

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

145 EAST HARMON II TRUST; AND  
ANTHONY TAN AS TRUSTEE OF  
THE 145 EAST HARMON II TRUST,

Appellant,

v.

THE RESIDENCES AT MGM  
GRAND TOWER A OWNERS'  
ASSOCIATION,

Respondent.

Supreme Court No. 75920  
Electronically Filed  
May 14 2019 09:36 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**APPEAL**

from the Eighth Judicial District Court, Clark County, Nevada  
The Honorable Mark B. Bailus, District Judge  
District Court Case No. A-16-733764-C

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**RESPONDENT'S APPENDIX**

**VOLUME I**

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BRENT LARSEN, ESQ. (SBN 1184)  
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**ALPHABETICAL INDEX OF RESPONDENT'S APPENDIX**

| <b>Document</b>   | <b>Date</b> | <b>Vol. No.</b> | <b>Page No.</b> |
|---|-------------|-----------------|-----------------|
| Memorandum of Costs and Disbursements filed by the Association            | 04/28/17    | 1               | R.App.000015-17 |
| Minutes of Hearing on the Association's Motion for Attorneys' Fees        | 08/08/17    | 1               | R.App.000046    |
| Notice of Entry of Order for Dismissal of the Association                 | 04/28/17    | 1               | R.App.000011-14 |
| Reply in support of Motion to Dismiss filed by MGM Defendants             | 06/02/16    | 1               | R.App.000001-7  |
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| Transcript of Proceedings on the Association's Motion for Attorneys' Fees | 08/08/17    | 1               | R.App.000018-45 |

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| <b>Document</b>   | <b>Date</b> | <b>Vol. No.</b> | <b>Page No.</b> |
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| Minutes of Hearing on the Association's Motion for Attorneys' Fees        | 08/08/17    | 1               | R.App.000046    |

DATED this 14<sup>th</sup> day of May, 2019.

SINGER & LARSEN P.C.

/s/ Brent Larsen

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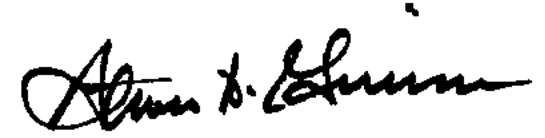
## CERTIFICATE OF SERVICE

I hereby certify that service of RESPONDENT'S APPENDIX VOL. 1 was made this 14<sup>th</sup> day of May, 2018, by electronic service through the Nevada Supreme Court's electronic filing system, to each of the following:

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Luis A. Ayon, Esq. ([laa@ayonlaw.com](mailto:laa@ayonlaw.com))

*/s/ Suzanne Saavedra-Zaranti*  
\_\_\_\_\_  
An employee of Singer & Larsen P.C.



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8 Attorneys for Defendants MGM RESORTS  
INTERNATIONAL, LLC and MGM GRAND  
CONDOMINIUMS, LLC  
9

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 145 EAST HARMON II TRUST,

13 Plaintiff,

14 v.

15 TURNBERRY/MGM GRAND TOWERS,  
16 LLC; MGM RESORTS INTERNATIONAL,  
17 LLC; THE RESIDENCES AT THE MGM  
GRAND TOWER A, LLC; MGM GRAND  
CONDOMINIUMS, LLC; and DOES 1-X,

18 Defendants.

Case No. A-16-733764-C  
Dept. No.: XI

**REPLY IN SUPPORT OF DEFENDANTS'**  
**MOTION TO DISMISS PLAINTIFF'S**  
**COMPLAINT**

Hearing Date: June 9, 2016

Hearing Time: 8:30 a.m.

19  
20 COMES NOW Defendants, MGM Grand Resorts International, LLC and MGM Grand  
21 Condominium, LLC, by and through its attorneys of record, the law of Wood, Smith, Henning &  
22 Berman, LLP, and hereby submits this Reply in Support of Defendants' Motion to Dismiss Plaintiff's  
23 Complaint in its entirety.

24 ///

25 ///

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27 ///

28 ///

WOOD, SMITH, HENNING & BERMAN LLP  
Attorneys at Law  
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1 This Reply is made and based upon the foregoing Memorandum of Points and Authorities, the  
2 papers and pleadings on file herein and any oral arguments as may be entertained by the Court at the  
3 time and place of the hearing set for this matter.

4 June 2, 2016

5 WOOD, SMITH, HENNING & BERMAN LLP  
6 Attorneys at Law

7  
8 By



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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff had the opportunity to amend the Complaint prior to any response being filed by  
4 Defendants, thereby preventing this motion practice, but chose not to amend the Complaint, despite  
5 the undisputed facts and public information readily available to Plaintiff. It is undisputed this matter  
6 arises out of an alleged incident involving property damage that occurred at condominium unit #25691  
7 located within the building located at 145 East Harmon Ave, Las Vegas, Nevada (the "Unit"). It is  
8 also undisputed the owner of the Unit is the 145 East Harmon Trust II, which is confirmed by public  
9 record. (See Exhibit B to Defendants' Motion to Dismiss Plaintiff's Complaint (the "Motion")).  
10 Plaintiff's Opposition disputes the ownership of the building located at 145 East Harmon Ave, Las  
11 Vegas, Nevada (the "Subject Property"). However, the information is available by public record and  
12 should not be in dispute.<sup>1</sup> (See Exhibit C to the Motion). Despite Plaintiff having the information  
13 and/or access to the information necessary to name the owner of the Subject Property, Plaintiff failed  
14 to name the owner and also failed to bring the action in the name of the trustee. Further, Plaintiff acted  
15 in bad faith and with dilatory motive when it refused to amend the Complaint prior to motion practice.  
16 Accordingly, this matter should be dismissed in its entirety.

17 **II. LEGAL ARGUMENT**

18 **A. This Matter Must be Brought in the Name of the Trustee of the 145 East Harmon**  
19 **II Trust.**

20 The exact language of NRCPP 17(a) is as follows:

21 Every action shall be prosecuted in the name of the real party in interest. An executor,  
22 administrator, guardian, bailee, trustee of an express trust, a party with whom or in  
23 whose name a contract has been made for the benefit of another, or a party authorized  
24 by statute may sue in that person's own name without joining the party for whose  
benefit the action is brought; and when a statute so provides, an action for the use or  
benefit of another shall be brought in the name of the State...<sup>2</sup>

25  
26 <sup>1</sup> It is clear Plaintiff is able to access and assess public record as, in preparing the opposition, Plaintiff references public  
records from the United States Securities and Exchange Commission and MGM Grand's "website." (See Plaintiff's  
Opposition to Defendants' Motion to Dismiss, or in the Alternative, Motion to Amend the Complaint, pgs. 11-12).

27 <sup>2</sup> Plaintiff quotes the language of NRCPP 17(a) as follows: "Every action shall be prosecuted in the name of the real party in  
28 interest; but an executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a

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1 In addition, the Nevada Supreme Court, in *Causey v. Carpenters S. Nevada Vacation Trust*, the Court  
2 invalidated judgment in favor of a trust fund because it was neither a natural or artificial person, and,  
3 as such, could not properly be a party to litigation. 95 Nev. 609, 610 (1979). In doing so, the Court  
4 found that only "the trustee, or trustees, rather than the trust itself is entitled to bring suit." *Id.*<sup>3</sup> Thus,  
5 the trustee of the 145 East Harmon II Trust, is the real party in interest.

