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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Supreme Court Case No.: 82484

District Court Case Number: 2020-CV-0124

APPELLANT'S REPLY BRIEF

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NRAP 26.1 DISCLOSURE STATEMENT

Appellant does not have a parent corporation or publicly held company that owns 10% or more of the party's stock. The attorneys and law firms whose partners or associates have appeared for Appellant are:

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DATED this 18th day of January, 2022.

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I.
INTRODUCTION

In Appellant's opening brief, Appellant presented several arguments which addressed whether the District Court erred regarding the following:

1. Finding that Appellant's Bylaws do not contemplate or allow for rentals of homes in the Elk Point Country Club community, thereby making Appellant's Rules and Regulations in conflict with the Bylaws;

2. Finding that Appellant's 26 USCS § 501(c)(7) tax-exempt status would be threatened by allowing either short-term (under 30 days) or long-term rentals of homes in the Elk Point Country Club community;

3. Issuing an order enjoining long-term rentals in the Elk Point Country Club community which was beyond the scope of the requested relief in the Motion for Preliminary Injunction, which sought an injunction as to only short-term rentals;

4. Relying on an unqualified expert's speculative testimony regarding the impact of allowing short-term rentals in the Elk Point Country Club community on Appellant's 26 USCS § 501(c)(7) tax-exempt status; and

5. Invalidating contracts between renters and owners by enjoining short-term (under 30 days) and long-term rentals of homes in the Elk Point Country Club community.

Contrary to Respondents assertion, Appellant did provide a detailed summary of the nature of the case, the course of the proceedings, the disposition of the motion

below, and a recitation of the facts relevant to the nature of this appeal in the "Relevant Facts and Procedural History" section of the opening brief in compliance with NRAP 28(a)(7) and NRAP 28(a)(8). Additionally, in support of its position, Appellant set forth argument that pursuant to a plain reading and interpretation of Appellant's contractual Bylaws, short-term rentals occurring in the EPCC community would be perfectly legitimate and allowable under NRS 116.340(1). The analysis of which called for contractual interpretation of Appellant's Bylaws and statutory interpretation of NRS 116.340 which is subject to de novo review. Appellant argued that the District Court erred when finding that Respondents demonstrated a reasonable likelihood of success on the merits as to the issue of the permissibility of short-term vacation rentals/transient commercial use.

Furthermore, Appellant reasoned that 26 USCS § 501(c)(7) is only concerned with business that the 26 USCS § 501(c)(7) tax-exempt club/HOA/organization ***itself*** engages in (i.e., transacts itself) and that the rental activity of private members is irrelevant. There was no dispute that, although there are homeowners in the community who engage in short and/or long-term vacation rental activities, Appellant does not operate the community's facilities in any manner that would benefit such activities, nor does it receive any share of the revenue from said rental activities. Thus, Appellant's tax-exempt status under 26 USCS § 501(c)(7) was in no danger from the private rental activity of individual members and there was

simply no imminent "irreparable harm for which compensatory relief is inadequate" to justify a preliminary injunction.

A finding of error in either of the central legal issues presented would essentially eliminate fulfilment of one of the factors required for granting a preliminary injunction (reversal of the Bylaws issue would eliminate fulfillment of factor (1), while reversal of the 26 USCS §501(c)(7) tax-exempt status issue would eliminate fulfillment of factor (2)) and would require the District Court's order to be vacated. Furthermore, Appellant provided proper argument regarding the public interest in allowing the status quo of homeowners engaging in short and/or long-term vacation rental activities to be protected. Thus, based on the arguments presented regarding the District Court's errors, Appellant requested that the underlying order be vacated.

In their answering brief, Respondents avoided the critical questions introduced in Appellant's opening brief. Instead, Respondents provided their own take on the issues presented for review, arguing little more than the same position which was presented to the District Court in an attempt to distract the Court by the factual evidence and skew the standard of review. Additionally, Respondents simply repeated the same incorrect conclusions reached by the District Court without meaningful responses to the issues presented in Appellant's opening brief. Consequently, the Order Granting Preliminary Injunction should be vacated.

