

IN THE SUPREME COURT OF THE STATE OF NEVADA
CLARK COUNTY

DAISY TRUST, a Nevada trust,
Appellant,

vs.

EL CAPITAN RANCH LANDSCAPE
MAINTENANCE ASSOCIATION, A
NEVADA NON-PROFIT
CORPORATION,

Respondents.

EL CAPITAN RANCH
LANDSCAPE MAINTENANCE
ASSOCIATION

Appellant,

vs.

DAISY TRUST, A NEVADA
TRUST

Respondents.

Supreme Court Case No. 83404

Consolidated with Supreme Court Case
No. 84037

District Court Case No.
A-19-789674-C

Electronically Filed
Apr 04 2022 04:14 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

From the Eighth Judicial District Court

The Honorable Adriana Escobar

**EL CAPITAN RANCH LANDSCAPE MAINTENANCE ASSOCIATION'S
APPENDIX OF EXHIBITS TO OPENING BRIEF**

Sean L. Anderson
Nevada Bar No. 7259
T. Chase Pittsenbarger
Nevada Bar No. 13740
LEACH KERN GRUCHOW ANDERSON SONG
2525 Box Canyon Drive, Las Vegas, Nevada 89128
Phone: (702) 538-9074

CERTIFICATE OF SERVICE

I hereby certify that on this date, April 4, 2022, I submitted the foregoing **EL CAPITAN RANCH LANDSCAPE MAINTENANCE ASSOCIATION'S APPENDIX OF EXHIBITS TO OPENING BRIEF** for filing and service through the Court's eFlex electronic filing service. According to the system, electronic notification will be automatically sent to the following:

Sean Anderson

T. Chase Pittsenbarger

Roger P. Croteau

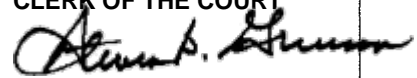
Christopher L. Benner

/s/ Yalonda Dekle

An Employee of LEACH KERN GRUCHOW
ANDERSON SONG

**INDEX OF APPENDIX TO EL CAPITAN RANCH LANDSCAPE
MAINTENANCE ASSOCIATION'S APPENDIX OF EXHIBITS TO
OPENING BRIEF**

DATE	DOCUMENT	BATES NO.
7/23/21	Memorandum of Costs and Fees	001-035
8/11/21	Motion for Attorney's Fees and Costs	036-052
8/25/21	Opposition to Motion for Attorney's Fees and Costs	053-069
10/14/21	Reply in Support of Motion of Attorney's Fees and Costs	070- 085
11/30/21	Order Denying Motion for Attorney's Fees and Costs	086-091
12/2/21	Notice of Entry of Order Denying Motion for Attorney's Fees and Costs	092-101



MEMC
LEACH KERN GRUCHOW
ANDERSON SONG
SEAN L. ANDERSON
Nevada Bar No. 7259
E-mail: sanderson@lkglawfirm.com
T. CHASE PITTSBARGER
Nevada Bar No. 13740
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2525 Box Canyon Drive
Las Vegas, Nevada 89128
Telephone: (702) 538-9074
Facsimile: (702) 538-9113
*Attorneys for Defendant El Capitan
Ranch Landscape Maintenance Association*

DISTRICT COURT
CLARK COUNTY, NEVADA

DAISY TRUST, a Nevada trust,
Plaintiff,

Case No.: A-19-789674-C
Dept. No.: 14

vs.

MEMORANDUM OF COSTS AND
DISBURSEMENTS

EL CAPITAN RANCH LANDSCAPE
MAINTENANCE ASSOCIATION, a
domestic non-profit corporation,
Defendant.

Defendant El Capitan Ranch Landscape Maintenance Association (the "Association") by and through its attorneys of record, Leach Kern Gruchow Anderson Song, respectfully submits its Verified Memorandum of Costs and Disbursements as follows:

a. Filing Fees	\$472.69
b. Photocopy Fees	\$606.40
c. Delivery/Messenger Fees	\$30.00
d. Postage	\$3.10
e. Records/Research	\$263.84
f. Arbitrator	\$500.00

TOTAL	\$1,876.03¹
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¹ See Itemization of Costs and Invoices, **Exhibit A**.

1 STATE OF NEVADA)
2 COUNTY OF CLARK) ss.


3
4 T. Chase Pittsenbarger, being duly sworn, states he has personal knowledge of the above
5 costs and disbursements expended, that the items contained in the above memorandum are true
6 and correct to the best of the Affiant's knowledge and belief, and that these costs and
7 disbursements have been necessarily incurred and paid in this action. I decree under penalty of
8 perjury under the laws of the State of Nevada that the foregoing is true and correct.

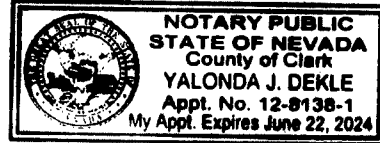
9 Dated this 23rd day of July 2021.

10 

11 T. Chase Pittsenbarger

12
13 Subscribed and Sworn before me
14 this 23rd day of July 2021.

15 
16 NOTARY PUBLIC in and for said County
17 and State



CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), the undersigned, an employee of LEACH KERN GRUCHOW ANDERSON SONG, hereby certifies that on this 23rd day of July 2021, service of the foregoing, **MEMORANDUM OF COSTS AND DISBURSEMENTS**, was made on all parties via the Court's CM/ECF System, as follows:

Roger P. Croteau
Christopher L. Benner
ROGER P. CROTEAU & ASSOCIATES, LTD.
2810 W. Charleston Boulevard, Suite 75
Las Vegas, Nevada 89148
croteaulaw@croteaulaw.com
chris@croteaulaw.com
Attorneys for Plaintiff

/s/ Yalonda Dekle

An Employee of LEACH KERN GRUCHOW
ANDERSON SONG

Exhibit A

Tcode 48 Wiznet- Court E-Filing Fee

005

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Stmnt # Rate	Hours Worked	Hours to Bill	Amount	Ref #	
Tcode 48 Wiznet- Court E-Filing Fee										
									Daisy Trust v. El Capitan Ranch (A-19-789674-C)	
Total for Tcode 48					Billable	0.00	0.00	252.69	Wiznet- Court E-Filing Fee	
Tcode 51 Photocopy charges-Black & White										
1740.004	11/25/2019	SA	A	51	0.200			3.00	PHOTOCOPY CHARGES-BLACK & WHITE (30) El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
1740.004	11/25/2019	SA	A	51	0.200			1.70	PHOTOCOPY CHARGES-BLACK & WHITE (17) El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
1740.004	11/25/2019	SA	A	51	0.200			2.70	PHOTOCOPY CHARGES-BLACK & WHITE (27) El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
1740.004	11/25/2019	SA	A	51	0.200			4.00	PHOTOCOPY CHARGES-BLACK & WHITE (40) El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
1740.004	11/25/2019	SA	A	51	0.200			3.50	PHOTOCOPY CHARGES-BLACK & WHITE (35) El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
1740.004	11/25/2019	SA	A	51	0.200			12.70	PHOTOCOPY CHARGES-BLACK & WHITE (127) El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
1740.004	11/25/2019	SA	A	51	0.200			11.10	PHOTOCOPY CHARGES-BLACK & WHITE (111) El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
1740.004	11/26/2019	SA	A	51	0.200			0.10	PHOTOCOPY CHARGES-BLACK & WHITE (1) El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
1740.004	12/03/2019	SA	A	51	0.200			18.20	PHOTOCOPY CHARGES-BLACK & WHITE (182) El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
1740.004	12/03/2019	SA	A	51	0.200			1.30	PHOTOCOPY CHARGES-BLACK & WHITE (13) El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
1740.004	01/30/2020	SA	A	51	0.200			0.60	PHOTOCOPY CHARGES-BLACK & WHITE (6) El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
1740.004	01/30/2020	SA	A	51	0.200			1.20	PHOTOCOPY CHARGES-BLACK & WHITE (12) El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
1740.004	01/30/2020	SA	A	51	0.200			0.70	PHOTOCOPY CHARGES-BLACK & WHITE (7) El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
1740.004	01/30/2020	SA	A	51	0.200			0.70	PHOTOCOPY CHARGES-BLACK & WHITE (7) El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
1740.004	01/30/2020	SA	A	51	0.200			1.30	PHOTOCOPY CHARGES-BLACK & WHITE (13) El Capitan Ranch Landscape Maintenance Association	ARCH

<u>Client</u>	<u>Trans Date</u>	<u>Tmkr</u>	<u>H P</u>	<u>Tcode/ Task Code</u>	<u>Stmt # Rate</u>	<u>Hours Worked</u>	<u>Hours to Bill</u>	<u>Amount</u>	<u>Ref #</u>
Tcode 51 Photocopy charges-Black & White									
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1740.004	01/30/2020	SA	A	51	0.200			Daisy Trust v. El Capitan Ranch (A-19-789674-C) 0.60 PHOTOCOPY CHARGES-BLACK & WHITE (6) El Capitan Ranch Landscape Maintenance Association	ARCH
1740.004	01/30/2020	SA	A	51	0.200			Daisy Trust v. El Capitan Ranch (A-19-789674-C) 0.90 PHOTOCOPY CHARGES-BLACK & WHITE (9) El Capitan Ranch Landscape Maintenance Association	ARCH
1740.004	01/30/2020	SA	A	51	0.200			Daisy Trust v. El Capitan Ranch (A-19-789674-C) 1.30 PHOTOCOPY CHARGES-BLACK & WHITE (13) El Capitan Ranch Landscape Maintenance Association	ARCH
1740.004	01/30/2020	SA	A	51	0.200			Daisy Trust v. El Capitan Ranch (A-19-789674-C) 1.30 PHOTOCOPY CHARGES-BLACK & WHITE (13) El Capitan Ranch Landscape Maintenance Association	ARCH
1740.004	01/30/2020	SA	A	51	0.200			Daisy Trust v. El Capitan Ranch (A-19-789674-C) 0.60 PHOTOCOPY CHARGES-BLACK & WHITE (6) El Capitan Ranch Landscape Maintenance Association	ARCH
1740.004	01/30/2020	SA	A	51	0.200			Daisy Trust v. El Capitan Ranch (A-19-789674-C) 0.90 PHOTOCOPY CHARGES-BLACK & WHITE (9) El Capitan Ranch Landscape Maintenance Association	ARCH
1740.004	02/19/2020	SA	A	51	0.200			Daisy Trust v. El Capitan Ranch (A-19-789674-C) 3.40 PHOTOCOPY CHARGES-BLACK & WHITE (17) El Capitan Ranch Landscape Maintenance Association	ARCH
1740.004	02/19/2020	SA	A	51	0.200			Daisy Trust v. El Capitan Ranch (A-19-789674-C) 1.00 PHOTOCOPY CHARGES-BLACK & WHITE (5) El Capitan Ranch Landscape Maintenance Association	ARCH
1740.004	02/19/2020	SA	A	51	0.200			Daisy Trust v. El Capitan Ranch (A-19-789674-C) 2.00 PHOTOCOPY CHARGES-BLACK & WHITE (10) El Capitan Ranch Landscape Maintenance Association	ARCH
1740.004	02/19/2020	SA	A	51	0.200			Daisy Trust v. El Capitan Ranch (A-19-789674-C) 1.20 PHOTOCOPY CHARGES-BLACK & WHITE (6) El Capitan Ranch Landscape Maintenance Association	ARCH
1740.004	02/20/2020	SA	A	51	0.200			Daisy Trust v. El Capitan Ranch (A-19-789674-C) 45.40 PHOTOCOPY CHARGES-BLACK & WHITE (227) El Capitan Ranch Landscape Maintenance Association	ARCH
1740.004	02/20/2020	SA	A	51	0.200			Daisy Trust v. El Capitan Ranch (A-19-789674-C) 78.40 PHOTOCOPY CHARGES-BLACK & WHITE (392) El Capitan Ranch Landscape Maintenance Association	ARCH
1740.004	02/20/2020	SA	A	51	0.200			Daisy Trust v. El Capitan Ranch (A-19-789674-C) 39.80 PHOTOCOPY CHARGES-BLACK & WHITE (199) El Capitan Ranch Landscape Maintenance Association	ARCH
1740.004	02/20/2020	SA	A	51	0.200			Daisy Trust v. El Capitan Ranch (A-19-789674-C) 22.40 PHOTOCOPY CHARGES-BLACK & WHITE (112) El Capitan Ranch Landscape Maintenance Association	ARCH
1740.004	02/20/2020	SA	A	51	0.200			Daisy Trust v. El Capitan Ranch (A-19-789674-C) 45.40 PHOTOCOPY CHARGES-BLACK & WHITE (227) El Capitan Ranch Landscape Maintenance Association	ARCH

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Stmnt # Rate	Hours Worked	Hours to Bill	Amount	Ref #
Tcode 51 Photocopy charges-Black & White									
1740.004	02/20/2020	SA	A	51	0.200			78.40	ARCH
								Daisy Trust v. El Capitan Ranch (A-19-789674-C) PHOTOCOPY CHARGES-BLACK & WHITE (392) El Capitan Ranch Landscape Maintenance Association	
1740.004	02/20/2020	SA	A	51	0.200			39.80	ARCH
								Daisy Trust v. El Capitan Ranch (A-19-789674-C) PHOTOCOPY CHARGES-BLACK & WHITE (199) El Capitan Ranch Landscape Maintenance Association	
1740.004	02/20/2020	SA	A	51	0.200			22.40	ARCH
								Daisy Trust v. El Capitan Ranch (A-19-789674-C) PHOTOCOPY CHARGES-BLACK & WHITE (112) El Capitan Ranch Landscape Maintenance Association	
1740.004	02/24/2020	SA	A	51	0.200			22.40	ARCH
								Daisy Trust v. El Capitan Ranch (A-19-789674-C) PHOTOCOPY CHARGES-BLACK & WHITE (112) El Capitan Ranch Landscape Maintenance Association	
1740.004	02/24/2020	SA	A	51	0.200			2.80	ARCH
								Daisy Trust v. El Capitan Ranch (A-19-789674-C) PHOTOCOPY CHARGES-BLACK & WHITE (28) El Capitan Ranch Landscape Maintenance Association	
1740.004	02/24/2020	SA	A	51	0.200			6.20	ARCH
								Daisy Trust v. El Capitan Ranch (A-19-789674-C) PHOTOCOPY CHARGES-BLACK & WHITE (31) El Capitan Ranch Landscape Maintenance Association	
1740.004	02/24/2020	SA	A	51	0.200			0.60	ARCH
								Daisy Trust v. El Capitan Ranch (A-19-789674-C) PHOTOCOPY CHARGES-BLACK & WHITE (3) El Capitan Ranch Landscape Maintenance Association	
1740.004	02/24/2020	SA	A	51	0.200			4.80	ARCH
								Daisy Trust v. El Capitan Ranch (A-19-789674-C) PHOTOCOPY CHARGES-BLACK & WHITE (24) El Capitan Ranch Landscape Maintenance Association	
1740.004	02/24/2020	SA	A	51	0.200			78.40	ARCH
								Daisy Trust v. El Capitan Ranch (A-19-789674-C) PHOTOCOPY CHARGES-BLACK & WHITE (392) El Capitan Ranch Landscape Maintenance Association	
1740.004	02/24/2020	SA	A	51	0.200			39.80	ARCH
								Daisy Trust v. El Capitan Ranch (A-19-789674-C) PHOTOCOPY CHARGES-BLACK & WHITE (199) El Capitan Ranch Landscape Maintenance Association	
1740.004	03/13/2020	SA	A	51	0.200			0.30	ARCH
								Daisy Trust v. El Capitan Ranch (A-19-789674-C) PHOTOCOPY CHARGES-BLACK & WHITE (3) El Capitan Ranch Landscape Maintenance Association	
1740.004	03/13/2020	SA	A	51	0.200			1.30	ARCH
								Daisy Trust v. El Capitan Ranch (A-19-789674-C) PHOTOCOPY CHARGES-BLACK & WHITE (13) El Capitan Ranch Landscape Maintenance Association	
1740.004	03/18/2020	SA	A	51	0.200			1.10	ARCH
								Daisy Trust v. El Capitan Ranch (A-19-789674-C) PHOTOCOPY CHARGES-BLACK & WHITE (11) El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	
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1740.004	08/05/2019	SA	A	53				1.45	ARCH
								El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	
1740.004	11/26/2019	SA	A	53				1.15	ARCH
								Postage	

