

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

**REPLY TO OPPOSITION TO  
MOTION TO CONSOLIDATE  
APPEALS**

Oct 24 2018 11:00 a.m.

Consolidated  
Clerk of Supreme Court

---

**Reply to Opposition to Motion to Consolidate Appeals**

**(Docket 73039)**

---

**RICHARD HASKIN**  
Nevada Bar No. 11592  
**GIBBS, GIDEN, LOCHER, TURNER,  
SENET, & WITTBRODT, LLP**  
1140 N. Town Center Drive  
Las Vegas, Nevada 89144  
(702) 836-9800  
*Attorneys for Appellants*

## **INTRODUCTION**

TRUDI LEE LYTLE; AND JOHN ALLEN LYTLE, AS TRUSTEES OF THE LYTLE TRUST (the “Lyttles”) requested Docket 73039 be consolidated with Docket 76198 in the interests of justice and judicial economy. NRAP 2. The Lyttles are Appellants in both dockets. Consolidation is warranted and necessary for the effective disposition of these matters given that the legal issues and legal questions are nearly identical. Once more, no party has been or will be prejudiced by consolidation, and doing so will preserve judicial resources while providing consistency in the determinations.

## **ARGUMENT**

### **I. RESPONDENTS WILL SUFFER NO PREJUDICE IF THE APPEALS ARE CONSOLIDATED**

Respondents erroneously argue that the consolidation of the appeals will cause them prejudice due to a prolonged cloud on title. As an initial matter, the abstracts once recorded against Respondents’ properties that were subject of the lawsuit were released pursuant to the district court’s order. *See* Order Granting Motion to Alter or Amend Findings of Fact and Conclusions of Law, Exhibit C to Motion to Consolidation.

Further, NRS 116.4109 requires that all sellers of property within a common interest community, even a limited purpose association, must disclose all judgments against the association to any prospective purchaser of the property. There is no

question the Lytles have three (3) valid and binding judgment against the Association totaling more than \$1,500,000.00. No decision by this Supreme Court or any district court will disrupt that required disclosure. Those judgments alone, regardless of this case, stand to disrupt any sale of the properties within the Association. The continued “cloud on title” argument is the proverbial red herring. Title is clouded by virtue of the Association’s continued refusal to pay the Lytles’ judgments.

**II. THE LYTTLES DID NOT UNREASONABLY DELAY IN FILING THIS MOTION TO CONSOLIDATE**

The district court in Case No. A-16-747800-C rendered its decision on June 29, 2017. The Lytle Trust timely filed an appeal thereof. The district court, in Case No. A-17-765372-C, entered its order on May 25, 2018. The appeal was then timely filed in Docket 76198 on June 19, 2018. The case appeal statement and docketing statement were filed thereafter. In the docketing statement, the Lytle Trust informed the Supreme Court that the two Dockets at issue in this Motion were related.

Meanwhile, in Case No. A-17-765372-C, the prevailing parties moved for attorneys’ fees and costs, which ultimately were granted in substantial part by the district court on September 11, 2018 and appealed by the Lytle Trust on September 14, 2018 (Docket No. 77007). Docket Nos. 76198 and 77007 will be subject to a joint motion to consolidate filed by the Lytle Trust and Respondents in those Dockets, which is expected to be filed shortly.

///

**III. THE ESSENTIAL AND DETERMINATIVE FACTS AND LAW IN DOCKET NOS. 73039 AND 76198 ARE SIMILAR AND SHOULD BE CONSOLIDATED TO ALLOW FOR A CONSISTENT AND FULLY REASONED ORDER BY THIS SUPREME COURT AS WELL AS IN THE INTERESTS OF JUDICIAL ECONOMY**

Judge Bailus, in Case No. A-17-765372-C issued a judgment in favor of Respondents in Docket 76198 that mirrored Judge Williams’ decision from Case No. A-17-765372-C. Indeed, Judge Bailus cited “law of the case” as a determining factor in issuing his decision.<sup>1</sup> *See* Order Granting Motion for Summary Judgment in Case No. A-17-765372-C, Exhibit E to Motion to Consolidate. The two cases have factual distinctions, yet the law this Court will likely apply to both is strikingly similar. This Court’s decision in Docket 73039 certainly will impact the Respondents in Docket 76198 because most of the legal issues will be decided therein. For those reasons, Dockets 73039 and 76198 should consolidated to effectively decide the issues before this Court.

The aforementioned is made obvious by the district court’s decision to consolidate the cases. Order Consolidating District Court Cases, Exhibit A hereto. In the underlying Motion to Consolidate, filed by Respondents in Docket 76198, Respondents argued the cases “involve the same parties, the same and substantially similar facts, and the same legal issues.” Motion to Consolidate District Court Cases,

---

<sup>1</sup> An issue on appeal in Docket 76198 is whether the district court improperly applied the law of the case doctrine.

