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IN THE SUPREME COURT OF THE STATE OF NEVADA

MATT KLABACKA,
DISTRIBUTION TRUSTEE OF
THE ERIC L. NELSON NEVADA
TRUST DATED MAY 30, 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 ERIC L.
NELSON NEVADA TRUST
DATED MAY 30, 2001,
Respondents/Cross-Appellant.

} SUPREME COURT CASE NO.: 66772

} District Court Case No. D411537

Electronically Filed
Mar 02 2016 08:51 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

} Consolidated with Case No. 68292

RESPONDENT/CROSS-APPELLANT, LYNITA SUE NELSON'S,
APPENDIX VOLUME 6

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
Attorneys for Respondent/Cross-Appellant, LYNITA SUE NELSON

1 Supreme Court Case 66772 Consolidated with 68292

2

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1	01/21/11	Motion for Temporary Support, for Release of Information, for an Order Enjoining Eric from Taking Certain Actions, for Monitoring by this Court or Appointment of a Receiver, and for an Award of Attorneys Fees	0122 - 0165
5 & 6	12/03/13	Motion to Disqualify Judge Sullivan	1125 - 1276
1	07/11/11	Notice of Filing Income and Expense Reports for: (1) Banone, LLC, and (2) Dynasty Development Group	0169 - 0197
1	07/15/11	Notice of Filing Income and Expense Reports for Banone-AZ, LLC	0198 - 0209
1	05/01/12	Notice of Filing Income and Expense Reports for Lynita Nelson for the period of January 1, 2011 through March 31, 2012	0210 - 0221
6	01/13/14	Order Denying Motion to Disqualify Judge Frank P. Sullivan	1333 - 1343
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3	07/19/12	Public Records: Deeds, Declaration of Value forms, Tax Assessor General Information sheet pertaining to the Tropicana – Albertson's Land (Admitted as Defendant's Exhibit IIII)	0658 - 0677
3 & 4	07/19/12	Public Records: Deeds pertaining to the Wyoming Horse Racing property located at 10180 State Highway 89 N (Admitted as Defendant's Exhibit LLLL)	0732 - 0755
4	07/19/12	Public Records: Deeds pertaining to the High Country Inn property located at 1936 Harrison Dr., Evanston, WY (Admitted as Defendant's Exhibit MMMM)	0756 - 0775
4	07/19/12	Public Records: Deeds, Declaration of Value forms, Tax Assessor Parcel Ownership History sheet, and General Information sheet pertaining to 3611 Lindell Road, Las Vegas, Nevada (Admitted as Defendant's Exhibit PPPP)	0776 - 0788

4	07/19/12	Public Records: Deeds pertaining to the cabin and land in the Brianhead, Utah area (Admitted as Defendant's Exhibit QQQQ)	0789 - 0839
4	07/19/12	Public Records: Deeds and other public records pertaining to the Tierra Del Sol Center in Phoenix, Arizona (Admitted as Defendant's Exhibit RRRR)	0840 - 0904
4	07/19/12	Public Records: Deeds and Declaration of Value forms pertaining to the 5220 East Russell Road, Las Vegas, Nevada (Admitted as Defendant's Exhibit UUUU)	0928 - 0959
4	07/19/12	Public Records: Deeds and County Recorder information sheets pertaining to the Sycamore Plaza property located at 1749-1755 West Main Street, Phoenix, Arizona (Admitted as Defendant's Exhibit VVVV)	0960 - 0966
3	05/30/01	The LSN Nevada Trust dated May 30, 2001 (Admitted as Intervenor's Exhibit 25)	0512 - 0544
1	11/17/10	Transcript Re: Non-Jury Trial (Partial)	0019 - 0121
1 & 2	08/20/12	Transcript Re: Non-Jury Trial	0222 - 0511
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3	06/01/01	Waiver of Notice and Consent to Hold Annual / Semi-Annual Trustees' Meeting of LSN Nevada Trust (Admitted as Intervenor's Exhibit 30)	0545

1 THE COURT: And you said November is --
2 MR. SOLOMON: November I'm gone --
3 THE COURT: Okay.
4 MR. SOLOMON: -- until the last week.
5 THE COURT: Okay. I think in fairness, then let's
6 -- I'm going to have you put in the order that the Court's
7 going to consider its -- this divorce decree as a final order.
8 We'll address this under Amy as an undisclosed asset, that way
9 it won't delay everything until December and that seems --
10 that would be the fair way to give everybody a chance to look
11 at it and give us any chance if we need any motions and to
12 limit discovery and things like that. It gives everybody
13 chance so we're not just scrambling. Because I'm trying to
14 get this done the best I can. I think that's the fairest to
15 do it and you can take all those issues up and if they think
16 it's appropriate, so bet it, but otherwise, you're never going
17 to get this thing done. Does that work for you, counsel, if
18 we did in December then sometime?
19 MR. SOLOMON: I can't agree to that for the reason
20 --
21 THE COURT: No. No.
22 MR. SOLOMON: -- you stated, Your Honor.
23 THE COURT: This says December. No.
24 MR. SOLOMON: I understand what you're doing.

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THE COURT: -- and let counsel --

MR. DICKERSON: Thank you.

THE COURT: -- sign off? Thanks, everybody. Sorry
to keep you so late.

MR. SOLOMON: Thank you, sir.

(PROCEEDINGS CONCLUDED AT 16:09:05)

* * * * *

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 Medrano

Adrian N. Medrano

EXHIBIT 11

EXHIBIT 11

**RESIGNATION OF CURRENT DISTRIBUTION TRUSTEE OF THE ERIC L. NELSON NEVADA TRUST
AND SUCCESSOR DISTRIBUTION TRUSTEE TO ACT IN THAT CAPACITY**

I, Lana Martin, as current Distribution Trustee of the Eric L. Nelson Nevada Trust hereby resign my role as Distribution Trustee of the Eric L. Nelson Nevada Trust as I'm no longer willing to serve in that capacity.

Pursuant to that certain *Change of Trusteeship for the Eric L. Nelson Nevada Trust* dated June 8th, 2011, executed by Jeffrey L. Burr, Esq on behalf of Jeffrey Burr, LTD, as Trust Consultant, I hereby request that per Article 11.2 of such agreement, that NOLA HARBER serve as Successor Distribution Trustee of the Trust.

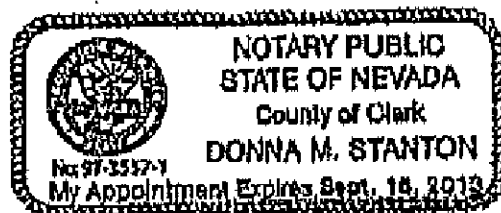
I certify that the foregoing is true and correct and hereby resign as Current Distribution Trustee.


LANA MARTIN

STATE OF NEVADA)
)ss:
COUNTY OF CLARK)

On June 10th, 2013, before me, the undersigned, a Notary Public in and for said County of Clark, State of Nevada, personally appeared LANA MARTIN personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.





Notary Public

EXHIBIT 12

EXHIBIT 12

**CHANGE OF TRUSTEESHIP
FOR THE
ERIC L. NELSON NEVADA TRUST**

THIS CHANGE OF TRUSTEESHIP, dated June 8, 2011, is made in accordance with ARTICLE XI, Section 11.3, entitled Trust Consultant, as provided in the Trust Agreement, dated May 30, 2001.

Witnesseth:

WHEREAS, ERIC L. NELSON, as Trustor, established the ERIC L. NELSON NEVADA TRUST on May 30, 2001, wherein ERIC L. NELSON is serving as Investment Trustee, NOLA HARBER is serving as Distribution Trustee and JEFFREY BURR, LTD., formerly known as JEFFREY L. BURR, LTD., a Nevada corporation, is serving as Trust Consultant; and

WHEREAS, pursuant to the power reserved to JEFFREY BURR, LTD., as the Trust Consultant, in Section 11.3 of the within referenced Trust Agreement, it is the Trust Consultant's desire to remove LYNITA SUE NELSON as the first nominated Successor Investment Trustee of the within referenced Trust Agreement and to make other Successor Investment Trustee changes; and

WHEREAS, pursuant to the power reserved to JEFFREY BURR, LTD., as the Trust Consultant, in Section 11.3 of the within referenced Trust Agreement, it is the Trust Consultant's desire to remove NOLA HARBER as current Distribution Trustee of the within referenced Trust Agreement and to make other Distribution Trustee changes.

NOW, THEREFORE by executing this Change of Trusteeship, the Trust Consultant hereby makes the following modifications and changes to the current and successor Trusteeship of the ERIC L. NELSON NEVADA TRUST dated May 30, 2001:

I.

Effective immediately, LYNITA SUE NELSON is hereby removed as the Successor Investment Trustee of the Trust and NOLA HARPER is hereby removed as the current Distribution Trustee of the Trust

1

JEFFREY BURR, LTD.
Attorneys at Law

Lana01081

II.

ARTICLE 11 – PROVISIONS RELATING TO TRUSTEESHIP. Sections 11.1 and 11.2 of this Article 11 shall be deleted in their entirety and the following shall be inserted in their stead:

"11.1 Investment Trustee and Successor Investment Trustee. ERIC L. NELSON is the current Investment Trustee of this Trust. If he should become deceased, unable or unwilling to serve, NOLA HARBER shall serve as Successor Investment Trustee of this Trust. If NOLA HARBER should become deceased, unable or unwilling to serve, CLARENCE NELSON shall serve as Successor Investment Trustee of this Trust. If CLARENCE NELSON should become deceased, unable or unwilling to serve, ALEDA NELSON shall serve as Successor Investment Trustee of this Trust. Except where specific powers are given to the Distribution Trustee as provided herein, wherever the term "Trustee" is used in this Trust, it shall be deemed to mean the Investment Trustee and Successor Investment Trustees as named above.

11.2 Distribution Trustee and Successor Distribution Trustee. LANA MARTIN is now appointed to serve as the current Distribution Trustee, effective immediately. If LANA MARTIN should become deceased, unable or unwilling to serve as the current Distribution Trustee, NOLA HARBER shall serve as Successor Distribution Trustee of this Trust. If NOLA HARBER should become deceased, unable or unwilling to serve, CLARENCE NELSON shall serve as Successor Distribution Trustee of this Trust. Notwithstanding the foregoing, upon the death of ERIC L. NELSON or in the event that he should cease to serve as the Investment Trustee hereunder, then the Distribution Trustee shall cease to serve and the administration and distribution of the Trust estate shall thereupon be under the exclusive control of the Investment Trustee(s). In no event shall the Trustor serve as a Distribution Trustee."

III.

THIS CHANGE OF TRUSTEESHIP is made and executed by the Trust Consultant on the day and year first above written.

TRUST CONSULTANT:

JEFFREY BURR, LTD.,
a Nevada corporation

BY:


JEFFREY L. BURR, ESQ.

ACCEPTANCE BY CURRENTLY APPOINTED DISTRIBUTION TRUSTEE

I certify that I have read the foregoing Change of Trusteeship and the within referenced Declaration of Trust and understand the terms and conditions for my service as current Distribution Trustee and I accept the Declaration of Trust in all particulars.

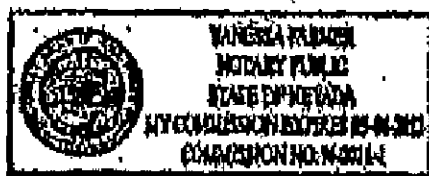

LANA MARTIN

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On June 8, 2011, before me, the undersigned, a Notary Public in and for said County of Clark, State of Nevada, personally appeared JEFFREY BURR, ESQ. of JEFFREY BURR, LTD., a Nevada corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized

capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

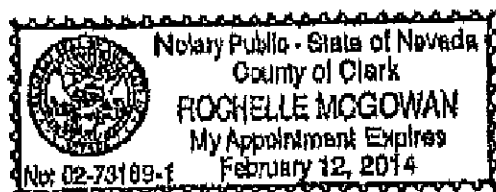


Vanessa Martin
NOTARY PUBLIC

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On June 8, 2011, before me, the undersigned, a Notary Public in and for said County of Clark, State of Nevada, personally appeared LANA MARTIN personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



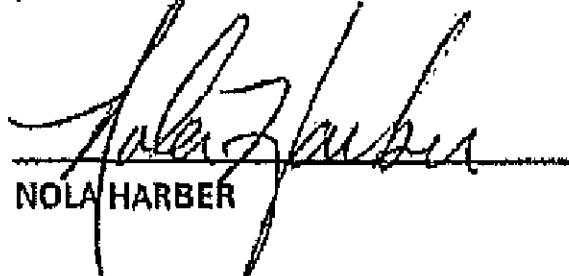
Rochelle McGowan
NOTARY PUBLIC

EXHIBIT 13

EXHIBIT 13

ACCEPTANCE BY SUCCESSOR DISTRIBUTION TRUSTEE TO ACT AS CURRENT DISTRIBUTION TRUSTEE

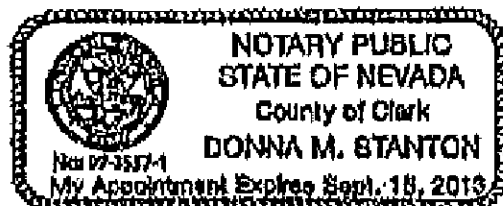
I certify that I have read the *Change of Trusteeship for the Eric L. Nelson Nevada Trust* dated June 8, 2011 and understand the terms and conditions for my service as Distribution Trustee and I accept in all particulars.


NOLA HARBER

STATE OF NEVADA }
 }ss:
COUNTY OF CLARK }

On June 10, 2013, before me, the undersigned, a Notary Public in and for said County of Clark, State of Nevada, personally appeared NOLA HARBER personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within Instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the Instrument, the person, or the entity upon behalf of which the person acted, executed the Instrument.

WITNESS my hand and official seal.





Notary Public

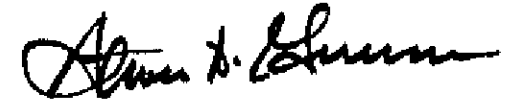
EXHIBIT 14

EXHIBIT 14

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

1 **NOTC**
2 MARK A. SOLOMON, ESQ.
3 Nevada State Bar No. 0418
4 E-mail: msolomon@sdfnvlaw.com
5 JEFFREY P. LUSZECK, ESQ.
6 Nevada State Bar No. 9619
7 E-mail: jluszeck@sdfnvlaw.com
8 SOLOMON DWIGGINS & FREER, LTD.
9 Cheyenne West Professional Centre'
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11 Las Vegas, Nevada 89129
12 Telephone No.: (702) 853-5483
13 Facsimile No.: (702) 853-5485
14 Attorneys for NOLA HARBER,
15 Distribution Trustee of the ERIC L. NELSON
16 NEVADA TRUST dated May 30, 2001

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CLERK OF THE COURT

DISTRICT COURT

COUNTY OF CLARK, 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.: D411537

Dept.: O

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

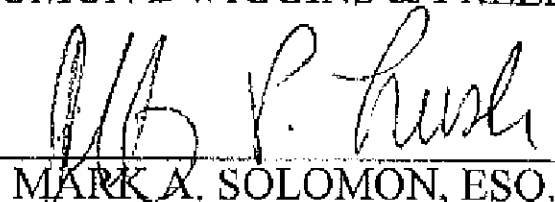
NOTICE OF SUBSTITUTION OF DISTRIBUTION TRUSTEE

Please take notice that on or around June 10, 2013, Lana Martin resigned as Distribution Trustee of the ELN Trust. See Resignation of Current Distribution Trustee of the ELN Trust and Successor Distribution Trustee to Act in that Capacity, attached hereto as **Exhibit 1**. Pursuant to the Change of Trusteeship for the ELN Trust dated June 8, 2011, Jeffrey Burr, Esq. appointed Nola Harber to serve as the Successor Distribution Trustee of the ELN Trust in the event that Ms. Martin became "deceased, unable or unwilling to serve as the current Distribution Trustee." See Change of Trusteeship for the ELN Trust dated June 8, 2011, attached hereto as **Exhibit 2**. Ms. Harber has accepted the appointment as Distribution Trustee of the ELN Trust, see Ex. 1, and Eric Nelson, the Investment Trustee, has authorized and delegated Ms. Harber to defend, maintain and pursue any and all actions on behalf of the ELN Trust. See Delegation of Nola Harber, attached hereto as **Exhibit 3**.

DATED this 16th day of July, 2013.

SOLOMON DWIGGINS & FREER, LTD.

By


MARK A. SOLOMON, ESQ.

Nevada State Bar No. 0418

msolomon@sdfnvlaw.com

JEFFREY P. LUSZECK, ESQ.

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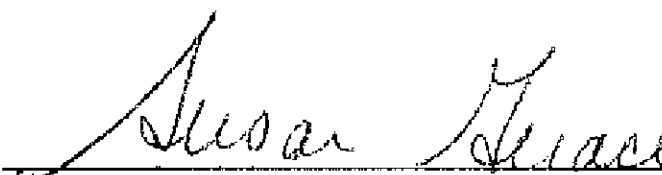
Attorneys for Nola Harber, Distribution Trustee

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CERTIFICATE OF MAILING

I HEREBY CERTIFY that pursuant to EDCR 7.26(a), service of the foregoing NOTICE OF
SUBSTITUTION OF DISTRIBUTION TRUSTEE was made on this 16th day of July, 2013, by sending a
true and correct copy of the same by United States Postal Service, first class postage fully prepaid, to
the following at his last known address as listed below:

Robert P. Dickerson, Esq.
Dickerson Law Group
1745 Village Center Circle
Las Vegas, NV 89134


An employee of Solomon Dwiggins & Freer, Ltd.

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

EXHIBIT 15

EXHIBIT 15

1 TRANS

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FILED

JUN 27 2013

Alan S. Sullivan
CLERK OF COURT

ORIGINAL

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON,)
)
Plaintiff,)
)
vs.)
)
LYNITA NELSON,)
)
Defendant.)

CASE NO. D-09-411537-D

DEPT. 0

(SEALED)

BEFORE THE HONORABLE FRANK P. SULLIVAN
DISTRICT COURT JUDGE

TRANSCRIPT RE: MOTION

WEDNESDAY, JUNE 19, 2013

D-09-411537-D NELSON 06/19/2013 TRANSCRIPT (SEALED)
VERBATIM REPORTING & TRANSCRIPTION, LLC (520) 303-7358

1 I've been attempting to get a hold of Dave Stephens (ph). He
2 has not returned my calls. I don't know if the trust has
3 taken the entire 1.8 million plus all the interest that has
4 been accrued on that over the last year, year and a half that
5 it's -- it's been there.

6 THE COURT: My intent was when I said dissolve it
7 was to order immediate distribution within the 30 days I think
8 -- at least maybe it wasn't as clear as I thought. And I said
9 we'll distribute A, B, C, D, E and then the remaining 500,000
10 to Mr. Nelson. That was my intent.

11 MR. DICKERSON: Well --

12 THE COURT: Not -- that's --

13 MR. DICKERSON: -- my -- my hope was is that that
14 was the intent --

15 THE COURT: Yeah.

16 MR. DICKERSON: -- and my hope was that it would
17 remain with -- with Mr. Stephens and that Mr. Stephens would
18 cut the checks that Your Honor had ordered. I don't know why
19 it -- it would have necessitated a -- a 30 day period. And
20 we're asking that Your Honor order that those monies be
21 released today. Ms. Nelson has no monies available to her.
22 As you see, we've set it -- I believe she has about 19,000.

23 THE COURT: 19,000 in --

24 MR. DICKERSON: She has significant debt.

1 THE COURT: -- credit card bills --

2 MR. DICKERSON: I think it's also --

3 THE COURT: -- about 53,000.

4 MR. DICKERSON: -- ironic and it -- it goes to tell
5 you what we've been dealing with in this case. You know that
6 this -- the case was filed in January of 2009. The parties
7 have been going through divorce problems for years prior to
8 that. They separated in June of 2008. And I think the -- the
9 record reflects that approximately since 2008 at most Lynita
10 Nelson has received about \$30,000 from Eric Nelson.

11 He left her this account roughly \$2,000,000 that she
12 was strictly had to rely upon that. Receives no income from
13 any other source, had to rely on those monies and that money
14 is down to 19,000 which they -- they throw a line in their
15 opposition pointing out that she's gone through the
16 \$2,000,000. That \$2,000,000 was what she used for the
17 purposes of her living expenses which Your Honor has already
18 determined. It's at least \$240,000 a year and she use those
19 money for the purposes of -- of her litigation expenses.

20 And I think it's ironic seeing that, Your Honor she
21 is here and she's not -- she doesn't have the money available
22 for her to go on vacation. And while Eric Nelson is not here,
23 because he's spending two and a half weeks in Thailand with at
24 least three of his children.

1 at it. When I looked at -- so I probably should have been
2 very specific, but that's why I try to say this money, this
3 money and then the remaining to Mr. Nelson, because I figured
4 they may have some concerns that the money could dissipate.

5 MR. LUSZECK: Yes. It's my understanding the money
6 has been transferred from the trust account to the ELN Trust.

7 MR. DICKERSON: So they have already --

8 MR. LUSZECK: Do you know if Mr. Nelson -- do you
9 know if Mr. Nelson's got his 500 grand? Do you know if they
10 distributed it and just transferred to the trust?

11 MR. LUSZECK: That I don't know, Your Honor.

12 THE COURT: Okay.

13 MR. DICKERSON: So what they've already done is they
14 have already taken benefits of your judgment and now they're
15 telling after we take the benefits of our judgment we're going
16 to file an appeal. And they can't do that. And they -- they
17 very well have waived their rights to appeal.

18 MR. LUSZECK: I -- I don't think that's true, Your
19 Honor. I believe the order -- the divorce decree has been
20 complied with and I don't think we've waived any rights to
21 appeal.

22 THE COURT: Okay. Yeah. We'll deal with that when
23 it comes. My concern on this case is I thought that there
24 could be possible appeals on that. I felt that -- give people

1 some time. I did feel that I would try to keep the trust in
2 place in order to provide the protection from creditors, so I
3 didn't want them to lose the intent as I found the intent of
4 their trust which was to protect from creditors on both sides.
5 They didn't want to open up Ms. Lynita either to any attacks
6 by creditors as to her thing through Eric or otherwise. So I
7 did feel on that.

8 I'll deal with those issues about setting aside
9 appropriately with Honeycutt or whatever comes down on that,
10 but I'm very -- the reason I asked you if those monies have
11 been transferred, because if they left the money with Mr.
12 Stephens I wouldn't been as concerned saying they left it
13 there, fine, they're doing it on the up and up. They had
14 concerns on that and they just want to protect that.

15 But I'll be honest with you. My findings on that
16 and your client's got a lot of issues from this Court felt on
17 credibility. I'm not the only judge that founds those issues.
18 Issues about dissipating estates and the bankruptcy estate
19 that I was concerned that this stuff could disappear. So that
20 was my intent.

21 If that money is stayed with Mr. Stephens in his
22 trust, then I'd have been more comfortable saying hey, the
23 money ain't going anywhere. Mr. Stephens -- Attorney Stephens
24 has it. He's an honorable. Money being transferred to Nelson

1 Trust -- to his trust, I'm worried about that, because I think
2 they could get distributions on that. Other ways to get that
3 money out, transfer it to family members as he done to the
4 other property on that. As I made my findings, getting out
5 and had the estate thrown. So I'm troubled by that and the
6 fact that they transferred to the trust. I'm very concerned
7 now.

8 As far as that going, I'm inclined to grant their
9 motion and make that money payable within 24 hours. And as
10 far as that, I'm also would consider if you -- as far as if
11 you want me to -- my concern is for -- for the trust for their
12 appeal purposes, their concern that wait a minute, that money
13 is gone. We give it to Ms. Nelson now. Now you kind of
14 screwed us all because we can't get it back. But the issue is
15 other property. They have two. There's other ways we can do
16 and ought to make -- there's some collateral there if it
17 disappeared over the next two years.

18 But I think -- there's other ways I could protect
19 that if it's appropriate, because there is sizable real estate
20 that could be pledged as collateral if necessary. So I think
21 that there is a remedy. I don't think she's going to go and
22 get rid of all the property in her trust during the pending of
23 the appeal on that, so I'm not so sure that you couldn't get
24 that money back.

1 I think there's collateral there that could be
2 assigned by this Court to cover the million dollars and some
3 change paid to Ms. Nelson so that if you were successful on
4 appeal, they would have collateral. I think I could probably
5 do a -- bond if I needed to to protect that. There's a couple
6 options, I think I could do that, that would solve the trust
7 concern that if they're successful on appeal, that they'd be
8 able to get the money and property back. So did you want to
9 address that specifically, counsel? And I'll have Mr.
10 Dickerson respond or it doesn't --

11 MR. LUSZECK: I mean, I discovery --

12 THE COURT: -- because I'm inclined to order that
13 money released immediately, so I want to give you a chance --

14 MR. DICKERSON: I -- I don't believe though that
15 this is the appropriate time to do this --

16 THE COURT: Well --

17 MR. DICKERSON: -- because they have yet to file the
18 appeal.

19 THE COURT: Appeal and the supersedeas bonds and --

20 MR. LUSZECK: Right.

21 THE COURT: -- everything and address it at that
22 time.

23 MR. LUSZECK: Well --

24 THE COURT: But --

1 going to give you up to the release by Friday, 5:00 o'clock.
2 That gives you two days. That way you can try to get
3 extraordinary relief if necessary. 24 hours is kind of tough,
4 gives you a chance a talk. I -- I believe Thailand has
5 telephones and emails in Thailand I believe they have, so I
6 imagine that it -- Mr. Nelson can be contacted.

7 I have serious concerns with that money being
8 transferred into the trust that that money would dissipate.
9 And that's my concerns on that. If it's still with Mr.
10 Stephens' account, I would have frozen that account, you know,
11 if I needed to on that, but I'm concerned on that.

12 So I am going to grant the motion. I'm denying the
13 motion for stay. I'll give you a chance to -- now you can
14 pursue your extraordinary relief if the supreme court has
15 deemed appropriate. And I will address any issues at that
16 time at the supersedeas bonds or otherwise, whatever needs to
17 be done.

18 This case has been going on for a long time. I
19 respect both parties. I am seriously concerned. Mr. Nelson
20 has been controlling the estate essentially since day one.
21 Now he's losing control of the estate. And no disrespect to
22 him. I expect a lot of problems trying to get payment.
23 That's why I did lump sums with my findings, because I can see
24 this going on til the world ended to be honest. And I do


1 48 hours. The presentation of this order. I'm going to sign
2 it today and get it dated. What's the date today?

3 THE CLERK: The 19th.

4 THE COURT: The 19th. I will initial. Let's get
5 these filed and get them served, get taken care of now. That
6 would give them two business days to get it done. I'm denying
7 the motion for stay as I think this case -- let the supreme
8 court intervene and do what they need to do as they deem
9 appropriate. This case has been ongoing since 2009 January.
10 We've had numerous, numerous motions, numerous, numerous
11 hearings. And I respect the party's right to litigate, but I
12 think it's time that it needs to be resolved and it needs to
13 be off of my desk up to the supreme court and let them handle
14 it as they deem appropriate.

15 I do not believe that the release of those funds put
16 you at any risk from the trust, because I do believe that Ms.
17 Nelson has significant resources that will -- could be able to
18 be collateral if -- if you need that. And so I don't think
19 I've identified any wrongdoing on Ms. Nelson that she would
20 try to get rid of funds and not pay any funds if the supreme
21 court was indeed overturned it and said she was not entitled
22 to said funds. And therefore, that's the basis for the order
23 of this Court. And then we have another -- did you want to
24 deal with this motion we have pending as to --

1 ATTEST: I do hereby certify that I have truly and
2 correctly transcribed the digital proceedings in the
3 above-entitled case to the best of my ability.

4
5 
6 /s/ Adrian N. Medrano
7 Adrian N. Medrano
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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,

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

Date of Hearing: 1/2/13
Time of Hearing: 3:00 p.m.
Department: 9

AFFIDAVIT OF THE HONORABLE FRANK P. SULLIVAN IN RESPONSE TO THE
ELN TRUST'S MOTION TO DISQUALIFY

I, FRANK P. SULLIVAN, hereby swear (or affirm) under penalty of perjury, that the
following assertions are true of my own personal knowledge:

1. I am the judge assigned to case D411537. I serve in Department O of the Eighth
Judicial District Court, Family Division.

2. I unequivocally deny all allegations of bias, prejudice, and discrimination made by ELN Trust in his Motion to Disqualify.
3. That the Complaint for Divorce in this matter was filed on May 6, 2009, and, as such, these proceedings have extended for more than four years.
4. That over the preceding four years this matter has seen a plethora of pleadings filed by both parties, necessitating the issuing of numerous Orders from this Court.
5. That this Court has also presided over two trials between the parties, one lasting for about two weeks and the second trial for approximately three weeks.
6. That the Eric L. Nelson Trust (ELN Trust) made their initial appearance in this matter in or around August 2011 and have been an active participant since that time; specifically, the ELN Trust fully participated in the second trial, including conducting extensive Discovery, which began in July 2012 and lasted for about three weeks.
7. That on June 6, 2013, this Court issued a Divorce Decree wherein the Court found that both the ELN Trust and the Lynita S. Nelson Trust (LSN Trust) were established as self-settled spendthrift trusts and were intended to protect the corpus or principal of the trusts from the claims of creditors.
8. That this Court found that while it could invalidate both Trusts based upon the lack of Trust formalities, Mr. Nelson's violation of his fiduciary responsibility as a spouse, Mr. Nelson's violation of his fiduciary duties as the Investment Trustee for the LSN Trust, this Court was not inclined to do so since invalidation of the Trusts could have serious implications for both parties in that it could expose the assets to the claims of creditors, thereby, defeating the intent of the parties to 'supercharge' the protection of the assets from creditors.

- 1 9. That this Court Ordered Mr. Nelson to pay Ms. Nelson lump sum alimony in the
2 amount of \$800,000, child support arrears in the amount of \$87,775 and \$144,967 in
3 attorney's fees for a total of \$1,032,742, to be remitted to Ms. Nelson within 30 days
4 of entry of the Divorce Decree.
5
- 6 10. That this Court further Ordered that Mr. Nelson pay the court-appointed expert witness
7 fees to Larry Bertsch in the amount of \$35,258.
- 8 11. That \$1,568,000 previously held in a blocked account pursuant to an Order of this
9 Court was ultimately transferred to the ELN Trust and the Court subsequently directed
10 that \$1,068,000, representing the amounts awarded to Ms. Nelson and owed to Mr.
11 Berstch, be placed in a blocked interest-bearing account pending the ultimate
12 resolution of this case, effectively giving the ELN Trust immediate use and access to
13 the residual \$500,000.
14
- 15 12. That this case is currently pending before the Nevada Supreme Court on the ELN's
16 Writ of Prohibition.
- 17 13. That it would appear that the ELN Trust Motion to Disqualify me is not timely filed
18 pursuant to NRS 1.235 and *Towbin Dodge, LLC v. Eighth Judicial Dist. Court of State*
19 *ex rel. Cnty. of Clark*, 121 Nev. 251, 112 P.3rd 1063 (2005) considering that the ELN
20 Trust is alleging that this Court rendered certain "bias" decisions and rulings in June,
21 July, August and October of 2013; yet the Motion to Disqualify was not filed until six
22 (6) days before the scheduled commencement of the trial as to the Wyoming Downs
23 property.
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- 1 14. That this Court clearly stated it's Findings in the Divorce Decree that the Court could
2 issue a charging order against distributions to be paid to Mr. Nelson by the ELN Trust
3 to secure the payment of Mr. Nelson's spousal and child support obligations.
4
- 5 15. That this Court found that Ms. Nelson owns a 50% interest in the Lindell Plaza
6 property and has maintained that ownership throughout the pendency of this matter,
7 and in order to determine what Ms. Nelson was owed, it was necessary to first
8 determine what income, if any, the property had produced. As such, the production of
9 the accounting for the Lindell Property was the most efficient way to accomplish this
10 goal.
11
- 12 16. That this Court found that there was not enough evidence presented during the divorce
13 proceedings for this Court to make a ruling as to the Wyoming Downs property, and
14 subsequently determined that it would be in the interests of justice to treat this property
15 as an omitted asset under *Amie v. Amie*, 106 Nev. 541, 796 P.2d 233 (1990), instead of
16 further delaying the issuance of a Divorce Decree.
- 17 17. That an evidentiary trial regarding this property was scheduled to begin 12/11/13, and,
18 as such, it is clear that no determinations as to the Wyoming Downs property have
19 been made and no orders have been entered by this Court as to the respective property.
20
- 21 18. That the ELN Trust had changed Distribution Trustees in June 2011, during the
22 pendency of this matter, without seeking this Court's approval, and, as such, this Court
23 was not inclined to grant the ELN Trust Motion for approval to change the
24 Distribution Trustee at this late stage of the proceedings, and, accordingly, denied
25 ELN's Motion and Ms. Nelson's Counter-Motion to appoint an "Authorized" Trustee.
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1 19. That this Court has made decisions based on law, equity, fairness and justice and not
2 because of any bias or prejudice towards the ELN Trust or any party to these
3 proceedings.
4

5 20. That this Court respects this Tribunal and will readily accept the Court's decision on
6 this Motion to Disqualify.

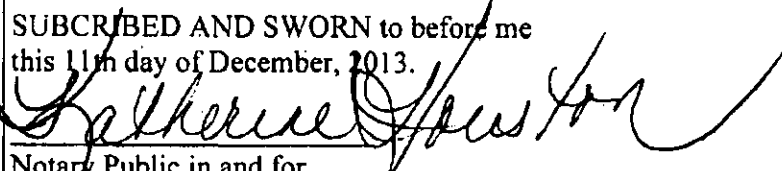
7 DATED this 11th Day of December, 2013.

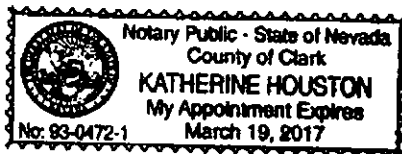
8 EIGHTH JUDICIAL DISTRICT COURT

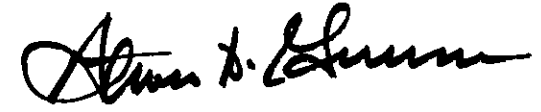
9
10 By: 

HONORABLE FRANK SULLIVAN
Nevada State Bar No. 1751
Family Division, Department O
601 North Pecos Road
Las Vegas, Nevada 89101-2408
Telephone: (702) 455-1334
Facsimile: (702) 455-1338

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17 SUBSCRIBED AND SWORN to before me
this 11th day of December, 2013.

18 
19 Notary Public in and for
20 said County and State.





CLERK OF THE COURT

OPPS
THE DICKERSON LAW GROUP
ROBERT P. DICKERSON, ESQ.
Nevada Bar No. 000945
JOSEF M. KARACSONYI, ESQ.
Nevada Bar No. 010634
1745 Village Center Circle
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Attorneys for LYNITA SUE NELSON

EIGHTH JUDICIAL 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

Date of Hearing: 1/02/13
Time of Hearing: 3:00 a.m.

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

Necessary Parties.

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

Counterclaimant
and Crossclaimant,

v.

LYNITA SUE NELSON and ERIC
NELSON,

Cross-Defendant and
Counterdefendant.

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LYNITA SUE NELSON,

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

v.

ERIC L. NELSON, individually and as the
Investment Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001; the
ERIC L. NELSON NEVADA TRUST dated
May 30, 2001; LANA MARTIN, as the
current and/or former Distribution Trustee
of the ERIC L. NELSON NEVADA TRUST
dated May 30, 2001,

Counterdefendant, and/or
Cross-Defendants, and/or
Third Party Defendants.

