

IN THE MATTER OF THE
CHRISTIAN FAMILY TRUST U/A/D 10/11/16

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Elizabeth A. Brown
Clerk of Supreme Court

SUSAN CHRISTIAN-PAYNE,
ROSEMARY KEACH, AND
RAYMOND CHRISTIAN, JR.,
Appellants,
vs.
ANTHONY L. BARNEY, LTD.,
Respondent.

The law office of Anthony L. Barney, Ltd. (“ALB Ltd.”). hereby files its Answering Brief requesting the Court dismiss the Appellants appeal against ALB, Ltd., because they lack legal standing to initiate this appeal on behalf of the Christian Family Trust dated October 11, 2016 (“CFT”), and because this matter is now moot upon the removal of the injunction against CFT assets. The amounts received by ALB, Ltd. were properly paid by the Trustees of the CFT, based upon the discretion that they were authorized to exercise, and ALB, Ltd., has no duty to determine whether the Trustee had authority to make payment; only that they were the current acting Trustees of the CFT.

DATED this 6th day of November 2019.

ANTHONY L. BARNEY, LTD.

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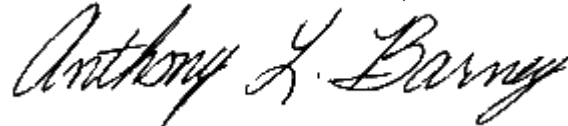
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11 **NRAP 26.1 DISCLOSURE**

12 The undersigned counsel of record certifies that the following are person(s)
13 and entity(ies) described in NRAP 26.1(a) and must be disclosed. These
14 representations are made in order that the Judges of this Court may evaluate
15 possible disqualification or recusal:
16
17

- 18 • Anthony L. Barney, President and Owner of Anthony L. Barney, Ltd.
19
20 • Anthony L. Barney, Ltd., a Nevada Corporation, Appellant

21 Dated this 6th day of November 2019.
22

23 Respectfully Submitted,
24 ANTHONY L. BARNEY, LTD.

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NRAP 17(b)(15) presumptively assigns cases involving trust and estate matters in which the corpus has a value of less than \$5,430,000 to the Court of Appeals of the State of Nevada, however the Nevada Supreme Court has taken this matter and is the appropriate court to hear and decide this matter. This case derives from a trust matter where the trust corpus is valued at less than the threshold amount contained in NRAP 17(b)(15). Therefore, it appears that the Court of Appeals of the State of Nevada is the appropriate court to hear and decide this matter.

Respectfully Submitted,
ANTHONY L. BARNEY, LTD.

Anthony L. Barney

iv

1 **CERTIFICATE OF COMPLIANCE**

2
3 1. We hereby certify that this brief complies with the formatting requirements of
4 NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type
5 style requirements of NRAP 32(a)(6) because this brief has been prepared in
6 a proportionally spaced typeface using Microsoft Word in Times New
7 Roman 14 pt. font.
8

9
10 2. We further certify that this brief complies with the page- or type-
11 volume limitations of NRAP 28.1(e) and NRAP 32(a)(7) because,
12 excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it does
13 not exceed thirty pages.
14

15 3. Finally, we hereby certify that we have read this appellate brief, and to
16 the best of my knowledge, information, and belief, it is not
17 frivolous or interposed for any improper purpose. We further certify
18 that this brief complies with all applicable Nevada Rules of
19 Appellate Procedure, in particular NRAP 28(e)(1), which requires
20 every assertion in the brief regarding matters in the record to be
21 supported by a reference to the page and volume number, if any, of the
22 transcript or appendix where the matter relied on is to be found.
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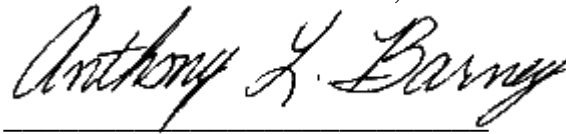
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1 4. We understand that we may be subject to sanctions in the event that the
2 accompanying brief is not in conformity with the requirements of the
3 Nevada Rules of Appellate Procedure.
4

5 Dated this 6th day of November 2019.
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7
8 Respectfully Submitted,
9 ANTHONY L. BARNEY, LTD.

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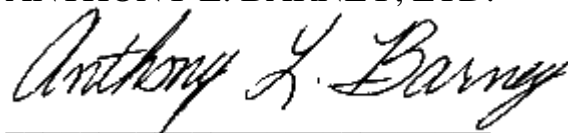
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1 **ATTORNEY’S CERTIFICATE PURSUANT TO NRAP 28.2**

- 2
- 3 1. The undersigned attorneys hereby certify that they have read the brief.
- 4
- 5 2. To the best of the attorneys’ knowledge, information and belief, the brief is
- 6 not frivolous or interposed for any improper purpose, such as to harass or to
- 7 cause unnecessary delay or needless increase in the cost of litigation.
- 8
- 9 3. The brief complies with all applicable Nevada Rules of Appellate Procedure,
- 10 including the requirement of Rule 28(e) that every assertion in the briefs
- 11 regarding matters in the record be supported by a reference to the page and
- 12 volume number, if any, of the appendix where the matter relied on is to be
- 13 found.
- 14
- 15 4. The brief complies with the formatting requirements of Rule 32(a)(4)-(6),
- 16 and either the page- or type-volume limitations stated in Rule 32(a)(7).
- 17
- 18 5. Pursuant to Rule 32(a)(7)(A)(ii) the answering brief is less than fourteen
- 19 thousand (14,000) words.
- 20

21 Dated this 6th day of November 2019.

22 Respectfully Submitted,
23 ANTHONY L. BARNEY, LTD.

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The Supreme Court of Nevada has jurisdiction over this matter pursuant to NRAP 3(a) as this appeal is taken from an order directing or allowing the payment of a debt, claim, devise, or attorney's fees in a trust proceeding. Such an order is an appealable order pursuant to NRS 155.190(j). The order regarding allowing the release of funds for the payment of a contractual debt was entered on April 12, 2018. The notice of appeal on this order was filed on April 26, 2018.

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Without authorization of the trustee of the Christian Family Trust dated October 11, 2016 (“CFT”), can the Appellants raise claims, on behalf of the CFT, against a third-party payee regarding payment received from the trustee of the CFT pursuant to his or her discretion to make such payment?

Did the Eighth Judicial District Court (“EJDC”) err when it temporarily lifted its injunction on the Christian Family Trust, dated October 11, 2016 (“Trust”), funds to allow payment of a portion of the contractual debt of Nancy Christian; approved by two successor trustees, Monte Reason and Jacqueline Utkin?

Assuming arguendo that Appellant's have legal standing to raise claims against ALB, Ltd., for partial payment made by the trustee of the CFT pursuant to her discretion, can Nancy Christian as grantor avoid her contractual obligations when her debts arising therefrom are not protected by the Trust's spendthrift provision or NRS §166.010 et seq.?

Is an analysis of the *Brunzell* or the *Beattie* factors needed when Nevada law provides for payment for the grantor's contractual debts and provides the trustee with the absolute discretion to approve such payment?

