

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * *

In the Matter of

THE W.N. CONNELL and MARJORIE
T. CONNELL LIVING TRUST, dated
May 18, 1972.

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Elizabeth A. Brown
Clerk of Supreme Court

Case No. 73837

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable GLORIA STURMAN, District Court Judge
District Court Case No. P-09-066425-T

APPELLANT'S APPENDIX

VOLUME 1: AAPP 1 through AAPP 125

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Supreme Court Case No. 73837

In the Matter of THE W.N. CONNELL and MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972.

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DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of

THE W.N. CONNELL and MARJORIE T.
CONNELL LIVING TRUST, dated May 18,
1972,

Case No. P-09-066425-T
Department: XXVI (Probate)

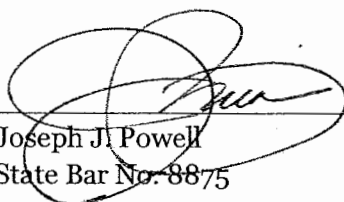
A non-testamentary trust.

**NOTICE OF ENTRY OF ORDER REGARDING MOTION FOR ASSESSMENT OF
DAMAGES AGAINST ELEANOR AHERN**

NOTICE IS HEREBY GIVEN THAT:

The "Order Regarding Motion for Assessment of Damages Against Eleanor Ahern" was filed
on August 8, 2017, a copy of which is attached hereto.

Respectfully submitted by:



Joseph J. Powell
State Bar No. 8875

8/9/17
Date

RUSHFORTH
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ORDER

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

In the Matter of

THE W.N. CONNELL and MARJORIE T.
CONNELL LIVING TRUST, dated May 18,
1972,

Case No. P-09-066425-T
Department: 26 (Probate)

A non-testamentary trust.

Date of Hearing: February 9 -10, 2017

ORDER REGARDING MOTION FOR ASSESSMENT OF DAMAGES AGAINST ELEANOR AHERN

A. PROCEDURAL BACKGROUND/OVERVIEW

A.1 A "Motion for Assessment of Damages Against Eleanor Ahern; Enforcement of No Contest Clause; and Surcharge of Eleanor's Trust Income" ("the Motion") was filed on behalf of Jacqueline M. Montoya and Kathryn A. Bouvier ("Movants" or "Ms. Montoya and Ms. Bouvier") on June 3, 2015, and a Supplement to the Motion was filed on July 31, 2015. Ms. Montoya is the currently serving trustee of the MTC Living Trust, dated December 6, 1995, and subsequently restated in its entirety on October 3, 2000 ("MTC Trust"), and is also a beneficiary of the MTC Trust, while Ms. Bouvier is a beneficiary of the MTC Trust.

A.2 An opposition to the Motion was filed on behalf of Eleanor Connell Hartman Ahern

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1 ("Ms. Ahern") on June 29, 2015, and a "Motion to Strike Supplement to Motion for Assessment of
2 Damages Against Eleanor Ahern; Enforcement of No Contest Clause; and Surcharge of Eleanor's
3 Trust Income" was filed on August 3, 2015.

4 A.3 An evidentiary hearing was held on February 22, 2016 and continued on March 3,
5 2016. On February 22, 2016 legal arguments were presented by all parties, and the testimony of
6 two witnesses, Fredrick Waid and Jacqueline Montoya, was offered, and on March 3, 2016 closing
7 arguments were made.
8

9 (a) Jacqueline M. Montoya and Kathryn A. Bouvier were jointly represented by
10 attorneys Layne T. Rushforth, Joseph J. Powell, and Daniel P. Kiefer of The Rushforth Firm,
11 Ltd.;

12 (b) Eleanor Connell Hartman Ahern ("Ms. Ahern") was represented by Tamara
13 Beatty Peterson, Esq. and Kirk B. Lenhard, Esq., of Brownstein Hyatt Farber Schreck, LLP;
14 and
15

16 (c) Fredrick P. Waid ("Mr. Waid"), in his capacity as the acting trustee of THE
17 W.N. CONNELL and MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972 ("the
18 Trust"), was represented by Todd L. Moody and Russel J. Geist of Hutchison & Steffen,
19 I.LC.

20 A.4 The result of the evidentiary hearing on February 22, 2016 and March 3, 2016 was
21 the issuance of the "Order Regarding Motion for Assessment of Damages; Enforcement of No
22 Contest Clause; and Surcharge of Trust Income", dated September 13, 2016 ("Order Regarding
23 Motion for Damages").

24 A.5 The Order Regarding Motion for Damages included the following findings:
25

- 26 1. *Ms. Ahern, as Trustee, did not comply with the Court order to protect*
27 *the 65% share of the Trust that was to be segregated under the terms of the*
28 *Trust for the Movants, Ms. Montoya and Ms. Bouvier.*

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1 3. *Ms. Ahern's failure to comply with the Court's Order to protect the*
2 *Movants' 65% share, however, resulted in a misapplication of the Trust*
3 *income, which deprived the Movants of funds owed to them under the terms*
4 *of the Trust. Ms. Ahern's misapplication of Trust funds warrants a*
5 *surcharge against Ms. Ahern's 35% share of the Trust, to be paid to*
6 *Movants, in a total amount to be determined at a future hearing to be set*
7 *by this Court.*

8
9 4. *Additional briefing and argument is needed on the issues of punitive*
10 *and treble damages. It is expected that the additional briefing on such*
11 *damages, and the hearing on the total amount owed to Movants, will be*
12 *scheduled after the Successor Trustee, Fredrick P. Waid ("Mr. Waid")*
13 *finalizes his accounting for the Court.*

14
15 6. *In further violation of this Court's Orders, Ms. Ahern removed some*
16 *funds from Trust accounts before turning those accounts over to the*
17 *Successor Trustee, Mr. Waid. Some funds have since been turned over to*
18 *the Successor Trustee, however, until such time as Mr. Waid can provide*
19 *an Accounting the Court cannot rule on Ms. Ahern potential liability. The*
20 *exact amount of any damages resulting from these serious breaches of*
21 *fiduciary duty will be determined at a later evidentiary hearing.*

22 8. *Movant's seek punitive damages, which requires a finding of willful*
23 *and malicious conduct. In the alternative, Movants seek treble damages*
24 *for breach of fiduciary duty. Ms. Ahern's conduct was shocking and needs*
25 *to be dealt with a serious fashion, but the final decision on whether punitive*
26 *and/or treble damages should be awarded in addition to restitution will be*
27 *made at the evidentiary hearing to be scheduled after Mr. Waid concludes*
28

discovery and prepares his report and accounting to the Court.

A.6 In the "Order" section of the Order Regarding Motion for Damages, it was stated that:

IT IS FURTHER ORDER ADJUDGED AND DECREED that Mr. Waid shall prepare a report and a trustee's account, and upon completion, a hearing on the amounts owed by Ms. Ahern, including any punitive and treble damages, shall be conducted, unless the parties stipulate otherwise.

A.7 In compliance with this Court's Order Regarding Motion for Damages, on February 1, 2017, Mr. Waid filed his "Accounting and Report of Trust Activity from 2013 to 2015" ("Accounting and Report").

A.8 As it relates to his calculation of the amounts owed to the MTC Trust from Ms. Ahern, Mr. Waid made the following declarations and conclusions in his Accounting and Report:

Since the Appointment of the Successor Trustee in April 2015, this Court has issued numerous orders requiring Ms. Ahern to produce records, comply with deposition notices and cooperate with the Successor Trustee's efforts to prepare an accounting for time periods when she served as Trustee. In response to the Court's orders Ms. Ahern has produced, through her various counsel, only limited records primarily consisting of forwarded mail. She did not appear for any scheduled or ordered depositions notwithstanding the findings of the Court regarding fraud and other misconduct pursuant to hearings on the Motion to Enforce the Trust's No Contest Clause.

Due to her failure to appear and cooperate as ordered, a significant portion of the transactional history that occurred during Ms. Ahern's tenure as trustee cannot be reconciled or explained. As such, and pursuant to Generally Accepted Accounting Principles (GAAP), the Successor Trustee is unable to this provide the

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1 Court with definitive information or explain as to the greatly expanded Trust
2 expenditures, either in dollars spent or to whom those dollars were paid, during
3 the accounting period and Ms. Ahern's tenure as Trustee. [Pages 1- 2 of
4 Accounting and Report]

5 *****

6
7 Again, due to Ms. Ahern's failure to answer questions under oath, the
8 rationale and basis for the expenditures remain unanswered and unclear. What
9 is clear is that MTC did not receive a single distribution of royalty income from the
10 Trust between June 2013 and April 2015. [Page 2 of Accounting and Report]

11 *****

12 A significant number of expenses that were authorized by Ms. Ahern appear
13 to have provided no benefit to the Trust and cannot be deemed appropriate,
14 deductible business expenses as defined and permitted by the Internal Revenue
15 Code. [Page 2 of Accounting and Report]

16 *****

17
18 After reviewing available records from the Internal Revenue Service,
19 various banks, oil and gas producers, common royalty recipients (i.e., the Miller
20 family, which shares an equivalent 25% royalty interest as the Trust) and partial
21 reconciliations completed by the accounting firm of Gamm et & King CP As, the
22 Successor Trustee prepared the chart attached as Exhibit B, which sets forth the
23 best available basis for calculation of royalties not paid to the MTC Trust, as
24 required by the terms of the Trust and as determined by this Court's previous
25 findings and orders.

26
27 MTC should have received royalty payments of \$481,010 for 2013,
28 \$2,028,134 for 2014 and \$1,447,406 for 2015, totaling \$3,956,550. MTC received

1 for the three (3) year period a total of \$2,214,497, with \$1,914,622 of the amount
2 being paid after Ms. Ahern was removed as Trustee. The total undistributed
3 royalties for the period is \$1,742,053. [Page 2 - 3 of Accounting and Report]

4 A.9 On February 7, 2017, the Movants filed their Pre-Trial Memorandum, which set forth
5 the amount of damages that the Movants were seeking to be awarded by the Court in light of Mr.
6 Waid's computations and calculations as found in his Accounting and Report.

7
8 A.10 On or about February 8, 2017, Ms. Ahern submitted an *ex parte* request, via
9 correspondence faxed to the Court, to have funds released by Mr. Waid from the Trust for the
10 payment of her representation by Mr. Lawrence Semenza at the evidentiary hearing.

11 A.11 In response to Ms. Ahern's *ex parte* request for an order releasing funds, pursuant
12 to a minute order issued on February 8, 2017, the Court granted Ms. Ahern's request for the release
13 of funds directly to Attorney Semenza "for his reasonable attorney's fees incurred for his
14 representation of Ms. Ahern at the February 9th and 10th evidentiary hearing".

15 A.12 Prior to the start of the evidentiary hearing, Attorney Semenza indicated that he
16 would be unable to represent Ms. Ahern under the circumstances and would have to respectfully
17 decline to accept the representation despite the minute order issued by the Court¹.

18 A.13 Subsequent to Attorney Semenza making his decision, Ms. Ahern was informed by
19 the Court of the situation and the fact that the evidentiary would proceed as scheduled. Ms. Ahern
20 replied that because she would not be represented by counsel, she indicated that she was declining
21

22
23
24 MR. SEMENZA: I have not made an appearance, and I certainly cannot make an appearance under the
25 terms that have been specified in the Court's order. Ms. Ahern, as you indicated last time, Your Honor,
26 needs counsel, and apparently she does not have sufficient funds with which to engage counsel, whether
27 it's me or someone else. And to me, for me to enter an appearance today and for tomorrow, assuming
28 that the hearing were to continue that and then I don't know whether I would have to move the Court
to withdraw since I—in for a pound, in for a penny, whatever. I cannot do that. It would be malpractice
for me to step into this for a hearing this morning, Your Honor, and I cannot do so.

THE COURT: Okay. So you're respectfully declining to appear.

MR. SEMENZA: I am, Your Honor.

1 to speak².

2 A.14 After making such declaration, Ms. Ahern then made an oral request for the
3 evidentiary hearing to be continued which the Court promptly denied³.

4 A.15 At the evidentiary hearing commencing on February 9th, appearances and
5 representations were as follows:

6 (a) The Movants were jointly represented by attorneys Joseph J. Powell and
7 Daniel P. Kiefer of The Rushforth Firm, Ltd.;

8 (b) Ms. Ahern appeared *pro se*; and

9 (c) Mr. Waid, in his capacity as the acting trustee of the Trust, was represented
10 by Todd L. Moody of Hutchison & Steffen, LLC.

11 A.16 The sole witness to provide testimony at the evidentiary hearing was Mr. Waid.

12 A.17 The issues to be determined at the evidentiary hearing were the determination of the
13 compensatory damages owing to the Movants, via their beneficial interests in the MTC Trust, from
14 Ms. Ahern and a determination as to whether exemplary damages would be awarded to the
15 Movants based on Ms. Ahern's conduct and if appropriate the amount of such exemplary damages
16 that was appropriate.

17
18
19 **B. FINDINGS REGARDING COMPENSATORY DAMAGES**

20 The Court makes the following findings and rulings in relation to compensatory damages:

21 B.1 Mr. Waid testified regarding the conclusions found in his Accounting and Report.
22 As such, the Accounting and Report is accepted by the Court in its entirety and the findings and
23 determinations therein relating to figures withheld from the MTC Trust beneficiaries, the Movants,
24

25
26 ² MS. AHERN: Since I am not represented by counsel, I will not be speaking.

27 THE COURT: Okay. That's understood.

28 ³ MS. AHERN: I would like a continuance.

THE COURT: That's denied.

1 by Ms. Ahern, are deemed accurate.

2 B.2 Specifically, between June of 2013 and the end of 2015 that the Movants, through
3 distributions required to be given to the MTC Trust, were entitled to the sum of \$3,956,550.

4 B.3 Further, for the period of June of 2013 through March 31, 2015, the Movants were
5 entitled to the sum of \$2,581,994.92.

6 B.4 Additionally, Mr. Waid made equitable adjustments of income, pursuant to guidance
7 from the Court, after he became trustee in early April of 2015, thus reducing the amount owed to
8 the Movants. As a result, the amount owed to Movants, through the MTC Trust, for the time period
9 of June of 2013 through March 31, 2015, is \$1,742,053.

10 B.5 Ms. Ahern offered no evidence to refute Mr. Waid's Accounting and Report nor his
11 testimony regarding his thorough investigation and subsequent reporting of the findings regarding
12 the same.

13
14 **C. FINDINGS REGARDING EXEMPLARY DAMAGES**

15 The Court makes the following findings and rulings in relation to exemplary damages:

16 C.1 The Movants have asked for this Court to award exemplary damages against Ms.
17 Ahern based on her inappropriate conduct in this matter.

18 C.2 Based on all evidence received and reviewed at the various evidentiary hearings,
19 including testimony of Mr. Waid, the Court finds that the imposition of punitive damages against
20 Ms. Ahern based on her conduct are warranted.

21 C.3 Specifically, Ms. Ahern intentionally and fraudulently breached her fiduciary duties
22 to the MTC Trust, and the Movants, as beneficiaries of the MTC Trust, and committed tortious acts
23 in converting and embezzling Trust funds. Accordingly, the Court finds that Ms. Ahern acted with
24 oppression, fraud, and malice.

25 C.4 Punitive damages are reserved for bad actors who deserve to be punished. See
26 *Coughlin v. Hilton Hotels Corp.*, 879 F.Supp. 1047 (D. Nev. 1995) ("punitive damages are not
27
28

1 designed to compensate the victim of a tortious act but rather to punish and deter oppressive,
2 fraudulent or malicious conduct"). Ms. Ahern's actions deserve to be punished and rise to the level
3 of her having acted with oppression, fraud, and malice.

4 C.5 This Court has the authority to award punitive damages "in an action for the breach
5 of an obligation not arising from contract, where it is proven by clear and convincing evidence
6 that the defendant has been guilty of oppression, fraud, or malice." See NRS 42.005(1).

8 C.6 Once shown, a petitioner, "in addition to the compensatory damages, may recover
9 damages for the sake of example and by way of punishing the defendant an amount equal to
10 three times the amount of compensatory damages awarded to [Petitioner] if the amount of
11 compensatory damages is \$100,000 or more." *Id.*

12 C.7 The evidence presented at the various evidentiary hearings conclusively established
13 that Ms. Ahern willfully and intentionally deceived this Court, and the Movants, by claiming, in a
14 sworn declaration signed under oath, all funds that she was ordered (by the Court) to keep in trust
15 during the pendency of the dispute were "intact and are presently being held in trust."

17 C.8 This Court previously held in its "Order Regarding Motion for Damages," that "the
18 account [Ms. Ahern] filed, under penalty of perjury on March 13, 2015, titled "Brief Regarding
19 Accounting Fiduciary Duties, and Trust Administration" was incomplete and intentionally
20 inaccurate."

21 C.9 In that same order, this Court determined that "Ms. Ahern, as Trustee, did not
22 comply with the Court order to protect the 65% share of the Trust that was to be segregated under
23 the terms of the Trust for the Movants, Ms. Montoya and Ms. Bouvier."

25 C.10 Based on the evidence presented to this Court (i.e. the testimony of Mr. Waid at the
26 hearings occurring on February 22, 2016 and February 9, 2017, together with the exhibits admitted
27 at the same hearings, which include reports made by Mr. Waid), the Court finds that there is clear
28 and convincing evidence that Ms. Ahern committed fraud, oppression, and malice.

1 C.11 The following factual findings support the Court's findings of fraud, oppression, and
2 malice:

- 3 1. Ms. Ahern filed, under penalty of perjury, an intentionally inaccurate
4 accounting with the Court;
- 5 2. Ms. Ahern failed to keep funds which were in dispute---i.e. the income
6 attributable to the MTC Trust's 65% share (the "Segregated Funds:")---
7 segregated despite Court order to do so (the "Segregation Order");
- 8 3. Ms. Ahern represented to the Court, under penalty of perjury, that she was
9 complying with the Court's Segregation Order while she continuously (and
10 secretly) removed large portions of the Segregated Funds from the Trust
11 accounts;
- 12 4. Ms. Ahern claimed, under penalty of perjury, that \$500,000 of the
13 Segregated Funds were on deposit with Fidelity Capital Inc. The evidence
14 and testimony in this matter demonstrate that this representation was and
15 is false. There was never \$500,000 on deposit with Fidelity Capital Inc.;
- 16 5. Ms. Ahern claimed, under penalty of perjury, that she rented office space for
17 the Trust from Joseph's Properties at a cost of \$1,750 per month pursuant
18 to an alleged lease. The evidence and testimony in this matter demonstrate
19 that this representation was and is false, and that Ms. Ahern never rented
20 office space from Joseph's Properties;
- 21 6. While the Segregation Order was in place, Ms. Ahern paid \$300,000 of
22 Segregated Funds to Real Estate Services, a entity operated by Suzanne
23 Nounna. Suzanne Nounna has no beneficial interest in the Trust or the MTC
24 Trust;
- 25 7. Ms. Ahern withdrew a substantial amount of Segregated Funds from Trust
26
27
28

1 accounts slightly before, on the day of, and shortly after her removal as
2 trustee. Ms. Ahern made such withdrawals by use of cashier's checks. Mr.
3 Waid testified that Ms. Ahern's use of cashier's checks was "severely
4 reckless" and "troubling" because of such negotiable instrument's status as
5 unprotected, uninsured, bearer paper;
6

7 8. Despite the Segregation Order, Ms. Ahern used Segregated Funds to pay
8 hundreds of thousands of dollars in personal expenses;

9 9. On, or around, February 18, 2015, Ms. Ahern removed \$1,287,580.85 of
10 Segregated Funds held in a Wells Fargo Trust account by use of a cashier's
11 check (the "February 2015 Cashier's Check").

12 10. After her removal as trustee of the Trust, Ms. Ahern attempted an "all cash"
13 withdrawal of \$100,000 from the Segregated Funds; and the Movant's
14 share.
15

16 C.12 The Court and Mr. Waid provided Ms. Ahern ample opportunity to explain her
17 actions described above and provide appropriate documentation to demonstrate any legitimate
18 purpose for such actions. Ms. Ahern remained silent on these issues and failed to provide any
19 financial documentation relevant to the above issues. More specifically, Ms. Ahern refused to
20 cooperate with Mr. Waid's investigation into Trust assets that went missing during her tenure as
21 trustee, and has willfully and intentionally obstructed and impeded the same.
22

23 C.13 The Court has no choice but to impose an adverse inference against Ms. Ahern
24 pursuant to the standard set for by the Nevada Supreme Court in *Bass-Davis v. Davis*, 122 Nev.
25 442, 134 P.3d 103 (2006). Accordingly, the Court finds that any information and documentation
26 which Ms. Ahern could have provided in relation to Mr. Waid's inquiry would have been adverse
27 to her legal position. *See id.* at 451-52, 109.
28

C.14 In the absence of any evidence to the contrary, the Court finds that pursuant to NRS

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1 47.250(1) Ms. Ahern's unlawful acts of violating the Segregation Order by removing Segregated
2 Funds "was done with an unlawful intent." Similarly, the Court must also find that pursuant to
3 NRS 47.250(2) Ms. Ahern intended the "ordinary consequences" of her "voluntary acts" of
4 repeatedly removing and withdrawing monies from the Segregated Funds---i.e. that she intended
5 to disregard and violate the Segregation Order.
6

7 C.15 Based on the above, the Court hereby finds that Ms. Ahern's actions in relation to
8 the Movants and the Segregated Funds were undertaken with an conscious disregard of the rights
9 of the Movants and were clearly fraudulent.

10 C.16 Of the above described actions, the Court finds Ms. Ahern's actions in relation to the
11 February 2015 Cashier's Check to be especially troubling and egregious. Although the funds
12 associated with the February 2015 Cashier's Check were eventually recovered through diligent
13 efforts of Mr. Waid, Ms. Ahern's use of this check was nonetheless reprehensible. Mr. Waid
14 testified that such behavior was disturbing. The Court believes that such willful behavior and
15 disregard of the Segregation Order needs to be discouraged, and clearly appears to have been
16 intended to defraud the Trust and the Movants.
17

18 C.17 Having considered the totality of Ms. Ahern's wrongful acts, the adverse inference
19 imposed against Ms. Ahern in accordance with *Bass-Davis v. Davis*, and the un rebutted
20 presumptions set forth at NRS 47.250(1) and (2), the Court believes that the imposition of punitive
21 damages in this matter is appropriate pursuant to NRS 42.005.

22 C.18 As the Court finds Ms. Ahern's actions in relations to the February 2015 Cashier's
23 Check to be the most egregious and reprehensible of Ms. Ahern's conduct, the Court shall treble the
24 amount of funds removed through the February 2015 Cashier's Check (\$1,287,580.85) and award
25 such as a punitive damage in favor of the Movants and against Ms. Ahern. Accordingly, the Court
26 intends to award punitive damages against Ms. Ahern in the amount of ~~\$9,862,742.55~~ (3 X
27 ~~\$1,287,580.85~~)

28 ~~\$1,287,580.85~~ ^{1,287,580.85}

~~\$9,862,742.55~~ ^{\$3,600,000} (3 X
~~\$1,287,580.85~~)

1 C.19 The Court finds that the punitive damage award described above should be paid
2 from and/or offset against Ms. Ahern's share of the Trust.

3 C.20 Given the anticipated compensatory damage award of \$2,581,994.92, which would
4 allow a possible punitive damages award in the amount of \$7,745,984.76, the anticipated punitive
5 damage award described above is well within the statutory bounds set forth in NRS 42.005(1)(a).
6

7 C.21 In accordance with, and in supplement to, the Order Regarding Motion for Damages,
8 the Court finds that Ms. Ahern's share of the Trust shall remain in complete and entire suspension
9 until all damages awarded herein (both compensatory and punitive damage awards), which shall
10 include all relevant interest, fees, and costs, have been fully satisfied. Accordingly, the Movants
11 shall receive all Trust income, with Mr. Waid calculating the relevant portion of Trust income which
12 would otherwise be attributable to Ms. Ahern's 35% share, until such time as Ms. Ahern's debts and
13 liabilities outlined herein are fully satisfied. The determination of whether Ms. Ahern's liabilities
14 to the Movants has been fully satisfied by her 35% share of the Trust shall be made by Mr. Waid in
15 his capacity as successor trustee of the Trust, *except Ms. Ahern's GPH may petition the Court for distributions necessary for Ms. Ahern's health, maintenance*
16 *Self care*

17 D. FINDINGS REGARDING AWARD OF ATTORNEY'S FEES AND COSTS *Self care*

18 The Court makes the following findings and rulings in relation to the Movants'
19 request for an award of attorney's fees and costs:

20 D.1 An award of attorney's fees and costs is appropriate pursuant to NRS 153.031(3)(b)
21 because:

- 22 1. The Movants' successfully moved the Court for relief "compelling redress of
23 a breach of the trust" pursuant to NRS 153.031(1)(m); and
24 2. An award of fees and costs in this matter is necessary to "avoid an injustice"
25 pursuant to NRS 153.031(3) because the Movants' relevant fees and costs are
26 a direct and proximate result of Ms. Ahern's misconduct.
27

28 D.2 The Court shall entertain a motion for fees from the Movants which shall detail the

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1 reasonableness of the requested fees in accordance with the *Brunzell* factors; and

2 D.3 As the Court does not believe that the Movants' are entitled to an award of their fees
3 and costs associated with the recently completed appeal in this matter, the motion for fees shall not
4 include a request for such fees and costs.

