

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.: 77007**

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

Electronically Filed  
May 16 2019 12:29 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**Appeal**

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

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**Appellants' Appendix to Opening Brief – Volume 11**

**(Docket 77007)**

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## TABLE OF CONTENTS

1. Motion to Retax and Settle Memorandum of Costs (AA000794 – AA000804)
2. Opposition to Motion for Attorney's Fees and Costs (AA000805 – AA000830)
3. Notice of Entry of Order Regarding Motion for Attorney's Fees and Costs and Memorandum of Costs and Disbursements and Motion to Retax and Settle Memorandum of Costs (AA000831 – AA000843)
4. Motion to Reconsider Court's Ruling Granting Attorney's Fees (AA000844 – AA000870)
5. Notice of Entry of Stipulation and Order to Dismiss All Remaining Claims Without Prejudice (AA000871 – AA000878)
6. Reporter's Transcript of Hearing – January 19, 2017 (AA000879 – AA000897)
7. Transcript of Proceedings Re: All Pending Motions (AA000898 – AA000917)

## CERTIFICATE OF SERVICE

### **1. Electronic Service:**

I hereby certify that on this date, the 16th day of May 2019, I submitted the foregoing **Appellant's Appendix for Opening Brief – Volume 11 (Docket 77007)** 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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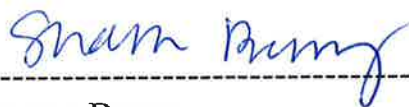
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TRUDI LEE LYTLE AND JOHN ALLEN  
LYTLE, AS TRUSTEES OF THE LYTLE  
TRUST

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

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

Plaintiff,

v.

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

Defendants.

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

**DEFENDANTS' MOTION TO RETAX  
AND SETTLE MEMORANDUM OF  
COSTS**

Date: July 11, 2018  
Time: 9:00 a.m.

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,

Plaintiff,

v.

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

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

Defendants.

**DEFENDANTS' MOTION TO RETAX AND SETTLE MEMORANDUM OF COSTS**

Defendants, Trudi Lee Lytle, John Allen Lytle, and The Lytle Trust, by and through their  
counsel of record, Gibbs Giden Locher Turner Senet & Wittbrodt, LLP, hereby file their Motion to  
Retax and Settle Memorandum of Costs.

This Motion is based on the following Memorandum of Points and Authorities, any exhibits  
attached hereto, the papers and pleadings on file, and any oral argument allowed by the Court.

DATED: June 8, 2018

GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP

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

Richard E. Haskin, Esq.  
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1140 N. Town Center Drive, Suite 300  
Las Vegas, Nevada 89144  
Attorneys for Defendants  
TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, AS  
TRUSTEES OF THE LYTLE TRUST

**NOTICE OF HEARING**

PLEASE TAKE NOTICE that on the 11 day of JULY, 2018, in Department XVIII of the above-entitled Court, at the hour of 9:00A a.m./p.m., or as soon thereafter as counsel may be heard, the undersigned will bring Defendants' Motion to Retax and Settle Memorandum of Costs before this Court for hearing.

DATED: June 8, 2018

GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP

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

Richard E. Haskin, Esq.  
Nevada State Bar # 11592  
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Las Vegas, Nevada 89144  
Attorneys for Defendants  
TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, AS  
TRUSTEES OF THE LYTLE TRUST

**MEMORANDUM OF POINTS AND AUTHORITIES****I. LEGAL STANDARD**

Nevada Revised Statutes 18.110(1) and (4) provide:

1. The party in whose favor judgment is rendered, and who claims costs, must file with the clerk, and serve a copy upon the adverse party, within 5 days after the entry of judgment, or such further time as the court or judge may grant, a memorandum of the items of the costs in the action or proceeding, which memorandum must be verified by the oath of the party, or the party's attorney or agent, or by the clerk of the party's attorney, stating that to the best of his or her knowledge and belief the items are correct, and that the costs have been necessarily incurred in the action or proceeding.

...

4. Within 3 days after service of a copy of the memorandum, the adverse party may move the court, upon 2 days' notice, to retax and settle the costs, notice of which motion shall be filed and served on the prevailing party claiming costs. Upon the hearing of the motion the court or judge shall settle the costs.

The District Court has discretion in determining whether to award costs to a prevailing party, *see* NRS 18.050, and there are only a few types of cases in which the Court must award costs as a matter of course, *see* NRS 18.020.



Documentation is required for costs to be awarded. *See Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. Adv. Op. 15, 345 P.3d 1049, 1054 (2015). “Justifying documentation” of costs must mean something more than a memorandum of costs. *Id.* In order to retax and settle costs upon motion of the parties pursuant to NRS 18.110, a district court must have before it evidence that the costs were reasonable, necessary, and actually incurred. *Id.* (citing *Gibellini v. Klindt*, 110 Nev. 1201, 1205, 885 P.2d 540, 543 (1994) (reversing award of costs and remanding for determination of actual reasonable costs incurred)).

The determination of allowable costs is within the sound discretion of the trial court; however, statutes permitting recovery of costs are in derogation of common law, and therefore must be strictly construed. *Gibellini*, 110 Nev. at 1205, 885 P.2d at 543 (citing *Bergmann v. Boyce*, 109 Nev. 670, 679, 856 P.2d 560, 565–66 (1993)). A party requesting costs must “demonstrate how such [claimed costs] were necessary to and incurred in the present action.” *Cadle Co.*, 131 Nev. Adv. Op. 15, 345 P.3d at 1054. Without evidence to determine whether a cost was reasonable and necessary, a district court may not award costs. *Id.* Evidence of costs should include receipts, invoices or court records, where available. *See id.* at n. 5.

## II. LEGAL ARGUMENT

### A. Plaintiffs’ Memorandum Of Costs And Disbursements Does Not Provide Evidence Demonstrating That The Costs Were Reasonable, Necessary, And Actually Incurred

Plaintiffs’ Memorandum of Costs and Disbursements consists of a four (4) page document claiming costs in this case for “Court Download Document Fee,” “Parking Fee,” “Court Filing Fees,” and “Westlaw Research.” The Memorandum also refers to Exhibits 2A, 2B, 2C and 2D attached to Plaintiffs’ Motion for Attorney’s Fees and Costs. These exhibits are the billing statements reflecting the billings to the four separate clients that Plaintiffs attorney represented throughout this matter. This is all the documentation that has been provided by Plaintiffs. There are no receipts, invoices, or documentation to reflect court records to demonstrate that these costs were reasonable, necessary, or actually incurred.

///

**i. Court Download Document Fee (\$30.04)**

According to Plaintiffs' billing statements, Plaintiffs incurred \$30.04 in "Court Download Document Fees." Plaintiffs have failed to provide any receipts demonstrating that these fees were actually incurred or anything beyond listing the costs in their billing statements. Furthermore, the fees for downloaded documents in the billing statements only add up to \$21.38. Without more documentation the Court cannot award costs, and, as such, Defendants request that this cost be denied, but alternatively retaxed to \$21.38.

**ii. Parking Fee (\$12.00)**

Plaintiffs include two charges in their billing statements (\$4.00 and \$8.00) for parking fees incurred for attendance at two hearings that did take place. However, no other documentation has been provided demonstrating that these parking fees were actually incurred. As a result, Defendants request that this cost be denied for lack of sufficient evidence.

**iii. Court Filing Fees (\$704.12)**

Defendants do not dispute that Plaintiffs incurred filing fees for the documents that they filed in this matter. However, the only evidence offered to support the \$704.12 figure for filing fees is Plaintiffs' own billing statement. This is not sufficient documentation as no receipts, invoices, or court records have been offered to prove the amount alleged. This is especially important with regard to the \$405.20 amount alleged for filing the complaint in this matter and the \$209.50 amount alleged for filing a Motion for Summary Judgment. Defendants therefore request that this cost be denied for lack of sufficient evidence as well.

**iv. Westlaw Research (\$1,260.44)**

Plaintiffs largest cost reported is their \$1,260.44, which again is only supported by their billing statements. There is no other evidence offered to demonstrate that this cost for legal research was actually incurred in relation to this case, was reasonable, or was necessary. In the billing statements, the charges from Westlaw are listed as monthly charges from the service (i.e. "Research - November 2017 \$56.74," "1/31/2018 Westlaw Research \$515.85," and "WestLaw Research February 2018."). There is no specific information about the costs incurred for research and all information about the research in individual billing statements have been redacted. Without



1 additional evidence, the Court cannot award costs to the Plaintiffs for legal research.

2 In defining the term “costs,” NRS 18.005(17) states that reasonable costs can include “[a]ny  
3 other reasonable and necessary expense incurred in connection with the action, including reasonable  
4 and necessary expenses for computerized services for legal research.” However, the Nevada  
5 Supreme Court has a history of denying requests for reimbursement of research fees as costs. *See*  
6 *Gibellini v. Klindt*, 110 Nev. 1201, 1205, 885 P.2d 540, 542–43 (1994); *see also Bergmann v.*  
7 *Boyce*, 109 Nev. 670, 856 P.2d 560 (1993). In *Bergmann*, the Nevada Supreme Court found that  
8 narrowly construing the version of NRS 18.005 that was in place at the time “computer research  
9 expenses are not recoverable as costs.” *Bergmann*, 109 Nev. at 680, 856 P.2d at 567. In the year  
10 following this decision, the Court reversed an award of costs for Westlaw charges and found that  
11 “attorneys incur computer research expenses as a function of their research of the law, so that the  
12 expense is more closely related to the attorney's fee than to the kinds of recoverable costs defined in  
13 NRS 18.005.” *Gibellini*, 110 Nev. at 1205, 885 P.2d at 542–43.

14 Candidly, NRS 18.005 has been updated since 1994 to include its current language regarding  
15 costs for computer research, but the Nevada Supreme Court has continued to approach awarding  
16 costs for legal research carefully. In a 2006 case, the Court upheld the decision of the district court  
17 to deny an award of costs for legal research because the costs were not sufficiently itemized.  
18 *Waddell v. L.V.R.V. Inc.*, 122 Nev. 15, 25–26, 125 P.3d 1160, 1166–67 (2006). In *Waddell* the Court  
19 highlighted that the “determination of allowable costs is within the sound discretion of the trial  
20 court,” “[o]nly reasonable costs may be awarded,” and “[r]easonable costs must be actual and  
21 reasonable rather than a reasonable estimate or calculation of such costs.” *Id.* (internal citations  
22 omitted).

23 Plaintiffs have not sufficiently itemized the costs that they have claimed for legal research  
24 and they have not provided evidence to demonstrate that the costs were reasonable, necessary, or  
25 actually incurred. The memorandum of costs and the billing statements do not provide any  
26 information about the research that was conducted or what relevance it had to the case. Plaintiffs  
27 specifically redacted any explanation of the research that they conducted or how it applied to the  
28 motions that they filed. They have also failed to provide any invoices or receipts from Westlaw

1 evidencing charges for legal research conducted for their clients in this matter. In addition, by listing  
 2 the charges as incurred over an entire month it is impossible to tell if the legal research fees were  
 3 charged for this case specifically or for multiple cases over the entire month.

4 As a result of the lack of evidence provided by Plaintiffs and necessary itemization of legal  
 5 research charges, the Court should deny their request to recover charges for legal research.

6 **B. Plaintiffs Are Not Entitled To An Award Of Costs Based On Statute Contract**  
 7 **Or Otherwise**

8 The Court should retax and deny Plaintiffs' Memorandum of Costs and Disbursements in its  
 9 entirety because Plaintiffs are not entitled to receive costs based on contract or statute.

10 NRS 18.020 defines what costs must be allowed to the prevailing party in a case. This matter  
 11 involved the expungement of an Abstract of Judgment that had been recorded on the properties of  
 12 each of the Plaintiffs. This judgment did not attempt to remove the Plaintiffs from possession of  
 13 their property, but simply acted as a lien for enforcement of prior court actions. There are no types  
 14 of costs defined in NRS 18.020 that could be applicable to this case.

15 Also at issue in this case was a Declaration of Covenants, Conditions and Restrictions  
 16 ("CC&R's) to which each of the parties were subject. (See Exhibit 3, to Plaintiff's Motion for  
 17 Attorney's Fees and Costs). The CC&R's contain a provision wherein attorney's fees may be  
 18 granted to the prevailing party in any legal or equitable proceeding for the enforcement of the  
 19 CC&R's. This provision, however, applies only to fees and **not costs**. This is relevant because NRS  
 20 chapter 18 treats fees and costs separately, and applies different standards between fees and costs.  
 21 (See NRS 18.010 and 18.015 regarding awards for fees, contrasted with NRS 18.005, 18.020, 18.050  
 22 and 18.110 regarding awards for costs.) Therefore, Plaintiffs do not have any contractual right to  
 23 recovery costs, and the Court should not grant them an award of costs in this matter.

24 ///

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26 ///

27 ///

28 ///

1 **III. CONCLUSION**

2 Based on the foregoing and failure of Plaintiffs to provide sufficient documentary evidence,  
3 this Court should retax all of the costs to \$0.00.

4 DATED: June 8, 2018

GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP

By: 

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

**CERTIFICATE OF MAILING**

The undersigned, an employee of the law firm of GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP, hereby certifies that on June 8, 2018, she served a copy of the foregoing by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope(s) addressed to:

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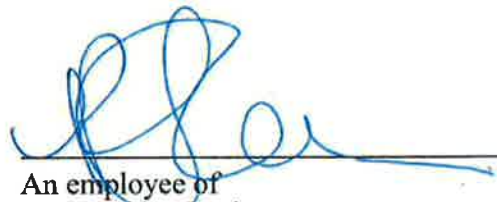
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File Number: 40EL-286495

December 26, 2017

**VIA ELECTRONIC MAIL**

John L. Corbett, Esq.  
Barnes & Thornburg, LLP  
2100 McKinney Avenue, Suite 1250  
Dallas, Texas 75201

Re: Celestino Acosta, et al. v. City of Long Beach, et al.

Dear John:

On behalf of Colony, I am responding to your December 21 letter, which requests that several carriers offer the \$2 million aggregate limits of their policies.

Your request, and the arguments that you assert to support it, are contrary to the positions previously taken by Friendly Village – in particular in your November 8 and December 6, 2017 letters to AIG. Specifically, Friendly Village asserted that there has been only a single occurrence, and that Coverage B does not supplement Coverage A in this case.

More importantly to Colony, you asserted that “there are no applicable primary policies prior to the 2011-12 period” because Friendly Village would not be “legally obligated to pay” for damages occurring before this period. The last Colony policy expired in 2009. Thus, you indicated that Colony would have no indemnity obligation, and should not be expected to offer its limits in settlement. Indeed, it is my understanding that this why Friendly Village did not even tender to Colony until October 2017 – more than two years after the lawsuit was filed.

Finally, due to the late tender, Colony has just now had an opportunity to begin its investigation of the claim and is still awaiting information requested by Ellen Fine.

For all of these reasons, Colony cannot at this time accede to your request that it immediately make its aggregate limits available for settlement. Of course, Colony will continue its investigation while reserving all of its rights.

Very truly yours,



Marc J. Feldman  
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRPH485050337.1

AA000803

**SheppardMullin**

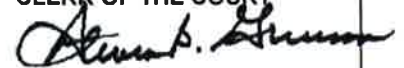
John L. Corbett, Esq.  
December 26, 2017  
Page 2

P.S. In response to your second letter of December 21, 2017 regarding mediation, and as I explained in my email to Teri earlier that day, because Colony received a tender very late in the litigation it was not in a position to either insist that the January mediation go forward or not go forward. Since the other parties and carriers have decided that it should go forward, Colony will have a representative present. For the reasons set forth above, however, Colony is not in a position to make an advance commitment regarding settlement.

cc: Ms. Ellen Fine

AA000804





**OPPM**  
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Nevada State Bar # 11592  
Daniel M. Hansen, Esq.  
Nevada State Bar # 13886  
**GIBBS GIDEN LOCHER TURNER**  
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Attorneys for Defendants  
TRUDI LEE LYTLE AND JOHN ALLEN  
LYTLE, AS TRUSTEES OF THE LYTLE  
TRUST

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiff,

v.

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

Defendants.

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

**DEFENDANTS' OPPOSITION TO  
PLAINTIFFS' MOTION FOR  
ATTORNEY'S FEES AND COSTS**

Date: July 11, 2018  
Time: 9:00 a.m.

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,

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Case No.: A-17-765372-C  
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LYTLE, AS TRUSTEES OF THE LYTLE  
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ENTITIES I through V, inclusive,

Defendants.

**DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR**

**ATTORNEY'S FEES AND COSTS**

Defendants, Trudi Lee Lytle, John Allen Lytle, and The Lytle Trust, by and through their  
counsel of record, Gibbs Giden Locher Turner Senet & Wittbrodt, LLP, hereby file their Opposition  
to Plaintiffs' Motion for Attorney's Fees and Costs.

This Opposition is based on the following Memorandum of Points and Authorities, any  
exhibits attached hereto, the papers and pleadings on file, and any oral argument allowed by the  
Court.

DATED: June 22, 2018

GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP

By: /s/ Richard E. Haskin

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Las Vegas, Nevada 89144  
Attorneys for Defendants  
TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, AS  
TRUSTEES OF THE LYTLE TRUST

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**MEMORANDUM OF POINTS AND AUTHORITIES****I. INTRODUCTION**

Even though Plaintiffs prevailed on their Motion for Summary Judgment, there is no basis for the Court to issue an award of attorney's fees and costs. To support their Motion, Plaintiffs claim they are entitled to an award of fees and costs pursuant to the Original CC&Rs, NRS 18.020, NRS 18.050, and/or NRS 18.010(2)(b). However, none of these items support an award of attorney's fees to the Plaintiffs, as more specifically addressed herein.

The Original CC&Rs do not allow for an award of costs, only for an award of attorney's fees, and only in the instance where Plaintiffs prevail in an action to enforce or restrain the violation of the CC&Rs. This case did not involve the enforcement or restraining of a violation of the CC&Rs; it was based on arguments related to the interpretation of NRS 116 and application of the Amended CC&Rs, which Plaintiffs steadfastly contended did not apply, and this Court agreed. If it had involved the enforcement or restraint of the Original CC&Rs then Plaintiffs would have been required to submit this matter to mandatory mediation or arbitration pursuant to NRS 38.310, which Plaintiffs did not.

NRS 18.020 does not provide a mandatory basis for an award of costs because Defendants did not have or assert a "possessory right" to Plaintiffs' real property. At most, their abstract of judgment represented a non-possessory right in Plaintiffs' properties.

In addition, the factors under NRS 18.050 that would allow the Court discretion to award costs in this case, have not been met. NRS 18.050 requires that a Court find that a party is (1) justified in bringing its action, and (2) recovered at least \$700 in money or damages, or personal property of that value. While Plaintiffs can argue that they were justified in bringing their action, they did not recover any monetary damages or personal property.

Finally, Plaintiffs cannot recover attorney's fees under NRS 18.010(2)(b) because Defendants claims and defenses alleged to support their position are reasonable and not intended to harass Plaintiffs. In fact, Defendants still maintain the claims and defenses that they brought before this Court in their appeal that is pending before the Supreme Court of Nevada.

///

1 As a result, there is no basis upon which the Court may award attorney's fees and costs to  
2 Plaintiffs, and their Motion should be denied.

3 **II. SUMMARY OF THE CASE**

4 There is significant history in this case reflecting the continuous efforts Defendants have had  
5 to make in order to preserve their property rights.

6 On January 4, 1994, Baughman & Turner Pension Trust (the "Developer"), as the subdivider  
7 of a cul-de-sac to be made up of nine (9) residential lots on a street known as Rosemere Court in Las  
8 Vegas, Nevada, recorded with the Clark County Recorder's Office a Declaration of Covenants,  
9 Conditions, and Restrictions ("Original CC&Rs"), creating "Rosemere Estates." The Lytles  
10 purchased their property, Lot 163-03-313-009 (the "Lytle Property") on November 6, 1996, from the  
11 original buyer who first purchased it from the Developer on August 25, 1995.

12 The Original CC&Rs, in the first paragraph, defines Rosemere Estates as "Lots 1 through 9  
13 of Rosemere Court, a subdivision..." The document adds that "it is the desire and intention of the  
14 Subdivider to sell the land described above and to impose on it mutual, beneficial, covenants,  
15 conditions and restrictions under a general plan or scheme of improvement for the benefit of all of  
16 the land described above and the future owners of the lots comprising said land." Thus, the  
17 Association includes each and every lot therein.

18 Sometime after the Lytles purchased their property, a group of homeowners formed the  
19 Association. In 1997, Linda Lamothe and Marge Boulden, two homeowners acting on behalf of all  
20 owners, filed Non-Profit Articles of Incorporation (the "Articles") pursuant to Nevada Revised  
21 Statutes ("NRS") 82, which formalized the property owners' committee and named it "Rosemere  
22 Estates Property Owners Association."

23 Without warning or consult with the homeowners, the Board for the Association, on July 2,  
24 2007, presented the Amended and Restated Covenants, Conditions and Restrictions (the "Amended  
25 CC&Rs") to the Association membership. The proposed Amended CC&Rs were far more restrictive  
26 than the Original CC&Rs and changed the very nature of property ownership within Rosemere  
27 Estates. The Amended CC&Rs contained numerous and onerous new use restrictions including the  
28 drastic expansion of the powers, rights, and duties of the Association, a section entitled "Restrictions

on Use, Alienation, and Occupancy,” pet restrictions, parking restrictions, lease restrictions, the establishment of a Design Review Committee with unfettered discretion, and a new and expansive definition of “nuisance.” The Amended CC&Rs also contained a morality provision. Finally, the Amended CC&Rs contained a construction timeline that would require the Lytles, and only the Lytles, to complete the construction of a custom home on the lot within a mere *60 days* of receipt of approval from the proposed *Design Review Committee*—something never envisioned in the Original CC&Rs and impossible to adhere to. Failure to comply would cost the Lytles \$50.00 per day. Despite failure to obtain the consent of all homeowners, the Board unilaterally recorded the Amended CC&Rs on July 3, 2007, with the Office of the Recorder for Clark County, Nevada.

Important to the case at hand, the Amended CC&Rs provide as follows:

Section 1.1. “‘Act’ shall mean and refer to the State of Nevada’s version of the Uniform Common-Interest Ownership Act, codified in NRS Chapter 116, as it may be amended from time to time, or any portion thereof.”

Section 1.14(e). “...the Property is a common interest community pursuant to the Act.”

Section 1.38. “‘Property’ shall refer to the Property as a whole, including the Lots and Common Elements, as restricted by and marketed and sold to third parties in accordance with this Declaration.”

Section 1.24. “‘Governing Documents includes the Amended CC&Rs.

Article 2: “The Association is charged with the duties and vested with the powers prescribed by law and set forth in the Governing Documents.”

Section 10.2(c). “An Assessment to pay a judgment against the Association may be made only against the lots in the Property at the time the judgment was entered, in proportion to the respective Liability for Common Expense.”

Amended CC&Rs.

