IN THE SUPREME COURT OF THE STATE OF NEVADA

ARTEMIS EXPLORATION COMPANY, a Nevada corporation,

Appellant,

vs.

RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION,

Respondent.

Case No. 77721
District Court Case No. CV-C-12-175

APPEAL

From the Fourth Judicial District Court, Department 2
The Honorable Alvin R. Kacin, District Court Judge
District Court Case No. CV-C-12-175

RESPONDENT'S ANSWERING BRIEF

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I. NRAP 26.1 DISCLOSURE

Pursuant to NRAP 26.1, the undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed:

Ruby Lake Estates Homeowner's Association
Ruby Lakes Estates Landowners Association

DATED this 21st day of June 2019.

/s/ Karen M. Ayarbe, Esq.
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II. ISSUES PRESENTED

Whether the fees sought and awarded are reasonable pursuant to *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 455 P.2d 31 (1969) are not at issue in the instant appeal. Appellant Artemis Exploration Company ("Artemis") merely challenges the district court's authority and discretion to award fees and costs.

1. Can the district court properly award attorney's fees ("fees") and costs to Respondent Ruby Lake Estates Homeowner's Association ("RLEHOA") as the prevailing party[1] pursuant to NRS 18.020, NRS 18.050, and NRS 116.4117 where Artemis' claims before the Office of the Ombudsman for Common-Interest Communities, State of Nevada Department of Business and Industry Real Estate Division ("Ombudsman's Office"), the Arbitrator Judge Leonard Gang, the district court, and the Nevada Supreme Court concerned the interpretation of RLEHOA's Declaration of Covenants, Conditions, and Restrictions ("CC&Rs"), the

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[1] RLEHOA is a prevailing party by virtue of the district court's February 12, 2013 *Order Denying Plaintiff's Motion for Summary Judgment* and February 14, 2013 *Order Granting Defendant's Motion for Summary Judgment* (collectively "*Summary Judgment Orders*") granting summary judgment in favor of RLEHOA on Artemis' and Harold and Mary Wyatt's ("the Wyatts") declaratory relief claim. The Wyatts are not parties to the instant appeal. Artemis does not dispute that RLEHOA is a prevailing party and, therefore, that issue is also not before this Court.

applicability of Chapter 116 of the Nevada Revised Statutes ("Chapter 116"), the levying and collection of assessments by RLEHOA's Board of Directors ("the Board") pursuant to that chapter, and Artemis' failure and refusal to pay those assessments?

2. Can the district court properly award fees and costs to RLEHOA pursuant to NRS 116.3115(6) where the evidence supports a finding that RLEHOA incurred common expenses in the form of fees and costs as a direct result of Artemis' misconduct?

3. Can the district court properly award fees and costs to RLEHOA as the prevailing party pursuant to the CC&Rs where it clearly provides a contractual basis for doing so?

4. Can the district court properly award fees and costs to RLEHOA pursuant to NRS 18.010(2)(b) where the evidence supports a finding that Artemis initiated the action without a reasonable basis?

III. STATEMENT OF THE CASE

The instant appeal originates from the district court's post-judgment November 1, 2018 *Order Awarding Attorney's Fees and Costs* ("*Fee Order*"). Artemis commenced an action asserting claims for damages, fraud, and a declaratory judgment that RLEHOA is not a common-interest community subject to Chapter 116 after (1) the Ombudsman Office issued an opinion declining to declare that RLEHOA is invalid ("*Ombudsman Decision*") and (2) a *Decision and Award* by Judge Gang ("*Arbitration Decision*") finding that RLEHOA is a common-interest community subject to Chapter 116 and that it was lawfully formed.[2]

The parties submitted respective motions for summary judgment. The district court denied Artemis' motion and granted RLEHOA's motion. Artemis and the Wyatts appealed the *Summary Judgment Orders*, and that appeal is currently pending before the Nevada Supreme Court as Case No. 75323. Because Artemis subsequently abandoned its claims for damages and fraud, at issue in Case No. 75323 is only Artemis' claim for declaratory relief.

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[2] The Wyatts subsequently joined as plaintiffs and agreed to be bound by the *Summary Judgment Orders.* Volume 1 Appellant's Appendix at 240 (hereinafter "__AA__").

RLEHOA timely moved for its fees and costs seeking $108,097.00 in fees and $7,591.14 in costs, and the district court awarded RLEHOA $85,097.00 in fees and $2,872.47 in costs against Artemis. The district court did ***not*** award RLEHOA $23,000.00 in fees and $4,718.67 in costs. The instant appeal followed.

IV. SUMMARY OF ARGUMENTS

1. Because Artemis' claims before the Ombudsman's Office, Judge Gang, the district court, and the Nevada Supreme Court concerned the interpretation of RLEHOA's CC&Rs, the applicability of Chapter 116, the levying and collection of assessments by the Board pursuant to that chapter, and Artemis' failure and refusal to pay those assessments, the district court properly awarded fees and costs pursuant to NRS 116.4117, NRS 18.020, and NRS 18.050.

2. Where the evidence supports a finding that RLEHOA incurred common expenses in the form of fees and costs as a direct result of Artemis' misconduct, this Court can likewise affirm the district court's *Fee Order* based upon NRS 116.3115(6).

3. Where the CC&Rs clearly provide a contractual basis for an award of fees and costs, this Court can alternatively affirm the district court's *Fee Order* based upon the CC&Rs.

4. Where the evidence supports a finding that Artemis initiated the action without a reasonable basis, this Court can alternatively affirm the district court's *Fee Order* based upon NRS 18.010 (2)(b).

V. STATEMENT OF FACTS

A. Background Facts.

1. Artemis is a Nevada corporation, whose President, Secretary, Treasurer, and sole director was Elizabeth E. Essington. Volume 1 Respondent's Appendix at 44-45 (hereinafter "__RA__"). Mrs. Essington's husband was George "Mel" Essington, who had full authority to act on behalf of Artemis. 1RA85, 94-95

2. Stephen and Mavis Wright ("the Wrights") recorded the official Plat Map for Ruby Lake Estates ("RLE") in Elko County September 15, 1989. 2RA336-340

3. With respect to the roadways, Sheet 1 of 3 of the Plat Map unambiguously states:

> At a regularly held meeting of the Board of Commissioners of Elko County, State of Nevada, held on the 5th day of July, 1989, this Plat was approved as a Final Plat pursuant to NRS 278.328. ***The Board does hereby reject on behalf of the public all streets or roadways for maintenance purposes*** and does hereby accept all streets and easements therein offered for utility, draining and access purposes only as dedicated for public use.

3AA176-178. (***emphasis added.***)

4. Elko County has never accepted the roads within RLE for maintenance. *Id.*; 1RA59-60, 64-65, 107-108, 153-154, 173, 175; 2RA210, 221, 250

5. Notwithstanding this fact, Elko County requires the roadways and adjoining ditches and culverts be maintained for health and safety reasons. 1RA59-60, 64-65, 107-108, 153-154, 173, 175; 2RA210, 221, 250, 402

6. Pursuant to Elko County Code § 12-5-1,[3] Elko County is authorized to use "any appropriate means" to maintain the roads, such as those in RLE. Elko County Code § 12-5-1; *see also* 1RA59-60 The "appropriate means" employed by Elko County is the requirement that roads within subdivisions, such as RLE, be maintained either through a road maintenance agreement and government improvement district ("GID") or by a common-interest community association. 1RA59-60, 64-65

7. Maintenance of roadways by Elko County through a road maintenance agreement or GID, and having those costs collected through real property taxes, is much more expensive to homeowners than maintaining the roads through a common-interest community association. 1RA59-60

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[3] This code has since been repealed, but it was relevant and pertinent during the applicable time-period.

8. The Ruby Lake Estates Fire Risk and Hazard Assessment Report prepared as part of the Fire Plan for Elko County shows RLE to be in the "High Hazard" category for fire risk. 2RA416-425. This report calls for fuels reduction treatment on a community basis and calls for the formation "of a local community based organization to provide leadership and be responsible for community wide fuels reduction and community fire safety." 2RA423

9. On October 25, 1989, the Wrights recorded the CC&Rs for RLE in the Office of the Elko County Recorder in Book 703, Page 287. 3AA179-184.

10. Artemis acquired Lot G-6 within RLE June 21, 1994 and Lot H-2 March 9, 2010. 3AA189-190.

11. On December 12, 2001, the Wyatts purchased Lot F-5 within RLE.

12. The lots purchased by Artemis and the Wyatts were created by the Plat Map and are subject to the CC&Rs. 3AA179-184.

13. Mr. and Mrs. Essingtons' ("the Essingtons") personal residence is located on Lot G-6 (the lot Artemis purchased). 1RA110.