6 Further, Plaintiff's understanding of basic trust principles is askew. Pursuant to basic trust  
7 principles, a trust is not a natural or artificial person it "is a **fiduciary relationship** with respect to  
8 property, subjecting the **person** by whom the title to the property is held to equitable duties to deal  
9 with the property for the benefit of another person..." Restatement (Second) of Trusts § 2 (1959)  
10 (emphasis added). The trustee is "the person holding property in trust" and the beneficiary is "the  
11 person for whose benefit the property is held." Restatement (Second) of Trusts § 3 (3) & (4) (1959).

12 Accordingly, pursuant to Nevada law and basic trust principles, the real party in interest  
13 pursuant to NRCP 17(a) is the trustee of the 145 East Harmon II Trust. 145 East Harmon II Trust is  
14 not a natural or artificial person. Thus, the trustee of the 145 East Harmon II Trust may bring the  
15 action in his name, without naming the beneficiary of the 145 East Harmon II Trust pursuant to  
16 NRCP 17(a).<sup>4</sup> Consequently, the real party in interest is the trustee of Plaintiff and the action must be  
17 brought in his name as trustee of the 145 East Harmon II Trust.

18 ///  
19 ///  
20 ///

21  
22 contract has been made for the benefit of another, or a party authorized by statute may sue in that person's own name  
23 without joining the party for whose benefit the action is brought; and when a statute so provides, an action for the use or  
24 benefit of another shall be brought in the name of the State." (See Plaintiff's Opposition pgs. 8-9). Plaintiff misquotes the  
language as the emphasized "but" does not appear anywhere in the language. It is unclear where this additional language  
came from as it is not in NRCP 17(a) nor FRCP 17(a).

25 <sup>3</sup> This was addressed in the Motion, pg. 7, Plaintiff references the case in a footnote and merely states the Court in *Causey*  
26 contemplated that the plaintiff in that case would be allowed to amend the complaint and, thus, Plaintiff here should be  
permitted to amend its Complaint. However, Plaintiff ignores the binding case law of *Causey* which requires an action to  
be maintained by a trustee of a trust as a trust is not a natural or artificial person.

27 <sup>4</sup> Plaintiff contends that the 145 East Harmon II Trust "will ultimately benefit from this action" (see Plaintiff's Opposition  
28 p. 9), however, this is incorrect as the beneficiary of the trust is the person who will receive the benefit of the action.  
Restatement (Second) of Trusts § 3 (4) (1959).



1           **B. Plaintiff's Argument that Parent Companies May Be Liable for Subsidiaries is**  
2           **Attenuated and Insufficient to State a Claim Upon Which Relief Can be Granted**  
3           **and Does not Negate that Plaintiff has Failed to Join a Necessary and**  
4           **Indispensable Party Under NRCP 19.**

5           To justify not naming the owner of the Subject Property, Signature Tower I, LLC, Plaintiff  
6 alleges that Defendants are a parent company of Signature Tower I, LLC and "may" or "can" be liable  
7 for its alleged subsidiary pursuant to *Viega GmbH v. Eighth Jud. Dist. Ct.*, 130 Nev. Adv. Op. 40, 328  
8 P.3d 1152, 1159 (2014). However, this ignores the basic premise that "corporate entities are  
9 presumed separate." *Id.* at 1157. Thus, the Signature Tower I, LLC, is presumed a separate entity  
10 from Defendants.

11           Further, even if Defendants are the "parent" of Signature Tower I, LLC, in order for  
12 Defendants to be liable, Plaintiff would still have to prove, among other potential factors, the  
13 following: "(1) the corporation must be influenced and governed by the person asserted to be the alter  
14 ego; (2) there must be such unity of interest and ownership that one is inseparable from the other; and  
15 (3) the facts must be such that adherence to the corporate fiction of a separate entity would, under the  
16 circumstances, sanction fraud or promote injustice." *Polaris Indus. Corp. v. Kaplan*, 103 Nev. 598,  
17 601, 747 P.2d 884, 886 (1987). A crucial part of making these determinations, and establishing prime  
18 facie liability, is the actions and involvement of Signature Tower I, LLC. Thus, naming alleged  
19 "parent" companies is attenuated and insufficient to state a claim upon which relief can be granted  
20 against Defendants and does not negate the fact that Signature Tower I, LLC, as the owner of the  
21 Subject Property, is an indispensable party.

22           **C. Plaintiff's Motion to Amend the Complaint Should be Denied on the Bases of Bad**  
23           **Faith and Dilatory Motive.**

24           Appropriate grounds for denying a motion to amend include, "undue delay, bad faith or  
25 dilatory motive on the part of the movant." *Stephens v. S. Nevada Music Co., Inc.*, 89 Nev. 104, 105-  
26 06, 507 P.2d 138, 139 (1973). Here, Plaintiff acted in bad faith and with dilatory motive in refusing to  
27 amend the complaint prior to Defendants filing a motion to dismiss. Counsel for Defendants and  
28 Plaintiff had numerous discussions regarding amending the Complaint to add the owner of the Subject

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1 Property, specifically to avoid necessitating motion practice. Plaintiff refused to amend the Complaint  
2 in any fashion necessitating Defendants' Motion and Plaintiff's Motion to Amend the Complaint.  
3 Plaintiff is now seeking to add the owner of the Subject Property, as previously requested, and the  
4 delay in waiting until Defendants' Motion was filed shows both bad faith and dilatory motive.  
5 Accordingly, Plaintiff should not be permitted to amend the Complaint. In addition, Defendants  
6 should be awarded fees and costs for having to file their Motion and respond to Plaintiff's Motion to  
7 Amend the Complaint.

8 **III. CONCLUSION**

9 Plaintiff has failed to bring this action in name of the trustee, has failed to state a claim upon  
10 which relief can be granted, has failed to name an indispensable party and has acted with bad faith and  
11 dilatory motive. Therefore, Defendants respectfully request that this Court dismiss the action in its  
12 entirety.

13 June 2, 2016

14 WOOD, SMITH, HENNING & BERMAN LLP  
15 Attorneys at Law

16  
17 By 

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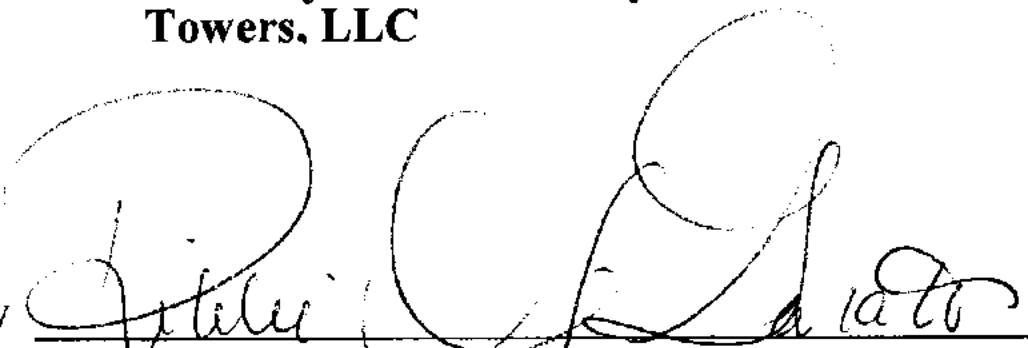
25 Attorneys for Defendants MGM RESORTS  
26 INTERNATIONAL, LLC and MGM GRAND  
27 CONDOMINIUMS, LLC  
28

1 **CERTIFICATE OF SERVICE**


2 I hereby certify that on this 2nd day of June, 2016, a true and correct copy of **REPLY IN**  
3 **SUPPORT OF DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT** was  
4 served by electronically filing with the Clerk of the Court using the Wiznet Electronic Service system  
5 and serving all parties with an email-address on record, who have agreed to receive Electronic Service  
6 in this action.

