IN THE SUPREME COURT OF THE STATE OF NEVADA

ROCK SPRINGS MESQUITE II OWNERS' ASSOCIATION, Appellant, vs. STEPHEN J. RARIDAN and JUDITH A. RARIDAN, Respondents.	Electronically Filed Aug 15 2019 04:42 p.m. Elizabeth A. Brown Clerk of Supreme Court Supreme Court No. 77085 District Court Case No. A-18-772425-C

ROCK SPRINGS MESQUITE II OWNERS' ASSOCIATION'S REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

RULES

OTHER AUTHORITIES

I. LEGAL ARGUMENT

A. THE DECLARATORY RELIEF ACTION WAS NOT RIPE FOR DETERMINATION IN CASE NUMBER ONE BECAUSE THE FACTUAL SITUATION IS CHANGING

The respondent's brief argues that the declaratory relief claim was known to the parties and ripe during the first case, and thus, the claim was required to be brought at that time. (*See Appellant's Brief* P. 4). This argument is factually inaccurate and generally irrational.

The wall continues to deteriorate to this date, and has continued to deteriorate over time. (APP161-APP163, APP168-APP169)[1]. Consequently, when, or even if, the association was to repair, or replace the wall, evolved over several years. In other words, if after case number one the defendants modified their backyard to avoid the excessive lateral pressure, then the wall may not need to be repaired completely or replaced. Since the wall has deteriorated further since the first case, where the complaint was filed on May 5, 2011, the association's situation regarding the wall changed, the factual situation is different and evolving. (APP001-APP006, APP160-APP163, APP168-APP169). How, when, where, and to what degree the wall needed to be repaired is an ongoing issue and clearly evolved over time. Consequently, to suggest that the association losses it's right for

[1] The photos demonstrate the walls obvious continued failure over time.

declaratory relief because it was aware of the lateral support issue previously is disingenuous. The wall repair, and the degree and method of the wall repair, is still at issue, not yet determined, and evolves as the condition of the wall becomes more problematic. The legal landscape related to the wall for the association needs to be determined to even allow the association's board of directors to arrive at an appropriate decision as to the scope and method of the wall replacement or repair.

After the first case was adjudicated, the association later determined that possible replacement of the wall, and/or some degree of repair to the wall may be required because the status of the wall changed. (APP168-APP169). Consequently at that juncture, the declaratory relief becomes ripe and subject to judicial determination. Ripeness of a claim is required before the declaratory action can be plead. This proposition is clearly stated in the Nevada case cited by the respondents, *MB America v. Alaska Pacific Leasing*, 367 P.3d 1287 (Nev. 2106).[2] Presently, the respondents argue that since the lateral support issue was possibly known during the first case which only focused upon a failure causation determination, the claim is forever barred. (*Respondent's Answering Brief*, P. 8). Such an interpretation of the claim preclusion doctrine is simply unworkable and

[2] The Supreme Court declined to apply claim preclusion in an instance where the declaratory relief action had not necessarily developed or became ripe. The Court wrote, "the issues are not ripe for judicial review because MBA failed to comply with the mediation terms of the agreement" *Id* at 1291.

inconsistent with the stated objectives of claim preclusion generally to insure judicial economy and insure fundamental fairness. *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048 (Nev. 2008). It is for this reason that declaratory relief actions are afforded various exceptions, ripeness for example, to the general rule, to avoid bizarre and inequitable outcomes or results. *MB America*, 367 P. 3d 1291.

B. THE FACTUAL SITUATION HAS CHANGED BECAUSE THE WALL HAS DETERIORATED FURTHER OVER TIME

The degree to which the wall needs to be repaired, its potential probability for collapse, and creation of liability to the association, is evolving. As such, the association determined after case one was resolved that declaratory relief was appropriate because the options as to the scope of the wall repair, the degree of the repair, and the potential cost, should now all be considered. The association board owes a statutory duty and obligation to its homeowners to ensure that the most effective and efficient repairs are undertaken, costs are appropriately contained, and its liability is properly managed and minimized. *See* NRS 116.3103. It is for this reason that the association determined that through time, and observing the further deterioration of the wall, declaratory relief was indicated to resolve and ultimately determine the parties' rights and responsibilities for repair or replacement of a wall. This says nothing to the risk evaluation associated with a possible complete wall collapse in the future. The wall did not necessarily require

replacement at the time case number one was plead and tried. (APP001-APP006). Furthermore, there is, presently existing new facts and changed facts, related to the wall; i.e., the wall condition is deteriorating over time.