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14. The owners of the residential lots within RLE have the collective responsibility to maintain the roads and other common elements of the community. 1RA58-62, 107-108

15. Consistent with the Wrights' expressed "intent that a homeowners association would be created at some future point in time to assume the obligation of road and asset maintenance after all the lots were sold[,]" the Wrights formed Ruby Lakes Estates Landowners Association after the last lot sold in 1997, which thereafter functioned as a common-interest community adopting budgets, collecting assessments, and maintaining roadways, perimeter fences, culverts, cattle guards, entrance sign, and providing weed abatement. 2RA402-405

16. The Architectural Review Committee ("ARC") was created pursuant to the CC&Rs. *Id.* The ARC served as the executive body of an association of lot owners established by Stephen Wright and referred to as Ruby Lakes Estates Landowners Association. *Id.*

17. After the Wrights sold all the lots in RLE, ARC members acted as the governing body of the informal Ruby Lakes Estates Landowners Association. *Id.*

18. The ARC, through Ruby Lakes Estates Landowners Association, regularly assessed lot owners within RLE for assessments. *Id.*

The assessments were used to maintain the roadways and perform weed and fire safety abatement within the community and in the adjoining ditches. *Id.*

19. The Essingtons recognized this collective responsibility well before the formation of RLEHOA in 2006 as evidenced by letters Mr. Essington wrote to their fellow homeowners in August 2005 for Lee Perks' review. Mr. Essington's letter emphasized the need for an association and the obligation of the collective homeowners to maintain the roads within RLE. 1RA109, 120-123

20. The Essingtons also prepared draft articles of incorporation for the proposed association. 1RA109, 143.

21. Mr. Perks filed the Articles of Association for RLEHOA January 16, 2006. 1RA67-171.

22. From 1994 to 2011, the Essingtons implicitly and expressly represented that they owned Lot G-6. Specifically, they wrote checks for RLEHOA assessments from their accounts. 1RA101-104. In August of 2006, Mrs. Essington sent a letter to Mr. Perks enclosing "our personal check in the amount of $150. This amount will cover our Ruby Lakes Homeowners dues for 2006." 2RA205. Mr. Essington signed into member meetings as the owner of Lot G-6 and represented to members of RLEHOA that he had the capacity and authority to act on behalf of Artemis and/or

Mrs. Essington. 1RA128, 132. Mr. Essington sent numerous communications to ARC members, the Board, and members of RLEHOA representing he was an owner of Lot G-6. 1RA120-123, 199, 201-203; 2RA205, 219, 221-223, 225-228.

23. Mr. Essington served as a member of the Board from 2007 until his resignation January 2011. 2RA318-319. Following his election to the Board, Mr. Essington signed a Declaration of Certification as a Common-Interest Community Board Member as required by NRS 116.31034(9). 2RA207.

24. As a Board member, Mr. Essington seconded a motion to approve the Bylaws of RLEHOA. 1RA126

25. These Bylaws, as approved by Mr. Essington, state: "An assessment fee will be charged yearly for maintenance, roads, fire protection, and other expenditures as the board allows or required by Elko County." 1RA190.

26. In 2006, RLEHOA sent a survey questionnaire to homeowners regarding the maintenance of the roadways, ditches, culverts, and other real property improvements that RLEHOA is required to maintain. 2RA329-331. The Essingtons completed one as "Artemis Exploration-Mel/Beth

Essington" and responded that they wanted RLEHOA to maintain the roadways. *Id.*

27. In this same survey, the Essingtons, as "Artemis Exploration-Mel/Beth Essington", indicated that they were ***not*** in favor of having Elko County provide road maintenance and that they were in favor of having RLEHOA provide road maintenance instead. *Id.*

28. As a member, Mr. Essington voted to levy assessments against all members for roadway maintenance, weed abatement, and the repair of signs and culverts. 1RA104-151; 2RA209-211, 219, 221-222, 249-260

29. Both before and during his tenure on the Board, Mr. Essington wrote letters to members of RLEHOA confirming the existence and necessity of RLEHOA, the necessity of enforcing the CC&Rs, the applicability of Chapter 116 to the RLE common-interest community and to RLEHOA, and the ability and responsibility of RLEHOA to levy and collect assessments for maintenance of the common elements. 1RA120-123, 199, 201-203; 2RA205, 219, 221-223, 225-228

30. In addition to the letters to homeowners, Mr. Essington wrote a letter addressed to the President of the Board January 14, 2007 emphasizing RLEHOA's obligation to comply with Chapter 116. 1RA201-203

31. Mr. Essington wrote to homeowners on October 13, 2008 emphasizing the fact that RLEHOA is a common-interest community responsible for maintaining common elements, including the roadways. 2RA221-223. Mr. Essington further wrote that because RLEHOA's budget did not have sufficient funds to repair the roads, it was necessary for RLEHOA to levy a temporary assessment. *Id.* Mrs. Essington thereafter paid the increased assessments as levied by the Board and as urged by her husband. 1RA101-104

32. In July 2009, the Board, of which Mr. Essington was a member, caused a Reserve Study to be prepared by an independent and licensed community association consultant as required by NRS 116.31153. 2RA230-247. The Reserve Study identified the common elements of RLEHOA as cattle guards, dirt road maintenance, fencing, gates, entrance signs, and street signs. *Id.* Mr. Essington met with and physically traveled to all common areas with the consultant. 1RA113-114

33. At the August 8, 2009 RLEHOA meeting with the Board and homeowners where the Reserve Study was discussed in detail, Mr. Essington voted to approve it. *Id.*; 2RA249-260 Mr. Essington also voted to levy assessments in accordance with the Reserve Study and the 2010 budget, which he also approved. 1RA113-114; 2RA249-260

34. Since RLEHOA's formation in 2006, budgets were adopted by members of RLEHOA and assessments have been levied for road maintenance, fire protection, and maintenance of RLEHOA's real property, including the gates, sign, culverts, cattle guards, and perimeter fencing. 1RA67-70, 134-151; 2RA209-211, 219, 221-223, 249-260 Mr. Essington approved these budgets and assessments to pay for maintenance of these community improvements at each annual meeting he attended from 2006 through and including 2010. 1RA125-132, 134-151; 2RA209-211, 219, 221-223, 249-260. The Essingtons paid these assessments without objection. 1RA101-104.

35. In 2009, a dispute arose between Mrs. Essington and ARC regarding the construction within RLE of a large building to house equipment. 2RA264, 269-270. On October 26, 2009, Mrs. Essington wrote a letter to the Board expressing her contempt for this structure. *Id.* The Board and ARC took the position that the structure was permitted. 2RA275-278.

36. The Essingtons disagreed with the Board and ARC, and thereafter commenced their campaign to have RLEHOA declared invalid because it no longer suited their needs. 2RA324-327, 333-334; 1AA1-20,

24-49, 121-145, 167-191. Although the Essingtons have since passed, their campaign continues through Artemis and the Wyatts.

37. Invoices generated in the ordinary course for RLEHOA were sent to Artemis in care of the Essingtons, but Artemis ceased paying its assessments, all of which Mr. Essington had approved as a Board member. 2RA302-316. RLEHOA was forced to retain a collection agency to try and collect Artemis' delinquent assessments. *Id.*

B. Procedural Background.

1. Artemis initially filed an Intervention Affidavit with the Ombudsman's Office December 18, 2009. 2RA333-334. On July 1, 2010, the Ombudsman's Office completed its case file review and issued its opinion: ". . . [I]t is our view that this Association is required to comply with the laws pertaining to homeowners associations, specifically, NRS 116 and related laws and regulations." *Id.*

2. On February 15, 2011, Artemis filed suit against RLEHOA in district court. 1AA1-20. The parties stipulated to dismiss this suit and agreed to "submit the matter to non-binding arbitration pursuant to NRS 38.310, and the parties' reserve[d] their rights to seek attorney's fees and costs arising out of this proceeding at arbitration." 3AA9.

3. Artemis then commenced with arbitration proceedings pursuant to NRS Chapter 38 on May 6, 2011. 2AA31-34.

4. The Arbitrator concluded that RLEHOA "is a Common-Interest Community and is subject to NRS Chapter 116. It is lawfully formed and is a validly existing non-profit common-interest association." 2AA33.

5. Undeterred by both the *Ombudsman Decision* and the *Arbitration Decision*, Artemis filed a complaint for trial de novo. 1AA24-49. The *Complaint* asserted causes of action for damages, fraud, and declaratory relief alleging that RLEHOA lacks authority to impose assessments, fees, or penalties because it is purportedly not a valid common interest community subject to Chapter 116. *Id.*; 1AA121-145, 167-191.

6. Artemis subsequently moved for partial summary judgment on its claim for a declaration that RLEHOA is not a valid association and, therefore, lacks the authority to impose assessments, fees, or penalties. 1AA81-91. RLEHOA also moved for summary judgment on this claim and Artemis' claims for fraud and damages.[4] 1RA1-203; 2RA204-425.

7. On February 12, 2013 and February 14, 2013, the district court entered the *Summary Judgment Orders* denying Artemis' motion for partial

[4] Artemis eventually abandoned its claims for fraud and damages, leaving only the declaratory relief claim. 2AA17.

summary judgment and granting RLEHOA's motion for summary judgment on Artemis' claim for declaratory relief. 1AA81-102.

8. On March 1, 2013, RLEHOA moved for an order confirming the arbitrator's decision and for an award of fees and costs. 3AA2. In this motion, RLEHOA requested fees and costs incurred from the arbitration totaling $26,810.67 ($22,092.00 in fees and $4,718.67 in costs) and fees and costs incurred from the district court action totaling $55,440.14 ($53,904.00 in fees and $1,536.14 in costs), for a total in fees and costs in the amount of $82,250.81. 3AA13-55.

9. On March 1, 2013, RLEHOA filed its *Memorandum of Costs* for $1,475.90. 3AA28-30. On March 29, 2013, RLEHOA filed a *Supplemental Memorandum of Costs* for $60.24. 3AA40-41. Artemis ***never*** moved to retax costs under NRS 18.110(4). 3AA6.

10. On May 15, 2013, the district court granted RLEHOA's motion. 3AA2.

11. On June 3, 2013, Artemis appealed the district court's May 15, 2013 Order to the Nevada Supreme Court. 3AA2. On June 6, 2013, the district court entered a *Judgment on an Arbitration Award and Award of Attorney's Fees and Costs*, awarding fees and costs to RLEHOA for $82,250.81. *Id.*

12. On October 7, 2013, the Nevada Supreme Court issued an *Order to Show Cause* as to why Artemis' appeal should not be dismissed for lack of jurisdiction because the record showed that while summary judgment resolved Artemis' claims, it appeared that RLEHOA's counterclaims remained unresolved. 1AA103-105.

