

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 APCO CONSTRUCTION, INC., A
3 NEVADA CORPORATION,

4 Appellant,

5 vs.

6 ZITTING BROTHERS CONSTRUCTION,
7 INC.,

8 Respondent.

Case No. 75197

District Court Case No. A571228

Electronically Filed
Apr 03 2018 09:10 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

DOCKETING STATEMENT

9 **1. District Court:**

10 Eighth Judicial District Court, Department XIII, Clark County, Judge Mark
11 Denton, District Court Case No. A571228.

12 **2. Attorney Filing this Docket Statement:**

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*Attorneys for Respondent
Zitting Brothers Construction, Inc.*

4. Nature of Disposition (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input checked="" 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) |

The district court granted Zitting Brothers Construction, Inc.'s ("Zitting") July 21, 2017 Partial Motion for Summary Judgment Against APCO Construction, Inc. ("APCO") which gave Zitting all of the relief it requested for all of its claims. As such, the Court's December 29, 2017 order granting Zitting's Partial Motion for Summary Judgment determined that Zitting's other claims were moot.

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
☐ Venue
☐ Termination of parental rights
☒ Not applicable

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:

The case has previously been the subject of three writ proceedings, as summarized below.

Case No.	Short Caption	Date Filed	Type-Subtype
61131	<i>APCO Construction, Inc.</i> <i>v. Dist. Ct. (Scott Finical)</i>	06/25/2012	Civil - Mandamus/ Prohibition
57784	<i>Club Vista Financial</i> <i>Services v. Dist. Ct.</i> (Scott Finical)	02/17/2011	Civil - Mandamus/ Prohibition
57641	<i>Club Vista Financial</i> <i>Services vs. Dist. Ct.</i> (Scott Finical Corp.).	01/28/2011	Civil - Mandamus/ Prohibition

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:

The docket for the district court case is attached as **Exhibit A**. This matter was consolidated with the following cases in the Eighth Judicial District Court: A571228, A574391, A574792, A577623, A579963, A580889, A583289, A584730, A587168, A589195, A589677, A590319, A592826, A596924, A597089, A606730, A608717, A608718. The district court case involved more than 90 parties. Please see Section 22(a), *infra*, for a list of all parties. The claims

1 of all parties can generally be described as claims related to payment of either
2 labor or materials provided to the Project. The district court action was initiated in
3 2008 during the economic recession, endured three appeals, and lasted
4 approximately ten years. As such, on September 5, 2017, there was a calendar call
5 on the claims of the remaining parties in the case.¹ During the calendar call,
6 APCO, Zitting, and other parties orally moved to dismiss those parties that had not
7 filed their pre-trial disclosures.² The Court set the final pre-trial disclosure date for
8 Friday, September 8, 2017.³ The Court set a follow-up hearing on the matter for
9 September 11, 2017.⁴ At that hearing, and pursuant to the Court's order, the only
10 parties that remained in the litigation were:

- APCO Construction, Inc. (proceeded to trial against other parties and awaiting a decision from the trial court)
- Camco Pacific Construction, Co. (proceeded to trial against other parties and awaiting a decision from the trial court)
- Steel Structures, Inc. (the parties are awaiting a stipulated dismissal pursuant to a settlement agreement)
- Unitah Investments, LLC. (the parties are awaiting a stipulated dismissal pursuant to a settlement agreement)
- E&E Fire Protection, LLC (proceeded to trial against other parties and awaiting a decision from the trial court)
- SWPP Compliance Solutions, LLC (proceeded to trial against other parties and awaiting a decision from the trial court)
- Helix Electric of Nevada, Inc. (proceeded to trial against other parties and awaiting a decision from the trial court)
- Fast Glass, Inc. (proceeded to trial against other parties and awaiting a decision from the trial court)
- Buchele, Inc. (dismissed pursuant to January 16, 2018 court order for not participating)
- Zitting Brothers Construction, Inc. (judgment granted on January 2, 2018)
- Nevada Prefab Engineers, Inc. (the parties are awaiting a stipulated dismissal pursuant to a settlement agreement)
- Heinaman Contract Glazing, Inc. (proceeded to trial against other parties and awaiting a decision from the trial court)

19 ¹ See September 21, 2017 Notice of Entry of Order Granting Plaintiff's Oral Motion to Dismiss,
attached as **Exhibit B**.

