

IN THE SUPREME COURT OF THE STATE OF NEVADA

TRUDI LEE LYTLE; AND JOHN ALLEN
LYTLE, AS TRUSTEES OF THE LYTLE
TRUST,

Appellant ,

v.

MARJORIE B. BOULDEN, TRUSTEE OF THE
MARJORIE B. BOULDEN TRUST; LINDA
LAMOTHE; AND JACQUES LAMOTHE,
TRUSTEES OF THE JACQUES & LINDA
LAMOTHE LIVING TRUST,

Respondents .

Supreme Court No.: 73039

District Court Case No.: A-16-747800-C

Electronically Filed
Aug 01 2017 03:54 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

DEFENDANTS TRUDI LEE LYTLE, JOHN ALLEN LYTLE, THE LYTLE TRUST'S

SUPPLEMENTAL RESPONSE TO ORDER TO SHOW CAUSE

COMES NOW Defendants TRUDI LEE LYTLE, JOHN ALLEN LYTLE, AS TRUSTEES OF THE LYTLE TRUST (the "Trust"), by and through their counsel of record, Richard E. Haskin, Esq., and Timothy Elson, Esq., of the law firm of GIBBS, GIDEN, LOCHER, TURNER, SENET & WITTBRODT, LLP, and hereby submits its Supplemental Response to Order to Show Cause.

I. BRIEF STATEMENT OF MATERIAL AND UNDISPUTED FACTS

On July 21, 2017, the Trust provided an initial Response the Order to Show Cause. Therein, the Trust provided this Court with a copy of the District Court's Order Granting Respondents' Motion for Summary Judgment, Exhibit A to the Response to Order to Show Cause.

Thereafter, the District Court granted the Trust's Motion to Alter or Amend Findings of Fact and Conclusions of Law, wherein the District Court removed the finding of slander of title. *See* Notice of Entry of Order and Order Granting Motion to Alter or Amend Findings of Fact and Conclusions of Law, Exhibit A. As a result, the Respondent is pursuing the slander of title claim in the District Court litigation.

However, the District Court did not alter or amend the injunction previously granted, and the same order is contained in the revised Findings of Fact and Conclusions of Law. *See* Notice of Entry of Order and Order Granting Motion to Alter or Amend Findings of Fact and Conclusions of Law, Exhibit A.

On June 2, 2017, Appellants filed a Docketing Statement with this Supreme Court indicating that one of the basis for appeal was that the underling order granted an injunction. *See* Docketing Statement, Exhibit B, Section 4. Further, this injunction was the an issue noted on appeal. *Id.* at Section 9. Finally, the Docketing Statement provides that NRAP 3(b)(3) serves as the basis for this Court's jurisdiction. *Id.* at Section 21.

II. BASIS FOR APPEAL

The Supreme Court has jurisdiction to consider the appeal of any order from a district court in a civil action "granting...an injunction..." NRAP 3(b)(3). Here, the District Court granted an injunction, permanently enjoining Appellants from clouding title to Respondents' property or recording any abstract of judgment. This matter is fit for appeal.

DATED: August 1, 2017

GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP

By: 

Richard E. Haskin, Esq.
Nevada State Bar # 11592
1140 N. Town Center Drive, Suite 300
Las Vegas, Nevada 89144
Attorneys for Appellants

CERTIFICATE OF MAILING

The undersigned, an employee of the law firm of GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP, hereby certifies that on August 1, 2017, she served a copy of the foregoing **DEFENDANTS TRUDI LEE LYTLE, JOHN ALLEN LYTLE, THE LYTLE TRUST'S SUPPLEMENTAL RESPONSE TO ORDER TO SHOW CAUSE** by electronic service through the Nevada Supreme Court ECF System:

DANIEL T. FOLEY, ESQ.
FOLEY & OAKS
626 S. 8th Street
Las Vegas, Nevada 89101

Attorneys for Plaintiffs **MARJORIE BOULDEN, TRUSTEE OF THE MARJORIE B. BOULDEN TRUST, ETAL.**

