

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
Jan 24 2018 02:14 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

FROM THE EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY
THE HONORABLE _TIMOTHY WILLIAMS, JUDGE
DISTRICT COURT CASE NO. A-16-747800-C

APPELLANT'S APPENDIX

VOLUME 4

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1 CASE NO. A747800

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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9 MARJORIE B. BOULDEN TRUST,)

10 Plaintiff,)

11 vs.)

12 LYTLE TRUST,)

13 Defendant.)

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REPORTER'S TRANSCRIPT

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OF

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HEARING

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BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

21

DISTRICT COURT JUDGE

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DATED THURSDAY, JANUARY 19, 2017

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REPORTED BY: PEGGY ISOM, RMR, NV CCR #541

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1 LAS VEGAS, NEVADA, THURSDAY, JANUARY 19, 2017

2 9:29 A.M.

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

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6 THE COURT: Page 11, Marjorie B. Boulden Trust
7 versus Lytle.

8 MR. HASKIN: Good morning, your Honor.
9 Richard Haskin on behalf of the Lytles, defendants in
09:29:04 10 the action.

11 MR. FOLEY: Dan Foley on behalf of the
12 plaintiffs. And appearing with me are Marjorie Boulden
13 and Linda Lamothe.

14 MR. HASKIN: Your Honor, also with me in the
09:29:13 15 courtroom are Mr. and Mrs. Lytle seated in the back.

16 THE COURT: And it's my understanding if you
17 want it reported, that's fine. If you don't want it
18 reported and you want to do something else, that's
19 fine, too. I do understand this case has somewhat of a
09:29:28 20 history.

21 MR. FOLEY: It does.

22 Split the cost?

23 MR. HASKIN: Yeah.

24 THE COURT: That's probably not -- that's
09:29:32 25 probably the truest thing I can say.

09:29:35 1 MR. HASKIN: We'll split it.

2 THE COURT: Okay. So tell me where do we want
3 to -- I mean, first, don't we have an ex parte
4 emergency motion for an order shortening time of
09:29:46 5 defendant Trudi Lee Lytle and others, and the trust, to
6 continue the hearing for February 17, 2017?

7 MR. HASKIN: Your Honor, we submitted that on,
8 I believe, Thursday or Friday of last week. That was
9 granted. That continued the hearing from Tuesday of
09:30:01 10 this week, to today.

11 THE COURT: Okay.

12 MR. FOLEY: There was some typos, February
13 instead of January.

14 MR. HASKIN: Yes.

09:30:09 15 THE COURT: That's where that kind of threw me
16 off. I saw that February.

17 MR. HASKIN: Yeah.

18 THE COURT: All right. I understand. So
19 anyway, where do we go from here?

09:30:15 20 MR. FOLEY: If I might, your Honor.

21 THE COURT: Yes.

22 MR. FOLEY: And I do have an issue, but, you
23 know, this case is -- and this motion --

24 THE COURT: It's a significant history. I
09:30:22 25 understand.

09:30:23 1 MR. FOLEY: It is. And what it's all about is
2 that there's been a judgment obtained against a third
3 party that was recorded against my clients' property.
4 My clients weren't parties in that case. They're not
09:30:42 5 subject to the judgment. Instead, what the Lytles did
6 was simply, in recording this judgment, write down my
7 clients' parcel numbers so that they're part of this
8 judgment as far as the county recorder's office is
9 concerned.

09:30:58 10 THE COURT: For the record, it's my
11 recollection the judgment was against the HOA, right?

12 MR. FOLEY: Yeah. It's not even an HOA.

13 THE COURT: Okay.

14 MR. FOLEY: It's --

09:31:04 15 THE COURT: What is it?

16 MR. FOLEY: It is -- it's a -- there's a
17 nonprofit corporation that's called Rosemere Homeowners
18 Association, but under the CC&Rs that exist, it's
19 really just a homeowner's committee.

09:31:22 20 The entire intent of everything that was done
21 by the Lytles in this underlying case was to obtain
22 declaratory relief that this was not an HOA.

23 But, your Honor, I need to tell you that, of
24 course, what we have is my client Marjorie Boulden's
09:31:42 25 Trust, her house is scheduled to be -- close escrow

09:31:46 1 tomorrow. And, of course, it can't because there's a
2 \$361,000 judgment being shown as an exception on the
3 preliminary title report.

4 THE COURT: I understand. That's significant.

09:31:56 5 MR. FOLEY: But the problem that I've
6 encountered is in -- I submitted a -- not presuming I'm
7 going to win this, but I submitted a proposed draft of
8 an order to the title company to say, Would this do
9 what needs to be done in order to be able to close on
09:32:14 10 this property tomorrow?

11 And up until last night about 4:00 o'clock,
12 I've kind of wrestled with the underwriter who said, I
13 like what you've submitted. However, it's a TRO that
14 you would be getting. And if it was granted and the
09:32:29 15 abstract of judgment was removed from the preliminary
16 title report, we would still show the judgment as an
17 exception. And so there's not going to be --

18 THE COURT: I'm not surprised by that. I used
19 to work for Chicago Title --

09:32:40 20 MR. FOLEY: Yeah.

21 THE COURT: -- years ago before I moved to
22 Las Vegas.

23 MR. FOLEY: I'm not offended. I'm not the
24 least bit offended by it. I understand it.

09:32:46 25 THE COURT: Because they need certainty before

09:32:49 1 they can grant it as an exception.

2 MR. FOLEY: They do. So as much as I'd like
3 to go forward with this, and as meritorious as it is, I
4 don't want to go through that before the Court, get a
09:33:00 5 TRO that requires a bond to be posted, and then have
6 the title company say, Well, it's of no real effect.

7 But another part of my motion, your Honor --

8 THE COURT: Because they need finality. They
9 do.

09:33:09 10 MR. FOLEY: They do. They do. And it's on a
11 TRO. If that's not the final judgment of this Court,
12 things go back the way they were, and the new buyers
13 had they actually purchased, would be looking to the
14 title company --

09:33:22 15 THE COURT: Yes.

16 MR. FOLEY: -- for \$361,000. So there won't
17 be any title insurance issued.

18 Part of my motion was to set this matter for a
19 preliminary injunction hearing and to consolidate the
09:33:35 20 trial on the merits with the preliminary injunction
21 hearing. And I'd like to do that.

22 We can try this case in a half a day. It may
23 not even be that. I think it's, honestly, just a
24 submittal of briefs and perhaps some closing arguments.

09:33:51 25 All the facts --

09:33:52 1 THE COURT: Tell me if I'm wrong about this.

2 MR. FOLEY: -- are admitted.

3 THE COURT: But it's my impression at the end
4 of the day, ultimately, it's going to be a question of
09:33:59 5 law; is that correct?

6 MR. FOLEY: Entirely. And counsel submitted
7 a --

8 THE COURT: Do you agree with that?

9 MR. FOLEY: -- request for judicial notice,
09:34:04 10 which I am sorry to interrupt. But I consent to their
11 request for judicial notice of all the documents that
12 they submitted.

13 MR. HASKIN: Your Honor, at this stage I would
14 agree with that. I think that we just got served with
09:34:15 15 a complaint.

16 THE COURT: Right.

17 MR. HASKIN: We intend on filing some
18 counterclaims. At least with respect to the equitable
19 claims that are currently at issue, I do agree that
09:34:23 20 there are questions of law that could be decided by
21 this Court.

22 THE COURT: Right.

23 MR. HASKIN: I can't disagree with that. I
24 mean, I want to preserve my rights to file
09:34:29 25 counterclaims.

09:34:30 1 THE COURT: I understand that.

2 MR. HASKIN: Yeah.

3 THE COURT: The only reason I mentioned that
4 because when I reviewed the points and authorities.

09:34:34 5 That was essentially -- I guess, from a bottom line
6 perspective, that was my opinion. I said at the end of
7 the day, I mean, this is a legal issue. I realize
8 there's a judgment. There was an adjudication done. I
9 guess, it was in front of Judge Leavitt. I realize
09:34:49 10 there have been appeals there, and so on.

11 And that's why I started out saying at the
12 very beginning, this case does have a history. And so,
13 I guess, it really comes down to what would be the net
14 effect of the judgments? And, essentially, who
09:35:03 15 potentially would be affected by the judgment as a
16 matter of law? Is that --

17 MR. FOLEY: Yes, sir.

18 THE COURT: That's the case, right?

19 MR. HASKIN: Yeah. That's -- that's correct.

09:35:11 20 As it stands today with the issues before your Honor,
21 that is absolutely correct.

22 THE COURT: Okay.

23 MR. HASKIN: And, your Honor --

24 THE COURT: I thought it was a fascinating

09:35:18 25 issue because when I read it I said, This is really

09:35:22 1 interesting. I don't know the answer. I'm looking
2 forward to being fully briefed on it.

3 MR. HASKIN: Your Honor, I think -- and
4 perhaps Mr. Foley and I both are going to be in
09:35:29 5 agreement for once on this case. But I think that
6 the --

7 THE COURT: Stop there. If you're in
8 agreement, we can stop.

9 MR. HASKIN: I think further briefing is kind
09:35:38 10 of necessary.

11 THE COURT: There's no doubt. It's full -- I
12 mean, I read this. And I just thought, Wow, this is
13 really an interesting issue. I don't know the answer
14 to this.

09:35:47 15 MR. HASKIN: Yeah. You know, and I don't know
16 if we're --

17 THE COURT: Especially in light of the nature
18 of the association --

19 MR. HASKIN: Yeah.

09:35:51 20 THE COURT: -- and whatever it was.

21 MR. HASKIN: Yeah. I mean, your Honor, we
22 do -- just to clear the record a little bit because
23 we're being recorded here. I think Mr. Foley made it
24 sound a lot like in his argument that we willy-nilly
09:36:03 25 wrote some APNs on an abstract of judgment. That's not

09:36:07 1 the case. We believe we're entitled to do so.

2 THE COURT: I understand. I'm not even
3 considering what the ultimate outcome is. I just know
4 there's a question of law here. That's basically how I
09:36:15 5 looked at it. I don't know what the right answer is
6 yet because I haven't been thoroughly briefed on it.

7 MR. FOLEY: Given kind of where we've gotten,
8 I appreciate counsel's --

9 THE COURT: Do you understand that's a big
09:36:26 10 difference. I'm not rushing to judgment at all.

11 MR. HASKIN: Unless you're rushing to my
12 judgment, I don't want you to.

13 THE COURT: Exactly.

14 MR. FOLEY: With counsel's consent, the idea
09:36:34 15 of having to do this on a -- combining the preliminary
16 injunction hearing with the trial on the merits,
17 perhaps just makes more sense for me to file a motion
18 for summary judgment at this point in time. And then
19 it can be properly briefed. And we're not looking at
09:36:50 20 coming back here in two weeks to try to get this done.
21 If that suits counsel.

22 MR. HASKIN: That suits me fine, your Honor.
23 I imagine that that's probably going to -- I think
24 it's --

09:36:59 25 THE COURT: He has to answer first, right?

09:37:01 1 MR. HASKIN: Yeah.

2 THE COURT: Then you have counterclaims;
3 right?

4 MR. HASKIN: Yeah. And I think our answer
09:37:05 5 date is coming up in a couple of weeks, and we'll
6 probably file a counterclaim. And we'll probably
7 counter move for summary judgment on the same issues.

8 So it will put -- your Honor, I think it's
9 going to put the entire legal basis of the case in
09:37:18 10 front of your Honor on an expedited basis. And I think
11 that's probably the best thing to do.

12 MR. FOLEY: Yeah. Yeah. So, I mean, I'll
13 work on my summary judgment motion. And as soon as we
14 get a answer on file, we'll file that. And they can
09:37:30 15 brief, and we'll go from there.

16 THE COURT: Try to coordinate it a little bit.

17 MR. HASKIN: Sure.

18 THE COURT: Because you know he has a
19 counterclaim. Make sure that, you know, you have
09:37:38 20 enough time to thoroughly brief it. I know you will.

21 MR. FOLEY: Just for the record, I don't know
22 where we are with this other -- with this escrow that's
23 scheduled to close today. We'll try to see if the
24 buyer will extend it. But this, again, will all go
09:37:49 25 into part of our damages as far as the slander of title

09:37:52 1 cause of action is concerned.

2 And, again --

3 THE COURT: So, I guess, it depends on how I
4 rule. Then the case might not necessarily be over
09:38:02 5 completely.

6 MR. FOLEY: Correct. Correct.

7 THE COURT: Yeah. Interesting. All right.
8 Well, what do you want? What is your recommendation?
9 What are your recommendations, gentlemen? What do you
09:38:14 10 want to do?

11 MR. HASKIN: It's his motion, your Honor.

12 MR. FOLEY: You know, I suspect under the
13 circumstance I need to withdraw my motion for temporary
14 restraining order --

09:38:21 15 THE COURT: Yes.

16 MR. FOLEY: -- for the reasons stated.

17 THE COURT: Right.

18 MR. FOLEY: And we'll proceed from here as
19 indicated.

09:38:25 20 THE COURT: There's no need for a status check
21 or any action by me at this stage.

