

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

**JOINT MOTION TO
CONSOLIDATE APPEALS**

Electronically Filed
Oct 29 2018 11:45 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Joint Motion to Consolidate Appeals

(Docket 77007)

RICHARD HASKIN
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Attorneys for Respondents

INTRODUCTION

TRUDI LEE LYTLE; AND JOHN ALLEN LYTLE, AS TRUSTEES OF THE LYTLE TRUST (the “Appellants”) and 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 (“Respondents”) hereby jointly request Docket 76198 be consolidated with Docket 77007 in the interests of justice and judicial economy. NRAP 2. Appellants and Respondents are the same in both Dockets. Consolidation is warranted and necessary for the effective disposition of these matters because Docket No. 77007 relates to attorneys’ fees and costs awarded as a result of Respondents prevailing in the underlying district court litigation, Case No. A-17-765372-C, the merits of which are subject to appeal in Docket No. 76198.

SUMMARY OF FACTS AND RELATED APPEALS

Respondents filed a lawsuit on November 30, 2017, seeking to quiet title to their respective properties and setting forth claims for quiet title and declaratory relief. Complaint in District Court Case No. A-17-765372-C, Exhibit A. Respondents claims address abstracts of judgment recorded by Appellants on Respondents’

respective properties located within Rosemere Property Owners Association (the “Association”). *See id generally*. The abstracts of judgments related to a judgment obtained by Appellants against the Association in District Court Case No. A-09-593497-C. *See id.* at ¶¶ 19 - 30. Appellants also obtained judgments against the Association in two additional matters, Case Nos. A-10-631355-C and A-15-761420-C, for which abstracts of judgment were not recorded. *See id.* at ¶¶ 31 – 39. Respondents complaint sought declaratory relief as to whether Appellants could enforce the judgments in these cases against Respondents. *See id.*

On February 27, 2018, the district court, Department XVIII, consolidated Case No. A-17-765372-C with Case No. A-16-747800-C. *See* Order Consolidating Cases, Exhibit B.

On May 22, 2018, the district court granted Respondents’ Motion for Summary Judgment, or, in the Alternative, Motion for Judgment on the Pleadings and Denying Countermotion for Summary Judgment. *See* Order Granting Motion, Exhibit C. Appellants appealed this Order, Docket No. 76198.

Thereafter, and after motions were filed, the district court awarded Respondents’ attorneys’ fees and costs as a prevailing party. *See* 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, Exhibit D. Appellants appealed this Order as well, Docket No. 77007.

RELIEF REQUESTED

Appellants and Respondents jointly seek to consolidate Dockets 76198 and 77007. Docket 76198 addresses the merits of the underlying litigation while Docket No. 77007 relates to attorneys' fees and costs awarded to Respondents as the prevailing party in the underlying litigation. Consolidation makes sense at this early stage of the appeals, with no briefs having been filed in either Docket, so that the parties may address all of the issues related to the underlying litigation through a single set of briefing. By way of example only, if Appellants' appeal is successful and the district court's order granting summary judgment overturned, then Respondents cannot be the prevailing party and fees and costs must necessarily be stricken.

Appellants and Respondents respectfully request this Court stay any decision in Docket 76198 pending full briefing and submission of Docket 77007.

October 29, 2018

CHRISTENSEN, JAMES &
MARTIN

By: /s/ Wesley J. Smith
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October 29, 2018

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Attorneys for Appellants

LIST OF EXHIBITS TO MOTION

Exhibit A	Complaint in District Court Case No. A-17-765372-C
Exhibit B	Order Consolidating Cases
Exhibit C	Order Granting Motion for Summary Judgment, or, in the Alternative, Motion for Judgment on the Pleadings and Denying Countermotion for Summary Judgment
Exhibit D	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

CERTIFICATE OF MAILING

The undersigned, an employee of the law firm of GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP, hereby certifies that on October 29, 2018, she served a copy of the foregoing **JOINT MOTION TO CONSOLIDATE APPEALS** by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope(s) addressed to:

Wesley J. Smith, Esq.
Laura J. Wolff, Esq.
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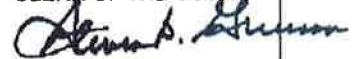
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EXHIBIT “A”



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8 **EIGHTH JUDICIAL DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

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

17 Plaintiffs,

18 vs.

