

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

G.L. CONSTRUCTION, INC., A NEVADA CORPORATION,
Appellant,
vs.
NORTHERN NEVADA HOMES, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Respondent.

No. 77145
Electronically Filed
Oct 11 2018 12:30 p.m.
DOCKETING STATEMENT Brown
CIVIL APPEALS Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Second Department 8
County Washoe Judge Barry L. Breslow
District Ct. Case No. CV13-01468

2. Attorney filing this docketing statement:

Attorney James Shields Beasley Telephone 775-329-6852

Firm LAW OFFICE OF JAMES SHIELDS BEASLEY

Address 435 Court Street
P.O. Box 2936
Reno, Nevada 89505

Client(s) Appellant G.L. Construction, Inc.

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Christopher M. Rusby Telephone 775-409-4037

Firm Rusby Law

Address 36 Stewart Street
Reno, Nevada 89501

Client(s) Respondent Northern Nevada Homes, LLC

Attorney _____ Telephone _____

Firm _____

Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (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 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 checked="" type="checkbox"/> Other disposition (specify): <u>Denial of Fees</u> |

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

- Child Custody
- Venue
- Termination of parental rights

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:

"Northern Nevada Homes, LLC, a Nevada limited liability company, Appellant, vs. GL Construction, Inc., a Nevada corporation, Respondent," Supreme Court Case No. 71899.

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:

"Cerberus Holdings, LLC, a Nevada limited liability company; Northern Nevada Homes, LLC, a Nevada limited liability company, Plaintiffs, vs. GL Construction, Inc., a Nevada corporation; Gordon Lemich, an individual; and Does 1-10, inclusive, Defendants," Case No. CV13-01468, was settled on August 5, 2016, when plaintiff agreed to dismiss their claims

"GL Construction, Inc., a Nevada corporation, Counterclaimant, vs. Northern Nevada Homes, LLC, Counterdefendant," Case No.13-01468, was disposed of on October 4, 2018, when the district court denied Counterclaimant's Motion for Attorney Fees.

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

The district court bifurcated the case into a jury trial concerning NNH's claims against G.L. and Gordon Lemich, and a bench trial concerning G.L.'s counterclaim for breach of contract against NNH. NNH settled its claims, and after a bench trial, the district court awarded G.L. \$7,811 in damages and \$10,000 in fees. NNH took an appeal from the district court's fee award, but that appeal was dismissed. Following remand, G.L. moved the district court pursuant to NRS 18.010(2)(a) to award it those fees which it had incurred in successfully defending against NNH's appeal. The district court denied G.L.'s motion for the fees incurred in connection with NNH's appeal based upon this Court's decision in Bobby Berosini, Ltd., v. People for the Ethical Treatment of Animals.

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

This Court's decision in Berosini did not decide the issue of whether a district court has the authority under NRS 18.010(2)(a) to award a prevailing party the attorney fees which the prevailing party incurs in successfully defending against an appeal taken by the opposing party which attacks the judgment the prevailing party has obtained in the trial court. Berosini only decided the issue of whether a district court had the authority to award a prevailing party's appellate attorney fees pursuant to NRS 18.010(2)(b) and/or NRAP 38 where this Court had already decided in connection with an earlier appeal in the same case that NRAP 38 did not warrant an award of the prevailing party's appellate attorney fees. Thus, the issue is whether a district court has the authority pursuant to NRS 18.010(2)(1) to award a prevailing party which has not recovered more than \$20,000 its appellate fees.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

N/A.

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

N/A

Yes

No

If not, explain:

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

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

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

A substantial issue of first impression

An issue of public policy

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

A ballot question

If so, explain: The issue of whether a district court has the authority under NRS 18.010 (2)(a) to award a prevailing party which does not recover more than \$20,000 the attorney fees which it incurs in successfully defending against an appeal taken by the opposing party, attacking the judgment entered in favor of the prevailing party, has not been cogently addressed and decided by a published Decision of this Court. Because there is NO language appearing in NRS 18.010(2)(a) which states that appellate

12. (Continued)

attorney fees cannot be awarded under its provisions, based upon this Court's decisions in In re Estate and Living Trust of Miller (2009) 125 Nev. 550, 555, 216 P.3d 239, 243, Musso v. Binick (1988) 104 Nev. 613, 614-615, 764 P.2d 477, 477, and the California appellate court's decision in Rosenauer v. Scherer (2001) 88 Cal.App. 4th 260, 105 Cal.Rptr. 2d 674, 693, holding that a statute authorizing an attorney fees award at the trial court level includes appellate attorney fees unless the statute specifically provides otherwise, this Court should hold that NRS 18.010(2)(a) vests in the district court this power when the prevailing party has not recovered more than \$20,000.

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

This appeal presents the issue of whether a district court, pursuant to NRS 18.010(2)(a), may award a prevailing party which has not recovered more than \$20,000 the attorney fees which the prevailing party has incurred in successfully defending against an appeal taken by the opposing party which challenges the award obtained by the prevailing party in the district court. As such, the matter is presumptively retained by this Court under NRAP 17 (a)(11). This Court, in an unpublished Opinion in "Tulelake Horseradish, Inc., Appellant, v. Santa Margarita Ranch, LLC," Case No. 69305, filed on June 20, 2016, (Cont. next page)

14. Trial. If this action proceeded to trial, how many days did the trial last? 1 day.

Was it a bench or jury trial? Bench Trial.

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

No.

13. (Continued)

stated that “no fees should have been awarded (to the appellant in that case) for time frames 3 and 5 (i.e., appellate fees), as NRS 18.010(2) does not authorize an award of appellate attorney fees,” citing two of its prior published Opinions, i.e., Bd. of Gallery of History, Inc. v. Datecs Corp. (2000) 116 Nev. 286, 288, 994 P.2d 1149, 1150, and Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals (1998) 114 Nev. 1348, 1356-57, 971 P.2d 383, 388. This unpublished Opinion was wrongfully decided and its overly-broad statement that “NRS 18.010(2) does not authorize an award of appellate attorney fees” runs directly contrary to the rationale upon which two of this Court’s published decisions, i.e., In re Estate and Living Trust of Miller (2009) 125 Nev. 550, 555, 216 P.3d 239, 243, Musso v. Binick (1988) 104 Nev. 613, 614-615, 764 P.2d 477, and the California appellate court’s decision in Rosenauer v. Scherer (2001) 88 Cal. App. 4th 260, 105 Cal.Rptr. 2d 674, 693, are founded (i.e., that a statute authorizing an attorney fees award at the trial court level includes appellate attorney fees unless the statute specifically provides otherwise.) In the unpublished Opinion, this Court failed to recognize that NRS 18.010(2)(a) and NRS 18.010(2)(b) address two entirely different situations. This Court erroneously conflated the two situations to which subsections (a) and (b) apply. NRS 18.010(2)(a) applies to the situation where a “prevailing party has not recovered more than \$20,000” – a situation in which the district court has the authority to award a prevailing party the attorney fees which it has incurred on an appeal because there is no language in that provision which states that appellate fees are excluded; while NRS 18.010(2)(b) applies to the situation where the district “court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party – a situation in which the district court has NO authority to award a prevailing party the attorney fees which the prevailing party has incurred on appeal inasmuch the award of appellate attorney fees in that specific situation is governed exclusively by NRAP 38. Appellant G.L. Construction, Inc., is calling upon this Court to reconcile its prior published Opinions with respect to this issue.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from October 4, 2018

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

17. Date written notice of entry of judgment or order was served October 5, 2018

Was service by:

Delivery

Mail/electronic/fax

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 _____

NRCP 52(b) Date of filing _____

NRCP 59 Date of filing _____

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 _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

Delivery

Mail

19. Date notice of appeal filed October 8, 2018

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

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)

SUBSTANTIVE APPEALABILITY

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

(a)

- | | |
|--|---------------------------------------|
| <input type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input checked="" type="checkbox"/> Other (specify) <u>NRAP 3A(b)(8)</u> | |

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

The district court's Order denying Counterclaimant G.L. Construction, Inc.'s Motion for Attorney Fees Incurred Post Order for Fees was a special order entered after Final Judgment.

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

(a) Parties:

Cerberus Holdings, LLC -- Plaintiff
Northern Nevada Homes, LLC - Plaintiff and Counterdefendant
G.L. Construction, Inc. - Defendant and Counterclaimant
Gordon Lemich - Defendant
Truckee Meadows Water Authority - Plaintiff in Intervention

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

Cerberus Holdings, LLC -- Complaint dismissed August 5, 2016; Northern Nevada Homes, LLC -- Trespass Complaint dismissed September 16, 2016; Truckee Meadows Water Authority - Complaint in Intervention dismissed on August 4, 2016.

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

Cerberus Holdings, LLC's Complaint for Negligence, Negligent Misrepresentation, Intentional Misrepresentation, Intentional Damage to Property, Breach of Contract and Quantum Meruit was dismissed on August 5, 2016. NNH's Complaint for Trespass against G.L. and Gordon Lemich was settled on August 11, 2016. G.L. was awarded \$7,811 on its Counterclaim against NNH on October 17, 2016.

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

Yes

No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

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.

G.L. CONSTRUCTION, INC.

Name of appellant

10/10/2018

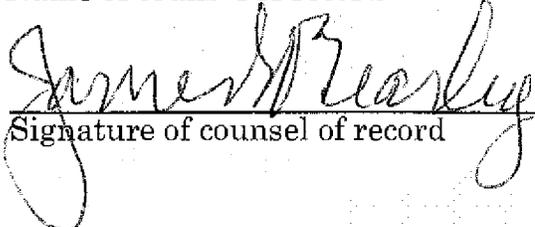
Date

NEVADA, WASHOE COUNTY

State and county where signed

JAMES SHIELDS BEASLEY

Name of counsel of record



Signature of counsel of record

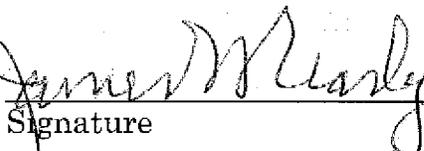
CERTIFICATE OF SERVICE

I certify that on the 11th day of October, 2018, I served a copy of this completed docketing statement upon all counsel of record:

- By personally serving it upon him/her; or
- By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Christopher M. Rusby
36 Stewart Street
Reno, Nevada 89501

Dated this 11th day of October, 2018



Signature

#27

1. Amended Answer and Counterclaim, filed October 28, 2013.
2. First Amended Complaint, filed February 11, 2014.
3. Judgment, filed April 29, 2014.
4. Truckee Meadows Water Authority's Complaint in Intervention, filed June 20, 2014.
5. Stipulation for Dismissal with Prejudice of TMWA's Complaint in Intervention, filed 08/03/2016.
6. Order Granting Stipulation for Dismissal with Prejudice of TMWA's Complaint in Intervention, filed 08/04/2016.
7. Notice of Entry of Order. Filed 08/04/2016.
8. Order Bifurcating Claims, filed 08/05/2016.
9. Stipulation and Order to Dismiss Certain Causes of Action, filed 08/05/2016.
10. Minutes 08/08-11/2016 – Jury Trial, filed 09/02/2016.
11. Minutes 08/11-12/2016 – Bench Trial, filed 09/07/2016.
12. Notice of Entry of Order dismissing NNH's Claims, filed 09/20/2016.
13. Notice of Entry of Order After Trial awarding G.L. Damages, filed 10/17/2016.
14. Judgment on Counterclaim, filed 10/31/2016.
15. Notice of Entry of Judgment on Counterclaim, filed 10/31/2016.
16. Notice of Entry of Order for Fees and Costs, filed 12/02/2016.
17. Notice of Entry of Order denying Counterclaimant's Motion for Attorney Fees Incurred Post-Order, filed 10/05/2018.

Exhibit 1

Exhibit 1

ORIGINAL

DC-990090644-054
CV13-01468
CERBERUS HOLDINGS ET AL VS GL 9 Pages
10/28/2013 04:30 PM
District Court
Washoe County
NVC

1 **CODE: 1085**
2 **JAMES SHIELDS BEASLEY**
3 **Nev. Bar No. 1733**
4 **LAW OFFICE OF JAMES SHIELDS BEASLEY**
5 **435 Court Street**
6 **Post Office Box 2936**
7 **Reno, Nevada 89505**
8 **(775) 329-6852**
9 **(775) 329-2174 - Fax**
10 **Attorney for Defendant**

FILED

2013 OCT 28 PM 4:30

JULIA DEBRA HASTINGS
CLERK OF THE COURT

Alone
DEPUTY

7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8 IN AND FOR THE COUNTY OF WASHOE

10 CERBERUS HOLDINGS, LLC, a Nevada
11 limited liability company; NORTHERN
12 NEVADA HOMES, LLC, a Nevada
13 limited liability company,

Case No. CV13-01468

13 Plaintiffs,

Dept. No. 8

14 vs.

15 GL CONSTRUCTION, INC., a Nevada
16 corporation; GORDON LEMICH, an
17 individual; and DOES 1 through 10
18 inclusive,

18 Defendants.

19 GL CONSTRUCTION, INC., a Nevada
20 corporation,

21 Counterclaimant,

22 vs.

23 NEVADA HOMES, LLC, a Nevada
24 limited liability company,

25 Counterdefendant.

26 **AMENDED ANSWER AND COUNTERCLAIM**

27 Defendants GL Construction, Inc., and Gordon Lemich, by and through their attorney,
28 James Shields Beasley, for their Answer to the Complaint of plaintiffs Cerberus Holdings, LLC,

1 and Northern Nevada Homes, LLC, admit, deny and specifically allege as follows:

2 As to Plaintiffs' General Allegations:

3 I

4 Answering paragraphs 1, 2, 5, 13, and 16 of plaintiffs' General Allegations, these
5 answering defendants are without information or knowledge sufficient to form a belief as to the
6 truth of said allegations contained therein and based thereon deny the same.

7 II

8 Answering paragraph 3 and 21 of plaintiffs' General Allegations, these answering
9 defendants admit the truth of each and every allegation contained therein.

10 III

11 Answering paragraph 4 of plaintiffs' General Allegations, these answering defendants deny
12 the truth of plaintiffs' allegation that "Gordon Lemich is, and at all relevant times was, a resident
13 of Washoe County, Nevada. With respect to each and every of the remaining allegations contained
14 in said paragraph 4, these answering defendants specifically deny the true of the same.

15 IV

16 Answering paragraphs 6 through 12, 14 through 15, 17 through 20, and 22 through 25 of
17 plaintiffs' General Allegations, these answering defendants specifically deny the true of the same.

18 As to Plaintiffs' First Claim for Relief:

19 V

20 Answering paragraph 26 of plaintiffs' First Claim for Relief, these answering defendants
21 refer to their answers to paragraphs 1 through 25 of Plaintiffs' Complaint and incorporate the same
22 herein by this reference.

23 VI

24 Answering paragraphs 27 through 32 of Plaintiffs' First Claim for Relief, these answering
25 defendants specifically deny the true of the same.

26 As to Plaintiffs' Second Claim for Relief:

27 VII

28 Answering paragraph 33 of Plaintiffs' Second Claim for Relief, these answering

1 defendants refer to their answers to paragraphs 1 through 32 of Plaintiffs' Complaint and
2 incorporate the same herein by this reference.

3 VIII

4 Answering paragraphs 34 and 36 through 38 of Plaintiffs' Second Claim for Relief, these
5 answering defendants specifically deny the truth of the same.

6 IX

7 Answering paragraph 35 of Plaintiffs' Second Claim for Relief, these answering
8 defendants deny the truth of said allegations on the basis that GL Construction made no
9 representations to plaintiffs.

10 As to Plaintiffs' Third Claim for Relief:

11 X

12 Answering paragraph 39 of Plaintiffs' Third Claim for Relief, these answering defendants
13 refer to paragraph 1 through 38 of Plaintiffs' Complaint and incorporate the same herein by this
14 reference.

15 XI

16 Answering paragraphs 40, 42, and 43 of Plaintiffs' Third Claim for Relief, these answering
17 defendants specifically deny the truth of each and every allegation contained therein.

18 XII

19 Answering paragraph 41 of Plaintiffs' Third Claim for Relief, these answering defendants
20 deny the truth of each and every allegation contained in said paragraph on the basis that GL
21 Construction made no representations to defendants.

22 As to Plaintiffs' Fourth Claim for Relief:

23 XIII

24 Answering paragraph 44 of Plaintiffs' Fourth Claim for Relief, these answering defendants
25 refer to their answers to paragraph 1 through 43 of Plaintiffs' Complaint and incorporate the same
26 herein by this reference.

27 XIV

28 Answering paragraphs 45 through 48 of Plaintiffs' Fourth Claim for Relief, these

1 answering defendants specifically deny the truth of the same.

2 As to Plaintiffs' Fifth Claim for Relief:

3 XV

4 Answering paragraph 49 of Plaintiffs' Complaint, these answering defendants refer to their
5 answers to paragraphs 1 through 48 of Plaintiffs' Complaint and incorporate the same herein by
6 this reference.

7 XVI

8 Answering paragraphs 50, 52, and 53 of Plaintiffs' Fifth Claim for Relief, these answering
9 defendants specifically deny the truth of each and every allegation contained therein.

10 XVII

11 Answering paragraph 51 of Plaintiffs' Fifth Claim for Relief, these answering defendants
12 deny the truth of each and every allegation contained therein on the basis that defendants have not
13 dumped any dirt and/or debris onto the property owned by NNH.

14 As to Plaintiffs' Sixth Claim for Relief:

15 XVIII

16 Answering paragraph 54 of Plaintiffs' Sixth Claim for Relief, these answering defendants
17 refer to their answers to paragraphs 1 through 53 of Plaintiffs' Complaint and incorporate the same
18 herein by this reference.

19 XIX

20 Answering paragraphs 55 through 57 of Plaintiffs' Sixth Claim for Relief, these answering
21 defendants deny the truth of each and every allegation contained therein.

22 **AFFIRMATIVE DEFENSES**

23 FIRST AFFIRMATIVE DEFENSE

24 Plaintiffs' Complaint fails to state a claim upon which relief may be validly granted against
25 defendants.

26 SECOND AFFIRMATIVE DEFENSE

27 Neither G.L. Construction, Inc., nor Gordon Lemich owed any type of duty, contractual or
28 otherwise, to maintain that property commonly known as Comstock Storage in good condition or

1 to insure that said property complied with any applicable laws and/or building code provisions.