13. On December 30, 2013, the Nevada Supreme Court dismissed Artemis' June 3, 2013 appeal. 3AA2.

14. Following the *Order to Show Cause* and dismissal of the appeal, the district court ultimately set aside the *Judgment on Arbitration Award and Award of Attorney's Fees and Costs*. 1AA106-112.

15. Litigation continued, and the district court subsequently ordered the joinder of all property owners within RLEHOA. 1AA113-120. All property owners were joined and defaulted except for Artemis and the Wyatts. 3AA2.

16. Before joinder was ordered, the parties had previously submitted their respective motions for summary judgment. As indicated hereinabove, the district court denied Artemis' motion and granted RLEHOA's motion. *See Summary Judgment Orders*. 1AA81-102.

17. On February 26, 2018, pursuant to the Stipulation and Order for Dismissal of Counterclaims and Cross-claim without Prejudice, Withdrawal

of Pending Motions, and for Final Judgment ("Stipulation"), the parties stipulated that "all claims have been resolved as to all parties which have appeared in this matter, . . . and request that the Court enter Final Judgment as to Artemis, RLEHOA, and the Wyatts, and as to the defaulted defendants pursuant to NRCP 54(b). . ." By virtue of this Stipulation, the Wyatts were bound by the district court's prior Summary Judgment Orders. 1AA240.

18. The district court entered the *Final Judgment* February 26, 2018 from which Artemis and the Wyatts appealed. 2AA1-14. That appeal is currently pending before the Nevada Supreme Court as Case No. 75323.

19. In their *Case Appeal Statement* for Case No. 75323, Artemis and the Wyatts stated: "The central issues in this case are whether Ruby Lake Estates subdivision is a common-interest community under NRS 116.021, and whether [RLEHOA] has authority to levy mandatory assessments against lot owners." 2RA428-429

20. On March 20, 2018, RLEHOA filed its *Motion for Attorney's Fees and Costs* ("*Motion for Fees and Costs*") requesting an award of its fees and costs in the amount of $115,688.14 ($82,250.81 for fees and costs from both the arbitration and the district court proceedings and $33,437.33 in fees and costs incurred since June, 2013). 2AA15-110.

21. On March 20, 2018, RLEHOA filed its third *Memorandum of Costs*. 3AA80. Similar to the first two *Memorandum of Costs*, Artemis ***never*** moved to retax costs pursuant to NRS 18.110(4). 3AA6.

22. In its *Motion for Fees and Costs* and consistent with the *Stipulation*, RLEHOA made it clear that it was "not seeking fees or costs specific to the prosecution of its now dismissed Counterclaims and Cross-Claim" and that it sought only fees and costs related to Artemis' original declaratory relief claim. 2AA18. RLEHOA further made it clear that "[f]ees and costs incurred by the Association for briefings on the cross motions for summary judgment on the Counterclaims and Crossclaims are not included in this request." *Id.*

23. In addition to not including fees and costs associated with its counterclaims and cross-claim, RLEHOA also made it clear that "not all of the Association's time and costs for travel to Elko for various hearings, and/or preparation for and attendance at those hearings, have been included." *Id.*

24. On November 1, 2018, the district court issued its *Fee Order*. 3AA1-82. *Judgment for Attorney's Fees and Costs in Favor of Ruby Lake Estates Homeowner's Association* was filed December 3, 2018 and the instant appeal followed. 3AA167-168, 173-175.

25. Although RLEHOA requested $108,097.00 in attorney's fees and $7,591.14 in costs for a total request of $115,688.14, the district court did not award the requested amount of $115,688.14. 3AA1-82.

26. The district court awarded RLEHOA only $85,097.00 in fees and $2,872.47 in costs. 3AA6. The district court did not award $23,000.00 in requested fees and $4,718.67 in requested costs. *Id.* The district court further held that "fairness dictates that [Artemis], rather than the Wyatts, should be responsible for these fees pursuant to NRS 116.4117(3) [and costs because Artemis] has been the driving force behind the litigation resulting in the fees at issue, not the Wyatts." 3AA5. Artemis, therefore, is the only appellant for the purposes of the instant appeal.

VI. ARGUMENT

A. Standard of Review.

Under the "American Rule," litigants generally must pay their own attorneys' fees in the absence of a rule, statute, or contract authorizing such an award. *Alyeska Pipeline Co. v. Wilderness Soc'y,* 421 U.S. 240, 95 S. Ct. 1612 (1975). "The award of attorney's fees resides within the discretion of the court. Moreover, in the absence of a manifest abuse of discretion, the court's decision on the issue will not be overturned." *County of Clark v. Blanchard Constr. Co.*, 98 Nev. 488, 492, 653 P.2d 1217, 1220 (1982); *see*

also MB Am., Inc. v. Alaska Pac. Leasing, __ Nev. __, 367 P.3d 1286, 1292 (2016); *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 956 P.2d 1382 (1998); *Davidsohn v. Steffens*, 112 Nev. 136, 911 P.2d 855 (1996); *University of Nev. v. Tarkanian*, 110 Nev. 581, 590, 879 P.2d 1180, 1187 (1994).

A manifest abuse of discretion is "one founded on prejudice or preference rather than on reason" or "contrary to the evidence or established rules of laws." *State of Eighth Jud. Dist. Ct.*, 127 Nev. 927, 932, 267 P.3d 777, 780 (2011) (internal quotations and citations omitted). In the present case, there are three separate statutory provisions and a contract upon which this Court can affirm the district court's award of fees and costs. Artemis has not and cannot establish that the district court manifestly abused its discretion in awarding RLEHOA fees and costs.

The record does not support a finding that the district court based its decision on clearly erroneous facts or disregarded controlling law. Nor does the record establish that the district court's award of fees and costs was predicated on prejudice or preference rather than on reason. Even if the district court's reasoning may be erroneous, "[t]his court [can still] affirm a district court's order if the district court reached the correct result, even if for the wrong reason." *Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010).

B. The District Court Did Not Award RLEHOA Fees and Costs Associated with Its Counterclaims and Cross-claim.

Artemis incorrectly contends that the district court awarded RLEHOA fees and costs associated with its counterclaims and cross-claim. Artemis, however, failed to specify the billing entries showing that RLEHOA requested fees and costs associated with its counterclaims and cross-claim. *Opening Brief* at 8-10.

The citations provided by Artemis to support this argument are references to the *Stipulation* and a sentence from the district court's *Fee Order*. *Id.* There are no citations to specific billing entries. *Id.*

NRAP 28(e)(1) requires that "every assertion in briefs regarding matters in the record shall be supported by a reference to the page and volume number, if any, of the appendix where the matter relied upon is to be found." NRAP 28(e) (1); *see also Lee v. Savalli Estates Homeowners Assoc.*, 2014 Nev. Unpub. LEXIS 1380 (Sept. 16, 2014) (in appeal from post-judgment orders awarding homeowner's association fees and costs, court declined to address homeowners' contention that fees awarded duplicative where homeowners failed to specify what billing entries were duplicative in opposing fees request).

In its *Motion for Fees and Costs* and consistent with the *Stipulation*, RLEHOA made it clear that it was "not seeking fees or costs specific to the prosecution of its now dismissed Counterclaims and Cross-Claim" and that it sought only fees and costs related to Artemis' *Complaint*. 2AA18. RLEHOA further made it clear that "[f]ees and costs incurred by the Association for briefings on the cross motions for summary judgment on the Counterclaims and Crossclaims are not included in this request." *Id.*

While it did not have to do so, RLEHOA did not seek an award for all of its travel time and costs and the time its counsel spent preparing for various hearings: "[N]ot all of the Association's time and costs for travel to Elko for various hearings, and/or preparation for and attendance at those hearings, have been included." *Id.* Artemis conveniently ignored this unrefuted fact below and on appeal.

The billing entries RLEHOA submitted to the district court are consistent with these representations. 2AA84-88, 102-103, 110. These billing entries show significant reductions in fees and costs sought by RLEHOA. *Id.*

The elimination of these fees and costs from RLEHOA's request is unrefuted. Artemis presented no evidence below and on appeal that the elimination of the fees and costs associated with RLEHOA's counterclaims

and cross-claim and a reduction of the time its counsel spent preparing for and attending various hearings were not established by RLEHOA. 2AA111-181; *Opening Brief* at 8-10.

Later in its *Opening Brief*, it appears that Artemis cites to four pages of the invoices provided by RLEHOA's counsel. *Opening Brief* at 15 (citing 3AA18, 72-74). It is unclear which specific billing entries are at issue and how Artemis arrived at the $5,112.00 amount for fees related to the dismissed counterclaims and cross-claim. *Id.*

In any event, in reviewing the specific pages upon which Artemis relies, these pages do not support Artemis' contention. 3AA18 references the drafting and finalization of the *Answer to Complaint and Counterclaim.* RLEHOA never agreed to omit from its request fees related to Artemis' *Complaint.* 1AA236-244.

