

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

Nov 16 2017 02:08 p.m.

APPELLANT'S MOTION TO ADD PARTY
AS RESPONDENT TO APPEAL

Elizabeth A. Brown
Clerk of Supreme Court

[NRAP 43(b)]

Appellant, TRUDI LEE LYTLE; AND JOHN ALLEN LYTLE, AS TRUSTEES OF
THE LYTLE TRUST ("Appellant"), hereby files the following Motion to Add Robert Z.

Disman, an individual, and Yvonne A. Disman, as Respondents to this Appeal for the reasons set
forth herein.

I. STATEMENT OF RELEVANT FACTS

Respondents MARJORIE B. BOULDEN, TRUSTEE OF THE MARJORIE B.
BOULDEN TRUST; LINDA LAMOTHE; AND JACQUES LAMOTHE, TRUSTEES OF THE
JACQUES & LINDA LAMOTHE LIVING TRUST (collectively, "Respondents") initiated a
lawsuit in the Eighth Judicial District on December 8, 2016 against Appellant, seeking to quiet
title to their respective properties and setting forth claims for quiet title, cloud on title, and
slander of title. On September 2, 2016, Appellant recorded Abstracts of Judgment against each
property within the Rosemere Estates Property Owners' Association (the "Association") after
obtaining various monetary judgments against the Association. Appellant argues that Appellant
had the right to record the abstracts of judgment against the individual properties within the
Association pursuant to the Association's covenants, conditions, and restrictions ("CC&Rs") as
well as certain provision of Chapter 116 of the Nevada Revised Statutes. These arguments
ultimately will be presented and detailed in this Appeal.

On April 26, 2017, after hearing, the District Court granted Respondents Motion for Partial Summary Judgment as to cloud on title. *See* Order, **Exhibit A**. Therein, the District Court granted an injunction against Appellants. Respondents slander of title claims remain with the District Court and are presently being litigated. Thereafter, the District Court altered the Order to make clear that there was no order granting the slander of title claim or other claims alleged by Respondents. *See* Amended Order, **Exhibit B**.

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.

In or about August 2017, Robert Z. Disman, an individual, and Yvonne A. Disman (collectively the “Dismans”) purchased the real property formerly belonging to Respondent MARJORIE B. BOULDEN, TRUSTEE OF THE MARJORIE B. BOULDEN TRUST (“Boulden”) for \$550,000.00. *See* Disman Answer and Cross-Complaint, Pg. 6; ¶¶ 6 – 7, **Exhibit C**. According to the Dismans, Boulden never informed the Disman’s of this Appeal and Appellant’s prior lien claim or that there was a lawsuit (and appeal) potentially affecting title to Boulden’s property. *Id.* at Pg. 7, ¶¶ 10 – 16.

In September 2017, the Dismans were added as parties to the District Court litigation.

II. ARGUMENT

Pursuant to Nevada Rule of Appellate Procedure, Rule 43(b), a party may substitute or add a party to an appeal upon motion to this Court. As a result of Boulden’s sale of the property for which the injunction was granted by the District Court to the Dismans, the Dismans are now property parties before this Court and to this Appeal. A ruling by this Court or, subsequently, by the District Court at the direction of this Court will necessarily affect the Dismans as owners of the subject property.

Boulden should remain a party to the appeal as well. Boulden maintains additional claims in the District Court matter for cloud and slander of title. A ruling by this Court will necessarily impact Boulden's remaining claims. For example, if this Court overturns the District Court's findings in granting the injunction, finding that Appellant had the right to record an abstract of judgment against Boulden's property, Boulden's cloud and slander of title claims are necessarily impacted.

III. CONCLUSIONS

For the reasons set forth herein, Appellant respectfully requests that this Court grant the Motion to add the Dismans as Respondents to this Appeal.

