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DISTRICT COURT

CLARK COUNTY, NEVADA

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JANETTE BYRNE, UOFM TRUST,)	
)	CASE NO. A-16-742143-D
Plaintiffs,)	
)	
vs.)	DEPT. NO. II
)	
SUNRIDGE BUILDERS, INC., ET.)	
AL.,)	Transcript of Proceedings
)	
Defendants.)	

BEFORE THE HONORABLE RICHARD F. SCOTTI, DISTRICT COURT JUDGE

**DEFENDANT LANDS WEST BUILDERS, INC.'S MOTION FOR ATTORNEYS'
FEES AND COSTS; DEFENDANT SUNRIDGE BUILDERS, INC.'S MOTION
FOR ATTORNEYS' FEES AND COSTS AND INTEREST**

MONDAY, JANUARY 8, 2018

APPEARANCES:

For Janette Byrne: LEONARD T. FINK, ESQ.

For Lands West Builders: BRIAN K. WALTERS, ESQ.

For Sunridge Builders: ATHANASIA E. DALACAS, ESQ.

RECORDED BY: DALYNE EASLEY, DISTRICT COURT
TRANSCRIBED BY: KRISTEN LUNKWITZ

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produced by transcription service.

1 MONDAY, JANUARY 8, 2018 AT 9:52 A.M.

2

3 THE COURT: All right. That's everything except
4 for page 6, 7, and 8, *Janette Byrne versus Sunridge*
5 *Builders*, A742143. All right. Why don't you take that?
6 Let's go ahead and have appearances for the record.

7 MR. FINK: Good morning, Your Honor. Leonard Fink
8 for the plaintiff.

9 THE COURT: Hello, Mr. Fink.

10 MR. WALTERS: Good morning, Your Honor. Brian
11 Walters for defendant Lands West Builders, Inc.

12 MS. DALACAS: Good morning, Your Honor. Sia
13 Dalacas for Sunridge Builders, Inc.

14 THE COURT: All right. So, let's hear from the
15 defendants first on the Motion -- this is a Motion for
16 Attorneys' Fees and a Motion for Costs. Let's go ahead and
17 hear argument.

18 MR. FINK: Are we going to do both of the
19 defendants' Motions and then I'll respond to both?

20 THE COURT: Let's do both. Let's do both.

21 MR. FINK: Okay.

22 THE COURT: Then I -- I had three binders and I
23 didn't read all of the invoices, but I -- but the materials
24 in support of the Memo of Costs, but I studied a lot of it.

25 MR. FINK: Before counsel starts, I had spoken

1 with counsel beforehand and, in preparing for the hearing
2 this morning, which I had nothing to do with the motion
3 work, I --

4 THE COURT: Right.

5 MR. FINK: -- realized page 8 was missing from our
6 Opposition to Lands West's Motion. So, I don't know if I
7 can file with the Court now or how the Court usually --
8 it's only -- it's really just the signature page. There's
9 not much more in there.

10 THE COURT: I have page 8 on mine.

11 MR. FINK: Oh, you do?

12 THE COURT: I do.

13 MR. FINK: On the -- on our Opposition to Lands
14 West?

15 THE COURT: His Opposition to -- oh, Sunridge
16 Builders.

17 MR. FINK: Right. Yeah, I looked this morning.
18 It looks like the one we filed did not have page 8.

19 MR. WALTERS: Your Honor, just for the record --
20 Brian Walters, again, from Lands West. We'll have to
21 object to that since we haven't -- we didn't receive a copy
22 until this morning. So, therefore, we didn't have an
23 opportunity to respond to that in our Reply brief.

24 THE COURT: Does it say anything different than in
25 your Opposition to Sunridge Builders?

1 MR. FINK: No. The only thing it's -- the only
2 thing it notes is the fees that Mr. Walters's client
3 incurred were about three times the amount on the fees of
4 Ms. Dalacas's client. That's it. And then the signature.

5 THE COURT: Well, yeah, I don't know that I need
6 to hear that. It was late and so -- and they haven't had a
7 chance to respond to it. So, the Court will deny receiving
8 and considering page 8 of the Plaintiffs' Opposition to
9 Defendant Lands West Motion for Attorneys' Fees and Costs.

10 MR. FINK: Thank you, Your Honor.

11 THE COURT: But thank you, sir.

12 All right. Let's hear any additional argument
13 besides what the papers say.

14 MR. WALTERS: Thank you, Your Honor. It's pretty
15 well briefed. I think the one issue that I wanted to
16 highlight was our argument under NRS 18.010 for all fees.
17 And that argument is based on the claim in our argument
18 that plaintiffs' Complaint against Lands West, who is
19 uniquely situated in this case, was brought or maintained
20 without reasonable grounds. And we briefed that and we
21 provided evidence to the Court and the two main arguments
22 there are, first, Lands West was not involved with the
23 development or the construction of this project. Van
24 Melson [phonetic], who is Lands West's principal and owner,
25 was involved as kind of a consultant to Sunridge, but Lands

1 West, the entity, was not involved and there's no evidence
2 before this Court to indicate that they were in any way
3 involved in the development or construction of plaintiffs'
4 residence.

5 The only basis for inclusion of Lands West in this
6 case was under an alter ego/successor liability theory.
7 It's our position, and we think the evidence before the
8 Court supports this, is that even if Lands West was the,
9 quote/unquote alter ego of Sunridge and/or the successor in
10 interest to Sunridge, it doesn't matter because Sunridge
11 and the subcontractors that work under Sunridge were all
12 sufficiently insured to cover any potential judgment and we
13 put evidence into the record in support of this motion,
14 demonstrating that there's approximately \$9 million of
15 insurance coverage for the parties that actually did the
16 work on the house. That's unopposed. Plaintiff does not
17 oppose any of the evidence that we put in to support that
18 argument.

19 It -- moving on, there's a second basis, if the
20 Court's not convinced of that first argument under NRS 18,
21 the traditional NRCP 68/NRS 40.652, Offer of Judgment
22 standard. We -- those -- went through the *Beattie* factors.
23 Those are all laid out. Does the Court have any specific
24 questions regarding those factors?

25 THE COURT: Well, I don't have any questions. I

1 do note that Sunridge Builders did not give me any
2 information at all to evaluate the reasonableness of the
3 \$50,000 Offer of Judgment in relation to the risk that they
4 faced if the litigation went forward. I think all they did
5 was -- I'm trying to think here. All they did was compare
6 the 50,000 in light of the summary judgment that was
7 granted and I think I need to actually -- I mean, I didn't
8 have any affidavits, expert reports, or anything that
9 showed that you anticipated your risk in the case on the
10 merits to be a lot lower than the \$1.6 million that
11 plaintiff believed was the cost to repair.

12 MS. DALACAS: Your Honor, Sia Dalacas for Sunridge
13 Builders. It was our \$50,000 offer and I do believe that
14 we had included, as part of our moving papers, our own
15 expert Cost of Repair that was in the amount of \$111,000
16 and that was certainly part of the basis for issuing our
17 \$50,000.

18 THE COURT: Help me find that.

19 MS. DALACAS: Okay.

20 THE COURT: I have your Motion for Attorneys' Fees
21 here.

22 MS. DALACAS: I believe it was --

23 THE COURT: Which exhibit?

24 MR. WALTERS: Are you looking at Sunridge's
25 Motion, Your Honor?

1 THE COURT: I am.

2 MS. DALACAS: Yeah. Okay.

3 THE COURT: That's what I'm looking at.

4 MR. WALTERS: Okay.

5 THE COURT: So, I didn't know which exhibit that
6 was.

7 MS. DALACAS: And I will -- I think it may have
8 been included as an -- it was certainly referenced in our
9 Reply brief in response to the argument from plaintiff that
10 the Lands West Cost of Repair was over \$400,000. I think
11 it was included as an exhibit to our --

12 THE COURT: Well, --

13 MS. DALACAS: -- Memorandum for Disbursement of
14 Cost.

15 THE COURT: Well, --

16 MS. DALACAS: That it specifically -- part of what
17 we're seeking.

18 THE COURT: All right. Well, I didn't see any
19 connection with this Motion and I --

20 MS. DALACAS: Well, --

21 THE COURT: So, if it was in the -- and I think I
22 didn't -- I didn't -- for purposes of resolving the
23 Memorandum of Costs, I determined it was not necessary to
24 look at many of the exhibits that were submitted. All
25 right. And that -- so, that's one that I did not consider.

1 If it was attached to the Memorandum of Costs, then I have
2 not considered and my guess would be that plaintiff
3 probably didn't consider it in connection with his
4 Opposition to the Motion for Attorneys' Fees, but I --

5 MS. DALACAS: Well, I --

6 THE COURT: You're standing. You making --

7 MS. DALACAS: Oh.

8 THE COURT: Only if you're making an objection. I
9 want to hear argument yet.

10 MR. FINK: No, no. I know. I appreciate it. I
11 only want to say I have not seen a copy of a Reply from
12 Sunridge to our Opposition to Motion for Attorneys' Fees.

13 THE COURT: Hmm. I got it. Let's make sure --

14 MS. DALACAS: I have a filed copy on December 28th
15 --

16 MR. FINK: And that could be an issue with my
17 office and not with counsel. I just didn't see it and I
18 looked for it --

19 THE COURT: 12-28.

20 MR. FINK: Thank you. That's --

21 MS. DALACAS: 12-28.

22 THE COURT: All right.

23 MS. DALACAS: And, Your Honor, --

24 THE COURT: So that was my only question at this
25 point.

1 MS. DALACAS: Yeah, just to go back. I think that
2 in our moving papers, while I didn't include a copy of our
3 Cost of Repair that was \$111,000, I did specifically lay
4 out that our expert evaluation that took over -- gosh,
5 probably 15 or 16 months to complete, included our experts
6 going to the site for visual inspections. They were there
7 for plaintiffs' destructive testing. They fully evaluated
8 all of the plaintiffs' expert reports. And in coming to
9 the decision to make the \$50,000 offer, our expert
10 evaluation was certainly part of that, in addition to our
11 consideration of the likelihood of success, obviously, of
12 our Motion for Summary Judgment, as well as the potential
13 defense fees and costs to put forth our defenses. So those
14 were the factors going into how we determine the \$50,000
15 offer was reasonable.

