

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No.: 82150

Electronically Filed
Dec 14 2020 10:24 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

HORIZON HOLDINGS 2900, LLC,
A NEVADA LIMITED LIABILITY COMPANY

Appellant,

v.

SHEA AT HORIZON RIDGE OWNERS ASSOCIATION,
A DOMESTIC NON-PROFIT ORGANIZATION,

Respondents.

Appeal from Judgment After Bench Trial
Eighth Judicial District Court, Clark County
The Honorable Susan H. Johnson, District Court Judge
District Court Case No.: A-17-758435-C

**APPENDIX OF EXHIBITS TO HORIZON HOLDINGS 2900, LLC
DOCKETING STATEMENT – VOLUME 2 OF 2**

McDONALD CARANO LLP
Pat Lundvall (NSBN 3761)
lundvall@mcdonaldcarano.com
Amanda C. Yen (NSBN 9726)
ayen@mcdonaldcarano.com
2300 W. Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
Telephone: (702) 873-4100
Facsimile: (702) 873-9966

Attorneys for Appellant Horizon Holdings, 2900, LLC

Index to Appendix

Exhibit No.	Document Description	Date	Label
Volume 1			
1.	District Court Docket for Case No. A-17-758438	12/08/2020	HH000001-HH000010
2.	Complaint	07/14/2017	HH000011-HH000022
3.	First Amended Complaint	07/21/2017	HH000023-HH000034
4.	First American Exchange Company, LLC's Answer to First Amended Complaint, Cross-Claim and Third-Party Complaint	09/05/2017	HH000035-HH000056
5.	Defendant Shea at Horizon Ridge Owners Association's Answer to First Amended Complaint	09/15/2017	HH000057-HH000065
6.	Defendant Taylor Management Association's Answer to First Amended Complaint	09/15/2017	HH000066-HH000074
7.	Order Granting Defendants Tag Horizon Ridge, LLC and The Aligned Group, LLC's Motion to Dismiss	01/02/2018	HH000075-HH000078
8.	Notice of Entry of Order Granting Defendants Tag Horizon Ridge, LLC and The Aligned Group, LLC's Motion to Dismiss	01/02/2018	HH000079-HH000085
9.	Stipulation & Order for Dismissal With Prejudice as to Defendant First American Exchange Company, LLC, Only	03/08/2018	HH000086-HH000088
10.	Notice of Entry of Order of Stipulation & Order for Dismissal With Prejudice as to Defendant First American Exchange Company, LLC, Only	03/08/2018	HH000089-HH000094
11.	Stipulation and Order for Dismissal of Cross-Claim and Third-Party Complaint with Prejudice	03/21/2018	HH000095-HH000097
12.	Notice of Entry of Stipulation and Order for Dismissal of Cross-Claim and Third-Party Complaint with Prejudice	03/22/2018	HH000098-HH000103

Exhibit No.	Document Description	Date	Label
13.	Horizon Holdings 2900, LLC's Second Amended Complaint	11/28/2018	HH000104-HH000112
14.	Defendant Shea at Horizon Ridge Owners Association's Answer to Second Amended Complaint	02/21/2019	HH000113-HH000121
15.	Defendant Taylor Management Association's Answer to Second Amended Complaint	02/21/2019	HH000122-HH000129
16.	Order Granting in Part and Denying in Party Defendants' Shea at Horizon Ridge Owners Association and Taylor Association Management's Motion for Partial Summary Judgment	02/04/2020	HH000130-HH000132
17.	Notice of Entry of Order Granting in Part and Denying in Party Defendants' Shea at Horizon Ridge Owners Association and Taylor Association Management's Motion for Partial Summary Judgment	02/04/2020	HH000133-HH000139
18.	Findings of Fact, Conclusions of Law and Judgment	05/26/2020	HH000140-HH000172
19.	Notice of Entry of Findings of Fact, Conclusions of Law and Judgment	06/01/2020	HH000173-HH000209
20.	Order Denying Defendant Taylor Association Management's Motion For An Award of Attorney's Fees and Interest	07/24/2020	HH000210-HH000214
21.	Notice of Entry of Order re Order Denying Defendant Taylor Association Management's Motion For An Award of Attorney's Fees and Interest	07/24/2020	HH000215-HH000222
Volume 2			
22.	Order re: Defendant Shea at Horizon Ridge Owners Association's Motion for Attorney's Fees, Costs and Interest	11/19/2020	HH000223-HH000236
23.	Notice of Entry of Order re Defendant Shea at Horizon Ridge Owners Association's Motion for Attorney's Fees, Costs and Interest	11/19/2020	HH000237-HH000254

Dated this 14th day of December, 2020.

McDONALD CARANO LLP

By: /s/ Pat Lundvall
Pat Lundvall (NSBN 3761)
lundvall@mcdonaldcarano.com
Amanda C. Yen (NSBN 9726)
ayen@mcdonaldcarano.com
2300 W. Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
Telephone: (702) 873-4100
Facsimile: (702) 873-9966

*Attorneys for Appellant Horizon
Holdings, 2900, LLC*

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDonald Carano LLP, and on the 14th day of December, 2020, a true and correct copy of the foregoing document was e-filed and e-served on all registered parties to the Supreme Court's electronic filing system:

/s/ Beau Nelson
An Employee of McDonald Carano LLP

Exhibit 22

1 **ORDR**

2 **DISTRICT COURT**

3 **CLARK COUNTY, NEVADA**

4
5 **HORIZON HOLDINGS 2900, LLC, a**
6 **Nevada limited liability company,**

7 **Plaintiff,**

8 **Vs.**

9 **SHEA AT HORIZON RIDGE OWNERS**
10 **ASSOCIATION, a Domestic Non-Profit**
11 **Corporation; TAYLOR MANAGEMENT**
12 **ASSOCIATION, a Nevada Limited-**
13 **Liability Company,**

14 **Defendants.**

Case No. A-17-758435-C
Dept. No. XXII

15 **ORDER RE: DEFENDANT SHEA AT HORIZON RIDGE OWNERS ASSOCIATION'S**
16 **MOTION FOR ATTORNEY'S FEES, COSTS AND INTEREST**

17 This matter concerning Defendant SHEA AT HORIZON RIDGE OWNERS'
18 ASSOCIATION'S Motion for Attorney's Fees, Costs and Interest filed June 12, 2020 came on for
19 hearing on the 11th day of August 2020 at 8:30 a.m. before Department XXII of the Eighth Judicial
20 District Court, in and for Clark County, Nevada, with JUDGE SUSAN JOHNSON presiding;
21 Plaintiff HORIZON HOLDINGS 2900, LLC appeared by and through its attorneys, ERIC B.
22 ZIMBELMAN, ESQ. of the law firm, PEEL BRIMLEY, and MATTHEW D. EKINS, ESQ. and
23 NATHAN E. LAWRENCE, ESQ. of the law firm, GALLIAN WELKER & BECKSTROM; and
24 Defendant SHEA AT HORIZON RIDGE OWNERS' ASSOCIATION appeared by and through its
25 attorney, BRIAN K. WALTERS, ESQ. of the law firm, GORDON REES SCULLY
26 MANSUKHANI. Having reviewed the papers and pleadings on file herein, heard oral
27
28 . . .

