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8 SUPREME COURT

9 STATE OF NEVADA

11 NICKEL MINE AVENUE TRUST, a
Nevada irrevocable trust;
12 TRAVERTINE LANE TRUST, a
Nevada irrevocable trust; MAHOGANY
13 MEADOWS AVENUE TRUST, a
Nevada irrevocable trust; SATICOY
14 BAY LLC, a Nevada Limited Liability
Company,
15

No. 82205

16 Appellants,

17 vs.

18 COPPER CREEK HOMEOWNERS
ASSOCIATION,
19

20 Respondent.

21
22 **APPELLANTS' OPENING BRIEF**
23
24

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1 **NRAP 26.1 DISCLOSURE STATEMENT**

2 Counsel for defendants/appellants certifies that the following are persons and
3 entities as described in NRAP 26.1(a), and must be disclosed. These representations
4 are made in order that the judges of this court may evaluate possible disqualification
5 or recusal.
6

7 1. Defendant/appellant, Nickel Mine Avenue Trust, is a Nevada trust.

8 2. Defendant/appellant, Travertine Lane Trust, is a Nevada trust.
9

10 3. Defendant/appellant, Mahogany Meadows Avenue Trust, is a Nevada trust.

11 4. Resources Group, LLC, a Nevada limited-liability company, is the trustee for
12 the Nickel Mine Avenue Trust, Travertine Lane Trust, and Mahogany Meadows
13 Avenue Trust.
14

15 5. Iyad Haddad a/k/a Eddie Haddad is the manager for Resources Group, LLC.

16 6. Defendant/appellant, Saticoy Bay LLC, is a Nevada Limited Liability
17 Company.
18

19 7. The manager for Saticoy Bay LLC is the Bay Harbor Trust.

20 8. The trustee for the Bay Harbor Trust is Iyad Haddad a/k/a Eddie Haddad.
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1 NRS 116.31151..... 10, 12, 37, 40

2 **JURISDICTIONAL STATEMENT**

3
4 (A) Basis for the Supreme Court’s Appellate Jurisdiction: Each judgment entered
5 against each defendant is appealable under NRAP3A(b)(1).
6

7 (B) The filing dates establishing the timeliness of the appeal: Each of the four (4)
8 judgments was entered on November 6, 2020. Notice of entry of each judgment was
9 served and filed on November 9, 2020.
10

11 (C) Defendants filed their notice of appeal on December 7, 2020.
12

13 **ROUTING STATEMENT**

14
15 This case involves claims for breach of contract. NRAP 17 does not list breach of
16 contract claims as one of the cases retained by the Supreme Court. Because the
17 amount in controversy was less than \$75,000, counsel for defendants believes that this
18 appeal should be assigned to the Court of Appeals as provided by NRAP 17(6).
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1 misrepresentation; and 4) negligent misrepresentation. (Appellants' Appendix
2 Volume 1 (hereinafter "AA1"), pgs. AA000001-AA000018)
3

4 On July 30, 2019, defendants filed an answer to plaintiff's complaint. (AA1,
5 pgs. AA000030-AA000034)
6

7 On August 29, 2019, defendants filed an opposition to plaintiff's request for
8 exemption from arbitration and stated that the fines levied by plaintiff against
9 defendants did not exceed \$50,000.00, and plaintiff had not "submitted any
10 documentation to support its claim that the fines exceeded \$50,000.00." (AA1, pgs.
11 AA000035-AA000037)
12
13
14

15 On September 3, 2019, plaintiff filed plaintiff's request for exemption from
16 arbitration, which request identified \$28,321.00 in fines allegedly owed by the four
17 (4) defendants for six (6) different properties. (AA1, pgs. AA000038-AA000073)
18
19

20 On September 9, 2019, defendants filed an opposition to plaintiff's request for
21 exemption from arbitration and stated that Nevada Arbitration Rule 3 did not permit
22 plaintiff to add attorney's fees and costs to the alleged fines of only \$28,321.00 in
23 order to increase the amount claimed by plaintiff to \$49,912.99. (AA1, pgs.
24 AA000074-AA000078)
25
26

27 On September 12, 2019, plaintiff filed a motion for leave to file a motion for
28

1 summary judgment with redactions pursuant to Nevada rules for sealing and redacting
2 court records on order shortening time. (AA1, pgs. AA000079-AA000084)
3

4 On September 24, 2019, the court entered an order granting plaintiff's motion
5 for leave to file a motion for summary judgment with redactions pursuant to Nevada
6 rules for sealing and redacting court records on order shortening time. (AA1, pgs.
7 AA000085-AA000086)
8
9

10 On October 15, 2019, the ADR Commissioner filed the commissioner's
11 decision on request for exemption. (AA1, pgs. AA000096-AA000097)
12

13 On October 22, 2019, plaintiff filed plaintiff's motion for summary judgment
14 (AA1, pgs. AA000098-AA000161), which motion requested that plaintiff be granted
15 judgment for the following amounts for six (6) specific properties:
16
17

- | | | |
|----|---------------------------------|------------|
| 18 | 1. 6838 Nickel Mine Avenue | \$7,113.00 |
| 19 | | |
| 20 | 2. 6892 Nickel Mine Avenue | 5,328.00 |
| 21 | | |
| 22 | 3. 6777 Travertine Lane | 4,170.00 |
| 23 | | |
| 24 | 4. 6896 Mahogany Meadows Avenue | 3,195.00 |
| 25 | | |
| 26 | 5. 6773 Granite River Lane | 4,170.00 |
| 27 | | |
| 28 | 6. 6915 Silver State Avenue | 4,345.00 |

Plaintiff also requested that it be awarded attorney's fees for the following

1 amounts:

- | | | | |
|----|----|------------------------------|------------|
| 2 | 1. | 6838 Nickel Mine Avenue & | \$5,962.66 |
| 3 | | | |
| 4 | | 6892 Nickel Mine Avenue | |
| 5 | | | |
| 6 | 2. | 6777 Travertine Lane | 2,981.33 |
| 7 | | | |
| 8 | 3. | 6896 Mahogany Meadows Avenue | 2,981.33 |
| 9 | | | |
| 10 | 4. | 6773 Granite River Lane & | 5,962.66 |
| 11 | | | |
| 12 | | 6915 Silver State Avenue | |

13 On November 7, 2019, defendants filed an opposition to motion for summary
14 judgment. (AA1, pgs. AA000162-AA000167)

15 On November 19, 2019, plaintiff filed a reply in support of plaintiff's motion
16 for summary judgment. (AA1, pgs. AA000193-AA000209)

17 On February 6, 2020, plaintiff filed plaintiff's evidentiary brief regarding
18 plaintiff's damages & injunction bond. (AA1, pgs. AA000212-AA000220)

19 On February 7, 2020, defendants filed defendants' evidentiary brief. (AA1, pgs.
20 AA000221-AA000227)

21 On February 25, 2020, the court held an evidentiary hearing at which hearing
22 counsel for both parties made oral arguments, but no witnesses testified and no
23 exhibits were admitted into evidence. (AA1, pgs. AA000231-AA000240)