To follow the argument of the respondents, that since the potential issue of lateral support was previously known, and thus, is forever barred, is simply unworkable and unfair. (*See Respondents Answering Brief* P. 8). If that standard is to apply, then any declaratory relief action that is possibly known, or that could arise in the future, would be mandated to be brought with other collateral or unrelated claims even if the factual environment changes over time. For example in case number one, if the association were successful, it would have allowed for the resolution of all issues between the parties. Further the respondent's position completely ignores the fluid and factually changing circumstances of the wall itself.

The respondents articulated an approach places an unreasonable burden upon the parties and practitioners to anticipate when, where, and how in the future, a claim may be ripe, for declaratory rights to be determined. Such clairvoyance is not required in the law and is simply unmanageable. It is for this reason that such declaratory relief exclusions to the doctrine of claim preclusion are appropriate and

well developed in the law. *Boca Park Marketplace v. HIGCO, Inc*. 407 P.3d 761 (Nev. 2017).

C. CLAIM PRECLUSION DOES NOT APPLY BECAUSE THERE IS NO COMMONALITY OF FACT BETWEEN CASE ONE AND THE PRESENT ACTION

In the instant matter, claim preclusion is inappropriate because there is no factual relationship between the first action and the subsequent declaratory relief action which is required for claim preclusion to apply. For claim preclusion to apply, the issues decided in the prior litigation must be identical to those presented in the current action. *Technomarine v. Giftports, Inc*, 758 F.3d 493, 499 (2d Cir. 2013). Clearly, there must be a commonality or nexus of law and fact for claim preclusion to apply. *Id*. Otherwise, if no nexus or commonality between the two actions is applicable then claim preclusion, as is the case in this instance, can be used to bar viable and appropriate claims in perpetuity. In order for such preclusion to occur, the court must evaluate if there exists a nexus of fact between the two claims such that, "the same evidence is needed to support both claims, and whether the facts **essential** to the second were present in the first". *Id*. (emphasis added).

It is well established law that there must be a commonality of fact between the prior and current issues in order for claim preclusion to apply. *Id*. The cases

cited by the respondents in their answering brief clearly articulate the appropriate test to determine when the two cases are completely dissimilar and do not overlap in any factual manner. As discussed below, the respondents cited cases, actually support the position espoused by the association.

In the case of *Laurel Sand & Gravel Incorporated v. Wilson*, 519 F.3d 156, 164 (4th Cir. 2008), a case cited by the respondents, the court articulated the appropriate test to determine whether claim preclusion should apply. The Fourth Circuit Court of Appeals wrote, "the test for deciding whether the causes of action are identical for claim preclusion purposes is whether the claim presented in the new litigation arises out of the same transaction or series of transactions as the claim resolved by the prior judgment. Quoting *Siding Pittston Company v. United States*, 199 F. 3d 694 (4th Cir. 1999). *Id* at 162.

The *Laurel Sand & Gravel* court further articulated the applicable standard to determine if claims share common facts, by quoting a Ninth Circuit Case called *Tahoe Sierra Council v. Tahoe Regional Planning Agency,* 322 F.3d 1064, 1078 (9th Cir. 2003) . The language from the *Tahoe* case further articulated the standard to utilize to determine if claim preclusion should apply. The court wrote, "newly articulated claims based on the same transactional nucleus of facts may still be subject to a res judicata finding that the claims could have been brought in the

earlier action". It is well articulated and clear black letter law that the doctrine of claim preclusion requires that there be a “nucleus of facts”, and that the claims arise from the same "transaction or series of transactions". *Id.* In this matter, the further deterioration and changing condition of the wall changed the facts and creates a completely new factual “transaction” or “nucleus”. *Id*.