Tel: (702) 384-2070
Fax: (702) 384-2128
Email: dan@foleyoakes.com

Persi J. Mishel
2725 Tidewater Court
Las Vegas, Nevada 89117

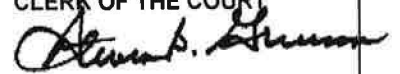
Settlement Judge

Tel: (702) 981-3043



An employee of
Gibbs Giden Locher Turner
Senet & Wittbrodt LLP

EXHIBIT “A”



NEOJ
Richard E. Haskin, Esq.
Nevada State Bar # 11592
Timothy P. Elson, Esq.
Nevada State Bar # 11559
**GIBBS GIDEN LOCHER TURNER
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(702) 836-9800

Attorneys for Defendants
TRUDI LEE LYTLE, JOHN ALLEN LYTLE,
& THE LYTLE TRUST

**DISTRICT COURT
CLARK COUNTY, NEVADA**

MARJORIE B. BOULDEN, TRUSTEE OF THE
MARJORIE B. BOULDEN TRUST, LINDA
LAMOTHE AND JACQUES LAMOTHE,
TRUSTEES OF THE JACQUES & LINDA
LAMOTHE LIVING TRUST

Plaintiff,

v.

TRUDI LEE LYTLE, JOHN ALLEN LYTLE,
THE LYTLE TRUST, DOES I through X,
inclusive, and ROE CORPORATIONS I through
X,

Defendants.

Case No.: A-16-747800-C
Dept.: XVI

**NOTICE OF ENTRY OF ORDER
GRANTING MOTION TO ALTER OR
AMEND FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

NOTICE IS HEREBY GIVEN that on the 25th day of July, 2017, an ORDER GRANTING
MOTION TO ALTER OR AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW was
entered in the above-entitled matter, a copy of which is attached hereto.

DATED: July 25, 2017

GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP

By: /s/ Richard E. Haskin

Richard E. Haskin, Esq.
Nevada State Bar # 11592
1140 N. Town Center Drive, Suite 300
Las Vegas, Nevada 89144
Attorneys for Defendants
TRUDI LEE LYTLE, JOHN ALLEN LYTLE, & THE
LYTLE TRUST

CERTIFICATE OF MAILING

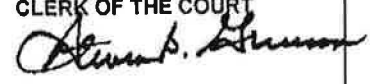
The undersigned, an employee of the law firm of GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP, hereby certifies that on July 25, 2017, she served a copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING MOTION TO ALTER OR AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW** by electronic service through the Regional Justice Center for Clark County, Nevada's ECF System:

DANIEL T. FOLEY, ESQ.
FOLEY & OAKS
626 S. 8th Street
Las Vegas, Nevada 89101

Attorneys for Plaintiffs **MARJORIE BOULDEN, TRUSTEE OF THE MARJORIE B. BOULDEN TRUST, ETAL.**

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Email: dan@folevoakes.com


An employee of
Gibbs Giden Locher Turner
Senet & Wittbrodt LLP



GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

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ORDER
Richard E. Haskin, Esq.
Nevada State Bar # 11592
Timothy P. Elson, Esq.
Nevada State Bar # 11559
**GIBBS GIDEN LOCHER TURNER
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Attorneys for Defendants
TRUDI LEE LYTLE, JOHN ALLEN LYTLE,
& THE LYTLE TRUST

**DISTRICT COURT
CLARK COUNTY, NEVADA**

MARJORIE B. BOULDEN, TRUSTEE OF THE
MARJORIE B. BOULDEN TRUST, LINDA
LAMOTHE AND JACQUES LAMOTHE,
TRUSTEES OF THE JACQUES & LINDA
LAMOTHE LIVING TRUST

Plaintiff,

v.

TRUDI LEE LYTLE, JOHN ALLEN LYTLE,
THE LYTLE TRUST, DOES I through X,
inclusive, and ROE CORPORATIONS I through
X,

Defendants.

Case No.: A-16-747800-C
Dept.: XVI

**ORDER GRANTING MOTION TO
ALTER OR AMEND FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

Hearing: June 29, 2017

Plaintiffs' Motion for Partial Summary Judgment and Defendants' Counter Motion for
Summary Judgment having come on for hearing before this Court on of April 13, 2017. Plaintiffs
Marjorie Boulden and Linda Lamothe appeared with their counsel, Daniel T. Foley, Esq. and
Defendants John Allen Lytle and Trudi Lee Lytle, as Trustees of the Lytle Trust, appeared with their
counsel, Richard Haskin, Esq. After hearing, the Court entered Findings of Fact, Conclusions of
Law and entered an Order Granting Plaintiffs' Motion for Partial Summary Judgment on April 25,
2017.