3AA72-74 refer to work related to the *Stipulation.* The *Stipulation* contains ten (10) paragraphs. 1AA236-240. Only three paragraphs (¶¶ 1, 3, and 4) exclusively address the dismissed counterclaims and cross-claim. *Id.* The remaining paragraphs address a number of other matters for which RELHOA is entitled to seek an award of fees (i.e. Artemis' *Motion for Reconsideration of Orders Denying Plaintiff's and Granting Defendant's Motions for Summary Judgment*, the appeal of the *Summary Judgment*

Orders, the *Joinder Order*, the inclusion of the Wyatts as parties and how they agreed to be bound by the *Summary Judgment Orders*, the entry of a final judgment, etc.). *Id.*

Because RLEHOA did not seek fees and costs associated with the dismissed counterclaims and cross-claim, 2AA84-88, 102-103, 110, the district court could not have awarded fees and costs that were never requested by RLEHOA. Even if the district court did err in ruling that RLEHOA was entitled to an award of fees and costs associated with its counterclaims and cross-claim, there were no such fees and costs to award. *Id.*

While the district court did make the statement that RLEHOA's "countersuit for declaration of validity constitutes a civil action for 'appropriate relief' that is obviously necessary for the collection of assessments authorized by governing documents [,]" this sentence should not be taken out of context. "[T]he language of an opinion must be construed with reference to the facts presented by the case; the positive authority of a decision is coextensive only with such facts." *PLCM Group v. Drexler*, 997 P.2d 511, 519 (Cal. 2000) (appeal involving award of attorney's fees).

The *Complaint* asserted causes of action for declaratory relief, damages, and fraud alleging that RLEHOA lacks authority to impose

assessments, fees, or penalties because it is purportedly not a valid common interest community subject to Chapter 116. 1AA27-28, 36-42, 125-126, 171-172. The *Complaint, First Amended Complaint* ("*FAC*"), and *Second Amended Complaint* ("*SAC*") all allege the following:

> 23. Plaintiff seeks a declaratory judgment to establish that the Ruby Lake Estates subdivision is not a common-interest community as defined by Chapter 116 of the Nevada Revised Statutes.
> . . .
> 25. Ruby Lake Estates subdivision does not have any common elements nor are any common elements described in the [CC&Rs] of Ruby Lake Estates subdivision.
> 26. The [CC&Rs] does not obligate the property owners of Ruby Lake Estates subdivision "to pay for a share of real estate taxes, insurance premiums, maintenance or improvement of, or services or other expenses related to, common elements, other units or other real estate." NRS 116.021(1).
> 27. Plaintiff seeks a declaratory judgment to establish that Defendant . . . is not authorized under the [CC&Rs] to collect dues or assessments, or otherwise compel property owners within the Ruby Lake Estates to participate in the activities of the so-called [RLEHA].

Id.

Although Artemis ultimately abandoned its claims for damages and fraud, Artemis originally alleged that RLEHOA engaged in intentional misconduct by representing itself as a validly formed community association "with authority to compel [Artemis] to pay homeowners fees under threat of liens, collections, and legal prosecution" and that RLEHOA knew that the "[CC&Rs] did not authorize [RLEHOA] to compel the payment of dues or

assessments, and that Ruby Lake Estates subdivision is not authorized by law to compel the payment of dues or assessments." 1AA1-20, 24-49. Significantly, Artemis attached as exhibits to the *Complaint, FAC,* and *SAC*, the CC&Rs, RLEHOA's Invoice to Artemis for an annual assessment, and a letter to Artemis from a collections agency for the delinquent assessments. 1AA8-13, 18, 20, 37-42, 47, 49, 133-138, 143, 145, 179-184, 189, 191.

Consistent with the allegations in the *Complaint, FAC,* and *SAC* are Artemis' representations in the *Case Appeal Statement* that "[t]he central issues in this case are whether Ruby Lake Estates subdivision is a common-interest community under NRS 116.021, whether [RLEHOA] is a valid unit-owners' association pursuant to NRS 116.3010, and whether RLEHOA has authority to levy mandatory assessments against lot owners." 2RA434-435 Artemis' and the Wyatts' *Case Appeal Statement* for Case No. 75323 contains the same representations. 2RA428-429

According to Artemis' own allegations and representations, the entirety of the declaratory relief, damages, and fraud claims concerns the interpretation and enforcement of the CC&Rs, the applicability of Chapter 116, the levying and collection of assessments by the Board pursuant to that chapter, and Artemis' failure and refusal to pay those assessments. The district court concluded as such in its *Fee Order*: "While the parties are

fundamentally in a dispute over the legality of the Defendant's existence, they agree Plaintiff stopped paying assessments as required by governing documents when its owner took the position that the association was not valid." 3AA3. Artemis' unsuccessful declaratory relief claim and abandoned fraud and damages claims involving assertions that the CC&Rs do not impose assessment obligations on property owners unequivocally brought their lawsuit against RLEHOA squarely within NRS 116.4117(1) and (2). *See generally* NRS 116.4117(1) and NRS 116.4117(2).

Simply stated, nothing in the record supports the contention that the district court erred and abused its discretion in awarding fees and costs that were never requested by RLEHOA. Artemis failed to supply this Court with references to specific billing entries showing that RLEHOA did in fact request and was awarded fees and costs associated with its counterclaims and cross-claim. The one isolated sentence from the district court's *Fee Order* should not be taken out of context and must be viewed with reference to facts as established by the record.

Even assuming for argument sake that this Court agrees with Artemis' misplaced contention that RLEHOA requested and was granted fees associated with the dismissed counterclaims and cross-claim totaling $5,112.00, rather than reverse the district court's grant of fees and costs in its

entirety, this Court can modify the award by deducting $5,112.00 in fees from the total award.

Before this Court does so, however, the fact of matter is that Artemis has yet to demonstrate how it arrived at the $5,112.00 amount and how this amount is related to the dismissed counterclaims and cross-claim. This is particularly so where RLEHOA has demonstrated below and on appeal that it did not seek fees associated with the counterclaims and cross-claim and also substantially reduced the fees it sought with respect to traveling to Elko and preparing for various hearings.

C. The District Court Properly Awarded Fees and Costs to RLEHOA as the Prevailing Party Pursuant to NRS 116.4117.

Artemis incorrectly contends that the district court was prohibited from awarding RLEHOA's fees and costs pursuant to NRS 116.4117 because its sole claim was brought pursuant to NRS 30.010 *et seq.* This argument is both factually incorrect and legally flawed.

As discussed above, Artemis initially asserted three claims: (1) declaratory relief; (2) damages; and (3) fraud. 1AA1-20, 24-49, 121-145, 167-191. While Artemis subsequently abandoned its claims for fraud and damages, it is undisputed that there was initially more than one claim in the case. *Id.* Artemis' contention that there was "only one claim in the case – Artemis' Declaratory Judgment Claim - . . . brought pursuant to NRS 30.010

et seq" is a misstatement of fact not supported by the *Complaint* and RLEHOA's briefing in its motion for summary judgment. *Opening Brief* at 10; 1AA1-20, 24-49; 1RA1-37; 2RA372-399.

It should further be noted that none of Artemis' complaints cite to NRS 30.010 *et seq.* 1AA1-20, 24-49, 121-145, 167-191. Artemis' own allegations and representations specifically reference Chapter 116, NRS 116.021 and/or NRS 116.3010. 1AA1-20, 24-49, 121-145, 167-191; 2RA428-429, 434-435. There can be no doubt, therefore, that the entirety of Artemis' claims for declaratory relief, damages, and fraud concerns the interpretation and enforcement of the CC&Rs, the applicability of Chapter 116, the levying and collection of assessments by the Board pursuant to that chapter, and Artemis' failure and refusal to pay those assessments. 1AA1-20, 24-49, 121-145, 167-191; 2RA428-429, 434-435.

NRS 116.4117(2) and NRS 116.4117(6) provide that in "***a civil action for damages or other appropriate relief*** for a failure or refusal to comply with any provisions of this chapter or the governing documents of an association" the district court "***may award reasonable attorney's fees to the prevailing party***." NRS 116.4117(2) and NRS 116.4117(6) (***emphasis***

added).[5] It is undisputed that Artemis' complaints to the Ombudsman Office, Judge Gang, the district court, and now the Nevada Supreme Court all consistently concern the interpretation, application and enforcement of the CC&Rs, the applicability of Chapter 116 (i.e. Artemis' assertions that RLEHOA "fail[ed] or refus[ed] to comply with [NRS 116.021 and NRS 116.3010] of this chapter"), the levying and collection of assessments by the Board pursuant to Chapter 116, and Artemis' failure and refusal to pay those assessments. 1AA1-20, 24-49, 121-145, 167-191; 2RA428-429, 434-435.

This is further evidenced and supported by the fact that Artemis' *Complaint, FAC,* and *SAC,* as well as the *Complaint* from the 2011 dismissed lawsuit, included as exhibits the CC&Rs, RLEHOA's Invoice to Artemis for an Annual Assessment, and a letter from a collections agency for Artemis' delinquent assessments. 1AA8-13, 18, 20, 37-42, 47, 49, 133-138, 143, 145, 179-187, 189, 191. The *FAC* and *SAC* also included RLE's Plat Map, which pursuant to NRS 116.2109(1) is part of the CC&Rs. 1AA33-35, 129-131, 175-177.

Because the applicability of the CC&Rs, Chapter 116, and the levying and collection of assessments under Chapter 116 have been at issue since the inception of Artemis' campaign to declare RLEHOA void when it no longer

[5] To clarify, the current "prevailing party" provision of NRS 116.4117(6) was previously codified as NRS 116.4117(4).

suited their needs, there can be no doubt that the facts of this case fall squarely within NRS 116.4117. Thus, NRS 116.4117 provided the district court with a specific statutory basis for an award of fees and costs to RLEHOA as the prevailing party. Artemis' contention to the contrary is not supported by the facts or NRS 116.4117.

It is further undisputed that all of Artemis' complaints involve claims for damages and/or "other appropriate relief". 1AA1-20, 24-49, 121-145, 167-191; *see also Lee*, 2014 Nev. Unpub. LEXIS 1380 (in case where homeowners brought suit against homeowner's association alleging that pipes were part of the common areas for which the association was responsible, and the association countersued for costs of repairs and breach of community's Covenants, Codes, and Restrictions ("CC&Rs"), the Court affirmed district court's award of fees and costs pursuant to NRS 116.4117 and CC&Rs).

