

MARK G. SIMONS, ESQ.
Nevada Bar No. 5132
MSimons@SHJNevada.com
SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
Reno, Nevada 89509
Telephone: (775) 785-0088
Facsimile: (775) 785-0087

Attorneys for Waste Management of Nevada, Inc.

Electronically Filed
May 21 2020 09:26 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

WASTE MANAGEMENT OF
NEVADA, INC.,

Appellant,

v.

WEST TAYLOR STREET, LLCA, a
limited liability company,

Respondent.

Supreme Court No.: 80841
(District Court Case No. CV12-02995)

**APPELLANT WASTE
MANAGEMENT OF NEVADA,
INC.'S DOCKETING
STATEMENT**

1. Judicial District:

Second Judicial District Court; Department: 4; County: Washoe; Judge:
Honorable District Judge Connie Steinheimer; District Court Case No. CV12-
02995.

2. Attorney filing this docketing statement:

Waste Management of Nevada, Inc. ("Waste Management") is represented
by Mark G. Simons (Nevada Bar No. 5132) of Simons Hall Johnston PC, 6490 S.
McCarran Blvd., Ste. F46, Reno, Nevada 89509.

1 **3. Attorney(s) representing respondent(s):**

2 West Taylor Street, LLC (“West Taylor”) is represented by C. Nicholas
3
4 Pereos (Nevada Bar No. 0013), 1610 Meadow Wood Lane, Suite 202, Reno,
5 Nevada 89502.

6 **4. Nature of disposition:**

7 Order denying NRCP 68 motion for attorney’s fees.

8
9 **5. Does this appeal raise issues concerning Child Custody, Venue or**
10 **Termination of parental rights?**

11 No.

12
13 **6. Pending and prior proceedings in this court:**

- 14 • Case No. 70540, Waste Management v. 2nd Judicial District Court (West
15 Taylor): Writ Petition denied by this Court.
- 16 • Case No. 69307, Waste management v. West Taylor: appeal voluntarily
17 dismissed.
- 18 • Case No. 74876, Waste Management v. West Taylor. Order of Reversal
19 and Remand issued by this Court to correct the district court’s erroneous
20 application of applying both the lien perfection requirements set forth in
21 NRS 108.226 and the two-year statute of limitations set forth in NRS
22 11.190(4)(b) to the foreclosure of those liens under NRS 444.520.
- 23
24
25
26

1 **7. Pending and prior proceedings in other courts:**

2 None.

3
4 **8. Nature of the action:**

5 This appeal stems from this Court's decision in Waste Management of Nev.
6 Inc. v. West Taylor Street, LLC, 135 Nev. 168, 443 P.3d 1115 (2019). After
7 remand, Waste Management filed its motion for and award of attorney's fees
8 pursuant to NRCF 68 since Waste Management had previously served an Offer
9 of Judgment upon West Taylor. The district court denied Waste Management's
10 motion. Due to the erroneous analysis applied by the district court, this appeal
11 follows.
12
13

14 **9. Issues on appeal:**

15
16 1. Whether the district court erred in determining that WTS's claims
17 were asserted in good faith in light of this Court's decision in Waste Management
18 of Nev. Inc. v. West Taylor Street, LLC, 135 Nev. 168, 443 P.3d 1115 (2019)
19 ("Waste Management"), which held as a matter of law WTS's claims were
20 baseless as they contradicted the plain language of NRS 444.520.
21

22 2. Whether the district court erred in determining that WTS's legally
23 baseless lawsuit benefitted the community so as to constitute good faith satisfying
24 the first of the Beattie factors.
25

26 3. Whether the district court erred in determining that Waste
Management's voluntarily release of its garbage liens due to the district court's

1 initial erroneous judgment equated to a finding that WTS' claims were brought in
2 good faith satisfying the first of the Beattie factors.

3
4 4. Whether the district court erred in determining that WTS's rejection
5 of the offer of judgment was reasonable under the circumstances of the case
6 precluding an award of fees to Waste Management under the third Beattie factor.
7

8 **10. Pending proceedings in this court raising the same or similar issues:**

9 N/A.

10 **11. Constitutional issues:**

11 N/A.

12 **12. Other issues:**

13 N/A.

14 **13. Assignment to the Court of Appeals or retention in the Supreme Court:**

15
16 This case does not fall within any of the categories of cases presumptively
17 assigned to the Supreme Court or Court of Appeals under NRAP 17. In addition,
18 this appeal raises a number of issues of first impression for this Court to address
19 and resolve.
20

21 **14. Trial:**

22 N/A.

23 **15. Judicial Disqualification:**

24 N/A.

1 **16. Date of entry of written judgment or order appealed from:**

2 1. 3/10/2020 Order Denying Waste Management of Nevada, Inc.'s
3
4 Motion for Award of Attorneys' Fees.

5 **17. Date written notice of entry of judgment or order was served:**

6 1. Notice of Entry was filed and electronically served on March 11,
7
8 2020.

9 **18. If the time for filing the notice of appeal was tolled by a post-judgment**
10 **motion (NRCP 50(b), 52(b), or 59):**

11
12 N/A.

13 **19. Date notice of appeal filed:**

14 Waste Management filed its Notice of Appeal on March 19, 2020.

15
16 **20. Specify statute or rule governing the time limit for filing the notice of**
17 **appeal, e.g., NRAP 4(a) or other:**

18 NRAP 4(a)(1).

19
20 **21. Specify the statute or other authority granting this court jurisdiction to**
21 **review the judgment or order appealed from:**

22 NRAP 3A(b)(1).

23
24 **22. List all parties involved in the action or consolidated actions in the**
25 **district court:**

26 **(a) Parties:**

- Waste Management of Nevada, Inc.

- West Taylor Street, LLC
- Karen Gonzales

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal: Karen Gonzales was formally dismissed from the underlying case.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

All claims in the underlying action were resolved in this Court's decision in Waste Management of Nev. Inc. v. West Taylor Street, LLC, 135 Nev. 168, 443 P.3d 1115 (2019).

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

Yes.

25. If you answered "No" to question 24, complete the following:

N/A.

26. If you answered "no" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

N/A.

1 27. **Attached file-stamped copies of the following documents:**

2 **Exhibit 1:** Second Amended Complaint;

3 **Exhibit 2:** 7/23/19 Supreme Court Advanced Opinion;

4 **Exhibit 3:** 7/23/19 Supreme Court Clerk's Certificate and Judgment;

5 **Exhibit 4:** 12/18/19 Order Dismissing Action;

6 **Exhibit 5:** 12/23/19 Notice of Entry of Order

7 **Exhibit 6:** 3/10/2020 Order Denying Waste Management of Nevada,
8 Inc.'s Motion for Award of Attorneys' Fees;

9 **Exhibit 7:** 3/11/2020 Notice of Entry of Order.

10
11
12
13 **VERIFICATION**

14 I declare under penalty of perjury that I have read this docketing statement,
15 that the information provided in this docketing statement is true and complete to
16 the best of my knowledge, information and belief, and that I have attached all
17 required documents to this docketing statement.
18

19 Dated this 21st day of May, 2020.

20
21 SIMONS HALL JOHNSTON PC
22 6490 S. McCarran Blvd., #F-46
23 Reno, Nevada, 89509

24 

25 **MARK G. SIMONS**
26 *Attorney for Appellant*

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I certify that I am an employee of SIMONS HALL
JOHNSTON PC, and that on this date I caused to be served a true copy of the
WASTE MANAGEMENT OF NEVADA, INC.'S DOCKETING
STATEMENT on all parties to this action by the method(s) indicated below:

☒ by using the Supreme Court Electronic Filing System:

C. Nicholas Pereos
Attorney for West Taylor Street, LLC

DATED: This 21 day of May, 2020.