DATED: November 16, 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 November 16, 2017, she served a copy of the foregoing **APPELLANT'S MOTION TO ADD PARTY AS RESPONDENT TO APPEAL** by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope(s) addressed to:

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”



1 **NOE**
2 DANIEL T. FOLEY, ESQ.
3 Nevada Bar No. 1078
4 FOLEY & OAKES, PC
5 626 S 8th Street
6 Las Vegas, Nevada 89101
7 Tel.: (702) 384-2070
8 Fax: (702) 384-2128
9 Email: dan@foleyoakes.com
10 *Attorneys for Plaintiffs*

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 MARJORIE B. BOULDEN, TRUSTEE OF)
14 THE MARJORIE B. BOULDEN TRUST,)
15 LINDA LAMOTHE AND JACQUES)
16 LAMOTHE, TRUSTEES OF THE)
17 JACQUES & LINDA LAMOTHE)
18 LIVING TRUST)

19 Plaintiff,)

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

20 v.)

21 TRUDI LEE LYTLE AND JOHN ALLEN)
22 LYTLE, AS TRUSTEES OF THE LYTLE)
23 TRUST, DOES I through X; and ROE)
24 CORPORATIONS I through X,)
25 Defendants.)

26 **NOTICE OF ENTRY**

27 PLEASE TAKE NOTICE that the Clerk of the Court entered the attached Findings of
28 Fact, Conclusions of Law, and Order Granting Plaintiffs' Motion for Partial Summary Judgment
in the above-entitled manner on April 26th, 2017. A copy of said Findings of Fact, Conclusions
of Law, and Order Granting Plaintiffs' Motion for Partial Summary Judgment is attached hereto

///

///

///

FOLEY
&
OAKES

1 as Exhibit "A".

2 Respectfully Submitted,

3 FOLEY & OAKES, PC

4 /s/Daniel T. Foley

5 Daniel T. Foley, Esq.

6 Nevada Bar No. 1078

7 626 So. 8th Street

8 Las Vegas, Nevada 89101

9 *Attorney for Plaintiffs*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NEFCR 9, N.R.C.P. 5(b) and EDCR 7.26, I hereby certify that I am an
3 employee of Foley & Oakes, PC, and that on the 27th day of April, 2017, I served the following
4 document(s):

5 **NOTICE OF ENTRY**

6 I served the above-named document(s) by the following means to the person s as listed
7 below: [x] By Electronic Transmission through the Wiznet System:

8
9 Richard E. Haskin, Esq.
10 GIBBS, GIDEN, LOCHER, TURNER,
11 SENET & WHITTBRODT, LLP
12 1140 N. Town Center Drive, Suite 300
13 Las Vegas, NV 89144

14 I declare under the penalty of perjury that the foregoing is true and correct.

15 /s/ Maren Foley
16 An employee of FOLEY & OAKES
17
18
19
20
21
22
23
24
25
26
27

EXHIBIT “A”

EXHIBIT “A”


CLERK OF THE COURT

1 **FFCL**
2 **DANIEL T. FOLEY, ESQ.**
3 **Nevada Bar No. 1078**
4 **FOLEY & OAKES, PC**
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6 **Las Vegas, Nevada 89101**
7 **Tel.: (702) 384-2070**
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9 **Email: dan@foleyoakes.com**
10 **Attorneys for Plaintiffs**

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 **MARJORIE B. BOULDEN, TRUSTEE OF)**
10 **THE MARJORIE B. BOULDEN TRUST,)**
11 **LINDA LAMOTHE AND JACQUES)**
12 **LAMOTHE, TRUSTEES OF THE)**
13 **JACQUES & LINDA LAMOTHE)**
14 **LIVING TRUST)**

13 **Plaintiff,)**

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

14 **v.)**

15 **TRUDI LEE LYTLE AND JOHN ALLEN)**
16 **LYTLE, AS TRUSTEES OF THE LYTLE)**
17 **TRUST, DOES I through X; and ROE)**
18 **CORPORATIONS I through X,)**
19 **Defendants.)**

Date of Hearing: April 13, 2017
Time of Hearing: 9:00 a.m.

