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.

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Elizabeth A. Brown
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SUPPLEMENTAL AUTHORITY

Six days after respondents ("Builders") filed their opposition to appellant Panorama Towers Condominium Association's motion for stay, this Court decided *Byrne v. Sunridge Builders, Inc.*, 136 Nev., Adv. Op. 69, ___ P.3d ___ (Oct. 29, 2020). *See* NRAP 31(e).

This Court need consider this authority only if it reaches the merits of the Association's motion. As stated in the Builder's opposition, the motion is premature until the district court confirms that the current stay will be lifted. And this Court should allow the district court to address *Byrne*'s impact in the first instance. But if this Court reaches the merits, it must consider how this new case affects the likelihood of success on appeal. *See* NRAP 8(c)(4).

Interpreting the one-year grace period for constructive-defect

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claims arising before 2015, *Byrne* holds that a "claimant must have 'commenced' an action—meaning filed a lawsuit within the grace period, not merely served an NRS Chapter 40 Notice—to preserve his or her action." 136 Nev., Adv. Op. 69, at 7, ___ P.3d at ___.

This case is significant because it renders moot the Association's claim that their counterclaims, filed more than a year after the grace period's expiration on February 24, 2016, relates back to the Builders' complaint. Like the plaintiffs' claims in *Byrne*, the Association's counterclaims are for alleged defects in the Panorama Towers, completed in early 2008. When in 2015 the Legislature amended the statute of repose to six years, the repose period applied to the Association's claims: the grace period was just a mechanism "by which a claimant could have saved his or her claim from being suddenly time-barred due to the shortened, retroactive statute of repose." 136 Nev., Adv. Op. 69, at 6, ___ P.3d at ___. And like the plaintiffs in *Byrne*, the Association served a NRS Chapter 40 notice on the last day of the grace period but did not timely file a complaint. The Builders filed their complaint on September 28, 2016, within thirty days of the mandatory prelitigation mediation but more than seven months after the grace

period expired. So even if the Association could relate their counterclaims back to the builders' complaint, that would not have the effect of timely "commenc[ing]" a lawsuit.

The *Byrne* case is also significant because it dismantles Association's argument that its good faith merits tolling under NRS 40.695(2).

> [B]y the time [the Association] served an NRS Chapter 40 Notice in [February 2016], the statute of repose had already expired. In other words, in [February 2016], there was no statute of repose left to toll. Furthermore, the grace period itself did not constitute a new statute of repose subject to tolling.

136 Nev., Adv. Op. 69, at 8, ___ P.3d at ___.

While *Byrne* expressly does not address the Associations' other argument—that the 2019 statute extending the repose period to ten years retroactively revives expired claims[1]—*Byrne* eliminates the

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[1] The plaintiff in *Byrne* recognized that "this amendment was irrelevant to her appeal." 136 Nev., Adv. Op. 69, at 6 n.4, ___ P.3d at ___ n.4.

Association's argument for timeliness under the law that existed at the time the complaint and counterclaims were filed.

Dated this 16th day of November, 2020.

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CERTIFICATE OF SERVICE

I certify that on November 16, 2020, I submitted the foregoing "Supplemental Authority" for filing *via* the Court's eFlex electronic filing system. Electronic notification will be sent to the following:

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