JODI ALHASAN

NO	DESCRIPTION	PAGES
1	Second Amended Complaint	7
2	7/23/19 Supreme Court Advanced Opinion	10
3	7/23/19 Supreme Court Clerk's Certificate and Judgment	1
4	12/18/19 Order Dismissing Action	2
5	12/23/19 Notice of Entry of Order	7
6	3/10/2020 Order Denying Waste Management of Nevada, Inc.'s Motion for Award of Attorneys' Fees	7
7	3/11/2020 Notice of Entry of Order	11

EXHIBIT 1

EXHIBIT 1

CV12-02995 DC-0990057457-029
WEST TAYLOR STREET VS WASTE 7 Pages
District Court 06/27/2014 02:41 PM
Washoe County 1090
Doc
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JOEY L. HASTINGS
CLERK OF DISTRICT COURT
BY McElwood
DEPUTY

1 CODE: 1090
2 C. NICHOLAS PEREOS, ESQ.
3 Nevada Bar #0000013
4 1610 MEADOW WOOD LANE, STE. 202
5 RENO, NV 89502
6 (775) 329-0678

7 ATTORNEYS FOR PLAINTIFF

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

10 WEST TAYLOR STREET, LLC,
11 a limited liability company,

Case No. CV12-02995
Dept. No. 4

12 Plaintiff,

13 vs.

14 WASTE MANAGEMENT OF NEVADA,
15 INC., KAREN GONZALEZ, and
16 DOES 1 THROUGH 10,

17 Defendants.

18 SECOND AMENDED COMPLAINT

19 Plaintiff, WEST TAYLOR STREET, LLC, by and through counsel, C. Nicholas
20 Pereos, complains of Defendants, and each of them, and for a claim for relief avers as
21 follows:

22 FIRST CLAIM FOR RELIEF

23 I

24 Defendants DOES 1 through DOES 10 are sued herein as fictitious names because
25 their true names and capacities of said Defendants are not now known by Plaintiff and
26 Plaintiff will ask leave to amend the Complaint when it becomes known by it.

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28 ///

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II

At all times herein mentioned, Defendants are agents and employees of the remaining Defendants in each of them acting in the course of scope of said agency and employment.

III

At all times herein mentioned, Plaintiff, West Taylor Street, LLC, is a limited liability company doing business in the State of Nevada and owns that certain real property located at 345 and 347 West Taylor Street, Reno, Nevada with Washoe County Assessor's Parcel Number 011-266-17.

IV

On or about the 23rd day of February, 2012, Defendants did cause to record a notice of lien for garbage fees under Document No. 4086834 at the Washoe County Recorders Office, Reno, Nevada. On or about November 26, 2012, Defendant did cause to record a notice of lien for garbage fees under Document No. 4177148 at the Washoe County Recorders Office, Reno, Nevada. On or about March 14, 2014, Defendant did cause to record a notice of lien for garbage fees under Document No. 4334435 at the Washoe County Recorders Office, Reno, Nevada. Plaintiff is informed and believes and thereon alleges that Defendant will continue to cause to record liens with regard to the properties at 345 and 347 West Taylor Street and that said liens will be the subject of claims set forth herein.

V

Subsequent to the recording of these early liens, Plaintiff made repeated demands upon Defendant for corroboration of the amount set forth in the lien for unpaid garbage fees to which Defendant alleges monies to be due.

VI

On or about November, 2012, Defendants sent corroborative information concerning the basis for the subject lien at which point in time, Plaintiff responded by providing Defendant an accounting of payments that were made that were purportedly the basis for

1 the unpaid amounts owed to the Defendants. Plaintiff made demand upon the release of
2 the lien given its incorrect filing and Defendants refuses to release the subject lien.

3 VII

4 On or about November 15, 2012, Defendants caused to send to Plaintiff a notice
5 of intent to lien for a different amount on the subject property notwithstanding the earlier
6 lien.

7 VIII

8 Plaintiff is informed and believes and thereon alleges that the basis for any lien
9 against the subject property is by reason of Nevada Revised Statute 444.520.

10 IX

11 Pursuant to NRS 444.520, any lien against the subject property was to be
12 foreclosed consistent with foreclosure of mechanic's lien.

13 X

14 At all times herein mentioned, the recording of the subject liens referenced
15 hereinabove was improper and Defendant continued to record liens for purposes of
16 recognizing the improper nature of its liens previously filed.

17 XI

18 At no time has Defendant undertaken a foreclosure of any lien pursuant to the
19 mechanic's lien laws and Plaintiff prays for a declaratory judgment from this Court
20 decreeing and declaring that said lien is of no effect and no longer encumbers Plaintiff's
21 property.

22 XII

23 Plaintiff has been required to employ the services of an attorney to file and
24 prosecute this action and is entitled to an allowance of attorneys fees as special damages
25 by reason thereof.

26 ///

27 ///

28 ///

1 II

2 At all times herein mentioned, Defendants knew or should have known that the
3 recording of the subject lien was without basis or merit and that the recording would impact
4 and impair Plaintiff's ownership of the property. Defendant continues to record liens
5 against the subject property by reason of the impropriety of the recording of earlier liens.
6 Plaintiff is informed and believes that Defendant will continue to record liens against the
7 subject property.

8 III

9 At all time herein mentioned, Defendants have caused to slander Plaintiff's title to
10 said property and each recording of the lien constitutes a separate act of slander
11 proximately causing the damages mentioned herein. Plaintiff submits that all future
12 recordings of liens against the subject property constitute a separate act of slander and
13 Plaintiff will ask leave to amend this complaint at the time of trial to show each separate
14 act of slander.

15 IV

16 As a proximate result of the foregoing, Plaintiff has sustained special damages
17 consisting of attorney's fees for purposes of removing the slanderous document from
18 Plaintiff's title ownership for an amount in excess of \$40,000.

19 V

20 As a proximate result of the foregoing, Plaintiff has sustained general damages in
21 a sum in excess of \$40,000.

22 VI

23 Plaintiff has been required to employ the services of an attorney to file and
24 prosecute this action and is entitled to special damages by reason of the same.

25 WHEREFORE, Plaintiffs pray for Judgment against Defendants, and each of them,
26 as follows:

27 1. For general damages in a sum in excess of Forty Thousand Dollars
28 (\$40,000.00).

1 2. For special damages consisting of attorney's fees for a sum in excess of
2 Forty Thousand Dollars (\$40,000.00).

3 3. For costs of suit herein.

4 4. For reasonable attorneys fees herein.

5 5. For such other and further relief as may be just and proper.


6 6. For a declaration from this Court that Plaintiff was required to comply with
7 mechanic lien laws in connection with the recording of the subject lien referenced herein.

8 7. Alternatively, for a ruling from this Court that the subject statute is
9 unconstitutional.

10 The undersigned affirms that the foregoing pleading does not contain a social
11 security number.

12 DATED this 26 day of June, 2014.

C. NICHOLAS PEREOS, LTD.

13
14 By: 
15 C. NICHOLAS PEREOS, ESQ.
16 1610 MEADOW WOOD LANE
RENO, NV 89502
ATTORNEY FOR PLAINTIFF

17 C:\Shared\CLIENTS\Waste Management\Pleading\Complaint 2nd Amended.wpd
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**Gregory S. Gilbert
Bryan L. Wright
HOLLAND & HART
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
702/669-4600
Attorneys for Waste Management of
Nevada, Inc. and Karen Gonzales**


Sandra Martinez

EXHIBIT 2

EXHIBIT 2

135 Nev., Advance Opinion 21
IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED
Electronically
CV12-02995
2012-07-23 03:34:08 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7389364

WASTE MANAGEMENT OF NEVADA,
INC.,
Appellant,
vs.
WEST TAYLOR STREET, LLC, A
LIMITED LIABILITY COMPANY,
Respondent.

No. 74876
CV12-02995
D4
FILED

JUN 27 2019

ELIZABETH A. GROWN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

Appeal from a final judgment in a declaratory relief action.
Second Judicial District Court, Washoe County; Connie J. Steinheimer,
Judge.

Reversed and remanded.

Simons Law, PC, and Mark G. Simons, Reno,
for Appellant.

C. Nicholas Pereos, Ltd., and C. Nicholas Pereos, Reno,
for Respondent.

Peterson Baker, PLLC, and Tamara Beatty Peterson and Nikki L. Baker,
Las Vegas,
for Amicus Curiae.

BEFORE THE COURT EN BANC.