5 **E. JUDGMENT AGAINST ELEANOR CONNELL HARTMAN AHERN**

6 E.1 Based on the above findings and rulings, the Court hereby ENTERS JUDGMENT
7 FOR COMPENSATORY DAMAGES in favor of the MTC TRUST (of which JACQUELINE M.
8 MONTOYA and KATHRYN A. BOUVIER are beneficiaries) and against ELEANOR CONNELL
9 HARTMAN AHERN as follows:
10

- 11 1. Compensatory damages in the amount of \$2,581,994.92;
- 12 2. A partial satisfaction of the above award shall be provided to ELEANOR
13 CONNELL HARTMAN AHERN in the amount of \$809,841.92 based on
14 payments made by Mr. Waid in his role as successor trustee of the Trust to
15 the MTC TRUST; accordingly, the current outstanding balance of the
16 compensatory damages awarded above is \$1,742,053;
- 17 3. In accordance with NRS 17.130(2) and NRS 99.040(1), pre-judgment and
18 post-judgment interest shall accrue against this compensatory damage
19 award *at the statutory rate* until fully satisfied;
- 20 4. In light of Mr. Waid's unique knowledge of the partial satisfaction described
21 above, as well as his role as successor trustee, Mr. Waid shall determine and
22 calculate the amount of relevant judgment interest associated with this
23 compensatory damage award;
- 24 5. Ms. Ahern's share of the Trust shall remain in complete and entire
25 suspension until all compensatory damages awarded herein have been fully
26 satisfied; *except for distributions allowed by the*
27 *court upon petition by Ms Aherns ~~to~~ ALJ*
28 *for her healthy maintenance & welfare.*

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6. The MTC Trust shall receive all net Trust income, with Mr. Waid calculating the relevant portion of the Trust income which would otherwise be attributable to ELEANOR CONNELL HARTMAN AHERN's 35% share, until such time as this is fully satisfied; and


7. The determination of whether ELEANOR CONNELL HARTMAN AHERN's liability related to this compensatory damage award has been fully satisfied shall be made by Mr. Waid in his capacity as successor trustee of the Trust.

E.2 Based on the above findings and rulings, the Court hereby ENTERS JUDGMENT FOR PUNITIVE DAMAGES in favor of the MTC TRUST (of which JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER are beneficiaries) and against ELEANOR CONNELL HARTMAN AHERN as follows:

1. Exemplary damages in the amount of ^{600,000}~~\$3,862,742.55~~;
2. In accordance with NRS 17.130(2) and NRS 99.040(1), pre-judgment and post-judgment interest shall accrue against this exemplary damage award *at the 5% statutory rate* until fully satisfied;
3. In light of Mr. Waid's unique role as successor trustee, Mr. Waid shall determine and calculate the amount of relevant judgment interest associated with this exemplary damage award;
4. Ms. Ahern's share of the Trust shall remain in complete and entire suspension until all compensatory damages awarded herein have been fully satisfied; *save & except for allowed distributions upon petition of Ms. Ahern's CAT*;
5. The MTC Trust shall receive all Trust income, with Mr. Waid calculating the relevant portion of Trust income which would otherwise be attributable to ELEANOR CONNELL HARTMAN AHERN's 35% share, until such time as this is fully satisfied; and

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6. The determination of whether ELEANOR CONNELL HARTMAN AHERN's liability related to this exemplary damage award has been fully satisfied shall be made by Mr. Waid in his capacity as successor trustee of the Trust.


DISTRICT COURT JUDGE

August 4, 2017
Date

Submitted by:

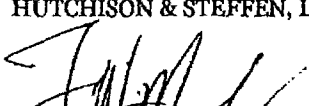
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*Attorneys for Fredrick P. Waid,
Court-appointed Trustee*

Electronically Filed
08/21/2017

Elizabeth A. Brown
CLERK OF THE COURT

Eleanor Ahern *IN FOR A PAUPERIS*
355 West Mesquite Blvd D30 #276
Mesquite, Nevada
Phone 702 345 3035
Fax 702 345 7909

Electronically Filed
Aug 28 2017 08:59 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

DISTRICT COURT

CLARK COUNTY

IN THE MATTER OF THE W. N. CONNELL
AND MARJORIE T. CONNELL LIVING
TRUST dated May 18, 1972

Case No.: P-09-066425 - T

Defendant
Eleanor Ahern
355 West Mesquite Blvd D30 #176
Mesquite, Nevada 89027

**APPEAL TO THE NOTICE OF
ENTRY OF ORDER REGARDING
MOTION FOR ASSESSMENT OF
DAMAGES AGAINST ELEANOR
AHERN**

Office of Appeal

**APPEAL TO THE NOTICE OF ENTRY OF ORDER REGARDING MOTION FOR
ASSESSMENT OF DAMAGES AGAINST ELEANOR AHERN.**

That defendant Eleanor Connell Hartman Ahern hereby appeals to the Supreme Court of Nevada from the order and judgement on defendant Eleanor Connell Hartman Ahern filed on August 8th 2017. Said Judgement setting forth with finality the provision of the judgement placed against said defendant as well as any and all other orders made final and/or otherwise applicable by the foregoing.

Eleanor Ahern
Eleanor Ahern *In Forma Pauperis*

RECEIVED

AUG 24 2017

CLERK OF THE COURT

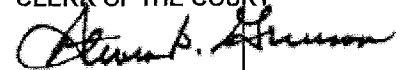
TYPE BODY OF PLEADING HERE.] - 1

21
1 I certify that on August 16, 2017, I mailed a true and correct copy of the foregoing APPEAL
2 Re: NOTICE OF ENTRY OF ORDER REGARDING MOTION FOR ASSESSMENT OF
3 DAMAGES AGAINST ELEANOR AHERN to those listed below:

4 Todd I. Moody (5430)
5 Russel J. Geist (9030)
6 The Hutchison & I Steffen Law Firm
7 10080 west Alta Drive, Suite 200
8 Las Vegas Nevada
9 702 385 2300 Phone
10 702 385 2086 Fax 7
11 Attorneys for Fred Waid

Joseph J. Powell, Esq
The Rushforth Firm
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Attorneys for Kathryn A. Bouvier
and Jacqueline M Montoya
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12 *Eleanor Ahern*
13 Eleanor Ahern Proper Person
14 355 West Mesquite Blvd. D30 #176
15 Mesquite, Nevada 89017
16 Phone 702 345 3035
17 Fax 702 346 7909



1 ASTA

2
3
4
5
6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**
7 **STATE OF NEVADA IN AND FOR**
8 **THE COUNTY OF CLARK**

9
10 In the Matter of the Trust of:

11 THE W.N. CONNELL and MARJORIE T.
12 CONNELL LIVING TRUST, dated May 18, 1972,

Case No: P-09-066425-T

Dept No: FAMILY DOMESTIC

13
14
15 **CASE APPEAL STATEMENT**

16 1. Appellant(s): Eleanor Ahern

17 2. Judge: Gloria J. Sturman

18 3. Appellant(s): Eleanor Ahern

19 Counsel:

20 Eleanor Ahern
21 355 W. Mesquite Blvd., D30 #276
22 Mesquite, NV 89027

23 4. Respondent (s): Jacqueline M. Montoya; Kathryn A. Bouvier

24 Counsel:

25 Joseph J. Powell
26 P.O. Box 371655
27 Las Vegas, NV 89137-1655

28 5. Appellant(s)'s Attorney Licensed in Nevada: N/A
Permission Granted: N/A

Respondent(s)'s Attorney Licensed in Nevada: Yes
Permission Granted: N/A

6. Appellant Represented by Appointed Counsel In District Court: No

7. Appellant Represented by Appointed Counsel On Appeal: N/A

8. Appellant Granted Leave to Proceed in Forma Pauperis**: Yes, May 25, 2017
***Expires 1 year from date filed*

Appellant Filed Application to Proceed in Forma Pauperis: N/A
Date Application(s) filed: N/A

9. Date Commenced in District Court: August 17, 2009

10. Brief Description of the Nature of the Action: Probate

Type of Judgment or Order Being Appealed: Judgment

11. Previous Appeal: Yes

Supreme Court Docket Number(s): 66231, 67782, 68046, 69737, 71577, 72766, 72897

12. Child Custody or Visitation: N/A

13. Possibility of Settlement: Unknown

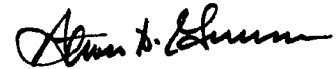
Dated This 23 day of August 2017.

Steven D. Grierson, Clerk of the Court

/s/ Heather Ungermann

Heather Ungermann, Deputy Clerk
200 Lewis Ave
PO Box 551601
Las Vegas, Nevada 89155-1601
(702) 671-0512

cc: Eleanor Ahern



CLERK OF THE COURT

JUDG

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

In the Matter of
THE W. N. CONNELL AND MARJORIE
T. CONNELL LIVING TRUST, Dated
May 18, 1972,

CASE NO. P-09-066425
DEPT NO. XXVI (26)

Date of Hearing: January 30, 2015
Time of Hearing: 10:00a.m.

An Inter Vivos Irrevocable Trust.

SUMMARY JUDGMENT

The current proceedings were commenced with the filing on September 27, 2013, of a PETITION FOR DECLARATORY JUDGMENT REGARDING LIMITED INTEREST OF TRUST ASSETS PURSUANT TO NRS 30.040, NRS 153.031(1)(E), AND NRS 164.033(1)(A). This Petition was filed by Jacqueline M. Montoya ("Jacqueline") as Trustee of the MTC Living Trust, and on her behalf and that of Kathryn A. Bouvier ("Kathryn"), her sister, as beneficiaries under the MTC Living Trust. During these proceedings several other Petitions, Motions, and Pleadings have been filed by the parties, including those summarized in the chart attached hereto as Exhibit "A".

On December 23, 2014, Jacqueline and Kathryn filed an OPPOSITION TO ELEANOR C. AHERN'S MOTION TO DISMISS PETITION FOR DECLARATORY JUDGMENT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED; AND, COUNTERMOTION OF KATHRYN A. BOUVIER AND JACQUELINE M. MONTOYA FOR SUMMARY JUDGMENT ON PETITION FOR DECLARATORY JUDGMENT, FOR DAMAGES AND ASSESSMENT OF PENALTIES. Thereafter, on January 2, 2015, Eleanor Connell Hartman Ahern ("Eleanor") filed an OMNIBUS OPPOSITION TO (1) PETITION FOR DETERMINATION OF CONSTRUCTION AND INTERPRETATION OF LANGUAGE RELATING TO TRUST NO. 2, AND (2) PETITION FOR CONSTRUCTION EFFECT OF PROBATE COURT ORDER; AND COUNTERMOTION FOR SUMMARY JUDGMENT. The parties agreed at the hearing on January 30, 2015, that their above-denominated Countermotions for Summary Judgment, and the claims and defenses asserted therein, subsumed all of the prior Petitions, Motions and Pleadings, and their defenses and claims asserted therein, as well as those briefed and discussed in the further replies, oppositions and supplements to their Countermotions, ~~as listed on the chart attached hereto as Exhibit "A"~~ (other than Jacqueline's and Kathryn's Motion for Leave to Amend Pleadings filed herein on January 12, 2015). Therefore, it was agreed, and the Court recognized, that the parties' claims and defenses in these proceedings could be resolved summarily by the Court in its adjudication of the parties' said Countermotions for Summary Judgment.

After reviewing the Countermotions for Summary Judgment, and the presentation of argument for and rebuttal against the Countermotions by the parties, the Court finds as follows:

1. A proceeding involving the subject Trust was initially commenced in 2009 by Eleanor, as Trustee of the W.N. Connell and Marjorie T. Connell Living Trust, dated May 18, 1972 (herein referred to as the "Trust"), with an unopposed Petition to

1 obtain a Court order clarifying to whom subtrust benefits would be paid upon her
2 death. The Court assumed jurisdiction over the Trust, recognizing that Eleanor, as
3 Trustee, was a Nevada resident, and the Trust provisions provided that it would be
4 administered pursuant to Nevada law. The unopposed Petition was consented to by
5 Jacqueline and Kathryn as contingent beneficiaries of subtrust No. 2 under the Trust,
6 and the Court approved the Petition by Order filed herein on September 4, 2009.
7 Pursuant to the Order, the Trust was reformed to provide that Jacqueline and Kathryn
8 were designated as the beneficiaries under subtrust No. 2 upon the death of Eleanor,
9 which had not theretofore been clearly delineated in the Trust provisions. In addition,
10 Jacqueline was designated as the successor Trustee under the Trust upon the death or
11 removal of Eleanor as the Trustee.

12 2. When the Trust was created in 1972, community property of W.N. Connell
13 ("William") and Marjorie T. Connell ("Marjorie"), along with two parcels of William's
14 separate real property, were transferred to the Trust. One parcel of William's separate
15 property was located in Clark County, Nevada. The other parcel consisted of a parcel
16 of real property and oil, gas and mineral rights relating thereto, located in Upton
17 County, Texas (hereinafter "Texas oil property"). In 1975, William and Marjorie, as
18 Trustees, deeded the Clark County, Nevada, separate property from their Trust to
19 Eleanor, personally, it having ^{declared} a value at the time, based upon the transfer tax paid, of
20 approximately \$55,000.00.

21 3. The dispute in these Trust proceedings relates to the ownership of and
22 entitlement to income from the Texas oil property. At the time of William's death on
23 November 24, 1979, the Texas oil property was the only remaining separate property
24 of William which had been titled in the Trust. The Trust provisions created two
25 subtrusts upon the death of William in 1979 (referred to in the Trust as Trust No. 2 and
26 Trust No. 3, and hereinafter referred to as "subtrust 2" and "subtrust 3"). Income
27 allocated to subtrust 2 was payable to Eleanor during her lifetime. Marjorie was the
28 beneficiary of the income and assets under subtrust 3, including the right during her

1 lifetime, at her election, to receive the assets outright free of trust. She was also given
2 the option of appointing the benefits under subtrust 3 in her Will to whomever she
3 desired. If she failed to remove the assets from subtrust 3 during her lifetime, or to
4 appoint them under her will, the benefits and assets under subtrust 3 would have
5 devolved by default to Eleanor.

6 4. Under the Trust provisions, Article SECOND, Section C.3, subtrust 3 was
7 to be funded with Marjorie's separate property, her share of the community property,
8 and a portion of William's separate property. The portion of William's separate
9 property to be allocated to subtrust 3 is determined by the provisions in Article THIRD
10 of the Trust. These provisions state:

11 "THIRD: MARITAL DEDUCTION. The Trustee shall allocate to Trust No. 3
12 from the Decedent's separate property the fractional share of the said assets which is
13 equal to the maximum marital deduction allowed for federal estate tax purposes . . . In
14 making the computations and allocations of the said property to Trust No. 3 as herein
15 required, the determination of the character and ownership of the said property and the
16 value thereof shall be as finally established for federal estate tax purposes."

17 5. Federal and Texas Estate Tax Returns were filed for William's estate
18 following his death. At the time of these proceedings, a copy of the Federal Estate Tax
19 Return could not be located, even the IRS no longer maintaining a copy thereof.
20 However, a copy of William's Texas Estate Tax Return, and a copy of the Closing
21 Letter for his Federal Estate Tax Return were available. The Texas Estate Tax Return
22 basically duplicated the information provided on the Federal Estate Tax Return, thereby
23 providing how William's estate was allocated and distributed on the Federal Estate Tax
24 Return. Daniel T. Gerety, CPA, an expert witness for Jacqueline and Kathryn, also
25 verified in his Report that the Texas Estate Tax Return used the property allocations
26 made on the Federal Estate Tax Return, and that the two Returns were consistent.

27 6. Under these two Estate Tax Returns, a 64.493% interest in the Texas oil
28 property was allocated to Marjorie, the beneficiary under subtrust 3, and the remaining
35.507% interest in the Texas oil property was allocated to Eleanor, the beneficiary
under subtrust 2. Further, as provided under Article THIRD, quoted above, this

1 allocation of interests in the Texas oil property determined the allocation of interests
2 in that property between subtrust 2 and subtrust 3 under the Trust. For purposes of
3 convenience, the interests in the Texas oil property are rounded to 65% and 35%. The
4 title to the Texas oil property has remained in the main Trust to the present day.

5 7. Upon William's death, Marjorie became the sole acting Trustee for the
6 main Trust, and the subtrusts thereunder. Pursuant to Article SECOND, Section C.6
7 of the Trust, and shortly after William's death in 1980, Eleanor was appointed by
8 Marjorie to be the co-trustee with her over William's separate property remaining in
9 the Trust; that is, over the Texas oil property which had been allocated between
10 subtrust 2 and subtrust 3. A copy of Eleanor's appointment as co-trustee, along with
11 a copy of the Trust, was recorded with the Upton County Texas Recorder's Office.

12 8. Thereafter, Marjorie sent letters to the oil companies with whom the Trust
13 had leases, advising them of William's death and that she and Eleanor were co-trustees
14 over the Texas oil property owned by the Trust. She directed that all further documents
15 which needed to be signed with the oil companies thereafter recognize the need for her
16 and Eleanor's signature.

17 9. From the time of William's death and the allocation of interests in the
18 Texas oil property between subtrust 2 and subtrust 3, until Marjorie's death on May 1,
19 2009, Eleanor was paid 35% of the Texas oil property income and Marjorie was paid
20 the remaining 65% of the income. Each was allocated a K-1 showing her receipt of her
21 share of the income, and each included the income in her annual Federal Income Tax
22 Returns.

23 10. Prior to her death, on January 7, 2008, Marjorie executed her last Will
24 and Testament, wherein she exercised her Power of Appointment over the assets and
25 benefits under subtrust 3, appointing them to Jacqueline and Kathryn as beneficiaries
26 under her MTC Living Trust. Following Marjorie's death, Eleanor, Jacqueline and
27 Kathryn met with David Strauss, Esq, Marjorie's estate planning attorney. Mr. Strauss
28 had previously provided Eleanor with a copy of Marjorie's Will containing the exercise

1 of her Power of Appointment over subtrust 3. In their meeting, he discussed with them
2 Marjorie's exercise of the Power of Appointment transferring to Jacqueline and
3 Kathryn the rights and interests of Marjorie under subtrust 3 of the Trust, thereby
4 entitling Jacqueline and Kathryn to receive the approximate 65% share of income being
5 generated by the Texas oil property going forward.

6 11. No one expressed any objection to what Mr. Strauss had advised them.
7 Thereafter, in the filing of Marjorie's Federal Estate Tax Return, the value of the 65%
8 interest in the Texas oil property allocated to Marjorie under the Trust was included
9 within her Federal taxable estate and Estate Tax Return, increasing the value of her
10 estate to a taxable estate, requiring the payment of over \$140,000.00 in Federal Estate
11 taxes. Most of Marjorie's estate at the time of her death, through her MTC Living
12 Trust, went to Jacqueline and Kathryn in equal shares. However, in addition to several
13 smaller bequests to friends, Marjorie also bequeathed to Eleanor, through the MTC
14 Living Trust, the sum of \$300,000.00.

15 12. From the time of Marjorie's death until approximately June, 2013, the
16 income from the Texas oil property was allocated with Eleanor continuing to receive
17 a 35% share, and Jacqueline and Kathryn receiving the remaining 65% share. In June,
18 2013, Eleanor as the sole acting Trustee of the Trust, stopped further income
19 distributions to Jacqueline and Kathryn, asserting at that time that she was entitled to
20 100% of the income from the Texas oil property. This led to the filing by Jacqueline
21 on September 27, 2013, of the PETITION FOR DECLARATORY JUDGMENT
22 REGARDING LIMITED INTEREST OF TRUST ASSETS PURSUANT TO NRS
23 30.040, NRS 153.031(1)(E), AND NRS 164.033(1)(A).

24 13. Prior to asserting her right to 100% of the income from the Texas oil
25 property in June, 2013, and the cutting off of any further income distributions from the
26 Trust to Jacqueline and Kathryn, Eleanor had never asserted a claim or right to more
27 than 35% of the Texas oil property income as the lifetime beneficiary to income under
28 subtrust 2. However, in her pleadings and documents filed in these proceedings, she

1 claims she was aware of an alleged mistake made in the allocation of the Texas oil
2 property between subtrust 2 and subtrust 3 shortly after the death of William in 1979.
3 However, rather than assert a claim to all of the income, or otherwise make a claim or
4 start a legal action, Eleanor testified that she decided to do nothing. At one point in
5 these proceedings she testified in her pleadings and documents filed that her inaction
6 was motivated by a fear that it would upset Marjorie if she made a claim to more than
7 a 35% interest. She also testified in these proceedings that her inaction was due to the
8 fact she was happy to allow Marjorie to have 65% of the Texas oil property income,
9 feeling she was being generous and helping to support her mother. She asserted the
10 same motivation of generosity as the basis for her allowing Jacqueline and Kathryn to
11 continue receiving a 65% share of the Texas oil property income following the death
12 of Marjorie in 2009, and until her stoppage of income distributions to them in June,
13 2013.

14 14. However, in 1983, as testified to by Robert Hartman in his affidavit, in the
15 course of Eleanor's divorce proceeding from him, her right to only 35% of the Texas
16 oil property income was asserted and relied upon by the Court in its division of
17 property and determination of his support rights and obligations to Eleanor and their
18 two children. Then, a few years later, as shown on an estate planning intake sheet,
19 when Eleanor met with her own estate planning attorney, she advised him that she was
20 only entitled to 35% of the Texas oil property income, and that Marjorie was the owner
21 of the remaining 65% interest.

22 15. Although Eleanor claims she was being generous in giving to Marjorie
23 65% of the Texas oil property income during the balance of Marjorie's life following
24 the death of William in 1979, Marjorie's communications and conduct supported her
25 belief that she owned the rights to 65% of the Texas oil property income as the
26 beneficiary under subtrust 3. This is confirmed in several memoranda/letters prepared
27 by Marjorie, and in the inclusion of the 65% interest in her taxable estate at the time
28 of her death.

1 16. To summarize, no evidence was produced by Eleanor of any claim or
2 assertion being made by her to anyone else to a right to more than 35% of the Texas oil
3 property income from the time of William's death until June, 2013, when she first
4 asserted her claim to 100% of the income by cutting off income distributions to
5 Jacqueline and Kathryn. Further, Marjorie never communicated or acknowledged to
6 anyone else that she was not entitled to 65% of the Texas oil property income, always
7 acting consistently with owning a right to the income under the Trust allocation of the
8 Texas oil property made following William's death in 1979.

9 17. As purported evidence supporting her claim to 100% of the Trust income
10 from the Texas oil property, Eleanor presented copies of Division Orders and Leases
11 between the oil companies and the Trust relating to the Texas oil property. From the
12 time that Eleanor was made co-trustee with Marjorie over William's separate property
13 owned by the Trust until approximately 1989, it appears that in signing the Division
14 Orders and Leases with the oil companies, Marjorie and Eleanor provided their
15 personal Social Security Numbers as a tax identification number when such a number
16 was requested by the oil companies. However, apparently after it was brought to their
17 attention by an oil company that the Trust was the owner of the Texas oil property and
18 not themselves personally, and the oil company requested and recommended that a tax
19 identification number for a Trust be provided, in approximately 1989, Marjorie and
20 Eleanor started providing a tax identification number to the oil companies which had
21 been assigned by the IRS to subtrust 2. They never provided the tax identification
22 number which had been assigned by the IRS to subtrust 3. However, the Court was not
23 provided with any dates on when subtrust 2 and subtrust 3 were first assigned tax
24 identification numbers.

25 18. Nevertheless, and notwithstanding a tax identification number for subtrust
26 2 was the only tax identification number apparently given to the oil companies from
27 and after 1989, in the actual allocation of income received from the Texas oil property,
28 and in the issuance of K-1's and the filing of their Federal Income Tax Returns,

1 Eleanor's share of the income was always a 35% share and Marjorie, while she was
2 alive, always received the remaining 65% share. Following Marjorie's death, the 65%
3 share went to Jacqueline and Kathryn until the cessation of distributions by Eleanor in
4 June, 2013.

5 19. Eleanor also asserted that the Trust was a special Trust created to retain
6 the Texas oil property for the benefit of only William and his blood descendants.
7 However, since at the time of William's death, the only separate property of his that
8 remained in the Trust was the Texas oil property, pursuant to the Trust provisions, a
9 portion of that property had to be allocated to subtrust 3 in order to obtain the
10 maximum Marital Deduction for Federal Estate Tax savings. In following the Trust
11 provisions, the Texas oil property could not all be allocated to subtrust 2. Further,
12 whatever William's intent may have been when he and Marjorie first created the Trust
13 in 1972, by their deeding the Clark County, Nevada, separate property to Eleanor in
14 1975, William knew that the only remaining separate property of his in the Trust at the
15 time of his death would be the Texas oil property.

16 20. Lastly, in support of her position, Eleanor asserted that Jacqueline and
17 Kathryn acknowledged that she owned rights to all of the income from the Texas oil
18 property by their consents to and verifications of the 2009 Petition Eleanor filed to
19 clarify ownership of subtrust 2 upon her death. Eleanor asserted that in this Petition
20 there are statements averring that she owned the rights to all of the Texas oil property
21 income. However, the Petition's language can also be read as asserting that Eleanor's
22 right to income from the Texas oil property only refers to her 35% interest. More
23 significantly, the 2009 Petition was not filed to clarify rights to the Texas oil property
24 income. Rather, it was a consentient Petition with the purpose only of clarifying
25 entitlement to the benefits of subtrust 2 upon Eleanor's death, and to designate a
26 successor Trustee for the Trust upon her death.

27 21. Based upon the foregoing undisputed facts presented to the Court with the
28 Affidavits and documentary evidence submitted by the parties with their

1 Countermotions and briefs, and from the argument of counsel at the hearing, the Court
2 finds that Eleanor's interest in the Texas oil property income, as the beneficiary under
3 subtrust 2 of the Trust, is limited to a 35% share, and her claim to all of the income is
4 not supported in any way by the facts in this case. The remaining 65% share belongs
5 to subtrust 3 and Jacqueline and Kathryn, equally, as the beneficiaries under the MTC
6 Living Trust, as bequeathed and appointed to them by Marjorie in her Will. While title
7 to the Texas oil property remains titled in the main Trust, in the event a division of the
8 title now needs to be made between the two subtrusts, such division should be made
9 as recognized in the Trust administration, with the filing of William's Estate Tax
10 Returns, and the allocation between the subtrusts resulting therefrom, with a 35%
11 interest being deeded to subtrust 2, and a 65% interest being deeded to subtrust 3 (and
12 thereafter said 65% interest being deeded to the MTC Living Trust, with Jacqueline and
13 Kathryn as equal beneficiaries, should that be their request). Accordingly, Jacqueline's
14 and Kathryn's Countermotion for Summary Judgment regarding ownership of the
15 Texas oil property should be granted; and, Eleanor's Countermotion for Summary
16 Judgment should be denied.