Artemis' reliance on upon *R Ventures I, LLC v. Wells Fargo Bank, N.A.*, 2017 Nev. Unpub. LEXIS 237 (Nev. Apr. 17, 2017) ("*R Ventures*"), and *Bank of Am., N.A. v. Treasure Landscape Maint. Ass'n*, 2017 U.S. Dist. LEXIS 113893 (D. Nev. July 21, 2017) ("*BofA*"), are likewise misplaced and

lend Artemis no support.[6] Both of these cases involved quiet title actions and declaratory relief litigation brought under NRS 30.010 and NRS 40.010 concerning the super-priority lien provision of Chapter 116. *R Ventures*, 2017 Nev. Unpub. LEXIS 237; *BofA*, 2017 U.S. Dist. LEXIS 113893.

The disputes in these two cases were between ***lenders*** and either a third-party purchaser or an association, all of whom litigated the issue as to whether the lenders' deeds of trust survived an association's Chapter 116 assessment lien foreclosure sales or were extinguished under the super-priority lien provision of NRS 116.3116 (2)(c). *R Ventures*, 2017 Nev. Unpub. LEXIS 237; *BofA*, 2017 U.S. Dist. LEXIS 113893. In this case, these issues were never presented to the Ombudsman Office, Judge Gang, the district court, or the Nevada Supreme Court.

Rather, in stark contrast to the present case, neither *R Ventures* nor *BofA* involved an association and/or property owner dispute over assessments, liens, compliance with Chapter 116, and/or the governing documents, as authorized by NRS 116.3116 and NRS 116.4117. In other words, none of the claims in these two cases involved a civil action for

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[6] It is also unclear why Artemis relies upon *Dep't of Human Res., Welfare Div. v. Fowler* where that case involved an interpretation of Chapters 283B and 284 (administrative disciplinary proceedings or appeal therefrom). 109 Nev. 782, 858 P.2d 375 (1993).

damages or other relief ***between an association and an owner*** as contemplated by NRS 116.3116 and NRS 116.4117.

As such, the determinations in *R Ventures* and *BofA* that NRS 116.4117 did not allow for an award of fees to the prevailing parties rested on the fact that neither NRS 116.3116 nor NRS 116.4117 authorized such claims in the first place. *R Ventures,* 2017 Nev. Unpub. LEXIS 237; *BofA,* 2017 U.S. Dist. LEXIS 113893. Fees to a prevailing party under these two statutes, therefore, were not authorized or even applicable. *R Ventures,* 2017 Nev. Unpub. LEXIS 237; *BofA,* 2017 U.S. Dist. LEXIS 113893.

> "Although appellant's quiet title and declaratory relief action may have relied on NRS 116.3116"s superpriority lien provision, ***NRS 116.3116 did not authorize appellant's action, meaning the action necessarily was not brought [or authorized] under that statute . . . [r]ather, appellant's action was brought under NRS 30.010 et seq. and NRS 40.010, Nevada's statues authorizing declaratory relief and quiet title actions***." . . . Therefore, ***the HOA is not entitled to attorney's fees under NRS 116.3116 [against the lender] under NRS 116.3116. . . Therefore, the court will deny the HOA's motion for attorney's fees [against the lender] as it relates to NRS 116.4117.***

BofA, 2017 U.S. Dist. LEXIS 113893 at *6-7 (quoting *R Ventures,* 2017 Nev. Unpub. LEXIS 237 at *1) (***emphasis added***).

Artemis' contention that the district court determined its declaratory relief claim was brought pursuant to NRS 30.010 is irrelevant and misstates the district court's *Order re: Joinder of Necessary Parties* ("*Joinder Order*").

Opening Brief at 10-11; 1AA113-120. First, a reading of the *Joinder Order* reveals that the district court was addressing RLEHOA's declaratory relief claim against Artemis when it made the determination that RLEHOA's counterclaim for declaratory relief against Artemis falls within NRS 30.010 *et seq*. for purposes of the joinder issue. 1AA113-115. ("the Court also expressed concern that the HOA's claim for declaratory relief is not ripe for decision because other lot owners have not been added as necessary parties to this action pursuant to NRS 30.130" and "[a] plain reading of NRS 38.310 leads the Court to conclude that the HOA's counterclaim for declaratory relief . . ."). Nothing in the district court's *Joinder Order* determined that Artemis' declaratory relief claim was brought pursuant to NRS 30.010 *et seq.,* or to the exclusion of any other applicable statutory and/or other substantive law. 1AA113-120.

Furthermore, neither the record nor the law supports Artemis' contention that "[w]hen only one cause of action is brought pursuant to NRS 30.010 *et seq.*, an Order awarding attorney's fees and costs under NRS 116.4117 is inapplicable…". *Opening Brief* at 10. Again, NRS 116.4117(2) provides for claims for damages "or other appropriate relief". As such, this Court can hold that Artemis' claims for declaratory relief, damages, and

fraud all fall squarely within Chapter 116 and, therefore, affirm the district court's award of fees and costs to RLEHOA pursuant to NRS 116.4117.

Even assuming for argument sake that that this Court somehow agrees with Artemis' contention, this Court can still affirm the district court's award of fees and costs pursuant to NRS 116.4117. That is because what triggers this statute is the dispute between Artemis as a property owner and RLEHOA as the association concerning the delinquent assessments, Artemis' conduct, and the enforcement of RLEHOA's governing documents and Chapter 116. The statutes are not mutually exclusive, and nothing in NRS 30.010 *et seq.*, renders the provisions of NRS 116.3116 and NRS 116.4117 nugatory.

D. NRS 116.3115(6) Provides an Alternative/Additional Basis for the District Court's Award of Fees and Costs.

While the district court did not predicate its award of fees and costs upon NRS 116.3115(6), this statute provides an alternative/additional statutory basis for an award of fees and costs to RLEHOA for this Court to affirm the award of fees and costs. NRS 116.3115(6) provides: "If any common expense is caused by the misconduct of any unit owner, [RLEHOA] may assess that expense exclusively against his unit." NRS 116.3115(6).

In the present case, RLEHOA's fees and costs could appropriately be awarded pursuant to this statute. But for Artemis' misconduct, the legal expenses and costs associated with this matter would never have been incurred by RLEHOA and, in essence, the other homeowners.

As set forth in the Statement of Facts, the record supports a finding that Artemis, through the Essingtons, engaged in misconduct:

1. The Essingtons recognized the collective responsibility of the homeowners through Ruby Lakes Estates Landowners Association to adopt budgets, collect assessments, and maintain roadways, perimeter fences, culverts, cattle guards, entrance sign, and provide weed abatement, well before the formation of RLEHOA in 2006 as evidenced by letters Mr. Essington wrote to their fellow homeowners in August 2005 for Lee Perks' review emphasizing the need for an association and the obligation of the collective homeowners to maintain the roads within the subdivision. 1RA109, 120-123, 199, 201-203; 2RA205, 219, 221-223, 225-228.

2. The Essingtons also prepared draft articles of incorporation for the proposed association. 1RA109, 143.

3. From 1994 to 2011, the Essingtons implicitly and expressly represented that they owned Lot G-6. Specifically, they wrote checks for RLEHOA assessments from their accounts. 1RA101-104. In August of

2006, Mrs. Essington sent a letter to Mr. Perks enclosing "our personal check in the amount of $150. This amount will cover our Ruby Lakes Homeowners dues for 2006." 2RA205. Mr. Essington signed into member meetings as the owner of Lot G-6 and represented to members of RLEHOA that he had the capacity and authority to act on behalf of Artemis and/or Mrs. Essington. 1RA128, 132. Mr. Essington sent numerous communications to ARC members, the Board, and members of RLEHOA representing he was an owner of Lot G-6. 1RA120-123, 199, 201-203; 2RA205, 219, 221-223, 225-228.

4. Mr. Essington served as a member of the Board from 2007 until his resignation January 2011. 2RA318-319. Following his election to the Board, Mr. Essington signed a Declaration of Certification as a Common-Interest Community Board Member as required by NRS 116.31034(9). 2RA207.

5. As a Board member, Mr. Essington seconded a motion to approve the Bylaws of RLEHOA. 1RA126.

6. These Bylaws, as approved by Mr. Essington, state: "An assessment fee will be charged yearly for maintenance, roads, fire protection, and other expenditures as the board allows or required by Elko County." 1RA190.

7. In 2006, RLEHOA sent a survey questionnaire to homeowners regarding the maintenance of the roadways, ditches, culverts, and other real property improvements that RLEHOA is required to maintain. 2RA329-331. The Essingtons completed one as "Artemis Exploration-Mel/Beth Essington" and responded that they wanted RLEHOA to maintain the roadways. *Id.*

8. In this same survey, the Essingtons as "Artemis Exploration-Mel/Beth Essington" indicated that they were ***not*** in favor of having Elko County provide road maintenance and that they were in favor of having RLEHOA provide road maintenance instead. *Id.*

9. As a member, Mr. Essington voted to levy assessments against all members for roadway maintenance, weed abatement, and the repair of signs and culverts. 1RA134-151; 2RA209-211, 219, 221-222, 249-260.

10. Both before and during his tenure on the Board, Mr. Essington wrote letters to members of RLEHOA confirming the existence and necessity of RLEHOA, the necessity of enforcing the CC&Rs, the applicability of Chapter 116 to the RLE common-interest community and to RLEHOA, and the ability and responsibility of RLEHOA to levy and collect assessments for maintenance of the common elements. 1RA120-123, 199, 201-203; 2RA205, 219, 221-223, 225-228.