OPINION

By the Court, GIBBONS, C.J.:

In 2005, the Nevada Legislature enacted the garbage lien statute to give waste collection companies a method for collecting delinquent payments for their services. *See* NRS 444.520. For the first time, we are asked to interpret this statute and the procedures required to perfect and foreclose on a garbage lien. This dispute focuses on whether NRS 444.520(3)'s reference to the mechanics' lien statute incorporates only the mechanics' lien statute's procedural requirements for foreclosure, as set forth in NRS 108.239. Or, rather, if that reference to the mechanics' lien statute also incorporates the requirements for perfecting a lien, as set forth in NRS 108.226. Additionally, we are asked to determine if the perpetual nature of the garbage lien means that the foreclosure of a garbage lien is not subject to a statute of limitations. We hold that the reference to the mechanics' lien statute in NRS 444.520(3) incorporates only the mechanics' lien statute's procedural requirements for foreclosure. We also hold that no limitations period applies to the foreclosure of a garbage lien.

FACTS AND PROCEDURAL HISTORY

Respondent West Taylor Street, LLC, is the owner of a duplex in Reno. This duplex has two addresses, and each address has a waste service account with appellant Waste Management of Nevada, Inc. At some point, both of these waste services accounts became delinquent. As a result, Waste Management filed three notices of liens against the property. West Taylor filed a complaint with the district court asking, among other things, for declaratory relief. West Taylor alleged that Waste Management did not properly follow the lien perfection requirements under NRS 108.226, which West Taylor argued the Legislature incorporated by reference into the garbage lien statute. West Taylor filed a motion for partial summary

judgment as to this issue. The district court granted West Taylor's motion for summary judgment, holding that the lien perfection requirements outlined in NRS 108.226 applied to the garbage lien statute. Therefore, the district court held that Waste Management did not properly record the lien because it failed to record it within 90 days of the completion of the work. The district court also held, in the alternative, that Waste Management could no longer foreclose on its liens because a two-year limitations period applied to the foreclosing on garbage liens. As a result of this ruling, Waste Management voluntarily released all three of its liens against the property. The parties proceeded to litigate other claims, until West Taylor voluntarily dismissed those claims. Waste Management now challenges the grant of summary judgment in West Taylor's favor as to the recordation of the liens.

DISCUSSION

This case is not moot

As an initial matter, we address West Taylor's argument that this matter is moot because Waste Management released the three liens. As a general rule, this court will decline to hear any case in which there is no actual controversy. *Univ. & Cmty. Coll. Sys. of Nev. v. Nevadans for Sound Gov't*, 120 Nev. 712, 720, 100 P.3d 179, 186 (2004) ("[T]he duty of every judicial tribunal is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles of law which cannot affect the matter in issue before it." (internal quotation marks omitted)). Therefore, if a case comes before this court when there is no actual controversy, even if the case had a live controversy at the outset, then we will dismiss the case as moot. *Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) (holding that a case has to have an actual controversy during "all stages of the proceeding" or it would be dismissed as moot). Because the

district court's order granting summary judgment prevents Waste Management from refileing its garbage liens against West Taylor, we conclude that there is still a live controversy, and the case is not moot.

The plain language of NRS 444.520(3) incorporates only the foreclosure procedures from the mechanics' lien statutes

We review questions of statutory construction de novo. *Tam v. Eighth Judicial Dist. Court*, 131 Nev. 792, 799, 358 P.3d 234, 240 (2015). "If the plain meaning of a statute is clear on its face, then [this court] will not go beyond the language of the statute to determine its meaning." *Beazer Homes Nev., Inc. v. Eighth Judicial Dist. Court*, 120 Nev. 575, 579-80, 97 P.3d 1132, 1135 (2004) (internal quotation marks omitted) (alterations in original). When a statute is clear on its face, this court gives the statute's plain language its "ordinary meaning." *UMC Physicians' Bargaining Unit of Nev. Serv. Emps. Union v. Nev. Serv. Emps. Union / SEIU Local 1107*, 124 Nev. 84, 88, 178 P.3d 709, 712 (2008). If a statute is ambiguous, meaning that it is susceptible to multiple "natural or honest interpretation[s]," then this court will look beyond that statute to determine its meaning. *Tam*, 131 Nev. at 799, 358 P.3d at 240.

The plain meaning of NRS 444.520(3) is clear on its face. NRS 444.520(3) states:

Until paid, any fee or charge levied pursuant to subsection 1 constitutes a perpetual lien against the property served, superior to all liens, claims and titles other than liens for general taxes and special assessments. The lien is not extinguished by the sale of any property on account of nonpayment of any other lien, claim or title, except liens for general taxes and special assessments. The lien may be foreclosed in the same manner as provided for the foreclosure of mechanics' liens.

Based on the definition of foreclosure, the statute's meaning is clear on its face as to which provision of the mechanics' lien statutes is incorporated into the garbage lien statute. "Foreclosure" is defined as "[a] legal proceeding to terminate a mortgagor's interest in a property instituted . . . either to gain title or to force a sale to satisfy the unpaid debt secured by the property." *Foreclosure, Black's Law Dictionary* (8th ed. 2004) (emphasis added). Under this definition, the ordinary meaning of the word "foreclosure" involves the actual legal proceeding itself and not the prerequisites of establishing the garbage lien and perfecting it. Therefore, to foreclose on a garbage lien, the lien holder must follow the foreclosure procedure established in the mechanics' lien statutes, which is outlined in NRS 108.239. Based on the statute's plain meaning, the only provision of the mechanics' lien statutes incorporated into NRS 444.520 is NRS 108.239.

Therefore, the district court erred in incorporating into NRS 444.520 the perfection requirements under the mechanics' lien statute as outlined in NRS 108.226, which is separate from NRS 108.239's foreclosure procedures. NRS 444.520(3) references mechanics' liens in the foreclosure context, not in the context of recording or perfecting a garbage lien. Further, NRS 444.520(4) already provides a method of perfecting a garbage lien. Thus, under the plain language of the garbage lien statute, the perfection requirements of the mechanics' lien statute, or any other requirements that do not involve the foreclosure of a mechanics' lien, are not incorporated. The district court erred when it incorporated anything beyond NRS 108.239 into the garbage lien statute. Accordingly, we hold that the district court erred in concluding that Waste Management needed to record its lien within 90 days of completing the work in accordance with NRS 108.226, and we reverse the district court's order on this ground.

The district court erred by concluding that there is a two-year statute of limitations to foreclose on garbage liens

Next, we address whether a statute of limitations applies to garbage liens, as the district court concluded that even if Waste Management had properly perfected its liens, it would be required to foreclose on those liens within two years. To determine whether there is an applicable limitations period for the foreclosure of a garbage lien, we again turn to the text of the statute.

NRS 444.520(3) provides that “[u]ntil paid, any fee or charge levied pursuant to subsection 1 constitutes a *perpetual* lien against the property served, superior to all liens, claims and titles other than liens for general taxes and special assessments.” (Emphasis added.) “Perpetual” is defined as “lasting for eternity; never ending.” *Perpetual, Webster’s II New College Dictionary* (2011). Under a plain reading of the statute, the lien against the property should last until the debt is paid. Perpetual liens, while unusual, are not uncommon in the context of tax or assessment law. See 85 C.J.S. Taxation § 970 (“The duration of a tax lien is generally governed by statute and, ordinarily, a tax lien continues until the tax is paid or the property is sold for the tax.”). States that have enacted perpetual liens have generally held that the liens last forever, and the ability to foreclose upon these liens is not limited by a general statute of limitations. See, e.g., *James v. Strange*, 407 U.S. 128, 132 (1972) (“Florida’s recoupment law has no statute of limitations and the State is deemed to have a perpetual lien against the defendant’s real and personal property and estate.”); *Forman Realty Corp. v. Brenza*, 144 N.E.2d 623, 628 (Ill. 1957) (“The purpose of this statute is to make taxes a lien superior to all other liens without regard to priority in point of time and to continue such liens without limitation of time until taxes are paid. . . .”); *Swingley v. Riechoff*,

112 P.2d 1075, 1079 (Mont. 1941) (“The government’s lien for taxes is based upon express statutory provision, and is a perpetual lien against which no statute of limitations can successfully be interposed.”).

