

1 said memorandum. In addition, Mr. Rushforth's report attached to Defendant's
2 "Motion in Limine to Exclude from Trial the Testimony and Report of Layne T.
3 Rushforth, Esq., and any Purported Expert Testimony Regarding the Interpretation of
4 Law, and Application of Facts to Law; to Strike the Eric L. Nelson Nevada Trust's Pre-
5 Trial Memorandum; and for Attorneys' Fees and Costs" as Exhibit A, is hereby
6 STRICKEN from said motion. The Court did not read any of the purported expert
7 reports attached to the aforementioned documents prior to this hearing.

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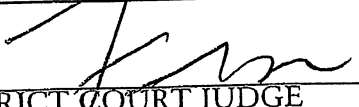
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1 IT IS FURTHER ORDERED that Defendant's request for attorneys' fees is
2 DENIED.

3 IT IS SO ORDERED.

4 DATED this 8 day of October, 2012.

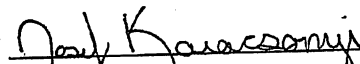
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6 
DISTRICT COURT JUDGE
7 FRANK P. SULLIVAN

8 Submitted by:

9 THE DICKERSON LAW GROUP

Approved as to Form and Content:

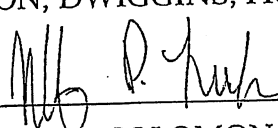
IVEY, FORSBERG & DOUGLAS

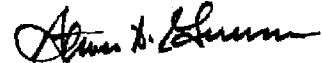
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11 By 
12 ROBERT P. DICKERSON, ESQ.
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27 Nevada Bar No. 009619
28 9060 W. Cheyenne Avenue
Las Vegas, Nevada 89129
Attorneys for Third-Party Defendants



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

ERIC L. NELSON,

Plaintiff/Counterdefendant,

vs.

LYNITA SUE NELSON, LANA MARTIN, as
Distribution Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001,

Defendant/Counterclaimants.

CASE NO.: D-09-411537-D
DEPT. NO.: O

LANA MARTIN, Distribution Trustee of the
ERIC L. NELSON NEVADA TRUST dated
May 30, 2001,

Crossclaimant,

vs.

LYNITA SUE NELSON,

Crossdefendant.

NOTICE OF ENTRY OF ORDER

Non-Trial Dispositions:
☐ Other
☐ Dismissed - Want of Prosecution
☐ Involuntary (Statutory) Dismissal
☐ Default Judgment
☐ Transferred
☐ Disposed After Trial Start

Settled/Withdrawn:
☐ Without Judicial Conf/Hrg
☐ With Judicial Conf/Hrg
☐ By ADR

Trial Dispositions:
☒ Judgment Reached by Trial

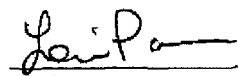
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TO:

Rhonda Forsberg, Esq.
Robert Dickerson, Esq.
Mark Solomon, Esq.
Jeffrey Luszeck, Esq.

PLEASE TAKE NOTICE that DECREE OF DIVORCE was duly entered in the above-
referenced case on the 3rd day of June, 2013.

DATED this 3 day of June, 2013.


Lori Parr
Judicial Executive Assistant
Dept. O

DISTRICT COURT
CLARK COUNTY, NEVADA

ERIC L. NELSON,
Plaintiff/Counterdefendant,

vs.

LYNITA SUE NELSON, LANA MARTIN, as
Distribution Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001,

Defendant/Counterclaimants.

LANA MARTIN, Distribution Trustee of the
ERIC L. NELSON NEVADA TRUST dated
May 30, 2001,

Crossclaimant,

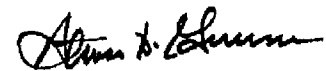
vs.

LYNITA SUE NELSON,

Crossdefendant.

CASE NO.: D-09-411537-D

DEPT. NO.: O
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CLERK OF THE COURT

DECREE OF DIVORCE

This matter having come before this Honorable Court for a Non-Jury Trial in October 2010, November 2010, July 2012 and August 2012, with Plaintiff, Eric Nelson, appearing and being represented by Rhonda Forsberg, Esq., Defendant, Lynita Nelson, appearing and being represented by Robert Dickerson, Esq., Katherine Provost, Esq., and Josef Karacsonyi, Esq., and Counter-defendant, Cross-defendant, Third Party Defendant Lana Martin, Distribution

FRANK R. SULLIVAN
DISTRICT JUDGE

FAMILY DIVISION, DEPT. O
LAS VEGAS NV 89101

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Trustee of the Eric L. Nelson Nevada Trust, being represented by Mark Solomon, Esq., and Jeffrey Luszeck, Esq., good cause being shown:

THE COURT HEREBY FINDS that it has jurisdiction in the premises, both as to the subject matter thereof and as the parties thereto, pursuant to NRS 125.010 et seq.

THE COURT FURTHER FINDS the Eric Nelson, Plaintiff, has been, and is now, an actual and bona fide resident of the County of Clark, State of Nevada, and has been actually domiciled therein for more than six (6) weeks immediately preceding to the commencement of this action.

THE COURT FURTHER FINDS that the parties were married September 17, 1983.

THE COURT FURTHER FINDS that 5 children were born the issue of this marriage; two of which are minors, namely, Garrett Nelson born on September 13, 1994, and Carli Nelson born on October 17, 1997; and to the best of her knowledge, Lynita Nelson, is not now pregnant.

THE COURT FURTHER FINDS that the Plaintiff filed for divorce on May 6, 2009.

THE COURT FURTHER FINDS that the parties entered into a Stipulated Parenting Agreement as to the care and custody of said minor children on October 15, 2008, which was affirmed, ratified and made an Order of this Court on February 8, 2010.

THE COURT FURTHER FINDS that on August 9, 2011, both parties stipulated and agreed that the Eric L. Nelson Nevada (ELN) Trust should be joined as a necessary party to this matter.

THE COURT FURTHER FINDS that Eric Nelson is entitled to an absolute Decree of Divorce on the grounds of incompatibility.

1
2 THE COURT FURTHER FINDS that during the couple's nearly thirty (30) years of
3 marriage, the parties have amassed a substantial amount of wealth.

4 THE COURT FURTHER FINDS that the parties entered into a Separate Property
5 Agreement on July 13, 1993, with Mr. Nelson being advised and counseled with respect to the
6 legal effects of the Agreement by attorney Jeffrey L. Burr and Mrs. Nelson being advised and
7 counseled as its legal effects by attorney Richard Koch.
8

9 THE COURT FURTHER FINDS that, pursuant to NRS 123.080 and NRS 123.220(1),
10 the Separate Property Agreement entered into by the parties on July 13, 1993, was a valid
11 Agreement.

12 THE COURT FURTHER FINDS that Schedule A of the Separate Property Agreement
13 contemporaneously established the Eric L. Nelson Separate Property Trust and named Mr.
14 Nelson as trustor. The trust included interest in:
15

16 A First Interstate Bank account;
17 A Bank of America account;
18 4021 East Portland Street, Phoenix, Arizona;
19 304 Ramsey Street, Las Vegas, Nevada;
20 Twelve (12) acres located on Cheyenne Avenue, Las Vegas, Nevada;
21 Ten (10) acres located on Cheyenne Avenue, Las Vegas, Nevada;
22 1098 Evergreen Street, Phoenix, Arizona;
23 Forty nine (49) lots, notes and vacant land in Queens Creek, Arizona;
24 Forty one (41) lots, notes and vacant land in Sunland Park, New Mexico;
25 Sport of Kings located at 365 Convention Center Drive, Las Vegas, Nevada;
26 A 1988 Mercedes;
27 Forty percent (40%) interest in Eric Nelson Auctioneering, 4285 South Polaris Avenue,
28 Las Vegas, Nevada;
One hundred percent (100%) interest in Casino Gaming International, LTD., 4285
South Polaris Avenue, Las Vegas, Nevada; and
Twenty five percent (25%) interest in Polk Landing.

THE COURT FURTHER FINDS that Schedule B of the Separate Property Agreement
contemporaneously established the Lynita S. Nelson Separate Property Trust and named Mrs.
Nelson as trustor. The trust included interest in:

FRANK R SULLIVAN
DISTRICT JUDGE

FAMILY DIVISION, DEPT. C
LAS VEGAS NV 89101

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2 A Continental National Bank account;
3 Six (6) Silver State Schools Federal Credit Union accounts;
4 An American Bank of Commerce account;
5 7065 Palmyra Avenue, Las Vegas, Nevada;
6 8558 East Indian School Road, Number J, Scottsdale, Arizona;
7 Ten (10) acres on West Flamingo Road, Las Vegas, Nevada;
8 1167 Pine Ridge Drive, Panguitch, Utah;
9 749 West Main Street, Mesa, Arizona;
10 1618 East Bell Road, Phoenix, Arizona;
11 727 Hartford Avenue, Number 178, Phoenix, Arizona;
12 4285 Polaris Avenue, Las Vegas, Nevada;
13 Metropolitan Mortgage & Security Co., Inc., West 929 Sprague Avenue Spokane,
14 Washington;
15 Apirade Bumpus, 5215 South 39th Street, Phoenix, Arizona;
16 Pool Hall Sycamore, 749 West Main Street, Mesa, Arizona;
17 A Beneficial Life Insurance policy; and
18 A 1992 van

19 THE COURT FURTHER FINDS that on May 30, 2001, the Eric L. Nelson Nevada
20 Trust (hereinafter "ELN Trust") was created under the advice and counsel of Jeffrey L. Burr,
21 Esq., who prepared the trust documents.

22 THE COURT FURTHER FINDS that the ELN Trust was established as a self-settled
23 spendthrift trust in accordance with NRS 166.020.¹

24 THE COURT FURTHER FINDS that all of the assets and interest held by the Eric L.
25 Nelson Separate Property Trust were transferred or assigned to the ELN Trust.

26 THE COURT FURTHER FINDS that on May 30, 2001, the Lynita S. Nelson Nevada
27 Trust (hereinafter "LSN Trust") was created under the advice and counsel of Jeffrey L. Burr,
28 Esq., who prepared the trust documents.

THE COURT FURTHER FINDS that the LSN Trust was established as a self-settled
spendthrift trust in accordance with NRS 166.020.

¹ NRS 166.020 defines a spendthrift trust as "at trust in which by the terms thereof a valid restraint on the voluntary and involuntary transfer of the interest of the beneficiary is imposed. See, NRS 166.020.

1
2 THE COURT FURTHER FINDS that all of the assets and interest held by the Lynita S.
3 Nelson Separate Property Trust were transferred or assigned to the LSN Trust.

4 THE COURT FURTHER FINDS that while the parties may differ as to the reason why
5 the trusts were created, the effect of a spendthrift trust is to prevent creditors from reaching the
6 principle or corpus of the trust unless said creditor is known at the time in which an asset is
7 transferred to the trust and the creditor brings an action no more than two years after the
8 transfer occurs or no more than 6 months after the creditor discovers or reasonably should have
9 discovered the transfer, whichever occurs latest.²

10
11 THE COURT FURTHER FINDS that while spendthrift trusts have been utilized for
12 decades; Nevada is one of the few states that recognize self-settled spendthrift trusts. The
13 legislature approved the creation of spendthrift trusts in 1999 and it is certainly not the purpose
14 of this Court to challenge the merits of spendthrift trusts.

15
16 THE COURT FURTHER FINDS that the testimony of the parties clearly established
17 that the intent of creating the spendthrift trusts was to provide maximum protection from
18 creditors and was not intended to be a property settlement in the event that the parties divorced.

19 THE COURT FURTHER FINDS that throughout the history of the Trusts, there were
20 significant transfers of property and loans primarily from the LSN Trust to the ELN Trust. Such
21 evidence corroborates Mrs. Nelson's testimony that the purpose of the two Trusts was to allow
22 for the ELN Trust to invest in gaming and other risky ventures, while the LSN Trust would
23 maintain the unencumbered assets free and clear from the reach of creditors in order to provide
24 the family with stable and reliable support should the risky ventures fail.

25
26 ...

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28

2 NRS 166.170(1)

1
2 THE COURT FURTHER FINDS that, due to Mrs. Nelson's complete faith in and total
3 support of her husband, Mr. Nelson had unfettered access to the LSN Trust to regularly transfer
4 assets from the LSN Trust to the ELN Trust to infuse cash and other assets to fund its gaming
5 and other risky investment ventures.

6
7 THE COURT FURTHER FINDS that on numerous occasions during these proceedings,
8 Mr. Nelson indicated that the ELN Trust and LSN Trust both held assets that were indeed
9 considered by the parties to be community property.

10 THE COURT FURTHER FINDS that during the first phase of trial held in August
11 2010, Mr. Nelson was questioned ad nauseam by both his former attorney, Mr. James
12 Jimmerson, and by Mrs. Nelson's attorney, Mr. Dickerson, about his role as the primary wage
13 earner for the family.

14 THE COURT FURTHER FINDS that on direct examination, when asked what he had
15 done to earn a living following obtaining his real estate license in 1990, Mr. Nelson's lengthy
16 response included:
17

18 "So that's my primary focus is managing all my assets and Lynita's assets so we
19 manage our *community assets*, and that's where our primary revenue is driven
(emphasis added)."

20 THE COURT FURTHER FINDS that upon further direct examination, when asked why
21 the ELN and LSN Trusts were created, Mr. Nelson responded:
22

23 "In the event that something happened to me, I didn't have to carry life insurance. I
24 would put safe assets into her property in her assets for her and the kids. My assets
25 were much more volatile, much more -- I would say daring; casino properties, zoning
26 properties, partners properties, so we maintained this and these — all these trusts
27 were designed and set up by Jeff Burr. Jeff Burr is an excellent attorney and so I felt
28 comfortable. This protected Lynita and her children and it gave me the flexibility
because I do a lot of tax scenarios, to protect her and the kids and me and we could
level off yearly by putting assets in her trust or my trust depending on the
transaction and protect -- the basic bottom line is to protect her (emphasis added)."

1
2 THE COURT FURTHER FINDS that upon further examination by Attorney Jimmerson
3 inquiring about the status of a rental property located on Lindell Road, Mr. Nelson's response
4 was:

5 "Well, we don't pay rent because we're managing all the assets, so I don't pay
6 myself to pay Lynita because we — it's all *community* (emphasis added)."

7 THE COURT FURTHER FINDS that during cross-examination on October 19, 2010,
8 Mr. Nelson was questioned as to why he closed his auctioning company and his response was:

9 "I was under water these businesses. And for business purposes and to -- to set -- to
10 save as much in our *community* estate, I was forced to lay people off, generate cash flow so
11 Lynita would have the cash flow from these properties in the future (emphasis added)."

12 THE COURT FURTHER FINDS that throughout Mr. Nelson's aforementioned
13 testimony, he either expressly stated that his actions were intended to benefit his and Mrs.
14 Nelson's community estate or made reference to the community.

15 THE COURT FURTHER FINDS that it heard testimony from Mr. Nelson over several
16 days during the months of August 2010, September 2010 and October 2010, in which Mr.
17 Nelson's testimony clearly categorized the ELN Trust and LSN Trust's property as community
18 property.
19

20 THE COURT FURTHER FINDS that Mr. Nelson's sworn testimony corroborates Mrs.
21 Nelson's claim that Mr. Nelson informed her throughout the marriage that the assets
22 accumulated in both the ELN Trust and LSN Trust were for the betterment of their family unit,
23 and, thus, the community.

24 THE COURT FURTHER FINDS Attorney Burr's testimony corroborated the fact that
25 the purpose of creating the spendthrift trusts was to "supercharge" the protection afforded
26 against creditors and was not intended to be a property settlement.
27

28 ...

FRANK A SULLIVAN
DISTRICT JUDGE

FAMILY DIVISION, DEPT. D
LAS VEGAS NV 89101

1
2 THE COURT FURTHER FINDS that Attorney Burr testified that he discussed and
3 suggested that the Nelsons periodically transfer properties between the two trusts to ensure that
4 their respective values remained equal.

5 THE COURT FURTHER FINDS that Attorney Burr further testified that the values of
6 the respective trust could be equalized through gifting and even created a gifting form for the
7 parties to use to make gifts between the trusts.
8

9 THE COURT FURTHER FINDS that the Minutes from a Trust Meeting, dated
10 November 20, 2004, reflected that all Mississippi property and Las Vegas property owned by
11 the ELN Trust was transferred to the LSN trust as final payment on the 2002 loans from the
12 LSN to the ELN Trust and to "*level off the trusts*" (emphasis added).

13 THE COURT FURTHER FINDS that the evidence adduced at trial clearly established
14 the parties intended to maintain an equitable allocation of the assets between the ELN Trust and
15 the LSN Trust.
16

17 *Fiduciary Duty*

18 THE COURT FURTHER FINDS that the Nevada Supreme Court has articulated that a
19 fiduciary relationship exists between husbands and wives, and that includes a duty to "disclose
20 pertinent assets and factors relating to those assets." *Williams v. Waldman*, 108 Nev. 466, 472
21 (1992).

22 THE COURT FURTHER FINDS that Mr. Nelson owed a duty to his spouse, Mrs.
23 Nelson, to disclose all pertinent factors relating to the numerous transfers of the assets from the
24 LSN Trust to the ELN Trust.
25

26 ...

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1
2 THE COURT FURTHER FINDS that Mrs. Nelson credibly testified that on numerous
3 occasions, Mr. Nelson requested that she sign documentation relating to the transfer of LSN
4 Trust assets to the ELN Trust. Mrs. Nelson further stated that she rarely questioned Mr. Nelson
5 regarding these matters for two reasons: (1) Mr. Nelson would become upset if she asked
6 questions due to his controlling nature concerning business and property transactions; and (2)
7 she trusted him as her husband and adviser.
8

9 THE COURT FURTHER FINDS that Mr. Nelson's behavior during the course of these
10 extended proceedings, as discussed in detail hereinafter, corroborates Mrs. Nelson's assertions
11 that Mr. Nelson exercises unquestioned authority over property and other business ventures and
12 loses control of his emotions when someone questions his authority.
13

14 THE COURT FURTHER FINDS that the evidence clearly established that Mr. Nelson
15 did not regularly discuss the factors relating to the numerous transfers of the assets from the
16 LSN Trust to the ELN Trust with Mrs. Nelson, and, therefore, violated his fiduciary duty to his
17 spouse.
18

19 THE COURT FURTHER FINDS that NRS 163.554 defines a fiduciary as a trustee...or
20 any other person, including an investment trust adviser, which is acting in a *fiduciary capacity*
21 for any person, trust or estate. See, NRS 163.554 (emphasis added).
22

23 THE COURT FURTHER FINDS that NRS 163.5557 defines an investment trust
24 adviser as a person, appointed by an instrument, to act in regard to investment decisions. NRS
25 163.5557 further states:

26 2. An investment trust adviser may exercise the powers provided
27 to the investment trust adviser in the instrument in the best interests of the
28 trust. **The powers exercised by an investment trust adviser are at the
sole discretion of the investment trust adviser and are binding on all other
persons.** The powers granted to an investment trust adviser may include,
without limitation, the power to:

FRANK R. SULLIVAN
DISTRICT JUDGE

FAMILY DIVISION, DEPT. O
LAS VEGAS NV 89101

- 1
2 (a) Direct the trustee with respect to the retention, purchase,
3 sale or encumbrance of trust property and the investment and
4 reinvestment of principal and income of the trust.
5 (b) Vote proxies for securities held in trust.
6 (c) Select one or more investment advisers, managers or counselors,
7 including the trustee, and delegate to such persons any of the powers
8 of the investment trust adviser.

9 See, NRS 163.5557 (emphasis added).

10 THE COURT FURTHER FINDS that Mr. Nelson continuously testified as to his role
11 as the investment trustee for both trusts, specifically testifying during cross examination on
12 September 1, 2010, as follows:

13 Q. Now you're the one that put title to those parcels
14 that we've talked about in the name of Dynasty, Bal Harbor,
15 Emerald Bay, Bay Harbor Beach Resorts and (indiscernible)
16 Financial Partnerships. Is that correct?

17 A. I believe so, yes.

18 Q. And you're the one that also put title in the name
19 of -- all the remaining lots in the name of LSN Nevada Trust.
20 Is that true?

21 A. Yes, sir.

22 THE COURT FURTHER FINDS that during his September 1st cross-examination, Mr.
23 Nelson also testified as to the assets located in Mississippi as follows:

24 Q. The height of the market was 18 months ago according
25 to your testimony?

26 A. No, no. But I'm just saying we could have -- the
27 this lawsuit's been pending for a while, sir. We did these
28 deeds mistake -- if you can -- if you reference back to it, it
shows -- shows Dynas -- it's my --

Q. Exhibit -- the Exhibit for the --

A. -- company. It shows Eric Nelson. That's my
company. We put them into Lynita's for community protection,
and she would not cooperate.

1
2
3 Q. You put them --

4 A. Yes, sir.

5 Q. -- into Lynita's?

6 A. Yes, sir --

7 Q. All right. Sir --

8 A. -- for *co -- unity wealth* (emphasis added).

9
10 THE COURT FURTHER FINDS that while the LSN Trust documents expressly named
11 Mrs. Nelson as investment trust adviser, the evidence clearly established that Mr. Nelson
12 exercised a pattern of continuous, unchallenged investment and property-transfer decisions for
13 both the ELN and the LSN Trusts, thereby illustrating that Mr. Nelson acted as the investment
14 trust adviser of the LSN Trust from its inception.

15 THE COURT FURTHER FINDS that the testimony of both parties clearly shows that,
16 pursuant to NRS 163.5557(2)(c), Mrs. Nelson delegated the duties of investment trustee to her
17 husband, Mr. Nelson.

18
19 THE COURT FURTHER FINDS that as the delegated investment trustee for the LSN
20 Trust, Mr. Nelson acted in a fiduciary capacity for Mrs. Nelson.³ Therefore, Mr. Nelson had a
21 duty to "disclose pertinent assets and factors relating to those assets".⁴

22 THE COURT FURTHER FINDS that, despite serving as the delegated investment
23 trustee for the LSN Trust, Mr. Nelson did not regularly discuss the pertinent factors relating to
24 the transfer of the assets from the LSN Trust to the ELN Trust, and, as such, violated the
25 fiduciary duty he owed to Mrs. Nelson and to the LSN Trust as the delegated investment trustee
26 to the LSN Trust.
27

28 ³ NRS 163.554.

⁴ *Williams v. Waldman*, 108 Nev. 466, 472 (1992).

1
2 THE COURT FURTHER FINDS that Mr. Nelson, in his dual role as a spouse and as
3 the delegated investment trustee for the LSN Trust, violated the fiduciary duties owed to Mrs.
4 Nelson and the LSN Trust.

5 *Constructive Trust*

6
7 THE COURT FURTHER FINDS that Mr. Nelson's activities as the delegated
8 investment trustee for the LSN Trust in which he transferred numerous properties and assets
9 from the LSN Trust to the ELN Trust, unjustly resulted in the ELN Trust obtaining title to
10 certain properties that the LSN Trust formerly held.

11 THE COURT FURTHER FINDS that a legal remedy available to rectify this unjust
12 result is the Court's imposition of a constructive trust. The basic objective of a constructive
13 trust is to recognize and protect an innocent party's property rights. Constructive trusts are
14 grounded in the concept of equity. *Cummings v. Tinkle*, 91 Nev. 548, 550 (1975).

15
16 THE COURT FURTHER FINDS that the Nevada Supreme Court has held that a
17 constructive trust is proper when "(1) a confidential relationship exists between the parties; (2)
18 retention of legal title by the holder thereof against another would be inequitable; and (3) the
19 existence of such a trust is essential to the effectuation of justice." *Locken v. Locken*, 98 Nev.
20 369, 372 (1982).

21
22 THE COURT FURTHER FINDS that in *Locken*, the Nevada Supreme Court found that
23 an oral agreement bound a son to convey land to his father, as the father was to make certain
24 improvements to the land. The Court found that even though the father completed an affidavit
25 claiming no interest in the land, this act did not preclude him from enforcing the oral
26 agreement. *Id.*, at 373.

1
2 THE COURT FURTHER FINDS that the *Locken* court found that the imposition of a
3 constructive trust does not violate the statute of frauds as NRS 111.025 states:

4 1. No estate or interest in lands...nor any trust or power over or
5 concerning lands, or in any manner relating thereto, shall be created,
6 granted, assigned, surrendered or declared after December 2, 1861,
7 unless by act or operation of law, or by deed or conveyance, in writing, subscribed by
8 the party creating, granting, assigning, surrendering or
9 declaring the same, or by the party's lawful agent thereunto authorized
10 in writing.

11 2. Subsection 1 shall not be construed to affect in any manner the power
12 of a testator in the disposition of the testator's real property by a last will
13 and testament, **nor to prevent any trust from arising or being extinguished**
14 **by implication or operation of law.**

15 See, NRS 111.025 (Emphasis added).

16 THE COURT FURTHER FINDS that NRS 111.025(2) creates an exception to the
17 statute of frauds that allows for the creation of a constructive trust to remedy or prevent the
18 type of injustice that the statute seeks to prevent.

19 THE COURT FURTHER FINDS that in this case, we clearly have a confidential
20 relationship as the two parties were married at the time of the transfers. In addition, Mr. Nelson
21 acted as the investment trustee for the LSN Trust, which effectively created another
22 confidential relationship between him and Mrs. Nelson as she is the beneficiary of the LSN
23 Trust.

24 THE COURT FURTHER FINDS that while Mr. Nelson argues that no confidential
25 relationship existed between Mrs. Nelson and the ELN Trust, a confidential relationship clearly
26 existed between Mrs. Nelson and Mr. Nelson, who, as the beneficiary of the ELN Trust,
27 benefits greatly from the ELN Trust's acquisition and accumulation of properties.
28

1
2 THE COURT FURTHER FINDS that the ELN Trust's retention of title to properties
3 that the LSN Trust previously held would be inequitable and would result in an unjust
4 enrichment of the ELN Trust to the financial benefit of Mr. Nelson and to the financial
5 detriment of the LSN Trust and Mrs. Nelson.

6 THE COURT FURTHER FINDS that Mrs. Nelson, as a faithful and supporting spouse
7 of thirty years, had no reason to question Mr. Nelson regarding the true nature of the assets that
8 he transferred from the LSN Trust to the ELN Trust.

9
10 THE COURT FURTHER FINDS that Mr. Nelson argues that the imposition of a
11 constructive trust is barred in this instance because Mrs. Nelson benefitted from the creation
12 and implementation of the trust and cites the Nevada Supreme Court ruling in *DeLee v.*
13 *Roggen*, to support his argument. 111 Nev. 1453 (1995).

14 THE COURT FURTHER FINDS that in *DeLee*, the party seeking the imposition of the
15 constructive trust made no immediate demands because he knew that his debtors would lay
16 claim to the property. The court found that a constructive trust was not warranted because the
17 creation of the trust was not necessary to effectuate justice. *Id.*, at 1457.

18
19 THE COURT FURTHER FINDS that unlike *DeLee*, Mrs. Nelson made no demand for
20 the property because Mr. Nelson assured her that he managed the assets in the trusts for the
21 benefit of the community. Consequently, Mrs. Nelson did not have notice that the LSN Trust
22 should reclaim the property.

23 THE COURT FURTHER FINDS that while Mr. Nelson acted as the investment trustee
24 for both the ELN and LSN Trust respectively, the properties never effectively left the
25 community. Consequently, Mrs. Nelson never thought that she needed to recover the
26 properties on behalf of the LSN Trust. Mrs. Nelson was not advised that she was not entitled to
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1
2 the benefit of the assets transferred from the LSN Trust to the ELN Trust under the direction of
3 Mr. Nelson until the ELN Trust joined the case as a necessary party.

4 THE COURT FURTHER FINDS that allowing the ELN Trust to acquire property from
5 the LSN Trust under the guise that these property transfers benefitted the community,
6 effectively deprives Mrs. Nelson of the benefit of those assets as beneficiary under the LSN
7 Trust, and will ultimately result in Mr. Nelson, as beneficiary of the ELN Trust, being unjustly
8 enriched at the expense of Mrs. Nelson.
9

10 THE COURT FURTHER FINDS that, as addressed in detail below, the Court will
11 impose a constructive trust on the following assets: (1) 5220 East Russell Road Property; (2)
12 3611 Lindell Road.

13 THE COURT FURTHER FINDS that as to the Russell Road property, according to the
14 report prepared by Larry Bertsch, the court-appointed forensic accountant, Mr. Nelson, as the
15 investment trustee for the LSN Trust, purchased the property at 5220 E. Russell Road on
16 November 11, 1999, for \$855,945. Mr. Nelson's brother, Cal Nelson, made a down payment of
17 \$20,000 and became a 50% owner of the Russell Road Property despite this paltry
18 contribution.⁵ Cal Nelson and Mrs. Nelson later formed CJE&L, LLC, which rented this
19 property to Cal's Blue Water Marine. Shortly thereafter, CJE&L, LLC obtained a \$3,100,000
20 loan for the purpose of constructing a building for Cal's Blue Water Marine.⁶
21
22

23 THE COURT FURTHER FINDS that in 2004, Mrs. Nelson signed a guarantee on the
24 flooring contract for Cal's Blue Water Marine. She subsequently withdrew her guarantee and
25 the LSN Trust forfeited its interest in the property to Cal Nelson. While Mr. Nelson argues that
26 the release of Mrs. Nelson as guarantor could be consideration, the flooring contract was never
27

28 ⁵ Mr. Nelson testified that Cal Nelson also assumed a \$160,000 liability arising from a transaction by Mr. Nelson involving a Las Vegas Casino.

⁶ Defendant's Exhibit GGGGG

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2 produced at trial and no value was ever assigned as to Mrs. Nelson's liability. Furthermore, the
3 Declaration of Value for Tax Purposes indicates that it was exempted from taxation due to
4 being a "transfer without consideration for being transferred to or from a trust."⁷ As such, the
5 alleged consideration was never established and appears to be illusory, and, accordingly, the
6 LSN Trust received no compensation from the Russell Road transaction.⁸
7

8 THE COURT FURTHER FINDS that in February 2010, Mr. Nelson purchased a 65%
9 interest in the Russell Road property, with Cal Nelson retaining a 35% interest in the property.

10 THE COURT FURTHER FINDS that on May 27, 2011, the Russell Road property was
11 sold for \$6,500,000. As part of the sale, Mr. Nelson testified that the ELN Trust made a
12 \$300,000 loan to the purchaser for improvements to the property, however, a first note/deed
13 was placed in the name of Julie Brown in the amount \$300,000 for such property improvement
14 loan. Due to the ambiguity as to who is entitled to repayment of the \$300,000 loan (ELN Trust
15 or Julie Brown), the Court is not inclined at this time to include such loan into the calculation
16 as to the ELN Trust's interest in the property.
17

18 THE COURT FURTHER FINDS that a second note/deed was placed on the Russell
19 Road property in the amount of \$295,000 to recapture all back rents and taxes.

20 THE COURT FURTHER FINDS that through a series of notes/deeds, the ELN Trust is
21 currently entitled to 66.67% of the \$6,500,000 purchase price and 66.67% of the \$295,000
22 note/deed for rents and taxes. Therefore, the ELN Trust and Mr. Nelson are entitled to
23 proceeds in the amount of \$4,530,227 (\$4,333,550 + \$196,677) from the Russell Road property
24 transaction.⁹
25

26 ...

27 ⁷ Defendant's Exhibit UUUU

28 ⁸ Id.

⁹ Defendant's Exhibit GGGG.

1
2 THE COURT FURTHER FINDS that because the LSN Trust was not compensated for
3 transferring its interest in Russell Road, under the advice and direction of Mr. Nelson, it would
4 be inequitable to allow the ELN Trust to retain its full 66.67% interest in the property to the
5 detriment of the LSN Trust. Therefore, the Court hereby imposes a constructive trust over half
6 of the ELN Trust 66.67% ownership interest in the Russell Road property on behalf of the LSN
7 Trust. As such, the LSN Trust is entitled to a 50% interest of the ELN Trust's 66.67%
8 ownership interest, resulting in the LSN Trust effectively receiving an overall one-third interest
9 in the Russell Road property with a value of \$2,265,113.50 ($\$4,333,550 + \$196,677 \times 1/2$).
10

11 THE COURT FURTHER FINDS that as to the 3611 Lindell property, on August 22,
12 2001, the entire interest in the property was transferred to the LSN trust from Mrs. Nelson's
13 1993 revocable trust.

14 THE COURT FURTHER FINDS that on March 22, 2007, a 50% interest in the Lindell
15 property was transferred to the ELN Trust at the direction of Mr. Nelson without any
16 compensation to the LSN Trust. Review of the Grant, Bargain, Sale Deed allegedly executed
17 by Mrs. Nelson on said date clearly reflects a signature not consistent with Mrs. Nelson's
18 signature when compared to the numerous documents signed by Mrs. Nelson and submitted to
19 this Court. As such, the validity of the transfer of the 50% interest of the LSN Trust to the ELN
20 Trust is seriously questioned.¹⁰
21

22 THE COURT FURTHER FINDS that while Mr. Gerety testified that consideration for
23 the 50% interest being transferred to the ELN Trust was the transfer of the Mississippi property
24 to the LSN, the court did not find such testimony credible as it appears that the transfer of the
25 Mississippi property occurred in 2004, whereas, the Lindell transfer to the ELN Trust was in
26 2007. In addition, the testimony was not clear as to which Mississippi properties were involved
27

28 ¹⁰ Defendant's Exhibit PPPP.

1
2 in the alleged transfer and no credible testimony as to the value of the Mississippi property was
3 presented. Accordingly, any alleged consideration for the transfer of the 50% interest in the
4 Lindell property from the LSN Trust to the ELN Trust is illusory.

5 THE COURT FURTHER FINDS that because the LSN Trust was not compensated for
6 transferring a 50% interest in the Lindell property to the ELN Trust, under the advice and
7 direction of Mr. Nelson, it would inequitable to allow the ELN Trust to retain a 50% interest in
8 the property.
9

10 THE COURT FURTHER FINDS that the Court imposes a constructive trust over the
11 ELN Trust's 50% interest in the Lindell property; therefore, the LSN Trust is entitled to 100%
12 interest in the Lindell property, with an appraised value of \$1,145,000.

13 *Unjust Enrichment*
14

15 THE COURT FURTHER FINDS that to allow the ELN Trust to retain the benefits
16 from the sale of the High Country Inn, which will be addressed hereinafter, to the detriment of
17 the LSN Trust, would result in the unjust enrichment of the ELN Trust at the expense of the
18 LSN Trust.

19 THE COURT FURTHER FINDS that on January 11, 2000, the High Country Inn was
20 initially purchased by Mrs. Nelson's Revocable 1993 Trust.¹¹ While multiple transfer deeds
21 were executed with related parties (e.g. Grotta Financial Partnership, Frank Soris) at the
22 direction of Mr. Nelson, the LSN Trust owned the High Country Inn. On January 18, 2007, Mr.
23 Nelson, as investment trustee for both the ELN Trust and the LSN Trust, was the sole
24 orchestrator of the transfer of the High Country Inn from the LSN Trust to the ELN Trust.
25

26 ...

27 ...

28

¹¹ The Nelson Trust would later transfer its interest in the High Country Inn to the LSN Trust on 5/30/01.

1
2 THE COURT FURTHER FINDS that on January 19, 2007, the ELN Trust sold the
3 High Country Inn for \$1,240,000 to Wyoming Lodging, LLC, with the proceeds from the sale
4 being placed directly into the bank account of ELN Trust,¹² without any compensation being
5 paid to the LSN Trust.

6
7 THE COURT FURTHER FINDS that in a fashion similar to the Russell Road
8 transaction, the ELN Trust provided no consideration to the LSN Trust. Further, it is quite
9 apparent that Mr. Nelson never intended to compensate the LSN Trust as evidenced by Mr.
10 Nelson's 2007 Tax Return Form, which listed both the sale of "Wyoming Hotel" (High
11 Country Inn) and "Wyoming OTB" (Off Track Betting) on his Form 1040 Schedule D.¹³

12 THE COURT FURTHER FINDS that allowing the ELN Trust to retain the benefit of
13 the proceeds from the sale of the High Country Inn would be unjust, and, accordingly, the LSN
14 Trust is entitled to just compensation. As such, an amount equal to the proceeds from the sale,
15 or in the alternative, property with comparable value, should be transferred to the LSN Trust to
16 avoid the ELN Trust from being unjustly enriched.

17
18 THE COURT FURTHER FINDS that Mr. Nelson created Banone, LLC on November
19 15, 2007, the same year that he sold High Country Inn.¹⁴ The Operating Agreement lists the
20 ELN Trust as the Initial Sole Member of the company, meaning that Banone, LLC is an asset
21 of the ELN Trust and that all benefits received from the managing of this company are
22 conferred to Mr. Nelson, as beneficiary of the ELN Trust.
23

24
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26
27 ¹² On January 24, 2007, Uinta Title & Insurance wired proceeds in the total amount of \$1,947,153.37 (\$1,240,000
for High Country Inn and \$760,000 for the Off Track Betting Rights) to the ELN Trust's bank account.

28 ¹³ Defendant's Exhibit NNNN.

¹⁴ Plaintiff's Exhibit 10K.

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THE COURT FURTHER FINDS that Banone, LLC, currently holds seventeen Nevada properties worth \$1,184,236.¹⁵

THE COURT FURTHER FINDS that equity and justice demands that the LSN Trust receive just compensation in the amount of \$1,200,000 for the sale of the High Country Inn in order to avoid the ELN Trust from being unjustly enriched, and, therefore, the LSN Trust should be awarded the Banone, LLC, properties held by ELN Trust, with a comparable value of \$1,184,236.

THE COURT FURTHER FINDS that there were additional transfers from the LSN Trust to the ELN Trust, without just compensation, which financially benefitted the ELN Trust to the detriment of the LSN Trust, specifically regarding the Tierra del Sol property, Tropicana/Albertson property and the Brianhead cabin.

THE COURT FURTHER FINDS that as to the Tierra del Sol property, the entire interest in the property was initially held in Mrs. Nelson's Revocable Trust and was subsequently transferred to the LSN Trust on or about October 18, 2001.

THE COURT FURTHER FINDS that the Tierra del Sol property was sold in August 5, 2005, for \$4,800,000. Out of the proceeds from the first installment payment, Mr. Nelson had a check issued from the LSN Trust account in the amount of \$677,717.48 in payment of a line of credit incurred by Mr. Nelson against the Palmyra residence, which was solely owned by the LSN Trust. From the proceeds for the second installment payment, the ELN Trust received proceeds in the amount of \$1,460,190.58. As such, the ELN Trust received proceeds from the sale of the Tierra del Sol property despite having no ownership interest in the property.

...
...

¹⁵ Defendant's Exhibit GGGGG.

1
2 THE COURT FURTHER FINDS that while Mr. Gerety testified that the ELN Trust
3 paid federal taxes in the amount of \$509,400 and Arizona taxes in the amount \$139,240 for a
4 total of \$648,640 on behalf of the LSN Trust from the proceeds received by the ELN Trust
5 from the sale of the Tierra del Sol property, that would still leave over \$800,000 that the ELN
6 Trust received despite having no ownership interest in the Tierra del Sol property.
7

8 THE COURT FURTHER FINDS that as to the Tropicana/Albertson's property, the
9 ELN Trust transferred a 50% interest in the property to the LSN Trust in November of 2004 in
10 consideration of an \$850,000 loan to the ELN Trust from the LSN Trust.

11 THE COURT FURTHER FINDS that Minutes dated November 20, 2004, reflected that
12 all Mississippi property and Las Vegas property owned by the ELN Trust was transferred to the
13 LSN trust as final payment on the 2002 loans from the LSN to the ELN Trust and to "level off
14 the trusts." It must be noted that in November of 2004 the only Las Vegas property owned by
15 the ELN Trust was the Tropicana/Albertson property.
16

17 THE COURT FURTHER FINDS that in 2007, Mr. Nelson had the LSN Trust deed
18 back the Tropicana/Albertson property to the ELN Trust, without compensation, and then sold
19 the property the same day, resulting in the ELN Trust receiving all the proceeds from the sale
20 of the property in the amount of \$966,780.23.

21 THE COURT FURTHER FINDS that as to the Brianhead cabin, the entire interest was
22 held by the LSN Trust.
23

24 THE COURT FURTHER FINDS that on May 22, 2007, a 50% interest in the
25 Brianhead cabin was transferred to the ELN Trust at the direction of Mr. Nelson without any
26 compensation to the LSN Trust.
27 ...
28

1
2 THE COURT FURTHER FINDS that while Mr. Gerety testified that consideration for
3 the 50% interest in the Brianhead cabin being transferred to the ELN Trust was the transfer of
4 the Mississippi property to the LSN, the court did not find such testimony credible as it appears
5 that the transfer of the Mississippi property occurred in 2004, whereas, the Brianhead cabin
6 transfer to the ELN Trust was in 2007. In addition, the testimony was not clear as to which
7 Mississippi properties were involved in the alleged transfer and no credible testimony as to the
8 value of the Mississippi property was presented. Accordingly, any alleged consideration for the
9 transfer of the 50% interest in the Brianhead cabin property from the LSN Trust to the ELN
10 Trust is illusory.
11

12 THE COURT FURTHER FINDS that the transfers from the LSN Trust to the ELN
13 Trust regarding the Tierra del Sol property, the Tropicana/Albertson property and the
14 Brianhead cabin all financially benefitted the ELN Trust to the financial detriment of the LSN
15 Trust.
16

17 THE COURT FURTHER FINDS that throughout the history of the Trusts, there were
18 significant loans from the LSN Trust to the ELN Trust, specifically: \$172,293.80 loan in May
19 of 2002; \$700,000 loan in October of 2003; \$250,000 loan in December of 2005 which resulted
20 in a total amount of \$576,000 being borrowed by the ELN Trust from the LSN Trust in 2005.
21

22 THE COURT FURTHER FINDS that while testimony was presented regarding
23 repayments of the numerous loans via cash and property transfers, the Court was troubled by
24 the fact that the loans were always going from the LSN Trust to the ELN Trust and further
25 troubled by the fact that the evidence failed to satisfactorily establish that all of the loans were
26 in fact paid in full.
27
28

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DISTRICT JUDGE

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1
2 THE COURT FURTHER FINDS that the evidence clearly established that Mr. Nelson
3 exhibited a course of conduct in which he had significant property transferred, including loans,
4 from the LSN Trust to the ELN Trust which benefited the ELN Trust to the detriment of the
5 LSN Trust, and, as such, justice and equity demands that the LSN Trust receive compensation
6 to avoid such unjust enrichment on the part of the ELN Trust.
7

8 *Credibility*

9 THE COURT FURTHER FINDS that during the first six days of trial held in 2010, Mr.
10 Nelson repeatedly testified that the actions he took were on behalf of the community and that
11 the ELN Trust and LSN Trust were part of the community.
12

13 THE COURT FURTHER FINDS that during the last several weeks of trial in 2012, Mr.
14 Nelson changed his testimony to reflect his new position that the ELN Trust and the LSN Trust
15 were not part of the community and were the separate property of the respective trusts.

16 THE COURT FURTHER FINDS that Mr. Nelson failed to answer questions in a direct
17 and forthright manner throughout the course of the proceedings.

18 THE COURT FURTHER FINDS that Mr. Nelson argued in the Motion to Dissolve
19 Injunction requesting the release of \$1,568,000, which the Court had ordered be placed in a
20 blocked trust account and enjoined from being released, that the ELN Trust "has an opportunity
21 to purchase Wyoming Racing LLC, a horse racing track and RV park, for \$440,000.00;
22 however, the ELN will be unable to do so unless the Injunction is dissolved."
23

24 THE COURT FURTHER FINDS that despite the Court's denial of the request to
25 dissolve the injunction, the ELN Trust via Dynasty Development Group, LLC, completed the
26 transaction and reacquired Wyoming Downs at a purchase price of \$440,000. The completion
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28

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1
2 of the purchase, without the dissolution of the injunction, evinced that Mr. Nelson misstated the
3 ELN Trust's financial position, or at the very least was less than truthful with this Court.

4 THE COURT FURTHER FINDS that it should be noted that in an attempt to
5 circumvent this Court's injunction regarding the \$1,568,000, Mr. Nelson had a Bankruptcy
6 Petition filed in the United States Bankruptcy Court, District of Nevada, on behalf of the
7 Dynasty Development Group, LLC, requesting that the \$1,568,000 be deemed property of the
8 Debtor's bankruptcy estate; however, the bankruptcy court found that this Court had exclusive
9 jurisdiction over the \$1,568,000 and could make whatever disposition of the funds without
10 regard to the Debtor's bankruptcy filing.

11
12 THE COURT FURTHER FINDS that based upon Mr. Nelson's change of testimony
13 under oath, his repeated failure to answer questions in a direct and forthright manner, his less
14 that candid testimony regarding the necessity of dissolving the injunction in order to purchase
15 the Wyoming race track and RV park, and his attempt to circumvent the injunction issued by
16 this Court clearly reflect that Mr. Nelson lacks credibility.

17
18 THE COURT FURTHER FINDS that United States Bankruptcy Judge, Neil P. Olack,
19 of the Southern District of Mississippi, cited similar concerns as to Mr. Nelson's credibility
20 during a bankruptcy proceeding held on June 24, 2011, regarding Dynasty Development
21 Group, LLC. Specifically, Judge Olack noted that as a witness, Mr. Nelson simply lacked
22 credibility in that he failed to provide direct answers to straight forward questions, which gave
23 the clear impression that he was being less than forthcoming in his responses.¹⁶
24
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28 ¹⁶ Defendant's Exhibit QQQQQ.

1
2 THE COURT FURTHER FINDS that Bankruptcy Judge Olack found that the evidence
3 showed that Mr. Nelson depleted the assets of Dynasty on the eve of its bankruptcy filing in
4 three separate transfers, and, subsequently, dismissed the Bankruptcy Petition.¹⁷

5 THE COURT FURTHER FINDS that Mr. Nelson's behavior and conduct during the
6 course of these proceedings has been deplorable. This Court has observed Mr. Nelson angrily
7 bursting from the courtroom following hearings.
8

9 THE COURT FURTHER FINDS that Mr. Nelson has repeatedly exhibited
10 inappropriate conduct towards opposing counsel, Mr. Dickerson, including, cursing at him,
11 leaving vulgar voice messages on his office phone and challenging him to a fight in the parking
12 lot of his office.

13 THE COURT FURTHER FINDS that Mr. Nelson's deplorable behavior also included
14 an open and deliberate violation of the Joint Preliminary Injunction that has been in place since
15 May 18, 2009. On 12/28/2009, Mr. Nelson purchased the Bella Kathryn property and
16 subsequently purchased the adjoining lot on 8/11/2010. Currently, with improvements to the
17 properties factored in, a total of \$1,839,495 has been spent on the Bella Kathryn property.
18

19 THE COURT FURTHER FINDS that Mr. Nelson was living in the Harbor Hills
20 residence upon his separation from Mrs. Nelson and could have remained there indefinitely
21 pending the conclusion of these proceedings, however, he chose to purchase the Bella Kathryn
22 residence in violation of the JPI simply because he wanted a residence comparable to the
23 marital residence located on Palmyra.
24

25 ...

26 ...

27
28 ¹⁷ Defendant's Exhibit QQQQQ.

1
2 THE COURT FURTHER FINDS that due to Mr. Nelson's willful and deliberate
3 violation of the JPI, the Bella Kathryn property will be valued at its "costs" in the amount of
4 \$1,839,495 and not at its appraised value of \$925,000 as a sanction for Mr. Nelson's
5 contemptuous behavior.
6

7 THE COURT FURTHER FINDS that as to Mr. Daniel Gerety, who testified as an
8 expert witness on behalf of the ELN Trust and Mr. Nelson, he based his report solely on
9 information and documentation provided to him by Mr. Nelson. It appears that Mr. Gerety
10 made no effort to engage Mrs. Nelson or her counsel in the process. In the Understanding of
11 Facts section of his report, Mr. Gerety repeatedly used the phrases "I have been told" or "I am
12 advised".¹⁸ Since Mr. Gerety considered statements from Mr. Nelson and others who were in
13 support of Mr. Nelson, an impartial protocol would dictate that he obtain statements from Mrs.
14 Nelson and her counsel in order to have a full and complete framework to fairly address the
15 issues at hand.
16

17 THE COURT FURTHER FINDS that Mr. Gerety has maintained a financially
18 beneficial relationship with Mr. Nelson dating back to 1998. This relationship, which has netted
19 Mr. Gerety many thousands of dollars in the past and is likely to continue to do so in the future,
20 calls in question his impartiality.
21

22 THE COURT FURTHER FINDS that while Mr. Gerety submitted documentation
23 allegedly outlining every transaction made by the ELN Trust from its inception through
24 September 2011, and "tracing" the source of funds used to establish Banone, LLC, this Court
25 found that Mr. Gerety's testimony was not reliable, and, as such, the Court found it to be of
26 little probative value.
27

28

¹⁸ Intervenor's Exhibit 168.

1
2 THE COURT FURTHER FINDS that as to Rochelle McGowan, she has had an
3 employment relationship with Mr. Nelson dating back to 2001, and was the person primarily
4 responsible for regularly notarizing various documents executed by Mr. and Mrs. Nelson on
5 behalf of the ELN Trust and LSN Trust, respectively.

6 THE COURT FURTHER FINDS that it was the regular practice for Mr. Nelson to
7 bring documents home for Mrs. Nelson's execution and to return the documents the following
8 day to be notarized by Ms. McGowan.

9
10 THE COURT FURTHER FINDS that the testimony of Ms. McGowan indicating that
11 she would contact Mrs. Nelson prior to the notarization of her signature is not credible as the
12 Court finds it difficult to believe that Ms. McGowan would actually contact Mrs. Nelson
13 directly every time prior to notarizing the documents.

14 *Lack of Trust Formalities*

15 THE COURT FURTHER FINDS that the formalities outlined within the ELN Trust and
16 the LSN Trust were not sufficiently and consistently followed. Article eleven, section 11.3, of
17 both trusts provides that Attorney Burr, as Trust Consultant, shall have the right to remove any
18 trustee, with the exception of Mr. Nelson and Mrs. Nelson, provided that he gives the current
19 trustee ten days written notice of their removal.
20

21 THE COURT FURTHER FINDS that Attorney Burr testified that on February 22,
22 2007, at Mr. Nelson's request, he removed Mr. Nelson's employee, Lana Martin, as
23 Distribution Trustee of both the ELN Trust and the LSN Trust and appointed Mr. Nelson's
24 sister, Nola Harber, as the new Distribution Trustee for both trusts. Attorney Burr further
25 testified that he did not provide Ms. Martin with ten days notice as specified in the trusts
26 documents. In June 2011, at Mr. Nelson's request, Attorney Burr once again replaced the
27
28

1
2 Distribution Trustee for the ELN Trust, without providing ten days notice, by replacing Nola
3 Harber with Lana Martin.

4 THE COURT FURTHER FINDS that the ELN Trust and LSN Trust documents require
5 that a meeting of the majority of the trustees be held prior to any distribution of trust income or
6 principal. During the meetings, the trustees must discuss the advisability of making
7 distributions to the ELN Trust Trustor, Mr. Nelson, and the LSN Trust Trustor, Mrs. Nelson. At
8 that time, a vote must take place and the Distribution Trustee must provide an affirmative vote.
9

10 THE COURT FURTHER FINDS that the testimony of Lana Martin and Nola Harber
11 indicate that neither one of them ever entered a negative vote in regards to distributions to Mr.
12 Nelson or Mrs. Nelson. The testimony also reflected that neither one of them ever advised Mr.
13 Nelson or Mrs. Nelson on the feasibility of making such distributions.
14

15 THE COURT FURTHER FINDS that while Ms. Martin and Ms. Harber testified that
16 they had the authority to approve or deny the distributions to Mr. Nelson under the ELN Trust
17 and to Mrs. Nelson under the LSN Trust, that despite literally hundreds of distributions
18 requests, they never denied even a single distribution request. Therefore, Ms. Martin and Ms.
19 Harber were no more than a "rubber stamp" for Mr. Nelson's directions as to distributions to
20 Mr. Nelson and Mrs. Nelson.
21

22 THE COURT FURTHER FINDS that while the ELN Trust produced multiple Minutes
23 of alleged meetings; this Court seriously questions the authenticity of the submitted
24 documentation. Specifically, several of the Minutes were unsigned, the authenticity of the
25 signatures reflected on some of the Minutes were questionable, and several of the Minutes
26 reflected that the meetings were held at the office of Attorney Burr while the testimony clearly
27 established that no such meetings ever occurred at his law office.
28

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1
2 THE COURT FURTHER FINDS that Daniel Gerety testified that he had to make
3 numerous adjustments to correct bookkeeping and accounting errors regarding the two trusts by
4 utilizing the entries "Due To" and "Due From" to correctly reflect the assets in each trust.

5 THE COURT FURTHER FINDS that the numerous bookkeeping and accounting
6 errors, in conjunction with the corresponding need to correct the entries to accurately reflect the
7 assets in each trust, raises serious questions as to whether the assets of each trust were truly
8 being separately maintained and managed.
9

10 THE COURT FURTHER FINDS that the lack of formalities further emphasizes the
11 amount of control that Mr. Nelson exerted over both trusts and that he did indeed manage both
12 trust for the benefit of the community.

13 THE COURT FURTHER FINDS that while the Court could invalidate both Trusts
14 based upon the lack of Trust formalities, this Court is not inclined to do so since invalidation of
15 the Trusts could have serious implications for both parties in that it could expose the assets to
16 the claims of creditors, thereby, defeating the intent of the parties to "supercharge" the
17 protection of the assets from creditors.
18

19 *Liabilities*

20 THE COURT FURTHER FINDS that while Mr. Nelson argued that he and the ELN
21 Trust were subject to numerous liabilities, this Court did not find any documented evidence to
22 support such claims except for the encumbrance attached to the newly reacquired Wyoming
23 Downs property.
24

25 ...

26 ...

27
28
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1
2 THE COURT FURTHER FINDS that Mr. Bertsch's report addresses several
3 unsupported liabilities alleged by Mr. Nelson. Specifically, Mr. Nelson reported a contingent
4 liability attached to the property located in the Mississippi Bay, however, no value was given to
5 the liability.¹⁹

6
7 THE COURT FURTHER FINDS that the Bertsch report indicated that several of the
8 liabilities were actually options held by subsidiaries that Mr. Nelson owns or options held by
9 relatives of Mr. Nelson, and, as such, were not true liabilities.²⁰

10 THE COURT FURTHER FINDS that while Mr. Nelson represented that a \$3,000,000
11 lawsuit was threatened by a third-party in regards to a transaction involving the Hideaway
12 Casino, no evidence was submitted to the Court that any such lawsuit had in fact been filed.

13 THE COURT FURTHER FINDS that the only verified liability is the loan attached to
14 Wyoming Downs. As mentioned above, Mr. Nelson, via Dynasty Development Group,
15 purchased Wyoming Downs in December 2011 for \$440,000 and subsequently obtained a loan
16 against the property.
17

18 THE COURT FURTHER FINDS that outside of the encumbrance attached to the
19 Wyoming Downs property, the liabilities alleged by Mr. Nelson have not been established as
20 true liabilities and are based on mere speculations and threats.

21 *Community Waste*

22 THE COURT FURTHER FINDS that the Nevada Supreme Court case of *Lofgren v.*
23 *Lofgren* addressed community waste and found that the husband wasted community funds by
24 making transfers/payments to family members, using the funds to improve the husband's home
25 and using the funds to furnish his new home. *Lofgren v. Lofgren*, 112 Nev. 1282, 1284 (1996).
26
27

28 ¹⁹ Defendant's Exhibit GGGGG.

²⁰ Id.

1
2 THE COURT FURTHER FINDS that evidence was adduced at trial that the transfers to
3 Mr. Nelson's family members were to compensate them for various services rendered and for
4 joint-investment purposes, and while some of the family transfers were indeed questionable,
5 Mr. Bertsch, the forensic accountant, testified that 1099s were provided to document income
6 paid and loan repayments to Mr. Nelson's family members.²¹
7

8 THE COURT FURTHER FINDS that transfers to Mr. Nelson's family members appear
9 to have been part of Mr. Nelson's regular business practices during the course of the marriage
10 and that Mrs. Nelson has always been aware of this practice and never questioned such
11 transfers prior to the initiation of these proceedings.

12 THE COURT FURTHER FINDS that Mrs. Nelson failed to establish that the transfers
13 to Mr. Nelson's family members constituted waste upon the community estate.
14

15 THE COURT FURTHER FINDS that as to Mr. Nelson's purchase, improvement and
16 furnishing of the Bella Kathryn residence via the ELN Trust, the ELN Trust and Mr. Nelson are
17 being sanctioned by this Court by valuing such property at "costs" in the amount of \$1,839,495
18 instead of at its appraised value of \$925,000, and, accordingly, it would be unjust for this Court
19 to further consider the Bella Kathryn property under a claim of community waste.

20 *Child Support*

21 THE COURT FURTHER FINDS that Mrs. Nelson is entitled to child support arrears
22 pursuant to NRS 125B.030 which provides for the physical custodian of the children to recover
23 child support from the noncustodial parent.
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28 ²¹ Mr. Bertsch did not confirm whether or not the 1099s were filed with the IRS as that was not within the scope of his assigned duties.

1
2 THE COURT FURTHER FINDS that the parties separated in September of 2008 when
3 Mr. Nelson permanently left the marital residence, and, therefore, Mrs. Nelson is entitled to
4 child support payments commencing in October 2008.

5 THE COURT FURTHER FINDS that Mr. Nelson's monthly earnings throughout the
6 course of these extended proceedings exceeded the statutory presumptive maximum income
7 range of \$14,816 and places his monthly child support obligation at the presumptive maximum
8 amount which has varied from year to year.

9
10 THE COURT FURTHER FINDS that Mr. Nelson's child support obligation
11 commencing on October 1, 2008 through May 31, 2013, inclusive, is as follows:

12 October 1, 2008 - June 30, 2009 = [(2 children x \$968) x 9 months] = \$17,424
13 July 1, 2009 - June 30, 2010 = [(2 children x \$969) x 12 months] = \$23,256
14 July 1, 2010 - June 30, 2011 = [(2 children x \$995) x 12 months] = \$23,880
15 July 1, 2011 - June 30, 2012 = [(2 children x \$1010) x 12 months] = \$24,240
16 July 1, 2012 - May 31, 2013 = [(2 children x \$1040) x 11 months] = \$22,880
17 **Total = \$111,680**

18 THE COURT FURTHER FINDS that Mr. Bertsch's report indicates that Mr. Nelson
19 has spent monies totaling \$71,716 on the minor children since 2009, to wit:

20 2009: Carli = \$14,000; Garrett = \$5,270;
21 2010: Carli = \$9,850; Garrett = \$29,539;
22 2011: Carli = \$8,630; Garrett = \$4,427
23 **Total = \$71,716**

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FRANK R. SULLIVAN
DISTRICT JUDGE

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1
2 THE COURT FURTHER FINDS that NRS 125B.080(9) describes the factors that the
3 Court must consider when adjusting a child support obligation. The factors to consider are:

- 4 (a) The cost of health insurance;
5 (b) The cost of child care;
6 (c) Any special educational needs of the child;
7 (d) The age of the child;
8 (e) The legal responsibility of the parents for the support of others;
9 (f) The value of services contributed by either parent;
10 (g) Any public assistance paid to support the child;
11 (h) Any expenses reasonably related to the mother's pregnancy and confinement;
12 (i) The cost of transportation of the child to and from visitation if the custodial parent
13 moved with the child from the jurisdiction of the court which ordered the support
14 and the noncustodial parent remained;
15 (j) The amount of time the child spends with each parent;
16 (k) Any other necessary expenses for the benefit of the child; and
17 (l) The relative income of both parents.

18 THE COURT FURTHER FINDS that, while the information provided to the Court does
19 not itemize the exact nature of the expenditures by Mr. Nelson on behalf of the children, NRS
20 125B.080(9)(k) does provide for a deviation for any other necessary expenses for the benefit of
21 the child.
22

23 THE COURT FURTHER FINDS that considering the fact that \$71,716 is a relatively
24 large sum of money, it would appear that fairness and equity demands that Mr. Nelson be given
25 some credit for the payments he made on behalf of the children. Therefore, the Court is inclined
26 to give Mr. Nelson credit for \$23,905 (one-third of the payments made on behalf of the
27 children), resulting in child support arrears in the amount of \$87,775.
28

THE COURT FURTHER FINDS that, while Mr. Nelson did spend a rather significant
amount of monies on the children dating back to 2009, Mr. Nelson did not provide any monies
whatsoever to Mrs. Nelson in support of the minor children, and, as such, crediting Mr. Nelson
with only one-third of such payments on behalf of the children seems quite fair and reasonable.

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DISTRICT JUDGE

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1
2 THE COURT FURTHER FINDS that Mrs. Nelson is entitled to current child support in
3 the amount of \$1,040 a month per child commencing June 1, 2013 through June 30, 2013 for a
4 monthly total of \$2,080.

5 THE COURT FURTHER FINDS that subject minor, Garrett, is 18 years old and will be
6 graduating from high school in June of 2013, and, as such, Mr. Nelson's child support
7 obligation as to Garrett ends on June 30, 2013.

8
9 THE COURT FURTHER FINDS that beginning July 1, 2013, Mr. Nelson's child
10 support obligation as to Carli will be \$1,058 per month.

11 *Spousal Support*

12 THE COURT FURTHER FINDS that NRS 125.150 provides as follows:

13 1. In granting a divorce, the court:

- 14 (a) May award such alimony to the wife or to the husband, in a specified principal sum or as
15 specified periodic payments, as appears just and equitable; and
16 (b) Shall, to the extent practicable, make an equal disposition of the community property of the
17 parties, except that the court may make an unequal disposition of the community property in
18 such proportions as it deems just if the court finds a compelling reason to do so and sets forth in
19 writing the reasons for making the unequal disposition

20 THE COURT FURTHER FINDS that the Nevada Supreme Court has outlined seven
21 factors to be considered by the court when awarding alimony such as: (1) the wife's career prior
22 to marriage; (2) the length of the marriage; (3) the husband's education during the marriage; (4)
23 the wife's marketability; (5) the wife's ability to support herself; (6) whether the wife stayed
24 home with the children; and (7) the wife's award, besides child support and alimony. *Sprenger*
25 v. *Sprenger*, 110 Nev. 855, 859 (1974).

26 THE COURT FURTHER FINDS that the Nelsons have been married for nearly thirty
27 years; that their earning capacities are drastically different in that Mr. Nelson has demonstrated
28 excellent business acumen as reflected by the large sums of monies generated through his
multiple business ventures and investments; that Mrs. Nelson only completed a year and a half

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2 of college and gave up the pursuit of a career outside of the home to become a stay at home
3 mother to the couple's five children; that Mrs. Nelson's career prior to her marriage and during
4 the first few years of her marriage consisted of working as a receptionist at a mortgage
5 company, sales clerk at a department store and a runner at a law firm, with her last job outside
6 of the home being in 1986;
7

8 THE COURT FURTHER FINDS that Mrs. Nelson's lack of work experience and
9 limited education greatly diminishes her marketability. Additionally, Mrs. Nelson solely relied
10 on Mr. Nelson, as her husband and delegated investment trustee, to acquire and manage
11 properties to support her and the children, and, as such, Mrs. Nelson's ability to support herself
12 is essentially limited to the property award that she receives via these divorce proceedings.
13

14 THE COURT FURTHER FINDS that while Mrs. Nelson will receive a substantial
15 property award via this Divorce Decree, including some income generating properties, the
16 monthly income generated and the values of the real property may fluctuate significantly
17 depending on market conditions. In addition, it could take considerable time to liquidate the
18 property, as needed, especially considering the current state of the real estate market. As such,
19 Mrs. Nelson may have significant difficulty in accessing any equity held in those properties.
20

21 THE COURT FURTHER FINDS that conversely, Mr. Nelson has become a formidable
22 and accomplished businessman and investor. Mr. Nelson's keen business acumen has allowed
23 him to amass a substantial amount of wealth over the course of the marriage.
24

25 THE COURT FURTHER FINDS that the repurchase of Wyoming Downs by Mr.
26 Nelson via Dynasty Development Group and his ability to immediately obtain a loan against
27 the property to pull out about \$300,000 in equity, clearly evidences Mr. Nelson's formidable
28 and accomplished business acumen and ability to generate substantial funds through his

1
2 investment talents. This type of transaction is not atypical for Mr. Nelson and demonstrates his
3 extraordinary ability, which was developed and honed during the couple's marriage, to evaluate
4 and maximize business opportunities and will ensure that he is always able to support himself,
5 unlike Mrs. Nelson.

6 THE COURT FURTHER FINDS that based the upon the findings addressed
7 hereinabove, Mrs. Nelson is entitled to an award of spousal support pursuant to NRS 125.150
8 and the factors enunciated in Sprenger²²
9

10 THE COURT FURTHER FINDS that during the marriage, at the direction of Mr.
11 Nelson, Mrs. Nelson initially received monthly disbursements in the amount of \$5,000, which
12 was increased to \$10,000 per month, and ultimately increased to \$20,000 per month dating
13 back to 2004. The \$20,000 per month disbursements did not include expenses which were paid
14 directly through the Trusts.

