Case No. 80615

In the Supreme Court of Nevada

PANORAMA TOWERS CONDOMINIUM ASSOCIATION,
Appellant,
vs.
LAURENT HALLIER; PANORAMA TOWERS I, LLC; PANORAMA TOWERS I MEZZ, LLC; and M.J. DEAN CONSTRUCTION, INC.,
Respondents.

OPPOSITION TO MOTION FOR STAY OF DISTRICT COURT PROCEEDINGS PENDING OUTCOME OF THIS APPEAL

Appellant Panorama Towers Condominium Association (the "association") got, it part, what it wanted—for the reasons it wanted. It asked for a stay pending this Rule 54(b) appeal in part because of "issues caused by COVID-19." (Ex. 4 to Mot., at 7:14; *see also id.* 5:6–17.) Although the district court denied the blanket stay the association sought, it recognized the disruption from the pandemic and so granted a temporary stay, with a status check set on whether to lift the stay set for December 16, 2020. (Ex. 6 to Mot., at 2:23.)[1]

But now, without bothering to renew its request to the district court, the association has asked this Court to impose a blanket stay. In so doing, the association relies on mischaracterizations about the claims and the nature of this

[1] While the district court entered its written order on September 3, 2020, the court's May 26 oral order was effective immediately. *See Nalder v. Eighth Judicial Dist. Court*, 136 Nev., Adv. Op. 24, 462 P.3d 677, 685 (2020).

appeal that the district court has repeatedly corrected. As the issue on appeal is separate from the claims that respondents (the "builders") filed more than four years ago, this Court should deny a stay.

PROCEDURAL HISTORY

This case arose as a result of alleged construction defects at Panorama Towers. As the district court held, those towers were completed in 2008 (Ex. 3 to Mot., at 11), so under AB 125's "safe harbor," which shortened the statute of repose to six years, the association had to file their NRS 40.645 notice by February 24, 2016. In September 2016, the builders filed suit, seeking damages for the associations' breach of the settlement agreement and declaratory relief. Not until March 2017 did the association file its construction-defect counterclaims.

The builders succeeded in narrowing the claims, finally prevailing in a motion for summary judgment on all of the association's counterclaims because they were time barred. (Ex. 3 to Mot.) The association then repeatedly attacked that order, which was certified as final under Rule 54(b) and appealed. Builders stand ready to begin discovery and prepare for trial on the builders' claims.

ARGUMENT

I.

THE ASSOCIATION NEEDS FIRST TO SEEK AN EXTENSION OF THE STAY IN THE DISTRICT COURT

This motion is premature. Under NRAP 8(a)(1)(A), a party must move for

(and be denied) a stay pending appeal in the district court first. But here, although the district court formally denied the blanket stay, it in reality issued a temporary stay that remains in effect, and the district court has not yet determined if or when it will lift the stay. That is what the court will hear in December.

II.

THE ASSOCIATION IS NOT ENTITLED TO A STAY OF THE BUILDERS' CLAIMS BASED ON THIS NARROW RULE 54(b) APPEAL ON THE TIMELINESS OF SEPARATE CLAIMS

NRAP 8(c) governs a request for stay pending appeal. *See Fritz Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev. 650, 6 P.3d 982 (2000). *Kress v. Corey*, 65 Nev. 1, 189 P.2d 352 (1948). A stay is "not automatic." *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 253, 89 P.3d 36, 39 (2004). Here, none of the factors weigh in favor of a stay. The motion should be denied.

A. The Builders' Affirmative Claims Are Separate from the Object of this Appeal on the Timeliness of the Counterclaims

The object of an appeal is its "purposes and benefits." *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 252, 89 P.3d 36, 38–39 (2004). For this factor to apply, the denial of a stay would have to make "any victory on appeal . . . hollow." *See id.* In *Mikohn*, the district court granted a motion to compel arbitration on some but not all claims. *Id.* That risked inconsistent rulings and harmed the Legislature's special solicitude toward "arbitration's monetary and timesaving benefits." *Id.*

The association misinterprets this factor. First, it mischaracterizes the builders' claims as "defenses" (to the association's counterclaims). (*E.g.*, Mot. 2–3, 5–7.) The district court rejected that notion, holding that the dismissal of the counterclaims was "distinctly separable from the remaining unresolved claims" in the builder's complaint. (Ex. A, at 9:22.) Second, the association confuses the harm to "object of the appeal" with any circumstance that renders an appeal moot.

1. The Builders' Affirmative Claims and the Association's Counterclaims Are Separate

As the district court repeatedly found, the association's claims on appeal do not hinge on or interfere with the builders' claims that are not before this Court. The association's appeal is on a single issue: the timeliness of their construction-defect counterclaims relating to the construction of the towers' windows. The builders' affirmative claims are focused on the breach of the parties' settlement agreement and a declaration that the associations' NRS 40.645 notice relates to the prior, settled litigation.

In rejecting the association's characterization of its counterclaims as "compulsory," the district court explained the difference. (Ex. 3 to Mot.) And as a result, the district court found that the two sets of claims were also separable for purposes of Rule 54(b) certification:

> The claims remaining are those are made by the Builders and deal specifically with the adherence of the parties' concessions set forth within the prior litigation's Settlement Agreement. These causes are distinctly different from the constructional

> defect claims alleged in the Counter-Claim. In this Court's view, entry of a separate judgment now would not require any appellate court to decide the same issues more than once on separate appeals.

(Ex. A, August 12, 2019, 54(b) Order, Pg. 11:28-12:2.)

Regardless of who wins this appeal, the builders need discovery for their damages claims on the breach of the settlement agreement, including on the relationship between the defects from the prior litigation and those of the new litigation. In contrast, were this Court to remand on the association's counterclaims, that discovery would focus on a different question: whether the windows are in fact defective within the meaning of NRS Chapter 40.

2. An Appeal's Mootness Is Different from the Illegitimate Destruction of its Objective

Even if the association were correct that the builders' damages and declaratory-relief claims amount to no more than "defenses" on claim preclusion and indemnity (Mot. 6, 7, 9), a stay is unnecessary. The association in this appeal challenges the *time bar* on their claims, and nothing that remains below will impact the analysis of that issue. What the association seems to fear is that the district court will find that claim preclusion independently bars relitigation of the window-defect claims. But such a hypothetical, even if accurate, simply illustrates the *appropriate* application of alternative grounds: a lower court decides in the first instance a question that moots a separate, thornier question on appeal—not because the district court has usurped this Court's authority, but because this Court

generally declines to wade into academic questions. *See Degraw v. Eighth Judicial Dist. Court*, 134 Nev. 330, 332, 419 P.3d 136, 139 (2018).