In yet another case cited by the respondents, *Zaide v. United States Sentencing Commission,* 115 F. Supp. 3d 80 (D.D.C. 2015), the same standard was clearly articulated, that there must be a commonality of fact. The court, in determining that claim preclusion should apply, determined that the factual events were similar and arose out of the same nexus of fact. The court found, “both sets of claims turn on the same series of events". *Id* at 85. Once again, the cases cited by the respondents clearly support the appellant’s contention that a factual nexus must be present in order for claim preclusion to apply. *Id.*

Nowhere in the respondent's brief, have they argued that the facts in case one are at all applicable to the declaratory relief action in this appeal. There is no commonality because they are totally and completely separate factual inquiries. There is absolutely no relationship. In case number one the factual analysis explored various possible causes for the wall failure. (APP001). In the present declaratory relief action, the facts are simply based upon the wall structure itself

and its location on the party's property line. (APP035). There is no overlap of factual inquiry whatsoever between the two issues. No facts applicable in case one, are "essential" to case number two. *Technomarine,* 758 F.3d at 499.

Respondents, ad naseum, make conclusory statements in their brief that the two cases are similar factually. (*See Respondent's Answering Brief*, P. 3, P. 6). However, the respondents do not provide any actual argument or citation demonstrating that the same facts argued and presented in case number one are relevant or in any manner similar to the simple legal determination for declaratory relief. In fact, the question of adjacent landowner's lateral support obligation is a question purely of law. Few facts are required, if any, for this determination, other than the existence of a property line between the parties and the location of the wall components along the property line. These factual issues were not relevant in the first case.

D. CLAIM PRECLUSION DOES NOT APPLY BECAUSE THERE IS NO COMMONALITY OR NEXUS OF LEGAL ISSUES BETWEEN CASE ONE AND THE PRESENT ACTION

The legal issues in case one were limited to causes of action all narrowly related to the cause of the wall failure based upon the prior homeowner's backyard forces pushing over the shared wall. (APP001-APP006). There were no legal determinations, or arguments, whatsoever as to whether or not a certain party

possessed an obligation to support the wall. The present narrow legal issue is completely separate and distinct from any issues presented in the first case. The respondents do not even attempt to present any evidence that the legal issues in case one are similar in any manner to the legal determinations sought in the instant case.

E. THE DECLARATORY RELIEF ISSUE WAS NEVER ULTIMATELY LITIGATED, DETERMINED OR EVEN ARGUED TO THE COURT IN CASE ONE

Factually, it is not in dispute that the presentation of a jury instruction during trial regarding lateral support was all that occurred in the first case as it related to the issue. (APP007). In other words, there was no briefing, detailed argument, or District Court findings/order resolving the issue. (APP165). Simply put, the court rejected the jury instruction without analysis or findings and the record is void of any detailed history regarding the requested instruction. (APP165).

The purpose of the lateral support jury instruction presented to the court by plaintiffs, was to simply ensure that the jury recognized that the subject complex wall system did not necessarily require the association support the wall with the use of its own land. This possible confusion could impact the jury's analysis of the parties' relative responsibility for the causation of the wall failure. The proposed

jury instruction, to clarify this issue, was requested to insure the jury made a determination on the appropriate issues and facts, related to the actual causes of action being litigated, i.e, causation of the wall failure.

The court record is completely void of any findings, or conclusions related to the association's simple request for this jury instruction and its subsequent rejection. (APP007). For the respondents to suggest, or even argue, that the matter was close to being litigated, plead, or in any way appropriately determined by a court, is simply factually wrong and there is no citation to the record to support such an argument.

In the respondent's brief, they attempt to obfuscate the issue of the prior causes of action which were actually litigated in the first case. (*Respondent's Answering Brief, P.* 8). The respondents appear to argue that, "Rock Springs cannot resurrect a case it previously lost simply by seeking declaratory relief rather than money damages". (*Respondent's Answering Brief, P.* 9). This statement completely misrepresents the causes of action in the underlying case number one. Case number one simply dealt with causation of a wall failure. (APP001-006). To suggest that a declaratory relief action between two adjacent landowners cannot be brought because it is somehow, "resurrecting prior claims, is completely factually and legally unsupportable". *Id*. There are no facts or legal relationships argued or

supported by the respondents in their answering brief related to the causes of action in case one being in any manner related to the requested declaratory relief sought in case two. Respondents simply make broad unsupported arguments and statements without any analysis of the actual relationship between the causes of action and related evidence in case one, and the relief sought in the present matter.

