

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDERIC AND BARBARA
ROSENBERG LIVING TRUST,
Appellant/Cross-Respondent,

vs.

MACDONALD HIGHLANDS
REALTY, LLC, a Nevada Limited
Liability Company; MICHAEL
DOIRON, an Individual; and FHP
VENTURES, a Nevada Limited
Partnership,
Respondents/Cross-Appellants.

FREDERIC AND BARBARA
ROSENBERG LIVING TRUST,
Appellant,

vs.

SHAHIN SHANE MALEK,
Respondent.

Electronically Filed
Dec 15 2016 10:24 a.m.
Elizabeth A. Brown
Clerk of Supreme Court
**Supreme Court No. 69399 and
70478
(Consolidated)**

District Court Case No. A689113

**RESPONDENT SHAHIN
MALEK'S APPENDIX**

On Appeal from Judgment Granted by the Eighth Judicial
District Court of the State of Nevada, in and for Clark County
Case No. A689113

James E. Shapiro, Esq.
Nevada Bar No: 7907
Sheldon A. Herbert, Esq.
Nevada Bar No: 5988
SMITH & SHAPIRO, PLLC
2520 St. Rose Pkwy, Suite 220
Henderson, NV 89074
(702) 318-5033
Attorneys for Respondent, SHAHIN MALEK

DOCUMENT	DATE	PAGE
Notice of Lis Pendens (Arbitration Exemption Claimed: Action Concerning Title to Real Property and Injunctive Relief Sought)	09/30/13	RA_000001- RA_000002
Amended Notice of Lis Pendens (APN 178-27-218-002)	10/24/13	RA_000003- RA_000006
Order Regarding Shane Malek's Motion to Dismiss	01/09/14	RA_000007- RA_000008
Plaintiff's Motion to Retax and Settle Memorandum of Costs and Disbursements	09/14/15	RA_000009- RA_000015
Defendant Shahin Shane Malek's Opposition to Plaintiff's Motion to Retax	10/02/15	RA_000016- RA_000021
Defendant Shahin Shane Malek's Reply in Support of Motion for Attorney's Fees	11/19/15	RA_000022- RA_000031
Order on Defendant Shahin Shane Malek's Motion for Attorneys' Fees and Costs and Plaintiff The Frederic and Barbara Rosenberg Living Trust's Motion to Retax Costs	01/13/16	RA_000032- RA_000038
Notice of Appeal (The Frederic and Barbara Rosenberg Living Trust)	05/23/16	RA_000039- RA_000041

Dated this 14th day of December, 2016.

SMITH & SHAPIRO, PLLC

/s/ James E. Shapiro, Esq.

James E. Shapiro, Esq.

Nevada Bar No: 7907

Sheldon A. Herbert, Esq.

Nevada Bar No: 5988

2520 St. Rose Pkwy, Suite 220

Henderson, NV 89074

Attorneys for Respondent, SHAHIN MALEK

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of N.R.A.P. 32(a)(4), the typeface requirements of N.R.A.P. 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

☒ This brief has been prepared in a proportionally spaced typeface using Word Perfect in 14 point font Times New Roman type style; or

☐ This brief has been prepared in a monospaced typeface using [*state name and version of word-processing program*] with [*state number of characters per inch and name of type style*].

2. I further certify that this brief complies with the page- or type-volume limitations of N.R.A.P. 32(a)(7) because, excluding the parts of the brief exempted by N.R.A.P. 32(a)(7)(C), it is either:

☒ Proportionately spaced, has a typeface of 14 points or more, and contains 680 words; or

☐ Monospaced, has 10.5 or fewer characters per inch, and contains _____ words or _____ lines of text; or

☐ Does not exceed 30 pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable

Nevada Rules of Appellate Procedure, in particular N.R.A.P. 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 14th day of December, 2016.

SMITH & SHAPIRO, PLLC

/s/ James E. Shapiro, Esq.

James E. Shapiro, Esq.

Nevada Bar No: 7907

Sheldon A. Herbert, Esq.

Nevada Bar No: 5988

2520 St. Rose Pkwy, Suite 220

Henderson, NV 89074

Attorneys for Respondent,

SHAHIN MALEK

CERTIFICATE OF SERVICE

I certify that on the 14th day of December, 2016, I served a copy of this
RESPONDENT SHAHIN MALEK'S APPENDIX via this Court's e-filing
system on counsel of record for all parties to the action.

/s/ Jill M. Berghammer

Jill M. Berghammer, an employee
of SMITH & SHAPIRO, PLLC


CLERK OF THE COURT

1 **LISP**
2 PETER C. BERNHARD
3 Nevada Bar No. 0734
4 LISA J. ZASTROW
5 Nevada Bar No. 9727
6 KAEMPFER CROWELL
7 8345 West Sunset Road, Suite 250
8 Las Vegas, Nevada 89113
9 Telephone: (702) 792-7000
10 Fax: (702) 796-7181
11 pbernhard@kcnvlaw.com
12 lzastrow@kcnvlaw.com
13 *Attorneys for Plaintiff The Fredric and*
14 *Barbara Rosenberg Living Trust*

DISTRICT COURT

CLARK COUNTY, NEVADA

11 THE FREDRIC AND BARBARA
12 ROSENBERG LIVING TRUST,

13 Plaintiff,

14 vs.

15 BANK OF AMERICA, N.A.;
16 BAC HOME LOANS SERVICING, LP, a
17 foreign limited partnership;
18 DRAGONRIDGE PROPERTIES, LLC;
19 DRAGONRIDGE GOLF CLUB, INC. is a
20 Nevada corporation;
21 MACDONALD PROPERTIES, LTD., a
22 Nevada corporation;
23 MACDONALD HIGHLANDS REALTY,
24 LLC, a Nevada limited liability company;
MICHAEL DOIRON, an individual;
SHAHIN SHANE MALEK, an individual;
REAL PROPERTIES MANAGEMENT
GROUP, INC., a Nevada corporation;
DOES I through X, inclusive; and ROE
BUSINESS ENTITY I through XX, inclusive,

Defendants.

Case No.: A-13-689113-C
Dept. No.: I

NOTICE OF LIS PENDENS

**(ARBITRATION EXEMPTION
CLAIMED: ACTION CONCERNING
TITLE TO REAL PROPERTY AND
INJUNCTIVE RELIEF SOUGHT)**

KAEMPFER CROWELL,
8345 West Sunset Road
Suite 250
Las Vegas, Nevada 89113

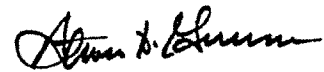
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24

The real property affected by this action is situated in Clark County, Nevada and generally described as that certain .34-acre portion as Assessor's Parcel No. 178-28-520-001, which is a portion of MacDonald Highlands Golf Hole #9 in the NW quarter of Section 27, Township 22 South, Range 62 East, M.D.M., generally located northwest of MacDonald Ranch Drive and Stephanie Street, Henderson, Clark County, Nevada.

DATED this 30 day of September, 2013.

By

PETER C. BERNHARD
Nevada Bar No. 0734
LISA J. ZASTROW
Nevada Bar No. 9727
8345 West Sunset Road, Suite 250
Las Vegas, Nevada 89113
Attorneys for Plaintiff
The Fredric and Barbara Rosenberg Living Trust



CLERK OF THE COURT

1 ALIS
PETER C. BERNHARD
2 Nevada Bar No. 0734
LISA J. ZASTROW
3 Nevada Bar No. 9727
JAMES E. SMYTH II
4 Nevada Bar No. 6506
KAEMPFER CROWELL
5 8345 West Sunset Road, Suite 250
Las Vegas, Nevada 89113
6 Telephone: (702) 792-7000
Fax: (702) 796-7181
7 pbernhard@kcnvlaw.com
lzastrow@kcnvlaw.com
8 jsmyth@kcnvlaw.com
*Attorneys for Plaintiff The Fredric and
9 Barbara Rosenberg Living Trust*

10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 THE FREDRIC AND BARBARA
ROSENBERG LIVING TRUST,

Case No.: A-13-689113-C

Dept. No.: I

13 Plaintiff,

AMENDED NOTICE OF LIS PENDENS

14 vs.

(APN 178-27-218-002)

15 BANK OF AMERICA, N.A.;
16 BAC HOME LOANS SERVICING, LP, a
foreign limited partnership;
17 DRAGONRIDGE PROPERTIES, LLC;
DRAGONRIDGE GOLF CLUB, INC. is a
18 Nevada corporation;
MACDONALD PROPERTIES, LTD., a
19 Nevada corporation;
MACDONALD HIGHLANDS REALTY,
20 LLC, a Nevada limited liability company;
MICHAEL DOIRON, an individual;
21 SHAHIN SHANE MALEK, an individual;
REAL PROPERTIES MANAGEMENT
22 GROUP, INC., a Nevada corporation;
DOES I through X, inclusive; and ROE
23 BUSINESS ENTITY I through XX, inclusive,

24 Defendants.

KAEMPFER CROWELL
8345 West Sunset Road
Suite 250
Las Vegas, Nevada 89113

1 **AMENDED NOTICE OF LIS PENDENS**

2 (APN 178-27-218-002)

3 COMES NOW, Plaintiff THE FREDRIC AND BARBARA ROSENBERG LIVING
4 TRUST, the above-entitled Plaintiff, by and through its counsel, KAEMPFER CROWELL, and
5 hereby provides notice that an action was commenced and is pending in the above-entitled Court
6 by THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST, the above-entitled
7 Plaintiff, against SHAHIN SHANE MALEK, an above-named Defendant, seeking relief as
8 stated in the Complaint, filed September 23, 2013, for easement and declaratory relief.

9 The real property affected by this action is situated in Clark County, Nevada and
10 generally described and commonly known as that certain .34-acre bare lot portion of Assessor's
11 Parcel No. 178-27-218-002, bounded and described as follows:

12 **SEE LEGAL DESCRIPTION ATTACHED HERETO**

13 **AND MADE A PART HEREOF AS "EXHIBIT A"**

14 and subject to restrictions, conditions, reservations, rights, rights of way and easements now of
15 record, if any, or any that actually exist on the property.

16 DATED this 24th day of October, 2013.

17 KAEMPFER CROWELL

18 By 

19 PETER C. BERNHARD

20 Nevada Bar No. 0734

LISA J. ZASTROW

21 Nevada Bar No. 9727

JAMES E. SMYTH II

22 Nevada Bar No. 6506

8345 West Sunset Road, Suite 250

Las Vegas, Nevada 89113

23 *Attorneys for Plaintiff*

24 *The Fredric and Barbara Rosenberg Living Trust*

WALLACE • MORRIS SURVEYING, INC.
Land Survey Consulting

APN: 178-27-218-002

EXHIBIT "A"

EXPLANATION: PROPERTY DESCRIPTION FOR THAT CERTAIN AREA TO BE
ADDED TO LOT 2, BLOCK 1 **MACDONALD HIGHLANDS A.K.A.**
FOOTHILLS @ MACDONALD RANCH PLANNING AREA 10.

