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Respondent.

Docket 82205 Document 2021-25409

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2 The undersigned counsel of record certifies that the following are persons
3
4 and entitled as described in NRAP 26.1(A) and must be disclosed. These
5 representations are made in order that the judges of this court may evaluate
6 possible disqualifications or recusal.

1. COPPER CREEK HOMEOWNERS ASSOCIATION is a Nevada non-profit corporation.

11 The following law firms have appeared on behalf of Respondent in these
12 proceedings and proceedings at the district court level:

1. Angius & Terry LLP

15 2. Bray Law Group, LLC

10 Dated: August 30, 2021

Dated: August 30, 2021

David M. Bray, Esq. SBN 12706
1180 N. Town Center Dr. Ste. 100
Las Vegas, Nevada 89144
Attorney for Respondent

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I.

ISSUES PRESENTED

1. Whether Copper Creek Homeowners Association (“Plaintiff”) provided ample evidence to the District Court for its determination that it followed the required procedures for imposing fines that are the basis for Plaintiff’s Complaint?
2. Whether the District Court had subject matter jurisdiction over the claims asserted by Plaintiff?
3. Whether the District Court abused its discretion in awarding Plaintiff attorneys’ fees and costs against Defendants Nickel Mine Avenue Trust; Travertine Lane Trust; Mahogany Meadows Trust; and Saticoy Bay LLC (collectively “Defendants”)?
4. Whether Plaintiff was entitled to recover attorneys’ fees under NRS 18.010(2)(b)?

II.

STATEMENT OF FACTS

This appeal arises from the District Court’s determination that Defendants breached a Settlement Agreement and Release (“Settlement Agreement”), reached as part of a prior lawsuit between the parties. (AA1, pgs. AA000111-A000117). The prior litigation between the parties involved Defendants’ claim

1 that Plaintiff was unable to enforce provisions of the Declaration of Covenants,
2 Conditions & Restrictions and Grant and Reservation of Easements for Copper
3 Creek; Articles of Incorporation of Copper Creek Homeowners Association;
4 Bylaws of Copper Creek Homeowners Association; and Copper Creek
5 Association Rules Regulations and Fee Schedule (collectively "Governing
6 Documents") related to certain rental restrictions of individual homes in the
7 Copper Creek common-interest community. (AA1, pgs. AA000111). The parties
8 were able to ultimately reach a resolution and memorialized the same in the
9 Settlement Agreement. (AA1, pgs. AA000111-A000117). One material provision
10 of the Settlement Agreement was that Defendants would only be allowed to
11 rent/lease 6838 Nickel Mine Avenue; 6892 Nickel Mine Avenue; 6777 Travertine
12 Lane; 6896 Mahogany Meadows Avenue; 6773 Granite River Lane; and 6915
13 Silver State Avenue (collectively referred to as the "Properties") for a limited
14 period, and thereafter would be prevented from doing so, without express
15 permission by Plaintiff. (AA1, pgs. AA000111-A000117).

1. By executing this agreement, [Plaintiff] and [Defendants] agree
[Defendants] [are] permitted to rent the Properties as an approved
lease under the Governing Documents until the earliest
occurrence of the following events: (i) [Plaintiff] obtaining an
order for declaratory relief from a court of competent jurisdiction
that judicially determines the number of phases of development
within COPPER CREEK and the adoption of Resolution(s)
and/or Regulation(s) related to the submitting and/or approving
of leases thereafter; (ii) the United States Supreme Court rejects
that Petition for a Writ of Certiorari submitted to the United States

1 Supreme Court in the matter of *Bourne Valley Court Trust v.*
2 *Wells Fargo Bank, N.A.*, as No. 16-1208; or the United States
3 Supreme Court in the matter of *Bourne Valley Court Trust v.*
4 *Wells Fargo Bank, N.A.*, as No. 16-1208 and thereafter renders a
5 decision. (AA1, pgs. AA000111-AA000112)

6 On October 18, 2017, pursuant to the terms of the Settlement Agreement,
7 the parties filed a Stipulation and Order to Dismiss with Prejudice. (AA1, pgs.
8 AA000119-AA000120). The U.S. Supreme Court rejected the Petition for Writ of
9 Certiorari in the matter of *Bourne Valley Court Trust v. Wells Fargo Bank, N.A.*,
10 as No. 16-1208 on June 26, 2017. (AA1, pgs. AA000122-AA000124). The
11 Settlement Agreement then provides the following additional term related to the
12 rental of Defendants' properties.
13