II.
ARGUMENT

A. STANDARD OF REVIEW

A district court's decision to grant a preliminary injunction "'will be reversed only where the district court abused its discretion or based its decision on an erroneous legal standard.'" *Boulder Oaks Cmty. Ass'n v. B & J Andrews Enters., LLC*, 125 Nev. 397, 403, 215 P.3d 27, 31 (2009) (quoting *United States v. Nutri-cology, Inc.*, 982 F.2d 394, 397 (9th Cir. 1992)). Generally, appellate courts review preliminary injunctions for abuse of discretion. *Labor Comm'r of Nev. v. Littlefield*, 123 Nev. 35, 39, 153 P.3d 26, 28 (2007). However, when the underlying issues in the motion for preliminary injunction involve questions of statutory construction and questions of law, an appellate court reviews those questions of law de novo. *See, State, Dep't of Bus. & Indus., Fin. Insts. Div. v. Nev. Ass'n Servs., Inc.*, 128 Nev., Adv. Op. 34, 128 Nev. 362, 294 P.3d 1223, 1226 (2012) (quoting *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 901, 141 P.3d 1235, 1240 (2006)). Each and every key issue of this appeal is a question of law or statutory interpretation which is subject to de novo review.

"A preliminary injunction is available when the moving party can demonstrate that the nonmoving party's conduct, if allowed to continue, will cause irreparable harm for which compensatory relief is inadequate and that the moving party has a reasonable likelihood of success on the merits." *Boulder Oaks Cmty. Ass'n v. B & J*

Andrews, 125 Nev. 397, 403, 215 P.3d 27, 31 (2009); NRS 33.010. In considering preliminary injunctions, courts also weigh the potential hardships to the relative parties and others, and the public interest. *Clark Co. School Dist. v. Buchanan*, 112 Nev. 1146, 1150, 924 P.2d 716, 719 (1996).

In Respondents' request for a preliminary injunction, the analysis of whether Respondents met their burden in demonstrating a reasonable likelihood of success on the merits turned on the contractual interpretation of Appellant's Bylaws and statutory interpretation of NRS 116.340. Similarly, the analysis of whether Respondents met their burden in demonstrating irreparable harm for which compensatory relief is inadequate turned on statutory interpretation of 26 USCS § 501(c)(7). Respondents agree that the contractual interpretation of Appellant's Bylaws calls for de novo review. However, in order to further their agenda that the applicable standard of review as it applies to Appellant's tax-exempt status pursuant to 26 USCS § 501(c)(7) is clear error, Respondents changed the entire nature of the question Appellant actually presented for review.

Appellant argued that the District Court erred when finding that Appellant's 26 USCS § 501(c)(7) tax-exempt status would be threatened by allowing either short-term (under 30 days) or long-term rentals of homes in the Elk Point Country Club community because whether a real danger of Appellant's 26 USCS § 501(c)(7) tax-exempt status existed hinged on the interpretation of the applicable legal

provisions/standards governing this issue and whether this interpretation as applied to the undisputed facts would result in a loss of said tax-exempt status. The analysis of the District Court's finding in this regard did not involve any findings of fact as Respondents incorrectly assert.

Appellant concedes that the secondary issue of whether the District Court's reliance on an unqualified expert's speculative testimony regarding the impact of allowing short-term rentals in the Elk Point Country Club community on Appellant's 26 USCS § 501(c)(7) tax-exempt status was error does fall within the purview of whether the District Court abused its discretion and committed clear error by disregarding controlling authority as it relates to the qualifications of expert testimony. However, the central issues remain subject to de novo review.

B. THE DISTRICT COURT COMMITTED ERROR WHEN FINDING THAT RESPONDENTS DEMONSTRATED A LIKELIHOOD OF SUCCESS ON THE MERITS BECAUSE APPELLANT'S BYLAWS DO ALLOW FOR RENTALS; THEREFORE, THE MOTION FOR PRELIMINARY INJUNCTION SHOULD HAVE BEEN DENIED.

i. Respondents' interpretation of Appellant's Bylaws is misguided and not supported by the plain language contained therein.

