IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID DEZZANI AND ROCHELLE DEZZANI,
Appellants,
vs.
KERN & ASSOCIATES, LTD.; AND GAYLE A. KERN,
Respondents

Supreme Court No. 69896
District Court Case No. CV1500826

Appellants'
Docketing Statement

Appellants' Docketing Statement

Pursuant to NRAP 14,, as amended October 1, 2015, and utilizing the form provided on the Court's website, Appellants David Dezzani and Rochelle Dezzani submit the following docketing statement, in proper person:

16-10164

1. Judicial District Second Department 10

County Washoe Judge Sattler

District Ct. Case No. CV1500826

2. Attorney filing this docketing statement:

Attorney N/A Telephone

Firm

Address

Client(s)

If this is a joint statement by multiple appellants, add the names and addresses 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 respondents(s):

Attorney N/A Telephone

Firm

Address

Client(s)

Attorney Telephone

Firm

Address

Client(s)

(List additional counsel on separate sheet if necessary)

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

- ☐ Judgment after bench trial
- ☐ Judgment after jury verdict
- ☐ Summary judgment
- ☐ Default judgment
- ☐ Grant/Denial of NRCP 60(b) relief
- ☐ Grant/Denial of injunction
- ☐ Grant/Denial of declaratory relief
- ☐ Review of agency determination
- ☒ Dismissal:
  - ☐ Lack of jurisdiction
  - ☒ Failure to state a claim
  - ☐ Failure to prosecute
  - ☒ Other (specify): award of fees and costs
- ☐ Divorce Decree:
  - ☐ Original ☐ Modification
- ☐ Other disposition (specify): _____

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

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

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:

DAVID DEZZANI; and ROCHELLE DEZZANI, Appellants
vs.
KERN & ASSOCIATES, LTD.; AND GAYLE A. KERN,
Respondents.
Supreme Court No. 69410

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:

DAVID DEZZANI; and ROCHELLE DEZZANI, Plaintiffs.
vs. KERN & ASSOCIATES, LTD., GAYLE KERN, KAREN HIGGINS, JOHN DOES 1 - 10, JANE DOES 1 - 10, DOE BUSINESSES 1 - 5, Defendants
CV1500826 IN THE SECOND JUDICIAL DISTRCIT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE

(Please refer to Appellants' Docketing Statement in Supreme Court No. 69410, for additional information, incorporated herein by reference)

8. Nature of the action. Briefly describe the nature of the action and the result below:

Respondents, as agents for Appellants' homeowners' association, wrongfuly retaliated against Appellants for their complaints about violations of NRS116 and the association's governing documents and for recommending that Respondents' replacement as attorneys for the association. (Please see Appellant's Docketing Statement in Supreme Court No. 69410.)

After the lower Court initially erred by granting Respondents' motion to dismiss Appellant's civil Complaint (currently on appeal in Supreme Court No. 69410), and notwithstanding that Respondents' motion had been filed "pro se" by Respondents, the lower court compounded its initial error by entering an Order awarding fees and costs, totalling $13,550.74, to Respondents.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

In addition to what is set forth under this paragraph in Appellants' Docketing Statement, filed in Supreme Court No. 69410 on January 5, 2016, the present appeal involves whether a person or entity who is an agent for a homewoners' association is entitled an award of attorney's fees and costs from members of the association who have proceeded unsuccessfully under NRS116.31183 and other provisions of Nevada law.

Whether an attorney, who successfully files an "in pro per" motion to dismiss a complaint based upon NRS116.31183 and other provisions of Nevada law, is entitled be awarded attorney's fees and costs.

Whether an award of attorney's fees and costs in excess of $13,000.00, for presenting a single motion to the lower Court, was proper under the circumstances of this case.

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

N/A

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?

- [x] N/A
- [ ] Yes
- [ ] No

If not, explain:

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

- [ ] Reversal of well-settled Nevada precedent (identify the case(s))
- [x] An issue arising under the United States and/or Nevada Constitutions
- [x] 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: In addition to the issues set forth under this heading in Supreme Court No 69410 and as set forth above, Appellants assert that the lower Court's award of attorney's fees and costs exceeding $13,000.00 without proof or providing Appellant's opportunity to be heard constitutes a denial of due process.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

Unknown

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

Was it a bench or jury trial? _____

15. 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

16. Date of entry of written judgment or order appealed from February 8, 2016

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served February 8,2016

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. 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, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. *See* AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

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

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed February 9, 2016

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

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

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

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

(a)

☒ NRAP 3A(b)(1)	☐ NRS 38.205
☐ NRAP 3A(b)(2)	☐ NRS 233B.150
☐ NRAP 3A(b)(3)	☐ NRS 703.376
☒ Other (specify)	IT IS HEREBY ORDERD the MOTION FOR ATTORNEY'S FEES &

(b) Explain how each authority provides a basis for appeal from the judgment or order:
Appellants only recourse to obtain relief through the legal system is via appeal.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Plaintiffs
David Dezzani
Rochelle Dezzani

Defendants
Kern & Associates, Ltd.
Gavle Kern

(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:

Karen Higgins - not served
Doe defendants - not identified due to lack of discovery.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Plaintiff's claims: Kerns retaliatory acts violated NRS116.31183
November 19, 2015

24. 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 or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, 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

(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

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

Order is independently appealable under NRAP 3A(b)

27. 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) dismissals 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
- Notices of entry for each attached order

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.

David Dezzani Rochelle Dezzani

David Dezzani Rochelle Dezzani
Name of appellant

N/A
Name of counsel of record

March 28, 2016
Date

N/A
Signature of counsel of record

State of California, Orange County
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 28th day of March, 2016, I served a copy of this completed 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): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Gayle Kern and
Kern & Associates, Ltd
5421 Kietzke Ln.
Reno, NV 89511

Dated this 28th day of March, 2016

Signature

CODE
YOUR NAME David and Rochelle Dezzani
ADDRESS 17 Camino Lienzo
CITY, STATE ZIP San Clemente, CA 92673
TELEPHONE NUMBER (808) 291-2302

FILED

2015 MAY -4 PM 4:51

JACQUELINE BRYANT
CLERK OF THE COURT
BY R. Branum
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

DAVID DEZZANI and

ROCHELLE DEZZANI

Plaintiffs,

KERN & ASSOCIATES, LTD.,

GAYLE KERN,

KAREN HIGGINS

'JOHN DOES 1-10,

JANE DOES 1-10,

DOE BUSINESSES 1-5

Defendants

/

Case No.: CV15 00828

Dept. No. 10

COMPLAINT

Complaint

DAVID DEZZANI and
ROCHELLE DEZZANI

vs.

KERN & ASSOCIATES, LTD.,

GAYLE KERN,
KAREN HIGGENS,
JOHN DOES 1-5,

JANE DOES 1-5 AND
DOE BUSINESS ENTITIES 1-5

COMPLAINT

Come now David Dezzani and Rochelle Dezzani, Plaintiffs, and for complaint against Defendants allege as follows:

Jurisdiction

1. Plaintiffs are residents of the State of California who own unit #211, in the McCloud Condominiums, a condominium development located in Incline Village, Nevada (hereinafter referred to simply as "McCloud").

2. Defendant Gayle Kern & Associates Ltd., is a business entity with offices located at 5421 Kietzke Lane in Reno, Nevada.

3. Defendant Gayle Kern is an attorney who dispenses legal advice in the State of Nevada.

4. Defendant Karen Higgins is a resident of the State of California who owns unit #20 in McCloud and who has been a member of the McCloud Condominium Homeowners Association Board of Directors since before 2013.

5. Defendants John Does 1-10, Jane Does1-10 and Doe Business entities 1-5

((hereinafter referred to individually and/or collectively as "Defendants Doe") are persons and/or business entities who are jointly, severally and/or contributorily liable to Plaintiffs for tortious acts and/or omissions in the State of Nevada, whose identities and/or activities are presently unknown but will become known through discovery.

Facts

6. On July 1, 2004, Plaintiffs purchased McCloud unit #211 and thereby became members of the McCloud Condominium Homeowners Association (hereinafter "McCloud HOA").

7. The McCloud HOA was established, exists and operates under the laws of the State of Nevada, including but not limited to the Nevada Uniform Common-Interest Ownership Act, NRS 116, and exercises power and authority through a Board of Directors (hereinafter the "Board").

8. Prior to Plaintiffs' purchase of unit #211, a previous owner had modified its rear deck, thereby making it larger than its original size.

9. The larger size of the rear deck of unit #211 was an important factor in Plaintiffs' decision to pay a higher price for that unit than they had been considering for similar units in McCloud.

10. Before finalizing their purchase of unit #211 in 2004, Plaintiffs sought, obtained and relied upon assurances that the previous owner's rear deck modification had been approved by the Board.

11. In 2013, more than eight years after they purchased unit #211, Plaintiffs received a NOTICE OF VIOLATION from the Board accusing them and/or their unit of violating two provisions of the McCloud CC&Rs (see Exhibit 1, attached, hereinafter "NOV").