19 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING**
20 **PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

21 **Plaintiffs' Motion for Partial Summary Judgment and Defendants' Counter Motion for**
22 **Summary Judgment having come on for hearing before this Court on the 13th day of April 2017,**
23 **Plaintiffs Marjorie Boulden and Linda Lamothe appeared with their counsel, Daniel T. Foley,**
24 **Esq. and Defendants John Allen Lytle and Trudi Lee Lytle, as Trustees of the Lytle Trust,**
25 **appearing with their counsel, Richard Haskin, Esq. The Court having reviewed the Plaintiffs'**
26 **Motion, the Defendants' Opposition and Counter-Motion and the Plaintiffs' Reply and all**

1 documents attached thereto or otherwise filed in this case, and good cause appearing therefore,
2 makes these Findings of Fact and Conclusions of Law.

3 To the extent any Findings of Fact also contain Conclusions of Law said Conclusions of
4 Law should be considered as such. To the extent that any Conclusions of Law also contain
5 Findings of Fact said Findings of Fact should be considered as such.

6 **FINDINGS OF FACT**

7
8 1. Mrs. Boulden is trustee of the Marjorie B. Boulden Trust (hereinafter "Mrs.
9 Boulden") which owns that residential property known as parcel number 163-03-313-008 also
10 known as 1960 Rosemere Ct., Las Vegas, NV 89117 ("the Boulden Property").

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

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

18
19 4. John Allen Lytle and Trudi Lee Lytle are the Trustees of the Lytle Trust
20 (collectively the "Defendants") which owns that certain residential property known as parcel
21 number 163-03-313-009 (the "Lytle Property").

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

25 6. None of the Plaintiffs were ever parties in the Rosemere LPA Litigation.
26
27

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

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

5 a. The Association is a limited purpose association under NRS 116.1201, is
6 not a Chapter 116 "unit-owners' association," and is relegated to only
7 those specific duties and powers set forth in Paragraph 21 of the Original
8 CC&Rs and NRS 116.1201.

9 b. The Association did not have any powers beyond those of the "property
10 owners committee" designation in the Original CC&Rs – simply to care
11 for the landscaping and other common elements of Rosemere Estates as
12 set forth in Paragraph 21 of the Original CC&Rs.

13 c. Consistent with the absence of a governing body, the Developer provided
14 each homeowner the right to independently enforce the Original CC&Rs
15 against one another.

16 d. The Amended and Restated CC&Rs recorded with the Clark County
17 Recorder's Office as Instrument #20070703-0001934 (the "Amended
18 CC&Rs") are invalid, and the Amended CC&Rs have no force and effect.

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

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

27 11. After obtaining the Final Judgment, the Defendants, on August 16, 2016, recorded
28 with the Clark County Recorder's office an Abstract of Judgement referencing the Final Judgment

1 against the Association, recorded as Instrument #20160818-0001198 (the "First Abstract of
2 Judgment").

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

6 13. On September 2, 2016, the Defendants recorded with the Clark County Recorder's
7 office an Abstract of Judgement referencing the Final Judgment against the Association, recorded
8 as Instrument #20160902-0002684 (the "Second Abstract of Judgment"). The Second Abstract
9 of Judgment listed the parcel number of the Lamothe Property only as the property to which the
10 Final Judgment was to attach.

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

16 CONCLUSIONS OF LAW

17 1. The Association is a "limited purpose association" as referenced in NRS
18 116.1201(2).

19 2. As a limited purpose association, NRS 116.3117 is not applicable to the
20 Association.

21 3. As a result of the Rosemere LPA Litigation, the Amended CC&Rs were judicially
22 declared to have been improperly adopted and recorded, the Amended CC&Rs are invalid and
23 have no force and effect and were declared void ab initio.

24 4. The Plaintiffs were not parties to the Rosemere LPA Litigation.

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

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

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

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

9. The First Abstract of Judgment recorded as Instrument #20160818-0001198 was improperly recorded against the Boulden Property and constitutes a cloud against the Boulden Property.

10. The Second Abstract of Judgment recorded as Instrument #20160902-0002684 improperly recorded against the Lamothe Property and constitutes a cloud against the Lamothe Property.

11. The Third Abstract of Judgment recorded as Instrument #20160902-0002690 was improperly recorded against the Boulden Property and constitutes a cloud against the Boulden Property.

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.

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

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

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

7 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
8 Defendants slandered the title to the Boulden Property.