1 On April 3, 2020, the court entered an order granting, in part, and denying, in
2 part, plaintiff's motion for summary judgment. (AA1, pgs. AA000241-AA000243)
3
4 This order expressly provided that "Plaintiff's damages are capped, pursuant to NRS
5 116.31031, to one thousand dollars (\$1,000.00) per home" and that "Plaintiff's
6 damages for the six (6) Subject Homes is six thousand dollars (\$6,000.00)." (AA1, pg.
7 AA000242)
8
9

10 On April 6, 2020, plaintiff served and filed notice of entry of order granting, in
11 part, and denying, in part, plaintiff's motion for summary judgment. (AA1, pgs.
12 AA000244-AA000248)
13
14

15 On April 13, 2020, plaintiff filed a verified memorandum of costs and
16 disbursements. (AA2, pgs. AA000249-AA000263)
17

18 On April 27, 2020, plaintiff filed a motion for an award of attorneys' fees and
19 costs. (AA2, pgs. AA000264-AA000299)
20

21 On May 15, 2020, defendants filed an opposition to plaintiff's motion for
22 attorney's fees and costs. (AA2, pgs. AA000300-AA000310)
23

24 On June 3, 2020, plaintiff filed a reply in support of plaintiff's motion for
25 attorney's fees and costs. (AA2, pgs. AA000321-AA000325)
26

27 On September 25, 2020, the court entered an order granting plaintiff's motion
28

1 for an award of attorney's fees and costs. (AA2, pgs. AA000347-AA000353)

2 On October 1, 2020, plaintiff served and filed notice of entry of the order
3
4 granting plaintiff's motion for an award of attorney's fees and costs. (AA2, pgs.
5 AA000354-AA000358)
6

7 On November 6, 2020, the court entered judgment in favor of plaintiff against
8
9 Saticoy Bay LLC for \$2,000.00 for "Damages" and \$13,571.35 for "Attorneys' Fees
10 & Costs." (AA2, pgs. AA000363-AA000377)
11

12 Plaintiff served and filed notice of entry of this judgment on November 9, 2020.
13 (AA2, pgs. AA000440-AA000456)
14

15 On November 6, 2020, the court entered judgment in favor of plaintiff against
16
17 Mahogany Meadows Avenue Trust for \$1,000.00 for "Damages" and \$6,785.68 for
18 "Attorneys' Fees & Costs Incurred." (AA2, pgs. AA000378-AA000392)
19

20 Plaintiff served and filed notice of entry of this judgment on November 9, 2020.
21 (AA2, pgs. AA000423-AA000439)
22

23 On November 6, 2020, the court entered judgment in favor of plaintiff against
24
25 Nickel Mine Avenue Trust for \$2,000.00 for "Damages" and \$13,571.35 for
26 "Attorneys' Fees & Costs Incurred." (AA2, pgs. AA000393-AA000407)
27

28 Plaintiff served and filed notice of entry of this judgment on November 9, 2020.

1 (AA2, pgs. AA000474-AA000490)

2 On November 6, 2020, the court entered judgment in favor of plaintiff against
3
4 Travertine Lane Trust for \$1,000.00 for “Damages” and \$6,785.68 for “Attorneys’
5 Fees & Costs Incurred.” (AA2, pgs. AA000408-AA000422)
6

7 Plaintiff served and filed notice of entry of this judgment on November 9, 2020.
8
9 (AA2, pgs. AA000457-AA000473)

10 On December 7, 2020, defendants collectively filed a notice of appeal from
11
12 each of the four judgments entered on November 6, 2020. (AA2, pgs. AA000491-
13 AA000492)
14

15 **STATEMENT OF FACTS**

16 On September 16, 2017, plaintiff and defendants entered into a settlement
17
18 agreement to resolve a dispute between the parties regarding certain rental restrictions
19
20 and provisions in the CC&Rs, Articles of Incorporation and Bylaws for plaintiff for
21 the following six (6) properties:

- 22 1. 6838 Nickel Mine Avenue, Las Vegas, Nevada.
- 23
- 24 2. 6892 Nickel Mine Avenue, Las Vegas, Nevada.
- 25
- 26 3. 6777 Travertine Lane, Las Vegas, Nevada.
- 27
- 28 4. 6896 Mahogany Meadows Avenue, Las Vegas, Nevada.

1 5. 6773 Granite River Lane, Las Vegas, Nevada.

2 6. 6915 Silver State Avenue, Las Vegas, Nevada.

3
4 Between June 26, 2018 and August 9, 2019, plaintiff fined Nickel Mine
5 Avenue Trust a total of \$4,655.00 for renting the real property located at 6838 Nickel
6 Mine Avenue (APN 161-26-411-110), and plaintiff fined Nickel Mine Avenue Trust
7 a total of \$3,725.00 for renting the real property located at 6892 Nickel Mine Avenue
8 (APN 161-26-411-101).
9
10

11
12 During the same time period, plaintiff fined the Travertine Lane Trust a total
13 of \$3,920.00 for renting the real property located at 6777 Travertine Lane (APN 161-
14 26-410-010).
15

16 During the same time period, plaintiff fined Mahogany Meadows Avenue Trust
17 a total of \$2,710.00 for “Maintenance & Repair” for the real property located at 6896
18 Mahogany Meadows Avenue (161-26-310-011).
19
20

21 During the same time period, plaintiff fined Saticoy Bay LLC a total of
22 \$3,650.00 for renting the real property located at 6773 Granite River Lane (161-26-
23 410-002).
24

25
26 During the same time period, plaintiff fined Saticoy Bay LLC Series 6915
27 Silver State a total of \$4,020.00 for renting the real property located at 6915 Silver
28

1 State Avenue (161-26-410-082).

2 **SUMMARY OF THE ARGUMENT**

3
4 Plaintiff did not prove that it followed proper procedures for imposing the fines
5 that are the basis for plaintiff's complaint.
6

7 The district court did not have subject matter jurisdiction over the claims
8 asserted by plaintiff.
9

10 The amount of attorneys' fees awarded by the district court to plaintiff is not
11 consistent with Nevada law.
12

13 Plaintiff was not entitled to recover attorneys' fees under NRS 18.010(2)(b).
14

15 **STANDARD OF REVIEW**

16 In Wood v. Safeway, Inc., 121 Nev. 724, 121 P.3d 1026, 1029 (2005), the court
17 stated that it "reviews a district court's grant of summary judgment de novo, without
18 deference to the findings of the lower court."
19
20

21 A district court's award of attorneys' fees is reviewed for an abuse of discretion.
22
23 Brunzell v. Golden Gate National Bank, 85 Nev. 345, 455 P.2d 31, 33 (1969).