While the district court agreed that the garbage lien was perpetual, and that therefore the six-month statute of limitations in the mechanics’ lien statute did not apply, it went on to conclude that the two-year statute of limitations under NRS 11.190(4)(b) applied.¹ To support this proposition, the district court relied on an early case from this court, *State v. Yellow Jacket Silver Mining Co.*, 14 Nev. 220 (1879). In that case, this court held that a tax lien could be perpetual, but the remedy of foreclosure was subject to a statute of limitations. *Id.* at 232.

However, the reasoning underlying this conclusion in *Yellow Jacket* is outdated, and therefore we decline to apply it here. See Bryan A. Garner et al., *The Law of Judicial Precedent* 178 (2016) (“[P]recedents become obsolete if the conditions or facts that existed when they were rendered are different or no longer exist, or if the underlying rationale is no longer sound.”). In *Yellow Jacket*, this court, following California law, reasoned that the remedy of foreclosure could expire under the statute of limitations, but the obligation of the debt could remain. See *id.* at 232. (“A mortgage debt is not destroyed or extinguished by the statute of limitations. The remedy only is taken away.” (citing *McCormick v. Brown*, 36 Cal. 180, 185 (1868))). However, separating the foreclosure remedy from its underlying debt is paradoxical, and as such, many states have rejected the


¹NRS 11.190(4)(b) provides two years for bringing actions “upon a statute for a penalty or forfeiture, where the action is given to a person or the State, or both, except when the statute imposing it prescribes a different limitation.”

notion that the debt may be separated from the foreclosure remedy. Nancy Saint-Paul, *Distinction Between Mortgage Lien and Mortgage Debt*, Clearing Land Titles § 6:2 (3d ed. 2018); see also Cal. Civ. Code § 2911(1) (eliminating the separation of the underlying debt from the foreclosure remedy). Nevada, like other states, has moved toward eliminating this separation under the “one action rule,” which states that “[t]here may be but one action for the recovery of any debt, or for the enforcement of any right secured by a mortgage or other lien upon real estate.” NRS 40.430(1); see also *McDonald v. D.P. Alexander & Las Vegas Boulevard, LLC*, 121 Nev. 812, 816, 123 P.3d 748, 751 (2005). Therefore, given that the underlying rationale for separating the remedy from the lien is outdated, we decline to follow the rule outlined in *Yellow Jacket*.

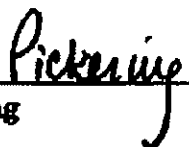
The plain language of NRS 444.520(3) indicates that the lien is perpetual, and therefore the remedy of foreclosure must also be perpetual. As another court has held regarding perpetual liens, “it is impossible to believe that the legislature meant to subject this lien, and the right to enforce it, to any limitation law; for then we would witness the anomalous condition, presented by a perpetual lien . . . without any power in the public to make such lien available.” *Wells Cty. v. McHenry*, 74 N.W. 241, 248 (N.D. 1898). As that court aptly observed, “[a] lien that cannot be enforced is no lien at all.” *Id.*


Accordingly, we hold that the district court properly concluded that garbage liens are perpetual but erred in applying both the lien perfection requirements set forth in NRS 108.226 and the two-year statute of limitations set forth in NRS 11.190(4)(b) to the foreclosure of those liens under NRS 444.520. Since a garbage lien is perpetual, it is not subject to a statute of limitations. Therefore, a municipal waste management company


may foreclose upon such a lien at any time so long as it properly perfects the lien under NRS 444.520(4). Therefore, we reverse the judgment of the district court and remand this case to the district court for further consideration consistent with this opinion.



Gibbons C.J.


We concur:


Pickering J.

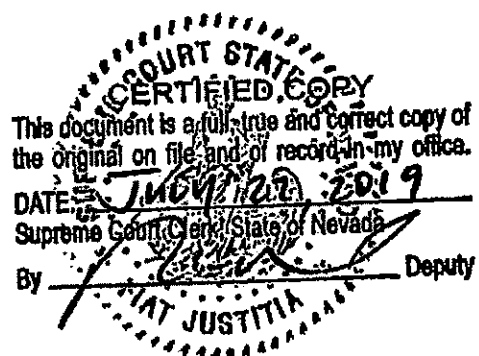

Hardesty J.


Parraguirre J.


Stiglich J.


Cadish J.


Silver J.



This document is a full, true and correct copy of the original on file and of record in my office.

DATE JULY 22 2019
Supreme Court Clerk, State of Nevada

By [Signature] Deputy

EXHIBIT 3

EXHIBIT 3

IN THE SUPREME COURT OF THE STATE OF NEVADA

WASTE MANAGEMENT OF NEVADA, INC.,
Appellant,
vs.
WEST TAYLOR STREET, LLC, A LIMITED
LIABILITY COMPANY,
Respondent.

Supreme Court No. 74876
District Court Case No. CV1202995

04

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"Reversed and remanded"

Judgment, as quoted above, entered this 27th day of June, 2019.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
July 22, 2019.

Elizabeth A. Brown, Supreme Court Clerk

By: Rory Wunsch
Deputy Clerk

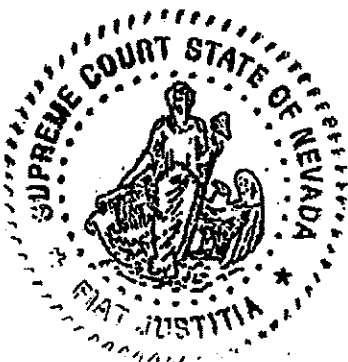


EXHIBIT 4

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

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WEST TAYLOR STREET, LLC, a limited
liability company,

Plaintiffs,

vs.

WASTE MANAGEMENT OF NEVADA,
INC., KAREN GONZALEZ, and DOES 1
THROUGH 10,

Defendants.

CASE NO.: CV12-02995

DEPT. NO.: 4

ORDER DISMISSING ACTION

Waste Management of Nevada, Inc.'s Motion to Vacate Orders and Judgments
and Enter Judgment in favor of Waste Management (the "Motion") having been heard by
the Court on December 6, 2019, Mark G. Simons of SIMONS HALL JOHNSTON, PC
representing Waste Management of Nevada, Inc. ("Waste Management") and C. Nicholas
Pereos representing West Taylor Street, LLC ("WTS"), and the Court having heard
arguments of counsel, and for good cause appearing, does hereby find as follow:

1. On June 27, 2019, the Nevada Supreme Court rendered its decision in
Waste Management v. West Taylor Street, LLC, 135 Nev. Ad. Op. 21 (June 27, 2019)
(hereinafter the "Decision").

2. Based upon the grounds stated in the Decision, the Court hereby vacates
the following Orders and Judgments: the Court's July 28, 2014, Order granting summary
judgment in favor of WTS; the Court's October 1, 2015, Order granting summary

SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509
Phone: (775) 785-0088

1 judgment in favor of WTS; the Court's December 29, 2017, Judgment; and the Court's
2 March 22, 2018, Judgment.

3 3. On March 28, 2017, this Court entered its Order on Defendants' Motion for
4 Summary Judgment dismissing Karen Gonzales as a party to these proceedings.
5

6 4. On November 10, 2017, WTS's voluntarily withdrew its claim for slander of
7 title.

8 5. WTS's first and second declaratory relief claims were resolved by the
9 Nevada Supreme Court in its Decision and WTS's third claim for relief asserting slander
10 of title was withdrawn by WTS.

11 6. There remains no case or controversy for the Court to resolve, therefore,
12 the Motion is granted and this action is hereby dismissed.