BASIS OF BEARING:

THE BASIS OF BEARING FOR THIS PROPERTY DESCRIPTION BEING,
SOUTH 04°03'35" WEST, BEING THAT CERTAIN CENTERLINE OF STEPHANIE STREET,
DESCRIBED AS "S04°03'35"W 398.21 FEET" AS SHOWN PER BOOK 92, PAGE 100 OF
PLATS, RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

BEING A PORTION OF THE NORTHWEST QUARTER (NW ¼) OF SECTION 27, TOWNSHIP
22 SOUTH, RANGE 62 EAST, M.D.M. IN THE CITY OF HENDERSON, COUNTY OF CLARK,
STATE OF NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTERLINE INTERSECTION OF MACDONALD RANCH DRIVE
AND STEPHANIE STREET AS SHOWN PER BOOK 92, PAGE 100 OF PLATS, RECORDED
IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.
THENCE ALONG THE CENTERLINE OF SAID STEPHANIE STREET,
NORTH 04°03'35" EAST, 389.11 FEET;
THENCE DEPARTING SAID LINE, NORTH 85°56'25" WEST, 40.00 FEET, SAID POINT
BEING THE NORTHEAST CORNER OF THE EXTERIOR BOUNDARY LINE OF "THE
FOOTHILLS AT MACDONALD RANCH, LOT 10" A.K.A., PLANNING AREA 10" AS PER MAP
RECORDED IN BOOK 92, PAGE 100 OF PLATS;
THENCE ALONG THE NORTHERLY EXTERIOR BOUNDARY LINE OF SAID BOOK 92,
PAGE 100 OF PLATS, SOUTH 81°15'00" WEST, 20.51 FEET TO THE
POINT OF BEGINNING;
THENCE ALONG SAID LINE THE FOLLOWING TWO (2) COURSES:
SOUTH 81°15'00" WEST, 106.47 FEET;
THENCE NORTH 62°21'00" WEST, 73.00 FEET;
THENCE DEPARTING SAID LINE, NORTH 36°04'33" EAST, 65.60 FEET;
THENCE NORTH 80°02'19" EAST, 41.47 FEET;
THENCE NORTH 68°55'54" EAST, 29.88 FEET;
THENCE NORTH 46°00'15" EAST, 56.90 FEET TO A POINT ON A CURVE TO WHICH A
RADIAL LINE BEARS, SOUTH 65°17'22" WEST;
THENCE SOUTHEASTERLY, ALONG THE ARC OF A CURVE TO THE LEFT, CONCAVE
NORTHEASTERLY, HAVING A RADIUS OF 155.00 FEET, THROUGH A CENTRAL ANGLE
OF 16°00'58", AN ARC DISTANCE OF 43.33 FEET TO A POINT ON A CURVE TO WHICH A
RADIAL LINE BEARS, NORTH 49°16'24" EAST;

THENCE SOUTHERLY, ALONG THE ARC OF A CURVE TO THE RIGHT, CONCAVE
WESTERLY, HAVING A RADIUS OF 644.00 FEET, THROUGH A CENTRAL ANGLE OF
07°00'16", AN ARC DISTANCE OF 78.24 FEET;
THENCE SOUTH 04°03'35" WEST, 13.64 FEE TO THE NORTHERLY LINE OF THE
EXTERIOR BOUNDARY LINE OF SAID BOOK 92, PAGE 100 OF PLATS, SAID POINT BEING
THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 14,840 SQ. FT., MORE OR LESS.

END OF DESCRIPTION

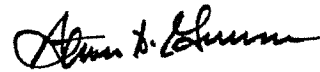
TERRY L. HAMBLET P.L.S.
NEVADA LICENSE NO. 11828

PROCESSOR 19 COPY

Page 2 of 2

C:\Documents and Settings\rbryant\Local Settings\Temporary Internet
Files\Content.Outlook\FJRMOPVC\PA10 Additional Area (2).docx
5740 S. Arville Street, Suite 206, Las Vegas, Nevada 89118, Ph: 702.212.3967 Fx: 702.212.3963

RA_000006


CLERK OF THE COURT

ORD

Patrick G. Byrne (Nevada Bar #7636)
Justin A. Shiroff (Nevada Bar #12869)
SNELL & WILMER L.L.P.
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89169
Telephone: 702.784.5200
Facsimile: 702.784.5252
Email: pbyrne@swlaw.com
jshiroff@swlaw.com

*Attorneys for Defendant
Shahin Shane Malek*

DISTRICT COURT

CLARK COUNTY, NEVADA

THE FREDRIC AND BARBARA
ROSENBERG LIVING TRUST,

Plaintiff,

vs.

BANK OF AMERICA, N.A.; BAC HOME
LOANS SERVICING, LP, a foreign limited
partnership; DRAGONRIDGE
PROPERTIES, LLC; DRAGONRIDGE
GOLF CLUB, INC., a Nevada corporation;
MACDONALD PROPERTIES, LTD, a
Nevada corporation; MACDONALD
HIGHLANDS REALTY, LLC, a Nevada
limited liability company; MICHAEL
DOIRON, an individual; SHAHIN SHANE
MALEK, an individual; REAL
PROPERTIES MANAGEMENT GROUP,
INC., a Nevada corporation; DOES I
through X, inclusive; and ROES I through
X, inclusive,

Defendants.

CASE NO.: A-13-689113-C

DEPT. NO.: I

ORDER

Hearing Date: Dec. 19, 2013

Hearing Time: 9:00 a.m.

This matter having come before the Court on defendant Shahin Shane Malek's Motion To Dismiss, and the Court having considered the opposition, the papers and pleadings on file with the Court, and having entertained oral argument, GRANTS Defendant's motion in part and DENIES Defendant's motion in part and finds and orders as follows:

1. Plaintiff's Complaint is sufficient to withstand dismissal under NRCP 12(b)(5) for the reasons stated by the Court on the record.

Snell & Wilmer

LAW OFFICES
3883 HOWARD HUGHES PARKWAY, SUITE 1100
LAS VEGAS, NEVADA 89169
(702)784-5200

2. Plaintiff did not meet its burden to maintain a lis pendens under NRS 14.015(3).

THEREFORE the Court finds that Defendant's Motion to Dismiss and Expunge Lis Pendens is GRANTED in part and DENIED in part.

IT IS ORDERED that Defendant's Motion to Dismiss is DENIED without prejudice.

IT IS FURTHER ORDERED that Defendant's Motion to Expunge Lis Pendens is GRANTED without prejudice and the lis pendens currently recorded against Malek's property is hereby expunged.

IT IS FURTHER ORDERED that, if Plaintiff seeks to record a new lis pendens against the property, they must first secure permission of the Court by Motion.

IT IS SO ORDERED

DATED this 8 day of Jan, 2014.


DISTRICT COURT JUDGE #8

Submitted by:

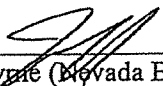
Approved as to form.

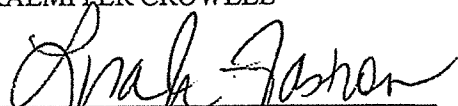
Dated this 27 day of December, 2013.

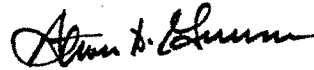
Dated this 23 day of December, 2013.

SNELL & WILMER L.L.P.

KAEMPFER CROWELL


Pat Byrne (Nevada Bar #7636)
Justin A. Shiroff (Nevada Bar #12869)
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, NV 89169
Attorneys for Defendant Shahin Shane Malek


Peter C. Bernhard, Esq.
Lisa J. Zastrow, Esq.
Kaempfer Crowell
8345 West Sunset Road, Suite 250
Las Vegas, NV 89113
Attorney for The Fredric and Barbara Rosenberg Trust



CLERK OF THE COURT

1 **MRTX**
2 HOWARD KIM, ESQ.
3 Nevada Bar No. 10386
4 E-mail: howard@hkimlaw.com
5 KAREN L. HANKS, ESQ.
6 Nevada Bar No. 009578
7 E-mail: karen@hkimlaw.com
8 HOWARD KIM & ASSOCIATES
9 1055 Whitney Ranch Drive, Suite 110
10 Henderson, Nevada 89014
11 Telephone: (702) 485-3300
12 Facsimile: (702) 485-3301
13 *Attorneys for Plaintiff*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

10 THE FREDRIC AND BARBARA
11 ROSENBERG LIVING TRUST,

12 Plaintiff,

13 vs.

14 BANK OF AMERICA, N.A.; BAC HOME
15 LOANS SERVICING, LP, a foreign limited
16 partnership; MACDONALD HIGHLANDS
17 REALTY, LLC, a Nevada limited liability
18 company; MICHAEL DOIRON, an
19 individual; SHAHIN SHANE MALEK, an
20 individual; PAUL BYKOWSKI, an
21 individual; THE FOOTHILLS AT
22 MACDONALD RANCH MASTER
23 ASSOCIATION, a Nevada limited liability
24 company; THE FOOTHILLS PARTNERS, a
25 Limited Partnerships; DOES I through X; and
26 ROE CORPORATIONS I through X,
27 inclusive,

28 Defendants.

Case No. A-13-689113-C

Dept. No. I

**PLAINTIFF'S MOTION TO RETAX AND
SETTLE MEMORANDUM OF COSTS AND
DISBURSEMENTS**

Plaintiff, THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST, by and through its
counsel of record, HOWARD KIM & ASSOCIATES, hereby moves this Court for an order to retax and
settle the Memorandum of Costs and Disbursements filed by Defendant, Shahin Shane Malek.

1 This Motion is made pursuant to NRS 18.020, NRS 18.110, and based on the following
2 Memorandum of Points and Authorities.

3 **NOTICE OF MOTION**

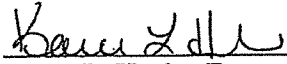
4 TO: All Interested Parties

5 TO: Their respective counsel of record

6 PLEASE TAKE NOTICE that Plaintiff will bring the foregoing Motion on for hearing before
7 Department 1 on the 19 day of Oct, 2015 at the hour of In Chambers or as soon thereafter as counsel
8 can be heard.