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

arguments of the attorneys and taken this matter under advisement, this Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT AND PROCEDURAL HISTORY

1. As set forth within its Second Amended Complaint filed November 28, 2018,¹ Plaintiff HORIZON HOLDINGS 2900, LLC sued Defendants SHEA AT HORIZON RIDGE OWNERS' ASSOCIATION (also referred to herein as the "ASSOCIATION") and its property manager, TAYLOR ASSOCIATION MANAGEMENT (also referred to herein as "TAM"), as a result of problems it has experienced with the heating, ventilation and air conditioning (also referred to as "HVAC") system located within its office unit in the common-interest community since Plaintiff assumed ownership thereof in early 2015. Plaintiff's causes of action lodged against these Defendants included: (1) breach of contract (against the ASSOCIATION only), (2) breach of good faith and fair dealing (against the ASSOCIATION only), (3) declaratory relief (against the ASSOCIATION only), (4) negligence (against both Defendants) and (5) negligent undertaking (against TAM only).

2. On August 16, 2019, the ASSOCIATION and TAM served their Offer of Judgment upon HORIZON HOLDINGS 2900, LLC, offering to allow judgment to be taken in favor of Plaintiff as against Defendants "in the total amount of FORTY THOUSAND DOLLARS (\$40,000.00) inclusive of costs and attorney's fees incurred to date, in accordance with Rule 68 of the Nevada Rules of Civil Procedure."² Plaintiff did not accept that Offer within the time frame set forth by NRCP 68.

3. On November 12, 2019, TAM and the ASSOCIATION filed their Motion for Summary Judgment seeking dismissal of the Second Amended Complaint in its entirety based upon

¹This case was originally instituted against, *inter alia*, the ASSOCIATION and TAM on July 14, 2017.

²See Exhibit C, Offer of Judgment, submitted in support of Defendant's Motion for Attorney's Fees, Costs and Interest filed June 12, 2020.

1 their affirmative defenses asserting HORIZON HOLDINGS 2900, LLC failed to mitigate its
2 damages. Separately, these Defendants sought summary judgment with respect to the negligence
3 and negligent undertaking claims contained in the Fourth and Fifth Claims for Relief upon the bases
4 (1) Plaintiff's claims are precluded by the economic loss doctrine, (2) TAM owed no independent
5 duty of care to HORIZON HOLDINGS 2900, LLC and (3) TAM did not render any services to
6 HORIZON HOLDINGS 2900, LLC.

7
8 **4.** On January 21, 2020, this Court heard Defendants' Motion for Summary Judgment.
9 At that hearing, HORIZON HOLDINGS 2900, LLC conceded the Fourth and Fifth Causes of Action
10 in favor of both the ASSOCIATION and TAM. Given the points and authorities set forth within
11 Defendants' motion as well as Plaintiff's concession, this Court granted Defendants' motion as it
12 sought judgment in their favor concerning the claims for negligence and negligent undertaking. It
13 denied Defendants' motion as it addressed Plaintiff's failure to mitigate its damages. While this
14 Court's decision did not wholly resolve all of Plaintiff's causes of action by summary judgment, it
15 did determine there was no remaining claim against the ASSOCIATION'S property manager, TAM.
16 The Order, granting in part, denying in part, Defendants' Motion for Summary Judgment, was filed
17 February 4, 2020; the Notice of Entry of Order was filed the same day.

18
19 **5.** Thereafter, the first three causes of action lodged by HORIZON HOLDINGS 2900,
20 LLC against the ASSOCIATION were tried before the Court for eight (8) days from February 3 to
21 12, 2020. On May 26, 2020, this Court issued its 33-page Findings of Fact, Conclusions of Law
22 and Judgment, finding in favor of the ASSOCIATION as against HORIZON HOLDINGS 2900,
23 LLC.
24

25 **6.** The ASSOCIATION now moves for reimbursement of its attorneys' fees, costs and
26 interest incurred in the defense of this matter upon the basis the Declaration of Commercial Office
27 Subdivision Covenants, Conditions & Restrictions and Reservations of Easements (hereinafter
28

1 referred to as “CC&Rs”) recorded against the commercial subdivision on May 27, 2005, Section
2 16.4(b), provide any judgment rendered in any action or proceeding to decide material breach of any
3 CC&Rs’ provisions shall include attorneys’ fees in such amount as the court may deem reasonable
4 in favor of the prevailing party.³ In this case, the ASSOCIATION was the prevailing party.
5 Notwithstanding such provision, the ASSOCIATION argues it prevailed with respect to its
6 \$40,000.00 Offer of Judgment served August 16, 2019, and therefore, it is entitled to reimbursement
7 of its attorneys’ fees and costs incurred from the time the Offer was made. Further, in addition to
8 the attorneys’ fees, costs and interest it seeks on its own behalf, the ASSOCIATION moves this
9 Court for reimbursement of attorneys’ fees, costs and interest it incurred in defending its property
10 manager, TAM; the ASSOCIATION was contractually obligated to indemnify and/or defend TAM
11 in the lawsuit filed by HORIZON HOLDINGS 2900, LLC. All in all, the ASSOCIATION seeks
12 \$321,472.00⁴ in attorney’s fees, \$42,143.78 in costs, and pre-judgment interest accruing on the costs.
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15 6. HORIZON HOLDINGS 2900, LLC opposes the motion upon the bases (1) the
16 ASSOCIATION did not incur the attorney’s fees; these charges were billed to another entity that is
17 not a party to the action, (2) the ASSOCIATION’S Offer of Judgment is invalid as it “was nothing
18 more than an unreasonable settlement offer masquerading as a Rule 68 Offer of Judgment because it
19 required Plaintiff to enter into a settlement agreement of vague and indeterminate terms[.]” (3) to the
20 extent this Court contemplates an award of attorney’s fees, it should deny all those attributable to
21 TAM whose own motion for attorney’s fees was denied, (4) the ASSOCIATION offers no authority
22 for the proposition it may seek an award of fees and costs for defending TAM pursuant to their
23 indemnification contract, and (5) if this Court is inclined to consider the ASSOCIATION’S motion,
24 fees should be denied or severely reduced because it failed to (i) apportion its fees between it and
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27
28 ³See Exhibit A, CCRs, submitted in support of Defendant’s Motion for Attorney’s Fees, Costs and Interest.

⁴Of this amount, \$213,915.50 was incurred after the Offer of Judgment was made.

1 TAM, (ii) demonstrate which fees are applicable to claims on which the ASSOCIATION was the
2 prevailing party and (iii) otherwise demonstrate the fees requested are reasonable.