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3 **APPLICABLE STANDARD OF REVIEW**

4 ALB, Ltd. is unaware of any case law that addresses this Court’s jurisdiction
5 to review the sole and absolute discretion granted to the trustee of a trust. The
6 California Supreme Court has held that, “An absolute discretion, exercised in good
7 faith by a trustee, cannot be controlled by a court on considerations going to the
8 soundness of the discretion so exercised." *Estate of Ferrall*, 41 Cal. 2d 166, 173,
9 258 P.2d 1009, 1013 (1953); See also *Henry v. Official Comm. of Unsecured*
10 *Creditors of Walldesign, Inc. (In re Walldesign, Inc.)*, 872 F.3d 954, 970 (9th Cir.
11 2017) citing *In re Ferrall's Estate*, 41 Cal. 2d 166, 176-77, 258 P.2d 1009 (Cal.
12 1953) (noting that trustees generally have "absolute or unlimited or uncontrolled
13 discretion" over disbursement of trust funds).

14 This Court has generally analyzed the controversies concerning trust
15 administration under an abuse of discretion standard. See *Maxwell v. Hembree (In*
16 *re Sommer Family Living Tr.)*, 445 P.3d 851 (Nev. 2019).
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1 **STATEMENT OF THE CASE – ANSWERING BRIEF**

2 While this Court has ordered an answering brief from Anthony L. Barney,
3
4 Ltd. (“ALB, Ltd.”) to the extent that it is required to raise issues more properly
5 raised by the Frederick P. Waid, Esq. (“Waid”), as current trustee of the of the
6 Christian Family Trust dated 10/11/16 (“CFT”), ALB, Ltd., respectfully requests
7 these matters, where appropriate, be considered a friend of the court brief in nature.
8

9 Nancy Christian (“Nancy”), Trustor of the Christian Family Trust dated
10 10/11/16 (“CFT”) changed the trustee of the CFT because of alleged breaches of
11 fiduciary duty by Appellants. Anthony L. Barney, Ltd., (“ALB, Ltd.”) represented
12 Nancy under a signed engagement agreement to further her intent and rights under
13 the CFT. In so doing, ALB, Ltd., incurred attorney’s fees and costs. After Nancy’s
14 death, the Eighth Judicial District Court (“EJDC”) ordered that an injunction be
15 placed upon the CFT assets. ALB, Ltd. sought payment of Nancy’s contractual
16 debt from the successor trustees who exercised the discretion granted to them
17 under the CFT to approved payment ALB, Ltd.’s fees and costs.¹ The EJDC lifted
18 its injunction temporarily for the specific purpose of making this payment.²
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23 Susan Christian-Payne (“Susan”), Raymond Christian, Jr. (“Raymond Jr.”),
24 and Rosemary Keach (“Rosemary”) (collectively referred to as the “Appellants”)
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28 ¹ RESAPP IV: 000746 at Paragraph I.3.

² RESAPP IV: 000747 - 000748

1 filed “an appeal from an EJDC order allowing the partial payment of a claim from
2 attorney’s fees to ALB, Ltd. in a trust action.”³ Further, the EJDC permanently
3
4 lifted its injunction during the pendency of this appeal rendering it moot.

5 The terms of the CFT provide that, “The Trustees shall not be liable for any
6
7 loss or injury to the property at any time held by them hereunder, except only such
8 as may result from their fraud, willful misconduct, or gross negligence. Every
9 election, determination, or other exercise by Trustees of any discretion vested,
10 either expressly or by implication, in them, pursuant to this Trust Agreement,
11 whether made upon a question actually raised or implied in their acts and
12 proceedings, shall be conclusive and binding upon all parties in interest.”⁴ The CFT
13
14 further provides that, “No person dealing with the Trustees shall be obligated to
15 see to the application of any property paid or delivered to them or to inquire into
16 the expediency or propriety of any transaction or the authority of the Trustees to
17 enter into and consummate the same upon such terms as they may deem
18 advisable.”⁵ Neither Appellants nor Waid, as current Trustee of the CFT, have
19 made any claims that Monte Reason (“Reason”) or Jacqueline Utkin (“Utkin”) as
20 trustees of the CFT engaged in fraud, willful misconduct, or gross negligence, and
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27 ³ See ORDER REGARDING PARTIES TO APPEAL dated October 23, 2019 at
28 Page 1.

⁴ RESAPP III: 000401 000440 - 000461; CFT, Article 11.1.

⁵ RESAPP III: 000401 – 000440; CFT, Article 12.

1 therefore the Appellants lack legal standing to assert any claims or remedies upon
2 appeal against ALB, Ltd., as a third party payee.
3

4 The CFT further provides that, “The enumeration of certain powers of the
5 Trustees shall not limit their general powers, subject always to the discharge of
6 their fiduciary obligations, and being vested with and having all rights, powers and
7 privileges which an absolute owner of the same property would have.”⁶
8

9 This Court adopted ALB, Ltd.’s position that Utkin was a respondent based
10 solely on her capacity as trustee, and since she was no longer trustee, the new
11 trustee (i.e. Waid) was the interested party to this appeal, not Utkin.⁷ Prior to this
12 Court’s adoption, ALB, Ltd. sought clarification from Waid in light of the fact that
13 no claims had been raised by Waid or the Appellants to challenge the exercised
14 discretion of Waid’s predecessors; namely Reason and Utkin. Waid declined to
15 voluntarily enter the appeal as current trustee of the CFT, or take a position
16 concerning the appeal, but did confirm that he had “not delegated any fiduciary
17 duty to pursue any claims on behalf of the Christian Family Trust to any party to
18 the underlying trust matter...and...[he]Waid will defer to the District Court who
19 previously hearing the matter and the Nevada Supreme Court who will hear the
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27 ⁶ RESAPP III: 000401 – 000440; Article 10.1, subsection (t).

28 ⁷ See Response to Order Granting Motion and Regarding Caption dated January
24, 2019 at Pages 1-2; Motion For Sanctions and Award of Attorney’s Fees, filed

1 pending appeal to determine who has appropriate standing to pursue claims raised
2 in these matters.”⁸ That same day, Waid had also declared that he was “not taking
3 any position as to such rights of any beneficiary or prior trustee regarding the
4 appeal.” He further claimed that he, “was not pursuing any claimed rights by such
5 individuals in his fiduciary capacity or using trust assets and resources to assist
6 them in their claims,...”⁹ Therefore, Waid acknowledged that he had not provided
7 the Appellants with any fiduciary authority [legal standing] to prosecute the appeal
8 on behalf of the Trust, but refused to take any action to protect the decisions of his
9 predecessor trustees in the payment of the fees and costs approved by the Reason
10 and Utkin. In short, Waid attempted to remain neutral despite the exercised
11 discretion of his predecessor trustees in approving the fees and costs of ALB, Ltd.
12

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14 The Appellants stated that, “the only individual/entity who could oppose the
15 instant appeal would be the current trustee of the CFT as the real party in interest
16 or the CFT beneficiaries.”¹⁰ Until Waid is added as the respondent on behalf of the
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23 May 10, 2019 at Paragraph A.13.; and Order Regarding Parties To Appeal, dated
24 October 23, 2019 at Page 2.

25 ⁸ See RESAPP IV: 000767 Letter dated March 26, 2019 from Russel J. Geist, Esq.
26 to Tiffany S. Barney, Esq.

