

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

NORTHERN NEVADA HOMES, LLC,

Appellant,

vs.

GL CONSTRUCTION, INC.,

Respondent.

No. 71899

Electronically Filed
Dec 15 2016 01:15 p.m.

Elizabeth A. Brown
Clerk of Supreme Court
**DOCKETING STATEMENT
CIVIL APPEALS**

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

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

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

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

1. Judicial District Second Department 8

County Washoe Judge Lidia S. Stiglich

District Ct. Case No. CV13-01468

2. Attorney filing this docketing statement:

Attorney Christopher Rusby, Esq. Telephone (775) 409-4037

Firm Rusby Law, PLLC

Address 36 Stewart Street
Reno, NV 89501

Client(s) Northern Nevada Homes, LLC

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 James Shields Beasley, Esq. Telephone (775) 329-6852

Firm Law Offices of James Shields Beasley

Address 435 Court St.
Reno, Nevada 89501

Client(s) GL Construction, Inc.

Attorney _____ Telephone _____

Firm _____

Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

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

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

None.

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

None.

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

This is an appeal from an order awarding respondent attorney's fees and costs following a bench trial.

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

The case overall involved several sets of claims and parties. Plaintiff/counterdefendant Northern Nevada Homes, LLC prevailed on its claims against defendant/counterclaimant GL Construction, Inc., after a four day jury trial by way of a \$362,500 settlement before closing arguments were scheduled to begin. Defendant/Counterclaimant GL Construction however refused to settle its counterclaim because it insisted it was entitled to approximately \$70,000 in attorney's fees. A separate one-half day bench trial was held regarding GL Construction's counterclaims against Northern Nevada Homes, wherein GL Construction was awarded \$7,811.00. GL Construction moved for attorney's fees and costs, which was granted in the amount of \$10,390.73. Northern Nevada Homes appeals the order awarding attorney's fees and costs, on the basis that GL Construction was not the prevailing party pursuant to the Nevada Supreme Court's adoption of the "net recovery rule" and, therefore, any award of attorney's fees and costs was in error.

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:

Appellant is not aware of any similar cases currently pending before the court.

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

☒ N/A

☐ 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))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

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:

This matter would fall within NRAP 17(b)(4)'s presumptive assignment to the Court of Appeals, because the amount in controversy is less than \$250,000.00.

14. Trial. If this action proceeded to trial, how many days did the trial last? 1

Was it a bench or jury trial? Bench

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 Dec 1, 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 Dec 2, 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 Dec 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)

- | | |
|--|---------------------------------------|
| <input type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input checked="" type="checkbox"/> Other (specify) <u>NRAP 3A(b)(8)</u> | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

NRAP 3A(b)(8) provides that an appeal may be taken from a special order entered after final judgment. The order awarding attorney's fees and costs is a special order entered after final judgment.

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

(a) Parties:

CERBERUS HOLDINGS, LLC - Plaintiff

NORTHERN NEVADA HOMES, LLC - Appellant and Plaintiff/Counter-defendant

GL CONSTRUCTION, INC. - Respondent and Defendant/Counterclaimant

GORDON LEMICH - Defendant

(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:

Claims by Cerberus Holdings, LLC and Northern Nevada Homes, LLC against GL Construction, Inc. and Gordon Lemich were settled. Only GL Construction, Inc.'s counterclaims are at issue in this appeal.

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.

CERBERUS HOLDINGS - Negligence, Negligent Misrepresentation, Intentional Misrepresentation, Intentional Damage to Property, Breach of Contract, Quantum Meruit, Inunctive Relief.

NORTHERN NEVADA HOMES - Negligent Trespass, Intentional Trespass.

GL CONSTRUCTION (Counterclaim) - Breach of Contract

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:

None

(b) Specify the parties remaining below:
None

(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)):

The order on appeal only concerned GL Construction's claim for attorney's fees and costs on its counterclaim. All the remaining claims had been previously adjudicated and resolved.

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.

Northern Nevada Homes, LLC

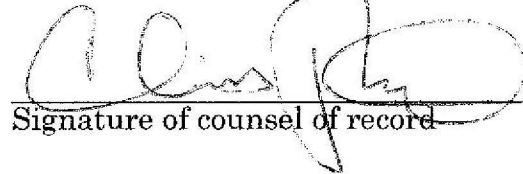
Name of appellant

Dec 15, 2016

Date

Christopher Rusby, Esq.

Name of counsel of record



Signature of counsel of record

Nevada, Washoe County

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 15th day of December, 2016, I served a copy of this completed docketing statement upon all counsel of record:

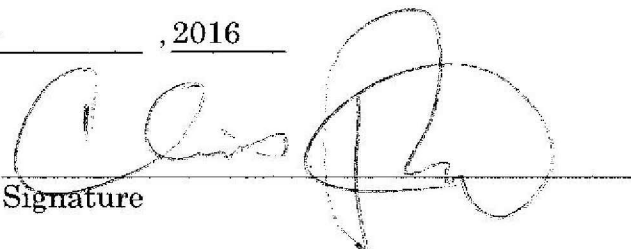
☐ By personally serving it upon him/her; or

☒ 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.)

James Shields Beasley, Esq.
Law Offices of James Shields Beasley
435 Court St.
Reno, NV 89501

Dated this 15th day of December, 2016

Signature



1090
Leslie Bryan Hart, Esq. (SBN 4932)
LIONEL SAWYER & COLLINS
50 West Liberty Street, Suite 1100
Reno, Nevada 89501
Telephone (775) 788-8666
lhart@lionelsawyer.com

Attorneys for Plaintiffs Cerberus Holdings, LLC
and Northern Nevada Homes, LLC and
Counterdefendant Northern Nevada Homes, LLC

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

CERBERUS HOLDINGS, LLC, a Nevada
limited liability company; NORTHERN
NEVADA HOMES, LLC, a Nevada
limited liability company,

CASE NO. CV13-01468

DEPT. NO. 8

Plaintiffs,

vs.

GL CONSTRUCTION, INC., a Nevada
corporation; GORDON LEMICH, an
individual; and DOES 1-10, inclusive,

Defendants.

GL CONSTRUCTION, INC., a Nevada
Corporation,

Counterclaimant,

vs.

NORTHERN NEVADA HOMES, LLC,
a Nevada limited liability company,

Counterdefendant.

FIRST AMENDED COMPLAINT

Plaintiffs Cerberus Holdings, LLC ("Cerberus") and Northern Nevada Homes, LLC and
Counterdefendant Northern Nevada Homes, LLC ("NNH") by and through their counsel, Leslie
Bryan Hart and Lionel Sawyer & Collins, hereby allege as follows:

///

1. Cerberus is, and at all relevant times was, a Nevada limited liability company.

2. Northern Nevada Homes, LLC ("NNH") is, and at all relevant times was, a Nevada limited liability company.

3. GL Construction, Inc. ("GL Construction") is, and at all relevant times was, a Nevada corporation and a construction contractor, licensed by the State of Nevada.

4. Gordon Lemich is, and at all relevant times was, a resident of Washoe County, State of Nevada, and is the principal of GL Construction.

5. Plaintiffs are currently unaware of the designations of DOES 1-10, and thereby sue the fictitious entities and individuals in absentia. Currently, Plaintiffs do not have knowledge of the actual names, business entities, or individuals sued herein as fictitious defendants and as such, reserve the right upon knowledge and notice of actual designation, name and identity of the fictitious entities and individuals to amend this pleading to assert the appropriate allegations against them.

6. Prior to December 28, 2012, GL Construction and/or Gordon Lemich owned, constructed, repaired and remodeled the real property and improvements located in Washoe County, commonly known as 2605 Comstock Drive, Reno, Nevada ("Real Property").

7. Prior to December 28, 2012, GL Construction, Gordon Lemich and Cerberus were involved in negotiations and discussions for the purchase and sale of the Real Property from GL Construction to Cerberus.

8. Prior to December 28, 2012, GL Construction and/or Gordon Lemich represented that the improvements on the Real Property were properly permitted, constructed, repaired, and remodeled and otherwise complied with all applicable laws and building code provisions.

9. In addition to the representations made by GL Construction and/or Gordon Lemich prior to December 28, 2012, GL Construction and/or Gordon Lemich again continued to

1 represent after that date, that the improvements on the Real Property were properly permitted,
2 constructed, repaired, and remodeled and otherwise complied with all applicable laws and
3 building code provisions.

4 10. On or about May 9, 2011, the Real Property and improvements were foreclosed
5 upon by Acquired Capital I, LP ("Bank").
6

7 11. After the foreclosure, GL Construction and/or Gordon Lemich became a tenant of
8 the Real Property, leased by Bank, but the tenancy was uncertain given that the Real Property
9 was available for sale.

10 12. After the foreclosure, Cerberus and GL Construction and/or Gordon Lemich
11 continued to discuss Cerberus's involvement in the Real Property and GL Construction and/or
12 Gordon Lemich recommended that Cerberus purchase the Real Property from Bank.
13

14 13. Bank would only sell the Real Property to Cerberus on an "as-is" basis.

15 14. GL Construction and/or Gordon Lemich informed Cerberus that it wanted
16 Cerberus to purchase the Real Property because GL Construction and Gordon Lemich believed
17 they had developed a good working relationship with Cerberus.

18 15. GL Construction and Gordon Lemich informed Cerberus that they believed that
19 ownership by Cerberus would increase the possibility that they would be allowed to remain as a
20 tenant of the Real Property and retain some of the rents relating to the Real Property.
21

22 16. Cerberus was not interested in purchasing the Real Property on an "as-is" basis
23 without assurances from GL Construction and/or Gordon Lemich that the improvements on the
24 Real Property were: (a) properly constructed, repaired and remodeled; (b) properly approved,
25 permitted and constructed; and (c) otherwise complied with applicable laws.