DEFENDANT’S OPPOSITION TO
MOTION TO DISQUALIFY JUDGE SULLIVAN
AND
COUNTERMOTION FOR ATTORNEYS’ FEES AND COSTS

COMES NOW, Defendant, LYNITA SUE NELSON (“Lynita”), by and through
her counsel, ROBERT P. DICKERSON, ESQ., and JOSEF M. KARACSONYI, ESQ.,
of THE DICKERSON LAW GROUP, and respectfully submits for the Court’s
consideration her Opposition to Motion to Disqualify Judge Sullivan, and
Countermotion for Attorneys’ Fees and Costs (“Opposition and Countermotion”).

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1 This Opposition and Countermotion is made and based upon the pleadings and
2 papers on file herein, the Points and Authorities attached hereto, and any other
3 evidence the Court may adduce at the hearing on this matter.

4 DATED this 18th day of December, 2013.

5 THE DICKERSON LAW GROUP

6
7 By Josef Karacsonyi
8 ROBERT P. DICKERSON, ESQ.
9 Nevada Bar No. 000945
10 JOSEF M. KARACSONYI, ESQ.
11 Nevada Bar No. 010634
12 1745 Village Center Circle
13 Las Vegas, Nevada 89134
14 Attorneys for Defendant
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1 POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 The Motion to Disqualify Judge Sullivan ("Motion"), by the DISTRIBUTION
4 TRUSTEE of the ERIC L. NELSON NEVADA TRUST ("ELN Trust"), is just the
5 latest legal maneuver, in a long line of legal maneuvers dating back several years,
6 directed by Defendant, ERIC L. NELSON ("Eric"),¹ to attempt to defeat the efficacy
7 of the legal system, and ensure that his wife of nearly thirty (30) years receives nothing
8 from this divorce action. The concerns about Judge Sullivan alleged in the Motion are
9 nothing more than complaints about legal rulings and factual findings entered by Judge
10 Sullivan. There is absolutely no allegation in the Motion of any objective fact that
11 would even imply personal bias or prejudice by Judge Sullivan against any of the
12 parties, or any allegation that Judge Sullivan has made any statement other than
13 statements (i.e., rulings and findings) made during the court proceeding, that commits
14 Judge Sullivan to a particular result. Indeed, the Motion is legally and factually
15 insufficient, and nothing more than an attempt by a vexatious husband to obtain a new
16 judge and different result other than the result reached by Judge Sullivan after more
17 than four (4) years of litigation.

18 It is impossible and unnecessary to detail over four (4) years of litigation in this
19 Opposition, however, it is respectfully requested that this Court review the Decree of
20 Divorce entered by Judge Sullivan on June 3, 2013, attached to the ELN Trust's
21 Motion as Exhibit "3," and on file herein, as such Decree contains a detailed history
22 of this case, the nearly three (3) weeks of trial that were conducted, and the attempts
23 by Eric throughout the case to deplete and defeat Lynita's interest in any of the
24 property acquired by the parties during nearly thirty (30) years of marriage. Lynita
25 prays that this Court will see the vexatious litigation tactics that have been perpetrated
26 by Eric and the ELN Trust throughout this divorce action to attempt to starve her out
27 ...

28 ¹ Eric and Lynita are collectively referred to herein as the "parties."

1 of this litigation and defeat her pursuit of justice, and will deny the Motion so that this
2 matter can continue to proceed towards a conclusion.

3 **II. FACTUAL STATEMENT AND PROCEDURAL HISTORY**

4 The ELN Trust has provided this Court with an incomplete, conclusory, and
5 completely self-serving recitation of the facts and procedural history of this matter, in
6 an attempt to convince the Court that Judge Sullivan's findings and orders have been
7 without support. Although disagreement with a judge's findings and orders do not
8 form a basis to disqualify the judge, and are only appropriately addressed through the
9 appellate and post-trial motion procedures, Lynita is compelled to provide this Court
10 with a true history of the facts and procedure of this case.

11 **A. Divorce Proceedings**

12 On May 6, 2009, Eric initiated this divorce action by the filing of his Complaint
13 for Divorce. Lynita and Eric were married for nearly thirty (30) years and amassed a
14 substantial amount of wealth (approximately \$17,500,000) during their marriage.
15 Decree of Divorce ("DOD"), pg. 3, 2-3; pg. 47. Five (5) children were born during the
16 parties' marriage. DOD, pg. 2, lines 12-16. While Eric became a formidable and
17 accomplished businessman and investor during the marriage, Lynita gave up pursuit of
18 a career outside the home to become a stay at home mother to the couple's five (5)
19 children. DOD, pg. 34, line 25 to pg. 35, line 23.

20 For six (6) full days in 2010, Eric, individually, and as Trustor and Investment
21 Trustee² of the ELN Trust, and being represented by James Jimmerson, Esq., one of the

22 ² The Investment Trustee is the only person authorized by the terms of the ELN Trust
23 to represent and bind the trust in legal proceedings, and does so to the same extent as any
24 absolute owner of property could bind himself or herself in such legal proceedings. Section
12.1 of the ELN Trust provides as follows:

25 12.1 Trustee's Powers.

26 ...

27 The Investment Trustee shall have the following powers, all of which are to be
exercised in a fiduciary capacity:

28 ...

(h) To institute, compromise, and defend any actions and proceedings.

1 most respected and accomplished attorneys in Nevada, presented evidence to the
2 Court, including his own testimony, conclusively confirming that all property held in
3 the name of the ELN Trust, and the LSN Nevada Trust, dated May 30, 2001 (“LSN
4 Trust”), was at all times during the parties’ nearly 30 year marriage, managed,
5 controlled, treated, held, and owned by the parties as community/marital property.
6 Attached hereto as Exhibit A are excerpts of Eric’s 2010 trial testimony from
7 transcripts on file herein. Portions of said testimony are also quoted and discussed in
8 the Decree of Divorce. DOD, pg. 6, line 10 to pg. 7, line 23.

9 Eric also elicited the testimony of the parties’ attorney, Jeffrey Burr, Esq. (“Mr.
10 Burr”), to prove to the Court, as part of his own case-in-chief, that the ELN Trust,
11 LSN Trust, and purported “Separate Property Agreement” signed by the parties in
12 1993, were not created for the purposes of dividing the parties’ property in the event
13 of divorce, but simply for estate planning purposes and asset protection, specifically
14 protection from outside creditors. Mr. Burr is the same attorney who prepared and
15 advised the parties with respect to all of said documents. Attached hereto as Exhibit
16 B are excerpts of Mr. Burr’s 2010 trial testimony from transcripts on file herein. Of
17 course, the ELN Trust in its Motion wholly ignores the first six (6) days of trial and the
18 testimony elicited and offered by Eric during such time period, and instead references
19 only Mr. Burr’s deposition transcript, from a deposition taken by the ELN Trust on
20 February 22, 2012, in an effort to get Mr. Burr to contradict or “fix” his prior trial
21 testimony.

22 Following the sixth day of trial, and while the Court and Lynita were preparing
23 to reconvene to bring this case to a conclusion, Eric perpetrated one of the most
24 outrageous abuses of judicial process that could be conceived. Sensing the Court was
25

26 ...
27 (s) The enumeration of certain powers of the Trustee shall not limit his
28 general powers, subject always to the discharge of his fiduciary
 obligations, and being vested with and having all the rights, powers, and
 privileges which an absolute owner of the same property would have.

1 not going to grant the division of property he sought, Eric reversed course and sought
2 to erase the past by causing the ELN Trust to become a named party to this action, and
3 to assert that neither of the parties possessed an interest in any of the property held by
4 same.

5 On June 24, 2011, Eric filed his Motion to Join Necessary Party; or in the
6 Alternative; to Dismiss Claims Against the Eric L. Nelson Nevada Trust Dated May 30,
7 2011. In the motion, Eric stated:

8 As this Court is well aware, Lynita contends that some or all of the assets
9 owned by the Eric L. Nelson Trust is community property, and as such,
10 are subject to division in the instant divorce proceeding. Notwithstanding said contention, Lynita has failed to name the Eric L.
11 Nelson Trust, [or] the Investment Trustee to the instant litigation.

12 Pg. 3, lines 17-22. These statements were made despite the following indisputable
13 facts: (1) Lynita had not yet begun the presentation of her case; (2) the Investment
14 Trustee of the ELN Trust, Eric, was a party to this action from day one when he filed
15 his Complaint for Divorce initiating this action; and (3) during six (6) days of trial Eric
16 contended, elicited testimony, presented evidence to support, and testified himself that
17 all of the assets owned by the ELN Trust and LSN Trust were community property and
18 subject to division in this action. See Exhibit A; DOD, pg. 6, line 10 to pg. 7, line 23.

19 On August 9, 2011, a Stipulation and Order was entered to join the ELN and
20 LSN Trusts as parties to this action. On August 19, 2011, the ELN Trust voluntarily
21 appeared in this action by filing an Answer to [Eric's] Complaint for Divorce and
22 Counterclaims and Crossclaim, submitting to the jurisdiction of the Court, asserting
23 causes of action against Lynita, and requesting affirmative relief. Specifically, the ELN
24 Trust requested a decision as to the status of its (the parties') property,³ and monetary
25 damages. Nonetheless, when Lynita subsequently asserted causes of action against the
26 ELN Trust, it (like Eric) reversed course, and baselessly argued that the Court did not

27 ³ Not coincidentally, despite the fact that the ELN Trust sought a declaratory judgment
28 that neither of the parties have any interest in the property held by the ELN Trust, which if
true would leave Eric penniless and at the mercy of the ELN Trust for any support, Eric joined
lock, stock, and barrel, in the positions taken by the ELN Trust throughout this action.

1 have jurisdiction over the trust and its affairs, despite the fact that it was the ELN
2 Trust that had invoked the jurisdiction of the Court.

3 After the ELN Trust and LSN Trust were joined to this action an additional year
4 of discovery ensued for all parties to prepare their case. The Court also appointed a
5 neutral third-party expert to trace and document the parties' assets and liabilities.

6 During the course of July and August, 2012, nine (9) additional days of trial
7 were conducted, seven (7) of which were devoted to trust issues and necessitated solely
8 because of Eric's unjustifiable change of positions in this action. Those seven (7) days
9 of trial did nothing to support Eric's change of position, and instead confirmed what
10 Eric represented to the Court for the first two (2) years of litigation, that at all times
11 during the parties' marriage, all property held by the ELN Trust, LSN Trust, or any
12 other trust, was managed, controlled, treated, held, and owned by the parties as
13 community/marital property.

14 On June 3, 2013, following fifteen (15) days of trial spanning two (2) years, the
15 Court entered its Decree of Divorce. In addition to the findings referenced above, the
16 Court made, in part, the following additional findings concerning the parties and the
17 ELN and LSN Trusts in its fifty (50) page Decree:

18 (1) In 2001 Eric and Lynita, upon the advice and counsel of Jeffrey Burr,
19 Esq., created the ELN Trust and LSN Trust. DOD, pg. 4, lines 20-23. The parties'
20 testimony "clearly established that the intent of creating the spendthrift trusts was to
21 provide maximum protection from creditors and was not intended to be a property
22 settlement in the event that the parties divorced." DOD, pg. 5, lines 16-18. In
23 addition, the testimony of Jeffrey Burr, Esq., the attorney who prepared the trusts,
24 corroborated the fact that the purpose of creating the trusts was to "supercharge" the
25 protection afforded against creditors and was not intended to be a property settlement
26 between spouses. DOD, pg. 7, lines 24-27.

27 (2) Attorney Burr suggested that the parties periodically level off or equalize
28 the property in the ELN and LSN Trusts. DOD, pg. 8, lines 2-4. The parties intended

1 to maintain an equal allocation of assets between the trusts as reflected in Minutes
2 from a Trust Meeting, dated November 20, 2004, wherein it was stated that property
3 was transferred from the ELN Trust to the LSN Trust, in part, to “level off the trusts.”
4 DOD, pg. 8, lines 9-16.

5 (3) That on “numerous occasions, [Eric] requested that [Lynita] sign
6 documentation relating to the transfer of LSN Trust assets to the ELN Trust.” DOD,
7 pg. 9, lines 2-4. Lynita “rarely questioned [Eric] regarding these matters for two
8 reasons: (1) [Eric] would become upset if she asked questions due to his controlling
9 nature concerning business and property transactions; and (2) she trusted him as her
10 husband and adviser.” DOD, pg. 9, lines 4-8. “[T]hat [Eric’s] behavior during the
11 course of [the] extended proceedings . . . corroborate[d] [Lynita’s] assertions that [Eric]
12 exercises unquestioned authority over property and other business ventures and loses
13 control of his emotions when someone questions his authority.” DOD, pg. 9, lines 9-
14 12.

15 (4) That Eric violated his fiduciary duties to Lynita as both Investment
16 Trustee and Trust Adviser to the LSN Trust, and as Lynita’s husband, by failing to
17 discuss the factors relating to the numerous transfers from the LSN Trust to the ELN
18 Trust. DOD, pg. 9, lines 14-17; pg. 11, lines 22-27; pg. 12, lines 2-4. Eric was able to
19 exercise control over properties in the LSN Trust and ELN Trusts, and freely transfer
20 same, under the “guise that [such] property transfers benefitted the community,” and
21 because he “assured [Lynita] that he managed the assets in the trusts for the benefit
22 of the community.” DOD, pg. 15, lines 4-9; pg. 14, lines 19-21. That Lynita “was not
23 advised [by Eric] that she was not entitled to the benefit of assets transferred from the
24 LSN Trust to the ELN Trust under the direction of [Eric] until the ELN Trust joined
25 the case as a necessary party.” DOD, pg. 14, line 27 to pg. 15, line 3.

26 . . .

27 . . .

28 . . .

1 (5) That prior to the Parties' divorce action, millions of dollars worth of
2 properties were taken by Eric from the LSN Trust and transferred to the ELN Trust
3 without compensation, and the retention of same by Eric and the ELN Trust would
4 result in unjust enrichment and injustice. DOD, pgs. 12-23.

5 (6) That Eric failed to follow the formalities of the ELN and LSN Trusts, and
6 had complete and unfettered access to the properties contained within such trusts:

7 THE COURT FURTHER FINDS that the formalities outlined within the
8 ELN Trust and the LSN Trust were not sufficiently and consistently
9 followed. Article eleven, section 11.3, of both trusts provides that
10 Attorney Burr, as Trust Consultant, shall have the right to remove any
11 trustee, with the exception of [Eric] and [Lynita], provided that he gives
12 the current trustee ten days written notice of their removal.

13 THE COURT FURTHER FINDS that Attorney Burr testified that on
14 February 22, 2007, at [Eric's] request, he removed [Eric's] employee,
15 Lana Martin, as Distribution Trustee of both the ELN Trust and the LSN
16 Trust and appointed [Eric's] sister, Nola Harber, as the new Distribution
17 Trustee for both trusts. Attorney Burr further testified that he did not
18 provide Ms. Martin with ten days notice as specified in the trusts
19 documents. In June 2011, at [Eric's] request, Attorney Burr once again
20 replaced the Distribution Trustee for the ELN Trust, without providing
21 ten days notice, by replacing Nola Harber with Lana Martin.

22 THE COURT FURTHER FINDS that the ELN Trust and LSN Trust
23 documents require that a meeting of the majority of the trustees be held
24 prior to any distribution of trust income or principal. During the
25 meetings, the trustees must discuss the advisability of making
26 distributions to the ELN Trust Trustor, [Eric], and the LSN Trust
27 Trustor, [Lynita]. At that time, a vote must take place and the
28 Distribution Trustee must provide an affirmative vote.

THE COURT FURTHER FINDS that the testimony of Lana Martin and
Nola Harber indicate that neither one of them ever entered a negative
vote in regards to distributions to [Eric] or [Lynita]. The testimony also
reflected that neither one of them ever advised [Eric] or [Lynita] on the
feasibility of making such distributions.

THE COURT FURTHER FINDS that while Ms. Martin and Ms. Harber
testified that they had the authority to approve or deny the distributions
to [Eric] under the ELN Trust and to [Lynita] under the LSN Trust, that
despite literally hundreds of distributions requests, they never denied
even a single distribution request. Therefore, Ms. Martin and Ms. Harber
were no more than a "rubber stamp" for [Eric's] directions as to
distributions to [Eric] and [Lynita].

THE COURT FURTHER FINDS that while the ELN Trust produced
multiple Minutes of alleged meetings; this Court seriously questions the
authenticity of the submitted documentation. Specifically, several of the
Minutes were unsigned, the authenticity of the signatures reflected on

1 some of the Minutes were questionable, and several of the Minutes
2 reflected that the meetings were held at the office of Attorney Burr while
3 the testimony clearly established that no such meetings ever occurred at
4 his law office.

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

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

14 THE COURT FURTHER FINDS that the lack of formalities further
15 emphasizes the amount of control that [Eric] exerted over both trusts and
16 that he did indeed manage both trust[s] for the benefit of the
17 community.

18 DOD, pg. 27, line 15 to pg. 29, line 12. The Court essentially found that the ELN and
19 LSN Trusts were Eric's alter egos.

20 (7) That Eric lacked credibility, and during the divorce proceedings: (a)
21 "failed to answer questions in a direct and forthright manner," (b) violated the Court's
22 injunction; and (c) "misstated the ELN Trust's financial position, or at the very least
23 was less than truthful with [the Court]." In fact, the Court referenced Eric's lack of
24 credibility, violation of Orders, and deplorable behavior during the divorce action
25 throughout its Decree, and even included a whole subsection concerning his lack of
26 credibility. Such findings warrant repeating herein:

27 ***Credibility***

28 THE COURT FURTHER FINDS that during the first six days of trial
held in 2010, [Eric] repeatedly testified that the actions he took were on
behalf of the community and that the ELN Trust and LSN Trust were
part of the community.

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

THE COURT FURTHER FINDS that [Eric] failed to answer questions
in a direct and forthright manner throughout the course of the
proceedings.

1 THE COURT FURTHER FINDS that [Eric] argued in the Motion to
2 Dissolve Injunction requesting the release of \$1,568,000, which the
3 Court had ordered be placed in a blocked trust account and enjoined
4 from being released, that the ELN Trust “has an opportunity to purchase
5 Wyoming Racing, LLC, a horse racing track and RV park for
6 \$440,000.00; however the ELN Trust will be unable to do so unless the
7 Injunction is dissolved.”

8 THE COURT FURTHER FINDS that despite the Court’s denial of the
9 request to dissolve the injunction, the ELN Trust via Dynasty
10 Development Group, LLC, completed the transaction and reacquired
11 Wyoming Downs at a purchase price of \$440,000. The completion of
12 the purchase, without the dissolution of the injunction, evidenced that
13 [Eric] misstated the ELN Trust’s financial position, or at the very least
14 was less than truthful with this Court.

15 THE COURT FURTHER FINDS that it should be noted that in an
16 attempt to circumvent this Court’s injunction regarding the \$1,568,000,
17 [Eric] had a Bankruptcy Petition filed in the United States Bankruptcy
18 Court, District of Nevada, on behalf of the Dynasty Development Group,
19 LLC, requesting that the \$1,568,000 be deemed property of the Debtor’s
20 bankruptcy estate; however, the bankruptcy court found that this Court
21 had exclusive jurisdiction over the \$1,568,000 and could make whatever
22 disposition of the funds without regard to the Debtor’s bankruptcy
23 filing.⁴

24 THE COURT FURTHER FINDS that based upon [Eric’s] change of
25 testimony under oath, his repeated failure to answer questions in a direct
26 and forthright manner, his less than candid testimony regarding the
27 necessity of dissolving the injunction in order to purchase the Wyoming
28 race track and RV park, and his attempt to circumvent the injunction
issued by this Court clearly reflect that [Eric] lacks credibility.

THE COURT FURTHER FINDS that the United States Bankruptcy
Judge, Neil P. Olack, of the Southern District of Mississippi, cited similar
concerns as to [Eric’s] credibility during a bankruptcy proceeding held on
June 24, 2011, regarding Dynasty Development Group, LLC.
Specifically, Judge Olack noted that as a witness, [Eric] simply lacked
credibility in that he failed to provide direct answers to straight forward
questions, which gave the clear impression that he was being less than
forthcoming in his responses.

THE COURT FURTHER FINDS that Bankruptcy Judge Olack found
that the evidence showed that [Eric] depleted the assets of Dynasty on
the eve of its bankruptcy filing in three separate transfers, and,
subsequently, dismissed the Bankruptcy Petition.

THE COURT FURTHER FINDS that [Eric’s] behavior and conduct
during the course of these proceedings has been deplorable. This Court
has observed [Eric] angrily bursting from the courtroom following
hearings.

...

⁴ Emphasis added.

1 THE COURT FURTHER FINDS that [Eric] has repeatedly exhibited
2 inappropriate conduct towards opposing counsel, Mr. Dickerson,
3 including, cursing at him, leaving vulgar voice messages on his office
4 phone and challenging him to a fight in the parking lot of his office.

5 THE COURT FURTHER FINDS that [Eric's] deplorable behavior also
6 included an open and deliberate violation of the Joint Preliminary
7 Injunction that has been in place since May 18, 2009.

8 DOD, pg. 23, line 9 to pg. 25, line 16. In fact, the Court also found that Eric's
9 purported expert witness, Daniel Gerety (with whom Eric had maintained a financially
10 beneficial relationship dating back to 1998), and Eric's employee, Rochelle McGowan,
11 lacked credibility. DOD pg. 26, line 27 to pg. 27, line 13.

12 (8) That while Eric and the ELN Trust claimed they were subject to
13 numerous liabilities in an effort to reduce the value of property adjudicated by the
14 Court, almost none of such liabilities existed. DOD, pg. 29, line 19 to pg. 30, line 20.
15 In fact, the Court appointed a neutral expert, Larry Bertsch, to independently trace and
16 value the parties' property held in the ELN and LSN Trusts, and Mr. Bertsch could not
17 confirm any of the indebtedness claimed by Eric and the ELN Trust. DOD, pg. 30,
18 lines 2-9.

19 Based upon the findings set forth in the Decree and above, the Court Ordered
20 an approximately equal division of the properties held in the ELN and LSN Trusts. As
21 pointed out in the ELN Trust's Motion, the Court's division of property was
22 accomplished by Ordering properties transferred between the two (2) trusts, and
23 imposing constructive trusts, without specifically invalidating the trusts. However, the
24 Court was extremely clear that it also found that the ELN and LSN Trusts were sham
25 trusts and essentially Eric's alter egos (based on the findings cited above), and that it
26 would have been wholly justified in invalidating such trusts:

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

DOD, pg. 29, lines 13-18.

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

11 DOD, pg. 44, lines 9-17.

12 The only reason the Court did not invalidate the trusts was that it believed it
13 could afford justice to the parties by transferring property between each trust to
14 accomplish an equal division of property, and award Lynita lump sum alimony, child
15 support arrears and attorneys' fees from \$1,568,000 that was enjoined in the trust
16 account of Eric's former counsel, David Stephens, Esq. Said monies were first enjoined
17 by the Court at a hearing held April 4, 2011, and remained in said account until
18 sometime shortly after the Court issued its Decree on June 3, 2013. Lynita's counsel
19 surmises that the Court did not invalidate the trusts because it was concerned, and
20 justifiably so, about the numerous unsubstantiated liabilities Eric claimed to be owed
21 to his family members, and the possibility that Eric would have such family members
22 initiate lawsuits against Lynita as part of his continued course of harassment.
23 Undoubtedly, and as Lynita pointed out in response to the two (2) petitions for writ
24 relief the ELN Trust (Eric) filed with the Nevada Supreme Court (still pending), if the
25 Court did not believe it could afford the relief it Ordered in the Decree without
26 invalidating the trusts, it would have simply invalidated the trusts based on its findings
27 warranting same, rather than changing the relief it afforded to the parties. The Court
28 has since confirmed such position on the record, which the ELN Trust complains
about, even though the Court's position was abundantly clear in the Decree.

29 In addition to dividing the parties' property, the Court in its Decree also
30 awarded Lynita \$800,000 for lump sum alimony, \$87,775 in child support arrears and
31 \$144,967 for attorneys' fees and costs. DOD, pgs. 48-49. Regarding the lump sum

1 alimony, the Court found that same was necessary, in part, as a result of Eric's actions
2 during the course of litigation, which clearly evidenced that absent a lump sum award
3 Eric would possibly "liquidate, interfere, hypothecate or give away assets" to avoid
4 alimony. DOD, pg. 39, lines 11-16. The attorneys' fees that were awarded to Lynita
5 resulted from Eric's and ELN Trust's unreasonable and unnecessary extension and
6 protraction of litigation, as set forth above. DOD, pg. 41, lines 21 to pg. 43, line 8; pg.
7 48, line 22 to page 49, line 3. Finally, the District Court Ordered the ELN Trust to
8 pay the remaining balance of \$35,258 owed to Mr. Bertsch.

9 To ensure that Lynita received her alimony, child support arrears and attorneys'
10 fees, and that Mr. Bertsch was paid his remaining balance, the Court Ordered that such
11 payments be made by the ELN Trust within thirty (30) days from the date of Decree
12 from the monies previously enjoined in Mr. Stephens' trust account. DOD, pg. 48, line
13 10 to pg. 49, line 3. To allow the ELN Trust and Eric to access the \$1,568,000 and
14 make the aforementioned payments, the Court also dissolved the prior injunction
15 freezing the \$1,568,000 in Mr. Stephens' trust account. DOD, pg. 48, lines 6-9. The
16 Court Ordered that the remaining approximately \$500,000 from the previously
17 enjoined funds would be distributed to Eric within thirty (30) days. DOD, pg. 49, lines
18 4-9.

19 In addition to the summary contained above, and because the ELN Trust has
20 presented its Motion in such a way as to lead this Court to believe that Judge Sullivan
21 has ruled solely in Lynita's favor on every issue or request, which is simply not true, it
22 must be noted that the Court entered several Orders adverse to Lynita, and denied
23 numerous requests for relief made by Lynita, throughout the divorce action. From the
24 time of the filing of Eric's Complaint for Divorce on May 6, 2009, through entry of the
25 Court's Decree of Divorce on June 3, 2013, Lynita was not awarded any temporary
26 maintenance, alimony, or child support by the Court, despite multiple requests for
27 same and despite the fact that Eric maintained control over the vast majority of the
28 parties' income producing properties. See Order filed May 25, 2011, pg. 3, lines 9-11;

1 see also Order filed June 9, 2011, pg. 2, lines 27-28. Once the ELN Trust intervened
2 in this matter, Lynita filed an Amended Answer, Counterclaim, and Third-Party
3 Complaint naming additional parties and asserting additional causes of action. The
4 ELN Trust filed a request to dismiss, and the Court dismissed numerous causes of
5 action asserted by Lynita and numerous parties named by Lynita. See Order from
6 February 23, 2013 Hearing Partially Granting ELN Trust's Motion to Dismiss Third-
7 Party Complaint Without Prejudice, filed August 29, 2012. Lynita also made two (2)
8 requests to appoint a receiver over the ELN Trust based on Eric's actions of depleting
9 the parties' property – the first request was made prior to entry of the Decree of
10 Divorce and the second request after – both of which were denied. See Order from
11 April 10, 2012 Hearing and Injunction, filed August 29, 2012; see also Injunctions
12 from September 4, 2013 Hearing, filed September 6, 2013. Prior to the 2012
13 continuation of trial, Lynita requested additional tracings from the Court appointed
14 forensic accountant, Mr. Bertsch, which was denied. See Findings of Fact and Order,
15 filed July 11, 2012. Since entry of the Decree of Divorce, the Court has also denied
16 a request by Lynita to have an appropriate party appointed as Distribution Trustee of
17 the ELN Trust in accordance with the Trust's terms. See Transcript from October 21,
18 2013 hearing, attached to the ELN Trust's Motion as Exhibit "7," and on file herein,
19 pg. 17, lines 18-20 ("So to restate, I'm denying the motion and the countermotion for
20 me to specifically appoint distribution trustee or to substitute parties.").

21 B. Post-Judgment Proceedings

22 As outlined below, following entry of the Court's Decree, Lynita filed a number
23 of motions in an attempt to enforce the Decree, and a motion to adjudicate the
24 Wyoming Downs property not divided by the Decree. Such attempts to enforce the
25 Decree have been mostly unsuccessful to date, as Eric and the ELN Trust have
26 attempted every type of legal maneuver to prevent enforcement of the Decree and
27 conclusion of this matter. In fact, the only relief that has been granted to Lynita are
28 injunctions over all the property awarded to Lynita in the Decree pending a decision

1 from the Supreme Court on the writ applications filed by the ELN Trust, payment to
2 Lynita of her share of the net income received from the parties' jointly owned Lindell
3 Professional Plaza, and required accountings of all the income generated from the
4 property awarded to Lynita. See Injunctions from September 4, 2013 Hearing, filed
5 September 6, 2013; see also Order from September 4, 2013 Hearing Regarding
6 Payment of Lindell Professional Plaza Income, filed September 25, 2013.

7 Based on the history of the underlying litigation, and Eric's never ending
8 attempts to defeat the efficacy of Court Orders and take advantage of the legal system,
9 Lynita and her counsel knew that after entry of the Decree, Eric and the ELN Trust
10 would immediately accept the benefit of the injunction dissolved by the Court's Decree
11 by withdrawing the \$1,568,000 previously enjoined in Mr. Stephens' trust account,
12 and then refuse to pay Lynita the portion of said funds awarded to her in the Decree.
13 Accordingly, on June 3, 2013, the day the Decree was issued, Lynita filed her Ex-Parte
14 Application for Direct Release of Funds to Defendant to Prevent Likely Irreparable
15 Harm and Manifest Injustice ("Ex-Parte Application"). The Court denied Lynita's Ex-
16 Parte Application, affording the ELN Trust and Eric an opportunity to be heard on the
17 request. Accordingly, on June 5, 2013 (only two (2) days after the Decree was
18 entered), Lynita filed her Motion for Immediate Payment of Funds Belonging to
19 Defendant Pursuant to Court's Decree to Ensure Receipt of Same, and for Immediate
20 Payment of Court Appointed Expert ("Motion for Payment").

21 In her Motion for Payment, Lynita requested that the Court Order that the
22 alimony, child support arrears, and attorneys' fees totaling \$1,032,742, and Mr.
23 Bertsch's fees, be paid directly from the \$1,568,000 held in Mr. Stephens' account, or
24 in the alternative, if the \$1,568,000 had already been withdrawn and transferred to
25 Eric and the ELN Trust, that Lynita's and Mr. Bertsch's portions of same be paid to
26 them immediately. Lynita's counsel submitted that if the Court did not direct the
27 \$1,032,742 which was ordered to be paid to Lynita within 30 days to be paid to her
28 immediately, "it is likely that Eric and the ELN Trust will attempt to withhold or

1 dissipate the same, thereby attempting to defeat the Court's Orders and intent and
2 further delaying Lynita's desperately needed monies." Motion for Payment, pg. 6, lines
3 21-24.

4 On June 19, 2013, the Court held a hearing on Lynita's Motion for Payment.
5 During the hearing, the Court confirmed that its intent in Ordering in the Decree that
6 the \$1,568,000 be used to pay Lynita's alimony, child support, and attorneys' fees was
7 to ensure payment of such obligations directly to Lynita, as a direct distribution from
8 the enjoined funds. Transcript from June 19, 2013 Hearing, filed June 27, 2013, pg.
9 7, lines 6.10. It was never the Court's intent for the ELN Trust to take the enjoined
10 funds, or for Lynita not to have access to the monies immediately. Accordingly, the
11 Court granted Lynita's Motion for Payment, and Ordered the ELN Trust and/or Eric
12 to pay Lynita and Mr. Bertsch within forty-eight (48) hours. See Order for Payment
13 of Funds Pursuant to June 3, 2013 Decree of Divorce, filed June 19, 2013.

14 Before the forty-eight (48) hours expired, Nola Harber, as purported
15 Distribution Trustee of the ELN Trust, filed a Petition for Writ of Prohibition, and a
16 Motion for Stay in the Nevada Supreme Court. Interestingly, the Distribution Trustee
17 for the ELN Trust at all times during the divorce proceedings was Lana Martin. It was
18 not until the June 19, 2013 hearing, that it was mentioned for the very first time by
19 Ms. Martin's counsel that the Distribution Trustee of the ELN Trust may have
20 changed: "Secondly, it's my understanding Lana Martin has resigned as distribution
21 trustee for health reasons and Nola Harber is the current distribution trustee."
22 Transcript June 19, 2013 Hearing, pg. 18, lines 9-11.

23 It should be noted that at the June 19, 2013 hearing, counsel for the ELN Trust
24 argued to the Court that the monies awarded to Lynita could not be transferred by the
25 Distribution Trustee without the approval of Eric - who was out of the country.
26 Transcript June 19, 2013 Hearing, pg. 17, lines 10-12.⁵ This argument was advanced

27 ⁵ While Lynita remained in Las Vegas with no monies to support herself, immediately
28 after withdrawing the \$1,568,000, Eric took three (3) of the parties' five (5) children on a
multi-week vacation to Thailand, as discussed at the June 19, 2013 Hearing. Transcript June

1 to the Court even though Eric had specifically delegated his ability to “institute,
2 compromise, and defend any actions and proceedings” for the ELN Trust to Lana
3 Martin because of an alleged conflict of interest (as detailed in the Decree).

4 Immediately following the June 19, 2013 Hearing, the ELN Trust filed its first
5 Application for Writ of Prohibition to the Nevada Supreme Court, and a request for
6 emergency stay, to prevent or delay Lynita’s receipt of the monies awarded to her in
7 the Decree. The Nevada Supreme Court issued a stay, and thereafter, Lynita requested
8 that the Court enjoin the monies awarded to her in the Decree pending a decision by
9 the Supreme Court. The requested injunction was granted, and has never been
10 challenged by the ELN Trust with the Nevada Supreme Court. See Injunctions from
11 September 4, 2013 Hearing, filed September 6, 2013

12 Following entry of the Court’s Decree, Lynita also sent letters to the tenants of
13 the real properties awarded to her asking them to begin forwarding their rental
14 payments to her in accordance with the Decree. After Lynita’s letter was sent, Eric sent
15 a responsive letter (personally signed by him) to the tenants asking them to disregard
16 Lynita’s letter, in violation of the Decree:

17 In response to a letter you may have received about a change of landlord,
18 please continue to make payments to Banone, LLC in the manner in
19 which you have always paid in the past. BANONE, LLC is still owner of
record on your property and will continue to receive and keep an
accounting of such payments.

20 If you have any questions, please contact Eric Nelson directly at 702-682-
21 8918 or via e-mail at ericnelson59@gmail.com

22 The foregoing facts were outlined and attested to in Lynita’s Ex Parte Application for
23 Order to Show Cause, etc.. and Motion for a Finding of Contempt, for Implementation
24 of the Penalties of Contempt, for Fees and Costs, and for Other Related Relief, filed
25 July 10, 2013.

26 On July 9, 2013, the ELN Trust filed a second Petition for Writ of Prohibition
27 and Motion for Emergency Stay with the Nevada Supreme Court challenging the award

28 _____
19, 2013 Hearing, pg. 8, lines 22-24.