9 Dated this 14th day of September, 2015.

10
11 HOWARD KIM & ASSOCIATES

12 
13 Karen L. Hanks, Esq.
14 Nevada Bar No. 009578
15 1055 Whitney Ranch Drive, Ste 110
16 Henderson, Nevada 89014
Attorneys for SFR Investments Pool 1, LLC

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **I. PREFATORY STATEMENT**

19 On September 9, 2015, Defendant, Shahin Shane Malek, ("Malek") served upon Plaintiff a
20 Verified Memorandum of Costs and Disbursements. The Memorandum claims costs in the amount of
21 \$12,270.45, which Malek seeks to recover as the prevailing party. Plaintiff opposes the Memorandum
22 on the following grounds. First, the Memorandum is late, and therefore must be denied. Second, NRS
23 18.020 does not permit the recovery of costs in this type of action. Finally, certain costs are unreasonable
24 or disallowed by Nevada law. Accordingly, Plaintiff requests that Malek's Memo be denied in its
25 entirety, or at a minimum be reduced to \$3,720.25.

26 ///

27 ///

28 ///

1 **II. LEGAL ARGUMENT**

2 **A. Malek's Memo is Untimely, and Therefore Must be Denied.**

3 NRS 18.110(1) provides that "[t]he party in whose favor judgment is rendered, and who claims
4 costs, **must** file with the clerk, and serve a copy upon the adverse party, **within 5 days after the entry**
5 **of judgment**...a memorandum of the items of costs in the action..." (emphasis added). Here, Malek's
6 Notice of Entry of Order was filed on August 20, 2015. As such, the deadline to file the Memo of Costs
7 was August 27, 2015. Yet, Malek filed the instant Memo of Costs on September 9, 2015, nine (9)
8 judicial days after the deadline. Having failed to timely file the Memo of Costs, Malek's Memo must
9 be denied in its entirety, and he is not entitled to recover any costs.

10 **B. Malek's Memo of Costs Must be Denied Because NRS Chapter 18 Does**
11 **Not Allow Costs for this Type of Action.**

12 NRS 18.020 lists five types of actions where costs must be awarded to the prevailing party, and
13 an action for declaratory/injunctive relief is not listed. In this case, Plaintiff's sought a declaration from
14 this Court that a restrictive covenant existed over the golf course, and therefore the portion of golf
15 course sold to Malek must remain golf course in terms of its use. This type of action is not contemplated
16 by any of the enumerated actions in NRS 18.020. As such, Malek is not entitled to costs.

17 **C. Malek's Memo of Costs Includes Unreasonable Costs or Costs**
18 **Disallowed by Nevada Law.**

19 Should this Court disregard the lateness of Malek's Memo and disregard the fact that NRS
20 Chapter 18 does not allow costs for this type of action, Malek's Memo should, at a minimum, be retaxed
21 because it includes unreasonable costs or costs disallowed by Nevada law. Under Nevada law, the
22 determination of which expenses are recoverable as costs is left largely to the sound discretion of the
23 trial court. Bergman v. Boyce, 109 Nev. 670, 679, 856 P.2d 560, 565-566 (1993). Because statutes
24 permitting recovery of costs are in derogation of common law, they should be strictly construed by the
25 Court. Gibellini v. Klindt, 110 Nev. 1201, 1205, 885 P.2d 540, 543 (1994). Thus, this Court's discretion
26 should be sparingly exercised when considering whether to allow an expense not specifically authorized
27 by statute or case precedent.

1 In this case, this Court should exercise its discretion, and deny (1) Malek's deposition transcript
2 fees in the amount of \$3,480.20; (2) expert deposition witness fees in the amount of \$1,470.00; and (3)
3 JAMS mediation fess in the amount of \$3,600.00. With regard to the deposition transcript fees, it was
4 completely unnecessary, and therefore unreasonable for Malek to order the deposition transcripts of
5 Craig Jiu (Plaintiff's diminution of value expert against the other named Defendants), Michael Tassi
6 (City of Henderson 30(b)(6) witness), Scott Dugan (MacDonald/Doiron's expert witness), Matthew
7 Lubawy (Bank of America's expert witness), and Jessica Woodbridge (Bank of America's 30(b)(6)
8 witness). These witnesses had no bearing whatsoever on the claims Plaintiff brought against Malek or
9 Malek's defenses to those claims. All of these witnesses dealt directly with Plaintiff's claims against
10 the other named Defendants. This is particularly true of the expert witnesses. These witnesses were
11 named to opine as to money damages should a restrictive covenant **not** exist on the golf course. These
12 witnesses had no bearing on whether a covenant existed. As such, it was unreasonable for Malek to
13 order these transcripts. Nothing under NRS Chapter 18 or Nevada law requires a non-prevailing party
14 to pay for costs that were inappropriately, and unnecessarily incurred by the prevailing party.

15 As to the expert deposition witness fees, it is baffling as to why Malek agreed to share in the
16 costs of the deposition of Plaintiff's diminution of value expert, when this expert had absolutely no
17 bearing on the claims/defenses between Plaintiff and Malek. Again, Craig Jiu was hired by Plaintiff to
18 support the claims brought against other parties in this action, and these claims were only alternative to
19 the extent a restrictive covenant did not exist over the golf parcel. In other words, Mr. Jiu intended to
20 testify, in terms of dollars, the loss of value to Plaintiff's property once Malek built the home he intended
21 to build on the golf parcel. Under no set of circumstances would Malek have ever been affected by Mr.
22 Jiu's opinions because Mr. Jiu's opinions were only relevant to the extent a restrictive covenant did not
23 exist over the golf course, and were offered to support money damages against the other named
24 defendants. Therefore sharing in the costs of this deposition was, to put it mildly, senseless. A cost
25 thoughtlessly incurred should not be the responsibility of Plaintiff.

26 Finally, with respect to the JAMS mediation fees, a prevailing party cannot recover costs for an
27 expense the parties agreed to share in equally. Carr Business Enterprises, Inc. v. City of Chowchilla, 82
28 Cal.Rptr.3d 135, 138-39 (Cal.Ct.App. 2008) (trial court erred in awarding prevailing party 50% of

1 referee fee, when parties agreed to split this cost); Friguquip Corp. v. Parker-Hannifin Corp., 75 F.R.D.
2 605, 613 (Okla. 1976) (court denied transcription costs to prevailing party where parties agreed to split);
3 A-Cal Copiers, Inc. v. North American Van Lines, Inc., 180 F.R.D. 183, 191 (Mass. 1998) (holding that
4 as a matter of equity, prevailing party is not entitled to cost of an expense that both parties agreed to
5 share); Schmidt v. Colonial Terrace Associates, 694 P.2d 1340, 1346 (Mont. 1985) (holding that trial
6 court did not err in excluding from prevailing party's cost bill amount attributable to their share of
7 special master's fee, where parties agreed to share equally in this fee); Thomas v. Duralite Co., Inc., 524
8 F.2d 577, 590 (3rd Cir. 1975) (holding that because both parties agreed to share expenses of daily
9 transcripts district court properly denied this cost to prevailing party); Eliscu v. Paramount Pictures, 73
10 F.Supp. 881, 886 (D.C. Cal. 1947) (recognizing costs of jury not recoverable by prevailing party if
11 parties agreed to split); Boston Belting Co. v. City of Boston, 183 Mass. 254, 261 (Mass. 1903) (where
12 parties agree to split costs of stenographer, the law does not recognize such payments as costs to be
13 taxed by the prevailing party).

14 In the present case, Plaintiff and Malek made the decision to engage in mediation, with a private
15 mediator. In fact, it was Malek who approached Plaintiff about settlement. The parties agreed to equally
16 split the fees for this mediation. Because the parties agreed to split the mediation fee, Malek cannot now
17 claim he is entitled to the share he already agreed to pay, irrespective of whether he prevailed. If that
18 were not enough, NRS 18.005 does not allow for the recovery of this cost. As such, this Court should
19 deny this cost. In short, if this Court is inclined to allow costs, at a minimum, it should disallow costs
20 in the amount of \$8,550.20.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///


1 **III. CONCLUSION**

2 Based on the lateness of Malek's Motion and the fact that NRS 18.020 does not allow costs for
3 actions such as the one against Malek, this Court should deny Malek's Memo of Costs in its entirety.
4 Alternatively, should this Court ignore the timing of Malek's Motion and NRS 18.020, this Court should
5 retax and reduce Malek's costs by \$8,550.20, thereby only awarding Malek a total of \$3,720.25 in costs.

6
7 DATED this 14th day of September, 2015.

8
9 Respectfully submitted by:

10 HOWARD KIM & ASSOCIATES

11
12 

13 KAREN L. HANKS, ESQ.

14 Nevada Bar No. 009578

15 1055 Whitney Ranch Drive, Suite 110

16 Henderson, Nevada 89014

17 Telephone: (702) 485-3300

18 Facsimile: (702) 485-3301

19 Attorneys for Plaintiff,

20 The Fredric and Barbara Rosenberg Living Trust

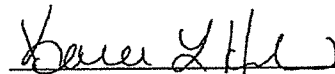
CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of September, 2015, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic service system the foregoing, **PLAINTIFF'S MOTION TO RETAX AND SETTLE MEMORANDUM OF COSTS AND DISBURSEMENTS**, to the following parties:

THE FIRM, P.C.
Preston P. Rezaee, Esq.
Preston.thefirm-lv.com
Attorneys for Shahin Shane Malek

AKERMAN LLP
Natalie L. Winslow, Esq.
Natalie.winslow@akerman.com
Attorneys for Bank of America, N.A.

KEMP, JONES & COULTHARD, LLP
Spencer H. Gunnerson, Esq.
s.gunnerson@kempjones.com
*Attorneys for Michael Doiron, MacDonald
Highlands Realty LLC and FHP Ventures*



An Employee of Howard Kim & Associates


CLERK OF THE COURT

OPPM

Preston P. Rezaee, Esq.
Nevada Bar No. 10729
Jay DeVoy, Esq., of counsel
Nevada Bar No. 11950
THE FIRM, P.C.
200 E. Charleston Blvd.
Las Vegas, NV 89104
Telephone: (702) 222-3476
Facsimile: (702) 252-3476
Attorneys for Defendant,
SHAHIN SHANE MALEK

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE FREDERIC AND BARBARA	)	CASE NO.: A-13-689113-C
ROSENBERG LIVING TRUST,	)	DEPT NO.: I
)	
Plaintiff,)	
vs.)	
)	
BANK OF AMERICA, N.A.; BAC HOME	)	DEFENDANT SHAHIN SHANE
LOANS SERVICING, LP, a foreign limited	)	MALEK'S OPPOSITION TO
partnership; MACDONALD HIGHLANDS	)	PLAINTIFF'S MOTION TO RETAX
REALTY, LLC, a Nevada limited liability	)	COSTS
company; MICHAEL DOIRON, an individual;)	
SHAHIN SHANE MALEK, an individual;)	
PAUL BYKOWSKI, an individual; THE)	
FOOTHILLS AT MACDONALD RANCH)	
MASTER ASSOCIATION, a Nevada limited)	
liability company; THE FOOTHILLS)	
PARTNERS, a Nevada limited partnership;)	
DOES I through X, inclusive; and ROE)	
BUSINESS ENTITY I through XX, inclusive,)	
)	
Defendants.)	
)	
)	

I. Introduction

This Court has broad discretion to control deadlines for party submissions. *Dornbach v. Tenth Jud. Dist. Ct.*, 130 Nev. Adv. Rep. 33, 324 P.3d 369 (2014); *Arnold v. Kip*, 123 Nev. 410, 418, 168 P.3d 1050, 1055 (2007). Independent of Malek's separately pending motion for attorneys' fees and costs, the Court has discretion to evaluate his verified memorandum of costs. This is consistent with

1 the Court's broad discretion to award attorneys' fees and costs and manage the proceedings before it.
2 *Bergmann v. Boyce*, 109 Nev. 670, 856 P.2d 560 (1993); *see Borger v. Eighth Jud. Dist. Ct.*, 120 Nev.
3 1021, 1030, 102 P.3d 600, 606 (2004) (supporting use of discretionary powers to manage litigation).