16 And it's certainly, like I said in the Reply, that
17 specific cost of repair amount, the \$111,000, is referenced
18 when it -- because I know that plaintiff had made an
19 objection or made -- excuse me, an argument, that the Lands
20 West Cost of Repair was nothing near our \$50,000, but
21 that's entirely unrelated. It's really our own cost of
22 repair that was -- I mean, quite frankly, almost half of
23 what our Cost of Repair estimate was was what our Offer of
24 Judgment was.

25 So, we believe that it was absolutely reasonable

1 and that was one of the considerations that was put into
2 the evaluation of the number to come up with for the Offer
3 of Judgment in July.

4 THE COURT: So, let's take this in part.

5 MS. DALACAS: Sure.

6 THE COURT: So, I'm looking at your Reply.

7 MS. DALACAS: Sure. So, --

8 THE COURT: And I'm trying to find the \$400,000
9 reference.

10 MS. DALACAS: So, if you look on page 4 of our
11 Reply, it's the beginning of the argument that the
12 reference to Lands West's Cost of Repair is really
13 irrelevant to our Offer of Judgment because we had two
14 different sets of expert groups. Lands West had their own
15 separate general contracting expert as well as their
16 separate cost estimator who came up with this \$400,000
17 number.

18 THE COURT: That was Lands West's expert, she's
19 saying.

20 MS. DALACAS: Right.

21 MR. WALTERS: That's correct, Your Honor.

22 MS. DALACAS: My experts have a whole different
23 evaluation of the matter and that's where -- at the very
24 bottom of page 4 in the last paragraph, it goes into detail
25 and we talk about -- I mean, our -- we had four specific

1 experts. We had an architectural expert, we had a plumbing
2 expert, we had a civil expert, as well as a certified
3 professional estimator, who came up with the estimate of
4 \$111,000 is what we believe the cost of repair for the
5 alleged defects are. And that was really -- I think that
6 that is the more operative evaluation for our Offer of
7 Judgment.

8 THE COURT: So, I'm still needing help finding
9 that expert report that comes up with the \$100,000 --

10 MS. DALACAS: And I --

11 THE COURT: -- anticipated cost of repair.

12 MS. DALACAS: Understood. And I think that that
13 specific cost of repair report is included as an exhibit
14 with our Memorandum of Costs -- with our --

15 THE COURT: That's what you said already --

16 MS. DALACAS: Yeah.

17 THE COURT: -- but you didn't tell me which
18 exhibit number it is.

19 MS. DALACAS: And that's -- and I don't have that
20 in front of me because that's not what was being heard
21 today. I understood that the -- the costs issue was
22 something that was on chambers for January 22nd.

23 THE COURT: I know, but, I mean, you're -- you're
24 doing a Motion for Attorneys' Fees and you want me to rely
25 on your expert report that wasn't attached to the Motion or

1 the Reply or -- so, I -- I mean, I think I'm at a
2 disadvantage in trying to determine that the amount offered
3 was reasonable.

4 MS. DALACAS: Well, Your Honor, --

5 THE COURT: I mean, if you're making a request now
6 that I consider that exhibit that was attached to your
7 Memorandum of Costs, I can do that, but then I'm not ready
8 to make a ruling today.

9 MS. DALACAS: Understood. And if you feel that
10 you need to see that, then that's certainly the request
11 I'll make.

12 My argument is obviously that is that I believe
13 that in light of the posture of the case and our arguments
14 with respect to the statute of repose issues that were --
15 that the Motion was eventually granted, I don't know that
16 you necessarily need to see that, but I'm happy to make
17 that request and postpone today's ruling on this issue,
18 pending your review of that document.

19 THE COURT: Is your expert Benchmark?

20 MS. DALACAS: No. That's --

21 MR. WALTERS: That was Lands West's --

22 MS. DALACAS: -- Lands West's expert.

23 MR. WALTERS: -- expert, Your Honor.

24 THE COURT: That was Lands West. All right.

25 MR. WALTERS: And, Your Honor, going back to

1 that, I just want to make sure --

2 THE COURT: Yeah. Let's finish with you and then
3 we'll go back to --

4 MR. WALTERS: Sure. Sure.

5 THE COURT: -- Sunridge.

6 MR. WALTERS: I just wanted to make sure the Court
7 understood that the -- the 400,000 number that our experts
8 threw out there was kind of an alternative argument. Their
9 primary opinion was that Lands West was not responsible for
10 any of these defects because they weren't involved with the
11 construction of the house. Therefore, that's kind of how
12 that 10,000 relates to the expert opinion.

13 Do you want to hear us go through the *Beattie*
14 factors --

15 THE COURT: Well, --

16 MR. WALTERS: -- or do you need --

17 THE COURT: -- it's up to you. I, you know, --

18 MR. WALTERS: -- clarification? Okay. Well, I'll
19 go ahead and go through it since we're here.

20 THE COURT: Also, I do see RHA's final defect list
21 and repair recommendations. Is that Sunridge?

22 MS. DALACAS: No. That's plaintiff.

23 THE COURT: That's -- oh wait. Okay. What I'm
24 still looking for -- there's got to be a Cost to Repair
25 Estimate submitted by Sunridge Builders I'm -- I --

1 MS. DALACAS: It would have been prepared --

2 THE COURT: I have Lands West's stuff, but I don't
3 see Sunridge Builders here. I'm missing it.

4 MS. DALACAS: Are you looking at the Memo of
5 Costs?

6 THE COURT: Yeah. I'm looking at all the
7 exhibits, the Memo of Costs.

8 MS. DALACAS: Okay.

9 THE COURT: Anyway, if you happen to find it, let
10 me know.

11 MS. DALACAS: Okay.

12 THE COURT: Let's hear any additional argument on
13 the *Beattie* factors.

14 MR. WALTERS: Sure. Sure, Your Honor.

15 The four *Beattie* factors -- now, plaintiff is
16 going to make the argument that none of the *Beattie* factors
17 are met because this -- the issue upon which we prevailed
18 on summary judgment was so obvious. We didn't have to go
19 through all of this nonsense about going through discovery
20 and incurring up all these costs, but it's our position, if
21 the Court is going to agree with that, if the issue was so
22 obvious, the case never should have been filed.

23 I kind of thought -- I mean, I'll hear from the
24 plaintiff. I kind of thought it was the opposite, that the
25 parties didn't really anticipate this. I mean, there were

1 -- there was an affirmative defense of statute of
2 limitations and statute of repose asserted by the
3 defendants. The Complaint was filed August 22nd, Offer of
4 Judgment was made like a year later, and the Motion for
5 Summary Judgment a couple of months after that. I really
6 don't think anybody anticipated the statute of repose would
7 be a limitation on liability here until very far into the
8 case.

9 MR. FINK: That's correct.

10 THE COURT: And, I mean, -- and, so, I guess what
11 I'm getting at is what we're dealing with here is, you
12 know, a complicated issue, legal interpretation of a
13 statute that had been recently amended and without a lot of
14 authority on how it should be interpreted. It was, I
15 think, a difficult issue to analyze. I don't think the
16 parties had anticipated my ruling on that and I just -- I
17 don't think that my interpretation was readily apparent and
18 I think all those factors are going to weigh in favor of
19 the plaintiff here in terms of deciding to reject the Offer
20 of Judgment. That was my initial thoughts, but let's go
21 ahead and --

22 MR. WALTERS: Sure. Sure. I appreciate you
23 highlighting that, Your Honor, because that thought will
24 kind of guide my comments on the *Beattie* factors.

25 The first *Beattie* factor is whether plaintiffs'

1 claim was brought in good faith. Now, that goes back to
2 our initial kind of theme here with respect to Lands West,
3 is that the claims against Lands West were not brought in
4 good faith because of those issues that Lands West was not
5 involved with the development or construction.

6 THE COURT: They claim alter ego. What's your
7 response to that?

8 MR. WALTERS: In order to prove alter ego, you
9 have to prove -- there's one of the factors that -- there
10 has to actually be some harm to the plaintiff. If you're
11 going to recognize the fiction of the separate entities or
12 disregard that -- disregard the corporate entity, you have
13 to demonstrate as a plaintiff that there is some harm.

14 THE COURT: I think I showed -- I think you have
15 to show some reliance, but I -- the harm -- but, anyway,
16 we'll hear from the plaintiff on that.

17 MR. WALTERS: Well, that's another factor, too. I
18 mean, -- but I -- and the big thing here, to just kind of
19 boil it down, is that even if Lands West was the alter ego
20 of Sunridge, there's no harm to plaintiff because all of
21 the defendants that were involved, actually involved with
22 the development and construction of this residence, were
23 all sufficiently insured. And that evidence is all
24 supported and it's all put into the record with our motion.
25 And none of that was opposed by plaintiff. Plaintiff

1 didn't make any substantive arguments against that.

2 So, that's kind of -- that kind of goes hand in
3 hand --

4 THE COURT: Well, the harm is if they're alter
5 egos of each other, then the harm is the defects that the
6 plaintiff suffered to the property. Right? And then if
7 there are alter egos, then don't I need to consider whether
8 the plaintiffs' decision to proceed with a case against
9 both parties is reasonable and -- I mean, those are
10 obviously, I mean, important considerations, I think.