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

In attempting to provide their conflicting analysis of Appellant's Bylaws, Respondents break up the Bylaws Preamble phrase in to four separate statements: (1) "It shall not operate…"; (2) "its properties or facilities…"; (3) "with the view of providing profit to its members…"; and (4) "but rather such properties and facilities shall be held, operated, and made available for the use and enjoyment of its members." 1 AA 5. 5 AA 99.

Respondents focus on the first and second parts of the Bylaws Preamble phrase not to provide any actual insight on the contractual interpretation of the Preamble, but rather to argue the factual merits of their position. However, whether Appellant's Board of Directors oversees compliance with the Bylaws and the fact that the rental properties themselves are not owned by Appellant does not bear any significance to the disputed concern here. Thus, Respondents' arguments should be disregarded accordingly.

Regarding the third part of the Bylaws Preamble phrase, no plausible reading of the plain language of this clause constitutes a prohibition on homeowners in the EPCC community renting their private properties to short-term or long-term renters. The clause merely prohibits Appellant from operating its properties or facilities "***with the view of providing profit to its members***" (e.g., tailoring its operations of its properties or facilities with the ***intention to enhance its members' profits from rental activity***, which Appellant does not do). It is undisputed that Appellant does

not operate its properties or facilities in a manner to enhance its members' profits from rental activity, but rather conducts ordinary maintenance and operation of such properties and facilities in a manner consistent with facilitation of ordinary member use of these properties and facilities. 3 AA 69.

In an attempt to distance the Court from this clear explanation, Respondents focus on the definition of the word "profit" to again argue the factual merits of their position that some members may be gaining revenue from the rental activity. Respondents do not address the entirety of the phrase which clearly establishes an intentionality to Appellant's operation of its properties and facilities. The plain language of the phrase "…shall not operate its properties or facilities with the view of providing profit to its members…," by operation of the words "***with the view of***" indicates that the EPCC board cannot operate its properties and facilities in a ***manner*** that affords any benefits to profitable operations within the community such as rentals. Since it is undisputed that Appellant does not do so, Respondents failed to demonstrate a reasonable likelihood of success on this issue.

Regarding the fourth part of the Bylaws Preamble phrase, Respondents merely provide a bare assertion that the inverse of this phrase somehow imports a mandatory requirement that Appellant's private property and facilities cannot be held, operated or made available to be used by non-members all together. Respondents' reasoning of the mandatory requirement is non-sensical since they concede in the following

sentence that "only members, *and their non-paying guests*, are authorized to use and enjoy access to Appellant's properties and facilities". However, Respondents provide no authority to support that the phrase should be interpreted in the inverse of the plain language detailed therein.

To the contrary, controlling authority provides that contracts will be construed from their written language and enforced as written. *See*, *Kaldi v. Farmers Ins. Exch*., 117 Nev. 273, 278, 21 P.3d 16, 20 (2001). Thus, the phrase "but rather such properties and facilities shall be held, operated, and made available for the use and enjoyment of its members" should be interpreted as it was written. Based on this, it is clear that Appellant is only required to operate its properties and facilities in an ordinary manner as if only for the enjoyment of its members, ***without any regard*** for whether rentals of any sort are occurring in the community or not. This interpretation is furthered by the requirement that any alleged restrictions on activities such as rentals be clear, specific, direct, and unambiguous to be enforceable, in the interest of "favoring the free and unrestricted use of property" (implicitly acknowledged in Nevada by the codification of NRS 116.340(1)[1]. *See* NRS 116.340(1); *Forshee v.*

[1] Respondents claim that homeowners in the EPCC community do not have any special right to the "free and unrestricted use of property" because of their agreement to abide by Appellant's Bylaws and Rules is entirely misguided as Appellant's position does not address this claim. Rather, Appellant asserts that the interest of favoring the free and unrestricted use of property calls for restrictions on activities, such as rentals, to be clear, specific, direct, and unambiguous in order to be enforceable.

