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Attorneys for Defendant

Elk Point Country Club Homeowners Assn., Inc.

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Douglas County
District Court Clerk

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2021 FEB -4 PM 4:05

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Electronically Filed
Feb 17 2021 02:39 p.m.

Elizabeth A. Brown
Clerk of Supreme Court

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

K. J. BROWN, L.L.C., a Nevada limited
liability company; and TIMOTHY D.
GILBERT and NANCY AVANZINO
GILBERT, as trustees of the TIMOTHY D.
GILBERT AND NANCY AVANZINO
GILBERT REVOCABLE FAMILY TRUST
DATED DECEMBER 27, 2013.

Plaintiffs,

v.

ELK POINT COUNTRY CLUB
HOMEOWNERS, ASSOCIATION, INC., also
known as ELK POINT COUNTRY CLUB,
INC., a Nevada non- profit, non-stock
corporation : and DOES 1-50, inclusive;

Defendants.

CASE NO.: 2020-CV-0124

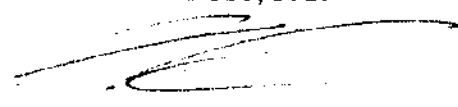
DEPT: I

NOTICE OF APPEAL

1 Notice is hereby given that ELK POINT COUNTRY HOMEOWNERS'
2 ASSOCIATION, INC., defendant above named, hereby appeals to the Supreme Court of Nevada
3 from the Order Granting Plaintiff's Motion for Preliminary Injunction entered in this action on
4 the 5th day of January, 2021, and served on the undersigned counsel on the 8th day of January,
5 2021, attached as Exhibit A.

6 DATED this 4th day of February, 2021.

7
8 **RESNICK & LOUIS, P.C.**

9
10 
11 _____
12 PRESCOTT JONES
13 Nevada Bar No. 11617
14 JOSHUA ANG
15 Nevada Bar No. 14026
16 8925 W. Russell Road, Suite 220
17 Las Vegas, NV 89148
18 *Attorneys for Defendant.*
19 *Elk Point Country Club Homeowners Ass'n, Inc.*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing **NOTICE OF APPEAL** was served this 4th day of February, 2021. by:

☒ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada, addressed as set forth below.

☐ **BY FACSIMILE:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document.

☐ **BY PERSONAL SERVICE:** by causing personal delivery by an employee of Resnick & Louis, P.C. of the document(s) listed above to the person(s) at the address(es) set forth below.

John E. Leach, Esq.

Gayle A. Kern, Esq.

Sophie A. Karadanis, Esq.

LEACH KERN GROCHOW ANDERSON SONG

5421 Kietzke Lane, Ste. 200

Reno, Nevada 89511

Attorneys for Plaintiffs

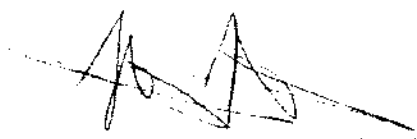

An Employee of Resnick & Louis, P.C.

EXHIBIT A

1 **GAYLE A. KERN, ESQ.**

2 Nevada Bar No. 1620

3 **SOPHIE A. KARADANIS, ESQ.**

4 Nevada Bar No. 12006

5 **LEACH KERN GRUCHOW ANDERSON SONG**

6 5421 Kietzke Lane, Ste. 200

7 Reno, Nevada 89511

8 Tel: (775) 324-5930

9 Fax: (775) 324-6173

10 E-Mail: gkern@lkglawfirm.com

11 E-Mail: skaradanis@lkglawfirm.com

12 *Attorneys for Plaintiffs*

13 **IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

14 **IN AND FOR COUNTY OF DOUGLAS**

15 K. J. BROWN, L.L.C., a Nevada limited
16 liability company; and TIMOTHY D.
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18 GILBERT, as trustees of the TIMOTHY D.
19 GILBERT AND NANCY AVANZINO
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21 DATED DECEMBER 27, 2013,

22 Plaintiffs,

23 v.

24 ELK POINT COUNTRY CLUB
25 HOMEOWNERS ASSOCIATION, INC., also
26 known as ELK POINT COUNTRY CLUB,
27 INC., a Nevada non-profit, non-stock
28 corporation; and DOES 1-50, inclusive,

Defendant.

CASE NO.: 2020 CV 00124

DEPT. NO.: 1

**NOTICE OF ENTRY OF ORDER
GRANTING PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION**

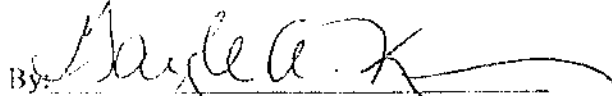
PLEASE TAKE NOTICE that on the 15th day of December 2020, an Order Granting
Plaintiffs' Motion for Preliminary Injunction ("Order") was entered in the above-captioned
matter. A copy of the Order is attached hereto.

///

1 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the *Notice of Entry*
2 *of Order Granting Plaintiffs' Motion for Preliminary Injunction* filed in the above-entitled case
3 (2020 CV 00124) does not contain the social security number of any person.
4

5 DATED this 5th day of January, 2021.

6 **LEACH KERN GRUCHOW ANDERSON SONG**

7
8 By: 

9 **GAYLE A. KERN, ESQ.**

10 Nevada Bar No. 1620

11 **SOPHIE A. KARADANIS, ESQ.**

12 Nevada Bar No. 12006

13 5421 Kietzke Lane, Ste. 200

14 Reno, Nevada 89511

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18 *Attorneys for Plaintiffs*
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Leach Kern
Gruchow Anderson Song, and that on this date I served the foregoing document described as
follows:

***NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION***

On the party(s) set forth below by:

- ☒ Placing an original or true copy thereof in a sealed envelope placed for collection
and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following
ordinary business practices.

Joshua Ang, Esq.
Prescott Jones, Esq.
c/o Resnick & Louis, P.C.
8925 W. Russell Road, Ste. 220
Las Vegas, NV 89148

- ☐ Electronically filing the foregoing with the Clerk of the Court by using the
electronic filing system, which will send a notice of electronic filing to the
following:

- ☐ Personal delivery.

- ☐ FedEx, UPS, or other overnight delivery.

DATED this 5th day of January 2021.


TERESA A. GEARHART

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DEC 15 2020

Douglas County
District Court Clerk

FILED

2020 DEC 15 AM 9:43

ELLEN R. WILLIAMS
CLERK

BY: ANCA DEPUTY

1 JOHN E. LEACH, ESQ.

2 Nevada Bar No. 1225

3 GAYLE A. KERN, ESQ.

4 Nevada Bar No. 1620

5 SOPHIE A. KARADANIS, ESQ.

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14 E-Mail: skaradanis@lkglawfirm.com

15 Attorneys for Plaintiffs

16 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

17 IN AND FOR COUNTY OF DOUGLAS

18 K. J. BROWN, L.L.C., a Nevada limited
19 liability company; and TIMOTHY D.
20 GILBERT and NANCY AVANZINO
21 GILBERT, as trustees of the TIMOTHY D.
22 GILBERT AND NANCY AVANZINO
23 GILBERT REVOCABLE FAMILY TRUST
24 DATED DECEMBER 27, 2013,

CASE NO.: 2020 CV 00124

DEPT. NO.: I

25 Plaintiffs,

26 v.

27 ELK POINT COUNTRY CLUB
28 HOMEOWNERS, ASSOCIATION, INC., also
known as ELK POINT COUNTRY CLUB,
INC., a Nevada non-profit, non-stock
corporation; and DOES 1-50, inclusive.

Defendant.

ORDER GRANTING PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION

On June 30, 2020, plaintiffs, K.J. BROWN, L.L.C. and TIMOTHY D. GILBERT and
NANCY AVANZINO GILBERT, as trustees of the TIMOTHY D. GILBERT AND NANCY

1 AVANZINO GILBERT REVOCABLE FAMILY TRUST DATED DECEMBER 27, 2013
2 (collectively referred to as "Plaintiffs"), by and through their undersigned counsel, Leach Kern
3 Gruchow Anderson Song, filed a Motion for Preliminary Injunction ("MFPI") in the above-
4 captioned case. The MFPI, once fully briefed, was submitted to this Court for decision on August
5 24, 2020.
6

7 The matter came on for a scheduled hearing on October 23, 2020, before the Honorable
8 Nathan Todd Young. The Plaintiffs were represented by counsel, Gayle A. Kern, Esq., and Sophie
9 A. Karadanis, Esq., of the law firm Leach Kern Gruchow Anderson Song. The Defendant was
10 represented by counsel Prescott Jones, Esq., of Resnick & Louis, P.C. All parties appeared in
11 person. The Court having reviewed the papers and pleadings on file herein, and having
12 considered the documentary evidence, witness testimony, and the oral arguments offered by
13 counsel on the legal and factual issues, this Court makes the following Findings of Fact and
14 Conclusion of Law in support of this Order:
15

16 **FINDINGS OF FACT**
17

18 The Court finds the following facts:

- 19 1. Plaintiff, K.J. BROWN, LLC, is a Nevada limited liability company and the owner
20 of certain real property located with the Elks Point Subdivision, in Zephyr Cove, Douglas County,
21 Nevada.
22
- 23 2. Plaintiffs, Timothy D. Gilbert and Nancy Avanzino Gilbert, as trustees of the
24 Timothy D. Gilbert and Nancy Avanzino Gilbert Revocable Trust dated December 27, 2013, own
25 certain real property located within the Elk Point Subdivision, in Zephyr Cove, Douglas County,
26 Nevada.
27
- 28 3. Defendant, Elk Point Country Club, Inc., ("EPCC"), is a Nevada non-profit, non-
stock corporation and recognized as a social club by the Internal Revenue Service.