22 MR. FOLEY: No, your Honor.

23 MR. HASKIN: No, your Honor.

24 THE COURT: Okay.

09:38:30 25 MR. FOLEY: I mean, if something changed in

09:38:31 1 the meantime with the title company, which I'm not
2 going to pursue because I don't envision that
3 happening.

4 THE COURT: I don't think so.

09:38:37 5 MR. FOLEY: I might move differently. But,
6 yeah.

7 THE COURT: I mean, at the end of the day they
8 want finality. And I just know -- you know, you look
9 at it from a risk and underwriting standpoint. I don't
09:38:48 10 even know -- I think they would want an ultimate
11 decision by the Supreme Court.

12 MR. HASKIN: That's what -- yeah. I just
13 had -- I was on the other side of this -- not this
14 issue, but another case involving title to property.
09:38:59 15 And we got a lis pendens expunged. But we were still
16 before the Supreme Court because no title company would
17 insure it as long as it was up on appeal.

18 THE COURT: Yeah. They want finality.

19 MR. HASKIN: Yeah. They just wouldn't do it.

09:39:14 20 MR. FOLEY: Thank you, your Honor.

21 THE COURT: All right. Enjoy your day,
22 gentlemen.

23 MR. HASKIN: All right. Thank you.

24 (Proceedings were concluded.)

25 * * * * *

REPORTER'S CERTIFICATE

STATE OF NEVADA)

:SS

COUNTY OF CLARK)

I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER DO
HEREBY CERTIFY THAT I TOOK DOWN IN STENOGRAPHY ALL OF THE
PROCEEDINGS HAD IN THE BEFORE-ENTITLED MATTER AT THE
TIME AND PLACE INDICATED, AND THAT THEREAFTER SAID
STENOGRAPHY NOTES WERE TRANSCRIBED INTO TYPEWRITING AT
AND UNDER MY DIRECTION AND SUPERVISION AND THE
FOREGOING TRANSCRIPT CONSTITUTES A FULL, TRUE AND
ACCURATE RECORD TO THE BEST OF MY ABILITY OF THE
PROCEEDINGS HAD.

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED
MY NAME IN MY OFFICE IN THE COUNTY OF CLARK, STATE OF
NEVADA.

PEGGY ISOM, RMR, CCR 541

MR. FOLEY: [31] MR. HASKIN: [28]	A747800 [1] 1/1 ABILITY [1] 15/11 able [1] 6/9 about [3] 5/1 6/11 8/1 absolutely [1] 9/21 abstract [2] 6/15 10/25 ACCURATE [1] 15/11 action [3] 3/10 13/1 13/21 actually [1] 7/13 adjudication [1] 9/8 admitted [1] 8/2 affected [1] 9/15 again [2] 12/24 13/2 against [3] 5/2 5/3 5/11 ago [1] 6/21 agree [3] 8/8 8/14 8/19 agreement [2] 10/5 10/8 all [10] 4/18 5/1 7/25 8/11 11/10 12/24 13/7 14/21 14/23 15/5 also [1] 3/14 am [1] 8/10 another [2] 7/7 14/14 answer [6] 10/1 10/13 11/5 11/25 12/4 12/14 any [2] 7/17 13/21 anyway [1] 4/19 APNs [1] 10/25 appeal [1] 14/17 appeals [1] 9/10 APPEARANCES [1] 2/1 appearing [1] 3/12 appreciate [1] 11/8 are [8] 3/12 3/15 8/2 8/19 8/20 10/4 12/22 13/9 argument [1] 10/24 arguments [1] 7/24 ARROYO [1] 2/12 as [18] association [2]	5/18 10/18 at [15] 8/3 8/13 8/18 8/19 9/6 9/11 11/5 11/10 11/18 11/19 13/21 14/7 14/9 15/6 15/8 authorities [1] 9/4 B back [3] 3/15 7/12 11/20 basically [1] 11/4 basis [2] 12/9 12/10 be [16] because [10] 6/1 6/25 7/8 9/4 9/25 10/22 11/6 12/18 14/2 14/16 been [3] 5/2 9/10 11/6 before [7] 1/20 6/21 6/25 7/4 9/20 14/16 15/6 BEFORE-ENTITLED [1] 15/6 beginning [1] 9/12 behalf [2] 3/9 3/11 being [3] 6/2 10/2 10/23 believe [2] 4/8 11/1 best [2] 12/11 15/11 big [1] 11/9 bit [3] 6/24 10/22 12/16 bond [1] 7/5 both [1] 10/4 bottom [1] 9/5 BOULDEN [3] 1/9 3/6 3/12 Boulden's [1] 5/24 brief [2] 12/15 12/20 briefed [3] 10/2 11/6 11/19 briefing [1] 10/9 briefs [1] 7/24 but [13] 4/22 5/18 5/23 6/5 6/7 7/7 8/3 8/10 10/5 12/24 14/5 14/14 14/15 buyer [1] 12/24 buyers [1] 7/12 C called [1] 5/17	can [6] 3/25 7/1 7/22 10/8 11/19 12/14 can't [2] 6/1 8/23 case [13] 1/1 3/19 4/23 5/4 5/21 7/22 9/12 9/18 10/5 11/1 12/9 13/4 14/14 cause [1] 13/1 CC [1] 5/18 CCR [2] 1/25 15/17 certainty [1] 6/25 CERTIFICATE [1] 15/1 CERTIFIED [1] 15/4 CERTIFY [1] 15/5 changed [1] 13/25 check [1] 13/20 Chicago [1] 6/19 circumstance [1] 13/13 claims [1] 8/19 CLARK [3] 1/7 15/3 15/14 clear [1] 10/22 client [1] 5/24 clients [1] 5/4 clients' [2] 5/3 5/7 close [3] 5/25 6/9 12/23 closing [1] 7/24 combining [1] 11/15 comes [1] 9/13 coming [2] 11/20 12/5 committee [1] 5/19 company [5] 6/8 7/6 7/14 14/1 14/16 complaint [1] 8/15 completely [1] 13/5 concerned [2] 5/9 13/1 concluded [1] 14/24 consent [2] 8/10 11/14 considering [1] 11/3 consolidate [1] 7/19 CONSTITUTES [1] 15/10 continue [1] 4/6 continued [1] 4/9	coordinate [1] 12/16 corporation [1] 5/17 correct [5] 8/5 9/19 9/21 13/6 13/6 cost [1] 3/22 could [1] 8/20 counsel [2] 8/6 11/21 counsel's [2] 11/8 11/14 counter [1] 12/7 counterclaim [2] 12/6 12/19 counterclaims [3] 8/18 8/25 12/2 county [4] 1/7 5/8 15/3 15/14 couple [1] 12/5 course [2] 5/24 6/1 COURT [7] 1/6 1/21 7/4 7/11 8/21 14/11 14/16 courtroom [1] 3/15 CROSSING [1] 2/12 currently [1] 8/19 D damages [1] 12/25 DAN [2] 2/6 3/11 DANIEL [1] 2/3 date [1] 12/5 DATED [1] 1/23 day [5] 7/22 8/4 9/7 14/7 14/21 decided [1] 8/20 decision [1] 14/11 declaratory [1] 5/22 defendant [3] 1/13 2/9 4/5 defendants [1] 3/9 depends [1] 13/3 DEPT [1] 1/3 did [1] 5/5 difference [1] 11/10 differently [1] 14/5 DIRECTION [1] 15/9 disagree [1] 8/23 DISTRICT [2] 1/6 1/21 do [23]
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(1) MR. FOLEY: - do

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1 CASE NO. A747800

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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MARJORIE B. BOULDEN TRUST,

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Plaintiff,

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vs.

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LYTLE TRUST,

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Defendant.

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REPORTER'S TRANSCRIPT

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OF

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MOTION FOR PARTIAL SUMMARY JUDGMENT; DEFENDANTS TRUDI
LEE LYTLE, JOHN ALLEN LYTLE, THE LYTLE TRUST OPPOSITION
TO MOTION FOR SUMMARY JUDGMENT AND COUNTERMOTION FOR
SUMMARY JUDGMENT

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BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

20

DISTRICT COURT JUDGE

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DATED THURSDAY, APRIL 13, 2017

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REPORTED BY: PEGGY ISOM, RMR, NV CCR #541

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1 LAS VEGAS, NEVADA, THURSDAY, APRIL 13, 2017

2 9:07 A.M.

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

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5
6 THE COURT: Okay. We're going to move on to
7 the contested calendar. Next up page 12. Marjorie B.
8 Boulden Trust versus the Lytle Trust.

9 MR. HASKIN: Yes.

09:07:08 10 THE COURT: All right. Good morning.

11 MR. FOLEY: Good morning, your Honor.

12 THE COURT: Let's go ahead and note our
13 appearances for the record.

14 MR. FOLEY: Dan Foley on behalf of the
09:07:20 15 plaintiffs.

16 MR. HASKIN: Good morning, your Honor.
17 Richard Haskin on behalf of the Lytle Trust.

18 THE COURT: Okay. It's my understanding this
19 is the motion for partial summary judgment. And we had
09:07:32 20 a countermotion, is that correct?

21 MR. FOLEY: Yes, your Honor.

22 MR. HASKIN: Correct, your Honor.

23 THE COURT: Okay. Mr. Foley, sir.

24 MR. FOLEY: Yes, your Honor. We were here a
09:07:38 25 couple of months ago on a TRO. And I'm -- I remember

09:07:41 1 the Court familiarized itself pretty well with the
2 case.

3 We don't have any disputed facts.

4 THE COURT: Okay.

09:07:52 5 MR. FOLEY: And basically, what the issue is
6 here is that judgments have been recorded against my
7 clients' property in a judgment that was obtained in a
8 case that my clients weren't parties to.

9 They didn't hire an attorney to represent
09:08:06 10 them. And the judgment is against the homeowners
11 association.

12 The theory --

13 THE COURT: And it's -- I mean, I wondered was
14 there a homeowners association; right? I mean ...

09:08:18 15 MR. FOLEY: And it's a good question because
16 it really isn't. There's a committee.

17 THE COURT: Right.

18 MR. FOLEY: And so a lot of the -- what the
19 problem that has arisen here really goes back to this
09:08:29 20 underlying case and how it was pled.

21 THE COURT: Right.

22 MR. FOLEY: And the parties in that case
23 pursued the case extensively even up to the Supreme
24 Court and back, but just with this committee.

09:08:42 25 So the Lytles have recorded this judgment

09:08:51 1 presumably under NRS 116.3117, which allows a judgment
2 against a homeowners association to attach to the real
3 property of the members of the association.

4 However, what the Lytles have done, and what
09:09:08 5 the entire support really for our case is, is based on
6 the summary judgment that the Lytles obtained in the
7 underlying case. Which specific, sought declaratory
8 relief from the Court and were granted declaratory
9 relief, which provided, you know, a number of things
09:09:28 10 including the fact that this is not a homeowners
11 association that's governed by NRS 116.

12 THE COURT: Right.

13 MR. FOLEY: It's a limited purpose
14 association. That is what the Lytles sought. That is
09:09:45 15 what they obtained. Now, they want to come back and
16 say exactly the opposite. And just -- I think my reply
17 brief, your Honor, really summarizes it perhaps best
18 and cites to all of the different substantive
19 provisions in the summary judgment that provide most
09:10:07 20 significantly -- provide everything most significantly.

21 The CC&Rs that were drafted specifically
22 provide that homeowners don't have a right to either --
23 to sue either -- to sue the association nor do they
24 have a right to rely on the association and what is a
09:10:26 25 committee to enforce the CC&Rs.

09:10:28 1 In fact, the CC&Rs specifically state if one
2 homeowner thinks another homeowner has violated it,
3 then it's an individual cause of action that they have
4 against that homeowner. So my clients could have been
09:10:43 5 sued. They were not.

6 As your Honor pointed out, the summary
7 judgment motion -- summary judgment order specifically
8 is right. This is not an owners' association. It says
9 that this is simply a committee with extremely limited
09:10:59 10 powers which include, you know, some landscaping and
11 some issues with the front gate and some perimeter
12 walls. And that's it.

13 And we've cited the Court to NRS 116.1201
14 which provides that with respect to a limited purpose
09:11:19 15 association, which the Lytles obtained declaratory
16 relief saying that's what this is, that the rest of the
17 116 is inapplicable.

18 THE COURT: I understand.

19 MR. FOLEY: So based on that, your Honor, we'd
09:11:29 20 ask for summary judgment ordering the abstracts of
21 judgment that have been recorded to be expunged. The
22 only reason it's not a motion for full summary judgment
23 is we need to come back in and present to the Court
24 evidence of what our damages are for clouding the title
09:11:47 25 and slandering the title.

09:11:49 1 Otherwise, if your Honor has any questions,
2 I'd be happy to address them.

3 THE COURT: I don't.

4 MR. FOLEY: Thank you, your Honor.

09:11:54 5 MR. HASKIN: Good morning, your Honor.

