IN THE SUPREME COURT OF THE STATE OF NEVADA

****

NORTHERN NEVADA HOMES, LLC,	)	
Appellant,	)	
vs.	)	**No. 71899**
GL CONSTRUCTION, INC.,	)	
Respondent.	)	

APPEAL FROM POST-TRIAL ORDER AWARDING ATTORNEY FEES AND COSTS
SECOND JUDICIAL DISTRICT COURT, WASHOE COUNTY, NEVADA
HONORABLE LIDIA S. STIGLICH, DISTRICT JUDGE

***

RESPONDENT'S ANSWERING BRIEF

JAMES SHIELDS BEASLEY
Law Office of James Shields Beasley
435 Court Street
P.O. Box 2936
Reno, Nevada
Telephone: (775) 329-6852
Facsimile: (775) 329-2174
Email: jimbeasleyesq@gmail.com

Attorney for Respondent
G.L. CONSTRUCTION, INC.

IN THE SUPREME COURT OF THE STATE OF NEVADA

****

NORTHERN NEVADA HOMES, LLC,	)	
Appellant,	)	**No. 71899**
vs.	)	
GL CONSTRUCTION, INC.,	)	
Respondent.	)	

RESPONDENT'S NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and/or entities as described in NRAP 26.1(a), and must be disclosed. These representations are made so that the judges of this Court may evaluate possible disqualification or recusal.

DOUGLAS R. BROWN, Esq., counsel for appellant in the district court.

LESLIE BRYAN HART, Esq., counsel for appellant in the district court.

VERNON E. LEVERTY, Esq., counsel for appellant in the district court.

THOMAS R. DRENDAL, Esq., counsel for appellant in the district court.

CHRISTOPHER RUSBY, Esq., counsel for appellant in the district court and on appeal.

JAMES S. BEASLEY, Esq., counsel for respondent in the district court and on

appeal.

ERICKSON THORPE & SWAINSTON, LTD., counsel for respondent in the district court.

JOHN C. BOYDEN, Esq., counsel for respondent in the district court.

BRETT A. DIEFFENBACH, Esq., counsel for respondent in the district court.

There is no corporation which owns more than 10% of the stock of G.L. Construction, Inc.

LAW OFFICE OF JAMES SHIELDS BEASLEY
Attorney for Respondent G.L. Construction, Inc.
435 Court Street
P.O. Box 2936
Reno, Nevada

By */s/ James Shields Beasley*
JAMES SHIELDS BEASLEY

TABLE OF CONTENTS

TABLE OF AUTHORITIES

RULES & STATUTES

I

NORTHERN NEVADA HOMES, LLC'S ASSIGNMENT OF ERROR

Northern Nevada Homes, LLC ("NNH") basically raises two arguments on its appeal. By its first argument, NNH maintains that the district court should have applied a "net monetary recovery" analysis in ruling upon G.L. Construction, Inc.'s ("GL") motion for attorney fees. By its second argument, NNH asserts that, if the district court had properly applied a "net monetary recovery" analysis, the district court could not have awarded G.L any attorney fees under a "net monetary" analysis because G.L. recovered only $7,811.00 on its counterclaim, while NNH recovered $362,500.00 from G.L. on its Complaint[1]. According to NNH's argument, G.L. did not recover a judgment against NNH under its counterclaim which was greater than

---

[1] As will be noted *infra*, G.L. disputes NNH's claim that it recovered $362,500.00 against G.L. when NNH settled the complaint which it had filed against both Gordon Lemich and G.L. No allocation of responsibility between Gordon Lemich and G.L. was ever made for the payment of this sum.

the monetary recovery which NNH recovered through its settlement with Gordon Lemich and G.L. (Appellant's Opening Brief, hereinafter AOB, pages 11-13.) Appellant's argument must be rejected.