Neuschwander, 381 Wis. 2d 757, 764-6, 769 (Wis. 2018); *Santa Monica Beach Prop.* 219 So. at 116.

With this interpretation of the Bylaws, current short-term rentals occurring in the EPCC community would be perfectly legitimate per Appellant's Bylaws. Therefore, Respondents failed to demonstrate a reasonable likelihood of success on the merits as to the issue of the permissibility of short-term vacation rentals/transient commercial use and the District Court should have found accordingly.

Furthermore, Respondents entirely failed to demonstrate a reasonable likelihood of success on the merits as to the issue of the permissibility of long-term rentals since this issue was not addressed in their motion or reply. 1 AA 1-42; 5 AA 97-189. Respondents do not address this issue directly which amounts to a confession of error. *See* NRAP 31(d); *Polk v. State*, 233 P.3d 357, 359–360 (Nev. 2010); *Bates v. Chronister*, 100 Nev. 675, 681–682, 691 P.2d 865, 870 (1984). Thus, the District Court's *sua sponte* order for preliminary injunction against long-term rental activities was wholly unsupported and constituted clear error.

ii. Since there is no explicit and direct prohibition of rental activity in Appellant's Bylaws, NRS 116.340 allows for transient commercial use.

In their motion for preliminary injunction, Respondents pointed out that Appellant's Bylaws place restrictions on homeowners as follows: "The property of members shall be used for single family residential purposes only." 1 AA 5.

Respondents contended that the restriction on property to be used for single family residential purposes prohibited short-term vacation rentals and that allowing short-term vacation rentals constituted unauthorized transient commercial use in violation of the Bylaws and NRS 116.340. *Id.* Respondents additionally alleged in their First Amended Complaint that Appellant had a duty to abide by NRS Chapter 116 and that the requirements for allowing transient commercial use under NRS 116.340 were not met. 2 AA 49. As such, Respondents' left-field assertion that there is no legal basis for this Court to consider any argument concerning NRS 116.340(1) is entirely unfounded.

If the residential purpose clause was construed to prohibit short-term vacation rentals, this would be in direct violation of NRS 116.340(1). Respondents' assertion that rentals for less than 30 consecutive days are defined by NRS 116.340(4)(b) as being transient commercial use and therefore automatically violate the residential purpose clause ignores the language of NRS 116.340(1).

NRS 116.340(1) provides that:

> …a person who owns, or directly or indirectly has an interest in, one or more units within a planned community that are restricted to residential use by the declaration ***may use that unit or one of those unit for a transient commercial use only if: (a) the governing documents of the association and any master association do no prohibit such use***; (b) the executive board of the association and any master association approves the transient commercial use of the unit, except that such approval is not required if the planned community and one or more hotels are subject to the governing documents of master association and those governing documents do not prohibit such use; and (c) the unit is

> properly zoned for the transient commercial use and any license require by the local government for the transient commercial use is obtained.

See, NRS 116.340(1) (Emphasis added).

NRS 116.340(1), by its plain language, explicitly provides that regardless of and notwithstanding any "residential use only" restrictions in the operative Bylaws of a community, rental activity is permissible, unless there is an explicit and direct prohibition of such activity in the governing documents. This codified mandate of NRS 116.340(1), specifically overriding any possible prohibition of rental activity through vague "residential use only" clauses, reflects the prevailing position of courts all across the United States that short-term vacation rentals do not violate restrictive covenants requiring property to be used only for residential purposes and prohibiting its use for business purposes. *See Santa Monica Beach Prop. Owners Ass'n v. Acord*, 219 So. 3d 111, 114-5 (Fla. 1st Dist. Ct. App. 2017) (Citing to a litany of cases from disparate states with holdings consistent with the foregoing).