20 ² *Id.*

21 ³ *Id.*

⁴ *Id.*

- Cactus Rose Construction, Inc. (proceeded to trial against other parties and awaiting a decision from the trial court)
- National Wood Products, Inc. (proceeded to trial against other parties and awaiting a decision from the trial court)
- United Subcontractors dba Sky Line Insulation (the parties are awaiting a stipulated dismissal pursuant to a settlement agreement), and
- Interstate Plumbing and Air Conditioning, LLC (February 5, 2018 stipulated dismissal).⁵

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

This action arises out of a construction project in Las Vegas, Nevada known as the Manhattan West Condominiums Project (“the Project”) in Clark County Nevada, (the “Property” or “Project”). Gemstone Development West, Inc. (“Gemstone”) was the owner of the Project that contracted with APCO to serve as the prime contractor. Gemstone and APCO entered into the Manhattan West General Construction Agreement (the “Agreement”) on or about September 6, 2007.

APCO entered into a subcontract with Zitting to provide wood framing services for the Project on April 17, 2007. Gemstone did not pay APCO for its June, July or August 2008 billings, and both APCO and Gemstone purported to terminate the Agreement in August 2008. Gemstone then hired a replacement general contractor, Camco Construction, Inc. (“Camco”). APCO ensured payment to Zitting through its August 2008 billings submitted to APCO before APCO left the Project. Zitting continued working on the Project for Camco and brought actions against APCO alleging non-payment of retention and change orders when the Project shutdown several months later. APCO believes the retention and change order payments never became due under the payment schedules in the subcontract. APCO also believes that it is not responsible for work completed under Camco’s direction.

Zitting alleged a breach of contract, NRS 108 foreclosure and related allegations

⁵ *Id.*

1 against APCO. APCO alleged affirmative defenses including failure to comply
2 with conditions precedent reflected in the subcontract's payment schedules. The
3 district court precluded APCO from asserting anything but a "pay-if-paid" defense
4 and ignored critical deposition testimony from Zitting's NRCP 30(b)(6) designee
5 that was obtained after the district court extended the discovery deadline. The
6 district court then granted Zitting summary judgment on the breach of contract and
NRS 108 foreclosure counts, awarding Zitting the full damages it sought against
APCO.

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

Issues on appeal include, but are not necessarily limited to:

9 **A.** Whether or not the district court erred in granting summary judgment to
10 Zitting when APCO presented genuine issues of material fact that were not
11 considered on numerous issues, including, but not limited to the following "facts"
12 the court found in its December 29, 2017 Findings of Fact and Conclusions of
Law:

13 12. Prior to the Project's shutdown, ZBCI submitted written
14 requests to APCO for change orders valued at \$423,654.85.
APCO did not provide written disapproval of those change
orders to ZBCI within 30 days of each request.

15 13. Also prior to the Project's shutdown, ZBCI had completed
16 its scope of work on Buildings 8 and 9 of the Project,
including work on the change orders, without any complaints
17 on the timing or quality of the work. ZBCI had submitted
close-out documents for its work, including release of claims
for ZBCI's vendors. The value of ZBCI's completed work
amounted to \$4,033,654.85.

18 14. At the time of the Project's shutdown, the drywall was
completed for Buildings 8 and 9.

19 15. To date, ZBCI had only received \$3,282,849.00 for its
20 work on the Project. ZBCI had completed work in the amount
of \$347,441.67 on the change orders and \$403,365.49 of the
Retention—totaling \$750,807.16— which remains unpaid.

1 ...
2 24. APCO does not dispute that ZBCI complied with all
3 requirements to create, perfect, and foreclose on its lien under
4 Chapter 108.