II

STATEMENT OF FACTS

On July 3, 2013, Cerberus Holdings, LLC ("Cerberus") and Northern Nevada Homes, LLC, filed a Complaint against defendants Gordon Lemich and G.L. Construction (G.L.) in the district court. By this Complaint, Cerberus asserted causes of action against Gordon Lemich and G.L. based upon its claims that defendants had performed faulty construction work on and had made misrepresentations concerning property which Cerberus subsequently purchased from Acquired Capital, LLC, out of foreclosure, i.e., Comstock Storage. (1 AA, 5:26–6:25) Cerberus also alleged a cause of action against defendants for the damages which defendants had allegedly

caused Comstock Storage during the short period of time after its purchase of the real property that Gordon Lemich leased the real property from Cerberus. (1 AA, 6:28–7:14) By the First Amended Complaint which Cerberus filed on February 11, 2014, it also sought damages for those lease payments which Gordon Lemich had allegedly failed to make to Cerberus for the period April to August 2103. (1 AA, 58:20–60:1) The damages sought by NNH in this Complaint, on the other hand, took on another form. NNH sought damages from both Gordon Lemich and G.L., based upon its allegation that both defendants had trespassed upon its property by dumping dirt onto the property without its consent. (1 AA, 17: 7-28; 60:2–61:9)[2] Because G.L. then had a separate and completely independent claim against NNH for $7,811.00 for its breach of a construction contract, G.L. filed a counterclaim against

---

[2] Contrary to the representations made by NNH at pages 3-4 of its Opening Brief, there is no evidence that either G.L. illegally dumped over 18,000 cubic yards of dirt and waste onto NNH's property, or that G.L. owned Comstock Storage.

NNH for this sum on October 28, 2013. (1 AA, 19:17–21:1)

Shortly after Cerberus and NNH had filed their First Amended Complaint on February 11, 2014, Gordon Lemich served Cerberus with his Offer of Judgment for $20,000. At that time, James Shields Beasley represented both Gordon Lemich and G.L. with respect to Complaint filed by Cerberus and NNH. He also represented G.L. with respect to the counterclaim for breach of contract which G.L. had filed against NNH. On February 27, 2014, Cerberus accepted Gordon Lemich's Offer of Judgment. (1 AA, 64-66) As of that date, Cerberus no longer had any claims against Gordon Lemich for negligent construction, misrepresentation, property damage, or unpaid lease payments. G.L., though, was still a defendant in the action brought by Cerberus and NNH. On May 21, 2014, John Boyden, Esq., assumed the defense of Gordon Lemich and G.L. insofar as the claims which Cerberus and NNH had brought against G.L. by their Complaint. (1 AA, 84) James Shields Beasley, however,

continued to represent G.L. in connection with the counterclaim which G.L. had brought against NNH[3]. On August 5, 2016, Cerberus and NNH agreed to dismiss with prejudice the Complaint which they had filed against Gordon Lemich and G.L. for Negligence, Negligent Misrepresentation, Intentional Misrepresentation, Intentional Damage to Property, Breach of Contract, and Quantum Meruit. (1 AA, 87:23–88:5) As a result, on August 8, 2016, it was only NNH's complaint for

---

[3] Respondent G.L. respectfully disagrees with NNH's characterization of James Shields Beasley's involvement in the underlying litigation, i.e., that he "had little involvement with the case after May 21, 2014" and that "[v]irtually nothing was done with regard to GL Construction's counterclaims and Mr. Beasley was for the most part absent from the case until shortly before trial." (AOB, pages 4-4) – a position which is borne out by an examination of the billing records which G.L. submitted in support of its motion for fees. (2 AA, 312-321) James Shields Beasley did not interfere with John Boyden's defense of Gordon Lemich and G.L. against the claims of Cerberus and NNH, nor did he waste his client's time and money by inserting himself unnecessarily in the parties' discovery process. This, however, is not to say that James Shields Beasley was not involved in the prosecution of G.L.'s counterclaim against NNH during this entire period. Because the ultimate success of G.L.'s counterclaim against NNH for breach of contract depended upon John Boyden's success in defending against the trespass claim which NNH brought against G.L. and defeating the affirmative defense of offset which NNH had raised in opposition to G.L.'s breach of contract claim, it was necessary for G.L.'s counsel to constantly monitor both NNH's prosecution of its trespass claim, as well as John Boyden's defense to that claim. (*See*, 2 AA, 264: 17–266: 19)