2 THIRD AFFIRMATIVE DEFENSE

3 Neither G.L. Construction, Inc., nor Gordon Lemich owed any duty to plaintiffs to properly
4 construct, repair, and/or remodel any improvements made to that real property commonly known
5 as Comstock Storage either prior to or after the date on which plaintiffs acquired title to such
6 property.

7 FOURTH AFFIRMATIVE DEFENSE

8 Plaintiffs' claims for Economic Loss are barred by the Economic Loss Doctrine.

9 Wherefore, defendants G.L. Construction, Inc., Gordon Lemich request that this Court
10 enter judgment in their favor and against plaintiffs Cerberus Holdings, LLC, and Northern Nevada
11 Homes, LLC, as follows:

- 12 1. That plaintiffs' Complaint be dismissed with prejudice;
13 2. That this Court award defendants their attorney's fees and costs; and
14 3. That this Court award defendants such other and further relief as it may deem just and
15 proper in the premises.

16 **COUNTERCLAIM**

17 Defendant/Counterclaimant G.L. Construction, Inc., by and through its attorney, James Shields
18 Beasley, for its Counterclaim against Plaintiff/Counterdefendant Northern Nevada Homes, LLC,
19 specifically avers and alleges as follows:

20 I

21 Counterclaimant is now, and at all times herein mentioned has been, a duly and regularly
22 licensed contractor under the laws of the State of Nevada, doing business in the City of Reno, County
23 of Washoe, State of Nevada.

24 II

25 Counterclaimant is informed and believes and based thereon alleges that counterdefendant
26 Northern Nevada Homes, LLC, is, and at all times herein mentioned was, a limited liability company
27 organized and existing under and by virtue of Nevada law.

28 III

1 On or about March 4, 2013, counterclaimant and counterdefendant entered into an oral contract
2 which provided that counterclaimant would furnish the necessary labor and materials for the
3 performance of excavation work on the property of defendant situated on DeChardin Street in the
4 Mountreaux Estates, Washoe County, Nevada. This contract was on a time and materials basis.

5 IV

6 Counterclaimant has performed all conditions, covenants and promises under the contract to
7 be performed on its part.

8 V

9 On or about April 16, 2013, counterdefendant breached the contract by failing and refusing to
10 pay plaintiff all of that compensation which was in fact due and owing to counterclaimant. As of the
11 present date, the sum of \$7,811.00 remains due and owing to counterclaimant for the labor and
12 materials which counterclaimant furnished to counterdefendant during the period March 4, 2013
13 through March 13, 2013 at counterdefendant's specific instance and request.

14 VI

15 As a result of counterdefendant's breach of contract, counterclaimant has suffered damages
16 for labor and materials furnished and used in the amount of \$7,811.00, and for interest on said
17 damages from and after the date on which said damages became legally due and owing at the legal
18 rate.

19 VII

20 On or about March 14, 2013, counterclaimant made demand upon counterdefendant for the
21 payment of such sum, but counterdefendant has failed and refused and still fails and refuses to pay the
22 sum, and the whole thereof, together with interest at the rate provided by law, remains due, owing, and
23 unpaid.

24 WHEREFORE, counterclaimant prays judgment against counterclaimant as follows:

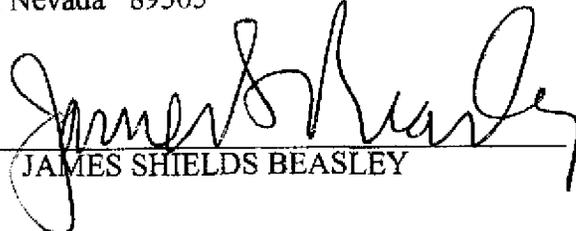
- 25 1. For compensatory damages in the sum of \$7.811.00;
- 26 2. For interest on the sum of \$7,811.00at the legal rate allowed by law from and after
27 March 14, 2013;
- 28 3. For costs of suit herein incurred;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4. For such other and further relief as the court may deem just and proper in the premises.

DATED this 17th day of September, 2013.

LAW OFFICE OF JAMES SHIELDS BEASLEY
Attorney for Counterclaimant
435 Court Street
P.O. Box 2936
Reno, Nevada 89505

By 
JAMES SHIELDS BEASLEY

VERIFICATION

I, Gordon Lemich, am President of G.L. Construction, the counterclaimant in this action, and a person who is authorized to make this Verification on its behalf. I have read the foregoing Counterclaim and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on September 17, 2013.

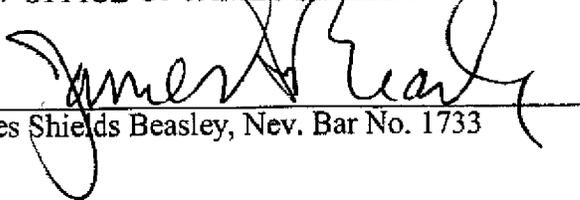

GORDON LEMICH

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, filed in Case Number CV11-00509, does not contain the social security number of any person.

DATED September 17, 2013.

LAW OFFICE OF JAMES SHIELDS BEASLEY

By: 
James Shields Beasley, Nev. Bar No. 1733

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on this date I deposited a true copy of the foregoing document in the United States mail at Reno, Nevada, by first class mail, postage prepaid, addressed to the following:

Leslie Bryan Hart, Esq.
Lionel Sawyer & Collins
50 West Liberty Street, #1100
Reno, Nevada 89501

DATED this 28th day of October, 2013.

Gail Lee

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit 2

Exhibit 2

1 1090
2 Leslie Bryan Hart, Esq. (SBN 4932)
3 LIONEL SAWYER & COLLINS
4 50 West Liberty Street, Suite 1100
5 Reno, Nevada 89501
6 Telephone (775) 788-8666
7 lhart@lionelsawyer.com

8 Attorneys for Plaintiffs Cerberus Holdings, LLC
9 and Northern Nevada Homes, LLC and
10 Counterdefendant Northern Nevada Homes, LLC

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

CERBERUS HOLDINGS, LLC, a Nevada
limited liability company; NORTHERN
NEVADA HOMES, LLC, a Nevada
limited liability company,

CASE NO. CV13-01468

DEPT. NO. 8

Plaintiffs,

vs.

GL CONSTRUCTION, INC., a Nevada
corporation; GORDON LEMICH, an
individual; and DOES 1-10, inclusive,

Defendants.

GL CONSTRUCTION, INC., a Nevada
Corporation,

Counterclaimant,

vs.

NORTHERN NEVADA HOMES, LLC,
a Nevada limited liability company,

Counterdefendant.

FIRST AMENDED COMPLAINT

Plaintiffs Cerberus Holdings, LLC ("Cerberus") and Northern Nevada Homes, LLC and
Counterdefendant Northern Nevada Homes, LLC ("NNH") by and through their counsel, Leslie
Bryan Hart and Lionel Sawyer & Collins, hereby allege as follows:

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. Cerberus is, and at all relevant times was, a Nevada limited liability company.

2. Northern Nevada Homes, LLC ("NNH") is, and at all relevant times was, a Nevada limited liability company.

3. GL Construction, Inc. ("GL Construction") is, and at all relevant times was, a Nevada corporation and a construction contractor, licensed by the State of Nevada.

4. Gordon Lemich is, and at all relevant times was, a resident of Washoe County, State of Nevada, and is the principal of GL Construction.

5. Plaintiffs are currently unaware of the designations of DOES 1-10, and thereby sue the fictitious entities and individuals in absentia. Currently, Plaintiffs do not have knowledge of the actual names, business entities, or individuals sued herein as fictitious defendants and as such, reserve the right upon knowledge and notice of actual designation, name and identity of the fictitious entities and individuals to amend this pleading to assert the appropriate allegations against them.

6. Prior to December 28, 2012, GL Construction and/or Gordon Lemich owned, constructed, repaired and remodeled the real property and improvements located in Washoe County, commonly known as 2605 Comstock Drive, Reno, Nevada ("Real Property").

7. Prior to December 28, 2012, GL Construction, Gordon Lemich and Cerberus were involved in negotiations and discussions for the purchase and sale of the Real Property from GL Construction to Cerberus.

8. Prior to December 28, 2012, GL Construction and/or Gordon Lemich represented that the improvements on the Real Property were properly permitted, constructed, repaired, and remodeled and otherwise complied with all applicable laws and building code provisions.

9. In addition to the representations made by GL Construction and/or Gordon Lemich prior to December 28, 2012, GL Construction and/or Gordon Lemich again continued to

1 represent after that date, that the improvements on the Real Property were properly permitted,
2 constructed, repaired, and remodeled and otherwise complied with all applicable laws and
3 building code provisions.

4 10. On or about May 9, 2011, the Real Property and improvements were foreclosed
5 upon by Acquired Capital I, LP ("Bank").
6

7 11. After the foreclosure, GL Construction and/or Gordon Lemich became a tenant of
8 the Real Property, leased by Bank, but the tenancy was uncertain given that the Real Property
9 was available for sale.

10 12. After the foreclosure, Cerberus and GL Construction and/or Gordon Lemich
11 continued to discuss Cerberus's involvement in the Real Property and GL Construction and/or
12 Gordon Lemich recommended that Cerberus purchase the Real Property from Bank.

13 13. Bank would only sell the Real Property to Cerberus on an "as-is" basis.
14

15 14. GL Construction and/or Gordon Lemich informed Cerberus that it wanted
16 Cerberus to purchase the Real Property because GL Construction and Gordon Lemich believed
17 they had developed a good working relationship with Cerberus.

18 15. GL Construction and Gordon Lemich informed Cerberus that they believed that
19 ownership by Cerberus would increase the possibility that they would be allowed to remain as a
20 tenant of the Real Property and retain some of the rents relating to the Real Property.
21

22 16. Cerberus was not interested in purchasing the Real Property on an "as-is" basis
23 without assurances from GL Construction and/or Gordon Lemich that the improvements on the
24 Real Property were: (a) properly constructed, repaired and remodeled; (b) properly approved,
25 permitted and constructed; and (c) otherwise complied with applicable laws.

26 17. GL Construction and/or Gordon Lemich affirmatively and expressly represented
27 that the improvements on the Real Property were: (a) properly constructed, repaired and
28

1 remodeled; (b) properly approved, permitted and constructed; and (c) otherwise in compliance
2 with applicable laws.

3 18. On or about December 28, 2012, relying heavily upon the assurances provided by
4 GL Construction and Gordon Lemich, Cerberus purchased the Real Property from Bank.

5 19. The improvements on the Real Property were not properly constructed, repaired,
6 remodeled, approved, permitted or constructed and did not otherwise comply with applicable
7 laws for many reasons, including but not limited to the following:
8

9 a. The primary building on the Real Property was inspected by the City of
10 Reno on or about April 5, 2013 and April 11, 2013 and determined to be riddled with
11 negligent and defective work and uninhabitable. Upon information and belief, the
12 primary building will require hundreds of thousands of dollars to obtain necessary
13 approvals, permitting and to cure substandard construction, repairs and remodeling to
14 allow for the uses GL Construction represented the Real Property and improvements
15 allowed for and to generate the revenue the Real Property and improvements were
16 represented to generate.
17

18 b. The defective construction and remodeling performed by GL Construction
19 has caused further damage to the physical structure on the Real Property, other than, and
20 in addition to, the defects themselves.
21

22 c. Electrical wiring was determined to be noncompliant with the applicable
23 building code. As a result, Cerberus was fined by NV Energy and was required to pay to
24 correct the problem.

25 20. After Cerberus's purchase of the Real Property from Bank, Cerberus and GL
26 Construction and/or Gordon Lemich had a month to month lease agreement relating to the Real
27 Property.
28

1 28. Defendants had a duty, as a licensed contractor in the State of Nevada, to: (a)
2 properly construct, repair and remodel the improvements on the Real Property; (b) properly
3 approve, permit and construct the improvements to the Real Property; and (c) otherwise comply
4 with applicable laws.

5 29. Defendants negligently failed to: (a) properly construct, repair and remodel the
6 improvements on the Real Property; (b) properly approve, permit and construct the
7 improvements to the Real Property; and (c) otherwise comply with applicable laws.

8 30. The defective construction and remodeling performed by Defendants has caused
9 further damage to the physical structure on the Real Property, other than, and in addition to, the
10 defects themselves.

11 31. Defendants' negligent and defective failure to properly construct, repair and
12 remodel the improvements on the Real Property, obtain proper approvals and/or permits and
13 otherwise comply with all applicable law, is the proximate cause of Cerberus's damages.

14 32. As a direct and proximate result of Defendants' negligence, Cerberus has
15 sustained damages in excess of \$10,000.

16
17
18 **SECOND CLAIM FOR RELIEF**
19 **(Negligent Misrepresentation)**

20 33. Plaintiff Cerberus reasserts paragraphs 1-25 of this Complaint as though set forth
21 herein in full.

22 34. GL Construction and/or Gordon Lemich negligently represented that it: (a)
23 properly constructed, repaired and remodeled all improvements on the Real Property; (b)
24 received all proper approvals and permits for the improvements on the Real Property; and (c)
25 otherwise comply with applicable laws with respect to the Real Property.

26
27 ///

1 35. Defendants' representations were false and Defendants should have known them
2 to be false.

3 36. Cerberus justifiably relied to its detriment on the representations of Defendants
4 and even reviewed a significant number of permits and approvals provided by Defendants prior
5 to purchasing the Real Property and improvements from Bank.
6

7 37. Defendants' negligent misrepresentations are the proximate cause of Cerberus's
8 damages.

9 38. As a direct and proximate result of Defendants' negligent misrepresentations,
10 Cerberus has sustained damages in excess of \$10,000.

11 **THIRD CLAIM FOR RELIEF**
12 **(Intentional Misrepresentation)**

13 39. Plaintiff Cerberus reasserts paragraphs 1-25 of this Complaint as though set forth
14 herein in full.

15 40. Defendants intentionally represented that it: (a) properly constructed repaired and
16 remodeled all improvements on the Real Property; (b) received all proper approvals and permits
17 for the improvements on the Real Property; and (c) otherwise comply with applicable laws with
18 respect to the Real Property.
19

20 41. Defendants' representations were intentionally false.

21 42. Cerberus justifiably relied to its detriment on the misrepresentations of
22 Defendants and even reviewed a significant number of permits and approvals provided by
23 Defendants prior to purchasing of the Real Property and improvements from Defendants.
24

25 43. Defendants' intentional misrepresentations directly and proximately caused
26 Cerberus damages in excess of \$10,000.

27 ///

FOURTH CLAIM FOR RELIEF
(Intentional Damage to Property)

1
2
3 44. Plaintiff Cerberus reasserts paragraphs 1-25 of this Complaint as though set forth
4 herein in full.

5 45. Defendants have intentionally damaged the Real Property and improvements and
6 personal property on the Real Property.

7 46. Upon information and belief, the damage caused by Defendants to the Real
8 Property and improvements and personal property therein include, but are not limited to: (a)
9 vandalizing, tearing down and otherwise damaging the shell and structural elements of the Real
10 Property and improvements; (b) storing and spilling hazardous waste on the Real Property and
11 improvements; (c) removing personal property from the Real Property and improvements not
12 owned by or belonging to Defendants.
13

14 47. Upon information and belief, Cerberus alleges that Defendants have caused
15 Cerberus loss in rents and additional cost and expense relating to required storage, removal and
16 disposition of personal property and equipment located on the Real Property after the eviction.
17

18 48. As a direct and proximate result of Defendants' intentional damage to the
19 aforementioned property, Cerberus has sustained damages in excess of \$10,000.

FIFTH CLAIM FOR RELIEF
(Breach of Contract)

20
21
22 49. Plaintiff Cerberus reasserts paragraphs 1-25 of this Complaint as though set forth
23 herein in full.

24 50. Cerberus and Defendants entered a contract pursuant to which Defendants leased
25 the Real Property on a month to month basis for an agreed upon price.

26 51. Defendants used and occupied the Real Property and made monthly payments for
27 the right to do so until April 2013.
28

1 costs of evictions, fines, and repairing damages to the leased premises.

2 **FIFTH CLAIM FOR RELIEF**
3 **(Negligent Trespass)**

4 61. Plaintiff NNH reasserts paragraphs 1-25 of this Complaint as though set forth
5 herein in full.

6 62. Defendants owed a duty as an adjacent landowner to refrain from activities that
7 would cause injury to the adjacent property owned by NNH ("Adjacent Property").

8 63. During their ownership and tenancy of the Real Property, Defendants breached
9 that duty by negligently dumping vast amounts of dirt and other debris onto the Adjacent
10 Property, owned by NNH, causing physical harm to the Adjacent Property, including loss of use.

11 64. Defendants' dumping of dirt and debris onto property owned by NNH was
12 conducted without NNH's authorization or permission.

13 65. Defendants' unauthorized act of going onto NNH's property constitutes a trespass,
14 and the dirt and debris continuing to remain on NNH's property constitutes a continuing trespass.

15 66. As a direct and proximate result of Defendants' negligence causing physical harm
16 to the Adjacent Property, NNH has sustained damages in excess of \$10,000.

17 **FIFTH CLAIM FOR RELIEF**
18 **(Intentional Trespass)**

19 67. Plaintiff NNH reasserts paragraphs 1-25 of this Complaint as though set forth
20 herein in full.

21 68. During their ownership and tenancy of the Real Property, Defendants
22 intentionally and in violation of NNH's right of exclusive possession dumped vast amounts of
23 dirt and other debris onto property adjacent to the Real Property, property that is owned by NNH
24 ("Adjacent Property").
25
26
27

28 ///

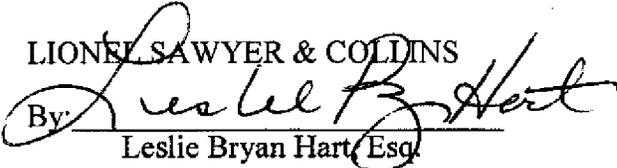
2. For special damages according to proof;
3. For temporary, preliminary and permanent injunctive relief, as set forth above;
4. For reasonable attorney's fees if any may be allowed under the law;
5. For costs of suit incurred herein; and
6. For such other and further relief as the court deems appropriate.