1 4. The evidence demonstrates EPCC was established in 1925 by filing its Articles of
2 Incorporation of Nevada Elks Tahoe Association, which articles were later amended to change
3 the name to Elk Point Country Club, Inc.¹

4 5. The evidence demonstrates that EPCC is a private, members-only gated
5 subdivision, which includes private property and facilities owned by EPCC, including the
6 following: private roads, private beach, marina, boat storage, a water system and water tank,
7 beach deck and barbeque area, water rights, water tank and water pumping system, and a
8 designated residential home for a full-time onsite caretaker.

9 6. The evidence demonstrates that purchasers of Units located within EPCC must
10 apply for and be accepted as an EPCC member and must pay an initial membership fee to EPCC,
11 which is currently \$20,000.00. In exchange for one's membership, EPCC members are permitted
12 exclusive access and use of EPCC's private property and facilities.

13 7. The evidence demonstrates that EPCC is subject to the certain Bylaws of Elk Point
14 Country Club, Inc. There are several such Bylaws recorded at various times, including but not
15 limited to those recorded on September 11, 2000, with the Douglas County Recorder as Document
16 No. 0499187, those recorded on August 1, 2001, with the Douglas County Recorder as Document
17 No. 0519700, and those recorded on August 26, 2005, with the Douglas County Recorder, as
18 Document No. 0653319 (collectively "Bylaws"), including all subsequent amendments
19 incorporate therein. The evidence shows the Bylaws Preamble states in pertinent part as follows:
20 "[EPCC's] primary purpose is hereby affirmed to be to provide its members the pleasure of
21 fellowship and recreation, and its corporate functioning shall be designed to achieve in highest
22

23
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25
26
27 ¹ There was an amendment purportedly changing the name as Elk Point Country Club
28 Homeowners Association, Inc., but such change is irrelevant to the issues before the Court
because the club's property is owned by Elk Point Country Club, Inc., and the IRS exemption is
in favor of Elk Point Country Club, Inc.

1 measure such purpose. It shall not operate its properties or facilities with the view of providing
2 profit to its members but rather such properties and facilities shall be held, operated, and made
3 available to the use and enjoyment of its members . . ." The evidence further shows that the
4 Bylaws Preamble as set forth herein has been duplicated and repeated in every iteration of the
5 bylaws. The Bylaws also provide at Article III, Section 2: "The Executive Board shall have the
6 Power to conduct, manage and control the affairs and business of the Corporation and to make
7 rules and regulations not inconsistent with the laws of the State of Nevada, the Articles of
8 Incorporation and the Bylaws of the Corporation." The evidence further shows that Article III,
9 Section 2 of the Bylaws has been duplicated and repeated in every iteration of the Bylaws
10 identified herein.
11

12
13 8. The evidence demonstrates that EPCC is subject to certain Rules and Regulations,
14 recorded with the Bylaws on September 18, 1995, in the Douglas County Recorder as Document
15 No. 370678 ("Rules"). The Rules provide at paragraph 10 that "[n]o person shall operate any
16 business on the Club premises, nor on their individual property, within the Club."
17

18 9. The evidence shows that on September 14, 2019, the EPCC Board of Directors
19 adopted the Rules, Regulations and Guidelines ("Amended Rules") which permit transient
20 commercial use of Units and long-term rentals of Units within EPCC. The Amended Rules were
21 not recorded.
22

23 10. The evidence shows that the Bylaws and Rules make references to both Tenants
24 and Guests. The evidence further shows that both the Bylaws and the Rules do not permit for-
25 profit use of EPCC property and facilities, including member Units.

26 11. The evidence shows that EPCC is an Internal Revenue Code ("IRC") Section
27 501(c)(7) tax-exempt social club located in Zephyr Cove, Douglas County, Nevada. By way of
28

///

1 its tax-exempt status, EPCC has enjoyed its tax-exempt social club status and such status is an
2 important attribute of EPCC since 1925.

3 12. The evidence demonstrates that when determining an entity's IRC 501(c)(7) tax-
4 exempt status, the Internal Revenue Service ("IRS") looks at the following factors: (1) the social
5 club must have an established membership of individuals, comingling, and fellowship; (2) the
6 social club must be organized for pleasure, recreation and other non-profitable purpose, meaning
7 it does not provide pleasure and recreation on a commercial basis; and (3) substantially all of the
8 activities of the club are for such purposes and no part of the net earnings of which inures to the
9 benefit of any private club member.
10

11 13. The evidence demonstrates that the stated intent and purpose of EPCC Bylaws is
12 in conformance with IRC 501(c)(7), in that EPCC is not to engage in behavior which encourages
13 profit to its members, and that it was organized with the specific intent to provide its members
14 with fellowship and recreation.
15

16 14. The evidence shows that EPCC members are renting their Units for transient
17 commercial uses, *i.e.* rentals for less than 30 consecutive calendar days, and are also engaged in
18 renting their Units for long-term residential use, *i.e.* rentals for longer than 30 consecutive
19 calendar days.
20

21 15. The evidence demonstrates that the EPCC Board of Directors have failed, refused,
22 and declined to prohibit transient commercial use within EPCC and have, in fact, encouraged and
23 facilitated such use, including by way of example, adopting the Amended Rules, creating a rental
24 calendar identifying the dates the various Units are rented, and providing information to Douglas
25 County when an owner seeks to have a permit issued for transient commercial use of their Unit.
26

27 16. Plaintiffs initiated this action to enjoin Defendant from encouraging, facilitating,
28 and accommodating EPCC members from renting their Units for a profit, which use violates the

1 Bylaws and puts EPCC's IRC 501(c)(7) tax-exempt status at risk. In addition, Plaintiffs requested
2 that the Defendant be required to enforce its recorded Bylaws and Rules in a manner that avoids
3 jeopardizing the tax-exempt status of EPCC.

4
5 17. The Court finds that EPCC members are engaged in transient commercial use
6 and/or long-term leasing of their properties and are thus, operating their Units for a profit. The
7 Court further finds that such use is directly contrary to, and in violation of, the language set forth
8 in the Bylaws and the Rules, which specifically prohibits EPCC from operating its properties and
9 facilities with the view of providing profit to its members.

10
11 18. The Court finds that EPCC members engaged in renting their Units to obtain
12 revenue constitutes a use of the Units for a profit, including both transient commercial use and
13 long-term rentals, and that use puts EPCC's IRC 501(c)(7) tax-exempt status at risk.

14
15 19. The Court finds that Plaintiff has demonstrated a likelihood of success on the
16 merits that EPCC members engaged in transient commercial use and long-term rental use of their
17 Units violates the Bylaws and Rules.

18
19 20. The Court concludes that the unrecorded Amended Rules are in violation of and
20 contrary to the Bylaws of EPCC, in that they permit, facilitate, and encourage renting Units to
21 generate revenue for profit, and as a result, they are not enforceable as they relate to any rental
22 activity for profit within EPCC.

23
24 21. The Court finds that EPCC members engaged in renting their Units for profit
25 constitutes an immediate threat of permanent damage to EPCC and its members through the loss
26 of its IRC 501(c)(7) tax-exempt status, and the loss of the character of the community.

27
28 22. The Court finds that EPCC members engaged in renting their Units for profit
constitutes an immediate threat of permanent damage to EPCC by causing a change in the nature
of the entity as a private social club designed to promote the social and recreational benefit to

1 those who are members. Specifically, the Court finds that allowing members to engage in renting
2 their Units for profit changes the nature of the organization to that of a commercial organization.

3 23. The Court finds a bond in the amount of \$5,000.00 is appropriate and supported
4 by the facts.

5 24. If any finding of fact above is, in fact, a conclusion of law, it should be regarded
6 as such.

7 CONCLUSIONS OF LAW

8 This Court concludes the following as the controlling law in this matter:

9 A. A party seeking the issuance of a preliminary injunction under NRCP 65 and NRS
10 33.010 bears the burden of establishing (1) a likelihood of success on the merits, and (2) a
11 reasonable probability that the non-moving party's conduct, if allowed to continue, will cause
12 irreparable harm for which compensatory damages is an inadequate remedy. *S.O.C., Inc. v.*
13 *Mirage Casino-Hotel*, 117 Nev. 403, 408, 23 P.3d 243 (2001).

14 B. Interpretation of a contract's terms is question of law. *Shelton v. Shelton*, 119 Nev.
15 492, 497, 78 P.3d 507, 510 (2003). Contractual provisions should be harmonized whenever
16 possible. *Eversole v. Sunrose villas VIII Homeowners Ass'n*, 112 Nev. 1255, 1260, 925 P.2d 505,
17 509 (1996), and no provisions should be rendered meaningless. *Musser v. Bank of Am.*, 114 Nev.
18 945, 964 P.2d 51, 54 (1998).

19 C. This Court concludes that a consistent reading of the Bylaws that gives meaning
20 to all provisions included therein is that members are not permitted to operate their Units or any
21 EPCC property and facilities in order to generate revenue or for a profit.

22 D. This Court finds that any use of a Unit within EPCC to generate revenue or for a
23 profit, including both transient commercial use and long-term rental use, is in violation of the
24 clear and unambiguous terms of the Bylaws, and recorded Rules.

1 E. This Court finds that any use of a Unit within EPCC to generate revenue or for a
2 profit, including both transient commercial use and long-term rental use, jeopardizes the tax-
3 exempt social club status under the IRC.

4 F. This Court concludes that it would lead to inconsistent and contradictory results
5 if, as suggested by Defendant, the references to the term "tenant" within the Bylaws and the Rules
6 was used as a means to justify allowing EPCC members to rent their Units to generate revenue or
7 for a profit. This Court finds that there are many different classifications of tenancies recognized
8 by the State of Nevada, including joint tenancies, tenancies in common, life tenancies, and
9 tenancies for years. Thus, the plain language of the Bylaws, reading it in context and construing
10 it so as to render each word, phrase and term meaningful, unambiguous, and harmonious with the
11 whole, requires a finding that EPCC is not entitled to operate its properties and facilities to
12 generate revenue or for a profit, which necessarily includes any rental of a Unit or EPCC property
13 and facilities for either long-term rental or transient commercial use.