trespass and injunctive relief against Gordon Lemich and G.L. that went to trial. The Counterclaim which G.L. had brought against NNH for breach of contract was bifurcated from NNH's Complaint. (1 AA 89-93) It was agreed that, upon the conclusion of NNH's trial against Gordon Lemich and G.L. for the damages caused by their alleged trespass, the trial of G.L.'s breach of contract claim would begin immediately. However, four days into the trial of NNH's complaint against Gordon Lemich and G.L., without any notification given to James Shields Beasley, and without any participation on the part of James Shields Beasley in the negotiations leading up to the parties' settlement of NNH's claims[4], the parties decided to settle

---

[4] At page 5 of NNH's Opening Brief, NNH has made a bald-faced misrepresentation which is without any factual support. NNH has represented:

> ". . . Efforts were made to reach a full and global resolution of the claims and counterclaims, but Mr. Beasley demanded approximately $70,000 out of the settlement money for his alleged attorney's fees and costs to settle the counterclaims. Thus, no settlement could be reached regarding the counterclaims . . ."

As noted *supra*, it was only after the parties had agreed to a settlement of NNH's claims against Gordon Lemich and G.L. that James Shields Beasley was informed that a settlement had been reached. At no time has James Shields Beasley ever

NNH's claims for a payment to NNH in the sum of $362,500.00. No attempt was made to allocate responsibility or liability between Gordon Lemich and G.L. for this payment. Subsequently, on September 16, 2016, counsel for plaintiff NNH and counsel for defendants Gordon Lemich and G.L. entered into a stipulation for entry of an Order for the dismissal of NNH's claims against Gordon Lemich and G.L. Based upon this Stipulation, the district court entered its Order, stating:

> "Pursuant to the stipulation of the parties hereto, and good cause appearing, IT IS HEREBY ORDERED that the Claims of Northern Nevada Homes, LLC, are dismissed with prejudice. As to these causes of action only each party shall bear its own attorney fees and costs."
>
> (Emphasis added.) (1 AA, 239:16-12)

After the settlement of NNH's claims against Gordon Lemich and G.L., G.L.

---

had any type of communication with NNH's counsel in which he demanded any money out of settlement proceeds, much less the approximate sum of $70,000.

immediately commenced a bench trial of its Counterclaim for breach of contract. At the conclusion of that bench trial, Judge Lidia S. Stiglich awarded the full sum which G.L. was requesting by way of its Counterclaim. (1 AA, 240). Immediately thereafter, G.L. moved for an award of attorney fees in the amount of $67,595.00 and costs in the amount of $2,497.33. (2 AA, 252 and 262) On December 1, 2016, the district court entered its Order, awarding G.L. attorney fees in the sum of $10,000.00, saying:

> "Having reviewed the pleadings, the court determines, that for the purpose of attorney fees, G L Construction was a prevailing party with respect to its counterclaim. In this, the court notes that the facts underlying the counterclaim were largely unrelated to the claims asserted by Cerberus and Northern Nevada Homes. Thus, under NRCP 13, GL Construction would have been free to bring this claim in an

unrelated action. Further, had GL Construction chosen to litigate its claim separately, it would have clearly been a prevailing party under NRS 18.010(2). Therefore, the court finds an award of fees and costs to be warranted." (3 AA, 515:9-17)

III

NEVADA HAS NO "NET MONETARY RECOVERY" RULE

In Nevada, there is **NO** such thing as a "net monetary recovery" rule. While Nevada does recognize that a court can look at multiple claims which have been brought on behalf of and against a party to an action – some of which the party has successfully pursued to judgment, and others where judgment has been rendered against the party– and then "net" those judgments to determine whether a party is a "prevailing party" within the meaning of NRS 18.010(2)(a) (*See,* Robert J. Gordon Constr. v. Meredith Steel (1975) 91 Nev. 434, 537 P.2d 1199;