009

Case # A-19-789674-C - Daisy Trust, Plaintiff(s)vs.El Capitan Ranch

Envelope Information

Envelope Id

3985013

Submitted Date

3/13/2019 4:11 PM PST

Submitted User Name

hkelley@lkglawfirm.com

Case Information

Location

Department 14

Category

Civil

Case Type

Intentional Misconduct

Case Initiation Date

2/19/2019

Case #

A-19-789674-C

Assigned to Judge

Escobar, Adriana

Filings

Filing Type

EFileAndServe

Filing Code

Answer - ANS (CIV)

Filing Description

El Capitan Ranch Landscape
Maintenance Aassociation's Answer to
Complaint

Client Reference Number

1740.004

Filing on Behalf of

El Capitan Ranch Landscape
Maintenance Association

Filing Status

Accepted

Accepted Date

3/13/2019 4:13 PM PST

Accept Comments

Auto Review Accepted

Lead Document

File Name

789674-ANS_201903131610.pdf

Security**Download**

Original File

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eService Details

Status	Name	Firm	Served	Date Opened
Sent	Sean L Anderson	Leach Kern Gruchow Anderson Song	Yes	Not Opened
Sent	Robin Callaway	Leach Kern Gruchow Anderson Song	Yes	3/13/2019 5:05 PM PST
Sent	Patty Gutierrez	Leach Kern Gruchow Anderson Song	Yes	3/14/2019 1:39 PM PST
Sent	Gina LaCascia	Leach Kern Gruchow Anderson Song	Yes	3/13/2019 4:17 PM PST

Filing Type

EFileAndServe

Filing Code

Initial Appearance Fee Disclosure - IAFD
(CIV)

Filing Description

Initial Appearance Fee Disclosure

Client Reference Number

1740.004

Filing on Behalf of

El Capitan Ranch Landscape
Maintenance Association

Filing Status

Accepted

Accepted Date

3/13/2019 4:13 PM PST

Accept Comments

Auto Review Accepted

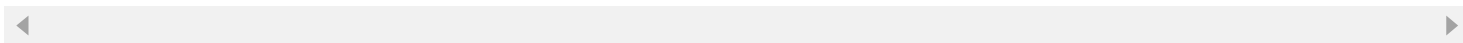
Lead Document

File Name	Security	Download
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eService Details

Status	Name	Firm	Served	Date Opened
Sent	Robin Callaway	Leach Kern Gruchow Anderson Song	Yes	3/13/2019 5:03 PM PST
Sent	Patty Gutierrez	Leach Kern Gruchow Anderson Song	Yes	Not Opened
Sent	Gina LaCascia	Leach Kern Gruchow Anderson Song	Yes	Not Opened

Status	Name	Firm	Served	Date Opened
Sent	Sean L Anderson	Leach Kern Gruchow Anderson Song	Yes	Not Opened



Parties with No eService

Name	Address
Ka H. Leung	6330 Spring Mountain Rd Ste D Las Vegas Nevada 89147

Fees

Answer - ANS (CIV)

Description	Amount
Filing Fee	\$223.00
Filing Total: \$223.00	

Initial Appearance Fee Disclosure - IAFD (CIV)

Description	Amount
Filing Fee	\$0.00
Filing Total: \$0.00	

Total Filing Fee	\$223.00
Payment Service Fee	\$6.69
E-File Fee	\$3.50
Envelope Total: \$233.19	

Transaction Amount	\$233.19		
Transaction Id	4882825		
Filing Attorney	Sean Anderson	Order Id	003985013-0
Transaction Response	Payment Complete		

Case # A-19-789674-C - Daisy Trust, Plaintiff(s)vs.El Capitan Ranch

Envelope Information

Envelope Id

4171198

Submitted Date

4/19/2019 9:29 AM PST

Submitted User Name

hkelly@lglawfirm.com

Case Information

Location

Department 14

Category

Civil

Case Type

Intentional Misconduct

Case Initiation Date

2/19/2019

Case #

A-19-789674-C

Assigned to Judge

Escobar, Adriana

Filings

Filing Type

EFile

Filing Code

ADR - Arbitration Selection List - ABSELL
(CIV)

Filing Description

Arbitration Selection List

Client Reference Number

1740.004

Filing on Behalf of

El Capitan Ranch Landscape
Maintenance Association

Filing Status

Accepted

Accepted Date

4/19/2019 9:31 AM PST

Accept Comments

Auto Review Accepted

Lead Document

File Name	Security	Download
ABSELL 789674.pdf		Original File Court Copy

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Fees

ADR - Arbitration Selection List - ABSELL (CIV)

Description	Amount
Filing Fee	\$0.00
Filing Total: \$0.00	

Total Filing Fee	\$0.00
E-File Fee	\$3.50
Envelope Total: \$3.50	

Transaction Amount	\$3.50		
Transaction Id	5096645		
Filing Attorney	Sean Anderson	Order Id	004171198-0
Transaction Response	Payment Complete		

Case # A-19-789674-C - Daisy Trust, Plaintiff(s)vs.El Capitan Ranch

Envelope Information

Envelope Id

5677434

Submitted Date

2/20/2020 4:36 PM PST

Submitted User Name

hkelley@lkglawfirm.com

Case Information

Location

Department 14

Category

Civil

Case Type

Intentional Misconduct

Case Initiation Date

2/19/2019

Case #

A-19-789674-C

Assigned to Judge

Escobar, Adriana

Filings

Filing Type

EFileAndServe

Filing Code

ADR - Motion - STMOT (CIV)

Filing Description

El Capitan Ranch Landscape
Maintenance Association's Motion to
Dismiss Arbitration

Client Reference Number

1740.004

Filing on Behalf of

El Capitan Ranch Landscape
Maintenance Association

Filing Status

Accepted

Accepted Date

2/20/2020 4:37 PM PST

Accept Comments

Auto Review Accepted

Lead Document

File Name

Motion to Dismiss Arb.pdf

Security**Download**

Original File

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eService Details

Status	Name	Firm	Served	Date Opened
Sent	Roger P. Croteau	Roger P. Croteau & Associates, Ltd.	Yes	2/21/2020 8:47 AM PST
Sent	Croteau Admin	Roger P. Croteau & Associates, Ltd.	Yes	2/20/2020 4:43 PM PST
Sent	Sean L Anderson	Leach Kern Gruchow Anderson Song	Yes	Not Opened
Sent	Robin Callaway	Leach Kern Gruchow Anderson Song	Yes	Not Opened
Sent	Kristy Kao	Law Offices of Eric K Chen	Yes	Not Opened
Sent	Patty Gutierrez	Leach Kern Gruchow Anderson Song	Yes	2/20/2020 4:49 PM PST
Sent	T. Chase Pittsenbarger	Leach Kern Gruchow Anderson Song	Yes	Not Opened
Sent	Yalonda Dekle	Leach Kern Gruchow Anderson Song	Yes	2/20/2020 4:39 PM PST
Sent	Ka Leung		Yes	Not Opened

Parties with No eService

Name	Address
Ka H. Leung	6330 Spring Mountain Rd Ste D Las Vegas Nevada 89147

Fees

ADR - Motion - STMOT (CIV)

Description	Amount
Filing Fee	\$0.00
Filing Total: \$0.00	

Total Filing Fee	\$0.00
E-File Fee	\$3.50
Envelope Total: \$3.50	

Transaction Amount	\$3.50		
Transaction Id	6800069		
Filing Attorney	T. Chase Pittsenbarger	Order Id	005677434-0
Transaction Response	Payment Complete		

Case # A-19-789674-C - Daisy Trust, Plaintiff(s)vs.El Capitan Ranch

Envelope Information

Envelope Id

5796559

Submitted Date

3/13/2020 12:41 PM PST

Submitted User Name

hkelley@lkglawfirm.com

Case Information

Location

Department 14

Category

Civil

Case Type

Intentional Misconduct

Case Initiation Date

2/19/2019

Case #

A-19-789674-C

Assigned to Judge

Escobar, Adriana

Filings

Filing Type

EFileAndServe

Filing Code

ADR - Application for Attorney's Fees,
Costs and/or Interest - ABAPP (CIV)

Filing Description

El Capitan Ranch Landscape
Maintenance Association's Application for
Attorney's Fees and Costs

Client Reference Number

1740.004

Filing on Behalf of

El Capitan Ranch Landscape
Maintenance Association

Filing Status

Accepted

Accepted Date

3/13/2020 12:43 PM PST

Accept Comments

Auto Review Accepted

Lead Document

File Name

App for Attorney's Fees and Costs.pdf

Security

Public Filed Document

Download

C
C

[Help](#)

eService Details

Status	Name	Firm	Served	Date Opened
Sent	Roger P. Croteau	Roger P. Croteau & Associates, Ltd.	Yes	Not Opened
Sent	Croteau Admin	Roger P. Croteau & Associates, Ltd.	Yes	3/17/2020 9:53 AM PST
Sent	Chet Glover	Roger P. Croteau & Associates, LTD	Yes	3/16/2020 9:47 AM PST
Sent	Sean L Anderson	Leach Kern Gruchow Anderson Song	Yes	Not Opened
Sent	Warren Harris	Law Offices of Eric K. Chen	Yes	Not Opened
Sent	Robin Callaway	Leach Kern Gruchow Anderson Song	Yes	Not Opened
Sent	Patty Gutierrez	Leach Kern Gruchow Anderson Song	Yes	3/13/2020 1:43 PM PST
Sent	T. Chase Pittsenbarger	Leach Kern Gruchow Anderson Song	Yes	Not Opened
Sent	Yalonda Dekle	Leach Kern Gruchow Anderson Song	Yes	Not Opened
Sent	Ka Leung		Yes	3/17/2020 5:22 PM PST

Parties with No eService

Name	Address
Ka H. Leung	6330 Spring Mountain Rd Ste D Las Vegas Nevada 89147

Fees

ADR - Application for Attorney's Fees, Costs and/or Interest - ABAPP (CIV)

Description	Amount
Filing Fee	\$0.00
Filing Total: \$0.00	

Total Filing Fee	\$0.00
E-File Fee	\$3.50
Envelope Total: \$3.50	

Transaction Amount	\$3.50
Transaction Id	6930402

Case # A-19-789674-C - Daisy Trust, Plaintiff(s)vs.El Capitan Ranch

Envelope Information

Envelope Id

5851700

Submitted Date

3/25/2020 2:00 PM PST

Submitted User Name

hkelley@lkglawfirm.com

Case Information

Location

Department 14

Category

Civil

Case Type

Intentional Misconduct

Case Initiation Date

2/19/2019

Case #

A-19-789674-C

Assigned to Judge

Escobar, Adriana

Filings

Filing Type

EFileAndServe

Filing Code

ADR - Reply to Application for
Fees/Costs/Interest - ABRSPN (CIV)

Filing Description

El Capitan Ranch Landscape
Maintenance Association's Reply in
Support of Application for Attorney's Fees
and Costs

Client Reference Number

1740.004

Filing on Behalf of

El Capitan Ranch Landscape
Maintenance Association

Filing Status

Accepted

Accepted Date

3/25/2020 2:02 PM PST

Accept Comments

Auto Review Accepted

Lead Document

File Name

Reply iso App for Attorney's Fees and
Costs.pdf

Security

Public Filed Document

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C

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Court Copy

eService Details

Status	Name	Firm	Served	Date Opened
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Sent	Robin Callaway	Leach Kern Gruchow Anderson Song	Yes	Not Opened
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Sent	Yalonda Dekle	Leach Kern Gruchow Anderson Song	Yes	Not Opened
Sent	Ka Leung		Yes	4/2/2020 12:29 AM PST

Parties with No eService

Name	Address
Ka H. Leung	6330 Spring Mountain Rd Ste D Las Vegas Nevada 89147

Fees

ADR - Reply to Application for Fees/Costs/Interest - ABRSPN (CIV)

Description	Amount
Filing Fee	\$0.00
Filing Total: \$0.00	

Total Filing Fee	\$0.00
E-File Fee	\$3.50
Envelope Total: \$3.50	

Transaction Amount	\$3.50
Transaction Id	6986313

Case # A-19-789674-C - Daisy Trust, Plaintiff(s)vs.El Capitan Ranch

Envelope Information

Envelope Id

7960451

Submitted Date

5/27/2021 3:56 PM PST

Submitted User Name

hkelley@lkglawfirm.com

Case Information

Location

Department 14

Category

Civil

Case Type

Intentional Misconduct

Case Initiation Date

2/19/2019

Case #

A-19-789674-C

Assigned to Judge

Escobar, Adriana

Filings

Filing Type

EFileAndServe

Filing Code

Motion for Summary Judgment - MSJD
(CIV)

Filing Description

El Capitan Ranch Landscape
Maintenance Association's Motion for
Summary Judgment

Client Reference Number

1740.004

Filing on Behalf of

El Capitan Ranch Landscape
Maintenance Association

Filing Status

Accepted

Accepted Date

5/27/2021 4:02 PM PST

Accept Comments

Auto Review Accepted

Lead Document

File Name

El Capitan's MSJ.pdf

Security

Public Filed Document

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eService Details

Status	Name	Firm	Served	Date Opened
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Parties with No eService

Name

Ka H. Leung

Address

6330 Spring Mountain Rd Ste D Las
Vegas Nevada 89147

Fees

Motion for Summary Judgment - MSJD (CIV)

Description

Filing Fee

Amount

\$200.00

Filing Total: \$200.00

Total Filing Fee

\$200.00

Payment Service Fee

\$6.00

E-File Fee

\$3.50

Envelope Total: \$209.50

Transaction Amount

\$209.50

Transaction Id

9053354

Filing Attorney

T. Chase Pittsenbarger

Order Id

007960451-0

Case # A-19-789674-C - Daisy Trust, Plaintiff(s)vs.El Capitan Ranch

Envelope Information

Envelope Id

8001083

Submitted Date

6/7/2021 10:03 AM PST

Submitted User Name

hkelley@lkglawfirm.com

Case Information

Location

Department 14

Category

Civil

Case Type

Intentional Misconduct

Case Initiation Date

2/19/2019

Case #

A-19-789674-C

Assigned to Judge

Escobar, Adriana

Filings

Filing Type

EFileAndServe

Filing Code

Motion to Compel - MCOM (CIV)

Filing Description

El Capitan Ranch Landscape
Maintenance Association's Motion to
Compel

Client Reference Number

1740.004

Filing on Behalf of

El Capitan Ranch Landscape
Maintenance Association

Filing Status

Accepted

Accepted Date

6/7/2021 10:05 AM PST

Accept Comments

Auto Review Accepted

Lead Document

File Name

Motion to Compel.pdf

Security

Public Filed Document

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Original File

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eService Details

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Sent	T. Chase Pittsenbarger	Leach Kern Gruchow Anderson Song	Yes	Not Opened
Sent	Yalonda Dekle	Leach Kern Gruchow Anderson Song	Yes	Not Opened

Filing Type

EFileAndServe

Filing Code

Appendix - APEN (CIV)

Filing Description

Appendix of Exhibits to El Capitan Ranch
Landscape Maintenance Association's
Motion to Compel Response to Discovery

Client Reference Number

1740.004

Filing on Behalf of

El Capitan Ranch Landscape
Maintenance Association

Filing Status

Accepted

Accepted Date

6/7/2021 10:05 AM PST

Accept Comments

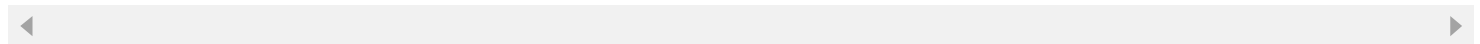
Auto Review Accepted

Lead Document

File Name	Security	Download
Appendix of Exhibits to Motion to Compel.pdf	Public Filed Document	Original File Court Copy

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Sent	Sean L Anderson	Leach Kern Gruchow Anderson Song	Yes	Not Opened



Parties with No eService

Name

Ka H. Leung

Address

6330 Spring Mountain Rd Ste D Las
Vegas Nevada 89147

Fees

Motion to Compel - MCOM (CIV)

Description

Filing Fee

Amount

\$0.00

Filing Total: \$0.00

Appendix - APEN (CIV)

Description

Filing Fee

Amount

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Filing Total: \$0.00

Total Filing Fee

\$0.00

E-File Fee

\$3.50

Envelope Total: \$3.50

Transaction Amount	\$3.50		
Transaction Id	9095114		
Filing Attorney	T. Chase Pittsenbarger	Order Id	008001083-0
Transaction Response	Payment Complete		