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Towers, LLC**

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17 Rikki M. Garate, an Employee of  
18 WOOD, SMITH, HENNING & BERMAN LLP  
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CLERK OF THE COURT

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14 **DISTRICT COURT**  
15 **CLARK COUNTY, NEVADA**

16 145 EAST HARMON II TRUST,  
17 ANTHONY TAN, AS TRUSTEE OF THE  
18 145 EAST HARMON II TRUST,

19 Plaintiffs,

20 vs.

21 MGM RESORTS INTERNATIONAL;  
22 MGM GRAND CONDOMINIUMS, LLC;  
23 THE SIGNATURE CONDOMINIUMS,  
24 LLC; SIGNATURE TOWER I, LLC; THE  
25 RESIDENCES AT MGM GRAND-  
26 TOWER A OWNERS' ASSOCIATION;  
27 and DOES I-X.

28 Defendants.

Case No.: A-16-733764-C

Dept. No. XI

**THREE DAY NOTICE OF INTENT TO  
DEFAULT AGAINST THE RESIDENCES  
AT MGM GRAND – TOWER A  
OWNERS' ASSOCIATION**

29 **TO: DEFENDANT, THE RESIDENCES AT MGM GRAND – TOWER A OWNERS'**  
30 **ASSOCIATION**

31 PLEASE TAKE NOTICE that the First Amended Complaint in the above entitled  
32 action was filed and served upon Defendant The Residences at MGM Grand – Tower A  
33 Owners' Association on June 27, 2016.

34 YOU ARE HEREBY NOTIFIED that if an Answer or other responsive pleading is

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not filed with the Court and served on Plaintiffs on or before three (3) days from the date of service of this Notice, a default will be taken and a final Judgment of Default will be requested against Defendant The Residences at MGM Grand – Tower A Owners' Association.

DATED this 25<sup>th</sup> day of July, 2016.

LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

*Eric N. Tran*

By: \_\_\_\_\_

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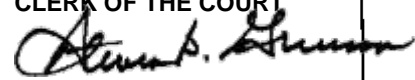
**CERTIFICATE OF SERVICE**

I hereby certify that on the 25<sup>th</sup> day of July, 2016, service of the foregoing **THREE DAY NOTICE OF INTENT TO DEFAULT AGAINST THE RESIDENCES AT MGM GRAND – TOWER A OWNERS’ ASSOCIATION** was made by delivering a copy thereof by electronic means to the Clerk's Office using the Odyssey E-File & Serve System for transmittal to the following Odyssey E-File & Serve registrants:

| Contact                                    | Email  |
|--|--|
| <b>Garman Turner Gordon</b>                |  |
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| <b>Wood Smith Henning &amp; Berman</b>     |  |
| Janice M. Michaels                         | <a href="mailto:jmichaels@wshblaw.com">jmichaels@wshblaw.com</a> |
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/s/ Joanna F. Alo-Sitagata

An Employee of  
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10 Residents at MGM Grand -  
11 Tower A Owners' Association

12  
13 DISTRICT COURT  
14 CLARK COUNTY, NEVADA

15 145 EAST HARMON II TRUST, ANTHONY  
16 TAN AS TRUSTEE OF THE 145 EAST  
17 HARMON II TRUST,

Case No.: A-16-733764-C  
Dept. No.: XVIII

18 Plaintiffs,

19 v.

20 MGM RESORTS INTERNATIONAL; MGM  
21 GRAND CONDOMINIUMS, LLC; THE  
22 SIGNATURE CONDOMINIUMS, LLC;  
23 SIGNATURE TOWER I, LLC; THE  
24 RESIDENCES AT MGM GRAND - TOWER  
25 A OWNERS' ASSOCIATION; and DOES I-  
26 X,

27 Defendants.

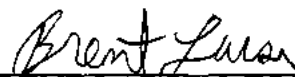
28  
**NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that an Order for Dismissal was entered in the above-entitled Court on the 27<sup>th</sup> day of April, 2017, a copy of which is attached hereto.

DATED this 28 day of April, 2017.

Respectfully submitted,

DEANER, MALAN, LARSEN & CIULLA

  
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R.App.000011

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1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that I am an employee of SINGER & LARSEN P.C.; that on  
3 20<sup>th</sup> day of April, 2017, I served a copy of the above and foregoing NOTICE OF ENTRY

4 OF ORDER, by way of:

- 5  Electronic mail,
- 6  Electronic means through the Clark County efilng/serving system pursuant to EDCR 8.05(a),
- 7  Mailing through the United States Postal Service,

8 to the following address:


9  
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12 Las Vegas, Nevada 89119  
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22 The Signature Condominiums, LLC

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An Employee of Singer & Larsen P.C.

SINGER & LARSEN P.C.  
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1 STD  
2 BRET LARSEN, ESQ.  
3 Nevada Bar No. 1184  
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5 4475 S. Pecos Road  
6 Las Vegas, Nevada 89121  
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8 [blarsen@deanerlaw.com](mailto:blarsen@deanerlaw.com)  
9 Attorney for Defendant,  
10 The Residences at MGM Grand -  
11 Tower A Owners' Association

12 DISTRICT COURT  
13 CLARK COUNTY, NEVADA

14 145 EAST HARMON II TRUST, ANTHONY  
15 TAN AS TRUSTEE OF THE 145 EAST  
16 HARMON II TRUST,

Case No.: A-16-733764-C  
Dept. No.: XVIII

17 Plaintiffs,

18 v.

19 MGM RESORTS INTERNATIONAL; MGM  
20 GRAND CONDOMINIUMS, LLC; THE  
21 SIGNATURE CONDOMINIUMS, LLC;  
22 SIGNATURE TOWER I, LLC; THE  
23 RESIDENCES AT MGM GRAND - TOWER  
24 A OWNERS' ASSOCIATION; and DOES I-  
25 X,

26 Defendants.

27 **STIPULATION AND ORDER FOR DISMISSAL**

28 COMES NOW the Plaintiff, 145 EAST HARMON II TRUST and ANTHONY TAN  
AS TRUSTEE OF THE 145 EAST HARMON II TRUST (hereinafter "the Plaintiff"), by  
and through their attorney, STEPHEN K. LEWIS, ESQ., and the Defendant THE  
RESIDENCES AT MGM GRAND - TOWER A OWNERS' ASSOCIATION (hereinafter  
"Defendant/MGM Tower A"), by and through its attorney, BRET LARSEN, ESQ. of the  
law firm of SINGER & LARSEN P.C., and hereby stipulate and agree to the following:

1. All claims asserted in the Plaintiff's First Amended Complaint against  
Defendant MGM Tower A, are hereby dismissed with prejudice.

///

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1 2. Defendant MGM Tower A's Motion to Dismiss, presently scheduled for a  
2 hearing on May 2, 2017 at 9:00 a.m., is hereby withdrawn and taken off calendar.

