

1                                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

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3 DEKKER/PERICH/SABATINI LTD.;  
4 NEVADA BY DESIGN, LLC d/b/a  
5 NEVADA BY DESIGN; MELROY  
6 ENGINEERING, INC. d/b/a MSA  
7 ENGINEERING CONSULTANTS; JW  
8 ZUNINO & ASSOCIATES, LLC;  
9 NINYO & MOORE, GEOTECHNICAL  
10 CONSULTANTS; RICHARDSON  
11 CONSTRUCTION, INC.; THE  
12 GUARANTEE COMPANY OF NORTH  
13 AMERICA USA; and JACKSON  
14 FAMILY PARTNERSHIP LLC dba  
15 STARGATE PLUMBING,

16                                   Petitioners,

17 vs.

18 THE EIGHTH JUDICIAL DISTRICT  
19 COURT OF THE STATE OF  
20 NEVADA, IN AND FOR THE  
21 COUNTY OF CLARK; AND THE  
22 HONORABLE TREVOR ATKIN,  
23 DISTRICT JUDGE,

24                                   Respondents, and

25 CITY OF NORTH LAS VEGAS,

26                                   Real Party in Interest.

Case No. 81459   Electronically Filed  
Sep 21 2020 01:45 p.m.  
Lower Court Case No. A-19-798346-C  
Elizabeth A. Brown  
Clerk of Supreme Court

**JACKSON FAMILY  
PARTNERSHIP LLC dba  
STARGATE PLUMBING'S  
JOINDER TO JOINT PETITION OF  
WRIT OF MANDAMUS OR,  
ALTERNATIVELY, PROHIBITION**

27                                   **JACKSON FAMILY PARTNERSHIP LLC dba STARGATE PLUMBING'S**  
28                                   **JOINDER TO JOINT PETITION OF WRIT OF MANDAMUS OR,**  
                                     **ALTERNATIVELY, PROHIBITION**

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15 Attorneys for Petitioner, JACKSON FAMILY

16 PARTNERSHIP LLC dba STARGATE PLUMBING

STATE OF NEVADA )  
 ) ss.  
COUNTY OF CLARK )

1. I am a partner at the law firm of Lincoln, Gustafson & Cercos, LLP, duly licensed to practice law in the State of Nevada, and counsel of record for Petitioner JACKSON FAMILY PARTNERSHIP LLC dba STARGATE PLUMBING.

3. I have read this Joinder to Joint Petition for Writ of Mandamus or Alternatively, Prohibition and the facts stated herein are true of my own knowledge, except as to those matters stated on information and belief, and as to those matters, I believe them to be true.

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4. I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

  
SHANNON G. SPLAINE, ESQ.

SUBSCRIBED and SWORN to before me  
this 21<sup>st</sup> day of September, 2020.

 **STACI IBARRA**  
Notary Public, State of Nevada  
No. 11-6020-1  
My Appt. Exp. Feb. 20, 2024

NOTARY PUBLIC in and for  
said County and State

**NRAP 26.1 DISCLOSURE**

JACKSON FAMILY PARTNERSHIP LLC dba STARGATE PLUMBING, by and through its counsel of record, the law firms of LINCOLN, GUSTAFSON & CERCOS, LLP and RESNICK & LOUIS, P.C., hereby certifies that JACKSON FAMILY PARTNERSHIP LLC dba STARGATE PLUMBING is not publicly traded, nor is ten percent of it or more owned by a publicly traded company.

JACKSON FAMILY PARTNERSHIP LLC dba STARGATE PLUMBING is represented in the District Court and in this Court by the law firms of LINCOLN, GUSTAFSON & CERCOS, LLP and RESNICK & LOUIS, P.C.

DATED this 21<sup>st</sup> day of September, 2020.

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**I.**

**INTRODUCTION AND RELIEF SOUGHT**

JACKSON FAMILY PARTNERSHIP LLC dba STARGATE PLUMBING (hereinafter “STARGATE”) join in the introduction and relief sought by Petitioners, as contained within the Writ filed on August 18, 2020, on the basis of the statute of repose, as though fully set forth herein. STARGATE seeks a directive to the District Court to vacate the order granting the CITY OF NORTH LAS VEGAS’ (hereinafter the “City”) motion to alter judgment and to re-affirm the District Court’s prior order dismissing the action.

### ISSUES PRESENTED FOR REVIEW

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**III.**

**SUMMARY OF FACTS AND PROCEDURAL HISTORY**

STARGATE joins in the facts as presented in the Joint Petition as though fully stated herein, as the same pertain to issues surrounding the statute of repose. STARGATE takes no position as to the facts presented with regard to the third issue related to the application of NRS 11.258. In addition, STARGATE presents the below additional, pertinent facts.

When the City filed its Complaint on July 11, 2019, the operative statute of repose in NRS 11.202 prohibited the commencement of any action brought more than six years from the date of substantial completion. See NRS 11.202 (circa July 2019). It is undisputed the City's Complaint expressly represented this project's notice of substantial completion was recorded on July 13, 2009, ten years prior to the filing of the City's Complaint. (Vol. 1, Ex. 1, PET.APP 1-17, pg. 6, ¶45; PET.APP. 132-133). Thus, the City's Complaint was filed effectively four years after the expiration of the applicable statute of repose.