The declaratory relief action is necessary to resolve an ongoing problem between two adjacent landowners on a very complex, expensive, and potentially dangerous wall. To suggest that in case number one the legal issues and causes of action related to causation for the wall failure, are somehow tied into the relief sought in declaratory relief by Rock Springs, is simply attempting to obfuscate the issues.

The respondents further make the specious argument that the association, "is attempting to collaterally attack the finality and validity of a judgment in favor of the Olsens in case number one by bringing a new case for declaratory relief against the Raridan's in case number two". (*Respondent's Answering Brief, P.* 11).

Once again, the respondents do not recognize that separate causes of action exist that are supported by a completely unrelated universes of fact, and that the declaratory relief regarding repair of a wall has absolutely nothing whatsoever in common with the issues litigated between the parties previously.

Are the respondents suggesting that should the wall collapse, that the courts would not be able to adjudicate or determine relative rights and responsibilities because of the issues litigated in case number one? What if the respondents, at the present time add additional lateral loads to the already failing wall? The facts then would be changed, and the association free to bring new causes of action. The respondents are asking for a ruling to exist in perpetuity even though the facts have significantly changed.

The association is not collaterally attacking the previous ruling. It was determined by the jury that the homeowner's backyard was not causing harm to the wall structure, but was possibly related to an inherent construction defect issue with the wall itself. (APP008-APP009). A true collateral attack would be bringing other claims or causes of action seeking monetary relief from the Raridans based upon the same arguments, causes of action or facts.

For example, the primary evidence presented in the trial against the Olsens related to excessive lateral support forces being exerted against the wall, primarily related to numerous very large palm trees growing within several feet of the subject wall. If the facts and circumstances change, and the respondents begin to modify their backyard, remove some of the associated walls, or perhaps add or construct additional lateral pressures, does the association have new rights of

action? The appellant contends that a new universe of facts would be created, unrelated to the facts resolved in the first case. Respondents are taking the untenable position that the first case forever resolves all outstanding issues between the parties regardless of the change of facts or circumstances that may arise.

The prior jury determination stands, and the association is barred from bringing any future causes of action or issues related to the cause of the wall failure based upon the conditions of the parties improved land at the time of the trial only.

Incredibly, the respondents want their cake and eat it too. They argue that declaratory relief is a collateral attack, and thus, should be barred forever. However, in the same breath, the respondents have argued that should the wall collapse and harm occur to their own backyard, that somehow the association could be liable. (APP035). For example, if the respondent's backyard begins to fail, and harm occurs, is the association liable for the failure to repair or replace the wall that provides lateral support to the land? Respondents would certainly contend that such rights exist in their favor. The respondents would then argue that the claim for judicial determination is ripe, for them and only them, and could seek an order of a District Court compelling the association to repair the wall and provide lateral support.

F. THE PROPOSED JURY INSTRUCTION, BY ITS LANGUAGE, CLEARLY INTENDED TO PROVIDE CLARITY TO THE JURY REGARDING THE ISSUES TO BE DETERMINED AND AVOID POSSIBLE CONFUSION

It is important to note the actual language of the jury instruction presented to the trial court. The proposed jury instruction, by its language, was designed to insure that the jury did not reach a verdict beyond the facts and causes of action presented at trial. The instructions read:

[Rock Springs] is under no duty or obligation to provide lateral support for defendant's wall or property to counteract the forces resulting from defendants actions. (APP007).

"To counteract the forces resulting from defendants actions" (APP007), was language proposed to simply insure the jury recognized that an adjacent landowner did not have an obligation to counter the unreasonable forces being placed upon the wall structure by the defendant's land improvements. The arguments from the first case by the association were that the homeowner's improvements, including planter boxes, vegetation and a swimming pool, were exerting unreasonable forces on the wall. The proposed, but rejected jury instruction was designed to insure the jury understood that the association was not obligated to counter act the unreasonable forces created by the defendants property.

While it is factually accurate that a jury instruction was presented to the

court in case one related to the requirement for lateral support, this was not a dispositive issue for the case, nor was it a factual or legal determination that would have impacted the outcome of the case. (APP007). The jury instruction in the first case was simply assisting the jury to determine causation and avoid a verdict based upon other possible factors misconceptions.