6 Addressing first some of the points that were raised in
7 the oral argument, I think that we have to -- and I
8 don't want to go back over all the history, but the
9 history is that the Lytles sued the association because
09:12:11 10 the association passed amended CC&Rs that, for right or
11 wrong, at one point in time there was a full-blown
12 homeowners association pursuant to the amended CC&Rs,
13 which were recorded by the board of directors.

14 THE COURT: But, I mean, was it truly a
09:12:25 15 full-blown association? Because it's my understanding
16 that they never got unanimous agreement by the
17 association -- I'm sorry by the homeowners that would
18 agree to changing the existing CC&Rs, adopting a
19 declaration, and agreeing to becoming a Chapter 116
09:12:49 20 homeowners association.

21 And the reason why I say that, I took a look.
22 And I read all the exhibits for the record. And I went
23 back, and I looked at the -- I think it's Exhibit 4.
24 I'm sorry. Let me get the correct number. It was the
09:13:03 25 exhibit where the, I guess, two parties refused to sign

09:13:11 1 off on the amendment to the declarations of covenants
2 conditions, and restrictions back in 2007. And, I
3 guess, one would be the owner of the property at 1830
4 Rosemere Court and, I guess, at 1960 Rosemere Court.

09:13:30 5 So I'm looking at that. And it was -- there
6 was an attempt to have a Chapter 116 homeowners
7 association. But it appears to me that attempt was
8 never realized.

9 MR. HASKIN: Your Honor, first of all, your
09:13:54 10 recognition of the facts is good. It's perfect.

11 THE COURT: Right.

12 MR. HASKIN: I wish you were the judge in our
13 first action. It would have ended a lot sooner. But
14 the fact is in 2007 they rammed these amended CC&Rs
09:14:06 15 down the throat of every single homeowner in the
16 association.

17 THE COURT: I understand that. I do.

18 MR. HASKIN: But, your Honor, it goes a little
19 further than that. It's one thing to say, you're
09:14:16 20 right, your Honor. They were not a homeowners
21 association. They weren't. And it took several years
22 up to 2012 for this Court to recognize the fact that
23 they weren't a homeowners association, and that action
24 was brought by the Lytles.

09:14:28 25 But between 2007 and 2012, whether anybody

09:14:32 1 liked it or not, this was a full-blown homeowners
2 association enacted as such --

3 THE COURT: Well --

4 MR. HASKIN: -- in every possible way.

09:14:38 5 THE COURT: Wait a second here. But if it was
6 a full-blown homeowners association, then the trial
7 court in the companion matter would have entered
8 declaratory relief, set forth the fact that it was a
9 full-blown homeowners association. And they would have
09:14:53 10 been affirmed on that issue on the appeal before the
11 Nevada Supreme Court, right?

12 Because let's face it, they can act -- just
13 because you act like you're a homeowners association
14 pursuant to the statute, doesn't mean you're one;
09:15:06 15 right?

16 MR. HASKIN: Correct, your Honor. Except in
17 this circumstance there is a sword and shield argument
18 to be made. And the fact is they did act like a
19 full-blown homeowners association. And just by way of
09:15:17 20 example --

21 THE COURT: I'll give you a question. If I go
22 out and act like a corporation, does that mean I'm a
23 corporation? Right? I mean, really. I can go out and
24 say, Look. I can go down and get a charter. Don't
09:15:29 25 register with the Secretary of State. I can have

09:15:31 1 letterhead saying Timothy Williams, PC, Professional
2 Corporation. But unless I go through the steps
3 mandated as a matter of law, I'm not a professional
4 corporation, right? I can hold myself out as one. And
09:15:45 5 as a result, I don't get the benefits of being a
6 professional corporation.

7 MR. HASKIN: But in this case they did, and
8 that's the distinguishing characteristic.

9 THE COURT: How do they do --

09:15:54 10 MR. HASKIN: Because they filed a counter suit
11 as -- and Mr. Foley was correct. He raised the point.
12 The limited purpose association is not allowed to bring
13 an action against a homeowner. Under NAC 116.090,
14 that's, in fact, one of the definitions of a limited
09:16:09 15 purpose association. However, in this case not once,
16 but twice this homeowners association between 2007 and
17 2012 maintained an action against the Lytles. And I
18 agree with your Honor. If --

19 THE COURT: But if they -- I mean, I could sue
09:16:23 20 on behalf of -- I could file a lawsuit -- I'm just
21 using this as a hypothetical -- that Timothy C.
22 Williams Professional Corporation, right, but unless
23 it's registered with the Secretary of State of the
24 State of Nevada and all of the appropriate legislative
09:16:37 25 mandates that followed, would that be a proper lawsuit;

09:16:41 1 right?

2 MR. HASKIN: It would be an improper lawsuit.

3 THE COURT: Exactly.

4 MR. HASKIN: But, your Honor, when it was --

09:16:46 5 but it was finally dismissed and adjudicated in favor
6 the other party. You would not be able to proclaim all
7 of the benefits but none of the burdens that came with
8 you pretending to be a corporation. And that's exactly
9 what is happening here. But I want --

09:17:02 10 THE COURT: No. I would get no benefits. I
11 would be probably personally responsible if they
12 pierced the corporation veil and all those wonderful
13 things because I wouldn't have any protection.

14 MR. HASKIN: But, your Honor, let's take your
09:17:12 15 hypothetical. Let's pretend pursuit to the corporate
16 charter, whether it's 82 Or 83, whatever it may be,
17 that pursuant to that corporate charter there as an
18 attorney fee provision inside the statute, and the
19 statute provided for attorney's fees, and you sued as
09:17:26 20 the corporation, would you have the benefits of the
21 corporation?

22 THE COURT: No. Do we have that here?

23 MR. HASKIN: We did in this case.

24 THE COURT: Was --

09:17:33 25 MR. HASKIN: Michelle Leavitt, who was the

09:17:33 1 judge in this case in our attorney fee award, ordered
2 that they are not a full-blown homeowners association;
3 however, they sued pursuant to there. Therefore, the
4 statute that applies attorney's fees to full-blown
09:17:44 5 homeowners associations under 116 and pursuant to the
6 amended CC&Rs, which were declared revoked, they don't
7 get to use that as a sword and a shield.

8 THE COURT: But, I mean --

9 MR. HASKIN: And that's exactly the case we
09:17:57 10 had here.

11 THE COURT: But you can't have it -- you can't
12 be -- you can't have it both ways.

13 MR. HASKIN: I agree.

14 THE COURT: Really and truly. Because, I
09:18:03 15 mean, I looked at one of the provisions you relied upon
16 in the declaration of covenants, conditions, and
17 restrictions. And it's my understanding you
18 specifically -- and that's on -- that's Exhibit 2 to
19 the motion for partial summary judgment, page 1. And
09:18:20 20 it would be paragraph -- I guess, the first paragraph
21 before paragraph 1.

22 And I read that specifically when it talked
23 about the breach or violation of the CC&Rs or any
24 reentry by reason of such breach or any lien

09:18:37 25 established hereinunder shall not defeat or render

09:18:43 1 invalid or modify in any way the lien of any mortgage
2 or deed of trust made in good faith, and so on.

3 I read that. That's simply a mortgage savings
4 clause pursuant to the CC&Rs. That's what that is.

09:18:55 5 MR. HASKIN: You're right, your Honor. And
6 that's -- it was just cited for the belief -- it was
7 cited for the mere fact that the original CC&Rs
8 contemplated that liens could be placed. It is a
9 mortgage savings clause. No doubt.

09:19:06 10 THE COURT: That's all it is, right?

11 MR. HASKIN: But it says in case other liens
12 are placed. Because the plaintiffs in this case have
13 an argument that there's no contemplation a lien can
14 ever be placed on the property.

09:19:15 15 THE COURT: You know what's fascinating about
16 this, I thought about this in light of the *SFR* case,
17 potentially this mortgage savings clause would be
18 effective.

19 MR. HASKIN: I saw the same thing. It's
09:19:25 20 actually not fully drafted.

21 THE COURT: I mean, but that would be
22 effective because it's not controlled by Chapter 116.

23 MR. HASKIN: Correct. Well, your Honor --

24 THE COURT: Right?

09:19:33 25 MR. HASKIN: -- I disagree with that.

09:19:35 1 THE COURT: No. But SFR said you can't have
2 everything contrary to Chapter 116. But this is not a
3 Chapter 116 HOA.

4 MR. HASKIN: But it's still a Chapter 116 LPA.

09:19:44 5 THE COURT: Yeah.

6 MR. HASKIN: And I think we have to go there
7 next, your Honor. Because with respect to the other
8 argument we're making, we're really making a common
9 sense argument that applies to all homeowners

09:19:54 10 associations, whether it's a limited purpose
11 association or not.

12 A homeowners association consists of the units
13 within the homeowners association, whether that's an
14 LPA or a full-blown unit owners association under
09:20:06 15 Chapter 116. And LPA is a Chapter 116 created device.

16 THE COURT: I got a question for you. When it
17 comes to the enforcement to the assessment of the
18 attorney's fees pursuant to the controlling declaration
19 of covenants, conditions, and restrictions, which

09:20:30 20 appear to be executed back in January of 1994, what
21 provision -- and that's controlling in this case,
22 that's the declaration -- what provision of the
23 homeowners association would be the basis for the
24 assessment of attorney's fees and costs against the

09:20:52 25 Boulden Trust, Lamothe --

09:20:56 1 MR. HASKIN: Sure.

2 THE COURT: -- and their trust?

3 MR. HASKIN: Okay. Your Honor, and I'll go
4 there next. This is Exhibit E to the request for

09:21:03 5 judicial notice that we filed. The attorney's fees
6 were awarded to -- pursuant to three separate

7 provisions. First was pursuant to the original CC&Rs.

8 This is Judge Leavitt's order, which was challenged on

9 appeal and it was affirmed by the Supreme Court. And

09:21:16 10 what they said was that attorney's fees under

11 paragraph 25 apply.

12 THE COURT: Wait, wait. But listen to me.

13 Yes, attorney's fees were assessed, but I'm talking

14 about specifically assessing attorney's fees to, No. 1,

09:21:28 15 a nonparty to the lawsuit. Because I looked at the

16 complaint, and the plaintiffs in this case were never a

17 party to the lawsuit, right?

18 MR. HASKIN: But --

19 THE COURT: They were never -- I mean, were

09:21:39 20 they named as a plaintiff and/or a defendant in the

21 lawsuit?

22 MR. HASKIN: Your Honor, can I address that

23 point?

24 THE COURT: Absolutely.

09:21:45 25 MR. HASKIN: While we're on that? Okay.

09:21:45 1 That's a misnomer. Under the D.R. Horton case versus
2 Eighth Judicial Court, the homeowners -- the unit
3 owners were not parties to that lawsuit ever, at any
4 point in time. And under the D.R. Horton case, the
09:21:58 5 Supreme Court of Nevada said that the units -- the
6 units within an association are part of the association
7 and subject to an order against the association.
8 THE COURT: But wait a second.
9 MR. HASKIN: That's what we have here.
09:22:10 10 THE COURT: I got a question for you. And I'm
11 quite sure I know the answer to this. But in the
12 D.R. Horton case, I would anticipate that the claim was
13 for common areas; right?
14 MR. HASKIN: It was for common, and it was for
09:22:21 15 units. That's not --
16 THE COURT: No, no, no, no.
17 MR. HASKIN: It's for both, your Honor.
18 THE COURT: If you take a look at the Nevada
19 Supreme Court as far as unit owners, the HOA is very
09:22:29 20 limited in being able to file a claim on behalf of unit
21 owners.
22 MR. HASKIN: Well, your Honor -- okay. Let's
23 go back a second.
24 THE COURT: I'm not being real clear.
09:22:38 25 MR. HASKIN: No. I understand. And I'm

09:22:39 1 trying to answer real clear.

2 THE COURT: We do construction defect in this
3 department.

4 MR. HASKIN: I understand. But then that's

09:22:43 5 where the D.R. Horton case is. That's why you have to
6 do --

7 THE COURT: I know that. That's why I'm
8 bringing it up because it's my recollection the
9 D.R. Horton -- it's a different scenario. Say,

09:22:51 10 hypothetically, in this case the attorney's fees were
11 awarded specifically regarding -- or there was an issue
12 as it related to the gate, and the wall, and all those
13 things that were specifically set forth in the CC&Rs
14 that would be the specific obligations of the property
09:23:11 15 owners committee -- right? -- that's contained in the
16 CC&Rs. I mean, I read that. I mean, I read all the
17 documents. I always do.

18 So I'm trying to figure out what -- because I
19 think this is important to point out. There's a
09:23:24 20 difference between awarding attorney's fees first and
21 foremost versus assessment of attorney's fees against
22 nonparties to the action.