14 G. This Court concludes that the Amended Rules adopted by EPCC on September 14,
15 2019, as they relate to rental activity within EPCC, are in violation of the Bylaws, and are
16 therefore unenforceable to the extent they permit members to derive revenue or a profit through
17 the rental of their Units for both transient commercial use and long-term rentals.

18 H. This Court concludes that Plaintiffs have met their burden of proving they have a
19 likelihood of success on the merits. Based on the evidence presented, the intent under the Bylaws
20 was for EPCC to be formed as a social club, to maintain that status as a IRC 501(c)(7) tax-exempt
21 social club, and that, under the Bylaws, any use or operation of a Unit within EPCC, or any EPCC
22 property and facilities, by any member, to generate revenue or for a profit, is strictly prohibited.

23 I. Irreparable harm is that harm for which compensatory damages would be
24 inadequate. *Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029, 1029-30 (1987).

1 J. Plaintiffs have met their burden, in demonstrating to the satisfaction of this Court,
2 that there is a threat of permanent and irreparable harm if EPCC's IRC 501(c)(7) tax-exempt
3 status is lost in the event EPCC is not immediately enjoined from allowing, facilitating and
4 encouraging EPCC members in renting their Units or any other EPCC property and facilities,
5 and deriving revenue or a profit from such use. An award of compensatory damages would be a
6 futile act by this Court for this type of damage, because, in addition to the loss of the tax-exempt
7 status, such irreparable harm includes a change in the overall nature and character of the
8 community, from one originally designed to promote the social and recreational benefit to those
9 who are members, to simply a commercial organization.
10

11 K. Plaintiffs are entitled to injunctive relief requiring EPCC to enforce its Bylaws,
12 and to prohibit the use of any Unit, and any other portion of EPCC's property and facilities, to
13 generate revenue or for profit, during the pendency of this case.
14

15 L. The purpose of posting security bond is to protect a party from damages incurred
16 as a result of a wrongful injunction, not from damages existing, if any, before the injunction was
17 issued. *See American Bonding Co. v. Roggen Enterprises*, 109 Nev. 588, 854 P.2d 868 (1993).
18 A bond in the amount of \$5,000.00 is appropriate under the circumstances.
19

20 M. If any conclusion of law above is, in fact, a finding of fact, it will be treated as
21 such.
22

23 ORDER

24 Upon the foregoing facts and controlling law, the Court enters the following Order:

25 ***IT IS HEREBY ORDERED, ADJUDGED AND DECREED*** that Plaintiffs' Motion for
26 Preliminary Injunction is GRANTED.
27

28 ///


1 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** that EPCC is
2 required to enforce its Bylaws, specifically as the Bylaws prohibit EPCC and its members from
3 deriving any revenue or profit through the operation of its properties and facilities.
4

5 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** that EPCC
6 shall within 90 days from the date of this Order prohibit, prevent, and enjoin and any rental use
7 of any portion of EPCC's property and facilities, including member's Units, and that said use
8 expressly includes both transient commercial use and long-term rental use of any Unit.
9

10 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** that Plaintiff
11 shall post a bond in the amount of \$5,000.00 in accordance with NRC'P 65(c) as security.
12

13 **IT IS SO ORDERED.**

14 DATED this 15 day of December, 2020.

15 
DISTRICT COURT JUDGE

16
17 Respectfully Submitted
18 this 3rd day of November, 2020, by:

19 **LEACH KERN GRUCHOW**
20 **ANDERSON SONG**

21 **SOPHIE A. KARADANIS, ESQ.**
22 Nevada Bar No. 12006
23 **GAYLE A. KERN, ESQ.**
24 Nevada Bar No. 1620
25 5421 Kietzke Lane, Ste. 200
26 Reno, Nevada 89511
27 Tel: (775) 324-5930
28 E-mail: skaradanis@lkglawfirm.com
Attorneys for Plaintiff

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Attorneys for Defendant

Elk Point Country Club Homeowners Assn., Inc.

Douglas County
District Court Clerk

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Defendants.

CASE NO.: 2020-CV-0124

DEPT: I

CASE APPEAL STATEMENT

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Defendant ELK POINT COUNTRY CLUB HOMEOWNERS' ASSOCIATION, INC., a Nevada Corporation, by and through their counsel of record, Prescott T. Jones, Esq., and Joshua Ang, Esq., of the law firm of Resnick & Louis, P.C., hereby files this Case Appeal Statement.

1. Name of appellant filing this Case Appeal Statement: Defendant ELK POINT COUNTRY CLUB HOMEOWNERS' ASSOCIATION, INC.

2. Identify the Judge issuing the decision, judgment, or order appealed from: Honorable Nathan Tod Young.

3. Identify each appellant and the name and address of counsel for each appellant:

Appellant: ELK POINT COUNTRY CLUB HOMEOWNERS' ASSOCIATION, INC.

Attorneys: Prescott T. Jones, Esq.
Joshua Ang, Esq.
Resnick & Louis, PC
8925 W. Russell Rd., Suite 220
Las Vegas, NV 89144

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):

Respondents: K.J. BROWN, L.L.C., and TIMOTHY D. GILBERT and NANCY AVANZINO GILBERT, as trustees of the TIMOTHY D. GILBERT AND NANCY AVANZINO GILBERT REVOCABLE FAMILY TRUST DATED DECEMBER 27, 2013.

Attorneys: Gayle Kern, Esq.
Sophia Karadanis, Esq.
Leach Kern Gruchow Anderson Song
5421 Kietzke Lane, Ste. 200
Reno, NV 89511

1 5. Indicate whether any attorney identified above in response to question 3 or 4 is
2 not licensed to practice law in Nevada and, if so, whether the district court granted that attorney
3 permission to appear under SCR 42: N/A.

4 6. Indicate whether appellant was represented by appointed or retained counsel in
5 the district court: Retained.

6 7. Indicate whether appellant is represented by appointed or retained counsel on
7 appeal: Retained.

8 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and
9 the date of entry of the district court order granting such leave: N/A.

10 9. Indicate the date the proceedings commenced in the district court (e.g., date
11 complaint, indictment, information, or petition was filed): The complaint was filed on July 2,
12 2020.

13 10. Provide a brief description of the nature of the action and result in the district
14 court, including the type of judgment or order being appealed and the relief granted by the
15 district court: This appeal is taken from a civil action brought by Plaintiffs, two homeowners in
16 the Elk Point Country Club community, against the HOA, the Elk Point Country Club
17 Homeowner's Association, Inc. Plaintiffs made claims against the Defendant sounding in
18 Violations of NRS Chapter 116, Nuisance, Negligence, Trespass, Breach of Contract, Breach of
19 Covenant of Good Faith and Fair Dealing: Contractual & Tortious Breach, and Declaratory
20 Relief. All of Plaintiff's claims arise out of their position that short-term vacation rentals are not
21 allowed at the HOA. Plaintiffs filed a Motion for Preliminary Injunction seeking to enjoin the
22 Defendant from allowing short-term vacation rentals at the HOA, and on January 5, 2021, the
23 Court's Order enjoining the HOA from allowing both short-term and long-term rentals was
24 entered. The Defendant appeals this order.

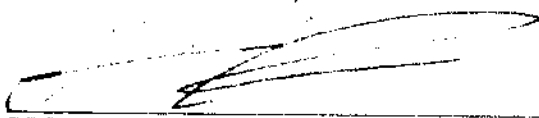
1 11. Indicate whether the case has previously been the subject of an appeal to or
2 original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket
3 number of the prior proceeding: N/A.

4 12. Indicate whether this appeal involves child custody or visitation: N/A.

5 13. If this is a civil case, indicate whether this appeal involves the possibility of
6 settlement: Yes.

7
8 DATED this 4th day of February, 2021.

9 **RESNICK & LOUIS, P.C.**

10
11 
12 **PRESCOTT JONES**
13 Nevada Bar No. 11617
14 **JOSHUA ANG**
15 Nevada Bar No. 14026
16 8925 W. Russell Road, Suite 220
17 Las Vegas, NV 89148
18 *Attorneys for Defendant,*
19 *Elk Point Country Club Homeowners Ass'n, Inc.*
20
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that service of the foregoing **CASE APPEAL STATEMENT**
3 was served this 4th day of February, 2021, by:

4
5 ☒ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope
6 with postage thereon fully prepaid, in the United States mail at Las Vegas,
Nevada, addressed as set forth below.

7 ☐ **BY FACSIMILE:** by transmitting via facsimile the document(s) listed above to
8 the fax number(s) set forth below on this date before 5:00 p.m. pursuant to
9 EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of
this document.

10 ☐ **BY PERSONAL SERVICE:** by causing personal delivery by an employee of
11 Resnick & Louis, P.C. of the document(s) listed above to the person(s) at the
12 address(es) set forth below.

13 John E. Leach, Esq.

14 Gayle A. Kern, Esq.

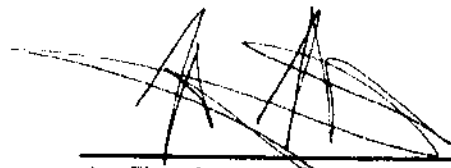
15 Sophie A. Karadanis, Esq.

LEACH KERN GROCHOW ANDERSON SONG

16 5421 Kietzke Lane, Ste. 200

17 Reno, Nevada 89511

Attorneys for Plaintiffs

18
19
20 

21 An Employee of Resnick & Louis, P.C.

Douglas County District Court

Case Summary Report

Case #: 2020-CV-00124

Case Title: K.J. Brown, LLC and Timothy D. Gilbert, et al vs. Elk Point Country Club, Inc.

