

**In the  
Supreme Court of the State of Nevada**

SOMERSETT OWNERS  
ASSOCIATION, a Domestic Non-  
Profit Corporation,

Appellant,

vs.

SOMERSETT DEVELOPMENT  
COMPANY, LTD, a Nevada  
Limited Liability Company;  
SOMERSETT, LLC a dissolved  
Nevada Limited Liability Company;  
SOMERSETT DEVELOPMENT  
CORPORATION, a dissolved  
Nevada Corporation; Q & D  
Construction, Inc., a Nevada  
Corporation; PARSONS BROS  
ROCKERIES, INC. a Washington  
Corporation; and STANTEC  
CONSULTING SERVICES, INC.,

Respondents.

Case No. 79921

Electronically Filed  
Aug 13 2020 03:51 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**APPELLANT SOMERSETT OWNERS ASSOCIATION'S**

**APPENDIX**

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DATED this 13th day of August, 2020.

**WOLF, RIFKIN, SHAPIRO, SCHULMAN &  
RABKIN, LLP**

By: /s/ Bradley Schrager

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## **CERTIFICATE OF SERVICE**

I hereby certify that on this 13th day of August, 2020, a true and correct copy of the foregoing Appellant Somerset Owners Association's Appendix was served upon all counsel of record by electronically filing the document using the Nevada Supreme Court's electronic filing system.

By: /s/ Danielle Fresquez

Danielle Fresquez, an Employee of  
WOLF, RIFKIN, SHAPIRO,  
SCHULMAN & RABKIN, LLP

**In the Matter Of:**

Department 10

**HEARING ON MOTIONS**

*July 15, 2019*

*Job Number: 561007*

1 CODE: 4185  
PEGGY B. HOOGS, CCR #160  
2 Sunshine Litigation Services  
151 Country Estates Cr.  
3 Reno, Nevada 89511  
(775) 323-3411  
4 Court Reporter

5

6 SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 THE HONORABLE ELLIOTT A. SATTler, DISTRICT JUDGE  
--oOo--

9

10 SOMERSETT OWNERS ASSOCIATION, Case No. CV17-02427

11 Plaintiff, Dept. No. 10  
12 vs.

13 SOMERSETT DEVELOPMENT COMPANY  
LTD., et al,

14 Defendants.

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18 TRANSCRIPT OF PROCEEDINGS

19 HEARING ON MOTIONS

20 MONDAY, JULY 15, 2019

21

22

23

24 Reported By: PEGGY B. HOOGS, CCR 160, RDR, CRR

AA000897

1 APPEARANCES:

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 18  
 19  
 20  
 21  
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2 RENO, NEVADA; MONDAY, JULY 15, 2019; 1:30 P.M.

3 -oOo-

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5 THE COURT: This is CV17-02427, Somerset  
6 Owners Association vs. Somerset, et al.

7 Mr. Samberg and Mr. Moas are here on behalf of  
8 what I will refer to from this point forward as the HOA  
9 or homeowners association because it will be easier in my  
10 mind to keep it organized that way.

11 Good afternoon, gentlemen.

12 MR. SAMBERG: Thank you and good afternoon.

13 THE COURT: Here on behalf of Parsons Brothers  
14 is Mr. Castronova.

15 Good afternoon, Mr. Castronova.

16 MR. CASTRONOVA: Good afternoon, Your Honor.

17 THE COURT: Nice to see you.

18 MR. CASTRONOVA: Nice to see you as well.

19 THE COURT: Ms. Landrum is here on behalf of

20 Q & D.

21 Hello, Ms. Landrum. Nice to see you around the  
22 monitor there as I crane my head.

23 Mr. Burcham is here on behalf of the two  
24 Somerset entities.

1                   **Good afternoon, Mr. Burcham.**

2                   MR. BURCHAM: There's actually three:  
3       Somerset Development, SDC, and then Somerset LLC and  
4       Somerset Development Corporation. I'm just going to  
5       refer to it as SDC or something like that.

6                   THE COURT: I'll probably just refer to it as  
7       we go forward as Somerset. That's why we'll refer to  
8       the homeowners association as the HOA, and that way  
9       Somerset can be all of the Somerset entities. I think  
10      that would be easier for all of us to keep it separated  
11      that way. And good afternoon to you, Mr. Burcham.

12                  Finally, last but not least on behalf of  
13      Stantec is Mr. Chrissinger.

14                  Nice to see you again.

15                  MR. CHRISSINGER: Nice to see you. Good  
16      afternoon.

17                  THE COURT: Okay, everybody. Just give me a  
18      second to pull up the files on my computer here.

19                  We are here to discuss three overlapping  
20      motions that have been filed. The first motion was filed  
21      by Mr. Samberg, the second motion streams were filed  
22      jointly by all of the defendants, and then Mr. Burcham  
23      filed a separate motion for summary judgment on behalf of  
24      Somerset.

1 And so what I'll do is put on the record the  
2 motion practice that we're going to be talking about  
3 today and then give you some thoughts about where we go  
4 and how we're going to conduct the hearing.

5 Specifically, the Court has received and  
6 reviewed the January 17, 2019, file-stamped Motion of  
7 Plaintiff to Strike Certain Affirmative Defenses Relating  
8 to Statutes of Limitations and Repose; Request For  
9 Judicial Notice and Declarations of John Samberg, Esq.,  
10 and Tracy Carter in Support Thereof with a request for a  
11 hearing.

12 Additionally, the Court has received and  
13 reviewed the January 17, 2019, file-stamped Plaintiff  
14 Somerset Owners Association's Request for Judicial  
15 Notice in Support of Plaintiff's Motion to Strike Certain  
16 Affirmative Defenses Relating to Statutes of Limitations  
17 and Repose.

18 Further, the Court has received and reviewed  
19 the March 26, 2019, file-stamped Stantec's Objection to  
20 Plaintiff's Evidence Offered In Its Motion to Strike.  
21 Parenthetically I would say that's an objection to a  
22 number of the photographs and exhibits that were  
23 contained in the motion itself on evidentiary grounds.

24 The Court has also received and reviewed the

1 March 26, 2019, file-stamped Defendant's Opposition to  
2 Somerset Owners Association's Motion to Strike. That is  
3 an omnibus motion filed by Mr. Chrissinger, but signed by  
4 all of the defendants, if I remember correctly -- yes --  
5 all of the defendants have joined into that motion  
6 stream.

7 Further, the Court has received and reviewed  
8 the March 26, 2019, file-stamped Reply of Plaintiff in  
9 Support of Its Motion to Strike Certain Affirmative  
10 Defenses Relating to Statutes of Limitation and Statutes  
11 of Repose. That motion stream was submitted for the  
12 Court's consideration on June 12th of 2019.

13 Additionally, the Court has received and  
14 reviewed the March 26, 2019, file-stamped Defendants'  
15 Motion for Summary Judgment. Similar to the previous  
16 omnibus motion, this Motion for Summary Judgment is a  
17 motion filed by all the defendants and signed by all of  
18 the defendants' counsel.

19 The Court has also received and reviewed the  
20 April 26, 2019, file-stamped Opposition of Plaintiff to  
21 Defendants' Joint Motion for Summary Judgment (Omnibus  
22 Motion).

23 Further, the Court has received and reviewed  
24 the March 26 -- strike that -- April 26, 2019,

1 file-stamped Request By Plaintiff for Judicial Notice.

2           Additionally, the Court has received and  
3 reviewed the June 7, 2019, file-stamped Defendants' Reply  
4 in Support of Their Motion for Summary Judgment. Again  
5 the reply, like the motion, is an omnibus motion on  
6 behalf of all of the defendants. That motion stream was  
7 submitted for the Court's consideration on June 12th of  
8 2019.

9           Additionally, the Court has received and  
10 reviewed the March 26, 2019, file-stamped Somerset  
11 Development Company's Separate Motion for Summary  
12 Judgment. As is clear by the title itself, that was  
13 filed by Mr. Burcham on behalf of the Somerset entities  
14 and raises certain constitutional issues that are not  
15 covered by the previous motion for summary judgment.

16           Mr. Burcham, I'm not quite sure why, but I did  
17 note that for some reason it says this was filed in  
18 Department 15, but it got to me one way or the other.

19           MR. BURCHAM: That was obviously a typo. This  
20 case was initially assigned to Department 15 with  
21 Judge Hardy.

22           THE COURT: And moved over to me.

23           The Court has also received and reviewed the  
24 April 26, 2019, file-stamped Opposition of Plaintiff to

1 Defendant Somerset Development Company, Ltd.'s Motion  
2 for Summary Judgment Relating to NRS 11.202 Statute of  
3 Repose.

4 Further, the Court has received and reviewed  
5 the April 26, 2019, file-stamped Request By Plaintiff for  
6 Judicial Notice filed by Mr. Samberg.

7 Additionally, the Court has received and  
8 reviewed the June 7, 2019, file-stamped Reply to  
9 Somerset Owners Association's Opposition to Somerset  
10 Development Company's Separate Motion For Summary  
11 Judgment. That motion stream was submitted for the  
12 Court's consideration on June 11th of 2019.

13 The Court entered an order directing the  
14 parties to schedule oral argument. That order was  
15 entered on July 2nd of 2019. The oral argument is on the  
16 three motion streams that have been identified.

17 The Court would also note that there are other  
18 motions that have been filed and are pending. However,  
19 as the Court noted in the order to set the hearing, the  
20 Court thought it would be more reasonable and more  
21 efficient use of judicial resources to resolve the  
22 statute of repose and the statute of limitations issues  
23 raised by the parties prior to addressing any other  
24 issues that have been filed and raised by the parties.

1 So we're just doing those three motions today.

2 Counsel, the first thing I would like to  
3 discuss and just get a general sense from you on is this.  
4 The motions, as the parties have identified, are all  
5 interrelated. They all basically raise the same issues.  
6 That is, the statutes of repose, statutes of limitations,  
7 and the implications of those on this construction defect  
8 case as well as some equitable relief that Mr. Samberg  
9 believes is appropriate.

10 What I'm disinclined to do is go through each  
11 motion separately, and so I hear from Mr. Samberg on his  
12 motion first, and then I would hear from the defendants,  
13 and then I would hear a reply argument from Mr. Samberg,  
14 and then I would start with the two motions that have  
15 been filed by the defendants for summary judgment and  
16 hear from those moving parties and then hear opposition  
17 from Mr. Samberg, and then hear a reply argument from the  
18 defendants.

19 The reason I'm disinclined to do that is that,  
20 really, you'd just be making the same arguments over and  
21 over again. As I identified a moment ago, Mr. Burcham  
22 raises some constitutional issues that are not raised in  
23 the other motion for summary judgment.

24 So what I would propose to do, unless there's

1 some objection from the parties, is I will hear from  
2 Mr. Samberg first regarding his motion because it was the  
3 first motion in time that was filed. So I'll hear from  
4 Mr. Samberg regarding his motion, and then I'll hear  
5 opposition argument from the defendants to that motion,  
6 and you can address any other issues possibly that are  
7 raised in the omnibus motion for summary judgment during  
8 that reply portion -- excuse me -- opposition portion,  
9 and then I'll hear from Mr. Samberg in reply.

10 And then what we'll do is I'll hear from  
11 Mr. Burcham regarding his constitutional issues on the  
12 motion for summary judgment that he filed. Mr. Samberg  
13 will get to make an opposition to that because they are  
14 completely different arguments. Not completely  
15 different, but they are significantly different, and that  
16 will give Mr. Burcham the opportunity to make a reply  
17 argument. So we don't have to go through the whole  
18 process three times; we'll only go through it twice.

19 Mr. Samberg, what are your thoughts about that?

20 MR. SAMBERG: Your Honor, I just have a quick  
21 question.

22 My understanding is the Court issued three  
23 orders. One is to set the hearing on the three motions  
24 you discussed, and then two separate motions, one as to a

1 motion under -- I think it's 146.668, and that's on hold  
 2 basically, and the other had to do with whether or not we  
 3 could proceed against an entity that had been out of  
 4 business for a couple of years. That was  
 5 Mr. Castronova's motion. That's also on hold.

6 THE COURT: Right.

7 MR. SAMBERG: So we're here for that.

8 In terms of just a quick overview --

9 THE COURT: Hold on a second, Mr. Samberg. I  
 10 think I've already addressed all those issues. We're  
 11 only talking about the three motions identified. I also  
 12 noted that there have been other motions that are fully  
 13 briefed, and we'll address those after we address these  
 14 motions, but not today.

15 MR. SAMBERG: Not today.

16 THE COURT: If that was your impression, I  
 17 apologize. Those are just on hold until we get these  
 18 issues resolved. And if I remember correctly, what the  
 19 order said was that those other motions could be  
 20 resubmitted at a later time after the Court resolves  
 21 these issues.

22 I would also note for the parties' benefit that  
 23 I don't anticipate ordering or ruling from the bench  
 24 today. This is just oral argument, and I'll take the

1 arguments under consideration. So I think we've got the  
2 files correctly.

3 What about the proposed argument process?

4 MR. SAMBERG: I think the sequencing makes  
5 perfect sense, Your Honor, because there are really just  
6 essentially two issues, the repose issue and the  
7 substantial completion issue, and they deal in one way or  
8 another with everything that's pending for the hearing  
9 today, and I'll plan on addressing those collectively in  
10 my first presentation. I think that will pretty much  
11 cover it.

12 THE COURT: Mr. Chrissinger?

13 MR. CHRISSINGER: Thank you, Your Honor. I  
14 don't have a problem with that. Stantec has no  
15 objection. I think you're right, you'd hear a lot of  
16 repetitive argument if we took each motion separately.

17 THE COURT: Mr. Burcham?

18 MR. BURCHAM: Your Honor, I agree with  
19 Mr. Chrissinger and Mr. Samberg.

20 I do need to note one thing, however, and I  
21 understand that you've been on vacation. In the order  
22 on, I think it was Mr. Castronova's motion regarding  
23 defunct entities and that sort of thing, there was a  
24 notation there that there was only one opposition to that

1 from the plaintiff. We filed -- I just want to be clear  
2 because this transpired -- so you've got it. Okay. I  
3 just wanted to make sure the record was complete that we  
4 did, in fact, file a timely opposition to that, which we  
5 won't be discussing today.

6 THE COURT: No, we won't.

7 Just so the record is clear, while Mr. Burcham  
8 was making his point to the Court, I held up his July 2,  
9 2019, that was presented to my judicial assistant,  
10 Ms. Mansfield, and she provided it to me.

11 Just so you know, I came back from vacation  
12 late last week and had the opportunity to come in over  
13 the weekend and review all of the motion practice. I'm  
14 also familiar with the orders that I've entered already  
15 in this case, but I did see that, Mr. Burcham, that there  
16 were some issues with that, but those, I think, have been  
17 resolved and will be addressed at some later time. I do  
18 have a copy of that letter, and I reviewed that and the  
19 email traffic, I guess you would call it, that went back  
20 and forth, so that's all in there as well. I've seen  
21 that.

22 MR. BURCHAM: Thank you.

23 THE COURT: Any objection to the proposed  
24 process, Ms. Landrum?

1 MS. LANDRUM: No, Your Honor, I have no  
2 objection. I think that's a great way to handle it.

3 THE COURT: Say that again. I'm sorry.

4 MS. LANDRUM: I think it's a great way to  
5 handle it.

6 THE COURT: Oh, thank you. I didn't make you  
7 say that again just because you were agreeing with me.

8 MR. CASTRONOVA: Parsons agrees with the  
9 Court's suggestion.

10 THE COURT: Mr. Castronova is in agreement as  
11 well, so that's what we're going to do.

12 Counsel, I note all of you have appeared before  
13 me in the past. When I say I have reviewed your motion,  
14 I have reviewed not only the motion itself but all of the  
15 exhibits that are attached to the motion practice. I  
16 don't print out all of your exhibits when I print out the  
17 motions themselves because I don't think that's very  
18 environmentally sound. Frequently there are thousands of  
19 pages that are filed and a lot of them are repetitive.  
20 So I usually just print out the motions themselves, but I  
21 do have all of the exhibits to each motion on the bench  
22 with me on my computer. So if at some point the parties  
23 want to refer to one of your exhibits, just give me a  
24 moment, let me know exactly what the exhibit is, and I'll

1 be able to pull it up here on the bench and we'll go from  
2 there.

3 I would also note that I did have or do have a  
4 separate copy on the bench of the appendix filed by  
5 Mr. Samberg. It was filed in two separate parts. One  
6 part was filed on April 26th, and then the other section  
7 was filed in May, if memory serves me correctly, and  
8 there are approximately 45 exhibits associated with those  
9 two filings, so I've got those two on the bench with me  
10 as well if at some point somebody needs to refer to any  
11 of those motions -- excuse me -- any of the exhibits,  
12 including those exhibits. So just keep that in mind as  
13 we go forward.

14 The last thing I want to address before we get  
15 into the substantive argument is this, and I'll let you  
16 address it first, Mr. Samberg.

17 I believe it was in the omnibus opposition or  
18 possibly the omnibus motion for summary judgment. The  
19 defendants directed the Court to the fact that frequently  
20 the plaintiffs are citing to the legislative history of  
21 certain statutes that are the subject of the motion  
22 practice. Not just once, but frequently there is  
23 discussion of the legislative history.

24 As I was reviewing the motion streams

1 themselves, it immediately struck me that why are we  
2 talking about the legislative history, because, as we all  
3 know, one of the basic tenets of statutory construction  
4 is that a statute that is plain on its face, you don't  
5 look at the legislative history. It's only an ambiguous  
6 statute that gives the Court the authority to refer to  
7 the legislative history to attempt to resolve any of the  
8 ambiguities.

9 And, again, I can't remember if it was  
10 Mr. Burcham or the omnibus motion, but there was an  
11 argument that, Mr. Samberg, at no time do you really  
12 raise the issue of ambiguity in any of the statutes.  
13 It's never suggested that these statutes are, in fact,  
14 ambiguous such that the Court would then turn to the  
15 legislative history to try and resolve the ambiguity.

16 So before we get into kind of the nuts and  
17 bolts of the motion practice, I'd like you to address  
18 whether or not you think that these statutes are in fact  
19 ambiguous and, if they are, in what way.

20 I reviewed them repeatedly, not just in this  
21 case, but in other cases as well, and I've obviously  
22 reviewed the motions themselves, so what about them is  
23 ambiguous that I'd start looking at legislative history  
24 at all?

1 MR. SAMBERG: Right. Your Honor, I'll address  
2 that with specificity in a moment.

3 Before I get started, I do want to note  
4 something for the Court and for my colleagues. This  
5 particular portfolio of motions is extremely well  
6 briefed, and I have appeared before you on several  
7 occasions before, Your Honor, and I know that you have  
8 and will review all of this material completely. What --

9 THE COURT: But maybe not the legislative  
10 history.

11 MR. SAMBERG: Well, we're going to get to that.  
12 But I want to just say that -- I really want to  
13 say this for the record. It's important.

14 This particular team of lawyers has been  
15 extremely professional, and we are dealing with a lot of  
16 paperwork and a lot of minutia, and I just wanted to let  
17 you know that what is before you is a result of everybody  
18 being an advocate, but also having to work  
19 collaboratively to deal with a large record.

20 As you note in the order setting hearing, we've  
21 agreed to restrict discovery, really, to lead to this  
22 moment so that we could get through these issues before  
23 everybody invests a lot of money in going forward with  
24 the case depending on how this whole thing goes.

1           There is one thing that I need to correct for  
2     the record before we get started. In our reply to the  
3     opposition to our motion to strike certain affirmative  
4     defenses, we incorrectly point out to the Court that the  
5     word "any" was placed in one of the operative statutes in  
6     2011, and in fact, it was in the statute at its  
7     inception. I'm referring to 116.3111(3), and it was  
8     brought to my attention late last week.

9           It doesn't really affect the gravamen of the  
10    argument that we will present, but it is an irregularity  
11    I want to put on this record so the record is complete.  
12    So I promised my colleagues on the other side I would do  
13    that, and so I've done it.

14           THE COURT: What page are you looking at of the  
15    reply?

16           MR. SAMBERG: Page 6. It basically says that  
17    the word "any" in the context of "any statute of  
18    limitations shall be tolled," that word was actually in  
19    the original statute when it was incorporated in toto by  
20    the Nevada Legislature. That's the Uniform Code under  
21    116. What happened was, in the 2011 edit to that  
22    statute, the word "any" was in fact removed and then put  
23    back in, so when we looked at the legislative history  
24    notes, it was unclear, and that's a misstatement I wanted

1 to correct for the record. Having done that, I just  
2 wanted to make that other note and I'll go forward.

3 The reason we are citing to the legislative  
4 history is for two reasons, Your Honor. Number 1, there  
5 are ambiguities in and as between the various provisions  
6 of NRS 116 itself. So specifically 116.3113 -- I'm  
7 sorry -- 3111(3) refers to the words "any statutes of  
8 limitations affecting the association's right of action  
9 against the defendant." That deals with a declarant  
10 implied warranty claim, which is really the core of our  
11 claim against Somerset Development in addition to the  
12 Chapter 40 claims.

13 But then when you look at the tolling  
14 provisions in NRS 116.4116(1) and NRS 116.4116(4), they  
15 refer to statutes accruing while, quote, "beginning to  
16 run." That, then, inter se within the statute creates an  
17 ambiguity that I'd like to address from the legislative  
18 history.

19 It also deals with, to the extent that we get  
20 to the substantial completion argument, how certain  
21 language within 116 is really driven by the distinction  
22 between the position of a declarant, in essence, as  
23 controlling all information, and the right to gather  
24 information and pursue claims, which is acknowledged in

1 116. And there are provisions that provide for declarant  
2 to create a committee before handing it over.

3 So to the extent that two --

4 I'm sorry. Do you want me to wait?

5 THE COURT: No. Go ahead. I can listen and  
6 staple simultaneously.

7 MR. SAMBERG: There we go.

8 So to the extent that Chapter 11.202 and .2055  
9 pertain to the statute of repose issue and when a  
10 particular feature is substantially completed, I wanted  
11 to point out, by addressing the legislative history, that  
12 there is an inherent distinction between the  
13 relationships between an ordinary Chapter 40 claim where  
14 you might be bringing multiple causes of action against  
15 those that were not in a special relationship with the  
16 declarant, whereas in a Chapter 116 implied warranty  
17 claim, it arises from a very different context, and that  
18 context is specifically where one entity, in this  
19 instance Somerset -- they're the developer and the  
20 declarant -- they control information, they control the  
21 board, and they control the right to sue up until early  
22 January of 2017 -- excuse me -- early January of 2013  
23 when control of the board was handed over to the  
24 Somerset owner-controlled board.

1           The ambiguity that I'd like to address arises  
2   from when, regardless of the issue of substantial  
3   completion, the right to proceed is created, and that is  
4   the distinction between the term of art "accrual" and the  
5   term of art "begins to run," and the term of art  
6   "tolling."

7           "Tolling" implies a right to sue has been  
8   created but is now on hold, "accrual" infers the right to  
9   sue has not yet occurred, and the phrase "begins to run"  
10   can be applied to either the end of the tolling period  
11   or, the accrual having occurred, that's when the right to  
12   proceed begins to run.

13           And that's why we went to the legislative  
14   history, particularly of Chapter 116, which points out  
15   that -- and I believe we quote -- that it is necessary to  
16   hold off so to speak -- rather than to muddle the water  
17   further with yet another phrase -- the commencement of  
18   the right to sue until the declarant either hands off to  
19   the owner-controlled board or has created a subcommittee  
20   during the owner-controlled period, and that subcommittee  
21   then is free of declarant control -- the statute lays it  
22   out, 116.4116, I believe it's subparagraph 4 -- and also  
23   not just gives that subcommittee the right to investigate  
24   but also the right to commence an action. And that's why

1 we went to the legislative history, because it deals with  
2 that special relationship, which is not present in a  
3 Chapter 40 claim per se. It could be present in a  
4 Chapter 40 claim by an owners association against a  
5 declarant where we're dealing with equitable tolling, and  
6 we'll come back to that later in the presentation, but it  
7 does not arise in Chapter 40 claims against those that  
8 are not the declarant.

9 And during the discovery process leading up to  
10 here, we acknowledged in an interrogatory response that  
11 Chapter 116 claim of implied warranty is only as between  
12 the owners association on the one hand and the declarant  
13 and, I think, those in privity with or some phrase like  
14 that.

15 So that's why we went to the legislative  
16 history, and I think it is relevant and I think it  
17 pertains to how the Court applies its responsibilities to  
18 reconcile those ambiguities so as to result in something  
19 that is neither absurd nor would frustrate the purpose of  
20 Chapter 116, and I would point you there, Your Honor, to  
21 116 -- I think it's .4109 -- Mr. Moas is here to backstop  
22 me because there are so many numbers, but I think it's  
23 116.4109 that talks about the legislature in essence  
24 shouldn't really do anything to get in the way of the

1 efficacy of the implied warranty claim and the right to  
2 proceed.

3 So that's a long-winded way of saying we think  
4 it pertains, and I'll leave it to you to say whether it  
5 does, but that's why we went there.

6 THE COURT: I will just state for the record I  
7 have not considered the legislative history regarding any  
8 of the statutes yet. Courts are often called upon to  
9 read, then disregard things. So I read the entire  
10 pleadings, but I don't know that I would get into, that  
11 is, dig deeper into or verify any of the representations  
12 regarding the legislative history unless and until I  
13 decide that there is some sort of ambiguity associated  
14 with the statutes themselves.

15 I would also note that I kind of -- it might  
16 seem petty, Mr. Samberg, but I did note a misstatement in  
17 your reply to -- it's the Reply of Plaintiff in Support  
18 of Its Motion to Strike Certain Affirmative Defenses  
19 Relating to the Statutes of Limitation and Repose.

20 On page 5, beginning at line --

21 MR. SAMBERG: Can you speak up a bit?

22 THE COURT: I apologize.

23 On page 5, beginning at line 8 through line 10,  
24 the reply says, "When facially clear, courts will not

1 generally go beyond the plain language of the provision,"  
2 citing McKay, M-c-K-a-y, vs. Board of Supervisors of  
3 Carson City, 102 Nev. 644, page 648, 730 P.2d 438 at  
4 page 441, a 1986 case.

5 When I read that, it struck me as odd because  
6 of the phrase "will not generally go beyond." That's not  
7 what the McKay court says. I mean, there's -- when I say  
8 "quote," I am quoting from your pleading. I'm not saying  
9 it's a quote from the McKay court, but you cite the Court  
10 back to McKay vs. Board of Supervisors in support of that  
11 proposition.

12 When you actually read that -- and I did, I  
13 went back and read that citation, and then I went back  
14 and reread the case -- it doesn't say anything about  
15 generally going beyond the plain language of the  
16 provision. It basically is the standard proposition that  
17 when a statute is not ambiguous or it's facially clear,  
18 courts will not look at the legislative history.

19 So, you know, I'll just leave it at that. I'm  
20 still not convinced that the legislative history needs to  
21 come into play. It will only come into play if at some  
22 point I decide that there is some ambiguity that needs to  
23 be resolved in the various statutes that are cited by the  
24 parties.

1 MR. SAMBERG: May I comment on that, Your  
2 Honor?

3 THE COURT: Yes.

4 MR. SAMBERG: First of all, I signed that  
5 pleading. I take all responsibility for anything that is  
6 not accurate, so I'm not going to make any excuses.

7 I will say that, as you can imagine, however,  
8 credit was a result of collaboration on our team, so to  
9 the extent there is misstatement, I'll represent to you  
10 it was not intentional, but it is my responsibility so I  
11 take that responsibility.

12 THE COURT: Well, and like I said, Mr. Samberg,  
13 it's not a big deal because obviously I'm familiar with  
14 when I can and when I can't look at the legislative  
15 history of a specific statute, but I just kind of put a  
16 little Post-It on it when I was reading through it. I  
17 actually went back and looked at it again because I was  
18 scratching my head about that because I have never seen a  
19 suggestion that that rule regarding reference to the  
20 legislative history was a general rule or generally  
21 courts do that because it suggests when you read the word  
22 "generally" that there are some times that they can do  
23 it, and I was unfamiliar with when that was.

24 MR. SAMBERG: I'd like to address that as well,

1 Your Honor, because, first of all, again, my apologies to  
2 the Court. I signed it, that's on me, so that was  
3 certainly not intentional.

4 I will say, though, Your Honor, when you're  
5 dealing with statutes that are in different parts of the  
6 code -- and that's exactly on point here today. We have  
7 in essence whether or not 11.202 does affect and would  
8 therefore preclude the tolling of the statutes of  
9 limitation that are referred to in NRS 116. So if you  
10 have something that is facially clear in 11.202, the  
11 threshold question is, does 11.202 even apply to Chapter  
12 116 -- that's something I'll get to in a moment -- and if  
13 it does, is that statute of repose that's set forth in  
14 11.202 absolute and in concrete as to every other  
15 provision of the Nevada Revised Statutes?

16 So while it may be clear as to what the  
17 call-out is, it may not be per se absolutely applicable  
18 to every other Nevada Revised Statute, and we're going to  
19 argue why under 116.

20 THE COURT: Obviously the Court has an  
21 obligation to harmonize statutes, to put them into effect  
22 in the way that the legislature intends.

23 Just so you know, I actually pointed out what  
24 the McKay court says, and the direct quote from McKay vs.

1 Board of Supervisors of Carson City is "Where a statute  
2 is clear on its face, a court may not go beyond the  
3 language of the statute in determining the legislature's  
4 intent." That is on page 648 of the Nevada Reporter and  
5 page 441 of the Pacific Second Reporter, and that quote  
6 from the Nevada Supreme Court cites back to Thompson vs.  
7 District Court, which is 100 Nev. 352 at page 354 and  
8 683 P.2d 17 at page 19, a 1984 case, and Robert E. --  
9 Robert and then capital initial E -- vs. Justice Court,  
10 99 Nev. 443, 664 P.2d 957, a 1983 case.

11 Regarding just the issue of legislative  
12 history, Mr. Chrissinger, anything to add?

13 MR. CHRISSINGER: I think the argument is that  
14 applying NRS 11.202 to Chapter 116 creates this  
15 ambiguity.

16 If you look at 116, they're clear. You've  
17 got -- sorry -- NRS 116.4116 and NRS 116.3111. .3111 is  
18 the starting point. That has the tolling issue. And  
19 this gets into the substance of the argument on some of  
20 the legal issues with the motions, but NRS 116.3111(3)  
21 states that "any statute of limitation affecting the  
22 association's right of action."

23 The defense has not raised the statute of  
24 limitations defense in this briefing. The defense is

1 discussing the statute of repose, and throughout the  
2 briefs we discuss the differences between the statutes of  
3 repose and statutes of limitations and the different  
4 purposes, but for the purposes of your question right  
5 now, it's not ambiguous because the statute of repose is  
6 not implicated by NRS Chapter 116.

7 THE COURT: And I think -- I'm trying to  
8 remember the order that I entered on July 2nd -- let me  
9 check something. I was trying to remember what it was in  
10 the footnote.

11 But as I noted in footnote number 1 of the  
12 July 2, 2019, order, Mr. Samberg's motion is styled as a  
13 motion to strike, but the Court is going to consider it  
14 as a motion for summary judgment. That is in essence  
15 what it is. And so his motion is regarding the statute  
16 of limitations affirmative defense and the statute of  
17 repose affirmative defense. Your motion for summary  
18 judgment is just on the opposite, bringing it to the  
19 attention of the Court from the opposite perspective, but  
20 it's the same argument.

21 MR. CHRISSINGER: Essentially I think we might  
22 have raised a couple of additional arguments that weren't  
23 encompassed by the original motion, but yes.

24 THE COURT: Mr. Burcham, regarding legislative

1 history, what are your thoughts?

2 MR. BURCHAM: I was going to point out that the  
3 term "ambiguous" or "ambiguity" appears twice in the  
4 briefs.

5 THE COURT: Isn't it nice that we have a button  
6 now that we can push on our computers that says count  
7 words, because in your brief you pointed out how many  
8 thousands of words were encompassed in the brief, and I  
9 think you said the word "ambiguous" or "unclear" and then  
10 gave the number of times those words are referenced in  
11 the thousands of words that Mr. Samberg used.

12 MR. BURCHAM: If truth be told, that's a  
13 valuable tool. Another valuable tool is having an  
14 administrative assistant do that for me because otherwise  
15 I'd be completely clueless.

16 In any event, I don't think there's any  
17 ambiguity here. I think you hit the nail on the head  
18 that the real key word is "harmonize." It's a matter of  
19 reading the various statutes, seeing what they say and  
20 harmonizing them together.

21 Quite frankly, when I was listening to  
22 Mr. Samberg, I didn't hear ambiguity still. I heard more  
23 of an argument of what the statute means, what those  
24 words say. I don't think there is an ambiguity, Your

1 Honor.

2 I do think and I'm prepared to discuss the fact  
3 that the legislative history actually supports my  
4 argument in this case, and it's certainly -- because I  
5 don't want to get too far into the weeds on my  
6 substantive argument, but we've already discussed  
7 NRS 116.3111(3) tolling. That's tolling of the statute  
8 of limitations, and it's also a limited tolling as to  
9 certain claims under that section that can be brought by  
10 an association. I will go into that in depth.

11 Bottom line is, we need to harmonize as opposed  
12 to take a look at everything that the legislature had in  
13 front of it when it came up with the statute.

14 THE COURT: Mr. Castronova, anything to add  
15 regarding that issue?

16 MR. CASTRONOVA: Nothing, Your Honor.

17 Ms. Landrum?

18 MS. LANDRUM: I don't have anything to add,  
19 Your Honor.

20 THE COURT: Why don't we start talking about  
21 the motions themselves, and as I said, we'll start first  
22 talking about Mr. Samberg's motion for summary judgment  
23 on behalf of the homeowners association.

24 Well, I was going to say something, but now

1 I've changed my mind.

2 Go ahead, Mr. Samberg. What are your thoughts?

3 You asked for oral argument.

4 MR. SAMBERG: Well, Your Honor, again, I'll  
5 just reiterate I'm not going to stand here for the next  
6 hour and regurgitate what's in the papers. I just want  
7 to point out a couple things that I think would bear on  
8 the Court's deliberations.

9 First and foremost is the issue of the real  
10 distinction structurally and in terms of how  
11 relationships evolve between arm's length business  
12 dealings which can be controlled by a declarant who's the  
13 developer. They deal with subcontractors, designers,  
14 etcetera, all of those parties that are not in a  
15 subservient position where they are vulnerable, and that  
16 would arise, for example, with the developer and  
17 subdeveloper and they have contracts. They can put in  
18 writing as businesspeople when things will accrue and  
19 when actions will or will not be timely.

