

FILED

1 Case No. 83-8599

2 Dept. No. 2

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M. Logan

JUDGE
BY

4 115943

5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE

8 * * *

9 LAWYERS TITLE INSURANCE
CORPORATION,

10 Plaintiff,

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND JUDGMENT

11 vs.

12 EAGLES NEST LIMITED PARTNERSHIP,
13 A Limited Partnership, and
14 CHARLES KETCHAM, Individually,

15 Defendants.

16 This matter having come on regularly before this
17 Court for trial on June 23, 1986, the Court having heard the
18 evidence, reviewed the exhibits and considered the arguments
19 of counsel, it makes and enters the following Findings of
20 Fact, Conclusions of Law, and Judgment.

21 FINDINGS OF FACT

22 1. That Defendants CHARLES KETCHAM, Individually
23 and EAGLES NEST LIMITED PARTNERSHIP were the developers of
24 a certain 72 unit condominium project located in the City of
25 Reno, County of Washoe, State of Nevada, commonly known as the
26 Eagles Nest Condominiums.

27 2. That Everett S. M. Brunzell was the general
28 contractor for the Eagles Nest Condominium Project.

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1 3. That after completion of the project, Everett S.
2 M. Brunzell did cause to be recorded against the Eagles Nest
3 Condominium Project, mechanic's lien in the sum of
4 \$530,412.22.

5 4. That Everett S. M. Brunzell commenced Washoe
6 County Action No. 80-5663 entitled, "Everett S. M. Brunzell v.
7 Eagles Nest Limited Partnership, a limited partnership and
8 Charles Ketcham" for purposes of enforcing the mechanic's lien
9 and obtaining personal judgment against Charles Ketcham upon
10 the construction contract.

11 5. That on December 14, 1981, Judgment was entered
12 in Washoe County Action No. 80-5663, enforcing the
13 aforementioned mechanic's lien and individually against
14 CHARLES KETCHAM, and the EAGLES NEST LIMITED PARTNERSHIP in
15 the sum of \$544,386.78.

16 6. This Judgment was appealed by EAGLES NEST
17 LIMITED PARTNERSHIP and CHARLES KETCHAM to the Nevada Supreme
18 Court.

19 7. On or about September 27, 1983, the Nevada
20 Supreme Court, in Case No. 14000 did uphold the lower Court's
21 Judgment in Washoe County Action No. 80-5663.

22 8. That Plaintiff LAWYERS TITLE INSURANCE
23 CORPORATION had issued policies of title insurance insuring
24 around the Brunzell mechanic's lien on Units 5, 8, 10, 11, 12,
25 13, 14, 15, 16, 18, 20, 21, 24, 25, 26, 27, 28, 34, 36, 37,
26 38, 42, 43, 44, 46, 50, 51, 53, 55, 57, 60, 62, 63, 65, 66,
27 and 68 of the Eagles Nest Condominium Project.

28 9. That LAWYERS TITLE INSURANCE CORPORATION did not

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1 volunteer to, or gratuitously insure around the Brunzell
2 mechanic's lien for the purpose of maintaining CHARLES
3 KETCHAM'S goodwill and continuing business.

4 10. That LAWYERS TITLE INSURANCE CORPORATION in
5 insuring around the Brunzell mechanic's lien, believed it
6 would have recourse and subrogation rights against the
7 individual or entity creating or responsible for the lien in
8 the event it was required to pay all or any part of the
9 aforementioned Brunzell mechanic's lien in fulfillment of its
10 obligation to its insureds, the purchasers of the
11 aforementioned 36 units.

12 11. That in satisfaction of its obligation to its
13 insureds, the purchasers of the aforementioned 36 units,
14 LAWYERS TITLE INSURANCE CORPORATION on or about April 20,
15 1984, did pay to Everett S. M. Brunzell, the sum of
16 \$385,329.24. Said sum being 36/72nds of the Judgment entered
17 in favor of Everett S. M. Brunzell in Washoe County Action No.
18 80-5663, and said sum being for the full release of the
19 Brunzell mechanic's lien from the aforementioned units.