B. The Association Will Not Suffer Irreparable Or Serious Injury from a Trial of the Builders' Claims

This Court has already decided that "litigation expenses, while potentially substantial, are neither irreparable nor serious." *Fritz Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev. 650, 658 6 P.3d 982, 986 (2000).

That is all that is at stake here, but the association nevertheless insists that the situation is "very different" because the builders' seek indemnification for its expenses. (Mot. 8–9.) Setting aside that the prevailing party's recovery of costs and fees is not that unusual, the association misses the broader point: the association is not shouldering the builders' fees and costs *now*; the builders and their insurers are. And as underscored in the district court's assessment of the separateness of the parties' claims, nothing in this appeal disturbs that question. The association would not be able to brandish a reversal from this Court as conclusive proof that the builders *cannot* prevail on their breach-of-contract claims or that indemnity is out of the picture.

Again, what the association fears is a future adverse judgment on the builders' indemnity claim. The association is aware of the prior litigation, aware that they had raised the window-defect claims in that litigation, and aware of the

financial risks inherent in a second installment of this previously and heavily litigated case. But that judgment, if it comes, may be appealed in the ordinary course. The association is not entitled to forestall a judgment under the guise of "irreparable harm."

C. The Builders Are Entitled to Proceed to Trial on the Complaint They Filed More than Four Years Ago

The builders acknowledge that, like litigation costs, delay in discovery and trial is not ordinarily irreparable harm. *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 253, 89 P.3d 36, 39 (2004). That is why these two factors—irreparable harm from the denial of a stay, and serious harm from its grant—are often neutral.

The builders note, however, that the two harms are not equal here. While the association faces just the ordinary expense of litigation, the delay that would result from a stay here would be truly extraordinary: The association's counterclaims arise from alleged defects that in towers that were completed in early 2008—more than twelve years ago. And the builders filed suit for the breach of the settlement agreement and for declaratory relief more than four years ago. The builders have narrowed the issues for trial and are entitled to discovery on their claims, the only claims that now remain.

D. The Association's Appeal Is Likely to Fail

The association does nothing to meet its burden on showing the likelihood of success other than to point this Court to the issues on appeal. The association also

says nothing about the equities favoring a stay. Regardless, the association is unlikely to overturn the district court's considered judgment.

1. AB 421's Retroactivity Provision Does Not Revive the Association's Already Expired Claims

AB 421, which took effect October 1, 2019, changed NRS 11.202's six-year statute of repose to ten years, and it purported to make the change retroactive "to actions in which the substantial completion of the improvement to the real property occurred before October 1, 2019."

But such a provision constitutionally is limited to those claims that had not already expired. Any other interpretation would infringe upon the builders' vested rights under the Fourteenth Amendment. As the district court explained,

> It is clear when the bar of a statute of limitations has become complete by the running of the full statutory period, the right to plead the statute as a defense is a vested right, which cannot be destroyed by legislation, since it is protected therefrom by Section 1 of the Fourteenth Amendment to the United States Constitution, as well as the Nevada Constitution. Thus, while the Nevada Legislature most certainly has the authority to enact or change NRS 11.202 to reflect a longer Statute of Repose period with retroactive effect, it lacks the power to reach back and breathe life into a time-barred claim.

(Ex. B, January 14, 2020 Order, Pg. 7, Ln. 3-10.)

That is consistent with this Court's precedent, which recognizes that "the protection afforded by the due process clause of the Fourteenth Amendment to the United States Constitution extends to prevent retrospective laws from divesting vested rights." *Town of Eureka v. Office of the State Eng'r*, 108 Nev. 163, 167,

826 P.2d 948, 950 (1992). Similarly, with respect to statutes of repose, this Court has held that statutes of repose may not be applied retroactively. *Lotter v. Clark County*, 106 Nev. 366, 370, 793 P.2d 1320, 1323 (1990); *see also Allstate Ins. Co. v. Furgerson*, 104 Nev. 772, 776, 766 P.2d 904, 907-08 (1988); *M.E.H. v. L.H.*, 685 N.E.2d 335, 339 (Ill. 1997) ("If the claims were time-barred under the old law, they remained time-barred even after the repose period was abolished by the legislature.").

This case merely presents the flip side of the same rule: just as a claimant cannot foresee the curtailment of a right, a defendant whose repose has become secure under existing law cannot foresee the resuscitation of that claim after its expiration. In this way, statutes of repose differ from statutes of limitations. *See Alsenz v. Twin Lakes Village*, 108 Nev. 1117, 1120, 843 P.2d 834, 836 (1992). "The legislature enacted the statutes of repose to protect persons engaged in the planning, design and construction of improvements to real property who otherwise would endure unending liability, even after they had lost control over the use and maintenance of the improvement." *Id.* The way that the statute provides repose is by assuring these individuals that after a specific date, their liability—or their need to insure against claims of liability—has passed. That is why a cause of action subject to a repose period *must* be "brought within the time frame set forth by the statute of repose." *G & H Assocs. v. Ernest W. Hahn, Inc.*, 113 Nev. 265, 233, 934

P.2d 229, 271 (1997) (citing *Colony Hill Condo I Ass'n v. Colony Co.*, 320 S.E.2d 273, 276 (N.C. App. 1984)). "Failure to file within that period gives the defendant a vested right not to be sued." *Colony Hill*, 320 S.E.2d at 276. Constitutionally, "[s]uch a vested right cannot be impaired by the retroactive effect of a later statute." *Id.*

2. The District Court Reasonably Rejected the Association's Other Tolling Arguments

The district court was also correct in holding that, under NRS 40.695, the association had 30 days to file a construction defect action after the Chapter 40 Mediation, but it failed to. (Ex. 3 to Mot., at 12:18–24.) The association's misinterpretation of the statute, along with its mistaken conceptualization of its counterclaims as "compulsory," was not good cause to "toll" the expiration of their claims. (Ex. 3 to Mot., at 15:3-17.)

CONCLUSION

The builders are abusing the process for seeking a stay. They are not asking the correct court for relief. And they are misinterpreting the requirements for a stay: Because the builders' independent claims do not depend on this Court's resolution of the timeliness of the association's counterclaims—the sole issue in this Rule 54(b) appeal—the builders should be permitted to go forward with their claims. This Court should deny a stay.