12. The NOV alleged the purported violation to be "Unallowed(sic)/Unapproved Deck Extension" and cited "the following violation of the McCloud CC&Rs" quoting CC&Rs "12.5" and "13.8.2" (see Exhibit 1, page 1).

13. The NOV was drafted, edited, approved and/or authored, in whole or in part, by Defendants Gayle Kern & Associates, Ltd. and/or Gayle Kern (hereinafter referred to collectively as "Defendants Kern") and/or Defendant Higgins and/or Defendants Doe.

14. After receiving the NOV, Plaintiffs communicated with the Board on many occasions; challenging and criticizing not only the NOV's drafting, editing, authorship, reasoning, logic and legality, but also questioning the competency of the legal services provided to the Board by Defendants Kern (see e.g. Exhibit 2, attached).

15. Notwithstanding Plaintiffs' communications, the Board scheduled a hearing on the NOV, to take place in Incline Village on August 23, 2013.

16. More than one month prior to the scheduled hearing, Plaintiffs provided the Board with a letter and documents establishing, beyond doubt, that Unit #211's rear deck modification had been approved by an authorized representative of the McCloud HOA, in 2002 and Plaintiffs requested in writing that their letter be placed on the next Board meeting agenda. (see Exhibit 3, attached).

17. Notwithstanding the foregoing, Defendants Kern, Higgins and Does advised and/or urged the Board to decline Plaintiffs' request to place their letter on the Board's next meeting agenda, in violation of NRS 116.31087 and other provisions of Nevada law, and, further, advised and/or urged the Board to refuse Plaintiffs' request that the charges be withdrawn and , instead, to continue prosecuting the Plaintiffs and proceed with hearing the NOV, which advice and urging the Board accepted (see Exhibit 4, attached).

18. The Board proceeded with hearing the NOV on August 23, 2013, but did not state any findings until more then a year later, when it issued a titled 'RESULT OF HEARING", dated September 5, 2014, purportedly ruling on the NOV (see Exhibit 5, attached, hereinafter "RESULT").

19. The RESULT was drafted, edited, approved and/or authored, in whole or in part, by Defendants Kern and/or Defendant Higgins and/or Defendants Doe.

20. On December 29, 2014, Plaintiffs sent a letter to the Board contesting the RESULT and requesting that the letter be placed on the agenda for the next regularly scheduled Board meeting (see Exhibit 6, attached).

21. On February 2, 2015, the Board replied to Plaintiffs, endorsing the RESULT and, in violation of NRS116.31087 and/o other provisions of Nevada law, refusing, declining and/or failing to address Plaintiffs' request to place the subject of their written complaint on the agenda for its next regularly scheduled meeting (see Exhibit 7, attached).

22. The February 2, 2015 reply described in Paragraph 21 was drafted, edited, approved and/or authored, in whole or in part, by Defendants Kern and/or Defendant Higgins and/or Defendants Doe.

Claims for Relief

I.

23. Plaintiffs reassert and incorporate by reference the allegations of paragraphs 1 through 22, above.

24. On or about May 3, 2013, Plaintiffs sent a lengthy email to the Board describing Defendants Kern as possessing *"**faulty knowledge** of the facts and the law, **a propensity to presume matters without evidence** and **a willingness** to espouse*

legal opinions which ***ignore, overlook, misconstrue and/or fail to consider applicable Nevada laws."*** (see Exhibit 2, page 2, emphasis added)

25. In the above-quoted email and in other communications during the time and events described above, Plaintiffs requested to review books, records and other papers and complained about, questioned and criticized Defendants Kerns' legal abilities, competency, services, opinions, violations of the NRS and McCloud HOA governing documents, in good faith, both orally and in writing, while recommending replacement of Defendants Kern and/or selection of different legal counsel and/or recommending a second opinion from and/or by independent legal counsel.

26. As a result, Defendants Kern and/or Defendant Higgins and/or Defendants Doe undertook, directed and/or encouraged others to take retaliatory action against Plaintiffs, in violation of NRS116.31183 and other provisions of Nevada law, thereby causing damages to Plaintiffs and their property.

II.

27. Plaintiffs reassert and incorporate by reference the allegations of paragraphs 1 through 26, above.

28. Prior to and/or during the time referred to above, Defendant Higgins and/or a previous owner of McCloud unit #20 modified the rear deck thereof.

29. Modification of unit #20's rear deck enhanced Defendant Higgin's enjoyment of her unit and the potential market value thereof.

30. Modification of the rear deck of unit #20 did not comply with the McCloud CC&Rs in force at the time thereof.

31. Some or all of unit #20's rear deck modification encroaches into and/or utilizes common area.

32. Prior to and/or during the time referred to above, Defendant Higgins and/or a previous owner of unit #20 modified the common area around and/or in the vicinity of the unit's rear deck.

33. Modification of the common area around and/or in the vicinity of unit #20's rear deck was not in compliance with the McCloud CC&Rs in force at the time thereof.

34. As of March 18, 2013, Defendants Kern, Defendant Higgins and/or Defendants Does were and/or should have been aware of the modifications described in paragraphs 28, 29, 30, 31, 32 and 33 above.

35. Notwithstanding such awareness, Defendants Kern, Defendant Higgins and/or Defendants Does participated in meetings, discussions and hearings regarding issues

related to modification of McCloud unit rear decks and/or common area encroachment.

36. The actions of Defendants Kerns, Defendant Higgins and Defendants Does described above were in violation of NRS 116.31084 and other provisions of Nevada law and caused damages to Plaintiffs and their property.

III.

37. Plaintiffs reassert and incorporate by reference the allegations of paragraphs 1 through 36, above.

38. Defendants Kern, Defendant Higgins and/or Defendants Does acted and/or directed and/or encouraged others to act, negligently, wrongfully, wantonly, willfully and/or intentionally, in violation of NRS116.3108, .31083, .31084, .31085, .31087 and . 31175 and other laws of the State of Nevada, to deprive Plaintiffs of their right to due process and other legal protections and to punish Plaintiffs, thereby causing harm and damages to them and their property.

IV.

39. Plaintiffs reassert and incorporate by reference the allegations of paragraphs 1 through 38, above.

40. By and through other wrongful acts and omissions, currently unknown to Plaintiffs but which will become known through discovery, Defendants Kern, Defendant Higgins and/or Defendants Doe, jointly, severally and/or contributorily, caused and continue to cause, harm and damages to Plaintiffs and their property.

WHEREFORE, Plaintiffs request judgement against Defendants Kern, Defendant Higgins and Defendants Doe as follows:

A. On Claim I, for damages in excess of $10,000.00, the amount of which will be proven at trial, plus costs, attorneys fees and/or such other relief as the court and jury deem just.

B. On Claim II, for damages in excess of $10,000.00, the amount of which will be proven at trial, plus costs, attorneys fees and/or such other relief as the court and jury deem just.

C. On Claim III, for damages in excess of $10,000.00, the amount of which will be

proven at trial, plus costs, attorneys fees and/or such other relief as the court and jury deem just.

D. On Claim IV, for damages in excess of $10,000.00, the amount of which will be proven at trial, plus costs, attorneys fees and/or such other relief as the court and jury deem just.

Signed, in San Clemente, California, this 3rd day of May, 2015.

David Dezzani. Plaintiff

17 Camino Lienzo

San Clemente, CA 92673

cell: (808)291-2302

Rochelle Dezzani, Plaintiff

17 Camino Lienzo

San Clemente, CA 92673

cell: (760) 525-5143

SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, _____

Complaint

(Title of Document)

filed in case number: _____

☒ Document does not contain the social security number of any person

-OR-

☐ Document contains the social security number of a person as required by:

☐ A specific state or federal law, to wit:

(State specific state or federal law)

-or-

☐ For the administration of a public program

-or-

☐ For an application for a federal or state grant

-or-

☐ Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: May 4, 2015

(Signature)

David Dezzani

(Print Name)

(Attorney for)

INDEX OF EXHIBITS

Exhibit Number 1 Number of Pages 2
Exhibit Description March 18, 2013 NOTICE OF VIOLATION

Exhibit Number 2 Number of Pages 9
Exhibit Description May 3, 2013 email to McCloud Bd. of Dirs

Exhibit Number 3 Number of Pages 4
Exhibit Description July 18, 2013 letter to McCloud Bd. of Dirs

Exhibit Number 4 Number of Pages 1
Exhibit Description July 31, 2013 letter to Plaintiffs from Defendant Kerns

Exhibit Number 5 Number of Pages 2
Exhibit Description September 5, 2014 RESULT OF HEARING

Exhibit Number 6 Number of Pages 3
Exhibit Description December 29, 2014 letter to McCloud Bd of Dirs

Exhibit Number 7 Number of Pages 1
Exhibit Description February 2, 2015 letter from McCloud Bd of Dirs

Exhibit Number _____ Number of Pages _____
Exhibit Description _____

EXHIBIT 1

EXHIBIT 1

McCloud Condominium Associationn
P.O. Box 3960
Incline Village, NV 89450

NOTICE OF VIOLATION

Sent Certified Mail with
Return Receipt

March 18, 2013

David & Rochelle Dezzani (211)
#13 Calle Altea
San Clemente, CA 92673

RE: Unit #211 Unallowed Deck Extension

Dear Mr. and Mrs. Dezzani;

This letter is to notify you that on March 14, 2013 an exterior inspection was conducted at your unit. At the time of inspection the following violation of the McCloud CC&Rs has been noted.