13 ITS IS SO ORDERED this 18 day of December, 2019.
14

15
16 Connie J. Steinheimer
17 DISTRICT COURT JUDGE
18

19 Submitted by:

20 SIMONS HALL JOHNSTON PC

21 By: [Signature]
22 Mark G. Simons, Esq.
23 6490 South McCarran Blvd., #F-46
24 Reno, NV 89509
25 Attorneys for Plaintiff Nanyah Vegas, LLC

26 Approved as to form and content:

27 By: _____
28 C. Nicholas Pereos, Esq.
1610 Meadow Wood Lane, Ste. 202
Reno, NV 89502
Attorney for West Taylor Street, LLC

EXHIBIT 5

EXHIBIT 5

1 **2540**
2 **MARK G. SIMONS, ESQ.**
3 **Nevada Bar No. 5132**
4 **MSimons@SHJNevada.com**
5 **SIMONS HALL JOHNSTON PC**
6 **6490 S. McCarran Blvd., Ste. F-46**
7 **Reno, Nevada 89509**
8 **Telephone: (775) 785-0088**
9 **Facsimile: (775) 785-0087**

10 *Attorneys for Waste Management of Nevada, Inc.*

11
12
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14
15 **IN THE SECOND JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA**
16 **IN AND FOR THE COUNTY OF WASHOE**

17 **WEST TAYLOR STREET, LLC, a limited**
18 **liability company,**

19 **Plaintiffs,**

20 **vs.**

21 **WASTE MANAGEMENT OF NEVADA,**
22 **INC., KAREN GONZALEZ, and DOES 1**
23 **THROUGH 10,**

24 **Defendants.**

CASE NO.: CV12-02995

DEPT. NO.: 4

NOTICE OF ENTRY OF ORDER
DISMISSING ACTION

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29 **PLEASE TAKE NOTICE** that an Order Dismissing Action was entered by the
30 Honorable Connie Steinheimer on the 18th day of December, 2019, in the above-entitled
31 matter. See **Exhibit 1**.

32 **///**

33 **///**

34 **///**

35 **///**

36 **///**

SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509
Phone: (775) 785-0088

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of SIMONS HALL JOHNSTON PC and that on this date I caused to be served a true copy of **NOTICE OF ENTRY OF ORDER** on all parties to this action by the method(s) indicated below:

- ☐ by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:

C. Nicholas Pereos, Esq.
1610 Meadow Wood Lane, Ste. 202
Reno, NV 89502
Attorney for West Taylor Street, LLC

- ☒ I hereby certify that on the date below, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

C. Nicholas Pereos, Esq.
Attorneys for West Taylor Street, LLC

DATED this 23 day of December, 2019.


Employee of Simons Hall Johnston PC

SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509
Phone: (775) 785-0088

1 **AFFIRMATION:** This document does not contain the social security number of any
2 person.

3 DATED this 25th day of December, 2019.

4 SIMONS HALL JOHNSTON PC
5 6490 S. McCarran Blvd., Ste. F-46
6 Reno, NV 89509

7 By: 

8 MARK G. SIMONS
9 Attorneys for Waste Management of Nevada, Inc.

SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509
Phone: (775) 785-0088

EXHIBIT LIST

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Jacqueline Bryant
Clerk of the Court
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EXHIBIT 1

EXHIBIT 1

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

7 WEST TAYLOR STREET, LLC, a limited
8 liability company,

9 Plaintiffs,

10 vs.

11 WASTE MANAGEMENT OF NEVADA,
12 INC., KAREN GONZALEZ, and DOES 1
THROUGH 10,

13 Defendants.
14

CASE NO.: CV12-02995

DEPT. NO.: 4

ORDER DISMISSING ACTION

15 Waste Management of Nevada, Inc.'s Motion to Vacate Orders and Judgments
16 and Enter Judgment in favor of Waste Management (the "Motion") having been heard by
17 the Court on December 6, 2019, Mark G. Simons of SIMONS HALL JOHNSTON, PC
18 representing Waste Management of Nevada, Inc. ("Waste Management") and C. Nicholas
19 Pereos representing West Taylor Street, LLC ("WTS"), and the Court having heard
20 arguments of counsel, and for good cause appearing, does hereby find as follow:

21
22 1. On June 27, 2019, the Nevada Supreme Court rendered its decision in
23 *Waste Management v. West Taylor Street, LLC*, 135 Nev. Ad. Op. 21 (June 27, 2019)
24 (hereinafter the "Decision").

25 2. Based upon the grounds stated in the Decision, the Court hereby vacates
26 the following Orders and Judgments: the Court's July 28, 2014, Order granting summary
27 judgment in favor of WTS; the Court's October 1, 2015, Order granting summary
28

SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509
Phone: (775) 785-0088

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Reno, NV 89509
Phone: (775) 785-0088

1 judgment in favor of WTS; the Court's December 29, 2017, Judgment; and the Court's
2 March 22, 2018, Judgment.

3 3. On March 28, 2017, this Court entered its Order on Defendants' Motion for
4 Summary Judgment dismissing Karen Gonzales as a party to these proceedings.

5 4. On November 10, 2017, WTS's voluntarily withdrew its claim for slander of
6 title.

7 5. WTS's first and second declaratory relief claims were resolved by the
8 Nevada Supreme Court in its Decision and WTS's third claim for relief asserting slander
9 of title was withdrawn by WTS.

10 6. There remains no case or controversy for the Court to resolve, therefore,
11 the Motion is granted and this action is hereby dismissed.

12 ITS IS SO ORDERED this 18 day of December, 2019.

13
14
15
16 Connie J. Steinheimer
17 DISTRICT COURT JUDGE

18
19 Submitted by:

20 SIMONS HALL JOHNSTON PC

21 By: [Signature]
22 Mark G. Simons, Esq.
23 6490 South McCarran Blvd., #F-46
24 Reno, NV 89509
25 Attorneys for Plaintiff Nanyah Vegas, LLC

26 Approved as to form and content:

27 By: [Signature]
28 C. Nicholas Pereos, Esq.
1610 Meadow Wood Lane, Ste. 202
Reno, NV 89502
Attorney for West Taylor Street, LLC

EXHIBIT 6

EXHIBIT 6

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 WEST TAYLOR STREET, LLC, a limited
9 liability company,

Case No. CV12-02995

10 Plaintiff,

Dept. No. 4

11 vs.

12 WASTE MANAGEMENT OF NEVADA,
13 INC., and DOES I through X,

Defendants.

14 **ORDER DENYING WASTE MANAGEMENT OF NEVADA, INC.'S**
15 **MOTION FOR AWARD OF ATTORNEYS' FEES**

16 On July 27, 2017, WASTE MANAGEMENT OF NEVADA, INC., (hereinafter "Waste
17 Management"), by and through its attorney, Mark G. Simons, Esq., served an Offer of Judgment
18 upon WEST TAYLOR, STREET, LLC (hereinafter "WTS") offering to allow judgment in favor
19 of WTS and against Waste Management in the amount of \$10,000.00. WTS, by and through its
20 attorney, C. Nicholas Pereos, Esq., did not accept the Offer.

21 On June 27, 2019, a *Decision* was entered in Waste Management v. West Taylor Street,
22 LLC, 135 Nev. Ad. Op. 21, wherein the Nevada Supreme Court found that this Court erroneously
23 granted summary judgment in favor of West Taylor Street, LLC (hereinafter "WTS") based upon
24 an incorrect interpretation of NRS 444.520, and that application of a statute of limitations to the
25 foreclosure of a garbage lien was improper. As a result, the Nevada Supreme Court reversed and
26 remanded for further proceedings consistent with the Decision.

27 On December 23, 2019, Waste Management filed a *Memorandum of Costs*. On December
28 24, 2019, WTS filed a *Motion to Retax Costs*. On December 26, 2019, Waste Management filed

1 a *Motion for Award of Attorneys' Fees and Costs*. On January 2, 2020, Waste Management filed
2 an *Opposition to Motion to Retax Costs*. On January 3, 2020, WTS filed an *Opposition to Motion*
3 *for Attorney Fees*, as well as a *Declaration of C. Nicholas Pereos in Support of Opposition to*
4 *Motion for Attorney Fees*. On January 6, 2020, Waste Management filed *Reply in Support of*
5 *Motion for Award of Attorneys' Fees and Costs*, and submitted the matter for the Court's
6 consideration. On January 7, 2020, WTS filed a *Reply Argument in Support of Motion to Retax*
7 *Costs*, and submitted the matter for the Court's consideration. On March 9, 2020, the Court entered
8 its Order Granting in Part and Denying in Part West Taylor Street, LLC's Motion to Retax Costs
9 in this matter.

10 The "purpose of NRCP 68 is to encourage the settlement of lawsuits before trial." Morgan
11 v. Demille, 106 Nev. 671, 674 (1990). Pursuant to NRCP 68(f)(1)(a) when a plaintiff rejects an
12 offer of judgment and fails to obtain a more favorable judgment, the plaintiff cannot recover any
13 costs, expenses, or attorney fees and may not recover interest for the period after the service of the
14 offer and before the judgment. Furthermore, the plaintiff must pay the defendants post-offer costs,
15 and expenses, including a reasonable sum to cover any expenses incurred by the offeror for each
16 expert witness whose services were reasonably necessary to prepare for and conduct the trial of
17 the case, applicable interest on the judgment from the time of the offer to the time of entry of the
18 judgment and reasonable attorney fees, if any be allowed, actually incurred by the offeror from the
19 time of the offer." NRCP 68(f)(1)(b).