Dated this 23rd day of October, 2020.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: */s/Abraham G. Smith*_____
DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
ABRAHAM G. SMITH (SBN 13250)
3993 Howard Hughes Parkway,Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

PETER C. BROWN (SBN 5887)
JEFFREY W. SAAB (SBN 11,261)
DEVIN R. GIFFORD (SBN 14,055)
BREMER WHYTE BROWN & O'MEARA LLP
1160 N. Town Center Dr.
Las Vegas, Nevada 89144

Attorneys for Respondent

CERTIFICATE OF SERVICE

I certify that on October 23, 2020, I submitted the foregoing "Opposition to Motion for Stay of District Court Proceedings Pending Outcome of this Appeal" for filing *via* the Court's eFlex electronic filing system. Electronic notification will be sent to the following:

Francis I. Lynch
LYNCH & ASSOCIATES LAW GROUP
1445 American Pacific Dr.
Suite 110 #293
Henderson, Nevada 89074

Michael J. Gayan
Joshua D. Carlson
KEMP JONES, LLP
3800 Howard Hughes Pkwy.,
17th Floor
Las Vegas, Nevada 89169

Scott Williams
WILLIAMS & GUMBINER, LLP
1010 B Street, Suite 200
San Rafael, California 94901

Attorneys for Appellant

/s/ Jessie M. Helm
An Employee of Lewis Roca Rothgerber Christie LLP

EXHIBIT A

EXHIBIT A

OGM

DISTRICT COURT

CLARK COUNTY, NEVADA

LAURENT HALLIER, an individual; PANORAMA TOWERS I, LLC, a Nevada limited liability company; PANORAMA TOWERS I MEZZ, LLC, a Nevada limited liability company; and M.J. DEAN CONSTRUCTION, INC., a Nevada corporation, Plaintiffs, Vs. PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION, a Nevada non-profit corporation. Defendant.	Case No. A-16-744146-D Dept. No. XXII ORDER RE: MOTION TO CERTIFY JUDGMENT AS FINAL UNDER NRCP 54(b)
PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION, a Nevada non-profit corporation, Counter-Claimant, Vs. LAURENT HALLIER, an individual; PANORAMA TOWERS I, LLC, a Nevada limited liability company; PANORAMA TOWERS I MEZZ, LLC, a Nevada limited liability company; and M.J. DEAN CONSTRUCTION, INC., a Nevada Corporation, Counter-Defendants.	

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION, a Nevada non-profit corporation,

Third-Party Plaintiff,

Vs.

SIERRA GLASS & MIRROR, INC.; F. ROGERS CORPORATION; DEAN ROOFING COMPANY; FORD CONSTRUCTING, INC.; INSULPRO, INC.; XTREME EXCAVATION; SOUTHERN NEVADA PAVING, INC.; FLIPPINS TRENCHING, INC.; BOMBARD MECHANICAL, LLC; R. RODGERS CORPORATION; FIVE STAR PLUMBING & HEATING, LLC dba SILVER STAR PLUMBING; and ROES 1 through 1000, inclusive,

Third-Party Defendants.[1]

ORDER RE: MOTION TO CERTIFY JUDGMENT AS FINAL UNDER NRCP 54(b)

This matter concerning the Motion to Certify Judgment as Final Under NRCP 54(b) filed by Plaintiffs/Counter-Defendants LAURENT HALLIER, PANORAMA TOWERS I, LLC, PANORAMA TOWERS I MEZZ, LLC and M.J. DEAN CONSTRUCTION, INC. on July 22, 2019 was heard, on Order Shortening Time, on the 6th day of August 2019 at the hour of 8:30 a.m. before Department XXII of the Eighth Judicial District Court, in and for Clark County, Nevada, with JUDGE SUSAN H. JOHNSON presiding; Plaintiffs/Counter-Defendants LAURENT HALLIER, PANORAMA TOWERS I, LLC, PANORAMA TOWERS I MEZZ, LLC and M.J. DEAN CONSTRUCTION, INC. appeared by and through its attorneys, DANIEL F. POLSENBERG, ESQ. of the law firm, LEWIS ROCA ROTHGERBER CHRISTIE, and PETER C. BROWN, ESQ. and

[1]As the subcontractors are not listed as "plaintiffs" in the primary action, the matter against them is better characterized as a "third-party" claim, as opposed to "counter-claim."

CYRUS S. WHITTAKER, ESQ. of the law firm, BREMER WHYTE BROWN & O'MEARA; and Defendant/Counter-Claimant/Third-Party Plaintiff PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION appeared by and through its attorneys, MICHAEL J. GAYAN, ESQ. and WILLIAM L. COULTHARD, ESQ. of the law firm, KEMP JONES & COULTHARD. Having reviewed the papers and pleadings on file, heard oral arguments of the lawyers and taken this matter under advisement, this Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT AND PROCEDURAL HISTORY

1. This case arises as a result of alleged constructional defects within both the common areas and the 616 residential condominium units located within two tower structures of the PANORAMA TOWERS located at 4525 and 4575 Dean Martin Drive in Las Vegas, Nevada. On February 24, 2016, Defendant/Counter-Claimant PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION served its original NRS 40.645 Notice of Constructional Defects upon Plaintiffs/Counter-Defendants (also identified herein as the "Contractors" or "Builders"), alleging deficiencies within its residential tower windows, fire blocking, mechanical room piping and sewer. Subsequently, after the parties engaged in the pre-litigation process ending with an unsuccessful NRS 40.680 mediation held September 26, 2016, the Contractors filed their Complaint on September 28, 2016 against the Owners' Association, asserting the following claims that, for the most part, deal with their belief the NRS 40.645 notice was deficient:

1. Declaratory Relief—Application of AB 125;
2. Declaratory Relief—Claim Preclusion;
3. Failure to Comply with NRS 40.600, *et seq.*;
4. Suppression of Evidence/Spoliation;
5. Breach of Contract (Settlement Agreement in Prior Litigation);

6. Declaratory Relief—Duty to Defend; and

7. Declaratory Relief—Duty to Indemnify.

2. On March 1, 2017, PANORAMA TOWER CONDOMINIUM UNIT OWNERS' ASSOCIATION filed its Answer and Counter-Claim, alleging the following claims:

1. Breach of NRS 116.4113 and 116.4114 Express and Implied Warranties; as well as those of Habitability, Fitness, Quality and Workmanship;

2. Negligence and Negligence *Per Se;*

3. Products Liability (against the manufacturers);

4. Breach of (Sales) Contract;

5. Intentional/Negligent Disclosure; and

6. *Duty of Good Faith and Fair Dealing;* Violation of NRS 116.1113.