5 ...
6 29. On June 5, 2017, ZBCI deposed APCO's Nev. R. Civ. P.
7 30(b)(6) witness regarding APCO's affirmative defenses. At
8 the deposition, APCO's Nev. R. Civ. P. 30(b)(6) witness
9 declined to update APCO's interrogatory responses and re-
10 affirmed APCO's sole reliance on the enforceability of the
11 pay-if-paid provision to excuse payment.

12 30. On July 19, 2017, ZBCI deposed APCO's Nev. R. Civ. P.
13 30(b)(6) witness regarding topics pertaining to APCO's
14 accounting for the Project. At the deposition, APCO's Nev. R.
15 Civ. P. 30(b)(6) witness again declined to update APCO's
16 interrogatory responses.

17 31. APCO did not supplement its discovery responses prior to
18 the June 30, 2017 discovery cutoff.

19 32. On July 31, 2017 and after the close of discovery, ZBCI
20 moved for summary judgment against APCO on ZBCI's
21 breach of contract and Nev. Rev. Stat. 108 claim—setting
forth ZBCI's prima facie case for those claims and addressing
the enforceability of the pay-if-paid provision in the
Subcontract.

33. On August 21, 2017, APCO filed its opposition to ZBCI's
motion, arguing—for the first time—other grounds for
refusing payment of the amount owed to ZBCI. ZBCI
objected to the admissibility of the evidence in support of
APCO's opposition.⁶

24 The evidence APCO submitted to the district court refuted these factual allegations
25 and findings.

26 B. Whether the court erred in finding that APCO breached the contract,
27 including but not limited to :

- 28 a. Whether Zitting presented sufficient admissible evidence on all elements of
29 breach of contract,
- 30 b. Whether the language the court deemed a "pay if paid" provision was
31 against public policy;
- 32 c. Whether all of Zitting's change orders were approved by operation of law
33 and were attributable to APCO;
- 34 d. Whether compliance with a condition precedent only requires substantial

35 ⁶ See December 27, 2017 Findings of Fact and Conclusions of Law.

- 1 compliance;
- 2 e. Whether Zitting actually proved substantial compliance with all conditions
3 precedent; and
4 Whether the termination of the prime contract entitled Zitting to immediate
5 payment of unbilled retention and undocumented/disputed change order
6 invoices.
- 7 C. Whether the district court erred in finding APCO was liable for a deficiency
8 judgment under NRS 108 as it had no ownership interest in the property and never
9 guaranteed Gemstone's payment obligations?
- 10 D. Whether the district court erred in not considering key Zitting admissions
11 obtained during an extended discovery period ordered by the district court and
12 effectively precluding any defense besides a "pay if paid" defense, including:
- 13 a. Whether the language in the Subcontract was "pay-if-paid" language;
14 b. Whether the district court erred in concluding that owner payment
15 preconditions are void and against public policy when they do not contain a
16 waiver of a mechanic's lien;
17 c. Whether Zitting was adequately on notice of APCO's defenses besides pay-
18 if-paid defenses;
19 d. Whether APCO's defenses were actually disclosed late;
20 e. Whether APCO's disclosure was justified if the court determines that
21 APCO's disclosure was late;
f. Whether APCO's allegedly late defense disclosures prejudiced Zitting, and
g. Whether the district court erred in issuing case terminating sanctions
without completing the required analysis under *Young v. Johnny Ribeiro*
Bldg., 106 Nev. 88, 787 P.2d 777 (1990)?
- E. Whether the district court erred in concluding that the agreed upon subcontract
payment schedules were or included pay if paid provisions that were against public
policy?
10. **Pending proceedings in this court raising the same or similar issues.** If you are
aware of any proceeding presently pending before this court which raises the same
or similar issues raised in this appeal, list the case name and docket number and
identify the same or similar issues raised:
- Appellant is not aware of any proceedings presently pending before this court

1 which raise similar issues.

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

6 ☒ N/A

7 ☐ Yes

8 ☐ No

9 If not, explain: Not applicable.

10 **12. Other issues.** Does this appeal involve any of the following issues?