-Unallowed/Unapproved Deck Extension

> 12.5 Association Maintenance and Decoration Authority. The Board of Directors, or its duly appointed agent, including the manager, if any, shall have the exclusive right to paint, decorate, repair, maintain and alter or modify the exterior walls, balconies, railings, exterior door surfaces, roof, and all installations and improvements in the common area, and no owner of a condominium shall be permitted to do, or have done, any such work. The approval of the Board of Directors shall be required in writing for the installation of any awnings, sunshades, or screen doors, or any antennae or structures on the roof of any condominium building.
>
> 13.8.2 [An Owner] May not change the appearance of the Common Areas, the exterior appearance of a unit, any component that may be seen from the exterior of the building, or any other portion of the Project, or make any change or modification to that Owner's Unit, such as replacing carpeting with hardwood floors, without permission from the Board or the Architectural Control Committee, as applicable.

It is the desire of the Board to be fair and equitable when rendering decisions regarding Association matters, recognizing as an owner within the community you have a mutual interest in the development.

After deliberation the Board offers 2 options to resolve the violation:

1) Please submit an application to the Association providing for the restoration of the deck to its original condition in order to cure the violation, A blank application for the restoration is enclosed.

2) Please sign and submit the enclosed Covenant that states that the deck extension will be permitted to remain during your ownership and one subsequent conveyance of ownership. Upon conveyance of any kind whether consensual or not and at any time to a third party hereafter, the deck extension will be removed at the owner's expense.

If no action is taken to cure the violation, a hearing may be scheduled with the Board of Directors pursuant to NRS 116.31031. We hope this will not be necessary and would like to resolve the violation as soon as possible.

Thank you in advance for your attention in this matter. If you have any questions, please do not hesitate to

Exhibit 1

contact Integrity Property Management at 775-831-3331

Sincerely,

McCloud Condominium Association, Board of Directors

Enclosure

EXHIBIT 2

EXHIBIT 2

From: David Dezzani [mailto:djdezzani@yahoo.com]
Sent: Friday, May 03, 2013 11:44 AM
To: dconway@integrityattahoe.com
Subject: Message to the Board of Directors regarding Unit #211 "Notice of Violation"

Dear Darcy,
Please forward the following message to the Board of Directors.
Thank you,
David and Shelly Dezzani

To: The Board of Directors, McCloud Condominium Association.
From: David and Rochelle Dezzani, Unit #211

We purchased our McCloud townhouse in 2004.

Its deck is the same size today as it was at the time of our purchase, in June 2004.

Before we actually saw our unit for the first time, we had been informed that it had an approved deck which was larger than other decks we had seen during our search for a McCloud townhouse.

When we first saw our unit's deck, in 2004, its appearance indicated it already had been in place for several years.

The fact that Unit #211 had an approved larger deck was an important factor in our decision to pay a higher price than we had been considering paying for other available townhouses.

Recently, at our home in San Clemente, California, ***nearly nine years after*** we purchased our townhouse, ***and many more years*** following the deck's construction, we received a NOTICE OF VIOLATION referencing: "Unit #211 Unallowed (sic) Deck Extension" (hereinafter the "NOV").

Although there is no signature on the NOV, its letterhead and content indicate it came from the McCloud Condominium Association's present Board of Directors.

The NOV states that, during an inspection of the exterior of our unit on March 14, 2013, a "violation of the McCloud CC&Rs has been noted".

The NOV cites and quotes sections 12.5 and 13.8.2 of the CC&Rs as authority for the alleged violation, then goes on to express the "desire of the Board to be fair and equitable", and to offer "2 options to resolve the violation".

Exhibit 2

Although the wording of the two options is vague*, each proposes the same outcome: our unit's deck must removed and reconstructed, to reduce its size from what it has been for many more than nine years.

The main differences between the two options relate to the timing and financial burden of removal and reconstruction.

After receiving the NOV via certified mail, we telephoned Integrity Property Management at the number suggested in the final paragraph and requested to see minutes of the board meetings when the issue of deck extensions had been discussed.

Integrity responded promptly, by providing minutes of board meetings on September 14, 2012, December 1, 2012 and February 27, 2013.

After receiving and reviewing those minutes, we telephoned and emailed additional requests and questions to Integrity, seeking further information regarding some of the entries recorded in those meeting minutes.

Instead of a response from Integrity, two letters arrived from an attorney in Reno, stating that she "represent[s]" the Association, had been "requested" by the Board to respond and we "will not receive any separate responses from the community manager".

The two letters from the attorney decline to provide any of the additional information or minutes we had requested.

Instead, as justification for not providing any further information or minutes, the two letters refer to Chapter 116 of the Nevada Revised Statutes ("NRS") and then go on to cite sections of that chapter as support for statements by the attorney regarding the reasons why the Board decided to issue NOVs to us and other homeowners.

After reading the minutes provided by Integrity and the statements in the attorney's two letters, it is clear that the Board's decision to issue NOVs to us and other McCloud owners, was based upon legal advice from an attorney who has faulty knowledge of the facts and the law, a propensity to presume matters without evidence and a willingness to espouse legal opinions which ignore, overlook, misconstrue and/or fail to consider applicable Nevada laws.

A. THE ATTORNEY'S LETTERS SHOW FAULTY KNOWLEDGE OF THE FACTS UNDERLYING THE DELIBERATIVE PROCESS WHICH PRECEDED ISSUANCE OF THE NOVs AND THE GRANTING OF PRIOR DECK EXTENSION REQUESTS.

1. The legal advice received by the Board was premised upon the attorney's erroneous understanding of "frequent homeowner involvement" in the deliberative process.

The attorney's first letter to us, dated April 4, 2013, clearly indicates that the legal

advice she provided to the Board was premised upon a faulty understanding of the deliberative process which led the Board to issue NOVs to multiple homeowners.

In the last paragraph of her first letter, directly above the her signature, the attorney describes the deliberative process erroneously, as having been "done at meetings with ***frequent homeowner involvement***" (emphasis added).

Contrary to the attorney's assertions, the minutes report ***only one instance*** of homeowner involvement, ***at only one meeting*** during the deliberative process, and that "homeowner involvement" was not only very brief but, apparently, ignored.

The instance of homeowner involvement reported in the minutes occurred during the September 2012 meeting, when Janice Bertozzi, of Unit 234 spoke up to say "the board will run into a lot of problems" and "the covenant that was written for her unit had been onerous and she didn't think many people would sign it".

We do not know if the attorney's erroneous understanding of "frequent homeowner involvement" was due simply to her not having attended two of the three meetings when deck extensions were discussed and, thereafter, failing to read the minutes of meetings she did not attend, or whether other factors caused her erroneous understanding.

However, since presumably our homeowner fees are being used to pay this attorney, it is important to note that, in addition to revealing the attorney's ignorance of the factual basis underlying her legal advice, the fact that she cited "frequent homeowner involvement" as an important factor to justify the Board's decision underscores the importance of *the true facts, i.e.* ***there was almost no homeowner involvement*** in the decision to issue the NOVs.

Therefore, the decision to issue the NOVs was based upon flawed legal advice and inadequate homeowner input.

Because the attorney's letters makes clear that her legal advice was premised upon erroneous understanding of the true facts and because adequate homeowner input was neither sought or received, the NOVs which were issued should be cancelled and/ or suspended, until such time as adequate and appropriate homeowner input and proper legal advice has been received and considered.

2. The attorney erroneously assumed the truth of crucial and contested facts, without supporting evidence, and rendered legal advice to the Board based upon probably untrue assumptions regarding those facts.

In the third paragraph of her first letter to us, the attorney states: **"While it is unfortunate the issue** (sic) **of deck extensions and the wrongful taking of common area was not addressed earlier,** the Association has properly taken action to protect

the integrity of the common area".(emphasis added)

The attorney's letter cites no source or support for the portion of her sentence emphasized above.

It appears she simply assumed that these issues were never addressed previously, in order to justify her legal recommendations regarding the propriety of of the present-day Board's issuance of the NOVs.

Because the factual assertions implicit in the emphasized words are probably incorrect, any action regarding the NOVs should be suspended and held in abeyance, until the true facts are known and proper legal advice can be obtained.

Even though our request to see past minutes was declined, the probable untruth of the attorney's statement that "deck extensions and wrongful taking" were "not addressed earlier" is clearly apparent from the first two sentences of the minutes that have been provided to us.

Page 11 of the minutes of the September 2012 meeting, under paragraph B, reports that discussion of the subject of deck extensions was first begun by the present-day Board with Mr. Price's commenting that "[t]wo of the [20] extensions were actually approved".

The remaining minutes of that meeting, and those for the December, 2012 and February, 2013 meetings, report much discussion concerning many extended decks at McCloud.

However, it appears no effort was made to ascertain what processes or procedures, if any, led to the two approvals described by Mr. Price or, for that matter, any of the 18 other extensions mentioned in the minutes.