AFFIRMATION
(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the foregoing does not contain the social security number of any person.

DATED: This 5th day of February, 2014.

LIONEL SAWYER & COLLINS

By: 

Leslie Bryan Hart, Esq.

Attorneys for Plaintiffs and Counterdefendant

28

Exhibit 3

Exhibit 3

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1880

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

CERBERUS HOLDINGS, LLC, a Nevada
limited liability company; NORTHERN
NEVADA HOMES, LLC, a Nevada
limited liability company,

CASE NO. CV13-01468
DEPT. NO. 8

Plaintiffs,

vs.

GL CONSTRUCTION, INC., a Nevada
corporation; GORDON LEMICH, an
individual; and DOES 1-10, inclusive,

Defendants.

GL CONSTRUCTION, INC., a Nevada
Corporation,

Counterclaimant,

vs.

NORTHERN NEVADA HOMES, LLC,
a Nevada limited liability company,

Counterdefendant.

JUDGMENT

The Court being fully advised in the premises, it is hereby

ORDERED, ADJUDGED AND DECREED that final and binding judgment is entered in
favor of Plaintiff Cerberus Holdings, LLC and against Defendant Gordon Lemich, in the amount

1 of \$20,000.00 ("Judgment Amount"), with post judgment interest that continues to accrue on the
2 Judgment Amount at the statutory rate of 5.25% per annum from the date this Judgment is
3 entered until the Judgment is satisfied, in the amount of \$2.87 per day.

4 IT IS ORDERED that this Judgment shall be further augmented in the amount of
5 reasonable costs expended in pursuing this Judgment as ordered by the Court and in collecting
6 said Judgment by execution or otherwise as shall have been established by affidavit, and offset in
7 the amount of any payments made by Defendant Gordon Lemich toward the Judgment amount.
8

9 This Judgment constitutes a final and binding decision on all claims in the First Amended
10 Complaint asserted by Plaintiff Cerberus Holdings, LLC against Defendant Gordon Lemich, and
11 any and all defenses thereto, and as to those claims only, shall constitute a final judgment.
12

13 Date: 04-29-2014

14 *Fred A. Stohil*
DISTRICT COURT JUDGE

15 Respectfully Submitted:

16 Leslie Bryan Hart, Esq.
17 Nevada State Bar No. 4932
18 LIONEL SAWYER & COLLINS
19 50 West Liberty Street, Suite 1100
20 Reno, Nevada 89501
Telephone (775) 788-8666

21 Attorneys for Plaintiff Cerberus Holdings, LLC
22
23
24
25
26
27
28

Exhibit 4

Exhibit 4

1 **CODE: 1445**
2 Paul J. Georgeson, Esq.
3 Nevada Bar No. 5322
4 Adam Hosmer-Henner, Esq.
5 Nevada Bar No. 12779
6 MCDONALD CARANO WILSON LLP
7 100 West Liberty Street, 10th Floor
8 P.O. Box 2670
9 Reno, NV 89505
10 775-788-2000 - phone
11 775-788-2020 - facsimile

12 *Attorneys for Truckee Meadows Water Authority*

13
14 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
15
16 **IN AND FOR THE COUNTY OF WASHOE**

17 CERBERUS HOLDINGS, LLC, a Nevada
18 limited liability company; NORTHERN
19 NEVADA HOMES, LLC, a Nevada limited
20 liability company,

Case No. CV13-01468

Dept. No. 8

21 Plaintiffs,

22 vs.

23 **TRUCKEE MEADOWS WATER**
24 **AUTHORITY'S COMPLAINT IN**
25 **INTERVENTION**

26 GL CONSTRUCTION, INC., a Nevada
27 corporation; GORDON LEMICH, an
28 individual; and DOES 1-10, Inclusive,

Defendants.

TRUCKEE MEADOWS WATER
AUTHORITY, Intervenor.

AND RELATED ACTIONS.

TRUCKEE MEADOWS WATER AUTHORITY ("TMWA"), as and for its Complaint
in Intervention, complains and alleges as follows:

GENERAL ALLEGATIONS

1
2 1. TMWA is a Joint Powers Authority entity created pursuant to a cooperative
3 agreement among the cities of Reno, Nevada, and Sparks, Nevada, and the County of Washoe,
4 Nevada, pursuant to NRS Chapter 277.

5 2. TMWA is informed and believes and thereupon alleges that Cerberus Holdings,
6 LLC ("Cerberus"), is a Nevada limited liability company.

7 3. TMWA is informed and believes and thereupon alleges that Northern Nevada
8 Homes, LLC, ("Northern Nevada"), is a Nevada limited liability company.

9 4. TMWA is informed and believes and thereupon alleges that GL Construction,
10 Inc., ("GL Construction") is a Nevada corporation.

11 5. TMWA is informed and believes and thereupon alleges that Gordon Lemich,
12 ("Lemich") is an individual residing in Washoe County, Nevada.

13 6. That the true names and capacities, whether individual, corporate, associate or
14 otherwise of Defendants DOES I through X, inclusive, and each of them, are unknown to
15 TMWA at this time, who therefore sues said Defendants by such fictitious names and when the
16 true names and capacities are ascertained, Plaintiff will amend this Complaint in Intervention
17 accordingly. TMWA is informed and believes and therefore alleges that each of the Defendants
18 designated herein as DOE are responsible for placing soils on property owned by TMWA and/or
19 on TMWA's Easement Rights on other properties.

20 7. TMWA owns property in north Reno (APN 003-362-07) on which it has
21 constructed and maintains a water tank and associated improvements. The property is referred to
22 herein as the "Comstock Tank Property."

23 8. Most of the Comstock Tank Property is surrounded by properties owned by
24 Cerberus and/or Northern Nevada.

25 9. Pursuant to a Grant of Access Easement ("Easement Agreement") dated August
26 21, 2013 and recorded with the Washoe County Recorder's Office on August 23, 2013 as
27 Document No 4272069, Cerberus, the then-owner of the parcel immediately to the west of the
28

 **MCDONALD-CARANO-WILSON**
100 WEST LIBERTY STREET, 10TH FLOOR • RENO, NEVADA 89501
P.O. BOX 2670 • RENO, NEVADA 89505-2670
PHONE 775-788-2000 • FAX 775-788-2020

1 Comstock Tank Property, (APN 002-030-05), granted an Easement to TMWA for the purpose of
2 constructing, maintaining, and operating water facilities and other utilities (as well as other
3 purposes) ("TMWA Easement").

4 10. TMWA is informed and believes and thereupon alleges that Cerberus
5 subsequently transferred ownership of the parcel to Northern Nevada, and therefore, the parcel is
6 presently owned by Northern Nevada ("Northern Nevada Parcel").

7 11. TMWA owns, uses, and maintains two 16-inch water pipelines buried within the
8 TMWA Easement area on the Northern Nevada Parcel.

9 12. The water pipelines, which TMWA is informed and believes were installed in or
10 about 1964 by its predecessor, are connected to the Comstock Tank and used for water
11 distribution and drain purposes.

12 13. TMWA is informed and believes that prior to Cerberus, Defendants GL
13 Construction and/or Lemich owned, leased, and/or otherwise occupied the Northern Nevada
14 Parcel.

15 14. TMWA is informed and believes that during the time GL Construction and/or
16 Lemich possessed or used the Northern Nevada Parcel, GL Construction and/or Lemich
17 deposited large amounts of the unclassified fill material on the Northern Nevada Parcel,
18 including within the TMWA Easement area, as well as on the Comstock Tank Property.

19 15. GL Construction and/or Lemich deposited unclassified fill material on the
20 TMWA Easement and the Comstock Tank Property without TMWA's knowledge or permission.

21 16. TMWA is informed and believes that GL Construction and/or Lemich deposited
22 unclassified fill material as high as 27 feet above the surface elevation of the land as it existed
23 when the water pipelines were installed.

24 17. The unclassified fill material remains on the TMWA Easement and the Comstock
25 Tank Property at this time.

26 18. The unclassified fill material on the TMWA Easement area violates the Grant of
27 Easement, interferes with the TMWA's Easement, impairs access to water facilities in the
28

1 TMWA Easement area owned and operated by TMWA for municipal water supply, and may
2 exceed the load capacity to which the water pipelines were designed to withstand.

3 19. In or about June of 1993, TMWA's predecessor in interest leased a portion of the
4 Comstock Tank Property to Gordon Lemich and Dale Landon, for use as an outdoor storage yard
5 ("1993 Lemich Lease").

6 20. TMWA is informed and believes and thereupon alleges that the 1993 Lemich
7 Lease expired by its terms, but Lemich and Landon continued to occupy the leased property as
8 holdover tenants.

9 21. Thereafter, in May of 2004, TMWA entered into a Real Property Lease with
10 Gordon Lemich and Carolyn Cox, doing business as Comstock Storage, for the same portion of
11 the Comstock Tank Property ("2004 Lemich Lease").

12 22. The 2004 Lemich Lease permitted Lemich and Cox to construct, operate, and
13 maintain an outdoor storage yard and other facilities necessary and incidental thereto, provided
14 that such actions and improvements did not interfere in any way with TMWA's operations and
15 activities on the remainder of the Comstock Tank Property.

16 23. The 2004 Lemich Lease provided that on termination, Lemich and Cox were
17 required to remove all improvements that had been placed in or upon the property or TMWA
18 could remove the improvements and recover from Lemich and Cox all costs of such removal,
19 including attorney's fees and court costs.

20 24. The 2004 Lemich Lease required that Lemich and Cox maintain the property and
21 improvements in a clean, safe, and sanitary condition.

22 25. The 2004 Lemich Lease provided that Lemich and Cox shall not allow any waste
23 or nuisance on the property.

24 26. The 2004 Lemich Lease provided that at the termination of the lease, Lemich and
25 Cox would surrender the property "in good condition and repair."
26
27
28

 MCDONALD-CARANO-WILSON
100 WEST LIBERTY STREET, 10TH FLOOR • RENO, NEVADA 89501
P.O. BOX 2670 • RENO, NEVADA 89501-2670
PHONE 775-788-2000 • FAX 775-788-2020

1 27. The 2004 Lemich Lease provided that Lemich and Cox must indemnify TMWA
2 for any and all costs TMWA may incur in response to the remediation of any pollution or
3 contamination of TMWA's property.

4 28. Lemich and Cox continued to occupy the leased premises, as holdover tenants,
5 until July 2010.

6 29. Based on recent information obtained by TMWA, TMWA is informed and
7 believes that during the above-described tenancies, the lessees placed contaminated soils on the
8 leased property without TMWA's knowledge or permission and/or stored materials, equipment,
9 or other products that caused soils contamination on the leased property.

10 **1st CLAIM FOR RELIEF**
11 **(Breach of Easement Agreement: Northern Nevada)**

12 30. TMWA hereby repeats, realleges and incorporates each and every allegation set
13 forth in paragraphs 1 through 29 of this Complaint in Intervention as if set forth at length and in
14 full.

15 31. TMWA is the holder of a real property interest in the form of an easement on the
16 Northern Nevada Parcel and is party to an Easement Agreement that runs with the land as an
17 encumbrance on the Northern Nevada Parcel.

18 32. The Easement Agreement is a valid and enforceable contract.

19 33. TMWA is informed and believes that Northern Nevada is the present owner of the
20 Northern Nevada Parcel.

21 34. The unclassified fill material on the TMWA Easement portion of the Northern
22 Nevada Parcel violates the Easement Agreement and interferes with TMWA's valid and
23 enforceable easement rights.

24 35. Northern Nevada continues to allow the unclassified fill material to remain on the
25 TMWA Easement.

26 36. TMWA has performed all conditions required of it pursuant to the Easement
27 Agreement.

28

 **MCDONALD-CARANO-WILSON**
100 WEST LIBERTY STREET, 10TH FLOOR • RENO, NEVADA 89501
PO BOX 2670 • RENO, NEVADA 89505-3670
PHONE 775-798-2000 • FAX 775-798-2020

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

37. Northern Nevada has breached the Easement Agreement.

38. As a proximate result of Northern Nevada's breach of the Easement Agreement, TMWA has been damaged in an amount in excess of \$10,000.

39. Additionally, TMWA has been forced to employ the undersigned attorneys to prosecute this action. TMWA has incurred, and will continue to incur, attorney's fees and costs in an amount that cannot presently be determined.

SECOND CLAIM FOR RELIEF
(Trespass Upon Easement: Northern Nevada, Cerberus, GL Construction, and Lemich)

40. TMWA hereby repeats, realleges and incorporates each and every allegation set forth in paragraphs 1 through 39 of this Complaint in Intervention as if set forth at length and in full.

41. TMWA is informed and believes and thereupon alleges that GL Construction and Lemich placed a substantial amount of unclassified fill material on the TMWA Easement area.

42. As owners of the property, Plaintiffs Northern Nevada and Cerberus continued to allow the unclassified fill material to remain on the TMWA Easement area.

43. The unclassified fill material, which has been deposited on the TMWA Easement and continue to remain on the TMWA Easement, interferes with TMWA's Easement and real property rights.

44. The existence of the unclassified fill material on TMWA's Easement constitutes a trespass, which trespass continues to this date.

45. TMWA has demanded that the responsible parties remove the unclassified fill material from the TMWA Easement area.

46. Plaintiffs and Defendants have failed and refused to remove the unclassified fill material from the TMWA Easement area.

47. As a proximate result of the parties' trespass on TMWA's Easement, TMWA has been damaged in an amount in excess of \$10,000.

1 48. Additionally, TMWA has been forced to employ the undersigned attorneys to
2 prosecute this action. TMWA has incurred, and will continue to incur, attorney's fees and costs
3 in an amount that cannot presently be determined.

4 **THIRD CLAIM FOR RELIEF**
5 **(Breach of Lease: Lemich)**

6 49. TMWA hereby repeats, realleges and incorporates each and every allegation set
7 forth in paragraphs 1 through 48 of this Complaint in Intervention as if set forth at length and in
8 full.

9 50. TMWA and Lemich entered into a valid, binding, and enforceable Lease
10 Agreement whereby Lemich leased certain portions of the Comstock Tank Property.

11 51. Pursuant to the Lease Agreement, Lemich was prohibited from damaging or
12 harming the leased property. Further, Lemich was required, at the termination of the Lease, to
13 surrender the property in "good condition and repair." In addition, Lemich is required to
14 indemnify TMWA from any and all claims related to the remediation of any pollution or
15 contamination of TMWA's property.

16 52. Lemich continued to occupy the subject property as a holdover tenant until July of
17 2010.

18 53. TMWA has performed all obligations required of it with respect to the Lease.

19 54. By engaging in the activities discussed herein, Lemich has breached the Lease
20 Agreement.

21 55. As a proximate result of Lemich's breach of the Lease Agreement, TMWA has
22 been damaged in an amount in excess of \$10,000.

23 56. Additionally, TMWA has been forced to employ the undersigned attorneys to
24 prosecute this action. TMWA has incurred, and will continue to incur, attorney's fees and costs
25 in an amount that cannot presently be determined.

 MCDONALD-CARANO-WILSON
100 WEST LIBERTY STREET, 10TH FLOOR • RENO, NEVADA 89501
P.O. BOX 2670 • RENO, NEVADA 89505-2670
PHONE 775-786-2000 • FAX 775-786-2020

PRAYER FOR RELIEF

WHEREFORE, TMWA prays for judgment against the Northern Nevada and Defendants and each of them, as follows:

1. For judgment in favor of TMWA and against Northern Nevada and Defendants.
2. For general and special damages in a sum in excess of \$10,000.00 as determined at trial.
3. For an order from this Court requiring Northern Nevada and Defendants to remove the soil at issue from the TMWA Easement and the Comstock Tank Property.
4. For reasonable attorney's fees and costs of the suit incurred herein, and
5. For such other and further relief as the Court deems just and proper.

Affirmation

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

DATED: June 20, 2016.

McDONALD CARANO WILSON LLP

By /s/ Paul J. Georgeson
Paul J. Georgeson
Adam Hosmer-Henner
100 West Liberty Street, 10th Floor
P.O. Box 2670
Reno, Nevada 89505-2670

Attorneys for Truckee Meadows Water Authority

450258.1

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDONALD CARANO WILSON LLP and that on June 20, 2016, I served the within **TRUCKEE MEADOWS WATER AUTHORITY'S COMPLAINT IN INTERVENTION** on the parties in said case electronically filing via the Court's e-filing system. The participants in this case are registered e-filing users and that service will be accomplished by e-filing to the following e-filing participants:

Chris Rusby, Esq.
Rusby Law Office
36 Stewart Street
Reno, NV 89501

James Shields Beasley, Esq.
Beasley Law Office
435 Court Street
Reno, NV 89505

John C. Boyden, Esq.
Andrea Pressler, Esq.
Brett Dieffenbach, Esq.
Erickson Thorpe & Swainston, Ltd.
P.O. Box 3559
Reno, NV 89505

and by placing a true copy thereof enclosed in sealed envelopes with postage prepaid thereon in the United States Post Office mail at 100 West Liberty Street, 10th Floor, Reno, Nevada 89501

addressed as follows:
Thomas Drendel, Esq.
Bradley Drendel & Jeanney
6900 S. McCarran Blvd, Suite 2000
Reno, NV 89509

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 20, 2016 at Reno, Nevada.

By /s/ Jill Nelson
Jill Nelson

454893.1

MCDONALD CARANO WILSON
100 WEST LIBERTY STREET, 10TH FLOOR • RENO, NEVADA 89501
P.O. BOX 2870 • RENO, NEVADA 89505-2870
PHONE 775-786-2000 • FAX 775-786-2020

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit 5

Exhibit 5

1 **CODE: 3985**

2 Paul J. Georgeson, Esq.
3 Nevada Bar No. 5322
4 Adam Hosmer-Henner, Esq.
5 Nevada Bar No. 12779
6 MCDONALD CARANO WILSON LLP
7 100 West Liberty Street, 10th Floor
8 P.O. Box 2670
9 Reno, NV 89505
10 775-788-2000 – phone
11 775-788-2020 – facsimile

12 *Attorneys for Truckee Meadows Water Authority*

13 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

14 **IN AND FOR THE COUNTY OF WASHOE**

15 CERBERUS HOLDINGS, LLC, a Nevada
16 limited liability company; NORTHERN
17 NEVADA HOMES, LLC, a Nevada limited
18 liability company,

19 Plaintiffs,

20 vs.