- 14
- 15 2. The Parties further agree that upon the occurrence of the earliest
16 of those events identified in Paragraph 1 above, [Defendants] may
17 continue to rent the Properties until the lease applicable to each
18 Property identified in the Recitals above expires, so long as the
19 stated term of any applicable lease does not exceed one (1) year
20 from the date of the earliest of those events identified in Paragraph
21 1 above. If a stated term on any lease applicable to an individual
22 Property identified above exceeds one year, upon the occurrence
23 of the earliest of those event identified in Paragraph 1 above,
24 [Defendants] may lease the Property until the anniversary date of
25 the day the applicable lease was executed, but in the event the
26 anniversary date is less than six (6) months from the occurrence of
27 the earliest of those events identified in Paragraph 1 above,
28 [Defendants] may lease that Property for a period of six (6) months
following the occurrence of the earliest event identified in
Paragraph 1 above, thereby providing sufficient time for any
tenant to make arrangements to vacate the Property[.]

...

[¶]

1 10. By executing this Agreement, the [Defendants] agree to timely pay
2 [Plaintiff] all assessments as they become due and owing and maintain
3 the Property in accordance with the Governing Documents, including
4 the payment of any non-rent restriction related fines that may be or are
due and owing. (AA1, pgs. AA000112; AA000113).

5 As a result of the Supreme Court's denial of certiorari for the *Bourne Valley*
6 matter, the earliest period in which Defendants would have to cease/desist any
7 rental/lease on the Properties would be November 26, 2017 (i.e., six (6) months
8 from the denial of Certiorari) and the latest period would have been June 26, 2018
9 (i.e., assuming that Defendants signed a one-year lease the exact same day as the
10 Supreme Court's denial of certiorari on June 26, 2017). (AA1, pgs. AA000112;
11 AA000122-AA000124). Thereafter, Defendants would have been required to
12 submit a rental/lease request to Plaintiff, pursuant to the protocol outlined in the
13 Governing Documents. (AA1, pgs. AA000112). Despite this express term of the
14 Settlement Agreement, Defendants continued to lease the Subject Homes, in
15 direct violation of the Settlement Agreement. (AA1, pgs. AA000241-AA000243).
16 Indeed, Defendants conceded the same, having provided leases to Plaintiff for the
17 Properties after June 26, 2018. (AA1, pgs. AA000126-AA000129).

18 On March 13, 2019, Plaintiff filed a Complaint against Defendants alleging
19 claims of (1) breach of contract; (2) breach of covenant of good faith and fair
20 dealing; (3) fraud in the inducement/intentional misrepresentation; (4) negligent
21 misrepresentation; and (5) civil conspiracy. (AA1, pgs. AA000001-AA000018).

1 On September 3, 2019, Plaintiff requested exemption from arbitration, as
2 the amount in controversy was in excess of \$50,000.00 per Plaintiff, exclusive of
3 interest and costs. (AA1, pgs. AA000038-AA000078). Indeed, at that time,
4 Plaintiff had fines against Defendants as follows:
5

- 6 • Nickel Mine Avenue Trust (6838 Nickel Mine Ave.; 6892 Nickel Mine
7 Avenue) - \$12,441.00
- 8 • Travertine Lane Trust (6777 Travertine Lane) - \$4,170.00
- 9 • Mahogany Meadows Avenue Trust (6896 Mahogany Meadows Ave.) -
10 \$3,195.00
- 11 • Saticoy Bay, LLC (6773 Granite River Lane; 6915 Silver State Ave.) -
12 \$8,515.00 (AA1, pgs. AA000039).