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Version: 2021.0.1.9538

Case # A-19-789674-C - Daisy Trust, Plaintiff(s)vs.El Capitan Ranch

Envelope Information

Envelope Id

8090456

Submitted Date

6/22/2021 1:37 PM PST

Submitted User Name

hkelley@lkglawfirm.com

Case Information

Location

Department 14

Category

Civil

Case Type

Intentional Misconduct

Case Initiation Date

2/19/2019

Case #

A-19-789674-C

Assigned to Judge

Escobar, Adriana

Filings

Filing Type

EFileAndServe

Filing Code

Reply - RPLY (CIV)

Filing Description

El Capitan Ranch Landscape
Maintenance Association's Reply in
Support of Motion for Summary Judgment

Client Reference Number

1740.004

Filing on Behalf of

El Capitan Ranch Landscape
Maintenance Association

Filing Status

Accepted

Accepted Date

6/22/2021 1:38 PM PST

Accept Comments

Auto Review Accepted

Lead Document

File Name

Reply iso MSJ.pdf

Security

Public Filed Document

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Original File

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eService Details

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Parties with No eService

Name	Address
Ka H. Leung	6330 Spring Mountain Rd Ste D Las Vegas Nevada 89147

Fees

Reply - RPLY (CIV)

Description	Amount
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Filing Attorney	T. Chase Pittsenbarger	Order Id	008090456-0
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Case # A-19-789674-C - Daisy Trust, Plaintiff(s)vs.El Capitan Ranch

Envelope Information

Envelope Id

8246077

Submitted Date

7/21/2021 8:00 AM PST

Submitted User Name

hkelly@lglawfirm.com

Case Information

Location

Department 14

Category

Civil

Case Type

Intentional Misconduct

Case Initiation Date

2/19/2019

Case #

A-19-789674-C

Assigned to Judge

Escobar, Adriana

Filings

Filing Type

EFileAndServe

Filing Code

Notice of Entry of Findings of Fact,
Conclusions of Law - NEFF (CIV)

Filing Description

Notice of Entry of Findings of Fact,
Conclusions of Law

Client Reference Number

1740.004

Filing on Behalf of

El Capitan Ranch Landscape
Maintenance Association

Filing Status

Accepted

Accepted Date

7/21/2021 8:02 AM PST

Accept Comments

Auto Review Accepted

Lead Document

File Name

2021-07-21 Ntc of Entry of Findings of
Fact Conclusions of Law.pdf

Security

Public Filed Document

Download

Original File

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eService Details

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Sent	Yalonda Dekle	Leach Kern Gruchow Anderson Song	Yes	Not Opened

Parties with No eService

Name	Address
Ka H. Leung	6330 Spring Mountain Rd Ste D Las Vegas Nevada 89147

Fees

Notice of Entry of Findings of Fact, Conclusions of Law - NEFF (CIV)

Description	Amount
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Filing Total: \$0.00	

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E-File Fee	\$3.50
Envelope Total: \$3.50	

Transaction Amount	\$3.50		
Transaction Id	9335100		
Filing Attorney	T. Chase Pittsenbarger	Order Id	008246077-0
Transaction Response	Payment Complete		

SUMMARY OF COST



**1609 James M Wood Blvd.
Los Angeles, CA 90015
(213) 249-9999 FAX (213) 249-9990**

ACCOUNT NO:	DATE:	REF:
210030	July 21, 2021	1740.004

**LEACH KERN GRUCHOW ANDERSON S
2525 Box Canyon Drive
Las Vegas, NV 89128**

MATTER ID	WORK ORDER	DESCRIPTION	INDEX	AMOUNT
1740.004	NV220961	Delivered from 2525 Box Canyon Drive Las Vegas, NV, 89128 to EVELYN @ 6330 Spring Mountain Rd Las Vegas, NV, 89146	010 - STANDARD DELIVERY (4 HRS)	11.50
1740.004	NV225449	Delivered from 2525 Box Canyon Drive Las Vegas, NV, 89128 to CAROLYN @ 6330 Spring Mountain Road Las Vegas, NV, 89146	010 - STANDARD DELIVERY (4 HRS)	11.50
			TOTAL	30.00

T. Chase Pittsenbarger, Esq.

cpittsenbarger@lkglawfirm.com

May 29, 2019

Jona Lepoma
HOA LAWYERS GROUP, LLC
9500 W. Flamingo Road, #204
Las Vegas, NV 89147

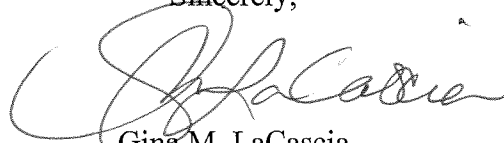
Re: 8721 Country Pines Avenue, Las Vegas/APN: 138-08-611-076
Case No.: A-19-789674-C

Dear Jona,

Please see attached check number 20267 in the amount of \$50.00 for a copy of the collection file for the property listed above.

Thank you again for your assistance.

Sincerely,



Gina M. LaCascia
Litigation Paralegal

GML
Enclosure

LKG, Ltd.
Operating Account
2525 Box Canyon Drive
Las Vegas, NV 89128
(702) 538-9074

BANK OF NEVADA
2700 WEST SAHARA AVENUE
LAS VEGAS, NV 89102
(702) 252-6269
94-17711224

20267

5/29/2019

PAY TO THE ORDER OF HOA Lawyers Group

\$ **50.00


Fifty and 00/100***** DOLLARS

HOA Lawyers Group

MEMO

1740.004 GML




AUTHORIZED SIGNATURE

LKG, Ltd.

HOA Lawyers Group
Advanced Client Costs

1740.004 GML

5/29/2019

20267

50.00

Bank of NV - LKG - 1740.004 GML

50.00

LKG, Ltd.
Operating Account
2525 Box Canyon Drive
Las Vegas, NV 89128
(702) 538-9074

BANK OF NEVADA
2700 WEST SAHARA AVENUE
LAS VEGAS, NV 89102
(702) 252-6269
94-177/1224

20226

5/14/2019

PAY TO THE ORDER OF Law Offices of Ka H. Leung

\$ **250.00

Two Hundred Fifty and 00/100*****


DOLLARS

Law Offices of Ka H. Leung

MEMO

A789674

1740.004 Notice of EAC GML LV


AUTHORIZED SIGNATURE

LKG, Ltd.

Law Offices of Ka H. Leung
Advanced Client Costs

1740.004 Notice of EAC GML LV

5/14/2019

20226

250.00

Bank of NV - LKG - 1740.004 Notice of EAC GML LV

250.00

LKG, Ltd.
Operating Account
2525 Box Canyon Drive
Las Vegas, NV 89128
(702) 538-9074

BANK OF NEVADA
2700 WEST SAHARA AVENUE
LAS VEGAS, NV 89102
(702) 252-6269
94-177/1224

20884

4/10/2020

PAY TO THE ORDER OF Law Offices of Ka H. Leung

\$ **250.00

Two Hundred Fifty and 00/100*****

DOLLARS

Law Offices of Ka H. Leung

VOID AFTER 6 MONTHS

MEMO

Arbitration Fees 1740.004 YD LV

AUTHORIZED SIGNATURE

LKG, Ltd.

Law Offices of Ka H. Leung
Advanced Client Costs

Arbitration Fees 1740.004 YD LV

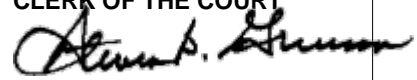
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20884

250.00

Bank of NV - LKG - Arbitration Fees 1740.004 YD LV

250.00



1 **MAFC**
2 **LEACH KERN GRUCHOW**
3 **ANDERSON SONG**
4 **SEAN L. ANDERSON**
5 Nevada Bar No. 7259
6 E-mail: sanderson@lkglawfirm.com
7 **T. CHASE PITTSBARGER**
8 Nevada Bar No. 13740
9 E-mail: cpittsbarger@lkglawfirm.com
10 2525 Box Canyon Drive
11 Las Vegas, Nevada 89128
12 Telephone: (702) 538-9074
13 Facsimile: (702) 538-9113
14 *Attorneys for Defendant El Capitan*
15 *Ranch Landscape Maintenance Association*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 DAISY TRUST, a Nevada trust,
12 Plaintiff,

13 vs.

14 EL CAPITAN RANCH LANDSCAPE
15 MAINTENANCE ASSOCIATION, a domestic
16 non-profit corporation,
17 Defendant.

Case No.: A-19-789674-C
Dept. No.: 14

**MOTION FOR ATTORNEYS' FEES
AND COSTS**

HEARING REQUESTED

17 Defendant El Capitan Ranch Landscape Maintenance Association (the "Association"), by
18 and through its attorneys of record, Leach Kern Gruchow Anderson Song, hereby moves the
19 Court for an award of attorneys' fees and costs. This Motion is made pursuant to NRCP 68,
20 NRS 116.4117, NRS 18.010(2)(b) and the attached Memorandum of Points and Authorities, the
21 pleadings and papers on file herein, and any oral argument the Court may allow.

22 **MEMORANDUM OF POINTS AND AUTHORITIES**

23 **I. INTRODUCTION AND FACTUAL BACKGROUND**

24 On February 19, 2019, Plaintiff filed its Complaint against the Association asserting
25 claims of negligent/intentional misrepresentation, breach of the duty of good faith and
26 conspiracy. *See* Compl. On March 13, 2019, the Association filed its Answer to the Complaint.
27 *See* Ans.

LEACH KERN GRUCHOW ANDERSON SONG
2525 Box Canyon Drive, Las Vegas, Nevada 89128
Telephone: (702) 538-9074 – Facsimile (702) 538-9113

On April 29, 2019, the Court appointed an Arbitrator to the case. On February 24, 2020, the arbitration hearing was held. *See* Arbitrator’s Decision. On March 9, 2020, the Arbitrator filed his decision in favor of the Association. *Id.* On April 6, 2020, the Plaintiff filed a Request for Trial De Novo. *See* Request for Trial De Novo. On May 21, 2021, the Association filed its Motion for Summary Judgment. *See* Motion for Summary Judgment. On July 20, 2021, the Court entered its Findings of Fact and Conclusions of Law in favor of the Association’s Motion for Summary Judgment. *See* FFCL.

On July 23, 2021, the Association submitted its Verified Memorandum of costs in the amount of \$1,876.03, which Plaintiff did not dispute. *See* Memo of Costs. The Association as the prevailing party to this case is entitled to its reasonable attorneys’ fees and costs pursuant to NRCF 68 and NRS 116.4117.

II. LEGAL STANDARD

In Nevada, “the method upon which a reasonable fee is determined is subject to the discretion of the court,” which “is tempered only by reasons and fairness.” *Shuette v. Beazer Home Holding Corp.*, 121 Nev. 837, 864, 124 P.3d 530, 548-49 (2005). The lodestar approach is the most appropriate approach for this case and involves the multiplying the number of hours reasonable spent on the case by the reasonable hourly rate. *Herbst v. Humana Health Ins. of Nevada*, 105 Nev. 586, 590, 781 P.2d 762, 764 (1989). The factors the court must consider in its analysis of the required amount of attorneys’ fees include:

1. The qualities of the advocate: his ability, training, education, experience, professional standing and skills;
2. The character of the work done; its difficulty, intricacy, 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; and
4. The result; whether the attorney was successful and what benefits were derived.

Brunzell v. Golden Gate National Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

///

III. ARGUMENT

A. This Court may Award to the Association its Reasonable Attorneys' Fees pursuant to NRS 116.4117.

Pursuant to NRS 18.010(2), a party is entitled to attorneys' fees and costs in "cases where an allowance is authorized by specific statute." NRS 116.4117 provides a basis upon which an award of attorneys' fees may be granted to the Association as a prevailing party in this matter.

Pursuant to NRS 116.4117(6) "[t]he court may award reasonable attorney's fees to the prevailing party." Statutory interpretation is an issue of law that this Court reviews *de novo*. *Washoe Medical Center v. Second Judicial Dist. Court of State of Nev. ex rel. County of Washoe*, 122 Nev. 1298, 1302, 148 P.3d 790, 792-93 (2006). When a statute is clear on its face, a Court "will not look beyond the statute's plain language." *Id.* at 793.

On May 21, 2021, the Association filed its Motion for Summary Judgment seeking summary judgment on all claims. The Association, as the prevailing party in this matter, has incurred attorneys' fees in the amount of \$29,586.50. *See attached* Detailed Itemization Attorneys' Fees attached to the affidavit of Chase Pittsenbarger as **Exhibit A-1**. Based on the clear and unambiguous language of NRS 116.4117, this Court may award to the Association its reasonable attorneys' fees as the prevailing party. *See* NRS 116.4117(6).

B. The Attorneys' Fees and Costs Incurred by the Association are Reasonable.

The attorneys' fees and costs incurred by the Association are reasonable, economical and customarily charged to the clients of Leach Kern Gruchow Anderson Song. *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969); *see attached* Affidavit of Chase Pittsenbarger, **Exhibit A**. Sean L. Anderson, lead counsel for the Association, is a partner with Leach Kern Gruchow Anderson Song and has practiced extensively in the area of commercial litigation and common-interest community litigation for more than 20 years and enjoys a reputation in the community for quality advocacy. *Id.* Mr. Anderson, where appropriate, made the prudent decision to assign this matter to an associate attorney, Chase Pittsenbarger, to handle the day-to-day management of the case, which lowered the per-hour billing significantly. *Id.* In addition, Mr. Anderson reviews all client billings for reasonableness and makes any and all

1 adjustments to ensure that the charges are commensurate with the value of the services provided.
2 *Id.* Leach Kern Gruchow Anderson Song charges hourly rates that are similar to those rates
3 charges by comparable law firms for similar legal services. *Id.* As this Court is aware, this was
4 and has continued to be a heavily litigated matter and the ability, training, education, experience,
5 professional standing and skill of each of the professionals involved with this action were
6 demonstrated in their pleadings, motions and other documents filed with this Court.

7 **IV. CONCLUSION**

8 For the reasons set forth above, the Association, as the prevailing party is entitled to an
9 award of its attorneys' fees in the amount of \$29,586.50 and costs in the amount of \$1,876.03.

10 DATED this 11th day of August 2021

11 **LEACH KERN GRUCHOW ANDERSON SONG**

12 */s/ T. Chase Pittsenbarger*

13 _____
14 Sean L. Anderson
15 Nevada Bar No. 7259
16 T. Chase Pittsenbarger
17 Nevada Bar No. 13740
18 2525 Box Canyon Drive
19 Las Vegas, Nevada 89128

20 *Attorneys for Defendant El Capitan Ranch*
21 *Landscape Maintenance Association*
22
23
24
25
26
27
28

LEACH KERN GRUCHOW ANDERSON SONG
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Attorneys for Plaintiff

An Employee of LEACH KERN GRUCHOW
ANDERSON SONG

Exhibit A

1 **LEACH KERN GRUCHOW**
2 **ANDERSON SONG**
3 SEAN L. ANDERSON
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4 T. CHASE PITTSBARGER
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6 Telephone: (702) 538-9074
Facsimile: (702) 538-9113
7 *Attorneys for Defendant El Capitan*
8 *Ranch Landscape Maintenance Association*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 DAISY TRUST, a Nevada trust,
12 Plaintiff,

Case No.: A-19-789674-C
Dept. No.: 14

13 vs.

14 EL CAPITAN RANCH LANDSCAPE
MAINTENANCE ASSOCIATION, a domestic
non-profit corporation,
15 Defendant.

**AFFIDAVIT OF
T. CHASE PITTSBARGER
IN SUPPORT OF APPLICATION FOR
ATTORNEYS' FEES AND COSTS**

16
17 STATE OF NEVADA)
18 COUNTY OF CLARK) ss.

19 Chase Pittsenbarger, being duly sworn and under all penalties of perjury do hereby
20 depose and say as follows:

21 1. I am an Associate with the law firm of Leach Kern Gruchow Anderson Song
22 ("LKG"), counsel for El Capitan Ranch Landscape Maintenance Association (the "Association")
23 in the above action.

24 2. I have personal knowledge of all matters stated herein.

25 3. I am over the age of eighteen (18) years and am competent to testify to the matters
26 set forth herein.

27 4. I hereby submit this Affidavit in Support of the Application for Attorneys' Fees &
28 Costs ("Motion").

1 5. LKG has extensive experience in commercial litigation and common-interest
2 community litigation and is an AV rated firm that devotes the vast majority of its practice to the
3 representation of Nevada common-interest communities.

4 6. On February 19, 2019, Plaintiff filed its Complaint for negligent/intentional
5 misrepresentation, breach of the duty of good faith and conspiracy.

6 7. On February 24, 2020, the parties participate in an Arbitration.

7 8. On March 9, 2020, Arbitrator Leung issued the Arbitrator's Decision and Award
8 in favor of the Association.