After the Amended CC&Rs were adopted, at a September 15, 2008 Executive Board meeting of the Association, the Association’s membership voted to approve a Board proposal that, first, each member of the Association should be assessed \$10,000.00 “in conjunction with [the Lytles’] actions” in bringing the NRED 1 litigation and in pursuing litigation against Plaintiff for unarticulated and nebulous reasons, and, second, that “the Association should bring foreclosure proceedings against any lots with outstanding assessments due the Association.” The Association



1 then initiated non-judicial foreclosure proceedings against the Lytles. In addition to instituting the  
2 non-judicial foreclosure process afforded to it by NRS Chapter 116 and the Amended CC&Rs, the  
3 Board recorded additional, unlawful liens without right against the Lytles. Interestingly, this Board  
4 consisted of Plaintiffs Gerry Zobrist and Sherman and Karen Kearn. The total of the three (3)  
5 unlawfully recorded liens was \$209,883.19.

6 **A. NRED 1 Litigation**

7 In response to the unauthorized changes to the CC&Rs and oppressive actions taken against  
8 the Lytles, in 2007, the Lytles filed an NRS 38.310 mandated non-binding arbitration before the  
9 Nevada Real Estate Division ("NRED"), naming the Association as respondent. The Lytles sought a  
10 declaration that the Amended CC&Rs were unlawfully adopted, recorded and enforced by the  
11 Association against the Lytles. However, after the arbitrator found in favor of the Association, the  
12 Lytles filed for a trial de novo in this District Court, case number A-09-593497-C, which was  
13 assigned to Judge Michelle Leavitt in Department XII. After the matter was initially dismissed, the  
14 Lytles appealed to the Supreme Court, prevailed, and the matter was then remanded back to the  
15 District Court.

16 The Lytles ultimately prevailed, entirely, in the litigation, and the Court granted the Lytles  
17 summary judgment on July 29, 2013. The court made the following pertinent findings:

- 18 • The Association was formed by the homeowners on February 25, 1997.
- 19 • The Association is a limited purpose association as defined by NRS 116.1201.
- 20 • The Amended CC&Rs were improperly recorded, were invalid, and the Amended  
21 CC&Rs were ordered released.
- 22 • From July 3, 2007, through July 29, 2013, the Amended CC&Rs governed the  
23 Association and its members.

24 The matter was once again appealed, and the Nevada Supreme Court affirmed the district  
25 court's Order granting the Lytles summary judgment. The Supreme Court remanded the case to the  
26 District Court for redetermination of costs, attorneys' fees and damages on October 19, 2015.

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1 On May 25, 2016, after hearing the Lytles' motion for attorneys' fees, the Court awarded the  
2 Lytles \$297,072.66 in attorneys' fees pursuant to the Original CC&Rs, the Amended CC&Rs and  
3 NRS 116.4117. On June 17, 2016, the Court awarded the Lytles damages, after a prove-up hearing,  
4 in the amount of \$63,566.93. These damages included amounts expended by the Lytles in the  
5 design, engineering, and other costs associated with the construction of their home for Rosemere  
6 Estates, all of which were now stale and useless. Finally, on July 22, 2016, the Court awarded the  
7 Lytles costs in the amount of \$599.00. Previously, the Court had awarded \$1,962.80 in costs.

8 On September 2, 2016, the Lytles recorded Abstracts of Judgment against each property  
9 within the Association pursuant to NRS 116.

10 **B. NRED 2 Litigation**

11 On March 16, 2010, the Lytles initiated another NRS 38.310 mandated non-binding  
12 arbitration before NRED, naming the Association as respondent (the "NRED 2 Litigation"). The  
13 purpose of the NRED 2 Litigation was to halt non-judicial foreclosure proceedings initiated by the  
14 Association against the Lytles pursuant to NRS, Chapter 116 and the Amended CC&Rs. The Lytles  
15 also sought an order from the Court directing the Association to comply with NRS Chapter 116 and  
16 the Amended CC&Rs where the Association had failed to comply, e.g. approval of budgets, conduct  
17 of meetings, etc. In that arbitration, all parties stipulated that the Amended CC&Rs were valid and  
18 enforceable for the purpose of the NRED 2 Litigation.

19 After the Association prevailed in the Arbitration (in November 2010), the Lytles promptly  
20 and timely filed a lawsuit (for trial de novo) on December 13, 2010. The Association filed a  
21 counterclaim, seeking to enforce the assessments the Association levied against the Lytles property.

22 The Lytles included the following language in their Complaint:

23 Pursuant to a stipulation and/or agreement between the Plaintiff TRUST  
24 and the Defendant ASSOCIATION in the NRED action, the parties to the  
25 NRED action agreed that the Amended CC and R's and Bylaws of the  
26 Defendant ASSOCIATION [were] valid and enforceable only for the  
27 purpose of the NRED action and because this is a trial de novo of the  
28 NRED action the Plaintiff TRUST once again agrees that for the purpose  
of this litigation only that the Amended CC and R's and bylaws of the  
defendant ASSOCIATION are valid and enforceable.

Complaint in NRED 2 Litigation.

On November 14, 2011, the Court granted the Association's Motion for Summary Judgment. The Court also awarded the Association's Motion for Attorneys' Fees pursuant to NRS Chapter 116 and the Amended CC&Rs, with an amount to be determined at a subsequent hearing. The Court then entered two orders granting the Association's attorneys' fees pursuant to NRS 116.4117 and Section 16 of the Amended CC&Rs. Thereafter, the Court awarded an additional \$7,068.00 in attorneys' fees to the Association pursuant to NRS 116.4117 and the Amended CC&Rs.

On July 16, 2012, the Lytles filed a Notice of Appeal. On December 21, 2015, the Nevada Supreme Court vacated the Order Granting Summary Judgment and remanded this case back to this Court for determination. Specifically, the Supreme Court held that the:

Lytles' actions during the NRED arbitration were sufficient to 'submit' their slander of title claim to the NRED arbitrator for the purposes of NRS 38.330(5). We also conclude that the Lytles did not need to establish that they suffered monetary damages for their remaining claims to be viable.

Supreme Court Order Re: NRED 2 Litigation. The Supreme Court also vacated the order awarding attorneys' fees, costs, and damages to the Association. In the second footnote of the foregoing Supreme Court Order, and an item of importance to the present case, the Court noted that its ruling was "premised in part on the Lytles' stipulation as to the amended CC&Rs validity."

Upon remand, the case was essentially thrust back to the beginning. On November 14, 2016, the Court granted the Lytles' Motion for Summary Judgment as to each and every cause of action and against the Association's Counterclaim. The district court then awarded the Lytles the following: \$274,608.28 in attorneys' fees, \$4,725.00 in costs, and \$823,824.84 in punitive damages pursuant to NRS 42.005. Pursuant to the foregoing, the total amount of the judgment against the Association and in favor of the Lytles in the NRED 2 Litigation, including attorneys' fees and costs, is \$1,103,158.12.

### **C. NRED 3 Litigation**

On April 2, 2015, the Lytles filed an action against the Association in the Eighth Judicial District, Case No. A-15-716420-C, seeking an order from the Court that the Association hold an election, as it has not held such an election since March 24, 2010, despite the legal obligation to do so. On September 13, 2017, the Court granted the Lytles' Motion for Summary Judgment in the

1 NRED 3 Litigation, and ordered that election take place before a neutral third party. Following that  
2 decision, on November 7, 2017, the Court awarded the Lytles \$14,807.50 in attorneys' fees and  
3 \$655.10 in costs.

4 All of the foregoing orders in NRED 1, 2 and 3 Litigations are final and not subject to appeal,  
5 and all monetary orders are accruing interest.

6 **D. Recording Of The Abstracts and Boulden/Lamothe Litigation**

7 Pursuant to NRS 116, the Lytles recorded various abstracts of judgment all stemming from  
8 the judgment issued in the NRED 1 Litigation against each unit (property) within the Association,  
9 including Plaintiffs' properties. The Lytles obtained an Abstract of Judgment in the NRED 2  
10 Litigation as well, but only recorded that Abstract against the Association.

11 On December 8, 2016, a case was filed against the Lytles by the Bouldens, who own  
12 property at 1960 Rosemere Court, and the Lamothes, who own property at 1830 Rosemere Court,  
13 each located within the subject association, to remove the Abstracts of Judgment and plead causes of  
14 action for Quiet Title, Declaratory Relief and Slander of Title. On February 24, 2017, the Bouldens  
15 and Lamothes filed a Motion for Partial Summary Judgment requesting that the Court Order the  
16 Lytles to release their liens against the Boulden and Lamothe properties. Their Motion was granted  
17 by the Court on July 25, 2017, and the Lytles released the liens against the properties. However, the  
18 Lytles filed a Notice of Appeal on May 15, 2017, appealing the District Court's ruling that the Lytles  
19 could not have an abstract of judgment recorded against the Boulden and Lamothe properties. That  
20 appeal is currently being litigated and is pending a decision by the Supreme Court of Nevada.

21 **III. LEGAL ARGUMENT**

22 Although the Court granted Plaintiffs' Motion for Summary Judgment, Plaintiffs' are not  
23 entitled to an award of fees or costs because the Lytles acted in good faith and are defending a  
24 reasonable legal position that is the subject of a pending appeal to the Supreme Court of Nevada.  
25 Once more, there is no contractual or statutory basis for the recovery of attorneys' fees in this matter.

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1           A.     Plaintiffs' Motion for Attorney's Fees and Costs Should be Denied Because  
2                     Plaintiffs' Did Not Seek to Comply with NRS 38.310

3           Plaintiffs' base their Motion for Attorney's Fees and Costs on the premise that they were  
4     "restrain[ing] violation of the Original CC&Rs by requiring the Lytle Trust to expunge the Abstracts  
5     of Judgment improperly recorded against their Properties, because Defendants relied on the Original  
6     CC&Rs as alleged authorization for recording the liens." See Plaintiffs' Motion 9:22-25.

7           In regulating actions based on the enforcement of the provisions in CC&Rs, NRS 38.310  
8     provides the following:

9           1. No civil action based upon a claim relating to:

10          (a) The interpretation, application or enforcement of any covenants, conditions or  
11          restrictions applicable to residential property or any bylaws, rules or regulations  
12          adopted by an association; or

13          (b) The procedures used for increasing, decreasing or imposing additional  
14          assessments upon residential property,

15          may be commenced in any court in this State unless the action has been submitted to  
16          mediation or, if the parties agree, has been referred to a program pursuant to the  
17          provisions of NRS 38.300 to 38.360, inclusive, and, if the civil action concerns real  
18          estate within a planned community subject to the provisions of chapter 116 of NRS or  
19          real estate within a condominium hotel subject to the provisions of chapter 116B of  
20          NRS, all administrative procedures specified in any covenants, conditions or  
21          restrictions applicable to the property or in any bylaws, rules and regulations of an  
22          association have been exhausted.

23          2. A court shall dismiss any civil action which is commenced in violation of the  
24          provisions of subsection 1.

25          Plaintiffs look to the Original CC&Rs to support their claim that they are entitled to an award  
26     of attorney's fees. The Original CC&Rs state that "[i]n any legal or equitable proceeding for the  
27     enforcement of or to restrain the violation of the Declaration of Covenants, Conditions and  
28     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." Therefore, in order to be entitled to attorney's fees under the  
CC&Rs, the action brought by the Plaintiffs would have to be considered an action for enforcement  
of, or restraining violation of, the governing documents. Any action brought on that basis would fall  
under the purview of NRS 38.310 as a civil action regarding the interpretation, application or  
enforcement of the governing documents and would be subject to mandatory mediation and/or  
arbitration before the Nevada Real Estate Division ("NRED").



1 The problem with Plaintiffs' Motion is that Plaintiffs did not submit their claims to NRED  
2 before commencing this civil action. Therefore, they either did not consider their case to be an  
3 action regarding the enforcement or application of the CC&Rs when they initiated this action, or this  
4 case was not properly brought before this Court.

5 Plaintiffs' actions are akin to the evidentiary "sword and shield" doctrine. Under that  
6 doctrine, it is held that a party may not use a privilege as both a sword to assert a claim and a shield  
7 to protect the content related to the claim. *Molina v. State*, 120 Nev. 185, 194, 87 P.3d 533, 539  
8 (2004). Plaintiffs cannot take the position that this action did not involve the interpretation,  
9 application, or enforcement of the CC&Rs in order to avoid the procedural requirements of NRS  
10 38.310, but then claim that the action was brought to enforce the CC&Rs or as an interpretation of  
11 the CC&Rs for the purpose of receiving an award of attorney's fees. A ruling in favor of Plaintiffs  
12 in the instant case would provide the Plaintiffs with forgiveness to utilize the attorney's fees  
13 provision of the CC&Rs as a sword to receive a monetary benefit, while using the nature of the case  
14 as a shield from having to follow mandatory statutory procedures. The public policy underlying  
15 *Molina* and its progeny is that such two-faced positions cannot stand the test of equities.

16 For the foregoing reasons, the Court should deny Plaintiffs' Motion for Attorney's Fees and  
17 Costs since their claimed basis for an award, the attorney's fees provision in the Original CC&Rs,  
18 does not apply to this action; and, if it does apply, Plaintiffs violated NRS 38.310 and should not be  
19 rewarded for their violation.

20 **B. Plaintiffs Are Not Entitled To An Award Of Costs Under Statute, Contract Or**  
21 **Otherwise**

22 Plaintiffs' claim that they are entitled to costs pursuant to NRS 18.020(1), based on their  
23 assertion that this litigation has been about recovering their possessory rights to their real property.  
24 However, Defendants' abstracts of judgment recorded on the property did not create a possessory  
25 right to the property for Defendants.

26 As provided in Plaintiffs' Motion for Attorney's Fees and Costs, NRS 18.020(1) states that  
27 "Costs must be allowed of course to the prevailing party against any adverse party against whom  
28 judgment is rendered. . .in an action for the recovery of real property or a possessory right thereto."

1 A possessory right or possessory interest in property is defined as: “(1) The present right to control  
 2 property, including the right to exclude others, by a person who is not necessarily the owner. (2) A  
 3 present or future right to the exclusive use and possession of property.” (POSSESSORY  
 4 INTEREST, Black's Law Dictionary (10th ed. 2014)). With regard to Possessory Interests in Land  
 5 Restatement (First) of Property § 7 (1936) (updated June 2018) provides:

6 § 7 Possessory Interests in Land

7 A possessory interest in land exists in a person who has

8 (a) a physical relation to the land of a kind which gives a certain degree of  
 9 physical control over the land, and an intent so to exercise such control as to  
 10 exclude other members of society in general from any present occupation of  
 the land; or

(b) interests in the land which are substantially identical with those arising  
 when the elements stated in Clause (a) exist.

11 *Comment:*

12 *a. Nonpossessory interests.* Any interest in land other than those described in this  
 Section is a nonpossessory interest.

13 To illustrate the difference between a possessory interest and nonpossessory interest in property, the  
 14 Restatement provides the following example: “A owns land in fee simple absolute. B obtains a  
 15 judgment against A, takes out execution and levies upon the land. A has a possessory and B a  
 16 nonpossessory interest in the land.” (Id. at Comment on Clause (a), section (b), illustration (3)).

17 The Nevada Supreme Court also recognized that an abstract of judgment does not provide a  
 18 lienholder with a possessory interest in property, and possessory interests are superior to lienholder  
 19 interests. See *In re Contrevo*, 123 Nev. 20, 24, 153 P.3d 652, 655 (2007). “An abstract judgment  
 20 lien under NRS 17.150 is void with respect to fully exempt homestead property, and a lien under this  
 21 statute does not attach to such property or otherwise affect the property’s title.” Id. Therefore, the  
 22 party with possessory rights can be in a superior position to the holder of an abstract judgment, by  
 23 simply recording a homestead exemption.

24 Defendants’ only interest in the properties was created by their abstract of judgments and did  
 25 not constitute possessory rights in the property. Defendants did not obtain any physical control over  
 26 the properties or ability to exclude any person from the Plaintiffs’ properties. At most, Defendants  
 27 held a nonpossessory right to the properties through their abstracts. As a result, this litigation cannot  
 28 be considered to have involved an action for the recovery of a possessory right in real property, and



1 Plaintiffs are not entitled to an award of costs of course pursuant to NRS 18.020(1).

2 Plaintiffs also opine in their Motion that NRS 18.020 and 18.050 “give this court wide  
3 discretion to award costs to the Plaintiffs as the prevailing parties. The only factor that must be  
4 proven is that the costs are reasonable, necessary, and actually incurred.” (Plaintiffs’ Motion for  
5 Attorney’s Fees, 7:24-27.) However, this is an incorrect characterization of NRS 18.020 and NRS  
6 18.050. NRS 18.020 only allows the Court to award costs to the prevailing party in specific  
7 situations, none of which are applicable to this case. Furthermore, NRS 18.050 states:

8 Except as limited by this section, in other actions in the district court, part or all of the  
9 prevailing party's costs may be allowed and may be apportioned between the parties,  
10 or on the same or adverse sides. If, in the judgment of the court, the plaintiff believes  
11 he or she was justified in bringing the action in the district court, and the plaintiff  
recovers at least \$700 in money or damages, or personal property of that value, the  
court may allow the plaintiff part or all of his or her costs.

12 Therefore, in order for the Court to award costs to a prevailing party, the Court must determine that  
13 the prevailing party was (1) justified in bringing the action, and (2) recovered at least \$700 in money  
14 or damages, or personal property of that value. *Id.* Here, Plaintiffs did not recover \$700 in money,  
15 damages, or personal property. This case did not involve monetary damages and no damages were  
16 awarded to the Plaintiffs as a result of the Order granting the Motion for Summary Judgment. As a  
17 result, NRS 18.050 would not apply and the Court does not have discretion to award costs.

18 As demonstrated above, certainly Plaintiffs are not entitled to costs simply by showing that  
19 their costs were reasonable, necessary, and actually incurred. Defendants already filed their Motion  
20 to Retax and Settle Memorandum of Costs in response to Plaintiffs’ Memorandum of Costs,  
21 demonstrating that the costs claimed are not reasonable. A party requesting costs must “demonstrate  
22 how such [claimed costs] were necessary to and incurred in the present action.” *Cadle Co. v. Woods*  
23 *& Erickson, LLP*, 131 Nev. Adv. Op. 15, 345 P.3d 1049, 1054 (2015). Plaintiffs failed to  
24 demonstrate that their costs were reasonable, necessary, or actually incurred with regard to this case.

25 For each of the foregoing reasons, the Court should deny Plaintiffs’ request for costs.  
26 Plaintiffs’ are not entitled to an award of costs under NRS 18.020, have not met the standard to  
27 receive an award of costs under NRS 18.050, and have not demonstrated that their claimed costs  
28 were reasonable, necessary, or actually incurred.

1           **C.     Plaintiffs Should not be Awarded Attorney's Fees**

2           The long-standing rule in Nevada is that attorney's fees cannot be awarded unless authorized  
3 by statute, rule, or agreement. See First Interstate Bank of Nev. v. Green, 101 Nev. 113, 116, 694  
4 P.2d 496, 498 (1985). A prevailing party may be awarded fees pursuant to NRS 18.010(2)(a) if the  
5 party recovers less than \$20,000. See Smith v. Crown Fin. Servs., 111 Nev. 277, 286, 890 P.2d 769,  
6 775 (1995). However, under NRS 18.010(2)(a), it is well settled that a money judgment is a  
7 prerequisite to recovery of attorney fees. Thomas v. City of N. Las Vegas, 122 Nev. 82, 86, 127  
8 P.3d 1057, 1060 (2006). Further, a party which successfully defends an action may be awarded fees  
9 if the court finds that the claim was brought or maintained without reasonable ground or to harass  
10 the prevailing party. NRS 18.010(2)(b). Although a district court has discretion to award attorney  
11 fees against a party for unreasonably maintaining a lawsuit, there must be evidence supporting the  
12 district court's finding that the claim or defense was unreasonable or brought to harass. Bower v.  
13 Harrah's Laughlin, Inc., 2009, 215 P.3d 709, 125 Nev. 470.

14           In this case, although there are CC&Rs considered in this matter, the lawsuit does not involve  
15 the enforcement of, or restraint of violation of the CC&Rs, which would be necessary for fees to be  
16 awarded due to a contractual right. Moreover, Defendants believed and still believe that they have  
17 reasonable grounds to support their position and have not provided their defenses as a way to harass  
18 the other party. This is evidenced both by Defendants' pleadings before this Court and the fact that  
19 Defendants have appealed the underlying decision to the Supreme Court of Nevada.

20           1.     *The Plaintiffs Are Not Entitled to Attorney's Fees Pursuant to the Terms of the*

21                     *Original CC&Rs.*

22           Section 25 of the Original CC&Rs provides that

23           In any legal or equitable proceeding for the enforcement of or to restrain the violation  
24           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.

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1 Plaintiffs contend that they restrained Defendants from a violation of the Original CC&Rs by  
2 requiring Defendants to expunge the Abstracts of Judgment recorded against their Properties.  
3 However, they do not identify what "violations" of the CC&Rs Defendants were being restrained  
4 from violating and do not specify any provisions of the CC&Rs that were violated.

5 The dispute in this case was specifically related to whether NRS 116.3117 applies to the  
6 judgments Defendants obtained in the NRED 1 and NRED 2 litigation. NRS 116.3117 provides that  
7 a judgment against an Association may be recorded against each unit. This statute creates the  
8 standard that a judgment against the common-interest community can be recorded against all  
9 property within that community, including all units defined as being within the community. In sum,  
10 this case is about statutory interpretation and not about enforcement or violations of the CC&Rs.

11 As addressed above, had this case been based on the enforcement or prevention of violations  
12 of the Original CC&Rs, then the Plaintiffs would have been required to follow the mandatory  
13 procedures in NRS 38.310. The Plaintiffs would have had to submit this dispute to NRED for  
14 mediation or arbitration before they could file a civil action. Otherwise the matter would have to  
15 have been mandatorily dismissed pursuant to NRS 38.310(2). Only now that Plaintiffs seek to  
16 obtain an award of attorney's fees through the Original CC&Rs, are they claiming that this case was  
17 based on enforcement of the Original CC&Rs.

18 This case is not an action that falls under the purview of the provision about attorney's fees  
19 in the Original CC&Rs, and therefore there is no basis to award attorney's fees based on contract.  
20 However, if it is determined that this case does involve the enforcement or action to restrain the  
21 violation of the Original CC&Rs, then it should have been submitted to mediation or arbitration  
22 pursuant to NRS 38.310. Since it was not, this case is procedurally improper and Plaintiffs' should  
23 not be awarded fees as they failed to comply with the appropriate statutes.

24 2. The Plaintiffs are not Entitled to Attorney's Fees Because Defendants had  
25 Every Right to Defend Themselves Against the Claims Brought by Plaintiffs

26 NRS 18.010(2)(b) provides that a court may make an allowance of attorney's fees to a  
27 prevailing party when the court finds that the claim, counterclaim, or defense was brought "without  
28 reasonable ground or to harass the prevailing party." To support an award of attorney fees without

1 regard to recovery sought, there must be evidence in record supporting proposition that claims were  
2 brought without reasonable grounds or to harass the other party. *Semenza v. Caughlin Crafted*  
3 *Homes*, 1995, 901 P.2d 684, 111 Nev. 1089. Although a district court has discretion to award  
4 attorney fees against a party for unreasonably maintaining a lawsuit, there must be evidence  
5 supporting the district court's finding that the claim or defense was unreasonable or brought to  
6 harass. *Bower v. Harrah's Laughlin, Inc.*, 2009, 215 P.3d 709, 125 Nev. 470.