23 MR. HASKIN: Completely different. But let's
24 go with back and use the hypothetical. And let's just

09:23:37 25 assume. And we'll go backwards on this that this was a

09:23:40 1 full-blown homeowners association. So we can all agree
2 that 116.3117 applies. We can also agree that
3 attorney's fees are included within a judgment. Okay,
4 116.3117 contemplates that a unit owner is not going to
09:23:56 5 be a party to a judgment. That's what 116.3117 does.
6 It knows that a homeowner is not going to be a party to
7 a judgment. And what it says is: If you get a
8 judgment against the association, you can record that
9 judgment against each and every unit within the
09:24:12 10 association even though they weren't individually named
11 as parties. That's what 3117 says. It contemplates
12 that exact scenario.

13 THE COURT: But this is not one of those types
14 of associations, right?

09:24:25 15 MR. HASKIN: True. But it's a limit --

16 THE COURT: Okay. I mean --

17 MR. HASKIN: The bulk -- your Honor, you got
18 to let me finish.

19 (Court Reporter interrupts)
09:24:28 20

21 THE COURT: It's like a little bit pregnant.
22 It's not one of those associations.

23 MR. HASKIN: I was answering your
24 hypothetical. We keep going backwards.

09:24:37 25 Why does 3117 say that? It says that because

09:24:41 1 within the definitions provided under 3116, a unit is
2 contained in the association. 3117 merely states the
3 obvious. If I have a judgment against the association,
4 I have a judgment against all property within the
09:24:57 5 association. Whether it's an LPA or a unit owners
6 association, it doesn't matter. I have a judgment
7 against all property owned by the association. A unit
8 is owned by the association pursuant to both the
9 recitals in -- the original CC&Rs say that.

09:25:13 10 THE COURT: Show me where a unit is owned by
11 the association in here.

12 MR. HASKIN: The original CC&Rs state that
13 this association includes Lots 1 through 9 of Rosemere
14 Court. There are nine lots in this community.

09:25:26 15 THE COURT: But the unit -- but they don't own
16 it.

17 MR. HASKIN: The association --

18 THE COURT: I mean, when I see -- the only
19 time you really see any issues, and even they then
09:25:36 20 don't own it, the units. I mean, we're not talking
21 about a co-op, right? We're talking about a --

22 MR. HASKIN: Correct.

23 THE COURT: We're talking about -- here,
24 specifically, this is a limited purpose association.

09:25:47 25 Where does it say that the association owns the

09:25:52 1 properties fee simple?

2 MR. HASKIN: Okay, your Honor. The two
3 provisions are the original CC&Rs.

4 THE COURT: I have them right here. Just tell

09:25:59 5 me where to look. What page?

6 MR. HASKIN: It's the recitals, page 1.

7 THE COURT: Okay.

8 MR. HASKIN: It states: If the Baughman,
9 Turner Pension Trust, hereinafter referred to as the

09:26:11 10 subdivider, owner in fee simple of the land situated in
11 the City of Las Vegas, State of Nevada describes as
12 follows: Lots --

13 THE COURT: Which paragraph?

14 MR. HASKIN: I'm sorry. It's the recitals,

09:26:20 15 your Honor. The very first paragraph in the indent
16 right underneath it on page 1 of the original CC&Rs.

17 THE COURT: Is that the declarations,
18 covenants, and restrictions?

19 MR. HASKIN: Yes, your Honor.

09:26:28 20 THE COURT: Okay. All right. I got you.

21 MR. HASKIN: Okay. So the association is
22 defined as including lots 1 through 9. That's
23 consistent with Chapter 116. 116.021, and these are
24 just definitions. This isn't a unit owners
09:26:43 25 association. This is LPA. This is definitions.

09:26:45 1 THE COURT: All that's defining is who the
2 declarant is, right?

3 MR. HASKIN: Well, yeah. But it also defines
4 what the association is.

09:26:50 5 THE COURT: But wait, wait, wait, wait.
6 Doesn't that declare who -- that sets forth who the
7 declarant is. I'm reading here. It says the
8 declaration and covenants, conditions, and restrictions
9 made on the 4th day of January, 1994, by the Baughman
09:27:05 10 and Turner Trust, hereinunder referred to as
11 subdivider, owner in fee simple of the land situated in
12 Las Vegas, County of Clark, State of Nevada described
13 as follows. And they're the declarants, and they
14 described the lots. And so they're the ones
09:27:22 15 subdividing the property.

16 MR. HASKIN: And this is going to be all
17 included within this subdivision.

18 THE COURT: Right, but that --

19 MR. HASKIN: Right.

09:27:28 20 THE COURT: But then they sell them off --

21 MR. HASKIN: Well, your Honor --

22 THE COURT: -- each lot.

23 MR. HASKIN: -- if I continue.

24 THE COURT: Show me.

09:27:32 25 MR. HASKIN: I don't believe that's true. If

09:27:33 1 I can continue. You have to read it in conjunction
2 with Chapter 116 in the provisions --

3 THE COURT: Tell me --

4 MR. HASKIN: -- that do apply to LPS.

09:27:40 5 THE COURT: Tell me where it says. Because at
6 the end of the day whatever ownership rights any
7 association would have -- and I've read enough CC&Rs.
8 For example, they'll tell you what the HOA owns.
9 They'll set forth the common areas that are owned and
09:27:54 10 controlled and maintained by the HOA. Very common in
11 CC&Rs, you know.

12 And they'll -- they'll discuss specifically
13 what the burdens are as far as the unit owners are
14 concerned. But go ahead and tell me where does it say
09:28:09 15 that the HOA in this -- under these declarations of
16 covenants, conditions, and restrictions own the
17 property.

18 MR. HASKIN: Well, that -- that by virtue -- I
19 guess, we're in disagreement there, your Honor.

09:28:20 20 THE COURT: No, no. I'm asking.

21 MR. HASKIN: And I'm answering.

22 THE COURT: I'm listening.

23 MR. HASKIN: Because --

24 THE COURT: Just point to a provision I can
09:28:25 25 look at, and maybe I'll agree with you.

09:28:27 1 MR. HASKIN: Okay. Well, I pointed that one,
2 but I'm reading in conjunction with NRS 116.021.

3 THE COURT: So we agree that there's no
4 provision under the CC&Rs that sets forth ownership by
09:28:35 5 the HOA of the units?

6 MR. HASKIN: No. I don't agree with that,
7 your Honor.

8 THE COURT: Then -- where is it then?

9 MR. HASKIN: Right here, your Honor. It
09:28:43 10 describes the declaration of CC&Rs.

11 THE COURT: Okay.

12 MR. HASKIN: Applies to these lots 1 through
13 9.

14 THE COURT: Okay. So --

09:28:48 15 MR. HASKIN: This is the association.

16 THE COURT: So for the record, it's your
17 position that the simple introductory language as it
18 relates to the declaration and the subdivision of the
19 property stands for the proposition that the HOA owns
09:29:00 20 the property.

21 MR. HASKIN: It says that the HOA consists of
22 this property. And then if you go down to paragraph 21
23 that establishes this property owners --

24 THE COURT: Okay. Let me look at that with
09:29:10 25 you.

09:29:10 1 MR. HASKIN: Sure.

2 THE COURT: All right. I'm with you.

3 MR. HASKIN: Okay. A property owners

4 committee shall be established by all owners of lots

09:29:17 5 within the subdivision. What's the subdivision? Lots

6 1 through 9. And it talks about the power of the unit

7 owners association, which is what the Lytles fought to

8 enforce all along.

9 Okay. So it's my reading of this that the

09:29:32 10 association consists of lots 1 through 9 of Rosemere

11 Court, and the owners committee, which is created, is

12 created to enforce the provisions of these original

13 CC&Rs with respect to those subdivisions.

14 THE COURT: But I notice you didn't say that

09:29:44 15 the association owned lots 1 through 9.

16 MR. HASKIN: Well, then I go to Chapter 116,

17 your Honor.

18 THE COURT: Okay. So you agree it's not in

19 the CC&Rs.

09:29:50 20 MR. HASKIN: Well, if you read it -- your

21 Honor, I've read a lot of CC&Rs, too. I don't know any

22 CC&Rs that say, We own your house. They don't.

23 THE COURT: No, no. They say specifically

24 what's owned by the HOA and they'll say specifically

09:30:04 25 what's owned by the unit owners. Like in condominiums,

09:30:07 1 for an example, they'll have the interior walls that
2 are owned by the unit owners. I mean, let's not
3 quibble here. And let's not be facetious. I know what
4 they say.

09:30:15 5 MR. HASKIN: No. And I'm not being facetious,
6 your Honor. I -- it's -- I think we're getting hung up
7 on the word "ownership". Because it's not whether it's
8 ownership or not because it's obvious that a homeowners
9 association doesn't own your house. However, your
09:30:28 10 house is part of the association, and that's what
11 subjects it to, frankly, the judgments under 3117.

12 THE COURT: All right.

13 MR. HASKIN: And, again, it's just a reading
14 of, in my view, of the definitions. And if we go to
09:30:42 15 NRS 116.021, common-interest community is all real
16 estate described in the declaration with respect to
17 which a person, by virtue of one's ownership of a unit,
18 is obligated to pay for.

19 Okay. So common-interest community includes
09:30:58 20 all the real estate -- all of the real estate described
21 in the declaration.

22 So if I go back to the declaration, we're
23 talking about lots 1 through 9. That's the
24 association. It includes all of the real estate
09:31:10 25 described in the declaration. That's lots 1 through 9.

09:31:21 1 THE COURT: So are you taking a position that
2 the CC&Rs that have been prepared in this case meet the
3 requirement of a common-interest community under
4 NRS 116.021?

09:31:33 5 MR. HASKIN: No. As an LPA, a limited purpose
6 association under Chapter 116.

7 THE COURT: Okay.

8 MR. HASKIN: I think there's this -- Chapter
9 116 creates a unit owners association. It also does
09:31:45 10 create a limited purpose association. It also creates
11 a small planned community. There are several different
12 aspects to 116.

13 It's -- and going further, your Honor. Under
14 116.093, unit is defined as the physical portion of the
09:32:03 15 common-interest community designated for separate
16 ownership or occupancy. Again, it defines a unit as a
17 physical portion of the common-interest community.

18 Your Honor, it's not my contention that by
19 looking at one document you could fully define this
09:32:19 20 case. It's my contention you have to read the original
21 CC&Rs in conjunction with the definitions under 116.
22 And also even if you -- even if you say 116.3117 does
23 not apply, it's our belief that 3117 is merely a
24 recitation of the obvious, that a unit owner -- that a
09:32:44 25 unit is contained within the association. I have a

09:32:45 1 judgment against the association. I can record the
2 judgment against all real estate described in the
3 declaration.

4 THE COURT: What application --

09:32:53 5 MR. HASKIN: And that's lots 1 through 9.

6 THE COURT: What application does, let me see
7 here, does NRS 11.1201 (sic) have in this case?

8 MR. HASKIN: 11.1201? Is that the limited
9 purpose association statute, your Honor?

09:33:14 10 THE COURT: Yes.

11 MR. HASKIN: I'm pulling it up right now, your
12 Honor.

13 THE COURT: Because if you look at 11.1201,
14 paragraph 2 it says, This chapter does not apply to a
09:33:34 15 limited purpose association.

16 MR. FOLEY: You've been saying 11. It's 116.

17 THE COURT: I'm sorry, 116.

18 MR. HASKIN: Yeah.

19 THE COURT: 116.1201. I was just -- I don't
09:33:45 20 know why I said 11, but it's 116.

21 MR. FOLEY: Just thought you jumped to a
22 statute of limitations.

23 THE COURT: No.

24 MR. HASKIN: That's a whole different problem.

09:33:53 25 THE COURT: Yeah. But, no. I mean, I'm

09:33:54 1 looking here. It says, it's talking specifically about
2 the applicability regulations. And it's my
3 understanding when it comes to issues as to statutory
4 construction, you can look at the title to determine
09:34:09 5 the intent of the statute.

6 And so it says here it doesn't apply to a
7 limited purpose association. So what do I do with
8 that? Why should I apply the specific provision you
9 want me to apply in this case?

09:34:24 10 MR. HASKIN: Well, your Honor, I think there's
11 no disagreement by the parties that 3117, which is a
12 judgment provision, does not apply. I think that's --
13 that's -- you know, our argument is that it applies by
14 virtue of the sword and shield doctrine. And we've
09:34:38 15 already discussed that, your Honor, so I won't
16 elaborate any further.

17 But with respect to the unit owners
18 association, I'm merely reading the original CC&Rs,
19 your Honor, in conjunction with the definitions set
09:34:50 20 forth in 116. I'm not going to argue that we're not a
21 limited purpose association. We are. And a limited
22 purpose association is subject to very few provisions
23 of Chapter 116. But it is still a Chapter 116-created
24 entity. It exists by virtue of 116. It just simply
09:35:07 25 limits the provisions such as budgets, and board

09:35:14 1 voting, and those sorts of things. But it's still a
2 Chapter 116 entity.

3 And again, your Honor, I think my argument --

4 THE COURT: So what provisions, if any, should
09:35:22 5 I apply to support your position if the statute stands
6 for the proposition that Chapter 116 of the provisions
7 don't apply to a limited purpose association?