17 22. While the Court finds that Jacqueline's and Kathryn's claim to 65% of the
18 Texas oil property and income is supported by the facts and merits of the case, and that
19 Eleanor's claim to more than 35% is not supported by the facts and merits of the case,
20 regardless of the merits of Eleanor's position, her claim to more than 35% of the
21 income from the Texas oil property cannot be supported or allowed for equitable
22 reasons because she has been guilty of laches in asserting her claim. Her assertion of
23 a claim to 100% of the income in June, 2013, makes no sense after failing in anyway
24 to assert a claim to more than 35% of the income prior to that time. During
25 approximately 34 years, from the death of William and her admitted awareness of the
26 allocation of the Texas oil property under the Trust provisions, until her first assertion
27 of a claim to more than 35% of the income in June, 2013, Eleanor never filed a claim
28 in any court, or otherwise asserted a claim or right to more than 35% of the income.

1 During this time, material documentary evidence, such as William's Federal Estate Tax
2 Return has been lost. During this time key witnesses, such as the accountant and other
3 professionals who prepared and filed William's Estate Tax Returns, as well as Marjorie
4 herself, have died. During this time period Jacqueline and Kathryn, and Marjorie while
5 she was living, made decisions affecting their personal and financial well-being in
6 reliance upon Eleanor's acceptance of the Texas oil property allocation under the Trust,
7 based upon her conduct and failure to make any challenge of the allocation. Eleanor's
8 claim to all of the income first asserted in approximately June, 2013, is made far too
9 late and has caused prejudice to Jacqueline and Kathryn because of the loss of evidence
10 and testimony of key witnesses, clearly requiring a rejection of Eleanor's position and
11 claim in these proceedings under the equitable doctrine of laches.

12 23. Concern was expressed by Jacqueline and Kathryn to Eleanor, through
13 counsel, during 2014 as to the status of funds Eleanor was required to hold in trust on
14 their behalf should the Court rule in their favor in these proceedings. An accounting
15 was requested from Eleanor's former counsel, and they were in the process of preparing
16 the same when Eleanor dismissed her former counsel and engaged new counsel.
17 *is ordered to provide by March 2, 2015, an*
Eleanor needs to follow through with the providing of this accounting for the Texas oil
18 property income, including the providing of information to Jacqueline and Kathryn
19 showing the total income received, expenses incurred, and distributions made of the
20 income from the beginning of 2012 to the present. Any income which should have
21 been distributed to Jacqueline and Kathryn during this time period, shall be accounted
22 for and reimbursed to them by Eleanor within 30 days from the date this judgment is
23 entered.

24 24. As noted in the chart attached hereto as Exhibit "A", Jacqueline and
25 Kathryn filed a Motion for Leave to Amend Pleadings, which was set for hearing on
26 January 30, 2015. As noted in this Motion and the Supplement thereto, they filed their
27 Motion out of an abundance of caution in that Eleanor in her briefing in support of her
28 Countermotion indicated that she did not feel Jacqueline and Kathryn had properly

1 pleaded all of their claims for relief and defenses for consideration by the Court at the
2 scheduled hearing. While Jacqueline and Kathryn disagreed with Eleanor's pleading
3 concerns, the pleadings and hearings in these proceedings had become disjointed in that
4 a companion Will Contest case, filed with this Court by Eleanor in Case No. P-14-
5 080595-E, intervened to suspend and continue the Trust matters until after the Will
6 Contest case was resolved. The Will Contest was resolved with a Stipulation for
7 Dismissal in early January, 2015. Further, Eleanor has been represented by three
8 different sets of attorney's in these proceedings. Her current attorneys only
9 commencing representation in late November, 2014, and they were not initially familiar
10 with the prior proceedings in this case and the effect of the Will Contest case
11 intervention. In any event, the Court finds that the initial pleadings filed on behalf of
12 Jacqueline and Kathryn in these proceedings properly plead the claims for relief and
13 the defense that the Court has relied upon in granting Judgment to them in these
14 proceedings. Eleanor clearly had notice of the pleadings and in fact the parties
15 negotiated over all of the claims for relief and the affirmative defenses alleged by
16 Jacqueline and Kathryn in concerted settlement negotiations in October, 2014, and such
17 claims and defenses were contained in the several Petitions and Motions filed during
18 the proceedings. In particular the defense of laches was mentioned in the context of
19 equitable defenses mentioned in the initial pleading, and was the subject of a Motion
20 to Dismiss and resolve the case summarily both in late 2013 and in early 2014.
21 Accordingly, the Court finds that there is no reason to file an Amended Pleading in
22 these proceedings and Jacqueline and Kathryn's Motion seeking permission to file the
23 same is considered moot and resolved.

24 25. There are still some claims and issues that the Court is not resolving at this
25 time. Eleanor filed a counterclaim for wrongful interference with contract with her
26 Answer and Counterclaim filed herein on February 10, 2014. The Court finds that this
27 Counterclaim should be dismissed without prejudice at this time, since the issues
28 therein were not addressed by the Court in the January 30, 2015, hearing, but it seems

1 that the issues would be resolved with its decision herein on the Countermotions.
2 Nevertheless, if Eleanor believes she has a valid claim still against Jacqueline for
3 wrongful interference with contract, as asserted in her Answer and Counterclaim, she
4 is free to reassert the same.

5 26. Each of the parties asserted a claim against the other in these proceedings
6 seeking to have the Court enforce the no-contest clause contained in the Trust against
7 the other party. The Court finds that the positions of each of the parties, seeking the
8 correct interpretation of the Trust provisions as to entitlement to the Texas oil property,
9 were not asserted in bad faith, and that therefore good cause to impose the no-contest
10 penalties does not exist and such claims are denied with respect to both parties, Eleanor
11 on the one hand, and Jacqueline and Kathryn on the other hand.

12 27. There still remains the issues and concerns of who will serve hereafter as
13 the Trustee of the Trust, and whether or not the interests of subtrust 2 and subtrust 3
14 in the Texas oil property should now be formally split and allocated with deeds from
15 the main Trust to the subtrusts, so the parties can go their separate ways in dealing with
16 their interests in the Texas oil properties, subject to the terms of the Trust with respect
17 to subtrust 2. Clearly, under the Trust provisions, the beneficiaries under subtrust 3 are
18 granted the right to remove their interest in the Texas oil property out of the main Trust
19 and subtrust 3, to be owned independently by the MTC Living Trust and Jacqueline
20 and Kathryn as beneficiaries thereunder. However, the Court is directing the parties
21 to submit to the Court, on or before March 2, 2015, information regarding the
22 feasibility and effect of now splitting the Texas oil property between subtrust 2 and
23 subtrust 3 (or the MTC Living Trust), and whether or not such division of interests
24 could adversely affect the value and future ownership of the interests hereafter. The
25 Court will set a hearing to consider this issue on March 20, 2015, at 10:00a.m.

26 28. With respect to whether or not Eleanor should be able to continue serving
27 as Trustee, to address both Jacqueline's and Kathryn's position that she should be
28 removed for breach of her duties as Trustee, and Eleanor's position that she is not

1 disqualified from serving, the Court also is directing the parties to provide a brief in
2 support of their positions, filed on or before March 2, 2015, with the issue to then be
3 addressed by the Court at the hearing on March 20, 2015.

4 29. Lastly, with respect to the claim Jacqueline and Kathryn have made for an
5 award of attorney's fees against Eleanor, the Court is directing that the parties file with
6 their briefs due on or before March 2, 2015, their argument and basis for their positions
7 on the award of attorney's fees and costs against Eleanor for the Court to then resolve
8 at the hearing on March 20, 2015.

9 30. In addition to the matters addressed at the hearing on January 30, 2015,
10 there is a pending appeal to the Nevada Supreme Court, assigned Case No. 66231, filed
11 by Eleanor, appealing a portion of the Court's Order in these proceedings entered on
12 July 7, 2014. With the resolution of issues in this case as herein provided, the matter
13 on appeal is now rendered moot. Therefore, the parties should submit a stipulation to
14 the Nevada Supreme Court dismissing that appeal.

15 JUGMENT

16 Pursuant to NRCP Rule 56, the Court finds that the pleadings and other
17 documents filed herein, together with the affidavits and documentary evidence
18 presented, show there is no genuine issue as to any material fact and that Jacqueline
19 and Kathryn are entitled to judgment against Eleanor as a matter of law in these
20 proceedings. Therefore, and based upon the foregoing findings, good cause exists to
21 now render judgment against Eleanor, in favor of Jacqueline and Kathryn, as follows:

22 A. Jacqueline's and Kathryn's Countermotion for Summary Judgment is
23 granted in part as hereinafter provided. The Court hereby declares, adjudges and
24 determines that the allocation of interests in the Texas oil property between subtrust 2
25 and subtrust 3, under the W.N. Connell and Marjorie T. Connell Living Trust, dated
26 May 18, 1972, was properly made under the Trust provisions, with subtrust 2 receiving
27 a 35.507% interest in the Texas oil property and subtrust 3 receiving a 64.493%
28 interest in the Texas oil property.

1 B. The Court adjudges and determines that even if the allocation of the Texas
2 oil property made following the death of William in 1979, in conjunction with the
3 filing of his Federal and Texas Estate Tax Returns, was not properly or accurately made
4 between the two subtrusts, Eleanor's claim and effort to now challenge the allocation
5 and assert an interest greater than 35.507% in the Texas oil property being in subtrust
6 2, is too late and barred under the doctrine of laches, thereby making the actual division
7 made final and binding upon her.

8 C. Eleanor's Countermotion for Summary Judgment is hereby denied.

9 D. On or before March 2, 2015, Eleanor shall provide to Jacqueline and
10 Kathryn an accounting of the Texas oil property income received by the Trust from
11 January 1, 2012, through the entry of this Summary Judgment, showing the total
12 income received, expenses incurred, and any distributions made of the income. Within
13 30 days following the entry of this Summary Judgment, Eleanor shall reimburse and
14 pay to Jacqueline and Kathryn any portion of their 65% share of the Texas oil property
15 income which was not distributed to them during this period of time. From and after
16 the entry of this Summary Judgment, 35% of the Texas oil property income shall be
17 distributed to Eleanor as beneficiary under subtrust 2, and 65% of the income shall be
18 distributed equally between Jacqueline and Kathryn as beneficiaries under subtrust 3
19 and the MTC Living Trust.

20 E. Eleanor's Counterclaim for wrongful interference with contract asserted
21 with her Answer and Counterclaim filed herein on February 10, 2014, is hereby
22 dismissed without prejudice.

23 F. The Court adjudges and determines that the positions of each of the
24 parties, seeking the correct interpretation of the Trust provisions as to entitlement to
25 the Texas oil property, were not asserted in bad faith, and that therefore good cause to
26 impose the no-contest penalties does not exist and such claims, both Eleanor's claim
27 on the one hand, and Jacqueline's and Kathryn's claim on the other hand, are denied
28 with prejudice.

1 G. Each of the parties is directed to file further briefing on the following
2 issues with the Court on or before March 2, 2015, which issues and matters will be
3 resolved by the Court at the next hearing in these proceedings, hereby set on March 20,
4 2015, at 10:00a.m.:

5 1) In the event there is no formal splitting of the Texas oil property between
6 subtrust 2 and subtrust 3 at this time, is there cause to remove Eleanor as Trustee and
7 appoint Jacqueline as the successor Trustee of the Trust and the subtrusts thereunder?
8 If cause does not exist for Eleanor's removal, would it still be better to appoint a
9 neutral successor Trustee?

10 2) Should the interests of subtrust 2 and subtrust 3 in the Texas oil property
11 now be formally split and allocated with deeds from the main Trust to the subtrusts, so
12 the parties can go their separate ways in dealing with their interests in the Texas oil
13 properties, subject to the terms of the Trust with respect to subtrust 2? The Court wants
14 the parties to provide recommendations from qualified persons knowledgeable with
15 respect to the Texas oil and mineral rights and the potential harm or benefit that could
16 result in a splitting of the interests between the parties, and whether or not such
17 division of interests could adversely affect the value and future ownership of the
18 interests hereafter.

19 3) Lastly, with respect to the claim Jacqueline and Kathryn have made for an
20 award of attorney's fees against Eleanor, the Court directs the parties to provide their
21 argument and basis for their positions on the award of attorney's fees and costs against
22 Eleanor in briefing filed on or before March 2, 2015, for the Court to then resolve at
23 the scheduled hearing on March 20, 2015.

24 H. The parties shall each sign a Stipulation and Order for Dismissal of the
25 Appeal presently pending in Nevada Supreme Court Case No. 66231, filed by Eleanor,
26 appealing a portion of the Court's Order in these proceedings entered on July 7, 2014.

27 I. The Court retains jurisdiction over the Trust pending the finalization and
28 resolution of the remaining issues mentioned above, to be addressed hereafter at the

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1 hearing scheduled on March 20, 2015, at 10:00a.m. Until that date, Eleanor shall
2 continue to exercise and fulfill her duties as Trustee of the Trust, and the parties shall
3 all cooperate, in the best interest of the Trust and its beneficiaries, in any dealings with
4 the oil companies affecting the Texas oil property.

5 SO ORDERED AND ADJUDGED this 15th day of April February, 2015.

6
7 
DISTRICT COURT JUDGE

8 Submitted by:

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10 WARNICK & ALBRIGHT

11 By: 

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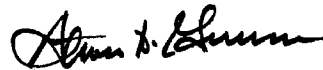
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DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of

THE W.N. CONNELL AND MARJORIE T.
CONNELL LIVING TRUST DATED May 18,
1972, An Inter Vivos Irrevocable Trust.

Case No.: P-09-066425-T
Dept. No.: 26

Date of Hearing: March 20, 2015
Time of Hearing: 10:00 a.m.

ORDER REGARDING THE ACCOUNTING, BREACH OF FIDUCIARY DUTY
CLAIMS AND AWARD OF ATTORNEY FEES

This matter, having come before the Honorable Gloria Sturman on March 20, 2015, 2015 for summary judgment, Whitney B. Warnick, Esq. of the law firm Albright Stoddard, Warnick & Albright appearing on behalf of Kathryn A. Bouvier, Joseph J. Powell, Esq. of the Rushforth Firm, Ltd. appearing on behalf of Jacqueline M. Montoya, and Dale A. Hayes, Esq. and Liane K. Wakayama, Esq. of the law firm Marquis Aurbach Coffing appearing on behalf of Eleanor Connell Hartman Ahern, as Trustee of The W.N. Connell and Marjorie T. Connell Living Trust dated May 18, 1972, the Court having considered the Brief Regarding Pending Issues; the Brief Regarding Accounting, Fiduciary Duties, and Trust Administration; the Supplement to Brief Regarding Pending Issues; the Supplement to Brief Regarding Accounting, Fiduciary Duties, and Trust Administration; the Second Supplement to Brief Regarding Pending Issues, and the underlying papers and pleadings, as well as the oral arguments of counsel, and good cause appearing therefore, the Court FINDS and ORDERS as follows:

1. At a hearing held on January 30, 2015, the Court ordered that Eleanor Connell Hartman Ahern, as Trustee of The W.N. Connell and Marjorie T. Connell Living Trust dated May 18, 1972 (the “Trust”), to produce an Accounting. The Court further ordered the parties to submit simultaneous briefing on the removal of Eleanor as trustee, an award of attorney fees and the best way for the Trust’s administration to continue.

2. The Court set a hearing on the remaining issues to be held on March 20, 2015.

UNDISPUTED FACTS

The Accounting

3. On March 13, 2015, Eleanor filed a Brief regarding the Accounting, fiduciary duties and trust administration (“Eleanor’s Brief”).

4. Attached to Eleanor's Brief was an Accounting prepared by Certified Public Accountants, Gamett and King, for the time period of June 2013 through January 2015 (the "Accounting").

5. All expenses identified in the Accounting except for the \$218,760.17 in Trustee fees are approved. The Court finds the Trustee fees unreasonable and not supported in any way. The Court further finds that it is improper for a Trustee to charge a 6% fee plus overhead expenses for staff and office space. The Court therefore finds that the easiest solution is to back out the Trustee's Fee from the Accounting as an unapproved expense; however, Eleanor may be entitled to compensation for her time in serving as Trustee.

6. The \$37,000 distribution to Jacqueline and Kathryn in June 2013 was for income earned and received by the Trust prior to June 2013. The Court therefore finds that the \$37,000 distribution should not be included in the Accounting as a credit to the 65% share that is to be held in trust for the benefit of Jacqueline and Kathryn.

7. Based on removing the \$218,760.17 in Trustee fees and not crediting the \$37,000 distribution, the Court finds that a total of \$2,163,758.88 shall be held in trust for the benefit of Jacqueline and Kathryn, which represents their 65% share of the total net income received by the Trust from June 1, 2013 through January 31, 2015.

1 8. The \$500,000 on deposit with Fidelity Capital Inc. ("Fidelity Capital") is not a
2 prudent investment. *NRS 164.640 et seq.*

3 9. Aside from the \$218,760.17 Trustee fees, the \$37,000 distribution and the
4 \$500,000 on deposit with Fidelity Capital, the Accounting is approved.

5 Cutting Off the 65% Income

6 10. As Trustee of the Trust, Eleanor owed fiduciary duties to Jacqueline and Kathryn
7 as beneficiaries of the Trust.

8 11. In June 2013, Eleanor cut off the 65% income stream of the net oil revenue in her
9 capacity as Trustee of the Trust, *without first seeking instruction from*
10 *the Court.*

11 CONCLUSIONS OF LAW

12 12. Pursuant to Nev. R. Civ. P. 56(b), "[a] party against whom a claim, counterclaim,
13 or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or
14 without supporting affidavits for a summary judgment in the party's favor as to all or any part
15 thereof." "The judgment sought shall be rendered forthwith if the pleadings . . . show that there
16 is no genuine issue as to any material fact that the moving party is entitled to judgment as a
17 matter of law." NRCP 56(c). The burden for demonstrating the absence of a genuine issue of
18 material fact lies with the moving party, and the material lodged by the moving party must be
19 viewed in the light most favorable to the non-moving party. Hoopas v. Hammargren, 102 Nev.
20 425, 429, 725 P.2d 238, 241 (1986). It is well settled in Nevada that the party opposing
21 summary judgment is entitled to all favorable inferences from the pleadings and documentary
22 evidence. See Mullis v. Nev. Nat'l Bank, 98 Nev. 510, 512, 654 P.2d 533, 535 (1982). The non-
23 moving party, however, "must, by affidavit or otherwise, set forth specific facts demonstrating
24 the existence of a genuine issue for trial or have summary judgment entered against him."

Bulbman, Inc. v. Nev. Bell, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992).

25 13. To prevail on a breach of fiduciary duty claim in Nevada, Jacqueline and Kathryn
26 bear the burden of showing that: (1) Eleanor owed them a fiduciary duty; (2) Eleanor breached
27 that duty; and (3) Jacqueline and Kathryn sustained damages as a proximate cause of the breach.
28 See Mosier v. S. Cal. Physicians Ins. Exch., 74 Cal.Rptr.2d 550, 565 (Cal. Ct. App. 1998).

1 14. The Court concludes as a matter of law that Eleanor did not breach any fiduciary
2 duties as it relates to the Accounting.

3 15. The Court concludes as a matter of law that Eleanor breached her fiduciary duties
4 owed to Jacqueline and Kathryn by failing to retain a third-party trustee and petition the Court to
5 allow the 65% income stream to Jacqueline and Kathryn to be cut off. As a result of Eleanor's
6 breach of fiduciary duties, Eleanor shall be removed as Trustee only over the 65% share of the
7 Upton County, Texas oil assets. Eleanor shall remain as Trustee over her 35% share of the
8 Upton County, Texas oil assets; however, a temporary successor Trustee shall be appointed over
9 the entire Trust until this litigation is finally resolved.

10 16. Based on Eleanor breaching her fiduciary duties, the Court will award Jacqueline
11 and Kathryn their attorney fees and costs pursuant to NRS 153.031(3)(b). The Court reserves for
12 a later date the exact amount of attorney fees and costs to be awarded.

13 BASED ON THE FOREGOING, IT IS HEREBY ORDERED, ADJUDGED AND
14 DECREED that:

15 1. The \$500,000 currently on deposit with Fidelity Capital shall be deposited into an
16 FDIC insured bank account;

17 2. Jacqueline and Kathryn's claim for breach of fiduciary duty against Eleanor, as
18 Trustee of the Trust, is DENIED as it relates to the Accounting *based on the information*


19 3. Summary judgment on Jacqueline and Kathryn's claim for breach of fiduciary
20 duty against Eleanor, as Trustee of the Trust, is GRANTED as it relates to Eleanor cutting of
21 their 65% distributions of the oil income in June 2013;

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1 4. Jacqueline and Kathryn shall submit an Application for their award of attorney
2 fees and costs pursuant to NRS 153.031(3)(b), which shall include a proper analysis of the
3 factors set forth in Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 455 P.2d 31 (1969) as well
4 as their redacted billing statements. The deadlines for the briefing schedule shall comply with
5 E.D.C.R. 2.20. The hearing on the Application shall be set for May 13, 2015 at 9:00 a.m.

6 IT IS SO ORDERED this 17th day of April, 2015.

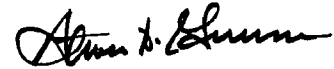
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9 
DISTRICT COURT JUDGE

Submitted by:

10 MARQUIS AURBACH COFFING

11
12 By 

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15 Liane K. Wakayama, Esq.,
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CLERK OF THE COURT

ORDR

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

In the Matter of
THE W. N. CONNELL AND MARJORIE T.
CONNELL LIVING TRUST, Dated May 18,
1972,

CASE NO. P-09-066425
DEPT NO. XXVI (26)

Date of Hearing: March 20, 2015
Time of Hearing: 10:00a.m.

An Inter Vivos Irrevocable Trust.

ORDER APPOINTING NEW TEMPORARY TRUSTEE

A hearing in this proceeding was held on March 20, 2015, for the Court to consider and resolve some of the remaining issues in this case following the hearing herein on January 30, 2015. At this hearing, the Court decided to appoint a new temporary Trustee for the W.N. Connell and Marjorie T. Connell Living Trust, dated May 18, 1972 (hereinafter referred to as the "Trust"). Based upon the unrelated, third party candidates recommended by the parties, Mr. Fredrick P. Waid, Esq., by Jacqueline M. Montoya and Kathryn A. Bouvier, and Premier Trust, by Eleanor Connell Hartman Ahern, and good cause appearing;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that Eleanor Connell Hartman Ahern is immediately removed as Trustee of the Trust, subject to the rulings made by the Court on March 26, 2015, and until further order of this Court. In her place and stead,

Mr. Fredrick P. Waid, Esq., is hereby appointed as the acting temporary successor Trustee of the Trust, with full authority to manage the Trust and its assets, including the Trust's interests in the Texas oil, gas and mineral property and interests in Upton County, Texas. ^{Communicate about these}
~~interests with Montoya Bousier parties is subject a Confidentiality Agreement to~~

Mr. Waid's appointment as acting successor Trustee of the Trust is made on a temporary, interim basis, until further order of the Court. Mr. Waid shall function as the sole acting Trustee of the Trust, with all powers and authority provided to him under the terms of the Trust instrument and the applicable Nevada Revised Statutes relating to a trustee's powers. Consistent with Nevada law, Mr. Waid, as Trustee, shall also honor all fiduciary obligations owed to all of the beneficiaries of the Trust.


In her capacity as the former trustee of the Trust, and until such time that she might be reinstated by this Court to such position, Ms. Ahern shall fully cooperate with Mr. Waid in providing to him all pertinent information concerning the Trust's current business transactions and dealings and in making this transition in trusteeship of the Trust.

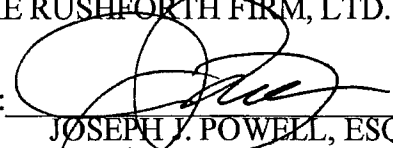
SO ORDERED this ^{30th} day of March, 2015.


DISTRICT COURT JUDGE


Submitted by:
ALBRIGHT, STODDARD,
WARNICK & ALBRIGHT

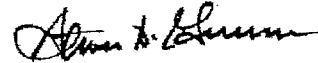
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8 DISTRICT COURT
9
10 CLARK COUNTY, NEVADA

12 In re the Matter of the

13 THE W.N. CONNELL and MARJORIE T.
14 CONNELL LIVING TRUST, dated May 18,
15 1972

16 A non-testamentary trust.

Case No.: P-09-066425-T
Department: 26 (Probate)
PC1 (Judge Sturman)

17
18 **SUPPLEMENT TO MOTION FOR ASSESSMENT OF DAMAGES AGAINST ELEANOR**
19 **AHERN; ENFORCEMENT OF NO CONTEST CLAUSE; AND SURCHARGE OF**
20 **ELEANOR'S TRUST INCOME**

21 Date of Hearing: August 5, 2015
22 Time of Hearing: 10:00 a. m.

23 JACQUELINE M. MONTOYA ("Jacqueline") and KATHRYN A. BOUVIER ("Kathryn"), by
24 and through her counsel of record, JOSEPH J. POWELL, Esq., of THE RUSHFORTH FIRM, LTD.,
25 hereby Supplement their "Motion for Assessment of Damages Against Eleanor Ahern; Enforcement
26 of No Contest Clause; and Surcharge of Eleanor's Trust Income" ("Motion") which was filed on
27 June 3, 2015 and is set for hearing on August 5, 2015. Jacqueline and Kathryn respectfully
28 Supplement their Motion as follows:

A. SETTING THE RECORD STRAIGHT

Jacqueline and Kathryn wish to set the record straight and provide the following background story as to what has actually occurred here. Having been painted as being money hungry, uncaring daughters over and over in Ms. Ahern's pleadings, and also in oral arguments made throughout the nearly two years of court proceedings by Ms. Ahern's numerous attorneys over that time, they are simply sick and tired of this completely inaccurate portrayal and have had enough of it. Despite there being a very minuscule chance, they also present the accurate story of what has transpired over the last three years with the hope that one day, in the not-to-distant future, that Ms. Ahern might actually reflect upon the collateral damage that her poor decisions have caused. This information has no legal significance as to the issues that have occurred here, but after having to face the significant amount of abuse that they have been dragged through in this matter, they both feel that they can longer sit back in silence and must have the record reflect the actual account of what has occurred here while Ms. Ahern has decided to destroy the strong family dynamic that once existed.