3:15-16, Exhibit B, hereto. Respondents continued “[t]he ONLY factual difference between the two cases is that each parcel unlawfully encumbered...has a different owner, thus different plaintiffs.”<sup>2</sup> *Id.* at 3:21-22. Respondents then spend considerable time illustrating, albeit via argument, the similarities between the facts and law of the cases. *See id.*

The reasons for consolidating the cases at the district court level certainly continue to apply here, especially given the district court in Docket 76198 applied the law of the case doctrine.

### CONCLUSION

For the reasons set forth herein and in the Motion to Consolidate, the Lytles respectfully request the Supreme Court consolidate Dockets Nos. 73039 and 76198.

DATED this 23<sup>rd</sup> day of October, 2018.

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

By: \_\_\_\_\_

Richard E. Haskin  
Nevada Bar No. 11592  
1140 N. Town Center Drive, Suite 300  
Las Vegas, NV 89144  
(702) 836-9800  
rhaskin@gibbsgiden.com

<sup>2</sup> The Lytles certainly argue there are legal and other factual distinctions between the cases, albeit the similarities far outnumber and outweigh the differences.

**CERTIFICATE OF MAILING**

The undersigned, an employee of the law firm of GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP, hereby certifies that on October 24, 2018, she served a copy of the foregoing **REPLY TO OPPOSITION TO MOTION TO CONSOLIDATE APPEALS** by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope(s) addressed to:

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

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

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

Christina H. Wang, Esq.  
FIDELITY NATIONAL LAW GROUP  
1701 Village Center Circle, Suite 110  
Las Vegas, Nevada 89134

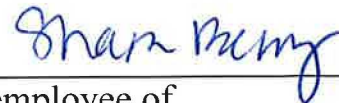
Attorneys for Respondents **ROBERT Z. DISMAN and YVONNE A. DISMAN**

Tel: (702) 667-3000  
Fax: (702) 433-3091  
Email: [christina.wang@fnf.com](mailto:christina.wang@fnf.com)

Wesley J. Smith, Esq.  
Laura J. Wolff, Esq.  
CHRISTENSEN JAMES & MARTIN  
7440 W. Sahara Avenue  
Las Vegas, Nevada 89117

Attorneys for **AMICI CURIAE**

Tel: (702) 255-1718  
Fax: (702) 255-0817



An employee of  
Gibbs Giden Locher Turner  
Senet & Wittbrodt LLP

# **EXHIBIT “A”**



CHRISTENSEN JAMES & MARTIN  
7440 WEST SAHARA AVE., LAS VEGAS, NEVADA 89117  
PH: (702) 255-1718 § FAX: (702) 255-0871

**ORDR**  
**CHRISTENSEN JAMES & MARTIN**  
KEVIN B. CHRISTENSEN, ESQ.  
Nevada Bar No. 175  
WESLEY J. SMITH, ESQ.  
Nevada Bar No. 11871  
LAURA J. WOLFF, ESQ.  
Nevada Bar No. 6869  
7440 W. Sahara Avenue  
Las Vegas, Nevada 89117  
Tel.: (702) 255-1718  
Facsimile: (702) 255-0871  
Email: kbc@cjmlv.com; wes@cjmlv.com; ljw@cjmlv.com  
*Attorneys for September Trust, Zobrist Trust, Sandoval Trust  
and Dennis & Julie Gegen*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

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

**ORDER GRANTING MOTION TO  
CONSOLIDATE CASE NO. A-16-  
747800-C WITH CASE NO. A-17-  
765372-C**

Date: February 21, 2018  
Time: 9:00 a.m.

**AND ALL RELATED COUNTERCLAIMS  
AND CROSS-CLAIMS**

SEPTEMBER TRUST, DATED MARCH 23,  
1972; GERRY R. ZOBRIST AND JOLIN G.  
ZOBRIST, AS TRUSTEES OF THE GERRY  
R. ZOBRIST AND JOLIN G. ZOBRIST  
FAMILY TRUST; RAYNALDO G.  
SANDOVAL AND JULIE MARIE  
SANDOVAL GEGEN, AS TRUSTEES OF  
THE RAYNALDO G. AND EVELYN A.  
SANDOVAL JOINT LIVING AND

Case No.: A-17-765372-C  
Dept. No.: XXVIII



1 DEVOLUTION TRUST DATED MAY 27,  
2 1992; and DENNIS A. GEGEN AND JULIE  
3 S. GEGEN, HUSBAND AND WIFE, AS  
4 JOINT TENANTS,

5 Plaintiffs,

6 vs.