On August 5, 2019, Petitioner NEVADA BY DESIGN, LLC d/b/a NEVADA BY DESIGN ("NBD") filed its Motion to Dismiss, or in the Alternative, Motion for Summary Judgment, arguing that the untimely filing of the City's Complaint violated, *inter alia*, NRS 11.202. (Vol. 5, Ex. 2, PET.APP. 648-717). On August 26, 2019, STARGATE joined NBD's dispositive motion as it relates to the application of NRS 11.202. (Vol. 14, Ex. 12, PET.APP. 2214-2218).

1 On August 20, 2019, the City filed its Opposition to the Motion and all joinders.  
2 (Vol. 6, Ex. 7, PET.APP. 829-846). The City claimed that the statute of repose was ten  
3 years when it filed its Complaint. (Id. at 833-836). On August 28, 2019, NBD filed its  
4 Reply establishing that the City's Opposition failed to challenge a number of factual  
5 and legal arguments in the Motion as well as the legislative material attached in support  
6 (Vol. 14, Ex. 14, PET.APP. 2233-2271).  
7

8 After reviewing the papers and hearing extensive oral argument, the District  
9 Court granted the Motion and all Joinders on the issue of the Statute of Repose and thus  
10 Ordered that "Plaintiff's claims and the Complaint against NBD and all joining parties  
11 are hereby dismissed with prejudice." (Vol. 15, Ex. 24, pg. 3, ll. 11-12; PET.APP. 2399-  
12 2406).  
13

14 On November 11, 2019, the City filed its Motion to Alter Judgment on the  
15 grounds that once AB 421 had taken effect on October 1, 2019, its Complaint (filed in  
16 July 2019) was suddenly valid under the newly established ten (10) year repose period  
17 in AB 421. (Vol. 15, Ex. 25, PET.APP. 002407-002421).  
18

19 On November 25, 2019, Petitioner JW ZUNINO & ASSOCIATES, LLC  
20 (hereinafter "JW") filed an Opposition to the City's Motion arguing, *inter alia*, that the  
21 change in law does not change the untimeliness of the filing of the Complaint since  
22 retroactivity only applies to pre-existing causes of action, not to previously filed  
23 Complaints (Vol. 16, Ex. 26, PET.APP. 2515-2530). On December 2, 2019,  
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1 STARGATE filed a Joinder with supplemental points and authorities to the Opposition  
2 filed by Petitioner JW (Vol. 18, Ex. 36, PET.APP. 002694-002887).

3 On November 26, 2019, Petitioner NBD filed an Opposition to the Motion  
4 arguing, *inter alia*, the following: (1) the Complaint filed on July 11, 2019 violated  
5 Nevada's then-existing statute of repose and therefore, was void *ab initio*; (2) AB 421  
6 did not go into effect until months after the Complaint was filed; (3) there was no change  
7 in controlling law as the matter no longer existed; (4) granting the Motion to Alter would  
8 violate NBD's Constitutional Rights; and (5) granting the Motion to Alter would result  
9 in absurd results. (Vol. 16, Ex. 27, PET.APP. 2531-2650). On December 2, 2019,  
10 STARGATE filed a Joinder with supplemental points and authorities to the Opposition  
11 filed by Petitioner NBD (Vol. 18, Ex. 37, PET.APP. 002901-002907).<sup>1</sup>  
12

13 The City filed its Reply (Vol. 18, Ex. 45, PET.APP. 3047-3063) and the Parties  
14 proceeded to a hearing before Respondent on January 21, 2020. (Vol. 21, Ex. 64,  
15 PET.APP. 3492-3540).  
16

17 At the hearing, Petitioners argued that regardless of whether the City filed its  
18 claims under the 6-year or 10-year statute of repose, the claims were untimely.  
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24 <sup>1</sup> Additional Oppositions or Joinders to the City's Motion were filed by Joint  
25 Petitioners DEKKER/PERICH/SABATINI LTD. (Vol. 16, Ex. 28, PET.APP. 2651-  
26 2677); NINYO & MOORE, GEOTECHNICAL CONSULTANTS (Vol. 17, Ex. 34,  
27 PET.APP. 2888-2893, 3044-3046); MELROY ENGINEERING, INC. d/b/a MSA  
28 ENGINEERING CONSULTANTS (Vol. 18, Ex. 39, PET.APP. 2911-3028); and  
RICHARDSON CONSTRUCTION, INC. and THE GUARANTEE COMPANY OF  
NORTH AMERICA USA (Vol. 17, Ex. 33, PET.APP. 2694-2887).