7 Plaintiffs claim that because Defendants would not settle with them by agreeing to remove  
8 the recorded abstracts of judgment, Defendants claims were groundless and intended only to harass  
9 Plaintiffs and prolong the litigation. Plaintiffs support these claims by pointing to the previously  
10 existing case regarding properties in the association that this case was consolidated with. Plaintiffs'  
11 specifically note that the Defendants had already been ordered to remove recorded abstracts of  
12 judgment. However, what Plaintiffs ignore is that Defendants filed an appeal to the prior judgment  
13 that is currently pending before the Supreme Court of Nevada. The issues in the prior case are still  
14 being contested by Defendants, and Defendants steadfastly maintain their position.

15 Moreover, Defendants had, and continue to have, reasonable grounds to believe that their  
16 case was not frivolous and not brought in bad faith. Defendants relied on the language in NRS  
17 116.4117, NRS 116.3111 and NRS 116.3117, as well as the prior rulings from the NRED 1, 2 and 3  
18 litigation. NRS 116.311(3) provides that "[l]iens resulting from judgments against the association  
19 are governed by NRS 116.3117." NRS 116.3117 then provides:

20 a judgment for money against the association, if a copy of the docket or an abstract or  
21 copy of the judgment is recorded, is not a lien on the common elements, but is a lien  
22 in favor of the judgment lienholder against all of the other real property of the  
23 association and all of the units in the common-interest community at the time the  
judgment was entered. No other property of a unit's owner is subject to the claims of  
creditors of the association.

24 Defendants have continued to rely on the language in these statutes to support their position before  
25 the Supreme Court of Nevada. Defendants did not have an obligation to alter their position simply  
26 because Plaintiffs asked them to.

27 Thus, Defendants' have reasonable grounds for their claims, and their defense in this  
28 litigation was not intended to harass Plaintiffs.



1           **D. Plaintiffs' Attorney's Fees are not Reasonable**

2           Even though Plaintiffs have not demonstrated that they are entitled to attorney's fees,  
3           assuming arguendo that they have a basis for such an award, the amount they have requested for fees  
4           is unreasonable and not appropriate under the circumstances of this case.

5           Plaintiffs are requesting \$70,932.60 in attorney's fees in a case that, as emphasized by  
6           Plaintiff, had already been tried and decided. Plaintiffs filed their Complaint and Motion for  
7           Summary Judgment concurrently at the end of November 2017, and ultimately received a favorable  
8           judgment based on the "law of the case." The amount of attorney's fees requested is not reasonable  
9           in light of the facts and circumstances of this case, given that Plaintiffs were only joining prior  
10          litigation that was based on nearly an identical set of facts that exist in their claims.

11           **E. Plaintiffs Cannot Be Awarded Fees Related To Their Amicus Brief Filed In An**  
12           **Appeal That Bear No Relation To This Action**

13          In addition, a review of Plaintiffs' billing statements reveals that Plaintiffs are requesting fees  
14          for time that they spent researching and working on an Amicus Brief that they filed in the Boulden  
15          and Lamothe matter that is currently being considered by the Supreme Court of Nevada, case  
16          number 73039. The Amicus Brief is not a part of this case and is not related to the Motion for  
17          Summary Judgment that the Court granted in this matter. Plaintiffs are requesting a total of  
18          \$15,359.50 in attorney's fees for time that they spent on the Amicus Brief, including for items that  
19          were titled "Research."<sup>1</sup> This Amicus Brief was not incurred in this action or related to Plaintiffs'  
20          Complaint, the Motion for Summary Judgment, or any hearing. They filed the Amicus Brief at their  
21          own election in a related appeal. There is absolutely no relevance to this action, and those fees  
22          cannot be included.

23          ///

24          ///

25          ///

26          ///

27          \_\_\_\_\_  
28          <sup>1</sup> See Exhibit 1. For demonstrative purposes, Defendants have compiled a spreadsheet of the billing records from  
Plaintiffs' counsel that represent time spent on the Amicus Brief for an appeal of a related matter, or are only titled  
"Research."

1 Moreover, given that Plaintiffs list that they conducted research for the Amicus Brief, it is  
2 likely that they are attempting to recover costs related to that research from Defendants as well.  
3 There is no way for Defendants to know what the research was conducted for because Plaintiffs have  
4 not itemized those costs. Plaintiffs should not be awarded fees and costs for legal work that is not  
5 related to this case.

6 **II. CONCLUSION**

7 Based on the foregoing the Court should deny Plaintiffs' request for fees and costs. Plaintiffs  
8 have not demonstrated that they have a statutory or contractual entitlement to receive an award of  
9 attorney's fees and costs. Moreover, Defendants' asserted their claims and defenses in good faith  
10 and without any intent to harass the Plaintiffs.

11  
12 DATED: June 22, 2018

GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP

13  
14 By: /s/ Richard E. Haskin

15 Richard E. Haskin, Esq.  
16 Nevada State Bar # 11592  
17 1140 N. Town Center Drive, Suite 300  
18 Las Vegas, Nevada 89144  
19 Attorneys for Defendants  
20 TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, AS  
21 TRUSTEES OF THE LYTLE TRUST  
22  
23  
24  
25  
26  
27  
28



**CERTIFICATE OF MAILING**

The undersigned, an employee of the law firm of GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP, hereby certifies that on June 22, 2018, she served a copy of the foregoing **DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR ATTORNEY'S FEES AND COSTS** by electronic service through the Regional Justice Center for Clark County, Nevada's ECF System:

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

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Wesley J. Smith, Esq.  
Laura J. Wolff, Esq.  
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Las Vegas, Nevada 89134

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

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An employee of  
Gibbs Giden Locher Turner  
Senet & Wittbrodt LLP

# **EXHIBIT “1”**

**AA000824**

September Trust, Dated March 23,1972			Page 6	
1/25/2018	WJS	Emails from D Foley; review Appellate Brief; Research mails to and from L Wolff regarding review Notices from Court regarding Case	0.33 260.00/hr	84.50
September Trust, Dated March 23,1972			Page 7	
1/25/2018 -	KBC	Review Appeal Record and Brief; review emails regarding Amicus Request; conference with W Smith regarding •••••	0.05 260.00/hr	13.00
1/26/2018 -	LJW	Review Appeal Brief	0.2 260.00/hr	52.00
1/29/2018 -	LJW	Review Appeal Brief; preparation of Notice of Hearing; emails to and from W Smith; Research	0.7 260.00/hr	182.00
1/30/2018 -	WJS	Review Lytle Appeal Brief; em ails to and from L Wolff and D Foley	0.3 260.00/hr	78.00
1/31/2018 -	LJW	Research	0.35 260.00/hr	91.00
1/31/2018 -	WJS	Research and review Arguments in Lytle Appeal Brief; file notes; email to L Wolff	0.78 260.00/hr	201.50
2/5/2018 -	WJS	Research notes to file; emails to and from L Wolff	1.10 260.00/hr	286.00
September Trust, Dated March 23,1972			Page 8	
2/7/2018 -	KBC	Conference with W Smith regarding Hearing, Answer, Appeal and potential Countermotion for Summary Judgment	0.10 260.00/hr	26.00
September Trust, Dated March 23,1972			Page 9	
2/22/2018 -	LJW	Preparation of Amicus Brief; telephone call with W Smith; preparation of Consolidation Order; emails to and from opposing counsel regarding 16.1 Conference and Order; Research_	0.93 260.00/hr	240.50
2/23/2018 -	LJW	Preparation of Amicus Brief; telephone call to W Smith	0.83 260.00/hr	214.50
2/26/2018 -	LJW	Review Pleadings; email to W Smith	0.05 260.00/hr	13.00
September Trust, Dated March 23,1972			Page 10	
3/8/2018 -	LJW	Preparation of Amicus Brief	0.40 260.00/hr	104.00
3/9/2018 -	LJW	Review Respondent's Brief	0.18 260.00/hr	45.50
3/12/2018 -	LJW	Review Respondent's Brief and preparation of Amicus Brief; emails to and from opposing counsel; emails to and from W Smith	1.00 260.00/hr	260.00
3/13/2018 -	LJW	Preparation of Amicus Brief	0.73 260.00/hr	188.50
3/14/2018 -	LJW	Preparation of Amicus Brief; emails to and from D Foley; emaHs to and from W Smith; preparation of Exhibits	1.05 260.00/hr	273.00
3/15/2018 -	LJW	Preparation of Amicus Brief; emails to and from W Smith; emails to and from Clerk	1.10 260.00/hr	286.00

-	WJS	Telephone call from L Wolff; review and revise Amicus Brief; Research; emails and telephone calls to and from L Wolff regarding review Lytle Reply Brief	0.70 260.00/hr	182.00
3/16/2018 -	LJW	Preparation of Amicus Brief; emails to and from W Smith; preparation of Exhibits; Research	0.75 260.00/hr	195.00
-	WJS	Review and revise Amicus Brief, Certificates and prepare for filing; telephone calls to and from Supreme Court regarding filing of Brief	0.45 260.00/hr	117.00
3/19/2018 -	WJS	Telephone call from Supreme Court Docketing Clerk regarding Amicus Brief; preparation for Summary Judgment Hearing and Argument; review Summary Judgment Motion and files	0.55 260.00/hr	143.00
3/20/2018 -	WJS	Preparation for Hearing; review Briefing and Exhibits on Motion for Summary Judgment and Appellate Briefs; prepare outline of Oral Argument; Oral Argument practice; emails to and from D Foley; review Transcripts of prior Summary Judgment Hearing	1.55 260.00/hr	403.00
September Trust, Dated March 23, 1972			Page 11	
5/1/2018 -	LJW	Review Lytle Appellate emails to and from W Smith	0.55 260.00/hr	143.00
Gerry R. Zobrist and Jolin G. Zobrist Family Trust			Page 2	
10/19/2017 -	KBC	Telephone call from D Foley regarding Stipulation, Joinder, Relief and Appeal Order regarding Injunction; conference with W Smith regarding emails to Attorneys and Clients	0.30 260.00/hr	78.00
Gerry R. Zobrist and Jolin G. Zobrist Family Trust			Page 6	
1/24/2018 -	LJW	Review documents and preparation of Arguments for Summary Judgment Motion and Appeal; preparation of Amended Order; emails to and from W Smith; telephone call to Clerk; emails to and from Clerk	0.88 260.00/hr	227.50
Gerry R. Zobrist and Jolin G. Zobrist Family Trust			Page 7	
1/25/2018 -	WJS	Emails from D Foley; review Appellate Brief; Research emails to and from L Wolff regarding review Notices from Court regarding Case Assignments and Rescheduled Motion to Consolidate Hearing; calendar Hearing	0.33 260.00/hr	84.50
-	KBC	Review Appeal Record and Brief; review emails regarding Amicus Request; conference with W Smith regarding	0.05 260.00/hr 260.00/hr	13.00
1/26/2018 -	LJW	Review Appeal Brief	0.20 260.00/hr	52.00
1/29/2018 -	LJW	Review Appeal Brief; preparation of Notice of Hearing, emails to and from W Smith; Research	0.70 260.00/hr	182.00
1/30/2018 -	WJS	Review Lytle Appeal Brief; emails to and from L Wolff and D Foley	0.30 260.00/hr	78.00
1/31/2018 -	LJW	Research	0.35	91.00

	- WJS	Research and review Arguments in Lytle Appeal Brief; file notes; email to L Wolff	260.00/hr 0.78	201.50
2/5/2018 -	WJS	Research notes to file; emails to and from L Wolff	260.00/hr 1.10	286.00
			260.00/hr	
Gerry R. Zobrist and Jolin G. Zobrist Family Trust			Page 8	
2/7/2018 -	KBC	Conference with W Smith regarding Hearing, Answer, Appeal and potential Countermotion for Summary Judgment	0.10	26.00
			260.00/hr	
Gerry R. Zobrist and Jolin G. Zobrist Family Trust			Page 9	
2/22/2018 -	LJW	Preparation of Amicus Brief; telephone call with W Smith; preparation of Consolidation Order; emails to and from opposing counsel regarding 16.1 Conference and Order; Research_	0.93	240.50
			260.00/hr	
2/23/2018 -	LJW	Preparation of Amicus Brief; telephone call to W Smith	0.83	214.50
			260.00/hr	
2/26/2018 -	LJW	Review Pleadings; email to W Smith	0.05	13.00
			260.00/hr	
Gerry R. Zobrist and Jolin G. Zobrist Family Trust			Page 10	
3/8/2018 -	LJW	Preparation of Amicus Brief	0.40	104.00
			260.00/hr	
3/9/2018 -	LJW	Review Respondent's Brief	0.18	45.50
			260.00/hr	
3/12/2018 -	LJW	Review Respondent's Brief and preparation of Amicus Brief; emails to and from opposing counsel; emails to and from W Smith	1.00	260.00
			260.00/hr	
3/13/2018 -	LJW	Preparation of Amicus Brief	0.73	188.50
			260.00/hr	
3/14/2018 -	LJW	Preparation of Amicus Brief; emails to and from D Foley; emails to and from W Smith; preparation of Exhibits	1.05	273.00
			260.00/hr	
3/15/2018 -	LJW	Preparation of Amicus Brief; emails to and from W Smith; emails to and from Clerk	1.10	286.00
			260.00/hr	
-	WJS	Telephone call from L Wolff; review and revise Amicus Brief; Research; emails and telephone calls to and from L Wolff regarding review Lytle Reply Brief	0.70	182.00
			260.00/hr	
3/16/2018 -	LJW	Preparation of Amicus Brief; emails to and from W Smith; preparation of Exhibits; Research	0.75	195.00
			260.00/hr	
-	WJS	Review and revise Amicus Brief, Certificates and prepare for filing; telephone calls to and from Supreme Court regarding filing of Brief	0.45	117.00
			260.00/hr	
3/19/2018 -	WJS	Telephone call from Supreme Court Docketing Clerk regarding Amicus Brief; preparation for Summary Judgment Hearing and	0.55	143.00
			260.00/hr	
Gerry R. Zobrist and Jolin G. Zobrist Family Trust			Page 11	
3/20/2018 -	WJS	Preparation for Hearing; review Briefing and Exhibits on Motion for Summary Judgment and Appellate Briefs; prepare outline of Oral Argument; Oral Argument practice; emails to and from D Foley; review Transcripts of prior Summary Judgment Hearing	1.55	403.00
			260.00/hr	
5/1/2018 -	LJW	Review Lytle Appellate Response; Research	0.55	143.00

	emails to and from W Smith	260.00/hr	
Raynaldo G. Evelyn A. Sandoval Jt Living & Devolution Trust		Page 6	
1/24/2018 - LJW	Review documents and preparation of Arguments for Summary Judgment Motion and Appeal; preparation of Amended Order; emails to and from W Smith; telephone call to Clerk; emails to and from Clerk	0.88 260.00/hr	227.50
1/25/2018 - WJS	Emails from D Foley; review Appellate Brief; Research emails to and from L Wolff regarding review Notices from Court regarding Case Assignments and Rescheduled Motion to Consolidate Hearing; calendar Hearing	0.33 260.00/hr	84.50
- KBC	Review Appeal Record and Brief; review emails regarding Amicus Request; conference with W Smith regarding	0.05 260.00/hr	13.00
1/26/2018 - LJW	Review Appeal Brief	0.20 260.00/hr	52.00
1/29/2018 - LJW	Review Appeal Brief; preparation of Notice of Hearing; email to and from W Smith; Research	0.70 260.00/hr	182.00
1/30/2018 - WJS	Review Lytle Appeal Brief; emails to and from L. Wolff and D Foley	0.30 260.00/hr	78.00
1/31/2018 - WJS	Research and review Arguments in Lytle Appeal Brief; file notes; email to L. Wolff	0.78 260.00/hr	201.50
Raynaldo G. Evelyn A. Sandoval Jt Living & Devolution Trust		Page 7	
2/7/2018 - KBC	Conference with W Smith regarding Hearing, Answer, Appeal and potential Countermotion for Summary Judgment	0.10 260.00/hr	26.00
Raynaldo G. Evelyn A. Sandoval Jt Living & Devolution Trust		Page 8	
2/22/2018 - LJW	Preparation of Amicus Brief; telephone call with W Smith; preparation of Consolidation Order; emails to and from opposing counsel regarding 16.1 Conference and Order; Research"	0.93 260.00/hr	240.50
2/23/2018 - LJW	Preparation of Amicus Brief; telephone call to W Smith	0.83 260.00/hr	214.50
Raynaldo G. Evelyn A. Sandoval Jt Living & Devolution Trust		Page 9	
3/8/2018 - LJW	Preparation of Amicus Brief	0.40 260.00/hr	104.00
3/9/2018 - LJW	Review Respondent's Brief	0.18 260.00/hr	45.50
3/12/2018 - LJW	Review Respondent's Brief and preparation of Amicus Brief; emails to and from opposing counsel; emails to and from W Smith	1.00 260.00/hr	260.00
3/13/2018 - LJW	Preparation of Amicus Brief	0.73 260.00/hr	188.50
3/14/2018 - LJW	Preparation of Amicus Brief; emails to and from D Foley; emails to and from W Smith; preparation of Exhibits	1.05 260.00/hr	273.00



3/15/2018 -	LJW	Preparation of Amicus Brief; emails to and from W Smith; emails to and from Clerk	1.10 260.00/hr	286.00
-	WJS	Telephone call from L Wolff; review and revise Amicus Brief; Research; emails and telephone calls to and from L Wolff regarding review Lytle Reply Brief	0.70 260.00/hr	182.00
Raynaldo G. Evelyn A. Sandoval Jt Living & Devolution Trust			Page 10	
3/16/2018 -	LJW	Preparation of Amicus Brief; emails to and from W Smith preparation of Exhibits; Research	0.75 260.00/hr	195.00
-	WJS	Review and revise Amicus Brief, Certificates and prepare for filing; telephone calls to and from Supreme Court regarding filing of Brief	0.45 260.00/hr	117.00
3/19/2018 -	WJS	Telephone call from Supreme Court Docketing Clerk regarding Amicus Brief; preparation for Summary Judgment Hearing and Argument; review Summary Judgment Motion and files	0.55 260.00/hr	143.00
3/20/2018 -	WJS	Preparation for Hearing; review Briefing and Exhibits on Motion for Summary Judgment and Appellate Briefs; prepare outline of Oral Argument; Oral Argument practice; emails to and from D Foley; review Transcripts of prior Summary Judgment Hearing	1.55 260.00/hr	403.00
5/1/2018 -	LJW	Review Lytle Appellate Response; Research on emails to and from W Smith	0.55 260.00/hr	143.00
Julie Marie Sandoval Gegan			Page 6	
1/24/2018 -	LJW	Review documents and preparation of Arguments for Summary Judgment Motion and Appeal; preparation of Amended Order; emails to and from W Smith; telephone call to Clerk; emails to and from Clerk	0.88 260.00/hr	227.50
1/25/2018 -	WJS	Emails from D Foley; review Appellate Brief; Research_ emails to and from L Wolff regarding review Notices from Court regarding Case Assignments and Rescheduled Motion to Consolidate Hearing; calendar Hearing	0.33 260.00/hr	84.50
-	KBC	Review Appeal Record and Brief; review emails regarding Amicus Request; conference with W Smith regarding	260.00/hr 0.05	13.00
1/26/2018 -	LJW	Review Appeal Brief	0.20 260.00/hr	52.00
1/29/2018 -	LJW	Review Appeal Brief; preparation of Notice of Hearing; emails to and from W Smith; Research	0.70 260.00/hr	182.00
1/30/2018 -	WJS	Review Lytle Appeal Brief; emails to and from L Wolff and D Foley	0.30 260.00/hr	78.00
1/31/2018 -	LJW	Research	0.35 260.00/hr	91.00
-	WJS	Research and review Arguments in Lytle Appeal Brief; file notes; email to L Wolff	0.78 260.00/hr	201.50

Julie Marie Sandoval Gegan

Page 7

**AA000829**

2/7/2018	KBC	Conference with W Smith regarding Hearing, Answer, Appeal and potential Countermotion for Summary Judgment	0.10 260.00/hr	26.00
Julie Marie Sandoval Gegan			Page 8	
2/22/2018 -	LJW	Preparation of Amicus Brief; telephone call with W Smith; preparation of Consolidation Order; emails to and from opposing counsel regarding 16.1 Conference and Order; Research	0.93 260.00/hr	240.50
2/23/2018 -	LJW	Preparation of Amicus Brief; telephone call to W Smith	0.83 260.00/hr	214.50
Julie Marie Sandoval Gegan			Page 9	
3/8/2018 -	LJW	Preparation of Amicus Brief	0.40 260.00/hr	104.00
3/9/2018 -	LJW	Review Respondent's Brief	0.18 260.00/hr	45.50
3/12/2018 -	LJW	Review Respondent's Brief and preparation of Amicus Brief; emails to and from opposing counsel; emails to and from W Smith	1.00 260.00/hr	260.00
3/13/2018	LJW	Preparation of Amicus Brief	0.73 260.00/hr	188.50
3/14/2018 -	LJW	Preparation of Amicus Brief; emails to and from D Foley; emails to and from W Smith; preparation of Exhibits	1.05 260.00/hr	273.00
3/15/2018 -	LJW	Preparation of Amicus Brief; emails to and from W Smith; emails to and from Clerk	1.10 260.00/hr	286.00
-	WJS	Telephone call from L Wolff; review and revise Amicus Brief; Research; emails and telephone calls to and from L Wolff regarding review Lytle Reply Brief	0.70 260.00/hr	182.00
Julie Marie Sandoval Gegan			Page 10	
3/16/2018 -	LJW	Preparation of Amicus Brief; emails to and from W Smith preparation of Exhibits; Research	0.75 260.00/hr	195.00
-	WJS	Review and revise Amicus Brief, Certificates and prepare for filing; telephone calls to and from Supreme Court regarding filing of Brief	0.45 260.00/hr	117.00
3/19/2018 -	WJS	Telephone call from Supreme Court Docketing Clerk regarding Amicus Brief; preparation for Summary Judgment Hearing and Argument; review Summary Judgment Motion and files	0.55 260.00/hr	143.00
3/20/2018 -	WJS	Preparation for Hearing; review Briefing and Exhibits on Motion for Summary Judgment and Appellate Briefs; prepare outline of Oral Argument; Oral Argument practice; emails to and from D Foley; review Transcripts of prior Summary Judgment Hearing	1.55 260.00/hr	403.00
5/1/2018 -	LJW	Review Lytle Appellate Response; Research emails to and from W Smith	0.55 260.00/hr	143.00
				15,359.50



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

10 **EIGHTH JUDICIAL DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

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

15 Plaintiffs,

16 vs.

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

20 Defendants.

21 AND ALL RELATED COUNTERCLAIMS  
22 AND CROSS-CLAIMS

23 SEPTEMBER TRUST, DATED MARCH 23,  
24 1972; GERRY R. ZOBRIST AND JOLIN G.  
25 ZOBRIST, AS TRUSTEES OF THE GERRY  
R. ZOBRIST AND JOLIN G. ZOBRIST  
26 FAMILY TRUST; RAYNALDO G.  
SANDOVAL AND JULIE MARIE  
27 SANDOVAL GEGEN, AS TRUSTEES OF  
THE RAYNALDO G. AND EVELYN A.  
28 SANDOVAL JOINT LIVING AND

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

**NOTICE OF ENTRY OF ORDER**  
**REGARDING PLAINTIFFS' MOTION**  
**FOR ATTORNEY'S FEES AND**  
**COSTS AND MEMORANDUM OF**  
**COSTS AND DISBURSEMENTS AND**  
**DEFENDANTS' MOTION TO RETAX**  
**AND SETTLE MEMORANDUM OF**  
**COSTS**

Date:  
Time:

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

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

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

5 Plaintiffs,

6 vs.