4 The Trust selectively recalls its positions in this case when asserting that NRS 18.020 does not
5 allow for Malek to recover his costs. NRS 18.020(1) allows for an award of costs in "an action for the
6 recovery of real property or a possessory right thereto," while NRS 18.020(5) allows the Court to
7 award costs "in an action which involves the title or boundaries of real estate." At the inception of this
8 litigation, the Trust immediately filed a *lis pendens* on Malek's property, which is only proper in
9 actions "affecting the title or possession of real property." NRS 14.010(1).

10 Now, the Trust contradicts its earlier positions by contending this is *not* an action concerning
11 possession or title of property under NRS 18.020. It was the Trust, rather than Malek, that first defined
12 this case as one about possession and title to property by filing its *lis pendens*. Now, despite its Notice
13 of *Lis Pendens* and Amended Notice of *Lis Pendens* filings, the Trust attempts to persuade the Court
14 that this case was never about having a possessory interest in Malek's land, in order to avoid the costs
15 it imposed on Malek with its unsuccessful litigation. It cannot do so.

16 II. Argument

17 Malek's deposition fees were necessary and proper in the defense of this case. In fact, one of
18 the depositions the Trust claims to be irrelevant to Malek's case was heavily relied upon in his
19 successful summary judgment motion. Similarly, NRS 18.005(5) warrants the Court awarding Malek
20 his full expert expenses paid in this action, and NRS 18.005(17) vests the Court with discretion to
21 award him his mediation costs in connection with this action.

22 A. Malek's Deposition Fees Were Reasonable and Necessary.

23 The Trust's contention that Malek had no need to obtain the deposition transcripts of Michael
24 Tassi and Jessica Woodbridge is without merit. Both of these transcripts were used in Malek's motion
25 for summary judgment, and provided specific, necessary facts to prove that the Trust could not prevail
26 on its claims. Specifically, Tassi discussed the zoning change on Malek's golf parcel, which was
27 foundational to the Trust's claim that an easement existed over it, precluding its use for residential
28 purposes. (Malek Statement of Undisputed Material Facts §§ 9, 27, 30-33, 36-48) Ms. Woodbridge's

1 deposition confirmed the addresses and information related to Bank of America's receipt of the
2 community notices mailed in connection with the re-zoning of Malek's property. (*Id.* at §§ 34, 49-51)

3 Similarly, the Trust's argument that Malek had no interest in or need for the deposition
4 transcripts of Messrs. Jiu, Lubawy, and Dugan is incomplete. The Trust contends that because these
5 experts dealt only with the Trust's alleged economic damages, while the Trust sought only injunctive
6 relief against Malek, Malek had no reason to obtain those transcripts. An understanding of injunctive
7 relief's role as a remedy available only where monetary damages are unable to make the injured party
8 whole reveals why the Trust's argument does not withstand scrutiny.

9 Injunctive relief is only available to prevent irreparable harm, and where a party has no
10 adequate remedy at law. *Finkel v. Cashman Professional, Inc.*, 128 Nev. Adv. Rep. 6, 270 P.3d 1259,
11 1264-65 (2012) (holding that injunctive relief is appropriate where irreparable harm exists); *State*
12 *Dept. of Bus. & Indus. v. Nev. Ass'n Servs.*, 128 Nev. Adv. Rep. 34, 294 P.3d 1223, 1228 (2012)
13 (finding irreparable harm only where monetary damages would not suffice). Where "the threat of an
14 injunction is employed simply for undue leverage in negotiations, legal damages may well be
15 sufficient to compensate" for suffered harm. *eBay Inc. v. MercExchange LLC*, 547 U.S. 388, 396
16 (2006). Actual, irreparable harm must exist to support the Court's entry of an injunction. *MGM*
17 *Resorts Int'l v. Unknown Registrant of www.imgmcasino.com*, Case No. 2:14-cv-01613-GMN-VCF
18 2015 U.S. Dist. LEXIS 128397 at *32-33 (D. Nev. July 8, 2015) (denying request for permanent
19 injunction). Where remedies are available at law to compensate for harm, such as money damages,
20 injunctive relief is inappropriate. *Hadel v. Willis Roof Consulting, Inc.*, Case No. 2:06-cv-01032-RLH-
21 RJJ 2008 U.S. Dist. LEXIS 42399 at *4, 9-10 (D. Nev. Sept. 23, 2008), *citing eBay*, 547 U.S. at 390.

22 Malek's analysis of the expert testimony in this case goes to the core of the Trust's desire for
23 injunctive relief to enforce its purported easements on his property. As explained above, injunctive
24 relief may be appropriate where there is no adequate legal remedy. But in this case, the Trust was
25 simultaneously seeking legal damages from the other defendants. With the Trust having its remedy in
26 the form of monetary damages, there would be no basis for the Court to enter an injunction against
27 Malek's use of his property even if easements existed in it. Malek's discovery into the Trust's
28 valuation of its damages arising from his potential construction was necessary to mount a full defense

1 of the Trust's claims and desired remedies. This also was necessary to prevent the Trust from
2 obtaining a double recovery in the form of both monetary damages from other defendants and an
3 injunction against Malek.

4 While Malek prevailed on summary judgment, the scheduling of this case required him to
5 prepare for trial, and to ascertain all the facts relevant to his defenses. This included the Trust's pursuit
6 of monetary damages from the other defendants while seeking a contradictory award of injunctive
7 relief from Malek. The valuation of the Trust's damages as contained in the depositions of Jiu, Dugan,
8 and Lubawy were necessary to Malek's defense of this action. The Trust, rather than Malek, should
9 bear these costs.

10 **B. Malek's Expert Fees Are Properly Taxable Under NRS 18.005(5).**

11 Related to the argument above about Malek's need to depose the Trust's expert, Craig Jiu, his
12 deposition and its expense were necessary. NRS 18.005(5) expressly allows the recovery of this
13 expense, and within the amount Malek seeks in his memorandum of costs. All Malek seeks is for the
14 Court to enforce 18.005(5) as it is written and award him the expenses due to him under that statute.

15 **C. The Court's Treatment of Malek's Mediation Fees Are Left to the Court's**

16 **Discretion.**

17 The Trust's legal argument concerning Malek's expenses for private mediation stands on its
18 own. Malek contends that this expense may be taxed to the Trust in the Court's discretion as a
19 "reasonable and necessary expense incurred in connection with the action." NRS 18.005(17). What
20 Malek cannot countenance, however, is the Trust's discussion of how mediation came about. (Mot. at
21 5:15 ("In fact, it was Malek who approached Plaintiff about settlement."))

22 The substance of such communication is privileged under both Nevada law and the parties'
23 private mediation agreement. *See* NRS 48.105, 48.109. It should not be considered in the Court's
24 evaluation of Malek's memorandum of costs. There is no conceivable justification for the Trust
25 bringing this privileged information before the Court.

26 **III. Conclusion**

27 For the foregoing reasons, the Court should deny the Trust's motion to retax Malek's costs in
28 full. At minimum, Malek's deposition expenses were necessary, and his expert witness expenses are

1 compensable under NRS 18.005(5). Even though the Trust divulges the substance of settlement-
2 privileged communication to dispute Malek's mediation costs, the Court has the discretion to award
3 them as well under NRS 18.005(17), and should do so in this case.

4
5 DATED this 2nd day of October, 2015.

6 THE FIRM, P.C.

7 BY: /s/ Jay DeVoy

8 Preston P. Rezaee, Esq.
9 Nevada Bar No. 10729
10 Jay DeVoy, Esq., *of counsel*
11 Nevada Bar No. 11950
12 200 E. Charleston Blvd.
13 Las Vegas, NV 89104
14 Attorneys for Defendant/Counterclaimant
15 SHAHIN SHANE MALEK
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2 **CERTIFICATE OF SERVICE**

3 I hereby certify that on this 2nd day of October, 2015, pursuant to NRCP 5(b), I served via the Eighth
4 Judicial District Court electronic service system and to be placed in the United States Mail, with first
5 class postage prepaid thereon, and addressed the foregoing **OPPOSITION TO MOTION TO**
6 **RETAX COSTS** to the following parties:

7 Howard C. Kim, Esq.

8 Email: Howard@hkimlaw.com

9 Diana S. Cline, Esq.

Email: Diana@hkimlaw.com

10 Jacqueline A. Gilbert, Esq.

Email: Jackie@hkimlaw.com

11 *Attorneys for Plaintiff*

12 Darren Brenner

Email: Darren.brenner@akerman.com

13 Deb Julien

Email: Debbie.julien@akerman.com

14 Natalie Winslow

Email: Natalie.winslow@akerman.com

15 *Attorneys for Bank of America, N.A.*

16 Erica Bennett

Email: E.bennett@kempjones.com

18 J. Randall Jones

Email: Jrj@kempjones.com

19 Janet Griffin

Email: janetjamesmichael@gmail.com

20 Email: jlg@kempjones.com

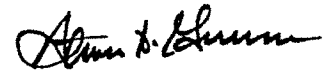
21 Spencer Gunnerson

Email: S.gunnerson@kempjones.com

22 *Attorneys for Michael Doiron & MacDonald Highlands Realty, LLC*

23
24 /s/ Jacqueline Martinez

25 an employee of The Firm, P.C.