8 MR. HASKIN: I think the definitions, your
9 Honor, in conjunction with the original CC&Rs that
09:35:41 10 define what the -- what the association consists of. I
11 think if you read those two provisions in conjunction
12 with one another, you have -- you have an association
13 that consists of the lots. It consists of all of the
14 property within the association.

09:35:57 15 The benefit here, your Honor, for Chapter
16 116.3117 and why 3117 was created was ordinarily you
17 would have joint and several liability against
18 homeowners. 3117 creates a several liability rather
19 than joint and several liability. In other words, the
09:36:16 20 provision was meant to benefit homeowners. It
21 wasn't -- it was meant to, Hey, ordinarily, you would
22 be subject to joint and several liability, but because
23 you're in a unit owners association, we're going to
24 create this statutory mechanism by which it's only
09:36:30 25 going to be several liability. So if you have nine

09:36:32 1 lots, you're subject to 1/9th of the judgment.

2 It limits the -- it limits the liability of
3 each and every unit owner. But it doesn't change the
4 fact, your Honor, that our reading under the original

09:36:45 5 CC&Rs in conjunction with the definition section of

6 Chapter 116 is that the unit -- that the

7 common-interest community -- this is a limited purpose

8 common-interest community. Still a common-interest

9 community. There's no argument a limited purpose

09:37:01 10 association isn't a common-interest community. It is.

11 It's just not a unit owners committee by definition.

12 THE COURT: I got another question for you.

13 MR. HASKIN: Sure.

14 THE COURT: I took -- I read Chapter -- I'm

09:37:11 15 sorry, paragraph 25 to the CC&Rs as it relates to

16 attorney's fees. What impact does this have in a case?

17 Because the provision pursuant to the CC&Rs sets forth

18 as follows:

19 Attorney's fees: In any legal or equitable

09:37:29 20 proceeding for the enforcement of or to

21 restrain the violations of the declaration of

22 covenants, conditions, and restrictions, or any

23 provisions thereof, the losing party or parties

24 shall pay by such amount as may be affixed by

09:37:51 25 the Court in such proceedings.

09:37:53 1 And the reason why I bring that up, it talks
2 about -- it talks about two things. No. 1, any legal
3 or equitable proceeding for enforcement of the -- for
4 violations or restraint of the CC&Rs. It appeared to
09:38:13 5 me the prior case didn't involve specifically
6 enforcement of these CC&Rs, but a new proposed CC&Rs
7 which didn't meet the mandate under Chapter 116.
8 Number one.

9 No. 2, the CC&Rs that controlled and have
09:38:36 10 always controlled this case, specifically talks about
11 the assessment of attorney's fees pursuant to the CC&Rs
12 as to losing party or parties.

13 And so in order to enforce the CC&Rs as it
14 relates to attorney's fees in this case, I guess, two
09:38:55 15 things have to be addressed:

16 No. 1, were the Bouldens and Lamothes parties?

17 And No. 2, were they losing parties pursuant
18 to the CC&Rs?

19 What do I do with that?

09:39:10 20 MR. HASKIN: Well, your Honor --

21 THE COURT: Do I just ignore it? Or what?

22 MR. HASKIN: Are we talking about the original
23 action, your Honor? I apologize.

24 THE COURT: I'm not talking about -- I'm

09:39:17 25 reading the CC&Rs that would be on the -- pursuant to

09:39:21 1 the limited purpose association that apparently is
2 still in force and affect after years of litigation.
3 And that would be the basis for the attorney's fees
4 being awarded in any case as to any member of the
09:39:38 5 limited purpose association.

6 And it appears to me that the CC&Rs are
7 particular as to upon what circumstances attorney's
8 fees and costs can be awarded. And it has to be,
9 No. 1, you have to be -- it says here, have to be a
09:39:58 10 losing party, basically. That's what it says.

11 So this provision -- can't we say -- is this
12 true this provision wouldn't be the basis for the award
13 of attorney's fees against the Bouldens and the
14 Lamothes because they weren't losing parties to any
09:40:17 15 litigation, right? Or should I just ignore that?

16 MR. HASKIN: Your Honor, the -- I'm a little
17 perplexed how to address it. Maybe your Honor could
18 clarify. But the prior Court's ruling in this case did
19 enforce the attorney's fees provision pursuant to,
09:40:38 20 again, three provisions. That the provision Chapter
21 116, the attorney's fees provision pursuant to Chapter
22 116, and the amended CC&Rs.

23 THE COURT: Well, I'll clarify it for you. I
24 understand that. But the award of attorney's fees, I
09:40:53 25 mean, I'm looking at it from this perspective, the

09:40:57 1 plaintiffs in this case weren't named parties in the
2 underlying litigation, right?

3 MR. HASKIN: They weren't named parties in the
4 underlying litigation.

09:41:07 5 THE COURT: Okay.

6 MR. HASKIN: Correct. The argument in the
7 other action, your Honor -- I forget what department
8 now it is, but it was before Michelle Leavitt. The
9 argument in that action, your Honor, was that,
09:41:19 10 essentially, the association served as a group of all
11 of the homeowners in that action in order to promote
12 the rights of all the homeowners against the Lytles in
13 that case.

14 THE COURT: Okay. Anything else, sir?

09:41:35 15 MR. HASKIN: Nothing else, your Honor.

16 THE COURT: Mr. Foley, sir.

17 MR. FOLEY: Yeah. Just get back to, your
18 Honor, the fact that there is a lot of res judicata in
19 this case based on the summary judgment and the
09:41:49 20 declaratory relief that they obtained. And I would
21 reference the Court to, on this issue of the CC&Rs, to
22 on page 11 of the summary judgment. It says Judgment
23 pursuant to the foregoing, this Court declares and
24 orders that the amended CC&Rs are invalid and the
09:42:03 25 amended CC&Rs have no force and effect.

09:42:06 1 THE COURT: Okay.

2 MR. FOLEY: This issue has come up about this
3 being a Chapter 116 limited purpose association. There
4 is no such thing. Just because the word limited
09:42:19 5 purpose association is found there in 1201, and it says
6 that this chapter doesn't apply, that doesn't create a
7 vehicle. And, in fact, on page 8 of the findings, the
8 Court --

9 THE COURT: I've seen that. It was --
09:42:33 10 actually starts on page 7 with the Section C. Right
11 there in the order. I read it.

12 MR. FOLEY: Yeah.

13 THE COURT: And it goes through it. And it
14 stands for the proposition that Rosemere is a limited
09:42:45 15 purpose association under NRS 116.1201 and not a unit
16 owners association with the meaning of NRS Chapters
17 116. It's right there in the order.

18 MR. FOLEY: Yeah. Well, and number -- and
19 number 11 on page 8 says here, no Chapter 116 unit
09:43:02 20 owners association was formed because no association
21 was organized prior to the date of the first -- that
22 the first unit was conveyed.

23 THE COURT: I see that.

24 MR. FOLEY: And throughout paragraph 13,
09:43:19 25 paragraph 14, again, 14 states the intent was never to

09:43:25 1 form a unit owners association within the meaning of
2 Chapter 116.

3 And paragraph 17 on page 9 says -- nowhere is
4 there reference in the original CC&Rs to a unit owners
09:43:38 5 association or a homeowners association. So it's not
6 even a reference to it. Again, as your Honor pointed
7 out, it was just this committee.

8 And then, you know, on page 9, paragraph 19 it
9 states that the association is a limited purpose
09:43:54 10 association. Under 116.1201 is not a Chapter 116 unit
11 owners association. Is relegated to only those
12 specific duties and powers set forth in paragraph 21 of
13 the original CC&Rs and NRS 116.1201, which talks about
14 the agricultural purpose.

09:44:16 15 So all of these arguments that are being made
16 are really being made against and contrary to the
17 declaratory judgment that they obtained. I understand
18 they found themselves in a bit of a pickle here that
19 they prevailed, and they prevailed mightily in the
09:44:35 20 underlying case. But that doesn't allow them to now
21 convert this award of attorney's fees into a judgment
22 against nonparties to the litigation, the only support
23 for which would be under 116.3117.

24 And they can't -- having prevailed, they can't
09:44:56 25 just walk away from it and now completely ignore and

09:45:00 1 argue contrary to the declaratory judgment regarding
2 this particular association.

3 THE COURT: Now, I got one question for you,
4 Mr. Foley.

09:45:09 5 And, counsel, you can, of course, address
6 this.

7 Because I'm looking at the findings of facts
8 and conclusions of law. I've read those as it related
9 to the motion for summary judgment. And then I looked
09:45:25 10 at the order on attorney's fees and costs that were
11 awarded to the plaintiffs in the underlying action.

12 And I'm reading this, and I'm trying to figure
13 out. And then I look at the abstract of adjustment.
14 And I'm trying to figure out what would be the basis,
09:45:40 15 if any, to file a lien on the Boulden and Lamothes'
16 properties. Because I don't know if I see it.

17 MR. FOLEY: The only basis would be 3117 under
18 NRS 116.

19 THE COURT: Because there's nothing
09:45:56 20 specifically in Judge Leavitt's order and/or as far
21 as -- when I say order, now I'm talking about the order
22 on plaintiff John Allen Lytle and Trudi Lee, I guess,
23 Lytle's motion for attorney's fees. And then looking
24 at the abstract of judgment.

09:46:12 25 MR. FOLEY: Right.

09:46:13 1 THE COURT: It's my impression in just looking
2 at those documents in and of itself, I don't see
3 anything that specifically sets forth the basis for
4 liening the properties of the plaintiffs in this case.

09:46:25 5 MR. FOLEY: No. There's nothing.

6 THE COURT: I just want to make sure. The
7 reason I'm asking the question, I just want to make
8 sure I'm not overlooking something.

9 MR. FOLEY: No. They just unilaterally, when
09:46:34 10 they recorded the abstract of judgment, typed in all of
11 these parcel numbers so that it attached. That wasn't
12 done by the Court. There's nothing in the order that
13 would in any way support an argument from the order
14 itself that this judgment would somehow apply to
09:46:51 15 nonparties to the litigation. Nothing.

16 The only thing they can ever get to on that, I
17 think, again, is 3117. And we've beaten that up pretty
18 good that it just absolutely has no application to this
19 association.

09:47:07 20 THE COURT: Sir, is there anything I need to
21 look at as far as the order and/or abstract of judgment
22 issue?

23 MR. HASKIN: Your Honor, no. Not -- well,
24 yes. Yes and no. I mean, the order -- all the orders
09:47:18 25 in this case grant the Lytles a judgment against the

09:47:21 1 association. And, your Honor, I --

2 THE COURT: I understand.

3 MR. HASKIN: I've been here long enough. I

4 fully understand which way you're heading. But our

09:47:27 5 contention, again, just for the record, is fairly

6 clear, I believe. And not to beat it to death, but,

7 again, it's the original CC&Rs themselves that define

8 lots 1 through 9 as the subdivision together in

9 conjunction with Chapter 116's definitions that state

09:47:45 10 that the association -- a common-interest community --

11 it doesn't say a unit owners association. It doesn't

12 say a limited purpose association. It says a

13 common-interest community, of which there's no question

14 this is one, includes all real estate, including units,

09:48:01 15 within that association. This is -- there are no facts

16 in dispute. These are two units.

17 So what gave the Lytles the power, we contend,

18 to record the abstracts of judgment? These are units.

19 They're included within the association. We have a

09:48:18 20 judgment against the association. A judgment could be

21 recorded against all property within the association.

22 THE COURT: I understand. Okay. Gentlemen,

23 this is what I'm going to do: Regarding the motion for

24 partial summary judgment, I'm going to grant that. And

09:48:40 25 I think we have a fairly, fairly good record, you know.

09:48:48 1 Because we've had a lot of discussion as far as this
2 issue is concerned.

3 No. 1, the basis of my decision is focusing
4 primarily on: No. 1, that the association at issue is
09:49:06 5 a limited purpose association and, as a result,
6 pursuant to NRS 116.1201 that deals with the
7 applicability of the statute and regulations sets forth
8 in paragraph No. 2, this chapter does not apply to
9 limited purpose associations.

09:49:29 10 Secondly, the plaintiffs in this case weren't
11 parties to the underlying litigation. They weren't.
12 They were never named. It was a limited purpose
13 association.

14 I guess, also it's important. I think,
09:49:46 15 Mr. Foley, what I want you to do is, you know, look at
16 the record we've made. And because I think the
17 application of the CC&Rs are very, very important.
18 Because even if you look at the attorney's fees
19 provision under paragraph 25, any assessment of
09:50:07 20 attorney's fees pursuant to the controlling limited
21 purpose CC&Rs specifically regard any legal and/or
22 equitable proceedings for the enforcement of or
23 restrain violations of the CC&Rs or declarations,
24 covenants, conditions, and restrictions that were put
09:50:33 25 in effect back from 1994. But more importantly, there

09:50:36 1 has to be a party that lost. And so the plaintiffs in
2 this case weren't a party, and they didn't lose. And
3 so that's my decision.

