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2 **IN THE SUPREME COURT OF THE STATE OF NEVADA**  
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4 JOSEPH FOLINO, an individual, and  
5 NICOLE FOLINO, an individual

6 Appellants,

7 v.

8 TODD SWANSON, an individual;  
9 TODD SWANSON, Trustee of  
10 SHIRAZ TRUST; SHIRAZ TRUST, A  
11 Trust of unknown origins; LYONS  
12 DEVELOPMENT, LLC, a Nevada  
limited liability company,

13 Respondents.  
14

S.C. DOCKET

Electronically Filed  
No. 81831  
Nov 19 2021 04:09 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**MOTION FOR  
RECONSIDERATION OF ORDER  
SUBMITTING APPEAL  
WITHOUT ORAL ARGUMENT**

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16 COMES NOW, Appellants, JOSEPH FOLINO and NICOLE FOLINO, by  
17 and through their attorney of record, Rusty Graf, Esq. of the law firm of Black &  
18 Wadhams., and hereby submit this Motion for Reconsideration of Order Submitting  
19 Appeal without Oral Argument pursuant to Rule 34(f) and Rule 27 of the Nevada  
20 Rules of Appellate Procedure ("NRAP"). This Motion is based upon the attached  
21 points and authorities, the statement of the facts of the Appellants, and any oral  
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argument that this Court may entertain at the hearing of this Motion, if any.

DATED this 19<sup>th</sup> day of November 2021.

**BLACK & WADHAMS**

/s/ Rusty Graf

Rusty Graf, Esq.

Nevada Bar No. 6322

10777 W. Twain Ave., Suite 300

Las Vegas, NV 89135

*Attorneys for Appellants*

**MEMORANDUM OF POINTS & AUTHORITIES**

**I. STATEMENT OF FACTS**

Appellants, Joseph and Nicole Folino, dispute involves significant disputable facts, where there are allegations that water damage to their real property was not disclosed to them at the time of purchase. Appellants have asserted that the district court erred in their ruling against the Appellants misinterpreting *Nelson v. Heer* and/or inaccurately applying the facts to that Case. The complexity of the factual arguments warrants oral argument.

The district court erred by granting Respondents' Motion to Dismiss/Motion for Summary Judgment, and thereby abused its discretion by granting Respondents' Motion for Attorneys' Fees and Costs based on the clearly erroneous factual determinations: (1) that Appellants' claims were only related to the February 2017 leak; (2) that Appellants' Intentional Misrepresentation claim was only related to allegations of concealment by Respondents', rather than their affirmative false

1 representations and/or omissions; (3) that the affidavit of Aaron Hawley, which  
2 allegedly provided support for Respondents' summary judgement motion(s), was  
3 disproved by his own deposition testimony presented to the district court, thereby  
4 negating its application to *Nelson v. Heer*; and (4) that the unrepaired and  
5 undisclosed basement ceiling leak was not related to Appellants' claims and clearly  
6 erroneously ignored by the district court.  
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9 **II. LEGAL ARGUMENT**

10 Nevada Rules of Appellant Procedure (NCAP), Rule 34(f), Oral Argument,  
11 allows for a court to order a case submitted for decision on the briefs, without oral  
12 argument. Under rule 27(b), Disposition of a Motion for a Procedural Order, the court  
13 may act on a motion for a procedural order at any time without awaiting a response.  
14 Rule 27 states a party adversely affected by the court's, or the clerk's, action may file  
15 a motion to reconsider, vacate or modify that action. Timely opposition filed after the  
16 motion is granted in whole or in part does not constitute a request to reconsider,  
17 vacate, or modify the disposition; a motion requesting that relief must be filed.  
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21 **III. CONCLUSION**

22 Based on the foregoing Nevada Rules of Appellant Procedure, Appellants  
23 respectfully requests that the Court grant this motion for reconsideration of its order  
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1 submitting the appeal for disposition without oral argument and to allow oral  
2 arguments.

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4 DATED this 19<sup>th</sup> day of November 2021.

5 **BLACK & WADHAMS**

6 /s/ Rusty Graf

7 Rusty Graf, Esq.

8 Nevada Bar No. 6322

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11 *Attorneys for Appellants*  
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**CERTIFICATE OF SERVICE**

*When All Case Participants are Registered for the Appellate CM/ECF System:*

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the Nevada Supreme Court by using the appellate CM/ECF e-flex electronic filing/service system; on November 19th, 2021.

I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

DATED this 19<sup>th</sup> day of November 2021.

**BLACK & WADHAMS**

/s/ Rusty Graf  
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