CLERK OF THE COURT

RIS

Preston P. Rezaee, Esq.
Nevada Bar No. 10729
Jay DeVoy, Esq., of counsel
Nevada Bar No. 11950
THE FIRM, P.C.
200 E. Charleston Blvd.
Las Vegas, NV 89104
Telephone: (702) 222-3476
Facsimile: (702) 252-3476
Attorneys for Defendant,
SHAHIN SHANE MALEK

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE FREDERIC AND BARBARA	)	CASE NO.: A-13-689113-C
ROSENBERG LIVING TRUST,	)	DEPT NO.: I
)	
Plaintiff,)	
vs.)	
)	
BANK OF AMERICA, N.A.; BAC HOME	)	DEFENDANT SHAHIN SHANE
LOANS SERVICING, LP, a foreign limited	)	MALEK'S REPLY IN SUPPORT
partnership; MACDONALD HIGHLANDS	)	OF MOTION FOR ATTORNEYS' FEES
REALTY, LLC, a Nevada limited liability	)	AND COSTS
company; MICHAEL DOIRON, an individual;)	
SHAHIN SHANE MALEK, an individual;)	
PAUL BYKOWSKI, an individual; THE)	
FOOTHILLS AT MACDONALD RANCH)	
MASTER ASSOCIATION, a Nevada limited)	
liability company; THE FOOTHILLS)	
PARTNERS, a Nevada limited partnership;)	
DOES I through X, inclusive; and ROE)	
BUSINESS ENTITY I through XX, inclusive,)	
)	
Defendants.)	
)	
)	

I. Introduction

The Fredric and Barbara Rosenberg Living Trust (the "Trust") failed to timely oppose Malek's motion for attorneys' fees and costs. At the time of the Court's October 22, 2015 hearing on Malek's motion, the Trust still had not opposed the motion. Based on the colloquy between the parties' counsel and the Court at that hearing, it seemed that the Trust had provided a copy of its opposition to the Court, but never filed it or supplied it to Malek's counsel. The Trust's counsel did not even have a

1 copy for Malek to review at the hearing. Only *after* the Court's properly noticed hearing on Malek's
2 motion did Malek's counsel, for the very first time, see the Trust's opposition. It was not filed until
3 the following day, October 23, 2015. (Opp. at 1)

4 The Trust's opposition is silent about this fatal issue. To the extent the Court even considers
5 the Trust's opposition, it only further demonstrates why the Court is well within its discretion in
6 awarding Malek his attorneys' fees and costs. The Trust misapprehends the Court's standard in
7 awarding fees under NRS 18.010(2)(b), and argues the Court should apply a higher standard than the
8 statute requires. It should not do so, and should not be persuaded by the hypothetical arguments the
9 Trust advances to justify its conduct in this litigation. The Court is fully equipped to evaluate Malek's
10 motion for attorneys' fees and costs, and should award Malek the fees he has incurred as a result of the
11 Trust suing him, its next-door neighbor, in this action designed to stop him from building his home.

12 **II. Argument**

13 The Trust's untimely opposition to Malek's motion should be disregarded. Under EDCR
14 2.20(e), the Trust should be deemed to have consented to Malek's motion. Yet, to the extent the Court
15 wishes to consider the Trust's opposition, it fails to show that the Trust brought or maintained this
16 action with reasonable grounds. The plain language of NRS 18.010(2)(b) calls for this Court to award
17 fees in order to discourage actions such as this one, and conserve its own limited judicial resources.

18 None of the justifications the Trust offers for its conduct show that its claims were made or
19 pursued with any reasonable grounds. Instead, the Trust's opposition relies on hypothetical scenarios
20 where its litigation campaign might, possibly, have found some solace in Nevada law. Here, though,
21 decades-old Nevada law expressly prohibited the very positions the Trust took in this case. While the
22 Trust cannot show to the Court that its claims against Malek were reasonable, the Court can readily
23 find that Malek's attorneys' fees incurred in defense of this action were, and would be within its
24 discretion to award them to him.

25 **A. The Trust Consented to Malek's Motion for Attorneys' Fees and Costs by Failing** 26 **to Timely Oppose It.**

27 The Trust's failure to file any form of opposition to Malek's motion until the day after its
28 scheduled hearing is sufficient for the Court to grant Malek's motion in full. Eighth Judicial District

1 Court Rule 2.20(e) provides that the Court may construe an opposing party's failure to serve and file a
2 written opposition as "an admission that the motion [...] is meritorious," and the opponent's consent to
3 the motion. This alone warrants the Court granting Malek's motion in full. Additionally, Nevada's
4 Supreme Court has affirmed that other district courts granting attorneys' fees and costs under this
5 rule's previous version were rightly within their discretion to do so. *Las Vegas Fetish & Fantasy*
6 *Halloween Ball, Inc. v. Ahern Rentals, Inc.*, 124 Nev. 272, 278, 182 P.3d 764, 768 (2008) (affirming
7 award of attorneys' fees and costs where motion was unopposed, as allowed under EDCR 2.20(b),
8 EDCR 2.20(e)'s predecessor); see *Foster v. Dingwall*, 126 Nev. Adv. Rep. 6, 227 P.3d 1042, 1046
9 (2010) (approving district court's construal of an unopposed motion for sanctions as admitted by the
10 opponent).

11 The Trust never filed its opposition until after the Court's originally scheduled hearing on
12 Malek's motion for attorneys' fees and costs. The Trust's attempt to include a certificate of service
13 dated September 28, 2015—and no other explanation for its tardiness—is unavailing. This Court's
14 electronic filing system could have provided ample data showing that the Trust's timely attempt to file
15 its opposition failed. The Trust had nearly a month to contact the Court and Malek to remedy this
16 issue, yet it utterly failed to do so. Its opposition is bereft of any explanation for its delay, or any
17 justification for requiring Malek to incur the fees of preparing for, and attending, another hearing on
18 his motion.

19 **B. Nevada Law Supports Malek's Request for Attorneys' Fees and Costs, and the**
20 **Trust's Arguments to the Contrary Ring Hollow.**

21 In awarding attorneys' fees and costs under NRS 18.010(2)(b), the Court's analysis "depends
22 upon the actual circumstances of the case rather than a hypothetical set of facts favoring plaintiff's
23 arguments." *Bergmann v. Boyce*, 109 Nev. 670, 675, 856 P.2d 560, 563 (1993).¹ In *Bergmann*, as in
24 the case here, the plaintiff's complaint survived a motion to dismiss under Rule 12(b)(5), but the
25 Supreme Court nonetheless found a number of plaintiff's claims were "groundless" and warranted the
26 award of attorneys' fees. *Id.* at 676, 856 P.2d at 564. While the Trust argues that its case could

27 ¹ This decision favorably cites *Fountain v. Mojo*, 687 P.2d 496, 501 (Colo. Ct. App. 1984), which
28 holds that a claim is groundless if "the complaint contains allegations sufficient to survive a motion to
dismiss for failure to state a claim, but which are not supported by any credible evidence at trial."

1 theoretically have merit and the Court merely disagreed with its positions (Opp. at 2:2-7), Nevada law
2 holds that this is no defense to liability for a prevailing party's attorneys' fees and costs. *Id.*

3 The Trust's position further relies on an inaccurate reading of NRS 18.010(2)(b), focusing only
4 on its use of the words "frivolous" or "vexatious." This misstates the standard for when the Court may
5 award attorneys' fees and costs to a prevailing party: when the action is "brought or maintained
6 without reasonable ground or to harass the prevailing party." NRS 18.010(2)(b). The Trust also
7 ignores the Legislative directive that Nevada's District Courts should "liberally construe the provisions
8 of this paragraph in favor of awarding attorney's fees." *Id.* This section goes on to state that "It is the
9 intent of the Legislature that the court award attorney's fees pursuant to this paragraph," both to deter
10 frivolous and vexatious litigation and to conserve "limited judicial resources." *Id.* Read in full, NRS
11 18.010(2)(b) operates in a manner much different than how the Trust contends (Opp. at 3:23-25), and
12 favors the Court granting Malek his attorneys' fees in this action.

13 **1. Nevada Law Never Supported The Trust's Easement Claim.**

14 The Court granted Malek's Motion for Summary Judgment on the Trust's easement claim
15 based on two cases: *Boyd v. McDonald*, 81 Nev. 642, 650-51, 408 P.2d 717, 722 (1965), and *Probasco*
16 *v. City of Reno*, 85 Nev. 563, 565, 459 P.2d 772, 774 (1969). (Order of Aug. 13, 2015 at 9:20-11:2)
17 Because the Trust's only identifiable bases for claiming an easement in Malek's property were the
18 protection of its view, light and privacy, the Court entered judgment in Malek's favor. (Order of Aug.
19 13, 2015 at 7:21-8:5) The Trust's feared loss of view, light, and privacy fell squarely within the scope
20 of implied easements prohibited by *Boyd* and *Probasco*.

21 The Trust did not seek to extend Nevada law into a new frontier, or bring a murky doctrine into
22 the light; its main theory of the case was premised on a doctrine Nevada "expressly repudiated" nearly
23 50 years prior. *Probasco*, 85 Nev. at 565, 459 P.2d at 774, citing *Boyd*, 81 Nev. 642, 408 P.2d 717.
24 Where proper research would reveal that a claim is barred by existing law, it is brought or maintained
25 without any reasonable ground. *Huettig & Schromm, Inc. v. Landscape Contractors Council*, 582 F.
26 Supp. 1519, 1522 (N.D. Cal. 1984) (imposing sanctions where counsel "knew or should have known"
27 no cause of action existed, and that an argument for extension or modification of existing law was
28 unfounded); *Innkeepers' Telemanagement & Equip Corp. v. Hummert Management Group*, Case No.

1 92 C 8416 1994 U.S. Dist. LEXIS 16075 at *28 (N.D. Ill. Nov. 2, 1994) (finding that plaintiff's failure
2 to adequately investigate the controlling precedent could not be construed as an argument for extension
3 or modification of existing law). Here, the Trust's entire case was predicated on seeking an implied
4 easement to protect its view, light, and privacy, despite Nevada law's express refusal to recognize such
5 easements since 1965. *See Probasco*, 85 Nev. at 565, 459 P.2d at 774.

6 In defense of its litigation, the Trust cites nearly 20 cases, with little if any explanation, for the
7 proposition that implied restrictive covenants exist. (Opp. at 4:26-6:7) The Trust's research into the
8 existence of implied restrictive covenants misses the mark. The issue actually before the Court in this
9 case was not whether Nevada law recognizes implied restrictive covenants in the abstract, but whether
10 the Trust could assert one to protect its view, light and privacy—the only potential losses the Trust
11 identified in this case's voluminous discovery. (Order of Aug. 13, 2015 at 7:21-8:5) In fact, the Trust
12 even cites *Boyd* as one of the cases justifying its position in this litigation (Opp. at 5:4-5), despite the
13 Court's reliance on it in granting Malek judgment on the Trust's claims. (Order of Aug. 13, 2015 at
14 9:20-10:20) While the Trust conclusorily asserts that it "did research the issue," (Opp. at 4:23-24) it
15 fails to explain the depth or breadth of its efforts, if any. This silence about the Trust's diligence
16 stands athwart its insistence that it had reasonable grounds to pursue its claims.