26 17. GL Construction and/or Gordon Lemich affirmatively and expressly represented
27 that the improvements on the Real Property were: (a) properly constructed, repaired and
28

1 remodeled; (b) properly approved, permitted and constructed; and (c) otherwise in compliance
2 with applicable laws.

3 18. On or about December 28, 2012, relying heavily upon the assurances provided by
4 GL Construction and Gordon Lemich, Cerberus purchased the Real Property from Bank.

5 19. The improvements on the Real Property were not properly constructed, repaired,
6 remodeled, approved, permitted or constructed and did not otherwise comply with applicable
7 laws for many reasons, including but not limited to the following:
8

9 a. The primary building on the Real Property was inspected by the City of
10 Reno on or about April 5, 2013 and April 11, 2013 and determined to be riddled with
11 negligent and defective work and uninhabitable. Upon information and belief, the
12 primary building will require hundreds of thousands of dollars to obtain necessary
13 approvals, permitting and to cure substandard construction, repairs and remodeling to
14 allow for the uses GL Construction represented the Real Property and improvements
15 allowed for and to generate the revenue the Real Property and improvements were
16 represented to generate.
17

18 b. The defective construction and remodeling performed by GL Construction
19 has caused further damage to the physical structure on the Real Property, other than, and
20 in addition to, the defects themselves.
21

22 c. Electrical wiring was determined to be noncompliant with the applicable
23 building code. As a result, Cerberus was fined by NV Energy and was required to pay to
24 correct the problem.

25 20. After Cerberus's purchase of the Real Property from Bank, Cerberus and GL
26 Construction and/or Gordon Lemich had a month to month lease agreement relating to the Real
27 Property.
28

21. Cerberus provided GL Construction and/or Gordon Lemich with a 30-day notice to quit on or about April 16, 2013. That 30-day notice period has run, Cerberus has terminated the lease agreement and GL Construction and/or Gordon Lemich were required to vacate the Real Property.

22. GL Construction and/or Gordon Lemich has caused damage to the Real Property, improvements and personal property prior to Cerberus's purchase of the Real Property, during Cerberus's ownership of the Property and after termination of the lease agreement.

23. The damage caused by GL Construction and/or Gordon Lemich to the Real Property and improvements and personal property therein include, but are not limited to vandalizing, tearing down and otherwise damaging shell and other aspects of the Real Property and improvements.

24. GL Construction and/or Gordon Lemich has caused Cerberus lost rents and additional cost and expense relating to required storage, removal and disposition of personal property and equipment located on the Real Property after the eviction.

25. During their ownership and tenancy of the Real Property, GL Construction and/or Gordon Lemich dumped vast amounts of dirt and other debris onto real property owned by NNH, which is adjacent to the Real Property causing damage to the Real Property.

FIRST CLAIM FOR RELIEF
(Negligence)

26. Plaintiff Cerberus reasserts paragraphs 1-25 of this Complaint as though set forth herein in full.

27. Defendants constructed, repaired and remodeled improvements to the Real Property and claimed to have obtained all necessary permits and approvals, and claimed to have otherwise complied with all applicable laws relating to said improvements.

1 28. Defendants had a duty, as a licensed contractor in the State of Nevada, to: (a)
2 properly construct, repair and remodel the improvements on the Real Property; (b) properly
3 approve, permit and construct the improvements to the Real Property; and (c) otherwise comply
4 with applicable laws.

5 29. Defendants negligently failed to: (a) properly construct, repair and remodel the
6 improvements on the Real Property; (b) properly approve, permit and construct the
7 improvements to the Real Property; and (c) otherwise comply with applicable laws.

8 30. The defective construction and remodeling performed by Defendants has caused
9 further damage to the physical structure on the Real Property, other than, and in addition to, the
10 defects themselves.

11 31. Defendants' negligent and defective failure to properly construct, repair and
12 remodel the improvements on the Real Property, obtain proper approvals and/or permits and
13 otherwise comply with all applicable law, is the proximate cause of Cerberus's damages.

14 32. As a direct and proximate result of Defendants' negligence, Cerberus has
15 sustained damages in excess of \$10,000.

16
17
18 **SECOND CLAIM FOR RELIEF**
19 **(Negligent Misrepresentation)**

20 33. Plaintiff Cerberus reasserts paragraphs 1-25 of this Complaint as though set forth
21 herein in full.

22 34. GL Construction and/or Gordon Lemich negligently represented that it: (a)
23 properly constructed, repaired and remodeled all improvements on the Real Property; (b)
24 received all proper approvals and permits for the improvements on the Real Property; and (c)
25 otherwise comply with applicable laws with respect to the Real Property.

26
27 ///

28

35. Defendants' representations were false and Defendants should have known them to be false.

36. Cerberus justifiably relied to its detriment on the representations of Defendants and even reviewed a significant number of permits and approvals provided by Defendants prior to purchasing the Real Property and improvements from Bank.

37. Defendants' negligent misrepresentations are the proximate cause of Cerberus's damages.

38. As a direct and proximate result of Defendants' negligent misrepresentations, Cerberus has sustained damages in excess of \$10,000.

THIRD CLAIM FOR RELIEF
(Intentional Misrepresentation)

39. Plaintiff Cerberus reasserts paragraphs 1-25 of this Complaint as though set forth herein in full.

40. Defendants intentionally represented that it: (a) properly constructed repaired and remodeled all improvements on the Real Property; (b) received all proper approvals and permits for the improvements on the Real Property; and (c) otherwise comply with applicable laws with respect to the Real Property.

41. Defendants' representations were intentionally false.

42. Cerberus justifiably relied to its detriment on the misrepresentations of Defendants and even reviewed a significant number of permits and approvals provided by Defendants prior to purchasing of the Real Property and improvements from Defendants.

43. Defendants' intentional misrepresentations directly and proximately caused Cerberus damages in excess of \$10,000.

///

FOURTH CLAIM FOR RELIEF
(Intentional Damage to Property)

44. Plaintiff Cerberus reasserts paragraphs 1-25 of this Complaint as though set forth herein in full.

45. Defendants have intentionally damaged the Real Property and improvements and personal property on the Real Property.

46. Upon information and belief, the damage caused by Defendants to the Real Property and improvements and personal property therein include, but are not limited to: (a) vandalizing, tearing down and otherwise damaging the shell and structural elements of the Real Property and improvements; (b) storing and spilling hazardous waste on the Real Property and improvements; (c) removing personal property from the Real Property and improvements not owned by or belonging to Defendants.

47. Upon information and belief, Cerberus alleges that Defendants have caused Cerberus loss in rents and additional cost and expense relating to required storage, removal and disposition of personal property and equipment located on the Real Property after the eviction.

48. As a direct and proximate result of Defendants' intentional damage to the aforementioned property, Cerberus has sustained damages in excess of \$10,000.

FIFTH CLAIM FOR RELIEF
(Breach of Contract)

49. Plaintiff Cerberus reasserts paragraphs 1-25 of this Complaint as though set forth herein in full.

50. Cerberus and Defendants entered a contract pursuant to which Defendants leased the Real Property on a month to month basis for an agreed upon price.

51. Defendants used and occupied the Real Property and made monthly payments for the right to do so until April 2013.

1 52. Defendants breached by the contract by failing to make monthly rental payments
2 beginning in April 2013.

3 53. Defendants continued to occupy the Real Property without paying rent from April
4 2013 until their eviction in August 2013.

5 54. Cerberus has been damaged by Defendants' failure to make monthly rental
6 payments which exceed \$2,500 per month, plus other fees associated with Defendants' breach,
7 including the costs of evictions, fines, and repairing damages to the Real Property.
8

9 **SIXTH CLAIM FOR RELIEF**
10 **(Quantum Meruit)**

11 55. Plaintiff Cerberus reasserts paragraphs 1-25 of this Complaint as though set forth
12 herein in full.

13 56. Prior to April 2013 Defendants entered a contract pursuant to which Defendants
14 leased the Real Property on a month to month basis for an agreed upon price.

15 57. Prior to April 2013 Defendants occupied the Real Property and made monthly
16 rental payments for the right to occupy and use the Real Property.
17

18 58. Beginning in April 2013 Defendants refused to make monthly payments for the
19 right to use and occupy the Real Property, but remained in the premises without paying until
20 their eviction in August 2013.

21 59. During the time period in which Defendants refused to make monthly rental
22 payments to Cerberus, Defendants unjustly used and occupied the Real Property, which conduct
23 is contrary to fundamental principles of justice and equity and good conscience.
24

25 60. Cerberus has been damaged by Defendants failure to make monthly rent
26 payments in the amount of the reasonable monthly rental rate for the Real Property, which is in
27 an amount in excess of \$2,500 plus other fees associated with Defendants' breach, including the
28

costs of evictions, fines, and repairing damages to the leased premises.

FIFTH CLAIM FOR RELIEF
(Negligent Trespass)

61. Plaintiff NNH reasserts paragraphs 1-25 of this Complaint as though set forth herein in full.

62. Defendants owed a duty as an adjacent landowner to refrain from activities that would cause injury to the adjacent property owned by NNH ("Adjacent Property").

63. During their ownership and tenancy of the Real Property, Defendants breached that duty by negligently dumping vast amounts of dirt and other debris onto the Adjacent Property, owned by NNH, causing physical harm to the Adjacent Property, including loss of use.

64. Defendants' dumping of dirt and debris onto property owned by NNH was conducted without NNH's authorization or permission.