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

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

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

21 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
22 Defendants are permanently enjoined from recording and enforcing the Final Judgment from the
23 Rosemere LPA Litigation or any abstracts related thereto against the Boulden Property or the
24 Lamothe Property.

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

DATED this 25th day of April 2017


DISTRICT COURT JUDGE

Submitted by:
FOLEY & OAKES, PC

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

Approved as to form:

~~Richard E. Haskin, Esq.
Gibbs Giden Locker Turner Senet & Wittbrodt LLP
1140 N. Town Center Dr., Ste. 300
Las Vegas, Nevada 89144
Attorney for Defendants~~

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

DATED this ____ day of _____ 2017

DISTRICT COURT JUDGE

Submitted by:
FOLEY & OAKES, PC

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

~~Approved as to form:~~

~~Richard E. Maskin, Esq.
Gibbs Gliden Locker Turner Senet & Wittbrodt LLP
1140 N. Town Center Dr., Ste. 300
Las Vegas, Nevada 89144
Attorney for Defendants~~

EXHIBIT “B”

Steven D. Grierson

ORDER

Richard E. Haskin, Esq.
Nevada State Bar # 11592
Timothy P. Elson, Esq.
Nevada State Bar # 11559

**GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP**
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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

**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.

///

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 Judgement 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 Judgement 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.

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

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

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

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

///

9. The First Abstract of Judgment recorded as Instrument #20160818-0001198 was improperly recorded against the Boulden Property and constitutes a cloud against the Boulden Property.

10. The Second Abstract of Judgment recorded as Instrument #20160902-0002684 improperly recorded against the Lamothe Property and constitutes a cloud against the Lamothe Property.

11. The Third Abstract of Judgment recorded as Instrument #20160902-0002690 was improperly recorded against the Boulden Property and constitutes a cloud against the Boulden Property.

12. The Court does not make any findings that the Defendants slandered title to Plaintiffs' properties, and this issue is left to trier of fact.

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.

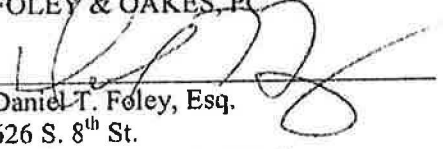
5 IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the
6 Defendants are permanently enjoined from taking any action in the future against the Plaintiffs or
7 their properties based upon the Rosemere LPA Litigation.

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 19th 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 as to form:

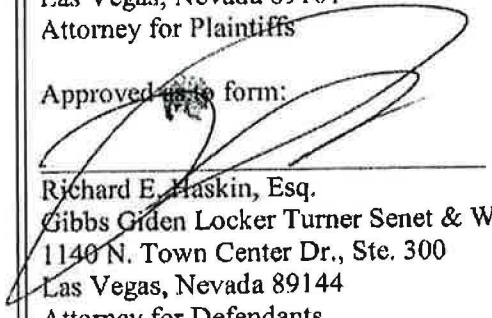
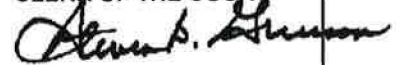
25 
Richard E. Haskin, Esq.
26 Gibbs Giden Locker Turner Senet & Wittbrodt LLP
27 1140 N. Town Center Dr., Ste. 300
28 Las Vegas, Nevada 89144
Attorney for Defendants

EXHIBIT “C”



1 **ANS/CRCM**
2 **CHRISTINA H. WANG, ESQ.**
3 Nevada Bar No. 9713
4 **FIDELITY NATIONAL LAW GROUP**
5 8363 W. Sunset Road, Suite 120
6 Las Vegas, Nevada 89113
7 Tel: (702) 667-3000
8 Fax: (702) 697-2020
9 Email: christina.wang@fnf.com
10 *Attorneys for Counter-Defendants/Cross-Claimants*
11 *Robert Z. Disman and Yvonne A. Disman*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 **MARJORIE B. BOULDEN, TRUSTEE OF THE)**
12 **MARJORIE B. BOULDEN TRUST, LINDA)**
13 **LAMOTHE AND JACQUES LAMOTHE,)**
14 **TRUSTEES OF THE JACQUES & LINDA)**
15 **LAMOTHE LIVING TRUST,)**