Apparently, the Reno attorney simply chose to assume, blindly and without evidence, that past directors on past boards in past times, completely and utterly failed to take any steps, on behalf of the Association, "to protect the integrity of the common area" or "address" any of the issues regarding "deck extensions and wrongful taking of common area", either when the two extensions were "actually approved" and/or when the 18 additional decks were enlarged.

If, indeed, those past deck extensions were approved without process, procedure or legal advice, such lack of due diligence on the part of those former Directors and/or Boards who granted the approvals would not have been simply "unfortunate", as described by the attorney, but actually would have been extraordinary failures to act with reasonable care.

Frankly, what strikes us as "unfortunate", to the point of arrogance, is for an attorney who represents the Association and its present-day Board, to suggest without a shred of evidentiary support that former Board members were so careless, delinquent and

negligent, while carrying out their duties in years past, that they failed to "address" what the attorney calls "basic issues" when considering and approving deck extensions.

Our request to see the minutes of Board meetings when the two extensions were "actually approved" has been declined and, because the attorney's bald statement "the issue(sic) of deck extensions and wrongful taking of common area was not addressed" is completely unsupported, we have no way of knowing what processes, procedures and/or considerations, if any, were involved in those approvals.

However, because logic, common sense and reasonable respect for the work of past Directors and Boards mandate that the attorney's statement is probably untrue, actions by the present-day Board premised upon those untrue assumptions and faulty legal advice should be cancelled or, at least, suspended and held in abeyance, pending further consideration.

B. THE LEGAL ADVICE RECEIVED BY THE PRESENT-DAY BOARD IGNORED, MISCONSTRUED AND/ OR FAILED TO CONSIDER AND DISCUSS THE CC&RS AND APPLICABLE NEVADA LAW.

In addition to the attorney's erroneous understanding of the deliberative process and unsupported, probably false, assumptions regarding earlier extension approvals, the CC&Rs and Nevada laws referred to by the attorney in her letters indicate that her legal analysis was deficient, her discussion of applicable law inadequate and her advice not only incorrect but, if followed, likely to create substantial additional problems and generate increased costs for the Association and its members.

1. The NOV cites, quotes and relies upon CC&Rs 12.5, and 13.8.2, yet the Association's attorney does not even mention those sections when attempting to explain their legal basis to homeowners.

CC&R 12.5 states that "the Board of Directors ... shall have the exclusive right to ... alter or modify ... all installations and improvements in the common area ... ." and, stated obversely, 13.8.2, permits unit owners to make changes and modifications " ... with permission from the Board of Directors or the Architectural Control Committee, as applicable."

It is uncontested that at least two decks were altered and/or modified with approval by Directors having the "exclusive right" to do so at the time, and there is evidence that our unit's deck extension was approved more than nine years ago.

Therefore, any attorney's legal opinion advising the present-day Board to cite us and other owners for violating CC&R sections which specifically authorize such alterations and modifications is absurd.

And for the Association's attorney to subsequently write two letters to us, purportedly

explaining the legal basis for the NOVs without even mentioning the CC&Rs on which they are premised, is itself an implied admission that the CC&Rs do not support what is alleged in the NOVs.

2, The Nevada Revised Statutes referred to in the Reno attorney's letters were not cited as authority in the NOVs, nor mentioned by the attorney during the deliberative process and contradict the legal advice the attorney provided to the present-day Board.

As discussed above, although the NOV issued by the Board alleges violation of the CC&Rs and not only cited but even quoted sections 12.2 and 13.8.2, the attorney's letters contained no mention of the CC&Rs.

Rather than discussing the CC&R sections cited and quoted in the NOV, the attorney's letters refer to and rely upon Chapter 116 of the Nevada Revised Statutes" ("NRS"), initially to justify declining our requests for information and then as authoritative Nevada law purportedly supporting the NOV.

It is astonishing that an attorney representing the Association, providing her supposedly learned view of the legal basis for an NOV alleging violation of CC&Rs12.2 and 13.8.2, would ***not even mention the CC&Rs*** in her letters but would instead focus her response upon the NRS, *especially* ***when the NRS is not even referenced in the NOV, was not even discussed during the deliberative process nor even mentioned by the attorney when she approved the final draft of the NOV.***

It does not take a lawyer to recognize that the NRS sections referenced in the attorney's letters are mostly irrelevant to the issues involved in the NOVs nor to see that the Association's attorney improperly presupposed, without evidence, the existence of important facts and/or legal status when she chose which sections of the NRS to cite.

For example, in her April 4, 2013 letter, just before making her erroneous assertion of "frequent homeowner involvement", the attorney summarized her view of the basis for her recommendations in three declarative sentences, referencing a specific NRS section after the last sentence.

Those three declarative sentences are simply argumentative statements, devoid of facts but replete with legal terminology, totally unsupported except for a single reference, to NRS 166.3112:

"There is no question common area is not permitted to be given to any one owner for his/her exclusive use and enjoyment, thereby reducing the common area for the other homeowners. It is the wrongful conversion of common area that is the problem. Simply put, there is no lawful transfer of common area to individual owners absent a vote of the membership. *See* NRS 116.3112" (emphasis in original).

Sounds good, but when one actually reads NRS 116.3112, it becomes apparent that the cited section provides no support for the attorney's three argumentative statements, quoted above.

NRS 116.3112, which is entitled "**Conveyance or encumbrance of common elements**", is not a restrictive statute, as suggested by the attorney when attempting to support her argumentative statements.

Rather, NRS 116.3112 is a permissive statute, dealing with the power of condominium associations to convey and encumber common elements, not prohibiting such action as implied by the attorney's citation at the end of her three argumentative statements.

In fact, none of the eight subparts of NRS 116.3112 deals with situations like that presented by the current NOVs.

For an attorney to cite an irrelevant statute, as purported support for her legal opinions, while at the same time ignoring the very CC&Rs upon which the NOVs are based and to simultaneously fail to discuss other, actually relevant, sections of the NRS, which deal specifically with common property used exclusively by fewer than all homeowners, calls into question the attorney's competence.

We can think of no valid reason why the Association's attorney would direct us to an irrelevant section of the NRS like 116.3112, discussed above, without at least also referencing NRS 116.059 which, in conjunction with NRS116.059, specifically permit structures like decks, which are "designed to serve a single unit, but located outside the unit's boundaries, are ***limited common elements allocated exclusively to that unit.***" (emphasis added)

That the Association's attorney would not, at a bare minimum, have mentioned, discussed or even referenced the concept of "limited common elements", while advising the Board on deck extensions is incomprehensible.

In fact, because exclusive use of portions of common property is such a fundamental principle of property law, specifically defined and dealt with in both the CC&R and the NRS, it is mind-boggling that the attorney neither mentioned nor discussed that concept while advising the Board regarding such a potentially controversial and explosive issue as requiring homeowners to remove and rebuild deck structures that have been in place for many years, some with specific approval by the Board of Directors.

Similarly mind-boggling is that the Association's attorney would write letters to concerned homeowners like us, who simply requested further information, not only declining to provide that information but also purporting to justify the legal basis for the Board's action without mentioning, considering or discussing the CC&Rs or the "limited common elements", sections of the NRS.

We recognize that the above comments set forth harsh criticisms of the Association's attorney.

When we began drafting this email to the Board of Directors, after receiving the attorney's second letter, we thought most of our comments would be directed to responding to valid points asserted by the attorney.

However, once we looked closely at the letters and compared what is stated with what appears in the NOV, the minutes and the Nevada Revised Statutes, the attorney's misstatements and errors became so apparent that we decided to send the above.

We look forward to learning the attorney's response to what we have expressed.

We also look forward to learning what the attorney has told other Association Owner/ Members who may have inquired, protested and/or requested information regarding the deck extension issue.

We are hopeful that the Board will consider the above expression of our views in the spirit they are intended, as coming from concerned homeowners who love, and have loved, the deck that was in place when they purchased thier townhouse nearly nine years ago.

We also hope the Board will undertake action to cancel, suspend and hold in abeyance action on the NOVs, pending further consideration of homeowner input and consultation with competent legal counsel.

If the Board decides to proceed as threatened in the NOVs, it would be helpful to homeowners like us, who have received NOVs, to be informed thereof as soon as possible, so that we can take appropriate steps to defend ourselves and attempt to mitigate our damages.

In that regard, we hope that the Board has considered the probable adverse effect enforcement of the NOVs would likely have upon ***all*** McCloud condominium values, regardless which of the two offered options is accepted.

Under either option, all units would eventually have small decks.

Units with small decks can be expected to sell for lower prices than units with larger decks, as evidenced by our willingness to pay more for our unit *because it had an approved larger deck.*

Ordinarily, the monetary value of condominium units is related to, if not determined by, the sales price of other units in the same complex.

Therefore, if more units are sold with small decks, the value of ***all*** units in McCloud can be expected to be diminished over time, as the units with smaller decks sell for lower prices than would have been received with larger decks.

And, unless and until the threat posed by the NOVs has been resolved, the myriad enforcement difficulties, unknown risks, inherent costs and uncertain burdens of the poorly drafted covenant, potentially will cloud titles and inhibit sales throughout the complex.

