

IN THE SUPREME COURT OF THE STATE OF NEVADA

ELK POINT COUNTRY CLUB
HOMEOWNERS, ASSOCIATION,
INC., also known as ELK POINT
COUNTRY CLUB, INC., a Nevada
non- profit, non-stock Corporation,

Appellant,

v.

K.J. BROWN, L.L.C., a Nevada limited
liability company; 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,

Respondent.

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Oct 18 2021 06:56 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case No.: 82484

District Court Case Number:
2020-CV-0124

APPELLANT'S APPENDIX

VOLUME 4

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Douglas County
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11 **IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
12
13 **IN AND FOR THE COUNTY OF DOUGLAS**
14

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

Plaintiffs,

v.

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

Defendant.

CASE NO.: 2020-CV-0124

DEPT: 1(1)

**DEFENDANT'S ANSWER TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT**

27 Defendant, ELK POINT COUNTRY CLUB HOMEOWNERS, ASSOCIATION, INC.,
28 also known as ELK POINT COUNTRY CLUB, INC., a Nevada non-profit, non-stock
corporation, by and through its counsel of record, PRESCOTT T. JONES, ESQ. and JOSHUA
Y. ANG, ESQ. of the law offices of RESNICK & LOUIS, P.C., hereby answers Plaintiffs' First
Amended Complaint (Filed July 2, 2020) as follows:

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1 1. Answering Paragraph 1 of Plaintiffs' Complaint, Defendant is **presently without**
2 **sufficient** information to form a belief as to the truth or falsity of the allegations contained within
3 said paragraph, and therefore, denies same.

4 2. Answering Paragraph 2 of Plaintiffs' Complaint, Defendant is **presently without**
5 **sufficient** information to form a belief as to the truth or falsity of the allegations contained within
6 said paragraph, and therefore, denies same.

7 3. Answering Paragraph 3 of Plaintiffs' Complaint, Defendant **admits** that
8 Defendant Elk Point Country Club Homeowners, Association, Inc., also known as Elk Point
9 Country Club, Inc. (EPCC), is a Nevada non-profit, non-stock corporation and that it is the is the
10 homeowner's association for the Elk Point subdivision, but as to all other allegations, is
11 **presently without sufficient** information to form a belief as to the truth or falsity of such
12 allegations contained within said paragraph, and therefore, denies same.

13 4. Answering Paragraph 4 of Plaintiffs' Complaint, Defendant **admits** each and
14 every allegation contained therein.

15 5. Answering Paragraphs 5-7 of Plaintiffs' Complaint, Defendant is **presently**
16 **without sufficient** information to form a belief as to the truth or falsity of the allegations
17 contained within said paragraphs, and therefore, denies same.

18 6. Answering Paragraphs 8 of Plaintiffs' Complaint, Defendant **admits** only
19 maintains, controls and manages the common area of the association; but as to all other
20 allegations in this paragraph, Defendant is **presently without sufficient** information to form a
21 belief as to the truth or falsity of the allegations contained within said paragraphs, and therefore,
22 denies same.

23 7. Answering Paragraphs 9-14 of Plaintiffs' Complaint, Defendant is **presently**
24 **without sufficient** information to form a belief as to the truth or falsity of the allegations
25 contained within said paragraphs, and therefore, denies same.
26

8. Answering Paragraphs 15-16 of Plaintiffs' Complaint, Defendant **denies** the allegations contained therein that transient commercial use/commercial use and activities is prohibited in the community; but as to all other allegations in these paragraphs, Defendant is **presently without sufficient** information to form a belief as to the truth or falsity of the allegations contained within said paragraphs, and therefore, denies same.

9. Answering Paragraphs 16.1, 16.2, 16.3, 16.4 and 17 of Plaintiffs' Complaint, Defendant is **presently without sufficient** information to form a belief as to the truth or falsity of the allegations contained within said paragraphs, and therefore, denies same.

10. Answering Paragraphs 18-19 of Plaintiffs' Complaint, Defendant is **presently without sufficient** information to form a belief as to the truth or falsity of the allegations contained within said paragraphs, and therefore, denies same.

11. Answering Paragraph 20 of Plaintiffs' Complaint Defendant **admits** only that NRS 116 generally applies to the Elk Point Country Club Homeowners Association, Inc. ("EPCC"), but affirmatively allege that EPCC was formed prior to the enactment of NRS 116. As to all other allegations in this paragraph, Defendant is **presently without sufficient** information to form a belief as to the truth or falsity of the allegations contained within said paragraph, and therefore, denies same.

12. Answering Paragraphs 21 of Plaintiffs' Complaint, Defendant **denies** the allegations contained therein that transient commercial use is prohibited EPCC's Bylaws; but as to all other allegations in these paragraphs, Defendant is **presently without sufficient** information to form a belief as to the truth or falsity of the allegations contained within said paragraph, and therefore, denies same.

13. Answering Paragraphs 22-23 of Plaintiffs' Complaint, Defendant is **presently without sufficient** information to form a belief as to the truth or falsity of the allegations contained within said paragraphs, and therefore, denies same.