3 **CONCLUSIONS OF LAW**

4 **Attorney's Fees**

5 1. Generally speaking, the district court may not award attorney fees absent authority
6 under a statute, rule, or contract. See Albios v. Horizon Communities, Inc., 122 Nev. 409, 132 P.3d
7 1022, 1028 (2006), citing State Department of Human Resources v. Fowler, 109 Nev. 782, 784, 858
8 P.2d 375, 376 (1993). In this case, HORIZON HOLDINGS 2900, LLC sued the ASSOCIATION,
9 alleging, *inter alia*, breach of contract or the CC&Rs.⁵ The ASSOCIATION now seeks
10 reimbursement of attorney fees based upon the CC&Rs, particularly Section 16.4(b), as well as
11 NRCP 68.
12

13 2. Section 16.4 of the relevant CC&Rs provides in salient part:
14

15 **Section 16.4 Enforcement.** Subject to Sections 16.15 and 16.16 below, this
16 Declaration may be enforced by each and every Owner as follows:

17 ...

18 (b) Material breach of any of the provisions contained in the Declaration
19 and the continuation of any such breach may be enjoined, abated or remedied by
20 appropriate legal or equitable proceedings instituted, in compliance with applicable
21 Nevada law, by any Owner, including Declarant so long as Declarant owns a Unit by
22 the Association, or by the successors-in-interest of the Association. *Any judgment
23 rendered in any action or proceeding pursuant hereto shall include a sum for
24 attorneys' fees in such amount as the court may deem reasonable, in favor of the
25 prevailing party, as well as the amount of any delinquent payment, interest thereon,
26 costs of collection and court costs.* Each Owner shall have a right of action against
27 any other Owner for any unreasonable and continuing failure to comply with
28 material and substantial provisions of this Declaration. (Emphasis added)

Here, both the unit owner, HORIZON HOLDINGS 2900, LLC, and the ASSOCIATION agreed, by
virtue of the CC&Rs, material breach of any provision may be remedied by appropriate legal or

⁵As set forth within the Findings of Fact, Conclusions of Law and Judgment filed May 26, 2020, pp. 25-26, this Court accepted the premise CC&Rs can impose contractual obligations upon both the association and unit owner.

1 equitable proceedings instituted by any owner. The CC&Rs clearly and unambiguously provided
2 any judgment rendered in an action or proceeding brought pursuant to the CC&Rs' Section 16.4(b)
3 *shall* include a sum for attorneys' fees in an amount the court may deem reasonable. Hence, not
4 only does this Court have authority to award attorney's fees, the parties specifically agreed any
5 judgment rendered *shall* or must include reasonable fees and costs.

6
7 **3.** Generally speaking, in determining the reasonableness of attorney's fees sought, the
8 Court must consider the factors set forth in the case, Brunzell v. Golden Gate National Bank, 85
9 Nev. 345, 349, 455 P.2d 31, 33 (1969), which include:

10 (1) the qualities of the advocate; his ability, training, education, experience,
11 professional standing and skill;

12 (2) the character of the work to be done: its difficulty, intricacy, importance, the
13 time and skill required, the responsibility imposed and the prominence and character of the
14 parties when they affect the importance of litigation;

15 (3) the work actually performed by the lawyer: the skill, time and attention given
16 to the work; and

17 (4) the result: whether the attorney was successful and what benefits were
18 derived.
19

20
21 **4.** With respect to the first factor, there is no question the qualities of the attorneys,
22 GORDON REES SCULLY MANSUKHANI, and particularly, ROBERT E. SCHUMACHER, ESQ.
23 and BRIAN K. WALTERS, ESQ., of whom this Court mostly dealt, are excellent. MR.
24 SCHUMACHER is the managing partner of the law firm's Las Vegas office, and as set forth on
25 page 15 of the Motion for Attorneys' Fees, he has over twenty-nine (29) years of legal experience.
26 His co-counsel, MR. WALTERS, is Senior Counsel with the law firm and has over fourteen (14)
27 years of legal experience. Both of these lawyers have significant experience dealing with
28

1 constructional defect cases, which include those involving HVAC systems. They have appeared
2 numerous times in unrelated matters before this Court since 2007 and have exhibited their
3 professional standing, skill and experience on each occasion. This Court finds both these lawyers
4 have the requisite ability, training, education, experience, professional standing and skill to defend
5 this case, and thus, concludes the first Brunzell factor is met.

6 **5.** The second factor to be considered is the character of the work to be done: its
7 difficulty, intricacy, importance, the time and skill required, the responsibility imposed and the
8 prominence and character of the parties when they affect the importance of litigation. Here, the
9 ASSOCIATION'S legal work involved analysis of the CC&Rs as they applied to the parties' rights
10 and responsibilities regarding the HVAC structure in question, the actual mechanism of the entire
11 building's HVAC and the problems with the system including the causes. As a consequence, the
12 legal work also encompassed the retention and use of mechanical and electrical engineering experts
13 in the investigation as well as in the trial work. The parties engaged in extensive discovery as well
14 as motion practice for about two and one-half years before the eight-day bench trial, which also
15 involved significant preparation. In summary, the work was difficult, intricate and required the
16 lawyers' substantial time and skill. In addition, the matter was hotly contested between the parties,
17 affecting the importance of this litigation. In sum, this Court concludes the second Brunzell factor is
18 met.
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21 **6.** A review of the attorneys' itemized billing demonstrates the third Brunzell factor is
22 also met. The work was performed by both lawyers and their paralegals where appropriate. The
23 lawyers' billing rate of \$270.00 is not only reasonable, but low given the attorneys' experience and
24 the prevailing charges of similar work within the Clark County community. The paralegal's hourly
25 rate of \$125.00 is also reasonable in light of the prevailing charges within the greater Las Vegas
26 valley. With the aforementioned said, this Court noted the billing also showed some double entries,
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1 duplicative work such as where two lawyers reviewed the same documents, entries that were so
2 redacted one could not ascertain what legal work was performed, charges for work conducted on
3 behalf of TAM, drafts of documents never filed, scan of paperwork for internal office record-
4 keeping and extensive reporting to the insurance carrier for which, in this Court's view, Plaintiff
5 should not be charged.

6
7 7. The attorneys were successful in that they obtained a defensive judgment in favor of
8 the ASSOCIATION. All in all, this Court concludes of the \$321,472.00 sought by the
9 ASSOCIATION, \$234,470.00 was reasonably and necessarily charged. This Court, therefore,
10 awards the ASSOCIATION \$234,470.00 in attorneys' fees as against HORIZON HOLDINGS 2900,
11 LLC pursuant to the CC&Rs' Section 16.4(b).