G. TO DENY THE APPELLANT THE RIGHT TO DECLARATORY RELIEF COULD LEAD TO INCONSISTENT RESULTS AMONG OTHER ADJACENT LAND OWNERS

The subject property wall primarily abuts the respondent's property. However, there are other adjacent property owners that may also be impacted (APP160-APP163). In other words, there are other parties where the declaratory relief action could impact their rights and liabilities.

The fact that additional landowners may be impacted clearly illustrates that the statutory intent of declaratory relief being liberally construed, should apply in the instant matter. There exists other homeowner's whose rights need to be determined as it relates to this large wall complex that runs along several lots. (APP160-APP163). This dilemma outlines the weakness with the respondent's position. In essence, respondents do not desire the courts to make a substantive determination of the parties' rights as it relates to this particular action. However, the impact upon other adjacent homeowners with regard to lateral support may be

implicated. The appellants raise this issue simply to demonstrate the judicial inefficiency and ineffectiveness of applying claim preclusion to the instant matter. A judicial determination between these parties will impact other similarly-situated parties and avoid inconsistent results and the need for multiple legal actions.

H. THE RESPONDENTS RELIANCE UPON MB AMERICA v. ALASKA PACIFIC LEASING IS FACTUALLY AND LEGALLY IRRELEVANT

The respondents rely upon the MB America case to limit the scope of potential declaratory relief actions under the Nevada declaratory relief statute. *MB Am Inc v. Alaska Pacific Leasing*, 367 P.3d 1286 (Nev. 2016). However, a reading of the case clearly demonstrates that the factual and legal issues presented are completely dissimilar to the present matter. In fact, the appellants would argue that the case actually supports the arguments espoused in this brief. In the instant case, the issue of declaratory relief was not necessarily ripe during the presentation of case one. It is clearly articulated in the *MB America* case that in order for a declaratory relief cause of action to be appropriately presented, it must be, "ripe for judicial determination". (*MB Am., Inc. v. Alaska Pac. Leasing Co.,* 367 P.3d 1286 (Nev., 2016)). It was on the basis of ripeness that the Supreme Court rejected the arguments in *MB America* by stating that, "the issues are not ripe for judicial

review because MB failed to comply with the mediation terms of the agreement". *Id* at 1291.

In other words, factually, declaratory relief was not appropriate as it had not yet become ripe. This is similar to the instant matter; at the time the first case was adjudicated, declaratory relief was not ripe for judicial determination because the status of the wall did not necessarily require repair.

I. THE OVERWHELMING WEIGHT OF LEGAL AUTHORITY SUPPORTS THE ASSOCIATION'S POSITION THAT NO DUTY EXISTS TO PROVIDE LATERAL SUPPORT TO AN ADJACENT PROPERTY IN AN IMPROVED CONDITION

While not particularly relevant to the issues presented for this court's determination in this appeal, the appellant will briefly respond to the substantive legal issues argued in the respondents answering brief. The respondents argued that there exists limited authority to support the association's substantive argument regarding lateral support of adjacent land owners. Contrarily, the overwhelming weight of authority supports the association's position that adjacent property owners are not required to utilize their land and provide additional support structures when the properties are in an improved condition.

In essence, the appellants are confident that should this matter proceed forward substantively for a determination of the parties relative rights, the association will prevail on the issue of lateral support requirements of adjacent

property owners. Clearly, this substantive outcome will be critical to the association's cost, liability exposure, and means and methods of the wall repair or replacement. The central issue when determining adjacent property owners lateral support obligations rests with whether the land is in a natural condition, or an unimproved condition. *Carrion v. Singley*, 614 S.W.2d 916 (Tex. Civ. App. 1981). When the property is improved, with structures, change of the actual land itself, walls, etc, the law is overwhelming clear, that landowners do not owe a duty of lateral support.