4 Plus -- when you -- I read everything.

09:50:49 5 And so, you know, just prepare a proposed
6 findings of fact conclusions of law. And make sure
7 counsel gets an opportunity to review that. And then
8 if you can't agree, submit your own. All right.

9 MR. FOLEY: Thank you, your Honor.

09:51:00 10 MR. HASKIN: Thank you, your Honor.

11 THE COURT: Okay. Gentlemen, enjoy your day.

12 MR. HASKIN: You too.

13

14 (Proceedings were concluded.)

09:51:04 15

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REPORTER'S CERTIFICATE

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STATE OF NEVADA)

:SS

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COUNTY OF CLARK)

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09:51:04 5

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MR. FOLEY: [23] 3/10 3/13 3/20 3/23 4/4 4/14 4/17 4/21 5/12 6/18 7/3 27/15 27/20 33/16 34/1 34/11 34/17 34/23 36/16 36/24 37/4 37/8 40/8 MR. HASKIN: [91] THE COURT: [110]	2 2007 [4] 8/2 8/14 8/25 10/16 2012 [3] 8/22 8/25 10/17 2017 [2] 1/22 3/1 2070 [1] 2/5 21 [2] 23/22 35/12 2128 [1] 2/5 25 [3] 15/11 30/15 39/19 270 [1] 2/12	able [2] 11/6 16/20 about [18] 12/23 13/15 13/16 15/14 19/21 19/21 19/23 24/6 25/23 28/1 31/2 31/2 31/10 31/22 31/24 34/2 35/13 36/21 absolutely [2] 15/24 37/18 abstract [4] 36/13 36/24 37/10 37/21 abstracts [2] 6/20 38/18 ACCURATE [1] 41/11 act [4] 9/12 9/13 9/18 9/22 action [11] 6/3 8/13 8/23 10/13 10/17 17/22 31/23 33/7 33/9 33/11 36/11 actually [2] 13/20 34/10 address [4] 7/2 15/22 32/17 36/5 addressed [1] 31/15 Addressing [1] 7/6 adjudicated [1] 11/5 adjustment [1] 36/13 adopting [1] 7/18 affect [1] 32/2 affirmed [2] 9/10 15/9 affixed [1] 30/24 after [1] 32/2 again [9] 25/13 26/16 29/3 32/20 34/25 35/6 37/17 38/5 38/7 against [24] 4/6 4/10 5/2 6/4 10/13 10/17 14/24 16/7 17/21 18/8 18/9 19/3 19/4 19/7 27/1 27/2 29/17 32/13 33/12 35/16 35/22 37/25 38/20 38/21 ago [1] 3/25 agree [10] 7/18 10/18 12/13 18/1 18/2 22/25 23/3 23/6 24/18 40/8 agreeing [1] 7/19	agreement [1] 7/16 agricultural [1] 35/14 ahead [2] 3/12 22/14 all [37] 3/10 5/18 7/8 7/22 8/9 10/24 11/6 11/12 13/10 14/9 17/12 17/16 18/1 19/4 19/7 20/20 21/1 21/16 24/2 24/4 24/8 25/12 25/15 25/20 25/20 25/24 27/2 29/13 33/10 33/12 35/15 37/10 37/24 38/14 38/21 40/8 41/5 ALLEN [2] 1/16 36/22 allow [1] 35/20 allowed [1] 10/12 allows [1] 5/1 along [1] 24/8 already [1] 28/15 also [6] 18/2 21/3 26/9 26/10 26/22 39/14 always [2] 17/17 31/10 amended [7] 7/10 7/12 8/14 12/6 32/22 33/24 33/25 amendment [1] 8/1 amount [1] 30/24 and/or [4] 15/20 36/20 37/21 39/21 another [3] 6/2 29/12 30/12 answer [2] 16/11 17/1 answering [2] 18/23 22/21 anticipate [1] 16/12 any [23] 4/3 7/1 11/13 12/23 12/24 13/1 13/1 16/3 19/19 22/6 24/21 28/16 29/4 30/19 30/22 31/2 32/4 32/4 32/14 36/15 37/13 39/19 39/21 anybody [1] 8/25 anything [3] 33/14 37/3 37/20	apologize [1] 31/23 apparently [1] 32/1 appeal [2] 9/10 15/9 appear [1] 14/20 appearances [2] 2/1 3/13 appeared [1] 31/4 appears [2] 8/7 32/6 applicability [2] 28/2 39/7 application [4] 27/4 27/6 37/18 39/17 applies [5] 12/4 14/9 18/2 23/12 28/13 apply [13] 15/11 22/4 26/23 27/14 28/6 28/8 28/9 28/12 29/5 29/7 34/6 37/14 39/8 appropriate [1] 10/24 APRIL [2] 1/22 3/1 are [24] 6/24 12/2 13/12 16/6 18/3 19/14 20/3 20/23 22/9 22/13 22/13 25/2 26/1 26/11 28/21 31/22 32/6 33/24 35/15 35/16 38/15 38/16 38/18 39/17 areas [2] 16/13 22/9 argue [2] 28/20 36/1 argument [11] 7/7 9/17 13/13 14/8 14/9 28/13 29/3 30/9 33/6 33/9 37/13 arguments [1] 35/15 arisen [1] 4/19 ARROYO [1] 2/12 as [46] ask [1] 6/20 asking [2] 22/20 37/7 aspects [1] 26/12 assessed [1] 15/13 assessing [1] 15/14
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(1) MR. FOLEY: - assessing

(1) MR. FOLEY: - assessing

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(2) assessment - controlling

(2) assessment - controlling

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(4) few - know

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(5) know... - occupancy

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(9) well... - your

(9) well... - your

1 CASE NO. A-16-747800-C

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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MARJORIE B. BOULDEN TRUST,

)

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Plaintiff,

)

11

vs.

)

12

LYTLE TRUST,

)

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Defendant.

)

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REPORTER'S TRANSCRIPT
OF
HEARING

15

16

17

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

18

DISTRICT COURT JUDGE

19

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DATED THURSDAY, JUNE 29, 2017

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REPORTED BY: PEGGY ISOM, RMR, NV CCR #541

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1 LAS VEGAS, NEVADA, THURSDAY, JUNE 29, 2017

2 10:05 A.M.

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

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5
6 THE COURT: Page 6. Marjorie Boulden Trust
7 versus the Lytle Trust.

8 MR. HASKIN: Good morning, your Honor.
9 Richard Haskin on behalf of the Lytle Trust.

10:05:50 10 MR. FOLEY: Danny Foley on behalf of the
11 plaintiff.

12 THE COURT: All right. Gentlemen, good
13 morning.

14 MR. HASKIN: Good morning.

10:05:54 15 THE COURT: And I see we have a motion for
16 attorney's fees, and we have also a motion, let me see
17 here, for reconsideration or in the alternative motion
18 to alter or amend order. I got it.

19 MR. HASKIN: Okay.

10:06:11 20 THE COURT: Sir, you have the floor.

21 MR. HASKIN: Your Honor, with respect to the
22 motion, and I think the two motions are kind of
23 interrelated a little bit, and I'm sure your Honor sees
24 that too. But with respect to the motion to alter the
10:06:21 25 judgment, it really just relates to one issue.

10:06:24 1 THE COURT: I understand the issue. I do.

2 MR. HASKIN: Okay.

3 THE COURT: Go ahead and make a record. And
4 I'll tell you what I'm thinking.

10:06:29 5 MR. HASKIN: Okay. Your Honor, just to make
6 the record. By way of background, we were here on
7 cross motions for summary judgment with respect to the
8 issues at hand. At the end of the hearing, your Honor
9 found in favor of the plaintiffs in this case with
10:06:45 10 respect to cloud on title.

11 Your Honor, in the order itself there was a
12 finding against the defendant Lytle Trust with respect
13 to slander of title. It's our contention, your Honor,
14 and we believe that the record plays this out, that
10:07:00 15 there was no evidence presented at all with respect to
16 slander of title in this case.

17 There were no findings of fact or conclusions
18 of law really in the order itself that supports such a
19 finding. And, your Honor, with respect to that, there
10:07:15 20 have to be facts. And I believe the law is clear on
21 this that there have to be findings of fact by the
22 Court to support an ultimate legal conclusion that
23 there was malice, oppression, or fraud to lead to
24 slander of title. And no such facts were presented in
10:07:31 25 this case at all. And, in fact, no such facts were

10:07:33 1 discussed. They're not present in any pleading. The
2 Court did not hear discussion on the matter. And, yet,
3 it's included in the order.

4 THE COURT: Here's my next question for you.

10:07:44 5 Regarding that issue, would that issue, ultimately,
6 have to be decided by the jury as it relates to slander
7 or not based upon the burdens and the like?

8 And the reason why I bring that up, I went
9 back because I thought it was a fascinating issue.

10:07:57 10 And, to me, the case I felt that was somewhat
11 controlling on this issue is the Horgan III versus
12 Felton matter, right? And I read the case because you
13 cited it. I think you cited it, right?

14 MR. HASKIN: We did.

10:08:10 15 THE COURT: Yeah. So anyway, what I found was
16 that because, apparently, there was some confusion in
17 this area at one point. And so what the Horgan case
18 court said was essentially this:

19 Accordingly, our statement in *Sandy Valley*
10:08:24 20 that attorney's fees are available in a case
21 "of clarifying or removing cloud upon title of
22 property" and similar statements in *Summa I* --
23 and, I guess, that's -- Michelsen inadvertently
24 expanded the scope of real property cases in
10:08:42 25 which attorney's fees are available as special

10:08:45 1 damages. Therefore, we retreat from these
2 statements and now clarify that the attorney's
3 fees are only available as special damages in
4 slander of title actions and not simply when a
10:08:59 5 litigant seeks to remove a cloud upon title.

6 MR. HASKIN: Correct, your Honor.

7 THE COURT: So that's in the case. And I read
8 it. And what I found really fascinating about it is in
9 reliance upon their retreat -- because that's what the
10:09:12 10 Supreme Court did. They retreated and really clarified
11 the issues. What they said was this, they said, Look,
12 you got to follow the Restatement (Second) of Torts,
13 Section 633, right?

14 MR. HASKIN: Yes.

10:09:23 15 THE COURT: And it talks about slander and all
16 that stuff. And so, I get it. There's what I'm trying
17 to tell you. I understand what your concern is. I
18 understand.

19 MR. HASKIN: Okay. And, your Honor, that's
10:09:35 20 right. And that's why we cited the case. And it
21 really relates to that. What necessitated this was,
22 your Honor, that it did end up in the order.

23 THE COURT: Yeah. I understand.

24 MR. HASKIN: Yeah.

10:09:46 25 THE COURT: You got to -- you got to

10:09:47 1 understand.

2 MR. HASKIN: Then I'll say no more.

3 THE COURT: You got to understand this --

4 MR. HASKIN: All right.

10:09:51 5 THE COURT: Whether -- this is what I try to
6 do. And I can't say I'm always right or I'm always
7 wrong, but I do try to get it right.

8 MR. HASKIN: I would agree, your Honor.

9 THE COURT: I do. I do. I try to get it

10:10:01 10 right.

11 What do I do with that, Mr. Foley?

12 MR. FOLEY: Your Honor, I think since it's a
13 motion for reconsideration or to amend, the fact is is
14 there was, perhaps, an oversight. But there's clearly
10:10:10 15 malice. And I think the operative case is that Roland
16 versus the LaPierre case which was cited.

17 THE COURT: And I don't mind telling you this,
18 too, and this is one thing I didn't do. Both of you
19 can address this issue. Because one of the things I
10:10:27 20 was thinking about when I was reviewing the points and
21 authorities, and I didn't have time to go back and deal
22 with it, but what's the status of the pleadings in this
23 case as far as what do you have contained in the
24 complaint as far as the various different claims for
10:10:41 25 relief.

10:10:42 1 You know, is slander of title one of them?
2 Because some of the cases talk about when you talk
3 about slander you got to -- I think, they say, Look,
4 you have to plead with some particularity, Rule 9G, or
10:10:54 5 whatever it is. I forget what it is. But I was
6 reading it. I was really fascinated with this area.
7 How does the case -- how is the complaint framed so I
8 can understand what's going on?

9 And then number two, I look at it from this
10:11:08 10 perspective, because the seminal case right now for
11 Nevada is the Horgan case. And what the trial court
12 did there, they made a determination, they got
13 reversed, right, that there was slander. And I don't
14 want to -- you know, I don't like getting reversed. I
10:11:24 15 don't mind saying that. I don't mind telling you that,
16 Mr. Foley. That's the controlling issue. I can live
17 with decisions that I get reversed. And I said, God, I
18 just kind of missed that one. That's okay. But I
19 don't want to get reversed unnecessarily when something
10:11:37 20 is being brought to my attention. Because I've never
21 had problems with lawyers filing motions for
22 reconsideration because I look at it, and sometimes
23 they have -- they don't have merit. They just reargue
24 whether or not they have merit.

