

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,

vs.

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,

Respondents.

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Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case No.
82484

District Court Case No.
2020-CV-00124

APPEAL

**From the Ninth Judicial District Court
The Honorable Nathan Tod Young**

**MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF OF
PROPERTY OWNERS IN SUPPORT OF APPELLANT**

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Hoffman; Val Licon; Bruce Munson;
Kristine Nelson; Eleanor Pott; Andrea
Pott; Katie Rowe; Richard Rowe; Mark
Schulze; Robert Schulze; Jeanette
Schulze; Mary Tanner; Richard
Tanner; Bill Zeller; Marty Zeller*

NRAP 26.1 Disclosure Statement

Putative Amici Curiae are the following individuals:

1. Lex and Cheri Adams: 462 Reno Ave, Zephyr Cove, NV 89448;
2. Pam Cash: 431 Lakeview, Zephyr Cove, NV 89448;
3. Suzanne, Shayne & Zack Dante:, NV 89448;
4. Jim and Papaha Gosline: 414 Lakeview Ave, Zephyr Cove, NV 89448;
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7. Brooke Hart: 441 Lakeview, Zephyr Cove, NV 89449;
8. Linda Hoffman: 421 Lakeview Ave, Zephyr Cove, NV 89448;
9. Val Licon: 430 Lakeview Ave, Zephyr Cove, NV 89448;
10. Bruce Munson: 429 Lakeview Ave, Zephyr Cove, NV 89448;
11. Kristine Nelson: 454 Center, Zephyr Cove, NV 89448;
12. Eleanor and Andrea Pott: 446 Lakeview Ave, Zephyr Cove, NV 89448;
13. Katie and Richard Rowe: 467 Lakeview Ave, Zephyr Cove, NV 89448;
14. Mark Schulze: 462 Lakeview Ave, Zephyr Cove, NV 89448;
15. Robert and Jeanette Schulze: 439 Lakeview Ave, Zephyr Cove, NV 89448;
16. Mary and Richard Tanner: 432 Elks Ave, Zephyr Cove, NV 89448;
17. Bill and Marty Zeller: 412 Lakeview Ave, Zephyr Cove, NV 89448

Snell & Wilmer has exclusively represented the Amici in their participation in this matter.

Pursuant to NRAP 29(c), a substantial number of property owners in Elk Point Subdivision (“Property Owners”) as identified above, hereby move for leave to file a brief as Amici Curiae in this appeal. Appellant has consented to the Property Owners’ Motion; Respondents have not.

The proposed brief is filed concurrently with this Motion.

Statement of Interest

Proposed Amici are twenty-seven Property Owners who all have been seriously damaged by the appealed-from preliminary injunction broadly prohibiting the use of their properties “to generate revenue or for profit,” including prohibiting both long and short-term rentals. 7 APP595. The injunction was issued without any notice or opportunity to be heard by the Property Owners, who unlike the actual Appellant, face enforcement measures such as fines, liens, and potential liability from their renters. Moreover, Plaintiff-Respondents are also property owners and as such have the same standing to litigate this issue, but to date, the Property Owners have not been afforded any meaningful opportunity to participate. So, while others who are similarly, or identically, situated have been able prosecute this action, the Property Owners were not heard before the injunction was issued.

And, while the injunction purports to bind Appellant, the Elk Point Country Club (the “Corporation” or “EPCC”), it is undisputed EPCC does not own any property in the Subdivision subject to the prohibition, and is largely unaffected by the injunction except that it requires EPCC to enforce the injunction’s absolute prohibition against any rentals as against Property Owners.¹

It is axiomatic that Property Owners’ bundle of property rights includes “all rights inherent in ownership, including the inalienable right to possess, use and enjoy the property.” *McCarran Intern. Airport v. Sisolak*, 122 Nev. 645, 137 P.3d 1110 (2006). The injunction specifically prohibits Property Owners from using their real property as they see fit, specifically leasing it on a long or short-term basis. This lawsuit directly affects Property Owners’ interest in their real property.

Property Owners hold specific and enumerated rights to their real property that have been impaired or taken away by the injunction. While their position is aligned with the Corporation, they are the most harmed

¹ Under the injunction, if a Property Owner wished or needed to relocate, for example because of a job transfer, they would not be permitted to rent their property in any way, but rather must either leave it vacant, or occupied by someone else for free.

and as such are uniquely motivated to seek reversal of the injunction and assist in educating the Court of the errors inherent in the injunction. Further, the Property Owners offer the Court a different perspective and legal analysis in support of the Corporation's Brief.

As such, the Court should permit the Property Owners to participate in the appeal as *Amici Curiae*, and grant leave to file their Amicus Brief.

Conclusion

This Court should grant leave for Property Owners to file an Amicus Brief.

DATED: October 25, 2021

SNELL & WILMER L.L.P.

/s/ Kelly H. Dove

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Richard Rowe; Mark Schulze; Robert
Schulze; Jeanette Schulze; Mary Tanner;
Richard Tanner; Bill Zeller; Marty Zeller*

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On October 25, 2021, I caused to be served a true and correct copy of the foregoing **MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF OF PROPERTY OWNERS IN SUPPORT OF APPELLANT** upon the following by the method indicated:

- ☐ **BY E-MAIL:** by transmitting via e-mail the document(s) listed above to the e-mail addresses set forth below and/or included on the Court's Service List for the above-referenced case.
- ☒ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.
- ☐ **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:

/s/ Kelly H. Dove

An Employee of SNELL & WILMER L.L.P.