21 GL CONSTRUCTION, INC., a Nevada
22 corporation; GORDON LEMICH, an
23 individual; and DOES 1-10, Inclusive,

24 Defendants.
25 _____/

26 TRUCKEE MEADOWS WATER
27 AUTHORITY,

28 Intervener,

29 vs.

30 CERBERUS HOLDINGS, LLC, a Nevada
31 limited liability company; NORTHERN
32 NEVADA HOMES, LLC, a Nevada limited
33 liability company; GL CONSTRUCTION,
34 INC., a Nevada corporation; GORDON
35 LEMICH, an individual; and DOES 1-10,
36 Inclusive,

37 Defendants.
38 _____/

Case No. CV13-01468

Dept. No. 8

**STIPULATION FOR DISMISSAL WITH
PREJUDICE OF TMWA'S COMPLAINT
IN INTERVENTION**

MCDONALD-CARANO-WILSON
100 WEST LIBERTY STREET, 10TH FLOOR • RENO, NEVADA 89501
PO BOX 2670 • RENO, NEVADA 89505-2670
PHONE 775-788-2000 • FAX 775-788-2020



 MCDONALD-CARANO-WILSON
100 WEST LIBERTY STREET, 10th FLOOR • RENO, NEVADA 89501
P.O. BOX 2670 • RENO, NEVADA 89505-2670
PHONE 775-788-2000 • FAX 775-788-3333

1 Plaintiffs Cerberus Holdings, LLC, and Northern Nevada Homes, LLC, by and through
2 their counsel Chris Rusby, Esq. of Rusby Law, PLLC.; Defendants GL Construction, Inc., and
3 Gordon Lemich, by and through their counsel John C. Boyden, Esq., of Erickson, Thorpe &
4 Swainston, Ltd.; Plaintiff in Intervention Truckee Meadows Water Authority ("TMWA"), by and
5 through its counsel Paul J. Georgeson, Esq., and Adam Hosmer-Henner, Esq. of McDonald
6 Carano Wilson, LLP, hereby stipulate and agree as follows:

7 IT IS HEREBY STIPULATED AND AGREED that all claims brought by TMWA in
8 TMWA's Complaint in Intervention filed on or about June 20, 2016 against all parties shall be
9 dismissed, with prejudice, each party to bear their own fees and costs.

10 IT IS FURTHER STIPULATED AND AGREED that the Motion to Continue Trial filed
11 by TMWA on July 25, 2016, and Joinder to the Motion to Continue filed by GL Construction
12 and Gordon Lemich on July 27, 2016, shall be withdrawn.

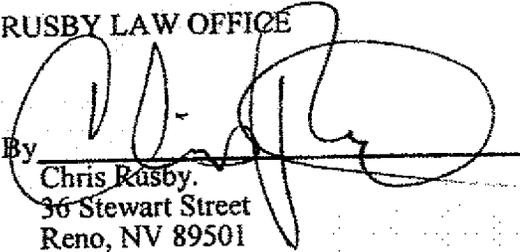
13 IT IS FURTHER STIPULATED AND AGREED that Plaintiffs' Motion to Bifurcate or
14 Sever TMWA's Claims filed on July 27, 2016, shall be withdrawn.

15 IT IS FURTHER NOTED that TMWA will not be filing a separate Motion to Dismiss its
16 trespass claims against GL Construction and Gordon Lemich, as this Dismissal encompasses that
17 claim.

18 AFFIRMATION

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

21
22
23 Dated: July 28, 2016.

24
25
26
27
28
RUSBY LAW OFFICE
By 
Chris Rusby.
36 Stewart Street
Reno, NV 89501

*Attorneys for Plaintiffs, Cerberus Holdings,
LLC, and Northern Nevada Homes, LLC*

1 Dated: 7/28, 2016.

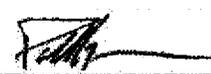
ERICKSON THORPE & SWAINSTON, LTD.

2
3 By 
4 John C. Boyden, Esq.
5 P.O. Box 3559
6 Reno Nevada 89505

*Attorney for Defendants GL Construction, Inc.
and Gordon Lemich*

7
8 Dated: 7/28, 2016.

McDONALD CARANO WILSON LLP

9
10 By 
11 Paul J. Georgeson, Esq.
12 Adam Hosmer-Henner, Esq.
13 100 West Liberty Street, 10th Floor
14 P.O. Box 2670
15 Reno, Nevada 89505

*Attorneys for Plaintiff in Intervention Truckee
Meadows Water Authority*

16
17
18
19
20
21
22
23
24
25
26
27
28

McDONALD-CARANO-WILSON
100 WEST LIBERTY STREET, 10th FLOOR • RENO, NEVADA 89501
P.O. BOX 2670 • RENO, NEVADA 89505-2670
PHONE 775-788-2000 • FAX 775-788-2020

Exhibit 6

Exhibit 6

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Paul J. Georgeson, Esq.
Nevada Bar No. 5322
Adam Hosmer-Henner, Esq.
Nevada Bar No. 12779
MCDONALD CARANO WILSON LLP
100 West Liberty Street, 10th Floor
P.O. Box 2670
Reno, NV 89505
775-788-2000 – phone
775-788-2020 – facsimile

Attorneys for Truckee Meadows Water Authority

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

CERBERUS HOLDINGS, LLC, a Nevada
limited liability company; NORTHERN
NEVADA HOMES, LLC, a Nevada limited
liability company,

Plaintiffs,

vs.

GL CONSTRUCTION, INC., a Nevada
corporation; GORDON LEMICH, an
individual; and DOES 1-10, Inclusive,

Defendants.

TRUCKEE MEADOWS WATER
AUTHORITY,

Intervener,

vs.

CERBERUS HOLDINGS, LLC, a Nevada
limited liability company; NORTHERN
NEVADA HOMES, LLC, a Nevada limited
liability company; GL CONSTRUCTION,
INC., a Nevada corporation; GORDON
LEMICH, an individual; and DOES 1-10,
Inclusive,

Defendants.

Case No. CV13-01468

Dept. No. 8

**ORDER GRANTING STIPULATION FOR
DISMISSAL WITH PREJUDICE OF
TMWA'S COMPLAINT IN
INTERVENTION**

Exhibit 7

Exhibit 7

1 CODE: 2540
Paul J. Georgeson, Esq.
2 Nevada Bar No. 5322
Adam Hosmer-Henner, Esq.
3 Nevada Bar No. 12779
MCDONALD CARANO WILSON LLP
4 100 West Liberty Street, 10th Floor
P.O. Box 2670
5 Reno, NV 89505
775-788-2000 - phone
6 775-788-2020 - facsimile
7 *Attorneys for Truckee Meadows Water Authority*

8
9 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

10 **IN AND FOR THE COUNTY OF WASHOE**

11 CERBERUS HOLDINGS, LLC, a Nevada
limited liability company; NORTHERN
12 NEVADA HOMES, LLC, a Nevada limited
liability company,

13 Plaintiffs,

14 vs.

15
16 GL CONSTRUCTION, INC., a Nevada
corporation; GORDON LEMICH, an
17 individual; and DOES 1-10, Inclusive,

18 Defendants.
_____/

Case No. CV13-01468

Dept. No. 8

NOTICE OF ENTRY OF ORDER

19 AND RELATED ACTIONS.
_____/

22 PLEASE TAKE NOTICE that on the 4th day of August, 2016, the above entitled Court
23 entered its Order Granting Stipulation for Dismissal with Prejudice of TMWA's Complaint in
24 Intervention. A true and correct copy of the Order is attached hereto as Exhibit 1.

25 //

26 //

27 //

28 //

MCDONALD-CARANO-WILSON
100 WEST LIBERTY STREET, 10TH FLOOR • RENO, NEVADA 89501
P.O. BOX 2670 • RENO, NEVADA 89505-2670
PHONE 775-788-2000 • FAX 775-788-2020

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

3 DATED: August 4, 2016.

4 McDONALD CARANO WILSON LLP

5
6 By /s/ Paul J. Georgeson

7 Paul J. Georgeson
8 Adam Hosmer-Henner
9 100 West Liberty Street, 10th Floor
10 P.O. Box 2670
11 Reno, Nevada 89505-2670

12 *Attorneys for Truckee Meadows Water Authority*

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
MCDONALD-CARANO-WILSON
100 WEST LIBERTY STREET, 10th FLOOR • RENO, NEVADA 89501
P.O. BOX 2670 • RENO, NEVADA 89505-2670
PHONE 775-788-2000 • FAX 775-788-2020

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDONALD CARANO WILSON LLP and that on August 4, 2016, I served the within **NOTICE OF ENTRY OF ORDER** on the parties in said case electronically filing via the Court's e-filing system. The participants in this case are registered e-filing users and that service will be accomplished by e-filing to the following e-filing participants:

Chris Rusby, Esq.
Rusby Law Office
36 Stewart Street
Reno, NV 89501

James Shields Beasley, Esq.
Beasley Law Office
435 Court Street
Reno, NV 89505

John C. Boyden, Esq.
Andrea Pressler, Esq.
Brett Dieffenbach, Esq.
Erickson Thorpe & Swainston, Ltd.
P.O. Box 3559
Reno, NV 89505

and by placing a true copy thereof enclosed in sealed envelopes with postage prepaid thereon in the United States Post Office mail at 100 West Liberty Street, 10th Floor, Reno, Nevada 89501 addressed as follows:

Thomas Drendel, Esq.
Bradley Drendel & Jeanney
6900 S. McCarran Blvd, Suite 2000
Reno, NV 89509

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 4, 2016 at Reno, Nevada.

By /s/ Jill Nelson
Jill Nelson

454893.1

 **McDONALD-CARANO-WILSON**
100 WEST LIBERTY STREET, 10th FLOOR • RENO, NEVADA 89501
P.O. BOX 2670 • RENO, NEVADA 89505-2670
PHONE 775-788-2000 • FAX 775-788-2020

INDEX OF EXHIBITS

EXHIBIT #	DESCRIPTION	NUMBER OF PAGES
1	Order Granting Stipulation for Dismissal with Prejudice of TMWA's Complaint in Intervention	2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

 **MCDONALD-CARANO-WILSON**
100 WEST LIBERTY STREET, 16TH FLOOR • RENO, NEVADA 89501
P.O. BOX 2670 • RENO, NEVADA 89505-2670
PHONE 775-788-2000 • FAX 775-788-2020

1 Paul J. Georgeson, Esq.
2 Nevada Bar No. 5322
3 Adam Hosmer-Henner, Esq.
4 Nevada Bar No. 12779
5 MCDONALD CARANO WILSON LLP
6 100 West Liberty Street, 10th Floor
7 P.O. Box 2670
8 Reno, NV 89505
9 775-788-2000 – phone
10 775-788-2020 – facsimile

11 *Attorneys for Truckee Meadows Water Authority*

12 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

13 **IN AND FOR THE COUNTY OF WASHOE**

14 CERBERUS HOLDINGS, LLC, a Nevada
15 limited liability company; NORTHERN
16 NEVADA HOMES, LLC, a Nevada limited
17 liability company,

18 Plaintiffs,

19 vs.

20 GL CONSTRUCTION, INC., a Nevada
21 corporation; GORDON LEMICH, an
22 individual; and DOES 1-10, Inclusive,

23 Defendants.
24 _____/

25 TRUCKEE MEADOWS WATER
26 AUTHORITY,

27 Intervener,

28 vs.

29 CERBERUS HOLDINGS, LLC, a Nevada
30 limited liability company; NORTHERN
31 NEVADA HOMES, LLC, a Nevada limited
32 liability company; GL CONSTRUCTION,
33 INC., a Nevada corporation; GORDON
34 LEMICH, an individual; and DOES 1-10,
35 Inclusive,

36 Defendants.
37 _____/

Case No. CV13-01468

Dept. No. 8

**ORDER GRANTING STIPULATION FOR
DISMISSAL WITH PREJUDICE OF
TMWA'S COMPLAINT IN
INTERVENTION**

Exhibit 8

Exhibit 8

1 **3370**
2 Christopher Rusby, Esq.
3 Nevada State Bar No. 11452
4 RUSBY CLARK PLLC
5 36 Stewart Street
6 Reno, NV 89505
7 T: (775) 409-4037
8 and
9 Thomas E. Drendel, Esq.
10 BRADLEY, DRENDEL & JEANNEY, LTD.
11 6900 S. McCarran Blvd., Suite 2000
12 P.O. Box 1987
13 Reno, NV 89505
14 (775) 335-9999
15 *Attorneys for Plaintiffs*

16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

CERBERUS HOLDINGS, LLC, a Nevada
limited liability company; NORTHERN
NEVADA HOMES, LLC, a Nevada limited
liability company,

Case No. CV13-01468
Dept. No. 8

Plaintiffs,

v.

GL CONSTRUCTION, INC., a Nevada
corporation; GORDON LEMICH, an
individual; and DOES I through X,
inclusive,

Defendants.

AND RELATED CLAIMS

ORDER

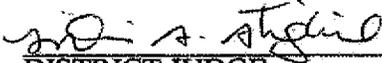
Pursuant to the stipulation of the parties hereto, and good cause appearing,

IT IS HEREBY ORDERED that the counterclaim in the above-captioned matter be
bifurcated from the claims being presented at the jury trial scheduled for August 8, 2016 between
Northern Nevada Homes, LLC and GL Construction, Inc. and Gordon Lemich.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS HEREBY FURTHER ORDERED that the counterclaim will be presented to the Court as a bench trial following the jury verdict in the primary trial.

Dated this 5th day of August, 2016



DISTRICT JUDGE

Exhibit 9

Exhibit 9

3985
1 JOHN C. BOYDEN, ESQ. (SBN 3917)
2 BRETT A. DIEFFENBACH, ESQ. (SBN 11370)
3 ERICKSON, THORPE & SWAINSTON, LTD.
4 P.O. Box 3559
5 Reno, NV 89505
6 (775) 786-3930
7 Attorneys for Defendants
8 GL Construction, Inc. & Gordon Lemich

9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

10 IN AND FOR THE COUNTY OF WASHOE

11 CERBERUS HOLDINGS, LLC, a Nevada limited
12 liability company; NORTHERN NEVADA
13 HOMES, LLC, a Nevada limited liability company,

14 Plaintiffs,

CASE NO: CV13-01468

15 vs.

DEPT. NO: 8

16 GL CONSTRUCTION, INC., a Nevada
17 corporation; GORDON LEMICH, an
18 individual; and DOES 1-10, inclusive,

19 Defendants.

20 _____
21 GL CONSTRUCTION, INC., a Nevada corporation

22 Counterclaimant,

23 vs.

24 NORTHERN NEVADA HOMES, LLC, a Nevada
25 limited liability company,

26 Counterdefendant.
27 _____
28

29 **STIPULATION AND ORDER TO DISMISS CERTAIN CAUSES OF ACTION**

30 Plaintiffs, CERBERUS HOLDINGS, LLC (SUREBREC HOLDINGS, LLC) and NORTHERN NEVADA
31 HOMES, LLC, by and through their counsel of record, RUSBY CLARK, PLLC, and CHRISTOPHER RUSBY,
32 ESQ., Defendants, GL CONSTRUCTION, INC., and GORDON LEMICH, by and through their counsel of record,
33 ERICKSON, THORPE & SWAINSTON, LTD., JOHN C. BOYDEN, ESQ., and BRETT A. DIEFFENBACH,
34 ESQ., and, Intervenor, TRUCKEE MEADOWS WATER AUTHORITY, by and through its counsel of record,
35 MCDONAL CARANO WILSON, LLP, PAUL J. GEORGESON, ESQ., and ADAM HOSMER-HENNER, ESQ.,

1 and hereby stipulate that Cerberus Holdings, LLC's Claims for Relief for Negligence, Negligent Misrepresentation,
2 Intentional Misrepresentation, Intentional Damage to Property, Breach of Contract, and Quantum Meruit shall be
3 dismissed with prejudice. As to these causes of action only each party is to bear its own attorneys' fees and costs.
4 Because these claims include all of the claims asserted be Plaintiff Cerberus Holdings, LLC, the parties stipulate to
5 dismiss Cerberus Holdings, LLC as a party to this case.

6 Plaintiff, NORTHERN NEVADA HOMES, LLC's Claims for Relief for Negligent Trespass, Intentional
7 Trespass, and Injunctive Relief are not affected by this stipulation.

8 The parties further agree and stipulate that the caption attached as Exhibit A shall be the caption used from
9 the date the Court signs the Order below.

10 Affirmation

11 The undersigned does hereby affirm that the preceding document does not contain the social security
12 number of any person.

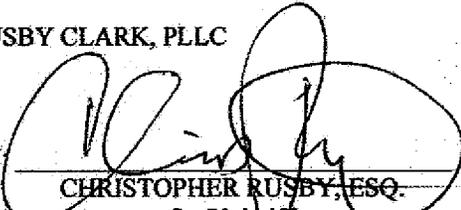
13 DATED this 5th day of August, 2016.

DATED this 5th day of August, 2016.

14 RUSBY CLARK, PLLC

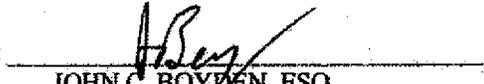
ERICKSON, THORPE & SWAINSTON, LTD.

15 BY



16 CHRISTOPHER RUSBY, ESQ.
17 Attorneys for Plaintiffs
18 Cerberus Holdings, LLC &
19 Northern Nevada Homes, LLC.

BY:



20 JOHN C. BOYDEN, ESQ.
21 BRETT A. DEFFENBACH, ESQ.
22 Attorneys for Defendants
23 GL Construction, Inc. & Gordon Lemich

24 ORDER

25 Pursuant to the stipulation of the parties hereto, and good cause appearing, IT IS HEREBY ORDERED that
26 Plaintiffs' Claims for Relief for Negligence, Negligent Misrepresentation, Intentional Misrepresentation, Intentional
27 Damage to Property, Breach of Contract, and Quantum Meruit are dismissed with prejudice, and Plaintiff Cerberus
28 Holdings, LLC is dismissed as a party to the case. As to these causes of action only each party shall bear its own
attorneys fees and costs.