24 **ARGUMENT**

25
26 **1. Plaintiff did not prove that it followed required procedures for
imposing the fines that are the basis for plaintiff's complaint.**

27 In the unredacted version of page 4 of its motion for summary judgment (*see*
28

1 redacted version at AA1, pg. AA000101), plaintiff stated that pursuant to the
2 Settlement Agreement, “the latest period in which Defendants could have continued
3 renting the Properties without submitting a request pursuant to the protocol outlined
4 in the Governing Documents, was **June 26, 2018.**” (emphasis by plaintiff)
5
6

7 This date is one (1) year after the United States Supreme Court denied the
8 petition for writ of certiorari filed in Bourne Valley Court Trust v. Wells Fargo Bank,
9 N.A., 137 S. Ct. 2296 (2017).
10
11

12 At pages 2 ro 4 of their opposition (AA1, pgs. AA000163-AA000165),
13 defendants quoted from NRCP 56 and stated that plaintiff had failed to prove that
14 plaintiff complied with the mandatory language in NRS 116.31065(6), NRS
15 116.31031 and NRS 116.31151(4) in imposing the fines upon which plaintiff based
16
17 its complaint.
18

19 In particular, at all relevant times, NRS 116.31065(6) stated that “[t]he rules
20 adopted by an association . . . [m]ay be enforced by the imposition of a fine **only if the**
21 **association complies with the requirements set forth in NRS 116.31031.**”
22
23 (Emphasis added)
24
25

26 At all relevant times, NRS 116.31031(1)(b) included the following specific
27 limits on the fines that could be imposed by the board of an HOA:
28

1 (b) **Impose a fine against the unit's owner** or the tenant or the
2 invitee of the unit's owner or the tenant for each violation, except that:

3 (1) A fine may not be imposed for a violation that is the subject
4 of a construction penalty pursuant to NRS 116.310305; and

5 (2) A fine may not be imposed against a unit's owner or a tenant
6 or invitee of a unit's owner or a tenant for a violation of the governing
7 documents which involves a vehicle and which is committed by a person
8 who is delivering goods to, or performing services for, the unit's owner
9 or tenant or invitee of the unit's owner or the tenant.

10 If the violation poses an imminent threat of causing a substantial
11 adverse effect on the health, safety or welfare of the units' owners or
12 residents of the common-interest community, the amount of the fine
13 must be commensurate with the severity of the violation and must be
14 determined by the executive board in accordance with the governing
15 documents. **If the violation does not pose an imminent threat of
16 causing a substantial adverse effect on the health, safety or welfare
17 of the units' owners or residents of the common-interest community,
18 the amount of the fine must be commensurate with the severity of
19 the violation and must be determined by the executive board in
20 accordance with the governing documents, but the amount of the
21 fine must not exceed \$100 for each violation or a total amount of
22 \$1,000, whichever is less.** The limitations on the amount of the fine do
23 not apply to any charges or costs that may be collected by the association
24 pursuant to this section if the fine becomes past due. (emphasis added)

25
26 As stated at page 5 of defendants' opposition (AA1, pg. AA000166), the
27 maximum that plaintiff could charge pursuant to NRS 116.31031(1)(b) was only
28 \$1,000.00 per unit.

29 At all relevant times, NRS 116.31031(4) included the following specific
30 procedures that must be followed before the Board of an HOA could impose fines on
31 a unit owner:

32 (a) Not less than 30 days before the alleged violation, the unit's
33 owner and, if different, the person against whom the fine will be imposed
34 had been provided with written notice of the applicable provisions of the
35 governing documents that form the basis of the alleged violation; and

1 (b) Within a reasonable time **after the discovery of the alleged**
2 **violation**, the unit's owner and, if different, the person against whom the
3 fine will be imposed has been provided with:

4 (1) Written notice:

5 (I) **Specifying in detail the alleged violation, the proposed**
6 **action to cure the alleged violation, the amount of the fine, and the**
7 **date, time and location for a hearing on the alleged violation; and**

8 (II) Providing a clear and detailed photograph of the alleged
9 violation, if the alleged violation relates to the physical condition of the
10 unit or the grounds of the unit or an act or a failure to act of which it is
11 possible to obtain a photograph; and

12 (2) **A reasonable opportunity to cure the alleged violation or**
13 **to contest the alleged violation at the hearing.**

14 For the purposes of this subsection, a unit's owner shall not be deemed
15 to have received written notice unless written notice is mailed to the
16 address of the unit and, if different, to a mailing address specified by the
17 unit's owner. (emphasis added)

18 NRS 116.31151(4) also included the following language:

19 4. The executive board **shall**, at the same time and in the same manner
20 that the executive board makes the budget available to a unit's owner
21 pursuant to this section, **make available to each unit's owner the**
22 **policy established for the association concerning the collection of any**
23 **fees, fines, assessments or costs imposed against a unit's owner**
24 **pursuant to this chapter.** The policy must include, without limitation:

25 (a) The responsibility of the unit's owner to pay any such fees, fines,
26 assessments or costs in a timely manner; and

27 (b) **The association's rights concerning the collection of such fees,**
28 **fines, assessments or costs** if the unit's owner fails to pay the fees, fines,
assessments or costs in a timely manner. (Emphasis added)

In response to defendants' argument, plaintiff attached redacted versions of
certain documents to plaintiff's redacted reply. On the other hand, the unredacted
versions of these documents proved that plaintiff violated NRS 116.31031 by seeking
to recover fines that were not owed by the defendants and/or fines that exceeded the

amount allowed by NRS 116.31031(1)(b).

1. 6838 Nickel Mine Avenue

The unredacted version of the statements attached to plaintiff's motion as Exhibit 6 (See redacted version at AA1, pgs. AA000130-AA000136) proved that during the thirteen (13) months that passed between June 26, 2018 and August 9, 2019, plaintiff fined Nickel Mine Avenue Trust a total of \$4,655.00 for renting the real property located at 6838 Nickel Mine Avenue:

<u>Date</u>	<u>Amount of Fine</u>	<u>Total</u>
06/27/2018	100.00	\$ 100.00
08/08/2018	400.00	500.00
09/11/2018	500.00	1,000.00
10/05/2018	400.00	1,400.00
01/07/2019	800.00	2,200.00
02/07/2019	260.00	2,460.00
03/06/2019	195.00	2,655.00
04/17/2019	400.00	3,055.00
07/22/2019	1,300.00	4,355.00
08/09/2019	300.00	<u>\$ 4,655.00</u>

1 The unredacted version of Exhibit 12 to plaintiff's reply, filed on November 19,
2 2019 (*See* redacted version at AA1, pgs. AA000200-AA000201) included notices
3 dated July 21, 2015, October 21, 2015, December 2, 2015, May 11, 2018, and June
4 7, 2018 that claimed Nickel Mine Avenue Trust was renting the property at 6838
5 Nickel Mine Avenue in violation of the CC&Rs.
6
7

8
9 On the other hand, each of those notices is dated during the time period that the
10 Settlement Agreement stated that Nickel Mine Avenue Trust could rent the property
11 at 6838 Nickel Mine Avenue.
12

13 In violation of NRS 116.31031(4), plaintiff did not provide Nickel Mine
14 Avenue Trust with any of the required notices for alleged violations that occurred after
15 June 26, 2018.
16
17

18 In violation of NRS 116.31031(4), plaintiff also claimed that Nickel Mine
19 Avenue Trust was liable for fines in the amount of \$4,655.00 even though NRS
20 116.31031(1)(b)(2) limited the maximum amount of fines the HOA could charge to
21 \$1,000.00.
22
23

24 At pages 3 and 4 of the unredacted version of its reply (*see* redacted version at
25 AA1, pgs. AA000195-AA000196), plaintiff cited NRS 116.31031(1)(b) and stated
26 that "Plaintiff is not limited by this provision as Defendants violations fall under the
27
28