15 THE COURT FURTHER FINDS that based upon the distributions that Mrs. Nelson
16 was receiving during the marriage, \$20,000 per month is a fair and reasonable amount
17 necessary to maintain the lifestyle that Mrs. Nelson had become accustomed to during the
18 course of the marriage.
19

20 THE COURT FURTHER FINDS that based upon the property distribution that will be
21 addressed hereinafter, Mrs. Nelson will receive some income producing properties (Lindell,
22 Russell Road, some of the Banone, LLC properties).
23

24 THE COURT FURTHER FINDS that while the evidence adduced at trial reflected that
25 the Lindell property should generate a cash flow of approximately \$10,000 a month, the
26 evidence failed to clearly establish the monthly cash flow from the remaining properties.
27 However, in the interest of resolving this issue without the need for additional litigation, this
28

²² Sprenger v. Sprenger, 110 Nev. 855 (1974).

1
2 Court will assign an additional \$3,000 a month cash flow from the remaining properties
3 resulting in Mrs. Nelson receiving a total monthly income in the amount of \$13,000.

4 THE COURT FURTHER FINDS that based upon a monthly cash flow in the amount of
5 \$13,000 generated by the income producing properties, a monthly spousal support award in the
6 amount of \$7,000 is fair and just and would allow Mrs. Nelson to maintain the lifestyle that she
7 had become accustomed to throughout the course of the marriage.

8
9 THE COURT FURTHER FINDS that Mrs. Nelson is 52 years of age and that spousal
10 support payments in the amount of \$7,000 per month for 15 years, which would effectively
11 assist and support her through her retirement age, appears to be a just and equitable spousal
12 support award.

13 THE COURT FURTHER FINDS that NRS 125.150(a) provides, in pertinent part, that
14 the court may award alimony in a specified *principal sum* or as specified periodic payment
15 (emphasis added).
16

17 THE COURT FURTHER FINDS that the Nevada Supreme Court has indicated that a
18 lump sum award is the setting aside of a spouse's separate property for the support of the other
19 spouse and is appropriate under the statute. *Sargeant v. Sargeant*, 88 Nev. 223, 229 (1972). In
20 *Sargeant*, the Supreme Court affirmed the trial court's decision to award the wife lump sum
21 alimony based on the husband short life expectancy and his litigious nature. The Supreme
22 Court, citing the trial court, highlighted that "the overall attitude of this plaintiff illustrates
23 some possibility that he might attempt to liquidate, interfere, hypothecate or give away his
24 assets to avoid payment of alimony or support obligations to the defendant" *Id.* at 228.
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FRANK R. SULLIVAN
DISTRICT JUDGE

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1
2 THE COURT FURTHER FINDS that Mr. Nelson's open and deliberate violation of the
3 Joint Preliminary Injunction evidences his attitude of disregard for court orders. The Court also
4 takes notice of Bankruptcy Judge Olack's finding that Mr. Nelson attempted to deplete the
5 assets of Dynasty Development Group on the eve of the bankruptcy filing, raising the concern
6 that Mr. Nelson may deplete assets of the ELN Trust precluding Mrs. Nelson from receiving a
7 periodic alimony award.
8

9 THE COURT FURTHER FINDS that Mr. Nelson has been less than forthcoming as to
10 the nature and extent of the assets of the ELN Trust which raises another possible deterrent
11 from Mrs. Nelson receiving periodic alimony payments.

12 THE COURT FURTHER FINDS that, as addressed hereinbefore, the ELN Trust moved
13 this Court to dissolve the injunction regarding the \$1,568,000 because it "has an opportunity to
14 purchase Wyoming Racing LLC, a horse racing track and RV park, for \$440,000.00; however,
15 the ELN will be unable to do so unless the Injunction is dissolved."
16

17 THE COURT FURTHER FINDS that despite the representation to the Court that the
18 injunction needed to be dissolved so that the ELN Trust would be able to purchase Wyoming
19 Downs, less than a month after the hearing, the ELN Trust, with Mr. Nelson serving as the
20 investment trustee, completed the purchase of Wyoming Downs. This leads this Court to
21 believe that Mr. Nelson was less than truthful about the extent and nature of the funds available
22 in the ELN Trust and such conduct on the part of Mr. Nelson raises serious concerns about the
23 actions that Mr. Nelson will take to preclude Mrs. Nelson from receiving periodic spousal
24 support payments.
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FRANK R. SULLIVAN
DISTRICT JUDGE

FAMILY DIVISION, DEPT. O
LAS VEGAS NV 89101

1
2 THE COURT FURTHER FINDS that Mr. Nelson alleged numerous debts and
3 liabilities worth millions of dollars, but forensic accountant, Mr. Bertsch, found that these
4 alleged debts and liabilities were based solely on threats and speculations.

5 THE COURT FURTHER FINDS that Mr. Nelson's practice of regularly transferring
6 property and assets to family members, as highlighted in the transactions involving the High
7 Country Inn and Russell Road properties, contributes to this Court's concern that Mr. Nelson
8 may deplete the assets of the ELN Trust via such family transfers, and, thereby, effectively
9 preclude Mrs. Nelson from receiving a periodic spousal support award.

10 THE COURT FURTHER FINDS that Mr. Nelson's overall attitude throughout the
11 course of these proceedings illustrates the possibility that he might attempt to liquidate,
12 interfere, hypothecate or give away assets out of the ELN Trust to avoid payment of his support
13 obligations to Mrs. Nelson, thereby justifying a lump sum spousal support award to Mrs.
14 Nelson based on the factors addressed hereinabove and the rationale enunciated in *Sargeant*.

15 THE COURT FURTHER FINDS that calculation of a monthly spousal support
16 obligation of \$7,000 for 15 years results in a total spousal support amount of \$1,260,000 which
17 needs to be discounted based upon being paid in a lump sum. Accordingly, Mrs. Nelson is
18 entitled to a lump sum spousal support award in the amount of \$800,000.

19 THE COURT FURTHER FINDS that the ELN Trust should be required to issue a
20 distribution from the \$1,568,000 reflected in the account of Dynasty Development Group, LLC,
21 and currently held in a blocked trust account pursuant to this Court's injunction, to satisfy Mr.
22 Nelson's lump sum spousal support obligation and to satisfy his child support arrearages
23 obligation.
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FRANK R. SULLIVAN
DISTRICT JUDGE

FAMILY DIVISION, DEPT. C
LAS VEGAS NV 89101

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THE COURT FURTHER FINDS that Mr. Nelson argues that Dynasty Development Group, LLC, is 100% held by the ELN Trust, and, therefore, he has no interest in Dynasty nor the funds reflected in the Dynasty account as all legal interest rests with the ELN Trust.²³

THE COURT FURTHER FINDS that various statutes and other sources suggest that the interest of a spendthrift trust beneficiary can be reached to satisfy support of a child or a former spouse.²⁴ Specifically, South Dakota, which also recognizes self-settled spendthrift trust, has addressed the issue in South Dakota Codified Law § 55-16-15 which states:

Notwithstanding the provisions of §§ 55-16-9 to 55-16-14, inclusive, this chapter does not apply in any respect to any person to whom the transferor is indebted on account of an agreement or *order of court* for the payment of *support or alimony* in favor of such transferor's spouse, *former spouse*, or children, or for a *division or distribution of property* in favor of such transferor's spouse or former spouse, to the extent of such debt (emphasis added).

Wyoming, which also allows self-settled spendthrift trust, has also addressed the matter through Wyoming Statutes Annotated § 4-10-503(b):

(b) Even if a trust contains a spendthrift provision, a person who has a judgment or court order against the beneficiary for child support or maintenance may obtain from a court an order attaching present or future distributions to, or for the benefit of, the beneficiary.

THE COURT FURTHER FINDS that, while not binding on this Court, these statutes clearly demonstrate that spouses entitled to alimony or maintenance are to be treated differently than a creditor by providing that the interest of a spendthrift trust beneficiary can be reached to satisfy support of a child or a former spouse.

...

...

²³ NRS 166.130

²⁴ Restatement (Third) of Trust § 59 (2003).

1
2 THE COURT FURTHER FINDS that in *Gilbert v. Gilbert*, 447 So.2d 299, the Florida
3 Court of Appeals affirmed the district court's order that allowed the wife to garnish the
4 husband's beneficiary interest in a spendthrift trust to satisfy the divorce judgment regarding
5 alimony payments.

6 THE COURT FURTHER FINDS that the *Gilbert* court found that while "the cardinal
7 rule of construction in trusts is to determine the intention of the settler and give effect to his
8 wishes . . . there is a strong public policy argument which favors subjecting the interest of the
9 beneficiary of a trust to a claim for alimony."²⁵ The Court went on to state that the dependents
10 of the beneficiary should not be deemed to be creditors as such a view would "permit the
11 beneficiary to have the enjoyment of the income from the trust while he refuses to support his
12 dependents whom it is his duty to support."²⁶ The *Gilbert* court went on to state that a party's
13 responsibility to pay alimony "is a duty, not a debt."²⁷

14
15 THE COURT FURTHER FINDS that there is a strong public policy argument in favor
16 of subjecting the interest of the beneficiary of a trust to a claim for spousal support and child
17 support, and, as such, Mr. Nelson's beneficiary interest in the ELN Trust should be subjected to
18 Mrs. Nelson award of spousal support and child support.

19
20 *Attorney's Fees*

21 THE COURT FURTHER FINDS that NRS 18.010(2)(b) provides, in pertinent part, for
22 the award of attorney's fees to the prevailing party: "when the court finds that the claim,
23 counterclaim, cross-claim or third-party complaint or defense of the opposing party was
24 brought or maintained without reasonable ground or to harass the prevailing party."

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27 ²⁵ Id at 301.

28 ²⁶ *Gilbert v. Gilbert*, 447 So.2d 299, 301

²⁷ Id at 301.

1
2 THE COURT FURTHER FINDS that Mr. Nelson, as the Investment Trustee for the
3 ELN Trust, was the person authorized to institute legal action on behalf of the Trust.

4 THE COURT FURTHER FINDS that Mr. Nelson did not request that the ELN Trust
5 move to be added as a necessary party to these proceedings until almost two years after
6 initiating this action and following the initial six days of trial. It is apparent to this Court that
7 Mr. Nelson was not satisfied with the tenor of the courts preliminary "findings" in that it was
8 not inclined to grant his requested relief, and, consequently, decided to pursue a "second bite at
9 the apple" by requesting that the ELN Trust pursue being added as a necessary party.
10

11 THE COURT FURTHER FINDS that adding the ELN Trust as a necessary party at this
12 rather late stage of the proceedings, resulted in extended and protracted litigation including the
13 re-opening of Discovery, the recalling of witnesses who had testified at the initial six days of
14 trial, and several additional days of trial.

15 THE COURT FURTHER FINDS that Mr. Nelson's position that he had a conflict of
16 interest which prevented him from exercising his authority to institute legal action on behalf of
17 the ELN Trust was not credible as he had appeared before this Court on numerous occasions
18 regarding community waste issues and the transfer of assets from the ELN Trust and the LSN
19 Trust and had never raised an issue as to a conflict of interest.
20

21 THE COURT FURTHER FINDS that while both parties were aware of the existence of
22 the ELN and LSN Trusts from the onset of this litigation, and, as such, Mrs. Nelson could have
23 moved to add the ELN Trust as a necessary party, Mr. Nelson had consistently maintained
24 throughout his initial testimony that the assets held in the ELN Trust and the LSN Trusts were
25 property of the community.
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1
2 THE COURT FURTHER FINDS that, while this Court fully respects and supports a
3 party's right to fully and thoroughly litigate its position, Mr. Nelson's change in position as to
4 the character of the property of the ELN Trust and LSN Trust in an attempt to get a "second
5 bite of the apple", resulted in unreasonably and unnecessarily extending and protracting this
6 litigation and additionally burdening this Court's limited judicial resources, thereby justifying
7 an award of reasonable attorney fees and costs in this matter.
8

9 THE COURT FURTHER FINDS that in considering whether or not to award
10 reasonable fees and cost this Court must consider "(1) the qualities of the advocate: his ability,
11 his training, education, experience, professional standing and skill; (2) the character of the work
12 to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility
13 imposed and the prominence and character of the parties where they affect the importance of
14 the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given
15 to the work; (4) the result: whether the attorney was successful and what benefits were
16 derived." *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349 (1969).
17

18 THE COURT FURTHER FINDS Attorney Dickerson has been Mrs. Nelson's legal
19 counsel continuously since September 2009 and is a very experienced, extremely skillful and
20 well-respected lawyer in the area of Family Law. In addition, this case involved some difficult
21 and complicated legal issues concerning Spendthrift Trusts and required an exorbitant
22 commitment of time and effort, including the very detailed and painstaking review of
23 voluminous real estate and financial records. Furthermore, Attorney Dickerson's skill, expertise
24 and efforts resulted in Mrs. Nelson's receiving a very sizeable and equitable property
25 settlement.
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1
2 THE COURT FURTHER FINDS that upon review of attorney Dickerson's
3 Memorandum of Fees and Costs, this Court feels that an award of attorney fees in the amount
4 of \$144,967 is fair and reasonable and warranted in order to reimburse Mrs. Nelson for the
5 unreasonable and unnecessary extension and protraction of this litigation by Mr. Nelson's
6 change of position in regards to the community nature of the property and his delay in having
7 the ELN Trust added as a necessary party which added significant costs to this litigation.
8

9 THE COURT FURTHER FINDS that while the Court could invalidate the Trusts based
10 upon Mr. Nelson's testimony as to community nature of the assets held by each Trust, the
11 breach of his fiduciary duty as a spouse, the breach of his fiduciary duty as an investment
12 trustee, the lack of Trust formalities, under the principles of a constructive trust, and under the
13 doctrine of unjust enrichment, the Court feels that keeping the Trusts intact, while transferring
14 assets between the Trusts to "level off the Trusts", would effectuate the parties clear intentions
15 of "supercharging" the protection of the assets from creditors while ensuring that the respective
16 values of the Trusts remained equal.
17

18 THE COURT FURTHER FINDS that in lieu of transferring assets between the Trusts
19 to level off the Trust and to achieve an equitable allocation of the assets between the Trusts as
20 envisioned by the parties, the Court could award a sizable monetary judgment against Mr.
21 Nelson for the extensive property and monies that were transferred from the LSN Trust to the
22 ELN Trust, at his direction, and issue a corresponding charging order against any distributions
23 to Mr. Nelson until such judgment was fully satisfied.
24

25 ...

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28
FRANK R. SULLIVAN
DISTRICT JUDGE

FAMILY DIVISION, DEPT. O
LAS VEGAS NV 89101

1
2 THE COURT FURTHER FINDS that the Court has serious concerns that Mrs. Nelson
3 would have a very difficult time collecting on the judgment without the need to pursue endless
4 and costly litigation, especially considering the extensive and litigious nature of these
5 proceedings.

6
7 THE COURT FURTHER FINDS that due to Mr. Nelson's business savvy and the
8 complexity of his business transactions, the Court is concerned that he could effectively deplete
9 the assets of the ELN Trust without the need to go through distributions, thereby circumventing
10 the satisfaction of the judgment via a charging order against his future distributions.

11 THE COURT FURTHER FINDS that its concern about Mr. Nelson depleting the assets
12 of the ELN Trust seems to be well founded when considering the fact that Bankruptcy Judge
13 Olack found that Mr. Nelson depleted the assets of Dynasty on the eve of its bankruptcy filing.

14 THE COURT FURTHER FINDS that upon review of Mr. Bertsch's Second
15 Application of Forensic Accountants for Allowance of Fees and Reimbursement of Expenses
16 for the Period from April 1, 2012 through July 25, 2012, Mr. Bertsch is entitled to payment of
17 his outstanding fees in the amount of \$35,258.

18
19 THE COURT FURTHER FINDS that in preparing this Decree of Divorce, the
20 monetary values and figures reflected herein were based on values listed in Mr. Bertsch's
21 report and the testimony elicited from the July and August 2012 hearings.²⁸

22
23 THE COURT FURTHER FINDS that as to the repurchase of Wyoming Downs by the
24 ELN Trust via the Dynasty Development Group, this Court is without sufficient information
25 regarding the details of the repurchase of the property, the value of the property and the
26 encumbrances on the property to make a determination as to the disposition of the property,

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28 ²⁸ *Supra*, note 6.

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and, accordingly, is not making any findings or decisions as to the disposition of the Wyoming Downs property at this time.

Conclusion

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the bonds of matrimony now existing between Eric and Lynita Nelson are dissolved and an absolute Decree of a Divorce is granted to the parties with each party being restored to the status of a single, unmarried person.

IT IS FURTHER ORDERED that the Brianhead cabin, appraised at a value of \$985,000 and currently held jointly by the ELN Trust and the LSN Trust, is to be divided equally between the Trusts.

IT IS FURTHER ORDERED that both parties shall have the right of first refusal should either Trust decide to sell its interest in the Brianhead cabin.

IT IS FURTHER ORDERED that the 66.67% interest in the Russell Road property (\$4,333,550) and the 66.67% interest in the \$295,000 note/deed for rents and taxes (\$196,677) currently held by the ELN Trust, shall be equally divided between the ELN Trust and the LSN Trust.

IT IS FURTHER ORDERED that both parties shall have the right of first refusal should either Trust decide to sell its interest in the Russell Road property.

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1
2 IT IS FURTHER ORDERED that the following properties shall remain in or be
3 transferred into the ELN Trust:

<u>Property Awarded</u>	<u>Value</u>
Cash	\$ 80,000
Arizona Gateway Lots	\$ 139,500
Family Gifts	\$ 35,000
Gift from Nikki C.	\$ 200,000
Bella Kathryn Property	\$1,839,495
Mississippi Property (121.23 acres)	\$ 607,775
Notes Receivable	\$ 642,761
Banone AZ Properties	\$ 913,343
Dynasty Buyout	\$1,568,000
½ of Brianhead Cabin	\$ 492,500
<u>1/3 of Russell Road (+ note for rents)</u>	<u>\$2,265,113.50 (\$2,166,775 + \$98,338.50)</u>
Total	\$8,783,487.50

13 IT IS FURTHER ORDERED that the following properties shall remain in or be
14 transferred into the LSN Trust:

<u>Property Awarded</u>	<u>Value</u>
Cash	\$ 200,000
Palmyra Property	\$ 750,000
Pebble Beach Property	\$ 75,000
Arizona Gateway Lots	\$ 139,500
Wyoming Property (200 acres)	\$ 405,000
Arnold Property in Miss.	\$ 40,000
Mississippi RV Park	\$ 559,042
Mississippi Property	\$ 870,193
Grotta 16.67% Interest	\$ 21,204
Emerald Bay Miss. Prop.	\$ 560,900
Lindell Property	\$1,145,000
Banone, LLC	\$1,184,236
JB Ramos Trust Note Receivable	\$ 78,000
½ of Brianhead Cabin	\$ 492,500
<u>1/3 of Russell Road (+ note for rents)</u>	<u>\$2,265,113.50 (\$2,166,775 + \$98,338.50)</u>
Total	\$8,785,988.50

28
FRANK R SULLIVAN
DISTRICT JUDGE

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1
2 IT IS FURTHER ORDERED that due to the difference in the value between the ELN
3 Trust and the LSN Trust in the amount of \$153,499, the Trusts shall be equalized by
4 transferring the JB Ramos Trust Note from the Notes Receivable of the ELN Trust, valued at
5 \$78,000, to the LSN Trust as already reflected on the preceding page.²⁹

6 IT IS FURTHER ORDERED that the injunction regarding the \$1,568,000 reflected in
7 the account of Dynasty Development Group, LLC, ("Dynasty Buyout") and currently held in a
8 blocked trust account, is hereby dissolved.

9
10 IT IS FURTHER ORDERED that the ELN Trust shall use the distribution of the
11 \$1,568,000, herein awarded to the ELN Trust, to pay off the lump sum spousal support
12 awarded to Mrs. Nelson in the amount of \$800,000. Said payment shall be remitted within 30
13 days of the date of this Decree.

14 IT IS FURTHER ORDERED that Mrs. Nelson is awarded child support arrears in the
15 amount of \$87,775 and that the ELN Trust shall use the distribution of the \$1,568,000, herein
16 awarded to the ELN Trust, to pay off the child support arrears awarded to Mrs. Nelson via a
17 lump sum payment within 30 days of issuance of this Decree.

18
19 IT IS FURTHER ORDERED that the ELN Trust shall use the distribution of the
20 \$1,568,000, herein awarded to the ELN Trust, to pay Mr. Bertsch's outstanding fees in the
21 amount of \$35,258 within 30 days of issuance of this Decree.³⁰

22 IT IS FURTHER ORDERED that the ELN Trust shall use the distribution of the
23 \$1,568,000, herein awarded to the ELN Trust, to reimburse Mrs. Nelson for attorney's fees
24 paid to Attorney Dickerson in the amount of \$144,967 in payment of fees resulting from Mr.
25

26
27 ²⁹ Defendant's Exhibit GGGGG.

28 ³⁰ Second Application of Forensic Accountants for Allowance of Fees and Reimbursement of Expenses for the
Period from April 1, 2012 through July 25, 2012.

1
2 Nelson's unreasonable and unnecessary extension and protraction of this litigation. Said
3 payment shall be remitted to Mrs. Nelson within 30 days of the date of this Decree.

4 IT IS FURTHER ORDERED that the funds remaining, in the amount of approximately
5 \$500,000, from the distribution of the \$1,568,000, herein awarded to the ELN Trust, after the
6 payment of the spousal support, child support arrears, Mr. Bertsch's fees and reimbursement of
7 the attorney fees to Mrs. Nelson, shall be distributed to Mr. Nelson within 30 days of issuance
8 of this Decree
9

10 IT IS FURTHER ORDERED that Mr. Nelson shall pay Mrs. Nelson \$2080 in child
11 support for the month of June 2013 for their children Garrett and Carli.

12 IT IS FURTHER ORDERED that Mr. Nelson shall pay Mrs. Nelson \$1,058 a month in
13 support of their child Carli, commencing on July 1, 2013 and continuing until Carli attains the
14 age of majority or completes high school, which ever occurs last.
15

16 IT IS FURTHER ORDERED that Mr. Nelson shall maintain medical insurance
17 coverage for Carli.

18 IT IS FURTHER ORDERED that any medical expenses not paid by any medical
19 insurance covering Carli shall be shared equally by the parties, with such payments being made
20 pursuant to the Court's standard "30/30" Rule.

21 IT IS FURTHER ORDERED that the parties shall equally bear the private education
22 costs, including tuition, of Carli's private school education at Faith Lutheran.
23

24 ...

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26
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28
FRANK R. SULLIVAN
DISTRICT JUDGE

FAMILY DIVISION, DEPT. O
LAS VEGAS NV 89101

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IT IS FURTHER ORDERED that the parties shall keep any personal property now in their possession and shall be individually responsible for any personal property, including vehicles, currently in their possession.

Dated this 3rd day of June, 2013.


Honorable Frank P. Sullivan
District Court Judge – Dept. O

FRANK P. SULLIVAN
DISTRICT JUDGE

FAMILY DIVISION, DEPT. O
LAS VEGAS NV 89101

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1 MOT
2 THE DICKERSON LAW GROUP
3 ROBERT P. DICKERSON, ESQ.
4 Nevada Bar No. 000945
5 JOSEF M. KARACSONYI, ESQ.
6 Nevada Bar No. 010634
7 1745 Village Center Circle
8 Las Vegas, Nevada 89134
9 Telephone: (702) 388-8600
10 Facsimile: (702) 388-0210
11 Email: info@dickersonlawgroup.com
12 Attorneys for LYNITA SUE NELSON

Alan D. Lamm
CLERK OF THE COURT

RECEIVED
JUL 11 2013

8 EIGHTH JUDICIAL DISTRICT COURT
9 FAMILY DIVISION

10 CLARK COUNTY, NEVADA

11 ERIC L. NELSON,
12 Plaintiff/Counterdefendant,
13 v.
14 LYNITA SUE NELSON,
15 Defendant/Counterclaimant.

CASE NO. D-09-411537-D
DEPT NO. "O"

16 ERIC L. NELSON NEVADA TRUST
17 dated May 30, 2001, and LSN NEVADA
18 TRUST dated May 30, 2001,

19 Necessary Parties (joined in this
20 action pursuant to Stipulation and
21 Order entered on August 9, 2011)

22 LANA MARTIN, as Distribution Trustee of
23 the ERIC L. NELSON NEVADA TRUST
24 dated May 30, 2001,

25 Necessary Party (joined in this action
26 pursuant to Stipulation and Order
27 entered on August 9, 2011)/ Purported
28 Counterclaimant and Crossclaimant,

26 v.

1 LYNITA SUE NELSON and ERIC
2 NELSON,

3 Purported Cross-Defendant and
4 Counterdefendant,

5 LYNITA SUE NELSON,

6 Counterclaimant, Cross-Claimant,
7 and/or Third Party Plaintiff,

8 v.

9 ERIC L. NELSON, individually and as the
10 Investment Trustee of the ERIC L. NELSON
11 NEVADA TRUST dated May 30, 2001; the
12 ERIC L. NELSON NEVADA TRUST dated
13 May 30, 2001; LANA MARTIN, individually,
14 and as the current and/or former Distribution
15 Trustee of the ERIC L. NELSON NEVADA
16 TRUST dated May 30, 2001, and as the
17 former Distribution Trustee of the LSN
18 NEVADA TRUST dated May 30, 2001);

19 Counterdefendant, and/or
20 Cross-Defendants, and/or
21 Third Party Defendants.

22 NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH
23 THE CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED WITH A COPY OF
24 YOUR RESPONSE WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE
25 TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN TEN (10)
26 DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF
27 BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE SCHEDULED
28 HEARING DATE.

29 MOTION FOR PAYMENT OF FUNDS BELONGING TO DEFENDANT
30 PURSUANT TO COURT'S DECREE TO ENSURE RECEIPT OF SAME, AND
31 FOR IMMEDIATE PAYMENT OF COURT APPOINTED EXPERT

32 COMES NOW Defendant, LYNITA SUE NELSON ("Lynita"), by and through
33 her attorneys, ROBERT P. DICKERSON, ESQ., and JOSEF M. KARACSONYI, ESQ.,
34 of THE DICKERSON LAW GROUP, and respectfully moves this Honorable Court for
35 the following relief:

36 1) An Order directing that \$1,032,742.00 and \$35,258.00 be paid directly to
37 Lynita and Court appointed expert, Larry Bertsch ("Mr. Bertsch"), from the

1 \$1,568,000.00 being held by David Stephens, Esq. ("Mr. Stephens"), in accordance with
2 this Court's Decree of Divorce entered June 3, 2013;

3 2) In the alternative, if the \$1,568,000.00 has already been transferred by Mr.
4 Stephens to Lana Martin ("Ms. Martin") and the ELN Trust, and/or Plaintiff, Eric
5 Nelson ("Eric"), for an Order directing Ms. Martin and Eric to immediately transfer the
6 sum of \$1,032,742.00 to Lynita and \$35,258.00 to Mr. Bertsch; and

7 3) Any other orders that this Court deems necessary and appropriate.

8 This Motion is made and based upon the records, files and pleadings on file
9 herein, including the Court's June 3, 2013 Decree of Divorce, the Points and Authorities
10 submitted herewith, Lynita's affidavit attached hereto, and such other and further
11 evidence as may be adduced at the hearing of this matter.

12 DATED this 5th day of June, 2013.

13 THE DICKERSON LAW GROUP

14
15 By Robert P. Dickerson
16 ROBERT P. DICKERSON, ESQ.
17 Nevada Bar No. 000945
18 JOSEF M. KARACSONYI, ESQ.
19 Nevada Bar No. 010634
20 1745 Village Center Circle
21 Las Vegas, Nevada 89134
22 Attorneys for LYNITA SUE NELSON
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DATED this 5th day of June, 2013.

By Robert P. Dickerson
 ROBERT P. DICKERSON, ESQ.
 Nevada Bar No. 000945
 JOSEF M. KARACSONYI, ESQ.
 Nevada Bar No. 010634
 1745 Village Center Circle
 Las Vegas, Nevada 89134
 Attorneys for LYNITA SUE NELSON

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. FACTUAL STATEMENT

3 On June 3, 2013, this Court issued its Decree of Divorce ("Decree"), which was
4 fifty (50) pages in length and contained extensive and detailed findings and Court
5 Orders. In the Decree, Lynita was awarded lump sum alimony in the amount of
6 \$800,000.00, child support arrears in the amount of \$87,775.00, and attorneys' fees in
7 the amount of \$144,967.00 from Eric and the ELN Trust (for a total amount owed to
8 Lynita of \$1,032,742.00). The Court also ordered that Eric and the ELN Trust pay the
9 outstanding balance owed to Mr. Bertsch in the amount of \$35,258.00. All of the
10 aforementioned sums were ordered to be paid within thirty (30) days of the issuance of
11 the Decree from the approximately \$1,568,000.00 which was previously¹ enjoined in
12 Mr. Stephens' trust account.

13 The Court was extremely clear in its Decree that the reason it was awarding lump
14 sum alimony to Lynita, and ordering that the \$1,568,000.00 be used to satisfy such
15 lump sum alimony, child support arrears, and attorneys' fees, was due to the Court's well
16 founded concerns that absent such an Order Lynita would never receive such sums from
17 Eric and/or the ELN Trust. Specifically, the Court concluded that Eric's overall behavior
18 and attitude during the divorce proceedings "illustrate[d] the possibility that he might
19 attempt to liquidate, interfere, hypothecate or give away assets out of the ELN Trust to
20 avoid payment of his support obligations to Mrs. Nelson"

21 The Court's Decree dissolves the injunction freezing the \$1,568,000.00 in Mr.
22 Stephens' trust account, and allows for said monies to be distributed to Eric and the
23 ELN Trust before Eric and the ELN Trust are required to provide Lynita and Mr.
24 Bertsch their respective portions of same. It is feared that Lynita will never receive her
25 portion of said funds, and that instead, Eric and the ELN Trust will refuse to pay Lynita
26 her share, and/or completely dissipate said funds, thereby precluding Lynita from

27 _____
28 ¹ The Court's Decree dissolves the previously issued injunction.

1 possibly ever receiving her lump sum alimony, child support arrears, and attorneys' fees.²
2 The Court's extensive findings detail why such fears are justified, and how such actions
3 are more than a mere possibility. This is exactly the result the Court was attempting to
4 avoid by awarding Lynita lump sum alimony, child support arrears, and attorneys' fees
5 from the \$1,568,000.00 previously frozen by the Court.

6 As the Court is aware, Lynita received very little of the parties' community
7 income, and no child support or maintenance, during the pendency of these proceedings.
8 If Lynita does not receive the \$1,032,742.00 due to her she will suffer irreparable harm,
9 as she has several outstanding obligations and has an immediate need for such funds.
10 Currently, Lynita has approximately \$19,000.00 in her bank accounts, but has
11 outstanding credit card balances of \$53,674.00, current household bills of \$3,130.00,
12 and an outstanding balance for attorneys' fees and costs of over \$140,000.00. If Lynita
13 does not receive the monies awarded to her from the \$1,568,000.00 previously enjoined
14 in Mr. Stephens' trust account she will be unable to support herself and will suffer
15 irreparable financial harm. Lynita previously made several requests for temporary
16 support and maintenance, most recently in her Motion for Temporary Support and to
17 Establish Child Support Orders ("Motion for Support"), filed January 28, 2013 (over
18 four (4) months ago). The hearing on Lynita's Motion for Support was continued and
19 eventually vacated by the Court because the Court intended for the Decree to resolve
20 Lynita's requests, and provide her with any support she required. If the Court does not
21 direct Lynita's monies to be paid directly to her immediately, it is likely that Eric and
22 the ELN Trust will attempt to withhold or dissipate same, thereby attempting to defeat
23 the Court's Orders and intent and further delaying Lynita's receipt of desperately needed
24 monies.

25 ...

26 ...

27
28 ² For the same reasons, it is also feared that Mr. Bertsch will not receive his outstanding balance from the
\$1,568,000.00 previously frozen by the Court.

1 II. LEGAL ANALYSIS

2 Nevada Revised Statutes, Section 125.240 (2013), provides:

3 NRS 125.240 Enforcement of judgment and orders: Remedies. The final
4 judgment and any order made before or after judgment may be
5 enforced by the court by such order as it deems necessary. A receiver
6 may be appointed, security may be required, execution may issue, real or
7 personal property of either spouse may be sold as under execution in other
8 cases, and disobedience of any order may be punished as a contempt.

9 Furthermore, it is well settled that the Court has inherent authority to protect the
10 dignity and decency of its proceedings, and to enforce its decrees. *See, e.g., Halverson v.*
11 *Hardcastle*, 123 Nev. 29, 163 P.3d 428, 440 (2007).

12 It is necessary that the Court issue an Order requiring Mr. Stephens' to
13 immediately pay to Lynita the \$1,032,742.00 she is entitled to from the approximately
14 \$1,568,000.00 being held in Mr. Stephens' trust account, and to pay to Mr. Bertsch the
15 sum of \$35,258.00. In the event Eric and/or the ELN Trust have already received the
16 \$1,568,000.00 in Mr. Stephens' trust account, the Court should issue an Order
17 requiring the ELN Trust and/or Eric to pay Lynita her \$1,032,742.00, and Mr. Bertsch
18 his \$32,258.00, from said funds immediately. Such Orders are necessary to enforce the
19 Court's Decree, and prevent the dissipation of the funds Lynita and Mr. Bertsch are
20 entitled to receive. Without such an Order, the Court's concerns that Lynita may never
21 actually receive her lump sum alimony, child support arrears, and attorneys' fees, or will
22 be delayed in her receipt of same, are likely to be realized.

23 Eric and the ELN Trust have no valid objection to the requests for relief made
24 herein. Lynita is simply requesting receipt of the monies awarded to her in the Court's
25 Decree, and that Mr. Bertsch receive the monies ordered to be paid to him in the
26 Decree, to which Eric and the ELN Trust have no right or interest. If Eric or the ELN
27 Trust oppose these requests it will only make it more clear why such Orders are
28 necessary, and demonstrate further the validity of Lynita's and the Court's concerns that
Eric and/or the ELN Trust will continue to disobey and attempt to defeat the Court's
Orders.

1 III. CONCLUSION

2 For the reasons set forth above in this Motion, Lynita respectfully requests the
3 following relief:

4 1) An Order directing that \$1,032,742.00 and \$35,258.00 be paid directly to
5 Lynita and Mr. Bertsch from the \$1,568,000.00 being held by Mr. Stephens, in
6 accordance with this Court's Decree of Divorce entered June 3, 2013;

7 2) In the alternative, if the \$1,568,000.00 has already been transferred by Mr.
8 Stephens to Ms. Martin and the ELN Trust, and/or Eric, for an Order directing Ms.
9 Martin and Eric to immediately transfer the sum of \$1,032,742.00 to Lynita and
10 \$35,258.00 to Mr. Bertsch; and

11 3) Any other orders that this Court deems necessary and appropriate.

12 Dated this 5th day of June, 2013.

13 Respectfully Submitted by:

14 THE DICKERSON LAW GROUP

15
16 By Robert P. Dickerson
17 ROBERT P. DICKERSON, ESQ.
18 Nevada Bar No. 000945
19 JOSEF M. KARACSONYI, ESQ.
20 Nevada Bar No. 010634
21 1745 Village Center Circle
22 Las Vegas, Nevada 89134
23 Attorneys for LYNITA SUE NELSON
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made by Eric. The problem, however, is that Lynita's Post-Trial Memorandum blatantly and in bad-faith misrepresents Eric's testimony. Indeed, Eric never represented to this Court nor testified that:

1. "the creation of the 1993 Agreement, 1993 revocable trusts, and 2001 ELN and LSN Trust, were never intended to affect the parties' rights in the event of dissolution."
2. "he solely and exclusively managed and controlled the assets of the ELN and LSN Trusts, without interference or input from any other party associated with such trusts (e.g., the Distribution Trustees), and without regard to the formalities of such trusts, and Chapter 166 of Nevada Revised Statutes."

Indeed, a simple review of Eric's testimony cited within Lynita's Post-Trial Memorandum will show that Eric never used the phrases: "intent," "Distribution Trustees," "Chapter 166 of the Nevada Revised Statutes," or "Separate Property Agreement." Had Eric testified that the creation of the Separate Property Agreement, Separate Property Trusts and Self-Settled Spendthrift Trusts were never intended to affect the parties' right in the event of dissolution, Lynita would have undoubtedly cited said testimony. Lynita's inability to do so conclusively establishes that no such testimony was elicited from Eric, and that she is intentionally misrepresenting Eric's testimony to bolster her self-serving claims.

Because Eric's testimony does not say what Lynita wants it to say, she mistakenly concludes that his testimony establishes certain self-serving positions that are absurd. Indeed, Lynita's contention that the Parties "believed that all assets contained in the ELN and LSN Trusts were community property, subject to their complete dominion and control" is nonsensical because as described above Lynita only has a discretionary interest in the ELN SSST (to the extent she possesses an interest at all) and Eric only has a discretionary interest in the LSN SSST. Eric's testimony does not establish that "at all times since 2001, Eric exclusively managed all properties in both trusts" as Eric has never had access to the financial accounts of the LSN SSST nor has he managed Lynita's

1 residence at Palmyra. Most relevantly, even if this were true, it would have no bearing on the issues in
2 this case that relate to the ELN SSST.²⁶

3 Although Eric may have made several references to “community” during the first six days of
4 trial; said statements are not controlling under Nevada law, which specifically provides that personal
5 opinion of either spouse as to separate or community character of property is of no moment
6 whatsoever in determining legal status of that property. On the effect of the opinion of a spouse as
7 evidence of the separate or community character of property, the court in *Re Pepper’s Estate*, 158 Cal.
8 619, 625-26, 112 P. 62 (Cal. 1910) stated:

10 Whether the property was community or separate, was a question of law,
11 depending on the manner and time of its acquisition. The opinion of
12 Pepper [the husband] on this legal question was entitled to no weight.

13 This Court recognized that Eric’s “opinion as to whether property is community or separate is not
14 controlling” in its Findings of Fact and Order filed January 31, 2012. Further, Mr. Dickerson has
15 already conceded that a witness cannot render a “legal opinion with respect to community property
16 law.”²⁷

17 If anything, Eric’s testimony illustrates, he for his own interests, and not on behalf of the ELN
18 SSST, was willing to settle this divorce by splitting “every asset 50/50”²⁸ because he was desperate to
19 obtain a divorce for the sake of his kids. Indeed, the first six days of trial were akin to a settlement
20 conference or mediation, and such settlement proposals are inadmissible to prove the
21 validity/invalidity of Lynita’s claims. This basic rule of law was recognized by Lynita’s Counsel at
22 trial wherein Mr. Dickerson repeatedly objected to questions on the basis of settlement discussions.

25 ²⁶ Indeed, it would also be irrelevant as to the operation and validity of the LSN SSST since Lynita had that
26 power under that trust to use whatever agents she wanted to manage the property of the LSN SSST. *See* Article
27 XII, LSN SSST, admitted as Intervenor’s Exhibit No. 25.

27 ²⁷ *See* October 20, 2010, Trial Transcript at p. 319, ll. 19-21 (MR. DICKERSON: To which I object,
28 because he’s just rendered a legal opinion with respect to community property law.”).

²⁸ *See* August 30, 2010, Trial Transcript at p. 49, ll. 10-11.

II. LEGAL ARGUMENT

A. ERIC AND THE ELN SSST ARE SEPARATE PARTIES, AND AS SUCH, STATEMENTS MADE BY ERIC IN HIS INDIVIDUAL CAPACITY CANNOT BIND THE ELN SSST.

Lynita seeks to bind the ELN SSST with her inaccurate and self-serving version of trial testimony elicited by Eric, in his individual capacity and not as Investment Trustee of the ELN SSST, based upon her mistaken belief that Eric and the ELN SSST are one in the same. Lynita however has already stipulated that Eric and ELN SSST are separate parties, and that at no point in the litigation has Eric represented the interests of the ELN SSST. Indeed, on June 24, 2011, Eric filed a Motion to Join Necessary Party, or in the Alternative, to Dismiss Claims Against the ELN SSST, wherein he asserted that Lynita had failed to name the ELN SSST and/or one of its trustees as a party, and as such, relief against the ELN SSST could not be granted. Instead of opposing said motion or otherwise arguing that Eric represented the ELN SSST, or that his testimony, in his individual capacity, bound the ELN SSST, Lynita stipulated that the ELN SSST was a necessary party who was entitled to protect its interests:

that the [ELN SSST] shall be joined as a necessary party, intervening in this action, as complete relief cannot be accorded among the parties without the [ELN SSST] being named a party and the disposition of the action in the absence of the [ELN SSST] will impair or impede its ability to protect its interests and add risk of incurring double, multiple, or otherwise inconsistent obligations.²⁹

Lynita's recent position that testimony elicited from Eric, in his individual capacity as opposed to in his capacity as Investment Trustee of the ELN SSST, binds the ELN SSST has been repeatedly rejected by courts which uniformly hold that for relief to be granted against a trust, the trust must be made a party to the action through the trustee in his/her capacity as trustee and not his/her individual capacity.³⁰ In the case entitled *In re Ashton*, the husband filed a mandamus action in a divorce proceeding that removed him from trusteeship and appointed a new trustee. In granting the writ of

²⁹ See Stipulation and Order at p. 1, l. 23 – p. 2, l. 2, previously filed on August 9, 2011.

³⁰ *In re Ashton*, 266 S.W.3d 602, 604 (Tex. Ct. App. 2008). Indeed, even the cases cited by Lynita in her Post-Trial Memorandum support the proposition a trust can only be bound by its trustee.

1 mandamus, the appellate court found that for “relief to be ordered against a trust, its trustee must be
2 properly before the trial court as a result of service, acceptance, or waiver of process of an
3 appearance.” Further, the appellate court found that although the husband “was before the court in his
4 individual capacity, he was not sued in his capacity as trustee of the I.A. Trust,” and as such, the trial
5 court order was void for lack of jurisdiction over husband as a trustee.³¹ In light of the foregoing,
6 Lynita’s contention that Eric’s statements bind the ELN SSST fails.

7 **B. ERIC PROPERLY DELEGATED THE AUTHORITY TO DEFEND THE ELN SSST AGAINST**
8 **COMMUNITY AND SEPARATE PROPERTY CLAIMS DUE TO HIS INHERENT CONFLICT**
9 **OF INTEREST.**

10 Lynita once again argues that Eric is the only person authorized to institute and defend actions
11 or legal proceedings on behalf of the ELN Trust despite the fact this Court has repeatedly rejected said
12 argument. Indeed, in its June 5, 2012, Findings of Fact and Order the Court³² found:

13 THE COURT FURTHER FINDS that irrespective of the Delegation of
14 Authority or the express terms contained in the ELN Trust, this Court has
15 recognized the fact that Lana Martin, as Distribution Trustee, has acted on
16 behalf of the ELN Trust since it joined this action, and, as such, does not
17 lack standing . . .

18 THE COURT FURTHER FINDS that alternatively, even though Lana
19 Martin is the Distribution Trustee and is not expressly authorized to
20 employ and compensate professionals under the terms of the ELN Trust,
21 Mr. Nelson, as Investment Trustee, should not maintain the responsibility
22 “to employ and compensate, out of the principal or income or both . . .
23 such agents, etc...” in this action due to an apparent conflict such
24 arrangement would create as the ELN Trust is alleging that it is a separate
25 entity representing its own interests, apart from and contrary to Mr. and
26 Mrs. Nelson’s interests in this divorce action.

27 ³¹ This rule of law was also applied in: *In re Sovereign Partners*, 179 B.R. 656, 662 (D. Nev. 1995) (“Party
28 appearing in action in one capacity, individual or representative, is not thereby bound by or entitled to benefits
of rules of res judicata in subsequent action in which he appears in another capacity.”); *Stiltjes v. Ridco*
Exterminating Co., Inc., 197 Ga. App. 852, 853, 399 S.E.2d 708, 709 (1990) *aff’d*, 261 Ga. 697, 409 S.E.2d 847
(1991) (wife in her individual capacity and in her capacity as administratrix are legally different persons);
Amrhein v. Amrhein, 560 N.E.2d 157, 160 (Mass. Ct. App. 1990) (district court erred in ordering the husband to
execute a mortgage on property owned by the trust where the husband had not been joined in his capacity as
trustee); *Goff v. MacDonald*, 333 Mass. 146, 129 N.E.2d 115 (1955) (judgments in suits in which trustee acted
individually do not bind trustee when acting as trustee).

³² See also Findings of Fact and Order dated January 31, 2012, wherein this Court found that Lana must be
able to “use any funds or assets necessary to defend against any lawsuits, including this divorce action” and
stated that Ms. Martin was “free to seek leave of this Court to obtain any funds or assets necessary to defend
against any lawsuits, including this divorce action, that will have a direct effect on the value of any properties
that are contained in the ELN Trust and, as such, are such susceptible to a community interest claim.”

Lynita also ignores the provisions of the ELN SSST which grant Eric, as Investment Trustee, unequivocal authority to appoint/delegate tasks to agents as he deems necessary or desirable.³³

As this Court recognized in its January 31, 2012, and June 5, 2012, Findings of Fact and Order, Eric delegated his authority to institute and defend the ELN SSST against any claims that the assets owned by the ELN SSST are community or separate property due to his inherent conflict of interest. Said conflict arises because either Eric and/or Lynita contend or have contended that some or all of the assets owned by the ELN SSST are community and/or separate property, and as such, are subject to division in the instant divorce proceeding, when in reality, neither Eric nor Lynita possess a community or separate property interest in any assets owned by the ELN SSST. Eric's delegation is consistent with the general rule of law that "[a] trustee should do everything in his power to avoid a conflict of interest."³⁴

C. LYNITA CANNOT INVOKE JUDICIAL ESTOPPEL BECAUSE SHE HAS FAILED TO ESTABLISH THE NECESSARY ELEMENTS.

"[J]udicial estoppel is an extraordinary remedy that should be cautiously applied. . . ." ³⁵ In Nevada, judicial estoppel applies when the following five criteria are met:

(1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (*i.e.*, the tribunal adopted the

³³ See generally, ELN Trust, admitted as Intervenor's Trial Exhibit No. 86 on July 17, 2012, at Article XII, Section 12.1, 12.2 and 12.6. See also NRS 164.770(1) ("A Trustee may delegate functions of investment and management that a prudent trustee of comparable skills could properly delegate under the circumstances."). Further, Article XII, Section 12.6 provides the: "Trustee [which is defined as in the Preamble of the ELN Trust as both Investment Trustee and Distribution Trustee] is authorized to employ attorneys, accountants, investment managers, specialists, and such other agents as the Trustee shall deem necessary or desirable."

³⁴ *Riley v. Rockwell*, 103 Nev. 698, 701, 747 P.2d 903, 905 (1987). See also *Lefkovitz v. Wagner*, 395 F.3d 773, 781 (7th Cir. 2005) ("trustees can consent to join forces with others in a litigation and delegate control to one or more of those others, who may have a larger stake or better counsel."); *Grimmway Enterprises, Inc. v. PIC Fresh Global, Inc.*, 548 F. Supp. 2d 840 (E.D. Cal. 2008) (a trustee is bound to act in the highest good faith toward the trust beneficiaries and must not occupy a position where his or her interests either conflict with those of the beneficiaries or even where the trustee is exposed to the temptation of acting contrary to the best interest of the beneficiaries).

³⁵ *Mainor v. Nault*, 120 Nev. 750, 765, 101 P.3d 308, 318 (Nev. 2004) (Nevada Supreme Court held judicial estoppel inapplicable because inconsistent position taken in the course of settlement cannot be deemed to have been successfully asserted in a prior judicial proceeding).

position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake.³⁶

Here, judicial estoppel cannot apply because: (1) the same party has not taken two positions; and (2) the Court did not accept and/or adopt Eric's prior testimony. As previously explained, Eric and the ELN SSST are not the same party, and as such, testimony elicited by Eric in his individual capacity cannot and does not bind the ELN SSST.³⁷ Further, Eric's testimony regarding the character of property owned by the ELN SSST is incompetent and irrelevant for the reasons set forth *supra*: personal opinion of either spouse as to separate or community character of property is of no moment whatsoever in determining legal status of that property.³⁸ Since his prior testimony is incompetent, Eric has not taken inconsistent positions.

Lynita's reliance on judicial estoppel also fails because this Court has not adopted or accepted Eric's prior testimony as true. The Court has not made a determination as to whether the property owned by the ELN SSST is community, separate or neither. To the contrary, this Court has already made it clear that Eric's "opinion as to whether property is community or separate is not controlling."³⁹ As such, judicial estoppel cannot apply.

³⁶ *Marcuse v. Del Webb Communities, Inc.*, 13 Nev. 278, 287, 163 P.3d 462, 468-469 (Nev. 2007) (judicial estoppel was applied because party took "totally inconsistent positions in separate judicial proceedings.")

³⁷ Even if Eric's testimony did bind the ELN SSST trust however, judicial estoppel would still not apply because Eric's trial testimony is not what Lynita represents it to be in her Post-Trial Memorandum.

³⁸ Lynita's reliance upon NRS 47.240 fails for the same reasons. Notwithstanding, if the facts were presumed, the direct evidence introduced at trial (e.g. Burr's testimony that there was no agreement that the Separate Property Agreement, Separate Property) renders the existence of the presumed facts more probable than not thereby constituting a finding against the existence of the presumed fact under NRS 47.190.

³⁹ See Findings of Fact and Order previously filed on January 31, 2012.

D. EQUITABLE ESTOPPEL IS INAPPROPRIATE BECAUSE LYNITA KNEW THAT THE ASSETS THAT FUNDED THE ELN SSST WERE ERIC'S SEPARATE PROPERTY AND THAT SHE POSSESSED NO COMMUNITY INTEREST THEREIN.

Lynita cannot meet the burden⁴⁰ of invoking equitable estoppel because she failed to establish that the ELN SSST has led her to believe that she possessed a community property interest in its assets, or that she was “ignorant of the true state of facts.”⁴¹ Unlike the case Lynita relied upon in her Post-Trial Memorandum, *In re Hansen Living Trust* (wherein equitable estoppel was invoked because the facts were undisputed), the facts in this matter are heavily disputed. As evidenced by the Separate Property Agreement, Separate Property Trusts and Self-Settled Spendthrift Trusts, and the dozens (if not hundreds) of deeds that she executed, Lynita was aware that the assets that funded the ELN SSST were Eric’s separate property and that she possessed no community interest therein. The only position taken by the ELN SSST during the course of this litigation is that neither Eric nor Lynita maintain a community or separate property interest in its assets, and Lynita failed to introduce any evidence indicating otherwise.

Lynita’s contention that Eric, individually, and not in his capacity as Investment Trustee of the ELN SSST, “intentionally, led [her] to believe that all of the property held by the ELN and LSN Trusts was community property . . . during this litigation” is nonsensical since Lynita filed a Counterclaim on June 22, 2009, nearly eighteen months prior to the trial of this matter, wherein she alleged that Eric “has indicated his intent to seek enforcement of the [Separate Property Agreement], thereby placing the interpretation, validity, and enforceability of such Agreement at issue.”⁴² Consequently, she knew

⁴⁰ See *Breliant v. Preferred Equities Corp.*, 112 Nev. 663, 674, 918 P.2d 314, 321 (1996) (stating that burden of proving equitable estoppel is on party asserting estoppel).

⁴¹ *In re Harrison Living Trust*, 121 Nev. 217, 223, 112 P.3d 1058, 1062 (2005) (“the elements to equitable estoppel are: (1) the party to be estopped must be apprised of the true facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting estoppel has the right to believe it was so intended; (3) the party asserting the estoppel must be ignorant of the true state of facts; (4) he must have relied to his detriment on the conduct of the party to be estopped”).

⁴² See Answer to Complaint for Divorce and Counterclaim for Divorce and Declaratory Relief at p. 9, ll. 26-28, previously filed on June 22, 2009.

that Eric, in his individual capacity, had taken the position that she did not possess a community interest in the ELN SSST, and Lynita's argument to the contrary is disingenuous.

Because she failed to establish the requisite elements for equitable estoppel, Lynita requests that this Court turn a blind-eye to the law and focus only on equity. However, equity demands that this Court find that neither Eric nor Lynita have a community or separate property interest in the ELN SSST. It is inequitable for Lynita, who has reaped the benefit of having her separate property protected from creditors for nearly twenty years, including the liabilities identified by Bertsch⁴³ and Gerety,⁴⁴ to seek to invalidate the ELN SSST because the assets contained therein now exceed the assets owned by the LSN SSST.⁴⁵ Even the case most heavily relied upon by Lynita, *Milender v. Marcum*, 110 Nev. 972, 979, 879 P.2d 748, 752 (1994), stands for the proposition that it would be inequitable to invalidate the ELN SSST, because in *Milender* the Nevada Supreme Court refused to invalidate a document (divorce decree), which was agreed to and relied upon by both the husband and wife, based upon an "unwritten, unspoken condition precedent."

E. LYNITA'S REQUEST THAT THIS COURT IGNORE THE PAROLE EVIDENCE RULE SHOULD BE DENIED.

The Nevada Supreme Court recently rejected Lynita's contention that "the parole evidence rule does not apply to preclude evidence of the facts and circumstances surrounding the execution of an agreement when the validity of such agreement has been challenged"⁴⁶ in *Rd. & Highway Builders v. N. Nev. Rebar*, 284 P.3d 377 (2012). There, our Supreme Court specifically held that "[w]hen the

⁴³ See Assets Schedule and Notes to Asset Schedule provided by Bertsch in open Court on October 11, 2011, admitted as Exhibit 2 of Bertsch's Trial Binder, Bates No. DEF0014892 – DEF0014894.

⁴⁴ See Exhibit 11 of Dan Gerety Report, admitted as Intervenor's Trial Exhibit No. 168 on July 23, 2012.

⁴⁵ Lynita's request is specifically renounced in two factually similar cases: *Marriage of Holtemann*, 166 Cal. App. 4th 1166, 83 Cal. Rptr. 3d 385 (Cal. App. 4th 2008) and *Marriage of Lund*, 174 Cal. App. 4th 40, 94 Cal. Rptr. 3d 84 (Cal. App. 4th 2009).

⁴⁶ In so doing, Lynita relies upon *Havas v. Alger*, 85 Nev. 627, 461 P.2d 857 (1969), to argue that this Court may look at the facts and circumstances surrounding the execution of the Separate Property Agreement because Lynita has challenged the validity of the same. Even if Lynita's analysis of *Havas* is correct, which it is not, said facts and circumstances cannot be utilized in varying the terms of the Separate Property Agreement, which is exactly what she is trying to do.

1 plaintiff pleads that the writing ... does not express the intentions of the parties to it at the time, he
2 pleads something which the law will not permit him to prove.”⁴⁷

3 Further, without legal citation, Lynita mistakenly contends that the ELN SSST lacks standing
4 to argue for the validity of the Separate Property Agreement because it was not a signatory on said
5 document. Said contention is absurd. The ELN SSST’s standing arises from the fact that Lynita seeks
6 to assert a community property claim to assets in the ELN SSST, and the ELN SSST is entitled to
7 prove that it was funded with assets, and/or the rents, issues and profits of assets, specifically
8 identified in the Separate Property Agreement.

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10 Lynita has also manufactured a number of what she considers to be “ambiguities” in the Separate
11 Property Agreement so that this Court will consider her intent in executing the same.⁴⁸ Lynita’s
12 position is untenable as the Separate Property Agreement is clear and unambiguous on its face, and
13 clearly states that Lynita was separating her community property to separate property and that she “has
14 retained independent counsel and [she] fully understand the facts and has been fully informed of all
15 legal rights and liabilities; that after such advice and knowledge, she believes this AGREEMENT to be

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20 ⁴⁷ See also *Green v. Del-Camp Investment, Inc.*, 193 Cal.App.2d 479, 14 Cal.Rptr. 420, 422 (1961) (stating
21 that where “the claim[e]d fraud consists of a false promise with respect to a matter covered by the agreement
22 itself, the oral evidence would contradict the terms of the agreement, in direct contravention of the rules. Such
23 proof is not permitted.”); *Sherrodd, Inc. v. Morrison-Knudsen Co.*, 249 Mont. 282, 815 P.2d 1135, 1137 (1991)
(providing that the exception made to the parol evidence rule when fraud is alleged “only applies when the
alleged fraud does not relate directly to the subject of the contract. Where an alleged oral promise directly
contradicts the terms of an express written contract, the parol evidence rule applies.”).

24 ⁴⁸ To the extent that this Court finds certain portions of the Separate Property Agreement “ambiguous,”
evidence regarding intent is limited to said provisions. See, e.g., *Pentax Corp. v. Boyd*, 111 Nev. 1296, 1300-
01, 904 P.2d 1024, 1027 (1995) (“Although parol evidence is admissible to clarify ambiguities in a contract, the
existence of an ambiguous provision only allows the admission of evidence to clarify the intent of the parties
with respect to such provision. Thus, in the present case, the ambiguous blank space would allow admission of
parol evidence which serves to explain what information should have been entered therein, but would disallow
parol evidence relating to the remainder of the guarantee. Since the parol evidence proffered by Boyd related to
the remainder of the guarantee, it is inadmissible.”).

1 fair, just and reasonable. . .”⁴⁹ Further, neither Burr nor Koch believed that the Separate Property
2 Agreement was ambiguous.⁵⁰

3 Finally, Lynita’s contention that the Separate Property Agreement is invalid under NRS
4 123.070 or voidable under general contract principles is incorrect.⁵¹ Lynita was advised by Burr of the
5 legal consequences of the Separate Property Agreement, including, but not limited to the benefits,
6 detriments and risks, one of which was divorce. Burr specifically explained that either Eric or Lynita
7 could stand by the terms of the Separate Property Agreement in the event of divorce, and that the other
8 party bore the risk that they would not have a further interest in the other spouse’s separate property.

9
10 Koch also explained to Lynita the legal effect of transmuting her community property to separate
11 property.⁵² As such, there was no evidence introduced at trial to support Lynita’s contention that “she
12 was led to believe” that the assets listed in the Separate Property Agreement, Separate Property Trusts
13 and Self-Settled Spendthrift Trusts would thereafter be treated as community property. Indeed, Lynita
14 never testified that Burr or Eric told her that the Separate Property Agreement, Separate Property
15 Trusts or Self-Settled Spendthrift Trusts would not apply in the case of divorce. Further, even if
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17 ⁴⁹ See Separate Property Agreement executed on July 13, 1993, admitted as Intervenor’s Trial Exhibit No. 4
on July 18, 2012.

18 ⁵⁰ Lynita’s contention that Eric “open[ed] the door” for Lynita to testify regarding her “intent” is
19 nonsensical as the ELN SSST was not a party to this action, and as such, was not afforded the opportunity to
20 object to said testimony. Further, neither Eric nor Lynita testified regarding their intent. Indeed, Burr was the
21 only witness who testified regarding the intent of the Separate Property Agreement, and contrary to Lynita’s
22 contention, both her Counsel and Eric’s Counsel, Jim Jimmerson, Esq., objected to Burr testifying regarding the
“intent” of the Parties. See November 22, 2010, Trial Transcript at p. 12, ll. 14-18 (“Objection to the form of
the question, Your Honor. He can’t possible understand a unilateral state of mind. The question what words
they say, I have no objection, but to say what their intent is, he can’t read a mind anymore than a judge can.”);
p. 51, ll. 19-20 (MR. DICKERSON: Object to the form of the question. How would he know what the intent
was.”).

23 ⁵¹ Lynita seeks to excuse her untimely claim because the Nevada Supreme Court in *Cord v. Neuhoff*, 94
24 Nev. 21, 24, 573 P.2d 1170, 1172 (1978), purportedly would not allow laches to run between husband and wife
during the continuance of the marital relationship. *Cord* does not stand for the proposition that spouses have an
indefinite time period to challenge marital agreement as Lynita contends, but rather would not allow laches to
run in that instance.

25 ⁵² For this reason alone, Lynita’s contention that Eric, Burr and Koch breached their fiduciary duties by not
26 explaining the legal effect of the Separate Property Agreement is nonsensical. As this Court will certainly
recall, Lynita’s breach of fiduciary claim against Eric was dismissed. Further, to the extent that Lynita believes
27 that Burr or Koch breached their fiduciary duties, Lynita has a legal remedy against said individuals as opposed
to the ELN SSST.

Lynita testified as such, which she did not, said testimony is simply not credible, and most certainly does not warrant a rescission⁵³ or reformation of the Separate Property Agreement.

Similarly, there was no evidence introduced at trial that either Eric or Burr were mistaken as to the full effect of the Separate Property Agreement thereby rendering Lynita's mutual mistake argument moot.

F. LYNITA FAILED TO ESTABLISH BY CLEAR AND CONVINCING EVIDENCE THAT THE PARTIES TRANSMUTED THEIR SEPARATE PROPERTY TO COMMUNITY PROPERTY AFTER 1993.

As set forth in the ELN SSST's Post-Trial Brief, since the Parties transmuted their community property to separate property in 1993, Lynita, not Eric, has the burden to establish by clear and convincing evidence that any separate property was transmuted back to community property.⁵⁴ Lynita's contention that there was an oral agreement to transmute separate property to community property lacks merit as no evidence, not even Lynita's testimony, regarding the purported oral agreement was admitted at trial. To the contrary, the evidence showed that the Parties, accountants and bookkeepers kept the assets and liabilities of the Separate Property Trusts and Self-Settled Spendthrift Trusts separate. Lynita herself executed numerous documents which specifically identified assets owned by the LSN Separate Property Trust as Lynita's "separate property."⁵⁵

⁵³ In the cases relied upon by Lynita there was ample evidence to support the parties contention that misrepresentations were made, whereas here, Lynita has been unable to identify said representations. *See, e.g., Pac. Maxon, Inc. v. Wilson*, 96 Nev. 867, 870, 619 P.2d 816, 818 (1980) (focus of the inquiry was whether party seeking rescission of contract was deceived in fact by the altered appraisal which the other party knowingly altered with the intention that it be relied upon); *Havas v. Alger*, 85 Nev. 627, 461 P.2d 857 (1969) (buyer was entitled to rescind contract because seller represented that automobile was a 1960 model but it was a 1959 model, that the automobile was in good condition).

⁵⁴ *See* ELN SSST's Post-Trial Brief at p. 13, l. 6 – p. 16, l. 9, previously filed on August 31, 2012.

⁵⁵ Lynita seems to contend that the documents she executed somehow constitutes "partial performance" of the Parties transmuting their separate property to community property. This is nonsensical as the cases relied upon by Lynita, *Sprenger v. Sprenger*, 110 Nev. 855, 858, 878 P.2d 284, 286, held that the appearance of the wife's signature as a shareholder on certain documents, without more, is not clear and convincing evidence of transmutation from separate property to community property, and here, the majority of documents specifically reference the property as Lynita's separate property. Further, in the other case relied upon, *Schreiber v. Schreiber*, 99 Nev. 453, 455, 663 P.2d 1189, 1190 (1983), transmutation from separate property occurred because the husband split the proceeds from the sale of his separate property with his wife.

Lynita's contention that assets acquired by the ELN Separate Property Trust, and ultimately the ELN SSST, after 1993 is community property disregards NRS 123.130(2), which specifically provides "[a]ll property of the husband . . . acquired by him afterwards by gift, bequest, devise, descent or by an award for personal injury damages, with the rents, issues and profits thereof, is his separate property." Under NRS 123.130, any property that the ELN Separate Property Trust purchased with its "rents, issues and profits" maintains its separate property character.

Finally, Lynita's contention that Eric commingled the properties held in the Separate Property Trusts and Self-Settled Spendthrift Trusts should also be summarily disregarded as Shelley unequivocally testified that the assets of the Separate Property Trusts were kept separate, and Gerety confirmed through his tracing that the assets and liabilities of the Self-Settled Spendthrift Trusts were kept separate.⁵⁶ The cases relied upon by Lynita, *Malmquist v. Malmquist*, 106 Nev. 231, 245, 792 P.2d 372, 381 (Nev. 1990) and *Ormachea v. Ormachea*, 67 Nev. 273, 217 P.2d 355 (Nev. 1950), are inapposite to Lynita's position because in those cases the courts found that there was extensive commingling of community assets, whereas here, no such evidence was presented and/or admitted at trial.

G. LYNITA HAS FAILED TO ESTABLISH THE NECESSARY ELEMENTS FOR THE IMPOSITION OF A CONSTRUCTIVE TRUST.

A constructive trust exists when: "(1) a confidential relationship exists between the parties; (2) retention of legal title by the holder thereof against another would be inequitable; and (3) the existence of such a trust is essential to the effectuation of justice."⁵⁷ Further, the Nevada Supreme Court has

⁵⁶ *Malmquist v. Malmquist*, 106 Nev. 231, 245, 792 P.2d 372, 381 (1990) (a claim of commingling can be rebutted by a: "direct tracing of the source of a particular purchase to the separate property portion of the account").

⁵⁷ *Locken v. Locken*, 98 Nev. 369, 650 P.2d 803 (1982).

1 “required unjust enrichment before imposing a constructive trust.”⁵⁸ The Nevada Supreme Court has
2 also barred the imposition of a constructive trust when a party refrains from demanding the property at
3 issue for self-serving reasons.⁵⁹

4 Here, Lynita has failed to establish any of the necessary elements for the imposition of a
5 constructive trust. First, a confidential relationship does not exist between Lynita and the ELN SSST.
6 Second, retention of legal title by the ELN SSST is not inequitable. Contrary to Lynita’s contention,
7 the facts of this case bear no similarity to *Locken v. Locken*, 98 Nev. 369, 371, 650 P.2d 803, 804
8 (1982), because in *Locken* the father agreed to place a parcel of property in the name of his son and the
9 son agreed to convey the property back to his father after a patent was granted. Here, there was no
10 agreement that the ELN SSST, which was funded entirely with Eric’s separate property titled in the
11 name of the ELN Separate Property Trust, would be held for the benefit of the community. To the
12 contrary, both Parties knew and understood that they did not possess a community and/or separate
13 property interest in either Self-Settled Spendthrift Trust. Further, the tracing performed by Gerety
14 conclusively establishes that no community property was transferred and/or commingled with the
15 assets titled in the name of the ELN SSST. Consequently, imposing a constructive trust over the ELN
16 SSST would be inequitable.