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

22 Defendants.

A-17-765372-C

Case No.:

Dept. No.: Department 28

COMPLAINT

24 Plaintiffs, September Trust, dated March 23, 1972 ("September Trust"), Gerry R. Zobrist
25 and Jolin G. Zobrist, as Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust
26 ("Zobrist Trust"), Raynaldo G. Sandoval and Julie Marie Sandoval Gegen, as Trustees of the
27 Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution Trust Dated May 27, 1992
28 ("Sandoval Trust"), Dennis A. Gegen and Julie S. Gegen, Husband and Wife as Joint Tenants

1 (hereafter "Gegen") (hereafter September Trust, Zobrist Trust, Sandoval Trust and Gegen may
2 be collectively referred to as "Plaintiffs"), by and through their attorneys, Christensen James &
3 Martin, hereby complain against Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle
4 Trust (collectively the "Lytles" or "Defendants"), JOHN DOES I through V; and ROE
5 ENTITIES I through V, as follows:

6 PARTIES, JURISDICTION & VENUE

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

10 2. The Zobrist Trust is the owner of the residential property in Clark County,
11 Nevada known as 1901 Rosemere Court, Las Vegas, Nevada 89117, Assessor's Parcel No. 163-
12 03-313-005 ("Zobrist Property").

13 3. The Sandoval Trust is the owner of the residential property in Clark County,
14 Nevada known as 1860 Rosemere Court, Las Vegas, Nevada 89117, Assessor's Parcel No. 163-
15 03-313-001 ("Sandoval Property").

16 4. Gegen is the owner of the residential property in Clark County, Nevada known as
17 1831 Rosemere Court, Las Vegas, Nevada 89117, Assessor's Parcel No. 163-03-313-003
18 ("Gegen Property") (hereafter September Property, Zobrist Property, Sandoval Property and
19 Gegen Property may be collectively referred to as Plaintiffs' Properties).

20 5. Upon information and belief, Trudi Lee Lytle and John Allen Lytle are residents
21 of Clark County, and are co-trustees of the Lytle Trust.

22 6. Venue for this proceeding is proper before the above-entitled Court as the events
23 relating to this matter occurred in Clark County, Nevada and the property that is the subject of
24 this litigation is in Clark County, Nevada.

25 7. The true names and capacities, whether partnership, individual, corporate,
26 company, associate or otherwise, of Defendants John Does I through V and Roe Entities I
27 through V, inclusive, are presently unknown to Plaintiffs, who therefore sue said Defendants by
28

1 such fictitious names. Such Defendants may be responsible for or liable to Plaintiffs by virtue of
2 the actions hereinafter described. Plaintiffs reserve the right to amend the Complaint to insert any
3 additional charging allegations, together with the true identities and capacities, when the same
4 have been ascertained.

5 8. Wherever appearing in this Complaint, each and every reference to Defendants or
6 to any of them is intended to be and shall be a reference to all Defendants hereto, and to each of
7 them, named and unnamed, including all fictitiously named Defendants, unless said reference is
8 otherwise specifically qualified.

9 9. At all times material herein, Defendants, and each of them, were an owner, a co-
10 owner, an agent, officer, manager, employee, representative, partner and/or alter ego of its co-
11 defendants, or otherwise acting on behalf of each and every remaining Defendant and, in doing
12 the things herein alleged, were acting within the course and scope of their authorities as an
13 owner, a co-owner, an agent, officer, manager, employee, representative, partner and/or alter ego
14 of its co-defendants, with the full knowledge, permission and consent of each and every
15 remaining defendant, each co-defendant having ratified the acts of the other co-defendants.