65. Defendants' unauthorized act of going onto NNH's property constitutes a trespass, and the dirt and debris continuing to remain on NNH's property constitutes a continuing trespass.

66. As a direct and proximate result of Defendants' negligence causing physical harm to the Adjacent Property, NNH has sustained damages in excess of \$10,000.

FIFTH CLAIM FOR RELIEF
(Intentional Trespass)

67. Plaintiff NNH reasserts paragraphs 1-25 of this Complaint as though set forth herein in full.

68. During their ownership and tenancy of the Real Property, Defendants intentionally and in violation of NNH's right of exclusive possession dumped vast amounts of dirt and other debris onto property adjacent to the Real Property, property that is owned by NNH ("Adjacent Property").

///

1 69. The dumping of vast amounts of dirt and other debris onto the Adjacent Property
2 has caused physical harm to the property owned by NNH, including loss of use.

3 70. Defendants' dumping of dirt and debris onto property owned by NNH was
4 conducted without NNH's authorization or permission.

5 71. Defendants' unauthorized act on NNH's property constitutes a trespass, and the
6 dirt and debris continuing to remain on NNH's property constitutes a continuing trespass.

7 72. As a result of Defendants' intentional trespass causing physical harm to the
8 Adjacent Property, NNH has sustained damages in excess of \$10,000.

9
10 **SEVENTH CLAIM FOR RELIEF**
11 **(Temporary, Preliminary and Permanent Injunctive Relief)**

12 73. Plaintiffs reassert paragraphs 1-25 of this Complaint as though set forth herein in
13 full.

14 74. Defendants continue to damage the Real Property and improvements.

15 75. Cerberus needs protection against further damage caused by Defendants to the
16 Real Property and improvements.

17 76. Cerberus is entitled under NRS 33.010 to temporary, preliminary and permanent
18 injunctive relief as follows:

19 a. Locking and securing the Real Property and improvements to protect against
20 further damage and loss by Defendants.

21 b. Ordering Defendants and any employee, partner, contractor, subcontractor,
22 representative or agent of Defendants from entering on the Real Property or improvements for
23 any reason.
24

25 WHEREFORE, Plaintiffs pray for the following relief:

26 1. For general damages in a just and reasonable amount in excess of \$10,000;
27

2. For special damages according to proof;
3. For temporary, preliminary and permanent injunctive relief, as set forth above;
4. For reasonable attorney's fees if any may be allowed under the law;
5. For costs of suit incurred herein; and
6. For such other and further relief as the court deems appropriate.

AFFIRMATION
(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the foregoing does not contain the social security number of any person.

DATED: This 5th day of February, 2014.

LIONEL SAWYER & COLLINS

By: 

Leslie Bryan Hart, Esq.


Attorneys for Plaintiffs and Counterdefendant

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of Lionel Sawyer &
3 Collins; that on the 11th day of February, 2014, a true and correct copy of the **FIRST**
4 **AMENDED COMPLAINT**, was enclosed in a sealed envelope and delivered, as indicated
5 below, to the following:

6 James Shields Beasley, Esq.
7 Law Office of James Shields Beasley
8 435 Court St.
9 Reno, NV 89501

- 10 ☒ Via First Class Mail, with postage pre-paid and deposited for mailing in Reno, Nevada
11 ☐ Via Hand Delivery
12 ☐ Via E-Mail and U.S. Mail, with postage pre-paid and deposited for mailing in Reno, NV
13 ☐ Via Facsimile and U.S. Mail with postage pre-paid and deposited for mailing in Reno, NV

14 
15 _____
16 Pamela Carmon

ORIGINAL

FILED

2013 OCT 28 PM 4:30

JULIA HASTINGS
CLERK OF THE COURT

A. Pone
DEPUTY

CODE: 1085
JAMES SHIELDS BEASLEY
Nev. Bar No. 1733
LAW OFFICE OF JAMES SHIELDS BEASLEY
435 Court Street
Post Office Box 2936
Reno, Nevada 89505
(775) 329-6852
(775) 329-2174 - Fax
Attorney for Defendant

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

CERBERUS HOLDINGS, LLC, a Nevada
limited liability company; NORTHERN
NEVADA HOMES, LLC, a Nevada
limited liability company,

Case No. CV13-01468

Plaintiffs,

Dept. No. 8

vs.

GL CONSTRUCTION, INC., a Nevada
corporation; GORDON LEMICH, an
individual; and DOES 1 through 10
inclusive,

Defendants.

GL CONSTRUCTION, INC., a Nevada
corporation,

Counterclaimant,

vs.

NEVADA HOMES, LLC, a Nevada
limited liability company,

Counterdefendant.

AMENDED ANSWER AND COUNTERCLAIM

Defendants GL Construction, Inc., and Gordon Lemich, by and through their attorney,
James Shields Beasley, for their Answer to the Complaint of plaintiffs Cerberus Holdings, LLC,

1 and Northern Nevada Homes, LLC, admit, deny and specifically allege as follows:

2 As to Plaintiffs' General Allegations:

3 I

4 Answering paragraphs 1, 2, 5, 13, and 16 of plaintiffs' General Allegations, these
5 answering defendants are without information or knowledge sufficient to form a belief as to the
6 truth of said allegations contained therein and based thereon deny the same.

7 II

8 Answering paragraph 3 and 21 of plaintiffs' General Allegations, these answering
9 defendants admit the truth of each and every allegation contained therein.

10 III

11 Answering paragraph 4 of plaintiffs' General Allegations, these answering defendants deny
12 the truth of plaintiffs' allegation that "Gordon Lemich is, and at all relevant times was, a resident
13 of Washoe County, Nevada. With respect to each and every of the remaining allegations contained
14 in said paragraph 4, these answering defendants specifically deny the true of the same.

15 IV

16 Answering paragraphs 6 through 12, 14 through 15, 17 through 20, and 22 through 25 of
17 plaintiffs' General Allegations, these answering defendants specifically deny the true of the same.

18 As to Plaintiffs' First Claim for Relief:

19 V

20 Answering paragraph 26 of plaintiffs' First Claim for Relief, these answering defendants
21 refer to their answers to paragraphs 1 through 25 of Plaintiffs' Complaint and incorporate the same
22 herein by this reference.

23 VI

24 Answering paragraphs 27 through 32 of Plaintiffs' First Claim for Relief, these answering
25 defendants specifically deny the true of the same.

26 As to Plaintiffs' Second Claim for Relief:

27 VII

28 Answering paragraph 33 of Plaintiffs' Second Claim for Relief, these answering

1 defendants refer to their answers to paragraphs 1 through 32 of Plaintiffs' Complaint and
2 incorporate the same herein by this reference.

3 VIII

4 Answering paragraphs 34 and 36 through 38 of Plaintiffs' Second Claim for Relief, these
5 answering defendants specifically deny the truth of the same.

6 IX

7 Answering paragraph 35 of Plaintiffs' Second Claim for Relief, these answering
8 defendants deny the truth of said allegations on the basis that GL Construction made no
9 representations to plaintiffs.

10 As to Plaintiffs' Third Claim for Relief:

11 X

12 Answering paragraph 39 of Plaintiffs' Third Claim for Relief, these answering defendants
13 refer to paragraph 1 through 38 of Plaintiffs' Complaint and incorporate the same herein by this
14 reference.

15 XI

16 Answering paragraphs 40, 42, and 43 of Plaintiffs' Third Claim for Relief, these answering
17 defendants specifically deny the truth of each and every allegation contained therein.

18 XII

19 Answering paragraph 41 of Plaintiffs' Third Claim for Relief, these answering defendants
20 deny the truth of each and every allegation contained in said paragraph on the basis that GL
21 Construction made no representations to defendants.

22 As to Plaintiffs' Fourth Claim for Relief:

23 XIII

24 Answering paragraph 44 of Plaintiffs' Fourth Claim for Relief, these answering defendants
25 refer to their answers to paragraph 1 through 43 of Plaintiffs' Complaint and incorporate the same
26 herein by this reference.

27 XIV

28 Answering paragraphs 45 through 48 of Plaintiffs' Fourth Claim for Relief, these

1 answering defendants specifically deny the truth of the same.

2 As to Plaintiffs' Fifth Claim for Relief:

3 XV

4 Answering paragraph 49 of Plaintiffs' Complaint, these answering defendants refer to their
5 answers to paragraphs 1 through 48 of Plaintiffs' Complaint and incorporate the same herein by
6 this reference.

7 XVI

8 Answering paragraphs 50, 52, and 53 of Plaintiffs' Fifth Claim for Relief, these answering
9 defendants specifically deny the truth of each and every allegation contained therein.

10 XVII

11 Answering paragraph 51 of Plaintiffs' Fifth Claim for Relief, these answering defendants
12 deny the truth of each and every allegation contained therein on the basis that defendants have not
13 dumped any dirt and/or debris onto the property owned by NNH.

14 As to Plaintiffs' Sixth Claim for Relief:

15 XVIII

16 Answering paragraph 54 of Plaintiffs' Sixth Claim for Relief, these answering defendants
17 refer to their answers to paragraphs 1 through 53 of Plaintiffs' Complaint and incorporate the same
18 herein by this reference.

19 XIX

20 Answering paragraphs 55 through 57 of Plaintiffs' Sixth Claim for Relief, these answering
21 defendants deny the truth of each and every allegation contained therein.