20 The key distinction and why we're really  
21 planting our flag on Chapter 116 hill and we're defending  
22 that hill more than any other hill are two things.  
23 Number 1, when is substantial completion? I'll get to  
24 that in a moment, but more than anything there is a

1 choice of word in 116.3111(3) that doesn't say "the"  
2 statute of limitation that may affect the right of a  
3 homeowners association to proceed. It uses the word  
4 "any," and to the extent that the repose period is in  
5 fact a period within which someone must act that is, I  
6 put it to Your Honor, encompassed within the intent of  
7 that word "any" rather than the word "the," and I think  
8 the challenge is to say --

9 THE COURT: Wait a minute. Hold on a second,  
10 Mr. Samberg.

11 There are many different statutes of  
12 limitations, as we know, anywhere from two years to six  
13 years, if I'm remembering them correctly. So that in my  
14 mind encompasses any statute of limitation, but the  
15 Nevada Supreme Court in numerous cases -- and of course,  
16 as we all know and have discussed in the motion practice,  
17 the most recent one I know of is the FDIC vs. Rhodes  
18 case -- the Nevada Supreme Court clearly draws  
19 distinctions between statutes of limitations and statutes  
20 of repose, so that "any" in NRS 116.3111(3) is talking  
21 about any statute of limitations. It's a simple concept.

22 It doesn't say "or any statute of repose" or  
23 "any other time to bring an action" or any of those other  
24 things. It just discusses the totality of the universe

1 of statute of limitations, and it says nothing about  
2 statutes of repose.

3 MR. SAMBERG: Your Honor, of course, I agree  
4 with what you've said, but I also urge the Court to  
5 recognize that there is an opportunity to interpret and  
6 harmonize the use of the word "any" with the following  
7 concept.

8 What is unique in the construction defect world  
9 from the perspective of this kind of litigation is that  
10 there's a very important group that is literally at the  
11 mercy of the declarant. That group is the owners  
12 association. They have minority presence on the board  
13 when it's first created, and they do not have either the  
14 practical ability or the authority to prosecute claims  
15 against the declarant.

16 And to the extent that -- I'll just say 3111(3)  
17 because it will save some paper -- to the extent that the  
18 intent is there to protect that vulnerable body, the  
19 argument goes -- and that's our presentation -- that the  
20 word "any" would encompass any legal barrier to  
21 proceeding in the form of a limitation period.

22 THE COURT: But isn't, Mr. Samberg, that  
23 argument, the legislative argument, it's an argument that  
24 should be made 35 miles south to a different body of the

1 government. I'm not here to rewrite the statutes  
2 themselves. I do have an obligation to harmonize them as  
3 we have discussed, but the legislature certainly could  
4 have taken that up at some point or rewritten the statute  
5 or amended it in some way.

6 I can't remember which of the pleadings it was  
7 that discussed the fact that if the legislature wanted to  
8 say any time to bring an action, it could have. It  
9 didn't. It chose specifically statutes of limitations.  
10 So why would I as the judicial branch go in and do  
11 something that the legislative branch has apparently  
12 chosen not to do?

13 MR. SAMBERG: Your Honor, that's a fair point,  
14 and I concede the point. However, I will say that 116 is  
15 substantially different than Chapter 40 to the extent  
16 that it is incorporated as a national body of law, and  
17 within various jurisdictions around the United States  
18 some may and some may not have statutes of repose.

19 So to the extent that our legislature could  
20 have stepped in at any legislative session and said, you  
21 know what, we really think we should add the words "or  
22 repose" following the provision you just cited, they  
23 certainly could have done that, but we are creating this  
24 record so that the record is clear that our argument is

1 that it is incumbent upon the Court and the legislature  
2 to protect the rights of those that need their rights  
3 protected, and to the extent the declarant is in a  
4 position to not just control information and bring  
5 actions, the declarant is in the unique position of  
6 protecting everyone's rights during the  
7 declarant-controlled period.

8 And again, rather than sort of perpetuating the  
9 debate, our position is set forth in the pleadings, and  
10 that is our position, that the statute of repose is  
11 encompassed within the intent and it can be read within  
12 the language of 116.3111(3). That's our argument.

13 That then brings to bear the issue that I had  
14 raised earlier which are within 116, in the three  
15 sections I cited, 4116(1) and 4116(4), when those are  
16 read together with the word "limitation" in 3111(3),  
17 different terms of art are used, and this takes us to  
18 both the tolling issue, the accrual issue, and then  
19 turning, then, to the fact question, the fact question,  
20 Your Honor, of substantial completion.

21 But to the extent the statute itself  
22 perpetuates some lack of -- arguable lack of clarity  
23 within 116 itself, it calls into question whether 3111(3)  
24 should be read to be limited to -- that's a bad pun --

1 limited to the limitations period. It can be read and  
2 argued that it should be read broadly in order to fulfill  
3 the intent of 116, which is to protect owners  
4 associations from a declarant who can simply do two  
5 things: Neither appoint a committee under 4116(4) and/or  
6 control until, regardless of the tolling of a limitations  
7 period, any limitations periods, the repose period has  
8 run. It would sort of frustrate the entire purpose of  
9 having the tolling of any limitations period in the first  
10 place.

11 THE COURT: I'm certainly back to the same  
12 point. Isn't that a legislative argument? I don't know  
13 what subcommittee you'd start with, but I can see that  
14 argument being made at a subcommittee either at the  
15 Assembly or in the Senate that this is an issue and it's  
16 an issue that needs to be addressed, but I'm still not  
17 convinced that the judicial branch is the one that starts  
18 that issue.

19 I guess theoretically, if the Court were to  
20 rule and deny your motion for summary judgment and grant  
21 the defendants' motion for summary judgment, it would  
22 then give the nonprevailing party the opportunity to file  
23 an appeal, and then the Nevada Supreme Court could look  
24 at it or the Court of Appeals could look at it and write

1 an order or an opinion that then could be brought to the  
2 attention of the next legislature that, look, this is  
3 what happened and this is what needs to be addressed, but  
4 that just brings me back to the same point.

5 I don't know that that's the reason that the  
6 courts exist, to raise issues that should initially be  
7 brought before the legislature. We want to have the  
8 Supreme Court or the Court of Appeals ring the bell for  
9 the legislature to get going when there are numerous  
10 other ways that the legislature bring issues or things  
11 get brought to the legislature's attention, talk to your  
12 assemblyman, talk to your senator, get a BDR filed, go  
13 that way, but I'm just kind of confused about the  
14 legislative argument that you're making that I should be  
15 kind of a super legislature in this room. That makes me  
16 reflexively uncomfortable.

17 MR. SAMBERG: Well, I of course respect that,  
18 Your Honor, and I know from our prior hearings that we're  
19 all prepared and we all take this seriously.

20 I'm glad members of the community are here  
21 because they've heard both of our thoughts on this and  
22 you're the guy in the robe, but I think in order to  
23 reconcile the issue of when something accrues versus when  
24 something that has accrued should be tolled, again,

1 that's our position. I won't, you know -- that horse has  
2 been duly beaten.

3 But what I would like to do, though, is shift  
4 the position along those lines to the issue of  
5 substantial completion, because whether it is the  
6 commencement of the running of the statute of limitations  
7 or the commencement of the running of the statute of  
8 repose, that occurs upon, putting aside the issue of  
9 what's tolled, substantial completion. And this issue  
10 has been briefed fully, and I will spare all of us the  
11 regurgitation of the whole thing.

12 I will simply point out that both Joseph  
13 Shields and Tom Marsh have done an exhaustive evaluation,  
14 and Mr. Marsh in particular has presented to the Court,  
15 through declaration and through other evidence that's in  
16 the appendix that you've referred to, substantial  
17 questions of fact as to whether 237 -- the original chart  
18 said 238, but one of the walls was pointed out should be  
19 removed from that -- but 237 walls show that, according  
20 to their opinions -- one is Mr. Shield's, who is a civil  
21 and structural engineer, and Mr. Marsh is a geotechnical  
22 engineer -- in their opinion the walls are not built in  
23 compliance with the plans and specs as to two critical  
24 features. Therefore, they are not substantially complete

1 because those significant deviations in two areas render  
2 those walls not fit for the purpose for which they were  
3 intended.

4 THE COURT: But are you focusing there,  
5 Mr. Samberg, on -- I'm trying to think of the correct  
6 grammatical term -- but what the verb "complete" applies  
7 to? Is it complete in the sense that the work is done,  
8 that they're not there anymore with graders all the way  
9 down to shovels and moving land, that the rock walls were  
10 finished? They weren't maybe done in accordance with the  
11 plans, but they're not being worked on anymore and  
12 haven't been for some ten-plus years now, if I remember  
13 correctly. So they were completed. Regardless of  
14 whether or not they were completed pursuant to the  
15 specifications, the work itself was done a long time ago.

16 You're not arguing that that's what we're  
17 talking about by "completed"? You're suggesting they  
18 weren't completed in the way that the plans called for,  
19 but that's not completed as I think the statute is  
20 intended. We're talking about what the common law  
21 analysis, what the common law analysis looks at.

22 The completion is it's done, they've moved on,  
23 they're doing something else or, as we know, some of the  
24 business entities now are out of business, but they're

1 not working on it anymore. Nobody is working on it.  
2 They are in use. They may not have been done correctly.  
3 I'm not making that determination. I'll just say for the  
4 sake of argument maybe they weren't done right, maybe  
5 there are numerous engineers who could come in with the  
6 plans and specifications and say, look, here are all the  
7 areas that Stantec, Q & D, and the Somerset entities  
8 didn't do this correctly, but how are you arguing that  
9 it's not completed in the sense that the walls have been  
10 there this whole time? You've given me pictures of the  
11 walls, some of them standing, some of them collapsing  
12 onto the ground, but they've been done for long time.  
13 Maybe I'm being too simplistic in the analysis, but it's  
14 been complete for a decade now.

15 MR. SAMBERG: Your Honor, it's not complete,  
16 which is the issue. The issue is whether the walls are  
17 substantially completed according to the common law.

18 And it is verbatim from 11.2055. Absent having  
19 final building inspection, which they don't have, absent  
20 having a notice of completion, which they don't have, and  
21 absent a certificate of occupancy, which they don't have,  
22 the Court is to look to the common law. And I think  
23 there is no dispute that the essential common law  
24 definition is built to the point where it is fit for the

1 purpose for which it is intended. And we culled that  
2 language both from prior arguments in this department in  
3 another case which you're familiar with -- we cited, I  
4 think, to Ryder Homes -- I'm not going to even go there,  
5 but I think Mr. Chrissinger himself in that case and I  
6 think in this case nobody is debating that the common law  
7 definition is built to the point where it is fit for the  
8 use for which it's intended.

9 And to the extent that that is also used in the  
10 industry, we cite you to the American Institute of  
11 Architecture Form Contract, and I happen to have a copy  
12 with me right here, and it defines substantial completion  
13 in Section 9.8 as "when the work or designated portion  
14 thereof is sufficiently complete in accordance with the  
15 contract so that the owner can occupy or utilize the work  
16 for its intended use." That is sort of the generic  
17 concept.

18 We're not arguing that if something is  
19 substantially complete by having one -- I'll just call  
20 them the magic documents so I don't have to say those  
21 three things every time. Absent the date certain which  
22 is provided by one of those three documents, the issue  
23 becomes at what point is a work of improvement fit for  
24 the purpose for which it is intended.

1           So just because somebody is onsite, they put  
2   down their tools and they leave doesn't mean that the  
3   work is substantially complete. According to that  
4   definition, they may be done as they perceive their work  
5   to be done, but that doesn't mean it is fit for the use  
6   for which it is intended.

7           The converse is also true, and I want to bring  
8   this to the Court's attention. We're not arguing that  
9   something cannot be substantially complete according to  
10   the plans and specs and still not be defective. You can  
11   have a certificate of occupancy which triggers a date of  
12   presumption of substantial completion, and that work can  
13   be built to the plans and specs, but it may still be  
14   defective.

15           We're not arguing defect. We're simply saying  
16   that applying that common law definition as interpreted  
17   by two highly qualified engineers, the walls identified  
18   in the battery of information provided, competent  
19   evidence, including the multipage chart that gets down  
20   for the end and identifies nearly 200 areas of material  
21   deviation from the plans and specs according to those  
22   experts, those walls do not fit the definition of  
23   substantial completion.

24           THE COURT: Based on that analysis,

1 Mr. Samberg, why doesn't that kind of throw the whole  
2 concept of a statute of repose into the dumpster so to  
3 speak? Because as you've identified, your experts, I  
4 believe, say that these walls need to be in place for  
5 50 years. If I remember correctly, that was the number  
6 of years.

7 MR. SAMBERG: They are huge structures that are  
8 to be used for at or near 50 years.

9 THE COURT: So let's just say instead of a  
10 decade we're 45 years down the road, and one of these  
11 walls -- or all of the walls, that dozens and dozens of  
12 miles of walls have remained in place and not a lot moves  
13 for 45 years, and then in year 46 one of the walls  
14 collapses.

15 Your argument would still be that the statute  
16 of -- and then you go back and you do all of the  
17 analysis, you have all the structural engineers come in,  
18 and they look at it and say, oh, wait, these aren't wide  
19 enough or tall enough, they weren't built in accordance  
20 with the plans that were submitted.

21 So you're saying 45 or 46 years out, the  
22 statute of repose would not have started yet, to take  
23 your argument to a more distant, but still logical  
24 conclusion.

1           MR. SAMBERG: Your Honor, that's how we test  
2 things, by making examples in the extreme, and in that  
3 extreme example, the answer is absolutely yes, it is a  
4 question of a fact as defined by the legislature that  
5 substantially complete is when under the common law --  
6 and we offer that definition, and that definition is not  
7 disputed to my knowledge by the other side, they relied  
8 on it in their pleadings -- if an expert says in their  
9 expert opinion that wall is not substantially complete  
10 because it is XYZ, whatever their opinion is, that  
11 creates a question of fact.

12           Now, your example can be controlled. This goes  
13 back to why a declarant under 116 should remain available  
14 until either handing it off or creating a committee.  
15 It's not outside the declarant's control to hedge against  
16 that, but to answer your specific question, the answer is  
17 yes, it remains a question of fact.

18           The dilemma is that we are dealing with  
19 structures that are intended to be robust and last a long  
20 time, and their deficiencies may not be readily apparent  
21 nor subject to the ravages of time or poor maintenance  
22 for decades.

23           So the argument -- again, to go to the inverse  
24 extreme, somebody puts down their tools and walks off the

1 job, we've built these things and we're done, and they  
2 start falling down immediately, okay. That's the other  
3 problem. But to the extent that there is by statute a  
4 common law requirement to resolve that question of fact,  
5 in the record in this case we have competent evidence by  
6 two highly qualified engineers that applying that  
7 standard, in their opinion, say, ten years down the road,  
8 these walls -- they may have walked off the job. That  
9 doesn't mean these walls are substantially complete  
10 according to the law.

11 And by contrast, the one thing I'd like to  
12 emphasize here, Your Honor, is to look at the specificity  
13 with which this analysis was done and the complexity of  
14 the analysis and the two core topics that were chosen,  
15 the heights of the walls are not subject to the ravages  
16 of time, the ravages of nature or lack of maintenance.  
17 Those walls are the height they were today as they were  
18 in 2006, 2003, whenever. The workers said, okay, we're  
19 out of here.

20 The other thing is whether a surcharge has been  
21 imposed on a single wall. The word "surcharge" deals  
22 with both vertical burden and horizontal burden. Hence  
23 the extent that there are -- for example, the one wall  
24 that was taken off of our list dealt with certain

1 callouts that had to do with vertical and horizontal  
2 surcharge, but absent a competing opinion in the form of  
3 competent evidence, none of which is offered, by the  
4 way -- argument is offered, but there isn't competing  
5 evidence to say, you know what, I'm a qualified engineer,  
6 I'm the guy that signed those 32 Stantec letters, there's  
7 nothing from that guy saying, you know what, I disagree.

8 To answer your question, yes, 47 years from  
9 now, if none of this had ever happened and a wall came  
10 down and an opinion was brought to the Court that that  
11 wall was never substantially complete, that is in fact an  
12 extreme example of that, but there's a way to hedge  
13 against that, and that's the critical point here.

14 When looking at, I believe it's 116.4111 -- is  
15 it 3 and 4, the express and implied warranties?  
16 Whatever. In 116 it all turns into one big mush. They  
17 argue express warranties and implied warranties that the  
18 declarant possessed at the time of handing over the  
19 control of the board from the declarant to the owner, and  
20 Marie is going to help me find it. Your Honor, it bears  
21 finding.

22 THE COURT: The implied warranties --

23 MR. SAMBERG: It's 4114(2) -- this is a quote,  
24 Your Honor -- "suitable for the ordinary uses of real

1 estate of its type and that any improvements made or  
2 contracted for by the declarant or dealer," blah, blah,  
3 blah, "of the common-interest community will be free from  
4 defective materials and constructed in accordance with  
5 applicable law...sound standards of engineering,"  
6 etcetera.

7 So if the Court, in interpreting the common law  
8 definition of substantial completion, under 11.2055 where  
9 you don't have the three magic documents, but you can go  
10 to the common law, the Court could -- and I could argue  
11 as a fallback position to hedge against the Court's  
12 concern -- use that representation as a de facto  
13 satisfaction of that fourth element.

14 The Court could say, look, I am uncomfortable  
15 with the on rare occasion, but it could happen in this  
16 instance. 40 years from now one of these walls falls  
17 down. The Court could take that in essence very similar  
18 representation of something that's fit for the use for  
19 which it's intended and use the declarant hand-off date  
20 as the trigger date of when to start running these  
21 various statutes, including the statute of repose, and  
22 use that definition as satisfying the "substantially  
23 complete" meaning, fit for the purpose for which -- built  
24 to the point where it is fit for the purpose for which

1 it's intended.

2 We made a big stink about this in our papers  
3 when we pointed out within the few months preceding the  
4 early January 2013 handoff by the declarant, there was an  
5 enormous presentation by the declarant of -- it's called  
6 a hand-off package and, Your Honor, you're familiar with  
7 this stuff. Here are your contracts, here are the things  
8 you have to maintain, here are the things you have to  
9 worry about, here are the things that are going on.

10 Nowhere that our client, the association, can  
11 find anywhere is there a mention of rockery walls that  
12 need to be either investigated, maintained, looked at,  
13 actions brought. There was nothing there. So of course  
14 the inference is that there's a representation made per  
15 the statute that they're fine.

16 Now, admittedly, I'm going to wait a moment  
17 because Mr. Burcham -- I want Mr. Burcham to hear this so  
18 he can please respond if I don't have it right -- in the  
19 process of exchanging under Rule 16.1, I think that there  
20 are still documents to be shared, and I don't know if,  
21 through no fault of anyone, there may be other documents  
22 that there are on this issue.

23 But what we have seen in terms of plans and  
24 specs that have been reviewed, there are certain height

1 maximum requirements and certain surcharge requirements  
2 that, according to Mr. Shields and Mr. Marsh, deviate to  
3 the point where they render the walls identified with  
4 specificity not fit for the purpose for which they were  
5 intended. That, Your Honor, satisfies that definition  
6 and creates a question of fact.

7           Here's the dilemma, if I can sort of skip to  
8 the end so my colleagues can explain to you why I'm  
9 wrong. The dilemma that we all face as a team -- and I  
10 don't mean that in the sense that we're collaborating,  
11 but as colleagues -- depending upon how the Court  
12 ultimately rules -- and I know you're going to take this  
13 under submission -- part of the reason we as lawyers  
14 decided to do this early on, to bring this hearing today  
15 into this courtroom, is so that we remove as much  
16 uncertainty as we can before going to the next phase of  
17 discovery, destructive testing, which will be very  
18 expensive.

19           You can imagine, Your Honor, given the enormous  
20 number of walls -- there's what, 13 miles, 70,000 feet of  
21 walls. It's going to cost a lot of money just to work up  
22 the fact issues in this case, and that's why we brought  
23 the repose issue to you. But to the extent we have clear  
24 guidance as to whether or not it remains a question of

1 fact subject to, contrary to the opinion of qualified  
2 experts and a trier of fact determining when substantial  
3 completion, according to the statute, did or did not  
4 occur, you can't answer the question of when these  
5 statutes began to run, whether the limitations or the  
6 repose statute.

7 THE COURT: Why don't I give you a shot at the  
8 argument that I would assume that one of your colleagues  
9 will make because I know it was made in the moving  
10 papers, and that is that you're changing the focus of  
11 your stipulation that you've entered into to resolve the  
12 statute of limitations and statutes of repose issues  
13 first. There were stipulations entered into by the  
14 parties that were going to resolve these discrete  
15 temporal issues before we start talking about the other  
16 substantive issues and the construction defect issues.

17 MR. SAMBERG: Correct.

18 THE COURT: And the argument was made in one of  
19 the dozen or so pleadings that I've read in anticipation  
20 of this hearing that Mr. Samberg is basically shifting  
21 the -- he's changing the playing field that we agreed to  
22 by going out and employing these engineers and raising  
23 this issue that's not part of the issues that we agreed  
24 to limit our focus on.

1 MR. SAMBERG: I disagree with that completely,  
2 Your Honor, because the reason that we're having this  
3 challenge is not to argue defect. I'm not here to tell  
4 you that according to Mr. Shields and according to  
5 Mr. Marsh, whether or not these walls are defective.  
6 That is a different day and a different battle.  
7 Mr. Marsh has already opined, and before we even filed  
8 this lawsuit there was an enormous amount of work that  
9 was done to identify defects.

10 The issue is germane and it is core to what we  
11 agreed to. Can the case proceed into the defect analysis  
12 until we resolve the issue of whether the lawsuit is  
13 timely. That's what we're here to argue, and a necessary  
14 component of timeliness are to resolve the legal effect  
15 of dates that we know for sure that are immutable.

16 Early January of 2013 the declarant handed off  
17 control of the board to the owners.

18 THE COURT: And there was some question in the  
19 pleadings about exactly what that date was.

20 MR. SAMBERG: It was plus or minus a few days  
21 from that.

22 THE COURT: Just so we're all clear, if the  
23 parties would stipulate it is the first two weeks of  
24 January -- and it doesn't impact the Court's analysis one

1 way or the other when the handoff was. There's just some  
2 slight disagreement, but it's in the first couple weeks  
3 of January.

4 Mr. Chrissinger, do you agree to that?

5 MR. CHRISSINGER: I agree to that.

6 THE COURT: Mr. Burcham?

7 MR. BURCHAM: Yes.

8 THE COURT: Ms. Landrum?

9 MS. LANDRUM: Yes.

10 THE COURT: Mr. Castronova?

11 MR. CASTRONOVA: Sure.

12 THE COURT: And I think you've even conceded to  
13 that as well.

14 So I think when we get down to what are the  
15 undisputed facts are, the undisputed fact is within the  
16 first couple weeks of January the handoff occurred.

17 MR. SAMBERG: Yes. The other undisputed fact  
18 is this action was filed within five years of that date,  
19 so if the causes of action, either under Chapter 40 or  
20 under Chapter 116, accrue upon substantial completion,  
21 this lawsuit is timely. As a matter of law, it's timely.

22 If, however, that question of fact, because it  
23 is a question of fact because they don't have the three  
24 magic documents, that question is the core of why we're

1 here, and regardless of whether or not there are other  
2 plans and specs that may deal with other walls, you can  
3 see when you interpret Mr. Marsh's chart that of the  
4 walls that he has seen with plans and specs, and  
5 Mr. Shields as well, they materially and substantially  
6 deviate from height and surcharge loads so as to render  
7 those walls at a minimum not substantially complete.

8 So I understand we all have clients to  
9 represent, and I don't take umbrage with my colleagues  
10 accusing me of shifting the playing field. This is the  
11 core issue. This is why we're here.

12 We've exchanged over 50,000 documents. It's  
13 impossible for everybody to have it at their fingertips,  
14 but there is no competing evidence to refute at least the  
15 walls that are identified by Mr. Marsh and his chart, in  
16 his opinion they're not substantially complete.  
17 Therefore, whatever you rule as to whether the statute of  
18 repose is not tolled, if the causes of action have not  
19 accrued until either, by definition, you resolve the  
20 question of fact that they accrued outside six years from  
21 the date of the filing of this lawsuit, other than that,  
22 this lawsuit is timely, and I think the parties on both  
23 sides, whatever your result is, Your Honor -- we've all  
24 worked hard, we've all collaborated to get to this

1 point -- we're not changing the playing field. We're  
2 here to figure out are we going to go forward and drop  
3 hundreds of thousands, literally, if not millions of  
4 dollars working this thing up to trial only to find out  
5 later on that the question of facts could have been  
6 resolved today and wasn't.

7 We think it's an open question of fact with  
8 competent evidence and is required under Rule 56.  
9 Technically, there's no competing competent evidence.  
10 There's we left the job, we had these letters, okay. We  
11 have qualified experts saying these walls are not  
12 substantially complete. The statutes haven't begun to  
13 run yet. So, anyway, that's the best I can to answer the  
14 question, Your Honor.

15 THE COURT: And what would you like to say  
16 about the fact that you've made a number of arguments  
17 about equitable tolling and that the Nevada Supreme Court  
18 has applied the concept of equitable tolling to statutes  
19 of limitations, but to my knowledge they never applied it  
20 to a statute of repose.

21 MR. SAMBERG: Your Honor, a couple things. I  
22 think that there is somewhere in my notes -- and while  
23 I'm rummaging through stuff, hopefully Mr. Moas will find  
24 it -- I believe we cite to a U.S. Supreme Court case that

1 while statutes of repose should be honored, they are not  
2 amenable. But more importantly, in response to that  
3 question particularly, I would refer you to pages 11  
4 through 16 of our operative motion to strike, which is  
5 being deemed the motion for summary judgment, and we have  
6 this whole explanation of why equitable tolling would  
7 apply in this case, and equitable tolling would apply to  
8 both the repose and limitations statutes, citing to I  
9 think what is the case of Copeland, which identifies --  
10 I'm holding up six fingers -- six factors. Just so we  
11 have them in the record, I'll recite them quickly.

12 By interesting observation, Your Honor, they  
13 really pair it, the tolling provisions of 116 -- and I'm  
14 quoting from Copeland, which is cited in our brief -- 1,  
15 diligence of the claimant.

16 Our position is we were diligent. From the  
17 point of turn-over, we filed within five years, more  
18 importantly, from the point of two walls failing to the  
19 point of collapse, and that's a distinction I haven't  
20 made yet.

21 These walls can fail without collapsing, but  
22 certainly walls that have collapsed have failed, and my  
23 client just spent over a million dollars repairing a wall  
24 that failed that thankfully was caught because of a

1 program my clients put in place to monitor these walls,  
2 and it was repaired before -- it failed, but before it  
3 collapsed. So diligence of the claimant.

4 Number 2, claimant's knowledge of the relevant  
5 facts. Again, this goes to when the declarant made  
6 available either a committee or handed over all of the  
7 documents with the declarant-controlled language.

8 Claimant's reliance on authoritative statements  
9 by the defendant. That would, of course, be the lack of  
10 any heads-up warning in early January of 2013.

11 Number 4 --

12 THE COURT: Hold on a second. Let's talk about  
13 that briefly.

14 What evidence is there that they had anything  
15 to warn them about, to warn the homeowners association  
16 about? A lack of warning, that presumes that they have  
17 some information or some knowledge.

18 If I remember correctly -- and I hope I'm not  
19 conflating this case with the Ryder Homes motion practice  
20 that I've dealt with before, but if I remember correctly,  
21 there was some issues, though minor, with some of these  
22 walls during the period of time that Somerset had  
23 control of --

24 MR. SAMBERG: Yes, Your Honor. You're

1 remembering correctly. Mr. Burcham -- it's the same  
2 lawyers on the other side. I wasn't involved in the  
3 Ryder Homes case, but they're all right here.

4 I believe you remembered correctly. In 2011  
5 there was some issue that came up that in theory might  
6 have led to the creation of a subcommittee by the  
7 declarant which wasn't, but I'm not saying that Somerset  
8 Development -- at this stage of the case I have no basis  
9 upon which to argue that they were intentionally  
10 deceptively making false assurances.

11 It goes to what my client has been able to say  
12 to you with certainty. There was nothing in the package  
13 that indicated affirmatively, an affirmative statement  
14 that the walls were fine. I'm just reciting the factors  
15 from Coleman.

16 Number 5, prejudice to the defendant if the  
17 limitations period is tolled. Obviously being subjected  
18 to litigation is not pleasant, but I don't think the word  
19 "prejudice" is being used in the sense it is not  
20 pleasant. Prejudice -- as you know, in many instance  
21 something can be highly prejudicial but be probative and  
22 be admissible in evidence.

23 And the sixth factor are other equitable  
24 considerations.

1 THE COURT: The defendants theoretically, if  
2 the case goes forward and goes to trial, not only is  
3 there the cost of the trial itself, including the  
4 discovery costs and the trial costs themselves, but the  
5 prejudice would be that they could also be exposed to the  
6 millions of dollars that it will cost to remediate all of  
7 the identified issues if it comes to that.

8 So it's not just -- I never think of prejudice  
9 in the sense of it's a pain in the backside to go to --  
10 to deal with legal issues. That's not the prejudice.  
11 The prejudice is that the outcome can be very detrimental  
12 to Somerset, to Q & D and -- Parson Brothers is no  
13 longer a functioning entity anymore.

14 MR. SAMBERG: Again, that's for another day,  
15 but, Your Honor, I will say that --

16 THE COURT: They'll feel prejudiced. Let's put  
17 it that way.

18 MR. SAMBERG: Well, I disagree with you  
19 completely. I think you're using the word in a  
20 colloquial and common sense, not a legal sense.

21 If someone runs a red light and they go to  
22 trial and lose and they have to pony up, that's not  
23 prejudice. It's really unfortunate, but it's not  
24 prejudice in the legal sense. I would urge you, Your

1 Honor, that the word "prejudice" in this case is being  
2 used in the legal sense.

3 THE COURT: It's prejudice in the sense that I  
4 shouldn't have had to be there in the first place.

5 MR. SAMBERG: I disagree, Your Honor.  
6 Prejudice is used -- I have to say respectfully  
7 disagree -- hopefully the record reflects that I'm  
8 obviously being deferential.

9 THE COURT: If you were being disrespectful,  
10 Mr. Samberg, the record would be clear.

11 MR. SAMBERG: I hate saying, "with all due  
12 respect," because judges know what comes next, but  
13 prejudice implies witnesses are unavailable, unavailable  
14 in the evidentiary sense. Not just moved out of state,  
15 but permanently unavailable, if you know what I mean.  
16 Records are not available.

17 You know, I have not heard from Mr. Burcham,  
18 but his client doesn't have all the plans and specs,  
19 thousands of pages that somehow through the passage of  
20 time, without any negative inference that there's been  
21 any tampering or spoliation, but that's what prejudice  
22 means, I would argue to you, in the legal sense.  
23 Unavailable witnesses, documents.

24 I will say to you that the fellow that signed

1 these 32 Stantec letters in 2006 is still in the  
2 community. A division of Stantec has now split off, and  
3 he's still in that.

4 Witnesses are available, documents are  
5 available. There was no prejudice in the legal sense  
6 that the statute --

7 Oh, that's my son Adrian.

8 THE COURT: He's not allowed to be in the  
9 courtroom. He has shorts on.

10 MR. SAMBERG: Pardon me?

11 THE COURT: He has shorts on. People in shorts  
12 cannot be in the courtroom.

13 Sorry about that, Mr. Samberg.

14 MR. SAMBERG: My daughter Allison is here, too.

15 THE COURT: If she doesn't have shorts on,  
16 she's fine.

17 MR. SAMBERG: Do you have shorts on?

18 MS. SAMBERG: No.

19 MR. SAMBERG: I'm sorry. He may have some  
20 clothes in the car. They're both at UNR and they wanted  
21 to come to the hearing.

22 THE COURT: I'm glad they're here.

23 MR. SAMBERG: Anyway, Your Honor, that is my  
24 argument to you in response to your concern that there

1 is, quote, prejudice. It is unfortunate for the client,  
2 for the homeowners association. You can say the same  
3 thing to them. They're prejudiced because they're going  
4 to have to impose special assessments.

5           Whether this case goes forward or not, whether  
6 we win at trial or not, this community is burdened with  
7 literally millions and millions of dollars of expenses to  
8 both have added monitoring, added repairs, repairing  
9 walls that have literally fallen down. It's a miracle,  
10 frankly -- I'm not being overly dramatic -- one of these  
11 walls fell down on a golf cart path. Thankfully it  
12 was -- the photo that was objected to, that wall fell  
13 down at like 3:00 in the morning. Thankfully nobody has  
14 been hurt.

15           But you can use the word "prejudice" in the  
16 same sense to the plaintiff as well. The plaintiff is  
17 not prejudiced. In that same sense they are incurring  
18 enormous expense, and they believe in good faith they  
19 have rights of action, and that's why we're here. So to  
20 the same extent the defendant is prejudiced because  
21 they're involved in litigation, it's unfortunate, but  
22 that's why we're here.

23           So that's how I would respond to that  
24 observation, Your Honor.

1 THE COURT: I think you only had gotten through  
2 number 3 or 4 of the factors.

3 Were there any additional factors you wanted to  
4 address?

5 MR. SAMBERG: Yes, Your Honor. Before I turn  
6 it over to my colleagues, I once again want to reiterate  
7 this is, of course, a very challenging case. It involves  
8 interesting legal and factual questions, and I just want  
9 to say for the record it's been a real pleasure to get  
10 the case to this point because there's been a lot of --  
11 the way it should be basically. The lawyers are working  
12 together, from my perspective and Mr. Moas's perspective,  
13 the way they should be. The chips are going to fall the  
14 way they fall.

15 Unless you have other questions, for now I'm  
16 done.

17 THE COURT: I had one question to you, and it  
18 dealt with something you wrote in your reply.

19 You cite the Court to a case titled Landis vs.  
20 Physicians Insurance Company of Wisconsin, Incorporated  
21 on page 6 of your reply brief.

22 MR. SAMBERG: Page 6 of the reply, Your Honor?

23 THE COURT: Of your reply belief.

24 And that case is 245 Wis.2d at page 1,

1 628 N.W.2d 893, a 2001 case in support of the proposition  
2 "Courts have held that when legislatures use the term  
3 'any applicable statute of limitations,' it typically is  
4 meant to encompass both statutes of limitation and  
5 statutes of repose." That's the citation from Landis.