1 exception of posing an imminent threat of causing a substantial adverse effect on the
2 health, safety or welfare of the units' owners or resident" of the Copper Creek
3 common-interest community.
4

5 At page 4 of the unredacted version of its reply (*see* redacted version at AA1,
6 pg. AA000196), plaintiff also stated that "[t]his is a fact that Defendants have agreed
7 upon and already conceded the same."
8
9

10 As support for this statement, plaintiff stated that "[o]n March 19, 2018,
11 **Defendants** requested a hardship exemption to the rental restriction for the home
12 located at 6915 Silver State Street." (emphasis added)
13
14

15 The unredacted version of Exhibit 13 to plaintiff's reply (*See* redacted version
16 at AA1, pgs. AA000202-AA000206) proves, however, that the letter, dated March 19,
17 2018, related only to the property at 6915 Silver State Street and did not involve
18 6838 Nickel Mine Avenue or the Nickel Mine Avenue Trust in any way.
19
20

21 Moreover, contrary to plaintiff's description of that letter, counsel for Saticoy
22 Bay LLC Series 6915 Silver State did not admit that "violations of the rental
23 restriction thus impact the 'health, safety and welfare' of the Copper Creek common-
24 interest community." Counsel for Saticoy Bay LLC Series 6915 Silver State instead
25 clearly stated that when "units remain empty, that invites criminals, crime and danger
26
27
28

1 to the other members of the community.”

2 Plaintiff also did not introduce any evidence to support its argument that “[a]
3 unit that is not owner-occupied may result in a failure of maintenance or general lack
4 of repair.”
5
6

7 Consequently, the district court correctly decided that plaintiff’s argument was
8 without merit, and the court limited plaintiff’s damages for the real property located
9 at 6838 Nickel Mine Avenue to \$1,000.00. (AA2, pg. AA000405)
10
11

12 2. 6892 Nickel Mine Avenue

13 The unredacted version of the statements attached to plaintiff’s motion as
14 Exhibit 7 (*see* redacted version at AA1, pgs. AA000137-AA000142) proved that
15 during the thirteen (13) months that passed between June 26, 2018 and August 9,
16 2019, plaintiff fined Nickel Mine Avenue Trust a total of \$3,725.00 for renting the
17 real property located at 6892 Nickel Mine Avenue:
18
19
20

<u>Date</u>	<u>Amount of Fine</u>	<u>Total</u>
07/02/2018	260.00	\$ 260.00
08/08/2018	260.00	520.00
09/11/2018	325.00	845.00
10/05/2018	260.00	1,105.00

1	11/05/2018	400.00	1,505.00
2	01/07/2019	520.00	2,025.00
3			
4	02/07/2019	260.00	2,285.00
5			
6	03/06/2019	195.00	2,480.00
7			
8	04/17/2019	400.00	2,880.00
9			
9	07/22/2019	845.00	<u>\$ 3,725.00</u>

10 The unredacted version of Exhibit 12 to plaintiff's reply, filed on November 19,
 11 2019 (*see* redacted version at AA1, pgs. AA000200-AA000201) included notices
 12 dated July 7, 2014, October 26, 2015, December 2, 2015 that relate to time periods
 13 prior to the Settlement Agreement, dated September 16, 2017.
 14

15 The unredacted version of Exhibit 12 to plaintiff's reply also included notices
 16 dated November 15, 2017, February 6, 2018, February 27, 2018, April 30, 2018 that
 17 claimed Nickel Mine Avenue Trust was renting the property at 6892 Nickel Mine
 18 Avenue in violation of the CC&Rs.
 19

20 On the other hand, each of those notices is dated during the time period that the
 21 Settlement Agreement stated that Nickel Mine Avenue Trust could rent the property
 22 at 6892 Nickel Mine Avenue.
 23

24 In violation of NRS 116.31031(4), plaintiff did not provide Nickel Mine
 25
 26
 27
 28

1 Avenue Trust with any of the required notices for alleged violations that occurred after
2 June 26, 2018.
3

4 In violation of NRS 116.31031(4), plaintiff also claimed that Nickel Mine
5 Avenue Trust was liable for fines in the amount of \$3,725.00 even though NRS
6 116.31031(1)(b)(2) limited the maximum amount of fines the HOA could charge to
7 \$1,000.00.
8
9

10 3. 6777 Travertine Lane
11

12 The unredacted versions of the statements attached to plaintiff's motion as
13 Exhibit 8 (See redacted version at AA1, pgs. AA000143-AA000147) proved that
14 during the thirteen (13) months that passed between June 26, 2018 and August 9,
15 2019, plaintiff fined the Travertine Lane Trust a total of \$3,920.00 for renting the
16
17 real property located at 6777 Travertine Lane:
18

<u>Date</u>	<u>Amount of Fine</u>	<u>Total</u>
07/02/2018	260.00	\$ 260.00
08/08/2018	260.00	520.00
09/11/2018	325.00	845.00
10/05/2018	260.00	1,105.00
11/05/2018	400.00	1,505.00

01/07/2019	520.00	2,025.00
02/07/2019	260.00	2,285.00
03/06/2019	195.00	2,480.00
04/17/2019	400.00	2,880.00
07/22/2019	845.00	3,725.00
08/09/2019	195.00	<u>\$ 3,920.00</u>

The unredacted version of Exhibit 12 to plaintiff's reply, filed on November 19, 2019 (*see* redacted version at AA1, pgs. AA000200-AA000201) included notices dated July 7, 2015, October 26, 2015, and December 2, 2015 that relate to time periods prior to the Settlement Agreement, dated September 16, 2017.

The unredacted version of Exhibit 12 to plaintiff's reply also included notices dated November 15, 2017, February 6, 2018, February 27, 2018, and May 11, 2018 that claimed Travertine Lane Trust was renting the property at 6777 Travertine Lane in violation of the CC&Rs.

On the other hand, each of those notices is dated during the time period that the Settlement Agreement stated that Travertine Lane Trust could rent the property at 6777 Travertine Lane.

In violation of NRS 116.31031(4), plaintiff did not provide Travertine Lane

1 Trust with any of the required notices for alleged violations that occurred after June
2 26, 2018.
3

4 In violation of NRS 116.31031(4), plaintiff also claimed that Travertine Lane
5 Trust was liable for fines in the amount of \$3,920.00 even though NRS
6 116.31031(1)(b)(2) limited the maximum amount of fines the HOA could charge to
7 \$1,000.00.
8
9

10 4. 6896 Mahogany Meadows Avenue
11

12 The unredacted versions of the statements attached to plaintiff's motion as
13 Exhibit 9 (See redacted version at AA1, pgs. AA000148-AA000151) proved that
14 during time period from August 21, 2017 to June 1, 2018, plaintiff fined the
15 Mahogany Meadows Avenue Trust a total of \$2,710.00 for "Maintenance & Repair"
16
17 for the real property located at 6896 Mahogany Meadows Avenue:
18

<u>Date</u>	<u>Amount of Fine</u>	<u>Total</u>
08/21/2017	100.00	\$ 100.00
10/05/2017	260.00	360.00
11/08/2017	260.00	620.00
12/05/2017	260.00	880.00
01/03/2018	260.00	1,140.00

02/06/2018	325.00	1,465.00
03/08/2018	260.00	1,725.00
04/04/2018	400.00	2,125.00
05/11/2018	260.00	2,385.00
06/07/2018	325.00	<u>\$ 2,710.00</u>

Plaintiff also charged the Mahogany Meadows Avenue Trust an additional \$482.00 for lien fees and recording fees.