Peterson v. Freeman (1970) 86 Nev. 850, 477 P.2d 876.), there is **NO** statutory or case authority in Nevada which gives a trial court the right, when considering whether a party is a "prevailing party" within the meaning of NRS 18.010(2)(a), to reduce the amount of a judgment which a party has been awarded in an action by a monetary recovery which an opposing party has obtained through a settlement which has not been reduced to a judgment. Similarly, while Nevada recognizes that awards made for claims which parties have asserted against each other in consolidated actions may be "netted" for the purpose of determining which party is a "prevailing party" within the meaning of NRS 18.010[5], there is **NO** statutory

---

[5] This is the holding of Parodi v. Budetti (1999) 115 Nev. 236, 241, 984 P.2d 172, where the Nevada Supreme Court held that

> "[I]n cases where separate and distinct suits have been consolidated into one action, the trial court must offset all awards of monetary damages to determine which side is the prevailing party and whether or not the total net damages exceed the $20,000 threshhold. The trial court would then award costs to the prevailing party pursuant to NRS 18.020 and proceed with the discretionary analysis under NRS 18.010(1)(a) to determine if attorney's fees are warranted."

or case authority in Nevada which would permit a trial court to reduce a judgment which has been awarded to a party claiming the status of a "prevailing party" by a monetary recovery which an opposing party has received through a settlement where that settlement has not been reduced to a judgment in that same action. By advancing a contrary argument, NNH is in effect maintaining that it must be considered the "prevailing party" in this action because it settled its negligent trespass claim against Gordon Lemich and G.L. for the sum of $362,500.00. NNH's argument must be soundly rejected because it is well established in Nevada that "a party to an action cannot be considered a prevailing party within the contemplation of NRS 18.010 where the action has not 'proceeded to judgment.'" Works v. Kuhn (1987) 103 Nev. 65, 68, 732 P.2d 1373; *see also*, Sun Realty v. District Court (1975) 91 Nev. 774, 542 P.2d 1072; County of Clark v. Blanchard Construction Co. (1982) 98 Nev. 488, 492, 653 P.2d 1217. Nevada has **NOT**

adopted a "net monetary recovery" rule for determining whether a party is a prevailing party under NRS 18.010(2)(a). Instead, Nevada has adopted a "net judgment" rule which does not permit a trial court, when considering whether a party is a prevailing party under NRS 18.010(2)(a) for the purpose of an attorney fee award, to reduce the party's judgment by a monetary settlement which an opposing party has received, but which has not been reduced to a judgment.

IV

IF CALIFORNIA'S "NET MONETARY RECOVERY" RULE APPLIES, G.L. IS STILL THE PREVAILING PARTY BECAUSE NNH CANNOT SHOW WHAT PART OF ITS MONETARY RECOVERY IS DUE TO THE SETTLEMENT OF ITS CLAIM AGAINST GORDON LEMICH AND WHAT PART OF ITS MONETARY RECOVERY IS DUE TO THE SETTLEMENT OF ITS CLAIM AGAINST G.L.

NNH asserted trespass claims against G.L. by its complaint; and G.L. brought a breach of contract claim against NNH. Thus, if NNH had actually recovered a judgment of $362,500.00 against G.L., there would be no question as to who would be the "prevailing party" in this litigation. The "prevailing party"

would most certainly have been NNH because NNH's judgment against G.L. for $362,500.00 would be greater than G.L.'s judgment against NNH for $7,811.00. This, however, is not the situation which confronts this Court in the present case because NNH has never been awarded a judgment against G.L. NNH has only received a monetary recovery against Gordon Lemich and G.L. through a settlement agreement which made no attempt whatsoever to allocate responsibility for NNH's trespass damages between these two defendants.

A. The cases which NNH has cited in support of a "Net Monetary Recovery" Rule, to wit: *DeSaulles*, *Daisy Manufacturing* and *Maher*, have no application to the instant case.