1 of properties to Lynita in the Decree, and requesting a stay of payments to Lynita in
2 accordance therewith. Thereafter, Lynita requested, and the Court Ordered that the
3 ELN Trust be “enjoined from, and shall not, encumber, sell, dispose of, liquidate,
4 pledge as security, or make any other disposition of the [] assets awarded to Lynita, in
5 whole or in part, in the Court’s Decree of Divorce.” Injunctions from September 4,
6 2013 Hearing, filed September 6, 2013, pg. 4, lines 4-7. The Court also Ordered the
7 ELN Trust remove any leverage from the properties awarded to Lynita since entry of
8 the Decree, because in a showing of complete bad faith, Eric represented that he had
9 already leveraged some of said properties. Injunctions from September 4, 2013
10 Hearing, filed September 6, 2013, pg. 4, lines 23-26.

11 Finally, on June 7, 2013, after entry of the Decree, Lynita filed her Motion to
12 Amend or Alter Judgment, for Declaratory and Related Relief, requesting, in part, that
13 the Court equally divide the Wyoming Downs property not adjudicated in the Decree.
14 Specifically, in the Decree the Court found that it did not have sufficient information
15 regarding the Wyoming Downs property (purchased during the course of the divorce
16 action in violation of the Joint Preliminary Injunction), and could not make any
17 decisions or findings concerning same. DOD, pg. 45, line 23 to pg. 46, line 3. An
18 evidentiary hearing regarding Wyoming Downs was scheduled for December 11, 2013,
19 however, through the instant Motion, Eric and the ELN Trust were able to delay same;
20 the Court vacated the evidentiary hearing until a decision on the instant Motion is
21 rendered.

22 The Orders entered by the Court since entry of the Decree of Divorce have been
23 nothing more than Orders attempting to enforce the Decree, or to prevent the sale,
24 liquidation, or dissipation of the assets awarded to Lynita pending a decision by the
25 Supreme Court. Contrary to the ELN Trust’s assertions, such Orders have all been
26 made in response to requests made by Lynita and not on the Court’s own volition as
27 ...

28

1 represented.⁶ As set forth above, and as reflected by the docket, Lynita has filed several
2 motions since the Decree was entered attempting to enforce her rights under same.
3 Certainly there has been nothing improper about the Court's Orders, but since Eric is
4 apparently unhappy with the Court's attempts to enforce its Orders and preserve the
5 property that was awarded to Lynita pending a decision from the Supreme Court, the
6 ELN Trust has improperly challenged such Orders through its instant Motion.
7 Certainly if the ELN Trust or Eric believe that the Court has violated the Supreme
8 Court's stay, or made erroneous legal rulings, they could have addressed such concerns
9 in the Supreme Court. To date, no papers have been filed with the Supreme Court
10 alleging that the Court violated the Supreme Court's stay. Instead, the ELN Trust and
11 Eric have decided to make such allegations to this Court in an attempt to convince this
12 Court that Judge Sullivan is biased.

13 C. Judge Sullivan's Affidavit

14 On December 11, 2013, Judge Sullivan filed his Affidavit in Response to the
15 ELN Trust's Motion to Disqualify ("Affidavit"). In the Affidavit, Judge Sullivan
16 "unequivocally den[ied] all allegations of bias, prejudice, and discrimination made by
17 the ELN Trust" in its Motion. Affidavit, ¶ 2. As confirmed by Judge Sullivan
18 throughout his Affidavit, his rulings and decisions have been "based on law, equity,
19 fairness and justice and not because of any bias or prejudice towards the ELN Trust or
20 any party to these proceedings." See generally Affidavit, and ¶ 19.

21 III. LEGAL ANALYSIS

22 A. The ELN Trust's Motion To Disqualify Is Untimely And Legally Insufficient

23 As pointed out by Judge Sullivan in his Affidavit, the Motion filed by the ELN
24 Trust is untimely. NRS 1.235 provides, in pertinent part, as follows:

25
26 ⁶ It must be pointed out that even if the Court had entered such Orders on its own
27 accord, it certainly had the authority to do so. NRS 125.240 authorizes the court to enter any
28 order "as it deems necessary" to enforce the "final judgment and any order made before or after
judgment." Additionally, it is well settled that the Court has inherent authority to protect the
dignity and decency of its proceedings, and to enforce its decrees. *See, e.g., Halverson v.*
Hardcastle, 123 Nev. 29, 163 P.3d 428, 440 (2007).

1 1. Any party to an action or proceeding pending in any court other than
2 the Supreme Court, who seeks to disqualify a judge for actual or implied
3 bias or prejudice must file an affidavit specifying the facts upon which the
4 disqualification is sought. The affidavit of a party represented by an
5 attorney must be accompanied by a certificate of the attorney of record
6 that the affidavit is filed in good faith and not interposed for delay.
7 Except as otherwise provided in subsections 2 and 3, the affidavit must
8 be filed:

9 (a) Not less than 20 days before the date set for trial or hearing of
10 the case; or

11 (b) Not less than 3 days before the date set for the hearing of any
12 pretrial matter.

13 In *Towbin Dodge, LLC v. Eighth Judicial Dist. Ct.*, 121 Nev. 251, 112 P.3d 1063, 1070
14 (2005), the Nevada Supreme Court held that an affidavit to disqualify a judge could
15 be filed after the time period provided in NRS 1.235(1) “if new grounds for a judge’s
16 disqualification are discovered after the time limits in NRS 1.235(1) have passed.”
17 However, a party is required to file the request to disqualify “as soon as possible” after
18 becoming aware of the new information.” *Id.* In *Towbin*, the affidavit was filed the day
19 after the party moving for disqualification discovered grounds for same. Here, the ELN
20 Trust filed its Motion on December 3, 2013, approximately forty-two (42) days after
21 the last hearing in this matter on October 21, 2013. Additionally, most of the rulings,
22 findings and statements that the ELN Trust alleges form the basis for its request
23 occurred at hearings conducted on June 19, 2013 (over five (5) months prior to the
24 Motion), July 22, 2013 (over four (4) months prior to the filing of the Motion), August
25 1, 2013 (over four (4) months prior to the filing of the Motion), and September 5,
26 2013 (almost three (3) months prior to the filing of the Motion). Indeed, almost every
27 one of the statements and rulings made at the October 21, 2013 hearing, were already
28 stated at the prior hearings. Accordingly, it is clear that the ELN Trust did not file its
Motion in a timely manner, and “as soon as possible” after allegedly discovering
grounds for disqualification.

Additionally, the ELN Trust did not file an affidavit or certificate of attorney in
support of its Motion as required by NRS 1.235. Even where grounds exist to file a

1 request to disqualify outside the time periods provided in NRS 1.235(1), the
2 procedures established by NRS 1.235 must still be applied to ensure that the request
3 is maintained in good faith and not to delay, and is supported by a sworn statement.
4 Therefore, this Court should deny the Motion for failure to comply with NRS 1.235.

5
6 B. There Is No Basis For Disqualification, And Disqualification Has Only Been
Sought In Order To Obtain A Different Judge And Different Result

7 Even if the ELN Trust's Motion was timely, and included the required affidavit
8 and certification of counsel, the facts alleged in the Motion are completely insufficient,
9 as a matter of law, to warrant disqualification. All of the alleged facts which the ELN
10 Trust asserts evidence prejudice and bias constitute legal and factual statements,
11 discussions, and decisions by the Court. The Nevada Supreme Court has specifically
12 held that such facts cannot form a basis for disqualification:

13 This court gives substantial weight to a judge's decision not to recuse
14 herself and will not overturn such a decision absent a clear abuse of
15 discretion. [Citations omitted]. A judge is presumed to be unbiased, and
16 "the burden is on the party asserting the challenge to establish sufficient
17 factual grounds warranting disqualification." [Citation omitted]. A judge
18 cannot preside over an action or proceeding if he or she is biased or
19 prejudiced against one of the parties to the action. NRS 1.230(1). To
20 disqualify a judge based on personal bias, the moving party must
21 allege bias that "stems from an extrajudicial source and results in an
opinion on the merits on some basis other than what the judge
learned from his participation in the case." *In re Petition to Recall*
Dunleavy, 104 Nev. 784, 790, 769 P.2d 1271, 1275 (1988) (quoting
United States v. Beneke, 449 F. 2d 1259, 1260-61 (8th Cir. 1971)).
"Where the challenge fails to allege legally cognizable grounds
supporting a reasonable inference of bias or prejudice," a court
should summarily dismiss a motion to disqualify a judge. [Citation
omitted].

22 *Rivero v. Rivero*, 125 Nev. 410, 216 P.3d 213, 233 (2009) (emphasis added). The
23 Motion filed by the ELN Trust does not make a single allegation of bias stemming from
24 an "extrajudicial source" as required by the holding in *Rivero*. Accordingly, the Motion
25 must be denied.

26 While no further analysis is necessary, several other points deserve brief
27 discussion. First, all of the statements and rulings complained about by the ELN Trust
28 were warranted under the law. For example, the ELN Trust complains that Judge

1 Sullivan “violate[d] Nevada case law” by deciding to treat the Wyoming Downs
2 property as an omitted asset even though it was known about during the divorce
3 action, and by deciding to conduct an evidentiary hearing to adjudicate each party’s
4 rights with respect to same. NRS 125.150(1)(b) requires the Court to equally divide
5 any community property unless compelling reasons exist for an unequal division, which
6 reasons must be set forth in writing.

7 In *Blanco v. Blanco*, 129 Nev. ___, ___ P.3d ___ (Adv. Op. No. 77, October 31,
8 2013), the Nevada Supreme Court again confirmed that all community property must
9 be divided in accordance with NRS 125.150(1)(b), regardless of other facts or
10 circumstances. There, the trial court had struck a wife’s pleading as a sanction after
11 numerous discovery violations, and ordered that a “case-resolving default be entered
12 that was consistent with prior orders and [husband’s] counterclaim.” *Id.* The district
13 court clerk entered default, and husband was granted a default decree of divorce by
14 summary disposition without a prove-up or evidentiary hearing. *Id.*

15 The wife appealed, arguing in part that the case concluding sanction was too
16 harsh, or in the alternative, that the trial court should have at least conducted a prove-
17 up hearing to take evidence on the value of the parties’ property. The Supreme Court
18 held that case-concluding sanctions are permissible in divorce actions on claims other
19 than child custody and child support, but that property must be divided in accordance
20 with NRS 125.150(1)(b), even if default has been entered against a party. *Id.*
21 Specifically, the Supreme Court stated:

22 With property division in particular, however, we conclude that
23 community property and debt must be divided in accordance with the
24 law. NRS 125.150(1)(b) requires the court to make an equal disposition
25 of property upon divorce, unless the court finds a compelling reason for
26 an unequal disposition and sets forth that reason in writing. The equal
27 disposition of community property may not be dispensed with through
28 default. Even jurisdictions that have permitted the entry of a default
divorce decree as a discovery sanction require the district court to make
independent findings on the division of property in accordance with the
applicable law.

...

1 *Id.* As expressly recognized in *Blanco*, the mandate in NRS 125.150(1)(b) cannot be
2 dispensed with through default. Similarly, it cannot be dispensed with by awarding a
3 party a property that was known to the parties, but never actually adjudicated at trial.

4 Additionally, the ELN Trust complains about orders and decisions that were
5 never made by the Court. In footnote 30, for example, the ELN Trust states:

6 Another example of Judge Sullivan granting relief that Lynita's Counsel
7 demanded, without complying with the Nevada Rules of Civil Procedure
8 and Eighth Judicial District Court Rules, pertains to Lynita's Counsel's
request for the appointment of a receiver over the ELN Trust at the
August 1, 2013 hearing. . . .

9 Every request made by Lynita for a receiver, however, was specifically denied by the
10 Court, as set forth in the Factual Statement above. The ELN Trust also complains at
11 page 11 that the Court discussed the possibility of entering a charging order, even
12 though the Court again never entered a charging order. To the contrary, the Court
13 specifically denied Lynita's request for a charging order without prejudice. Injunctions
14 from September 4, 2013 Hearing, filed September 6, 2013, pg. 3, lines 9-12.

15 Finally, the ELN Trust baselessly alleges that Judge Sullivan has entered orders
16 "even if it means ignoring the direction given by the Nevada Supreme Court and/or
17 Nevada law." Motion, pg. 10, lines 5-6. Of course, the ELN Trust has not addressed
18 such allegations with the Supreme Court, despite having two (2) pending applications
19 for writs pending with the Supreme Court. Additionally, the statements complained
20 about were simply statements confirming what was clearly set forth in the Decree: that
21 the Court could have invalidated the trusts based on its findings, but did not do so
22 because it thought it could accomplish the relief provided without invalidating the
23 trusts.

24 As has been set forth above, there is no legal or factual basis supporting the ELN
25 Trust's Motion, and the Motion should be denied.

26 . . .

27 . . .

28 . . .

1 C. Lynita Should Be Awarded Her Attorneys' Fees And Costs Incurred In This
2 Matter

3 NRS 18.010 permits litigants to recover their attorneys' fees where the Court
4 finds that a claim or defense of an opposing party was brought without reasonable
5 ground or to harass the prevailing party. EDCR 7.60(b)(1) permits the Court to
6 sanction a party for presenting to the court a motion "which is obviously frivolous,
7 unnecessary or unwarranted." In addition to denying the ELN Trust's Motion, the
8 Court should enter an Order awarding Lynita her fees and costs incurred in defending
9 against such Motion. As has been set forth throughout, the ELN Trust's Motion is
10 untimely and not supported as required by law. Additionally, the allegations made do
11 not, as a matter of law, constitute reasonable grounds to disqualify a judge.

12 Pursuant to Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 349, 455 P.2d
13 31, 33 (1969), in awarding reasonable fees and costs to Lynita this Court will need to
14 make specific findings regarding the quality of her advocates, the character of the work
15 done in this Opposition and Countermotion, the work actually performed, and the
16 result. It is impossible at this time to provide the Court with a total amount of time
17 spent towards this Opposition and Countermotion, as a Reply to the ELN Trust's
18 opposition to Lynita's Countermotion will likely be required. To assist the Court in
19 making the other necessary findings, however, Lynita submits that this Opposition and
20 Countermotion is only necessary as a result of the frivolous, unnecessary and
21 unwarranted Motion filed by the ELN Trust. Lynita's lead counsel charges a standard
22 hourly fee of \$550.00 for his services. Associate counsels' hourly fees are \$400.00.
23 Both fees are customary and reasonable in this locality for similarly situated persons
24 and cases. Mr. Dickerson has been practicing law for 35 years, with the last 20 plus
25 years devoted to the practice of family law. He is a former President of the State Bar
26 of Nevada, and Clark County Bar Associations, and is AV rated both as to skill and
27 ethics. Mr. Karacsonyi has been licensed to practice law in Nevada since 2007, and has
28 been appointed by his peers to the State Bar of Nevada, Family Law Executive Council.

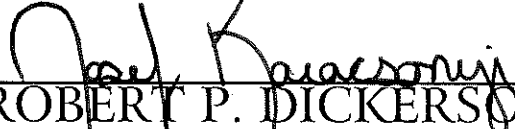
1 The Dickerson Law Group is an AV Preeminent rated law firm, the highest level of
2 professional excellence. All attorneys at the firm have extensive experience in the area
3 of family law, and a reputation for competency. The rates charged by Lynita's counsel
4 are reasonable in light of the experience of the law firm, and the character of work
5 involved in this matter.

6 **IV. CONCLUSION**

7 For the reasons stated above, the ELN Trust's request to disqualify the
8 Honorable Frank P. Sullivan should be denied, and Lynita should be awarded
9 attorneys' fees and costs for having to defend against such request.

10 Dated this 18th day of December, 2013.

11 THE DICKERSON LAW GROUP

12 
13 ROBERT P. DICKERSON, ESQ.
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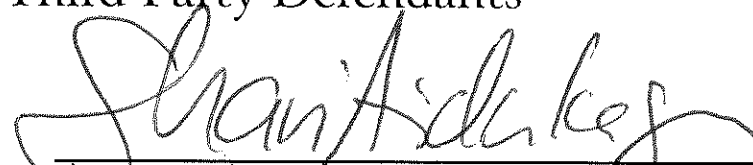
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CERTIFICATE OF MAILING

I HEREBY CERTIFY that I am depositing a true and correct copy of
DEFENDANT'S OPPOSITION TO MOTION TO DISQUALIFY JUDGE SULLIVAN
AND COUNTERMOTION FOR ATTORNEYS' FEES AND COSTS, in the U.S. Mail,
postage prepaid, to the following opposing counsels at their last known address on the
18th day of December, 2013:

RHONDA K. FORSBERG, ESQ.
RADFORD J. SMITH, CHARTERED
64 North Pecos Road, Ste. 700
Henderson, Nevada 89074
Attorneys for Plaintiff

MARK A. SOLOMON, ESQ.
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Las Vegas, Nevada 89129
Attorneys for Third-Party Defendants


An employee of The Dickerson Law Group

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4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA
7

8 ERIC L. NELSON

9 Plaintiff(s),

CASE NO. D411537

10 -VS-

DEPT. NO. O

11 LYNITA SUE NELSON

12 Defendant(s).

13
14 **FAMILY COURT
MOTION/OPPOSITION FEE
INFORMATION SHEET
(NRS 19.0312)**

14 Party Filing Motion/Opposition: ☐ Plaintiff/Petitioner ☒ Defendant/Respondent

15 MOTION FOR OPPOSITION TO Defendant's Opposition to Motion to Disqualify
16 Judge Sullivan and Countermotion for Attorneys' Fees and Costs

17 **Motions and**
18 **Oppositions to Motions**
19 **filed after entry of a final**
20 **order pursuant to NRS**
21 **125, 125B or 125C are**
22 **subject to the Re-open**
23 **filing fee of \$25.00,**
24 **unless specifically**
25 **excluded. (NRS 19.0312)**

23 **NOTICE:**

24 *If it is determined that a motion or*
25 *opposition is filed without payment*
26 *of the appropriate fee, the matter*
27 *may be taken off the Court's*
28 *calendar or may remain undecided*
until payment is made.

Mark correct answer with an "X."

1. No final Decree or Custody Order has been
entered. ☐ YES ☒ NO
2. This document is filed solely to adjust the amount of
support for a child. No other request is made.
☐ YES ☒ NO
3. This motion is made for reconsideration or a new
trial and is filed within 10 days of the Judge's Order
If YES, provide file date of Order: _____
☐ YES ☒ NO

If you answered YES to any of the questions above,
you are not subject to the \$25 fee.

27 Motion/Opposition ☒ IS ☐ IS NOT subject to \$25 filing fee

28 Dated this 18th of December 200 2013

Shari Adulak
Printed Name of Preparer

Shari Adulak
Signature of Preparer

Exhibit “A”

AUGUST 30, 2010 TRIAL TESTIMONY¹

Opening Statement by Mr. Jimmerson:

You have before you a list of properties [Eric's Options A and B] which I'll explain to you in just a minute, but to give you an overview, give or take on cost basis, 18, 19 million dollars in assets which would be divided under our proposals nine and nine...

TT, August 30, 2010, pg. 14, beginning at line 2.

... each party, on a cost basis, is going to get approximately \$9 million in assets and on a real fair market value basis, something considerably more. And more importantly, **we're dividing everything that these parties have, including their businesses, in half plus or minus one or two adjustments.** . . .

TT, August 30, 2010, pg. 14, beginning at line 15.

If I could now ask you to briefly turn your attention to Options A and B, I'd like to discuss this with you. The difference between Option A and B is it just turns on two assets, okay? **Option A is an equal division of all assets and liabilities, Judge, except for the cash that each of them have on their own, so we didn't divide the cash Lynita has in her six or seven bank accounts and we didn't divide Eric's cash that he has in his four or five bank accounts. They take their own – they take their own cars, you know, the – they take their own personal property, they take their own furniture and furnishings that they have plus or minus some things that could be exchanged.** . . .

TT, August 30, 2010, pg. 19, beginning at line 5.

So the difference between A and B is A is everything divided in half except for cash and for cars and **B is everything divided in half except for cash and cars except that Mississippi would go to Husband and Russell would go to Wife.**

TT, August 30, 2010, pg. 21, beginning at line 23.

Direct Examination of Eric L. Nelson, questioning by Mr. Jimmerson:

A. **[T]hat's my primary focus is managing all my assets and Lynita's assets so we manage our community assets, and that's where our primary revenue is driven.**

TT, August 30, 2010, pg. 32, beginning at line 21.

¹ Emphasis added.

Q. I just asked you, please tell the Court about the trusts –

A. LSN Trust –

Q. – **how they came about.**

A. Was designed and set up and my trust, ELN Trust, or **Eric Nelson's Trust was for asset protection purposes.**

Q. Okay.

A. In the event that something happened to me, I didn't have to carry life insurance. **I would put safe assets into her property in her assets for her and the kids. My assets were much more volatile, much more—I would say daring; casino properties, zoning properties, partners properties, so we maintained this and these – all these trusts were designed and set up by Jeff Burr. [He] is an excellent attorney and so I felt 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.**

TT, August 30, 2010, pg. 44, beginning at line 21.

Q (by the Court). So that's 1A [referencing Eric's Exhibit 1A]?

A. – this is basically a way I felt to – **to easily explain the assets, to simplify it for Joe [Leaunae], Bob [Dickerson], and Melissa [Attanasio], Mr. [Bob] Gaston, anyone else that'd look at our estate,** and so I listed the property – **you'll see that these properties are designated in somebody's trust; LSN Trust or Eric's Trust.** The majority of them if it's a sub-company it's going to flow up to my trust by design.

TT, August 30, 2010, pg. 48, beginning at line 2 (discussing Plaintiff's Exhibit 1A).

... I'm confident that you're going to hear that the vast majority of these can be sold and divided.

TT, August 30, 2010, pg. 49, lines 10-11 (by Mr. Jimmerson discussing properties listed in Exhibit 1A).

Q. [Indiscernible].

A. Okay, so, Your Honor, so I prepared this document to allow us to anticipate

who wanted some of the assets. **It is so important that I get divorced that I'm willing to split every asset 50/50. I want you to make that very clear.**
...

TT, August 30, 2010, pg. 52, beginning at line 2.

Q. And [the tenancy for your office at Lindell] is on a month-to-month?

A. **Well, we don't pay rent because we're managing all the assets, so I don't pay myself to pay Lynita because we – it's all community.**

TT, August 30, 2010, pg. 70, beginning at line 21 (discussing the Lindell Plaza Office building).

Q. Okay. So the last 10, then, are **10 lots owned 25 percent by the Lynita Trust. It's community property**, I understand –

A. Yes.

Q. – but its owned by the Lynita Trust and three other guys?

A. Yes.

...

Q. **Eighty [lots] by the community?**

A. **Yes.**

TT, August 30, 2010, pg. 115, beginning at line 9 (discussing the Gateway Arizona lots).

Q. Okay, so **Dynasty Development Company, for the Court's edification.** .

A. Yes.

Q. – is the name of the company that owns Lynita and Eric's interests in Silver Slipper?

A. **Yes, under my trust.**

Q. All right.

A. Lynita's not a party to that, I mean, with the – with side of the – the trust side of it.

Q. **The trust owns it and Eric Nelson –**

A. **The community – yes.**

Q. **– Trust, but she has a community interest, and that's the entity –**

A. **Right.**

TT, August 30, 2010, pgs. 156-57 (discussing Silver Slipper/Dynasty Development).

A. ...I said, guys – they wanted all the land that **we owned** down there, **Lynita and me**, which was in my trust, to go into the operation and the security. I refused. In fact I refused so much I said I'm **going to transfer a majority of these properties into Lynita's trust** to make sure they're fully aware that these properties aren't going off. I'm going to do a leveling of the trusts. **I recorded the deeds incorrectly. Lana typed them up.** There were some verbiage problems when we transferred them to Lynita, they clouded the title.

TT, August 30, 2010, pg. 165, beginning at line 6 (discussing land deals in Mississippi).

Q. And what do they pay Dynasty if they pay – **who is the owner of the real estate that the RV park's on?**

A. **Well the, it's the community. It's under Lynita's trust right now. It came from my trust into her trust.** It's clouded title. That's the property – the 70 or 60 or 70 acres that's in the Manise lawsuit....

TT, August 30, 2010, pg. 186, beginning at line 2.

AUGUST 31, 2010 TRIAL TESTIMONY

Cross Examination of Eric L. Nelson, questioning by Mr. Dickerson:

Q. You've given her \$500 since June of 2008, correct?

...

A. Well, no, no, that - - that's its. As **community assets** she has 2.6-million where her flow of cash was 15,000 a month. So if it's community, estate, she --

...

Q. Sir, do you understand my question?

A. – has had that. Yes, sir.

Q. Since June of 2008 - -

A. Yes, sir.

Q. - - you have given your wife Lynita a grand total of \$500, correct?

Mr. Jimmerson: Objection to the form of the question.

A. Well, it's not true, Mr. Dickerson. I've given her 2.6-million of the community.

TT, August 31, 2010, pg. 443, beginning at line 17.

Q. How much were you giving her sir?

A. **I was giving her money that I would flow into the Lindell account, even if we didn't collect rent, I'd put additional money in it from Nelson Trust so she would get an additional 6000 periodically.**

TT, August 31, 2010, pg. 463, beginning at line 4 (discussing payments from ELN Trust to Lynita).

Q. Well let me ask this if I may. **Other than Lynita's bank accounts which over on the income section you don't represent any income, you're in control of all of these assets, isn't that true?**

A. No.

Q. **Which assets are you -**

A. **Well, I manage them but she has an ownership in - in -**

Q. Well -

A. - whatever

Q. **You're in control of them. You're the one that is receiving all this income that's being generated from these assets; is that true?**

A. **And paying all the expenses.**

TT, August 31, 2010, pg. 473, beginning at line 16.

Q. Now sir, don't you agree that you stopped paying any rental income to Lynita since May 2009?

A. I don't know when the last thing, but **Lynita didn't ever receive rental income, let's get that straight. She received a check from me to assist in some areas of whatever she needed assistance in. We never calculated that she got some percentage of any rents or whatever. That's not the way we do our business.**

TT, August 31, 2010, pg. 547, beginning at line 1.

Q. **Now, in February of this year, you used community cash to purchase an interest in this property; is that correct?**

A. **Yes, sir.**

TT, August 31, 2010, pg. 549, beginning at line 18 (discussing Russell Road property).

Q. **So roughly we're looking then at you took \$2,777,861 –**

A. **Yes, sir.**

Q. **– of community cash?**

A. **Yes, sir.**

Q. **And you gave that to your brother?**

A. **No, sir.**

Q. **What'd you do with it?**

A. **I bought two-thirds of his building --**

TT, August 31, 2010, pg. 559, beginning at line 3.

SEPTEMBER 1, 2010 TRIAL TESTIMONY

Cross Examination of Eric L. Nelson, questioning by Mr. Dickerson:

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

A. **I believe so, yes.**

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

A. **Yes, sir.**

TT, September 1, 2010, pg. 673, beginning at line 20.

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

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

...

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

Q. You put them –

A. **Yes, sir.**

Q. **– into Lynita's?**

A. **Yes, sir.**

Q. **All right. For –**

A. **– for community wealth.**

TT, September 1, 2010, pg. 691, beginning at line 21 (discussing Mississippi land).

Q. Okay. And title then was put in the name of Lynita's trust at your –

A. **Yes, sir.**

Q. **– at your behest, correct?**

A. **Yes, sir.**

Q. [] So you're quibbling here as to whether you didn't - - you purchased that home?

...

A. **I paid off the mortgage. I didn't buy the house from her. I paid off the mortgage, put it in Lynita's name** for – so they would be comfortable and her sister wouldn't think there was anything – any foul play going on.

TT, September 1, 2010, pg. 697, beginning at line 21 (discussing Pebble Beach house).

A. **But it gave us more flexibility to level off the trusses [sic] or level off this at divorce agreement.**

TT, September 1, 2010, pg. 704, beginning at line 22 (discussing Banone property division).

OCTOBER 19, 2010 TRIAL TESTIMONY

Cross Examination of Eric L. Nelson, questioning by Mr. Dickerson:

Q. And why did you do that [close the auction company], sir?

A. . . . I was under water these businesses. . . . to save as much in our community estate, I was forced to lay people off, generate cash flow so Lynita would have the cash flow from these properties in the future.

TT, October 19, 2010, pg. 27, beginning at line 16 (discussing business closures).

Q. Now you talk, sir, about you're initiating a lawsuit against the Silver Slipper?

A. Yes, sir. I believe I'm going to.

Q. Now who is – who is – you personally, you as an individual?

A. Me personally, yes. . .

TT, October 19, 2010, pg. 40, beginning at line 18.

Q. Well, but who's been damaged?

A. I believe myself and my – partners and Lynita.

Q. Well, the stock – the stock is held in the name of Dynasty; is that correct?

A. Yes, sir.

Q. And there is some stock – or no, all the stock is held in the name of Dynasty; is that true?

A. Yes, sir.

Q. It is owned by you?

A. **Yes, sir.**

TT, October 19, 2010, pg. 41, beginning at line 4.

Q. Okay. So in other words, it's just - - this is just one of Eric Nelson's threats? I'm going to sue everybody or is there something out there? Is it really - -

A. Maybe it's a strategy . . . And - - and if they had some misgivings Mr. Dickerson, then possibly it would delay some of those areas. **And so I'm trying to salvage everything and anything I can in that investment for this community.**

TT, October 19, 2010, pgs. 42-43.

Q. So it's just - - you don't believe that's important information for us to know, whether a lot has been sold and where that money is?

...

A. - - let me just - - **she can have anything she wants 50/50.**

TT, October 19, 2010, pg. 58, beginning line 7.

Q. That is money, the \$45,500 [promissory note], is money that is owed to Nelson & Associates by Emerald Bay Mississippi, LLC, isn't that correct?

A. All owned by Eric Nelson.

Q. Pardon me?

A. All owned by Eric Nelson.

Q. So the answer to that is yes.

A. I'm going to pay myself.

TT, October 19, 2010, pg. 76, beginning line 17.

OCTOBER 20, 2010 TRIAL TESTIMONY

Redirect Examination of Eric L. Nelson, questioning by Mr. Jimmerson:

Q. **Here you go, Judge. We're going to call this Option C.**

A. I worked off the same worksheets that we've got Bob, or the same thing

we've been – we kind of duplicated it. But I couldn't pull your stuff up to do it and mine was on my computer. So I went this direction. It was okay. **And so we had court option A revised is what I'm looking at.**

TT, October 20, 2010, pg. 223, beginning line 9.

A. Well, I – I **understand the judge's position. Even though we had irrevocable trusts we wanted to put everything out there on top of everything. It was outweighed in my favor. And –**

Q. All right. So then –

A. **– one thing we do is split everything. However, this would be a fair scenario** where we both conceding in some areas in all litigation, use my expertise to fight off claims that I think I need to fight off on behalf of her and me.

And so this is what I came up with . I think under – this is subject to conditions that everybody was agreeing. It was additional conditions and things change.

TT, October 20, 2010, pg. 226, beginning line 6. Thereafter, Eric explained to the Court his “Option C” for division of all community property held in the Trusts in detail, asset by asset.

Exhibit “B”

NOVEMBER 22, 2010 TRIAL TESTIMONY¹

Direct Examination of Jeffrey Burr, Esq., questioning by James J. Jimmerson, Esq. ("Mr. Jimmerson"):

Q. It's my understanding that the Nelsons first consulted you for trust work in roughly 1991, about 19 years ago. Is that consistent with your recollection?

A. Yes.

Q. What do you recall in that regard?

A. They came to me at the time and they wanted to do some estate planning and we helped draft a joint family trust for them.

Trial Transcript ("TT"), November 22, 2010, pg. 7, lines 17-19.

Q. Quite a while, okay. Now, what is the - - what was the purpose in 1991 for creating the Eric Nelson and Lynita Sue Nelson Family Trust?

A. They wanted to delineate what happened in the event one or both of them became incompetent or passed away and they wanted to do a trust to help - - help avoid probate in case they had a catastrophe in their family.

TT, November 22, 2010, pg. 11, lines 2-8.

Q. Okay. Now, we know through the documents at least, about two years past and then they returned to you for additional **estate planning**; is that true?

A. Yes.

...

Q. Now, **what was the purpose of the 1993 Agreement which I'll show you here?**

A. The Nels --

...

Q. Okay. **So what I want to know is what are you being told by either Eric**

¹ Emphasis added.

or Lynita or what are you telling them in response as to why they want a separate agreement now in 1992? And the documents that went along to implement that?

- A. Well, they came to me and Eric was getting ready or just already began involvement in what they both felt were risky ventures. There was some gaming that he wanted to be involved in. And he was going to have to sign some guarantees and the concern was that we didn't want all the a - - **they didn't want all the assets subject to creditors. And so they were looking for ways to protect a portion of the assets from potential liabilities down the road.**

TT, November 22, 2010, pgs. 17-19.

- Q. **Did you explain to Lynita Nelson that by signing the 1993 Agreement and the way to implement that, the separate property trust, that she was relinquishing her community property interest as it relates to assets that were being placed in Eric's separate property trust as Eric was relinquishing community property interest being placed in Lynita's separate property trust?**

...

- A. **Okay. This is where it gets a little tricky. The discussion of course was clear and concise about trying to protect the assets from third party creditors and from guarantees and that type of thing. And in order to accomplish that, it was my opinion this - - the property needed to be separated. So, did we discuss in detail, you know, marital property rights as to each other, we did have a discussion about that. And the property was divided equally at the time. And my advice to them was, you know, going forward they should balance the assets on a periodic basis to maintain their 50/50 ownership, because again, these were two people that were doing well in their marriage, getting along, and they were primarily focusing on outside creditors and frivolous lawsuits, that kind of thing.**

So - - so there wasn't a big discussion about, you know, dissolution rights and that type of thing.

- Q. Okay.

- A. **It was more just protecting them against third party creditors.**

TT, November 22, 2010, pg. 21, lines 10-16; pg. 22, lines 3-22.

Cross Examination of Mr. Burr, questioning by Robert P. Dickerson, Esq. ("Mr. Dickerson"):

Q. Okay. Now, isn't it true that - - do you recall how it came about that you were contacted with respect to the issues that were being discussed for the purpose of this 1993 Agreement in say the spring of 1993?

A. Yeah, the parties again came to see me.

...

Q. **So it is true, Mr. Burr, that really the sole purpose of you putting together this 1993 Agreement that's been admitted into evidence as Exhibit 210 was simply and solely for the purpose of asset protection from creditors?**

...

A. **The purpose of this agreement was to protect them from creditors, yes.**

TT, November 22, 2010, pg. 11, lines 7-11, 19-23; pg. 12, lines 6-7.

Q (by the Court). Do you understand why they came to your - - or the purpose of you said to protect assets from creditors? Is there anything else that you understood to be the purpose of the parties coming before you for the 1993 Agreement?

A. **That was the sole purpose. There was no discussion about protecting each other from each other or dissolution or anything.**

Q (Mr. Dickerson resumes questioning). **And in fact, wasn't there discussion of the fact that there would be no different - - that for example, the - - the assets that are going to Lynita, if Eric lost every one of his assets because of the risks involved and he lost every one of his assets, was it the intent that he have no interest in the assets that are being distributed to Lynita?**

A. **The intent was Lynita would take care of him and further their community.**

TT, November 22, 2010, pg. 12, lines 23-24; pg. 13, lines 1-15.

Q. Okay. And again, vis-a-vis each other as affecting their rights against each other, what was their intent?

A. **Again, my understanding of the intent and the discussions we had related to protection from third party creditors, but they still wanted to take care of each other and - - and benefit each other basically.**

TT, November 22, 2010, pg. 15, lines 18-23.