For Jacqueline, the relationship she had with her mother was one she held in very high regard. She appreciated her mother being involved with her family and enjoyed the time she and her children spent with Ms. Ahern. From the time Ms. Ahern moved back to Las Vegas from Idaho which occurred in 2004, she was a valued member of Jacqueline's family life. They spent almost every weekend together with family BBQ's, movie nights on the couch, and outings with Ms. Ahern's grandchildren, as well as the annual family vacation to Disneyland. Ms. Ahern stayed the night many times at Jacqueline's house and generally accompanied them to church the day after. Ms. Ahern was present in Jacqueline's home many times throughout the week and joined in the nightly prayers with Jacqueline's children before leaving for her own home.

In 2009, when Mrs. Connell passed, Ms. Ahern reacted strangely on two incidents that Jacqueline recalls made her wonder what instigated these actions. The first was during a meeting

1 that Attorney David Strauss, Mrs. Connell's estate planning attorney, held in his office with
2 Jacqueline, Kathryn, and Ms. Ahern all present.

3 Upon arrival at this meeting, Ms. Ahern brought in "a friend" named Suzanne Nounna, as
4 well as Ms. Nounna's daughter, Ariella, who was approximately 12 years of age at the time of the
5 meeting. Ms. Ahern stated that she wanted Ms. Nounna and Ariella to be present throughout the
6 meeting regarding Mrs. Connell's estate plan. Both Jacqueline, Kathryn, and even Attorney Strauss
7 were a bit surprised by this request, but after seeing the determination in Ms. Ahern they
8 acquiesced and the meeting proceeded. The curious thing was that Ms. Nounna said she had to
9 have Ariella present, as Ariella supposedly had a life threatening issue and could die unexpectedly
10 if presented with any environmental triggers.

11 The next "curious detail" occurred a few months later when Jacqueline received a "demand
12 for monies" e-mail from her mother. Apparently, Ms. Ahern thought Jacqueline was stealing her
13 \$300,000 gift that was provided for under Mrs. Connell's Trust, the MTC Living Trust. As Trustee
14 of the MTC Trust, Jacqueline was doing her best to conclude all of the numerous details involved
15 with the trust administration and was working closely with Attorney Strauss and Corey Haina, the
16 MTC Living Trust Accountant. The response to this demand of Ms. Ahern's was actually
17 formulated by Attorney Strauss, as he had to provide support for how expeditiously Jacqueline was
18 working through the Trust Administration of the MTC Living Trust. Ms. Ahern subsequently
19 provided Jacqueline with an apology.

20 Things went back to normal with family unity, until in February 2012 when Ms. Ahern broke
21 her leg. She was admitted into Mountain View Hospital and proceeded to have surgery. She did
22 not, as was erroneously stated in her court pleadings, have any major issues or complications from
23 the surgery. She was coherent after surgery and requested that Jacqueline make the nurses some
24 homemade chocolate chip cookies, as they had taken such good care of her. Of course, Jacqueline
25 did this immediately. Ms. Ahern even stated to Jacqueline that she was not on "any pain
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1 medications", as she felt so strong after surgery. However, because she was an older patient, she
2 stressed to her doctors that she would like to have in-patient rehabilitation at their facility next
3 door. Therefore, Ms. Ahern spent about 3 weeks learning how to get around in the wheelchair,
4 what exercises she needed to perform, strength training her upper body, and how to shower and
5 care for herself. Jacqueline visited Ms. Ahern every day in rehab, and returned in the evening with
6 her children so they could visit with their grandmother. They spent one Saturday watching Ms.
7 Ahern go through her exercises and the grandchildren got to see how the doctors worked on their
8 grandmother to make her stronger. Yet, when a friend of Jacqueline's was helping Ms. Ahern with
9 some tasks while she was in rehab, he asked her if she had seen Jacqueline recently. Ms. Ahern's
10 response was "Yes, she stopped by once or twice". That was a very strange comment about a
11 daughter who visited her every day! Upon Ms. Ahern's discharge, she hired a personal care taker
12 named Lynelle to help her with her daily house and personal care.

13
14 On April 4, 2012, the deal with Apache Corporation ("Apache") was coming to a close.
15 Jacqueline had spoken to her mother many times while she was in rehab regarding the details of
16 the new deal. One such detail was that the deal was at \$3,000 per acre, which was an amount no
17 one thought possible, but Ms. Ahern responded to this information with "My attorneys feel I can
18 get \$7,000 per acre". On April 4th, Jacqueline had brought over the lease to her mother, after
19 having issues with encryption and print errors for hours, as well as learning that Ms. Ahern's
20 notary was unavailable. Lynelle was present during this time. Jacqueline scheduled a notary that
21 made house calls and met him there at Ms. Ahern's home. Although throughout the day Ms. Ahern
22 and Jacqueline spoke numerous times about the upcoming signing with the notary, Jacqueline
23 found food and dishes all over the table where Ms. Ahern was seated. Despite this, Ms. Ahern
24 signed the Apache lease and Jacqueline was then forced to rush over to a Fed Ex location so that
25 the contracts would arrive in Texas the next morning, meeting the deadline. Later that same day,
26 in the evening, Ms. Ahern strangely requested that Jacqueline bring by the copy of the lease, but
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1 Jacqueline was at dinner with her husband for their 17th wedding anniversary dinner. Jacqueline
2 e-mailed it over to Ms. Ahern that night. The next day, April 5, Jacqueline received a call from Jeff
3 Johnston stating that Ms. Ahern had faxed and called numerous times during the night and had
4 voided her agreement. Mr. Johnston was upset, as there was 3 groups of families involved, as well
5 as the Apache team, all of whom were relying on each other to complete the negotiations as
6 discussed. Jacqueline attempted to call her mother, but all calls were unanswered. Kathryn
7 attempted the same. Apparently Ms. Ahern, and an advisor, likely Ms. Nounna, spent the next day
8 talking with Mr. Johnston for hours in order to "understand" the lease, despite previously signing
9 the lease. Ms. Ahern and her advisor also spoke to Jim Walton for a few hours doing the same
10 thing.
11

12 In the end, Ms. Ahern signed the lease, but never called Jacqueline with an explanation for
13 her actions or avoiding Jacqueline's calls. However, on April 9, Jacqueline received a text that said,
14 "I received such joy when I thought of you today I pray you had a lovely day. Hugs mom".
15 Jacqueline finally decided to confront her mother on April 15 and told her mother how her actions
16 had made her feel. Lynelle was also present during this conversation. Ms. Ahern then sent an
17 apology letter to Jacqueline (copying similar letters to Mr. Johnston, Mr. Walton, and Mozelle
18 Miller and Bob Miller) explaining that Jacqueline did nothing wrong and that Ms. Ahern had
19 reacted improperly. Jacqueline thought the issue was done and over with, but found out in May
20 of 2012 that the issue had just escalated.
21

22 On May 12, Jacqueline dropped off Ms. Ahern's Mother's Day and Birthday gifts, since she
23 chose not to spend any time with them for those occasions. Once Jacqueline's boys gave her the
24 gifts, she came out of the house on crutches, in tears, saying "I thought you were trying to steal my
25 trust" and also made another attempt to apologize for all the negative behavior she had been
26 extending to Jacqueline. Jacqueline could not hold this conversation with her boys nearby so she
27 responded that she had no idea what her mother was talking about, but that they would have to
28

1 discuss it later due the nature of the conversation being something that should not occur in the
2 presence of her boys. On May 25, Lynelle called Jacqueline and asked her to meet with her. She
3 said there were some strange things happening in her Ms. Ahern's house that she wanted to make
4 Jacqueline aware of. Lynelle began with the date of May 9 when Jacqueline had tried to drop off
5 some papers for Ms. Ahern, she said that Ms. Nounna was throwing a birthday party for Ms. Ahern
6 that night. Apparently, Ms. Nounna pulled Lynelle aside to say "she would pay Lynelle out of her
7 own pocket for a week if Lynelle would stay with Ms. Ahern 24/7 and keep Jacqueline away".
8 Lynelle went on to say that Ms. Nounna told her that "I need you to pray over Ms. Ahern so she
9 doesn't go back to Jacqueline". Lynelle said she told Ms. Nounna "No". Lynelle also wanted
10 Jacqueline to know that Ms. Ahern had allowed Ms. Nounna to "borrow" her car for 8 weeks, but
11 that Ms. Ahern wanted it back. Lynelle observed Ms. Nounna attempt to placate Ms. Ahern, in
12 response for her demand that she no longer possess the vehicle, by saying she would return it soon.
13 When it was finally returned, Lynelle further stated that Ms. Nounna had put a big red bow on Ms.
14 Ahern's car, as if it were a gift, and gave it back to her saying "I spent \$5,000 on it getting it looking
15 nice again". Jacqueline thought that was strange as the car was less than a year old.
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17
18 The last two details Lynelle shared with Jacqueline was that Ms. Nounna had said to her
19 "Jacqueline is trying to institutionalize her mom" and that Ms. Ahern never had any money on her,
20 as she always had to ask Ms. Nounna for her money when she needed it. When Jacqueline met with
21 her mother on May 25, she discussed these issues, as she was very concerned for her mother's
22 welfare. Ms. Ahern had responded that she loved Jacqueline very much and that "this behavior
23 would stop". However, Ms. Ahern ended the conversation strangely by saying, "I guess I am going
24 to have to choose between you and Suzanne".
25

26 In June of 2012, Jacqueline asked her mother if she would join her in family counseling, as
27 she was very worried about their family, their relationship, and even more so — her mother. Ms.
28 Ahern responded with a flippant answer of "When I am ready".

1 On July 4, Ms. Ahern sent Jacqueline a very cryptic text requesting 7 years of original bank
2 statements, etc. On July 6, Ms. Ahern asked Jacqueline and her boys to come to lunch. Following
3 lunch, Jacqueline sent a text asking Ms. Ahern to join them for dinner. Ms. Ahern responded she
4 was busy, but would love to next time and that she loved them all. However, weeks passed and Ms.
5 Ahern did not even call or text Jacqueline on her 47th birthday that year which was on the 19th of
6 July. This was followed by an extremely strange, and upsetting, event.

7
8 On July 25, Jacqueline was invited to a late birthday lunch with a friend that had worked
9 for her previously. Jacqueline was on US 95 passing by Ms. Ahern's house when she thought she
10 saw a white car pull out of the garage. Jacqueline pulled off the expressway and circled back to her
11 mother's house, as she, as noted, had not heard from her mother since July 6. Jacqueline pushed
12 through the gates with the boys in tow and knocked on the gate only to find the gate was unlocked.
13 They then knocked on the door and found it pushed open ——— also being unlocked. They saw in
14 the foyer a grocery bag from Whole Foods that held melted butter and some lemons in it. There was
15 a travel bag spread out over the entry hallway ——— blocking anyone from passing ——— as though
16 Ms. Ahern had dropped it upon being surprised or scared. Ms. Ahern's "boot" used for her broken
17 leg was laying there as well. Jacqueline felt immediately worried for her mother and told the boys
18 to wait while she checked out the house. The bed was not slept in and the dog was in the garage,
19 but the car was gone. There was a huge pile of mail on the kitchen counter that seemed to indicate
20 Ms. Ahern had just returned from a trip. Jacqueline called the Las Vegas Metro missing persons
21 division, as the scene she was witnessing really scared her. While she waited for an officer, she and
22 her boys waited at the kitchen table and Jacqueline called Ms. Ahern's friend, Sandy. Jacqueline
23 also reached out to a friend and asked if he would call her mother, since her mother had not
24 responded to any of Jacqueline's calls when she entered the house and found it in such disarray.
25 This is when Ms. Ahern's friend Sandy called back and said, "Your mom is fine, she said to stop
26 calling her friends and she will call you if she ever needs you". Another slap in the face to a
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1 daughter worried about her mother.

2 Just as Metro arrived, her friend called back and said he had talked to Ms. Ahern, but only
3 to discuss business. But at least Jacqueline knew she was alright and unharmed. Jacqueline
4 cancelled her lunch plans and began to talk with the officer that had been dispatched to Ms. Ahern's
5 home. The officer asked many questions about what Jacqueline and her boys had found upon their
6 arrival, then wrote a report. After hearing some of the "strange" details of Jacqueline's experience
7 with her mother over the last few months, he suggested Jacqueline reach out to Elder Abuse
8 Services. When the officer left, Jacqueline asked him to stay while she locked up so he could
9 confirm the home was secured.
10

11 Ms. Ahern disappeared from the family without any further conversations at the end of July
12 2012. Not once during this 3 year period has Ms. Ahern reached out to her grandchildren. Ms.
13 Ahern has 4 grandkids in total, Jacqueline's two boys and Kathryn's two boys, who continue to love
14 her even during all of this drama. Never has there been a birthday card, Christmas card, letter,
15 email, text or call. It is a shame that Ms. Ahern has allowed money to destroy not only the
16 relationship she had with her kids, but also her grandchildren ——— who remain innocent through
17 all of this.
18

19 As a brief aside from the chronology of events, to clearly illustrate how emotionally removed
20 Ms. Ahern is from her grandchildren, and the Montoya and Bouvier families, during this past June
21 22 hearing when Kathryn saw Ms. Ahern in court she wanted to share a text from her oldest son
22 saying he loved his "Grammie". Kathryn approached her mother and the only words Ms. Ahern
23 said were "He has grown up". Not that she misses or loves her grandson, not that she wanted to
24 see him or even respond to him just that he grew up. That curt response did not preclude
25 Kathryn from offering Ms. Ahern her phone number in case she wanted to call to her or her
26 grandchildren, to speak to them in a non-threatening and non-litigation discussion manner. Ms.
27 Ahern stated she didn't know Kathryn's number even though it is the same number Kathryn has
28

1 had for the past 10 years.

2 On approximately August 8, 2012, Jacqueline contacted Elder Abuse / Protective Services.
3 Jacqueline called them shortly after talking with Ms. Ahern's computer guy - Bill. He had shared
4 with Jacqueline in this phone call that he had found Ms. Ahern on the floor in the "midst of filth
5 from her having a vertigo attack". He said Ms. Ahern stopped taking her vertigo medicine which
6 Jacqueline was unaware she even took anything for, not having had actively seen her mother for
7 over two months at such time. He said that Ms. Nounna took over Ms. Ahern's books because she
8 was not paying her credit card bills. This did not make sense to Jacqueline, as she and Kathryn's
9 distribution was less than Ms. Ahern's-----35% versus 32.5%. Therefore, if Jacqueline was able to
10 live on this amount with a family of 4 (and the same for Kathryn), then why was Ms. Ahern having
11 financial issues? Jacqueline became worried after this call, since it indicated Ms. Ahern had health
12 issues in addition to potentially being manipulated. Jacqueline told the person at Elder Services,
13 that Ms. Ahern was a beautiful 74 year old woman who took care of her home, car, person, and
14 worked in multi level marketing. She said that she was concerned though about an advisor in Ms.
15 Ahern's life that seemed to be controlling her financial decisions, as well as those of a personal
16 nature. She discussed the experience of the house being unlocked and groceries being left
17 unattended, the request Ms. Nounna made of Wells Fargo to withdraw a large sum of money, the
18 car that Ms. Ahern loaned to Ms. Nounna for 8 weeks, the comment Ms. Nounna made to Lynelle
19 about keeping Jacqueline away from Ms. Ahern for a week. The responder said to Jacqueline that
20 an older person sometimes gets very nervous later in life, but none of these circumstances seemed
21 to indicate she was being manipulated. Jacqueline was very distressed by the result of this call, as
22 she had hoped they would make a serious and thorough effort to research the people surrounding
23 her mother. Jacqueline was not made aware that this agency would in turn make a house check and
24 discuss this with her mother, as at no time did Jacqueline make that call to state that her mother
25 was unable to care for herself. The entire goal of Jacqueline's was for this agency to research the
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1 leeches that are in Ms. Ahern's life.

2 Another incident was on August 19, 2012 when a friend of Ms. Ahern's contacted Jacqueline.
3 She said that another of Ms. Ahern's business reps was at a convention with Ms. Ahern and that Ms.
4 Ahern had proceeded to tell her "that my daughter is trying to institutionalize me", in reference to
5 Jacqueline. The rep was really worried and called the friend. The same person continued to tell the
6 friend that Ms. Ahern had shared that her computer guy (Bill) had bugged her home and phone.
7

8 Following the September 2013 mediation in Texas, which failed miserably, Jacqueline
9 delivered to her mother an album of their years together, and cards from her boys and her. Both
10 Jacqueline and Kathryn continue to be concerned for their mother, and hope some sort of a
11 relationship can be salvaged after this experience.

12 It now has been 3 years since Ms. Ahern's disappearance, and for the most part Jacqueline
13 has not seen her with the exception of court hearings or at depositions. However, in December of
14 2014, Jacqueline was surprised to meet a friend of hers that she had modeled with almost 30 years
15 ago. This friend and Jacqueline began to talk and Jacqueline just sensed in the conversation which
16 was about where the friend lived having horses and stables that this would be a place that her
17 mother would choose to live, despite owing 3 homes. So Jacqueline asked her if she knew Ms.
18 Ahern. This friend's face suddenly expressed a look of great surprise and then she said "Yes, I
19 cooked dinner and cookies for her over the last two years many times". She then asked Jacqueline
20 how she knew Ms. Ahern and of course Jacqueline explained. Then the friend explained that Ms.
21 Ahern had moved into an equestrian neighborhood and had rented the home across from her. The
22 friend went on to explain that Ms. Ahern had a person in her life that really worried the friend. The
23 friend said that the lady's name was Suzanne (in reference to Ms. Nounna) and that friend would
24 find Ms. Nounna and Ms. Ahern in the horse stalls talking in whispers with the security guard of
25 the complex. When the friend asked Ms. Ahern about it, Ms. Ahern responded that "Her (Ms.
26 Ahern's) daughter is trying to kill her". The friend was of course horrified to learn this — not
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1 knowing Jacqueline was the daughter being accused. The friend also said that Ms. Ahern has a
2 personal body guard with her to ensure that the daughter (Jacqueline) can't kill her.

3 One last "incident" occurred in December of 2012, where another person Ms. Ahern is in
4 contact with through her business dealings notified Jacqueline that Ms. Ahern had talked with her
5 recently about Ms. Nounna making Ms. Ahern get involved with credit card fraud. The lady helped
6 Ms. Ahern rectify the fraud, but said she would need to call her back. Ms. Ahern said it would take
7 some time for her to answer, as she had to take the call in the bathroom since she wasn't allowed
8 to take calls.
9

10 On January 2015, Ms. Ahern's attorneys at Marquis Aurbach Coffing sent an email to
11 Attorney Powell stating that they had been requested to notify Jacqueline, and Kathryn as well, that
12 Ms. Ahern does not want any further gifts from her. Jacqueline and Kathryn had been sending
13 letters from the grandchildren, as well as photos of them so their grandmother could be appraised
14 of their lives. Apparently Ms. Ahern didn't care to know how her grandchildren were doing.
15

16 As stated, Jacqueline and Kathryn, having been accused of being "greedy" daughters and
17 the purpose of providing this background is the set forth the reality of what has really transpired,
18 given that Ms. Ahern is now on her fourth set of counsel and each one of them remain convinced
19 that Jacqueline and Kathryn are to "blame" for what has occurred here, each one ignoring the fact
20 that Ms. Ahern chose to leave her children and grandchildren, not the other way around.

21 **B. INTERIM TRUSTEE REPORT**

22 Subsequent to the filing of the Motion on June 3, 2015, the current serving trustee of "The
23 W.N. Connell and Marjorie T. Connell Living Trust", dated May 18, 1972 ("Trust"), Fredrick P.
24 Waid, has filed his "Interim Trustee Report" dated July 2, 2015 ("Report").
25

26 After a review of the Report, it is crystal clear and blatantly obvious that all of the damages
27 prayed for by Jacqueline and Kathryn are unquestionably warranted to be assessed against Ms.
28 Ahern. Furthermore, the verification by Mr. Waid, as an independent party to this matter, of the

1 theft and conversion of assets mandated to be held for Jacqueline and Kathryn confirms that this
2 Court must enforce the No Contest clause contained in the Trust, thereby terminating Ms. Ahern's
3 interest in the Trust.

4 The actions undertaken by Ms. Ahern as detailed in the Report amount to a complete and
5 utter disrespect of this Court in completely ignoring and thumbing her nose at this Court's
6 authority and previous rulings. Ms. Ahern has also clearly lied to this Court and her own counsels
7 on multiple occasions and refuses to honor this Court's outstanding orders. The actions also show
8 a complete disregard for Jacqueline and Kathryn and their financial and emotional well being. The
9 actions of Ms. Ahern are simply deplorable and unjustifiable. The actions can be described by a
10 wide range of adjectives, but include the actions of theft, fraud, deceit, manipulation, and
11 conversion, to name a few.

12 A thorough discussion of Mr. Waid's Report is appropriate.

13
14 On or about Friday April 3, 2015, a copy of the Court's Order removing Ms. Ahern
15 as Trustee was provided to Wells Fargo Bank. On that day, it was determined that
16 only \$9,941.55 was on deposit at Wells Fargo Bank in accounts of the Trust.

17 After successfully prevailing in this litigation and this Court determining that Jacqueline and
18 Kathryn were in fact entitled to 65% of the income generated by the Trust, as they had asserted all
19 along, Jacqueline and Kathryn had an extremely reasonable expectation that upon Mr. Waid taking
20 over as the trustee of the Trust that they would immediately receive a large distribution of cash that
21 they were always entitled to, but had been withheld from them since June of 2013. The
22 distribution to them would obviously ease the severe economic strain, and the accompanying
23 severe emotional stress and torment that accompanies being placed in a completely unexpected
24 financial predicament that they did not bring upon themselves, that they, and their respective
25 families, had to deal with since Ms. Ahern unilaterally decided that she was no longer going to be
26 making distributions to them, which they had relied on, and made life altering choices in reasonable
27 reliance of, since their grandmother's passing in 2009.
28

1 Instead of being able to enjoy the vindication of their rights, the survival of the persistent
2 name calling that was directed at them by all Ms. Ahern's attorneys, and the gamesmanship
3 displayed throughout which was intended to further financially break them that Ms. Ahern's
4 revolving door of attorneys subjected Jacqueline and Kathryn to, they then had to deal with the slap
5 in the face of being told by Mr. Waid that the money this Court required be waiting for them upon
6 their successful enforcement of their rights was simply gone. Imagine for just a second what kind
7 of a gut wrenching, emotional torment that would cause a reasonable person in their positions to
8 experience. Fighting a battle in which you have to expend an extreme amount of legal fees and deal
9 with the daily emotional roller coaster that is litigation and then to be told at the end of the draining
10 journey that the anticipated pay off from the victory is simply not there. This is what Ms. Ahern
11 thought, and still clearly thinks, was an acceptable occurrence. WHY? Her own greed! What kind
12 of person does this?!?!?!?! A person without any moral compass whatsoever. A person who only
13 thinks about herself. That is the type of person that puts her own daughters through this emotional
14 train wreck that she herself has caused.

15
16 Like the punishment that anyone else who would engage in these pathetic, unthinkable acts,
17 Ms. Ahern must now face the music and this Court must hold her completely responsible for these
18 actions. To do anything less than render full punishment to Ms. Ahern is to reward her for her
19 behavior and would set a dangerous precedent that this Court simply cannot allow to occur,
20 especially in this arena where the administration of trusts are built on a foundation of trust and
21 doing the right and proper things that one is entrusted by others to do. Anything short of full
22 punishment sends a message that is acceptable and permissible to ignore the law and to ignore
23 what this Court directs, simply because one feels like doing so. This Court has a prime opportunity
24 to not allow Ms. Ahern to get away with any of her actions and to send the message that is necessary
25 to Ms. Ahern-----You are responsible for your actions!

26
27 As this Court will clearly recall, Ms. Ahern, via her attorneys, vigorously fought the request
28

1 of Jacqueline and Kathryn to receive their 65% distribution during the pendency of this litigation.
2 Her attorneys argued that it would not be "fair" for Jacqueline and Kathryn to continue to receive
3 their 65% of the income from the Trust because "if" they did not prevail Ms. Ahern might have a
4 difficult time recovering those funds. Therefore, based on this, this Court stated that only if
5 Jacqueline and Kathryn could become fully bonded could they receive their income distributions.
6 Unfortunately, the bonding process was fruitless as Jacqueline and Kathryn were told that they
7 would have to put up dollar for dollar collateral to secure the necessary bonding, which they were
8 unable to do. So after all of this fuss about Ms. Ahern being protected just in case, please forgive
9 Jacqueline and Kathryn if the irony of this situation is not easily dismissed and shrugged away.
10 It should be very easy to understand and sympathize with the extreme level of anger and frustration
11 that Jacqueline and Kathryn experienced while learning that Ms. Ahern stole and converted the
12 money that she was expressly required to hold for Jacqueline and Kathryn and which she was
13 expressly prohibited by this Court from taking. Again, Ms. Ahern clearly has no regard whatsoever
14 for this Court's authority.
15

16
17 On April 8, 2015, Ms. Ahern deposited into the Trust's account a cashier's check in
18 the amount of \$409,228.50. The cashier's check represented funds withdrawn on
19 March 20, 2015 from the Trust's account by Ms. Ahern after the hearing earlier in the
20 day in which she was removed as Trustee. The funds were withdrawn from a Wells
21 Fargo Bank branch in Orange County, California just before the bank closed for
22 business that evening.

23 Jacqueline and Kathryn simply have no words to describe this conduct. This conduct speaks
24 for itself. As stated, Ms. Ahern, on the day that she was removed as trustee by this Court, knowing
25 that she has had an obligation to keep all funds protected in the Wells Fargo trust account decides
26 to rush to a Wells Fargo branch in Southern California and get there before closing to remove over
27 \$400,000. As Mr. Waid explains in his Report, there has been no explanation given by Ms. Ahern.