1 14. Answering Paragraphs 24-25 of Plaintiffs' Complaint, Defendant **denies** each and
2 every allegation contained therein.

3 15. Answering Paragraphs 26-27 of Plaintiffs' Complaint, Defendant is **presently**
4 **without sufficient** information to form a belief as to the truth or falsity of the allegations
5 contained within said paragraphs, and therefore, denies same.

6 16. Answering Paragraphs 28, 29, 30, and 30(a) to 30(f) of Plaintiffs' Complaint,
7 Defendant is **presently without sufficient** information to form a belief as to the truth or falsity
8 of the allegations contained within said paragraphs, and therefore, denies same.

9 17. Answering Paragraphs 31-35 of Plaintiffs' Complaint, Defendant is **presently**
10 **without sufficient** information to form a belief as to the truth or falsity of the allegations
11 contained within said paragraphs, and therefore, denies same.

12 18. Answering Paragraphs 36-37 of Plaintiffs' Complaint, Defendant is **presently**
13 **without sufficient** information to form a belief as to the truth or falsity of the allegations
14 contained within said paragraphs, and therefore, denies same.

15 19. Answering Paragraphs 38-40 of Plaintiffs' Complaint, Defendant **denies** each and
16 every allegation contained therein.

17 20. Answering Paragraphs 41-46 of Plaintiffs' Complaint, Defendant is **presently**
18 **without sufficient** information to form a belief as to the truth or falsity of the allegations
19 contained within said paragraphs, and therefore, denies same.
20

21 **FIRST CAUSE OF ACTION**

22 **(Violations of NRS Chapter 116)**

23 21. Defendant hereby incorporates its responses to Paragraphs "1" through "46" of
24 Plaintiffs' Complaint as though fully contained herein, in response to paragraph 47 of
25 Plaintiffs' Complaint.

26 22. Answering Paragraphs 48-52 of Plaintiffs' Complaint, Defendant **denies** each and
27 every allegation contained therein.
28

1 **SECOND CAUSE OF ACTION**

2 **(Nuisance)**

3 23. Defendant hereby incorporates its responses to Paragraphs "1" through "52" of
4 Plaintiffs' Complaint as though fully contained herein, in response to paragraph 53 of
5 Plaintiffs' Complaint.

6 24. Answering Paragraphs 54-62 of Plaintiffs' Complaint, Defendant **denies** each and
7 every allegation contained therein.

8 **THIRD CAUSE OF ACTION**

9 **(Negligence)**

10 25. Defendant hereby incorporates its responses to Paragraphs "1" through "62" of
11 Plaintiffs' Complaint as though fully contained herein, in response to paragraph 63 of
12 Plaintiffs' Complaint.

13 26. Answering Paragraph 64 of Plaintiff's Complaint, Defendant is **presently**
14 **without sufficient** information to form a belief as to the truth or falsity of the allegations
15 contained within said paragraph, and therefore, denies same.

16 27. Answering Paragraphs 65-68 of Plaintiffs' Complaint, Defendant **denies** each and
17 every allegation contained therein.

18 **FOURTH CAUSE OF ACTION**

19 **(Trespass)**

20 28. Defendant hereby incorporates its responses to Paragraphs "1" through "68" of
21 Plaintiffs' Complaint as though fully contained herein, in response to paragraph 69 of
22 Plaintiffs' Complaint.

23 29. Answering Paragraphs 70-74 of Plaintiffs' Complaint, Defendant **denies** each and
24 every allegation contained therein.

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1 **FIFTH CAUSE OF ACTION**

2 **(Breach of Contract)**

3 30. Defendant hereby incorporates its responses to Paragraphs "1" through "74" of
4 Plaintiffs' Complaint as though fully contained herein, in response to paragraph 75 of
5 Plaintiffs' Complaint.

6 31. Answering Paragraphs 76-82 of Plaintiffs' Complaint, Defendant **denies** each and
7 every allegation contained therein.

8 **SIXTH CAUSE OF ACTION**

9 **(Breach of Covenant of Good Faith and Fair Dealing: Contractual & Tortious Breach)**

10 32. Defendant hereby incorporates its responses to Paragraphs "1" through "82" of
11 Plaintiffs' Complaint as though fully contained herein, in response to paragraph 83 of
12 Plaintiffs' Complaint.

13 33. Answering Paragraph 84 of Plaintiffs' Complaint, Defendant **denies** each and
14 every allegation contained therein.

15 34. Answering Paragraphs 85-86 of Plaintiff's Complaint, Defendant is **presently**
16 **without sufficient** information to form a belief as to the truth or falsity of the allegations
17 contained within said paragraphs, and therefore, denies same.

18 35. Answering Paragraphs 87-91 of Plaintiffs' Complaint, Defendant **denies** each and
19 every allegation contained therein.