11. In addition to the letters to homeowners, Mr. Essington wrote a letter addressed to the President of the Board January 14, 2007 emphasizing RLEHOA's obligation to comply with Chapter 116. 1RA201-203.

12. After RLEHOA's formation, Mr. Essington wrote to homeowners on October 13, 2008 emphasizing the fact that RLEHOA is a common-interest community responsible for maintaining common elements, including the roadways. 2RA221-223 Mr. Essington further wrote that because RLEHOA's budget did not have sufficient funds to repair the roads, it was necessary for RLEHOA to levy a temporary assessment. *Id.* Mrs. Essington thereafter paid the increased assessments as levied by the Board and as urged by her husband. 1RA101-104.

13. In July 2009, the Board, of which Mr. Essington was a member, caused a Reserve Study to be prepared by an independent and licensed community association consultant as required by NRS 116.31153. 2RA230-247. The Reserve Study identified the common elements of RLEHOA as cattle guards, dirt road maintenance, fencing, gates, entrance signs, and street signs. *Id.* Mr. Essington met with and physically traveled to all common areas with the consultant. 1RA113-114.

14. At the August 8, 2009 RLEHOA meeting with the Board and homeowners where the Reserve Study was discussed in detail, Mr.

Essington voted to approve it. *Id.*; 2RA249-260. Mr. Essington also voted to levy assessments in accordance with the Reserve Study and the 2010 budget, which he also approved. 1RA113-114; 2RA249-260.

15. Since RLEHOA's formation in 2006, budgets were adopted by members of RLEHOA and assessments have been levied for road maintenance, fire protection, and maintenance of RLEHOA's real property, including the gates, sign, culverts, cattle guards, and perimeter fencing. 1RA67-70, 134-151; 2RA209-211, 219, 221-223, 249-260. Mr. Essington approved these budgets and assessments to pay for maintenance of these community improvements at each annual meeting he attended from 2006 through and including 2010. 1RA125-132, 134-151; 2RA209-211, 219, 221-223, 249-260. The Essingtons paid these assessments without objection. 1RA101-104. Prior to RLEHOA's formation in 2006, Ruby Lakes Estates Landowners Association (formed by the Wrights after the last lot sold in 1997) functioned as a common-interest community adopting budgets, collecting assessments, and maintaining roadways, perimeter fences, culverts, cattle guards, entrance sign, and providing weed abatement. 2RA402-404.

16. In 2009, a dispute arose between Mrs. Essington and ARC regarding the construction within RLE of a large building to house

equipment. 2RA264, 269-270. On October 26, 2009, Mrs. Essington wrote a letter to the Board expressing her contempt for this structure. *Id.* The Board and ARC took the position that the structure was permitted. 2RA275-278.

17. The Essingtons disagreed with the Board and ARC and thereafter commenced their campaign to have RLEHOA declared invalid because it no longer suited their needs. 2RA324-327, 333-334; 1AA1-20, 24-49, 121-145, 167-191. Although the Essingtons have since passed, their campaign continues through Artemis as evidenced by its appeal in Case No. 75323 and the instant appeal.

In the district court's *Fee Order,* the court issued the following opinion: "In the court's opinion, fairness dictates that Plaintiff, rather [than] the Wyatts, should be responsible for these fees pursuant to NRS 116.4117(3)[6]. [Artemis] has been the driving force behind the litigation resulting in the fees at issue, not the Wyatts." 3AA5. The undisputed facts of this case support this opinion.

Consistent with this opinion are the district court's findings in its *Summary Judgment Orders* to support a conclusion from this Court that Artemis, through the Essingtons, engaged in misconduct towards

RLEHOA.[7] 1AA81-102. Simply stated, the Essingtons not only acknowledged the existence and authority of RLEHOA, but also concomitantly insisted that it be formed. Moreover, when RLEHOA no longer suited their needs, the Essingtons sought to declare it invalid without any basis in fact and law.

Where Artemis, through the Essingtons, urged for the formation of RLEHOA and consistently emphasized and reminded homeowners that it is their collective responsibility through Ruby Lakes Estates Landowners Association and subsequently RLEHOA to adopt budgets, collect assessments, and maintain roadways, perimeter fences, culverts, cattle guards, entrance sign, and provide weed abatement, Artemis' lawsuit against RLEHOA can only be described as specious. Where the Essingtons wrote letters to members of RLEHOA confirming the existence and necessity of RLEHOA, the necessity of enforcing the CC&Rs, the applicability of Chapter 116 to the RLE common-interest community and to RLEHOA, and the ability and responsibility of RLEHOA to levy and collect assessments

[7] The district court correctly recognized the conduct of Mr. Essington as holding himself out as and acting with apparent, if not actual authority, on behalf of Artemis. 1AA84-86, 95-96. It is clear Artemis did not dispute this below or on appeal, and Artemis is bound by the misconduct of the Essingtons. *Dixon v. Thatcher*, 103 Nev. 414, 417, 742 P.2d 1029, 1030 (1987).

for maintenance of the common elements, Artemis' lawsuit against RLEHOA can only be described as disingenuous.

The evidence of misconduct by Artemis through the condoned acts of the Essingtons is unequivocal. However, but for Artemis' misconduct as established by the unrefuted evidence discussed herein, the legal expenses of this matter in the underlying arbitration and the district court proceedings would not have been incurred. The unrefuted evidence establishes and the district court opined that Artemis is the driving force behind this specious lawsuit.

These common expenses should not be borne by other homeowners within RLEHOA. Stated another way, the expenses incurred by RLEHOA in fees and costs as a result of misconduct of one property owner should not potentially and unfairly be passed onto the other property owners.

Nevada law is clear that fees and costs incurred as a result of an owner's misconduct may be awarded to RLEHOA and properly assessed against that homeowner - Artemis. NRS 116.3115(6). This is precisely the type of situation contemplated by this statute. It is well within this Court's discretion and authority, therefore, to affirm the district court's award of fees and costs based on this alternative/additional statutory provision.

E. NRS 18.010 (2) (b) Provides Yet Another Alternative/Additional Basis for the District Court's Award of Fees.

While the district court did not predicate its award of fees and costs upon NRS 18.010 (2) (b), for the same reasons just discussed, this statute provides yet another alternative/additional statutory basis for an award of fees to RLEHOA. As such, this Court could affirm the award of fees based upon this statute as well.

NRS 18.010 (2)(b) provides that the court may award fees to a prevailing party "[w]ithout regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought without reasonable ground or to harass the prevailing party." NRS 18.010(2) (b). NRS 18.010(2) (b) further provides:

> The court shall liberally construe the provisions of his paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, . . .

Id.

For the same reasons just discussed, the unrefuted evidence supports a finding that Artemis' declaratory relief, damages, and fraud claims against

RLEHOA were brought without reasonable grounds and to harass RLEHOA. In light of the Ombudsman Office's, Judge Gang's, and the district court's decision, it is abundantly clear that Artemis' claims against RLEHOA are both frivolous and vexatious.

There is nothing in the record to support Artemis' baseless allegations of wrongful conduct by RLEHOA in enforcing, levying, and collecting assessments to provide for the common area and elements. Given Mr. Essington's actions as a member of the Board, with apparent and/or actual authority to act on behalf of Artemis and Artemis' repeated knowledge and ratification of those actions from 1994 through 2011, Artemis' subsequent position 17 years later was without legal or factual basis. Artemis, through the Essingtons, simply did not like the ARC's decision and then sought to undermine the entire RLEHOA - an association formed at the insistence of the Essingtons themselves.

Where the only relevant inquiry is whether the action itself was initiated for the purpose of harassment or without reasonable basis and the plethora of unrefuted and overwhelming evidence presented supports a finding of both (although only one is required under the statute), this Court can affirm the district court's award of fees based on this alternative and additional statutory provision. 2RA324-327, 333-334

In fact, Judge Gang emphatically stated:

> ***It is difficult to understand why, faced with the overwhelming evidence that RLHOA is a valid HOA, any one would continue to maintain that it is not***. The HOA owns property within the subdivision, it maintains roads, signs, gates, culverts and fencing. It is incorporated as required by law. Indeed, Mr. Essington was at one time on the board of directors of RLHOA and was a moving force in its formation and incorporation. He signed and filed a "Declaration of Certification Common-Interest Community Board Member" with Real Estate Division certifying that he read and understood the governing documents of the Association and the provisions of Chapter 116 of Nevada Revised Statutes and Administrative Code. His wife, Elizabeth Essington, apparently owns all the stock in Artemis.
>
> . . . ***I have carefully considered all of the many allegations and arguments of the Claimant and find them unpersuasive. Indeed, I find the interpretation of counsel that the Real Estate Ombudsman took no action when it opined that RLHOA had to comply with the laws of the Nevada pertaining to homeowners association illogical.*** The Ombudsman clearly opined that the HOA was subject to the laws of Nevada that applied to HOA's . . . The Ombudsman took no action on the complaint of Artemis because the RLHOA was validly formed and obliged to comply with the law relating to HOA's . . .

2AA32-33 (***emphasis added***).

Consistent with Judge Gang's conclusions is the district court's *Summary Judgment Orders*: "In its Opposition, ***Artemis makes nonsensical substantive arguments***. . . "1AA86; (***emphasis added***); *see also* 1AA97; ("In its MSJ, Artemis makes nonsensical substantive arguments."). It is, therefore, troubling and confounding that when faced with three different arbiters' decisions that RLEHOA is a valid association and the

overwhelming evidence to support these three decisions, how Artemis can continue to pursue this groundless lawsuit and maintain its appeals in good faith.