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18 Finally, the imposition of a constructive trust would not effectuate justice because Lynita has
19 benefitted from the creation and implementation of the Self-Settled Spendthrift Trusts as the assets
20 owned by the LSN SSST were not exposed to her perceived additional risk and moral aversion to the
21 investments made by the ELN SSST. Lynita cannot accept the benefit that she has retained for nearly
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23 ⁵⁸ *Waldman v. Maini*, 124 Nev. 1121, 1132, 195 P.3d 850, 858 (2008) (imposition of a constructive trust
24 was not warranted because defendant failed to establish an inequitable act or result, and defendant failed to
demonstrate how plaintiff’s estate would be unjustly enriched by retaining the proceeds from the policies).

25 ⁵⁹ *DeLee v. Roggen*, 111 Nev. 1453, 1457, 907 P.2d 168, 170 (1995) (the creation of a constructive trust was
26 not necessary to achieve justice because party refrained from demanding the property until 1989 mainly for self-
27 serving reasons (e.g. he had so many debts that if he had made such a demand, the property would have been
“gobbled up” by creditors.). Further, during the late 1970’s and early 1980’s, the party was seeking and
obtaining loans totaling \$100,000, and if the party had demanded the property during that time, he likely would
have experienced greater difficulty in securing the loans).

twenty years on one hand while arguing that justice requires the imposition of a constructive trust on the other hand.

H. THIS COURT SHOULD DENY LYNITA’S REQUEST TO APPLY THE CALIFORNIA ALTER EGO STANDARD BECAUSE SHE FAILED TO ESTABLISH BY CLEAR AND CONVINCING EVIDENCE THAT ERIC IS THE ALTER EGO OF THE ELN SSST AS REQUIRED UNDER NRS 163.418.

Despite the fact that Lynita’s alter ego claim was brought under NRS 163.418,⁶⁰ she has repeatedly argued that NRS 163.418 applies in this matter,⁶¹ and this Court has already held that NRS 163.418 should be applied when determining whether the ELN SSST is Eric’s alter ego,⁶² Lynita now seeks to have this Court disregard NRS 163.418 because the majority, if not all, of the evidence she introduced at trial is inadmissible to prove an alter ego claim under NRS 163.418 and ultimately NRS 163.4177.⁶³ Lynita should be estopped from changing her legal position regarding the applicability of NRS 163.418 after this Court entertained seven days of trial on her alter ego claim.

Lynita contends that NRS 163.418 should not be applied because said statute was not enacted “until 2009, long after many of the acts described herein occurred.” In support of her contention, Lynita relies upon *McKellar v. McKellar*, 110 Nev. 200, 203, 891 P.2d 296, 298 (1994), wherein the Nevada Supreme Court held that the Nevada State Legislature did not clearly manifest “an intent that the amendment to NRS 125B.050 apply retroactively” and/or there was no evidence that the intent of the legislature could not otherwise be satisfied.⁶⁴ In so doing, Lynita ignores two Nevada Supreme Court cases that were decided after *McKellar* which hold:

With respect to the application of newly enacted statutes, we generally presume that they apply prospectively unless the Legislature clearly

⁶⁰ See Lynita’s First Amended Complaint at p. 27, ll. 16-20 and p. 28, ll. 14-18, previously filed on December 20, 2011.

⁶¹ See Opposition to Motion to Dismiss at p. 11, l. 26 – p. 12, l. 20, previously filed on December 1, 2011, and Supplement to Opposition to Motion to Dismiss at p. 11, ll. 4-22, previously filed on January 27, 2012.

⁶² See Notice of Entry of Order at p. 2, l. 20, p. 3, l. 9, previously filed on July 11, 2011.

⁶³ See ELN SSST’s Post-Trial Brief at p. 28, l. 5 – p. 29, l. 13, previously filed on August 31, 2012.

⁶⁴ Unlike NRS 125B.050, NRS 163.418 was not “amended” in 2009; rather, it was the first time that the Nevada State Legislature recognized a claim for alter ego against an irrevocable trust. Consequently, the Nevada State Legislature’s intent to recognize a claim for alter ego against an irrevocable trust cannot be effectuated unless NRS 163.418 applies retroactively.

1 indicates that they should apply retroactively or the Legislature's intent
2 cannot otherwise be met. This general rule does not apply to statutes that
3 do not change substantive rights and instead relate solely to remedies and
4 procedure, however; in these instances, a statute will be applied to any
5 cases pending when it is enacted.⁶⁵

6 Just like the statutes in *Valdez* and *Madera*, NRS 163.418 does not change the substantive rights but
7 rather relates solely to the remedies and procedure of an alter ego claim in Nevada. As such, NRS
8 163.418 applies retroactively, and Lynita's contention to the contrary lacks merit.

9 Instead of applying NRS 163.418 and NRS 163.4177, which are the only Nevada statutes that
10 authorize an alter ego claim against a trust, Lynita requests that this Court apply and adopt California
11 law which the Ninth Circuit purportedly applied to a revocable trust in the case entitled *In re*
12 *Schwarzkopf*, 626 F. 3d 1032 (9th Cir. 2010). As this Court may recall, *Schwarzkopf* was
13 unsuccessfully relied upon by Lynita in her Opposition to Motion to Dismiss and Supplement to
14 Opposition to Motion to Dismiss because in *Schwarzkopf* the trust was created for the benefit of minor
15 children, and not the settlor,⁶⁶ and NRS Chapter 166 specifically permits the settlor of a self-settled
16 spendthrift trust to be a beneficiary without limits as to the benefits received and to have any power
17 except "for the power of the settlor to make distributions to himself or herself without the consent of
18 another person."⁶⁷ For these reasons alone, the facts in *Schwarzkopf* are not "almost identical to those
19 herein" as Lynita would have this Court believe. *Schwarzkopf* is further distinguishable because the
20 finding of alter ego was premised upon facts that are inadmissible under NRS 163.418.

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22 ⁶⁵ *Valdez v. Employers Ins. Co. of Nevada*, 123 Nev. 170, 179-80, 162 P.3d 148, 154 (2007) (finding that
23 the statute applied retroactively because statute was procedural and remedial). *See also Madera v. State*
24 *Indus. Ins. Sys.*, 114 Nev. 253, 258, 956 P.2d 117, 120 (1998) (since statute "is restricted in its effect to
25 remedies available and does not abridge vested rights, we hold that its proscriptions are not presumptively
26 prospective in their application. We further conclude that application to pending matters is consistent with the
27 clear intent of the legislature.").

28 ⁶⁶ *See Schwarzkopf*, 626 F.3d at 1036 (trust was created for the benefit of a minor child).

⁶⁷ Specifically, NRS 166.040(3) provides: "[e]xcept for the power of the settlor to make distributions to
himself or herself without the consent of another person, the provisions of this section shall not be construed to
prohibit the settlor of a spendthrift trust from holding other powers under the trust, whether or not the settlor is a
cotrustee, including, without limitation, the power to remove and replace a trustee, direct trust investments and
execute other management powers."

In light of the foregoing, and as set forth in the ELN SSST's Post-Trial Brief,⁶⁸ Lynita failed to introduce admissible evidence to support her alter ego claim, and as such, this Court should find in favor of the ELN SSST.

I. NRS 163.185 DOES NOT AUTHORIZE THIS COURT TO TERMINATE THE ELN SSST BECAUSE IT IS A VIABLE SELF-SETTLED SPENDTHRIFT TRUST THAT POSSESSES MILLIONS OF DOLLARS IN ASSETS.

Because Lynita failed to establish that Eric is the alter ego of the ELN SSST, she requests that this Court invalidate or terminate the ELN SSST based upon her mistaken belief that Burr testified in Eric's case-in-chief that neither Party intended to divest themselves of title to their property when they transferred said property to the Self-Settled Spendthrift Trusts because the transfer would not affect their rights in the event of divorce. Even if that was Burr's testimony, which it was not, Burr clarified those statements in his July 2012, testimony wherein he testified that the Parties intended the Self-Settled Spendthrift Trust to be valid for all purposes, and he was aware of no "wink-and-a-nod" side agreement that said trusts would not apply in the case of divorce. Lynita introduced no evidence of a side agreement.

After seven days of trial on the trust issues, Lynita seeks to introduce a new legal theory: that this Court can terminate the irrevocable Self-settled Spendthrift Trusts if it finds the administration of such trusts is no longer feasible under NRS 163.185. As a practical matter, Lynita's reliance upon NRS 163.185 fails as a matter of law because she failed to file a petition for termination and distribution of trust under NRS 164.010 and 164.015.⁶⁹ The major flaw in Lynita's argument is that NRS 163.185 was designed to grant courts authority to terminate a trust early if it is uneconomical for the trust to continue to operate. For example, if Trust A's sole purpose were to distribute \$10.00 a month to a single beneficiary over the course of 10 years, but the administration expenses of Trust A exceed \$10 a month, it would not be feasible or economical for Trust A to continue to operate said

⁶⁸ See ELN SSST's Post-Trial Brief at p. 27, l. 11 – p. 29, l. 13, previously filed on August 31, 2012.

⁶⁹ As this Court will certainly recall, at the hearing on the ELN SSST's Motion to Dismiss, this Court recommended that Lynita file a petition under NRS 164.010 and NRS 164.015; however, she refused to do so.

trust for 10 years. As such, a court could terminate Trust A early and distribute the remaining assets in Trust A to the beneficiary.

NRS 163.185 would never apply to the ELN SSST or LSN SSST because Eric and Lynita as Investment Trustees (or the Distribution Trustees as to Eric and Lynita) have the sole discretion to make distributions to beneficiaries named therein at any time. Consequently, if the ELN SSST was no longer feasible or economical Eric or Lana could distribute the remaining assets to the beneficiaries of the ELN SSST. More importantly, both the ELN SSST and LSN SSST are viable self-settled spendthrift trusts which possess millions of dollars in assets, which include, but are not limited to, real property, gaming stock and interests in certain business entities. As such, this Court has no reason to terminate the ELN SSST, and NRS 163.185 certainly does not authorize this Court authority to do so.⁷⁰

J. LYNITA'S CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS.

Lynita's contention that she is not a creditor under NRS 166.170(1) is simply wrong. A creditor is defined as a "person who has a claim,"⁷¹ and Lynita has filed a claim for alter ego and constructive trust against the ELN SSST. Notwithstanding, even if this Court finds that Lynita is not a creditor, her claims are still barred under NRS 166.170(8), which bars a claim initiated by any person:

Notwithstanding any other provision of law, *no action of any kind*, including, without limitation, an action to enforce a judgment entered by a court or other body having adjudicative authority, *may be brought at law or in equity against the trustee of a spendthrift trust* if, as of the date the action is brought, an action by a creditor with respect to a transfer to the *spendthrift trust would be barred pursuant to this section.* (*Emphasis added*).

⁷⁰ Lynita's reliance upon *In re Marriage of Epperson*, 107 P.3d 1268, 326 Mont. 142 (MT 2005) is misplaced because the Montana statute relied upon in *Epperson* grants a court unfettered discretion to terminate a trust if said court finds that continuation of the trust "outweighs the interest in accomplishing a material purposes of the trust," whereas NRS 163.185 limits termination to instances where continuation of a trust are no longer feasible or economical.

⁷¹ See NRS 112.150(4). NRS 166.170(10)(b) did not adopt the definition of "claim" set forth in NRS 112.150 as Lynita contends.

Lynita also seems to justify her untimely claims based upon her mistaken belief that the ELN SSST converted and/or fraudulently obtained its assets, and the Nevada State Legislature did not intend to condone such acts by enacting the Spendthrift Trust Act of Nevada. Such argument is nonsensical as Lynita's claim for conversion was previously dismissed. Further, the Nevada State Legislature has previously enacted legislation subjecting conversion claims to a three-year limitation period in NRS 11.190(3)(c). Consequently, Lynita's contention that conversion claims are never barred by the statute of limitations lacks merit.⁷²

Lynita also mistakenly contends her claims are not precluded by the statute of limitations because "[p]rior to June, 2011, Eric steadfastly maintained that all assets titled in the names of the ELN and LSN Trusts were held, owned and controlled by the parties as community property." This representation is false, as evidenced by the fact that Lynita failed to cite any testimony wherein Eric purportedly made such a statement. As stated in the ELN SSST's Post-Trial Brief, Lynita was fully aware, or reasonably should have been aware,⁷³ as early as 2001 that she did not possess a community property interest in the ELN SSST. Lynita has failed to introduce any evidence that prior to the settlement statements that Eric (in his individual capacity) made at trial, that he ever inferred and/or stated that property titled in the names of the Self-Settled Spendthrift Trusts was community property, and all documentation from 2001 through present indicates otherwise. The fact that Lynita filed a counterclaim in June 2009 seeking to invalidate the Separate Property Agreement because Eric indicated his intent to seek enforcement of the same further negates Lynita's position that her cause of action could not have "accrued" until June, 2011.⁷⁴

⁷² As set forth in the ELN SSST's Post-Trial Brief, Lynita's claims are also barred under NRS 11. *See* ELN SSST's Post-Trial Brief at p. 26, l. 16 – p. 27, l. 9.

⁷³ Even the cases relied upon by Lynita stand for the proposition that statute of limitations begin to accrue "[w]hen the plaintiff knew or in the exercise of proper diligence should have known of the facts constituting the elements of his cause of action. . ." *Oak Grove Investors v. Bell & Gossett Co.*, 99 Nev. 616, 623, 668 P.2d 1075, 1079 (1983).

⁷⁴ *See* Lynita's Answer to Complain for Divorce and Counterclaim for Divorce and Declaratory Relief, previously filed on June 22, 2009.

Finally, Lynita seeks to excuse her untimely claim because the Nevada Supreme court in *Cord v. Neuhoff*, 94 Nev. 21, 24, 573 P.2d 1170, 1172 (1978), purportedly would not allow laches to run between husband and wife during the continuance of the marital relationship. Irrespective of whether laches can run during the continuance of the marital relationship, the existence of marriage relationship does not suspend running of statute of limitations on a claim of wife against her husband.⁷⁵ Even if the statute of limitations between a husband and wife is tolled during marriage, the statute of limitations would still not be tolled in this case because Lynita's claims are against the ELN SSST, a separate and distinct entity, as opposed to Eric.

III. CONCLUSION

Lynita's claims against the ELN SSST are time-barred and she failed to establish her burden by clear and convincing evidence that Eric is the alter ego of the ELN SSST and/or that she is entitled to any interest therein. Consequently, this Court should find that neither Eric nor Lynita have a community property and/or separate property interest therein in this valid self-settled spend thrift trust.

DATED this 28th day of September, 2012.

SOLOMON DWIGGINS & FREER, LTD.

By: 

MARK A. SOLOMON, ESQ.

Nevada State Bar No. 0418

JEFFREY P. LUSZECK

Nevada State Bar No. 9619

Cheyenne West Professional Centre'

9060 West Cheyenne Avenue

Las Vegas, Nevada 89129

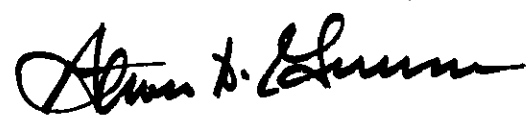
*Attorneys for LANA MARTIN, Distribution
Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001*

⁷⁵ See e.g., *In re Crawford's Estate*, 155 Kan. 388, 125 P.2d 354 (Kan. 1942); *Aus v. Carper*, 82 S.D. 568, 151 N.W.2d 611 (S.D. 1967) (statute of limitations ran against wife on husband note during marriage).

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MEM
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Attorneys for LANA MARTIN, Distribution
Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

ERIC L. NELSON,

Plaintiff/Counterdefendant,

vs.

LYNITA SUE NELSON, LANA MARTIN, as
Distribution Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001

Defendants/Counterclaimants.

LANA MARTIN, Distribution Trustee of the
ERIC L. NELSON NEVADA TRUST dated
May 30, 2001,

Crossclaimant,

vs.

LYNITA SUE NELSON,

Crossdefendant.

Case No. D-411537
Dept. No. O

DATES OF TRIAL: July 16-19 & 23-25, 2012

SUPPLEMENT TO VERIFIED MEMORANDUM OF ATTORNEYS' FEES AND COSTS

SOLOMON DWIGGINS & FREER, LTD.
9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TEL: (702) 853-5483 | FAX: (702) 853-5485

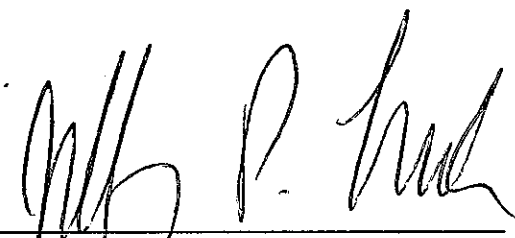
On September 28, 2012, Lana Martin, Distribution Trustee ("Trustee") of the ERIC L. NELSON NEVADA TRUST dated May 30, 2001 ("ELN SSST"), submitted the Verified Memorandum of Attorneys' Fees and Costs, which inadvertently neglected to identify the fees and costs incurred by the ELN SSST's expert witnesses Gerety & Associates, CPAs and The Rushforth Firm, Ltd.¹

Gerety & Associates, CPAs	\$160,772.05 ²
The Rushforth Firm, Ltd.	\$16,542.50 ³

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

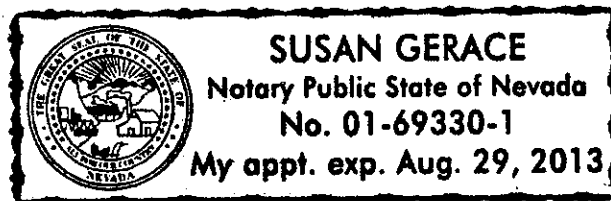
I, JEFFREY P. LUSZECK, ESQ., being first duly sworn, states that affiant is the attorney for ERIC L. NELSON NEVADA TRUST dated May 30, 2001, and has personal knowledge of the above fees, costs and disbursements expended; that the items contained in the above memorandum are true and correct to the best of this Affiant's knowledge and belief; and that the said disbursements have been necessarily incurred and paid in this action.

DATED this 8th day of October, 2012.


JEFFREY P. LUSZECK, ESQ.

Subscribed and sworn before me on
this 8th day of October, 2012.


NOTARY PUBLIC in and for said
County and State



My Commission Expires:

¹ As this Court may recall, on June 5, 2012, this Court authorized the ELN SSST to pay \$40,000.00 for its expert witness fees and costs that had been incurred. See Notice of Entry of Findings of Fact and Order dated June 5, 2012, on file herein.

² A copy of Gerety & Associates, CPA's billing statements are attached hereto as **Exhibit 1**. Portions of the bill that pertain to services not related to litigation have been redacted.

³ A copy of The Rushforth Firm, PLLC's billing statements are attached hereto as **Exhibit 2**.

EXHIBIT 1

EXHIBIT 1

Gerety & Associates, CPAs

6817 S. Eastern Ave. Suite 101
Las Vegas, NV 89119

Phone: (702) 933-2213

Fax: (702) 933-2214

Eric Nelson

Invoice: 10876

3611 S. Lindell Road, Suite 201

Date: 10/17/2011

Las Vegas, NV 89103

Due Date: Due upon receipt

For professional service rendered as follows:

Time spent on litigation support for divorce including meeting and phone conference with Larry Birtch this summer. Phone conferences with Mark Solomon and progress billing on preparation of report on the accounting for the Nevada Trusts

\$8,196.05

New Charges:

\$15,946.05

Invoice Total

\$15,946.05

Beginning Balance

\$0.00

Invoices

19,421.05

Receipts

0.00

Adjustments

0.00

Service Charges

0.00

Amount Due

\$19,421.05

Gerety & Associates, CPAs

6817 S. Eastern Ave. Suite 101
Las Vegas, NV 89119

Phone: (702) 933-2213

Fax: (702) 933-2214

Eric Nelson

Invoice: 11246

3611 S. Lindell Road, Suite 201

Date: 01/25/2012

Las Vegas, NV 89103

Due Date: Due upon receipt

For professional service rendered as follows:

Time spent on litigation support for divorce including work on tracing assets to Eric's trust, compiling information to show compliance to trust documents, meetings with Eric and Lana to go over open items, and meeting with Mark Solomon to go over settlement offers	\$26,480.00
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83.45 hours

New Charges:	\$26,480.00
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Invoice Total	\$26,480.00
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Beginning Balance	\$8,421.05
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Invoices	26,480.00
----------	-----------

Receipts	0.00
----------	------

Adjustments	0.00
-------------	------

Service Charges	0.00
-----------------	------

Amount Due	\$34,901.05
------------	-------------

Gerety & Associates, CPAs

6817 S. Eastern Ave. Suite 101
Las Vegas, NV 89119

Phone: (702) 933-2213

Fax: (702) 933-2214

Eric Nelson

Invoice: 12447

3611 S. Lindell Road, Suite 201

Date: 06/22/2012

Las Vegas, NV 89103

Due Date: Due upon receipt

For professional service rendered as follows:

Time spent working on expert report for divorce. See the attached for detail. 239 hours	\$82,351.00
--	-------------

New Charges:	\$82,384.00
Invoice Total	\$82,384.00

Beginning Balance	\$34,901.05
Invoices	82,384.00
Receipts	(20,000.00)
Adjustments	0.00
Service Charges	0.00
Amount Due	\$97,285.05

Gerety & Associates, CPAs

6817 S. Eastern Ave. Suite 101
Las Vegas, NV 89119

Phone: (702) 933-2213

Fax: (702) 933-2214

Eric Nelson

Invoice: 12591

3611 S. Lindell Road, Suite 201

Date: 08/31/2012

Las Vegas, NV 89103

Due Date: Due upon receipt

For professional service rendered as follows:

Time from 6/23/12 through 8/31/12 spent on litigation support regarding the Nelson divorce including the finalization of our expert report, testifying in court and meetings with Eric Nelson and attorneys.
103.5 hours

\$43,745.00

New Charges:

\$43,745.00

Invoice Total

\$43,745.00

Beginning Balance

\$97,285.05

Invoices

43,745.00

Receipts

0.00

Adjustments

0.00

Service Charges

0.00

Amount Due

\$141,030.05

Invoice Journal

October 17, 2011 - September 30, 2012

Inv #	Reference	Date	Client	Sort Name	Time	Expenses	Progress	Surcharge	Discount	Sales Tax	Service Tax	Invoice Amount
10876		10/17/11	NELSONERIC	Nelson Eric	15,936.06	9.99	0.00	0.00	0.00	0.00	0.00	15,946.05
Detail: Staff Description Date Hrs/Units WIP Amt Billed Adjusted Carryover Comments												
AJR	Financial Consulting	09/26/11		1.50	540.00	540.00	0.00	0.00				
Divorce Consulting - Meet with Dan re: special project, review the excel g/l's that we have in the file, conference call with Dan and Lana Martin re: items needed and to set up a time for me to meet her out at Eric's office to gather additional information up etc..												
AJR	Mileage Expenses	09/28/11		0.00	9.99	9.99	0.00	0.00				
18 miles @55.5 cents/mile												
AJR	Financial Consulting	09/28/11		1.50	540.00	540.00	0.00	0.00				
Divorce Consulting - Meeting at client to gather up information needed for the lit support project, discussed items with Dan etc..												
AJR	Financial Consulting	09/29/11		0.60	216.00	216.00	0.00	0.00				
Pull docs off of the CD ROM, review and label/send to our perm. archive for Eric personal and the ELN Trust.												
AJR	Tax Client Conference	09/29/11		0.30	90.00	90.00	0.00	0.00				
Divorce consulting - restore the Peachtree backups for each trust, email to Lana re: passwords, discussed items with Dan etc..												
AJR	Financial Consulting	09/30/11		0.80	288.00	288.00	0.00	0.00				
Divorce Consulting - Call Lana re: Peachtree password, export yearly g/l's since 2001 to excel and save to q drive and organize properly.												
AJR	Litigation Support	10/05/11		2.50	900.00	900.00	0.00	0.00				
Divorce Consulting - Look over the Peachtree g/l's from the backup obtained from Lana, look at why these g/l's do not agree to the copies in our binder, discussed with Lana, emailed reports to her for her review, reviewed the 2001 g/l's from our binder in detail, list questions and list items needed re: note agreements, assignments, quit claims etc. and discussed with Dan.												
DTG	Litigation Support	05/09/11		1.50	697.50	697.50	0.00	0.00				
meeting with Eric and Lanna regarding divorce case												
DTG	Litigation Support	05/10/11		0.30	139.50	139.50	0.00	0.00				
phone conf with Larry Birtch												
DTG	Litigation Support	05/27/11		3.40	1,581.00	1,581.00	0.00	0.00				
meeting with Larry Birtch to go over items needed.												
DTG	Litigation Support	06/03/11		1.30	604.50	604.50	0.00	0.00				
review of GLs and balance sheets, phone call with Lana and emailed balance sheets to Larry Birtch												
DTG	Litigation Support	06/10/11		0.30	139.50	139.50	0.00	0.00				
phone call with Mark Solomon												
DTG	Litigation Support	09/06/11		0.30	139.50	139.50	0.00	0.00				
phone call with Mark Solomon												
DTG	Litigation Support	10/10/11		0.30	139.50	139.50	0.00	0.00				
phone call with Mark Solomon and went over accounting with Angelo												

Invoice Journal October 17, 2011 - September 30, 2012

Inv #	Reference	Date	Client	Sort Name	Time	Expenses	Progress	Surcharge	Discount	Sales Tax	Service Tax	Invoice Amount
Detail: Staff	Description	Date	Hrs/Units	WIP Amt	Billed	Adjusted	Carryover	Comments				
KLL	Litigation Support	06/17/11	2.33	745.60	745.60	0.00	0.00					

15,946.05 15,946.05

11246		01/25/12	NELSONERIC	Nelson Eric		26,480.00	0.00	0.00	0.00	0.00	0.00	26,480.00
Detail: Staff	Description	Date	Hrs/Units	WIP Amt	Billed	Adjusted	Carryover	Comments				
AJR	Tax Client Conference	11/02/11	1.70	510.00	510.01	0.01	0.00	Divorce consulting - Set up a spreadsheet to compare the ELN yearly balance sheets and income statements. Work on the 12/31/01 comparison, had to drop in the 12/31/01 amounts since we do not have a balance sheet in excel to copy for this period.				
AJR	Tax Client Conference	11/03/11	1.50	450.00	450.01	0.01	0.00	Divorce consulting - Work on the 12/31/02 financials comparison and the cash flows for 12/31/01 and 12/31/02, had to drop in the 12/31/02 amounts since we do not have a balance sheet in excel to copy for this period. Jot down questions for Dan and make notes. Start on 2003.				
AJR	Tax Client Conference	11/09/11	2.75	825.00	825.02	0.02	0.00	Divorce consulting - Continue to work on putting together the year to year balance sheets, income statements and cash flows for the ELN NV Trust.				
AJR	Tax Client Conference	11/10/11	3.50	1,050.00	1,050.02	0.02	0.00	Continue to work on putting together the year to year balance sheets, income statements and cash flows for the ELN NV Trust. Worked on 2004, 2005 and most of 2006.				
AJR	Tax Client Conference	11/11/11	2.75	825.00	825.02	0.02	0.00	Divorce consulting - Continue to work on putting together the year to year balance sheets, income statements and cash flows for the ELN NV Trust. Worked on the backing into the 2005 income statement amounts, enter 2006 and 2007 financial data into the spreadsheet.				

Invoice Journal
October 17, 2011 - September 30, 2012

Inv #	Reference	Date	Client	Sort Name	Hrs/Units	WIP Amt	Billed	Adjusted	Expenses	Progress	Net	Surcharge	Discount	Sales Tax	Service Tax	Invoice Amount
Detail: Staff Description Date Date Hrs/Units WIP Amt Billed Adjusted Carryover Comments																
AJR	Tax Client Conference	11/14/11		3.00	900.00	900.02	0.02	0.00			Divorce consulting - Complete the balance sheet and income statement spreadsheet by entering in the 2007-2011 information. Compare the assets and liab on the ELN NV Trust's books with the assets and liab per the report by Larry Bertsh.					
AJR	Tax Client Conference	11/16/11		1.55	465.00	465.01	0.01	0.00			Divorce consulting - complete the ELN NV Tr retained earn rollforward to track variances, start on referencing asset dispositions/transfers etc, modify balance sheet comparison etc..					
AJR	Tax Client Conference	11/18/11		3.30	990.00	990.02	0.02	0.00			Divorce consulting - update the comparative financials to show comments for each asset and liability by reviewing the g/l's in order to look at what happened to the assets and liabilities over the last 9 years, emails to Lana re: questions etc..					
AJR	Tax Client Conference	11/21/11		1.50	450.00	450.01	0.01	0.00			Divorce consulting - compare the trust's assets/liab. per the Larry Bertsch special report to the ELN NV Tr books and notate the differences on the financial statement spreadsheet comparison.					
AJR	Tax Client Conference	11/22/11		1.30	390.00	390.01	0.01	0.00			Divorce consulting - prepare for and attend meeting with Dan.					
AJR	Tax Client Conference	11/22/11		0.55	165.00	165.00	0.00	0.00			Add to list of items needed from Lana, export the 1/1/06-9/30/11 capital contributions g/l activity from Peachtree to excel and begin the analyze.					
AJR	Tax Client Conference	11/23/11		2.50	750.00	750.01	0.01	0.00			Divorce consulting - work on long list of items needed/questions for Lana, made additional notes on the comparative financials etc..					
AJR	Tax Client Conference	11/28/11		1.30	390.00	390.01	0.01	0.00			Divorce consulting - meet with Lana and Dan Gerety re: questions/items needed.					
AJR	Tax Client Conference	11/28/11		5.90	1,770.00	1,770.03	0.03	0.00			Complete the open items list/questions for Lana, prepare for our meeting with Lana, look over the capital contributions detail for the years 2001 to current and make notes and list questions for Lana, do the same for the loan accounts relating to the LSN NV Tr etc and email to Lana.					
AJR	Tax Client Conference	12/01/11		1.00	300.00	300.01	0.01	0.00			Divorce consulting - export the 2006-2011 g/l's to excel for the ELN NV Tr capital account and copy and paste the 2001-2004 g/l's also, analyze the activity, account for beginning year balance differences etc, emails to and from Lana re: items requested, review her explanation on line items etc..					
AJR	Tax Client Conference	12/01/11		3.50	1,050.00	1,050.02	0.02	0.00			Divorce consulting - Restore the Banone LLC and Banone AZ LLC Peachtree backups, review the g/l for each entity since inception, review email from Rochelle containing docs, start to go through the docs and send to agent etc..					
AJR	Tax Client Conference	12/02/11		6.50	1,950.00	1,950.04	0.04	0.00			Divorce consulting - go through all of the information received from Rochelle including all of the 2006-2011 Mellon broker statements, email Lana many more questions, discussions with Dan re: issues, review Lana's responses to our questions etc..					

Invoice Journal

October 17, 2011 - September 30, 2012

Inv #	Reference	Date	Client	Sort Name	Time	Expenses	Progress	Net	Sales	Service	Invoice
								Surcharge	Discount	Tax	Amount
Detail: Staff	Description	Date	Hrs/Units	WIP Amt	Billed	Adjusted	Carryover	Comments			
AJR	Tax Client Conference	12/03/11	1.75	525.00	525.01	0.01	0.00	Divorce consulting - Restore the Dynasty Dev and ENA Peachtree backups, review the g/l for each entity since 2006, email Rochelle re: obtaining the Peachtree backup for Nelson & Assoc..			
AJR	Tax Client Conference	12/05/11	1.50	450.00	450.01	0.01	0.00	Divorce consulting - send excel g/l's to binder, organize items in binder, email to Lana review open items, discussion with Dan re: status/issues, add items to open list.			
AJR	Tax Client Conference	12/06/11	3.00	900.00	900.02	0.02	0.00	Many emails to and from Lana, review additional information received by Lana, review all of our documents and list all of the issues in a word doc for tomorrow's meeting with Dan and Lana.			
AJR	Tax Client Conference	12/07/11	1.30	390.00	390.01	0.01	0.00	Divorce consulting - meeting with Dan and Lana Martin re: open items etc..			
AJR	Tax Client Conference	12/08/11	0.20	60.00	60.00	0.00	0.00	Divorce consulting - review email containing the WY Downs closing statement and send to binder.			
AJR	Tax Client Conference	12/23/11	2.25	675.00	675.01	0.01	0.00	Divorce consulting - review emails received from Lana, send items to binder and split and label, generate an updated list of items/questions for Lana and email to her.			
AJR	Tax Client Conference	01/05/12	0.20	60.00	60.00	0.00	0.00	Divorce Consulting - go over status with Dan, review emails sent by Lana.			
AJR	Tax Client Conference	01/11/12	4.15	1,245.00	1,245.02	0.02	0.00	Divorce Consulting - review all of the emails from Lana containing additional information, split/lable docs, organize in binder, start to review latest Bertsch report, meet with Dan etc..			
AJR	Tax Client Conference	01/12/12	1.00	300.00	300.01	0.01	0.00	Divorce Consulting - meet with Eric, Dan and Lana.			
AJR	Tax Client Conference	01/13/12	0.30	90.00	90.00	0.00	0.00	Divorce consulting - prepare for meeting with Dan, Eric and Lana.			
AJR	Tax Client Conference	01/17/12	1.30	390.00	390.01	0.01	0.00	Divorce consulting - meet with Dan re: generating expert report, email a few more questions to Lana, organize items for report etc..			
AJR	Tax Client Conference	01/18/12	2.50	750.00	750.01	0.01	0.00	Review of proposed settlement agreement, meet with Dan, compare the asset values to the Bertsch report, update Dan's spreadsheet on the 3 settlement scenarios.			
AJR	Tax Client Conference	01/18/12	2.10	630.00	630.01	0.01	0.00	Start to pull together the draws activity from 2006-2011 for the trust and its wholly owned companies, start making notes in word for tomorrow's meeting and for the opinion letter.			
AJR	Tax Client Conference	01/19/12	1.80	540.00	540.01	0.01	0.00	Divorce consulting - go over the settlement spreadsheet scenarios with Dan, update the settlement spreadsheet with changes.			
AJR	Tax Client Conference	01/19/12	3.40	1,020.00	1,020.02	0.02	0.00	Meeting at Mark Solomon's office to review the settlement offer.			
AJR	Tax Client Conference	01/20/12	0.30	90.00	90.00	0.00	0.00	Email to Lana re: 5/30/01 asset assignments still needed, review the 1993 separate asset detail in the trust agreement, notate and send to binder.			
AJR	Tax Client Conference	01/24/12	0.60	180.00	180.00	0.00	0.00	Conference call with Dan and Mark Solomon.			

Invoice Journal

October 17, 2011 - September 30, 2012

Inv #	Reference	Date	Client	Sort Name	Time	Expenses	Progress	Net	Surcharge	Discount	Sales Tax	Service Tax	Invoice Amount
Detail:	Staff	Description	Date	Hrs/Units	WIP Amt	Billed	Adjusted	Carryover	Comments				
1	DTG	Litigation Support	11/22/11	0.50	232.50	232.50	0.00	0.00	went over work with Angelo				
	DTG	Litigation Support	11/28/11	1.30	604.50	604.51	0.01	0.00	meeting with Lana to go over questions on GL				
	DTG	Litigation Support	12/05/11	0.30	139.50	139.50	0.00	0.00	phone call with Eric on status of report				
	DTG	Litigation Support	12/07/11	1.30	604.50	604.51	0.01	0.00	meeting with Lana to go over information needed				
	DTG	Litigation Support	01/12/12	1.00	465.00	465.01	0.01	0.00	meeting with Eric and Lana				
	DTG	Litigation Support	01/17/12	0.80	372.00	372.01	0.01	0.00	meeting with Angelo				
	DTG	Litigation Support	01/18/12	1.00	465.00	465.01	0.01	0.00	review of settlement agreement and meeting with Angelo				
	DTG	Litigation Support	01/19/12	0.50	232.50	232.50	0.00	0.00	review of changes made to spreadsheet by Angelo, print out schedules for meeting				
	DTG	Litigation Support	01/19/12	3.40	1,581.00	1,581.03	0.03	0.00	meeting at Solomon's office to go over settlement offer				
	DTG	Litigation Support	01/24/12	0.50	232.50	232.50	0.00	0.00	review of liabilities and phone conversation with Mark				
	MDS	Bookkeeping	11/23/11	0.30	25.50	25.50	0.00	0.00	Scan balance sheets into consulting binders, name and file				
		Report Totals		83.45	26,637.50	26,480.00	-157.50	0.00					
12447			06/22/12	NELSONERIC	Nelson Eric	82,384.00	0.00	0.00					82,384.00
Detail:	Staff	Description	Date	Hrs/Units	WIP Amt	Billed	Adjusted	Carryover	Comments				
	ABV	General Consulting Services	06/18/12	3.80	513.00	513.00	0.00	0.00	Proof and make changes to report, add text to exhibits, go over changes with Dan				
	AJR	Tax Client Conference	02/07/12	0.10	30.00	30.00	0.00	0.00	Divorce consulting - email to Lana re: status of tracing the assets from the 1993 separate property trusts to the 2001 trusts.				
	AJR	Tax Client Conference	02/22/12	0.35	105.00	105.00	0.00	0.00	Divorce consulting - follow up email to Lana re: status of tracing assets from 1993 to the 2001, asked her re: 2007-2010 distribution authorizations, emails to and from Lana.				
	AJR	Tax Client Conference	02/23/12	1.00	300.00	300.00	0.00	0.00	Discuss next week's meeting with Dan, look over emails to Lana to resend the email requesting the 5/30/01 assignments from Eric to the trust, move items from the perm file to binder, make notes etc..				
	AJR	Tax Client Conference	02/24/12	0.20	60.00	60.00	0.00	0.00	Go over items with Dan re: Tracing WY Downs from inception to				

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											Tax	Tax	Amount
Detail:	Staff	Description	Date	Hrs/Units	WIP Amt	Billed	Adjusted	Carryover	Comments				
AJR		Tax Client Conference	02/25/12	4.50	1,350.00	1,350.00	0.00	0.00	the ultimate sale in 2006.				
AJR		Tax Client Conference	04/12/12	0.50	150.00	150.00	0.00	0.00	Meet with Dan to assist in generating a comprehensive open item list and other data for his meeting on Monday at Solomon's office, also looked over questions Dan had etc..				
AJR		Tax Client Conference	04/19/12	0.20	60.00	60.00	0.00	0.00	Meeting with Eric, Rochelle and Dan.				
AJR		Tax Client Conference	04/25/12	1.30	390.00	390.00	0.00	0.00	Discussion with Eric re: info needed to start the report.				
AJR		Tax Client Conference	04/27/12	3.40	1,020.00	1,020.00	0.00	0.00	Discussion with Eric, discuss the nelson loans pdf with Dan, restore the 2005 ELN NV Tr peachtree file, run and review the f/i and begin to update the comparative f/s.				
AJR		Tax Client Conference	04/30/12	5.25	1,575.00	1,575.00	0.00	0.00	Start to review the information sent over by Lana and Rochelle, go through the Wells Fargo broker statements (activity was not on the books of the trust) and list questions/items needed on this account.				
AJR		Tax Client Conference	05/02/12	0.35	126.00	126.00	0.00	0.00	Go through the items received from Lana and Rochelle, send a long list of questions and remaining items needed. Start on distributions work.				
AJR		Tax Client Conference	05/03/12	3.40	1,224.00	1,224.00	0.00	0.00	Discussions with Eric re: status and Lana/Rochelle re: my emails detailing out the items still needed.				
AJR		Tax Client Conference	05/04/12	3.00	1,080.00	1,080.00	0.00	0.00	Work on the distributions spreadsheet covering 2001-2011.				
AJR		Tax Client Conference	05/08/12	1.20	432.00	432.00	0.00	0.00	Continue the work on the distribution spreadsheet, detail out questions for Lana/Rochelle.				
AJR		Tax Client Conference	05/08/12	2.20	792.00	792.00	0.00	0.00	Complete the ELN NV Tr distribution spreadsheet, email to Lana, Rochelle and Eric.				
AJR		Tax Client Conference	05/10/12	0.50	180.00	180.00	0.00	0.00	Go through add'l info sent by Rochelle/Lana, look over list and notate outstanding items for Thursday's meeting.				
AJR		Tax Client Conference	05/10/12	1.25	450.00	450.00	0.00	0.00	Read April 4, 2012 motion for Larry Bertsch to examine AZ sales transactions, discussed items with Dan before our meeting.				
AJR		Tax Client Conference	05/10/12	1.00	360.00	360.00	0.00	0.00	Meeting with Dan, Eric, Lana and Rochelle.				
AJR		Tax Client Conference	05/11/12	1.50	540.00	540.00	0.00	0.00	Review add'l items/organize, discuss setting up the chart of accts in CSA etc..				
AJR		Tax Client Conference	05/14/12	0.55	198.00	198.00	0.00	0.00	Add items to binder, discuss the CSA set up status with David, email to Lana/Rochelle with an updated list of items needed/questions.				
AJR		Tax Client Conference	05/15/12	0.20	72.00	72.00	0.00	0.00	Go over add'l CSA set up details with David.				
AJR		Tax Client Conference	05/16/12	0.45	162.00	162.00	0.00	0.00	Discussion with Dan, review the email from Rochelle.				
AJR		Tax Client Conference	05/16/12	0.30	108.00	108.00	0.00	0.00	Go over the add'l info. received, send another email to Rochelle re:bank info. still needed.				
AJR		Tax Client Conference	05/16/12	0.30	108.00	108.00	0.00	0.00	Discussion with Jeff Luszeck at Solomons office, email him the WY Horseracing 1998 stock cert in the name of the ENSPT.				

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Inv #	Reference	Date	Client	Sort Name	Time	Expenses	Progress	Net	Surcharge	Discount	Sales	Service	Invoice
Detail: Staff	Description	Date	Hrs/Units	WIP Amt	Billed	Adjusted	Carryover	Comments			Tax	Tax	Amount
AJR	Litigation Support	05/16/12	1.75	630.00	630.00	0.00	0.00	Send addtl items to binder, email addtl questions to Rochelle, update the open items list, review addtl items received etc..					
AJR	Litigation Support	05/17/12	5.50	1,980.00	1,980.00	0.00	0.00	Review addtl emails, email Rochelle addtl questions relating to her email and regarding another B of A account, send addtl items to binder, review open items list, jot down notes to include in report, start on report, label/organize many exhibits, figure out 2006 balance sheet out of balance issues, go over other unadjusted balance issues from 2005 and 2006 with David, go over addtl items sent over by Rochelle etc..					
AJR	Litigation Support	05/18/12	0.75	270.00	270.00	0.00	0.00	Send another updated list of open items, update the Lindell rental income/expense spreadsheet with notes re: LSN NV Tr collecting all of the rent and paying the expenses for an 18 month period when the ELN NV Tr owned 50% of the property.					
								Work on report, exhibits etc.					
AJR	Litigation Support	05/18/12	3.00	1,080.00	1,080.00	0.00	0.00	Print off and organize the WF #6005 & #6521 bank statements, go through all of the bank stmts received for the 3 accounts not recorded on the books, send a comprehensive list of bank statements needed and begin open items list of backup needed pertaining to deposits and withdrawals for these 3 accounts.					
AJR	Litigation Support	05/21/12	2.80	1,008.00	1,008.00	0.00	0.00	Go through the WF #6005, #6521 and B of A #4354 statements that we have on hand and list out questions relating to transactions, updated open items list and emailed both to client, started on our ajes for 2001 and 2002 in CSA.					
AJR	Litigation Support	05/22/12	5.90	2,124.00	2,124.00	0.00	0.00	Discussion with Eric re: report status and discussed the information we still need.					
AJR	Litigation Support	05/23/12	0.30	108.00	108.00	0.00	0.00	Discussion with Rochelle, work on the ajes for 2002-2006, prepare spreadsheet for 2005 g/l variances, add exhibits etc..					
AJR	Litigation Support	05/23/12	6.00	2,160.00	2,160.00	0.00	0.00	Work on the ajes for 2006 and 2007, go through new info sent over by Rochelle/Lana, add items to bank transaction questions etc..					
AJR	Litigation Support	05/24/12	7.25	2,610.00	2,610.00	0.00	0.00	Discussion with Eric, complete the 2007 adjustments, email addtl questions to Lana and Rochelle, update open items etc.					
AJR	Litigation Support	05/25/12	7.50	2,700.00	2,700.00	0.00	0.00	Work on 2008 adjustments, review emails from Rochelle.					
AJR	Litigation Support	05/29/12	4.05	1,458.00	1,458.00	0.00	0.00	Discussion with Jeff at Solomon's office re: status of report.					
AJR	Litigation Support	05/30/12	0.30	108.00	108.00	0.00	0.00	Continue to work on 2008 adjustments, review addtl info received from Lana/Rochelle, emails to and from, meet with Dan, t/c with Eric.					
AJR	Litigation Support	05/30/12	5.65	2,034.00	2,034.00	0.00	0.00	Work on the 2008 and 2009 accounting adjustments, go over emails from Lana and Rochelle etc..					
AJR	Litigation Support	05/31/12	6.85	2,466.00	2,466.00	0.00	0.00						

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Inv #	Reference	Date	Client	Sort Name			Net			Sales	Service	Invoice
							Progress	Surcharge	Discount	Tax	Tax	Amount
Detail:	Staff	Description	Date	Hrs/Units	WIP Amt	Billed	Adjusted	Expenses	Carryover	Comments		
AJR		Litigation Support	06/01/12	8.50	3,060.00	3,060.00	0.00		0.00	Wrok on the 2009 and 2010 accounting, meeting with Dan, Eric, Lana and Rochelle, discuss gameplan with Dan, update open items list etc.		
AJR		Litigation Support	06/02/12	2.25	810.00	810.00	0.00		0.00	Finish up the 2010 accounting, email Lana/Rochelle questions re: 2004 and 2007 assignments to and from LSNNVT, add items to report etc..		
AJR		Litigation Support	06/05/12	6.00	2,160.00	2,160.00	0.00		0.00	Wrap up 2010 accounting and complete the 2011 accounting, review addtl info sent by Rochelle, calc the Lindell est cash flow due to ELNNVT from LSNNVT from 4/1/07 to 9/30/08, addtl accounting ajes in past years etc..		
AJR		Litigation Support	06/06/12	5.00	1,800.00	1,800.00	0.00		0.00	Set up a spreadsheet for the 2004, 2006 and 2007 asset transfers to and from the ELNNVT and LSNNVT, long discussion with Rochelle re: assignment of Lindell and Brianhead Cabin to the LENNVT in 2001 and other issues relating to the MS Land, update the open items list and record addtl adjustments etc..		
AJR		Litigation Support	06/07/12	5.50	1,980.00	1,980.00	0.00		0.00	Record the B of A #7077 activity in 2007, clear questions, add items to list, investigate items by reviewing other related entity g/l's, go over addtl info received, add addtl adjustments etc.		
AJR		Litigation Support	06/08/12	7.80	2,808.00	2,808.00	0.00		0.00	Addtl 2006 ajes, print off t/b's by year, work on report and additional exhibits, discussion with Dan etc..		
AJR		Litigation Support	06/11/12	1.00	360.00	360.00	0.00		0.00	Discussion with Eric, review Rochelle's email re: Brianhead cabin assignment, review items with Dan, prepare for meeting, another email to Rochelle.		
AJR		Litigation Support	06/11/12	3.20	1,152.00	1,152.00	0.00		0.00	Meeting with Dan and Eric to go over asset transfers and other report issues.		
AJR		Litigation Support	06/12/12	4.90	1,764.00	1,764.00	0.00		0.00	Make additional adjustments for various years per our meeting on monday, review addtl info emailed over by Rochelle and make adjustments, rerun the annual t/b's and ajes, update items in the report for changes in exhibits and distributions etc..		
AJR		Litigation Support	06/13/12	0.50	180.00	180.00	0.00		0.00	Look over g/l's and other information in order to attempt to identify the orgination of the undistributed deposits on the g/l, discussion with Jeff from Solomon's office re: WY Downs sale etc..		
AJR		Litigation Support	06/13/12	3.00	1,080.00	1,080.00	0.00		0.00	Work on report with Dan.		
AJR		Litigation Support	06/14/12	0.50	180.00	180.00	0.00		0.00	Review appraisals of MS properties and WY 200 acres, discussed with Dan and made notations on Exhibit 7.		
AJR		Litigation Support	06/14/12	2.70	972.00	972.00	0.00		0.00	Review emails from Lana, make addtl adjustments, rerun the t/b's, update the exhibits and report, discussion with Dan.		
AJR		Litigation Support	06/15/12	0.60	216.00	216.00	0.00		0.00	Send items to binders and revise reports for a few small items.		
AJR		Litigation Support	06/15/12	4.80	1,728.00	1,728.00	0.00		0.00	Work on report with Dan, meet with Eric and Dan etc..		

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Inv #	Reference	Date	Client	Sort Name	Time	Expenses	Progress	Net	Surcharge	Discount	Sales	Service	Invoice
Detail: Staff	Description	Date	Hrs/Units	WIP Amt	Billed	Adjusted	Carryover	Comments	Tax	Tax	Amount		
AJR	Litigation Support	06/18/12	1.25	450.00	450.00	0.00	0.00	Discussion with Rochelle, Dan and Eric, review report. Look into the 2002 transfer of the Lucky, Lucky, Lucky note to LSNNVT and email details to Dan.					
AJR	Tax Client Conference	06/21/12	3.25	975.00	975.00	0.00	0.00	Discussion with Dan and Mark, discuss the temporary finalization of the binder and the CD needed for next weeks meeting with Mark, work on the bank account activity spreadsheet covering 4/21/12 to 6/15/12, discussions with Dan, emails to Lana and Rochelle re: info needed for spreadsheet.					
AJR	Litigation Support	06/22/12	2.25	810.00	810.00	0.00	0.00	Go over Nelson v Nelson liability binder and the bank account activity spreadsheet both with Dan, split the liab binder docs and send to the divorce binder and label, start to go through the liabilities and start a list of questions for Eric.					
DCH	Litigation Support	05/10/12	3.80	551.00	551.00	0.00	0.00	Work on chart of accounts for bookkeeping					
DCH	Litigation Support	05/11/12	4.00	580.00	580.00	0.00	0.00	Work on chart of accounts. Got them all set up, started inputting balances.					
DCH	Bookkeeping	05/14/12	8.00	960.00	960.00	0.00	0.00	Work on accounting.					
DCH	Litigation Support	05/16/12	3.00	435.00	435.00	0.00	0.00	Work on annual bookkeeping.					
DCH	Litigation Support	05/17/12	8.60	1,247.00	1,247.00	0.00	0.00						
DCH	Litigation Support	05/18/12	3.10	449.50	449.50	0.00	0.00	Finish bookkeeping for court.					
DTG	Litigation Support	01/30/12	0.30	139.50	139.50	0.00	0.00	met with Eric to get update on liabilities					
DTG	Litigation Support	01/31/12	0.30	139.50	139.50	0.00	0.00	phone conf with Mark solomon update on hearing					
DTG	Litigation Support	02/01/12	0.30	139.50	139.50	0.00	0.00	phone call with Eric					
DTG	Litigation Support	02/22/12	0.30	139.50	139.50	0.00	0.00	read the most recent Bertsch report Banone AZ source and application of funds					
DTG	Litigation Support	02/25/12	3.00	1,395.00	1,395.00	0.00	0.00	went over open items with Angelo to prepare for meeting					
DTG	Litigation Support	02/25/12	0.30	139.50	139.50	0.00	0.00	updated todo list					
DTG	Litigation Support	02/27/12	3.00	1,395.00	1,395.00	0.00	0.00	meeting at Mark Solomon's office with Eric, Lana, Mark Jeff and Rochelle to go over what was needed to complete expert report					
DTG	Litigation Support	03/13/12	0.30	139.50	139.50	0.00	0.00	phone call with Eric and phone call with Jeff on Status of report					
DTG	Litigation Support	03/14/12	0.50	232.50	232.50	0.00	0.00	met with Eric and Lana to go over plan					
DTG	Litigation Support	03/20/12	1.00	465.00	465.00	0.00	0.00	meeting with Eric to go over Strategy					
DTG	Litigation Support	03/26/12	0.50	232.50	232.50	0.00	0.00	meeting with Eric and Shelly Newell					
DTG	Litigation Support	04/12/12	0.50	232.50	232.50	0.00	0.00	meeting with Eric to go over items needed					
DTG	Litigation Support	04/24/12	0.30	139.50	139.50	0.00	0.00	phone call with Eric and phone call with Mark Solomon on project status					

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Inv #	Reference	Date	Client	Sort Name	Time	Expenses	Progress	Net	Surcharge	Discount	Sales Tax	Service Tax	Invoice Amount
Detail: Staff	Description	Date	Hrs/Units	WIP Amt	Billed	Adjusted	Carryover	Comments					
DTG	Litigation Support	04/25/12	2.30	1,069.50	1,069.50	0.00	0.00	review of burr documents and review of his deposition					
DTG	Litigation Support	04/25/12	2.80	1,302.00	1,302.00	0.00	0.00	read Burr depo					
DTG	Litigation Support	04/26/12	1.90	883.50	883.50	0.00	0.00	read though Burr Depo vol I					
DTG	Litigation Support	05/10/12	1.50	697.50	697.50	0.00	0.00	prep for meeting with Eric, went over items needed and meeting with Eric.					
DTG	Litigation Support	06/01/12	2.00	930.00	930.00	0.00	0.00	met with Eric to go over report met with angelo to further discuss work that needs to be done.					
DTG	Litigation Support	06/08/12	0.60	279.00	279.00	0.00	0.00	went over report issues with Mark Solomon and Angelo					
DTG	Litigation Support	06/11/12	0.30	139.50	139.50	0.00	0.00	phone call with Mark Solomon and Eric					
DTG	Litigation Support	06/11/12	3.20	1,488.00	1,488.00	0.00	0.00	meeting with Eric on report					
DTG	Litigation Support	06/11/12	1.50	697.50	697.50	0.00	0.00	started to review report					
DTG	Litigation Support	06/12/12	0.70	325.50	325.50	0.00	0.00	review of report					
DTG	Litigation Support	06/13/12	5.20	2,418.00	2,418.00	0.00	0.00	work on report					
DTG	Litigation Support	06/14/12	0.30	139.50	139.50	0.00	0.00	went over issues with Angelo					
DTG	Litigation Support	06/14/12	1.00	465.00	465.00	0.00	0.00	work on report					
DTG	Litigation Support	06/14/12	2.30	1,069.50	1,069.50	0.00	0.00	worked on report					
DTG	Litigation Support	06/15/12	5.30	2,464.50	2,464.50	0.00	0.00	work on report					
DTG	Litigation Support	06/15/12	0.40	186.00	186.00	0.00	0.00	work on report					
DTG	Litigation Support	06/16/12	4.60	2,139.00	2,139.00	0.00	0.00	worked on finalizing report.					
DTG	Litigation Support	06/18/12	2.10	976.50	976.50	0.00	0.00	worked on revision of report					
DTG	Litigation Support	06/20/12	0.40	186.00	186.00	0.00	0.00	phone call with Mark and printed reports Phone call with Jeff to go over report					
DTG	Litigation Support	06/21/12	1.00	465.00	465.00	0.00	0.00	meeting with Mark and Jeff to go over report					
DTG	Litigation Support	06/21/12	0.30	139.50	139.50	0.00	0.00	went over with Angelo on what needed to be done regarding cash position and going over liabilities					
DTG	Litigation Support	06/22/12	0.40	186.00	186.00	0.00	0.00	met with Angeloo to go over debts and cash flow					
Report Totals				239.10	82,384.00	82,384.00	0.00	0.00					

12591 08/31/12 NELSONERIC Nelson Eric 43,708.45 36.55 0.00 0.00 0.00 43,745.00

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Inv #	Reference	Date	Client	Sort Name	Time	Expenses	Progress	Net	Surcharge	Discount	Sales	Service	Invoice
Detail: Staff	Description	Date	Hrs/Units	WIP Amt	Billed	Adjusted	Carryover	Comments			Tax	Tax	Amount
ABV	Tax Preparation	08/23/12	0.20	22.00	22.00	0.00	0.00	Pull Excel file from Sharefile and file in binder, email KL					
AJR	Litigation Support	06/23/12	3.25	1,170.00	1,170.00	0.00	0.00	Go through the liability binder, set up spreadsheet to summarize the liabilities, emails to and from Lana etc..					
AJR	Litigation Support	06/24/12	1.50	540.00	540.00	0.00	0.00	Work on liability spreadsheet, finish reviewing docs etc..					
AJR	Litigation Support	06/25/12	1.25	450.00	450.00	0.00	0.00	Prepare for meeting with Mark Solomon.					
AJR	Litigation Support	06/25/12	3.00	1,080.00	1,080.00	0.00	0.00	Meet with Mark Solomon to go over report.					
AJR	Litigation Support	06/25/12	0.80	288.00	288.00	0.00	0.00	Review my notes from my meeting with Mark, discussion with Rochelle re: bank activity g/l's needed, review emails and update bank activity spreadsheet with updated information.					
AJR	Mileage Expenses	06/25/12	0.00	27.75	27.75	0.00	0.00	50 miles					
AJR	Litigation Support	06/26/12	0.20	72.00	72.00	0.00	0.00	Prepare for today's meeting with Eric.					
AJR	Litigation Support	06/26/12	0.70	252.00	252.00	0.00	0.00	Meet with Eric to go over cash position and debt.					
AJR	Litigation Support	06/26/12	2.00	720.00	720.00	0.00	0.00	Update liab spreadsheet with notes from my meeting with Eric, update report and other items.					
AJR	Litigation Support	06/29/12	1.50	540.00	540.00	0.00	0.00	Complete the bank activity spreadsheet, draft letter to Solomon re: the cash activity for the trust since 4/20/12.					
AJR	Litigation Support	07/02/12	2.75	990.00	990.00	0.00	0.00	Meet with Dan to go over report changes and liabilities.					
AJR	Litigation Support	07/16/12	1.40	504.00	504.00	0.00	0.00	Meet with Dan re: expert witness preparation.					
AJR	Litigation Support	07/16/12	2.00	720.00	720.00	0.00	0.00	Conference call with Mark Solomon, Jeff and Dan, go over trial prep with Dan etc..					
AJR	Litigation Support	07/17/12	5.80	2,088.00	2,088.00	0.00	0.00	Assist Dan with trial prep.					
AJR	Litigation Support	07/18/12	1.20	432.00	432.00	0.00	0.00	Go through addtl docs sent over by Solomon's office, discussion with Dan re: trial prep etc..					
AJR	Litigation Support	07/19/12	2.00	720.00	720.00	0.00	0.00	Telephone conversations with Dan, look over information and get back to him multiple times re: issues, discussed the day's proceedings with Dan.					
AJR	Litigation Support	07/20/12	0.75	270.00	270.00	0.00	0.00	Conference call with Dan and Mark re: trial prep for monday, reviewed email re: addtl exhibits being sent to Mark's office by Bob Dickerson.					
AJR	Litigation Support	07/23/12	3.00	1,080.00	1,080.00	0.00	0.00	Meet with Dan to go over Bertsch report/distributions, telephone conversations with Dan and look up addtl information for him in binder, review exhibits sent over by Jeff Luszeck, text Dan re: a so called payment to Eric in 2005 from LSNNVT.					
AJR	Litigation Support	07/24/12	3.75	1,350.00	1,350.00	0.00	0.00	Review all of the Bertsch reports for wednesday's trial for Dan.					
AJR	Litigation Support	07/24/12	1.90	684.00	684.00	0.00	0.00	Meet with Dan to go over the Bertsch reports for the trial since Bertsch is taking the stand on wednesday.					

Invoice Journal

October 17, 2011 - September 30, 2012

Inv #	Reference	Date	Client	Sort Name	Time	Expenses	Progress	Net	Surcharge	Discount	Sales	Service	Invoice
Detail: Staff	Description	Date	Hrs/Units	W/P Amt	Billed	Adjusted	Carryover	Comments			Tax	Tax	Amount
AJR	Litigation Support	07/25/12	0.25	90.00	90.00	0.00	0.00	Answer questions for Jeff Luszeck.					
AJR	Litigation Support	08/15/12	0.50	180.00	180.00	0.00	0.00	Discussion with Eric re: Dan taking the stand on monday, text to Dan, set up on his calendar. Review items in binder.					
AJR	Litigation Support	08/20/12	0.25	90.00	90.00	0.00	0.00	Discussed today's proceedings with Dan.					
DTG	Litigation Support	07/02/12	4.90	2,278.50	2,278.49	-0.01	0.00	went over report with Angelo and review of liabilities. Made modifications to report and phone conference with Eric. Phone Conf with Mark Solomon.					
DTG	Litigation Support	07/03/12	3.40	1,581.00	1,581.00	0.00	0.00	work on report and exhibits					
DTG	Litigation Support	07/03/12	3.90	1,813.50	1,813.50	0.00	0.00	updated exhibits posted new entries to trial balance and updated report					
DTG	Litigation Support	07/05/12	4.50	2,092.50	2,092.49	-0.01	0.00	made changes to trial balance and ajustemetrns Sorris note and transactions for exhibits. review of exhibits phone call with Eric					
DTG	Litigation Support	07/06/12	1.50	697.50	697.50	0.00	0.00	phone call with mark Solomon regarding russell property. review of financials to determine how this was recorded and phone call with Eric.					
DTG	Litigation Support	07/06/12	0.30	139.50	139.50	0.00	0.00	copied files recieved on CD Rushforth report etc					
DTG	Litigation Support	07/07/12	1.50	697.50	697.50	0.00	0.00	review of Lane's report					
DTG	Litigation Support	07/13/12	3.80	1,767.00	1,767.00	0.00	0.00	meeting with Mark Solomon to prepare for trial					
DTG	Litigation Support	07/13/12	0.50	232.50	232.50	0.00	0.00	review of minutes for each of the trusts					
DTG	Litigation Support	07/16/12	2.30	1,069.50	1,069.50	0.00	0.00	prep for trial					
DTG	Litigation Support	07/16/12	1.70	790.50	790.50	0.00	0.00	conference call with Mark Solomon and review of documents					
DTG	Litigation Support	07/17/12	2.00	930.00	930.00	0.00	0.00	prep for trial and go over issues Dickerson raised					
DTG	Litigation Support	07/17/12	1.50	697.50	697.50	0.00	0.00						
DTG	Litigation Support	07/17/12	0.20	93.00	93.00	0.00	0.00	phone call with Eric					
DTG	Litigation Support	07/17/12	2.10	976.50	976.50	0.00	0.00	prep for trial					
DTG	Litigation Support	07/18/12	4.00	1,860.00	1,860.00	0.00	0.00	went to court for testimony					
DTG	Litigation Support	07/19/12	8.60	3,999.00	3,998.99	-0.01	0.00	testify in court, went over some issues with Angelo and phone call with Mark Solomon					
DTG	Litigation Support	07/20/12	0.50	232.50	232.50	0.00	0.00	phone conf with Jeff Lutzcheck					
DTG	Litigation Support	07/20/12	1.00	465.00	465.00	0.00	0.00	phone conf with Mark and Jeff					
DTG	Litigation Support	07/23/12	6.70	3,115.50	3,115.49	-0.01	0.00	Prepare for trial, review various documents, answer questions during trial on the stand					
DTG	Litigation Support	07/24/12	1.90	883.50	883.50	0.00	0.00						
DTG	Litigation Support	07/25/12	4.50	2,092.50	2,092.49	-0.01	0.00	prep for court, meeting with Mark and sat through Bertsch					

Invoice Journal

October 17, 2011 - September 30, 2012

Inv #	Reference	Date	Client	Sort Name	Time	Expenses	Progress	Surcharge	Discount	Sales Tax	Service Tax	Invoice Amount
Detail: Staff	Description	Date	Hrs/Units	WIP Amt	Billed	Adjusted	Carryover	Comments				
DTG	Litigation Support	08/20/12	1.80	837.00	838.00	1.00	0.00	testimony prep for trial and drive to court house and testify				
MDS	Bookkeeping	07/05/12	0.40	34.00	34.00	0.00	0.00	Upload Dan's reports to portal, phone attorney to let him know that they are there,				
MEC	Postage/Shipping Charges	06/25/12	1.00	8.80	8.80	0.00	0.00	Accelerated Courier to Solomon Dwiggins Freer & Morse RE: Divorce Project				
Report Totals				104.45	43,744.05	43,745.00	0.95	0.00				

EXHIBIT 2

EXHIBIT 2

The Rushforth Firm, PLLC
A Professional Limited-Liability Company
P.O. Box 371655
Las Vegas, NV 89137-1655

Ph:(702) 255-4552

Fax:(702) 255-4677

Solomon Dwiggins & Freer
9060 W. Cheyenne Ave.
Las Vegas, Nevada
89129

October 8, 2012

Attention: Mark Solomon, Esq.