17 The Trust's claimed research is exactly the kind of hypothetical rationalization that *Bergmann*
18 prohibits when analyzing a party's reasonable grounds for bringing or maintaining suit. 109 Nev. at
19 675, 856 P.2d at 563. It is possible that the Trust's positions would have been viable if the facts of this
20 case had been different, or it sought an easement for anything other than to protect its view, light, or
21 privacy. But it did not (Order of Aug. 13, 2015 at 7:21-8:5), and controlling Nevada precedent from
22 1965 required that the Trust lose. This was not a new legal development, nor a decision that came
23 down from the Nevada Supreme Court during the litigation.

24 In addition, and relevant to the Court's consideration of this case's "actual circumstances" in
25 assessing whether the Trust had reasonable grounds to bring suit, the Court must consider all of the
26 Trust's available resources. *Bergmann*, 109 Nev. at 675, 856 P.2d at 563. The Trust had access not
27 only to sophisticated counsel, but had a seasoned real estate agent as its trustee, and yet another Las
28 Vegas attorney as its beneficiary. (Order of Aug. 13, 2015 at 5:24-6:8); in light of extant law and the

1 resources available to it, the Trust cannot credibly claim it expected to win this case, rather than use it
2 as a vehicle to impose significant legal costs upon Malek. (*See* Mot. Exhs. B-D) There were no
3 reasonable grounds for the Trust to bring its claims against Malek. There is, however, ample basis to
4 see this litigation as a mechanism for the Trust to harass Malek, and coerce him to abandon his plans to
5 build his home.

6 **2. The Trust's Arguments In Support of its Other Claims Fail to Show They**
7 **Were Brought or Maintained on Reasonable Grounds.**

8 The Trust's opposition devotes exactly one paragraph to discussing its reasonable grounds for
9 bringing a novel claim of implied restrictive covenant, and styling its requests for injunctive and
10 declaratory relief as separate causes of action. (Opp. at 6:8-16) The Trust cites no case law supporting
11 its positions, and does not grapple with extant Nevada law showing these claims were barred, or would
12 be rejected.² (Mot. at 7:12-8:3; Mot. Exh. A at 11-12)

13 In particular, Nevada's legal tradition has long opposed the recognition of new causes of action
14 with inconsistent elements and subjective standards of application. *Brown v. Eddie World LLC*, 131
15 Nev. Adv. Rep. 19, 348 P.3d 1002 (2015); *Badillo v. Am. Brands*, 117 Nev. 34, 42, 16 P.3d 435, 440
16 (2001); *Greco v. U.S.*, 111 Nev. 405, 408-09, 893 P.2d 345, 347-58 (1995). The Trust had access to
17 this information before filing suit, as well as the disparate standards for an implied restrictive covenant
18 claim within the jurisdictions that recognized it (Order of Aug. 13, 2015 at 11:3-20), yet pursued this
19 cause of action anyway. Nevada's recognition of declaratory and injunctive relief only as remedies,
20 rather than causes of action, also long pre-dated this litigation. (Order of Aug. 13, 2015 at 12:3-18)
21 The Trust's opposition does nothing to address, let alone refute, the weight of Nevada law against any
22 reasonable ground for these claims, whether in their current form or as any professed extension of
23 existing law.

24 **3. The Trust's Only Supporting Evidence for Its Opposition Was Never**
25 **Attached as An Exhibit to Its Brief.**

26 Within its opposition, the Trust cites extensively to the Court's transcript from its hearing on
27 Malek's Motion for Summary Judgment. (Opp at 6:27-7:14) Although claiming to have attached the

28 ² This, too, essentially qualifies as a concession to Malek's motion under EDCR 2.20(e), which
requires a party to file a memorandum of points and authorities – generally understood to require legal
argument under EDCR 2.20(c).

1 transcript as Exhibit 1 to the motion, this exhibit was never attached to the brief the Trust filed on
2 October 23, 2015. (*See generally*, Opp.) While Malek does not doubt the accuracy of the quoted
3 excerpts, the Trust's failure to attach the exhibit impairs his ability to put the Court's statements in
4 their proper context.

5 The Court's colloquy with the parties at that hearing did not prevent it from entering its clear
6 and forceful order granting judgment to Malek on the Trust's claims (Order of Aug. 13, 2015). Nor
7 did it stop the Court from granting the MacDonald Highland Defendants' motion for attorneys' fees
8 and costs. (Order of Nov. 10, 2015) The Court's award of these attorneys' fees and costs was based on
9 the premise that the Trust's rejection of those defendants' offer of judgment in January of 2015 was
10 objectively unreasonable in light of the known facts and applicable law at the time. (*See Id.*)

11 Whatever the Court may have said at the time it heard Malek's motion, its written orders
12 remove any doubt about its holdings. The Court's actions, rather than its words, are consistent with
13 the Trust bringing "or maintaining" its suit against Malek without reasonable ground, or solely to
14 harass him. NRS 18.010(2)(b). This, too, weighs in favor of the Court granting Malek his attorneys'
15 fees and costs.

16 **C. Malek's Requested Fees and Costs are Reasonable, and can be Ascertained by the**
17 **Court.**

18 The Trust's opposition concludes with a cursory discussion of the factors this Court must
19 consider in awarding attorneys' fees and costs under *Brunzell v. Golden Gate National Bank*, 85 Nev.
20 345, 455 P.2d 31 (1969). (Opp. at 7-8) The Trust takes no issue with the qualifications of Malek's
21 counsel, the rates or amounts charged, or the quality of work performed in this case.³ (Opp. at 7:17-
22 8:9) Indeed, Malek's counsel was successful in defeating the Trust's claims, demonstrating the
23 efficacy of their work.

24 Instead, the Trust hones in on the redaction of Malek's invoices, and the reasonableness of the
25 sums charged by Malek's predecessor counsel, Snell & Wilmer. First and foremost, redactions to
26

27 ³ Similarly, the Trust's opposition is silent on Malek's request for post-judgment interest on the
28 Court's award of attorneys' fees and costs. (*See generally*, Opp.) Malek specifically requested post-
judgment interest in his motion (Mot. at 10:1-10), and the Court may deem the Trust to have consented
to that request under EDCR 2.20(e).

1 invoices submitted with a motion for attorneys' fees and costs "do not unduly inhibit [the Court's]
2 ability to determine the reasonableness" of those time entries. *Branch Banking & Trust Co. v. Jarrett*,
3 Case No. 3:13-cv-00235-RCJ-VPC 2014 U.S. Dist. LEXIS 129531 at *6 (D. Nev. Sept. 16, 2014).
4 Such redaction is even more appropriate in this case where confidential and work product-privileged
5 information may be ascertained from even partially redacted time entries. This unredacted information
6 would be directly relevant to the appeal that the Trust has stated, in open Court, that it intends to
7 pursue. See *Id.*; see also *MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 505 (9th Cir. 1986) (allowing
8 redactions to preserve confidential information and maintain the work product privilege).

9 If the Court has questions as to any time entries, it may conduct an in camera review of the
10 billing records in order to determine what amount is reasonable to award Malek. *U.S. v. \$167,070.00 in*
11 *U.S. Currency*, Case No. 3:13-cv-00324-LRH-VPC 2015 U.S. Dist. LEXIS 112556 at *14 (D. Nev.
12 Aug. 24, 2015) (confirming that "the court can conduct an in camera review if necessary" to review
13 confidential billing information), citing *MGIC Indem. Corp.*, 803 F.2d at 505. If the Court should
14 request them, Malek will provide wholly unredacted copies of these records for the Court to review in
15 chambers. In doing so, the Court would maintain the confidentiality of this information while
16 allowing it to exercise its discretion in awarding Malek's attorneys' fees. *Id.*

17 The reasonableness of Snell & Wilmer's billings is, too, evident from the docket in this case.
18 Malek's predecessor counsel incurred \$16,926.50 in attorneys' fees (Mot. Exh. C at 5) moving to
19 dismiss the Trust's initial complaint against Malek, and successfully expunging the *lis pendens* the
20 Trust wrongfully filed on Malek's property. This process involved the unconventional step of both the
21 Trust and Malek submitting supplemental briefing in December 2013, prior to a hearing on all pending
22 motions. Based on the Court's familiarity with Snell & Wilmer, the voluminous public information
23 available about the firm's prowess, and its advocacy for Malek in this case, the Court can
24 independently assess the reasonableness of its fees—and award them to Malek.

25 Finally, the Court's familiarity with the filings in this case empowers it to determine the
26 appropriate amount of fees awarded to Malek in prevailing on the Trust's claims. Exact time entry
27 descriptions are not necessary for the Court to account for the reasonable value of attorneys' fees and
28 costs Malek expended in obtaining judgment on the Trust's claims; the reasonableness of his fees can

1 be assessed based on the litigation conducted in this case. *See Marrocco v. Hill*, 291 F.R.D. 586 (D.
2 Nev. 2013) (basing award of attorneys' fees upon review of materials submitted to court); *see also*
3 *Hologram, Inc. v. Pulse Evolution Corp.*, Case No. 2:14-cv-00772-GMN-NJK 2015 U.S. Dist. LEXIS
4 121248 (D. Nev. Sept. 11, 2015) (basing award of attorneys' fees upon review of docket activity). To
5 the extent more detailed information is desired, though, Malek stands ready to provide unredacted
6 billing records to the Court for in camera review.

7 **III. Conclusion**

8 For the foregoing reasons, the Court should grant Malek's motion for attorneys' fees and costs,
9 if only for the Trust's failure to timely oppose it. The Trust's actions, as detailed in this reply brief,
10 demonstrate that the Court would be soundly within its discretion awarding Malek his reasonable
11 attorneys' fees. As such, the Court should award Malek his attorneys' fees of \$109,763.38⁴ in addition
12 to the \$7,568.50 the Court awarded him during its October 22, 2015 hearing on the Trust's motion to
13 re-tax his Memorandum of Costs.

14
15 DATED this 19th day of November, 2015.

16 THE FIRM, P.C.

17 BY: /s/ Jay DeVoy

18 Preston P. Rezaee, Esq.
19 Nevada Bar No. 10729
20 Jay DeVoy, Esq., *of counsel*
21 Nevada Bar No. 11950
22 200 E. Charleston Blvd.
23 Las Vegas, NV 89104
24 Attorneys for Defendant
25 SHAHIN SHANE MALEK
26

27
28 ⁴ Because of the need for two hearings on this issue, Malek's attorneys' fees in this matter continue to
accrue, and the amount he has actually and necessarily incurred to date is greater than those sought in
his motion.