20 NCRP 68(g) states:

21 To invoke the penalties of this rule, the court must determine if the offeree failed
22 to obtain a more favorable judgment. If the offer provided that costs, expenses,
23 interest, and if attorney fees are permitted by law or contract, attorney fees, would
24 be added by the court, the court must compare the amount of the offer with the
25 principal amount of the judgment, without inclusion of costs, expenses, interest,
26 and if attorney fees are permitted by law or contract, attorney fees. If a party made
27 an offer in a set amount that precluded a separate award of costs, expenses, interest,
28 and if attorney fees are permitted by law or contract, attorney fees, the court must
compare the amount of the offer, together with the offeree's pre-offer taxable costs,
expenses, interest, and if attorney fees are permitted by law or contract, attorney
fees, with the principal amount of the judgment.

26 NCRP 68(g).

27 "[T]he trial court must carefully evaluate the following factors [in determining to award
28 attorney's fees pursuant to NRCP 68]: (1) whether the plaintiff's claim was brought in good faith;

1 (2) whether the defendants' offer of judgment was reasonable and in good faith in both its timing
2 and amount; (3) whether the plaintiff's decision to reject the offer and proceed to trial was grossly
3 unreasonable or in bad faith; and (4) whether the fees sought by the offeror are reasonable and
4 justified in amount. After weighing the foregoing factors, the district judge may, where warranted,
5 award up to the full amount of fees requested." Beattie v. Thomas, 99 Nev. 579, 588-89 (1983).
6 Under Beattie, no one factor is determinative, and the district court has broad discretion to grant
7 the request for attorney's fees, so long as all appropriate factors are considered. Yamaha Motor
8 Co., U.S.A. v. Arnoult, 114 Nev. 233, 252, fn.16 (1998).

9 In determining the reasonable value of an attorney's services, the Court must consider four
10 factors: "(1) the qualities of the advocate: his ability, his training, education, experience,
11 professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy,
12 its importance, time and skill required, the responsibility imposed and the prominence and
13 character of the parties where they affect the importance of the litigation; (3) the work actually
14 performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the
15 attorney was successful and what benefits were derived." Brunzell v. Golden Gate Nat. Bank, 85
16 Nev. 345, 349 (1969).

17 First, the Court will consider the first Beattie factor in determining an award of attorney's
18 fees pursuant to NRCP 68: whether Plaintiff's claim was brought in good faith. The plaintiff,
19 WTS, initially contacted Waste Management regarding not receiving its bills which had been sent
20 to the wrong address. WTS worked with Waste Management and believed the account had been
21 settled. Unbeknownst to the WTS, Waste Management continued to carry the account delinquent.
22 Two years later, without any warning, Waste Management issued its first lien against WTS. When
23 the Complaint in this case was filed, there were three liens against WTS's property which totaled
24 \$1,754.12. Waste Management removed the liens on the property in August 2014, following the
25 Court's July 28, 2014 Order. Under the November 17, 2015, *Stipulation and Order for Rule*
26 *54(b) Certification and to Stay Proceedings*, the outstanding claim for Slander of Title was stayed
27 while the Defendant, Waste Management, actively pursued an appeal of the October 1, 2015 Partial
28

1 Summary Judgment. Waste Management filed two appeals with the Nevada Supreme Court, as
2 well as a Petition for Writ of Mandamus.

3 Waste Management claims that WTS initiated extensive litigation over minor amounts in
4 controversy and continued to pursue extensive litigation even after the liens were removed from
5 WTS's property. WTS argues that it initiated litigation only after attempts at resolution of this
6 dispute outside of Court were unsuccessful. WTS further alleges that Waste Management's
7 practices of improperly imposing fees, late fees, fines, and liens on property would customarily be
8 cost prohibitive to private parties wishing to fight them. Also, the lawsuit served to benefit the
9 community who uses Waste Management's services under the Doctrine of Substantial Benefit.

10 Unlike most private parties, WTS was able to afford litigation and successfully fought to
11 have the liens removed. As such, the Court finds that WTS's claim was brought in good faith.

12 Second, the Court will consider the second Beattie factor; whether Defendants' offer of
13 judgment was reasonable and in good faith in both its timing and amount. NRCP 68(a) states that
14 "[a]t any time more than 21 days before trial, any party may serve an offer in writing to allow
15 judgment to be taken in accordance with its terms and conditions." NRCP 68(a). Failure to
16 Accept Offer, "within 14 days after service . . . will be considered rejected by the offeree and
17 deemed withdrawn by the offeror." NRCP(e).

18 Waste Management made an offer under NRCP 68, on July 27, 2017. The offer was made
19 three years after the liens had been released from WTS's property and was made approximately
20 five months before trial was to commence. The only outstanding claim before the Court for
21 consideration was WTS's Slander of Title claim. Waste Management's offer was to pay WTS
22 \$10,000.00. In addition, Waste Management promised to forgive the charges of \$1,754.12 that
23 had been incurred in relation to the three liens that had been released. While the amount offered
24 would not have covered costs, or attorney's fees, had C. Nicholas Pereos, Esq. charged WTS for
25 his time, the offer was reasonable in relation to the gravamen of the case. Therefore, Waste
26 Management, made the offer in good faith, in both its timing and amount. Third, the Court will
27 consider the third factor in Beattie; whether Plaintiff's decision to reject the offer and proceed to
28 trial was grossly unreasonable or in bad faith. As stated above, Waste Management's offer was

1 reasonable in relation to the gravamen of the initial claims brought. While Waste Management
2 contends that WTS did not incur any special damages resulting from the recordation of Waste
3 Management's liens and that WTS pursued extensive litigation even after the liens were removed
4 from WTS's property, WTS did not have to accept the offer, as settlement is voluntary. WTS's
5 decision to reject the offered amount, after years of ongoing litigation does not appear to be
6 unreasonable or made in bad faith. Therefore, the Court finds WTS's decision to reject the offer
7 and proceed to trial was not grossly unreasonable, nor was it made in bad faith.

8 The final Beattie factor the Court must consider is whether the fees sought by Waste
9 Management, the offeror, are reasonable and justified in amount. In determining the reasonable
10 value of an attorney's services, the Court must consider the four Brunzell factors. The Court finds
11 that Mark G. Simons, Esq., who represented Waste Management, is a skilled and professional
12 advocate, as evidenced by his training, ability, and education. The case brought by Waste
13 Management, was the first to ask the Nevada Supreme Court to interpret issues regarding NRS
14 444.520. The character of the work to be done in this case required Mr. Simons to expend much
15 time and skill. Furthermore, it is difficult to litigate statutes that have not yet been interpreted by
16 higher courts.

17 Moreover, the Court finds the work actually performed by the lawyer required skill, time,
18 and attention. Mr. Simons has adequately recorded the time he committed to the representation he
19 provided to Waste Management. The Supreme Court in this case interpreted NRS 444.520 to
20 apply mechanics lien statutes only to foreclosure proceedings, not to the recording and perfecting
21 requirements of garbage liens, which the current statute appears to be silent on. This result allowed
22 the attorney to successfully represent Waste Management in defeating WTS's claims. Therefore,
23 under the Brunzell factors, the Court finds that Mr. Simons was effective counsel whose fees were
24 reasonable and justified in amount.

25 Weighing the four Beattie factors, no one factor is determinative. The Court finds that
26 while Waste Management's offer was reasonable and the attorneys effectively represented their
27 client, an award of attorneys' fees is not justified in this case. WTS's claims were brought in good
28 faith, and WTS's decision to reject the offer to proceed to trial was not grossly unreasonable or

1 made in bad faith. The plaintiff, while not successful at the Nevada Supreme Court, did
2 successfully have liens removed by Waste Management, and was reasonable in pursuing the
3 litigation against Waste Management. The Court, therefore, denies Waste Management's Motion
4 for award of attorneys' fees.