12
13 8. Notably, the ASSOCIATION proposed it should also be awarded attorneys' fees it
14 incurred in defending its property manager, TAM, as such was agreed upon by them in their
15 property management contract. This Court declines to do so for at least a couple of reasons. *First*,
16 HORIZON HOLDINGS 2900, LLC is not a party to that property management contract and,
17 presumably, had no notice of the "hold harmless" and "defend" provision. That is, while HORIZON
18 HOLDINGS 2900, LLC was aware of CC&Rs' Section 16.4(b) and thus, the risk it would be
19 assessed the ASSOCIATION'S attorneys' fees in the event it did not prevail in the litigation, it
20 could not have contemplated it would also be responsible for the ASSOCIATION'S indemnifying
21 the property manager for attorneys' fees. *Second*, Section 16.4(b) contemplates litigation in the
22 event of a material breach of the CC&Rs; here, not only is TAM not a party to the CC&Rs, and thus,
23 not entitled to its benefits such as for reimbursement of reasonable attorneys' fees and costs,⁶ but
24 also, it was not sued for breach of contract. The causes of action lodged against it were for
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28 ⁶Likewise, if HORIZON HOLDINGS 2900, LLC had been the prevailing party as against TAM, it would not
have been able to retrieve attorneys' fees against the property manager by virtue of the CC&Rs.

10. As it has determined the ASSOCIATION is the prevailing party and entitled to receive reimbursement of all reasonable attorneys' fees incurred in the defense of the matter by virtue of Section 16.4(b) of the CC&Rs, it is not necessary for this Court to analyze whether there is an entitlement to fees pursuant to NRCP 68 or from the time the Offer of Judgment was made in or about August 2019.

11. Notwithstanding Section 16.4(b) of the CC&Rs, NRS 18.020 sets forth costs must be allowed of course to the prevailing party against his adversary against whom judgment is rendered in an action where the plaintiff seeks to recover more than \$2,500.00. The determination of which expenses are allowed as costs is within the sound discretion of the trial court. Although this Court has wide discretion in awarding costs to prevailing parties, such is not without limits. *See Cadle Company v. Woods & Erickson*, 131 Nev. 114, 345 P.3d 1049 (2015). This discretion should be exercised sparingly when considering whether to allow expenses not specified by statute and precedent. *See Bergmann v. Boyce*, 109 Nev. 670, 679, 856 P.2d 560, 566 (1993).

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• • •

1 **12.** NRS 18.005 defines the “costs” recoverable by the prevailing party. They include:

- 2 1. Clerk’s fees.
- 3 2. Reporters’ fees for depositions, including a reporter’s fee for one copy of each
- 4 3. Jurors’ fees and expenses, together with reasonable compensation of an
- 5 4. Fees for witnesses at trial, pretrial hearings and deposing witnesses, unless the
- 6 5. Reasonable fees of not more than five expert witnesses in an amount of not
- 7 6. Reasonable fees of necessary interpreters.
- 8 7. The fee of any sheriff or licensed process server for the delivery or service of
- 9 any summons or subpoena used in the action, unless the court determines that the service was
- 10 not necessary.
- 11 8. Compensation for the official reporter or reporter pro tempore.
- 12 9. Reasonable costs for any bond or undertaking required as part of the action.
- 13 10. Fees of a court bailiff or deputy marshal who was required to work overtime.
- 14 11. Reasonable costs for telecopies.
- 15 12. Reasonable costs for photocopies.
- 16 13. Reasonable costs for long distance telephone calls.
- 17 14. Reasonable costs for postage.
- 18 15. Reasonable costs for travel and lodging incurred taking depositions and
- 19 conducting discovery.
- 20 16. Fees charged pursuant to NRS 19.0335.
- 21 17. Any other reasonable and necessary expense incurred in connection with the
- 22 action, including reasonable and necessary expenses for computerized services for legal
- 23 research.

24 **13.** NRS 18.110 sets forth the procedure by which the prevailing party seeks

25 reimbursement of its taxable costs:

26 1. The party in whose favor judgment is rendered, and who claims costs, must file with

27 the clerk, and serve a copy upon the adverse party, within 5 days after the entry of judgment,

28 or such further time as the court or judge may grant, a memorandum of the items of the costs

 in the action or proceeding, which memorandum must be verified by the oath of the party, or

 the party’s attorney or agent, or by the clerk of the party’s attorney, stating that to the best of

 his or her knowledge and belief the items are correct, and that the costs have been necessarily

 incurred in the action or proceeding.

 ...

 4. Within 3 days after service of a copy of the memorandum, the adverse party may

 move the court, upon 2 days’ notice, to retax and settle the costs, notice of which motion

1 shall be filed and served on the prevailing party claiming costs. Upon the hearing of the
2 motion the court or judge shall settle the costs.

3 **14.** As noted above, the ASSOCIATION seeks reimbursement of \$42,143.78 in costs as
4 set forth within its Memorandum of Costs and Disbursements filed June 1, 2020, which was the
5 same day notice of entry of judgment was filed:

6	Court Fees	\$ 352.75
7	Court Reporter-Deposition Transcripts	4,373.22
8	Witness Fees	2,962.40
9	Expert Witness Fees	18,715.96
10	Process Server	422.50
11	Official Court Reporter/Recorder	9,096.71
12	Photocopies (Outside Printing/Copying)	2,457.04
13	Long Distance Telephone	10.65
14	Postage/Shipping	58.74
15	Mediation Service	<u>3,676.29</u>

16 **Total:** **\$42,143.78**

17 HORIZON HOLDINGS 2900, LLC never challenged these costs by way of a motion to re-tax. *See*
18 NRS 18.110(4). With that said, this Court declines the ASSOCIATION'S request for an award of
19 mediation fees as such were spent in efforts to resolve the matter outside of the courthouse; they are
20 not costs necessarily incurred in litigation. This Court therefore awards the ASSOCIATION
21 \$38,467.49 in taxable costs.


22 Accordingly, based upon the foregoing Findings of Fact and Conclusions of Law,

23 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** Defendant SHEA AT
24 HORIZON RIDGE OWNERS' ASSOCIATION'S Motion for Attorney's Fees, Costs and Interest
25 filed June 12, 2020 is granted in part, denied in part. Of the \$321,472.00 attorneys' fees sought, this
26 Court concludes \$234,470.00 was reasonably and necessarily incurred, and thus, awards
27 \$234,470.00 to Defendant SHEA AT HORIZON RIDGE OWNERS' ASSOCIATION as against
28 HORIZON HOLDINGS 2900, LLC pursuant to Section 16.4(b) of the pertinent CC&Rs. This
Court also awards the ASSOCIATION \$38,467.49 as reasonable, taxable costs.

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IT IS FURTHER ORDERED, ADJUDGED AND DECREED Defendant shall receive no
award of pre-judgment interest; however, post-judgment interest shall accrue at the legal rate of
interest as set forth in NRS 99.040 until the attorneys' fees and costs set forth above are paid or
otherwise satisfied.

Dated this 19th day of November, 2020



SUSAN H. JOHNSON, DISTRICT COURT JUDGE

75A D15 0F46 84DF
Susan Johnson
District Court Judge

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Horizon Holdings 2900 LLC,
7 Plaintiff(s)

CASE NO: A-17-758435-C

8 vs.