6 Why would I refer to a case from Wisconsin  
7 regarding that proposition that basically statutes of  
8 limitations and statutes of repose are the same thing  
9 when, as we know, in the FDIC case that I referred to  
10 before, the Nevada Supreme Court has made it pretty clear  
11 that they're two entirely different things. So you're  
12 citing me to a Wisconsin case for a general proposition  
13 that the Supreme Court of the State of Nevada has said  
14 doesn't apply in Nevada. Maybe that's the law in  
15 Wisconsin.

16 I would note that when I read that, I went and  
17 did some quick legal research. That case, Landis vs.  
18 Physicians Insurance Company of Wisconsin, has been cited  
19 51 times. 49 of them are in the state of Wisconsin, one  
20 of them is in Pennsylvania in a dissent, and another one  
21 was in Hawaii. So that might be the law in the state of  
22 Wisconsin, but it's not the law in the state of Nevada.

23 Isn't it true that in Nevada, Justice Hardesty  
24 in the FDIC case basically said this is the law, statutes

1 of limitations and statutes of repose in Nevada,  
2 regardless of what they are anywhere else in the country,  
3 are two entirely different creatures in the state of  
4 Nevada and get a different analysis.

5 MR. SAMBERG: Your Honor, that point is well  
6 taken and I concede the point. It's cited for reference  
7 to the extent the Court deems its deliberations would  
8 take it to other jurisdiction. That's why it's there.

9 We're in Nevada, the Supreme Court in Nevada  
10 has said what it says, and of course neither are we in  
11 Kansas anymore nor in Wisconsin. So that point is well  
12 taken.

13 THE COURT: Okay. Thank you, Mr. Samberg.

14 Let's see. Mr. Chrissinger, what would you  
15 like to say regarding the plaintiffs's motion for summary  
16 judgment?

17 MR. CHRISSINGER: Thank you, Your Honor.

18 While we're on the topic of Landis -- and I  
19 won't belabor the point -- the Wisconsin court noted that  
20 no statutes in Wisconsin use the term "repose," "statutes  
21 of repose" or "statute of repose" in any context. In  
22 Nevada "repose" is used 13 times within Chapter 40  
23 itself.

24 There's a lot to unpack there from

1 Mr. Samberg's argument. I don't want to try to rebut  
2 everything he said point by point. I'll certainly  
3 address the main topics.

4 What I would like to do is first discuss the  
5 legal issues that were raised by the association in the  
6 briefs and then get into the notion of substantial  
7 completion and this changed definition fit for a  
8 particular purpose or fit for the intended use, which is  
9 not the common law definition of substantial completion,  
10 but I'll address that in a couple minutes.

11 The first issue in the briefing is whether  
12 statutory warranty claims are even subject to the  
13 NRS 11.202 statute of repose. The second issue is  
14 whether the statute of repose may be equitably tolled,  
15 and there was some discussion a couple minutes ago about  
16 that. Mr. Samberg also discussed equitable estoppel, so  
17 I'd like to address that. And the final legal issue is  
18 whether the statute of repose is tolled by statute and  
19 specifically 116.3111.

20 Now, the Court can properly make determinations  
21 on all of those issues today without regard to the facts,  
22 so I think it's important that I address each one of  
23 these, but as I do that, I think an overall undeniable  
24 fact -- and the Court has alluded to this -- these walls

1 have been there for now 13 years, almost 13. I think the  
2 last certification was in late December 2006.

3 The walls were fully and finally completed  
4 under the definition of final completion in the NRS, and  
5 you can find that in Chapter 108, which is the mechanic's  
6 lien statutes, and the mechanic's liens statutes talk  
7 about occupation or use by the owner along with a  
8 cessation of work or acceptance by the owner along with a  
9 cessation of work.

10 So this notion that a carpenter can just put  
11 down his bags and walk off and the project is magically  
12 completed, that's not contemplated in the Nevada Revised  
13 Statutes. Substantial completion contemplates something  
14 equal to or less than final completion, and under the  
15 definition of final completion, we have that here back in  
16 2006.

17 I'm sorry. I tend to digress a little bit when  
18 talking about substantial completion, so let me just  
19 briefly hit these legal issues.

20 There's been some discussion of the Ryder case.  
21 I was involved in the Ryder case. Different facts under  
22 Ryder, but if this Court is inclined to look at prior  
23 orders out of this department, this department has held  
24 that warranty claims, statutory warranty claims under 116

1 are subject to the statute of repose.

2 I mentioned that in a footnote. I'm  
3 uncomfortable doing it. It's an unpublished opinion.

4 THE COURT: From myself.

5 MR. CHRISSINGER: From yourself, but under the  
6 rules we're not supposed to do that. I felt I needed to  
7 do that based on the multiple citations to the Ryder case  
8 in the plaintiff's briefing.

9 THE COURT: Just so the record is clear, I'm  
10 not going to go back and revisit the pleadings or the  
11 order in the Ryder Homes case. Who are the plaintiffs in  
12 that again? I forgot their names off the top of my head.

13 MR. CHRISSINGER: It was Ryder Homes against  
14 Somersett.

15 MR. BURCHAM: Somersett, and I think I brought  
16 in the other parties as third parties.

17 THE COURT: We keep referring to it as the  
18 Ryder Homes case. It was another construction defect  
19 case in this department which, if memory serves me  
20 correctly, was scheduled to go to trial a couple months  
21 ago.

22 MR. CHRISSINGER: That was Gargus.

23 THE COURT: I apologize. I got the two trial  
24 dates conflated, but I'm not going to go back and look at

1 the Ryder Homes case. The facts of the Ryder Homes case  
2 are different, so I think there is a factual distinction.  
3 You're right, Mr. Chrissinger, I did hold in that order  
4 that the -- what you said regarding the statute of  
5 repose. I'm just not going to relitigate or go back and  
6 say, well, as I said in Ryder Homes, I'm saying here.

7 MR. CHRISSINGER: Thank you. I just wanted to  
8 bring that up.

9 And the argument in our briefing is almost a  
10 verbatim recitation of your order because it talks about  
11 the statute of repose is not ambiguous. It provides in  
12 no uncertain terms no action may be commenced more than  
13 six years after the substantial completion. It doesn't  
14 say no action based in contract, based in negligence,  
15 based in some amorphous Chapter 40 claim for relief, no  
16 action may be commenced. Essentially, if the plaintiff  
17 is complaining that something was built incorrectly or  
18 was designed incorrectly, no action may be brought after  
19 six years.

20 THE COURT: What about the argument that  
21 Mr. Samberg makes -- I'm not agreeing or disagreeing with  
22 it -- that the way that the defendants are approaching  
23 this would encourage a developer in essence to maintain  
24 control for six years and then hand it off because then

1 the statute of repose would have expired and that would  
2 defeat the purpose of some other portions of the  
3 legislation? I'm paraphrasing Mr. Samberg's argument,  
4 but basically that's what he said.

5 MR. CHRISSINGER: Well, I think that gets more  
6 towards the argument of estoppel and having some  
7 affirmative act by a developer or a declarant. The  
8 legislature can certainly look at that issue and change  
9 the law if the legislature so desires, but as it's  
10 written right now, no action.

11 The statute does provide for some exceptions.  
12 Indemnity and contribution aren't barred by the statute  
13 of repose, innkeeper liability and product liability.  
14 Those are the three statutory exceptions.

15 The association complains that the defense  
16 doesn't have any authority for this proposition of  
17 warranty claims are encompassed by the statute of repose,  
18 but the authority is the statute itself, and because that  
19 statute is not ambiguous, there's no need to go search  
20 for cases that state exactly what the statute says.  
21 There's no need to look at any legislative history to  
22 determine what the legislature really meant when the  
23 legislature said no action.

24 So this idea that warranty claims are not

1 subject to the statute of repose, that may be something  
2 that the association or other associations want, and like  
3 you said earlier, there's a place to go get that law  
4 changed and it's 35 miles south of here, but it's not  
5 here in this department.

6 The next issue is whether the statutes of  
7 limitations can be equitably tolled. And Mr. Samberg  
8 went through all the elements of equitable tolling, but,  
9 again, that's in context of a statute of limitations, and  
10 you have to look at the different purposes between the  
11 two statutes.

12 Statutes of limitations focus on the actions of  
13 the plaintiff. The limitations encourage plaintiffs to  
14 file their claims timely, and if the plaintiff is  
15 prevented from doing that by some extraordinary means,  
16 whether it's procedural or something else, the purpose of  
17 the statute is not furthered by barring that plaintiff's  
18 claims. The plaintiffs are still going to be encouraged  
19 to bring their claims timely, but the Court can look at  
20 it and say, hey, something happened here and you weren't  
21 able to bring your claim within this statute of  
22 limitations. And so in appropriate circumstances the  
23 Court may apply equitable tolling, but there's no Nevada  
24 case applying equitable tolling to a statute of repose.

1 And, Your Honor, you brought up the FDIC  
2 against Rhodes case, and I just want to read a sentence  
3 from that case. "Moreover, a statute of limitations can  
4 be equitably tolled. In contrast, a statute of repose  
5 bars a cause of action after a specified period of time  
6 regardless of when the cause of action was discovered or  
7 a recoverable injury occurred."

8 And the next sentence is important, too,  
9 because it talks about the purposes of the statute of  
10 repose. It conditions a cause of action on filing a suit  
11 within the statutory time period and defines the right  
12 involved in terms of the time allowed to bring suit.

13 So while statutes of limitations focus on  
14 encouraging plaintiffs, statutes of repose focus on  
15 providing defendants and owners, contractors, design  
16 professionals, independent testing companies with the  
17 right not to be sued after a certain amount of time.

18 So taking into consideration some extraordinary  
19 thing that happens to a plaintiff, it is unfair to take  
20 away this vested right that these contractors and owners  
21 have received after a certain period of time, and that  
22 period of time is determined by the legislature. And  
23 whether it's six years, eight years, ten years, twelve  
24 years, that's a legislative determination based on public

1 policy determined by the legislators in our state.

2 Essentially, allowing equitable tolling of a statute of  
3 repose defeats the purpose of it.

4 The next legal issue raised by the association  
5 is whether equitable estoppel may defeat the statute of  
6 repose. The Nevada Supreme Court has discussed equitable  
7 estoppel and says it operates to prevent a party from  
8 asserting legal rights that in equity and good conscience  
9 they should not be allowed to assert because of their  
10 conduct.

11 The California Supreme Court has looked at it,  
12 and I'm hesitant to cite to California cases in this  
13 department or any other department in Washoe County, but  
14 estoppel is a common law concept that's been well  
15 developed over the years.

16 THE COURT: I saw Judge Lane once threaten to  
17 hold someone in contempt -- it was an attorney who was  
18 from San Francisco -- and kept citing -- he kept saying,  
19 "Well, I don't know about Nevada, but in California," and  
20 about the fourth time he said that, Judge Lane's head  
21 exploded and he was going to hold the guy in contempt.  
22 He said, "If I hear you say California one more time, I'm  
23 throwing you in jail."

24 So don't worry about it, Mr. Chrissinger.

1 You're not there yet.

2 MR. CHRISSINGER: Well, you know, as a native  
3 Nevadan, I feel I should get a little bit of liberty to  
4 talk about California law, but it's essentially common  
5 law. And the California Supreme Court said the defense  
6 of estoppel requires a clear showing that the party  
7 relying upon it, the association in this case, was  
8 induced by the adverse party to make a detrimental change  
9 in position. Induced by the defendants here to make an  
10 adverse change in position, and the burden of proof is on  
11 the party asserting estoppel.

12 And in that case the Court held that a party  
13 may be estopped from asserting a statute of limitations  
14 defense -- and, again, limitations, not statute of  
15 repose -- when that party represents during a limitations  
16 period that all actionable damage has been or will be  
17 repaired, thus making it unnecessary to sue.

18 In that case you had an affirmative action by a  
19 defendant saying basically, don't worry about it, I'm  
20 going to fix it, or don't worry about it, I have fixed  
21 it. We don't have any of that evidence in this case.

22 Over the last four or five days, including this  
23 weekend, I have gone over these briefs very carefully,  
24 and the estoppel argument, as I can tell, is that the

1 association was under declarant control until January 8,  
2 2013. And I'll just use that date, as we discussed.  
3 It's a who cares. It's a two-week period.

4 The statute of repose ran before the  
5 association had the ability to file a claim, and  
6 therefore -- because the declarant controlled the board.  
7 So therefore the association never had a chance to bring  
8 this claim, and I think that's the affirmative action  
9 that the association relies upon, but that argument is  
10 based on a false premise.

11 On January 8, 2013, the Nevada statute of  
12 repose was ten years, so if we're discussing -- just for  
13 the purposes of this discussion, January 1, 2007, for  
14 substantial completion.

15 On January 8, 2013, the association could have  
16 done whatever it wanted with these walls. It could have  
17 had its engineer, Seth Padovan, who had worked for the  
18 association prior and still works for the association  
19 today, who was aware of the prior minor issues with the  
20 walls, they could have had Mr. Padovan go out there and  
21 inspect the 13 miles of wall.

22 AB125 was passed in February 2015, and AB125  
23 had a saving provision. AB125 reduced the statute of  
24 repose from ten to six, but in AB125 it said if a

1 claimant brings an action within one year of the  
2 effective date of this act, that claimant will be under  
3 the old statute of repose, the ten-year statute of  
4 repose. That's a three-year period that the association  
5 could have brought this claim.

6 So this idea that the association never had a  
7 chance to bring this claim due to the timing of the  
8 turnover of declarant control is simply untrue, and if  
9 this Court buys the argument that equitable estoppel can  
10 be applied to a statute of repose, that estoppel argument  
11 is -- or the timing of the passage of AB125 and this  
12 three-year period has failed to that estoppel.

13 The final legal issue before we get into  
14 substantial completion is the tolling that's in  
15 NRS 116.3111. I'm having the same problem as  
16 Mr. Samberg. There's too many numbers.

17 .3111 applies to indemnity and contribution  
18 claims that the association has against a declarant that  
19 arise out of claims against the association. So in other  
20 words, it only applies to claims from third parties  
21 against the association, and then it discusses the  
22 association's right of action against a declarant.

23 Now, first, the statute .3111 says in  
24 subsection 3, "Any statute of limitations" -- again,

1 limitation, I'll get to that in a second -- "affecting  
2 the association's right of action against a declarant  
3 under this section is tolled until the period the  
4 declarant's control terminates." "Under this section."  
5 It doesn't say under this act, it doesn't say under the  
6 Uniform Common Interest Act or under Chapter 116  
7 generally. "Under this section."

8           So we have to look closely at the statute.  
9 Subsection 1 of the statute is -- it's essentially the  
10 unit owner indemnity statute that says the unit owner is  
11 not going to be personally liable just by virtue of being  
12 a unit owner if there's a problem with the common  
13 elements. So there's no question that doesn't apply to  
14 this case.

15           Subsection 2 is what I just referred to, and  
16 that is "an action alleging a wrong done by the  
17 association." We don't have that here. We have an  
18 action alleging a wrong done by the declarant, and the  
19 party alleging the wrong is the association, and  
20 subsection 2 goes on to discuss that if the declarant is  
21 given notice of this third-party claim where the  
22 association has been sued and the declarant doesn't do  
23 anything, the association then has a right of action  
24 against the declarant.

1 And then subsection 3 says "any statute of  
2 limitation affecting the association's right of action  
3 against the declarant under this section is tolled..."

4 So .3111 does not apply to this situation, and  
5 even if it does -- and we had this discussion a little  
6 bit earlier -- it applies to a statute of limitation.

7 There's no need to look at legislative history  
8 because we know that the Nevada Supreme Court has called  
9 NRS 11.202 and its predecessors statutes of repose since  
10 well before the adoption of the Uniform Common Interest  
11 Ownership Act. There's no need to look at legislative  
12 history, and if there's any question of whether the  
13 Nevada Legislature knows how to include statutes of  
14 repose, it's answered by NRS 40.695, statutes of  
15 limitation or repose applicable to a claim based on a  
16 constructional defect are tolled from the time a  
17 Chapter 40 notice is given. So the legislature knows how  
18 to toll a statute of repose, and the legislature decided  
19 not to under 116.3111.

20 That takes me to this issue of substantial  
21 completion, and I'm sorry if earlier I thought I looked  
22 like I was going to jump out of my chair.

23 THE COURT: I didn't notice. Go ahead.

24 MR. CHRISSINGER: I tried to mask that as much

1 as possible.

2 His argument is that the walls are too high,  
3 some of them are too high, some of them are surcharged by  
4 other walls. Therefore, all the walls are not  
5 substantially complete.

6 I discussed earlier a little bit about that  
7 flying in the face of what actual completion is, but it's  
8 important to look at the definition of substantial  
9 completion, and as Mr. Samberg noted, this group of  
10 defense lawyers has discussed the common law definition  
11 of substantial completion in another case, but the  
12 defense is perfectly fine with this definition in the AIA  
13 contract. It encompasses the purpose of having  
14 substantial completion, and the contract states -- and  
15 it's section 9.8.1, and that's going to be important in a  
16 minute -- "Substantial completion is the stage in the  
17 progress" -- a stage in the progress, not at the end --  
18 "the stage in the progress of the work when the work is  
19 sufficiently complete in accordance with the contract  
20 documents so that the owner can occupy or utilize the  
21 work for its intended use."

22 That definition right there implies that there  
23 may still be some more work to be done, and if there's  
24 any question about that, Section 9.8.2, the next section,

1 "When the contractor considers that the work is  
2 substantially complete, the contractor shall prepare and  
3 submit to the architect a comprehensive list of items to  
4 be completed or corrected prior to final payment."

5 That section right there tells us that  
6 substantial completion can occur when there's still more  
7 work to be done and when there are items that are  
8 defective, items that need to be repaired.

9 The association cites to this definition, but  
10 the association changes it, "fit for its intended use."  
11 You will not find the words "fit for its intended use" in  
12 9.8.1. Anyone who has been to law school in the last  
13 50 years recognizes that language from the Uniform  
14 Commercial Code. It's the implied warranty of fitness  
15 for a particular purpose where a dealer or a merchant, if  
16 the merchant has notice of some particular purpose that  
17 the consumer is going to use and goes ahead and sells  
18 that item, that merchant implies it's fit for that use.  
19 That's where that language comes from.

20 And in the briefing -- and I don't have the  
21 page here -- but the association goes through some of the  
22 warranties in 116 and said that's essentially the  
23 definition of substantial completion, but that's not  
24 true. You have to look at the words of the substantial

1 completion definition in the American Institute of  
2 Architects contract, and it's clear that it's a timing  
3 issue. How far along are you in the work when the owner  
4 can actually use these rock walls?

5 THE COURT: Does it have to be each individual  
6 section of rock wall? As we know, there are like  
7 13 miles, I think, of rock wall, 70,000 feet or whatever  
8 it is, but let's say you got 12.5 done. Is that  
9 substantial completion because there's a little bit more  
10 to go, or do you have to look at every single chunk of  
11 rock wall and say, is that section substantially complete  
12 or is that section substantially complete?

13 MR. CHRISSINGER: I think the most logical way  
14 to handle it is by building permit, and so if you have a  
15 section of wall for a subdivision that is being built  
16 right now, that section of wall will become substantially  
17 complete on a different date than a wall that's being  
18 built in another part of Somerset.

19 Stantec's certifications which have been  
20 alluded to a little bit today certify completion of the  
21 walls, I think 35 different certificates.

22 THE COURT: I think it is 35.

23 MR. CHRISSINGER: So that's how I would answer  
24 that.

1           We discussed -- I didn't discuss, but you  
2   discussed with Mr. Samberg the practical effect of the  
3   association's new definition of substantial completion.  
4   The building we're in, not this section, but the building  
5   we're in was built in 1910, the contractor most likely  
6   long gone.

7           If the County sent an inspector up to the attic  
8   and determined that the roof framing was done incorrectly  
9   and the flashing was installed incorrectly, and therefore  
10   if we get a lot of rain, that might lead to some water  
11   intrusion, under this definition of substantial  
12   completion the County then has a claim against that  
13   contractor because the building is not fit for its  
14   intended use.

15           And I think the extreme example that the Court  
16   mentioned, the 45 years, is telling because the  
17   association's position is, absolutely, that's not  
18   substantially complete. Even though it's finally  
19   complete, the workers have gone home, the owner has  
20   accepted it and put it into use, but it's not  
21   substantially complete.

22           I was trying to think of a different analogy  
23   today, and if I get myself back into shape and go try to  
24   run a marathon and I make it 26.1 miles out of the 26.2,

1 and I fall and pull my hamstring and don't finish, if  
2 someone asked me if I finished, I'm going to say, you  
3 know, I didn't actually finish, but I certainly  
4 substantially completed it.

5 Substantial completion is something less than  
6 final completion. It's either equal to or less, but  
7 under this definition that we have here today,  
8 substantial completion can be never achieved even though  
9 final completion was achieved.

10 You talked a little bit earlier about the  
11 defense's complaint that we've changed the playing field  
12 here. The defense doesn't have the burden of proof on  
13 the statute of repose. Absolutely on statutes of  
14 limitations the defense has the burden. The statute of  
15 repose is not an affirmative defense. It is essentially  
16 an element of the plaintiff's claim.

17 When this motion was filed, there was no  
18 evidence disclosed that these walls were not  
19 substantially complete, and that's the stance the  
20 defendant took in the briefing.

21 It's incumbent on the association to come back  
22 with admissible evidence, and you've seen the objections.  
23 I don't know if you want to discuss those today or if  
24 you --

1 THE COURT: I'll cover them in the written  
2 order if I believe it's necessary.

3 MR. CHRISSINGER: Fair enough.

4 But Mr. Samberg said, you know, the defense did  
5 not put forward any evidence. It's not our burden. It's  
6 not the defendants' burden.

7 The association must come forward and say, we  
8 have evidence that these walls were substantially  
9 completed within six years of filing the Complaint. The  
10 only -- and I'm going to put this in quotes -- evidence  
11 that the association has come forward with are two  
12 declarations by engineers, but they're commenting on the  
13 wrong standard.

14 Those engineers said these walls are not fit  
15 for their intended use, but that is not the definition of  
16 substantial completion. Substantial completion is a  
17 stage in the progress when the owner can utilize the  
18 work. These walls have been there for 13 years. There's  
19 no question about that. There's no argument that that's  
20 not true.

21 THE COURT: Is it accurate or inaccurate to say  
22 that some of the walls that Mr. Samberg argues are  
23 incomplete are currently in use and not evidencing any  
24 signs of distress? Do you understand what I'm saying?

1           He's identified all these different sections  
2   that were not completed according to the specifications,  
3   but I would assume that there are some of those that are  
4   still there that are doing the job. Even though they're  
5   not tall enough or wide enough or have the surcharges  
6   that are going on, they're still there and they're still  
7   working. Everything hasn't fallen apart.

8           MR. CHRISSINGER: All the walls are still  
9   there. There have been a couple of failures. One  
10   occurred in February 2017 when we had the most rain I  
11   think that Reno ever received until potentially this  
12   February, but the engineers state that some of these  
13   walls are too high and that some are surcharged.

14           So inevitably there has to be walls out there  
15   that are not too high, and the surcharging that the  
16   association is complaining about are by multiple tiered  
17   walls. So there's many walls where there's only one tier  
18   so there can't be any surcharge.

19           So that's how I'm going to answer that question  
20   because I can't sit here and tell you that all those  
21   walls were built defectively, nondefectively. I'm not  
22   the person to do that. But I can say that there are  
23   walls out there -- there have to be walls out there that  
24   are less than -- 16 feet high, I think was the highest

1 design, but there could be some 2-, 3-foot walls that are  
2 not surcharged and are not too high.

3 So absolutely there are walls out there that  
4 even under this new definition of substantial completion,  
5 fit for a particular purpose, those walls would fit that  
6 definition. And the association has not come forward  
7 with evidence as to those walls, as to why they're not  
8 substantially complete.

9 Your Honor, I think I've covered everything  
10 that I wanted to. It is laid out in the briefs. One  
11 thing I didn't discuss in the briefs is this issue of the  
12 three-year period after declarant control where the  
13 association could have brought suit or done anything it  
14 wanted with respect to the rockery walls.

15 But with that, if you have any questions about  
16 what I just said or any other issues that you perceive  
17 for this case, I'd be happy to answer them.

18 THE COURT: I do not at this point,  
19 Mr. Chrissinger. Thank you.

20 Mr. Burcham, anything to add to  
21 Mr. Chrissinger's argument?

22 MR. BURCHAM: A few things, Your Honor.

23 Thankfully, being second means I don't have to  
24 cover my eight pages of notes and I can do kind of a

1 truncated version of them.

2 I think -- and I'll just scatter a little bit,  
3 and I will get to the equal protection argument which  
4 applies to my client.

5 THE COURT: Well, I'm going to give you an  
6 opportunity to address that.

7 MR. BURCHAM: That's not the one you want me to  
8 yet?

9 THE COURT: Yeah, we'll talk about that later.

10 MR. BURCHAM: Okay. That's fine.

11 So with respect to these other arguments, I  
12 think it's important to note that the statute of repose,  
13 11.202, has two operative words in it for today's  
14 proceeding, and that is "no action."

15 Now, I don't think "no action" is an ambiguous  
16 term or one that is difficult to decipher what it means.  
17 It means no action. It doesn't say "no action based in  
18 tort." It doesn't say "no action based in" -- it says  
19 "no actions."

20 Now, that's different from a statute of repose  
21 which, as the Court has already pointed out, has  
22 different periods of time for different things.  
23 Contracts written, six years; oral, four years; statute,  
24 four years; three years for various other things; two

1 years for negligence causing personal injury.

2 So the statute of repose does not differentiate  
3 between type of action, and most certainly a warranty  
4 claim under NRS 116 is an action, there's no question  
5 about that. When the statute of repose says "no action,"  
6 it, just following the bouncing ball of reasoning, has to  
7 include a warranty claim under 116 because otherwise we  
8 would be literally rewriting that statute. We would be  
9 actually probably adding another exception. We talked  
10 about product liability. You've heard indemnity  
11 contribution, those sorts of things. You'd have to add  
12 another section. Well, the legislature is going to be  
13 meeting in another year and a half, so that's the time to  
14 address that issue.

15 Mr. Chrissinger talked about substantial  
16 completion and the date of substantial completion. It  
17 almost appears as though the association is trying to  
18 take the words "substantial completion" and turn it  
19 into -- I was going to say, redundantly, completely,  
20 completely done or perfectly completed. That's not the  
21 statute, and Mr. Chrissinger set forth very clearly that  
22 substantial completion cannot be after actual completion.

23 These walls -- I said it in my briefs and I'll  
24 say it again -- these walls have now become almost

1 geologic features up there. They have been around for  
2 13 years. They were around 11 years before the lawsuit  
3 was filed. There's 13 miles of them. There is not  
4 evidence that these walls are falling down willy-nilly.  
5 I don't know what the actual linear footage is of walls  
6 that have experienced distress to an extent that they've  
7 either been monitored or fixed. I do not know that. But  
8 you have 70,000 linear feet of them, and I expect it's a  
9 very minute percentage of those that are actually going  
10 down.

11 Anybody that drives around Somerset can see  
12 the walls and can see that they're doing what the walls  
13 are supposed to do. So the notion that these walls are  
14 not substantially complete because a couple engineers  
15 come along and say, gee, I don't think they're  
16 substantially complete, just makes no sense.

17 It's also very important, I think, especially  
18 to look at the declaration of Tom Marsh. It's kind of  
19 the lead geotech guy out there for the association. He  
20 actually, in his declaration, uses legal terms. He  
21 actually says in his declaration there is a genuine issue  
22 of material fact as to whether these walls are finished.  
23 That indicates to me that an engineer is being put forth  
24 as judge and jury and executioner to make the final call;

1 I don't think it's substantially complete, therefore it  
2 is not substantially complete. I think those are words  
3 on a piece of paper and they have no effect legally on  
4 this case.

5           There was a statement made by Mr. Samberg --  
6 I'll be careful about this one, and I'm pretty sure I  
7 have a quote -- he says, "The association did not have  
8 the ability to pursue declarant before turnover." I  
9 believe that was the direct quote. I might have misheard  
10 it, but I'm pretty sure I wrote it down  
11 contemporaneously.

12           Mr. Samberg knows that the association, while  
13 it was controlled by Somerset Development, my client,  
14 pursued Chapter 40 claims. That is mentioned in the  
15 briefs. It's kind of put on the back burner.

16           On two occasions -- and I'm not sure why it  
17 just wasn't mentioned -- on two occasions Somerset  
18 Owners Association, while controlled by my client,  
19 pursued Chapter 40 claims against Somerset Development  
20 Company. So that actually happened, that is actually  
21 something that occurred out there. So how it can be  
22 claimed that the association did not have the ability to  
23 pursue declarant before turnover, how that statement can  
24 be made, I don't know.

1 THE COURT: The point he was trying to make is  
2 that under the statute, the declarant, in this case your  
3 client, would have needed to create a separate  
4 independent committee to pursue those claims. I'm  
5 paraphrasing the argument, but statutorily that's the way  
6 to get there, so we don't rely on in this case Somerset  
7 to look around and sue itself.

8 MR. BURCHAM: True enough, but the fact of the  
9 matter is they did, and that's where I want to make sure  
10 that the statement that was made, "did not have the  
11 ability to pursue" -- that's the key part -- "did not  
12 have the ability to pursue," in fact, the pursuit was  
13 made twice, I believe, at least by the association while  
14 it was controlled by my client against my client. I  
15 mean, that actually happened.

16 I think it's important, just so the record is  
17 clear, that that statement that they did not -- I don't  
18 know where it came from, legally or whatever, but in fact  
19 those kind of claims were made.

20 Now, with respect to tolling, under  
21 116.3111(3), I'd like to quote from the association's  
22 moving papers. This is on page 8. This is on the motion  
23 to strike.

24 "It is well established that all periods of

1 limitation or claims against the declarant by a  
2 homeowners association are tolled during the time that  
3 the declarant controls the homeowners association board  
4 unless an independent committee is established." The  
5 citation says, "See generally NRS 116.3111." That is not  
6 what NRS 116.3111 says.

7 As Mr. Chrissinger pointed out, that subsection  
8 of .3111 is limited to claims under .3111 and in  
9 particular .3111(2), and that subparagraph is basically  
10 an indemnity and contribution claim.

11 In other words, when the association is sued  
12 for something that rightfully the declarant should be  
13 responsible for, then there's a process whereby the  
14 association can go after the declarant. This is not that  
15 type of case. This is a direct action by the association  
16 against my client, the declarant, so therefore the  
17 tolling provisions which only apply to the statute of  
18 limitations and not the statute of repose simply have no  
19 application to the current factual and legal setting of  
20 this case.

21 I believe, Your Honor, that I don't want to  
22 till ground that's already been tilled. I think those  
23 are the additional points separate and apart from the  
24 equal protection argument, which is a real quick one, by

1 the way.

2 If Your Honor has any questions, I'm perfectly  
3 willing to entertain them.

4 THE COURT: No, I don't.

5 MR. BURCHAM: Thank you, Your Honor.

6 THE COURT: Thank you.

7 Mr. Castronova, anything to add?

8 MR. CASTRONOVA: Just very briefly, Your Honor.

9 We're really here on cross motions for summary  
10 judgment, and, really, there is one issue that's  
11 presented to the Court to resolve, and that is, did the  
12 HOA commence this action timely.

13 I don't think there are any disputed issues of  
14 fact, it's really a question of law, and I think the  
15 beginning and end is the language of NRS 11.202. I  
16 disagree that there's only two words to focus on. I  
17 think there's four, and the four words are "no action  
18 shall be commenced." Actually, that's five, but it's the  
19 HOA's burden to show affirmatively that it timely  
20 commenced this action within the statute of repose time  
21 period.

22 It has not introduced any evidence with respect  
23 to what I'll call the three magic documents, which  
24 plaintiff's counsel referred to. It's the HOA's burden

1 to show that it filed this action in a timely manner and  
2 did so within the repose period, and it hasn't produced  
3 any evidence to establish that. Therefore, there is an  
4 issue of law before the Court, and that is, summary  
5 judgment should be granted and the HOA motion should be  
6 denied.

7 The only other thing I'd point out is, this  
8 case is exactly why there is a statute of repose. It's  
9 to bar untimely actions. It's a set time period in which  
10 an action can be brought, and either you do it or you  
11 don't, and this is an instance where it wasn't done. And  
12 with that I rest.

13 THE COURT: Thank you.

14 Anything else to add on behalf of your client?

15 MS. LANDRUM: This is just a quick point of  
16 clarification, Your Honor. It's something that  
17 Mr. Samberg mentioned during his argument that kind of  
18 caught my attention.

19 He said that even the Supreme Court --

20 MR. SAMBERG: Could you have counsel speak up a  
21 bit?

22 MS. LANDRUM: He said that even the Supreme  
23 Court has held that the statute of repose is immutable.  
24 In fact, they've actually held the opposite.

1           In CalPERS v. ANZK Securities, Inc.,  
2   137 S.Ct. 2042 from 2017, they stated, "By establishing a  
3   fixed limit, the statute of repose implements a  
4   legislative decision that as a matter of policy there  
5   should be a specific time beyond which a defendant should  
6   no longer be subjected to protracted liability."

7           I don't have the page number where that quote  
8   appears, but they were talking about the applicability of  
9   equitable tolling in the American Pipeline case on this  
10   CalPERS case. It says that doesn't work because this is  
11   a statute of repose, not a statute of limitations.

12           You know, the intent is that equitable  
13   considerations such as what's articulated in the American  
14   Pipe can't alter the unconditional language of a statute  
15   of repose, and that's throughout that case. So we don't  
16   just have that in Nevada Supreme Court authority. We do  
17   have that in the United States Supreme Court authority.  
18   And contrary to how the pleadings sometimes muddy the  
19   statute of limitations and the statute of repose, they're  
20   two distinct things.

21           THE COURT: Thank you.

22           Mr. Samberg, in response, I actually made a  
23   note to myself to discuss this with you, but I didn't,  
24   and it was raised by Mr. Chrissinger, actually.

1 In Nevada, as the Nevada Supreme Court has  
2 repeatedly acknowledged, they follow the rule of  
3 statutory construction, which in Latin is "expressio  
4 unius est exclusio alterius."