16 **Plaintiffs,**

17 **vs.**

18 **TRUDI LEE LYTLE, JOHN ALLEN LYTLE,)**
19 **THE LYTLE TRUST, DOES I through X, and)**
20 **ROE CORPORATIONS I through X,)**

21 **Defendants.**

22 **TRUDI LEE LYTLE, JOHN ALLEN LYTLE,)**
23 **THE LYTLE TRUST,)**

24 **Counter-Claimants,**

25 **vs.**

26 **LINDA LAMOTHE AND JACQUES)**
27 **LAMOTHE, TRUSTEES OF THE JACQUES &)**
28 **LINDA LAMOTHE LIVING TRUST, ROBERT)**
29 **Z. DISMAN, YVONNE A. DISMAN, and)**
30 **ROES 1 through 10, inclusive,)**

31 **Counter-Defendants.**

Case No.: A-16-747800-C

Dept. No.: XVI

**COUNTER-DEFENDANTS AND
CROSS-CLAIMANTS ROBERT Z.
DISMAN AND YVONNE A. DISMAN'S
ANSWER AND CROSSCLAIM**

1 ROBERT Z. DISMAN, an individual; and
2 YVONNE A. DISMAN, an individual,

3 Cross-Claimants,

4 vs.

5 MARJORIE B. BOULDEN, TRUSTEE OF THE
6 MARJORIE B. BOULDEN TRUST,
7 AMENDED AND RESTATED DATED JULY
17, 1996; DOES I through X; and ROE
BUSINESS ENTITIES XI through XX,

8 Cross-Defendants.

9 Counter-Defendants ROBERT Z. DISMAN and YVONNE A. DISMAN (hereinafter
10 collectively referred to as, the "Dismans") by and through their attorneys of record, the Fidelity
11 National Law Group, hereby file this Answer to Counter-Claimants TRUDI LEE LYTLE and
12 JOHN ALLEN LYTLE, Trustees of THE LYTLE TRUST (hereinafter collectively referred to
13 as, the "Lyttles")' Counterclaim as follows:

14 **I. THE PARTIES AND JURISDICTION**

15 1. Answering paragraph numbers 1 and 2, the Dismans are without sufficient
16 knowledge or information to form a belief as to the truth of the allegations of said paragraphs
17 and on that basis deny each and every allegation set forth therein.

18 2. Answering paragraph number 3, the Dismans admit that in or about August 2017,
19 they purchased the real property commonly known as 1960 Rosemere Court, Las Vegas, Nevada
20 89117, Parcel No. 163-03-313-008 ("1960 Rosemere Court" or "Property") from Marjorie B.
21 Boulden, Trustee of The Marjorie B. Boulden Trust, amended and restated dated July 17, 1996.
22 The Dismans further admit that they are now owners of 1960 Rosemere Court. The Dismans
23 generally and specifically deny all other allegations set forth in paragraph number 3.

24 3. Answering paragraph number 4, the Dismans are without sufficient knowledge or
25 information to form a belief as to the truth of the allegations of said paragraph and on that basis
26 deny each and every allegation set forth therein.

27 **II. ROSEMERE ESTATES COMMUNITY AND GOVERNING DOCUMENTS**

28 4. Answering paragraph number 5, the allegations set forth therein attempt to

1 characterize the terms of the document referenced, which speaks for itself. Therefore, the
2 Dismans generally and specifically deny any characterization or legal conclusion inconsistent
3 with the document referenced and no further response is required.

4 5. Answering paragraph numbers 6, 7, 8, 9, 10, 11 and 12, the Dismans are without
5 sufficient knowledge or information to form a belief as to the truth of the allegations of said
6 paragraphs and on that basis deny each and every allegation set forth therein.

7 **III. THE UNDERLYING LITIGATION**

8 6. Answering paragraph number 13, the Dismans are without sufficient knowledge
9 or information to form a belief as to the truth of the allegations of said paragraph and on that
10 basis deny each and every allegation set forth therein.