F. The CC&Rs Provide a Contractual Basis for the Award of Fees and Costs.

While the district court did not predicate its award of fees and costs upon the CC&Rs, they provide a contractual basis for this Court to affirm the award of fees and costs. Artemis has not and cannot dispute that it is subject to the CC&Rs.

Article V of the CC&Rs provides this Court with a contractual basis to affirm the district court's award of fees and costs:

> In the event of any existing violation of any of the conditions set forth herein, any owner of any lot, DECLARANT, or any representative of the [ARC], may bring an action at law or in equity for an injunction, action for damages, or for any additional remedy available under Nevada law and all such remedies shall be cumulative and not limited by an election and shall not affect the right of another to avail himself or itself of any available remedy for such violation. ***The prevailing party shall be entitled to recover its court costs and attorney's fees***.

3AA183; (***emphasis added***).

RLEHOA is the prevailing party by virtue of the *Summary Judgment Orders* and, therefore, it is entitled to its fees and costs pursuant to the express language of the CC&Rs. *Lee*, 2014 Nev. Unpub. LEXIS 1380 (homeowners brought suit against homeowner's association alleging it was

responsible for pipes of common areas and association countersued for costs of repairs and breach of community's Covenants, Codes, and Restrictions ("CC&Rs"); and Court affirmed district court's award of fees and costs pursuant to CC&Rs).

G. The District Court Did Not Err In Nor Is It Prohibited from Awarding Fees and Costs Incurred in the Dismissed 2011 Lawsuit and Arbitration.

In its *Motion for Attorney's Fees and Costs*, RLEHOA sought $108,097.00 in fees and $7,591.14 in costs: (1) $22,092.00 in fees and $4,718.67 in costs incurred from the arbitration and the 2011 dismissed lawsuit; (2) $53,904.00 in fees and $1,536.14 in costs incurred from March 2, 2012 through March 27, 2013; and (3) $32,101.00 in fees and $1,336.33 in costs incurred from June, 2013 through March 18, 2018. 2AA19, 44-45, 56-57, 70-71, 79-80. The district court did not award RLEHOA the full amount of the fees and costs it requested.

Instead, the district court awarded $85,097.00 in fees and $2,872.47 in costs. 3AA6. This means that the district court did ***not*** award $23,000.00 in requested fees. Contrary to Artemis misplaced contentions, the district court did ***not*** award the requested costs of $4,718.67 incurred from the arbitration and 2011 dismissed lawsuit ($7,591.14 less $4,718.67 is $2,872.47). *Id.*

The district court also did not award fees incurred by RLEHOA in seeking and attempting to protect the order confirming the *Arbitration Decision*. 3AA5. The costs incurred from the arbitration and 2011 dismissed lawsuit and fees incurred relating to the order confirming the *Arbitration Decision*, therefore, are not at issue.

Artemis incorrectly contends that the district court awarded RLEHOA $2,796.00 in fees and $821.24 in costs from the 2011 dismissed lawsuit and cites to 1AA49-50 and 53. *Opening Brief* at 12. The citations to the record Artemis provides, however, do not support these assertions. 1AA49 is an exhibit to Artemis' March 2, 2012 *Complaint* and is a letter from a collections agency regarding its delinquent assessments. 1AA50 is RLEHOA's *Acceptance of Service.* 1AA53 references one page of RLEHOA's April 2, 2012 *Answer to Complaint and Counterclaim.*

Artemis further incorrectly contends that pursuant to NRCP 54, the district court is prohibited from awarding fees and costs incurred from the arbitration and the 2011 dismissed lawsuit. This contention ignores the express language from NRS 116.3115(6), NRS 116.4117(2) and NRS 116.4117(6), and the CC&Rs authorizing the award of these fees and costs.

NRS 116.4117(2) and NRS 116.4117(6) clearly provide that a civil action for damages or other appropriate relief for failure or refusal to comply

with Chapter 116 may be brought by the property owner against the association and the court may award reasonable fees to the prevailing party. NRS 116.3115(6) also clearly provides that if a homeowner's misconduct causes RLEHOA to incur a common expense, such as fees and costs, RLEHOA may assess that expense exclusively against that homeowner. NRS 116.3115(6). The CC&Rs provide that the "prevailing party [in an action brought by a lot owner] ***shall be entitled to recover its court costs and attorney's fees***." 3AA183; (***emphasis added***).

Nothing in NRS 116.3115(6), NRS 116.4117(2) and NRS 116.4117(6), and/or the CC&Rs precluded the district court from awarding fees and costs incurred from the arbitration and the 2011 dismissed lawsuit. Instead, the express language from these two statutory provisions and the CC&Rs clearly authorize an award of fees and costs to RLEHOA as the prevailing party in both the arbitration and the 2011 dismissed lawsuit.

The district court recognized this when it made the following findings and conclusions:

> Whether [RLEHOA] is entitled to be reimbursed for attorney's fees incurred in the dismissed 2011 lawsuit and arbitration merits special consideration. A review of the billing entries predating the commencement of this action reveals that [RLEHOA] incurred fees when its representatives consulted with its lawyers and the attorneys engaged in conversations and correspondence with opposing lawyers, fought off the premature lawsuit, obtained discovery, and developed

> arguments that proved successful in this action. The court infers that this legal work facilitated the lightning quickness with which the parties sought summary judgment. In the court's opinion, this circumstance makes these fees "actually and necessarily incurred" (as represented by [RLEHOA's] lead counsel such that they should be awarded [fees and costs] under NRS 116.4117 if reasonable. . .

3AA4.

The discovery conducted from the 2011 dismissed lawsuit and arbitration was utilized by both Artemis and RLEHOA for the 2012 lawsuit. 2AA50-51; (billing entries for preparation of written discovery, depositions, and production of discovery). Because the parties conducted discovery for the 2011 dismissed lawsuit and arbitration proceeding, there was simply no need for the parties to conduct discovery for the 2012 lawsuit. *Id.*

Artemis also incorrectly contends that the district court's award of fees and costs from the arbitration was entered in direct violation of Chapter 38 and the *Order to Show Cause.* First, the contention that the district court awarded costs incurred from the arbitration is factually incorrect.

RLEHOA requested $7,591.14 in total costs and the district court awarded only $2,872.47 in costs. 2AA19, 44-45; 3AA6. The district court did ***not*** award the requested costs of $4,718.67 incurred from the arbitration and the 2011 dismissed lawsuit: $7,591.14 less $4,718.67 is $2,872.47. 3AA6. It is, therefore, unclear why Artemis continues to insist that the

district court awarded $4,718.67 in costs incurred from the arbitration and the 2011 dismissed lawsuit. At issue are only the fees incurred from the arbitration and the 2011 dismissed lawsuit.

Second, Artemis misconstrues the *Order to Show Cause.* The Nevada Supreme Court did ***not*** determine that the award of fees and costs was in error. 1AA103-105. The court never reached the issue of fees and costs because no final judgment had been entered. *Id.*

Specifically, the court stated that a confirmation of the *Arbtration Decision* predicated upon Chapter 38 did not apply because "an action was commenced within the applicable time frame. . ." 1AA104. As to the issue of fees and costs, the court only stated:

> Moreover, to the extent that the order confirming and entering judgment on the attorney fees and costs award deemed independently appealable under NRS 38.247(1)(c) or (f), it does not appear that this court ***could reach the subdivision and homeowner's association issues in the context of this appeal from that order,*** since it confirms only the attorney fees and costs awarded and awards additional fees and costs to the ***prevailing party***.

1AA104-105; (***emphasis added***).

It, therefore, remained within the district court's and remains within this Court's discretion to consider RLEHOA's request for fees and costs pursuant to NRS 116.3115(6), NRS 116.4117(2) and (6), and the CC&Rs separate and apart from Chapter 38. Contrary to Artemis' erroneous

contention, the district court presented authority for its decision to award fees from the arbitration where it relied upon NRS 116.4117(2) and (6). 3AA4.

Stated another way, recovery of fees and costs is not limited to the provisions of Chapter 38. Nothing in Chapter 38 precludes the recovery of fees and costs from the arbitration. If such were the case, then other statutory, rule, or contractual bases for fees and costs would be rendered entirely meaningless and nugatory.

NRS 116.4117, NRS 116.3115, and the CC&Rs all provide additional grounds for an award of fees and costs to RLEHOA as the prevailing party in both the arbitration and district court proceedings, including the dismissed lawsuit. As to the 2012 district court action, NRS 18.010 (2)(b) provides another additional statutory basis for courts to award fees to prevailing parties defending against frivolous claims, such as those asserted by Artemis.

The district court did not violate the *Order to Show Cause*. In any event, this Court can affirm the district court's award of fees from the arbitration based upon NRS 116.4117, NRS 116.3115, and the CC&Rs. Simply stated, RLEHOA is the prevailing party by virtue of the *Ombudsman Decision*, the *Arbitration Decision*, the *Summary Judgment Orders*, and the

Final Judgment. RLEHOA, therefore, is entitled to its fees and costs pursuant to these statutory provisions and the CC&Rs.

H. Nothing in the Record Supports Artemis' Incorrect Contention that the District Court Awarded Fees and Costs for Purportedly Staff's Duplicative Time and Redacted Entries.

Artemis' final argument without any support whatsoever is that the billing entries purportedly included "staff time". *Opening Brief* at 16-17. Artemis asserted the same argument below. 2AA119-120.

There were no billing entries for "staff time" as asserted by Artemis. While Artemis' counsel may leave the evaluation, compilation, and organization of exhibits to their staff, RLEHOA's counsel did not. There is no requirement, and Artemis offered none below and on appeal, requiring RLEHOA's counsel to have staff decipher, organize, and finalize documents and exhibits.