20 12. That the Judgment entered against EAGLES NEST
21 LIMITED PARTNERSHIP and CHARLES KETCHAM, Individually, in
22 Washoe County Action No. 80-5663 was reduced and partially
23 satisfied by the payment of \$385,329.24 by LAWYERS TITLE
24 INSURANCE CORPORATION to Everett S. M. Brunzell.

25 13. That LAWYERS TITLE INSURANCE CORPORATION failed
26 to meet its burden of proof with regard to the alleged written
27 agreement of indemnity by and between LAWYERS TITLE INSURANCE
28 CORPORATION and CHARLES KETCHAM.

1 14. That the payment of \$385,329.24 to Everett S.
2 M. Brunzell by LAWYERS TITLE INSURANCE CORPORATION in
3 satisfaction of its obligation to its insureds, was a benefit
4 to Defendants which was retained and appreciated by
5 Defendants.

6 15. That under the circumstances of this case, it
7 would be inequitable for Defendants to retain this benefit
8 without payment to Plaintiff.

9 16. That Plaintiff LAWYERS TITLE INSURANCE
10 CORPORATION has been subrogated to the rights of its insureds
11 against Defendant under the authorizations and assignment of
12 rights executed by the insureds on 30 of the aforementioned
13 units, as evidenced by Exhibits "K-1 through K-24". Said
14 subrogation exists on Units 5, 8, 10, 13, 15, 16, 18, 20, 21,
15 24, 25, 27, 28, 34, 36, 37, 38, 42, 43, 44, 46, 51, 53, 55,
16 57, 60, 63, 66 and 68.

17 17. That Plaintiff is also entitled to recover due
18 to the equities of this case, under theories of equitable
19 subrogation and equitable indemnity.

20 18. That at the time of execution of 36 Grant,
21 Bargain and Sale Deeds to purchasers and insureds by
22 Defendant, Defendant KETCHAM had knowledge of the existence of
23 the Brunzell lien.

24 CONCLUSIONS OF LAW

25 1) That Plaintiff is entitled to assert the warranties
26 contained in the Grant, Bargain and Sale Deeds executed by
27 Defendant CHARLES KETCHAM, Individually, and EAGLES NEST
28 LIMITED PARTNERSHIP.

1 2) That Plaintiff has met all of the elements required
2 for a claim of unjust enrichment in the State of Nevada.

3 3) That Plaintiff is entitled to recover from
4 Defendants by virtue of its subrogation to the rights of the
5 insured under the aforementioned Grant, Bargain and Sale
6 Deeds, pursuant to the authorizations and assignment of 30/36
7 of \$385,329.24.

8 4) That Plaintiff is entitled to recover from
9 Defendants based upon equitable subrogation and equitable
10 indemnity, the full amount paid by it in satisfaction of its
11 obligation to its insureds, that being the sum of \$385,329.24.

12 JUDGMENT

13 Based upon the foregoing,

14 IT IS HEREBY ORDERED, DECREED AND ADJUDGED, that
15 Plaintiff have Judgment against Defendant EAGLES NEST LIMITED
16 PARTNERSHIP, a Limited Partnership, and Defendant CHARLES
17 KETCHAM, Individually, in the sum of \$385,329.24 plus taxable
18 costs herein incurred, each side to bear the cost of their own
19 attorney's fees.

20 DATED this 5th day of July, 1986.

Charles McGee

21
22 DISTRICT JUDGE
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CLERK OF THE DISTRICT COURT
FILE NO. 115943
FEE \$ 10.00

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

DATE: 1-27-88

JUDI RILEY, Clerk of the Second Judicial District Court, in and for the County of Washoe, State of Nevada

[Signature] Deputy.

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