7 TRUDI LEE LYTLE AND JOHN ALLEN  
8 LYTLE, AS TRUSTEES OF THE LYTLE  
9 TRUST; JOHN DOES I through V; and ROE  
10 ENTITIES I through V, inclusive,

11 Defendants.

12 Presently before the Court is a Motion to Consolidate Case No. A-16-747800-C with  
13 Case No. A-17-765372-C ("Motion"). No Oppositions were filed. The Motion came on for  
14 hearing on February 21, 2018 at 9:00 a.m. in Department XVIII of the Eighth Judicial District  
15 Court, Clark County, Nevada. Wesley J. Smith, Esq. of Christensen James & Martin appeared on  
16 behalf of the Movants, September Trust, dated March 23, 1972 ("September Trust"), Gerry R.  
17 Zobrist and Jolin G. Zobrist, as Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family  
18 Trust ("Zobrist Trust"), Raynaldo G. Sandoval and Julie Marie Sandoval Gegen, as Trustees of  
19 the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution Trust dated May 27, 1992  
20 ("Sandoval Trust"), and Dennis A. Gegen and Julie S. Gegen, Husband and Wife, as Joint  
21 Tenants ("Dennis & Julie Gegen"). Timothy P. Elson, Esq. of Gibbs Giden Locher Turner Senet  
22 & Wittbrodt LLP appeared on behalf of the Trudi Lee Lytle and John Allen Lytle, as Trustees of  
23 the Lytle Trust ("Lytle Trust"). Daniel T. Foley, Esq. of Foley & Oaks, PC appeared on behalf of  
24 Marjorie B. Boulden, Trustee of the Marjorie B. Boulden Trust, amended and restated dated July  
25 17, 1996 ("Boulden Trust") and Linda Lamothe and Jacques Lamothe, Trustees of the Jacques  
26 and Linda Lamothe Living Trust ("Lamothe Trust"). Christina H. Wang, Esq. of Fidelity  
27 National Law Group appeared on behalf of Robert Z. Disman and Yvonne A. Disman ("Robert  
28 & Yvonne Disman"). The Court having considered the Motion and exhibits, having heard the  
arguments of counsel, for all the reasons contained in the Motion, and with good cause appearing  
therefore, the Court hereby enters the following Order:

1           **IT IS HEREBY ORDERED** that the Motion to Consolidate Case No. A-16-747800-C  
2 with Case No. A-17-765372-C is hereby GRANTED.

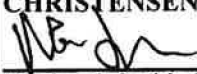
3           **IT IS SO ORDERED.**

4           Dated this 27<sup>th</sup> day of February, 2018.

5  
6   
DISTRICT COURT JUDGE

7 Submitted by:

8 **CHRISTENSEN JAMES & MARTIN**

9   
Wesley J. Smith, Esq.  
10 Nevada Bar No. 11871  
Laura J. Wolff, Esq.  
11 Nevada Bar No. 6869  
7440 W. Sahara Ave.  
12 Las Vegas, NV 89117  
Attorneys for Plaintiffs September Trust,  
13 Zobrist Trust, Sandoval Trust, and  
Dennis & Julie Gegen

14 **Approved as to Form and Content by:**

15 **FIDELITY NATIONAL LAW GROUP**

16  
17 **CHRISTINA H. WANG, ESQ.**  
Nevada Bar No. 9713  
18 1701 Village Center Circle, Suite 110  
Las Vegas, Nevada 89134  
19 Attorneys for Counter-Defendants/Cross-  
Claimants Robert & Yvonne Disman

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

22 **RICHARD E. HASKIN, ESQ.**  
Nevada Bar No. 11592  
23 **TIMOTHY P. ELSON, ESQ.**  
Nevada Bar No. 11559  
24 1140 N. Town Center Drive, Suite 300  
Las Vegas, Nevada 89144  
25 Attorneys for Defendants/Counter-  
26 Claimants Lytle Trust

**FOLEY & OAK, P.C.**

16  
17 **DANIEL T. FOLEY, ESQ.**  
Nevada Bar No. 1078  
18 626 S. 8<sup>th</sup> Street  
Las Vegas, Nevada 89101  
19 Attorneys for Plaintiffs/Counter-  
Defendants/Cross-Defendants Boulden Trust  
20 and Lamothe Trust

1           **IT IS HEREBY ORDERED** that the Motion to Consolidate Case No. A-16-747800-C  
2 with Case No. A-17-765372-C is hereby GRANTED.

3           **IT IS SO ORDERED.**

4           **Dated this \_\_\_\_ day of February, 2018.**

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

\_\_\_\_\_  
DISTRICT COURT JUDGE

Submitted by:  
**CHRISTENSEN JAMES & MARTIN**

\_\_\_\_\_  
Wesley J. Smith, Esq.  
Nevada Bar No. 11871  
Laura J. Wolff, Esq.  
Nevada Bar No. 6869  
7440 W. Sahara Ave.  
Las Vegas, NV 89117  
Attorneys for Plaintiffs September Trust,  
Zobrist Trust, Sandoval Trust, and  
Dennis & Julie Gegen

**Approved as to Form and Content by:**

FIDELITY NATIONAL LAW GROUP

\_\_\_\_\_  
CHRISTINA H. WANG, ESQ.  
Nevada Bar No. 9713  
1701 Village Center Circle, Suite 110  
Las Vegas, Nevada 89134  
Attorneys for Counter-Defendants/Cross-  
Claimants Robert & Yvonne Disman

GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP

\_\_\_\_\_  
RICHARD E. HASKIN, ESQ.  
Nevada Bar No. 11592  
TIMOTHY P. ELSON, ESQ.  
Nevada Bar No. 11559  
1140 N. Town Center Drive, Suite 300  
Las Vegas, Nevada 89144  
Attorneys for Defendants/Counter-  
Claimants Lytle Trust

FOLEY & OAK, P.C.