Dated this 5th day of August, 2016

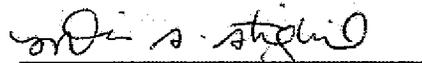

DISTRICT JUDGE

Exhibit 10

Exhibit 10

CASE NO. CV13-01468

CERBERUS HOLDINGS, LLC ETAL VS. GL CONSTRUCTION ETAL

Page One

DATE, JUDGE

OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

08/08/2016

JURY TRIAL – Day One

HONORABLE

Christopher Rusby, Esq. and Thomas Drendel, Esq. were preset in Court on behalf of Plaintiff, Northern Nevada Homes, LLC, who was also present.

LIDIA

John Boyden, Esq. and Brett Dieffenbach, Esq. were present in Court on behalf of G & L Construction, Inc. and Gordon Lemich, who was also present.

STIGLICH

DEPT. NO. 8

9:30 a.m. – Court convened with Court, Counsel, Plaintiff and Defendant present.

A. DeGayner

(Clerk) Counsel Rusby addressed and advised the Court of a few pretrial issues to include an objection to any cross examination of Mr. Fitzgerald as to if or when he had knowledge that a trespass had occurred. Counsel Rusby further argued that the evidence submitted on market value has no relevance.

I. Zihn

Counsel Dieffenbach addressed the Court and argued the relevance of the evidence to include that the appraisal is only 3 years old.

(Reporter)

Counsel Rusby argued that the 2013 appraisal is prejudicial and not competent evidence.

Court inquired as to why the evidence would be prejudicial.

Counsel Rusby responded to the Court's inquiry and advised that Mr. Fitzgerald would have to explain the bankruptcy in 2009, when a sale is not a "full arms length" sale it is not relevant as to market value and the appraisal is not probative of current value.

Counsel Dieffenbach argued in support of the appraisal and advised that there is no reason to bring up the bankruptcy.

Counsel Rusby requested that Mr. Fitzgerald be allowed to talk about the current appraisal.

COURT ORDERED: Mr. Fitzgerald can testify about the recent appraisal as to his knowledge of the value and any reference to the bankruptcy or the \$33k transfer in 2013 is EXCLUDED. Unless Mr. Fitzgerald denies the appraisal happened, no other documents shall come in.

Counsel Rusby argued in support of allowing in the settlement agreement with TMWA.

Counsel Dieffenbach argued in opposition of the TMWA settlement and inquired if Plaintiff will concede that the property has no value with dirt there.

Counsel Rusby advised that if going down the road of diminished value then the TMWA agreement must come in, if not, then it is not necessary.

COURT ORDERED: Will wait to see what the Defense is, if the parties want to bring something in they shall first seek leave of Court.

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

08/08/2016

JURY TRIAL – Day One

HONORABLE

Counsel Dieffenbach argued that the elements of trespass are all relevant as to implied consent.

LIDIA

Counsel Rusby advised of the Court's ruling that the statute of limitations is not a defense.

STIGLICH

Counsel Boyden advised that consent is an element of trespass.

DEPT. NO. 8

Counsel Rusby argued for exclusion of cross examination of Mr. Fitzgerald as to whether he should have known prior to when he did know of the trespass in 2013.

A. DeGayner

Counsel Dieffenbach confirmed that the Defense will not move to amend the answer.

(Clerk)

COURT ORDERED: Inquiry in that area is allowed a limiting instruction will be given if needed. Counsel to prepare the redaction for the TMWA letter.

I. Zihn

Discussion ensued as to scheduling the bifurcated issue.

(Reporter)

Prior to Court, roll taken by Bailiff Natasha Rickey. Forty-Four (44) of Forty-Four (44) prospective jurors were present.

Prior to the commencement of Court, Plaintiff's Exhibits 1-32 and Defendant's Exhibits 33-59 were marked for identification and Proposed Jury Instructions were provided to the Court by Counsel.

11:39 a.m. – Court convened with Court, Counsel and prospective jurors present.

Court addressed the prospective jurors.

Introduction of Court staff, respective counsel, Plaintiff and Defendant were made to the prospective jurors.

Counsel Rusby provided a brief statement of the case to the prospective jurors.

All prospective jurors were sworn to answer questions touching upon their qualifications to serve as trial jurors in this case.

The Court ordered that Nineteen (19) names be drawn, consisting of Eight (8) jurors and One (1) alternate, who were called and seated in the jury box.

At the direction of the Court, the Nineteen (19) prospective jurors introduced themselves.

Court read the list of witnesses expected to be called in the case.

The Court conducted general and specific voir dire examination of the potential jurors in the box.

Potential Juror Krymsen Hernandez was excused by the Court and replaced with potential juror Megan Medeiros.

Sidebar between Court and Counsel.

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

08/08/2016

JURY TRIAL – Day One

HONORABLE

Potential Juror Glenda Bacon was excused by the Court and replaced with potential juror Ronald Seagraves.

LIDIA

Potential Juror Connie Lowe excused by Court and replaced with potential juror Pisek Praphatanant.

STIGLICH

DEPT. NO. 8

A. DeGayner
(Clerk)

Potential Juror Joseph Metzger advised the Court of inability to serve as a Juror in this case and offered to meet with the Court privately to explain.

I. Zihn

Recess to meet with potential Juror Metzger in chambers.

(Reporter)

Court met in Chamber and on the record with Court, Counsel and potential Juror Joseph Metzger present.

Potential Juror Joseph Metzger provided explanation to the Court as to the reason he is unable to serve as a Juror in this case.

Respective Counsel stated no objection to potential Juror Joseph Metzger being excused.

Recess.

Court reconvened with Court and Counsel present.

Potential Juror Joseph Metzger excused by Court and replaced with potential Juror Lisa Marotta.

Potential Juror Pizek Praphatanant excused by Court and replaced with potential Juror Terry Hutsell.

12:30 p.m. – Counsel Drendel, on behalf of the Plaintiff, conducted general and specific voir dire of the potential Jurors in the box.

Counsel Drendel passed the panel for cause.

12:50 p.m. – Counsel Boyden, on behalf of the Defendants, conducted general and specific voir dire of the potential Jurors in the box.

Counsel Boyden passed the panel for cause.

The Court admonished the Jury.

12:55 p.m. – Recess to conduct challenges.

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

08/08/2016
HONORABLE
LIDIA
STIGLICH
DEPT. NO. 8
A. DeGayner
(Clerk)
I. Zihn
(Reporter)

JURY TRIAL – Day One

1:08 p.m. – Court reconvened in chambers with Court and Counsel present where preemptory challenges were exercised, Four (4) per side plus One (1) alternate. The following panel was selected and stipulated to:

Linda Carson, Terry Perez, Su Suh, Matthew Gardner, Gerald Sliker, Megan Medeiros, Oscar Correa, Ronald Seagraves and alternate Franklyn Christian.

1:16 p.m. – Court reconvened with Court, Counsel, Prospective Jurors, Plaintiff and Defendant present.

The selected and stipulated jurors were seated in the jury box and sworn. The Court thanked and excused the un-reached and unselected prospective Jurors.

The court addressed the Jury, provided preliminary admonishments and an anticipated trial schedule for the week.

1:25 p.m. – Noon Recess. Jury and Counsel ordered to return to Court at 2:30 p.m.

2:32 p.m. – Court reconvened with Court, Counsel, Plaintiff, Defendant and Jury present. Court provided preliminary instructions to the Jury.

2:41 p.m. – Counsel Drendel, on behalf of the Plaintiff, presented Opening Statement.

3:06 p.m. – Counsel Boyden, on behalf of the Defendants, presented Opening Statement.

Jury admonished and ordered to return to Court on Tuesday, August 9, 2016 at 10:15 a.m.

3:28 p.m. – Court stood in Recess.

DATE, JUDGE
OFFICERS OF
COURT PRESENTAPPEARANCES-HEARING

08/09/2016

JURY TRIAL – Day TwoHONORABLE
LIDIA
STIGLICH
DEPT. NO. 8
A. DeGayner
(Clerk)
I. Zihn
(Reporter)

Christopher Rusby, Esq. and Thomas Drendel, Esq. were present in Court on behalf of Plaintiff, Northern Nevada Homes, LLC, who was also present.

John Boyden, Esq. and Brett Dieffenbach, Esq. were present in Court on behalf of G & L Construction, Inc. and Gordon Lemich, who was also present.

10:26 a.m. – Court convened with Court, Counsel, Plaintiff and Defendant present. Counsel Drendel addressed and advised the Court that parties have stipulated to a number of exhibits and would like to admit them as a matter of housekeeping.

Exhibit 1 offered; previously stipulated to by Counsel; ADMITTED.

Exhibit 2 offered; previously stipulated to by Counsel; ADMITTED.

Exhibit 3 offered; previously stipulated to by Counsel; ADMITTED.

Exhibit 4 offered; previously stipulated to by Counsel; ADMITTED.

Exhibit 5 offered; previously stipulated to by Counsel; ADMITTED.

Exhibit 6 offered; previously stipulated to by Counsel; ADMITTED.

Exhibit 7 offered; previously stipulated to by Counsel; ADMITTED.

Exhibit 17 offered; previously stipulated to by Counsel; ADMITTED.

Exhibit 18 offered; previously stipulated to by Counsel; ADMITTED.

Exhibit 19 offered; previously stipulated to by Counsel; ADMITTED.

Exhibit 20 offered; previously stipulated to by Counsel; ADMITTED.

Exhibit 23 offered; previously stipulated to by Counsel; ADMITTED.

Exhibit 33 offered; previously stipulated to by Counsel; ADMITTED.

Exhibit 48 offered; previously stipulated to by Counsel; ADMITTED.

Exhibit 54 offered; previously stipulated to by Counsel; ADMITTED.

Exhibit 58 offered; previously stipulated to by Counsel; ADMITTED.

Counsel Rusby advised the Court that he has prepared two redacted letters from TMWA and provided said letters to the Court for review.

10:28 a.m. – Jury escorted into the Courtroom.

Counsel Drendel called **Gordon Lemich** who was sworn and direct examined.

Exhibit 8 offered; objection – overruled; ADMITTED.

Continued direct examination conducted by Counsel Drendel.

Exhibit 9 offered; no objection; ADMITTED.

Continued direct examination conducted by Counsel Drendel.

Exhibit 30 offered; no objection; ADMITTED.

Continued direct examination conducted by Counsel Drendel; cross examination conducted by Counsel Boyden.

Exhibit 60 marked; offered; no objection; ADMITTED.

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

08/09/2016

JURY TRIAL – Day Two

HONORABLE

Continued cross examination conducted by Counsel Boyden.

LIDIA

Exhibit 61 marked.

STIGLICH

Continued cross examination conducted by Counsel Boyden.

DEPT. NO. 8

The Court admonished the Jury, which was presented prior to every recess.

A. DeGayner

11:55 a.m. – Noon Recess. Jury ordered to return at 1:15 p.m.

(Clerk)

1:21 p.m. – Court convened with Court, Counsel, Plaintiff and the Defendant present.

I. Zihn

Outside the presence of the Jury, Counsel Rusby inquired the Court if the redacted TMWA letter could be addressed at this time.

(Reporter)

*Counsel Dieffenbach argued that everything following "scope of proposed work" on page 2 of the letter be redacted; no objection stated.**Counsel Rusby made additional redactions to the TMWA letter.*

1:29 p.m. – Jury escorted into the Courtroom.

Court instructed the Jury as to questions.

Continued cross examination of **Gordon Lemich** conducted by Counsel Boyden; re-direct examination conducted by Counsel Drendel; witness thanked and excused.Counsel Rusby called **Robert Rice**.

Counsel Boyden addressed the Court and moved for an offer of proof for the Plaintiff's witness Robert Rice.

Sidebar conducted between Court and Counsel.

Plaintiff's witness Robert Rice took the witness stand and was sworn.

Matt Jensen, Esq. addressed the Court from behind the bar and introduced himself as counsel for the Plaintiff's witness Robert Rice and further requested permission of the Court to sit in front of the bar and raise objections if necessary.

COURT ORDERED: Matt Jensen, Esq. may sit in front of the bar but shall leave any objections to Counsel of record in the case.Direct examination of **Robert Rice** conducted by Counsel Rusby; witness thanked and excused.Counsel Rusby called **John Erwin** who was sworn.*Sidebar conducted between Court and Counsel.*Direct examination of **John Erwin** conducted by Counsel Rusby.**Exhibit 16** offered; no objection; ADMITTED.

Continued direct examination conducted by Counsel Rusby.

Sidebar conducted between Court and Counsel.

Continued direct examination conducted by Counsel Rusby; witness thanked and excused.

DATE, JUDGE
OFFICERS OF
COURT PRESENTAPPEARANCES-HEARING

08/09/2016

JURY TRIAL – Day Two

HONORABLE

The Court admonished the Jury, which was presented prior to every recess.

LIDIA

2:59 p.m. – Afternoon Recess.

STIGLICH

3:11 p.m. – Court convened with Court, Counsel, Plaintiff and Defendant present.

DEPT. NO. 8

3:12 p.m. – Jury escorted into the Courtroom.

A. DeGayner

Counsel Rusby called **Robert Fitzgerald** who was sworn and direct examined.

(Clerk)

Exhibit 15 offered; no objection; ADMITTED.

I. Zihn

Continued direct examination conducted by Counsel Rusby; cross examination

(Reporter)

conducted by Counsel Boyden; re-direct examination conducted by Counsel Rusby;
witness thanked and excused.**Exhibit 42** offered; no objection; ADMITTED.**Exhibit 17** offered; no objection; ADMITTED.The Court admonished the Jury. Ordered to return on Wednesday, August 10, 2016 at 9:30
a.m.

4:31 p.m. – Jury escorted out.

*Outside the presence of the Jury Court reviewed admitted exhibits.***Exhibit 61** offered; no objection; ADMITTED.*Discussion ensued as to scheduling for the remainder of the trial.*

4:34 p.m. – Court stood in Recess.

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

08/10/2016

JURY TRIAL – Day ThreeHONORABLE
LIDIA
STIGLICH
DEPT. NO. 8
A. DeGayner
(Clerk)
I. Zihn
(Reporter)

Christopher Rusby, Esq. and Thomas Drendel, Esq. were present in Court on behalf of Plaintiff, Northern Nevada Homes, LLC, who was also present.

John Boyden, Esq. and Brett Dieffenbach, Esq. were present in Court on behalf of G & L Construction, Inc. and Gordon Lemich, who was also present.

10:02 a.m. – Court convened with Court, Counsel, Plaintiff and Defendant present. Counsel Drendel called **Raymond Pezonella** who was sworn and direct examined; cross examination conducted by Counsel Dieffenbach.

Exhibit 25 offered; objection – overruled; ADMITTED.

Continued cross examination conducted by Counsel Dieffenbach; re-direct examination conducted.

Exhibit 24 offered; no objection; ADMITTED.

Witness thanked and excused.

Counsel Drendel called **John Munson** who was sworn and direct examined by Counsel Rusby.

Sidebar conducted between Court and Counsel.

Continued direct examination conducted by Counsel Rusby.

Jury Admonished as presented prior to every recess and ordered to return to Court at 12:45 p.m.

11:29 a.m. – Jury escorted out of the Courtroom.

Outside the presence of the Jury Counsel Boyden moved for a mistrial and presented argument in support of his motion.

Counsel Rusby addressed the Court and argued in opposition of the Motion for a Mistrial, Counsel Rusby advised that witness John Munson's testimony is not materially different from his report or deposition.

Counsel Boyden argued that he is entitled to the witness' final opinion at the deposition and he did not get that.

COURT ORDERED: Motion for Mistrial – UNDER SUBMISSION.

11:36 a.m. – Recess.

12:45 p.m. – Court reconvened with Court, Counsel, Plaintiff and Defendant present.

COURT ORDERED: Motion for Mistrial – DENIED. To the extent that the parties feel a jury instruction is appropriate, the Court will consider that at the time instructions are settled.

12:47 p.m. – Jury escorted into the Courtroom.

Plaintiff's witness **John Munson** resumed the witness stand.

Cross examination conducted by Counsel Boyden; witness thanked and excused.

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

08/10/2016

JURY TRIAL – Day ThreeHONORABLE
LIDIACounsel Rusby called **Nathan Roach** who was sworn and direct examined by Counsel Drendel.

STIGLICH

Page 2 of Exhibit 26 offered; no objection; ADMITTED.

DEPT. NO. 8

Cross examination conducted by Counsel Dieffenbach; witness thanked and excused.

A. DeGayner
(Clerk)

1:29 p.m. – Counsel Rusby advised the Court that he would not be calling any additional witnesses and rested the Plaintiff's case in chief.

I. Zihn

The Court admonished the Jury, which was presented prior to every recess.

(Reporter)

1:31 p.m. – Recess.

1:56 p.m. – Court reconvened with Court, Counsel, Plaintiff and Defendant present.

*Outside the presence of the Jury, Counsel Dieffenbach moved for a 50 A Motion and presented argument in support of said motion.**Counsel Rusby argued in opposition of the 50A motion.***COURT ORDERED:** Defendant's 50A Motion – UNDER SUBMISSION.

1:58 p.m. – Jury escorted into the Courtroom.

Counsel Boyden called **Lorin Mark Chapman** who was sworn and direct examined; cross examination conducted by Counsel Rusby; re-direct examination conducted by Counsel Boyden.*Sidebar conducted between Court and Counsel.*

Re-direct examination conducted by Counsel Boyden; witness thanked and excused.

Counsel Boyden re-called **Gordon Lemich** who was previously sworn and advised by the Court that he is still under oath; direct examination conducted; cross examination conducted; witness thanked and excused.

Counsel Boyden, on behalf of the Defendant, advised he would not be calling additional witnesses and rested the Defendant's case.

Jury admonished and ordered to return to Court on Thursday, August 11, 2016 at 10:00 a.m.

*Outside the presence of the Jury, Counsel Drendle moved for a Judgment in favor of the Plaintiff on the negligent trespass issue.**Counsel Dieffenbach argued that negligence is for the Jury to decide.**Counsel Boyden argued that the Plaintiff has to bring in proof of ownership.***Court** inquired, what fact/issues remain for Jury as to the negligent trespass.