11 MR. WALTERS: Sure. Sure. If there are defects,
12 you've got \$9 million of insurance coverage and you've got
13 the general contractor that developed and constructed the
14 property and all of its subs named directly.

15 THE COURT: But, I mean, I'm having trouble
16 following that, too. Just because there's insurance
17 coverage, are you saying that plaintiff has no right to sue
18 to pursue its claims on -- they just make an insurance
19 claim? They don't have to sue?

20 MR. WALTERS: Not at all. I'm not making -- I'm
21 not saying that they don't have a right. I'm saying that
22 under NRS 18.020, the claims were not reasonably grounded.
23 It's Lands West's position that plaintiff went on this wild
24 goose chase to create this alter ego situation when it
25 wasn't necessary.

1 THE COURT: So they can --

2 MR. WALTERS: There was no need to do that.

3 THE COURT: 18.020, you're claiming fraud or bad
4 faith.

5 MR. WALTERS: We're --

6 THE COURT: It's a pretty high standard.

7 MR. WALTERS: We're not claiming fraud. We're
8 claiming that the claim was not brought with the reasonable
9 grounds.

10 THE COURT: Well, --

11 MR. WALTERS: And I think that falls below the
12 fraud standard. But, even if the Court doesn't agree with
13 that, we think even under --

14 THE COURT: See that -- let me interrupt you a
15 second.

16 MR. WALTERS: Sure.

17 THE COURT: I've studied this and that standard
18 requires me to find that no reasonable attorney would have
19 brought those claims. Because if I can find that it's
20 potential that a reasonable attorney could, you know, could
21 determine that there was some merit to that claim, then I
22 can't find that it -- you know, was not brought in good
23 faith.

24 MR. WALTERS: It's our position that it was
25 unreasonable, Your Honor.

1 THE COURT: Okay.

2 MR. WALTERS: With the evidence that we presented
3 to the Court, which has not been rebutted.

4 THE COURT: All right. Let's continue.

5 MR. WALTERS: Sure. Moving onto the alternate
6 basis for recovery of post-offer attorneys' fees based on
7 NRCP 68 and NRS 40.652, which we need to go to the *Beattie*
8 factors.

9 I think talking about the -- whether or not the
10 claim was brought, was reasonably grounded, kind of goes
11 hand in hand with the -- whether it was brought in good
12 faith. It's our same argument there. We don't think it
13 was brought in good faith.

14 Was the offer reasonable in timing and amount?
15 Well, the offer was submitted relatively shortly after
16 Lands West appeared. The amount of the offer was \$10,001.
17 If plaintiff is to be believed that this issue was so
18 obvious and we should have caught it right away and we
19 should have filed the dispositive motion immediately upon
20 service of the Complaint, then they should have jumped on
21 the \$10,000 and walked away but that didn't happen.

22 And that kind of goes hand in hand with the -- was
23 the rejection of the \$10,000 grossly unreasonable? We
24 think for Lands West, because of the unique situation which
25 it stood in this case, that rejection of \$10,000 from a

1 party that had nothing to do with the development or
2 construction of the residence was grossly unreasonable.

3 And, finally, the last *Beattie* factor is -- asks
4 whether the fees sought are reasonable and justified and
5 the Nevada Supreme Court tells us that we need to look at
6 the *Brunzell* factors for that. Plaintiff --

7 THE COURT: Which you didn't address in your
8 Motion and then you tried -- oh, I'm sorry. Sunridge
9 didn't but Lands West did. Okay.

10 MR. WALTERS: Correct. Lands West --

11 THE COURT: I'm sorry. I just got -- got the two
12 --

13 MR. WALTERS: It's confusing, Your Honor, going
14 back and forth. We -- I understand.

15 THE COURT: I got the two defendants --

16 MR. WALTERS: Lands West went through all of the
17 *Brunzell* factors. We established everything that needs to
18 be established under *Brunzell*, but plaintiff acknowledged
19 that Lands West met the *Brunzell* factors and that's page 6
20 of their Opposition.

21 So, in conclusion, we're asking the Court to award
22 Lands West all of its attorneys' fees under 18.020 or,
23 alternatively, if the Court believes that the claims were
24 brought with reasonable grounds, that attorneys' fees after
25 the offer until judgment are granted pursuant to NRCP 68

1 and/or NRS 40.652. Thank you, Your Honor.

2 THE COURT: And remind me of the total amounts.

3 MR. WALTERS: Total amount -- total -- if the
4 Court is to grant the Motion under NRS 18.020, total fees
5 incurred would be \$145,692.50. For the alternative request
6 for relief under NRCP 68 or NRS 40.652, post-offer fees
7 from the date of the offer until the judgment, \$104,787.50.

8 THE COURT: All right. Thank you.

9 MR. WALTERS: Thanks, Your Honor.

10 THE COURT: Anything more from Sunridge?

11 MS. DALACAS: Your Honor, just to clarify the
12 issue about the *Brunzell* factors --

13 THE COURT: Yeah.

14 MS. DALACAS: -- plaintiff raised it in the
15 Opposition to Sunridge's Motion and certainly we did not
16 use that name -- the actual *Brunzell* name in our pleading,
17 but in our Reply we pointed out the ways that we have
18 addressed the *Brunzell* factors in our moving papers.
19 Specifically, we included all -- well, obviously, my
20 affidavit includes the rates that were used for performance
21 of all of the legal work.

22 THE COURT: I saw that. You said rates and the
23 attorneys and the amount of time. You didn't -- I mean,
24 *Brunzell* requires a lot more than that.

25 MS. DALACAS: Well, we've specifically included

1 all of the detailed billings that I think show all of the
2 work that was done. Sunridge Builders is the general
3 contractor for the case.

4 THE COURT: But you expect me to go through all
5 the billings to determine whether the time spent on various
6 tasks is reasonable and -- I mean, I don't even have an
7 understanding of major groups of tasks.

8 MS. DALACAS: Well, well, I -- I mean, I guess I -
9 - what I didn't do specifically is break out the hours
10 spent. For example, we spent countless hours in deposition
11 of plaintiffs' experts. That was all done by me. That's
12 all included in there. Obviously, I had to file a Third
13 Party Complaint and bring in all of those subs into the
14 case. All of those subs are not from Lands West at all,
15 but from me. So that obviously is a highly time intensive
16 task.

17 So, I didn't specifically include breakdowns of
18 hours for all of the tasks, but all of those specific
19 things, post-offer, from July through the date of the
20 filing of the Motion, which would have been late November,
21 are included --

22 THE COURT: Did you lose any motions in this case?

23 MS. DALACAS: Did I, I'm sorry?

24 THE COURT: Lose -- did Sunridge lose any motions
25 in this case?

1 MS. DALACAS: Did we lose any motions? No. There
2 wasn't really a lot of pretrial -- excuse me, --

3 THE COURT: Okay.

4 MS. DALACAS: -- a lot of motion work, other than
5 the Motion for Summary Judgment.

6 This case was -- I think it's important to note,
7 was kind of expedited, really, because plaintiff had
8 requested a preferential trial setting and, once that was
9 granted, we were all really on a short, quick timeline in
10 discovery. That was granted in, I think, February of 2017.
11 And, then, we really kind of off and running, much quicker
12 than we would have, had this case been set with a
13 traditional discovery schedule.

14 So that really accounted for a great deal of the
15 expedited discovery and costs that likely would not have
16 been incurred had this case been on a routine stack. We
17 were all working towards -- initially the January 2018
18 trial date with a discovery cutoff in December. It was
19 moved for -- by a month or so for some calendaring issues,
20 but that was really what prompted us to start all the
21 expert depositions.

22 There had been some talk amongst counsel about
23 trying to delay some of those pending the dispositive
24 motions in order to save some fees, but we couldn't really
25 do that because of the pending trial date. And, so,

1 obviously, that would have been my preference. I mean,
2 aside from saving costs, it was a lot of work that I and my
3 office had to kind of take the lead on in order to prepare
4 -- to take all of his expert depositions, --

5 THE COURT: Right.

6 MS. DALACAS: -- which we had to do.

7 So, all of that's included as part of the
8 evaluation of the attorneys' fees and costs.

9 And if you look at everything that's post-offer,
10 it's really -- I mean, considering the amount of work that
11 was done, it's not that much. It's \$25,000 -- \$26,000,
12 which for, I mean, you know, probably a good chunk of that
13 is actually taking the expert depositions. So, I think
14 that that is something to consider.

15 Also, like I said, the issue about the
16 preferential trial setting would not have -- had we been on
17 a normal timing, the costs in this case and attorneys' fees
18 would have been much less.

19 THE COURT: So, in terms of the *Brunzell* factors,
20 again, you really didn't discuss them in your moving papers
21 and, then, in your Reply brief, you have one paragraph that
22 refers me mostly back to the billings and then you have
23 your argument today. I just -- I don't know if -- well,
24 personally, I've always done a heck of a lot more in
25 analyzing the *Brunzell* factors in, you know, all of the

1 construction cases that I've handled.

2 So, anyway, I'll hear argument on that and I'll
3 have to take that into consideration.

4 MS. DALACAS: Okay.

5 THE COURT: Anything else?

6 MS. DALACAS: No, other than to -- I think that
7 I've -- I had tried to send a clarification to see where
8 that Cost of Repair is and I believe that it's attached as
9 an exhibit to the Memorandum of Costs in support of our --
10 excuse me, to the Points and Authorities in Support of our
11 Memorandum of Costs that outlines the expert fees, includes
12 all of the expert invoices, and that type of thing.

13 But, again, Your Honor, if you want to review
14 that, I'm happy to allow you time to do that and put the
15 ruling over for that evaluation.