Before addressing the issue of whether this Court's application of California's "net monetary recovery" rule would mandate a finding that G.L. was not the "prevailing party" in this litigation, G.L. would like to first explain why a "net monetary recovery" rule has no place in Nevada law. NNH has cited three cases in support of its argument that this Court should consider the $362,500.00

which it received from Gordon Lemich and G.L. in settlement of its trespass claim in deciding whether G.L. is a prevailing party within the meaning of NRS 18.010(2)(a). (AOB, page 13) The cited cases are DeSaulles v. Community Hospital of Monterey (2016) 62 Cal.4th 1140, 370 P.3d 996, Daisy Manufacturing Co., Inc. v. Paintball Sports, Inc.(2000) 999 P.2d 914, and Maher v. Gagne (1980) 448 U.S. 122. Neither of these cases supports NNH's argument that this Court can or should apply a "net monetary recovery" analysis in addressing the issue of whether G.L. is a prevailing party under NRS 18.010(2)(a).

DeSaulles v. Community Hospital of Monterey

In *DeSaulles*, the California Supreme Court undoubtedly employed a "net monetary recovery" analysis in arriving at its conclusion that a plaintiff who had voluntarily dismissed her action after entering into a monetary settlement with the defendant hospital was the prevailing party under California Code of Civil

Procedure § 1032(a)(4). Although the plaintiff in that case had voluntarily dismissed her complaint against the defendant hospital, the California Supreme Court emphasized the fact that the defendant had paid the plaintiff in order to settle the plaintiff's claim and concluded that the dismissal of plaintiff's claims could not considered as a dismissal in the hospital's favor. In coming to this conclusion, the California Supreme Court overruled a prior decision of the California Court of Appeal, i.e., Chinn v. KMR Property Management (2008) 166 Cal.App.4th 175, 82 Cal.Rptr3d 586, which had held that a defendant is the prevailing party under CCP § 1032(a)(4) where a settlement results in the dismissal of a plaintiff's claim. The *DeSaulles* decision has no relevance to the issue before this Court because the California Supreme Court reached its decision, applying a "net monetary recovery" analysis, based upon the express language of a California statute. CCP § 1032(a)(4) specifically defined a "prevailing party" to

include the party with a net monetary recovery, hence, the origin of the "net monetary recovery" rule. Notably, neither California statutory or case law limited the definition of a prevailing party to a party who had actually obtained a judgment in his or her favor. It is for this reason that California courts, in applying CCP § 1032(a)(4) to a given set of facts, could consider a monetary recovery which a party had obtained by a settlement in analyzing the question of whether such a party was a prevailing party for the purpose of a fee award. This, however, is not the situation in Nevada.

Nevada does not have a statute which authorizes a trial court, when considering an award of attorney fees under NRS 18.010(2)(a), to offset the amount of one party's judgment by a monetary settlement which an opposing party has received, but which has not been reduced to a judgment. To the contrary, Nevada's case and statutory law specifically requires that a party must obtain a

judgment on, not just a settlement of, the party's claim before such a party can be considered to be a prevailing party under NRS 18.010(a)(2).

Daisy Manufacturing Co. v. Paintball Sports, Inc.

So too, the case of Daisy Manufacturing Co. v. Paintball Sports, Inc., *supra*, 134 Idaho 259, 999 P.2d 914, provides no support for NNH's argument. In that case, the Idaho appellate court held that a defendant was the prevailing party where the plaintiff had voluntarily dismissed with prejudice its complaint after finding out that it had sued the wrong party[6]. Again, the decision in *Daisy Manufacturing* was based upon specific language found in an Idaho statute. Idaho Rule of Civil Procedure 54(d)(1)(B) read in pertinent part:

> "In determining which party to an action is a prevailing party and entitled to costs, the trial court shall in its sound discretion

---

[6] During discovery, the plaintiff (Daisy Manufacturing) learned that it was not the defendant (Paintball Sports) which had made the open account purchases for which Daisy had sought collection.

consider the final judgment or result of the action in relation to the relief sought by the respective parties, whether there were multiple claims, multiple issues, counter-claims, third party claims, cross-claims, or other multiple or cross issues between the parties, and the extent to which each party prevailed upon each such issues or claim . . ." (Emphasis added.)