\_\_\_\_\_  
DANIEL T. FOLEY, ESQ.  
Nevada Bar No. 1078  
626 S. 8<sup>th</sup> Street  
Las Vegas, Nevada 89101  
Attorneys for Plaintiffs/Counter-  
Defendants/Cross-Defendants Boulden Trust  
and Lamothe Trust

1           **IT IS HEREBY ORDERED** that the Motion to Consolidate Case No. A-16-747800-C  
2 with Case No. A-17-765372-C is hereby GRANTED.

3           **IT IS SO ORDERED.**

4           Dated this \_\_\_\_ day of February, 2018.

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

\_\_\_\_\_  
DISTRICT COURT JUDGE

Submitted by:  
**CHRISTENSEN JAMES & MARTIN**

\_\_\_\_\_  
Wesley J. Smith, Esq.  
Nevada Bar No. 11871  
Laura J. Wolff, Esq.  
Nevada Bar No. 6869  
7440 W. Sahara Ave.  
Las Vegas, NV 89117  
Attorneys for Plaintiffs September Trust,  
Zobrist Trust, Sandoval Trust, and  
Dennis & Julie Gegen

**Approved as to Form and Content by:**  
FIDELITY NATIONAL LAW GROUP

FOLEY & OAK, P.C.

\_\_\_\_\_  
CHRISTINA H. WANG, ESQ.  
Nevada Bar No. 9713  
1701 Village Center Circle, Suite 110  
Las Vegas, Nevada 89134  
Attorneys for Counter-Defendants/Cross-  
Claimants Robert & Yvonne Dismar

\_\_\_\_\_  
DANIEL T. FOLEY, ESQ.  
Nevada Bar No. 1078  
626 S. 8<sup>th</sup> Street  
Las Vegas, Nevada 89101  
Attorneys for Plaintiffs/Counter-  
Defendants/Cross-Defendants Boulden Trust  
and Lamothe Trust

\_\_\_\_\_  
GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP

\_\_\_\_\_  
RICHARD E. HASKIN, ESQ.  
Nevada Bar No. 11592  
TIMOTHY P. ELSON, ESQ.  
Nevada Bar No. 11559  
1440 N. Town Center Drive, Suite 300  
Las Vegas, Nevada 89144  
Attorneys for Defendants/Counter-  
Claimants Lytle Trust

1           **IT IS HEREBY ORDERED** that the Motion to Consolidate Case No. A-16-747800-C  
2 with Case No. A-17-765372-C is hereby GRANTED.

3           **IT IS SO ORDERED.**

4           **Dated this \_\_\_\_ day of February, 2018.**

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DISTRICT COURT JUDGE

Submitted by:

**CHRISTENSEN JAMES & MARTIN**

Wesley J. Smith, Esq.  
Nevada Bar No. 11871  
Laura J. Wolff, Esq.  
Nevada Bar No. 6869  
7440 W. Sahara Ave.  
Las Vegas, NV 89117  
Attorneys for Plaintiffs September Trust,  
Zobrist Trust, Sandoval Trust, and  
Dennis & Julie Gegen

**Approved as to Form and Content by:**

FIDELITY NATIONAL LAW GROUP

CHRISTINA H. WANG, ESQ.  
Nevada Bar No. 9713  
~~8363 W. Sunset Road~~ 1701 Village Center  
Circle, Suite 420  
Las Vegas, Nevada 89113  
89134  
Attorneys for Counter-Defendants/Cross-  
Claimants Robert & Yvonne Disman

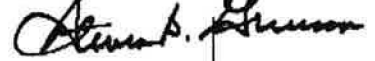
GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP

RICHARD E. HASKIN, ESQ.  
Nevada Bar No. 11592  
TIMOTHY P. ELSON, ESQ.  
Nevada Bar No. 11559  
1140 N. Town Center Drive, Suite 300  
Las Vegas, Nevada 89144  
Attorneys for Defendants/Counter-  
Claimants Lytle Trust

FOLEY & OAK, P.C.