16 THE COURT: One second. Just give me a moment.

17 MS. DALACAS: Sure.

18 [Pause in proceedings]

19 THE COURT: Well, I'll take your word that it's
20 hear, but I'm going to have to -- oh, here. Maybe this is
21 it.

22 [Pause in proceedings]

23 THE COURT: All right. Project total, \$111,199?

24 MS. DALACAS: That's it.

25 THE COURT: All right. This is the report of --

1 MS. DALACAS: It is David Suggs from Bert Howe and
2 Associates is the name of the --

3 THE COURT: Yeah. Bert Howe and Associates.
4 Yeah, I have that right here. It's kind of buried within
5 Exhibit 1. All right.

6 MS. DALACAS: There's a lot of exhibits in this
7 case.

8 THE COURT: All right. All right. Let's -- Mr.
9 Fink, you're up, sir.

10 MR. FINK: Good morning, Your Honor. It is a good
11 morning, I think.

12 I want to go through a couple of things, if I may,
13 and then I'll address some of the specific issues that
14 counsel brought up and the Court seemed to have issues
15 with.

16 We really got -- when we're looking at the
17 attorneys' fees, we have to look at this case in -- broadly
18 and specifically. The broad issue is the construction
19 defects, whether it was construction de -- whether there
20 were construction defects. The specific issues is the
21 statute of repose, statute of limitations issue.

22 Broadly, there isn't anybody that I'm aware of
23 that is saying there was not construction defects in this
24 house. Now whether there are differences of opinion as to
25 the scope of the construction defects, the repairs,

1 everybody agrees there's construction defects. So, when
2 you look at it broadly, there's no question that the
3 plaintiff brought the case in good faith.

4 Now, had everybody kind of -- had there been even
5 any incident on the other side saying, well, there's no
6 defect here, then that would be an argument but that's not
7 here because everybody agrees there's defects.

8 Counsel for Lands West -- I keep saying Lands End.
9 Lands West, says that, well, they had a cost of repair that
10 was over \$400,000 but also their expert report said Lands
11 West didn't do anything on this house. Two problems with
12 that. One is that that report is not attached, that Lands
13 West didn't do anything other than -- wasn't part of the
14 construction, original construction of the house.

15 Part two is there's no dispute that Lands West
16 actually made repairs to the house prior to the lawsuit
17 being filed. So, I would posit to the Court, why would
18 Lands West make repairs for something it had no
19 responsibility to do? So, I think it's -- and it's
20 certainly not an issue with counsel and I want to make it
21 very clear, but I think it's a disingenuous position for
22 Lands West as a client to take and, again, nothing on
23 counsel.

24 So, we have to look at it broadly. So, broadly,
25 there's no question that the plaintiff had good faith to

1 bring the case.

2 Now, we look specifically. The specific issue in
3 the Motion for Summary Judgment had nothing to do with
4 construction defects themselves.

5 THE COURT: Right.

6 MR. FINK: Had nothing to do with whether Lands
7 West was general contractor. It was for the one issue that
8 related to the statute of limitations, statute of repose,
9 that has changed by the Legislature under AB 125.

10 So, -- and if the Court --

11 THE COURT: And I'm sure the Supreme Court is
12 going to hear that and add some clarification to it --

13 MR. FINK: I would assume. I -- this might be my
14 one and out on this case.

15 THE COURT: We'll see.

16 MR. FINK: And I've really literally have nothing
17 to do with it, but I do believe there's going to be an
18 appeal on that.

19 THE COURT: Yeah.

20 MR. FINK: And it's --

21 THE COURT: Which is fine because it was a
22 difficult issue.

23 MR. FINK: And this case was filed right in that
24 sweet spot. So, you know, if we have cases filed today, it
25 won't be an issue, and cases filed before weren't an issue,

1 but we're just kind of like right there. So it's not even
2 an issue that's likely to come -- it's not an issue that's
3 going to come up again.

4 But -- so, anyway, so, specifically then we have
5 to look: Was this case brought in good faith related
6 specifically to the statute of limitations or statute of
7 repose? I think the Court itself recognized that nobody
8 anticipated that this was going to be the issue during the
9 original stages of the litigation and counsel is right --
10 Lands West's counsel is right that we have said and we
11 certainly have said in our Oppositions that, hey, the
12 statute of limitations, statute of repose, if this is an
13 issue upfront, they should have filed their motion, either
14 a Motion to Dismiss or a Motion for Summary Judgment before
15 engaging in the discovery.

16 So, we've got two different arguments. One is
17 that it was so apparent that it should have been done early
18 on or that it was just not so apparent to anybody that
19 there's no reason that the plaintiffs' claim is in bad
20 faith.

21 THE COURT: I don't think that it was apparent how
22 I was going to interpret the statute of repose. It
23 probably wasn't apparent how any judge would interpret that
24 statute of repose. So, I think the inquiry we need to
25 focus on is whether it was apparent that Lands West

1 shouldn't have been sued in this case.

2 MR. FINK: I appreciate that. So, -- but, again,
3 we'll put down -- again, we're talking about whether there
4 was good faith by my client to bring a lawsuit and we're
5 talking in the broad, whether construction defects.

6 THE COURT: Yeah. Well, I'll tell you right now I
7 -- I am pretty persuaded that there was good faith, at
8 least as to Sunridge.

9 MR. FINK: Okay. I appreciate that.

10 THE COURT: All right. At least until I hear the
11 Reply.

12 MR. FINK: I appreciate that, Your Honor. So,
13 let's focus on Lands West.

14 First, like I said, Lands West did not bring --
15 the attorneys' fees that they're asking for relate to the
16 Motion for Summary Judgment on statute of repose, statute
17 of limitations. They have not brought any motion related
18 to the fact that they shouldn't have been named in the suit
19 at all. Had that been part of the Motion for Summary
20 Judgment, then I agree. That's something that we need to
21 talk about. However, it really doesn't need to be
22 addressed. I'll address it for you, but, just for the
23 record, it's nothing that needs to be addressed here
24 because it was not part of the motion that is the basis for
25 their request for attorneys' fees and costs.

1 Certainly this case goes up on appeal and if we
2 prevail on that and the Supreme Court said, well, we're in
3 that area, that this Court was wrong in granting the Motion
4 for Summary Judgment, Lands West still has their argument
5 that we're general -- we had nothing to do with this house
6 and we should not have been sued. However, pointed out
7 that Lands West did make repairs prior to plaintiff filing
8 suit. There are going to be defenses, Sunridge,
9 subcontractors, that the repairs Lands West made are
10 defects, not the original construction.

11 So, we've got this issue that Lands West, even if
12 they weren't part of the original construction, which we
13 think they were and I think it's -- like I said, I think
14 it's a little, not counsel, a little disingenuous of Lands
15 West themselves to say that they weren't acting as a
16 general contractor during original construction. But, even
17 if we take that as true, they made repairs.

18 THE COURT: Value of those defects?

19 MR. FINK: Of the -- I don't know the answer to
20 that.

21 THE COURT: Okay.

22 MR. FINK: I don't know whether it's more than
23 10,000, less than 10,000. I couldn't --

24 THE COURT: Okay.

25 MR. FINK: If that's something the Court needs to

1 know, we can find out, but I just don't know the answer to
2 that.

3 THE COURT: Well, if you're arguing that you're --
4 that whether their Offer of Judgment was made in good faith
5 and whether you rejected in good faith, I think I need to
6 know the amount of risk that they actually faced. And, in
7 order to assess the amount of risk, I probably need to know
8 whether the defects that you're alleging were material.

9 MR. FINK: Yeah. And that's certainly -- that's
10 one part of our argument and if that's --

11 THE COURT: Right.

12 MR. FINK: -- something the Court needs, we can
13 get that. It was --

14 THE COURT: Okay.

15 MR. FINK: And I appreciate that, but I don't
16 think the Court does need that, personally, but, again, if
17 that's something you need, we'll get it for you right away.

18 But the fact of the matter is that they acted like
19 a general contractor when they come out and make repairs.
20 Why come out and make repairs to something that's not your
21 responsibility?

22 So, the evidence in front of this Court -- in
23 fact, there is no evidence in front of this Court from the
24 Motion that Lands West was not the general contractor.
25 There's arguments in the Motion from counsel that says

1 they're not. There's no affidavit from anybody from Lands
2 West. Arguments by counsel aren't evidence, as the Court
3 knows. So, right now, this Court has no evidence in front
4 of it that Lands West was not the general contractor.

5 So, I think that's an important part. So, when
6 you say was it good -- was it assumed in good faith, that's
7 our position. They went out and they made repairs. They
8 acted like a general contractor. There's no evidence from
9 this Court that they weren't a general contractor and
10 arguments from counsel, as good as they may be, aren't
11 evidence for the Court to consider.

12 The other problem -- and counsel --

13 THE COURT: Well, one reason -- sorry to interrupt
14 again.

15 MR. FINK: No, no. Please.

16 THE COURT: Appreciate allowing me to interrupt,
17 but, I mean, I can see one reason why they would go out and
18 do the repairs, especially if they're just minor repairs,
19 is because they're trying to avoid any further litigation
20 and any further attorneys' fees and any further risk in the
21 case if they thought they could do these repairs and be
22 done. I'm speculating, but that --

23 MR. FINK: Sure. I mean, I guess, you know,
24 you've practiced for quite a while and you've dealt with
25 construction defect cases and I'd have to leave it up to

1 you whether you've had any clients that you've recommended
2 make repairs even though they said they had nothing to do
3 with the construction. So, I've -- I mean, I can tell you
4 --

5 THE COURT: I've had subs do that. Had a -- yeah,
6 I've never had, I mean, --

7 MR. FINK: I can tell you, in my practice, I can
8 represent to the Court I've never recommended to a client
9 that they offer to make repairs when they say they had
10 nothing to do with constructing the house.