9 9. The Association, as the prevailing party in this action, is entitled to its attorneys'
10 fees and costs pursuant to NRS 116.4117 and NRS 18.010 in the amount to \$31,462.53.

11 10. The attorneys' fees incurred by the Association in this matter are reasonable,
12 economical and customarily charged to the clients of LKG. *See* Detailed Itemization Attorneys'
13 Fees and costs, **Exhibit A-1**.

14 11. Sean L. Anderson, lead counsel for the Association, is a partner with Leach Kern
15 Gruchow Anderson Song and has practiced extensively in the area of commercial litigation and
16 common-interest community litigation for more than 20 years and enjoys a reputation in the
17 community for quality advocacy.

18 12. Mr. Anderson, where appropriate, made the prudent decision to assign this matter
19 to myself, an associate attorney, to handle the day-to-day management of the case, which
20 lowered the per-hour billing significantly.

21 13. I am an associate with LKG and have practiced extensively in the area of
22 commercial litigation and common-interest community litigation for more than 5 years.

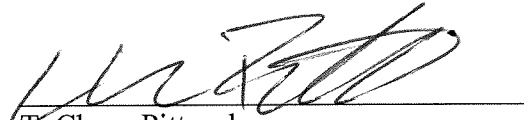
23 14. In addition, Mr. Anderson reviews all client billings for reasonableness and makes
24 any and all adjustments to ensure that the charges are commensurate with the value of the
25 services provided.

26 15. LKG charges hourly rates that are similar to those rates charges by comparable
27 law firms for similar legal services.
28

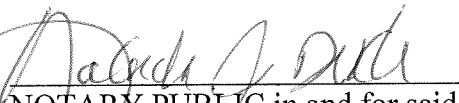
1 16. I have reviewed the invoice attached as an exhibit to this affidavit and believe
2 them to be correct and accurate reflections of the work performed.

3 17. Accordingly, the Association should be awarded its attorneys' fees and costs in
4 the total amount of \$31,462.53.

5 18. These attorneys' fees and costs were necessary in defending this action and will
6 continue to be incurred as a result of this Motion.

7
8
9 
T. Chase Pittsenbarger

10
11 **SUBSCRIBED and SWORN** to before
12 me this 11th day of August 2021.

13
14 
15 NOTARY PUBLIC in and for said
County and State.

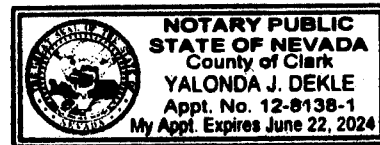


Exhibit A-1

LKG, Ltd.

	Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount		Ref #
Fees										
	1740.004	04/06/2020	SA	A	1	335.00	0.30	100.50	Review and analyze Request for Trial de Novo El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
	1740.004	04/07/2020	CP	A	1	275.00	0.70	192.50	Conduct research on the standard for objecting to the Arbitrator's Fees and Costs (.4); Correspond with Mr. Anderson regarding whether the Association has the ability to object to the Arbitrator's Fees and Costs (.3)	ARCH
	1740.004	04/08/2020	CP	A	1	275.00	0.20	55.00	El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Receive and review Request for Trial De Novo (.2)	ARCH
	1740.004	04/15/2020	SA	A	1	335.00	0.20	67.00	El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Review and analyze Demand for Removal from the Short Trial Program	ARCH
	1740.004	04/16/2020	SA	A	1	335.00	0.30	100.50	El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Review and analyze Plaintiff's Demand for Jury Trial (.2); Review and analyze Correspondence from ADR Office (.1)	ARCH
	1740.004	04/16/2020	CP	A	1	275.00	0.40	110.00	El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Correspond with opposing counsel regarding the Early Case Conference for this matter (.4)	ARCH
	1740.004	04/16/2020	CP	A	1	275.00	0.20	55.00	El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Receive and review Demand for Removal from the Short Trial Program (.2)	ARCH
	1740.004	04/17/2020	CP	A	1	275.00	0.20	55.00	El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Receive and review Correspondence from ADR Commissioner Regarding Proof of Demand Out Fee (.1); receive and review Demand for Jury Trial (.1)	ARCH
	1740.004	04/21/2020	CP	A	1	275.00	0.30	82.50	El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Review file, draft and send update to the community manager (.3)	ARCH
	1740.004	04/28/2020	CP	A	1	275.00	0.40	110.00	El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Receive and review email from opposing counsel requesting availability to hold the early case conference (.2); Correspond with opposing counsel regarding the availability of all parties to hold the Early Case Conference (.2)	ARCH
	1740.004	04/30/2020	CP	A	1	275.00	0.50	137.50	El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Prepare for and participate in Early Case Conference (.5)	ARCH
	1740.004	05/06/2020	CP	A	1	275.00	1.20	330.00	El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Conduct research on the standard for a Motion to Strike Request for Trial de Novo (1.2).	ARCH
	1740.004	05/07/2020	CP	A	1	275.00	0.70	192.50	El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Receive and review proposed Joint Case Conference Report (.7).	ARCH
	1740.004	05/08/2020	SA	A	1	335.00	0.70	234.50	El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Review and analyze email from opposing counsel and attached proposed JCCR (.4); Telephone conference with opposing counsel (.3)	ARCH
	1740.004	05/14/2020	SA	A	1	335.00	0.50	167.50	El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Review and analyze Joint Case Conference Report	ARCH

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	<u>Client</u>	<u>Trans Date</u>	<u>Tmkr</u>	<u>H P</u>	<u>Tcode/ Task Code</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>		<u>Ref #</u>
Fees										
	1740.004	05/15/2020	CP	A	1	275.00	0.30	82.50	El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Receive and review Joint Case Conference Report (.3).	ARCH
	1740.004	07/08/2020	CP	A	1	275.00	3.90	1,072.50	El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Prepare for and participate in Mandatory Rule 16 Conference (3.9).	ARCH
	1740.004	07/08/2020	SA	A	1	335.00	1.40	469.00	El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Review and analyze Plaintiff's First Set of Requests for Admissions to El Capitan Ranch Landscape Maintenance Association (.4); Review and analyze Plaintiff's First Set of Requests for Production to El Capitan Ranch Landscape Maintenance Association (.6); Review and analyze Plaintiff's First Set of Interrogatories to El Capitan Ranch Landscape Maintenance Association (.4)	ARCH
	1740.004	07/15/2020	CP	A	1	275.00	1.20	330.00	El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Receive and review Request for Production of Documents served on the Association (.4); Review file to determine what documents the community manager has already produced in this matter (.5); Draft and send email forwarding the Request for Production of Documents and requesting the community manager's assistance in gathering certain documents (.3).	ARCH
	1740.004	07/16/2020	SA	A	1	335.00	0.30	100.50	El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Review and analyze Notice of Intent to Serve Subpoena Duces Tecum to Alessi & Koenig	ARCH
	1740.004	07/16/2020	CP	A	1	275.00	2.90	797.50	El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Receive and review documents forward by the community manager in response to the Request for Production of Documents served on the Association (1.7); Commence preparing the Association's responses to the Request for Production of Documents (1.2).	ARCH
	1740.004	07/17/2020	CP	A	1	275.00	0.30	82.50	El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Receive and review Notice of Intent to Serve Subpoena Duces Tecum to Alessi & Koenig.	ARCH
	1740.004	07/29/2020	CP	A	1	275.00	0.20	55.00	El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Request and obtain extension to respond to written discovery in this matter (.2).	ARCH
	1740.004	07/31/2020	CP	A	1	275.00	0.20	55.00	El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Receive and review Order Setting Trial.	ARCH
	1740.004	07/31/2020	CP	A	1	275.00	1.20	330.00	El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Receive and review Plaintiff's First Supplement to Initial Disclosures.	ARCH
	1740.004	08/03/2020	SA	A	1	335.00	0.30	100.50	El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Review and analyze Plaintiff's First Supplement to Initial 16.1 Disclosures	ARCH
	1740.004	08/12/2020	CP	A	1	275.00	5.00	1,375.00	El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Continue drafting the Association's responses to the Request for Production of Documents (1.7); Commence drafting the Association's responses to	ARCH

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<u>Fees</u>	<u>Client</u>	<u>Trans Date</u>	<u>Tmkr</u>	<u>H P</u>	<u>Tcode/ Task Code</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>	<u>Ref #</u>
								the Request for Admissions (1.4); Commence drafting the Association's responses to the Interrogatories (1.9). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	
	1740.004	08/24/2020	CP	A	1	275.00	2.50	687.50	ARCH
								Finalize the Association's responses to the Interrogatories (.3); Draft and send email forwarding the same to the community manager for review/comment and execution of the verification page (.1); Finalize and execute the Association's responses to Plaintiff's Request for Production of Documents and Request for Admissions (.6); Receive and review email from opposing counsel taking issue with 2 of the responses to the Requests for Admissions (.2); Conduct research on the standard for Requests for Admissions (.6); Draft and execute Amended Responses to the Requests for Admissions (.3); Draft and send email setting forth the Association's position on the responses to the Requests for Admission and advise opposing counsel that if he disputes the responses we should set a 2.34 conference (.4). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	
	1740.004	08/31/2020	CP	A	1	275.00	0.30	82.50	ARCH
								Finalize and execute the Association's responses to the Interrogatories. El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	
	1740.004	11/04/2020	CP	A	1	275.00	0.70	192.50	ARCH
								Receive and review email from the community manager forwarding questions from the Board on this matter (.2); Review file in preparation for respond to the Board's questions (.2); Draft and send email responding to the Board's questions (.3). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	
	1740.004	01/04/2021	CP	A	1	275.00	0.30	82.50	ARCH
								Receive and review email from the community manager forwarding a number of questions from the Board and requesting availability to hold a telephonic conference to discuss these topics (.1); Review calendar and send email providing my availability (.2). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	
	1740.004	01/06/2021	CP	A	1	275.00	0.50	137.50	ARCH
								Participate in phone call with the community manager (.2); Receive and review email from the community manager requesting to move the phone call (.1); Review calendar and provide my availability (.2). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	
	1740.004	01/11/2021	CP	A	1	275.00	1.40	385.00	ARCH
								Prepare for and participate in call with the Board to discuss this matter (1.4). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	
	1740.004	01/28/2021	CP	A	1	275.00	0.60	165.00	ARCH
								Review file to determine whether a supplemental disclosure of witnesses and documents is necessary (.6). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	
	1740.004	02/18/2021	CP	A	1	300.00	2.90	870.00	ARCH
								Review file in preparation for drafting written discovery to be served on Plaintiff (1.4); Commence drafting additional Requests for Admissions to be served on Plaintiff (1.5). El Capitan Ranch Landscape Maintenance Association	

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	<u>Client</u>	<u>Trans Date</u>	<u>Tmkr</u>	<u>H P</u>	<u>Tcode/ Task Code</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>		<u>Ref #</u>
Fees										
	1740.004	02/25/2021	CP	A	1	300.00	4.20	1,260.00	Daisy Trust v. El Capitan Ranch (A-19-789674-C) Draft Interrogatories to be served on Plaintiff (2.3); Draft Requests for Production of Documents to be served on Plaintiff (1.9).	ARCH
	1740.004	02/25/2021	SA	A	1	340.00	1.30	442.00	El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) REvise and edit Interrogatories to Plaintiff (.7) Revise and edit Requests for Production to Plaintiff (.6)	ARCH
	1740.004	02/26/2021	CP	A	1	300.00	0.60	180.00	El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Review, finalize and execute written discovery to be served on Plaintiff (.6).	ARCH
	1740.004	03/24/2021	SA	A	1	340.00	1.80	612.00	El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Review and analyze Plaintiff's Responses to El Capitan's Second Set of Interrogatories to Daisy Trust (.7); Review and analyze Plaintiff's Responses to El Capitan's Second Set of Requests for Production to Daisy Trust (.6); Review and analyze Plaintiff's Responses to El Capitan's Second Set of Requests for Admission to Daisy Trust (.5)	ARCH
	1740.004	03/25/2021	CP	A	1	300.00	0.30	90.00	El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Review file to determine whether supplemental disclosure of witnesses and documents is necessary.	ARCH
	1740.004	03/26/2021	CP	A	1	300.00	2.90	870.00	El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Analyze Plaintiff's responses to written discovery (2.6); Correspond with opposing counsel to set a telephonic conference to discuss the inadequacies of the responses (.3).	ARCH
	1740.004	03/29/2021	CP	A	1	300.00	1.60	480.00	El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Prepare for and participate in Rule 2.34 conference .	ARCH
	1740.004	03/30/2021	CP	A	1	300.00	1.70	510.00	El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Draft and send email forwarding the discovery order in which the discovery commissioner ordered the production of rental agreements and rent history and to confirm that opposing counsel will provide amended responses to certain Interrogatories (.4); Draft and execute Notice of Deposition of Plaintiff (1.3).	ARCH
	1740.004	04/07/2021	CP	A	1	300.00	0.40	120.00	El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Review file to determine whether additional documents or witnesses need to be disclosed (.4).	ARCH
	1740.004	04/19/2021	CP	A	1	300.00	1.30	390.00	El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Review file in preparation for drafting the outline for the deposition of Plaintiff (.5); Follow up with opposing counsel regarding the status of the additional documents requested in preparation for the deposition of his client (.1); Correspond with opposing counsel regarding the same and coordinate resetting the deposition (.4); Draft and execute Amended Notice of Deposition (.3).	ARCH
	1740.004	04/29/2021	CP	A	1	300.00	0.20	60.00	El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Review file to determine whether additional documents or witnesses need to be disclosed in this matter (.2).	ARCH
									El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	

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LKG, Ltd.

Fees	Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount		Ref #
	1740.004	05/10/2021	CP	A	1	300.00	0.20	60.00	Draft and send email to opposing counsel following up on the production of additional documents regarding rental income (.1); Receive and review email from opposing counsel advising that the documents will be produced today (.1). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
	1740.004	05/11/2021	CP	A	1	300.00	0.20	60.00	Follow up with opposing counsel regarding additional documents he agreed to produce (.1); Receive and review response advising he should have something by the end of the day (.1). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
	1740.004	05/12/2021	CP	A	1	300.00	0.80	240.00	Review file to determine whether opposing counsel has produced documents related to rental income for the property (.1); Correspond with opposing counsel regarding his failure to produce this information and the need to move the deposition of his client as a result of the failure to produce this information (.4); Draft and execute Amended Notice of Deposition (.3). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
	1740.004	05/14/2021	SA	A	1	340.00	0.10	34.00	Review and analyze BlueJeans Link for Hearing El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
	1740.004	05/14/2021	CP	A	1	300.00	0.20	60.00	Receive and review Bluejeans link regarding Hearing set for 5/18/21. El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
	1740.004	05/14/2021	CP	A	1	300.00	0.20	60.00	Follow up with opposing counsel regarding the document (.2). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
	1740.004	05/17/2021	CP	A	1	300.00	0.70	210.00	Correspond with opposing counsel regarding his failure to disclose documents and demand he disclose the same by Wednesday or we would be filing a motion with the discovery commissioner (.4); Draft and execute Notice to Vacate Deposition (.3). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
	1740.004	05/18/2021	CP	A	1	300.00	2.10	630.00	Prepare for and attend status check (1.8); Correspond with opposing counsel regarding the status of requested documents and the court ordered settlement conference (.3). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
	1740.004	05/19/2021	CP	A	1	300.00	0.20	60.00	Receive and review email providing proposed response to Interrogatory 5 (.2). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
	1740.004	05/19/2021	SA	A	1	340.00	0.50	170.00	Review and analyze Plaintiff's Amended Responses to Defendant El Capitan's Second Set of Interrogatories to Daisy Trust El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
	1740.004	05/21/2021	CP	A	1	300.00	0.30	90.00	Receive and review Plaintiff's Amended Response to HOA's Second Set of Interrogatories. El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
	1740.004	05/24/2021	CP	A	1	300.00	0.10	30.00	Draft and send email to opposing counsel requesting status on additional documents to be produced (.1). El Capitan Ranch Landscape Maintenance Association	ARCH

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LKG, Ltd.

	Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount		Ref #
Fees										
	1740.004	05/26/2021	CP	A	1	300.00	5.60	1,680.00	Daisy Trust v. El Capitan Ranch (A-19-789674-C) Review file in preparation for drafting the Association's Motion for Summary Judgment (1.4); Commence drafting the Association's Motion for Summary Judgment (4.2). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
	1740.004	05/27/2021	SA	A	1	340.00	0.10	34.00	Review and analyze Notice of Hearing El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
	1740.004	05/27/2021	CP	A	1	300.00	5.80	1,740.00	Continue drafting the Association's Motion for Summary Judgment (.9); Finalize and execute the Motion for Summary Judgment (.6); Review file in preparation for drafting the Association's Motion to Compel (.7); Commence drafting the Association's Motion to Compel (3.6). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
	1740.004	05/28/2021	SA	A	1	340.00	6.40	2,176.00	Review entire file, discovery and pleadings to date (2.0); Revise and edit El Capitan Ranch Motion for Summary Judgment (3.4) Additional research regarding Intentional/Negligent misrepresentation (1.0) El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
	1740.004	05/28/2021	CP	A	1	300.00	0.20	60.00	Receive and review Notice of Hearing of HOA's Motion for Summary Judgment. El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	ARCH
	1740.004	06/04/2021	CP	P	1	300.00	2.20	660.00	Continue to draft Motion to Compel (1.3); Finalize and execute the same (.5); Correspond with opposing counsel regarding the settlement conference in this matter and possibility of moving the hearing on the MSJ (.4). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	134
	1740.004	06/07/2021	SA	P	1	340.00	0.10	34.00	Review and analyze Notice of Hearing - El Capitan Ranch Landscape Maintenance Association's Motion to Compel Discovery Responses El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	149
	1740.004	06/09/2021	CP	P	1	300.00	0.50	150.00	Receive and review email from opposing counsel forwarding availability to hold the settlement conference (.1); Review calendar for availability and send email to the Association advising of the Court's order to participate in a settlement conference and provide proposed dates to participate in the same (.4). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	135
	1740.004	06/10/2021	SA	P	1	340.00	1.30	442.00	Review and analyze Plaintiff's Opposition to El Capitan Ranch Landscape Maintenance Association's Motion for Summary Judgment El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	148
	1740.004	06/11/2021	CP	P	1	300.00	0.90	270.00	Receive and review Plaintiff's Opposition to El Capitan's Motion for Summary Judgment (.7); receive and review Notice of Hearing regarding the Association's Motion to Compel (.2). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	143
	1740.004	06/14/2021	CP	P	1	300.00	0.40	120.00	Receive and review email from the community manager regarding the settlement conference (.1); Correspond with opposing counsel regarding the	136

051

LKG, Ltd.

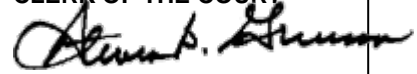
<u>Client</u>	<u>Trans Date</u>	<u>Tmkr</u>	<u>H P</u>	<u>Tcode/ Task Code</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>	<u>Ref #</u>
Fees								
1740.004	06/16/2021	CP	P	1	300.00	0.40	120.00	137
							upcoming settlement conference (.3). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C) Correspond with all parties regarding the upcoming status check and the Court's order regarding settlement conference (.4). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	
1740.004	06/21/2021	CP	P	1	300.00	3.00	900.00	138
							Analyze Plaintiff's Opposition to the Motion for Summary Judgment (1.6); Review file in preparation for drafting Reply in support of Motion for Summary Judgment (.5); Commence drafting Reply in support of Motion for Summary Judgment (.9). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	
1740.004	06/21/2021	SA	P	1	340.00	1.00	340.00	147
							Review and analyze Plaintiff's Opposition to El Capitan Ranch Landscape Maintenance Association's Motion to Compel Responses to Discovery El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	
1740.004	06/22/2021	CP	P	1	300.00	6.20	1,860.00	139
							Continue drafting Reply in support of Motion for Summary Judgment (5.8); Review, revise and execute the same (.4). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	
1740.004	06/23/2021	SA	P	1	340.00	0.40	136.00	146
							Review and analyze Notice of Entry of Order Setting Settlement Conference El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	
1740.004	06/25/2021	CP	P	1	300.00	1.00	300.00	144
							Receive and review Notice of Entry of Order Setting Settlement Conference (.2); Receive and review Court Notice regarding BlueJeans Link for 6/29/21 Hearing (.2); Receive and review Trust's Opposition to HOA's Motion to Compel (.6). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	
1740.004	06/25/2021	SA	P	1	340.00	0.10	34.00	145
							Review and analyze Notice of BlueJeans Link for Hearing El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	
1740.004	06/28/2021	CP	P	1	300.00	2.70	810.00	140
							Commence preparing for the hearing on the Association's Motion for Summary Judgment (2.7). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	
1740.004	06/29/2021	CP	P	1	300.00	3.60	1,080.00	141
							Continue preparing for and attend the hearing on the Association's Motion for Summary Judgment (3.6). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	
1740.004	06/30/2021	CP	P	1	300.00	1.60	480.00	142
							Prepare findings of fact and conclusion of law granting summary judgment in favor of the Association (1.6). El Capitan Ranch Landscape Maintenance Association Daisy Trust v. El Capitan Ranch (A-19-789674-C)	

Total for Fees

Billable

98.60

29,586.50



OPPS

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Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

DAISY TRUST, a Nevada trust,

Plaintiff,

vs.

EL CAPITAN RANCH LANDSCAPE
MAINTENANCE ASSOCIATION, a domestic
Nevada non-profit corporation,

Defendants.

Case No: A-19-789674-C
Dept. No: 14

**PLAINTIFF'S OPPOSITION TO EL
CAPITAN RANCH LANDSCAPE
MAINTENANCE ASSOCIATION'S
MOTION FOR ATTORNEY FEES AND
COSTS**

Hearing Date: October 21, 2021
Hearing Time: 10:00 a.m.

Plaintiff Daisy Trust ("Plaintiff"), by and through its attorneys, Roger P. Croteau & Associates, LTD., requests that the Court deny Defendant El Capitan Ranch Landscape Maintenance Association's (the "HOA") Motion for Attorney's Fees and Costs (the "Motion") for the following reasons: First, NRS 116.4117 does not allow for an award of attorney's fees in this case, because the basis for Plaintiff's claims against the HOA arose before Plaintiff was a member of the HOA. Further, Plaintiff's claims do not arise from the HOA's assessments or operation of the HOA, so Section 116.4117 does not allow for an award of attorney's fees. Second, HOA's

1 alleged attorney's fees are excessive and should not be granted in part or in full under *Brunzell* due
2 to a portion of the amounts set forth appearing to be from a different, related matter.

3
4 **RELEVANT BACKGROUND**

5 The instant matter is one of the many cases currently being litigated that involve the
6 interpretation of common law and NRS Chapter 116 and the duties of disclosure of homeowners'
7 associations and their collection/foreclosure agents under applicable law.

8 This action relates to real property commonly known as 8721 Country Pines Avenue, Las
9 Vegas, Nevada 89129 (APN 138-08-611-076) ("Property"). Plaintiff is the current owner of the
10 Property, which Plaintiff acquired at the HOA Foreclosure Sale at issue.

11 Plaintiff filed its Complaint on February 19, 2019, alleging three causes of action: (1)
12 intentional, or alternatively negligent, misrepresentation, (2) breach of the covenant of good faith,
13 and (3) conspiracy. Defendant HOA filed a Motion for Summary Judgment of Plaintiff's Complaint
14 ("MSJ") on May 27, 2021, which was opposed by Plaintiff. The MSJ was granted by this Court on
15 July 20, 2021. The Findings of Fact and Conclusions of Law granting the motion set forth detailed
16 reasons for the dismissal, which did **NOT** include that Plaintiff's claims were baseless or brought
17 without reasonable ground. The HOA's Motion for Attorney's Fees was filed on August 11, 2021.

18
19 **LEGAL STANDARD TO AWARD ATTORNEY'S FEES**

20 Under Nevada law, "attorney's fees are not recoverable absent a statute, rule, or contractual
21 provision to the contrary." *Rowland v. Lepire*, 99 Nev. 308, 315 (1983) (citations omitted).
22 Moreover, a party is entitled to an award of attorney's fees, if and "when the court finds that the
23 claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was
24 brought or maintained without reasonable ground." NRS 18.010(2)(b).
25

26 Courts also have discretion to decline to make an award of attorney's fees under NRS
27 18.010(2)(b). *See Foley v. Morse & Mowbray*, 109 Nev. 116, 124 (1993). The Supreme Court of
28

1 Nevada, in *Chowdhry v. NLVH, Inc.*, determined that, when that court reviews an order granting
2 attorney's fees on appeal, "there must be evidence in the record supporting the proposition that the
3 complaint was brought without reasonable grounds or to harass the other party." 109 Nev. 478, 486
4 (1993). In assessing a motion for attorney's fees under NRS 18.010(2)(b), the trial court must
5 determine whether the plaintiff had reasonable grounds for its claims. Such an analysis depends
6 upon the actual circumstances of the case rather than a hypothetical set of facts favoring plaintiff's
7 averments." *Bergmann v. Boyce*, 109 Nev. 670 (1993) (citing *Fountain v. Mojo*, 687 P.2d 496, 501
8 (Colo. Ct. App. 1984)), abrogated on other grounds as stated in *Copper Sands HOA v. Copper Sands*
9 *Realty, LLC*, 2017 U.S. Dist. LEXIS 161877, at *15 – 16 (D. Nev. Sep. 29, 2017) (unpublished
10 disposition). Moreover, "[i]f an action is not frivolous when it is initiated, then the fact that it later
11 becomes frivolous will not support an award of fees." *Duff v. Foster*, 110 Nev. 1306, 1309 (1994).
12
13

14 **LEGAL ARGUMENT**

15 **1. THE HOA IS NOT ENTITLED TO ATTORNEY'S FEES UNDER NRS 116.4117**

16 In its Motion, the HOA claims that it is the prevailing party and therefore entitled to attorney's
17 fees under NRS 116.4117, which provides in relevant part:

18 1. Subject to the requirements set forth in subsection 2, if a declarant, community
19 manager or any other person subject to this chapter fails to comply with any of its
20 provisions or any provision of the declaration or bylaws, any person or class of
21 persons suffering actual damages from the failure to comply may bring a civil action
22 for damages or other appropriate relief.

23 2. Subject to the requirements set forth in NRS 38.310 and except as otherwise
24 provided in NRS 116.3111, a civil action for damages or other appropriate relief for
25 a failure or refusal to comply with any provision of this chapter or the governing
26 documents of an association may be brought:

27 (a) By the association against:

- 28 (1) A declarant;
- (2) A community manager; or
- (3) A unit's owner.

(b) By a unit's owner against:

- (1) The association;
- (2) A declarant; or
- (3) Another unit's owner of the association.

1 (c) By a class of units' owners constituting at least 10 percent of the total
2 number of voting members of the association against a community manager.

3 The HOA's argument fails for multiple reasons. First, Section 116.4117 does not allow for
4 an award of attorney's fees in this case, because the basis for Plaintiff's claims against the HOA arose
5 *before* Plaintiff was a member of the HOA. The HOA's and HOA's agent's acts and omissions in
6 misrepresenting material facts to Plaintiff, and in hiding material facts from Plaintiff, *led to* Plaintiff
7 becoming a unit owner, but by definition took place *before* Plaintiff became an owner. Plaintiff's
8 allegations all pertain to acts/omissions that took place *before* the HOA Foreclosure Sale and *before*
9 Plaintiff was a "unit owner" within the HOA.
10

11 Second, Plaintiff's claims do not arise from the HOA's assessments or operation of the HOA,
12 so Section 116.4117 does not allow for an award of attorney's fees. *See* NRS 116.4117(1), (2).
13 Section 116.4117 allows a civil action to be brought "for a failure or refusal to comply with any
14 provision of this chapter or the governing documents of an association." This lawsuit, for
15 misrepresentation, civil conspiracy, and NRS 116.1113 violations of HOA and HOA's agents, does
16 not fit the types of actions covered by NRS 116.4117.
17

18 A recent Order of the Nevada Supreme Court made a distinction as to NRS 116.4117 and a
19 contract dispute between a bidder and a homeowner's association, and denied a homeowner's
20 association attorney fees under NRS 116.4117 following a contractual dispute. *See* Order Affirming
21 (Docket No. 79593) and Affirming in Part and Vacating in Part (Docket No. 80312) in the matter
22 *REEC Enters. v. Savannah Falls Homeowners' Ass'n*, 481 P.3d 1258 (Nev. 2021) (unpublished
23 disposition) ("*REEC Matter*"), attached as Exhibit 1. In the *REEC Matter*, REEC sought to enforce
24 an agreement to purchase property from a homeowner's association following a bidding process, the
25 homeowner's association obtaining the property following a foreclosure under NRS 116. REEC
26 alleged Quiet Title and Cancellation of Instruments, against all defendants, which included the
27 homeowner's association and holder of the first deed of trust, and claims of Breach of Contract and
28

1 Equitable Estoppel against the homeowners' association. In the consolidated matter, the
2 homeowners' association also sought Quiet Title, Declaratory Relief, and Slander of Title claims
3 against the holder of the first deed of trust. The district court found that REEC had failed to form a
4 contract with the homeowners' association, without addressing any issue pertaining to NRS 116 in
5 the Order. The Nevada Supreme Court reversed, finding that the district court did not interpret NRS
6 116, or the CC&R's or bylaws, and thus fees pursuant to NRS 116.4117 were not proper. Thus, the
7 *REEC* Matter commences setting forth the limitations of awarding attorney fees under NRS
8 116.4117, differentiating matters that simply involve homeowner's associations from matters which
9 analyze NRS 116, the CC&Rs, or the bylaws. The overbroad approach in this matter offers another
10 opportunity to address the metes and bounds of NRS 116.4117, and determine the extent to which
11 homeowner associations are entitled to attorney fees in good faith, fraud, and conspiracy matters are
12 brought against homeowner associations and their agents.

13
14
15 Third, it is Plaintiff's contention that the HOA failed to act in good faith under NRS 116.1113
16 in the matters leading up to and including the HOA Foreclosure Sale of the Property. Plaintiff
17 maintains that under NRS 116.1113 and Nevada case law, the HOA had a duty to disclose any
18 attempted tender/payment made by the lender to either the HOA or its agent upon inquiry by
19 Plaintiff prior to the HOA Foreclosure Sale. In *Noonan v. Bayview Loan Svcng., LLC*, the Supreme
20 Court of Nevada held that "[s]ummary judgment was appropriate on the negligent misrepresentation
21 claim because Hampton neither made an affirmative false statement nor omitted a material fact it
22 was bound to disclose." 438 P.3d 335 at *2 (Nev. 2019) (unpublished disposition).

23
24 Notably absent from the unpublished *Noonan* decision, however, is an express holding that
25 the HOA trustee *never* has a duty to inform potential bidders about a tender or an attempted
26 tender/payment from a lender or its agent, or an express holding that the only basis for pleading
27 intentional/negligent misrepresentation is NRS 116.31162(1)(b)(3)(II) (2017). A statute that
28

1 derogates the common law shall be narrowly construed – that is settled Nevada law – and the issue
2 of whether there is a common-law duty to disclose the existence of the material fact of a lender’s
3 attempted tender of the superpriority lien upon inquiry does not appear to have been explicitly
4 decided in any published or unpublished opinion from Nevada’s appellate courts.

5
6 The allegations contained in Plaintiff’s Complaint relate primarily to the actions of the HOA
7 Trustee, as an agent of the HOA, with the HOA being vicariously liable for the actions of the HOA
8 Trustee, up to and including the HOA Foreclosure Sale. There are no allegations that require an
9 interpretation of the CC&Rs or any governing documents of the HOA. NRS 116.4117 pertains to
10 claims by unit owners related to the CC&Rs and the mandates of NRS Chapter 116 as it relates to
11 Chapter 116’s imposition of control over the CC&Rs, assessments, and general matters. Plaintiff
12 does not assert claims that give rise to attorney’s fees pursuant to NRS 116.4117. Moreover, it must
13 be highlighted that Plaintiff’s allegations all pertain to acts/omissions that took place *before* the HOA
14 Foreclosure Sale and *before* Plaintiff was a “unit owner” within the HOA.

15
16 Any award of attorney’s fees pursuant to NRS 116.4117(6) is discretionary with the court
17 and not mandatory. *See* NRS 116.4117(6) (“The court *may* ...”) (emphasis added). This matter will
18 not be resolved until the Nevada Supreme Court provides guidance on the issues addressed in
19 Plaintiff’s Complaint and the case law developed in other jurisdictions interpreting the uniform act
20 that is embodied in NRS Chapter 116 regarding the duties of the HOA. Particularly, the issues of
21 honesty in fact, candor, and disclosure of material facts known to the HOA and/or its agent related
22 to the HOA Foreclosure Sale and what should be disclosed to the public and/or potential bidders
23 upon inquiry by a bidder and/or Plaintiff.