22 **AFFIRMATIVE DEFENSES**

23 FIRST AFFIRMATIVE DEFENSE

24 Plaintiffs' Complaint fails to state a claim upon which relief may be validly granted against
25 defendants.

26 SECOND AFFIRMATIVE DEFENSE

27 Neither G.L. Construction, Inc., nor Gordon Lemich owed any type of duty, contractual or
28 otherwise, to maintain that property commonly known as Comstock Storage in good condition or

1 to insure that said property complied with any applicable laws and/or building code provisions.

2 THIRD AFFIRMATIVE DEFENSE

3 Neither G.L. Construction, Inc., nor Gordon Lemich owed any duty to plaintiffs to properly
4 construct, repair, and/or remodel any improvements made to that real property commonly known
5 as Comstock Storage either prior to or after the date on which plaintiffs acquired title to such
6 property.

7 FOURTH AFFIRMATIVE DEFENSE

8 Plaintiffs' claims for Economic Loss are barred by the Economic Loss Doctrine.

9 Wherefore, defendants G.L. Construction, Inc., Gordon Lemich request that this Court
10 enter judgment in their favor and against plaintiffs Cerberus Holdings, LLC, and Northern Nevada
11 Homes, LLC, as follows:

- 12 1. That plaintiffs' Complaint be dismissed with prejudice;
13 2. That this Court award defendants their attorney's fees and costs; and
14 3. That this Court award defendants such other and further relief as it may deem just and
15 proper in the premises.

16 COUNTERCLAIM

17 Defendant/Counterclaimant G.L. Construction, Inc., by and through its attorney, James Shields
18 Beasley, for its Counterclaim against Plaintiff/Counterdefendant Northern Nevada Homes, LLC,
19 specifically avers and alleges as follows:

20 I

21 Counterclaimant is now, and at all times herein mentioned has been, a duly and regularly
22 licensed contractor under the laws of the State of Nevada, doing business in the City of Reno, County
23 of Washoe, State of Nevada.

24 II

25 Counterclaimant is informed and believes and based thereon alleges that counterdefendant
26 Northern Nevada Homes, LLC, is, and at all times herein mentioned was, a limited liability company
27 organized and existing under and by virtue of Nevada law.

28 III

1 On or about March 4, 2013, counterclaimant and counterdefendant entered into an oral contract
2 which provided that counterclaimant would furnish the necessary labor and materials for the
3 performance of excavation work on the property of defendant situated on DeChardin Street in the
4 Mountreaux Estates, Washoe County, Nevada. This contract was on a time and materials basis.

5 IV

6 Counterclaimant has performed all conditions, covenants and promises under the contract to
7 be performed on its part.

8 V

9 On or about April 16, 2013, counterdefendant breached the contract by failing and refusing to
10 pay plaintiff all of that compensation which was in fact due and owing to counterclaimant. As of the
11 present date, the sum of \$7,811.00 remains due and owing to counterclaimant for the labor and
12 materials which counterclaimant furnished to counterdefendant during the period March 4, 2013
13 through March 13, 2013 at counterdefendant's specific instance and request.

14 VI

15 As a result of counterdefendant's breach of contract, counterclaimant has suffered damages
16 for labor and materials furnished and used in the amount of \$7,811.00, and for interest on said
17 damages from and after the date on which said damages became legally due and owing at the legal
18 rate.

19 VII

20 On or about March 14, 2013, counterclaimant made demand upon counterdefendant for the
21 payment of such sum, but counterdefendant has failed and refused and still fails and refuses to pay the
22 sum, and the whole thereof, together with interest at the rate provided by law, remains due, owing, and
23 unpaid.

24 WHEREFORE, counterclaimant prays judgment against counterclaimant as follows:

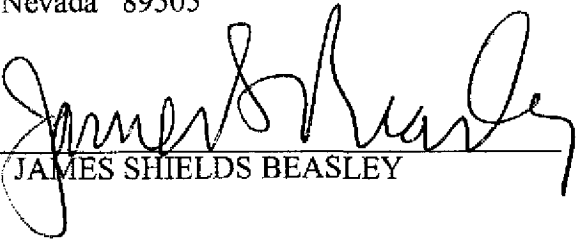
- 25 1. For compensatory damages in the sum of \$7,811.00;
26 2. For interest on the sum of \$7,811.00 at the legal rate allowed by law from and after
27 March 14, 2013;
28 3. For costs of suit herein incurred;

1 4. For such other and further relief as the court may deem just and proper in the premises.

2 DATED this 17th day of September, 2013.

3 LAW OFFICE OF JAMES SHIELDS BEASLEY
4 Attorney for Counterclaimant
5 435 Court Street
6 P.O. Box 2936
7 Reno, Nevada 89505

8 By

9 
10 JAMES SHIELDS BEASLEY

11 VERIFICATION

12 I, Gordon Lemich, am President of G.L. Construction, the counterclaimant in this action, and
13 a person who is authorized to make this Verification on its behalf. I have read the foregoing
14 Counterclaim and know the contents thereof. The same is true of my own knowledge, except as to
15 those matters which are therein stated on information and belief, and, as to those matters, I believe it
16 to be true.

17 I declare under penalty of perjury that the foregoing is true and correct and that this declaration
18 was executed on September 17, 2013.

19 

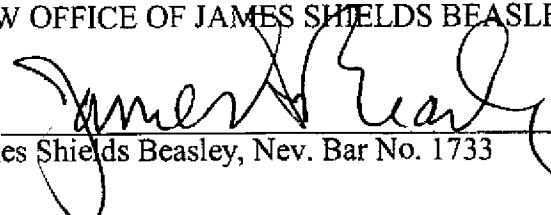
20 GORDON LEMICH
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28

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, filed in Case Number CV11-00509, does not contain the social security number of any person.

DATED September 17, 2013.

LAW OFFICE OF JAMES SHIELDS BEASLEY

By: 
James Shields Beasley, Nev. Bar No. 1733

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that on this date I deposited a true copy of the foregoing
3 document in the United States mail at Reno, Nevada, by first class mail, postage prepaid,
4 addressed to the following:

5 Leslie Bryan Hart, Esq.
6 Lionel Sawyer & Collins
7 50 West Liberty Street, #1100
8 Reno, Nevada 89501

9 DATED this 28th day of October, 2013.

10 Gail Lee
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1880

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

CERBERUS HOLDINGS, LLC, a Nevada
limited liability company; NORTHERN
NEVADA HOMES, LLC, a Nevada
limited liability company,

CASE NO. CV13-01468

DEPT. NO. 8

Plaintiffs,

vs.

GL CONSTRUCTION, INC., a Nevada
corporation; GORDON LEMICH, an
individual; and DOES 1-10, inclusive,

Defendants.

GL CONSTRUCTION, INC., a Nevada
Corporation,

Counterclaimant,

vs.

NORTHERN NEVADA HOMES, LLC,
a Nevada limited liability company,

Counterdefendant.

JUDGMENT

The Court being fully advised in the premises, it is hereby

ORDERED, ADJUDGED AND DECREED that final and binding judgment is entered in
favor of Plaintiff Cerberus Holdings, LLC and against Defendant Gordon Lemich, in the amount

1 of \$20,000.00 ("Judgment Amount"), with post judgment interest that continues to accrue on the
2 Judgment Amount at the statutory rate of 5.25% per annum from the date this Judgment is
3 entered until the Judgment is satisfied, in the amount of \$2.87 per day.

4 IT IS ORDERED that this Judgment shall be further augmented in the amount of
5 reasonable costs expended in pursuing this Judgment as ordered by the Court and in collecting
6 said Judgment by execution or otherwise as shall have been established by affidavit, and offset in
7 the amount of any payments made by Defendant Gordon Lemich toward the Judgment amount.
8

9 This Judgment constitutes a final and binding decision on all claims in the First Amended
10 Complaint asserted by Plaintiff Cerberus Holdings, LLC against Defendant Gordon Lemich, and
11 any and all defenses thereto, and as to those claims only, shall constitute a final judgment.
12

13 Date: 04-29-2014

14 *Trilin A. Stghil*
DISTRICT COURT JUDGE

15 Respectfully Submitted:

16 Leslie Bryan Hart, Esq.
17 Nevada State Bar No. 4932
18 LIONEL SAWYER & COLLINS
19 50 West Liberty Street, Suite 1100
20 Reno, Nevada 89501
Telephone (775) 788-8666

21 Attorneys for Plaintiff Cerberus Holdings, LLC
22
23
24
25
26
27
28

3985

1 JOHN C. BOYDEN, ESQ. (SBN 3917)
2 BRETT A. DIEFFENBACH, ESQ. (SBN 11370)
3 ERICKSON, THORPE & SWAINSTON, LTD.
4 P.O. Box 3559
5 Reno, NV 89505
6 (775) 786-3930
7 Attorneys for Defendants
8 GL Construction, Inc. & Gordon Lemich

9
10 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

11 IN AND FOR THE COUNTY OF WASHOE

12 CERBERUS HOLDINGS, LLC, a Nevada limited
13 liability company; NORTHERN NEVADA
14 HOMES, LLC, a Nevada limited liability company,

15 Plaintiffs,

CASE NO: CV13-01468

16 vs.

DEPT. NO: 8

17 GL CONSTRUCTION, INC., a Nevada
18 corporation; GORDON LEMICH, an
19 individual; and DOES 1-10, inclusive,

20 Defendants.
21 _____/

22 GL CONSTRUCTION, INC., a Nevada corporation

23 Counterclaimant,

24 vs.