File #: 6691-804

Inv #: Settle

RE: Eric Nelson

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Sep-07-11	NO CHARGE: Prepare engagement agreement for attorney review.	0.50	0.00	ACS
Sep-08-11	NO CHARGE: Finalize engagement agreement and email to Mr. Solomon.	0.40	0.00	ACS
Sep-09-11	NO CHARGE: Telephone conference with Mark Solomon; preparation of file memo; instructions to ACS regarding finalization of engagement agreement.	1.00	0.00	LTR
Oct-10-11	Review pleadings provide by Jeff Luszeck; legal research.	1.10	495.00	LTR
Nov-28-11	Review file; telephone conference with Mark Solomon regarding case status.	0.40	180.00	LTR
Nov-29-11	Legal research; case conferences with JJP; telephone conference with Eric; work on opinion letter.	1.20	540.00	LTR
	Case conferences with LTR	0.60	195.00	JJP
Nov-30-11	Work on opinion letter; instructions to JJP to review and critique opinion letter.	2.20	990.00	LTR
	Instructions from LTR	0.10	32.50	JJP

Dec-01-11	Finalize initial draft of opinion letter; transmittal of letter to Mark Solomon;	1.40	630.00	LTR
	Review of opinion letter from LTR and review of file; conferences with LTR	1.30	422.50	JJP
Dec-02-11	Review pleadings; legal research; telephone conference with Mark Solomon; update opinion letter.	2.30	1,035.00	LTR
Dec-05-11	Legal research; case conference with JJP; revisions to opinion letter.	2.10	945.00	LTR
	Conference with LTR	0.30	97.50	JJP
Dec-06-11	Discussions with JJP; incorporation of Joey's suggestions into opinion letter; send link to updated letter to Mark Solomon.	0.80	360.00	LTR
	Review of revisions to opinion letter from letter and review of law citations; conference with LTR regarding suggestion revisions and additional arguments/clarifications of existing law	1.40	455.00	JJP
Dec-28-11	Case conference with JJP	0.30	135.00	LTR
	Conference with LTR regarding current issues	0.30	97.50	JJP
Mar-12-12	Discussion with Eric Nelson.	0.50	225.00	LTR
Apr-11-12	Telephone conference with Jeff Luszeck.	0.20	90.00	LTR
May-16-12	Telephone conference with Jeff Luszeck; review file; telephone conference with Jeff Luszeck and Mark Solomon.	0.40	180.00	LTR
May-24-12	Review of testimony transcripts of Jeff Burr; legal research.	3.20	1,440.00	LTR
May-31-12	Review testimony transcripts of Jeff Burr.	4.20	1,890.00	LTR
Jun-12-12	NO CHARGE: Telephone conference with Mark Solomon regarding unbilled charges.	0.10	0.00	LTR
Jun-25-12	Legal research; work on opinion letter as requested by Mark Solomon.	8.00	3,600.00	LTR
Jun-26-12	Finalize draft of opinion letter; instructions to	1.50	675.00	LTR

JJP and ACS to review and suggest corrections and revisions.

	Review of LTR's expert opinion letter to Mark Solomon, Esq.; conference with LTR regarding opinion letter	1.90	617.50	JJP
	NO CHARGE: Review expert witness letter.	0.90	0.00	ACS
Jun-27-12	Telephone conference with Mark Solomon; revision of opinion letter; e-mail correspondence with Mark Solomon's office; instructions to staff to assemble enclosures and prepare in final.	0.70	315.00	LTR
Jul-12-12	Out-of-office meeting with Mark Solomon and Jeff Luszeck.	1.30	585.00	LTR
Jul-16-12	Review of materials provided by Mark Solomon and Jeff Luszeck, including report of Dan Gerety and minutes of meetings of the trustees of the spouses' spendthrift trusts.	0.70	315.00	LTR
	Totals	41.30	\$16,542.50	

Total Fee & Disbursements for all charges on this matter

\$16,542.50

TAX ID Number 38-3771803

PAYMENT DETAILS

Jan-31-12	Payment for invoice: 13869	5,000.00
Jul-16-12	Payment for invoice: 14470	6,925.00
Aug-17-12	Payment on Account - THANK YOU!	2,000.00
Sep-18-12	Payment on Account - THANK YOU!	2,617.50

Total Payments

\$16,542.50

UNPAID BALANCE

\$0.00

(Excludes interest and penalties; may include unbilled time and expenses.)

COPY

FILED 10/24/12

NEO
THE DICKERSON LAW GROUP
ROBERT P. DICKERSON, ESQ.
Nevada Bar No. 000945
KATHERINE L. PROVOST, ESQ.
Nevada Bar No. 008414
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1745 Village Center Circle
Las Vegas, Nevada 89134
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Email: info@dickersonlawgroup.com
Attorneys for LYNITA SUE NELSON

DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON,
Plaintiff/Counterdefendant,
v.
LYNITA SUE NELSON
Defendant/Counterclaimant.

CASE NO. D-09-411537-D
DEPT NO. "O"

ERIC L. NELSON NEVADA TRUST
dated May 30, 2001, and LSN NEVADA
TRUST dated May 30, 2001,

Necessary Parties (joined in this
action pursuant to Stipulation and
Order entered on August 9, 2011)

NOTICE OF ENTRY OF ORDER
FROM JULY 16, 2012 HEARING

1
2 LANA MARTIN, as Distribution Trustee)
3 of the ERIC L. NELSON NEVADA)
4 TRUST dated May 30, 2001,)

5 Necessary Party (joined in this)
6 action pursuant to Stipulation and)
7 Order entered on August 9, 2011)/)
8 Purported Counterclaimant and)
9 Crossclaimant,)

10 v.)

11 LYNITA SUE NELSON and ERIC)
12 NELSON,)

13 Purported Cross-Defendant and)
14 Counterdefendant,)

15 LYNITA SUE NELSON,)

16 Counterclaimant, Cross-Claimant,)
17 and/or Third Party Plaintiff,)

18 v.)

19 ERIC L. NELSON, individually, and as)
20 the Investment Trustee of the ERIC L.)
21 NELSON NEVADA TRUST dated May)
22 30, 2001; the ERIC L. NELSON)
23 NEVADA TRUST dated May 30, 2001;)
24 LANA MARTIN, individually, and as the)
25 current and/or former Distribution)
26 Trustee of the ERIC L. NELSON)
27 NEVADA TRUST dated May 30, 2001,)
28 and as the former Distribution Trustee of)
the LSN NEVADA TRUST dated May)
30, 2001; NOLA HARBER, individually,)
and as the current and/or former)
Distribution Trustee of the ERIC L.)
NELSON NEVADA TRUST dated May)
30, 2001, and as the current and/or)
former Distribution Trustee of the LSN)
NEVADA TRUST dated May 30, 2001;)
ROCHELLE McGOWAN, individually;)
JOAN B. RAMOS, individually; and)
DOES I through X,)

Counterdefendants, and/or)
Cross-Defendants, and/or)
Third Party Defendants.)

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TO: MARK A. SOLOMON, ESQ., and JEFFREY P. LUSZECK, ESQ., of
SOLOMON, DWIGGINS & FREER, LTD., Attorneys for the Eric L. Nelson
Nevada Trust:

DATED this 10th day of October, 2012.

By Joseph Karacsonyi
 ROBERT P. DICKERSON, ESQ.
 Nevada Bar No. 000945
 KATHERINE L. PROVOST, ESQ.
 Nevada Bar No. 008414
 JOSEF M. KARACSONYI, ESQ.
 Nevada Bar No. 10634
 1745 Village Center Circle
 Las Vegas, Nevada 89134
 Attorneys for Defendant

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I HEREBY CERTIFY that I am this date depositing a true and correct copy of the attached **NOTICE OF ENTRY OF ORDER FROM JULY 16, 2012 HEARING**, in the U.S. Mail, postage prepaid to the following at their last known addresses, on the 10th day of October, 2012:

RHONDA K. FORSBERG, ESQ.
 FORSBERG & DOUGLAS
 1070 W. Horizon Ridge Pkwy., Ste. 100
 Henderson, Nevada 89012
 Attorneys for Plaintiff

MARK A. SOLOMON, ESQ.
SOLOMON, DWIGGINS, FREER & MORSE, LTD.
9060 W. Cheyenne Avenue
Las Vegas, Nevada 89129
Attorneys for Third-Party Defendants

Shari Aidakaz
An employee of The Dickerson Law Group


CLERK OF THE COURT

1 **ORDR**
2 THE DICKERSON LAW GROUP
3 ROBERT P. DICKERSON, ESQ.
4 Nevada Bar No. 000945
5 KATHERINE L. PROVOST, ESQ.
6 Nevada Bar No. 008414
7 JOSEF M. KARACSONYI, ESQ.
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13 Email: info@dickersonlawgroup.com
14 Attorneys for LYNITA SUE NELSON

9 EIGHTH JUDICIAL DISTRICT COURT
10 FAMILY DIVISION

11 CLARK COUNTY, NEVADA

12 ERIC L. NELSON,

13 Plaintiff/Counterdefendant,

14 LYNITA SUE NELSON,

15 Defendant/Counterclaimant.

16 AND RELATED ACTIONS

13 CASE NO. D-09-411537-D
14 DEPT NO. "O"

15 DATE OF HEARING: 07-16-12
16 TIME OF HEARING: 9:00 a.m.

19 ORDER FROM JULY 16, 2012 HEARING

20 This matter coming on for hearing on this 16th day of July, 2012, before the
21 Honorable Frank P. Sullivan, for a Decision on Defendant's "Motion in Limine to
22 Exclude Testimony and Report of Daniel T. Gerety, CPA," and "Motion in Limine to
23 Exclude from Trial the Testimony and Report of Layne T. Rushforth, Esq., and any
24 Purported Expert Testimony Regarding the Interpretation of Law, and Application of
25 Facts to Law; to Strike the Eric L. Nelson Nevada Trust's Pre-Trial Memorandum; and
26 for Attorneys' Fees and Costs," and the oppositions to said motions; ROBERT P.
27 DICKERSON, ESQ., KATHERINE L. PROVOST, ESQ., and JOSEF M.
28 KARACSONYI, ESQ., of THE DICKERSON LAW GROUP, appearing on behalf of

1 Defendant, LYNITA NELSON, and Defendant being present; RHONDA K.
2 FORSBERG, ESQ., of FORSBERG & DOUGLAS, appearing on behalf of Plaintiff,
3 ERIC NELSON, and Plaintiff being present; and MARK P. SOLOMON, ESQ., and
4 JEFFREY P. LUSZECK, ESQ., of SOLOMON, DWIGGINS, FREER & MORSE,
5 LTD., appearing on behalf of Third-Party Defendants, Lana Martin and the ELN Trust,
6 and Lana Martin being present. The Court having reviewed and analyzed the pleadings
7 and papers on file herein, having researched the issues presently before the Court, and
8 having heard the arguments of counsel and the parties, and good cause appearing
9 therefore,

10 IT IS HEREBY ORDERED that Defendant's "Motion in Limine to Exclude from
11 Trial the Testimony and Report of Layne T. Rushforth, Esq., and any Purported Expert
12 Testimony Regarding the Interpretation of Law, and Application of Facts to Law; to
13 Strike the Eric L. Nelson Nevada Trust's Pre-Trial Memorandum; and for Attorneys'
14 Fees and Costs" is GRANTED. Layne T. Rushforth, Esq. is excluded from testifying
15 as an expert witness in this matter because the Court does not see how Mr. Rushforth
16 could assist the Court in deciding a fact at issue in this matter, and any testimony Mr.
17 Rushforth could offer is regarding the law which invades the province of the Court.
18 Additionally, the disclosure of Mr. Rushforth's report just seventeen (17) days before
19 Trial was untimely.

20 IT IS FURTHER ORDERED that Defendant's "Motion in Limine to Exclude
21 Testimony and Report of Daniel T. Gerety, CPA" is DENIED. Daniel T. Gerety, CPA
22 will be permitted to testify regarding any knowledge of the facts he may have in this
23 matter, and any tracing he may have done of the parties' assets. Mr. Gerety has
24 previously testified in this matter so there is no surprise to Defendant despite the
25 timing of the disclosure of Mr. Gerety's report.

26 IT IS FURTHER ORDERED that the written reports attached to Third-Party
27 Defendant's Pre-Trial Memorandum as Exhibits 5 and 6 are hereby STRICKEN from
28

166 Cal.App.4th 1166, 83 Cal.Rptr.3d 385, 08 Cal. Daily Op. Serv. 12,144, 2008 Daily Journal D.A.R. 14,434

(Cite as: 166 Cal.App.4th 1166, 83 Cal.Rptr.3d 385)

[3] Husband and Wife 205 ⇨ 266.1

205 Husband and Wife

205VII Community Property

205k266 Transactions Between Husband and Wife

205k266.1 k. In general; transmutation of character of property. Most Cited Cases

In deciding whether a transmutation of property into community property has occurred, the court interprets written instruments independently, without resort to extrinsic evidence. West's Ann.Cal.Fam.Code §§ 850, 852.

[4] Husband and Wife 205 ⇨ 266.1

205 Husband and Wife

205VII Community Property

205k266 Transactions Between Husband and Wife

205k266.1 k. In general; transmutation of character of property. Most Cited Cases

An express declaration of transmutation of property into community property, for purposes of division of property upon dissolution, does not necessarily require use of the terms "transmutation," "community property," or "separate property." West's Ann.Cal.Fam.Code §§ 850, 852.

[5] Husband and Wife 205 ⇨ 266.2(3)

205 Husband and Wife

205VII Community Property

205k266 Transactions Between Husband and Wife

205k266.2 Contracts

205k266.2(3) k. Evidence; effect of tax returns. Most Cited Cases

Husband's counsel's letter reminding him of the consequences of transmutation of separate into community property was relevant to rebut husband's claim that his express declaration of transmutation was unknowing or inadvertent, even though the letter was extrinsic evidence not considered in deciding whether a transmutation occurred in the first instance. West's Ann.Cal.Fam.Code §§ 850, 852.

[6] Divorce 134 ⇨ 1216

134 Divorce

134V Spousal Support, Allowances, and Disposition of Property

134V(I) Appeal

134k1214 Presentation and Reservation in Lower Court of Grounds of Review

134k1216 k. Issues and questions in lower court. Most Cited Cases
(Formerly 134k282)

Husband failed in trial court to allege that, as a matter of public policy, courts should generally exclude revocable estate planning documents as evidence of transmutation upon marital dissolution, and thus waived the argument on appeal, and Court of Appeal would not consider the argument when considering the validity of transmutation agreement between husband and wife. West's Ann.Cal.Fam.Code § 850.

[7] Husband and Wife 205 ⇨ 266.2(1)

205 Husband and Wife

205VII Community Property

205k266 Transactions Between Husband and Wife

205k266.2 Contracts

205k266.2(1) k. In general. Most Cited Cases

Determination that transmutation agreement and trust resulted in transmutation of husband's separate property for divorce purposes did not undermine public policy of encouraging spouses to provide for their surviving spouses in their estate plans. West's Ann.Cal.Fam.Code § 852(a).

[8] Divorce 134 ⇨ 1216

134 Divorce

134V Spousal Support, Allowances, and Disposition of Property

134V(I) Appeal

134k1214 Presentation and Reservation in Lower Court of Grounds of Review

134k1216 k. Issues and questions in lower court. Most Cited Cases

166 Cal.App.4th 1166, 83 Cal.Rptr.3d 385, 08 Cal. Daily Op. Serv. 12,144, 2008 Daily Journal D.A.R. 14,434

(Cite as: 166 Cal.App.4th 1166, 83 Cal.Rptr.3d 385)

(Formerly 134k282)

Husband waived claim on appeal that transmutation agreement and trust were governed by statute providing that “a statement in a will of the character of property is not admissible as evidence of a transmutation of property in a proceeding commenced before the death of the person who made the will,” for purposes of division of property upon dissolution, where husband failed to raise the issue in the trial court. West's Ann.Cal.Fam.Code § 853(a).

[9] Husband and Wife 205 ⚡ 270(8)

205 Husband and Wife

205VII Community Property

205k270 Actions

205k270(8) k. Evidence. Most Cited Cases

(Formerly 409k5, 390k10)

Statute providing that “a statement in a will of the character of property is not admissible as evidence of a transmutation of property in a proceeding commenced before the death of the person who made the will” applies only to wills, not to trusts or transmutation agreements. West's Ann.Cal.Fam.Code § 853(a).

[10] Husband and Wife 205 ⚡ 265

205 Husband and Wife

205VII Community Property

205k265 k. Rights of husband and wife during existence of community. Most Cited Cases

Husband and Wife 205 ⚡ 266.2(1)

205 Husband and Wife

205VII Community Property

205k266 Transactions Between Husband and Wife

205k266.2 Contracts

205k266.2(1) k. In general. Most Cited

Cases

Agreement expressly transmuting husband's separate property to community property did not affect husband's right to seek reimbursement for his contribution of separate property to the community estate upon dissolution of marriage. West's Ann.Cal.Fam.Code §§ 852(a), 2640(b).

****387** Law Offices of Bernard N. Wolf, Bernard N. Wolf, San Francisco; Ginny A. Browne, Pismo Beach, for Appellant.

Robert H. Mott, San Luis Obispo, for Respondent.

***1169 OPINION**

PERREN, J.

In *In re Marriage of Starkman* (2005) 129 Cal.App.4th 659, 28 Cal.Rptr.3d 639, we concluded that merely characterizing separate property transferred to a trust established pursuant to an estate plan as “community property” is insufficient to effectuate a transmutation of the property in the absence of “‘language which expressly states that the characterization or ownership of the property is being changed.’” (*Id.*, at p. 664, 28 Cal.Rptr.3d 639, quoting *Estate of MacDonald* (1990) 51 Cal.3d 262, 272, 272 Cal.Rptr. 153, 794 P.2d 911.) Here we are presented with such a clear expression, in the form of an express agreement to transmute property transferred into a trust established for the same purpose. We conclude that a present transmutation of separate property to community property was thereby effected, notwithstanding language in the transmutation agreement and trust that purports to qualify, limit or condition the transfer upon the death of either spouse.

Frank Gordon Holtemann appeals from a bifurcated order issued in favor of his former wife, Barbara Holtemann, regarding the legal effect of a spousal property transmutation agreement executed during ****388** the marriage. Frank ^{FN1} contends the family law court erred in finding that the agreement contained an “express declaration” sufficient to transmute his separate property into community property, as contemplated by Family Code section 852, subdivision (a).^{FN2} We conclude otherwise and affirm.

FN1. We refer to the parties by their first names for ease of reference, and intend no disrespect.

FN2. All subsequent statutory references are to the Family Code.

FACTS AND PROCEDURAL HISTORY

166 Cal.App.4th 1166, 83 Cal.Rptr.3d 385, 08 Cal. Daily Op. Serv. 12,144, 2008 Daily Journal D.A.R. 14,434

(Cite as: 166 Cal.App.4th 1166, 83 Cal.Rptr.3d 385)

Frank and Barbara were married on June 21, 2003, and separated on June 2, 2006. The parties had no children together, although each has adult children from prior marriages.

When the parties were married, Frank had considerable assets while Barbara had few. The parties jointly retained attorney Joseph Look to prepare estate planning documents that would eliminate the need for probate and minimize taxes in the event of either spouse's death. On March 10, 2005, the parties executed a document entitled "Spousal Property Transmutation Agreement" (the Transmutation Agreement) and another entitled "Holtemann Community Property Trust" (the Trust). An introductory provision in the Transmutation Agreement states that "[t]he parties are entering into this *1170 agreement in order to specify the character of their property interests pursuant to the applicable provisions of the California Family Code. This agreement is not made in contemplation of a separation or marital dissolution and is made solely for the purpose of interpreting how property shall be disposed of on the deaths of the parties." The parties also acknowledged that Look had explained the "legal consequences" of the agreement, and that they had decided not to retain separate counsel after being advised of the advantages of doing so.

The Transmutation Agreement

Article 2.1 of the Transmutation Agreement states as follows: "*Transmutation of Husband's Separate Property to Community Property.* Husband agrees that the character of the property described in Exhibit A (including any future rents, issues, profits, and proceeds of that property) is hereby transmuted from his separate property to the community property of both parties. Exhibit A is attached to and made part of this agreement." Exhibit A, which is identified as both "Husband's Separate Property Being Transmuted to Community Property" and a "List of Community Property," lists a total of eight items of property, including the spouses' residence in Nipomo as well as stock portfolios and land, building, and gas well partnership interests identifying the "Frank G. Holtemann 1996 Trust" as the owner. Article 2.3 further provides that "[c]oncurrently herewith, Husband and Wife have entered into a Declaration of Trust for the Holtemann Community

Property Trust; it being the intention of the parties that the property transmuted by Husband hereunder shall be transferred and assigned into such Trust. Wife acknowledges that the transmutation of Husband's separate property into community property herewith was undertaken upon the express condition that the disposition of the trust estate of said Trust, upon the death of Husband and of Wife, as provided for in said Declaration of Trust, dated March 10, 2005, shall remain in effect, and not be amended, modified or changed by Wife, so that upon the death of the parties, the property subject to this **389 Agreement will pass as provided in said Declaration of Trust. The parties further acknowledge that, but for such agreed disposition of the subject property, settlor Frank Holtemann would not have effected the within transmutation of his separate property into community property. Wife agrees not to amend, modify or change the dispositive provisions of any of the trusts established pursuant to said Declaration of Trust without Husband's prior written consent and agreement."

The Trust

Article 1.3 of the Trust provides: "*Statement of Intent.* This is a joint trust established by the settlors in order to hold community property of the settlors, *1171 which community property was created by the transmutation of separate property of settlor Frank G. Holtemann concurrently with the execution of this trust instrument. The parties each acknowledge that the transmutation of Frank Holtemann's separate property into community property was undertaken upon the condition of and with this trust instrument in mind, in particular with the disposition of the trust estate upon the death of the settlors as provided for herein in mind; and but for such agreed disposition, settlor Frank Holtemann would not have effected the transmutation of his separate property into community property, with which this trust was funded." Article 2.2, entitled "*Character of Trust Assets,*" provides that "[a]ll community property of the settlors transferred to this trust, and the proceeds of all such property, shall continue to be community property under the laws of California, subject to the provisions of this instrument. All separate and quasi-community property shall remain the separate or quasi-community property, respectively, of the contributing settlor."

The Trust further states that "[d]uring the joint

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lifetimes of the settlors, any trust created by this instrument may be revoked or terminated, in whole or in part, by either settlor as to any separate or quasi-community property of that settlor and any community property of the settlors.” The Trust also states that “[u]nless otherwise provided in the revocation or this trust instrument, *any community property so returned shall continue to be the community property of the settlors.*” (Italics added.)

The Proceedings

Barbara filed a petition to dissolve the marriage on August 1, 2006. On October 19, 2006, Frank issued notice that he had exercised his right to revoke the Trust. The parties subsequently stipulated to bifurcate the trial to determine the validity of the Transmutation Agreement. The trial court subsequently found that under the express terms of the Transmutation Agreement, Frank had transmuted his separate property identified in exhibit A to community property. In addition, the court ordered Frank to pay \$13,000 to Barbara's attorney for the purpose of retaining experts to value the community property identified in exhibit A to the Transmutation Agreement.

The court issued a certificate of probable cause certifying the order for interlocutory review, and we subsequently granted Frank's motion for leave to appeal the order. (§ 2025; Cal. Rules of Court, rules 5.180(d) & (f).) ^{FN3}

^{FN3}. On May 12, 2008, we affirmed the trial court's order in a published opinion. We subsequently granted rehearing and ordered the parties to file supplemental briefs addressing the application of sections 853, subdivision (a), and 2640, subdivision (b).

****390 *1172 DISCUSSION**

[1] Frank contends that the Transmutation Agreement and the Trust are insufficient to establish his express intent to transmute his separate property identified in exhibit A to community property, as contemplated by section 852, subdivision (d). According to Frank, his intent in this regard was rendered ambiguous by language in both documents indicating that they were executed solely for estate planning purposes. We disagree.

[2] “Section 850, subdivision (b), provides that married persons may transmute the separate property of either spouse into community property ‘by agreement or transfer,’ subject to the provisions of sections 851 to 853. Section 852, subdivision (a), provides: ‘A transmutation of real or personal property is not valid unless made in writing by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected.’ Our Supreme Court has interpreted ‘an express declaration’ as language expressly stating that a change in the characterization or ownership of the property is being made. (*Estate of MacDonald, supra*, 51 Cal.3d at p. 272, 272 Cal.Rptr. 153, 794 P.2d 911.) ‘[A] writing signed by the adversely affected spouse is not an “express declaration” for the purposes of [Civil Code] section 5110.730(a) [now Fam.Code, § 852, subd. (a)] unless it contains language which expressly states that the characterization or ownership of the property is being changed.’ [Citation.]” (*In re Marriage of Starkman, supra*, 129 Cal.App.4th at pp. 663–664, 28 Cal.Rptr.3d 639.) “The express declaration must unambiguously indicate a change in character or ownership of property. [Citation.]” (*Id.*, at p. 664, 28 Cal.Rptr.3d 639.)

[3] “In deciding whether a transmutation has occurred, we interpret the written instruments independently, without resort to extrinsic evidence. [Citations.]” (*In re Marriage of Starkman, supra*, 129 Cal.App.4th at p. 664, 28 Cal.Rptr.3d 639.) The Transmutation Agreement and Trust at issue in this case establish that Frank intended to, and did, transmute from separate to community property that which was identified in the incorporated exhibit. The Transmutation Agreement unambiguously states that “Husband agrees that the character of the property described in Exhibit A (including any future rents, issues, profits, and proceeds of that property) *is hereby transmuted from his separate property to the community property of both parties.*” (Italics added.) The attached Exhibit A is later expressly identified as “Husband's Separate Property Being Transmuted to Community Property.” In referencing the Trust, the Transmutation Agreement states it is “the intention of the parties that *the property transmuted by Husband hereunder* shall be transferred and assigned into such Trust.” (Italics added.) It also states that “Wife

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acknowledges that *the transmutation of Husband's separate property into community property herewith* " (italics added) is conditioned on her agreement to refrain *1173 from amending, modifying or changing the Trust so that "the property subject to this Agreement will pass as provided in said Declaration of Trust. The parties further acknowledge that, but for such agreed disposition of the subject property, *settlor Frank Holtemann would not have effected the within transmutation of his separate property into community property.*" (Italics added.) The Trust similarly provides that it was created "in order to hold community property of the settlors, *which community property was created by the transmutation of separate property of settlor Frank G. Holtemann concurrently with the execution of this trust instrument.*" *391 " (Italics added.) As the trial court aptly noted, "[a] clearer statement of a transmutation is difficult to imagine."

[4] An express declaration of transmutation does not necessarily require use of the terms "transmutation," "community property," or "separate property." (*In re Marriage of Starkman*, *supra*, 129 Cal.App.4th at p. 664, 28 Cal.Rptr.3d 639.) Unlike in *Starkman*, in which "transmutation" is never mentioned, here the word is stated repeatedly and pointedly. There can be no doubt that, with the advice of counsel, the parties chose this unique and specific term of art.

Frank nevertheless contends that these repeated, express declarations of transmutation were rendered ambiguous by the statement in the Transmutation Agreement that "[t]his agreement is not made in contemplation of a separation or marital dissolution and is made solely for the purpose of interpreting how property shall be disposed of on the deaths of the parties," as well as statements in both documents reflecting the parties' agreement that Frank would not have transmuted his separate property had Barbara not agreed to refrain from exercising her right to amend, modify or change the trust. According to Frank, "[t]hese provisions negate any legally-mandated conclusion that the [Transmutation] Agreement established the requisite 'unambiguous' proof of a transmutation in this marital dissolution action, prior to the parties' deaths."

[5] We are not persuaded. Regardless of the motivations

underlying the documents, they contain the requisite express, unequivocal declarations of a present transmutation. Moreover, the documents reflect that Frank was fully informed of the legal consequences of his actions. Nothing in the record indicates that he was misinformed or misled. On the contrary, counsel sent Frank a letter "reminding" him that "this 'transmutation' of separate into community property has clear and potentially irreversible consequences...." FN4 The Trust also expressly provides that if Frank exercised his *1174 right of revocation during his lifetime—an event that came to pass—any community property that had been transferred into the Trust would continue to be community property. Under the circumstances, Frank will not be heard to complain that his express declaration of transmutation was unknowing or that he " 'slip[ped] into a transmutation by accident.' [Citation.]" (*In re Marriage of Starkman*, *supra*, 129 Cal.App.4th at p. 664, 28 Cal.Rptr.3d 639.)

FN4. While we do not consider extrinsic evidence in deciding whether a transmutation occurred in the first instance (*Estate of MacDonald*, *supra*, 51 Cal.3d at pp. 271–272, 272 Cal.Rptr. 153, 794 P.2d 911), counsel's letter is relevant to rebut Frank's claim that his express declaration of transmutation was unknowing or inadvertent.

Frank also urges us to treat his express declarations of transmutation differently from other express declarations because he did not have his own attorney. He asserts that "[s]ince Mr. Look represented both parties in the estate plan, he should have added an express disclaimer, to the effect that the transmutation would be inoperative on marital dissolution." As we have already noted, however, Frank was fully advised of the consequences in failing to secure separate counsel, yet chose to proceed.

In any event, we are not aware of any authority for the proposition that a transmutation, once effected, can be limited in purpose or otherwise rendered conditional or temporary. Once the character of the property has been changed, a "retransmutation" can be achieved only by an express agreement to that effect that independently**392 satisfies the requirements of subdivision (a) of section 852. As the trial judge stated: "Husband argues that the

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transmutation was limited to estate purposes only. In other words, Frank wishes to have his cake and eat it too. He argues that, in the event of either his or Barbara's death, the survivor would be able to use the Transmutation Agreement to claim the property as community property, thus obtaining a full step up in basis to the fair market value of the property at date of death, while at the same time denying the validity of the Transmutation Agreement as an instrument which created community property. Thus, when it would benefit either Frank or his estate, Frank wishes to characterize the property as community. However, when it would be detrimental to Frank, he wishes to ignore the transmutation and call the property separate." In a similar vein, Frank overlooks the fact that the transmutation allowed him to characterize all income and distributions of principal as community property during the marriage, a tax benefit he otherwise would not have enjoyed.

[6][7] Frank also contends that "[a]s a matter of public policy, ... Courts should generally exclude revocable estate planning documents like the [Transmutation] Agreement and Trust as evidence of transmutation upon marital dissolution." This contention was not raised below, so it is waived. (*Martinez v. Scott Specialty Gases, Inc.* (2000) 83 Cal.App.4th 1236, 1249, 100 Cal.Rptr.2d 403.) In any event, the policy he identifies—"to encourage spouses to provide for their surviving spouses in their estate plans"—is not undermined by our conclusion. We conclude, however, that his chosen language speaks to a contrary intent.

[8][9] *1175 For the first time on appeal, Frank also urges us to conclude that the Transmutation Agreement and Trust are governed by section 853, subdivision (a), which provides that "[a] statement in a will of the character of property is not admissible as evidence of a transmutation of property in a proceeding commenced before the death of the person who made the will." Aside from having waived the claim, Frank fails to demonstrate that section 853 is intended to apply to anything other than wills. The only published decision addressing the issue holds otherwise (*In re Cecconi* (Bkrtcy.N.C.Cal.2007) 366 B.R. 83), and we are persuaded by its reasoning. As we previously recognized in analyzing section 853, wills "are not intended to convey a present interest in the

property. Further, a will is ambulatory in nature, subject to revocation or modification during the testator's life; it 'speaks' only as of the date of the testator's death." (*Estate of Gallio* (1995) 33 Cal.App.4th 592, 598, 39 Cal.Rptr.2d 470; *In re Cecconi, supra*, at p. 127; see also Cal. Law Revision Com. com., 29C West's Ann. Fam.Code (2004 ed.) foll. § 853, p. 484 ["Section 853 is consistent with the general concepts that a will is ambulatory and subject to subsequent revocation or modification and does not speak until the testator's death"].) A trust, on the other hand, conveys to the trustee a present interest that passes immediately upon execution. (*In re Cecconi, supra*, at p. 127.) Moreover, "[t]he language of Section 853 says '[a] statement in a will' and does not have any language including will-substitutes." (*Ibid.*) While Frank notes that commentators have deemed it "unclear" why the law distinguishes between wills and trusts in this regard (Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2007) ¶ 8:846.1), those commentators do not dispute that the distinction exists. Any change in the law is the province of the Legislature.

[10] In his petition for rehearing, Frank warns that our decision will "create **393 havoc" on the "tens of thousands of married couples in California who have executed living trusts." We are confident no such crisis will befall. As the trial court found, the transmutation does not affect Frank's right to seek reimbursement for his contribution of separate property to the community estate pursuant to section 2640, subdivision (b).^{FN5} Neither party has ever disputed this finding.

FN5. Section 2640, subdivision (b) provides: "In the division of the community estate ..., unless a party has made a written waiver of the right to reimbursement or has signed a writing that has the effect of a waiver, the party shall be reimbursed for the party's contributions to the acquisition of property of the community estate to the extent the party traces the contributions to a separate property source. The amount reimbursed shall be without interest or adjustment for change in monetary values and may not exceed the net value of the property at the time of the division."

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***1176** Because we reject Frank's claim that the assets identified in exhibit A to the Transmutation Agreement and Trust are his separate property, his contention that the court erred in ordering him to pay Barbara's fees incurred in valuing those community property assets is moot.

DISPOSITION

The order is affirmed. Respondent shall recover costs on appeal.

We concur: GILBERT, P.J., and YEGAN, J.

Cal.App. 2 Dist.,2008.

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END OF DOCUMENT

EXHIBIT 2

EXHIBIT 2

174 Cal.App.4th 40, 94 Cal.Rptr.3d 84, 09 Cal. Daily Op. Serv. 6225, 2009 Daily Journal D.A.R. 7268

(Cite as: 174 Cal.App.4th 40, 94 Cal.Rptr.3d 84)



Editor's Note: Additions are indicated by Text and deletions by ~~Text~~.

Court of Appeal, Fourth District, Division 3, California.

In re MARRIAGE OF Kathryn A. and Earl E. LUND,
Jr.
Kathryn A. Lund, Appellant,
v.
Earl E. Lund, Jr., Respondent.
No. G040863.

May 21, 2009.

Background: In marriage dissolution proceedings, the Superior Court, Orange County, No. 04D001905, Franz E. Miller, J., found in a bifurcated trial that husband did not transmute his separate property to community property and, even if he had, the transmutation was the product of wife's undue influence. Wife appealed from the interlocutory order.

Holdings: The Court of Appeal, Ikola, J., held that:

- (1) transmutation agreement unambiguously indicated change in all of husband's separate property into community property, and
- (2) evidence did not support finding that wife failed to establish that husband understood agreement.

Reversed.

West Headnotes

[1] Husband and Wife 205 ⚡ 266.1

205 Husband and Wife

205VII Community Property

205k266 Transactions Between Husband and Wife

205k266.1 k. In general; transmutation of character of property. Most Cited Cases

A writing signed by the adversely affected spouse is not an "express declaration," as required to transmute separate property into community property, unless the writing contains language which expressly states that the characterization or ownership of the property is being changed, and the writing unambiguously indicates a change in character or ownership of property. West's Ann.Cal.Fam.Code § 852(a).

[2] Husband and Wife 205 ⚡ 266.1

205 Husband and Wife

205VII Community Property

205k266 Transactions Between Husband and Wife

205k266.1 k. In general; transmutation of character of property. Most Cited Cases

For a writing to be an "express declaration" transmuting separate property into community property, the writing does not have to use the term "transmutation" or any other particular locution. West's Ann.Cal.Fam.Code § 852(a).

[3] Husband and Wife 205 ⚡ 266.1

205 Husband and Wife

205VII Community Property

205k266 Transactions Between Husband and Wife

205k266.1 k. In general; transmutation of character of property. Most Cited Cases

In deciding whether a transmutation of separate property into community property has occurred, courts interpret the written instruments independently, without resort to extrinsic evidence. West's Ann.Cal.Fam.Code § 852(a).

[4] Husband and Wife 205 ⚡ 266.1

205 Husband and Wife

205VII Community Property

205k266 Transactions Between Husband and Wife

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205k266.1 k. In general; transmutation of character of property. Most Cited Cases

In deciding whether a transmutation of separate property into community property has occurred, a reviewing court is not bound by the interpretation given to the written instruments by the trial court. West's Ann.Cal.Fam.Code § 852(a).

[5] Husband and Wife 205 ↪ 266.2(1)

205 Husband and Wife

205VII Community Property

205k266 Transactions Between Husband and Wife

205k266.2 Contracts

205k266.2(1) k. In general. Most Cited

Cases

A property transmutation agreement unambiguously indicated a change in all of husband's separate property into community property, as required to transmute the property, even though the agreement stated that the property would be community property "for estate planning hereto," the agreement stated that the parties did not intend "to make any transfer of property between the parties," and the agreement was executed simultaneously with estate planning documents, where the agreement also stated that all of husband's property was "hereby converted to community property of Husband and Wife," and that husband and wife each had "a present, existing, and equal interest therein"; the agreement described a present transmutation rather than a conditional future transmutation, and the provision stating that the parties did not intend to make any transfer could be harmonized by interpreting it to mean that the parties did not intend to transfer title to real property. West's Ann.Cal.Fam.Code § 852(a); West's Ann.Cal.Civ.Code §§ 1641, 1643, 3541.

See Annot., Transmutation of separate into community property by agreement or gift between husband and wife, or transfer or conveyance by one to the other (1939) 120 A.L.R. 264; Cal. Jur. 3d, Family Law, §§ 579, 580; Cal. Civil Practice (Thomson Reuters 2009) Family Law Litigation, §§ 5:31, 8:40; Cal. Transactions Forms, Estate Planning, §§ 10:14, 11:35, 11:59 (Thomson Reuters 2009); Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2009) ¶ 8:477 (CAFAMILY Ch. 8-B); 11 Witkin, Summary of Cal. Law

(10th ed. 2005) Community Property, §§ 155, 156; 5 Miller & Starr, Cal. Real Estate (3d ed. 2001) § 12:39.

[6] Husband and Wife 205 ↪ 266.2(1)

205 Husband and Wife

205VII Community Property

205k266 Transactions Between Husband and Wife

205k266.2 Contracts

205k266.2(1) k. In general. Most Cited

Cases

A property transmutation agreement stating that all property "held in the name of Husband having its origin in his separate property" was "hereby converted to community property" had the effect of transmuting separate property held by husband in his capacity as trustee of an express trust of which he was also the settlor; such property was held in husband's name.

[7] Trusts 390 ↪ 1

390 Trusts

390I Creation, Existence, and Validity

390I(A) Express Trusts

390k1 k. Nature and essentials of trusts. Most Cited Cases

A trust is not a person but rather a fiduciary relationship with respect to property.

[8] Trusts 390 ↪ 1

390 Trusts

390I Creation, Existence, and Validity

390I(A) Express Trusts

390k1 k. Nature and essentials of trusts. Most Cited Cases

An ordinary express trust is not an entity separate from its trustees.

[9] Trusts 390 ↪ 129

390 Trusts

390II Construction and Operation

390II(B) Estate or Interest of Trustee and of Cestui Que Trust

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(Cite as: 174 Cal.App.4th 40, 94 Cal.Rptr.3d 84)

390k129 k. Nature of estate in trust. Most Cited Cases

Property cannot be held in the name of an express trust.

[10] Husband and Wife 205 ⚡266.1

205 Husband and Wife

205VII Community Property

205k266 Transactions Between Husband and Wife

205k266.1 k. In general; transmutation of character of property. Most Cited Cases

In determining whether a writing is an “express declaration” transmuting separate property into community property, the motivations underlying the documents are irrelevant; the relevant question is whether they contain the requisite express, unequivocal declarations of a present transmutation. West's Ann.Cal.Fam.Code § 852(a).

[11] Husband and Wife 205 ⚡272(1)

205 Husband and Wife

205VII Community Property

205k272 Dissolution of Community

205k272(1) k. Effect of abandonment, separation, or divorce. Most Cited Cases

Trusts 390 ⚡59(2)

390 Trusts

390I Creation, Existence, and Validity

390I(A) Express Trusts

390k59 Revocation

390k59(2) k. Conditions or reservations in instrument creating trust. Most Cited Cases

The termination provision in a trust of which husband and wife were trustees and settlors, whereby the trust was automatically revoked upon filing of a petition for dissolution of marriage, could not be interpreted as automatically retransmuting community property in the trust back into husband's separate property upon the filing of a dissolution petition, even though the trust was amended to add wife as trustee and settlor simultaneously with the execution of an agreement transmuting all of

husband's separate property into community property. West's Ann.Cal.Fam.Code § 761.

[12] Husband and Wife 205 ⚡266.1

205 Husband and Wife

205VII Community Property

205k266 Transactions Between Husband and Wife

205k266.1 k. In general; transmutation of character of property. Most Cited Cases

A husband and wife may not execute a “conditional” transmutation from separate to community property, to take place only upon the death of one party during the marriage. West's Ann.Cal.Fam.Code § 852.

[13] Husband and Wife 205 ⚡266.2(1)

205 Husband and Wife

205VII Community Property

205k266 Transactions Between Husband and Wife

205k266.2 Contracts

205k266.2(1) k. In general. Most Cited Cases

In interpreting a purported property transmutation agreement containing a clause stating that “nothing contained herein shall be construed so as to require the commission of any act contrary to law,” the Court of Appeal would not assume the parties intended to execute the agreement for the sole purpose of providing documentary support to a future materially false representation to the Internal Revenue Service (IRS) that a transmutation of separate to community property had taken place.

[14] Contracts 95 ⚡317

95 Contracts

95V Performance or Breach

95k317 k. Effect of breach in general. Most Cited Cases

A party's alleged failure to meet executory obligations under a contract does not affect the meaning of other provisions in the contract.

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(Cite as: 174 Cal.App.4th 40, 94 Cal.Rptr.3d 84)

[15] Husband and Wife 205 ⚡232.1

205 Husband and Wife

205VI Actions

205k231 Evidence

205k232.1 k. Presumptions and burden of proof.

Most Cited Cases

When an interspousal transaction advantages one spouse, the law, from considerations of public policy, presumes such transactions to have been induced by undue influence. West's Ann.Cal.Fam.Code § 721.

[16] Contracts 95 ⚡96

95 Contracts

95I Requisites and Validity

95I(E) Validity of Assent

95k96 k. Undue influence. Most Cited Cases

Gifts 191 ⚡38

191 Gifts

191I Inter Vivos

191k35 Validity

191k38 k. Fraud, duress, and undue influence.

Most Cited Cases

Courts of equity view gifts and contracts which are made or take place between parties occupying confidential relations with a jealous eye.

[17] Husband and Wife 205 ⚡270(8)

205 Husband and Wife

205VII Community Property

205k270 Actions

205k270(8) k. Evidence. Most Cited Cases

Statutory requirements for valid transmutation of separate property into community property do not necessarily in and of themselves determine whether the presumption of undue influence is overcome, if the transaction advantages one spouse over the other. West's Ann.Cal.Fam.Code § 852.

[18] Husband and Wife 205 ⚡232.1

205 Husband and Wife

205VI Actions

205k231 Evidence

205k232.1 k. Presumptions and burden of proof.

Most Cited Cases

When a presumption of undue influence applies to an interspousal transaction, the spouse who was advantaged by the transaction must establish that the disadvantaged spouse's action was freely and voluntarily made, with a full knowledge of all the facts, and with a complete understanding of the effect of the transaction. West's Ann.Cal.Fam.Code § 721.

[19] Husband and Wife 205 ⚡235(2)

205 Husband and Wife

205VI Actions

205k235 Trial

205k235(2) k. Questions for jury. Most Cited Cases

Husband and Wife 205 ⚡243

205 Husband and Wife

205VI Actions

205k243 k. Appeal and error. Most Cited Cases

The question whether the spouse gaining an advantage in an interspousal transaction has overcome the presumption of undue influence is a question for the trier of fact, whose decision will not be reversed on appeal if supported by substantial evidence. West's Ann.Cal.Fam.Code § 721.

[20] Husband and Wife 205 ⚡266.2(3)

205 Husband and Wife

205VII Community Property

205k266 Transactions Between Husband and Wife

205k266.2 Contracts

205k266.2(3) k. Evidence; effect of tax returns. Most Cited Cases

Trial court's finding that wife failed to establish that husband had a complete understanding of the legal effect

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of an unambiguous agreement transmuting his separate property to community property, in finding that wife did not rebut the presumption of undue influence, was not supported by substantial evidence, since husband's attestation at the time of signing that he understood the agreement served to rebut the presumption that he did not understand, and there was no other evidence in the record to weigh. West's Ann.Cal.Fam.Code § 721.

****87** Law Offices of Steven E. Briggs and Steven E. Briggs, Newport Beach, for Appellant.

Hughes and Sullivan, Bruce A. Hughes and Lisa Hughes, Tustin, for Respondent.

*43 OPINION

IKOLA, J.

As part of their dissolution of marriage proceedings, appellant Kathryn A. Lund and respondent Earl E. Lund, Jr., contested whether Earl transmuted his separate real properties into community property by way of a written agreement executed in 2002.^{FN1} The court below, conducting a bifurcated trial of this issue pursuant to California Rules of Court, rule 5.175, determined Earl had not transmuted his separate property and, even if he had, Kathryn did not meet her burden of establishing she had not unduly influenced Earl in the execution of the agreement at issue. We granted Kathryn's motion to appeal the court's interlocutory order (Cal. Rules of Court, rule 5.180(d)) and now reverse. Earl made "an express declaration" in writing of his unambiguous intention to transmute all of his separate property as of the date he executed the 2002 agreement. (Fam.Code § 852, subd. (a.))^{FN2} The court erred in finding the agreement to be ambiguous and in finding Earl was ****88** unduly influenced. A valid transmutation of Earl's separate property occurred.

FN1. We use the first names of the parties for ease of reference and clarity. We intend no disrespect.

FN2. All statutory references are to the Family Code unless otherwise specified.

FACTS

Kathryn and Earl married in August 1990. Kathryn had one daughter from a previous marriage, Earl had a son and daughter from a previous marriage (both of whom Kathryn adopted), and the parties together had a son following their marriage. Kathryn petitioned for dissolution of marriage in March 2004, and Earl's response to the petition also included a request for dissolution of marriage.

The issue before us is whether a document executed by the parties on December 12, 2002 (entitled "Agreement to Establish Interest in Property of Earl E. Lund, Jr., and Anne K. Lund") effectively transmuted various real properties from the separate property of Earl to the community property of Earl and Kathryn. On that day, Kathryn spent approximately 20 minutes at a law firm reviewing and signing various documents (along with the aforementioned agreement, the "Last Will and Testament of Anne K. Lund" and "The Earl E. Lund, Jr. Trust"). She had not reviewed any of the documents before her arrival at the law office. Kathryn met Earl at the law office on his lunch hour; there is no testimony in the record regarding Earl's level of familiarity with or understanding of the documents at issue. (Earl did not testify.)

The parties disagree as to the meaning of the "Agreement to Establish Interest in Property," and further disagree as to whether the other documents ***44** executed on December 12, 2002 should play any role in the interpretation of the agreement at issue. We quote in detail below relevant provisions of the various documents signed by the parties on December 12, 2002.

Agreement to Establish Interest in Property of Earl E. Lund, Jr. and Anne K. Lund^{FN3}

FN3. Due to the importance of this agreement in examining the issues before us (and the relatively small size of the agreement), this section reproduces most of the agreement as it exists in the record. Other than the footnotes wherein we have added necessary explanation, the entire section is a quotation of the agreement.

"THIS AGREEMENT, made and entered into this 12 day of December 2002, by and between Earl E. Lund, Jr.,

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of the County of Orange, State of California, hereinafter called "Husband", and Anne K. Lund,^{FN4} of the County of Orange, State of California, hereinafter called "Wife".

FN4. The documents at issue refer to "Anne K. Lund" as Earl's wife, whereas appellant identifies herself as "Kathryn A. Lund." As the parties have nothing to say on this matter, we shall ignore it as well.

"RECITALS

"A. It is the intention of the parties hereto, by this Agreement, to fix and establish their respective interests and rights in all property now owned by them or hereafter acquired by them, except as to property hereinafter acquired by gift, bequest, devise or descent, whether held in their names, as joint tenants, tenants in common, or otherwise for estate planning;

"B. The parties hereto are husband and wife, and have continuously maintained their legal residence in the State of California during their marriage; and

"C. At the date of marriage, Husband owned property, real or otherwise of substantial value and wife had assets of de minimus value; and

****89** "D. The Husband, for estate planning purposes desires to convert said separate property into community property.

"NOW, THEREFORE, in order to evidence, confirm and ratify their agreement and intention it is agreed as follows:

~~"A. SEPARATE PROPERTY. The following properties are acknowledged to be the separate property of:~~

***45** ~~"1. Husband~~

~~"(a) 6014-6030 Gifford Avenue, Huntington Park, CA~~

~~"(b) 4601 E 58th Street, Maywood, CA~~

~~"(c) 218 Ogle Street, Costa Mesa, CA~~

~~"(d) 12 Wildwheat, Irvine, CA^{FN5}~~

FN5. The parties crossed out this portion of the agreement and initialed next to the change. Neither party contests the legitimacy of this alteration.

"B. COMMUNITY PROPERTY

"1. All ~~other of the~~^{FN6} property, real and personal, of the parties hereto, whether title thereto is held in the names of one or the other of the parties or both of the parties as joint tenants or otherwise, is the community property of the parties hereto, each having a present, existing, and equal interest therein.

FN6. The parties also crossed this phrase out and initialed next to this change; neither party contests the legitimacy of this alteration.

"2. Any checking/savings accounts and automobiles ... shall be joint tenancy property and pass to the surviving joint tenant by right of survivorship.

"C. CONVERTED PROPERTY

"All of the property, real and personal, held in the name of Husband having its origin in his separate property no matter how received and/or earned, is hereby converted to community property of Husband and Wife, and shall thereafter be the community property of the parties for estate planning hereto, each having a present, existing, and equal interest therein.

"D. EMPLOYEE BENEFITS

~~"[] ... []~~

~~"E. HEADING^{FN7}~~

FN7. The word "HEADING" is the actual heading for this section of the contract. The court and the parties speculated that this was merely a drafting oversight on the part of the drafting attorney.

"This Agreement is intended as a document of transfer for estate planning purposes to the extent necessary to conform the record ownership of the properties of the parties to the within Agreement. It is not

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intended by this *46 Agreement to make any transfer of property between the parties hereto, nor shall this Agreement be construed for any purpose to affect any such transfer, but this Agreement is executed solely for the purpose of recognizing as between the parties the type of ownership of the properties acquired and now owned by them. In addition, the parties agree to join in the execution of such other deeds, assignments or documents as may be required to reflect the formal record ownership in accordance with this Agreement.

"F. ATTORNEY

"The parties hereto acknowledge the law firm of EDWARD H. STONE, A LAW CORPORATION, has acted as counsel for Husband and Wife for the preparation of the within Agreement, and each party states, that it understands and acknowledges that [Stone] has been asked by all parties to prepare this Agreement and all **90 Exhibits and that the terms of this Agreement and Exhibits were concluded between the parties themselves....

"G. BINDING

"[¶] ... [¶]

"H ENTIRE AGREEMENT: MODIFICATION

"This Agreement contains the entire understanding and agreement of the parties, and there have been no promises, representations, agreements, warranties, or undertakings by either party to the other, either oral or written, of any character or nature, except as set forth here. This Agreement may be altered, amended, or modified only by an instrument in writing, executed and acknowledged by the parties to the Agreement and by no other means. Each party waives the future right to claim, contend, or assert that this Agreement was modified, canceled, superseded, or changed by an oral agreement, course of conduct, or estoppel.

"I. APPLICABLE LAW

"This Agreement shall be governed in all respects by the laws of the State of California applicable to agreements executed and to be performed wholly within California. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision

contained herein and any present or future statute, law, ordinance or regulation contrary to which the parties have no right to contract, the latter shall prevail but the provision of this Agreement which is affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law....

**47 "J. SEVERABILITY*

"If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and shall in no way be affected, impaired, or invalidated.

"K. CAPTIONS

"The captions of the various paragraphs in this Agreement are for convenience only, and none of them is intended to be any part of the text of this Agreement, nor intended to be referred to in construing any of the provisions of it.

"[¶] ... [¶]

"I have carefully read and understand all of the provisions of the foregoing Agreement and approve of and agree to all of the terms hereof. [Signed Earl E. Lund, Jr. and Anne K. Lund.]"

The Earl E. Lund, Jr. Trust^{FN8}

^{FN8}. The Trust is 218 pages long, and most of the text has no bearing on any of the issues in dispute. Thus, it would be both unnecessary and impractical to replicate the Trust in the same manner as we have done with the Agreement to Establish Interest in Property.

Earl established The Earl E. Lund, Jr. Trust (the Trust) in October 1990, several months after the parties married. On December 12, 2002, Earl and Kathryn amended and restated the Trust, such that both Earl and Kathryn became trustees and settlors of the Trust. The recitals to the amendment stated the Trust "is being amended to reflect the love and unity of Earl E. Lund, Jr. and Anne K. Lund. [¶] Earl E. Lund, Jr. considers Anne K. Lund to be an equal partner and to that end, Anne K. Lund in this amendment and restatement shall be deemed a

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Settlor as of October 18, 1990.”

****91** Three of the real properties at issue were transferred to Earl, as trustee of the Trust, prior to 2002, and in 2002 one of the properties was transferred to Earl and Kathryn, as trustees of the Trust. The Trust indicates with regard to property provided to the Trust, in relevant part: “The Settlor has transferred and delivered or will transfer and deliver to the Trustees, without consideration, the property described in Schedule A attached hereto, which is both separate and community property as more specifically designated herein.... [¶] The Settlor intends that all community property transferred to this Agreement and the proceeds thereof (the ‘community estate’) shall remain community property of the Settlor during their joint lifetimes. Similarly, the Settlor intends that all separate property and quasi-community property of either Settlor and the proceeds thereof (the ‘separate estate’) shall remain ***48** separate property or quasi-community property during the joint lifetime of the Settlor–Owner. [¶] ... It is the Settlor’s intention that the Trustees shall have no more extensive power over any community property transferred to the Trust Estate than either of the Settlor would have had under Family Code Section 761 had this Agreement not been created and this Agreement shall be interpreted to so achieve this intention. This limitation shall terminate upon the death of either Settlor.... Any property in both names of the Settlor and transferred to a Trustee in this Agreement is deemed to be community property.”

The Trust provides for its own undoing upon a dissolution of marriage: “Upon the filing of a petition for the dissolution of the marriage and/or separation by either Settlor, this Agreement is automatically terminated without further notice to third parties and either Trustee shall return to each Settlor the separate property they contributed to this Agreement not previously disposed of, together with each Settlor’s share of the Trust Estate which is community property. Upon the automatic termination, all dispositive provisions of this Trust Agreement shall be null and void other than returning the assets to the rightful owners and each Settlor shall be deemed to have predeceased the other Settlor if the assets or property have not been returned to the proper owner prior to that Settlor’s demise.”

The Parties’ Wills

Both Kathryn and Earl executed wills on December 12, 2002. In sections of the wills relating to “no contest” clauses appearing in each will, the wills state: “For these purposes, my Estate Plan or Dispositive Plan includes but are not limited to this my Last Will and Testament, including all Codicils, my and my spouse’s Trust, Agreement, any amendment, any amendment and restatement thereto, any lifetime gifts or transmutations, and any designation of beneficiary executed by me with respect to any and all life insurance policies, employee benefit plans, IRA’s or other contractual arrangements.” In sections of the wills concerning the “construction” of the wills with regard to the “no contest” clauses, the wills state: “[I]t is my intent that all of my estate planning documents ARE INTEGRATED so that if there is a breach, contest, violation or attack of one instrument, document or transfer of mine ... then there is a breach, contest, violation or attack of any and/or all instruments, documents or transfers of mine as to that breaching, thwarting, contesting, violating or attacking party or entity.”

Trial of Bifurcated Issue

The court commenced proceedings in May 2006 to determine whether the Agreement to Establish Interest in Property transmuted Earl’s separate property ****92** to community property. The court led off by expressing its uncertainty as ***49** to interpreting the meaning of the contract: “[I]t seems like the issue as framed is if we assume ... there are sufficient magic words [to transmute the separate property]” “a question arises ... what does ‘for estate planning purposes’ mean? Does it mean that the parties are merely reciting the motivating reason behind this transmutation of property, or is it some sort of ... King’s X?” “I don’t know whether Item (E) [in the Agreement to Establish Interest in Property] is something that [makes the contract] ... ambiguous [.]” The court invited the parties to call expert witnesses to assist the court in determining whether the repeated use of the phrase “for estate planning purposes” was intended as a term of art which would affect the overall meaning of the Agreement to Establish Interest in Property. The court further framed the issue for trial: “Here’s what I don’t

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know. If it's his separate property, can they for estate planning purposes ... [and] for stepped-up [tax] basis, ... say the magic words, 'for community property,' then it's community property, but for all other purposes it's not?"

The parties each called a qualified expert in the field of estate planning law. The experts discussed the tax advantages of community property vis-à-vis separate property upon the death of one spouse. Earl's expert discussed in detail the way in which the various "estate planning documents," which he defined to include the Agreement to Establish Interest in Property, would work together in the hypothetical event of the death of one of the parties had they remained married. The "estate plan" (the Trust, combined with the Agreement to Establish Interest in Property) provided tax benefits only if the couple was married when one died; thus, the Trust revoked upon separation of the parties. Earl's expert opined that the Agreement to Establish Interest in Property "would be accepted by the IRS as transmuting the property into community property." But, in his opinion, the Internal Revenue Service's (IRS) acceptance of the document (in the hypothetical) does not equate to an actual transmutation occurring under California law; language in the agreement indicating it is for "estate planning purposes" and language in section E providing "[i]t is not intended by this Agreement to make any transfer of property between the parties hereto" negates the contrary indications that the agreement actually transmutes Earl's separate property as of December 2002.

The court issued a statement of decision on June 18, 2007. The statement of decision states in relevant part: "The court finds no effective transmutation occurred. The agreement is ambiguous, particularly when read in conjunction with the trust, and if it is not, the most reasonable construction of the documents is the parties objectively intended the agreement to change separate property to community property only if they were married when one spouse died." "In this case, the language [of the agreement] is certainly an express declaration connoting an intent to change respondent's separate property to community property." "But the court must not read that language *50 in a vacuum." "The agreement, the trust, and the wills were executed the same day. The parties' wills provide all of the estate planning documents are integrated. The court considers them as a whole."

"Although the language 'convert' in the agreement is clear and unambiguous when read alone, other language [in the documents] is contrary to it, or at least makes the parties' objective intent ambiguous." "A party's intent to effect a transmutation must be unambiguous.... Taken together, ... the estate planning documents create [] an ambiguity**93 about what the parties intended." "Concerning the second issue, the court finds that even if the agreement effected a valid transmutation, it was the product of undue influence."

DISCUSSION

Transmutation of Property Interests

[1][2] The first issue before us is whether the court correctly interpreted the agreement in finding Earl had not unambiguously declared his intention to transmute his separate real properties to community property. "[M]arried persons may by agreement or transfer, with or without consideration, ... [¶] [t]ransmute separate property of either spouse to community property." (§ 850.) "A transmutation of real or personal property is not valid unless made in writing by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected." (§ 852, subd. (a).) "[A] writing signed by the adversely affected spouse is not an 'express declaration' for the purposes of section [852, subd. (a)] unless it contains language which expressly states that the characterization or ownership of the property is being changed." (*Estate of MacDonald* (1990) 51 Cal.3d 262, 272, 272 Cal.Rptr. 153, 794 P.2d 911.) Section 852, subdivision (a), does not "require[] use of the term 'transmutation' or any other particular locution." (*Id.* at p. 273, 272 Cal.Rptr. 153, 794 P.2d 911.) However, "[t]he express declaration must unambiguously indicate a change in character or ownership of property. [Citation.] A party does not 'slip into a transmutation by accident.'" (*In re Marriage of Starkman* (2005) 129 Cal.App.4th 659, 664, 28 Cal.Rptr.3d 639 (*Starkman*).)

[3][4] "In deciding whether a transmutation has occurred, we interpret the written instruments independently, without resort to extrinsic evidence. [Citations.] Under the circumstances, we are not bound by the interpretation given to the written instruments by the trial court." (*Starkman, supra*, 129 Cal.App.4th at p. 664, 28

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Cal.Rptr.3d 639.)

The most factually similar California case to the instant one is *In re Marriage of Holtemann* (2008) 166 Cal.App.4th 1166, 83 Cal.Rptr.3d 385 (*Holtemann*), a case published after the court reached its decision in this case. *51 In *Holtemann*, a married couple executed a “Spousal Property Transmutation Agreement” and a trust one year before their separation. (*Id.* at pp. 1169–1170, 83 Cal.Rptr.3d 385.) An introductory provision in the transmutation agreement stated: “ ‘[t]he parties are entering into this agreement in order to specify the character of their property interests pursuant to the applicable provisions of the California Family Code. This agreement is not made in contemplation of a separation or marital dissolution and is made solely for the purpose of interpreting how property shall be disposed of on the deaths of the parties.’ ” (*Ibid.*) The transmutation agreement, in its substantive provisions, stated: “ ‘Husband agrees that the character of the property [at issue] is hereby transmuted from his separate property to the community property of both parties.’ ” (*Id.* at p. 1170, 83 Cal.Rptr.3d 385.) The transmutation explicitly referenced the trust, and the wife “acknowledge[d] that the transmutation of Husband’s separate property into community property herewith was undertaken upon the express condition that the disposition of the trust estate of said Trust, upon the death of Husband and of Wife ... shall remain in effect, and not be amended, modified or changed by Wife....” (*Ibid.*)

The *Holtemann* court affirmed the trial court in finding an unambiguous transmutation**94 occurred: “Regardless of the motivations underlying the documents, they contain the requisite express, unequivocal declarations of a present transmutation. Moreover, the documents reflect that [husband] was fully informed of the legal consequences of his actions. (*Holtemann, supra* 166 Cal.App.4th at p. 1173, 83 Cal.Rptr.3d 385.) [W]e are not aware of any authority for the proposition that a transmutation, once effected, can be limited in purpose or otherwise rendered conditional or temporary.... In other words, [husband] wishes to have his cake and eat it too. He argues that, in the event of either his or [wife’s] death, the survivor would be able to use the Transmutation Agreement to claim the property as community property,

thus obtaining a full step up in basis to the fair market value of the property at date of death, while at the same time denying the validity of the Transmutation Agreement as an instrument which created community property.” (*Id.* at p. 1174, 83 Cal.Rptr.3d 385.) “We conclude, however, that his chosen language speaks to a contrary intent.” (*Ibid.*)

Interpretation of Agreement to Establish Interest in Property

[5][6][7][8][9] Interpreting the agreement at issue in this case as a whole, and analyzing it alongside *Holtemann, supra*, 166 Cal.App.4th at p. 1169–1174, 83 Cal.Rptr.3d 385, we conclude that it unambiguously effects a transmutation of Earl’s separate property into community property. Two substantive provisions of the agreement make clear all of the property previously held as Earl’s separate property should be considered community property as of December 2002. Section B, part 1 states: “All property, real and personal, of the parties hereto, whether title thereto is held in the names of one or the other of the parties or both of *52 the parties as joint tenants or otherwise, is the community property of the parties hereto, each having a present, existing, and equal interest therein.” Section C states: “All of the property, real and personal, held in the name of Husband having its origin in his separate property no matter how received and/or earned, *is hereby converted to community property* of Husband and Wife, and shall thereafter be the community property of the parties for estate planning hereto, *each having a present, existing, and equal interest therein.*” (Italics added.) Although the agreement does not use the word “transmutation,” sections B and C clearly and unambiguously evidence an intent to transmute Earl’s separate property into community property in December 2002.^{FN9}

FN9. Earl made a brief two-sentence argument in his brief, repeated again at oral argument, to the effect that section C operates *only* on property held “in the name of [Earl].” He asserts that none of the disputed property was held in his name, but rather “in the name of a trust.” This argument is sophistry. The deeds in evidence establish that the properties were held in Earl’s name “as Trustee.” This is as it must be, because “a trust is

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not a person but rather ‘a fiduciary *relationship* with respect to property.’ [Citations.] Indeed, ‘“an ordinary express trust is not an entity separate from its trustees.” ’ ’ ’ (Moeller v. Superior Court (1997) 16 Cal.4th 1124, 1132, fn. 3, 69 Cal.Rptr.2d 317, 947 P.2d 279.) Thus, Earl held the property *in his name*, but subject to his obligations as trustee under the terms of the Trust. Property cannot be held “in the name” of an express trust.

The parties' elimination of section A further confirms that the intent of the agreement was to transmute all of Earl's separate property, as this section identified Earl's real property as his separate property. By removing section A from the agreement, the parties manifested their intent to eliminate any potential argument that the real properties identified in section **95 A were not subject to the transmutation provided for in section C.

[10] The court was influenced in its interpretation of the agreement by language in the recitals and in section E of the agreement indicating the agreement was executed for “estate planning purposes,” as well as by the existence of other “estate planning” documents (the trust and the wills). But, as correctly stated in *Holtemann, supra*, 166 Cal.App.4th at p. 1173, 83 Cal.Rptr.3d 385, “the motivations underlying the documents” are irrelevant; the relevant question is whether “they contain the requisite express, unequivocal declarations of a present transmutation.” It simply does not matter that the agreement, the trust, and the wills were all executed together as part of a single “estate planning” strategy. The parties hotly dispute the question of whether we should interpret the agreement alone or in conjunction with all of the estate planning documents. But all the “estate planning” documents show is the parties had a comprehensive estate plan which would operate to provide the surviving party with tax benefits had the marriage survived until the death of the other party. The “estate planning” documents do not have any bearing on whether the *53 agreement at issue contains the “requisite express, unequivocal declarations of a present transmutation.” (*Holtemann, supra*, 166 Cal.App.4th at p. 1173, 83 Cal.Rptr.3d 385.)