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

11 Defendants.

12 PLEASE TAKE NOTICE that on September 12, 2018, the attached Order Regarding  
13 Plaintiffs' Motion for Attorney's Fees and Costs and Memorandum of Costs and  
14 Disbursements and Defendants' Motion to Retax and Settle Memorandum of Cost was  
15 entered into the Court's Docket.

16 DATED this 13th day of September, 2018.

17 CHRISTENSEN JAMES & MARTIN

18 By: /s/ Wesley J Smith, Esq.

19 Wesley J Smith, Esq.

20 Nevada Bar No. 11871

21 7440 W. Sahara Avenue

22 Las Vegas, NV 89117

23 Tel.: (702) 255-1718

24 Fax: (702) 255-0871

25 *Attorneys for September Trust, Zobrist*  
26 *Trust, Sandoval Trust and Gegen*

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**CERTIFICATE OF SERVICE**

I am an employee of Christensen James & Martin. On September 13th, 2018, I caused a true and correct copy of the foregoing NOTICE OF ENTRY OF ORDER REGARDING PLAINTIFFS' MOTION FOR ATTORNEY'S FEES AND COSTS AND MEMORANDUM OF COSTS AND DISBURSEMENTS AND DEFENDANTS' MOTION TO RETAX AND SETTLE MEMORANDUM OF COSTS to be served in the following manner:

☒ **ELECTRONIC SERVICE:** electronic transmission (E-Service) through the Court's electronic filing system pursuant to Rule 8.05 of the Rules of Practice for the Eighth Judicial District Court of the State of Nevada.

☐ **UNITED STATES MAIL:** depositing a true and correct copy of the above-referenced document into the United States Mail with prepaid first-class postage, addressed to the parties at their last-known mailing address(es):

☐ **FACSIMILE:** By sending the above-referenced document via facsimile as follows:

☐ **E-MAIL:** electronic transmission by email to the following address(es):

/s/ Natalie Saville  
Natalie Saville





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

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

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

**ORDER REGARDING PLAINTIFFS'  
MOTION FOR ATTORNEY'S FEES  
AND COSTS AND MEMORANDUM  
OF COSTS AND DISBURSEMENTS  
AND DEFENDANTS' MOTION TO  
RETAX AND SETTLE  
MEMORANDUM OF COSTS**

Date: August 9, 2018  
Time: 9:00 a.m.

AND ALL RELATED COUNTERCLAIMS  
AND CROSS-CLAIMS

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

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

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

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

5 Plaintiffs,

6 vs.

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

11 Defendants.

12 Presently before the Court is Plaintiffs' Motion for Attorney's Fees and Costs and  
13 Memorandum of Costs and Disbursements (hereafter collectively "Plaintiffs' Motion") filed by  
14 the September Trust, dated March 23, 1972 ("September Trust"), Gerry R. Zobrist and Jolin G.  
15 Zobrist, as Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust ("Zobrist Trust"),  
16 Raynaldo G. Sandoval and Julie Marie Sandoval Gegen, as Trustees of the Raynaldo G. and  
17 Evelyn A. Sandoval Joint Living and Devolution Trust dated May 27, 1992 ("Sandoval Trust"),  
18 and Dennis A. Gegen and Julie S. Gegen, Husband and Wife, as Joint Tenants ("Dennis & Julie  
19 Gegen") (collectively the "Plaintiffs") in Case No. A-17-765372-C, and Defendants' Motion to  
20 Retax and Settle Memorandum of Costs ("Defendant's Motion") filed by Trudi Lee Lytle and  
21 John Allen Lytle, as Trustees of the Lytle Trust ("Lytle Trust") in Case No. A-17-765372-C,  
22 which came on for hearing on July 26, 2018 at 9:00 a.m. and August 9, 2018 at 9:00 a.m. in  
23 Department XVIII of the Eighth Judicial District Court, Clark County, Nevada.

24 Wesley J. Smith, Esq. of Christensen James & Martin appeared on behalf of the Plaintiffs  
25 September Trust, Zobrist Trust, Sandoval Trust, and Dennis & Julie Gegen. Richard Haskin,  
26 Esq. of Gibbs Giden Locher Turner Senet & Wittbrodt LLP appeared on behalf of the Lytle  
27 Trust. John M. Oakes, Esq. of Foley & Oakes, PC appeared on behalf of Marjorie B. Boulden,  
28 Trustee of the Marjorie B. Boulden Trust, amended and restated dated July 17, 1996 ("Boulden

1 Trust”) and Linda Lamothe and Jacques Lamothe, Trustees of the Jacques and Linda Lamothe  
2 Living Trust (“Lamothe Trust”). Christina H. Wang, Esq. of Fidelity Law Group appeared on  
3 behalf of Robert Z. Disman and Yvonne A. Disman (“Robert & Yvonne Disman”).

4 The Court having considered the Plaintiffs’ Motion and exhibits and Defendant’s Motion  
5 to Re-Tax and Exhibits, all Oppositions Replies and exhibits thereto, and having heard the  
6 arguments of counsel, and with good cause appearing therefore, the Court hereby enters the  
7 following Order:  
8

### 9 FINDINGS OF FACT

10 In August and September of 2016, the Lytles recorded with the Clark County Recorder’s  
11 office four (4) abstracts of the Final Judgment (“Abstracts of Judgment”) obtained against the  
12 Rosemere Association on August 16, 2016 in Case No. A-09-593497-C, Department XII. The  
13 Abstracts of Judgment were recorded against eight of the individual parcels or properties within  
14 the Rosemere Subdivision, including properties owned by the Plaintiffs. The owners of the  
15 encumbered properties were not Judgment Debtors under the Abstracts of Judgment.  
16

17 On or about December 8, 2016, a case was filed against the Lytle Trust by the Bouldens,  
18 who owned Parcel No. 163-03-313-008, 1960 Rosemere Court, and the Lamothes, who own  
19 Parcel No. 163-03-313-002, 1830 Rosemere Court, each located in the Rosemere Subdivision, to  
20 remove the Abstracts of Judgment and plead causes of action for Quiet Title, Declaratory Relief  
21 and Slander of Title. On February 24, 2017, the Bouldens and Lamothes filed a Motion for  
22 Partial Summary Judgment on their Quiet Title and Declaratory Relief causes of action, which  
23 the Court granted on July 25, 2017 (“Order”).  
24

25 In its Order, the Court found that, among other things, the Abstracts of Judgment were  
26 improperly recorded and must be expunged and stricken from the record. Following the Court’s  
27  
28

1 direction in the Order, the Lytle Trust released its liens against the Boulden and Lamothe  
2 properties.

3 The Plaintiffs in this Action each own a property in the Rosemere Subdivision that was  
4 encumbered by the Defendants' recording of the Abstracts of Judgment. Prior to initiating this  
5 Action, on September 26, 2017, Plaintiffs sent a demand letter to Defendant's attorney  
6 requesting that the Abstracts of Judgment be expunged from Plaintiffs' Properties as well, based  
7 on the Court's Order and the identical factual and legal circumstances of the Plaintiffs'  
8 properties. On several occasions, Plaintiffs' attorneys also spoke to the Lytle Trust's attorney  
9 requesting that the Abstracts of Judgment be removed. The Plaintiffs requested to be placed in  
10 the same position as the Bouldens and Lamothes, with the Appeal to continue and the  
11 Defendants' appeal rights preserved. However, the Lytle Trust refused to release the Abstracts of  
12 Judgment.  
13

14 On November 30, 2017, the Plaintiffs filed a Complaint and Motion for Summary  
15 Judgment in Case No. A-17-765372-C, Department XXVIII, requesting that the Lytle Trust's  
16 Abstracts of Judgment be removed from their Properties, just as the Court had ordered for the  
17 Bouldens and Lamothes. On February 21, 2018, Case No. A-17-765372-C was consolidated with  
18 Case No. A-16-747900-C.  
19

20 On February 9, 2018, the Defendants filed an Opposition to Motion for Summary  
21 Judgment, Or, In the Alternative, Motion for Judgment on the Pleadings and Countermotion for  
22 Summary Judgment ("Countermotion"). On February 21, 2018, Plaintiffs filed a Reply to the  
23 Opposition and an Opposition to the Countermotion. On March 14, 2018, Defendants filed a  
24 Reply to the Plaintiffs' Opposition to the Countermotion. The Motion and Countermotion came  
25 on for hearing on March 21, 2018 and May 2, 2018, where the Court decided in the favor of the  
26 Plaintiffs, adopting Judge Williams' prior Order as "law of the case."  
27  
28

## CONCLUSIONS OF LAW

NRS 18.010(2)(b), provides that the court may make an allowance of attorney's fees to a prevailing party

Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

The Defendants had notice of the Order entered by Judge Williams in Case No. A-16-747900-C in favor of substantially similarly situated property owners as the Plaintiffs. After the Order was entered and prior to this Case being filed by the Plaintiffs, the Defendants were given opportunity to avoid this litigation and to preserve their legal arguments for appeal. As this Court has already held, Judge Williams' Order is *law of the case* and binding on this Court. Therefore, given the directive in NRS 18.010(b) to liberally construe the paragraph in favor of awarding attorney's fees, the Court finds that the Defendants' defense to this action was maintained without reasonable ground. An award of Attorney's Fees to the Plaintiffs is therefore warranted. Having prevailed in this Action, the Court finds that the Plaintiffs are also entitled to an award of Costs pursuant to NRS 18.020 and NRS 18.050.

In considering the reasonableness of the amount of the Plaintiffs' requested legal fees, the Court considered the factors set forth in *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), to wit: 1) The qualities of the advocate: his ability, his training, education, experience, professional standing and skill; 2) The character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and



1 the prominence and character of the parties where they affect the importance of the litigation; 3)  
2 The work actually performed by the lawyer: the skill, time and attention given to the work; and  
3 4) the result: whether the attorney was successful and what benefits were derived.

4 Having considered the *Brunzell* factors and the Defendants' Motion to Retax Costs, the  
5 Court finds that the Plaintiffs are entitled to their attorney's fees and costs, but exercises its  
6 discretion to reduce the legal fees and costs awarded. Accordingly, the Court awards Attorney's  
7 Fees and Costs to the Plaintiffs in the following amounts:  
8

9 Plaintiff	Attorney's Fees	Costs	Total
10 September Trust	\$13,513.26	\$250.87	\$13,764.13
11 Zobrist Trust	\$13,331.26	\$250.87	\$13,582.13
12 Sandoval Trust	\$12,616.26	\$250.87	\$12,867.13
13 Gegen	\$12,590.26	\$250.87	\$12,841.13
14 Totals	\$52,051.04	\$1,003.48	\$53,054.52

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18 **ORDER**

19  
20 Based upon the Findings of Fact and Conclusions of Law above, and good cause  
21 appearing therefore,

22 **IT IS HEREBY ORDERED ADJUDGED AND DECREED** that Plaintiffs' Motion for  
23 Attorney's Fees and Costs and Memorandum of Costs and Disbursements are hereby granted in  
24 part and denied in part, in that the Court is awarding attorney's fees and costs to the Plaintiffs but  
25 in a reduced amount.  
26  
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28

1  
2 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the  
3 Lytle Trust's Motion to Retax and Settle Memorandum of Costs is hereby granted in part and  
4 denied in part, in that the Court is awarding costs to the Plaintiffs but in a reduced amount.

5 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the  
6 Lytle Trust shall pay Thirteen Thousand Seven Hundred Sixty-Four and 13/100 Dollars  
7 (\$13,764.13) to the September Trust for its attorney's fees and costs.  
8

9 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the  
10 Lytle Trust shall pay Thirteen Thousand Five Hundred Eighty-Two and 13/100 Dollars  
11 (\$13,582.13) to the Zobrist Trust for its attorney's fees and costs.

12 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the  
13 Lytle Trust shall pay Twelve Thousand Eight Hundred Sixty-Seven and 13/100 Dollars  
14 (\$12,867.13) to the Sandoval Trust for its attorney's fees and costs.  
15

16 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the  
17 Lytle Trust shall pay Twelve Thousand Eight Hundred Forty-One and 13/100 Dollars  
18 (\$12,841.13) to Dennis & Julie Gegen for their attorney's fees and costs.

19 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the total  
20 amount ordered to be paid by the Lytle Trust to the Plaintiffs collectively for attorney's fees and  
21 costs is Fifty-Three Thousand Fifty-Four and 52/100 Dollars (\$53,054.52).  
22

23 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the  
24 Lytle Trust is hereby ordered to pay the attorney's fees and costs as Ordered herein by certified  
25 check made payable to "Christensen James & Martin Special Client Trust Account" in the  
26 amount of Fifty-Three Thousand Fifty-Four and 52/100 Dollars (\$53,054.52) and delivered to  
27 the Plaintiffs' attorneys within ten (10) days after the date of Notice of Entry of this Order.  
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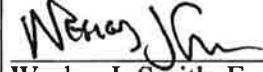
**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August, 2018.

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

Submitted by:

**CHRISTENSEN JAMES & MARTIN**

  
\_\_\_\_\_  
Wesley J. Smith, Esq.  
Nevada Bar No. 11871  
Laura J. Wolff, Esq.  
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Attorneys for Plaintiffs September Trust,  
Zobrist Trust, Sandoval Trust, and  
Dennis & Julie Gegen

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

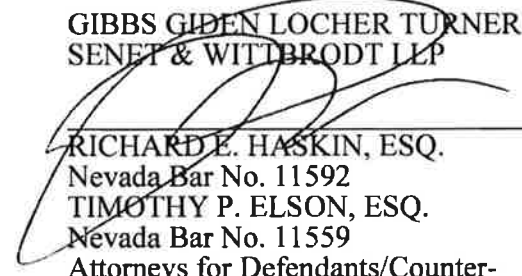
**FIDELITY NATIONAL LAW GROUP**

\_\_\_\_\_  
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Nevada Bar No. 9713  
Attorneys for Counter-Defendants/Cross-  
Claimants Robert & Yvonne Disman

**FOLEY & OAKES, P.C.**

\_\_\_\_\_  
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Nevada Bar No. 1078  
Attorneys for Plaintiffs/Counter-  
Defendants/Cross-Defendants Boulden Trust  
and Lamothe Trust

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\_\_\_\_\_  
RICHARD E. HASKIN, ESQ.  
Nevada Bar No. 11592  
TIMOTHY P. ELSON, ESQ.  
Nevada Bar No. 11559  
Attorneys for Defendants/Counter-  
Claimants Lytle Trust

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**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August, 2018.

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

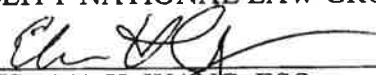
Submitted by:

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Dennis & Julie Gegen

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RICHARD E. HASKIN, ESQ.  
Nevada Bar No. 11592  
TIMOTHY P. ELSON, ESQ.  
Nevada Bar No. 11559  
Attorneys for Defendants/Counter-  
Claimants Lytle Trust

1 IT IS SO ORDERED.

2  
3 Dated this 11 day of ~~August~~ <sup>SEPTEMBER</sup>, 2018.

4  
5   
DISTRICT COURT JUDGE

L.L.

6 Submitted by:

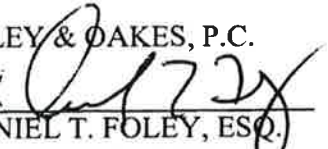
7  
8 **CHRISTENSEN JAMES & MARTIN**

9  
10 Wesley J. Smith, Esq.  
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13 Zobrist Trust, Sandoval Trust, and  
Dennis & Julie Gegen

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

16 **FIDELITY NATIONAL LAW GROUP**

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18 **CHRISTINA H. WANG, ESQ.**  
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19 Claimants Robert & Yvonne Disman

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22 Attorneys for Plaintiffs/Counter-  
23 Defendants/Cross-Defendants Boulden Trust  
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Claimants Lytle Trust





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Attorneys for Defendants

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

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiff,

v.

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

Defendants.

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

**DEFENDANTS' MOTION TO  
RECONSIDER COURT'S RULING  
GRANTING PLAINTIFFS' ATTORNEY'S  
FEES**

Date:  
Time:

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,

Plaintiff,

v.

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

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

5  
6 Defendants.

7 **NOTICE OF HEARING**

8 Defendants TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, AS TRUSTEES OF THE  
9 LYTLE TRUST, **MOTION TO RECONSIDER COURT'S RULING GRANTING**  
10 **PLAINTIFFS' ATTORNEY'S FEES ON ORDER SHORTENING TIME** will be heard on the  
11 20<sup>th</sup> day of November, 2018 at 9:00 a.m. in Department XVIII of the above-captioned  
12 court.

13  
14 DATED: November 14, 2018

GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP

15  
16 By: 

17 Richard E. Haskin, Esq.  
18 Nevada State Bar # 11592  
19 1140 N. Town Center Drive, Suite 300  
20 Las Vegas, Nevada 89144  
21 Attorneys for Defendants  
22 TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, AS  
23 TRUSTEES OF THE LYTLE TRUST

24 ///

25 ///

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**DECLARATION OF RICHARD E. HASKIN, ESQ.**

I, RICHARD E. HASKIN, ESQ., declare and say as follows:

1. I am an attorney and partner with the law firm GIBBS, GIDEN, LOCHER, TURNER, SENET & WITTBRODT, LLP, and I am licensed to practice law in the States of California and Nevada. I am counsel for Defendants TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, AS TRUSTEES OF THE LYTLE TRUST.

2. This Declaration is made in support of Defendants Motion to Reconsider Court's Ruling Granting Attorneys' Fees and Costs on Order Shortening Time.

3. On September 11, 2018, this Court issued its Order Regarding Plaintiffs' Motion for Attorneys' Fees and Costs and Disbursements and Defendants' Motion to Retax and Settle Memorandum of Costs ("Order Awarding Attorneys' Fees"). A true and correct copy of the foregoing order is attached as Exhibit 1.

4. On September 13, 2018, the Nevada Supreme Court published an order in *Frederic & Barbara Rosenberg Living Trust v. MacDonald Highlands Realty, LLC*, 427 P.3d 104, 134 Nev. Adv. Rep. 69 (2018), which opinion directly relates to the present case and Defendants maintain should cause this Court to revisit its prior ruling.

5. Unfortunately, on November 8, 2018, the Hon. Mark B. Bailus lost an election for the District 8, Department 18. Defendants believe this motion should be heard by Judge Bailus as he has the personal knowledge behind his original reasoning, and we believe recent Supreme Court case addresses that specific reasoning.

6. Defendants respectfully request this motion be heard by Judge Bailus on shortened time.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct. Executed this 14<sup>th</sup> day of November 2018.



RICHARD E. HASKIN, ESQ.

**MEMORANDUM OF POINTS AND AUTHORITIES****I. INTRODUCTION**

On September 11, 2018, this Court awarded Plaintiffs attorneys' fees, citing NRS 18.010(2)(b), and reasoning Defendants should not have defended this action given a prior ruling in this case. Two day later, the Nevada Supreme Court issued a published opinion in *Frederic & Barbara Rosenberg Living Trust v. MacDonald Highlands Realty, LLC*, 427 P.3d 104, 134 Nev. Adv. Rep. 69 (2018), which opinion directly relates to the present case and Defendants maintain should cause this Court to revisit its prior ruling. In *Frederic & Barbara Rosenberg Living Trust*, the Nevada Supreme Court overturned a District Court's award of attorneys' fees under NRS 18.010(2)(b), citing the novel concept of law the non-prevailing party espoused. Ultimately, the Supreme Court found that although the breadth of facts and law were against the non-prevailing party, it was up to District Courts to properly and reasonably balance the need to deter reckless litigation against the "need for attorneys to pursue novel legal issues or argue for clarification or modification of existing law."

In the present case, Defendants, at the very minimum, highlight a gap in NRS, Chapter 116, the Common Interest Development Act. As argued by Defendants, creditors against limited purpose associations should be afforded the same rights as creditors against full-blown unit owners' association. Further, Defendants argue that two prior District Court awards of attorneys' fees, costs, and damages pursuant to the entirety of Chapter 116 as well as the Amended CC&Rs should afford Defendants the right of any creditor rather than some limited *ex post facto* right. Each party to this lawsuit must concede the difficulty in making either side of these arguments. Similarly, this Court should afford Defendants their rights to pursue their novel legal arguments and attempt to clarify the existing law with respect to creditors against a homeowners' association.

**II. SUMMARY OF THE CASE**

There is significant history in this case reflecting the continuous efforts Defendants have had to make in order to preserve their property rights.

///

1 ///

2 On January 4, 1994, Baughman & Turner Pension Trust (the "Developer"), as the subdivider  
3 of a cul-de-sac to be made up of nine (9) residential lots on a street known as Rosemere Court in Las  
4 Vegas, Nevada, recorded with the Clark County Recorder's Office a Declaration of Covenants,  
5 Conditions, and Restrictions ("Original CC&Rs"), creating "Rosemere Estates." The Lytles  
6 purchased their property, Lot 163-03-313-009 (the "Lytle Property") on November 6, 1996, from the  
7 original buyer who first purchased it from the Developer on August 25, 1995.

8 The Original CC&Rs, in the first paragraph, defines Rosemere Estates as "Lots 1 through 9  
9 of Rosemere Court, a subdivision..." The document adds that "it is the desire and intention of the  
10 Subdivider to sell the land described above and to impose on it mutual, beneficial, covenants,  
11 conditions and restrictions under a general plan or scheme of improvement for the benefit of all of  
12 the land described above and the future owners of the lots comprising said land." Thus, the  
13 Association includes each and every lot therein.

14 Sometime after the Lytles purchased their property, a group of homeowners formed the  
15 Association. In 1997, Linda Lamothe and Marge Boulden, two homeowners acting on behalf of all  
16 owners, filed Non-Profit Articles of Incorporation (the "Articles") pursuant to Nevada Revised  
17 Statutes ("NRS") 82, which formalized the property owners' committee and named it "Rosemere  
18 Estates Property Owners Association."

19 Without warning or consult with the homeowners, the Board for the Association, on July 2,  
20 2007, presented the Amended and Restated Covenants, Conditions and Restrictions (the "Amended  
21 CC&Rs") to the Association membership. The proposed Amended CC&Rs were far more restrictive  
22 than the Original CC&Rs and changed the very nature of property ownership within Rosemere  
23 Estates. The Amended CC&Rs contained numerous and onerous new use restrictions including the  
24 drastic expansion of the powers, rights, and duties of the Association, a section entitled "Restrictions  
25 on Use, Alienation, and Occupancy," pet restrictions, parking restrictions, lease restrictions, the  
26 establishment of a Design Review Committee with unfettered discretion, and a new and expansive  
27 definition of "nuisance." The Amended CC&Rs also contained a morality provision. Finally, the  
28 Amended CC&Rs contained a construction timeline that would require the Lytles, and only the

1 Lytles, to complete the construction of a custom home on the lot within a mere *60 days* of receipt of  
 2 approval from the proposed *Design Review Committee*—something never envisioned in the Original  
 3 CC&Rs and impossible to adhere to. Failure to comply would cost the Lytles \$50.00 per day.  
 4 Despite failure to obtain the consent of all homeowners, the Board unilaterally recorded the  
 5 Amended CC&Rs on July 3, 2007, with the Office of the Recorder for Clark County, Nevada, which  
 6 thereafter became the only governing documents for the Association.