Filed: 06/29/2020

Cause: Other Civil Matters

DV: N

Case Status: Active

Date: 06/29/2020

Parties

<u>Party</u>	<u>Name</u>	<u>Status</u>		
Plaintiff	K.J. Brown, LLC			
Plaintiff	Gilbert, Timothy D.			
Plaintiff	Gilbert, Nancy Avanzino			
Defendant	Elk Point Country Club, Inc.			
<u>Party</u>	<u>Name</u>	<u>Bar #</u>	<u>Status</u>	<u>Representing</u>
Attorney	Karadanis, Sophie Alexandra	12006	Current	
Attorney	Jones, Prescott Esq	11617	Current	

Events

<u>Date/Time</u>	<u>Type</u>	<u>Result</u>	<u>Reason</u>
10/23/2020	Bench Trial	Concluded	
11/19/2020	16.2 Case Management Conference	Vacated	
02/01/2022	Pre-Trial Conference		
03/07/2022	Jury Trial		
03/09/2022	Jury Trial		
03/10/2022	Jury Trial		
03/11/2022	Jury Trial		

Documents

<u>Date</u>	<u>Code</u>	<u>Description</u>
	MINS	Minutes
06/29/2020	DCOM	Complaint
06/29/2020	DSBA	Summons Issued - Elk Point Country Club, Inc.
06/29/2020	MMOT	Motion - for Preliminary Injunction
07/02/2020	DSBA	Summons Issued - Amended Summons Issued
07/02/2020	DCAM	Amended Complaint - First Amended Complaint
07/02/2020	DERR	Errata to - Motion for Preliminary Injunction
07/22/2020	DSF	Summons Filed - Amended Summons Filed
08/06/2020	DASR	Answer - Defendant's Answer to Plaintiff's First Amended Complaint
08/06/2020	DOPP	Opposition to Motion - Defendant Elk Point Country Club Homeowner's Association, Inc.'s Opposition to Plaintiffs' Motion for Preliminary Injunction
08/24/2020	DREP	Reply to - Plaintiffs' Reply in Support of Motion for Preliminary Injunction
08/24/2020	DRSU	Request for Submission - of Plaintiffs' Motion for Preliminary Injunction
08/31/2020	DOSH	Order Setting Hearing
09/08/2020	DDJT	Demand for Jury Trial
10/19/2020	DEXM	Ex Parte Motion - Defendant Elk Point Country Club Homeowners Association, INC.'s Ex Parte Request for an Order Shortening Time and Motion to Partially Strike Plaintiffs' Reply in Support of Motion for Preliminary Injunction
10/27/2020	DTRN	Transcript of Proceedings - Partial Transcript - Judge's Order 10/23/2020
11/03/2020	DRSU	Request for Submission - of (Proposed) Order Denying Defendant's Ex Parte Request for an Order Shortening Time and Motion to Partially Strike Plaintiffs' Reply in Support of Motion for Preliminary Injunction
11/03/2020	DRSU	Request for Submission - of (Proposed) Order Granting Plaintiff's Motion for Preliminary Injunction
11/05/2020	DTRN	Transcript of Proceedings - Motion for Preliminary Injunction 10/23/2020

<u>Date</u>	<u>Code</u>	<u>Description</u>
11/09/2020	DODE	Order Denying - Defendant's Ex Parte Request for an Order Shortening Time and Motion to Partially Strike Plaintiff's Reply in Support of Motion for Preliminary Injunction
11/12/2020	DNEO	Notice of Entry of Order - Denying Defendant's Ex Parte Request for an Order Shortening Time and Motion to Partially Strike Plaintiff's Reply in Support of Motion for Preliminary Injunction
11/16/2020	DOBJ	Objection to - Defendant Elk Point Country Club Homeowners Association, Inc.'s Objection to Plaintiff's Proposed Order Granting Motion for Preliminary Injunction, or in the Alternative, Motion to Amend order
11/20/2020	DREP	Reply to - Defendant's Objection to Plaintiff's Proposed Order Granting Motion for Preliminary Injunction, or In the Alternative Motion to Amend Order
11/23/2020	DJCR	Joint Case Conference Report
12/04/2020	DORD	Order
12/15/2020	DPRI	Preliminary Injunction - Order Granting Plaintiffs' Motion for Preliminary Injunction
12/16/2020	DIFQ	Information Questionnaire
12/22/2020	DPTC	Scheduling Order 16.1 Trial and PTC
01/06/2021	CONV	Conversion Document - Receipt for Posting of \$5,000.00 Cost Bond
01/06/2021	DN	Notice of - Plaintiffs' Notice of Posting Bond
01/06/2021	DNEO	Notice of Entry of Order - Notice of Entry of Order Granting Plaintiffs' Motion for Preliminary Injunction
01/25/2021	DAOC	Association of Counsel - Notice of Association of Counsel
02/04/2021	DNOA	Notice of Appeal
02/04/2021	DCAP	Case Appeal Statement

Case Notes

6/29/20 Motion for Preliminary Injunction - submitted

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Douglas County
District Court Clerk

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2020 DEC 15 AM 9:43

BOBBIE R. WILLIAMS
CLERK

BY ANOM DEPUTY

1 **JOHN E. LEACH, ESQ.**

2 Nevada Bar No. 1225

3 **GAYLE A. KERN, ESQ.**

4 Nevada Bar No. 1620

5 **SOPHIE A. KARADANIS, ESQ.**

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15 *Attorneys for Plaintiffs*

16 **IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

17 **IN AND FOR COUNTY OF DOUGLAS**

18 K. J. BROWN, L.L.C., a Nevada limited
19 liability company; and TIMOTHY D.
20 GILBERT and NANCY AVANZINO
21 GILBERT, as trustees of the TIMOTHY D.
22 GILBERT AND NANCY AVANZINO
23 GILBERT REVOCABLE FAMILY TRUST
24 DATED DECEMBER 27, 2013,

CASE NO.: 2020 CV 00124

DEPT. NO.: I

25 Plaintiffs,

26 v.

27 ELK POINT COUNTRY CLUB
28 HOMEOWNERS, ASSOCIATION, INC., also
known as ELK POINT COUNTRY CLUB,
INC., a Nevada non-profit, non-stock
corporation; and DOES 1-50, inclusive,

Defendant.

**ORDER GRANTING PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION**

On June 30, 2020, plaintiffs, K.J. BROWN, L.L.C. and TIMOTHY D. GILBERT and
NANCY AVANZINO GILBERT, as trustees of the TIMOTHY D. GILBERT AND NANCY

1 AVANZINO GILBERT REVOCABLE FAMILY TRUST DATED DECEMBER 27, 2013
2 (collectively referred to as "Plaintiffs"), by and through their undersigned counsel, Leach Kern
3 Gruchow Anderson Song, filed a Motion for Preliminary Injunction ("MFPI") in the above-
4 captioned case. The MFPI, once fully briefed, was submitted to this Court for decision on August
5 24, 2020.
6

7 The matter came on for a scheduled hearing on October 23, 2020, before the Honorable
8 Nathan Todd Young. The Plaintiffs were represented by counsel, Gayle A. Kern, Esq., and Sophie
9 A. Karadanis, Esq., of the law firm Leach Kern Gruchow Anderson Song. The Defendant was
10 represented by counsel Prescott Jones, Esq., of Resnick & Louis, P.C. All parties appeared in
11 person. The Court having reviewed the papers and pleadings on file herein, and having
12 considered the documentary evidence, witness testimony, and the oral arguments offered by
13 counsel on the legal and factual issues, this Court makes the following Findings of Fact and
14 Conclusion of Law in support of this Order:
15
16

17 **FINDINGS OF FACT**

18 The Court finds the following facts:

19 1. Plaintiff, K.J. BROWN, LLC, is a Nevada limited liability company and the owner
20 of certain real property located with the Elks Point Subdivision, in Zephyr Cove, Douglas County,
21 Nevada.
22

23 2. Plaintiffs, Timothy D. Gilbert and Nancy Avanzino Gilbert, as trustees of the
24 Timothy D. Gilbert and Nancy Avanzino Gilbert Revocable Trust dated December 27, 2013, own
25 certain real property located within the Elk Point Subdivision, in Zephyr Cove, Douglas County,
26 Nevada.
27

28 3. Defendant, Elk Point Country Club, Inc., ("EPCC"), is a Nevada non-profit, non-
stock corporation and recognized as a social club by the Internal Revenue Service.

1 4. The evidence demonstrates EPCC was established in 1925 by filing its Articles of
2 Incorporation of Nevada Elks Tahoe Association, which articles were later amended to change
3 the name to Elk Point Country Club, Inc.¹
4

5 5. The evidence demonstrates that EPCC is a private, members-only gated
6 subdivision, which includes private property and facilities owned by EPCC, including the
7 following: private roads, private beach, marina, boat storage, a water system and water tank,
8 beach deck and barbeque area, water rights, water tank and water pumping system, and a
9 designated residential home for a full-time onsite caretaker.
10

11 6. The evidence demonstrates that purchasers of Units located within EPCC must
12 apply for and be accepted as an EPCC member and must pay an initial membership fee to EPCC,
13 which is currently \$20,000.00. In exchange for one's membership, EPCC members are permitted
14 exclusive access and use of EPCC's private property and facilities.
15

16 7. The evidence demonstrates that EPCC is subject to the certain Bylaws of Elk Point
17 Country Club, Inc. There are several such Bylaws recorded at various times, including but not
18 limited to those recorded on September 11, 2000, with the Douglas County Recorder as Document
19 No. 0499187, those recorded on August 1, 2001, with the Douglas County Recorder as Document
20 No. 0519700, and those recorded on August 26, 2005, with the Douglas County Recorder, as
21 Document No. 0653319 (collectively "Bylaws"), including all subsequent amendments
22 incorporate therein. The evidence shows the Bylaws Preamble states in pertinent part as follows:
23 "[EPCC's] primary purpose is hereby affirmed to be to provide its members the pleasure of
24 fellowship and recreation, and its corporate functioning shall be designed to achieve in highest
25
26

27 ¹ There was an amendment purportedly changing the name as Elk Point Country Club
28 Homeowners Association, Inc., but such change is irrelevant to the issues before the Court
because the club's property is owned by Elk Point Country Club, Inc., and the IRS exemption is
in favor of Elk Point Country Club, Inc.