24
25 Plaintiff filed this case in good faith and pled valid, cognizable claims. Even though the Court
26 ruled in favor of the HOA, the ultimate answer will be rendered by the Nevada Supreme Court. As
27 such, Plaintiff asserts that any award of fees pursuant to NRS 116.4117 is inappropriate and not
28

1 reasonable, because the statute does not address the matters as asserted in the Complaint. Given the
2 discretion awarded to the Court in NRS 116.4117(6), and based on the argument herein, Plaintiff
3 requests that the Court decline to award attorney's fees pursuant to NRS 116.4117.

4 **2. THE HOA'S REQUEST FOR ATTORNEY'S FEES IS UNWARRANTED AND**
5 **FAILS UNDER A BRUNZELL ANALYSIS**

6 In its Motion, the HOA relies on *Brunzell v. Golden Gate National Bank*, 455 P.2d 31 (1969)
7 in an effort to establish reasonableness and a justification for requesting an exorbitant amount of
8 attorney's fees totaling \$29,586.50. The HOA's claim that the requested attorney's fees are
9 "reasonable" and "economical," for essentially filing a Motion for Summary Judgment used
10 previously is incorrect. *See* Mot. at Ex. A, ¶ 10 (Affidavit of T. Chase Pittsenbarger in Support of
11 Motion for Attorney's Fees and Costs).¹

12 According to the HOA's attorney invoice, multiple billing entries were entered for identical
13 work done by Mr. Sean Anderson ("SA") and Mr. Chase Pittsenbarger ("CP"):
14

- 15 • April 6 and April 8, 2020 – .3 hours billed by timekeeper SA to "Review and analyze
16 Request for Trial de Novo" and .2 hours billed by timekeeper CP for the same
17 described activity.
- 18 • July 16 and July 17, 2020 – .3 hours billed by timekeeper SA to "Review and analyze
19 Notice of Intent to serve Subpoena Duces Tecum to Alessi & Koenig" and .3 hours
20 billed by timekeeper CP for the same described activity.
- 21 • July 31 and August 3, 2020 – 1.2 hours billed by timekeeper CP to "Received and
22 review Plaintiff's First Supplement to Initial Disclosures" and .3 hours billed by
23 timekeeper SA for the same described activity.
- 24 • March 24 and March 26, 2021 – .7 hours billed by timekeeper SA to "Review and
25
26
27

28 ¹ Plaintiff obviously disagrees with HOA's characterization, but this allegation highlights the
inconsistency with HOA's arguments.

1 analyze Plaintiff's Responses to El Capitan's Second Set of Interrogatories to Daisy
2 Trust" and 2.6 hours billed by timekeeper CP to "Analyze Plaintiff's responses to
3 written discovery."

- 4 • May 19 and May 21, 2021 – .5 hours billed by timekeeper SA to "Review and analyze
5 Plaintiff's Amended Responses to El Capitan's Second Set of Interrogatories to Daisy
6 Trust" and .3 hours billed by timekeeper CP to "Receive and review Plaintiff's
7 Amended Response to HOA's Second Set of Interrogatories."
8
- 9 • June 10 and June 11, 2021– 1.3 hours billed by timekeeper SA to "Review and analyze
10 Plaintiff's Opposition to El Capitan Ranch Landscape Maintenance Association's
11 Motion for Summary Judgment" and .7 hours billed by timekeeper CP to "Receive
12 and review Plaintiff's Opposition to El Capitan's Motion for Summary Judgment."
13

14 Additionally, there are extensive entries for standard activities, such as the following:

- 15 • July 8, 2020 – timekeeper CP billed 3.9 hours to "Prepare for and participate in
16 Mandatory Rule 16 conference" While the calendar was long, these conferences are
17 not extensive, and a full morning of billing is excessive for a seasoned attorney.
18
- 19 • May 26 to May 28, 2021 – timekeeper CP billed 1.4 hours to "Review file in
20 preparation for drafting the Association's Motion for Summary Judgment" then 4.2
21 hours to "Commence drafting the Association's Motion for Summary Judgment," on
22 May 26, 2021. This was followed by .9 hours to "Continue drafting the Association's
23 Motion for Summary Judgment" and .6 hours to "Finalize and execute the Motion for
24 Summary Judgment" on May 27, 2021. The next day, SA billed 2.0 hours to "Review
25 entire file, discovery and pleadings to date" and then an addition 3.4 hours to "Revise
26 and edit El Capitan Ranch Motion for Summary Judgment;" followed by an entry of
27 1.0 hours for "Additional research regarding Intention/Negligent misrepresentation"
28

1 for a Motion that had been “finalize[d] and executed[d]” the prior day.

- 2 • June 28 and June 29, 2021 – timekeeper CP billed 2.7 hours to “Commence preparing
3 for the hearing on the Association’s Motion for Summary Judgment, which was
4 followed by 3.6 hours on June 29 where CP also billed 3.6 hours to “Continue
5 preparing for and attend the hearing on the Association’s Motion for Summary
6 Judgment.”
7

8 Plaintiff should not be held responsible for duplicative work and excessive billing for
9 standard tasks and hearing by seasoned attorneys. Plaintiff maintains that the Court should deny the
10 Motion in its entirety. However, if an analysis under *Brunzell* is conducted under the facts and
11 circumstances this case presents, Plaintiff urges this court to consider the following in making its
12 determination.
13

14 Plaintiff does not argue the abilities of the advocates’ legal prowess.

15 As to the second and third *Brunzell* factors, the work performed in this case was not
16 complicated and, as shown by the Motion for Summary Judgment, had been done previously.

17 Finally, as to the fourth *Brunzell* factor, Plaintiff acknowledges that HOA’s MSJ was granted
18 by this Court; however, nothing in the order granting that MSJ even hinted at grounds for sanctions
19 since no bad faith existed on the part of Plaintiff, and the claims pleaded were not characterized as
20 “groundless” or “baseless.” Plaintiff submits that the Motion is without merit and must be denied.
21 Each party should bear its own fees.
22

23 While Plaintiff defers to this Court’s wide discretion, Plaintiff urges the Court to consider the
24 reasonableness of, and more accurately stated, lack thereof, in awarding attorney’s fees that are not
25 supported by fact or law. Alternatively, in the event that this Court determines HOA is entitled to an
26 amount of attorney’s fees, Plaintiff maintains that no more than three (20.0) hours of legal services,
27 calculated at \$300.00/hour, is more than reasonable to resolve this dispute.
28

1 Plaintiff submits that any amount over \$6,000.00 is unreasonable, unsupported by the facts
2 and circumstances presented in this case, and flies in the face of governing law.

3 **CONCLUSION**

4 Based upon the foregoing, this Opposition should be sustained, and the HOA's Motion for
5 Attorney's Fees and Costs should be denied.
6

7 Dated this August 25, 2021.

8 ROGER P. CROTEAU & ASSOCIATES, LTD.

9 /s/ Christopher L. Benner

10 Roger P. Croteau, Esq.

11 Nevada Bar No. 4958

12 Christopher L. Benner, Esq.

13 Nevada Bar No. 8963

14 2810 West Charleston Blvd., Suite 75

15 Las Vegas, Nevada 89102

16 Attorney for Plaintiff
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/s/ Joe Koehle
An employee of ROGER P. CROTEAU & ASSOCIATES, LTD.

EXHIBIT 1

EXHIBIT 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

REEC ENTERPRISES, LLC,
Appellant,
vs.
SAVANNAH FALLS HOMEOWNERS'
ASSOCIATION,
Respondent.
REEC ENTERPRISES, LLC,
Appellant,
vs.
SAVANNAH FALLS HOMEOWNERS'
ASSOCIATION,
Respondent.

No. 79593

FILED

MAR 10 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

No. 80312

*ORDER AFFIRMING (DOCKET NO. 79593) AND AFFIRMING IN PART
AND VACATING IN PART (DOCKET NO. 80312)*

Docket No. 79593 is an appeal from a district court summary judgment in a quiet title and contract action, and Docket No. 80312 is an appeal from a district court order granting a postjudgment motion for attorney fees and costs.¹ Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge. Because the appeals involve the same parties and arise from the same district court case, we elect to consolidate them for disposition. See NRAP 3(b)(2).

Docket No. 79593

Appellant argues that the district court erred by granting summary judgment because genuine issues of material fact remain. Specifically, appellant argues that it was undisputed that respondent's letter inviting bids stated that the subject property would be conveyed to the "successful bidder," and that, upon the highest bidder's failure to tender

¹Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted.

the bid amount, appellant constituted the “successful bidder.” Appellant therefore asserts that the solicitation letter required respondent to accept its bid and convey the property. At the very least, appellant argues, there are genuine issues of material fact regarding whether appellant was the successful bidder and the distinction, if any, between the highest or winning bidder and the “successful bidder.”

We review de novo, *see Nev. Recycling & Salvage, Ltd. v. Reno Disposal Co., Inc.*, 134 Nev. 463, 465, 423 P.3d 605, 607 (2018) (“[A] district court’s order granting summary judgment is reviewed de novo.”), and disagree. Appellant’s argument fails because an invitation to bid does not constitute a contractual offer. Instead, appellant’s bid constituted an offer, which respondent refused to accept. *Gulf Oil Corp. v. Clark Cty.*, 94 Nev. 116, 118, 575 P.2d 1332, 1333 (1978) (“It is established that a bid in response to a solicitation therefor constitutes no more than an offer and until its acceptance, a contract does not exist.”); *see also* 17A Am. Jur. 2d Contracts § 49 (2021) (“[C]ompliance with the requirements of a general invitation to make an offer involves nothing more than an offer, which may or may not be accepted by the party who issued the invitation.”). And, because respondent rejected the offer, the district court did not err by finding that the parties had not formed a contract. *See May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005) (“Basic contract principles require, for an enforceable contract, an offer and acceptance, meeting of the minds, and consideration.”).

Next, appellant argues that the district court erred by granting summary judgment on the issue of equitable estoppel. We review de novo, *see Nev. Recycling & Salvage*, 134 Nev. at 465, 423 P.3d at 607, and disagree. Because an invitation for bids is not an offer for purposes of

forming a contract, the letter itself stated that payment would be due only upon acceptance of the bidder's offer, and appellant was left in the same position as before it submitted its bid, we conclude that the district court did not err by finding that equitable estoppel did not apply.² See *Goldstein v. Hanna*, 97 Nev. 559, 563, 635 P.2d 290, 293 (1981) ("The doctrine of equitable estoppel is properly invoked whenever 'unconscionable injury would result from denying enforcement of the contract after one party has been induced by the other seriously to change his position in reliance on the contract.'" (quoting *Alpark Distrib. Inc. v. Poole*, 95 Nev. 605, 607-08, 600 P.2d 229, 230-31 (1979))); see also *Breliant v. Preferred Equities Corp.*, 112 Nev. 663, 674, 918 P.2d 314, 321 (1996) (holding that the district court abused its discretion in applying equitable estoppel because "there [was] no evidence in the record to show that [the party asserting estoppel] was induced to make a detrimental change of position").

Docket No. 80312

Appellant next challenges the legal basis for the district court's attorney fees award, arguing that NRS 116.4117 does not apply to its complaint.³ We review de novo, *Albios v. Horizon Cmtys., Inc.*, 122 Nev. 409, 417, 132 P.3d 1022, 1027-28 (2006) (holding that this court generally reviews district court attorney fees determinations for an abuse of

²Because we conclude that the district court did not err by granting summary judgment on the issues of contract formation or equitable estoppel, essentially finding appellant had no interest in the property, we need not address appellant's argument that the district court erred by finding that it waived its claim to any interest in the property.

³Appellant does not challenge the award of costs. We therefore affirm that portion of the appealed order in Docket No. 80312.

discretion, but that questions of statutory interpretation are reviewed de novo), and agree.

“A district court is not permitted to award attorney fees or costs unless authorized to do so by a statute, rule or contract.” *U.S. Design & Const. Corp. v. Int’l Bhd. of Elec. Workers*, 118 Nev. 458, 462, 50 P.3d 170, 173 (2002). NRS 116.4117 does not apply here because the complaint did not allege that respondent violated any provisions of NRS Chapter 116 or its Covenants, Conditions, and Restrictions (CC&Rs) or bylaws. See NRS 116.4117(1), (6) (providing for a civil action for damages for failure or refusal to comply with provisions of NRS Chapter 116 or a homeowner’s associations own governing documents, and further providing that “the court may award reasonable attorney fees to the prevailing party” in such an action). The order granting summary judgment similarly makes no reference to NRS Chapter 116, respondent’s CC&Rs, or its bylaws. Thus, the district court erred by relying on NRS 116.4117 to award attorney fees.


We also agree with appellant that respondent could not recover attorney fees under NRS 18.010(2)(a), which permits awards of attorney fees to the prevailing party under certain circumstances, as it was a defendant that did not receive a money judgment. See *Smith v. Crown Fin. Servs. of Am.*, 111 Nev. 277, 280, 890 P.2d 769, 771 (1995) (reaffirming the rule that a defendant does not satisfy the requirements for an award of attorney fees under NRS 18.010(2)(a) where it does not recover a money judgment below). And respondent waived any argument that it was entitled to attorney fees under NRS 18.010(2)(b) (allowing an attorney fees award when claims were “brought or maintained without reasonable ground or to harass the prevailing party”), by failing to make such arguments below or

on appeal.⁴ *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal."); *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n. 3, 252 P.3d 668, 672 n. 3 (2011) (explaining that issues not raised on appeal are deemed waived).

In sum, we affirm the summary judgment in Docket No. 79593 and we affirm the portion of order in Docket No. 80312 awarding costs to respondent but vacate the portion of that order awarding respondent attorney fees.

It is so ORDERED.

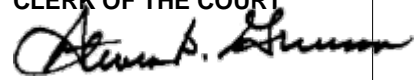
 , J.
Parraguirre

 , J.
Stiglich

 , J.
Silver

cc: Hon. Jacqueline M. Bluth, District Judge
Hong & Hong
Leach Kern Gruchow Anderson Song/Las Vegas
Eighth District Court Clerk

⁴The district court also made no findings that would support an award under NRS 18.010(2)(b).



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*Attorneys for Defendant El Capitan
Ranch Landscape Maintenance Association*

DISTRICT COURT

CLARK COUNTY, NEVADA

DAISY TRUST, a Nevada trust,
Plaintiff,

vs.

EL CAPITAN RANCH LANDSCAPE
MAINTENANCE ASSOCIATION, a domestic
non-profit corporation,
Defendant.

Case No.: A-19-789674-C
Dept. No.: 14

**REPLY IN SUPPORT OF MOTION FOR
ATTORNEYS' FEES AND COSTS**

Hearing Date: October 21, 2021

Hearing Time: 10:00 AM

Defendant El Capitan Ranch Landscape Maintenance Association (the "Association"), by and through its attorneys of record, Leach Kern Gruchow Anderson Song, hereby submits its Reply in Support of Motion for Attorneys' Fees and Costs. This Reply is made pursuant to NRS 116.4117, NRS 18.010(2)(b) and the attached Memorandum of Points and Authorities, the pleadings and papers on file herein, and any oral argument the Court may allow.

MEMORANDUM OF POINTS AND AUTHORITIES

I. ARGUMENT

A. This Court may Award to the Association its Reasonable Attorneys' Fees pursuant to NRS 116.4117.

Plaintiff argues that the Association cannot be awarded attorneys' fees because: (1) its complaint concerns allegations which arose before Plaintiff was a unit owner within the Association; (2) because Plaintiff did not allege a violation of the governing documents; and (3)

1 that Plaintiff alleged that the Association failed to act in good faith. *See* Opposition at 4. As set
2 forth in more detail below, Plaintiff's arguments are either irrelevant or incorrect under the law.

3 Plaintiff first argues that NRS 116.4117 does not allow for an award of attorneys' fees
4 because the basis for Plaintiff's claims arose before Plaintiff was a unit owner within the
5 Association. *Id.* This argument is extremely disingenuous. Plaintiff only had standing to bring
6 this lawsuit in the first place because it is a unit owner within the community. Indeed, NRS
7 116.4117(2)(b) only permits "unit owners" to sue their HOAs for violations of NRS 116. To the
8 extent Plaintiff really means to argue that he cannot be held liable to pay for the Association's
9 fees and costs under 116.4117, then the fees and costs should be awarded under NRS 18 as such
10 claims would have necessarily been "brought or maintained without reasonable ground." *See*
11 NRCP 18(2)(b). Plaintiff cannot wear the hat of unit owner in order to assert claims for breach
12 of NRS Chapter 116 and then claim that it is not a unit owner when the time comes for it to be
13 held responsible for the attorneys' fees and costs under the very statute that authorized its claims
14 to begin with.

