IN THE SUPREME COURT OF THE STATE OF NEVADA

SEDONA CONDOMINIUM HOMEOWNERS ASSOCIATION, INC., A NEVADA NON-PROFIT CORPORATION, Appellant, vs. DELTA HARBOR, LLC, A DELAWARE LIMITED LIABILITY COMPANY; DELTA HARBOR MANAGEMENT, INC., A DELAWARE CORPORATION; AND HBC PROPERTIES, LLC, A DELAWARE LIMITED LIABILITY COMPANY, Respondents.	No. 57569
SEDONA CONDOMINIUM HOMEOWNERS ASSOCIATION, INC., A NEVADA NON-PROFIT CORPORATION, Appellant, vs. DELTA HARBOR, LLC, A DELAWARE LIMITED LIABILITY COMPANY; DELTA HARBOR MANAGEMENT, INC., A DELAWARE CORPORATION; AND HBC PROPERTIES, LLC, A DELAWARE LIMITED LIABILITY COMPANY, Respondents.	No. 58090

FILED

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TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

These are consolidated appeals from a district court summary judgment, certified as final under NRCP 54(b), in a real property action, and from a related district court order awarding attorney fees. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

Appellant Sedona Condominium Homeowners Association, Inc. (Sedona) governs a development known as the Sedona Condominiums in Las Vegas. In 2002, respondent HBC Properties, LLC purchased property consisting of undeveloped land and an apartment complex known as the Phase I units. That same day, HBC sold the property to respondent Delta Harbor, LLC. Delta Harbor later sold the undeveloped land to Delta Harbor Development, LLC. Delta Harbor Development contracted with Camden Development, Inc. to construct apartments on what is now known as the Phase II units upon the undeveloped land. After the construction's completion, Delta Harbor Development rented out the majority of the Phase II units as apartments. Delta Harbor Development then sold the Phase II units to Eagle Las Vegas 560, LLC (Eagle). Eagle converted the Phase II units into the condominiums and began selling them to the public in June of 2005.

In 2006, Sedona filed a complaint against respondent Delta Harbor Management, Inc., Delta Harbor (collectively, the Delta Parties), HBC, and others, alleging construction defect claims regarding the Phase II units pursuant to NRS Chapter 40. On November 12, 2009, the Delta Parties and HBC made an offer of judgment in the amount of $1,000. Sedona did not accept the offer. On July 6, 2010, the Delta Parties and HBC made a second offer of judgment in the amount of $1,500. Sedona again did not accept the offer. The district court later granted the Delta Parties and HBC summary judgment after finding that Sedona failed to demonstrate any genuine issues of material fact regarding whether the Phase II units constituted "new residences" or whether an alter ego relationship existed between Delta Harbor and HBC. After the district court granted summary judgment, the Delta Parties and HBC sought

attorney fees and costs. The district court awarded the Delta Parties and HBC $77,858.25 in attorney fees and $6,416.30 in costs. Sedona now appeals from the summary judgment and the attorney fees award.

We conclude that the district court properly granted summary judgment and did not abuse its discretion in awarding or calculating the amount of attorney fees. The parties are familiar with the facts and procedural history of this case, and we do not recount them further except as necessary for our disposition.

The district court properly granted the Delta Parties and HBC summary judgment on Sedona's NRS Chapter 40 claims

We review a district court's order granting summary judgment de novo. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other evidence presented demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. Id. When deciding a summary judgment motion, a district court must view all evidence in a light most favorable to the nonmoving party. Id. The nonmoving party bears the burden of demonstrating that a genuine issue of material fact exists. Id. at 732, 121 P.3d at 1031. General allegations and conclusory statements do not create genuine issues of fact. Id. at 731, 121 P.3d at 1030-31.

Sedona argues that genuine issues of material fact exist regarding the occupation and status of the Phase II units as apartments. Sedona further contends that units occupied for less than one year still may qualify as "new residences" under NRS Chapter 40. We disagree.

NRS Chapter 40 allows a party to assert claims against a "contractor" for defects in the construction of a "new residence." NRS 40.640; NRS 40.615. A "[c]ontractor" is a person who "[d]evelops,

constructs, alters, repairs, improves or landscapes a residence," "[d]evelops a site for a residence," or "[s]ells a residence." NRS 40.620. A "[r]esidence" is "any dwelling in which title to the individual units is transferred to the owners." NRS 40.630. However, to qualify as a "new residence," the residence must be "a product of original construction that has been unoccupied as a dwelling from the completion of its construction until the point of sale." Westpark Owners' Ass'n v. Dist. Ct., 123 Nev. 349, 360, 167 P.3d 421, 429 (2007).

Sedona has failed to demonstrate any genuine issues of material fact regarding the prior status of the Phase II units as apartments or the occupation of the Phase II units. The Certificates of Occupancies for the Phase II units indicate that Camden Development constructed the units as apartments. The rent rolls demonstrate an occupancy rate of 96.4% for the Phase II units prior to their sale to Eagle. The rent rolls also show that tenants, including some corporations, rented the Phase II units for various time periods. Some of the leases did not expire until after Eagle had already purchased the Phase II units. The rent rolls demonstrate occupancy absent any evidence to the contrary.