Naturally, we hope the Board will act favorably upon our above-stated requests for cancellation, suspension and/or holding in abeyance further action on the NOVs, so that all concerned can avoid involving the Nevada Real Estate Division and Ombudsman and, further, to avert the potential of a legal dispute, with multiple attorneys making the situation even more costly for homeowners via lower property values and higher homeowner dues.

We look forward to hearing from you after you have had opportunity to consider the views expressed above.

Thank you for your attention to this matter.

Very truly yours,

David and Rochelle (Shelly) Dezzani
Unit #211n

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* Although the "2 options" are ambiguously worded and their phraseology makes it difficult to understand how they would be interpreted or implemented, both seem to have the same goal vis-a-vis the property (i.e. removal of currently large decks and replacement with decks of smaller size),

EXHIBIT 3

EXHIBIT 3

July 18, 2013

Dear Members of the Board of Directors,

In July, 2004, we purchased McCloud Unit #211 with an enlarged deck, which had been approved by the Board of Directors, according to representations made to us at that time.

In March, 2013, the Board of Directors sent us a "NOTICE OF VIOLATION, via certified mail, alleging that Unit #211's deck extension is "Unallowed (sic)/Unapproved".

Since receiving that certified mail, we have spent many hours communicating with the Board, its management company and its attorney, contesting the violation, requesting further information and explaining why we believe the allegation lacks merit.

Nevertheless, a hearing on the alleged violation is scheduled to take place in Incline Village on August 23, 2013.

Recently, while reviewing documents from the files of the HOA, we found two pages which prove conclusively that the claimed violation has no merit.

We are enclosing copies of these two pages from the HOA documents.

These enclosures confirm that, in May of 2002, the previous owner of our unit submitted an HOA "UNIT CHANGE/MODIFICATION FORM", with drawings, asking "to increase size of [the] deck and add steps".

These documents show that the request and drawings were **"approved"** on May 8,2002.

While visiting McCloud recently, we inspected and measured our unit's deck and steps and they conform exactly to what is designated **"Approved"** on the second page of the enclosed documents.

Therefore, there is absolutely no basis for the Board to continue with any aspect of what is alleged in the March 18, 2013 "NOTICE OF VIOLATION".

Unless we are informed, very soon, that those charges have been withdrawn and the August 23rd hearing cancelled, we will have no choice but to hire an attorney to represent us and travel to Nevada, to prepare for and participate in the proceedings.

We see absolutely no reason why we or the Association should be required to spend any further time, energy, effort or expense regarding this matter.

Indeed, the enclosed HOA records make clear that any continued effort to proceed with

Exhibit 3

these allegations would be completely unwarranted, to the point that any and all additional costs, time expenditures and emotional distress should be borne by those responsible for continuing to pursue the matter.

We have been informed that the next meeting of the Board of Directors is scheduled for August 1, 2013.

We request that this letter and its enclosures be placed on the agenda for that meeting, *for consideration and appropriate action during that meeting.*

If, *by close of business on the day following that meeting,* we have not been informed that we no longer need be concerned about this matter, we will have no choice but to take appropriate action to defend ourselves and seek reimbursement, for all costs and damages, from those responsible.

Thank you for your attention to this matter.

Very truly yours,

David and Rochelle Dezzani
Unit #211

5/8/02

INCOMING FAX

McCloud Condominium HOA

FILE COPY

UNIT CHANGE/MODIFICATION FORM

mcloud

Owner Name: DAVID OLSON Unit #: 211 Date: 5/8/02

Mailing Address: PO Box 3745 E. LV NV 89450

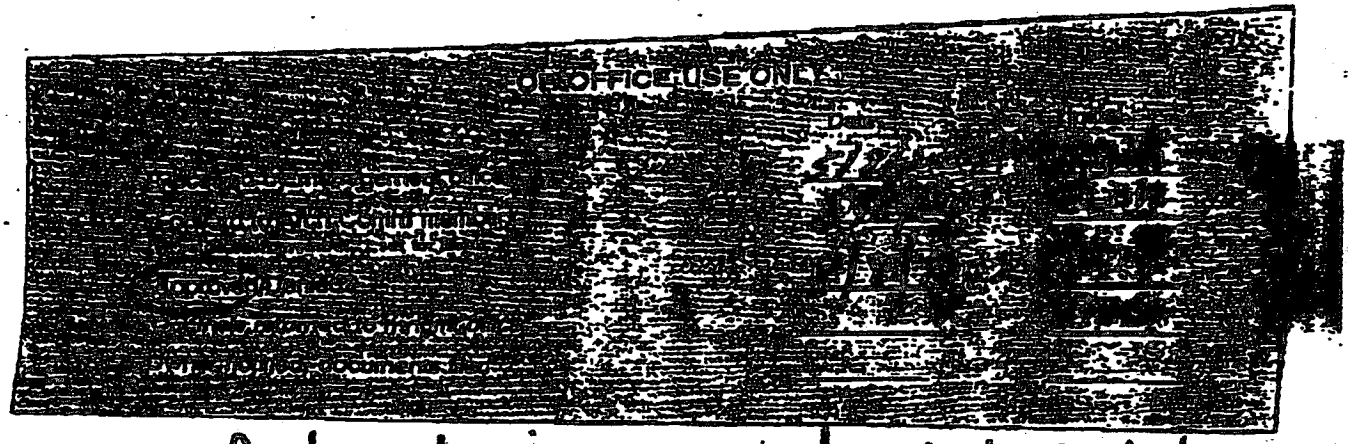
Telephone: Day # 775-831-1586 Evening # 775-831-1586

Tentative date of change/modification: ASAP

1) Location of change/modification (please describe in detail):
See Attached Drawing to INCREASE SIZE of Deck + ADD Steps. Rear Deck

2) *Description of change/modification to be made, in detail:
See attached Drawing

* 5 copies of detailed plans must accompany this form in order for any approvals to be made.



MCL\mcl-mod.frm Deck extension approved not to include back of bench. Vaughn Stitt

mcl 211

DAVID OLSON
UNIT #211 McCOYS
775-831-1586

FILE COPY

WOODEN SUPPORTS - WOOD to match base

LONGITUDINAL SLATS (WOOD) match base

EXISTING BENCH WITH BACK ADDED No

3' EXTENSION Approved

4' EXTENSION

EXISTING DECK

8ft

Approved

HOUSE

10'6"

HOUSE

EXHIBIT 4

EXHIBIT 4

KERN & ASSOCIATES, LTD.
ATTORNEYS AT LAW

GAYLE A. KERN, ESQ.
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July 31, 2013

David and Rochelle Dezzani
13 Calle Altea
San Clemente, CA 92673

Re: *McCloud Condominium Association*
Unit #211

Dear Mr. and Mrs. Dezzani:

This letter shall serve as the Association's response to your letter of July 18, 2013 with additional note dated July 19, 2013. As previously advised, the Board of Directors declines your request to place your alleged violation on the agenda for August 1, 2013. Pursuant to Nevada law, a hearing has been scheduled for quite some time and it was continued to August 23, 2013 at your request. It will be held on that day. It is inappropriate for the Board to make any decision outside of the scheduled hearing date. At the hearing, the Board will consider all information provided, including that contained in your recent letter, and make a decision after deliberation.

As previously advised, if it is difficult for you to attend this hearing, you are welcome to participate by phone. The number for you to call is as follows:

Conference Dial-In Number: 866-576-7975
Participant Access Code: 540006#

Your attorney may participate by phone as well.

If you have any further questions or wish any additional information to be considered by the Board, please do not hesitate to provide it to me.

Very truly yours,

KERN & ASSOCIATES, LTD.

Gayle A. Kern

c: Client

Exhibit 4

EXHIBIT 5

EXHIBIT 5

McCloud Condominium Association
P.O. Box 3960
Incline Village, NV 89450

RESULT OF HEARING

Sent Certified Mail with Return Receipt

September 5, 2014

David & Rochelle Dezzani
#13 Calle Altea
San Clemente, CA 92673

RE: McCloud Condominium Homeowners Association - Unit 211

Dear Mr. and Mrs. Dezzani:

The Board appreciates your participation in this process. We are very understanding of your distress over this matter and are sorry that it created such anxiety for you. It was not our intent to create any burden or disruption in your enjoyment of your property or your tenant's enjoyment of your property.

It is difficult for all involved and we carefully considered your evidence, written communications, comments made at the hearings by both of you, together with the comments and communications from your attorney. This letter is not an exhaustive discussion of all of the issues that have been the subject of numerous letters, emails and other forms of communication by and between you, your attorney, our attorney, and the Association. All of the documents and communications were specifically considered and provide the basis of our findings. We also carefully considered your assertion that we should obtain a second opinion regarding this matter. In fact, we had the benefit of that second opinion by reading and considering the legal arguments made by your counsel, Mr. Rogers. We respectfully considered his opinion. We believe that the reliance on our counsel's analysis in response to Mr. Rogers' letters better reflects Nevada law and application of our CC&Rs. We also are aware that there is no definitive Nevada case, but the cases identified by our counsel support the analysis that she provided to us. In comparing the two opinions, we find that it is appropriate to rely upon the opinion of our counsel who practices nearly exclusively in this area. While we understand you do not agree, we believe the evidence, information and record does support our determination that the expanded deck is a violation.