The unredacted version of Exhibit 12 to plaintiff's reply, filed on November 19, 2019 (*see* redacted version at AA1, pgs. AA000200-AA000201) did not include any notices to Mahogany Meadows Avenue Trust any maintenance or repairs required for the property at 6896 Mahogany Meadows Avenue or any evidence proving that plaintiff provided any maintenance or repairs to the property at 6896 Mahogany Meadows Avenue.

The unredacted version of Exhibit 12 to plaintiff's reply instead included a courtesy notice dated July 25, 2019, a hearing notice dated August 9, 2019, a notification of hearing outcome dated August 30, 2019 that claimed that Mahogany Meadows Avenue Trust was renting the property at 6896 Mahogany Meadows Avenue in violation of the CC&Rs.

1 These are all dates after plaintiff filed its complaint on March 13, 2019. As a
2 result, these notices could not have supported any claim against Mahogany Meadows
3 Avenue Trust on the date that plaintiff filed its complaint.
4

5 In violation of NRS 116.31031(4), plaintiff also claimed that Mahogany
6 Meadows Avenue Trust was liable for fines in the amount of \$2,710.00 even though
7 NRS 116.31031(1)(b)(2) limited the maximum amount of fines the HOA could charge
8 to \$1,000.00.
9
10

11
12 5. 6773 Granite River Lane

13 The unredacted versions of the statements attached to plaintiff's motion as
14 Exhibit 10 (*See* redacted version at AA1, pgs. AA000152-AA000156) proved that
15 during the thirteen (13) months that passed between June 26, 2018 and August 9,
16 2019, plaintiff fined Saticoy Bay LLC a total of \$3,650.00 for renting the real
17 property located at 6773 Granite River Lane:
18
19
20

<u>Date</u>	<u>Amount of Fine</u>	<u>Total</u>
07/02/2018	260.00	\$ 260.00
08/08/2018	260.00	520.00
09/11/2018	325.00	845.00
10/05/2018	260.00	1,105.00

1	11/06/2018	260.00	1,365.00
2	01/07/2019	520.00	1,885.00
3			
4	01/23/2019	65.00	1,950.00
5			
6	02/07/2019	65.00	2,015.00
7			
8	03/06/2019	195.00	2,210.00
9			
10	04/17/2019	400.00	2,610.00
11			
12	07/22/2019	845.00	3,455.00
13			
14	08/09/2019	195.00	<u>\$ 3,650.00</u>

15 The unredacted version of Exhibit 12 to plaintiff's reply, filed on March 28,
16 2014 (*see* redacted version at AA1, pgs. AA000200-AA000201) included notices
17 dated March 28, 2014, October 26, 2015, December 2, 2015, and January 18, 2016,
18 and September 8, 2016, and September 22, 2016 that relate to time periods prior to the
19 Settlement Agreement, dated September 16, 2017.

21 The unredacted version of Exhibit 12 to plaintiff's reply also included notices
22 dated November 15, 2017, February 6, 2018, February 27, 2018, and May 11, 2018
23 that claimed Saticoy Bay was renting the property at 6773 Granite River Lane in
24 violation of the CC&Rs.

27 On the other hand, each of those notices is dated during the time period that the
28

1 Settlement Agreement stated that Saticoy Bay could rent the property at 6773 Granite
2 River Lane.
3

4 In violation of NRS 116.31031(4), plaintiff did not provide Saticoy Bay with
5 any of the required notices for alleged violations that occurred after June 26, 2018.
6

7 In violation of NRS 116.31031(4), plaintiff also claimed that Saticoy Bay was
8 liable for fines in the amount of \$3,650.00 even though NRS 116.31031(1)(b)(2)
9 limited the maximum amount of fines the HOA could charge to \$1,000.00.
10
11

12 6. 6915 Silver State Avenue

13 The unredacted versions of the statements attached to plaintiff's motion as
14 Exhibit 11 (*See* redacted version at AA1, pgs. AA000157-161) proved that during the
15 thirteen (13) months that passed between June 26, 2018 and August 9, 2019, plaintiff
16 fined Saticoy Bay LLC Series 6915 Silver State a total of \$4,020.00 for renting the
17 real property located at 6915 Silver State Avenue:
18
19
20

<u>Date</u>	<u>Amount of Fine</u>	<u>Total</u>
07/02/2018	260.00	\$ 260.00
08/22/2018	100.00	360.00
09/11/2018	585.00	945.00
10/05/2018	260.00	1,205.00

1	11/05/2018	400.00	1,605.00
2	01/07/2019	520.00	2,125.00
3			
4	02/07/2019	260.00	2,385.00
5			
6	03/06/2019	195.00	2,580.00
7			
8	04/17/2019	400.00	2,980.00
9			
10	07/22/2019	845.00	3,825.00
11			
12	08/09/2019	195.00	<u>\$ 4,020.00</u>

13 The unredacted version of Exhibit 12 to plaintiff's reply, filed on March 28,
14 2014 (*see* redacted version at AA1, pgs. AA000200-AA000201) included notices
15 dated August 25, 2015, October 20, 2015, January 8, 2016, and April 7, 2016 that
16 relate to time periods prior to the Settlement Agreement, dated September 16, 2017.
17

18 The unredacted version of Exhibit 12 to plaintiff's reply also included notices
19 dated November 15, 2017, February 6, 2018, February 27, 2018, and May 11, 2018
20 that claimed Saticoy Bay LLC Series 6915 Silver State was renting the property at
21 6915 Silver State Avenue in violation of the CC&Rs.
22

23 On the other hand, each of those notices is dated during the time period that the
24 Settlement Agreement stated that Saticoy Bay LLC Series 6915 Silver State could
25 rent the property at 6915 Silver State.
26
27
28

1 In violation of NRS 116.31031(4), plaintiff did not provide Saticoy Bay LLC
2 Series 6915 Silver State with any of the required notices for alleged violations that
3 occurred after June 26, 2018.
4

5 In violation of NRS 116.31031(4), plaintiff also claimed that Saticoy Bay LLC
6 Series 6915 Silver State was liable for fines in the amount of \$4,020.00 even though
7 NRS 116.31031(1)(b)(2) limited the maximum amount of fines the HOA could charge
8 to \$1,000.00.
9
10

11 Each of the judgments entered by the district court acknowledged that
12 plaintiff's damages were capped at \$1,000.00 per home.
13
14

15 The district court, however, did not address plaintiff's failure to prove that it
16 provided proper notice for any of the fines that make up the \$1,000.00 per home
17 awarded by the district court.
18

19 In the context of a motion for summary judgment, "the pleadings and other
20 proof must be construed in a light most favorable to the nonmoving party." Wood v.
21 Safeway, Inc., 121 Nev. 724, 121 P.3d 1026, 1031 (2005).
22
23

24 As demonstrated above, plaintiff did not produce any admissible evidence
25 proving that plaintiff complied with the mandatory language in NRS 116.31031(4) for
26 the fines awarded by the district court. As a result, each judgment entered in favor of
27
28

1 plaintiff should be reversed.

