

IN THE SUPREME COURT OF THE STATE OF NEVADA

PARDEE HOMES OF NEVADA,

Appellant,

vs.

JAMES WOLFRAM; ANGELA L. LIMBOCKER-WILKES as trustee of the WALTER D. WILKES AND ANGELA L. LIMBOCKER-WILKES LIVING TRUST; and the WALTER D. WILKES AND ANGELA L. LIMBOCKER-WILKES LIVING TRUST,

Respondents.

Case No.: 72371

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Eighth Judicial District
Case No.: A-10-632338-C

**RESPONDENTS' SECOND
NOTICE OF SUPPLEMENTAL
AUTHORITIES**

COME NOW, Respondents, JAMES WOLFRAM, ANGELA L. LIMBOCKER-WILKES as trustee of the WALTER D. WILKES AND ANGELA L. LIMBOCKER-WILKES LIVING TRUST, and the WALTER D. WILKES AND ANGELA L. LIMBOCKER-WILKES LIVING TRUST (collectively, "Respondents" or "Wolfram and Wilkes"), by and through their counsel of record, James J. Jimmerson, Esq. and James M. Jimmerson, Esq., of The Jimmerson Law Firm, P.C., and, pursuant to NRAP 31(e), hereby provide this Second Notice of Supplemental Authorities.

I. LEGAL AUTHORITY FOR NOTICE

Under Nevada Rule of Appellate Procedure 31(e):

When pertinent and significant authorities come to a party's attention after the party's brief has been filed, but before a decision, a party may promptly advise the Supreme Court by filing and serving a notice of supplemental authorities, setting forth the citations. The notice shall provide references to the page(s) of the brief that is being supplemented. The notice shall further state concisely without legal argument the legal proposition for which each supplemental authority is cited. The notice may not raise any new points or issues. Any response must be similarly limited.

Id.

II. SUPPLEMENTAL AUTHORITIES

The following supplemental authority is intended to supplement the authorities cited and provide additional support for the positions asserted in Wolfram and Wilkes' Answering Brief:

1. *Summa Corp. v. Greenspun*, 96 Nev. 247, 255-57, 607 P.2d 569, 574-75 (1980).

This decision in *Summa Corp.* supplements Wolfram and Wilkes' Answering Brief at page 57, and is cited in further support of the legal proposition that "the availability of attorney's fees as damages is not extinguished simply because [Wolfram and Wilkes] have a breach of

contract claim.” Respondents’ Answering Brief at 57. As stated by this Court in *Summa Corp.*:

The court found that attorneys’ fees in the amount of \$53,204.61 were incurred by Greenspun for legal representation in this case and awarded them judgment for that sum...

The judgment in this case is based squarely upon findings that there was an oral rescission agreement and that Summa breached its obligation under that agreement to cancel and return the deed of trust. The court then specifically enforced the agreement by ordering expungement and return of the deed of trust. We are compelled to conclude that this action was for the breach of an obligation arising from contract...

The judgment below is affirmed in all respects, except as to the award of punitive damages...

Id., 96 Nev. at 255-57.¹

¹ This decision is pertinent and significant, warranting this Notice of Supplemental Authorities under NRAP 31(e). This Court in *Sandy Valley Associates v. Sky Ranch Estates Owners Ass’n*, 117 Nev. 948, 958, 35 P.3d 964, 970 (2001) examined in detail the validity of *Summa Corp.* as precedent for an award of attorney’s fees as damages, stating, “[i]n *Summa Corp.*, Summa was sued for slander of title and breach of contract. A judgment was entered against Summa that included an award of attorney fees as damages even though no claim for damages was contained in the complaint. This court affirmed the award of attorney fees as damages...”. *Id.* This Court continued, “[t]he following cases involved issues relating to attorney fees as an element of damage. Any language in these cases that suggests attorney fees were considered pursuant to a rule, statute or agreement is disapproved... *Summa Corp. v. Greenspun*, 96 Nev. 247, 607 P.2d 569 (1980)...” *Id.*, 117 Nev. at 955 n. 7, clarified in *Horgan v. Felton*, 123 Nev. 577, 585-86, 170 P.3d 982,

Wolfram and Wilkes respectfully submit this Second Notice of Supplemental Authorities for the Court's consideration.

Dated this 15th day of January, 2019.

THE JIMMERSON LAW FIRM, P.C.

By: /s/ James M. Jimmerson, Esq.
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987-88 (2007) (holding that attorney's fees as special damages not available in real property actions to quiet title, but instead for claims for slander of title, stating, "attorney fees are permissible as special damages in slander of title actions because the defendant by intentional and calculated action leaves the plaintiff with only one course of action: that is, litigation. Fairness requires the plaintiff to have some recourse against the intentional malicious acts of the defendant.") (citation omitted).

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of The Jimmerson Law Firm, P.C., and on the 15th day of January, 2019, 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:

/s/ James M. Jimmerson, Esq.
An employee of The Jimmerson Law Firm