25 NORTHERN NEVADA HOMES, LLC, a Nevada
26 limited liability company,

27 Counterdefendant.
28 _____/

29 **STIPULATION AND ORDER TO DISMISS CERTAIN CAUSES OF ACTION**

30 Plaintiffs, CERBERUS HOLDINGS, LLC (SUREBREC HOLDINGS, LLC) and NORTHERN NEVADA
31 HOMES, LLC, by and through their counsel of record, RUSBY CLARK, PLLC, and CHRISTOPHER RUSBY,
32 ESQ., Defendants, GL CONSTRUCTION, INC., and GORDON LEMICH, by and through their counsel of record,
33 ERICKSON, THORPE & SWAINSTON, LTD., JOHN C. BOYDEN, ESQ., and BRETT A. DIEFFENBACH,
34 ESQ., and, Intervenor, TRUCKEE MEADOWS WATER AUTHORITY, by and through its counsel of record,
35 MCDONAL CARANO WILSON, LLP, PAUL J. GEORGESON, ESQ., and ADAM HOSMER-HENNER, ESQ.,

1 and hereby stipulate that Cerberus Holdings, LLC's Claims for Relief for Negligence, Negligent Misrepresentation,
2 Intentional Misrepresentation, Intentional Damage to Property, Breach of Contract, and Quantum Meruit shall be
3 dismissed with prejudice. As to these causes of action only each party is to bear its own attorneys' fees and costs.
4 Because these claims include all of the claims asserted be Plaintiff Cerberus Holdings, LLC, the parties stipulate to
5 dismiss Cerberus Holdings, LLC as a party to this case.

6 Plaintiff, NORTHERN NEVADA HOMES, LLC's Claims for Relief for Negligent Trespass, Intentional
7 Trespass, and Injunctive Relief are not affected by this stipulation.

8 The parties further agree and stipulate that the caption attached as Exhibit A shall be the caption used from
9 the date the Court signs the Order below.

10 Affirmation

11 The undersigned does hereby affirm that the preceding document does not contain the social security
12 number of any person.

13 DATED this 5th day of August, 2016.

DATED this 5th day of August, 2016.

14 RUSBY CLARK, PLLC

ERICKSON, THORPE & SWAINSTON, LTD.

15 BY: 

BY: 

16 CHRISTOPHER RUSBY, ESQ.
17 Attorneys for Plaintiffs
18 Cerberus Holdings, LLC &
19 Northern Nevada Homes, LLC.

JOHN C. BOYDEN, ESQ.
BRETT A. DIEFFENBACH, ESQ.
Attorneys for Defendants
GL Construction, Inc. & Gordon Lemich

20 **ORDER**

21 Pursuant to the stipulation of the parties hereto, and good cause appearing, IT IS HEREBY ORDERED that
22 Plaintiffs' Claims for Relief for Negligence, Negligent Misrepresentation, Intentional Misrepresentation, Intentional
23 Damage to Property, Breach of Contract, and Quantum Meruit are dismissed with prejudice, and Plaintiff Cerberus
24 Holdings, LLC is dismissed as a party to the case. As to these causes of action only each party shall bear its own
25 attorneys fees and costs.

26 Dated this 5th day of August, 2016

27 
28 DISTRICT JUDGE

1 **3985**
JOHN C. BOYDEN, ESQ. (SBN 3917)
2 BRETT A. DIEFFENBACH, ESQ. (SBN 11370)
ERICKSON, THORPE & SWAINSTON, LTD.
3 P.O. Box 3559
Reno, NV 89505
4 (775) 786-3930
Attorneys for Defendants
5 *GL Construction, Inc. & Gordon Lemich*

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 NORTHERN NEVADA HOMES, LLC,
a Nevada limited liability company,

9 Plaintiff,

CASE NO: CV13-01468

10 vs.

DEPT. NO: 8

11 GL CONSTRUCTION, INC., a Nevada
12 corporation; GORDON LEMICH, an
individual; and DOES 1-10, inclusive,

13 Defendants.
14 _____ /

15 **STIPULATION AND ORDER TO DISMISS**

16 Plaintiff, NORTHERN NEVADA HOMES, LLC, by and through its counsel of record,
17 RUSBY LAW, PLLC, and CHRISTOPHER RUSBY, ESQ., and Defendants, GL
18 CONSTRUCTION, INC., and GORDON LEMICH, by and through their counsel of record,
19 ERICKSON, THORPE & SWAINSTON, LTD., JOHN C. BOYDEN, ESQ., and BRETT A.
20 DIEFFENBACH, ESQ., hereby stipulate that this matter, as to the causes of action brought by
21 NORTHERN NEVADA HOMES, LLC, shall be dismissed with prejudice.

22 ///

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28 ///

Each party is to bear its own attorneys' fees and costs.

Affirmation

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 6th day of September 2016.

RUSBY LAW, PLLC.

DATED this 8th day of September 2016.

ERICKSON, THORPE & SWAINSTON, LTD.

BY: 

CHRISTOPHER RUSBY, ESQ.
Attorneys for Plaintiff
Northern Nevada Homes, LLC.

BY: 

JOHN C. BOYDEN, ESQ.
BRETT A. DIEFFENBACH, ESQ.
Attorneys for Defendants
GL Construction, Inc. &
Gordon Lemich

///

///

///

ORDER

Pursuant to the stipulation of the parties hereto, and good cause appearing, IT IS HEREBY ORDERED that the Claims of Plaintiff, Northern Nevada Homes, LLC., are hereby dismissed with prejudice. As to these causes of action only each party shall bear its own attorneys fees and costs.

Dated this 16th day of September, 2016


DISTRICT JUDGE

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

CEREBRUS HOLDINGS, LLC, a
Nevada limited liability company;
NORTHERN NEVADA HOMES, LLC,
a Nevada limited liability company,

Case No. CV13-01468

Dept. No. 8

Plaintiffs,

vs.

GL CONSTRUCTION, INC, a Nevada
corporation, GORDON LEMICH, an
individual; and DOES 1-10, inclusive,

Defendants.

GL CONSTRUCTION, INC, a Nevada
corporation,

Counterclaimant,

vs.

NORTHERN NEVADA HOMES, LLC,
a Nevada limited liability company,

Counterdefendant.

ORDER AFTER TRIAL

Background

Prior to May 9, 2011, Defendant and Counterclaimant Gordon Lemich was
the owner of real property located at 2605 Comstock Drive, Reno, Nevada ("the

1 property"). Lemich is also the principal of GL Construction, a Nevada corporation,
2 and licensed contractor. It appears that the property at issue was occupied by a
3 number of tenants, including GL Construction.

4 At some point in 2012, Lemich discussed the possibility of selling the
5 property to Plaintiff and Counterdefendant Cerebrus Holdings, LLC. However,
6 before any formal negotiations were complete, the property was foreclosed on by
7 Acquired Capital I, LD ("the bank"). After the foreclosure, Lemich continued to
8 discuss the possibility of Cerebrus buying the property, and of becoming their
9 tenant. Lemich represented to Cerebrus that any improvements to the property
10 were properly constructed and permitted. Following this conversation, Cerebrus
11 successfully purchased the property from the bank.

12 Following its acquisition of the property, Cerebrus asserted that it discovered
13 multiple instances of defective workmanship, code violations, and was found the
14 property to be uninhabitable. Cerebrus filed the instant suit on July 3, 2013,
15 alleging claims of negligence, negligent misrepresentation, intentional
16 misrepresentation, intentional damage to property, trespass, and injunctive relief.
17 The complaint also named Northern Nevada Homes, LLC, as a plaintiff, and alleged
18 that GL Construction and Lemich had dumped large quantities of dirt and debris
19 onto the lot adjacent to the property at issue, which was owned by Northern Nevada
20 Homes.¹ Cerebrus filed an amended complaint on February 11, 2014, further
21 alleging a claim for breach of contract, related to GL Construction's failure to pay
22 rent between April and August of 2013.

23 In its answer, GL Construction asserted a counterclaim against Northern
24 Nevada Homes, in the amount of \$7,811.00, related to excavation work that GL
25 Construction performed for Northern Nevada Homes at property situated on
26 DeChardin Street of Montreaux Estates during March of 2013. It appears that
27 given the outstanding rent and other damages allegedly owed by GL Construction
28

¹Cerebrus and Northern Nevada Homes were both managed by Robert Fitzgerald.

1 to Cerebrus and Northern Nevada Homes, manager Robert Fitzgerald withheld
2 payment of the invoice.

3 On February 12, 2014, Lemich, individually, served an offer of judgment
4 upon Cerebrus, in the amount of \$20,000.00. Cerebrus accepted the offer. The offer
5 of judgment was silent as to GL Construction's counterclaim against Northern
6 Nevada Homes.

7 Eventually, the parties reached a settlement with respect to all claims except
8 GL Construction's counterclaim against Northern Nevada Homes. The matter
9 proceeded to a bench trial before this court on August 12, 2016. This order follows.

10 *Discussion*

11 The only claim currently before this court is GL Construction's breach of
12 contract counterclaim against Northern Nevada Homes. A contract is formed when
13 a party can establish offer and acceptance, meeting of the minds, and consideration.
14 *May v. Anderson*, 121 Nev. 668, 673, 119 P.3d 1254, 1257 (2005). In this case, GL
15 Construction argues that it entered an oral contract with Northern Nevada Homes
16 on March 4, 2013, for the performance of excavation work at DeChardin Street in
Montreaux Estates.

17 The court finds that GL Construction performed the work, and delivered
18 Northern Nevada Homes an invoice in the amount of \$7,811.00. Northern Nevada
19 Homes does not appear to dispute that GL Construction performed the work at
20 issue. However, due to GL Construction's alleged breach of other obligations to
21 Northern Nevada Homes and Cerebrus, manager Robert Fitzgerald did not pay the
22 invoice.