3 3. Notwithstanding the foregoing, the Defendant MGM Tower A reserves its right  
4 to file a Motion to recover the attorneys' fees it incurred in this matter, as may be provided  
5 for by law.

6 DATED this 17 day of April, 2017.

7 

8  
9 STEPHEN K. LEWIS, ESQ.  
10 Nevada Bar No. 7064  
11 5538 S. Eastern Avenue  
12 Las Vegas, Nevada 89119  
13 Attorney for Plaintiffs

SINGER & LARSEN P.C.



14 BRENT LARSEN, ESQ.  
15 Nevada Bar No. 1184  
16 4475 S. Pecos Road  
17 Las Vegas, Nevada 89121  
18 Attorney for Defendant MGM Tower A

19 **ORDER**

20 IT IS HEREBY ORDERED that all of Plaintiffs' claims against Defendant MGM  
21 Tower A are dismissed, with prejudice.

22 IT IS FURTHER ORDERED that MGM Tower A's Motion to Dismiss presently  
23 scheduled for May 2, 2017 at 9:00 a.m. is withdrawn and taken off calendar.

24 IT IS FURTHER ORDERED that MGM Tower A reserves its right to file a Motion to  
25 recover attorneys' fees in this matter.

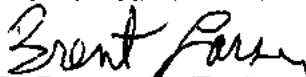
26 DATED this 21<sup>st</sup> day of April, 2017.

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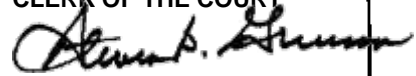
28 DISTRICT JUDGE  
J. CHARLES THOMPSON  
SENIOR DISTRICT JUDGE

Submitted by:

SINGER & LARSEN P.C.



29 BRENT LARSEN, ESQ.  
30 Nevada Bar No. 1184  
31 4475 S. Pecos Road  
32 Las Vegas, Nevada 89121  
33 Attorney for Defendant MGM Tower A



1 MEMC  
2 BRENT LARSEN, ESQ.  
3 Nevada Bar No. 1184  
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8 [blarsen@singerlarsen.com](mailto:blarsen@singerlarsen.com)  
9 Attorney for Defendant,  
10 Residence at MGM Grand -  
11 Tower A Owners' Association

DISTRICT COURT  
CLARK COUNTY, NEVADA

12 145 EAST HARMON II TRUST, ANTHONY  
13 TAN AS TRUSTEE OF THE 145 EAST  
14 HARMON II TRUST,

Case No.: A-16-733764-C  
Dept. No.: XVIII

15 Plaintiffs,

16 v.

17 MGM RESORTS INTERNATIONAL; MGM  
18 GRAND CONDOMINIUMS, LLC; THE  
19 SIGNATURE CONDOMINIUMS, LLC;  
20 SIGNATURE TOWER I, LLC; THE  
21 RESIDENCES AT MGM GRAND - TOWER  
22 A OWNERS' ASSOCIATION; and DOES I-  
23 X,

24 Defendants.

MEMORANDUM OF COSTS AND DISBURSEMENTS

25 Filing Fees ..... 444.00  
26 Motion to Dismiss or i/t/a Motion for Summary Judgment, \$423  
27 Six (6) filings through Wiznet at \$3.50 ea., \$21.00


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1 Postage ..... 3.56  
 2 Courier Services (two (2) runs to and from court to drop off and pick up Order) . 50.00  
 3 TOTAL ..... \$ 497.56

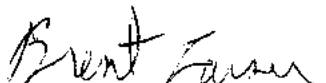
4 DATED this 28 day of April, 2017.

5 Respectfully submitted,  
6 SINGER & LARSEN P.C.

7  
 8   
 9 BRENT LARSEN, ESQ.  
 Nevada Bar No. 001184  
 4475 S. Pecos Road  
 Las Vegas, Nevada 89121  
 Attorney for The Residences at MGM  
 Grand - Tower A Owners' Association

10 STATE OF NEVADA }  
11 COUNTY OF CLARK } ss:

12 BRENT LARSEN , being duly sworn, states: that affiant is the attorney for the  
13 Defendant, MGM GRAND - TOWER A OWNERS' ASSOCIATION, and has personal  
14 knowledge of the above costs and disbursements expended; that the items contained in the  
15 above memorandum are true and correct to the best of this affiant's knowledge and belief;  
16 and that the said disbursements have been necessarily incurred and paid in this action.  
17  
18  
19  
20

21   
 22 BRENT LARSEN

23 SUBSCRIBED and SWORN to before me  
24 on this 28<sup>th</sup> day of April, 2017.

25   
 26 NOTARY PUBLIC in and for Said  
 27 County and State.  
 28



**CERTIFICATE OF SERVICE**

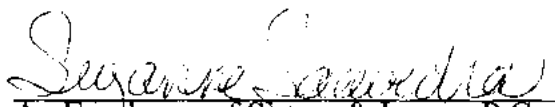
1 I HEREBY CERTIFY that I am an employee of SINGER & LARSEN P.C.; that on  
2 28<sup>th</sup> day of April, 2017, I served a copy of the above and foregoing MEMO OF COSTS  
3 AND DISBURSEMENTS, by way of:

- 4  Electronic mail,
- 5  Electronic means through the Clark County efileing/serving system pursuant to
- 6 EDCR 8.05(a),
- 7  Mailing through the United States Postal Service,

8 to the following address:

9 Stephen K. Lewis, Esq.  
10 5538 S. Eastern Avenue  
11 Las Vegas, Nevada 89119  
12 steve.lewis@stoamigo.com  
13 Attorney for Plaintiffs

14 Elisa L. Wyatt, Esq.  
15 Wood, Smith, Henning & Berman  
16 7674 W. Lake Mead Blvd.  
17 Suite 150  
18 Las Vegas, Nevada 89128  
19 ewyatt@wshblaw.com  
20 Attorney for Defendant,  
21 The Signature Condominiums, LLC

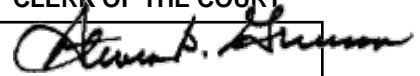
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An Employee of Singer & Larsen P.C.

SINGER & LARSEN P.C.

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Las Vegas, Nevada 89121

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DISTRICT COURT  
CIVIL DIVISION

145 EAST HARMON II TRUST,  
ANTHONY TAN AS TRUSTEE OF THE  
145 EAST HARMON II TRUST,

Plaintiffs,

vs.

MGM RESORTS INTERNATIONAL;  
MGM GRAND CONDOMINIUMS, LLC;  
THE SIGNATURE CONDOMINIUMS, LLC;  
SIGNATURE TOWER I, LLC; THE  
RESIDENCES AT MGM GRAND TOWER A  
OWNERS' ASSOCIATION; and  
DOES I - X,

Defendants.

CASE NO: A-16-733764-C  
DEPT NO: XVIII

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE MARK B. BAILUS

Tuesday, August 8, 2017  
9:22 a.m.