7 Important to the case at hand, the Amended CC&Rs provide as follows:

8 Section 1.1. “‘Act’ shall mean and refer to the State of Nevada’s version  
 9 of the Uniform Common-Interest Ownership Act, codified in NRS  
 10 Chapter 116, as it may be amended from time to time, or any portion  
 11 thereof.”

12 Section 1.14(e). “...the Property is a common interest community  
 13 pursuant to the Act.”

14 Section 1.38. “‘Property’ shall refer to the Property as a whole, including  
 15 the Lots and Common Elements, as restricted by and marketed and sold to  
 16 third parties in accordance with this Declaration.”

17 Section 1.24. “‘Governing Documents includes the Amended CC&Rs.

18 Article 2: “The Association is charged with the duties and vested with the  
 19 powers prescribed by law and set forth in the Governing Documents.”

20 Section 10.2(c). “An Assessment to pay a judgment against the  
 21 Association may be made only against the lots in the Property at the time  
 22 the judgment was entered, in proportion to the respective Liability for  
 23 Common Expense.”

24 Amended CC&Rs.

25 After the Amended CC&Rs were adopted, at a September 15, 2008 Executive Board meeting  
 26 of the Association, the Association’s membership voted to approve a Board proposal that, first, each  
 27 member of the Association should be assessed \$10,000.00 “in conjunction with [the Lytles’]  
 28 actions” in bringing the NRED 1 litigation and in pursuing litigation against Plaintiff for  
 unarticulated and nebulous reasons, and, second, that “the Association should bring foreclosure  
 proceedings against any lots with outstanding assessments due the Association.” The Association  
 then initiated non-judicial foreclosure proceedings against the Lytles. In addition to instituting the  
 non-judicial foreclosure process afforded to it by NRS Chapter 116 and the Amended CC&Rs, the  
 Board recorded additional, unlawful liens without right against the Lytles. Interestingly, this Board



consisted of Plaintiffs Gerry Zobrist and Sherman and Karen Kearl. The total of the three (3) unlawfully recorded liens was \$209,883.19.

**A. NRED 1 Litigation**

In response to the unauthorized changes to the CC&Rs and oppressive actions taken against the Lytles, in 2007, the Lytles filed an NRS 38.310 mandated non-binding arbitration before the Nevada Real Estate Division ("NRED"), naming the Association as respondent. The Lytles sought a declaration that the Amended CC&Rs were unlawfully adopted, recorded and enforced by the Association against the Lytles. However, after the arbitrator found in favor of the Association, the Lytles filed for a trial de novo in this District Court, case number A-09-593497-C, which was assigned to Judge Michelle Leavitt in Department XII. After the matter was initially dismissed, the Lytles appealed to the Supreme Court, prevailed, and the matter was then remanded back to the District Court.

The Lytles ultimately prevailed, entirely, in the litigation, and the Court granted the Lytles summary judgment on July 29, 2013. The court made the following pertinent findings:

- The Association was formed by the homeowners on February 25, 1997 which was the owners' committee (as set forth in the Original CC&Rs).
- The Association is a limited purpose association as defined by NRS 116.1201.
- The Amended CC&Rs were improperly recorded, were invalid, and the Amended CC&Rs were ordered released.
- From July 3, 2007, through July 29, 2013, the Amended CC&Rs governed the Association and its members.

The matter was once again appealed, and the Nevada Supreme Court affirmed the district court's Order granting the Lytles summary judgment. The Supreme Court remanded the case to the District Court for redetermination of costs, attorneys' fees and damages on October 19, 2015.

On May 25, 2016, after hearing the Lytles' motion for attorneys' fees, the Court awarded the Lytles \$297,072.66 in attorneys' fees pursuant to the Original CC&Rs, the Amended CC&Rs and NRS 116.4117. On June 17, 2016, the Court awarded the Lytles damages, after a prove-up hearing, in the amount of \$63,566.93. These damages included amounts expended by the Lytles in the

1 design, engineering, and other costs associated with the construction of their home for Rosemere  
 2 Estates, all of which were now stale and useless. Finally, on July 22, 2016, the Court awarded the  
 3 Lytles costs in the amount of \$599.00. Previously, the Court had awarded \$1,962.80 in costs.

4 On September 2, 2016, the Lytles recorded Abstracts of Judgment against each property  
 5 within the Association pursuant to NRS 116.

6 **B. NRED 2 Litigation**

7 On March 16, 2010, the Lytles initiated another NRS 38.310 mandated non-binding  
 8 arbitration before NRED, naming the Association as respondent (the "NRED 2 Litigation"). The  
 9 purpose of the NRED 2 Litigation was to halt non-judicial foreclosure proceedings initiated by the  
 10 Association against the Lytles pursuant to NRS, Chapter 116 and the Amended CC&Rs. The Lytles  
 11 also sought an order from the Court directing the Association to comply with NRS Chapter 116 and  
 12 the Amended CC&Rs where the Association had failed to comply, e.g. approval of budgets, conduct  
 13 of meetings, etc. In that arbitration, all parties stipulated that the Amended CC&Rs were valid and  
 14 enforceable for the purpose of the NRED 2 Litigation.

15 After the Association prevailed in the Arbitration (in November 2010), the Lytles promptly  
 16 and timely filed a lawsuit (for trial de novo) on December 13, 2010. The Association filed a  
 17 counterclaim, seeking to enforce the assessments the Association levied against the Lytles property.

18 The Lytles included the following language in their Complaint:

19 Pursuant to a stipulation and/or agreement between the Plaintiff TRUST  
 20 and the Defendant ASSOCIATION in the NRED action, the parties to the  
 21 NRED action agreed that the Amended CC and R's and Bylaws of the  
 22 Defendant ASSOCIATION [were] valid and enforceable only for the  
 23 purpose of the NRED action and because this is a trial de novo of the  
 24 NRED action the Plaintiff TRUST once again agrees that for the purpose  
 25 of this litigation only that the Amended CC and R's and bylaws of the  
 26 defendant ASSOCIATION are valid and enforceable.

27 Complaint in NRED 2 Litigation.

28 On November 14, 2011, the Court granted the Association's Motion for Summary Judgment.  
 The Court also awarded the Association's Motion for Attorneys' Fees pursuant to NRS Chapter 116  
 and the Amended CC&Rs, with an amount to be determined at a subsequent hearing. The Court  
 then entered two orders granting the Association's attorneys' fees pursuant to NRS 116.4117 and

1 Section 16 of the Amended CC&Rs. Thereafter, the Court awarded an additional \$7,068.00 in  
2 attorneys' fees to the Association pursuant to NRS 116.4117 and the Amended CC&Rs.

3 On July 16, 2012, the Lytles filed a Notice of Appeal. On December 21, 2015, the Nevada  
4 Supreme Court vacated the Order Granting Summary Judgment and remanded this case back to this  
5 Court for determination. Specifically, the Supreme Court held that the:

6 Lytles' actions during the NRED arbitration were sufficient to 'submit'  
7 their slander of title claim to the NRED arbitrator for the purposes of NRS  
8 38.330(5). We also conclude that the Lytles did not need to establish that  
9 they suffered monetary damages for their remaining claims to be viable.

10 Supreme Court Order Re: NRED 2 Litigation. The Supreme Court also vacated the order awarding  
11 attorneys' fees, costs, and damages to the Association. In the second footnote of the foregoing  
12 Supreme Court Order, and an item of importance to the present case, the Court noted that its ruling  
13 was "premised in part on the Lytles' stipulation as to the amended CC&Rs validity."

14 Upon remand, the case was essentially thrust back to the beginning. On November 14, 2016,  
15 the Court granted the Lytles' Motion for Summary Judgment as to each and every cause of action  
16 and against the Association's Counterclaim. The district court then awarded the Lytles the  
17 following: \$274,608.28 in attorneys' fees, \$4,725.00 in costs, and \$823,824.84 in punitive damages  
18 pursuant to NRS 42.005. Pursuant to the foregoing, the total amount of the judgment against the  
19 Association and in favor of the Lytles in the NRED 2 Litigation, including attorneys' fees and costs,  
20 is \$1,103,158.12.

### 21 **C. NRED 3 Litigation**

22 On April 2, 2015, the Lytles filed an action against the Association in the Eighth Judicial  
23 District, Case No. A-15-716420-C, seeking an order from the Court that the Association hold an  
24 election, as it has not held such an election since March 24, 2010, despite the legal obligation to do  
25 so. On September 13, 2017, the Court granted the Lytles' Motion for Summary Judgment in the  
26 NRED 3 Litigation, and ordered that election take place before a neutral third party. Following that  
27 decision, on November 7, 2017, the Court awarded the Lytles \$14,807.50 in attorneys' fees and  
28 \$655.10 in costs.

All of the foregoing orders in NRED 1, 2 and 3 Litigations are final and not subject to appeal,

1 and all monetary orders are accruing interest.

### 2 **C. Court's Award Of Attorneys' Fees and Costs**

3 On September 11, 2018, this Court issued its Order Regarding Plaintiffs' Motion for  
4 Attorneys' Fees and Costs and Disbursements and Defendants' Motion to Retax and Settle  
5 Memorandum of Costs ("Order Awarding Attorneys' Fees"), Exhibit 1. In pertinent part, the Court  
6 awarded attorneys' fees pursuant to NRS 18.010(2)(b) which provides as follows:

7 Without regard to the recovery sought, when the court finds that the claim,  
8 counterclaim, cross-claim or third-party complaint or defense of the  
9 opposing party was brought or maintained without reasonable ground or to  
10 harass the prevailing party. The court shall liberally construe the  
11 provisions of this paragraph in favor of awarding attorney's fees in all  
12 appropriate situations. It is the intent of the Legislature that the court  
13 award attorney's fees pursuant to this paragraph and impose sanctions  
14 pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all  
15 appropriate situations to punish for and deter frivolous or vexatious claims  
16 and defenses because such claims and defenses overburden limited  
17 judicial resources, hinder the timely resolution of meritorious claims and  
18 increase the costs of engaging in business and providing professional  
19 services to the public.

20 The Court held that Defendants had notice of Judge Williams' prior Order granting summary  
21 judgment in the consolidated case, and Defendants "were given an opportunity to avoid this  
22 litigation and to preserve their legal arguments for appeal." Order Awarding Attorneys' Fees, 5:13-  
23 14, Exhibit 1. The Court further held that Judge Williams order was "law of the case." *Id.* at 5:15.  
24 As a result, this Court found that "Defendants' defense to this action was maintained without  
25 reasonable ground" and an award of attorneys' fees was appropriate under NRS 18.010(2)(b). *Id.* at  
26 5:18-22.

### 27 **III. LEGAL ARGUMENT**

#### 28 **A. Request for Certification**

This case is presently on appeal to the Nevada Supreme Court. While the appeal is pending,  
the district court is without jurisdiction to grant any relief under Rule 60(b). *See Foster v. Dingwall*,  
126 Nev. —, —, 228 P.3d 453, 454–456 (2010); *Huneycutt v. Huneycutt*, 94 Nev. 79, 575 P.2d 585  
(1978). However, if the Court is inclined to grant the relief requested, then it may certify its intent to  
do so. *Foster*, 228 P.3d at 455; *see also Huneycutt*, 94 Nev. at 81, 575 P.2d at 586. Pursuant to the  
procedure adopted by the Nevada Supreme Court in *Huneycutt*, and reaffirmed in *Foster*,



Defendants request that the Court certify its intention to grant the relief requested in this motion should the Supreme Court remand the case back to the Court for this purpose.

**B. NRCP 60 Provides Relief From This Court's Order Granting Attorneys' Fees**

NRCP 60(b) provides as follows:

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; or, (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that an injunction should have prospective application. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than 6 months after the proceeding was taken or the date that written notice of entry of the judgment or order was served. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

In the present case, the Nevada Supreme Court issued a ruling after hearing on the motion for attorneys' fees which likely will impact this Court's prior Order.

**B. The Nevada Supreme Court Case *Frederic & Barbara Rosenberg Living Trust v. MacDonald Highlands Realty, LLC*, 427 P.3d 104, 134 Nev. Adv. Rep. 69 (2018) Provides New Case Law That Should Assist This Court In Denying Attorneys' Fees**

NRS 18.010(2)(b) provides that a court may make an allowance of attorney's fees to a prevailing party when the court finds that the claim, counterclaim, or defense was brought "without reasonable ground or to harass the prevailing party." To support an award of attorney fees without regard to recovery sought, there must be evidence in record supporting proposition that claims were brought without reasonable grounds or to harass the other party. *Semenza v. Caughlin Crafted*

1 *Homes*, 1995, 901 P.2d 684, 111 Nev. 1089. Although a district court has discretion to award  
2 attorney fees against a party for unreasonably maintaining a lawsuit, there must be evidence  
3 supporting the district court's finding that the claim or defense was unreasonable or brought to  
4 harass. *Bower v. Harrah's Laughlin, Inc.*, 2009, 215 P.3d 709, 125 Nev. 470.

5 In a recent Nevada Supreme Court case, *Frederic & Barbara Rosenberg Living Trust v.*  
6 *MacDonald Highlands Realty, LLC*, 427 P.3d 104, 134 Nev. Adv. Rep. 69 (2018), the Supreme  
7 Court held the District Court abused its discretion in awarding attorneys' fees pursuant to NRS  
8 18.010(b)(2). In *Frederic & Barbara Rosenberg Living Trust*, the trust purchased a residential lot  
9 and attempted to maintain an implied restrictive covenant on a parcel adjoining the lot and a golf  
10 course. *Id.* at 18. The trust ultimately filed a lawsuit against a third-party purchaser of the adjoining  
11 parcel, Malek, seeking to establish an easement. *Id.* Malek brought a motion for summary judgment  
12 against the trust because Nevada does not recognize the type of easement sought to be enforced. *Id.*  
13 The District Court agreed and granted the motion for summary judgment. *Id.*

14 The District Court then awarded attorneys' fees to the Malek pursuant to NRS 18.010(2)(b).  
15 *Frederic & Barbara Rosenberg Living Trust*, 427 P.3d at 18. The court found the trust "lacked  
16 reasonable grounds to maintain the litigation, even if it initially had reasonable grounds to file suit,  
17 because of the facts and law" in the motion for summary judgment. *Id.* at 19-20.

18 The Supreme Court, however, disagreed and found the District Court abused its discretion in  
19 awarding fees. *Frederic & Barbara Rosenberg Living Trust*, 427 P.3d at 19-20. The Court cited  
20 *Semenza v. Caughlin Crafted Homes*, 111 Nev. 1089, 1095, 901 P.2d 684, 687-88 (1995), in finding  
21 that "[f]or purposes of NRS 18.010(2)(b), a claim is frivolous or groundless if there is no credible  
22 evidence to support it." *Id.* "Although a district court has discretion to award attorney fees under  
23 NRS 18.010(2)(b), there must be evidence supporting the district court's finding that the claim or  
24 defense was unreasonable or brought to harass." *Id.* (quoting *Bower*, 125 Nev. at 493, 215 P.3d at  
25 726).

26 The Supreme Court reasoned that while it agreed the evidence presented on summary  
27 judgment did not support the trust's lawsuit, the trust did not lack "reasonable grounds to maintain  
28 the suit, as it presented a novel issue in state law, which, if successful, could have resulted in the



1 expansion of Nevada's caselaw regarding restrictive covenants.” *Frederic & Barbara Rosenberg*  
2 *Living Trust*, 427 P.3d at 21 (citing *Rodriguez v. Primadonna Co., LLC*, 125 Nev. 578, 588, 216  
3 P.3d 793, 801 (2009) where the district court denied attorney fees under NRS 18.010(2)(b) because  
4 the claim “presented a novel issue in Nevada law concerning the potential expansion of common law  
5 liability”). Finally, the Court held that while there is a need to deter frivolous lawsuits, this “must  
6 be balanced with the need for attorneys to pursue novel legal issues or argue for clarification or  
7 modification of existing law.” *Id.*

8 In the present case, there simply can be no argument regarding the novel and complex  
9 concepts involved in this lawsuit. Defendants continue to have reasonable grounds to believe that  
10 they had an absolute right to record the abstracts of judgments and seek relief pursuant to the  
11 plethora of law cited in the briefing in this case. There is an unquestionable gap in Chapter 116 that  
12 creates ambiguity as to whether a limited purpose association can enforce a judgment against the  
13 owners, something a creditor undoubtedly can do in a full blow unit owners’ association. Further,  
14 the District Court, in prior judgments in favor of Defendants, awarded attorneys’ fees, costs, and  
15 damages pursuant to the Amended CC&Rs and the entirety of Chapter 116. Defendants contend that  
16 because the judgments were not limited, neither should collection efforts, and Defendants should be  
17 afforded all of the rights of any creditor against a unit owners’ association.

18 Defendants relied on the language in NRS 116.4117, NRS 116.3111 and NRS 116.3117, as  
19 well as the prior rulings from the NRED 1, 2 and 3 litigation. NRS 116.3111(3) provides that  
20 “[l]iens resulting from judgments against the association are governed by NRS 116.3117.” NRS  
21 116.3117 then provides:

22 a judgment for money against the association, if a copy of the docket or an abstract or  
23 copy of the judgment is recorded, is not a lien on the common elements, but is a lien  
24 in favor of the judgment lienholder against all of the other real property of the  
25 association and all of the units in the common-interest community at the time the  
judgment was entered. No other property of a unit's owner is subject to the claims of  
creditors of the association.

26 Defendants have continued to rely on the language in these statutes to support their position before  
27 the Supreme Court of Nevada. Defendants did not have an obligation to alter their position simply  
28 because Plaintiffs asked them to. Thus, Defendants’ have reasonable grounds for their claims, and

1 their defense in this litigation was not intended to harass Plaintiffs.

2 **C. Judge Williams Prior Order Is Not Law Of The Case**

3 The law-of-the-case doctrine “refers to a family of rules embodying the general concept that  
4 a court involved in later phases of a lawsuit should not re-open questions decided (i.e., established as  
5 law of the case) by that court or a higher one in earlier phases.” *Crocker v. Piedmont Aviation, Inc.*,  
6 49 F.3d 735, 739 (D.C.Cir.1995). “Normally, ‘for the law-of-the-case doctrine to apply, the  
7 appellate court must actually address and decide the issue explicitly or by necessary implication.’”  
8 *Reconstruct Co. v Zhang*, 317 P.3d 814, 818 (2014) (quoting *Dictor v. Creative Mgmt. Servs.*,  
9 *L.L.C.*, 126 Nev. —, —, 223 P.3d 332, 334 (2010)), *see also Dictor v. Creative Management*  
10 *Services, LLC*, 126 Nev. 41, 44-46, 223 P.2d 332, 335 (2010) (holding that in order for the law-of-  
11 the-case doctrine to apply, the appellate court must specifically and actually address and decide the  
12 issue). A trial court’s ruling does not constitute law of the case. *Byford v. State* 116 Nev. 215, 232,  
13 994 P.2d 700, 711-12 (2000). The issue must be adjudicated on appeal. *Id.*

14 Indeed, a court has the discretion to revisit prior rulings in the same case, provided such  
15 rulings and issues decided therein have not been decided by the appeal or Supreme Court. *Bejarano*  
16 *v. State*, 122 Nev. 1066, 1074-75, 146 P.3d 265, 271-72 (2006). Thus, in *Dictor*, supra, the Supreme  
17 Court held that a district court could entertain a renewed motion for summary judgment based on  
18 new and alternative statutory defenses that were not raised in a prior summary judgment motion.  
19 In the present case, the Court always had jurisdiction and discretion to revisit all prior rulings,  
20 specifically Judge Williams’ Order Granting Partial Summary Judgment.

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**II. CONCLUSION**

Based on the new case law set forth in *Frederic & Barbara Rosenberg Living Trust v. MacDonald Highlands Realty, LLC*, 427 P.3d 104, 134 Nev. Adv. Rep. 69 (2018), Defendants respectfully request this Court reconsider its prior ruling and certify to the Supreme Court that it will overturn that ruling and deny attorneys' fees and costs.

DATED: November 14, 2018

GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP

By: 

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Attorneys for Defendants  
TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, AS  
TRUSTEES OF THE LYTLE TRUST

**CERTIFICATE OF MAILING**

The undersigned, an employee of the law firm of GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP, hereby certifies that on November 16, 2018, she served a copy of the foregoing **DEFENDANTS' MOTION TO RECONSIDER COURT'S RULING GRANTING PLAINTIFFS' ATTORNEY'S FEES** by electronic service through the Regional Justice Center for Clark County, Nevada's ECF System:

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FOLEY & OAKS  
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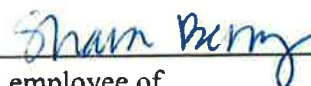
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# **EXHIBIT “1”**

**AA000860**

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*Attorneys for September Trust, Zobrist Trust, Sandoval Trust  
and Dennis & Julie Gegen*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-16-747800-C

Dept. No.: XVIII

**ORDER REGARDING PLAINTIFFS'  
MOTION FOR ATTORNEY'S FEES  
AND COSTS AND MEMORANDUM  
OF COSTS AND DISBURSEMENTS  
AND DEFENDANTS' MOTION TO  
RETAKE AND SETTLE  
MEMORANDUM OF COSTS**

Date: August 9, 2018

Time: 9:00 a.m.

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

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

Case No.: A-17-765372-C

Dept. No.: XXVIII



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

5 Plaintiffs,

6 vs.

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

11 Defendants.

12 Presently before the Court is Plaintiffs' Motion for Attorney's Fees and Costs and  
13 Memorandum of Costs and Disbursements (hereafter collectively "Plaintiffs' Motion") filed by  
14 the September Trust, dated March 23, 1972 ("September Trust"), Gerry R. Zobrist and Jolin G.  
15 Zobrist, as Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust ("Zobrist Trust"),  
16 Raynaldo G. Sandoval and Julie Marie Sandoval Gegen, as Trustees of the Raynaldo G. and  
17 Evelyn A. Sandoval Joint Living and Devolution Trust dated May 27, 1992 ("Sandoval Trust"),  
18 and Dennis A. Gegen and Julie S. Gegen, Husband and Wife, as Joint Tenants ("Dennis & Julie  
19 Gegen") (collectively the "Plaintiffs") in Case No. A-17-765372-C, and Defendants' Motion to  
20 Retax and Settle Memorandum of Costs ("Defendant's Motion") filed by Trudi Lee Lytle and  
21 John Allen Lytle, as Trustees of the Lytle Trust ("Lytle Trust") in Case No. A-17-765372-C,  
22 which came on for hearing on July 26, 2018 at 9:00 a.m. and August 9, 2018 at 9:00 a.m. in  
23 Department XVIII of the Eighth Judicial District Court, Clark County, Nevada.

24 Wesley J. Smith, Esq. of Christensen James & Martin appeared on behalf of the Plaintiffs  
25 September Trust, Zobrist Trust, Sandoval Trust, and Dennis & Julie Gegen. Richard Haskin,  
26 Esq. of Gibbs Giden Locher Turner Senet & Wittbrodt LLP appeared on behalf of the Lytle  
27 Trust. John M. Oakes, Esq. of Foley & Oakes, PC appeared on behalf of Marjorie B. Boulden,  
28 Trustee of the Marjorie B. Boulden Trust, amended and restated dated July 17, 1996 ("Boulden

1 Trust”) and Linda Lamothe and Jacques Lamothe, Trustees of the Jacques and Linda Lamothe  
2 Living Trust (“Lamothe Trust”). Christina H. Wang, Esq. of Fidelity Law Group appeared on  
3 behalf of Robert Z. Disman and Yvonne A. Disman (“Robert & Yvonne Disman”).