Based on these facts, the majority of the Phase II units cannot qualify as "new residences" as defined in Westpark because tenants occupied the units before Eagle initially sold them as condominiums. See 123 Nev. at 360, 167 P.3d at 429. While Sedona argues that such an interpretation invites contractors to circumvent NRS Chapter 40's applicability, Sedona does not present any evidence demonstrating such abuse by the Delta Parties or HBC.

We further conclude that summary judgment was appropriate even though the rent rolls indicate that some of the Phase II units

remained vacant prior to their sale as condominiums, because the Delta Parties and HBC are not "contractors" under NRS Chapter 40. The Delta Parties and HBC did not develop, construct, or sell a "residence" as defined in NRS Chapter 40. Instead, the Delta Parties and HBC were involved with the Phase II units only as apartments. Thus, unlike the developer in Westpark, the Delta Parties and HBC never owned the Phase II units as condominiums. See 123 Nev. at 354, 167 P.3d at 425 (describing how the developer built condominium units, leased them as apartments, and later offered them for sale). The Phase II units did not meet the definition of "residence" for NRS Chapter 40 purposes until Eagle purchased the units in 2005, converted them to condominiums, and began selling them to the public. Therefore, the district court properly granted the Delta Parties and HBC summary judgment on Sedona's NRS Chapter 40 claims.[1]

The district court did not abuse its discretion in awarding attorney fees to the Delta Parties and HBC

Sedona argues the district court erred in awarding attorney fees and costs to Delta Parties and HBC. We disagree.

We review the award of attorney fees for an abuse of discretion. Ozawa v. Vision Airlines, 125 Nev. 556, 562, 216 P.3d 788, 792 (2009). NRCP 68(f)(2) provides that "[i]f the offeree rejects an offer [of judgment] and fails to obtain a more favorable judgment . . . the offeree shall pay the offeror's post-offer costs . . . and reasonable attorney's fees . . . ." See also NRS 17.115(4) (authorizing attorney fees and costs when an offer of judgment is rejected and the rejecting party fails to

[1]In light of this conclusion, we need not reach the issue of Sedona's alter ego theory of liability.

obtain a more favorable judgment). This court has held that in determining whether to allow fees under NRCP 68, a district court must evaluate the following factors:

> (1) whether the plaintiff's claim was brought in good faith; (2) whether the defendant's offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether the plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the fees sought by the offeror are reasonable and justified in amount.

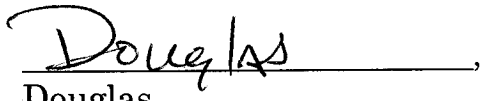
Beattie v. Thomas, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983). No one Beattie factor is determinative, and the district court has broad discretion to grant attorney fees, so long as all the factors are considered. Yamaha Motor Co. v. Arnoult, 114 Nev. 233, 252, n.16, 955 P.2d 661, 673, n.16 (1998). The district court here weighed each of the Beattie factors, but did not make a specific determination as to whether Sedona brought its claims in good faith. However, the district court determined that the Delta Parties' and HBC's last offer of judgment was reasonable in amount and timing, and that Sedona's rejection of the offer of judgment was unreasonable. Thus, the district court's decision to award reasonable attorney fees was proper.

In determining the reasonableness of attorney fees, the district court must apply the following factors: "(1) the qualities of the advocate; . . . (2) the character of the work to be done; . . . (3) the work actually performed by the lawyer; . . . [and] (4) the result . . . ." See Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). Weighing the Brunzell factors, the district court here determined the quality of advocacy was exemplary, the character of the work was complex, the work performed was extensive and necessary, and the Delta

Parties and HBC's lawyers obtained a positive result. Thus, the district court found that the amount of attorney fees was reasonable.

Upon reviewing the record, the evidence presented below supports the district court's findings as to each Beattie and Brunzell factor. Therefore, we conclude the district court did not abuse its discretion in deciding to award attorney fees and in determining the amount of attorney fees to award.[2] Accordingly, we

ORDER the judgments of the district court AFFIRMED.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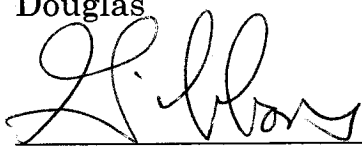
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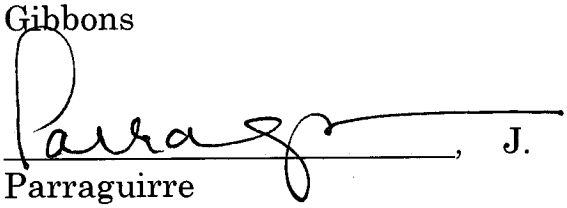
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cc: Hon. Susan Johnson, District Judge
Thomas J. Tanksley, Settlement Judge
Angius & Terry LLP/Las Vegas
Lionel Sawyer & Collins/Las Vegas
Eighth District Court Clerk

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[2]We have considered the parties' other arguments and conclude they are without merit.