1 measure such purpose. It shall not operate its properties or facilities with the view of providing
2 profit to its members but rather such properties and facilities shall be held, operated, and made
3 available to the use and enjoyment of its members . . .” The evidence further shows that the
4 Bylaws Preamble as set forth herein has been duplicated and repeated in every iteration of the
5 bylaws. The Bylaws also provide at Article III, Section 2: “The Executive Board shall have the
6 Power to conduct, manage and control the affairs and business of the Corporation and to make
7 rules and regulations not inconsistent with the laws of the State of Nevada, the Articles of
8 Incorporation and the Bylaws of the Corporation.” The evidence further shows that Article III,
9 Section 2 of the Bylaws has been duplicated and repeated in every iteration of the Bylaws
10 identified herein.
11

12
13 8. The evidence demonstrates that EPCC is subject to certain Rules and Regulations,
14 recorded with the Bylaws on September 18, 1995, in the Douglas County Recorder as Document
15 No. 370678 (“Rules”). The Rules provide at paragraph 10 that “[n]o person shall operate any
16 business on the Club premises, nor on their individual property, within the Club.”
17

18 9. The evidence shows that on September 14, 2019, the EPCC Board of Directors
19 adopted the Rules, Regulations and Guidelines (“Amended Rules”) which permit transient
20 commercial use of Units and long-term rentals of Units within EPCC. The Amended Rules were
21 not recorded.
22

23 10. The evidence shows that the Bylaws and Rules make references to both Tenants
24 and Guests. The evidence further shows that both the Bylaws and the Rules do not permit for-
25 profit use of EPCC property and facilities, including member Units.

26 11. The evidence shows that EPCC is an Internal Revenue Code (“IRC”) Section
27 501(c)(7) tax-exempt social club located in Zephyr Cove, Douglas County, Nevada. By way of
28

///

1 its tax-exempt status, EPCC has enjoyed its tax-exempt social club status and such status is an
2 important attribute of EPCC since 1925.

3 12. The evidence demonstrates that when determining an entity's IRC 501(c)(7) tax-
4 exempt status, the Internal Revenue Service ("IRS") looks at the following factors: (1) the social
5 club must have an established membership of individuals, commingling, and fellowship; (2) the
6 social club must be organized for pleasure, recreation and other non-profitable purpose, meaning
7 it does not provide pleasure and recreation on a commercial basis; and (3) substantially all of the
8 activities of the club are for such purposes and no part of the net earnings of which inures to the
9 benefit of any private club member.
10

11 13. The evidence demonstrates that the stated intent and purpose of EPCC Bylaws is
12 in conformance with IRC 501(c)(7), in that EPCC is not to engage in behavior which encourages
13 profit to its members, and that it was organized with the specific intent to provide its members
14 with fellowship and recreation.
15

16 14. The evidence shows that EPCC members are renting their Units for transient
17 commercial uses, *i.e.* rentals for less than 30 consecutive calendar days, and are also engaged in
18 renting their Units for long-term residential use, *i.e.* rentals for longer than 30 consecutive
19 calendar days.
20

21 15. The evidence demonstrates that the EPCC Board of Directors have failed, refused,
22 and declined to prohibit transient commercial use within EPCC and have, in fact, encouraged and
23 facilitated such use, including by way of example, adopting the Amended Rules, creating a rental
24 calendar identifying the dates the various Units are rented, and providing information to Douglas
25 County when an owner seeks to have a permit issued for transient commercial use of their Unit.
26

27 16. Plaintiffs initiated this action to enjoin Defendant from encouraging, facilitating,
28 and accommodating EPCC members from renting their Units for a profit, which use violates the

1 Bylaws and puts EPCC's IRC 501(c)(7) tax-exempt status at risk. In addition, Plaintiffs requested
2 that the Defendant be required to enforce its recorded Bylaws and Rules in a manner that avoids
3 jeopardizing the tax-exempt status of EPCC.
4

5 17. The Court finds that EPCC members are engaged in transient commercial use
6 and/or long-term leasing of their properties and are thus, operating their Units for a profit. The
7 Court further finds that such use is directly contrary to, and in violation of, the language set forth
8 in the Bylaws and the Rules, which specifically prohibits EPCC from operating its properties and
9 facilities with the view of providing profit to its members.
10

11 18. The Court finds that EPCC members engaged in renting their Units to obtain
12 revenue constitutes a use of the Units for a profit, including both transient commercial use and
13 long-term rentals, and that use puts EPCC's IRC 501(c)(7) tax-exempt status at risk.

14 19. The Court finds that Plaintiff has demonstrated a likelihood of success on the
15 merits that EPCC members engaged in transient commercial use and long-term rental use of their
16 Units violates the Bylaws and Rules.
17

18 20. The Court concludes that the unrecorded Amended Rules are in violation of and
19 contrary to the Bylaws of EPCC, in that they permit, facilitate, and encourage renting Units to
20 generate revenue for profit, and as a result, they are not enforceable as they relate to any rental
21 activity for profit within EPCC.
22

23 21. The Court finds that EPCC members engaged in renting their Units for profit
24 constitutes an immediate threat of permanent damage to EPCC and its members through the loss
25 of its IRC 501(c)(7) tax-exempt status, and the loss of the character of the community.

26 22. The Court finds that EPCC members engaged in renting their Units for profit
27 constitutes an immediate threat of permanent damage to EPCC by causing a change in the nature
28 of the entity as a private social club designed to promote the social and recreational benefit to

1 those who are members. Specifically, the Court finds that allowing members to engage in renting
2 their Units for profit changes the nature of the organization to that of a commercial organization.

3 23. The Court finds a bond in the amount of \$5,000.00 is appropriate and supported
4 by the facts.

5 24. If any finding of fact above is, in fact, a conclusion of law, it should be regarded
6 as such.

7 CONCLUSIONS OF LAW

8 This Court concludes the following as the controlling law in this matter:

9 A. A party seeking the issuance of a preliminary injunction under NRCP 65 and NRS
10 33.010 bears the burden of establishing (1) a likelihood of success on the merits, and (2) a
11 reasonable probability that the non-moving party's conduct, if allowed to continue, will cause
12 irreparable harm for which compensatory damages is an inadequate remedy. *S.O.C., Inc. v.*
13 *Mirage Casino-Hotel*, 117 Nev. 403, 408, 23 P.3d 243 (2001).

14 B. Interpretation of a contract's terms is question of law. *Shelton v. Shelton*, 119 Nev.
15 492, 497, 78 P.3d 507, 510 (2003). Contractual provisions should be harmonized whenever
16 possible. *Eversole v. Sunrose villas VIII Homeowners Ass'n*, 112 Nev. 1255, 1260, 925 P.2d 505,
17 509 (1996), and no provisions should be rendered meaningless. *Musser v. Bank of Am.*, 114 Nev.
18 945, 964 P.2d 51, 54 (1998).

19 C. This Court concludes that a consistent reading of the Bylaws that gives meaning
20 to all provisions included therein is that members are not permitted to operate their Units or any
21 EPCC property and facilities in order to generate revenue or for a profit.

22 D. This Court finds that any use of a Unit within EPCC to generate revenue or for a
23 profit, including both transient commercial use and long-term rental use, is in violation of the
24 clear and unambiguous terms of the Bylaws, and recorded Rules.

1 E. This Court finds that any use of a Unit within EPCC to generate revenue or for a
2 profit, including both transient commercial use and long-term rental use, jeopardizes the tax-
3 exempt social club status under the IRC.

4 F. This Court concludes that it would lead to inconsistent and contradictory results
5 if, as suggested by Defendant, the references to the term “tenant” within the Bylaws and the Rules
6 was used as a means to justify allowing EPCC members to rent their Units to generate revenue or
7 for a profit. This Court finds that there are many different classifications of tenancies recognized
8 by the State of Nevada, including joint tenancies, tenancies in common, life tenancies, and
9 tenancies for years. Thus, the plain language of the Bylaws, reading it in context and construing
10 it so as to render each word, phrase and term meaningful, unambiguous, and harmonious with the
11 whole, requires a finding that EPCC is not entitled to operate its properties and facilities to
12 generate revenue or for a profit, which necessarily includes any rental of a Unit or EPCC property
13 and facilities for either long-term rental or transient commercial use.

14 G. This Court concludes that the Amended Rules adopted by EPCC on September 14,
15 2019, as they relate to rental activity within EPCC, are in violation of the Bylaws, and are
16 therefore unenforceable to the extent they permit members to derive revenue or a profit through
17 the rental of their Units for both transient commercial use and long-term rentals.

18 H. This Court concludes that Plaintiffs have met their burden of proving they have a
19 likelihood of success on the merits. Based on the evidence presented, the intent under the Bylaws
20 was for EPCC to be formed as a social club, to maintain that status as a IRC 501(c)(7) tax-exempt
21 social club, and that, under the Bylaws, any use or operation of a Unit within EPCC, or any EPCC
22 property and facilities, by any member, to generate revenue or for a profit, is strictly prohibited.

23 I. Irreparable harm is that harm for which compensatory damages would be
24 inadequate. *Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029, 1029-30 (1987).