If a vacation renter uses a home for the purposes of eating, sleeping, and other residential purposes, no matter how short the rental duration, this use is residential and not commercial (thus consistent with any restrictions to "residential use"), and the nature of the property's use is not transformed from residential to business simply because the owner earns income from the rentals. *See Id*. (Citing to *Wilkinson v. Chiwawa Communities Ass'n*, 327 P.3d 614, 620 (Wash. 2014) (en banc); *Slaby v. Mountain River Estates Residential Ass'n*, 100 So. 3d 569, 579 (Ala. Civ. App.

2012). Indeed, "[N]either [the] financial benefit nor the advertisement of the property or the remittance of a lodging tax transforms the nature of the use of the property from residential to commercial." *Santa Monica Beach Prop.*, 219 So. at 115 (Quoting *Slaby*, 100 So. at 580 (Ala. Civ. App. 2012)). Thus, the fact that certain owner-members of the EPCC community may derive financial benefit from the rental activity (and the fact of any advertisements by them of their homes for rental activity) is not prohibited by the residential use restriction in the Bylaws.

C. THE DISTRICT COURT COMMITTED ERROR WHEN FINDING THAT RESPONDENTS DEMONSTRATED THAT IRREPARABLE HARM WOULD BE CAUSED IF THE PRELIMINARY INJUNCTION WAS NOT ISSUED BECAUSE APPELLANT'S 26 USCS § 501(C)(7) TAX-EXEMPT STATUS WAS NOT THREATENED BY ALLOWING EITHER SHORT-TERM OR LONG-TERM RENTALS OF HOMES IN THE EPCC COMMUNITY.

Whether Appellant was in any real danger of losing its 26 USCS § 501(c)(7) tax-exempt status, is also wholly a question of law subject to de novo review. Respondents argue that the applicable standard of review as it applies to Appellant's tax-exempt status pursuant to 26 USCS § 501(c)(7) is clear error because the determination of what a tax-exempt entity can, and cannot do, to protect and maintain its tax-exempt status is a factual analysis. However, Appellant reiterates that all facts applicable to this question are not in dispute. There are homeowners in the community who engage in short and/or long-term vacation rental activities, and the EPCC Board does not operate the community's facilities in any manner that would benefit such activities, nor does it receive any share of the revenue from said

rental activities. 3 AA 72. Thus, the District Court's findings of whether a real danger of Appellant's 26 USCS § 501(c)(7) tax-exempt status existed rested on the interpretation of the applicable legal provisions/standards governing this issue and whether this interpretation as applied to these undisputed facts would result in a loss of said tax-exempt status.

As stated herein, Appellant concedes that the secondary issue of whether the District Court's reliance on an unqualified expert's speculative testimony regarding the impact of allowing short-term rentals in the Elk Point Country Club community on Appellant's 26 USCS § 501(c)(7) tax-exempt status was error does fall within the purview of whether the District Court abused its discretion and committed clear error by disregarding controlling authority as it relates to the qualifications of expert testimony. However, the central issue remains subject to de novo review.

i. Respondents do not provide any support for their position that Michelle L. Salazar was properly qualified as an expert witness other than repeating the District Court's erred findings.

In reaching its decision that there was a threat of permanent and irreparable harm if Appellant's 26 USCS § 501(c)(7) tax-exempt status was lost and that an award of compensatory damages would be a futile for this type of damage, the District Court abused its discretion and committed clear error by disregarding controlling authority and relying on speculative testimony from Michelle L. Salazar who was not properly qualified as an expert witness.

Respondents insist that this Court reject Appellant's arguments in this regard because the District Court found that she was fully qualified. However, Respondents provide nothing further other than citation to the record below to support this proposition. Rather, Respondents incorrectly suggest that Appellant did not cite to anything in the record to show that a mistake was made by the District Court in considering Ms. Salazar's testimony.

To the contrary, Appellant provided that Michelle L. Salazar, through her declaration and testimony, was not qualified to testify as an expert as it relates to tax exempt entities. The qualifications that were provided were as to her knowledge of valuation and examination of fraud, which were not at issue. 10 AA 756. Consequently, any experience she may have had would not speak to the situation at hand and any opinions she may have had were outside the scope of her knowledge. Thus, the District Court should have precluded any opinions or testimony from Michelle L. Salazar regarding Appellant's 26 USCS § 501(c)(7) tax-exempt status pursuant to NRS 50.275. Additionally, this Court should reject Respondents' reliance on testimony from Michelle L. Salazar as controlling authority in support of their flawed interpretation of the requirements of 26 USCS § 501(c)(7).