DANIEL T. FOLEY, ESQ.  
Nevada Bar No. 1078  
626 S. 8<sup>th</sup> Street  
Las Vegas, Nevada 89101  
Attorneys for Plaintiffs/Counter-  
Defendants/Cross-Defendants Boulden Trust  
and Lamothe Trust

# **EXHIBIT “B”**



CHRISTENSEN JAMES & MARTIN  
7440 WEST SAHARA AVE., LAS VEGAS, NEVADA 89117  
PH: (702) 255-1718 & FAX: (702) 255-0871

1 **MCSD**  
2 **CHRISTENSEN JAMES & MARTIN**  
3 KEVIN B. CHRISTENSEN, ESQ.  
Nevada Bar No. 175  
4 WESLEY J. SMITH, ESQ.  
Nevada Bar No. 11871  
5 LAURA J. WOLFF, ESQ.  
Nevada Bar No. 6869  
6 7440 W. Sahara Avenue  
Las Vegas, Nevada 89117  
7 Tel.: (702) 255-1718  
Facsimile: (702) 255-0871  
8 Email: kbc@cjmlv.com; wes@cjmlv.com; ljw@cjmlv.com  
*Attorneys for September Trust, Zobrist Trust, Sandoval Trust and Gegen*

9 **EIGHTH JUDICIAL DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

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

15 Plaintiffs,

16 vs.

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

19 Defendants.

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

**MOTION TO CONSOLIDATE CASE**  
**NO. A-16-747800-C WITH CASE NO.**  
**A-17-765372-C**

21 SEPTEMBER TRUST, DATED MARCH 23,  
22 1972; GERRY R. ZOBRIST AND JOLIN G.  
23 ZOBRIST, AS TRUSTEES OF THE GERRY  
R. ZOBRIST AND JOLIN G. ZOBRIST  
24 FAMILY TRUST; RAYNALDO G.  
SANDOVAL AND JULIE MARIE  
25 SANDOVAL GEGEN, AS TRUSTEES OF  
THE RAYNALDO G. AND EVELYN A.  
26 SANDOVAL JOINT LIVING AND  
DEVOLUTION TRUST DATED MAY 27,  
1992; and DENNIS A. GEGEN AND JULIE  
27 S. GEGEN, HUSBAND AND WIFE, AS  
JOINT TENANTS,

Case No.: A-17-765372-C  
Dept. No.: XXVIII





1 **NOTICE OF MOTION**

2 To: All Interested Parties; and

3 To: Their Attorneys of Record herein.

4 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that Plaintiffs'  
5 MOTION TO CONSOLIDATE CASE NO. A-16-747800-C WITH CASE NO. A-17-  
6 765372-C will be heard by the above captioned court in Department 16 of the Regional  
7 Justice Center the 22 day of February, 2018 at the hour of 9:00 am.  
8  
9

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. Introduction**

12 Case No. A-16-747900-C, filed in Department XVI on December 8, 2016 ("First  
13 Case"), and Case No. A-17-765372-C, filed on November 30, 2017 in Department XXVIII  
14 ("Second Case"), involve the same parties, the same and substantially similar facts, and the  
15 same legal issues. Each case pertains to abstracts of judgment wrongfully recorded by Trudi  
16 Lee Lytle and John Allen Lytle, Trustees of the Lytle Trust ("Lytle"), against parcels of real  
17 estate in a small residential community known as Rosemere Estates subdivision ("Rosemere  
18 Subdivision" or "Subdivision") in Las Vegas, Nevada, containing only nine (9) lots and/or  
19 properties. The ONLY factual difference between the two cases is that each parcel  
20 unlawfully encumbered by Lytle has a different owner, thus different plaintiffs. However,  
21 the legal issues are exactly the same and each property owner is entitled to the same relief.  
22 Procedurally, the First Case was filed over a year ago and Summary Judgment was granted  
23 to the Plaintiffs. Lytle has appealed the decision and the Opening Brief and Appendix are  
24 due by January 23, 2018.  
25  
26  
27  
28

1           The Defendants in each case are exactly the same. The First Case involves two (2) of  
2 the lots in the Subdivision. The Second Case involves four (4) more lots. Defendants also  
3 own a lot in the Subdivision, which was conveniently not encumbered by the Abstract of  
4 Judgment. Therefore, seven (7) out of the nine (9) property owners are embroiled in the  
5 same battle and it should be decided in the same courtroom. Consolidation is appropriate to  
6 avoid inconsistent rulings involving the same factual and legal issues.  
7

## 8           **II. Facts**

9           The factual and legal issues in this case and in the First Case are part of a much  
10 larger litigation picture, as follows.  
11