13 Plaintiff also pointed out that the fines against Defendants would continue
14 to increase as Defendants continued to violate the terms of the Settlement
15 Agreement by their unauthorized rental/lease of the Properties. (AA1, pgs.
16 AA000039). Finally, because the Settlement Agreement executed by the parties
17 provides that attorneys' fees and costs are a recoverable damage against the
18 breaching party, such incurred costs should be accounted for in analyzing the
19 request for exemption. (AA1, pgs. AA000039). Indeed, redacted copies of the
20 Plaintiff's ledgers, attorney's fee timesheets and costs logs were produced as part
21 of its request. (AA1, pgs. AA000054-AA000065).
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25 On September 30, 2019, pursuant to the Alternative Dispute Resolution
26 ("ADR") Commissioner's request, Plaintiff provided additional facts in support
27 of its request for exemption in its Supplement to Plaintiff's Request for Exemption
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1 from Arbitration. (AA1, pgs. AA000091-AA000095). Therein, Plaintiff outlined
2 that through the course of prior litigation, it was discovered that although the
3 named-Defendants are separate legal entities, they were all managed by the same
4 person, Eddie Haddad. (AA1, pgs. AA000092). As such, Plaintiff asserted that
5 because the conduct in question arises from the same Settlement Agreement and
6 the same individual manages all the Properties, Plaintiff's claims of breach of
7 contract against each of the Defendants was inseparable and therefore the sum of
8 Plaintiff's damages should be considered when deciding as to whether the matter
9 should be exempted from arbitration. (AA1, pgs. AA000092).
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13 On October 15, 2019, the ADR Commissioner, having reviewed Plaintiff's
14 Request for Exemption and all related pleadings, granted Plaintiff's request.
15 (AA1, pgs. AA000096-AA000097). Defendants filed no objection to the ADR
16 Commissioner's decision.
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19 On October 22, 2019, Plaintiff filed a Motion for Summary Judgment on
20 its breach of contract claims against Defendants. (AA1, pgs. AA000098-
21 AA000161). Plaintiff's Motion outlined that there was no genuine issue of
22 material fact regarding Defendants' breach of the Settlement Agreement, as they
23 continued to rent/lease the Properties without the express approval of Plaintiff.
24 (AA1, pgs. AA000098-AA000161). Moreover, Plaintiff requested a permanent
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1 injunction from the Court that Defendants cease and desist all rental/leasing of the
2 Properties. (AA1, pgs. AA000098-AA000161).

3
4 On November 7, 2019, Defendants filed their Opposition to the Motion for
5 Summary Judgment, but provided the Court with no exhibits in support of its
6 Opposition and simply made the bald assertion that “[t]he plaintiffs motion for
7 summary judgment should be denied because the motion fails to demonstrate
8 compliance with all the statutory requirements as detailed herein.” (AA1, pgs.
9 AA000162-AA000167). Indeed, Defendants’ Opposition provided the Court with
10 no evidence whatsoever that they were not renting/leasing the Properties; nor any
11 copies of current or past rental/lease agreements; nor did they assert any argument
12 as to how exactly Plaintiff did not follow the proper procedures outlined in NRS
13 116 to assess the rental restriction fines. (AA1, pgs. AA000162-AA000167).
14 Instead, Defendants simply stated, without any actual support that “[t]he motion
15 fails to set forth compliance with the various statutes which must be followed
16 before fines may be assessed.” (AA1, pgs. AA000167).

17
18 However, Plaintiff provided the Court with ample evidence to meet its
19 burden of production and persuasion, including copies of the various Fine Notices,
20 Hearing Notifications, Penalty Notices, Notifications of Hearing Outcomes, Fine
21 Ledges and the Affidavit of Jeff Pope, Plaintiff’s community manager, who
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1 authenticated the documents as true and correct copies. (AA1, pgs. AA000193-
2 AA000209).

3
4 On April 3, 2020, the District Court granted, in part, and denied, in part,
5 Plaintiff's Motion for Summary Judgment. (AA1, pgs. AA000241-AA000243).
6 Therein the District Court held that "Defendants breached the Settlement
7 Agreement and Release between Plaintiff and Defendants in that Defendants used
8 the six (6) properties located at 6773 Granite River Lane; 6915 Silver State
9 Avenue; 6896 Mahogany Meadows Avenue; 6777 Travertine Lane; 6838 Nickel
10 Mine Avenue; and 6892 Nickel Mine Avenue (collectively "Subject Homes") as
11 rentals." (AA1, pgs. AA000242). However, the Court held that despite the fines
12 being assessed for Defendants' continued violation of the rental restriction, "NRS
13 116.31031 capped Plaintiff's damages to one thousand dollars (\$1,000.00) per
14 home." (AA1, pgs. AA000242). Finally, the Court granted Plaintiff's request for
15 a permanent injunction holding that "Defendants, their officers, agents, servants,
16 employees, attorneys, successors, assigns and all persons in active participation
17 or concert with them are permanently restrained and enjoined from doing,
18 causing, or permitting to be done, directly or indirectly, any acts whereby the
19 terms of the Settlement Agreement and Release between Plaintiff and Defendants
20 are in any manner violated and Defendants must cease and desist any and all
21 leasing and/or renting of the Subject Homes." (AA1, pgs. AA000243).

1 The Notice of Entry of the Order Granting, In Part, and Denying, In Part,
2 Plaintiff's Motion for Summary Judgment was filed April 6, 2020. (AA1, pgs.
3 AA000244-AA000245).