11 **A. NRED I LITIGATION**

12 7. Answering paragraph numbers 14, 15, 16, 17 and 18, the Dismans are without
13 sufficient knowledge or information to form a belief as to the truth of the allegations of said
14 paragraphs and on that basis deny each and every allegation set forth therein.

15 **B. NRED II LITIGATION**

16 8. Answering paragraph numbers 19, 20, 21, 22, 23, 24, 25 and 26, the Dismans are
17 without sufficient knowledge or information to form a belief as to the truth of the allegations of
18 said paragraphs and on that basis deny each and every allegation set forth therein.

19 **FIRST CAUSE OF ACTION**

20 **(For Declaratory Relief Against Counter-Defendants Jacques and Linda Lamothe, Third-**
21 **Party Defendants Robert Disman and Yvonne Disman, and ROES 1 through 10, Inclusive)**

22 9. Answering paragraph number 27, the Dismans repeat and reallege their answers
23 to paragraphs 1 through 26 above, and incorporates the same by reference as though fully set
24 forth herein.

25 10. Answering paragraph number 28, the Dismans generally and specifically deny
26 the allegations set forth therein.

27 11. Answering paragraph numbers 29(a) and (b), the allegations set forth therein
28 attempt to characterize the terms of the documents referenced, which speak for themselves.

1 Therefore, the Dismans generally and specifically deny any characterization or legal conclusion
2 inconsistent with the documents referenced and no further response is required.

3 12. Answering paragraph numbers 29(c) and (d), and 30, the allegations set forth
4 therein call for legal conclusions to which no response is required. To the extent paragraph
5 numbers 29(c) and (d) are determined to contain factual allegations, the Dismans are without
6 sufficient knowledge or information to form a belief as to the truth of the allegations of said
7 paragraphs and on that basis deny each and every allegation set forth therein.

8 13. Answering paragraph number 31, the Dismans generally and specifically deny
9 the allegations set forth therein

10 AFFIRMATIVE DEFENSES

11 The Dismans assert the following affirmative defenses to the claims and allegations
12 contained in the Counterclaim.

13 1. The Counterclaim fails to state a claim or cause of action against the Dismans
14 upon which relief can be granted.

15 2. The Counterclaim is not ripe for determination.

16 3. The Counterclaim is barred in whole or in part by the doctrines of laches, waiver,
17 estoppel, and/or unclean hands.

18 4. The Counterclaim is barred in whole or in part by the doctrines of ratification,
19 confirmation, release, discharge, and/or set-off.

20 5. The Counterclaim is barred in whole or in part by the doctrines of mistake,
21 excuse, and/or non-performance.

22 6. The Dismans acted at all times in accordance with their contractual and legal
23 rights.

24 7. The Dismans acted at all times in good faith and in conformity with applicable
25 law and regulations.

26 8. Any damage, injury or loss sustained by the Lytles was caused by the actions of
27 others or by intervening or superseding events for which the Dismans have no responsibility.
28

9. Any damage, injury or loss sustained by the Lytles was solely and proximately caused by, or contributed to by, their own negligence, which either bars or reduces the Lytles' recovery herein in an amount to be determined by the trier of fact.

10. The Lytles have failed to mitigate their damages.

11. The Lytles have failed to name all necessary parties and complete relief cannot be accorded among existing parties.

12. The Dismans are bona fide purchasers of 1960 Rosemere Court in that they purchased the Property in good faith, for a valuable consideration, not by gift, with no actual, constructive, or inquiry notice of any alleged or real infirmities in the title, who would be prejudiced by the relief sought.

13. The Dismans hereby incorporate by reference those affirmative defenses enumerated in NRC 8 for the specific reason of not waiving the same.

14. Pursuant to NRCP 11, all possible affirmative defenses may not have been alleged herein, insofar as sufficient facts were not available after reasonable inquiry upon the filing of the Dismans' Answer and, therefore, the Dismans reserve the right to amend their Answer to allege additional affirmative defenses if subsequent investigations warrants.

WHEREFORE, the Dismans pray that the Lytles take nothing by way of their Counterclaim, that the Dismans be awarded reasonable attorney's fees and costs incurred in defending this action, and that the Court award any and all other relief that it deems necessary and appropriate.

