

IN THE SUPREME COURT OF THE STATE OF NEVADA

PARDEE HOMES OF NEVADA, INC.,

Appellant,

vs.

JAMES WOLFRAM; ANGELA L.  
LIMBOCKER-WILKES, AS TRUSTEE  
OF THE WALTER D. WILKES AND  
ANGELA L. LIMBOCKER-WILKES  
LIVING TRUST, A NEVADA TRUST;  
AND WALTER D. WILKES AND  
ANGELA L. LIMBOCKER-WILKES  
LIVING TRUST, A NEVADA TRUST,

Respondents.

Case No.: 72371

Electronically Filed  
Eighth Judicial District Court  
Jun 13 2018 03:25 p.m.  
Case No.: A-10-612338-G  
Elizabeth A. Brown  
Clerk of Supreme Court

**APPELLANT PARDEE HOMES  
OF NEVADA’S REPLY IN  
SUPPORT OF MOTION FOR  
PERMISSION TO FILE REPLY  
BRIEF EXCEEDING PAGE AND  
TYPE-VOLUME LIMITS**

**Argument**

In footnote 7 of their Response to Pardee’s Motion, Wolfram and Wilkes concede that they do not “outright oppose” Pardee’s Motion because “both sides should be appropriately heard on this appeal.” *See* Respondents’ Response to Appellant Pardee Homes of Nevada’s Motion for Permission to File Reply Brief Exceeding Page and Type-Volume Limits (the “Response”) at p. 4, fn. 7. Because Wolfram and Wilkes do not oppose Pardee’s Motion, they concede it has merit. *See, e.g., Nye County v. Washoe Medical Ctr., Inc.*, 108 Nev. 896, 900, 839 P.3d 1312, 1315 (1992) (interpreting district court rule stating “[f]ailure of the opposing party to serve and file his written opposition may be construed as an admission that the

motion is meritorious and a consent to granting the same.”); *see also McConnell v. State*, 120 Nev. 1043, 1062, 102 P.3d 606, 620 (2004) (failure to address an opposing party’s argument may be concession the argument has merit). Therefore, the Court may grant Pardee’s Motion.

Nevertheless, despite not opposing Pardee’s Motion, Wolfram and Wilkes try to turn NRAP 32’s standard on its head by claiming the motion fails to adequately detail why good cause exists for exceeding the page and type-volume limits established by NRAP 32. *See* Response at p. 5. Specifically, they suggest Pardee was required to identify with “particularity” each statement in Wolfram and Wilkes’ answering brief that required correction in Pardee’s reply brief. *See id.*

But this argument is circular. If Pardee included in the Motion every point of correction necessary to Wolfram and Wilkes’ answering brief, then the Motion itself would exceed the 10-page limit in Rule 27. *See* NRAP 27(d)(2). NRAP 32(a)(7)(D) requires a showing of good cause and diligence. It does not require “particularity” as Wolfram and Wilkes contest. Indeed, the legal citation Wolfram and Wilkes use to graft a “particularity” requirement onto NRAP 32 comes from the federal district court for the Northern District of California, not from this Court. The illogic is apparent.

Here, Pardee’s Motion satisfies NRAP 32’s requirements of showing good cause and diligence. Wolfram and Wilkes do not challenge Pardee’s showing of diligence in crafting the reply brief. *See generally* Response. And the Motion

indicates good cause for exceeding the page and type-volume limits because of the substantial record below, the inaccurate references in Wolfram and Wilkes' answering brief, and the complexity of this case. All of these require a complete and thorough response from Pardee, and any of them is sufficient to establish good cause. Finally, Pardee explained that it was mindful of the Court's time and resources and accordingly filed an opening brief well below the page and type-volume limits. *See* Motion at fn. 2. Thus, even with the reply brief at its current length, Pardee remains well below the prescribed page and type-volume limits afforded to appellants in ordinary appeals.

In sum, although this case involves the straightforward application of existing law regarding attorney's fees as special damages and contractual interpretation of prevailing party provisions, the record below was substantial. Because Pardee takes seriously its duty to provide the Court with thorough briefing in this adversarial process, and because Wolfram and Wilkes concede that both parties should be appropriately heard on this appeal, Pardee respectfully requests that the Court grant its Motion.

## **AFFIRMATION**

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

DATED this 13th day of June, 2018.

McDONALD CARANO LLP

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## **CERTIFICATE OF COMPLIANCE**

I hereby certify that this reply complies with the formatting, typeface, and type-style requirements in NRAP 27 and 32 because this reply has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point font, Times New Roman style. I further certify that this reply complies with the page and type-volume limitations of NRAP 27 and 32 because it contains 542 words and is 3 pages long.

I hereby certify that I have read this reply, 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 reply complies with all applicable Nevada Rules of Appellate Procedure, and I understand that I may be subject to sanctions if this reply is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 13th of June, 2018.

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**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of McDonald Carano LLP, and on the 13th day of June, 2018, a true and correct copy of the foregoing document was e-filed and e-served on all registered parties to the Supreme Court's electronic filing system:

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