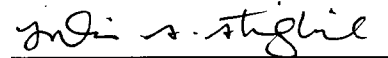
23 Any of these other obligations or payments owed by GL Construction to
24 Cerebrus and Northern Nevada Homes were raised in Plaintiff's Complaint and
25 Amended Complaint in this matter. These claims have all been dismissed pursuant
26 to the stipulation of the parties. The court finds that none of these agreements to
27 settle, nor the February, 2014, offer of judgment, addressed GL Construction's
28 counterclaim. Notably, the 2014 offer of judgment was tendered by Lemich,

1 individually, to Cerebrus, while the counterclaim states only GL Construction and
2 Northern Nevada Homes as parties.

3 Accordingly, the court finds that counterclaimant GL Construction has
4 established, by a preponderance of the evidence, a breach of contract by
5 counterdefendant Northern Nevada Homes. The court AWARDS GL Construction
6 damages in the amount of \$7,811.00.

7 IT IS SO ORDERED.

8 DATED this 17th day of October, 2016.

9 
10 LIDIA S. STIGLICH
11 District Judge
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1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second
3 Judicial District Court of the State of Nevada, County of Washoe; that on this
4 17th day of October, 2016, I electronically filed the following with the Clerk of the
5 Court by using the ECF system which will send a notice of electronic filing to the
6 following:

7 James Shields Beasley, Esq.

8 John Boyden, Esq.

9 Christopher Rusby, Esq.

10 I deposited in the Washoe County mailing system for postage and mailing
11 with the United States Postal Service in Reno, Nevada, a true copy of the attached
12 document addressed to:

13
14 
15 CHRISTINE KUHL
16 Judicial Assistant
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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

CEREBRUS HOLDINGS, LLC, a
Nevada limited liability company;
NORTHERN NEVADA HOMES, LLC,
a Nevada limited liability company,

Case No. CV13-01468

Dept. No. 8

Plaintiffs,

vs.

GL CONSTRUCTION, INC, a Nevada
corporation, GORDON LEMICH, an
individual; and DOES 1-10, inclusive,

Defendants.

GL CONSTRUCTION, INC, a Nevada
corporation,

Counterclaimant,

vs.

NORTHERN NEVADA HOMES, LLC,
a Nevada limited liability company,

Counterdefendant.

ORDER

Currently before the court is Defendant and Counterclaimant GL
Construction's request for attorney's fees. Plaintiff and Counter-Defendant
Northern Nevada Homes has opposed the request. This order follows.

1 *Background*

2 This case involves a number of disputes, which were ultimately resolved by
3 way of two separate settlement agreements and a bench trial.

4 Prior to May 9, 2011, Defendant and Counterclaimant Gordon Lemich was
5 the owner of real property located at 2605 Comstock Drive, Reno, Nevada ("the
6 property"). Lemich is also the principal of GL Construction, a Nevada corporation,
7 and licensed contractor. It appears that the property at issue was occupied by a
8 number of tenants, including GL Construction.

9 At some point in 2012, Lemich discussed the possibility of selling the
10 property to Plaintiff and Counterdefendant Cerebrus Holdings, LLC. However,
11 before any formal negotiations were complete, the property was foreclosed on by
12 Acquired Capital I, LD ("the bank"). After the foreclosure, Lemich continued to
13 discuss the possibility of Cerebrus buying the property, and of becoming their
14 tenant. Lemich represented to Cerebrus that any improvements to the property
15 were properly constructed and permitted. Following this conversation, Cerebrus
16 successfully purchased the property from the bank.

17 Following its acquisition of the property, Cerebrus asserted that it discovered
18 multiple instances of defective workmanship, code violations, and was found the
19 property to be uninhabitable. Cerebrus filed the instant suit on July 3, 2013,
20 alleging claims of negligence, negligent misrepresentation, intentional
21 misrepresentation, intentional damage to property, trespass, and injunctive relief.
22 The complaint also named Northern Nevada Homes, LLC, as a plaintiff, and alleged
23 that GL Construction and Lemich had dumped large quantities of dirt and debris
24 onto the lot adjacent to the property at issue, which was owned by Northern Nevada
25 Homes.¹ Cerebrus filed an amended complaint on February 11, 2014, further
26 alleging a claim for breach of contract, related to GL Construction's failure to pay
27 rent between April and August of 2013.

28

1Cerebrus and Northern Nevada Homes were both managed by Robert Fitzgerald.

1 In its answer, GL Construction asserted a counterclaim against Northern
2 Nevada Homes, in the amount of \$7,811.00, related to excavation work that GL
3 Construction performed for Northern Nevada Homes at property situated on
4 DeChardin Street of Montreaux Estates during March of 2013. It appears that
5 given the outstanding rent and other damages allegedly owed by GL Construction
6 to Cerebrus and Northern Nevada Homes, manager Robert Fitzgerald withheld
7 payment of the invoice.

8 On October 28, 2013, Lemich and GL Construction served an offer of
9 judgment upon Northern Nevada Homes. The offer provided that Northern Nevada
10 Homes pay \$5,000 with respect to the counterclaim, and that "all those claims
11 asserted by plaintiff Northern Nevada Homes, LLC against defendant GL
12 Construction, Inc., be dismissed with prejudice." Northern Nevada Homes rejected
13 the offer.

14 On February 12, 2014, Lemich, individually, served an offer of judgment
15 upon Cerebrus, in the amount of \$20,000.00. Cerebrus accepted the offer.

16 Eventually, the matter proceeded to a jury trial with respect to Northern
17 Nevada Homes' claims related to the dumping of dirt and debris by GL
18 Construction. At the close of evidence, the court indicated that it was inclined to
19 enter judgment as a matter of law in favor of Northern Nevada Homes with respect
20 to the issue of liability. Shortly thereafter, the parties agreed to settle Northern
21 Nevada Home's claims against GL Construction and Lemich for \$362,500.00.

22 The remaining counterclaim by GL Construction against Northern Nevada
23 Homes proceeded to a bench trial before this court on August 12, 2016. This court
24 found in favor of GL Construction, and awarded damages in the amount of
25 \$7,811.00.

26 GL Construction has filed the instant *Motion for Attorneys Fees*.

27 Discussion

28 Generally, the "compensation of an attorney and counselor for his or her
services is governed by agreement, express or implied, which is not restrained by
law." NRS 18.010(1). In this case, GL Construction argues that it is entitled to fees

1 and costs pursuant to NRCP 68, which relates to offers of judgment, and NRS
2 18.010(2), which allows for an award of fees where a prevailing party has recovered
3 less than \$20,000.00. This court discusses each claim in turn.

4 *Attorney's fees under NRCP 68*

5 In instances where an offer to settle is made prior to trial, NRCP 68 provides:

6 (a) The Offer. At any time more than 10 days before trial, any party
7 may serve an offer in writing to allow judgment to be taken in
8 accordance with its terms and conditions.

9 [. . .]

10 (f) Penalties for Rejection of Offer. If the offeree rejects an offer and
11 fails to obtain a more favorable judgment,

12 (1) the offeree cannot recover any costs or attorney's fees and shall not
13 recover interest for the period after the service of the offer and before
14 the judgment; and

15 (2) the offeree shall pay the offeror's post-offer costs, applicable interest
16 on the judgment from the time of the offer to the time of entry of the
17 judgment and reasonable attorney's fees, if any be allowed, actually
18 incurred by the offeror from the time of the offer. If the offeror's
19 attorney is collecting a contingent fee, the amount of any attorney's
20 fees awarded to the party for whom the offer is made must be deducted
21 from that contingent fee.

22 The decision to grant attorney's fees pursuant to NRCP 68 lies within the discretion
23 of this court. *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983).

24 When considering whether an award of fees is warranted, this court must
25 consider (1) whether the claims at issue were brought in good faith; (2) whether the
26 offer was reasonable in timing and amount; (3) whether the decision to reject the
27 offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether
28 the fees sought by the offeror are reasonable and justified in amount. *Id.* In
determining the amount of any fee award pursuant to the fourth factor of this test,
this court must also examine the quality of the attorney at issue, the character of
the work performed, the amount of work actually performed, and the result
achieved. *See Barney v. Mt. Rose Heating & Air Conditioning*, 124 Nev. 821, 192
P.3d 730 (2008) (citing *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455

1 P.2d 31 (1969)). After analyzing the *Beattie* and *Brunzell* factors, the court may
2 award all or some of the fees requested. *Beattie*, 99 Nev. at 589, 668 P.2d at 274.

3 In this case, GL Construction argues that Northern Nevada Homes' rejection
4 of its October 28, 2013 offer of judgment in the amount of \$5,000.00 indicates that it
5 is entitled to an award of fees. This court disagrees. In this, the court notes that in
6 addition to the offer of \$5,000.00 to settle GL Construction's counterclaim, the offer
7 of judgment also stipulated that Northern Nevada Homes would dismiss all of its
8 claims against GL Construction. Given that this court found GL Construction liable
9 for negligent trespass as a matter of law, and that Northern Nevada Homes and GL
10 Construction agreed to settle its claims for \$362,500.00, it was absolutely
11 reasonable for Northern Nevada Homes to reject the October 28, 2013, offer of
12 judgment. Therefore, the court declines to award attorney's fees on this basis.

13 *Attorney's fees and costs pursuant to NRS 18.010(2) and NRS 18.020*

14 NRS 18.010(2) allows for an award of attorney's fees "[w]hen the prevailing
15 party has not recovered more than \$20,000.00." NRS 18.020 similarly mandates an
16 award of costs to the prevailing party. In this case, the parties dispute whether GL
17 Construction is a prevailing party. Generally, with respect to fee and cost awards, a
18 party can "prevail" in litigation "if it succeeds on any significant issue in litigation
19 which achieves some of the benefits it sought in bringing suit." *Valley Electric*
Ass'n v. Overfield, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005).