16 10. At all times material herein and to the best of Plaintiffs' knowledge, the Lytles,
17 and John Does and Roe Entities have been operating as alter egos and conduits of each other and
18 to serve the purpose of each other, and not as individual entities or persons, so as to permit the
19 individual Defendants to escape liability, whose business operations have been operated under
20 common labor, ownership, control and an interrelationship of operations, such that they
21 constitute a single business in fact. The Court should disregard the corporate or business shell to
22 the extent necessary to afford complete relief.

23 11. Plaintiffs have been required to retain the services of Christensen James & Martin
24 to prosecute this action and are entitled to receive their reasonable attorney's fees and costs.

25 12. Jurisdiction and venue may also be based upon facts alleged elsewhere in this
26 Complaint.

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1
2 GENERAL ALLEGATIONS

3 13. Plaintiffs herein restate and re-allege Paragraphs 1 through 12 of this Complaint
4 as if fully set forth herein and incorporate the same by reference.

5 14. The Plaintiffs' Properties are located in the Rosemere Estates subdivision
6 ("Subdivision") wherein there are nine (9) lots and/or properties.

7 15. The Subdivision properties are subject to the CC&R's recorded January 4, 1994
8 (the "CC&Rs").

9 16. The CC&Rs provide in paragraph 21 that a property owners committee shall be
10 established by all owners of lots within the subdivision to determine the landscaping on the four
11 exterior wall planters and the entrance way planters, to determine the method and cost of
12 watering the planters, to maintain the exterior perimeter wall, to maintain the Entrance Gate and
13 to maintain and repair the interior street.

14 17. The CC&Rs provide in paragraph 24 that in order to enforce the CC&Rs any
15 appropriate judicial proceeding in law or in equity could be used by any lot owner suing directly
16 any other lot owner or owners for any violation of the CC&Rs.

17 18. A non-profit corporation, the Rosemere Estates Property Owners Association
18 ("Rosemere Association"), was formed in 1997 in order to open a bank account to handle the
19 property owners committee's funds for the landscaping described in paragraph sixteen (16). The
20 corporate charter of the Rosemere Association was revoked by the Nevada Secretary of State's
21 office in 2015.

22 Rosemere Litigation I

23 19. In 2009, the Lytles filed suit against the Rosemere Association directly in Case
24 No. A-09-593497-C ("Rosemere Litigation I"). The Lytles did not name the Plaintiffs or any
25 other lot owners as Defendants in Rosemere Litigation I.

26 20. On or about July 29, 2016, the Lytles obtained a Judgment against the Rosemere
27 Association in the amount of \$361,238.59 ("Rosemere Judgment I").
28

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

13 22. When the Lytles recorded the Abstracts of Judgment, the Lytles specifically
14 included the parcel numbers of the Plaintiffs' Properties even though Plaintiffs were not parties
15 to the Rosemere Litigation from which the Rosemere Judgment I arose.
16

17 23. The Plaintiffs have no legal duty to pay the Rosemere Judgment I and have
18 advised the Lytles of this fact and have requested that the Lytles remove the Abstracts of
19 Judgment from their Properties.
20

21 24. The Lytles knew or should have known that the Plaintiffs did not have a legal
22 duty to pay the Rosemere Judgment I.
23

24 25. The Abstracts of Judgment were wrongfully recorded against the Plaintiffs'
25 Properties and the Lytles knew or should have known the Abstracts of Judgment were
26 wrongfully recorded.
27

28 26. Other property owners in the Rosemere Subdivision, the Bouldens (Parcel No.
163-03-313-008) and the Lamothes (Parcel No. 163-03-313-002) have already filed a lawsuit
(Case No. A-16-747900-C) regarding this same issue ("BL Lawsuit"), because the Rosemere

1 Judgment I was recorded against all the properties in the Subdivision except for the Lytle's
2 property.

3 27. On July 25, 2017, the Court issued its Order in the BL Lawsuit Granting Motion
4 to Alter or Amend Findings of Fact and Conclusions of Law ("Order").