4
5 On April 13, 2020, Plaintiff filed their Verified Memorandum of Costs and
6 Disbursements, which amounted to a total of \$2,256.06 in costs. (AA2, pgs.
7 AA000249-AA000263).

8
9 On April 27, 2020, Plaintiff filed a Motion for an Award of Attorneys' Fees
10 and Costs. (AA2, pgs. AA000264-AA000299). Therein, Plaintiff cited the express
11 terms of the Settlement Agreement that entitled Plaintiff to recover its incurred
12 attorneys' fees and costs for its effort to enforce the Settlement Agreement.
13

14
15 13.7 The prevailing Party in any action brought to enforce the
16 terms of this Agreement shall be entitled to its attorney's fees and
17 costs for enforcing this Agreement. (AA2, pgs. AA000267).

18 Plaintiff highlighted how each of the factors outlined in *Brunzell v.*
19 *Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969) favored an award
20 of attorneys' fees to Plaintiff. (AA2, pgs. AA000268-AA000272). Moreover,
21 Plaintiff provided copies of the attorney's timesheets, which included the dates,
22 the persons, the description of the task, the time spent, and the amount charged.
23 (AA2, pgs. AA000289-AA000299). As a result of the one hundred ninety-two
24 (192) hours of work over the sixteen (16) month period related to the litigation,
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1 Plaintiff requested a total award of \$38,458.00 in attorneys' fees and \$2,256.06
2 in costs. (AA2, pgs. A000275).

3
4 Given that there were six (6) Properties owned by four (4) separate
5 Defendants, Plaintiff requested the following breakdown of attorneys' fees and
6 costs against each of the Defendants:

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- 8 • Saticoy Bay, LLC (6773 Granite River Lane; 6915 Silver State Ave.) -
9 \$13,571.35
- 10 • Nickel Mine Avenue Trust (6838 Nickel Mine Ave.; 6892 Nickel Mine
11 Avenue) - \$13,571.35
- 12 • Travertine Lane Trust (6777 Travertine Lane) - \$6,785.68
- 13 • Mahogany Meadows Avenue Trust (6896 Mahogany Meadows Ave.) -
14 \$6,785.68 (AA2, pgs. AA000275).

15 On September 25, 2020, the Court granted Plaintiff's Motion for Attorneys'
16 Fees and Costs holding that "Plaintiff is the prevailing party in this case given the
17 Court's ruling that Defendants breached the settlement agreement" and that
18 "pursuant to the terms of the Settlement Agreement and Release, Plaintiff is
19 entitled to an award of attorneys' fees and costs as the prevailing party." (AA2,
20 pgs. AA000348). Moreover, the Court found that "the *Brunzell analysis* in
21 Plaintiff's Motion and Affidavit to be reasonable and adopts the same." (AA2,
22 pgs. AA000349).

23
24 On November 6, 2020, Judgments against each of the Defendants was
25 entered for the \$1,000.00 in capped damages, and the respective award of
26 attorneys' fees and costs. (AA2, pg. A000363-A000490).
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1 On December 7, 2020, Defendant filed their Notice of Appeal and Case
2 Appeal Statement. (AA2, pgs. AA000491-AA000492).

3 On July 30, 2021, Defendants filed their Opening Brief arguing that the
4 District Court erred in its granting, in part, and denying, in part, of Plaintiff's
5 Motion for Summary Judgment, as well as its award of attorneys' fees in favor of
6 Plaintiff. Defendants argue in their present appeal that: (1) Plaintiff did not prove
7 that it followed the required procedures for imposing fines against Defendants for
8 its rental restriction violation; (2) the District Court did not have subject matter
9 jurisdiction, as the matter should have been heard before the Justice Court for Las
10 Vegas Township or submitted to arbitration; (3) that the amount of attorneys' fees
11 awarded Plaintiff was unreasonable; and (4) Plaintiff was not entitled to a
12 recovery of attorneys' fees under NRS 18.010(2)(b). As highlighted below, each
13 of these arguments are without merit and the Defendant's appeal should be denied.
14 However, the Court should rule that the District Court erred in its capping of
15 Plaintiff's damages for Defendants' rental restriction violation to \$1,000.00 per
16 home, as NRS 116.31031's \$1,000.00 cap does not apply when the violation is
17 deemed a continued violation.
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III.