27 ⁹ See RESAPP IV: 000768 Letter dated March 26, 2019 from Russel J. Geist, Esq.
28 to Tiffany S. Barney, Esq.

¹⁰ See Appellant/Cross-Respondents’ Opening Brief dated January 9, 2019 at Page
9 and Motion For Sanctions and Award of Attorney’s Fees filed May 10, 2019 at
Paragraph A.9.

1 CFT either through voluntary submission to this Court’s jurisdiction, or through
2 order of this Court, the CFT is not a party to this appeal.
3

4 Prior to this Court’s order on October 23, 2019, and despite naming ALB,
5 Ltd., as the Respondent, Appellants represented that that the only individual/entity
6 who could oppose the instant appeal would be the current trustee of the CFT or the
7 Appellants themselves.¹¹ Appellants stated that “Waid was appointed as Trustee of
8 the CFT, who filed his Notice of Appearance, through counsel, in this appeal on
9 February 13, 2019.”¹² On October 23, 2019, this Court ordered that Appellants had
10 seven (7) days to name the current trustee in place of Utkin.¹³ Appellants
11 proceeded to name Waid as the Respondent to this matter on October 29, 2019.¹⁴
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15 **STATEMENT OF FACTS – ANSWERING BRIEF**

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17 On or before October 2016, Nancy and her husband Raymond T. Christian
18 (“Raymond Sr.”) were recently being cared for by the Appellants after Nancy
19 Christian’s (“Nancy”) husband was released from the hospital in early 2016. The
20 estranged Appellants had made forceful and unwanted abusive inroads back into
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24 ¹¹ See Appellant/Cross-Respondents’ Opening Brief dated January 9, 2019 at Page
25 9 and Motion For Sanctions and Award of Attorney’s Fees filed May 10, 2019 at
26 Paragraph A.9.

27 ¹² See Applicant’s Motion for Substitution of Party dated October 29, 2019 at Page
28 3.

¹³ See Order Regarding Parties to Appeal dated October 23, 2019 at Page 3.

¹⁴ See Applicant’s Motion for Substitution of Party dated October 29, 2019 at Page
3.

1 Nancy and her husband's life in 2016.¹⁵ In early October 2016, Nancy and
2 Raymond Sr. (collectively "Trustors") were bedridden and/or physically weak.¹⁶
3 Nancy believed she was under the involuntary sedation of the Appellants.¹⁷ In this
4 condition, the Trustors met with drafting attorney David Grant, Esq. ("Mr. Grant")
5 on or around October 6, 2016¹⁸ and received no drafts of the CFT prior to signing
6 the CFT on October 11, 2016. Appellants referred to Mr. Grant as their attorney
7 and admittedly "sat at the table and negotiated the terms of the [CFT] Trust."¹⁹
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11 The CFT was not created as alleged to "protect Nancy from her son and
12 creditors" because "Nancy was [allegedly] known to unwisely spend money; and,
13 if left unchecked, would run out of money".²⁰ The stated purpose of the CFT was
14 to provide for the Trustors' joint and individual interests²¹ and the CFT's
15 spendthrift clause explicitly doesn't apply to the Trustors' interest in the CFT.²²
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23 ¹⁵ RESAPP II: 000198, ¶¶ 13-14

24 ¹⁶ RESAPP II: 000199, ¶¶ 17-18

25 ¹⁷ RESAPP II: 000200, ¶ 34; Notably, Nancy read and verified the entire pleading.

26 ¹⁸ RESAPP II: 000206

27 ¹⁹ RESAPP I: 000124, lines 18-20.

28 ²⁰ See page 3, paragraph 4, second and third sentence of Appellant's Opening Brief.

²¹ RESAPP I: 000036 - 000037, Article 3.1 and RESAPP I: 000038, Article 4.3.

²² RESAPP I: 000055, Article 11.1.

1 As Trustees, the Appellants immediately began to breach their fiduciary
2 duties by converting and misappropriating assets of the CFT²³ in order to maximize
3 their interests at Nancy's death. Before Nancy was expelled from her home by the
4 Appellants in December 2016, Nancy was suffering from chest pains and she
5 attempted to call 911.²⁴ One of the Appellants snatched the phone from her and
6 yelled at Nancy; after which Nancy was involuntarily sedated.²⁵ Under the
7 Appellants control, Nancy's prescription medication for diabetes, heart problems,
8 and high blood pressure went unfilled for two months.²⁶

9 In a drunken rage, the Appellants kicked Nancy out of the home located at
10 2848 Bluff Point Drive, Las Vegas, NV 89134 ("BP") on Christmas Eve because
11 Nancy refused their food based upon her restricted diabetic diet.²⁷ Raymond Sr.,
12 eventually persuaded the Appellants to let Nancy return to be with him.²⁸ On
13 January 16, 2017, however, the Appellants kicked Nancy out again because she
14 requested to maintain her diabetic diet.²⁹ While throwing Nancy and her
15 belongings out, Raymond Jr. exclaimed, "...I hope you die and I will piss on your
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24 ²³ RESAPP II: 000159, lines 17-20; RESAPP II: 000200, ¶ 42, RESAPP II:
25 000201, ¶ 43. This pleading was read and verified by Nancy Christian.

26 ²⁴ RESAPP II: 000159, line 22-23.

27 ²⁵ RESAPP II: 000159, lines 23-24.

28 ²⁶ RESAPP II: 000159, line 24; RESAPP II:160, lines 1-2.

29 ²⁷ RESAPP II: 000160, lines 3-5.

²⁸ RESAPP II: 000160, line 7.

²⁹ RESAPP II: 000160, lines 11-13.

grave.”³⁰ Raymond Jr. continued to violate the CFT by residing in the BP property to the exclusion of Nancy³¹ and would not leave until Nancy evicted him from the premises.³² Without authority, Appellants removed Nancy out of BP and into the squalor of a 600-square foot debt-incumbered condo,³³ while Raymond Jr., lived rent-free in the BP home owned by the CFT.³⁴

Shortly before Raymond Sr.’s death on January 31, 2017, the Appellants guarded the Trustors in shifts prohibiting all outside communication.³⁵ The Appellants malnourished Raymond Sr.³⁶ and prevented Nancy from ever seeing or speaking to Raymond Sr. again.³⁷ However, on one occasion about a week prior to Raymond Sr.’s death, Nancy was able to speak to him because a hospice nurse allowed him to call her.³⁸ During this phone call, Raymond Sr. expressed his fear of the Appellants and indicated that his bank account had been emptied.³⁹ Nancy told Raymond Sr. to leave and move into her condo, however Nancy heard the

³⁰ RESAPP II: 000160, lines 13-14.

³¹ RESAPP I: 000038, Article 4.4.

³² RESAPP II: 000314.

³³ RESAPP II: 000162, lines 6-8 and RESAPP II: 000215.

³⁴ RESAPP II: 000162, lines 8-12 and RESAPP II: 000217 (picture of Trust owned home).

³⁵ RESAPP II: 000160, lines 18-19.

³⁶ RESAPP II: 000160, line 20.

³⁷ RESAPP II: 000160, lines 20-22.

³⁸ RESAPP II: 000160, lines 23-24.

³⁹ RESAPP II: 000160, line 24; RESAPP II: 000161, lines 1-2.