11 So, -- but I think that's the -- the effect that
12 the Court's looking at I guess it would be circumstantial
13 evidence, looking at all of the evidence -- the only
14 evidence that the Court has in front of it that's
15 undisputed is that they made repairs.

16 THE COURT: In addition to that argument, do you
17 have proof of alter ego? You know, common location, common
18 employees, common management, comingling of assets? I
19 mean, do you have -- I didn't see any evidence of that set
20 forth.

21 MR. FINK: Your Honor, if we have that evidence,
22 I'm not aware of it. I agree it was not in the Opposition
23 on that.

24 THE COURT: Okay.

25 MR. FINK: But, if it's there, I'm not aware of

1 it. And, again, if it's something the Court needs, we can
2 go back and do that, but it's not -- we certainly didn't
3 address that specific issue and the reason we didn't
4 address it mostly was because it had nothing to do with the
5 Motion for Summary Judgment on the statute of
6 limitations/statute of repose.

7 THE COURT: Help me with timing. When were the
8 repairs done by Lands West, or the attempted repairs? The
9 Complaint in this case was August 2016.

10 MR. FINK: Yeah. It would have been right before
11 the Chapter 40 Notice, Judge.

12 THE COURT: All right.

13 MR. FINK: And I'm not -- I -- you know, again, I
14 apologize. I'm not intimately familiar with --

15 THE COURT: No, that's fine. Before the Complaint
16 is what I needed to know.

17 MR. FINK: Yeah. It was for -- it was actually
18 before the Chapter 40 Notice went out, but it was
19 definitely before the Complaint. So the Complaint wasn't
20 filed until I want to say six or seven months into the
21 Chapter 40 process. So the repairs that Lands West was
22 making was before that and then when it was clear to the
23 plaintiff that Lands West was done, that they weren't going
24 to make repairs anymore, that's when the Chapter 40 process
25 started.

1 THE COURT: So is the sole basis, why you brought
2 suit against Lands West, because they did the repairs or is
3 there any contract that you saw that puts them involved in
4 this project?

5 MR. FINK: I'm not aware of any contract. And
6 that's -- the fact that they made repairs isn't the sole
7 reason, but that's certainly a big reason. When somebody
8 acts like a general contractor to make repairs and responds
9 as a general contractor, every reason to believe they are
10 the general contractor --

11 THE COURT: It's certainly an important factor. I
12 think I am going to need some information on the -- what
13 you asked them to do and what you contended to be the value
14 of the defective repair work.

15 MR. FINK: Okay.

16 THE COURT: All right. Let's go on.

17 MR. FINK: All right. So, anyways, so when we're
18 talking about the -- and the Court's aware, there's the two
19 bases for attorneys' fees. One is NRS 18.010 subsection
20 (2) and the other is NRCP 68. And we talked about -- Lands
21 West actually brought it up under -- and maybe the Court
22 did under 18.010(2). It has to be that the claim is
23 brought without unreasonable grounds or to harass the
24 prevailing party. And the reasonable grounds, again, are
25 we're saying that you act like a duck, you walk like a

1 duck, you're a duck. That's part of it. And, then,
2 partially because of the repairs that they made.

3 And then --

4 THE COURT: Aren't you arguing that also just by
5 virtue of being the prevailing party under 18.010 subpart
6 (2) they were entitled to attorneys' fees even without the
7 need for the Court to determine bad faith or bringing the
8 claim without a reasonable basis? I thought that's what
9 you were arguing also on Sunridge.

10 MR. FINK: I did --

11 MS. DALACAS: Yes. That's certainly part of the
12 argument on the -- the prevailing party --

13 THE COURT: Yeah.

14 MS. DALACAS: Yes.

15 THE COURT: Let me just deal wit that one first
16 because I thought that, in my understanding of Nevada law -
17 - and I have a case here that I actually found --

18 MR. FINK: And, just for the record, Judge, I
19 would object to anything that Sunrise -- Sunridge, any
20 discussions they had about 18.010(2) -- actually, I'll
21 strike that. Never mind. My apologies.

22 THE COURT: Well --

23 MR. FINK: I was thinking of something else.

24 THE COURT: -- I didn't see -- maybe I'm --
25 there's a lot going on here.

1 So, the Nevada Supreme Court has held that a
2 prevailing defendant cannot use 18.010 subpart (2) subpart
3 (a) as a basis for recovery of attorneys' fees. I have the
4 citation for that, just not with me, but I know that's what
5 the Supreme Court has held. All right. So, if you think
6 they've changed their mind on that, let me know, but
7 defendants being a prevailing party, you know, and
8 recovering, you know, -- there being a defense verdict
9 doesn't entitle the defendant to attorneys' fees under NRS
10 18.010 subpart (2) subpart (a). Right?

11 The other thing is I wanted to doublecheck
12 Sunridge's Motion to see if you asked for attorneys' fees
13 on the grounds of the Complaint being brought without
14 reasonable cause or in bad faith.

15 MS. DALACAS: And that was one of the arguments
16 that was included, Your Honor. And I understand the
17 difference between Sunridge's position in this case and
18 Lands West's position in this case and the Court's likely
19 ruling as it relates to good faith issues for bringing a
20 claim against Sunridge, but, yes. That was a -- something
21 that was brought in our --

22 THE COURT: All right. Thank you. Appreciate
23 that.

24 MS. DALACAS: Sure.

25 THE COURT: All right.

1 MR. FINK: So, anyways, so we talked about NRS
2 18.010(2). I do want to address the fact that in their
3 Reply Lands West argued that because -- they argued that
4 plaintiff didn't argue anything under 18.010(2), which
5 wasn't true and I want to point to the Court that although
6 it was in a footnote on page -- in the Opposition, it was a
7 footnote on page 7 to the Opposition -- on the Opposition.
8 And, also, it's part and parcel and I think counsel kind of
9 agreed to the *Beattie* factor one. So, it was certainly in
10 there and not waived by the plaintiff.

11 Next we're talking about NRCP 68, the offers of
12 judgment. NRCP 68 has to be interpreted within the context
13 of Chapter 40 and Lands West pointed this out in their
14 Motion. 40.652 subsection (4). We know under 40.625
15 subsection (2) that Chapter 40 prevails over any
16 conflicting law.

17 So we've got this -- a little bit of a
18 juxtaposition between NRCP 68 and NRS 40.652 where it could
19 be argued that under NRCP 68, the award of attorneys' fees
20 is more mandatory, although I would disagree that's the way
21 the courts have interpreted it. But, certainly, under
22 Chapter 40, as quoted by counsel in their Motion,
23 40.652(4)(d) says the Court may award. And what's
24 important is right above that, under (4)(c), it talks about
25 costs, taxable costs and it says shall. So, clearly the

1 Legislature was giving the courts more discretion than
2 under NRCP 68 to determine fees and costs under Chapter 40,
3 under 40.652. So, the Court needs to look at that and the
4 Court says, under 40.652(4)(d) that the Court may award
5 expert witness costs, may award interest, and may award
6 attorneys' fees. Not shall.

7 So, and, again, somebody -- it could be
8 interpreted that NRCP 68 makes it a little more mandatory
9 but certainly under Chapter 40 the Court has more
10 discretion.

11 THE COURT: Let's suppose you're correct. What
12 are the factors that guide the Court's discretion in
13 determining whether attorneys' fees should be awarded under
14 40.6452?

15 MR. FINK: I think you still have to go to the
16 *Beattie* factors. There's no -- I don't think there's --
17 there's nothing in Chapter 40 that would suggest that the
18 Court should abandon that analysis. The *Beattie* factors
19 have been around for I don't know how long.

20 THE COURT: Yeah.

21 MR. FINK: So I think that's --

22 THE COURT: That's kind of what I would think,
23 too. All right. Thank you.

24 MR. FINK: Yeah. All right. So, we talked about
25 the fact that the plaintiffs' position is they brought the

1 claim in good faith and there's discussion with Sunridge's
2 counsel as to the cost of repair. And their cost of repair
3 being \$111,000. First, I'd object to the Court considering
4 anything with respect to the actual Cost of Repair because
5 it wasn't attached to the Motion, but what's important is
6 the amount. If it's important at all, and, again, I don't
7 think it has anything to do with the Motion for Summary
8 Judgment, which, again, is the basis for the Motion for
9 Attorneys' Fees. But, to the extent that we're looking at
10 the broader aspect of construction defect claims
11 themselves, the fact of the matter is that they, as the
12 general contractor under Chapter 40, and it's my position
13 that Lands West as well, they are 100 percent responsible
14 for defects. Now they may be able to push them off to the
15 subcontractors, but Chapter 40 makes the contractor 100
16 percent responsible.

17 So, if you've got \$111,000 cost of repair by
18 Sunridge with a \$50,000 Offer of Judgment that's, on its
19 face, that Offer of Judgment is unreasonable. So the
20 \$111,000, the specific cost repair itself is irrelevant.
21 The \$111,000 is the part that the Court should consider.

22 And we go to -- again, to Lands West. They had
23 the 400 and -- what did I say? A little more than \$400,000
24 offer -- cost of repair. I appreciate that counsel
25 represented to the Court that that was an alternative, that

1 Lands West's initial position was that they aren't the
2 general contractor and --

3 THE COURT: Right.

4 MR. FINK: -- responsible for nothing, but, again,
5 that's not evidence in front of the Court. What is
6 evidence is the \$434,000.

7 So, again, while I think the Cost of Repair has
8 really nothing to do with the issue of attorneys' fees on
9 this Motion, to the extent that the Court takes the broader
10 view, \$10,000 does not add up to \$400,000 and does not meet
11 that Offer of Judgment in good faith.