20 Nonetheless, Northern Nevada Homes notes that Nevada has determined
21 that in actions involving multiple parties and counterclaims, "prevailing party"
22 status is determined based on the net judgments obtained by the parties. *See*
23 *Parodi v. Budetti*, 115 Nev. 236, 241, 984 P.2d 172, 175 (1999). Specifically, in
24 *Parodi*, the Nevada Supreme Court determined that "in cases where separate and
25 distinct suits have been consolidated into one action, the trial court must offset all
26 awards of monetary damages to determine which side is the prevailing party . . ."
27 *Id.*

28 Thus, because Cerebrus and Northern Nevada Homes settled their claims
against GL Construction and Lemich for \$20,000.00 and \$362,500.00 respectively,

1 while GL Construction recovered only \$7,811.00, Northern Nevada Homes argues
2 that GL Construction is not a prevailing party under the net monetary recovery
3 rule.

4 In response, GL Construction argues that the Supreme Court decisions
5 addressing this issue, including *Parodi* relate only to judgments. In this case, GL
6 Construction argues the \$362,500.00 and \$20,000.00 recoveries were the result of
7 settlement negotiations, rather than judgments. The only judgment actually
8 entered by this court was in favor of GL Construction, against Northern Nevada
9 Homes.

10 Having reviewed the pleadings, the court determines, that for the purposes of
11 attorney's fees, GL Construction was a prevailing party with respect to its
12 counterclaim. In this, the court notes that the facts underlying the counterclaim
13 were largely unrelated to the claims asserted by Cerebrus and Northern Nevada
14 Homes. Thus, under NRCF 13, GL Construction would have been free to bring this
15 claim in an unrelated action. Further, had GL Construction chosen to litigate its
16 claim separately, it would have clearly been a prevailing party entitled to fees under
17 NRS 18.010(2). Therefore, the court finds an award of fees and costs to be
18 warranted.

19 However, the court notes that any fees awarded must be reasonable.
20 Specifically, as discussed above, the court must examine the quality of the attorney
21 at issue, the character of the work performed, the amount of work actually
22 performed, and the result achieved. *See Barney v. Mt. Rose Heating & Air*
23 *Conditioning*, 124 Nev. 821, 192 P.3d 730 (2008) (citing *Brunzell v. Golden Gate*
24 *National Bank*, 85 Nev. 345, 455 P.2d 31 (1969)).

25 GL Construction has requested fees in the amount of \$67,595.00. The court
26 notes that GL Construction's counterclaim was a straightforward claim for breach
27 of an oral contract. Essentially, Northern Nevada Homes did not dispute that it
28 had failed to pay several invoices issued by GL Construction. Reviewing the record,

1 very little, if any, substantive motion practice occurred with respect to the
2 counterclaim.² The counterclaim itself was resolved in a half day bench trial.

3 Accordingly, while acknowledging the skill of GL Construction's counsel, and
4 the fact that GL Construction recovered the full amount sought, this court cannot
5 conclude that the fees sought by GL Construction are reasonable. Rather,
6 considering the character of the counterclaim, and the work actually performed in
7 relation to the counterclaim, the court finds attorney's fees in the amount of
8 \$10,000.00 to be reasonable.

9 With respect to costs, GL Construction has requested \$2,497.33. This
10 includes a \$200.00 filing fee for a motion for summary judgment, \$1,906.60 in
11 deposition fees for Mr. Fitzgerald and Mr. Wolf, and \$390.73 in copy costs related to
12 the bench trial. Having reviewed the requested costs, the court finds that the
13 motion for summary judgment was unrelated to GL Construction's counterclaim.
14 Similarly, it appears that the depositions of Mr. Fitzgerald and Mr. Wolf related
15 almost completely to the claims by Northern Nevada Homes, rather than the
16 counterclaim. Therefore, the court declines to award these requested costs.

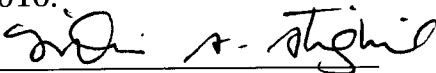
17 Beyond its argument that GL Construction is not a prevailing party,
18 Northern Nevada Homes does not dispute the remaining copying costs. Therefore,
19 the court awards GL Construction costs in the amount of \$390.73.

20 *Conclusion*

21 Based on the foregoing, the court ORDERS GL Construction's *Motion for*
22 *Attorney's Fees* GRANTED. The court AWARDS GL Construction attorney's fees in
23 the amount of \$10,000.00 and costs in the amount of \$390.73.

24 IT IS SO ORDERED.

25 DATED this 1st day of December, 2016.

26 
LIDIA S. STIGLICH
District Judge

27
28 ²The court acknowledges that a jurisdictional dispute regarding the counterclaim arose shortly before the bench trial.

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second
3 Judicial District Court of the State of Nevada, County of Washoe; that on this
4 18 day of December, 2016, I electronically filed the following with the Clerk of
5 the Court by using the ECF system which will send a notice of electronic filing to
6 the following:

7 James Shields Beasley, Esq.

8 John Boyden, Esq.

9 Christopher Rusby, Esq.

10 I deposited in the Washoe County mailing system for postage and mailing
11 with the United States Postal Service in Reno, Nevada, a true copy of the attached
12 document addressed to:

13
14 
15 CHRISTINE KUHL
16 Judicial Assistant
17
18
19
20
21
22
23
24
25
26
27
28

Code:

James Shields Beasley, Nev. Bar No. 1733
LAW OFFICE OF JAMES SHIELDS BEASLEY
435 Court Street
P.O. Box 2936
Reno, Nevada 89505
Telephone No.: (775) 329-6852

Attorney for Counterclaimant G.L. Construction, Inc.

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

CERBERUS HOLDINGS, LLC, a Nevada
limited liability company; NORTHERN
NEVADA HOMES, LLC, a Nevada
limited liability company,

Case No. CV13-01468

Dept. No. 8

Plaintiffs,

vs.

GL CONSTRUCTION, INC., a Nevada
corporation; GORDON LEMICH, an
individual; and DOES 1 through 10
inclusive,

Defendants.

G.L. CONSTRUCTION, INC., a Nevada
corporation,

Counterclaimant,

vs.

NEVADA HOMES, LLC, a Nevada
limited liability company,

Counterdefendant.

NOTICE OF ENTRY OF ORDER FOR FEES AND COSTS

To: Counterdefendant Nevada Homes, LLC, and to its attorneys of record,
Christopher M. Rusby of Rusby Law, 36 Stewart Street, Reno, Nevada 89501:

PLEASE TAKE NOTICE that on December 1, 2016, the above-entitled Court entered

1 its Order awarding counterclaimant G.L. Construction, Inc., attorney fees in the sum of
2 \$10,000.00, and costs in the sum of \$390.73. A true and correct copy of said Order is
3 attached hereto as Exhibit 1.

4 **Affirmation Pursuant to NRS 239B.030**

5 The undersigned does hereby affirm that the preceding document, filed in Case No.
6 CV13-01468, does not contain the social security number of any person.

7 DATED this 2nd day of December, 2016.

8 LAW OFFICE OF JAMES SHIELDS BEASLEY
9 Attorney for Counterclaimant G.L. Construction, Inc.
435 Court Street
10 Post Office Box 2936
Reno, Nevada 89505

11
12 By 
13 JAMES SHIELDS BEASLEY

14 **CERTIFICATE OF SERVICE**

15 Pursuant to NRCP 5(b), I certify that I am an employee of the Law Office of James
16 Shields Beasley, and that on this 2nd day of December, 2016, I transmitted a true and correct
17 copy of the foregoing document by the methods noted below:

18 ☐ **Personal delivery to the following: [NONE]**

19 ☒ **Electronically filed with the Clerk of the Court, using the eFlex system which**
20 **constitutes effective service for all eFiled documents pursuant to the eFile User**
Agreement

21 ☒ **Caused a true copy of the foregoing document to be deposited in the United**
22 **States mail at Reno, Nevada, by first-class mail, addressed to:**

23 Christopher Rusby
24 RUSBY CLARK, PLLC
36 Stewart Street
Reno, Nevada 89501

25 DATED this 2nd day of December, 2016.

26 
27 CHARLES BEASLEY
28

EXHIBIT LIST

<u>Ex. No.</u>	<u>Description</u>	<u>No. of Pages</u>
1.	Order, filed 21/01/2016	8

Exhibit 1

Exhibit 1

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

CEREBRUS HOLDINGS, LLC, a
Nevada limited liability company;
NORTHERN NEVADA HOMES, LLC,
a Nevada limited liability company,

Case No. CV13-01468

Dept. No. 8

Plaintiffs,

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Defendants.

GL CONSTRUCTION, INC, a Nevada
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Counterclaimant,

vs.

NORTHERN NEVADA HOMES, LLC,
a Nevada limited liability company,

Counterdefendant.

ORDER

Currently before the court is Defendant and Counterclaimant GL
Construction's request for attorney's fees. Plaintiff and Counter-Defendant
Northern Nevada Homes has opposed the request. This order follows.

1 *Background*

2 This case involves a number of disputes, which were ultimately resolved by
3 way of two separate settlement agreements and a bench trial.

4 Prior to May 9, 2011, Defendant and Counterclaimant Gordon Lemich was
5 the owner of real property located at 2605 Comstock Drive, Reno, Nevada ("the
6 property"). Lemich is also the principal of GL Construction, a Nevada corporation,
7 and licensed contractor. It appears that the property at issue was occupied by a
8 number of tenants, including GL Construction.