DEPT. NO. Department 22

9 Shea at Horizon Ridge Owners
10 Association, Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 11/19/2020

16 Rosey Jeffrey	rjeffrey@peelbrimley.com
17 Terri Hansen	thansen@peelbrimley.com
18 Amanda Armstrong	aarmstrong@peelbrimley.com
19 Eric Zimbelman	ezimbelman@peelbrimley.com
20 Brian Walters	bwalters@grsm.com
21 Brian Walters	bwalters@grsm.com
22 Robert Schumacher	rschumacher@grsm.com
23 Sean Owens	sowens@grsm.com
24 Cristina Pagaduan	cpagaduan@grsm.com
25 Andrea Montero	amontero@grsm.com

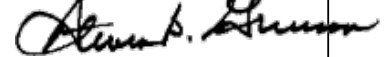
1	Debbie Kingham	dkingham@grsm.com
2		
3	Kaitlyn Caswell	kcaswell@grsm.com
4	E-serve GRSM	WL_LVSupport@grsm.com
5	Nathan Lawrence	nlawrence@vegascase.com
6	Matthew Ekins	matt@utahcase.com

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Exhibit 23

Gordon Rees Scully Mansukhani, LLP
300 S. 4th Street, Suite 1550
Las Vegas, NV 89101

Electronically Filed
11/19/2020 12:38 PM
Steven D. Grierson
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1 **NEOJ**
2 ROBERT E. SCHUMACHER
3 Nevada Bar No. 7504
4 BRIAN K. WALTERS
5 Nevada Bar No. 9711
6 **GORDON REES SCULLY MANSUKHANI LLP**
7 300 S. 4th Street, Suite 1550
8 Las Vegas, NV 89101
9 Telephone: (702) 577-9339
10 Facsimile: (702) 255-2858
11 Email: rschumacher@grsm.com
12 bwalters@grsm.com

13 *Attorneys for Defendants*
14 *Shea at Horizon Ridge Owners Association and Taylor Association Management*

15 **EIGHTH JUDICIAL DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 HORIZON HOLDINGS 2900, LLC, a Nevada) CASE NO. A-17-758435-C
18 limited liability company;) DEPT. NO.: XXII

19 Plaintiff,)

20 vs.)

21 SHEA AT HORIZON RIDGE OWNERS)
22 ASSOCIATION, a Domestic Non-Profit)
23 Corporation, TAYLOR MANAGEMENT)
24 ASSOCIATION, a Nevada Limited-Liability)
25 Company;)

26 Defendants.)

**NOTICE OF ENTRY OF ORDER RE
DEFENDANT SHEA AT HORIZON
RIDGE OWNERS ASSOCIATION'S
MOTION FOR ATTORNEY'S FEES,
COSTS AND INTEREST**

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Gordon Rees Scully Mansukhani, LLP
300 S. 4th Street, Suite 1550
Las Vegas, NV 89101

**NOTICE OF ENTRY OF ORDER RE DEFENDANT SHEA AT HORIZON RIDGE
OWNERS ASSOCIATION'S MOTION FOR ATTORNEY'S FEES, COSTS AND
INTEREST**

PLEASE TAKE NOTICE that on November 19, 2020 an **ORDER RE DEFENDANT
SHEA AT HORIZON RIDGE OWNERS ASSOCIATION'S MOTION FOR
ATTORNEY'S FEES, COSTS AND INTEREST** was entered in the above-entitled matter, a
copy of which is attached hereto as **Exhibit "1."**

DATED this 19th day of November 2020.

**GORDON REES SCULLY
MANSUKHANI LLP**

/s/ Robert E. Schumacher

ROBERT E. SCHUMACHER, ESQ.
Nevada Bar No. 7504
BRIAN K. WALTERS, ESQ.
Nevada Bar No. 9711
300 South 4th Street, Suite 1550
Las Vegas, NV 89101
*Attorneys for Defendants,
Shea at Horizon Ridge Owners
Association and Taylor Management
Association*

Gordon Rees Scully Mansukhani, LLP
300 S. 4th Street, Suite 1550
Las Vegas, NV 89101

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of November 2020, I served a true and correct copy of **NOTICE OF ENTRY OF ORDER RE DEFENDANT SHEA AT HORIZON RIDGE OWNERS ASSOCIATION'S MOTION FOR ATTORNEY'S FEES, COSTS AND INTEREST** via the Court's Electronic Filing/Service system upon all parties on the E-Service Master List as follows:

Eric Zimbelman, Esq.
PEEL BRIMLEY, LLP
3333 E. Serene Avenue, Suite 200
Henderson, Nevada 89074
Email: ezimbelman@peelbrimley.com

Matthew D. Ekins, Esq.
Nathan E. Lawrence, Esq.
GALLIAN WELKER & BECKSTROM, L.C.
540 East St. Louis Avenue
Las Vegas, Nevada 89104
Attorneys for Plaintiff
Horizon Holdings 2900, LLC

/s/ Andrea Montero
An employee of Gordon Rees Scully
Mansukhani LLP

EXHIBIT 1

EXHIBIT 1

1 **ORDR**

2 **DISTRICT COURT**

3 **CLARK COUNTY, NEVADA**

4
5 **HORIZON HOLDINGS 2900, LLC, a**
6 **Nevada limited liability company,**

7 **Plaintiff,**

8 **Vs.**

9 **SHEA AT HORIZON RIDGE OWNERS**
10 **ASSOCIATION, a Domestic Non-Profit**
11 **Corporation; TAYLOR MANAGEMENT**
12 **ASSOCIATION, a Nevada Limited-**
13 **Liability Company,**

14 **Defendants.**

Case No. A-17-758435-C
Dept. No. XXII

15 **ORDER RE: DEFENDANT SHEA AT HORIZON RIDGE OWNERS ASSOCIATION'S**
16 **MOTION FOR ATTORNEY'S FEES, COSTS AND INTEREST**

17 This matter concerning Defendant SHEA AT HORIZON RIDGE OWNERS'
18 ASSOCIATION'S Motion for Attorney's Fees, Costs and Interest filed June 12, 2020 came on for
19 hearing on the 11th day of August 2020 at 8:30 a.m. before Department XXII of the Eighth Judicial
20 District Court, in and for Clark County, Nevada, with JUDGE SUSAN JOHNSON presiding;
21 Plaintiff HORIZON HOLDINGS 2900, LLC appeared by and through its attorneys, ERIC B.
22 ZIMBELMAN, ESQ. of the law firm, PEEL BRIMLEY, and MATTHEW D. EKINS, ESQ. and
23 NATHAN E. LAWRENCE, ESQ. of the law firm, GALLIAN WELKER & BECKSTROM; and
24 Defendant SHEA AT HORIZON RIDGE OWNERS' ASSOCIATION appeared by and through its
25 attorney, BRIAN K. WALTERS, ESQ. of the law firm, GORDON REES SCULLY
26 MANSUKHANI. Having reviewed the papers and pleadings on file herein, heard oral
27
28 . . .