RLEHOA supplied the district court with unrefuted affidavits that its counsel performed the work set forth in the billing entries. 2AA43-46, 55-58, 69-72, 77-80. Other than Artemis' conclusory and unsupported allegation, there is no evidence that RLEHOA's counsel submitted time for which she did not perform.

Artemis further complains about the redacted invoices claiming the redactions make it purportedly "impossible to distinguish whether those slips

were entered in regards to fees for RLEHOA's counterclaims and cross-claim." *Opening Brief* at 17. First, the district court did not have any difficulties reviewing the redacted invoices as evidenced by its rulings. 3AA1-82. "For the foregoing reasons, [RLEHOA] shall be awarded all fees documented in the exhibits attached to the affidavits of its counsel (billing statements), save and except for the entries stricken by the court. *See Exhibit B, Exhibit D, Exhibit F, Exhibit G*. These fees amount to $85,097.00." 3AA5.

Second, RLEHOA is entitled to protect privileged communications and Artemis has not established to the contrary. As set forth in the supporting affidavits of RLEHOA's counsel, redactions were made to protect privileged communications. 2AA44, 56, 70, 78.

In any event, Artemis had the opportunity below to request that RLEHOA submit its unredacted invoices to the district court for in camera review if it was so concerned about whether the redacted entries were in fact privileged communications. It, however, failed to do so.

Third, this baseless contention ignores the following unrefuted facts: (1) RLEHOA submitted invoices showing that the fees incurred in connection with the counterclaims and cross-claim have not been included in the requested amount, including fees for briefing on the cross-motions for

summary judgment on the counterclaims; and (2) RLEHOA did not include all of the time and costs required for travel to Elko to attend hearings and to prepare for the hearings. The billing entries clearly demonstrate that certain entries and fees have been either entirely omitted or reduced to take into account time spent on the counterclaims and cross-claim. 2AA83-91, 102-104. As discussed earlier, this is consistent with the *Stipulation* and Artemis failed to establish below and on appeal to the contrary. Instead, it can only assert unfounded allegations of improper redactions and billing for "staff time" at attorney rates.

I. Artemis Has No Grounds to Seek a Reversal of the District Court's Award of Costs in the Amount of $2,872.47.

RLEHOA sought a total of costs in the amount of $7,591.14: (1) $4,718.67 in costs incurred from the arbitration and 2011 dismissed lawsuit; (2) $1,536.14 in costs incurred from March 2, 2012 through March 27, 2013; and (3) $1,336.33 in costs incurred from June, 2013 through March 18, 2018. 2AA44-45, 56-57, 70-71, 79-80. The district court awarded only $2,872.47. 3AA6. The district court did not award the costs requested from the arbitration and 2011 dismissed lawsuit ($7,591.14 less $2,872.47 equals the $4,781.67 for costs requested for the arbitration and 2011 dismissed lawsuit). *Id.*

Rather, the district court awarded only the costs set forth in RLEHOA's three *Memorandum of Costs* filed March 1, 2013 for $1,475.00, March 29, 2013 for $60.24, and March 20, 2018 for $1,336.00. 3AA6. NRS 18.110(4) provides that "[w]ithin 3 days after service of a copy of the memorandum, the adverse party may move the court, upon 2 days' notice, to retax and settle the costs, notice of which motion shall be filed and served on the prevailing party claiming costs." NRS 118.110(4).

There is nothing in the record to suggest that Artemis moved, timely or otherwise, to retax and settle the costs RLEHOA requested. That is because Artemis failed to do so with respect to all three filed *Memorandum of Costs.* The district court, therefore, correctly noted and awarded costs accordingly as requested in the three memoranda: "As [Artemis] has not moved to retax costs under NRS 18.110(4), Defendant shall be awarded the costs reflected in the memoranda. . . [Artemis] shall be solely responsible for the payment of these costs, which the court calculates to be $2,872.47." 3AA6.

The district court's award of costs in the amount of $2,872.47, therefore, should not be an issue in this appeal. This is particularly so where the district court did not award any costs associated with the arbitration and 2011 dismissed lawsuit and where Artemis failed to move, timely or

otherwise, to retax costs. Even assuming for argument sake that the district court awarded costs associated with the counterclaims and cross-claim, Artemis cannot request this Court to reverse the district court's award of costs where Artemis failed to move to retax costs as required by NRS 18.110(4).

VII. CONCLUSION

Artemis cannot establish that the district court manifestly abused its discretion in awarding fees and costs to RLEHOA as the prevailing party pursuant to NRS 116.4117. It is undisputed that RLEHOA is the prevailing party.

Where it is further undisputed that Artemis' lawsuit against RLEHOA included claims for damages, fraud, and declaratory relief, an award of fees based upon NRS 116.4117 was appropriate. While Artemis subsequently abandoned its claims for damages and fraud, the fact remains that Artemis' lawsuit was "a civil action for damages or other appropriate relief . . ." pursuant to NRS 116.4117(2) whereby RLEHOA is entitled to its attorney’s fees pursuant to NRS 116.4117(6)..

It is further undisputed that from the inception of Artemis' campaign to have RLEHOA declared void, Artemis' complaints before the Ombudsman Office, Judge Gang, the district court, and now the Nevada

Supreme Court concerned the interpretation of RLEHOA's CC&Rs, the applicability of Chapter 116, the levying and collection of assessments by the Board pursuant to that chapter, and Artemis' failure and refusal to pay those assessments. 1AA1-20, 24-49, 121-145, 167-191. This is further evidenced and supported by the fact that Artemis' *Complaint*, *FAC*, and *SAC*, as well as the *Complaint* from the 2011 dismissed lawsuit, all included as exhibits the CC&Rs, RLEHOA's Invoice to Artemis for an Annual Assessment, and a letter from a collections agency for Artemis' delinquent assessments. 1AA8-13, 18, 20, 37-42, 47, 49, 133-138, 143, 145, 179-187, 189, 191. The *FAC* and *SAC* also included RLE's Plat Map, which is part of the CC&Rs. *See* NRS 116.2109(1). 1AA33-35, 129-131, 175-177.

If this Court is not inclined to affirm the district court's award of fees and costs pursuant to NRS 116.4117, this Court can nevertheless affirm the award pursuant to NRS 116.3115(6). The unrefuted facts establish that RLEHOA incurred common expenses in the form of fees and costs resulting from Artemis' misconduct[8] - expenses that other homeowners within RLEHOA should not unfairly bear. If this Court is not inclined to affirm the district court's award of fees and costs pursuant to either NRS 116.4117

[8] For this same reason, this Court can affirm the award of fees incurred from the 2012 district court proceeding pursuant to NRS 18.010(2)(b).

and/or NRS 116.3115, the CC&Rs provide yet another additional ground upon which this Court affirm the award.

As for the district court's award of costs, the district court did ***not*** award any costs associated with the arbitration and the 2011 dismissed lawsuit. 2AA44-45; 3AA6. Where Artemis had the opportunity below and failed to move to retax costs pursuant to NRS 18.110(4), Artemis is precluded below and on appeal from making any objections as to the district court's award of costs.

There is nothing in the record to support a suggestion that the district court manifestly abused its discretion. This Court should affirm the district court's award of fees and costs in its entirety.

Based upon Artemis' Opening Brief, it apparently contests the award of fees totaling $27,204.00 ($2,796.00 related to the 2011 lawsuit, $19,296.00 related to the arbitration, and $5,112.00 related to the dismissed counterclaims and crossclaim). *Opening Brief* at 12, 13, 15. If this Court is somehow inclined to agree with Artemis's misplaced contentions, it should bear in mind that the district court did not award $23,000.00 in attorney's fees and $4,718.67 in costs – for a total amount requested but not awarded of $27,718.67. This total amount already disallowed exceeds the additional $27,204.00 Artemis is contesting in attorney's fees. There is no basis,

therefore, for any further reduction in the amount of fees awarded by the district court. If a decision is made other than affirmance of the district court's fees and costs award in its entirety, however, then any reduction in fees should be limited to only $4,204.00 ($27,204.00 less the $23,000.00 already disallowed by the district court).

VIII. VERIFICATION

Under the penalty of perjury, the undersigned declares that she is the attorney for Appellant named in the instant Brief and knows the contents of the Brief. The pleading and facts stated therein are true of her own knowledge, excepts as to those matters stated on information and belief, and that as such matters she believes them to be true. The undersigned attorney pursuant to NRAP 21(a) (5) makes this verification.

IX. CERTIFICATE OF COMPLIANCE

1. I certify that this Brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because it has been prepared in proportionally spaced typeface using Word in 14 point Times New Roman font.

2. I further certify that this Brief complies with the page-or type-volume limitations of NRAP 32(a)(7), excluding the parts of the brief

exempted by NRAP 32(a)(7)(c), it is proportionally spaced, has a typeface font of 14 points or more, and contains 12,349 words.

3. I certify that I have read this Brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 21st day of June 2019.

/s/ Karen M. Ayarbe, Esq.
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CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c)(1), I certify that I am an employee of the law firm of Leach Kern Gruchow Anderson Song, and that on this day I served the foregoing document described as ***RESPONDENT'S ANSWERING BRIEF*** on the parties set forth below, at the address listed below by:

X Electronic means to registered user of the court's electronic filing system consistent with NEFCR 9:

Travis Gerber, Esq.

X Placing a true copy thereof in a sealed, postage paid envelope in the United States Mail in Reno, Nevada, addressed to the following:

Zachary A. Gerber, Esq.
Gerber Law Offices, LLP
491 4th Street
Elko, NV 89801

DATED this 21st day of June 2019.

/s/ Teresa Gearhart
TERESA GEARHART