15 Next, Plaintiff argues that NRS 116.4117 only permits an award of attorneys' fees and
16 costs if the dispute arose from "the HOA's assessments or operation of the HOA." *See*
17 Opposition at 4: 17-18. Plaintiff relies on an unpublished decision of the Supreme Court of
18 Nevada to support this position. However, Plaintiff is incorrect.

19 Plaintiff's reliance on *REEC Enters. v. Savannah Falls Homeowners' Ass'n*, 481 P.3d
20 1258 (Nev. 2021) (unpublished disposition) fails. Its interpretation of the Supreme Court of
21 Nevada's decision in that case does not align with the actual language of the order or the plain
22 language of NRS 116.4117. Indeed, counsel for the Association is intimately familiar with the
23 *REEC Enters.* case because it was the firm that represented the Savannah Falls Homeowner's
24 Association in that matter. Contrary to Plaintiff's misrepresentation, the actual holding of the
25 Supreme Court of Nevada was that the district court erred in awarding attorney's fees and costs
26 pursuant to NRS 116.4117 because "the complaint did not allege that respondent violated any
27 provisions of NRS Chapter 116 or its Covenants, Conditions, and Restrictions (CC&Rs) or
28 bylaws. *See* NRS 116.4117(1), (6) (providing for a civil action for damages for failure or refusal

1 to comply with provisions of NRS Chapter 116 or a homeowner's associations own governing
2 documents, and further providing that "the court may award reasonable attorney fees to the
3 prevailing party" in such an action)."

4 In *REEC Enters.*, the Supreme Court of Nevada relied upon the plain language of NRS
5 116.4117 which provides that homeowners have the ability to assert claims against an HOA "for
6 a failure or refusal to **comply with any provision of this chapter** or the governing documents."
7 See NRS 116.4117(2)(emphasis added.) That is exactly what Plaintiff did here. Plaintiff alleged
8 that the Association violated its duties of good faith under NRS 116.1113 by failing to notify
9 Plaintiff of a bank's attempt to pay a portion of the Association's lien prior to the foreclosure
10 sale. See Complaint at 12-13. NRS 116.4117 then specifically authorizes this Court to grant
11 attorneys' fees to the Association because it was the prevailing party on a claim maintained by
12 Plaintiff which alleged a "failure or refusal to comply with [the] provision[s] of [NRS Chapter
13 116]." Indeed, the Nevada Supreme Court recently confirmed that an award of attorneys' fees
14 was appropriate in a case where the claim stemmed from an allegation that the HOA violated
15 NRS Chapter 116 and not the governing documents. See Order Affirming in Part, Reversing in
16 Part, and Remanding, Case No. 77721 (Jun. 1, 2020), **Exhibit A**. Thus, Plaintiff's argument that
17 NRS 116.4117 only authorizes attorneys' fees and costs in cases dealing with "HOA assessments
18 or operation of the HOA" is incorrect.

19 **B. The Attorneys' Fees and Costs Incurred by the Association are Reasonable.**

20 Next Plaintiff argues the Association's fees as unreasonable. Plaintiff's unsupported
21 conclusion that \$6,000.00 of attorney's fees and costs is all that was necessary to defend the
22 Association in this case defies reason. Legal research and careful briefing were critical in
23 ensuring that the issues were correctly presented before this Court. It simply absurd for Plaintiff
24 to argue that \$6,000.00 of attorney's fees and costs would cover the time it took to draft the
25 Motion for Summary, participate in discovery conferences, draft written discovery, produce
26 relevant documents, find and disclose witnesses, review the prior case Plaintiff litigated with the
27 Bank, etc.

28 ///

1 In support of this argument, Plaintiff argues that unnecessary billing occurred generally
2 because multiple attorneys and staff worked on the case. *See Opp.* at 7-8. However, there is no
3 rule which prohibits a law firm from using multiple attorneys to represent a client in a matter. In
4 fact, doing so allowed the Association to bill less on the file. As set forth in the affidavit
5 attached to the Motion, Mr. Anderson was the lead attorney on the file and where appropriate left
6 much of the day-to-day handling of the case to Mr. Pittsenbarger who operated at a reduced rate.
7 *See Affidavit of Chase Pittsenbarger attached to Motion for Attorneys' Fees and Costs at Exhibit*
8 *A.* As lead attorney on the file, Mr. Anderson did review some of the same documents Mr.
9 Pittsenbarger was required to review in order to ensure that the file was being litigated correctly.
10 Once again, Plaintiff offers no authority that lead counsel on a case cannot bill for reviewing
11 documents that other counsel review in the course of litigation.

12 Plaintiff appears to argue that it was unreasonable for counsel for the Association to bill
13 for time spent at the Mandatory Rule 16.1 conference held by the Court. *See Opp.* at 8: 15.
14 Plaintiff acknowledges that the calendar was long on the date of the hearing however, appears to
15 imply that the Association is not entitled to the fees and costs incurred for attending this hearing
16 and waiting for the case to be called. Plaintiff offers no analysis, let alone legal authority that
17 would support its belief that billing for preparing and attending this mandatory hearing was not
18 reasonable. As such, Plaintiff's argument that the billing associated with that hearing was
19 unreasonable should be rejected.

20 Plaintiff also takes issue with counsels 1.4 hours to review the file in preparation for
21 drafting the Association's Motion for Summary Judgment and the time spent on drafting the
22 Motion for Summary Judgment which is absurd given the Motion that was filed. *See Opp.* at 8:
23 19. The Motion for Summary Judgment totals 16 pages of detailed legal analysis on the claims
24 asserted in the Complaint. In a normal setting where a reasonable attorney had not been familiar
25 with the legal issues present in this matter, it would have taken more than 20 hours to draft the
26 Motion for Summary Judgment. Accordingly, the time billed to draft the Motion for Summary
27 Judgment in this matter is more than reasonable.

28 ///

1 Finally, Plaintiff copies and pastes the time entries related to the hearing on the Motion
2 for Summary Judgment but offers no analysis of the same. *See* Opp. at 9: 2-7. As such, the
3 Association is left to assume why that entry was included in the Opposition. It is assumed that
4 Plaintiff will argue that the time spent on preparing for and attending the hearing on the Motion
5 for Summary Judgment was unreasonable. Again, Plaintiff offers no analysis, let alone legal
6 authority that would support its belief that billing for preparing and attending this important
7 hearing was not reasonable. The briefing on the Motion for Summary Judgment totaled 71
8 pages. In a normal setting where a reasonable attorney had not been familiar with the legal
9 issues present in this matter, it would have taken more than 15 hours to prepare for and attend the
10 hearing on the Motion for Summary Judgment. Accordingly, the time billed to prepare for and
11 attend the hearing on the Motion for Summary Judgment in this matter is more than reasonable.

12 In sum, the attorneys' fees incurred by the Association are reasonable, economical and a
13 customarily charged to the clients of LKG. *Brunzell v. Golden Gate National Bank*, 85 Nev.
14 345, 349, 455 P.2d 31, 33 (1969); *see also* Affidavit of Chase Pittsenbarger attached to the
15 Motion for Attorney's Fees as Exhibit A. Mr. Anderson and Mr. Pittsenbarger have practiced
16 extensively in the area of commercial litigation and common-interest community litigation and
17 enjoy reputations in the community for quality advocacy. Mr. Anderson, where appropriate,
18 made the prudent decision to assign this matter to Mr. Pittsenbarger to handle the day-to-day
19 management of the case, which lowered the per-hour billing significantly. *Id.* In addition, LKG
20 reviews all client billings for reasonableness and makes any and all adjustments to ensure that
21 the charges are commensurate with the value of the services provided. *Id.* LKG charges hourly
22 rates that are similar to those rates charges by comparable law firms for similar legal services.
23 *Id.* The ability, training, education, experience, professional standing and skill of each of the
24 professionals involved with this action were demonstrated in their pleadings, motions and other
25 documents filed with this Court.

26 As a result of LKG's representation of the Association, this Court granted the
27 Association's Motion for Summary Judgment. Accordingly, the Association should be awarded
28 its attorneys' fees in the amount of \$29,586.50 and costs in the amount of \$1,876.03.

II. CONCLUSION

For the reasons set forth above, the Association, as the prevailing party is entitled to an award of its attorneys' fees in the amount of \$29,586.50 and costs in the amount of \$1,876.03.

DATED this 14th day of October 2021

LEACH KERN GRUCHOW ANDERSON SONG

/s/ T. Chase Pittsenbarger

Sean L. Anderson
Nevada Bar No. 7259
T. Chase Pittsenbarger
Nevada Bar No. 13740
2525 Box Canyon Drive
Las Vegas, Nevada 89128
*Attorneys for Defendant El Capitan Ranch
Landscape Maintenance Association*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), the undersigned, an employee of LEACH KERN GRUCHOW
3 ANDERSON SONG, hereby certifies that on this 14th day of October 2021, service of the
4 foregoing, **REPLY IN SUPPORT OF MOTION FOR ATTORNEYS' FEES AND COSTS**,
5 was made on all parties via the Court's CM/ECF System, as follows:

6 Roger P. Croteau
7 Christopher L. Benner
8 **ROGER P. CROTEAU & ASSOCIATES, LTD.**
9 2810 W. Charleston Boulevard, Suite 75
10 Las Vegas, Nevada 89148
11 croteaulaw@croteaulaw.com
12 chris@croteaulaw.com
13 *Attorneys for Plaintiff*

14 */s/ Yalonda Dekle*

15 An Employee of LEACH KERN GRUCHOW
16 ANDERSON SONG
17
18
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20
21
22
23
24
25
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27
28

LEACH KERN GRUCHOW ANDERSON SONG
2525 Box Canyon Drive, Las Vegas, Nevada 89128
Telephone: (702) 538-9074 – Facsimile (702) 538-9113

Exhibit A

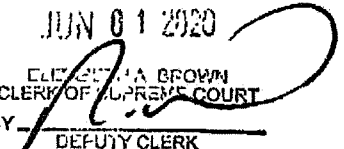
IN THE SUPREME COURT OF THE STATE OF NEVADA

ARTEMIS EXPLORATION COMPANY,
A NEVADA CORPORATION,
Appellant,
vs.
RUBY LAKE ESTATES
HOMEOWNER'S ASSOCIATION,
Respondent.

No. 77721

FILED

JUN 01 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART,
AND REMANDING*

This is an appeal from a district court postjudgment order awarding attorney fees and costs. Fourth Judicial District Court, Elko County; Alvin R. Kacin, Judge.

In the underlying litigation, appellant and property owner Artemis Exploration Company challenged respondent Ruby Lake Estates Homeowner's Association's (Ruby) authority under NRS Chapter 116 to levy assessments against Artemis. Following nonbinding arbitration in which the arbitrator ruled in favor of Ruby, Artemis filed a complaint in district court. Ruby answered the complaint and asserted counterclaims and a cross-claim. The parties eventually stipulated to dismiss Ruby's counterclaims and cross-claim and "agree[d] to bear their own fees and costs incurred in the prosecution and/or defense of the [c]ounterclaims and [c]rossclaim." After the final judgment was entered, Ruby moved for attorney fees and costs and attached as exhibits its billing invoices and supporting attorney affidavits. Artemis opposed Ruby's motion, attaching

as exhibits Ruby's billing invoices on which it highlighted contested billing entries.

In determining whether Ruby was entitled to attorney fees and costs, the district court analyzed NRS 116.4117 and reasoned the statute provided it discretion to award attorney fees to the prevailing party. The court determined that "there is little doubt that [Ruby] is now a 'prevailing party' for the purposes of NRS 116.4117," and was thus "entitled to an award of reasonable attorney[] fees." The district court then calculated the reasonableness of Ruby's requested attorney fees under the factors set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). Under the *Brunzell* factors, the district court concluded that the majority of Ruby's requested attorney fees were reasonable except for those fees sought when Ruby erroneously pursued enforcement of the arbitrator's decision before the finality of the case. As a result, the district court reduced Ruby's requested attorney fees from \$115,688.14 to \$85,097.¹ The district court also awarded Ruby costs in the amount of \$2,872.47 pursuant to NRS 18.050. Artemis appeals the district court's order.

"[T]he district court may not award attorney fees absent authority under a statute, rule, or contract." *Albios v. Horizon Cmtys., Inc.*, 122 Nev. 409, 417, 132 P.3d 1022, 1028 (2006). The district court's decision to award fees is within its sound discretion. *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 995, 860 P.2d 720, 724 (1993). "However, where a district court exercises its discretion in clear disregard of the guiding legal principles, this action may constitute an abuse of discretion." *Id.* A district court must consider certain factors to determine the reasonableness of the attorney fees

¹Ruby did not cross-appeal the district court's decision to reduce its attorney fees.

before awarding such fees. *Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 81, 319 P.3d 606, 615-16 (2014) (listing the *Brunzell* factors as “the qualities of the advocate,” “the character of the work to be done,” “the work actually performed by the lawyer,” and “the result” (internal quotation marks and emphasis omitted)).

The district court properly relied on NRS 116.4117 to award Ruby attorney fees and costs

Artemis argues the district court abused its discretion by awarding Ruby attorney fees and costs pursuant to NRS 116.4117 because Artemis brought its claims only under NRS Chapter 30, and thus, any fees and costs awarded pursuant to NRS 116.4117 were inapplicable. Artemis further contends the district court erred when it relied on Ruby’s voluntarily dismissed countersuit as a basis for awarding such fees and costs pursuant to NRS 116.4117.² In the stipulation and order dismissing Ruby’s countersuit, the parties “agree[d] to bear their own fees and costs incurred in the prosecution and/or defense of the [c]ounterclaims and [c]rossclaim.” While we agree the district court improperly relied on Ruby’s dismissed countersuit as a basis for awarding attorney fees and costs pursuant to NRS

²Artemis additionally contends for the first time on appeal that the district court abused its discretion when it awarded Ruby attorney fees in the amount of \$2,796 and costs in the amount \$821.24 incurred as a result of Artemis’s original complaint filed in February 2011. The parties stipulated shortly thereafter to dismiss this complaint so that the matter could proceed to nonbinding arbitration. Artemis argues this dismissal in 2011 makes Ruby’s 2018 request for attorney fees and costs related to this portion of the litigation untimely under NRCP 54. However, because Artemis failed to raise this issue in the district court, we do not consider it on appeal. See *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (“A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.”).

116.4117, we disagree that NRS 116.4117 is inapplicable to this matter.

NRS 116.4117(2)(b)(1) authorizes a unit's owner to bring "a civil action for damages or other appropriate relief for a failure or refusal to comply with any provision of [NRS Chapter 116] or the governing documents [including the covenants, conditions, and restrictions (CC&Rs)] of an association . . . against . . . [an] association." *See also* NRS 38.300(3) (defining "[c]ivil action" as "an action for money damages or equitable relief"); NRS 38.310(1) (limiting the initiation of certain civil actions brought in district court under NRS Chapter 116 and requiring the action to first be submitted to mediation); NRS 38.243(3) (providing that, "[o]n application of a prevailing party to a contested judicial proceeding under NRS 38.239, 38.241 or 38.242, the court may add reasonable attorney[] fees and other reasonable expenses of litigation incurred in a judicial proceeding after the [arbitration] award is made to a judgment confirming . . . an award"). NRS 116.4117(6) provides that "[t]he court may award reasonable attorney[] fees to the prevailing party."

The district court found that "[w]hile the parties are fundamentally in a dispute over the legality of [Ruby]'s existence, they agree [Artemis] stopped paying assessments as required by governing documents when its owner took the position that the association was not valid." Moreover, in an earlier appeal stemming from the same underlying litigation, we concluded that Ruby is a validly constituted common-interest community within the meaning of NRS 116.021 and was authorized to assess Artemis. *See Artemis Expl. Co. v. Ruby Lake Estates Homeowner's Ass'n*, 135 Nev. 366, 370-72, 449 P.3d 1256, ____ (2019). Because Artemis sought a declaration that Ruby was not a valid association under NRS Chapter 116, and Ruby prevailed and established it was a valid association,

we conclude that the district court properly relied on NRS 116.4117 to award Ruby attorney fees and costs. We now turn to whether the district court's award of attorney fees and costs to Ruby was an abuse of discretion. *The district court abused its discretion in awarding a portion of Ruby's attorney fees*

The district court's award of attorney fees to Ruby included \$5,112 incurred as a result of its counterclaims. Artemis argues that the district court abused its discretion in awarding these fees because the parties had stipulated "to bear their own fees and costs incurred in the prosecution and/or defense of the [c]ounterclaims and [c]rossclaim." We agree and thus reverse that portion of the district court's order and remand this matter to the district court with instructions for it to reduce Ruby's attorney fees award by \$5,112.