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

08/10/2016
HONORABLE
LIDIA
STIGLICH
DEPT. NO. 8
A. DeGayner
(Clerk)
I. Zihn
(Reporter)

JURY TRIAL – Day Three

Counsel Dieffenbach responded to the Court's inquiry and argued that the Defendant did not know where the property line was, he was negligent as to not knowing where the line was, he believed he was dumping on TMWA land which he thought he had permission to do.

Counsel Drendle argued that a trespass by mistake is not an excuse as to negligent trespass. Counsel Drendle further advised that the Plaintiff will dismiss the other 2 causes in the complaint as to intentional trespass as well as the injunction. Counsel Drendle moved for a Judgment under Rule 50 in favor of the Plaintiff.

Counsel Dieffenbach presented further argument in opposition of Plaintiff's Rule 50 Motion.

COURT ORDERED: Plaintiff's Rule 50 Motion – UNDER SUBMISSION.

3:34 p.m. – Court reconvened outside the presence of the Jury with Court, Counsel, Plaintiff and Defendant present.

COURT ORDERED: Defendant's Rule 50A Motion – DENIED. Plaintiff's Rule 50A Motion – GRANTED as to negligent trespass. Jury shall decide damages.

Counsel Drendle moved to dismiss the intentional trespass claim and the injunction; no objection stated; SO ORDERED.

Court advised of a Juror question from Juror #9. Court inclined to tell the Jury to rely upon the state of the evidence unless there is an agreement by counsel otherwise. Discussion ensued as to Jury Instructions.

3:42 p.m. – Court stood in Recess. Counsel to return on Thursday, August 11, 2016 at 9:30 a.m. to settle Jury Instructions.

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

08/11/2016

JURY TRIAL – Day Four

HONORABLE

Christopher Rusby, Esq. and Thomas Drendel, Esq. were preset in Court on behalf of Plaintiff, Northern Nevada Homes, LLC, who was also present.

LIDIA

John Boyden, Esq. and Brett Dieffenbach, Esq. were present in Court on behalf of G & L Construction, Inc. and Gordon Lemich, who was also present.

STIGLICH

DEPT. NO. 8

9:37 a.m. – Court convened with Court, Counsel, Plaintiff and Defendant present.

A. DeGayner

Outside the presence of the Jury, Jury Instructions were informally settled. Respective counsel stated applicable objections and had no additional Jury Instructions to proffer.

(Clerk)

Respective counsel argued as to who maintained the burden of proof on fair market value.

I. Zihn

Court advised the parties that the Defendant had been found negligent by the Court, the Jury is to determine damages.

(Reporter)

10:12 a.m. – Court stood in Recess.

11:20 a.m. – Court convened with Court, Counsel and Plaintiff present.

Counsel Rusby addressed and advised the Court that the parties have come to a resolution as to damages in the amount of \$362,500 to include a release of all claims except as to the prior \$20k judgment that Cerberus Holdings has against G.L.

Construction and Gordon Lemich. Counsel Rusby advised that the Counterclaim is not included in the Judgment and they are trying to work out the counterclaim with Counsel Beasley.

Court canvassed Counsel Boyd as to the Defendant's understanding of the agreement. Counsel Drendle advised that if the Counterclaim is not resolved it will be a bench trial with the Court and Counsel Beasley would like that bench trial heard tomorrow, Friday, August 12, 2016 as he is concerned about the timing of the offer of judgment.

Discussion ensued as to trial schedule for the bifurcated claim.

11:37 a.m. – Recess. Counsel shall return to Court at 1:30 p.m. to speak to the Jury.

Counsel shall be prepared to discuss the jurisdiction of the counterclaim.

1:31 p.m. – Court convened with Court, Counsel and Jury present.

Court addressed the Jury and advised that the case has been resolved.

The Jury was thanked by the Court for their service and released.

1:35 p.m. – Recess.

Exhibit 11

Exhibit 11

CASE NO. CV13-01468

GL CONSTRUCTION, INC. VS NORTHERN NEVADA HOMES, LLC.

Page One

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

08/11/2016
HONORABLE
LIDIA
STIGLICH
DEPT. NO. 8
A. DeGayner
(Clerk)
I. Zihn
(Reporter)

BENCH TRIAL – (pre-trial)

*Prior to the commencement of Court, Counterclaimant's **Exhibits 1-53** marked for identification with the Court Clerk.*

James Shields Beasley, Esq. was present in Court on behalf of the Counterclaimant, GL Construction, Inc. and Gordon Lemich, who was not present.

Christopher Rusby, Esq. was present in Court on behalf of the Counter-defendant, Northern Nevada Homes, LLC., who not present.

2:02 p.m. – Court convened with Court, Counsel Rusby and Counsel Beasley present. Counsel Rusby advised the Court that he has filed a motion to dismiss on the basis that the underlying claims have settled.

Counsel Beasley advised the Court that up until the settlement of the underlying claims today, this Court had jurisdiction of the bifurcated claim and the counterclaimant has incurred attorney's fees and costs. Counsel Beasley further argued that Northern Nevada Homes' is attempting to extinguish the right of GL Construction to seek attorney's fees by making a belated motion. If this case goes to the Reno Justice Court, GL Construction will have lost the right to recover attorney's fees.

2:10 p.m. – Court stood in Recess. Counsel shall return on Friday, August 12, 2016 at 9:00 a.m. Bench Trial scheduled for Friday, August 12, 2016 at 11:00 a.m., if needed. If counsel files any pleadings overnight they shall also be e-mailed directly to the Court.

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

08/12/2016
HONORABLE
LIDIA
STIGLICH
DEPT. NO. 8
A. DeGayner
(Clerk)
I. Zihn
(Reporter)

BENCH TRIAL – Day One

James Shields Beasley, Esq. was present in Court on behalf of the Counterclaimant, GL Construction, Inc. and Gordon Lemich, who was not present.

Christopher Rusby, Esq. was present in Court on behalf of the Counter-defendant, Northern Nevada Homes, LLC., who was present through Robert Fitzgerald.

9:05 a.m. – Court convened with Court, Counsel and Mr. Lemich present.

COURT ORDERED: Counter-defendant's Motion to Dismiss – DENIED. The Court will proceed with the previously scheduled Bench Trial on the Counterclaim. Counsel and parties are ordered to appear today, August 12, 2016 at 11:00 a.m. for Bench Trial.

9:07 a.m. – Court stood in recess.

Counter-defendant's Exhibits 54-58 marked for identification.

11:07 a.m. – Court convened with Court, Counsel, Counterclaimant and Counter-defendant present.

Counsel Beasley called **Gordon Lemich** who was sworn and direct examined.

Exhibit 34 offered; no objection; ADMITTED.

Continued direct examination conducted by Counsel Beasley; cross examination conducted.

Exhibit 58 offered; objection – sustained; Counsel Rusby to lay foundation for page 2.

Exhibit 58 page 1 offered; no objection; ADMITTED.

Continued cross examination conducted by Counsel Rusby.

Exhibit 59 marked.

Continued cross examination conducted by Counsel Rusby.

Exhibit 55 offered; no objection; ADMITTED.

Exhibit 59 offered; no objection; ADMITTED.

Continued cross examination conducted; re-direct examination conducted; witness thanked and excused.

Counsel Rusby called **Robert Fitzgerald** who was sworn and direct examined.

Exhibit 56 offered; no objection; ADMITTED.

Continued direct examination conducted.

Exhibit 58 offered; no objection; ADMITTED.

Continued direct examination conducted.

Exhibit 57 offered; objection – overruled; ADMITTED.

Cross examination conducted; witness thanked and excused.

Counsel Rusby rested the Defendant's case.

Counsel Beasley recalled **Gordon Lemich** who was advised by the Court that he is still under oath and direct examined; witness inquired by the Court; witness thanked and

excused.

CASE NO. CV13-01468

GL CONSTRUCTION, INC. VS NORTHERN NEVADA HOMES, LLC.

Page Three

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

08/12/2016
HONORABLE
LIDIA
STIGLICH
DEPT. NO. 8
A. DeGayner
(Clerk)
I. Zihn
(Reporter)

BENCH TRIAL – Day One

Counsel Beasley addressed the Court and argued in support of the Counterclaim.
Counsel Rusby addressed and advised the Court that all claims being sought today have been resolved and further argued that there is no basis for the Counterclaim.
COURT ORDERED: GL Construction, Inc.'s Counterclaim – UNDER SUBMISSION.
Court stood in Recess.

Exhibit 12

Exhibit 12

1 2545
JOHN C. BOYDEN, ESQ. (SBN 3917)
2 BRETT A. DIEFFENBACH, ESQ. (SBN 11370)
ANDREA K. PRESSLER, ESQ. (SBN 8620)
3 ERICKSON, THORPE & SWAINSTON, LTD.
P.O. Box 3559
4 Reno, NV 89505
(775) 786-3930
5 *Attorneys for Defendants*

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 NORTHERN NEVADA HOMES, LLC,
a Nevada limited liability company,

9 Plaintiff,

CASE NO: CV13-01468

10 vs.

DEPT. NO: 8

11 GL CONSTRUCTION, INC., a Nevada
12 corporation; GORDON LEMICH, an
individual; and DOES 1-10, inclusive,

13 Defendants.

14 **NOTICE OF ENTRY OF ORDER**

15 GL CONSTRUCTION, INC., a Nevada
corporation,

16 Counterclaimant,

17 vs.

18 NORTHERN NEVADA HOMES, LLC,
19 a Nevada limited liability company,

20 Counterdefendant.

21
22 TO: ALL PARTIES AND THEIR COUNSEL OF RECORD:

23 YOU WILL PLEASE TAKE NOTICE that in the above-entitled action on September 16,
24 2016, the above-entitled Court duly entered its Order dismissing the actions brought by
25 NORTHERN NEVADA HOMES, LLC. A copy of said order is attached hereto.

26 ///

27 ///

28 ///

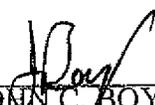
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Affirmation

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 19th day of September, 2016.

ERICKSON, THORPE & SWAINSTON, LTD.

BY: 

JOHN C. BOYDEN, ESQ.
BRETT A. DIEFFENBACH, ESQ.
Attorneys for Defendants

1 **3985**
JOHN C. BOYDEN, ESQ. (SBN 3917)
2 BRETT A. DIEFFENBACH, ESQ. (SBN 11370)
ERICKSON, THORPE & SWAINSTON, LTD.
3 P.O. Box 3559
Reno, NV 89505
4 (775) 786-3930
Attorneys for Defendants
5 *GL Construction, Inc. & Gordon Lemich*

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 NORTHERN NEVADA HOMES, LLC,
a Nevada limited liability company,

9 Plaintiff,

CASE NO: CV13-01468

10 vs.

DEPT. NO: 8

11 GL CONSTRUCTION, INC., a Nevada
12 corporation; GORDON LEMICH, an
individual; and DOES 1-10, inclusive,

13 Defendants.
14 _____/

15 **STIPULATION AND ORDER TO DISMISS**

16 Plaintiff, NORTHERN NEVADA HOMES, LLC, by and through its counsel of record,
17 RUSBY LAW, PLLC, and CHRISTOPHER RUSBY, ESQ., and Defendants, GL
18 CONSTRUCTION, INC., and GORDON LEMICH, by and through their counsel of record,
19 ERICKSON, THORPE & SWAINSTON, LTD., JOHN C. BOYDEN, ESQ., and BRETT A.
20 DIEFFENBACH, ESQ., hereby stipulate that this matter, as to the causes of action brought by
21 NORTHERN NEVADA HOMES, LLC, shall be dismissed with prejudice.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Each party is to bear its own attorneys' fees and costs.

Affirmation

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 6th day of September 2016.
RUSBY LAW, PLLC.

DATED this 8th day of September 2016.
ERICKSON, THORPE & SWAINSTON, LTD.

BY: 
CHRISTOPHER RUSBY, ESQ.
Attorneys for Plaintiff
Northern Nevada Homes, LLC.

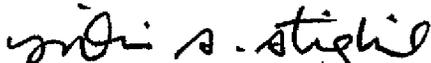
BY: 
JOHN C. BOYDEN, ESQ.
BRETT A. DIEFFENBACH, ESQ.
Attorneys for Defendants
GL Construction, Inc. &
Gordon Lemich

///
///
///

ORDER

Pursuant to the stipulation of the parties hereto, and good cause appearing, IT IS HEREBY ORDERED that the Claims of Plaintiff, Northern Nevada Homes, LLC., are hereby dismissed with prejudice. As to these causes of action only each party shall bear its own attorneys fees and costs.

Dated this 16th day of September, 2016


DISTRICT JUDGE

CERTIFICATE OF SERVICE

Pursuant to NRCF 5(b), I certify that I am an employee of ERICKSON, THORPE & SWAINSTON, LTD., and that on this day I served a true and correct copy of the attached document

by:

- U.S. Mail
- E-Mail
- Facsimile Transmission
- Personal Service
- Messenger Service
- 2nd Judicial eFlex

addressed to the following:

NAME & ADDRESS	PHONE/FAX NUMBERS	PARTY
Chris Rusby, Esq. Rusby Law Office 36 Stewart Street Reno, NV 89501	775-409-4037 775-299-5326	Plaintiffs
Thomas E. Drendel, Esq. Bradley, Drendel & Jeanney, Ltd. 6900 S. McCarran Blvd., Suite 2000 P.O. Box 1987 Reno, NV 89505 tdrendel@bdjlaw.com VIA U.S. MAIL/OR EMAIL	775-335-9999	Plaintiffs
James Shields Beasley, Esq. Beasley Law Office 435 Court Street Reno, NV 89505	775-329-6852 775-329-2174	Personal Counsel for GL Construction, Inc.
Paul J. Georgeson, Esq. Adam Hosmer-Henner, Esq. McDonald Carano Wilson LLP 100 W. Liberty Street, 10th Fl. P.O. Box 2670 Reno, NV 89505 pgeorgeson@mcwlaw.com ahosmerhenner@mcwlaw.com	775-788-2000 775-788-2020	Truckee Meadows Water Authority

DATED this 20 day of September, 2016.



Exhibit 13

Exhibit 13

1 **Code:**
James Shields Beasley, Nev. Bar No. 1733
2 LAW OFFICE OF JAMES SHIELDS BEASLEY
435 Court Street
3 P.O. Box 2936
Reno, Nevada 89505
4 Telephone No.: (775) 329-6852

5 Attorney for Counterclaimant G.L. Construction, Inc.
6

7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8 IN AND FOR THE COUNTY OF WASHOE

9 CERBERUS HOLDINGS, LLC, a Nevada
10 limited liability company; NORTHERN
NEVADA HOMES, LLC, a Nevada
11 limited liability company,

Case No. CV13-01468

Dept. No. 8

12 Plaintiffs,

13 vs.

14 GL CONSTRUCTION, INC., a Nevada
15 corporation; GORDON LEMICH, an
individual; and DOES 1 through 10
16 inclusive,

17 Defendants.
/

18 G.L. CONSTRUCTION, INC., a Nevada
19 corporation,

20 Counterclaimant,

21 vs.

22 NEVADA HOMES, LLC, a Nevada
23 limited liability company,

24 Counterdefendant.
/

25 **NOTICE OF ENTRY OF ORDER AFTER TRIAL**

26 To: Counterdefendant Nevada Homes, LLC, and to its attorneys of record, Christopher M.
27 Rusby of Rusby Law, 36 Stewart Street, Reno, Nevada 89501, and Thomas E. Drendel
28 of Bradley, Drendel & Jeanney, 6900 S. McCarran Blvd., Ste. 2000:

1 PLEASE TAKE NOTICE that on October 17, 2016, the above-entitled Court entered its Order
2 After Trial in which it awarded counterclaimant G.L. Construction, Inc., damages in the sum of
3 \$7,811.00. A true and correct copy of said Order After Trial is attached hereto as Exhibit 1.

4 **Affirmation Pursuant to NRS 239B.030**

5 The undersigned does hereby affirm that the preceding document, filed in Case No.
6 CV13-01468, does not contain the social security number of any person.

7 DATED this 17th day of October, 2016.

8 LAW OFFICE OF JAMES SHIELDS BEASLEY
9 Attorney for Counterclaimant G.L. Construction, Inc.
10 435 Court Street
11 Post Office Box 2936
12 Reno, Nevada 89505

13 By 
14 JAMES SHIELDS BEASLEY

15 **CERTIFICATE OF SERVICE**

16 Pursuant to NRCP 5(b), I certify that I am an employee of the Law Office of James
17 Shields Beasley, and that on this 17th day of October, 2016, I transmitted a true and correct
18 copy of the foregoing document by the methods noted below:

19 _____ **Personal delivery to the following: [NONE]**

20 _____ **Electronically filed with the Clerk of the Court, using the eFlex system which
21 constitutes effective service for all eFiled documents pursuant to the eFile User
22 Agreement**

23 _____ **Caused a true copy of the foregoing document to be deposited in the United States
24 mail at Reno, Nevada, by first-class mail, addressed to:**

25 Christopher Rusby
26 RUSBY CLARK, PLLC
27 36 Stewart Street
28 Reno, Nevada 89501

Thomas E. Drendel
Bradley, Drendel & Jeanney, Ltd.
6900 S. McCarran Blvd., Ste. 2000
P.O. Box 1987
Reno, Nevada 89505

DATED this 17th day of October, 2016.


CHARLES BEASLEY

EXHIBIT LIST

<u>Ex. No.</u>	<u>Description</u>	<u>No. of Pages</u>
1.	ORDER AFTER TRIAL	4

Exhibit 1

Exhibit 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

CEREBRUS HOLDINGS, LLC, a
Nevada limited liability company;
NORTHERN NEVADA HOMES, LLC,
a Nevada limited liability company,

Case No. CV13-01468
Dept. No. 8

Plaintiffs,

vs.

GL CONSTRUCTION, INC, a Nevada
corporation, GORDON LEMICH, an
individual; and DOES 1-10, inclusive,

Defendants.

GL CONSTRUCTION, INC, a Nevada
corporation,

Counterclaimant,

vs.

NORTHERN NEVADA HOMES, LLC,
a Nevada limited liability company,

Counterdefendant.