There is one important textual difference between the document interpreted in *Holtemann* and the agreement before us. In section E of the agreement here, it states: “It is not intended by this Agreement to make any transfer of property between the parties hereto, nor shall this Agreement be construed for any purpose to affect any such transfer, but this Agreement is executed solely for the purpose of recognizing as between the parties the type of ownership of the properties acquired and now owned by them. In addition, the parties agree to join in the execution of such other deeds, assignments or documents as may be required to reflect the formal record ownership in accordance with this Agreement.” Earl argues (and the court below agreed): (1) section E creates ambiguity as to Earl's intent to transmute his previously separate property, and therefore no transmutation occurred because there is not an unequivocal declaration; (2) taking section E into consideration, if there is an unambiguous meaning of the contract, it must be that Earl did not actually intend to transmute the property but only intended to execute a document capable of convincing the IRS that a transmutation had occurred; and (3) there is no evidence in the record indicating the parties executed other documents to bring formal record ownership into accordance with the agreement, and thus the parties must not have meant to transmute the separate properties.

We disagree with each contention. Interpreting section E to simply undo or call into question the work done by sections B and C violates basic principles of contract interpretation. (Civ.Code §§ 1641 [“The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other”], 1643 [“A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect, if it can be done without violation the intention of the parties”], 3541 [“An interpretation which gives effect is preferred to one which makes void”].) Sections B and C clearly transmute Earl's separate property into community property; if at all possible, section E should be interpreted to be consistent with sections B and C. This can be accomplished by **96 interpreting the contract as suggested by Kathryn. The agreement was not a deed. It was *an agreement* to transmute Earl's separate property to community property. (See § 850 [married persons may

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transmute separate property to community property “*by agreement or transfer*” (italics added)].) The agreement transmutes Earl's separate property to community property, but it does not “transfer” title of the real property at issue.

[11] Reduced to its essentials, Earl's argument, if accepted, would interpret the agreement as effecting a transmutation of his separate property to *54 community property only if he or Kathryn died while married. But the language of the agreement clearly disclaims the notion of a conditional future transmutation. “All of the property, real and personal, held in the name of Husband having its origin in his separate property no matter how received and/or earned, *is hereby converted to community property of Husband and Wife, and shall thereafter be the community property of the parties for estate planning hereto, each having a present, existing, and equal interest therein.*” (Italics added.) A “present, existing, and equal interest” is the antithesis of a “conditional future transmutation.” We suggest that only persons overschooled in the law could read this clear language to find an ambiguity where none exists. Persons unschooled in the law would read this language to mean exactly what it says. And the termination provision in the trust, whereby the trust is automatically revoked upon filing of a petition for dissolution of marriage, cannot be interpreted as automatically retransmuting the property upon the filing of a dissolution petition. “Community property, including any income or appreciation, that is distributed or withdrawn from a trust by revocation, power of withdrawal, or otherwise, remains community property unless there is a valid transmutation of the property *at the time of distribution or withdrawal.*” (§ 761, subd. (b)) (Italics added.)

[12][13] Moreover, the notion that parties may execute a “conditional” transmutation (or, as colorfully described by the court, cross their fingers while signing the agreement) was rejected by *Holtemann, supra*, 166 Cal.App.4th at p. 1173–1174, 83 Cal.Rptr.3d 385. The transmutation either occurred in December 2002 (as we find it did) or it did not. We also note that interpreting the contract as a mere tax strategy and not an effective transmutation (i.e., the agreement would serve as documentary support for a representation to the IRS that

a transmutation occurred notwithstanding the lack of an actual transmutation) seems to contravene section I of the agreement, which states: “Nothing contained herein shall be construed so as to require the commission of any act contrary to law....” We will not assume the parties intended to execute the agreement for the sole purpose of providing documentary support to a future materially false representation to the IRS.

[14] Finally, the lack of evidence of additional deeds, assignments, or other documents reflecting community property ownership of the property at issue does not affect the interpretation of the other provisions of the agreement. Three of the properties at issue had been transferred to Earl as trustee before the December 2002 amendment and restatement of the trust, and the fourth property was transferred to Earl and Kathryn as trustees. We will not speculate as to whether Earl was required under the agreement to execute a deed reflecting community property ownership of his previously separate real properties. Even if Earl had been required to execute additional documents, a party's alleged failure to meet executory obligations under **97 a contract does not affect the meaning of other provisions in the contract.

*55 Undue Influence

The court also supported its judgment on the alternate ground that any attempt at transmutation was invalid due to Kathryn's failure to rebut the presumption of undue influence attaching to the transaction. Kathryn argues on appeal the court's finding lacks substantial evidence.

Spouses “may enter into any transaction with the other, or with any other person, respecting property, which either might if unmarried.” (§ 721, subd. (a).) “[I]n transactions between themselves, a husband and wife are subject to the general rules governing fiduciary relationships which control the actions of persons occupying confidential relations with each other. This confidential relationship imposes a duty of the highest good faith and fair dealing on each spouse, and neither shall take any unfair advantage of the other. This confidential relationship is a fiduciary relationship subject to the same rights and duties of nonmarital business partners” (§ 721, subd. (b).)

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[15][16][17] “When an interspousal transaction advantages one spouse, ‘[t]he law, from considerations of public policy, presumes such transactions to have been induced by undue influence.’ [Citation.] ‘Courts of equity ... view gifts and contracts which are made or take place between parties occupying confidential relations with a jealous eye.’ ” (*In re Marriage of Haines* (1995) 33 Cal.App.4th 277, 293–294, 39 Cal.Rptr.2d 673.) “Thus, the requirements of section 852 are prerequisites to a valid transmutation but do not necessarily in and of themselves determine whether a valid transmutation has occurred.” (*In re Marriage of Barneson* (1999) 69 Cal.App.4th 583, 588, 81 Cal.Rptr.2d 726.)

[18][19] “When a presumption of undue influence applies to a transaction, the spouse who was advantaged by the transaction must establish that the disadvantaged spouse’s action ‘was freely and voluntarily made, with a full knowledge of all the facts, and with a complete understanding of the effect of’ the transaction.” (*In re Marriage of Burkle* (2006) 139 Cal.App.4th 712, 738–739, 43 Cal.Rptr.3d 181.) “The question ‘whether the spouse gaining an advantage has overcome the presumption of undue influence is a question for the trier of fact, whose decision will not be reversed on appeal if supported by substantial evidence.’ ” (*Id.* at p. 737, 43 Cal.Rptr.3d 181.)

The only issue before us is whether the court’s finding of fact—that Kathryn did not rebut the presumption of undue influence—is supported by *56 substantial evidence.^{FN10} The following are the relevant findings by the court in its statement of decision: “[T]he court concludes by a preponderance of the evidence [Earl] entered into the agreement freely and voluntarily with a full understanding of the pertinent facts. Attorney Stone, who drafted the agreement, was the attorney for both parties. The court infers Stone advised respondent of the implications of the agreement, inquired whether he was entering into the agreement freely and voluntarily, and would not have allowed the document to be executed if [Earl] gave other than an **98 affirmative answer. [¶] The proof problem lies with whether [Earl] had ‘a complete understanding of the effect of the [agreement].’ [Citation.] As the analysis in this statement of decision suggests, the language in the agreement presents an extremely tough

legal question concerning its effect. [¶] It is extremely unlikely respondent, a lay person, could figure it out on his own, and the court cannot conclude it is more likely than not attorney Stone told [Earl] his separate property transmuted into community property as of the date the parties signed the agreement and a later divorce would have no effect on that fact. [Kathryn] failed to meet her burden to rebut the presumption of undue influence as it is defined concerning interspousal transactions.”

FN10. Kathryn does not argue on appeal that she did not obtain an advantage over Earl by way of the agreement or that the presumption of undue influence was inapplicable to the transaction at issue. Nor does Kathryn argue on appeal that the court should not have reached the issue of undue influence as part of its inquiry into the bifurcated issue of whether a transmutation occurred.

In essence, the court found Kathryn successfully demonstrated Earl entered the transaction voluntarily with an understanding of all relevant facts, but failed to rebut the presumption that Earl did not understand the legal effect of the transaction. The court’s finding is based in part on a lack of evidence in the record: Neither Earl nor the attorney who drafted the agreement (Stone) testified at the trial, and Kathryn (the only percipient witness to testify) did not testify as to whether the legal import of the agreement was explained to her and Earl. The court also based its ruling on the perceived complexity of the agreement, which led the court to its conclusion that Earl was unlikely to have understood its legal ramifications.

[20] The court’s ruling lacked substantial evidence. Just above Earl’s signature in the agreement is the following statement: “I have carefully read and understand all of the provisions of the foregoing Agreement and approve of and agree to all of the terms hereof.” The agreement is only five pages long, including the signature page. And, as detailed above, the court wrongly interpreted the agreement to include ambiguity. Earl’s attestation to his understanding of the agreement served to rebut the presumption that he did not understand the legal import of the agreement. There is no other evidence in the record to weigh, as none of the testimony goes to Earl’s understanding of the legal effect of the agreement.

174 Cal.App.4th 40, 94 Cal.Rptr.3d 84, 09 Cal. Daily Op. Serv. 6225, 2009 Daily Journal D.A.R. 7268

(Cite as: 174 Cal.App.4th 40, 94 Cal.Rptr.3d 84)

***57 DISPOSITION**

Because we disagree with the court's interpretation of the agreement at issue and because substantial evidence does not support the court's factual finding as to undue influence, we reverse the judgment on the bifurcated issue of whether Earl's separate property was transmuted into community property. We grant Kathryn's motion to augment the record on appeal pursuant to California Rules of Court, rule 8.155. Kathryn shall recover her costs on appeal.

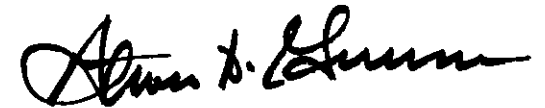
WE CONCUR: O'LEARY, Acting P.J., and ARONSON, J.

Cal.App. 4 Dist., 2009.

In re Marriage of Lund

174 Cal.App.4th 40, 94 Cal.Rptr.3d 84, 09 Cal. Daily Op. Serv. 6225, 2009 Daily Journal D.A.R. 7268

END OF DOCUMENT



CLERK OF THE COURT

MEM
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Attorneys for LANA MARTIN, Distribution
Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001

DISTRICT COURT

CLARK COUNTY, NEVADA

ERIC L. NELSON,

Plaintiff/Counterdefendant,

vs.

LYNITA SUE NELSON, LANA MARTIN, as
Distribution Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001

Defendants/Counterclaimants.

LANA MARTIN, Distribution Trustee of the
ERIC L. NELSON NEVADA TRUST dated
May 30, 2001,

Crossclaimant,

vs.

LYNITA SUE NELSON,

Crossdefendant.

Case No. D-411537

Dept. No. O

DATES OF TRIAL: July 16-19 & 23-25, 2012

VERIFIED MEMORANDUM OF ATTORNEYS' FEES AND COSTS

Pursuant to Article XII, Section 12.1(m) and (z), and Section 12.6 of the ERIC L. NELSON NEVADA TRUST dated May 30, 2001 ("ELN SSST"), Lana Martin, Distribution Trustee ("Trustee") of the ELN SSST, hereby requests an order for payment of the following attorneys' fees and costs from the ELN SSST to the law firm of Solomon Dwiggins & Freer, Ltd.:

Attorneys' Fees from March 1, 2012, through September 27, 2012:	\$264,493.50 ¹
Costs from March 1, 2012, through September 27, 2012:	\$8,628.74 ²
TOTAL Attorneys' Fees and Costs for March 1, 2012, through September 27, 2012	<u>\$273,122.24</u>

In light of the foregoing, the Trustee requests that this Court enter an Order awarding attorneys' fees and costs to the law firm of Solomon Dwiggins & Freer, Ltd. from the ELN SSST in the total amount of **\$213,122.24** for the period of March 1, 2012, through September 27, 2012, which takes into account the \$60,000.00 retainer that was paid to Solomon Dwiggins & Freer, Ltd. pursuant to this Court's June 5, 2012, Order. In the event additional services are required from the law firm of Solomon Dwiggins & Freer, Ltd. thereby incurring additional attorneys' fees and costs, the ELN SSST will file a supplemental application for attorneys' fees and costs.

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, JEFFREY P. LUSZECK, ESQ., being first duly sworn, states that affiant is the attorney for ERIC L. NELSON NEVADA TRUST dated May 30, 2001, and has personal knowledge of the above

¹ A copy of Solomon Dwiggins & Freer, Ltd.'s attorney bills from March 1, 2012, through September 27, 2012, is attached hereto as **Exhibit 1**. As this Court may recall, on June 5, 2012, this Court ordered \$60,000.00 to be held as a retainer to offset attorneys' fees and costs incurred in preparation for the July, 2012, hearing to the law firm of Solomon Dwiggins & Freer, Ltd. Consequently, the total remaining fees due and owing for from March 1, 2012, through September 27, 2012, is \$204,493.50.

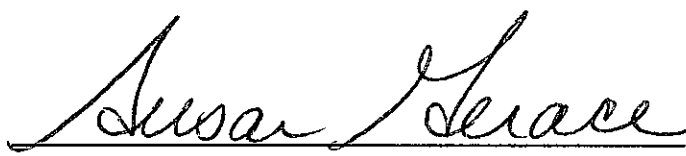
² A copy of Solomon Dwiggins & Freer, Ltd.'s costs from March 1, 2012, through September 27, 2012, is attached hereto as **Exhibit 2**.

1 attorneys' fees, costs and disbursements expended; that the items contained in the above memorandum
2 are true and correct to the best of this Affiant's knowledge and belief; and that the said disbursements
3 have been necessarily incurred and paid in this action.

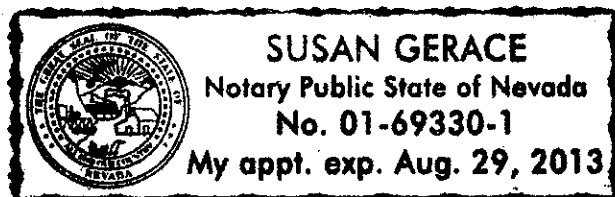
4 **DATED** this 27th day of September, 2012.

5 
6 JEFFREY P. LUSZECK, ESQ.

7
8 Subscribed and sworn before me on
9 this 27th day of September, 2012.

10 
11 NOTARY PUBLIC in and for said
12 County and State

13 My Commission Expires:



15 8-29-2013

EXHIBIT 1

EXHIBIT 1

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Stmt # Rate	Hours to Bill	Amount		Ref #
Client ID 2998.0001 Nelson, Eric (1)									
2998.0001	03/01/2012	18	A	1	240.00	1.30	312.00	Supplement motion for fees. Confer with Mark A. Solomon regarding [REDACTED]. Evaluate and respond to multiple correspondence.	ARCH
2998.0001	03/01/2012	1	A	1	590.00	0.50	295.00	Review revised fee motion.	ARCH
2998.0001	03/02/2012	18	A	1	240.00	1.10	264.00	Evaluate and respond to correspondence. Supplement motion for attorneys fees.	ARCH
2998.0001	03/02/2012	1	A	1	590.00	1.30	767.00	Review file regarding [REDACTED]. Confer with Jeffrey P. Luszeck regarding [REDACTED].	ARCH
2998.0001	03/06/2012	18	A	1	240.00	0.80	192.00	Supplement and finalize motion for attorneys' fees.	ARCH
2998.0001	03/07/2012	18	A	1	240.00	1.30	312.00	Prepare for and attend meeting with clients.	ARCH
2998.0001	03/07/2012	1	A	1	590.00	2.50	1,475.00	Prepare for and attend meeting with Richard Koch regarding [REDACTED]. Review hearing setting for fee motion. Confer with Jeffrey P. Luszeck regarding [REDACTED]. Confer with Jeffrey P. Luszeck regarding [REDACTED].	ARCH
2998.0001	03/09/2012	1	A	1	590.00	1.00	590.00	Review Jeff Burr deposition transcript.	ARCH
2998.0001	03/12/2012	18	A	1	240.00	0.20	48.00	Telephone conference with client.	ARCH
2998.0001	03/13/2012	18	A	1	240.00	0.10	24.00	Telephone conference with Dan Gerety.	ARCH
2998.0001	03/14/2012	18	A	1	240.00	0.20	48.00	Telephone conference with counsel.	ARCH
2998.0001	03/15/2012	1	A	1	590.00	0.20	118.00	Review emails regarding [REDACTED].	ARCH
2998.0001	03/16/2012	18	A	1	240.00	0.10	24.00	Evaluate correspondence.	ARCH
2998.0001	03/16/2012	1	A	1	590.00	0.20	118.00	Review correspondence from Dickerson's office regarding [REDACTED].	ARCH
2998.0001	03/20/2012	18	A	1	240.00	0.20	48.00	Evaluate proposed order.	ARCH
2998.0001	03/21/2012	18	A	1	240.00	0.80	192.00	Telephone conference with client and opposing counsel. Evaluate and respond to correspondence. Confer with Mark A. Solomon regarding [REDACTED].	ARCH
2998.0001	03/21/2012	15	A	1	175.00	5.90	1,032.50	Conference with Jeffrey P. Luszeck regarding [REDACTED]. Conduct legal research on WestLaw;	ARCH
2998.0001	03/22/2012	18	A	1	240.00	0.20	48.00	Evaluate minute order.	ARCH
2998.0001	03/23/2012	18	A	1	240.00	1.60	384.00	Evaluate dvd from last hearing. Supplement proposed order.	ARCH
2998.0001	03/26/2012	18	A	1	240.00	0.70	168.00	Evaluate and respond to correspondence. Prepare for upcoming depositions.	ARCH
2998.0001	03/27/2012	17	A	1	190.00	0.30	57.00	Receipt of documents provided by Trustee and bate stamp.	ARCH
2998.0001	03/27/2012	18	A	1	240.00	2.90	696.00	Meeting with clients. Telephone conference with the same. Evaluate opposition to motion for fees.	ARCH
2998.0001	03/27/2012	3	A	1	375.00	0.20	75.00	Conference with Jeffrey P. Luszeck regarding [REDACTED].	ARCH
2998.0001	03/28/2012	17	A	1	190.00	0.40	76.00	Bate stamp documents received from Joan and Rochelle.	ARCH
2998.0001	03/28/2012	18	A	1	240.00	0.70	168.00	Evaluate documents for disclosure. Respond to correspondence. Prepare for deposition.	ARCH
2998.0001	03/29/2012	18	A	1	240.00	5.80	1,392.00	Prepare for, travel to and attend deposition of Rochelle McGowan. Conduct legal research.	ARCH
2998.0001	03/30/2012	18	A	1	240.00	0.90	216.00	Telephone conference with client. Conduct legal research. Confer with Ross E. Evans regarding [REDACTED].	ARCH
2998.0001	03/30/2012	15	A	1	175.00	7.20	1,260.00	Continue legal research regarding [REDACTED]. Conference with Jeffrey P. Luszeck regarding [REDACTED]; conduct legal research on WestLaw; draft research memo;	ARCH
2998.0001	04/02/2012	2	A	1	400.00	0.40	160.00	Conference with Jeffrey P. Luszeck regarding [REDACTED]. Review research.	ARCH
2998.0001	04/02/2012	18	A	1	240.00	5.90	1,416.00	Draft reply to opposition. Evaluate and respond to correspondence.	ARCH
2998.0001	04/02/2012	3	A	1	375.00	0.40	150.00	Conference with Jeffrey P. Luszeck regarding [REDACTED].	ARCH
2998.0001	04/02/2012	15	A	1	175.00	2.80	490.00	Conference with Jeffrey P. Luszeck regarding [REDACTED]; conduct research on WestLaw regarding [REDACTED];	ARCH
2998.0001	04/03/2012	18	A	1	240.00	3.70	888.00	Draft opposition to countermotion. Telephone conference with counsel.	ARCH
2998.0001	04/04/2012	18	A	1	240.00	2.50	600.00	Evaluate and respond to correspondence. Telephone conference with client. Draft opposition to countermotion.	ARCH
2998.0001	04/05/2012	18	A	1	240.00	1.40	336.00	Evaluate and respond to correspondence, Supplement opposition. Evaluate supplement to countermotion. Telephone conference with Mark A. Solomon.	ARCH
2998.0001	04/06/2012	18	A	1	240.00	4.50	1,080.00	Supplement opposition to countermotion.	ARCH
2998.0001	04/09/2012	18	A	1	240.00	2.70	648.00	Telephone conference with client. Supplement opposition to countermotion.	ARCH
2998.0001	04/09/2012	1	A	1	590.00	2.20	1,298.00	Review and edit opposition. Confer with Jeffrey P. Luszeck regarding [REDACTED]. Telephone conference with Eric Nelson regarding [REDACTED]. Review transcript.	ARCH

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount		Ref #
Client ID 2998.0001 Nelson, Eric (1)									
2998.0001	04/10/2012	18	A	1	240.00	4.10	984.00	Prepare for and travel to hearing. Telephone conference with expert. Confer with Dana A. Dwiggins regarding [REDACTED].	ARCH
2998.0001	04/10/2012	2	A	1	400.00	0.40	160.00	Conference with Jeffrey P. Luszeck regarding [REDACTED].	ARCH
2998.0001	04/10/2012	1	A	1	590.00	4.50	2,655.00	Prepare for hearing. Review email from Jeff Burr's office regarding [REDACTED]. Attend hearing. Prepare for Burr deposition. Review documents from Burr's office.	ARCH
2998.0001	04/11/2012	17	A	1	190.00	2.50	475.00	Conferences with Jeffrey P. Luszeck. Organize and bate stamp discovery documents from Jeffrey Burr's office and Lana Martin. Compile and print exhibits for deposition. Conference with Dana A. Dwiggins. Review file and provide copies of pleadings to Dana A. Dwiggins.	ARCH
2998.0001	04/11/2012	2	A	1	400.00	1.80	720.00	Review corporate binder regarding [REDACTED]. Review pleadings.	ARCH
2998.0001	04/11/2012	18	A	1	240.00	5.60	1,344.00	Prepare for and attend deposition of Jeffrey Burr. Telephone conference with expert and Rhonda. Confer with Dana A. Dwiggins regarding [REDACTED].	ARCH
2998.0001	04/11/2012	1	A	1	590.00	2.00	1,180.00	Prepare for and attend Burr deposition. Meet with Rhonda and Eric regarding [REDACTED].	ARCH
2998.0001	04/12/2012	2	A	1	400.00	3.10	1,240.00	Prepare for meeting. Review document disclosures. Meeting with Jeffrey P. Luszeck and Lana for [REDACTED]. Conference with Jeffrey P. Luszeck regarding [REDACTED]. Review additional pleadings.	ARCH
2998.0001	04/12/2012	17	A	1	190.00	1.50	285.00	Prepare disc of documents responsive to Subpoena to Lana Martin. Print and compile all documents.	ARCH
2998.0001	04/12/2012	18	A	1	240.00	1.50	360.00	Draft correspondence to Jeffrey Burr. Prepare for and attend conference with Lana.	ARCH
2998.0001	04/13/2012	2	A	1	400.00	4.00	1,600.00	Attend deposition of Lana Martin. Conference with Jeffrey P. Luszeck and Mark A. Solomon regarding [REDACTED].	ARCH
2998.0001	04/13/2012	18	A	1	240.00	0.90	216.00	Evaluate and respond to correspondence. Telephone conference with Dana A. Dwiggins. Draft correspondence to opposing counsel regarding [REDACTED].	ARCH
2998.0001	04/13/2012	4	A	1	200.00	1.80	360.00	Confer with Dana A. Dwiggins regarding [REDACTED]; research regarding [REDACTED].	ARCH
2998.0001	04/14/2012	18	A	1	240.00	1.00	240.00	Begin drafting reply to Lynita's claims.	ARCH
2998.0001	04/16/2012	18	A	1	240.00	0.40	96.00	Evaluate and respond to correspondence. Supplement correspondence to Jeffrey Burr.	ARCH
2998.0001	04/16/2012	1	A	1	590.00	0.80	472.00	Review sources and app from Bertsch for ELN.	ARCH
2998.0001	04/17/2012	18	A	1	240.00	3.00	720.00	Telephone conference with client. Evaluate and respond to correspondence. Draft reply to cross-claim.	ARCH
2998.0001	04/17/2012	1	A	1	590.00	0.10	59.00	Review Bob Dickerson's letter to Koch.	ARCH
2998.0001	04/18/2012	18	A	1	240.00	1.40	336.00	Draft discovery requests. Evaluate documents for disclosure.	ARCH
2998.0001	04/19/2012	18	A	1	240.00	1.30	312.00	Evaluate correspondence and respond to the same. Continue to evaluate documents.	ARCH
2998.0001	04/19/2012	17	A	1	190.00	3.70	703.00	Conferences with Jeffrey P. Luszeck. Receipt of documents from Rochelle McGowan and bate stamp. Telephone call with Rochelle McGowan regarding [REDACTED]. Access and down load share files. Review and unzip files. Bate stamp documents.	ARCH
2998.0001	04/20/2012	17	A	1	190.00	0.20	38.00	Telephone call to Rochelle McGowan regarding [REDACTED].	ARCH
2998.0001	04/20/2012	1	A	1	590.00	0.80	472.00	Review emails from Josef and Jeffrey P. Luszeck regarding [REDACTED]. Review Dickerson's letter to Bertsch regarding [REDACTED].	ARCH
2998.0001	04/23/2012	18	A	1	240.00	1.30	312.00	Evaluate and respond to correspondence from opposing counsel. Supplement orders.	ARCH
2998.0001	04/24/2012	17	A	1	190.00	0.40	76.00	Telephone call with Rochelle McGowan regarding [REDACTED]. Conference with Jeffrey P. Luszeck regarding [REDACTED].	ARCH
2998.0001	04/24/2012	18	A	1	240.00	2.40	576.00	Draft requests for production of documents and reply to counterclaim. Telephone conference with client.	ARCH
2998.0001	04/24/2012	1	A	1	590.00	2.60	1,534.00	Review email from Eric. Review and edit reply to counterclaims. Review and edit request to produce and confer with Jeffrey P. Luszeck regarding [REDACTED]. Confer with Jeffrey P. Luszeck regarding [REDACTED]. Review email to Josef regarding [REDACTED]. Telephone conference with Dan Gerety regarding [REDACTED].	ARCH
2998.0001	04/25/2012	18	A	1	240.00	0.80	192.00	Evaluate and respond to numerous correspondence. Evaluate minute order and notices of deposition.	ARCH
2998.0001	04/25/2012	1	A	1	590.00	0.60	354.00	Review California case regarding [REDACTED]. Confer with Jeffrey P. Luszeck regarding [REDACTED].	ARCH

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Stmt # Rate	Hours to Bill	Amount		Ref #
Client ID 2998.0001 Nelson, Eric (1)									
2998.0001	04/26/2012	2	A	1	400.00	0.20	80.00	Conference with Mark A. Solomon regarding [REDACTED] Receipt and review of e-mails regarding [REDACTED]	ARCH
2998.0001	04/27/2012	18	A	1	240.00	3.00	720.00	Draft multiple correspondence to opposing counsel. Draft reply. Telephone conference with Rhonda. Supplement discovery.	ARCH
2998.0001	04/27/2012	1	A	1	590.00	1.10	649.00	Review draft order regarding [REDACTED]. Review draft reply to Lynita's counterclaims by Eric.	ARCH
2998.0001	04/30/2012	18	A	1	240.00	0.60	144.00	Prepare for deposition of Richard Koch. Telephone conference with Larry Bertsch.	ARCH
2998.0001	04/30/2012	1	A	1	590.00	0.50	295.00	Prepare for Koch deposition.	ARCH
2998.0001	05/01/2012	18	A	1	240.00	1.00	240.00	Evaluate and respond to correspondence. Evaluate motions filed by Larry Bertsch.	ARCH
2998.0001	05/01/2012	1	A	1	590.00	2.90	1,711.00	Prepare for and attend deposition of Richard Koch. Confer with Rhonda regarding [REDACTED]. Review Josef's email regarding [REDACTED]. Review updated source and app from Bertsch.	ARCH
2998.0001	05/02/2012	18	A	1	240.00	1.10	264.00	Telephone conference with client. Evaluate and respond to correspondence.	ARCH
2998.0001	05/02/2012	1	A	1	590.00	1.10	649.00	Review Bertsch's request for instructions. Review Jeffrey P. Luszeck's email regarding [REDACTED]. Review Bertsch's fee request and Jeffrey P. Luszeck's email regarding [REDACTED]. Review Jeffrey P. Luszeck's email to Eric regarding [REDACTED]	ARCH
2998.0001	05/03/2012	18	A	1	240.00	2.10	504.00	Evaluate deposition transcript of Lynita S. Nelson. Telephone conference with Eric and Rochelle regarding [REDACTED]. Evaluate and respond to correspondence regarding [REDACTED]	ARCH
2998.0001	05/03/2012	1	A	1	590.00	1.20	708.00	Confer with Jeffrey P. Luszeck regarding [REDACTED]. Review Eric's email regarding [REDACTED]	ARCH
2998.0001	05/05/2012	18	A	1	240.00	1.20	288.00	Evaluate correspondence with orders. Draft response to the same.	ARCH
2998.0001	05/07/2012	18	A	1	240.00	1.70	408.00	Supplement and finalize correspondence to judge with orders.	ARCH
2998.0001	05/07/2012	1	A	1	590.00	0.30	177.00	Review correspondence to Judge Sullivan regarding [REDACTED]	ARCH
2998.0001	05/08/2012	2	A	1	400.00	1.40	560.00	Conference with Jeffrey P. Luszeck regarding [REDACTED]. Review deposition testimony of Rochelle.	ARCH
2998.0001	05/08/2012	18	A	1	240.00	1.80	432.00	Telephone conference with client. expert and counsel. Evaluate correspondence and pleadings.	ARCH
2998.0001	05/08/2012	1	A	1	590.00	1.80	1,062.00	Telephone call from Eric regarding [REDACTED]. Review Bertsch's source and app for LSN. Confer with Jeffrey P. Luszeck regarding [REDACTED]. Call to Dan Gerety. Review motion from Dickerson regarding [REDACTED]	ARCH
2998.0001	05/08/2012	15	A	1	175.00	3.50	612.50	Conference with Jeffrey P. Luszeck regarding [REDACTED]. Conduct legal research on westlaw and begin drafting research memo;	ARCH
2998.0001	05/09/2012	2	A	1	400.00	1.50	600.00	Prepare for meeting with Rochelle. Review deposition transcript of Lana Martin. Conference with Jeffrey P. Luszeck regarding [REDACTED]. Meeting with Rochelle [REDACTED]	ARCH
2998.0001	05/09/2012	18	A	1	240.00	1.20	288.00	Telephone conference with opposing counsel. Supplement and finalize correspondence regarding [REDACTED]. Continue to evaluate deposition transcript of Eric L. Nelson.	ARCH
2998.0001	05/10/2012	18	A	1	240.00	1.30	312.00	Telephone conference with client. Evaluate and respond to correspondence.	ARCH
2998.0001	05/10/2012	2	A	1	400.00	1.20	480.00	Review deposition transcript of Joan.	ARCH
2998.0001	05/10/2012	15	A	1	175.00	2.70	472.50	Conference with Jeffrey P. Luszeck; receive and review Dickerson's brief regarding Special Master; continue legal research and drafting research memo;	ARCH
2998.0001	05/11/2012	5	A	1	180.00	0.20	36.00	Mark documents as confidential.	ARCH
2998.0001	05/11/2012	2	A	1	400.00	0.50	200.00	Conference with Jeffrey P. Luszeck regarding [REDACTED]. Review documents.	ARCH
2998.0001	05/11/2012	18	A	1	240.00	4.10	984.00	Evaluate and respond to correspondence. Evaluate motion. telephone conference with Rhonda. Draft notice of partial objection.	ARCH
2998.0001	05/11/2012	1	A	1	590.00	1.00	590.00	Review partial objection to Bertsch's motion for fees.	ARCH
2998.0001	05/14/2012	2	A	1	400.00	4.60	1,840.00	Attend deposition of Rochelle McGowan. Conference with Mark A. Solomon and Jeffrey P. Luszeck regarding [REDACTED]	ARCH
2998.0001	05/14/2012	18	A	1	240.00	0.40	96.00	Confer with Dana A. Dwiggins regarding [REDACTED]. Draft correspondence to opposing counsel.	ARCH
2998.0001	05/14/2012	1	A	1	590.00	0.40	236.00	Confer with Dana A. Dwiggins regarding [REDACTED]	ARCH

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Stmnt # Rate	Hours to Bill	Amount		Ref #
Client ID 2998.0001 Nelson, Eric (1)									
2998.0001	05/15/2012	2	A	1	400.00	0.30	120.00	Receipt and review of e-mail from Rochelle. Review notary attachments. Conference with Jeffrey P. Luszeck regarding [REDACTED]	ARCH
2998.0001	05/15/2012	18	A	1	240.00	1.20	288.00	Supplement and finalize petitions. Evaluate and respond to numerous correspondence. Telephone conference with court.	ARCH
2998.0001	05/15/2012	1	A	1	590.00	0.50	295.00	Review response to Bertsch's instruction request.	ARCH
2998.0001	05/16/2012	18	A	1	240.00	1.00	240.00	Telephone conferences with client. Evaluate and respond to correspondence.	ARCH
2998.0001	05/16/2012	2	A	1	400.00	0.40	160.00	Begin reviewing deposition transcript of Joan Ramos.	ARCH
2998.0001	05/17/2012	2	A	1	400.00	2.70	1,080.00	Finish reviewing deposition transcript of Joan Ramos. Conference with Jeffrey P. Luszeck [REDACTED]	ARCH
								Prepare for meeting with Joan Ramos. Receipt and review of additional disclosure of documents for Joan Ramos. Receipt and review of limited objection to payment of fees. Meeting with Joan Ramos.	
2998.0001	05/17/2012	18	A	1	240.00	0.20	48.00	Confer with Dana A. Dwiggins regarding [REDACTED]	ARCH
2998.0001	05/18/2012	18	A	1	240.00	0.20	48.00	Confer with Dana A. Dwiggins regarding [REDACTED]	ARCH
								Evaluate and respond to correspondence.	
2998.0001	05/21/2012	2	A	1	400.00	2.10	840.00	Attend deposition of Joan Ramos. Conference with Jeffrey P. Luszeck regarding [REDACTED]	ARCH
2998.0001	05/21/2012	18	A	1	240.00	4.20	1,008.00	Evaluate and respond to correspondence. Draft opposition to motion for bertsch. Telephone conference with court.	ARCH
2998.0001	05/21/2012	17	A	1	190.00	0.80	152.00	Conference with Jeffrey P. Luszeck. Review transcripts and save in searchable format. Receipt of discovery documents and bate stamp.	ARCH
2998.0001	05/22/2012	18	A	1	240.00	9.30	2,232.00	Conduct legal research. Draft opposition to motion to examine and countermotion's. telephone conference with Rhonda Forsberg. Evaluate subpoenas.	ARCH
2998.0001	05/22/2012	17	A	1	190.00	0.30	57.00	Revise bate stamps on documents. Bate stamp documents received from Joan Ramos.	ARCH
2998.0001	05/23/2012	18	A	1	240.00	3.00	720.00	Supplement and finalize opposition to motion to examine. Telephone conference with Rhonda and client. Evaluate and respond to numerous correspondence.	ARCH
2998.0001	05/23/2012	1	A	1	590.00	1.80	1,062.00	Review opposition to master's appointment. Review Rhonda's opposition. Review subpoenas to United Healthcare and Bank of America. Review Rhonda's limited opposition to Bertsch fees.	ARCH
2998.0001	05/24/2012	17	A	1	190.00	0.20	38.00	Prepare and bate stamp documents received from Jeffrey Burr.	ARCH
2998.0001	05/27/2012	1	A	1	590.00	0.60	354.00	Review Dickerson's reply regarding [REDACTED]	ARCH
2998.0001	05/29/2012	18	A	1	240.00	0.30	72.00	Evaluate order. Evaluate and respond to correspondence.	ARCH
2998.0001	05/29/2012	1	A	1	590.00	0.30	177.00	Review Court's order regarding [REDACTED]	ARCH
2998.0001	05/30/2012	18	A	1	240.00	0.80	192.00	Telephone conference with client and expert witness. Draft correspondence. Confer with Mark A. Solomon regarding [REDACTED]	ARCH
2998.0001	05/30/2012	1	A	1	590.00	0.20	118.00	Review Jeffrey P. Luszeck and Eric's emails regarding [REDACTED]	ARCH
2998.0001	05/31/2012	18	A	1	240.00	1.50	360.00	Evaluate and respond to correspondence. Draft response to reply.	ARCH
2998.0001	06/05/2012	18	A	1	240.00	0.20	48.00	Evaluate order and reply to opposition.	ARCH
2998.0001	06/05/2012	1	A	1	590.00	0.50	295.00	Review Rhonda's joinder in Reply regarding [REDACTED]	ARCH
2998.0001	06/07/2012	1	A	1	590.00	0.50	295.00	Review Eric's email. Review order. Review Jeffrey P. Luszeck's email to Rhonda [REDACTED]	ARCH
2998.0001	06/08/2012	18	A	1	240.00	0.10	24.00	Telephone conference with client.	ARCH
2998.0001	06/08/2012	1	A	1	590.00	0.50	295.00	Telephone call with Dan Gerety regarding [REDACTED]	ARCH
2998.0001	06/11/2012	18	A	1	240.00	1.70	408.00	Prepare for and attend conference with client. Telephone conference with Dan Gerety.	ARCH
2998.0001	06/11/2012	1	A	1	590.00	1.50	885.00	Meet with Eric. Telephone conference with Dan regarding [REDACTED]	ARCH
2998.0001	06/12/2012	18	A	1	240.00	2.30	552.00	Telephone conference with client. Evaluate and respond to correspondence. Evaluate trial transcripts.	ARCH
2998.0001	06/12/2012	1	A	1	590.00	0.50	295.00	Review Eric's email to Rhonda. Confer with Jeffrey P. Luszeck regarding [REDACTED]	ARCH
2998.0001	06/13/2012	18	A	1	240.00	5.30	1,272.00	Evaluate trial transcripts for use at trial.	ARCH
2998.0001	06/13/2012	1	A	1	590.00	0.60	354.00	Confer with Jeffrey P. Luszeck regarding [REDACTED]	ARCH
								[REDACTED] Telephone conference with Rhonda regarding [REDACTED]	
2998.0001	06/14/2012	18	A	1	240.00	5.40	1,296.00	Continue to evaluate trial transcripts for use at trial. Telephone conference with expert.	ARCH
2998.0001	06/14/2012	1	A	1	590.00	2.50	1,475.00	Review deposition notice for Wyoming Secretary of	ARCH

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Stmnt # Rate	Hours to Bill	Amount	Ref #
Client ID 2998.0001 Nelson, Eric (1)								
2998.0001	06/15/2012	18	A	1	240.00	4.80	1,152.00 State. Telephone conference with Layne Rushforth regarding [REDACTED] Review depositions.	ARCH
2998.0001	06/15/2012	1	A	1	590.00	2.00	1,180.00 Telephone conference with client. Continue to evaluate trial transcripts for use at trial. Evaluate and respond to correspondence.	ARCH
2998.0001	06/18/2012	18	A	1	240.00	1.10	264.00 Confer with Jeffrey P. Luszeck regarding [REDACTED] Review same.	ARCH
2998.0001	06/18/2012	1	A	1	590.00	2.00	1,180.00 Evaluate correspondence. Telephone conference with client.	ARCH
2998.0001	06/19/2012	18	A	1	240.00	0.90	216.00 Review sur-reply regarding Bertsch's motion. Review Dan's draft report.	ARCH
2998.0001	06/20/2012	18	A	1	240.00	0.10	24.00 Evaluate expert witness report.	ARCH
2998.0001	06/20/2012	1	A	1	590.00	2.00	1,180.00 Telephone conference with Dan Gerety.	ARCH
2998.0001	06/21/2012	18	A	1	240.00	3.20	768.00 Review trial transcripts.	ARCH
2998.0001	06/21/2012	15	A	1	175.00	0.40	70.00 Prepare for and attend conference with Dan Gerety. Telephone conference with expert. Draft correspondence to the same. Evaluate deposition transcript of Joe Launauae.	ARCH
2998.0001	06/21/2012	1	A	1	590.00	3.50	2,065.00 Conference with Jeffrey P. Luszeck regarding [REDACTED]	ARCH
2998.0001	06/22/2012	18	A	1	240.00	1.80	432.00 Meet with Dan Gerety regarding [REDACTED] Review and edit revised report.	ARCH
2998.0001	06/25/2012	17	A	1	190.00	2.30	437.00 Telephone conference with Rhonda Forsberg. Continue to evaluate trial transcripts. Confer with Mark A. Solomon and Ross E. Evans regarding [REDACTED]	ARCH
2998.0001	06/25/2012	15	A	1	175.00	4.70	822.50 Conduct research.	ARCH
2998.0001	06/25/2012	1	A	1	590.00	2.30	1,357.00 Prepare for and meet with Mark A. Solomon and Angelo Ruccia regarding [REDACTED]	ARCH
2998.0001	06/25/2012	15	A	1	175.00	3.60	630.00 Review emails from Jeffrey P. Luszeck regarding [REDACTED] Conference with Mark A. Solomon regarding [REDACTED] Draft trial subpoena for Jeffrey Burr; Conference with Mark A. Solomon regarding [REDACTED] Conduct legal research [REDACTED]	ARCH
2998.0001	06/26/2012	1	A	1	590.00	2.10	1,239.00 Prepare for and Meet with Angelo (Gerety's office) along with Sharon H. Simcizen.	ARCH
2998.0001	06/27/2012	15	A	1	175.00	5.50	962.50 Continue legal research [REDACTED] Begin drafting research memo; Conference with Mark A. Solomon regarding [REDACTED] Conference with Susan regarding [REDACTED] Conference with Susan regarding [REDACTED]	ARCH
2998.0001	06/27/2012	1	A	1	590.00	3.00	1,770.00 Review Layne Rushforth's draft. Work on changes. Legal research regarding [REDACTED]	ARCH
2998.0001	06/28/2012	15	A	1	175.00	3.00	525.00 Receive and review Layne Rushforth expert report; Bates-stamp report and prepare for disclosure; Draft Expert Witness disclosure and ROC; Continue legal research [REDACTED]	ARCH
2998.0001	06/28/2012	1	A	1	590.00	2.50	1,475.00 Review Layne Rushforth's revised report. Review trial transcripts.	ARCH
2998.0001	06/29/2012	15	A	1	175.00	2.50	437.50 Continue legal research on Westlaw and drafting research memo;	ARCH
2998.0001	07/02/2012	18	A	1	240.00	2.90	696.00 Review trial transcripts.	ARCH
2998.0001	07/02/2012	1	A	1	590.00	2.30	1,357.00 Continue legal research and drafting memo to Jeffrey P. Luszeck regarding [REDACTED]	ARCH
2998.0001	07/02/2012	15	A	1	175.00	3.60	630.00 Attend conference with Shelley Newell. Evaluate subpoena duces tecum. Conduct legal research for [REDACTED]	ARCH
2998.0001	07/03/2012	17	A	1	190.00	2.00	380.00 Meet with Shelley and Rhonda, along with Jeffrey P. Luszeck. Telephone conference with Dan regarding [REDACTED]	ARCH
2998.0001	07/03/2012	1	A	1	590.00	4.30	2,537.00 Conduct research on Westlaw regarding [REDACTED] [REDACTED] effect on corporate property [REDACTED]	ARCH
2998.0001	07/03/2012	15	A	1	175.00	4.00	700.00 Conference with Jeffrey P. Luszeck. Prepare trial subpoenas and acceptance of services to Richard Koch and Shelley Newell. Telephone calls with Richard Koch's office and Shelley Newell to coordinate service of subpoenas.	ARCH
2998.0001	07/04/2012	18	A	1	240.00	7.10	1,704.00 Meet with Nola and Rhonda regarding [REDACTED] Review Dan Gerety revisions to report. Meet with Eric regarding [REDACTED]	ARCH
2998.0001	07/05/2012	18	A	1	240.00	6.70	1,608.00 Continue legal research and draft memo regarding [REDACTED] Conference with Jeffrey P. Luszeck regarding [REDACTED] Draft pretrial statement. Attend conferences with witnesses.	ARCH
2998.0001	07/05/2012	18	A	1	240.00	6.70	1,608.00 Continue to draft pretrial memorandum. Conduct legal research. Evaluate document disclosures.	ARCH

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Stmnt # Rate	Hours to Bill	Amount		Ref #
Client ID 2998.0001 Nelson, Eric (1)									
2998.0001	07/05/2012	1	A	1	590.00	4.20	2,478.00	Telephone conference with Dan Gerety regarding [REDACTED]. Review Gerety's email regarding [REDACTED]. Review deposition testimony. Review Gerety's email [REDACTED]. Telephone conference with Bob Dickerson regarding trial and expert reports. Telephone conference with Jeffrey P. Luszeck regarding [REDACTED].	ARCH
2998.0001	07/05/2012	15	A	1	175.00	6.80	1,190.00	Conference with Jeffrey P. Luszeck regarding [REDACTED]. Conduct research on [REDACTED].	ARCH
2998.0001	07/06/2012	17	A	1	190.00	1.00	190.00	Conference with Jeffrey P. Luszeck. Process and combine discovery documents. Prepare disc for client with Lana's disclosures.	ARCH
2998.0001	07/06/2012	18	A	1	240.00	5.30	1,272.00	Attend conference with clients. Prepare for trial.	ARCH
2998.0001	07/06/2012	1	A	1	590.00	5.70	3,363.00	Review and edit trial brief. Meet with Eric, Rhonda, and Jeffrey P. Luszeck. Telephone conference with Dan regarding [REDACTED]. Review letter to Dickerson.	ARCH
2998.0001	07/06/2012	15	A	1	175.00	2.80	490.00	Review and revise pre-trial memorandum for [REDACTED]. Perform supplemental research for pre-trial memorandum.	ARCH
2998.0001	07/07/2012	18	A	1	240.00	6.30	1,512.00	Prepare for trial.	ARCH
2998.0001	07/08/2012	18	A	1	240.00	8.40	2,016.00	Prepare for trial. Evaluate thousands of pages disclosed by opposing counsel. Evaluate deposition transcript of Richard Koch. Draft witness outlines for use at trial.	ARCH
2998.0001	07/09/2012	18	A	1	240.00	10.70	2,568.00	Prepare witness outlines. Evaluate and respond to correspondence. Telephone conference with opposing counsel. Conduct legal research.	ARCH
2998.0001	07/09/2012	17	A	1	190.00	2.50	475.00	Conference with Jeffrey P. Luszeck. Process pleading for researchable format.	ARCH
2998.0001	07/09/2012	1	A	1	590.00	5.50	3,245.00	Review Eric's email regarding [REDACTED]. Review trial exhibits. Review Josef's email regarding [REDACTED]. Meet with Rochelle regarding [REDACTED].	ARCH
2998.0001	07/09/2012	15	A	1	175.00	3.90	682.50	Conference with Jeffrey P. Luszeck regarding [REDACTED]. Conduct research [REDACTED].	ARCH
2998.0001	07/10/2012	17	A	1	190.00	3.50	665.00	Conference with Jeffrey P. Luszeck. Review trial exhibits and prepare table. Process pleadings and depositions into searchable format.	ARCH
2998.0001	07/10/2012	18	A	1	240.00	11.10	2,664.00	Prepare for trial. Draft witness outlines. Conduct legal research. Meet with witness.	ARCH
2998.0001	07/10/2012	19	A	1	200.00	5.30	1,060.00	Reviewed email from Jeffrey P. Luszeck regarding [REDACTED]. performed extensive research regarding [REDACTED]. drafted memo with findings and opinions; conference with Jeffrey P. Luszeck and Mark A. Solomon regarding [REDACTED].	ARCH
2998.0001	07/10/2012	1	A	1	590.00	2.00	1,180.00	Review minutes from Nola. Meet with Joan Ramos.	ARCH
2998.0001	07/10/2012	15	A	1	175.00	4.80	840.00	Continue drafting Opposition regarding Expert Reports and Expert Witness Testimony of Rushforth and Gerety; Continue legal research [REDACTED].	ARCH
2998.0001	07/10/2012		A	90			26,170.28	Payment	ARCH
2998.0001	07/11/2012	17	A	1	190.00	6.00	1,140.00	Conference with Jeffrey P. Luszeck. Review trial exhibits and prepare chart of Trusts minutes and distribution authorizations. Continue processing of transcripts and disclosures into readable format.	ARCH
2998.0001	07/11/2012	18	A	1	240.00	12.80	3,072.00	Continue to prepare for trial. Draft opposition to motion in limine. Conduct legal research. Draft settlement letter. Evaluate and respond to correspondence.	ARCH
2998.0001	07/11/2012	19	A	1	200.00	2.90	580.00	Conference with Mark A. Solomon regarding [REDACTED]. performed extensive Westlaw research regarding [REDACTED]; drafted memo to Mark A. Solomon with [REDACTED].	ARCH
2998.0001	07/11/2012	1	A	1	590.00	2.00	1,180.00	Review Eric's email regarding [REDACTED]. Review Burr's outline. Review Court's orders.	ARCH
2998.0001	07/11/2012	15	A	1	175.00	4.60	805.00	Continue drafting Opposition regarding [REDACTED].	ARCH
2998.0001	07/12/2012	18	A	1	240.00	8.60	2,064.00	Continue to prepare for trial. Evaluate and respond to correspondence. Evaluate trial exhibits. Meet with Layne Rushforth. Conduct legal research.	ARCH
2998.0001	07/12/2012	17	A	1	190.00	3.00	570.00	Continuing converting discovery document into readable format. Conference with Jeffrey P. Luszeck. Review and copy documents [REDACTED].	ARCH

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Client ID 2998.0001 Nelson, Eric (1)								
2998.0001	07/19/2012	1	A	1	590.00	8.00	4,720.00	ARCH
							[REDACTED]; conferences with Steven E. Hollingworth; conference with Mark A. Solomon; revise e-mail to Mark A. Solomon.	
							Prepare for and attend trial. Review Gerety's email regarding [REDACTED]. Confer with Gerety regarding [REDACTED]. Review Steven E. Hollingworth's email regarding [REDACTED].	
2998.0001	07/19/2012	8	A	1	400.00	4.70	1,880.00	ARCH
							Research and analysis with Mark A. Solomon and Brian K. Steadman [REDACTED]. [REDACTED] draft summary of potential arguments.	
2998.0001	07/20/2012	18	A	1	240.00	4.80	1,152.00	ARCH
							Evaluate and respond to emails. Meet with client. Evaluate documents. Draft disclosure of rebuttal expert witness.	
2998.0001	07/20/2012	17	A	1	190.00	0.70	133.00	ARCH
							Research [REDACTED]. Telephone calls with Uinta County Recorder regarding [REDACTED].	
2998.0001	07/20/2012	1	A	1	590.00	5.20	3,068.00	ARCH
							Review email from Dickerson regarding [REDACTED]. Telephone conference with Dan regarding [REDACTED]. Meet with Eric regarding [REDACTED]. Telephone conference with Lana regarding [REDACTED]. Prepare for trial. Review email from Eric regarding [REDACTED]. Review memo and cases from Ross E. Evans regarding [REDACTED]. Review memo from Steven E. Hollingworth regarding [REDACTED]. Trust. Review email to Gerety regarding [REDACTED].	
2998.0001	07/21/2012	1	A	1	590.00	4.20	2,478.00	ARCH
							Review trial transcripts from Lynita. Prepare for trial. Review new selected documents. Review emails from Eric [REDACTED].	
2998.0001	07/22/2012	18	A	1	240.00	6.40	1,536.00	ARCH
							Evaluate and respond to correspondence. Meet with client. Evaluate binders disclosed by Lynita's counsel.	
2998.0001	07/22/2012	1	A	1	590.00	4.00	2,360.00	ARCH
							Prepare for trial. Meet with Rochelle, Eric and Rhonda, along with Jeffrey P. Luszeck regarding [REDACTED]. Review new trial exhibit binder from Dickerson.	
2998.0001	07/23/2012	18	A	1	240.00	9.10	2,184.00	ARCH
							Prepare for, travel to and attend trial. Evaluate documents and evaluate and respond to correspondence.	
2998.0001	07/23/2012	1	A	1	590.00	9.00	5,310.00	ARCH
2998.0001	07/24/2012	17	A	1	190.00	0.20	38.00	ARCH
							Correspondence with Jeffrey P. Luszeck. Review trial transcript.	
2998.0001	07/24/2012	18	A	1	240.00	12.40	2,976.00	ARCH
2998.0001	07/24/2012	1	A	1	590.00	10.00	5,900.00	ARCH
							Prepare for and attend trial. Telephone conference with Dan and Angelo regarding [REDACTED]. Review Bertsch reports. Review Jeffrey P. Luszeck's email [REDACTED].	
2998.0001	07/25/2012	18	A	1	240.00	9.40	2,256.00	ARCH
2998.0001	07/25/2012	1	A	1	590.00	8.00	4,720.00	ARCH
							Meet with Dan Gerety. Prepare for and attend trial. Review Josef's email with revised order regarding [REDACTED].	
2998.0001	07/30/2012	19	A	1	200.00	4.20	840.00	ARCH
							Conference with Mark A. Solomon regarding [REDACTED]. [REDACTED] began researching issue and preparing memo on the same.	
2998.0001	07/31/2012	19	A	1	200.00	2.20	440.00	ARCH
							Continued research project [REDACTED].	
2998.0001	08/01/2012	1	A	1	590.00	0.20	118.00	ARCH
2998.0001	08/06/2012	18	A	1	240.00	0.20	48.00	ARCH
2998.0001	08/06/2012	19	A	1	200.00	4.50	900.00	ARCH
							Continue drafting memo regarding [REDACTED] and performing research regarding [REDACTED], completed draft of memo.	
2998.0001	08/06/2012	1	A	1	590.00	1.80	1,062.00	ARCH
							Confer with Jeffrey P. Luszeck regarding [REDACTED]. Confer with Alexander G. LeVeque regarding [REDACTED]. Review draft orders.	
2998.0001	08/07/2012	18	A	1	240.00	1.00	240.00	ARCH
							Multiple telephone conferences opposing counsel regarding [REDACTED]. Review and execute stipulation and orders.	
2998.0001	08/07/2012	1	A	1	590.00	1.20	708.00	ARCH
							Confer with Jeffrey P. Luszeck regarding [REDACTED]. Review Alexander G. LeVeque's memo regarding [REDACTED].	
2998.0001	08/08/2012		A	90			33,829.72	ARCH
							Payment	
2998.0001	08/10/2012	1	A	1	590.00	0.10	59.00	ARCH
							Review entry of order.	
2998.0001	08/16/2012	18	A	1	240.00	1.00	240.00	ARCH
							Evaluate correspondence from court. Telephone conference with client. Evaluate correspondence from client.	
2998.0001	08/17/2012	18	A	1	240.00	1.90	456.00	ARCH
2998.0001	08/17/2012	1	A	1	590.00	2.60	1,534.00	ARCH
							Confer with Mark A. Solomon regarding [REDACTED]. Review Court's email regarding [REDACTED]. Confer with Jeffrey P. Luszeck regarding [REDACTED]. Review	

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Client ID 2998.0001 Nelson, Eric (1)								
							trial notes. Confer with Jeffrey P. Luszeck regarding [REDACTED]	
2998.0001	08/20/2012	18	A	1	240.00	0.10	24.00 Telephone conference with client.	ARCH
2998.0001	08/21/2012	18	A	1	240.00	3.70	888.00 Evaluate minute order. Telephone conference with court. Begin outlining pretrial brief.	ARCH
2998.0001	08/21/2012	1	A	1	590.00	0.40	236.00 Review Eric's email regarding [REDACTED]. Confer with Jeffrey P. Luszeck regarding [REDACTED].	ARCH
2998.0001	08/22/2012	18	A	1	240.00	2.20	528.00 Telephone conference with client, Court and Rhonda Forsberg. Continue to outline post-trial brief.	ARCH
2998.0001	08/23/2012	18	A	1	240.00	4.80	1,152.00 Continue to conduct legal research and draft post-trial memorandum.	ARCH
2998.0001	08/24/2012	18	A	1	240.00	2.80	672.00 Continue to conduct legal research and draft post-trial brief.	ARCH
2998.0001	08/27/2012	18	A	1	240.00	7.50	1,800.00 Continue to conduct legal research and draft post-trial brief.	ARCH
2998.0001	08/28/2012	18	A	1	240.00	8.10	1,944.00 Continue to conduct legal research and draft post-trial brief.	ARCH
2998.0001	08/29/2012	18	A	1	240.00	6.80	1,632.00 Evaluate bankruptcy order and Bertsch's motion for fees. Continue to conduct legal research and draft post-trial brief.	ARCH
2998.0001	08/29/2012	1	A	1	590.00	1.00	590.00 Review draft trial brief. Review Bertsch fee application and Jeffrey P. Luszeck's email.	ARCH
2998.0001	08/30/2012	18	A	1	240.00	4.40	1,056.00 Continue to conduct legal research and draft post-trial memorandum.	ARCH
2998.0001	08/30/2012	1	A	1	590.00	2.00	1,180.00 Work on trial brief.	ARCH
2998.0001	08/31/2012	18	A	1	240.00	2.00	480.00 Telephone conference with counsel. Continue to conduct legal research and draft post-trial memorandum. Confer with Mark A. Solomon regarding [REDACTED]	ARCH
2998.0001	08/31/2012	5	A	1	180.00	0.10	18.00 Confer with Jeffrey P. Luszeck regarding [REDACTED]	ARCH
2998.0001	08/31/2012	1	A	1	590.00	2.10	1,239.00 Review and edit trial brief.	ARCH
2998.0001	09/04/2012	18	P	1	240.00	6.80	1,632.00 Evaluate Lynita's post-trial brief.	527
2998.0001	09/04/2012	1	P	1	590.00	0.70	413.00 Confer with Jeffrey P. Luszeck regarding [REDACTED]	540
2998.0001	09/05/2012	18	P	1	240.00	7.90	1,896.00 Conduct legal research. Draft outline to response to post-trial brief. Evaluate orders.	528
2998.0001	09/05/2012	1	P	1	590.00	0.30	177.00 Review order regarding [REDACTED]. Review order regarding [REDACTED]	541
2998.0001	09/06/2012	18	P	1	240.00	6.50	1,560.00 Continue to conduct legal research and draft response to post-trial brief.	530
2998.0001	09/06/2012	1	P	1	590.00	0.40	236.00 Confer with Jeffrey P. Luszeck regarding [REDACTED]	543
2998.0001	09/07/2012	18	P	1	240.00	6.30	1,512.00 Telephone conference with counsel and client. Evaluate and respond to e-mails. Continue to conduct legal research and draft response to post-trial brief.	529
2998.0001	09/10/2012	18	P	1	240.00	3.70	888.00 Continue to conduct legal research and draft response to post-trial brief.	531
2998.0001	09/10/2012	1	P	1	590.00		0.00 Meet with Courtney regarding [REDACTED]	544
2998.0001	09/11/2012	18	P	1	240.00	7.30	1,752.00 Continue to conduct legal research and draft response to post-trial brief.	532
2998.0001	09/12/2012	18	P	1	240.00	6.50	1,560.00 Continue to conduct legal research and draft response to post-trial brief.	533
2998.0001	09/12/2012	1	P	1	590.00	0.30	177.00 Review emails between Jeffrey P. Luszeck, Rhonda and Eric regarding [REDACTED]	545
2998.0001	09/14/2012	18	P	1	240.00	3.40	816.00 Continue to conduct legal research and draft response to pre-trial brief.	534
2998.0001	09/17/2012	18	P	1	240.00	0.10	24.00 Draft correspondence to counsel.	535
2998.0001	09/18/2012	18	P	1	240.00	2.00	480.00 Continue to draft response to Lynita's post-trial brief.	536
2998.0001	09/18/2012	1	P	1	590.00	2.10	1,239.00 Confer with Jeffrey P. Luszeck regarding [REDACTED]	546
2998.0001	09/19/2012	18	P	1	240.00	0.50	120.00 [REDACTED]. Review sections.	537
2998.0001	09/19/2012	18	P	1	240.00	0.50	120.00 Telephone conference with client and court. Evaluate Lynita's partial objection to Bertsch's fees.	537
2998.0001	09/20/2012	18	P	1	240.00	4.10	984.00 Evaluate and respond to correspondence. Supplement response to post trial brief.	538
2998.0001	09/21/2012	18	P	1	240.00	1.40	336.00 Supplement response to post-trial brief.	539
2998.0001	09/21/2012	1	P	1	590.00	1.50	885.00 Review and edit reply brief. Legal research regarding [REDACTED]. Confer with Jeffrey P. Luszeck regarding [REDACTED]	548
2998.0001	09/24/2012	18	P	1	240.00	1.70	408.00 Supplement response to post-trial brief. Evaluate order from Dickerson's office. Evaluate and respond to correspondence.	542
2998.0001	09/25/2012	18	P	1	240.00	3.00	720.00 Draft memorandum of costs. Continue to draft response to Lynita's post trial brief.	547
2998.0001	09/26/2012	18	P	1	240.00	2.60	624.00 Supplement and finalize memo for fees and costs and response to lynita's post trial memorandum. Evaluate order. Evaluate and respond to correspondence.	549

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Stmt # Rate	Hours to Bill	Amount	Ref #
Total for Client ID 2998,0001					Billable	820.80	264,493.50	Nelson, Eric (1)
					Payments		60,000.00	Eric L. Nelson Nevada Trust dated May 30, 2001
GRAND TOTALS								
					Billable	820.80	264,493.50	
					Payments		60,000.00	

EXHIBIT 2

EXHIBIT 2

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Amount	Ref #
Client ID 2998.0001 Nelson, Eric (1)							
2998.0001	03/06/2012	1	A	70		3.50 Electronic filing fee (Motion for Payment of Attorneys Fees/Costs).	ARCH
2998.0001	03/07/2012	1	A	70		3.50 Electronic filing fee (Certificate of Mailing).	ARCH
2998.0001	03/08/2012	1	A	51	0.250	2.75 Laser copy charges.	ARCH
2998.0001	03/09/2012	1	A	72	8.000	8.00 Courier fee.	ARCH
2998.0001	03/21/2012	1	A	56		25.00 Clark County Treasurer - Transcript of 2/23 Hearing.	ARCH
2998.0001	03/21/2012	1	A	51	0.250	0.50 Laser copy charges.	ARCH
2998.0001	03/22/2012	1	A	72	8.000	8.00 Courier fee.	ARCH
2998.0001	03/23/2012	1	A	51	0.250	0.25 Laser copy charges.	ARCH
2998.0001	03/27/2012	1	A	51	0.250	36.50 Laser copy charges.	ARCH
2998.0001	03/28/2012	1	A	51	0.250	0.75 Laser copy charges.	ARCH
2998.0001	03/30/2012	1	A	51	0.250	21.50 Laser copy charges.	ARCH
2998.0001	03/31/2012	1	A	53		4.70 Postage March 2012.	ARCH
2998.0001	03/31/2012	1	A	82	2.000	272.72 Westlaw online legal research.	ARCH
2998.0001	04/04/2012	1	A	51	0.250	19.25 Laser copy charges.	ARCH
2998.0001	04/04/2012	1	A	70		3.50 Electronic filing fee (Reply to Opposition).	ARCH
2998.0001	04/09/2012	1	A	51	0.250	297.25 Laser copy charges.	ARCH
2998.0001	04/09/2012	1	A	72	8.000	8.00 Courier fee.	ARCH
2998.0001	04/09/2012	1	A	70		3.50 Electronic filing fee (Receipt of Copy - Opposition).	ARCH
2998.0001	04/09/2012	1	A	70		3.50 Electronic filing fee (Opposition to Countermotion for Receiver).	ARCH
2998.0001	04/11/2012	1	A	51	0.250	277.50 Laser copy charges.	ARCH
2998.0001	04/12/2012	1	A	51	0.250	623.75 Laser copy charges.	ARCH
2998.0001	04/13/2012	1	A	51	0.250	0.50 Laser copy charges.	ARCH
2998.0001	04/13/2012	1	A	72	8.000	8.00 Courier fee.	ARCH
2998.0001	04/16/2012	1	A	51	0.250	2.25 Laser copy charges.	ARCH
2998.0001	04/17/2012	1	A	51	0.250	2.75 Laser copy charges.	ARCH
2998.0001	04/18/2012	1	A	21		32.00 Witness Fee - Richard Koch, Esq.	ARCH
2998.0001	04/18/2012	1	A	51	0.250	4.25 Laser copy charges.	ARCH
2998.0001	04/18/2012	1	A	72	8.000	8.00 Courier fee.	ARCH
2998.0001	04/23/2012	1	A	56		25.00 CD of 4-10-12 Hearing - Clark County Treasurer.	ARCH
2998.0001	04/23/2012	1	A	77		594.00 Transcription of Jeffrey Burr - All American Court Reporters.	ARCH
2998.0001	04/23/2012	1	A	51	0.250	199.75 Laser copy charges.	ARCH
2998.0001	04/24/2012	1	A	51	0.250	110.75 Laser copy charges.	ARCH
2998.0001	04/25/2012	1	A	51	0.250	94.75 Laser copy charges.	ARCH
2998.0001	04/25/2012	1	A	72	8.000	8.00 Courier fee.	ARCH
2998.0001	04/27/2012	1	A	53		6.25 Postage April 2012	ARCH
2998.0001	04/27/2012	1	A	82	2.000	215.18 Westlaw online legal research April 2012.	ARCH
2998.0001	04/27/2012	1	A	51	0.250	212.00 Laser copy charges.	ARCH
2998.0001	04/30/2012	1	A	51	0.250	39.25 Laser copy charges.	ARCH
2998.0001	05/09/2012	1	A	72	8.000	8.00 Courier fee.	ARCH
2998.0001	05/09/2012	1	A	51	0.250	26.00 Laser copy charges.	ARCH
2998.0001	05/11/2012	1	A	51	0.250	7.50 Laser copy charges.	ARCH
2998.0001	05/11/2012	1	A	72	8.000	8.00 Courier fee.	ARCH
2998.0001	05/15/2012	1	A	51	0.250	6.75 Laser copy charges.	ARCH
2998.0001	05/15/2012	1	A	70		3.50 Electronic filing fee (Response to Request for Instructions).	ARCH
2998.0001	05/15/2012	1	A	70		3.50 Electronic filing fee (Limited Objection).	ARCH
2998.0001	05/15/2012	1	A	70		3.50 Electronic filing fee (Certificate of Mailing - Response and Limited Objection).	ARCH
2998.0001	05/16/2012	1	A	72	8.000	8.00 Courier fee.	ARCH
2998.0001	05/17/2012	1	A	51	0.250	47.50 Laser copy charges.	ARCH
2998.0001	05/21/2012	1	A	51	0.250	5.00 Laser copy charges.	ARCH
2998.0001	05/22/2012	1	A	51	0.250	1.00 Laser copy charges.	ARCH
2998.0001	05/23/2012	1	A	51	0.250	15.75 Laser copy charges.	ARCH
2998.0001	05/23/2012	1	A	70		3.50 Electronic filing fee (Opposition).	ARCH
2998.0001	05/23/2012	1	A	70		3.50 Electronic filing fee (Certificate of Mailing-Opposition).	ARCH
2998.0001	05/24/2012	1	A	51	0.250	4.00 Laser copy charges.	ARCH
2998.0001	05/29/2012	1	A	51	0.250	7.25 Laser copy charges.	ARCH
2998.0001	05/31/2012	1	A	51	0.250	9.50 Laser copy charges.	ARCH
2998.0001	05/31/2012	1	A	53		9.05 Postage (May 2012).	ARCH
2998.0001	05/31/2012	1	A	82	2.000	67.58 Westlaw online legal research.	ARCH
2998.0001	06/01/2012	1	A	72	8.000	8.00 Courier fee.	ARCH
2998.0001	06/01/2012	1	A	51	0.250	13.75 Laser copy charges.	ARCH
2998.0001	06/01/2012	1	A	70		3.50 Electronic filing fee (Response to Limited Objection).	ARCH
2998.0001	06/01/2012	1	A	70		3.50 Electronic filing fee (Answer to First Amended Claims for Relief Against Eric Nelson).	ARCH
2998.0001	06/01/2012	1	A	70		3.50 Electronic filing fee (Answer to First Amended Claims for Relief Against Lana Martin).	ARCH
2998.0001	06/12/2012	1	A	51	0.250	3.00 Laser copy charges.	ARCH
2998.0001	06/15/2012	1	A	51	0.250	5.00 Laser copy charges.	ARCH
2998.0001	06/18/2012	1	A	51	0.250	6.00 Laser copy charges.	ARCH
2998.0001	06/18/2012	1	A	70		3.50 Electronic filing fee (Response to New Issues Raised in L. Nelson's Reply to Opposition to Motion for Court Order).	ARCH
2998.0001	06/18/2012	1	A	70		3.50 Electronic filing fee (Certificate of Mailing - Response to New Issues).	ARCH
2998.0001	06/19/2012	1	A	72	8.000	8.00 Courier fee.	ARCH
2998.0001	06/20/2012	1	A	51	0.250	36.00 Laser copy charges.	ARCH
2998.0001	06/21/2012	1	A	51	0.250	82.75 Laser copy charges.	ARCH
2998.0001	06/22/2012	1	A	51	0.250	55.50 Laser copy charges.	ARCH
2998.0001	06/25/2012	1	A	51	0.250	4.00 Laser copy charges.	ARCH
2998.0001	06/27/2012	1	A	21		32.00 Witness Fee (Jeffrey Burr, Ltd).	ARCH
2998.0001	06/27/2012	1	A	72	8.000	8.00 Courier fee.	ARCH

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Amount		Ref #
Client ID 2998.0001 Nelson, Eric (1)								
2998.0001	06/27/2012	1	A	51	0.250	11.50	Laser copy charges.	ARCH
2998.0001	06/28/2012	1	A	72	8.000	8.00	Courier fee.	ARCH
2998.0001	06/28/2012	1	A	51	0.250	8.25	Laser copy charges.	ARCH
2998.0001	06/29/2012	1	A	53		4.35	Postage.	ARCH
2998.0001	06/29/2012	1	A	82	2.000	32.50	Westlaw online legal research.	ARCH
2998.0001	07/02/2012	1	A	51	0.250	196.50	Laser copy charges.	ARCH
2998.0001	07/03/2012	1	A	21		32.00	Witness Fee (Shelley Newell).	ARCH
2998.0001	07/03/2012	1	A	21		32.00	Witness Fee (Richard A. Koch, Esq.).	ARCH
2998.0001	07/03/2012	1	A	51	0.250	3.25	Laser copy charges.	ARCH
2998.0001	07/03/2012	1	A	72	8.000	8.00	Courier fee.	ARCH
2998.0001	07/05/2012	1	A	51	0.250	117.75	Laser copy charges.	ARCH
2998.0001	07/06/2012	1	A	72	8.000	8.00	Courier fee.	ARCH
2998.0001	07/06/2012	1	A	51	0.250	538.50	Laser copy charges.	ARCH
2998.0001	07/06/2012	1	A	70		3.50	Electronic filing fee (Pre-Trial Memorandum).	ARCH
2998.0001	07/09/2012	1	A	51	0.250	360.50	Laser copy charges.	ARCH
2998.0001	07/09/2012	1	A	72	8.000	8.00	Courier fee.	ARCH
2998.0001	07/10/2012	1	A	72	8.000	8.00	Courier fee.	ARCH
2998.0001	07/10/2012	1	A	51	0.250	20.25	Laser copy charges.	ARCH
2998.0001	07/12/2012	1	A	51	0.250	630.75	Laser copy charges.	ARCH
2998.0001	07/13/2012	1	A	72	8.000	8.00	Courier fee.	ARCH
2998.0001	07/13/2012	1	A	51	0.250	523.00	Laser copy charges.	ARCH
2998.0001	07/13/2012	1	A	70		3.50	Electronic filing fee (Supplement to Pretrial Memorandum).	ARCH
2998.0001	07/13/2012	1	A	70		3.50	Electronic filing fee (Certificate of Mailing - Opposition to Motion in Limine).	ARCH
2998.0001	07/16/2012	1	A	51	0.250	56.50	Laser copy charges.	ARCH
2998.0001	07/17/2012	1	A	51	0.250	23.75	Laser copy charges.	ARCH
2998.0001	07/18/2012	1	A	51	0.250	60.50	Laser copy charges.	ARCH
2998.0001	07/19/2012	1	A	51	0.250	19.75	Laser copy charges.	ARCH
2998.0001	07/20/2012	1	A	51	0.250	2.50	Laser copy charges.	ARCH
2998.0001	07/20/2012	1	A	70		3.50	Electronic filing fee (Opposition to Motion in Limine).	ARCH
2998.0001	07/24/2012	1	A	72	8.000	8.00	Courier fee.	ARCH
2998.0001	07/24/2012	1	A	51	0.250	116.25	Laser copy charges.	ARCH
2998.0001	07/25/2012	1	A	72	8.000	8.00	Courier fee.	ARCH
2998.0001	07/31/2012	1	A	51	0.250	2.50	Laser copy charges.	ARCH
2998.0001	07/31/2012	1	A	53		3.60	Postage.	ARCH
2998.0001	07/31/2012	1	A	82	2.000	1,173.92	Westlaw online legal research.	ARCH
2998.0001	08/03/2012	1	A	72	8.000	8.00	Courier fee.	ARCH
2998.0001	08/06/2012	1	A	51	0.250	9.50	Laser copy charges.	ARCH
2998.0001	08/07/2012	1	A	72	8.000	8.00	Courier fee.	ARCH
2998.0001	08/17/2012	1	A	51	0.250	2.25	Laser copy charges.	ARCH
2998.0001	08/21/2012	1	A	51	0.250	0.25	Laser copy charges.	ARCH
2998.0001	08/22/2012	1	A	51	0.250	1.00	Laser copy charges.	ARCH
2998.0001	08/31/2012	1	A	70		3.50	Electronic filing fee (Post-Trial Brief).	ARCH
2998.0001	08/31/2012	1	A	70		3.50	Electronic filing fee (Certificate of Mailing - Post-Trial Brief).	ARCH
2998.0001	08/31/2012	1	A	53		3.35	Postage.	ARCH
2998.0001	08/31/2012	1	A	82	2.000	170.08	Westlaw online legal research.	ARCH
2998.0001	09/04/2012	1	P	72	8.000	8.00	Courier fee.	238
2998.0001	09/04/2012	1	P	51	0.250	40.50	Laser copy charges.	239
2998.0001	09/24/2012	1	P	82	2.000	607.96	Westlaw online legal research.	240

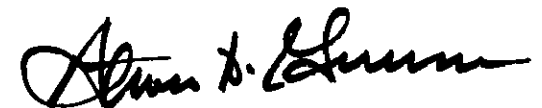
Total for Client ID 2998.0001	Billable	8,628.74	Nelson, Eric (1)
			Eric L. Nelson Nevada Trust dated May 30, 2001

GRAND TOTALS			
	Billable	8,628.74	

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Facsimile No.: (702) 853-5485
Attorneys for LANA MARTIN, Distribution
Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

ERIC L. NELSON,

Plaintiff/Counterdefendant,

Case No. D-411537
Dept. No. O

vs.