Direct Examination of Mr. Burr, questioning by Mr. Jimmerson:

Q. Okay. **So please tell us what communication happened between you, Lynita and Eric Nelson regarding hey guys, there's a new law on the books that may be of some advantage to you?**

A. **Well, keep in mind that the dynamics between Lynita and Eric, Eric was pretty much the business guy and so, he was the one I would predominantly communicate with.**

Q. Okay.

A. And we sent letters out, communication to our clients, informing them of this opportunity to utilize this special trust and Eric and - - and Lynita came in I believe together and we talked about, you know, how these asset protection trusts could be layered on top of the other trusts they'd done and in other words, **and give more protection to them as a couple, as a family.**

TT, November 22, 2010, pg. 37, lines 13-14.

A. **Actually, Eric**, because he's in real estate and very knowledgeable, had a pretty competent staff, **he pretty much always wanted to be in control of the funding and do that.**

TT, November 22, 2010, pg. 39, lines 15-17 (discussing funding of the ELN and LSN Trusts).

Q. Okay. So for what purposes of the Nelsons, each of them were trying to accomplish, why would the use of this trust be superior than the revocable separate property trust that they were using since 1993?

A. Okay. In these types of trusts, the self-settled spendthrift trusts were not available in any state at that time, and so the onl - - the best we could do for asset protection purposes was to try to divide assets equally between the spouses, this protecting the less risky spouse from hopefully a lawsuit for - - from - - on the risky spouse's side, because as we all know, if you have community property debt, all the community property is exposed to liability. **So back then, that was kind of the best plan we had to at least protect one-half the value of the estate.**

Q. Okay.

A. And so time moved forward, this special trust is passed and now because

they already have these other trusts that they've created there's still some utility in dividing the assets between those two trusts from a creditor protection point of view and then you layer on top of that or you - - in conjunction with that by transferring to an asset protection trust the fact that now after two years have elapsed, not only is the less risky spouse protected but also the more risky spouse hopefully is protected after two years elapse from liabilities that could occur. **So it was just a way of enhancing the asset protection planning that we had tried to put in place before.**

TT, November 22, 2010, pg. 42, lines 4-7, and 13-24; pg. 43, lines 1-11.

Q. **And what did you explain to [Lynita] were the basic concepts of the trust, the irrevocable trust of 2001, Exhibit 81?**

A. **Just that this additional statute would provide an extra layer of protection for her, Eric and the family from creditors.**

Q. Okay. So, how were the assets divided between the parties if you know?

A. **Eric just said he would take that upon himself.**

TT, November 22, 2010, pg. 45, lines 11-16, and 23-24; pg. 46, line 1.

Q. Okay. Would you agree with me that not only would she be able to understand the word irrevocable because of your conversation with her, but she could understand that it may not be altered, amended or revoked?

A. **I must interject now that I explained to both parties that irrevocable is a kind of a term of art in the trust world. Any trust can be revoked or amended by transferring all of the assets out of it when it becomes unfunded and they have - - each have the power to do that pretty much as investment trustee with the distribution trustee's authority.**

Q. Right.

A. And then the statute gave them a continuing power of appointment over the assets so they could change the beneficiaries, the - - the dispositive provisions at any time. So one thing I - - we tell all our clients that do these because they get all concerned about well, this is irrevocable, I don't know if I want to do it, **we stress the flexibility of these trusts still because the statute provides a lot of flexibility still with the trustor and allows for them to if they want, if it ever becomes obsolete or it becomes no longer necessary in the planning, they could pretty much get rid of the trust just by transferring the assets out of the trust.**

So it's not your typical like with gift planning and when you're trying to avoid estate tax, you really button up the trust and you make it so it's really irrevocable without independent trustee approval and all that kind of - - these types of trusts are very flexible. It's a term of art, even the statute as you read it, talks about irrevocability, but it gives all these powers to the trustor.

TT, November 22, 2010, pg. 47, lines 18-24; pg. 48, lines 1-24.

Q. . . . I understood you to say that as a practical matter, if the trustee, with the distributors trustee, the two of them, the investment trustee and . . . the distribution trustee, . . . , can distribute assets to whom they wish or how they wish, correct?

A. Yes.

...

A. When we talk about irrevocable, there's so many ways still to change the terms of the trust. That's - - I have to in fairness say that, but you're right, the term - - if you look up Webster's Dictionary, and you look at that provision, irrevocable means you can't change it.

TT, November 22, 2010, pg. 49, lines 18-24; pg. 50, lines 1, and 15-19.

Q. . . . The things that you say about the flexibility because it's an irrevocable trust are things that the trustee can do by will, by voluntary choice, correct?

A. Yes.

Q. Can a court order assets to be removed from an irrevocable trust as defined under Chapter 166?

A. I think in certain circumstances, yes.

Q. How is that possible?

A. I believe that you'd have - - any document like that, you'd have to look at who the grantor is and **if the grantor really didn't possess or own the property by him or herself [e.g. community property]. That's one reason the Court could order the revocation or amendment of the trust.**

TT, November 22, 2010, pg. 51, lines 10-22.

- Q. Each party has half - - has assets in the trust. Are you telling me that Judge Sullivan has the power to order against the grantor's wish, against the trustee's wish, being the same person . . . Can Judge Sullivan order her to transfer assets over to her husband?
- A. I believe so, yes.
- Q. And what's the basis for that?
- A. **Well, you have to go back to the 1993 Agreement, for example, what was done. That agreement, even though it did alter certain assets and their character at the time it was created, you'll notice there's no provision in there directing how community property will be split going forward; for example, earned income, personal services income. So you've got this ongoing issue of after that date there's going to be community property created and separate property that is attributable to the division that occurred. So you're going to have community property issues that arise - - that arise. And so maybe one spouse in doing the transfers and funding the trust was actually funding it with community property.**

TT, November 22, 2010, pg. 52, lines 3-23.

- Q. I'll ask you again because I think you have. What were the parties agreeing to do as it relates to dividing their assets and characterizing their assets as their respective separate property in 1993 and redone again in an irrevocable nature in 2001?
- A. In '93, it's clear that they were dividing their estate equally into two separate trust, into two separate prop - - and into separate property. **In 2001, you'll notice there's not that language in that trust declaring it to be separate property. At that point in time, you know, I don't see and - - there was not attempt really to define community property rights at that time. And again, the intent all along was to protect them from third-party creditors, from guarantees, and (indiscernible) for them from the very beginning that I thought these trusts would not - - should not be relied upon for dissolution rights; I mean, because their intent all along was to keep the balance of ownership.**

TT, November 22, 2010, pg. 54, lines 7-23.

- Q. **2001, (indiscernible) what were the parties' understanding and intent as you understood it, as you prepared the documents, relative to whether or not there still retained a community property interest in assets they declared to be each party's separate property, vis-a-vis themselves?**

A. Again - -

Q. And not a third party creditor?

A. Again, to be - - I mean, clear, vis-a-vis themselves, this trust - - **this planning was never meant to alter the rights in the event of a dissolution or divorce. And that was never discussed.** I mean, the whole discussion focused on how can the family best protect itself from potential liabilities to third parties. And so that was basically what was discussed.

Q. Just so I have a current understanding, would that be trust, your answer be true, for all of the asset protection trusts your firm has prepared since 1999 when the statute passed?

A. Yes.

TT, November 22, 2010, pg. 56, lines 1-24.

A. ... **But the intent, and I'll say this very clearly, our intent when we do this planning for them is not to somehow create with that planning some type of pre-dissolution event or pre-dissolution planning for the couple.** That's not why they come to us for it. We tell them to go see divorce attorneys for that. So they come to us together trying to find protection from outside creditors being [sic].

Q. Okay. Specifically as it related to Lynita Nelson and Eric Nelson, did you have a conversation with Eric Nelson and Lynita Nelson where you explained to them that the execution of the irrevocable trust in 2001 was not a protection against each other as it relates to community property rights?

A. I explained - - my best of my recollection, because I try to do this in every case, **I tried to tell them that these trusts should not be relied upon in a dissolution setting.**

TT, November 22, 2010, pg. 58, lines 10-17, and 19-24; pg. 59, lines 1-3.

Cross Examination of Mr. Burr, questioning by Mr. Dickerson:

Q. All right. Well, one of the things that you indicated that the parties agreed to specifically Lynita and Eric in 2001, was that there would be, you know, a leveling off or an updating of the trusts to try to keep them roughly even, do you recall your testimony?

A. Yes.

Q. Okay. And what did you communicate to them in that regard?

A. Just that it would be important to, you know, periodically rebalance the trusts.

TT, November 22, 2010, pg. 33, lines 4-14.

Q. Now again, at the point in time that they - - in May of 2001, when Eric Nelson and Lynita Nelson entered into their respective trusts, Exhibit 80 and 81, **did you have discussions with the parties as to what their intent was with respect to each other, vis-a-vis each other, affecting their community property rights or their interest in all their property?**

A. **I have to say that yes, the tenor, the tone all along was one of cooperation and a mutually shared goal of trying to protect their family from as - - from creditors, frivolous lawsuits, that type of thing, but a shared intent to look out for each other and the community at the same time.**

Q. So isn't it true in doing that sir, what the parties wanted to do and their intent was to take all of the assets in which there was any risk involved and put those into Eric Nelson's trust; is that correct?

A. Back - - yes. Back in the initial phase of this and continuing forward, that was one of the goals as I understood it.

Q. Okay. And the other goal was to take all of the assets that are safe that are owned free and clear and put those in Lynita Nelson's trust, correct?

A. Best of my recollection, yes.

Q. Okay. So did the parties discuss with your - - you their intent or were you aware of what their intent was, if all of the assets that were in Eric Nelson's trust went down the drain, they failed, the creditors took them away, what was going to happen with respect to the remaining assets, the safe assets, in Lynita Nelson's trust?

A. Well again, if that happened the hope was that only Eric's assets again would be gone and that would leave the rest of the assets available for the family.

Q. Now is that consistent with the intent that was expressed to you by Mr. and Mrs. Nelson when they first met with you in 1991?

A. Yes.

TT, November 22, 2010, pg. 19, lines 8-24; pg. 20, lines 1-18.

Q. Assets that are held in the name of Lynita Nelson's trust, this Court could enter an order directing Lynita Nelson to transfer tho - - transfer half of an interest in any of those assets to Eric Nelson as an individual, would you agree?

A. Or to his trust.

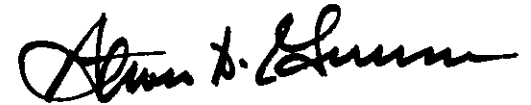
TT, November 22, 2010, pg. 60, lines 16-20.

Re-direct Examination of Mr. Burr, questioning by Mr. Jimmerson:

Q. The way to - - to render one of these trusts essentially ineffective is to voluntarily have the investment trustee and the distribution trustee voluntarily transfer assets away from the trust, correct?

A. That's one way, yes.

TT, November 22, 2010, pg. 62, lines 6-9.



CLERK OF THE COURT

1 ORDR

2
3 EIGHTH JUDICIAL DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 ERIC L. NELSON

6 Plaintiff,

7 vs.

8 LYNITA SUE NELSON,

9 Defendant.

Case No. D411537

Dept. No. IX

10 **ORDER DENYING MOTION TO DISQUALIFY JUDGE FRANK P. SULLIVAN**

11 This Court, having considered all pleadings filed in relation to the Plaintiff's Motion to
12 Disqualify filed December 3, 2013, decides the matter upon the pleadings and without oral
13 argument pursuant to EDCR 2.23.

14 Considering the merits of the present Motion, this Court concludes that Plaintiff's Motion
15 does not raise sufficient grounds to support disqualification and is denied. First, this Court notes
16 that the Nevada Supreme Court held that "a judge or justice is presumed not to be biased, and the
17 burden is on the party asserting the challenge to establish sufficient factual grounds warranting
18 disqualification." Hogan v. Warden, Ely State Prison, 112 Nev. 553, 559-60, 916 P.2d 805, 809
19 (1996) citing Goldman v. Bryan, 104 Nev. 644, 649, 764 P.2d 1296, 1299 (1988). Plaintiff has not
20 met this burden. The instant Motion states that Judge Sullivan should be disqualified due to his
21 bias against Plaintiff. Plaintiff raises several allegations of judicial bias in support of his Motion: that
22 Judge Sullivan penalized Plaintiff for filing a Writ of Prohibition, that his bias against Plaintiff was so
23 strong that he would not follow the direction of the Nevada Supreme Court, and that he was so
24 biased against Plaintiff that he refused to correctly apply the law in order to damage Plaintiff. This
25 Court, considering the entirety of the record, finds that Plaintiff's Motion fails to meet the burden
26 mandated in Hogan v. Warden and orders the Motion DENIED.

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CLERK OF THE COURT

1 I. Allegations of Bias

2 a. *Penalization of Plaintiff for Filing Writ of Prohibition*

3 First, Plaintiff's Motion does not allege sufficient proof of Judge Sullivan's retaliation against
4 Plaintiff for filing a Writ of Prohibition. Plaintiff states that Judge Sullivan denied several of Plaintiff's
5 requests after the Writ was filed, and that Judge Sullivan's motivation for doing so was to have an
6 adverse effect on the Writ. The instant Motion states that, at a hearing held October 21, 2013 on a
7 Motion to Substitute Parties, Judge Sullivan stated he would deny Plaintiff's Motion to Substitute
8 and that he was "not sure if [the denial] could impact [Plaintiff's] writ." Plaintiff's Motion further
9 states that Judge Sullivan denied the Motion to Substitute Parties because he believed it would
10 adversely effect the Writ, which at the time was pending before the Nevada Supreme Court, and
11 that he did not grant the Motion because he was biased against Plaintiff. Besides being speculative
12 in nature, this allegation does not support a finding of bias on the part of the judge. It is well
13 established that the "[r]ulings and actions of a judge during the course of official judicial
14 proceedings do not establish legally cognizable grounds for disqualification." Matter of Dunleavy,
15 104 Nev. 784, 789, 769 P.2d 1271, 1274 (1988). As a result, Judge Sullivan's rulings, even those
16 adverse to Plaintiff, are not grounds for disqualification.

17 Next, to support the allegation that Judge Sullivan retaliated against Plaintiff after the filing
18 of the Writ, Plaintiff states that Judge Sullivan set unreasonable deadlines so that Plaintiff could not
19 seek relief from the Nevada Supreme Court. Plaintiff alleges that, at a hearing held June 19, 2013
20 on Defendant's Motion of Payment, Judge Sullivan ordered funds transferred from Plaintiff's Trust
21 to Defendant's Trust within thirty days because he believed Plaintiff would file an appeal and
22 wanted to give Plaintiff enough time to do so. The Judge then "quickly changed course and
23 demanded that [Plaintiff] turnover said funds. . . more than ten days sooner than required under the
24 divorce decree." This allegation that the Judge shortened a deadline is insufficient evidence of bias
25 or partiality on the part of the Judge, and does not support his disqualification. There is nothing
26 about the shortened deadline that would prevent Movant from seeking a stay and/or relief before
27 the Nevada Supreme Court. Again, under Matter of Dunleavy, Judge Sullivan's rulings are not
28

1 grounds for disqualification, and this allegation is insufficient to support disqualification. Id.

2 *b. Interpretation of Supreme Court Rulings*

3 Second, Plaintiff alleges that Judge Sullivan's bias is apparent because he sought to thwart
4 the Nevada Supreme Court's rulings in this matter, as evidenced by his statements that if the
5 Supreme Court granted Plaintiff's Writ of Prohibition, he would invalidate Plaintiff's trust. At a
6 hearing held September 5, 2013, Judge Sullivan stated that "depending on what the Supreme Court
7 does, you know, I thought my order of decree made it clear that I was inclined to set aside those
8 spendthrift trusts," and "depending on what the Supreme Court does, they may remand it back to
9 me and I may set aside the trust and we'll go to round two in the Supreme Court." Plaintiff
10 contends that these statements show bias toward Plaintiff and the Judge's "predisposition to do
11 anything he believes is necessary, even if it means ignoring the direction given by the Nevada
12 Supreme Court and/or Nevada law, to provide an economic windfall to [Defendant]." However,
13 these statements alone do not show sufficient bias to warrant judicial disqualification. It seems that
14 Judge Sullivan made these statements to show his confidence in his own interpretation of the law
15 concerning setting aside the trust, and noting that his previous decree should be clear in that
16 regard. Even if his legal position was incorrect, it would not be grounds for disqualification under
17 Dunleavy. Id.

18 *c. Incorrect Application of the Law*

19 Finally, Plaintiff's Motion states that Judge Sullivan should be disqualified because he has
20 repeatedly granted Defendant relief that is improper under the law. To illustrate this, Plaintiff points
21 to the Judge's alleged misinterpretation of Aime v. Aime, 106 Nev. 541 (1990). At a July 22, 2013
22 hearing, Judge Sullivan stated that he wished to treat a trust asset as an undisclosed asset, but that
23 he was "not sure" he could do so under Aime. Judge Sullivan further addressed his uncertainty of
24 how the asset should be treated under Aime, and stated "I don't know if that would hold up, to be
25 honest, because I haven't researched it." This allegation is also insufficient to warrant
26 disqualification. As noted above, Matter of Dunleavy states that a judge's ruling is not grounds for
27 disqualification. Matter of Dunleavy at 789, 1274. Furthermore, in order for a motion to disqualify
28 to succeed, a party must show "either actual bias against a party or evidence to support a

1 reasonable inference of bias.” City of Sparks v. Second Judicial Dist. Court ex rel County of
2 Washoe, 112 Nev. 952, 920 P.2d 1014 (1996). Here, Judge Sullivan’s uncertainty of the
3 correctness of his rulings does not constitute actual bias or a reasonable inference of bias. As a
4 result, this allegation is also insufficient to warrant disqualification.

5 *d. Conclusion*

6 Overall, Plaintiff’s allegations of bias are insufficient to warrant the disqualification of Judge
7 Sullivan. Before a judge can be disqualified due to animus towards a party, egregious facts must
8 be shown. City of Las Vegas Downtown Redevelopment Agency v. Hecht, 113 Nev. 632, 637, 940
9 P.2d 127, 130 (1997). Further, to support disqualification, a party must show that a judge’s hostility
10 must be “so extreme as to display clear inability to render fair judgment.” Liteky v. United States,
11 510 U.S. 540, 114 S. Ct. 1147 (1994). As Plaintiff has not shown any such egregious facts, nor has
12 he shown any extreme hostility on the part of the Judge, the Motion to Disqualify must be denied.
13 Further, the Motion relies on Judge Sullivan’s rulings, which, even if incorrect, are insufficient to
14 support his disqualification. Additionally, Judge Sullivan swore in his affidavit that he bears no bias
15 or prejudice for or against any of the parties involved, and that all of his decisions and rulings have
16 been based on law, not based upon any prejudice or bias

17 II. Procedural Issues

18 *a. Lack of Affidavit Required by NRS 1.235*

19 As correctly noted by Defendant in her Opposition filed December 13, 2013, NRS 1.235 (1)
20 requires that motions to disqualify must be accompanied by an affidavit specifying the facts upon
21 which disqualification is sought. Plaintiff argued in his Response to Defendant’s Opposition filed
22 December 24, 2013 that the notion that a motion to disqualify be accompanied by an affidavit is
23 “absurd and unsupported by law.” However, this is incorrect, and because there was no affidavit
24 included with the instant Motion, the Motion is procedurally deficient under NRS 1.235 (1).

25 *b. Timeliness*

26 Next, the Motion is untimely, as it was filed after the time periods provided in NRS 1.235 (1).
27 Plaintiff filed the Motion under the guidelines provided in Towbin Dodge, LLC v. Eighth Judicial Dist.
28 Ct., 121 Nev. 251 (2005), which are that a party may file a motion to disqualify after the time

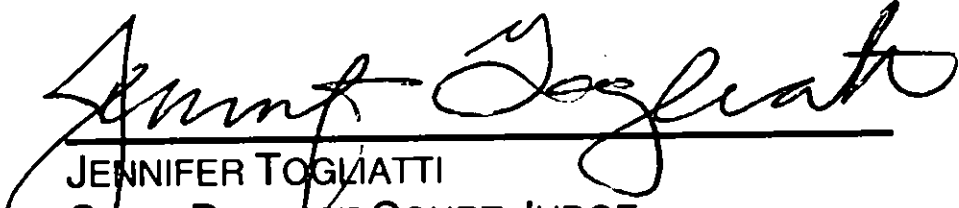
1 deadline set by 1.235 if new grounds for disqualification are discovered. However, as stated in
2 Defendant's Opposition, Towbin Dodge states that a party must file their motion to disqualify as
3 soon as possible after new grounds have been discovered. Id. Here, Plaintiff filed the Motion to
4 Disqualify between three and six months after the actions of Judge Sullivan took place. Therefore,
5 the Motion is not timely under Towbin Dodge nor NRS 1.235 (1). Id.

6 *c. Defendant's Countermotion for Attorney's Fees*

7 First, this Court notes the authority for its decision on a Motion to Disqualify is silent as to
8 the need for a responsive pleading by any party, as well as silent as to the Court's authority to
9 award attorneys fees for the same. NRS 1.235. The Nevada Supreme Court has noted that only
10 the judge whose bias and prejudice has been questioned "can determine whether he or she has a
11 personal bias or prejudice toward litigants or their counsel." Millen v. Eighth Judicial District. Ex rel.
12 County of Clark, 122 Nev. 1245, 1254, 148 P.3d 694, 700 (2006). As a result, the instant Motion,
13 which calls into question the bias of Judge Sullivan, cannot necessarily be considered frivolous, as
14 it seeks an answer that only Judge Sullivan himself could give. While EDCR 7.60 allows for
15 attorneys fees as a sanction for a frivolous motion, based upon Millen and the unusual nature of
16 disqualification proceedings and the law in this area, the Court declines to award attorneys fees
17 under EDCR 7.60 and ORDERS the Countermotion DENIED.

18 Therefore, IT IS HEREBY ORDERED that Plaintiff's Motion to Disqualify Judge Sullivan is
19 DENIED, and Defendant's Countermotion for Attorney's Fees is DENIED.

20 DATED this 10th of January, 2014.

21
22
23 
24 JENNIFER TOGLIATTI
CHIEF DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on about the date filed, a true copy of the foregoing Order Denying Motion To Disqualify Judge Frank P. Sullivan (D411537) was served upon the following:

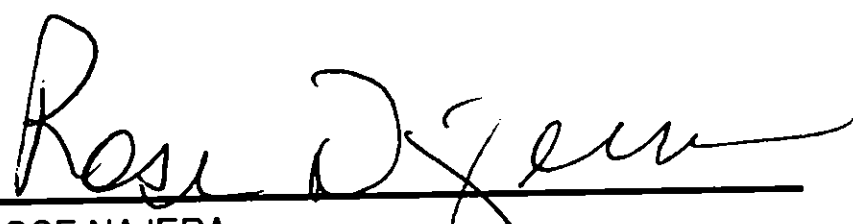
Hon Frank P. Sullivan
Department O
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ROSE NAJERA
JUDICIAL EXECUTIVE ASSISTANT, DEPARTMENT IX

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Decision and Order filed in District Court case number 09C253054-2 **DOES NOT** contain the social security number of any person.

/s/ Rose Najera Date 1/10/14
Judicial Executive Assistant

JENNIFER TOGLIATTI
DISTRICT JUDGE
DEPARTMENT IX

TRANSMISSION VERIFICATION REPORT

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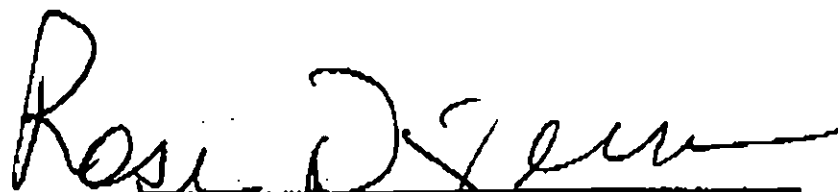
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ROSE NAJERA
JUDICIAL EXECUTIVE ASSISTANT, DEPARTMENT IX

RAPP1339

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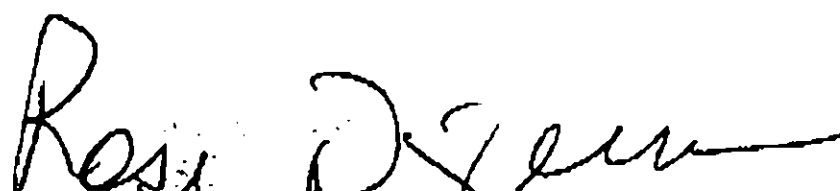
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ROSE NAJERA
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RAP1340

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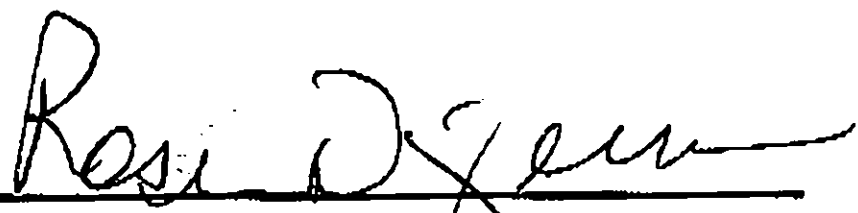
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ROSE NAJERA
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RAPP1341

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ROSE NAJERA
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RAPP1342

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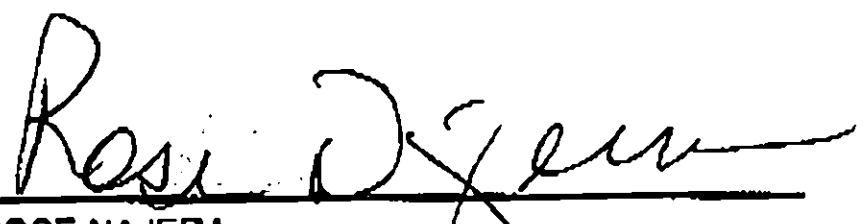
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ROSE NAJERA
JUDICIAL EXECUTIVE ASSISTANT, DEPARTMENT IX
RAPP1343

1 TRANS

FILED

NOV 03 2014

CLERK OF COURT

ORIGINAL

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4
5 EIGHTH JUDICIAL DISTRICT COURT
6 FAMILY DIVISION
7 CLARK COUNTY, NEVADA
8

9 ERIC L. NELSON,)
10 Plaintiff,) CASE NO. D-09-411537-D
11 vs.) DEPT. L
12 LYNITA NELSON,) (SEALED)
13 Defendant.)
14

15 BEFORE THE HONORABLE FRANK P. SULLIVAN
16 DISTRICT COURT JUDGE

17 TRANSCRIPT RE: NON-JURY TRIAL

18 FRIDAY, MAY 30, 2014
19
20
21
22
23
24

1 APPEARANCES:

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3 For the Plaintiff:

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5 The Intervener:
6 For the Intervener:

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8 The Defendant:
9 For the Defendant:

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JOSEF KARACSONYI, ESQ.
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(702) 388-8600

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INDEX OF WITNESSES

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FRIDAY, MAY 30, 2014

INTERVENER'S WITNESSES

ERIC NELSON	18	73	111	--
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* * * * *

I N D E X O F E X H I B I T S

ADMITTED

FRIDAY, MAY 30, 2014

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* * * * *

1 LAS VEGAS, NEVADA

FRIDAY, MAY 30, 2014

2 P R O C E E D I N G S

3 (THE PROCEEDINGS BEGAN AT 10:05:02)

4
5 THE COURT: Number D-411537. We'll get everyone's
6 appearances for the record. We'll start counsel for the --

7 MR. SOLOMON: Thank you, Your Honor.

8 THE COURT: -- Trust.

9 MR. SOLOMON: Mark Solomon, bar number 418, on
10 behalf of the ELN Trust.

11 THE COURT: Thank you.

12 MR. LUSZECK: Jeff Luszeck, bar number 9619, on
13 behalf of the distribution trustee the ELN Trust.

14 THE COURT: Thank you.

15 MS. FORSBERG: Good morning, Your Honor. Rhonda
16 Forsberg, 9557, on behalf of Eric Nelson and Eric Nelson is
17 present to my right.

18 THE COURT: Good morning, Eric.

19 MR. KARACSONYI: All right. Josef Karacsonyi,
20 10634, on behalf of Lynita Nelson and Robert Dickerson, 945,
21 on behalf of the Defendant.

22 THE COURT: Good morning, Ms. Lynita. Everybody
23 ready to go? Any preliminary matters before we jump right
24 into it?

1 MR. KARACSONYI: A couple, Your Honor. We have the
2 order from the motion in limine and motion to a summary
3 judgment and it's fully signed by everybody. And then the
4 other preliminary matter we have is I -- I think the Court's
5 aware that the supreme court has dismissed the petitions --
6 writ of -- of petitions for writ of prohibition and the -- has
7 dissolved the temporary stays.

8 We are -- we have brought an order prepared today to
9 have the 1.068 million or the blocked account transferred to
10 Ms. Nelson now that there's no longer a temporary stay in
11 effect and now that the supreme court has dismissed the
12 petitions. And I believe Mr. Bertsch and Mr. Miller are here
13 today and they have funds that are due to them from those
14 blocked account too. So we've brought an order to release the
15 funds from the blocked account now that everybody's been
16 resolved.

17 THE COURT: Thank you. Any --

18 MR. SOLOMON: Yes, Your Honor. We are -- depending
19 on how this Court resolves the hearing today, I think the
20 supreme court order anticipated that reasonable writs were
21 dismissed is this would go up on appeal immediately after this
22 hearing and we're going to be asking for another stay. I
23 would like to orally file a motion for stay or at least orally
24 present a motion for stay and have Your Honor rule on that in

1 connection with any appear to file.

2 THE COURT: Anything from you?

3 MS. FORSBERG: No, Your Honor. I agree with Mr.
4 Solomon.

5 THE COURT: Yeah, you know, I had read the decision
6 by the supreme court and I'm -- I'm looking at Page 3 on the
7 last -- the next sentence. It says thus the district court
8 has at least in part enjoined transfer of the assets at issues
9 in these petitions to the extent that any party seeks an
10 injunction that is not addressed by the district court order
11 currently in effect, such relief may be sought and the
12 district court under these circumstances given availability of
13 an appeal they denied th4e writ. So one, the supreme court is
14 trying to tell me that part of the reason they denied it was
15 because those funds were enjoined. So I'm not sure if that's
16 what they mean by it to be honest is I just read the order.
17 So I haven't looked into it anymore. But that's my concern if
18 that's why they denied the writ was because of the injunction,
19 so --

20 MR. KARACSONYI: Well, it seems to me that they
21 leave to Your Honor the issue of injunctions. I mean, the --
22 the point -- if -- if they had ruled the other way and ruled
23 in their favor, I'm sure they would be standing here today
24 asking the same thing of you. I mean, the point is she has no

1 money. And she's basically had to liquidate assets and now
2 she's working a -- practically a minimum wage job. And she's
3 sacrificing her future, her future ability to -- to support
4 herself while this process is going on. And they want to hold
5 all the assets until they're done -- good and done litigating.

6 Well, that's not how it works and we should be -- we
7 should be given assets that were awarded to us. And if they
8 want to take it up on appeal, they can do that and they
9 certainly have that right. But at this time there's no reason
10 not to give the assets that were duly award to Ms. Nelson to
11 Ms. Nelson.

12 THE COURT: Okay.

13 MR. SOLOMON: I'm just going to repeat myself Your
14 Honor so I don't want to do that and belabor it. I -- I think
15 that the order was clear, maybe not as clear as it could have
16 been to the supreme court. But I think what was intended was
17 they -- everything's in place. Everything's enjoined or we
18 have a hearing today, this is going to end this matter, it's
19 going to end up on appeal and we'll file appropriate motion to
20 stay pending appeal.

21 I don't think -- I think maybe counsel will be
22 surprised what our motion's going to say. We're going to try
23 and present something equitable to keep the parties going
24 during the course of appeal and just prevent irreparable

1 injury on our motion. So I would ask for that just be
2 reconsidered at that point.

3 THE COURT: Okay. Why don't we get this started and
4 let me think about it a little bit. I got -- I have some
5 options. I can release the whole funds. I can release part
6 of it in order to make sure there's some security there. I
7 was anticipating some of these arguments to be honest when I
8 looked at it yesterday but I didn't -- I was in trial all day
9 to late last night. I think there's ways I can do to release
10 some of the funds that it would still make sure it's secure so
11 there will be no irreparable harm pending appeal. So I would
12 look at that.

13 I think Mr. Bertsch deserves to be paid. They've
14 been waiting a long time. I think Ms. Nelson is probably
15 entailing some money on that to keep her going on that. So I
16 was inclined to look at that too. So I was thinking perhaps
17 to release the spousal support. Forgot how much I gave on
18 that to look on that lump sum, because I think there was 1
19 point something million, 1.2 is it?

20 MR. KARACSONYI: 1. -- oh, that -- that was enjoined
21 was 1.068 million.

22 THE COURT: That --

23 MR. LUSZECK: That was enjoined. The spousal
24 support was -- I forget the number. I think it -- I have the

1 decree right here. I think it's --

2 THE COURT: I'll look at that and why don't we get
3 this started so we'll get it done, because what happens today
4 whether that impact and I'll give you some time if you want to
5 file an appeal or any stage we can do that. But I think
6 there's some options I can do. I -- there's enough with the
7 supreme court basically would saying since the property had
8 been enjoined they weren't going to look for extraordinary
9 relief where they were trying to tell me something that they
10 want enjoined or consider further enjoinsments or injunction.
11 I'm not sure.

12 MR. KARACSONYI: And if we're filing appeals, what's
13 grossly inequitable is he still has control of all his assets.
14 So --

15 THE COURT: And you got --

16 MR. KARACSONYI: -- only one party it doesn't -- it
17 --

18 THE COURT: And you got this fine --

19 MR. KARACSONYI: -- it -- the equity's not --
20 there's no equity there.

21 THE COURT: And you got his --

22 MR. KARACSONYI: And --

23 THE COURT: -- 500,000 right --

24 MR. KARACSONYI: Right.

1 THE COURT: -- off the top when that --

2 MR. KARACSONYI: He has the --

3 THE COURT: -- was all frozen.

4 MR. KARACSONYI: -- 500,000. He has all the other
5 properties. So if we file an appeal, are you going to stay
6 any distribution to the ELN Trust of properties that they have
7 right now? I mean, they should have all their assets frozen
8 then, all of the assets. I mean, that would be the only fair
9 solution then if it's where -- if we're -- if we're going to
10 -- if we're going to do this in equity.

11 MR. SOLOMON: Well, it would be the assets in
12 controversy, Your Honor, number one to be looked at. And --
13 and two, I think --

14 MR. KARACSONYI: Well, everything was in
15 controversy. All the property was in controversy.

16 MR. SOLOMON: No, I don't think you were asking for
17 a hundred percent. So -- ever. Although --

18 MR. DICKERSON: But you only heard 50 percent. We
19 get tie up.

20 MR. SOLOMON: Yeah, well --

21 MR. DICKERSON: He gets good. But you could have
22 given her any --

23 MR. SOLOMON: -- that -- that's in controversy. So
24 with respect to the assets or controversies, that's what we

1 have to look at. And again, we intend to propose a plan which
2 Your Honor can consider as we know. We have first have to
3 bring the motion for stay before Your Honor before we can take
4 it up to supreme court anyway after the appeal is right. And
5 we intend to try and put it in some terms that I -- are fair
6 and reasonable. And hopefully the Court will agree and that's
7 where this should be decided.