2 **2. The district court did not have subject matter jurisdiction over**
3 **the claims asserted by plaintiff.**

4 In Swan v. Swan, 106 Nev. 464, 796 P.2d 221, 224 (1990), the court held that
5 a district court's custody ruling was void because the court lacked subject matter
6 jurisdiction under the Uniform Child Custody Jurisdiction Act. In reaching its
7 decision, the court cited Biscoe v. Biscoe, 443 N.W.2d 221, 223-224 (Minn. App.
8 1989), as authority that “[a] court's lack of subject matter jurisdiction can be raised for
9 the first time on appeal.” Swan, 796 P.2d at 224.
10
11
12
13

14 The court also cited Gomez v. Gomez, 86 A.D.2d 594, 446 N.Y.S.2d 127, 129
15 (S. Ct. App. Div. 1982), as authority that “subject matter jurisdiction is not waivable.”
16 Swan, 796 P.2d at 224.
17

18 The court also cited Biscoe v. Biscoe as authority that “subject matter
19 jurisdiction can be raised at any time, or sua sponte by a court of review, **and cannot**
20 **be conferred by the parties.**” Swan, 796 P.2d at 224. (emphasis added)
21
22

23 In State Industrial Insurance System v. Sleeper, 100 Nev. 267, 679 P.2d 1272,
24 1274 (1984), the court stated that “[t]here can be no dispute that lack of subject matter
25 jurisdiction renders a judgment void.”
26
27

28 According to NRS 4.370(1)(a), “[e]xcept as otherwise provided in subsection

1 2, justice courts have jurisdiction of the following civil actions and proceedings and
2 no others except as otherwise provided by specific statute . . . “[i]n actions arising on
3 contract for the recovery of money only, if the sum claimed, exclusive of interest, does
4 not exceed \$15,000”
5

6
7 The exception in subsection 2 relates to “civil actions, other than for forcible
8 entry or detainer, in which the title of real property or mining claims or questions
9 affecting the boundaries of land are involved.”
10

11
12 NRS 3.221 provides that “[i]f an action is filed in the district court and a district
13 judge determines that the action is properly within the jurisdiction of the justice court
14 pursuant to NRS 4.370, the district judge may transfer original jurisdiction of the
15 action to the justice court.”
16
17

18 In the present case, plaintiff alleged in paragraph 16 of its complaint (AA1, pg.
19 AA000005) that “DEFENDANTS have failed to abide by the material terms of the
20 *Settlement Agreement*” that was entered between the parties on September 16, 2017.
21
22

23 In paragraph 17 of its complaint (AA1, pgs. AA000005-AA000006), plaintiff
24 alleged that “the acts of DEFENDANTS have caused damage to COPPER CREEK
25 HOA in an amount in excess of \$15,000.00 to be proven at trial.”
26

27 According to Nevada law, “[e]very one is presumed to know the law and this
28

1 presumption is not even rebuttable.” Smith v. State, 38 Nev. 477, 481, 151 P. 512, 513
2 (1915).
3

4 Consequently, plaintiff and its counsel are presumed to know that NRS
5 116.31031(1)(b)(2) limited the maximum amount of fines that the HOA could charge
6 for each property involved in the present action to \$1,000.00.
7

8
9 Because plaintiff’s complaint included allegations relating to six (6) specific
10 properties, plaintiff and its counsel are presumed to have known that the principal
11 amount of plaintiff’s damages against all of the defendants could not exceed
12 \$6,000.00.
13

14
15 As provided by NRS 4.370(1)(a), plaintiff’s complaint should have been filed
16 in the Justice Court for Las Vegas Township and not in the District Court for Clark
17 County, Nevada.
18

19
20 Instead of entering separate judgments in favor of plaintiff against each of the
21 four defendants, the district court should have transferred “original jurisdiction of the
22 action to the justice court” as provided by NRS 3.221.
23

24 Moreover, even if plaintiff’s complaint was properly filed in District Court,
25 Rule 3(A) of the Nevada Arbitration Rules required that plaintiff submit its
26 controversy to arbitration. As discussed above, however, plaintiff represented to the
27
28

1 court that the four (4) defendants owed \$28,321.00 in fines for the six (6) different
2 properties and that defendants were liable for payment of \$15,488.00 in attorney's
3 fees and \$6,103.99 in costs. (AA1, pg. AA000039)

4
5 As stated at page 2 of defendants' opposition to plaintiff's request for
6 exemption from arbitration (AA1, pg. AA000075), Nevada Arbitration Rule 3
7 expressly excluded "interest and costs" from the calculation of the \$50,000.00
8 jurisdictional limit.
9
10

11
12 As stated at page 3 of defendants' opposition to plaintiff's request for
13 exemption from arbitration (AA1, pg. AA000076), plaintiff did not cite any authority
14 that plaintiff's attorneys' fees could properly be included to satisfy the \$50,000.00
15 jurisdictional limit. Defendants also quoted the language in Nevada Arbitration Rule
16 16(B) stating that "[t]he maximum award that can be rendered by the arbitrator is
17 \$50,000 per plaintiff, **exclusive of attorney's fees, interest and costs.**" (emphasis
18 added)
19
20
21

22
23 Plaintiff should not be permitted to recover attorney's fees that would not have
24 been incurred if plaintiff would have filed its complaint in the Justice Court for Las
25 Vegas Township as required by NRS 4.370(1)(a), or submitted its claim to mandatory
26 arbitration as required by Rule 3(A) of the Nevada Arbitration Rules.
27
28

1 **3. The amount of attorneys' fees awarded by the district court to**
2 **plaintiff is not consistent with Nevada law.**

3 The judgment entered against Saticoy Bay LLC involved two properties, and
4 the court capped the plaintiff's damages at \$2,000.00. The judgment also awarded
5 \$13,571.35 to plaintiff for attorneys' fees and costs incurred in pursuing the \$2,000.00
6 claim.
7

8
9 The judgment entered against Mahogany Meadows Avenue Trust involved one
10 property, and the court capped the plaintiff's damages at \$1,000.00. The judgment
11 also awarded \$6,785.68 to plaintiff for attorneys' fees and costs incurred in pursuing
12 the \$1,000.00 claim.
13

14
15 The judgment entered against Nickel Mine Avenue Trust involved two
16 properties, and the court capped the plaintiff's damages at \$2,000.00. The judgment
17 also awarded \$13,571.35 to plaintiff for attorneys' fees and costs incurred in pursuing
18 the \$2,000.00 claim.
19

20
21 The judgment entered against Travertine Lane Trust involved one property, and
22 the court capped the plaintiff's damages at \$1,000.00. The judgment also awarded
23 \$6,785.68 to plaintiff for attorneys' fees and costs incurred in pursuing the \$1,000.00
24 claim.
25

26
27
28 The amounts of attorneys' fees awarded to plaintiff in each judgment is not

1 consistent with Nevada law.