12 And I'm kind of diving into the *Beattie* factors a
13 little bit.

14 THE COURT: No, I appreciate that. That's exactly
15 what I need to know.

16 MR. FINK: And I -- there's -- I was going to put
17 some quotes actually from Lands West's Motion with respect
18 to the fact that the statute of limitations issue wasn't
19 something that was easy to discern, but I think the Court's
20 already there, so I'm not going to bother with that.

21 So, the *Beattie* factors, one, whether plaintiffs'
22 claim is brought in good faith. The answer is yes to both
23 Lands West and to Sunridge and we've already discussed
24 that, unless the Court's got specific questions. I'll move
25 from that.

1 Whether the defendants' Offer of Judgment was
2 reasonable and in good faith both in timing and amount.
3 I'm always troubled by timing, so I -- there's -- timing is
4 kind of up to the individual, so I don't have much to say
5 about that, but certainly the amounts and we've talked
6 about that. One is that there was no -- that plaintiff had
7 no thought at the time of either of these Motions for
8 Summary Judgment that it was looking at a statute of
9 repose, statute of limitations motions for summary
10 judgment. I'm not aware that it was ever even discussed
11 between the parties or even a possibility or even a threat
12 at the time of the Offers of Judgment.

13 So, when we're looking at that point, is, again,
14 in the context of this specific -- you look puzzled.

15 THE COURT: Well, just as -- sorry, as to Lands
16 West, --

17 MR. FINK: That's okay.

18 THE COURT: -- they -- I mean, they did their
19 Offer of Judgment shortly after they got into the case.
20 So, I guess, you -- right?

21 MR. FINK: Right, but --

22 THE COURT: You wouldn't really know if they were
23 contemplating the applicability of the statute of repose.
24 There might be more evidence that Sunridge went in this
25 case a long time before they considered it.

1 MR. FINK: Right. And I think that's why -- and
2 that's important. I think it's important that if -- you
3 know, to get in the mind of the defendants as to what they
4 were thinking in the Offers of Judgment, --

5 THE COURT: Right.

6 MR. FINK: -- you know, they're the only ones that
7 know what they were thinking, but certainly by the evidence
8 that we're looking at and the arguments we're hearing is
9 that they didn't think, and this is on Land West's Motion
10 and the Reply. They didn't think the statute of repose
11 issue was something that was kind of hidden in the face and
12 they had to do all this work and stuff.

13 So, if they do an Offer of Judgment and their
14 Offer of Judgment was in March 4th, 2017.

15 THE COURT: Right.

16 MR. FINK: So they have to do all this work after
17 March 4th, 2017 to establish, in their mind, the Motion for
18 Summary Judgment on the statute of limitations and statute
19 of repose, then they weren't thinking of statute of
20 limitations and statute of repose when they were making
21 their Offer of Judgment. They were thinking about purely,
22 and I think as counsel even represented, hey, you weren't
23 the general contractor.

24 THE COURT: So, let's suppose -- I have the
25 statute of repose issue figured out with respect to whether

1 the rejection was reasonable. What about the fact that at
2 the time you filed the Complaint you perhaps had a
3 reasonable belief that Lands West was the general
4 contractor because they did repairs, but then all this time
5 goes by for discovery, right, and then you get the Offer of
6 Judgment of 10,000 from Lands West. At that point in time,
7 didn't you have enough to realize they had a very limited
8 role in the project?

9 MR. FINK: We certainly knew they thought they had
10 a limited role, although I will tell you the expert report
11 that counsel is mentioning his expert say, hey, our initial
12 position is they didn't do the work so they're not
13 responsible, I don't think it was produced until after the
14 Offer of Judgment. So we're not looking at an expert
15 report that says that.

16 THE COURT: How --

17 MR. FINK: But I don't want to misrepresent
18 anything to the Court and it may very well be that Lands
19 West counsel did have that discussion with original counsel
20 because I know this wasn't a new issue. It didn't just pop
21 up. But I don't know when that discussion took place and
22 it very well may have taken place even before the Motion --
23 before the Complaint or somewhere after the Complaint was
24 filed, which required an amendment to bring the alter ego
25 claim in. So, --

1 THE COURT: So how do I know whether your
2 rejection was reasonable or unreasonable as to Lands West?

3 MR. FINK: Well, I'm saying because it's --
4 regardless of Lands West's position, we're saying the fact
5 that they made the repairs out there -- again, you walk
6 like a duck, you talk like a duck, you're a duck.

7 THE COURT: Okay. All right.

8 MR. FINK: So, I can -- defendants -- as the Court
9 knows and plaintiffs, say all sorts of things during the
10 course of litigation and whether they're ultimately backed
11 up or not is something different. So, the question is if
12 you have the evidence to make it reasonable to reject the
13 offer and I'm saying that it was reasonable at the time,
14 March 4th, 2017, to reject that offer because they had made
15 repairs. All of the evidence at that point is that they'd
16 made repairs, they'd acted like a general contractor.

17 THE COURT: So, what makes somebody a general
18 contractor then if you don't need a contract with the
19 plaintiff?

20 MR. FINK: What makes somebody a general
21 contractor --

22 THE COURT: Why is Lands West the general
23 contractor here where the plaintiff, your client,
24 presumably would know with whom he contracted, why would
25 Lands West become a general contractor without a contract

1 with a plaintiff --

2 MR. FINK: I think something --

3 THE COURT: Help me out on all that.

4 MR. FINK: I think something is getting a little
5 lost then because --

6 THE COURT: Okay.

7 MR. FINK: -- this house -- this is a Street of
8 Dreams house. So the original owner is -- this -- they're
9 not the original owner.

10 THE COURT: Well, right. Right. It was a
11 subsequent purchaser.

12 MR. FINK: Correct.

13 THE COURT: Right. No, I understand that, but, --

14 MR. FINK: Right.

15 THE COURT: -- in connection with the purchase,
16 wouldn't the new buyer have access to the original owner's
17 records as to who built the thing?

18 MR. FINK: You know, I can't sit here and say
19 exactly what records they had. I know that they didn't
20 have all the records. That I do know for a fact that there
21 was problems with who was doing what. That I do know.

22 THE COURT: All right. So, can I say that I -- I
23 keep interrupting you.

24 MR. FINK: Sure. No, no --

25 THE COURT: Can I say the plaintiffs' position was

1 that it's still believed that Lands West was the general
2 contractor and through the discovery that was conducted, it
3 still did not have an answer to that question with any kind
4 of reasonable probability?

5 MR. FINK: Certainly not before March 4th, 2017. I
6 would agree with that, Your Honor.

7 THE COURT: All right. Why don't you continue?

8 MR. FINK: All right. So, the question is whether
9 the Offer of Judgment was reasonable in good faith, both in
10 timing and amount, and maybe that does answer the timing
11 issue that Lands West's motion -- Lands West's Offer of
12 Judgment was too soon at March 4th, 2017, but certainly with
13 the amount -- the only thing that could be considered at
14 the time is we've got defects. And, again, nobody's
15 claiming that there aren't defects to the house.

16 Third is whether plaintiffs' decision to reject
17 the offer and proceed to trial was grossly unreasonable or
18 bad faith. So, grossly, to me, says it's got to be pretty
19 bad. And, so, the question is, at the time, and now we're
20 talking for Lands West, March 4th, 2017, was it grossly
21 unreasonable for the plaintiff to still consider that Lands
22 West has responsibility either directly as a general
23 contractor or some alter ego liability for the defects, for
24 the -- what plaintiff says is \$1.7 million in defects, what
25 Lands West later said is more than \$400,000 in defects.

1 THE COURT: Well, when we get back to Lands West,
2 I'd like to hear why they didn't file a Motion for Summary
3 Judgment before maybe doing the Offer of Judgment. Why did
4 they -- it sounds like -- if it was crystal clear they
5 weren't involved, why didn't they do that?

6 MR. WALTERS: That would have been step two.

7 THE COURT: Okay. Very good. I understand. That
8 makes sense.

9 MR. FINK: So -- yeah, so, again, now we're
10 looking at it from plaintiffs' perspectives.

11 THE COURT: Right.

12 MR. FINK: So, now it's not -- you know, we don't
13 have the benefit of the hindsight that we have now on
14 January 8th, 2018.

15 THE COURT: All right.

16 MR. FINK: It was March 4th, 2017. Was it grossly
17 unreasonable? And the answer is the facts and the evidence
18 the Court has in front of it, absolutely not. The evidence
19 this Court has is Lands West made repairs prior to the
20 lawsuit being filed. Lands West acted like the general
21 contractor.

22 So, at the time, March 4th to now, had they made
23 that Offer of Judgment perhaps October of 2017, we might
24 have a completely different discussion. But it's pretty
25 clear that this is the beginning of this case and to make

1 that early -- and I can appreciate making Offers of
2 Judgment early and I can appreciate making Offers of
3 Judgment early, but there's always that danger if you make
4 them too early.

5 THE COURT: Right.

6 MR. FINK: And, for this case, that might be the
7 case, it was too early.

8 With respect to Sunridge, their Offer of Judgment
9 was July 7th, 2017. I can't recall offhand if their expert
10 report for \$111,000 was produced before or after that. But
11 the fact of the matter is it doesn't matter because, again,
12 you're looking at plaintiffs' perspective on July 7th, 2017.
13 They have \$1.7 million cost for repair and nobody at that
14 time through today is saying that there aren't defects with
15 that house. And even Sunridge is saying it's going to cost
16 \$111,000 to do that. So, to say that it was grossly
17 unreasonable or in bad faith to reject a \$50,000 Offer of
18 Judgment July 7, 2017 didn't meet the fact -- doesn't meet
19 that test.

20 Fourth is whether the fees sought by the offer are
21 reasonable and a justified in amount. With respect to
22 Sunridge, they didn't go through *Brunzell* and so I think
23 they lose just on that.