8 THE COURT: Okay. Mr. Dickerson, do you want to be
9 heard on this before we jump to --

10 MR. DICKERSON: I don't think I want to -- and --
11 and since we have Mr. Bertsch here, the order we prepared was
12 releasing the monies to Lynita and Lynita then would pay the
13 monies to Mr. Bertsch and he had no objection to that. So I
14 don't know if he -- he wants to express a -- a position on
15 that, if you -- if it's your intent to get him paid and I -- I
16 agree he should be paid and monies should also be distributed
17 to Lynita, we have to prepare an appropriate order.

18 We just thought it was easier for one party to go to
19 Nevada -- Bank of Nevada, obtain the check and then we'll
20 disburse the funds accordingly, but --

21 MR. SOLOMON: And our -- is it 60?

22 MR. KARACSONYI: 32 --

23 MR. SOLOMON: I believe the amount was --

24 MR. KARACSONYI: I think I'll take 50.

1 THE COURT: I'll -- I'll let Mr. Bertsch is earned
2 what --
3 MR. KARACSONYI: It's 30 --
4 MR. SOLOMON: May I ask?
5 THE COURT: Yeah.
6 MR. KARACSONYI: It's 32,858, I think.
7 MS. FORSBERG: Oh, it was the other --
8 MR. BERTSCH: It's 35,258.
9 MR. KARACSONYI: 35,258. Sorry.
10 MR. SOLOMON: Wait, if this would help, we would
11 stipulate to release that amount without prejudice to any
12 argument and have that go to Mr. Bertsch at this time.
13 THE COURT: Let's get that part done. We'll make
14 sure we get an order at close today to make sure Mr. Bertsch
15 gets paid. He's waited a long time. And I'm -- let me think
16 about this for a second. As I said, I have a couple of
17 options. I can release the whole thing. I can also release a
18 lump sum to Ms. Lynita to help her cover any sharp falls on
19 that. That would still have done security. I know Ms. Lynita
20 has half interest in the cabin in Utah. So I think that's
21 collateral there if the supreme court thought I was wrong on
22 that. So I think there's ways I can do it to make sure that
23 -- that they're protected to at least get a motion in front of
24 the supreme court appropriately and give Ms. Lynita funds to

1 operate on that, because I was thinking about it and I haven't
2 had a chance to adjust it. But I was thinking that it's been
3 awhile on that in fairness for equity.

4 I did not freeze up the 500,000 which I could have.
5 The 1568 I could have froze that, but I didn't want to do that
6 because I wanted hopefully the matter to be resolved and we
7 would be done with that. That didn't work out the way we
8 wanted.

9 The purpose of that lump sum was to give Ms. Lynita
10 money as to the property started generating a revenue so she
11 can liquidate as she thought appropriate and not get hit real
12 bad with taxes and to give Mr. Nelson a lump sum so he can
13 invest it and keep his business going. Didn't work out as I
14 planned. But let me think about that for a second and I want
15 to get this done. And then I'll -- I'll definitely by the
16 release and part of the funds -- all those funds and give you
17 guys a chance to prepare.

18 MR. DICKERSON: And -- and with that, I know that
19 Mr. Bertsch is represented by legal counsel. We would be more
20 than happy depending on what your decision is, we can prepare
21 a -- a single order that would address all these issues and I
22 can make contact with Mr. Bertsch after this. I'm sure you
23 guys want to sit here for the next few hours listening to
24 what's going on, but --

1 THE COURT: I thought he enjoyed the pleasure of our
2 company. I thought he was just here -- nowhere else he would
3 rather be. So the parties have already agreed on that. We'll
4 make sure Mr. Bertsch that you get paid the 35,258 whether
5 it's a separate check or to Ms. Lynita. We'll make sure that
6 that's a part of the order by that close today for you. All
7 right. Okay. And we'll advise an order afterwards. And as I
8 said, all I can think about all the issues and read that
9 decision again in more detail. Thanks.

10 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

11 THE COURT: You got the one order you want me to --

12 MR. KARACSONYI: Yeah, the submitted the -- did I
13 hand it?

14 MS. FORSBERG: I handed it already.

15 MR. KARACSONYI: Did I hand it already?

16 MS. FORSBERG: You did over there. But no?

17 THE COURT: Let's get that one order done before we
18 lose it and then --

19 MR. KARACSONYI: Maybe I put it back away. Okay.
20 Okay. Here it is, Your Honor. It's signed by everybody. We
21 also were -- a couple of other just housekeeping matters. I
22 think we're waiting a decision on whether he can deduct a
23 health insurance from the Lindell income in an accounting of
24 what she's owed from Lindell. And I -- I just wanted to bring

1 that to the Court's --

2 THE COURT: Is that --

3 MR. KARACSONYI: -- attention.

4 THE COURT: Was that order that was recently
5 submitted to me last month? Or no, for the -- was that from
6 the October hearing or --

7 MR. KARACSONYI: I think this was the one you took
8 under advisement.

9 MR. DICKERSON: You took under submission.

10 THE COURT: August 16th?

11 MR. DICKERSON: You took this under submission.

12 THE COURT: At the August 16th order? Because I
13 think I have a draft on my desk.

14 MR. DICKERSON: Yes.

15 THE COURT: Okay. Let me check this. Let me check
16 --

17 MR. KARACSONYI: I think it was --

18 MR. DICKERSON: Yes.

19 MR. KARACSONYI: -- from August.

20 MR. DICKERSON: Yes.

21 THE COURT: And my law clerk's gone today, so what
22 is it for -- that was for the --

23 MR. KARACSONYI: Was it August?

24 MR. LUSZECK: I'm not sure. I just know there is a

1 couple of competing orders from different hearings.

2 MR. KARACSONYI: From October 21st there were
3 competing orders. I knew --

4 MR. LUSZECK: Yeah.

5 MR. KARACSONYI: -- that. There were two competing
6 orders from October 21st and --

7 THE COURT: I thought I signed one of those, no? I
8 thought I had signed a competing order I thought.

9 MR. KARACSONYI: I haven't seen one yet.

10 MS. FORSBERG: And we haven't seen it.

11 MR. KARACSONYI: And then there's -- there was --

12 THE COURT: That's the one from the Lindell?

13 MR. KARACSONYI: -- one issues taken under
14 advisement, Lindell expenses and accounting and what she's
15 owed from Lindell.

16 THE COURT: Okay. Let me check those. My law
17 clerk's not in the office but I'll check it. But I know I had
18 the competing orders. I thought I signed one of those, but
19 not only the August one. We just did a -- my review. So
20 we'll get that out for you. Anything else before we jump
21 right into it? Do you want a brief opening statement?

22 MR. SOLOMON: Your Honor, I we filed cross motions
23 for summary judgment. We fully briefed this issue. Unless
24 you want it, I would propose we just put the testimony on and

1 we'll argue it again.

2 MR. KARACSONYI: That's fine with me.

3 THE COURT: You okay with that?

4 MS. FORSBERG: Yes, Your Honor.

5 THE COURT: Are we ready to go?

6 MR. SOLOMON: Yes, we are. I really don't know who
7 has the burden here, but I don't care. I'll be glad to start.

8 MR. KARACSONYI: I'm glad to start too.

9 MR. SOLOMON: I mean --

10 THE COURT: Does it matter?

11 MR. SOLOMON: All right. All right. Mr. Nelson, do
12 you want to take the stand?

13 THE COURT: Okay. Mr. Nelson, right up there and
14 we'll get you -- you can bring your water up there if you want
15 Mr. Nelson so you --

16 MR. LUSZECK: This stack has one for the Judge and
17 -- oh, sorry.

18 THE CLERK: You do solemnly swear the testimony
19 you're about to give in this action shall be the truth, the
20 whole truth and nothing but the truth, so help you God?

21 THE WITNESS: Yes.

22 ERIC NELSON

23 called as a witness on behalf of the Intervener and being
24 first duly sworn, testified as follows on:

DIRECT EXAMINATION

THE CLERK: Please state your name for the record.

THE WITNESS: Eric Nelson.

THE COURT: Why don't we canvass my proposed witnesses to see if they ever testified before but I know you have, so I think we partake of that. Counsel, you may begin at your pleasure.

MR. SOLOMON: Your Honor, my understanding I want to confirm before we get --

MR. KARACSONYI: Has he been sworn in?

MR. SOLOMON: -- going is that everybody has our binder of proposed exhibits including Your Honor. Should be an official one the Court has with a list, a courtesy copy, binder for Your Honor. The witness now has one and counsel has one.

THE COURT: Everybody's got copies? Okay. Yeah. Yes, he's been sworn in.

BY MR. SOLOMON:

Q Mr. Nelson, would you turn to Exhibit 1 in that binder?

A Yes, I have it.

MR. SOLOMON: Well, I thought he was sworn in.

MS. FORSBERG: Did you swear him in?

THE COURT: Did you swore him?

1 THE CLERK: Yes.

2 THE COURT: Yeah, they swore him up.

3 MS. FORSBERG: Oh, okay. Sorry. You did that when
4 we were --

5 MR. SOLOMON: I thought I heard that.

6 MR. LUSZECK: Okay. I wasn't sure.

7 MS. FORSBERG: I wasn't sure.

8 MR. LUSZECK: Thank you.

9 Q All right. What is Dynasty Development Management,
10 LLC?

11 A That's an LLC that purchased the racetrack at
12 Wyoming Downs, a racetrack.

13 Q Okay. When was it formed?

14 A It was formed April 25th of 2011.

15 Q Okay. And the racetrack wasn't purchased for many
16 months thereafter, is that correct?

17 A Yes, it was designed for a holding company just in
18 the event that I did purchase property we would put it in an
19 LLC.

20 Q Okay. Is that one of the ELN Trust ordinary --

21 MR. KARACSONYI: Objection, leading.

22 THE COURT: Overruled. I take it --

23 MR. SOLOMON: I didn't have a question out before
24 the objection.

1 BY MR. SOLOMON:

2 Q Does ELN routinely form LLCs for purposes of having
3 them available to perform transactions in the futures?

4 A Yes.

5 Q And this is one instance of that?

6 A Yes.

7 Q And there was another Dynasty involved in this case.
8 What was the name of that Dynasty entity?

9 A Dynasty Development Group which the -- was the
10 Mississippi assets. And it gets confusing that's for sure.

11 Q Did Dynasty Development Management, LLC, the one
12 that's shown in Exhibit 1 have anything to do with that group?

13 A Nothing.

14 Q Now under this operating agreement --

15 MR. SOLOMON: Well, we offer Exhibit 1, Your Honor.

16 Q That's your signature on the bottom as manager?

17 A Yes.

18 MR. KARACSONYI: No objection.

19 MR. SOLOMON: Offer 1.

20 THE COURT: No objection. Hereby admitted as
21 Exhibit Number 1.

22 (Intervener's Exhibit 1 admitted)

23 BY MR. SOLOMON:

24 Q It indicates that the Eric L. Nelson Nevada trust is

1 the initial sole member, is that correct?

2 A Correct.

3 Q And at the time this entity was formed in or about
4 April of 2011 did it have any assets?

5 A No.

6 Q Does the ELN Trust -- I know it says the initial
7 sole member, but was the ELN Trust the sole member of this
8 entity at formation?

9 A Yes.

10 Q Has Lynita or LSN Trust ever possessed a membership
11 interest in this entity?

12 A No.

13 Q All right. You got a head of me a little bit by
14 your answer in the opening question, but did Dynasty ever
15 acquire any property?

16 A Up to this time, no.

17 Q Ever.

18 A No.

19 MR. KARACSONYI: Would just -- which Dynasty are we
20 -- are we just going to refer to this as Dynasty for the rest
21 --

22 MR. SOLOMON: That was my intention since the other
23 one doesn't have any role in it, is that okay?

24 MR. KARACSONYI: Yeah, that's fine.

1 MR. SOLOMON: All right.

2 MR. KARACSONYI: I just want to make sure we're
3 clear.

4 BY MR. SOLOMON:

5 Q Do you understand that when I'm talking about
6 Dynasty now unless I make a change I'm talking about Dynasty
7 Development Management, LLC.

8 A No.

9 Q Right?

10 A Right. I'm sorry.

11 Q Listen to the question. After this date did it ever
12 acquire property, ever?

13 A The racetrack.

14 Q Thank you. When did you first become aware of the
15 opportunity to reacquire Wyoming Downs again?

16 A I think it was about 30 -- possibly up to 60 days
17 before the auction.

18 Q Okay. And how did you learn about the opportunity
19 to perhaps require it?

20 A Not quite sure, but I think someone called me or I
21 read it in the newspaper or -- or an article was sent to me.
22 Not -- not really quite clear on that.

23 Q All right. Would you take a look at Exhibit 2?

24 A Yes.

1 Q Do you recall ever seeing an advertisement such as
2 this announcing the auction of this property?

3 A Yes.

4 Q Does that refresh your recollection of how you found
5 out about it?

6 A Well, this is one source. Definitely I saw this.
7 But maybe somebody called me on it too and I can't recall. So
8 I apologize.

9 Q And Exhibit 2 indicates that the auction was going
10 to take place on Wednesday, November 16th, 2011. Was that in
11 fact the date that the auction occurred?

12 A Yes.

13 Q Now the article also in that same first paragraph
14 indicates that there was going to be a minimum bid of
15 \$400,000. Were you aware of that prior to the time of the
16 auction?

17 A Yes.

18 Q Did you believe that Wyoming Downs racetrack may be
19 worth the \$400,000 minimum bid?

20 A I believed it was.

21 Q Why?

22 A Just because it has, you know, some land value, the
23 infrastructure there. And I thought it was worth 400.

24 Q All right. What if anything did you do to

1 investigate the opportunity to purchase that property?

2 A Well, I went through the due diligence package and
3 just refreshed myself on the facility itself.

4 Q You have of course been aware of that facility in
5 the past and through the trust that owned that property.

6 A Yes.

7 Q What had happened to that property since you last
8 were familiar with it?

9 A They operated at several years and they closed it
10 down for I think three, four years. And so it was just a -- a
11 vacant racetrack.

12 Q All right. Would you turn to Exhibit 3?

13 MR. SOLOMON: Do you have any objection to Exhibit
14 2?

15 MR. KARACSONYI: No.

16 MR. SOLOMON: Offer 2, Your Honor.

17 THE COURT: Hereby admitted -- admitted as Exhibit
18 Number 2.

19 (Intervener's Exhibit 2 admitted)

20 THE COURT: Ms. Forsberg, do you have any objection?

21 MS. FORSBERG: No objection, Your Honor.

22 BY MR. SOLOMON:

23 Q All right. Turning to Exhibit 3, this appears to
24 say it's an auction services registration form and it contains

1 your name for the entity Dynasty and your title as manager.

2 And is that your signature to the right where it says manager?

3 A Yes.

4 Q And what is this document?

5 A It's a registration form when you sign up at the
6 auction that you just, you know, they give you disclosures on
7 buyer and seller.

8 Q Okay. And it's dated November 16, 2011. Is that
9 truly dated?

10 A Yes.

11 MR. SOLOMON: We offer 3, Your Honor.

12 MR. KARACSONYI: No objection.

13 MS. FORSBERG: No objection.

14 THE COURT: Hereby admitted as Exhibit Number 3.

15 (Intervener's Exhibit 3 admitted)

16 BY MR. SOLOMON:

17 Q Was any money required to participate in the
18 auction?

19 A That had a cashier's check for \$75,000.

20 Q And did you present a cashier's check for \$75,000 to
21 bid?

22 A Yes.

23 Q And where did you obtain this 75,000?

24 A Came from the BanOne properties but in essence from

1 my trust.

2 Q And would you turn to Exhibit 14?

3 A Yes.

4 Q And does that reflect that \$75,000 withdrawal from
5 the BanOne, LLC account on November 15th the day before the
6 auction?

7 A Yes.

8 Q And was that money used to acquire the cashier's
9 check --

10 MR. KARACSONYI: Objection to leading, Your Honor.

11 THE COURT: Sustained.

12 BY MR. SOLOMON:

13 Q What was the 75,000 used for?

14 A For the earnest money deposit to bid on the
15 property.

16 Q And is that reflected in Exhibit 15?

17 A Yes.

18 MR. KARACSONYI: Let me just object, Your Honor.

19 This wasn't produced during discovery. What are you referring
20 to?

21 MR. SOLOMON: I can't hear you.

22 MR. DICKERSON: What exhibit?

23 MR. SOLOMON: 15.

24 MR. KARACSONYI: Same objection, Your Honor. It

1 wasn't presented during discovery.

2 MR. SOLOMON: Your Honor just entered an order
3 saying that it was admissible. Anything that was produced --
4 attached to the pleadings or discovery --

5 MR. KARACSONYI: During the discovery process and
6 prior, not --

7 MR. SOLOMON: Read the order yourself, Your Honor.
8 It's very clear. It says anything that's attached as exhibits
9 to our pleadings or in produced was the only thing that would
10 be allowed at this hearing. This was attached prior to the
11 prior hearing, they're aware of it and --

12 MR. KARACSONYI: This is -- this is --

13 THE COURT: Is this the two exhibits that you had
14 objected to at the last motion --

15 MR. KARACSONYI: Yes, exactly.

16 THE COURT: -- saying it had not been promoted -- it
17 had not been prepared to you -- presented to you in discovery
18 and then it came in on a motion and you --

19 MR. KARACSONYI: Exactly. We objected to it. And
20 the reason is because if -- after the deposition and after the
21 closing of discovery you start attaching documents to papers
22 with the Court. Guess what, we don't have an opportunity to
23 conduct discovery with those documents. We never had the
24 benefit of them. In fact, they refused to provide all bank

1 statements during the course of discovery as I can show the
2 Court in our exhibits. I would be happy to go through those
3 if they wanted -- if they -- if they disagree, but I don't
4 think they will.

5 MR. SOLOMON: Well, I will, because they were
6 produced to Mr. Bertsch and they're in his report and he
7 report the \$75,000 back in early 2012. So the Court -- and
8 they have been fully aware of this for months and months. And
9 even before the -- way before anything happened with respect
10 to this issue. It's a non-disputed fact Your Honor that this
11 \$75,000 was in fact withdrawn from ELN Trust assets and
12 deposited and then repaid shortly thereafter.

13 MR. KARACSONYI: It's actually Your Honor, it is --
14 what -- if they want to refer to Mr. Bertsch's report, it does
15 show that monies went from the ELN Trust towards the Wyoming
16 purchase. But regardless of the fact, if I request bank
17 statements, okay, and they won't provide them to me, they
18 refused. They categorically refused and I can -- we have the
19 discovery and we can all read it together that they cannot
20 rely on those documents. It is inherently unfair for them to
21 start presenting documents that they only provide after the
22 discovery.

23 THE COURT: Let's just talk about Exhibit 15 because
24 we kind of skipped over 14. I wasn't -- I --

1 MR. KARACSONYI: 14 too was never provided. Now if
2 they want to go into Mr. Bertsch's report and rely upon that,
3 then that's a different story. But to start presenting new
4 checks and new documents that they didn't provide prior to
5 discovery that I didn't have the opportunity to ask Mr. Nelson
6 is not -- isn't equitable. And they're redacted. They didn't
7 even -- these aren't even true and correct -- they can't --
8 they -- this isn't even a true and correct copy. They kept --
9 they chose what they would redact. How could you rely on
10 this?

11 THE COURT: Why don't we move forward on this. So
12 I'm not going to admit Exhibit 14 and 15 at this time. Let's
13 get our testimony and that may resolve with the testimony and
14 cross examination. I got to look at the discovery, because
15 and if it was not provided to you and a fair opportunity on
16 that, then one sanction the Court can is not allow it to be
17 admitted. But why don't we move forward at this time. I'm
18 not going to admit 14 and 15 at this moment so that way we get
19 moving forward so we don't get bogged down.

20 BY MR. SOLOMON:

21 Q All right, Mr. Nelson. Who -- you attended the
22 auction on that date, correct?

23 A Yes. Yes, sir.

24 Q And did you make a bid --

1 BY MR. SOLOMON:

2 Q All right. The first page of -- if appears to be a
3 summary statement. Let's go through that. It says the date
4 of the agreement was November 16th, 2011, the same date as the
5 auction.

6 A Yes.

7 Q And the seller was Wyoming Racing, LLC. And that
8 was your -- the seller?

9 A Yes.

10 Q And the purchaser was Dynasty Development --

11 A Yes.

12 Q -- correct? And it reflects that your high bid of
13 400,000. What is the \$40,000 below in item six?

14 A A broker premium or buyer premium.

15 Q So the total purchase price reflected here was
16 440,000. That would have been your opening bid plus the buyer
17 premium, correct?

18 A Yes.

19 Q And the initial earnest money deposit was the
20 \$75,000 you testified that you gave as a cashier's check?

21 A Yes.

22 Q And it indicates the closing date was going to be
23 December 16, 2011, do you see that?

24 A Yes.

1 Q Now Exhibit B to that Exhibit 4, is a list of
2 equipment, fixtures and personal property. Do you see that?

3 A Yes.

4 Q Did you try and inspect the property to determine
5 whether or not that was there and what condition it might be
6 in?

7 A After the sale I looked at the inventory.

8 Q And what was the -- what was your observation
9 relative to that?

10 A Part of it was there. Part wasn't very, very poor
11 condition and I didn't put any value on it.

12 Q Now how did Dynasty intend to finance the property
13 at the time that it entered into real estate purchase and
14 settlement agreement?

15 A I had hope to retrieve 50 percent of the --
16 unfortunately Dynasty Development Group money that was being
17 held in a blocked account trying to -- oh, I thought I could
18 get that released from the Court.

19 Q Okay. And that was the approximate 1.5 million
20 dollars that was in David Stephen's (ph) trust account?

21 A Yes.

22 Q And what was the source of those funds?

23 A They were from the Silver Slipper transaction which
24 was a gaming property that was held exclusively by Wyoming --

1 excuse me, by Dynasty Development Group which was owned
2 entirely by the Eric L. Nelson Trust.

3 Q And did the ELN Trust file a motion requesting that
4 this Court release the funds from Mr. Stephen's trust account
5 to finance the purchase of Wyoming Downs.

6 A I believe so.

7 Q And did you attend the hearing?

8 A Yes.

9 Q And what happened with respect to that request?

10 A It was denied.

11 Q What position did Lynita take regarding utilizing
12 the 1.5 million or any part of it to purchase Wyoming Downs?

13 A I believe they were adamantly opposed to it.

14 Q And after the release of the 1.5 million dollars was
15 denied, was there any colloquy that you had with the Court
16 relative to the possibility of buying it with other source,
17 with other funds?

18 A I'm sorry, what was the question?

19 Q Yes, after the Court denied the release of the 1.5,
20 did you have any colloquy with the Court relative to the
21 potentiality of using other funds or other resources to
22 acquire that property?

23 A Well, I asked the Court if I could purchase a
24 property if we found funds outside of that, because the Court

1 said you couldn't use any of the funds --

2 MR. KARACSONYI: Objection, hearsay.

3 A -- for that. I'm sorry.

4 THE COURT: As far as you saying this is on the
5 record, I'll have to look at it then --

6 MR. SOLOMON: And it's never hearsay if it's what he
7 says, so --

8 MR. KARACSONYI: So he was saying --

9 MR. DICKERSON: It is hearsay.

10 MR. KARACSONYI: -- what the Judge said.

11 THE COURT: And I'm --

12 MR. DICKERSON: And it is hearsay.

13 THE COURT: Yeah.

14 MR. DICKERSON: He can't offer any statements of
15 himself. And we could offer statements of his, but he cannot
16 offer statements of his. And that's -- and that's the --
17 that's the Rules of Evidence. Pretty simple.

18 THE COURT: On that motion on that, I remember what
19 I -- what happened at that motion. I remember I denied it,
20 but I don't remember we talked about the purchase outside, but
21 I'll look at that. I'll review that tape again. We have so
22 many motions that I -- I know we did -- deny that. I don't
23 know if we -- I don't remember talking about purchasing
24 outside of that, but I'll look at that record.

1 MR. SOLOMON: Okay.

2 THE WITNESS: Well, do I finish the question?

3 MR. SOLOMON: Sure.

4 THE WITNESS: My understand --

5 MR. DICKERSON: We have an objection, Judge. And I

6 --

7 THE COURT: Sustained. I don't think -- I'll look

8 -- I'll look at what happened on that. I'll look at the total

9 video on that to see on that, because I --

10 BY MR. SOLOMON:

11 Q I'll ask it this way. What was your understanding

12 of what you could possibly do after that hearing relative to

13 the acquisition?

14 MR. DICKERSON: Which we also object. His

15 understanding has no relevance, Your Honor. It's what

16 happens.

17 MR. SOLOMON: It really -- certainly has relevance.

18 THE COURT: Overruled. I think he can give -- it's

19 rather not for the truth contained there and what his

20 understanding or his strategy I guess he could say for the

21 purchase of it.

22 THE WITNESS: My understanding was if I wanted to

23 purchase Wyoming Downs and save the \$75,000 deposit that I

24 would have to find outside financing and that was going to be

1 acceptable to the Court and to the trust.

2 BY MR. SOLOMON:

3 Q Okay. Were you aware of any injunction whatsoever
4 that would prevent the ELN Trust or its entities from
5 acquiring properties at that point?

6 A Definitely not.

7 Q Was Dynasty able to close within the 30 days of the
8 real estate agreement of -- of December 16, 2013?

9 A No.

10 Q I'm sorry, 2011. The answer is no?

11 A No.

12 Q Was the \$75,000 deposit in jeopardy if you couldn't
13 close or extend?

14 A Close, yes.

15 Q And what did you do to try and keep that transaction
16 alive at that point?

17 A Oh, I started to seek out third party fund --
18 funding from hard money lenders and see if I could
19 collateralize the facility itself.

20 Q What did you do about the closing date that was set
21 for December 16?

22 A I tendered an additional \$10,000 I believe to -- or
23 offered 10,000 to extend a 30 day extension to find funding.
24 And release the \$75,000 to them.

1 Q Would you turn to Exhibit 5? And do you recognize
2 this document titled addendum to purchase agreement?

3 A Yes.

4 Q And is that your signature on behalf of Dynasty on
5 December 1, 2011?

6 A Yes.

7 MR. DICKERSON: Stipulated.

8 MR. SOLOMON: Offer Exhibit 5.

9 THE COURT: Any objection?

10 MS. FORSBERG: No objection, Your Honor.

11 THE COURT: Hereby admitted as Exhibit Number 5.

12 (Intervener's Exhibit 5 admitted)

13 BY MR. SOLOMON:

14 Q Is this the agreement by which you were able to
15 extend the close of escrow from December 16th?

16 A Yes.

17 Q And the terms say that the close of escrow shall be
18 honored before January 6, 2012, is that correct?

19 A That is correct.

20 Q And the \$75,000 that you had deposited as earnest
21 money would be immediately released to the seller, was that
22 done?

23 A Yes.

24 Q And that you will pay an additional 10,000 upon

1 close of escrow for the granting of extension.

2 A Yes.

3 Q Does that refresh your recollection that you didn't
4 in fact have to pay the \$10,000 at the time you got the
5 extension but rather the 10,000 would be payable at close?

6 A That is correct.

7 Q Now after the hearing that eluded to or you sought
8 the release of -- part or all of the 1.5 million dollars, were
9 you able to obtain alternate financing?

10 A I was prior to the close of escrow. Prior to
11 January 6 I was.

12 Q And did ELN or Dynasty do to obtain an alternate
13 financing?

14 A We signed loan agreements against the racetrack
15 facility.

16 Q Okay. Were you able to locate a lender?

17 A Yes.

18 Q And who was that?

19 A Henderson Capital.

20 Q And what is Henderson Capital?

21 A They're a lending source basically in my opinion a
22 hard money lender.

23 Q Had you or ELN or dynasty have any prior
24 transactions with Henderson?

1 A No prior transactions.

2 Q And how did you find Henderson?

3 A They were on my list of people that have finding
4 that I contacted.

5 Q And did Henderson Capital ultimately agree to fund
6 your purchase of Wyoming Downs?

7 A Yes.

8 Q Would you turn to Exhibit 6? Exhibit 6 appears to
9 be a copy of a promissory note in the principal amount of
10 \$700,000 dated January 4, 2012 and signed by you as the
11 manager of Dynasty on the same date. Do you recognize it as
12 such?

13 A Yes.

14 MR. SOLOMON: Offer 6, Your Honor.

15 MS. FORSBERG: No objection

16 MR. KARACSONYI: No objection.

17 THE COURT: Hereby admitted as Exhibit Number 6.

18 (Intervener's Exhibit 6 admitted)

19 BY MR. SOLOMON:

20 Q I -- in this promissory note, it indicates in the
21 first paragraph that the borrower Dynasty Development
22 Management agrees to these terms says in the second paragraph
23 that the loan is due and payable in 12 months from execution.
24 That's the maturity date. Do you see that?

1 A Yes.

2 Q Then it goes on to say to induce creditor to extend
3 the aforementioned loan debtors agree to be creditor \$100,000
4 payable upon execution of this note which shall act as full
5 prepayment of interest and fees related to the aforementioned
6 loan plus all reasonable third party costs. Do you see that?

7 A Yes.

8 Q All right. So Henderson Capital agreed to lend you
9 700,000 but really only gave you 600,000 because they took a
10 hundred back to pay themselves, is that correct?

11 A That's correct.

12 Q Now let me call your attention to the fifth
13 paragraph down. It says if upon completion of the 12 month
14 loan period debtor fails to pay the outstanding principle
15 balance of this note, any late penalty or rate of interest on
16 the principal loan amount or outstanding principal balance
17 heretofore contemplated shall no longer apply and a rate of
18 interest equal to one and one-half percent monthly, 18 percent
19 annually on the outstanding principal balance shall apply. Do
20 you see that provision?

21 A Yes.

22 Q Did that provision later come into play?

23 MR. KARACSONYI: Objection, Your Honor. He can't
24 testify about this. This is absolutely excluded. We

1 requested all the documents related to any payout. We asked
2 him if they owed money. We requested all the bank statements
3 to show the servicing of the mortgage and they refused to
4 provide it. He is excluded from testifying about this
5 subject.

6 MR. SOLOMON: The question didn't even have to do
7 with payout, Your Honor. The question has to do whether or
8 not this provision became applicable.

9 MR. KARACSONYI: Would he like to --

10 MR. SOLOMON: It had nothing to do with payments.
11 Payments weren't made.

12 MR. KARACSONYI: Yes.

13 MR. SOLOMON: That's the whole paid.

14 MR. KARACSONYI: He's trying to get him to testify.
15 Don't try to confuse it. I mean, the question is did -- was
16 it paid -- basically the question is was it paid by the 12
17 months or was there interest incurred. And the answer is
18 well, you didn't provide that in discovery. You refuse to
19 provide it. So he can't testify to this.

20 MR. SOLOMON: What --

21 MR. KARACSONYI: The motion in limine covers it.

22 MR. SOLOMON: What would he provide that he didn't
23 pay -- made payment, Your Honor? What would be provided that
24 he didn't make any payment?

1 MR. KARACSONYI: Okay. Well, I can answer that
2 question. Let me --

3 MR. SOLOMON: In the addendum question.

4 MR. KARACSONYI: Let me answer the question.

5 MR. SOLOMON: I'm in the addendum covers.

6 MR. KARACSONYI: Let me answer the question. We
7 asked for all the bank statements. If you give us the bank
8 statements, we could verify and see whether payments were made
9 or not made. But if you won't give us the bank statements to
10 show whether payments were made or not made on the loan, then
11 we can't obviously confirm. We can't even ask him about it.
12 When we ask him about it, it's outside the scope.

13 So he's not allowed to testify in this subject. I'm
14 happy -- I have in our book the request for production and I'm
15 happy to sit here and open them up and read them together and
16 read their response. And I've got all their responses with a
17 lack of bank statements. And we can go through that and see
18 that they denied us all this information.

19 MR. SOLOMON: Your Honor, this argument is
20 fallacious. The -- it's already been covered by a hearing
21 that said we can't introduce any evidence that they asked and
22 we refused to give. And so we're not preventing any documents
23 on this. We didn't ask the question in any deposition.
24 Didn't seek a motion to compel. Didn't subpoena any bank

1 records. There's absolutely no support and law for the type
2 of breadth of sanction that he's trying to ask this court to
3 do at this point. The Court's entered a sanction. It's in
4 the order. We're complying with the order. And the order is
5 clear that I can't ask him a question that was directly asked
6 -- asked of him at deposition that he refused to answer, but
7 to say that because we didn't produce all bank statements or
8 -- or something like that and therefore we can't talk about
9 what he has personal knowledge of goes well beyond any
10 sanction order that this Court has ordered or I believe could
11 order.

12 MR. KARACSONYI: The order says that any evidence
13 information that wasn't provided. Basically what he's trying
14 to do is say -- is do this. Okay. It's like if he -- if we
15 ask for January's -- all the bank statements, he doesn't give
16 it to us. Then he comes here and says well, what's -- what
17 did you do from this bank account in January. Well, you
18 didn't ask him what he did from that bank account in January.
19 The point is they excluded -- they deprived us of the
20 information to be able to verify anything -- any testimony on
21 this subject.

22 And listen, the request for production is clear. It
23 was asked. Can you please provide us -- we asked several
24 times in each of them in request number six for year end

1 financial statements. Request four, accounting records.
2 Request two, all financial statements related to Dynasty and
3 Wyoming Downs. Request seven was bank account or investment
4 account statements. And they refused to give us those. They
5 told us it was outside the scope. They sat there and then at
6 deposition supported Mr. Nelson's dictation of what's outside
7 the scope.

8 So to allow them to testify on this subject that
9 they wouldn't give you documents related to is gross
10 inequitable. In fact, we do have legal authority. The Court
11 heard it last time and -- and considered it was Blanco v.
12 Blanco. It's a very recent brand new supreme court case where
13 they reiterated the fact that they have held that it is
14 inequitable to allow a party to present evidence that they
15 refused to provide during discovery.

16 MR. DICKERSON: Moreover, Your Honor --

17 MR. SOLOMON: Your Honor --

18 MR. DICKERSON: Moreover, they're off -- they're
19 attempting to offer parole evidence with respect to a document
20 outside the four corners of the document. The document speaks
21 for itself.

22 MR. SOLOMON: No, we're not. We're -- I'm asking
23 him whether or not he made any payments. It's --

24 MR. DICKERSON: The document --

1 MR. SOLOMON: -- zero payments.

2 MR. DICKERSON: The document speaks for itself.

3 MR. SOLOMON: It does not speaks for itself.

4 MR. DICKERSON: And it provides as to when payment
5 is to be made and he's offering parole evidence purportedly
6 what -- what I would imagine is to go outside the -- the four
7 corners of that document and say no, we didn't comply with
8 that. But they didn't provide us with any documentation to
9 support that.

10 MR. SOLOMON: Your Honor, it's a negative. There's
11 no document that would support it. The only question I asked
12 at the deposition is how much is still owed on the Henderson
13 Capital Group, LLC on the original \$700,000. And that was
14 dealt with way after the divorce.

15 MR. KARACSONYI: And you said --

16 MR. SOLOMON: So with that, it was outside the scope
17 because it had nothing to do with the acquisition.

18 THE COURT: At this time I'm going to overrule it.
19 He can answer questions on that. I'm not going to admit
20 Exhibit Number 6. I'm going to need to look at your book of
21 everything you discovered. I can always strike it from the
22 record --

23 MR. KARACSONYI: So Exhibit 6 --

24 THE COURT: -- so we can get this done.

1 MR. KARACSONYI: -- is -- is fine. It's the
2 question --

3 THE COURT: Just the testimony?

4 MR. KARACSONYI: -- about what -- see, can I at
5 least tell Your Honor what -- what we asked and -- and here it
6 is. We asked in our request for production we said and -- and
7 this -- there is a number that would cover this, but we said
8 please produce any and all bank account or investment account
9 statements from January 1, 2011 to present date for all bank
10 and investment accounts from which monies have been expended,
11 withdrawn, transferred and/or leveraged from the purchase of
12 Wyoming Downs or operation of Wyoming Downs or purchase or
13 operation of any other real property or gaming venture in the
14 state of Wyoming during such time period.