DATES OF TRIAL: July 16-19 & 23-25, 2012

LYNITA SUE NELSON, LANA MARTIN, as
Distribution Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001

Defendants/Counterclaimants.

LANA MARTIN, Distribution Trustee of the
ERIC L. NELSON NEVADA TRUST dated
May 30, 2001,

Crossclaimant,

vs.

LYNITA SUE NELSON,

Crossdefendant.

RESPONSE TO DEFENDANT LYNITA S. NELSON'S POST-TRIAL MEMORANDUM ON TRUST ISSUES

I. CLARIFICATION OF FALSE STATEMENTS MADE BY LYNITA IN THE "FACTUAL STATEMENT" OF HER PRE-TRIAL MEMORANDUM

Consistent with the other pleadings she has filed in this matter, Lynita continues to make brazen self-serving statements which are unsupported by fact or law.¹ Indeed, Lynita's Post-Trial Memorandum's "Factual Statement" is riddled with inaccuracies and misrepresentations. The "Statement of the Facts" section in the ELN SSST's Post-Trial Brief provides an accurate recitation of the evidence admitted at trial and is hereby incorporated by reference.² Although the ELN SSST is confident that this Court will be able to sift through Lynita's blatant misrepresentations, it is compelled to highlight Lynita's most egregious misrepresentations below.

A. TWO DIFFERENT ATTORNEYS ADVISED LYNITA OF THE LEGAL CONSEQUENCES SURROUNDING THE SEPARATE PROPERTY AGREEMENT AND SEPARATE PROPERTY TRUSTS.

Lynita's contention that she had "little to no involvement" in the decision to enter into the Separate Property Agreement and Separate Property Trusts is false as Jeffrey L. Burr, Esq. ("Burr") clearly testified that he had at least one lengthy meeting to discuss this concept with Lynita, another meeting to review the plan, and a third meeting to execute the documents.³ The truth of the matter is that Lynita agreed to the creation and implementation of the Separate Property Agreement and Separate Property Trusts because she wanted to be protected from creditors and did not want to be involved in gaming or liquor ventures due to her moral and religious convictions.

Lynita's contention that the "legal consequences" of the Separate Property Agreement and Separate Property Trusts were never explained to her is also false and contravenes the trial testimony of two well respected attorneys: Burr and Richard Koch, Esq. ("Koch"). Indeed, Burr clearly testified

¹ Although the ELN SSST has not reviewed Lynita's Post Trial Memorandum on Divorce Issues, it is likely that she has made similar, if not identical representations, in said pleading. To the extent that Lynita has argued trust issues in her Post Trial Brief on Divorce Issues, this Court should disregard and strike said arguments as this Court implemented a 50 page limit to address the trust issues, which Lynita met in her Post Trial Memorandum on Trust Issues.

² See Post-Trial Memorandum at p. 2, l. 20 – p. 13, l. 2, previously filed on August 31, 2012.

³ See July 18, 2012, Hearing DVD at 10:53:00 – 10:53:17.

that he explained to both Eric and Lynita that: (1) a separate property agreement possessed certain benefits and risks, one of which was divorce; (2) the property they currently owned was community property, and that said community property would be converted to separate property; and (3) either Eric or Lynita could stand by the terms of the Separate Property Agreement in the event of divorce, and that the other party bore the risk that they would not have a further interest in the other spouse's separate property. Lynita's contention that the Parties "agreed" to "level off the assets held in their individual trusts periodically" is clearly not true as Burr testified that any intent of Eric or Lynita to make equalizing gifts in the future was in their sole discretion as they had no binding agreement to do so. Indeed, Burr repeatedly testified that he was aware of no side agreement between Eric and Lynita. Similarly, Koch⁴ also explained the legal consequences of the Separate Property Agreement to Lynita by:

. . . advis[ing] LYNITA SUE NELSON with respect to this Agreement and has explained to her the legal effect of it; that LYNITA SUE NELSON has acknowledged her full and complete understanding of the Agreement and its legal consequences, and has freely and voluntarily executed the agreement. . .⁵ (Emphasis Added).

Further, Lynita's self-serving claim in her Post-Trial Memorandum that she was ignorant of the legal consequences is inconsistent with: (1) her trial testimony that Koch asked her if she had any questions and understood it and she said yes; and (2) documents she executed which specifically state that she "fully understand[s] the facts and has been fully informed of all legal rights and liabilities."⁶ Because she undoubtedly realizes that the evidence introduced at trial conclusively establishes that the legal consequences of the Separate Property Agreement were explained to her by two well-respected

⁴ Lynita's contention that she "was never given time to research and retain independent counsel of her own choosing to advise her with respect to the 1993 Agreement" is inconsistent with her prior testimony that Burr informed her that there were several attorneys she could see regarding the Separate Property Agreement and she chose Koch. Further, the Separate Property Agreement that she executed acknowledges that she "has retained independent counsel."

⁵ See Separate Property Agreement executed on July 13, 1993, admitted as Intervenor's Trial Exhibit No. 4 on July 18, 2012.

⁶ *Id.* Schedule B to the Separate Property Agreement also confirms that all community property was transmuted to separate property.

1 attorneys, Lynita cites obscure testimony elicited by Burr in 2010, before the ELN SSST was made a
2 party in this matter, to argue that said agreement was not intended to affect the Parties rights in the
3 event of divorce. Despite Lynita's characterization of Burr's testimony on November 22, 2010, Burr
4 testified on July 18, 2012, that: (1) there was and could be no side agreement that the Separate
5 Property Agreement would apply against creditors but not in the case of divorce; (2) either Eric or
6 Lynita could stand by the terms of the Separate Property Agreement in the event of divorce; and (3)
7 the other Party bore the risk that they would not have a further interest in the other spouse's separate
8 property. Consequently, Lynita's contention that she was unaware of the legal consequences
9 associated with the Separate Property Agreement is belied by the evidence.
10

11 **B. LYNITA FAILED TO INTRODUCE ANY EVIDENCE THAT WYOMING DOWNS OR ANY**
12 **OTHER PROPERTY ACQUIRED BY THE ELN SEPARATE PROPERTY TRUST WAS**
13 **PURCHASED WITH ASSETS BELONGING TO THE LSN SEPARATE PROPERTY TRUST.**

14 Lynita's contention that assets acquired by the ELN Separate Property Trust, and ultimately the
15 ELN SSST, after 1993 is community property disregards NRS 123.130(2), which specifically provides
16 "[a]ll property of the husband . . . acquired by him afterwards by gift, bequest, devise, descent or by an
17 award for personal injury damages, with the rents, issues and profits thereof, is his separate property."
18 Under NRS 123.130, any property that the ELN Separate Property Trust purchased with its "rents,
19 issues and profits" maintains its separate property character.
20

21 At trial, even though Lynita has the burden to establish by clear and convincing evidence that
22 the separate property was transmuted to community property, Shelley Newell ("Shelley")
23 unequivocally testified that the assets of the Separate Property Trusts were kept separate, and that no
24 loans were made between said trusts. She further testified that Wyoming Downs was purchased with
25 assets from the ELN Separate Property Trust and not the LSN Separate Property Trust. Further, Dan
26 Gerety, CPA ("Gerety") who has first-hand knowledge regarding the sale of Las Vegas Casino, an
27 asset that was owned by the ELN Separate Property Trust, and the acquisition of Wyoming Downs,
28

1 testified that the ELN Separate Property Trust had sufficient assets to purchase Wyoming Downs in or
2 around 1998. Despite Shelley and Gerety's testimony, which Lynita was unable to rebut at trial, she
3 requests that this Court find that Wyoming Downs and any other asset acquired by the ELN Separate
4 Property Trust was purchased with funds "taken from Lynita's trust, or community earnings." Such
5 request should be denied as it is unsupported by fact and law.

6
7 **C. BURR ADVISED LYNITA OF THE LEGAL EFFECT OF THE CREATION AND
IMPLEMENTATION OF THE SELF-SETTLED SPENDTHRIFT TRUSTS.**

8 Just like the Separate Property Trusts, Burr advised Lynita on more than one occasion of the
9 legal effect of the creation and implementation of the Self-Settled Spendthrift Trusts prior to Lynita
10 executing the same. This was confirmed by Lynita herself in the execution of the LSN SSST and
11 correspondence dated May 30, 2001 (which explained the ramifications of the LSN SSST), wherein
12 she acknowledged that she "hereby understand[s] and acknowledge[s] receipt of this letter. . ."⁷
13 Notwithstanding, Lynita requests that this Court disregard NRS 166 and the terms of the Self-Settled
14 Spendthrift Trusts based on her unsubstantiated and self-serving contention that "she was led to
15 believe by her attorney and husband, both of whom owed her a fiduciary duty, that the trusts would
16 not affect the parties' property rights in the event of divorce, and the assets could readily be withdrawn
17 from such trusts."⁸ Unsurprisingly, Lynita was unable to introduce as evidence any statements made
18 by either Burr or Eric at or around the time that the Self-Settled Spendthrift Trusts were created and
19 implemented that would lead her to such an erroneous belief. Further, the ELN SSST was unable to
20
21

22 ⁷ See Burr's Correspondence to Lynita dated May 30, 2001, admitted as Intervenor's Trial Exhibit No. 27
on July 18, 2012.

23 ⁸ Lynita's contention that "Eric suggested to this Court that Lynita is mentally challenged" is a blatant
24 misrepresentation. It is noteworthy that throughout the entire trial Mr. Dickerson is the only attorney, party or
25 witness who has used the phrase "mentally challenged." Indeed, had Eric ever uttered that phrase Lynita would
26 have cited the same in her Post-Trial Memorandum. When Mr. Dickerson introduced that phrase for the first
27 time on September 1, 2010, he was not even referring to Lynita, but rather Lynita's sister, Thelma Slaughter.
Once again, at the conclusion of Eric's testimony on July 25, 2012, it was Mr. Dickerson as opposed to Eric
who referred to Lynita as being "mentally challenged" on at least two separate occasions. Indeed, when Mr.
Dickerson asked Eric on the last day of trial why Eric would spend so much time explaining things to a woman
that Eric perceives to be "mentally challenged," Eric stated: "I think you misunderstood the conversation that
Lynita is challenged." See July 25, 2012, Hearing DVD at 18:04:38 – 18:04: 44.

1 find anywhere in the trial transcripts wherein Lynita testified that “she was led to believe” or that she
2 believed for that matter, that the Separate Property Agreement, Separate Property Trusts and/or Self-
3 Settled Spendthrift Trusts would not affect her property rights in the event of divorce.

4 Lynita’s contention that the terms of the Self-Settled Spendthrift Trusts somehow illustrate the
5 Parties’ intent was not to relinquish any community/marital property rights in property transferred to
6 such trusts is equally absurd because the Parties relinquished any community or separate property
7 interests in the assets that funded the Self-Settled Spendthrift Trusts. Assuming *arguendo* that Lynita
8 is even a beneficiary under the terms of the ELN SSST during the lifetime of Eric (because she is
9 merely listed as the “spouse” as opposed to a “beneficiary” under Article 2.1 of the ELN SSST⁹), she
10 is only entitled to discretionary distributions during Eric’s lifetime. Further, upon the death of Eric,
11 Lynita is only entitled to “the net income of the Nevada Exemption Trust estate as shall be necessary
12 for her health, education, maintenance, and support,”¹⁰ or principal, if, and only if, she is able to show
13 that the income is insufficient “to meet such needs.”¹¹ Any remaining income of the Nevada
14 Exemption Trust or remaining principal of the Nevada Exemption Trust and Nevada Marital Trust
15 shall be distributed to the Parties’ children as provided for in Article V. Consequently, Lynita’s
16 insinuation that she will have unfettered access and control over the Nevada Exemption Trust and
17 Nevada Marital Trust is misplaced. If anything, the terms of the Self-Settled Spendthrift Trusts
18 confirm that in 2001 the Parties knew that they had a discretionary/expectancy interest in the assets
19 owned by said trusts as opposed to a community property interest.
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25 ⁹ Contrary to Lynita’s contention, Section 3.1 of the ELN SSST only identifies the “Trustor’s issue and
other beneficiaries named herein or as described in Section 2.1 above” as beneficiaries.

26 ¹⁰ See Article 4.2(a) of the ELN SSST. Further, under Article 4.2(c) of the ELN SSST Lynita may also be
entitled to use the principal of the Nevada Exemption Trust if she is able to show that the income is insufficient.

27 ¹¹ See Article 4.2(c) of the ELN SSST. Lynita’s rights under the Nevada Marital Trust are similar if not
identical to those of the Nevada Exemption Trust. See Article 4.3 of the ELN SSST.

1 **D. THE FORMALITIES OF THE ELN SSST WERE COMPLIED WITH.**

2 Lynita's contention that Eric failed to follow the formalities of the ELN SSST illustrate a
3 fundamental misunderstanding of tax and trust law, as all evidence elicited at trial established that Eric
4 complied with any and all trust formalities.

5 1. IRC 674 DOES NOT REQUIRE THE APPOINTMENT OF AN IRC 672 "INDEPENDENT
6 TRUSTEE" OVER A GRANTOR TRUST.

7 Lynita's contention that the appointment of Lana and Nola as Distribution Trustees of the ELN
8 SSST violated IRC 674 because they are not an "independent trustee" as defined in IRC 672 is
9 misplaced. IRC 674 provides as a general rule that if the grantor (*i.e.* Eric and Lynita) retains rights
10 over the trust income and principal, the trust is not treated as a separate taxable entity and all trust
11 income is to be reported directly on the grantor's personal income tax return. This is commonly
12 referred to as a "grantor trust." Subsection (c) of IRC 674, the only portion of IRC 674 that references
13 "independent trustee," provides an exception that permits a trust to be a separate taxable entity if none
14 of the trustees is the grantor and no more than half of them are "related or subordinate parties who are
15 subservient to the wishes of the grantor." Said exception could never apply to the ELN SSST or LSN
16 SSST because said trusts were expressly set up as a "grantor trust," thereby making any income
17 taxable directly to the grantor regardless of who serves as the trustee (*i.e.* income of the ELN SSST is
18 taxable directly to Eric and the income of the LSN SSST is taxable directly to Lynita). Indeed, Article
19 3.6 of the ELN SSST and LSN SSST both state: "[t]rustor understands that retention of such powers
20 shall cause the Trust income to be taxable to him under Subchapter J, Subpart E of the Internal
21 Revenue Code of 1986, as amended, and agree to pay all income taxes attributable to such Trust
22 income."¹²

23
24 This simple fact was confirmed by Burr who testified that the ELN SSST and LSN SSST were
25 intended to be "grantor trusts." Since the ELN SSST and the LSN SSST are "grantor trusts," and
26

27 ¹² See Article 3.6 of the ELN SSST, admitted as Intervenor's Trial Exhibit No. 86 on July 17, 2012.

cannot under any set of circumstances qualify as “non-grantor trusts,” neither the Investment Trustee nor the Distribution Trustees are required to be “unrelated or subordinate parties” under IRC 672. In other words, anybody can be an “independent trustee” under IRC 674 when you are dealing with a “grantor” trust¹³ because you never need to comply with subsection of (c) of IRC 674.

2. LYNITA CONSENTED TO ALL ACTS UNDERTAKEN BY THE LSN SSST.

Lynita’s Post-Trial Memorandum focuses more on the management of the LSN SSST as opposed to the management of the ELN SSST, which is irrelevant to the claims and positions of the ELN SSST in this case. However, irrespective of whether Eric “directed the disposition of, and managed all property contained” in the LSN SSST, the evidence showed that Lynita consented to any and all transactions. Further, Lynita complains that she was never “offered the opportunity to veto distributions from the LSN Trust to other named beneficiaries,” however, she failed to introduce any evidence that distributions were ever made to a third-party. Indeed, loans that have since been repaid do not constitute a distribution.

3. THE DISTRIBUTION TRUSTEE OF THE ELN SSST APPROVED ALL DISTRIBUTIONS MADE TO ERIC.

Without citing any examples, Lynita generally contends that “Eric constantly received or took money from the ELN Trust without prior approval from, or true and absolute discretion of the Distribution Trustee.” Because Lynita failed to identify the distributions that she contends were not approved, the ELN SSST is informed and believes that she is trying to mislead this Court as to what a “distribution” entails. Pursuant to the terms of the ELN SSST, the Distribution Trustee must approve distributions to Eric¹⁴ as opposed to distributions to other beneficiaries of the ELN SSST, or expenses

¹³ Lynita also attempts to unsuccessfully argue that all distributions made to Eric since February, 2007 are invalid because Burr failed to comply with 11.3 of said trust by providing “ten (10) days written notice to the Trustee to remove any Trustee named herein.” In addition to Lynita’s lack of standing to make said argument on behalf of a removed trustee, it defies all logic and is unsupported by any legal authority.

¹⁴ See Article 3.3 of the ELN SSST, admitted as Intervenor’s Trial Exhibit No. 86 on July 17, 2012.

1 and investments of the ELN SSST.¹⁵ For example, the purchase of the Bella Kathryn property by the
2 ELN SSST constitutes an investment, which Eric is entitled to do under the terms of the ELN SSST
3 without the prior approval of the Distribution Trustee.

4 Lynita's inability to cite any specific examples comes as no surprise as the Distribution
5 Trustees unequivocally testified that they approved any and all distributions made to Eric. Further, the
6 Distribution Trustees documented the majority, if not all, of the distributions that they approved in the
7 Distribution Authorization forms¹⁶ and/or Annual Meeting Minutes¹⁷ even though Article 3.3 of the
8 ELN SSST does not require a written record.¹⁸ Contary to Lynita's contention, a comparison between
9 the distributions made to Eric as identified by Bertsch and the Distribution Authorization forms and
10 Annual Meeting Minutes establish that the Distribution Trustee approved at least \$1,440,000.00 in
11 distributions from January 2009 through June 2012, but he only utilized \$284,231.35 of said
12 distributions from January 1, 2009, through May 2011, which is the reporting period Bertsch prepared
13 for the ELN SSST.¹⁹

15 Lynita's argument regarding annual meetings is further perplexing because Lana testified that
16 she discussed trust business with Eric on a daily basis, and there were annual meetings on: June 1,
17 2001, July 3, 2001, August 31, 2001, November 30, 2001, December 31, 2001, January 3, 2002,
18 April 3, 2002, May 15, 2002, May 20, 2002, July 3, 2002, December 23, 2002, February 20, 2003,
19 September 20, 2003, December 15, 2003, January 5, 2004, January 10, 2004, February 25, 2004,
20

21 ¹⁵ See, e.g., Article 12.1 of the ELN SSST setting forth Eric's powers and limitations.

22 ¹⁶ See Distribution Authorizations dated June 1, 2001, October 1, 2001, November 3, 2001, December 2,
23 2001, January 6, 2002, February 11, 2002, June 1, 2002, February 19, 2003, May 31, 2003, June 1, 2003,
September 1, 2003, November 12, 2003, January 3, 2008, January 6, 2009, January 6, 2010, June 9, 2011,
admitted as Intervenor's Trial Exhibit No.'s 100, 105, 106, 108, 111, 112, 117, 121, 123, 124, 125, 127, 153,
156, 159 and 163.

24 ¹⁷ See also Minutes of Annual Meetings dated July 3, 2001, July 3, 2002, February 25, 2004, February 25,
25 2005, February 23, 2005, February 27, 2006, September 19, 2006, February 23, 2007, January 3, 2008,
January 6, 2009, January 6, 2010, admitted as Intervenor's Trial Exhibit No.'s 101, 118, 131, 133, 141, 146,
148, 150, 153, 155, 158.

26 ¹⁸ Indeed, Article 3.3 of the ELN Trust merely requires a meeting of a majority of the trustees, which "shall
be effective whether held in person or by telephone or other electronic means."

27 ¹⁹ See Notice of Filing Amendment to Source and Application of Funds for ELN SSST, previously filed on
February 27, 2012.

1 April 30, 2004, May 10, 2004, May 20, 2004, November 20, 2004, February 23, 2005, May 5, 2005,
2 May 15, 2005, February 25, 2006, September 19, 2006, February 23, 2007, January 3, 2008,
3 January 6, 2009, January 6, 2010 and June 16, 2011.²⁰ Further, and perhaps most importantly, annual
4 meetings are not required under Nevada law. Burr confirmed this in his trial testimony and in his
5 May 30, 2001, correspondence to Eric which states: "Nevada law does not require that these Trustee's
6 meetings be held."²¹

7
8 4. THE ELN SSST DID NOT MAKE DISTRIBUTIONS TO NON-BENEFICIARIES.

9 Lynita's contention that Eric has made "distributions" "to related individuals who are not
10 beneficiaries under the terms of the ELN Trust" is false, as evidenced by the fact that she could not
11 identify any "distributions" made to related individuals. Indeed, Bertsch's reports never use the term
12 "distributions" in identifying payments made to third-parties; rather, he characterizes said payments as
13 being for work performed, reimbursements or loans.²² For example, Bertsch's Notice of Filing Source
14 and Application of Funds for Eric Nelson Auctioneering specifically identifies any and all payments
15 made to Aleda Nelson, Cal Nelson, Chad Ramos, Eric T. Nelson, Paul Nelson and Ryan Nelson as:
16 commissions, expenses, reimbursement and rent.²³ Even if Lynita were correct that the ELN SSST
17 made "distributions" to related individuals, which it did not, said payment would be characterized as a
18 distribution to Eric who in turn made a gift to related individuals. There is nothing in the ELN SSST
19 that prohibits Eric from making a gift to a third-party.
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24 ²⁰ See Annual Meeting Minutes admitted as Intervenor's Trial Exhibit No.'s 99, 101, 103, 107, 109, 110,
25 113, 115, 116, 118, 119, 120, 126, 128, 129, 130, 131, 133, 134, 136, 137, 139, 141, 142, 144, 146, 148, 150,
152, 156, 158 and 164. The fact that a few Annual Meeting Minutes were not executed is inconsequential as
the Distribution Trustees testified that said meeting occurred.

26 ²¹ See Correspondence from Burr to Eric, admitted as Intervenor's Trial Exhibit No. 88 on July 25, 2012.

27 ²² Lynita's contention that Gerety has attempted to "reclassify" distributions as loans is nonsensical as
Bertsch, not Gerety, classified certain payments to third-parties as loans as opposed to distributions.

²³ See Defendants Trial Exhibit GGGGG.

5. LYNITA APPROVED ALL TRANSACTIONS OF WHICH SHE NOW COMPLAINS.

Because she was unable to rebut the documents or witnesses at trial, Lynita's Post-Trial Memorandum fabricates and misrepresents certain transactions between the ELN SSST and LSN SSST (out of thousands of transactions that were reviewed by Gerety), which she deems unfair. Not only are Lynita's characterizations inaccurate and unfair as they do not represent all of the facts regarding said transactions, they were consistently rebutted by Gerety's expert witness report and/or testimony, and the testimony of Eric, Rochelle McGowan ("Rochelle") and Shelley.

Irrespective of how Lynita characterizes said transactions, the truth of the matter is that she agreed to each and every transaction of which she now complains. This is evidenced by the documents she executed and cited in her Post-Trial Memorandum and her trial testimony. Further, both Eric and Rochelle testified that they explained said transactions to Lynita prior to her executing the necessary documents to effectuate said transactions.²⁴ Additionally, the fact that Lana and Rochelle helped manage properties owned by the LSN SSST is inconsequential because Lynita routinely asked for, or at the very least consented, to their assistance.²⁵

Given the page limitation to this Response brief, the ELN SSST is precluded from addressing each and every misrepresentation Lynita has made regarding the transactions. Notwithstanding, the ELN SSST has the utmost confidence that this Court will be able to distinguish the misrepresentations contained within Lynita's Post-Trial Memorandum from the evidence presented at trial.

E. STATEMENTS PURPORTEDLY MADE BY ERIC DO NOT BIND THE ELN SSST.

The crux of Lynita's case is that this Court should find any and all property owned by the ELN SSST and LSN SSST is community property based upon her interpretation of a number of statements

²⁴ Lynita's contention that Rochelle "was lead to testify during cross-examination that she consulted with Lynita regarding decisions of the ELN Trust, such testimony was completely contradicted by Ms. McGowan's deposition testimony" is not true as said questions were never asked and/or followed-up on at her deposition. Lynita's Counsel cannot blame Rochelle, or request that this Court question her credibility, because of their inability to ask the pertinent questions at her deposition.

²⁵ See, e.g., E-mails between Lynita and Rochelle, admitted as Intervenor's Trial Exhibit No.'s 63, 69, 74 75 and 76 on July 23, 2012.

1 IT IS FURTHER ORDERED that Defendant's request for additional injunctive
2 relief is GRANTED, and to preserve the status quo of the ELN Trust as of 3:00 p.m.
3 on April 10, 2012, the ELN Trust is enjoined from, and shall not acquire any new or
4 additional assets, encumber existing assets, or sell existing assets without the specific
5 order of the Court.

6 DATED this 28 day of August, 2012.

7
8 Jack B. Ames
9 DISTRICT COURT JUDGE JA

10
11 Submitted by:

12 THE DICKERSON LAW GROUP

13 By Robert P. Dickerson

14 ROBERT P. DICKERSON, ESQ.
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16 KATHERINE L. PROVOST, ESQ.
17 Nevada Bar No. 008414
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20 1745 Village Center Circle
21 Las Vegas, Nevada 89134
22 Attorneys for Defendant

Approved as to Form and Content:

IVEY, FORSBERG & DOUGLAS

By Rhonda K. Forsberg

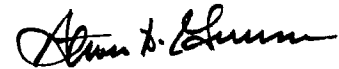
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CLERK OF THE COURT

1 NEO
2 THE DICKERSON LAW GROUP
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14 Attorneys for LYNITA SUE NELSON

DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

11 ERIC L. NELSON,
12 Plaintiff/Counterdefendant,

13 v.

14 LYNITA SUE NELSON
15 Defendant/Counterclaimant.

CASE NO. D-09-411537-D
DEPT NO. "O"

16 ERIC L. NELSON NEVADA TRUST
17 dated May 30, 2001, and LSN NEVADA
18 TRUST dated May 30, 2001,

19 Necessary Parties (joined in this
20 action pursuant to Stipulation and
21 Order entered on August 9, 2011)

NOTICE OF ENTRY OF ORDER
FROM FEBRUARY 23, 2012
HEARING PARTIALLY
GRANTING ELN TRUST'S
MOTION TO DISMISS THIRD-
PARTY COMPLAINT WITHOUT
PREJUDICE

1
2 LANA MARTIN, as Distribution Trustee
3 of the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001,

4 Necessary Party (joined in this
5 action pursuant to Stipulation and
6 Order entered on August 9, 2011)/
Purported Counterclaimant and
Crossclaimant,

7 v.

8 LYNITA SUE NELSON and ERIC
NELSON,

9 Purported Cross-Defendant and
10 Counterdefendant,

11 LYNITA SUE NELSON,

12 Counterclaimant, Cross-Claimant,
13 and/or Third Party Plaintiff,

14 v.

15 ERIC L. NELSON, individually, and as
16 the Investment Trustee of the ERIC L.
NELSON NEVADA TRUST dated May
17 30, 2001; the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001;
18 LANA MARTIN, individually, and as the
current and/or former Distribution
19 Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001,
20 and as the former Distribution Trustee of
the LSN NEVADA TRUST dated May
21 30, 2001; NOLA HARBER, individually,
and as the current and/or former
22 Distribution Trustee of the ERIC L.
NELSON NEVADA TRUST dated May
23 30, 2001, and as the current and/or
former Distribution Trustee of the LSN
NEVADA TRUST dated May 30, 2001;
24 ROCHELLE McGOWAN, individually;
JOAN B. RAMOS, individually; and
DOES I through X,

25 Counterdefendants, and/or
26 Cross-Defendants, and/or
27 Third Party Defendants.

1 NOTICE OF ENTRY OF ORDER FROM FEBRUARY 23, 2012 HEARING
2 PARTIALLY GRANTING ELN TRUST'S MOTION TO DISMISS THIRD-
3 PARTY COMPLAINT WITHOUT PREJUDICE

4 TO: ERIC L. NELSON, Plaintiff; and

5 TO: RHONDA K. FORSBERG, ESQ., of FORSBERG & DOUGLAS, Attorneys for
6 Plaintiff;

7 TO: MARK A. SOLOMON, ESQ., and JEFFREY P. LUSZECK, ESQ., of
8 SOLOMON, DWIGGINS & FREER, LTD., Attorneys for the Eric L. Nelson
9 Nevada Trust:

10 PLEASE TAKE NOTICE that an ORDER FROM FEBRUARY 23, 2012
11 HEARING PARTIALLY GRANTING ELN TRUST'S MOTION TO DISMISS
12 THIRD-PARTY COMPLAINT WITHOUT PREJUDICE was entered in the above-
13 entitled matter on August 29, 2012, a copy of which is attached hereto.

14 DATED this 31st day of August, 2012.

15 THE DICKERSON LAW GROUP

16 By

17 Robert R. Dickerson
18 ROBERT R. DICKERSON, ESQ.
19 Nevada Bar No. 000945
20 KATHERINE L. PROVOST, ESQ.
21 Nevada Bar No. 008414
22 JOSEF M. KARACSONYI, ESQ.
23 Nevada Bar No. 10634
24 1745 Village Center Circle
25 Las Vegas, Nevada 89134
26 Attorneys for Defendant
27
28

1 CERTIFICATE OF MAILING

2 I HEREBY CERTIFY that I am this date depositing a true and correct copy of
3 the attached NOTICE OF ENTRY OF ORDER FROM FEBRUARY 23, 2012
4 HEARING PARTIALLY GRANTING ELN TRUST'S MOTION TO DISMISS
5 THIRD-PARTY COMPLAINT WITHOUT PREJUDICE, in the U.S. Mail, postage
6 prepaid to the following at their last known addresses, on the 31st day of August,
7 2012:

8
9 RHONDA K. FORSBERG, ESQ.
10 FORSBERG & DOUGLAS
11 1070 W. Horizon Ridge Pkwy., Ste. 100
Henderson, Nevada 89012
Attorneys for Plaintiff

12 MARK A. SOLOMON, ESQ.
13 SOLOMON, DWIGGINS, FREER & MORSE, LTD.
14 9060 W. Cheyenne Avenue
Las Vegas, Nevada 89129
Attorneys for Third-Party Defendants

15 
16 An employee of The Dickerson Law Group

AAPP 4544

1 LANA MARTIN, as Distribution Trustee of)
 2 the ERIC L. NELSON NEVADA TRUST)
 3 dated May 30, 2001,)
 4 Necessary Party (joined in this action)
 5 pursuant to Stipulation and Order)
 6 entered on August 9, 2011)/ Purported)
 7 Counterclaimant and Crossclaimant,)
 8 v.)
 9 LYNITA SUE NELSON and ERIC)
 10 NELSON,)
 11 Purported Cross-Defendant and)
 12 Counterdefendant,)
 13

 LYNITA SUE NELSON,)
 14 Counterclaimant, Cross-Claimant,)
 15 and/or Third Party Plaintiff,)
 16 v.)
 17 ERIC L. NELSON, individually and as the)
 18 Investment Trustee of the ERIC L. NELSON)
 19 NEVADA TRUST dated May 30, 2001; the)
 20 ERIC L. NELSON NEVADA TRUST dated)
 21 May 30, 2001; LANA MARTIN, individually,)
 22 and as the current and/or former Distribution)
 23 Trustee of the ERIC L. NELSON NEVADA)
 24 TRUST dated May 30, 2001, and as the)
 25 former Distribution Trustee of the LSN)
 26 NEVADA TRUST dated May 30, 2001);)
 27 NOLA HARBER, individually, and as the)
 28 current and/or former Distribution Trustee)
 of the ERIC L. NELSON NEVADA TRUST)
 dated May 30, 2001, and as the current)
 and/or former Distribution Trustee of the)
 LSN NEVADA TRUST dated May 30, 2001;)
 ROCHELLE McGOWAN, individually;)

1 JOAN B. RAMOS, individually; and DOES I)
2 through X,)
3 Counterdefendant, and/or)
4 Cross-Defendants, and/or)
5 Third Party Defendants.)
6)

7 ORDER FROM FEBRUARY 23, 2012 HEARING PARTIALLY GRANTING
8 ELN TRUST'S MOTION TO DISMISS THIRD-PARTY COMPLAINT
9 WITHOUT PREJUDICE

10 This matter coming on for hearing on this 23rd day of February, 2012, before the
11 Honorable Frank P. Sullivan, for a Decision on Third-Party Defendants' Motion to
12 Dismiss, filed November 7, 2011, Plaintiff's Motion to Dismiss and Countermotion
13 for Attorneys Fees and Costs, filed November 4, 2011, Defendant's Opposition to
14 Motions to Dismiss, and Countermotion for an Award of Attorneys Fees and Costs,
15 filed December 1, 2011, and the various supplements to the aforementioned papers
16 filed by the parties; ROBERT P. DICKERSON, ESQ., KATHERINE L. PROVOST,
17 ESQ., and JOSEF M. KARACSONYI, ESQ., of THE DICKERSON LAW GROUP,
18 appearing on behalf of Defendant, LYNITA NELSON, and Defendant being present;
19 RHONDA K. FORSBERG, ESQ., of FORSBERG & DOUGLAS, appearing on behalf
20 of Plaintiff, ERIC NELSON, and Plaintiff being present; and MARK P. SOLOMON,
21 ESQ., and JEFFREY P. LUSZECK, ESQ., of SOLOMON, DWIGGINS & FREER ,
22 LTD., appearing on behalf of Third-Party Defendants. The Court having reviewed and
23 analyzed the pleadings and papers on file herein, having researched the issues presently
24 before the Court, and having heard the arguments of counsel and the parties, and good
25 cause appearing therefore,

26 THE COURT HEREBY FINDS that the Court has reviewed Part IV of the
27 Eighth Judicial District Court Rules with respect to probate, trust, administration of
28 estates, the rules that apply under Chapter 164 of Title 13 of the Nevada Revised
Statutes, and the various Nevada Supreme Court decisions cited by the parties in

1 analyzing whether this Court has jurisdiction to hear the various claims asserted by
2 Defendant in her First Amended Claims for Relief Against Eric L. Nelson, et. al, filed
3 December 20, 2011, and whether the Court would be inclined to exercise such
4 jurisdiction. EDCR 4.16(a) provides:

5 (a) The probate judge may hear whichever contested matters the judge
6 shall select, and schedule them at the convenience of the judge's calendar.
7 The judge alone may refer contested matters pertaining to the probate
8 calendar to a master appointed by the judge for hearing and report. All
9 other contested matters pertaining to the probate calendar will be
10 assigned on a random basis to a civil trial judge, other than a trial judge
11 serving in the family division. The judge to whom a matter is assigned
12 may, upon resolution of the contested matter, return the case to the
13 probate calendar, or continue with the case if further contested matters
14 are expected.

15 However, in *Landreth v. Malik*, 251 P.3d 163, 127 Nev. Adv. Op. 16 (2011), the
16 Nevada Supreme Court held that a Family Court does not lack authority to resolve
17 cases solely because such cases involve subject matter outside of those matters
18 specifically delineated in NRS 3.223 setting forth the original and exclusive jurisdiction
19 of the Family Court. *Landreth* was very clear in holding that Article 6, Section 6 of the
20 Nevada Constitution, provides the district courts with jurisdiction that cannot be
21 limited by the Nevada Legislature by legislative order or rule. *Landreth* further made
22 it clear that NRS 3.223 does not limit the Constitutional power and authority provided
23 under Article 6, Section 6(1) of the Nevada Constitution, to a district court judge
24 sitting in the family division. The Court further notes that EDCR 4.16(a), and its
25 language providing for contested probate matters to be assigned to a "civil trial judge,
26 other than a trial judge serving in the family division," was enacted in May, 2004, and
27 *Landreth* was decided seven (7) years later. Accordingly, this Court finds that it has
28 jurisdiction to entertain actions concerning trusts and administration of estates if it so
chooses, or where it would be appropriate. NRS 3.223, and the EDCRs, cannot limit
this Court's powers under the Nevada Constitution.

THE COURT FURTHER FINDS that NRS 164.015(1) provides, in pertinent
part: "The court has exclusive jurisdiction of proceedings initiated by the petition of

1 an interested person concerning the internal affairs of a nontestamentary trust . . . ”
2 Under NRS 132.116, “‘District court’ or ‘court’ means a district court of this State
3 sitting in probate or otherwise adjudicating matters pursuant to this title.”
4 Accordingly, the reference to a court in NRS 164.015(1) is not limited to district
5 courts sitting in probate only.

6 THE COURT FURTHER FINDS that in *Barelli v Barelli*, 11 Nev. 873, 944 P.2d
7 246 (1997), the Nevada Supreme Court held that a family court has jurisdiction to
8 resolve issues falling outside of its original and exclusive jurisdiction that are necessary
9 to the resolution of claims within its original and exclusive jurisdiction. This Court is
10 only inclined to hear such claims concerning the parties’ trusts as it believes necessary
11 to resolve the property issues surrounding the parties’ divorce, and to distribute
12 property between the parties as the Court deems appropriate.

13 THE COURT FURTHER FINDS that it has examined the causes of action
14 asserted by Defendant in her First Amended Claims for Relief Against Eric L. Nelson,
15 et. al, filed December 20, 2011. The Court finds that Defendant has stated a cause of
16 action for alter ego under the First (Veil-Piercing), and Second (Reverse Veil-Piercing)
17 claims for relief, and has further stated a cause of action under the Fourteenth
18 (Constructive Trust), and Fifteenth (Injunctive Relief) claims for relief, which the
19 Court is inclined and believes it needs to hear and resolve. Although the Court has
20 jurisdiction over Defendant’s other claims in the First Amended Claims for Relief
21 Against Eric L. Nelson, et. al, filed December 20, 2011, the Court declines to hear such
22 other claims (which are tort claims), without ruling on the merits of whether such
23 causes of action state a claim for relief (which the Court has not analyzed).
24 Consequently, claims against Joan Ramos, Lana Martin, individually and as former
25 distribution trustee of the ELN Trust and LSN Trust (but not as current distribution
26 trustee of the ELN Trust), Nola Harber, individually, and as former distribution trustee
27 of the ELN Trust and LSN Trust, and Rochelle McGowan, should be dismissed,
28 without prejudice.

1 NOW, THEREFORE,

2 IT IS HEREBY ORDERED the ELN Trust's Motion to Dismiss Third-Party
3 Complaint is GRANTED IN PART WITHOUT PREJUDICE..

4 IT IS FURTHER ORDERED that the requests to dismiss the First, Second,
5 Fourteenth, and Fifteenth claims for relief in Defendant's First Amended Claims for
6 Relief Against Eric L. Nelson, et. al, filed December 20, 2011, are DENIED. Such
7 claims shall remain as to the ELN Trust, Eric Nelson, individually and as investment
8 trustee of the ELN Trust, and Lana Martin, as current distribution trustee of the ELN
9 Trust.

10 IT IS FURTHER ORDERED that the provisions contained in NRS 78 are not
11 the appropriate standards to be applied to Lynita Nelson's veil-piercing claims against
12 the ELN Trust.

13 IT IS FURTHER ORDERED that the Court DECLINES to exercise its
14 jurisdiction over the Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth,
15 Eleventh, Twelfth, and Thirteenth claims for relief in Defendant's First Amended
16 Claims for Relief Against Eric L. Nelson, et. al, filed December 20, 2011, without
17 making any specific findings or orders regarding the merits of such claims, and whether
18 such claims state a cause of action, which issues the Court has not analyzed or
19 addressed, and as such, said claims are hereby DISMISSED WITHOUT PREJUDICE
20 so that same can be brought in another tribunal.

21 IT IS FURTHER ORDERED that Joan Ramos, Lana Martin, individually and
22 as former distribution trustee of the ELN Trust and LSN Trust, Nola Harber,
23 individually and as former distribution trustee of the ELN Trust and LSN Trust, and
24 Rochelle McGowan are hereby DISMISSED WITHOUT PREJUDICE from this
25 action.

26 IT IS FURTHER ORDERED that the previously set trial dates in May, 2012,
27 are hereby VACATED, and the trial in this matter shall continue on July 16, 17, 18,
28 19, 23, and 24, 2012, at 9:00 a.m. each day.

1 IT IS FURTHER ORDERED that the parties' attorneys shall confer and attempt
2 to reach an agreement regarding discovery deadlines.

3 IT IS SO ORDERED.

4 DATED this 28 day of August, 2012.

5
6 Jack B. Amma
DISTRICT COURT JUDGE JA

8 Submitted by:

9 THE DICKERSON LAW GROUP

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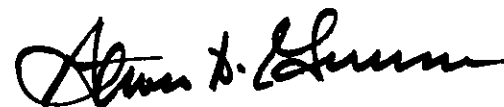
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CLERK OF THE COURT

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Attorneys for LANA MARTIN, Distribution

Trustee of the ERIC L. NELSON

NEVADA TRUST dated May 30, 2001

DISTRICT COURT

CLARK COUNTY, NEVADA

ERIC L. NELSON,

Plaintiff/Counterdefendant,

vs.

LYNITA SUE NELSON, LANA MARTIN, as
Distribution Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001

Defendants/Counterclaimants.

LANA MARTIN, Distribution Trustee of the
ERIC L. NELSON NEVADA TRUST dated
May 30, 2001,

Crossclaimant,

vs.

LYNITA SUE NELSON,

Crossdefendant.

Case No. D-411537

Dept. No. O

DATES OF TRIAL: July 16-19 & 23-25, 2012

POST-TRIAL BRIEF OF ERIC L. NELSON NEVADA TRUST DATED MAY 30, 2001

1 **I. INTRODUCTION**

2 Lynita S. Nelson's ("Lynita") claims against THE ERIC L. NELSON NEVADA TRUST dated
3 May 30, 2001 ("ELN SSST") are an example of Lynita wanting to have her cake and eat it too.¹
4 Indeed, Lynita is seeking to invalidate an estate plan that she agreed to and has otherwise benefitted
5 from since 1993, solely because the assets owned by the ELN SSST exceed the assets owned by THE
6 LSN NEVADA TRUST dated May 30, 2001 ("LSN SSST"). Lynita's self-serving and dishonest
7 position has been rejected by at least two other courts: *Marriage of Holtemann*, 166 Cal. App. 4th
8 1166, 83 Cal. Rptr. 3d 385 (Cal. App. 4th 2008) and *Marriage of Lund*, 174 Cal. App. 4th 40, 94 Cal.
9 Rptr. 3d 84 (Cal. App. 4th 2009), copies of which are attached hereto as **Exhibit No.'s 1 and 2**.
10

11 Despite Lynita's untenable position, she has failed to establish by clear and convincing
12 evidence that Eric L. Nelson ("Eric") is the alter ego of the ELN SSST. Indeed, the only evidence that
13 Lynita introduced at trial cannot be considered by this Court pursuant to NRS 163.418 and NRS
14 163.4177, or pertained to the management and operation of the LSN SSST as opposed to the ELN
15 SSST. Lynita's inability to establish her burden comes as no surprise as the ELN SSST complied with
16 its terms and NRS 166, and Lynita has failed to introduce any evidence indicating otherwise. For
17 these reasons and those set forth below, this Court should find that neither Eric nor Lynita have a
18 community property and/or separate property interest in the ELN SSST.
19

20 **II. STATEMENT OF FACTS**

21 The facts of this case are simple: Eric and Lynita with full advice from multiple attorneys
22 created an asset-protection plan that at the time of its creation and implementation was one of the only
23 means of accomplishing their goals under Nevada law. Indeed, the Parties, for their own and/or
24 mutual reasons, made a conscious decision to enter into the asset-protection plan despite the
25 consequences and risks associated with the same.

26 ¹ The ELN SSST incorporates by reference any and all arguments made within its Pre-Trial Memorandum
27 filed on July 6, 2012.

On one hand, Eric wanted to engage in gaming, liquor and other risky ventures, but at the same time protect certain assets for the benefit of Lynita and their five children. On the other hand, Lynita had a moral aversion to gaming and liquor ventures and wanted to ensure that she would not be exposed to Eric's risky enterprises.

A. 1991 REVOCABLE TRUST.

In 1991 Eric and Lynita retained Jeffrey L. Burr, Esq. ("Burr") to draft a standard revocable trust, pour-over wills and durable powers of attorney for asset management. Burr consulted with both Eric and Lynita prior to the creation and execution of said revocable trust, and believes that they both understood the probate and estate-planning process.

B. CREATION AND IMPLEMENTATION OF THE SEPARATE PROPERTY AGREEMENT AND SEPARATE PROPERTY TRUSTS.

1. JEFFREY L. BURR, ESQ. MET WITH LYNITA PRIOR TO THE CREATION AND IMPLEMENTATION OF THE SEPARATE PROPERTY AGREEMENT AND SEPARATE PROPERTY TRUSTS AND EXPLAINED TO HER THE LEGAL EFFECT OF SAID DOCUMENTS.

In July 1993 Eric and Lynita came to see Burr because Eric had an opportunity to invest in some gaming ventures, which Lynita was concerned about and did not want to become involved in for moral and religious reasons. Lynita's aversion to gaming and liquor was confirmed by Burr, Lana Martin ("Lana"), Nola Harber ("Nola"), Rochelle McGowan ("Rochelle") and Shelley Newell ("Shelley"). Nola testified that Lynita did not want gaming and liquor associated with her name because of a "personal and moral conviction" against said ventures. Indeed, Lynita herself testified on November 16, 2010, that she did not believe it was in the best interests of her family to be involved in gaming.

Over the course of a number of meetings in which both Eric and Lynita were present,² Burr explained that the only way to accomplish their goals would be to enter into a separate property agreement, which was the best methodology that estate planners then used in order to provide some amount of asset protection for at least a portion of the marital community. Burr further explained that once the property had been divided into separate pools and funded into their separate property trusts, Eric and Lynita would be free to operate and dispose of their separate property as they deemed fit.

Burr believes that he had an ethical obligation, which he believes he met, in representing both Eric and Lynita in connection with this type of estate plan to explain the legal consequences of the Separate Property Agreement,³ including, but not limited to the benefits, detriments and risks. During the meetings Burr explained that a separate property agreement possessed certain benefits and risks, one of which was divorce. Specifically, Burr explained to Eric and Lynita that the property they currently owned was community property, and that said community property would be converted to separate property under the Separate Property Agreement. Burr also explained that either Eric or Lynita could stand by the terms of the Separate Property Agreement in the event of divorce, and that the other party bore the risk that they would not have a further interest in the other spouse's separate property. Further, Burr expressly explained as he so testified that if the Parties wanted to avoid the possibility of possessing unequal assets and liabilities at any point in time, they should voluntarily gift their separate property as they deemed appropriate.⁴ To effectuate such balancing Eric or Lynita would need to make the decision to gift their separate property to the other party and/or their separate

² See Burr's Handwritten Notes, admitted as Intervenor's Trial Exhibit No. 1 on July 18, 2012, which indicate that there was a meeting with both Eric and Lynita thus evidencing that she was involved in the creation and implementation of the Separate Property Agreement and Separate Property Trusts.

³ The Separate Property Agreement executed on July 13, 1993, admitted as Intervenor's Trial Exhibit No. 4 on July 18, 2012, is hereinafter referred to as "Separate Property Agreement."

⁴ Said testimony is consistent with the Declaration of Gift form that was provided by Burr to Eric and Lynita on or around June 19, 1998, admitted as Intervenor's Trial Exhibit No. 11 on July 18, 2012.

1 property trust. Indeed, Burr made it clear that any intent of Eric or Lynita to make equalizing gifts in
2 the future was in their sole discretion as they had no binding agreement to do so.

3 While it is true that neither Eric nor Lynita informed Burr that they were contemplating divorce
4 and/or that the Separate Property Agreement was intended to constitute a "divorce settlement," both
5 Eric and Lynita knew that the separate property was separate for all purposes and that there could not
6 be a "wink-and-a-nod" side agreement that the Separate Property Agreement would not apply in the
7 case of divorce. This was confirmed by Burr who testified that in order for this plan to be effective the
8 Parties had to reach an agreement dividing the community assets without any side agreements.
9 Indeed, if Eric and Lynita had an express or implied agreement it would render the Separate Property
10 Agreement invalid or ineffective. Simply put, the Parties could not on one hand agree to treat the
11 property as separate for creditor purposes, while on the other hand have a "wink-and-a-nod" side
12 agreement that it would not be treated as separate property in any other instance, including divorce.
13 Burr testified that there is no agreement in the Separate Property Agreement nor is he aware of any
14 other agreement between the Parties that the Separate Property Agreement would not control in the
15 event of divorce. In fact, other than Lynita's self-serving and fabricated testimony, no evidence and/or
16 testimony evidencing that the Separate Property Agreement was to be operative with respect to
17 creditors and would not control the disposition of property between them in the case of divorce was
18 introduced at trial. Burr believes that Lynita understood what he told her regarding the Separate
19 Property Agreement.
20
21

22 Lynita's defense that she "always did what Eric instructed" is disingenuous as numerous
23 witnesses, including, but not limited to Lana, Nola, Rochelle and Shelley all testified regarding
24 Lynita's strong personality and how Lynita would not blindly execute any document placed in front of
25 her. Notwithstanding, even if their perception of Lynita is incorrect, Lynita, who is a grown woman
26 and can read and write the English language, agreed to the creation and implementation of the
27
28

1 Separate Property Agreement, and as discussed below the Separate Property Trusts⁵ and Self-Settled
2 Spendthrift Trusts⁶ because she wanted her separate property to be protected from any potential future
3 liability that Eric could have incurred in what she deemed to be “risky” or “immoral” ventures. Most
4 importantly, Lynita was represented by competent Counsel in Burr and Richard Koch, Esq. (“Koch”),
5 and as such, was fully informed of the benefits and risks associated with the creation and
6 implementation of the Separate Property Agreement. It is noteworthy that Lynita failed to introduce
7 any evidence that Eric lied or falsified any information that she received and/or that she executed the
8 Separate Property Agreement (or any other document for that matter) as a result of duress or fraud. To
9 the contrary, Burr testified that he has no reason to believe that Eric unduly influenced Lynita to
10 execute the Separate Property Agreement or any other document. Further, Burr testified that it was his
11 belief and understanding that the division of community assets at the time the Separate Property
12 Agreement was executed was fair and equitable based upon what both Eric and Lynita told him.⁷

14 2. RICHARD KOCH, ESQ. EXPLAINED TO LYNITA THE LEGAL EFFECT OF THE
15 SEPARATE PROPERTY AGREEMENT.

16 In addition to the legal advice that Burr rendered to Lynita regarding the Separate Property
17 Agreement and Separate Property Trusts, Burr informed Lynita that there were several attorneys she
18 could see regarding the Separate Property Agreement and Koch was one of them. Lynita chose Koch
19 because his office was located conveniently down the street from Burr’s office. Burr did not
20 personally meet with Koch regarding the Separate Property Agreement; however, to the best of his

21 ⁵ THE NELSON TRUST dated July 13, 1993 (“LSN Separate Property Trust”), admitted as Intervenor’s
22 Trial Exhibit No. 5 on July 17, 2012, and THE ERIC L. NELSON SEPARATE PROPERTY TRUST dated July
23 13, 1993 (“ELN Separate Property Trust”), admitted as Intervenor’s Trial Exhibit No. 7, will hereinafter
collectively be referred to as “Separate Property Trusts.”

24 ⁶ The LSN SSST admitted as Trial Exhibit Intervenor No. 25 on July 17, 2012, and ELN SSST, admitted as
25 Intervenor’s Trial Exhibit No. 84, will hereinafter collectively be referred to as “Self-Settled Spendthrift
Trusts.”

26 ⁷ Indeed, Burr was provided with a list of all community assets nearly a week before the Separate Property
27 Agreements and Separate Property Trusts were executed. See Correspondence to Burr’s Office dated July 8,
1993, admitted Intervenor’s Trial Exhibit No. 2 on July 25, 2012.

1 recollection Burr spoke with Koch about the proposed estate plan over the telephone. Burr's office
2 also sent correspondence to Koch asking him to review the following with Lynita: (1) Separate
3 Property Agreement with Schedules A and B; and (2) "the values of the respective assets, which were
4 given to Mr. Burr."⁸

5 Although Koch (who knew and understood the law of community property in the State of
6 Nevada in 1993) has no independent recollection of speaking with Lynita regarding the Separate
7 Property Agreement, his custom and practice would have been to explain the difference in the
8 attributes of community property and separate property and the legal effect of dividing community
9 property into two pools of separate property. Koch understands that he had an ethical obligation
10 towards Lynita to explain the attributes of community property and separate property, and the legal
11 consequences of converting community property to separate property. Koch would not have executed
12 the following "Attorney Certification" contained within the Separate Property Agreement without
13 fulfilling his ethical obligations and ensuring that the representations were true and correct:
14

15 The undersigned hereby certifies that he is an attorney at law, duly
16 licensed and admitted to practice in the State of Nevada; that he has been
17 employed by RICHARD KOCH, ESQ. and that he has advised LYNITA
18 SUE NELSON with respect to this Agreement and has explained to her
19 the legal effect of it; that LYNITA SUE NELSON has acknowledged her
20 full and complete understanding of the Agreement and its legal
21 consequences, and has freely and voluntarily executed the agreement in
22 the undersigned's presence.⁹ (Emphasis Added).

23 Said certification is consistent both with Lynita's testimony wherein she confirmed that Koch
24 asked her if she had any questions and understood it and she said yes, and with recital 1 to the Separate
25 Property Agreement, which she executed that states:
26

27 ⁸ See Correspondence from Melina Barr to Koch dated July 13, 1993, admitted as Intervenor's Trial
28 Exhibit No. 3 on July 18, 2012.

⁹ See Separate Property Agreement executed on July 13, 1993, admitted as Intervenor's Trial Exhibit No. 4
on July 18, 2012.

1 The Parties declare that each has retained independent counsel and they
2 fully understand the facts and has been fully informed of all legal rights
3 and liabilities; that after such advice and knowledge, each believes this
4 AGREEMENT to be fair, just and reasonable, and that each signs this
5 AGREEMENT freely and voluntarily.¹⁰

6 Further, Schedule B attached to the Separate Property Agreement provides:

7 The following constitutes the sole and separate property . . . in which she
8 has an interest or which stands in the name of LYNITA SUE NELSON is
9 wholly her sole and separate property under the laws of the State of
10 Nevada, irrespective of the manner in which record title is held or has
11 been held prior to the transfer to the Trustee under this Trust.¹¹

12 As will be discussed *infra*, the recitals contained within the Separate Property Agreement create a
13 conclusive presumption precluding this Court from looking beyond the four-corners of said document.

14 Koch has no recollection of Lynita advising him that there was a side agreement that the
15 Separate Property Agreement would not control the character of the property being divided in the
16 event of a divorce between the Parties. If she had, Koch's custom and practice would have been to:
17 (1) express serious concern about the purported side agreement not being contained within the
18 Separate Property Agreement; and (2) follow-up with a letter advising her that if the Separate Property
19 Agreement was executed without the purported side agreement there was a risk that the Separate
20 Property Agreement would be controlling. Koch has no recollection of preparing and/or sending to
21 Lynita such a letter. Koch has no reason to believe that he did not follow his custom and practice in
22 his dealings with Lynita.

23 **C. THE ASSETS THAT FUNDED THE SEPARATE PROPERTY TRUSTS WERE KEPT**
24 **SEPARATE AND NOT COMMINGLED.**

25 Part of the estate plan discussed *supra* included the creation and implementation of separate
26 property trusts as a vehicle to keep Eric and Lynita's separate property uncommingled. The assets
27 listed in Schedule A of the Separate Property Agreement were used to fund the ELN Separate Property
28

¹⁰ *Id.*

¹¹ *Id.* at Schedule B.

