

**20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

NRAP 3A(b)(1) X NRS 155.190 \_\_\_\_\_ (specify subsection) \_\_\_\_\_  
NRAP 3A(b)(2) \_\_\_\_\_ NRS 38.205 \_\_\_\_\_ (specify subsection) \_\_\_\_\_  
NRAP 3A(b)(3) \_\_\_\_\_ NRS 703.376 \_\_\_\_\_  
Other (specify) \_\_\_\_\_

**Explain how each authority provides a basis for appeal from the judgment or order:**

NRAP 3A(b)(1) applies to this matter because the Court issued an Order Granting Defendants' Motion for Summary Judgment which was entered on May 15, 2014.



**21. List all parties involved in the action in the district court:**

**(a) Parties:**

Plaintiffs: TOWER HOMES, LLC

Defendant: WILLIAM H. HEATON; and NITZ, WALTON & HEATON, LTD.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.* , formally dismissed, not served, or other:

**22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims or third-party claims, and the trial court's disposition of each claim, and how each claim was resolved (*i.e.*, order, judgment, stipulation), and the date of disposition of each claim. Attach a copy of each disposition.**

TOWER HOMES, LLC has a claim for (1) Negligence/ legal malpractice; and (2) Breach of Fiduciary Duty against WILLIAM H. HEATON; and NITZ, WALTON & HEATON, LTD.

**23. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action below:**

Yes   x   No           

**24. If you answered "No" to question 23, complete the following:**

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b):

Yes            No            If "Yes," attach a copy of the certification or order, including any notice of entry and proof of service.

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment:

Yes            No           

**25. If you answered "No" to any part of question 24, explain the basis (or seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):**

**26. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissal formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below even if not at issue on appeal
- Any other order challenged on appeal

- **Notice of entry of each attached order.**

**Exhibit 1:** Notice of Entry of Order Granting Defendants' Motion for Summary Judgment

**Exhibit 2:** Complaint.

**VERIFICATION**

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

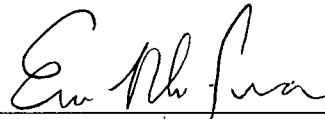
TOWER HOMES, LLC

Dennis M. Prince and Eric N. Tran

\_\_\_\_\_  
Name of appellant

\_\_\_\_\_  
Name of counsel of record

June 18, 2014



\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of counsel of record

Clark County, Nevada

\_\_\_\_\_  
State and county where signed

**CERTIFICATE OF SERVICE**

I certify that on the 17<sup>th</sup> day of June, 2014, I served a copy of this complete Docketing Statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es):

Jeffrey Olster, Esq.  
LEWIS BRISBOIS BISGAARD & SMITH, LLP  
6385 South Rainbow Boulevard, Suite 600  
Las Vegas, Nevada 89118  
Facsimile: (702) 893-3789  
*Attorneys for Defendants/Respondent*

  
\_\_\_\_\_  
An employee of Prince & Keating