

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

Horizon Holdings 2900, LLC,

Appellant,

vs.

Shea at Horizon Ridge Owners Association,

Respondent.

No. 82150

DOCKETING

CIVIL APPEALS

Electronically Filed
Dec 14 2020 10:21 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department 22
County Clark Judge Honorable Susan H. Johnson
District Ct. Case No. A-17-758435-C

2. Attorney filing this docketing statement:

Attorney Pat Lundvall Telephone 702-873-4100
Firm McDonald Carano LLP
Address 2300 W. Sahara Avenue, Suite 1200, Las Vegas, Nevada 89102

Client(s) Horizon Holdings 2900, LLC

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Robert E. Schumacher Telephone 702-577-9300
Firm Gordon Rees Scully Mansukhani LLP
Address 300 South Fourth Street, Suite 1550, Las Vegas, Nevada 89101

Client(s) Shea at Horizon Ridge Owners Association

Attorney Brian K. Walters Telephone 702-577-9300
Firm Gordon Rees Scully Mansukhani LLP
Address 300 South Fourth Street, Suite 1550, Las Vegas, Nevada 89101

Client(s) Shea at Horizon Ridge Owners Association

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|-------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> Other disposition (specify): <u>Post-judgment order granting motion for fees and costs.</u> |

5. Does this appeal raise issues concerning any of the following? No.

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Horizon Holdings 2900, LLC v. Shea at Horizon Ridge Owners Association, Nevada Supreme Court Case No. 81421

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None.

8. Nature of the action. Briefly describe the nature of the action and the result below:

Since Plaintiff Horizon Holdings 2900, LLC ("Horizon") purchased its property in 2015, Defendant Shea at Horizon Ridge Owners Association ("Association") has denied Horizon its use and enjoyment of its contractual right to an undivided pro rata share of the air conditioning as provided for under the governing CC&Rs. The Association breached its contractual obligation to Horizon by unreasonably denying Horizon's request to balance, or commission, the HVAC units for the building to ensure that Horizon received its pro rata share. After suffering years of heat in the Las Vegas summers, spending thousands of dollars to ameliorate the lack of air conditioning, incurring loss of property value and associated income, and having the Association place unilateral conditions precedent on Horizon before it would balance the system, Horizon brought its complaint for breach of contract, breach of the implied covenant of good faith and fair dealing, negligence, and declaratory relief against, among others, the Association. After a bench trial, the district court, relying on facts not supported by the testimony or evidence, entered findings of fact, conclusions of law, and judgment against Horizon and in favor of the Association. Horizon continues to suffer extreme temperatures in its unit and continues to be denied its pro rata share of the air conditioning. This is the subject of Appeal No. 81421.

Post-judgment, the Association brought its motion for fees, costs and interest pursuant to the CC&Rs and an invalid NRCP 68 offer of judgment. The Association requested fees in the amount of \$321,472.00, costs in the amount of \$42,143.78 and pre-judgment interest in the amount of \$1,263.99. The District Court granted the Association's motion for fees, costs and interest finding that the Association is the prevailing party under the CC&Rs. The District Court awarded the Association \$234,470.00 in fees and \$38,467.49 in costs.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Whether the District Court erred in awarding fees to the Association when the Association sought fees on both its behalf and a dismissed defendant who the District Court already had ordered could not be awarded any fees and thus the fees awarded were neither reasonable and necessary.

Alternatively, whether the District Court erred in awarding fees to the Association where neither the Association, nor the District Court, attempted to segregate the Association's incurred fees from the dismissed defendant's incurred fees.

Alternatively, whether the District Court erred in awarding the Association fees in excess of the amount of fees that were incurred by the Association based on prior admissions by the Association's counsel.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues? No.

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

Pursuant to NRAP 17, this matter is NOT presumptively assigned to the Court of Appeals because it involves a contract dispute where the amount in controversy substantially exceed \$75,000 and no other provisions of NRAP 17(b) apply.

14. Trial. If this action proceeded to trial, how many days did the trial last? 7

Was it a bench or jury trial? Bench trial

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from Nov 19, 2020

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served Nov 19, 2020

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59) None.

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed _____

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

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

NRAP 4(a)(1) _____

SUBSTANTIVE APPEALABILITY

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

(a)

- | | |
|--------------------------------------------------------------------------|---------------------------------------|
| <input type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input checked="" type="checkbox"/> Other (specify) <u>NRAP 3A(b)(8)</u> | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

Horizon appeals from a post-judgment order granting respondent's motion for fees, costs and interest and NRAP 3A(b)(8) provides that an appellant may appeal from a special order entered after final judgment.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Plaintiff: Horizon Holdings 2900, LLC

Defendant: Shea at Horizon Ridge Owners Association

Defendant: Taylor Management Association

Defendant/ Cross-Claimant: First American Exchange Company, LLC

Defendant/ Cross-Defendant: TAG Horizon Ridge, LLC

(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, *e.g.*, formally dismissed, not served, or other:

January 2, 2018 – Notice of Entry of Order Granting Defendants Tag Horizon Ridge, LLC and The Aligned Group, LLC's Motion to Dismiss

March 8, 2018 – Stipulation and Order for Dismissal with Prejudice as to Defendant/Cross-Claimant First American Exchange Company, LLC Only

March 22, 2019 – Notice of Entry of Order for Dismissal of Cross-Claim and Third-Party Complaint of First American Exchange Company, LLC against TAG Horizon Ridge, LLC and TAG Fund I, LLC

February 4, 2020 – Notice of Entry of Granting in Part and Denying in part Defendants' Shea at Horizon Ridge Owners Association and Taylor Association Management's Motion for Partial Summary Judgment

February 5, 2020 – Notice of Entry of Order Denying Plaintiff's Motion for Partial Summary Judgment

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.

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

☐ No

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

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

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)):

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

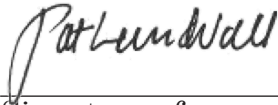
VERIFICATION

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

Horizon Holdings 2900, LLC
Name of appellant

December 14, 2020
Date

Pat Lundvall
Name of counsel of record


Signature of counsel of record

Nevada, Clark County
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 14th day of December, 2020, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Robert E. Schumacher
Brian K. Walters
Gordon Rees Scully Mansukhani LLP
300 South Fourth Street, Suite 1550
Las Vegas, Nevada 89101
Attorneys for Respondent, Shea at Horizon Ridge Owners Association

Dated this 14th day of December, 2020

/s/ Pat Lundvall
Signature