In addition, as previously advised, IVGID had identified McCloud as over-covered with regards to impervious coverage per TRPA. Subsequently the Board of Directors mandated that all deck extensions that were structural be removed. The Board then determined that use of a covenant which identified a timeframe for removal would be appropriate. The covenant was a sincere effort to reach a compromise between those affected homeowners and the Association.

Exhibit 5

We want to clarify the concern you have regarding the issue of the violation considered. The Board is required to address the encroachment in the common area and understand that the deck was installed by the prior owner upon receiving "approval" to do so. Unfortunately, as has been explained, such approval was not appropriate as it resulted in an allocation of common area for the exclusive use of your unit. Therefore, the Board considered its authority to resolve matters as allowed by the CC&Rs and Nevada law, including NRS 116.3102(3) and (4). It is with this consideration of the enforcement action to take that it has made the following conclusion.

The deck is an encroachment in the common area. There was no vote of the members to allow such use of the common area and the allocation of exclusive use of the greater area was not in the recorded map. Therefore, the additional portion of the deck is not in compliance with the governing documents. This result of hearing will be placed in the file for this unit.

We also want to take this opportunity to assure you that your refusal to execute the proposed covenant is not a violation. Rather, the execution of the covenant would have been in accordance with NRS 116.3102(3) and (4) and would have allowed a resolution that would have provided for compliance at a later time so that there would have been no impact on your enjoyment or your tenant's enjoyment of the property at McCloud. The Board is empathetic and sorry for the inconvenience this has caused. However, the Board must protect the common area for all members.

In addition, we appreciate the information you provided to us regarding possible other violations in the common area. Rest assured that the Board is addressing all additional violations as soon as possible. While the specifics of any enforcement action remain confidential unless the owner requests the hearing be in public as you did, the Board will proceed with appropriate action.

Sincerely,
McCloud Condominium Association Board of Directors

EXHIBIT 6

EXHIBIT 6

TO: The McCloud Condominium Association Board of Directors

FROM: David and Rochelle Dezzani, MCCloud Unit #211

This letter is being sent to you pursuant to the provisions of the Uniform Common-Interest Ownership Act of the State of Nevada ("NRS 116"), regarding several violations thereof by the McCloud Condominium Association Board of Directors, individually and as a group ("the Board"), which violations have caused and continue to cause serious damages to my wife, our property and me.

In September, we received a letter from the Board, dated September 5, 2014 entitled "RESULT OF HEARING" (the "RESULT"), alluding to a process (the "process) which began when the Board served us with a NOTICE OF VIOLATION, dated March 18, 2013 ("NOV"), regarding the rear deck of our unit.

The RESULT acknowledges the distress and anxiety the process caused my wife and me, and refers to the many written and oral submissions we made to the Board while defending ourselves against the charge originally levied against us and the Board's subsequent efforts to ignore and/or modify that original charge.

The RESULT also acknowledges that my wife and I have already set forth our objections and expressed our reasons for disagreeing with the Board's actions and the reasoning allegedly supporting its previous statements, findings and conclusions.

Therefore, for the sake of brevity, rather than repeating and rehashing what we previously have presented, my wife and I hereby reassert and incorporate by reference our submissions to the Board during the process, specifically including each and every document and/or tangible thing kept, maintained, filed and/or relied upon by the Association and/or by any representative thereof, regarding Unit #211 and/or any other McCloud unit with a deck which in any fashion and/or to any degree encroaches upon and/or into any portion of the common area.

Also, we specifically assert that the Board has treated us and our unit in a discriminatory fashion and we hereby request that all materials, files, documents and/or writings regarding and/or pertaining to the "process" be made available to us and to the Nevada Ombudsman, for review and consideration.

Additionally, because the RESULT makes several gratuitous statements, *raising new matters* ***for the first time*** while *purportedly deciding them adversely to us*, it thereby additionally violates our due process rights and other aspects of Nevada law and we therefore address those additional matters briefly below.

For clarity, we shall address each of the RESULT's seven paragraphs sequentially.

Paragraph 1 is mostly responded to by our above-stated reassertion and incorporation

Exhibit 6

by reference, except for that paragraph's final sentence, which gratuitously disavows any "intention" by the Board "to create any burden or disruption" of my wife's and my enjoyment of our property, whereas, in truth and in fact, for nearly two years the Board's efforts against us have been devoted to attempting to deprive us of our unit's rear deck, as approved in 2002, for which we paid a premium in 2004.

Paragraph 2 of the RESULT is so filled with misstatements and misguided legal conclusions as to render it nearly impossible to respond to, other than by our above-stated reassertion and incorporation by reference and pointing out the fallacy of the Board's claim that it received "the benefit of ...[a] second opinion", by considering and rejecting the arguments presented by the attorney we retained to defend us.

Almost every open-minded person would easily recognize the huge difference between seeking and obtaining an independent "second opinion", for guidance regarding disputed legal issues, and simply proceeding upon the advice of the same attorney who originally provided the disputed legal advice and disregarding the opinion of an attorney retained to advocate an opposing point of view.

To claim that the Board actually obtained the benefit of a second opinion, by considering and rejecting the opinion our attorney, makes a mockery of our multiple requests to the Board to obtain independent legal advice via a "second opinion".

Paragraph 3 of the RESULT states "as previously advised, IVGID had identified McCloud as over-covered with regards to impervious coverage per TRPA", whereas in truth and in fact the Board did not advise us of this issue during the process nor were TRPA coverage considerations a part of the proceedings against us.

For the Board to raise such a matter, for the first time, in the RESULT, as purported support for ruling adversely to us, is an additional violation of our due process rights and other provisions of NRS 116.

Paragraph 4 of the RESULT concedes that our unit's rear deck "was installed by the prior owner upon receiving 'approval'", but continues on to state that "such approval was not appropriate" and "the Board considered its authority to resolve matters", completely ignoring that the Board's own recently-approved covenants granting exclusive use of common area to at least thirteen previously unapproved deck extensions, presupposes the appropriateness of authority to grant such approval.

Paragraph 5 of the RESULT mostly rehashes earlier assertions by the Board, all amply addressed by the above-stated reassertion and incorporation by reference, except for the final sentence, which states: "This result will be placed in the file for this unit".

Assuming that the words "This result", as used in that sentence, are intended to refer to "the RESULT", as used herein, that final sentence of Paragraph 5 is both alarming and extremely upsetting to my wife and me because of the legal effect and practical implications of placing such a letter in our file.

It seems to us, and we hereby assert, that placing a copy of the RESULT in any file maintained by the Association would be an illegal attempt by the Board to place a damaging cloud on our title to our property, without due process of law and in violation of the protections afforded to homeowners by Nevada law.

Paragraph 6 of the RESULT is nearly incomprehensible but, at least, acknowledges clearly that "refusal to execute the proposed covenant is not a violation", contrary to previous statements and assertions by the Board's attorney during the proceedings.

That acknowledgement, when considered together with the fact that the Board's own records establish unequivocally that my wife and I were not guilty of violating the McCloud CC&Rs alleged, and specifically identified as 12.5 and 13.8, in the March 18, 2013 NOV establishes that the Board has absolutely no legal basis for any adverse action against us or our unit, including placing a letter such as the RESULT in our file.

Simply put, because neither my wife nor I, nor our unit, ever violated the CC&Rs, there never was any basis for any finding adverse to us or our unit.

Finally, although paragraph 7 of the RESULT urges us to "[r]est assured that the Board is addressing all additional violations as soon as possible", neither that paragraph nor any of the previous paragraphs nor any other communication from the board addresses the fundamental issue we have raised repeatedly i.e. *the conflict of interest, in violation of NRS 116.31084 and related provisions of Nevada law, on the part of at least one Board member.*

That Board member participated in the proceedings and the process which led to the current dispute, while having an ownership interest in a unit with a rear deck and patio which extend into and upon the common area.

Adding to the wrongness of participation in the proceedings and the process by the conflicted Board member is the fact that, as far as we can determine, the conflict was neither disclosed to nor considered by the Board.

Such a conflict of interest, whether disclosed or undisclosed, renders the process and the RESULT invalid and void.

Therefore we respectfully request the Board to issue a new finding, stating that neither my wife nor I violated the CC&Rs and, as stated in paragraph 4 of the RESULT, the rear deck of our unit was installed by the prior owner upon receiving approval to do so.

In closing, we request that this letter be considered a written complaint against the Board and placed on the agenda of the next regularly scheduled meeting.

Thank your for your attention to this matter.

Very truly yours,

December 29, 2014

December 29, 2014

EXHIBIT 7

EXHIBIT 7

McCloud Condominium Association
P.O. Box 3960
Incline Village, NV 89450

Sent Certified Mail with Return Receipt

February 2, 2015

David & Rochelle Dezzani
#13 Calle Altea
San Clemente, CA 92673

RE: McCloud Condominium Homeowners Association - Unit 211

Dear Mr. and Mrs. Dezzani:

Please note that the McCloud Board of Directors is in receipt of your letter dated 12-30-14. At this time, the board continues to have the same opinion that was stated in the Result of Hearing Notice dated September 05, 2014.