10:11:50 25 And I looked at this, and said there might be

10:11:52 1 some merit to this one because I don't want to get
2 reversed on that issue. I feel pretty strongly about
3 my other decisions. I feel comfortable with those, I
4 should say. But what do I do about this?

10:11:59 5 MR. FOLEY: Well, from the standpoint of the
6 pleadings, your Honor, I don't have the complaint in
7 front of me, but the causes of action as I recall were
8 quiet title for declaratory relief, for slander of
9 title.

10:12:11 10 THE COURT: Okay.

11 MR. FOLEY: And there's another one, and I'm
12 just not recalling. But I think all of the causes of
13 action were appropriately dealt with and handled in
14 the --

10:12:25 15 THE COURT: But is that a question?

16 MR. FOLEY: -- motion for summary judgment.

17 THE COURT: Here's a question I have. I think
18 we can frame it this way. There was a cloud on title.
19 Whether it was slander or not, we'll kind of put that
10:12:35 20 by the wayside. I made a determination as a matter of
21 law there was an appropriate cloud on title, right? I
22 made that decision.

23 Now, when it comes to the slander aspects,
24 does there have to be a factual determination on that
10:12:49 25 issue? And what I mean by that is this: Would that

10:12:52 1 case -- would that issue, which could be the basis for
2 special damages under Nevada law, go to the jury or a
3 bench trial to determine that issue where everybody
4 testifies, and we, you know, that's -- because I don't
10:13:06 5 want to -- I mean, I want to make sure that when we
6 button this up because there will be an appeal that --

7 MR. FOLEY: I'm here --

8 THE COURT: You hear me, Mr --

9 MR. FOLEY: I do. I do. And, quite frankly,
10:13:16 10 I don't know that it necessarily has to go to a jury,
11 your Honor. I think as we've argued this case
12 repeatedly, there really are no disputed facts.
13 They're making some excuses along the way, but the
14 undisputed facts are that, especially with respect to
10:13:32 15 the slander of title, which, again, the seminal case
16 really isn't under the -- of what constitutes slander
17 of title is not the Horgan case, but it's the Roland
18 versus LaPierre case where it says the malice is where
19 the defendant knew that the statement was false or
10:13:47 20 acted in reckless disregard of the truth or falsity of
21 the statement.

22 The Lytles knew, never any doubt, that they
23 never sued my clients in the underlying case. They
24 knew that the Rosemere CCRs did not constitute a
10:14:12 25 full-blown homeowners association. In fact, they

10:14:15 1 sought and obtained relief from Judge Leavitt to say
2 exactly that. That this is a limited purpose
3 association, and, therefore, by the strict language of
4 the statute, NRS 116.3117, which allows a judgment
10:14:32 5 against the full-blown association to be recorded
6 against all of the properties, that that didn't apply.

7 It's undisputed they found themselves in a
8 situation where they had a judgment that was literally
9 uncollectible. So they did what? They sat down,
10:14:49 10 figured out a way to do this, and recorded abstracts of
11 judgment specifically listing my client's parcel
12 numbers so they would attach to the property. That was
13 the slander of title.

14 I think your Honor can easily make those
10:15:05 15 findings at this point in time to fill out the final
16 order that that was in -- that was a knowing, malicious
17 effort on their part or, at a minimum, a reckless
18 disregard of the truth of the matter.

19 Again, they want to offer excuses that, Well,
10:15:25 20 we had a lawyer and we got advice. Well, that's not an
21 excuse. And as I went through even in the opposition,
22 and I went through it at length, we hashed out all of
23 that. Your Honor hashed all of that at the hearing on
24 the partial summary judgment motion saying, Let's --
10:15:42 25 tell me where it -- you know, counsel stood up and

10:15:45 1 said, All the property is owned by the association.
2 That's why we did what we did. Your Honor went
3 laboriously, I think about ten pages worth, saying,
4 Where does it say that.

10:15:54 5 Finally, at the end counsel says, Well, you're
6 right. The association doesn't own the property. And
7 then he argued about a mortgage savings clause that
8 somehow gives a right to record the judgment. You went
9 through and said, Wait a minute. Counsel at the end of
10:16:09 10 that, as I pointed out in the opposition, said, Yeah,
11 you're right. That's just a mortgage savings clause.
12 It gives nothing.

13 By the end of the discussion, counsel was
14 truly laid bare saying, well, I took my shot and
10:16:22 15 everything -- ultimately, I kind of agreed. I agreed
16 with the Court on every point.

17 So that argument that they had counsel, One,
18 it's not an excuse even under Roland versus LaPierre.
19 In that case the Court said you can take that into
10:16:37 20 consideration. But there has to be some good faith.
21 There was absolutely none.

22 So, your Honor, I don't think there's any
23 problem for the Court to at this point in time find
24 that there was at a minimum a reckless disregard for
10:16:51 25 the truth and the falsity of this recording of

10:16:55 1 abstracts of judgment. And that's even continued on
2 where at the time they withdrew the abstracts, recorded
3 releases of those abstracts, even before they did that,
4 they recorded a lis pendens against the property. For
10:17:10 5 the purpose of doing what? To collect on the judgment.
6 Just trying to do another vehicle to collect on the
7 judgment.

8 So I don't think that has to go to the jury.
9 I think your Honor can make that finding. I will tell
10:17:24 10 the Court that --

11 THE COURT: This is the main reason I have
12 hesitation is because I was -- I was going through
13 the -- as I was listening to you, I was just kind of
14 briefly scanning the Horgan versus Felton matter. And
10:17:40 15 I think they make a distinction when they talk about,
16 you know, slander of title versus, I guess, a general
17 cloud on title. And any time, you know, a court refers
18 to attorney's fees as being permissible as special
19 damages in a cloud of title action, that's a different
10:18:03 20 animal when it comes to, say, the award of attorney's
21 fees for the cost of the litigation. And, you know,
22 that's typically done posttrial.

23 And whereas, here, we have attorney's fees and
24 potentially as special damages. Any time I see the
10:18:18 25 term of art "special damages", you usually have a trial

10:18:21 1 to determine what the special damages are.

2 And that's why I have a hesitation. Because
3 one of the things I don't want to do, Mr. Foley, I feel
4 confident with the current posture of the case, but I
10:18:34 5 don't want to err where it's been brought to my
6 attention and, potentially, it's readily apparent.

7 Maybe that's the best way I can say that. Because I'm
8 looking at it. And this is what -- I mean, I
9 haven't -- they cite quite a few cases here in one of
10:18:52 10 the footnotes, I guess, Footnote 23. And they cite the
11 Restatement of Torts Section 633.1 and, I guess, it's
12 1977. And that's where our Supreme Court is relying
13 on.

14 But I was sitting here saying to myself, Okay,
10:19:05 15 we haven't had any slander of title cases going to
16 trial, but it just appears to me, just at first blush,
17 if it's a special damage, somebody has to decide that
18 after hearing, trial, something. Because if that's the
19 case, the -- and here it's being -- if it wasn't being
10:19:26 20 contested, that's another thing, right? But it's being
21 contested.

22 And so I do feel it's something I can't rule
23 as a matter of law. And if I'm incorrect in that
24 analysis, that's okay. You can tell me. But that's my
10:19:41 25 concern. It really is.

10:19:43 1 MR. FOLEY: Your Honor, let me say this. I
2 would tell you that I think you're wrong, but the fear
3 of the Supreme Court being the one that tells you
4 you're wrong, I know --

10:19:51 5 THE COURT: Is overwhelming.

6 MR. FOLEY: -- which one you're more concerned
7 about.

8 THE COURT: Yes.

9 MR. FOLEY: And the fact that --

10:19:55 10 THE COURT: The only reason I say that,
11 Mr. Foley, I love to have discussion. That's all I
12 want.

13 MR. FOLEY: No, no, no. And I appreciate
14 that. And what I had done in my motion for attorney's
10:20:02 15 fees was basically say I was willing to waive a damage
16 claim for the lost sale of the property which occurred
17 as a result of the recording of the abstract of
18 judgment.

19 THE COURT: Okay.

10:20:15 20 MR. FOLEY: I was willing to because in that
21 situation, it would require a trial to determine the
22 amount, and whether that was the cause, and so forth.

23 But there's been another development in this
24 case which is counsel has submitted another judgment to
10:20:31 25 me that he's obtained on behalf of the Lytles against

10:20:34 1 the same, Rosemere Property Owners Association, which
2 is now a defunct non-profit corporation. And,
3 apparently, the case was abandoned by this homeowners
4 association, but there's a judgment for a million
10:20:47 5 dollars or so.

6 And counsel said, You got to disclose this.
7 This is something that under -- I vehemently disagree
8 with him that there's any obligation on the part of my
9 client to disclose it, but I need to amend my complaint
10:21:02 10 to now make sure that as we're moving forward to close
11 escrow we don't get a recording of this new abstract of
12 judgment. And I need a declaratory relief from the
13 Court to make the same finding with respect to that
14 judgment that's been obtained.

10:21:20 15 So where I'm at at this point in time is I
16 want to -- I'm not going to waive the claim for slander
17 of title damages for the loss of the other sale. I'm
18 going to seek to amend -- make a motion with the Court
19 to amend the complaint. And to that extent then, even,
10:21:40 20 I think, at this point in time I necessarily withdraw
21 my motion for attorney's fees to bring that on at the
22 end of the case. Because my hope was is by doing this
23 motion for attorney's fees and waiving that other
24 damage claim, I could end this case now. But I don't
10:21:59 25 think I can.

10:22:00 1 THE COURT: I understand.

2 MR. HASKIN: Your Honor, two things. I think,
3 one, going back to the beginning, we're here on a
4 motion for reconsideration of the order. I think your
10:22:07 5 Honor is right. And one thing I'd like to add is it --
6 by plaintiff, it was a motion for partial summary
7 judgment. That's how it was presented to the Court.

8 MR. FOLEY: That's right.

9 MR. HASKIN: And the facts of the motion did
10:22:19 10 not present slander of title. There was nothing to
11 contest. There were no facts in that motion at all
12 related to slander of title. In fact, there was no
13 argument at all with respect to the slander of title.
14 And it was this office's assumption, your Honor, that
10:22:35 15 that issue was not being contested for that motion for
16 summary judgment.

17 And again, that's the basis. But I think your
18 Honor has it right. Just to clarify the record, we did
19 present a judgment that we obtained in another case
10:22:48 20 against the association. We did not record the
21 judgment. We didn't file an abstract. We did no such
22 thing. I want the record to be clear with respect to
23 that. We are not intending on violating your Honor's
24 orders already issued in this case. We simply relayed
10:23:03 25 a judgment obtained in another case to counsel. That

10:23:06 1 was it.

2 And, again, we do believe that a seller of
3 property has a duty to disclose a judgment against the
4 association. I think, in fact, 116.4109, which
10:23:17 5 unequivocally relates to limited purpose associations,
6 statutorily requires them to do so. But we're not
7 recording the abstract. There's no lis pendens,
8 nothing like that.

9 MR. FOLEY: But that was the threat.

10:23:28 10 MR. HASKIN: It wasn't a threat at all.

11 MR. FOLEY: That was the threat that came with
12 the abstract, is you must do this and then a lecture on
13 4.109, which you just received.

14 So to just say, Oh, it was a courtesy call is
10:23:40 15 disingenuous.

16 MR. HASKIN: There was no threat of an
17 abstract, Dan.

18 MR. FOLEY: I didn't say that.

19 MR. HASKIN: It's just. I don't know what to
10:23:45 20 say.

21 MR. FOLEY: It was here's another judgment,
22 and the reason why you can't sell your property.

23 MR. HASKIN: No.

24 MR. FOLEY: So as I understand it, your Honor,
10:23:53 25 you'll grant the motion with respect to the slander of

10:23:56 1 title.

2 THE COURT: Finding or determination.

3 MR. FOLEY: Finding or determination.

4 THE COURT: To me, after reading the case,

10:24:02 5 this is what I'm going to do. As far as the motion for
6 reconsideration, I'm going to deny that. But I'm going
7 to grant the motion to alter -- the alternative motion
8 to alter or amend the order regarding the slander of
9 title determination finding. Do you understand that?

10:24:19 10 MR. HASKIN: Yes, your Honor.

11 MR. FOLEY: Yes, your Honor.

12 THE COURT: Yeah. I mean, I -- it's right, I
13 think.

14 MR. HASKIN: Your Honor, if you'd like me to

10:24:25 15 proceed, I can take the order. I can remove the
16 slander of title part. Send it to opposing counsel for
17 review.

18 THE COURT: Please.

19 MR. HASKIN: Resubmit an alternative order.

10:24:34 20 MR. FOLEY: I think you probably need an order
21 and an order related to this motion.

22 MR. HASKIN: Yeah.

23 THE COURT: Yeah, do that.

24 MR. HASKIN: Okay. Thank you, your Honor.

10:24:41 25 THE COURT: Interesting case.