9 At some point in 2012, Lemich discussed the possibility of selling the
10 property to Plaintiff and Counterdefendant Cerebrus Holdings, LLC. However,
11 before any formal negotiations were complete, the property was foreclosed on by
12 Acquired Capital I, LD ("the bank"). After the foreclosure, Lemich continued to
13 discuss the possibility of Cerebrus buying the property, and of becoming their
14 tenant. Lemich represented to Cerebrus that any improvements to the property
15 were properly constructed and permitted. Following this conversation, Cerebrus
16 successfully purchased the property from the bank.

17 Following its acquisition of the property, Cerebrus asserted that it discovered
18 multiple instances of defective workmanship, code violations, and was found the
19 property to be uninhabitable. Cerebrus filed the instant suit on July 3, 2013,
20 alleging claims of negligence, negligent misrepresentation, intentional
21 misrepresentation, intentional damage to property, trespass, and injunctive relief.
22 The complaint also named Northern Nevada Homes, LLC, as a plaintiff, and alleged
23 that GL Construction and Lemich had dumped large quantities of dirt and debris
24 onto the lot adjacent to the property at issue, which was owned by Northern Nevada
25 Homes.¹ Cerebrus filed an amended complaint on February 11, 2014, further
26 alleging a claim for breach of contract, related to GL Construction's failure to pay
27 rent between April and August of 2013.

28

¹Cerebrus and Northern Nevada Homes were both managed by Robert Fitzgerald.

1 In its answer, GL Construction asserted a counterclaim against Northern
2 Nevada Homes, in the amount of \$7,811.00, related to excavation work that GL
3 Construction performed for Northern Nevada Homes at property situated on
4 DeChardin Street of Montreaux Estates during March of 2013. It appears that
5 given the outstanding rent and other damages allegedly owed by GL Construction
6 to Cerebrus and Northern Nevada Homes, manager Robert Fitzgerald withheld
7 payment of the invoice.

8 On October 28, 2013, Lemich and GL Construction served an offer of
9 judgment upon Northern Nevada Homes. The offer provided that Northern Nevada
10 Homes pay \$5,000 with respect to the counterclaim, and that "all those claims
11 asserted by plaintiff Northern Nevada Homes, LLC against defendant GL
12 Construction, Inc., be dismissed with prejudice." Northern Nevada Homes rejected
13 the offer.

14 On February 12, 2014, Lemich, individually, served an offer of judgment
15 upon Cerebrus, in the amount of \$20,000.00. Cerebrus accepted the offer.

16 Eventually, the matter proceeded to a jury trial with respect to Northern
17 Nevada Homes' claims related to the dumping of dirt and debris by GL
18 Construction. At the close of evidence, the court indicated that it was inclined to
19 enter judgment as a matter of law in favor of Northern Nevada Homes with respect
20 to the issue of liability. Shortly thereafter, the parties agreed to settle Northern
21 Nevada Home's claims against GL Construction and Lemich for \$362,500.00.

22 The remaining counterclaim by GL Construction against Northern Nevada
23 Homes proceeded to a bench trial before this court on August 12, 2016. This court
24 found in favor of GL Construction, and awarded damages in the amount of
25 \$7,811.00.

26 GL Construction has filed the instant *Motion for Attorneys Fees*.

27 Discussion

28 Generally, the "compensation of an attorney and counselor for his or her
services is governed by agreement, express or implied, which is not restrained by
law." NRS 18.010(1). In this case, GL Construction argues that it is entitled to fees

1 and costs pursuant to NRCP 68, which relates to offers of judgment, and NRS
2 18.010(2), which allows for an award of fees where a prevailing party has recovered
3 less than \$20,000.00. This court discusses each claim in turn.

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12 (1) the offeree cannot recover any costs or attorney's fees and shall not
13 recover interest for the period after the service of the offer and before
14 the judgment; and

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16 on the judgment from the time of the offer to the time of entry of the
17 judgment and reasonable attorney's fees, if any be allowed, actually
18 incurred by the offeror from the time of the offer. If the offeror's
19 attorney is collecting a contingent fee, the amount of any attorney's
20 fees awarded to the party for whom the offer is made must be deducted
21 from that contingent fee.

22 The decision to grant attorney's fees pursuant to NRCP 68 lies within the discretion
23 of this court. *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983).

24 When considering whether an award of fees is warranted, this court must
25 consider (1) whether the claims at issue were brought in good faith; (2) whether the
26 offer was reasonable in timing and amount; (3) whether the decision to reject the
27 offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether
28 the fees sought by the offeror are reasonable and justified in amount. *Id.* In
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2 award all or some of the fees requested. *Beattie*, 99 Nev. at 589, 668 P.2d at 274.

3 In this case, GL Construction argues that Northern Nevada Homes' rejection
4 of its October 28, 2013 offer of judgment in the amount of \$5,000.00 indicates that it
5 is entitled to an award of fees. This court disagrees. In this, the court notes that in
6 addition to the offer of \$5,000.00 to settle GL Construction's counterclaim, the offer
7 of judgment also stipulated that Northern Nevada Homes would dismiss all of its
8 claims against GL Construction. Given that this court found GL Construction liable
9 for negligent trespass as a matter of law, and that Northern Nevada Homes and GL
10 Construction agreed to settle its claims for \$362,500.00, it was absolutely
11 reasonable for Northern Nevada Homes to reject the October 28, 2013, offer of
12 judgment. Therefore, the court declines to award attorney's fees on this basis.

13 *Attorney's fees and costs pursuant to NRS 18.010(2) and NRS 18.020*

14 NRS 18.010(2) allows for an award of attorney's fees "[w]hen the prevailing
15 party has not recovered more than \$20,000.00." NRS 18.020 similarly mandates an
16 award of costs to the prevailing party. In this case, the parties dispute whether GL
17 Construction is a prevailing party. Generally, with respect to fee and cost awards, a
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Thus, because Cerebrus and Northern Nevada Homes settled their claims
against GL Construction and Lemich for \$20,000.00 and \$362,500.00 respectively,

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6 Construction argues the \$362,500.00 and \$20,000.00 recoveries were the result of
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8 entered by this court was in favor of GL Construction, against Northern Nevada
Homes.

9 Having reviewed the pleadings, the court determines, that for the purposes of
10 attorney's fees, GL Construction was a prevailing party with respect to its
11 counterclaim. In this, the court notes that the facts underlying the counterclaim
12 were largely unrelated to the claims asserted by Cerebrus and Northern Nevada
13 Homes. Thus, under NRCP 13, GL Construction would have been free to bring this
14 claim in an unrelated action. Further, had GL Construction chosen to litigate its
15 claim separately, it would have clearly been a prevailing party entitled to fees under
16 NRS 18.010(2). Therefore, the court finds an award of fees and costs to be
17 warranted.

18 However, the court notes that any fees awarded must be reasonable.
19 Specifically, as discussed above, the court must examine the quality of the attorney
20 at issue, the character of the work performed, the amount of work actually
21 performed, and the result achieved. *See Barney v. Mt. Rose Heating & Air*
22 *Conditioning*, 124 Nev. 821, 192 P.3d 730 (2008) (citing *Brunzell v. Golden Gate*
23 *National Bank*, 85 Nev. 345, 455 P.2d 31 (1969)).

24 GL Construction has requested fees in the amount of \$67,595.00. The court
25 notes that GL Construction's counterclaim was a straightforward claim for breach
26 of an oral contract. Essentially, Northern Nevada Homes did not dispute that it
27 had failed to pay several invoices issued by GL Construction. Reviewing the record,
28

1 very little, if any, substantive motion practice occurred with respect to the
2 counterclaim.² The counterclaim itself was resolved in a half day bench trial.

3 Accordingly, while acknowledging the skill of GL Construction's counsel, and
4 the fact that GL Construction recovered the full amount sought, this court cannot
5 conclude that the fees sought by GL Construction are reasonable. Rather,
6 considering the character of the counterclaim, and the work actually performed in
7 relation to the counterclaim, the court finds attorney's fees in the amount of
8 \$10,000.00 to be reasonable.

9 With respect to costs, GL Construction has requested \$2,497.33. This
10 includes a \$200.00 filing fee for a motion for summary judgment, \$1,906.60 in
11 deposition fees for Mr. Fitzgerald and Mr. Wolf, and \$390.73 in copy costs related to
12 the bench trial. Having reviewed the requested costs, the court finds that the
13 motion for summary judgment was unrelated to GL Construction's counterclaim.
14 Similarly, it appears that the depositions of Mr. Fitzgerald and Mr. Wolf related
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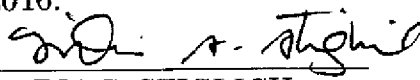
17 Beyond its argument that GL Construction is not a prevailing party,
18 Northern Nevada Homes does not dispute the remaining copying costs. Therefore,
19 the court awards GL Construction costs in the amount of \$390.73.

20 *Conclusion*

21 Based on the foregoing, the court ORDERS GL Construction's *Motion for*
22 *Attorney's Fees* GRANTED. The court AWARDS GL Construction attorney's fees in
23 the amount of \$10,000.00 and costs in the amount of \$390.73.

24 IT IS SO ORDERED.

25 DATED this 1st day of December, 2016.

26 
LIDIA S. STIGLICH
District Judge

27
28 ²The court acknowledges that a jurisdictional dispute regarding the counterclaim arose shortly
before the bench trial.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 18 day of December, 2016, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

James Shields Beasley, Esq.

John Boyden, Esq.

Christopher Rusby, Esq.

I deposited in the Washoe 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:


CHRISTINE KUHLE
Judicial Assistant