McCloud has scheduled a board meeting for February 20, 2015, which we invite you to attend if you feel that there is additional information to share with the board. If you decide to attend and want the deck encroachment addressed under owner's comments, you will be allowed three minutes to share your information. However, if you prefer to have your deck addressed in a closed executive session meeting, please advise Integrity Property Management at 775-831-3331 by February 09, 2015 to allow time for placing this item on the agenda.

As addressed in a previous meetings and letters, we the board understand your desire to address your deck encroachment with the Board of Directors and understand your concerns. Please let us know if you plan on attending the upcoming meeting, and we look forward to addressing any new items related to your deck concerns.

Sincerely,
McCloud Condominium Association Board of Directors

Exhibit 7

2540
GAYLE A. KERN, ESQ.
Nevada Bar No. 1620
KERN & ASSOCIATES, LTD.
5421 Kietzke Lane Suite 200
Reno, Nevada 89511
Telephone: (775) 324-5930
Telefax: (775) 324-6173
E-mail: gaylekern@kernltd.com

Attorneys for Kern & Associates, Ltd. and Gayle Kern

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

DAVID DEZZANI and ROCHELLE DEZZANI,

Plaintiffs,

vs.

KERN & ASSOCIATES, LTD; GAYLE KERN; KAREN HIGGINS; JOHN DOES 1-10; JANE DOES 1-10; DOE BUSINESSES 1-5,

Defendants.
_____/

CASE NO.: CV15-00826

DEPT. NO.: 10

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on the 19th day of November, 2015, an Order (dismissing case in its entirety) ("Order"), was entered in the above-captioned matter. A copy of the Order is attached hereto.

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document filed in the above-entitled case does not contain the social security number of any person.

DATED this 19th day of November, 2015.

KERN & ASSOCIATES, LTD.

By _____
GAYLE A. KERN, ESQ.
Attorneys for Kern & Associates, Ltd. and Gayle Kern

Notice Entry of Order November 19, 2015

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Kern & Associates, Ltd., 5421 Kietzke Lane, Suite 200, Reno, NV 89511, and that on this date, I served the foregoing document(s) described as follows:

NOTICE OF ENTRY OF ORDER

On the party(s) set forth below by:

__X__ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

____ Personal delivery.

____ Facsimile (FAX).

____ Federal Express or other overnight delivery.

____ Reno-Carson Messenger Service.

addressed as follows:

David and Rochelle Dezzani
17 Camino Lienzo
San Clemente, CA 92673

DATED this 19th day of November, 2015.

Teresa A. Gearhart

TERESA A. GEARHART

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

DAVID DEZZANI and ROCHELLE DEZZANI,

Plaintiffs,

vs.

KERN & ASSOCIATES, LTD; GAYLE KERN; KAREN HIGGINS; JOHN DOES 1-10; JANE DOES 1-10; DOE BUSINESSES 1-5;

Defendants.

_____/

Case No.: CV15-00826

Dept. No: 10

ORDER

Presently before the Court is DEFENDANTS, KERN & ASSOCIATES, LTD. AND GAYLE KERN'S MOTION TO DISMISS COMPLAINT ("the Motion") filed by Defendants GAYLE A. KERN, DBA KERN & ASSOCIATES, LTD. ("Kern") on September 17, 2015. Plaintiffs DAVID DEZZANI and ROCHELLE DEZZANI (collectively "the Plaintiffs") filed a MEMORANDUM IN DEFENDANTS, KERN AND GAYLE KERN'S MOTION[1] ("the Opposition") on October 6, 2015. Kern filed DEFENDANTS, KERN & ASSOCIATES, LTD.

[1]. The Reply asserts the Opposition was required to be filed no later than October 5, 2015, pursuant to WDCR 12(2). The Reply further argues the Opposition should not be considered by the Court for failure to contain a valid certificate of service. The Court finds refusing to consider the Opposition would be contrary to the strong policy in the State of Nevada to resolve cases on their merits. *Kahn v. Orme*, 108 Nev. 510, 516, 835 P.2d 790, 794 (1992); *Yochum v. Davis*, 98 Nev. 484, 487, 653 P.2d 1215, 1217 (1982) (holding "the court must give due consideration to the state's underlying basic policy of resolving cases on their merits wherever possible."). Accordingly, the Court will consider the Opposition.

ORDER
Granting Motion
to Dismiss
November 19, 2015

AND GAYLE KERN'S REPLY IN SUPPORT OF MOTION TO DISMISS COMPLAINT on October 12, 2015. Kern submitted the matter for the Court's consideration on October 13, 2015.

The Plaintiffs filed a COMPLAINT ("the Complaint") on May 4, 2015. The Complaint alleges four causes of action for various violations of Chapter 116 of the Nevada Revised Statutes. The Complaint alleges Kern engaged in retaliatory action against the Plaintiffs. This case arises out of a dispute between the Plaintiffs and the McCloud Condominium Homeowner's Association ("the HOA"). The Plaintiffs' property contains a rear deck extended from original dimensions by a previous owner. The HOA cited the Plaintiffs for a violation indicating the deck extension was contrary to the Covenants Conditions and Restrictions ("CC&Rs") of the HOA. Kern engaged in correspondence between the Plaintiffs and the HOA as the HOA's counsel. A hearing regarding the violation was conducted and a RESULT OF HEARING was issued by the HOA on September 5, 2014. At all times relevant to this matter Kern was acting as an attorney for the HOA.

The Motion seeks an order from the Court dismissing the Complaint as to Kern pursuant to NRCP 12(b)(1), NRCP 12(b)(5), NRCP 12(h)(3), and NRS 38.310. The Motion alleges the Plaintiffs have failed to assert any claims against Kern for which relief may be granted because there is no theory of liability by which Kern could be independently liable to the Plaintiffs. The Motion asserts, as a matter of law, no cause of action can be asserted against her because she was acting as an attorney for the HOA and owed no duty to Plaintiffs in their individual capacities. Any communication between Kern and the Plaintiffs was communicated on behalf of the HOA, not for the benefit of the Plaintiffs.

The Opposition contends Kern mischaracterizes the claims as those which required privity of contract. The Opposition asserts NRS 116.3118 authorizes civil complaints against agents of an association. The Opposition asserts Kern admitted to being an agent of the HOA and therefore can be liable for retaliatory action. The Reply contends Kern cannot be liable for actions taken solely in connection with her representation of the HOA.

N.R.C.P. 12(b)(5) provides that a defendant may make a motion for dismissal on the grounds of failure to state a claim upon which relief can be granted. Nevada is a notice-pleading jurisdiction, and its "courts liberally construe pleadings to place into issues matters which are

fairly noticed to the adverse party." *Hay v Hay,* 100 Nev. 196, 198, 678 P.2d 672, 674 (1984). The Court must construe the pleadings liberally and draw every fair inference in favor of the non-moving party when considering a motion to dismiss on the grounds of failure to state a claim upon which relief can be granted. *Hampe v. Foote*, 118 Nev. 405, 408, 47 P.3d 438, 439 (2002), citing *Blackjack Bonding v. Las Vegas Mun. Ct.,* 116 Nev. 1213, 1217, 14 P.3d 1275, 1278 (2000).

The Court finds there is no basis in law or fact to support the causes of action alleged against Kern. The Court finds to permit such causes of action against Kern would result in a chilling effect on individuals' ability to hire and retain counsel. NRS 116.3118 does not permit attorneys to be personally liable for actions taken on behalf of an association.

IT IS HEREBY ORDERED the DEFENDANTS, KERN & ASSOCIATES, LTD. AND GAYLE KERN'S MOTION TO DISMISS COMPLAINT is GRANTED.

The Court notes the Plaintiffs filed a MOTION TO POSTPONE AND/TEMPORARILY STAY ("the Motion for Stay") on October 20, 2015. Kern filed DEFENDANTS, KERN & ASSOCIATES, LTD. AND GAYLE KERN'S OPPOSITION TO MOTION TO POSTPONE AND TEMPORARILY STAY PROCEEDINGS ("the Opposition to Stay") on October 22, 2015. The Plaintiff filed a REPLY IN SUPPORT OF MOTION TO POSTPONE AND/OR TEMPORARILY STAY PROCEEDINGS on November 5, 2015. The Plaintiffs submitted the matter for the Court's consideration on November 10, 2015.

The Motion for Stay seeks an order from the Court staying all proceedings until December 1, 2015, based upon the medical treatment of Plaintiff Mr. Dezzani. The Opposition to Stay contends there are no grounds on which this Court may render a decision to stay this matter. The Opposition to Stay asserts the Plaintiffs had ample opportunity to secure local counsel to ensure all proceedings in this matter could be conducted in a timely fashion. The Opposition to Stay further points out the Plaintiffs have not made any specified requests regarding what should be stayed.