1 J. Plaintiffs have met their burden, in demonstrating to the satisfaction of this Court,
2 that there is a threat of permanent and irreparable harm if EPCC's IRC 501(c)(7) tax-exempt
3 status is lost in the event EPCC is not immediately enjoined from allowing, facilitating and
4 encouraging EPCC members in renting their Units or any other EPCC property and facilities,
5 and deriving revenue or a profit from such use. An award of compensatory damages would be a
6 futile act by this Court for this type of damage, because, in addition to the loss of the tax-exempt
7 status, such irreparable harm includes a change in the overall nature and character of the
8 community, from one originally designed to promote the social and recreational benefit to those
9 who are members, to simply a commercial organization.
10

11
12 K. Plaintiffs are entitled to injunctive relief requiring EPCC to enforce its Bylaws,
13 and to prohibit the use of any Unit, and any other portion of EPCC's property and facilities, to
14 generate revenue or for profit, during the pendency of this case.

15 L. The purpose of posting security bond is to protect a party from damages incurred
16 as a result of a wrongful injunction, not from damages existing, if any, before the injunction was
17 issued. *See American Bonding Co. v. Roggen Enterprises*, 109 Nev. 588, 854 P.2d 868 (1993).
18 A bond in the amount of \$5,000.00 is appropriate under the circumstances.
19

20 L. If any conclusion of law above is, in fact, a finding of fact, it will be treated as
21 such.
22

23 ORDER

24 Upon the foregoing facts and controlling law, the Court enters the following Order:

25 ***IT IS HEREBY ORDERED, ADJUDGED AND DECREED*** that Plaintiffs' Motion for
26 Preliminary Injunction is GRANTED.
27

28 ///

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that EPCC is required to enforce its Bylaws, specifically as the Bylaws prohibit EPCC and its members from deriving any revenue or profit through the operation of its properties and facilities.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that EPCC shall within 90 days from the date of this Order prohibit, prevent, and enjoin and any rental use of any portion of EPCC's property and facilities, including member's Units, and that said use expressly includes both transient commercial use and long-term rental use of any Unit.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff shall post a bond in the amount of \$5,000.00 in accordance with NRCp 65(c) as security.

IT IS SO ORDERED.

DATED this 15 day of December, 2020.


DISTRICT COURT JUDGE

Respectfully Submitted
this 3rd day of November, 2020, by:

**LEACH KERN GRUCHOW
ANDERSON SONG**

SOPHIE A. KARADANIS, ESO.

Nevada Bar No. 12006

GAYLE A. KERN, ESQ.

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Attorneys for Plaintiff

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JAN 06 2021
Douglas County
District Court Clerk

2021 JAN -6 PM 3:57

SCOTT R. WILLIAMS

DEPUTY

Attorneys for Plaintiffs

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR COUNTY OF DOUGLAS

K. J. BROWN, L.L.C., a Nevada limited liability company; and TIMOTHY D. GILBERT and NANCY AVANZINO GILBERT, as trustees of the TIMOTHY D. GILBERT AND NANCY AVANZINO GILBERT REVOCABLE FAMILY TRUST DATED DECEMBER 27, 2013,

CASE NO.: 2020 CV 00124

DEPT. NO.: 1

Plaintiffs,

v.

NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

ELK POINT COUNTRY CLUB HOMEOWNERS, ASSOCIATION, INC., also known as ELK POINT COUNTRY CLUB, INC., a Nevada non-profit, non-stock corporation; and DOES 1-50, inclusive,

Defendant.

PLEASE TAKE NOTICE that on the 15th day of December 2020, an Order Granting Plaintiffs' Motion for Preliminary Injunction ("Order") was entered in the above-captioned matter. A copy of the Order is attached hereto.

///

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the *Notice of Entry of Order Granting Plaintiffs' Motion for Preliminary Injunction* filed in the above-entitled case (2020 CV 00124) does not contain the social security number of any person.

DATED this 5th day of January, 2021.

LEACH KERN GRUCHOW ANDERSON SONG

By: 

GAYLE A. KERN, ESQ.

Nevada Bar No. 1620

SOPHIE A. KARADANIS, ESQ.

Nevada Bar No. 12006

5421 Kietzke Lane, Ste. 200

Reno, Nevada 89511

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Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Leach Kern
Gruchow Anderson Song, and that on this date I served the foregoing document described as
follows:

***NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION***

On the party(s) set forth below by:

- ☒ Placing an original or true copy thereof in a sealed envelope placed for collection
and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following
ordinary business practices.

Joshua Ang, Esq.
Prescott Jones, Esq.
c/o Resnick & Louis, P.C.
8925 W. Russell Road, Ste. 220
Las Vegas, NV 89148

- ☐ Electronically filing the foregoing with the Clerk of the Court by using the
electronic filing system, which will send a notice of electronic filing to the
following:

- ☐ Personal delivery.

- ☐ FedEx, UPS, or other overnight delivery.

DATED this 5th day of January 2021.


TERESA A. GEARHART

RECEIVED

DEC 15 2020

Deputy Clerk
District Court

FILED

2020 DEC 15 AM 9:43

CLERK WILLIAMS

BY ANCHUT DEPUTY

1 **JOHN E. LEACH, ESQ.**

2 Nevada Bar No. 1225

3 **GAYLE A. KERN, ESQ.**

4 Nevada Bar No. 1620

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15 *Attorneys for Plaintiffs*

16 **IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

17 **IN AND FOR COUNTY OF DOUGLAS**

18 K. J. BROWN, L.L.C., a Nevada limited
19 liability company; and TIMOTHY D.
20 GILBERT and NANCY AVANZINO
21 GILBERT, as trustees of the TIMOTHY D.
22 GILBERT AND NANCY AVANZINO
23 GILBERT REVOCABLE FAMILY TRUST
24 DATED DECEMBER 27, 2013,

CASE NO.: 2020 CV 00124

DEPT. NO.: 1

25 Plaintiffs,

26 v.

27 ELK POINT COUNTRY CLUB
28 HOMEOWNERS, ASSOCIATION, INC., also
known as ELK POINT COUNTRY CLUB,
INC., a Nevada non-profit, non-stock
corporation; and DOES 1-50, inclusive,

Defendant.

**ORDER GRANTING PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION**

On June 30, 2020, plaintiffs, K.J. BROWN, L.L.C. and TIMOTHY D. GILBERT and
NANCY AVANZINO GILBERT, as trustees of the TIMOTHY D. GILBERT AND NANCY

1 AVANZINO GILBERT REVOCABLE FAMILY TRUST DATED DECEMBER 27, 2013
2 (collectively referred to as "Plaintiffs"), by and through their undersigned counsel, Leach Kern
3 Gruchow Anderson Song, filed a Motion for Preliminary Injunction ("MFPI") in the above-
4 captioned case. The MFPI, once fully briefed, was submitted to this Court for decision on August
5 24, 2020.
6

7 The matter came on for a scheduled hearing on October 23, 2020, before the Honorable
8 Nathan Todd Young. The Plaintiffs were represented by counsel, Gayle A. Kern, Esq., and Sophie
9 A. Karadanis, Esq., of the law firm Leach Kern Gruchow Anderson Song. The Defendant was
10 represented by counsel Prescott Jones, Esq., of Resnick & Louis, P.C. All parties appeared in
11 person. The Court having reviewed the papers and pleadings on file herein, and having
12 considered the documentary evidence, witness testimony, and the oral arguments offered by
13 counsel on the legal and factual issues, this Court makes the following Findings of Fact and
14 Conclusion of Law in support of this Order:
15

16
17 **FINDINGS OF FACT**

18 The Court finds the following facts:

19 1. Plaintiff, K.J. BROWN, LLC, is a Nevada limited liability company and the owner
20 of certain real property located with the Elks Point Subdivision, in Zephyr Cove, Douglas County,
21 Nevada.
22

23 2. Plaintiffs, Timothy D. Gilbert and Nancy Avanzino Gilbert, as trustees of the
24 Timothy D. Gilbert and Nancy Avanzino Gilbert Revocable Trust dated December 27, 2013, own
25 certain real property located within the Elk Point Subdivision, in Zephyr Cove, Douglas County,
26 Nevada.
27

28 3. Defendant, Elk Point Country Club, Inc., ("EPCC"), is a Nevada non-profit, non-
stock corporation and recognized as a social club by the Internal Revenue Service.

1 4. The evidence demonstrates EPCC was established in 1925 by filing its Articles of
2 Incorporation of Nevada Elks Tahoe Association, which articles were later amended to change
3 the name to Elk Point Country Club, Inc.¹
4

5 5. The evidence demonstrates that EPCC is a private, members-only gated
6 subdivision, which includes private property and facilities owned by EPCC, including the
7 following: private roads, private beach, marina, boat storage, a water system and water tank,
8 beach deck and barbeque area, water rights, water tank and water pumping system, and a
9 designated residential home for a full-time onsite caretaker.
10

11 6. The evidence demonstrates that purchasers of Units located within EPCC must
12 apply for and be accepted as an EPCC member and must pay an initial membership fee to EPCC,
13 which is currently \$20,000.00. In exchange for one's membership, EPCC members are permitted
14 exclusive access and use of EPCC's private property and facilities.
15

16 7. The evidence demonstrates that EPCC is subject to the certain Bylaws of Elk Point
17 Country Club, Inc. There are several such Bylaws recorded at various times, including but not
18 limited to those recorded on September 11, 2000, with the Douglas County Recorder as Document
19 No. 0499187, those recorded on August 1, 2001, with the Douglas County Recorder as Document
20 No. 0519700, and those recorded on August 26, 2005, with the Douglas County Recorder, as
21 Document No. 0653319 (collectively "Bylaws"), including all subsequent amendments
22 incorporate therein. The evidence shows the Bylaws Preamble states in pertinent part as follows:
23 "[EPCC's] primary purpose is hereby affirmed to be to provide its members the pleasure of
24 fellowship and recreation, and its corporate functioning shall be designed to achieve in highest
25
26

27 ¹ There was an amendment purportedly changing the name as Elk Point Country Club
28 Homeowners Association, Inc., but such change is irrelevant to the issues before the Court
because the club's property is owned by Elk Point Country Club, Inc., and the IRS exemption is
in favor of Elk Point Country Club, Inc.