In a case from the Court of Civil Appeals of Texas, called *Carrion v. Singley,* 614 S.W.2d 916 (Tex. Civ. App. 1981), the appeals court ruled in favor of adjacent land owners in a case factually identical to the instant matter. In the *Carrion* case, the adjacent homeowners shared a retaining wall which was located entirely on the defendant's property. *Id.* at 196. The subject wall provided lateral support to the plaintiff's property. *Id*. The plaintiff' property was situated higher than the defendant's property. *Id.* Again factually identical to the matter on appeal before this court. Defendant's supporting retaining wall failed and the plaintiff's property began to erode and even impacted the homeowner's foundation. *Id.* The Texas Court of Appeals ruled in favor of the defendants by outlining the clear black letter law that is applicable to the duty of lateral support and adjacent

homeowners. The court wrote, “the right of lateral support is the right which soil is in its natural state has to support from land adjoining it. The right applies only to land in this natural state. The right of adjoining property owner to lateral support exists only so far as to require support for his land and its natural state from his neighbor's land in its natural state. *Simon v. Nance*, CCA NWH, 45 Tex. Civ. App. 480, 100 S. W. 1038; *Carpenter v. Ellis* 489 S.W. 2d 388 (Tex. Civ. App. 1973); *Williams vs. Thompson*, 152 Tex. 270, 256 S.W. 2d 399.” *Id* at 197.

The court concluded, "in such situations we hold that defendant had no duty to maintain the retaining wall located on his property which provided lateral support to plaintiff's land." *Id*.

The following cases are cited for additional authority supporting the same proposition in other jurisdictions. It is important for this court to note that the respondents did not provide any authority which indicated that an adjacent land owner owes a duty of lateral support when the adjacent land is improved or in its unnatural state. The overwhelming authority, if not all the applicable authority, supports the association's substantive contention that lateral support is not required. *Xi Properties, Inc., Larry W. Nichols, and Jimmy C. Stout v. Racetrac Petroleum, Inc*. 151 S.W. 3d 443 (2004) , citing *Olsen v. Mullen,* 244 Minn. 31, 68 N.W. 2d 640, 644 (1955); *Victor Mining Co. v. Morning Star Mining Co.,* 50 Mo. App. 525,

1892 WL 1893 (1892); *Carrion*, 614 S.W.2d at 917; *see also* 1 Am.Jur.2d *Adjoining Landowners* § 40; Restatement (Second) of Torts § 817 cmt. e. (1979). Where, as here, a landowner alters his land by filling, thus raising the level of the land above its natural state, there is no right of lateral support from adjoining landowners with respect to the altered portion of the land. *Sime v. Jensen*, 213 Minn. 476, 7 N.W.2d 325, 327 (1942); *see also* Restatement (Second) of Torts § 817 cmt. c (1979) (stating that naturally necessary support "does not include the support needed because of the presence of artificial additions to …the surrounding land"). It follows then, that landowners who raise their land above the natural level are under a duty to "keep the dirt from encroaching upon [their] neighbor's land." *Abrey v. City of Detroit*, 127 Mich. 374, 86 N.W. 785, 786 (1901); *see also Sime*, 7 N.W.2d at 327 (following) the reasoning of *Abrey*). This duty includes, if necessary, the building of a retaining wall or other structure to protect the neighbor's land. *Abrey*, 86 N.W. at 786; *Hutchinson and Rourke v. Schimmelfeder*, 40 Pa. 396, 1861 WL 6074 (1861).

II. CONCLUSION

Based upon the briefs submitted, the appellant, Rock Springs Mesquite II Owners' Association respectfully requests this court enter an order reversing the

District Court's ruling and remanding the matter for further proceedings.

Dated this 15th day of August, 2019.

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III. CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman and 14- point font size.

I FURTHER CERTIFY that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) as modified by this Court's order because, excluding the parts of the answer exempted by NRAP 32(a)(7)(C) it is proportionally spaced, has a typeface of 14-points or more and contains 5,582

words pursuant to MS Word word-count, which is less than the 37,000 permitted under this Rule.

FINALLY, I CERTIFY that I have read this REPLY BRIEF, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found.

I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 15th day of August, 2019.

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CERTIFICATE OF SERVICE

I do hereby certify that on the 15th day of August, 2019 a true and correct copy of the foregoing Rock Springs Mesquite II Owners' Association's Reply Brief was served via the Nevada State Supreme Court Clerk electronic filing and service system.

/s/ Norma Ramirez
An Employee of Boyack Orme & Anthony