11 ☐ Reversal of well-settled Nevada precedent (identify the case(s))

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

13 ☒ A substantial issue of first-impression

14 ☒ An issue of public policy

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

17 ☐ A ballot question

18 If so, explain:

19 This Court has not addressed whether a general contractor can be personally liable
20 for a deficiency judgment under NRS 18.238 after an NRS 108 foreclosure of a
21 property that did not result in sufficient funds to satisfy all mechanics liens. The
Court has also not addressed whether payment preconditions are valid conditions
precedent to payments when not combine with a waiver of a mechanic's lien in a
published decision.⁷

Due process limitations are at issue with respect to the district court's imposition
of case ending sanction without completing the required analysis under *Young v.*

⁷ APCO Construction, Inc. believes that this Court has confirmed that payment preconditions are
valid preconditions to payment under a payment schedule in *Padilla Construction Company of
Nevada v. Big-D Construction, Corp.* 386 P.3d 982, 2016 Nev. Unpub. LEXIS 958.

1 *Johnny Ribeiro Bldg.*, 106 Nev. 88, 787 P.2d 777 (1990). These issues/matters are
2 present in this appeal.

3 ☐ N/A

4 **13. Assignment to the Court of Appeals or retention in the Supreme Court.**
5 Briefly set forth whether the matter is presumptively retained by the Supreme Court or
6 assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the
7 Rule under which the matter falls. If appellant believes that the Supreme Court should
8 retain the case despite its presumptive assignment to the Court of Appeals, identify the
9 specific issue(s) or circumstance(s) that warrant retaining the case, and include an
10 explanation of their importance or significance:

11 This matter is presumptively retained by the Supreme Court. NRAP 17(A)(14).

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

13 The action between Zitting and APCO did not proceed to trial given the district
14 court's granting of summary judgment. A trial involving the following parties: APCO
15 Construction, Inc., Camco Pacific Construction, Co., E&E Fire Protection, LLC, SWPP
16 Compliance Solutions, LLC, Helix Electric of Nevada, Inc., Fast Glass, Inc., Heinaman
17 Contract Glazing, Inc., Cactus Rose Construction, Inc., and National Wood Products, Inc.
18 proceeded to a 6 day trial.

19 **15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a
20 justice recuse him/herself from participation in this appeal? If so, which Justice?

21 Appellant does not intend to file a motion to disqualify or have a justice recuse
him/herself.

22 **TIMELINESS OF NOTICE OF APPEAL**

23 **16. Date of entry of written judgment or order appealed from**

24 APCO is appealing: (1) the Findings of Fact, Conclusions of Law, and Order
25 Granting Zitting Brothers Construction, Inc.'s Motion for Partial Summary Judgment

1 Against APCO Construction entered on December 27, 2017⁸ attached as **Exhibit C**, and
2 (2) the Order Denying APCO Construction, Inc.'s Motion for Reconsideration of Court's
3 Order Granting Zitting Brothers Construction, Inc.'s Partial Motion for Summary
4 Judgment entered on January 25, 2018, attached as **Exhibit D**.⁹

5 **Attach a copy. If more than one judgment or order is appealed from, attach**
6 **copies of each judgment or order from which appeal is taken.**

7 (a) If no written judgment or order was filed in the district court, explain the
8 basis for seeking appellate review:

9 Not applicable.

10 **17. Date written notice of entry of judgment or order was served**

- 11 1. Notice of Entry of Judgment for the Findings of Fact, Conclusions of Law,
12 and Order Granting Zitting Brothers Construction, Inc.'s Motion for Partial
13 Summary Judgment Against APCO Construction was entered on January 2,
14 2018, attached as **Exhibit E**.
- 15 2. Notice of Entry of Order Denying APCO Construction, Inc.'s Motion for
16 Reconsideration of Court's Order Granting Zitting Brothers Construction,
17 Inc.'s Partial Motion for Summary Judgment entered on January 31, 2018,
18 attached as **Exhibit F**.