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

arguments of the attorneys and taken this matter under advisement, this Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT AND PROCEDURAL HISTORY

1. As set forth within its Second Amended Complaint filed November 28, 2018,¹ Plaintiff HORIZON HOLDINGS 2900, LLC sued Defendants SHEA AT HORIZON RIDGE OWNERS' ASSOCIATION (also referred to herein as the "ASSOCIATION") and its property manager, TAYLOR ASSOCIATION MANAGEMENT (also referred to herein as "TAM"), as a result of problems it has experienced with the heating, ventilation and air conditioning (also referred to as "HVAC") system located within its office unit in the common-interest community since Plaintiff assumed ownership thereof in early 2015. Plaintiff's causes of action lodged against these Defendants included: (1) breach of contract (against the ASSOCIATION only), (2) breach of good faith and fair dealing (against the ASSOCIATION only), (3) declaratory relief (against the ASSOCIATION only), (4) negligence (against both Defendants) and (5) negligent undertaking (against TAM only).

2. On August 16, 2019, the ASSOCIATION and TAM served their Offer of Judgment upon HORIZON HOLDINGS 2900, LLC, offering to allow judgment to be taken in favor of Plaintiff as against Defendants "in the total amount of FORTY THOUSAND DOLLARS (\$40,000.00) inclusive of costs and attorney's fees incurred to date, in accordance with Rule 68 of the Nevada Rules of Civil Procedure."² Plaintiff did not accept that Offer within the time frame set forth by NRCP 68.

3. On November 12, 2019, TAM and the ASSOCIATION filed their Motion for Summary Judgment seeking dismissal of the Second Amended Complaint in its entirety based upon

¹This case was originally instituted against, *inter alia*, the ASSOCIATION and TAM on July 14, 2017.

²See Exhibit C, Offer of Judgment, submitted in support of Defendant's Motion for Attorney's Fees, Costs and Interest filed June 12, 2020.

1 their affirmative defenses asserting HORIZON HOLDINGS 2900, LLC failed to mitigate its
2 damages. Separately, these Defendants sought summary judgment with respect to the negligence
3 and negligent undertaking claims contained in the Fourth and Fifth Claims for Relief upon the bases
4 (1) Plaintiff's claims are precluded by the economic loss doctrine, (2) TAM owed no independent
5 duty of care to HORIZON HOLDINGS 2900, LLC and (3) TAM did not render any services to
6 HORIZON HOLDINGS 2900, LLC.
7

8 **4.** On January 21, 2020, this Court heard Defendants' Motion for Summary Judgment.
9 At that hearing, HORIZON HOLDINGS 2900, LLC conceded the Fourth and Fifth Causes of Action
10 in favor of both the ASSOCIATION and TAM. Given the points and authorities set forth within
11 Defendants' motion as well as Plaintiff's concession, this Court granted Defendants' motion as it
12 sought judgment in their favor concerning the claims for negligence and negligent undertaking. It
13 denied Defendants' motion as it addressed Plaintiff's failure to mitigate its damages. While this
14 Court's decision did not wholly resolve all of Plaintiff's causes of action by summary judgment, it
15 did determine there was no remaining claim against the ASSOCIATION'S property manager, TAM.
16 The Order, granting in part, denying in part, Defendants' Motion for Summary Judgment, was filed
17 February 4, 2020; the Notice of Entry of Order was filed the same day.
18

19 **5.** Thereafter, the first three causes of action lodged by HORIZON HOLDINGS 2900,
20 LLC against the ASSOCIATION were tried before the Court for eight (8) days from February 3 to
21 12, 2020. On May 26, 2020, this Court issued its 33-page Findings of Fact, Conclusions of Law
22 and Judgment, finding in favor of the ASSOCIATION as against HORIZON HOLDINGS 2900,
23 LLC.
24

25 **6.** The ASSOCIATION now moves for reimbursement of its attorneys' fees, costs and
26 interest incurred in the defense of this matter upon the basis the Declaration of Commercial Office
27 Subdivision Covenants, Conditions & Restrictions and Reservations of Easements (hereinafter
28

1 referred to as “CC&Rs”) recorded against the commercial subdivision on May 27, 2005, Section
2 16.4(b), provide any judgment rendered in any action or proceeding to decide material breach of any
3 CC&Rs’ provisions shall include attorneys’ fees in such amount as the court may deem reasonable
4 in favor of the prevailing party.³ In this case, the ASSOCIATION was the prevailing party.
5 Notwithstanding such provision, the ASSOCIATION argues it prevailed with respect to its
6 \$40,000.00 Offer of Judgment served August 16, 2019, and therefore, it is entitled to reimbursement
7 of its attorneys’ fees and costs incurred from the time the Offer was made. Further, in addition to
8 the attorneys’ fees, costs and interest it seeks on its own behalf, the ASSOCIATION moves this
9 Court for reimbursement of attorneys’ fees, costs and interest it incurred in defending its property
10 manager, TAM; the ASSOCIATION was contractually obligated to indemnify and/or defend TAM
11 in the lawsuit filed by HORIZON HOLDINGS 2900, LLC. All in all, the ASSOCIATION seeks
12 \$321,472.00⁴ in attorney’s fees, \$42,143.78 in costs, and pre-judgment interest accruing on the costs.
13
14

15 6. HORIZON HOLDINGS 2900, LLC opposes the motion upon the bases (1) the
16 ASSOCIATION did not incur the attorney’s fees; these charges were billed to another entity that is
17 not a party to the action, (2) the ASSOCIATION’S Offer of Judgment is invalid as it “was nothing
18 more than an unreasonable settlement offer masquerading as a Rule 68 Offer of Judgment because it
19 required Plaintiff to enter into a settlement agreement of vague and indeterminate terms[.]” (3) to the
20 extent this Court contemplates an award of attorney’s fees, it should deny all those attributable to
21 TAM whose own motion for attorney’s fees was denied, (4) the ASSOCIATION offers no authority
22 for the proposition it may seek an award of fees and costs for defending TAM pursuant to their
23 indemnification contract, and (5) if this Court is inclined to consider the ASSOCIATION’S motion,
24 fees should be denied or severely reduced because it failed to (i) apportion its fees between it and
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28 ³See Exhibit A, CCRs, submitted in support of Defendant’s Motion for Attorney’s Fees, Costs and Interest.

⁴Of this amount, \$213,915.50 was incurred after the Offer of Judgment was made.

1 TAM, (ii) demonstrate which fees are applicable to claims on which the ASSOCIATION was the
2 prevailing party and (iii) otherwise demonstrate the fees requested are reasonable.