Trust for the benefit of Eric, and the assets listed in Exhibit B were used to fund the LSN Separate Property Trust for the benefit of Lynita. Lynita effectuated the transfer of her newly divided separate property by executing the requisite documents to fund the LSN Separate Property Trust.¹² Further, she executed a document entitled "Assignment of Assets," which transferred and assigned the following assets to the LSN Separate Property Trust:

All jewelry, pictures, books, silverplate, linen, china, coin collections, glassware, objects of art, clothing, household furniture and furnishings, personal automobiles, motor homes, mobile homes, boats and other tangible articles of personal property, together with any insurance on such property, as well as insurance on any other assets owned by the trust;

Promissory notes, amounts owing to trustors, stocks, bonds, securities, interest in general of limited partnerships, contents of safe deposit boxes, claims under pending lawsuits, and other choses in action; and any other assets held by trustor which otherwise would be subject to probate.¹³

From 1993 through 2001, the assets owned and liabilities owed by the ELN Separate Property Trust and the LSN Separate Property Trust were kept separate. This was confirmed by Shelley,¹⁴ the bookkeeper for the ELN Separate Property Trust and LSN Separate Property Trust from 1993 - 2001, who testified that all of the transactions concerning the assets and liabilities of said trusts were kept separate. Shelley made a conscious effort to keep the assets and liabilities of the ELN Separate Property Trust and the LSN Separate Property Trust separate because she was repeatedly instructed to do so by Burr and Eric. This is illustrated in correspondence between Shelley and Burr from March

¹² See e.g., deeds executed by Lynita, admitted as Intervenor's Trial Exhibit No. 167 on July 23, 2012, at Bates No.'s DEF006153, DEF004761, DEF006050, DEF004715, DEF004738 and DEF004658.

¹³ See Assignment of Assets, admitted as Intervenor's Trial Exhibit No. 6 on July 18, 2012.

¹⁴ Shelley is currently employed by the Nevada Gaming Commission as a CPA. Dan Gerety, CPA testified that Shelley was a competent and reliable bookkeeper.

1 1994 wherein she sought guidance from Burr as to how she should address the separate nature of the
2 Separate Property Trusts with the IRS.¹⁵

3 Shelley testified that although there were a few gifts made from the ELN Separate Property
4 Trust to the LSN Separate Property Trust (*i.e.* an interest in Tierra Del Sol and Sycamore Plaza),¹⁶ no
5 loans were made between said trusts. Shelley also testified that to the extent that common expenses
6 were shared between the ELN Separate Property Trust and the LSN Separate Property Trust, said
7 expenses were always accounted for as a “due to – due from.” According to Dan Gerety, CPA
8 (“Gerety”), there was no balance in the “due to – due from” accounts in 2001. Despite her best efforts,
9 Lynita was unable to impeach or rebut Shelley’s testimony.
10

11 **D. CREATION AND IMPLEMENTATION OF THE SELF-SETTLED SPENDTHRIFT TRUSTS.**

12 Burr testified that in or around 2000 Eric and Lynita would have received communications
13 from his office regarding the domestic asset-protection trust statute that had been recently enacted in
14 Nevada, and the opportunities associated with said statute.

15 On or around January 15, 2001, Eric and Lynita met with Burr to discuss converting their
16 Separate Property Trusts to self-settled spendthrift trusts.¹⁷ The implementation of self-settled
17 spendthrift trusts were intended to “supercharge” the prior estate planning already in place by
18 providing both Eric and Lynita greater protection from liabilities because: (1) the assets owned by
19 each of the Separate Property Trusts were still exposed to liabilities that the grantor incurred
20

21 ¹⁵ See Correspondence from Shelley to Burr dated March 19, 1994, admitted as Intervenor’s Trial Exhibit
22 No. 9 on July 17, 2012, and Correspondence from Burr to Shelley dated March 24, 1994, admitted as
Intervenor’s Trial Exhibit No. 10 on July 17, 2012.

23 ¹⁶ The gifts made by Eric to the LSN Separate Property Trust were consistent with the advice given by Burr
that: either Eric or Lynita had the right to transmute their separate property to their spouse’s separate property.

24 ¹⁷ See Burr’s Handwritten Notes dated January 15, 2001, admitted as Intervenor’s Trial Exhibit No. 21 on
25 July 18, 2012, which indicate that “we need 2 new trusts, 1 for Eric, 1 for Lynita, . . . they want to see drafts
26 when they return.” See also Burr’s Correspondence to Eric and Lynita dated January 30, 2001, admitted as
Intervenor’s Trial Exhibit No. 22, wherein Burr states “[t]his letter serves to follow up on your meeting with
Jeffrey L. Burr and Melina Barr and also to confirm the fees for the services we will provide.”
27
28

1 individually (e.g. car accidents); and (2) assets owned by a self-settled spendthrift trust would be
2 protected from creditors after a two year waiting period. Copies of the Self-Settled Spendthrift Trusts
3 were sent to Eric and Lynita on or around February 15, 2001.¹⁸

4 On May 30, 2001, nearly 3 months after they were provided drafts of the Self-Settled
5 Spendthrift Trusts, Eric executed the ELN SSST,¹⁹ and Lynita executed the LSN SSST.²⁰ Despite the
6 fact that self-settled spendthrift trusts are somewhat complex, Jeff assured himself that Lynita had a
7 fundamental understanding of the LSN SSST before he let her execute the same. Upon execution of
8 the ELN SSST and LSN SSST, Burr believed said trusts were valid and enforceable under Nevada law
9 in accordance with their terms.
10

11 It was Burr's understanding that the ELN SSST was to be funded with the assets owned by the
12 ELN Separate Property Trust, and the LSN SSST was to be funded with the assets owned by the LSN
13 Separate Property Trust. At trial, Lynita's Counsel seemed to argue that said funding violated the
14 Separate Property Agreement because: (1) Lynita was not allowed the right of first refusal afforded in
15 Paragraph 4; and (2) the property was transferred to an irrevocable trust as opposed to a revocable
16 trust. Said argument must be summarily disregarded because both Eric and Lynita agreed with this
17 course of action over ten years ago, and neither of them sought to invoke their right of first refusal
18 before the assets were transferred to the new irrevocable trusts. Moreover, Burr, who drafted the
19 Separate Property Agreement, Separate Property Trusts and Self-Settled Spendthrift Trusts, never
20 advised Eric or Lynita that funding the Self-Settled Spendthrift Trusts from assets owned by the
21 Separate Property Trusts would invalidate the Separate Property Agreement and/or that they were
22 precluded from doing so.
23

24 ¹⁸ See also Burr's Correspondence to Eric and Lynita dated February 15, 2001, admitted as Intervenor's
25 Trial Exhibit No. 23 on July 18, 2012.

26 ¹⁹ See ELN SSST, admitted as Intervenor's Trial Exhibit No. 86 on July 17, 2012.

27 ²⁰ See LSN SSST, admitted as Intervenor's Trial Exhibit No. 25 on July 17, 2012.

on one hand that the property is community, and on the other hand to execute documents specifically identifying said property as separate.²²

III. LEGAL ARGUMENT

A. ERIC AND LYNITA TRANSMUTED THEIR COMMUNITY PROPERTY TO SEPARATE PROPERTY.

“[T]he evidence necessary to show a transmutation of community property into separate property must be of a clear and convincing character.”²³ In Nevada, “conveyance of real property during marriage from husband and wife to husband alone [is] presumed to be a gift of wife’s interest absent clear and convincing evidence otherwise.”²⁴ Further, property held in joint tenancy is “clear and certain proof needed to overcome the presumption that it was community property.”²⁵ The Nevada Supreme Court has also recognized the ability of a spouse to transmute separate property into community property by an oral agreement.²⁶

²² See, e.g., THE TOTAL AMENDMENT AND RESTATEMENT OF THE NELSON TRUST dated February 17, 2009, admitted as Intervenor’s Trial Exhibit No. 14 on July 18, 2012 (“The property comprising the original Trust estate, during the life of the Trustor, shall retain its character as her separate property, as designated on the document of transfer or conveyance.”); and Assignment of Assets, admitted as Intervenor’s Trial Exhibit No. 17 on July 23, 2012.

²³ *Petition of Fuller*, 63 Nev. 26, 36, 159 P.2d 579, 583 (Nev. 1945). See also *Sprenger v. Sprenger*, 110 Nev. 855, 858, 878 P.2d 284, 286 (1994) (signature as a shareholder on certain documents, without more, is not clear and convincing evidence of transmutation).

²⁴ *Kerley v. Kerley*, 112 Nev. 36, 37, 910 P.2d 279, 280 (Nev. 1996) (“the 1983 quitclaim deed vesting title in Thomas’ name only is presumed to be a gift of Nancy’s interest unless clear and convincing evidence establishes otherwise”) citing *Graham v. Graham*, 104 Nev. 472, 760 P.2d 772 (1988); *Todkill v. Todkill*, 88 Nev. 231, 495 P.2d 629 (1972); *Peardon v. Peardon*, 65 Nev. 717, 201 P.2d 309 (1948); *Petition of Fuller*, 63 Nev. 26, 159 P.2d 579 (1945).

²⁵ *Peters v. Peters*, 92 Nev. 687, 690, 557 P.2d 713, 715 (Nev. 1976) (“burden was upon the respondent to prove through clear and convincing evidence that the real property which was held in joint tenancy with right of survivorship had been nevertheless transmuted into community property.”).

²⁶ *Schreiber v. Schreiber*, 99 Nev. 453, 663 P.2d 1189 (Nev. 1983) (“trial court erred, in divorce action, in ruling that oral property settlement agreement was null and void and had no effect upon division of community property, where husband contended that oral agreement had been fully performed by parties and that wife should thus be estopped from contesting it.”); *Schulman v. Schulman*, 92 Nev. 707, 558 P.2d 525 (Nev. 1976) (recognizing ability of spouse to transmute separate property into community property by oral agreement, although rejecting contention by wife in case that husband transmuted shares of stock where expressed intent of

1 “[T]he right of the spouses in their separate property is as sacred as is the right in their
2 community property, and when it is once made to appear that property was once of a separate
3 character, it will be presumed that it maintains that character until some direct evidence to the contrary
4 is made to appear.”²⁷ “Transmutation from separate to community property must be shown by clear
5 and convincing evidence.”²⁸

6 Here, the Separate Property Agreement and LSN Separate Property Trust establish by clear and
7 convincing evidence that Eric and Lynita transmuted their community property to separate property in
8 1993. The Separate Property Agreement executed by Lynita, after consulting with Burr and Koch, is
9 both clear and convincing evidence that Eric and Lynita intended to transmute their community
10 property to separate property. Indeed, the Separate Property Agreement provides that the Parties
11 “hereto desire to split the community estate into the sole and separate property of each spouse.”²⁹ The
12 Separate Property Agreement further provides:
13

14 3(A) Husband shall receive as his sole and separate property all assets
15 listed on the attached Schedule “A” hereto, subject to any
16 encumbrances thereon.
17

18 husband was not supported by other evidence); *Mullikin v. Jones*, 71 Nev. 14, 27, 278 P.2d 876, 882 (Nev.
19 1955) (“Moreover, it is well settled that property may be converted into community property at any time by oral
20 agreement between the spouses . . .”) (citations omitted); *Stockgrowers' & Ranchers' Bank of Reno v. Milisich*,
21 52 Nev. 178, 283 P. 913, 914 (Nev. 1930) (“It is true we have repeatedly held that the evidence necessary to
22 show a transmutation of community property into separate property must be of a clear and convincing character,
but the evidence of the respondents in this case appears to us to be of that force. There is nothing in our law, nor
can any sound reason be assigned, why the testimony of a husband and wife may not have that probative effect.
While it must be conceded that such testimony is of a character easily to be fabricated, yet in the absence of
something tangible to impute to it suspicion, it cannot be deemed unreliable on the former account alone.”).

23 ²⁷ *Barrett v. Franke*, 46 Nev. 170, 208 P. 435, 437 (Nev. 1922).

24 ²⁸ *See Sprenger v. Sprenger*, 110 Nev. 855, 858, 878 P.2d 284, 287 (Nev. 1994) citing *In re Marriage of*
25 *Weaver*, 224 Cal.App.3d 478, 273 Cal.Rptr. 696, 701 (1990). (Emphasis added).

26 ²⁹ *See* Separate Property Agreement executed on July 13, 1993, admitted as Intervenor’s Trial Exhibit No. 4
27 on July 18, 2012.

3(B) Wife shall receive as her sole and separate property all assets listed on the attached Schedule "B" hereto, subject to any encumbrances thereon.³⁰

Schedule A and B of the Separate Property Agreement³¹ also state:

The following constitutes the sole and separate property of the Trustor, and the Trustor hereby declares that all property in which he has an interest or which stands in the name of ERIC L. NELSON is wholly his sole and separate property under the laws of the State of Nevada, irrespective of the manner in which record title is held or has been held . . .

The following constitutes the sole and separate property of the Trustor, and the Trustor hereby declares that all property in which he has an interest or which stands in the name of LYNITA SUE NELSON is wholly her sole and separate property under the laws of the State of Nevada, irrespective of the manner in which record title is held or has been held . . .

Similarly, the LSN Separate Property Trust executed by Lynita, after consulting with Burr, establishes that the community property was transmuted into separate property:

The property comprising the original Trust estate, during the life of the Trustor, shall retain its character as her separate property, as designated on the attached Schedule "A" or document of transfer or conveyance. Property subsequently received by the Trustee during the life of the Trustor . . . shall have the separate character designated thereon or on the document or transfer or conveyance.³²

There is a presumption that the recitals contained with the Separate Property Agreement and Separate Property Trusts are conclusive under 47.240(2), a presumption that Lynita failed to overcome:

The truth of the fact recited, from the recital in a written instrument between the parties thereto, or their successors in interest by a subsequent title, but this rule does not apply to the recital of a consideration.

In addition to the express provisions contained within the Separate Property Agreement and LSN Separate Property Trust, Lynita effectuated the transfer of community property to separate

³⁰ *Id.*

³¹ *Id.* at Schedule A and B.

³² *See* LSN Separate Property Trust, admitted as Intervenor's Trial Exhibit No. 5 on July 17, 2012.

property by executing the requisite documents to fund the LSN Separate Property Trust.³³ This is further supported by Burr and Koch who testified that they explained the legal consequences of the agreement to Lynita, and Burr pointing out that equalization would have to occur by gift, thereby dispelling any inference that community property rights would stay intact. Said evidence clearly and convincingly establishes that Eric and Lynita's community property was transmuted to separate property in or around July 1993. Consequently, the assets owned by the Separate Property Trusts, which ultimately funded the Self-Settled Spendthrift Trusts, were separate property, a fact which Lynita failed to rebut at the seven day trial.

B. LYNITA CANNOT ACCEPT THE BENEFITS OF THE SEPARATE PROPERTY AGREEMENT, SEPARATE PROPERTY TRUSTS AND SELF-SETTLED SPENDTHRIFT TRUSTS FOR SOME PURPOSES AND THEN REPUDIATE SAID DOCUMENTS FOR OTHER PURPOSES.

Lynita is seeking to have her cake and eat it too. On one hand she has reaped the benefit of having her separate property protected from creditors for nearly twenty years, including the liabilities identified by Bertsch³⁴ and Gerety,³⁵ and on the other hand seeks to invalidate the ELN SSST because the assets contained therein exceed the assets owned by the LSN SSST. In Nevada, it "is well settled that a person shall not be allowed at once to benefit by and repudiate an instrument, but, if he chooses to take the benefit which it confers, he shall likewise take the obligations or bear the onus which it imposes."³⁶ This well-reasoned rule of law has been applied in two factually similar cases: *Marriage*

³³ See e.g., deeds executed by Lynita, admitted as Intervenor's Trial Exhibit No. 167 on July 23, 2012, at Bates No.'s DEF006153, DEF004761 and DEF004658.

³⁴ See Assets Schedule and Notes to Asset Schedule provided by Bertsch in open Court on October 11, 2011, admitted as Exhibit 2 of Bertsch's Trial Binder, Bates No. DEF0014892 – DEF0014894.

³⁵ See Exhibit 11 of Dan Gerety Report, admitted as Intervenor's Trial Exhibit No. 168 on July 23, 2012.

³⁶ *Fed. Mining & Engr. Co. v. Pollak*, 59 Nev. 145, 85 P.2d 1008, 1012 (Nev. 1939) ("as a general rule, if a corporation, with knowledge of the facts, accepts or retains the benefit of an unauthorized contract or other transaction by its officers or agents, as where it receives and uses or retains money or property paid by the other party, or accepts the benefits of services, etc., it thereby ratified the contract or other transaction, or will be

1 of *Holtemann*, 166 Cal. App. 4th 1166, 83 Cal. Rptr. 3d 385 (Cal. App. 4th 2008) and *Marriage of*
2 *Lund*, 174 Cal. App. 4th 40, 94 Cal. Rptr. 3d 84 (Cal. App. 4th 2009).

3 In *Marriage of Holtemann*, 166 Cal. App. 4th 1166, 83 Cal. Rptr. 3d 385 (Cal. App. 4th 2008), a
4 husband and wife entered into a transmutation agreement and trust that established the husband's
5 express intent to transmute his separate property to community property so as to eliminate the need for
6 probate and minimize taxes in the event of either spouse's death. Both the transmutation agreement
7 and trust³⁷ made it clear that they were not "not made in contemplation of a separation or marital
8 dissolution [but] solely for the purpose of interpreting how property shall be disposed of on the deaths
9 of the parties."³⁸ The trust also provided that it "may be revoked or terminated, in whole or in part, by
10 either settlor as to any separate or quasi-community property of that settlor and any community
11 property of the settlors."³⁹

12 The wife filed a petition to dissolve marriage on August 1, 2006, and on October 19, 2006, the
13 husband issued notice that he had exercised his right to revoke the trust.
14
15
16

17 estopped to deny ratification.") (citations omitted). See also *Schmidt v. Horton*, 52 Nev. 302, 287 P. 274, 280
18 (Nev. 1930).

19 ³⁷ Article 1.3 of the trust provided: "*Statement of Intent*. This is a joint trust established by the settlors in
20 order to hold community property of the settlors, which community property was created by the transmutation
21 of separate property of settlor Frank G. Holtemann concurrently with the execution of this trust instrument.
22 The parties each acknowledge that the transmutation of Frank Holtemann's separate property into community
property was undertaken upon the condition of and with this trust instrument in mind, in particular with the
disposition of the trust estate upon the death of the settlors as provided for herein in mind; and but for such
agreed disposition, settlor Frank Holtemann would not have effected the transmutation of his separate property
into community property, with which this trust was funded."

23 ³⁸ *Holtemann*, 166 Cal. App. 4th at 1169-1170, 83 Cal. Rptr. 3d at 388. The wife acknowledged in Article
24 2.3 of the transmutation agreement that the "transmutation of Husband's separate property into community
25 property herewith was undertaken upon the express condition that the disposition of the trust estate of said
Trust, upon the death of husband and wife . . . will pass as provided in said Declaration of Trust." The wife
further acknowledged that "but for such agreed disposition of the subject property, settlor Frank Holtemann
would not have effected the within transmutation of his separate property into community property."

26 ³⁹ *Holtemann*, 166 Cal. App. 4th at 1171, 83 Cal. Rptr. 3d at 389.
27
28

At trial, the court rejected the husband's arguments that: (1) the transmutation was rendered ambiguous by the statement in the transmutation agreement that: "this agreement is not made in contemplation of a separation or marital dissolution and is made solely for the purpose of interpreting how property shall be disposed of on the deaths of the parties;"⁴⁰ and (2) he was not fully informed of the legal consequences of his actions because he had failed to secure separate counsel to represent him regarding the transmutation agreement and trust.⁴¹ In so doing, the court found that "[r]egardless of the motivations underlying the documents, they contain the requisite express, unequivocal declarations of a present transmutation . . . and reflect that [the husband] was fully informed of the legal consequences of his actions."⁴² In rejecting the husband's claim that the assets identified in the transmutation agreement and trust were his separate property, the court found:

In any event, we are not aware of any authority for the proposition that a transmutation, once effected, can be limited in purpose or otherwise rendered conditional or temporary. Once the character of the property has been changed, a "retransmutation" can be achieved only by an express agreement to that effect that independently satisfies the requirements of subdivision (a) of section 852. As the trial judge stated: "Husband argues that the transmutation was limited to estate purposes only. In other words, Frank wishes to have his cake and eat it too. He argues that, in the event of either his or Barbara's death, the survivor would be able to use the Transmutation Agreement to claim the property as community property, thus obtaining a full step up in basis to the fair market value of the property at date of death, while at the same time denying the validity of the Transmutation Agreement as an instrument which created community property. Thus, when it would benefit either Frank or his estate, Frank wishes to characterize the property as community. However, when it would be detrimental to Frank, he wishes to ignore the transmutation and call the property separate."⁴³

⁴⁰ *Holtemann*, 166 Cal. App. 4th at 1173, 83 Cal. Rptr. 3d at 391.

⁴¹ *Holtemann*, 166 Cal. App. 4th at 1174, 83 Cal. Rptr. 3d at 392.

⁴² *Id.*

⁴³ *Holtemann*, 166 Cal. App. 4th at 1174, 83 Cal. Rptr. 3d at 391-392. (Emphasis added).

1 Simply put, the court would not allow the husband to transmute his separate property for conditional
2 or limited purposes, especially since the transmutation “allowed him to characterize all income and
3 distributions of principal as community property during the marriage, a tax benefit he otherwise would
4 not have enjoyed.”⁴⁴

5 Similarly, in *Marriage of Lund*, 174 Cal. App. 4th 40, 94 Cal. Rptr. 3d 84 (Cal. App. 4th 2009),
6 the court found that a husband could not selectively use a transmutation agreement that
7 unambiguously transmuted all of his property to community property. Specifically, in *Lund* the
8 transmutation agreement provided that all of the property, real and personal, held in the name of the
9 husband is hereby converted to community property of husband and wife “for estate planning purposes
10 to the extent necessary to conform the record ownership of the properties of the parties.”⁴⁵ The
11 husband amended and restated his trust contemporaneously with executing the transmutation
12 agreement to specifically provide that said agreement was null and void in the event of divorce:
13

14 Upon the filing of a petition for the dissolution of the marriage and/or
15 separation by either Settlor, this Agreement is automatically terminated
16 without further notice to third parties and either Trustee shall return to
17 each Settlor the separate property they contributed to this Agreement not
18 previously disposed of, together with each Settlor’s share of the Trust
19 Estate which is community property. Upon the automatic termination, all
dispositive provisions of this Trust Agreement shall be null and void other
than returning the assets to the rightful owners and each Settlor shall be
deemed to have predeceased the other Settlor if the assets or property have
not been returned to the proper owner prior to that Settlor’s demise.⁴⁶

20 In May 2006, the court commenced proceedings to determine whether the agreement
21 transmuted the husband’s separate property to community property. In short, the husband sought to
22 have the court “interpret the agreement as effecting a transmutation of his separate property to
23 community property only if he or [his wife] died while married,” despite the fact that “language of the
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24 ⁴⁴ *Id.*

25 ⁴⁵ *Lund*, 174 Cal. App. 4th at 45, 94 Cal. Rptr. 3d at 89.

26 ⁴⁶ *Lund*, 174 Cal. App. 4th at 48, 94 Cal. Rptr. 3d at 91. (Emphasis added).

1 agreement clearly disclaims the notion of a conditional future transmutation.”⁴⁷ The question
2 addressed by the court was whether “[i]f it’s his separate property, can they for estate planning
3 purposes . . . [and] for stepped-up [tax] basis, . . . say the magic words, ‘for community property,’ then
4 it’s community property, but for all other purposes it’s not?”⁴⁸ Ultimately, the court relying upon
5 *Holtemann*, rejected “the notion that parties may execute a “conditional” transmutation (or, as
6 colorfully described by the court, cross their fingers while signing the agreement),”⁴⁹ in holding that it
7 would not “assume the parties intended to execute the agreement for the sole purpose of providing
8 documentary support to a future materially false representation to the IRS.”⁵⁰

10 Here, Lynita is asking this Court to ignore the clear provisions contained within the Separate
11 Property Agreement, Separate Property Trusts and Self-Settled Spendthrift Trusts because of her
12 unsubstantiated belief that said documents would not apply in the case of divorce. As correctly stated
13 in *Holtemann*, “the motivations underlying the documents” are irrelevant; the relevant question is
14 whether “they contain the requisite express, unequivocal declarations of a present transmutation,”⁵¹ as
15 is the case presently before this Court. Indeed, *Holtemann* rejected the notion that a husband and wife
16 can invalidate a transmutation agreement because it was not made in “contemplation of a separation or
17 marital dissolution.” Further, both *Holtemann* and *Lund* specifically held that a spouse cannot have a
18 “conditional” transmutation of property, which is exactly what Lynita contends by stating that the
19 Separate Property Agreement was not intended to apply in the case of divorce. Over the course of the
20 last twenty years, Lynita has benefitted from the Separate Property Agreement as her separate property
21

22 ⁴⁷ *Lund*, 174 Cal. App. 4th at 53-54, 94 Cal. Rptr. 3d at 96.

23 ⁴⁸ *Lund*, 174 Cal. App. 4th at 49, 94 Cal. Rptr. 3d at 92.

24 ⁴⁹ *Lund*, 174 Cal. App. 4th at 54, 94 Cal. Rptr. 3d at 96.

25 ⁵⁰ *Id.*

26 ⁵¹ *Holtemann*, 166 Cal. App. 4th at 1173, 83 Cal. Rptr. 3d at 385.

was not exposed to the perceived additional risk and her moral aversion that came from the investments Eric was making. Lynita cannot accept that benefit on one hand while arguing that she really retained an interest in Eric's separate property on the other hand. For these reasons, Lynita's arguments must be rejected.

C. LYNITA'S TESTIMONY REGARDING HER INTENT IN EXECUTING THE SEPARATE PROPERTY AGREEMENT, LSN SEPARATE PROPERTY TRUST AND LSN SSST IS INADMISSIBLE.

Lynita contends that the Separate Property Agreement, and effectively the Separate Property Trusts and Self-Settled Spendthrift Trusts, are invalid because she did not "intend" said documents to apply in the case of divorce. Said testimony is inadmissible and must not be considered by this Court in making its ruling.

First, Paragraph 2 of the Separate Property Agreement specifically provides that the Separate Property Agreement as opposed to self-serving testimony shall be controlling in determining ownership of property:

The Parties agree that this AGREEMENT shall be controlling in determining the ownership of each party's property regardless the manner in which the property was previously held or titled, acquired through capital or personal efforts, or whether the property is real, personal or any variation thereof.⁵²

Consequently, Lynita, after having the legal consequences of the Separate Property Agreement explained by both Burr and Koch, agreed to be bound by said agreement.

Second, "[i]n deciding whether a transmutation has occurred, [courts] interpret the written instruments independently, without resort to extrinsic evidence."⁵³ Indeed, courts strictly determine a settlor's intent from the language contained in the trust document and not the settlor's undeclared or

⁵² See Separate Property Agreement executed on July 13, 1993, admitted as Intervenor's Trial Exhibit No. 4 on July 18, 2012.

⁵³ *Holtemann*, 166 Cal. App. 4th at 1172, 1166, 83 Cal. Rptr. 3d at 390; *Lund*, 174 Cal. App. 4th at 50, 94 Cal. Rptr. 3d at 93.

subsequent intentions.⁵⁴ Contracts, like wills, should be construed by reading the actual words used, not by trying to infer intent from something else.⁵⁵ Like contract law, courts only consider extrinsic evidence if the trust document is ambiguous.⁵⁶ Moreover, “extrinsic evidence is not admissible to

⁵⁴ See, e.g., *Taylor v. Taylor*, 978 A.2d 538, 542-43 (Conn. Ct. App. 2009) (“The issue of intent as it relates to the interpretation of a trust instrument ... is to be determined by examination of the language of the trust instrument itself and not by extrinsic evidence of actual intent The construction of a trust instrument presents a question of law. . . .”); *Soeffje v. Jones*, 270 S.W.3d 617, 628 (Tex. Ct. App. 2008) (“Construction of an unambiguous trust is a matter of law for the court. In construing a trust, we are to ascertain the intent of the grantor from the language in the four corners of the instrument.”); *Kimberlin v. Dull*, 218 S.W.3d 613, 616 (Mo. Ct. App. 2007) (“[A]bsent ambiguity, the intent of the settlor is determined from the four corners of the trust instrument. It is not this court’s function to rewrite a trust in order to effectuate a more equitable distribution or to impart an intent to the testatrix that is not expressed in the trust”); *Keisling v. Landrum*, 218 S.W.3d 737, 741 (Tex. Ct. App. 2007) (“The construction of a will or trust instrument is a question of law for the trial court. Courts construe trusts to determine the intent of the maker. The intent of the maker must be ascertained from the language used within the four corners of the instrument.”) (Citations omitted); *Blue Ridge Bank and Trust Co. v. McFall*, 207 S.W.3d 149, 156-57, 161 (Mo. Ct. App. 2006) (“As a starting point in any analysis of a testamentary document, we note that the paramount rule of will or trust construction is to discern the intent of the settlor. Such intention must be ascertained from the instrument as a whole, and must be adhered to unless it conflicts with some positive rule of law. . . . [I]n interpreting the trust, the court must look to the language of the instrument and not to the results to be achieved. . . . Courts are to ascertain what the testator meant from the words actually used.”) (Citations omitted); *Sherard v. Sherard*, 142 P.3d 673, 677 (Wyo. 2006) (“The intent is determined from the trust document itself. [T]he interpretation of the language of a trust instrument constitutes a question of law”); *Estate of Edwards*, 203 Cal. App.3d 1366, 1371 (1988) (Citing *Estate of Stokley*, 108 Cal. App. 3d 461, 467 (1980) (“The testator’s intent is determined from the language of the will itself. The intention which an interpretation of a will seeks to ascertain is the testator’s intention as expressed in the words of the will, not some undeclared intention which may have been in his mind.”)).

⁵⁵ See *Zirovcic v. Kordic*, 101 Nev. 740, 709 P.2d 1022 (Nev. 1985) quoting *Jones v. First National Bank*, 72 Nev. 121, 296 P.2d 295 (Nev. 1956).

⁵⁶ See, e.g., *Jones*, 270 S.W.3d at 628 (“If the words in the trust are unambiguous, we do not go beyond them to find the grantor’s intent. Our focus is not what the grantor may have intended to write, but what words are actually used in the trust instrument. If the words are unambiguous, extrinsic evidence is not admissible to show that the grantor had some other intent than that expressed in the clear words of the trust.”); *Carmody v. Betts*, 104 Ark. App. 84, 88, 289 S.W.3d 174, 178 (Ark. Ct. App. 2008) (“Extrinsic evidence may be received on the issue of the testator’s intent only if the terms of the will are ambiguous. Absent a finding of ambiguity by the court, testimony about the settlor’s intent should not be considered. When the terms of a trust are unambiguous, it is the court’s duty to construe the written agreement according to the plain meaning of the language employed.”); *Sherard*, 142 P.3d at 677 (“The intent is determined from the trust document itself. [T]he interpretation of the language of a trust instrument constitutes a question of law. . . . Where the language used in the trust is unambiguous, the plain provisions of the trust determine its construction and interpretation does not require consideration of evidence.”); *Goodwine v. Goodwine*, 819 N.E.2d 824, 829 (Ind. Ct. App. 2004) (“To determine the settlor’s intent, courts look first to the language used in the trust document. If the terms of the trust instrument are not ambiguous, a court may examine only the document itself to determine the settlor’s intent.”) (Citations omitted); *In re Reid*, 46 P.3d 188, 190 (Okla. Ct. App. 2002) (“As a general rule, the interpretation of the language of a trust instrument constitutes a question of law. . . . The courts strive to ascertain and effect the intent of the settlor, but parole evidence may not be considered where there is no

contradict the plain language of the trust” and “[a] trustor’s intention must be determined in view of the circumstances existing at the time of the creation of the trust.”⁵⁷ As the court observed in *Edwards*:

It is not the business of the court to say, in examining the terms of a will, what the testator intended, but what is the meaning to be given to the language which he used. Where the terms of a will are free from ambiguity, the language used must be interpreted according to its ordinary meaning and legal import and the intention of the testator ascertained thereby.⁵⁸

Courts limit their inquiry to the four corners of the trust document because “the language of the trust deed itself is the best and controlling evidence of such intent.”⁵⁹ Accordingly, courts regularly exclude evidence from parties and/or the settlor concerning the intention of trust terms. The terms of the trust agreement are conclusive of the testator’s intent.⁶⁰

Although extrinsic evidence is inadmissible to contradict the terms of the Separate Property Agreement, Separate Property Agreement, LSN Separate Property Trust and LSN SSST, all of the evidence and testimony elicited at trial (except Lynita’s self-serving testimony) supports the validity of said documents and the transmutation of community to separate property. Indeed, both Burr and Koch testified that they explained the legal consequences of the Separate Property Agreement to Lynita and that they were unaware of any type of side agreement. Lynita also testified that Kock asked her if she had any questions and she said no. Burr also explained to Lynita that equalization would have to

ambiguity and the language of a declaration of trust is clear and plainly susceptible of only one construction: the plain provisions of the trust instrument ... determine its construction.”) (Citations omitted).

⁵⁷ *In re Estate of Zilles*, 200 P.3d 1024, 1028 (Ariz. Ct. App. 2008).

⁵⁸ *Id.*, quoting *Estate of Avila*, 85 Cal. App. 2d 38, 39 (1948).

⁵⁹ *In re Estate of Devine*, 910 A.2d 699, 703 (Pa. Super. 2006).

⁶⁰ *See, e.g., Taylor*, 978 A.2d at 542-43 (“The issue of intent as it relates to the interpretation of a trust instrument ... is to be determined by examination of the language of the trust instrument itself and not by extrinsic evidence of actual intent.”).

1 occur by gift thereby dispelling any inference that community property rights would stay intact.
2 Additionally, Burr testified that he explained and reviewed the LSN Separate Property Trust and LSN
3 SSST with Lynita. Further, the terms of the Separate Property Agreement, ELN Separate Property
4 Trust and LSN Separate Property Trust, ELN SSST and LSN SSST are clear, definite and
5 unambiguous. Consequently, it would be inappropriate for this Court to consider any parole evidence
6 of any contrary terms, understandings or agreements.

7
8 **D. NEITHER ERIC NOR LYNITA HAVE A COMMUNITY AND/OR SEPARATE PROPERTY
INTEREST IN THE ELN SSST AS A MATTER OF LAW.**

9 Lynita's contention that she possesses a community property interest in the ELN SSST fails as
10 a matter of law as said assets are owned by the ELN SSST as opposed to Eric or Lynita. When
11 property is transferred to an irrevocable spendthrift trust as is the case here, the rights of the transferor,
12 as such, are terminated, and the rights of all persons are determined only as provided in the trust
13 agreement.

14
15 Chapter 166 of the Nevada Revised Statutes codifies the Spendthrift Trust Act of Nevada. For
16 purposes of Chapter 166, a spendthrift is defined as "a trust in which by the terms thereof a valid
17 restraint on the voluntary and involuntary transfer of the interest of the beneficiary is imposed."⁶¹
18 Since Eric cannot unilaterally remove any property and his distributions are subject to the
19 discretionary approval of the "distribution trustee," it is a misnomer to characterize the property
20 contained with the ELN SSST as his separate property or community property. "A beneficiary of a
21 spendthrift trust has no legal estate in the capital, principal or corpus of the trust estate . . ."⁶² As such,
22 Eric's property rights under the ELN SSST are limited to that of a beneficiary with a "discretionary
23 interest," as defined in NRS 163.4185(1)(c), and Nevada law limits his enforceable rights. There is no
24

25 ⁶¹ NRS 166.020.

26 ⁶² NRS 166.130.

1 legal authority that allows a spouse to assert a community property interest in property not owned by
2 the other spouse. In light of the foregoing, Lynita's contention that she possesses a community
3 property interest in the ELN SSST is incorrect as a matter of law.

4 **E. LYNITA'S CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS.**

5 NRS 166.170 limits the time frame in which a creditor,⁶³ which is defined as "a person who
6 has a claim, may bring an action against a trust advisor,⁶⁴ trustee and/or spendthrift trust. Specifically,
7 NRS 166.170 provides:

- 8
- 9 1. A person may not bring an action with respect to a transfer of
property to a spendthrift trust:
 - 10 (a) If the person is a creditor when the transfer is made, unless
11 the action is commenced within:
 - 12 (1) Two years after the transfer is made; or
 - 13 (2) Six months after the person discovers or reasonably
14 should have discovered the transfer, whichever is
15 later.
 - 16 (b) If the person becomes a creditor after the transfer is made,
17 unless the action is commenced within 2 years after the
18 transfer is made. (Emphasis added).

19 Under NRS 166.170(2), "[a] person shall be deemed to have discovered a transfer at the time a
20 public record is made of the transfer, including, without limitation, the conveyance of real property
21 that is recorded in the office of the county recorder of the county in which the property is located . . ."
22 Further, NRS 166.170(3) and (6), require that a creditor prove by "clear and convincing evidence" that
23 the transfer of property was a fraudulent transfer and/or violated the laws of the State of Nevada.

24 ⁶³ See NRS 112.150(4) defines a creditor as "a person who has a claim."

25 ⁶⁴ See NRS 166.170(6)(a) defines trust advisor as: "any person, including, without limitation, an accountant,
26 attorney or investment adviser, who gives advice concerning or was involved in the creation of, transfer of
27 property to, or administration of the spendthrift trust or who participated in the preparation of accountings, tax
28 returns or other reports related to the trust." (Emphasis added).

Lynita was advised of this two-year statute of limitation by Burr in person and via correspondence dated May 30, 2001, which specifically provides: “[o]nly those assets transferred to your NOST will be protected from creditors’ claims once the two-year statute of limitations has run from the date you transfer assets into your NOST.”⁶⁵ Lynita executed said correspondence and represented that she “understand and acknowledge receipt of this letter.”⁶⁶ Further, Eric and Lynita established their Self-Settled Spendthrift Trusts concurrently using the same attorney and were aware that the Self-Settled Spendthrift Trusts were funded with assets owned by their respective Separate Property Trusts.⁶⁷ Additionally, a notice relating to transfers made to the ELN SSST and LSN SSST was published in Nevada Legal News three times commencing on August 21, 2001,⁶⁸ and conveyances of real property were recorded in the county recorder’s office. Consequently, the statute of limitations began to run in or around May 2001, over ten (10) years ago. Pursuant to NRS 166.170, any claim that Lynita may have had against the ELN SSST should have been brought no later than May 2003, within two years of its creation and funding; however, she failed to do so. Said failure precludes Lynita’s claims against the ELN SSST.

Even though the time limitations of NRS 11 do not apply because NRS 11.190(3)(d) specifically states that NRS 166.170 supersedes the longer period that would otherwise be allowed under that provision,⁶⁹ Lynita’s claims are similarly barred under NRS 11. Indeed, any claim for the

⁶⁵ See Correspondence from Burr to Lynita dated May 30, 2001, admitted as Intervenor’s Trial Exhibit No. 27 on July 18, 2012.

⁶⁶ *Id.* at Bates No. DEF004056.

⁶⁷ See LSN SSST, admitted as Intervenor’s Trial Exhibit No. 25 on July 17, 2012.

⁶⁸ See Legal Notice, admitted as Intervenor’s Trial Exhibit No.’s 29 and 102 on July 23, 2012.

⁶⁹ NRS 166.170 (8) provides: “[n]otwithstanding any other provision of law, no action of any kind, including, without limitation, an action to enforce a judgment entered by a court or other body having adjudicative authority, may be brought at law or in equity against the trustee of a spendthrift trust if, as of the date the action is brought, an action by a creditor with respect to a transfer to the spendthrift trust would be barred pursuant to this section.”

1 recovery of real property conveyed to Eric under the Separate Property Agreement is beyond the
2 statute of limitations set forth in NRS 11.070 and 11.080, which require the person asserting the claim
3 to be “seized or possessed of the premises” within five years. Any claim for breach of written contract
4 must have been brought within six years or the purported breach,⁷⁰ while any claim for breach of an
5 oral agreement (*i.e.* the purported side agreement that is inadmissible for the reasons set forth *supra*),
6 is subject to a four year statute of limitations.⁷¹ Finally, as to any alleged breach of statutes relating to
7 community property, any claim must have been brought within three years.⁷² For these reasons,
8 Lynita’s claims are barred by the statute of limitations.
9

10 **F. LYNITA FAILED TO INTRODUCE ADMISSIBLE EVIDENCE TO SUPPORT HER ALTER**
11 **EGO CLAIM AGAINST THE ELN SSST.**

12 In order to evaluate the application of any alter-ego doctrine to a self-settled spendthrift trust, it
13 is important to understand the public policy regarding such a trust. Until the mid-1990s, the laws of
14 all states uniformly prohibited the establishment of a spendthrift trust that was completely exempt
15 from the claims of a beneficiary’s creditors to the extent the settlor was a beneficiary. In other words,
16 a self-settled spendthrift trust could not be created because of a public policy that generally prohibited
17 arrangements that allowed a settlor to benefit from a trust he created with his own assets that was
18 shielded from the claims of the settlor’s creditors.

19 Trusts subject to the laws of foreign jurisdictions have allowed self-settled spendthrift trust for
20 many years. In the mid-1990s, because of the lucrative trust business, state legislatures started to
21 consider allowing domestic asset-protection trusts in order to entice trust business into their states.
22 Beginning with Alaska and Delaware in 1997, various states have adopted statutes that allow the
23

24 ⁷⁰ See NRS 11.190(1)(b).

25 ⁷¹ See NRS 11.190(2)(c).

26 ⁷² See NRS 11.190(3)(a).

creation of SSSTs whose assets are exempt from the claims of the settlor's creditors. Thus, the public policy shifted, allowing the settlor to benefit from a trust that would not be liable for the payment of creditors except as to a creditor who can timely meet its burden to prove that such trust or a transfer thereto violates the law.⁷³

Nevada's public policy as set forth in NRS Chapter 166 reflects a desire to reduce disputes, including those based on improper dominion and control or based on an alter-ego theory. There is no Nevada statute that specifies what makes a trust the alter ego of its settlor, but NRS 163.418 and NRS 163.4177 provide some guidelines. NRS 163.418 provides that an alter ego claim must be proven by clear and convincing evidence, and the following factors, alone or in combination, are insufficient for a finding of alter ego:

1. The settlor has signed checks, made disbursements or executed other documents related to the trust as the trustee and the settlor is not a trustee, if the settlor has done so in isolated incidents.
2. The settlor has made requests for distributions on behalf of a beneficiary.
3. The settlor has made requests for the trustee to hold, purchase or sell any trust property.
4. The settlor has engaged in any one of the activities, alone or in combination, listed in NRS 163.4177.

Further, NRS 163.4177 provides that "[i]f a party asserts that a beneficiary or settlor is exercising improper dominion or control over a trust, the following factors, alone or in combination, must not be considered exercising improper dominion or control over a trust:"

1. A beneficiary is serving as a trustee.
2. The settlor or beneficiary holds unrestricted power to remove or replace a trustee.
3. The settlor or beneficiary is a trust administrator, general partner of a partnership, manager of a limited-liability company, officer of a corporation or any other manager of any other type of entity and all or part of the trust property consists of an interest in the entity.

⁷³ The public policy of several states, including South Dakota, Tennessee, Utah, Wyoming, New Hampshire, and Rhode Island, as reflected in their respective spendthrift trust statutes, excluded protection for certain claims, including claims for child support and/or alimony. Nevada has no such limitation.

4. The trustee is a person related by blood, adoption or marriage to the settlor or beneficiary.
5. The trustee is the settlor or beneficiary's agent, accountant, attorney, financial adviser or friend.
6. The trustee is a business associate of the settlor or beneficiary.

Lynita failed to establish her burden, by clear and convincing evidence, that Eric is the alter ego of the ELN SSST. The only evidence introduced by Lynita in support of her alter ego claim either cannot be considered or is insufficient for a finding of alter ego under NRS 163.418 and 163.4177. Indeed, the fact that Lana and Nola served as Distribution Trustee and/or that Eric served as the Investment Trustee of the ELN SSST "must not be considered" under NRS 163.4177(1), (4) or (5). Because she undoubtedly realized that she failed to meet her burden, Lynita seemed to argue that the ELN SSST is invalid because it failed to comport with certain legal formalities. As set forth below, said arguments completely disregard the terms of the ELN SSST and illustrate a lack of basic understanding of trust law.

1. THE APPOINTMENT OF LANA AND NOLA AS DISTRIBUTION TRUSTEE OF THE ELN SSST DOES NOT VIOLATE NEVADA LAW.

Lynita questions the validity of the ELN SSST because Lana, an employee of Eric and/or the ELN SSST, and Nola, Eric's sister, have served and/or currently serve as Distribution Trustee of the ELN SSST. Said contention was rebutted by Burr at trial and shows a lack of basic understanding regarding NRS 166. First, as indicated *supra* under NRS 163.4177 (4) and (5), this Court "must not" consider the fact that Lana was an employee of Eric and/or the ELN SSST, or that Nola is related to Eric in addressing Lynita's alter ego claim.

Secondly, Burr, the Trust Protector of the ELN SSST and LSN SSST who appointed Nola to serve as the Distribution Trustee of both the ELN SSST and LSN SSST on February 22, 2007,⁷⁴ and

⁷⁴ See Change of Distribution Trusteeship for the ELN SSST, admitted as Intervenor's Trial Exhibit No. 149, on July 16, 2012.

Lana to serve as Distribution Trustee of the ELN SSST on June 8, 2011,⁷⁵ did not see any legal issues from them serving as Distribution Trustee of the ELN SSST because there is nothing wrong with the settlor selecting a party that they feel will seek to meet their needs.⁷⁶ Influence should not be a factor when determining whether or not a self-settled spendthrift trust is a sham. Consistent with the public policy reflected in Nevada's legislation relating to spendthrift trusts, two commentators have stated (referring to a self-settled spendthrift trust as an "APT" or asset-protection trust):⁷⁷

[T]here are numerous other reasons that debunk the notion that friendly relations between a trustor and trustee are, by themselves, proof of a sham:

- a. It is the very nature of a trust relationship that trustors will pick trustees they trust, and it should not be surprising that trustees will take care of a trustor-beneficiary.
- b. Trustees are supposed to carry out a trustor's intent.
- c. Given that trustees are fiduciaries who are supposed to be solicitous of their beneficiaries' best interests, they often make distributions requested by beneficiaries-trustors or nontrustors.
- d. The need for a trustee to honor its legal duties to a trustor-beneficiary is most acute precisely when creditors press claims.
- e. A trustee's failure to honor its duties during the pendency of a creditor's claim could expose the trustee to claims for breach of duty, and a beneficiary asserting such claims could seek money damages, a declaratory judgment for specific performance of those duties, or other remedies.
- f. An APT that functions exactly as required by the terms of the agreement is not a sham.

⁷⁵ See Change of Distribution Trusteeship for the ELN SSST, admitted as Intervenor's Trial Exhibit No. 162, on July 16, 2012.

⁷⁶ Similarly, Burr did not have a problem with Lana serving as the initial Distribution Trustee of both the ELN SSST and LSN SSST because both Eric and Lynita agreed to appoint Lana as the initial Distribution Trustee of said trusts as they were comfortable working with her. Although unclear, it appears that Lynita now seems to object to Burr's appointment of Nola to serve as Distribution Trustee of the LSN SSST on February 22, 2007. However, said objection is misplaced as it was Burr as Trust Protector, as opposed to Eric, who had the authority to effectuate said appointment. Further, since Lynita appointed Nola to serve as the guardian of her children in her February 17, 2009, Last Will and Testament, admitted as Intervenor's Trial Exhibit No. 19 on July 19, 2012, it seems odd that she would object to said appointment as Distribution Trustee, especially since Lynita named Nola as a Successor Investment Trustee of the LSN SSST. See Article 11.1 of the LSN SSST, admitted as Intervenor's Trial Exhibit No. 25 on July 17, 2012.

⁷⁷ *Asset Protection: Domestic & International Law & Tactics* § 14A:125, footnotes omitted.

- g. As discussed above, American precedent shows that proper trust administration involving an independent trustee and observing legal formalities will survive a sham challenge.
- h. A rule or argument that a sham trust exists simply because a trustee engages in a pattern of trust distributions or other friendly measures to or for a trustor-beneficiary could actually have an undue chilling effect on a trustee's independence.

Third, Burr was not aware of an express or implied agreement that Lana or Nola as Distribution Trustee would make any distributions as directed by Eric. To the contrary, both Lana and Nola testified that they knew that they had to approve any distributions to Eric, which is consistent with Nevada law that merely requires that all distributions to the settlor are received "only subject to the discretion of another person."⁷⁸ The evidence also shows that Lana and/or Nola approved of distributions in writing on: June 1, 2001, July 3, 2001, October 1, 2001, November 3, 2001, December 2, 2001, January 6, 2002, February 11, 2002, June 1, 2002, July 3, 2002, February 19, 2003, May 31, 2003, June 1, 2003, September 1, 2003, November 12, 2003, February 25, 2004, February 25, 2005, February 23, 2005, February 27, 2006, September 19, 2006, February 23, 2007, January 3, 2008, January 6, 2009, January 6, 2010, June 9, 2011.⁷⁹ Lynita's contention that Lana and Nola have violated a duty by consenting to distributions requested by Eric is a specious argument and must not be considered under NRS 163.418(2). Further, both Lana and Nola expressly testified that they understood that they had the ability to deny any requests for distributions requested by the Eric; however, Eric never asked them to make a distribution that they had disagreed with.

⁷⁸ See NRS 166.040(2)(g).

⁷⁹ See Distribution Authorizations dated June 1, 2001, October 1, 2001, November 3, 2001, December 2, 2001, January 6, 2002, February 11, 2002, June 1, 2002, February 19, 2003, May 31, 2003, June 1, 2003, September 1, 2003, November 12, 2003, January 3, 2008, January 6, 2009, January 6, 2010, June 9, 2011, admitted as Intervenor's Trial Exhibit No.'s 100, 105, 106, 108, 111, 112, 117, 121, 123, 124, 125, 127, 153, 156, 159, 163, and Minutes of Annual Meetings dated July 3, 2001, July 3, 2002, February 25, 2004, February 25, 2005, February 23, 2005, February 27, 2006, September 19, 2006, February 23, 2007, January 3, 2008, January 6, 2009, January 6, 2010, admitted as Intervenor's Trial Exhibit No.'s 101, 118, 131, 133, 141, 146, 148, 150, 153, 155, 158.

2. THE FACT THAT THE ELN SSST AND LSN SSST CONDUCTED BUSINESS WITH EACH OTHER IS IRRELEVANT AND MOST CERTAINLY DOES NOT CONSTITUTE CLEAR AND CONVINCING EVIDENCE THAT ERIC IS THE ALTER EGO OF THE ELN SSST.

Lynita went to great lengths to highlight a few transactions between the ELN SSST and LSN SSST (out of thousands of transactions that were reviewed by Gerety), which she deemed to be unfair to attack the validity of the ELN SSST. The truth of the matter, however, is that Lynita agreed to each and every transaction of which she now complains as evidenced by the documents she executed and her trial testimony.⁸⁰ For the most part, Lynita's characterizations were inaccurate and unfair as they did not represent all of the facts regarding said transactions, and were consistently rebutted by Gerety's expert witness report and/or testimony.

For example, Lynita accused Eric of malfeasance because the LSN SSST transferred its 50% interest in what was referred to as the "Tropicana Albertson's Land" to the ELN SSST on or about November 28, 2006, and on January 1, 2007, said land was sold to a third-party for \$1,457,000.00.⁸¹ What Lynita intentionally failed to advise this Court is that the LSN SSST was only supposed to obtain a deed over the Tropicana Albertson's Land as collateral for a \$700,000.00 loan from the LSN SSST to the ELN SSST, as opposed to an outright conveyance.⁸² Consequently, the LSN SSST had no choice but to relinquish its interest in the Tropicana Albertson's Land to the ELN SSST on or around November 28, 2006, once the \$700,000.00 loan was paid in full.

Lynita also complains that the LSN SSST did not receive any sale proceeds from the sale of Wyoming Downs; however, she fails to recognize that she never owned an interest in Wyoming

⁸⁰ Lynita's testimony that she did not execute various documents is simply not credible. Indeed, many of the documents that she claims she did not sign were notarized by the following notaries: Cindy Marie Nunn, Cathryn J. Goecke, Shelley J. Newell, Joan Bledsoe Ramos, Rochelle McGowan and Nancy Spemry.

⁸¹ See Grant, Bargain, Sale Deed dated November 28, 2006, and January 1, 2007, admitted as Defendant's Trial Exhibit No. IIII.

⁸² See Exhibit 5.03, Bates No. DG-00070, to Dan Gerety's Expert Report, admitted as Intervenor's Trial Exhibit No. 168, on July 23, 2012.

1 Downs. Indeed, as Dan, Eric and Shelley testified, Wyoming Downs was purchased by the ELN
2 Separate Property Trust on or around May 29, 1998,⁸³ from sale proceeds of the Las Vegas Casino, an
3 entity that was wholly owned by the ELN Separate Property Trust. Although Lynita ultimately
4 acquired an interest in two separate parcels of property located near Wyoming Downs (one parcel was
5 approximately eleven acres and the other parcel was approximately two hundred acres), she never
6 obtained an interest in Wyoming Downs itself. Prior to the sale of Wyoming Downs to an unrelated
7 third-party on or around September 6, 2006,⁸⁴ the LSN SSST conveyed its eleven acre parcel of
8 property to an unrelated third-party in exchange for an easement across Wyoming Downs to the two
9 hundred acre parcel of property, which the LSN SSST still owns.⁸⁵ Without such conveyance the two
10 hundred acre parcel of property owned by the LSN SSST would be landlocked and essentially
11 worthless. Consequently, neither Lynita nor the LSN SSST were entitled to any proceeds from the
12 sale of Wyoming Downs.
13

14 Further, Lynita complains that the LSN SSST relinquished its 50% interest in an entity named
15 CJE & L, LLC for little or no consideration. However, Lynita failed to inform this Court that neither
16 Eric nor the ELN SSST maintain an interest in CJE & L, LLC, and that she relinquished 50% interest
17 because she had entered into a flooring agreement, without the advice or knowledge of Eric, thereby
18 creating a large liability for the LSN SSST.⁸⁶ Consequently, Lynita decided to relinquish the interest
19 in CJE & L, LLC in exchange for a release from said liability.
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21
22

23 ⁸³ See Wyoming Downs Documents, admitted as Intervenor's Trial Exhibit No. 166 on July 25, 2012.

24 ⁸⁴ See Escrow Agreement and Asset Purchase Agreement, admitted as Intervenor's Trial Exhibit No.'s 181
and 182 on July 25, 2012.

25 ⁸⁵ See General Warranty Deed, admitted as Intervenor's Trial Exhibit No. 171 on July 23, 2012.

26 ⁸⁶ See Assignment and Assumption of Interest from LSN SSST, admitted as Intervenor's Trial Exhibit No.
172 on July 23, 2012.
27
28

1 Similarly, Lynita complains that the LSN SSST was not compensated for the sale of the Indian
2 School Condo; however, a check from Security Title Agency made payable to the "LSN Nevada Trust,
3 u/a/d 5/30/01" in the amount of \$93,599.74 proves otherwise.⁸⁷ The ELN SSST does not intend to
4 address Lynita's remaining complaints because the ELN SSST and the LSN SSST were permitted to
5 conduct business with each other and Gerety accounted for each and every transaction, all of which
6 were approved by Lynita. Most importantly, whether Lynita's self-serving claim that the transactions
7 complained of were neither fair nor and reasonable are outside the purview of her claim for alter ego.
8 Indeed, if Lynita believes that the ELN SSST owes a debt to the LSN SSST the proper protocol would
9 be for the LSN SSST to the ELN SSST for said debt.
10

11 Contrary to Lynita's contention, no evidence was introduced at trial that Eric or the ELN SSST
12 attempted to take advantage of Lynita or the LSN SSST. To the contrary, the testimony and
13 documents repeatedly show that Eric attempted to provide for and protect Lynita and their children.
14 Indeed, at the time the Separate Property Trusts were created in 1993, the Self-Settled Spendthrift
15 Trusts were created in 2001, and most of the transactions complained of occurred, neither Eric nor
16 Lynita contemplated divorce. The only reason for the disparity between the ELN SSST and LSN
17 SSST (if you can even call it a disparity because of the liabilities owed by the ELN SSST) is because
18 the ELN SSST participated in gaming which Lynita consistently and emphatically stated that she
19 wanted no part of. Dan emphatically testified that the proceeds from the sale of Wyoming downs
20 alone make up 78.06% of all the assets currently held in the ELN SSST.⁸⁸ Notwithstanding, Eric and
21 the ELN SSST shared the success from the gaming ventures by making gifts or distributions to Lynita,
22 the LSN Separate Property Trust and the LSN SSST. Neither Eric nor the ELN SSST had a reason to
23
24
25

26 ⁸⁷ See Check No. 55075841, admitted as Intervenor's Trial Exhibit No. 170, on July 23, 2012.

27 ⁸⁸ See Dan Gerety Report at pp. 3-4, admitted as Intervenor's Trial Exhibit No. 168 on July 23, 2012.

act dishonestly or unfair towards Lynita or the LSN SSST as the Separate Property Trusts and Self-Settled Spendthrift Trusts had the same beneficiaries (*i.e.* themselves and their children).

The fact that Lynita relied upon Eric's office staff to run the day-to-day operations of the LSN Separate Property Trust and LSN SSST does not support Lynita's mistaken contention that she was taken advantage of by Eric and/or the ELN SSST. No evidence was introduced and/or admitted at trial that Eric's staff acted contrary to Lynita's instruction. To the contrary, the limited correspondence between Lynita and Lana or Rochelle that was disclosed in this matter confirms that Lynita relied upon the office staff to assist Lynita in managing the LSN SSST.⁸⁹

3. LYNITA HAS FAILED TO INTRODUCE ANY EVIDENCE THAT THE FORMALITIES OF THE ELN SSST WERE NOT COMPLIED WITH.

Although Lynita testified *ad naeseum* that she failed to follow the formalities of the LSN SSST, she was unable to elicit any testimony or introduce any evidence that Eric failed to follow the formalities of the ELN SSST. Gerety, who specializes in estate and trust planning, testified that Eric and the Distribution Trustees complied with the formalities of the ELN SSST. Further, Gerety testified that he did not observe any terms of the ELN SSST that were violated. Indeed, the testimony elicited at trial shows that Eric was in daily contact with the Distribution Trustee of the ELN Trust, who worked in the same office as Eric, and he approved each and every transaction in which the ELN Trust participated and she approved all distributions to him. Said approval was evidenced by the transaction documents themselves and the annual meeting minutes of the ELN Trust.⁹⁰ It is

⁸⁹ See, e.g., E-mails between Lynita and Rochelle, admitted as Intervenor's Trial Exhibit No.'s 63, 69, 74 75 and 76 on July 23, 2012.

⁹⁰ See Annual Meeting Minutes dated June 1, 2001, July 3, 2001, August 31, 2001, November 30, 2001, December 31, 2001, January 3, 2002, April 3, 2002, May 15, 2002, May 20, 2002, July 3, 2002, December 23, 2002, February 20, 2003, September 20, 2003, December 15, 2003, January 5, 2004, January 10, 2004, February 25, 2004, April 30, 2004, May 10, 2004, May 20, 2004, November 20, 2004, February 23, 2005, May 5, 2005, May 15, 2005, February 25, 2006, September 19, 2006, February 23, 2007, January 3, 2008, January 6, 2009, January 6, 2010, June 16, 2011, admitted as Intervenor's Trial Exhibit No.'s 99, 101, 103, 107, 109, 110, 113, 115, 116, 118, 119, 120, 126, 128, 129, 130, 131, 133, 134, 136, 137, 139, 141, 142, 144, 146, 148, 150, 152, 156, 158, 164.

1 noteworthy that although Burr confirmed that "Nevada law does not require that these Trustee's
2 meetings be held,"⁹¹ Eric and the Distribution Trustee routinely engaged in such meetings and
3 memorialized the same meeting minutes. As a practical matter, but for distributions the Distribution
4 Trustee did not need to be involved in the day-to-day operations of the ELN Trust.

5 Lynita's inability to identify and/or prove that the ELN SSST failed to comply with formalities
6 is further evidence that her alter ego claim is without merit.

7 **IV. CONCLUSION**

8 Lynita's claims against the ELN SSST are time-barred and she failed to establish her burden by
9 clear and convincing evidence that Eric is the alter ego of the ELN SSST and/or that she is entitled to
10 any interest therein. Consequently, this Court should find that neither Eric nor Lynita have a
11 community property and/or separate property interest therein in this valid self-settled spend thrift trust.

12 DATED this 31st day of August, 2012.

13 SOLOMON DWIGGINS & FREER, LTD.

14
15
16 By: 

17 MARK A. SOLOMON, ESQ.

18 Nevada State Bar No. 0418

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22 9060 West Cheyenne Avenue

23 Las Vegas, Nevada 89129

24 *Attorneys for LANA MARTIN, Distribution*

25 *Trustee of the ERIC L. NELSON*

26 *NEVADA TRUST dated May 30, 2001*

27 ⁹¹ See Correspondence from Burr to Eric admitted as Intervenor's Trial Exhibit No. 88, on July 25, 2012.

EXHIBIT 1

EXHIBIT 1

166 Cal.App.4th 1166, 83 Cal.Rptr.3d 385, 08 Cal. Daily Op. Serv. 12,144, 2008 Daily Journal D.A.R. 14,434

(Cite as: 166 Cal.App.4th 1166, 83 Cal.Rptr.3d 385)

H

Court of Appeal, Second District, Division 6, California.

In re MARRIAGE OF Barbara and Frank Gordon
HOLTEMANN.

Barbara Holtemann, Respondent,

v.

Frank Gordon Holtemann, Appellant.

No. B203089.

Sept. 15, 2008.

Review Denied Dec. 10, 2008.

Background: Wife filed petition for dissolution of marriage. Following bifurcation, the Superior Court, San Luis Obispo County, No. FL061017, Patrick J. Perry, Commissioner, issued order in favor of wife regarding the legal effect of a spousal property transmutation agreement executed during the marriage, and husband appealed.

Holdings: The Court of Appeal, Perren, J., held that:

- (1) transmutation agreement and trust clearly established husband's express intent to transmute his separate property to community property,
- (2) holding did not undermine public policy; and
- (3) trust and transmutation agreement were admissible as evidence of transmutation before husband's death.

Affirmed.

West Headnotes

[1] Husband and Wife 205 ⚡ 266.2(1)

205 Husband and Wife

205VII Community Property

205k266 Transactions Between Husband and Wife

205k266.2 Contracts

205k266.2(1) k. In general. Most Cited

Cases

Transmutation agreement and trust, which stated that

separate property was "hereby transmuted from his separate property to the community property of both parties," referred to trust property as "property transmuted by Husband hereunder," and stated that wife acknowledged "transmutation of Husband's separate property into community property," clearly established, in dissolution of marriage action, husband's express intent to transmute his separate property to community property, where husband was fully informed of legal consequences of his actions; provisions in agreement which stated it was "not made in contemplation of a separation or marital dissolution and is made solely for the purpose of interpreting how property shall be disposed of on the deaths of the parties," and that transmutation was undertaken on condition that wife not modify trust, did not limit transmutation to estate planning purposes. West's Ann.Cal.Fam.Code § 850, 852(d).

See 11 Witkin, Summary of Cal. Law (10th ed. 2005) Community Property, § 153 et seq.; Cal. Jur. 3d, Family Law, § 578 et seq.; Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2007) ¶ 9:255 (CAFAMILY Ch. 9-D); Cal. Civil Practice (Thomson/West 2007) Family Law Litigation, § 5:30 et seq; Annot., Transmutation of separate into community property by agreement or gift between husband and wife, or transfer or conveyance by one to the other (1939) 120 A.L.R. 264.

[2] Husband and Wife 205 ⚡ 266.2(2)

205 Husband and Wife

205VII Community Property

205k266 Transactions Between Husband and Wife

205k266.2 Contracts

205k266.2(2) k. Form and requisites; oral agreements. Most Cited Cases

A writing signed by the adversely affected spouse is not an "express declaration" for purposes of statute requiring such declaration for transmutation of property into community property unless it contains language which expressly states that the characterization or ownership of the property is being changed. West's Ann.Cal.Fam.Code § 852(a).

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATT KLABACKA, Distribution Trustee
of the Eric L. Nelson Nevada Trust dated
May30, 2001,

Appellant/Cross Respondent.

vs.

LYNITA SUE NELSON, Individually and in
her capacity as Investment Trustee of the
LSN NEVADA TRUST dated May 30,
2001; and ERIC L. NELSON, Individually
and in his capacity as Investment Trustee of
the ELN NEVADA TRUST dated May 30,
2001;

Respondents/Cross-Appellants.

MATT KLABACKA, as Distribution
Trustee of the Eric L. Nelson Nevada Trust
dated May30, 2001,

Appellants,

vs.

ERIC L. NELSON; LYNITA SUE
NELSON, INDIVIDUALLY; AND LSN
NEVADA TRUST DATED MAY 30, 2001,

Respondents.

Supreme Court Case No. 66772

District Court Case No. D-09-

411537

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Dec 01 2015 10:42 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

Consolidated With:

Supreme Court Case No. 68292

**RECORD ON APPEAL
VOLUME 19**

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Supreme Court Case 66772 Consolidated with 68292 In the Matter of: Klabacka v. Nelson et al.