15 We also asked on request eight please produce a copy
16 of all documents relating to or otherwise pertaining to the
17 purchase, sale, encumbrance and/or transfer of any interest in
18 the real property and race track known as Wyoming Downs or any
19 other real property that's situated in the state of Wyoming
20 during 2011, 2012 and the current calendar year to date.
21 Included in this request is all document related to the
22 purchase and sale of Wyoming Downs or any other real property
23 situated in the state of Wyoming included but not limited to
24 all closing statement, deed, mortgage, other evidence of

1 indebtedness and ownership.

2 We also asked for anything else pertaining and we
3 asked for all their financial records. How can he say that we
4 didn't make payments when he won't give us the financial
5 statements? And we can go through those requests too. I
6 mean, the year end profits. Anything. Everyone of these was
7 said no. I mean, a copy of -- a copy of all financial
8 statements prepared for Dynasty Developments was request
9 number two or Wyoming Downs. A copy of all tax information
10 and tax returns was request number three. All accounting
11 records, general ledgers, general journals, cash disbursements
12 for Dynasty and the racetrack was request number four.

13 He won't give us those but then he's going to sit
14 here and testify well, I didn't make any payments. Well,
15 guess what. You don't -- we had no change to verify that. We
16 have nothing to look at. We have nothing.

17 MR. DICKERSON: And this is a witness the Court has
18 already found not to be credible on at least three or four
19 different occasions.

20 MR. KARACSONYI: So that's our objection.

21 MR. SOLOMON: Your Honor, we are not admitting any
22 of those records that we --

23 THE COURT: Over -- overruled.

24 MR. SOLOMON: -- used for this, any of it.

1 THE COURT: You can ask -- ask him the question.
2 What probative value it has this Court will take appropriately
3 and I will look at all the discovery requests that you had
4 specifically, but we'll testify and the Court can determine
5 the admissibility of any of his testimony. I can strike it.
6 We don't have a jury here, but let's get this moving forward
7 on that. And again, the Court has made findings on that as
8 far as the probative value, based history. They cannot
9 substantiate with corroborating evidence, that would go to the
10 probative value. You can continue, counsel.

11 MR. SOLOMON: Thank you.

12 BY MR. SOLOMON:

13 Q Would you turn to Exhibit 8 -- I'm sorry, 7.

14 A Yes.

15 Q And do you recognize this as a copy of a mortgage,
16 power of a sale that you executed on behalf of Dynasty on
17 January 12th, 2004 to provide a security for the \$700,000 loan
18 extended by Henderson?

19 A Yes.

20 MR. SOLOMON: What's that?

21 MR. KARACSONYI: You have the date wrong.

22 MR. SOLOMON: Oh.

23 MR. KARACSONYI: You said January 12, 2004.

24 MR. SOLOMON: Sorry, January 4, 2012. Apparently

1 transposed the question.

2 Q Do you understand the question with that change?

3 A Yes.

4 MR. SOLOMON: Offer --

5 Q Did you sign that?

6 A I did.

7 MR. SOLOMON: Offer 7, Your Honor.

8 MS. FORSBERG: No objection

9 MR. KARACSONYI: No objection.

10 THE COURT: As to 6, did you object to 6 being
11 admitted, the promissory note? I know you object to the
12 testimony, but did you object to --

13 MR. SOLOMON: They objected to neither, Your Honor.
14 They stipulated to --

15 MR. DICKERSON: No objection.

16 MR. KARACSONYI: We stipulated to 6.

17 (Intervener's Exhibit 7 admitted)

18 MR. SOLOMON: I'm sorry, I didn't hear, Your Honor.
19 Is -- is 7 admitted?

20 THE COURT: Yeah, they stipulated.

21 MR. SOLOMON: Thank you.

22 THE COURT: Yeah.

23 BY MR. SOLOMON:

24 Q All right. Would you turn to Exhibit 8?

1 A Okay.

2 Q And is this document entitled amendment to operating
3 agreement of Dynasty Development Management, LLC executed by
4 you on January 5, 2012 on behalf of the Eric L. Nelson Trust?

5 A Yes.

6 Q And it's also executed by Lana Martin as
7 distribution trustee.

8 A Yes.

9 Q And what was the purpose of this amendment for the
10 operating agreement?

11 A It was just one of the requested documents that --
12 that Henderson Capital Group requested.

13 Q Okay. And the third paragraph of that first page of
14 that document indicates that Henderson is appointed as a
15 co-manager with a limited role that's defined in there. Do
16 you see that?

17 A Yes.

18 Q So the purpose was to give them some control of the
19 entity while the loan was outstanding?

20 A Yes.

21 MR. SOLOMON: Did I offer --

22 MS. FORSBERG: You didn't.

23 MR. SOLOMON: -- 8? Offer it now.

24 MR. KARACSONYI: Okay.

1 MS. FORSBERG: No objection.

2 MR. KARACSONYI: No objection.

3 THE COURT: Hereby admitted as Exhibit 8.

4 (Intervener's Exhibit 8 admitted)

5 BY MR. SOLOMON:

6 Q Can you turn to Exhibit 10?

7 A Okay.

8 Q Is that your signature on the bottom of Page 3 of --
9 of Dynasty?

10 A Yes.

11 Q And is this the final as reflected on Page 1 the
12 final settlement statement or the acquisition of Wyoming Downs
13 by Dynasty?

14 A Yes.

15 MR. SOLOMON: We would offer 10, Your Honor.

16 MS. FORSBERG: No objection.

17 MR. KARACSONYI: No objection except only to the
18 extent that -- that we didn't get any statements to verify any
19 of this cash to the borrower. So if they go outside the scope
20 of that, they -- that's for the purpose of just showing the
21 settlement statement that if they --

22 THE COURT: Hereby admitted as Exhibit 10 with the

23 --

24 (Intervener's Exhibit 10 admitted)

1 BY MR. SOLOMON:

2 Q All right. Let's go through the first page.

3 Indicates that the -- on Line 101, do you see that?

4 A Yes.

5 Q The contract sells for 440,000. That was the bid
6 plus the buyer's premium, correct?

7 A Yes.

8 Q And it says settlement charges on Line 103 of
9 \$30,839?

10 A Yes.

11 Q And additional funds for extension, that was the
12 agreement that you signed saying you would have paid --
13 Dynasty payment at your \$10,000 at close?

14 A Yes.

15 Q And so the gross amount due from borrower shown on
16 Line 20 of \$480,839, do you see that?

17 A Yes.

18 Q And then on Line 201 it says deposit earnest money
19 of 75,000, that's the 75,000 we talked about earlier, correct?

20 A Yes.

21 Q And it says the principle amount of new loan
22 600,000. Do you see that?

23 A Yes.

24 Q That would be the \$700,000 note minus the hundred

1 thousand you prepaid?

2 A That's correct.

3 Q And in Lines 2 -- 211, it says there is an
4 adjustment for taxes in the amount of a hundred and
5 seventy-five dollars and forty-six cents. Do you see that?

6 A Yes.

7 Q Indicates then that Line 220 that the total amount
8 of paid for -- or for borrower would be \$675,175.46. Do you
9 see that?

10 A Yes.

11 Q All right. And then the reconciliation of that at
12 the bottom, it says that -- takes that \$480,839 from Line 120,
13 reinserts it in Line 309 and takes the \$675,175.46 from line
14 220 and reasserts it at 302 showing a difference of
15 \$194,336.46. Do you see that?

16 A Yes.

17 Q So at the close of escrow based upon the loan you
18 were actually able to pull out about a hundred -- a little
19 over a hundred and ninety-four thousand dollars out of the
20 equity of the property, is that correct?

21 A Well, that included the \$75,000 earnest money
22 deposit. So from the lender side of it it would be a hundred
23 and ninety-four thousand minus the 75, but approximately --
24 what is that, a hundred and twenty thousand dollars of new

1 money.

2 Q And did you pay back the \$75,000 to the loan?

3 A Yes.

4 MR. KARACSONYI: Objection. Objection. He's -- he
5 didn't produce any documents related to that. He didn't show
6 any of that. He's got nothing to prove that.

7 MR. SOLOMON: I don't have to produce it. He has
8 personal knowledge that he paid back \$75,000 and they have the
9 document and it was attached to -- as an exhibit to pleadings
10 in the motion for summary judgment.

11 MR. KARACSONYI: Exactly.

12 MR. SOLOMON: But more importantly, the failure to
13 produce a document does not mean that you -- meaning under
14 your order because it's explicit that you can't produce the
15 document, but I don't think that's applicable here because
16 that order says if it wasn't attached to pleadings. It
17 doesn't say attached to pleadings prior to any particular date
18 number one. It says more importantly it does -- if he has
19 personal knowledge that the money was paid back, he's allowed
20 to testify to that whether or not the Court allows him to
21 produce the document.

22 THE COURT: Well, I think he can testify as far as
23 how much probative value the Court gives on it without
24 supporting documentation I guess is for the Court to determine

1 based on credibility and other issues on that. So --

2 MR. DICKERSON: That's our problem is we are left in
3 a position -- we -- we have nothing to show otherwise and that
4 -- that's a problem is we're dealing with a man whose
5 credibility has already been determined.

6 MR. SOLOMON: Hogwash. They could have brought any
7 motion they wanted to. They chose to sit on their rear ends
8 and do nothing, Your Honor, and rely upon this type of
9 argument.

10 MR. DICKERSON: No, it's not --

11 MR. SOLOMON: That's not good.

12 THE COURT: You can go.

13 MR. DICKERSON: It's not our burden. It is not our
14 burden. If -- if that's --

15 MR. SOLOMON: It is your burden --

16 MR. DICKERSON: If that's the choice they choose to
17 take.

18 MR. SOLOMON: -- if you deny his testimony.

19 THE COURT: You can --

20 MR. DICKERSON: They've dug the holes for
21 themselves.

22 MR. KARACSONYI: Oh, the order?

23 THE COURT: Continue the questioning. And again, as
24 far as the probative value and the stuff with the documents,

1 this Court will cooperate in any final determination.

2 MR. KARACSONYI: I didn't realize I had it in front
3 of me.

4 BY MR. SOLOMON:

5 Q Would you turn to Exhibit 15?

6 A Yes.

7 MR. KARACSONYI: You've already ruled on this. I
8 mean --

9 MR. SOLOMON: I'm sorry, 16.

10 MR. KARACSONYI: Same objection as before, Your
11 Honor. You already ruled against 15 and 14.

12 MR. SOLOMON: Not ruled at all. I didn't even ask
13 the question.

14 MR. KARACSONYI: For the same reasons. You -- but
15 --

16 MR. SOLOMON: I haven't asked a question yet,
17 counsel.

18 THE COURT: 16 is it? You can --

19 MR. SOLOMON: Thank you.

20 BY MR. SOLOMON:

21 Q When did you pay the \$75,000 back to BanOne?

22 MR. KARACSONYI: The same objection.

23 THE COURT: Overruled.

24 MR. KARACSONYI: You know, we can't verify it

1 because he's not giving us the documents, the supporting
2 documents.

3 MS. FORSBERG: The Court's overruled.

4 THE COURT: But he can answer.

5 THE WITNESS: February 8th, 2012.

6 MR. KARACSONYI: This is improper, Your Honor. He's
7 refreshing his recollection before he even asked him the
8 question. He's got documents in front of him.

9 THE COURT: And why don't you testify from your
10 memory first without looking at the documents.

11 THE WITNESS: Sometime after the close of escrow
12 within 30 days I believe approximately.

13 BY MR. SOLOMON:

14 Q Okay. And did you use some of that hundred and
15 ninety-four thousand dollars that we just saw that you got out
16 of the close of escrow to do that?

17 MR. KARACSONYI: Objection.

18 A Yes.

19 MR. KARACSONYI: We requested those financial
20 documents during discovery and were provided with them.

21 THE COURT: Objection noted. He can -- he can
22 testify and the documents itself will not be admitted and it
23 becomes a probative value based on credibility and other
24 issues in the issues this Court. The Court will incorporate

1 that all in its findings. You can continue, counsel.

2 MR. SOLOMON: I would offer 16, Your Honor.

3 MS. FORSBERG: No objection.

4 MR. KARACSONYI: Objection. That's the same as 14
5 and 15. Wasn't produced. They're redacted statements. You
6 -- you can't -- this isn't --

7 THE COURT: Sustained. It will not be admitted at
8 this time.

9 MR. SOLOMON: Okay. Can I at least respond Your
10 Honor --

11 THE COURT: Sure.

12 MR. SOLOMON: -- for the record?

13 THE COURT: Sure.

14 MR. SOLOMON: Your Honor has signed an order and on
15 Page 3 of the order, Line 13 it says it's further ordered that
16 Lynita's request for a motion in limine is granted in part.
17 The Court will exclude a trial any testimony, information,
18 evidence neither requested regarding Dynasty Development
19 Management, LLC and Wyoming Downs during the course of
20 discovery which was not previously provided in response to
21 discovery or in filings with the court. This was provided in
22 filings with the court and that question --

23 MR. KARACSONYI: I agree. Previously provided. It
24 talks about her requesting during discovery and anything they

1 previously provided I agree. Hey, we had it then. We had at
2 least an opportunity to look at it but it wasn't previously
3 provided. When it was provided, it's after discovery closed.
4 If -- if that's the position, I mean, then that would be a
5 great strategy for everybody in every trial. Just start
6 producing doc -- move for summary judgment.

7 THE COURT: He's just raising the record. For this
8 time 16's not going to be admitted. The testimony can stand
9 by itself.

10 BY MR. SOLOMON:

11 Q All right. Indicated that \$75,000 was paid from the
12 hundred and ninety-four thousand dollars coming out of escrow.
13 What did Dynasty do with the remaining hundred and nineteen
14 thousand three hundred and thirty-six dollars and forty-six
15 cents?

16 A The -- for the repairs at the racetrack and
17 operation --

18 MR. KARACSONYI: Objection.

19 A -- expenses.

20 MR. KARACSONYI: Same objection.

21 THE COURT: Overruled. You can --

22 MR. KARACSONYI: He wouldn't give us financial
23 statements on the racetrack.

24 THE COURT: As far as he -- he can testify as far as

1 what the value the Court puts on it based on -- without
2 supporting documentation we'll get to the probative value on
3 that, but let's get this moving forward, so --

4 THE WITNESS: So the expenses -- to cover expenses
5 and operations of the racetrack.

6 BY MR. SOLOMON:

7 Q Okay. And was that a requirement of the mortgage,
8 Exhibit 7, at section 4?

9 A Yes.

10 Q And pursuant to that terms of Exhibit 7 mortgage,
11 who was required to pay taxes on Wyoming Downs?

12 A Wyoming -- Dynasty Development Management.

13 Q And were those taxes paid?

14 A Yes.

15 Q And pursuant to the terms of the mortgage, was
16 Dynasty required to maintain insurance on Wyoming Downs?

17 A Yes.

18 Q And were those paid?

19 A Yes.

20 Q All right. Was Dynasty able to repay the promissory
21 note when initially due on January 4, 2013?

22 MR. KARACSONYI: Objection, Your Honor. They
23 wouldn't give us any of the financial statements. They
24 wouldn't give us any bank statements, nothing to verify this

1 answer to this question.

2 MR. SOLOMON: It's the same objection over and over
3 again. It's the same argument.

4 MR. KARACSONYI: I have to make the --

5 MR. SOLOMON: It's the same --

6 THE COURT: And he still -- and he's got to make the
7 objection to each one. The supreme court said there's no
8 continuing objection so he has to do it each time on that.
9 Overruled at this time. As far as them, we're going to get
10 this stuff out there and I'll make findings. I'll exclude --
11 evidence is not proper on that. I'll go through on that and
12 make detailed findings. But at least let's get a record so we
13 can get the matter resolved.

14 MR. SOLOMON: Thank you, Your Honor.

15 BY MR. SOLOMON:

16 Q Was Dynasty able to pay the mortgage -- I'm sorry,
17 the promissory note when initially due under accordance of
18 this terms on January 4, 2013?

19 A No.

20 Q Did you advise Henderson Capital that Dynasty could
21 not pay?

22 A Yes.

23 MR. KARACSONYI: Objection, hearsay.

24 MR. SOLOMON: What's the objection? I'm sorry.

1 MR. KARACSONYI: Plus he didn't --

2 MS. FORSBERG: Hearsay.

3 MR. KARACSONYI: Again, the same objection. It's to
4 the form of the question.

5 MR. SOLOMON: Your Honor, it's --

6 THE COURT: Overruled.

7 MR. SOLOMON: -- offered of fact.

8 THE COURT: Overruled. You can -- you can answer
9 the question.

10 BY MR. SOLOMON:

11 Q Pursuant to the terms of the promissory note which
12 is Exhibit 6 if you go back for that -- I'm sorry? Oh, I'm
13 sorry. I thought you did. Did you answer whether you advised
14 Henderson Capital that you could not pay?

15 A Yes. Could not pay.

16 Q Now would you turn to Exhibit 6? The paragraph that
17 says if upon completion of the 12 month loan period if debtor
18 fails to pay, what happened as a result of your inability to
19 make the promissory note payment on as due on January 4th,
20 2013?

21 MR. KARACSONYI: Objection.

22 A The interest increased to 18 --

23 MR. KARACSONYI: I just want to note my objection to
24 the question for the same basis that I've laid out.

1 THE COURT: Yeah, well, I'll take the objection.

2 Overruled. You can --

3 THE WITNESS: The interest rate of 18 percent kicked
4 in and they agreed to extend it.

5 BY MR. SOLOMON:

6 Q Would you turn to Exhibit 9? Is that a true and
7 correct copy of the bill of sale that accompanied the purchase
8 of the personal property associated with Wyoming Downs --

9 A Yes.

10 Q -- on or about January 5, 2012?

11 A Sorry, yes.

12 Q Is that your signature on the second page thereof on
13 behalf of Dynasty?

14 A Yes.

15 MR. SOLOMON: Offer 9.

16 MS. FORSBERG: No objection.

17 THE COURT: No objections?

18 MR. DICKERSON: No objection.

19 MR. SOLOMON: Turn to Exhibit 11.

20 THE COURT: 9 will be admitted.

21 (Intervener's Exhibit 9 admitted)

22 BY MR. SOLOMON:

23 Q Is Exhibit 11 a true and correct copy of a special
24 warranty deed that Dynasty received upon close of escrow from

1 Wyoming Racing, LLC?

2 A Yes.

3 MR. SOLOMON: Offer 11.

4 MR. KARACSONYI: No objection.

5 MS. FORSBERG: No objection.

6 THE COURT: Hereby admitted as Exhibit 11.

7 (Intervener's Exhibit 11 admitted)

8 BY MR. SOLOMON:

9 Q Turn to Exhibit 12. Is Exhibit 12 a true and
10 correct copy of an assignment and assumption agreement that
11 you received at the close of escrow transferring the
12 intangibles to Wyoming Downs to Dynasty?

13 A Yes.

14 MR. SOLOMON: Offer 12.

15 MS. FORSBERG: No objection.

16 MR. KARACSONYI: Okay. No objection.

17 THE COURT: Hereby admitted as Exhibit 12.

18 (Intervener's Exhibit 12 admitted)

19 MR. KARACSONYI: What did you describe it as?

20 MR. SOLOMON: It's an assignment and assumption of
21 the obligations related to the intangibles.

22 MR. KARACSONYI: From what? It says this is from
23 Wyoming Racing to --

24 MR. SOLOMON: Right.

1 MR. KARACSONYI: -- Dynasty.

2 MR. SOLOMON: Exactly.

3 MR. KARACSONYI: Oh.

4 BY MR. SOLOMON:

5 Q Do you believe that Lynita or the LSN Trust have any
6 interest in Wyoming Downs?

7 MR. KARACSONYI: Objection, calls for a legal
8 conclusion.

9 THE COURT: Overruled. He can give his opinion as
10 far as if they have any legal basis. The Court will decide,
11 but he can give his opinion, I guess.

12 THE WITNESS: No, I didn't think she had any
13 interest whatsoever.

14 BY MR. SOLOMON:

15 Q Why not?

16 A Because we had two separate trusts. I believe that
17 my trust was -- was run in accordance to Mr. Bertsch and Mr.
18 Gerety had showed that the trusts were separated from funding.
19 I thought I had an -- an understanding with the Court that I
20 could buy this outside of the LSN claim for community property
21 if I didn't use any of those funds. It was a gaming property
22 that she was adamantly opposed to gaming and liquor and -- and
23 they were adamantly opposed at the time that they didn't want
24 me to purchase that or not to include any of their funds, that

1 they didn't want anything to do with it. I thought it was
2 perfectly clear.

3 Q Okay. If the Court were to award Lynita or LSN
4 Trust interest in Wyoming Downs, will it create any licensing
5 issues or other issues for Wyoming Downs?

6 MR. KARACSONYI: Objection, lack of foundation.
7 Calls for speculation and legal conclusion.

8 THE COURT: Overruled. He can answer. I think
9 we've gone through this with the Mississippi Gaming and the
10 licensing -- the game and license, but he can give his
11 understanding of whether it's accurate or not on that, but I
12 do know about the licensing and who's on it, if you got gaming
13 license, anybody else on it that has to be approved that they
14 we went through this, added for item on the Mississippi
15 property for licensing. So he can answer for what it's worth.
16 You can answer it.

17 THE WITNESS: After what prior experiences of having
18 about 15 different gaming licenses, Lynita never participated
19 in any of them, because she would have had to have gotten the
20 license.

21 MR. DICKERSON: It's non-responsive, Your Honor.
22 He's non-responsive to the question.

23 THE COURT: Restate the question for him.

24 BY MR. SOLOMON:

1 Q Yeah, the question is would an award of this
2 property to Lynita or LSN create any licensing or other issues
3 for you? Can you speak to that?

4 A I believe it would have severe impact on the
5 facility because she is a non-licensee. And she would have to
6 get licensed.

7 Q What specifically would be the issue?

8 A The issue would be you would have several owners
9 that would be fighting going into a privileged license
10 scenario which the -- I believe the gaming commission would be
11 hard pressed to allow warring fractions as you would say to be
12 involved in a license like that.

13 MR. KARACSONYI: Objection, he's speculating Your
14 Honor on what the --

15 MR. DICKERSON: Move to strike.

16 MR. KARACSONYI: -- register.

17 THE COURT: Sustained.

18 BY MR. SOLOMON:

19 Q In addition to the gaming license that's held and
20 with respect to this property, are there liquor licenses?

21 MR. KARACSONYI: Objection, Your Honor. They
22 refused to produce any licenses or a license application
23 during the course of discovery.

24 MR. SOLOMON: The same -- still testified to --

1 MR. KARACSONYI: So he can --

2 MR. SOLOMON: -- his personal knowledge.

3 MR. KARACSONYI: So they can just deny us all the
4 documents and just have him testify as whatever he wants to
5 make up.

6 MR. SOLOMON: Then file a motion to compel if you
7 think he can --

8 MR. KARACSONYI: Motion to compel. That's -- that's
9 equitable. So he can say get lost and then we're stuck.

10 THE COURT: As far as that, I'm -- the value that
11 the Court puts on his testimony based on past history without
12 the cooperating documents is a matter for credibility and
13 determination on that. Then again, I'll look at everything
14 and we'll get a nice record set and I'll look at your --
15 everything you asked and determined what should have been
16 provided or not provided. But I want to get a nice record
17 going because we sure may not end here. So I want to get a
18 nice record so any other court can do what they need to do.

19 BY MR. SOLOMON:

20 Q It's a liquor license.

21 A Yes, it is a liquor license.

22 Q Is that a privileged license also?

23 A That is definitely a privileged license.

24 Q Has Lynita ever to your knowledge obtained a liquor

1 license?

2 A 100 percent not.

3 MR. KARACSONYI: Objection, calls for speculation.

4 A That I'm aware of.

5 THE COURT: Overruled. I think we talked about the
6 licensing and the Mississippi and Ms. Lynita said she could
7 apply and get licensing, just go to the formality. I think
8 she said she was willing to do it as far as the Mississippi
9 property. So I'm very familiar with the licensing that's been
10 -- you can continue, counsel.

11 BY MR. SOLOMON:

12 Q Now would you turn to Exhibit 13? Can you recall
13 that Mr. Bertsch filed a report to the Court a source of
14 application and funds through -- pursuant in April 10, 2012
15 hearing?

16 A Yes.

17 Q An opportunity to review that in the past?

18 A I have.

19 Q Direct your attention to a page or two. There is
20 exhibits behind this report. And the first exhibit is -- I
21 want you to look at is --

22 MR. DICKERSON: Do you want to offer this first? We
23 have no objection.

24 MR. SOLOMON: It's already been submitted to the

1 Court.

2 MR. DICKERSON: Yeah, we have no objection.

3 MR. SOLOMON: It's in the court record.

4 MR. DICKERSON: We have no objection for it coming
5 in to as evidence.

6 MR. SOLOMON: Fine. It's offered. I --

7 MS. FORSBERG: No objection.

8 THE COURT: Exhibit 13?

9 MR. KARACSONYI: Yeah, I think it's already been
10 admitted to the last -- it was admitted last time.

11 THE COURT: Hereby admitted as Exhibit Number 13.

12 (Intervener's Exhibit 13 admitted)

13 BY MR. SOLOMON:

14 Q All right. Would you turn to Exhibit D-4? It's the
15 separating pages about old exhibit D -- no, B-4.

16 A Okay. B-4?

17 Q Yes.

18 A Yes.

19 Q And have you got to the page behind that cover
20 sheet, the actual report?

21 A Yes, I have it.

22 Q All right. So it's three-quarters down at the left.
23 It says applications. Do you see that?

24 A Yes.

1 Q And it says Wyoming Downs asset. Do you see that
2 line?

3 A Yes.

4 Q And then to the right of that on -- in November of
5 2011 which was the date you previously testified deposited
6 \$75,000 earnest money. Is that the -- it shows \$75,000. Is
7 that the \$75,000 that was used for the earnest money?

8 A Yes.

9 Q At any time prior to the divorce being entered on
10 June 3rd, 2012 --

11 MR. KARACSONYI: 13. 13.

12 MR. SOLOMON: 13. I'm sorry. I'm a year off.

13 Q Had Dynasty or anybody else made any payment on the
14 Henderson Capital loan other than the prepayment of a hundred
15 thousand dollars?

16 MR. KARACSONYI: Objection, same objection. They
17 wouldn't give us any documents.

18 THE COURT: I'll note the objections. It's
19 overruled. You can answer.

20 THE WITNESS: No.

21 MR. SOLOMON: No further questions.

22 MR. KARACSONYI: Can I take a quick recess to use --

23 THE COURT: Take a five minute break, bathroom
24 break.

1 (Off record)

2 THE COURT: Okay. Now we're back on the record.
3 This is the continuation of the Nelson matter, case number
4 D-411537. We took a brief recess. We're ready to pick up
5 with our cross examination.

6 CROSS EXAMINATION

7 BY MR. KARACSONYI:

8 Q Okay. Mr. Nelson, you formed Dynasty Development
9 Management on April 25th, 2011, correct?

10 A I believe that to be correct, yes.

11 Q And that was prior to the entry of the divorce
12 decree in this matter, correct?

13 A Yes.

14 Q And you testified that the initial sole member of
15 Dynasty was the ELN Trust, correct?

16 A Yes.

17 Q And you are the investment trustee of the ELN Trust?

18 A Yes.

19 Q You're also the sole manager of Dynasty.

20 A Yes.

21 Q And you -- you indicate that you formed Dynasty to
22 hold assets you were going to attempt to purchase, correct?

23 A Yes.

24 Q And you actually make the decisions with respect to

1 the investments of Dynasty.

2 A Yes.

3 Q And on November 16th you entered into a contract to
4 purchase Wyoming Downs. November 16, 2011 you entered into a
5 contract to purchase Wyoming Downs.

6 A On November?

7 Q Yes.

8 A No, actually said April. On November, yes.

9 Q And Wyoming Downs it consists of a racetrack?

10 A Yes.

11 Q Approximately 200 acres.

12 A Yeah, a hundred and eighty-six acres.

13 Q Grandstand seating for individuals.

14 A Yes.

15 Q Okay. Horse stalls or stables.

16 A Yes.

17 Q Trainers areas.

18 A Yes.

19 Q Okay. And you obtained the property in an auction
20 you indicated, correct?

21 A Correct.

22 Q Okay. And at the auction you actually brought with
23 you 75,000 but you indicated it was for BanOne, LLC, correct?

24 A Yes.

1 Q Okay. And the 75,000 that you brought from BanOne,
2 LLC was your earnest money deposit.

3 A Yes.

4 Q That you indicated that putting that as an earnest
5 money deposit was risky because it could be lost if you
6 couldn't finish -- complete the transaction, correct?

7 A Yes.

8 Q And it's true though that actually you didn't
9 request permission from the Court to dissolve the injunction
10 over the 1.5 million until November 29th, 2011, correct?

11 A I believe that to be true.

12 Q So it wasn't until after you had already given the
13 deposit that you requested permission to release the funds to
14 complete the purchase, correct?

15 A Yes.

16 Q Okay. And it was your decision as investment
17 trustee to participate in the auction, correct?

18 A Yes.

19 Q And you bid on Wyoming Downs because you thought it
20 was a good investment.

21 A Yes.

22 Q Now the promissory note that we looked at indicates
23 that it was for 700,000, correct?

24 A Yes.

1 Q But you actually had to pay a hundred thousand
2 immediately upon the sale according to -- or upon the
3 signature of the promissory note, correct?

4 A Yeah, preparing interest, yes.

5 Q So a hundred thousand was paid to Henderson capital
6 group for the -- for the initial -- to -- to prepay the
7 interest, correct?

8 A Yes, and he's funded 600,000.

9 Q And -- and okay. And -- and they received their
10 initial hundred thousand dollar payment, is that correct?

11 A Yes.

12 Q Okay. And prior to the time that you acquired title
13 to Wyoming Downs or Dynasty acquired title to Wyoming Downs,
14 Dynasty didn't own any other assets, correct?

15 A Not that I'm aware of.

16 Q That was actually the first asset that Dynasty
17 acquired, correct?

18 A Yes.

19 Q Frank Lamb is -- was an executive director of
20 Wyoming Pari-Mutuel Commission at one point, correct?

21 A Yes.

22 Q Okay. And you actually in 2000 -- in 2012 Frank
23 Lamb was paid from the ELN Trust \$12,067.33, correct?

24 A I'm not sure.

1 Q Okay. Can you turn to Exhibit 13? And I'd like you
2 to turn to the 2012 consolidated detail.

3 A I'm sorry, in what exhibit?

4 Q That would be Exhibit C-4.

5 A C-4?

6 Q Yes.

7 A I have C-4.

8 Q Okay. And if you turn to the second page, you'll
9 see a category called and other individuals. Do you see that?
10 Brianna Ramos (ph) --

11 A Yes.

12 Q -- stated here. And if you look at the last
13 individual listed there by Mr. Bertsch, it's Frank Lamb,
14 correct?

15 A Yes.

16 Q And it shows there that \$12,067.33 was paid to Mr.
17 Lamb during 2012, correct?

18 A Yes.

19 Q Okay. And if you look further down that you
20 testified that the only monies that were paid to Henderson
21 Capital Group were the 75,000, correct? And the hundred
22 thousand.

23 A And where -- where are you looking?

24 Q Is that -- that was your testimony, correct?

1 A I'm sorry?

2 Q That you only paid the Henderson Capital for the
3 note only received the 75,000, correct?

4 A I'm sorry? I didn't understand the question.

5 Q That Henderson Capital only received the hundred
6 thousand dollar prepayment of interest was the only monies
7 they received for the -- for the note, correct?

8 A Well, you mean at time of funding?

9 Q Yes.

10 A They -- yeah, they had the money returned to them
11 plus they have -- we've had some closing costs I'm sure.

12 Q But you also indicated that prior to the -- prior to
13 the divorce -- or prior to the 12 month period that they
14 didn't receive any other monies, correct?

15 A That they didn't receive any monies whether the
16 closing costs if you're interpreting legal costs or closing
17 costs, I'm not sure.

18 Q If you look here, the -- if you look at other
19 companies, the last one listed is Henderson Capital Group,
20 LLC, correct?

21 A Yes.

22 Q And it indicates that actually 2500 was paid to
23 them, correct?

24 A Yes.

1 Q Okay. Now if you'll go to the 2012 consolidated
2 report which is Exhibit B-2.

3 A I'm sorry?

4 Q B-2 of Exhibit 13.

5 A B -- B-2?

6 Q Yes.

7 A Okay. Okay. I have it.

8 Q If you look there under applications, do you see
9 those applications?

10 A Yes.

11 Q And it lists Wyoming Downs for 2012 \$4800, correct?

12 A Under applications?

13 Q Yes.

14 A I don't see it.

15 Q Wyoming Downs asset --

16 A That's a blank.

17 Q Okay. Maybe we're on the -- the -- are you on
18 Exhibit B2?

19 A Now Exhibit B2.

20 Q B5. I'm sorry.

21 A That's all right. That's all right. B5.

22 Q I read it backwards.

23 A Okay. I have it.

24 Q Now if you go down to applications --

1 A Yes.

2 Q -- and you see Wyoming Downs, it lists that the 4800
3 was paid from the ELN Trust towards Wyoming Downs in 2012,
4 correct?

5 A Yes.

6 Q Okay. And that was in March 2012, correct?

7 A Yes.

8 Q Okay. And then if you go to the 2011 consolidated
9 which is the exhibit immediately prior to Exhibit 13 before.

10 A Yes.

11 Q It lists there for 2011 76,000 paid for Wyoming
12 Downs.

13 A Yes.

14 Q Now if you can go to the -- what other questions on
15 that one? Okay. I'd like to show you what I'm going to now
16 have be our Exhibit K.

17 A Thank you.

18 Q Sorry, I'm having --

19 MS. FORSBERG: Is this an additional exhibit in --
20 in addition --

21 MR. KARACSONYI: Yes.

22 MS. FORSBERG: -- to your book? Do you have a copy?

23 MR. KARACSONYI: Yeah.

24 MS. FORSBERG: Can you pass that down?

1 MR. KARACSONYI: But these are -- I'm going to
2 represent to you these are the answers, the distribution
3 trustee's answers to Lynita Nelson's first set of request for
4 productions of documents regarding Wyoming Downs. Do you guys
5 have any objection to this? Obviously you produced it to
6 production.

7 MR. SOLOMON: No objection.

8 MR. KARACSONYI: Okay.

9 MS. FORSBERG: No objection.

10 MR. KARACSONYI: Now I move to admit this to show
11 the -- the scope of not all the individual documents but the
12 scope of the responses, Your Honor.

13 THE COURT: Any objection?

14 MR. SOLOMON: No objection.

15 MS. FORSBERG: No objection.

16 THE COURT: Hereby admitted as Exhibit K.

17 (Defendant's Exhibit K admitted)

18 BY MR. KARACSONYI:

19 Q If you can turn to Page 3, you see request number
20 two was please produce copies of all financial statements
21 prepared for Dynasty Development Management, LLC, the Wyoming
22 Downs racetrack and any and all other business entities
23 including but not limited to corporations, limited liability
24 companies and partnerships owned or managed by you which

1 showed an interest or have held an interest at any time during
2 the past three years in the real property and racetrack known
3 as Wyoming Downs or any other real property situated in the
4 state of Wyoming during 2011, 2012 and the current calendar
5 year to date including but not limited to interim financial
6 statements prepared for the purpose of obtaining a loan,
7 credit line or credit rating during such time period.