5 MR. SAMBERG: Alterius.

6 Could you speak up just a bit, Your Honor?

7 THE COURT: Certainly. You obviously know what  
8 I was just saying.

9 Recently in an unpublished though citable  
10 disposition from the Nevada Supreme Court because it was  
11 issued in 2017 -- the case is Rural Telephone Company vs.  
12 Public Utilities Commission -- I'm just looking at it  
13 right here, it doesn't have a Westlaw citation I can give  
14 you, but it's a 2017 case -- the Nevada Supreme Court  
15 affirmed that, again -- the Court says in that case,  
16 "This Court follows the principle of statutory  
17 construction that 'the mention of one thing implies the  
18 exclusion of another,'" citing back to Sonia F. vs.  
19 Eighth Judicial District Court, 125 Nev. 495 at page 499,  
20 215 P.3d 705 to 708, a 2009 case, and in that case cites  
21 to State vs. Wyatt, which is a case from 1968.

22 The Sonya F. case I think was written by  
23 Justice Pickering. Let me just check on that and make  
24 sure. No, Justice Hardesty wrote that case.

1 But to bring it back to the statutory  
2 construction analysis, as Mr. Chrissinger noted, the  
3 statute of repose under NRS 11.202(2) does have some  
4 limitations. The legislature has carved out certain  
5 circumstances where a statute of repose is inapplicable,  
6 so wouldn't I apply that rule of statutory construction?

7 That is, the legislature has acknowledged under  
8 these limited circumstances we will allow for the  
9 expansion of the statute of repose or the disregard of  
10 the statute of repose under 11.202(2)(a) and (b), and  
11 because they've done that, I have to assume that they  
12 knew they could have done it in all kinds of other  
13 circumstances and they have specifically chosen not to do  
14 so.

15 Mr. Chrissinger didn't cite -- didn't give me  
16 the Latin, but basically made the argument, the statutory  
17 argument that, you know, the legislature says -- the  
18 legislature could have done this. You can go down and  
19 ask them to do it in January of 2021 along with everybody  
20 else making their pitches to the legislature. Maybe  
21 they'll choose to do it, but they've chosen specific  
22 times and circumstances where the statute of repose does  
23 not apply in subsection 2(a) and (b). Why should I add  
24 one to that section?

1 MR. SAMBERG: Your Honor, I have a lot of  
2 ground to cover, and like Mr. Chrissinger, I fought the  
3 urge to jump up and down during that presentation. There  
4 are certain things that are attributed to me that I'm  
5 going to directly refute. There's certain citations I'm  
6 going to address in reverse order.

7 First of all, "expressio unius" is a maxim of  
8 jurisprudence that's applicable to contracts and  
9 statutes, and you're absolutely correct there is a  
10 legislative process for doing this. However, as I said  
11 before and I stand on the argument, simply because the  
12 statute is there doesn't mean that it cannot be  
13 interpreted or reconciled, and that's what we're asking  
14 you to do.

15 You are correct, there are certain carve-outs  
16 and they're stated in the statute, and expressio unius  
17 would seem to apply to that. We're urging that chapter  
18 doesn't -- that 11.202 does not extend to 116. It may  
19 extend to Chapter 40, but that's our argument, it's  
20 briefed, and we stand on it.

21 Your Honor, I have to refute a couple of things  
22 because they were not just attributed to my client, they  
23 were attributed to me.

24 Number one, it's been represented to me -- and

1 my client has reviewed the minutes the best they could  
2 going back to 2003 -- that there were no lawsuits filed  
3 by the association against itself. Now, I may be wrong,  
4 and if I'm wrong, I'm happy to be corrected.

5 My understanding is that there may have been  
6 insurance claims made or that the proceedings may have  
7 begun, but if I was aware of actual lawsuits that have  
8 been filed by the association against the declarant, I  
9 would have brought that to the Court's attention. If  
10 they're there, they're there.

11 We're talking about from 2003 to 2013, Charlie,  
12 is ten years.

13 MR. BURCHAM: Chapter 40 notices, John.

14 MR. SAMBERG: Again, Your Honor, I apologize  
15 for consulting directly with Mr. Burcham.

16 He has made the representation, and I take him  
17 on his word that that is a fact. It's not in the  
18 pleadings. Perhaps if there had been a citation, we  
19 could have avoided this issue in court.

20 In terms of what Mr. Chrissinger pointed out  
21 regarding what happened in the Ryder Homes case, first of  
22 all, I am not a Nevadan by birth, I am a Nevadan by  
23 choice, so I wanted to make that clear, and I'm very  
24 thankful that the case you discussed was from Wisconsin,

1 not from California.

2 But what I will say -- and I know you've  
3 already discussed Ryder Homes -- I can quote to you, and  
4 I will give you the date that it occurred, and if you'd  
5 like, I will give you the exact page it occurred on, but  
6 in oral argument on July 23, 2018, Mr. Chrissinger used  
7 that same exact language to define substantial  
8 completion. It's on page 23 of the transcript. So,  
9 again, this goes to picking and choosing from statutes  
10 which is to your advantage but ignoring that which is  
11 not.

12 If the legislature, in adopting 116 or in  
13 adopting any version of what is substantial completion  
14 under the common law, if they had meant to incorporate a  
15 mechanic's lien definition, they could have simply said  
16 the substantial completion according to that which is set  
17 forth in the mechanic's lien statute or the certificates  
18 that are filed by owners, which may not be recorded, by  
19 the way, that deal with when you trigger the period  
20 within which to not just record, but commence an action  
21 for the enforcement of a mechanic's lien.

22 Then he goes on to talk about the Uniform  
23 Commercial Code in terms of fit for the use for which it  
24 is intended. That's fine, but that's not what we're

1 arguing. What we're arguing is that which is in essence  
2 common sense as adopted by the experts. That's their  
3 opinion. This is argument of counsel.

4 Finally, I have to point out that to the extent  
5 there is some inference that there is an untoward risk to  
6 a declarant regarding whether or not the statute would  
7 put them in some position of risk, they can mitigate that  
8 by appointing the committee under .4116. Why is this  
9 important? Because counsel went to great lengths to  
10 point out how .3111 doesn't pertain to this presentation.

11 Your Honor, the statute is there for you to  
12 read, and I submit that that is not a complete -- and I  
13 don't want to say inaccurate representation, but .3111(3)  
14 begins with the phrase "except as otherwise provided in  
15 116.4116." Then it goes on to say the statute is tolled  
16 under the period the plaintiffs's control terminates.

17 But then you have to go to .4116, and that's  
18 what I did during my presentation, and .4116 says that it  
19 must be brought within six years, quote -- where does it  
20 go -- one second, Your Honor. Mr. Moas will find it.

21 THE COURT: I've got it.

22 MR. SAMBERG: When you go to .4116, it says,  
23 "any action against the declarant," so .3111(3) is read  
24 together with .4116, and rather than bicker with how it's

1    been presented to you by my colleagues, I will leave it  
2    to you, Your Honor, as I'm sure you have -- I'm confident  
3    you'll go back and look at all of these statutes and look  
4    at them both individually and collectively and see how  
5    they pertain.

6                   So let me now go back as best I can to start at  
7    the beginning of this.

8                   THE COURT: Before we get there, just so I'm  
9    clear about your argument, Mr. Samberg, under  
10   NRS 116.4116(4), which discuss the period of time when  
11   the declarant is in control, it says, "The association  
12   may authorize an independent committee of the executive  
13   board to evaluate and enforce any warranty claims  
14   involving the common elements and to address those  
15   claims."

16                   So is the thought or the suggestion that there  
17   should be some board created to address any potential  
18   claims or is it specific claims once they're raised? So  
19   in this case there would be a rock wall board, and then  
20   if the roads start to buckle, there would be a paving  
21   board? Or is it just kind of like an omnibus board that  
22   would be created to address those issues?

23                   MR. SAMBERG: That's a great question. It  
24   depends on the circumstances.

1 THE COURT: Because here, based on what we've  
2 heard, at least what I understand so far, it doesn't  
3 sound like there has been anything that occurred that  
4 would trigger the need to form that board.

5 So, for example, you've got the photograph in  
6 here -- and I know Mr. Chrissinger objects to it -- but  
7 there's a photograph in there of this rock wall that has  
8 just slid down road, and it looks like it's sitting on a  
9 golf cart path. So let's say for the sake of argument  
10 that happened during a period of Somerset's control and  
11 they did nothing about it, and then another one fell down  
12 and they did nothing about it. Then at least there would  
13 be some reason to be on notice that something is going  
14 on, and if you don't want to do something about it, we  
15 need to establish this independent board to look at that  
16 issue.

17 But as I understand it still, nothing was  
18 occurring that would trigger anyone to believe that we  
19 need to create this independent committee at all or at  
20 least specifically regarding these rock walls that were  
21 constructed.

22 Is that accurate or inaccurate?

23 MR. SAMBERG: To my knowledge, Your Honor,  
24 there were intermittent incidents that were not of the

1 magnitude that occurred in 2016 to 2017, so as a general  
2 notion you are correct, but the question really goes to  
3 how to interpret the statute globally and how to apply it  
4 here.

5 To the extent a committee was not created,  
6 that's not in dispute. The developer has acknowledged it  
7 didn't create that committee. Whether they should have  
8 begs the question of what the statute says, and it goes  
9 to the issue of how interpreting Chapter 113's tolling  
10 provisions does not prejudice the declarant because they  
11 can control when the rights of action begin to accrue.  
12 That's why I cite you to that section under 4, .4116(4).

13 Either they can wait until after they hand over  
14 control or they can begin the clock ticking earlier, and  
15 it says "begin to run" under that statute by creating a  
16 new committee.

17 THE COURT: But then would you be creating a  
18 committee -- under the specific facts of this case, not  
19 just in general, but the specific facts in this case,  
20 you're in essence saying they should have created a  
21 committee that would have never investigated anything  
22 because there was no reason to investigate anything, and  
23 because they didn't create this unnecessary committee,  
24 then the period hasn't started.

1 MR. SAMBERG: I'm not saying that, Your Honor,  
2 because there is no dispute that they didn't. I'm not  
3 arguing that they should have. That's not my argument.  
4 My argument is that the statute has two provisions for  
5 how to start the clock. That's all I'm saying, Your  
6 Honor. I'm not trying to impute misconduct on the  
7 declarant for not creating the committee. That's not  
8 what I'm saying. I'm simply saying when you're  
9 interpreting the statute, those two things are there.

10 But I have to correct a couple things. One  
11 wall did not collapse. Two walls collapsed on that rainy  
12 evening, the golf cart wall and a wall around -- I think  
13 it's on Gypsy Hill or Timber -- they collapsed on the  
14 same night, completely different and separate walls apart  
15 from each other. They didn't just fail, they collapsed,  
16 complete and total collapse. There is a wall on the golf  
17 course, in fact, the wall you saw, Your Honor, that has  
18 triggered potential litigation with that tenant.

19 So this is not just a one-time catastrophic  
20 event that occurred because of either seismic event or a  
21 storm. These walls are built in a seismic area in an  
22 area of Nevada that is known to have heavy rains at  
23 times. In fact, sometimes you have these rains that are,  
24 you know, very intense in very short of periods of time.

1           These are retaining walls. They're engineered  
2 structures designed to last for 50-plus years. I haven't  
3 heard any argument that says it's okay to build a  
4 retaining wall to hold back earth and to hold up  
5 structures that fall down in ten years. If that's their  
6 argument, then I think it lacks credibility.

7           What we have are walls that are by definition  
8 over 6 feet in height, they're engineered structures.  
9 Those engineered structures in 237 instances materially  
10 deviate from plans and specifications.

11           There was one failure that was caught before  
12 collapse that was just repaired at a cost of a over  
13 million dollars, and the association has spent close to  
14 \$3 million on this. So the fact that not every wall has  
15 collapsed is not the fact. The point is that there have  
16 been significant, chronic failures starting in 2016, and  
17 the association acted diligently in investigating and  
18 bringing this lawsuit.

19           To the extent I have to refute other things,  
20 let's go to the really circuitous argument that deals  
21 with what a trigger event is under the American Institute  
22 of Architects contract, 9.8. That was used as an  
23 exemplar to actually support what's already been argued.  
24 I can argue collateral estoppel as to that argument

1 that's already been presented to you by the same team of  
2 lawyers in the Ryder Homes case.

3 The point of the AIA contract 9.8 --

4 THE COURT: I don't think it would be  
5 collateral estoppel. I think it's judicial estoppel.

6 MR. SAMBERG: Is it collateral estoppel?

7 THE COURT: Well, there's judicial estoppel  
8 when you're taking a contrary opinion. You're bound by  
9 the opinion taken in a previous litigation, so you can't  
10 ride two different horses in two different cases. That's  
11 judicial estoppel.

12 MR. SAMBERG: Well, all I'm saying is you were  
13 in the courtroom when they said it.

14 In any event, Your Honor, to the extent that is  
15 a payment sequencing contract trigger device -- I'm sure  
16 you've handled cases over the years where there's a fight  
17 between a general and a sub as to when they should have  
18 been paid, and there are benchmarks of when money is  
19 supposed to flow, and sometimes it's divided into ten  
20 benchmarks as the project goes from, you know, just dirt  
21 until certificate of occupancy.

22 As those benchmarks are hit of substantial  
23 completion, that's when the subs want to complete.  
24 That's really the whole point of Mr. Chrissinger's

1 presentation that is taken out of context, with all due  
2 respect to my colleague, that has nothing to do with this  
3 particular case other than to point out that if the  
4 legislature wanted to use a specific definition of  
5 substantial completion, they would have not deferred all  
6 of us to the common law and left it to counsel to argue  
7 and the Court to decide.

8           They could have said substantial completion for  
9 the purposes of this catch-all is, quote, and they  
10 didn't. They could have cited to the mechanic's lien  
11 definition. They could have cited to the AIA contract.  
12 They could have cited to the oral argument in the Ryder  
13 Homes case. All it says is substantial completion.  
14 Competent evidence is in the record, and I will end with  
15 specific citations to various things.

16           Counsel pointed out the Supreme Court opinion  
17 that apparently stands for something different than what  
18 I said. I was simply referring to page 11 of our brief,  
19 the entire passage. It says what it says.

20           I will point out the four exact paragraphs here  
21 for your consideration in the four declarations, not two  
22 declarations, of Mr. Marsh and Mr. Shields.

23           Mr. Marsh's first declaration, paragraph 20.  
24 There's a supplemental declaration, Your Honor, and

1 that's at paragraph 43. So we have 20 and 43. And then  
2 in Mr. Shields' original declaration, paragraph 19, and  
3 in the subsequent declaration, 25 to 26. So the record  
4 speaks for itself. Those are the declarations. That's  
5 what they say.

6 Other than that, Your Honor, I think we're at  
7 the point where I'm again beating that horse as well.  
8 Unless you have other questions, I'll shut up and sit  
9 down.

10 THE COURT: I do not. And I appreciate your  
11 advocacy, Mr. Samberg.

12 Now, that's Mr. Samberg's motion for summary  
13 judgment. I will just assume for the sake of argument  
14 that the oral arguments regarding the omnibus defendant's  
15 motion for summary judgment would follow along.

16 Is there anything additional that you feel like  
17 you need to add regarding the omnibus motion? Not  
18 Mr. Burcham's independent motion about raising some  
19 constitutional issues.

20 MR. CHRISSINGER: No. But may I respond to one  
21 thing very quickly?

22 THE COURT: No. Because he gets -- Mr. Samberg  
23 gets the last word, so if you respond, he's going to get  
24 to say --

1 MR. CHRISSINGER: Don't I get the last word on  
2 the defense's affirmative motion?

3 THE COURT: On your motion.

4 Okay. Just tell me what you have to say just  
5 to avoid that confusing process.

6 MR. CHRISSINGER: This judicial estoppel or  
7 collateral estoppel issue. I went back through the Ryder  
8 briefs, we put forward the common law definition of  
9 substantial completion, and it's very similar to the AIA.  
10 It doesn't contain the words "fit for its intended use."  
11 To the extent that I said "fit for its use" in oral  
12 argument, I don't know what notes I had in front of me,  
13 but I misspoke. It's not "fit for its intended use," and  
14 this transcript can be brought out and shown to me, but,  
15 Your Honor, that definition is in that briefing and it's  
16 consistent with this AIA definition. And to pull out a  
17 transcript and pick out one word I said in a 15-minute  
18 presentation I think is a bit unfair.

19 And one more issue, mechanic's lien statute.  
20 I'm not citing the mechanic's lien statute for  
21 substantial completion. That's final completion. That's  
22 when everybody is done, gone, walked off the project.  
23 Substantial completion, by common sense, is something  
24 equal to or less than that.

1           The arguments in the defense motion for summary  
2 judgment, I covered them all in my prior presentation. I  
3 don't have anything additional to add. Unless the Court  
4 has any additional questions, I can sit down.

5           THE COURT: I do not.

6           Anything else regarding the omnibus motion,  
7 Mr. Burcham?

8           MR. BURCHAM: No, Your Honor.

9           THE COURT: Ms. Landrum?

10          MS. LANDRUM: No, Your Honor.

11          THE COURT: Mr. Castronova?

12          MR. CASTRONOVA: No, Your Honor.

13          THE COURT: Why don't we do this. It's ten  
14 minutes of 4:00. Why don't we take a ten-minute recess  
15 and we'll come back and I'll hear from Mr. Burcham on his  
16 individual motion.

17          If the rest of you guys don't feel like you  
18 need to stay, then I will not be offended if you're not  
19 here when I come back.

20          MR. BURCHAM: Your Honor, my presentation is  
21 like two minutes. It's not a long one. We can take a  
22 break if necessary, but --

23          THE COURT: I'm just more concerned about the  
24 comfort of everybody. I'm good, but -- we'll take a

1 ten-minute recess.

2           Whoever is not here, assuming Mr. Burcham is  
3 here, have a nice day.

4           (A recess was taken.)

5           THE COURT: We'll go back on the record in  
6 Somerset vs. Somerset, CV17-02427.

7           We have conducted the oral argument regarding  
8 the competing motions for summary judgment, both the  
9 omnibus motion and Mr. Samberg's motion, so now we just  
10 have the separate motion filed by Mr. Burcham raising  
11 some constitutional issues.

12           Mr. Burcham, what would you like to say  
13 regarding that?

14           MR. BURCHAM: Your Honor, while we were in the  
15 break I went and just looked over my briefing on this  
16 issue, and I did touch a lot on -- about 90 percent of  
17 the arguments that were made ended up being  
18 nonconstitutional stuff, and so I talked about the  
19 warranties under 116 and all that and various, you know,  
20 iterations of them, and that is, once again, ground that  
21 has already been tilled.

22           So I'm just going to focus -- and literally  
23 it's just a couple minutes -- on the reason that 11.202,  
24 when it says, "any action," that that has to be

1 all-inclusive and include the warranty claims that are  
2 brought against Somerset Development, and the reason  
3 that that's important is that in 1983, in State Farm vs.  
4 All Electric, a prior version of the statute of repose  
5 did not include two types of folks. It did not include  
6 owners of real property, and it did not include material  
7 men. And in 1983 the Nevada Supreme Court, Justice  
8 Manoukian, ruled that not including those entities under  
9 the umbrella of protection under the statute of repose  
10 created a constitutional infirmity, and therefore the  
11 entire statute was invalidated.

12 Now, why does that apply to this case? It  
13 applies to this case because if we carve out 116 warranty  
14 claims from 11.202, it creates the very same infirmity.  
15 It is not inclusive as to all folks that are under the  
16 protection of the statute of repose, which is Somerset  
17 Development.

18 And so therefore -- for instance, Somerset  
19 Development -- nobody is going to argue or complain about  
20 this -- Somerset Development was not out there building  
21 walls. They weren't out there digging dirt. They hired  
22 people to do that. Those folks have protection. They  
23 are protected parties under the statute of repose, as is  
24 Somerset Development.

1           What makes Somerset Development different is  
2   its status as a declarant, as an HOA declarant.  
3   Therefore, if you carve out Somerset Development from  
4   protection of the statute of repose as to the 116 claims,  
5   equal protection is violated.

6           That's my only point that's specific to that  
7   motion. It's a very simple concept, and it flows from,  
8   really, the -- you almost don't need to get to it. This  
9   is almost like a footnote item because, once again, when  
10   you go back to 11.202 and it says "no action," it doesn't  
11   differentiate between types of action, not, again,  
12   repeating everything else that's been said.

13           Very clearly, 116 warranty claims are not one  
14   of the exceptions for coverage under 202, and therefore I  
15   think everything is harmonious in the entire -- in the  
16   entire statutory setting. The only thing that makes it  
17   disharmonious is if somehow 116 claims are carved out and  
18   not given the protection, then equal protection is  
19   violated.

20           THE COURT: So the warranties are being made by  
21   Somerset, the developer, under 116.4114?

22           MR. BURCHAM: Yeah. There's two sections,  
23   .4113, which is express -- I don't think we're dealing  
24   with express here.

1 THE COURT: The express warranties or the  
2 implied warranties, and so the argument is that Stantec,  
3 **Q & D, Parsons Brothers, everybody else, they're not**  
4 **making any of those warranties. It only applies**  
5 **separately to Somerset, just so I understand your**  
6 **argument?**

7 MR. BURCHAM: Correct.

8 THE COURT: Because they're the declarant under  
9 Chapter 116?

10 MR. BURCHAM: Correct.

11 And this Court has already on stipulation of  
12 the parties removed warranty claims, for instance, from  
13 Parsons Brothers, the folks that built it. That was on  
14 stipulation. There's a court order on it so that's  
15 essentially right.

16 THE COURT: Thank you, Mr. Burcham.

17 Mr. Samberg, what would you like to say about  
18 that discrete issue?

19 MR. SAMBERG: Okay. I think that it goes back  
20 to the main point of the gravamen of our argument, and  
21 let me -- I've been really struggling to figure out a way  
22 to explain this part of it.

23 Let's say an 8-year old is in the car with  
24 their father, and the father runs a red light and a bunch

1 of people get hurt, including the 8-year-old. The  
2 8-year-old is not in a position to investigate or bring a  
3 claim against the father. It's a completely separate  
4 kind of relationship than the driver of the car also  
5 being a tort feisor. It's a different relationship, and  
6 the legislature has deemed it appropriate to give that  
7 kid another ten years to grow up and then figure out  
8 whether they want to go after the dad.

9 The point Mr. Burcham is making is exactly the  
10 point of why there is a distinction. Otherwise you  
11 wouldn't need Chapter 116. There's a fundamental  
12 difference in the relationship between an  
13 owner-controlled owners association and those with whom  
14 it does not have any contractual privity. They go to the  
15 Chapter 40 claims, which they're really talking  
16 negligence.

17 The 116 body of law, it's a warranty claim as  
18 between parties that are in a special relationship, and I  
19 don't believe it would create a constitutional issue to  
20 treat a declarant differently from an entity that does  
21 not have that same kind of relationship with the owners  
22 association.

23 That's really all I would do to point out -- to  
24 refute that other than to regurgitate what we've already

1 said, but that's it in a nutshell.

2 THE COURT: Thank you, Mr. Samberg.

3 Anything else, Mr. Burcham?

4 MR. BURCHAM: Nothing on that, no.

5 MR. SAMBERG: May I just say one thing, Your  
6 Honor?

7 THE COURT: Now you're back where  
8 Mr. Chrissinger was just a couple minutes ago.

9 MR. SAMBERG: It has nothing to do with any of  
10 that. I just want to acknowledge during the break  
11 Mr. Burcham showed me the claim that he was talking  
12 about, and he's represented to me that it's been part of  
13 the 16.1 disclosure of tens of thousands of documents.  
14 So I took him at his word, he's absolutely correct, but,  
15 again, without regurgitating the argument, we're not  
16 saying they didn't form a committee and some harm should  
17 be attributable to that, but I wanted to acknowledge he  
18 is correct and he showed me the form.

19 THE COURT: Thank you for clarifying that.

20 Okay, everybody. As I said, I think these are  
21 important issues, and I don't ever think I do my best  
22 work by shooting off the cuff off the bench, and there's  
23 really no reason to do so.

24 So what I'm going to do is take these three

1 motions under submission effective the day that I have  
2 the transcript of the proceedings, so it won't be today.  
3 It will be as soon as the court reporter is able to get  
4 the transcript done. So then I've got all the  
5 information that I need.

6 And if I feel the need, just so you know,  
7 Mr. Chrissinger, to address the objections that you made  
8 to some of the exhibits that were contained in  
9 Mr. Samberg's motion for summary judgment -- having  
10 reviewed that pleading, I don't know how anything is  
11 going to rise or fall based on those exhibits or pieces  
12 of evidence, I guess I should say that are embedded in  
13 the pleadings themselves, but if I feel the need to  
14 address to them, I will in relation to the written orders  
15 that I enter.

16 Thank you, everybody. Have a good afternoon.

17 (Proceedings concluded.)  
18  
19  
20  
21  
22  
23  
24

1 STATE OF NEVADA )  
2 ) ss.  
3 COUNTY OF WASHOE )

4

5 I, PEGGY B. HOOGS, Certified Court Reporter in  
6 and for the State of Nevada, do hereby certify:

7 That the foregoing proceedings were taken by me  
8 at the time and place therein set forth; that the  
9 proceedings were recorded stenographically by me and  
10 thereafter transcribed via computer under my supervision;  
11 that the foregoing is a full, true and correct  
12 transcription of the proceedings to the best of my  
13 knowledge, skill and ability.

14 I further certify that I am not a relative nor  
15 an employee of any attorney or any of the parties, nor am  
16 I financially or otherwise interested in this action.

17 I declare under penalty of perjury under the  
18 laws of the State of Nevada that the foregoing statements  
19 are true and correct.

20 Dated this 29th day of July, 2019.

21

22 /s/ Peggy B. Hoogs

23 \_\_\_\_\_  
24 Peggy B. Hoogs, CCR #160, RDR

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

SOMERSETT OWNERS ASSOCIATION,  
a domestic non-profit corporation,

Plaintiff,

vs.

Case No. CV17-02427

Dept. No. 10

SOMERSETT DEVELOPMENT CO., LTD.,  
a Nevada limited liability company;  
SOMERSETT, LLC, a dissolved Nevada  
limited liability company; SOMERSETT  
DEVELOPMENT CORPORATION, a  
dissolved Nevada corporation; Q&D  
CONSTRUCTION, INC., PARSONS  
BROTHERS ROCKERIES, INC., a  
Washington corporation; PARSONS ROCKS!,  
LLC, a Nevada limited liability company, and  
DOES 5-50 inclusive,

Defendants,

AND RELATED CROSS-ACTIONS.

**ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Presently before the Court is DEFENDANTS' MOTION FOR SUMMARY JUDGMENT  
("the Motion") filed by Defendants STANTEC CONSULTING SERVICES INC.; SOMERSETT  
DEVELOPMENT CO., LTD; SOMERSETT, LLC; SOMERSETT DEVELOPMENT  
CORPORATION; Q&D CONSTRUCTION, INC; and PARSONS BROTHERS ROCKERIES,  
INC. (collectively "the Defendants") on March 26, 2019. Plaintiff SOMERSETT OWNERS

1 ASSOCIATION ("the Plaintiff") filed the OPPOSITION OF PLAINTIFF TO DEFENDANTS'  
2 JOINT MOTION FOR SUMMARY JUDGMENT (OMNIBUS MOTION) ("the Opposition") on  
3 April 26, 2019. The Plaintiff contemporaneously filed the REQUEST BY PLAINTIFF FOR  
4 JUDICIAL NOTICE ("the RJN").<sup>1</sup> The Defendants filed DEFENDANTS' REPLY IN SUPPORT  
5 OF THEIR MOTION FOR SUMMARY JUDGMENT ("the Reply") on June 7, 2019. The Court  
6 held a hearing on July 15, 2019, and took the matter under advisement.  
7

8 The Plaintiff filed the FIRST AMENDED COMPLAINT FOR DAMAGES  
9 (CORRECTED) ("the FAC") on May 3, 2018.<sup>2</sup> The Plaintiff is a homeowners association of a  
10 common-interest community. The FAC is a construction defect matter which contains the  
11 following causes of action: 1) Negligence and Negligence Per Se; 2) Breach of Express and Implied  
12 Warranties Pursuant to NRS 116.4113 and NRS 11.4114<sup>3</sup> and Common Law; 3) Negligent  
13 Misrepresentation and/or Failure to Disclose; 4) Declaratory Relief; and 5) Breach of NRS  
14 116.1113 and the Implied Covenant of Good Faith. The Complaint 8-17. The Plaintiff contends  
15 the Defendants negligently designed and constructed rockery walls within the Plaintiff's common-  
16 interest community and breached the express and implied warranties associated with the  
17 construction. The Complaint 11-13. The Plaintiff also alleges the Defendants negligently  
18 misrepresented and/or failed to disclose known latent defects which later caused the rockery walls  
19 to fail and also breached the implied covenant of good faith and fair dealing. The Complaint 14-16.  
20  
21  
22  
23

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24  
25 <sup>1</sup> NRS 47.130 and 47.1150 govern judicial notice. The effect of judicial notice is to establish the fact which is noticed to  
26 the court. *Lemel v. Smith*, 64 Nev. 545, 566, 187 P.2d 169, 179 (1947). While the Plaintiff has asked the Court to take  
27 judicial notice of twelve different items, the Court does not believe judicial notice of these items is necessary or  
appropriate for the Motion. The Court will consider the items in the RJN as if they had been submitted as exhibits to the  
Opposition and will give them appropriate weight, if any.

28 <sup>2</sup> The requisite Chapter 40 notice was served on December 29, 2017. *See* the Motion 6:10-14.

<sup>3</sup> The Court presumes the Plaintiff intended to write "116.4144."

1 The Defendants contend they are entitled to summary judgment on all of the Plaintiff's  
2 claims because the statute of repose has expired. The Motion 7:10-21. The Defendants contend  
3 more than six years have elapsed since the rockery walls were substantially completed, and statutes  
4 of repose are not subject to equitable or statutory tolling. The Motion 8:8-17; 9:3-27; 10:6-21;  
5 11:1-22. The Plaintiff responds the Motion should be denied because the warranty claims under  
6 NRS Chapter 116 did not begin to run until control of the Plaintiff's board was transferred from  
7 Defendant SOMERSETT DEVELOPMENT CO., LTD. ("SDC") to the Plaintiff on January 8,  
8 2013. The Opposition 2:6-14; 6:7-15. The Plaintiff also contends there is a genuine issues of  
9 material fact regarding the date of substantial completion for the rockery walls because evaluations  
10 from 2017 and 2018 revealed the rockery walls were unfit for their intended use. The Opposition  
11 2:15-20; 9:20-23; 10:16-20; 11:14-17; 17:4-8. The Plaintiff further contends the statute of repose is  
12 subject to statutory and equitable tolling and is only applicable to the Negligence and Negligence  
13 Per Se claims. The Opposition 13:26-28; 20:17-18; 22:7-11; 23:3-10; 24:4-13. The Defendant  
14 responds by arguing that the Plaintiff conflates statutes of limitation and statutes of repose and that  
15 tolling only applies to the former. The Reply 4:2-21; 8:16-20; 9:8-12; 11:10-18. The Defendant  
16 also argues the common law definition of substantial completion does not require an improvement  
17 to be free from defects, and substantial completion cannot occur after actual completion. The  
18 Reply 5:6-16; 7:11-23; 8:13-15.

19 NRCP 56(a) allows a party to petition the court for summary judgment on a claim or  
20 defense. *Shadow Wood Homeowners Ass'n v. New York Cmty. Bancorp, Inc.*, 132 Nev. 49, 55,  
21 366 P.3d 1105, 1109 (2016). Summary judgment is appropriate where the moving party  
22 demonstrates no genuine issue of material fact, thus entitling the party to judgment as a matter of  
23 law. NRCP 56(a). A material fact is one that could impact the outcome of the case. *Wood v.*

1 *Safeway, Inc.*, 121 Nev. 724, 730, 121 P.3d 1026, 1030 (2005) (quoting *Anderson v. Liberty*  
2 *Lobby*, 477 U.S. 242, 247-48, 106 S. Ct. 2505, 2509-10 (1986)). When the party moving for  
3 summary judgment does not bear the burden of persuasion at trial, the movant may satisfy the  
4 burden of production for summary judgment by “submitting evidence that negates an essential  
5 element of the nonmoving party’s claim” or “pointing out that there is an absence of evidence to  
6 support the nonmoving party’s case.” *Cuzze v. Univ. and Cmty. Coll. Sys. of Nev.*, 123 Nev. 598,  
7 602-03, 172 P.3d 131, 134 (2007).  
8

9       When considering a motion for summary judgment, the district court must view the  
10 evidence and any reasonable inferences drawn from it in the light most favorable to the  
11 nonmoving party. *Wood*, 121 Nev. at 729, 121 P.3d at 1029. However, the nonmoving party must  
12 set forth “specific facts demonstrating the existence of a genuine factual issue.” *Pegasus v. Reno*  
13 *Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82, 87 (2002) (explaining non-moving party may  
14 not stand on “general allegations and conclusions”). Such facts must be predicated on admissible  
15 evidence, and the non-moving party is not permitted “to build a case on the gossamer threads of  
16 whimsy, speculation and conjecture.” *Id.* “The substantive law controls which factual disputes  
17 are material and will preclude summary judgment; other factual disputes are irrelevant.” *Wood*,  
18 121 Nev. at 731, 121 P.3d at 1031.  
19

20       NRS 11.202 enumerates the statute of repose for claims related to construction defects and  
21 provides:  
22

- 23
- 24       1. No action may be commenced against the owner, occupier or any person  
25       performing or furnishing the design, planning, supervision or observation of  
26       construction, or the construction of an improvement to real property more than 6  
27       years after the substantial completion of such an improvement, for the recovery  
28       of damages for:

- a. Any deficiency in the design, planning, supervision or observation of  
construction or the construction of such an improvement;

- b. Injury to real or personal property caused by any such deficiency; or
- c. Injury to or the wrongful death of a person caused by any such deficiency.

2. The provisions of this section do not apply:

- a. To a claim for indemnity or contribution.
- b. In an action brought against:
  - 1) The owner or keeper of any hotel, inn, motel, motor court, boardinghouse or lodging house in this State on account of his or her liability as an innkeeper.
  - 2) Any person on account of a defect in a product.

The date of substantial completion is the latest of the following dates: the date of the final building inspection, the date the notice of completion is issued, or the date a certificate of occupancy is issued. NRS 11.2055. *See also Dykema v. Del Webb Cmty., Inc.*, 132 Nev. 823, 827, 385 P.3d 977, 980 (2016) (holding issue date for notice of completion is date of recording). If none of the above three events occurred, the date of substantial completion is determined by the rules of the common law. *Id.* <sup>4</sup> “[S]ubstantial completion’ implies that the parties have been given the object of their contract and that any omissions or deviations can be remedied.” 22 AM. JUR. 2D DAMAGES § 83 (explaining contract has been substantially performed).