2 **A. Defendants acted in good faith.**
3

4 At page 7 of its motion for an award of attorneys' fees and costs (AA2, pg.
5 AA000270), plaintiff stated that "Plaintiff's counsel has spent over one hundred
6 ninety-two (192) hours prosecuting this action and working to overcome **the frivolous**
7 **defenses** presented by Defendants." (emphasis added)
8
9

10 On the other hand, plaintiff did not explain how the defenses asserted by
11 defendants could be "frivolous" when the district court agreed with defendants that
12 plaintiff was entitled to recover only \$2,000.00 of the \$12,441.00 in fines sought by
13 plaintiff against Nickel Mine Avenue Trust, only \$1,000.00 of the \$4,170.00 in fines
14 sought by plaintiff against Travertine Lane Trust, only \$1,000.00 of the \$3,195.00 in
15 fines sought by plaintiff against Mahogany Meadows Avenue Trust, and only
16 \$2,000.00 of the \$8,515.00 in fines sought by plaintiff against Saticoy Bay LLC. *See*
17 chart at page 8 of unredacted version of plaintiff's motion for summary judgment.
18
19 (see redacted version of chart at AA1, pg. AA000105)
20
21
22
23

24 In this regard, the total amount of fines recovered by plaintiff was only twenty-
25 one percent (21%) of the total fines of \$28,321.00 claimed by plaintiff.
26

27 The measure of defendants' good faith is also magnified by plaintiff's wrongful
28

1 attempt to recover fines for the time period from September 16, 2017 to June 26,
2 2018, which is the time period that plaintiff agreed that each defendant could lease its
3
4 property.

5 Furthermore, if defendant's defenses were truly frivolous, why did it take
6
7 plaintiff's counsel 192 hours of billable time to overcome the claims?

8
9 The evidence instead proves that plaintiff's motion for summary judgment
10 attempted to obtain exorbitant fines that were not permitted by statute. Defendants'
11 actions in defending the motion were in good faith and were ultimately validated by
12 the district court's denial of plaintiff's requested fine amounts in excess of \$1,000.00
13 per unit.
14
15

16 At page 10 of its motion for an award of attorney's fees and costs (AA2, pgs.
17 AA000273), plaintiff stated that "[d]efendants had no actual defense for its breach."
18 However, as discussed during the evidentiary hearing held on February 25, 2020, the
19
20 six homes in question were purchased at HOA foreclosure sales, and each unit
21 required work to bring it up to a standard where it could be sold to an interested home
22 buyer. The sale of each unit was further complicated by the pending lawsuits relating
23
24 to the legal effect of an HOA foreclosure sale. (AA1, pg. AA000235)
25
26

27 Until recently, buyers would not purchase homes that were acquired through
28

HOA foreclosure sales because the buyers would not be able to obtain title insurance. In addition, HOA foreclosure sale purchasers who leave the houses purchased at HOA foreclosure sales empty have to deal with the threat of squatters and the added costs of repairing damages caused by the squatters.

Defendants' argument that all parties are best served by allowing each unit to be rented until it could be sold has been validated by defendants' successful sale of four of the six properties at issue in this matter – one prior to the evidentiary hearing held on February 25, 2020 and three more since the hearing.

B. The amount awarded for attorneys' fees is not reasonable.

In Brunzell v. Golden Gate National Bank, 85 Nev. 345, 455 P.2d 31, 33 (1969), the court identified four “basic elements to be considered in determining the reasonable value of an attorney's services”:

(1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived. *See*, 7 C.J.S. Attorney and Client § 191 a. (2), p. 1080 et seq.; 5 Am.Jur., Attorneys at Law, section 198. *Cf. Ives v. Lessing*, 19 Ariz. 208, 168 P. 506.

As discussed at pages 3 to 7 of defendants' opposition to plaintiff's motion for attorney's fees and costs (AA2, pgs. AA000302-AA000306), three of the identified

1 factors weighed against awarding the \$38,458.00 in attorneys' fees requested by
2 plaintiff in its motion for an award of attorneys' fees and costs.
3

4 **1) Qualities of the Advocate.**

5 At page 6 of plaintiff's motion for award of attorneys' fees and costs (AA2, pg.
6 AA000269), plaintiff stated that both of the law firms retained by plaintiff "are
7 experienced litigation firms that have handled hundreds of cases in California,
8 Nevada, and Florida" or that both firms "have prosecuted similar claims in various
9 other communities throughout Southern Nevada for over 30 years."
10
11
12

13 On the other hand, the wealth of experience held by plaintiff's counsel in this
14 specific area of law raised the question of why experienced counsel chose to incur
15 \$38,458.00 in attorneys' fees to prosecute a claim in district court that plaintiff's
16 counsel should have known was limited to only \$6,000.00 (*i.e.* \$1,000.00 per
17 property).
18
19
20

21 The pleadings filed with the district court proved that the issues presented were
22 relatively simple. The case was also resolved in less than twenty (20) months passed
23 between the filing of plaintiff's complaint on March 13, 2019 and the entry of the four
24 judgments on November 6, 2020. The fees requested by plaintiff were not
25 commensurate with a litigation of such short duration.
26
27
28

1 **2) Character of the work.**

2 At page 7 of its motion (AA2, pg. AA000270), plaintiff stated that counsel had
3
4 spent over “one hundred ninety-two (192) hours prosecuting this action.” On the
5 other hand, plaintiff did not address “its difficulty, its intricacy, its importance, time
6 and skill required, the responsibility imposed and the prominence and character of the
7 parties where they affect the importance of the litigation” as required by Brunzell.
8
9

10 Again, this was a relatively simple case involving a breach of contract claim
11 that was resolved in less than twenty (20) months and which could have been resolved
12 even sooner if plaintiff had filed its complaint in the correct court or not avoided
13 mandatory arbitration of its claims.
14
15

16 When added together, the four (4) judgments awarded plaintiff the full amount
17 of the \$38,458.00 requested for attorneys’ fees, and the fee award was then divided
18 and allocated to the six (6) properties involved in the litigation. However, neither
19 plaintiff nor the court explained why it was reasonable for plaintiff to incur over
20 \$6,400.00 in attorneys’ fees per property to recover only \$1,000.00 in fines for each
21 property.
22
23
24
25

26 Plaintiff did not provide any reason why the disparity between the amounts
27 charged by plaintiff’s counsel and the amount recovered for each property was
28

1 reasonable.

2 At page 10 of its motion for award of attorneys' fees and costs (AA2, pg.
3
4 AA000273), plaintiff stated that "Defendants had no actual defense for its breach of
5 the *Settlement Agreement*" and that "the defense for the breach was frivolous and
6 vexatious, and therefore sanctionable." As demonstrated above, however, plaintiff
7 did not comply with the mandatory language in NRS 116.31065(6), NRS 116.31031
8 and NRS 116.31151(4) to assess the claimed fines and the amounts claimed by
9 plaintiff exceeded the maximum amount allowed by NRS 116.31031(1)(b) for each
10 property.
11
12
13
14

15 Defendants' success in having the district court limit the amount of fines
16 awarded to plaintiff to only \$6,000.00 (\$1,000.00 per property) proves that
17 defendants' defense in response to plaintiff's unsupportable claim to recover
18 \$28,321.00 in fines was not frivolous, vexatious or sanctionable.
19
20

21 **3) Work Actually Performed.**

22 An examination of the register of actions shows that only three hearings were
23 held in this matter. For the hearing held on September 24, 2019, plaintiff filed a
24 motion for leave to file a motion for motion for summary judgment with redactions
25 that was unopposed. The timesheets attached to plaintiff's motion show that
26
27
28

1 plaintiff's counsel billed \$2,050.00 (8.2 hours billed at \$250.00) to draft the motion.