1 Petitioners also argued that the City was under the mistaken belief that it was entitled  
2 to relief under AB 421 simply because the law was passed in June 2019. However, as  
3 pointed out at the hearing, the Nevada Legislature opted to set the Effective Date for  
4 October 1, 2019. Petitioners stated that if the District Court ignored the Effective Date  
5 of AB 421, it would usurp the role of the Legislature and effectively amend the statute  
6 of repose by providing the City with an additional three months, rendering the Effective  
7 Date of AB 421 meaningless. (Vol. 21, Ex. 64, PET.APP. 3512-3514).  
8  
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10 Petitioners (and other joining parties) further argued that the City's proposed  
11 manner of retroactively applying AB 421 violated the Petitioners' Constitutional rights.  
12 The District Court disagreed. In doing so, the District Court ignored the overwhelming  
13 case law from the Ninth Circuit and around the nation which stated that retroactive  
14 application cannot occur where it would affect a defendant's substantive rights and that  
15 while retroactivity can *extend* a claim period, it cannot not *revive* an expired period or  
16 a "stale claim".  
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19 Following oral argument, Respondent exceeded its jurisdiction and committed  
20 legal error when it granted the City's Motion to Alter based on a finding that AB 421  
21 changed the controlling law to a 10-year statute of repose. (Vol. 18, Ex. 46, PET.APP.  
22 3064-3073). In making its decision, Respondent ignored the fact that the City's  
23 Complaint was void *ab initio* and the matter never legally commenced.  
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IV.

**STATEMENT OF REASONS WHY THE WRIT SHOULD ISSUE**

STARGATE joins in the factual and legal arguments presented by the Joint Petition to issue a writ in regard to the proper application and ruling regarding NRS 11.202 as though fully set forth herein. The issue raised is strictly a question of law as there are no factual disputes at issue. STARGATE, as well as all other professionals, persons, or entities, who performed work on the fire station at issue obtained a vested property right at the expiration of the six-year statute of repose. STARGATE has now been deprived of this fundamental property right by Respondent's retroactive application of the subsequently amended NRS 11.202 to revive the City's stale claims.

Moreover, the City's motion to amend should never have been granted. NRCP 3 provides that "[a] civil action is commenced by filing a complaint with the Court." NRS 11.202, both the prior and newly amended version, provide "no action shall be commenced..." with the difference between the statutes being one provided a six-year statute of repose, and the amended version a ten-year limitation. This means that the City's Complaint, filed on July 11, 2019, past the then-applicable six-year statute of repose never "commenced." As the City's untimely Complaint was barred from commencing, it is properly considered void *ab initio*. A Complaint that is void *ab initio* "has no force and effect, does not legally exist, and therefore, cannot be amended" nor should it be revived by the district court. *See generally S. Nev. Adult Mental Health*

1 *Servs. v. Eighth Judicial Dist. Court*, 132 Nev. 1031 (2016). Thus, the City's original  
2 defective Complaint cannot be brought back to life by Respondent.

3  
4 V.

5 **CONCLUSION**

6 For the reasons stated herein, which includes incorporation of the arguments  
7 contained within the Joint Petition, STARGATE respectfully requests this Court grant  
8 the Petition for a Writ of Mandamus or, Alternatively, Prohibition, and provide the relief  
9 requested herein.  
10

11 DATED this 21<sup>st</sup> day of September, 2020.

12  
13 **LINCOLN, GUSTAFSON & CERCOS, LLP**

14 

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**CERTIFICATE OF COMPLIANCE**

1  
2 1. I hereby certify that this brief complies with the formatting requirements of  
3 NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style  
4 requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally  
5 spaced typeface using Word version in 14 point Times New Roman type style.  
6

7 2. I hereby certify that this brief complies with the page and volume type  
8 requirements of NRAP 32(a)(7) as the brief is 7 pages long and contains 1,561 words.  
9

10 3. I hereby certify that I have read this brief, and to the best of my knowledge,  
11 information, and belief, it is not frivolous or interposed for any improper purpose. I  
12 further certify that this brief complies with all applicable Nevada Rules of appellate  
13 procedure, in particular NRAP 28(e)(1), which requires every assertion in a brief  
14 regarding matters in the record to be supported by appropriate references to page and  
15 volume number, if any, of the transcript or appendix where the matter relied on is to  
16 be found. I understand that I may be subject to sanctions in the event that the  
17 accompanying brief is not in conformity with the requirements of the Nevada Rules of  
18 Appellate Procedure.  
19  
20  
21

22 DATED this 21<sup>st</sup> day of September, 2020.

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**CERTIFICATE OF SERVICE**

Pursuant to NRAP 25, I hereby certify that on this 21<sup>st</sup> day of September, 2020, the foregoing **JACKSON FAMILY PARTNERSHIP LLC dba STARGATE PLUMBING'S JOINDER TO JOINT PETITION FOR WRIT OF MANDAMUS OR, ALTERNATIVELY, PROHIBITION**, was e-submitted to the Clerk of the Supreme Court of the State of Nevada and services were executed to the addresses shown below by electronic means:

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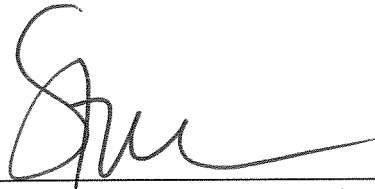
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