Because there was only one claim that was raised by plaintiff's (Daisy Manufacturing) complaint, and that one claim was voluntarily dismissed with prejudice by plaintiff after defendant (Paintball Sports) had brought to plaintiff's attention that it had sued the wrong entity, the Idaho appellate court concluded, as a matter of law, that defendant was the prevailing party because the " 'result obtained' in this case was a dismissal of Daisy's action with prejudice, the most favorable outcome that could possibly be achieved by Paintball as defendant." (At

p. 917) Contrary to NNH's argument (*See*, AOB, 10), the appellate court in *Daisy Manufacturing* did not apply the net recovery rule and it did not hold that "recovery may be the product of a court judgment or a settlement reached by the parties." In fact, a "net monetary recovery" rule played no part whatsoever in the Idaho appellate court's decision.

Maher v. Gagne

And finally, the United States Supreme Court case of Maher v. Gagne (1980) 448 U.S. 122, fails to support NNH's argument that a Nevada trial court, when deciding whether a plaintiff is a prevailing party under NRS 18.010(2)(a), may reduce any judgment rendered in favor of the plaintiff by a monetary recovery which such a defendant has obtained through a settlement which has not been reduced to a judgment. In *Maher*, respondent was a working recipient of AFDC benefits who commenced an action against the Commissioner of Income

Maintenance of Connecticut (Maher). In her complaint, respondent alleged that Connecticut's AFDC regulations denied her credit for substantial portions of her actual work-related expenses, thereby reducing the level of her benefits. After the action was filed in the District Court, a settlement was negotiated and the District Court entered a consent decree which, among other things provided for a substantial increase in the standard allowances and gave ADFC recipients the right to prove that their actual work-related expenses were in excess of the standard. The parties then informally agreed that the question of whether respondent was entitled to recover attorney fees would be submitted to the District Court after the entry of the consent decree. Following an adversary hearing on respondent's right to an award of fees, the District Court found that the respondent was the "prevailing party" within the meaning of § 1988 because, while not prevailing "in every particular," she had won "substantially all of the relief sought in her

complaint" in the consent decree. In affirming this judgment, the United States Supreme Court observed:

> "The fact that respondent prevailed through a settlement rather than through litigation does not weaken her claim to fees. Nothing in the language of § 1988 conditions the District Court's power to award fees on full litigation of the issues or on a judicial determination that the plaintiff's rights have been violated. Moreover, the Senate Report expressly stated that 'for purposes of the award of counsel fees, parties may be considered to have prevailed when they vindicate rights through a consent judgment or without formally obtaining relief.' S. Rep. No. 94-1011, p.5 (1976)."

From the foregoing, it should be clear why *Maher* has no application to the instant case. Just as was the case in *DeSaulles* and *Daisy Manufacturing*, there

was a specific statute in *Maher* which vested in the District Court the authority to do what it did. In *DeSaulles*, because CCP § 1032(a)(4) expressly defined a prevailing party to include a party who had obtained a "net monetary recovery" and did not require the entry of a judgment, the California Supreme Court held that a plaintiff who had settled her claim against a defendant for a monetary sum in return for the dismissal of her complaint was a prevailing party under that statute. In *Daisy Manufacturing*, because Idaho Code of Civil Procedure 54(d)(1)(B) instructed the trial court to look to the final judgment or the *result of the action in relation to the relief sought by the respective parties* in determining whether a party is the prevailing party, the Idaho appellate court concluded that a defendant who had obtained the dismissal of a plaintiff's complaint was the prevailing party because the defendant was the only party which had obtained any benefit from the dismissal of the plaintiff's complaint. In *Maher*, because there was no language