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ii. Respondents failed to address the legal construction of 26 USCS § 501(c)(7) and relied upon misplaced arguments related to factual evidence of irreparable harm which is not at issue.

The entirety of Respondents' arguments regarding the finding of irreparable harm based on the risk to Appellant's 26 USCS § 501(c)(7) tax-exempt status center around the factual evidence presented to the District Court. However, the District Court's findings of whether a real danger of Appellant's 26 USCS § 501(c)(7) tax-exempt status existed rested on the interpretation of the applicable legal provisions/standards governing this issue and whether this interpretation as applied to the facts would result in a loss of said tax-exempt status. Thus, reiteration of the factual evidence presented to the District Court does nothing more than impede this Court's ability to review the questions of statutory construction and questions of law actually at issue. As such, Appellant will not delve into further recitation and respond to Respondents' misplaced contentions.

Rather, in support of the claim that the District Court erred in finding that Appellant's 26 USCS § 501(c)(7) tax-exempt status would be threatened by allowing either short-term (under 30 days) or long-term rentals of homes in the Elk Point Country Club community, Appellant argues that it is clear from the plain language that 26 USCS § 501(c)(7) is only concerned with business that the 26 USCS § 501(c)(7) tax-exempt club/HOA/organization ***itself*** engages in (i.e., transacts itself) and that the rental activity of private members is irrelevant. When a statute's

language is clear and unambiguous, it must be given its plain meaning . . . ." *D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 123 Nev. 468, 476, 168 P.3d 731, 737 (2007).

This construction is further supported by corresponding caselaw. *See e.g.; Augusta Golf Ass'n v. United States*, 338 F. Supp. 272, 275-6 (S.D. Ga. 1971) (holding that activities are not inconsistent with the enumerated 26 USCS § 501 (c)(7) purposes of "pleasure, recreation, and other nonprofitable purposes" as long as such activities did not amount to the conducting of business for profit/a situation where business is being transacted with the general public); *Pittsburgh Press Club v. United States*, 615 F.2d 600, 606 (3rd Cir. 1980) (Engaging in exclusive analysis of the proportion of member and non-member monetary receipts of the subject tax-exempt club itself, in evaluating whether it engaged in business that would make it non-exempt). Respondents' argument that the foregoing cases did not address the private social club member's conduct furthers the position that 26 USCS § 501(c)(7) is only concerned with business that the 26 USCS § 501(c)(7) tax-exempt club/HOA/organization *itself* engages in.

Respondents point to no legal authority other than unqualified expert testimony to actually contradict the foregoing construction. Respondents do attempt to cite to a string of several Revenue Rulings in support of their contention, but review of these rulings demonstrates the opposite.

For instance, Rev. Rul. 69-527, 1969-2C.B. 125 provides that a social club organized and operated primarily to aid its members in their individual business endeavors did not qualify for exemption under 26 USCS § 50l(c)(7). However, it is undisputed that the primary purpose of EPCC for which it was originally organized and operated thereafter was for fellowship and recreation. 1 AA 5. 5 AA 99. 10 AA 657. Additionally, Rev. Rul. 70-32, 1970-1 C.B. 132 dealt with an organization which was *solely* involved with the ownership, operation, and maintenance of the aircraft for use by the members. There was little commingling among members for social or recreational purposes unlike the situation presented here where the organization is formed of neighbors who interact with each other within the community. 10 AA 700-701. Further, Rev. Rul. 65-219, 1965-2 C.B. 168 dealt with a licensor who had the power to control the amount of income he derived by virtue of his control of the club with respect to solicitation, number, and transfer of memberships as well as his control over the amounts of initiation fees, transfer fees, and annual club dues. Thus, it was determined that the club was operated as a commercial venture for the financial benefit of the licensor. However, there is no evidence in the record here that members controlled the amount of the memberships fees and received those directly as income. Also, Rev. Rul. 66-225, 1966-2 C.B. 22 found no tax-exempt status when the club was formed by owners of a motel who employed servers, bartenders, and others to operate a café for the members. This is