3 **CONCLUSIONS OF LAW**

4 **Attorney's Fees**

5 1. Generally speaking, the district court may not award attorney fees absent authority
6 under a statute, rule, or contract. See Albios v. Horizon Communities, Inc., 122 Nev. 409, 132 P.3d
7 1022, 1028 (2006), citing State Department of Human Resources v. Fowler, 109 Nev. 782, 784, 858
8 P.2d 375, 376 (1993). In this case, HORIZON HOLDINGS 2900, LLC sued the ASSOCIATION,
9 alleging, *inter alia*, breach of contract or the CC&Rs.⁵ The ASSOCIATION now seeks
10 reimbursement of attorney fees based upon the CC&Rs, particularly Section 16.4(b), as well as
11 NRCP 68.
12

13 2. Section 16.4 of the relevant CC&Rs provides in salient part:
14

15 **Section 16.4 Enforcement.** Subject to Sections 16.15 and 16.16 below, this
16 Declaration may be enforced by each and every Owner as follows:

17 ...

18 (b) Material breach of any of the provisions contained in the Declaration
19 and the continuation of any such breach may be enjoined, abated or remedied by
20 appropriate legal or equitable proceedings instituted, in compliance with applicable
21 Nevada law, by any Owner, including Declarant so long as Declarant owns a Unit by
22 the Association, or by the successors-in-interest of the Association. *Any judgment
23 rendered in any action or proceeding pursuant hereto shall include a sum for
24 attorneys' fees in such amount as the court may deem reasonable, in favor of the
25 prevailing party, as well as the amount of any delinquent payment, interest thereon,
26 costs of collection and court costs.* Each Owner shall have a right of action against
27 any other Owner for any unreasonable and continuing failure to comply with
28 material and substantial provisions of this Declaration. (Emphasis added)

Here, both the unit owner, HORIZON HOLDINGS 2900, LLC, and the ASSOCIATION agreed, by
virtue of the CC&Rs, material breach of any provision may be remedied by appropriate legal or

⁵As set forth within the Findings of Fact, Conclusions of Law and Judgment filed May 26, 2020, pp. 25-26, this Court accepted the premise CC&Rs can impose contractual obligations upon both the association and unit owner.

1 equitable proceedings instituted by any owner. The CC&Rs clearly and unambiguously provided
2 any judgment rendered in an action or proceeding brought pursuant to the CC&Rs' Section 16.4(b)
3 *shall* include a sum for attorneys' fees in an amount the court may deem reasonable. Hence, not
4 only does this Court have authority to award attorney's fees, the parties specifically agreed any
5 judgment rendered *shall* or must include reasonable fees and costs.

6
7 **3.** Generally speaking, in determining the reasonableness of attorney's fees sought, the
8 Court must consider the factors set forth in the case, Brunzell v. Golden Gate National Bank, 85
9 Nev. 345, 349, 455 P.2d 31, 33 (1969), which include:

10 (1) the qualities of the advocate; his ability, training, education, experience,
11 professional standing and skill;

12 (2) the character of the work to be done: its difficulty, intricacy, importance, the
13 time and skill required, the responsibility imposed and the prominence and character of the
14 parties when they affect the importance of litigation;

15 (3) the work actually performed by the lawyer: the skill, time and attention given
16 to the work; and

17 (4) the result: whether the attorney was successful and what benefits were
18 derived.
19

20
21 **4.** With respect to the first factor, there is no question the qualities of the attorneys,
22 GORDON REES SCULLY MANSUKHANI, and particularly, ROBERT E. SCHUMACHER, ESQ.
23 and BRIAN K. WALTERS, ESQ., of whom this Court mostly dealt, are excellent. MR.
24 SCHUMACHER is the managing partner of the law firm's Las Vegas office, and as set forth on
25 page 15 of the Motion for Attorneys' Fees, he has over twenty-nine (29) years of legal experience.
26 His co-counsel, MR. WALTERS, is Senior Counsel with the law firm and has over fourteen (14)
27 years of legal experience. Both of these lawyers have significant experience dealing with
28

1 constructional defect cases, which include those involving HVAC systems. They have appeared
2 numerous times in unrelated matters before this Court since 2007 and have exhibited their
3 professional standing, skill and experience on each occasion. This Court finds both these lawyers
4 have the requisite ability, training, education, experience, professional standing and skill to defend
5 this case, and thus, concludes the first Brunzell factor is met.

6 **5.** The second factor to be considered is the character of the work to be done: its
7 difficulty, intricacy, importance, the time and skill required, the responsibility imposed and the
8 prominence and character of the parties when they affect the importance of litigation. Here, the
9 ASSOCIATION'S legal work involved analysis of the CC&Rs as they applied to the parties' rights
10 and responsibilities regarding the HVAC structure in question, the actual mechanism of the entire
11 building's HVAC and the problems with the system including the causes. As a consequence, the
12 legal work also encompassed the retention and use of mechanical and electrical engineering experts
13 in the investigation as well as in the trial work. The parties engaged in extensive discovery as well
14 as motion practice for about two and one-half years before the eight-day bench trial, which also
15 involved significant preparation. In summary, the work was difficult, intricate and required the
16 lawyers' substantial time and skill. In addition, the matter was hotly contested between the parties,
17 affecting the importance of this litigation. In sum, this Court concludes the second Brunzell factor is
18 met.
19

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21 **6.** A review of the attorneys' itemized billing demonstrates the third Brunzell factor is
22 also met. The work was performed by both lawyers and their paralegals where appropriate. The
23 lawyers' billing rate of \$270.00 is not only reasonable, but low given the attorneys' experience and
24 the prevailing charges of similar work within the Clark County community. The paralegal's hourly
25 rate of \$125.00 is also reasonable in light of the prevailing charges within the greater Las Vegas
26 valley. With the aforementioned said, this Court noted the billing also showed some double entries,
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1 duplicative work such as where two lawyers reviewed the same documents, entries that were so
2 redacted one could not ascertain what legal work was performed, charges for work conducted on
3 behalf of TAM, drafts of documents never filed, scan of paperwork for internal office record-
4 keeping and extensive reporting to the insurance carrier for which, in this Court's view, Plaintiff
5 should not be charged.

6
7 7. The attorneys were successful in that they obtained a defensive judgment in favor of
8 the ASSOCIATION. All in all, this Court concludes of the \$321,472.00 sought by the
9 ASSOCIATION, \$234,470.00 was reasonably and necessarily charged. This Court, therefore,
10 awards the ASSOCIATION \$234,470.00 in attorneys' fees as against HORIZON HOLDINGS 2900,
11 LLC pursuant to the CC&Rs' Section 16.4(b).

12
13 8. Notably, the ASSOCIATION proposed it should also be awarded attorneys' fees it
14 incurred in defending its property manager, TAM, as such was agreed upon by them in their
15 property management contract. This Court declines to do so for at least a couple of reasons. *First*,
16 HORIZON HOLDINGS 2900, LLC is not a party to that property management contract and,
17 presumably, had no notice of the "hold harmless" and "defend" provision. That is, while HORIZON
18 HOLDINGS 2900, LLC was aware of CC&Rs' Section 16.4(b) and thus, the risk it would be
19 assessed the ASSOCIATION'S attorneys' fees in the event it did not prevail in the litigation, it
20 could not have contemplated it would also be responsible for the ASSOCIATION'S indemnifying
21 the property manager for attorneys' fees. *Second*, Section 16.4(b) contemplates litigation in the
22 event of a material breach of the CC&Rs; here, not only is TAM not a party to the CC&Rs, and thus,
23 not entitled to its benefits such as for reimbursement of reasonable attorneys' fees and costs,⁶ but
24 also, it was not sued for breach of contract. The causes of action lodged against it were for
25
26

27
28 ⁶Likewise, if HORIZON HOLDINGS 2900, LLC had been the prevailing party as against TAM, it would not
have been able to retrieve attorneys' fees against the property manager by virtue of the CC&Rs.