24 And it's important with the *Beattie* factors that,
25 obviously the Court knows, that not just one of these is

1 determinative. That you have to look at everything.

2 So, certainly with respect to Sunridge, they don't
3 have anything to say that their fees were reasonable and
4 justified. So, there's nothing for us to oppose on that
5 and that's their burden, not ours.

6 With respect to Lands West, we didn't fight
7 *Brunzell*. I mean, knowing counsel for a long time, know
8 their firm, don't have anything bad to say. They're very
9 good lawyers. They're very respected. No issues with what
10 they -- no issues with them and how they defended their
11 client. The only thing I would point out for the Court is
12 that they spent a lot of money before filing a Motion for
13 Summary Judgment. And the Court -- you know, the Court's -
14 - you're wearing glasses, but you're not blind and you can
15 certainly see the Motion for Summary Judgment itself and
16 see the evidence that they put in the Motion for Summary
17 Judgment and there's not much there and I don't know that
18 it justified 125,000 -- maybe it was -- I think it was
19 actually 100 and -- 125,000 or whatever it was in fees to
20 get there.

21 I have nothing other to add other than, as Court
22 realizes, this case is likely going to an appeal and we
23 have a homeowner with real construction defects. Nobody is
24 saying that they don't. To put upon them to have to bond
25 around an attorneys' fees award that, quite frankly, isn't

1 supported by the NRCP or the caselaw for either, especially
2 because the rejection of the Offer of Judgment -- the
3 claims brought in good faith and the rejection of the Offer
4 of Judgment was also in good faith, would be -- you know,
5 could be catastrophic.

6 So, unless the Court has any other questions, I'll
7 sit down.

8 THE COURT: All right. No other questions. Thank
9 you.

10 MR. FINK: Thank you, Your Honor.

11 THE COURT: All right. Let's go back on reply and
12 who wants to reply first, Lands West or Sunridge?

13 MR. WALTERS: Sure. Just a couple of responses to
14 counsel's statements.

15 Your Honor asked if counsel could provide evidence
16 supporting the -- I think repairs that Lands West
17 performed.

18 THE COURT: Do you have that number?

19 MR. WALTERS: No, because their experts didn't
20 differentiate between original construction and repairs.
21 The plaintiffs' expert report is a summary of construction
22 defects. They don't differentiate between the two.

23 THE COURT: All right.

24 MR. WALTERS: They -- they've lumped Lands West in
25 with Sunridge without saying these are the things that were

1 done after completion, these are the things that were done
2 as a part of original construction.

3 THE COURT: So you're the one filing the Motion,
4 so you have the burden then to establish that the amount of
5 your offer was reasonable and the rejection was grossly
6 unreasonable. And for me to decide that, I need to know --
7 I need to have an evaluation of Lands West's involvement on
8 the project. It's separate and apart from the statute of
9 repose issue.

10 MR. WALTERS: Sure. It's --

11 THE COURT: And I don't know that I have enough
12 from you to make that determination. So, I don't know that
13 you met your burden on that issue.

14 MR. WALTERS: It's quite simple, Your Honor.

15 THE COURT: Okay.

16 MR. WALTERS: There's a \$10,000 Offer of Judgment
17 -- \$10,001 Offer of Judgment. There's an expert report
18 from our expert that was produced as part of Plaintiffs'
19 Opposition, so it's in front of the Court.

20 THE COURT: Right.

21 MR. WALTERS: And the -- Lands West's experts say
22 that Lands West wasn't involved in the original
23 construction. So, if they're saying they weren't involved
24 with the original construction and we've got a construction
25 defect claim saying that, you know, these are all -- all

1 these issues are attributed to Lands West, I think you have
2 to look at the \$10,001 offer as exceedingly reasonable
3 under the circumstances.

4 THE COURT: So are you saying the experts in
5 making that determination that Lands West was not involved,
6 they looked at all the construction documents including
7 perhaps Lands West's internal memorandum, project manuals,
8 time cards, I mean, all -- I mean, did -- are you saying
9 that your expert looked at everything to determine the
10 extent of Lands West's actual involvement?

11 MR. WALTERS: Yes. And as a matter of fact, I can
12 read for you the language that they used in their report in
13 response to every single defect alleged by plaintiff,
14 here's what they said. And this was Lands West's experts:

15 According to documents provided, reviewed, and
16 analyzed, Lands West Builders performed no construction
17 related services on this project regrading the original
18 construction of the residence through completion and
19 occupancy.

20 THE COURT: What page is that? Sorry. I want to
21 look at that.

22 MR. WALTERS: That's Exhibit A to Plaintiffs'
23 Opposition, bates stamped LANDS-BCS-a bunch of zeros, and
24 then 4.

25 THE COURT: Okay. I hope you can appreciate with

1 this much volume, I --

2 MR. WALTERS: I understand, Your Honor.

3 THE COURT: -- really needed to hear argument
4 before I could focus on a particular document.

5 MR. WALTERS: Sure. There's a lot being thrown at
6 you at once.

7 THE COURT: Yeah.

8 MR. WALTERS: I understand that.

9 THE COURT: All right. What else do you got?

10 MR. WALTERS: I mentioned that there's a -- some
11 dialogue regarding why didn't Lands West file their MSJ on
12 the alter ego issue? That was going to come if the repose
13 issue didn't go our way.

14 There is -- this notion by plaintiffs that the --

15 THE COURT: Well, you know what? Hold on.

16 Sometimes I just get a --

17 MR. WALTERS: Sure.

18 THE COURT: -- brainstorm here.

19 Was that expert report disclosed before your Offer
20 of Judgment?

21 MR. WALTERS: No. The expert report came after
22 the --

23 THE COURT: Does --

24 MR. WALTERS: -- Lands West's Offer of Judgment.

25 THE COURT: -- the expert report that says Lands

1 West, we looked at all of the documents, Lands West wasn't
2 involved?

3 MR. WALTERS: That's correct.

4 THE COURT: Okay.

5 MR. WALTERS: But --

6 THE COURT: I mean, doesn't that -- isn't that
7 kind of a factor in plaintiffs' favor then?

8 MR. WALTERS: I don't think so because plaintiff
9 was the one that was dealing with these parties here.
10 Plaintiff understood who Sunridge and Lands West were.
11 Plaintiff knew --

12 THE COURT: The predecessor in interest did at
13 least.

14 MR. WALTERS: Well, plaintiff was dealing directly
15 with Lands West. He understood that it was not Lands West,
16 the entity, that was involved in building the house.

17 THE COURT: Oh, that's -- the successor in
18 interest was involved in Lands West --

19 MR. WALTERS: Correct.

20 THE COURT: -- with respect to the repair work?

21 MR. WALTERS: Lands West's principal helped
22 Sunridge out, separate and apart from this entity. Then
23 Lands West came on afterwards and did some repairs.

24 THE COURT: Hmm. Okay.

25 MR. WALTERS: So, I just -- just to -- did you

1 have another question, Your Honor?

2 THE COURT: Nope.

3 MR. WALTERS: Okay.

4 THE COURT: I'm good.

5 MR. WALTERS: Just to conclude, I wanted to touch
6 on this notion that plaintiff had no idea that this repose
7 issue was a possibility and that it just came out of the
8 blue and had no idea. Well, in our Reply brief, we
9 responded to that. And we pointed to an e-mail that we
10 disclosed as part of our Motion for Summary Judgment. And
11 that's at page 8 of our Reply brief. And it's referenced
12 as Exhibit 6 to Mr. Springel's affidavit in the Opposition.

13 In that e-mail, he says: More importantly, now
14 that I know that the home has defects, I am forced to
15 sue sooner because I am on notice of the defects.

16 This is in December of 2012. So, to add on to
17 that, paragraph 46 of Plaintiffs' Complaint says:

18 In the event plaintiff failed to file suit within
19 the statutorily prescribed time period for any
20 allegations, duh, duh, duh, the statute of limitations
21 of repose are thus tolled.

22 So they were aware that this issue was out there.
23 It's -- I think it's kind of disingenuous to say, oh, we
24 had no idea. They knew.

25 I'll rest on that, Your Honor.

1 THE COURT: All right. Thank you.

2 MS. DALACAS: Thank you, Your Honor.

3 Just a few final thoughts. Obviously, I agree
4 with Mr. Walters's comments that the plaintiff knew that
5 this issue was possibly out there. I mean, from Sunridge's
6 perspective, we had been involved with a Chapter 40
7 mediation with plaintiff where the issue about the repose
8 was brought up as one of the issues to consider. It was
9 one of the issues to consider when we made an offer at the
10 Chapter 40 mediation that was rejected by plaintiff and
11 that was sort of what then led into the filing of the suit.

12 So, to say that that's not something that was out
13 there is not entirely true.

14 Another thing, Your Honor, Mr. --

15 THE COURT: When was that mediation?

16 MS. DALACAS: The mediation would have been in
17 July of 2016, I believe.

18 THE COURT: All right. So still about a year
19 after the Complaint and --

20 MS. DALACAS: Year before.

21 THE COURT: I'm sorry. 2016. You said 2016?

22 MS. DALACAS: Yeah. It was the Chapter 40
23 mediation.

24 THE COURT: Oh, it was two months before. Right.

25 MS. DALACAS: Yeah.

1 THE COURT: Right. I'm sorry. Yeah.

2 MS. DALACAS: Yeah. So, that was certainly --

3 THE COURT: I was thinking 2017. But, right.
4 2016.

5 MS. DALACAS: Yeah. And then the Complaint was
6 filed shortly thereafter.

7 So, that was certainly an issue that we had
8 raised. Obviously, there was no formal motion at the time
9 because I think Your Honor's exactly right. It was a
10 complicated issue. I don't know that there was any clear
11 determination either way which way this Court or any court
12 would go and it was something that we were analyzing.
13 Obviously, it was something that we were analyzing in
14 conjunction with their Cost of Repair that was then issued.
15 I mean, then, you know, -- but the Cost of Repair came back
16 at \$1.8 million. So, at that point, I don't know that
17 Sunridge had any other option other than to go that route.
18 Had it been something less, maybe we'd be talking about a
19 different situation here. But all of those things together
20 are what led Sunridge to put up the \$50,000 offer.