1 measure such purpose. It shall not operate its properties or facilities with the view of providing
2 profit to its members but rather such properties and facilities shall be held, operated, and made
3 available to the use and enjoyment of its members . . .” The evidence further shows that the
4 Bylaws Preamble as set forth herein has been duplicated and repeated in every iteration of the
5 bylaws. The Bylaws also provide at Article III, Section 2: “The Executive Board shall have the
6 Power to conduct, manage and control the affairs and business of the Corporation and to make
7 rules and regulations not inconsistent with the laws of the State of Nevada, the Articles of
8 Incorporation and the Bylaws of the Corporation.” The evidence further shows that Article III,
9 Section 2 of the Bylaws has been duplicated and repeated in every iteration of the Bylaws
10 identified herein.
11

12
13 8. The evidence demonstrates that EPCC is subject to certain Rules and Regulations,
14 recorded with the Bylaws on September 18, 1995, in the Douglas County Recorder as Document
15 No. 370678 (“Rules”). The Rules provide at paragraph 10 that “[n]o person shall operate any
16 business on the Club premises, nor on their individual property, within the Club.”
17

18 9. The evidence shows that on September 14, 2019, the EPCC Board of Directors
19 adopted the Rules, Regulations and Guidelines (“Amended Rules”) which permit transient
20 commercial use of Units and long-term rentals of Units within EPCC. The Amended Rules were
21 not recorded.
22

23 10. The evidence shows that the Bylaws and Rules make references to both Tenants
24 and Guests. The evidence further shows that both the Bylaws and the Rules do not permit for-
25 profit use of EPCC property and facilities, including member Units.

26 11. The evidence shows that EPCC is an Internal Revenue Code (“IRC”) Section
27 501(c)(7) tax-exempt social club located in Zephyr Cove, Douglas County, Nevada. By way of
28

///

1 its tax-exempt status, EPCC has enjoyed its tax-exempt social club status and such status is an
2 important attribute of EPCC since 1925.

3 12. The evidence demonstrates that when determining an entity's IRC 501(c)(7) tax-
4 exempt status, the Internal Revenue Service ("IRS") looks at the following factors: (1) the social
5 club must have an established membership of individuals, commingling, and fellowship; (2) the
6 social club must be organized for pleasure, recreation and other non-profitable purpose, meaning
7 it does not provide pleasure and recreation on a commercial basis; and (3) substantially all of the
8 activities of the club are for such purposes and no part of the net earnings of which inures to the
9 benefit of any private club member.
10

11 13. The evidence demonstrates that the stated intent and purpose of EPCC Bylaws is
12 in conformance with IRC 501(c)(7), in that EPCC is not to engage in behavior which encourages
13 profit to its members, and that it was organized with the specific intent to provide its members
14 with fellowship and recreation.
15

16 14. The evidence shows that EPCC members are renting their Units for transient
17 commercial uses, *i.e.* rentals for less than 30 consecutive calendar days, and are also engaged in
18 renting their Units for long-term residential use, *i.e.* rentals for longer than 30 consecutive
19 calendar days.
20

21 15. The evidence demonstrates that the EPCC Board of Directors have failed, refused,
22 and declined to prohibit transient commercial use within EPCC and have, in fact, encouraged and
23 facilitated such use, including by way of example, adopting the Amended Rules, creating a rental
24 calendar identifying the dates the various Units are rented, and providing information to Douglas
25 County when an owner seeks to have a permit issued for transient commercial use of their Unit.
26

27 16. Plaintiffs initiated this action to enjoin Defendant from encouraging, facilitating,
28 and accommodating EPCC members from renting their Units for a profit, which use violates the

1 Bylaws and puts EPCC's IRC 501(c)(7) tax-exempt status at risk. In addition, Plaintiffs requested
2 that the Defendant be required to enforce its recorded Bylaws and Rules in a manner that avoids
3 jeopardizing the tax-exempt status of EPCC.
4

5 17. The Court finds that EPCC members are engaged in transient commercial use
6 and/or long-term leasing of their properties and are thus, operating their Units for a profit. The
7 Court further finds that such use is directly contrary to, and in violation of, the language set forth
8 in the Bylaws and the Rules, which specifically prohibits EPCC from operating its properties and
9 facilities with the view of providing profit to its members.
10

11 18. The Court finds that EPCC members engaged in renting their Units to obtain
12 revenue constitutes a use of the Units for a profit, including both transient commercial use and
13 long-term rentals, and that use puts EPCC's IRC 501(c)(7) tax-exempt status at risk.

14 19. The Court finds that Plaintiff has demonstrated a likelihood of success on the
15 merits that EPCC members engaged in transient commercial use and long-term rental use of their
16 Units violates the Bylaws and Rules.
17

18 20. The Court concludes that the unrecorded Amended Rules are in violation of and
19 contrary to the Bylaws of EPCC, in that they permit, facilitate, and encourage renting Units to
20 generate revenue for profit, and as a result, they are not enforceable as they relate to any rental
21 activity for profit within EPCC.
22

23 21. The Court finds that EPCC members engaged in renting their Units for profit
24 constitutes an immediate threat of permanent damage to EPCC and its members through the loss
25 of its IRC 501(c)(7) tax-exempt status, and the loss of the character of the community.

26 22. The Court finds that EPCC members engaged in renting their Units for profit
27 constitutes an immediate threat of permanent damage to EPCC by causing a change in the nature
28 of the entity as a private social club designed to promote the social and recreational benefit to

1 those who are members. Specifically, the Court finds that allowing members to engage in renting
2 their Units for profit changes the nature of the organization to that of a commercial organization.

3 23. The Court finds a bond in the amount of \$5,000.00 is appropriate and supported
4 by the facts.
5

6 24. If any finding of fact above is, in fact, a conclusion of law, it should be regarded
7 as such.

8 CONCLUSIONS OF LAW

9 This Court concludes the following as the controlling law in this matter:

10 A. A party seeking the issuance of a preliminary injunction under NRCP 65 and NRS
11 33.010 bears the burden of establishing (1) a likelihood of success on the merits, and (2) a
12 reasonable probability that the non-moving party's conduct, if allowed to continue, will cause
13 irreparable harm for which compensatory damages is an inadequate remedy. *S.O.C., Inc. v.*
14 *Mirage Casino-Hotel*, 117 Nev. 403, 408, 23 P.3d 243 (2001).
15

16 B. Interpretation of a contract's terms is question of law. *Shelton v. Shelton*, 119 Nev.
17 492, 497, 78 P.3d 507, 510 (2003). Contractual provisions should be harmonized whenever
18 possible. *Eversole v. Sunrose villas VIII Homeowners Ass'n*, 112 Nev. 1255, 1260, 925 P.2d 505,
19 509 (1996), and no provisions should be rendered meaningless. *Musser v. Bank of Am.*, 114 Nev.
20 945, 964 P.2d 51, 54 (1998).
21

22 C. This Court concludes that a consistent reading of the Bylaws that gives meaning
23 to all provisions included therein is that members are not permitted to operate their Units or any
24 EPCC property and facilities in order to generate revenue or for a profit.
25

26 D. This Court finds that any use of a Unit within EPCC to generate revenue or for a
27 profit, including both transient commercial use and long-term rental use, is in violation of the
28 clear and unambiguous terms of the Bylaws, and recorded Rules.

1 E. This Court finds that any use of a Unit within EPCC to generate revenue or for a
2 profit, including both transient commercial use and long-term rental use, jeopardizes the tax-
3 exempt social club status under the IRC.

4 F. This Court concludes that it would lead to inconsistent and contradictory results
5 if, as suggested by Defendant, the references to the term "tenant" within the Bylaws and the Rules
6 was used as a means to justify allowing EPCC members to rent their Units to generate revenue or
7 for a profit. This Court finds that there are many different classifications of tenancies recognized
8 by the State of Nevada, including joint tenancies, tenancies in common, life tenancies, and
9 tenancies for years. Thus, the plain language of the Bylaws, reading it in context and construing
10 it so as to render each word, phrase and term meaningful, unambiguous, and harmonious with the
11 whole, requires a finding that EPCC is not entitled to operate its properties and facilities to
12 generate revenue or for a profit, which necessarily includes any rental of a Unit or EPCC property
13 and facilities for either long-term rental or transient commercial use.

14 G. This Court concludes that the Amended Rules adopted by EPCC on September 14,
15 2019, as they relate to rental activity within EPCC, are in violation of the Bylaws, and are
16 therefore unenforceable to the extent they permit members to derive revenue or a profit through
17 the rental of their Units for both transient commercial use and long-term rentals.

18 H. This Court concludes that Plaintiffs have met their burden of proving they have a
19 likelihood of success on the merits. Based on the evidence presented, the intent under the Bylaws
20 was for EPCC to be formed as a social club, to maintain that status as a IRC 501(c)(7) tax-exempt
21 social club, and that, under the Bylaws, any use or operation of a Unit within EPCC, or any EPCC
22 property and facilities, by any member, to generate revenue or for a profit, is strictly prohibited.

23 I. Irreparable harm is that harm for which compensatory damages would be
24 inadequate. *Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029, 1029-30 (1987).