Job No.: 410276  
Reported by: Andrea Martin, CSR, RPR, NV CCR 887  
Certified Realtime Reporter (NCRA)

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DISTRICT COURT  
CIVIL DIVISION

145 EAST HARMON II TRUST, )  
ANTHONY TAN AS TRUSTEE OF THE )  
145 EAST HARMON II TRUST, )  
Plaintiffs, )  
vs. )  
MGM RESORTS INTERNATIONAL; )  
MGM GRAND CONDOMINIUMS, LLC; )  
THE SIGNATURE CONDOMINIUMS, LLC; )  
SIGNATURE TOWER I, LLC; THE )  
RESIDENCES AT MGM GRAND TOWER A )  
OWNERS' ASSOCIATION; and )  
DOES I - X, )  
Defendants. )

CASE NO: A-16-733764-C  
DEPT NO: XVIII

REPORTER'S TRANSCRIPT OF PROCEEDINGS

HELD BEFORE THE HONORABLE MARK B. BAILUS, in the  
Civil Division of the District Court, Department 18,  
Phoenix Building, Courtroom 110, 330 South  
Third Street, Las Vegas, Nevada, beginning at  
9:22 a.m., and ending at 9:50 a.m., on Tuesday,  
August 8, 2017, before Andrea N. Martin, Certified  
Realtime Reporter, Nevada Certified Shorthand  
Reporter No. 887.

Reported by: Andrea Martin, RPR, CRR, NV CCR 887

1 APPEARANCES:

2

3 For Plaintiffs, 145 East Harmon II Trust, Anthony  
4 Tan as Trustee of the 145 East Harmon II Trust:

5

STEPHEN K. LEWIS  
ATTORNEY AT LAW  
6970 O'Bannon Drive  
Las Vegas, Nevada 89117  
6 TEL: (702) 204-3590  
E-mail: SLewis@trpnppo.com

7

8

9 For Defendants MGM Grand Tower A Owners'  
Association:

10

SINGER & LARSEN P.C.  
BY: BRENT LARSEN, ESQ.  
11 4475 South Pecos Road  
Las Vegas, Nevada 89121  
12 TEL: (702) 454-2111  
E-mail: BLarsen@singerlaw.com

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1 Las Vegas, Nevada; Tuesday, August 8, 2017,

2 9:22 a.m.

3 -oOo-

4 THE COURT: 145 East Harmon Trust  
5 versus Turnberry/MGM Grand Towers LLC, Case  
6 No. A-16-733764-C.

7 Counsel, state your appearances for the  
8 record, please.

9 MR. LARSEN: Brent Larsen for the  
10 defendant.

11 MR. LEWIS: Good morning, Your Honor.  
12 Stephen Lewis here on behalf of the plaintiff.

13 MR. LARSEN: Actually, I should say the  
14 defendant, MGM Homeowners Association, Tower A.

15 THE COURT: And this is on for the  
16 defendant, the residents of MGM Tower A Owners'  
17 Association, motion for attorneys' fees?

18 MR. LARSEN: Correct.

19 MR. LEWIS: That's correct.

20 THE COURT: I read everything, Counsel. I  
21 read all the briefing, read all the exhibits. You  
22 certainly are free to argue whatever you want to  
23 argue, but I will tell you up front I've read all  
24 the briefing.

25 Is there anything you wish to add?

1 MR. LARSEN: Is there any particular point  
2 that you're concerned with?

3 THE COURT: No. I understood the  
4 briefing.

5 MR. LARSEN: Okay. I would merely repeat  
6 what's in the brief, in the key briefs.

7 THE COURT: That's your call, but I did  
8 read it.

9 MR. LARSEN: Again, we've got two bases  
10 for recovery.

11 The CC&Rs, they -- one of their causes of  
12 action was based on a violation of the CC&Rs. The  
13 biggest thing here is they say, "Oh, we don't have a  
14 judgment." A dismissal with prejudice is the  
15 equivalent of a judgment because it establishes who  
16 is the prevailing party.

17 And the right to recover attorneys' fees  
18 is clearly set forth in the CC&Rs, and it's set  
19 forth in the stipulation for dismissal. In other  
20 words, we reserved the right -- once we got  
21 dismissed from the case, we reserved the right to  
22 move for attorneys' fees.

23 The thing that is most telling in this  
24 case is the last page of the opposition brief, where  
25 they, basically, admit we have a motion to dismiss

1 pending.

2 THE COURT: I thought it was a motion for  
3 summary judgment, Counsel.

4 MR. LARSEN: Well, it's both. I'm sorry.  
5 It's in the alternative, motion to dismiss and/or,  
6 in the alternative, a motion for summary judgment.

7 Then they say: In the face of a motion --  
8 pending motion for summary judgment. Then he says:  
9 Plaintiff agreed to the dismissal solely because  
10 MGM, meaning the other defendants, the primary  
11 defendant, and plaintiff had already agreed to the  
12 terms of their settlement and we're working on the  
13 settlement agreement. And, to my knowledge, that  
14 case is still pending. There's no dismissal of that  
15 case.

16 But my point is: My client had reasons to  
17 want to be out of this case and not be tied to any  
18 settlement with the other defendants, so we moved to  
19 dismiss and for summary judgment.

20 To say that we -- then we -- when they  
21 offer -- finally, when we get an agreement that we  
22 can now dismiss it if we reserve the right to  
23 attorneys' fees, it would have been ludicrous and a  
24 waste of money and Court's time to proceed with the  
25 motion for summary judgment when, now, they agreed

1 to dismiss, and we reserved the right to recover  
2 attorneys' fees.

3 THE COURT: And their argument under the  
4 Azzarello case is that you did not get a judgment;  
5 therefore, you're not entitled to attorney fees and  
6 costs.

7 MR. LARSEN: And, again, the cases they're  
8 relying on are dismissals without prejudice. This  
9 is a dismissal with prejudice. It's the same as a  
10 judgment.

11 But let's look at it this way: If we look  
12 at 41B, even if you can say it was only a voluntary  
13 dismissal, the rules say that, finally, if the  
14 plaintiff decides they don't have a case worth  
15 pursuing and they want to now come to the Court and  
16 voluntarily dismiss this case, the Court can do so.  
17 Once the summary judgment is filed, then the Court  
18 can't just dismiss the case, because it has to  
19 consider on -- what terms are just.

20 And if a defendant, in this case, has  
21 incurred \$10,000 in attorneys' fees, it would be  
22 just for the Court to award attorneys' fees, and  
23 that rule doesn't require that a judgment be  
24 entered. The rule specifically says if a plaintiff  
25 wants to come forward and now move to dismiss after

1 a summary judgment is granted, the Court can't just  
2 dismiss without dismissing on terms that are just.

3 We sent two -- a demand letter to both  
4 prior counsel and plaintiff's current counsel to  
5 dismiss the case, and they never did. The first  
6 counsel promised to do so, and then he didn't. We  
7 sent the same demand letter, making it to Mr. Lewis,  
8 on December 12th, which is -- I believe it's  
9 Exhibit E or F, an e-mail that says, "Okay. Here's  
10 the same demand letter your prior counsel had."

11 They didn't do anything. They were  
12 holding out a dismissal until they knew where they  
13 stood with the other defendants.

14 So no matter how the dice is thrown, even  
15 under 41B, you couldn't dismiss this case without  
16 considering my client's entitlement to attorneys'  
17 fees, but we're beyond 41B. Now we have an  
18 agreement to dismiss with prejudice, so now my  
19 client is the prevailing party. As the prevailing  
20 party, they're entitled to recover attorneys' fees.

21 The case itself against my client was  
22 without reasonable grounds, as provided by the  
23 statute. The best evidence of that is: Look at the  
24 complaint. We cited a case from Federal Court that  
25 says: You make allegations as though same

1 allegations apply to all defendants; that's not  
2 going to cut it.