Statutes of repose are distinct from statutes of limitation. As the *Rhodes* Court explained:

The distinction between these two terms [statute of limitations and statute of repose] is often overlooked. A statute of limitations prohibits a suit after a period of time that follows the accrual of the cause of action . . . Moreover, a statute of limitations can be equitably tolled . . . **In contrast**, a statute of repose bars a cause of action after a specified period of time **regardless of when the cause of action was discovered or a recoverable injury occurred.**

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<sup>4</sup> The parties do not dispute that no final building inspection occurred and no notice of completion was issued. Additionally, the parties do not argue the statute is ambiguous.

1 *FDIC v. Rhodes*, 130 Nev. 893, 899, 336 P.3d 961, 965 (2014) (emphasis added). *See also*  
2 *Davenport v. Comstock Hills-Reno*, 118 Nev. 389, 390, 46 P.3d 62, 63 (2002) (explaining statutes  
3 of repose “absolutely bar any action stemming from injuries caused by a negligently designed or  
4 constructed improvement to real property after a certain period of time has passed.”). In addition to  
5 and separate from the elements of a cause of action, a plaintiff “must also prove that the cause of  
6 action was brought within the time frame set forth by the statute of repose.” *G&H Assocs. v. Ernest*  
7 *W. Hahn, Inc.*, 113 Nev. 265, 271, 934 P.2d 299, 233 (1997) (internal citations omitted).

9       The Court will grant the Motion because there is no genuine dispute of material fact the  
10 Plaintiff failed to file the FAC within the six-year statute of repose. Even when viewing the  
11 evidence in the light most favorable to the Plaintiff, the Plaintiff has not identified any admissible  
12 evidence proving the FAC was filed within the six-year statute of repose. Because the Plaintiff  
13 bears the burden of persuasion on the statute of repose issue, the lack of affirmative evidence is  
14 fatal. First, the statute of repose applies to all of the Plaintiff’s claims, not only the Negligence and  
15 Negligence Per Se claims. All of the Plaintiff’s claims are premised on the design and construction  
16 of the walls. The plain language of NRS 11.202(1) clearly states that “no action...for the recovery  
17 of damages” for construction deficiency can be commenced more than six years after the  
18 substantial completion of the improvement. The statute does not differentiate between types of  
19 actions, and the only exemptions appear in NRS 11.202(2). Because the Plaintiff’s claims do not  
20 fall within the applicable exemptions, the statute of repose applies. Second, the Plaintiff’s  
21 argument that evaluations from 2017 to 2018 confirm the lack of substantial completion is  
22 unpersuasive. The Plaintiff essentially argues the discovery of any defects precludes substantial  
23 completion; however, this argument contradicts the purpose of and policy determination embodied  
24 by the statute of repose. The statute of repose is intended to provide parties with finality and  
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1 establish a time period after which they cannot be sued for construction deficiencies. *See*  
2 *Davenport*, 118 Nev. at 393, 46 P.3d at 65 (“[T]he legislature has opted to provide them [parties  
3 involved in creating improvement] with a measure of economic certainty by closing the door to  
4 liability . . .”). If the Court were to accept the Plaintiff’s analysis, the statute of repose would  
5 potentially last decades for appurtenances and other common interest elements and developments,  
6 such as roads, sidewalks, walls, parks, trails and developed open spaces constructed for the benefit  
7 of all members of a community. The statute of repose is an absolute time bar based on substantial  
8 completion and is unaffected by the later discovery of damage or injury. *See G&H Assocs.*, 113  
9 Nev. at 271, 934 P.2d at 233. Accepting the Plaintiff’s argument would eviscerate the purpose of  
10 the statute of repose, render the substantial completion standard meaningless and expressly  
11 contradict the policy determination made by the Legislature.  
12

13  
14 Finally, statutes of repose are not subject to equitable or statutory tolling, a concept which  
15 has been explained by the Nevada Supreme Court. *See Rhodes*, 130 Nev. at 899, 336 P.3d at 965  
16 (explaining statutes of limitations can be tolled and statutes of repose cannot). *See also State Dep’t*  
17 *of Taxation v. Masco Builder Cabinet Grp.*, 127 Nev. 730, 738, 265 P.3d 666, 671 (2011)  
18 (explaining operation of equitable tolling for statute of limitations). The Plaintiff’s reliance on out-  
19 of-state case law is unpersuasive in light of mandatory authority undercutting its argument. *See*  
20 *Rhodes*, 130 Nev. at 899, 336 P.3d at 965 (explaining purpose of statute of repose is to “give a  
21 defendant peace of mind by barring delayed litigation, so as to prevent unfair surprises that result  
22 from the revival of claims that have remained dormant for a period during which the evidence  
23 vanished and memories faded.”). For all of these reasons, the Plaintiff has failed to carry its burden  
24 to establish its claims were filed within the six-year statute of repose.  
25  
26

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28

1           **IT IS ORDERED** DEFENDANTS' MOTION FOR SUMMARY JUDGMENT is hereby  
2 **GRANTED.**

3           **DATED** this   2   day of October, 2019.  
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7 ELLIOTT A. SATTLER  
8 District Judge  
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1 **CERTIFICATE OF MAILING**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court  
3 of the State of Nevada, County of Washoe; that on this \_\_\_\_\_ day of October, 2019, I deposited in  
4 the County mailing system for postage and mailing with the United States Postal Service in Reno,  
5 Nevada, a true copy of the attached document addressed to:  
6

7  
8 **CERTIFICATE OF ELECTRONIC SERVICE**

9 I hereby certify that I am an employee of the Second Judicial District Court of the State of  
10 Nevada, in and for the County of Washoe; that on the 2nd day of October, 2019, I electronically  
11 filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of  
12 electronic filing to the following:  
13

14 CHARLES BURCHAM, ESQ.

15 NATASHA LANDRUM, ESQ.

16 DIRK GASPAR, ESQ.

17 DAVID LEE, ESQ.

18 STEPHEN CASTRONOVA, ESQ.

19 THEODORE E. CHRISSINGER, ESQ.

20 MICHAEL S. KIMMEL, ESQ.

21 STEPHEN G. CASTRONOVA, ESQ.

22 JOHN SAMBERG, ESQ.

23 DON SPRINGMEYER, ESQ.  
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Sheila Mansfield  
Judicial Assistant

Code: 2540

Charles L. Burcham, Esq., Nevada Bar No. 2673  
Wade Carner, Esq., Nevada Bar No. 11530  
Thorndal, Armstrong, Delk, Balkenbush & Eisinger  
6590 S. McCarran, Suite B  
Reno, Nevada 89509  
Tel: (775) 786-2882

Attorneys for Defendants  
SOMERSETT DEVELOPMENT COMPANY, LTD;  
SOMERSETT, LLC and SOMERSETT DEVELOPMENT CORPORATION

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

SOMERSETT OWNERS ASSOCIATION, a  
Domestic Non-Profit Corporation,

Plaintiff,

vs.

Case No. CV17-02427

Dept. No. 15

SOMERSETT DEVELOPMENT  
COMPANY, LTD, a Nevada Limited  
Liability Company; SOMERSETT, LLC a  
dissolved Nevada Limited Liability Company;  
SOMERSETT DEVELOPMENT  
CORPORATION, a dissolved Nevada  
Corporation; Q & D Construction, Inc., a  
Nevada Corporation, PARSONS BROS  
ROCKERIES, INC., a Washington  
Corporation; PARSONS ROCKS!, LLC., a  
Nevada Limited Liability Company, and  
DOES 5 through 50, inclusive,

Defendants.

SOMERSETT DEVELOPMENT CO., LTD.,

Third-Party Plaintiff,

vs.

STANTEC CONSULTING, INC., an Arizona  
Corporation; and DOES 1-50 inclusive,

Third-Party Defendant.

**NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that on the 2<sup>nd</sup> day of October, 2019, the above-entitled Court  
entered its Order in the above-entitled matter.

1 PLEASE TAKE FURTHER NOTICE that on the 2<sup>nd</sup> day of October, 2019, said Order  
2 was duly filed in the office of the Clerk of the above-entitled Court and that attached hereto is a  
3 true and correct copy of said Order.

4 **AFFIRMATION**

5 **Pursuant to NRS 239B.030 and 603A.040**

6 The undersigned hereby affirms that this document does not contain the personal  
7 information of any person.

8 DATED this 2<sup>nd</sup> day of October, 2019.

9 THORNDAL, ARMSTRONG,  
10 DELK, BALKENBUSH & EISINGER

11 By: /s/ Charles Burcham  
12 CHARLES L. BURCHAM, ESQ.  
13 Nevada Bar No. 2673  
14 WADE CARNER, ESQ.  
15 Nevada Bar No. 11530  
16 6590 S. McCarran Blvd., Suite B  
17 Reno, Nevada 89509  
18 Attorneys for Defendants  
19 SOMERSETT DEVELOPMENT  
20 COMPANY, LTD, SOMERSETT, LLC,  
21 and SOMERSETT DEVELOPMENT  
22 CORPORATION  
23  
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25  
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of Thorndal, Armstrong, Delk,  
3 Balkenbush & Eisinger, and that on this date I caused the foregoing NOTICE OF ENTRY OF  
4 ORDER to be served on all parties to this action by:

5 \_\_\_\_\_ placing an original or true copy thereof in a sealed, postage prepaid, envelope in the  
6 United States mail at Reno, Nevada.

7  X  Second Judicial District Court Eflex ECF (Electronic Case Filing)

8 \_\_\_\_\_ personal delivery

9 \_\_\_\_\_ facsimile (fax)

10 \_\_\_\_\_ Federal Express/UPS or other overnight delivery

11 fully addressed as follows:

12 **Don Springmeyer, Esq.**  
13 **John Samberg, Esq.**  
14 **Royi Moas, Esq.**  
15 **Wolf, Rifkin, Shapiro, Schulman &**  
16 **Rabkin, LLP**  
17 **5594 B Longley Lane**  
18 **Reno, NV 89511**  
19 **Attorneys for Plaintiff**

**Natasha Landrum, Esq.**  
**Dirk W. Gaspar, Esq.**  
**Lee, Hernandez, Landrum & Garofalo**  
**7575 Vegas Dr., Ste 150**  
**Las Vegas, NV 89128**  
**Attorneys for Defendant**  
**Q & D Construction**

17 **Steve Castronova, Esq.**  
18 **Castronova Law Offices, P.C.**  
19 **605 Forest Street**  
20 **Reno, NV 89509**  
21 **Attorney for Defendant**  
22 **Parsons Bros Rockeries**

**Theodore Chrissinger, Esq.**  
**Hoy, Chrissinger, Kimmel & Vallas**  
**50 W. Liberty Street, Suite 840**  
**Reno, NV 89501**  
**Attorney for Stantec Consulting**

22 DATED this 2<sup>nd</sup> day of October, 2019.

24 /s/ Laura Bautista  
25 An employee of Thorndal, Armstrong,  
26 Delk, Balkenbush & Eisinger  
27  
28

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

SOMERSETT OWNERS ASSOCIATION,  
a domestic non-profit corporation,

Plaintiff,

vs.

Case No. CV17-02427

Dept. No. 10

SOMERSETT DEVELOPMENT CO., LTD.,  
a Nevada limited liability company;  
SOMERSETT, LLC, a dissolved Nevada  
limited liability company; SOMERSETT  
DEVELOPMENT CORPORATION, a  
dissolved Nevada corporation; Q&D  
CONSTRUCTION, INC., PARSONS  
BROTHERS ROCKERIES, INC., a  
Washington corporation; PARSONS ROCKS!,  
LLC, a Nevada limited liability company, and  
DOES 5-50 inclusive,

Defendants,

AND RELATED CROSS-ACTIONS.

**ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Presently before the Court is DEFENDANTS' MOTION FOR SUMMARY JUDGMENT  
("the Motion") filed by Defendants STANTEC CONSULTING SERVICES INC.; SOMERSETT  
DEVELOPMENT CO., LTD; SOMERSETT, LLC; SOMERSETT DEVELOPMENT  
CORPORATION; Q&D CONSTRUCTION, INC; and PARSONS BROTHERS ROCKERIES,  
INC. (collectively "the Defendants") on March 26, 2019. Plaintiff SOMERSETT OWNERS

1 ASSOCIATION ("the Plaintiff") filed the OPPOSITION OF PLAINTIFF TO DEFENDANTS'  
2 JOINT MOTION FOR SUMMARY JUDGMENT (OMNIBUS MOTION) ("the Opposition") on  
3 April 26, 2019. The Plaintiff contemporaneously filed the REQUEST BY PLAINTIFF FOR  
4 JUDICIAL NOTICE ("the RJN").<sup>1</sup> The Defendants filed DEFENDANTS' REPLY IN SUPPORT  
5 OF THEIR MOTION FOR SUMMARY JUDGMENT ("the Reply") on June 7, 2019. The Court  
6 held a hearing on July 15, 2019, and took the matter under advisement.  
7

8 The Plaintiff filed the FIRST AMENDED COMPLAINT FOR DAMAGES  
9 (CORRECTED) ("the FAC") on May 3, 2018.<sup>2</sup> The Plaintiff is a homeowners association of a  
10 common-interest community. The FAC is a construction defect matter which contains the  
11 following causes of action: 1) Negligence and Negligence Per Se; 2) Breach of Express and Implied  
12 Warranties Pursuant to NRS 116.4113 and NRS 11.4114<sup>3</sup> and Common Law; 3) Negligent  
13 Misrepresentation and/or Failure to Disclose; 4) Declaratory Relief; and 5) Breach of NRS  
14 116.1113 and the Implied Covenant of Good Faith. The Complaint 8-17. The Plaintiff contends  
15 the Defendants negligently designed and constructed rockery walls within the Plaintiff's common-  
16 interest community and breached the express and implied warranties associated with the  
17 construction. The Complaint 11-13. The Plaintiff also alleges the Defendants negligently  
18 misrepresented and/or failed to disclose known latent defects which later caused the rockery walls  
19 to fail and also breached the implied covenant of good faith and fair dealing. The Complaint 14-16.  
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25 <sup>1</sup> NRS 47.130 and 47.1150 govern judicial notice. The effect of judicial notice is to establish the fact which is noticed to  
26 the court. *Lemel v. Smith*, 64 Nev. 545, 566, 187 P.2d 169, 179 (1947). While the Plaintiff has asked the Court to take  
27 judicial notice of twelve different items, the Court does not believe judicial notice of these items is necessary or  
appropriate for the Motion. The Court will consider the items in the RJN as if they had been submitted as exhibits to the  
Opposition and will give them appropriate weight, if any.

28 <sup>2</sup> The requisite Chapter 40 notice was served on December 29, 2017. *See* the Motion 6:10-14.

<sup>3</sup> The Court presumes the Plaintiff intended to write "116.4144."

1 The Defendants contend they are entitled to summary judgment on all of the Plaintiff's  
2 claims because the statute of repose has expired. The Motion 7:10-21. The Defendants contend  
3 more than six years have elapsed since the rockery walls were substantially completed, and statutes  
4 of repose are not subject to equitable or statutory tolling. The Motion 8:8-17; 9:3-27; 10:6-21;  
5 11:1-22. The Plaintiff responds the Motion should be denied because the warranty claims under  
6 NRS Chapter 116 did not begin to run until control of the Plaintiff's board was transferred from  
7 Defendant SOMERSETT DEVELOPMENT CO., LTD. ("SDC") to the Plaintiff on January 8,  
8 2013. The Opposition 2:6-14; 6:7-15. The Plaintiff also contends there is a genuine issues of  
9 material fact regarding the date of substantial completion for the rockery walls because evaluations  
10 from 2017 and 2018 revealed the rockery walls were unfit for their intended use. The Opposition  
11 2:15-20; 9:20-23; 10:16-20; 11:14-17; 17:4-8. The Plaintiff further contends the statute of repose is  
12 subject to statutory and equitable tolling and is only applicable to the Negligence and Negligence  
13 Per Se claims. The Opposition 13:26-28; 20:17-18; 22:7-11; 23:3-10; 24:4-13. The Defendant  
14 responds by arguing that the Plaintiff conflates statutes of limitation and statutes of repose and that  
15 tolling only applies to the former. The Reply 4:2-21; 8:16-20; 9:8-12; 11:10-18. The Defendant  
16 also argues the common law definition of substantial completion does not require an improvement  
17 to be free from defects, and substantial completion cannot occur after actual completion. The  
18 Reply 5:6-16; 7:11-23; 8:13-15.

19 NRCP 56(a) allows a party to petition the court for summary judgment on a claim or  
20 defense. *Shadow Wood Homeowners Ass'n v. New York Cmty. Bancorp, Inc.*, 132 Nev. 49, 55,  
21 366 P.3d 1105, 1109 (2016). Summary judgment is appropriate where the moving party  
22 demonstrates no genuine issue of material fact, thus entitling the party to judgment as a matter of  
23 law. NRCP 56(a). A material fact is one that could impact the outcome of the case. *Wood v.*

1 *Safeway, Inc.*, 121 Nev. 724, 730, 121 P.3d 1026, 1030 (2005) (quoting *Anderson v. Liberty*  
2 *Lobby*, 477 U.S. 242, 247-48, 106 S. Ct. 2505, 2509-10 (1986)). When the party moving for  
3 summary judgment does not bear the burden of persuasion at trial, the movant may satisfy the  
4 burden of production for summary judgment by “submitting evidence that negates an essential  
5 element of the nonmoving party’s claim” or “pointing out that there is an absence of evidence to  
6 support the nonmoving party’s case.” *Cuzze v. Univ. and Cmty. Coll. Sys. of Nev.*, 123 Nev. 598,  
7 602-03, 172 P.3d 131, 134 (2007).  
8

9 When considering a motion for summary judgment, the district court must view the  
10 evidence and any reasonable inferences drawn from it in the light most favorable to the  
11 nonmoving party. *Wood*, 121 Nev. at 729, 121 P.3d at 1029. However, the nonmoving party must  
12 set forth “specific facts demonstrating the existence of a genuine factual issue.” *Pegasus v. Reno*  
13 *Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82, 87 (2002) (explaining non-moving party may  
14 not stand on “general allegations and conclusions”). Such facts must be predicated on admissible  
15 evidence, and the non-moving party is not permitted “to build a case on the gossamer threads of  
16 whimsy, speculation and conjecture.” *Id.* “The substantive law controls which factual disputes  
17 are material and will preclude summary judgment; other factual disputes are irrelevant.” *Wood*,  
18 121 Nev. at 731, 121 P.3d at 1031.  
19

20 NRS 11.202 enumerates the statute of repose for claims related to construction defects and  
21 provides:  
22

- 23
- 24 1. No action may be commenced against the owner, occupier or any person  
25 performing or furnishing the design, planning, supervision or observation of  
26 construction, or the construction of an improvement to real property more than 6  
27 years after the substantial completion of such an improvement, for the recovery  
28 of damages for:

- a. Any deficiency in the design, planning, supervision or observation of  
construction or the construction of such an improvement;

- b. Injury to real or personal property caused by any such deficiency; or
- c. Injury to or the wrongful death of a person caused by any such deficiency.

2. The provisions of this section do not apply:

- a. To a claim for indemnity or contribution.
- b. In an action brought against:
  - 1) The owner or keeper of any hotel, inn, motel, motor court, boardinghouse or lodging house in this State on account of his or her liability as an innkeeper.
  - 2) Any person on account of a defect in a product.

The date of substantial completion is the latest of the following dates: the date of the final building inspection, the date the notice of completion is issued, or the date a certificate of occupancy is issued. NRS 11.2055. *See also Dykema v. Del Webb Cmty., Inc.*, 132 Nev. 823, 827, 385 P.3d 977, 980 (2016) (holding issue date for notice of completion is date of recording). If none of the above three events occurred, the date of substantial completion is determined by the rules of the common law. *Id.* <sup>4</sup> “[S]ubstantial completion’ implies that the parties have been given the object of their contract and that any omissions or deviations can be remedied.” 22 AM. JUR. 2D DAMAGES § 83 (explaining contract has been substantially performed).

Statutes of repose are distinct from statutes of limitation. As the *Rhodes* Court explained:

The distinction between these two terms [statute of limitations and statute of repose] is often overlooked. A statute of limitations prohibits a suit after a period of time that follows the accrual of the cause of action . . . Moreover, a statute of limitations can be equitably tolled . . . **In contrast**, a statute of repose bars a cause of action after a specified period of time **regardless of when the cause of action was discovered or a recoverable injury occurred.**

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<sup>4</sup> The parties do not dispute that no final building inspection occurred and no notice of completion was issued. Additionally, the parties do not argue the statute is ambiguous.

1 *FDIC v. Rhodes*, 130 Nev. 893, 899, 336 P.3d 961, 965 (2014) (emphasis added). *See also*  
2 *Davenport v. Comstock Hills-Reno*, 118 Nev. 389, 390, 46 P.3d 62, 63 (2002) (explaining statutes  
3 of repose “absolutely bar any action stemming from injuries caused by a negligently designed or  
4 constructed improvement to real property after a certain period of time has passed.”). In addition to  
5 and separate from the elements of a cause of action, a plaintiff “must also prove that the cause of  
6 action was brought within the time frame set forth by the statute of repose.” *G&H Assocs. v. Ernest*  
7 *W. Hahn, Inc.*, 113 Nev. 265, 271, 934 P.2d 299, 233 (1997) (internal citations omitted).

9       The Court will grant the Motion because there is no genuine dispute of material fact the  
10 Plaintiff failed to file the FAC within the six-year statute of repose. Even when viewing the  
11 evidence in the light most favorable to the Plaintiff, the Plaintiff has not identified any admissible  
12 evidence proving the FAC was filed within the six-year statute of repose. Because the Plaintiff  
13 bears the burden of persuasion on the statute of repose issue, the lack of affirmative evidence is  
14 fatal. First, the statute of repose applies to all of the Plaintiff’s claims, not only the Negligence and  
15 Negligence Per Se claims. All of the Plaintiff’s claims are premised on the design and construction  
16 of the walls. The plain language of NRS 11.202(1) clearly states that “no action...for the recovery  
17 of damages” for construction deficiency can be commenced more than six years after the  
18 substantial completion of the improvement. The statute does not differentiate between types of  
19 actions, and the only exemptions appear in NRS 11.202(2). Because the Plaintiff’s claims do not  
20 fall within the applicable exemptions, the statute of repose applies. Second, the Plaintiff’s  
21 argument that evaluations from 2017 to 2018 confirm the lack of substantial completion is  
22 unpersuasive. The Plaintiff essentially argues the discovery of any defects precludes substantial  
23 completion; however, this argument contradicts the purpose of and policy determination embodied  
24 by the statute of repose. The statute of repose is intended to provide parties with finality and  
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1 establish a time period after which they cannot be sued for construction deficiencies. *See*  
2 *Davenport*, 118 Nev. at 393, 46 P.3d at 65 (“[T]he legislature has opted to provide them [parties  
3 involved in creating improvement] with a measure of economic certainty by closing the door to  
4 liability . . .”). If the Court were to accept the Plaintiff’s analysis, the statute of repose would  
5 potentially last decades for appurtenances and other common interest elements and developments,  
6 such as roads, sidewalks, walls, parks, trails and developed open spaces constructed for the benefit  
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14 Finally, statutes of repose are not subject to equitable or statutory tolling, a concept which  
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18 (explaining operation of equitable tolling for statute of limitations). The Plaintiff’s reliance on out-  
19 of-state case law is unpersuasive in light of mandatory authority undercutting its argument. *See*  
20 *Rhodes*, 130 Nev. at 899, 336 P.3d at 965 (explaining purpose of statute of repose is to “give a  
21 defendant peace of mind by barring delayed litigation, so as to prevent unfair surprises that result  
22 from the revival of claims that have remained dormant for a period during which the evidence  
23 vanished and memories faded.”). For all of these reasons, the Plaintiff has failed to carry its burden  
24 to establish its claims were filed within the six-year statute of repose.  
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1           **IT IS ORDERED** DEFENDANTS' MOTION FOR SUMMARY JUDGMENT is hereby  
2 **GRANTED.**

3           **DATED** this   2   day of October, 2019.  
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7 ELLIOTT A. SATTLER  
8 District Judge  
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1 **CERTIFICATE OF MAILING**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court  
3 of the State of Nevada, County of Washoe; that on this \_\_\_\_\_ day of October, 2019, I deposited in  
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5 Nevada, a true copy of the attached document addressed to:  
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8 **CERTIFICATE OF ELECTRONIC SERVICE**

9 I hereby certify that I am an employee of the Second Judicial District Court of the State of  
10 Nevada, in and for the County of Washoe; that on the 2nd day of October, 2019, I electronically  
11 filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of  
12 electronic filing to the following:  
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14 CHARLES BURCHAM, ESQ.

15 NATASHA LANDRUM, ESQ.

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18 STEPHEN CASTRONOVA, ESQ.

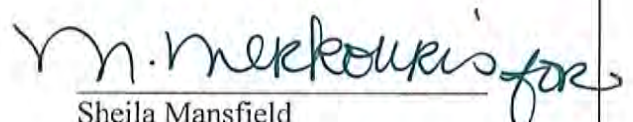
19 THEODORE E. CHRISSINGER, ESQ.

20 MICHAEL S. KIMMEL, ESQ.

21 STEPHEN G. CASTRONOVA, ESQ.

22 JOHN SAMBERG, ESQ.

23 DON SPRINGMEYER, ESQ.  
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Sheila Mansfield  
Judicial Assistant

1 **\$2515**  
2 **WOLF, RIFKIN, SHAPIRO,**  
3 **SCHULMAN & RABKIN, LLP**  
4 DON SPRINGMEYER, ESQ. (NSB: 1021)  
5 BRADLEY SCHRAGER, ESQ. (NSB: 10217)  
6 JOHN SAMBERG, ESQ. (NSB: 10828)  
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15 *Attorneys for Somersett Owners Association*

Electronically Filed  
Nov 01 2019 03:19 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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

18 SOMERSETT OWNERS ASSOCIATION, a  
19 Domestic Non-Profit Corporation,

20 Plaintiff,

21 vs.

22 SOMERSETT DEVELOPMENT COMPANY,  
23 LTD, a Nevada Limited Liability Company;  
24 SOMERSETT, LLC a dissolved Nevada  
25 Limited Liability Company; SOMERSETT  
26 DEVELOPMENT CORPORATION, a  
27 dissolved Nevada Corporation; PARSONS  
28 BROS ROCKERIES, INC. a Washington  
Corporation; Q & D Construction, Inc., a  
Nevada Corporation, and DOES 1 through 50,  
inclusive,

Defendants.

AND RELATED CROSS-ACTIONS.

Case No. CV17-02427

Dept. No.: 10

Judge: Hon. Elliott A. Sattler

**NOTICE OF APPEAL**

Pursuant to NRAP 3A, Plaintiff Somersett Owners Association, by and through its counsel,  
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP, hereby appeals to the Supreme Court of Nevada  
the Order Granting Defendants' Motion for Summary Judgment, entered on October 2, 2019.

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**AFFIRMATION**

The undersigned does hereby affirm, pursuant to NRS 239B.030, that this document and any attachments do not contain personal information as defined in NRS 603A.040 about any person.

DATED this 29th day of October, 2019.

**WOLF, RIFKIN, SHAPIRO,  
SCHULMAN & RABKIN, LLP**

By: /s/ John Samberg

DON SPRINGMEYER, ESQ. (NSB: 1021)  
BRADLEY SCHRAGER, ESQ. (NSB: 10217)  
JOHN SAMBERG, ESQ. (NSB: 10828)  
ROYI MOAS, ESQ. (NSB: 10686)  
5594 B Longley Lane  
Reno, Nevada 89511  
(775) 853-6787/Fax (775) 853-6774  
*Attorneys for Plaintiff Somersett Owners  
Association*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 29th day of October, 2019, I electronically filed the foregoing  
3 **NOTICE OF APPEAL** was served via the Washoe County E-Flex Filing System on all parties or  
4 persons requesting notice:

5 Charles Burcham, Esq.  
6 Wade Carner, Esq.  
7 Thorndal, Armstrong, Delk, Balkenbush & Eisinger  
8 for SOMERSETT DEVELOPMENT  
9 CORPORATION, SOMERSETT, LLC.,  
10 SOMERSETT DEVELOPMENT COMPANY LTD  
11 E-Mail: clb@thorndal.com  
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10 Natasha Landrum, Esq.  
11 Dirk W. Gaspar, Esq.  
12 David Lee, Esq.  
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14 for Q & D CONSTRUCTION, INC.  
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Theodore E. Chrissinger, Esq.  
Michael S. Kimmel, Esq.  
Hoy, Chrissinger, Kimmel, Vallas P.C.  
for STANTEC CONSULTING  
SERVICES, INC.  
Email: tchrissinger@nevadalaw.com  
Email: mkimmel@nevadalaw.com

15  
16 By /s/ Dannielle Fresquez  
17 Dannielle Fresquez, an employee of  
18 WOLF, RIFKIN, SHAPIRO, SCHULMAN &  
19 RABKIN, LLP  
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1310  
WOLF, RIFKIN, SHAPIRO,  
SCHULMAN & RABKIN, LLP  
DON SPRINGMEYER, ESQ. (NSB: 1021)  
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rmoas@wrslawyers.com  
*Attorneys for Somerset Owners Association*

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

SOMERSETT OWNERS ASSOCIATION, a  
Domestic Non-Profit Corporation,

Plaintiff,

vs.

SOMERSETT DEVELOPMENT COMPANY,  
LTD, a Nevada Limited Liability Company;  
SOMERSETT, LLC a dissolved Nevada  
Limited Liability Company; SOMERSETT  
DEVELOPMENT CORPORATION, a  
dissolved Nevada Corporation; PARSONS  
BROS ROCKERIES, INC. a Washington  
Corporation; Q & D Construction, Inc., a  
Nevada Corporation, and DOES 1 through 50,  
inclusive,

Defendants.

AND RELATED CROSS-ACTIONS.

Case No. CV17-02427

Dept. No.: 10

Judge: Hon. Elliott A. Sattler

**CASE APPEAL STATEMENT**

Plaintiff Somerset Owners Association, by and through its counsel, Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP, hereby submits this Case Appeal Statement pursuant to NRAP 3(f)(1).

1. Appellant filing this appeal statement: Somerset Owners Association
2. Judge issuing decision, judgment, or order appealed from: Hon. Elliott A. Sattler

3. Appellant: Plaintiff Somerset Owners Association

COUNSEL OF RECORD:

Don Springmeyer, Esq.

Bradley Schrager, Esq.

John Samberg, Esq.

Royi Moas, Esq.

Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP

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bschrager@wrslawyers.com

jsamberg@wrslawyers.com

rmoas@wrslawyers.com

4. Respondent: Defendants Somerset Development Company Ltd., Somerset, LLC,  
and Somerset Development Corporation

COUNSEL OF RECORD:

Charles Burcham, Esq.

Wade Carner, Esq.

Thorndal, Armstrong, Delk, Balkenbush & Eisinger

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Reno, Nevada 89509

clb@thorndal.com

wnc@thorndal.com

Respondent: Defendant Parsons Bros Rokerries, Inc.

COUNSEL OF RECORD:

Steve Castronova, Esq.

Castronova Law Offices, P.C.

605 Forest Street

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sgc@castronovaLaw.com

Respondent: Defendant Q & D Construction, Inc.

COUNSEL OF RECORD:

Natasha Landrum, Esq.

Dirk W. Gaspar, Esq.

David Lee, Esq.

Lee, Hernandez, Landrum & Carlson, APC

7575 Vegas Drive, Suite 150

Las Vegas, Nevada 89128

dgaspar@lee-lawfirm.com

nlandrum@lee-lawfirm.com

dlee@lee-lawfirm.com

Respondent: Third-Party Defendant Stantec Consulting Services, Inc.

COUNSEL OF RECORD:

Theodore E. Chrissinger, Esq.  
Michael S. Kimmel, Esq.  
Hoy, Chrissinger, Kimmel, Vallas P.C.  
50 W. Liberty St., Suite 840  
Reno, Nevada 89501  
tchrissinger@nevadalaw.com  
mkimmel@nevadalaw.com

5. All other counsel identified above are licensed to practice in Nevada.

6. Appellant was represented by retained counsel in the district court.

7. Appellant is represented by retained counsel on appeal.

8. No request has been made to proceed in forma pauperis.

9. The Complaint in this matter was originally filed on December 29, 2017.

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by district court.

This is a civil matter concerning claims for liability involving defects and failures of several miles of rockery walls at a the Somerset planned unit development community in Reno, Nevada. Plaintiff is the owners' association. The district court granted summary judgment in favor of all of the Defendants. Issues of law and fact were before the Court, and focused primarily upon when limitations periods accrued, the common law definition of substantial completion, whether the statutory tolling of certain statutes of limitations also served to toll the statute of repose, and whether equitable tolling applied to the statute of repose. Among other rulings, the Court determined that the statute of repose applied to all claims, that all claims accrued at the same time, and that the statute of repose was not tolled.

11. The case has not been subject of an appeal to or original writ proceeding in the Supreme Court.

12. This appeal does not involve child custody or visitation.

13. While settlement thus far has not seemed likely, Plaintiff/Appellant will participate in the Court's mandatory mediation program in good faith, and with an open mind to the

1 possibility of settlement.

2 **AFFIRMATION**

3 The undersigned does hereby affirm, pursuant to NRS 239B.030, that this document and  
4 any attachments do not contain personal information as defined in NRS 603A.040 about any  
5 person.