28 It is obvious what occurred here. The facts speak for themselves. The fact of the matter is that
there is no explanation other than this was blatant theft and conversion of assets that belonged to

1 Jacqueline and Kathryn.

2 On March 23, three days after her removal as Trustee, Ms. Ahern withdrew
3 \$500,000 from the Trust account at Wells Fargo Bank (St. George, Utah branch),
4 purchased a cashier's check payable to the Trust and deposite the same with US
5 Bank. Upon learning of these transactions Ms. Ahern's counsel withdrew its
6 Certificate of Compliance with the Court's order regarding the \$500,000 transfer
7 and moved the Court for permission to withdraw as counsel of record.

8 A pattern?!?!?!? So Ms. Ahern's journey with an intent of theft and conversion of
9 proceeds belonging to Jacqueline and Kathryn continues from Orange County, California to St.
10 George, Utah. Once again, Ms. Ahern sees it fit to remove a half a million dollars of monies
11 belonging to Jacqueline and Kathryn so as to now take the total to over \$900,000 in a three day
12 period after she was removed as trustee. In the process, her attorneys at Marquis Aurbach Coffing
13 decide that they no longer can represent a deceitful client who is committing criminal acts as she
14 pleases and obviously feel that they can no longer be part of the further deceit to this Court.

15 On April 16, 2015, Ms. Ahern delivered a \$700,000 cashier's check to her then
16 counsel at MAC. The check was in the form of a Wells Fargo cashier's check payable
17 to the Trust and dated February 18, 2015. The check was obtained by Ms. Ahern at
18 the St. George, Utah branch of the bank. No explanation has been provided or basis
19 determined for the withdrawal of funds from the Trust account, the intent of Ms.
20 Ahern, or where the check was held for approximately two months. This transaction
21 directly contradicts the declarations and representations as set forth in the Ahern
22 Brief and its exhibits. Clearly, as of the date of the signing and filing of the Ahern
23 Brief on March 13, 2015, \$700,000 of the \$1,997,573.18 declared therein was not on
24 deposit with Wells Fargo Bank, but was withdrawn on February 18, 2015, placed in
25 a cashier's check and held by Ms. Ahern or others until it was delivered to her then
26 counsel, who in turn delivered the funds to the Successor Trustee.

27 Lies, lies, and more lies from Ms. Ahern! Theft, theft, and more theft from Ms. Ahern! It
28 would be highly surprising, bordering on shocking, if Ms. Ahern, via her current counsel, will not
attempt to put a positive spin on this and attempt to offer an explanation for this. Whatever lie and
misrepresentation that Ms. Ahern will come up with, which must be made under penalty of perjury,
the fact remains that this Court has been lied to with such frequency and consistency, along with
Jacqueline and Kathryn, that no "explanation" should ever be accepted by this Court. As Mr. Waid
explains, over three months from this discovery have evaporated and yet Ms. Ahern still does not

1 feel compelled to provide any explanation to Mr. Waid. Her silence is deafening as to what has
2 occurred here. There is no justification. This was theft and conversion----plain and simple.

3 Since Ms. Ahern's removal as Trustee, the Trust has located additional Trust funds
4 in banks located in Texas and Utah. On April 2, 2015, after Ms. Ahern was removed
5 as Trustee and before the Successor Trustee had access to or information about the
6 Trust's accounts, Ms. Ahern withdrew \$146,517.38 from the Trust's account at Wells
7 Fargo Bank (St. George, Utah branch location) and purchased a cashier's check in
8 the same amount, payable to the Trust. Ms. Ahern then opened an account, in the
9 name of the Trust, at Town & Country Bank located in St. George, Utah and
10 deposited the \$146,517.38 check. Town & Country Bank's compliance department
11 labeled the account as "suspicious" due to the behavior of Ms. Ahern.

12 On April 14, 2015, the day the Court issued its Order to Show Cause against Ms.
13 Ahern regarding the \$500,000 Fidelity Capital, Inc. matter, Ms. Ahern contacted the
14 bank and attempted to arrange an all cash withdrawal of \$100,000 from the Trust's
15 account. According to the bank's representative, Ms. Ahern claimed she, "wanted
16 the cash to put it in her vault." On May 15, 2015, Town & Country Bank elected to no
17 longer do business with the Trust or Ms. Ahern and administratively closed the
18 account.

19 What else is there to say that has not yet been said?!?!?!?! Ms. Ahern's theft spree continues
20 and knows no limits.

21 It is believed that Ms. Ahern opened another bank account at Zions Bank in St.
22 George, Utah in the name of the Trust after her removal as Trustee. Information as
23 to this account has not been verified. Confirmation and supplementation will follow
24 upon receipt of the information and any funds recovered will be credited to the new
25 Trust account.

26 More and more and more confirmation of Ms. Ahern's actions AFTER her removal as
27 trustee, in direct and complete violation of this Court's orders.

28 Based on the reporting of Mr. Waid, to say that Ms. Ahern's hands were caught in the
proverbial cookie jar would be a massive understatement. The reality is that Ms. Ahern's hands
remain firmly stuck in the cookie jar that she continues to drag around with a massive trail of
crumbs being found in the wake of her path.

C. TIMELINE

It will likely be helpful for the sake of organization for this Court to review the following
timeline and sequence of events.

1 November 12, 2013—Court orally orders Ms. Ahern to Jacqueline and Kathryn's 65%
2 share in Trust

3 December 20, 2013—Court order signed requiring Ms. Ahern to hold Jacqueline and
4 Kathryn's 65% share in Trust

5 March 20, 2015—Court orders removal of Ms. Ahern as trustee of Trust

6 March 20, 2015—Hours after Court removes Ms. Ahern as trustee, Ms. Ahern
7 removes the amount of \$409,228.50 from the Wells Fargo trust account via a Wells Fargo
branch located in Orange County, California shortly before closing of the branch

8 March 23, 2015—Ms. Ahern travels to St. George, Utah and removes \$500,000 from
9 the Wells Fargo trust account via a Wells Fargo branch located in St. George, Utah

10 April 2, 2015—Ms. Ahern removes the amount of \$146,517.38 from the Wells Fargo
trust account via a Wells Fargo branch located in St. George, Utah

11 April 14, 2015—Ms. Ahern attempts to remove \$100,000 in cash from Town &
12 Country Bank located in St. George, Utah. Town & Country Bank refuses request

13 **D. NO RETURN OF THE \$500,000 CLAIMED TO HAVE BEEN HELD BY FIDELITY**
14 **CAPITAL**

15 On top of all of these actions, as of this date, as confirmed by conversation with Mr. Waid,
16 Ms. Ahern has still not produced the \$500,000 that she claimed was on deposit with Fidelity
17 Capital, which Fidelity Capital, via Mr. Perel subsequently denounced, and which is more fully
18 discussed below.

19 Despite being instructed and ordered on multiple occasions to immediately return those
20 funds dating back to April, the \$500,000 has still not been produced, nor has its whereabouts been
21 revealed. As fits the pattern with all of these previously described actions, Ms. Ahern does not
22 apparently feel that she owes Mr. Waid, or the actual victims of her crimes, Jacqueline and Kathryn,
23 any type of an explanation as to the status of the \$500,000. On information and belief, Jacqueline
24 and Kathryn believe that the money has either been spent by Ms. Ahern or is being hidden by Ms.
25 Ahern, possibly through the actions of co-conspirators. It is terrible, unjustifiable conduct on Ms.
26 Ahern's part, but par for the course of this litigation.

27 **E. "OFFICE RENTAL" WAS NOTHING MORE THAN A RENTAL HOME FOR**
28

SUZANNE NOUNNA

This Court will recall that as part of this fraud, that Ms. Ahern has continued to perpetuate on it and Jacqueline and Kathryn, that Ms. Ahern had previously represented that she needed to rent office space to transact trust business and store documents relating to the Trust because she did not have adequate space to do so in her personal residence.

In her "Brief Regarding Accounting, Fiduciary Duties, and Trust Administration", which was filed on March 13, 2015 ("Brief"), Ms. Ahern represented the following to this Court:

Eleanor rents office space where she and her assistants maintain the Trust records and perform Trust business. The location where Eleanor currently lives does not have suitable space for Eleanor to perform Trust business and store Trust records, so she rents an office at a cost of \$1,750 per month.

Interestingly, Ms. Ahern never listed the address for this so-called rental property. Instead of listing any documentation concerning this "office" with her Brief, she instead included a letter from Adele Joseph's of "Joseph's Properties", which was attached as Exhibit 8 to her Brief. Ms. Joseph's letter is dated March 5, 2015 (based on a handwritten date inscription next to Ms. Joseph's signature) and simply states the following:

Summary for your records,

Your office rent expense has been \$1750.00 a month since the beginning of 2013. It is paid as of the beginning of this month.

After discovery of the lease agreement by Mr. Waid, which is attached hereto as Exhibit "A" and is hereby incorporated by this reference, it crystal clear as to why Ms. Ahern did not want to provide any details about her "office". The "office" was really not an office at all. Instead it was a two bedroom townhome located in Spanish Trails, with an address of 6975 Emerald Springs Lane, Las Vegas, Nevada 89113. Why a townhome? Well that is because the townhome was actually being used as a home for Suzanne Nounna. Based on disclosure relayed to Attorney Powell from Mr. Waid, Mr. Waid has learned from the landlord of the townhome that Ms. Nounna had previously applied to rent the townhome and her application was denied. Apparently, not liking

1 the word "No", it appears that Ms. Ahern decided that she herself would rent the townhome for Ms.
2 Nounna, which as this Court will recall Ms. Ahern has made it known in several pleadings that Ms.
3 Nounna is part of her "advisory team", and then make the claim that this was the "office" space that
4 Ms. Ahern just had to have to administer the Trust, especially with the piles and piles of documents
5 that Ms. Ahern had led this Court to believe that she had to manage in her role as trustee. Despite
6 painting this picture of the enormous amount of records, Ms. Ahern has turned few records over
7 to Mr. Waid. Therefore, yet another lie, and more theft, from Ms. Ahern has been exposed.

8
9 Upon discovery of that Ms. Nounna was living in the townhome, the landlord, realizing that
10 she had been lied to by Ms. Ahern, immediately terminated the lease.

11 Mr. Waid has informed Attorney Powell that he intends to depose the landlord of the
12 townhome shortly and take her testimony under oath. It is assumed that once completed Mr. Waid
13 will supplement his Report to this Court, which will further detail all of his findings in this regard.

14 In the interim, Jacqueline and Kathryn, hereby request that this Court tack on all of the rent
15 paid for the townhome, that had ZERO benefit to the Trust, as damages owed by Ms. Ahern to
16 them, and in turn treble those damages since this was additional fraud, embezzlement, conversion,
17 and theft of funds that belonged to Jacqueline and Kathryn.

18 F. DAMAGES ASSOCIATED WITH NON PAYMENT OF ESTATE TAXES

19
20 As Mr. Waid has detailed in his Report, in reference to payments of taxes, *"It is undisputed*
21 *that no such quarterly payments were made by Ms. Ahern, as Trustee, from June 1, 2013 to*
22 *January 31, 2015. None are reported or reflected in the Ahern Brief and no payments were*
23 *reported to be received by the IRS"*. What does this all mean? It means that Ms. Ahern's failure
24 to pay taxes that were obligated to be paid has further caused damage to Jacqueline and Kathryn.

25 Mr. Waid's Report further details the following:

26
27 *On Friday afternoon April 10, 2015, just two (2) business days before the April 15th tax*
28 *deadline, the Trust was notified by the tax preparer/advisor engaged by Ms. Ahern,*
Gammet and King CPAs, that the Trust 1) had underreported income for 2013, 2) that

1 *there was an estimated tax liability for 2014 of \$700,000, and 3) that Ms. Ahern had*
2 *distributed to herself all of her 35% share of prior years' Trust income. With limited*
3 *options and limited time, the Trust paid the estimated liability as calculated and estimated.*

4 *The underreporting of 2013 Trust income was verified with the IRS and in the process it*
5 *was discovered that the 2012 return was never filed by Ms. Ahern or the Trust. No*
6 *explanation has been provided or basis determined for the failure to abide by the Court's*
7 *order to pay estimated quarterly taxes for any time period, the failure to file a return for*
8 *2012, or the underreporting of Trust income for 2013.*

9 As this Court will certainly recall, on numerous occasions Ms. Ahern's previous counsel went
10 to great lengths to represent to this Court all of the fantastic work that Ms. Ahern was doing as
11 trustee. They made it a point to drill into this Court's head, as well as Jacqueline and Kathryn, that
12 the allegations and concerns from Jacqueline and Kathryn concerning Ms. Ahern's failure to
13 properly perform her trustee duties were completely unfounded and untrue and painted a picture
14 that Ms. Ahern was doing everything perfectly as she should and was in control of all facets of the
15 Trust. Yet, despite all of the other issues, and having CPAs supposedly assisting her, Ms. Ahern
16 never filed any tax returns and in turn now forces Mr. Waid to pick up the rubble of her neglect,
17 which in turn directly damages Jacqueline and Kathryn, since Mr. Waid has the obligation, as a
18 liable and responsible party in his capacity as trustee, to ensure that the IRS obligations of the Trust
19 are satisfied. As with every other false and fraudulent representation made by Ms. Ahern that
20 continue to be exposed, the extent of the damage caused by Ms. Ahern while serving as "trustee"
21 and after her removal simply continue to compound for Jacqueline and Kathryn. As such,
22 Jacqueline and Kathryn respectfully request that this Court award them damages related to tax
23 penalties and interest that they are now bearing the brunt of.

24 As Mr. Waid notes, the Trust was always been a pass through entity for taxation purposes
25 with the beneficiaries paying the tax directly on the income that they receive, via their personal
26 returns. Ms. Ahern's complete lack of doing her job as trustee in handling this issue, as well as her
27 unilateral stopping of payments to Jacqueline and Kathryn, has caused damage to Jacqueline and
28 Kathryn as they should have received their payments and then report them on their individual

1 returns, as they had done since their grandmother's passing in 2009.

2 **G. PAYMENT OF WILL CONTEST SETTLEMENT PROCEEDS PAID FROM**
3 **JACQUELINE'S AND KATHRYN'S OWN FUNDS**

4 As this Court will recall, on January 7, 2015, Jacqueline and Kathryn and Ms. Ahern
5 stipulated to the dismissal of the Will Contest that Ms. Ahern had filed in regard to the Last Will
6 and Testament of Marjorie T. Connell, which was executed by Mrs. Connell on January 7, 2008.
7 On the following day, January 8, 2015, this Court issued an order which confirmed the agreement
8 of the parties to the Will Contest, which included the requirement of Ms. Ahern's payment of the
9 attorney fees and costs of Jacqueline and Kathryn to the tune of \$75,000 which related to the Will
10 Contest.

11
12 Not only did it take nearly two months for the payment of the \$75,000 to be made by Ms.
13 Ahern, but, based on information learned from Mr. Waid, it appears that Ms. Ahern did not pay the
14 \$75,000 obligation from her own funds, as was required under the settlement agreement, but in
15 reality used the monies belonging to Jacqueline and Kathryn, which were to be held in the Trust
16 account, to the make the payment to them. Therefore, Ms. Ahern wound up "paying" Jacqueline
17 and Kathryn with their own funds. This is simply terrible conduct on Ms. Ahern's part and
18 constitutes further theft, embezzlement, and conversion of the monies belonging to Jacqueline and
19 Kathryn, which should also be trebled.

20
21 **H. REAL PROPERTIES "OWNED" BY MS. AHERN**

22 Ms. Ahern transferred three real properties originally in her name, or her revocable trust's
23 name, the EAC Trust, to three separate trusts that she created, presumably "irrevocable" trusts.
24 The three properties as follows:

25 6105 Elton Avenue, Las Vegas, Nevada, APN 138-35-515-002

26 1008 Vineyard Vine Way, N. Las Nevada, APN 139-09-720-054

27 7232 Willow Brush Street, Las Vegas, APN 126-13-816-006
28

1 As noted, Ms. Ahern transferred each of these properties into a separate trust that she
2 created. Attached as Exhibit "B" are the deeds for the all three properties, which are hereby
3 incorporated by this reference. On information and belief, Ms. Ahern has unilateral control over
4 each of the properties. This belief appears to be confirmed by Ms. Ahern's recent unilateral transfer
5 of the Elton Avenue Property from the "Elton Business Trust" to the "Elton Investment Group
6 LLC", effectuating such transfer in her capacity as the trustee of the Elton Business Trust.
7 Interestingly enough, Ms. Ahern's deed is dated May 13, 2015, yet her signature, occurring in front
8 of notary in Washington County, Utah, did not apparently occur until June 3, 2015.

9
10 Further, on information and belief, it is believed that Ms. Ahern placed these properties into
11 trusts as some sort of tax strategy, the integrity of which will likely want to be closely examined by
12 the IRS given the fraudulent and deceitful actions that Ms. Ahern has taken in this matter.

13 Based on the undeniable damage caused to Jacqueline and Kathryn, they respectfully
14 request that this Court immediately issue an order stating, and directing, that the Mr. Waid shall
15 take immediate possession of all three properties as recovery for the sums still outstanding and
16 unrecovered from the Trust. Once completed, it would be anticipated that Mr. Waid would then
17 liquidate those properties as recovery for the Trust.

18
19 For closing the discussion on this topic, there are two issues that require further analysis.
20 One issue is the transferring entity whose fingerprints are all over these transfers into Trusts—
21 Fidelity Capital. The second issue is the previously highlighted statement, discussed above, that
22 Ms. Ahern required an "office" to store the paperwork and documents associated with her role as
23 trustee.

24 As to Fidelity Capital, as this Court will readily remember, Fidelity Capital is nothing more
25 than a moving target. Ms. Ahern previously told this Court that Fidelity Capital held \$500,000 of
26 Jacqueline and Kathryn's funds. In fact, she supplied a letter from Mr. M. Perel (with apparently
27 Mr. Perel being unable to include his full first name) on Fidelity Capital "letterhead" dated with a
28

1 date of March 5, 2015 stating that Fidelity Capital was, in essence, holding \$500,000 safely and
2 soundly for the Trust. This was included as Exhibit 14 to her Accounting Brief. This Court will
3 recall that upon learning of this information this Court immediately ordered the collection and
4 return of the \$500,000 to the Trust account, which, as discussed above still has not occurred. In
5 a shocking and sudden turn of events (stated with tongue firmly embedded in cheek), Mr. M. Perel
6 reversed his previous statements contained in the March 5, 2015 letter and in a letter dated April
7 15, 2015 which was addressed to Ms. Ahern, Mr. Perel completely discredits his previous
8 statement, and in the process any credibility whatsoever, by claiming that Ms. Ahern has committed
9 fraud on Fidelity Capital and disavows that Fidelity Capital ever had the \$500,000 in the first place.
10 In the April 15, 2015 letter, Mr. Perel states that *"Due to your misrepresentations the proposed*
11 *funding has been withdrawn"*.
12

13 To further illustrate the hoax that is being perpetrated on this Court, this Court may recall
14 that M. Perel was formerly Ms. Ahern's attorney as well. In fact, as proof of this fact, attached as
15 Exhibit "C" and hereby incorporated by this reference are letters from Mr. Perel. One letter is dated
16 July 10, 2012, while the other is also from July 10, 2012, judging by the date on the fax. As this
17 Court can clearly see from such communications, Mr. Perel presented himself as Ms. Ahern's legal
18 representative. These characters perpetually continue to linger in the shadows.
19

20 Quite the interesting about face by Mr. Perel after his previous reassurance, isn't it?!?!?
21 Such a drastic 180 degree turn might lead a reasonable person to conclude that something
22 fraudulent is, and continues to be, occurring based on the \$500,000 still missing, with no
23 explanation from Ms. Ahern.
24

25 As to the second issue, please recall Ms. Ahern's previous statement about her space issues
26 when she claimed the following:

27 *The location where Eleanor currently lives does not have suitable space for Eleanor to*
28 *perform Trust business and store Trust records, so she rents an office at a cost of \$1,750*
per month.

1 In sifting through the continual lies, Ms. Ahern would like this Court to believe that she needed to
2 rent a two bedroom townhome with Trust resources, assuredly consisting solely of Jacqueline and
3 Kathryn's 65% share of the Trust, where just coincidentally Ms. Nounna was found to be living in
4 and the lease was subsequently terminated thereafter, despite the facts that she owned, and
5 continues to "own", three separate properties and apparently none of the banker boxes of records
6 could be placed into any empty spaces in those locations. That simply does not compute and
7 reconcile given that Ms. Ahern is not apparently residing in any one of those properties. Is it also
8 coincidental too that Ms. Ahern has steadfastly refused to inform this Court where her actual
9 physical residence is?

11 There are long established rules regarding Trust and Trustee's fiduciary duties. Ms. Ahern
12 has broken all such well founded rules and by her conduct disqualified herself as a continual
13 beneficiary of the Trust. Ms. Ahern defrauded her daughters, this Court, and the intent of the
14 Trust's Settlers—her own parents. Whatever the case, the fact of the matter is that Ms. Ahern must
15 understand that there are severe repercussions for her behavior in this matter. Jacqueline and
16 Kathryn remain confident that this Court will impart this lesson on Ms. Ahern very clearly and very
17 loudly. The law and equity demand it.

19 CONCLUSION

20 In addition to the relief previously requested in their underlying Motion, Jacqueline and
21 Kathryn hereby now seek additional relief from this Court, based on new information learned
22 from Mr. Waid, as follows:

- 23 1) The return of all "rent" paid by Ms. Ahern from the Trust for the "office space"
24 consisting of the 6975 Emerald Springs Lane, Las Vegas, Nevada 89113, plus the
25 trebling of such "rent";
- 26 2) Directing that the three following properties:
27 6105 Elton Avenue, Las Vegas, Nevada, APN 138-35-515-002
28

THE RUSHFORTH FIRM, LTD.
Telephone: 702-255-4652 / Fax: 702-255-4677
PO Box 371655
Las Vegas, Nevada 89137-1655

1 1008 Vineyard Vine Way, N. Las Nevada, APN 139-09-720-054

2 7232 Willow Brush Street, Las Vegas, APN 126-13-816-006

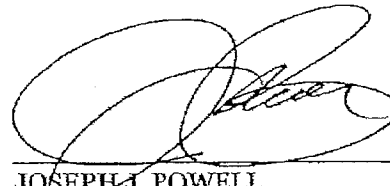
3 be immediately seized by Fredrick P. Waid, in his capacity as the current serving
4 trustee of "The W.N. Connell and Marjorie T. Connell Living Trust", dated May 18,
5 1972; and

- 6
7 3) Ms. Ahern be directed to make a payment of the amount of \$225,000 from her our
8 resources, or surcharged against her shares, as applicable, representing the amount
9 of \$75,000 stolen and converted from the Trust assets (and in turn trebled) for the
10 payment of the obligated amount of Ms. Ahern under the terms of the settlement of
11 the Will Contest relating to the Estate of Marjorie T. Connell, which was ratified, and
12 ordered, by this Court pursuant to its order dated January 8, 2015.

13 Of course, Jacqueline and Kathryn continue to reserve their right to file additional
14 supplements to their Motion, and seek additional remedies and damages, based on new
15 information discovered and in turn shared by Mr. Waid as his investigation and reporting continue.
16

17 Respectfully submitted,

18 THE RUSHFORTH FIRM, LTD.

19
20
21
22 

23 JOSEPH J. POWELL
24 State Bar No. 8875
25
26
27
28

EXHIBIT "A"

RESIDENTIAL LEASE AGREEMENT

for

6975 Emerald Springs Ln
Las Vegas, NV 89113

(Property Address)

31 EA - 3:30 PM



1. This AGREEMENT is entered into this 30th day of October, 2014 between

2 Sharon R. Walker, ("LANDLORD") legal owner of the property through the Owner's
3 BROKER, ("BROKER") and

4 Tenant's Name: Eleanor M. Ahern Tenant's Name:

6 Tenant's Name: Tenant's Name:

8 (collectively, "TENANT"), which parties hereby agree to as follows:

10 2. SUMMARY: The initial rents, charges and deposits are as follows:

	Total Amount	Received	Balance Due Prior to Occupancy
15 Rent: From 11/01/2014, To 11/30/2014	\$ 1,750.00	\$	\$ 1,750.00
16 Security Deposit	\$ 1,750.00	\$	\$ 1,750.00
17 Key Deposit	\$	\$	\$
18 Admin Fee/Credit App Fee (Non-refundable)	\$ 50.00	\$ 50.00	\$
19 Pet Deposit	\$ 500.00	\$	\$ 500.00
20 Cleaning Deposit	\$ 250.00	\$	\$ 250.00
21 Last Month's Rent Security	\$	\$	\$
22 CIC Registration	\$	\$	\$
23 Utility Proration	\$	\$	\$
24 Sewer/Trash Proration	\$	\$	\$
25 Other Last Month Rent	\$ 1,750.00	\$	\$ 1,750.00
26 Other	\$	\$	\$
27 Other	\$	\$	\$
28 Other	\$	\$	\$
29 TOTAL	\$ 6,050.00	\$ 50.00	\$ 6,000.00

30 (Any balance due prior to occupancy to be paid in CERTIFIED FUNDS)

32 3. ADDITIONAL MONIES DUE:

36 4. PREMISES: Landlord hereby leases to TENANT and TENANT hereby leases from Landlord, subject to the terms
37 and conditions of the lease, the Premises known and designated as 6975 Emerald Springs Ln, Las Vegas,
38 NV 89113 consisting of two bedroom town home ("the Premises").

40 5. TERM: The term hereof shall commence on November 1, 2014 and continue until
41 November 30, 2016, for a total rent of \$ 42,000.00, then on a month-to-month basis
42 thereafter, until either party shall terminate the same by giving the other party thirty (30) days written notice
43 delivered by certified mail (all calculation based on 30 day month).

45 6. RENT: TENANT shall pay rent at the monthly rate of \$ 1,750.00, in advance, on the 1st day
46 of every month beginning the 1st day of December, 2014 and delinquent after
47 3 days. There is no grace period. If rent is delinquent, it must be paid in the form of certified funds.