8 And the response, correct, was objection, this
9 request seeks documents that are neither relevant to the
10 December 11, 2013 evidentiary hearing nor calculated to lead
11 to the discovery of admissible evidence. Further, financial
12 statements is not a defined term. This request also seeks
13 confidential and proprietary information which would cause
14 Dynasty Development Management, LLC irreparable harm if
15 disclosed to third parties, correct?

16 A Is that a question?

17 Q Yes, was that the response -- that was the response.
18 I -- I read that correctly.

19 A I didn't say objection, but it was a --

20 Q Did I read that correctly?

21 A I believe so, yes.

22 Q Okay. And it doesn't indicate here that any
23 documents have been provided in response to this request,
24 correct?

1 A Not that I'm aware of.

2 Q Now I want to show you for a second -- I'm going to
3 go through the rest of those. Exhibit -- if you could turn to
4 our Exhibit -- do you have our exhibit book up there? I
5 apologize.

6 A These two.

7 Q The -- the other book?

8 MR. KARACSONYI: And maybe I have an extra -- no?

9 THE MARSHALL: Yeah, I had to place two of them --

10 MR. KARACSONYI: Oh, okay. Yeah, I brought an extra
11 copy. Okay. Yes. This is correct.

12 THE MARSHALL: So this is the one.

13 THE WITNESS: Okay.

14 MR. KARACSONYI: Yes. Oh, did I have -- did I give
15 a copy to the Court to mark and admit? Okay.

16 THE MARSHALL: You did --

17 THE CLERK: The Judge has one.

18 MR. KARACSONYI: Oh, okay. The witness -- can we
19 use the witnesses? Just keep it -- that way he can look at
20 the -- thank you.

21 MR. DICKERSON: We may have an extra one over here I
22 think. There was one -- are we missing one?

23 THE MARSHALL: Do you have a big binder? Remember,
24 that we gave you this one.

1 MS. FORSBERG: Oh, okay. Just making sure.
2 THE MARSHALL: Just in case you needed to see that.
3 THE WITNESS: Yeah. Thank you.

4 BY MR. KARACSONYI:

5 Q Okay. And I want to turn also then to Exhibit H.

6 A H?

7 Q Yes.

8 MR. KARACSONYI: Sorry, will you stipulate to this
9 one or do I need to do that?

10 MR. SOLOMON: Well, wait. Are you offering it?

11 MR. KARACSONYI: Yes.

12 MR. SOLOMON: Yes, of course I'll stipulate to it.

13 MS. FORSBERG: No objection.

14 THE COURT: Hereby admitted as Exhibit H.

15 (Defendant's Exhibit H admitted)

16 BY MR. KARACSONYI:

17 Q Now you were -- the -- there was a subpoena served
18 upon Dynasty Development Management for the person most
19 knowledgeable regarding the ownership and acquisition of
20 Wyoming Downs, correct?

21 A Yes.

22 Q And there was also a subpoena served upon you
23 individually to appear for a deposition, correct?

24 A Yes.

1 Q And actually, those two -- those two depositions
2 were consolidated to one time and location because you were
3 the person to serve as both -- for both deponents.

4 A I believe so.

5 Q So you were actually the person designated as the
6 person most knowledgeable about the ownership and acquisition
7 of Wyoming Downs, correct?

8 A Yes.

9 Q Now if you'll turn to Exhibit G.

10 A I have it.

11 Q Now these are actually your responses to the request
12 for production in your individual capacity, correct?

13 A I believe so.

14 MR. KARACSONYI: I move to admit that exhibit as
15 well, Your Honor. Exhibit G.

16 MR. SOLOMON: We have no objection.

17 MS. FORSBERG: No objection.

18 THE COURT: Hereby admitted as Exhibit G.

19 (Defendant's Exhibit G admitted)

20 BY MR. KARACSONYI:

21 Q And I would look -- like you to look at Exhibit G
22 and Exhibit K.

23 A I don't have a K.

24 Q The K is the one that we handed you, the packet.

1 A Okay.

2 Q Oh, okay. Now you -- you responded to the same
3 request for production that -- that the ELN Trust was served
4 with, correct?

5 A I believe so.

6 Q And if you look -- your response to the request
7 number two that we previously read was objection, this request
8 seeks documents that are neither relevant to the December 11,
9 2013 evidentiary hearing nor calculated to lead to the
10 discovery of admissible evidence. Further, financial
11 statements is not a defined term. This request has been
12 responded to an Eric L. Nelson Nevada Trust distribution
13 trustee's answer to Defendant Lynita Sue Nelson's first set of
14 request for production of documents regarding Wyoming Downs
15 and Eric L. Nelson individual hereby incorporates the response
16 of the distribution trustee as if set forth for the hearing,
17 correct? That was your response.

18 A My response?

19 Q Yes.

20 A Well, someone typed it. I mean, I didn't say all
21 that.

22 Q But this is -- this is a response submitted on
23 behalf of you, correct?

24 A Oh, yes.

1 Q Now if you turn to Exhibit K.

2 A K.

3 Q First of all to your knowledge, were any financial
4 statements for Dynasty Development or Wyoming Downs ever
5 produced to us?

6 A I believe we gave you the closing statements and the
7 purchasing the facility, purchasing. And the closing
8 documents.

9 Q Okay. But nothing further, correct?

10 A I don't believe anything further.

11 Q Okay. Now request Number 3 requested -- and this is
12 the same whether you're looking at Exhibit K or Exhibit G, but
13 because you're both responding. But please produce a copy of
14 all tax information, tax returns, postdate and federal and all
15 declarations of estimate of tax prepared by or on behalf of
16 Dynasty Development Management, LLC or any and all other
17 business entities including but not limited to corporations,
18 limited liability companies and partnerships owned or managed
19 by you which hold an interest or have held an interest at
20 anytime during the past three years in Wyoming Downs or any
21 and other real property situated in the state of Wyoming
22 during 2011, 2012 and the current calendar year-to-date
23 included but not limited to K1 statements.

24 This request includes without limitation all drafts

1 of any such documentation during such period of time. This
2 request further includes but is not limited to correspondence
3 or other statements or documents received from the IRS or any
4 -- Internal Revenue Service or any other taxing authority
5 regarding any tax liability, credit, debt, interest,
6 assessment or penalty during such period of time. That was
7 the request, correct?

8 A Yes.

9 Q Okay. And the response by the ELN Trust was
10 objection, this request seeks documents that are neither
11 relevant to the December 11, 2013 evidentiary hearing nor
12 calculate to lead to the discovery of admissible evidence.
13 Further, this request seeks confidential and proprietary
14 information which would cause Dynasty Development Management,
15 LLC irreparable harm if disclosed to third parties, correct?

16 A Yes.

17 Q Okay. And your -- your response turning to Exhibit
18 G was basically incorporating the same response of the
19 distribution trustee, correct?

20 MR. SOLOMON: Your Honor, this is taking a lot of
21 unnecessary time. The documents are in. They're not objected
22 to. Counsel are going to argue. They say what they say. All
23 he's asking is what this says, quoting it and asking is that
24 what it says. There's no followup questions. This is --

1 MR. DICKERSON: What's the objection?
2 MR. SOLOMON: The objection is that it's --
3 MS. FORSBERG: The document speaks for itself.
4 MR. SOLOMON: -- meaningless. It is --
5 MR. DICKERSON: I don't recall that --
6 MR. SOLOMON: It's not --
7 THE COURT: I think he's --
8 MR. SOLOMON: It's already in evidence. It's --
9 THE COURT: I think he's --
10 MR. SOLOMON: -- subject to argument, but no need to
11 waste our Court's time reading documents that are in evidence
12 and are not adding anything to it.
13 MR. DICKERSON: I don't remember learning that
14 objection in evidence.
15 THE COURT: Overruled. He can lay a thing on there
16 to show his basis for why he thinks the Court should not admit
17 the evidence, testimony or otherwise.
18 MR. KARACSONYI: Yeah, his prior testimony about the
19 financials.
20 THE COURT: Now you said Exhibit G?
21 MR. KARACSONYI: Yeah, I was going -- but I'm going
22 back and forth between Exhibit G and K. They're the same
23 request, but they're different responses. They're the same --
24 they're -- they're his responses and the ELN Trust response.

1 THE COURT: Well, I got -- maybe I got it wrong. I
2 got G as affidavit of Eric Nelson and a response to order to
3 show cause. I think we have a different -- we have --

4 MR. KARACSONYI: Oh, that's -- I think you have it
5 for the last evidentiary hearing.

6 THE COURT: So you didn't give us one for this one?

7 MR. KARACSONYI: I thought I did.

8 THE COURT: This is the one they gave me, but this
9 is the one from the last one. Okay. That's why.

10 MR. LUSZECK: We dropped off --

11 THE COURT: Okay. This is the one they -- think
12 they sent the wrong one down.

13 THE CLERK: Yeah.

14 THE COURT: My law clerk's not here today, so I
15 think they sent the wrong exhibit book. Do you have an extra
16 one? If not, send an email to Laurie to get it down.

17 THE CLERK: Do you need an extra one?

18 THE COURT: Yeah, you must -- you dropped it off.
19 She must have sent the wrong one --

20 MR. KARACSONYI: Yeah, we --

21 THE COURT: -- because the law clerk's not there.

22 MR. KARACSONYI: Yes. Sorry, Your Honor.

23 THE COURT: That's okay.

24 MR. KARACSONYI: Okay. Exhibit G. And then K is

1 the one we brought in by hand.

2 THE COURT: You brought.

3 BY MR. KARACSONYI:

4 Q And to your knowledge, no -- none of these tax
5 record -- no such tax records have been produced to us, is
6 that correct?

7 A That's correct.

8 Q Now request number four requested all account --
9 please produce all accounting records, e.g., general ledgers,
10 general journals, cash disbursement journals, et cetera, for
11 Dynasty Development Management, LLC, the racetrack and/or real
12 property known as Wyoming Downs or any and all other business
13 entities including but not limited to corporations, limited
14 liability companies and partnerships owned or managed by you
15 which hold an interest or have held an interest at any time
16 during the past three years in Wyoming Downs or any other real
17 property situated in the state of Wyoming for the business
18 years beginning January 1, 2011 through the present showing
19 all transactions occurring during such period -- said period
20 of time, correct?

21 A That's correct.

22 Q And the response from the ELN Trust was objection,
23 this request seeks documents that are neither relevant to the
24 December 11, 2013 evidentiary hearing nor calculated to lead

1 to the discovery of admissible evidence. Further, this
2 request seeks confidential and proprietary information which
3 would cause Dynasty Development Management, LLC irreparable
4 harm if disclosed to third parties, correct?

5 A Correct.

6 Q And then your response turning to Exhibit G to
7 response to request number four was a similar objection and
8 then that the request has been responded to by the ELN Trust
9 and that you incorporate their response, correct?

10 A That's correct.

11 Q Okay. And to your knowledge, none of these -- no
12 general ledgers, general journals, accounting records, cash
13 disbursement journals have been produced to us, correct?

14 A I think -- correct.

15 Q Now if you'll go to request number six. And in that
16 request we stated please produce any and all year end
17 financial statements both audited and unaudited included but
18 not limited to balance sheets, statements of profit and loss,
19 statements of changes and financial position and notes to
20 financial statements for Dynasty Development Management, LLC,
21 the Wyoming Downs race track or any trust or business entity
22 including but not limited to corporations, limited liability
23 companies and partnerships owned or managed by which you hold
24 an interest or have held an interest at anytime during the

1 past three years in Wyoming Downs or any of -- all other real
2 property situated in the state of Wyoming for 2011, 2012 and
3 the current calendar year to date. With regard to the current
4 year, please produce all periodic, monthly, quarterly, et
5 cetera statements. That was the question, correct?

6 A Correct.

7 Q And the response from the ELN Trust was objection,
8 this request seeks documents that are neither relevant to the
9 December 11, 2013 evidentiary hearing nor calculated to lead
10 to the discovery of admissible evidence. Further, this
11 request seeks confidential and proprietary information which
12 would cause Dynasty Development Management, LLC irreparable
13 harm if disclosed to third parties, correct?

14 A Correct.

15 Q And your response was largely the same that we've
16 discussed, that you basically stated an objection and
17 incorporated their response.

18 A Yes.

19 Q And to -- to your knowledge, we have not been
20 provided with any such financial statements to -- to this day,
21 correct?

22 A To my knowledge.

23 Q To your knowledge, that's true.

24 A That's true.

1 Q Okay. Number seven. Now you testified about
2 certain -- certain transactions related to this property,
3 right?

4 A Yes.

5 Q Financial transactions? Now request number seven
6 says please produce any and all bank account or investment
7 account statements from January 1, 2011 to present date for
8 all bank and investment accounts from which monies have been
9 expended, withdrawn, transferred and/or leverage for the
10 purchase of Wyoming Downs or operation of Wyoming Downs or
11 purchase or operation of any other real property or gaming
12 venture in the state of Wyoming during such time period,
13 correct?

14 A Correct.

15 Q And your response was -- or the ELN Trust response
16 was objection, this request seeks documents that are neither
17 relevant to the December 11, 2013 evidentiary hearing nor
18 calculated to lead to the discovery of admissible evidence.
19 Further, this request seeks confidential and proprietary
20 information 3which would cause Dynasty Development Management,
21 LLC irreparable harm if disclosed to third parties, correct?

22 A Correct.

23 Q And your response turning to Exhibit G to number
24 seven was the same -- you object -- objected that it wasn't

1 relevant and not likely to lead to discovery of admissible
2 evidence and then again just incorporated their answer as
3 though you said it there, correct?

4 A Correct.

5 Q Okay. And to your knowledge during -- prior to the
6 motion for summary judgment that we filed, were any bank
7 statements that were request here produced to us?

8 A No.

9 Q And now request number eight, you'll see looking at
10 either Exhibit G or K requests a copy -- please produce a copy
11 of all documents relating or otherwise pertaining to the
12 purchase, sale, encumbrance and/or transfer of any interest in
13 the real property and racetrack known as Wyoming Downs or any
14 other real property situated in the state of Wyoming during
15 2011, 2012 and the current calendar year to date.

16 Included in this request is all documentation
17 related to the purchase and sale of Wyoming Downs or any other
18 real property situated in the state of Wyoming included but
19 not limited to all closing statements, deeds, notes, mortgages
20 and/or other evidence of ownership and indebtedness. And the
21 response was objection, this request seeks documents that are
22 neither relevant to the December 11, 2013 evidentiary hearing
23 nor calculate to lead to the discovery of admissible evidence.
24 Further, this request seeks confidential and proprietary

1 information which would cause Dynasty Development Management,
2 LLC irreparable harm if disclosed to third parties.
3 Notwithstanding and without waiving said objection, please see
4 documents Bate Number Wyoming Down 0001 through 54, 57 through
5 85 and 89 through 163, correct?

6 A Correct.

7 Q Okay. Now I -- you -- you've seen the documents
8 related to Wyoming Downs that were produced in this matter?

9 A Yes.

10 Q Okay. And in those documents that are referenced in
11 response to request number eight, there are no bank statements
12 actually in those documents. That's correct?

13 A I don't believe there are any.

14 Q Okay. Now request number nine, you testified about
15 your -- your belief of the licensing and how it would be
16 affected by -- by Lyni -- if Lynita was owed -- given an
17 ownership interest in Wyoming Downs, correct?

18 A I'm sorry, what was the question?

19 Q You testified you were asked about whether -- what
20 effect you thought awarding Lynita in ownership interest in
21 Wyoming Downs would have on your licenses, correct, and what
22 licenses the company has?

23 A Yes.

24 Q Now request number nine, you'll see request please

1 produce a copy of all gaming, horseracing and other state or
2 federal licenses relating to horseracing and/or wagering on
3 horseracing issue to you, Dynasty Development Racing, LLC, any
4 other entity owned or managed by you or any employee of any
5 entity trust or entity owned or managed by you, correct?

6 A Correct.

7 Q Okay. And the response from the ELN Trust was
8 objection, this request seeks documents that are neither
9 relevant to the December 11, 2013 evidentiary hearing nor
10 calculated to leave to the discovery of admissible evidence,
11 correct?

12 A Correct.

13 Q Okay. And your response if you turn to Exhibit G
14 was you stated that you -- you objected on the same basis and
15 then you incorporated the response of the distribution
16 trustee, correct?

17 A Correct.

18 Q Okay. And to your knowledge, it's true that we have
19 never had -- never been provided with any such -- copies of
20 any such licenses, correct?

21 A Correct.

22 Q Has requested in request number nine.

23 A Correct.

24 Q Okay. Now request number 10 requested a please

1 produce a copy of all applications for gaming, horseracing and
2 other state or federal licenses relating to horseracing and/or
3 wagering on horseracing by you, Dynasty Development Racing,
4 LLC, any other entity owned or managed by you or any employee
5 of any entity, trust or entity owned or managed by you
6 regardless of whether such licensed was ultimately approved,
7 issued or granted by the issuing authority.

8 And the response from the ELN Trust was objection,
9 this request seeks documents that are neither relevant to the
10 December 11, 2013 evidentiary hearing nor calculated to lead
11 to discovery of admissible evidence. Further, this request
12 seeks confidential and proprietary information which would
13 cause Dynasty Development Management, LLC irreparable harm if
14 disclosed to third parties, correct?

15 A Correct.

16 Q Okay. And your answer in your Exhibit G was you
17 stated the same objection and then you incorporated their
18 response again, correct?

19 A Correct.

20 Q And to your knowledge, we have never actually been
21 provided with any copies of such applications requested in
22 request number 10, correct?

23 A Not that I'm aware of.

24 Q And now the final one, if you'll go to request

1 number 11 -- well, actually, we covered 11 and 12. Request
2 number 11 is please produce an accounting of the disposition
3 of any of all funds received from the mortgage or encumbrance
4 of the real property and racetrack known as Wyoming Downs or
5 any other properties situated in the state of Wyoming during
6 2011, 2012 and the current calendar year to date. Please also
7 produce any and all bank or investment account statements,
8 cancelled checks and other documents evidencing such
9 disposition of funds, correct? That was the question.

10 A Correct.

11 Q And you testified that some of those funds were used
12 for various purposes during your testimony, correct?

13 A Correct.

14 Q Okay. And you're -- the response to request number
15 11 from the ELN Trust was objection, this request exceeds the
16 scope of Nevada Rule of Civil Procedure 34 and such rule does
17 not require a party to prepare an accounting, right?

18 A Correct.

19 Q Okay. And your response was in Exhibit G that this
20 request seeks -- objection, this request seeks documents that
21 are neither relevant to the December 11, 2013 evidentiary
22 hearing nor calculated to lead to the discovery of admissible
23 evidence and then incorporated the response of the
24 distribution trustee, correct?

1 A Correct.

2 Q And -- and to your knowledge at least prior to our
3 motion for summary judgment no bank or investment account
4 statements, cancelled checks and other documents evidencing
5 such disposition of funds, the -- the mortgage or encumbrance
6 funds were ever produced to us, correct?

7 A Correct.

8 Q Okay. Now the final request number 12 was please
9 produce a copy of any and all other documents required to be
10 disclosed by Nevada Rules of Civil Procedure Rule 16.2 which
11 have not been provided in response to any other request
12 contained above, correct?

13 A Correct.

14 Q And the response from the ELN Trust was just to see
15 the documents that were attached to the response, correct?

16 A Correct.

17 Q And your response was all documents are in the
18 possession of the Eric L. Nelson Nevada -- or Eric L. Nelson
19 Trust and had been produced in the Eric L. Nelson Nevada Trust
20 distribution trustee, answer Defendant Lynita Sue Nelson's
21 first set of request for production of documents regarding
22 Wyoming Downs, correct?

23 A Correct.

24 MR. KARACSONYI: I move for the admission of Exhibit

1 G and K. I think it just --

2 MS. FORSBERG: You already did that.

3 MR. SOLOMON: I thought K was already in and I
4 thought G was in, but I have no objection.

5 MR. KARACSONYI: K is in.

6 THE COURT: They have already been in admitted, G
7 and --

8 MR. KARACSONYI: Okay. And Exhibit H was admitted.
9 Okay. Now I would like to publish the deposition of Mr.
10 Nelson on November 21st, 2013, Your Honor.

11 MR. SOLOMON: No objection.

12 MR. KARACSONYI: I have also attached copies of
13 Exhibit J and I would like to admit it for the purpose of
14 showing the responses so that the supreme court has a record
15 of the responses that were -- that we're going to go over here
16 with the -- with the Court.

17 MR. DICKERSON: So for the record, it's being
18 accepted as being published and we're also having it marked as
19 an exhibit for the record.

20 THE COURT: So Exhibit J I think they said they --
21 no objection as being --

22 MR. SOLOMON: No objection.

23 MS. FORSBERG: No objection.

24 THE COURT: All right.

(Defendant's Exhibit J admitted)

1
2 BY MR. KARACSONYI:

3 Q Now at your deposition you were asked various
4 questions about the -- about the -- your acquisition of
5 Wyoming Downs, correct?

6 A Correct.

7 Q Now at that time you actually couldn't recall how
8 you came to find out that Wyoming Downs was available for
9 purchase, correct?

10 A Correct.

11 Q Okay. And you couldn't recall how you located
12 Henderson Capital Group, LLC, correct?

13 A Correct.

14 Q In fact, you couldn't even recall who you dealt
15 with, anybody associated with Henderson Capital Group, LLC,
16 correct?

17 A Well, I knew that like the secretary and but not
18 anyone in particular that I had, no.

19 Q You couldn't identify anyone by name except for
20 possibly some gentleman named Dennis --

21 A Yes.

22 Q -- last name unknown.

23 A Yes.

24 Q Correct?

1 A Uh-huh (affirmative).

2 Q Okay. And at that deposition you were asked various
3 questions which you felt were outside the scope of these
4 proceedings, correct?

5 A Correct.

6 Q And you refused to answer those questions, correct?

7 A Correct.

8 Q Can you turn --

9 A I don't have it.

10 Q Oh, it's in your exhibits, Exhibit J in the exhibit
11 book.

12 A Oh, in this one? Okay. Sorry.

13 Q Okay. You actually wouldn't answer the question
14 about whether anyone else has an ownership interest in Wyoming
15 Downs besides Dynasty, correct?

16 A Where are you at?

17 Q Page 26. Now I asked you on Line 19 question,
18 besides Dynasty, does anyone else have an ownership interest
19 in Wyoming Downs and your answer was that would be outside the
20 scope, correct?

21 A Correct.

22 Q And you never answered that question at deposition,
23 did you?

24 A That's correct.

1 Q Now if you'll turn to Page 30, I asked you at Line 2
2 does Dynasty own a hundred percent of Wyoming Downs. And your
3 answer was in the scope of the understanding from the
4 questioning, if I understand this correctly, when I purchase
5 the facility on the 11th enclosed yes, then the question was
6 so when the property was purchased Dynasty owned a hundred
7 percent of Wyoming Downs. Answer, yes. Question, did Dynasty
8 own a hundred percent of Wyoming Downs on the date of your
9 divorce from Mrs. Nelson. And your answer was that is beyond
10 the scope, correct?

11 A Correct.

12 Q And you actually didn't ever answer that question at
13 a deposition whether or not Dynasty even owned a hundred
14 percent of -- of the -- of Wyoming Downs on the date of your
15 divorce, correct?

16 A Correct.

17 Q And if you look at it starting at Line 15, I asked
18 so you're refusing to answer that question and your answer was
19 that is beyond the scope of when I purchased it and when I
20 closed. And my question so it is your position that the only
21 questions you have to answer today are questions between the
22 time prior to the purchase up until the time of close, is that
23 correct. Answer, that's correct. Question, and you're
24 refusing to answer any other questions, answer, that is

1 correct. That was your testimony, correct?

2 A Yes.

3 Q Okay. Okay. Now you also didn't recall at your
4 deposition any of the specific people you asked for a loan
5 other than Henderson Capital, LLC, correct?

6 A Correct.

7 Q Now if you'll turn to Page 38, I asked you the
8 following the questions and received the following answers.
9 At Line 4 -- and at that time Dynasty owned a hundred percent
10 of Wyoming Downs, correct? Yes. How much is still owed to
11 Henderson Capital Group, LLC on the original 700,000 mortgage.
12 Answer, that would be outside the scope of this deposition.
13 Question, so you are refusing to answer that question.
14 Answer, yes. Then I asked counsel do you support his refusal
15 to answer, Mr. Luszeck, correct. Did I read that correctly?

16 A I believe so.

17 Q Okay. And you wouldn't answer and you never did
18 answer at deposition whether any money or no money was owed to
19 Henderson Capital Group at the time of your deposition,
20 correct?

21 A Correct.

22 Q Now on Line 18 I asked you since Wyoming Downs was
23 acquired, what has been done to approve the property. And
24 your answer was that is outside the scope of this deposition,

1 correct?

2 A Correct.

3 Q Okay. Now I went on to ask you a series of
4 questions at the bottom of Page 38. I am going to go through
5 a series of questions and please indicate to me whether you
6 are willing to answer any of the questions and then I asked
7 your counsel -- counsel if you could indicate to me if there
8 is anything that you are going to instruct your client to
9 answer, I would appreciate that as well, correct?

10 A Correct.

11 Q And -- and Mr. Luszeck, your coun -- the counsel for
12 the ELN Trust indicated that he will do, right?

13 A Correct.

14 Q And then I asked you the following series of
15 questions. I received the following series of answers
16 starting at Line 7, Page 39. Question, what licensing was
17 required to operate Wyoming Downs. Answer, that would be
18 outside the scope of this deposition. Question, what
19 legislation was required to allow Wyoming Downs to operate as
20 a racetrack. Answer, that would be outside the scope of this
21 deposition. I don't know. Question, how many employees work
22 at Wyoming Downs. Answer, that is outside the scope of this
23 deposition. Question, who are the employees for Wyoming
24 Downs. Answer, that would be outside the scope of this

1 deposition. Question, what events or races have occurred at
2 Wyoming Downs since it was acquired. Answer, that would be
3 outside the scope of this deposition. Question, what was the
4 attendance of the race events at Wyoming Downs since it was
5 acquired. Answer, that would be outside the scope of this
6 deposition. Question, what were the profits from the various
7 race events that occurred at Wyoming Downs after it was
8 acquired. Answer, that would be outside the scope of this
9 deposition.

10 Question, where have the profits been deposited from
11 the racing operations at Wyoming Downs after Dynasty's
12 acquisition of Wyoming. Answer, that would be outside the
13 scope of this deposition. Question, what money have you
14 personally received from the operation of Wyoming Downs.
15 Answer, that would be outside the scope of this deposition.
16 Question, have any profits been transferred to any other
17 entity from Dynasty from Wyoming Downs. Answer, that would be
18 outside the scope of this deposition.

19 Question, has the ELN Trust received any profits
20 from the operation of Wyoming Downs. Answer, that would be
21 outside the scope of this deposition. Question, what are the
22 operating expenses for the operation of Wyoming Downs.
23 Answer, that would be outside the scope of this deposition.
24 Where are the gaming revenues for Wyoming Downs. That would

1 be outside the scope of this deposition.

2 Can you explain to me the offtrack betting rights
3 for Wyoming Downs? That would be outside the scope of this
4 deposition. What are the future plans for the operation of
5 Wyoming Downs? That would be outside the scope of this
6 deposition. Is there any new legislation on the horizon which
7 you believe will affect Wyoming Downs. That would be outside
8 the scope of this deposition. Are you conducting any lobbying
9 efforts for -- it says lobbying. Lobbying efforts for Wyoming
10 Downs for additional legislation. That would be outside the
11 scope of this deposition.

12 Did I read that correctly?

13 A I believe so.

14 Q Okay. And then Mr. -- Mr. Luszeck and Ms. Forsberg
15 confirmed that they would not instruct you to answer the
16 question, correct?

17 A Correct.

18 Q Or any of those questions, correct?

19 A Correct.

20 Q Okay. Okay. And then one final time at Page 44,
21 starting at Page 44. I asked you another series of questions
22 and it indicated for you or your counsel, either of them, to
23 indicate whether or not they would instruct you to answer or
24 whether you would answer, correct?

1 A Correct.

2 Q Okay. And we'll go through those. Page 44, Line
3 22. Does Dynasty own any other property other than Wyoming
4 Downs. That would be outside the scope of this deposition.
5 Does Dynasty own any bank accounts in between yes, in between
6 the time of purchase and yes, they would have an account, can
7 you list for us the specific accounts held by Dynasty
8 Development since the time of creation to present date. From
9 the time of the purchase it would be one. What is that bank
10 account. Where is that located. That would be -- I
11 apologize.

12 You don't know where the bank account for Dynasty is
13 held. I believe it is at City National. And is that bank
14 account still open. Yes. Is that the only bank account that
15 Dynasty has had for its operation. I believe, ye. Does
16 Dynasty own any other real property. That's outside the scope
17 of this deposition. Does Dynasty have any other type of
18 accounts other than the one bank account at City National.

19 If we are being specific from the date of the
20 purchase or the auction to the closing, that would be the only
21 account. But after that date, have there been any other
22 accounts open for Dynasty and that would be outside the scope
23 of this deposition. Are there any other long term debts
24 associated with Wyoming Downs other than the mortgage.

1 Between the auction period to the closing this is the only
2 debt. Has Wyoming Downs incurred any other debt since the
3 time of closing. And that would be outside the scope of --
4 outside of this deposition.

5 Has Dynasty incurred any other debts other than the
6 mortgage since the time of closing of Wyoming Downs. That
7 would be outside the scope of this deposition. What are the
8 current liabilities of Dynasty other than the mortgage. That
9 would be outside the scope of this deposition. Does Dynasty
10 have any plans to acquire additional property in the future.
11 That would be outside the scope of this deposition.

12 Did I read that correctly?

13 A I believe so.

14 Q Now if you'll turn to the promissory note which was
15 admitted as Exhibit 6.

16 A I have it.

17 Q This -- the second paragraph indicates that the full
18 principal loan amount is due and payable in full 12 months
19 from the date of execution of the note, correct?

20 A That's correct.

21 Q Okay. And the note is signed January 4, 2012.

22 A Correct.

23 Q And the 12 months from January 4, 2012 is January 4,
24 2013, correct?

1 A Correct.

2 Q And that was approximately or almost exactly six
3 months prior to the notice -- or the entry of a divorce decree
4 in this case, correct?

5 A Correct.

6 MR. KARACSONYI: I have no further questions, Your
7 Honor.

8 THE COURT: Ms. Forsberg, do you have any questions
9 you want to ask?

10 MS. FORSBERG: No, I don't have any questions, Your
11 Honor.

12 THE COURT: Any redirect, counsel?

13 REDIRECT EXAMINATION

14 BY MR. SOLOMON:

15 Q Mr. Nelson, did you see anywhere in Exhibit K where
16 you were requested to produce a document whereby you repaid
17 BanOne \$75,000?

18 A I'm sorry, where is that located, the question is?

19 Q I don't think it's there, but anywhere in Exhibit K
20 where you were asked to produce specifically any documents
21 that would have included the repayment of the BanOne 75,000.

22 A No.

23 MR. SOLOMON: I have nothing further.

24 MR. KARACSONYI: I have one question and then a

1 followup. I have no questions.

2 THE COURT: Thanks.

3 THE WITNESS: Am I done?

4 THE COURT: Mr. Nelson, you're --

5 THE WITNESS: Thank you. Just leave this stuff
6 here?

7 THE COURT: Yeah, you can just leave those exhibits
8 there, thanks.

9 MR. SOLOMON: We have nothing further, Your Honor.

10 THE COURT: Well, it's about 10 after 12:00. Do you
11 guys want to go through?

12 MR. KARACSONYI: Yeah, we're --

13 MR. DICKERSON: We're done.

14 MR. SOLOMON: Ready to argue --

15 MR. KARACSONYI: We're done.

16 MR. SOLOMON: -- if that's what Your Honor --

17 MR. KARACSONYI: We're ready to argue closing
18 arguments, Your Honor.

19 MR. SOLOMON: Then we can have our Friday, Your
20 Honor, what's left of it. Ready? Thank you, Your Honor.

21 We're here today as Your Honor well knows because you entered
22 a divorce decree on January -- sorry, June 3rd. I can't keep
23 the years straight either. 2013. And held that you were
24 quote, without sufficient information to make a determination

1 as to the disposition of the property. And you're referring
2 to Wyoming Downs.

3 On June 17th, 2013 Lynita filed a motion to amend or
4 alter judgment or for declaratory related relief we shall call
5 the motion to amend wherein she sought among other things for
6 the Court to award her a 50 percent interest in Wyoming Downs.

7 At the hearing that occurred on that motion after
8 briefs were filed, that hearing was July 22nd, Your Honor,
9 2013. This Court said and I quote I would not be inclined
10 just to give Ms. Lynita half of Wyoming Downs, that's a
11 bracket, you meant Wyoming Downs. It was the property.
12 Without evidence or some basis on why it should be awarded or
13 anything on that this can look at because I did maintain as
14 much as I could the integrity of the trust to protect both
15 parties from adjustment creditors.

16 The Court also said I'm just not setting aside the
17 trust to be -- to begin with. I try to trace money that fall
18 that came from one thing to try to do what was fair and just
19 under the trust while maintaining the trust. I said here's
20 why I did this on this one with Wyoming. That came late. I
21 don't know where the money came from.

22 And then subsequently the Court at another hearing,
23 this was the February 25, 2014 status check amplified more
24 what you wanted to hear and why you wanted to hear it with

1 respect to Wyoming Downs. And this is from the transcript of
2 February 25, 2014 at 14:02:17. The Court said I have no doubt
3 my concern with the Downs to be quite honest is that it came
4 on a motion to release the money to buy it saying there's no
5 way they can buy it unless they release the money, then it got
6 purchased. I want to make sure there's no funny business in
7 the purchase so I can trace to where it came from to see if
8 any properties was used that I had awarded to Lynita in the
9 divorce decree.

10 If that was used on that, some stuff that might have
11 been transferred, I don't know, that was my concern to be
12 quite honest to make sure there's no funny business where I
13 can trace where it came from being that there are some things
14 being moved from Lynita's trust to the other trust.

15 I know that the Downs was purchased plus they owned
16 it, sold it, they came back. I just want to make sure that it
17 was straight up and down so I know how it got purchased. It
18 was purchased just so I have some findings of that. So just
19 -- I just really want to see how the Downs was purchased, how
20 it came from and to make sure there were no shenanigans and
21 what was used to do it, what collateral was pledged to see if
22 there was anything that had been awarded to Lynita in the
23 decree or something that was her property that got transferred
24 into the other trust to put collateral for that property.

1 That's kind of what I was looking for to kind of trace it to
2 see how it came in because of the notion I had was that it
3 could not be purchased without that money being released and
4 then it got purchased.

5 At the July 22nd hearing, we also talked about what
6 was needed and what this Court thought was needed to get to
7 the questions that you had. And the transcript reflects and
8 I'm -- and quotes that it was focusing -- and this is a quote,
9 focusing right now on the acquisition itself. You said that
10 you thought the discovery needed for that, what you needed to
11 know based upon what you have already articulated was your
12 concern would be you called the evidentiary hearing would be
13 on the very limited issue. That's the quote. And you
14 couldn't even understand exactly what discovery would be
15 needed other than the documents which you thought Lynita
16 already possessed.