1 J. Plaintiffs have met their burden, in demonstrating to the satisfaction of this Court,
2 that there is a threat of permanent and irreparable harm if EPCC's IRC 501(c)(7) tax-exempt
3 status is lost in the event EPCC is not immediately enjoined from allowing, facilitating and
4 encouraging EPCC members in renting their Units or any other EPCC property and facilities,
5 and deriving revenue or a profit from such use. An award of compensatory damages would be a
6 futile act by this Court for this type of damage, because, in addition to the loss of the tax-exempt
7 status, such irreparable harm includes a change in the overall nature and character of the
8 community, from one originally designed to promote the social and recreational benefit to those
9 who are members, to simply a commercial organization.
10

11 K. Plaintiffs are entitled to injunctive relief requiring EPCC to enforce its Bylaws,
12 and to prohibit the use of any Unit, and any other portion of EPCC's property and facilities, to
13 generate revenue or for profit, during the pendency of this case.
14

15 L. The purpose of posting security bond is to protect a party from damages incurred
16 as a result of a wrongful injunction, not from damages existing, if any, before the injunction was
17 issued. *See American Bonding Co. v. Roggen Enterprises*, 109 Nev. 588, 854 P.2d 868 (1993).
18 A bond in the amount of \$5,000.00 is appropriate under the circumstances.
19

20 L. If any conclusion of law above is, in fact, a finding of fact, it will be treated as
21 such.
22

23 ORDER

24 Upon the foregoing facts and controlling law, the Court enters the following Order:

25 ***IT IS HEREBY ORDERED, ADJUDGED AND DECREED*** that Plaintiffs' Motion for
26 Preliminary Injunction is GRANTED.

27 ///

1 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** that EPCC is
2 required to enforce its Bylaws, specifically as the Bylaws prohibit EPCC and its members from
3 deriving any revenue or profit through the operation of its properties and facilities.
4

5 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** that EPCC
6 shall within 90 days from the date of this Order prohibit, prevent, and enjoin and any rental use
7 of any portion of EPCC's property and facilities, including member's Units, and that said use
8 expressly includes both transient commercial use and long-term rental use of any Unit.
9

10 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** that Plaintiff
11 shall post a bond in the amount of \$5,000.00 in accordance with NRCP 65(c) as security.
12

13 **IT IS SO ORDERED.**

14 DATED this 15 day of December, 2020.

15 
DISTRICT COURT JUDGE

16
17 Respectfully Submitted
18 this 3rd day of November, 2020, by:

19 **LEACH KERN GRUCHOW**
20 **ANDERSON SONG**

21 **SOPHIE A. KARADANIS, ESQ.**
22 Nevada Bar No. 12006
23 **GAYLE A. KERN, ESQ.**
24 Nevada Bar No. 1620
25 5421 Kietzke Lane, Ste. 200
26 Reno, Nevada 89511
27 Tel: (775) 324-5930
28 E-mail: skaradanis@lkglawfirm.com
Attorneys for Plaintiff

CASE NO: 2020-CV-00124

DEPT NO. I

K.J. Brown, LLC and Timothy D. Gilbert, et al

v.

Elk Point Country Club, Inc.

DATE: 10/23/2020

JUDGE: Nathan Tod Young

CLERK: Autumn Newton

COURT REPORTER: Kathy Jackson

PLAINTIFFS COUNSEL: Sophie Alexandra Karadanis/Gayle Kern

DEFENDANTS COUNSEL: Prescott Jones, Esq

LAW CLERK: John Seddon

BAILIFFS: Bill Addington

The above-entitled matter was before the Court this being the time set for MOTION FOR PRELIMINARY INJUNCTION. The plaintiffs were present in court and represented by counsel. The defendant was present in court and represented by counsel.

WITNESSES SWORN AND TESTIFIED:

Nancy Gilbert

Kurt Brown

Timothy Gilbert

Michelle Salazar

Robert Felton

EXHIBITS MARKED:

1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 17A

EXHIBITS ADMITTED:

1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 17A

EXHIBITS NOT ADMITTED:

15, 16

EXHIBITS STRICKEN AND DESTROYED:

17

DEFENDANT ELK POINT COUNTRY CLUB HOMEOWNERS ASSOCIATION, INC.'S EX PARTE REQUEST FOR AN ORDER SHORTENING TIME AND MOTION TO PARTIALLY STRIKE PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION:

The Court denied the ex-parte request and motion.

Ms. Kern presented opening statements.

Mr. Jones presented opening statements.

Mr. Jones moved for a directed verdict.

Ms. Kern presented argument.

The Court denied Mr. Jones's motion.

Ms. Kern presented closing argument.

Mr. Jones presented closing argument.

The Court finds the following:

- * There is a likelihood that the plaintiffs will prevail in this matter;
- * There is a threat of permanent damage to the plaintiffs through the loss of the tax exemption and a change in the nature of the association.

The Court granted the Motion for Preliminary Injunction.

the Court ordered that bond be posted in the amount of \$5,000.00.

Ms. Kern will prepare the order.

EXHIBIT LIST

CASE NAME: K.J. BROWN V. ELKS POINT COUNTRY CLUB

CASE NUMBER: 2020-CV-00124

DATE OF HEARING: 10-23-2020

JUDGE: NATHAN TOD YOUNG

DEPT NO: I

ATTORNEY: SOPHIE KARADANIS/PRESCOTT JONES

PURPOSE OF HEARING: MOTION FOR PRELIMINARY INJUNCTION

Exhibit #	Description	Marked for ID	Admitted	Not Admitted
1	1925 ARTICLES OF INCORPORATION FOR NEVADA ELKS TAHOE ASSOCIATION	X	X	
2	1927 BY-LAWS OF NEVADA ELKS TAHOE ASSOC.	X	X	
3	1927 CERTIFICATE OF AMENDMENT OF NEVADA ELKS TAHOE ASSOCIATION	X	X	
4	1949 BYLAWS OF ELK POINT COUNTRY CLUB, INC.	X	X	
5	1995 BYLAWS OF ELK POINT COUNTRY CLUB, INC.	X	X	
6	1988 RULES AND REGULATIONS (RECORDED) OF ELK POINT COUNTRY CLUB, INC.	X	X	
7	2000 BYLAWS OF ELK POINT COUNTRY CLUB, INC.	X	X	
8	2001 BYLAWS OF ELK POINT COUNTRY CLUB, INC.	X	X	
9	2005 BYLAWS OF ELK POINT COUNTRY CLUB HOMEOWNERS' ASSOCIATION, INC.	X	X	
10	ENTRANCE SIGN FOR ELK POINT COUNTRY CLUB	X	X	
11	DOUGLAS COUNTY PARCEL MAP FOR ELK POINT COUNTRY CLUB	X	X	
12	SHORT TERM RENTAL ADVERTISEMENTS	X	X	

13	2018 SHORT TERM RENTAL INCOME SPREADSHEET	X	X	
14	2019 SHORT TERM RENTAL INCOME SPREADSHEET	X	X	
15	BOARD MEMBER SURVEYS	X		X
16	2007-2017 TAX RETURNS FOR ELK POINT COUNTRY CLUB	X		X
17	HOMEOWNERS' ASSOCIATION RULES, REGULATIONS, AND GUIDELINES	STRICKEN & DESTROYED		
17A	HOMEOWNERS' ASSOCIATION RULES, REGULATIONS, AND GUIDELINES	X	X	

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STATE OF NEVADA)
) ss
COUNTY OF DOUGLAS)

FILED
2021 FEB 16 AM 9:28
BOBBIE R. WILLIAMS
CLERK
Boobbie Williams
DEPUTY

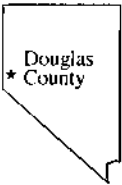
I, BOBBIE R. WILLIAMS, Clerk of the Ninth Judicial District Court, State of Nevada, in and for the said County of Douglas; said Court being a Court of Record, having common law jurisdiction, and a Clerk and a Seal, do hereby certify that the foregoing are the full, true copies of the original pleadings filed in Case No. 2018-CV-00124 (K. J. BROWN, L.L.C. et al VS. ELKS POINT COUNTRY CLUB HOMEOWNERS ASSOCIATION, INC.).

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal at Minden, in said County and State this 16th day of February, 2021.

~~BOBBIE R. WILLIAMS~~

Clerk of the Court
Boobbie Williams

Deputy Clerk



BOBBIE R. WILLIAMS
CLERK OF COURT
COURT ADMINISTRATOR
JURY COMMISSIONER

District Court Clerk's Office
(775) 782-9820
Tahoe Justice Court
(775) 586-7200
East Fork Justice Court
(775) 782-9955

Transmittal to the Supreme Court

To: Nevada Supreme Court
210 South Carson Street
Carson City, Nevada 89710

Date: February 16, 2021

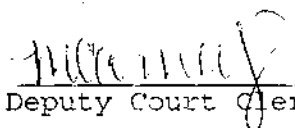
Re: District Court Case #: 2020-CV-00124

District Court Case Name: K. J. BROWN, L.L.C. et al VS. ELKS POINT COUNTRY
CLUB HOMEOWNERS ASSOCIATION, INC.

The following documents are transmitted to the Supreme Court pursuant to the July 22, 1996 revisions to the Nevada Rules of Appellate Procedure. Checked items are **NOT** included in this appeal:

- ☐ Notice of Appeal
- ☐ Case Appeal Statement
- ☒ Certificate That No Transcript Is Being Requested
- ☒ Defendant's Request for Transcript of Proceedings
- ☒ Notice of Posting of Appeal Bond
- ☐ District Court Docket entries
- ☐ Judgment(s) or order(s) appealed from
- ☒ Order (NRAP FORM 4)
- ☐ Notice of entry of the judgment(s) or order(s) appealed from
- ☒ Certification order directing entry of judgment pursuant to NRCP 54(b)
- ☐ District Court Minutes
- ☐ Exhibit Lists
- ☒ Supreme Court filing fee (\$250.00), if applicable

Respectfully,
BOBBIE WILLIAMS
CLERK OF THE COURT

By: 
Deputy Court Clerk