4 The Court having considered the Plaintiffs’ Motion and exhibits and Defendant’s Motion  
5 to Re-Tax and Exhibits, all Oppositions Replies and exhibits thereto, and having heard the  
6 arguments of counsel, and with good cause appearing therefore, the Court hereby enters the  
7 following Order:

8  
9 **FINDINGS OF FACT**

10 In August and September of 2016, the Lytles recorded with the Clark County Recorder’s  
11 office four (4) abstracts of the Final Judgment (“Abstracts of Judgment”) obtained against the  
12 Rosemere Association on August 16, 2016 in Case No. A-09-593497-C, Department XII. The  
13 Abstracts of Judgment were recorded against eight of the individual parcels or properties within  
14 the Rosemere Subdivision, including properties owned by the Plaintiffs. The owners of the  
15 encumbered properties were not Judgment Debtors under the Abstracts of Judgment.  
16

17 On or about December 8, 2016, a case was filed against the Lytle Trust by the Bouldens,  
18 who owned Parcel No. 163-03-313-008, 1960 Rosemere Court, and the Lamothes, who own  
19 Parcel No. 163-03-313-002, 1830 Rosemere Court, each located in the Rosemere Subdivision, to  
20 remove the Abstracts of Judgment and plead causes of action for Quiet Title, Declaratory Relief  
21 and Slander of Title. On February 24, 2017, the Bouldens and Lamothes filed a Motion for  
22 Partial Summary Judgment on their Quiet Title and Declaratory Relief causes of action, which  
23 the Court granted on July 25, 2017 (“Order”).  
24

25 In its Order, the Court found that, among other things, the Abstracts of Judgment were  
26 improperly recorded and must be expunged and stricken from the record. Following the Court’s  
27  
28

1 direction in the Order, the Lytle Trust released its liens against the Boulden and Lamothe  
2 properties.

3 The Plaintiffs in this Action each own a property in the Rosemere Subdivision that was  
4 encumbered by the Defendants' recording of the Abstracts of Judgment. Prior to initiating this  
5 Action, on September 26, 2017, Plaintiffs sent a demand letter to Defendant's attorney  
6 requesting that the Abstracts of Judgment be expunged from Plaintiffs' Properties as well, based  
7 on the Court's Order and the identical factual and legal circumstances of the Plaintiffs'  
8 properties. On several occasions, Plaintiffs' attorneys also spoke to the Lytle Trust's attorney  
9 requesting that the Abstracts of Judgment be removed. The Plaintiffs requested to be placed in  
10 the same position as the Bouldens and Lamothes, with the Appeal to continue and the  
11 Defendants' appeal rights preserved. However, the Lytle Trust refused to release the Abstracts of  
12 Judgment.  
13

14 On November 30, 2017, the Plaintiffs filed a Complaint and Motion for Summary  
15 Judgment in Case No. A-17-765372-C, Department XXVIII, requesting that the Lytle Trust's  
16 Abstracts of Judgment be removed from their Properties, just as the Court had ordered for the  
17 Bouldens and Lamothes. On February 21, 2018, Case No. A-17-765372-C was consolidated with  
18 Case No. A-16-747900-C.  
19

20 On February 9, 2018, the Defendants filed an Opposition to Motion for Summary  
21 Judgment, Or, In the Alternative, Motion for Judgment on the Pleadings and Countermotion for  
22 Summary Judgment ("Countermotion"). On February 21, 2018, Plaintiffs filed a Reply to the  
23 Opposition and an Opposition to the Countermotion. On March 14, 2018, Defendants filed a  
24 Reply to the Plaintiffs' Opposition to the Countermotion. The Motion and Countermotion came  
25 on for hearing on March 21, 2018 and May 2, 2018, where the Court decided in the favor of the  
26 Plaintiffs, adopting Judge Williams' prior Order as "law of the case."  
27  
28

## CONCLUSIONS OF LAW

NRS 18.010(2)(b), provides that the court may make an allowance of attorney's fees to a prevailing party

Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

The Defendants had notice of the Order entered by Judge Williams in Case No. A-16-747900-C in favor of substantially similarly situated property owners as the Plaintiffs. After the Order was entered and prior to this Case being filed by the Plaintiffs, the Defendants were given opportunity to avoid this litigation and to preserve their legal arguments for appeal. As this Court has already held, Judge Williams' Order is *law of the case* and binding on this Court. Therefore, given the directive in NRS 18.010(b) to liberally construe the paragraph in favor of awarding attorney's fees, the Court finds that the Defendants' defense to this action was maintained without reasonable ground. An award of Attorney's Fees to the Plaintiffs is therefore warranted. Having prevailed in this Action, the Court finds that the Plaintiffs are also entitled to an award of Costs pursuant to NRS 18.020 and NRS 18.050.

In considering the reasonableness of the amount of the Plaintiffs' requested legal fees, the Court considered the factors set forth in *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), to wit: 1) The qualities of the advocate: his ability, his training, education, experience, professional standing and skill; 2) The character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and

1 the prominence and character of the parties where they affect the importance of the litigation; 3)  
2 The work actually performed by the lawyer: the skill, time and attention given to the work; and  
3 4) the result: whether the attorney was successful and what benefits were derived.

4 Having considered the *Brunzell* factors and the Defendants' Motion to Retax Costs, the  
5 Court finds that the Plaintiffs are entitled to their attorney's fees and costs, but exercises its  
6 discretion to reduce the legal fees and costs awarded. Accordingly, the Court awards Attorney's  
7 Fees and Costs to the Plaintiffs in the following amounts:  
8

9 Plaintiff	Attorney's Fees	Costs	Total
10 September Trust	\$13,513.26	\$250.87	\$13,764.13
11 Zobrist Trust	\$13,331.26	\$250.87	\$13,582.13
12 Sandoval Trust	\$12,616.26	\$250.87	\$12,867.13
13 Gegen	\$12,590.26	\$250.87	\$12,841.13
14 Totals	\$52,051.04	\$1,003.48	\$53,054.52

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18 **ORDER**

19  
20 Based upon the Findings of Fact and Conclusions of Law above, and good cause  
21 appearing therefore,

22 **IT IS HEREBY ORDERED ADJUDGED AND DECREED** that Plaintiffs' Motion for  
23 Attorney's Fees and Costs and Memorandum of Costs and Disbursements are hereby granted in  
24 part and denied in part, in that the Court is awarding attorney's fees and costs to the Plaintiffs but  
25 in a reduced amount.  
26  
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28

1  
2 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the  
3 Lytle Trust's Motion to Retax and Settle Memorandum of Costs is hereby granted in part and  
4 denied in part, in that the Court is awarding costs to the Plaintiffs but in a reduced amount.

5 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the  
6 Lytle Trust shall pay Thirteen Thousand Seven Hundred Sixty-Four and 13/100 Dollars  
7 (\$13,764.13) to the September Trust for its attorney's fees and costs.

8 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the  
9 Lytle Trust shall pay Thirteen Thousand Five Hundred Eighty-Two and 13/100 Dollars  
10 (\$13,582.13) to the Zobrist Trust for its attorney's fees and costs.

11 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the  
12 Lytle Trust shall pay Twelve Thousand Eight Hundred Sixty-Seven and 13/100 Dollars  
13 (\$12,867.13) to the Sandoval Trust for its attorney's fees and costs.

14 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the  
15 Lytle Trust shall pay Twelve Thousand Eight Hundred Forty-One and 13/100 Dollars  
16 (\$12,841.13) to Dennis & Julie Gegen for their attorney's fees and costs.

17 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the total  
18 amount ordered to be paid by the Lytle Trust to the Plaintiffs collectively for attorney's fees and  
19 costs is Fifty-Three Thousand Fifty-Four and 52/100 Dollars (\$53,054.52).

20 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the  
21 Lytle Trust is hereby ordered to pay the attorney's fees and costs as Ordered herein by certified  
22 check made payable to "Christensen James & Martin Special Client Trust Account" in the  
23 amount of Fifty-Three Thousand Fifty-Four and 52/100 Dollars (\$53,054.52) and delivered to  
24 the Plaintiffs' attorneys within ten (10) days after the date of Notice of Entry of this Order.  
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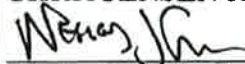
**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August, 2018.

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

Submitted by:

**CHRISTENSEN JAMES & MARTIN**



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

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

**FIDELITY NATIONAL LAW GROUP**

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Nevada Bar No. 9713  
Attorneys for Counter-Defendants/Cross-  
Claimants Robert & Yvonne Disman

**FOLEY & OAKES, P.C.**

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Attorneys for Plaintiffs/Counter-  
Defendants/Cross-Defendants Boulden Trust  
and Lamothe Trust

  
GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP

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Nevada Bar No. 11592  
TIMOTHY P. ELSON, ESQ.  
Nevada Bar No. 11559  
Attorneys for Defendants/Counter-  
Claimants Lytle Trust

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**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August, 2018.

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


Submitted by:

**CHRISTENSEN JAMES & MARTIN**

\_\_\_\_\_  
Wesley J. Smith, Esq.  
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Zobrist Trust, Sandoval Trust, and  
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**Approved as to Form and Content by:**

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Nevada Bar No. 11592  
TIMOTHY P. ELSON, ESQ.  
Nevada Bar No. 11559  
Attorneys for Defendants/Counter-  
Claimants Lytle Trust

1 IT IS SO ORDERED.

2  
3 Dated this 11 day of ~~August~~ <sup>SEPTEMBER</sup>, 2018.

4  
5   
DISTRICT COURT JUDGE

a.p.

6 Submitted by:

7  
8 CHRISTENSEN JAMES & MARTIN

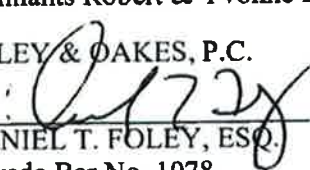
9  
10 Wesley J. Smith, Esq.  
Nevada Bar No. 11871  
11 Laura J. Wolff, Esq.  
Nevada Bar No. 6869  
12 7440 W. Sahara Ave.  
Las Vegas, NV 89117  
13 Attorneys for Plaintiffs September Trust,  
Zobrist Trust, Sandoval Trust, and  
Dennis & Julie Gegen

14  
15 Approved as to Form and Content by:

16 FIDELITY NATIONAL LAW GROUP

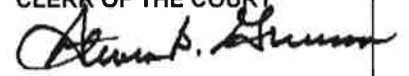
17  
18 CHRISTINA H. WANG, ESQ.  
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19 Attorneys for Counter-Defendants/Cross-  
Claimants Robert & Yvonne Disman

20 FOLEY & OAKES, P.C.

21   
DANIEL T. FOLEY, ESQ.  
22 Nevada Bar No. 1078  
23 Attorneys for Plaintiffs/Counter-  
Defendants/Cross-Defendants Boulden Trust  
and Lamothe Trust

GIBBS GIDEN LOCHER TURNER  
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Nevada Bar No. 11592  
TIMOTHY P. ELSON, ESQ.  
Nevada Bar No. 11559  
Attorneys for Defendants/Counter-  
Claimants Lytle Trust



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2 DANIEL T. FOLEY, ESQ.  
3 Nevada Bar No. 1078  
4 FOLEY & OAKES, PC  
5 1210 S. Valley View Blvd. #208  
6 Las Vegas, NV 89102  
7 Tel.: (702) 384-2070  
8 Fax: (702) 384-2128  
9 Email: dan@foleyoakes.com  
10 *Attorneys for the Boulden and*  
11 *Lamothe Plaintiffs.*

12 **DISTRICT COURT**  
13 \*\*\*  
14 **CLARK COUNTY, NEVADA**

15 MARJORIE B. BOULDEN, TRUSTEE OF )  
16 THE MARJORIE B. BOULDEN TRUST, )  
17 LINDA LAMOTHE AND JACQUES )  
18 LAMOTHE, TRUSTEES OF THE JACQUES )  
19 & LINDA LAMOTHE LIVING TRUST )

20 Plaintiffs, )

21 vs. )

22 TRUDI LEE LYTLE AND JOHN ALLEN )  
23 LYTLE, AS TRUSTEES OF THE LYTLE )  
24 TRUST, DOES I through X; and ROE )  
25 CORPORATIONS I through X )

26 *Defendants.* )

27 AND ALL RELATED COUNTERCLAIMS )  
28 AND CROSS-CLAIMS )

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

**NOTICE OF ENTRY OF  
STIPULATION AND ORDER TO  
DISMISS ALL REMAINING  
CLAIMS WITHOUT  
PREJUDICE**

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

8 )  
9 Plaintiffs )

10 v. )

11 TRUDI LEE LYTLER AND JOHN LYTLER, AS )  
TRUSTEES OF THE LYTLER TRUST; JOHN )  
12 DOES I through V; and ROW ENTITIES I )  
through I inclusive. )

13 Defendants. )  
14 )  
15 )

16 **NOTICE OF ENTRY OF STIPULATION AND ORDER TO DISMISS ALL REMAINING**  
17 **CLAIMS WITHOUT PREJUDICE**

18 TO: All Parties and their counsel:

19 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that a Stipulation and  
20 Order was entered with the above-entitled Court on January 14, 2019. A copy of said Stipulation  
21 and Order is attached hereto.

22 Dated: January 14, 2019.

23 FOLEY & OAKES, PC

24 /s/ Daniel T. Foley  
25 Daniel T. Foley, Esq.  
26 1210 S. Valley View Blvd. #208  
Las Vegas, NV 89102  
27 Attorneys for Plaintiffs

28 **FOLEY  
&  
OAKES**

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NEFCR 9, N.R.C.P. 5(b) and EDCR 7.26, I hereby certify that I am an  
3 employee of Foley & Oakes, PC, and that on the 14<sup>th</sup> day of January, 2019 I served the following  
4 document(s):

5 **NOTICE OF ENTRY OF STIPULATION AND ORDER TO DISMISS ALL**  
6 **REMAINING CLAIMS WITHOUT PREJUDICE**

7 I served the above-named document(s) by the following means to the person s as listed  
8 below: [ x ] By Electronic Transmission through the Wiznet System:

9 Richard E. Haskin, Esq.  
10 GIBBS, GIDEN, LOCHER, TURNER,  
11 SENET & WHITTBRODT, LLP  
12 1140 N. Town Center Drive, Suite 300  
Las Vegas, NV 89144  
*Attorneys for the Lytles*

13 Christina H. Wang, ESQ.  
14 FIDELITY NATIONAL LAW GROUP  
15 8363 W. Sunset Road, Suite 120  
Las Vegas, Nevada 89113  
*Attorneys for Counter-Defendants/Cross-Claimants*  
16 *Robert Z. Disman and Yvonne A. Disman*

17 **CHRISTENSEN JAMES & MARTIN**  
18 KEVIN B. CHRISTENSEN, ESQ. (175)  
19 WESLEY J. SMITH, ESQ. (11871)  
20 LAURA J. WOLFF, ESQ. (6869)  
7440 W. Sahara Avenue  
Las Vegas, Nevada 89117  
*Attorneys for September Trust, Zobrist Trust, Sandoval Trust,*  
21 *and Dennis & Julie Gegen*

22 I declare under the penalty of perjury that the foregoing is true and correct.

23 /s/ Liz Gould  
24 An employee of FOLEY & OAKES



**EXHIBIT “A”**

**EXHIBIT “A”**

*Steven D. Grierson*

1 **SAO**  
2 DANIEL T. FOLEY, ESQ.  
3 Nevada Bar No. 1078  
4 FOLEY & OAKES, PC  
5 1210 S. Valley View Blvd. #208  
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9 Email: dan@foleyoakes.com  
10 *Attorneys for the Boulden and*  
11 *Lamothe Plaintiffs.*

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

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

14 Plaintiffs,

16 vs.

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

20 *Defendants.*

21 )  
22 AND ALL RELATED COUNTERCLAIMS )  
23 AND CROSS-CLAIMS )

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

**STIPULATION AND ORDER TO  
DISMISS ALL REMAINING  
CLAIMS WITHOUT  
PREJUDICE**

24  
25  
26 ☐ Voluntary Dismissal  
27 ☐ Involuntary Dismissal  
☒ Stipulated Dismissal  
☐ Motion to Dismiss by Deft(s)  
☐ Summary Judgment  
☐ Stipulated Judgment  
☐ Default Judgment  
☐ Judgment of Arbitration

**FOLEY  
&  
OAKES**

JAN 09 2019

**AA000875**

1 SEPTEMBER TRUST, DATED MARCH 23, )  
2 1972; GERRY R. ZOBRIST AND JOLIN G. )  
3 ZOBRIST, AS TRUSTEES OF THE GERRY )  
4 R. ZOBRIST AND JOLIN G. ZOBRIST )  
5 FAMILY TRUST; RAYNALDO G. )  
6 SANDOVAL AND JULIE MARIE )  
7 SANDOVAL GEGEN, AS TRUSTEES OF )  
8 THE RAYNALDO G. AND EVELYN A. )  
9 SANDOVAL JOINT LIVING AND )  
10 DEVOLUTION TRUST DATED MAY 27, )  
11 1992; and DENNIS A. GEGEN AND JULIE )  
12 GEGEN, HUSBAND AND WIFE AS JOINT )  
13 TENANTS, )

14 Plaintiffs )

15 v. )

16 TRUDI LEE LYTLE AND JOHN LYTLE, AS )  
17 TRUSTEES OF THE LYTLE TRUST; JOHN )  
18 DOES I through V; and ROW ENTITIES I )  
19 through I inclusive. )

20 Defendants. )

Case No.: A-17-765372-C

Dept. No.: XVIII

21 **STIPULATION AND ORDER TO DISMISS ALL REMAINING CLAIMS WITHOUT**  
22 **PREJUDICE**

23 IT IS HEREBY STIPULATED AND AGREED by and between counsel for all parties  
24 herein, that all of the remaining causes of action in the above captioned case be dismissed without  
25 prejudice. Specifically, the parties agree that the Plaintiffs, MARJORIE B. BOULDEN,  
26 TRUSTEE OF THE MARJORIE B. BOULDEN TRUST ("Boulden Trust"), and LINDA  
27 LAMOTHE AND JACQUES LAMOTHE, TRUSTEES OF THE JACQUES & LINDA  
28 LAMOTHE LIVING TRUST ("Lamothe Trust")' First, Fifth, and Sixth Causes of Action in  
their Second Amended Complaint filed July 25, 2017 be dismissed without prejudice.

IT IS FURTHER STIPULATED AND AGREED, specifically that TRUDI LEE LYTLE  
AND JOHN ALLEN LYTLE, AS TRUSTEES OF THE LYTLE TRUST'S Counterclaim

1 against the Lamothe Trust and Robert Z. Disman and Yvonne A. Disman, filed August 11, 2017  
2 be dismissed without prejudice.

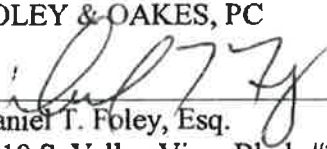
3 IT IS FURTHER STIPULATED AND AGREED that Robert Z. Disman's and Yvonne A.  
4 Disman's Crossclaim against the Boulden Trust filed September 26, 2017, be dismissed without  
5 prejudice and that each of these parties shall bear their own attorney's fees and costs associated  
6 with the Crossclaim

7  
8 IT IS FURTHER STIPULATED AND AGREED that, other than as provided above, the  
9 parties are not dismissing or waiving any rights they may have to seek to recover attorneys' fees  
10 and costs, to the extent that any such rights may exist.


11 It is further stipulated that the parties are not dismissing any currently pending appeals from  
12 decisions of the above captioned court or stipulating as to anything related to the right to file any  
13 future appeals from future decisions of the above captioned court related to this matter.

14 Dated: January 8, 2019


15 FOLEY & OAKES, PC

16  
17   
18 Daniel T. Foley, Esq.  
19 1210 S. Valley View Blvd. #208  
20 Las Vegas, NV 89102  
21 Attorneys for Plaintiffs

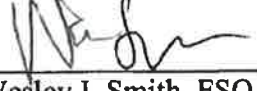
22 GIBBS, GIDEN, LOCHER, TURNER,  
23 SENET & WHITTBRODT, LLP

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25 Richard E. Haskin, Esq.  
26 1140 N. Town Center Drive, Suite 300  
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28 Attorneys for Defendants

1 FIDELITY NATIONAL LAW GROUP

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5 Las Vegas, Nevada 89113  
6 *Attorneys for Counter-Defendants/Cross-Claimants*  
7 *Robert Z. Disman and Yvonne A. Disman*

8 **CHRISTENSEN JAMES & MARTIN**

9   
10 Wesley J. Smith, ESQ.  
11 7440 W. Sahara Avenue  
12 Las Vegas, Nevada 89117  
13 *Attorneys for September Trust, Zobrist Trust, Sandoval Trust,*  
14 *and Dennis & Julie Gegen*

15 **ORDER**

16 It is so ORDERED.

17 DATED this 10<sup>th</sup> day of January 2019.

18   
19 \_\_\_\_\_  
20 DAVID B. BARKER  
21 SENIOR DISTRICT COURT JUDGE 

1 CASE NO. A747800

2 DOCKET U

3 DEPT. 16

4

5

6

DISTRICT COURT

7

CLARK COUNTY, NEVADA

8

\* \* \* \* \*

9 MARJORIE B. BOULDEN TRUST, )

10 Plaintiff, )

11 vs. )

12 LYTTLE TRUST, )

13 Defendant. )

14

15 REPORTER'S TRANSCRIPT

16

OF

17

HEARING

18

19

20 BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

21

DISTRICT COURT JUDGE

22

23

DATED THURSDAY, JANUARY 19, 2017

24

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



## 1 APPEARANCES:

2

3

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DAN@FOLEYOAKES.COM

7

8

## 9 FOR THE DEFENDANT:

10

11

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RHASKIN@GIBBSGIDEN.COM

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

2 9:29 A.M.

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

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

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

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

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

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

21 MR. FOLEY: It does.

22 Split the cost?

23 MR. HASKIN: Yeah.

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

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

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

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

11 THE COURT: Okay.

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

14 MR. HASKIN: Yes.

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

17 MR. HASKIN: Yeah.

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

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

21 THE COURT: Yes.

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

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

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

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

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

13 THE COURT: Okay.

14 MR. FOLEY: It's --

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

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

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

23 But, your Honor, I need to tell you that, of  
24 course, what we have is my client Marjorie Boulden's

09:31:42 25 Trust, her house is scheduled to be -- close escrow

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

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

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

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

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

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

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

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

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

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

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

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

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

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

09:33:22 15 THE COURT: Yes.

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

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

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

09:33:51 25 All the facts --



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

2 MR. FOLEY: -- are admitted.

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

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

8 THE COURT: Do you agree with that?

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

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

16 THE COURT: Right.

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

22 THE COURT: Right.

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

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

2 MR. HASKIN: Yeah.

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

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

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

17 MR. FOLEY: Yes, sir.

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

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

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

22 THE COURT: Okay.

23 MR. HASKIN: And, your Honor --

24 THE COURT: I thought it was a fascinating  
09:35:18 25 issue because when I read it I said, This is really

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

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

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

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

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

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

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

19 MR. HASKIN: Yeah.

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

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

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

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

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

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

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

13 THE COURT: Exactly.

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

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

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

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

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

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

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

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

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

17 MR. HASKIN: Sure.

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

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

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

2 And, again --

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

6 MR. FOLEY: Correct. Correct.

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

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

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

09:38:21 15 THE COURT: Yes.