17 We took you at face value Your Honor and -- and in
18 good faith produced everything that we had that had to do with
19 the acquisition of Wyoming Downs. You know it's our position
20 that that asset is owned by an entity that's wholly owned by
21 the ELN Trust and that it was 100 percent debt financed.
22 There was nothing that this Court awarded to Lynita that was
23 used to acquire that property.

24 I don't know if they're going to try and confuse you

1 with respect to that \$75,000, but this Court did award
2 specific properties from BanOne. I think there was 17 of them
3 to Lynita, specifically to equalize another transaction, but
4 it did not award BanOne to her. It did not award to her any
5 of the funds from BanOne. And in any case all that happened
6 was that \$75,000 came out of BanOne. They had a right to do
7 it because there's no injunction preventing in this ordinary
8 course of the ELN Trust business. It was led to -- give the
9 earnest money deposit. And as soon as we have money we give
10 it back to BanOne.

11 The monies that the Court ordered to be segregated
12 for -- or to be awarded to Lynita had been segregated and
13 deposited and they're tied up, there's nothing that they can
14 show that any of the assets from Lynita or LSN Trust were used
15 in any way, shape or form to make this acquisition. And
16 there's nothing in the decree that would suggest anything to
17 the sort.

18 Yes, we have refused to answer those questions that
19 they tried to shotgun. You saw the request to produce. It
20 went far beyond what this Court wanted to hear about. It went
21 into the deepest recesses of everything that has ever happened
22 not only in the time of acquisition of 2011, but they wanted
23 12 and they wanted 13. They wanted everything. Cannot do
24 what the operation of that business before they proved and we

1 believe can't prove that they have any interest in it
2 whatsoever.

3 I've been doing this a long time, Your Honor. I
4 know you've been on the bench and -- and practiced law too.
5 The standard procedure is if somebody shotguns that type of
6 discovery at you and your position is that they are not
7 entitled to it because they don't have an interest in it and
8 they don't have the right to that information is you object to
9 it and you refused to produce it.

10 You know the consequences. The consequence is if
11 you don't produce it, I can't affirmatively produce it at
12 trial. That's -- that's the decision I make. I understand
13 that. But if they want it and they want some type of
14 evidentiary standard on it, they got to file a motion to
15 compel and then the Court can deal with what -- are they
16 entitled to that before they even prove they have an ownership
17 interest in this or otherwise entitle the information, should
18 I create some type of protective order to keep it confidential
19 so that business can't be ruined, I mean, those are all the
20 issues that are done if they were to pursue that.

21 We gave them and we have produced in this Court
22 today all the evidence you need to make the decisions that you
23 said you needed to know with respect to how to deal with this
24 asset. And I don't think there's any doubt about that. You

1 know how it was acquired, how much it was acquired for, how it
2 was financed, how it was that even though Eric was relying
3 probably wrongfully in this -- as it turned out to get that
4 1.5 released or thinking you can get some of that released.
5 Even though he was initially relying upon that, he was still
6 able to do it after the fact by finding a hard money launder
7 on behalf of Dynasty to put up the money to acquire it. And
8 the project that Lynita didn't want anything to do with,
9 objected to, claim Mr. Dickerson, if you'll look at the
10 transcript of that hearing, he says I'm going to ask for that
11 \$75,000 to come back. Well, guess what. It did come back.

12 They don't want anything to do with it. And Your
13 Honor will certainly remember the testimony of Lynita that I
14 asked and elicited from her on cross examination in my phase
15 of the trial that she didn't want anything to do with gaming
16 and liquor properties, moral aversion to it. Now not only
17 they apparently want something, they want to know everything
18 about it and get into complete ownership, I guess.

19 All information with respect to Wyoming Downs other
20 than what we produced is either not responsive to what the
21 Court asked us to produce and -- or has none of their business
22 unless and until this Court determines that they have some
23 interest in it somehow. And that's our position and I think
24 it's a correct position.

1 Your Honor decided when you entered the decree of
2 divorce as you've already -- as I already quoted to keep the
3 trust intact and to try and recompense Lynita in a way that
4 you thought was fair by erecting constructive trust and making
5 other divisions to take the assets that you thought were
6 unfairly contributed to Eric's trust that should have left or
7 been shared in Lynita's. And you did that through a 70 some
8 page decree asset by asset trying to trace what happened to
9 the assets. And if you thought Eric's trust got an advantage
10 in some deal, you created some remedy in order to even it out.

11 That analysis doesn't apply to Wyoming Downs at this
12 stage because you already -- there was nothing done in any
13 way, shape or form to use any of Lynita's assets or any of her
14 cash or any of her collateral or anything to acquire Wyoming
15 Downs and you know that's true because you saw how it was
16 acquired. It was acquired by pure debt.

17 And we're not asking her to pay that debt unless
18 Your Honor is going to award her some of it. We're not asking
19 her to do any of that. It's none of her business. It's not
20 her asset, it's not her trust asset, it never was. When
21 property is -- and Your Honor knows this, when property is
22 transferred to an irrevocable trust, it doesn't belong to
23 either of the parties at that point.

24 Yeah, you can do what you did and say well, hold on.

1 That trust has assets that should have come -- that came from
2 her and should go back to her and she could reckon that.
3 That's one remedy and -- and I understand that as a matter of
4 concept. But you can't treat it as community property at that
5 point because it's a trust asset under Nevada law. It's an
6 irrevocable trust and the statute explicitly states that the
7 parties don't own that. They have no legal estate in the
8 capital, principal or corpus of the estate under 160 -- Nevada
9 Revised Statutes 166.130.

10 The Court found in this decree that ELN was
11 established as a self sale of the spendthrift trust in
12 accordance of 166.1.020. And there is simply no legal
13 authority that allows Lynita to assert a community interest
14 and property that's not even owned by Eric. Especially is
15 that true where she can't trace any community property to its
16 acquisition.

17 The Court also in its decree indicated that the
18 parties have -- had entered into a separate property agreement
19 and divided their property and that the ELN Trust was funded
20 with the separate property that had been so divided.

21 Springer vs. Springer, 110 Nev. 855 (1994) makes it
22 clear that once property has become separate it is presumed to
23 maintain that character and some direct -- until some direct
24 evidence to the contrary is made to appear. Transmutation

1 from separate property to community property must be shown by
2 clear and convincing evidence.

3 Here, we don't even technically have that in play
4 because it's not even Eric's separate property that was in the
5 ELN Trust because under well established statutory state law
6 of Nevada he doesn't even own a legal interest in the ELN
7 Trust property. It's owned by the trust.

8 It's really that simple, Your Honor. We tried our
9 best to straight up answer the Court's questions to prove to
10 you that this property was acquired straight up through the
11 loan process, nothing to do with Lynita's interests or her
12 community property. And it's not necessary or even
13 appropriate to award her any type of interest therein.

14 Now maybe I should save this for reply, but I'm
15 anxious to get it out here on Friday and I'm going to say it.
16 If the Court does find somehow that Lynita is entitled to
17 community property interest, we have a bunch of problems. I
18 mean, we've got a serious -- we got liquor and gaming
19 licensing. We got all sorts of subsequent events that have
20 happened that the Court would have to know about that, that
21 would become relevant for the first time. All of which can be
22 avoided by conveying to Lynita of something of equivalent
23 value because she never wanted anything to do with gaming and
24 -- and liquor anyway. And you know darn well they can't agree

1 on anything. What a disaster that would be if you put them
2 both in the same entity.

3 I think the only objective evidence regarding value,
4 everything in this divorce was valued I believe as of April
5 12, 2012 or '11 -- 2012 mostly through Larry Bertsch's
6 efforts. I mean, the only objective evidence that's been
7 raised and nothing prevented this side from going out and
8 getting any -- any evidence they wanted affirmatively, none of
9 which they produced, notice they didn't go to Henderson
10 Capital. Notice they didn't go to the banks. Notice they
11 didn't do anything. They're just trying to rely on their
12 theory that somehow everything's open wide and -- and because
13 we take the position that they're not entitled to that
14 information til they show some type of interest that somehow
15 this should all be held against us and big sanctions should be
16 awarded and they should be awarded half the property with who
17 knows what assumptions they want to make.

18 Frankly, the only objective evidence regarding value
19 of the acqui -- the date of acquisition of divorce is that the
20 property sold for \$440,000. Maybe you can argue Henderson
21 Capital, thought it was worth \$700,000, because they were
22 willing -- now it was probably more like six because they're
23 only getting really good -- they're going to come out of
24 pocket six. But even if you assumed it was 700,000 and that

1 was some type of evidence of what somebody thought this
2 property was worth at the date of acquisition or date of
3 divorce.

4 Where does that leave us? It's 700,000 minus the
5 purchase price of 440 gives us what, \$268,000 net value? Each
6 of them get a hundred and 30,000 of it. And that's a possible
7 remedy if you think there's community property. We submit
8 however there's not community property interest in here, that
9 it -- the Court specifically maintained the integrity of the
10 trust. Nothing was done inequitable in any way, shape or form
11 to give this trust an interest in another asset that anyway
12 use any capital or any resources of Lynita or her trust.

13 And we believe the proper decision is that the court
14 should so find and end that issue so that we can deal with all
15 the other ones that need to be dealt with in the expeditious
16 filing. Thank you.

17 THE COURT: Thank you, counsel.

18 MR. KARACSONYI: First, I want to point out that
19 some of the representations about the prior testimony are
20 inaccurate. Lynita's testimony wasn't that she was throughout
21 the entire marriage adversed to gaming or and wanted nothing
22 to do with it. Her testimony was although she was against it,
23 she was against it initially when the idea was approached that
24 she supported her husband and stood by him. And as you found

1 in the decree, her support and reliance on her husband of 30
2 years was largely what turned out to be to her detriment.

3 There's two theories really. There's two ways that
4 -- that you can look at this. The first way is if you look at
5 the subject of community property law, this is a slam dunk and
6 this is a -- this -- there's really not much to be decided.
7 Under community property law, any asset acquired during
8 marriage is presumed to be the community property of the
9 parties. It doesn't matter whether either party -- both
10 parties wanted to be involved. That's completely irrelevant.
11 If that were relevant, then every party in a divorce action
12 would start investing monies and say hey, all the profits are
13 mine, Judge, because she didn't want anything to do with it.
14 Just used community property willy-nilly and whatever they
15 would like.

16 So that's really irrelevant that the only question
17 would be when was it acquired. And if it's acquired during
18 marriage, then the presumption is it's community property.
19 And they have to prove by clear and convincing evidence that
20 it's separate property. Well, they haven't done that. They
21 haven't done that twice now. They didn't do it today. You
22 didn't hear any evidence today of showing a separate property
23 source or any testimony that -- that there was a separate
24 property source for the acquisition if you view all the

1 property to be community property.

2 And at trial they weren't able to trace back all the
3 property to today's property. In fact, you found extensive,
4 that's probably even an understatement, commingling of assets
5 between two separate two -- two different trusts.

6 So under community property law, you would have to
7 find that this is a community property assets and he cannot
8 choose when he divests her of her interest. He cannot say you
9 know what, Judge, I had purchased community property, but I
10 think a good time to value her interest would be on the date
11 of acquisition. It's not an op -- it's not an option. They
12 continued to hold it as community property until today. And
13 the value, if you were going to determine a value and not
14 leave them joined owners would be as of today.

15 Now they say well, you should award her a value
16 because you didn't see any evidence of what possibly the
17 ramifications could be of making her joint ef -- joint owner.
18 Well, they didn't present any evidence on that. In fact, they
19 excluded -- they denied us all evidence on licensing,
20 applications, things of that nature. So that's true --
21 certainly isn't a basis to -- to deny her a continued
22 ownership of the property.

23 You don't have enough information to value the
24 property if you were going to award her a value. If you were

1 going to award her a value, we would have to go -- go ahead
2 and have the business value by -- by somebody's who's -- who's
3 qualified to do those types of things, to -- to offer an
4 opinion of the value of the property, someone like Steve
5 Nicolatus. Then we would finally get the records that you
6 wanted from day one.

7 It's interesting -- and before I get to that, the
8 other theory, the second theory you could proceed under is the
9 fact that you can't really determine that he did this with his
10 property. Why was he able to acquire Wyoming Downs? Because
11 he got 75,000 from BanOne, LLC.

12 If you look at Page 47 of your decree and I -- I've
13 been accused that this may be trying to mislead you, but I'll
14 -- I'll read it verbatim and maybe -- maybe -- I guess the
15 Court can make that decision. It is further -- further
16 ordered that the following properties shall remain in or be
17 transferred into the LSN Trust. BanOne, LLC, \$1,184,236.

18 Now if you only meant by that that she only gets
19 certain specific properties in there, then -- then perhaps
20 I've -- I've -- you know, I've misstated this, but it says
21 that she's awarded BanOne, LLC here.

22 So if she's awarded BanOne, LLC, then they have used
23 and done exactly what you stated which was used property that
24 was awarded to her or take their own -- a loan that he decided

1 to give to himself with her property to purchase -- to -- to
2 make this purchase.

3 But why is he able to get financing? He's able to
4 get financing for the purchase because he has all these assets
5 that belong to her that are inextricably linked with her
6 assets. You go through your divorce decree. You make
7 extensive findings of the number of properties, the sheer
8 volume of the property that he stole from her. Essentially
9 now we can -- might as well just call it what it is. It was a
10 stealing that he stole from her over their 30 years of
11 marriage.

12 You have the Wyoming OTB properties oddly enough,
13 ironically enough. The High Country Inn in Wyoming ironically
14 enough. You have Lindell, Russell Road. These are millions
15 of dollars of assets that are held in the ELN Trust as he's
16 doing this transaction but he's saying he has no interest in
17 those.

18 So even if you weren't to apply community property
19 law, you could easily find that there are properties at this
20 juncture in time are inextricably intertwined which is -- has
21 already been found by the Court and that any transaction at
22 this time should be treated as the trans -- transaction that
23 -- that she has an interest in.

24 They have not even proven to you the -- the evidence

1 they have offered does not show to you that any of the down
2 payment monies, the 75,000 was returned. If you looked at
3 their exhibit from Mr. Bertsch, it doesn't show in there
4 anywhere where it was returned. They won't give you the
5 documentary evidence.

6 Now that turns to -- to really a critical point in
7 this and that was what they brought up that -- that you had
8 asked for all this information. And I don't know how this
9 helps them. They quoted you and saying I want to trace it. I
10 want to see it. He said at one hearing, I discussed at the
11 last hearing that they could bury you in the information. We
12 made the request. They never ever produced a single bank
13 statement.

14 Why would Eric Nelson if his whole theory is that he
15 borrowed all the money at deposition, not answered the
16 question and refused to answer the question of whether or not
17 money was still owed to on the mortgage. Why wouldn't they
18 just give you copies of all the statements? Why wouldn't they
19 produce that to us? Why wouldn't they produce the banking
20 documents to us if there was nothing to hide? You've already
21 found the credibility in this case that Mr. Nelson lacks.

22 Why not just give us the documentary evidence to
23 show that your theory of the case is at least factually
24 correct? This is one of the worst cases of hiding the ball

1 I've ever seen. Maybe I haven't been doing this as long as
2 Mr. Solomon. But in seven years I have never seen appear at
3 deposition and refuse to answer questions to the extent that
4 it was done here that don't have to do with an attorney/client
5 privilege or some other -- some other basis.

6 I mean, the amount of questions, the lack of good
7 faith in responding to discovery, well, Judge, they -- they --
8 this -- their -- their discovery response goes outside the
9 scope of -- of what you wanted. Well, what did you do to at
10 least provide documents that were within the scope of what I
11 wanted?

12 Certainly you must have thought that some bank
13 statements would be helpful in this case. Even if it was the
14 one or month or three months that they thought was -- would
15 show the trace -- the monies that went in and out of the
16 transaction. But they wouldn't give that to -- to you. They
17 wouldn't give that to us.

18 The only evidence that you have, objective evidence,
19 is you have the promissory note. Requires that the note be
20 paid off in 12 months. Other than that, you have no other
21 evidence. You can only infer that it was paid according to
22 its terms because he still holds it. If that's the case, then
23 not only do you have 75,000 from BanOne, LLC going to this
24 property during the marriage and apparently some hundred

1 thousand dollar payment that was due upon the initiation of
2 the loan which has never been documented but is discussed and
3 was admitted that it was paid.

4 But you also have an additional 600,000 being paid
5 from some source, but nobody will show you that. Nobody can
6 prove to the contrary. The fact of the matter is that you --
7 they wanted to determine what you needed, what you needed to
8 make a decision. And they wanted to limit us to what they
9 felt they needed. And by doing so they haven't been able to
10 provide to you with any documents that would show you that A,
11 that this was property acquired from separate property or B,
12 that this was property acquired from some source other than
13 sources belonging to both parties.

14 So for those reasons and in equity, Ms. Nelson
15 should be given a -- a 50 percent interest in Wyoming Downs.

16 THE COURT: Thank you. Ms. Forsberg.

17 MS. FORSBERG: Thank you, Your Honor. I'm going to
18 be much more brief, because I think really it boils down --
19 are you okay? It boils down to a couple of things. The
20 bottom line question if we cut through the rest of this is
21 that is the Court going to honor its statement when it said
22 look, what I want to know is was it collateralized by LSN
23 properties. That's what the Court said when it said I need to
24 know more. I need to know what was used to collateralize it.

1 It's now been proven to everyone in this courtroom
2 that it was more than a hundred percent collateralized. They
3 -- he -- it was collateralized by ELN getting a loan that was
4 even bigger than the original purchase price.

5 So I guess the bottom line is Your Honor that you
6 limited the scope by saying it's as of the purchase. I want
7 to see where the funds came from. And they don't like the
8 fact that you have limited the scope. And so they're making
9 all this noise about how much we wouldn't give them or the ELN
10 Trust wouldn't give them or because the Court limited the
11 scope.

12 So the bottom line comes down to whether the Court's
13 going to honor its statement saying that it needs to know
14 where the collateral was from was it collateralized or did he
15 get a hundred percent loan.

16 MR. SOLOMON: Just real briefly, Your Honor. Just
17 to respond to some of Mr. Josef's comments and handle it.
18 Your Honor remembers the testimony and -- and the position
19 that Lynita and her trust took at not only at the trial but at
20 the subsequent hearings leading up to here. They don't want
21 anything to do with Wyoming Downs. They don't want to
22 purchase. They didn't want the 1.5 used for it. They wanted
23 75 repaid. They got all that. Now they got all that and they
24 still want it.

1 On the community property theory, counsel's right on
2 what he said, but the converse is also true that any asset
3 acquired with separate property is separate property. And
4 certainly he -- any property acquired by a trust which is not
5 even community or separate property. It has nothing to do
6 with the community property presumption or the separate
7 property presumption.

8 The commingling argument's interesting. The
9 commingling concept is a community property concept admittedly
10 but it didn't have anything to do with two trusts. If one
11 trust steals from another trust or commingles stuff, then you
12 come into court and you ask the Court to uncommingle it or
13 have it repaid. It doesn't create -- and -- and that's what
14 this Court in essence tried to do in -- in its decree. It
15 went through each of the transactions and tried to say oh,
16 hold on. This -- this was something that came from Lynita and
17 the profit was made on it and here was the amount. So we
18 weren't going to send something back to equalize that. That
19 -- that's the remedy you get. It doesn't change the character
20 of what's in the trust until the award's made.

21 BanOne, that argument's interesting. Take a look
22 at your findings, Your Honor. I can read some of them. And
23 these are quotes. The Court -- this is from the decree. The
24 Court further finds that BanOne, LLC currently holds 17

1 properties worth \$1,184,236. It's on Page 20, Lines 2 to 9.
2 The same page. The Court further finds that equity and
3 justice demands the LSN receive just compensation and then out
4 of 1.2 million for the sale of High Country Inn in order to
5 avoid the ELN Trust from being unjustly enriched and therefore
6 LSN Trust should be awarded BanOne, LLC properties held by the
7 ELN Trust with a comparable value of \$1,184,236. That's also
8 Page 20, Lines 2 to 9.

9 And then the Court further finds that based upon the
10 property distribution that we addressed hereafter -- here and
11 after, Mrs. Nelson will receive some income producing
12 properties, Lindell, Russell Road, some of the BanOne, LLC
13 properties, close paren, that's at Page 36, Line 20 to 23.

14 So my statement was correct that she received BanOne
15 property. She didn't receive any of the cash that was there.
16 And even if she did, what it was is another loan. \$75,000 was
17 taken out of BanOne for a period of time and repaid.

18 But the real source of money and really the only
19 source of money for this acquisition which was proved without
20 dispute was the hard money loan that the trust or the entity
21 owned by the trust took out. That was the acquisition.
22 That's where it was -- the money came from. That's where the
23 money was sourced. And Lynita had no interest in that
24 whatsoever for trust. They had no interest in that

1 whatsoever. And there's no legal basis for her to be awarded
2 or her trust to be awarded interest in Wyoming Downs.

3 MR. KARACSONYI: I would just point out --

4 THE COURT: I'll give you a brief rebuttal because I
5 really didn't say whose burden it was. So I'll give you a --

6 MR. KARACSONYI: Okay.

7 THE COURT: -- really quick rebuttal --

8 MR. KARACSONYI: On the BanOne --

9 THE COURT: -- and then we'll call it a day.

10 MR. KARACSONYI: The BanOne -- the reason you
11 referred to some of the BanOne properties, you obviously
12 awarded her all the ones in BanOne, LLC because you listed the
13 value. The reason it says that is because there's BanOne, LLC
14 and BanOne Arizona properties. She clearly got all of the
15 assets of BanOne, LLC and you noticed they didn't read the
16 order. They only read the findings.

17 The other thing that -- the only other fact that I
18 would point out to the court is the 75,000 when he took it, he
19 said it was a risky venture. He gave himself a loan, a
20 property that was ultimately awarded to her and prop -- and
21 held properties that were awarded to -- that were inter --
22 inextricably intertwined which he used to get a loan. I'm --
23 I'm sure they gave him a loan on the basis of his extensive
24 holdings.

1 But he used this 75,000. He hadn't even asked for
2 permission. So basically he took what he called a loan. I
3 wonder if what would have happen if he couldn't have closed
4 and the 75,000 was lost. I'm sure they would be standing here
5 today saying that they owed back the 75,000 or calling it a
6 loan. It would have just been a lost investment.

7 He took a risk with her \$75,000 and then filed a
8 motion after already taking the risk. And he was able to do
9 that freely because he had free reign of -- of all the
10 property. So I would just point that out to the Court and
11 again, and we believe it's clear that she should -- is
12 entitled to interest in the property.

13 THE COURT: Thanks, counsel. As far as -- I think
14 we have a post motion coming up I think on -- I think June 4th
15 I think is the order to show cause which is separate I
16 believe.

17 MR. KARACSONYI: I finished it, yeah.

18 THE COURT: Yeah, we got the motion on June 16th for
19 the Pebble Beach residence?

20 MR. KARACSONYI: Yes.

21 MR. SOLOMON: I'm not involved in either of those,
22 am I?

23 MS. FORSBERG: No, not --

24 THE COURT: No.

1 MS. FORSBERG: -- at all. Your Honor, the other
2 thing about -- I -- I was talk to Mr. Karacsonyi today, we're
3 going to need to probably move the -- the 16th, 17th, because
4 I'm planning on being gone for the baby.

5 THE COURT: Oh, yeah. Your daughter.

6 MS. FORSBERG: Remember we talked about that? I
7 mean --

8 THE COURT: Your daughter. I'm thinking that --

9 MR. KARACSONYI: But I think that is in the ELN
10 Trust issue now.

11 MR. SOLOMON: Which?

12 MR. KARACSONYI: The Pebble Beach.

13 THE COURT: Pebble Beach, I don't --

14 MR. SOLOMON: I'm not aware of it.

15 THE COURT: Yeah, I don't remember the --

16 MR. LUSZECK: Not that I know. Well, yeah, but I
17 don't think --

18 MR. SOLOMON: I'm -- I'm just not available that
19 day. That's why I asked.

20 THE COURT: So I think since we'll be back to it, it
21 will be a time to come back to give a decision. You know,
22 with the -- the recent supreme court decision, do you think
23 it's possible to get this matter resolved, tie everything up
24 in one big package? Is it worth the time to pursue it or not?

1 I know we've been around the block 19 times, but it looked
2 like -- I thought Mr. Solomon makes some statements at the
3 beginning indicating that there might be something coming in
4 horizon that might surprise people. So I don't know if that
5 something is worth the time to try to, because you know
6 exactly what's going to happen.

7 I have options. I can release all the money to
8 Lynita on that and have you guys deny your stay and then have
9 you go up to the supreme court to try to get a stay on that
10 and I would give you time of course to get that filed on that.
11 I'm not sure what the supreme court meant when it said under
12 these circumstances. I don't know if they were saying well
13 since it was secured he wasn't worried about that. They could
14 get more enjoin -- they can get more injunctions or pursue
15 more injunctions if they thought that was, you know,
16 beneficial.

17 So I wasn't sure what the supreme court meant when
18 they mentioned that. They could have just denied it straight
19 out. So I don't know if they were saying that the reason they
20 weren't overly concerned was because the property's enjoined
21 and they can enjoy more property if the Court could if they
22 thought it was irreparable.

23 The other options that I can give Lynita a portion
24 of that money which I would be inclined to do for sure as far

1 as she's been sitting out there and -- and Mr. Nelson and to
2 the trust was -- gave them their 500,000 right up front. I
3 could have froze that up to the power and leverage on the
4 other side and fine, she waits for her money, you can wait for
5 your money. But I didn't want to do that because I thought
6 that was the investment issues on that. So I made some
7 equities. So there's things I can do on that to push the
8 issue one way or the other.

9 My thing on that, do you think even sitting out and
10 try to resolve one big package because it depends what the
11 supreme court does and if I release all that and they do stay
12 on the supreme court would grant the stay or not, I'm reading
13 their decision. I don't know if that injunction is big to
14 them. This -- as if they -- the injunction was there and then
15 they would deny the stay if it wasn't there. Maybe they do
16 the stay to enjoin it again. So I'm trying to think through
17 where they're going. Yeah.

18 MR. DICKERSON: All we have is her money has been
19 tied up for over nine months.

20 THE COURT: Exactly.

21 MR. DICKERSON: He has full use of everything. He's
22 got full use of --

23 MR. SOLOMON: Your Honor, in answering your question
24 --

1 THE COURT: Yeah, I mean --

2 MR. SOLOMON: -- I would be more than happy to sit
3 down with Mr. Dickerson and --

4 THE COURT: Is it worth the time? I know we've been
5 around 19 --

6 MR. SOLOMON: -- we can spend next week and see if
7 we can reach an agreement.

8 MR. DICKERSON: I -- I would certainly like a ruling
9 --

10 THE COURT: Because maybe --

11 MR. DICKERSON: -- out of you and if we can work
12 something out from there. But we need a ruling and the
13 problem is the history. I've -- I've worked with this case
14 for it seems like six years now. You know we've made numerous
15 efforts to try to get the case resolved.

16 THE COURT: I mean, we had it settled a couple of
17 times and it came back during the eve of some --

18 MR. DICKERSON: We're dealing with a very litigious
19 individual.

20 THE COURT: I just want to get it out there. Not
21 that they --

22 MR. SOLOMON: You're talking about Lynita, right?

23 THE COURT: If they thought it was worth the time to
24 get it resolved in one big package, fine. I'm fine making my

1 rulings. As far as the release of the 8.68, whatever it was,
2 did you want to put a record on that or not? I mean, as far
3 as that, I said I'm going to -- I haven't digested it yet. I
4 got to read to the supreme court decision again and see what
5 they're saying on that. But as I said, I got options. I can
6 release the whole thing. On your appeal and I can, you know,
7 deny the stay which I'd be inclined to do to be quite honest
8 and then go to the supreme court and see if they would stay
9 and re-enjoin. If I did that, I would give you, you know, a
10 day or two to follow your stay on that supreme court. Could
11 rule on that, because otherwise you'll be kind of undermining
12 the supreme court. So that's several things I can do that.

13 MR. DICKERSON: The case where the fairness is.

14 THE COURT: Yeah. Yeah.

15 MR. DICKERSON: She really hasn't been treated
16 fairly and I'm not --

17 THE COURT: Yeah. I --

18 MR. DICKERSON: -- complaining.

19 THE COURT: No.

20 MR. DICKERSON: The problem is she has no -- she's
21 had to sell her home. She's had to go to work. He's not
22 giving her any money. He's given everybody else money, but he
23 -- she has nothing. So she has to sell her home just to be
24 able to survive. She's put in a -- a real difficult

1 predicament and she needs money. And she needs the money that
2 this Court has awarded to her. She's not even receiving the
3 income --

4 MR. KARACSONYI: From BanOne. I mean --

5 MR. DICKERSON: These --

6 MR. KARACSONYI: -- these -- I don't think the
7 injunction --

8 MS. FORSBERG: It's not even --

9 MR. KARACSONYI: -- I think it's clear she can at
10 least get that today. I mean, from now on from today forward
11 she's the legal owner of the properties of BanOne, LLC and
12 Lindell. And they can take it up with the supreme court, but
13 she should at least get the income from those properties.
14 That was never even stayed. Their concern was their argument
15 was we will be irreparably harmed because real property is
16 unique and it can be sold, encumber leverage, which by the way
17 that argument goes both ways. But that's neither here nor
18 there.

19 You enjoin that, but what -- what irreparable harm
20 do they have if she is collecting the monthly rents at least
21 from her property now? She should get that immediately today.
22 I mean, and if they argue that's irreparable harm, well, to
23 them -- well then what is it to her? Because she's
24 irreparably harm in the same manner because she's not getting

1 it. And she's the one who has the better claim as of today.
2 They're the one who needs -- ones who need to take up an
3 appeal. I mean, she can get all that monthly income and be in
4 charge of that. That would be a huge start, have the checks
5 directly sent to her so that he doesn't start deducting health
6 insurance.

7 MR. SOLOMON: I think what the supreme court
8 intended by that order was for this Court to make a decision,
9 this final thing so this thing goes up on appeal and we can a
10 file a motion to stay. The Court can rule whatever it wants
11 to on that and we can try and get whatever it needs to be done
12 stayed. That's where I think the procedural posture of this
13 is and that's what was intended by the supreme court.

14 I told you before and I meant it seriously, we will
15 make some proposal that they may not love. I guarantee you we
16 won't love it either, whether or not they accept it. And
17 we'll also propose it to the Court at the appropriate time of
18 getting her some type of money cash flow out during the
19 pendency of the appeal that we think --

20 MR. DICKERSON: We've made an effort.

21 MR. SOLOMON: -- it will be reasonable and it won't

22 --

23 MR. SOLOMON: Haven't made --

24 MR. SOLOMON: -- be everything they claim they're

1 entitled to, but it will be a heck of a lot more than what we
2 claim they're entitled to because that's where we are in the
3 position of this case.

4 MR. DICKERSON: The whole concept is to start --

5 MR. SOLOMON: And I'm more than happy to talk to Mr.
6 Dickerson about that million and to get this back in front of
7 the Court on that issue.

8 THE COURT: And we're coming back on --

9 MR. DICKERSON: Well, I've been sitting around for
10 six years.

11 THE COURT: Yeah, we're coming back on June 4th for
12 the order to show cause. So that would be a good time for me
13 to give my rulings. I know you're not part of that, but does
14 that work for you just to give rulings if that help gets this
15 case moving? That also -- that also gives you a week --

16 MR. SOLOMON: That's all I need. I am here on June
17 4th, Your Honor.

18 MS. FORSBERG: I'm here.

19 THE COURT: Since when? When -- June 4th, next --

20 THE CLERK: Next Wednesday.

21 MR. DICKERSON: Are we going forward with the -- the
22 evidentiary hearing? Is that the date that --

23 THE COURT: I believe it was that --

24 MS. FORSBERG: That is the evidentiary hearing.

1 MR. KARACSONYI: The finalization.
2 THE COURT: Yeah, that's day two. Yeah.
3 MR. KARACSONYI: Yeah.
4 MR. SOLOMON: The evidentiary hearing on what?
5 MR. DICKERSON: We're -- we're available.
6 MS. FORSBERG: On an order to show cause.
7 THE COURT: Order to show cause. You guys aren't
8 involved in that, but I thought --
9 MS. FORSBERG: You're not involved.
10 THE COURT: -- since the parties --
11 MR. SOLOMON: Thank you.
12 THE COURT: -- would be here, if you're available
13 there will be a time that --
14 MS. FORSBERG: That's what you're looking at --
15 MR. SOLOMON: I -- I can come on that day but I
16 don't want to sit on that hearing if I don't have to.
17 THE COURT: -- give a ruling before, yeah. No, I --
18 what time would that be set for?
19 THE CLERK: That's set at 9:00.
20 THE COURT: I can --
21 MR. KARACSONYI: We'll do that at the start.
22 THE COURT: Yeah.
23 MR. KARACSONYI: For the --
24 MR. DICKERSON: 9:00 o'clock.

1 MS. FORSBERG: At the start.
2 THE COURT: Yeah, we --
3 MR. SOLOMON: All right.
4 THE COURT: -- do that --
5 MR. SOLOMON: That's fine.
6 THE COURT: -- and give you findings on that. That
7 gives you a couple of days to maybe talk a little bit to see
8 if there's some other issues that could be resolved and that
9 way I'll be making a decision on the injunction because I
10 think that's the key issue.
11 MR. DICKERSON: That's acceptable.
12 MR. SOLOMON: What's it at, June 4th?
13 THE COURT: Yeah, June 4th, 9:00 o'clock. And then
14 we'll start the --
15 MS. FORSBERG: He looked at me like I'm not going to
16 be here, but --
17 MR. KARACSONYI: I'll be here, Your Honor.
18 THE COURT: No, but I mean, you're going to be here,
19 right?
20 MS. FORSBERG: I'll be here.
21 THE COURT: Now you're here for the trial, so --
22 MS. FORSBERG: I'm here.
23 MR. KARACSONYI: And that would allow the appeals
24 process to start and everything.

1 THE COURT: Yeah.

2 MR. KARACSONYI: I think -- okay. I'll look back
3 and see if there's any other outstanding orders or anything --

4 MS. FORSBERG: 9:00 o'clock.

5 MR. KARACSONYI: -- that need to be wrapped up.

6 THE COURT: Yeah, I know you got the two. I'll
7 check. I know I signed the competing orders. I'll have to
8 check Mr. Courtney. I know that --

9 MR. SOLOMON: Your Honor, I can make 9:00 o'clock,
10 but I have to be back in my office at 10:30. Would that be
11 enough time?

12 THE COURT: Sure.

13 MS. FORSBERG: You're going to go -- he's going to
14 go first on that he said.

15 THE COURT: Okay. And why don't you guys go first
16 that way you can leave.

17 MR. SOLOMON: Thank you.

18 THE COURT: Do we have anything else that day that
19 we get to --

20 MS. FORSBERG: Just us --

21 THE COURT: So we'll do that and then just start the
22 trial afterwards. That way we get you out. All right.

23 Thanks, everyone.

24 MS. FORSBERG: Thank you, Your Honor.

1 MR. SOLOMON: Thank you, Your Honor. We'll see you
2 then.

3 THE COURT: Thank you. I'll see you --

4 MR. KARACSONYI: Thank you, Your Honor.

5 THE COURT: -- on June 4th at 9:00 o'clock.

6 MS. FORSBERG: June 4th. Yeah. Yeah.

7 (PROCEEDINGS CONCLUDED AT 12:55:36)

8 * * * * *

9 ATTEST: I do hereby certify that I have truly and
10 correctly transcribed the digital proceedings in the
11 above-entitled case to the best of my ability.

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Adrian Medrano

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Adrian N. Medrano

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