ARGUMENT

A. Standard of Review

The Nevada Supreme Court will review de novo an order granting summary judgment. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

Summary Judgment is “when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact [remains], and the moving party is entitled to judgment as a matter of law.” *Wood*, 121 Nev. at 731, 121, P.3d at 1031. If the party moving for summary judgment will bear the burden of persuasion at trial, that party “must present evidence that would entitle it to a judgment as a matter of law in the absence of contrary evidence.” *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007).

B. The District Court Properly Held That Defendants Breached the Settlement Agreement and That Plaintiff Performed the Requisite Procedures for Imposing Fines Against Defendants

In support of Plaintiff’s Motion for Summary Judgment on its claims, Plaintiff provided the District Court with the Fine Notices, Hearing Notifications, Penalty Notices, Notifications of Hearing Outcomes, and fine ledgers for each of the six (6) Properties. (AA1, pgs. A000131-AA000472; AA1,

1 pgs. AA000201). Moreover, Plaintiff submitted the Affidavit of Jeff Pope,
2 Plaintiff's community manager, who authenticated the documents as true and
3 correct copies. (AA1, pg. AA000208-AA000209). These documents highlight
4 how Defendants failed to meet its obligations and promises under the Settlement
5 Agreement. However, in response, Defendants' Opposition provided the Court
6 with no exhibits, nor any actual argument, other than the bald assertion that
7 "[t]he motion fails to set forth compliance with the various statutes which must
8 be followed before fines may be assessed." (AA1, pg. AA000162-AA000167).
9 There was no discussion or argument posited by Defendants regarding alleged
10 deficiencies in the violation notices or an issue surrounding the timing of a notice
11 and/or hearing. Accordingly, because Defendants provided no "contrary
12 evidence" that created genuine material issues of facts on Plaintiff's claim, the
13 District Court properly granted Plaintiff's Motion for Summary Judgment.
14

15 Now, after recognizing the consequence of their breach of the Settlement
16 Agreement, Defendants have fabricated an entirely new argument on appeal.
17 Although the Nevada Supreme Court reviews orders granting summary
18 judgment on de novo, this does not entitle appellants to provide brand new
19 arguments on appeal that were never presented to the lower court. As such,
20 Defendants' brand-new arguments regarding the timing of the violation notices
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1 should be summarily dismissed as no such mention was presented to the lower
2 court.

3 *Arguendo*, that the Court does entertain Defendants' arguments that Plaintiff
4 failed to comply with the provision of NRS 116 to assess fines against
5 Defendants for their unauthorized rental/lease of the Properties, the operative
6 facts demonstrate otherwise.
7

8
9 Upon review of the terms of the Settlement Agreement, the triggering date in
10 which a determination could be made as to when Defendants would no longer
11 be able to rent/lease the Properties was June 26, 2017. This was the date that the
12 U.S. Supreme Court rejected the Petition for Writ of Certiorari in the matter of
13 *Bourne Valley Court Trust*. (AA1, pg. AA000112-A000124).
14

15
16 Although Defendants have stated that they would have until June 26, 2018,
17 to continue to rent/lease the Properties, that is not entirely true. The Settlement
18 Agreement provides that once the trigger date occurs, the Properties could
19 continue to be rented/lease until the anniversary date of the operative rental/lease
20 agreement. Moreover, if that anniversary date was less than six (6) months from
21 June 26, 2017, then Defendants would have a minimum of six (6) months to
22 continue renting the Property.
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26 The Parties further agree that upon the occurrence of the earliest
27 of those events identified in Paragraph 1 above, [Defendants] may
28 continue to rent the Properties until the lease applicable to each
Property identified in the Recitals above expires, so long as the

1 stated term of any applicable lease does not exceed one (1) year
2 from the date of the earliest of those events identified in Paragraph
3 1 above. If a stated term on any lease applicable to an individual
4 Property identified above exceeds one year, upon the occurrence
5 of the earliest of those event identified in Paragraph 1 above,
6 [Defendants] may lease the Property until the anniversary date of
7 the day the applicable lease was executed, but in the event the
8 anniversary date is less than six (6) months from the occurrence of
9 the earliest of those events identified in Paragraph 1 above,
10 [Defendants] may lease that Property for a period of six (6) months
11 following the occurrence of the earliest event identified in
12 Paragraph 1 above, thereby providing sufficient time for any
13 tenant to make arrangements to vacate the Property. (AA1, pgs.
14 A000111-AA000112).