5 28. In its Order, the Court found that, among other things, the Association is not
6 subject to NRS 116.3117, the Bouldens and Lamothes were not parties to the Rosemere
7 Litigation, the Rosemere Judgment I is not an obligation or debt of the Bouldens or the Lamothes
8 and that the Abstracts of Judgment were improperly recorded against such properties and must
9 be expunged and stricken from the record.

10 29. After the Court issued its Order, the Lytles released their liens against the
11 Boulden and Lamothes properties but have not released their liens against the Plaintiffs'
12 Properties.

13 30. Although the Plaintiffs and Lytles have participated in settlement discussions and
14 the Plaintiffs have requested the same relief granted to the Bouldens and Lamothes, as of the date
15 of filing this Complaint, the Lytles have not agreed to release the Abstracts of Judgment
16 wrongfully recorded against the Plaintiffs' Properties.

17 **Rosemere Litigation II**

18 31. In 2010, the Lytles filed another suit against the Rosemere Association directly in
19 Case No. A-10-631355-C ("Rosemere Litigation II"). The Lytles did not name the Plaintiffs or
20 any other lot owners as Defendants in the Rosemere Litigation II.

21 32. On or about November 14, 2016, the Lytles were granted Summary Judgment
22 against the Rosemere Association.

23 33. On or about July 20, 2017, the District Court signed an Abstract of Judgment in
24 the amount of \$1,103,158.12. ("Rosemere Judgment II").

25 34. The Plaintiffs were not named parties in the Rosemere II Litigation and did not
26 have notice of the same.

1 35. As of the date of filing this Complaint, the Rosemere Judgment II has not been
2 recorded against the Plaintiffs' Properties.

3 **Rosemere Litigation III**

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

9 37. On or about September 13, 2017, the Court entered its Order granting Summary
10 Judgment for Declaratory Relief as against the Association ("Rosemere Judgment III). On
11 November 8, 2017, the Court granted a Motion for Attorney's Fees and Costs in this case.

12 38. As of the date of filing this Complaint, the Rosemere Judgment III has not been
13 recorded against the Plaintiffs' Properties.

14 39. It has been necessary for Plaintiffs to obtain legal counsel to pursue their rights
15 and protect their interests as they relate to the allegations asserted in this Complaint.

16 **FIRST CAUSE OF ACTION**

17 [Quiet Title]

18 40. Plaintiffs herein restate and re-allege Paragraphs 1 through 39 of this Complaint
19 as if fully set forth herein and incorporate the same by reference.

20 41. The Lytles, by their claims and actions, have asserted certain rights to lien the
21 Plaintiffs' Properties.

22 42. The Lytles are without any legal basis whatsoever to lien the Plaintiffs'
23 Properties.

24 43. The Lytles are without any legal basis whatsoever to claim any interest in the
25 Plaintiffs' Properties, including any rights to lien or sell the same.

26 44. As a proximate result of the Lytles' actions, the titles to the Plaintiffs' Properties
27 have been improperly and illegally clouded.

1 45. Plaintiffs are entitled to an Order from this Court pursuant to NRS 40.010
2 quieting title in their names and expunging the Abstracts of Judgment.

3 46. Plaintiffs herein have been required to retain the services of Christensen James &
4 Martin to prosecute this action, and are entitled to an award of attorney's fees and costs.

5 SECOND CAUSE OF ACTION

6 [Declaratory Relief]

7 47. Plaintiffs herein restate and re-allege Paragraphs 1 through 46 of this Complaint
8 as if fully set forth herein and incorporate the same by reference.

9 48. A dispute and actual controversy exists between the parties relative to their
10 interpretation of the rights and duties of the Plaintiffs regarding the Rosemere Judgments, the
11 recorded Abstracts of Judgment, and the Plaintiffs' Properties.

12 49. The Plaintiffs are entitled to a declaration from the Court, to the effect that the
13 Rosemere Judgments against the Rosemere Estates Home Owners Association are not judgments
14 against the Plaintiffs, separately or individually, and that the Rosemere Judgments and the
15 Abstracts of Judgment were improperly and unlawfully recorded against the Plaintiffs'
16 Properties.

