

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant ,

v.

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

Respondents .

Supreme Court No.: 76198 and 77007
District Court Case No.: A-17-765372-C

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MOTION TO EXCEED TYPE-VOLUME LIMITATION

[Appellants' Reply Brief]

COMES NOW, Appellant, TRUDI LEE LYTLE; AND JOHN ALLEN
LYTLE, AS TRUSTEES OF THE LYTLE TRUST ("Appellants") move this
Court pursuant to NRAP 32(a)(7)(D) for permission to exceed the page limits or
type-volume limitation set forth NRAP 32(a)(7)(A)(ii). Good causes exists to
exceed the page and type-volume limitations because this Court consolidated the
briefing for Dockets 76198 and 77007.

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I. ARGUMENT

A. The Nevada Rules of Appellate Procedure Provide Appellants With The Ability To Seek Leave From The Court For Additional Page And Type-Volume

NRAP 32(a)(7)(A)(i) and (ii) provide that a reply brief may be no longer than 7,000 words or 15 pages, unless the Court grants permission pursuant to 32(a)(7)(D). NRAP 32(a)(7)(D) provides that a motion to exceed the page limit and/or type-volume limitation will be granted if the moving party shows “diligence and good cause.”

B. Good Cause Exists To Grant Appellants Leave To Exceed The Page And Type-Volume Limitations

This Court consolidated the briefing for Dockets 76198 and 77007. While the underlying district court case is the same in each appeal, the issues are very different. In Docket 76198, the issue before the Court is whether the district court erred in granting Respondents’ motion for summary judgment and permanent injunction. Declaration of Richard E. Haskin (“Haskin Decl.”), ¶ 3. The issues are complex and involve an analysis and discussion related to appropriate equitable relief. *Id.*

In Docket 77007, the issue before the Court is whether the district court erred in concluding that a prior district court’s order on appeal was *law of the case*, a ruling which served as the foundation for the district court to award

Respondents' attorneys' fees pursuant to NRS 18.010(2)(B). Haskin Decl. ¶ 4.

Here, Appellants spent considerable text analyzing current case law related to the law of the case doctrine, as well as refuting Respondents' citations to inapplicable Nevada case law as well as citations to other jurisdictions. *Id.*

While the law of the case doctrine overlapped with Docket 76198, the other issues and equitable considerations set forth in the Reply to Docket 76198 were far different than those to be considered in Docket 77007. Appellants were both mindful and diligent in their effort to be concise with their arguments, but the volume of arguments contained in the Answering Brief related to the two Dockets require the additional pages and type-volume herein requested. Haskin Decl. ¶ 5.

August 19, 2019

GIBBS GIDEN LOCHER TURNER
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By: 

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DECLARATION OF RICHARD E. HASKIN

1. I, Richard E. Haskin, am a partner at the law firm of GIBBS GIDEN LOCHER, TURNER, SENET & WITTBRODT, LLP, counsel for TRUDI LEE LYTLE; AND JOHN ALLEN LYTLE, AS TRUSTEES OF THE LYTLE TRUST (“Appellants”). I base this declaration on my personal knowledge.

2. This Supreme Court consolidated the briefing for Dockets 76198 and 77007.

3. Docket 76198 is an appeal from a district court order granting summary judgment and a permanent injunction in favor of Respondents 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 (collectively, “Respondents”).

The issue before the Court in Docket 76198 is whether the district court erred in granting summary judgment in favor of Respondents and granting a permanent injunction after finding Appellants clouded title to Respondents’ properties when Appellants recording abstracts of judgment awarded to Appellants in a separate civil action against Respondents homeowners’ association. In this appeal,

Appellants ask this Court to enforce the same equitable measures afforded to Appellants by the district court in a prior litigation. IN that 2017 case, the district court awarded Appellants attorneys' fees pursuant to a fee provision within the Amended CC&Rs despite the fact that the Amended CC&Rs were declared void ab initio prior to the award. The Amended CC&Rs also contained a measure by which creditors of the association could collect on judgments via recording liens on units within the association. Appellants request this Court to extend the equitable reasoning of the district court in the 2017 litigation to allow Appellants to enforce the collection provision in the Amended CC&Rs (as they were extended the fee provision) so that Appellants are not provided with a meaningless remedy.

4. Docket 77007 is an appeal from a post-judgment attorneys' fees award whereby the district court granted attorneys' fees pursuant to NRS 18.010(2)(B), finding Appellants maintained the defense to the action in bad faith. Specifically, the district court found that Judge Timothy Williams' order granting summary judgment in a consolidated case was law of the case, even though that order was on appeal during the entirety of Appellants' litigation with Respondents. Appellants contend the district court erred in its application of the *law of the case* doctrine.

5. I was cognizant of the page limitations set forth NRAP 32(a)(7) when drafting the Reply Brief. However, the unique issues posed by Dockets 76198 and 77007 required substantial briefing. Further, Respondents Answering Brief

addressed new arguments that were not contained in Appellants' Opening Briefs as to both appeals, in addition to addressing those arguments that were raised. Each argument required separate consideration and briefing, including significant briefing as to case law cited from both Nevada and other jurisdictions. Despite my diligence and good faith attempts to be concise with arguments, the current type-volume is 10,204 words. I have made every attempt to eliminate text where possible.

I declare under the penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct. Signed this 19th day of August, 2019, in Las Vegas, Nevada.



Richard E. Haskin

CERTIFICATE OF MAILING

The undersigned, an employee of the law firm of GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP, hereby certifies that on August 19, 2019, she served a copy of the foregoing **MOTION TO EXCEED TYPE-VOLUME LIMITATION** by electronic service through the Nevada Supreme Court's e-filing system and by placing said copy in an envelope, postage fully prepaid, in the U.S.

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