1 CERTIFICATE OF SERVICE

2 I hereby certify that on this 19th day of November, 2015, pursuant to NRCp 5(b), I served via the
3 Eighth Judicial District Court electronic service system and to be placed in the United States Mail,
4 with first class postage prepaid thereon, and addressed the foregoing **DEFENDANT SHAHIN**
5 **SHANE MALEK'S REPLY IN SUPPORT OF MOTION FOR ATTORNEYS' FEES AND**
6 **COSTS** to the following parties:

7 Howard C. Kim, Esq.
8 Email: Howard@hkimlaw.com

9 Diana S. Cline, Esq.
10 Email: Diana@hkimlaw.com

11 Jacqueline A. Gilbert, Esq.
12 Email: Jackie@hkimlaw.com

13 *Attorneys for Plaintiff*

14 Darren Brenner
15 Email: Darren.brenner@akerman.com

16 Deb Julien
17 Email: Debbie.julien@akerman.com

18 Natalie Winslow
19 Email: Natalie.winslow@akerman.com
20 *Attorneys for Bank of America, N.A.*

21 Erica Bennett
22 Email: E.bennett@kempjones.com

23 J. Randall Jones
24 Email: Jrj@kempjones.com

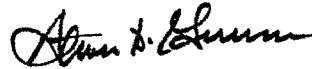
25 Janet Griffin
26 Email: janetjamesmichael@gmail.com

27 Email: jlg@kempjones.com

28 Spencer Gunnerson
Email: S.gunnerson@kempjones.com

Attorneys for Michael Doiron & MacDonald Highlands Realty, LLC

24 /s/ Jay DeVoy
25 of counsel to The Firm, P.C.



CLERK OF THE COURT

1 Preston P. Rezaee, Esq.
Nevada Bar No. 10729
2 Jay DeVoy, Esq., of counsel
Nevada Bar No. 11950
3 THE FIRM, P.C.
200 E. Charleston Blvd.
4 Las Vegas, NV 89104
Telephone: (702) 222-3476
5 Facsimile: (702) 252-3476
6 *Attorneys for Defendant / Counterclaimant,*
SHAHIN SHANE MALEK

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 THE FREDERIC AND BARBARA)
ROSENBERG LIVING TRUST,)

CASE NO.: A-13-689113-C

DEPT NO.: I

10)
11 Plaintiff,)

12 vs.)

13 BANK OF AMERICA, N.A.; BAC HOME)
LOANS SERVICING, LP, a foreign limited)
partnership; MACDONALD HIGHLANDS)
14 REALTY, LLC, a Nevada limited liability)
company; MICHAEL DOIRON, an individual;)
15 SHAHIN SHANE MALEK, an individual;)
16 PAUL BYKOWSKI, an individual; THE)
FOOTHILLS AT MACDONALD RANCH)
17 MASTER ASSOCIATION, a Nevada limited)
liability company; THE FOOTHILLS)
18 PARTNERS, a Nevada limited partnership;)
DOES I through X, inclusive; and ROE)
19 BUSINESS ENTITY I through XX, inclusive,)

20)
21 Defendants.)
22)

**ORDER ON DEFENDANT SHAHIN
SHANE MALEK'S MOTION FOR
ATTORNEYS' FEES AND COSTS AND
PLAINTIFF THE FREDERIC AND
BARBARA ROSENBERG LIVING
TRUST'S MOTION TO RETAX COSTS**

23 Before the Court is Defendant/Counterclaimant Shahin Shane Malek's ("Malek['s]") Motion for
24 Attorneys' Fees and Costs, and Plaintiff The Fredric and Barbara Rosenberg Living Trust's (the
25 "Trust['s]") Motion to Retax Malek's Memorandum of Costs. A detailed history of these motions and
26 the Court's order deciding them follows.

27 //

28 //

1 **I. Relevant Procedural History**

2 On September 9, 2015, Malek filed his Motion for Attorneys' Fees and Costs and Verified
3 Memorandum of Costs in this action. On September 21, 2015, the Trust filed its Motion to Re-Tax
4 Malek's Memorandum of Costs. Malek opposed the Trust's motion on October 2, 2015.

5 The Court scheduled both motions decided in this Order to be heard in its chambers on October
6 12, 2015, but scheduled argument for October 22, 2015 following the Trust's request for a hearing on
7 these motions.¹ Karen Hanks, Esq. and Jackie Gilbert, Esq. for the Trust, Jay DeVoy, Esq. for Malek,
8 and Matthew Carter, Esq. for defendants MacDonald Highlands Realty, Michael Doiron, and FHP
9 Ventures, attended the October 22, 2015 hearing. During this scheduled argument, the Court heard the
10 Trust's Motion to Retax Malek's Memorandum of Costs. The Court also called Malek's motion for
11 attorneys' fees and costs, to which the Trust had not filed an opposition.² By agreement of counsel for
12 the Trust and Malek, the Court continued the hearing on Malek's Motion for Attorneys' Fees and
13 Costs until December 1, 2015, when the Court calendared its next hearing on Malek's Motion for
14 Attorneys' Fees and Costs. The Court, however, did not indicate a time during this hearing.

15 Following the October 22, 2015 hearing, the Trust filed its opposition to Malek's Motion for
16 Attorneys' Fees and Costs on October 23, 2015. Malek timely filed his reply in support of his Motion
17 for Attorneys' Fees and Costs on November 19, 2015. Jay DeVoy, Esq., then appeared for Malek at
18 the December 1, 2015 hearing; no counsel appeared for any other party, including the Trust. Mr.
19 DeVoy represented that he had left a voice mail for Ms. Hanks confirming the time of the December 1,
20 2015 hearing on the late afternoon before, November 30, 2015.

21 **II. Legal Analysis**

22 The Court grants in part, and denies in part, both the Trust's Motion to Retax Costs, and
23 Malek's Motion for Attorneys' Fees and Costs. As set forth below, the Court awards Malek a total of
24 \$25,986.00 in Attorneys' Fees and Costs. Additionally, the Court sanctions the Trust \$500 for conduct
25 requiring more than one hearing for Malek's counsel to argue the Motion for Attorneys' Fees and
26 Costs.

27 **A. The Trust's Motion to Retax Malek's Memorandum of Costs**

28 ¹ The Trust filed its Notice of Hearing for the October 22, 2015 hearing on these motions, pursuant to its request for
hearing, on October 14, 2015.

² It was not until the hearing that the Trust became aware there was an issue with filing of the Opposition, as the Trust
counsel believed it had been filed.

1 The Trust's Motion to Retax Malek's Costs is granted to the extent it seeks to disallow a full
2 reimbursement of the funds paid to Craig Jiu in connection with his deposition. Additionally, the
3 mutually agreed-upon costs of private mediation that Malek sought in his memorandum of costs
4 cannot be imposed on the Trust. All other costs in Malek's memorandum of costs are reasonably and
5 necessarily incurred incident to this litigation, and the Court exercises its jurisdiction to award them to
6 Malek in the amount of \$7,568.50.

7 **B. Malek's Motion for Attorneys' Fees and Costs**

8 The Court grants in part Malek's Motion for Attorneys' Fees and Costs under NRS
9 18.010(2)(b) on the basis that the Trust lacked reasonable grounds to maintain this litigation, even if it
10 initially had reasonable grounds to file suit. Based on the facts and law presented in Malek's Motion
11 for Summary Judgment filed on April 16, 2015, it was unreasonable for the Trust to maintain this
12 litigation against him from that date onward. Having reviewed the requested fees and Trust's
13 Opposition³ to Malek's motion, the Court finds Malek's requested fees from April 17, 2015 until the
14 date of the Motion's filing, for a total of \$18,417.50, to be reasonably incurred. The Court therefore
15 awards attorneys' fees to Malek in the amount of \$18,417.50, as they were incurred after the Trust
16 lacked reasonable grounds to maintain this action against him.

17 **C. Sanctions**

18 The Court's inherent powers include the orderly administration of cases before it. Because of
19 the delayed hearing on Malek's Motion for Attorneys' Fees and Costs and then the Trust's failure to
20 appear at the scheduled December 1, 2015 hearing, the Court exercises its discretion to impose a
21 monetary sanction on the Trust.⁴ The Court's sanction upon the Trust shall be in the amount of
22 \$500.00, based on a calculation of the two hours Mr. DeVoy waited for this matter to be called and
23 heard on the December 1, 2015 hearing date, calculated based on the \$250 per hour rate submitted in
24 Malek's Motion for Attorneys' Fees and Costs.

25 ..
26 ..
27 ..
28 ..

⁴ This sanction is imposed on the trust itself, as a party, and not upon its counsel.

1 It is therefore **ORDERED, ADJUDGED, AND DECREED** that Malek be awarded and
2 entitled to \$7,568.50 in costs, \$18,417.50 in his reasonable attorneys' fees incurred in this action, and a
3 sanction of \$500, against the Trust, in a total amount of \$26,486.00.

4 **IT IS SO ORDERED**

5 Dated: 12 day of January 2015⁶




DISTRICT JUDGE

8 Respectfully Submitted:

Approved in content and form by:

9
10
11 Preston P. Rezaee
12 Nevada Bar No. 10729
13 Jay DeVoy, of counsel
14 Nevada Bar No. 11950
15 Sarah Chavez, of counsel
16 Nevada Bar No. 11935
17 THE FIRM, P.C.
18 200 E. Charleston Blvd.
19 Las Vegas, NV 89104
20 Telephone: (702) 222-3476
21 Facsimile: (702) 252-3476
22 *Attorneys for Defendant/Counterclaimant,*
23 *Shahin Shane Malek*


Karen Hanks
Nevada Bar No. 9578
Howard Kim & Associates
1055 Whitney Ranch Drive, Suite 110
Henderson, NV 89014
Attorneys for Plaintiff/Counterclaim
Defendant,
The Fredric and Barbara Living Trust

24 Approved in content and form by:

Approved in content and form by:

21 J. Randall Jones
22 Nevada Bar No. 1927
23 Spencer H. Gunnerson
24 Nevada Bar No. 8810
25 Kemp, Jones & Coulthard
26 3800 Howard Hughes Parkway, 17th Floor
27 Las Vegas, NV 89169
28 *Attorneys for Defendants*
MacDonald Highlands Realty, LLC,
Michael Doiron, and
FHP Ventures
(formerly The Foothills Partners).

Darren Brenner
Nevada Bar No. 8386
Steven Shevorski
Nevada Bar No. 8256
William Habdas
Nevada Bar No. 13138
Akerman LLP
1160 Town Center Drive, Suite 330
Las Vegas, NV 89144
Attorneys for Defendants
Bank of America N.A. and BAC Home Loans
Servicing, LP.

1 It is therefore **ORDERED, ADJUDGED, AND DECREED** that Malek be awarded and
2 entitled to \$7,568.50 in costs, \$18,417.50 in his reasonable attorneys' fees incurred in this action, and a
3 sanction of \$500, against the Trust, in a total amount of \$26,486.00.