3 So they dismissed that case for lack of  
4 jurisdiction.

5 We have the same pleading problem in this  
6 case. My client was sued without reasonable  
7 grounds, so they are entitled to attorneys' fees.

8 Thank you.

9 THE COURT: Counsel? I do have a couple  
10 of comments, Counsel, that may be helpful as to your  
11 argument.

12 MR. LEWIS: Of course. Happy to hear it,  
13 Your Honor.

14 THE COURT: No. 1, it appears when the  
15 complaint was filed, you used the old shotgun  
16 approach. You sued everybody you thought may have  
17 some liability in the case. I do not fault you for  
18 that. I mean, rather than rely on Does and Roes,  
19 you named actual parties.

20 It appears you were pretty well put on  
21 notice fairly early in the case that the defendant  
22 did not feel they had any liability. You rely on  
23 the Azzarello case. I mean, clearly, it is apparent  
24 from the record in this matter that you filed your  
25 voluntary dismissal one step ahead of a motion for

1 summary judgment being granted against your client.

2 The argument that it's not a judgment for  
3 purposes of enabling fees and costs was a large  
4 consideration in Azzarello, but in Azzarello, the  
5 Court discussed a motion to dismiss and determined  
6 that a motion -- even if the party had been granted  
7 a motion to dismiss, it would not have constituted  
8 the judgment. That's not really the facts here.

9 If the Court -- and I looked at the motion  
10 for summary judgment -- the Court would have been  
11 inclined to grant the motion for summary judgment,  
12 there would have been a judgment entitling them to  
13 attorneys' fees and costs.

14 The fact that the voluntary dismissal was  
15 negotiated, where you agreed that it would be with  
16 prejudice reason, voluntary dismissal without  
17 prejudice is not viewed as a judgment for purposes  
18 of determining fees and costs because you can refile  
19 it and litigate the issues.

20 In this case, you can't refile it. You  
21 dismissed it with prejudice, and, specifically, the  
22 defendant reserved the right to seek attorneys'  
23 fees.

24 So, again, that seems to be the facts of  
25 this case which differ from the Azzarello case, so

1 you might want to address those concerns I have.

2 MR. LEWIS: Absolutely, Your Honor.

3 First, I want to apprise the Court that  
4 the matter -- because it has been brought up  
5 multiple times by opposing counsel, the matter with  
6 MGM has settled. It settled months ago. The only  
7 reason the documents aren't before the Court is  
8 because the unit is in the middle of construction.  
9 So there is an agreement not to submit the documents  
10 until the unit is completely reconstructed, which  
11 should be in the next 30 days. All they have to do  
12 is hang wallpaper.

13 In terms of the facts of the case,  
14 Your Honor -- obviously, the Court is aware the  
15 American rule is, normally, that there is no award  
16 of attorneys' fees unless there are certain  
17 situations, meaning contract, statute, or rule.

18 And we've set forth our arguments, but I  
19 want to address the CC&Rs. Then we'll get to the  
20 prevailing party issue.

21 The CC&Rs are very, very specific in this  
22 case in that they require both a judgment, a  
23 prevailing party, but, also, they specifically deal  
24 with a collection action of delinquency payments.  
25 When you look at Section 20 and you read it in its



1 entirety, it deals with -- you can get -- if you get  
2 a judgment for delinquent payments, you have the  
3 ability, under this section, to move forward with  
4 your fees and costs.

5 So in this case, the movement fails on,  
6 arguably -- and I understand the Court's position as  
7 to a judgment, but one was simply not obtained. As  
8 to a prevailing party, there is at least argument to  
9 say they were not a prevailing party. And, three,  
10 the section -- the very specific section the CC&Rs  
11 relied upon deals with the collection of delinquent  
12 payments, which has absolutely nothing to do with  
13 this case.

14 So I believe that we have set forth  
15 sufficient grounds, understanding the standard and  
16 the posture of the American rule versus a collection  
17 of fees, against the CC&Rs, specifically. There is  
18 no judgment entered. They are not a prevailing  
19 party, because there was a voluntary dismissal,  
20 even, arguably, if it was with prejudice. And,  
21 third, the section just simply doesn't apply, in and  
22 of its own rules expressly provided in a recovery  
23 action.

24 Your Honor, I want to move back now to  
25 what you point out, which is the voluntary dismissal

1 with prejudice.

2           The voluntary dismissal was -- you are  
3 correct -- entered after a summary judgment motion  
4 was filed. As I attempted to articulate in my  
5 brief, the summary judgment motion was not opposed,  
6 and I can understand why the Court would be inclined  
7 to grant it without an opposition or argument, but  
8 it wasn't opposed because we agreed to dismiss the  
9 case.

10           Had opposing counsel said, "Mr. Lewis, I  
11 appreciate your request to now dismiss it after I  
12 filed my motion," we would have submitted an  
13 opposition. We would have, if nothing else, advised  
14 the Court very clearly: No answer has been filed,  
15 no discovery by any party in the entire case, not  
16 one -- anything has gone forward, no depositions, no  
17 discovery at all.

18           And I think that that is part of the  
19 importance when I come to Your Honor and say, "Look,  
20 you have the discretion in this case."

21           We have a very complex -- a disaster, a  
22 complete building destroyed by mold. Not in  
23 dispute. Not in dispute. The entire building has  
24 to be stripped down to studs. And Plaintiff's  
25 counsel comes into the case and, in a matter of four

1 months, resolves the entirety of it, and we're  
2 almost -- we're almost done with reconstruction of  
3 it.

4 And during that time period, during those  
5 four months, Your Honor, I get one e-mail from  
6 opposing counsel that says, quote/unquote, "Would  
7 you consider" -- "would you consider letting me out  
8 of the case?"

9 Counsel does not provide me with the  
10 letter from previous counsel saying, "Yes, I'll let  
11 you out," does not provide me with that at any time.  
12 Still, to this day, he's never sent it to me. So we  
13 get into the case, and we get a, "Would you  
14 consider," and that is it.

15 And during that same time period, there is  
16 no demand to answer. There is -- there is no 16.1.  
17 There is no discovery. There's no depositions, but  
18 we settled the case, and the case was resolved, and  
19 the whole unit is almost constructed.

20 I bring that up, Your Honor, because had  
21 there been -- and counsel can't point to any of  
22 it -- had there been any effort -- any effort to  
23 communicate with me, to say, "Mr. Lewis, look, I'm  
24 going to file this motion," I would have said, "Hey,  
25 okay. I'm either going to immediately oppose it,

1 and here's all my facts," or "I'm going to let you  
2 out of the case," like I did. But, instead, I'm  
3 working with counsel, and there's silence on this  
4 end of the case.

5 THE COURT: Why did you agree to dismiss  
6 with prejudice? I mean, if your argument -- if this  
7 is your argument, that you had a valid opposition to  
8 the motion for summary judgment, why didn't you  
9 stand your ground and just say, "We'll either  
10 voluntarily dismiss without prejudice or we'll go  
11 forward with the motion for summary judgment"?

12 MR. LEWIS: Great question. Because I  
13 received what I believed was full-value settlement  
14 for my client from one defendant. And although  
15 there are other defendants in the case, I have no  
16 desire and I believe I have an ethical obligation  
17 not to pursue in excess of what is the full legal  
18 recovery on behalf of my client.