6 DATED this 29th day of October, 2019.

7 **WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP**

8 By: /s/ John Samberg

9 DON SPRINGMEYER, ESQ. (NSB: 1021)

10 BRADLEY SCHRAGER, ESQ. (NSB: 10217)

11 JOHN SAMBERG, ESQ. (NSB 10828)

12 ROYI MOAS, ESQ. (NSB 10686)

13 5594 B Longley Lane

14 Reno, Nevada 89511

15 *Attorneys for Plaintiff Somersett Owners Association*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 29th day of October, 2019, I electronically filed the foregoing  
3 **CASE APPEAL STATEMENT** was served via the Washoe County E-Flex Filing System on all  
4 parties or persons requesting notice:

5 Charles Burcham, Esq.  
6 Wade Carner, Esq.  
7 Thorndal, Armstrong, Delk, Balkenbush & Eisinger  
8 for SOMERSETT DEVELOPMENT  
9 CORPORATION, SOMERSETT, LLC.,  
10 SOMERSETT DEVELOPMENT COMPANY LTD  
11 E-Mail: clb@thorndal.com  
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10 Natasha Landrum, Esq.  
11 Dirk W. Gaspar, Esq.  
12 David Lee, Esq.  
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Theodore E. Chrissinger, Esq.  
Michael S. Kimmel, Esq.  
Hoy, Chrissinger, Kimmel, Vallas P.C.  
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16  
17 By /s/ Dannielle Fresquez  
18 Dannielle Fresquez, an employee of  
19 WOLF, RIFKIN, SHAPIRO, SCHULMAN &  
20 RABKIN, LLP  
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**SECOND JUDICIAL DISTRICT COURT****STATE OF NEVADA****COUNTY OF WASHOE****Case History - CV17-02427****Case Description: SOMERSETT OWNERS ASSOC VS SOMERSETT DEV. ETAL (D10)****Case Number: CV17-02427 Case Type: CHAPTER 40 CONSTRUCTION DEFECT - Initially Filed On: 12/29/2017****Parties**

<u>Party Type &amp; Name</u>	<u>Party Status</u>
JUDG - DAVID A. HARDY - D15	Party ended on: 7/12/2018 10:16:49AM
JUDG - ELLIOTT A. SATTLER - D10	Active
PLTF - SOMERSETT OWNERS ASSOCIATION - @1186671	Active
DEFT - SOMERSETT DEVELOPMENT CORPORATION - @1152258	Active
DEFT - PARSONS BROS. ROCKERIES CALIFORNIA INC DBA PARSONS WALLS - @1318200	Active
DEFT - Q & D CONSTRUCTION, INC. - @1304132	Active
DEFT - SOMERSETT, LLC. - @1174674	Active
DEFT - SOMERSETT DEVELOPMENT COMPANY LTD. - @1129114	Active
DEFT - PARSONS ROCKSI, LLC. - @1323450	Party ended on: 5/10/2018 12:00:00AM
DEFT - PARSONS BROS. ROCKERIES, CA, INC. - @1318199	Active
DEFT - STANTEC CONSULTING SERVICES INC. - @1328698	Active
ATTY - Theodore E. Chrissinger, Esq. - 9528	Active
ATTY - Dirk W. Gaspar, Esq. - 10046	Active
ATTY - Natasha A. Landrum, Esq. - 7414	Active
ATTY - David S. Lee, Esq. - 6033	Active
ATTY - Don Springmeyer, Esq. - 1021	Active
ATTY - Wade Carner, Esq. - 11530	Active
ATTY - Michael S. Kimmel, Esq. - 9081	Active
ATTY - Royi Moas, Esq. - 10686	Active
ATTY - Stephen G. Castronova, Esq. - 7305	Active
ATTY - Charles L. Burcham, Esq. - 2673	Active
ATTY - John M. Samberg, Esq. - 10828	Active

**Disposed Hearings**

- 1 Department: D10 -- Event: Request for Submission -- Scheduled Date & Time: 6/6/2019 at 15:23:00  
Extra Event Text: MOTION FOR SUMMARY JUDGMENT AS AGAINST PLAINTIFF, SOMERSET OWNERS ASSOCIATION FILED 4-24-19  
Event Disposition: S200 - 6/7/2019
- 2 Department: D10 -- Event: Request for Submission -- Scheduled Date & Time: 6/11/2019 at 13:06:00  
Extra Event Text: MOTION FOR SUMMARY JUDGMENT AS AGAINST PLAINTIFF, SOMERSETT OWNERS ASSOCIATION AND CROSS-CLAIMANT, SOMERSET  
Event Disposition: S200 - 7/2/2019
- 3 Department: D10 -- Event: Request for Submission -- Scheduled Date & Time: 6/11/2019 at 16:00:00  
Extra Event Text: REQUEST FOR SUBMISSION OF SDC'S MOTION FOR SUMMARY JUDGMENT FILED 3/27/19  
Event Disposition: S200 - 7/2/2019
- 4 Department: D10 -- Event: Request for Submission -- Scheduled Date & Time: 6/11/2019 at 15:59:00  
Extra Event Text: REQUEST FOR SUBMISSION OF SDC'S MOTION FOR SUMMARY JUDGMENT FILED 3/26/19  
Event Disposition: S200 - 7/2/2019

- 5 Department: D10 -- Event: Request for Submission -- Scheduled Date & Time: 6/12/2019 at 14:34:00  
Extra Event Text: MOTION FOR SUMMARY JUDGMENT FILED 3/26/19  
Event Disposition: S200 - 7/2/2019
- 6 Department: D10 -- Event: Request for Submission -- Scheduled Date & Time: 6/12/2019 at 13:59:00  
Extra Event Text: PLAINTIFFS' MOTION TO STRIKE CERTAIN AFFIRMATIVE DEFENSES RELATING TO STATUTES OF LIMITATIONS AND REPOSE FILED 1-17  
Event Disposition: S200 - 7/2/2019
- 7 Department: D10 -- Event: HEARING... -- Scheduled Date & Time: 7/15/2019 at 13:30:00  
Extra Event Text: HEARING ON SOMERSETT MOTION FOR S.J.; MOTION TO STRIKE; SOMERSETT DEV.'S MOTION FOR S.J. (1:30-5:00)(COURT REPT. REQ  
Event Disposition: D435 - 7/15/2019
- 8 Department: D10 -- Event: Request for Submission -- Scheduled Date & Time: 7/30/2019 at 09:00:00  
Extra Event Text: PLAINTIFF'S MOTION TO STRIKE; DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND SOMERSETT'S MOTION FOR SUMMARY JUD  
Event Disposition: S200 - 10/2/2019
- 9 Department: D10 -- Event: PRE-TRIAL CONFERENCE -- Scheduled Date & Time: 1/10/2020 at 09:00:00  
Extra Event Text: PRETRIAL CONFERENCE (JURY TRIAL SET FOR FEBRUARY 3, 2020)(1/2 HOUR)  
Event Disposition: D870 - 5/8/2019
- 10 Department: D10 -- Event: TRIAL - JURY -- Scheduled Date & Time: 2/3/2020 at 08:30:00  
Extra Event Text: NO. 1 SETTING-JURY TRIAL-CONSTRUCTION DEFECT MATTER (3 WEEKS)  
Event Disposition: D870 - 5/8/2019

### Actions

- |   | <u>Filing Date</u> | <u>-</u> | <u>Docket Code &amp; Description</u>  |
|---|--------------------|----------|---|
| 1 | 12/29/2017         | -        | \$1427 - \$Complaint - Construct Defect<br>Additional Text: Transaction 6458851 - Approved By: YVILORIA : 12-29-2017:13:12:31   |
| 2 | 12/29/2017         | -        | PAYRC - **Payment Receipted<br>Additional Text: A Payment of \$510.00 was made on receipt DCDC596089.   |
| 3 | 1/5/2018           | -        | 2610 - Notice ...<br>Additional Text: NOTICE OF DEPOSIT OF CD   |
| 4 | 1/8/2018           | -        | COC - Evidence Chain of Custody Form<br><i>No additional text exists for this entry.</i>  |
| 5 | 1/8/2018           | -        | 4090 - ** Summons Issued<br>Additional Text: X3   |
| 6 | 1/8/2018           | -        | 4090 - ** Summons Issued<br>Additional Text: x6   |
| 7 | 4/11/2018          | -        | 1120 - Amended ...<br>Additional Text: DOE AMENDMENT TO PLAINTIFF'S COMPLAINT TO SUBSTITUTE TRUE NAMES FOR FICTITIOUS NAMES - Transaction 6624769 - Approved By: JAPARICI : 04-12-2018:10:16:24 |
| 8 | 4/12/2018          | -        | NEF - Proof of Electronic Service<br>Additional Text: Transaction 6625508 - Approved By: NOREVIEW : 04-12-2018:10:17:36   |
| 9 | 4/13/2018          | -        | 4090 - ** Summons Issued<br>Additional Text: x2   |

- 10 4/13/2018 - 4090 - \*\* Summons Issued  
Additional Text: X2
- 11 4/17/2018 - 4085 - Summons Filed  
Additional Text: SAMUEL GARCIA OBO PARSONS BROS, ROCKERIES CA INC CO/ KEVIN PARSON REGISTERED AGENT - APRIL 12, 2018; 11:22 AM - Transaction 6634017 - Approved By: YVILORIA : 04-17-2018:15:25:43
- 12 4/17/2018 - 4085 - Summons Filed  
Additional Text: BILL MAGRATH, MGR - OFFICE OF SIERRA CORP. SERVICES ENO REGISTERED AGENT FOR Q&D CONSTRUCTION INC - APR 16, 2018; 11:46 AM - Transaction 6634017 - Approved By: YVILORIA : 04-17-2018:15:25:43
- 13 4/17/2018 - 4085 - Summons Filed  
Additional Text: BILL MAGRATH, MGR - OFFICE OF SIERRA CORP. SERVICES RENO REGISTERED AGENT SOMERSETT DEVELOPMENT CO LTD - APR 16, 2018; 11:46 AM - Transaction 6634017 - Approved By: YVILORIA : 04-17-2018:15:25:43
- 14 4/17/2018 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6634262 - Approved By: NOREVIEW : 04-17-2018:15:26:51
- 15 4/18/2018 - 4085 - Summons Filed  
Additional Text: PARSONS BROS. ROCKERIES, INC. 04/16/18 @9:26AM - Transaction 6636855 - Approved By: CVERA : 04-18-2018:16:53:47
- 16 4/18/2018 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6637039 - Approved By: NOREVIEW : 04-18-2018:16:55:00
- 17 4/19/2018 - 4085 - Summons Filed  
Additional Text: DECLARATION OF SERVICE - R/A FOR PARSONS ROCKS! LLC 4/17/18 - Transaction 6639004 - Approved By: CSULEZIC : 04-19-2018:15:45:59
- 18 4/19/2018 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6639135 - Approved By: NOREVIEW : 04-19-2018:15:47:21
- 19 4/20/2018 - 4085 - Summons Filed  
Additional Text: PARSONS BROS ROCKERIES CALIFORNIA INC dba PARSONS WALLS - Transaction 6639602 - Approved By: KTOMBOW : 04-20-2018:09:11:14
- 20 4/20/2018 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6639657 - Approved By: NOREVIEW : 04-20-2018:09:12:15
- 21 4/20/2018 - 4085 - Summons Filed  
Additional Text: SOMERSETT DEVELOPMENT CORPORATION, 4/17/18 - Transaction 6640598 - Approved By: CSULEZIC : 04-20-2018:14:16:45
- 22 4/20/2018 - 4085 - Summons Filed  
Additional Text: SOMERSETT LLC , 4/17/18 - Transaction 6640598 - Approved By: CSULEZIC : 04-20-2018:14:16:45
- 23 4/20/2018 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6640852 - Approved By: NOREVIEW : 04-20-2018:14:18:04
- 24 4/27/2018 - 3995 - Stip & Ord Dismiss W/O Prej  
Additional Text: OF CASE - Transaction 6651259 - Approved By: NOREVIEW : 04-27-2018:09:12:34
- 25 4/27/2018 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6651264 - Approved By: NOREVIEW : 04-27-2018:09:13:40
- 26 4/27/2018 - FIE - \*\*Document Filed in Error  
*No additional text exists for this entry.*

- 27 5/2/2018 - 1090 - Amended Complaint  
Additional Text: FIRST AMENDED COMPLAINT FOR DAMAGES - Transaction 6660069 - Approved By: YVILORIA : 05-02-2018:15:57:21
- 28 5/2/2018 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6660280 - Approved By: NOREVIEW : 05-02-2018:15:58:21
- 29 5/3/2018 - 1090 - Amended Complaint  
Additional Text: FIRST AMENDED COMPLAINT FOR DAMAGES (CORRECTED) - Transaction 6662726 - Approved By: YVILORIA : 05-03-2018:16:56:24
- 30 5/3/2018 - 1650 - Errata...  
Additional Text: NOTICE OF ERRATA TO FIRST AMENDED COMPLAINT - Transaction 6662726 - Approved By: YVILORIA : 05-03-2018:16:56:24
- 31 5/3/2018 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6662932 - Approved By: NOREVIEW : 05-03-2018:16:59:21
- 32 5/10/2018 - 3995 - Stip & Ord Dismiss W/O Prej  
Additional Text: PARSONS ROCKS! LLC - Transaction 6672575 - Approved By: NOREVIEW : 05-10-2018:09:35:08
- 33 5/10/2018 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6672590 - Approved By: NOREVIEW : 05-10-2018:09:37:09
- 34 6/21/2018 - JF - \*\*First Day Jury Fees Deposit  
Additional Text: SOMERSETT OWNERS ASSOCIATION - Transaction 6739304 - Approved By: PMSEWELL : 06-21-2018:09:39:25
- 35 6/21/2018 - 1580 - Demand for Jury  
Additional Text: SOMERSETT OWNERS ASSOCIATION - Transaction 6739304 - Approved By: PMSEWELL : 06-21-2018:09:39:25
- 36 6/21/2018 - PAYRC - \*\*Payment Receipted  
Additional Text: A Payment of \$320.00 was made on receipt DCDC612488.
- 37 6/21/2018 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6739344 - Approved By: NOREVIEW : 06-21-2018:09:42:29
- 38 6/26/2018 - 4085 - Summons Filed  
Additional Text: LEO BERGIN PERSON IN CHARGE OFFICE OF SIERRA CORP. SERVICES RENO REGISTERED AGENT FOR Q & D CONSTRUCTION INC - JUNE 19, 2018 - Transaction 6746356 - Approved By: YVILORIA : 06-26-2018:08:57:26
- 39 6/26/2018 - 4085 - Summons Filed  
Additional Text: JENNI CHAPMAN, ADMIN ASST OFFICE OF GBS ADVISORS INC REGISTERED AGENT FOR SOMERSETT DEVELOPMENT CORP. - JUNE 19, 2018 - Transaction 6746356 - Approved By: YVILORIA : 06-26-2018:08:57:26
- 40 6/26/2018 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6746555 - Approved By: NOREVIEW : 06-26-2018:08:58:26
- 41 6/26/2018 - 4085 - Summons Filed  
Additional Text: SERVED JOHN DOE OBO PARSONS BROS ROCKERIES, INC. ON 6/18/18 - Transaction 6747112 - Approved By: PMSEWELL : 06-26-2018:11:49:55
- 42 6/26/2018 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6747302 - Approved By: NOREVIEW : 06-26-2018:11:50:53
- 43 7/12/2018 - 3161 - Ord of Recusal  
Additional Text: DIRECTING RANDOM REASSIGNMENT - Transaction 6772294 - Approved By: NOREVIEW : 07-12-2018:08:53:26
- 44 7/12/2018 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6772298 - Approved By: NOREVIEW : 07-12-2018:08:56:09

- 45 7/12/2018 - 1312 - Case Assignment Notification  
Additional Text: RANDOMLY REASSIGNED TO D10 FROM D15 DUE TO ORDER OF RECUSAL FILED 7/12/18 - Transaction 6772644 - Approved By: NOREVIEW : 07-12-2018:10:21:57
- 46 7/12/2018 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6772649 - Approved By: NOREVIEW : 07-12-2018:10:22:56
- 47 7/17/2018 - 4085 - Summons Filed  
Additional Text: LEO BERGIN 6/19/18 @11:23AM SOMERSETT DEVELOPMENT COMPANY - Transaction 6779717 - Approved By: CVERA : 07-17-2018:11:14:16
- 48 7/17/2018 - 4085 - Summons Filed  
Additional Text: JENNI CHAPMAN FOR SOMERSETT 06/19/18 @10:12AM - Transaction 6779717 - Approved By: CVERA : 07-17-2018:11:14:16
- 49 7/17/2018 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6780057 - Approved By: NOREVIEW : 07-17-2018:11:15:22
- 50 8/13/2018 - 1817 - Initial Appear. Fee Disclosure  
Additional Text: Transaction 6826806 - Approved By: CSULEZIC : 08-14-2018:08:33:34
- 51 8/13/2018 - \$1132 - \$Answer - Construct Defect  
Additional Text: Q&D CONSTRUCTION, INC.'S ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT FOR DAMAGES - Transaction 6826806 - Approved By: CSULEZIC : 08-14-2018:08:33:34
- 52 8/14/2018 - PAYRC - \*\*Payment Receipted  
Additional Text: A Payment of \$463.00 was made on receipt DCDC617237.
- 53 8/14/2018 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6827496 - Approved By: NOREVIEW : 08-14-2018:08:34:46
- 54 8/17/2018 - \$1567 - \$Def 1st App -Construct Defect  
Additional Text: SOMERSETT DEVELOPMENT COMPANY, LTD - Transaction 6836297 - Approved By: YVILORIA : 08-20-2018:08:14:53
- 55 8/17/2018 - 1140 - Answer to Amended Complaint  
Additional Text: ANSWER TO FIRST AMENDED COMPLAINT AND CROSS-CLAIM - Transaction 6836297 - Approved By: YVILORIA : 08-20-2018:08:14:53
- 56 8/17/2018 - \$DEFT - \$Addl Def/Answer - Prty/Appear  
Additional Text: SOMERSETT DEVELOPMENT CORPORATION - Transaction 6836297 - Approved By: YVILORIA : 08-20-2018:08:14:53
- 57 8/17/2018 - \$DEFT - \$Addl Def/Answer - Prty/Appear  
Additional Text: SOMERSETT, LLC - Transaction 6836297 - Approved By: YVILORIA : 08-20-2018:08:14:53
- 58 8/17/2018 - JF - \*\*First Day Jury Fees Deposit  
Additional Text: Transaction 6836303 - Approved By: YVILORIA : 08-20-2018:08:25:13
- 59 8/17/2018 - 1580 - Demand for Jury  
Additional Text: DEFTS SOMERSETT DEVELOPMENT CO., LTD, SOMERSETT LLC AND SOMERSETT DEVELOPMENT CORP. - Transaction 6836303 - Approved By: YVILORIA : 08-20-2018:08:25:13
- 60 8/20/2018 - PAYRC - \*\*Payment Receipted  
Additional Text: A Payment of \$523.00 was made on receipt DCDC617690.
- 61 8/20/2018 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6836550 - Approved By: NOREVIEW : 08-20-2018:08:15:53

- 62 8/20/2018 - PAYRC - \*\*Payment Receipted  
Additional Text: A Payment of \$320.00 was made on receipt DCDC617691.
- 63 8/20/2018 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6836592 - Approved By: NOREVIEW : 08-20-2018:08:26:11
- 64 8/21/2018 - \$1567 - \$Def 1st App -Construct Defect  
Additional Text: PARSONS BROS ROCKERIES, INC. - Transaction 6839753 - Approved By: YVILORIA : 08-21-2018:12:57:44
- 65 8/21/2018 - 1140 - Answer to Amended Complaint  
Additional Text: PARSONS BROS ROCKERIES, INC.'S ANSWER TO FIRST AMENED COMPLAINT FOR DAMAGES (CORRECTED) - Transaction 6839753 - Approved By: YVILORIA : 08-21-2018:12:57:44
- 66 8/21/2018 - PAYRC - \*\*Payment Receipted  
Additional Text: A Payment of \$463.00 was made on receipt DCDC617848.
- 67 8/21/2018 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6840106 - Approved By: NOREVIEW : 08-21-2018:12:58:43
- 68 8/23/2018 - 1155 - Answer to Cross Claim  
Additional Text: Parsons Bros Rockeries, Inc.'s Answer to Somersett Development Company, Ltd's Cross-Claim - Transaction 6846355 - Approved By: PMSEWELL : 08-24-2018:08:58:34
- 69 8/24/2018 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6846666 - Approved By: NOREVIEW : 08-24-2018:08:59:38
- 70 8/29/2018 - 4090 - \*\* Summons Issued  
*No additional text exists for this entry.*
- 71 8/29/2018 - \$4180 - \$Third Party Complaint  
Additional Text: Transaction 6854910 - Approved By: JAPARICI : 08-29-2018:15:51:13
- 72 8/29/2018 - PAYRC - \*\*Payment Receipted  
Additional Text: A Payment of \$135.00 was made on receipt DCDC618744.
- 73 8/29/2018 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6855630 - Approved By: NOREVIEW : 08-29-2018:15:53:21
- 74 8/29/2018 - 1005 - Acceptance of Service  
Additional Text: Transaction 6855960 - Approved By: CVERA : 08-30-2018:08:40:01
- 75 8/30/2018 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6856171 - Approved By: NOREVIEW : 08-30-2018:08:41:11
- 76 8/30/2018 - 1165 - Answer Third Party Complaint  
Additional Text: Transaction 6858368 - Approved By: CVERA : 08-31-2018:08:44:00
- 77 8/30/2018 - \$1560 - \$Def 1st Appearance - CV  
Additional Text: STANTEC CONSULTING, INC. - Transaction 6858368 - Approved By: CVERA : 08-31-2018:08:44:00
- 78 8/31/2018 - PAYRC - \*\*Payment Receipted  
Additional Text: A Payment of \$213.00 was made on receipt DCDC618878.
- 79 8/31/2018 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6858778 - Approved By: NOREVIEW : 08-31-2018:08:45:14

- 80 8/31/2018 - 3840 - Request Exemption Arbitration  
Additional Text: Transaction 6860205 - Approved By: NMASON : 08-31-2018:14:14:56
- 81 8/31/2018 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6860223 - Approved By: NOREVIEW : 08-31-2018:14:15:58
- 82 9/4/2018 - 2501 - Non-Opposition ...  
Additional Text: NON-OPPOSITION TO PLAINTIFFS REQUEST FOR EXEMPTION FROM ARBITRATION - Transaction 6862147 - Approved By: CSULEZIC : 09-04-2018:14:55:18
- 83 9/4/2018 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6862174 - Approved By: NOREVIEW : 09-04-2018:14:56:15
- 84 9/11/2018 - A190 - Exempt from Arb (over \$50,000)  
Additional Text: Transaction 6874336 - Approved By: NOREVIEW : 09-11-2018:16:42:53
- 85 9/11/2018 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6874358 - Approved By: NOREVIEW : 09-11-2018:16:45:36
- 86 9/18/2018 - 2610 - Notice ...  
Additional Text: NOTICE OF CASE SETTING CONFERENCE PER WDCR4(3) 10/02/18 @10:00 - Transaction 6885645 - Approved By: CSULEZIC : 09-18-2018:16:51:37
- 87 9/18/2018 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6886348 - Approved By: NOREVIEW : 09-18-2018:16:52:51
- 88 9/25/2018 - 3696 - Pre-Trial Order  
Additional Text: Transaction 6896816 - Approved By: NOREVIEW : 09-25-2018:11:59:36
- 89 9/25/2018 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6896824 - Approved By: NOREVIEW : 09-25-2018:12:00:44
- 90 9/25/2018 - 2540 - Notice of Entry of Ord  
Additional Text: NOTICE OF ENTRY OF ORDER EXEMPTING CASE FROM COURT ANNEXED ARBITRATION PROGRAM - Transaction 6897534 - Approved By: NOREVIEW : 09-25-2018:15:34:50
- 91 9/25/2018 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6897538 - Approved By: NOREVIEW : 09-25-2018:15:35:58
- 92 9/28/2018 - 1155 - Answer to Cross Claim  
Additional Text: Q&D Construction, Inc.'s Answer to Somerset's Cross-Claim - Transaction 6903290 - Approved By: CVERA : 09-28-2018:13:56:46
- 93 9/28/2018 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6903512 - Approved By: NOREVIEW : 09-28-2018:13:57:45
- 94 10/3/2018 - 1250E - Application for Setting eFile  
Additional Text: FOR PRETRIAL CONFERENCE ON JANUARY 10, 2020 AT 9:00 A.M. AND JURY TRIAL ON FEBRUARY 3, 2020, AT 8:30 A.M. - Transaction 6909053 - Approved By: NOREVIEW : 10-03-2018:10:57:32
- 95 10/3/2018 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6909056 - Approved By: NOREVIEW : 10-03-2018:10:58:28
- 96 10/11/2018 - 1475 - Consent ...  
Additional Text: CONSENT TO SERVICE BY ELECTRONIC MEANS - Transaction 6922724 - Approved By: PMSEWELL : 10-11-2018:10:43:26

- 97 10/11/2018 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6922849 - Approved By: NOREVIEW : 10-11-2018:10:44:24
- 98 10/17/2018 - 1835 - Joint Case Conference Report  
Additional Text: JOINT CASE CONFERENCE REPORT - Transaction 6933719 - Approved By: PMSEWELL : 10-17-2018:16:10:11
- 99 10/17/2018 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6933812 - Approved By: NOREVIEW : 10-17-2018:16:13:45
- 100 1/17/2019 - 2490 - Motion ...  
Additional Text: MOTION OF PLAINTIFF TO STRIKE CERTAIN AFFIRMATIVE DEFENSES RELATING TO STATUTES OF LIMITATIONS AND REPOSE; REQUEST FOR JUDICIAL NOTICE AND DECLARATIONS OF JOHN SAMBERG, ESQ., AND TRACY CARTER IN SUPPORT THEREOF - Transaction 7072901 - Approved By: CSULEZIC : 01-17-2019:12:43:30
- 101 1/17/2019 - 3870 - Request  
Additional Text: PLAINTIFF SOMERSETT OWNERS ASSOCIATION'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFF'S MOTION TO STRIKE CERTAIN AFFIRMATIVE DEFENSES RELATING TO STATUTES OF LIMITATIONS AND REPOSE - Transaction 7072901 - Approved By: CSULEZIC : 01-17-2019:12:43:30
- 102 1/17/2019 - 1520 - Declaration  
Additional Text: DECLARATION OF TRACY CARTER IN SUPPORT OF PLAINTIFF'S MOTION TO STRIKE CERTAIN AFFIRMATIVE DEFENSES RELATING TO STATUTES OF LIMITATIONS AND REPOSE - Transaction 7072901 - Approved By: CSULEZIC : 01-17-2019:12:43:30
- 103 1/17/2019 - 1520 - Declaration  
Additional Text: DECLARATION OF JOHN SAMBERG IN SUPPORT OF PLAINTIFF'S MOTION TO STRIKE CERTAIN AFFIRMATIVE DEFENSES RELATING TO STATUTES OF LIMITATIONS AND REPOSE - Transaction 7072901 - Approved By: CSULEZIC : 01-17-2019:12:43:30
- 104 1/17/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7073347 - Approved By: NOREVIEW : 01-17-2019:12:44:41
- 105 3/4/2019 - 4050 - Stipulation ...  
Additional Text: STIPULATION AND ORDER FOR PARTIAL DISMISSAL OF SECOND CLAIM FOR RELIEF, WITHOUT PREJUDICE - Transaction 7145731 - Approved By: CSULEZIC : 03-04-2019:14:33:44
- 106 3/4/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7146342 - Approved By: NOREVIEW : 03-04-2019:14:35:40
- 107 3/7/2019 - 2915 - Ord Dismissal w/o Prejudice  
Additional Text: ORDER FOR PARTIAL DISMISSAL OF CERTAIN CLAIMS WITHOUT PREJUDICE FROM THE SECOND CLAIM FOR RELIEF AGAINST DEFENDANT PARSONS BROS ROCKERIES, INC. - Transaction 7154204 - Approved By: NOREVIEW : 03-07-2019:13:37:17
- 108 3/7/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7154209 - Approved By: NOREVIEW : 03-07-2019:13:38:21
- 109 3/14/2019 - 2540 - Notice of Entry of Ord  
Additional Text: NOTICE OF ENTRY OF ORDER FOR PARTIAL DISMISSAL OF CERTAIN CLAIMS WITHOUT PREJUDICE, FROM THE SECOND CLAIM FOR RELIEF AGAINST DEFENDANT PARSONS BROS ROCKERIES, INC. WITHOUT PREJUDICE - Transaction 7166333 - Approved By: NOREVIEW : 03-14-2019:12:03:32
- 110 3/14/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7166342 - Approved By: NOREVIEW : 03-14-2019:12:04:43
- 111 3/26/2019 - 2645 - Opposition to Mtn ...  
Additional Text: DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION TO STRIKE - Transaction 7185578 - Approved By: YVILORIA : 03-26-2019:14:19:08
- 112 3/26/2019 - 1520 - Declaration  
Additional Text: DECLARATION OF THEODORE CHRISSINGER IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT - Transaction 7185622 - Approved By: YVILORIA : 03-26-2019:14:23:10

- 113 3/26/2019 - \$2200 - \$Mtn for Summary Judgment  
Additional Text: DEFENDANTS' MOTION FOR SUMMARY JUDGMENT - Transaction 7185622 - Approved By: YVILORIA : 03-26-2019:14:23:10
- 114 3/26/2019 - 2630 - Objection to ...  
Additional Text: STANTEC'S OBJECTION TO EVIDENCE OFFERED IN SOA'S MOTION TO STRIKE - Transaction 7185772 - Approved By: CVERA : 03-26-2019:14:24:16
- 115 3/26/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7185808 - Approved By: NOREVIEW : 03-26-2019:14:20:24
- 116 3/26/2019 - PAYRC - \*\*Payment Receipted  
Additional Text: A Payment of \$200.00 was made on receipt DCDC634100.
- 117 3/26/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7185833 - Approved By: NOREVIEW : 03-26-2019:14:24:29
- 118 3/26/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7185838 - Approved By: NOREVIEW : 03-26-2019:14:25:33
- 119 3/26/2019 - \$2200 - \$Mtn for Summary Judgment  
Additional Text: DFX: NO EXHIBIT COVER PAGE - SOMERSETT DEVELOPMENT COMPANY'S SEPARATE MOTION FOR SUMMARY JUDGMENT - Transaction 7186554 - Approved By: YVILORIA : 03-27-2019:08:07:13
- 120 3/27/2019 - PAYRC - \*\*Payment Receipted  
Additional Text: A Payment of \$200.00 was made on receipt DCDC634134.
- 121 3/27/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7186750 - Approved By: NOREVIEW : 03-27-2019:08:08:10
- 122 3/27/2019 - 1520 - Declaration  
Additional Text: DECLARATION OF CHARLES BURCHAM - Transaction 7187466 - Approved By: CSULEZIC : 03-27-2019:11:32:21
- 123 3/27/2019 - \$2200 - \$Mtn for Summary Judgment  
Additional Text: Transaction 7187466 - Approved By: CSULEZIC : 03-27-2019:11:32:21
- 124 3/27/2019 - PAYRC - \*\*Payment Receipted  
Additional Text: A Payment of \$200.00 was made on receipt DCDC634167.
- 125 3/27/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7187670 - Approved By: NOREVIEW : 03-27-2019:11:35:31
- 126 4/24/2019 - \$2200 - \$Mtn for Summary Judgment  
Additional Text: PARSONS BROS ROCKERIES, INC. 'S MOTION FOR SUMMARY JUDGMENT AS AGAINST PLAINTIFF, SOMERSETT OWNERS ASSOCIATION, AND CROSSCLAIMANT, SOMERSETT DEVELOPMENT COMPANY, LTD - Transaction 7236220 - Approved By: YVILORIA : 04-24-2019:14:39:58
- 127 4/24/2019 - 3870 - Request  
Additional Text: PARSONS BROS ROCKERIES INC'S REQUEST FOR JUDICIAL NOTICE - Transaction 7236232 - Approved By: YVILORIA : 04-24-2019:14:52:43
- 128 4/24/2019 - PAYRC - \*\*Payment Receipted  
Additional Text: A Payment of \$200.00 was made on receipt DCDC636382.
- 129 4/24/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7236388 - Approved By: NOREVIEW : 04-24-2019:14:41:28

- 130 4/24/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7236437 - Approved By: NOREVIEW : 04-24-2019:14:54:00
- 131 4/26/2019 - 2630 - Objection to ...  
Additional Text: OBJECTION BY PLAINTIFF TO THE DECLARATION OF BLAKE SMITH FILED ISO MSJ RELATING TO NRS 40.668 - Transaction 7240498 - Approved By: YVILORIA : 04-26-2019:14:03:32
- 132 4/26/2019 - 2645 - Opposition to Mtn ...  
Additional Text: OPPOSITION OF PLAINTIFF TO DEFENDANT SOMERSETT DEVEL. CO. MSJ RELATING TO NRS 11.202 STATUTE OF RESPOSE - Transaction 7240498 - Approved By: YVILORIA : 04-26-2019:14:03:32
- 133 4/26/2019 - 2645 - Opposition to Mtn ...  
Additional Text: OPPOSITION OF PLAINTIFF TO DEFENDANT SOMERSETT DEVELOPMENT CO. MSJ RELATING TO NRS 40.668 - Transaction 7240498 - Approved By: YVILORIA : 04-26-2019:14:03:32
- 134 4/26/2019 - 3790 - Reply to/in Opposition  
Additional Text: REPLY OF PLAINTIFF ISO MOTION TO STRIKE CERTAIN AFFIRMATIVE DEFENSES RELATING TO STATUTE OF LIMITATIONS AND REPOSE - Transaction 7240507 - Approved By: YVILORIA : 04-26-2019:14:14:56
- 135 4/26/2019 - 3880 - Response...  
Additional Text: RESPONSE OF PLAINTIFF TO DEF. STANTEC OBJECTION TO EVIDENCE OFFERED IN MOTION TO STRIKE - Transaction 7240507 - Approved By: YVILORIA : 04-26-2019:14:14:56
- 136 4/26/2019 - 2645 - Opposition to Mtn ...  
Additional Text: OPPOSITION OF PLAINTIFF TO DEFENDANTS' JOINT MSJ (OMNIBUS MOTION) - Transaction 7240514 - Approved By: YVILORIA : 04-26-2019:14:16:29
- 137 4/26/2019 - 3870 - Request  
Additional Text: REQUEST BY PLAINTIFF FOR JUDICIAL NOTICE - Transaction 7240514 - Approved By: YVILORIA : 04-26-2019:14:16:29
- 138 4/26/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7240651 - Approved By: NOREVIEW : 04-26-2019:14:04:50
- 139 4/26/2019 - 1520 - Declaration  
Additional Text: APPENDIX OF PLAINTIFF'S SUPPORTING EVIDENCE - Transaction 7240696 - Approved By: YVILORIA : 04-26-2019:15:06:27
- 140 4/26/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7240701 - Approved By: NOREVIEW : 04-26-2019:14:15:59
- 141 4/26/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7240707 - Approved By: NOREVIEW : 04-26-2019:14:17:28
- 142 4/26/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7240940 - Approved By: NOREVIEW : 04-26-2019:15:08:06
- 143 5/1/2019 - 2650 - Opposition to ...  
Additional Text: DFX: EXHIBIT PRESENTED INCORRECTLY - DEFENDANT, Q&D CONSTRUCTION, INC'S OPPOSITION TO DEFENDANT, SOMERSETT DEVELOPMENT COMPANY, LTD'S MOTION FOR SUMMARY JUDGMENT BASED UPON NRS 40.668 - Transaction 7248873 - Approved By: YVILORIA : 05-02-2019:08:22:53
- 144 5/2/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7248976 - Approved By: NOREVIEW : 05-02-2019:08:24:11
- 145 5/8/2019 - 4030 - Stip & Ord Continue Trial  
Additional Text: STIPULATION AND ORDER TO VACATE TRIAL DATE, PRETRIAL CONFERENCE AND CASE DEADLINES - Transaction 7259478 - Approved By: NOREVIEW : 05-08-2019:11:22:26
- 146 5/8/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7259503 - Approved By: NOREVIEW : 05-08-2019:11:24:44