The Court finds the Plaintiffs have not provided legal authority warranting a stay, or what proceedings the Plaintiffs seek to have stayed. Further, the Court finds Defendant KAREN HIGGINS has not been served in this matter. The 120 days for service has lapsed. NRCP 4(i).

IT IS HEREBY ORDERED the MOTION TO POSTPONE AND/TEMPORARILY STAY is denied. IT IS FURTHER ORDERED the above-captioned matter is DISMISSED in its entirety.

DATED this 19 day of November, 2015.

ELLIOTT A. SATTLER
District Judge

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 19 day of November, 2015, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

David and Rochelle Dezzani
17 Camino Lienzo
San Clemente, CA 92673

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 19 day of November, 2015, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Gayle Kern, Esq.

Sheila Mansfield
Administrative Assistant

2540
GAYLE A. KERN, ESQ.
Nevada Bar No. 1620
KERN & ASSOCIATES, LTD.
5421 Kietzke Lane Suite 200
Reno, Nevada 89511
Telephone: (775) 324-5930
Telefax: (775) 324-6173
E-mail: gaylekern@kernltd.com

Attorneys for Kern & Associates, Ltd. and Gayle Kern

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

DAVID DEZZANI and ROCHELLE DEZZANI,

Plaintiffs,

vs.

KERN & ASSOCIATES, LTD; GAYLE KERN; KAREN HIGGINS; JOHN DOES 1-10; JANE DOES 1-10; DOE BUSINESSES 1-5,

Defendants.

/

CASE NO.: CV15-00826

DEPT. NO.: 10

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on the 8th day of February, 2016, an Order (granting Motion for Attorney's Fees & Costs) ("Order"), was entered in the above-captioned matter. A copy of the Order is attached hereto.

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document filed in the above-entitled case does not contain the social security number of any person.

DATED this 9th day of February, 2016.

KERN & ASSOCIATES, LTD.

By Gayle A. Kern
GAYLE A. KERN, ESQ.
Attorneys for Kern & Associates, Ltd. and Gayle Kern

Notice of Entry of Order
February 9, 2016

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Kern & Associates, Ltd., 5421 Kietzke Lane, Suite 200, Reno, NV 89511, and that on this date, I served the foregoing document(s) described as follows:

NOTICE OF ENTRY OF ORDER

On the party(s) set forth below by:

__X__ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

____ Personal delivery.

____ Facsimile (FAX).

____ Federal Express or other overnight delivery.

____ Reno-Carson Messenger Service.

addressed as follows:

David and Rochelle Dezzani
17 Camino Lienzo
San Clemente, CA 92673

DATED this 9th day of February, 2016.

Teresa A. Gearhart

TERESA A. GEARHART

FILED
Electronically
2016-02-08 04:57:47 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5359444

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

DAVID DEZZANI and ROCHELLE DEZZANI,

Plaintiffs,

vs.

KERN & ASSOCIATES, LTD; GAYLE KERN; KAREN HIGGINS; JOHN DOES 1-10; JANE DOES 1-10; DOE BUSINESSES 1-5;

Defendants.

/

Case No.: CV15-00826

Dept. No: 10

ORDER

Presently before the Court is a MOTION FOR ATTORNEY'S FEES & COSTS ("the Motion") filed by Defendants KERN & ASSOCIATES, LTD., and GAYLE KERN ("Kern") on December 2, 2015. Plaintiffs DAVID DEZZANI and ROCHELLE DEZZANI (collectively "the Plaintiffs") filed a MEMORANDUM OF ANSWERING POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR ATTORNEY'S FEES AND COSTS; COUNTER-AFFICAVIT [SIC] AND AFFIRMATION ("the Opposition") on December 14, 2015. Plaintiff Rochelle Dezzani filed PLAINTIFF ROCHELLE DEZZANI"S [SIC] JOINDER IN MEMORANDUM OF ANSWERING POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR ATTORNEY'S FEES AND COSTS; COUNTER-AFFICAVIT [SIC] AND AFFIRMATION ("the Joinder") on December 14, 2015. Kern filed a REPLY TO MEMORANDUM OF ANSWERING POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR ATTORNEY'S FEES &

ORDER Granting Motion for Attorney's Fees & Costs
February 8, 2016

COSTS; COUNTER-AFFICAVIT [SIC] AND PLAINTIFF ROCHELLE DEZZANI'S JOINDER THERETO ("the Reply") on December 21, 2015. Kern filed a SUPPLEMENTAL AFFIDAVIT OF GAYLE A. KERN, ESQ. IN SUPPORT OF REPLY TO MEMORANDUM OF ANSWERING POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR ATTORNEY'S FEES & COSTS; COUNTER-AFFICAVIT [SIC] AND PLAINTIFF ROCHELLE DEZZANI'S JOINDER THERETO ("the Supplement") on December 22, 2015. Kern submitted the matter for the Court's consideration on December 22, 2015.

The Plaintiffs filed a COMPLAINT ("the Complaint") on May 4, 2015. The Complaint alleged four causes of action for various violations of Chapter 116 of the Nevada Revised Statutes. The Complaint alleges Kern engaged in retaliatory action against the Plaintiffs. This case arises out of a dispute between the Plaintiffs and the McCloud Condominium Homeowner's Association ("the HOA"). Kern engaged in correspondence between the Plaintiffs and the HOA as the HOA's counsel. Kern's September 9, 2015, letter ("the September Letter"), clearly gave notice and an opportunity to respond to the allegations of the Complaint's deficiencies in compliance with NRCP 11(c). The September Letter gave a thorough and detailed analysis of the deficiencies of the Plaintiffs' claims, namely the inability to institute litigation against the HOA's counsel, Kern. The September Letter went so far as to direct the Plaintiffs to a local case where a plaintiff raised identical issues and a judge found the issues untenable. Though not binding, this case was certainly persuasive.

The Court granted DEFENDANTS, KERN & ASSOCIATES, LTD. AND GAYLE KERN'S MOTION TO DISMISS COMPLAINT in its November 19, 2015, ORDER ("November Order"). The Court found NRS 116.3118 does not permit attorneys to be personally liable for actions taken on behalf of an association.

The Motion argues the Plaintiffs are liable for attorneys' fees pursuant to NRS 18.010(2)(b). "The decision to award attorney's fees is within the sound discretion of the trial court." *Bergmann v. Boyce,* 109 Nev. 670, 674, 856 P.2d 560, 563 (1993). A district court's award of attorney's fees will not be disturbed absent a manifest abuse of discretion. *Nelson v. Peckham Plaza Partnerships,* 110 Nev. 23, 26, 866 P.2d 1138, 1139–40 (1994). An action may

constitute an abuse of discretion where a district court disregards the applicable legal principles. *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 995, 860 P.2d 720, 724 (1993). A district court assesses a motion for attorney's fees under NRS 18.010(2)(b) by determining whether the plaintiff had reasonable grounds for its claims. *Bergmann*, 109 Nev. at 675, 856 P.2d at 563. This analysis is dependent on the actual circumstances of the plaintiff's claim not hypothetical facts. *Id.*

The Motion contends the Plaintiffs maintained the above-captioned lawsuit without reasonable grounds. The Opposition argues the Plaintiffs' lawsuit was not rendered groundless solely as a result of the Court's finding that NRS 116.3118 did not support the Complaint. The Court notes the mere granting of a motion to dismiss is not *ipso facto* a finding that attorney's fees are mandated. The Reply asserts the Plaintiffs were informed of the inappropriate application of NRS 116.3118 to this dispute and acted in bad faith by continuing to maintain this lawsuit. The Motion and Reply further argue fees are appropriate as sanctions pursuant to NRCP 11 because there "is no question that Plaintiffs' Complaint was not well grounded in fact or existing law." The Reply 6:2.

The Court finds evidence indicating this case was maintained in an effort to harass the Defendants. The Court is unpersuaded by the Opposition's arguments that this suit was maintained with reasonable grounds. Rule 11 sanctions "should be imposed for frivolous actions." *Marshall v. Eighth Judicial Dist. Court In and For County of Clark*, 108 Nev. 459, 465, 836 P.2d 47, 52 (1992). "Rule 11 sanctions are not intended to chill an attorney's enthusiasm or creativity in reasonably pursuing factual or legal theories." *Id.* The Court notes Plaintiff David Dezzani ("Mr. Dezzani"), although not licensed to practice in this state, has been an attorney for several years and is aware of the obligation to proceed in good faith in all causes of action. Mr. Dezzani's COUNTER AFFIDAVIT ("Affidavit") attests he filed the Complaint "in good faith, as [the Plaintiffs] believed, that [they] had [been] retaliated against, in violation of Nevada law." The Affidavit ¶ 12. Yet, the Court finds the September Letter clearly placed the Plaintiffs on notice of the absence of legal authority to support the claims against Kern. The September Letter gave a thorough analysis of the issues raised by the Complaint. The September Letter informed the Plaintiffs, should they choose to proceed with litigation, Kern would seek attorney's fees and costs

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 8 day of February, 2016, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

David and Rochelle Dezzani
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San Clemente, CA 92673

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 8 day of February, 2016, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Gayle Kern, Esq.

Sheila Mansfield
Administrative Assistant