ORDER AFTER TRIAL

Background

Prior to May 9, 2011, Defendant and Counterclaimant Gordon Lemich was the owner of real property located at 2605 Comstock Drive, Reno, Nevada ("the

1 property"). Lemich is also the principal of GL Construction, a Nevada corporation,
2 and licensed contractor. It appears that the property at issue was occupied by a
3 number of tenants, including GL Construction.

4 At some point in 2012, Lemich discussed the possibility of selling the
5 property to Plaintiff and Counterdefendant Cerebrus Holdings, LLC. However,
6 before any formal negotiations were complete, the property was foreclosed on by
7 Acquired Capital I, LD ("the bank"). After the foreclosure, Lemich continued to
8 discuss the possibility of Cerebrus buying the property, and of becoming their
9 tenant. Lemich represented to Cerebrus that any improvements to the property
10 were properly constructed and permitted. Following this conversation, Cerebrus
11 successfully purchased the property from the bank.

12 Following its acquisition of the property, Cerebrus asserted that it discovered
13 multiple instances of defective workmanship, code violations, and was found the
14 property to be uninhabitable. Cerebrus filed the instant suit on July 3, 2013,
15 alleging claims of negligence, negligent misrepresentation, intentional
16 misrepresentation, intentional damage to property, trespass, and injunctive relief.
17 The complaint also named Northern Nevada Homes, LLC, as a plaintiff, and alleged
18 that GL Construction and Lemich had dumped large quantities of dirt and debris
19 onto the lot adjacent to the property at issue, which was owned by Northern Nevada
20 Homes.¹ Cerebrus filed an amended complaint on February 11, 2014, further
21 alleging a claim for breach of contract, related to GL Construction's failure to pay
22 rent between April and August of 2013.

23 In its answer, GL Construction asserted a counterclaim against Northern
24 Nevada Homes, in the amount of \$7,811.00, related to excavation work that GL
25 Construction performed for Northern Nevada Homes at property situated on
26 DeChardin Street of Montreaux Estates during March of 2013. It appears that
27 given the outstanding rent and other damages allegedly owed by GL Construction
28

¹Cerebrus and Northern Nevada Homes were both managed by Robert Fitzgerald.

1 to Cerebrus and Northern Nevada Homes, manager Robert Fitzgerald withheld
2 payment of the invoice.

3 On February 12, 2014, Lemich, individually, served an offer of judgment
4 upon Cerebrus, in the amount of \$20,000.00. Cerebrus accepted the offer. The offer
5 of judgment was silent as to GL Construction's counterclaim against Northern
6 Nevada Homes.

7 Eventually, the parties reached a settlement with respect to all claims except
8 GL Construction's counterclaim against Northern Nevada Homes. The matter
9 proceeded to a bench trial before this court on August 12, 2016. This order follows.

10 *Discussion*

11 The only claim currently before this court is GL Construction's breach of
12 contract counterclaim against Northern Nevada Homes. A contract is formed when
13 a party can establish offer and acceptance, meeting of the minds, and consideration.
14 *May v. Anderson*, 121 Nev. 668, 673, 119 P.3d 1254, 1257 (2005). In this case, GL
15 Construction argues that it entered an oral contract with Northern Nevada Homes
16 on March 4, 2013, for the performance of excavation work at DeChardin Street in
17 Montreaux Estates.

18 The court finds that GL Construction performed the work, and delivered
19 Northern Nevada Homes an invoice in the amount of \$7,811.00. Northern Nevada
20 Homes does not appear to dispute that GL Construction performed the work at
21 issue. However, due to GL Construction's alleged breach of other obligations to
22 Northern Nevada Homes and Cerebrus, manager Robert Fitzgerald did not pay the
23 invoice.

24 Any of these other obligations or payments owed by GL Construction to
25 Cerebrus and Northern Nevada Homes were raised in Plaintiff's Complaint and
26 Amended Complaint in this matter. These claims have all been dismissed pursuant
27 to the stipulation of the parties. The court finds that none of these agreements to
28 settle, nor the February, 2014, offer of judgment, addressed GL Construction's
counterclaim. Notably, the 2014 offer of judgment was tendered by Lemich,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

individually, to Cerebrus, while the counterclaim states only GL Construction and Northern Nevada Homes as parties.

Accordingly, the court finds that counterclaimant GL Construction has established, by a preponderance of the evidence, a breach of contract by counterdefendant Northern Nevada Homes. The court AWARDS GL Construction damages in the amount of \$7,811.00.

IT IS SO ORDERED.

DATED this 17th day of October, 2016.

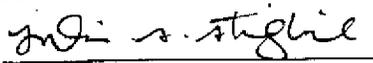

LIDIA S. STIGLICH
District Judge

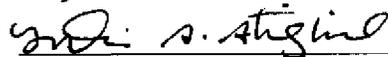
Exhibit 14

Exhibit 14

1 for the excavation and grading work which counterclaimant G.L. Construction, Inc.,
2 performed on behalf of counterdefendant Northern Nevada Homes, LLC's behalf; (4) that
3 because counterdefendant Northern Nevada Homes, LLC, made direct payment to one of
4 counterclaimant G.L. Construction, Inc.'s suppliers, counterdefendant Northern Nevada
5 Homes, LLC, owed the sum of \$7,811.00 to counterclaimant G.L. Construction, Inc., as of
6 March 14, 2013; and (5) that counterdefendant Northern Nevada Homes, LLC, breached the
7 oral contract by failing to pay to counterclaimant G.L. Construction, Inc., the sum of
8 \$7,811.00 which was owed on March 14, 2013, under said oral contract;

9 NOW, THEREFORE, IT IS ADJUDGED, ORDERED AND DECREED that
10 judgment shall be entered in favor of G.L. Construction, Inc., and against Northern Nevada
11 Homes, LLC, for the sum of \$7,811.00, together with interest thereon at the legal rate from
12 and after March 14, 2013.

13 DATED this 31st day of October, 2016.

14
15 

16 DISTRICT JUDGE
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit 15

Exhibit 15

1 **Code:**
James Shields Beasley, Nev. Bar No. 1733
2 LAW OFFICE OF JAMES SHIELDS BEASLEY
435 Court Street
3 P.O. Box 2936
Reno, Nevada 89505
4 Telephone No.: (775) 329-6852

5 Attorney for Counterclaimant G.L. Construction, Inc.

6
7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8 IN AND FOR THE COUNTY OF WASHOE

9
10 G.L. CONSTRUCTION, INC., a Nevada
corporation,

Case No. CV13-01468

11 Counterclaimant,

Dept. No. 8

12 vs.

13 NEVADA HOMES, LLC, a Nevada
14 limited liability company,

15 Counterdefendant.
16

17 **NOTICE OF ENTRY OF JUDGMENT ON COUNTERCLAIM**

18 To: Counterdefendant Nevada Homes, LLC, and to its attorneys of record,
Christopher M. Rusby of Rusby Law, 36 Stewart Street, Reno, Nevada 89501,
19 and Thomas E. Drendel of Bradley, Drendel & Jeanney, 6900 S. McCarran Blvd.,
Ste. 2000, P.O. Box 1987, Reno, Nevada 89505:
20

21 PLEASE TAKE NOTICE that on October 31, 2016, the above-entitled Court entered its
22 Judgment on Counterclaim in which it awarded counterclaimant G.L. Construction, Inc., judgment
23 against counterdefendant Northern Nevada Homes, LLC, for the sum of \$7,811.00, together with
24 interest thereon at the legal rate from and after March 14, 2013. A true and correct copy of said
25 Judgment on Counterclaim is attached hereto as Exhibit 1.

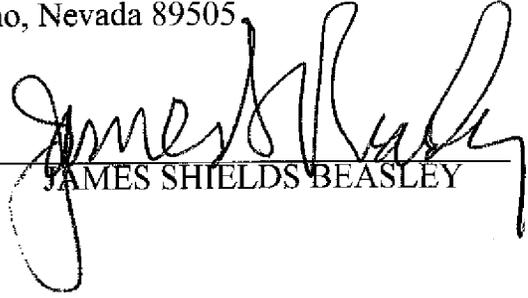
26 **Affirmation Pursuant to NRS 239B.030**

27 The undersigned does hereby affirm that the preceding document, filed in Case No.
28 CV13-01468, does not contain the social security number of any person.

1 DATED this 31st day of October, 2016.

2 LAW OFFICE OF JAMES SHIELDS BEASLEY
3 Attorney for Counterclaimant G.L. Construction, Inc.
4 435 Court Street
5 Post Office Box 2936
6 Reno, Nevada 89505

7 By

8 
9 JAMES SHIELDS BEASLEY

10 **CERTIFICATE OF SERVICE**

11 Pursuant to NRCP 5(b), I certify that I am an employee of the Law Office of James
12 Shields Beasley, and that on this 31st day of October, 2016, I transmitted a true and correct
13 copy of the foregoing document by the methods noted below:

14 Personal delivery to the following: [NONE]

15 Electronically filed with the Clerk of the Court, using the eFlex system which
16 constitutes effective service for all eFiled documents pursuant to the eFile User
17 Agreement

18 Caused a true copy of the foregoing document to be deposited in the United States
19 mail at Reno, Nevada, by first-class mail, addressed to:

20 Christopher Rusby
21 RUSBY CLARK, PLLC
22 36 Stewart Street
23 Reno, Nevada 89501

24 Thomas E. Drendel
25 Bradley, Drendel & Jeanney, Ltd.
26 6900 S. McCarran Blvd., Ste. 2000
27 P.O. Box 1987
28 Reno, Nevada 89505

DATED this 31st day of October, 2016.


CHARLES BEASLEY

EXHIBIT LIST

<u>Ex. No.</u>	<u>Description</u>	<u>No. of Pages</u>
1.	Judgment on Counterclaim	2

Exhibit 1

Exhibit 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

CEREBRUS HOLDINGS, LLC, a
Nevada limited liability company;
NORTHERN NEVADA HOMES, LLC,
a Nevada limited liability company,

Case No. CV13-01468
Dept. No. 8

Plaintiffs,

vs.

GL CONSTRUCTION, INC, a Nevada
corporation, GORDON LEMICH, an
individual; and DOES 1-10, inclusive,

Defendants.

GL CONSTRUCTION, INC, a Nevada
corporation,

Counterclaimant,

vs.

NORTHERN NEVADA HOMES, LLC,
a Nevada limited liability company,

Counterdefendant.

ORDER AFTER TRIAL

Background

Prior to May 9, 2011, Defendant and Counterclaimant Gordon Lemich was the owner of real property located at 2605 Comstock Drive, Reno, Nevada ("the

1 property"). Lemich is also the principal of GL Construction, a Nevada corporation,
2 and licensed contractor. It appears that the property at issue was occupied by a
3 number of tenants, including GL Construction.

4 At some point in 2012, Lemich discussed the possibility of selling the
5 property to Plaintiff and Counterdefendant Cerebrus Holdings, LLC. However,
6 before any formal negotiations were complete, the property was foreclosed on by
7 Acquired Capital I, LD ("the bank"). After the foreclosure, Lemich continued to
8 discuss the possibility of Cerebrus buying the property, and of becoming their
9 tenant. Lemich represented to Cerebrus that any improvements to the property
10 were properly constructed and permitted. Following this conversation, Cerebrus
11 successfully purchased the property from the bank.

12 Following its acquisition of the property, Cerebrus asserted that it discovered
13 multiple instances of defective workmanship, code violations, and was found the
14 property to be uninhabitable. Cerebrus filed the instant suit on July 3, 2013,
15 alleging claims of negligence, negligent misrepresentation, intentional
16 misrepresentation, intentional damage to property, trespass, and injunctive relief.
17 The complaint also named Northern Nevada Homes, LLC, as a plaintiff, and alleged
18 that GL Construction and Lemich had dumped large quantities of dirt and debris
19 onto the lot adjacent to the property at issue, which was owned by Northern Nevada
20 Homes.¹ Cerebrus filed an amended complaint on February 11, 2014, further
21 alleging a claim for breach of contract, related to GL Construction's failure to pay
22 rent between April and August of 2013.

23 In its answer, GL Construction asserted a counterclaim against Northern
24 Nevada Homes, in the amount of \$7,811.00, related to excavation work that GL
25 Construction performed for Northern Nevada Homes at property situated on
26 DeChardin Street of Montreaux Estates during March of 2013. It appears that
27 given the outstanding rent and other damages allegedly owed by GL Construction

28 ¹Cerebrus and Northern Nevada Homes were both managed by Robert Fitzgerald.

1 to Cerebrus and Northern Nevada Homes, manager Robert Fitzgerald withheld
2 payment of the invoice.

3 On February 12, 2014, Lemich, individually, served an offer of judgment
4 upon Cerebrus, in the amount of \$20,000.00. Cerebrus accepted the offer. The offer
5 of judgment was silent as to GL Construction's counterclaim against Northern
6 Nevada Homes.

7 Eventually, the parties reached a settlement with respect to all claims except
8 GL Construction's counterclaim against Northern Nevada Homes. The matter
9 proceeded to a bench trial before this court on August 12, 2016. This order follows.

10 *Discussion*

11 The only claim currently before this court is GL Construction's breach of
12 contract counterclaim against Northern Nevada Homes. A contract is formed when
13 a party can establish offer and acceptance, meeting of the minds, and consideration.
14 *May v. Anderson*, 121 Nev. 668, 673, 119 P.3d 1254, 1257 (2005). In this case, GL
15 Construction argues that it entered an oral contract with Northern Nevada Homes
16 on March 4, 2013, for the performance of excavation work at DeChardin Street in
17 Montreaux Estates.

18 The court finds that GL Construction performed the work, and delivered
19 Northern Nevada Homes an invoice in the amount of \$7,811.00. Northern Nevada
20 Homes does not appear to dispute that GL Construction performed the work at
21 issue. However, due to GL Construction's alleged breach of other obligations to
22 Northern Nevada Homes and Cerebrus, manager Robert Fitzgerald did not pay the
23 invoice.

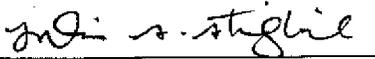
24 Any of these other obligations or payments owed by GL Construction to
25 Cerebrus and Northern Nevada Homes were raised in Plaintiff's Complaint and
26 Amended Complaint in this matter. These claims have all been dismissed pursuant
27 to the stipulation of the parties. The court finds that none of these agreements to
28 settle, nor the February, 2014, offer of judgment, addressed GL Construction's
counterclaim. Notably, the 2014 offer of judgment was tendered by Lemich,

1 individually, to Cerebrus, while the counterclaim states only GL Construction and
2 Northern Nevada Homes as parties.

3 Accordingly, the court finds that counterclaimant GL Construction has
4 established, by a preponderance of the evidence, a breach of contract by
5 counterdefendant Northern Nevada Homes. The court AWARDS GL Construction
6 damages in the amount of \$7,811.00.

7 **IT IS SO ORDERED.**

8 DATED this 17th day of October, 2016.

9 

10 **LIDIA S. STIGLICH**
11 District Judge
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit 16

Exhibit 16

1 **Code:**
James Shields Beasley, Nev. Bar No. 1733
2 LAW OFFICE OF JAMES SHIELDS BEASLEY
435 Court Street
3 P.O. Box 2936
Reno, Nevada 89505
4 Telephone No.: (775) 329-6852

5 Attorney for Counterclaimant G.L. Construction, Inc.
6

7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8 IN AND FOR THE COUNTY OF WASHOE

9 CERBERUS HOLDINGS, LLC, a Nevada
10 limited liability company; NORTHERN
NEVADA HOMES, LLC, a Nevada
11 limited liability company,

Case No. CV13-01468

Dept. No. 8

12 Plaintiffs,

13 vs.

14 GL CONSTRUCTION, INC., a Nevada
15 corporation; GORDON LEMICH, an
individual; and DOES 1 through 10
16 inclusive,

17 Defendants.
/

18 G.L. CONSTRUCTION, INC., a Nevada
19 corporation,

20 Counterclaimant,

21 vs.

22 NEVADA HOMES, LLC, a Nevada
23 limited liability company,

24 Counterdefendant.
/

25 **NOTICE OF ENTRY OF ORDER FOR FEES AND COSTS**

26 To: Counterdefendant Nevada Homes, LLC, and to its attorneys of record,
27 Christopher M. Rusby of Rusby Law, 36 Stewart Street, Reno, Nevada 89501:

28 PLEASE TAKE NOTICE that on December 1, 2016, the above-entitled Court entered

1 its Order awarding counterclaimant G.L. Construction, Inc., attorney fees in the sum of
2 \$10,000.00, and costs in the sum of \$390.73. A true and correct copy of said Order is
3 attached hereto as Exhibit 1.

4 **Affirmation Pursuant to NRS 239B.030**

5 The undersigned does hereby affirm that the preceding document, filed in Case No.
6 CV13-01468, does not contain the social security number of any person.

7 DATED this 2nd day of December, 2016.

8 LAW OFFICE OF JAMES SHIELDS BEASLEY
9 Attorney for Counterclaimant G.L. Construction, Inc.
10 435 Court Street
11 Post Office Box 2936
12 Reno, Nevada 89505

13 By 
14 JAMES SHIELDS BEASLEY

14 **CERTIFICATE OF SERVICE**

15 Pursuant to NRCP 5(b), I certify that I am an employee of the Law Office of James
16 Shields Beasley, and that on this 2nd day of December, 2016, I transmitted a true and correct
17 copy of the foregoing document by the methods noted below:

18 **Personal delivery to the following: [NONE]**

19 **Electronically filed with the Clerk of the Court, using the eFlex system which**
20 **constitutes effective service for all eFiled documents pursuant to the eFile User**
21 **Agreement**

22 **Caused a true copy of the foregoing document to be deposited in the United**
23 **States mail at Reno, Nevada, by first-class mail, addressed to:**

24 Christopher Rusby
25 RUSBY CLARK, PLLC
26 36 Stewart Street
27 Reno, Nevada 89501

28 DATED this 2nd day of December, 2016.


CHARLES BEASLEY

EXHIBIT LIST

<u>Ex. No.</u>	<u>Description</u>	<u>No. of Pages</u>
1.	Order, filed 21/01/2016	8

Exhibit 1

Exhibit 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

CEREBRUS HOLDINGS, LLC, a
Nevada limited liability company;
NORTHERN NEVADA HOMES, LLC,
a Nevada limited liability company,

Case No. CV13-01468

Dept. No. 8

Plaintiffs,

vs.