5 IT IS HEREBY ORDERED that Waste Management of Nevada, Inc.'s Motion for Award
6 of Attorneys' Fees is DENIED.

7 DATED this 10 day of March, 2020.

8 Connie J. Steinheimer
9 DISTRICT JUDGE
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CERTIFICATE OF SERVICE

CASE NO. CV12-02995

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 10 day of March, 2020, I filed the ORDER DENYING WASTE MANAGEMENT OF NEVADA, INC.'S MOTION FOR AWARD OF ATTORNEYS' FEES with the Clerk of the Court.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

 Personal delivery to the following: [NONE]

☒ Electronically filed with the Clerk of the Court, using the eFlex system which constitutes effective service for all eFiled documents pursuant to the eFile User Agreement.

MARK SIMONS, ESQ. for WASTE MANAGEMENT OF NEVADA INC

THERESE SHANKS, ESQ.

DOUGLAS FERMOILE, ESQ. for WEST TAYLOR STREET LLC

C. PEREOS, ESQ. for WEST TAYLOR STREET LLC

 Transmitted document to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada: [NONE]

 Placed a true copy in a sealed envelope for service via:

 Reno/Carson Messenger Service – [NONE]

 Federal Express or other overnight delivery service [NONE]

DATED this 10 day of March, 2020.

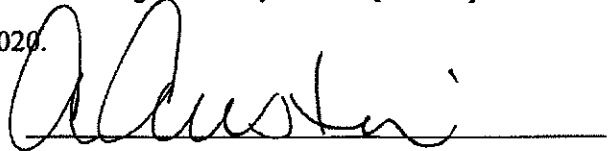


EXHIBIT 7

EXHIBIT 7

1 CODE:
2 C. NICHOLAS PEREOS, ESQ.
3 Nevada Bar #0000013
4 1610 MEADOW WOOD LANE, STE. 202
5 RENO, NV 89502
6 (775) 329-0678
7 ATTORNEYS FOR PLAINTIFF

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

WEST TAYLOR STREET, LLC,
a limited liability company,

Case No. CV12 02995
Dept. No. 4

Plaintiff,

vs.

WASTE MANAGEMENT OF NEVADA,
INC., KAREN GONZALEZ, and
DOES 1 THROUGH 10,

Defendants.

NOTICE OF ENTRY OF ORDER

TO: DEFENDANTS ABOVE-NAMED AND THEIR ATTORNEY OF RECORD:

NOTICE IS HEREBY GIVEN that on the 10th day of March, 2020, an Order Denying Defendants' Motion for Award of Attorney's Fees was entered in the above-entitled action in favor of Plaintiff and against Defendants, a copy of which is marked as **Exhibit "1"** attached hereto and made a part hereof.

The undersigned affirms that the foregoing pleading does not contain a social security number.

///

///

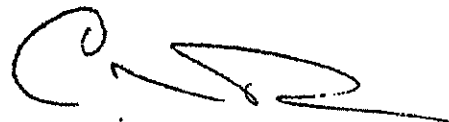
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AFFIRMATION

The undersigned affirms that the foregoing pleading does not contain a social security number.

DATED this 11th day of March, 2020

C. NICHOLAS PEREOS, LTD.



By: _____
C. NICHOLAS PEREOS, ESQ.
1610 MEADOW WOOD LANE, STE. 202
RENO, NV 89502
ATTORNEY FOR PLAINTIFF

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CERTIFICATE OF SERVICE

PURSUANT TO NEVADA RULES OF CIVIL PROCEDURE 5 (b), I certify that I am an employee of C. NICHOLAS PEREOS, LTD., and that on the date listed below, I caused to be served a true copy of the foregoing pleading on all parties to this action by electronically filing the foregoing with the Clerk of the Court by using the CM/ECF system which served the following parties electronically:

SIMONS HALL JOHNSTON
Mark G. Simons, Esq.
ATTORNEY FOR DEFENDANTS

DATED this 11th day of March, 2020


Iris M. Norton

FILED
Electronically
CV12-02995
2020-03-11 09:39:09 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 7786350

EXHIBIT "1"

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

WEST TAYLOR STREET, LLC, a limited
liability company,

Plaintiff,

vs.

WASTE MANAGEMENT OF NEVADA,
INC., and DOES I through X,

Defendants.

Case No. CV12-02995

Dept. No. 4

**ORDER DENYING WASTE MANAGEMENT OF NEVADA, INC.'S
MOTION FOR AWARD OF ATTORNEYS' FEES**

On July 27, 2017, WASTE MANAGEMENT OF NEVADA, INC., (hereinafter "Waste Management"), by and through its attorney, Mark G. Simons, Esq., served an Offer of Judgment upon WEST TAYLOR, STREET, LLC (hereinafter "WTS") offering to allow judgment in favor of WTS and against Waste Management in the amount of \$10,000.00. WTS, by and through its attorney, C. Nicholas Pereos, Esq., did not accept the Offer.

On June 27, 2019, a *Decision* was entered in Waste Management v. West Taylor Street, LLC, 135 Nev. Ad. Op. 21, wherein the Nevada Supreme Court found that this Court erroneously granted summary judgment in favor of West Taylor Street, LLC (hereinafter "WTS") based upon an incorrect interpretation of NRS 444.520, and that application of a statute of limitations to the foreclosure of a garbage lien was improper. As a result, the Nevada Supreme Court reversed and remanded for further proceedings consistent with the Decision.

On December 23, 2019, Waste Management filed a *Memorandum of Costs*. On December 24, 2019, WTS filed a *Motion to Retax Costs*. On December 26, 2019, Waste Management filed

1 a *Motion for Award of Attorneys' Fees and Costs*. On January 2, 2020, Waste Management filed
2 an *Opposition to Motion to Retax Costs*. On January 3, 2020, WTS filed an *Opposition to Motion*
3 *for Attorney Fees*, as well as a *Declaration of C. Nicholas Pereos in Support of Opposition to*
4 *Motion for Attorney Fees*. On January 6, 2020, Waste Management filed *Reply in Support of*
5 *Motion for Award of Attorneys' Fees and Costs*, and submitted the matter for the Court's
6 consideration. On January 7, 2020, WTS filed a *Reply Argument in Support of Motion to Retax*
7 *Costs*, and submitted the matter for the Court's consideration. On March 9, 2020, the Court entered
8 its Order Granting in Part and Denying in Part West Taylor Street, LLC's Motion to Retax Costs
9 in this matter.

10 The "purpose of NRCP 68 is to encourage the settlement of lawsuits before trial." Morgan
11 v. Demille, 106 Nev. 671, 674 (1990). Pursuant to NRCP 68(f)(1)(a) when a plaintiff rejects an
12 offer of judgment and fails to obtain a more favorable judgment, the plaintiff cannot recover any
13 costs, expenses, or attorney fees and may not recover interest for the period after the service of the
14 offer and before the judgment. Furthermore, the plaintiff must pay the defendants post-offer costs,
15 and expenses, including a reasonable sum to cover any expenses incurred by the offeror for each
16 expert witness whose services were reasonably necessary to prepare for and conduct the trial of
17 the case, applicable interest on the judgment from the time of the offer to the time of entry of the
18 judgment and reasonable attorney fees, if any be allowed, actually incurred by the offeror from the
19 time of the offer." NRCP 68(f)(1)(b).

20 NCRP 68(g) states:

21 To invoke the penalties of this rule, the court must determine if the offeree failed
22 to obtain a more favorable judgment. If the offer provided that costs, expenses,
23 interest, and if attorney fees are permitted by law or contract, attorney fees, would
24 be added by the court, the court must compare the amount of the offer with the
25 principal amount of the judgment, without inclusion of costs, expenses, interest,
26 and if attorney fees are permitted by law or contract, attorney fees. If a party made
27 an offer in a set amount that precluded a separate award of costs, expenses, interest,
28 and if attorney fees are permitted by law or contract, attorney fees, the court must
compare the amount of the offer, together with the offeree's pre-offer taxable costs,
expenses, interest, and if attorney fees are permitted by law or contract, attorney
fees, with the principal amount of the judgment.