12           The September Trust is the owner of the residential property in Clark County,  
13 Nevada known as 1861 Rosemere Court, Las Vegas, Nevada 89117, Assessor's Parcel No.  
14 163-03-313-004 ("September Property"). The Zobrist Trust is the owner of the residential  
15 property in Clark County, Nevada known as 1901 Rosemere Court, Las Vegas, Nevada  
16 89117, Assessor's Parcel No. 163-03-313-005 ("Zobrist Property"). The Sandoval Trust is  
17 the owner of the residential property in Clark County, Nevada known as 1860 Rosemere  
18 Court, Las Vegas, Nevada 89117, Assessor's Parcel No. 163-03-313-001 ("Sandoval  
19 Property"). Gegen is the owner of the residential property in Clark County, Nevada known  
20 as 1831 Rosemere Court, Las Vegas, Nevada 89117, Assessor's Parcel No. 163-03-313-003  
21 ("Gegen Property") (hereafter September Property, Zobrist Property, Sandoval Property and  
22 Gegen Property may be collectively referred to as the "Second Case Properties"). True and  
23 correct copies of ownership documents regarding the Second Case Properties are attached  
24 hereto as Exhibits 1-4.  
25  
26  
27  
28

1 As stated above, the Second Case Properties are located in the Rosemere  
2 Subdivision, wherein there are nine (9) lots and/or properties. The Second Case Properties  
3 are subject to the CC&R's recorded January 4, 1994 (the "CC&Rs"). A true and correct  
4 copy of the CC&R's are attached hereto as Exhibit "5". A homeowner's association was  
5 formed pursuant to the CC&R's called the Rosemere Association.  
6

7 On June 26, 2009, the Lytles filed suit against the Rosemere Association directly in  
8 Case No. A-09-593497-C, Department XII ("Rosemere LPA Litigation"). The Lytles did not  
9 name the Plaintiffs in the First Case or in the Second Case or any other lot owners as  
10 Defendants in the Rosemere LPA Litigation. A copy of the Lytles' Complaint filed in the  
11 Rosemere LPA Litigation is attached hereto as Exhibit "6".  
12

13 In the Rosemere LPA Litigation, the Lytles alleged that the CC&Rs had been  
14 improperly amended by some of the property owners in the Subdivision which converted the  
15 Association to a full-fledged homeowner's association. The Lytles sought and obtained a  
16 Summary Judgment from the District Court, which held that the Rosemere Association was  
17 not a home-owners association as defined in NRS 116 but instead was a limited-purpose  
18 association as defined in NRS 116.1201(6) that was not subject to the requirements or  
19 benefits of NRS Chapter 116. *See* a true and correct copy of the Summary Judgment filed in  
20 the Rosemere LPA Litigation and attached hereto as Ex. 7, at par. 9, pg. 9. The Summary  
21 Judgment was appealed to, and upheld by the Nevada Supreme Court. Thereafter, on or  
22 about July 29, 2016, the Lytles obtained a Judgment against the Rosemere Association for  
23 their attorney's fees and costs in the amount of \$361,238.59 (hereafter "Attorneys' Fees  
24 Judgment"). As explained below, this Judgment was recorded against the Plaintiffs'  
25 properties and is the subject of the First Case and Second Case disputes.  
26  
27  
28

1           On December 31, 2010, the Lytles filed another suit against the Rosemere  
2 Association directly in Case No. A-10-631355-C, Department XXXII ("Rosemere Litigation  
3 II"). The Lytles did not name the Plaintiffs in the First Case or in the Second Case or any  
4 other lot owners as Defendants in the Rosemere Litigation II. On or about November 14,  
5 2016, the Lytles were granted Summary Judgment against the Rosemere Association. On or  
6 about July 20, 2017, the District Court signed an Abstract of Judgment in the amount of  
7 \$1,103,158.12. ("Abstract Rosemere Judgment II"). See a true and correct copy of the  
8 Abstract Rosemere Judgment II attached hereto as Exhibit "12". As of the date of filing this  
9 Motion, the Rosemere Judgment II has not been recorded against the Plaintiffs' Properties.  
10

11           On or about April 2, 2015, the Lytles filed a third lawsuit against the Association,  
12 Case No. A-15-716420-C, Department XXX and named as Defendants Sherman L. Kearl  
13 ("Kearl") and Gerry G. Zobrist ("Zobrist") ("Rosemere Litigation III"). On April 8, 2015,  
14 the Lytles filed an Errata to the Complaint amending it so that all references to Kearl and  
15 Zobrist were taken out of the Complaint. A true and correct copy of the Complaint and  
16 Errata are attached to the SJ Motion as Exhibit "13". On or about September 13, 2017, the  
17 Court entered its Order granting Summary Judgment for Declaratory Relief as against the  
18 Association ("Rosemere Judgment III). A true and correct copy of the Summary Judgment  
19 is attached to the SJ Motion as Exhibit "14". On November 8, 2017, the Lytles' Motion for  
20 Attorney's Fees and Costs was granted. A true and correct copy of the Order Granting  
21 Motion for Attorney's Fees is attached to the SJ Motion as Exhibit "15". As of the date of  
22 filing this Motion, the Rosemere Judgment III has not been recorded against the Plaintiffs'  
23 Properties in either case nor has an Abstract of Judgment been filed with the Court.  
24  
25  
26  
27  
28