19 Was service by:

20 ☐ Delivery ☐ Unknown ☒ Mail/Electronic/Fax: E-service

21 **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 _____

⁸ Notice of Entry of Order was on January 2, 2018.

⁹ Notice of Entry of Order was on January 31, 2018.

☐ NRCP 52(b) Date of filing _____

☒ NRCP 59 Date of filing: APCO filed a motion for reconsideration on January 8, 2018.

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: January 25, 2018.

(c) Date written notice of entry of order resolving tolling motion was January 31, 2018 by:

☒ Delivery (e-service)

☐ Mail

19. **Date notice of appeal was filed:** February 16, 2018

If more than one party has appealed from the judgment or order, list date each notice of appeal was filed and identify by name the party filing the notice of appeal:

Not applicable.

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)(4)(C)

SUBSTANTIVE APPEALABILITY

21. **Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

☒ NRAP 3A(b)(1) ☐ NRS 38.205

☐ NRAP 3A(b)(2) ☐ NRS 233B.150

☐ NRAP 3A(b)(3) ☐ NRS 703.376

☐ Other (specify) _____

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

1 The summary judgment disposed of all Appellant's claims and that judgment was
2 subject to appeal pursuant to NRAP 3A(b)(1). *Lee v. GNLV Corp.*, 116 Nev. 424,
3 426, 996 P.2d 416, 417 (2000). The time to appeal was tolled by the motion for
4 reconsideration. *See AA Primo Builders*, 111 Nev. at 582.

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

7 (a) Parties: This case represents the consolidation of more than 90 parties.
8 Parties include:

- 9 1. Apco Construction, Inc.
- 10 2. Asphalt Products Corporation
- 11 3. Cactus Rose Construction
- 12 4. Camco Pacific Construction Co, Inc.
- 13 5. Camco Pacific Construction Company, Inc.
- 14 6. Club Vista Financial Services, LLC
- 15 7. Gemstone Development West, Inc.
- 16 8. Insulpro Projects, Inc.
- 17 9. Tharaldson Motels II, Inc.
- 18 10. Gary D. Tharaldson
- 19 11. Accuracy Glass & Mirror Company, Inc.
- 20 12. Ahern Rentals, Inc.
- 21 13. Arch Aluminum and Glass Co.
- 14 14. Atlas Construction Supply, Inc.
- 15 15. Bank of Oklahoma NA
- 16 16. Bruin Painting Corporation
- 17 17. Buchele, Inc.
- 18 18. Cabintec, Inc.
- 19 19. Camco Pacific Construction Co, Inc.
- 20 20. Camco Pacific Construction, Inc.
- 21 21. Cellcrete Fireproofing of Nevada, Inc.
- 22 22. Concrete Visions, Inc.
- 23 23. Creative Home Theatre, LLC
- 24 24. Dave Peterson Framing, Inc.
- 25 25. E & E Fire Protection, LLC
- 26 26. Executive Plastering, Inc.
- 27 27. EZA P.C.
- 28 28. Fast Glass, Inc.
- 29 29. Ferguson Fire and Fabrication, Inc.
- 30 30. Gerdau Reinforcing Steel
- 31 31. Granite Construction Company
- 32 32. Harsco Corporation
- 33 33. HD Supply Waterworks LP
- 34 34. Heinaman Contract Glazing
- 35 35. Helix Electric of Nevada, LLC
- 36 36. Hydropressure Cleaning, Inc.
- 37 37. Inquipco