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12	07/10/2012	Defendant's Motion in Limine to Exclude Testimony and Report of Daniel T. Gerety, CPA	2850 - 2863
20	06/17/2013	Defendant's Motion to Amend or Alter Judgement for Declaratory and Related Relief	4755 – 4798
23, 24	11/13/2014	Defendant's Motion to Enforce the June 3, 2013 Decree of Divorce, Address Issues Relating to Property Awarded to Defendant in the Divorce, and for Related Relief	5579 – 5805
24	12/22/2014	ELN Trust's Opposition to Defendant's Motion to Enforce the June 3, 2013 Decree of Divorce, Address Issues Relating to Property Awarded to Defendant in the Divorce, and for Related Relief	5806 – 5940
26	01/26/2009	E-mail from Mrs. Nelson to Barbara Morelli (Admitted as Intervenor Trial Exhibit 12)	6350
26	04/28/1993	Executed Separate Property Agreement (Admitted as Intervenor Trial Exhibit 4)	6273 – 6282
26	02/27/2009	Exercise of Power of Appointment for the LSN Nevada Trust (Admitted as Intervenor Trial Exhibit 81)	6462 - 6468
26	03/24/1994	Fax from Jeffrey L. Burr & Associates to Shelley Newell (Admitted as Intervenor Trial Exhibit 10)	6345 - 6346
26	03/19/1994	Fax from Shelley Newell to Jeffrey L. Burr & Associates (Admitted as Intervenor Trial Exhibit 9)	6343 – 6344
26	07/08/1993	Fax to Melina Barr from Roslyn Hinton (Admitted as	6253 - 6261

		Intervenor Trial Exhibit 2)	
25	06/08/2015	Findings of Fact and Order	6226 – 6248
30	03/22/2007	Grant, Bargain, Sale Deed (Admitted as Nelson Exhibit 57A)	7394 – 7396
26	01/09/2001	Handwritten Note from Jeff Burr File (Admitted as Intervenor Trial Exhibit 20)	6389 - 6391
26	01/15/2001	Handwritten Note from Jeff Burr File (Admitted as Intervenor Trial Exhibit 21)	6392
26	07/15/1993	Handwritten Note to Melina (Admitted as Intervenor Trial Exhibit 1)	6252
8	08/19/2011	Initial Appearance Fee Disclosure (NRS Chapter 19)	1775- 1776
1	05/18/2009	Joint Preliminary Injunction	9-10
30	09/08/2011	Judgement and Order Granting Plaintiffs' Motion for Summary Judgment in United States District Court, Central District of California, Case No. 2:11-cv-02583-JEM (Admitted as GGGGG at Tab 23)	7409 - 7410
26	02/17/2009	Last Will and Testament of Mrs. Nelson (Admitted as Intervenor Trial Exhibit 19)	6384 - 6388
26	00/00/0000	Letter of Instruction signed by Mrs. Nelson (Admitted as Intervenor Trial Exhibit 18)	6383
26	06/19/1998	Letter to Mr. and Mrs. Nelson from Jeffrey L. Burr & Associates (Admitted as Intervenor Trial Exhibit 11)	6347 - 6349
6	01/30/2001	Letter to Mr. and Mrs. Nelson from Jeffrey L. Burr & Associates (Admitted as Intervenor Trial Exhibit 22)	6393
26	02/15/2001	Letter to Mr. and Mrs. Nelson from Jeffrey L. Burr & Associates (Admitted as Intervenor Trial Exhibit 23)	6394
26	05/30/2001	Letter to Mr. and Mrs. Nelson from Jeffrey L. Burr & Associates (Admitted as Intervenor Trial Exhibit 28)	6442 – 6444
26	05/30/2001	Letter to Mrs. Nelson from Jeffrey L. Burr & Associates (Admitted as Intervenor Trial Exhibit 26)	6434 - 6437
26	05/30/2001	Letter to Mrs. Nelson from Jeffrey L. Burr & Associates (Admitted as Intervenor Trial Exhibit 27)	6438 - 6441
26	05/03/2002	Letter to Mrs. Nelson from Jeffrey L. Burr & Associates (Admitted as Intervenor Trial Exhibit 40)	6447
26	03/26/2003	Letter to Mrs. Nelson from Jeffrey L. Burr & Associates (Admitted as Intervenor Trial Exhibit 44)	6448
26	05/03/2004	Letter to Mrs. Nelson from Jeffrey L. Burr & Associates (Admitted as Intervenor Trial Exhibit 51)	6449
26	05/04/2005	Letter to Mrs. Nelson from Jeffrey L. Burr & Associates (Admitted as Intervenor Trial Exhibit 57)	6450
26	02/09/2009	Letter to Mrs. Nelson from Jeffrey L. Burr & Associates (Admitted as Intervenor Trial Exhibit 79)	6453 - 6457
26	02/09/2009	Letter to Mrs. Nelson from Jeffrey L. Burr & Associates (Admitted as Intervenor Trial Exhibit 80)	6458 – 6461
26	00/00/0000	Letter to Nevada Legal News from Jeffrey L. Burr & Associates (Admitted as Intervenor Trial Exhibit 29)	6445 – 6446

26,	07/13/1993	Letter to Richard Koch with Separate Property Agreement (Admitted as Intervenor Trial Exhibit 3)	6262 - 6272
11	05/15/2012	Limited Objection to Application of Forensic Accountants for Allowance of Fees and Reimbursement of Expenses for the period from April 4, 2011 through March 31, 2012	2710 – 2712
8	09/30/2011	Lynita Sue Nelson's: (1) Answer to Claims of The Eric L. Nelson Nevada Trust; and (2) Claims for Relief Against Eric L. Nelson Nevada Trust dated May 30, 2001, Lana Martin, Nola Harber, Rochelle McGowan, Joan B. Ramos, and Does 1 through X (Whether Designed as a Counterclaim, Cross-Claim and/or Third Party Complaint)	1818 - 1853
9	12/20/2011	Lynita Sue Nelson's: (1) First Amended Answer to Claims of the Eric L. Nelson Nevada Trust and (2) First Amended Claims for Relief Against Eric L. Nelson Nevada Trust dated May 30, 2001, Lana Martin, Nola Harber, Rochelle McGowan, Joan B. Ramos, and Does 1 through X (Whether Designed as a Counterclaim, Cross-Claim and/or Third Party Complaint)	2140 - 2182
30	05/07/2013	Memorandum from Robert P. Dickerson in Support of AB378 (Exhibit 8)	7480 - 7487
27	00/00/0000	Miscellaneous Documents produced by Defendants (Admitted as Intervenor Trial Exhibit 167)	6513 – 6549
29, 30	03/01/2002	Mississippi Deeds (Admitted as Nelson Exhibit 8A)	7069 - 7393
10	03/06/2012	Motion for Payment of Attorneys' Fees and Costs	2461 – 2494
19	06/05/2013	Motion for Payment of Funds Belonging to Defendant Pursuant to Court's Decree to Ensure Receipt of the Same, and for Immediate Payment of Court Appointed Expert	4743 – 4752
8	11/07/2011	Motion to Dismiss	1885 - 1908
9	01/17/2012	Motion to Dismiss Amended Third-Party Complaint and Motion to Strike	2190 - 2224
8	11/29/2011	Motion to Dissolve Injunction	1916 - 1999
7	06/24/2011	Motion to Join Necessary Party; or in the Alternative; to Dismiss Claims Against The Eric L. Nelson Nevada Trust dated May 30, 2011	1606 - 1661
23	10/20/2014	Notice of Appeal	5576 – 5578
25, 26	06/23/2015	Notice of Appeal	6249 – 6251
21	09/10/2013	Notice of Entry of Injunctions from September 4, 2013 Hearing	5230 – 5241
10	01/31/2012	Notice of Entry of Order	2264 – 2272
11	05/29/2012	Notice of Entry of Order	2739 – 2745
12	06/05/2012	Notice of Entry of Order	2759 – 2770

12	07/11/2012	Notice of Entry of Order	2914 – 2920
12	07/11/2012	Notice of Entry of Order	2921 – 2929
19	08/07/2012	Notice of Entry of Order	4517 – 4520
	06/03/2012	Notice of Entry of Order	4691 – 4742
8	11/14/2011	Notice of Entry of Order and Order – August 24, 2011 Hearing	1909 - 1915
21	09/03/2013	Notice of Entry of Order Denying Countermotion to Stay Payments and Transfer Property Pending Appeal and/or Resolution to the Nevada Supreme Court for an Extraordinary Writ	5148 – 5153
23	09/22/2014	Notice of Entry of Order Determining Disposition of Dynasty Development Management, Inc. AKA Wyoming Downs	5553 – 5561
19	10/10/2012	Notice of Entry of Order from July 16, 2012 Hearing	4683 – 4690
19	08/31/2012	Notice of Entry of Order from April 10, 2012 Hearing and Injunction	4531 – 4539
19, 20	08/31/2012	Notice of Entry of Order from February 23, 2012 Hearing Partially Granting ELN Trust's Motion to Dismiss Third-Party Complaint Without Prejudice.	4540 – 4550
23	09/22/2014	Notice of Entry of Order from July 22, 2013 Hearing on Lynita Nelson's Motion to Amend or Alter Judgment for Declaration and Related Relief	5562 – 5575
21, 22	09/30/2013	Notice of Entry of Order from September 4, 2013 Hearing Regarding Payment of Lindell Professional Plaza Income	5247 – 5254
19	08/29/2012	Notice of Entry Of Order Granting Motion for Relief from Automatic Stay and Denying Motion to Dismiss Without Prejudice	4521 – 4527
12	06/05/2011	Notice of Entry of Order regarding Findings of Fact and Order dated June 5, 2012	2771 – 2782
7	08/09/2011	Notice of Entry of Stipulation and Order	1742 - 1746
8	09/14/2011	Notice of Filing a Summary Appraisal Report of a Two- Story Office Building (3611 Lindell Road, Las Vegas, NV)	1789 - 1801
10	02/27/2012	Notice of Filing Amendment to Source and Application of Duns for Lynita Nelson	2249 – 2460
10	01/27/2012	Notice of Filing Amendment to Source and Application of Funds for Emerald Bay Mississippi, LLC Filed December 8, 2011	2257 – 2263
10	02/27/2012	Notice of Filing Amendment to Source and Application of Funds for Eric L. Nelson Nevada Trust	2425 – 2248
7	07/05/2011	Notice of Filing Asset Schedule and Notes to Asset Schedule	1662 - 1683
9	12/23/2011	Notice of Filing Corrected Asset Schedule by Ownership	2186 - 2189
7	07/15/2011	Notice of Filing Income and Expense Reports for Banone-AZ LLC	1713 -1724

8	08/15/2011	Notice of Filing Income and Expense Reports for Emerald Bay Resorts, LLC	1762 – 1769
7	07/19/2011	Notice of Filing Income and Expense Reports for Eric L. Nelson Nevada Trust	1725 - 1741
7, 8	08/15/2011	Notice of Filing Income and Expense Reports for Eric Nelson Auctioneering	1747 - 1761
9, 10	01/26/2012	Notice of Filing Income and Expense Reports for Eric Nelson Auctioneering	2225 -2256
8	09/28/2011	Notice of Filing Income and Expense Reports for Lynita Nelson	1806 - 1817
7	07/11/2011	Notice of Filing Income and Expense Reports for: (1) Banone, LLC and (2) Dynasty Development Group	1684 - 1712
10	02/16/2012	Notice of Filing Source and Application of Funds for Banone-AZ, LLC	2362 – 2389
11	04/11/2012	Notice of Filing Source and Application of Funds for Dynasty Development Group, LLC	2645 – 2677
9	12/08/2011	Notice of Filing Source and Application of Funds for Eric L. Nelson Nevada Trust	2060 - 2095
11	04/23/2012	Notice of Filing Source and Application of Funds Pursuant to April 10, 2012 Hearing	2678 – 2709
8	10/03/2011	Notice of Filing Summary Appraisal Report of +202.50 Acres of Agricultural/Residential Land (Uinta County, Wyoming)	1854 - 1859
8	10/06/2011	Notice of Submission of First Billing for Fees and Expenses of Forensic Accountants	1860 -1884
11	04/09/2012	Opposition to Countermotion for Receiver, Additional Injunction and Fees and Costs	2630 – 2642
21	08/23/2013	Opposition to Imposition of Charging Order and Appointment of Receiver	5043 – 5066
10, 11	03/26/2012	Opposition to Motion for Payment of Attorneys' Fees and Costs, and Countermotion for Receiver, Additional Injunction, and Fees and Costs	2495 – 2594
20	06/18/2013	Opposition to Motion for Payment of Funds Belonging to Defendant Pursuant to Court's Decree to Ensure Receipt of the Same, and for Immediate Payment of Court Appointed Expert; and Countermotion to Stay Payments and Transfer Property Pending Appeal and/or Resolution to the Nevada Supreme Court for an Extraordinary Writ	4799 – 4812
16	07/20/2012	Opposition to Motion in Limine to Exclude to Exclude from Trial the Testimony and Report of Daniel T. Gerety, CPA, Layne T. Rushforth, Esq. and Any Purported Experts Testimony Regarding the Interpretation of Law, and Application of Facts to Law; to Strike the Eric L. Nelson Nevada Trusts' Pre-Trial Memorandum; and Counter-Motion to Continue Trial and for Attorneys' Fees and Costs	3803 – 3838

8, 9	12/01/2011	Opposition to Motion to Dismiss and Countermotion for an Award of Attorneys' Fees and Costs	2000 - 2040
9	12/07/2011	Opposition to Motion to Dissolve Injunction and Countermotion for an Aware of Attorneys' Fees and Costs	2041 - 2059
30	07/11/2012	Order entered in Case D-09-411537-D	7471 - 7479
20	06/19/2013	Order for Payment of Funds Pursuant to June 3, 2013 Decree of Divorce	4847 - 4850
30	08/09/2011	Order in Case No. D-09-411537-D	7400 - 7402
6	11/17/2010	Partial Transcript, Non-Jury Trial, November 17, 2010	1256 - 1435
6	11/22/2010	Partial Transcript, Non-Jury Trial, November 22, 2010	1436 - 1499
6, 7	11/22/2010	Partial Transcript, Non-Jury Trial, November 22, 2010	1500 - 1605
21	09/27/2013	Plaintiff Eric Nelson's Response to Lynita's Response to Court Ordered Accountings Provided by Eric Nelson	5242 - 5246
19	08/31/2012	Post-Trial Brief of Eric L. Nelson Nevada Trust Dated May 30, 2001	4551 - 4610
30	01/28/2005	Promissory Note in favor of Lana Martin	7488
30	01/28/2005	Promissory Note in favor of Robert A. Martin	7489
29	09/25/1999	Real Estate Records for 5220 E. Russell Road, Las Vegas, Nevada (UUUU)	7017 - 7049
	06/06/2013	Receipt of Copy regarding Motion for Payment of Funds Belonging to Defendant Pursuant to Court's Decree to Ensure Receipt of the Same, and for Immediate Payment of Court Appointed Expert	4753 - 4754
8	09/19/2011	Reply to Counterclaim and Answer to Cross - Claim	1802 - 1805
24, 25	01/14/2015	Reply to ELN Trust's Opposition to Defendant's Motion to Enforce the June 3, 2013 Decree of Divorce, Address Issues Relating to Property Awarded to Defendant in the Divorce, and for Related Relief and Eric Nelson's Opposition to Defendants Motion to Enforce June 3, 2013 Decree of Divorce, Address Issues Relating to Property Awarded to Defendant in the Divorce, and for Related Relief and Opposition to Eric Nelson's Countermotion	5941 - 6076
11	05/22/2012	Reply to Limited Objection to Application of Forensic Accountants for Allowance of Fees and Reimbursement of Expenses for the period from April 4, 2011 through March 31, 2012 filed by the Eric L. Nelson Nevada Trust and Reply to Limited Objection to Application of Forensic Accountants for Allowance of Fees and Reimbursement of Expenses for the period from April 4, 2011 through March 31, 2012 filed by Eric Nelson	2713 - 2738
22	10/14/2013	Reply to Opposition to Countermotion/Petition for Appointment of Authorized Trustee and for Fees and Costs	5255 - 5265

20	07/11/2013	Reply to Opposition to Defendant's Motion to Amend or Alter Judgement, for Declaratory and Related Relief and Joinder to Opposition	4851 – 4869
21	08/30/2013	Reply to Opposition to Imposition of Charging Order and Appointment of Receiver and Requests for Injunction and Fees and Costs	5067 – 5087
11	04/04/2012	Reply to Opposition to Motion for Payment of Attorneys' Fees and Costs	2595 – 2623
9	12/09/2011	Reply to Opposition to Motion to Dismiss and Countermotion for An Aware of Attorneys' Fees and Costs	2096 - 2123
9	12/09/2011	Reply to Opposition to Motion to Dissolve Injunction and Opposition to Countermotion for an Aware of Attorneys Fees and Costs	2124 -2139
22	10/15/2013	Reply to Plaintiff Eric Nelson's Response to Court Order Accountings	5266 - 5287
27, 28, 29	07/05/2012	Report of Gerety & Associates (Admitted as Intervenor Trial Exhibit 168)	6550 – 7014
21	08/30/2013	Response to Court Order Accountings Provided by Eric Nelson	5088 – 5147
19	09/28/2012	Response to Defendant Lynita S. Nelson's Post-Trial Memorandum on Trust Issues	4628 – 4657
29	01/21/2002	Soris Original Mortgage – (Wyoming Property) – (Admitted as Nelson Exhibit 41C)	7050 – 7068
8	08/24/2011	Summons directed to Eric Nelson	1779 -1782
8	08/24/2011	Summons directed to Lynita Sue Nelson	1783 -1786
11	04/05/2012	Supplement to Opposition to Motion for Payment of Attorneys' Fees and Costs, and Countermotion for Receiver, Additional Injunction, and Fees and Costs	2624 – 2629
	10/08/2012	Supplement to Verified Memorandum of Attorneys' Fees and Costs	4658 – 4682
26, 27	05/30/2001	The Eric L. Nelson Nevada Trust (Admitted as Intervenor Trial Exhibit 86)	6475 – 6508
12	07/06/2012	The Eric L. Nelson Nevada Trust's Pretrial Memorandum	2783 – 2849
26	07/13/1993	The Eric L. Nelson Separate Property Trust (Admitted as Intervenor Trial Exhibit 7)	6313 – 6341
26	05/30/2001	The LSN Nevada Trust (Admitted as Intervenor Trial Exhibit 25)	6395 - 6433
26	07/13/1993	The Nelson Trust (Admitted as Intervenor Trial Exhibit 5)	6283 - 6311
20, 21	08/01/2013	Transcript Re: All Pending Motions	4991 – 5039
21	09/05/2013	Transcript Re: All Pending Motions	5154 – 5229
22	10/21/2013	Transcript Re: All Pending Motions	5288 – 5347
25	01/26/2015	Transcript RE: All Pending Motions	6077 – 6225
22, 23	06/04/2014	Transcript RE: Decisions	5495 – 5552

20	06/19/2013	Transcript Re: Motion	4813 – 4846
20	07/22/2013	Transcript Re: Motion	4876 – 4990
10	02/23/2012	Transcript regarding Decision	2390 – 2424
10	01/31/2012	Transcript relating to Motion	2273 – 2361
4	10/19/2010	Transcript, Non-Jury Trial, October 19, 2010	849 – 990
4, 5, 6	10/20/2010	Transcript, Non-Jury Trial, October 20, 2010	991 – 1255
1, 2	08/30/2010	Transcript, Non-Jury Trial, Volume 1 from August 30, 2010	40 – 258
2	08/31/2010	Transcript, Non-Jury Trial, Volume 2 from August 31, 2010	259 - 441
2, 3	08/31/2010	Transcript, Non-Jury Trial, Volume 3 from August 31, 2010	442 – 659
3,4	09/01/2010	Transcript, Non-Jury Trial, Volume 4 from September 1, 2010	660 –848
13, 14	07/17/2012	Trial Transcript Re: Non-Jury Trial	3181 – 3406
14, 15	07/18/2012	Trial Transcript Re: Non-Jury Trial	3407 – 3584
22	05/30/2014	Trial Transcript RE: Non-Jury Trial	5348 – 5494
15	07/19/2012	Trial Transcript Re: Non-Jury Trial – Vol. I	3585 – 3714
16	07/23/2012	Trial Transcript Re: Non-Jury Trial – Vol. I	3839 – 3943
17	07/24/2012	Trial Transcript Re: Non-Jury Trial – Vol. I	4050 – 4187
18	07/25/2012	Trial Transcript Re: Non-Jury Trial – Vol. I	4279 – 4447
15, 16	07/19/2012	Trial Transcript Re: Non-Jury Trial – Vol. II	3715 – 3802
16, 17	07/23/2012	Trial Transcript Re: Non-Jury Trial – Vol. II	3494 -4049
17, 18	07/24/2013	Trial Transcript Re: Non-Jury Trial – Vol. II	4188 – 4278
18, 19	07/25/2012	Trial Transcript Re: Non-Jury Trial – Vol. II	4448 -4514
12, 13	07/16/2012	Trial Transcript Volume I	2930 – 3120
13	07/16/2012	Trial Transcript Volume II	3121 – 3180
26	02/17/2009	Trust Agreement of the Total Amendment and Restatement of the Nelson Trust (Admitted as Intervenor Trial Exhibit 14)	6351 – 6381
30	03/31/2011	Trust Ownership-Distribution Report of Larry Bertsch (Admitted as Exhibit GGGGG at Tab 9)	7397 – 7399
19	09/28/2012	Verified Memorandum of Attorneys' Fees and Costs	4611 – 4627

1 MS. PROVOST: 161 is May the 18th of --
2 THE COURT: 161?
3 MS. PROVOST: -- whatever months from --
4 THE COURT: Is that admitted or no?
5 MS. FORSBERG: No objection.
6 MR. DICKERSON: No objection to 161.
7 THE COURT: Okay. 161.
8 (Intervener's Exhibit 161 admitted)
9 THE COURT: All right. So we got --
10 MR. SOLOMON: Offer 166.
11 MS. FORSBERG: I believe this comes from your book,
12 Bob. Bob, I believe 161 comes from your book property number
13 16 --
14 MR. DICKERSON: I have no objection.
15 MS. FORSBERG: No objection.
16 THE COURT: 166 was the next one?
17 MR. DICKERSON: 166 isn't from mine, but I don't
18 have any objection.
19 MS. PROVOST: Some of them are.
20 MR. DICKERSON: Some of them are.
21 THE COURT: 166.
22 (Intervener's Exhibit 166 admitted)
23 THE COURT: So we have 2 and 87 through 98, 160, 161
24 and 166. Okay. Okay.

1 MR. SOLOMON: Anything else? We rest of we have no
2 further questions of the -- oh, hold on. Maybe I do.

3 THE WITNESS: There is one. I think we -- we need
4 to be clear on the West Flamingo property. It had been an
5 issue.

6 MR. SOLOMON: That's what happens when you're in a
7 hurry, Your Honor.

8 MS. PROVOST: I like Mark's statement better.

9 BY MR. SOLOMON:

10 Q What would you like to tell the Court about the West
11 Flamingo property?

12 A The West Flamingo property, there's been a question
13 in regards to the funding, did Lynita get her fair share of
14 that. I know in 2005, 2006 she received over 800,000 from the
15 Grada group. The Grada funding though, the West Flamingo
16 property is very important, because it entails all my brothers
17 and sisters. That property in West Flamingo was acquired from
18 the death of my mother and father. And we put that property
19 in Lynita's name as a holding of that property there. And at
20 the proper time Lynita signed all the documentations to
21 transfer it to the Grada group where she was one-sixth.

22 Q So that -- would that have been your one-sixth
23 interest?

24 A That would have been my one-sixth interest, but I

1 wanted to make sure that she felt she was included on all
2 projects. And my brothers and brothers were fine --

3 Q And you had no interest in Grada.

4 A Excuse me?

5 Q You had no interest in Grada, is that --

6 A I had no interest in Grada. It was all my brothers
7 and sisters. Their spouses were not included, Lynita was.
8 And he referenced that she did not receive benefit from that.
9 This is -- it is not true I don't believe. And that in any
10 areas when monies were paid, that's where they would level
11 things off immediately when there is a payoff to Grada which
12 is reflected in that \$800,000 I think it's 2005, 2006 and the
13 documents that Mr. Burr on the last disbursement on that 10
14 acres on West Flamingo was paid. I don't know if that made
15 any sense or not, but --

16 Q Let me ask just this last question I hope. Did you
17 make every effort during the course of your marriage the
18 operation of the assets and the management of the assets in
19 both the '93 Trust and the 2001 Trust to advise Lynita what
20 was going on as it was happening?

21 A Yes.

22 Q Did you ever withhold any information from her?

23 A No.

24 Q Did you ever take advantage of her in any of the

1 transactions that were going on that?

2 A No, I think it needs to be noted that I probably had
3 six or eight gaming properties that had failed during that
4 time. So I wasn't always successful. And the money from the
5 Wyoming Horse Racing was a gaming property and it was planned
6 to be rolled over and take over the Silver Slipper Casino.
7 That didn't materialize.

8 Q Why is your trust have more value than the LSN
9 Trust?

10 A It truly doesn't. If you look at the liabilities
11 and you add the liabilities in there and the future
12 liabilities, Lynita doesn't have liabilities. She has free
13 and clear assets. She had free access to two and a half to
14 \$3,000,000. She moved that money willingly and -- and without
15 my knowledge in 2007 or '8.

16 Q Mr. Gerety testified that approximately 80 percent
17 of the assets in your trust originate from the proceeds of the
18 sale of Wyoming Downs.

19 A That's just the way --

20 Q Do you agree with that?

21 A Yes, that's the way it rolled out.

22 Q And that was an asset that Lynita did not want to
23 have an interest in, isn't that true?

24 A That is correct.

1 MR. SOLOMON: Nothing further.

2 MR. DICKERSON: Rhonda?

3 MS. FORSBERG: Nothing further.

4 MR. DICKERSON: Is there any objection to introduce
5 the -- it should have been Exhibit WWWW which is the 2005 tax
6 return for the Grada Group LLC that reflects as the -- it has
7 the K-1s in it showing what she did with accuracy?

8 MR. SOLOMON: I don't have any objection to that.

9 MS. FORSBERG: I have no objection.

10 THE COURT: That's quadruple W.

11 MR. DICKERSON: Quadruple W.

12 THE COURT: You got that? Quadruple W hereby be
13 admitted.

14 (Defendant's Exhibit WWWW admitted)

15 CROSS EXAMINATION

16 BY MR. DICKERSON:

17 Q And Mr. Nelson, can you confirm that the -- that you
18 recall the check you saw written to Irwin Union Bank.

19 A Yes, sir.

20 Q That was a Grada Group LLC that was paid off, isn't
21 that true?

22 A I don't believe so.

23 Q Okay.

24 A I'm not sure, but I don't believe that Grada

1 Financial -- or as banked at the -- or when National -- I
2 couldn't tell you.

3 Q Now if I understand your testimony that you've given
4 here today, you had weekly conversations with your wife where
5 you would discuss these type -- all business matters, is that
6 correct?

7 A Yes, I would say at least. That was my passion, my
8 work along with my family.

9 Q And would you describe it to her in the way that you
10 described it here in Court today?

11 A Probably in greater detail in some sense.

12 Q Okay. And you included her in meetings at your
13 office, is that correct?

14 A Whenever she would like to come, yes.

15 Q According to you, you included her in many meetings?

16 A In the office?

17 Q Yes.

18 A She didn't come to very many meetings in the office.

19 Q And you testified that you explained thoroughly all
20 the transactions that were going on with the --

21 A Definitely.

22 Q -- either your assets or her assets.

23 A Definitely with her assets there's no questions.

24 With my assets, the purchase of the, you know, building a

1 casino in Mexico City. She knew not -- what was going on but
2 the complexity of that and the interest in that of a
3 publically traded company and the takeover of that. Not what
4 I've gotten into that great detail.

5 Q Well, you did fully discuss with her the loans that
6 were going and forth between your respective trusts, correct?

7 A I believe so, yes.

8 Q And you explained that in detail.

9 A Just as she would be paid in full.

10 Q And showed her how -- you explained what the loans
11 were for.

12 A Yes.

13 Q And you just brought home to her and discussed the
14 monthly ledgers, is that right?

15 A Yes. Uh-huh (affirmative).

16 Q Discussed it in detail and explained to her what the
17 monthly ledgers were.

18 A I showed her that more importantly the check
19 register money coming in and money coming out.

20 Q And you discussed with her how you would use the
21 loan proceeds to be purchasing properties and what those
22 properties were needed for, is that right?

23 A The -- it's a little more complicated than just loan
24 proceeds. The reason why is because when you have a

1 partnership with -- let's exclude Lynita. Let's say I had
2 Bill Walters and he had to -- he managed properties in Arizona
3 and I managed the properties in Nevada. We would have a due
4 to, due from. And so periodically either six months, once a
5 year or 18 months or a rolling time frame we would get
6 together and level those trusts as off.

7 So when Lynita was loaning money, she showed money
8 coming -- going out one way but coming back in would come
9 through the paid back in those areas there. So you would have
10 a relinquish of it. No, it would be offset to -- on the due
11 to and due from as Dan Gerety's report is.

12 Q And you would discuss -- and you explained all that
13 to her.

14 A The majority of it that she's being pad back.

15 Q And she fully understood all that.

16 A I don't know if she fully understood it all.

17 Q Well, and you also explained to her the tax issues
18 that you've discussed here today.

19 A Pretty much, yeah.

20 Q In the same manner that you explained it here to the
21 Court?

22 A Just yes, we had definitely a tax advantage that was
23 allowed in a unique -- with the uniqueness of the separate
24 property trust that was unique inside a marriage.

1 Q And you fully discussed with her this plan of yours
2 as to why you were going to split up the Mississippi property,
3 is that correct?

4 A One question, we just didn't have meetings in the
5 house. When we go to dinner, we had -- that's a topic of
6 conversation was to plan unit developments and things like
7 that.

8 Q And you shared with her your plans on how you're
9 going to clear up all the land in Mississippi, is that right?

10 A I believe, yes.

11 Q And you fully explained to her that whole
12 explanation about the easement in Wyoming that you discussed
13 with the Court, is that right?

14 A Well, I wouldn't know if I had gone into that much
15 detail with the exception that she needed to have an easement
16 to that property to increase the value of her asset.

17 Q Now I would take it then all these things that you
18 do and explain what was going on, it would take you a
19 considerable amount of time.

20 A About as much time as we spent here today. It
21 wouldn't take more than an hour when we're at dinner. It's
22 something we talked about.

23 Q So at least an hour a week you would discuss this
24 with her?

1 A Oh, yeah.

2 Q If not, more?

3 A If not, more.

4 Q Can you explain to us sir why you would waste your
5 time discussing all of these things with the woman whom you
6 considered to be mentally challenged?

7 A No, I think you misunderstood the -- the
8 conversation that Lynita's challenged. I don't believe that
9 Lynita standing here today and believe that she was telling
10 you anything that was incorrect. Lynita believes what she
11 believes. She might be misleading people at periodic times.
12 She has what they call tunnel vision meaning that she sees
13 some areas and it doesn't see outside sources there.

14 She has a hard time remembering some things
15 periodically. I do the same thing. I thought Lynita has a
16 little bit more challenge in those areas there. Now that's my
17 personal belief. I love the lady. She's the -- she's the
18 children of my -- of my five children. And I would never take
19 advantage of her.

20 Q Then why would you take your time and waste your
21 time discussing this, all these issues with the woman who you
22 considered to be mentally challenged?

23 A It was not a waste of time.

24 MR. DICKERSON: Thank you. I have nothing further.

1 MR. SOLOMON: We're done.

2 THE WITNESS: That does not mean I have the divorce

3 --

4 MR. DICKERSON: So does the Trust rests?

5 MR. SOLOMON: The Trust rests.

6 THE WITNESS: Thank you, Your Honor. I want to

7 thank you for your help for staying over so late. It was very

8 important for me and my family and Lynita. Thank you guys.

9 MR. DICKERSON: Your Honor, I have this -- Ms.

10 Forsberg, do you have anything else with respect to the trust

11 case?

12 MS. FORSBERG: I do not.

13 THE COURT: Oh, yeah. Did you want to --

14 MR. DICKERSON: We have nothing with respect --

15 THE COURT: Did you want to authenticate 183? That

16 was the one --

17 MR. DICKERSON: Yes.

18 THE COURT: -- we held in there.

19 MR. DICKERSON: It -- yeah, have you -- this is the

20 --

21 THE COURT: This is one that they submitted that you

22 want to authenticate her signature I think it was.

23 MS. NELSON: It was this one.

24 MR. DICKERSON: Or -- oh. Oh. Yeah. Can we do

1 that one?

2 THE COURT: Is that the one that you wanted to look
3 at that you wanted to ask --

4 MR. DICKERSON: Can we put her on the stand on this?
5 Thank you for waiting.

6 THE COURT: Let me ask, do you want to back there or
7 do you want to go from the stand or --

8 MS. PROVOST: We can ask here you said if you want
9 to just leave her there.

10 THE COURT: Are you okay there? They just want to
11 ask to authenticate 183 her signature.

12 MR. DICKERSON: Does she need to put under oath
13 swear her --

14 THE COURT: No, you're all --

15 MR. DICKERSON: All right.

16 THE COURT: You're under oath already, so --

17 LYNITA NELSON

18 recalled as a witness on behalf of the Defendant and being
19 previously sworn, testified as follows on:

20 DIRECT EXAMINATION

21 BY MR. DICKERSON:

22 Q Lynita, if you'll take a look at Exhibit 183. Have
23 you seen that document?

24 A I haven't.

1 Q You have what?

2 A I have not.

3 Q Now the --

4 MR. SOLOMON: I couldn't hear her answer.

5 MR. DICKERSON: She said she has not.

6 THE COURT: That she had not.

7 A I have not.

8 MR. SOLOMON: All right.

9 Q Take a look at the signature page, please. Do you

10 believe that to be your signature?

11 A I do not.

12 Q And would you explain to the Court why you do not

13 believe to be your signature?

14 A The N, the E, the L, the S, the S on Sue, I don't

15 believe that it's mine.

16 Q And again, this appears to have been notarized by --

17 oh, Rochelle McGowan. Okay.

18 A I can imagine.

19 MR. DICKERSON: Okay. Your Honor, with that

20 understanding, with that, I have no objection to this being

21 admitted into evidence.

22 (Intervener's Exhibit 183 admitted)

23 MR. SOLOMON: Do you rest?

24 MR. DICKERSON: We rest.

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THE COURT: Okay. So as far as --
MR. DICKERSON: With respect to the trust case.
THE COURT: Yeah, so as far as what we have here --
well, why don't go off -- we'll go off the record because
there's some housekeeping. Because I'm going to --

(PROCEEDINGS CONCLUDED AT 18:07:53)

* * * * *

ATTEST: I do hereby certify that I have truly and
correctly transcribed the digital proceedings in the
above-entitled case to the best of my ability.



Adrian N. Medrano

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Search Refine Search Close

Location : Family Courts Images Help

REGISTER OF ACTIONS

CASE NO. D-09-411537-D

Eric L. Nelson, Plaintiff. vs. Lynita Nelson, Defendant.

§
§
§
§
§
§

Case Type: Divorce - Complaint
Subtype: Complaint Subject Minor (s)
Date Filed: 05/06/2009
Location: Department L
Conversion Case Number: D411537

PARTY INFORMATION

Defendant	Nelson, Lynita 7065 PALMYRA AVE Las Vegas, NV 89117	Female 5' 7", 130 lbs	Lead Attorneys Robert Paul Dickerson, ESQ <i>Retained</i> 702-388-8600(W)
Plaintiff	Nelson, Eric L 3611 S Lindell RD APT 201 Las Vegas, NV 89103	Male 6' 0", 190 lbs	Rhonda K. Forsberg <i>Retained</i> 702-800-3588(W)
Subject Minor	Nelson, Carli Ann		
Subject Minor	Nelson, Garrett		

EVENTS & ORDERS OF THE COURT

07/16/2012 **Non-Jury Trial (9:30 AM) (Judicial Officer Sullivan, Frank P.)**
07/16/2012, 07/17/2012, 07/18/2012, 07/19/2012, 07/23/2012, 07/24/2012, 07/25/2012

Minutes

07/16/2012 9:30 AM

- MOTION IN LIMINE: DEFENDANT'S MOTION IN LIMINE TO EXCLUDE TESTIMONY AND REPORT OF DANIEL T. GERETY CPA...MOTION IN LIMINE: DEFENDANT'S MOTION IN LIMINE TO EXCLUDE FROM TRIAL THE TESTIMONY AND REPORT OF LAYNE T. RUSHFORTH, ESQ AND ANY PURORTED EXPERT TESTIMONY REGARDING THE INTERPRETATION OF LAW AND APPLICATION OF FACTS, STRIKE ERIC L. NELSON NEVADA TRUST'S PRE-TRIAL MEMORANDUM AND ATTORNEY'S FEES...NON-JURY TRIAL Following arguments by counsel, COURT ORDERED, the court will exclude Mr. Rushforth's testimony as an expert witness. The Court will GRANT the Motion in Limine as to Mr. Rushforth only. The court will allow Mr. Gerety to testify as a witness not as an expert. Attorney Fees is DENIED at this time. The court will STRIKE all documents attached to the pre-trial memorandum and the report from Mr. Rushforth attached to the Motion. Mr. Dickerson requested he be allowed to provide Mr. Berch with Mr. Gerety's report since he be will be allowed to testify and he can be familiar with the report, also that he be allowed to testify on Thursday. COURT ORDERED, it will DENY Mr. Dickerson's request, however, does not have a problem with him testifying on Thursday. At this time the court will not allow Mr. Berch to get involved with this, he is coming in on a limited testimony as a Master. COURT FURTHER ORDERED, Mr. Karacsonyi is to prepare the order. Opening statements by counsel. Court recessed for lunch. Court reconvened. Witnesses sworn and testified to per attached worksheet. Exhibits offered and admitted per attached worksheet. There being insufficient time to conclude hearing, COURT ORDERED, matter will

reconvene on 7/17/12 at 9:30 a.m.

07/17/2012 9:30 AM

- Court continued testimony as per witness list. Exhibits marked and admitted. COURT ORDERED, MATTER CONTINUED.

07/18/2012 9:30 AM

- Court heard continued testimony as per worksheet. Exhibits marked and admitted. Deposition of Jeffrey L. Burr, Volume I and Volume II PUBLISHED IN OPEN COURT. COURT ORDERED, MATTER CONTINUED.

07/19/2012 9:30 AM

- Also present at Counsel's table for Defendant is Melissa Attanasio. Court heard continued testimony as per worksheet. Exhibits marked and admitted. COURT ORDERED, MATTER CONTINUED.

07/23/2012 9:30 AM

- Also present at Counsel's table for Defendant is Melissa Attanasio. Court heard continued testimony as per worksheet. Exhibits marked and admitted. COURT ORDERED, Defendant counsel's request to meet with Special Master Burch is DENIED. MATTER CONTINUED.

07/24/2012 9:30 AM

07/24/2012 9:30 AM

- Court heard continued testimony as per worksheet. Exhibits marked and admitted. COURT ORDERED, MATTER CONTINUED.

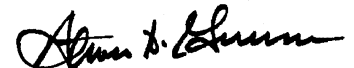
07/25/2012 9:30 AM

- Daniel Gerety, CPA also present at Plaintiffs Counsel's table. The Notary Book of Rochelle McGowan provided under seal to the court for in-camera inspection. Court heard continued testimony per worksheet. Exhibits marked and admitted. Parties RESTED as to the trust issues. Parties discussed the briefing schedule and future trial dates. COURT ORDERED, both parties to submit briefs as to the Trust by 8/31/12 and any responses by 9/21/12. Thereafter, the matter will be submitted and the court will issue a written decision. TRIAL is continued to address divorce issues on August 20, 2012 and August 22, 2012.

Parties Present

Return to Register of Actions

8/9/12



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

ERIC L. NELSON,

Plaintiff/Counterdefendant,

vs.

LYNITA SUE NELSON, LANA MARTIN, as
Distribution Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001,

Defendant/Counterclaimants.

CASE NO.: D-09-411537-D
DEPT. NO.: O

LANA MARTIN, Distribution Trustee of the
ERIC L. NELSON NEVADA TRUST dated
May 30, 2001,

Crossclaimant,

vs.

LYNITA SUE NELSON,

Crossdefendant.

NOTICE OF ENTRY OF ORDER

FRANK R. SULLIVAN
DISTRICT JUDGE

FAMILY DIVISION, DEPT. O
LAS VEGAS NV 89101


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TO:

Rhonda Forsberg, Esq.
Robert Dickerson, Esq.
Mark Solomon, Esq.
Jeffrey Luszeck, Esq.
Larry Bertsch

PLEASE TAKE NOTICE that FINDINGS OF FACT AND ORDER was duly entered
in the above-referenced case on the 7th day of August, 2012.

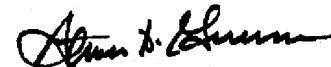
DATED this 7 day of August, 2012.



Lori Parr
Judicial Executive Assistant
Dept. O

FRANK R. SULLIVAN
DISTRICT JUDGE

FAMILY DIVISION, DEPT. O
LAS VEGAS NV 89101


CLERK OF THE COURT

ORDR

DISTRICT COURT
CLARK COUNTY, NEVADA

ERIC L. NELSON,

Plaintiff/Counterdefendant,

vs.

LYNITA SUE NELSON, LANA MARTIN, as
Distribution Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001,

Defendant/Counterclaimants.

CASE NO.: D-09-411537-D
DEPT. NO.: O

LANA MARTIN, Distribution Trustee of the
ERIC L. NELSON NEVADA TRUST dated
May 30, 2001,

Crossclaimant,

vs.

LYNITA SUE NELSON,

Crossdefendant.

FINDINGS OF FACT AND ORDER

This Honorable Court, having presided over the Evidentiary Hearing wherein Plaintiff,
Eric Nelson, Defendant, Lynita Nelson and Counterdefendant, Cross-Defendant, Third-Party
Defendant, Lana Martin, Distribution Trustee of the Eric L. Nelson Nevada Trust (hereinafter,
"Intervenor") all appeared before this Court, hereby issues the following Minute Order:

FRANK R. SULLIVAN
DISTRICT JUDGE

FAMILY DIVISION, DEPT. O
LAS VEGAS NV 89101

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THE COURT HEREBY FINDS that during the Evidentiary Hearing, this Court admitted into evidence copies of Pages 17-33 of Rochelle McGowan's Journal of Notarial Acts (marked as Defendant's Exhibit CCCCC), and copies of Pages 36 and 37 of Ms. McGowan's Journal of Notarial Acts (marked as Intervenor's Exhibit 177), contingent upon the Court's in-camera inspection of the corresponding pages contained in Ms. McGowan's Journal of Notarial Acts to ensure that they are true and accurate copies of the same.

THE COURT FURTHER FINDS that upon its in-camera review and inspection of Pages 17-33 and Pages 36 and 37 of Ms. McGowan's Journal of Notarial Acts, this Court has determined that Defendant's Exhibit CCCCC and Intervenor's Exhibit 177 are true and accurate representations of the corresponding pages contained in Ms. McGowan's Journal of Notarial Acts.

THEREFORE, IT IS HEREBY ORDERED that Defendant's Exhibit CCCCC and Intervenor's Exhibit 177 will remain as admitted documents in their entirety, without revision.

Dated this 7th day of August, 2012.



Honorable Frank P. Sullivan
District Court Judge - Dept. O

8/30/12

NEO
THE DICKERSON LAW GROUP
ROBERT P. DICKERSON, ESQ.
Nevada Bar No. 000945
KATHERINE L. PROVOST, ESQ.
Nevada Bar No. 008414
JOSEF M. KARACSONYI, ESQ.
Nevada Bar No. 010634
1745 Village Center Circle
Las Vegas, Nevada 89134
Telephone: (702) 388-8600
Facsimile: (702) 388-0210
Email: info@dickersonlawgroup.com
Attorneys for LYNITA SUE NELSON

DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON,
Plaintiff/Counterdefendant,
v.
LYNITA SUE NELSON
Defendant/Counterclaimant.

CASE NO. D-09-411537-D
DEPT NO. "O"

ERIC L. NELSON NEVADA TRUST
dated May 30, 2001, and LSN NEVADA
TRUST dated May 30, 2001,
Necessary Parties (joined in this
action pursuant to Stipulation and
Order entered on August 9, 2011)

NOTICE OF ENTRY OF ORDER
GRANTING MOTION FOR
RELIEF FROM AUTOMATIC
STAY AND DENYING MOTION
TO DISMISS WITHOUT
PREJUDICE

1
2 LANA MARTIN, as Distribution Trustee)
3 of the ERIC L. NELSON NEVADA)
4 TRUST dated May 30, 2001,)

5 Necessary Party (joined in this)
6 action pursuant to Stipulation and)
7 Order entered on August 9, 2011)/)
8 Purported Counterclaimant and)
9 Crossclaimant,)

10 v.)

11 LYNITA SUE NELSON and ERIC)
12 NELSON,)

13 Purported Cross-Defendant and)
14 Counterdefendant,)

15 LYNITA SUE NELSON,)

16 Counterclaimant, Cross-Claimant,)
17 and/or Third Party Plaintiff,)

18 v.)

19 ERIC L. NELSON, individually, and as)
20 the Investment Trustee of the ERIC L.)
21 NELSON NEVADA TRUST dated May)
22 30, 2001; the ERIC L. NELSON)
23 NEVADA TRUST dated May 30, 2001;)
24 LANA MARTIN, individually, and as the)
25 current and/or former Distribution)
26 Trustee of the ERIC L. NELSON)
27 NEVADA TRUST dated May 30, 2001,)
28 and as the former Distribution Trustee of)
the LSN NEVADA TRUST dated May)
30, 2001; NOLA HARBER, individually,)
and as the current and/or former)
Distribution Trustee of the ERIC L.)
NELSON NEVADA TRUST dated May)
30, 2001, and as the current and/or)
former Distribution Trustee of the LSN)
NEVADA TRUST dated May 30, 2001;)
ROCHELLE McGOWAN, individually;)
JOAN B. RAMOS, individually; and)
DOES I through X,)

Counterdefendants, and/or)
Cross-Defendants, and/or)
Third Party Defendants.)

1 NOTICE OF ENTRY OF ORDER GRANTING MOTION FOR RELIEF FROM
2 AUTOMATIC STAY AND DENYING MOTION TO DISMISS WITHOUT
3 PREJUDICE

4 TO: ERIC L. NELSON, Plaintiff; and

5 TO: RHONDA K. FORSBERG, ESQ., of FORSBERG & DOUGLAS, Attorneys for
6 Plaintiff;

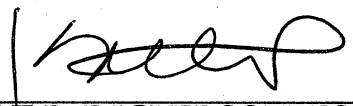
7 TO: MARK A. SOLOMON, ESQ., and JEFFREY P. LUSZECK, ESQ., of
8 SOLOMON, DWIGGINS & FREER, LTD., Attorneys for the Eric L. Nelson
9 Nevada Trust:

10 PLEASE TAKE NOTICE that an ORDER GRANTING MOTION FOR
11 RELIEF FROM AUTOMATIC STAY AND DENYING MOTION TO DISMISS
12 WITHOUT PREJUDICE was entered by the United States Bankruptcy Court District
13 of Nevada on August 28, 2012, a copy of which is attached hereto.

14 DATED this 29th day of August, 2012.

15 THE DICKERSON LAW GROUP

16 By

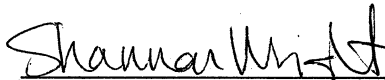
17 
18 ROBERT P. DICKERSON, ESQ.
19 Nevada Bar No. 000945
20 KATHERINE L. PROVOST, ESQ.
21 Nevada Bar No. 008414
22 JOSEF M. KARACSONYI, ESQ.
23 Nevada Bar No. 10634
24 1745 Village Center Circle
25 Las Vegas, Nevada 89134
26 Attorneys for Defendant
27
28

1 CERTIFICATE OF MAILING

2 I HEREBY CERTIFY that I am this date depositing a true and correct copy of
3 the attached NOTICE OF ENTRY OF ORDER GRANTING MOTION FOR
4 RELIEF FROM AUTOMATIC STAY AND DENYING MOTION TO DISMISS
5 WITHOUT PREJUDICE, via facsimile and in the U.S. Mail, postage prepaid to the
6 following at their last known addresses, on the 21st day of August, 2012:

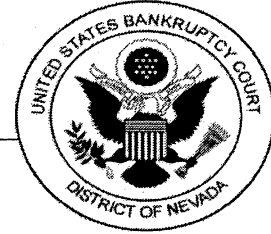
7
8 RHONDA K. FORSBERG, ESQ.
9 FORSBERG & DOUGLAS
10 1070 W. Horizon Ridge Pkwy., Ste. 100
Henderson, Nevada 89012
(702) 800-3589
Attorneys for Plaintiff

11
12 MARK A. SOLOMON, ESQ.
13 SOLOMON, DWIGGINS, FREER & MORSE, LTD.
14 9060 W. Cheyenne Avenue
Las Vegas, Nevada 89129
(702) 853-5485

15 
16 An employee of The Dickerson Law Group
17
18
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20
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24
25
26
27
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Bruce A. Markell

Honorable Bruce A. Markell
United States Bankruptcy Judge



Entered on Docket
August 28, 2012

Goldsmith & Guymon, P.C.
Marjorie A. Guymon, Esq.
Nevada Bar No. 4983
E-mail: mguymon@goldguylaw.com
Erin M. Houston, Esq.
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E-mail: ehouston@goldguylaw.com
2055 Village Center Circle
Las Vegas, Nevada 89134
Telephone: (702) 873-9500
Facsimile: (702) 873-9600
Attorneys for Creditor, Lynita Nelson

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:)	CASE NO. BK-S-12-16334-bam
DYNASTY DEVELOPMENT GROUP,)	
LLC,)	CHAPTER 11
)	
Debtor.)	Hearing date: August 21, 2012
)	Hearing time: 10:00 a.m.

ORDER GRANTING MOTION FOR RELIEF FROM AUTOMATIC STAY AND
DENYING MOTION TO DISMISS WITHOUT PREJUDICE

Creditor, Lynita Nelson, by and through bankruptcy counsel, Goldsmith & Guymon, P.C., having filed her Motion for Relief From Automatic Stay and Motion to Dismiss Case; the matter having been set for hearing on August 21, 2012 at the hour of 10:00 a.m.; the same having been timely noticed to all interested parties; no timely opposition having been filed, but Debtor having filed an untimely opposition; Marjorie A. Guymon, Esq. of Goldsmith & Guymon, P.C. appearing on behalf of Creditor, and John T. Oblad, Esq. of The Oblad Law Group, Chtd. appearing on behalf

1 of the Debtor; the Debtor representing through counsel its willingness to stipulate to the stay lifting
2 as requested in the pending motion for relief as to the Funds; the Court having entertained the oral
3 argument of counsel upon hearing, and for good cause appearing,

4 IT IS HEREBY ORDERED that the motion to dismiss is denied without prejudice.

5 IT IS FURTHER ORDERED that the motion for relief from automatic stay is hereby granted.

6 IT IS FURTHER ORDERED that the Eighth Judicial District Court, Family Division,
7 Department O ("Family Court") shall have exclusive jurisdiction over the sum of \$1,568,000 (the
8 "Funds"), presently held in an interest bearing account by Debtor's principal, Eric L. Nelson's legal
9 counsel pursuant to a preliminary injunction issued by the Family Court.

10 IT IS FURTHER ORDERED that the Funds are deemed not property of the Debtor's
11 bankruptcy estate, and the Family Court may make whatever disposition of the Funds without regard
12 to the Debtor's bankruptcy filing.

13
14 SUBMITTED BY:

15 GOLDSMITH & GUYMON, P.C.

16 /s/ Marjorie A. Guymon
17 MARJORIE A. GUYMON, ESQ.
Nevada Bar No. 4983
18 ERIN M. HOUSTON, ESQ.
Nevada Bar No. 11814
19 2055 Village Center Circle
Las Vegas, Nevada 89134
20 Attorneys for Lynita Nelson
21
22
23
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9021 CERTIFICATION

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that (check one):

☐ The court has waived the requirement of approval under LR 9021(b)(1).

☐ No party appeared at the hearing or filed an objection to the motion.

☒ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or failed to respond to the order]:

Approved/Disapproved/Failed to Respond:

The Oblad Law Group, Chtd.

/s/J. Taylor Oblad

J. Taylor Oblad

Nevada Bar No.: 11430

3611 South Lindell, Suite 201B

Las Vegas, NV 89103

Tele: (702) 241-2613

Attorney for Debtor

☐ I certify that this a case under Chapter ____, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

/s/ Marjorie A. Guymon, Esq.

Marjorie A. Guymon, Esq.

Attorneys for Debtor

IT IS SO ORDERED.

Page 3 of 3

###

COPY

FILED
9/4/12

CERT
THE DICKERSON LAW GROUP
ROBERT P. DICKERSON, ESQ.
Nevada Bar No. 000945
KATHERINE L. PROVOST, ESQ.
Nevada Bar No. 008414
JOSEF M. KARACSONYI, ESQ.
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Facsimile: (702) 388-0210
Email: info@dickersonlawgroup.com
Attorneys for LYNITA SUE NELSON

DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON,

Plaintiff/Counterdefendant,

v.

LYNITA SUE NELSON

Defendant/Counterclaimant.

CASE NO. D-09-411537-D
DEPT NO. "O"

ERIC L. NELSON NEVADA TRUST
dated May 30, 2001, and LSN NEVADA
TRUST dated May 30, 2001,

Necessary Parties (joined in this
action pursuant to Stipulation and
Order entered on August 9, 2011)

CERTIFICATE OF MAILING

1 LANA MARTIN, as Distribution Trustee)
2 of the ERIC L. NELSON NEVADA)
3 TRUST dated May 30, 2001,)

4 Necessary Party (joined in this)
5 action pursuant to Stipulation and)
6 Order entered on August 9, 2011)/)
7 Purported Counterclaimant and)
8 Crossclaimant,)

9 v.)

10 LYNITA SUE NELSON and ERIC)
11 NELSON,)

12 Purported Cross-Defendant and)
13 Counterdefendant,)

14 LYNITA SUE NELSON,)

15 Counterclaimant, Cross-Claimant,)
16 and/or Third Party Plaintiff,)

17 v.)

18 ERIC L. NELSON, individually, and as)
19 the Investment Trustee of the ERIC L.)
20 NELSON NEVADA TRUST dated May)
21 30, 2001; the ERIC L. NELSON)
22 NEVADA TRUST dated May 30, 2001;)
23 LANA MARTIN, individually, and as the)
24 current and/or former Distribution)
25 Trustee of the ERIC L. NELSON)
26 NEVADA TRUST dated May 30, 2001,)
27 and as the former Distribution Trustee of)
28 the LSN NEVADA TRUST dated May)
30, 2001; NOLA HARBER, individually,)
and as the current and/or former)
Distribution Trustee of the ERIC L.)
NELSON NEVADA TRUST dated May)
30, 2001, and as the current and/or)
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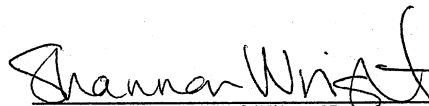
Counterdefendants, and/or)
Cross-Defendants, and/or)
Third Party Defendants.)

1 CERTIFICATE OF MAILING

2 I HEREBY CERTIFY that I am serving via U.S. Mail to Plaintiff's and Lana
3 Martin's Trustee counsel, a true and correct copy of the foregoing DEFENDANT'S
4 POST TRIAL MEMORANDUM ON TRUST ISSUES to the following at their last
5 known addresses on this 31st day of August, 2012.

6
7 RHONDA K. FORSBERG, ESQ.
8 FORSBERG & DOUGLAS
9 1070 W. Horizon Ridge Pkwy., Ste. 100
Henderson, Nevada 89012
(702) 800-3589
Attorneys for Plaintiff

10 MARK A. SOLOMON, ESQ.
11 SOLOMON, DWIGGINS, FREER & MORSE, LTD.
12 9060 W. Cheyenne Avenue
Las Vegas, Nevada 89129
(702) 853-5485
13 Attorney for Lana Martin, Distribution Trustee of the ELN Trust

14
15 
16 An employee of The Dickerson Law Group
17
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NEO
THE DICKERSON LAW GROUP
ROBERT P. DICKERSON, ESQ.
Nevada Bar No. 000945
KATHERINE L. PROVOST, ESQ.
Nevada Bar No. 008414
JOSEF M. KARACSONYI, ESQ.
Nevada Bar No. 010634
1745 Village Center Circle
Las Vegas, Nevada 89134
Telephone: (702) 388-8600
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Email: info@dickersonlawgroup.com
Attorneys for LYNITA SUE NELSON

DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON,
Plaintiff/Counterdefendant,
v.
LYNITA SUE NELSON
Defendant/Counterclaimant.

CASE NO. D-09-411537-D
DEPT NO. "O"

ERIC L. NELSON NEVADA TRUST
dated May 30, 2001, and LSN NEVADA
TRUST dated May 30, 2001,

**NOTICE OF ENTRY OF ORDER
FROM APRIL 10, 2012
HEARING AND INJUNCTION**

Necessary Parties (joined in this
action pursuant to Stipulation and
Order entered on August 9, 2011)

1
2 LANA MARTIN, as Distribution Trustee)
3 of the ERIC L. NELSON NEVADA)
4 TRUST dated May 30, 2001,)

5 Necessary Party (joined in this)
6 action pursuant to Stipulation and)
7 Order entered on August 9, 2011)/)
8 Purported Counterclaimant and)
9 Crossclaimant,)

10 v.)

11 LYNITA SUE NELSON and ERIC)
12 NELSON,)

13 Purported Cross-Defendant and)
14 Counterdefendant,)

15 LYNITA SUE NELSON,)

16 Counterclaimant, Cross-Claimant,)
17 and/or Third Party Plaintiff,)

18 v.)

19 ERIC L. NELSON, individually, and as)
20 the Investment Trustee of the ERIC L.)
21 NELSON NEVADA TRUST dated May)
22 30, 2001; the ERIC L. NELSON)
23 NEVADA TRUST dated May 30, 2001;)
24 LANA MARTIN, individually, and as the)
25 current and/or former Distribution)
26 Trustee of the ERIC L. NELSON)
27 NEVADA TRUST dated May 30, 2001,)
28 and as the former Distribution Trustee of)
the LSN NEVADA TRUST dated May)
30, 2001; NOLA HARBER, individually,)
and as the current and/or former)
Distribution Trustee of the ERIC L.)
NELSON NEVADA TRUST dated May)
30, 2001, and as the current and/or)
former Distribution Trustee of the LSN)
NEVADA TRUST dated May 30, 2001;)
ROCHELLE McGOWAN, individually;)
JOAN B. RAMOS, individually; and)
DOES I through X,)

Counterdefendants, and/or)
Cross-Defendants, and/or)
Third Party Defendants.)

1 NOTICE OF ENTRY OF ORDER FROM APRIL 10, 2012
2 HEARING AND INJUNCTION

3 TO: ERIC L. NELSON, Plaintiff; and

4 TO: RHONDA K. FORSBERG, ESQ., of FORSBERG & DOUGLAS, Attorneys for
5 Plaintiff;

6 TO: MARK A. SOLOMON, ESQ., and JEFFREY P. LUSZECK, ESQ., of
7 SOLOMON, DWIGGINS & FREER, LTD., Attorneys for the Eric L. Nelson
8 Nevada Trust:

9 PLEASE TAKE NOTICE that an **ORDER FROM APRIL 10, 2012 HEARING**
10 **AND INJUNCTION** was entered in the above-entitled matter on August 29, 2012,
11 a copy of which is attached hereto.

12 DATED this 31st day of August, 2012.

13 THE DICKERSON LAW GROUP

14 By Josef Karacsonyi
15 ROBERT P. DICKERSON, ESQ.
16 Nevada Bar No. 000945
17 KATHERINE L. PROVOST, ESQ.
18 Nevada Bar No. 008414
19 JOSEF M. KARACSONYI, ESQ.
20 Nevada Bar No. 10634
21 1745 Village Center Circle
22 Las Vegas, Nevada 89134
23 Attorneys for Defendant
24
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26
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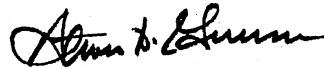
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CLERK OF THE COURT

1 **ORDR**
2 **THE DICKERSON LAW GROUP**
3 **ROBERT P. DICKERSON, ESQ.**
4 **Nevada Bar No. 000945**
5 **KATHERINE L. PROVOST, ESQ.**
6 **Nevada Bar No. 008414**
7 **JOSEF M. KARACSONYI, ESQ.**
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11 **Telephone: (702) 388-8600**
12 **Facsimile: (702) 388-0210**
13 **Email: info@dickersonlawgroup.com**
14 **Attorneys for LYNITA SUE NELSON**

11
12
13 **EIGHTH JUDICIAL DISTRICT COURT**
14 **FAMILY DIVISION**

15 **CLARK COUNTY, NEVADA**

16 **ERIC L. NELSON,**

17
18 **Plaintiff/Counterdefendant,**

19 **v.**

20 **LYNITA SUE NELSON,**

21 **Defendant/Counterclaimant.**

22
23 **ERIC L. NELSON NEVADA TRUST**
24 **dated May 30, 2001, and LSN NEVADA**
25 **TRUST dated May 30, 2001,**

26 **Necessary Parties (joined in this**
27 **action pursuant to Stipulation and**
28 **Order entered on August 9, 2011)**

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)
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)
) **CASE NO. D-09-411537-D**
) **DEPT NO. "O"**

)
) **DATE OF HEARING: 04/10/12**
) **TIME OF HEARING: 1:30 p.m.**

1 LANA MARTIN, as Distribution Trustee of)
 2 the ERIC L. NELSON NEVADA TRUST)
 3 dated May 30, 2001,)
 4 Necessary Party (joined in this action)
 5 pursuant to Stipulation and Order)
 6 entered on August 9, 2011)/ Purported)
 7 Counterclaimant and Crossclaimant,)
 8 v.)
 9 LYNITA SUE NELSON and ERIC)
 10 NELSON,)
 11 Purported Cross-Defendant and)
 12 Counterdefendant,)
 13 LYNITA SUE NELSON,)
 14 Counterclaimant, Cross-Claimant,)
 15 and/or Third Party Plaintiff,)
 16 v.)
 17 ERIC L. NELSON, individually and as the)
 18 Investment Trustee of the ERIC L. NELSON)
 19 NEVADA TRUST dated May 30, 2001; the)
 20 ERIC L. NELSON NEVADA TRUST dated)
 21 May 30, 2001; LANA MARTIN, individually,)
 22 and as the current and/or former Distribution)
 23 Trustee of the ERIC L. NELSON NEVADA)
 24 TRUST dated May 30, 2001, and as the)
 25 former Distribution Trustee of the LSN)
 26 NEVADA TRUST dated May 30, 2001);)
 27 NOLA HARBER, individually, and as the)
 28 current and/or former Distribution Trustee)
 of the ERIC L. NELSON NEVADA TRUST)
 dated May 30, 2001, and as the current)
 and/or former Distribution Trustee of the)
 LSN NEVADA TRUST dated May 30, 2001;)
 ROCHELLE McGOWAN, individually;)

1 JOAN B. RAMOS, individually; and DOES I)
2 through X,)

3 Counterdefendant, and/or)
4 Cross-Defendants, and/or)
5 Third Party Defendants.)
6

7 **ORDER FROM APRIL 10, 2012 HEARING AND INJUNCTION**

8 This matter coming on for hearing on this 10th day of April, 2012, before the
9 Honorable Frank P. Sullivan, for a Decision on the ERIC L. NELSON NEVADA
10 TRUST's ("ELN Trust")¹ Motion for Payment of Attorneys Fees and Costs, Plaintiff's
11 Opposition to the Motion for Payment of Attorneys Fees and Costs and
12 Countermotion for Receiver, Additional Injunction, and Fees and Costs, and the ELN
13 Trust's Reply to Opposition and Opposition to Countermotion; ROBERT P.
14 DICKERSON, ESQ., KATHERINE L. PROVOST, ESQ., and JOSEF M.
15 KARACSONYI, ESQ., of THE DICKERSON LAW GROUP, appearing on behalf of
16 Defendant, LYNITA NELSON, and Defendant being present; RHONDA K.
17 FORSBERG, ESQ., of FORSBERG & DOUGLAS, appearing on behalf of Plaintiff,
18 ERIC NELSON, and Plaintiff being present; and MARK P. SOLOMON, ESQ., and
19 JEFFREY P. LUSZECK, ESQ., of SOLOMON, DWIGGINS, & FREER, LTD.,
20 appearing on behalf of the ELN Trust. The Court having reviewed and analyzed the
21 pleadings and papers on file herein, having researched the issues presently before the
22 Court, and having heard the arguments of counsel and the parties, and good cause
23 appearing therefore,

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25 ...

26 ...

27 ¹ The Motion for Payment of Attorneys Fees and Costs having been brought on behalf of the
28 Eric L. Nelson Nevada Trust by its Distribution Trustee, Lana Martin.

1 THE COURT FINDS that to ensure the Court will have a clear understanding
2 of all of the assets, income, expenses, and day-to-day operations of the ELN Trust at
3 the time of trial, Defendant's request for further injunctive relief is warranted pursuant
4 to EDCR 5.85, NRS 125.050, and other applicable Nevada law, and an injunction
5 prohibiting the acquisition of any new assets, or the encumbrance, or sale of existing
6 assets to maintain the status quo of the ELN trust as of 3:00 p.m. today, April 10,
7 2012, shall be issued. The ELN Trust shall not acquire any new or additional assets,
8 encumber existing assets, or sell existing assets without the specific order of the Court.

9 NOW THEREFORE,

10 IT IS HEREBY ORDERED that the ELN Trust's Motion for Payment of
11 Attorneys Fees and Costs is taken under advisement with the Court to issue a separate
12 Findings of Fact and written Order on this request.

13 IT IS FURTHER ORDERED that Defendant's requests to appoint a receiver to
14 manage the assets of the ELN Trust, and to place in a blocked account the proceeds
15 from the Mellon Bank account, and Wyoming Downs purchase are DENIED.

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