in § 1988 which restricted a district court's authority to award attorney fees to those instances in which there had been full litigation of the issues or a judicial determination that the plaintiff's rights had been violated, the District Court could make an award of attorney fees to a party who has achieved what the party sought to achieve by the action through a settlement agreement. Here, though, in this case, there is a statute and case law which specifically requires that, in order for a party to be considered a prevailing party for the purpose of an award of fees under NRS 18.010(2)(a), the party's status as a prevailing party must be founded in a judgment entered by the trial court. *See*, Works v. Kuhn, *supra,* 103 Nev. 65, 68, 732 P.2d 1373; Sun Realty v. District Court, *supra*, 91 Nev. 774, 542 P.2d 1072; and County of Clark v. Blanchard Construction Co., *supra*, 98 Nev. 488, 492, 653 P.2d 1217. Inasmuch as NNH has never obtained a judgment for any amount of money in the district court, NNH cannot be considered the prevailing party; and

any monetary recovery received by NNH through its settlement with Gordon Lemich and G.L. cannot be utilized to reduce the amount of the only judgment which has been entered by the district court – that Judgment which this Court entered in favor of G.L. and against NNH for the sum of $7,811.00.

B. Assuming that this Court were to employ a "net monetary recovery" analysis, G.L. would still be the "prevailing party" because NNH cannot show what, if any, portion of its settlement, was paid by G.L.

Throughout litigation in the district court, G.L. consistently maintained that G.L. and Gordon Lemich were completely separate and distinct legal entities. Gordon Lemich was not the owner of G.L.; and G.L. was never found to be the alter ego of Gordon Lemich. Based upon this legal distinction, G.L. defended NNH's trespass claims and pursued its own counterclaim for breach of contract. In doing so, G.L. always acknowledged that it had dumped dirt onto the property of TMWA and the property owned by NNH's predecessors-in-interest prior to the

end of 2008. But, G.L. specifically denied that it had ever dumped dirt either onto TMWA's property, or onto the property of NNH and NNH's predecessors-in-interest after the end of 2008. This legal position which G.L. consistently maintained in the underlying litigation was reflected in Defendant GL Construction, Inc.'s Responses to Northern Nevada Homes, LLC's Second Set of Requests for Admission, served on February 16, 2016. (3 AA, 503–509)[7].

NNH has implied in its Opening Brief that it obtained a judgment for a monetary amount when the district court granted NNH's motion under NRCP 50(a) for a directed verdict at the close of defendants' case. NNH states that its "claims were settled for $362,500.00 on the fourth day of trial after the Court

---

[7] After G.L. admitted in its Responses to NNH's Requests for Admission that it had unknowingly dumped dirt onto the property owned by NNH's predecessors-in-interest during the period 2003 through 2008 (3 AA, 504:2 - 505:20) , G.L. expressly denied that it had ever dumped dirt or other material onto the property of NNH or that of NNH's predecessors-in-interest during the period 2009 through 2013. (3 AA, 504:16–505:20) G.L. also expressly denied that it had "filled" and/or otherwise moved any dirt around on the property now owned by NNH during the period 2010 through 2013. (3 AA, 505:21– 507:18)

granted judgment as a matter of law in favor of NNH." (*See*, AOB, page 5) However, in granting NNH's motion for a directed verdict on the issue of Gordon Lemich's and G.L.'s liability for committing a negligent trespass, this Court did not award any money to NNH against either Gordon Lemich or G.L. True, in resolving NNH's NRCP 50(a) motion at the close of defendants' case, this Court entered a judgment "as a matter of law." That judgment, though, was not one for a monetary amount. Instead, by its judgment, this Court merely held that neither Gordon Lemich nor G.L. Construction, Inc., had a viable defense to NNH's claim that Gordon Lemich and G.L. had negligently trespassed onto NNH's property, i.e., G.L. with respect to the period prior to the end of 2008, and Gordon Lemich with respect to the year 2010 and thereafter. The district court's judgment, however, did not purport to address the amount of those damages, if any, which NNH had suffered as a result of Gordon Lemich's negligent trespass, and more