26 NCRP 68(g).

27 "[T]he trial court must carefully evaluate the following factors [in determining to award
28 attorney's fees pursuant to NRCP 68]: (1) whether the plaintiff's claim was brought in good faith;

1 (2) whether the defendants' offer of judgment was reasonable and in good faith in both its timing
2 and amount; (3) whether the plaintiff's decision to reject the offer and proceed to trial was grossly
3 unreasonable or in bad faith; and (4) whether the fees sought by the offeror are reasonable and
4 justified in amount. After weighing the foregoing factors, the district judge may, where warranted,
5 award up to the full amount of fees requested." Beattie v. Thomas, 99 Nev. 579, 588-89 (1983).
6 Under Beattie, no one factor is determinative, and the district court has broad discretion to grant
7 the request for attorney's fees, so long as all appropriate factors are considered. Yamaha Motor
8 Co., U.S.A. v. Arnoult, 114 Nev. 233, 252, fn.16 (1998).

9 In determining the reasonable value of an attorney's services, the Court must consider four
10 factors: "(1) the qualities of the advocate: his ability, his training, education, experience,
11 professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy,
12 its importance, time and skill required, the responsibility imposed and the prominence and
13 character of the parties where they affect the importance of the litigation; (3) the work actually
14 performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the
15 attorney was successful and what benefits were derived." Brunzell v. Golden Gate Nat. Bank, 85
16 Nev. 345, 349 (1969).

17 First, the Court will consider the first Beattie factor in determining an award of attorney's
18 fees pursuant to NRCP 68: whether Plaintiff's claim was brought in good faith. The plaintiff,
19 WTS, initially contacted Waste Management regarding not receiving its bills which had been sent
20 to the wrong address. WTS worked with Waste Management and believed the account had been
21 settled. Unbeknownst to the WTS, Waste Management continued to carry the account delinquent.
22 Two years later, without any warning, Waste Management issued its first lien against WTS. When
23 the Complaint in this case was filed, there were three liens against WTS's property which totaled
24 \$1,754.12. Waste Management removed the liens on the property in August 2014, following the
25 Court's July 28, 2014 Order. Under the November 17, 2015, *Stipulation and Order for Rule*
26 *54(b) Certification and to Stay Proceedings*, the outstanding claim for Slander of Title was stayed
27 while the Defendant, Waste Management, actively pursued an appeal of the October 1, 2015 Partial
28

1 Summary Judgment. Waste Management filed two appeals with the Nevada Supreme Court, as
2 well as a Petition for Writ of Mandamus.

3 Waste Management claims that WTS initiated extensive litigation over minor amounts in
4 controversy and continued to pursue extensive litigation even after the liens were removed from
5 WTS's property. WTS argues that it initiated litigation only after attempts at resolution of this
6 dispute outside of Court were unsuccessful. WTS further alleges that Waste Management's
7 practices of improperly imposing fees, late fees, fines, and liens on property would customarily be
8 cost prohibitive to private parties wishing to fight them. Also, the lawsuit served to benefit the
9 community who uses Waste Management's services under the Doctrine of Substantial Benefit.

10 Unlike most private parties, WTS was able to afford litigation and successfully fought to
11 have the liens removed. As such, the Court finds that WTS's claim was brought in good faith.

12 Second, the Court will consider the second Beattie factor; whether Defendants' offer of
13 judgment was reasonable and in good faith in both its timing and amount. NRCP 68(a) states that
14 "[a]t any time more than 21 days before trial, any party may serve an offer in writing to allow
15 judgment to be taken in accordance with its terms and conditions." NRCP 68(a). Failure to
16 Accept Offer, "within 14 days after service . . . will be considered rejected by the offeree and
17 deemed withdrawn by the offeror." NRCP(e).

18 Waste Management made an offer under NRCP 68, on July 27, 2017. The offer was made
19 three years after the liens had been released from WTS's property and was made approximately
20 five months before trial was to commence. The only outstanding claim before the Court for
21 consideration was WTS's Slander of Title claim. Waste Management's offer was to pay WTS
22 \$10,000.00. In addition, Waste Management promised to forgive the charges of \$1,754.12 that
23 had been incurred in relation to the three liens that had been released. While the amount offered
24 would not have covered costs, or attorney's fees, had C. Nicholas Pereos, Esq. charged WTS for
25 his time, the offer was reasonable in relation to the gravamen of the case. Therefore, Waste
26 Management, made the offer in good faith, in both its timing and amount. Third, the Court will
27 consider the third factor in Beattie; whether Plaintiff's decision to reject the offer and proceed to
28 trial was grossly unreasonable or in bad faith. As stated above, Waste Management's offer was

1 reasonable in relation to the gravamen of the initial claims brought. While Waste Management
2 contends that WTS did not incur any special damages resulting from the recordation of Waste
3 Management's liens and that WTS pursued extensive litigation even after the liens were removed
4 from WTS's property, WTS did not have to accept the offer, as settlement is voluntary. WTS's
5 decision to reject the offered amount, after years of ongoing litigation does not appear to be
6 unreasonable or made in bad faith. Therefore, the Court finds WTS's decision to reject the offer
7 and proceed to trial was not grossly unreasonable, nor was it made in bad faith.

8 The final Beattie factor the Court must consider is whether the fees sought by Waste
9 Management, the offeror, are reasonable and justified in amount. In determining the reasonable
10 value of an attorney's services, the Court must consider the four Brunzell factors. The Court finds
11 that Mark G. Simons, Esq., who represented Waste Management, is a skilled and professional
12 advocate, as evidenced by his training, ability, and education. The case brought by Waste
13 Management, was the first to ask the Nevada Supreme Court to interpret issues regarding NRS
14 444.520. The character of the work to be done in this case required Mr. Simons to expend much
15 time and skill. Furthermore, it is difficult to litigate statutes that have not yet been interpreted by
16 higher courts.

17 Moreover, the Court finds the work actually performed by the lawyer required skill, time,
18 and attention. Mr. Simons has adequately recorded the time he committed to the representation he
19 provided to Waste Management. The Supreme Court in this case interpreted NRS 444.520 to
20 apply mechanics lien statutes only to foreclosure proceedings, not to the recording and perfecting
21 requirements of garbage liens, which the current statute appears to be silent on. This result allowed
22 the attorney to successfully represent Waste Management in defeating WTS's claims. Therefore,
23 under the Brunzell factors, the Court finds that Mr. Simons was effective counsel whose fees were
24 reasonable and justified in amount.

25 Weighing the four Beattie factors, no one factor is determinative. The Court finds that
26 while Waste Management's offer was reasonable and the attorneys effectively represented their
27 client, an award of attorneys' fees is not justified in this case. WTS's claims were brought in good
28 faith, and WTS's decision to reject the offer to proceed to trial was not grossly unreasonable or

1 made in bad faith. The plaintiff, while not successful at the Nevada Supreme Court, did
2 successfully have liens removed by Waste Management, and was reasonable in pursuing the
3 litigation against Waste Management. The Court, therefore, denies Waste Management's Motion
4 for award of attorneys' fees.

5 IT IS HEREBY ORDERED that Waste Management of Nevada, Inc.'s Motion for Award
6 of Attorneys' Fees is DENIED.

7 DATED this 10 day of March, 2020.

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9 Connie J. Steinheimer
10 DISTRICT JUDGE
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CERTIFICATE OF SERVICE

CASE NO. CV12-02995

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 10 day of March, 2020, I filed the ORDER DENYING WASTE MANAGEMENT OF NEVADA, INC.'S MOTION FOR AWARD OF ATTORNEYS' FEES with the Clerk of the Court.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

 Personal delivery to the following: [NONE]

 X Electronically filed with the Clerk of the Court, using the eFlex system which constitutes effective service for all eFiled documents pursuant to the eFile User Agreement.

MARK SIMONS, ESQ. for WASTE MANAGEMENT OF NEVADA INC

THERESE SHANKS, ESQ.

DOUGLAS FERMOILE, ESQ. for WEST TAYLOR STREET LLC

C. PEREOS, ESQ. for WEST TAYLOR STREET LLC

 Transmitted document to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada: [NONE]

 Placed a true copy in a sealed envelope for service via:

 Reno/Carson Messenger Service – [NONE]

 Federal Express or other overnight delivery service [NONE]

DATED this 10 day of March, 2020.