- 1 38. Insulpro Projects, Inc.
39. Interstate Plumbing & Air Conditioning
- 2 40. John Deere Landscape, Inc.
41. Las Vegas Pipeline, LLC
42. Masonry Group Nevada, Inc.
- 3 43. Nevada Construction Services
44. Nevada Prefab Engineers
45. Nevada Prefab Engineers, Inc.
- 4 46. Noord Sheet Metal Company
47. Noorda Sheet Metal Company
48. Northstar Concrete, Inc.
- 5 49. Pape Materials Handling
50. Patent Construction Systems
- 6 51. Professional Door and Mill Works, LLC
52. Professional Doors And Millworks, LLC
53. Ready Mix, Inc.
- 7 54. Renaissance Pools & Spas, Inc.
55. Republic Crane Service, LLC
56. Scott Financial Corporation
- 8 57. Bradley J. Scott
58. Selectbuild Nevada, Inc.
59. Steel Structures, Inc.
- 9 60. Supply Network, Inc.
61. The Pressure Grout Company
- 10 62. Tri City Drywall, Inc.
63. WRG Design, Inc.
64. Zitting Brothers Construction, Inc.
- 11 65. Commonwealth Land Title Insurance Co
66. First American Title Insurance Co
67. Helix Electric
- 12 68. Oz Architecture of Nevada, Inc.
69. Pape Rents
70. Power Plus!
- 13 71. Viking Supplynet
72. Cell Crete Fireproofing Of NV, Inc.
73. Custom Select Billing, Inc.
- 14 74. Dave Peterson Framing, Inc.
75. National Wood Products, Inc.'s
- 15 76. Pressure Grout Co
77. Fidelity & Deposit Company Of Maryland
78. Fidelity And Deposit Co Of Maryland
- 16 79. First American Title Insurance Co
80. Jeff Heit Plumbing Co., LLC
81. Kelly Marshall
- 17 82. Old Republic Surety
83. Arch Aluminum And Glass Co Now Known As Arch Aluminum and Glass LLC
- 18 84. Cactus Rose Construction Inc
85. Harsco Corporation
- 19 86. S R Bray Corp
87. Selectbuild Nevada, Inc.
88. Sunstate Companies, Inc.
- 20 89. SWPPP Compliance Solutions LLC
90. Graybar Electric Company

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- 1 91. PCI Group, LLC
2 92. RLMW Investments, LLC
3 93. United Subcontractors Inc Doing Business As Skyline Insulation
4 94. Wiss, Janney, Elstner Associates, Inc.

5 (b) If all parties in the district court are not parties to this appeal, explain in
6 detail why those parties are not involved in this appeal, *e.g.*, formally
7 dismissed, not served, or other:

8 See Section 7, *supra*.

9
10 **23. Give a brief description (3 to 5 words) of each party's separate claims,**
11 **counterclaims, cross-claims or third-party claims, and the date of formal**
12 **disposition of each claim.**

13 See Section 7, *supra*.

14 **24. Did the judgment or order appealed from adjudicate ALL the claims alleged**
15 **below and the rights and liabilities of ALL the parties to the action or**
16 **consolidated actions below?**

17 ☐ Yes

18 ☒ No

19 **25. If you answered "No" to question 23, complete the following:**

20 (a) Specify the claims remaining pending below:

21 The following parties are awaiting a decision from a 6 day trial: APCO Construction,
Inc., Camco Pacific Construction, Co., E&E Fire Protection, LLC, SWPP Compliance
Solutions, LLC, Helix Electric of Nevada, Inc., Fast Glass, Inc., Heinaman Contract
Glazing, Inc., Cactus Rose Construction, Inc., and National Wood Products, Inc. All
remaining claims relate to allegations of non-payment for labor or materials provided on
the Project.

(b) Specify the parties remaining below:

See Section 25(a), *supra*.

(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 24, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

The summary judgment disposed of all of Appellant's claims and it was subject to appeal pursuant to NRAP 3A(b)(1), following allowable tolling. *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000); *see AA Primo Builders*, 111 Nev. at 582.

27. Attach copies of the last-filed version of all complaints, counterclaims, and/or cross-claims filed in the district court, any tolling motion, the order challenged on appeal and written notice of entry for any attached orders.

See Exhibit G.

///

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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.

Name of Appellant:

Apco Construction, Inc.

Name of counsel of record:



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mbacon@spencerfane.com

Dated this 2nd day of April, 2018.



Signature of counsel of record

State and county where signed:

Clark County, Nevada

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