importantly, the amount of those damages which NNH had allegedly suffered as a result of G.L.'s negligent trespass prior to the end of 2008. It still remained for the jury to decide what, if any, damages were caused by Gordon Lemich's negligent trespass, as well as what damages, if any, were caused by G.L.'s negligent trespass. Moreover, it still remained for the jury to decide whether the trespass claims which NNH's predecessors-in-interest had held on account of the dirt which G.L. had unknowingly dumped onto the property prior to the end of 2008 were barred by NRS 11.220 because of their actual or constructive knowledge that a trespass had occurred.

It is because of the above-mentioned unanswered questions that NNH's reliance upon California's "net monetary recovery" rule is misplaced. Even if this Court were to apply California's "net monetary recovery" analysis, such an analysis would require this Court to take into account the monetary recovery

which NNH had actually obtained against G.L. through a settlement, rather than by a judgment. It is at this juncture that California's "net monetary recovery" analysis would totally break down. Here, it is not possible for this Court to conclude that NNH obtained any monetary recovery from G.L., as opposed to Gordon Lemich, inasmuch as the settlement which was entered into between NNH on the one hand, and Gordon Lemich and G.L. on the other, made no attempt to allocate responsibility for NNH's claimed trespass damages between the two defendants. Given the fact that an issue still remained as to whether and to what extent G.L., as opposed to Gordon Lemich, moved or dumped any dirt onto the property now owned by NNH after the end of 2008, it would amount to pure speculation and conjecture on this Court's part if it were to allocate any portion of the $362,500.00 settlement as a recovery coming from G.L.

CONCLUSION

Based upon the foregoing argument, G.L. Construction, Inc., requests that this Honorable Court affirm the district court's award of attorney fees and costs.

DATED this 5th day of June, 2017.

LAW OFFICE OF JAMES SHIELDS BEASLEY
Attorney for Respondent G.L. Construction, Inc.
435 Court Street
P.O. Box 2936
Reno, Nevada 89501
(775) 329-6852
Email: jimbeasleyesq@gmail.com

/s/ James Shields Beasley
JAMES SHIELDS BEASLEY (Bar No. 1733)

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced type using Word Perfect X5, with the use of Times New Roman typeface at 14 point font.

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

[ ] Proportionately spaced, has a typeface of 14 points or more and contains _____ words; or

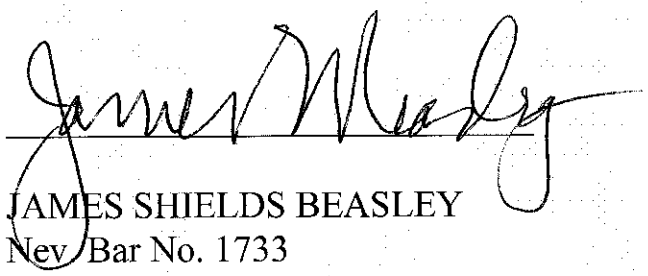
[ ] Monospaced, has 10.5 or fewer characters per inch, and contains _____ words or _____ lines of text; or

[X] 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 also 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 5th day of June, 2016.



JAMES SHIELDS BEASLEY
Nev Bar No. 1733
435 Court Street, P.O. Box 2936
Reno, Nevada 89505
(775) 329-6852

CERTIFICATE OF SERVICE

I certify that I am an employee of the Law Office of James Shields Beasley, and that on this date, pursuant to NRCP 5(b) and NRAP 25, I personally delivered a true and correct copy of the following document:

RESPONDENT'S ANSWERING BRIEF

in the case of "Northern Nevada Homes, LLC., Appellant, vs. G.L. Construction, Inc., Respondent," Supreme Court Case No.71899 to :

Christopher Rusby
Rusby Law, PLLC
36 Stewart Street
Reno, Nevada 89501

DATED this 5th day of June, 2017.

Charles Beasley

Charles Beasley