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1 On June 29, 2017, Defendants' Motion for Reconsideration or, in the Alternative, Motion to
 2 Alter or Amend Judgment, came on for hearing. Plaintiffs Marjorie Boulden and Linda Lamothe
 3 appeared with their counsel, Daniel T. Foley, Esq. and Defendants John Allen Lytle and Trudi Lee
 4 Lytle, as Trustees of the Lytle Trust, appeared with their counsel, Richard Haskin, Esq.

5 The Court having reviewed the Defendants' Motion, Plaintiff's Opposition and the
 6 Defendants' Reply, all documents attached thereto or otherwise filed in this case, and good cause
 7 appearing therefore, grants Defendants' Motion to Alter and Amend Judgment pursuant to EDCR
 8 2.24(b), and the Court makes the following Amendment Findings of Fact and Conclusions of Law,
 9 granting Plaintiffs' Motion for Partial Summary Judgment.

10 **FINDINGS OF FACT**

11 1. Mrs. Boulden is trustee of the Marjorie B. Boulden Trust (hereinafter "Mrs.
 12 Boulden") which owns that residential property known as parcel number 163-03-313-008 also
 13 known as 1960 Rosemere Ct., Las Vegas, NV 89117 ("the Boulden Property").

14 2. Mr. and Mrs. Lamothe are the trustees of the Linda Lamothe and Jacques Lamothe
 15 Living Trust (hereinafter "Mr. and Mrs. Lamothe") which owns that certain residential property
 16 known as parcel number 163-03-313-002 also known as 1830 Rosemere Ct., Las Vegas, NV 89117
 17 (the "Lamothe Property").

18 3. The Boulden Property and the Lamothe Property are located in the Rosemere Court
 19 subdivision and are subject to the CC&Rs recorded January 4, 1994 (the "Original CC&Rs").

20 4. John Allen Lytle and Trudi Lee Lytle are the Trustees of the Lytle Trust (collectively
 21 the "Defendants") which owns that certain residential property known as parcel number 163-03-313-
 22 009 (the "Lytle Property").

23 5. In 2009, the Defendants sued the Rosemere Estates Property Owners Association (the
 24 Association") in the Eighth Judicial District Court, case # A-09-593497-C (the "Rosemere LPA
 25 Litigation").

26 6. None of the Plaintiffs were ever parties in the Rosemere LPA Litigation.

27 7. None of the Plaintiffs were a "losing party" in the Rosemere LPA Litigation as that
 28 term is found in Section 25 of the Original CC&Rs.

1 8. The Defendants obtained a Summary Judgment for Declaratory Relief from the
2 District Court in the Rosemere LPA Litigation, which found and ruled as follows:

- 3 a. The Association is a limited purpose association under NRS 116.1201, is not
4 a Chapter 116 "unit-owners' association," and is relegated to only those
5 specific duties and powers set forth in Paragraph 21 of the Original CC&Rs
6 and NRS 116.1201.
- 7 b. The Association did not have any powers beyond those of the "property
8 owners committee" designation in the Original CC&Rs – simply to care for
9 the landscaping and other common elements of Rosemere Estates as set forth
10 in Paragraph 21 of the Original CC&Rs.
- 11 c. Consistent with the absence of a governing body, the Developer provided
12 each homeowner the right to independently enforce the Original CC&Rs
13 against one another.
- 14 d. The Amended and Restated CC&Rs recorded with the Clark County
15 Recorder's Office as Instrument #20070703-0001934 (the "Amended
16 CC&Rs") are invalid, and the Amended CC&Rs have no force and effect.

17 9. Pursuant to NRS 116.1201(2) much of NRS Chapter 116 does not apply to the
18 Association because it is a limited purpose association that is not a rural agricultural residential
19 community.

20 10. After obtaining Summary Judgment in the Rosemere LPA Litigation, the Defendants
21 filed a Motion for Attorneys' Fees and Costs against the Association, and conducted a prove-up
22 hearing on damages. After hearing all matters, a Final Judgment was entered in the Defendants'
23 favor against the Association for \$361,238.59, which includes damages, attorneys' fees and costs
24 (the "Final Judgment").