CROSSCLAIM

Cross-Claimants ROBERT Z. DISMAN and YVONNE A. DISMAN (hereinafter collectively referred to as, the "Dismans"), by and through their attorneys of record, the Fidelity National Law Group, complain and allege against Cross-Defendant MARJORIE B. BOULDEN, Trustee of THE MARJORIE B. BOULDEN TRUST, AMENDED AND RESTATED DATED JULY 17, 1996; DOES I through X; and ROE BUSINESS ENTITIES XI through XX as follows:

///

1 **PARTIES**

2 1. The Dismans are, and at all times relevant herein were, residents of Clark
3 County, Nevada.

4 2. The Dismans are informed and believe and on that basis allege that MARJORIE
5 B. BOULDEN, Trustee of THE MARJORIE B. BOULDEN TRUST, AMENDED AND
6 RESTATED DATED JULY 17, 1996 ("Boulden"), is, and at all relevant times herein was, a
7 resident of Clark County, Nevada.

8 3. The Dismans are unaware of the true names and legal capacities, whether
9 individual, corporate, associate, or otherwise, of the Cross-Defendants sued herein as DOES I
10 through X and ROE BUSINESS ENTITIES XI through XX, inclusive, and therefore sue said
11 Cross-Defendants by their fictitious names. The Dismans pray leave to insert said Cross-
12 Defendants' true names and legal capacities when ascertained. The Dismans are informed and
13 believe and on that basis allege that each of the Cross-Defendants designated herein as a DOE or
14 a ROE is in some way legally responsible and liable for the events referred to herein and
15 proximately caused the damages alleged herein.

16 **JURISDICTION AND VENUE**

17 4. This Court's jurisdiction over the parties is proper under NRS 14.065 as it is
18 consistent with the constitution of this state and the Constitution of the United States.

19 5. Venue is proper in the Eighth Judicial District Court of Nevada under NRS
20 13.010 as the subject property is located in Clark County, Nevada.

21 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

22 6. This action concerns the real property commonly known as 1960 Rosemere
23 Court, Las Vegas, Nevada 89117, Parcel No. 163-03-313-008 ("1960 Rosemere Court" or
24 "Property").

25 7. In or about August 2017, the Dismans purchased 1960 Rosemere Court from
26 Boulden for \$550,000.00.

27 8. The Grant, Bargain, Sale Deed conveying title of the Property from Boulden to
28 the Dismans was recorded on August 4, 2017, as Instrument No. 20170804-0002656 of the

1 Official Records of Clark County, Nevada.

2 9. Trudi Lee Lytle and John Allen Lytle, Trustees of The Lytle Trust (hereinafter
3 collectively referred to as, the "Lyttles") allege that 1960 Rosemere Court is encumbered by a
4 judgment lien that they recorded against the Rosemere Property Owners' Association and that
5 attached to the Property (the "Judgment Lien").

6 **FIRST CLAIM FOR RELIEF**

7 **(Breach of Warranty)**

8 10. The Dismans repeat, reallege and incorporate by reference each and every
9 allegation contained in Paragraphs 1 through 9 as though fully set forth herein.

10 11. Pursuant to Nevada law and, specifically, NRS 111.170, the Grant, Bargain, Sale
11 Deed whereby Boulden conveyed 1960 Rosemere Court to the Dismans is a warranty deed that
12 contains certain covenants, including, but not limited to, the covenant that the Property is free
13 from any encumbrance and defect in title.

14 12. Such covenants may be sued upon in the same manner as if they had been
15 expressly inserted in the conveyance.

16 13. By virtue of the Lyttles' Counterclaim against the Dismans, 1960 Rosemere Court
17 may be subject to the Judgment Lien.

18 14. Boulden, therefore, breached the covenants contained in the Grant, Bargain, Sale
19 Deed whereby she conveyed the Property to the Dismans.

20 15. As a direct and proximate result of Boulden's breach, the Dismans have suffered
21 damages in an amount in excess of Fifteen Thousand Dollars (\$15,000.00), all in a sum to be
22 determined according to proof at the time of trial.