2 Similarly, plaintiff's evidentiary hearing brief was largely identical to plaintiff's
3 motion for summary judgment, but the timesheets attached to plaintiff's motion show
4 that plaintiff's counsel billed \$1,950.00 (7.8 hours billed at \$250.00) to draft the brief.
5

6
7 On September 18, 2019, plaintiff's counsel billed 3.1 hours for preparing a
8 NRCP 16.1 joint case conference report. In the following days, plaintiff's counsel
9 billed an additional 1.9 hours for drafting the joint case conference report. The billing
10 does not indicate there were any unresolved issues between the parties that would
11 warrant a total of 5 hours for preparing and drafting what is essentially a form
12 document.
13

14
15
16 Between September 18, 2019 and October 17, 2019, a total of 21.4 hours was
17 billed for production of plaintiff's initial list of witnesses and documents.
18

19
20 Plaintiff's counsel also billed 9.1 hours related to plaintiff's request for
21 exemption from arbitration. This included drafting two requests for arbitration and
22 a supplement that were a total of 5 pages of content - not including captions, signature
23 pages, and certificates of service. Plaintiff's counsel also billed a total of 4.9 hours
24 for drafting plaintiff's request for exemption from arbitration on September 3, 2020
25 (3.2 hours) and the supplement plaintiff's request for exemption from arbitration on
26
27
28

1 September 30, 2020 (1.7 hours). Typically you would not expect such a motion to
2 require this amount of billable work.
3

4 The amount of hours reflected in the timesheets attached to plaintiff's motion
5 was simply not consistent with what one would expect to see for this type of work, in
6 this type of litigation, by a firm that focuses on HOA law, has over 30 years
7 experience in the area of law, and has been involved in hundreds of cases.
8
9

10 **4) Result.** 11

12 An award of attorneys' fees is also not warranted because plaintiff did not
13 obtain the result it sought to obtain. In particular, plaintiff's motion for summary
14 judgment sought to recover fines of \$28,321.00, but the district court limited the
15 amount of fines that plaintiff could recover to only \$6,000.00.
16
17

18 At page 4 of its motion for award of attorneys' fees and costs (*see* redacted
19 version at AA2, pg. AA000267), plaintiff stated that "the *Settlement Agreement*
20 expressly provides for a recovery of attorney's fees and costs to the prevailing party
21 in the instant of a breach."
22
23

24 Plaintiff also quoted from Section 13.7 of the Settlement Agreement, which
25 states:
26

27 13.7. The prevailing Party in any action brought to enforce the terms of
28 this Agreement shall be entitled to its attorney's fees and costs **for**

1 **enforcing this Agreement.** (emphasis added)

2 Plaintiff, however, did not identify any language in the Settlement Agreement
3
4 that authorized plaintiff to impose fines against the defendants that violated the
5
6 mandatory language in NRS 116.31065(6), NRS 116.31031 and NRS 116.31151(4)
7 or that exceeded the \$1,000.00 per property limit imposed by NRS 116.31031(1)(b).
8

9 Consequently, plaintiff's complaint seeking to recover judgment for the
10 unauthorized fines cannot properly be characterized as an "action brought to enforce
11
12 the terms of this Agreement."

13 Because the amount of attorneys' fees awarded by the district court is
14
15 inconsistent with three of the four factors identified in the Brunzell case, defendants
16
17 respectfully submit that this court should find that the district court abused its
18
19 discretion in awarding the full amount of the \$38,458.00 requested by plaintiff for
20 attorneys' fees,

21 **4. Plaintiff was not entitled to recover attorneys' fees under**
22 **NRS 18.010(2)(b).**

23 At page 10 of its motion for an award of attorneys' fees and costs (AA2, pg.
24
25 AA000273), plaintiff quoted from NRS 18.010(2)(b) and emphasized the words "**in**
26
27 **all appropriate situations to punish for and deter frivolous or vexatious claims**
28 and **defenses**." (emphasis by plaintiff)

1 Plaintiff also stated that “Defendants had no actual defense for its breach of the
2 *Settlement Agreement.*”
3

4 On the other hand, as quoted at page 7 of defendants’ opposition to plaintiff’s
5 motion for attorney’s fees and costs (AA2, pg. AA000306), NRS 18.010(4) states that
6 subsection 2 of NRS 18.010 does “not apply to any action arising out of a written
7 instrument or agreement which entitles the prevailing party to an award of reasonable
8 attorney’s fees.”
9
10

11 Moreover, as discussed at length above, plaintiff did not identify any language
12 in the Settlement Agreement that authorized plaintiff to impose fines against the
13 defendants that exceeded the \$1,000.00 per property limit imposed by NRS
14 116.31031(1)(b).
15
16
17

18 Because the district court agreed with defendants’ argument that plaintiff could
19 not recover fine in excess of \$1,000.00 per property, defendants’ “defense” to
20 plaintiff’s claim to recover fines that were not owed to plaintiff was neither
21 “frivolous” nor “vexatious.”
22

23
24 ///
25

26 CONCLUSION

27 By reason of the foregoing, defendants respectfully request that this court
28

1 reverse each of the judgments entered by the district court on November 9, 2020 and
2 remand this case to the district court with instructions to enter judgment in favor of
3 defendants.
4

5 DATED this 30th day of July, 2021.
6

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13 **CERTIFICATE OF COMPLIANCE**

14 1. I hereby certify that this brief complies with the formatting requirements of
15 NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(6) because this brief has
16 been prepared in a proportionally spaced typeface using Word Perfect X6 14 point
17 Times New Roman.
18

19 2. I further certify that this brief complies with the page or type-volume
20 limitations of NRAP 37(a)(7) because, excluding the parts of the brief exempted by
21 NRAP 32(a)(7) it is proportionately spaced and has a typeface of 14 points and
22 contains 8,221 words.
23

24 3. I hereby certify that I have read this appellate brief, and to the best of my
25
26
27
28

1 knowledge, information, and belief, it is not frivolous or interposed for any improper
2 purpose. I further certify that this brief complies with all applicable Nevada Rules of
3 Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in
4 the brief regarding matters in the record to be supported by a reference to the page
5 of the transcript or appendix where the matter relied on is to be found.
6
7

8
9 DATED this 30th day of July 2021.

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26 **CERTIFICATE OF SERVICE**

27 In accordance with N.R.A.P. 25, I hereby certify that I am an employee of the
28

1 Law Offices of Michael F. Bohn, Esq., Ltd., and that on the 30th day of July, 2021,
2 a copy of the foregoing **APPELLANT'S OPENING BRIEF** was served
3 electronically through the Court's electronic filing system to the following
4 individuals:
5

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12 /s/ /Maurice Mazza /
13 An Employee of the LAW OFFICES OF
14 MICHAEL F. BOHN, ESQ., LTD.
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