3. This Court previously dismissed the constructional defect claims within the mechanical room as being time-barred by virtue of the "catch-all" statute of limitations of four (4) years set forth in NRS 11.220.[2] With respect to challenges to the sufficiency and validity of the NRS 40.645 notice, this Court stayed the matter to allow PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION to amend it with more specificity. This Court ultimately determined the amended NRS 40.645 notice served upon the Builders on April 15, 2018 was valid only with respect to the windows' constructional defects.[3]

4. On April 23, 2019, this Court heard two motions filed by the parties, to wit: (1) the Contractors' Motion for Summary Judgment Pursuant to NRS 11.202(1) filed February 11, 2019 and (2) the Association's Conditional Counter-Motion for Relief Pursuant to NRS 40.695(2) filed March 1, 2019. After hearing the parties' arguments, this Court took the matter under advisement, and on

[2] *See* Findings of Fact, Conclusions of Law and Order filed September 15, 2017.
[3] *See* Findings of Fact, Conclusions of Law and Order filed November 30, 2018.

May 23, 2019, issued its third Findings of Fact, Conclusions of Law and Order which granted the Builders' motion, and denied the Association's Conditional Counter-Motion. As pertinent here, this Court concluded the Owners' Association's remaining constructional defect claims lodged against the Builders were time-barred by the six-year statute of repose set forth in NRS 11.202(1).

4. On June 3, 2019, the Association filed its Motion for Reconsideration and/or Stay of the Court's May 23, 2019 Findings of Fact, Conclusions of Law and Order Granting Plaintiffs' Motion for Summary Judgment or alternatively, a Motion to Stay the Court's Order.[4] Ten days later, on June 13, 2019, the Association filed a second Motion for Reconsideration and/or to Alter or Amend the Court's May 23, 2019 Findings of Fact, Conclusions of Law and Order Granting Plaintiffs' Motion for Summary Judgment. These two motions essentially were the same except the second alerted the Court the Nevada Legislature passed AB 421 on June 1, 2019, and such was signed by the Governor and formally enacted on June 3, 2019. As pertinent here, AB 421 amends NRS 11.202 by extending the statute of repose period from six (6) to ten (10) years and it is to be applied retroactively to actions in which the substantial completion of the improvement to real property occurred before October 1, 2019, the date in which the amendment takes effect.

The Builders opposed the two motions on several grounds. First, they noted this Court entered a final order on May 23, 2019, the Notice of Entry of Order was filed May 28, 2019, and thus, by the time the Motion for Reconsideration and/or Stay was filed June 3, 2019, there was no pending matter to stay. Second, while AB 421 was enacted and will apply retroactively, it does not become effective until October 1, 2019, meaning, currently, there is no change in the law. That is,

[4]The Association moved this Court to stay the Order upon the basis the Nevada Legislature had passed Assembly Bill (referred to as "AB" herein) 421 on June 1, 2019, which "immediately and retroactively extends the statute of repose to 10 years." *See* Motion for Reconsideration of the Court's May 23, 2019 Findings of Fact, Conclusions of Law and Order Granting Plaintiffs' Motion for Summary Judgment or alternatively, a Motion to Stay the Court's Order filed June 3, 2019, p. 4. The Association urged this Court to stay the Order until such time as AB 241 was enacted or rejected by the Governor. As set forth *infra,* the Governor signed the bill on June 3, 2019 which was to take effect October 1, 2019.

as the law stands, the period for the statute of repose is six (6) years as enacted February 24, 2015, and not ten (10). Third, as the Association's claims have already been adjudicated, AB 421 cannot be interpreted to revive those causes of action.

This Court denied the Association's first Motion for Reconsideration and/or Stay filed June 3, 2019 at the July 16, 2019 hearing; it took the June 13, 2019 motion under advisement, and ultimately, it was denied via Order filed August 9, 2019. In summary, this Court concluded the newly-amended NRS 11.202 becomes effective October 1, 2019, whereby the current state of the law is such the statute of repose is six (6) years, and not ten (10). If the Nevada Legislature had intended AB 421's retroactive effect to be applied now, it would have said so just as it had in enacting AB 125 in February 2015.

5. The Contractors have moved this Court to certify the May 23, 2019 Findings of Fact, Conclusions of Law and Order as final under Rule 54(b) of the Nevada Rules of Civil Procedure (NRCP). They argue the Order is final in that it granted summary judgment with respect to the Association's claims in their entirety, and there is no just reason for delaying the entry of final judgment. The Owners' Association opposes upon the bases (1) the May 23, 2019 Order is "silent as to which of the Association's legal claims were resolved in this action,"[5] and "[t] repeated references to 'construction defect claims' are too vague and insufficient to make the [] Order final and appealable;"[6] (2) the Order "could not have resolved the Association's contract-based claims;"[7] and (3) the Builders will not face hardship or injustice by waiting for the issue to be appealed after all parties' claims are resolved.

. . .

---

[5] *See* Defendant's (1) Opposition to Plaintiffs'/Counter-Defendants' Motion to Certify Judgment as Final Under Rule 54(b) and (2) Response to Plaintiffs'/Counter-Defendants' Opposition to Defendant's/Counter-Claimant's July 16, 2019 Oral Motion to Postpone the Court's Ruling on the Motion for Reconsideration of and/or to Alter or Amend the Court's May 23, 2019 Findings of Fact, Conclusions of Law and Order filed August 1, 2019, p. 11.

[6] *Id.*, p. 12.

[7] *Id.*, p. 14.

CONCLUSIONS OF LAW

1. NRCP 54 was recently amended to reflect virtually the identical wording of Rule 54 of the Federal Rules of Civil Procedure (FRCP). NRCP 54(b) provides:

> (b) *Judgment on Multiple Claims or Involving Multiple Parties.* When an action presents more than one claim for relief—whether as a claim, counterclaim, crossclaim, or third-party claim—or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

Clearly, NRCP 54(b) permits district courts to authorize immediate appeal of dispositive rulings on separate claims in a civil action raising multiple claims. This rule "was adopted...specifically to avoid the possible injustice of delay[ing] judgment o[n] a *distinctly separate* claim [pending] adjudication of the entire case....The Rule thus aimed to augment, not diminish, appeal opportunity." *See* Jewel v. National Security Agency, 810 F.3d 622, 628 (9th Cir. 2015), *quoting* Gelboim v. Bank of America Corp., ____ U.S. ____ 135 S.Ct. 897, 902-903,190 L.Ed.2d 789 (2015) (interpreting FRCP 54).