23 16. As a direct and proximate result of Boulden's breach, the Dismans have been
24 required to retain legal counsel and incur legal fees and costs in connection with this action and
25 is, therefore, entitled to recover reasonable attorneys' fees and costs from Boulden as special
26 damages.

27 ///

28 ///

1 **SECOND CLAIM FOR RELIEF**

2 **(In the Alternative, Unjust Enrichment)**

3 17. The Dismans repeat, reallege and incorporate by reference each and every
4 allegation contained in Paragraphs 1 through 16 as though fully set forth herein.

5 18. The Dismans paid Boulden the fair market value for the purchase of 1960
6 Rosemere Court.

7 19. Boulden, however, failed to convey clear title of the Property to the Dismans
8 because the Lytles claim a Judgment Lien against the Property.

9 20. Boulden, therefore, has been unjustly enriched at the Dismans' expense.

10 21. As a direct and proximate result of Boulden's conduct, the Dismans have
11 suffered damages in an amount in excess of Fifteen Thousand Dollars (\$15,000.00), all in a sum
12 to be determined according to proof at the time of trial.

13 22. As a direct and proximate result of Boulden's conduct, the Dismans have been
14 required to retain legal counsel and incur legal fees and costs in connection with this action and
15 is, therefore, entitled to recover reasonable attorneys' fees and costs from Boulden as special
16 damages.

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1 WHEREFORE, the Dismans pray for judgment against Boulden, DOES I through X and
2 ROE BUSINESS ENTITIES XI through XX, and each of them, as follows:

- 3 1. For damages in excess of \$15,000.00, plus all applicable interest thereon;
- 4 2. For an award of attorney's fees and costs of litigation; and
- 5 3. For any and all such other relief as the Court deems just and proper.

6 DATED this 26th day of September, 2017.

7 FIDELITY NATIONAL LAW GROUP

8
9 
10 CHRISTINA H. WANG, ESQ.
11 Nevada Bar No. 9713
12 8363 W. Sunset Road, Suite 120
13 Las Vegas, Nevada 89113
14 Attorneys for Counter-Defendants/Cross-
15 Claimants Robert Z. Disman and
16 Yvonne A. Disman
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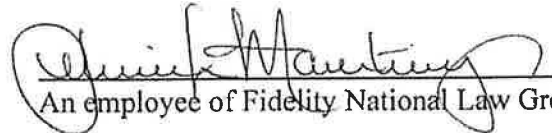
1 **CERTIFICATE OF SERVICE**

2 The undersigned employee of Fidelity National Law Group, hereby certifies that she
3 served a copy of the foregoing **COUNTER-DEFENDANTS AND CROSS-CLAIMANTS**
4 **ROBERT Z. DISMAN AND YVONNE A. DISMAN'S ANSWER AND CROSSCLAIM**
5 upon the following parties on the date below entered (unless otherwise noted), at the fax
6 numbers and/or addresses indicated below by: [] (i) placing said copy in an envelope, first
7 class postage prepaid, in the United States Mail at Las Vegas, Nevada, [] (ii) via facsimile, []
8 (iii) via courier/hand delivery, [] (iv) via overnight mail, [] (v) via electronic delivery (email),
9 and/or [X] (vi) via electronic service through the Court's Electronic File/Service Program.

10
11 Richard E. Haskin, Esq.
12 Timothy P. Elson, Esq.
13 GIBBS GIDEN LOCHER TURNER
14 SENET & WITTBRODT LLP
15 1140 N. Town Center Drive, Suite 300
16 Las Vegas, Nevada 89144-0596
17 *Attorneys for Defendants/Counter-*
18 *Claimants Trudi Lee Lytle and John*
19 *Allen Lytle, Trustees of The Lytle Trust*

Daniel T. Foley, Esq.
Foley & Oakes, PC
626 S. 8th Street
Las Vegas, Nevada 89101
Attorneys for Plaintiffs Marjorie B.
Boulden, Trustee of The Marjorie B.
Boulden Trust, amended and restated
dated July 17, 1996; and Linda Lamothe
and Jacques Lamothe, Trustees of the
Jacques and Linda Lamothe Living Trust

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DATED: 9/26/17


An employee of Fidelity National Law Group