11 Once again, Defendants never provided the District Court, or this Court with
12 the rental/lease agreements, but instead have taken the unsupported position that
13 Defendants could have rent/leased the Properties until June 26, 2018. However,
14 that would only be true if Defendants had signed a rental/lease agreement on the
15 exact same day that the U.S. Supreme Court rejected certiorari in *Bourne Valley*
16 *Court Trust*. A fact that was never presented or posited by Defendants.

20 Plaintiff followed the requisite procedures to assess fines for Defendants'
21 unauthorized rental/lease of the Properties, by sending violation notices,
22 scheduling and conduct hearings on those violations and provide notification of
23 the penalty fines. (AA1, pg. AA000200-AA000201). Indeed, one of the
24 Defendants, SATICOY BAY, LLC, even had an attorney provide a response to
25 one of the violation notices. (AA1, pg. AA000203-AA000205). Defendants
26 were provided the requisite notice and opportunity to be heard in order Plaintiff
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1 to assess fines for their unauthorized rental/lease of the Properties. Defendants'
2 attempts to escape liability by asserting new and entirely baseless arguments
3 should be summarily rejected by this Court.
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5 **C. The District Court's Reduction of Plaintiff's Fines to \$1,000.00 Per**
6 **Home was in Error as NRS 116.31031's cap does not apply to**
7 **continuing violation**

8 Defendant's Opposition to Plaintiff's Motion for Summary Judgment argued
9 that "[b]y statute, fines are capped at \$1,000.00" and that NRS 116.31031
10 provides that "plaintiff cannot collect more than \$1,000.00 on each unit[.]"
11 (AA1, pgs. AA000116). The District Court agreed holding that "Plaintiff's
12 damages are capped, pursuant to NRS 116.31031, to one thousand dollars
13 (\$1,000.00) per home." (AA1, pg. AA000242).
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16 However, NRS 116.31031 cap on damages is not applicable when the
17 violation is a continuing violation. Indeed, the Nevada Real Estate Division
18 explicitly provides an answer to this inquiry on its website. Under the *Frequently*
19 *Asked Questions: Living in a Common-Interest Community (HOA)* section of the
20 HOA Board Member and Unit Owner Training section of the Ombudsman's
21 Office it provides the following:
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1 **Can the association charge a fine exceeding \$1,000 for a**
2 **violation of the governing documents?**

3 **NRS 116.31031(1)(b)(2); NRS 116.31031(7)**

4 The amount of a fine must not exceed \$100 for each violation
5 or a total amount of \$1,000, whichever is less. The \$1,000
6 cap is on the amount that can be charged for violations cited
7 at one hearing. Once violations become continuing, however,
8 meaning that they have not been cured within at least 14
9 days, there is no cap on the fine amount. Thereafter, the
10 executive board may impose an additional fine for each 7-day
11 period or portion thereof that the violation is not cured.

12 If a violation has been cured but occurs again, the board
13 cannot call the violation a continuing violation because it was
14 in fact already cured. (Respondent's Appendix ("RA1"), pg.
15 RA00001).

16 Plaintiff's fines against Defendants clearly became continuing violations,
17 as Defendants continued to rent/lease the homes despite agreeing previously that
18 they would need express approval from Plaintiff to do so once the grace period
19 allotted in the Settlement Agreement expired. As such, Plaintiff's fines should
20 not have been capped at the \$1,000.00 and the District Court's holding should
21 be overturned. This ruling has created the untenable situation where after the
22 \$1,000.00 are assessed against a homeowner for an unauthorized rental/lease, a
23 common-interest community association is left with no other remedy, short of
24 initiating formal proceedings against the homeowner, to seek compliance. In
25 essence, the \$1,000.00 would become the "cost of doing business" for such
26 violators, including Defendants, and leave homeowners' associations, like
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1 Plaintiff, with the hard decision of incurring significant legal costs to enforce
2 terms of the Governing Documents, or in this case, a separate agreement
3 altogether. That is not what the Nevada Legislature intended, and it certainly
4 isn't how the Nevada Department of Real Estate, or the Ombudsman's Office
5 interprets and/or enforces NRS 116.31031. (RA1, pg. RA00001). As such, this
6 Court should instruct the District Court to remove the cap placed on Plaintiff's
7 damages as it is not in accordance with the statute.
8

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10
11 **D. The District Court Was the Appropriate Venue for Plaintiff's**
12 **Complaint and Had Subject Matter Jurisdiction**

13 The District Court had subject matter jurisdiction over this matter. As
14 outlined above, Plaintiff's damages should not be subject to NRS 116.31031's
15 \$1,000.00 cap, as Defendant's conduct was a continuing violation. Indeed, at the
16 time of the Plaintiff's Complaint, Defendants had over \$28,321.00 in fines.
17 (AA1, pgs. A000039). Moreover, the fines were anticipated to continue as
18 Defendants were still renting the Properties without express permission of
19 Plaintiff.
20