1 Appellants enter the room and the phone was abruptly hung up.⁴⁰ This telephone
2 call was the last contact Nancy had with her husband before he died.⁴¹ The
3 Appellants informed Nancy by text message that Raymond died and didn't include
4 her in any funeral arrangements.⁴²

5
6 During his final weeks of life, Raymond Sr. expressed to his sister serious
7 concerns regarding the Appellants, including: his fear that the Appellants were
8 "cheating" him and Nancy,⁴³ noting a specific instance when Susan took a large
9 sum of money from Raymond Sr. without his permission,⁴⁴ and his fear that the
10 Appellants would harm Nancy, physically, emotionally, or financially, and that he
11 was unable to prevent such harm.⁴⁵ Raymond Sr.'s sister expressed her concerns
12 that the Appellants procured their beneficial interest in, and control over, the CFT
13 through manipulation and threats against Raymond Sr.⁴⁶ In Raymond, Sr.'s dying
14 wish, he made his sister promise to try and prevent the Appellant's further abuse
15 and exploitation of Nancy.⁴⁷

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24 ⁴⁰ RESAPP II: 000161, lines 2-4.

25 ⁴¹ RESAPP II: 000161, line 5-6.

26 ⁴² RESAPP II: 000161, lines 6-7.

27 ⁴³ RESAPP II: 000161, lines 8-10.

28 ⁴⁴ RESAPP II: 000161, lines 11-12.

⁴⁵ RESAPP II: 000161, lines 12-13.

⁴⁶ RESAPP II: 000161, lines 13-15.

⁴⁷ RESAPP II: 000161, lines 15-18.

1 After Nancy partially recovered from Appellant's abuse, she retained ALB,
2 Ltd. to investigate and work on a solution.⁴⁸ Nancy formally requested information
3 from the Appellants pursuant to the CFT's terms, and made requests for
4 distributions from the CFT for Nancy's physical and mental well-being.⁴⁹ The
5 Appellants refused any distributions to Nancy explaining they wanted to maximize
6 their own beneficial interests at Nancy's death.⁵⁰ Nancy's living situation before
7 her death was certainly diminished from her accustomed lifestyle with Raymond
8 Sr.,⁵¹ and she had monthly expenses beyond basic needs; including substantial
9 medical expenses for her heart condition, diabetes, and high blood pressure.⁵² Yet,
10 the Appellants did not provide anything to Nancy before her death.⁵³

15 Based in part on the Appellants' abusive treatment of Nancy, she chose to
16 exercise her rights under the CFT to remove the Appellants as Trustees of the
17 CFT⁵⁴ in favor of Reason.⁵⁵ Through counsel, Nancy drafted the Modification and
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22 ⁴⁸ RESAPP II: 000161, lines 18-21.

23 ⁴⁹ RESAPP II: 000161, lines 20-23 and RESAPP II: 000162, line 1.

24 ⁵⁰ RESAPP II: 000162, lines 1-3.

25 ⁵¹ RESAPP II: 000162, lines 12-13.

26 ⁵² RESAPP II: 000162, lines 13-15.

27 ⁵³ RESAPP II: 000162, lines 3-4.

28 ⁵⁴ RESAPP I: 000048, Article 9.3 stating in part; "After the Death of the first Trustor to die, the surviving Trustor shall have the power to change the Trustee or Successor Trustee of the Trust by an instrument in writing signed by the surviving Trustor and delivered to the Trustee."

⁵⁵ RESAPP II: 000162, lines 23-24.

1 Designation of Trustee and Successor Trustee (“Modification”)⁵⁶ which was
2 certified by an independent attorney⁵⁷ pursuant to NRS § 155.0975.⁵⁸ The
3
4 Modification was provided to the Appellants on June 13, 2017.⁵⁹ The EJDC later
5 affirmed Nancy’s Modification by its order dated April 4, 2018, which was an
6
7 appealable order, that was not appealed and or otherwise overturned.⁶⁰

8 On June 21, 2017, Nancy notified Appellants of Reason’s appointment and
9
10 to safeguard the CFT assets until the Certificate of Incumbency (“Certificate”)
11 was provided to them.⁶¹ On June 27, 2017, Reason provided the Appellants with a
12 Certificate of his appointment⁶² and attempted to gain control over the CFT bank
13
14 account to avoid further conversion by the Appellants, but he was too late. Three
15 days later, on June 30, 2017, the Appellants had removed \$267,902.53 from the
16
17 CFT bank account despite prior notice of their lack of authority to act on behalf of
18 the CFT.⁶³ The Appellants refused at that time to return the funds to the CFT.
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22 ⁵⁶ RESAPP II: 000163, lines 3-4; RESAPP II: 000219 - 000220.

23 ⁵⁷ RESAPP II: 000163, lines 4-7.

24 ⁵⁸ RESAPP II: 000163, lines 7-9; RESAPP II: 000222.

25 ⁵⁹ RESAPP II: 000163, lines 9-10; RESAPP II: 000224 - 000228.

26 ⁶⁰ RESAPP IV: 000711 - 000713. Note this Order was the last order dealing with
27 the validity of the appointment of a Successor Trustee of which ALB Ltd. was
provided notice either by the Appellants or by the Court.

28 ⁶¹ RESAPP II: 000163, lines 12-14; RESAPP II: 000230.

⁶² RESAPP II: 000163, lines 15-16; RESAPP II: 000232 - 000233.

⁶³ RESAPP II: 000163, lines 18-20; RESAPP II: 000235 - 000237.

1 Nancy also wanted to obtain a new residence similar to the BP. Because
2 Raymond Jr. refused to leave the BP peaceably, Nancy forcefully evicted him.⁶⁴
3
4 Approximately one week later, after the court hearing on the eviction, Nancy
5 passed away on December 14, 2017.⁶⁵ Nancy died with pending petitions before
6 the EJDC and, thus, the substitution of Nancy's estate occurred to prosecute her
7 claims against the Appellants.⁶⁶ Nancy owed ALB, Ltd. for outstanding legal fees
8 and costs, which Reason approved on January 4, 2018.⁶⁷
9
10

11 Because of Wells Fargo Bank's declination to serve upon Reason's
12 resignation as successor trustee, he nominated Raymond Sr.'s sister, Utkin, as
13 Trustee of the CFT,⁶⁸ who approved the payment to ALB, Ltd. for Nancy's debt.⁶⁹
14 On February 8, 2018, at the EJDC's direction, ALB, Ltd., filed a petition to the
15 EJDC setting forth its reasons for releasing funds from the frozen account to satisfy
16 Nancy's debt and related creditor's claim.⁷⁰ The Court released only a partial
17 amount of the CFT assets to pay ALB, Ltd.;⁷¹ after which, this appeal arose.
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19
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21 **SUMMARY OF ARGUMENT – ANSWERING BRIEF**

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25 ⁶⁴ *Id.*

26 ⁶⁵ RESAPP II: 000315.

27 ⁶⁶ RESAPP II: 000330 - 000331.

28 ⁶⁷ RESAPP III: 000506.

⁶⁸ RESAPP III: 000324 - 000325, 000452 - 000453.

⁶⁹ RESAPP III: 000508 - 000511.

⁷⁰ RESAPP III: 000473 - 000555.

1 The terms of the CFT provide that, “The Trustees shall not be liable for any
2 loss or injury to the property at any time held by them hereunder, except only such
3 as may result from their fraud, willful misconduct, or gross negligence. Every
4 election, determination, or other exercise by Trustees of any discretion vested,
5 either expressly or by implication, in them, pursuant to this Trust Agreement,
6 whether made upon a question actually raised or implied in their acts and
7 proceedings, *shall be conclusive an binding upon all parties in interest.*”⁷²
8 Neither Appellants nor Waid have made any claims against the discretion
9 exercised by Reason or Utkin as product of fraud, willful misconduct, or gross
10 negligence, and therefore the Trustees discretion is binding upon them.
11
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15 The CFT further provides that, “No person dealing with the Trustees shall be
16 obligated to see to the application of any property paid or delivered to them or to
17 inquire into the expediency or propriety of any transaction or the authority of the
18 Trustees to enter into and consummate the same upon such terms as they may
19 deem advisable.”⁷³ ALB, Ltd. did not have an obligation to see that any CFT
20 property paid to them was properly within the authority of the Trustees to be paid
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27 ⁷¹ RESAPP IV: 000745 - 000748. The Court approved payment of \$50K in fees
28 and \$3,031.97 in costs.

⁷² RESAPP I: 000032 - 000062, Article 11.1 (Emphasis added).

⁷³ RESAPP I: 000032 - 000062 Article 12.

1 from the CFT, and therefore ALB, Ltd. should be entitled to rely upon the
2 representations of the Trustees for payment of their fees and costs.
3

4 The CFT further provides that, “The enumeration of certain powers of the
5 Trustees shall not limit their general powers, subject always to the discharge of
6 their fiduciary obligations, and being vested with and having all rights, powers and
7 privileges which an absolute owner of the same property would have.”⁷⁴ The
8 Trustee of the CFT is vested with all rights, powers, and privileges which an
9 absolute owner of the same property would have, and therefore their decisions
10 concerning that property should be absolute, and not subject to review by any third
11 party, especially in the absence of any objection as to their exercised discretion.
12
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14

15 In the absence of any allegations of fraud, willful misconduct, or gross
16 negligence against either Reason or Utkin by the Appellants, the EJDC properly
17 and temporarily lifted its injunction upon assets of the CFT to permit approved fees
18 by Reason and Utkin to be properly paid to ALB, Ltd. Appellants had no legal
19 standing upon which to appeal, because the acts of the Reason and Utkin were
20 conclusively binding upon them.
21
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23

24 The Appellants are requesting this Court to reach into the exercised
25 discretion of Reason and Utkin, as successor Trustees of the CFT despite never
26 having raised a claim for breach of fiduciary duty, fraud, willful misconduct, or
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1 gross negligence, and to effect the rights of a third party that, in good faith, relied
2 upon representations of payment from both Reason and Utkin. The Appellants
3 failed to ask or obtain a finding of fraud, willful misconduct, or gross negligence
4 from the EJDC against Reason or Utkin, and now barred from doing so on appeal.
5

6
7 Furthermore, the Appellants failed to appeal the district court's orders on
8 two prior hearings permanently removing the injunction upon Trust's assets;
9 making their current appeal of the injunction moot.⁷⁵ Neither of these orders were
10 legally noticed to ALB, Ltd. and were unknown to ALB, Ltd., until after ALB,
11 Ltd., filed its combined answering brief on appeal, and opening brief on cross
12 appeal.⁷⁶ The Trustee of the CFT is now free to make payment to the ALB, Ltd.
13 under the discretionary approval provided by Reason and Utkin.
14
15

16
17 The Appellants do not have authority and have not been delegated any duties
18 to prosecute claims on behalf of the CFT for an alleged violation of the CFT
19 spendthrift provision. The Appellants have not raised a claim for breach of
20 fiduciary duty, fraud, willful misconduct, or gross negligence against Trustee
21 Reason or Utkin regarding an alleged violation of the spendthrift clause by
22 exercising their discretion to make payment to ALB, Ltd. And, the CFT doesn't
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27 ⁷⁴ RESAPP I: 000032 - 000062 Article 10.1, subsection (t).

28 ⁷⁵ See RESAPP IV: 000761 – 000766; See also RESAPP IV: 000769 - 000778 at
Page 7:11-14.

⁷⁶ See Order Regarding Parties To Appeal dated October 23, 2019.

1 qualify Nancy for spendthrift protection under NRS 166.010 et seq. Releasing
2 funds that were already contractually warranted and authorized by Reason and
3 Utkin did not require an analysis under *Brunzell v. Golden Gate National Bank* and
4 *Beattie v. Thomas*, because they were already approved by the Trustees.
5

6 **ARGUMENT – ANSWERING BRIEF**

7
8 I. *In the absence of delegation of authority or the raising of a claim for breach*
9 *by Appellants regarding the exercised discretion by Trustees Reason and*
10 *Utkin, Appellants lack legal standing to raise claims against ALB, Ltd.*
11

12 Nevada has a long history of requiring an actual justiciable controversy as a
13 predicate to judicial relief. Moreover, litigated matters must present an existing
14 controversy, not merely the prospect of a future problem. *Doe v. Bryan*, 102 Nev.
15 523, 525, 728 P.2d 443, 444 (1986). The judiciable controversy lies, if at all,
16 between the Appellants and the Trustees. The Appellants failed to raise claims
17 against the Trustee pursuant the terms of the CFT, and now seek to improperly
18 recover from ALB, Ltd. as a third-party payee of the Trustee’s approved payment.
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22 The CFT further provides that, “No person dealing with the Trustees shall be
23 obligated to see to the application of any property paid or delivered to them or to
24 inquire into the expediency or propriety of any transaction or the authority of the
25 Trustees to enter into and consummate the same upon such terms as they may
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1 deem advisable.”⁷⁷ This provision simply expands the statutory relief and
2 protection already provided to a third party dealing with a trustee. *See NRS*
3 *164.400-440*. ALB, Ltd. did not have an obligation to see that any CFT property
4 paid to them was properly within the authority of the Trustees to be paid from the
5 CFT, and therefore ALB, Ltd. is entitled to rely only upon the Trustees’
6 representations for payment of their fees and costs.
7

8
9 Whenever it appears by suggestion of the parties or otherwise that the court
10 lacks jurisdiction of the subject matter, the court shall dismiss the action.” *See*
11 *NRCP 12(h)(3)*. Legal standing is a jurisdictional issue that must be established in
12 some appropriate matter and that the fundamental aspect of standing is that it
13 focuses on the party seeking to get his or her complaint before the court – not on
14 the issues the party wishes to have adjudicated. *Chiatello v. City and County of San*
15 *Francisco*, 189 Cal. App. 4th 472 (Cal. App. 1st Dist. Oct. 21, 2010).
16
17

18
19 Whether a party has legal standing is a question that goes to the court’s
20 jurisdiction, and questions of jurisdiction can never be waived and may be raised at
21 any time, even *sua sponte* by the court for the first time on appeal. *See Baldonado*
22 *v. Wynn Las Vegas, LLC*, 124 Nev. 951, 964-65, 194 P.3d 96, 105 (2008). This is
23 so because questions of jurisdiction go to whether the court has the fundamental
24 power to grant the requested relief and enforce its own judgment. If the court has
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⁷⁷ RESAPP I: 000032 - 000062 Article 12.

1 no power to grant relief—either because it lacks jurisdiction over the subject
2 matter, an indispensable party is absent from the litigation, the dispute is moot or
3 not yet ripe, or a party does not have the legal right to seek or receive the requested
4 relief—then its ruling is legally void and not much more than a meaningless
5 advisory opinion whether or not any party raised a timely objection below. See
6 *State Indus. Ins. Sys. v. Sleeper*, 100 Nev. 267, 269, 679 P.2d 1273, 1274 (1984)
7 ("There can be no dispute that lack of subject matter jurisdiction renders a
8 judgment void."); See also *Wallace v. Smith*, 2018 Nev. App. Unpub. LEXIS 106,
9 *6-7, 2018 WL 1426396.

10
11 If Appellants had raised a claim of breach of fiduciary duty, then the EJDC
12 lifting of the injunction would have potential furthered that breach. However, in
13 the absence of such a claim, the Appellants have no legal standing to object to the
14 EJDC order properly permitting the Trustee of the CFT to properly exercise his or
15 her discretion to make payment to ALB, Ltd.

16
17 In the addition to the language of the CFT, NRS §164.025 deals with the
18 interplay between creditors and trustees of a trust and the ability of a creditor to file
19 suit if a claim is rejected.⁷⁸ Notably, there is no statutory language in NRS
20 §164.025 allowing a beneficiary of the trust to approve or reject a creditor's claim
21 – only a trustee. The terms of the CFT provides the guidelines of the case as to
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1 which party who has the ability “to institute, compromise, and defend any actions
2 and proceedings”⁷⁹ It is the Trustee who has the power on behalf of the CFT to
3 approve, reject or bring claims against a creditor of the CFT.
4

5 The Appellants have brought this appeal against ALB, Ltd. despite the fact
6 that ALB, Ltd. did not have an obligation to determine that any CFT property paid
7 to them was properly within the authority of the Trustees to be paid from the
8 CFT.⁸⁰ The Appellants are not trustees of the CFT.⁸¹ The Appellants are simply
9 beneficiaries of the CFT and were not authorized by Reason, Utkin, or Waid to
10 bring this appeal on behalf of the CFT interfere with their discretion.
11
12

13 Although the Appellants may be interested parties to the CFT or entitled to
14 notice, they are not authorized to commandeer the role of the Trustee without a
15 corresponding claim that would suggest a breach of fiduciary duty. Reason and
16 Utkin had the sole and absolute discretion under their fiduciary duty to assess the
17 benefits and/or detriment to the CFT to pay ALB, Ltd.’s legal fees and costs, not
18 the Appellants. Appellants cannot second-guess the Trustee’s exercised discretion
19 on appeal by naming payee ALB, Ltd. without first objecting to the Trustees’
20 exercise of discretion as payor.
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26 ⁷⁸ NRS §164.025 (1)-(6).

27 ⁷⁹ RESAPP I: 000050, Article 10.1(i).

28 ⁸⁰ RESAPP I: 000032 - 000062 Article 12.

⁸¹ RESAPP II: 000219 - 000220.

1 The Appellants are bound by the discretionary decisions of the prior
2 successor Trustees, and their remedy lies, if at all, in a breach of fiduciary duty
3 action for fraud, willful misconduct, or gross negligence against Reason and Utkin
4 which they have failed to allege. Despite Waid's declination to voluntarily enter
5 this appeal, he did not provide any fiduciary powers to prosecute claims or appeal
6 against a third-party payee. Therefore, without the authority to act on behalf of the
7 CFT, the Appellants' appeal should be dismissed for lack of legal standing.
8
9

10
11 *II. Monte Reason and Jacqueline Utkin, as Trustees of the CFT, had absolute*
12 *discretion in to make payment to a third-party and the Appellants are bound*
13 *by their decisions.*
14

15 The California Supreme Court has held that, "An absolute discretion,
16 exercised in good faith by a trustee, cannot be controlled by a court on
17 considerations going to the soundness of the discretion so exercised." *Estate of*
18 *Ferrall*, 41 Cal. 2d 166, 173, 258 P.2d 1009, 1013 (1953); See also *Henry v.*
19 *Official Comm. of Unsecured Creditors of Walldesign, Inc. (In re Walldesign,*
20 *Inc.)*, 872 F.3d 954, 970 (9th Cir. 2017) (noting that trustees generally have
21 "absolute or unlimited or uncontrolled discretion" over disbursement of trust
22 funds). The Trustors provided that the Trustees of the CFT discharge their
23 fiduciary obligations with a directive that the Trustees were vested with and had all
24 rights, powers, and privileges which an absolute owner of the same property would
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1 have.” *RESAPP I: 000032 - 000062 Article 10.1, subsection (t)*. Without objection
2 by the Appellant, the Trustees exercised this absolute discretion by approving
3 payment to ALB, Ltd.
4

5 The parties are controlled by the terms of the CFT, and the Appellants do not
6 have power to supplant the discretion granted by the Trustors of the CFT to the
7 Trustees. *See NRS § 163.023* (A trustee has the powers provided in the trust
8 instrument,..., as necessary or appropriate to accomplish a purpose of the trust, but
9 the court may not grant a power expressly prohibited by the trust instrument); *See*
10 also *In re Kragness*, 58 B.R. 939, 942 (Bankr. D. Or. 1986) (“The intent of the
11 testator must be carried out unless the objective is illegal or impossible. Courts
12 generally have no power to frustrate the testator’s intent and substitute a different
13 scheme.”); *See also Campbell v. Kawanānakoā*, 34 Haw. 333, 341 (1973) (“It has
14 been so often judicially declared that the will of the testator is the law of the case
15 that it has become a legal maxim.”) If the Appellants disagreed with payment to
16 any third party, their remedy lies in making a claim of fraud, willful misconduct, or
17 gross negligence against a Trustee’s exercise of discretion. The Appellants simply
18 failed to make such a claim and are now bound by the Trustee’s decision.
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25 *III. The Appeal is Moot Due the Permanent Removal of the Injunction by Two*
26 *Prior Orders Not Appealed by Appellants.*
27
28

1 Furthermore, the injunction has been permanently removed by the EJDC by
2 previous orders rendering the current appeal moot. See *Univ. & Cmty. Coll. Sys. of*
3 *Nev. v. Nevadans for Sound Gov't*, 120 Nev. 712, 720, 100 P.3d 179, 186 (2004)
4 (recognizing that events subsequent to the district court's decision can render an
5 appeal moot); See also *State v. Alvogen, Inc.*, Nos. 77100, 77365, 2019 Nev.
6 Unpub. LEXIS 1153, at *3 (Oct. 21, 2019). Due to the fact that the injunction has
7 been permanently removed, there are no issues remaining to be resolved as to
8 ALB, Ltd., as it is now free to petition the EJDC for the remainder of its attorney's
9 fees and costs based upon the prior Trustees discretion to make payment upon
10 Nancy's debt. Therefore, the current appeal is moot.

11 IV. Contrary to the Appellants' representation, this Court found that no rule
12 precludes ALB, Ltd. from participating in this Appeal

13 NRS §132.390(c)(8) specifically provides that a creditor of the settlor whose
14 claim has been accepted by the trustee is an interested person as to a trust.⁸² This
15 Court further found that, "no rule precludes Barney, Ltd. from participating as a
16 respondent to the appeal." See *Order Regarding Parties To Appeal dated October*
17 *23, 2019 at Page 1*. Therefore, ALB, Ltd. has standing to participate in this
18 appeal, because it was a creditor of the settlor who claim was accepted.

1 NRS §163.5559(1) is inapplicable to the facts at issue, because Nancy held
2 an absolute right to occupy and dispose of the CFT-owned residence and was also
3 entitled to the non-discretionary distribution of all of the personal property
4 belonging to Raymond Sr., which was not otherwise distributed by a personal
5 property distribution list.⁸³ Therefore, neither of the conditions in NRS §163.5559
6 apply which would prevent the payment from CFT assets to satisfy Nancy's debts.
7
8

9 V. Even if Appellants had legal standing, the CFT's Spendthrift Provision
10 Does Not Apply to the Trustor
11

12 The Appellants have failed to first bring an action against the Trustee of the
13 CFT for violating what they allege to be a violation of the CFT spendthrift
14 provision by its payment to ALB, Ltd. Assuming arguendo that the Appellants can
15 raise their claims regarding payment against the payee versus the fiduciary bound
16 payor, then Appellants have still improperly classified the CFT as purely a
17 "discretionary trust, as proscribed by NRS §163.4185(1)(c), and contained a
18 spendthrift provision."⁸⁴ While the CFT did provide discretion for the Trustee in
19 terms of income payments to Nancy, there was **no** discretion as it pertained to the
20 CFT residence which Nancy had the absolute right to use, sell, and purchase/build
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27 ⁸² See NRS §132.390(c)(8): It states, "For the purposes of this title, a person is an
28 interested person with respect to:... a trust, if the person:... Is a creditor of the
settlor who has a claim which has been accepted by the trustee."

⁸³ RESAPP I: 000038 - 000039, Article 5.1(a)

1 with CFT property, and for which she did not have to pay rent or account for its
2 use.⁸⁵ She was also entitled to the non-discretionary distribution of all personal
3 property belonging to Raymond Sr., not otherwise distributed by a personal
4 property distribution list.⁸⁶ The CFT is not a purely “discretionary trust” as to
5 Nancy’s interest in the real and personal property of the CFT.⁸⁷ The Appellants
6 simply failed to address the following provision in the CFT relating to Nancy:
7

8
9 **14.2 Spendthrift Provision....** *This provision shall not apply to a Trustor's*
10 *interest in the Trust estate....*⁸⁸
11

12 Therefore, Nancy’s interest in the CFT is subject to her creditor’s claims.

13 The preamble to the CFT provides that property placed in the CFT retains its
14 character:
15

16 The property comprising the original Trust estate, during the joint lives of
17 the Trustors, **shall retain its character as their community property or**
18 **separate property**, as designated on the document of transfer or
19 conveyance. Property subsequently received by the Trustees during the joint
20 lives of the Trustors **shall have the separate or community character**
21 **designated on the document of transfer or conveyance.**⁸⁹
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25 ⁸⁴ See Pg. 10 of Appellant/Cross-Respondent’s Opening Brief, last paragraph.

26 ⁸⁵ RESAPP I: 000038, Article 4.4.

27 ⁸⁶ RESAPP I: 000038 - 000039, Article 5.1.

28 ⁸⁷ Even if the Trust was purely discretionary, Nevada law prohibits fraud upon a
settlor’s creditors.

⁸⁸ RESAPP I: 000056 - 000057 (Emphasis added.)

⁸⁹ RESAPP I: 000035 (Emphasis added.)

1 The Dancing Vines property (“DV”) was owned jointly between Nancy and
2 Raymond Christian, Sr., prior to transfer into the CFT.⁹⁰ Despite Appellants
3 unwillingness to admit Nancy’s interests in other Trust assets, the Appellants **do**
4 admit that Nancy had an interest in the DV⁹¹ and under NRS §123.220 all property
5 acquired during the marriage is presumably community property. The proceeds and
6 after acquired property therefrom (i.e. Bluff Point property) belong to Nancy.
7

8
9 ALB Ltd. isn’t required to file in Nancy’s probate estate before requesting
10 payment from Nancy’s ownership in CFT, because Nancy had an interest in the
11 CFT of at least \$100,000.00 for payment of her debts, because, as noted by §14.2
12 of the CFT, the spendthrift provision doesn’t apply to Nancy’s interest in the CFT
13 and permits payment to ALB, Ltd. from Nancy’s CFT interests.
14
15

16
17 Additionally, under CFT §§4.3-4.4, all property not used for “the
18 administrative expenses,...and any debt owed by the Decedent” after the
19 Decedent’s death, was transferred to the Survivor’s share of the Trust.⁹² Upon the
20 death of Raymond Sr., all property became Nancy’s property for purposes of CFT
21
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24 ⁹⁰ RESAPP III: 000583 - 000586; This Court can take judicial notice pursuant to
25 NRS §47.130 that the DV was jointly owned by Nancy and Raymond Christian
26 from the filing of the Grant Bargain and Sale Deed recorded as
Instrument#20161019-0000692 on October 19, 2016 in Clark County, Nevada.

27 ⁹¹ See Page 3, last paragraph second sentence of Appellant’s Opening Brief:
28 **“Other than the DV real property**, which was in the process of being sold, all
“cash” funding of the CFT came from the separate property assets of Ray, Sr.”
(Emphasis added.)

1 §14.2.⁹³ The assets of the CFT are subject to approved claims of Nancy’s creditors;
2 the last trustor to die.
3

4 Unfortunately, the Appellants have incorrectly cited NRS § 163.417 for the
5 proposition that “a court cannot order payments to creditors”.⁹⁴ This statute limits
6 the court exercise over certain powers or over a trustee’s discretion and states that
7 trust property is not subject to the personal obligations of the trustee,⁹⁵ but it does
8 not state that a court cannot lift an injunction to permit the payment of discretion
9 properly exercised by an acting trustee. Therefore, the Appellants misrepresent the
10 actual language and effect of this statute.
11
12

13
14 The Appellants’ citations to *Klabacka v. Nelson* are inapplicable herein
15 because that case applies to self-settled spendthrift trusts⁹⁶. Herein, the CFT was
16 not created as a self-settled spendthrift trust because it did not provide protection
17 for Nancy’s own assets from the reach of creditors.⁹⁷
18

19 Additionally, the Appellants’ reliance upon *Brock v. Premier Trust, Inc. (In*
20 *re Frei Irrevocable Trust)*, 390 P.3d 646 (Nev. 2017), is misplaced. Therein, the
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24 ⁹² RESAPP I: 000038

25 ⁹³ RESAPP I: 000056 - 000057

26 ⁹⁴ See Appellant/Cross-Respondent’s Opening Brief, Pg. 8, first paragraph.

27 ⁹⁵ See NRS §163.417(1)(a-d) and NRS §163.417(2).

28 ⁹⁶ *Klabacka v. Nelson*, 394 P.3d 940, 950, 2017 Nev. LEXIS 40, *27, 133 Nev.
Adv. Rep. 24, 2017 WL 2303609

⁹⁷ RESAPP I: 000056, Article 14.2, specifically, “*This provision shall not apply to a Trustor's interest in the Trust estate*”.

beneficiary pledged the trust assets as security for payment of his debt and the Court found the following:

Once a beneficiary is entitled to have the trust principal conveyed to him or her, however, any spendthrift protection becomes invalid. The beneficiary does not need to actually exercise the right of distribution, only possess it.⁹⁸

In *Brock v. Premier Trust, Inc.*, the court found that the trust company had not breached any fiduciary duty when it paid the debt of the beneficiary to the creditor since the spendthrift provision was invalidated. Herein, the CFT's spendthrift provision does not include or protect Nancy's interest in the CFT.

The CFT is neither a wholly discretionary trust nor a spendthrift trust as to Nancy's interests. The EDJC properly found that the CFT's spendthrift language excludes Nancy's interest in the CFT;⁹⁹ therefore, as Nancy's lifetime contractual creditor, ALB, Ltd. had the right to receive payment from Nancy's CFT assets.

VI. A spendthrift provision cannot affect the rights of third-party payee(s) after the Trustee has exercised discretion and made payment

Assuming arguendo that the Appellants have current legal standing to object to the Trustees' prior exercised discretion, and they have authority on behalf of the CFT to object to the lifting of the injunction by the EJDC, and if this appeal has

⁹⁸ *Brock v. Premier Trust, Inc. (In re Frei Irrevocable Trust)*, 390 P.3d 646, 651, 2017 Nev. LEXIS 14, *8, 133 Nev. 8, 133 Nev. Adv. Rep. 8 (citing Restatement (Second) of Trusts § 153(2) (Am. Law Inst. 1959) and *In re Estate of Beren*, 321 P.3d 615, 622, 2013 COA 166, 2013 COA 166 (Colo. App. 2013).

⁹⁹ RESAPP IV: 000746, lines 18-19.

1 not been rendered moot by the prior permanent removal of the injunction, NRS
2 §164.025(3) still allows for a creditor to make a claim against a trustor of a trust,
3
4 and NRS §163.5559(1) also provides that a creditor of a trustor can seek to satisfy
5 a claim against the trustor from the trust's assets. The Trustees have power to make
6 payments from the CFT to any person deemed suitable by the Trustees,¹⁰⁰ and
7 provides a corresponding right to the Appellants to make a claim of fraud, willful
8 misconduct, or gross negligence if they disagree with the power exercised.¹⁰¹ The
9
10 Successor Trustees had power to pay Nancy's debts and did so, and the Appellants
11 failed to raise a claim against them.
12

13
14 Upon the exercised discretion of the Trustees, payments made to ALB, Ltd.
15 are no longer CFT assets. The Appellants failed to make a claim of fraud, willful
16 misconduct, or gross negligence regarding any a violation of a spendthrift
17 provision, but belatedly and improperly allege it against a third-party payee that
18 has no duties under the CFT. Even in the absence of payment, NRS § 166.170(3)
19 authorizes an action by a creditor against a spendthrift trust, within the allowed
20 time period, if the creditor demonstrates that a transfer violates a contractual
21 obligation to the creditor. Nancy signed a contractual engagement agreement with
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27

28 ¹⁰⁰ RESAPP I: 000051, Article 10.1 (m).

¹⁰¹ RESAPP I: 000032 - 000062 Article 11.1 (Emphasis added).

1 ALB Ltd. which created Nancy's legal obligations and ALB, Ltd.'s claim was
2 timely made.
3

4 VII. The Court didn't approve attorney's fees; it simply lifted its injunction
5 making an analysis under Brunzell or Beattie unnecessary.
6

7 The Appellants confirm the EJDC's order that directed the partial payment
8 to ALB, Ltd., by their acknowledgement that "The general rule is that attorney's
9 fees and/or costs are not recoverable by a successful party except as provided for
10 by agreement, statute, court rule or case law (NRS §18.010; EDCR 7.60(b))".¹⁰²
11 The EJDC confirmed payment of Nancy's debts as approved by the two prior
12 successor trustees.¹⁰³ No claim was raised that this discretion was a breach of the
13 fiduciary duty by either Trustee, who were the EJDC-recognized successor trustees
14 and who approved payment to ALB, Ltd.¹⁰⁴ The Court did not go through a
15 prevailing party analysis under *Brunzell* or *Beattie*¹⁰⁵ in the release of funds to
16 ALB, Ltd., because the ALB, Ltd.'s claim, consisting of attorney's fees and costs,
17 had already been approved by Reason and Utkin. In its April 12, 2018 order, the
18 EJDC simply partially released the undistributed approved payment.¹⁰⁶
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24 ¹⁰² Appellant/Cross-Respondent's Opening Brief, Pg. 14, ¶ 5. (Emphasis added.)

25 ¹⁰³ RESAPP IV: 000746, lines 20-21.

26 ¹⁰⁴ RESAPP IV: 000737 - 000739; III: 000506, 000508.

27 ¹⁰⁵ See Page 15 of Appellant's Opening Appendix, last paragraph and *Brunzell v.*
28 *Golden Gate National Bank*, 85 Nev. 345 (1969) and *Beattie v. Thomas*, 99 Nev.
579 (1983).

¹⁰⁶ RESAPP IV: 000745 - 000748

1
2 VIII. Conclusion of Answering Brief:

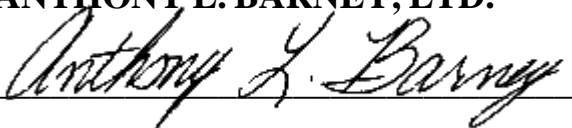
3 The EJDC did not abuse its discretion in lifting the injunction to permit
4 Utkin to make payment in the amount of \$53,031.97 to ALB, Ltd. The Trustees of
5 the CFT properly exercised their sole and absolute discretion to make payment for
6 Nancy's debts. The Appellants did not raise any claims related to a breach of
7 fiduciary duty by Reason or Utkin regarding the partial approval of ALB, Ltd.'s
8 fees and costs, and therefore cannot seek a remedy against ALB, Ltd. as a third-
9 party payee of those funds. No appeal was taken from the order appointing Utkin
10 as successor trustee of the CFT after approval of ALB, Ltd.'s fees and costs, or
11 thereafter when the EJDC permanently lift the injunction making this appeal moot.
12
13
14

15 **CONCLUSION**

16 ALB, Ltd. requests the Court dismiss the Appellants appeal against ALB,
17 Ltd., because they lack legal standing to initiate this appeal on behalf of the CFT,
18 and because this matter is now moot upon the removal of the injunction against
19 CFT assets. The amounts received by ALB, Ltd. were properly paid by the
20 Trustees of the CFT, based upon the discretion that they were authorized to
21 exercise, and ALB, Ltd., has no duty to determine whether the Trustee had
22 authority to such payment; only that they were the acting Trustees of the CFT.
23
24

25 DATED this 6th day of November 2019.

26 Respectfully Submitted,
27 **ANTHONY L. BARNEY, LTD.**

28 

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