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

17 THE COURT: Right.

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

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

22 MR. FOLEY: No, your Honor.

23 MR. HASKIN: No, your Honor.

24 THE COURT: Okay.

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



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

4 THE COURT: I don't think so.

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

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

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

18 THE COURT: Yeah. They want finality.

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

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

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

23 MR. HASKIN: All right. Thank you.

24 (Proceedings were concluded.)

25 \* \* \* \* \*

## REPORTER'S CERTIFICATE

STATE OF NEVADA)

:SS

COUNTY OF CLARK)

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

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

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PEGGY ISOM, RMR, CCR 541

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

(1) MR. FOLEY: - do

<b>D</b> <b>DOCKET</b> [1] 1/2 <b>documents</b> [1] 8/11 <b>does</b> [2] 3/21 9/12 <b>don't</b> [12] 3/17 4/3 7/4 10/1 10/13 10/15 11/5 11/12 12/21 14/2 14/4 14/9 <b>done</b> [4] 5/20 6/9 9/8 11/20 <b>doubt</b> [1] 10/11 <b>down</b> [3] 5/6 9/13 15/5 <b>draft</b> [1] 6/7	<b>F</b> <b>facts</b> [1] 7/25 <b>far</b> [2] 5/8 12/25 <b>fascinating</b> [1] 9/24 <b>Fax</b> [1] 2/14 <b>February</b> [3] 4/6 4/12 4/16 <b>February 17</b> [1] 4/6 <b>file</b> [5] 8/24 11/17 12/6 12/14 12/14 <b>filing</b> [1] 8/17 <b>final</b> [1] 7/11 <b>finality</b> [3] 7/8 14/8 14/18 <b>fine</b> [3] 3/17 3/19 11/22 <b>first</b> [2] 4/3 11/25 <b>FOLEY</b> [5] 2/3 2/3 3/11 10/4 10/23 <b>FOLEYOAKES.COM</b> [1] 2/6 <b>FOREGOING</b> [1] 15/10 <b>forward</b> [2] 7/3 10/2 <b>Friday</b> [1] 4/8 <b>front</b> [2] 9/9 12/10 <b>full</b> [2] 10/11 15/10 <b>fully</b> [1] 10/2 <b>further</b> [1] 10/9	<b>H</b> <b>had</b> [4] 7/13 14/13 15/6 15/12 <b>half</b> [1] 7/22 <b>happening</b> [1] 14/3 <b>has</b> [3] 3/19 11/25 12/18 <b>HASKIN</b> [2] 2/11 3/9 <b>have</b> [9] 4/3 4/22 5/24 7/5 9/10 9/12 12/2 12/19 15/13 <b>haven't</b> [1] 11/6 <b>having</b> [1] 11/15 <b>he</b> [2] 11/25 12/18 <b>hearing</b> [6] 1/17 4/6 4/9 7/19 7/21 11/16 <b>her</b> [1] 5/25 <b>here</b> [5] 4/19 10/23 11/4 11/20 13/18 <b>HEREBY</b> [1] 15/5 <b>HEREUNTO</b> [1] 15/13 <b>his</b> [2] 10/24 13/11 <b>history</b> [3] 3/20 4/24 9/12 <b>HOA</b> [3] 5/11 5/12 5/22 <b>homeowner's</b> [1] 5/19 <b>Homeowners</b> [1] 5/17 <b>honestly</b> [1] 7/23 <b>Honor</b> [18] <b>HONORABLE</b> [1] 1/20 <b>house</b> [1] 5/25 <b>how</b> [2] 11/4 13/3 <b>However</b> [1] 6/13	<b>in</b> [24] <b>indicated</b> [2] 13/19 15/7 <b>injunction</b> [3] 7/19 7/20 11/16 <b>instead</b> [2] 4/13 5/5 <b>insurance</b> [1] 7/17 <b>insure</b> [1] 14/17 <b>intend</b> [1] 8/17 <b>intent</b> [1] 5/20 <b>interesting</b> [3] 10/1 10/13 13/7 <b>interrupt</b> [1] 8/10 <b>into</b> [2] 12/25 15/8 <b>involving</b> [1] 14/14 <b>is</b> [22] <b>ISOM</b> [3] 1/25 15/4 15/17 <b>issue</b> [6] 4/22 8/19 9/7 9/25 10/13 14/14 <b>issued</b> [1] 7/17 <b>issues</b> [2] 9/20 12/7 <b>it</b> [34] <b>it's</b> [18]	3/1 6/22 <b>Las Vegas</b> [1] 6/22 <b>last</b> [2] 4/8 6/11 <b>law</b> [4] 8/5 8/20 9/16 11/4 <b>least</b> [2] 6/24 8/18 <b>Leavitt</b> [1] 9/9 <b>Lee</b> [1] 4/5 <b>legal</b> [2] 9/7 12/9 <b>light</b> [1] 10/17 <b>like</b> [4] 6/13 7/2 7/21 10/24 <b>Linda</b> [1] 3/13 <b>line</b> [1] 9/5 <b>lis</b> [1] 14/15 <b>little</b> [2] 10/22 12/16 <b>LLP</b> [1] 2/11 <b>LOCHER</b> [1] 2/11 <b>long</b> [1] 14/17 <b>look</b> [1] 14/8 <b>looked</b> [1] 11/5 <b>looking</b> [3] 7/13 10/1 11/19 <b>lot</b> [1] 10/24 <b>LYTLE</b> [4] 1/12 3/7 3/15 4/5 <b>Lytles</b> [3] 3/9 5/5 5/21
<b>E</b> <b>effect</b> [2] 7/6 9/14 <b>else</b> [1] 3/18 <b>emergency</b> [1] 4/4 <b>encountered</b> [1] 6/6 <b>end</b> [3] 8/3 9/6 14/7 <b>Enjoy</b> [1] 14/21 <b>enough</b> [1] 12/20 <b>entire</b> [2] 5/20 12/9 <b>Entirely</b> [1] 8/6 <b>entitled</b> [2] 11/1 15/6 <b>envision</b> [1] 14/2 <b>equitable</b> [1] 8/18 <b>escrow</b> [2] 5/25 12/22 <b>Especially</b> [1] 10/17 <b>ESQ</b> [2] 2/3 2/11 <b>essentially</b> [2] 9/5 9/14 <b>even</b> [4] 5/12 7/23 11/2 14/10 <b>everything</b> [1] 5/20 <b>ex</b> [1] 4/3 <b>Exactly</b> [1] 11/13 <b>exception</b> [3] 6/2 6/17 7/1 <b>exist</b> [1] 5/18 <b>expedited</b> [1] 12/10 <b>expunged</b> [1] 14/15 <b>extend</b> [1] 12/24	<b>G</b> <b>gentlemen</b> [2] 13/9 14/22 <b>get</b> [3] 7/4 11/20 12/14 <b>getting</b> [1] 6/14 <b>GIBBS</b> [1] 2/11 <b>GIBBSGIDEN.COM</b> [1] 2/14 <b>GIDEN</b> [1] 2/11 <b>Given</b> [1] 11/7 <b>go</b> [6] 4/19 7/3 7/4 7/12 12/15 12/24 <b>going</b> [7] 6/7 6/17 8/4 10/4 11/23 12/9 14/2 <b>Good</b> [1] 3/8 <b>got</b> [2] 8/14 14/15 <b>gotten</b> [1] 11/7 <b>grant</b> [1] 7/1 <b>granted</b> [2] 4/9 6/14 <b>guess</b> [4] 9/5 9/9 9/13 13/3	<b>I</b> <b>I'd</b> [2] 7/2 7/21 <b>I'll</b> [1] 12/12 <b>I'm</b> [9] 6/6 6/18 6/23 6/23 8/1 10/1 11/2 11/10 14/1 <b>I've</b> [2] 6/5 6/12 <b>idea</b> [1] 11/14 <b>if</b> [11] 3/16 3/17 4/20 6/14 7/11 8/1 10/7 10/16 11/21 12/23 13/25 <b>imagine</b> [1] 11/23 <b>impression</b> [1] 8/3	<b>J</b> <b>JANUARY</b> [3] 1/23 3/1 4/13 <b>JUDGE</b> [3] 1/20 1/21 9/9 <b>Judge Leavitt</b> [1] 9/9 <b>judgment</b> [17] <b>judgments</b> [1] 9/14 <b>judicial</b> [2] 8/9 8/11 <b>just</b> [11] 5/19 7/23 8/14 10/12 10/22 11/3 11/17 12/21 14/8 14/12 14/19	<b>M</b> <b>made</b> [1] 10/23 <b>Make</b> [1] 12/19 <b>makes</b> [1] 11/17 <b>MARJORIE</b> [4] 1/9 3/6 3/12 5/24 <b>matter</b> [3] 7/18 9/16 15/6 <b>may</b> [1] 7/22 <b>me</b> [8] 3/12 3/14 4/2 4/15 8/1 11/17 11/22 13/21 <b>mean</b> [8] 4/3 8/24 9/7 10/12 10/21 12/12 13/25 14/7 <b>meantime</b> [1] 14/1 <b>mentioned</b> [1] 9/3 <b>meritorious</b> [1] 7/3 <b>merits</b> [2] 7/20 11/16 <b>might</b> [3] 4/20 13/4 14/5 <b>more</b> [1] 11/17 <b>morning</b> [1] 3/8 <b>motion</b> [8] 4/4 4/23 7/7 7/18 11/17 12/13 13/11 13/13

(2) DOCKET - motion

(2) DOCKET - motion

<b>M</b> move [2] 12/7 14/5 moved [1] 6/21 Mr. [3] 3/15 10/4 10/23 Mr. and [1] 3/15 Mr. Foley [2] 10/4 10/23 Mrs. [1] 3/15 Mrs. Lytle [1] 3/15 much [1] 7/2 my [18]	6/9 13/14 other [2] 12/22 14/13 others [1] 4/5 our [2] 12/4 12/25 out [1] 9/11 outcome [1] 11/3 over [1] 13/4	11/4 questions [1] 8/20	<b>S</b> said [4] 6/12 9/6 9/25 15/7 same [1] 12/7 saw [1] 4/16 say [3] 3/25 6/8 7/6 saying [1] 9/11 scheduled [2] 5/25 12/23 seated [1] 3/15 see [1] 12/23 SENET [1] 2/11 sense [1] 11/17 served [1] 8/14 set [1] 7/18 shortening [1] 4/4 SHORTHAND [1] 15/4 show [1] 6/16 shown [1] 6/2 side [1] 14/13 significant [2] 4/24 6/4 simply [1] 5/6 sir [1] 9/17 slander [1] 12/25 so [14] 2/4 4/2 4/18 5/7 6/17 7/2 7/16 9/10 9/12 11/1 12/8 12/12 13/3 14/4 some [4] 4/12 7/24 8/17 10/25 something [2] 3/18 13/25 somewhat [1] 3/19 soon [1] 12/13 sorry [1] 8/10 sound [1] 10/24 split [2] 3/22 4/1 13/21 standpoint [1] 14/9 stands [1] 9/20 started [1] 9/11 STATE [2] 15/2 15/14 stated [1] 13/16 status [1] 13/20 STENOTYPE [2] 15/5 15/8 still [2] 6/16 14/15 stop [2] 10/7 10/8 STREET [1] 2/4	<b>subject</b> [1] 5/5 <b>submittal</b> [1] 7/24 <b>submitted</b> [6] 4/7 6/6 6/7 6/13 8/6 8/12 <b>SUBSCRIBED</b> [1] 15/13 <b>SUITE</b> [1] 2/12 <b>suits</b> [2] 11/21 11/22 <b>summary</b> [3] 11/18 12/7 12/13 <b>SUPERVISION</b> [1] 15/9 <b>Supreme</b> [2] 14/11 14/16 <b>sure</b> [2] 12/17 12/19 <b>surprised</b> [1] 6/18 <b>suspect</b> [1] 13/12
<b>N</b> NAME [1] 15/14 nature [1] 10/17 necessarily [1] 13/4 necessary [1] 10/10 need [5] 5/23 6/25 7/8 13/13 13/20 needs [1] 6/9 net [1] 9/13 NEVADA [4] 1/7 3/1 15/2 15/15 new [1] 7/12 night [1] 6/11 nilly [1] 10/24 no [7] 1/1 7/6 10/11 13/20 13/22 13/23 14/16 nonprofit [1] 5/17 not [18] NOTES [1] 15/8 notice [2] 8/9 8/11 numbers [1] 5/7 NV [3] 1/25 2/4 2/13	<b>P</b> Page [1] 3/6 Page 11 [1] 3/6 parcel [1] 5/7 PARKWAY [1] 2/12 part [4] 5/7 7/7 7/18 12/25 parte [1] 4/3 parties [1] 5/4 party [1] 5/3 PC [1] 2/3 PEGGY [3] 1/25 15/4 15/17 pendens [1] 14/15 perhaps [3] 7/24 10/4 11/17 perspective [1] 9/6 PLACE [1] 15/7 Plaintiff [1] 1/10 plaintiffs [1] 3/12 point [1] 11/18 points [1] 9/4 posted [1] 7/5 potentially [1] 9/15 preliminary [5] 6/3 6/15 7/19 7/20 11/15 preserve [1] 8/24 presuming [1] 6/6 probably [6] 3/24 3/25 11/23 12/6 12/6 12/11 problem [1] 6/5 proceed [1] 13/18 Proceedings [3] 14/24 15/6 15/12 properly [1] 11/19 property [3] 5/3 6/10 14/14 proposed [1] 6/7 purchased [1] 7/13 pursue [1] 14/2 put [2] 12/8 12/9	<b>R</b> read [2] 9/25 10/12 real [1] 7/6 realize [2] 9/7 9/9 really [4] 5/19 9/13 9/25 10/13 reason [1] 9/3 reasons [1] 13/16 recollection [1] 5/11 recommendation [1] 13/8 recommendations [1] 13/9 record [4] 5/10 10/22 12/21 15/11 recorded [2] 5/3 10/23 recorder's [1] 5/8 recording [1] 5/6 relief [1] 5/22 removed [1] 6/15 report [2] 6/3 6/16 reported [3] 1/25 3/17 3/18 REPORTER [1] 15/4 REPORTER'S [2] 1/15 15/1 request [2] 8/9 8/11 requires [1] 7/5 respect [1] 8/18 restraining [1] 13/14 reviewed [1] 9/4 RHASKIN [1] 2/14 RICHARD [2] 2/11 3/9 right [12] 4/18 5/11 8/16 8/22 9/18 11/5 11/25 12/3 13/7 13/17 14/21 14/23 rights [1] 8/24 risk [1] 14/9 RMR [2] 1/25 15/17 Rosemere [1] 5/17 Rs [1] 5/18 rule [1] 13/4 rushing [2] 11/10 11/11	<b>T</b> tell [3] 4/2 5/23 8/1 temporary [1] 13/13 Thank [2] 14/20 14/23 that [45] that's [19] their [1] 8/10 then [4] 7/5 11/18 12/2 13/4 there [8] 4/12 7/16 8/20 9/8 9/10 9/10 10/7 12/15 there's [8] 5/2 5/16 6/1 6/17 9/8 10/11 11/4 13/20 THEREAFTER [1] 15/7 they [15] 6/25 7/1 7/2 7/8 7/8 7/10 7/10 7/12 7/13 8/12 12/14 14/7 14/10 14/18 14/19 they're [2] 5/4 5/7 thing [2] 3/25 12/11 things [1] 7/12 think [12] 7/23 8/14 10/3 10/5 10/9 10/23 11/23 12/4 12/8 12/10 14/4 14/10 third [1] 5/2 this [34] thoroughly [2]	

(3) move - thoroughly

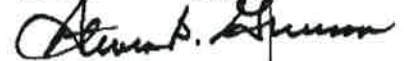
(3) move - thoroughly

<b>T</b> <b>thoroughly... [2]</b> 11/6 12/20 <b>thought [2]</b> 9/24 10/12 <b>threw [1]</b> 4/15 <b>through [1]</b> 7/4 <b>THURSDAY [3]</b> 1/23 3/1 4/8 <b>time [4]</b> 4/4 11/18 12/20 15/7 <b>TIMOTHY [1]</b> 1/20 <b>title [11]</b> 6/3 6/8 6/16 6/19 7/6 7/14 7/17 12/25 14/1 14/14 14/16 <b>today [3]</b> 4/10 9/20 12/23 <b>tomorrow [2]</b> 6/1 6/10 <b>too [1]</b> 3/19 <b>TOOK [1]</b> 15/5 <b>TRANSCRIBED [1]</b> 15/8 <b>TRANSCRIPT [2]</b> 1/15 15/10 <b>trial [2]</b> 7/20 11/16 <b>TRO [3]</b> 6/13 7/5 7/11 <b>Trudi [1]</b> 4/5 <b>TRUE [1]</b> 15/10 <b>truest [1]</b> 3/25 <b>trust [5]</b> 1/9 1/12 3/6 4/5 5/25 <b>try [4]</b> 7/22 11/20 12/16 12/23 <b>Tuesday [1]</b> 4/9 <b>TURNER [1]</b> 2/11 <b>two [1]</b> 11/20 <b>TYPEWRITING [1]</b> 15/8 <b>typos [1]</b> 4/12	6/12 <b>underwriting [1]</b> 14/9 <b>Unless [1]</b> 11/11 <b>until [1]</b> 6/11 <b>up [3]</b> 6/11 12/5 14/17 <b>used [1]</b> 6/18 <hr/> <b>V</b> <b>VEGAS [4]</b> 2/4 2/13 3/1 6/22 <b>versus [1]</b> 3/7 <b>very [1]</b> 9/12 <hr/> <b>W</b> <b>want [12]</b> 3/17 3/17 3/18 4/2 7/4 8/24 11/12 13/8 13/10 14/8 14/10 14/18 <b>was [19]</b> <b>way [1]</b> 7/12 <b>we [17]</b> <b>we'll [7]</b> 4/1 12/5 12/6 12/14 12/15 12/23 13/18 <b>we're [4]</b> 10/16 10/23 11/1 11/19 <b>we've [1]</b> 11/7 <b>week [2]</b> 4/8 4/10 <b>weeks [2]</b> 11/20 12/5 <b>Well [2]</b> 7/6 13/8 <b>were [4]</b> 7/12 14/15 14/24 15/8 <b>weren't [1]</b> 5/4 <b>what [14]</b> 5/1 5/5 5/15 5/24 6/9 6/13 9/13 11/3 11/5 13/8 13/8 13/9 13/9 14/12 <b>whatever [1]</b> 10/20 <b>when [2]</b> 9/4 9/25 <b>where [5]</b> 4/2 4/15 4/19 11/7 12/22 <b>WHEREOF [1]</b> 15/13 <b>which [2]</b> 8/10 14/1 <b>who [2]</b> 6/12 9/14 <b>why [1]</b> 9/11 <b>will [4]</b> 12/8 12/20 12/24 12/24 <b>WILLIAMS [1]</b> 1/20 <b>willy [1]</b> 10/24	<b>willy-nilly [1]</b> 10/24 <b>win [1]</b> 6/7 <b>withdraw [1]</b> 13/13 <b>WITNESS [1]</b> 15/13 <b>won't [1]</b> 7/16 <b>work [2]</b> 6/19 12/13 <b>would [9]</b> 6/8 6/14 6/16 7/13 8/13 9/13 9/15 14/10 14/16 <b>wouldn't [1]</b> 14/19 <b>Wow [1]</b> 10/12 <b>wrestled [1]</b> 6/12 <b>write [1]</b> 5/6 <b>wrong [1]</b> 8/1 <b>wrote [1]</b> 10/25 <hr/> <b>Y</b> <b>yeah [18]</b> <b>years [1]</b> 6/21 <b>Yes [5]</b> 4/14 4/21 7/15 9/17 13/15 <b>yet [1]</b> 11/6 <b>you [22]</b> <b>you're [2]</b> 10/7 11/11 <b>you've [1]</b> 6/13 <b>your [21]</b>		
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(4) thoroughly... - your

(4) thoroughly... - your





1 **RTRAN**

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4 **DISTRICT COURT**  
5 **CLARK COUNTY, NEVADA**  
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8 **MARJORIE B. BOULDEN TRUST,**

9 **Plaintiff(s),**

10 **vs.**

11 **TRUDI LYTLER,**

12 **Defendant(s).**

Case No. A-16-747800-C /  
Case No. A-17-765372-C

DEPT. XVIII

13  
14  
15 **BEFORE THE HONORABLE MARK B. BAILUS,**  
16 **DISTRICT COURT JUDGE**

17 **WEDNESDAY, MARCH 21, 2018**

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19  
20 **TRANSCRIPT OF PROCEEDINGS RE:**  
21 **ALL PENDING MOTIONS**

22 **APPEARANCES (on page 2).**

23  
24 **RECORDED BY: ROBIN PAGE, COURT RECORDER**  
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APPEARANCES:

For the Plaintiff(s), September  
Trust Dated March 23, 1972;  
Gerry R. Zobrist and Jolin G.  
Zobrist Family Trust;  
Raynaldo G and Evelyn A  
Sandoval Joint Living and  
Devolution Trust; Julie S.  
Gegen, and Dennis A. Gegen: WESLEY J. SMITH, ESQ.

For the Plaintiff(s), Linda  
Lamothe, Jacques Lamothe,  
Marjorie B. Boulden, and  
Jacques & Linda Lamothe  
Living Trust: DANIEL THOMAS FOLEY, ESQ.

For the Counter Defendant(s),  
Yvonne A. Disman and  
Robert Z. Disman: CHRISTINA H. WANG, ESQ.

For the Defendant(s),  
Lytle Trust: RICHARD EDWARD HASKIN, ESQ.

1 **LAS VEGAS NEVADA, WEDNESDAY, MARCH 21, 2018**

2 [Proceedings commenced at 9:05 a.m.]

3  
4 THE COURT: On page 8, *Marjorie B. Boulden Trust vs. Trudi*  
5 *Lytle*, Case No. A-16-747800.

6 MR. HASKIN: Good morning, Your Honor. Richard Haskin on  
7 behalf of the Lytle Trust.

8 MR. SMITH: Good morning, Your Honor. Wesley Smith on  
9 behalf of the plaintiffs, that's the September Trust, the Zobrist Trust, the  
10 Sandoval Trust, and Dennis and Julie Gegen.

11 MR. FOLEY: Dan Foley on behalf of Boulden and Lamothe,  
12 Your Honor.

13 MS. WANG: Christina Wang on behalf of the Dismans, Your  
14 Honor.

15 THE COURT: And is this all counsel necessary for the  
16 go-forward with this hearing this morning?

17 MR. HASKIN: Yes, Your Honor.

18 THE COURT: Counsel, I've had an opportunity to read the  
19 briefing and does any -- does either counsel have a hard copy of the  
20 exhibits that were filed? There was over 200 exhibits.

21 MR. SMITH: I have some of them, but not all of them.

22 THE COURT: Well, I -- I pulled up the exhibits, and Exhibit --  
23 Exhibit 5 was -- appears to be the original CC&Rs. And it references the  
24 amended ones as being Exhibit 6, but Exhibit 6 appears to be the same  
25 CC&Rs. Does anybody have a hard copy of the amended CC&Rs?