10:24:41 1 MR. FOLEY: And then we'll just --
2 THE COURT: Continue.
3 MR. HASKIN: Lucky you, it's not over.
4 MR. FOLEY: Then we'll just take that motion
10:24:47 5 for attorney's fees off?
6 THE COURT: We'll vacate it for now.
7 MR. FOLEY: Okay.
8 THE COURT: And I just find this area
9 fascinating. I was a tort lawyer, but I used to work
10:24:56 10 for Chicago Title my first job back in Chicago. And I
11 always found real property fascinating. That's why.
12 MR. HASKIN: There you go.
13 THE COURT: Okay.
14 MR. HASKIN: Thank you.
10:25:05 15 MR. FOLEY: Thank you.

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(Proceedings were concluded.)

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REPORTER'S CERTIFICATE

2

STATE OF NEVADA)

:SS

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COUNTY OF CLARK)

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I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER DO

10:25:53 5

HEREBY CERTIFY THAT I TOOK DOWN IN STENOGRAPHY ALL OF THE

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PROCEEDINGS HAD IN THE BEFORE-ENTITLED MATTER AT THE

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TIME AND PLACE INDICATED, AND THAT THEREAFTER SAID

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STENOGRAPHY NOTES WERE TRANSCRIBED INTO TYPEWRITING AT

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FOREGOING TRANSCRIPT CONSTITUTES A FULL, TRUE AND

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IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED

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MY NAME IN MY OFFICE IN THE COUNTY OF CLARK, STATE OF

10:25:53 15

NEVADA.

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PEGGY ISOM, RMR, CCR 541

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MR. FOLEY: [25] MR. HASKIN: [28]	A.M [1] 3/2 abandoned [1] 16/3 ABILITY [1] 21/11 about [11] 6/8 6/15 7/20 8/2 8/3 9/2 9/4 12/3 12/7 13/15 15/7 absolutely [1] 12/21 abstract [6] 15/17 16/11 17/21 18/7 18/12 18/17 abstracts [4] 11/10 13/1 13/2 13/3 Accordingly [1] 5/19 ACCURATE [1] 21/11 acted [1] 10/20 action [3] 9/7 9/13 13/19 actions [1] 6/4 add [1] 17/5 address [1] 7/19 advice [1] 11/20 after [2] 14/18 19/4 again [4] 10/15 11/19 17/17 18/2 against [7] 4/12 11/5 11/6 13/4 15/25 17/20 18/3 agree [1] 7/8 agreed [2] 12/15 12/15 ahead [1] 4/3 all [15] 3/12 4/15 4/25 6/15 7/4 9/12 11/6 11/22 11/23 12/1 15/11 17/11 17/13 18/10 21/5 allows [1] 11/4 along [1] 10/13 already [1] 17/24 also [1] 3/16 alter [4] 3/18 3/24 19/7 19/8 alternative [3] 3/17 19/7 19/19 always [3] 7/6 7/6 20/11 amend [6] 3/18 7/13 16/9 16/18 16/19 19/8 amount [1] 15/22 analysis [1] 14/24	animal [1] 13/20 another [8] 9/11 13/6 14/20 15/23 15/24 17/19 17/25 18/21 any [7] 5/1 10/22 12/22 13/17 13/24 14/15 16/8 anyway [1] 5/15 apparent [1] 14/6 apparently [2] 5/16 16/3 appeal [1] 10/6 APPEARANCES [1] 2/1 appears [1] 14/16 apply [1] 11/6 appreciate [1] 15/13 appropriate [1] 9/21 appropriately [1] 9/13 are [8] 3/22 5/20 5/25 6/3 10/12 10/14 14/1 17/23 area [3] 5/17 8/6 20/8 argued [2] 10/11 12/7 argument [2] 12/17 17/13 ARROYO [1] 2/12 art [1] 13/25 as [22] aspects [1] 9/23 association [9] 10/25 11/3 11/5 12/1 12/6 16/1 16/4 17/20 18/4 associations [1] 18/5 assumption [1] 17/14 at [28] attach [1] 11/12 attention [2] 8/20 14/6 attorney's [11] 3/16 5/20 5/25 6/2 13/18 13/20 13/23 15/14 16/21 16/23 20/5 authorities [1] 7/21 available [3] 5/20 5/25 6/3 award [1] 13/20	B back [4] 5/9 7/21 17/3 20/10 background [1] 4/6 bare [1] 12/14 based [1] 5/7 basically [1] 15/15 basis [2] 10/1 17/17 be [10] 4/20 4/21 5/6 8/25 9/24 10/1 10/6 11/5 12/20 17/22 because [18] 5/9 5/12 5/16 6/9 7/19 8/2 8/10 8/20 8/22 9/1 10/4 10/6 13/12 14/2 14/7 14/18 15/20 16/22 been [3] 14/5 15/23 16/14 before [3] 1/17 13/3 21/6 BEFORE-ENTITLED [1] 21/6 beginning [1] 17/3 behalf [3] 3/9 3/10 15/25 being [7] 8/20 13/18 14/19 14/19 14/20 15/3 17/15 believe [3] 4/14 4/20 18/2 bench [1] 10/3 best [2] 14/7 21/11 bit [1] 3/23 blown [2] 10/25 11/5 blush [1] 14/16 Both [1] 7/18 BOULDEN [2] 1/9 3/6 briefly [1] 13/14 bring [2] 5/8 16/21 brought [2] 8/20 14/5 burdens [1] 5/7 but [28] button [1] 10/6	19/15 can't [3] 7/6 14/22 18/22 case [34] cases [4] 5/24 8/2 14/9 14/15 cause [1] 15/22 causes [2] 9/7 9/12 CCR [2] 1/23 21/17 CCRs [1] 10/24 CERTIFICATE [1] 21/1 CERTIFIED [1] 21/4 CERTIFY [1] 21/5 Chicago [2] 20/10 20/10 cite [2] 14/9 14/10 cited [4] 5/13 5/13 6/20 7/16 claim [3] 15/16 16/16 16/24 claims [1] 7/24 clarified [1] 6/10 clarify [2] 6/2 17/18 clarifying [1] 5/21 CLARK [3] 1/7 21/3 21/14 clause [2] 12/7 12/11 clear [2] 4/20 17/22 clearly [1] 7/14 client [1] 16/9 client's [1] 11/11 clients [1] 10/23 close [1] 16/10 cloud [7] 4/10 5/21 6/5 9/18 9/21 13/17 13/19 collect [2] 13/5 13/6 comes [2] 9/23 13/20 comfortable [1] 9/3 complaint [5] 7/24 8/7 9/6 16/9 16/19 concern [2] 6/17 14/25 concerned [1] 15/6 concluded [1] 20/17 conclusion [1] 4/22
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Peggy Isom, CCR 541, RMR

(1) MR. FOLEY: - conclusion

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C conclusions [1] 4/17 confident [1] 14/4 confusion [1] 5/16 consideration [1] 12/20 constitute [1] 10/24 constitutes [2] 10/16 21/10 contained [1] 7/23 contention [1] 4/13 contest [1] 17/11 contested [3] 14/20 14/21 17/15 Continue [1] 20/2 continued [1] 13/1 controlling [2] 5/11 8/16 corporation [1] 16/2 Correct [1] 6/6 cost [1] 13/21 could [2] 10/1 16/24 counsel [9] 11/25 12/5 12/9 12/13 12/17 15/24 16/6 17/25 19/16 COUNTY [3] 1/7 21/3 21/14 court [17] 1/6 1/18 4/22 5/2 5/18 6/10 8/11 12/16 12/19 12/23 13/10 13/17 14/12 15/3 16/13 16/18 17/7 courtesy [1] 18/14 cross [1] 4/7 CROSSING [1] 2/12 current [1] 14/4	decide [1] 14/17 decided [1] 5/6 decision [1] 9/22 decisions [2] 8/17 9/3 declaratory [2] 9/8 16/12 defendant [4] 1/13 2/9 4/12 10/19 defunct [1] 16/2 deny [1] 19/6 DEPT [1] 1/3 determination [6] 8/12 9/20 9/24 19/2 19/3 19/9 determine [3] 10/3 14/1 15/21 development [1] 15/23 did [14] 5/2 5/14 6/10 6/22 8/12 10/24 11/9 12/2 12/2 13/3 17/9 17/18 17/20 17/21 didn't [5] 7/18 7/21 11/6 17/21 18/18 different [2] 7/24 13/19 DIRECTION [1] 21/9 disagree [1] 16/7 disclose [3] 16/6 16/9 18/3 discussed [1] 5/1 discussion [3] 5/2 12/13 15/11 disingenuous [1] 18/15 disputed [1] 10/12 disregard [3] 10/20 11/18 12/24 distinction [1] 13/15 DISTRICT [2] 1/6 1/18 do [24] DOCKET [1] 1/2 does [3] 8/7 9/24 12/4 doesn't [1] 12/6 doing [2] 13/5 16/22 dollars [1] 16/5 don't [18] 7/17 8/13 8/14 8/15 8/15 8/19 8/23 9/1 9/6 10/4 10/10 12/22	13/8 14/3 14/5 16/11 16/24 18/19 done [2] 13/22 15/14 doubt [1] 10/22 down [2] 11/9 21/5 duty [1] 18/3 E easily [1] 11/14 effort [1] 11/17 end [7] 4/8 6/22 12/5 12/9 12/13 16/22 16/24 ENTITLED [1] 21/6 err [1] 14/5 escrow [1] 16/11 especially [1] 10/14 ESQ [2] 2/3 2/11 essentially [1] 5/18 even [5] 11/21 12/18 13/1 13/3 16/19 every [1] 12/16 everybody [1] 10/3 everything [1] 12/15 evidence [1] 4/15 exactly [1] 11/2 excuse [2] 11/21 12/18 excuses [2] 10/13 11/19 expanded [1] 5/24 extent [1] 16/19 F fact [8] 4/17 4/21 4/25 7/13 10/25 15/9 17/12 18/4 facts [7] 4/20 4/24 4/25 10/12 10/14 17/9 17/11 factual [1] 9/24 faith [1] 12/20 false [1] 10/19 falsity [2] 10/20 12/25 far [3] 7/23 7/24 19/5 fascinated [1] 8/6 fascinating [4] 5/9 6/8 20/9 20/11 favor [1] 4/9 Fax [1] 2/14 fear [1] 15/2	feel [4] 9/2 9/3 14/3 14/22 fees [11] 3/16 5/20 5/25 6/3 13/18 13/21 13/23 15/15 16/21 16/23 20/5 felt [1] 5/10 Felton [2] 5/12 13/14 few [1] 14/9 figured [1] 11/10 file [1] 17/21 filing [1] 8/21 fill [1] 11/15 final [1] 11/15 Finally [1] 12/5 find [2] 12/23 20/8 finding [7] 4/12 4/19 13/9 16/13 19/2 19/3 19/9 findings [3] 4/17 4/21 11/15 first [2] 14/16 20/10 floor [1] 3/20 FOLEY [7] 2/3 2/3 3/10 7/11 8/16 14/3 15/11 FOLEYOAKES.COM [1] 2/6 follow [1] 6/12 Footnote [1] 14/10 footnotes [1] 14/10 FOREGOING [1] 21/10 forget [1] 8/5 forth [1] 15/22 forward [1] 16/10 found [5] 4/9 5/15 6/8 11/7 20/11 frame [1] 9/18 framed [1] 8/7 frankly [1] 10/9 fraud [1] 4/23 front [1] 9/7 full [3] 10/25 11/5 21/10 full-blown [2] 10/25 11/5	GIBBS [1] 2/11 GIBBSGIDEN.COM [1] 2/14 GIDEN [1] 2/11 gives [2] 12/8 12/12 go [6] 4/3 7/21 10/2 10/10 13/8 20/12 God [1] 8/17 going [9] 8/8 13/12 14/15 16/16 16/18 17/3 19/5 19/6 19/6 good [4] 3/8 3/12 3/14 12/20 got [9] 3/18 6/12 6/25 6/25 7/3 8/3 8/12 11/20 16/6 grant [2] 18/25 19/7 guess [4] 5/23 13/16 14/10 14/11 H had [8] 8/21 11/8 11/20 12/17 14/15 15/14 21/6 21/12 hand [1] 4/8 handled [1] 9/13 has [7] 10/10 12/20 13/8 14/17 15/24 17/18 18/3 hashed [2] 11/22 11/23 HASKIN [2] 2/11 3/9 have [21] 3/15 3/16 3/20 4/20 4/21 5/6 7/21 7/23 8/4 8/23 8/23 8/24 9/6 9/17 9/24 13/11 13/23 13/25 14/2 15/11 21/13 haven't [2] 14/9 14/15 he [1] 12/7 he's [1] 15/25 hear [2] 5/2 10/8 hearing [4] 1/15 4/8 11/23 14/18 here [8] 3/17 4/6 10/7 13/23 14/9 14/14 14/19 17/3 here's [3] 5/4 9/17 18/21 HEREBY [1] 21/5 HEREUNTO [1] 21/13
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(2) conclusions - HEREUNTO

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