Residential Lease Agreement Rev. 05/12

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Landlord

Tenant EA Tenant

Tenant Tenant

Property: 6975 Emerald Springs Ln

Realty ONE Group, Inc. 10750 W Charleston Blvd #150 Las Vegas, NV 89133
Peter Georgier

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Phone: (702)898-1221

Fax: (702)405-3339

6975 Emerald Springs

- 1 7. **PLACE OF PAYMENTS:** TENANT shall make all payments payable to Sharon Walker
 2 and shall mail such payments to: _____
 3 _____ -or- _____ hand deliver such payments to
 4 _____ during normal business hours.
 5
- 6 8. **ADDITIONAL FEES:**
 7
- 8 **A. LATE FEES:** In the event TENANT fails to pay rent when due, TENANT shall pay a late fee of
 9 \$ 50.00 plus \$ 25.00 per day for each day after 3 days that the sum was due.
 10
- 11 **B. DISHONORED CHECKS:** A charge of \$ 75.00 shall be imposed for each dishonored
 12 check made by TENANT to LANDLORD. TENANT agrees to pay all rents, all late fees, all notice fees and all
 13 costs to honor a returned check with certified funds. After TENANT has tendered a check which is dishonored,
 14 TENANT hereby agrees to pay all remaining payments including rent due under this Agreement by certified funds.
 15 Any payments tendered to LANDLORD thereafter, which are not in the form of certified funds, shall be treated as if
 16 TENANT failed to make said payment until certified funds are received. LANDLORD presumes that TENANT is
 17 aware of the criminal sanctions and penalties for issuance of a check which TENANT knows is drawn upon
 18 insufficient funds and which is tendered for the purpose of committing a fraud upon a creditor.
 19
- 20 **C. ADDITIONAL RENT:** All late fees and dishonored check charges shall be due when incurred and shall
 21 become additional rent. Payments will be applied to charges which become rent in the order accumulated. All
 22 unpaid charges or any fees owed by TENANT, including but not limited to notice fees, attorney's fees, repair bills,
 23 utility bills, landscape/pool repair and maintenance bills and CIC fines will become additional rent at the beginning
 24 of the month after TENANT is billed. TENANT'S failure to pay the full amount for a period may result in the
 25 initiation of eviction proceedings. LANDLORD'S acceptance of any late fee or dishonored check fee shall not act as
 26 a waiver of any default of TENANT, nor as an extension of the date on which rent is due. LANDLORD reserves the
 27 right to exercise any other rights and remedies under this Agreement or as provided by law.
 28
- 29 9. **SECURITY DEPOSITS:** Upon execution of this Agreement, TENANT shall deposit with LANDLORD as a
 30 Security Deposit the sum stated in paragraph 2. TENANT shall not apply the Security Deposit to, or in lieu of,
 31 rent. At any time during the term of this Agreement and upon termination of the tenancy by either party for any
 32 reason, the LANDLORD may claim, from the Security Deposit, such amounts due Landlord under this Agreement.
 33 Any termination prior to the initial term set forth in paragraph 5, or failure of TENANT to provide proper notice of
 34 termination, is a default in the payment of rent for the remainder of the lease term, which may be offset by the
 35 Security Deposit. Pursuant to NRS 118A.242, LANDLORD shall provide TENANT with a written, itemized
 36 accounting of the disposition of the Security Deposit within thirty (30) days of termination. TENANT agrees, upon
 37 termination of the tenancy, to provide LANDLORD with a forwarding address to prevent a delay in receiving the
 38 accounting and any refund.
 39
- 40 10. **TRUST ACCOUNTS:** BROKER shall retain all interest earned, if any, on security deposits to offset
 41 administration and bookkeeping fees.
 42
- 43 11. **EVICITION COSTS:** TENANT shall be charged an administrative fee of \$ 575.00 per eviction
 44 attempt to offset the costs of eviction notices and proceedings. TENANT may be charged for service of legal
 45 notices and all related fees according to actual costs incurred.
 46
- 47 12. **CARDS AND KEYS:** Upon execution of the Agreement, TENANT shall receive the following:
 48 1 Door key(s) 1 Garage Transmitter(s) _____ Other(s) _____
 49 1 Mailbox key(s) _____ Gate Card(s) _____ Other(s) _____
 50 _____ Laundry Room key(s) _____ Gate Transmitter(s) _____ Other(s) _____
 51 Tenant shall make a key deposit (if any) in the amount set forth in paragraph 2 upon execution of this Agreement.
 52 The key deposit shall be refunded within 30 days of Tenant's return of all cards and/or keys to Landlord or
 53 Landlord's BROKER.
 54

- 1 13. CONVEYANCES AND USES: TENANT shall not assign, sublet or transfer TENANT'S interest, nor any part
2 thereof, without prior written consent of LANDLORD. TENANT shall use the Premises for residential purposes
3 only and not for any commercial enterprise or for any purpose which is illegal. TENANT shall not commit waste,
4 cause excessive noise, create a nuisance or disturb others.
- 5 *No more than 3 E.A.*
- 6 14. OCCUPANTS: Occupants of the Premises shall be limited to 3 persons and shall be used solely for
7 housing accommodations and for no other purpose. TENANT represents that the following person(s) will live in the
8 Premises: Eleanor M. Ahern and STAFF E.A.
- 9
- 10
- 11 15. GUESTS: The TENANT agrees to pay the sum of \$ 25.00 per day for each guest remaining on
12 the Premises more than 15 days. Notwithstanding the foregoing, in no event shall any guest remain on the
13 Premises for more than 30 days. *E.A.*
- 14
- 15 16. UTILITIES: LESSEE shall immediately connect all utilities and services of premises upon commencement of
16 lease. LESSEE is to pay when due all utilities and other charges in connection with LESSEE's individual rented
17 premises. Responsibility is described as (T) for Tenant and (O) for Owner:
- 18 Electricity T Trash T Phone T Other _____
19 Gas T Sewer T Cable T Other _____
20 Water T Septic n/a Association Fees O
- 21
- 22 a. TENANT is responsible to connect the following utilities in TENANT'S name: Electricity, Gas,
23 Water, Trash, Sewer, Phone, Cable *No later than Nov. 6 2014*
- 24 b. LANDLORD will maintain the connection of the following utilities in LANDLORD's name and bill
25 TENANT for connection fees and use accordingly: _____
- 26
- 27 c. No additional phone or cable lines or outlets shall be obtained for the Premises without the
28 LANDLORD's written consent. In the event of LANDLORD's consent, TENANT shall be responsible for all
29 costs associated with the additional lines or outlets.
- 30 d. If an alarm system exists on the Premises, TENANT shall obtain the services of an alarm services
31 company and shall pay all costs associated therewith.
- 32 e. Other: n/a
- 33
- 34
- 35 17. PEST NOTICE: TENANT understands that various pest, rodent and insect species (collectively, "pests") exist in
36 Southern Nevada. Pests may include, but are not limited to, scorpions (approximately 23 species, including bark
37 scorpions), spiders (including black widow and brown recluse), bees, snakes, ants, termites, rats, mice and pigeons.
38 The existence of pests may vary by season and location. Within thirty (30) days of occupancy, if the Premises has
39 pests, LANDLORD, at TENANT's request, will arrange for and pay for the initial pest control spraying. TENANT
40 agrees to pay for the monthly pest control spraying fees. The names and numbers of pest control providers are in the
41 yellow pages under "PEST." For more information on pests and pest control providers, TENANT should contact the
42 State of Nevada Division of Agriculture at www.agri.nv.gov.
- 43
- 44 18. PETS: No pet shall be on or about the Premises at any time without written permission of LANDLORD. In the
45 event TENANT wishes to have a pet, TENANT will complete an Application for Pet Approval. Should written
46 permission be granted for occupancy of the designated pet, an additional security deposit in the amount of \$ 500
47 will be required and paid by TENANT in advance subject to deposit terms and conditions aforementioned. In the
48 event written permission shall be granted, TENANT shall be required to procure and provide to Landlord written
49 evidence that TENANT has obtained such insurance as may be available against property damage to the Premises and
50 liability to third party injury. Each such policy shall name LANDLORD and LANDLORD'S AGENT as additional
51 insureds. A copy of each such policy shall be provided to Landlord or Landlord's BROKER prior to any pets being
52 allowed within the Premises. If TENANT obtains a pet without written permission of LANDLORD, TENANT agrees
53 to pay an immediate fine of \$500. TENANT agrees to indemnify LANDLORD for any and all liability, loss and

1 damages which LANDLORD may suffer as a result of any animal in the Premises, whether or not written
2 permission was granted.

3
4 19. RESTRICTIONS: TENANT shall not keep or permit to be kept in, on, or about the Premises: waterbeds, boats,
5 campers, trailers, mobile homes, recreational or commercial vehicles or any non-operative vehicles except as
6 follows: n/a

7 TENANT shall not conduct nor permit any work on vehicles on the premises.

8
9 20. ALTERATIONS: TENANT shall make no alterations to the Premises without LANDLORD's written consent. All
10 alterations or improvements made to the Premises, shall, unless otherwise provided by written agreement between
11 parties hereto, become the property of LANDLORD and shall remain upon the Premises and shall constitute a
12 fixture permanently affixed to the Premises. In the event of any alterations, TENANT shall be responsible for
13 restoring the Premises to its original condition if requested by LANDLORD or LANDLORD's BROKER.

14
15 21. DEFAULT: Failure by TENANT to pay rent, perform any obligation under this Agreement, or comply with any
16 Association Governing Documents (if any), or TENANT's engagement in activity prohibited by this Agreement, or
17 TENANT's failure to comply with any and all applicable laws, shall be considered a default hereunder. Upon
18 default, LANDLORD may, at its option, terminate this tenancy upon giving proper notice. Upon default,
19 LANDLORD shall issue a proper itemized statement to TENANT noting the amount owed by TENANT.
20 LANDLORD may pursue any and all legal and equitable remedies available.

21
22 22. ENFORCEMENT: Any failure by LANDLORD to enforce the terms of this Agreement shall not constitute a
23 waiver of said terms by LANDLORD. Acceptance of rent due by LANDLORD after any default shall not be
24 construed to waive any right of LANDLORD or affect any notice of termination or eviction.

25
26 23. NOTICE OF INTENT TO VACATE: TENANT shall provide notice of TENANT's intention to vacate the
27 Premises at the expiration of this Agreement. Such notice shall be in writing and shall be provided to
28 LANDLORD prior to the first day of the last month of the lease term set forth in section 5 of this Agreement.
29 In no event shall notice be less than 30 days prior to the expiration of the term of this Agreement. In the event
30 TENANT fails to provide such notice, TENANT shall be deemed to be holding-over on a month-to-month basis
31 until 30 days after such notice. During a holdover not authorized by LANDLORD, rent shall increase by
32 10.000 %.

33
34 24. TERMINATION: Upon termination of the tenancy, TENANT shall surrender and vacate the Premises and shall
35 remove any and all of TENANT'S property. TENANT shall return keys, personal property and Premises to the
36 LANDLORD in good, clean and sanitary condition, normal wear excepted. TENANT will allow LANDLORD to
37 inspect the Premises in the TENANT's presence to verify the condition of the Premises.

38
39 25. EMERGENCIES: The name, address and phone number of the party who will handle maintenance or essential
40 services emergencies on behalf of the LANDLORD is as follows: Sharon Walker Cell: (702) 768-2645

41
42
43 26. MAINTENANCE: TENANT shall keep the Premises in a clean and good condition. TENANT shall immediately
44 report to the LANDLORD any defect or problem pertaining to plumbing, wiring or workmanship on the Premises.
45 TENANT agrees to notify LANDLORD of any water leakage and/or damage within 24 hours of the occurrence.
46 TENANT understands that TENANT may be held responsible for any water and/or mold damage, including the
47 costs of remediation of such damage. TENANT shall be responsible for any MINOR repairs necessary to the
48 Premises up to and including the cost of \$ 50.00 . TENANT agrees to pay for all repairs,
49 replacements and maintenance required by TENANT's misconduct or negligence or that of TENANT's family, pets,
50 licensees and guests, including but not limited to any damage done by wind or rain caused by leaving windows
51 open and/or by overflow of water, or stoppage of waste pipes, or any other damage to appliances, carpeting or the
52 building in general. At LANDLORD's option, such charges shall be paid immediately or be regarded as additional
53 rent to be paid no later than the next monthly payment date following such repairs.

1 a. TENANT shall change filters in the heating and air conditioning systems at least once every month, at
2 TENANT's own expense. LANDLORD shall maintain the heating and air conditioning systems and provide for
3 major repairs. However, any repairs to the heating or cooling system caused by dirty filters due to TENANT
4 neglect will be the responsibility of TENANT.

5
6 b. TENANT shall replace all broken glass, regardless of cause of damage, at TENANT's expense.

7
8 c. In the case of landscaping and/or a swimming pool being maintained by a contractor, TENANT agrees to
9 cooperate with the landscape and/or pool contractor in a satisfactory manner. LANDLORD provided landscaping
10 maintenance is not to be construed as a waiver of any responsibility of the TENANT to keep and maintain the
11 landscaping and/or shrubs, trees and sprinkler system in good condition. In the event the landscaping is not being
12 maintained by a Contractor, TENANT shall maintain lawns, shrubs and trees. TENANT shall water all lawns,
13 shrubs and trees, mow the lawns on a regular basis, trim the trees and fertilize lawns, shrubs and trees. If
14 TENANT fails to maintain the landscaping in a satisfactory manner, LANDLORD may have the landscaping
15 maintained by a landscaping contractor and charge TENANT with the actual cost. Said costs shall immediately
16 become additional rent.

17
18 d. LANDLORD shall be responsible for all major electrical problems that are not caused by TENANT.

19
20 e. TENANT shall -OR- X shall not have carpets professionally cleaned upon move out. If cleaned,
21 TENANT shall present LANDLORD or LANDLORD's BROKER with a receipt from a reputable carpet cleaning
22 company.

23
24 f. There is -OR- X is not a pool contractor whose name and phone number are as follows: _____

25
26 If there is no such contractor, TENANT agrees to maintain the pool, if any. TENANT agrees to maintain the
27 water level, sweep, clean and keep in good condition. If TENANT fails to maintain the pool in a satisfactory
28 manner, LANDLORD may have the pool maintained by a licensed pool service and charge TENANT with the
29 actual cost. Said costs shall become additional rent.

30
31 27. ACCESS: TENANT agrees to grant LANDLORD the right to enter the Premises at all reasonable times and for all
32 reasonable purposes including showing to prospective lessees, buyers, appraisers or insurance agents or other
33 business therein as requested by LANDLORD, and for BROKER's periodic maintenance reviews. If TENANT fails
34 to keep scheduled appointments with vendors to make necessary/required repairs, TENANT shall pay for any
35 additional charges incurred which will then become part of the next month's rent and be considered additional rent.
36 TENANT shall not deny LANDLORD his/her rights of reasonable entry to the Premises. LANDLORD shall have
37 the right to enter in case of emergency and other situations as specifically allowed by law. LANDLORD agrees to
38 give TENANT twenty-four (24) hours notification for entry, except in case of emergency.

39
40 28. INVENTORY: It is agreed that the following inventory is now on said premises. (Check if present; cross out if
41 absent.)

42
43 X Refrigerator _____ Intercom System _____ Spa Equipment _____
44 X Stove X Alarm System _____ Auto Sprinklers _____
45 X Microwave _____ Trash Compactor _____ Auto Garage Openers _____
46 X Disposal _____ Ceiling Fans _____ BBQ _____
47 X Dishwasher _____ Water Conditioner Equip. _____ Solar Screens _____
48 X Washer _____ Floor Coverings _____ Pool Equipment _____
49 X Dryer X Window Coverings _____ Other _____

50
51 TENANT assumes responsibility for the care and maintenance thereof.

1 29. ASSOCIATIONS: Should the Premises described herein be a part of a common interest community, homeowners
2 association planned unit development, condominium development ("the Association") or such, TENANT hereby
3 agrees to abide by the Governing Documents (INCLUDING Declarations, Bylaws, Articles, Rules and Regulations)
4 of such project and further agrees to be responsible for any fines or penalties levied as a result of failure to do so by
5 himself, his family, licensees or guests. Noncompliance with the Governing Documents shall constitute a violation
6 of this Agreement. Unless billed directly to TENANT by the Association, such fines shall be considered as an
7 addition to rent and shall be due along with the next monthly payment of rent. By initialing this paragraph,
8 TENANT acknowledges receipt of a copy of the applicable Governing Documents. LANDLORD, at LANDLORD's
9 expense, shall provide TENANT with any additions to such Governing Documents as they become available.
10 LANDLORD may, at its option, with 30 days notice to TENANT, adopt additional reasonable rules and regulations
11 governing use of the Premises and of the common areas (if any). [EA] [] [] []
12

13 30. INSURANCE: TENANT X is -OR- is not required to purchase renter's insurance. LANDLORD and BROKER
14 shall be named as additional interests on any such policy. LANDLORD shall not be liable for any damage or
15 injury to TENANT, or any other person, to any property occurring on the Premises or any part thereof, or in
16 common areas thereof. TENANT agrees to indemnify, defend and hold LANDLORD harmless from any claims for
17 damages. TENANT understands that LANDLORD's insurance does not cover TENANT's personal property. Even
18 if it is not a requirement of this Agreement, TENANT understands that LANDLORD highly recommends that
19 TENANT purchase renter's insurance.
20

21 31. ILLEGAL ACTIVITIES PROHIBITED: TENANT is aware of the following: It is a misdemeanor to commit or
22 maintain a public nuisance as defined in NRS 202.450 or to allow any building or boat to be used for a public
23 nuisance. Any person, who willfully refuses to remove such a nuisance when there is a legal duty to do so, is guilty
24 of a misdemeanor. A public nuisance may be reported to the local sheriff's department. A violation of building,
25 health or safety codes or regulations may be reported to the government entity in our local area such as the code
26 enforcement division of the county/city government or the local health or building departments.
27

28 32. ADDITIONAL RESPONSIBILITIES:

29
30 a. TENANT may install or replace screens at TENANT's own expense. Solar screen installation requires written
31 permission from LANDLORD. LANDLORD is not responsible for maintaining screens.
32

33 b. With the exception of electric cooking devices, outdoor cooking with portable barbecuing equipment is
34 prohibited within ten (10) feet of any overhang, balcony or opening, unless the Premises is a detached single
35 family home. The storage and/or use of any barbecuing equipment is prohibited indoors, above the first floor and
36 within five (5) feet of any exterior building wall. Adult supervision is required at all times the barbecue
37 equipment is generating heat.
38

39 c. The Premises X have -OR- have not been freshly painted. If not freshly painted, the Premises
40 X have -OR- have not been touched up. TENANT will be responsible for the costs for any holes or
41 excessive dirt or smudges that will require repainting.
42

43 d. TENANT agrees to coordinate transfer of utilities to LANDLORD or BROKER no less than 3
44 business days of vacating the Premises.
45

46 e. Locks may be replaced or re-keyed at the TENANT'S expense provided TENANT informs LANDLORD and
47 provides LANDLORD with a workable key for each new or changed lock.
48

49 f. TENANT may conduct a risk assessment or inspection of the Premise for the presence of lead-based paint
50 and/or lead-based paint hazards at the TENANT's expense for a period of ten days after execution of this
51 agreement. Such assessment or inspection shall be conducted by a certified lead-based paint professional. If
52 TENANT for any reason fails to conduct such an assessment or inspection, then TENANT shall be deemed to
53 have elected to lease the Premises "as is" and to have waived this contingency. If TENANT conducts such an
54 assessment or inspection and determines that lead-based paint deficiencies and/or hazards exist, TENANT will

1 notify LANDLORD in writing and provide a copy of the assessment/inspection report. LANDLORD will then
2 have ten days to elect to correct such deficiencies and/or hazards or to terminate this agreement. In the event of
3 termination under this paragraph, the security deposit will be refunded to TENANT. (If the property was
4 constructed prior to 1978, refer to the attached Lead-Based Paint Disclosure.)
5

6 g. TENANT may display the flag of the United States, made of cloth, fabric or paper, from a pole, staff or in a
7 window, and in accordance with 4 USC Chapter 1. LANDLORD may, at its option, with 30 days notice to
8 TENANT, adopt additional reasonable rules and regulations governing the display of the flag of the United States.
9

10 h. TENANT may display political signs subject to any applicable provisions of law governing the posting of
11 political signs, and, if the Premises are located within a CIC, the provisions of NRS 116 and any governing
12 documents related to the posting of political signs. All political signs exhibited must not be larger than 24 inches
13 by 36 inches. LANDLORD may not exhibit any political sign on the Premises unless the tenant consents, in
14 writing, to the exhibition of the political sign. TENANT may exhibit as many political signs as desired, but may
15 not exhibit more than one political sign for each candidate, political party or ballot question.
16

17 33. CHANGES MUST BE IN WRITING: No changes, modifications or amendment of this Agreement shall be valid
18 or binding unless such changes, modifications or amendment are in writing and signed by each party. Such changes
19 shall take effect after thirty days notice to TENANT.
20

21 34. CONFLICTS BETWEEN LEASE AND ADDENDUM: In case of conflict between the provisions of an
22 addendum and any other provisions of this Agreement, the provisions of the addendum shall govern.
23

24 35. ATTORNEY'S FEES: In the event of any court action, the prevailing party shall be entitled to be awarded against
25 the losing party all costs and expenses incurred thereby, including, but not limited to, reasonable attorney's fees and
26 costs.
27

28 36. NEVADA LAW GOVERNS: This Agreement is executed and intended to be performed in the State of Nevada in
29 the county where the Premises are located and the laws of the State of Nevada shall govern its interpretation and
30 effect.
31

32 37. WAIVER: Nothing contained in this Agreement shall be construed as waiving any of the LANDLORD's or
33 TENANT's rights under the laws of the State of Nevada.
34

35 38. PARTIAL INVALIDITY: In the event that any provision of this Agreement shall be held invalid or
36 unenforceable, such ruling shall not affect in any respect whatsoever the validity or enforceability of the remainder
37 of this Agreement.
38

39 39. VIOLATIONS OF PROVISIONS: A single violation by TENANT of any of the provisions of this Agreement
40 shall be deemed a material breach and shall be cause for termination of this Agreement. Unless otherwise provided
41 by the law, proof of any violation of this Agreement shall not require criminal conviction but shall be by a
42 preponderance of the evidence.
43

44 40. SIGNATURES: The Agreement is accepted and agreed to jointly and severally. The undersigned have read this
45 Agreement and understand and agree to all provisions thereof and further acknowledge that they have received a
46 copy of this Agreement.
47

48 41. LICENSEE DISCLOSURE OF INTEREST: Pursuant to NAC 645.640, _____ n/a
49 is a licensed real estate agent in the State(s) of _____ n/a _____, and has the following interest, direct
50 or indirect, in this transaction: ☐ Principal (LANDLORD or TENANT) -OR- ☐ family relationship or business
51 interest: _____ n/a _____
52
53

1 45. ADDITIONAL TERMS AND CONDITIONS: 1). Tenant reserves the right to buyout
2 prior to lease expiration date with a thirty(30) day written notice to
3 landlord and a penalty fee of one-month rent (\$1,750).
4 2). \$100 of the \$250 Cleaning Deposit will be non-refundable.
5 3). Tenant shall abide by all HOA Rules & Regulations.
6 4). Any HOA/parking fines related to tenant's occupancy or tenant's guests
7 will be paid by tenant.
8 5). All repairs/improvements over \$50 to be authorized by landlord/owner.
9 6). Tenant is aware this is an owner managed property and all communication
10 shall be between tenant and Sharon Walker who is the owner/landlord.
11
12
13
14
15
16
17
18
19

21 Sharon R. Walker
22 LANDLORD/OWNER OF RECORD NAME

time 9:30pm
Eleanor Ahern Oct 31, 2014
TENANT'S SIGNATURE DATE
Print Name: Eleanor M. Ahern
Phone:

26
27 MANAGEMENT COMPANY (BROKER) NAME

TENANT'S SIGNATURE DATE
Print Name:
Phone:

31 By
32 Authorized AGENT for BROKER SIGNATURE DATE

TENANT'S SIGNATURE DATE
Print Name:
Phone:

34 ☐ REALTOR®

TENANT'S SIGNATURE DATE
Print Name:
Phone:

LEASE ADDENDUM FOR DRUG FREE HOUSING



In consideration of the execution or renewal of a lease of the dwelling unit identified in the lease, Landlord and Tenant agree as follows:

1. Tenant, any member of Tenant's household, or a guest or other person under Tenant's control shall not engage in criminal activity, including drug-related criminal activity, on or near the subject leasehold premises. "Drug-related criminal activity" means the illegal manufacture, sale, distribution, use or possession with intent to manufacture, sell, distribute, or use, of controlled substance (as defined in section 102 of the Controlled Substance Act, 21 U.S.C. 802).
2. Tenant, any member of the Tenant's household, or a guest or other person under Tenant's control, shall not engage in any act intended to facilitate criminal activity, including drug-related criminal activity, on or near the subject leasehold premises.
3. Tenant or members of the household will not permit the dwelling unit to be used for or to facilitate criminal activity, including drug-related criminal activity, regardless of whether the individual engaging in such activity is a member of the household or a guest.
4. Tenant or member of the household will not engage in the manufacture, sale or distribution of illegal drugs at any location, whether on or near the subject leasehold premises or otherwise.
5. Tenant, any member of the Tenant's household, or a guest or other person under Tenant's control shall not engage in acts of violence, including, but not limited to the unlawful discharge of firearms, on or near the subject leasehold premises.
6. VIOLATION OF THE ABOVE PROVISIONS SHALL BE A MATERIAL VIOLATION OF THE LEASE AND GOOD CAUSE FOR TERMINATION OF TENANCY. A single violation of any of the provisions of the addendum shall be deemed a serious violation and a material noncompliance with the lease. It is understood and agreed that a single violation shall be cause for termination of the lease. Unless otherwise provided by law, proof of violation shall not require criminal conviction, but shall be by a preponderance of the evidence.
7. In case of conflict between the provisions of this addendum and any other provisions of the lease, the provisions of the addendum shall govern.
8. This lease addendum incorporated into the lease executed or renewed this day between Landlord and Tenant.