Artemis also contends the district court abused its discretion when it awarded Ruby attorney fees in the amount of \$19,296 and costs in the amount of \$3,897.43 incurred as a result of the nonbinding arbitration. Artemis further contends that "NRS 38.300 to [NRS] 38.360 do not provide for an award of attorney[] fees and costs from a non-binding arbitration," relieving the district court of authority to award Ruby such fees and costs. We agree that NRS 38.310 does not provide for attorney fees and costs, and that it was an abuse of discretion if the district court found otherwise. However, on the record before us, it is unclear what reductions were included in the district court's \$30,591 overall adjustment to Ruby's award of attorney fees and cost and whether those reductions included the arbitration fees and costs.

Moreover, NRS 116.4117(2) requires parties to adhere to NRS 38.310 unless an exception applies under NRS 116.3111 (detailing tort and contract liability). Neither party argues that NRS 116.3111 applies here.

Pursuant to NRS 38.243(3), a district court may, "[o]n application of a prevailing party to a contested judicial proceeding under NRS 38.239, 38.241 or 38.242, . . . add reasonable attorney[] fees and other reasonable expenses of litigation incurred . . . after the [arbitration] award is made to a judgment confirming . . . an award." But none of those statutory provisions apply here either. Additionally, NRS 116.4117(2) and (6) provide that in an action such as the underlying litigation here, which is "[s]ubject to the requirements set forth in NRS 38.310," "[t]he [district] court may award reasonable attorney[] fees to the prevailing party." But, again, NRS 38.310 does not provide for attorney fees and costs.

Accordingly, we conclude that there is no statutory authority upon which the district court could rely to award Ruby attorney fees and costs related to the arbitration proceeding. *See Albios*, 122 Nev. at 417, 132 P.3d at 1028 (stating that "the district court may not award attorney fees absent authority under a statute, rule, or contract"). Therefore, when parties enter into mediation or arbitration proceedings pursuant to NRS 38.310, as required by NRS 116.4117, unless the parties provide for attorney fees and costs in an agreement resulting from a mediation or arbitration under NRS 38.310, attorney fees and costs cannot be awarded as a matter of law. The parties had no such agreement here.

However, as we note above, it is unclear from the record before us whether any of the attorney fees and costs stricken by the district court included those associated with the arbitration proceedings. In its order, the district court determined that Ruby "should not be awarded attorney[] fees incurred in seeking and attempting to protect the [arbitration] order." The district court then goes on to award Ruby "all fees" totaling \$85,097.00, "save and except for the entries stricken by the court" as indicated on

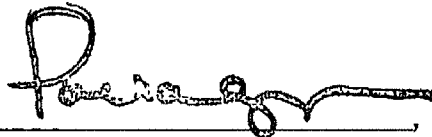
certain exhibits attached to its order. Those exhibits included multiple billing invoices that appear to have been redacted and/or have items lined through as though they had been stricken by both the parties and the court, making it unclear exactly what was included in the district court's award of attorney fees and costs.

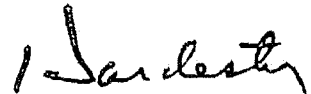
Therefore, having concluded there is no statutory basis upon which to award Ruby attorney fees and costs associated with the arbitration proceeding, we affirm the remainder of the district court's award of attorney fees and costs to Ruby so long as that amount does not include any fees and costs incurred as a result of the arbitration proceedings. Thus, on remand we further instruct the district court to reevaluate the remainder of its award of attorney fees and costs to Ruby to determine whether that award should be further reduced because its award improperly included fees and costs associated with the arbitration proceedings. The district court should state with specificity in a written order those attorney fees and costs that are being stricken and its reasoning for doing so.³


For the reasons set for above, we ORDER the judgment of the district court AFFIRMED IN PART, REVERSED IN PART, AND REMANDED with instructions for the district court to reduce Ruby's

³Artemis also argues that Ruby's billing invoices included multiple slips for many days, duplicative services, and some billing entries that were for staff time. Ruby's motion for attorney fees and costs was accompanied by several affidavits from its counsel attesting to the work performed and that the billing invoices were redacted to protect attorney-client privilege. These affidavits appear to have gone unrefuted in the district court. Because Artemis offers no cogent argument or relevant authority supporting its claim on appeal, we decline to consider this argument. See *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (detailing that we need not consider claims not cogently argued or supported by relevant authority).

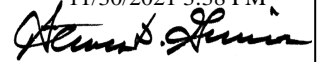
attorney fees award of \$85,097 by \$5,112 and to further reevaluate the remainder of its award consistent with this order.


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Cadish

cc: Hon. Alvin R. Kacin, District Judge
Gerber Law Offices, LLP
Leach Kern Gruchow Anderson Song/Reno
Elko County Clerk


CLERK OF THE COURT

ORDR

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DISTRICT COURT

CLARK COUNTY, NEVADA

DAISY TRUST, a Nevada trust,

Plaintiff,

vs.

EL CAPITAN RANCH LANDSCAPE
MAINTENANCE ASSOCIATION, a domestic
Nevada non-profit corporation,

Defendants.

Case No: A-19-789674-C
Dept. No: 14

**ORDER DENYING EL CAPITAN RANCH
LANDSCAPE MAINTENANCE
ASSOCIATION'S MOTION FOR
ATTORNEY FEES AND COSTS**

Hearing Date: October 21, 2021
Hearing Time: 10:00 a.m.

This matter came before the Court on Defendants El Capitan Ranch Landscape Maintenance Association's (the "HOA") Motion for Attorney's Fees and Costs (the "Motion") on October 21, 2021 at 10:00 a.m.. Mr. Christopher L. Benner, Esq., appeared on behalf of Plaintiff Daisy Trust ("Plaintiff"). Mr. Chase Pittsenbarger, Esq., appeared on behalf of the HOA. After a review of the pleadings, and good cause shown, the court FINDS and ORDERS as follows:

This action relates to real property commonly known as 8721 Country Pines Avenue, Las Vegas, Nevada 89129 (APN 138-08-611-076) ("Property"). Plaintiff is the current owner of the Property, which Plaintiff acquired at the HOA Foreclosure Sale at issue.

1 Plaintiff filed its Complaint on February 19, 2019, alleging three causes of action: (1)
2 intentional, or alternatively negligent, misrepresentation, (2) breach of the covenant of good faith,
3 and (3) conspiracy. Defendant HOA filed a Motion for Summary Judgment of Plaintiff's
4 Complaint ("MSJ") on May 27, 2021, which was opposed by Plaintiff. The MSJ was granted by
5 this Court on July 20, 2021. The Findings of Fact and Conclusions of Law granting the motion set
6 forth detailed reasons for the dismissal, and do not state Plaintiff's claims were baseless or brought
7 without reasonable ground. The HOA's Motion for Attorney's Fees was filed on August 11, 2021

8
9 NRS 116.4117 provides in relevant part:

10 1. Subject to the requirements set forth in subsection 2, if a declarant, community
11 manager or any other person subject to this chapter fails to comply with any of its
12 provisions or any provision of the declaration or bylaws, any person or class of
13 persons suffering actual damages from the failure to comply may bring a civil action
14 for damages or other appropriate relief.

15 2. Subject to the requirements set forth in NRS 38.310 and except as otherwise
16 provided in NRS 116.3111, a civil action for damages or other appropriate relief for
17 a failure or refusal to comply with any provision of this chapter or the governing
18 documents of an association may be brought:

19 (a) By the association against:

- 20 (1) A declarant;
- 21 (2) A community manager; or
- 22 (3) A unit's owner.

23 (b) By a unit's owner against:

- 24 (1) The association;
- 25 (2) A declarant; or
- 26 (3) Another unit's owner of the association.

27 (c) By a class of units' owners constituting at least 10 percent of the total
28 number of voting members of the association against a community manager.

29 Plaintiff's claims do not arise from the HOA's assessments or operation of the HOA, so
30 Section 116.4117 does not allow for an award of attorney's fees. *See* NRS 116.4117(1), (2).
31 Section 116.4117 allows a civil action to be brought "for a failure or refusal to comply with any
32 provision of this chapter or the governing documents of an association." This lawsuit, for
33 misrepresentation, civil conspiracy, and NRS 116.1113 violations of HOA and HOA's agents, does
34 not fit the types of actions covered by NRS 116.4117.

1 The Court ORDERS that Defendant HOA's motion shall be shall be DENIED.

2 DATED this Q. Escobar day of _____, 2021.

3 Dated this 30th day of November, 2021

4 Q. Escobar

5 DISTRICT COURT JUDGE

6 **F6B B07 A64B 96A5**
7 **Adriana Escobar**
8 **District Court Judge**

9 Submitted by:

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10 ROGER P. CROTEAU &
11 ASSOCIATES, LTD.

12 /s/ Christopher L. Benner

13 Roger P. Crogeau, Esq.

14 Nevada State Bar No. 4958

15 Christopher L. Benner, Esq.

16 Nevada State Bar No. 8963

17 2810 W. Charleston Blvd., Ste. 75

18 Las Vegas, Nevada 89102

19 (702) 254-7775

20 ***Attorney for Plaintiff***

21 LEACH KERN GRUCHOW

22 ANDERSON SONG

23 /s/ T. Chase Pittsenbarger

24 Sean Anderson, Esq.

25 Nevada State Bar No. 7259

26 T. Chase Pittsenbarger, Esq.

27 Nevada State Bar No. 13740

28 2525 Box Canyon Drive

Las Vegas, NV 89128

(702) 538-9074

Attorneys for Defendant

29 *Daisy Trust v. El Capitan Ranch*

A-19-789674-C

Receptionist

From: Chase Pittsenbarger <CPittsenbarger@lkglawfirm.com>
Sent: Wednesday, November 17, 2021 1:16 PM
To: Chris Benner
Subject: RE: Daisy Trust v. El Capitan Ranch LMA A-19-789674-C Order of Attorney fees

You may file with my e-signature.



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2525 Box Canyon Drive
Las Vegas, Nevada 89128
Phone: (702) 538-9074
Fax: (702) 538-9113

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From: Chris Benner <chris@croteaulaw.com>
Sent: Monday, November 8, 2021 2:37 PM
To: Chase Pittsenbarger <CPittsenbarger@lkglawfirm.com>
Cc: Receptionist <receptionist@croteaulaw.com>
Subject: Daisy Trust v. El Capitan Ranch LMA A-19-789674-C Order of Attorney fees

Sorry for the delay; I had really bad cold and this kind slipped past me, but getting back on rails. Please review and let me know of any changes, or, alternatively, if I may submit with your e-signature.

Sincerely,

Christopher L. Benner, Esq.
Roger P. Croteau & Associates
2810 Charleston Boulevard, No. H-75
Las Vegas, NV 89102
(702) 254-7775
chris@croteaulaw.com

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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Daisy Trust, Plaintiff(s)

CASE NO: A-19-789674-C

7 vs.

DEPT. NO. Department 14

8 El Capitan Ranch Landscape
9 Maintenance Association,
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

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18 Sean Anderson

sanderson@lkglawfirm.com

19 Robin Callaway

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20 Patty Gutierrez

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21 T. Pittsenbarger

cpittsenbarger@lkglawfirm.com

22 Yalonda Dekle

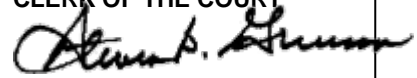
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23 Christopher Benner

chris@croteaulaw.com

ROGER P. CROTEAU & ASSOCIATES, LTD.
• 2810 West Charleston Blvd, Suite 75 • Las Vegas, Nevada 89102 •
Telephone: (702) 254-7775 • Facsimile (702) 228-7719

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12/2/2021 2:42 PM
Steven D. Grierson
CLERK OF THE COURT



1 **NEOJ**
2 ROGER P. CROTEAU, ESQ.
3 Nevada Bar No. 4958
4 CHRISTOPHER L. BENNER, ESQ.
5 Nevada Bar No. 8963
6 ROGER P. CROTEAU & ASSOCIATES, LTD.
7 2810 W. Charleston Blvd., Ste. 75
8 Las Vegas, Nevada 89102
9 (702) 254-7775
10 (702) 228-7719 (facsimile)
11 croteaulaw@croteaulaw.com
12 chris@croteaulaw.com
13 *Attorneys for Plaintiff*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 *****

17 DAISY TRUST, a Nevada trust,

18 Plaintiff,

19 vs.

20 EL CAPITAN RANCH LANDSCAPE
21 MAINTENANCE ASSOCIATION, a
22 domestic Nevada non-profit corporation,

23 Defendants.

Case No: A-19-789674-C

Dept. No: 14

**NOTICE OF ENTRY OF ORDER
DENYING EL CAPITAN RANCH
LANDSCAPE MAINTENANCE
ASSOCIATION'S MOTION FOR
ATTORNEY FEES AND COSTS**

24 ///

25 ///

26 ///

27 ///

ROGER P. CROTEAU & ASSOCIATES, LTD.
• 2810 West Charleston Blvd, Suite 75 • Las Vegas, Nevada 89102 •
Telephone: (702) 254-7775 • Facsimile (702) 228-7719

1 PLEASE TAKE NOTICE that an **ORDER DENYING EL CAPITAN RANCH**
2 **LANDSCAPE MAINTENANCE ASSOCIATION'S MOTION FOR ATTORNEY FEES**
3 **AND COSTS** was entered in the above-entitled action on November 30th, 2021, a copy of which
4 is attached hereto.
5

6
7 DATED this 2nd day of December, 2021.

8 **ROGER P. CROTEAU & ASSOCIATES, LTD.**

9 By: /s/ Roger P. Croteau
10 ROGER P. CROTEAU, ESQ
11 Nevada Bar No. 4958
12 2810 W. Charleston Blvd., Ste. 75
13 Las Vegas, Nevada 89102
14 (702) 254-7775
15 **Attorneys for Plaintiff**
16
17
18
19
20
21
22
23
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27
28

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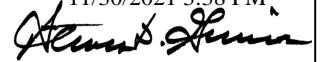
CERTIFICATE OF SERVICE

I hereby certify that on December 2nd, 2021 I served the foregoing document on all persons and parties in the E-Service Master List in the Eighth Judicial District Court E-Filing System, by electronic service in accordance with the mandatory electronic service requirements of Administrative Order 14-1 and the Nevada Electronic Filing and Conversion Rules.

/s/ Joe Koehle
An employee of
ROGER P. CROTEAU & ASSOCIATES, LTD.

EXHIBIT 1

EXHIBIT 1


CLERK OF THE COURT

ORDR

ROGER P. CROTEAU, ESQ.
Nevada Bar No.: 4958
CHRISTOPHER L. BENNER, ESQ.
Nevada Bar No. 8963
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croteaulaw@croteaulaw.com
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

DAISY TRUST, a Nevada trust,

Plaintiff,

vs.

EL CAPITAN RANCH LANDSCAPE
MAINTENANCE ASSOCIATION, a domestic
Nevada non-profit corporation,

Defendants.

Case No: A-19-789674-C
Dept. No: 14

**ORDER DENYING EL CAPITAN RANCH
LANDSCAPE MAINTENANCE
ASSOCIATION'S MOTION FOR
ATTORNEY FEES AND COSTS**

Hearing Date: October 21, 2021
Hearing Time: 10:00 a.m.

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2 DATED this Q. Escobar day of _____, 2021.

3 Dated this 30th day of November, 2021

4 Q. Escobar

5 DISTRICT COURT JUDGE

6 **F6B B07 A64B 96A5**
7 **Adriana Escobar**
8 **District Court Judge**

9 Submitted by:

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10 ROGER P. CROTEAU &
11 ASSOCIATES, LTD.

12 /s/ Christopher L. Benner

13 Roger P. Crogeau, Esq.

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15 Christopher L. Benner, Esq.

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20 ***Attorney for Plaintiff***

LEACH KERN GRUCHOW

ANDERSON SONG

/s/ T. Chase Pittsenbarger

Sean Anderson, Esq.

Nevada State Bar No. 7259

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Nevada State Bar No. 13740

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(702) 538-9074

Attorneys for Defendant

21
22
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27 *Daisy Trust v. El Capitan Ranch*

A-19-789674-C

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Attorney
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3 DISTRICT COURT
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6 Daisy Trust, Plaintiff(s)

CASE NO: A-19-789674-C

7 vs.

DEPT. NO. Department 14

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