2. Over sixty (60) years ago, the United States Supreme Court outlined steps to be followed in making determinations under FRCP 54(b), of which NRCP 54(b) is now the same. *See* Sears, Roebuck & Company v. Mackey, 351 U.S. 427, 76 S.Ct. 895, 100 L.Ed. 1297 (1956), *cited by* Curtiss-Wright Corporation v. General Electric Company, 446 U.S. 1, 7, 100 S.Ct. 1460, 1464, 64 L.Ed.2d 1 (1980). The district court first must determine it is dealing with a "final judgment." It must be a "judgment" in the sense it is a decision upon a cognizable claim for relief, and it must be "final" or an "an ultimate disposition of an individual claim entered in the course of a multiple claims action." *Id.*, *quoting* Sears, Roebuck & Company, 351 U.S. at 436, 76 S.Ct. at 900.

. . .

3. Once it finds "finality," the district court must determine whether there is any just reason for delay. Not all final judgments on individual claims should be immediately appealable even if they are separable from the remaining unresolved claims. It is left to the sound judicial discretion of the district court to determine the appropriate time when each final decision in a multiple claims action is ready for appeal. Curtiss-Wright Corporation, 446 U.S. at 8, 100 S.Ct. at 1464-1465, *citing* Sears, Roebuck & Company, 351 U.S. at 437, 76 S.Ct. at 899, 900. Thus, in deciding whether there is no just reason to delay the appeal of the May 23, 2019 Findings of Fact, Conclusions of Law and Order, which granted the Builders' February 11, 2019 Motion for Summary Judgment, this Court must take into account the judicial administrative interests as well as the equities involved. Consideration of the former is necessary to assure application of NRCP 54(b) will not result in the appellate courts deciding the same issues more than once on separate appeals.

4. Here, the Owners' Association argues against NRCP 54(b) certification upon the bases the May 23, 2019 Order is not final as it is "silent as to which of the Association's legal claims were resolved in this action"[8] and further, the Order "could not have resolved the Association's contract-based claims."[9] This Court disagrees with both of the Association's positions. The May 23, 2019 16-page Order specifically details this Court's reasoning and conclusion the Owners' Association's constructional defect claims are time-barred by the six-year statute of repose. Notably, this Court specifically set forth on page 13 of the Order "[t]he Association's counter-claims of negligence, intentional/negligent disclosure, breach of sales contract, products liability, breach of express and implied warranties under and violations of NRS Chapter 116, and breach of duty of good faith and fair dealing are for monetary damages as a result of constructional defects to its

[8] *See* Defendant's (1) Opposition to Plaintiffs'/Counter-Defendants' Motion to Certify Judgment as Final Under Rule 54(b) and (2) Response to Plaintiffs'/Counter-Defendants' Opposition to Defendant's/Counter-Claimant's July 16, 2019 Oral Motion to Postpone the Court's Ruling on the Motion for Reconsideration of and/or to Alter or Amend the Court's May 23, 2019 Findings of Fact, Conclusions of Law and Order filed August 1, 2019, p. 11.

[9] *Id.*, p. 14.

windows in the two towers." In short, the May 23, 2019 Order was not silent as to which of the Association's counter-claims were resolved; the Order specifically enumerated and decided all the claims.

Further, while the Association argues the Order "could not have resolved the Association's contract-based claims."[10] a review of the Association's Fourth Cause of Action entitled "Breach of Contract" within the Counter-Claim indicates it is an action seeking monetary damages as a result of constructional defects. It states, *inter alia,* the Developers entered into written contracts[11] representing the individual units were constructed in a professional and workmanlike manner and in accordance with all applicable standards of care in the building industry. The Developers breached the Sales Contracts "by selling units containing the Defects described above, *and as a direct result of said breaches, The (sic) Association and its individual members have suffered the losses and damages described above."*[12] (Emphasis added) Clearly, the "Breach of Contract" action, seeking monetary damages as a result of constructional defects, was addressed and analyzed within this Court's May 23, 2019 Order as time-barred by virtue of the six-year statute of repose. This Court concludes its May 23, 2019 Findings of Fact, Conclusions of Law and Order is final as it was an ultimate disposition of all the Association's causes of action set forth within the Counter-Claim.

5. The next issue that must be determined is whether there is any just reason for delay. In this regard, this Court considers whether the May 23, 2019 Findings of Fact, Conclusions of Law and Order dealt with matters distinctly separable from the remaining unresolved claims. This Court, therefore, turns to the claims for relief set forth in the Builders' Complaint to determine which of

---

[10] *Id.*, p. 14.

[11] Notably, the Fourth Cause of Action does not state with whom the Developers entered into the Sales Contracts. Presumably, the contracts were between the Developers and the members of the Association, and not with the Association itself. The homeowners are not Counter-Claimants in this case.

[12] *See* Defendant Panorama Tower Condominium Unit Owners' Association's Answer to Complaint and Counterclaim filed March 1, 2017, p. 32, Paragraph 71.

them remain unresolved, and if they are separate from the Association's causes of action contained in the Counter-Claim.

The First Claim for Relief sought declaratory relief regarding the application of Assembly Bill (AB) 125 enacted and effective as of February 24, 2015. In its various Findings of Fact, Conclusions of Law and Orders issued in this case, this Court determined AB 125 reflects the state of the law between February 24, 2015 to September 30, 2019' and was applied in this Court's analyses whereby this cause of action is resolved. The Second Claim for Relief seeks a declaration from this Court the Association's claims are precluded, as in this Builders' view, the rights and obligations of the parties in this matter were resolved by way of Settlement Agreement reached in a prior litigation. This Second Claim for Relief is distinctly different from the causes adjudged in the May 23, 2019 Order, and thus, it is not yet resolved. The Third Claim for Relief accuses the Association of failure to comply with the pre-litigation process set forth in NRS 40.600 through 40.695. This Court dealt with the issues presented in the Third Claim for Relief within its September 15, 2017 and November 30, 2018 Findings of Fact, Conclusions of Law and Orders; ultimately, it found the Association failed to provide an adequate NRS 40.645 notice with respect to the constructional defects allegedly found in the Towers' sewer system[13] and fire walls. It determined the notice was adequate concerning the constructional defects found in the Towers' windows. The Third Claim for Relief is resolved.