9. HORIZON HOLDINGS 2900, LLC argues it should not be assessed any attorneys' fees as another entity actually incurred the ASSOCIATION'S defense expenses. In this Court's view, it matters not that a liability insurance carrier assumed the ASSOCIATION'S defense. HORIZON HOLDINGS 2900, LLC is not entitled to the benefit of the ASSOCIATION'S forethought in paying premiums and acquiring liability insurance. If the ASSOCIATION had not done so, it necessarily would have incurred such attorneys' fees and litigation costs.

Litigation Costs

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• • •

1 **12.** NRS 18.005 defines the “costs” recoverable by the prevailing party. They include:

- 2 1. Clerk’s fees.
- 3 2. Reporters’ fees for depositions, including a reporter’s fee for one copy of each
- 4 3. Jurors’ fees and expenses, together with reasonable compensation of an
- 5 4. Fees for witnesses at trial, pretrial hearings and deposing witnesses, unless the
- 6 5. Reasonable fees of not more than five expert witnesses in an amount of not
- 7 6. Reasonable fees of necessary interpreters.
- 8 7. The fee of any sheriff or licensed process server for the delivery or service of
- 9 8. Compensation for the official reporter or reporter pro tempore.
- 10 9. Reasonable costs for any bond or undertaking required as part of the action.
- 11 10. Fees of a court bailiff or deputy marshal who was required to work overtime.
- 12 11. Reasonable costs for telecopies.
- 13 12. Reasonable costs for photocopies.
- 14 13. Reasonable costs for long distance telephone calls.
- 15 14. Reasonable costs for postage.
- 16 15. Reasonable costs for travel and lodging incurred taking depositions and
- 17 16. Fees charged pursuant to NRS 19.0335.
- 18 17. Any other reasonable and necessary expense incurred in connection with the
- 19 action, including reasonable and necessary expenses for computerized services for legal
- 20 research.

21 **13.** NRS 18.110 sets forth the procedure by which the prevailing party seeks

22 reimbursement of its taxable costs:

23 1. The party in whose favor judgment is rendered, and who claims costs, must file with

24 the clerk, and serve a copy upon the adverse party, within 5 days after the entry of judgment,

25 or such further time as the court or judge may grant, a memorandum of the items of the costs

26 in the action or proceeding, which memorandum must be verified by the oath of the party, or

27 the party’s attorney or agent, or by the clerk of the party’s attorney, stating that to the best of

28 his or her knowledge and belief the items are correct, and that the costs have been necessarily

 incurred in the action or proceeding.

 4. Within 3 days after service of a copy of the memorandum, the adverse party may

 move the court, upon 2 days’ notice, to retax and settle the costs, notice of which motion

1 shall be filed and served on the prevailing party claiming costs. Upon the hearing of the
2 motion the court or judge shall settle the costs.

3 **14.** As noted above, the ASSOCIATION seeks reimbursement of \$42,143.78 in costs as
4 set forth within its Memorandum of Costs and Disbursements filed June 1, 2020, which was the
5 same day notice of entry of judgment was filed:

6	Court Fees	\$ 352.75
7	Court Reporter-Deposition Transcripts	4,373.22
8	Witness Fees	2,962.40
9	Expert Witness Fees	18,715.96
10	Process Server	422.50
11	Official Court Reporter/Recorder	9,096.71
12	Photocopies (Outside Printing/Copying)	2,457.04
13	Long Distance Telephone	10.65
14	Postage/Shipping	58.74
15	Mediation Service	<u>3,676.29</u>

16 **Total:** **\$42,143.78**

17 HORIZON HOLDINGS 2900, LLC never challenged these costs by way of a motion to re-tax. *See*
18 NRS 18.110(4). With that said, this Court declines the ASSOCIATION'S request for an award of
19 mediation fees as such were spent in efforts to resolve the matter outside of the courthouse; they are
20 not costs necessarily incurred in litigation. This Court therefore awards the ASSOCIATION
21 \$38,467.49 in taxable costs.

22 Accordingly, based upon the foregoing Findings of Fact and Conclusions of Law,

23 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** Defendant SHEA AT
24 HORIZON RIDGE OWNERS' ASSOCIATION'S Motion for Attorney's Fees, Costs and Interest
25 filed June 12, 2020 is granted in part, denied in part. Of the \$321,472.00 attorneys' fees sought, this
26 Court concludes \$234,470.00 was reasonably and necessarily incurred, and thus, awards
27 \$234,470.00 to Defendant SHEA AT HORIZON RIDGE OWNERS' ASSOCIATION as against
28 HORIZON HOLDINGS 2900, LLC pursuant to Section 16.4(b) of the pertinent CC&Rs. This
Court also awards the ASSOCIATION \$38,467.49 as reasonable, taxable costs.

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IT IS FURTHER ORDERED, ADJUDGED AND DECREED Defendant shall receive no
award of pre-judgment interest; however, post-judgment interest shall accrue at the legal rate of
interest as set forth in NRS 99.040 until the attorneys' fees and costs set forth above are paid or
otherwise satisfied.

Dated this 19th day of November, 2020



SUSAN H. JOHNSON, DISTRICT COURT JUDGE

75A D15 0F46 84DF
Susan Johnson
District Court Judge

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Horizon Holdings 2900 LLC,
7 Plaintiff(s)

CASE NO: A-17-758435-C

8 vs.

DEPT. NO. Department 22

9 Shea at Horizon Ridge Owners
10 Association, Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 11/19/2020

16 Rosey Jeffrey	rjeffrey@peelbrimley.com
17 Terri Hansen	thansen@peelbrimley.com
18 Amanda Armstrong	aarmstrong@peelbrimley.com
19 Eric Zimbelman	ezimbelman@peelbrimley.com
20 Brian Walters	bwalters@grsm.com
21 Brian Walters	bwalters@grsm.com
22 Robert Schumacher	rschumacher@grsm.com
23 Sean Owens	sowens@grsm.com
24 Cristina Pagaduan	cpagaduan@grsm.com
25 Andrea Montero	amontero@grsm.com

1	Debbie Kingham	dkingham@grsm.com
2		
3	Kaitlyn Caswell	kcaswell@grsm.com
4	E-serve GRSM	WL_LVSupport@grsm.com
5	Nathan Lawrence	nlawrence@vegascase.com
6	Matthew Ekins	matt@utahcase.com

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