- 147 5/13/2019 - 1650 - Errata...  
Additional Text: ERRATA TO APPENDIX, AND SUPPLEMENT TO OPPOSITION OF PLAINTIFF TO DEFENDANTS' JOINT MOTION FOR SUMMARY JUDGMENT (OMNIBUS MOTION) - Transaction 7267124 - Approved By: YVILORIA : 05-13-2019:15:58:23
- 148 5/13/2019 - 4105 - Supplemental ...  
Additional Text: SUPPLEMENTAL APPENDIX OF PLAINTIFF'S SUPPORTING EVIDENCE - Transaction 7267124 - Approved By: YVILORIA : 05-13-2019:15:58:23
- 149 5/13/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7267302 - Approved By: NOREVIEW : 05-13-2019:16:01:53
- 150 5/22/2019 - 2645 - Opposition to Mtn ...  
Additional Text: OPPOSITION BY PLAINTIFFS TO DEFENDANT PARSONS BROS MSJ RELATING TO NRS 78.585 - Transaction 7282165 - Approved By: CSULEZIC : 05-22-2019:10:40:33
- 151 5/22/2019 - 1520 - Declaration  
Additional Text: DECLARATION OF JOHN SAMBERG IN SUPPORT OF PLAINTIFFS OPP TO DEF PARSONS BROS MSJ - Transaction 7282165 - Approved By: CSULEZIC : 05-22-2019:10:40:33
- 152 5/22/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7282493 - Approved By: NOREVIEW : 05-22-2019:10:43:17
- 153 6/3/2019 - 1650 - Errata...  
Additional Text: FURTHER SUPPLEMENTAL ERRATA OF PLAINTIFF TO OPPOSITION TO DEFENDANTS' JOINT MOTION FOR SUMMARY JUDGMENT (OMNIBUS MOTION) - Transaction 7299720 - Approved By: BBLOUGH : 06-03-2019:11:03:11
- 154 6/3/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7299933 - Approved By: NOREVIEW : 06-03-2019:11:05:43
- 155 6/6/2019 - 3790 - Reply to/in Opposition  
Additional Text: PARSONS BROS ROCKERIES, INC.'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AS AGAINST PLAINTIFF, SOMERSETT OWNERS ASSOCIATION - Transaction 7307906 - Approved By: YVILORIA : 06-06-2019:14:18:13
- 156 6/6/2019 - 3860 - Request for Submission  
Additional Text: REQUEST FOR SUBMISSION OF MOTION FOR SUMMARY JUDGMENT AS AGAINST PLAINTIFF, SOMERSETT OWNERS ASSOCIATION - Transaction 7307908 - Approved By: YVILORIA : 06-06-2019:14:42:57  
DOCUMENT TITLE: MOTION FOR SUMMARY JUDGMENT AS AGAINST PLAINTIFF, SOMERSET OWNERS ASSOCIATION FILED 4-24-19  
PARTY SUBMITTING: STEPHEN CASTRONOVA ESQ  
DATE SUBMITTED: 6-6-19  
SUBMITTED BY: YV  
DATE RECEIVED JUDGE OFFICE:
- 157 6/6/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7308042 - Approved By: NOREVIEW : 06-06-2019:14:39:39
- 158 6/6/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7308120 - Approved By: NOREVIEW : 06-06-2019:14:43:49
- 159 6/6/2019 - 2645 - Opposition to Mtn ...  
Additional Text: SOMERSETT DEVELOPMENT COMPANY, LTD'S OPPOSITION TO PARSONS BROTHERS ROCKERIES' MOTION FOR SUMMARY JUDGMENT - Transaction 7308203 - Approved By: YVILORIA : 06-06-2019:16:34:26
- 160 6/6/2019 - 2610 - Notice ...  
Additional Text: NOTICE OF WITHDRAWAL OF REQUEST FOR SUBMISSION RE MOTION FOR SUMMARY JUDGMENT AS AGAINST PLAINTIFF, SOMERSETT OWNERS ASSOCIATION - Transaction 7308246 - Approved By: YVILORIA : 06-06-2019:16:35:38
- 161 6/6/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7308702 - Approved By: NOREVIEW : 06-06-2019:16:35:34
- 162 6/6/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7308713 - Approved By: NOREVIEW : 06-06-2019:16:36:41

- 163 6/7/2019 - S200 - Request for Submission Complet  
Additional Text: REQUEST FOR SUBMISSION PREMATURELY FILED; PARTIES WILL RESUBMIT ONCE MOTION IS FULLY BRIEFED
- 164 6/7/2019 - 3795 - Reply...  
Additional Text: Defendants' Reply in Support of Their Motion for Summary Judgment - Transaction 7309280 - Approved By: SACORDAG : 06-07-2019:09:58:17
- 165 6/7/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7309316 - Approved By: NOREVIEW : 06-07-2019:09:59:18
- 166 6/7/2019 - 3795 - Reply...  
Additional Text: REPLY TO SOMERSETT OWNERS ASSOCIATION'S OPPOSITION TO SOMERSETT DEVELOPMENT COMPANY'S SEPARATE MOTION FOR SUMMARY JUDGMENT - Transaction 7309818 - Approved By: YVILORIA : 06-07-2019:13:04:01
- 167 6/7/2019 - 1520 - Declaration  
Additional Text: DECLARATION OF CHARLES L BURCHAM IN SUPPORT OF REPLY TO SOMERSETT OWNERS ASSOCIATION'S OPPOSITION TO SOMERSETT DEVELOPMENT COMPANY'S SEPARATE MOTION FOR SUMMARY JUDGMENT - Transaction 7309818 - Approved By: YVILORIA : 06-07-2019:13:04:01
- 168 6/7/2019 - 3795 - Reply...  
Additional Text: SOMERSET DEVELOPMENT COMPANY'S COMBINED REPLY IN FAVOR OF ITS MOTION FOR SUMMARY JUDGMENT BASED UPON THE PROVISIONS OF NRS 40.668 - Transaction 7309823 - Approved By: YVILORIA : 06-07-2019:13:11:08
- 169 6/7/2019 - 1520 - Declaration  
Additional Text: DECLARATION OF CHARLES L. BURCHAM IN SUPPORT OF SOMERSETT DEVELOPMENT COMPANY'S COMBIEND REPLY IN FAVOR OF ITS MOTION FOR SUMMARY JUDGMENT BASED UPON THE PROVISIONS OF NRS 40.668 - Transaction 7309823 - Approved By: YVILORIA : 06-07-2019:13:11:08
- 170 6/7/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7310048 - Approved By: NOREVIEW : 06-07-2019:13:04:52
- 171 6/7/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7310073 - Approved By: NOREVIEW : 06-07-2019:13:11:54
- 172 6/7/2019 - 2630 - Objection to ...  
Additional Text: STANTEC'S OBJECTION TO PLAINTIFF'S EVIDENCE OFFERED IN ITS OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT - Transaction 7310610 - Approved By: YVILORIA : 06-07-2019:16:44:32
- 173 6/7/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7311137 - Approved By: NOREVIEW : 06-07-2019:16:45:21
- 174 6/11/2019 - 3790 - Reply to/in Opposition  
Additional Text: PARSONS BROS ROCKERIES, INC.'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AS AGAINST SOMERSETT DEVELOPMENT COMPANY, LTD - Transaction 7314324 - Approved By: YVILORIA : 06-11-2019:13:01:24
- 175 6/11/2019 - 3860 - Request for Submission  
Additional Text: REQUEST FOR SUBMISSION OF MOTION FOR SUMMARY JUDGMENT AS AGAINST PLAINTIFF, SOMERSETT OWNERS ASSOCIATION AND SOMERSETT DEVELOPMENT COMPANT LTD - Transaction 7314334 - Approved By: YVILORIA : 06-11-2019:13:04:36  
DOCUMENT TITLE: MOTION FOR SUMMARY JUDGMENT AS AGAINST PLAINTIFF, SOMERSETT OWNERS ASSOCIATION AND CROSS-CLAIMANT, SOMERSETT DEVELOPMENT COMPANY, LTD FILED 4-24-19  
PARTY SUBMITTING: STEPHEN CASTRONOVA ESQ  
DATE SUBMITTED: 6-11-19  
SUBMITTED BY: YV  
DATE RECEIVED JUDGE OFFICE:
- 176 6/11/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7314755 - Approved By: NOREVIEW : 06-11-2019:13:02:24
- 177 6/11/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7314774 - Approved By: NOREVIEW : 06-11-2019:13:05:49

- 178 6/11/2019 - 3860 - Request for Submission  
Additional Text: - Transaction 7314933 - Approved By: CSULEZIC : 06-11-2019:15:33:19  
DOCUMENT TITLE: REQUEST FOR SUBMISSION OF SDC'S MOTION FOR SUMMARY JUDGMENT FILED 3/27/19  
PARTY SUBMITTING: CHARLES BURCHAM ESQ  
DATE SUBMITTED: 6/11/19  
SUBMITTED BY: CS  
DATE RECEIVED JUDGE OFFICE:
- 179 6/11/2019 - 3860 - Request for Submission  
Additional Text: Transaction 7314933 - Approved By: CSULEZIC : 06-11-2019:15:33:19  
DOCUMENT TITLE: REQUEST FOR SUBMISSION OF SDC'S MOTION FOR SUMMARY JUDGMENT FILED 3/26/19  
PARTY SUBMITTING: CHARLES BURCHAM ESQ  
DATE SUBMITTED: 6/11/19  
SUBMITTED BY: CS  
DATE RECEIVED JUDGE OFFICE:
- 180 6/11/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7315472 - Approved By: NOREVIEW : 06-11-2019:15:35:18
- 181 6/12/2019 - 3860 - Request for Submission  
Additional Text: REQUEST FOR SUBMISSION (REQUEST FOR HEARING) - Transaction 7317315 - Approved By: YVILORIA : 06-12-2019:13:58:31  
DOCUMENT TITLE: PLAINTIFFS' MOTION TO STRIKE CERTAIN AFFIRMATIVE DEFENSES RELATING TO STATUTES OF LIMITATIONS AND REPOSE FILED 1-17-19  
PARTY SUBMITTING: JOHN SAMBERG ESQ  
DATE SUBMITTED: 6-12-19  
SUBMITTED BY: YV  
DATE RECEIVED JUDGE OFFICE:
- 182 6/12/2019 - 3860 - Request for Submission  
Additional Text: - Transaction 7317392 - Approved By: CSULEZIC : 06-12-2019:14:10:41  
DOCUMENT TITLE: MOTION FOR SUMMARY JUDGMENT FILED 3/26/19  
PARTY SUBMITTING: THEODORE CHRISSINGER ESQ  
DATE SUBMITTED: 6/12/19  
SUBMITTED BY: CS  
DATE RECEIVED JUDGE OFFICE:
- 183 6/12/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7317421 - Approved By: NOREVIEW : 06-12-2019:13:59:50
- 184 6/12/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7317498 - Approved By: NOREVIEW : 06-12-2019:14:11:56
- 185 7/2/2019 - 3347 - Ord to Set  
Additional Text: ORDER TO SET HEARING ON MOTIONS - Transaction 7351429 - Approved By: NOREVIEW : 07-02-2019:10:19:36
- 186 7/2/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7351434 - Approved By: NOREVIEW : 07-02-2019:10:20:32
- 187 7/2/2019 - 3370 - Order ...  
Additional Text: ORDER REGARDING MOTION FOR SUMMARY JUDGMENT - Transaction 7351440 - Approved By: NOREVIEW : 07-02-2019:10:21:48
- 188 7/2/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7351446 - Approved By: NOREVIEW : 07-02-2019:10:22:57
- 189 7/2/2019 - 3370 - Order ...  
Additional Text: ORDER REGARDING PARSONS BROS MOTION FOR SUMMARY JUDGMENT - Transaction 7351464 - Approved By: NOREVIEW : 07-02-2019:10:25:54

- 190 7/2/2019 - S200 - Request for Submission Complet  
Additional Text: ORDER FILED JULY 2, 2019
- 191 7/2/2019 - S200 - Request for Submission Complet  
Additional Text: ORDER FILED JULY 2, 2019
- 192 7/2/2019 - S200 - Request for Submission Complet  
Additional Text: ORDER FILED JULY 2, 2019
- 193 7/2/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7351469 - Approved By: NOREVIEW : 07-02-2019:10:26:52
- 194 7/2/2019 - S200 - Request for Submission Complet  
Additional Text: ORDER FILED JULY 2, 2019
- 195 7/2/2019 - S200 - Request for Submission Complet  
Additional Text: ORDER FILED JULY 2, 2019
- 196 7/2/2019 - 1250E - Application for Setting eFile  
Additional Text: FOR HEARING ON SOMERSETT MOTION FOR S.J.; MOTION TO STRIKE; SOMERSETT DEV. MOTION FOR S.J. SET FOR JULY 15, 2019, AT 1:30 P.M. - Transaction 7352979 - Approved By: NOREVIEW : 07-02-2019:15:22:11
- 197 7/2/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7352981 - Approved By: NOREVIEW : 07-02-2019:15:23:14
- 198 7/15/2019 - MIN - \*\*\*Minutes  
Additional Text: 7/15/19 - MOTIONS HEARING - Transaction 7374208 - Approved By: NOREVIEW : 07-15-2019:17:01:59
- 199 7/15/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7374214 - Approved By: NOREVIEW : 07-15-2019:17:03:05
- 200 7/30/2019 - 4185 - Transcript  
Additional Text: Hearing on Motions - Transaction 7400767 - Approved By: NOREVIEW : 07-30-2019:09:20:06
- 201 7/30/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7400773 - Approved By: NOREVIEW : 07-30-2019:09:21:19
- 202 10/2/2019 - 3060 - Ord Granting Mtn ...  
Additional Text: ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT - Transaction 7516904 - Approved By: NOREVIEW : 10-02-2019:15:27:15
- 203 10/2/2019 - S200 - Request for Submission Complet  
*No additional text exists for this entry.*
- 204 10/2/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7516910 - Approved By: NOREVIEW : 10-02-2019:15:28:29
- 205 10/2/2019 - 2540 - Notice of Entry of Ord  
Additional Text: Transaction 7517271 - Approved By: NOREVIEW : 10-02-2019:16:45:27
- 206 10/2/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7517280 - Approved By: NOREVIEW : 10-02-2019:16:46:40
- 207 10/3/2019 - 2842 - Ord Denying Motion  
Additional Text: ORDER DENYING MOTION TO STRIKE AS MOOT - Transaction 7517620 - Approved By: NOREVIEW : 10-03-2019:08:47:42

- 208 10/3/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7517621 - Approved By: NOREVIEW : 10-03-2019:08:48:36
- 209 10/3/2019 - 2842 - Ord Denying Motion  
Additional Text: ORDER DENYING SEPARATE MOTION FOR SUMMARY JUDGMENT AS MOOT - Transaction 7517628 - Approved By: NOREVIEW : 10-03-2019:08:50:29
- 210 10/3/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7517633 - Approved By: NOREVIEW : 10-03-2019:08:51:30
- 211 10/3/2019 - 1950 - Memorandum of Costs  
Additional Text: PARSONS BROS ROCKERIES, INC'S MEMORANDUM OF COSTS - Transaction 7518538 - Approved By: NOREVIEW : 10-03-2019:11:31:09
- 212 10/3/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7518541 - Approved By: NOREVIEW : 10-03-2019:11:32:24
- 213 10/4/2019 - 1950 - Memorandum of Costs  
Additional Text: Transaction 7520882 - Approved By: NOREVIEW : 10-04-2019:10:15:33
- 214 10/4/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7520889 - Approved By: NOREVIEW : 10-04-2019:10:18:48
- 215 10/4/2019 - 1950 - Memorandum of Costs  
Additional Text: Transaction 7521436 - Approved By: NOREVIEW : 10-04-2019:12:49:18
- 216 10/4/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7521437 - Approved By: NOREVIEW : 10-04-2019:12:50:18
- 217 10/4/2019 - 1950 - Memorandum of Costs  
Additional Text: DFX: EXHIBITS PRESENTED INCORRECTLY  
Q & D Construction, Inc.'s Memorandum of Costs - Transaction 7522567 - Approved By: NOREVIEW : 10-04-2019:16:16:30
- 218 10/4/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7522572 - Approved By: NOREVIEW : 10-04-2019:16:17:31
- 219 10/8/2019 - 1650 - Errata...  
Additional Text: Notice of Errata Re. Q & D Construction, Inc.'s Memorandum of Costs - Transaction 7527610 - Approved By: CSULEZIC : 10-08-2019:16:03:21
- 220 10/8/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7527626 - Approved By: NOREVIEW : 10-08-2019:16:04:26
- 221 10/11/2019 - 1520 - Declaration  
Additional Text: Declaration of Michael Kimmel - Transaction 7534174 - Approved By: NOREVIEW : 10-11-2019:14:44:39
- 222 10/11/2019 - 1520 - Declaration  
Additional Text: Declaration of Theodore Chrissinger - Transaction 7534174 - Approved By: NOREVIEW : 10-11-2019:14:44:39
- 223 10/11/2019 - 2010 - Mtn for Attorney's Fee  
Additional Text: Transaction 7534174 - Approved By: NOREVIEW : 10-11-2019:14:44:39
- 224 10/11/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7534177 - Approved By: NOREVIEW : 10-11-2019:14:45:39
- 225 10/11/2019 - 1520 - Declaration  
Additional Text: Transaction 7534228 - Approved By: NOREVIEW : 10-11-2019:15:11:12

- 226 10/11/2019 - 2010 - Mtn for Attorney's Fee  
Additional Text: Transaction 7534228 - Approved By: NOREVIEW : 10-11-2019:15:11:12
- 227 10/11/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7534253 - Approved By: NOREVIEW : 10-11-2019:15:13:43
- 228 10/16/2019 - 2010 - Mtn for Attorney's Fee  
Additional Text: Transaction 7540801 - Approved By: NOREVIEW : 10-16-2019:11:32:09
- 229 10/16/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7540837 - Approved By: NOREVIEW : 10-16-2019:11:37:20
- 230 10/22/2019 - 2010 - Mtn for Attorney's Fee  
Additional Text: Defendant, Q & D Construction, Inc.'s Motion for Attorney's Fees - Transaction 7552422 - Approved By: NOREVIEW : 10-22-2019:16:52:11
- 231 10/22/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7552433 - Approved By: NOREVIEW : 10-22-2019:16:53:23
- 232 10/29/2019 - \$2515 - \$Notice/Appeal Supreme Court  
Additional Text: NOTICE OF APPEAL - Transaction 7562225 - Approved By: YVILORIA : 10-29-2019:15:18:14
- 233 10/29/2019 - 1310E - Case Appeal Statement  
Additional Text: CASE APPEAL STATEMENT - Transaction 7562225 - Approved By: YVILORIA : 10-29-2019:15:18:14
- 234 10/29/2019 - PAYRC - \*\*Payment Receipted  
Additional Text: A Payment of \$34.00 was made on receipt DCDC648589.
- 235 10/29/2019 - 1310 - Case Appeal Statement  
Additional Text: CASE APPEAL STATEMENT - Transaction 7562270 - Approved By: YVILORIA : 10-29-2019:15:25:11
- 236 10/29/2019 - \$2515 - \$Notice/Appeal Supreme Court  
Additional Text: NOTICE OF APPEAL - Transaction 7562270 - Approved By: YVILORIA : 10-29-2019:15:25:11
- 237 10/29/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7562272 - Approved By: NOREVIEW : 10-29-2019:15:20:31
- 238 10/29/2019 - PAYRC - \*\*Payment Receipted  
Additional Text: A Payment of \$34.00 was made on receipt DCDC648591.
- 239 10/29/2019 - NEF - Proof of Electronic Service  
Additional Text: Transaction 7562290 - Approved By: NOREVIEW : 10-29-2019:15:26:12
- 240 10/30/2019 - SAB - \*\*Supreme Court Appeal Bond  
Additional Text: Bond ID: SAB-19-00075; Total Bond Amount: \$500.00.  
  
Bond Code, SAB, Receipted for: SITE DEFINED TRUST DEPOSIT, on 30-OCT-2019 in the amount of \$500.00 on case ID CV17-02427.
- 241 10/30/2019 - SAB - \*\*Supreme Court Appeal Bond  
Additional Text: Bond ID: SAB-19-00076; Total Bond Amount: \$500.00.  
  
Bond Code, SAB, Receipted for: SITE DEFINED TRUST DEPOSIT, on 30-OCT-2019 in the amount of \$500.00 on case ID CV17-02427.
- 242 10/30/2019 - 1350 - Certificate of Clerk  
Additional Text: CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 7564652 - Approved By: NOREVIEW : 10-30-2019:15:21:35

243 10/30/2019 - NEF - Proof of Electronic Service

Additional Text: Transaction 7564660 - Approved By: NOREVIEW : 10-30-2019:15:22:45

244 10/30/2019 - 1350 - Certificate of Clerk

Additional Text: CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL #2 - Transaction 7564720 - Approved By:  
NOREVIEW : 10-30-2019:15:34:09

245 10/30/2019 - NEF - Proof of Electronic Service

Additional Text: Transaction 7564724 - Approved By: NOREVIEW : 10-30-2019:15:35:14

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

SOMERSETT OWNERS ASSOCIATION,  
a domestic non-profit corporation,

Plaintiff,

vs.

Case No. CV17-02427

Dept. No. 10

SOMERSETT DEVELOPMENT CO., LTD.,  
a Nevada limited liability company;  
SOMERSETT, LLC, a dissolved Nevada  
limited liability company; SOMERSETT  
DEVELOPMENT CORPORATION, a  
dissolved Nevada corporation; Q&D  
CONSTRUCTION, INC., PARSONS  
BROTHERS ROCKERIES, INC., a  
Washington corporation; PARSONS ROCKS!,  
LLC, a Nevada limited liability company, and  
DOES 5-50 inclusive,

Defendants,

AND RELATED CROSS-ACTIONS.

**ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Presently before the Court is DEFENDANTS' MOTION FOR SUMMARY JUDGMENT  
("the Motion") filed by Defendants STANTEC CONSULTING SERVICES INC.; SOMERSETT  
DEVELOPMENT CO., LTD; SOMERSETT, LLC; SOMERSETT DEVELOPMENT  
CORPORATION; Q&D CONSTRUCTION, INC; and PARSONS BROTHERS ROCKERIES,  
INC. (collectively "the Defendants") on March 26, 2019. Plaintiff SOMERSETT OWNERS

1 ASSOCIATION ("the Plaintiff") filed the OPPOSITION OF PLAINTIFF TO DEFENDANTS'  
2 JOINT MOTION FOR SUMMARY JUDGMENT (OMNIBUS MOTION) ("the Opposition") on  
3 April 26, 2019. The Plaintiff contemporaneously filed the REQUEST BY PLAINTIFF FOR  
4 JUDICIAL NOTICE ("the RJN").<sup>1</sup> The Defendants filed DEFENDANTS' REPLY IN SUPPORT  
5 OF THEIR MOTION FOR SUMMARY JUDGMENT ("the Reply") on June 7, 2019. The Court  
6 held a hearing on July 15, 2019, and took the matter under advisement.  
7

8 The Plaintiff filed the FIRST AMENDED COMPLAINT FOR DAMAGES  
9 (CORRECTED) ("the FAC") on May 3, 2018.<sup>2</sup> The Plaintiff is a homeowners association of a  
10 common-interest community. The FAC is a construction defect matter which contains the  
11 following causes of action: 1) Negligence and Negligence Per Se; 2) Breach of Express and Implied  
12 Warranties Pursuant to NRS 116.4113 and NRS 11.4114<sup>3</sup> and Common Law; 3) Negligent  
13 Misrepresentation and/or Failure to Disclose; 4) Declaratory Relief; and 5) Breach of NRS  
14 116.1113 and the Implied Covenant of Good Faith. The Complaint 8-17. The Plaintiff contends  
15 the Defendants negligently designed and constructed rockery walls within the Plaintiff's common-  
16 interest community and breached the express and implied warranties associated with the  
17 construction. The Complaint 11-13. The Plaintiff also alleges the Defendants negligently  
18 misrepresented and/or failed to disclose known latent defects which later caused the rockery walls  
19 to fail and also breached the implied covenant of good faith and fair dealing. The Complaint 14-16.  
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24  
25 <sup>1</sup> NRS 47.130 and 47.1150 govern judicial notice. The effect of judicial notice is to establish the fact which is noticed to  
26 the court. *Lemel v. Smith*, 64 Nev. 545, 566, 187 P.2d 169, 179 (1947). While the Plaintiff has asked the Court to take  
27 judicial notice of twelve different items, the Court does not believe judicial notice of these items is necessary or  
appropriate for the Motion. The Court will consider the items in the RJN as if they had been submitted as exhibits to the  
Opposition and will give them appropriate weight, if any.

28 <sup>2</sup> The requisite Chapter 40 notice was served on December 29, 2017. *See* the Motion 6:10-14.

<sup>3</sup> The Court presumes the Plaintiff intended to write "116.4144."

1 The Defendants contend they are entitled to summary judgment on all of the Plaintiff's  
2 claims because the statute of repose has expired. The Motion 7:10-21. The Defendants contend  
3 more than six years have elapsed since the rockery walls were substantially completed, and statutes  
4 of repose are not subject to equitable or statutory tolling. The Motion 8:8-17; 9:3-27; 10:6-21;  
5 11:1-22. The Plaintiff responds the Motion should be denied because the warranty claims under  
6 NRS Chapter 116 did not begin to run until control of the Plaintiff's board was transferred from  
7 Defendant SOMERSETT DEVELOPMENT CO., LTD. ("SDC") to the Plaintiff on January 8,  
8 2013. The Opposition 2:6-14; 6:7-15. The Plaintiff also contends there is a genuine issues of  
9 material fact regarding the date of substantial completion for the rockery walls because evaluations  
10 from 2017 and 2018 revealed the rockery walls were unfit for their intended use. The Opposition  
11 2:15-20; 9:20-23; 10:16-20; 11:14-17; 17:4-8. The Plaintiff further contends the statute of repose is  
12 subject to statutory and equitable tolling and is only applicable to the Negligence and Negligence  
13 Per Se claims. The Opposition 13:26-28; 20:17-18; 22:7-11; 23:3-10; 24:4-13. The Defendant  
14 responds by arguing that the Plaintiff conflates statutes of limitation and statutes of repose and that  
15 tolling only applies to the former. The Reply 4:2-21; 8:16-20; 9:8-12; 11:10-18. The Defendant  
16 also argues the common law definition of substantial completion does not require an improvement  
17 to be free from defects, and substantial completion cannot occur after actual completion. The  
18 Reply 5:6-16; 7:11-23; 8:13-15.

19 NRCP 56(a) allows a party to petition the court for summary judgment on a claim or  
20 defense. *Shadow Wood Homeowners Ass'n v. New York Cmty. Bancorp, Inc.*, 132 Nev. 49, 55,  
21 366 P.3d 1105, 1109 (2016). Summary judgment is appropriate where the moving party  
22 demonstrates no genuine issue of material fact, thus entitling the party to judgment as a matter of  
23 law. NRCP 56(a). A material fact is one that could impact the outcome of the case. *Wood v.*

1 *Safeway, Inc.*, 121 Nev. 724, 730, 121 P.3d 1026, 1030 (2005) (quoting *Anderson v. Liberty*  
2 *Lobby*, 477 U.S. 242, 247-48, 106 S. Ct. 2505, 2509-10 (1986)). When the party moving for  
3 summary judgment does not bear the burden of persuasion at trial, the movant may satisfy the  
4 burden of production for summary judgment by “submitting evidence that negates an essential  
5 element of the nonmoving party’s claim” or “pointing out that there is an absence of evidence to  
6 support the nonmoving party’s case.” *Cuzze v. Univ. and Cmty. Coll. Sys. of Nev.*, 123 Nev. 598,  
7 602-03, 172 P.3d 131, 134 (2007).

9 When considering a motion for summary judgment, the district court must view the  
10 evidence and any reasonable inferences drawn from it in the light most favorable to the  
11 nonmoving party. *Wood*, 121 Nev. at 729, 121 P.3d at 1029. However, the nonmoving party must  
12 set forth “specific facts demonstrating the existence of a genuine factual issue.” *Pegasus v. Reno*  
13 *Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82, 87 (2002) (explaining non-moving party may  
14 not stand on “general allegations and conclusions”). Such facts must be predicated on admissible  
15 evidence, and the non-moving party is not permitted “to build a case on the gossamer threads of  
16 whimsy, speculation and conjecture.” *Id.* “The substantive law controls which factual disputes  
17 are material and will preclude summary judgment; other factual disputes are irrelevant.” *Wood*,  
18 121 Nev. at 731, 121 P.3d at 1031.

19 NRS 11.202 enumerates the statute of repose for claims related to construction defects and  
20 provides:  
21

- 22 1. No action may be commenced against the owner, occupier or any person  
23 performing or furnishing the design, planning, supervision or observation of  
24 construction, or the construction of an improvement to real property more than 6  
25 years after the substantial completion of such an improvement, for the recovery  
26 of damages for:

- a. Any deficiency in the design, planning, supervision or observation of  
27 construction or the construction of such an improvement;  
28

- b. Injury to real or personal property caused by any such deficiency; or
- c. Injury to or the wrongful death of a person caused by any such deficiency.

2. The provisions of this section do not apply:

- a. To a claim for indemnity or contribution.
- b. In an action brought against:
  - 1) The owner or keeper of any hotel, inn, motel, motor court, boardinghouse or lodging house in this State on account of his or her liability as an innkeeper.
  - 2) Any person on account of a defect in a product.

The date of substantial completion is the latest of the following dates: the date of the final building inspection, the date the notice of completion is issued, or the date a certificate of occupancy is issued. NRS 11.2055. *See also Dykema v. Del Webb Cmty., Inc.*, 132 Nev. 823, 827, 385 P.3d 977, 980 (2016) (holding issue date for notice of completion is date of recording). If none of the above three events occurred, the date of substantial completion is determined by the rules of the common law. *Id.* <sup>4</sup> “[S]ubstantial completion’ implies that the parties have been given the object of their contract and that any omissions or deviations can be remedied.” 22 AM. JUR. 2D DAMAGES § 83 (explaining contract has been substantially performed).

Statutes of repose are distinct from statutes of limitation. As the *Rhodes* Court explained:

The distinction between these two terms [statute of limitations and statute of repose] is often overlooked. A statute of limitations prohibits a suit after a period of time that follows the accrual of the cause of action . . . Moreover, a statute of limitations can be equitably tolled . . . **In contrast**, a statute of repose bars a cause of action after a specified period of time **regardless of when the cause of action was discovered or a recoverable injury occurred.**

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<sup>4</sup> The parties do not dispute that no final building inspection occurred and no notice of completion was issued. Additionally, the parties do not argue the statute is ambiguous.

1 *FDIC v. Rhodes*, 130 Nev. 893, 899, 336 P.3d 961, 965 (2014) (emphasis added). *See also*  
2 *Davenport v. Comstock Hills-Reno*, 118 Nev. 389, 390, 46 P.3d 62, 63 (2002) (explaining statutes  
3 of repose “absolutely bar any action stemming from injuries caused by a negligently designed or  
4 constructed improvement to real property after a certain period of time has passed.”). In addition to  
5 and separate from the elements of a cause of action, a plaintiff “must also prove that the cause of  
6 action was brought within the time frame set forth by the statute of repose.” *G&H Assocs. v. Ernest*  
7 *W. Hahn, Inc.*, 113 Nev. 265, 271, 934 P.2d 299, 233 (1997) (internal citations omitted).