Property Address 6975 Emerald Springs Ln, Las Vegas, NV 89113

Agent/Landlord _____
Sharon R. Walker

Tenant Eleanor M. Ahern
Eleanor M. Ahern

Company _____

Tenant _____

Owner _____
Sharon R. Walker

Tenant _____

Date _____

Date October 31, 2014

Lease Addendum for Drug Free Housing Rev. 10/07

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6975 Emerald

Produced with ZipForm20 by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48028 www.ziplogix.com



SMOKE DETECTOR AGREEMENT

This Agreement entered into the 30th day of October, 2014 between
Sharon R. Walker, Landlord
(by and through Landlord's Agent), and Eleanor M. Ahern
, Tenant.

In consideration of their mutual promises, Landlord and Tenant agree as follows:

1. Tenant is renting from Landlord the premises at 6975 Emerald Springs Ln, Las Vegas, NV 89113.
2. This agreement is an addendum and part of the rental agreement and/or lease between Landlord and Tenant.
3. The premises are equipped with smoke detection device(s).
4. It is agreed that Tenant will test the smoke detector within one hour after occupancy and inform Landlord or his/her Agent immediately if detector(s) is not working properly.
5. It is agreed that Tenant will be responsible for testing smoke alarm(s) at least once every week by pushing the "push to test" button on the detector for about five (5) seconds. To be operating properly, the alarm will sound when the button is pushed.
6. Tenant understands that said smoke detector(s) is a battery operated unit and it shall be Tenant's responsibility to insure that the battery is in operating condition at all times. If after replacing battery, any smoke detector(s) will not operate or has no sound, Tenant must inform Landlord or his/her Agent immediately in writing.
7. Landlord and his/her Agent recommend that Tenant provides and maintains a fire extinguisher on the premises.
8. The undersigned have read the above agreement and understand and agree to all provisions thereof and further acknowledge that they have received a copy of said agreement.

LANDLORD/AGENT

Sharon R. Walker

Eleanor M. Ahern
TENANT

Eleanor M. Ahern

TENANT

Smoke Detector Agreement Rev. 02/08

© 2008 Greater Las Vegas Association of REALTORS®

Realty ONE Group, Inc, 10750 W Charleston Blvd #180 Las Vegas, NV 89135
Phone: (702)898-1221 Fax: (702)405-3359 Peter Georgiev

Produced with ZipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com

6975 Emerald

EXHIBIT "B"

Document Prepared by:

When recorded, please return to:
Fidelity Capital
8635 W. Sahara, #80
Las Vegas, NV 89117-5858

Until a change is requested, all tax statements
shall be sent to the following address:

Fidelity Capital
8635 W. Sahara, #80
Las Vegas, NV 89117-5858

Inst #: 201212310003294

Fee: \$18.00 N/C Fee: \$0.00

RPTT: \$456.45 Ex #

12/31/2012 02:03:22 PM

Receipt #: 1440694

Requestor:

FIDELITY CAPITAL

Recorded By: TAH Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

Assessors Parcel No: 139-09-720-054

File No:

GRANT, BARGAIN, AND DEED SALE

KNOW BY ALL THESE PRESENTS THAT for the valuable consideration of Eighty Nine Thousand Three Hundred Twenty-Four dollars (\$89,324.00) and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, Eleanor Ahern of 6105 Elton Avenue, Las Vegas, NV 89107 (hereinafter referred to as the "Grantor"), does hereby grant, bargain, and sell unto Vineyard Vine BT of 1008 Vineyard Vine Way, N. Las Vegas, NV 89032 (hereinafter the "Grantee"), whether one or more, the following lands and property, together with all improvements located thereon, lying in the County of Clark, State of Nevada, to-wit:

See property description attached hereto as "Exhibit A".

Prior instrument reference: Tempo-Unit 4 Plat Book 96, Page 69, Lot 214 Block 9GEOD: PT N2 SE4 SEC 09 20 61, of the Public Records of the County Clerk of Clark County, Nevada.

Subject to (1) all general and special taxes for the current fiscal year, and (2) all covenants, conditions, restrictions, restorations, right, rights of way and easements now of record.

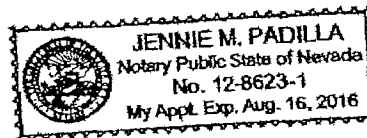
TOGETHER with all tenements, hereditaments and appurtenances, including easements and water rights, if any, hereto belonging or appertaining, and any reversions, remainders, rents, issues or profits thereof.

Dec. 28 2012
Date

Eleanor Ahern +
Eleanor Ahern

STATE OF NEVADA
COUNTY OF CLARK

This instrument was acknowledged before me
on December 28, 2012
by ELEANOR AHERN



Signature Jennie M. Padilla
Notary Public

My Commission Expires: 8/16/16

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

a. 139-09-720-054

b. _____

c. _____

d. _____

2. Type of Property:

- | | |
|--|---|
| a. <input type="checkbox"/> Vacant Land | b. <input checked="" type="checkbox"/> Single Fam. Res. |
| c. <input type="checkbox"/> Condo/Twnhse | d. <input type="checkbox"/> 2-4 Plex |
| e. <input type="checkbox"/> Apt. Bldg | f. <input type="checkbox"/> Comm./Ind'l |
| g. <input type="checkbox"/> Agricultural | h. <input type="checkbox"/> Mobile Home |
| <input type="checkbox"/> Other | |

FOR RECORDERS OPTIONAL USE ONLY

Book _____ Page: _____

Date of Recording: _____

Notes: _____

3.a. Total Value/Sales Price of Property

\$ 89,324.00

b. Deed in Lieu of Foreclosure Only (value of property (_____))

c. Transfer Tax Value: \$ 89,324.00

d. Real Property Transfer Tax Due \$ 456.45

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section _____

b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: _____ %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature Eleanor Ahern Capacity: Grantor

Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Eleanor Ahern
Address: 6105 Elton Avenue
City: Las Vegas
State: NV Zip: 89107

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: Vineyard Vine BT
Address: 1008 Vineyard Vine Way
City: Las Vegas
State: NV Zip: 89032

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: Fidelity Capital
Address: 8635 W. Sahara, #80
City: Las Vegas

Escrow # _____
State: NV Zip: 89117-5858

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

3-1
Document Prepared by:

When recorded, please return to:
Fidelity Capital
8635 W. Sahara, #80
Las Vegas, NV 89117-5858

Until a change is requested, all tax statements
Shall be sent to the following address:

Fidelity Capital
8635 W. Sahara, #80
Las Vegas, NV 89117-5858

Inst #: 201212310003293

Fees: \$18.00 N/C Fee: \$0.00

RPTT: \$479.40 Ex: #

12/31/2012 02:03:22 PM

Receipt #: 1440594

Requestor:

FIDELITY CAPITAL

Recorded By: TAH Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

Assessors Parcel No: 126-13-816-006

File No:

GRANT, BARGAIN, AND DEED SALE

KNOW BY ALL THESE PRESENTS THAT for the valuable consideration of Ninety Three Thousand Nine Hundred Twenty-Four dollars (\$93,924.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Eleanor M. Ahern of 6105 Elton Avenue, Las Vegas, NV 89107 (hereinafter referred to as the "Grantor"), does hereby grant, bargain, and sell unto Willow Brush BT of 7232 Willow Brush Street, Las Vegas, NV 89166 (hereinafter the "Grantee"); whether one or more, the following lands and property, together with all improvements located thereon, lying in the County of Clark, State of Nevada, to-wit:

See property description attached hereto as "Exhibit A".

Prior instrument reference: Cliffs Edge POD 115, 116 & 117 Unit 3B, Plat Book 132, Page 76, Lot 105, Block F, GEOID: PT S2 SE4 SEC 13 19 59, of the Public Records of the County Clerk of Clark County, Nevada.

Subject to (1) all general and special taxes for the current fiscal year, and (2) all covenants, conditions, restrictions, restorations, right, rights of way and easements now of record.

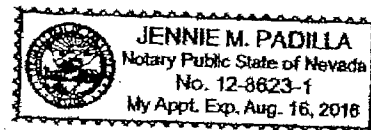
TOGETHER with all tenements, hereditaments and appurtenances, including easements and water rights, if any, hereto belonging or appertaining, and any reversions, remainders, rents, issues or profits thereof.

December 28, 2012
Date

Eleanor M. Ahern
Eleanor M. Ahern

STATE OF NEVADA
COUNTY OF CLARK

This instrument was acknowledged before me
on December 28, 2012
by ELEANOR M. AHERN



Signature Jennie M. Padilla
Notary Public
My Commission Expires: 8/16/16

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

a. 126-13-816-006
b. _____
c. _____
d. _____

2. Type of Property:

a. ☐ Vacant Land b. ☒ Single Fam. Res.
c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
g. ☐ Agricultural h. ☐ Mobile Home
Other _____

FOR RECORDERS OPTIONAL USE ONLY
Book _____ Page: _____
Date of Recording: _____
Notes: _____

3.a. Total Value/Sales Price of Property \$ 93,924.00
b. Deed in Lieu of Foreclosure Only (value of property (_____))
c. Transfer Tax Value: \$ 939.24
d. Real Property Transfer Tax Due \$ 479.40

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section _____
b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: _____ %
The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature Eleanor Ahern Capacity: Grantor
Signature _____ Capacity: _____

**SELLER (GRANTOR) INFORMATION
(REQUIRED)**

Print Name: Eleanor M. Ahern
Address: 6105 Elton Avenue
City: Las Vegas
State: NV Zip: 89107

**BUYER (GRANTEE) INFORMATION
(REQUIRED)**

Print Name: Willow Brush BT
Address: 7232 Willow Brush Street
City: Las Vegas
State: NV Zip: 89166

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: Fidelity Capital
Address: 8635 W. Sahara, #80
City: Las Vegas

Escrow # _____
State: NV Zip: 89117-5858

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

A.P.N.: 138-35-515-002
File No: 116-2485987 (CC)
R.P.T.T.: \$459.00 C

Inst #: 20150608-0000773
Fees: \$18.00 N/C Fee: \$0.00
RPTT: \$459.00 Ex: #
06/08/2015 08:58:00 AM
Receipt #: 2450149
Requestor:
FIRST AMERICAN TITLE INSURA
Recorded By: OSA Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

When Recorded Mail To: Mail Tax Statements To:
ELTON INVESTMENT GROUP LLC
1818 INDUSTRIAL ROAD 101
LAS VEGAS, NV 89102

GRANT, BARGAIN and SALE DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Eleanor C. Ahern, Trustee on the ELTON Business Trust, dated December 21, 2011, who
acquired title as ELTON BT

do(es) hereby *GRANT, BARGAIN and SELL* to

ELTON INVESTMENT GROUP LLC

the real property situate in the County of Clark, State of Nevada, described as follows:

**LOT FORTY (40) IN BLOCK THIRTEEN (13) OF CHARLESTON HEIGHTS TRACT NO. 41-
A, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 7 OF PLATS, PAGE 56, IN THE
OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.**

Subject to

1. All general and special taxes for the current fiscal year.
2. Covenants, Conditions, Restrictions, Reservations, Rights, Rights of Way and Easements
now of record.

TOGETHER with all tenements, hereditaments and appurtenances, including easements and
water rights, if any, thereto belonging or appertaining, and any reversions, remainders, rents,
issues or profits thereof.

Date: 05/13/2015

Eleanor C. Ahern, Trustee of the Elton
Business Trust

Eleanor C. Ahern

By: Eleanor C. Ahern,, Trustee

STATE OF

NEVADA UT

COUNTY OF

CLARK Washington ^{SS.}

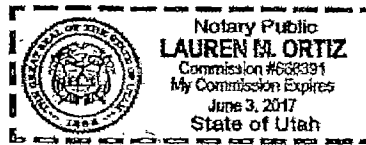
*

This instrument was acknowledged before me on June 3, 2015 by
ELTON BUSINESS TRUST.

Lauren M. Ortiz

Notary Public

(My commission expires: 06/03/2017)



This Notary Acknowledgement is attached to that certain Grant, Bargain Sale Deed dated **May 13, 2015** under Escrow No. **116-2485987**.

* Eleanor C. Ahern, Trustee of the Elton Business
Trust

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

- a) 138-35-515-002
b) _____
c) _____
d) _____

2. Type of Property

- a) ☐ Vacant Land b) ☒ Single Fam. Res.
c) ☐ Condo/Twnhse d) ☐ 2-4 Plex
e) ☐ Apt. Bldg. f) ☐ Comm'l/Ind'l
g) ☐ Agricultural h) ☐ Mobile Home
i) ☐ Other _____

FOR RECORDERS OPTIONAL USE

Book _____ Page: _____
Date of Recording: _____
Notes: _____

3. a) Total Value/Sales Price of Property: \$90,000.00
b) Deed in Lieu of Foreclosure Only (value of (\$ _____)
c) Transfer Tax Value: \$90,000.00
d) Real Property Transfer Tax Due \$459.00

4. If Exemption Claimed:

- a. Transfer Tax Exemption, per 375.090, Section: _____
b. Explain reason for exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: _____
Signature: _____

Capacity: Agent
Capacity: _____

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: ELTON BUSINESS TRUST

Address: 1818 INDUSTRIAL ROAD 101

City: Las Vegas

State: NV Zip: 89102

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: ELTON INVESTMENT GROUP LLC

Address: 1818 INDUSTRIAL ROAD 101

City: LAS VEGAS

State: NV Zip: 89102

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)

First American Title Insurance
Print Name: Company
Address: 2500 Paseo Verde Parkway, Suite 120
City: Henderson

File Number: 116-2485987 CC/CC
State: NV Zip: 89074

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

EXHIBIT "C"

MARTIN O. PEREL, ESQ.
10100 Santa Monica Blvd.
Los Angeles, CA 90067

July 10, 2012

10100 Santa Monica Blvd
Los Angeles, CA 90067

Attention: Mary Lou Cassidy

The purpose of this letter is to inform you that at the request of Wells Fargo Bank Eleanor Ahern has closed the bank account which was in direct violation of several Federal, State and Local Laws. Upon the request of Wells Fargo Bank Eleanor Ahern contacted me and upon review I informed her to comply with the banks long standing request to close this account in order to avoid any potential criminal charges against her or Jacqueline. This account was subject to closing by the bank if Eleanor had not done so. Wells Fargo Bank Corp. was very clear that they were not willing to lose their banking charter in order to allow the continuance of fraud. Eleanor did attempt to comply with the banks Regional Vice President's request with the cooperation of her daughter which was not attainable.

Identity theft is a federal crime as is check fraud. Once the documents were reviewed and I was satisfied of the legitimacy of the banks claim and potential actions, I insisted that my client cease her month long delay with compliance of their request.

Eleanor has opened a new bank account at Wells Fargo which is in compliance with Federal, State and Local laws and of which Wells Fargo is content to allow deposit. Wells Fargo had indeed informed Eleanor that they would no longer allow the deposit of checks into that subject account and fully intended to suspend all banking actions of this subject account and possibly press charges. Sufficely to say Wells Fargo now has a proper trust account open wherein all revenue checks will be deposited and appropriate payments will be made. Please forward to me all documents supporting your position regarding the monetary split.

Weekly Jacqueline Montoya may take any and all checks which may come into her possession to Michael Root's Office at 415 S. 6th Street, Las Vegas, NV 89101. She is to give them to Jennie Padilla and she will provide a receipted copy. This shall be done every Wednesday as needed by each week.

MARTIN O. PEREL, ESQ.
10100 Santa Monica Blvd.
Los Angeles, CA 90067

Once a month, a local, CPA FIRM will provide a complete accounting. Jacqueline Montoya may pick up checks once a month on the 8th at the office of Michael Root at 415 S. 6th Street, Ste. 203A, Las Vegas, NV 89101. Additionally once a month on the 8th she will be provided with full accounting records which will be from the local CPA firm. It is at that time she may sign any check requiring her signature.

Please be advised I have contacted all oil and gas companies of a change of address from maverick and 710 to our offices at the request of Eleanor. **DO NOT CHANGE THIS PROVISION. IT IS IN EVERYONES BEST INTEREST. DO NOT HAVE ANY CONTACT WITH ANY OF THE LESSORS.**

Should you have any further questions please contact me in writing.

Sincerely,



Martin O. Perel, ESQ.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

**Probate -
Trust/Conservatorships**

COURT MINUTES

August 05, 2015

P-09-066425-T

In the Matter of the Trust of:

The W.N. Connell and Marjorie T. Connell Living Trust, dtd May 18, 1972

August 05, 2015 10:00 AM Motion

HEARD BY: Sturman, Gloria

COURTROOM: RJC Courtroom 03H

COURT CLERK: Linda Denman

COURT RECORDER: Kerry Esparza

PARTIES:

Eleanor Ahern, Petitioner, present

Kirk Lenhard, Tamara Peterson, Attorneys,
present

Fredrick Waid, Trustee, present

Todd Moody, Attorney, present

Jacqueline Montoya, Other, Personal
Representative, present

Joseph Powell, Attorney, present

Kathryn Bouvier, Other, present

JOURNAL ENTRIES

JACQUELINE M. MONTOYA'S AND KATHRYN A. BOUVIER'S MOTION FOR ASSESSMENT OF DAMAGES AGAINST ELEANOR AHERN; ENFORCEMENT OF NO-CONTEST CLAUSE; AND SURCHARGE OF ELEANOR'S TRUST INCOME

Mr. Powell requested relief from the Court for this motion for damages; treble damages; punitive damages; enforcement of the no-contest clause in the trust; and to surcharge Eleanor Ahern's income if she is not disinherited. Mr. Lenhard argued there was no due process and advised the Court he had filed a Motion to Strike the supplement to this motion and his motion is set to be heard on August 19. Court stated this motion is premature as the contempt hearing against Ms. Ahern has not been held. Court also directed counsel to Rogler v Millard, a recently decided Nevada Supreme Court opinion upholding this Court granting of a no-contest dispute on a Motion for Summary Judgment.

Mr. Waid advised he was still working on recovering trust assets but had IRS issues to resolve and could not depose Ms. Ahern until the criminal proceedings against her were finalized. COURT

PRINT DATE:	08/06/2015	Page 1 of 2	Minutes Date:	August 05, 2015
-------------	------------	-------------	---------------	-----------------

ORDERED matter SET for EVIDENTIARY HEARING on the issues of damages, punitive damages, surcharge, and no-contest clause; discovery deadline is October 16. COURT FURTHER ORDERED status check SET.

9/2/2015 AT 9:00AM STATUS CHECK: EVIDENTIARY HEARING STATUS

11/9/2015 AT 9:30AM EVIDENTIARY HEARING

CLERK'S NOTE: Please note the date of the Status Check is Wednesday, September 2nd, 2015 at 9:00AM./ld

INTERIM CONDITIONS:

FUTURE HEARINGS:

Canceled: August 05, 2015 1:30 PM Motion

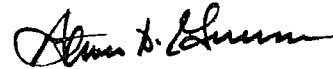
August 14, 2015 9:30 AM Petition - HM
RJC Courtroom 03F
Chun, Sharon
Yamashita, Wesley

August 18, 2015 8:30 AM
Romea, Dulce
RJC Courtroom 14C
Gonzalez, Elizabeth
Hawkins, Jill

August 19, 2015 9:00 AM Motion to Strike
Denman, Linda
Sturman, Gloria
Esparza, Kerry
RJC Courtroom 03H

PRINT DATE:	08/06/2015	Page 2 of 2	Minutes Date:	August 05, 2015
-------------	------------	-------------	---------------	-----------------

TRAN



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

IN THE MATTER OF THE TRUST OF:)
THE W.N. CONNELL AND MARJORIE)
T. CONNELL LIVING TRUST, DTD)
MAY 18, 1972,)
_____)

CASE NO: P09-066425-T
DEPT NO: XXVI

BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

EVIDENTIARY HEARING: ENFORCEMENT OF NO CONTEST CLAUSE

MONDAY, FEBRUARY 22, 2016

APPEARANCES:

For Ahern:

KIRK B. LENHARD, ESQ.
TAMMY PETERSON, ESQ.

For Bouvier and Montoya:

JOSEPH POWELL, ESQ.
DANIEL KIEFER, ESQ.
LAYNE RUSHFORTH, ESQ.

For Waid:

TODD MOODY, ESQ.

RECORDED BY KERRY ESPARZA, COURT RECORDER
TRANSCRIBED BY: KARR Reporting, Inc.

KARR REPORTING, INC.

I N D E X

OPENING STATEMENTS:

By Mr. Rushforth	24
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WITNESSES:

FREDRICK WAID

Direct Examination By Mr. Powell	56
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Recross Examination By Mr. Lenhard	157

JACQUELINE MONTOYA

Direct Examination By Mr. Lenhard	165
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EXHIBITS

EXHIBITS ADMITTED:

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1 LAS VEGAS, NEVADA, MONDAY, FEBRUARY 22, 2016, 10:07 A.M.

2 * * * * *

3 THE COURT: So we're going to go on the record then
4 in P-09-066425. We'll have everybody state appearances,
5 because we do have a substitute clerk today and she may not be
6 as familiar with everybody as the regular clerk was. So we'll
7 have everybody state appearances.

8 MR. POWELL: Good morning, Your Honor. Joey Powell
9 appearing on behalf of Kathryn Bouvier and Jacqueline Montoya.

10 MR. KIEFER: Daniel Kiefer on behalf of the same
11 parties, Your Honor.

12 MR. RUSHFORTH: Layne Rushforth on behalf of the
13 same parties, Your Honor.

14 MR. LENHARD: Kirk Lenhard and Tammy Peterson on
15 behalf of Ms. Ahern.

16 MR. MOODY: Good morning, Your Honor. Todd Moody,
17 Bar No. 5430, for the court appointed trustee, Fred Waid,
18 who's also present.

19 THE COURT: Okay. Today we are scheduled for an
20 evidentiary hearing, and we did discuss, you know, what we
21 were going to try to accomplish at our evidentiary hearing
22 today and what we've got as far as who we're going to hear
23 from and what we've got with respect to exhibits.

24 One thing first that should be noted is we do have
25 trial memorandum from both Ms. Peterson, Mr. Lenhard and from

1 Mr. Powell. Unfortunately, both sides used letters in their
2 exhibits, so it's a little confusing for the clerk. But since
3 I believe -- and Mr. Lenhard did request to file his under
4 seal, and I grant that, because one of the documents that was
5 included, I think it's actually in both, is Mr. Waid's report,
6 which was sealed.

7 So to the extent that these are on file, that
8 exhibit definitely should be sealed. I don't know if the rest
9 of them need to be sealed, Mr. Lenhard, but we do have that
10 one exhibit that does need to be sealed, and because it is
11 referenced, probably all of it should be sealed. So we did
12 seal that one.

13 I don't know, Mr. Powell, if you wanted to seal your
14 brief, anything in yours. It looked -- there was a lot of
15 overlap as far as exhibits in the two. So, you know, if we
16 need to seal anything, we can certainly discuss that at a
17 later time if we -- if there's anything that needs to be
18 sealed. Because this is -- there's a lot of information in
19 here, financial information here about the parties that they
20 may not want made public.

21 MR. KIEFER: Thank you, Your Honor. We're happy to
22 seal anything specific, whether it be with redactions, or
23 since the report was already sealed, we apologize that that
24 was filed not under seal in the rest of the case. But it
25 seems at least a bit presumptuous to seal the entire trial

1 brief on either side, considering the amount of information
2 that's in there that's not confidential or doesn't need to be
3 redacted given the policy to have everything open to the
4 public.

5 THE COURT: Okay. The purpose for the hearing today
6 is this was a request at this point in time, we're at the
7 point of a request of what do we do now that we've got a
8 little bit of time behind us and we have some idea. And
9 perhaps Mr. Waid not having technically -- he doesn't feel
10 he's completed his efforts to really -- he's at the point
11 where he feels he can do a formal report, but we were at a
12 point where we needed to know what we were going to do going
13 forward.

14 And we need to take evidence on this with respect to
15 how -- basically how to account for the income from the oil
16 and gas revenues going forward, I think. So at a minimum, I
17 believe we've got a request that we do a surcharge, but there
18 is also a request that beyond a surcharge, that we actually
19 enforce the no contest clause and deprive Ms. Ahern of her
20 interest in the trust altogether. So if there is anything
21 else that we need to be discussing today, I don't know.

22 But I do think that we need at least some testimony
23 today to update us as to where we are, so that we can make a
24 determination as to whether there's enough information here
25 for the court to say we know what's happened or hasn't

1 happened to the funds, and at least, you know, what we've been
2 able to recover to date and what remains unaccounted for. And
3 then the next step being how do we deal with that; is this a
4 simple matter of a surcharge, do we go beyond that. So those
5 are the things we need to be the issues.

6 MR. KIEFER: Your Honor, we do have just one
7 evidentiary issue that would need to be addressed first.
8 Given the late filing of the trial brief, we weren't able to
9 file a proper motion in limine on this issue.

10 THE COURT: Okay.

11 MR. KIEFER: As you know, Your Honor, the trial
12 brief from Ms. Eleanor Ahern states that they are essentially
13 going to argue that she was under undue influence. We would
14 argue that they're judicially estopped from taking that
15 position. It's very important that the Court remember that
16 during the MSJ hearing on January 30, 2015, counsel for Ms.
17 Ahern was adamant that she was under no undue influence.

18 In fact, on page 126 of that transcript, which is a
19 part of the record, Ms. Renka said, "And again we keep hearing
20 counsel's opinion that Eleanor is under undue influence and
21 consulting with bad people and talking to God. There's no
22 evidence anywhere in here that Eleanor ever said that she was
23 advised by God, and we have an EPS social worker saying that
24 there's no undue influence. Eleanor is completely with it,
25 very intelligent, and capable of managing not only her

1 personal finances, but the finances of the trust."