1 MR. SMITH: I do not have those with me.

2 MR. HASKIN: I may have one, Your Honor. Permission to  
3 take a look real quick.

4 THE COURT: Sure. Or am I just misreading Exhibit 6?

5 MR. HASKIN: Your Honor, my -- my exhibits, I believe, were  
6 letters. So I think you're referring to --

7 MR. SMITH: Yeah, that's -- it is my exhibit. I'm sorry, I do not  
8 have it with me today.

9 THE COURT: Okay. Well --

10 MR. HASKIN: I do have a copy, Your Honor, within my  
11 pleading, the opposition and counter motion.

12 THE COURT: Well, I was going to review them before court  
13 today. I haven't had a chance. If they're part of your exhibits, I'll look --  
14 I'll look through your exhibits.

15 In any event, this is on for Plaintiff's Motion for Summary  
16 Judgment, or in the alternative, Motion for Judgment on the Pleadings.  
17 Defendant Trudi Lytle, John Allen Lytle, the Lytle Trust opposition to  
18 Motion for Summary Judgment or in the alternative, Motion for Judgment  
19 on the Pleadings and Counter Motion for Summary Judgment.

20 I have read all the briefing. Did a little bit of independent  
21 research. I noticed the -- I believed then the opposition was -- the  
22 parties cited *Boulder Oaks Community Association vs. B&J Andrews*  
23 *Enterprises*, I actually litigated that case and prevailed on Summary  
24 Judgment, even though the supreme court said I didn't have a likelihood  
25 of success on the merits in dissolving the preliminary injunction. So

1 sometimes the supreme court gets it wrong.

2 In any event, I do have a little bit of a working knowledge of  
3 NRS 116. Does counsel want to be heard on oral argument in this  
4 matter?

5 MR. SMITH: Sure, Your Honor, if you want to entertain it.

6 MR. HASKIN: Yes, Your Honor. And permission to approach,  
7 Your Honor, I --

8 THE COURT: Sure. And thank you.

9 MR. HASKIN: Your Honor, for the record, I handed you  
10 Exhibit C from our opposition and counter motion, which is the amended  
11 CC&Rs.

12 THE COURT: Thank you, counsel.

13 MR. HASKIN: You're welcome, Your Honor.

14 THE COURT: Counsel, Plaintiff?

15 MR. SMITH: Thank you, Your Honor.

16 I think that probably the best place to start is to kind of  
17 summarize why we're here today. My clients are property owners within  
18 the Rosemere subdivision, four different lots that they own. And the  
19 Lytles have recorded a -- an abstractive judgment or multiple abstracts  
20 of judgment on their properties.

21 Now, the facts are undisputed today. We don't have any  
22 material facts that are in dispute. It's undisputed that my clients were  
23 not defendants in the underlying litigation, they were not parties to the  
24 underlying litigation, and they are not judgment debtors. So the Lytles  
25 have taken those judgments and recorded them against properties that

1 are -- do not belong to the judgment debtor.

2 And so really, this comes back to the underlying litigation.  
3 Because there are important findings of fact and conclusions of law from  
4 that case that arise from the judgment they recorded that preclude them  
5 from doing what they've done. Specifically, Judge Leavitt in that prior  
6 case found that those amended CC&Rs were void *ab initio*. Not  
7 rescinded, not voidable, not divisible, but void *ab initio*, meaning from the  
8 very beginning, meaning they can never be enforced, they never came  
9 into existence.

10 So the other thing that she found is that this particular  
11 association, this judgment debtor, was not an NRS 116 association as  
12 it's defined under that statute. Instead, it's a very particular type of  
13 association called a limited purpose association, which is governed  
14 exclusively by NRS 116.1201. Now, they are relying upon a particular  
15 section of 116 called 3117 to say that they can record these judgments  
16 against the individual units within the association.

17 Now, 3117 on its very face says that it can record a judgment  
18 against an association. Now, association is a defined term under  
19 NRS 116, and Judge Leavitt specifically found that this association did  
20 not qualify under that definition. So on its face, 3117 can't be applied.

21 Further, NRS 1201 -- or 116.1201 says that Chapter 116 is  
22 only applicable to a limited purpose association for the specifically  
23 enumerated subsections; there's 28 of them. NRS 311 -- 116.3117 is  
24 not one of those sections.

25 And so we have right on its face, clear and unambiguous in

1 two different places, that they don't have authority to do what they've  
2 done. Yet that's what they're asking you to do. They say that there's  
3 equity that should be applied here. But they haven't given you a single  
4 rule of equity that's applicable here to do what they want you to do.

5 We're simply asking to be put on the same position as the  
6 other plaintiffs in this case. We are recently consolidated. Judge  
7 Williams has already considered this issue.

8 THE COURT: Just out of curiosity, Judge Williams recused  
9 himself?

10 MR. SMITH: He did, Your Honor.

11 THE COURT: After issuing the order?

12 MR. SMITH: Yes, Your Honor.

13 THE COURT: Okay. So that's how it ended up in my  
14 department?

15 MR. SMITH: That's how it ended up with you, Your Honor.

16 MR. FOLEY: My daughter took a job as his law clerk,  
17 unfortunately. So.

18 THE COURT: Oh. Okay.

19 MR. SMITH: He screwed it up for us.

20 MR. HASKIN: Your Honor, just to add to that real quick, they  
21 filed a separate action before Judge Israel. We had an action already  
22 pending before Judge Williams. The actions -- they filed a Motion to  
23 Consolidate almost identical time as Judge Williams recused himself.  
24 So we -- the Judge Williams case was transferred to your court, the  
25 Motion for -- for Consolidation was granted, and the Judge Israel case,



1 which is this case, was then moved over to this court as well.

2 MR. SMITH: That's all correct, Your Honor.

3 THE COURT: I just was curious, because I saw my name  
4 mentioned in the pleadings. And I -- and I'm just wondering how I ended  
5 up with the -- with the case.

6 MR. SMITH: That's right.

7 THE COURT: So that --

8 MR. HASKIN: You're lucky.

9 MR. SMITH: So that's where we are. And Judge Williams, he  
10 already considered these exact same issues. It's the exact same legal  
11 question. We have a single legal question before you today. Was it  
12 appropriate under NRS 116 or under the original CC&Rs, which are the  
13 only ones that are applicable today, was it appropriate to record these  
14 judgments against the individual units.

15 And judge Williams found that it was not, that 116 didn't apply,  
16 that this was a limited purposes association, and that 3117, specifically  
17 that section, was not applicable.

18 And so he ordered that those judgment liens be expunged.  
19 We're just asking this court to put us in the same position as the other  
20 property owners in this case. Now, that order is on appeal. And so the  
21 Lytles are going to have their day to be able to explain that the supreme  
22 court, why they think that was wrong.

23 THE COURT: What is the status of the appeal?

24 MR. SMITH: It's currently under briefing, as far as I know.

25 THE COURT: I saw that you'd attached the opening brief.

1 Has an answering brief been filed?

2 MR. SMITH: Yes, Your Honor. Mr. Foley filed an answering  
3 brief. I believe that the other counsel in the case filed an answering  
4 brief. We filed an Amicus brief earlier this week. We expect that no  
5 matter what happens here today, there's going to be an appeal, and that  
6 those appeals will be consolidated and that the supreme court's going to  
7 hear all of the issues at the same time.

8 So, you know, that's really the -- the gist of it. It seems pretty  
9 straightforward to me. You know, normally on a summary judgment  
10 you've got a lot of argument about facts are in dispute, those kinds of  
11 things. This is really straightforward and it's really an easy case. You  
12 know, law of the case is applicable. We've got res judicata issues that  
13 are applicable from the prior -- the underlying case that arise from this  
14 judgment. And so we submit that to you and -- and ask that you grant  
15 our Motion for Summary Judgment today.

16 THE COURT: Thank you, counsel.

17 Counsel, you just handed me the amended and restated  
18 Declaration of Covenants, Conditions, and Restrictions for Rosemere  
19 Estates. I had an opportunity to glance through it. I was looking at the  
20 *Boulder Oaks* decision. And the preface to it regarding NRS  
21 Chapter 116 states:

22 While NRS Chapter 116 generally applies to all Nevada  
23 common interest communities, it only applies to communities  
24 containing lots reserved exclusively for nonresidential use, if the  
25 declaration so provides.

1 And the Rosemere Estates is exclusively residential?  
2 MR. HASKIN: Yes, Your Honor.  
3 THE COURT: Okay. Six --  
4 MR. HASKIN: Nine residential homes.  
5 THE COURT: Nine residential homes; is that correct?  
6 MR. HASKIN: There's actually eight homes within the  
7 community. And there's an empty lot, which is the Lytles' lot within the  
8 community all -- as well. But the -- even the original CC&Rs, Your  
9 Honor, designated each of those nine lots to be for residential purposes.  
10 THE COURT: But it's strictly a residential --  
11 MR. HASKIN: Correct.  
12 THE COURT: There's no nonresidential units in it?  
13 MR. HASKIN: Correct.  
14 THE COURT: Thank you.  
15 MR. HASKIN: Your Honor, and -- and just to give you a  
16 picture of the community, Your Honor, it's essentially a single-street  
17 cul-de-sac, where you enter kind of through the middle of the cul-de-sac  
18 and you have homes on the left and homes on the right. But it's -- it's  
19 nine units, it's very small.  
20 Your Honor, I think that both parties have extensively and well  
21 briefed this matter, and I think that the law is well referred to therein. So  
22 I'll only draw your attention, Your Honor, really, the overlying themes of  
23 the Lytles' position. I think we have two essential questions in this case.  
24 And the first being does Nevada law provide creditors with the right to  
25 lien units within an association? I think -- I think that's the broad-based

1 question. And we've heard a lot of reference from the plaintiffs to the  
2 fact that they weren't judgment debtors. That they -- they weren't parties  
3 to the underlying case, they weren't judgment debtors to the underlying  
4 case. And somehow that's supposed to absolve them from any potential  
5 liability.

6 Well, that's true personally, meaning that there is no possible  
7 way under Nevada law that I as a creditor could seek to enforce a  
8 judgment against all of their assets, it's not true with respect to the units  
9 that are contained within the association.

10 In fact, regardless of whether NRS 116.3117 applies, and we  
11 believe it does, but let's just take it in the abstract for a second. 3117  
12 undoubtedly provides a right for a judgment creditor to obtain a judgment  
13 against a unit within an association. And, Your Honor, in our reply brief  
14 we cited the Uniform Common Interest Ownership Act, and it provides  
15 reasoning as to why that law exists. In fact, the UCIOA has provided  
16 that relief for years now prior to when Nevada adopted its own version of  
17 the UCIOA some time ago.

18 But there is a right under Nevada law unquestionably that  
19 provides a creditor with a right to place a lien against a unit within an  
20 association. And the reasoning again is within the UCIOA it states that  
21 a -- a creditor should be able to reach the equity of the judgment debtor.  
22 Unquestionably, units in common interest developments. And that's  
23 what we're talking about here, whether it's a limited purpose association,  
24 a condominium complex, an RV park, whatever you have, it's a common  
25 interest development.

1 In this case, we have a limited purpose association. Since  
2 July 29, 2013, we have a limited purpose association. But since that  
3 time it's an LPA. And a judgment creditor has the right, whether it's an  
4 LPA or otherwise, to collect against a unit within the association. Why?  
5 Because a unit is part of the association. In fact, it's included within the  
6 definitions under Chapter 116. Just look to the definitions, don't even  
7 get past those.

8 NRS 116.021 defines a common interest community as  
9 including all of the real estate within the community, common elements,  
10 limited common elements, it also includes the units.

11 THE COURT: I will tell you, counsel, their -- their main  
12 argument is that -- I was curious why -- how -- why Judge Williams no  
13 longer had the case, because wouldn't this case -- wouldn't this motion  
14 be before Judge Williams if he hadn't recused himself?

15 MR. HASKIN: Your Honor, I believe so.

16 THE COURT: Opposing counsel's nodding up and down as if  
17 to indicate yes.

18 MR. HASKIN: Well, Your Honor, it's --

19 THE COURT: And here's my concern, counsel. Just Judge  
20 Williams' order is not binding on me.

21 MR. HASKIN: No.

22 THE COURT: Obviously, another district court's ruling is not  
23 binding. There was a lot of briefing on the issue of preclusion, res  
24 judicata, law of the case. I don't think it's law of the case, it hasn't gone  
25 up to the Supreme Court and then been decided. I don't believe it's res

1   judicata. Your issue preclusion argument was sound, however, I'm not  
2   sure I would even decide on issue preclusion.

3           You invited me to review the underlying briefing as to Judge  
4   Williams' order, which I do intend to do. But my -- my question to you,  
5   counsel, is there any reason for you to believe that if this -- if this motion  
6   has been in front of Judge Williams, would he have decided any  
7   differently than he decided the -- the other order, the other matter that's  
8   in this order? And, you know, candor to the court is always good when  
9   you're making an argument. But is there any reason to believe that this  
10   matter had been in front of Judge Williams, you would have been able to  
11   persuade him differently than this previous order that is now up on  
12   appeal?

13           MR. HASKIN: Your Honor, I believe so. And there is a  
14   distinction. When Judge Williams heard this case, he heard the case  
15   only with the -- and I'll refer to it as *NRED 1*, I think that's how we  
16   referred to it in our briefings.

17           THE COURT: It took me a while to get the fact pattern down  
18   on what occurred in each -- in each proceeding.

19           MR. HASKIN: Yeah, I forget that I've --

20           THE COURT: But I think I have it down now.

21           MR. HASKIN: -- lived it my whole -- you know, basically, my  
22   whole adult career it seems like. But the -- *NRED 1* essentially was the  
23   litigation to seek the -- the voiding of the amended CC&Rs. *NRED 2*  
24   was a different litigation entirely. That was not subject o Judge Williams'  
25   order, and there are distinctions to be made. And I think important ones.

1           The *NRED 2* case, the parties, all the parties involved,  
2 including the association, stipulated to the fact that the amended CC&Rs  
3 were the governing document and were the law of the land.

4           THE COURT: But wasn't that only -- wasn't that stipulation  
5 only applicable to *NRED 2*? I mean, wasn't it limited to just application  
6 to *NRED 2*?

7           MR. HASKIN: Correct. It was -- it was limited in application to  
8 *NRED 2*. It was, Your Honor. But --

9           THE COURT: So it's not binding in any other form? That's --  
10 the stipulation is not binding in any other form?

11          MR. HASKIN: No, but I -- Your Honor, I think the distinction's  
12 important. Because one of our key arguments, and perhaps our key  
13 argument in this case, is that you can't ignore the legal -- the legal  
14 realities of the fact that until July 29th, 2013, and really with respect to  
15 *NRED 2*, until well after that, till 2016, the amended CC&Rs were the  
16 governing documents. They -- they were the governing documents.

17          THE COURT: But their argument is they were not a party to  
18 *NRED 2*, that the stipulation was between the association and the Lytles,  
19 and it was only limited to *NRED 2*.

20          MR. HASKIN: Sure, Your Honor. But the association -- this  
21 is -- this is not an ordinary corporation, right. This is not a corporation  
22 that had shareholders. An association is not an entrepreneurial  
23 ventureship. An association -- a homeowners association, is an  
24 organizational structure that consists of all the homeowners who've  
25 worked -- who vote to have a board to run the governance of their



1 community. This association is the homeowners. That's what it is.

2 When we join associations, we join voluntarily knowing that  
3 the board controls us. In one way or another, the board controls us.  
4 And when the board enters that stipulation for *NRED 2*, that's the  
5 decision that binds the association. Whether we as an association like it  
6 or not, and whether they liked it or not as debtors, and let's not forget  
7 that some of the board members are plaintiffs in this case. They  
8 decided this. This was their issue. They fought this case. They're not  
9 bystanders to this.

10 And even if they were bystanders, it wouldn't matter. The  
11 homeowners association is not a corporation in its ordinary terms. It is  
12 an organizational structure to which we as homeowners are all subject to  
13 what the board of directors decides. And in this case, what they decided  
14 to do was they decided to try to foreclose against the Lytles' home by  
15 enforcing Chapter 116's foreclosure provision and the amended CC&Rs'  
16 foreclosure provisions; that was their decision. They tried to enforce it,  
17 and the Lytles defended themselves against a foreclosure in *NRED 2*.  
18 And in order to do that, they were forced to stipulate that the amended  
19 CC&Rs were the governing documents, because their defenses in that  
20 case against the foreclosure wasn't that the amended CC&Rs were void  
21 *ab initio*. That was never an issue in *NRED 2*.

22 What they said was, You didn't even follow your own  
23 amended CC&Rs or Chapter 116. And we're going to agree that's the  
24 law of the land. So what ended up happening was the Lytles prevailed  
25 in that case.

1 And what the plaintiffs are seeking here really produces an  
2 absurd result, which is that had the prevailing party been the plaintiffs in  
3 this case, they would have foreclosed on the Lytles' house or lot. They  
4 wouldn't have anything. But because the Lytles prevailed, they have no  
5 remedy to obtain their attorneys' fees. Because now, they're arguing,  
6 well, sorry, the amended CC&Rs are void *ab initio*.

7 The -- the key to this case, really, is just that, is if a document  
8 is declared void *ab initio*, should it penalize the party that had it declared  
9 void *ab initio*? And the *Mackintosh* case, Your Honor, which we cite,  
10 and other cases that are similar, state the otherwise. It states that just  
11 because you have a document declared void *ab initio*, you shouldn't be  
12 punished as a result of that.

13 And -- and this is not the *Bergstrom* case, where a party  
14 obtained damages and also rescission. This is -- this is different. This is  
15 the *Mackintosh* case, where the court said, your document is -- the  
16 document's void *ab initio*. We're going to grant you that relief. And we  
17 know you've incurred attorneys' fees as a result of that, and the contract  
18 provided an award of attorneys' fees. And so we're going to allow you to  
19 enforce that contractual provision.

20 In this case, the amended CC&Rs, Section 10.2, provides the  
21 exact same relief as NRS 116.3117. It states that if a judgment is  
22 obtained against the association, it is a judgment against each and every  
23 one of the units in this association pro rata. That's what we're seeking to  
24 enforce. Because the contrary is -- it's -- not only is it not equitable, but  
25 it's absurd. Because only the association could have prevailed in those

1 cases under their theory of the case. And their theory of the case is that  
2 we're judgment debtors, we -- we're not judgment debtors, because we  
3 weren't parties to that case.

4 Well, the wealth of common interest development law says  
5 otherwise. Says if you join a common interest development, this is not  
6 you becoming a shareholder of a corporation. This is you joining an  
7 organizational structure and you have knowledge of these amended  
8 CC&Rs, why? They're recorded against your property and we provided  
9 you copies of them. You have knowledge of 116, you're assumed to  
10 have knowledge of 116, because you lived within the common interest  
11 development.

12 And that's the thrust of our argument, Your Honor.

13 THE COURT: Okay. Counsel, you invited me to review the  
14 underlying briefing in Judge Williams' order. I am going to take you up  
15 on your invitation. I haven't had a chance to do that yet. I have pulled  
16 the order and some of the briefing. Is there anything in rebuttal that you  
17 want to argue to the court? I am going to take this case under  
18 submission. I want to -- took me a while to get the fact pattern down,  
19 quite frankly. I had to review it over a couple of times. There's multiple  
20 litigations that underline this. I was going to put it on for two weeks for  
21 my decision.

22 But I don't want -- I want you to make whatever argument you  
23 want to make in response to counsel's argument.

24 MR. SMITH: Thank you, Your Honor. I appreciate that.

25 I think that I'll start with the distinction that's being made

1 between the *NRED 1* and the *NRED 2* litigation. Yes, there was a  
2 stipulation that was entered at one time in that case. But I'll actually  
3 refer to Exhibit L from the defendant's exhibits.

4 This is an order that they obtained in summary judgment. It  
5 was entered on November 15th, 2016, in case A-10-631355-C. It's  
6 called The Order Granting plaintiff John Alvin Lytle and Trudi Lee Lytles  
7 as Trustees of Lytle Trust, Motion for Summary Judgment.

8 THE COURT: Is this the order that mentions that it was void  
9 *ab initio* six times?

10 MR. SMITH: Yeah.

11 THE COURT: Okay.

12 MR. SMITH: Exactly.

13 THE COURT: I've reviewed it.

14 MR. SMITH: It seems kind of disingenuous to say that we  
15 stipulated to this issue and this was the main issue and that void *ab initio*  
16 never came up.

17 THE COURT: And your argument also was this was prepared  
18 by the Lytles' counsel --

19 MR. SMITH: Absolutely.

20 THE COURT: -- as with many of the other orders that  
21 basically the association did not put up a fight and it was akin to a  
22 default judgment.

23 MR. SMITH: Yeah. And, you know, whether or not it's a  
24 default judgment, you know, really aside from that, the whole point is  
25 that the Lytles, throughout all of the litigation that they've gone through,

1 they have argued that this is void *ab initio*. Now, void *ab initio* is a legal  
2 term with --

3 THE COURT: Means it never existed.

4 MR. SMITH: -- specific meaning. And to argue for that and  
5 successfully win at every turn they've won, and the final judgment, that's  
6 what they've gotten. And to turn around and now say that they can use  
7 that against nonparties is just -- it -- it doesn't make any sense. It's not  
8 legally possible. And so we -- we would say that's just not okay.

9 But as far as the -- you know, you asked whether or not Judge  
10 Williams would make the same decision today, I wasn't there. But I did  
11 read the transcript yesterday of the hearing. And it was pretty  
12 one-sided. And I would say that he would not have changed his mind.  
13 He was decidedly against the defendant's position on this issue.

14 And so we can submit that for -- for your review, as well, as  
15 part of that.

16 THE COURT: I'm going to go back and read the Mackintosh  
17 case, also, while I take this under submission. Probably do some  
18 independent research. And I am going to review the underlying basis of  
19 Judge Williams' order. If you want to submit transcripts, that's fine.

20 MR. SMITH: Okay. And one -- one other thing. If you're  
21 going to review *Mackintosh*, I would just say you should also read the  
22 Ninth Circuit's opinion in *Golden Pisces* --

23 THE COURT: I'll probably --

24 MR. SMITH: -- which we cited in our briefs.

25 THE COURT: -- do more than that, counsel. I'll probably

1 review all --

2 MR. SMITH: Thank you, Your Honor.

3 THE COURT: -- a lot of the cases cited. Like I said, it took  
4 me a while in reading this to get a handle on the fact that there was -- it  
5 was a lengthy fact pattern and tried to understand what occurred in each  
6 of t he -- it was, what, three -- *NRED 1, NRED 2, NRED 3*, then what  
7 happened in front of Judge Leavitt, and then what happened in front of  
8 Judge Williams. And now it's happening in front of myself.

9 MR. HASKIN: You got sucked in.

10 MR. SMITH: We won't belabor the issue then. We'll let you  
11 get to it.

12 THE COURT: Thank you, counsel.

13 MR. SMITH: Thank you.

14 MR. HASKIN: Thank you.

15 [Proceedings concluded at 9:31 a.m.]

16  
17 ///

18  
19 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
20 audio/video proceedings in the above-entitled case to the best of my  
21 ability.

22 

23 Shawna Ortega, CET\*562  
24  
25