1 In August and September of 2016, the Lytles recorded with the Clark County  
2 Recorder's office two different abstracts of the Attorneys' Fees Judgment from Case No. A-  
3 09-593497-C, Department XII, in the Rosemere LPA Litigation. The first Abstract  
4 specifically listed the parcel numbers of all the properties in the Subdivision except for the  
5 Lytle's property, to which the Rosemere Judgment was to attach. The second Abstract only  
6 listed one parcel which was a different property in the Subdivision but the second Abstract  
7 of Judgment still appears as a lien on the Zobrist Trust's Property in a title report (hereafter  
8 the 2 Abstracts are "Abstracts of Judgment"). True and correct copies of the recorded  
9 Abstracts of Judgment are attached hereto as Exhibit "8".  
10

11  
12 The First Case was filed against the Lytles on or about December 8, 2016, by the  
13 Bouldens (Parcel No. 163-03-313-008), 1960 Rosemere Court, and the Lamothes (Parcel  
14 No. 163-03-313-002), 1830 Rosemere Court, who also own or owned property in the  
15 Rosemere Subdivision. The Bouldens and the Lamothes filed their lawsuit to remove the  
16 Abstracts of Judgment and plead causes of action for Quiet Title, Declaratory Relief and  
17 Slander of Title. On February 24, 2017, the Bouldens and Lamothes filed a Motion for  
18 Partial Summary Judgment, a true and correct copy of which is attached hereto as Exhibit  
19 "9". On July 25, 2017, the Court issued its Order in the First Case granting the Motion for  
20 Partial Summary Judgment and finding certain Findings of Fact and Conclusions of Law  
21 ("Order"). A true and correct copy of the Order is attached hereto as Exhibit "10".  
22

23  
24 In its Order, the Court found that, among other things, the Association is not subject  
25 to NRS 116.3117, the Bouldens and Lamothes were not parties to the Rosemere Litigation,  
26 the Rosemere LP Judgment is not an obligation or debt of the Bouldens or the Lamothes and  
27 that the Abstracts of Judgment were improperly recorded against such properties and must  
28

1 be expunged and stricken from the record. *See* Ex. 10 at 4-5. Following the Court's direction  
2 in the Order, the Lytles released their liens against the Boulden and Lamothe properties.  
3 True and correct copies of the Lien Releases are attached hereto as Exhibit "11". However,  
4 the Lytles have not released the Abstracts of Judgment as to any other property. The Second  
5 Case was filed to obtain the same relief for the September Trust, Zobrist Trust, Sandoval  
6 Trust and Gegen, that is an order requiring the Lytles to remove the Abstracts of Judgment  
7 wrongfully recorded against the Second Case Properties.  
8

9         The Second Case Plaintiffs alleged all the same causes of action as Boulden and  
10 Lamothe, except for Slander of Title. On November 30, 2017, the Second Case Plaintiffs  
11 filed a Motion for Summary Judgment against the Lytles almost exactly like the one filed by  
12 Boulden and Lamothe in the First Case. Plaintiffs anticipate that the Lytles will file an  
13 Opposition and Countermotion to their Motion for Summary Judgment.  
14

### 15         **III.     Argument**

16         E.D.C.R. 2.50(a)(1) provides that:  
17

18         Motions for consolidation of two or more cases must be heard by the judge assigned  
19 to the case first commenced. Such a motion would be prematurely brought if done in  
20 advance of the filing of an answer. If consolidation is granted, the consolidated case  
will be heard before the judge ordering consolidation.

21         N.R.C.P. 42(a) provides that:

22         When actions involving a common question of law or fact are pending before the  
23 court, it may order a joint hearing or trial of any or all the matters in issue in the  
24 actions; it may order all the actions consolidated; and it may make such orders  
concerning proceedings therein as may tend to avoid unnecessary costs or delay.

25         Good cause exists for consolidating these cases. First, both cases have substantially  
26 the same parties. "Cases may be consolidated even where certain defendants are named in  
27 only one of the complaints." *Jacobs v. Castillo*, 612 F.Supp.2d 369, 373 (S.D.N.Y. 2009).  
28

1 The Defendants are parties to both cases. While the First Case and Second Case involve  
2 different plaintiffs, the Plaintiffs are similarly situated, each being property owners in the  
3 Rosemere Subdivision and subject to the Lytles' improper Abstract of Judgment recordings.  
4 In fact, the Plaintiffs' claims against the Defendants are identical in both cases except for the  
5 Slander of Title action asserted by Plaintiffs in the First Case.  
6