2 In support of that same motion, in a reply dated
3 January 9, 2015, Eleanor Ahern submitted a declaration. At
4 paragraph 10 of that declaration, under the topic titled
5 Jacqueline Contacted Elder Protective Services Without
6 Consulting Me, it says:

7 "During the meeting I learned that Jacqueline had
8 called EPS and reported that my close friend and limited
9 agent, Suzanne Nounna [phonetic], was financially exploiting
10 me. I explained that this was not the case, that Suzanne was
11 a trusted friend and that I had complete control and
12 understanding of my finances and business affairs.

13 "EPS closed the case, determining that the claims of
14 exploitation were not substantiated. I later obtained a copy
15 of the EPS assessment from EPS via mail. I was extremely hurt
16 and upset and angered that Jacqueline would lie to EPS and
17 contact EPS without so much as discussing her alleged concern
18 with me."

19 The issue we have, Your Honor, and again, I
20 understand that opposing counsel is just being the advocates
21 that they need to be, but their trial brief essentially makes
22 the argument that through Jacqueline and Kathryn's deposition
23 you can infer and you can take evidence that there was undue
24 influence. Yet their client tells you in her own declaration
25 that that evidence is a lie.

1 So it seems a bit disingenuous at least that they
2 would present evidence that what their client has said in a
3 sworn statement is a lie. And for that reason, Your Honor, we
4 have a standing objection to any evidence presented in that
5 regard.

6 THE COURT: Well, to the extent that we had, you
7 know, the arguments of counsel a year ago where that Ms. Ahern
8 was not under undue influence, do we have, I think, perhaps
9 some subsequent information from Mr. Waid, who is her trustee,
10 that might -- I wouldn't say contradict that, but that might
11 call that into question?

12 MR. KIEFER: Well, here's the important issue, Your
13 Honor, and that's a good point and I understand that, and if
14 that came from Mr. Waid I would understand that point too.
15 But in -- the reason that they were so adamant that there was
16 no undue influence is because the argument from Jacqueline and
17 Kathryn was, Your Honor, for reasons we can't explain, in June
18 2013 she deviated from the trust document.

19 We think the reason she might have deviated is that
20 she got some new friends and they were chirping in her ear to
21 do this, do that. Not that she was unduly influenced, but
22 that they had an influence or at least were talking to her.
23 They denied that, because it was so important that they wanted
24 to argue, as they still argue in the Supreme Court now on
25 appeal, that she is entitled to 100 percent of the trust,

1 she's entitled to 100 percent of the trust income.

2 So they wanted to wipe out any idea that there was
3 some sort of shifting that got her to change her position from
4 65/35 to the new 100 percent. And they've been adamant in
5 that point. And in fact, this Court hasn't found any undue
6 influence, even though it was argued.

7 And like I said, Your Honor, in their Supreme Court
8 brief, their opening brief appealing the 65/35, they still
9 talk about 17 times it calls these distributions gifts. So
10 they're taking a completely contrary position that cannot be
11 supported and cannot be allowed.

12 THE COURT: Understood. Okay. Thank you.

13 Mr. Lenhard.

14 MR. LENHARD: Thank you, Your Honor. First of all,
15 yes, we did file our trial brief Friday afternoon. I'll
16 remind the Court that due to the good efforts of counsel for
17 Ms. Montoya and Ms. Bouvier, we're working on a pro bono
18 basis. It's a miracle we got something filed at all.

19 But leaving that to the side, let's talk about a
20 filing on July 31, 2015, well after the events discussed by
21 counsel here this morning. In that document entitled
22 Supplement to Motion for Assessment of Damages Against Eleanor
23 Ahern, Enforcement of No Contest Clause and Surcharge of
24 Eleanor's Trust Income, what we're here for today, there's a
25 heading setting the record straight.

1 In pages 2 through 11, they go into detail on all
2 the influence of a lady named Suzanne Nounna on the life of my
3 client. They filed that with this court to influence this
4 court in its decisional process today. Now they want us to
5 ignore that document, prohibit us from questioning about that
6 document, prohibit us from arguing about that document, yet
7 use that document in today's proceedings.

8 What am I missing here? I would suggest they put it
9 in evidence in the filing of July 31, it's open season, and we
10 do intend on raising the influence of others here today as we
11 analyze the trustor's intent in paragraph 10 of the trust
12 document. Thank you, Your Honor.

13 THE COURT: All right.

14 MR. KIEFER: Your Honor, I'll just point out that
15 again, as of Thursday, before the trial brief was filed, the
16 position taken by Ms. Ahern is that there's never been any
17 undue influence. And in fact, in their trial brief on page 7,
18 it says, "The remaining claims are innocuous; that is it's
19 clear that the trust funds were mishandled in between 2013 and
20 2005, and Eleanor will be responsible for ensuring that the
21 trust is compensated appropriately once the extent of the loss
22 is finally determined."

23 So are they changing course? Are they going to
24 stipulate to dismiss their appeal, which is based on the fact
25 that she's entitled to 100 percent of the trust income?

1 Because if they're not, they're taking two completely
2 incongruent positions that cannot be sustained. Thank you,
3 Your Honor.

4 THE COURT: Well, I think that's -- that goes to
5 argument, so we'll certainly hear those arguments. I do think
6 that we do need to take some testimony. As I said, I
7 appreciate that Mr. Waid has not reached a point where he is
8 comfortable that he can state definitively what has happened
9 with respect to the funds. However, I do think we need some
10 testimony on that.

11 I think that we need to see what we can do to figure
12 out where -- where the -- where we stand today with what we've
13 recovered, so we can make a determination as to -- and I don't
14 want to put words in Mr. Lenhard's mouth, but I would not say
15 that they have conceded that a surcharge is warranted. I read
16 it as saying if a surcharge is warranted.

17 So I just want to make sure they still want to be
18 heard on that preliminary question, or do we just go to the
19 other question, which is that, you know, totally --

20 MR. LENHARD: What we are going to state this
21 morning, because we have proceedings pending at this point, we
22 are going to, I guess, concede the -- I think Mr. Waid's
23 holding 700,000.

24 Can you answer that, Mr. Waid? You're going to be
25 under oath in a minute anyway.

1 MR. WAID: Approximately.

2 MR. LENHARD: All right. We are going to concede
3 that should go back to Mr. Waid to use as he deems
4 appropriate. Once the Supreme Court winds through all this
5 thing, if we're determined to be correct in 100 percent, a new
6 accounting can occur. If we're determined not to be correct
7 and it's a 65/35 split, that can be accounted for, or if we
8 lose entirely, that can be accounted for.

9 But for today's purposes and what's before the
10 Court, we are going to tender to Mr. Waid the 700 and plus
11 thousand dollars for the trustees pending a ruling by the
12 Supreme Court.

13 THE COURT: Okay. Mr. Moody, can I ask, I don't
14 want yet to put Mr. Waid under oath, because I know he's
15 really uncomfortable about this. But so where are we? Where
16 are we with respect to what the trustee's been able to
17 accomplish so far? What can he tell us about today?

18 Because I know some of this he doesn't want to go on
19 the record under oath on because some of it is tax liability
20 that would devolve to the trustee. And he doesn't, for good
21 reason, want to take a position on some of these things
22 because some of it's we're dealing with the IRS here, these
23 taxes, so.

24 MR. MOODY: Yeah. Thank you, Your Honor. There are
25 a lot of sensitive issues that are at issue here. With

1 respect to Mr. Waid's testimony today, we've done a few
2 things. We've brought motions before Your Honor, and Ms.
3 Ahern was ordered to appear and submit to -- for an
4 independent medical examination, which she did last week in
5 Mesquite.

6 Despite our best efforts, I can personally represent
7 to the Court that four follow-up phone calls have been made
8 with the office. It was our understanding we would have a
9 report from that doctor the very afternoon of the examination.
10 That has not come in.

11 So to answer Your Honor, some of the things that
12 Mr. Waid needs in order to finalize his accounting, in fact,
13 most of what's left are really questions for Ms. Ahern. And
14 that's the reason for the IME, to see if she can submit to
15 questioning by way of deposition and if so, under what
16 circumstances, what accommodations need to be met. So that's
17 still kind of just hanging out there, and I wish I had a
18 better answer for Your Honor about that.

19 MR. LENHARD: On the IME issue, you know, we have a
20 concern also, because we have a client here that's hard of
21 hearing, among other things, and has cognitive issues. We
22 wanted that IME for purposes of today's proceedings as well as
23 the deposition. And we've been interested in getting the IME,
24 and then of course it was --

25 THE COURT: Yeah. I don't think anybody's saying

1 that it was the parties who didn't cooperate. I think it's
2 just a question of, you know, relying on a professional, you
3 know, the physician to deal with it expeditiously and, you
4 know, things happen and we didn't get it. So that may limit
5 what we can do today. I mean, I don't know, Counsel, if
6 you -- how you take a position on that.

7 But it does not appear to be that it was a failure
8 to cooperate on anybody's part. It looks like everybody did
9 what they were supposed to do. It's just we're relying on
10 this third party, the IME physician, who just hasn't gotten us
11 the written report. So it may limit what we're able to do
12 today.

13 MR. KIEFER: Your understanding is our
14 understanding, Your Honor.

15 THE COURT: Thanks. I just want to make sure that
16 that's clear, Mr. Moody, and that's why I said, you know, we
17 just -- we need to make a good record, because I know
18 Mr. Waid's really concerned about making it very clear that at
19 this point he cannot state definitively that he knows what the
20 numbers are.

21 MR. MOODY: Absolutely. If he were able, Your Honor
22 would have an accounting from him. But he has made
23 representations to the Court by way of declarations and in
24 some motions. He and I both have thoroughly reviewed those.
25 He is prepared to testify about them.

1 One question that I do have for Your Honor is that
2 Mr. Waid, because he is the trustee, is a fiduciary to both
3 sides that are arguing in court today and does not want to
4 take an adversarial position. And I don't know --

5 THE COURT: No, no. He is not. He is not
6 advocating -- I don't view this as he would be advocating for
7 any party. I think that it's understood that his job was to
8 marshal the assets and see if he could come to an accounting
9 and tell us what had happened during this period in time, and
10 he's made -- and I think it's conceded he's made good strides.

11 That may be a question that we have though, which is
12 at this point in time really going forward, you know, what
13 should that role be. It might be that it needs to change.

14 MR. MOODY: Well, my point is really one of an
15 evidentiary one, and that is whether Mr. Waid will be subject
16 to cross-examination. That is usually reserved for a party
17 who takes an adversarial position. He's not a hostile
18 witness. He's not adversarial to either side, and I would
19 appreciate a ruling from the Court before we begin that he be
20 limited to direct examination questions only, particularly in
21 light --

22 THE COURT: By both parties.

23 MR. MOODY: By both sides.

24 THE COURT: Yes. In other words, no leading that
25 he's -- it's informational fact gathering. It's to make a

1 record for both sides. It's not --

2 MR. LENHARD: That's a little unusual, Your Honor.

3 THE COURT: He's not adversary to anybody. He's
4 here as a trustee --

5 MR. LENHARD: I appreciate that and I don't treat
6 Mr. Waid as an adversary. But if he's called by my opponents,
7 the general rule is, whether he's an adversary or not, the
8 second party gets to cross-examine. And I'm not sure why I
9 would be denied the right to cross-examine Mr. Waid if he's in
10 fact called as a witness by the movants here. I'm not saying
11 he's adverse to me. I'm just talking about the general rules
12 of evidence in a courtroom.

13 THE COURT: Right.

14 MR. KIEFER: Although we agree that Mr. Waid is also
15 neutral, I agree with Mr. Lenhard that he should have the
16 right to cross-examine him.

17 THE COURT: I mean, I'm not saying and I don't think
18 Mr. Moody is saying that they aren't allowed to question him.
19 I specifically thought that Mr. Moody's concern was leading
20 questions, treating him as a hostile witness, those kinds of
21 things that, I mean, it's just questioning. It's not -- maybe
22 I'm wrong, so.

23 MR. MOODY: That's it, Your Honor. He is here, he's
24 prepared, he understands that he'll probably be the primary
25 witness if not the only witness today, and I just --

1 THE COURT: Sure.

2 MR. MOODY: He is a fiduciary. Because he has not
3 provided a -- or been able to provide a full accounting, my
4 request and my oral motion to the Court is that the questions
5 be limited to direct examination and that he not be subject to
6 cross-examination.

7 MR. LENHARD: Maybe I can agree with movant's
8 counsel on this. Why don't we take this on the basis let's
9 wait and see what happens before we agree to not cross.

10 THE COURT: Right. And I guess, I think that may be
11 well. I think that certainly Mr. Moody is allowed to make
12 objections if he feels it's an inappropriate question directed
13 at his client.

14 But I just again, for the record, since we're not
15 all on the same page, we don't all know or are not as familiar
16 with what Mr. Waid does, because it's highly technical and
17 sophisticated work that he does, what is your -- in your view,
18 what is it the trustee can testify to without --

19 And this is also, you know, so that not only
20 Ms. Ahern, but her daughters also understand the problem that
21 we have here is a significant tax liability. And if we make a
22 record about it, then we're all stuck with sworn testimony
23 about tax liability that nobody really -- it's not in
24 anybody's interest for us to help the IRS.

25 MR. RUSHFORTH: Your Honor, we're prepared to

1 stipulate that the issue of tax liability will be only
2 mentioned in general concept, but not in specifics. And I
3 don't think that will be an issue today, Your Honor.

4 THE COURT: So as long as we can -- I think you
5 understand everybody's concern, Mr. Lenhard, is that we -- we
6 don't want to put Mr. Waid under oath as testifying to having
7 specific -- a specific opinion about what the tax liability
8 might be, because it's the IRS.

9 MR. LENHARD: I certainly don't want to get into the
10 specifics of tax liability either. But one of the arguments
11 we will be making, based on what Mr. Waid has told us when we
12 met with Mr. Waid per your instructions, is how we handle the
13 \$700,000 that's sitting there to avoid the tax liability.
14 That is why we're making tender today without waiving our
15 rights in the Supreme Court and taking an inconsistent
16 position. We're trying to solve the tax problem with the
17 assistance of Mr. Waid.

18 THE COURT: Okay. So I think we -- what we need to
19 go back over is the ground rules here, because Mr. Powell's
20 motion and what he has been advocating for, for however long
21 it's been, you know, close to a year now, is at a minimum his
22 clients are entitled to a surcharge or the ultimate sanction
23 of exercising the no contest clause.

24 Because we have some amount of money, and I don't
25 know -- and I understand that Mr. Waid can give us a general

1 idea of what he has recovered, what he thinks should have been
2 there and what he has recovered. We've got this tax problem
3 that overlays all of this that we don't want anybody here
4 taking a firm position on today.

5 It's not in anybody's interest for us to have any
6 sworn testimony about what any of us believe tax liabilities
7 would be. Because again, not only Mr. Waid, but a tax
8 professional hopefully can deal with this to minimize it for
9 us all. I understand that. But we think -- I think we need
10 at this point in time, we need to make -- we need to rule on
11 Mr. Powell's motion that's been hanging over this case once
12 and for all, and that then you can go forward.

13 Because it is a probate case, a trust case, you
14 can -- interim orders can be made and they can be appealed.
15 We have to make a definitive ruling on how we're going to --
16 how I believe this should be treated going forward, so that
17 then you've got that and you're ready to go. We just need a
18 final decision on this, this issue.

19 So I just want to make sure that everybody
20 understands the ground rules and that no -- everybody here
21 understands and respects the position that the trustee is in
22 is as a fiduciary to both sets of beneficiaries. He is not
23 here to advocate for either of them. It is a -- it is he's
24 here to report factually what he has been able to do in his
25 role and that that -- he's just here to report that. It's

1 not -- he's not taking a position. He has not taken a
2 position on this in any way.

3 And all we're looking for here is just evidence to
4 help the Court make its determination on this motion that
5 Mr. Powell has had pending now for months and months. It's we
6 have to make an evidentiary hearing. I understand that we may
7 not be able to, and I appreciate Mr. Lenhard's concern that
8 without that IME report we -- he's uncomfortable with perhaps
9 permitting his client to go forward today.

10 And it may be that we will only hear from Mr. Waid.
11 There may be some from Mr. Powell's clients. They may have
12 some testimony to give. I mean, we certainly -- you know,
13 they are certainly here and they can testify. But I believe,
14 I don't think I'm hearing from anybody that I don't think that
15 we won't have what we need to make a ruling on these motions.
16 I think that we have -- we will have enough.

17 And as I said, I do not view this as a situation
18 where Mr. Waid is here as a witness or an advocate for either
19 party. He is here simply to report to the extent that he can
20 on an interim basis. He doesn't have a conclusion, he
21 hasn't -- he -- and we don't want to put him in a position of
22 taking a -- stating an opinion as to what -- definitively what
23 has happened, because we're then, we're tying his hands.

24 And because he's most importantly, in addition to
25 recovering these funds, we have apparently a really

1 significant income tax liability that we want to leave him all
2 options open. So we don't want to paint him into a corner
3 where he -- we limit his options with the Internal Revenue
4 Service, if you're comfortable with that, Mr. Moody.

5 MR. MOODY: So I think we agree with Your Honor, and
6 let me just give you an overview of what I expect Mr. Waid to
7 testify about.

8 THE COURT: Okay.

9 MR. MOODY: He'll testify what -- about what he has
10 done since he was appointed almost a year ago. He will
11 testify about what he has found as a result of his
12 investigation. He can talk about what he would still like to
13 do and what he has not been permitted to do, and what he's
14 waiting on to finalize the accounting. And then he can speak,
15 as I think both sides agree, very generally about his concerns
16 about potential tax liabilities without telling you
17 specifically what those may look like, because we don't have
18 the accounting.

19 THE COURT: Right.

20 MR. MOODY: Anything else, Mr. Waid?

21 MR. WAID: Correct.

22 MR. MOODY: Okay.

23 THE COURT: Okay. With that understanding,
24 Mr. Rushforth, Mr. Waid, Mr. Powell, do you think that's
25 adequate for the purposes of going forward today for the

1 evidence we need for this motion?

2 MR. POWELL: Absolutely, Your Honor.

3 THE COURT: Mr. Lenhard, do you have any concerns
4 about that? I think that -- and at this point, I think that's
5 about all we can do. Any concerns about --

6 MR. LENHARD: I agree, except I don't necessarily
7 agree with the limitations on Mr. Waid's testimony generally
8 that Mr. Moody placed. We certainly intend on going a little
9 deeper in certain issues.

10 THE COURT: All right. Well, we'll see where we can
11 go and again, because he is in this awkward position as a
12 fiduciary. So, Mr. Rushforth, are you going to call the
13 witness then?

14 MR. RUSHFORTH: If that's all right, with you, Your
15 Honor, I'd like to approach the bench. I have some slides
16 that we're going to be using.

17 THE COURT: Okay.

18 MR. RUSHFORTH: And here's our evidentiary binder
19 and the slides that we're using, and also on the document
20 monitor.

21 MR. LENHARD: I assume what we're doing is opening
22 statements; is that --

23 MR. RUSHFORTH: Yes.

24 MR. LENHARD: I haven't seen a pretrial order here,
25 so I'm assuming this is the normal course.

1 THE COURT: Yeah.

2 MR. RUSHFORTH: I'm going to begin with the --

3 THE COURT: Now, and just for the record, I do take
4 the view, given the Watters case, that PowerPoint
5 presentations -- even though that was a criminal case,
6 PowerPoint presentations, while not evidence, nevertheless are
7 made a court's exhibit so the Court sees what the court saw.

8 MR. LENHARD: I'm not objecting to the PowerPoint,
9 not at all.

10 THE COURT: Okay. So then it will be made a court's
11 exhibit when you're finished. If I can keep this stack, we'll
12 make it a court's exhibit.

13 MR. RUSHFORTH: You can keep that, and there's also
14 another copy in the binder that is for the record.

15 THE COURT: Excellent. Then we'll make it a court's
16 exhibit.

17 MR. RUSHFORTH: My role here is going to be opening
18 statement, and then Mr. Powell is going to present -- he's
19 going to present our witness, present Mr. Waid and talk to him
20 about the -- within the scope that we've already discussed.

21 OPENING STATEMENT

22 MR. RUSHFORTH: Just very quickly, I just am putting
23 this first slide up here for to show the 35/65 percent
24 division of the trust. But the main point of this slide is to
25 show that our clients, Jacqueline and Kathryn, Jacqui and

1 Kathy are the residuary beneficiaries, the remainder
2 beneficiaries of Trust No. 2. And they're also the
3 beneficiaries through the MTC Living Trust, the Trust No. 3.

4 So they've really got an interest in both sides of
5 this trust. And so when we talk about accounting, when we
6 talk about responsibility to fiduciary duty, there is a
7 fiduciary duty that the trustee owes to them in both sides of
8 the trust, not just on one side of the trust.

9 I quickly summarize the orders that the court has
10 already granted. In December 20, the order was entered saying
11 that the 65 percent share interest was to be protected, that
12 was a duty that was imposed on the trustee. In April of last
13 year, summary judgment was required that Ms. Ahern account for
14 the income and disbursements and to reimburse the 65 percent
15 of Texas oil property income.

16 And on April 20, a summary judgment order was
17 clarified and it was declared that a minimum of \$2.1 million,
18 almost \$2.2 million was declared due from Ms. Ahern. A breach
19 of fiduciary duty was found. She was removed as trustee of
20 the 65 percent trust and suspended as trustee of the 35
21 percent share. She has not been discharged because she hasn't
22 accounted and cannot be discharged until she has accounted.
23 In June of last year, attorney's fees were awarded and 500,000
24 was ordered to be restored to the trust.

25 Now, we've already -- kind of already have talked

1 about the issues that are going to be discussed today, and our
2 number one issue and the most important issue is the
3 enforceability of the no contest clause. If that issue is
4 found, if the Court finds that she did as is found in Clause
5 10 of the trust, if she interfered with the administration of
6 the trust or the distribution of its assets, if the Court
7 makes that finding, if the facts that come out today
8 demonstrate that she's interfered with the administration of
9 the trust, then under Nevada law we have a clear prima facie
10 case for enforceability.

11 There are -- under our statute for no contest
12 clauses there are some limitations. There are some exclusions
13 from that, but they simply don't apply in this case. The
14 exclusion is a good faith exception, when you're bringing a
15 contest, that on bona fide evidence that related to the lack
16 of a testator's capacity or the lack of a settlor's mental
17 capacity. Those exceptions just don't apply here.

18 And but if the Court decides for some reason that
19 there is some kind of reason that Ms. Ahern's conduct doesn't
20 amount to a contest under the terms of the trust, then the
21 next issue that we're going to discuss is going to be what
22 happens to the distributions from the trust and do we impound
23 it, can there be some leakage, can there be some allowance of
24 income that comes to Ms. Ahern, or does it all get frozen
25 until it's been restored. And of course, I think we've made

1 our position clear.

2 And then Item No. C, we've all agreed that Mr. Waid
3 hasn't done the calculations. We don't know the calculations.
4 We're not going to discuss the tax implications yet, because
5 we're not there yet. But one of the issues on the damages,
6 and we know -- we know there's going to have to -- if when we
7 get to damages, there's going to have to be another
8 evidentiary hearing and it's going to be after Mr. Waid's done
9 his job. But one of the things we are asking here is that we
10 think that there is a reason to ask for treble damages.
11 There's a reason to ask for punitive damages. And so those
12 are some of the issues that we want to argue today too.

13 But the main thing that we want to begin with is
14 about no contest clause. Now, we want to preserve what's at
15 stake. We want to preserve the 65 percent. We want to make
16 sure that the prior court orders have been administered, have
17 been honored, and are being honored. But it all really boils
18 down to fiduciary duties and whether they've been met or
19 whether they don't.

20 As trustee, Ms. Ahern had a duty of accountability,
21 and up to this point she hasn't met that duty. NRS Chapter
22 165 is the chapter that relates to fiduciary accountings, and
23 she hasn't complied with that and she's the one that's in a
24 position to account.

25 The main reason I want to point this out is if you

1 read the opposition that we get, we get all kinds of red
2 herring arguments about things that might deter her from doing
3 this or doing that. She can't delegate her duty. A third
4 party can't absolve her her duty. It's still her duty to
5 account. And whether she was unduly influenced or whatever,
6 it's still her duty and she's accountable, and no third party
7 conduct is going to absolve her from her fiduciary duties.
8 And that's going to also be true with respect to the no
9 contest clause.

10 Now, the no contest clause is really pretty simple.
11 We're going to produce testimony that this conduct did attack,
12 oppose or seek to set aside the administration and
13 distribution of the trust. She attempted to defeat the clear
14 unambiguous intent of the settlors as expressed in the trust
15 instrument. Did she do that? We're going to show that she
16 did.

17 Now, the legal question that's involved here is that
18 we're going to show that she engaged in conduct that we
19 believe that has amounted to that frustration of intent, that
20 attacking and opposing. For Ms. Ahern to win on this motion,
21 this Court has to find either A, that the factual evidence
22 that we purport isn't adequate, is not persuasive, or that as
23 a matter of law that the conduct doesn't amount to interfering
24 with the administration of the estate. And so that's where
25 we're going to hit.

1 Ms. Ahern declared under penalty of perjury that all
2 funds were accounted for, but they were not. In her own
3 report she acknowledged that there should have been 1.9,
4 almost \$2 million on hand in January 2015. But when Mr. Waid
5 took over as trustee, there was only \$9,941.15.

6 So clearly there's been something that's happened
7 here that has frustrated the administration of the estate, the
8 administration of the trust estate. What was that? Well,
9 these are actions that were taken by Ms. Ahern. On February
10 18 of last year she withdrew \$700,000 from the St. George
11 branch of Wells Fargo Bank. There was a hearing on March 20,
12 after that, a month later, where she was actually removed as
13 trustee of the trust.

14 She was suspended and removed. And on that very
15 day, after she's been told she's no longer a trustee, after
16 she's been given a court order that says [unintelligible] at
17 65 percent, she goes to Wells Fargo just before closing time
18 and takes out over \$400,000, out of a Wells Fargo trust
19 account. Now, if she's not the trustee, she had no business
20 doing that.

21 This is an interference with the administration of
22 the trust by the successor trustee. This is in clear
23 violation of the no contest clause. She then a few days later
24 goes to St. George and takes out \$500,000, again removing
25 assets that were to be taken over by the successor trustee,