GL CONSTRUCTION, INC, a Nevada
corporation, GORDON LEMICH, an
individual; and DOES 1-10, inclusive,

Defendants.

GL CONSTRUCTION, INC, a Nevada
corporation,

Counterclaimant,

vs.

NORTHERN NEVADA HOMES, LLC,
a Nevada limited liability company,

Counterdefendant.

ORDER

Currently before the court is Defendant and Counterclaimant GL
Construction's request for attorney's fees. Plaintiff and Counter-Defendant
Northern Nevada Homes has opposed the request. This order follows.

1 *Background*

2 This case involves a number of disputes, which were ultimately resolved by
3 way of two separate settlement agreements and a bench trial.

4 Prior to May 9, 2011, Defendant and Counterclaimant Gordon Lemich was
5 the owner of real property located at 2605 Comstock Drive, Reno, Nevada ("the
6 property"). Lemich is also the principal of GL Construction, a Nevada corporation,
7 and licensed contractor. It appears that the property at issue was occupied by a
8 number of tenants, including GL Construction.

9 At some point in 2012, Lemich discussed the possibility of selling the
10 property to Plaintiff and Counterdefendant Cerebrus Holdings, LLC. However,
11 before any formal negotiations were complete, the property was foreclosed on by
12 Acquired Capital I, LD ("the bank"). After the foreclosure, Lemich continued to
13 discuss the possibility of Cerebrus buying the property, and of becoming their
14 tenant. Lemich represented to Cerebrus that any improvements to the property
15 were properly constructed and permitted. Following this conversation, Cerebrus
16 successfully purchased the property from the bank.

17 Following its acquisition of the property, Cerebrus asserted that it discovered
18 multiple instances of defective workmanship, code violations, and was found the
19 property to be uninhabitable. Cerebrus filed the instant suit on July 3, 2013,
20 alleging claims of negligence, negligent misrepresentation, intentional
21 misrepresentation, intentional damage to property, trespass, and injunctive relief.
22 The complaint also named Northern Nevada Homes, LLC, as a plaintiff, and alleged
23 that GL Construction and Lemich had dumped large quantities of dirt and debris
24 onto the lot adjacent to the property at issue, which was owned by Northern Nevada
25 Homes.¹ Cerebrus filed an amended complaint on February 11, 2014, further
26 alleging a claim for breach of contract, related to GL Construction's failure to pay
27 rent between April and August of 2013.

28 ¹Cerebrus and Northern Nevada Homes were both managed by Robert Fitzgerald.

1 In its answer, GL Construction asserted a counterclaim against Northern
2 Nevada Homes, in the amount of \$7,811.00, related to excavation work that GL
3 Construction performed for Northern Nevada Homes at property situated on
4 DeChardin Street of Montreaux Estates during March of 2013. It appears that
5 given the outstanding rent and other damages allegedly owed by GL Construction
6 to Cerebrus and Northern Nevada Homes, manager Robert Fitzgerald withheld
7 payment of the invoice.

8 On October 28, 2013, Lemich and GL Construction served an offer of
9 judgment upon Northern Nevada Homes. The offer provided that Northern Nevada
10 Homes pay \$5,000 with respect to the counterclaim, and that "all those claims
11 asserted by plaintiff Northern Nevada Homes, LLC against defendant GL
12 Construction, Inc., be dismissed with prejudice." Northern Nevada Homes rejected
13 the offer.

14 On February 12, 2014, Lemich, individually, served an offer of judgment
15 upon Cerebrus, in the amount of \$20,000.00. Cerebrus accepted the offer.

16 Eventually, the matter proceeded to a jury trial with respect to Northern
17 Nevada Homes' claims related to the dumping of dirt and debris by GL
18 Construction. At the close of evidence, the court indicated that it was inclined to
19 enter judgment as a matter of law in favor of Northern Nevada Homes with respect
20 to the issue of liability. Shortly thereafter, the parties agreed to settle Northern
21 Nevada Home's claims against GL Construction and Lemich for \$362,500.00.

22 The remaining counterclaim by GL Construction against Northern Nevada
23 Homes proceeded to a bench trial before this court on August 12, 2016. This court
24 found in favor of GL Construction, and awarded damages in the amount of
25 \$7,811.00.

26 GL Construction has filed the instant *Motion for Attorneys Fees*.

27 *Discussion*

28 Generally, the "compensation of an attorney and counselor for his or her
services is governed by agreement, express or implied, which is not restrained by
law." NRS 18.010(1). In this case, GL Construction argues that it is entitled to fees

1 and costs pursuant to NRCP 68, which relates to offers of judgment, and NRS
2 18.010(2), which allows for an award of fees where a prevailing party has recovered
3 less than \$20,000.00. This court discusses each claim in turn.

4 *Attorney's fees under NRCP 68*

5 In instances where an offer to settle is made prior to trial, NRCP 68 provides:

6 (a) The Offer. At any time more than 10 days before trial, any party
7 may serve an offer in writing to allow judgment to be taken in
8 accordance with its terms and conditions.

9 [. . .]

10 (f) Penalties for Rejection of Offer. If the offeree rejects an offer and
11 fails to obtain a more favorable judgment,

12 (1) the offeree cannot recover any costs or attorney's fees and shall not
13 recover interest for the period after the service of the offer and before
14 the judgment; and

15 (2) the offeree shall pay the offeror's post-offer costs, applicable interest
16 on the judgment from the time of the offer to the time of entry of the
17 judgment and reasonable attorney's fees, if any be allowed, actually
18 incurred by the offeror from the time of the offer. If the offeror's
19 attorney is collecting a contingent fee, the amount of any attorney's
20 fees awarded to the party for whom the offer is made must be deducted
21 from that contingent fee.

22 The decision to grant attorney's fees pursuant to NRCP 68 lies within the discretion
23 of this court. *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983).

24 When considering whether an award of fees is warranted, this court must
25 consider (1) whether the claims at issue were brought in good faith; (2) whether the
26 offer was reasonable in timing and amount; (3) whether the decision to reject the
27 offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether
28 the fees sought by the offeror are reasonable and justified in amount. *Id.* In
determining the amount of any fee award pursuant to the fourth factor of this test,
this court must also examine the quality of the attorney at issue, the character of
the work performed, the amount of work actually performed, and the result
achieved. *See Barney v. Mt. Rose Heating & Air Conditioning*, 124 Nev. 821, 192
P.3d 730 (2008) (citing *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455

1 P.2d 31 (1969)). After analyzing the *Beattie* and *Brunzell* factors, the court may
2 award all or some of the fees requested. *Beattie*, 99 Nev. at 589, 668 P.2d at 274.

3 In this case, GL Construction argues that Northern Nevada Homes' rejection
4 of its October 28, 2013 offer of judgment in the amount of \$5,000.00 indicates that it
5 is entitled to an award of fees. This court disagrees. In this, the court notes that in
6 addition to the offer of \$5,000.00 to settle GL Construction's counterclaim, the offer
7 of judgment also stipulated that Northern Nevada Homes would dismiss all of its
8 claims against GL Construction. Given that this court found GL Construction liable
9 for negligent trespass as a matter of law, and that Northern Nevada Homes and GL
10 Construction agreed to settle its claims for \$362,500.00, it was absolutely
11 reasonable for Northern Nevada Homes to reject the October 28, 2013, offer of
12 judgment. Therefore, the court declines to award attorney's fees on this basis.

13 *Attorney's fees and costs pursuant to NRS 18.010(2) and NRS 18.020*

14 NRS 18.010(2) allows for an award of attorney's fees "[w]hen the prevailing
15 party has not recovered more than \$20,000.00." NRS 18.020 similarly mandates an
16 award of costs to the prevailing party. In this case, the parties dispute whether GL
17 Construction is a prevailing party. Generally, with respect to fee and cost awards, a
18 party can "prevail" in litigation "if it succeeds on any significant issue in litigation
19 which achieves some of the benefits it sought in bringing suit." *Valley Electric*
20 *Ass'n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005).

21 Nonetheless, Northern Nevada Homes notes that Nevada has determined
22 that in actions involving multiple parties and counterclaims, "prevailing party"
23 status is determined based on the net judgments obtained by the parties. *See*
24 *Parodi v. Budetti*, 115 Nev. 236, 241, 984 P.2d 172, 175 (1999). Specifically, in
25 *Parodi*, the Nevada Supreme Court determined that "in cases where separate and
26 distinct suits have been consolidated into one action, the trial court must offset all
27 awards of monetary damages to determine which side is the prevailing party . . ."
28 *Id.*

Thus, because Cerebrus and Northern Nevada Homes settled their claims
against GL Construction and Lemich for \$20,000.00 and \$362,500.00 respectively,

1 while GL Construction recovered only \$7,811.00, Northern Nevada Homes argues
2 that GL Construction is not a prevailing party under the net monetary recovery
3 rule.

4 In response, GL Construction argues that the Supreme Court decisions
5 addressing this issue, including *Parodi* relate only to judgments. In this case, GL
6 Construction argues the \$362,500.00 and \$20,000.00 recoveries were the result of
7 settlement negotiations, rather than judgments. The only judgment actually
8 entered by this court was in favor of GL Construction, against Northern Nevada
9 Homes.

10 Having reviewed the pleadings, the court determines, that for the purposes of
11 attorney's fees, GL Construction was a prevailing party with respect to its
12 counterclaim. In this, the court notes that the facts underlying the counterclaim
13 were largely unrelated to the claims asserted by Cerebrus and Northern Nevada
14 Homes. Thus, under NRCP 13, GL Construction would have been free to bring this
15 claim in an unrelated action. Further, had GL Construction chosen to litigate its
16 claim separately, it would have clearly been a prevailing party entitled to fees under
17 NRS 18.010(2). Therefore, the court finds an award of fees and costs to be
18 warranted.

19 However, the court notes that any fees awarded must be reasonable.
20 Specifically, as discussed above, the court must examine the quality of the attorney
21 at issue, the character of the work performed, the amount of work actually
22 performed, and the result achieved. *See Barney v. Mt. Rose Heating & Air*
23 *Conditioning*, 124 Nev. 821, 192 P.3d 730 (2008) (citing *Brunzell v. Golden Gate*
24 *National Bank*, 85 Nev. 345, 455 P.2d 31 (1969)).

25 GL Construction has requested fees in the amount of \$67,595.00. The court
26 notes that GL Construction's counterclaim was a straightforward claim for breach
27 of an oral contract. Essentially, Northern Nevada Homes did not dispute that it
28 had failed to pay several invoices issued by GL Construction. Reviewing the record,

1 very little, if any, substantive motion practice occurred with respect to the
2 counterclaim.² The counterclaim itself was resolved in a half day bench trial.

3 Accordingly, while acknowledging the skill of GL Construction's counsel, and
4 the fact that GL Construction recovered the full amount sought, this court cannot
5 conclude that the fees sought by GL Construction are reasonable. Rather,
6 considering the character of the counterclaim, and the work actually performed in
7 relation to the counterclaim, the court finds attorney's fees in the amount of
8 \$10,000.00 to be reasonable.

9 With respect to costs, GL Construction has requested \$2,497.33. This
10 includes a \$200.00 filing fee for a motion for summary judgment, \$1,906.60 in
11 deposition fees for Mr. Fitzgerald and Mr. Wolf, and \$390.73 in copy costs related to
12 the bench trial. Having reviewed the requested costs, the court finds that the
13 motion for summary judgment was unrelated to GL Construction's counterclaim.
14 Similarly, it appears that the depositions of Mr. Fitzgerald and Mr. Wolf related
15 almost completely to the claims by Northern Nevada Homes, rather than the
16 counterclaim. Therefore, the court declines to award these requested costs.

17 Beyond its argument that GL Construction is not a prevailing party,
18 Northern Nevada Homes does not dispute the remaining copying costs. Therefore,
19 the court awards GL Construction costs in the amount of \$390.73.

20 *Conclusion*

21 Based on the foregoing, the court ORDERS GL Construction's *Motion for*
22 *Attorney's Fees* GRANTED. The court AWARDS GL Construction attorney's fees in
23 the amount of \$10,000.00 and costs in the amount of \$390.73.

24 **IT IS SO ORDERED.**

25 DATED this 1st day of December, 2016.

26 
LIDIA S. STIGLICH
District Judge

27
28 ²The court acknowledges that a jurisdictional dispute regarding the counterclaim arose shortly before the bench trial.

CERTIFICATE OF SERVICE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 18 day of December, 2016, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

James Shields Beasley, Esq.

John Boyden, Esq.

Christopher Rusby, Esq.

I deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:


CHRISTINE KUHL
Judicial Assistant

Exhibit 17

Exhibit 17

1 **2535**
2 Christopher Rusby, Esq. NSB #11452
3 RUSBY CLARK, PLLC
4 36 Stewart Street
5 Reno, Nevada 89501
6 T: (775) 409-4037

7
8 Attorney for Plaintiffs

9
10 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

11
12 IN AND FOR THE COUNTY OF WASHOE

13 CERBERUS HOLDINGS, LLC, a Nevada
14 limited liability company; NORTHERN
15 NEVADA HOMES, LLC, a Nevada limited
16 liability company,

17 Plaintiffs,

18 vs.

19 GL CONSTRUCTION, INC., a Nevada
20 corporation; GORDON LEMICH, an
21 individual; and DOES 1-10, inclusive,

22 Defendant.

23 AND RELATED CLAIMS
24

Case No. CV13-01468

Dept. No. 8

25
26 **NOTICE OF ENTRY OF ORDER**

27 PLEASE TAKE NOTICE that on October 4, 2018, an Order Denying
28 Counterclaimant's Motion for Attorney's Fees Incurred Post-Order was entered by the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCPC 5(b), I certify that I am an employee of Rusby Clark and that on this date, I electronically filed through the Court's eflex filing system, a true and correct copy of the within document, of which notice will be electronically served upon the following:

James Shields Beasley, Esq.
Law Offices of James Shields Beasley
435 Court St.
Reno, NV 89501

DATED: October 5, 2018.

/s/ Christopher Rusby

EXHIBIT LIST

EXHIBIT #	DESCRIPTION	# OF PAGES
1	July 18, 2016 Order	4

FILED
Electronically
CV13-01468
2018-10-05 10:24:28 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 6113501

EXHIBIT 1

EXHIBIT 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

CEREBUS HOLDINGS, LLC, a
Nevada Limited Liability Company;
NORTHERN NEVADA HOMES, LLC,
a Nevada limited liability company,

Plaintiffs,

Case No. CV13-01468

vs.

Dept. No. 8

G.L. CONSTRUCTION, INC., a Nevada
Corporation, GORDON LEMICH, an
individual; and DOES 1-10, inclusive,

Defendants.

G.L. CONSTRUCTION, INC., a Nevada
Corporation,

Counterclaimant,

vs.

NEVADA HOMES, LLC, a Nevada
Limited Liability Company,

Counterdefendant.

**ORDER DENYING COUNTERCLAIMANT'S MOTION FOR
ATTORNEY FEES INCURRED POST-ORDER**

Currently before the Court is Counterclaimant's *Motion for Attorney Fees Incurred Post Order for Fees*, filed August 28, 2018 by G.L. CONSTRUCTION, INC. ("Counterclaimant"). Counterdefendant, NEVADA HOMES, LLC, filed its *Opposition to G.L. Construction's Motion for Attorney's Fees on Appeal* on September 12, 2018, to which Counterclaimant responded

1 through a *Reply Points and Authorities in Support of G.L. Construction, Inc.'s Motion for*
2 *Attorney Fees Incurred Post Order for Fees*, filed September 17, 2018¹.

3 Having reviewed the briefing and being fully informed, the Court DENIES
4 Counterclaimant's motion for attorney fees incurred post-order. Counterclaimant is entitled to
5 recover only the \$10,000.00 in attorney fees originally awarded by the Honorable Lidia Stiglich
6 in the above-captioned matter.

7 **BACKGROUND**

8 On October 31, 2016, litigation between Counterclaimant and Counterdefendant resulted
9 in a judgment in the amount of \$7,811.00 in favor of Counterclaimant². In accordance with NRS
10 18.010(2)(a), which allows a prevailing party recovering less than \$20,000.00 to additionally
11 recover attorney fees, Counterclaimant sought attorney fees from Counterdefendant. The
12 Honorable Lidia Stiglich, then presiding judge of this Department, awarded reasonable fees in
13 the amount of \$10,000.00.

14 On December 9, 2016, Counterdefendant filed a notice of appeal to the Nevada Supreme
15 Court from the order awarding attorney fees and costs to Counterclaimant. Evaluating Judge
16 Stiglich's award under an abuse of discretion analysis, the Supreme Court issued an order of
17 affirmance on August 2, 2018 upholding the award and finding that Judge Stiglich had not
18 abused her discretion.

19 Counterclaimant now prays for an order from this Court to recover attorney fees for the
20 costs related to successfully litigating Counterdefendant's appeal. Counterclaimant thus seeks:

- 21 1. \$7,811.00 principal, together with pre-judgment interest on this principal sum at the
22 legal rate from and after March 14, 2013;

23 //

24 //

25
26
27 ¹ The Court is also in receipt of a *Motion for Leave to File Surreply*, filed by Counterdefendant on September 18,
2018. The Court finds that the issue of attorney fees is fully briefed without a surreply and that the Court can render
a fully-informed decision at this time. The Counterdefendant's motion for leave is therefore DENIED.

28 ² The award also included pre-judgment interest accrued on the principal sum at the legal rate from March 14, 2013
to the date of judgment.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION

Counterclaimant's *Motion for Attorney Fees Incurred Post Order for Fees* is therefore
DENIED.

IT IS SO ORDERED

DATED this 3RD day of October, 2018.



BARRY L. BRESLOW
District Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 5 day of October, 2018, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

- James Beasley, Esq.
- John Boyden, Esq.
- Brett Dieffenbach, Esq.
- Thomas Drendel, Esq.
- Paul Georgeson, Esq.
- Adam Hosmer Henner, Esq.
- Andrea Pressler, Esq.
- Christopher Rusby, Esq.


Judicial Assistant