19 Although we sued multiple other defendants  
20 and we let one prior defendant out, I received a  
21 full-value settlement on behalf of one. I was in  
22 the middle of not only finalizing the documents but  
23 beginning construction with no communication from  
24 the other side in four months. I had no  
25 understanding that they were going to be filing this

1 motion, no e-mail, no phone call, no fax, no  
2 nothing, Your Honor.

3 So while there was a letter saying, "Would  
4 you consider" I am now settling the case. I have  
5 full-value settlement, and the case is going away.  
6 So he files his motion. Shoot, had you called, I  
7 would let you out.

8 Had I not received full-value settlement,  
9 which is what Counsel claims is the smoking gun --  
10 had I not received full-value settlement from  
11 another defendant, of course I would have and had an  
12 ethical obligation to move forward against all  
13 defendants in order to obtain that full-value  
14 settlement for my client, but by the time I got that  
15 pleading, I did not need to.

16 THE COURT: My concern is, Counsel, and  
17 I'm sure you can understand it, because the way you  
18 did your voluntary dismissal is with prejudice, with  
19 knowledge that he was insisting upon that, so -- in  
20 lieu of his motion for summary judgment, and, No. 2,  
21 you acknowledge that he intended to ask for  
22 attorneys' fees.

23 So, basically, what you're telling me is  
24 you snookered Mr. Larsen to come forward and agree  
25 to a voluntary dismissal in lieu of proceeding

1 forward with his summary judgment, which, again,  
2 maybe it was good lawyering. I don't know. But it  
3 was evident from the voluntary dismissal that he was  
4 going to oppose it; he was going to go forward with  
5 his motion for summary judgment, get a judgment  
6 against your client, in all probability, at some  
7 point. I mean, maybe you would have asked for a  
8 Rule 56 protection and wanted to do some discovery,  
9 but at some point he was going to file it and get a  
10 judgment against your client.

11 Again, I'm not -- I don't know your  
12 reasons for, you know, settling this matter. Maybe  
13 it was the most expeditious and most ethical way to  
14 do it, but you agreed to do it with prejudice,  
15 recognizing that he was going to be seeking  
16 attorneys' fees in lieu of going forward on his  
17 summary judgment motion.

18 MR. LEWIS: With all due respect to the  
19 Court's comment that I snookered him --

20 THE COURT: I apologize. You  
21 outmaneuvered him.

22 MR. LEWIS: -- I believe, Your Honor, I  
23 did everything in my power, in under four months, to  
24 settle a massive case, and as soon as I got a  
25 pleading, I literally walked out of a doctor's

1 office and said, "What are you doing? Where have  
2 you been for four months? I have no idea what  
3 you're doing. I'll let you out."

4 I was trying -- no discovery, no answers,  
5 no depositions. I'm doing everything in my power to  
6 never see you and never burden the Court with any  
7 pleadings of any type.

8 I don't believe that that's snookering.  
9 Yes, I could have said, "You know what" --

10 THE COURT: You know, I wish I hadn't used  
11 that word. It was --

12 MR. LEWIS: Fair enough.

13 THE COURT: -- just that you were a good  
14 lawyer and that you moved forward with your  
15 voluntary dismissal, and you agreed to terms that  
16 are concerning to me to obtain a voluntary  
17 dismissal, and that's that you're agreeing to terms  
18 with prejudice and with the recognition that  
19 Mr. Larsen was going to seek attorneys' fees as the  
20 prevailing party.

21 MR. LEWIS: I appreciate the rewording,  
22 Your Honor.

23 I find it hard to take a position against  
24 a plaintiff that settles a massive case in a very  
25 short period of time to say, "Well, Mr. Lewis,

1 because you didn't file a reasonable opposition to a  
2 motion to summary judgment and, at the very least,  
3 asked for Rule 56 discovery, that now your client,  
4 counter to the standard of American law, is going to  
5 be required to pay fees and costs for a series of  
6 motions that exceed 100-plus pages that are more  
7 than the entire filing in the entire case," where  
8 the fees generated for those are more than the  
9 entire -- every single law firm, probably, in the  
10 case, simply because I did not burden the Court with  
11 a Rule 56 opposition and set forth all of the  
12 appropriate demands under the CC&Rs that would have  
13 evaded a motion.

14           The CC&Rs have all types of requirements  
15 for the homeowners association to act, not the least  
16 of which we would have provided information that  
17 there is knowing access to these units, but the fact  
18 that we didn't do that, to try and take this away  
19 from the Court, to try and settle this case, should  
20 not punish my client. We were doing everything we  
21 can to make the case easy, to make it go away,  
22 everything possible, and it was only the pleadings.  
23 It was only Counsel's pleadings, without a phone  
24 call to say, "Hey, what's going on?"

25           Again, have -- if the burden was the other



1 way around and the standard practice was to award  
2 fees, I get it, but the standard of practice  
3 absolutely is not to award fees. I believe we had  
4 more than valid arguments against the CC&Rs, not the  
5 least of which -- even if I fail on the prevailing  
6 party issue, even if I fail on the dismissal issue  
7 or the judgment issue, Your Honor, you have the  
8 section to deal with the HOA recovering its past  
9 dues. We should be successful in that.

10 If we are going to go to discretion, I  
11 would believe that the Court would want to promote a  
12 massive case being settled in a couple months with  
13 no discovery or -- or even the demand of an answer.

14 And, finally, Your Honor, when we look at  
15 all the pleadings I set forth in my motion -- and I  
16 said I understand they don't apply on all fours to a  
17 motion for summary judgment, but in almost every  
18 situation, the local rules require you to reach out  
19 to opposing counsel. Before you do your 2.47, your  
20 2.34, your 3.54, any of those things, before you do  
21 any of them, just make a phone call.

22 And I understand I didn't do anything more  
23 than one phone call, which is disputed, but at least  
24 I made one phone call to say, "Hey, can you send me  
25 my client's prior agreement? Because I don't have

1 it."

2 And I find it very difficult to swallow  
3 that the plaintiff gets punished in the judicial  
4 system which specifically stands for, no, you don't  
5 get fees on a prevailing party, when we have done  
6 everything right except for, perhaps, one phone  
7 call.

8 Counsel never provided a voluntary  
9 dismissal. That's not in the record. He didn't  
10 say, "Mr. Lewis, here, sign it." He didn't provide  
11 an affidavit from himself saying, "Mr. Lewis, you  
12 know, I called you three times," "Mr. Lewis, why  
13 don't you dismiss me," or "I'm going to file the  
14 motion."

15 His e-mail to me is, "Would you consider  
16 it?" and I think it's harsh, with all due respect,  
17 Your Honor, to hit a plaintiff for 15-plus thousand  
18 dollars' worth of attorneys' fees for 100-plus pages  
19 of a motion that exceed the entirety of the case and  
20 that we got resolved.

21 THE COURT: Are you contesting the amount  
22 of the attorneys' fees under the Brunzell factors?

23 MR. LEWIS: I contest all of them,  
24 Your Honor, because I believe -- well, let me take a  
25 reasonable step back.

1 Everything up until the filing of the  
2 motion, if the Court is inclined to believe that  
3 they're entitled to that for being in the case, I'll  
4 concede that, but everything from the motion, on, I  
5 believe shouldn't -- it shouldn't have happened.  
6 The motions shouldn't have been filed. The  
7 attorneys' fees motion shouldn't have been 50-plus  
8 pages. The reply shouldn't have been 50-plus pages.  
9 This shouldn't have happened.