20 **SEVENTH CAUSE OF ACTION**

21 **(Declaratory Relief)**

22 36. Defendant hereby incorporates its responses to Paragraphs "1" through "91" of
23 Plaintiffs' Complaint as though fully contained herein, in response to paragraph 92 of
24 Plaintiffs' Complaint.

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37. Answering Paragraph 93 of Plaintiffs' Complaint, Defendant is **presently without sufficient** information to form a belief as to the truth or falsity of the allegations contained within said paragraphs, and therefore, denies same.

38. Answering Paragraphs 94-96 of Plaintiffs' Complaint, Defendant **denies** each and every allegation contained therein.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiffs failed to mitigate their damages.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs are not entitled to relief from or against Defendant, as Plaintiffs have not sustained any loss, injury, or damages that resulted from any act, omission, or breach by Defendant.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred because Defendant complied with applicable statutes and with the requirements and regulations of the state of Nevada.

FOURTH AFFIRMATIVE DEFENSE

Pursuant to NRCP 9, Plaintiffs lack capacity to sue or be sued, among other reasons because it has failed to exhaust mandatory administrative/alternative remedies under NRS 38.310, wherein an extension for Defendants to respond in said administrative/alternative proceedings was allowed, among other reason.

Also pursuant to NRCP 9, the legal existence of the Timothy D. Gilbert And Nancy Avanzino Gilbert Revocable Family Trust Dated December 27, 2013, an organized association of persons who are Plaintiffs (Nancy Gilbert and Timothy Gilbert), is questionable, which be

1 due to defects in the formation of said trust, among other things- which may result a lack of
2 standing, capacity to sue or be sued and/or a lack of authority to sue.

3 **FIFTH AFFIRMATIVE DEFENSE**

4 Defective service of process.

5 **SIXTH AFFIRMATIVE DEFENSE**

6 At all material times, the Defendant acted in good faith and exercised its lawful rights in
7 dealing with Plaintiff(s).

8 **SEVENTH AFFIRMATIVE DEFENSE**

9 Plaintiff(s) claims are barred by their own failure to deal in good faith and deal fairly
10 with Defendant.

11 **EIGHTH AFFIRMATIVE DEFENSE**

12 Plaintiff(s) are barred from maintaining this action by virtue of their own unclean hands
13 and inequitable conduct.

14 **NINTH AFFIRMATIVE DEFENSE**

15 Laches or estoppel.

16 **TENTH AFFIRMATIVE DEFENSE**

17 Lack of damages, or that the damages are inconsequential and de minimis.

18 **ELEVENTH AFFIRMATIVE DEFENSE**

19 Barred by statute of limitations.

20 **TWELTH AFFIRMATIVE DEFENSE**

21 Contributory negligence on the part of the Plaintiffs, reducing or barring recovery,

22 **THIRTEENTH AFFIRMATIVE DEFENSE**

23 Fraud.

24 ///

FOURTEENTH AFFIRMATIVE DEFENSE

Assumption of risk by the Plaintiffs.

FIFTEENTH AFFIRMATIVE DEFENSE

Waiver of any or all claims asserted by Plaintiffs.

SIXTEENTH AFFIRMATIVE DEFENSE

Claim preclusion and/or issue preclusion.

SEVETEENTH AFFIRMATIVE DEFENSE

Pursuant to NRCP 11, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of this answer, and Respondents reserves the right to amend this answer to allege additional affirmative defenses if subsequent investigation warrants.

WHEREFORE, having fully answered Plaintiffs' Complaint, Defendant respectfully requests the following relief:

- A. That Plaintiffs takes nothing by virtue of their Complaint;
- B. That the Complaint be dismissed with prejudice and that Defendant be awarded judgment in this action;
- C. That Defendant be awarded its costs incurred herein;
- D. That Defendant be awarded its attorneys' fees; and
- E. That no declaratory relief or findings requested by Plaintiffs are awarded.
- F. Dismissal for failure to exhaust mandatory administrative/alternative remedies.
- G. That no preliminary injunction be entered.

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1 H. For such other and further relief as the Court deems just and proper.

2 **AFFIRMATION**

3 Pursuant to NRS 239B.030, the undersigned does hereby affirm that this
4 ***DEFENDANTS' ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT*** filed in the
5 above-entitled case does not contain the social security number of any person

6
7 DATED this 3rd day of August, 2030.

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

9
10 By: 

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing **DEFENDANTS' ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT** was served this 3rd day of August, 2020, 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.

☐ **BY ELECTRONIC SERVICE:** by transmitting via the Court's electronic filing services the document(s) listed above to the Counsel set forth on the service list on this date pursuant to EDCR Rule 7.26(c)(4).

JOHN E. LEACH, ESQ.

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GAYLE A. KERN, ESQ.

Nevada Bar No. I 620

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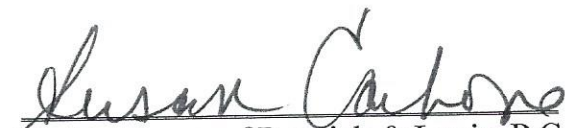
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