25 11. After obtaining the Attorneys' Fees Judgment, the Defendants, on August 16, 2016,
26 recorded with the Clark County Recorder's office an Abstract of Judgment referencing the Final
27 Judgment against the Association, recorded as Instrument #20160818-0001198 (the "First Abstract
28 of Judgment").

 12. In the First Abstract of Judgment, the Defendants listed the parcel numbers of the
Boulden Property and the Lamothe Property as properties to which the First Abstract of Judgment
and Final Judgment was to attach.

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14. On September 2, 2016, the Defendants recorded with the Clark County Recorder's office an Abstract of Judgment referencing the Final Judgment against the Association, recorded as Instrument #20160902-0002690 (the "Third Abstract of Judgment"). The Third Abstract of Judgment listed the parcel number of the Boulden Property only as the property to which the Judgment was to attach.

1. The Association is a "limited purpose association" as referenced in NRS 116.1201(2).
2. As a limited purpose association, NRS 116.3117 is not applicable to the Association.
3. As a result of the Rosemere LPA Litigation, the Amended CC&Rs were judicially declared to have been improperly adopted and recorded, the Amended CC&Rs are invalid and have no force and effect and were declared void ab initio.

18 5. The Plaintiffs were not “losing parties” in the Rosemere LPA Litigation as per
19 Section 25 of the Original CC&Rs.

20 6. The Final Judgment in favor of the Defendants is not against, and is not an obligation
21 of, the Plaintiffs.

22 7. The Final Judgment against the Association is not an obligation or debt owed by the
23 Plaintiffs.

24 8. The First Abstract of Judgment recorded as Instrument #20160818-0001198 was
25 improperly recorded against the Lamothe Property and constitutes a cloud against the Lamothe
26 Property.

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ORDER

Based upon the Findings of Fact and Conclusions of Law above, and good cause appearing therefore,

IT IS HEREBY ORDERED ADJUDGED AND DECREED that Plaintiffs' Motion for Partial Summary Judgment is GRANTED as to Plaintiffs' claims and causes of action for quiet title and declaratory relief, the Second and Third Causes of Action in Plaintiffs' First Amended Complaint.

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that Defendants' Motion for Summary Judgment is **DENIED**.

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Defendants improperly clouded the title to the Boulden Property.

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Defendants improperly clouded the title to the Lamothe Property.

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the First Abstract of Judgment recorded as Instrument #20160818-0001198 in the Clark County Recorder's Office is hereby expunged and stricken from the records of the Clark County Recorder's Office.

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1 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the Second
2 Abstract of Judgment recorded as Instrument #20160902-0002684 in the Clark County Recorder's
3 Office is hereby expunged and stricken from the records of the Clark County Recorder's Office.

4 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the Third
5 Abstract of Judgment recorded as Instrument #20160902-0002690 in the Clark County Recorder's
6 Office is hereby expunged and stricken from the records of the Clark County Recorder's Office.

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1 IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the
2 Defendants are permanently enjoined from recording and enforcing the Final Judgment from the
3 Rosemere LPA Litigation or any abstracts related thereto against the Boulden Property or the
4 Lamothe Property.

5 IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the
6 Defendants are permanently enjoined from taking any action in the future against the Plaintiffs or
7 their properties based upon the Rosemere LPA Litigation.

8 IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the
9 Defendants are hereby ordered to release the First Abstract of Judgment, the Second Abstract of
10 Judgment, and the Third Abstract of Judgment recorded with the Clark County Recorder within
11 ten (10) days after the date of Notice of Entry of this Order.

12
13 DATED this 14th day of July 2017

14
15 
16 DISTRICT COURT JUDGE
17 

18 Submitted by:
19 FOLEY & OAKES, PC

20 Daniel T. Foley, Esq.
21 626 S. 8th St.
22 Las Vegas, Nevada 89101
23 Attorney for Plaintiffs

24 Approved by to form:

25 Richard E. Maskin, Esq.
26 Gibbs Giden Locker Turner Senet & Wittbrodt LLP
27 1140 N. Town Center Dr., Ste. 300
28 Las Vegas, Nevada 89144
Attorney for Defendants