21
22 Now Defendants argue that Plaintiff should have been aware that the District
23 Court would have limited their damages to \$1,000.00 per home, even though the
24 Nevada Real Estate Division and Ombudsman's Office state otherwise. (RA1,
25 pg. RA0001). At best, Plaintiff's damages should not have been capped at all,
26 and at worse, Plaintiff had a good faith belief that its damages would exceed
27
28

1 \$15,000.00. As such, the District Court, and not the Justice Court, was the
2 appropriate venue for Plaintiff's Complaint.

3
4 Moreover, Defendants assertion that the matter should have been submitted
5 to arbitration is entirely moot, as Defendants failed to raise any objections to the
6 ADR commissioner's decision to exempt Plaintiff's matter from arbitration.
7
8 (AA1, pgs. A000096-AA000097). Indeed, Nevada Arbitration Rule ("NAR") 5
9 provides in pertinent part:

10
11 Any objection(s) to the commissioner's decision must be filed
12 with the commissioner who shall then notify the district judge
13 to whom the case is assigned. Objections must be filed within
14 5 days of the date the commissioner's decision is served, with
service to all parties. NAR 5(D).

15 Defendants made no objection to the ADR Commissioner's decision filed on
16 October 15, 2019. Moreover, even if Defendants had filed the requisite
17 objection, the District Court would have made the final determination.
18

19 The district judge to whom a case is assigned shall make all final
20 determinations regarding the arbitrability of a case and may hold
21 a hearing on the issue of arbitrability, if necessary. The district
22 judge's determination of such an issue is not reviewable. NAR
5(E).

23 As such, the District Court had subject matter jurisdiction over
24 Plaintiff's Complaint.
25

26 ///

27 ///

1 **E. The District Court Did Not Abuse Its Discretion In Awarding**
2 **Plaintiff Its Incurred Attorneys' Fees**

3 The Nevada Supreme Court reviews a district court's award of attorneys' fees
4 for an abuse of discretion. *Miller v. Wilfong*, 121 Nev. 619, 622, 119 P.3d 727,
5 729 (2005). When awarding attorneys' fees, the district court must consider the
6 factors set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349,
7 455 P.2d 31, 33 (1969).
8

9
10 Here, the District Court clearly demonstrated that it considered each of the
11 *Brunzell* factors in its determination of whether to award Plaintiff its incurred
12 attorneys' fees.
13

14 **THE COURT FURTHER FINDS** that whenever a district court awards
15 attorney's fees and costs, the reasonability of the award must always be a
16 consideration. *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 455 P.2d
17 31 (1969). The Nevada Supreme Court has provided factors to be utilized
18 in determining whether the fees requested are reasonable, as follows: (1)
19 the qualities of the advocate: his ability, his training, education, experience,
20 professional standing and skill; (2) the character of the work to be done: its
21 difficulty, its intricacy, its importance, time and skill required, the
22 responsibility imposed and the prominence and character of the parties
23 where they affect the importance of the litigation; (3) the work actually
24 performed by the lawyer: the skill, time and attention given to the work; (4)
25 the result: whether the attorney was successful and what benefits were
26 derived. *Id.* at 349.

27 Indeed, the District Court had ample opportunity to comb through the specific
28 tasks performed by Plaintiff's counsel to determine if any task took too much
29 time or was improperly billed. The reason the District Court was afforded that
30 opportunity was because Plaintiff provided the attorney timesheets, which

1 outline in detail, what tasks were performed, who performed it, when and how
2 much time was spent. (AA2, pgs. AA000289-AA000299). Having reviewed
3 those timesheets in detail, the District Court found the billed attorneys' fees
4 reasonable and awarded Plaintiff, as the prevailing party, under the terms of the
5 Settlement Agreement. (AA2, pgs. AA000282).

6
7
8 The attorneys' fees award resulted from Plaintiff's counsel billing one
9 hundred ninety-two (192) hours over sixteen (16) month period, an average of
10 twelve (12) hours a month. When divided among the four separate Defendants,
11 that is an average of three (3) billable hours per month – an amount well within
12 reason. Moreover, the rates charged by Plaintiffs' counsel (i.e., \$250-\$275 per
13 hour for partner and associate attorneys, and \$160.00 for paralegals) were well
14 within, if not below, the average rates charged by attorneys and paralegals in the
15 Las Vegas area representing common-interest communities as corporate
16 counsel.