10 So if the Court's inclined to grant costs,  
11 if the Court's inclined to grant communications with  
12 the client up until that point, then I guess I can  
13 agree with that on behalf of my client. I think  
14 there is still a valid claim. I think we would have  
15 been successful in defeating that summary judgment  
16 motion. I just felt that it was more appropriate to  
17 resolve the entire case than to continue to bow.

18 THE COURT: Mr. Larsen, the statute seems  
19 fairly clear on this issue that you have to obtain a  
20 judgment. You know, I read the Azzarello case. I  
21 agree with you that it -- there is portions of it  
22 that are helpful to your position, but for purposes  
23 of the statute, you know, NRS 18.010(2)(B), it  
24 appears you have to have a judgment.

25 MR. LARSEN: Is it your ruling that a

1 dismissal with prejudice is not an adjudication on  
2 the merits, and, therefore, it is the equivalent of  
3 a judgment? That's making form triumph over  
4 substance. We've cited the Valley Bank case versus  
5 Carrillo that said when you construe a statute, you  
6 look at what the effect is, not what the words are.

7 Form does not triumph over substance. In  
8 substance, we are the prevailing party. That means  
9 they can't file again. We are the equivalent of a  
10 judgment. So that, as a matter of law, is basically  
11 inviting reversible error.

12 THE COURT: And, again, there is some  
13 persuasive aspects of Azzarello as to the  
14 distinction between the motion to dismiss and the  
15 motion for summary judgment, that if you pursued a  
16 summary judgment, that you would have got a judgment  
17 and been entitled to attorneys' fees.

18 I'm going to take this matter under  
19 submission.

20 MR. LARSEN: Could I just add one point,  
21 Your Honor?

22 THE COURT: Absolutely.

23 MR. LARSEN: For Counsel to say, "Where  
24 were you for four months?" -- we only made a  
25 request. We made a demand. The August 1st

1 letter, which is Exhibit A to our motion, was sent  
2 to prior counsel. That was a demand to dismiss.  
3 Prior counsel agreed to dismiss. That's also in the  
4 record, in Exhibit B. He says, "Okay. I'm tied up  
5 right now, but I will dismiss it."

6           What's lost in all this discussion is he  
7 says, "We did nothing wrong." They did something  
8 wrong in not dismissing. Then we get new counsel.  
9 The same August 1st demand letter is sent to  
10 Mr. Lewis on December the 12th. That's also in  
11 the record. It's not just, "Oh, I'm requesting;  
12 would you please dismiss?" I said, "Here's the  
13 demand letter." We tell him, "Your prior counsel  
14 agreed to dismiss."

15           He says we didn't tell him that prior  
16 counsel had. He had the file. He could have seen  
17 it himself in his own file that he got from prior  
18 counsel. To say that -- so from the time -- then  
19 Mr. Lewis tells me -- I'm in the exchange with prior  
20 counsel. He says, "Don't bother me with your  
21 e-mails anymore."

22           We said, "Fine."

23           At that point -- and, again, this is not  
24 between attorneys. This is between parties. The  
25 client says, "Proceed with the motion." We don't

1 want to have to continually disclose a meritless  
2 case in our disclosure statements when people want  
3 to sell their units. They're required by statute to  
4 set forth any litigation. They wanted it over with.

5 They directed me -- I'm not going to get  
6 into attorney-client privileges and things, but I  
7 can say that drafts went back and forth to the  
8 client. The affidavit of Larry Hartman went back  
9 and forth. I -- they were on notice twice. We  
10 discharged our duty.

11 To say, "Where were you" -- the onus  
12 falls -- once he got -- once Plaintiff's counsel got  
13 the letter the second time, the onus was on them.

14 And then he says, "Oh, when I got back  
15 from the doctor, I called."

16 Said, "Well, would have dismissed if you  
17 just would have made a call."

18 The last page of his brief says to the  
19 contrary. They weren't going to let us out until  
20 they got all the other defendants out.

21 To say that all the attorneys' fees in  
22 this case, majority, is here, that's pure  
23 conjecture. He's asking the Court to assume that  
24 what the primary defendant -- what they've spent in  
25 this case is less than what I've spent. There's no

1 foundation for that. It's pure conjecture.

2 In any event, I'll submit it, Your Honor.

3 THE COURT: Mr. Lewis, I'm going to let  
4 you get the last word in, so...

5 MR. LEWIS: I appreciate that. I need to  
6 only address one issue, Your Honor, and then I'll  
7 let it be.

8 Counsel brought up in his pleading and  
9 then again right now that I advised him and prior  
10 counsel for my client to remove me from the e-mails.  
11 The reason I did that is because of bickering back  
12 and forth between counsel: You're unethical this;  
13 you're unethical that; why don't you read the rules;  
14 why don't you do this.

15 That has no place in the way I practice  
16 law. I don't believe that it has any place in the  
17 way anybody practices, especially with a counsel  
18 that's no longer part of the case. And that is very  
19 clear. After three or four e-mails back and forth  
20 with two gentlemen taking personal potshots at each  
21 other, I said, "Enough. It has nothing to do with  
22 the case. Please let me out."

23 With that, you know, Your Honor, I -- I  
24 think that sets the tone for what's happened, and I  
25 apologize that we're here, and I'll submit it after

1 that.

2 THE COURT: Thank you, Counsel.

3 I am going to take it under submission. I  
4 want to look at it again. I wanted to hear  
5 Counsels' argument on some of the issues before I  
6 made my decision, so I'm going to have you come back  
7 in one week, and I'll render my decision at that  
8 time.

9 MR. LARSEN: What's that: The 15th?

10 THE CLERK: August 15th, 9 a.m.

11 MR. LARSEN: You said the 15th?

12 THE CLERK: August 15th.

13 MR. LARSEN: Yeah.

14 MR. LEWIS: That's fine.

15 THE COURT: Thank you, Counsel.

16 MR. LEWIS: Thank you very much,  
17 Your Honor.

18 (Proceedings concluded at 9:50 a.m.)

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1 STATE OF NEVADA )  
COUNTY OF CLARK )

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CERTIFICATE OF REPORTER

4

I, Andrea N. Martin, a Certified Shorthand

5

Reporter of the State of Nevada, do hereby certify:

6

That the foregoing proceedings were taken

7

before me at the time and place herein set forth;

8

that any witnesses, prior to testifying, were duly

9

administered an oath; that a record of the

10

proceedings was made using machine shorthand which

11

was thereafter transcribed under my direction; that

12

the foregoing transcript is a complete, true, and

13

accurate transcription of said shorthand notes;

14

I further certify that I am neither

15

financially interested in the action nor a relative

16

or employee of any attorney or party to this action.

17

IN WITNESS WHEREOF, I have hereunto set my hand

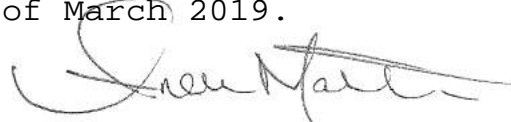
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in my office in the County of Clark, State of

19

Nevada, this 7th day of March 2019.

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ANDREA N. MARTIN, CRR, CCR NO. 887

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