7 Consolidation of the cases should take place to avoid injustice. The Judges in both  
8 cases must decide identical claims against the Defendants that arise from the same nucleus  
9 of operative facts and the Judges will make their determinations using the same law.  
10 Consolidation of cases with common questions of law or fact is favored "to avoid  
11 unnecessary costs and delay," (citation omitted) and to "expedite trial and eliminate  
12 unnecessary repetition and confusion." *Devlin v. Trans. Commc'ns Int'l Union*, 175 F3d  
13 121, 130 (2d Cir. 1999). Department XVI has already made certain rulings on the First  
14 Case, including an Order that has been appealed, that should be considered and followed in  
15 the Second Case. Allowing Department XVI to decide these same issues will eliminate  
16 repetition and confusion.  
17

18 Further, there exists the danger of inconsistent verdicts and/or a ruling that the claims  
19 in one of the cases be barred by res judicata because Defendants have improperly recorded  
20 Abstracts of Judgment. The Bouldens and Lamothes have already been accorded relief from  
21 the Court on these same issues and the wrongfully recorded Abstracts have been released  
22 from their properties. The Second Case Plaintiffs are also entitled to the same relief. The  
23 Defendants have now sought Judgments against the Association in three (3) different  
24 Departments (XII, XXXII and XXX). Now, litigation is ongoing in two (2) more  
25  
26  
27  
28

1 Departments regarding these same issues (XVI and XXVIII). Therefore, consolidating these  
2 matters makes sense.

3         Judicial economy will also be achieved through consolidation of the Cases. The most  
4 prominent elements of systemic integrity are “judicial economy and the avoidance of  
5 inconsistent judgments.” *Byerson v. Equifax Info. Serv., LLC*, 467 F. Supp.2d 627, 635 (E.D.  
6 Va. 2006). Discovery alone warrants consolidation. Because the facts in each case are  
7 identical, the Plaintiffs in the Second Case can most likely rely and use the discovery  
8 already obtained by the Plaintiffs in the First Case since the same documents will be  
9 produced, the same questions will be asked through interrogatories and the same admissions  
10 will be requested in each Case. In fact, consolidation should open the door for a demand for  
11 prior discovery for the Second Case Plaintiffs under NRCP 26(h), which should be  
12 extremely helpful in conserving resources. There is no need to duplicate expense, time, and  
13 effort in two different Cases. This Court has enough litigation to supervise. Consolidating  
14 two cases that are essentially the same promotes judicial economy.

15         Further, events and rulings in all the prior lawsuits will most likely influence and  
16 dictate events in this case. Central to both cases are the issue of whether the Lytles can assert  
17 liens against property owners in the Rosemere Subdivision based on judgments against the  
18 Association only. The Court has already decided this issue in the First Case making specific  
19 rulings, and the Defendants have already appealed such a ruling. In fact, in the First Case  
20 the court has already ruled that:

21         • The Plaintiffs were not parties or a “losing party” as per Section 25 of the CC&R’s  
22 in the Rosemere Litigation I (4:17-19);  
23  
24  
25  
26  
27  
28



• The Association is a limited purpose association as referenced under NRS 116.1201 (2) (4:12);

• NRS 116.3117 is not applicable to the Association (4:13);

• The Final Judgment against the Association is not an obligation or debt of the Plaintiffs (4:20-24); and

• The Abstracts of Judgment were improperly recorded against the Boulden and Lamothe's Properties (4:24-26;5:1-9).

After the Court entered its Order, the Lytles released the Abstracts of Judgment against the Boulden and Lamothe's Properties. Ex. "11". This is exactly what the Second Case Plaintiffs are requesting. It makes sense to have the cases consolidated so that the Court's rulings are consistent.

In sum, exposing litigants to the possibility of res judicata and inconsistent judgments is unfair and not in the interest of justice. Justice requires that the Court bring all of the parties together in one case where claims can be properly managed. Judge Timothy C. Williams has already decided this same issue on a partial summary judgment motion in favor of the Bouldens and Lamothes. Thus, consolidation is necessary to prevent relitigation of these issues.

### III.

## CONCLUSION

Plaintiffs respectfully request that the Court consolidate Case No. A-16-747900-C, Department XVI, with Case No. A-17-765372-C, Department XXVIII, because there are common questions of law and fact. “Both NRCP 42(a) and its federal counterpart allow for consolidation of actions that involve a common question of law or fact.” *Marcuse v. Del*

1 *Webb Communities, Inc.*, 123 Nev. 278, 163 P.3d 462, 467-468 (2007). Consolidation is  
2 necessary and in the best interest of all the parties so that all the litigation regarding the  
3 properties in the Rosemere Subdivision are decided by the same Judge.  
4

5 DATED this 16th day of January, 2018.

6 CHRISTENSEN JAMES & MARTIN

7 By: /s/ Laura J. Wolff, Esq.  
8 Laura J. Wolff, Esq.  
9 Nevada Bar No. 6869  
10 7440 W. Sahara Avenue  
11 Las Vegas, NV 89117  
12 Tel.: (702) 255-1718  
13 Fax: (702) 255-0871  
14 *Attorneys for Plaintiffs*  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28