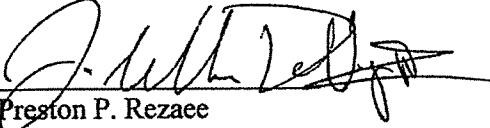
4 **IT IS SO ORDERED**

5 Dated: _____, 2015

6 _____
7 DISTRICT JUDGE

8 Respectfully Submitted:

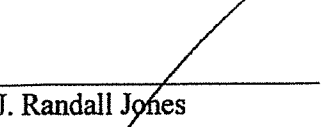
Approved in content and form by:

9 
10 Preston P. Rezaee
11 Nevada Bar No. 10729
12 Jay DeVoy, of counsel
13 Nevada Bar No. 11950
14 ~~Sarah Chavez, of counsel~~
15 ~~Nevada Bar No. 11935~~
16 THE FIRM, P.C.
17 200 E. Charleston Blvd.
18 Las Vegas, NV 89104
19 Telephone: (702) 222-3476
20 Facsimile: (702) 252-3476
21 Attorneys for Defendant/Counterclaimant,
22 *Shahin Shane Malek*

Karen Hanks
Nevada Bar No. 9578
Howard Kim & Associates
1055 Whitney Ranch Drive, Suite 110
Henderson, NV 89014
Attorneys for Plaintiff/Counterclaim
Defendant,
The Fredric and Barbara Living Trust

Approved in content and form by:

Approved in content and form by:

21 
22 J. Randall Jones
23 Nevada Bar No. 1927
24 Spencer H. Gunnerson
25 Nevada Bar No. 8810
26 Kemp, Jones & Coulthard
27 3800 Howard Hughes Parkway, 17th Floor
28 Las Vegas, NV 89169
Attorneys for Defendants
MacDonald Highlands Realty, LLC,
Michael Doiron, and
FHP Ventures
(formerly The Foothills Partners).

Darren Brenner
Nevada Bar No. 8386
Steven Shevorski
Nevada Bar No. 8256
William Habdas
Nevada Bar No. 13138
Akerman LLP
1160 Town Center Drive, Suite 330
Las Vegas, NV 89144
Attorneys for Defendants
Bank of America N.A. and BAC Home Loans
Servicing, LP.

1 It is therefore **ORDERED, ADJUDGED, AND DECREED** that Malek be awarded and
2 entitled to \$7,568.50 in costs, \$18,417.50 in his reasonable attorneys' fees incurred in this action, and a
3 sanction of \$500, against the Trust, in a total amount of \$26,486.00.

4 **IT IS SO ORDERED**

5 Dated: _____, 2015

6 _____
7 **DISTRICT JUDGE**

8 Respectfully Submitted:

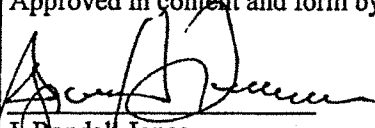
Approved in content and form by:

9 _____
10
11 Preston P. Rezaee
Nevada Bar No. 10729
12 Jay DeVoy, of counsel
Nevada Bar No. 11950
13 Sarah Chavez, of counsel
Nevada Bar No. 11935
14 THE FIRM, P.C.
15 200 E. Charleston Blvd.
Las Vegas, NV 89104
16 Telephone: (702) 222-3476
Facsimile: (702) 252-3476
17 Attorneys for Defendant/Counterclaimant,
18 *Shahin Shane Malek*

Karen Hanks
Nevada Bar No. 9578
Howard Kim & Associates
1055 Whitney Ranch Drive, Suite 110
Henderson, NV 89014
*Attorneys for Plaintiff/Counterclaim
Defendant,
The Fredric and Barbara Living Trust*

19 Approved in content and form by:

Approved in content and form by:

20 
21 J. Randall Jones
Nevada Bar No. 1927
22 Spencer H. Gunnerson
Nevada Bar No. 8810
23 Kemp, Jones & Coulthard
24 3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169
25 Attorneys for Defendants
MacDonald Highlands Realty, LLC,
26 Michael Doiron, and
27 FHP Ventures
(formerly The Foothills Partners).

Darren Brenner
Nevada Bar No. 8386
Steven Shevorski
Nevada Bar No. 8256
William Haddas
Nevada Bar No. 13138
Akerman LLP
1160 Town Center Drive, Suite 330
Las Vegas, NV 89144
Attorneys for Defendants
Bank of America N.A. and BAC Home Loans
Servicing, LP.

1 It is therefore **ORDERED, ADJUDGED, AND DECREED** that Malek be awarded and
2 entitled to \$7,568.50 in costs, \$18,417.50 in his reasonable attorneys' fees incurred in this action, and a
3 sanction of \$500, against the Trust, in a total amount of \$26,486.00.

4 **IT IS SO ORDERED**

5 Dated: _____, 2015

6 _____
7 DISTRICT JUDGE

8 Respectfully Submitted:
9 _____

Approved in content and form by:
10 _____

11 Preston P. Rezaee
12 Nevada Bar No. 10729
13 Jay DeVoy, of counsel
14 Nevada Bar No. 11950
15 Sarah Chavez, of counsel
16 Nevada Bar No. 11935
17 THE FIRM, P.C.
18 200 E. Charleston Blvd.
19 Las Vegas, NV 89104
20 Telephone: (702) 222-3476
21 Facsimile: (702) 252-3476
22 *Attorneys for Defendant/Counterclaimant,*
23 *Shahin Shane Malek*

Karen Hanks
Nevada Bar No. 9578
Howard Kim & Associates
1055 Whitney Ranch Drive, Suite 110
Henderson, NV 89014
Attorneys for Plaintiff/Counterclaim
Defendant,
The Fredric and Barbara Living Trust

24 Approved in content and form by:
25 _____

Approved in content and form by: #8256
26 _____

27 J. Randal Jones
28 Nevada Bar No. 1927
Spencer H. Gunnerson
Nevada Bar No. 8810
Kemp, Jones & Coulthard
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169
Attorneys for Defendants
MacDonald Highlands Realty, LLC,
Michael Doiron, and
FHP Ventures
(formerly The Foothills Partners).

Darren Brenner
Nevada Bar No. 8386
Steven Shevorski
Nevada Bar No. 8256
William Habdas
Nevada Bar No. 13138
Akerman LLP
1160 Town Center Drive, Suite 330
Las Vegas, NV 89144
Attorneys for Defendants
Bank of America N.A. and BAC Home Loans
Servicing, LP.


CLERK OF THE COURT

1 NOAS
HOWARD C. KIM, ESQ.
Nevada Bar No. 10386
2 E-mail: diana@kgelegal.com
JACQUELINE A. GILBERT, ESQ.
3 Nevada Bar No. 10580
E-mail: jackie@kgelegal.com
4 KAREN L. HANKS, ESQ.
Nevada Bar No. 9578
5 E-mail: karen@kgelegal.com
KIM GILBERT EBRON
6 7625 Dean Martin Drive, Suite 110
Las Vegas, Nevada 89139
7 Telephone: (702) 485-3300
Facsimile: (702) 485-3301
8 *Attorneys for Plaintiff*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 THE FREDRIC AND BARBARA
ROSENBERG LIVING TRUST,

12 Plaintiff,

13 vs.

14
15 BANK OF AMERICA, N.A.; BAC HOME
LOANS SERVICING, LP, a foreign limited
16 partnership; MACDONALD HIGHLANDS
REALTY, LLC, a Nevada limited liability
17 company; MICHAEL DOIRON, an individual;
SHAHIN SHANE MALEK, an individual;
18 PAUL BYKOWSKI, an individual; THE
FOOTHILLS AT MACDONALD RANCH
19 MASTER ASSOCIATION, a Nevada limited
liability company; THE FOOTHILLS
20 PARTNERS, a Nevada limited partnership;
DOES I through X; and ROE
21 CORPORATIONS I through X, inclusive,

22 Defendants.

23 SHAHIN SHANE MALEK,

24 Counterclaimant,

25 vs.

26 THE FREDRIC AND BARBARA
ROSENBERG LIVING TRUST,

27 Counter-Defendant.
28

Case No.: A-13-689113-C

Dept. No.: I

NOTICE OF APPEAL

KIM GILBERT EBRON
7625 DEAN MARTIN DRIVE, SUITE 110
LAS VEGAS, NEVADA 89139
(702) 485-3300 FAX (702) 485-3301

KIM GILBERT EBRON
7625 DEAN MARTIN DRIVE, SUITE 110
LAS VEGAS, NEVADA 89139
(702) 485-3300 FAX (702) 485-3301

1 The FREDRIC AND BARBARA ROSENBERG LIVING TRUST, by and through its
2 counsel of record, Kim Gilbert Ebron, hereby appeals the following:
3 1. The Findings of Fact, Conclusions of Law, and Judgment on
4 Defendant/Counterclaimant Shahin Shane Malek's Motion for Summary Judgment, entered on
5 August 13, 2015; and
6 2. All other orders made appealable thereby.

7
8 DATED this 23th day of May, 2016.

KIM GILBERT EBRON

/s/Jacqueline A. Gilbert
HOWARD C. KIM, ESQ.
Nevada Bar No. 10386
JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593
DIANA S. CLINE, ESQ.
Nevada Bar No. 10580
KAREN L. HANKS, ESQ.
Nevada Bar No. 9578
7625 Dean Martin Drive, Suite 110
Las Vegas, Nevada 89139
Attorneys for Plaintiff

KIM GILBERT EBRON
7625 DEAN MARTIN DRIVE, SUITE 110
LAS VEGAS, NEVADA 89139
(702) 485-3300 FAX (702) 485-3301

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23th day of May, 2016, pursuant to NRCP 5(b), I served, via the Eighth Judicial District Court electronic filing system, the foregoing **NOTICE OF APPEAL**, to the following parties:

		Select All	Select None	
Akerman LLP				
Name	Email			Select
Akerman Las Vegas Office	akermanlas@akerman.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Darren T. Brenner, Esq.	darren.brenner@akerman.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Steven G. Shevorski, Esq.	steven.shevorski@akerman.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Kemp Jones & Coulthard				
Name	Email			Select
Ian P. McGinn	ipm@kempjones.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Sandy Sell	s.sell@kempjones.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Kemp, Jones & Coulthard				
Name	Email			Select
J. Randall Jones	jjr@kempjones.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Janet Griffin	janetjamesmichael@gmail.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Janet Griffin	jlq@kempjones.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Matthew Carter	m.carter@kempjones.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Sandy Sell	s.sell@kempjones.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Spencer Gunnerson	s.gunnerson@kempjones.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Kemp, Jones & Coulthard, LLP				
Name	Email			Select
Pamela Montgomery	p.montgomery@kempjones.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
The Firm				
Name	Email			Select
Jay M. DeVoy	jay@thefirm-lv.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
The Firm, P.C.				
Name	Email			Select
Jacqueline Martinez	jacqueline@thefirm-lv.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Preston P. Rezaee, Esq.	preston@thefirm-lv.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Ryan E. Alexander, Esq.	ryan@ryanalexander.us	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

/s/Jacqueline A. Gilbert
An Employee of Howard Kim & Associates