The Fourth Claim for Relief is entitled "suppression of evidence/spoliation," and essentially the Contractors seek sanctions against the Association for its alleged failure to retain the parts and mechanisms removed or replaced during the sewer repair, and prior to sending the Builders the NRS 40.645 notice. Assuming there were no other suppression of evidence or spoliation issues with

[13]The sewer system had been repaired prior to the Association sending the NRS 40.645 notice meaning the Builders were not accorded their right to repair under NRS Chapter 40.

respect to constructional defects in the windows, fire walls or mechanical room, the Fourth Claim for Relief also is resolved as this Court concluded, in its November 30, 2018 Order, the NRS 40.645 notice was insufficient with respect to the sewer deficiencies and the Builders were not notified of the constructional defects prior to repair. If there are remaining suppression of evidence or spoliation issues, such deal with whether this Court should issue sanctions upon the Association for its failure to preserve. In this Court's view, such matters are moot given its prior conclusions claims relating to the mechanical room are barred by the four-year statute of limitations, the NRS 40.645 notice was insufficient with respect to constructional defects allegedly within the fire walls, and lastly, the window deficiencies are time-barred by the six-year statute of repose. In other words, whether there remain spoliation issues, this Court concludes the Fourth Claim for Relief is moot.

The Fifth Claim for Relief for breach of the Settlement Agreement made in resolving party differences in the prior litigation remains undecided for the same reason this Court concluded the "claim preclusion" issues identified in the Second Claim for Relief were not determined. Likewise, the Sixth and Seventh Claims for Relief, seeking declaratory relief given the Association's duty to defend and indemnify under the Settlement Agreement, have not been decided. In short, the remaining causes are the Second, Fifth, Sixth and Seventh Claims for Relief set forth in the Contractors' Complaint and they are distinctly separate from the Associations' constructional defect claims decided in the Findings of Fact, Conclusions of Law and Orders filed September 15, 2017, November 30, 2018 and May 23, 2019.

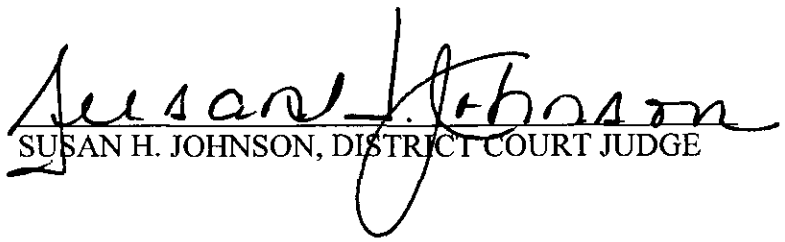
6. In summary, the May 23, 2019 Findings of Fact, Conclusions of Law and Order resulted in a culmination of a final adjudication, wholly resolving the causes set forth within the Association's Counter-Claim. The claims remaining are those are made by the Builders and deal specifically with the adherence of the parties' concessions set forth within the prior litigation's Settlement Agreement. These causes are distinctly different from the constructional defect claims

alleged in the Counter-Claim. In this Court's view, entry of a separate judgment now would not require any appellate court to decide the same issues more than once on separate appeals.

Accordingly, based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED the Motion to Certify Judgment as Final Under NRCP 54(b) filed by Plaintiffs/Counter-Defendants LAURENT HALLIER, PANORAMA TOWERS I, LLC, PANORAMA TOWERS I MEZZ, LLC and M.J. DEAN CONSTRUCTION, INC. on July 22, 2019 is granted.

DATED this 12th day of August 2019.



SUSAN H. JOHNSON, DISTRICT COURT JUDGE

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

CERTIFICATE OF SERVICE

I hereby certify, on the 12th day of August 2019, I electronically served (E-served), placed within the attorneys' folders located on the first floor of the Regional Justice Center or mailed a true and correct copy of the foregoing ORDER RE: MOTION TO CERTIFY JUDGMENT AS FINAL UNDER NRCP 54(b) to the following counsel of record, and that first-class postage was fully prepaid thereon:

PETER C. BROWN, ESQ.
BREMER WHYTE BROWN & O'MEARA, LLP
1160 North Town Center Drive, Suite 250
Las Vegas, Nevada 89144
pbrown@bremerwhyte.com

DANIEL F. POLSENBERG, ESQ.
JOEL D. HENRIOD, ESQ.
ABRAHAM G. SMITH, ESQ.
LEWIS ROCA ROTHGERBER CHRISTIE, LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
DPolsenberg@LRRC.com

FRANCIS I. LYNCH, ESQ.
CHARLES "DEE" HOPPER, ESQ.
SERGIO SALZANO, ESQ.
LYNTH HOPPER, LLP
1210 South Valley View Boulevard, Suite 208
Las Vegas, Nevada 89102

SCOTT WILLIAMS
WILLIAMS & GUMBINER, LLP
100 Drakes Landing Road, Suite 260
Greenbrae, California 94904

MICHAEL J. GAYAN, ESQ.
WILLIAM L. COULTHARD, ESQ.
KEMP JONES & COULTHARD
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
m.gayan@kempjones.com

Laura Banks

Laura Banks, Judicial Executive Assistant

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

EXHIBIT B

EXHIBIT B

ORDR

DISTRICT COURT

CLARK COUNTY, NEVADA

LAURENT HALLIER, an individual; PANORAMA TOWERS I, LLC, a Nevada limited liability company; PANORAMA TOWERS I MEZZ, LLC, a Nevada limited liability company; and M.J. DEAN CONSTRUCTION, INC., a Nevada corporation, Plaintiffs, Vs. PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION, a Nevada non-profit corporation. Defendant.	Case No. A-16-744146-D Dept. No. XXII ORDER RE: DEFENDANT'S MOTION TO ALTER OR AMEND COURT'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ENTERED MAY 23, 2019
PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION, a Nevada non-profit corporation, Counter-Claimant, Vs. LAURENT HALLIER, an individual; PANORAMA TOWERS I, LLC, a Nevada limited liability company; PANORAMA TOWERS I MEZZ, LLC, a Nevada limited liability company; and M.J. DEAN CONSTRUCTION, INC., a Nevada Corporation, Counter-Defendants.	