entirely different than the situation presented here as there is no evidence in the record of club employees operating a quasi-restaurant. Lastly, Rev. Rul. 66-360, 1966-2 C.B. 228 and Rev. Rul. 67-302, 1967-2 C.B. 203 simply have no application here whatsoever. All in all, review of these Revenue Rulings furthers the notion that 26 USCS § 501(c)(7) is only concerned with business that the 26 USCS § 501(c)(7) tax-exempt club/HOA/organization *itself* engages in.

Since 26 USCS § 50l(c)(7) and 26 CFR 1.501(c)(7)-1, are concerned only with transactions of/engagement business by the HOA/club *itself*, it is beyond dispute that Appellant has not engaged in any conduct that would jeopardize its tax-exempt status under said statutes in this manner and the District Court should have found accordingly. Appellant is not engaged in, and does not transact, any rental business activity whatsoever (for a profit or otherwise); such activity is conducted wholly independently of Appellant by individual members. 3 AA 72. Appellant derives no income or profit from the private rental activity of its individual members. *Id.* Nor does Appellant transact business or derive incidental income or profit from visitors to the community by permitting them to utilize its facilities for fee. *Id.*

Thus, Appellant's tax-exempt status under 26 USCS § 501(c)(7) was in no danger from the private rental activity of individual members. There was simply no imminent "irreparable harm for which compensatory relief is inadequate" of this

nature (or indeed any so of possible imminent harm at all) to justify a preliminary injunction.

D. THE DISTRICT COURT COMMITTED ERROR BY FAILING TO CONSIDER PUBLIC INTEREST AND POLICY CONCERNS WHICH WEIGH AGAINST INVALIDATING CONTRACTS BETWEEN RENTERS AND HOMEOWNERS THROUGH ENJOINING SHORT-TERM AND LONG-TERM RENTALS OF HOMES IN THE EPCC COMMUNITY.

Another factor that Courts must consider when determining whether to grant a preliminary injunction is whether doing so would be in the public interest. *See, Clark Co. School Dist.*, 112 Nev. at 1150. Respondents do not disagree that the District Court failed to address this issue though it was raised in the opposition. 3 AA 77; 3 AA 83. Because it was raised in the papers before the District Court, Respondents' contention that this issue cannot be advanced on appeal is without merit.

Restrictions on rental activity are not in the general public interest of the EPCC community because regulations governing rental activity were duly enacted by the Board through the majority support of the EPCC community members. 10 AA 824-827. Respondents do not address this point and instead focus again on the District Court's findings that the Bylaws prohibit rental activity. However, the issue of restrictions on rental activity is an internal problem of the EPCC community, which should also be resolved internally. To permit Respondents to undemocratically override the will of the majority of EPCC members flies in the

face of the public interest of said community members, and public policy considerations, which strongly favor democratic decision-making in this regard and the District Court should have found accordingly.

III.
CONCLUSION

Based on the foregoing, Appellant respectfully requests that the Court issue an order to:

1. Vacate the Order Granting Preliminary Injunction; and

2. Remand this matter for further proceedings.

DATED this 18th day of January, 2022.

RESNICK & LOUIS, P.C.

/s/ Prescott Jones

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IV.
CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this reply brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, and in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found.

I further certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 365 ProPlus, Times New Roman 14 point and the type-volume limitation. This brief also complies with the length requirements of NRAP 32(7) because this brief does not exceed 7,000 words (the entirety of this brief contains 6,170 words).

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I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

/s/ Prescott Jones

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V.
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing **APPELLANT'S REPLY BRIEF** was served this 18th day of January, 2022, by:

[X] **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 as follows:

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