21 You know, just by footnote, the offer that we had
22 made at the Chapter 40 mediation was less than the \$50,000
23 Offer of Judgment that we made a year later. So, that's
24 certainly was one of the factors that we considered.

25 Another thing raised by Mr. Fink is that, you

1 know, a -- this notion that the general contractor is
2 responsible for all of the defects of the house and, so, by
3 virtue of that, our \$111,000 cost of repair is
4 unreasonable. It's important to note in this case the
5 procedural posture is that plaintiff has sued all the subs
6 directly. So, certainly there was not an expectation from
7 plaintiffs' end that Sunridge was going to fund the
8 entirety of the settlement and all they're going after was
9 me. They were going after all the subs directly
10 themselves. And, prior to our offer, had reached
11 settlements with the few of the subs that they had named as
12 direct defendants on their own.

13 THE COURT: So I'm not too impressed with that
14 argument and because the subs could have different defenses
15 than the general contractor could have. And, so, I think
16 it's reasonable, even though you think the subs are
17 individually liable, to go after the general contractor for
18 the total amount.

19 MS. DALACAS: Understood, but, in this situation,
20 I think that it's not reasonable to think that the general
21 contractor is going to fund the entire amount of the
22 settlement, certainly the defenses might be different, but
23 if you're going after the framer, for example, and the
24 roofer yourself, you know, you're looking to -- and if
25 you're trying to get a pot of money together for a

1 settlement, you don't think that I'm going to pay the whole
2 thing. Obviously the roofer and the framer and all of the
3 individual subcontractors who played a part in the
4 construction of the house are going to be contributing to
5 that.

6 So, my point in raising is that --

7 THE COURT: Well, -- go ahead.

8 MS. DALACAS: My point is simply that the fact
9 that, you know, our offer was \$111,000 is not necessarily
10 indicative of the total settlement amount that may have
11 come plaintiffs' way, at the end of the day, because there
12 would have been contributions from other folks as well. So
13 that's my point in raising that issue.

14 THE COURT: I understand. Thank you.

15 MS. DALACAS: I think that plaintiff in their
16 Reply makes a note that never -- paraphrase, but never in a
17 million years would they have thought that this motion on
18 the statute of repose would have been granted. And I think
19 that that is evidence of the unreasonableness in rejecting
20 our \$50,000 offer. Certainly, I think that the caselaw on
21 the issue was -- I mean, the revision itself was new.
22 There was really no clear way that any of us thought that
23 this was going to go. So, to make a statement that never
24 in a million years did I even, you know, think that the
25 possibility was out there, to me, demonstrates that's a

1 miscalculation. I mean, that should have been something
2 that plaintiff considered, especially because the \$50,000
3 was certainly not something that is an insignificant
4 amount.

5 In terms of timing, -- well, just let me back up
6 and say that the amounts from the date of the offer forward
7 for Sunridge total \$110,000 -- I'm sorry. \$102,625.79.
8 That amount is broken down into two components. The costs
9 is \$73,335.45. That is strictly costs related to our own
10 expert fees of which is \$52,000 or so.

11 THE COURT: I saw that.

12 MS. DALACAS: Payment of the expert -- plaintiffs'
13 expert, who we had to pay to take their deposition,
14 obtaining copies of transcripts, court filing fees, JAMS
15 fees, Special Master fees. So, if you see, the bulk of
16 that is really for something outside of my own fees and
17 costs. Ours is \$26,000 and change or so. And, again,
18 that's from July to the date of the filing of this motion,
19 which would have been November.

20 So, in that time, if you remember, obviously it
21 was the filing of the Motion for Summary Judgment,
22 preparation for that, argument for that, and preparation
23 and taking all of the expert depositions that I took the
24 lead on. So that amount, the \$28,600 figure is certainly
25 not unreasonable for the amount of work done in that time

1 frame. I think it's been laid out appropriately and, I
2 mean, if the argument is that, you know, Lands West fees
3 are way more than what ours were, I think that that
4 argument -- my argument of reasonableness in my \$26,000 is
5 -- should be addressed.

6 THE COURT: All right. Thank you. So, I don't
7 know if anybody has any additional information that they
8 think that I need to know, but given the --

9 MR. FINK: Your Honor, can I just point out one
10 thing and --

11 THE COURT: Well, --

12 MR. FINK: -- it's just something that counsel --
13 just something -- just I'd ask the Court to read --

14 THE COURT: No, that's fine.

15 MR. FINK: Just if the Court just reads -- Exhibit
16 A of their Opposition --

17 THE COURT: Yes. I was going to read that.

18 MR. FINK: Yeah, if the Court could read the
19 entire thing, not just what --

20 THE COURT: I will.

21 MR. FINK: -- counsel quoted. But that's it.

22 THE COURT: I will.

23 So, I still wanted to know the extent of Lands
24 West's involvement in the repairs. What I'm going to do is
25 request that each side provide me with a post-hearing brief

1 with any additional information that you believe I should
2 know. And can you limit it to -- just make it short with
3 kind of like bullet points. Really, very significant
4 things that you want to make sure I understand. Can you
5 keep to maybe two pages, not including exhibits or
6 attachments?

7 MR. FINK: Sure, Your Honor.

8 THE COURT: I really want it to be concise.

9 MR. WALTERS: Of course, Your Honor.

10 MR. FINK: Yes, Your Honor.

11 MR. WALTERS: Not a problem.

12 THE COURT: All right. Can you guys get that to
13 me by the end of the day Thursday this week? That would be
14 the 11th.

15 MR. WALTERS: Your Honor, do you want to lay it
16 out as we provide ours and then plaintiff opposes or just -
17 -

18 THE COURT: No. I think --

19 MR. FINK: I think just do it consecutively.

20 THE COURT: I think you all know --

21 MR. WALTERS: Okay.

22 THE COURT: -- each other's arguments here and
23 there's been briefs and Oppositions and Replies. I want
24 you guys to just submit to me by close of business
25 Thursday, two pages, not counting exhibits and attachments,

1 any additional points and authorities that you think I need
2 to consider. All right?

3 And if you think I'm wrong on that other issue
4 about a prevailing defendant can't rely on 18.010 subpart
5 (2) subpart (a), let me know that as well. And I wish I
6 had that case that I was relying on. If I find it, I can -
7 - I'll e-mail it to you guys. All right?

8 MR. WALTERS: Thank you, Your Honor.

9 MS. DALACAS: Thanks, Your Honor.

10 THE COURT: I will take this under advisement and
11 you probably won't hear anything from me until a few days
12 after I get the supplement. Thank you very much.

13 MS. DALACAS: Thank you, Your Honor.

14 MR. WALTERS: Thank you, Your Honor.

15 MR. FINK: Thank you, Your Honor.

16 THE COURT: I appreciate all your great insights
17 to help me understand this. Court is adjourned.

18

19 PROCEEDING CONCLUDED AT 11:04 A.M.

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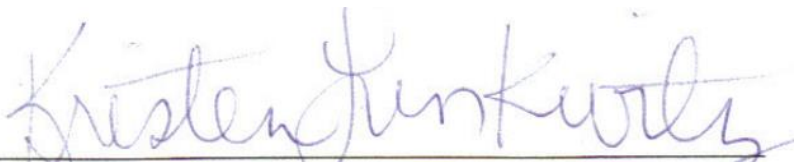
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CERTIFICATION

I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

AFFIRMATION

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.



KRISTEN LUNKWITZ
INDEPENDENT TRANSCRIBER

IN THE SUPREME COURT OF THE STATE OF NEVADA

JANETTE BYRNE, as Trustee of the UOFM
TRUST

Appellant,

vs.

SUNRIDGE BUILDERS, INC., LANDS
WEST BUILDERS, INC., et al.,

Respondents.

_____ /

Electronically Filed
Mar 13 2019 01:42 p.m.
No. 77668
Elizabeth A. Brown
Clerk of Supreme Court

Supplemental Certificate of No Transcript Request

Pursuant to this Court's March 11, 2019 Order granting leave to Appellant Janette Byrne to supplement her NRAP 9(a) transcript certificate, Appellant hereby certifies that the transcript of the hearing on Respondent Lands West's motion for attorney's fees, held on January 8, 2018, has previously been prepared and was filed in the Eighth Judicial District Court, Case No. A-16-742143-D on March 4, 2019. A copy of the transcript is attached hereto as Exhibit "1".

DATED this 13th day of March, 2019.

/s/ Robert C. Vohl, Esq.

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CERTIFICATE OF SERVICE

I certify that on this date, I electronically filed the foregoing *Supplemental Certificate of No Transcript Request*, thereby serving notice of the filing to:

Resnick & Lewis / Melissa L. Alessi

Gordon & Rees Scully Mansukhani LLP / Robert E. Schumacher

Morris Sullivan Lemkul / Will A. Lemkul

Pitegoff Law Office / Jeffrey I. Pitegoff

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Brown, Bonn & Friedman, LLP / Kevin A. Brown and Aaron Young

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Keating Law Group / Bryce B. Buckwalter

Law Offices of David R. Johnson, PLLC / David R. Johnson

Springel & Fink, LLP / Wendy L. Walker and Adam Springel

DATED this 13th day of March, 2019.

/s/ Robert C. Vohl

Exhibit 1