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION, a Nevada non-profit corporation,

Third-Party Plaintiff,

Vs.

SIERRA GLASS & MIRROR, INC.; F. ROGERS CORPORATION; DEAN ROOFING COMPANY; FORD CONSTRUCTING, INC.; INSULPRO, INC.; XTREME EXCAVATION; SOUTHERN NEVADA PAVING, INC.; FLIPPINS TRENCHING, INC.; BOMBARD MECHANICAL, LLC; R. RODGERS CORPORATION; FIVE STAR PLUMBING & HEATING, LLC dba SILVER STAR PLUMBING; and ROES 1 through 1000, inclusive,

Third-Party Defendants.[1]

ORDER RE: DEFENDANT'S MOTION TO ALTER OR AMEND COURT'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ENTERED MAY 23, 2019

This matter concerning Defendant/Counter-Claimant/Third-Party Plaintiff PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION'S Motion to Alter or Amend Court's Findings of Fact, Conclusions of Law and Order Entered May 23, 2019 which was filed September 9, 2019, came on for hearing on the 17th day of October 2019 at the hour of 9:00 a.m. before Department XXII of the Eighth Judicial District Court, in and for Clark County, Nevada with JUDGE SUSAN H. JOHNSON presiding; Plaintiffs/Counter-Defendants LAURENT HALLIER, PANORAMA TOWERS I, LLC, PANORAMA TOWERS I MEZZ, LLC and M.J. DEAN CONSTRUCTION, INC. appeared by and through their attorneys, DANIEL F. POLSENBERG,

[1]As the subcontractors are not listed as "plaintiffs" in the primary action, the matter against them is better characterized as a "third-party" claim, as opposed to "counter-claim."

ESQ. of the law firm, LEWIS ROCA ROTHGERBER CHRISTIE, and PETER C. BROWN, ESQ. and DEVIN R. GIFFORD, ESQ. of the law firm, BREMER WHYTE BROWN & O'MEARA; and Defendant/Counter-Claimant/Third-Party Plaintiff PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION appeared by and through its attorneys, FRANCIS I. LYNCH, ESQ. of the law firm, LYNCH & ASSOCIATES, and WILLIAM L. COUTHARD, ESQ. and MICHAEL J. GAYAN, ESQ. of the law firm, KEMP JONES COULTHARD. Having reviewed the papers and pleadings on file herein, heard oral arguments of the lawyers and taken this matter under advisement, this Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT AND PROCEDURAL HISTORY

1. The facts and procedural history have been set forth several times within this Court's various orders filed in this case with the most updated and recent information being written in the August 9, 2019 Order Re: Defendant's Motion for Reconsideration and/or to Alter or Amend the Court's May 23, 2019 Findings of Fact, Conclusions of Law and Order Granting Plaintiffs' Motion for Summary Judgment Pursuant to NRS 11.202(1). This Court adopts its Findings of Fact and Procedural History as set forth within the August 9, 2019 Order, and incorporates them as though fully set forth herein.

2. Defendant/Counter-Claimant/Third-Party Plaintiff PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION filed its most recent motion on September 9, 2019, arguing, by the time this matter is heard, it will be after October 1, 2019 when Assembly Bill (referred to as "AB" herein) 421 becomes effective, and the retroactive application of the new ten-year Statute of Repose is to be applied. In the view of the Owners' Association, the now-controlling law no longer supports dismissal of its claims as time-barred by the six-year Statute of Repose in effect prior to October 1, 2019. PANORAMA TOWERS CONDOMINIUM UNIT OWNERS'

. . .

ASSOCIATION, therefore, seeks an order altering or amending this Court's May 23, 2019 Order with the finding its claims were timely filed.

3. Plaintiffs LAURENT HALLIER, PANORAMA TOWERS I, LLC, PANORAMA TOWERS I MEZZ, LLC and M.J. DEAN CONSTRUCTION, INC. oppose upon the bases AB 421 does not resurrect claims previously adjudicated as time-barred under 2015 Legislature's AB 125's six (6) year Statute of Repose. Further, if AB 421 were to be applied to revive the association's constructional defect claims, such would result in a "clear constitutional infringement" [2]on the builders' vested due process rights.

CONCLUSIONS OF LAW

1. As alluded to above, PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION moves this Court to amend or alter its May 23, 2019 decision pursuant to Rule 59 of the Nevada Rules of Civil Procedure (NRCP). NRCP 59 accords litigants the opportunity to move the Court to alter or amend a judgment or seek a new trial for any of the following causes or grounds materially affecting the substantial rights of the moving party:

A. Irregularity in the proceedings of the court, jury, master or adverse party or in any order of the court or master, or any abuse of discretion by which either party was prevented from having a fair trial;

B. Misconduct of the jury or prevailing party;

C. Accident or surprise that ordinary prudence could not have guarded against;

D. Newly discovered evidence material for the party making the motion that the party could not, with reasonable diligence, have discovered and produced at the trial;

E. Manifest disregard by the jury of the instructions of the Court;

[2]*See* Plaintiffs'/Counter-Defendants' Opposition to Defendants'/Counter-Claimants' Motion to Alter or Amend the Court's Findings of Fact, Conclusions of Law, and Order Entered on May 23, 2019 filed September 26, 2019, p.4.

F. Excessive damages appearing to have been given under the influence of passion or prejudice; or

G. Error in law occurrinig at the trial and objected to by the party making the motion.

Case law interpreting NRCP 59 provides the motion to amend or alter must state the grounds with particularity and the relief sought. *See* United Pacific Insurance Co. v. St. Denis, 81 Nev. 103, 399 P.3d 135 (1965). Further, the motion to alter or amend a judgment must be filed no later than 28 days after service of written notice of entry of judgment. *See* NRCP 59(e). In this case, there was no argument presented to suggest PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION'S motion was untimely.[3]

3. The basis for the Owners' Association's position this Court should amend or alter its May 23, 2019 decision stems from the enactment of AB 421 which, as stated above, became effective October 1, 2019. AB 421 extends the statute of repose addressed in NRS 11.202 from six (6) to ten (10) years. AB 421, Section 7, states in part:

> NRS 11.202 is hereby amended to reach as follows:
> 11.202 1. No action may be commenced against the owner, occupier or any person performing or furnishing the design, planning, supervision or observation of construction, or the construction of an improvement to real property more than ***10*** years after the substantial completion of such an improvement. ... (Emphasis in original)