17
18
19 Finally, Plaintiff was the prevailing party in the matter, as it was able to
20 enforce the terms of the Settlement Agreement, obtain an order from the District
21 Court that Defendants breached the Settlement Agreement and also received a
22 permanent injunction that ordered Defendants to cease and desist the
23 renting/lease of the Properties. (AA1, pgs. AA000241-AA000243). As such, the
24 factors announced in *Brunzell* (i.e., qualities of the advocate, character of the
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1 work, the work performed, and the result) were all considered by the District
2 Court, supported by substantial evidence, and therefore do not amount to an
3 abuse of discretion.
4

5 **F. The basis for the District Court's award of attorneys' fees and costs**
6 **to Plaintiff was from the express terms of the Settlement Agreement,**
7 **not NRS 18.010(2)(b)**

8 The District Court did not award Plaintiff attorneys' fees and costs pursuant
9 to NRS 18.010(2)(b), but instead did so pursuant to the express terms of the
10 Settlement Agreement.
11

12
13 The Court finds that Plaintiff is the prevailing party in this case
14 given the Court's ruling that Defendants breached the
15 settlement agreement.

16 **THE COURT FINDS** that pursuant to the terms of the
17 Settlement Agreement and Release, Plaintiff is entitled to an
18 award of attorneys' fees and costs as the prevailing party.
(AA2, pg. AA000348).

19 Although Plaintiff made arguments in its Motion for Summary Judgment
20 regarding an award of attorneys' fees and costs pursuant to NRS 18.010(2)(b),
21 the District Court found them unpersuasive and ultimately did not grant
22 Plaintiff's Motion on those grounds. As such, Defendants' instant assertion that
23 "Plaintiff was not entitled to recover attorneys' fees under NRS 18.010(2)(b) is
24 moot and irrelevant.
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IV.

CONCLUSION

By reason of the foregoing, Plaintiff respectfully requests that this Court deny Defendants' appeal and remand this case to the District Court with instructions that the Judgments be amended to include all of the assessed fines against Defendants, as NRS 116.31031 should not have capped Plaintiff's rental restriction fines against Defendants at \$1,000.00 per home, as the fines were continued violation fines.

Dated: August 30, 2021.

BRAY LAW GROUP LLC



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Attorney for Respondent

CERTIFICATE OF COMPLIANCE

1
2 1. I hereby certify that this brief complies with the formatting
3 requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32 (a)(5)
4 and the type style requirements of NRAP 32 (a)(6) because this Answering Brief
5 has been prepared in a proportionally spaced typeface using Microsoft Word 2019
6 in the 14 point Times New Roman type style
7
8

9 2. I further certify that this brief complies with the page- or type-volume
10 limitations of NRAP 32(a)(7).
11

12 3. Finally, I hereby certify that I have read this appellate brief, and to the
13 best of my knowledge, information, and belief, it is not frivolous or interposed for
14 any improper purpose. I further certify that this brief complies with all applicable
15 Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which
16 requires every assertion in the brief regarding matters in the record to be supported
17 by a reference to the page and volume number, if any, of the transcript or appendix
18 where the matter relied on is to be found. I understand that I may be subject to
19
20
21

22 ///

23 ///

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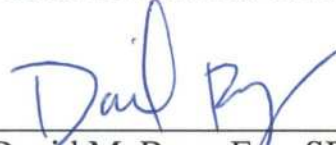
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1 sanctions in the event that the accompanying brief is not in conformity with the
2 requirements of the Nevada Rules of Appellate Procedure.

3 Dated: August 30, 2021

BRAY LAW GROUP LLC


4
5 

6 David M. Bray, Esq. SBN 12706
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8 Las Vegas, Nevada 89144
9 *Attorney for Respondent*

10
11 **CERTIFICATE OF SERVICE**

12
13 In accordance with NRAP 25, I hereby that on this 30th day of August, 2021,
14 a copy of the foregoing **RESPONDENT, COPPER CREEK HOMEOWNERS**
15 **ASSOCIATION'S ANSWERING BRIEF** was served electronically through
16 the Court's electronic filing system to the following individuals:
17

18 MICHAEL F. BOHN, ESQ.
19 LAW OFFICES OF MICHAEL F. BOHN, ESQ., LTD.
20 2260 Corporate Circle, Ste. 480
21 Henderson, Nevada 89074

22
23 
24 An Employee of Bray Law Group LLC