9       The Court will grant the Motion because there is no genuine dispute of material fact the  
10 Plaintiff failed to file the FAC within the six-year statute of repose. Even when viewing the  
11 evidence in the light most favorable to the Plaintiff, the Plaintiff has not identified any admissible  
12 evidence proving the FAC was filed within the six-year statute of repose. Because the Plaintiff  
13 bears the burden of persuasion on the statute of repose issue, the lack of affirmative evidence is  
14 fatal. First, the statute of repose applies to all of the Plaintiff’s claims, not only the Negligence and  
15 Negligence Per Se claims. All of the Plaintiff’s claims are premised on the design and construction  
16 of the walls. The plain language of NRS 11.202(1) clearly states that “no action...for the recovery  
17 of damages” for construction deficiency can be commenced more than six years after the  
18 substantial completion of the improvement. The statute does not differentiate between types of  
19 actions, and the only exemptions appear in NRS 11.202(2). Because the Plaintiff’s claims do not  
20 fall within the applicable exemptions, the statute of repose applies. Second, the Plaintiff’s  
21 argument that evaluations from 2017 to 2018 confirm the lack of substantial completion is  
22 unpersuasive. The Plaintiff essentially argues the discovery of any defects precludes substantial  
23 completion; however, this argument contradicts the purpose of and policy determination embodied  
24 by the statute of repose. The statute of repose is intended to provide parties with finality and  
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1 establish a time period after which they cannot be sued for construction deficiencies. *See*  
2 *Davenport*, 118 Nev. at 393, 46 P.3d at 65 (“[T]he legislature has opted to provide them [parties  
3 involved in creating improvement] with a measure of economic certainty by closing the door to  
4 liability . . .”). If the Court were to accept the Plaintiff’s analysis, the statute of repose would  
5 potentially last decades for appurtenances and other common interest elements and developments,  
6 such as roads, sidewalks, walls, parks, trails and developed open spaces constructed for the benefit  
7 of all members of a community. The statute of repose is an absolute time bar based on substantial  
8 completion and is unaffected by the later discovery of damage or injury. *See G&H Assocs.*, 113  
9 Nev. at 271, 934 P.2d at 233. Accepting the Plaintiff’s argument would eviscerate the purpose of  
10 the statute of repose, render the substantial completion standard meaningless and expressly  
11 contradict the policy determination made by the Legislature.  
12

13  
14 Finally, statutes of repose are not subject to equitable or statutory tolling, a concept which  
15 has been explained by the Nevada Supreme Court. *See Rhodes*, 130 Nev. at 899, 336 P.3d at 965  
16 (explaining statutes of limitations can be tolled and statutes of repose cannot). *See also State Dep’t*  
17 *of Taxation v. Masco Builder Cabinet Grp.*, 127 Nev. 730, 738, 265 P.3d 666, 671 (2011)  
18 (explaining operation of equitable tolling for statute of limitations). The Plaintiff’s reliance on out-  
19 of-state case law is unpersuasive in light of mandatory authority undercutting its argument. *See*  
20 *Rhodes*, 130 Nev. at 899, 336 P.3d at 965 (explaining purpose of statute of repose is to “give a  
21 defendant peace of mind by barring delayed litigation, so as to prevent unfair surprises that result  
22 from the revival of claims that have remained dormant for a period during which the evidence  
23 vanished and memories faded.”). For all of these reasons, the Plaintiff has failed to carry its burden  
24 to establish its claims were filed within the six-year statute of repose.  
25  
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1           **IT IS ORDERED** DEFENDANTS' MOTION FOR SUMMARY JUDGMENT is hereby  
2 **GRANTED.**

3           **DATED** this   2   day of October, 2019.  
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7 ELLIOTT A. SATTLER  
8 District Judge  
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1 **CERTIFICATE OF MAILING**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court  
3 of the State of Nevada, County of Washoe; that on this \_\_\_\_\_ day of October, 2019, I deposited in  
4 the County mailing system for postage and mailing with the United States Postal Service in Reno,  
5 Nevada, a true copy of the attached document addressed to:  
6  
7

8 **CERTIFICATE OF ELECTRONIC SERVICE**

9 I hereby certify that I am an employee of the Second Judicial District Court of the State of  
10 Nevada, in and for the County of Washoe; that on the 2nd day of October, 2019, I electronically  
11 filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of  
12 electronic filing to the following:  
13

14 CHARLES BURCHAM, ESQ.

15 NATASHA LANDRUM, ESQ.

16 DIRK GASPAR, ESQ.

17 DAVID LEE, ESQ.

18 STEPHEN CASTRONOVA, ESQ.

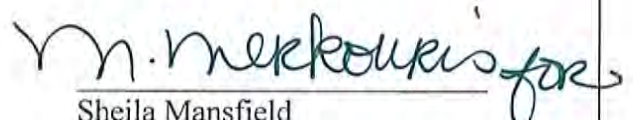
19 THEODORE E. CHRISSINGER, ESQ.

20 MICHAEL S. KIMMEL, ESQ.

21 STEPHEN G. CASTRONOVA, ESQ.

22 JOHN SAMBERG, ESQ.

23 DON SPRINGMEYER, ESQ.  
24  
25  
26  
27  
28

  
Sheila Mansfield  
Judicial Assistant

Code: 2540

Charles L. Burcham, Esq., Nevada Bar No. 2673  
Wade Carner, Esq., Nevada Bar No. 11530  
Thorndal, Armstrong, Delk, Balkenbush & Eisinger  
6590 S. McCarran, Suite B  
Reno, Nevada 89509  
Tel: (775) 786-2882

Attorneys for Defendants  
SOMERSETT DEVELOPMENT COMPANY, LTD;  
SOMERSETT, LLC and SOMERSETT DEVELOPMENT CORPORATION

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

SOMERSETT OWNERS ASSOCIATION, a  
Domestic Non-Profit Corporation,

Plaintiff,

vs.

Case No. CV17-02427

Dept. No. 15

SOMERSETT DEVELOPMENT  
COMPANY, LTD, a Nevada Limited  
Liability Company; SOMERSETT, LLC a  
dissolved Nevada Limited Liability Company;  
SOMERSETT DEVELOPMENT  
CORPORATION, a dissolved Nevada  
Corporation; Q & D Construction, Inc., a  
Nevada Corporation, PARSONS BROS  
ROCKERIES, INC., a Washington  
Corporation; PARSONS ROCKS!, LLC., a  
Nevada Limited Liability Company, and  
DOES 5 through 50, inclusive,

Defendants.

SOMERSETT DEVELOPMENT CO., LTD.,

Third-Party Plaintiff,

vs.

STANTEC CONSULTING, INC., an Arizona  
Corporation; and DOES 1-50 inclusive,

Third-Party Defendant.

**NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that on the 2<sup>nd</sup> day of October, 2019, the above-entitled Court  
entered its Order in the above-entitled matter.

1 PLEASE TAKE FURTHER NOTICE that on the 2<sup>nd</sup> day of October, 2019, said Order  
2 was duly filed in the office of the Clerk of the above-entitled Court and that attached hereto is a  
3 true and correct copy of said Order.

4 **AFFIRMATION**

5 **Pursuant to NRS 239B.030 and 603A.040**

6 The undersigned hereby affirms that this document does not contain the personal  
7 information of any person.

8 DATED this 2<sup>nd</sup> day of October, 2019.

9 THORNDAL, ARMSTRONG,  
10 DELK, BALKENBUSH & EISINGER

11 By: /s/ Charles Burcham  
12 CHARLES L. BURCHAM, ESQ.  
13 Nevada Bar No. 2673  
14 WADE CARNER, ESQ.  
15 Nevada Bar No. 11530  
16 6590 S. McCarran Blvd., Suite B  
17 Reno, Nevada 89509  
18 Attorneys for Defendants  
19 SOMERSETT DEVELOPMENT  
20 COMPANY, LTD, SOMERSETT, LLC,  
21 and SOMERSETT DEVELOPMENT  
22 CORPORATION  
23  
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of Thorndal, Armstrong, Delk,  
3 Balkenbush & Eisinger, and that on this date I caused the foregoing NOTICE OF ENTRY OF  
4 ORDER to be served on all parties to this action by:

5 \_\_\_\_\_ placing an original or true copy thereof in a sealed, postage prepaid, envelope in the  
6 United States mail at Reno, Nevada.

7  X  Second Judicial District Court Eflex ECF (Electronic Case Filing)

8 \_\_\_\_\_ personal delivery

9 \_\_\_\_\_ facsimile (fax)

10 \_\_\_\_\_ Federal Express/UPS or other overnight delivery

11 fully addressed as follows:

12 **Don Springmeyer, Esq.**  
13 **John Samberg, Esq.**  
14 **Royi Moas, Esq.**  
15 **Wolf, Rifkin, Shapiro, Schulman &**  
16 **Rabkin, LLP**  
17 **5594 B Longley Lane**  
18 **Reno, NV 89511**  
19 **Attorneys for Plaintiff**

**Natasha Landrum, Esq.**  
**Dirk W. Gaspar, Esq.**  
**Lee, Hernandez, Landrum & Garofalo**  
**7575 Vegas Dr., Ste 150**  
**Las Vegas, NV 89128**  
**Attorneys for Defendant**  
**Q & D Construction**

17 **Steve Castronova, Esq.**  
18 **Castronova Law Offices, P.C.**  
19 **605 Forest Street**  
20 **Reno, NV 89509**  
21 **Attorney for Defendant**  
22 **Parsons Bros Rockeries**

**Theodore Chrissinger, Esq.**  
**Hoy, Chrissinger, Kimmel & Vallas**  
**50 W. Liberty Street, Suite 840**  
**Reno, NV 89501**  
**Attorney for Stantec Consulting**

22 DATED this 2<sup>nd</sup> day of October, 2019.

24 /s/ Laura Bautista  
25 An employee of Thorndal, Armstrong,  
26 Delk, Balkenbush & Eisinger  
27  
28

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

SOMERSETT OWNERS ASSOCIATION,  
a domestic non-profit corporation,

Plaintiff,

vs.

Case No. CV17-02427

Dept. No. 10

SOMERSETT DEVELOPMENT CO., LTD.,  
a Nevada limited liability company;  
SOMERSETT, LLC, a dissolved Nevada  
limited liability company; SOMERSETT  
DEVELOPMENT CORPORATION, a  
dissolved Nevada corporation; Q&D  
CONSTRUCTION, INC., PARSONS  
BROTHERS ROCKERIES, INC., a  
Washington corporation; PARSONS ROCKS!,  
LLC, a Nevada limited liability company, and  
DOES 5-50 inclusive,

Defendants,

AND RELATED CROSS-ACTIONS.

**ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Presently before the Court is DEFENDANTS' MOTION FOR SUMMARY JUDGMENT  
("the Motion") filed by Defendants STANTEC CONSULTING SERVICES INC.; SOMERSETT  
DEVELOPMENT CO., LTD; SOMERSETT, LLC; SOMERSETT DEVELOPMENT  
CORPORATION; Q&D CONSTRUCTION, INC; and PARSONS BROTHERS ROCKERIES,  
INC. (collectively "the Defendants") on March 26, 2019. Plaintiff SOMERSETT OWNERS

1 ASSOCIATION ("the Plaintiff") filed the OPPOSITION OF PLAINTIFF TO DEFENDANTS'  
2 JOINT MOTION FOR SUMMARY JUDGMENT (OMNIBUS MOTION) ("the Opposition") on  
3 April 26, 2019. The Plaintiff contemporaneously filed the REQUEST BY PLAINTIFF FOR  
4 JUDICIAL NOTICE ("the RJN").<sup>1</sup> The Defendants filed DEFENDANTS' REPLY IN SUPPORT  
5 OF THEIR MOTION FOR SUMMARY JUDGMENT ("the Reply") on June 7, 2019. The Court  
6 held a hearing on July 15, 2019, and took the matter under advisement.  
7

8 The Plaintiff filed the FIRST AMENDED COMPLAINT FOR DAMAGES  
9 (CORRECTED) ("the FAC") on May 3, 2018.<sup>2</sup> The Plaintiff is a homeowners association of a  
10 common-interest community. The FAC is a construction defect matter which contains the  
11 following causes of action: 1) Negligence and Negligence Per Se; 2) Breach of Express and Implied  
12 Warranties Pursuant to NRS 116.4113 and NRS 11.4114<sup>3</sup> and Common Law; 3) Negligent  
13 Misrepresentation and/or Failure to Disclose; 4) Declaratory Relief; and 5) Breach of NRS  
14 116.1113 and the Implied Covenant of Good Faith. The Complaint 8-17. The Plaintiff contends  
15 the Defendants negligently designed and constructed rockery walls within the Plaintiff's common-  
16 interest community and breached the express and implied warranties associated with the  
17 construction. The Complaint 11-13. The Plaintiff also alleges the Defendants negligently  
18 misrepresented and/or failed to disclose known latent defects which later caused the rockery walls  
19 to fail and also breached the implied covenant of good faith and fair dealing. The Complaint 14-16.  
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24  
25 <sup>1</sup> NRS 47.130 and 47.1150 govern judicial notice. The effect of judicial notice is to establish the fact which is noticed to  
26 the court. *Lemel v. Smith*, 64 Nev. 545, 566, 187 P.2d 169, 179 (1947). While the Plaintiff has asked the Court to take  
27 judicial notice of twelve different items, the Court does not believe judicial notice of these items is necessary or  
appropriate for the Motion. The Court will consider the items in the RJN as if they had been submitted as exhibits to the  
Opposition and will give them appropriate weight, if any.

28 <sup>2</sup> The requisite Chapter 40 notice was served on December 29, 2017. *See* the Motion 6:10-14.

<sup>3</sup> The Court presumes the Plaintiff intended to write "116.4144."

1 The Defendants contend they are entitled to summary judgment on all of the Plaintiff's  
2 claims because the statute of repose has expired. The Motion 7:10-21. The Defendants contend  
3 more than six years have elapsed since the rockery walls were substantially completed, and statutes  
4 of repose are not subject to equitable or statutory tolling. The Motion 8:8-17; 9:3-27; 10:6-21;  
5 11:1-22. The Plaintiff responds the Motion should be denied because the warranty claims under  
6 NRS Chapter 116 did not begin to run until control of the Plaintiff's board was transferred from  
7 Defendant SOMERSETT DEVELOPMENT CO., LTD. ("SDC") to the Plaintiff on January 8,  
8 2013. The Opposition 2:6-14; 6:7-15. The Plaintiff also contends there is a genuine issues of  
9 material fact regarding the date of substantial completion for the rockery walls because evaluations  
10 from 2017 and 2018 revealed the rockery walls were unfit for their intended use. The Opposition  
11 2:15-20; 9:20-23; 10:16-20; 11:14-17; 17:4-8. The Plaintiff further contends the statute of repose is  
12 subject to statutory and equitable tolling and is only applicable to the Negligence and Negligence  
13 Per Se claims. The Opposition 13:26-28; 20:17-18; 22:7-11; 23:3-10; 24:4-13. The Defendant  
14 responds by arguing that the Plaintiff conflates statutes of limitation and statutes of repose and that  
15 tolling only applies to the former. The Reply 4:2-21; 8:16-20; 9:8-12; 11:10-18. The Defendant  
16 also argues the common law definition of substantial completion does not require an improvement  
17 to be free from defects, and substantial completion cannot occur after actual completion. The  
18 Reply 5:6-16; 7:11-23; 8:13-15.

19 NRCP 56(a) allows a party to petition the court for summary judgment on a claim or  
20 defense. *Shadow Wood Homeowners Ass'n v. New York Cmty. Bancorp, Inc.*, 132 Nev. 49, 55,  
21 366 P.3d 1105, 1109 (2016). Summary judgment is appropriate where the moving party  
22 demonstrates no genuine issue of material fact, thus entitling the party to judgment as a matter of  
23 law. NRCP 56(a). A material fact is one that could impact the outcome of the case. *Wood v.*

1 *Safeway, Inc.*, 121 Nev. 724, 730, 121 P.3d 1026, 1030 (2005) (quoting *Anderson v. Liberty*  
2 *Lobby*, 477 U.S. 242, 247-48, 106 S. Ct. 2505, 2509-10 (1986)). When the party moving for  
3 summary judgment does not bear the burden of persuasion at trial, the movant may satisfy the  
4 burden of production for summary judgment by “submitting evidence that negates an essential  
5 element of the nonmoving party’s claim” or “pointing out that there is an absence of evidence to  
6 support the nonmoving party’s case.” *Cuzze v. Univ. and Cmty. Coll. Sys. of Nev.*, 123 Nev. 598,  
7 602-03, 172 P.3d 131, 134 (2007).

9 When considering a motion for summary judgment, the district court must view the  
10 evidence and any reasonable inferences drawn from it in the light most favorable to the  
11 nonmoving party. *Wood*, 121 Nev. at 729, 121 P.3d at 1029. However, the nonmoving party must  
12 set forth “specific facts demonstrating the existence of a genuine factual issue.” *Pegasus v. Reno*  
13 *Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82, 87 (2002) (explaining non-moving party may  
14 not stand on “general allegations and conclusions”). Such facts must be predicated on admissible  
15 evidence, and the non-moving party is not permitted “to build a case on the gossamer threads of  
16 whimsy, speculation and conjecture.” *Id.* “The substantive law controls which factual disputes  
17 are material and will preclude summary judgment; other factual disputes are irrelevant.” *Wood*,  
18 121 Nev. at 731, 121 P.3d at 1031.

21 NRS 11.202 enumerates the statute of repose for claims related to construction defects and  
22 provides:  
23

- 24 1. No action may be commenced against the owner, occupier or any person  
25 performing or furnishing the design, planning, supervision or observation of  
26 construction, or the construction of an improvement to real property more than 6  
27 years after the substantial completion of such an improvement, for the recovery  
28 of damages for:

- a. Any deficiency in the design, planning, supervision or observation of  
construction or the construction of such an improvement;

- b. Injury to real or personal property caused by any such deficiency; or
- c. Injury to or the wrongful death of a person caused by any such deficiency.

2. The provisions of this section do not apply:

- a. To a claim for indemnity or contribution.
- b. In an action brought against:
  - 1) The owner or keeper of any hotel, inn, motel, motor court, boardinghouse or lodging house in this State on account of his or her liability as an innkeeper.
  - 2) Any person on account of a defect in a product.

The date of substantial completion is the latest of the following dates: the date of the final building inspection, the date the notice of completion is issued, or the date a certificate of occupancy is issued. NRS 11.2055. *See also Dykema v. Del Webb Cmty., Inc.*, 132 Nev. 823, 827, 385 P.3d 977, 980 (2016) (holding issue date for notice of completion is date of recording). If none of the above three events occurred, the date of substantial completion is determined by the rules of the common law. *Id.* <sup>4</sup> “[S]ubstantial completion’ implies that the parties have been given the object of their contract and that any omissions or deviations can be remedied.” 22 AM. JUR. 2D DAMAGES § 83 (explaining contract has been substantially performed).

Statutes of repose are distinct from statutes of limitation. As the *Rhodes* Court explained:

The distinction between these two terms [statute of limitations and statute of repose] is often overlooked. A statute of limitations prohibits a suit after a period of time that follows the accrual of the cause of action . . . Moreover, a statute of limitations can be equitably tolled . . . **In contrast**, a statute of repose bars a cause of action after a specified period of time **regardless of when the cause of action was discovered or a recoverable injury occurred**.

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<sup>4</sup> The parties do not dispute that no final building inspection occurred and no notice of completion was issued. Additionally, the parties do not argue the statute is ambiguous.

1 *FDIC v. Rhodes*, 130 Nev. 893, 899, 336 P.3d 961, 965 (2014) (emphasis added). *See also*  
2 *Davenport v. Comstock Hills-Reno*, 118 Nev. 389, 390, 46 P.3d 62, 63 (2002) (explaining statutes  
3 of repose “absolutely bar any action stemming from injuries caused by a negligently designed or  
4 constructed improvement to real property after a certain period of time has passed.”). In addition to  
5 and separate from the elements of a cause of action, a plaintiff “must also prove that the cause of  
6 action was brought within the time frame set forth by the statute of repose.” *G&H Assocs. v. Ernest*  
7 *W. Hahn, Inc.*, 113 Nev. 265, 271, 934 P.2d 299, 233 (1997) (internal citations omitted).

9       The Court will grant the Motion because there is no genuine dispute of material fact the  
10 Plaintiff failed to file the FAC within the six-year statute of repose. Even when viewing the  
11 evidence in the light most favorable to the Plaintiff, the Plaintiff has not identified any admissible  
12 evidence proving the FAC was filed within the six-year statute of repose. Because the Plaintiff  
13 bears the burden of persuasion on the statute of repose issue, the lack of affirmative evidence is  
14 fatal. First, the statute of repose applies to all of the Plaintiff’s claims, not only the Negligence and  
15 Negligence Per Se claims. All of the Plaintiff’s claims are premised on the design and construction  
16 of the walls. The plain language of NRS 11.202(1) clearly states that “no action...for the recovery  
17 of damages” for construction deficiency can be commenced more than six years after the  
18 substantial completion of the improvement. The statute does not differentiate between types of  
19 actions, and the only exemptions appear in NRS 11.202(2). Because the Plaintiff’s claims do not  
20 fall within the applicable exemptions, the statute of repose applies. Second, the Plaintiff’s  
21 argument that evaluations from 2017 to 2018 confirm the lack of substantial completion is  
22 unpersuasive. The Plaintiff essentially argues the discovery of any defects precludes substantial  
23 completion; however, this argument contradicts the purpose of and policy determination embodied  
24 by the statute of repose. The statute of repose is intended to provide parties with finality and  
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1 establish a time period after which they cannot be sued for construction deficiencies. *See*  
2 *Davenport*, 118 Nev. at 393, 46 P.3d at 65 (“[T]he legislature has opted to provide them [parties  
3 involved in creating improvement] with a measure of economic certainty by closing the door to  
4 liability . . .”). If the Court were to accept the Plaintiff’s analysis, the statute of repose would  
5 potentially last decades for appurtenances and other common interest elements and developments,  
6 such as roads, sidewalks, walls, parks, trails and developed open spaces constructed for the benefit  
7 of all members of a community. The statute of repose is an absolute time bar based on substantial  
8 completion and is unaffected by the later discovery of damage or injury. *See G&H Assocs.*, 113  
9 Nev. at 271, 934 P.2d at 233. Accepting the Plaintiff’s argument would eviscerate the purpose of  
10 the statute of repose, render the substantial completion standard meaningless and expressly  
11 contradict the policy determination made by the Legislature.  
12

13  
14 Finally, statutes of repose are not subject to equitable or statutory tolling, a concept which  
15 has been explained by the Nevada Supreme Court. *See Rhodes*, 130 Nev. at 899, 336 P.3d at 965  
16 (explaining statutes of limitations can be tolled and statutes of repose cannot). *See also State Dep’t*  
17 *of Taxation v. Masco Builder Cabinet Grp.*, 127 Nev. 730, 738, 265 P.3d 666, 671 (2011)  
18 (explaining operation of equitable tolling for statute of limitations). The Plaintiff’s reliance on out-  
19 of-state case law is unpersuasive in light of mandatory authority undercutting its argument. *See*  
20 *Rhodes*, 130 Nev. at 899, 336 P.3d at 965 (explaining purpose of statute of repose is to “give a  
21 defendant peace of mind by barring delayed litigation, so as to prevent unfair surprises that result  
22 from the revival of claims that have remained dormant for a period during which the evidence  
23 vanished and memories faded.”). For all of these reasons, the Plaintiff has failed to carry its burden  
24 to establish its claims were filed within the six-year statute of repose.  
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1           **IT IS ORDERED** DEFENDANTS' MOTION FOR SUMMARY JUDGMENT is hereby  
2 **GRANTED.**

3           **DATED** this   2   day of October, 2019.  
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7 ELLIOTT A. SATTLER  
8 District Judge  
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1 **CERTIFICATE OF MAILING**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court  
3 of the State of Nevada, County of Washoe; that on this \_\_\_\_\_ day of October, 2019, I deposited in  
4 the County mailing system for postage and mailing with the United States Postal Service in Reno,  
5 Nevada, a true copy of the attached document addressed to:  
6  
7

8 **CERTIFICATE OF ELECTRONIC SERVICE**

9 I hereby certify that I am an employee of the Second Judicial District Court of the State of  
10 Nevada, in and for the County of Washoe; that on the 2nd day of October, 2019, I electronically  
11 filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of  
12 electronic filing to the following:  
13

14 CHARLES BURCHAM, ESQ.

15 NATASHA LANDRUM, ESQ.

16 DIRK GASPAR, ESQ.

17 DAVID LEE, ESQ.

18 STEPHEN CASTRONOVA, ESQ.

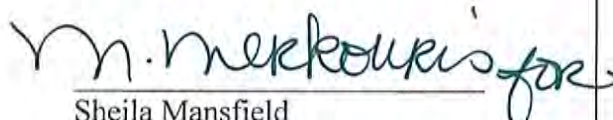
19 THEODORE E. CHRISSINGER, ESQ.

20 MICHAEL S. KIMMEL, ESQ.

21 STEPHEN G. CASTRONOVA, ESQ.

22 JOHN SAMBERG, ESQ.

23 DON SPRINGMEYER, ESQ.  
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Sheila Mansfield  
Judicial Assistant

CASE NO. CV17-02427

**SOMERSETT OWNERS ASSOCIATION VS.**  
**SOMERSETT DEVELOPMENT COMPANY, LTD., ETAL**

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

APPEARANCES-HEARING

7/15/19  
HONORABLE  
ELLIOTT A.  
SATTLER  
DEPT. NO. 10  
M. Merkouris  
(Clerk)  
P. Hoogs  
(Reporter)

**MOTIONS HEARING**

1:30 p.m. – Court convened.

John Samberg, Esq., and Royi Moas, Esq., were present on behalf of Plaintiff Somerset Owners Association.

Theodore Chrissinger, Esq., was present on behalf of Defendant Stantec Consulting Services Inc.

Charles Burcham, Esq., was present on behalf of Defendants Somerset Development Company, Ltd.; Somerset Development Corporation; and Somerset, LLC.

Natasha Landrum, Esq., was present on behalf of Defendant Q&D Construction, Inc.

Stephen Castronova, Esq., was present on behalf of Defendant Parson Bros.

**COURT** reviewed the procedural history of the case, noting that this hearing was set to address three pending motions:

**-Motion of Plaintiff to Strike Certain Affirmative Defenses Relating to Statutes of Limitations and Repose; Request for Judicial Notice and Declarations of John Samberg, Esq., and Tracy Carter in Support Thereof, filed January 17, 2019 (Motion to Strike).**

**-Defendants' Motion for Summary Judgment, filed March 26, 2019 (Omnibus MSJ).**

**-Somerset Development Company's Separate Motion for Summary Judgment, filed March 26, 2019 (Somerset's MSJ).**

**COURT** further reviewed two additional fully briefed Motions, noting that these Motions will not be addressed until the Court has resolved the three Motions being argued today.

Counsel Samberg addressed the Court regarding legislative history; counsel Chrissinger and counsel Burcham responded.

**COURT** noted that counsel Samberg's Motion to Strike is in essence a Motion for Summary Judgment, and the Court will consider it as such.

Counsel Samberg presented argument in support of his Motion to Strike.

Counsel Chrissinger responded; and he further argued in opposition of the Motion to Strike, and in support of the Omnibus MSJ.

Counsel Burcham, counsel Castronova and counsel Landrum also responded.

Counsel Samberg replied; and he further presented argument in support of the Motion to Strike, and in opposition of the Omnibus MSJ.

Counsel Chrissinger briefly replied in support of his Omnibus MSJ.

3:54 p.m. – Court stood in recess.

4:01 p.m. – Court reconvened.

Counsel Burcham presented argument in support of Somerset's MSJ.

Counsel Samberg replied.

**COURT ORDERED:** This matter shall be taken under advisement on the date that the transcript of this hearing has been filed.

4:09 p.m. – Court adjourned.

AA001131

Code 1350

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

SOMERSETT OWNERS ASSOCIATION, a  
domestic non-profit corporation,

Case No. CV17-02427

Plaintiff,

Dept. No. 10

vs.

SOMERSETT DEVELOPMENT CO., LTD., a Nevada limited  
liability company; SOMERSETT, LLC, a dissolved Nevada  
limited liability company; SOMERSETT DEVELOPMENT  
CORPORATION, a dissolved Nevada corporation; Q&D  
CONSTRUCTION, INC., PARSONS BROTHERS  
ROCKERIES, INC., a Washington corporation; PARSONS  
ROCK!, LLC, a Nevada limited liability company, and DOES  
5-50 inclusive,

Defendants.

AND RELATED CROSS-ACTIONS

**CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL**

I certify that I am an employee of the Second Judicial District Court of the State of Nevada,  
County of Washoe; that on the 30th day of October, 2019, I electronically filed the Notice of  
Appeal in the above entitled matter to the Nevada Supreme Court.

I further certify that the transmitted record is a true and correct copy of the original  
pleadings on file with the Second Judicial District Court.

Dated this 30th day of October, 2019

Jacqueline Bryant  
Clerk of the Court

By /s/ Yvonne Vilorio  
Yvonne Vilorio

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Deputy Clerk

**WOLF RIFKIN SHAPIRO SCHULMAN & RABKIN**

3556 E. RUSSELL ROAD, 2ND FLOOR  
LAS VEGAS, NV 89120

CITY NATIONAL BANK AN RBC COMPANY  
ENTERTAINMENT BANKING  
(800) 773-7100

4147

16-1606/1220



October 29, 2019

PAY TO THE  
ORDER OF

Two Hundred Fifty & NO/100

\$ 250.00

Clerk of the Supreme Court  
201 South Carson Street, Suite 201  
Carson City, Nevada 89701

DOLLARS

MEMO

Filing Fee / File No.: RN5034-037

CV17-02427

  
AUTHORIZED SIGNATURE

MP

⑈004147⑈ ⑆122016066⑆ 362200563⑈

AA001134

Photo Safe Deposit

Details on Back.

1 **2540**  
2 **WOLF, RIFKIN, SHAPIRO,**  
3 **SCHULMAN & RABKIN, LLP**  
4 DON SPRINGMEYER, ESQ. (NSB: 1021)  
5 BRADLEY SCHRAGER, ESQ. (NSB: 10217)  
6 JOHN SAMBERG, ESQ. (NSB 10828)  
7 ROYI MOAS, ESQ. (NSB 10686)  
8 5594-B Longley Lane  
9 Reno, Nevada 89511  
10 (775) 853-6787  
11 dspringmeyer@wrslawyers.com  
12 bschrager@wrslawyers.com  
13 jsamberg@wrslawyers.com  
14 rmoas@wrslawyers.com  
15 *Attorneys for Somerset Owners Association*

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

18 SOMERSETT OWNERS ASSOCIATION, a  
19 Domestic Non-Profit Corporation,

20 Plaintiff,

21 vs.

22 SOMERSETT DEVELOPMENT COMPANY,  
23 LTD, a Nevada Limited Liability Company;  
24 SOMERSETT, LLC a dissolved Nevada  
25 Limited Liability Company; SOMERSETT  
26 DEVELOPMENT CORPORATION, a  
27 dissolved Nevada Corporation; PARSONS  
28 BROS ROCKERIES, INC. a Washington  
Corporation; Q & D Construction, Inc., a  
Nevada Corporation, and DOES 1 through 50,  
inclusive,

Defendants.

AND RELATED CROSS-ACTIONS.

Case No. CV-1702427

Dept. No.: 10

Judge: Hon. Elliott A. Sattler

**NOTICE OF ENTRY OF ORDER**

NOTICE IS HEREBY GIVEN that an ORDER GRANTING PLAINTIFF'S NRCP 54(B)  
MOTION FOR CERTIFICATION OF FINAL JUDGMENT FOR PURPOSES OF APPEAL was  
entered in the above-captioned matter on the 9<sup>th</sup> day of December, 2019. A true and correct copy  
of the Order is attached hereto as Exhibit 1.

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**AFFIRMATION**

The undersigned does hereby affirm, pursuant to NRS 239B.030, that this document and any attachments do not contain personal information as defined in NRS 603A.040 about any person.

DATED this 19th day of December, 2019.

**WOLF, RIFKIN, SHAPIRO,  
SCHULMAN & RABKIN, LLP**

By: /s/ Bradley S. Schrager

DON SPRINGMEYER, ESQ. (NSB: 1021)  
BRADLEY SCHRAGER, ESQ. (NSB: 10217)  
JOHN SAMBERG, ESQ. (NSB 10828)  
ROYI MOAS, ESQ. (NSB 10686)  
5594 B Longley Lane  
Reno, Nevada 89511  
(775) 853-6787/Fax (775) 853-6774  
*Attorneys for Plaintiff Somersett Owners  
Association*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 19th day of December, 2019, that the foregoing **NOTICE OF**  
3 **ENTRY OF ORDER** was served via the Washoe County E-Flex Filing System on all parties or  
4 persons requesting notice in accordance with the Master Service List.

5  
6 By /s/ Dannielle Fresquez  
7 Dannielle Fresquez, an employee of  
8 WOLF, RIFKIN, SHAPIRO, SCHULMAN &  
9 RABKIN, LLP  
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**EXHIBIT INDEX**

1. ORDER GRANTING PLAINTIFF’S NRCP 54(B) MOTION FOR CERTIFICATION OF FINAL JUDGMENT FOR PURPOSES OF APPEAL

# EXHIBIT 1

# EXHIBIT 1

1 **3105**  
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3 **SCHULMAN & RABKIN, LLP**  
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15 *Attorneys for Somerset Owners Association*

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

18 SOMERSETT OWNERS ASSOCIATION, a  
19 Domestic Non-Profit Corporation,

20 Plaintiff,

21 vs.

22 SOMERSETT DEVELOPMENT COMPANY,  
23 LTD, a Nevada Limited Liability Company;  
24 SOMERSETT, LLC a dissolved Nevada  
25 Limited Liability Company; SOMERSETT  
26 DEVELOPMENT CORPORATION, a  
27 dissolved Nevada Corporation; PARSONS  
28 BROS ROCKERIES, INC. a Washington  
Corporation; Q & D Construction, Inc., a  
Nevada Corporation, and DOES 1 through 50,  
inclusive,

Defendants.

AND RELATED CROSS-ACTIONS.

Case No. CV-1702427

Dept. No.: 10

Judge: Hon. Elliott A. Sattler

**ORDER GRANTING  
PLAINTIFF'S NRCP 54(B) MOTION FOR  
CERTIFICATION OF FINAL  
JUDGMENT FOR PURPOSES OF  
APPEAL**

The Court, having reviewed Plaintiff Somerset Owners Association's NRCP 54(b) Motion for Certification of Final Judgment for Purposes of Appeal ("Motion"), filed on November 22, 2019, and no opposition having been filed, finds and orders as follows:

**THE COURT FINDS** that its order granting summary judgment for Defendants, entered on October 2, 2019, did not adjudicate all the claims and rights of the parties, as there remained cross claims for between Defendant/Cross-Claimant Somerset Development Co. Ltd. against

-1-

[Proposed] ORDER GRANTING PLAINTIFF'S NRCP 54(B) MOTION FOR CERTIFICATION OF FINAL JUDGMENT FOR PURPOSES OF APPEAL

AA001140

1 Cross-Defendants Q&D Construction, Inc. and Parsons Brothers Rockeries, Inc.; and third-party  
2 claims for implied indemnity, contribution, equitable indemnity, apportionment, and express  
3 indemnity by Defendant/Third-Party Plaintiff Somerset Development Co. Ltd. against Third-  
4 Party Defendant Stantec Consulting Inc.

5 **THE COURT FURTHER FINDS** that, cause appearing, there is no just reason for delay  
6 in certifying and entering final judgment for Defendants against Plaintiff, for purposes of appeal of  
7 this Court's October 2, 2019 summary judgment order.

8 **IT IS HEREBY ORDERED** that Plaintiff's NRCP 54(b) motion is granted, and the Court  
9 directs final judgment be entered for Defendants against Plaintiff on the basis of the October 2,  
10 2019 order of the Court.

11 DATED this 9 day of DECEMBER 2019.

12  
13   
14 DISTRICT COURT JUDGE

15 Respectfully Submitted By:

16  
17 /s/ Bradley Schrager

18 **WOLF, RIFKIN, SHAPIRO,**  
19 **SCHULMAN & RABKIN, LLP**  
20 DON SPRINGMEYER, ESQ. (NSB: 1021)  
21 BRADLEY SCHRAGER, ESQ. (NSB: 10217)  
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