AB 421, Section 11, Subsection 4 also provides "[t]he period of limitations on actions set forth in NRS 11.202, as amended by section 7 of this act, apply *retroactively* to actions in which the substantial completion of the improvement to real property occurred before October 1, 2019." (Emphasis added). This Court now considers whether AB 421 should be applied retroactively to

[3]On September 9, 2019, the Owners' Association moved this Court to amend or alter its decision expressed within its Findings of Fact, Conclusions of Law and Order filed May 23, 2019. The May 23, 2019 Order became final and appealable on August 12, 2019 when this Court granted Plaintiffs' Motion to Certify Judgment as Final and Appealable under NRCP 54(b), whereby the motion is timely under NRCP 59(e).

resurrect the Owners' Association's constructional defect claims under the new ten-year Statute of Repose when they previously had expired under the prior six-year period as set forth within this Court's May 23, 2019 Findings of Fact, Conclusions of Law and Order.

4. It has long been established in American jurisprudence a court is to apply the law in effect at the time it renders its decision unless doing so would result in manifest injustice or there is statutory direction or legislative history to the contrary. Bradley v. School Board of City of Richmond, 416 U.S. 696, 710, 94 S.Ct. 2006, 2016, 40 L.Ed.2d 476 (1974). The origin and justification for this rule are found in the words of Mr. Chief Justice Marshall in United States v. Schooner Peggy, 1 Cranch 103, 110, 2 L.Ed. 49 (1801):

> It is in the general true that the province of an appellate court is only to enquire whether a judgment when rendered was erroneous or not. But if subsequent to the judgment and before the decision of the appellate court, a law intervenes and positively changes the rule which governs, the law must be obeyed, or its obligation denied. If the law be constitutional...I know of no court which can contest its obligation. It is true that in mere private cases between individuals, a court will and ought to struggle hard against a construction which will, by a retrospective operation, affect the rights of parties, but in great national concerns...the court must decide according to existing laws, and if it be necessary to set aside a judgment, rightful when rendered, but which cannot be affirmed but in violation of law, the judgment must be set aside.

5. In keeping with the dictates set forth by the United States Supreme Court, this Court considers whether its application of NRS 11.202 (2015)'s six-year statute of repose within its May 23, 2019 Order would not be affirmed or result in manifest injustice, as, unfortunately, there appears to be no statutory directive or legislative history to the contrary.

6. "[O]nce a statute of limitations has expired, the defendant has a vested right to invoke the bar of the limitations period as a defense to a cause of action. That right cannot be taken away by the legislature without offending...due process protections...." Doe A. v. Diocese of Dallas, 234 Ill.2d 393, 409,917 N.E.2d 475, 485 (2009), *quoting* M.E.H. v. L.H., 177 Ill.2d 207, 214-215, 685 N.E.2d 335 (1997). Accordingly, "[i]f the claims were time-barred under the old law, they remain

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

time-barred after the repose period was abolished by the legislature." M.E.H., 177 Ill.2d at 215, 685 N.E.2d 335.

7. It is clear when the bar of a statute of limitations has become complete by the running of the full statutory period, the right to plead the statute as a defense is a vested right, which cannot be destroyed by legislation, since it is protected therefrom by Section 1 of the Fourteenth Amendment to the United States Constitution, as well as the Nevada Constitution.[4] Thus, while the Nevada Legislature most certainly has the authority to enact or change NRS 11.202 to reflect a longer Statute of Repose period with retroactive effect, it lacks the power to reach back and breathe life into a time-barred claim.

8. Suffice it to say, in its view, this Court's application of NRS 11.202 (2015) at the time it rendered its May 23, 2019 Findings of Fact and Conclusions of Law was, and still is correct. Arguably, manifest injustice would result if this Court were to amend or alter its prior ruling to reverse itself and revive PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION'S time-barred claims. Notwithstanding the aforementioned, this Court notes none of the factors set forth by NRCP 59 for amending or altering its May 23, 2019 decision are present here. Indeed, there were no irregularities in the proceedings. There was no misconduct by any party. There were no accidents or surprises, or errors in law. For these reasons, this Court denies Defendant/Counter-Claimant/Third-Party Plaintiff PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION'S Motion to Alter or Amend Court's Findings of Fact, Conclusions of Law and Order Entered May 23, 2019 which was filed September 9, 2019.

. . .

---

[4]Section 1 of the Fourteenth Amendment to the United States Constitution provides "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. *No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law;* nor deny to any person within its jurisdiction the equal protection of the laws." (Emphasis added). *Also see* Article 1, Sections 1 and 2 of the Nevada Constitution.

Based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED Defendant/Counter-Claimant/Third-Party Plaintiff PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION'S Motion to Alter or Amend Court's Findings of Fact, Conclusions of Law and Order Entered May 23, 2019 which was filed September 9, 2019, is denied.

DATED this 14th day of January 2020.

SUSAN H. JOHNSON, DISTRICT COURT JUDGE

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

CERTIFICATE OF SERVICE

I hereby certify, on the 14th day of January 2020, I electronically served (E-served), placed within the attorneys' folders located on the first floor of the Regional Justice Center or mailed a true and correct copy of the foregoing ORDER RE: DEFENDANT'S MOTION TO ALTER OR AMEND COURT'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ENTERED MAY 23, 2019 to the following counsel of record, and that first-class postage was fully prepaid thereon:

PETER C. BROWN, ESQ.
DEVIN R. GIFFORD, ESQ.
BREMER WHYTE BROWN & O'MEARA, LLP
1160 North Town Center Drive, Suite 250
Las Vegas, Nevada 89144
pbrown@bremerwhyte.com

DANIEL F. POLSENBERG, ESQ.
LEWIS ROCA ROTHGERBER CHRISTIE, LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
DPolsenberg@LRRC.com

FRANCIS I. LYNCH, ESQ.
LYNTH HOPPER, LLP
1210 South Valley View Boulevard, Suite 208
Las Vegas, Nevada 89102

SCOTT WILLIAMS
WILLIAMS & GUMBINER, LLP
100 Drakes Landing Road, Suite 260
Greenbrae, California 94904

MICHAEL J. GAYAN, ESQ.
WILLIAM L. COULTHARD, ESQ.
KEMP JONES & COULTHARD
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
m.gayan@kempjones.com

Laura Banks

Laura Banks, Judicial Executive Assistant

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII