

IN THE SUPREME COURT OF THE STATE OF NEVADA

TRUDI LEE LYTLE; AND JOHN ALLEN
LYTLE, AS TRUSTEES OF THE LYTLE
TRUST,

Appellant ,

v.

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

Respondents .

Supreme Court No.: 76198

District Court Case No.: A-17-765372-C

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Clerk of Supreme Court

Appeal

From the Eighth Judicial District Court, Clark County
Honorable Mark Bailus

Appellants' Appendix to Opening Brief – Volume 2

(Docket 76198)

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Nevada Bar No. 11592
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4. Affidavit of Julie Marie Sandoval Gegen in Support of Motion for Summary Judgment (**AA000106 – AA000108**)
5. Declaration of Wesley J. Smith in Support of Motion for Summary Judgment (**AA000109 – AA000184**)

CERTIFICATE OF SERVICE

1. Electronic Service:

I hereby certify that on this date, the 15th day of January 2019, I submitted the foregoing **Appellant's Appendix for Opening Brief – Volume 2 (Docket 76198)** for filing and service through the Court's eFlex electronic filing service. According to the system, electronic notification will automatically be sent to the following:

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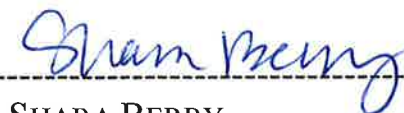
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SHARA BERRY

1 Gegen Property may be collectively referred to as "Plaintiffs' Properties"). A true and correct
2 copy of the Grant, Bargain, Sale Deed is attached hereto as Exhibit "4". *See Id*

3 5. The Plaintiffs' Properties are located in the Rosemere Estates subdivision
4 ("Rosemere Subdivision" or "Subdivision"), wherein there are nine (9) lots and/or properties.
5 *See Exhibits 1-4.*

6 6. The Plaintiffs' Properties are subject to the CC&R's recorded January 4, 1994
7 (the "CC&Rs"). A true and correct copy of the CC&R's is attached hereto as Exhibit "5".
8

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

13 8. In the Rosemere Litigation I, the Lytles alleged that the CC&Rs had been
14 improperly amended by some of the property owners in the Subdivision which converted the
15 Association to a full-fledged homeowner's association. *See Ex. 6.*

16 9. The Lytles sought and obtained a Summary Judgment from the District Court,
17 which held that the Rosemere Association was not a home-owners association as defined in NRS
18 116 but instead was a limited-purpose association as defined in NRS 116.1201(6) that was not
19 subject to the requirements or benefits of NRS Chapter 116. *See* a true and correct copy of the
20 Order Granting Summary Judgment filed in the Rosemere Litigation I and attached hereto as Ex.
21 7, pg. 9, par. 19. The Summary Judgment was appealed to, and upheld by the Nevada Supreme
22 Court.
23

24 10. Thereafter, on or about July 29, 2016, the Lytles obtained a Judgment against the
25 Rosemere Association for their attorney's fees and costs in the amount of \$361,238.59 (hereafter
26 "Attorneys' Fees Judgment").
27
28

1 11. Thereafter, in August and September of 2016, the Lytles recorded with the Clark
2 County Recorder's office two different abstracts of the Rosemere Judgment I. The first Abstract
3 (filed in August) specifically listed the parcel numbers of the Plaintiffs' Properties as properties
4 to which the Rosemere Judgment I was to attach but pursuant to the records of the Clark County
5 Recorder's Office only attached to one (1) of the Plaintiffs' Properties-the Sandoval Property.
6 However, the first recorded Abstract appears on a Title Report for the Zobrist Property. The
7 second Abstract (filed in September) only listed one parcel number but attached to three (3) of
8 the Plaintiffs' Properties (hereafter the 2 Abstracts are "Abstracts of Judgment"). Therefore,
9 both the Abstracts of Judgment affect and are an unlawful encumbrance on all of Plaintiffs'
10 Properties. True and correct copies of the recorded Abstracts of Judgment are attached hereto as
11 Exhibit "8".
12

13 12. Plaintiffs have filed suit in this case in order to remove the Abstracts of Judgment
14 wrongfully recorded against their Properties and have alleged Quiet Title and Declaratory Relief
15 in the Complaint. *See* the Complaint filed concurrently herewith.
16

17 13. Other property owners in the Rosemere Subdivision, the Bouldens (Parcel No.
18 163-03-313-008) and the Lamothes (Parcel No. 163-03-313-002) have already filed a lawsuit
19 (Case No. A-16-747900-C) requesting the same relief ("BL Lawsuit") as the Plaintiffs, because
20 the Abstracts of Judgment were recorded against all the properties in the Subdivision except for
21 the Lytle's property.
22

23 14. On February 24, 2017, the Bouldens and Lamothes filed a Motion for Partial
24 Summary Judgment in the BL Lawsuit. A true and correct copy of the Motion for Partial
25 Summary Judgment is attached hereto as Exhibit "9".
26
27
28

1 15. On July 25, 2017, the Court issued its Order in the BL Lawsuit granting the
2 Motion for Partial Summary Judgment and finding certain Findings of Fact and Conclusions of
3 Law ("Order"). A true and correct copy of the Order is attached hereto as Exhibit "10".

4 16. In its Order, the Court found that, among other things, the Association is not
5 subject to NRS 116.3117, the Bouldens and Lamothes were not parties to the Rosemere
6 Litigation, the Rosemere Judgment I (referred to as the "Rosemere LP Litigation" in the Order)
7 is not an obligation or debt of the Bouldens or the Lamothes and that the Abstracts of Judgment
8 were improperly recorded against such properties and must be expunged and stricken from the
9 record. *See* Ex. 10, pg. 4-5.

10 17. After the Court issued its Order, the Lytles released their liens against the
11 Boulden and Lamothes properties. True and correct copies of the Lien Releases are attached
12 hereto as Exhibit "11".

13 18. The Lytles have appealed the Order in the BL Lawsuit.

14 19. In 2010, the Lytles filed another suit against the Rosemere Association directly in
15 Case No. A-10-631355-C ("Rosemere Litigation II"). The Lytles did not name the Plaintiffs or
16 any other lot owners as Defendants in the Rosemere Litigation II. On or about November 14,
17 2016, the Lytles were granted Summary Judgment against the Rosemere Association. On or
18 about July 20, 2017, the District Court signed an Abstract of Judgment in the amount of
19 \$1,103,158.12. ("Abstract Rosemere Judgment II"). *See* a true and correct copy of the Abstract
20 Rosemere Judgment II attached hereto as Exhibit "12".

21 20. The Plaintiffs were not named parties in the Rosemere II Litigation and did not
22 have notice of the same. *Id.* *See* Plaintiffs' Affidavits.

23 21. As of the date of filing this Motion, the Rosemere Judgment II has not been
24 recorded against the Plaintiffs' Properties.

1 22. On or about April 2, 2015, the Lytles filed a third case (Case No. A-15-716420-
2 C) against the Association and named as Defendants Sherman L. Kearl ("Kearl") and Gerry G.
3 Zobrist ("Zobrist") ("Rosemere Litigation III"). On April 8, 2015, the Lytles filed an Errata to
4 the Complaint amending it so that all references to Kearl and Zobrist were taken out of the
5 Complaint. A true and correct copy of the Complaint and Errata are attached hereto as Exhibit
6 "13".

7 23. On or about September 13, 2017, the Court entered its Order granting Summary
8 Judgment for Declaratory Relief as against the Association ("Rosemere Judgment III). A true
9 and correct copy of the Order Granting Summary Judgment is attached hereto as Exhibit "14".
10 On November 8, 2017, the Lytles' Motion for Attorney's Fees and Costs was granted. A true
11 and correct copy of the Order Granting Motion for Attorney's Fees is attached hereto as Exhibit
12 "15".

13 24. As of the date of filing this Motion, the Rosemere Judgment III has not been
14 recorded against the Plaintiffs' Properties nor has an Abstract of Judgment been filed with the
15 Court.
16

17 25. Although the Plaintiffs and Lytles have participated in settlement discussions and
18 the Plaintiffs have requested the same relief granted to the Bouldens and Lamothes, that of
19 removing the Abstracts of Judgment from their Properties, as of the date of filing this Motion,
20 the Lytles have not agreed to release the Abstracts of Judgment wrongfully recorded against the
21 Plaintiffs' Properties. *See* Declaration of Wesley J. Smith ("Smith Decl.") attached hereto.
22

23 26. All of the facts set forth above are undisputed.
24

25 II.

26 STANDARD OF REVIEW
27
28

1 Summary judgment "shall be rendered forthwith if the pleadings. . . together with the
2 affidavits, if any, show that there is no genuine issue as to any material fact and that the moving
3 party is entitled to a judgment as a matter of law." NRCP 56, *See also Wood v. Safeway, Inc.*,
4 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). The substantive law pertaining to each cause of
5 action defines which facts are material. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248
6 (1986). The party seeking summary judgment has the burden of showing there is no genuine
7 issue of material fact. *See Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 157 (1970). Once the
8 moving party meets its burden by presenting evidence that would entitle the movant to a directed
9 verdict, the burden shifts to the other party to go beyond the pleadings and set forth specific facts
10 demonstrating there is a genuine issue of material fact for trial. *Anderson*, 477 U.S. at 249-51.

12 NRCP12(c) provides that a motion for judgment on the pleadings may be made by any
13 party and if matters outside the pleadings are presented to and not excluded by the court, the
14 motion shall be treated as one for summary judgment and disposed of as provided in Rule 56.
15 A motion under NRCP 12(c) "is designed to provide a means of disposing of cases when
16 material facts are not in dispute and a judgment on the merits can be achieved by focusing on the
17 content of the pleadings." *Duff v. Lewis*, 114 Nev. 564 (1998); *Bernard v. Rockhill Dev. Co.*, 103
18 Nev. 132, 135, 734 P.2d 1238, 1241 (1987). A motion under this rule "has utility only when all
19 material allegations of fact are admitted in the pleadings and only questions of law remain." *Id.*
20 at 136, 734 P.2d at 1241.

22 III.

23 LEGAL ARGUMENT

24 Defendants have improperly recorded Abstracts of Judgment against the Plaintiffs'
25 Properties. The Plaintiffs were never parties to the lawsuit and are not named in the Judgment.
26 *See* Plaintiffs' Affidavits. Further, other property owners have already been accorded the same
27
28

1 relief from this District Court. Finally, Plaintiffs are also entitled to a Declaratory Judgment that
2 the Judgments named in this Motion may NOT be recorded against Plaintiffs' Properties.

3 A. The Plaintiffs Are Not Parties to the Rosemere Litigation I.

4 As shown on all the pleadings in all the cases filed thus far by the Lytles against the
5 Association, the Plaintiffs are not named parties to **any** of the litigation and when some of the
6 Plaintiffs were named in a Complaint, the Lytles filed an Errata to remove them. *See* Exs. 6-15
7 and Plaintiffs' Affidavits. The Attorneys' Fee Judgment was not entered against the Plaintiffs in
8 the Rosemere Litigation I. The Abstracts of Judgment do not name the Plaintiffs in the same
9 litigation.
10

11 NRS 17.150(2) provides that:

12 A transcript of the original docket or an abstract or copy of any judgment or decree of a
13 district court of the State of Nevada or the District Court or other court of the United
14 States in and for the District of Nevada, the enforcement of which has not been stayed on
15 appeal, certified by the clerk of the court where the judgment or decree was rendered,
16 may be recorded in the office of the county recorder in any county, and when so recorded
**it becomes a lien upon all the real property of the judgment debtor not exempt from
execution in that county, owned by the judgment debtor at the time, or which the
judgment debtor may afterward acquire, until the lien expires. (emphasis added)**

17 The Plaintiffs are not Judgment Debtors-they have never been named in any of the lawsuits
18 brought by the Lytles. Therefore, the Abstracts of Judgment cannot be recorded against the
19 Plaintiffs' Properties. A Judgment may **only** become a lien upon property of the judgment
20 debtor--which in this case is only the Association. Therefore, the Abstracts of Judgment have
21 been wrongfully recorded and must be expunged immediately.
22

23 B. Other Subdivision Homeowners Have Had This Same Issue Decided in Their Favor.

24 This District Court (Judge Timothy C. Williams) has already decided this same issue on a
25 partial summary judgment motion in favor of other homeowners in the Subdivision-the Bouldens
26 and Lamothes. The Bouldens and Lamothes obtained the exact relief Plaintiffs are requesting in
27 this Motion in District Court, Case No. A-16-747900-C, Dept. No XVI.
28

1 In their case, the Bouldens and Lamothes filed a Motion for Partial Summary Judgment
2 (“SJ Motion”) on these very same issues. In deciding the Bouldens and Lamothes SJ Motion, the
3 District Court entered an Order (Ex. “10”) finding some of the following relevant facts:

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

6 • The Association is a limited purpose association as referenced under NRS 116.1201 (2)
7 (4:12);

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

9 • The Final Judgment against the Association is not an obligation or debt of the Plaintiffs
10 (4:20-24); and

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

13 After the Court entered its Order, the Lytles released the Abstracts of Judgment against the
14 Boulden and Lamothe’s Properties. Ex. “11”. This is exactly what the Plaintiffs in this case are
15 requesting that the Lytles do in their case. Thus, this Court should grant the same relief to the
16 Plaintiffs that Judge Williams has already granted to the Boulden and Lamothe’s and required
17 that the Lytles remove their Abstracts of Judgment from their Properties.

18 C. Defendants Sought and Obtained a Declaration that the Association is a Limited
19 Purpose Association.

20 In the Rosemere Litigation I, the Lytles specifically sought and obtained declaratory
21 relief that the Rosemere Association was only a limited-purpose association and was not a home-
22 owners association required to abide by NRS 116. See Ex. 7. In the Summary Judgment Order
23 that was prepared by the Lytle’s counsel, the District Court held that the Rosemere Association
24 was “a limited purpose association under NRS 116.1201, is not a Chapter 116 “unit-owners’
25 association” and is relegated to only those specific duties and powers set forth in paragraph 21 of
26
27
28

1 the Original CC&R's and NRS 116.1201." Ex. 7, p. 9, par. 19. Paragraph 21 of the CC&R's
2 provides that a property owners committee shall be established by all owners of lots within the
3 subdivision to determine the landscaping on the four exterior wall planters and the entrance way
4 planters, to determine the method and cost of watering the planters, to maintain the exterior
5 perimeter wall, to maintain the Entrance Gate and to maintain and repair the interior street. See
6 Ex. 5, par. 21.

7 As a limited purpose association NRS 116 does not apply to its actions. See NRS
8 116.1201(2) (specifically excluding the application of NRS 116 to limited purpose associations).
9 This concept is important because NRS 116.3117 provides that a judgment recorded against a
10 homeowners association attaches to all property owned by members within the association.
11 However, since the Rosemere Association has been declared to be only a limited purpose
12 association NRS 116.3117 does not apply to any of the Judgments obtained by the Lytles against
13 the Rosemere Association. Therefore, the Lytles cannot rely on this portion of NRS to record its
14 Abstracts of Judgment against Plaintiffs' Properties and the inclusion of the Plaintiffs' Properties
15 constitutes a cloud on the Plaintiffs' Titles.
16

17
18 D. The CC&Rs Do Not Create Joint Liability for the Plaintiffs.

19 The CC&R's are very short and were specifically made only to create a committee with
20 responsibilities for landscaping, the perimeter wall, the entrance gate and the private drive. Ex.
21 5, p. 3, par. 21. There is no language in the CC&Rs that allows a judgment against the
22 Association to attach to a non-parties property. In fact, the CC&Rs specifically provide that if
23 any disputes arise between residents relating to the CC&Rs that each resident has the right to
24 initiate their disputes against each other, not against the Association. Paragraph 24 of the
25 CC&R's provides:
26

27 Except as otherwise provided herein, Subdivider or any owner or owners of any of the
28 lots shall have the right to enforce any or all of the provisions of the covenants,

1 conditions and restrictions upon any other owner or owners. In order to enforce said
2 provision or provisions, any appropriate judicial proceeding in law or in equity may be
3 initiated and prosecuted by any such lot owner or owners against any other owner or
4 owners.

5 Ex. 5, p. 4.

6 Plaintiffs anticipate that Defendants will argue that since all the lots are subject to the
7 CC&Rs that somehow judgment against the Association is enforceable against all property
8 owners. The Lytles will most likely point to language that the CC&Rs are applicable to all 9
9 lots. However, such language only shows that the CC&Rs are for the benefit of the Subdivision
10 properties and does not include the right to file a Judgment against all the property owners when
11 they are not even a named party in the litigation.

12 Plaintiffs anticipate that Defendants will also argue that the introductory language in the
13 CC&Rs that states that breaches of the CC&Rs shall not defeat mortgages or deeds of trusts
14 recorded against any of the properties also gives them the right to file the Abstracts of Judgment
15 against the Plaintiffs' Properties. However, this language is simply to allow buyers of property
16 to obtain loans to finance the purchases of their homes.

17 Finally, if Defendants attempt to argue that NRS 116 should apply to this Association, the
18 Defendants are precluded from doing so because they have already litigated this issue and sought
19 for and obtained a Judgment that the exact opposite is true-that NRS 116 does not apply to this
20 Association. See Ex. 7.

21
22 E. The Abstracts of Judgment Must be Expunged and Plaintiffs are Entitled to Injunctive
23 Relief.

24 The Plaintiffs are being irreparably harmed by the Abstracts of Judgment because injury
25 to real property constitutes irreparable harm. Real property and its attributes are considered
26 unique and loss of real property rights generally results in irreparable harm. See *Leonard v.*
27 *Stoebling*, 102 Nev. 543, 728 P.2d 1358 (1986) (view from home is unique asset; injunction
28

1 issued to preserve view); *see also Nevada Escrow Service, Inc. v. Crockett*, 91 Nev. 201, 533
2 P.2d 471 (1975) (denial of injunction to stop foreclosure reversed because legal remedy
3 inadequate). Clearly, compensatory damages do not provide an adequate remedy in this situation
4 where some or all of the Plaintiffs would like to sell and/or refinance their Properties and cannot
5 do so with the Abstracts of Judgment clouding their titles. The real estate market in Las Vegas
6 has proved to be volatile in the past and could take a turn at any point. Therefore, it will be
7 difficult to substantiate the value of these Properties and the value of other homes that may be
8 purchased with the sale proceeds of any of the Plaintiffs' Properties in the future of this
9 litigation.
10

11 Therefore, pursuant to NRS 40.010 this Court should declare the Defendants' Abstracts
12 of Judgment to be improper clouds on the Plaintiffs' Properties, which should be stricken and
13 expunged from the records of the Clark County Recorder's Office.
14

15 III.

16 CONCLUSION

17 Plaintiffs respectfully request that this Court enter a Summary Judgment against the
18 Defendants expunging and striking the Abstracts of Judgment recorded against the Plaintiffs'
19 Properties, restraining and enjoining the Lytles from selling or attempting to sell the Plaintiffs'
20 Properties and from taking any action in the future against the Plaintiffs or their Properties based
21 upon any litigation the Lytles have commenced against the Rosemere Association.
22

23 DATED this 29th day of November, 2017.

24 CHRISTENSEN JAMES & MARTIN

25 By: /s/ Laura J. Wolff, Esq.
26 Laura J. Wolff, Esq.
27 Nevada Bar No. 6869
28 Attorneys for Plaintiffs

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14 *Attorneys for Plaintiffs*

8 **EIGHTH JUDICIAL DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 SEPTEMBER TRUST, DATED MARCH
11 23, 1972; GERRY R. ZOBRIST AND
12 JOLIN G. ZOBRIST, AS TRUSTEES OF
13 THE GERRY R. ZOBRIST AND JOLIN G.
14 ZOBRIST FAMILY TRUST; RAYNALDO
15 G. SANDOVAL AND JULIE MARIE
16 SANDOVAL GEGEN, AS TRUSTEES OF
17 THE RAYNALDO G. AND EVELYN A.
18 SANDOVAL JOINT LIVING AND
19 DEVOLUTION TRUST DATED MAY 27,
20 1992; and DENNIS A. GEGEN AND
21 JULIE S. GEGEN, HUSBAND AND
22 WIFE, AS JOINT TENANTS,

17 Plaintiffs,

18 vs.

19 TRUDI LEE LYTLE AND JOHN ALLEN
20 LYTLE, AS TRUSTEES OF THE LYTLE
21 TRUST; JOHN DOES I through V; and
22 ROE ENTITIES I through V, inclusive,

22 Defendants.

23 State of Nevada)
24) ss.
25 County of Clark)

26 Sherman L. Kearl, states under penalty of perjury:

27
28 1. I am a resident of Clark County, Nevada and over the age of 18.

Case No.:
Dept. No.:

**AFFIDAVIT OF SHERMAN L. KEARL
AS TRUSTEE OF THE SEPTEMBER
TRUST, DATED MARCH 23, 1972 IN
SUPPORT OF PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT OR, IN
THE ALTERNATIVE, MOTION FOR
JUDGMENT ON THE PLEADINGS**

1 2. I am one of the Trustees for the September Trust, Dated March 23, 1972
2 (hereafter "September Trust").

3 3. I make this Affidavit in support of Plaintiffs' Motion for Summary Judgment or,
4 in the Alternative, Motion for Judgment on the Pleadings.

5 4. I have personal knowledge of the facts stated herein, except as to those matters
6 which are stated upon information and belief, and as to those matters I believe them to be true. I
7 am competent to testify to the same and would so testify if called upon as a witness.

8 5. The September Trust is the owner of the residential property in Clark County,
9 Nevada known as 1861 Rosemere Court, Las Vegas, Nevada 89117, Assessor's Parcel No. 163-
10 03-313-004 ("September Property").

11 6. According to the online records of the Clark County Recorder's Office as of
12 November 14, 2017, the September Property is encumbered by one of two (2) Abstracts of
13 Judgment recorded by the Defendants Trudi Lee Lytle and John Allen Lytle, as Trustees of the
14 Lytle Trust (hereafter "Lytles"), in August and September of 2016.

15 7. To date, the September Trust has not been a named party to any of the lawsuits
16 filed by the Lytles against the Rosemere Estates Property Owners Association and is not a debtor
17 to any judgment obtained by the Lytles.

18 8. The September Trust does not owe any money to the Lytles.

19 9. The Abstracts of Judgment are an unauthorized, improper and illegal cloud upon
20 title to the September Property.

21 10. Plaintiffs have filed suit in this case in order to remove the Abstracts of Judgment
22 wrongfully recorded against their Properties.

23 ///

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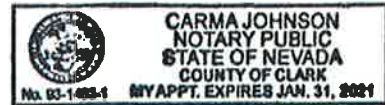
1
2 11. Further your affiant sayeth naught.
3

4 DATED this 29th day of November, 2017.
5

6 By: Sherman L. Kearn
7 Sherman L. Kearn
8

9 Subscribed and sworn to before me
10 this 29th day of the month of November, 2017.

11 Carma Johnson
Notary Public in and for the County and State



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8 **EIGHTH JUDICIAL DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 SEPTEMBER TRUST, DATED MARCH
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22 ROE ENTITIES I through V, inclusive,

22 Defendants.

Case No.:
Dept. No.:

**AFFIDAVIT OF GERRY R. ZOBRIST AS
TRUSTEE OF THE GERRY R. ZOBRIST
AND JOLIN G. ZOBRIST FAMILY
TRUST IN SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT
OR, IN THE ALTERNATIVE, MOTION
FOR JUDGMENT ON THE PLEADINGS**

23 State of Nevada)
24) ss.
25 County of Clark)

26 Gerry R. Zobrist, states under penalty of perjury:

27
28 1. I am a resident of Clark County, Nevada and over the age of 18.

1 2. I am one of the Trustees for the Gerry R. Zobrist and Jolin G. Zobrist Family
2 Trust (hereafter "Zobrist Trust").

3 3. I make this Affidavit in support of Plaintiffs' Motion for Summary Judgment or,
4 in the Alternative, Motion for Judgment on the Pleadings.

5 4. I have personal knowledge of the facts stated herein, except as to those matters
6 which are stated upon information and belief, and as to those matters I believe them to be true. I
7 am competent to testify to the same and would so testify if called upon as a witness.

8 5. The Zobrist Trust is the owner of the residential property in Clark County,
9 Nevada known as 1901 Rosemere Court, Las Vegas, Nevada 89117, Assessor's Parcel No. 163-
10 03-313-005 ("Zobrist Property").

11 6. According to a Preliminary Title Report obtained on August 29, 2017, the Zobrist
12 Property is encumbered by two (2) Abstracts of Judgment recorded by the Defendants Trudi Lee
13 Lytle and John Allen Lytle, as Trustees of the Lytle Trust (hereafter "Lyttles"), in August and
14 September of 2016.

15 7. To date, the Zobrist Trust has not been a named party to any of the lawsuits filed
16 by the Lyttles against the Rosemere Estates Property Owners Association and is not a debtor to
17 any judgment obtained by the Lyttles.

18 8. The Zobrist Trust does not owe any money to the Lyttles.

19 9. The Abstracts of Judgment are an unauthorized, improper and illegal cloud upon
20 title to the Zobrist Property.

21 10. Plaintiffs have filed suit in this case in order to remove the Abstracts of Judgment
22 wrongfully recorded against their Properties.

23 ///

26 ///

11. Further your affiant sayeth naught.

DATED this 29 day of November, 2017.

By: Gerry R. Zobrist
Gerry R. Zobrist

Subscribed and sworn to before me
this 29 day of the month of November, 2017.

N. Saville
Notary Public in and for the County and State



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

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

9 **EIGHTH JUDICIAL DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 SEPTEMBER TRUST, DATED MARCH
23, 1972; GERRY R. ZOBRIST AND
12 JOLIN G. ZOBRIST, AS TRUSTEES OF
THE GERRY R. ZOBRIST AND JOLIN G.
13 ZOBRIST FAMILY TRUST; RAYNALDO
G. SANDOVAL AND JULIE MARIE
14 SANDOVAL GEGEN, AS TRUSTEES OF
THE RAYNALDO G. AND EVELYN A.
15 SANDOVAL JOINT LIVING AND
DEVOLUTION TRUST DATED MAY 27,
1992; and DENNIS A. GEGEN AND
16 JULIE S. GEGEN, HUSBAND AND
WIFE, AS JOINT TENANTS,

17 Plaintiffs,

18 vs.

19 TRUDI LEE LYTLE AND JOHN ALLEN
20 LYTLE, AS TRUSTEES OF THE LYTLE
TRUST; JOHN DOES I through V; and
21 ROE ENTITIES I through V, inclusive,

22 Defendants.

Case No.:
Dept. No.:

**AFFIDAVIT OF JULIE MARIE
SANDOVAL GEGEN AS TRUSTEE OF
THE RAYNALDO G. AND EVELYN A.
SANDOVAL JOINT LIVING AND
DEVOLUTION TRUST DATED MAY 27,
1992 TRUST AND INDIVIDUALLY AS A
JOINT TENANT WITH DENNIS A.
GEGEN IN SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT
OR, IN THE ALTERNATIVE, MOTION
FOR JUDGMENT ON THE PLEADINGS**

23 State of Nevada)
24) ss.
25 County of Clark)

26 Julie Marie Sandoval Gegen, states under penalty of perjury:

27
28 1. I am a resident of Clark County, Nevada and over the age of 18.

1 2. I am one of the Trustees for the Raynaldo G. and Evelyn A. Sandoval Joint Living
2 and Devolution Trust Dated May 27, 1992 (hereafter "Sandoval Trust").

3 3. I am also a Joint Tenant with my husband Dennis A. Gegen as joint owners
4 (hereafter "Gegens") of the residential property in Clark County, Nevada known as 1831
5 Rosemere Court, Las Vegas, Nevada 89117, Assessor's Parcel No. 163-03-313-003 ("Gegen
6 Property").

7 4. I make this Affidavit in support of Plaintiffs' Motion for Summary Judgment or,
8 in the Alternative, Motion for Judgment on the Pleadings.

9 5. I have personal knowledge of the facts stated herein, except as to those matters
10 which are stated upon information and belief, and as to those matters I believe them to be true. I
11 am competent to testify to the same and would so testify if called upon as a witness.

12 6. The Sandoval Trust is the owner of the residential property in Clark County,
13 Nevada known as 1860 Rosemere Court, Las Vegas, Nevada 89117, Assessor's Parcel No. 163-
14 03-313-001 ("Sandoval Property").

15 7. According to the online records of the Clark County Recorder's Office as of
16 November 14, 2017, the Sandoval Property is encumbered by one of two (2) Abstracts of
17 Judgment recorded by the Defendants Trudi Lee Lytle and John Allen Lytle, as Trustees of the
18 Lytle Trust (hereafter "Lyttles") in August of 2016 and the Gegen Property is encumbered by an
19 Abstract of Judgment recorded by the Lyttles in September 2016.

20 8. To date, neither the Sandoval Trust nor the Gegens have been named parties to
21 any of the lawsuits filed by the Lyttles against the Rosemere Estates Property Owners Association
22 and are not debtors to any judgment obtained by the Lyttles.

23 9. The Sandoval Trust does not owe any money to the Lyttles. The Gegens do not
24 owe any money to the Lyttles.

25 10. The Abstracts of Judgment are an unauthorized, improper and illegal cloud upon
26 title to the Sandoval Property and the Gegen Property.

1 11. Plaintiffs have filed suit in this case in order to remove the Abstracts of Judgment
2 wrongfully recorded against their Properties.

3 12. Further your affiant sayeth naught.

4 DATED this 29 day of November, 2017.

5
6 By: Julie Marie Sandoval Gegen
7

8 Subscribed and sworn to before me
9 this 29 day of the month of November, 2017.

10 N Saville
11 Notary Public in and for the County and State



DECL
CHRISTENSEN JAMES & MARTIN
WESLEY J. SMITH, ESQ.
Nevada Bar No. 11871
LAURA J. WOLFF, ESQ.
Nevada Bar No. 6869
7440 W. Sahara Avenue
Las Vegas, Nevada 89117
Tel.: (702) 255-1718
Facsimile: (702) 255-0871
Email: wes@cjmlv.com; ljw@cjmlv.com
Attorneys for Plaintiffs

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.:
Dept. No.:

DECLARATION OF COUNSEL IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT, OR IN THE
ALTERNATIVE, MOTION FOR
JUDGMENT ON THE PLEADINGS

DECLARATION OF WESLEY J. SMITH, ESQ.

STATE OF NEVADA)

:ss.

COUNTY OF CLARK)

Wesley J. Smith, Esq., being first duly sworn and under penalty of perjury of the laws of
the United States of America and the State of Nevada:

1 1. I am at least 18 years of age and of sound mind. I personally prepared this
2 Declaration and I am familiar with all factual statements it contains, which I know to be true and
3 correct, except for any statements made on information and belief, which statements I believe to
4 be true. I am competent to testify to the same and would so testify if called upon as a witness.

5 2. I am an attorney licensed to practice before all state and federal courts of the State
6 of Nevada.

7 3. I am a partner and shareholder in Christensen James & Martin, counsel for the
8 Plaintiffs, September Trust, dated March 23, 1972 ("September Trust"), Gerry R. Zobrist and
9 Jolin G. Zobrist, as Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust ("Zobrist
10 Trust"), Raynaldo G. Sandoval and Jule Marie Sandoval Gegen, as Trustees of the Raynaldo G.
11 and Evelyn A. Sandoval Joint Living and Devolution Trust Dated May 27, 1992 ("Sandoval
12 Trust"), and Dennis A. Gegen and Julie S. Gegen, Husband and Wife as Joint Tenants (hereafter
13 "Gegen") (hereafter September Trust, Zobrist Trust, Sandoval Trust and Gegen may be
14 collectively referred to as "Plaintiffs").
15

16 4. I make this Declaration in support of Plaintiffs' Motion for Summary Judgment,
17 Or in the Alternative, Motion for Judgment on the Pleadings ("Motion").
18

19 5. I reviewed the online records of the Clark County Recorder's Office, and I found
20 and printed the following records from that website:

- 21 a. The Grant, Bargain, Sale Deed naming the September Trust as owner of that
22 residential property in Clark County, Nevada known as 1861 Rosemere Court,
23 Las Vegas, Nevada 89117, Assessor's Parcel No. 163-03-313-004
24 ("September Property"). A true and correct copy of the Grant Bargain Sale
25 Deed is attached to the Motion as Exhibit "1".
26
27
28

1 b. The Grant, Bargain, Sale Deed naming the Zobrist Trust as the owner of the
2 residential property in Clark County, Nevada known as 1901 Rosemere Court,
3 Las Vegas, Nevada 89117, Assessor's Parcel No. 163-03-313-005 ("Zobrist
4 Property"). A true and correct copy of the Grant, Bargain, Sale Deed is
5 attached to the Motion as Exhibit "2".

6 c. The Quitclaim Deed naming the Sandoval Trust as the owner of the residential
7 property in Clark County, Nevada known as 1860 Rosemere Court, Las
8 Vegas, Nevada 89117, Assessor's Parcel No. 163-03-313-001 ("Sandoval
9 Property"). A true and correct copy of the Quitclaim Deed is attached to the
10 Motion as Exhibit "3".

11 d. The Grant, Bargain, Sale Deed naming Gegen as the owner of the residential
12 property in Clark County, Nevada known as 1831 Rosemere Court, Las
13 Vegas, Nevada 89117, Assessor's Parcel No. 163-03-313-003 ("Gegen
14 Property"). A true and correct copy of the Grant, Bargain, Sale Deed is
15 attached to the Motion as Exhibit "4".
16

17
18 6. The Plaintiffs' Properties are located in the Rosemere Estates subdivision
19 ("Rosemere Subdivision" or "Subdivision"), wherein there are nine (9) lots and/or properties.
20 See Exhibits 1-4.

21 7. A true and correct copy of the CC&R's for the Rosemere Association is attached
22 to the Motion as Exhibit "5".

23 8. A true and correct copy of the Lytles' Complaint filed in the suit against the
24 Rosemere Association directly in Case No. A-09-593497-C ("Rosemere Litigation I") is attached
25 to the Motion as Exhibit "6".
26

1 9. A true and correct copy of the Order Granting Summary Judgment in the
2 Rosemere Litigation I is attached to the Motion as Ex. "7".

3 10. True and correct copies of the Abstracts of Judgment filed in the Rosemere
4 Litigation I and recorded at the Clark County Nevada Recorder's Office are attached to the
5 Motion as Exhibit "8".

6 11. A true and correct copy of the Motion for Partial Summary Judgment filed in the
7 the Bouldens and the Lamothes lawsuit (Case No. A-16-747900-C) ("BL Lawsuit") is attached
8 to the Motion as Exhibit "9".

9 12. A true and correct copy of the BL Lawsuit Summary Judgment Order is attached
10 to the Motion as Exhibit "10".

11 13. True and correct copies of the Lien Releases filed by the Lytles in the Clark
12 County Recorder's Office are attached to the Motion as Exhibit "11".

13 14. In 2010, the Lytles filed another suit against the Rosemere Association directly in
14 Case No. A-10-631355-C ("Rosemere Litigation II"). True and correct copies of the Abstracts of
15 Judgment filed in the Rosemere Litigation II are attached to the Motion as Exhibit "12".

16 15. The Lytles filed a third case (Case No. A-15-716420-C) against the Association
17 ("Rosemere Litigation III"). A true and correct copy of the Complaint and Errata filed in the
18 Rosemere Litigation III are attached to the Motion as Exhibit "13".

19 16. A true and correct copy of the Order Granting Summary Judgment entered in the
20 Rosemere Litigation III is attached to the Motion as Exhibit "14".

21 17. A true and correct copy of the Order Granting Motion for Attorney's Fees in the
22 Rosemere Litigation III is attached to the Motion as Exhibit "15".

23 18. Although the this office and the Lytles' attorney have participated in settlement
24 discussions and the Plaintiffs have requested the same relief granted to the Bouldens and
25

1 Lamoths, as of the date of filing this Motion, the Lytles have not agreed to release the Abstracts
2 of Judgment wrongfully recorded against the Plaintiffs' Properties.

3 19. To my knowledge, Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle
4 Trust, are not minors, incompetents or in the military service, or otherwise exempted under the
5 Servicemembers' Civil Relief Act, 50 U.S.C. § 501, et seq.

6 Further your affiant sayeth naught.

7 DATED this 29th day of November, 2017.

8 /s/ Wesley J. Smith
9 Wesley J. Smith, Esq.

Exhibit 1

Exhibit 1

(3)

APN: 163-03-313-004

**MAIL TAX NOTICE/BILL/
RECORDED DEED TO:
September Trust
1861 Rosemere Court
Las Vegas, NV 89117**

Space Above this Line For Recorder's Use

GRANT, BARGAIN, SALE DEED

The undersigned grantors:

Sherman L. Kearl and Karen Dee Kearl, Trustees of the Sherman
Kearl Family Trust dated March 23, 1972, and as amended and
restated on August 15, 1994

do hereby convey, grant, bargain, sell and warrant to the following grantees:

September Trust, dated March 23, 1972,

the grantor's interest in the real property located in the County of Clark, State of Nevada described as follows:

Lot Four (4) of Rosemere Court, as shown by map thereof on file in Book 59 of Plats,
Page 58 in the Office of the County Recorder of Clark County, Nevada.

(And more commonly known as 1861 Rosemere Court, Las Vegas, NV 89117).

The property is conveyed with all warranties of title (subject to each encumbrance, covenant, restriction, reservation and right-of-way of record), together with each and every tenement, hereditament, and appurtenance thereof.

The grantee(s), as Trustee(s) of the above-referenced Trust, may sell, encumber, or otherwise transfer said property, or any interest therein, and no person dealing with said Trustee(s) has any duty to inquire as to the terms of the Trust or as to the application of the proceeds from the sale, transfer, or encumbrance hereof.

Grant, Bargain, Sale Deed

The undersigned grantors, under penalties of perjury, declares that the actual consideration received for this conveyance was none.

DATED: JUN 22 2009

GRANTOR:

SHERMAN KEARL FAMILY TRUST:

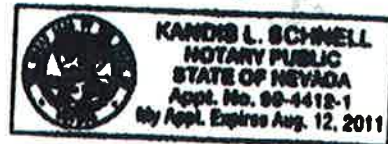
By: Sherman L. Kearl
Sherman L. Kearl, Trustee

By: Karen Dee Kearl
Karen Dee Kearl, Trustee

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On this _____ day of JUN 22 2009, personally appeared before me, a Notary Public, **Sherman L. Kearl and Karen Dee Kearl**, who are personally known or proved to me to be the persons whose names are subscribed to the above instrument and who acknowledged to me that they signed the instrument.

Kandis L. Schnell
NOTARY PUBLIC



**STATE OF NEVADA
DECLARATION OF VALUE**

1. Assessor Parcel Number(s)

(a) 163-03-313-004

(b) _____

(c) _____

(d) _____

FOR RECORDERS OPTIONAL USE ONLY

Document Instrument #: _____

Book: _____

Page: _____

Date of Recording: _____

Notes: _____

2. Type of Property:

(a) ☐ Vacant Lot(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 _____

3. Total Value/Sales Price of Property

\$ _____

Deed in Lieu of Foreclosure Only (value of Property) (_____)

Transfer Tax Value

\$ _____

Real Property Transfer Tax Due

\$ _____

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section 7 _____

b. Explain Reason for Exemption: Transfer to Trust; no consideration.

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 _____

Capacity: Grantor

Signature _____

Capacity: Grantee
SELLER (GRANTOR) INFORMATION
(Required)
Print Name: Sherman L. KearlAddress: 1861 Rosemere Ct.City: Las VegasState: NV Zip: 89117
BUYER (GRANTEE) INFORMATION
(Required)
Print Name: September TrustAddress: SAME

City: _____

State: _____

Zip: _____

Company/Person Requesting Recording (required if not seller or buyer)

Evans & Associates
3230 S. Buffalo, Suite 108
Las Vegas, NV 89117

Exhibit 2

Exhibit 2

STATE OF NEVADA
DECLARATION OF VALUE

20010416
00190

1. Assessor Parcel Number(s)

a) 163-03-113-005
b) _____
c) _____
d) _____

FOR RECORDERS USE ONLY

Documentation Reviewed by: _____
Type of Documentation: _____
Assessor's Tag: _____
Recording Deputy: W

2. Type of Property:

a) ☐ Vacant Land b) ☐ Single Fam. Res.
c) ☐ Condominium d) ☐ 2-4 Plex
e) ☐ Apt. Bldg f) ☐ Comm/Instl
g) ☐ Agricultural h) ☐ Mobile Home
i) ☐ Other _____

3. Total Value/Sales Price of Property

\$ _____

Deduct Assessed Liens and/or Encumbrances
(Recording Information on assumed amount: Book/Instrument # _____)

4. Taxable Value (per NRS 375.010, Section 2):

\$ _____

Real Property Transfer Tax Due

\$ _____

5. Exemption Claimant:

a. Transfer Tax Exemption per NRS 375.030, Section _____, NAC 375.030

b. Explain Reason for Exemption:

transferring title from name of individuals

to name of Family Trust

6. Partial Interest: Percentage being transferred: _____ %

The undersigned Seller (Grantor/Owner) declares and acknowledges, under penalty of perjury, pursuant to NRS 375.000 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 1/2% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

SELLER (GRANTOR) INFORMATION

Seller Signature: [Signature]

Print Name: Cassy E. Zobrist

Address: Jolin E. Zobrist

Address: 1901 Rosemary Court

City: Las Vegas

State: NV

Zip: 89117

Telephone: () 702-300-4326

Capacity: husband and wife

BUYER (GRANTEE) INFORMATION

Buyer Signature: [Signature]

Print Name: Cassy E. Zobrist

Address: Jolin E. Zobrist, Trustee

Address: 1901 Rosemary Court

City: Las Vegas

State: NV

Zip: 89117

Telephone: () 702-300-4226

Capacity: Trustee

COMPANY REQUESTING RECORDING

Co. Name: _____ Escrow #: _____
(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

190

COPY

20010416
00190

21 A.D.R.T.T. 5

11/16/03 2:30 PM

GRANT, BARGAIN, SALE DEED

THIS INSTRUMENT WITNESSETH That Gerry R Zobrist and Jolin G Zobrist, husband and wife
as joint tenants

FOR A VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, do hereby Grant, Bargain,
Sell and Convey to Gerry R Zobrist and Jolin G Zobrist, Trustees of the Gerry R Zobrist and
Jolin G Zobrist Family Trust

all that real property situated in the _____ County of Clark

State of Nevada, Bounded and described as follows:

Lot Five (5) of Rosemere Court, as shown by map thereof on file in Book 59 of
Plats, Page 58, in the Office of the County Recorder, Clark County, Nevada

Together with and reserving therefrom an easement for ingress and egress and public utility
easement as shown on said map of Rosemere Court

Together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise
appertaining.

Witness our hand this 9th day of April, 2001

STATE OF NEVADA }
COUNTY OF Clark } ss.

Gerry R Zobrist
Jolin G Zobrist

On April 9, 2001

personally appeared before me, a Notary Public,
Gerry R Zobrist and Jolin G Zobrist

personally known (or proved) to me to be the person whose
name is subscribed to the above instrument,
who acknowledged that he X executed the above
instrument.

Signature [Signature]
(Notary Public)



ESCROW NO.)
ORDER NO.)
WHEN RECORDED MAIL TO: John Zobrist
1801 Rosemere Court, Las Vegas, NV 89107

CLARK COUNTY, NEVADA
JUDITH A. VANDEVER, RECORDER
RECORDED AT REQUEST OF:
LAWYERS TITLE OF NEVADA
04-16-2001 00190 010
BOOK 20010416 PAGE 00190
FEE: 7.00 AMT. EXH005

FORM 101

AA000120

Exhibit 3

Exhibit 3

4-1

APN: 163-03-313-001

RECORDING REQUESTED BY:
BOYCE & GIANNI, LLP
1701 N. Green Valley Pkwy., Suite 8-A
Henderson, Nevada 89074

WHEN RECORDED MAIL TO:
MAIL TAX STATEMENTS TO:
Raynaldo G. and Evelyn A. Sandoval
Joint Living and Devolution Trust
1860 Rosemere Court
Las Vegas, Nevada 89117

Inst #: 20160728-0002848
Fees: \$19.00 N/C Fees: \$0.00
RPTT: \$0.00 Ex: #007
07/28/2016 09:35:40 AM
Receipt #: 2831006
Requestor:
JUNES LEGAL SERVICES
Recorded By: TAH Pgs: 4
DEBBIE CONWAY
CLARK COUNTY RECORDER

QUITCLAIM DEED

For good and valuable consideration, the receipt of which is hereby acknowledged,

RAYNALDO G. SANDOVAL, Trustee of the RAYNALDO G. AND EVELYN A. SANDOVAL JOINT LIVING AND DEVOLUTION TRUST DATED MAY 27, 1992, does hereby quitclaim to

RAYNALDO G. SANDOVAL and JULIE MARIE SANDOVAL GEGEN, as Trustees of the RAYNALDO G. AND EVELYN A. SANDOVAL JOINT LIVING AND DEVOLUTION TRUST DATED MAY 27, 1992 (Grantee's address: 1860 Rosemere Court, Las Vegas, Nevada 89117), the following described real property in the State of Nevada, County of Clark:

SEE LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT "A"
AND INCORPORATED HEREIN BY REFERENCE

Commonly known as: 1860 Rosemere Court, Las Vegas, Nevada 89117

Subject To: 1. Taxes for the current fiscal year.
2. Covenants, Conditions, Restrictions, Reservations, Rights of Way and Easements now of record.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

DATED this 6 day of July, 2016.

RAYNALDO G. AND EVELYN A. SANDOVAL JOINT LIVING
AND DEVOLUTION TRUST DATED MAY 27, 1992


RAYNALDO G. SANDOVAL, Trustee

STATE OF NEVADA)

) ss

COUNTY OF CLARK)

On this 16th day of JULY, 2016, before me, a notary public, personally appeared RAYNALDO G. SANDOVAL who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person or entity upon behalf of which person acted, executed the instrument.


NOTARY PUBLIC



ASSESSOR'S COPY

EXHIBIT "A"
Legal Description

APN: 163-03-313-001

**LOT ONE (1) OF ROSEMERE COURT, AS SHOWN BY MAP THEREOF ON FILE IN BOOK
59 OF PLATS, PAGE 58, IN THE OFFICE OF THE COUNTY RECORDER, CLARK COUNTY,
NEVADA.**

ASSESSOR'S COPY

**STATE OF NEVADA
DECLARATION OF VALUE**

1. Assessor Parcel Number(s)

a) 163-03-313-001

b) _____

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"/> Com'l/Ind'l |
| g) <input type="checkbox"/> Agricultural | h) <input type="checkbox"/> Mobile Home |
| i) <input type="checkbox"/> Other: | |

FOR RECORDER'S OPTIONAL USE ONLY

Doc./Inst. #: _____

Book: _____ Page: _____

Date of Recording: _____

Notes: _____

3. a) Total Value/Sales Price of Property:

\$ N/A

b) Deed in Lieu of Foreclosure Only (value of property):

(_____)

c) Transfer Tax Value:

\$ _____

d) Real Property Transfer Tax Due:

\$ _____

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section 007

b. Explain Reason for Exemption:

**THIS IS A TRANSFER OF TITLE TO A TRUST
WITH NO CONSIDERATION**

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: _____

Capacity: Grantor

Signature: _____

Capacity: Grantee

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

Print Name: Raynaldo G. and Evelyn A.
Sandoval Joint Living and
Devolution Trust

Address: 1860 Rosemere Court

City: Las Vegas

State: NV Zip: 89117

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

Print Name: Raynaldo G. and Evelyn A.
Sandoval Joint Living and
Devolution Trust

Address: 1860 Rosemere Court

City: Las Vegas

State: NV Zip: 89117

COMPANY REQUESTING RECORDING (required if not seller or buyer)

Print Name: BOYCE & GIANNI, LLP

Escrow #: N/A

Address: 1701 N. Green Valley Pkwy., Suite 8-A

City, State, Zip: Henderson, Nevada 89074

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

AA000125

Exhibit 4

Exhibit 4

Inst #: 20150923-0002560
Fees: \$20.00 N/C Fee: \$0.00
RPTT: \$892.50 Ex: #
09/23/2015 02:48:47 PM
Receipt #: 2561114
Requestor:
CHICAGO TITLE LAS VEGAS
Recorded By: CDE Pgs: 5
DEBBIE CONWAY
CLARK COUNTY RECORDER

ESCROW NO: 15040132-148-SAB

APN: 163-03-313-003
Affix R.P.T.T. \$ 892.50

**WHEN RECORDED MAIL TO and
MAIL TAX STATEMENT TO:
DENNIS A. GEGEN AND JULIE S. GEGEN
1831 ROSEMERE COURT
LAS VEGAS, NV 89117**

ESCROW NO: 15040132-148-SAB

GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH: That

John C. Haehn, a married man as his sole and separate property and
Cynthia Ann Selcer, an unmarried woman

in consideration of \$10.00 and other valuable consideration, the receipt of which is hereby
acknowledged, do hereby Grant, Bargain, Sell and Convey to

Dennis A. Gegen and Julie S. Gegen, husband and wife, as Joint Tenants

all that real property situated in the County of Clark, State of Nevada, bounded and described as
follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Subject to: 1. Taxes for the current fiscal year, paid current.
2. Conditions, covenants, restrictions, reservations, rights, rights of way and
easements now of record, if any.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging
or in anywise appertaining.

Witness my/our hand(s) this 22nd day of September, 2015.

SIGNED IN COUNTERPART

John C. Haehn

Cynthia Ann Selcer
Cynthia Ann Selcer

STATE OF NORTH DAKOTA

COUNTY OF CASS) ss.

On this 22nd day of Sept, 2015

appeared before me, a Notary Public,

CYNTHIA ANN SELCER

personally known or proven to me to
be the person(s) whose name(s) is/are
subscribed to the above instrument,
who acknowledged that he/she/they
executed the instrument for the
purposes therein contained.

Mark D. Mason

Notary Public

My commission expires: 10-23-2018



Witness my/our hand(s) this 22 day of September, 2015.

John C. Haehn
John C. Haehn

SIGNED IN COUNTERPART
Cynthia Ann Selcer

STATE OF Utah)
) ss.
COUNTY OF Washington

On this 9/22/2015
appeared before me, a Notary Public,
John C. Haehn



personally known or proven to me to
be the person(s) whose name(s) ~~is~~ are
subscribed to the above instrument,
who acknowledged that ~~he~~ she/they
executed the instrument for the
purposes therein contained.

Jocelyn Waters
Notary Public

My commission expires: 3/12/2019

ESCROW NO: 15040132-148-SAB

EXHIBIT A

**LOT THREE (3) OF ROSEMERE COURT, AS SHOWN BY MAP THEREOF ON FILE IN
BOOK 59 OF PLATS, PAGE 58 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK
COUNTY, NEVADA.**

ASSESSOR'S COPY

**STATE OF NEVADA
DECLARATION OF VALUE FORM**

1. Assessor Parcel Number(s)

a) 163-03-313-003

b)

c)

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 RECORDER'S OPTIONAL USE ONLY

Book: _____ Page: _____

Date of Recording: _____

Notes: _____

3. Total Value/Sales Price of Property:

\$175,000.00

Deed in Lieu of Foreclosure Only (value of property):

()

Transfer Tax Value:

\$175,000.00

Real Property Transfer Tax Due:

\$ 892.50

4. If Exemption Claimed:

a. Transfer Tax Exemption, per NRS 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 _____

Capacity Grantor

Signature Dennis A. Gegen

Capacity Grantee

SELLER (GRANTOR) INFORMATION
(REQUIRED)

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name John C. Hachn and Cynthia Ann

Print Name: Dennis A. Gegen

Seleer

Address: 2664 W 290 N

Address: 1831 Rosemere Court

City, St., Zip: Hurricane, UT 84737

City, St., Zip: Las Vegas, NV 89117

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

Print Name: Chicago Title of Nevada, Inc.

Escrow #: 15040132-148

Address: 500 N. Rainbow Blvd

City/State/Zip: Las Vegas, NV 89107

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

AA000131

Exhibit 5

Exhibit 5

7 4 0 1 0 1 0 1 2 4 1

4

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
(CC and R's)

This Declaration of Covenants, Conditions and Restrictions made this 4th Day of Jan, 1994 by Baughman & Turner Pension Trust hereinafter referred to as "Subdivider", owner in fee simple of the land situated in the City of Las Vegas, County of Clark, State of Nevada, described as follows:

Lots 1 through 9 of Rosemere Court, a subdivision, recorded in Book 59 of Plats, Page 58, Clark County Records, Nevada.

WHEREAS, it is the desire and intention of Subdivider to sell the land described above and to impose on it mutual, beneficial covenants, conditions and restrictions under a general plan or scheme of improvement for the benefit of all the land described above and the future owners of the lots comprising said land,

NOW, THEREFORE, Subdivider hereby declares that all of the land described above is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved subject to the following covenants, conditions and restrictions, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of said land and are established and agreed upon for the attractiveness of said land and lots and every part thereof. All of such covenants, conditions and restrictions shall run with the land and shall be binding on the Subdivider and on all of its heirs, successors and assigns and on all other parties having or occupying any right, title, or interest in the described land or any part thereof, and on all of their heirs, successors and assigns.

A breach or violation of these CC & R's or any re-entry by reason of such breach or any liens established hereunder shall not defeat or render invalid or modify in any way the lien of any mortgage or deed of trust made in good faith and for value as to said lots or PROPERTY or any part thereof; that these CC & R's shall be binding and effective against any owner of said PROPERTY whose title thereof is acquired by foreclosure, trustee's sale or otherwise.

1. Lots shall be used for private one-family residential purposes exclusively. Customary out-buildings including guest house, hobby house, private garages or carports may be erected or maintained therein, consistent with City of Las Vegas Zoning Ordinances.

2. All lavatories and toilets shall be built indoors and be connected with the existing sewer system.

3. No aerial transmission or reception of television or radio signals shall be maintained on the roof of any structure within subdivision. In addition, no cooling or heating units shall be visible on the roof of any structure within subdivision.

4. No rubbish, brush, weeds, undergrowth or debris of any kind or character shall ever be placed or permitted to accumulate upon said lots so as to render said premises a fire hazard, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity or to the occupants thereof. Trash containers shall be visible on days of trash pick-up only. The Owner of the lot, for himself, his successors and assigns agrees to care for, cultivate, prune and maintain in good condition any and all trees, lawns and shrubs.

5. No odors shall be permitted to arise therefrom so as to render any such lot unsanitary, unsightly, offensive or detrimental to any other lot and no nuisance shall be permitted to exist or operate upon any lot so as to be offensive or detrimental to any other lot or to the occupants thereof; and without limiting the generality of any of the foregoing provisions, no horns, whistles, bells or other sound devices, except devices used exclusively for security purposes, shall be located, used or placed upon any lots. Stereo speakers may be used at reasonable volume levels.

No structure (including but not limited to dwelling units, garages, carports, walls and fences) shall be permitted to fall into disrepair and all structures shall at all times be kept in good condition and repair and adequately painted or otherwise finished. Any and all repairs, redecorations, modifications or additions, interior and exterior, shall fully comply with all restrictions.

7. No owner shall permit any thing or condition to exist upon any lot which shall induce, breed or harbor infectious plant disease or noxious insects.

8. For continuity of the neighborhood appearance, every single-family dwelling erected shall be of Spanish, Moorish, Mediterranean or similar-style architecture, and shall have a tile roof, face into the cul-de-sac and contain not less than 3,000 square feet of floor space for one-story homes and 3,500 square feet of floor space for two-story homes, exclusive of basements, porches, patios, garages, carports, guest or hobby houses.

9. Driveways for Lots 1 and 9 must enter the cul-de-sac and ~~exit~~ the entrance street.

10. Building plans of residences to be erected shall be approved by Subdivider prior to start of construction.

11. Easements for installation and maintenance of utilities and drainage facilities have been conveyed as shown on the recorded subdivision plat and otherwise of record.

12. No billboards, signs, or advertising of any kind excepting a conventional "for sale" or "for rent" sign not larger than two feet by two feet shall be erected or maintained upon any of said lots without the written consent of Subdivider.

13. No animals or fowl, other than household pets, shall be kept or maintained on said property or any portion thereof. At any one time the total number of household pets shall not exceed four. No horses shall be allowed within the subdivision at any time.

14. Each Owner of a lot agrees for himself and his successors and assigns that he will not in any way interfere with the natural or established drainage of water over his lot from adjoining or other lots in said subdivision, or that he will make adequate provisions for proper drainage in the event it is necessary to change the natural or established flow of water drainage over his lot. For the purposes herein, natural drainage is defined as the drainage which occurred or which would occur at the time the overall grading of said subdivision, including the finish grading of each lot in said parcel was completed by the Subdivider.

15. Landscaping in front of a residence shall be completed within three (3) months from completion of construction of that residence. Landscaping shall meet or surpass VA and FHLA standards.

16. No clotheslines shall be placed nor shall any clothes be hung in any manner whatsoever on any lot in a location visible from a public street.

16. No boat, trailer, mobile home, camper or commercial vehicles may be parked at any time within the private drive (street) area. In addition, no automobile, camper, mobile home, commercial vehicle, truck, boat or other equipment may be dismantled on any lot in an area visible from an adjoining property or the street area.

17. No boat, trailer, mobile home, camper, or commercial vehicle may be parked or stored at any time on any lot in an area visible from adjoining properties or streets. Additionally, no automobile, camper, mobile home, commercial vehicle, truck, boat or other equipment may be dismantled or stored on any lot in an area visible from adjoining properties or streets.

18. No commercial tools, equipment, commercial vehicles, structures or other commercial appurtenances shall be stored at any time on any lot.

19. Purchasers/Owners shall on an equal share basis, assume responsibility to maintain any and all off-site improvements which have been installed by Subdivider.

20. Purchasers/Owners or their successors in interest shall assume responsibility to maintain walls erected by Subdivider. Side and front walls shall be of the same type and color as presently installed and shall be erected within three months from completion of construction of house on said lot. Cost of side walls shall be agreed upon and equally shared by adjoining property owners. In the event side walls are already erected at time of purchase of lot, the Purchaser of that lot shall pay the adjoining lot owner who previously erected said wall one half (1/2) the cost as proven by his paid receipts. Payment shall be made within sixty (60) days from date of purchase of said lot.

21. A property owners committee shall be established by all owners of lots within the subdivision.

a. The committee shall determine the type and cost of landscaping on the four (4) exterior wall planters, and the entrance-way planters. The committee shall also determine the method and cost of watering and maintaining planters. All costs shall be equally shared by all owners of lots within the subdivision. In the event of any disagreement, the majority shall rule.

b. The exterior perimeter wall along the Oakley, Tonaya and El Parque frontage shall be maintained and/or repaired when appropriate, under the direction of the property owners committee. The costs to be equally shared by all 9 lot owners.

c. The Entrance Gate and it's related mechanical and electrical systems shall be maintained and/or repaired on an equal share basis by all lot owners.

d. The Private Drive (the interior street) used for ingress and egress purposes by all lots within the subdivision shall be maintained and/or repaired on an equal share basis by all owners of lots within the subdivision.

22. Construction trailers or mobile homes will not be permitted on any lot within the subdivision.

2 2 0 4 0 1 0 1 2 4 1

23. Each of the provisions of these covenants, conditions and restrictions shall be deemed independent and severable and the invalidity or partial invalidity of any provision or portion thereof, shall not effect validity or enforceability of any other provision.

24. Except as otherwise provided herein, Subdivider or any owner or owners of any of the lots shall have the right to enforce any or all of the provisions of the covenants, conditions and restrictions upon any other owner or owners. In order to enforce said provision or provisions, any appropriate judicial proceeding in law or in equity may be initiated and prosecuted by any such lot owner or owners against any other owner or owners.

25. Attorney's Fees: In any legal or equitable proceeding for the enforcement of or to restrain the violation of the Declaration of Covenants, Conditions and Restrictions or any provision thereof, the losing party or parties shall pay in such amount as may be fixed by the court in such proceeding.

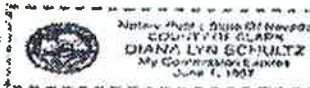
IN WITNESS WHEREOF, said Owner/Subdivider Baughman & Turner Pension Trust of Nevada, has hereto affixed their signatures.

Date: 1/4/94 Stephen F. Turner
Owner/Subdivider/Trustee

Date: 1-4-94 Richard J. Baughman
Owner/Subdivider/Trustee

On this 4th day of JANUARY, 1994,
before me, the undersigned, a Notary Public in
and for said County and State, Personally appeared

Stephen F. Turner & Richard J. Baughman



Diana Lyn Schultz
Notary Public in and for said County and State

(this area for official seal)

When Recorded Mail To:
Baughman & Turner, Inc.
1210 Elson Street
Las Vegas, NV 89102

4 of 4

CLARK COUNTY, NEVADA
JOAN L. SWIFT, RECORDED
RECORDED AT REQUEST OF:
BAUGHMAN & TURNER INC.
01-04-94 14:00 PDR 4
BOOK 940104 PAGE 0104
FEE: 10.00 RPT: .00

Exhibit 6

Exhibit 6

ORIGINAL

FILED

1 COMP
2 WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP
3 MICHAEL J. LEMCOOL, ESQ.
4 Nevada Bar No. 07061
5 3556 E. Russell Road, 2nd Floor
6 Las Vegas, NV 89120
7 Telephone: (702) 341-5200
8 Facsimile: (702) 341-5300

JUN 26 4 23 PM '09

Earl A. Lytle
CLERK OF THE COURT

Attorneys for Plaintiff, John Allen Lytle & Trudi Lee Lytle, as Trustees of the Lytle Trust

A-09-593497-C
205801



DISTRICT COURT

CLARK COUNTY, NEVADA

JOHN ALLEN LYTLE & TRUDI LEE
LYTLE, AS TRUSTEES
OF THE LYTLE TRUST,

Plaintiff,

vs.

ROSEMERE ESTATES PROPERTY
OWNERS ASSOCIATION, and DOES 1
through 10, inclusive

Defendants.

Case No.: A09593497C

Dept. No.: XI

COMPLAINT FOR TRIAL DE
NOVO PURSUANT TO NRS 38.330;
DECLARATORY RELIEF; AND
FOR A PERMANENT
INJUNCTION

ARBITRATION EXEMPT
(Appeal from Arbitration; Declaratory
Relief Requested)

COMES NOW Plaintiff, the LYTLE TRUST, by and through its Trustees, John Allen Lytle and Trudi Lee Lytle, herein by and through their attorneys, WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP, by Michael J. Lemcool, Esq., and for its Complaint against ROSEMERE ESTATES PROPERTY OWNERS ASSOCIATION (hereinafter, the "Association"), and DOES 1 through 10, inclusive, states unto this Court as follows:

1. That Plaintiff, the Lytle Trust, is the current owner of real property located in Clark County, Nevada, APN 163-03-313-009, and described as:

Lot Nine (9) of Rosemere Court, as shown by map thereof on file in Book 59, of Plats, Page 58, in the Office of the County Recorder of Clark County, Nevada.

Said property was previously owned by J. Allen Lytle and Trudi L. Lytle, the current Trustees of the Lytle Trust, having been purchased by deed recorded November 15, 1996. A true copy of said

-1-

COMPLAINT FOR TRIAL DE NOVO PURSUANT TO NRS 38.330

I:\V0755030\Plendings\Complaint-062609.wpd

RECEIVED

JUN 26 2009

CLERK OF THE COURT

AA000138

1 deed is attached hereto, and incorporated herein, as Exhibit "1".

2 2. That Defendant, the Association, at all times herein mentioned is comprised of
3 nine (9) owners of single family lots all as more particularly described in the recorded
4 Declaration of Covenants, Conditions and Restrictions ("CC&Rs") for the Association as
5 recorded in the official records of the Clark County Nevada Recorder's office. Plaintiff is
6 informed and believes, and based thereon alleges, that the original CC&Rs were recorded on
7 January 4, 1994, before title to any lot within the Association was conveyed by deed, and are
8 referenced in the deeds to all 9 properties located within the Association. A true copy of said
9 recorded CC&Rs is attached hereto, and incorporated herein, as Exhibit "2". A true copy of said
10 recorded map for Rosemere Court is attached hereto, and incorporated herein, as Exhibit "3".

11 3. The true names and capacities of Defendants sued herein as DOES 1-10,
12 inclusive, and each of them, are presently unknown to Plaintiff, and, therefore, they are sued
13 herein under fictitious names, and when the true names are discovered, Plaintiff will seek leave
14 to amend this Complaint and proceedings herein to substitute the true names of said Defendants.
15 Plaintiff is informed and believes and based thereon alleges that each of the Defendants
16 designated herein as a DOE is negligent or responsible in some manner for the events herein
17 referred to and negligently, carelessly, recklessly and in a manner that was grossly negligent and
18 willful and wanton, caused damages proximately thereby to the Plaintiff as herein alleged.

19 4. That Plaintiff is, and at all times herein mentioned was, and continues to be, the
20 record owner of the property located at 1930 Rosemere Court, Las Vegas, Nevada, which is
21 located within the boundaries of the Association.

22 5. That since the Association is comprised of only 9 units, the Association is
23 classified as a small planned community pursuant to NRS 116.1203, and is exempt from many of
24 the provisions of NRS Chapter 116.

25 6. By the terms of the CC&Rs, and as a result of the mutuality of restrictive
26 covenants running with the land for each of the 9 property owners, approval by 100% of the unit
27 owner is required to amend the terms of the CC&Rs.

28 7. That on or about July 2, 2007, an Amended and Restated CC&Rs were proposed

1 to the members of the Association. The proposed amended CC&Rs increased the complexity,
2 and size of the document, from 4 pages to 36 pages, and contained numerous additional
3 restrictions upon the members.

4 8. That the proposed amended CC&Rs were not agreed to by all owners, in fact less
5 than 67% thereof, with at least 3 owners specifically objecting to the proposed changes. A true
6 copy of the consent signature page is attached hereto as Exhibit "4".

7 9. That despite the failure to obtain the required unanimous approval for changing
8 the CC&Rs, the Association proceeded, on July 3, 2007, to record in the office of the Recorder
9 for Clark County, Nevada, the Amended and Restated CC&Rs. A true copy of the Certificate of
10 Officers used for recording said amended CC&Rs is attached hereto, and incorporated herein, as
11 Exhibit "5".

12 10. That the Association has threatened to apply the amended CC&Rs and their
13 restrictions against Plaintiff and its property, all to the detriment of Plaintiff.

14 11. That on or about September 26, 2008, Plaintiff brought a claim against the
15 Association regarding the interpretation, application and enforcement of the Association's
16 amended CC&Rs with the Nevada Real Estate Division ("NRED") as required by NRS 38.310.

17 12. That said dispute was arbitrated upon written stipulation of facts, documents, and
18 briefs of the parties, with the non-binding decision by the Arbitrator issued on or about May 4,
19 and June 1, 2009, and the Completion Certificate, required for filing this action, issued by the
20 NRED on June 4, 2009. A true copy of the Completion Certificate issued June 4, 2009 is
21 attached hereto, and incorporated herein, as Exhibit "6".

22 13. That said decision was erroneous in that, *inter alia*, it is contrary to Nevada law
23 regarding covenants recorded against and running with the land, contrary to the terms of the
24 originally recorded CC&Rs and, relied upon the authority to amend an Association's bylaws,
25 pursuant to NRS 116.3102, as granting the Association the inherent authority to amend the
26 CC&Rs upon a majority vote.

27 14. That there exists a controversy between Plaintiff and Defendant regarding the
28 interpretation, application and enforcement of the Association's CC&Rs and the Association's

1 implementation of the amended CC&Rs, requiring a determination by this Court and entry of
2 declaratory relief.

3 15. That prior to bringing the NRED claim, Plaintiff complained in good faith that the
4 original governing CC&Rs did not allow for the adoption and recording of the amended CC&Rs
5 upon less than 100% approval by the members.

6 16. That in retaliation for Plaintiff's good faith complaints, and in an effort to chill
7 Plaintiff's rights to bring the NRED action, the Board of Directors held a special member's
8 meeting on September 15, 2008, wherein an agenda item was to consider a civil action against
9 Plaintiff relating to actions brought by Plaintiff against the Association.

10 17. That said retaliation conducted by the Board of Directors is prohibited by NRS
11 116.31183.

12 18. That Plaintiff has suffered general damages including, but not limited to, damages
13 for breach of the CC&Rs as a result of the actions by the Association and its Board of Directors
14 in an amount in excess of Ten Thousand Dollars, the exact amount to be established at trial.

15 19. That Plaintiff has suffered special damages including, but not limited to, damages
16 for breach of the CC&Rs, for the costs involved for the generation of construction plans,
17 including architectural, engineering, and design, in an amount in excess of Ten Thousand
18 Dollars, the exact amount to be established at trial.

19 20. That the original CC&Rs provide for the award of reasonable attorney fees and
20 costs to a prevailing party.

21 WHEREFORE, Plaintiff prays that this Court:

22 A. Enter a Declaratory Judgment in favor of Plaintiff and against the Association
23 finding and declaring that amended CC&Rs were not properly adopted by the members of the
24 Association and are of no force and effect;

25 B. Enter a Permanent Injunction prohibiting the Association from amending the
26 Association's CC&Rs without the approval of all property owners;

27 C. Award Plaintiff general and special damages in an amount in excess of Ten
28 Thousand Dollars, the exact amount to be established at trial.

1 D. Award Plaintiff its attorney fees and costs for these entire proceedings in
2 accordance with the CC&Rs and/or any applicable law; and,

3 E. Award Plaintiff such further or other relief as this Court finds is just and proper in
4 the premises for a complete administration of justice.

5
6 Dated this 26th day of June, 2009.

7
8 WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP

9
10
11 By: 

12 MICHAEL J. LEMCOOL, ESQ.
13 Nevada Bar No. 07061
14 3356 E. Russell Road, 2nd Floor
15 Las Vegas, NV 89120
16 (702) 341-5200

17 Attorneys for Plaintiff, John Allen Lytle & Trudi Lee
18 Lytle, as Trustees of the Lytle Trust
19
20
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28

Legal Tabs Co. 1-800-322-3022

Recycled  Stock # EX-5-B

EXHIBIT 1

AA000143

STATE REV. 125.05

961115.02307

APR 163-03-313-009

GRANT, BARGAIN, SALE DEED

THIS INSTRUMENT WITNESSETH: That Justin A. England, an unmarried woman

FOR A VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, do hereby Grant, Bargain,
Sell and Convey to J. Allen Lytle and Trudi L. Lytle, husband and wife
as joint tenants

all that real property situated in the _____ County of Clark
State of Nevada, bounded and described as follows:

See Exhibit "A" attached hereto and by reference made a part hereof

- SPURCEY VS: 1. Taxes for the fiscal year 1996-97.
2. Covenants, conditions, restrictions, rights,
rights of way and easements now in record.

Together with all outcrops, easements, servitudes and appurtenances thereto belonging or in anywise appertaining.

Witness my hand and seal this 15th day of November, 1996

STATE OF NEVADA }
COUNTY OF Clark } ss.

On November 6, 1996
before me, a Notary Public, personally appeared

Justin A. England

personally known to me (or proved to me on the basis of
satisfactory evidence) to be the person whose name is
subscribed to this instrument and acknowledged that he
(she or they) executed it.

Signature _____
(Notary Public)

(Notarial Seal)



J. NOON
Notary Public - Nevada
Clark County
My Exp. 10/1/1999

RECORD NO:

96-10-2126 CTR

MAIL TAX STATEMENTS TO: Lytle 4705 Aladdin Lane
Las Vegas, NV 89102-0801

000016

EXHIBIT "A"
LEGAL DESCRIPTION

961115.02307

LOT NINE (9) OF ROSEMERE COURT, AS SHOWN BY MAP THEREOF ON FILE
IN BOOK 59, OF PLATS, PAGE 58, IN THE OFFICE OF THE COUNTY
RECORDER OF CLARK COUNTY, NEVADA.

TOGETHER WITH AND RESERVING THEREFROM AN EASEMENT FOR INGRESS AND
EGRESS AND PUBLIC UTILITY EASEMENT AS SHOWN ON SAID MAP OF
ROSEMERE COURT.

CLARK COUNTY, NEVADA
JUDITH A. VANDEVER, RECORDER
RECORDED AT REQUEST OF:
NEVADA TITLE COMPANY

11-15-96 16:24 DB1 2
BOOK 561115 INST 82387
FEE 0.00 RPTD 128.85

000047

7

2

Capital Talk Co. 1-800-322-3022

Recycled  Stock # BX-5-B

EXHIBIT 2

AA000146

94010401241

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
(CC and R's)

This Declaration of Covenants, Conditions and Restrictions made this 4th Day of Jan. 1972 by Baughman & Turner Pension Trust hereinafter referred to as "Subdivider", owner in fee simple of the land situated in the City of Las Vegas, County of Clark, State of Nevada, described as follows:

Lots 1 through 9 of Rosemere Court, a subdivision, recorded in Book 39 of Plans, Page 58, Clark County Records, Nevada.

WHEREAS, it is the desire and intention of Subdivider to sell the land described above and to impose on it mutual, beneficial covenants, conditions and restrictions under a general plan or scheme of improvement for the benefit of all the land described above and the future owners of the lots comprising said land.

NOW, THEREFORE, Subdivider hereby declares that all of the land described above is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved subject to the following covenants, conditions and restrictions, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of said land and are established and agreed upon for the attractiveness of said land and lots and every part thereof. All of such covenants, conditions and restrictions shall run with the land and shall be binding on the Subdivider and on all of its heirs, successors and assigns and on all other parties having or occupying any right, title, or interest in the described land or any part thereof, and on all of their heirs, successors and assigns.

A breach or violation of these CC & R's or any re-entry by reason of such breach or any liens established hereunder shall not defeat or render invalid or modify in any way the lien of any mortgage or deed of trust made in good faith and for value as to said lots or PROPERTY or any part thereof; that these CC & R's shall be binding and effective against any owner of said PROPERTY whose title thereof is acquired by foreclosure, trustee's sale or otherwise.

1. Lots shall be used for private one-family residential purposes exclusively. Customary out-buildings including guest house, bobby house, private garages or carports may be erected or maintained therein, consistent with City of Las Vegas Zoning Ordinances.

2. All lavatories and toilets shall be built indoors and be connected with the existing sewer system.

3. No antennas or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained on the roof of any structure within subdivision. In addition, no cooling or heating units shall be visible on the roof of any structure within subdivision.

4. No rubbish, brush, weeds, undergrowth or debris of any kind or character shall ever be placed or permitted to accumulate upon said lots so as to render said premises a fire hazard, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity of the occupants thereof. Trash containers shall be visible on days of trash pick-up only. The Owner of the lot, for himself, his successors and assigns agrees to care for, cultivate, prune and maintain in good condition any and all trees, lawns and shrubs.

5. No odors shall be permitted to arise therefrom so as to render any such lot unsanitary, unsightly, offensive or detrimental to any other lot and no nuisance shall be permitted to exist or operate upon any lot so as to be offensive or detrimental to any other lot or to the occupants thereof; and without limiting the generality of any of the foregoing provisions, no horns, whistles, bells or other sound devices, except devices used exclusively for security purposes, shall be located, used or placed upon any lots. Stereo speakers may be used at reasonable volume levels.

6. No structure (including but not limited to dwelling units, garages, carports, walls and fences) shall be permitted to fall into disrepair and all structures shall at all times be kept in good condition and repair and adequately painted or otherwise finished. Any and all repairs, redecoration, modifications or additions, interior and exterior, shall fully comply with all restrictions.

7. No owner shall permit any thing or condition to exist upon any lot which shall induce, breed or harbor infectious plant disease or noxious insects.

8. For continuity of the neighborhood appearance, every single-family dwelling erected shall be of Spanish, Moorish, Mediterranean or similar-style architecture, and shall have a tile roof, face into the cul-de-sac and contain not less than 3,000 square feet of floor space for one-story homes and 3,500 square feet of floor space for two-story homes, exclusive of basements, porches, patios, garages, carports, guest or hobby houses.

9. Driveways for Lots 1 and 9 must enter the cul-de-sac and face the entrance street.

10. Building plans of residences to be erected shall be approved by Subdivider prior to start of construction.

11. Easements for installation and maintenance of utilities and drainage facilities have been conveyed as shown on the recorded subdivision plat and otherwise of record.

12. No billboard, signs, or advertising of any kind excepting a conventional "for sale" or "for rent" sign not larger than two feet by two feet shall be erected or maintained upon any of said lots without the written consent of Subdivider.

13. No animals or fowl, other than household pets, shall be kept or maintained on said property or any portion thereof. At any one time the total number of household pets shall not exceed four. No horses shall be allowed within the subdivision at any time.

14. Each Owner of a lot agrees for himself and his successors and assigns that he will not in any way interfere with the natural or established drainage of water over his lot from adjoining or other lots in said subdivision, or that he will make adequate provisions for proper drainage in the event it is necessary to change the natural or established flow of water drainage over his lot. For the purpose hereof, "natural" drainage is defined as the drainage which occurred or which would occur at the time the overall grading of said subdivision, including the finish grading of each lot in said parcel was completed by the Subdivider.

15. Landscaping in front of a residence shall be completed within three (3) months from completion of construction of that residence. Landscaping shall meet or surpass VA and PFA standards.

16. No clotheslines shall be placed nor shall any clothes be hung in any manner whatsoever on any lot in a location visible from a public street.

16. No boat, trailer, mobile home, camper or commercial vehicles may be parked at any time within the private drive (street) area. In addition, no automobile, camper, mobile home, commercial vehicle, truck, boat or other equipment may be dismantled on any lot in an area visible from an adjoining property or the street area.

17. No boat, trailer, mobile home, camper, or commercial vehicle may be parked or stored at any time on any lot in an area visible from adjoining properties or streets. Additionally, no automobile, camper, mobile home, commercial vehicle, truck, boat or other equipment may be dismantled or stored on any lot in an area visible from adjoining properties or streets.

18. No commercial tools, equipment, commercial vehicles, structures or other commercial appurtenances shall be stored at any time on any lot.

19. Purchasers/Owners shall on an equal share basis, assume responsibility to maintain any and all off-site improvements which have been installed by Subdivider.

20. Purchasers/Owners or their successors in interest shall assume responsibility to maintain walls erected by Subdivider. Side and front walls shall be of the same type and color as presently installed and shall be erected within three months from completion of construction of houses on said lot. Cost of side walls shall be agreed-upon and equally shared by adjoining property owners. In the event side walls are already erected at time of purchase of lot, the Purchaser of that lot shall pay the adjoining lot owner who previously erected said wall one half (1/2) the cost as proven by his paid receipts. Payment shall be made within sixty (60) days from date of purchase of said lot.

21. A property owners committee shall be established by all owners of lots within the subdivision.

a. The committee shall determine the type and cost of landscaping on the four (4) exterior wall planters, and the entrance-way planters. The committee shall also determine the method and cost of watering and maintaining planters. All costs shall be equally shared by all owners of lots within the subdivision. In the event of any disagreement, the majority shall rule.

b. The exterior perimeter wall along the Oakley, Tenaya and El Parque frontage shall be maintained and/or repaired when appropriate, under the direction of the property owners committee. The costs to be equally shared by all 9 lot owners.

c. The Entrance Gate and it's related mechanical and electrical systems shall be maintained and/or repaired on an equal share basis by all lot owners.

d. The Private Drive (the interior street) used for ingress and egress purposes by all lot owners and the private sewer system within the Private Drive and easement area shall be maintained and/or repaired on an equal share basis by all owners of lots within the subdivision.

22. Construction trailers or mobile homes will not be permitted on any lot within the subdivision.

9 4 0 | 0 4 0 1 2 4 1

23. Each of the provisions of these covenants, conditions and restrictions shall be deemed independent and severable and the invalidity or partial invalidity of any provision or portion thereof, shall not effect validity or enforceability of any other provision.

24. Except as otherwise provided herein, Subdivider or any owner or owners of any of the lots shall have the right to enforce any or all of the provisions of the covenants, conditions and restrictions upon any other owner or owners. In order to enforce said provision or provisions, any appropriate judicial proceeding in law or in equity may be initiated and prosecuted by any such lot owner or owners against any other owner or owners.

25. Attorney's Fees: to any legal or equitable proceeding for the enforcement of or to restrain the violation of the Declaration of Covenants, Conditions and Restrictions or any provision thereof, the losing party or parties shall pay in such amount as may be fixed by the court in such proceeding.

IN WITNESS WHEREOF, said Owner/Subdivider Baughman & Turner Pension Trust of Nevada, has hereunto affixed their signatures.

Date: 1/4/94 Stephen F. Turner
Owner/Subdivider/Trustee Stephen F. Turner
Date: 1-4-94 Richard J. Baughman
Owner/Subdivider/Trustee Richard J. Baughman

On this 4th day of January, 1994,
before me, the undersigned, a Notary Public in
and for said County and State, Personally appeared

Stephen F. Turner & Richard J. Baughman



(this area for official seal)

Diana Lyn Schultz
Notary Public in and for said County and State

When Recorded Mail To:
Baughman & Turner, Inc.
1210 Rinsen Street
Las Vegas, NV 89102

CLARK COUNTY, NEVADA
JOAN L. SWIFT, RECORDER
RECORDED AT REQUEST OF:
BAUGHMAN & TURNER, INC.
01-04-94 14180 PDR
6000 418184 PDR 01841
FEE 10.00 WITH

Legal Texts Co. 1-800-322-3022

Recycled  Stock # EX-5-B

EXHIBIT 3

AA000151

Legal Tans Co 1-800-522-3022

Recycled  Stock # EX06-8

EXHIBIT 4

AA000154

IN WITNESS WHEREOF, the owners of record of lots 1 thru 9 of the Property, have affixed their signatures to the Rosemere Estates Property Owners Association AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS AND RESERVATIONS OR EASEMENTS:

1. 1860 Rosemere Ct. Ray/Evelyn Sandoval date: 7-2-07

2. 1830 Rosemere Ct. Jacques/Linda Linaoche date: _____

3. 1831 Rosemere Ct. Jerry/Lou Hachn date: 7-2-07

4. 1861 Rosemere Ct. Sherman/Karen Kearl date: 7-2-07

5. 1901 Rosemere Ct. Gerry/Judy Zobyist date: 7-2-07

6. 1931 Rosemere Ct. Chris/Karen Korras date: 7-2-07

7. 1961 Rosemere Ct. Orville/Johnnie McCumber date: 7-2-07

8. 1960 Rosemere Ct. Carl Canter/Marge Boulden date: _____

9. 1930 Rosemere Ct. Allen/Trudi Lytle date: _____

State of Nevada, County of Clark

On this 2nd of July, 2007, personally appeared before me, a Notary Public in and for the County of Clark, State of Nevada, duly Commissioned and sworn, the owners of lots 1 thru 9 as indicated, personally known (or proved) to me to be the persons whose names are subscribed to the above instrument, and who acknowledged to me that he/she executed the same freely and voluntarily and for the uses and purposes therein mentioned.



33



Legal Table Co. 1-800-322-3022

Recycled  Stock # EX-S-B

EXHIBIT 5

AA000156

CERTIFICATE OF OFFICERS

We, the undersigned, hereby certify as follows:

1. We are the duly elected and acting President and Secretary for ROSEMERE ESTATES PROPERTY OWNERS ASSOCIATION, a Nevada non-profit corporation.
2. The foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions for Rosemere Estates, duly adopted by the members of the Association on July 2, 2007.
3. Members representing more than sixty-seven percent (67%) of the voting power of the Members of the Association voted in favor of the First Amendment.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed as of this 2nd day of July, 2007.

June

ROSEMERE ESTATES PROPERTY
OWNERS ASSOCIATION

By: [Signature]

Its: President

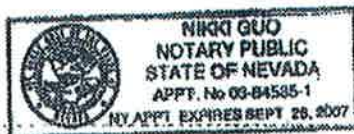
By: [Signature]

Its: Secretary

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

On this 2 day of June, 2007, before me the undersigned Notary Public, in and for said County and State, personally appeared Gerry Zolner, Sherman Keat, known or proved to me to be the President of Rosemere Estates Property Owners Association, who executed the foregoing instrument, and who acknowledged to me that he did so freely and voluntarily and for the uses and purposes therein provided.

[Signature]
NOTARY PUBLIC



212

Lapel Ties Co. 1-800-322-3022

Recycled  Stock # R-EX-6-6

EXHIBIT 6

AA000158



JEFF GIBSON
Governor

LINDSAY WATTE
Ombudsman

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
OFFICE OF THE OMBUDSMAN FOR OWNERS IN
COMMON-INTEREST COMMUNITIES AND CONDOMINIUM HOTELS
OIOmbudsman@nd.state.nv.us
http://www.red.state.nv.us
COMPLETION CERTIFICATE

DIANNE CORNWALL
Director

GAIL J. ANDERSON
Administrative

June 4, 2009

Thomas D. Harper, Esq.
606 South Ninth Street
Las Vegas, Nevada 89101

Jason D. Smith, Esq.
400 South Fourth Street 300
Las Vegas, Nevada 89101

Alternative Dispute Resolution (ADR) Control # 09-33 Non-Blinding Arbitration
Claimant(s): Lytle Trust, John Allen Lytle & Trude Lee Lytle, Trustees c/o Thomas D. Harper, Esq.
Respondant(s): Rosemere Estates Property Owners' Association c/o Jason D. Smith, Esq.

This notarized document will serve as a certificate for the Claimant(s) certifying they have completed the Alternative Dispute Resolution process as required by NRS 38.

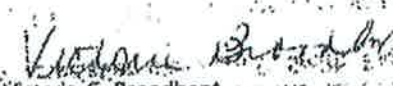

Gordon Milden
Administrative Assistant III

cc: Ara H. Shinnian, Esq., Arbitrator

STATE OF NEVADA
COUNTY OF CLARK

On June 4, 2009, Gordon Milden, who is personally known to me or proven to me to be the person whose name is subscribed to this instrument, appeared before me acknowledging that he executed same.




Victoria G. Broadbent
Notary Public, State of Nevada

MY COMMISSION EXPIRES: 6/1/10

2501 E. Sahara Avenue, Suite 202 • Las Vegas, Nevada 89104-4137
(702) 486-4480 • Fax (702) 486-4520 • Toll Free 1-877-829-9907

Exhibit 7

Exhibit 7

Ann L. Johnson
CLERK OF THE COURT

1 **OGSJ**
Richard E. Haskin, Esq.
2 Nevada State Bar # 11592
GIBBS GIDEN LOCHER TURNER
3 **SENET & WITTBRODT LLP**
7450 Arroyo Crossing Parkway, Suite 270
4 Las Vegas, Nevada 89113-4059
(702) 836-9800

5 Attorneys for Plaintiff
6 **JOHN ALLEN LYTLE and**
TRUDI LEE LYTLE
7 as Trustees of the Lytle Trust

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

10
11 **JOHN ALLEN LYTLE and TRUDI LEE LYTLE,**
as Trustees of the Lytle Trust,

12 Plaintiffs,

13 v.

14 **ROSEMERE ESTATES PROPERTY OWNERS'**
15 **ASSOCIATION; and DOES 1 through 10,**
inclusive,

16 Defendants.

CASE NO. A-09-593497-C
Dept.: XII

ORDER GRANTING PLAINTIFFS JOHN
ALLEN LYTLE AND TRUDI LEE
LYTLE'S MOTION FOR SUMMARY
JUDGMENT

17
18 PLEASE TAKE NOTICE that on April 1, 2013, the Court heard Plaintiff JOHN ALLEN
19 LYTLE and TRUDI LYTLE, as TRUSTEES OF THE LYTLE TRUST's ("Plaintiff"), Motion for
20 Summary Judgment, and ROSEMERE ESTATES PROPERTY OWNERS' ASSOCIATION's (the
21 "Association") Motion for Summary Judgment. After considering the motions, oppositions and
22 replies thereto, the declarations, affidavits, and evidence submitted therewith, and hearing oral
23 argument thereon, the Court grants Plaintiff JOHN ALLEN LYTLE AND TRUDI LEE LYTLE, as
24 TRUSTEES OF THE LYTLE TRUST's Motion for Summary Judgment. The Court further denies
25 ROSEMERE ESTATES PROPERTY OWNERS' ASSOCIATION's Motion for Summary
26 Judgment.

27 //

28 //

07/30/2013

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Pursuant to NRCP 56(c), the Court's findings with respect to the undisputed material facts and legal determinations on which the court granted summary judgment are set forth herein and as follows:

L. FINDINGS OF UNDISPUTED MATERIAL FACTS

1. On January 4, 1994, Baughman & Turner Pension Trust (the "Developer"), as the subdivider of a cul-de-sac to be made up of nine (9) residential lots on a street known as Rosemere Court in Las Vegas, Nevada, recorded with the Clark County Recorder's Office a Declaration of Covenants, Conditions, and Restrictions ("Original CC&Rs.")

2. The Original CC&Rs consist of four (4) pages and 25 paragraphs, with no bylaws annexed, no amendment provision, and no homeowners association, as defined by Chapter 116.

3. The Original CC&Rs create a "property owners' committee" with very limited maintenance duties over specific common area items (exterior walls and planters, entrance way and planters, entrance gate, and the private street), which are specifically set forth in Paragraph 21 of the Original CC&Rs.

4. The Original CC&Rs then grant each homeowner, and not any homeowners' association, the power to enforce the Original CC&Rs against one another.

5. Among other things, there are no rental or pet restrictions or construction deadline in the Original CC&Rs.

6. The Developer then sold the nine (9) undeveloped lots between May 1994 and July 1996.

7. The first of the lots was conveyed by the Developer under the Original CC&Rs on May 19, 1994.

8. Plaintiff's trustees, John Allan Lytle and Thad Lee Lytle (the "Lytles"), purchased a Rosemere Estates property, assessor's parcel number ("APN") 163-03-313-009 ("Plaintiff's Property"), on November 6, 1996, from the original buyer who first purchased it from the Developer on August 25, 1995.

9. The Lytles later transferred Plaintiff's Property to Plaintiff.

///

1 10. The Lytles purchased the property with the sole purpose of building a custom home
2 thereon.

3 11. The primary reasons that the Lytles selected the property were the limited restrictions
4 contained in the Original CC&Rs and the lack of a "unit-owners association," as that term is legally
5 defined by Chapter 116 of the Nevada Revised Statutes ("NRS").

6 12. Further, the Lytles could not meet any restrictive deadline on construction, so
7 Plaintiff purposefully selected in a community with no construction deadline.

8 13. Plaintiff undertook the design of the new custom built home, and by 2006, Plaintiff
9 had developed preliminary plans that were approved by the Developer.

10 14. Sometime after Plaintiff purchased its property, a group of property owners formed
11 the Rosemere Estates Property Owners Association (the "Association"), with the sole purpose of
12 maintaining those common areas designated by Paragraph 21 of the Original CC&Rs.

13 15. In 1997, two owners, acting on behalf of all owners, filed Non-Profit Articles of
14 Incorporation (the "Articles") pursuant to NRS 82, which formalized the property owners'
15 committee and named it "Rosemere Estates Property Owners Association."

16 16. The property owners recognized that the Association did not have powers granted to
17 it other than those granted by the Original CC&Rs. For example, the Association had no power to
18 assess, fine, issue rules and regulations, or undertake other actions commonly reserved for
19 homeowners' associations.

20 17. In 1997, some of the property owners prepared and distributed a proposed set of
21 amended CC&Rs, which proposed to empower the Association and drastically increase the scope of
22 the Original CC&Rs.

23 18. The property owners determined that unanimous consent was required to amend the
24 Original CC&Rs. Due to a failure to obtain unanimous consent, as required, the proposed CC&Rs
25 were not adopted.

26 ///

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28 ///

1 19. At a February 23, 2004 Association meeting, two Board members presented a set of
2 proposed, amended CC&Rs. The newly proposed CC&Rs included various restrictions not within
3 the Original CC&Rs, including animal restrictions, exterior maintenance and repair obligations,
4 prohibitions against "unsightly articles," and other use restrictions and obligations.

5 20. The proposed amended CC&Rs were not unanimously approved at the February 23,
6 2004 meeting and, therefore, not adopted.

7 21. Without warning, consultation or advisement to the Rosemere property owners, on or
8 about July 2, 2007, Amended and Restated CC&Rs were again proposed to the property owners by
9 the Board

10 22. This third set of proposed amended CC&Rs increased the complexity, scope, and size
11 of the CC&Rs, from 4 pages to 36 pages, and contained numerous additional restrictions upon the
12 property owners.

13 23. At the July 2, 2007 homeowners' meeting, the Association's Board presented the
14 property owners with a binder that contained the following: (1) new Articles of Incorporation, dated
15 June 6, 2007, which articles were never filed although represented to be as set forth herein; (2) a
16 letter from the Board to the Association members; (3) a Corporate Charter referencing the February
17 25, 1997 and June 6, 2007 Articles of Incorporation; (4) a section entitled "Governing Documents"
18 referencing the June 6, 2007 Articles of Incorporation; (5) the "First Statutorily Mandated
19 Amendment to the Bylaws of the Rosemere Estates Homeowners Association," containing the
20 recital "WHEREAS, the Declaration was recorded in the Office of Clark County Recorder on
21 January 4, 1994, which Declaration provides for a method to make amendments to the Declaration
22 and Bylaws..." (6) the proposed Amended and Restated Covenants, Conditions and Restrictions
23 ("Amended CC&Rs"). Bylaws did not exist prior to 2007.

24 24. The binders containing all of the foregoing documents were presented to each
25 homeowner together with the following misrepresentations: (1) the June 6, 2007 Articles of
26 Incorporation were filed with the Secretary of State, (2) the original CC&Rs provided a method for
27 amendment, (3) the CC&Rs could be amended without unanimous consent, (4) the 1999 Nevada
28 Legislature, through adoption of Senate Bill 451, "mandated" that the original CC&Rs be changed

1 to conform to NRS Chapter 116 "without complying with the procedural requirements generally
2 applicable to the adoption of an amendment..." and (5) all of the changes made were under NRS
3 116.2117.

4 25. The proposed Amended CC&Rs were far more restrictive than the Original CC&Rs
5 and changed the very nature of property ownership within Rosemere Estates. The Amended
6 CC&Rs contained numerous and onerous new use restrictions including the drastic expansion of the
7 powers, rights, and duties of the Association, a section entitled "Restrictions on Use, Alienation,
8 and Occupancy," pet restrictions, parking restrictions, lease restrictions, the establishment of a
9 Design Review Committee with unfettered discretion, and a new and expansive definition of
10 "nuisance."

11 26. The Amended CC&Rs also contained a morality clause, providing as follows:

12 No use that is reasonably deemed immoral, improper,
13 offensive, or unlawful by the Board of Directors may be
14 made of the Property or any portion thereof.

15 27. The Amended CC&Rs also contained a pet restriction that permits any animal found
16 off a leash to immediately be turned over to animal control, and any animal causing a "nuisance," a
17 vague and undefined term, to be permanently removed from Rosemere Estates upon three days
18 written notice and hearing before the Board.

19 28. Finally, the proposed Amended CC&Rs contained a construction timeline that would
20 require Plaintiff to complete the construction of the custom home on the lot within a mere 60 days
21 of receipt of approval from the proposed Design Review Committee—something never envisioned
22 in the Original CC&Rs and impossible to adhere to.

23 29. Plaintiff's property is the only Property subject to this restriction as Plaintiff's
24 Property was the only undeveloped lot at the time of amendment.

25 30. Further, the 60 day deadline is impossible to satisfy, and the homeowner is fined
26 \$50.00 per day for failure to comply with this impossible deadline.

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31. Pursuant to the Amended CC&Rs, approval for a home design was (1) entirely within the Board's discretion, (2) based on Design Review Guidelines that have never been published, and (3) not subject "to any objective standards of reasonableness."

32. After the Board presented the proposed Amended CC&Rs to the owners, together with the written misrepresentations set forth above, the Board did not provide the owners with a reasonable time to review or discuss the lengthy pack of legal documents, or to seek legal advice. Rather, the Board insisted that the amendment was "a done deal."

33. Despite the misrepresentations introducing the governing documents, the vast expansion of the Original CC&Rs, the lack of any review time or discussion, and the insistence that the amendment was a "done deal," the Board asked the property owners to sign documents acknowledging their approval, with a notary retained by the Board present to verify signatures.

34. The Amended CC&Rs were not agreed to by all property owners at the July 2, 2007 meeting. In fact, only five of the property owners approved, with three property owners who refused to sign the amendment. A fourth homeowner submitted a disputed proxy that was not counted by the Board.

35. Despite the failure to obtain the required unanimous approval for amending the Original CC&Rs, the Association proceeded, on July 3, 2007, to record the Amended CC&Rs in the office of the Recorder for Clark County, Nevada.

II. LEGAL DETERMINATIONS

A. Summary Judgment Standard

1. Summary judgment shall be rendered in favor of a moving party if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. NRCP Rule 56(c).

2. "Summary Judgment is appropriate and shall be rendered forthwith when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to judgment as a matter of law.'" *Wood v. Safeway*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005) (quoting NRCP 56(c).)

3. The Nevada Supreme Court held that "Rule 56 should not be regarded as a disfavored procedural shortcut" but instead as an integral important procedure which is designed "to secure just, speedy and inexpensive determination in every action." *Wood*, 121 Nev. at 730, 121 P.3d at 1030 (internal citation omitted).

B. Plaintiff Is Entitled To Summary Judgment In Its Favor

4. A declaratory relief cause of action is proper where a conflict has arisen between the litigating parties, and the action is brought to establish the rights of the parties. 26 C.J.S. Declaratory Judgments § 1.

5. Plaintiff's Cause of Action for Declaratory Relief seeks (1) a declaration from the Court that the Amended CC&Rs were not properly adopted by the members of the Association and were improperly recorded against Plaintiff's Property, and (2) a permanent injunction against the Association from adopting further amendments without unanimous consent.

6. Summary judgment as to the Declaratory Relief Cause of Action is warranted based on the Court's finding that the Amended CC&Rs were not adopted with unanimous consent, as required, and were, therefore, improperly recorded against Plaintiff's Property.

C. Rosemere Is A Limited Purpose Association Under NRS 116.1201 And Not A Unit-Owners' Association Within The Meaning Of NRS, Chapter 116

7. In order to create a valid unit-owners' association, as defined by Chapter 116, certain formalities "must" be followed. NRS 116.3101 provides, in pertinent part.

Organization of unit-owners' association.

1. A unit-owners' association must be organized no later than the date the first unit in the common-interest community is conveyed. . . .

8. The purpose of Section 3101 is to provide the purchaser record notice that he/she/it is purchasing a property that is governed by a homeowners association and will be bound by Chapter 116. *et seq*

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1 9. There is a strong public policy in protecting property owners in common-interest
2 communities against any alteration of the burdens of character of the community. Rest. 3d,
3 Property - Servitudes, § 6.10, Comments.¹

4 10. A buyer is said to have "record notice" of the recorded covenants, conditions and
5 restrictions on the property; thus the mandate that the homeowners' association be formed prior to
6 conveyance of the first unit in the community, together with the requirement that the CC&Rs be
7 recorded. NRS 116.3101.

8 11. Here, no Chapter 116 unit-owners' association was formed because no association
9 was organized prior to the date the first unit was conveyed. The Association was not formed until
10 February 25, 1997, more than three years after Rosemere Estates was formed and the Original
11 CC&Rs were recorded.

12 12. Further, the Association did not have any powers beyond those of the "property
13 owners committee" designated in the Original CC&Rs—simply to care for the landscaping and
14 other common elements of Rosemere Estates as set forth in Paragraph 21 of the Original CC&Rs.

15 13. The Original CC&Rs provide for the creation of a "property owners' committee,"
16 which is a "limited purpose association," as defined by the 1994 version of NRS 116.1201, then in
17 effect. That provision provided that Chapter 116 did not apply to "Associations created for the
18 limited purpose of maintaining . . . [t]he landscape of the common elements of a common interest
19 community. . . ."

20 14. In 1992, Rosemere Estates' owners formed the Association for the express and
21 limited purpose of (1) tending to the limited matters set forth in Paragraph 21 of the Original
22 CC&Rs, (2) holding a bank account in which to deposit and withdraw funds for the payment of the
23 limited common area expenses assigned to the Owners Committee, and (3) purchasing liability
24 insurance. The intent was never to form a unit-owners' association within the meaning of Chapter
25 116.

26 ///

27
28 ¹ "Property owners in common-interest communities are protected against amendments that unfairly
change the allocation of burdens in the community or change the character of the community." Rest.
Law 3d, Property - Servitudes, § 6.10, Comments.

15. A limited purpose association cannot enforce "any restrictions concerning the use of units by the units' owners, unless the limited-purpose association is created for a rural agricultural residential common-interest community." NRS 116.1201(2)(a)(5). There is no question that Rosemere Estates was not "created for a rural agricultural residential common-interest community," hence the Association cannot enforce "any restrictions concerning the use of units by the units' owners...."

16. In reviewing the language of the Original CC&Rs, the Court must strictly construe the covenants thereto and any "doubt will be resolved in favor of the unrestricted use of the property...." *Dickstein v. Williams*, 93 Nev. 605, 608, 571 P.2d 1169 (1977); see also, e.g., *South Shore Homes Ass'n v. Holland Holidays*, 549 P.2d 1035, 1043 (Kan. 1976); *Duffy v. Sunburst Farms East Mutual Water & Agricultural Company, Inc.*, 604 P.2d 1124 (Ariz. 1980); *Bordleeon v. Homeowners Ass'n of Lake Ramsey*, 916 So.2d 179, 183 (La. Ct. App. 2005); *Cummings v. Dasari*, 159 S.E.2d 513, 517 (N.C. 1968); *Long v. Branham*, 156 S.E.2d 235, 236 (N.C. 1967).

17. In keeping with this well-settled and general principle, the Court construes the Original CC&Rs pursuant to the plain meaning of the language therein. Nowhere is there reference in the Original CC&Rs to a "unit-owners' association" or "homeowners association." Rather, the Developer created a 116.1201 *limited purpose association* termed a "property owners' committee," and the Developer provided that committee with limited, rather than comprehensive, duties and powers.

18. Consistent with the absence of a governing body, e.g. unit-owners' association, delegated with the duty to enforce the Original CC&Rs, the Developer provided each homeowner the right to independently enforce the Original CC&Rs against one another.

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

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D. The CC&Rs Can Only Be Amended By Unanimous Consent of All Property Owners

20 Because Rosemere Estates is a limited purpose association under NRS 116.1201, NRS 116.2117, the statutory provision typically governing amendments to the CC&R's, does not apply here.

21. The Original CC&Rs are mutual and reciprocal among all of the Rosemere Estates property owners. The Original CC&Rs "touch and concern" (and thus "run with") the land. Accordingly, under long-standing and well-established common law, the Original CC&Rs are binding, and not subject to amendment, absent a new conveyance properly executed by all Rosemere property owners and in conformance with all of the other legal requirements for a valid transfer of an interest in real property. In short, there can be no valid amendment of the Original CC&Rs absent, at a minimum, the unanimous consent of all Rosemere property owners.

22. There has never been unanimous consent to amend the Original CC&Rs and there has never been a valid conveyance of Plaintiff's interest in the Original CC&Rs. Specifically, unanimous consent was not received in 2007, when the Invalid Amended CC&Rs were wrongfully recorded by the Association.

23. Even if the provisions related to amendment within Chapter 116 were to apply, the Amended CC&Rs would still be invalid, and wrongly recorded, because NRS 116.2117 required unanimous consent under these circumstances. NRS 116.2117 specifies the kinds of amendments that require unanimous unit owner approval (as opposed to majority or supermajority approval). In particular, a "change of use" always requires unanimous approval.

NRS 116.2117 provides, in pertinent part:

1. ...the declaration, including any plats, may be amended only by vote or agreement of units' owners of units to which at least a majority of the votes in the association are allocated, unless the declaration specifies a different percentage for all amendments or for specified subjects of amendment. If the declaration requires the approval of another person as a condition of its effectiveness, the amendment is not valid without that approval.

* * *

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4 Except to the extent expressly permitted or required by other provisions of this chapter, no amendment may change the boundaries of any unit, change the allocated interests of a unit or change the uses to which any unit is restricted, in the absence of unanimous consent of only those units' owners whose units are affected and the consent of a majority of the owners of the remaining units.

(Emphasis added.)

24. For the reasons set forth above, the Association's counter-motion for summary judgment is without merit.

III. JUDGMENT

IT IS HEREBY ADJUDGED AND DECREED:

A. Declaration

25. Pursuant to the foregoing, this Court declares and orders that the Amended CC&Rs were not properly adopted or recorded, that the Amended CC&Rs are invalid, and that the Amended CC&Rs have no force and effect. This Order, may be recorded in the Office of the Clark County Recorder's Office by any party and, once recorded, shall be sufficient notice of same.

B. Injunctive Relief

26. The Association is permanently enjoined from recording and enforcing the Amended CC&Rs. The Association is hereby ordered to release the Amended CC&Rs, Document Number 20070703-0001934, recorded with the Clark County Recorder on July 3, 2007, within ten (10) court days after the date of Notice of Entry of this Order.

C. Plaintiff's Monetary Damages

27. Plaintiff's monetary damages are subject to a prove-up hearing, and Plaintiff is to submit a separate motion regarding the same.

D. The Association's Motion For Summary Judgment

28. The Association's Motion for Summary Judgment is denied.

E. Costs

29. Plaintiff is deemed the prevailing party in this action. Plaintiff is directed to prepare, file and serve a Memorandum of Costs.

///

1 F. Attorneys' Fees

2 30. Plaintiff is deemed the prevailing party in this action. Any motion for attorney fees
3 will be addressed separately by the Court.

4
5 Dated this 29 day of July, 2013.

6
7 
8 MICHELLE LEAVITT, DISTRICT COURT JUDGE

9 Prepared and submitted by:

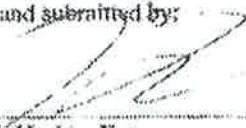
10
11 
12 Richard E. Haskin, Esq.
13 Gibbs, Giden, Locher, Turner, Sene & Witthrodt LLP
14 7450 Arroyo Crossing Parkway, Suite 270
15 Las Vegas, Nevada 89113
16 Attorney for Plaintiff
17 JOHN ALLEN LYTLE and TRUDI LEE LYTLE
18 as Trustees of the Lytle Trust
19
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22
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Exhibit 8

Exhibit 8

RECORDING REQUESTED BY

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

AND WHEN RECORDED MAIL TO

Richard E. Haskin, Esq.
GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP
7450 Arroyo Crossing Pkwy., Ste. 270
Las Vegas, Nevada 89113

THIS SPACE FOR RECORDER'S USE

Inst #: 20160818-0001198

Fee: \$19.00

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08/18/2018 11:51:34 AM

Receipt #: 2848915

Requestor:

NATIONWIDE LEGAL

Recorded By: ANI Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

APN No.: 163-03-313-001
APN No.: 163-03-313-002
APN No.: 163-03-313-003
APN No.: 163-03-313-004
APN No.: 163-03-313-005
APN No.: 163-03-313-006
APN No.: 163-03-313-007
APN No.: 163-03-313-008

ABSTRACT OF JUDGMENT

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION
(Govt. Code 27361.8)
(Additional recording fee applies)

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CLERK OF THE COURT

1 Richard E. Haskin, Esq.
Nevada State Bar # 11592
2 Timothy P. Elson, Esq.
Nevada State Bar # 11559
3 **GIBBS GIDEN LOCHER TURNER**
SENET & WITTBRODT LLP
4 7450 Arroyo Crossing Parkway, Suite 270
Las Vegas, Nevada 89113-4059
5 (702) 836-9800

6 Attorneys for Plaintiff
JOHN ALLEN LYTLE and
7 TRUDI LEE LYTLE

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

10 JOHN ALLEN LYTLE and TRUDI LEE LYTLE,
11 as Trustees of the Lytle Trust,

12 Plaintiff,

13 v.

14 ROSEMERE ESTATES PROPERTY OWNERS'
ASSOCIATION; and DOES 1 through 10,
15 inclusive,

16 Defendants.

CASE NO. A-09-593497-C
Dept.: XII

ABSTRACT OF JUDGMENT

17
18 In the District Court of Clark County, State of Nevada, on July 29, 2013, a Judgment was
19 entered in favor of Plaintiffs JOHN ALLEN LYTLE and TRUDI LEE LYTLE, as Trustees of the
20 Lytle Trust ("Plaintiffs") and against Defendant ROSEMERE ESTATES PROPERTY OWNERS'
21 ASSOCIATION ("Defendant").

22 On May 25, 2016, the District Court entered an Order Awarding Attorneys' Fees in the
23 amount of \$297,072.66 in favor of Plaintiff and against Defendant.

24 On June 17, 2016, the District Court entered an Order Awarding Plaintiffs' Damages
25 Following Prove-Up Hearing against Defendant in the amount of \$63,566.93.

26 Finally, on July 22, 2016, the District Court entered and Order Awarding Plaintiffs' Costs
27 against Defendant in the amount of \$599.00.

28 ///

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RECEIVED
AUG 12 2016
DEPT. 12

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

1 Pursuant to the foregoing, the total amount of the Judgment, plus attorneys' fees and costs is
2 \$361,238.59. In addition, Plaintiff is due post-judgment interest at the Nevada legal rate annually
3 until the Judgment is satisfied.

4 I certify that the foregoing is a correct abstract of the judgment rendered in the above action
5 in my Court.

6
7 DATED: 8/15/14


DISTRICT COURT JUDGE
RL

8
9
10
11 Respectfully requested by:

12 GIBBS GIDEN LOCHER TURNER
13 SENET & WITTBRODT LLP

14 By: 

15 Richard E. Haskin, Esq.
16 Nevada State Bar # 11592
17 Timothy P. Elson, Esq.
18 Nevada State Bar # 11559
19 7450 Arroyo Crossing Parkway, Suite 270
20 Las Vegas, Nevada 89113-4059
21 Attorneys for Plaintiff
22 JOHN ALLEN LYTLE and TRUDI LEE
23 LYTLE
24
25
26
27
28

RECORDING REQUESTED BY
GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP

AND WHEN RECORDED MAIL TO

Richard E. Haskin, Esq.
GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP
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(7)

THIS SPACE FOR RECORDER'S USE

Inet #: 20160902-0002684

Fees: \$19.00

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09/02/2016 04:13:08 PM

Receipt #: 2864037

Requestor:

NATIONWIDE LEGAL

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DEBBIE CONWAY

CLARK COUNTY RECORDER

APN No.: 163-03-313-002

ABSTRACT OF JUDGMENT

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION
(Govt. Code 27361.6)
(Additional recording fee applies)

1772596 1

AA000177

Adam L. Johnson
CLERK OF THE COURT

1 Richard E. Haskin, Esq.
Nevada State Bar # 11592
2 Timothy P. Elson, Esq.
Nevada State Bar # 11559
3 GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP
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Las Vegas, Nevada 89113-4859
5 (702) 836-9800

6 Attorneys for Plaintiff
JOHN ALLEN LYTLE and
7 TRUDI LEE LYTLE

8
9 DISTRICT COURT
CLARK COUNTY, NEVADA

10 JOHN ALLEN LYTLE and TRUDI LEE LYTLE,
11 as Trustees of the Lytle Trust,

CASE NO. A-09-593497-C
Dept.: XII

12 Plaintiff,

ABSTRACT OF JUDGMENT

13 v.

14 ROSEMER ESTATES PROPERTY OWNERS'
ASSOCIATION; and DOES 1 through 10,
15 inclusive,

16 Defendants.

17
18 In the District Court of Clark County, State of Nevada, on July 29, 2013, a Judgment was
19 entered in favor of Plaintiff's JOHN ALLEN LYTLE and TRUDI LEE LYTLE, as Trustees of the
20 Lytle Trust ("Plaintiffs") and against Defendant ROSEMER ESTATES PROPERTY OWNERS'
21 ASSOCIATION ("Defendant").

22 On May 25, 2016, the District Court entered an Order Awarding Attorneys' Fees in the
23 amount of \$297,072.66 in favor of Plaintiff and against Defendant.

24 On June 17, 2016, the District Court entered an Order Awarding Plaintiffs' Damages
25 Following Prove-Up Hearing against Defendant in the amount of \$63,566.93.

26 Finally, on July 22, 2016, the District Court entered an Order Awarding Plaintiffs' Costs
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28 //

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AUG 12 2016
DEPT. 12

1 Pursuant to the foregoing, the total amount of the Judgment, plus attorneys' fees and costs is
2 \$361,238.59. In addition, Plaintiff is due post-judgment interest at the Nevada legal rate annually
3 until the Judgment is satisfied.

4 I certify that the foregoing is a correct abstract of the judgment rendered in the above action
5 in my Court.

6
7 DATED: 8/15/16


DISTRICT COURT JUDGE
22

8
9
10
11 Respectfully requested by:

12 GIBBS GIDEN LOCHER TURNER
13 SENET & WHITBRODT LLP

14 By: 

15 Richard E. Haskin, Esq.
16 Nevada State Bar # 11592
17 Timothy P. Elson, Esq.
18 Nevada State Bar # 11559
19 7450 Arroyo Crossing Parkway, Suite 270
20 Las Vegas, Nevada 89113-4059
21 Attorneys for Plaintiff
22 JOHN ALLEN LYTLE and TRUDI LEE
23 LYTLE
24
25
26
27
28

Exhibit 9

Exhibit 9


CLERK OF THE COURT

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

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

15 Plaintiff,)

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

16 v.)

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

21 Defendants.)

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MOTION FOR PARTIAL SUMMARY JUDGMENT

TO: ALL INTERESTED PARTIES; and

TO: THEIR ATTORNEYS OF RECORD HEREIN:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that Defendants' Motion for

Partial Summary Judgment will be heard by the above captioned court in Department 16 of the

Regional Justice Center the 28 day of MARCH, 2017 at the hour of 9:00A

m.

FOLEY
&
OAKES

1 DATED this 24th day of February 2017

2 Respectfully Submitted,

3 FOLEY & OAKES, PC
4 /s/Daniel T. Foley
5 Daniel T. Foley, Esq.
6 Nevada Bar No. 1078
7 626 So. 8th Street
8 Las Vegas, Nevada 89101
9 Attorney for Plaintiffs

10 **MOTION FOR PARTIAL SUMMARY JUDGMENT**

11 COMES NOW Plaintiffs, by and through their attorneys, Foley & Oakes, PC, and hereby
12 move this Court for Partial Summary Judgment against Defendants Trudi Lee Lytle and John
13 Lytle, the Trustees of the Lytle Living Trust (collectively the "Lyttles"). Plaintiffs move this
14 Court to enter judgment in Plaintiffs' favor on all four causes of action leaving only an
15 evidentiary hearing regarding damages and attorneys' fees on Marjorie Boulden's slander of title
16 cause of action numbered 1. Plaintiffs hereby seek a Judgment Granting Declaratory Relief
17 determining that the Lyttles have clouded title on both pieces of property, that the Lyttles have
18 slandered Ms. Boulden's title, and injunctive relief expunging and striking the two Abstracts of
19 Judgment recorded against the Plaintiffs' property, restraining and enjoining the Lyttles from
20 selling or attempting to sell the Plaintiffs' property via foreclosure sale, and restraining and
21 enjoining the Lyttles from taking any action in the future against the Plaintiffs or their properties
22 based upon the litigation the Lyttles commenced against third-party Rosemere Property Owner's
23 Association.
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27

1 The Plaintiffs move this Court pursuant to NRCP Rules 56 and the pleadings and papers
2 on file herein, together with the Memorandum of Points and Authorities set forth below.

3 DATED this 24th day of February 2017

4 Respectfully Submitted,

5 FOLEY & OAKES, PC

6 /s/Daniel T. Foley

7 Daniel T. Foley, Esq.

8 Nevada Bar No. 1078

9 626 S 8th St.

Las Vegas, Nevada 89101

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I.**

12 **STATEMENT OF FACTS**

13
14 1. Mrs. Boulden is trustee of the Marjorie B. Boulden Trust (hereinafter "Mrs.
15 Boulden") which owns that residential property known as parcel number 163-03-313-008 also
16 known as 1960 Rosemere Ct., Las Vegas, NV 89117 ("the Boulden Property").

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

21 3. The Boulden Property and the Lamothe Property are located in the Rosemere
22 Court subdivision and are subject to the CC&Rs recorded January 4, 1994. A true and correct
23 copy of the CC&Rs is attached hereto as Exhibit "1".

24 4. In 2009, the Lytles sued the Rosemere Estates Property Owners Association in the
25 Eighth Judicial District Court, case # A-09-593497-C (the "Rosemere LPA Litigation").
26
27

1 5. Mrs. Boulden and Mr. and Mrs. Lamothe were never parties to the Rosemere LPA
2 Litigation. A copy of the Lytles Complaint filed in the Rosemere LPA Litigation is attached
3 hereto as Exhibit "2".

4 6. The Lytles alleged, among other things, that the owners of the residences within
5 the Rosemere Court Subdivision had improperly amended the CC&Rs and attempted to convert
6 the simple 9 residence Rosemere Court Subdivision into a full-fledged home owners'
7 association. Exhibit "2".

8 7. The Lytles obtained a Summary Judgment from the District Court in the
9 Rosemere LPA Litigation, determining and declaring that the Rosemere LPA was not a full-
10 fledged home owners' association under NRS 116, but instead was a limited-purpose association
11 as defined by NRS 116.1201(6). See paragraph 19 on page 9 of the Order Granting Summary
12 Judgment a true and correct copy of which is attached hereto as Exhibit "3".

13 8. The Summary Judgment was appealed to, and upheld by, the Nevada Supreme
14 Court.

15 9. Upon remand, the Lytles filed a Motion for Attorneys' Fees and Costs and against
16 the Rosemere LPA, and a Judgment was entered in the Lytles' favor against the Rosemere LPA
17 for \$361,238.59 (the "Attorneys' Fees Judgment"). A true and copy of the Attorneys' Fees
18 Judgment is attached hereto as Exhibit "4".

19 10. After obtaining the Attorneys' Fees Judgment, on August 16, 2016, the Lytles
20 recorded with the Clark County Recorder's office their First Abstract of Judgement referencing
21 the Attorneys' Fees Judgment against the Rosemere LPA. A true and correct copy of the First
22 Abstract of Judgment is attached hereto as Exhibit "5".
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