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2 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

3  
4 No. 85441

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Elizabeth A. Brown  
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7 **JEFFREY A. MYERS and ANDREW JAMES,**

8  
9 Appellants,

10  
11 vs.

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13 **THI OF NEVADA AT CHEYENNE, LLC; HEALTHCARE REALTY OF**  
14 **CHEYENNE, LLC; FUNDAMENTAL ADMINISTRATIVE SERVICES,**  
15 **LLC**

16  
17 Respondents.

18  
19 **APPELLANTS' REPLY BRIEF**

20 Appeal from the Eighth Judicial District Court for Clark County

21 District Court Case No. A-16-735550-C

22 (Honorable Mark Gibbons)

23  
24 **DONALD C. KUDLER, ESQ.**

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2 **IN THE SUPREME COURT OF THE STATE OF NEVADA**  
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4 JEFFREY A. MYERS and ANDREW JAMES

No. 85441

5 Appellants,

6 vs.

7 THI OF NEVADA AT CHEYENNE, LLC;  
8 HEALTHCARE REALTY OF CHEYENNE,  
9 LLC; FUNDAMENTAL ADMINISTRATIVE  
SERVICES, LLC

10 Respondents.  
11

12 **NRAP RULE 26.1. DISCLOSURE STATEMENT**

13 Appellants are individuals suing in their individual capacity. The sole  
14 attorney who has, or will, appear on the Appellants' behalf is DONALD C.  
15 KUDLER, ESQ., who is a partner in the Law Office of CAP & KUDLER.  
16

17 DATED this 5<sup>th</sup> day of April, 2023.

18 CAP & KUDLER

19  
20 By: 

21 Donald C Kudler, Esq.  
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23 3202 W. Charleston, Blvd.  
24 Las Vegas, Nevada 89102  
25 *Attorney for Appellants*  
26 *Jeffrey A. Myers and*  
27 *Andrew James*  
28

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**TABLE OF AUTHORITIES**

**Cases Cited**

1. *Town & Country Elec. Co. v. Hawke*,  
100 Nev. 701, 692 P.2d 490 (1984). . . . .Page 2, lines 8 - 11

**Statutes Cited**

N/A



**STATEMENT OF ISSUES ON APPEAL**

1. Did the Jury Err in finding that the Defendants did not Breach any duty of care owed to the Plaintiffs?

2. Did the District Court err by denying the Plaintiffs' Motion for New Trial?

3. Did the District Court error by not following the law of the case?

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1 Q. Thank you. Mr. Comstock, the night of the incident on June 6th, 2014,  
2 you got there the next Monday?

3 A. Yes, sir.

4 Q. Anybody report to you that the power went out to the building?

5 A. No, sir.

6 Q. Anybody report to you that the generator kicked on?

7 A. No, sir.

8  
9 As an aside, the Defendants are confusing two breakers as discussed in the  
10 Opening Brief: the one being replaced by the Plaintiffs at the time of the incident  
11 which did not fail and cause the arc flash; and the main breaker that failed to trip  
12 when the short occurred as the screw the Defendants were responsible for fell from  
13 above the Plaintiffs' heads. Here, it was the main breaker that failed - a breaker, like  
14 all other equipment in the building that was only looked at when there was an  
15 issue<sup>1</sup>.

16 Q. Do you know whether or not there were any regular inspection of those  
17 panels by a licensed electrician?

18 A. No. Just a licensed electrician if there's a problem.

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<sup>1</sup> See, i.e., Roy Comstock's Testimony at AA000834, lines 6 - 8:

1 CONCLUSION

2 Appellants' respectfully requests that this Court reverse the Orders of the  
3 District Court denying the Motion for New Trial and order that a New Trial against  
4 all Defendants on the Merits go forth.

5  
6 DATED this 5th day of April, 2023.

7 CAP & KUDLER

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9 By: 

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**CERTIFICATE OF COMPLIANCE**

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Word Perfect - Version X3 in 14 point Times New Roman.

2. I further certify that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(c), it is proportionally spaced, has a typeface of 14 points or more and contains 13,456 words; and

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3. Finally, I hereby certify that I have read this Appellants' Opening Brief and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters to the record to be supported by a referenced to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that this accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 5<sup>th</sup> day of April, 2023.

**CAP & KUDLER**

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*Jeffrey A. Myers and*  
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1 **CERTIFICATE OF SERVICE**

2 I certify that on this \_\_\_\_ day of April, 2023, I served a copy of the foregoing  
3 document upon all counsel of record by electronic service by filing the foregoing  
4 with the Clerk of Court using the E-Flex system, which will electronically mail the  
5 filing to the following:

6 Alexander F. Giovanniello, Esq.

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12 *Attorney for Defendants*

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14 *Healthcare Realty of Cheyenne, LLC; and*

*Fundamental Administrative Services, LLC*

15 DATED this 5<sup>th</sup> day of April, 2023.

16  
17   
18 Employee of **CAP & KUDLER**