17 50. Plaintiffs do not owe any money whatsoever to the Lytles.

18 51. Plaintiffs do not have an adequate remedy at law because they cannot sell their
19 Properties with the Abstracts of Judgment recorded against their Properties.

20 52. Plaintiffs will suffer irreparable harm if they are not able to sell their Properties
21 due to the recording of the Abstracts of Judgment.

22 53. Further, if the Lytles were to record the Rosemere Judgment II or the Rosemere
23 Judgment III like they have the Rosemere Judgment I, the Plaintiffs will not have an adequate
24 remedy at law because they could not sell their Properties.

25 54. The Lytles have threatened to record the Rosemere Judgment II against other
26 homeowners in the Rosemere Subdivision

27 55. Plaintiffs are likely to prevail on their claims against the Lytles.
28

1 56. The Plaintiffs are entitled to a declaration from the Court, to the effect that the
2 Rosemere Judgment II and Rosemere Judgment III against the Rosemere Estates Home Owners
3 Association is not a judgment against the Plaintiffs, separately or individually, and that the
4 Rosemere Judgment II and Rosemere Judgment III cannot be recorded against the Plaintiffs'
5 Properties.

6 57. Plaintiffs are entitled to an Order from this Court expunging the liens in the form
7 of the recorded Abstracts of Judgment and declaring that the Rosemere Judgment II and the
8 Rosemere Judgment III may not be recorded against the Plaintiffs' Properties.

9 58. Plaintiffs have been required to retain the services of Christensen James & Martin
10 to prosecute this action, and are entitled to an award of attorney's fees and costs.

11 PRAYER FOR RELIEF

12 WHEREFORE, the Plaintiffs pray for Judgment against Defendants as follows:

13 1. For an order restraining the Lytles, and each of them, their, agents, servants,
14 employees, attorneys, successors and assign, from foreclosing upon or selling the Plaintiffs'
15 Properties and from doing, causing, or permitting to be done, directly or indirectly, any acts
16 whereby the rights of the Plaintiffs in said property is in any matter impaired, violated or
17 interfered with and that the Abstracts of Judgment should be stricken from the records of the
18 Clark County Recorder's Office;

19 2. For an Order quieting title of the Properties in favor of the Plaintiffs and against
20 the Lytles;

21 3. For a declaration that the Lytles, and each of them, have no right, title or interest
22 in the Plaintiffs' Properties, and a judgment and order quieting the Plaintiffs' title, canceling and
23 expunging the Abstracts of Judgment;

24 4. For Plaintiffs' attorney's fees and costs incurred in this action, and

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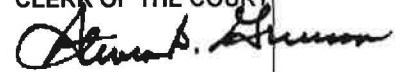
5. For such further relief as the Court may deem proper under the circumstances.

DATED this 29th day of November, 2017.

CHRISTENSEN JAMES & MARTIN

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EXHIBIT “B”



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1 **ORDER**

2 **CHRISTENSEN JAMES & MARTIN**

3 **KEVIN B. CHRISTENSEN, ESQ.**

4 Nevada Bar No. 175

5 **WESLEY J. SMITH, ESQ.**

6 Nevada Bar No. 11871

7 **LAURA J. WOLFF, ESQ.**

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14 Attorneys for September Trust, Zobrist Trust, Sandoval Trust

15 and Dennis & Julie Gegen

16 **EIGHTH JUDICIAL DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 MARJORIE B. BOULDEN, TRUSTEE OF
19 THE MARJORIE B. BOULDEN TRUST,
20 LINDA LAMOTHE AND JACQUES
21 LAMOTHE, TRUSTEES OF THE
22 JACQUES & LINDA LAMOTHE LIVING
23 TRUST,

24 Plaintiffs,

25 vs.

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

Defendants.

Case No.: A-16-747800-C

Dept. No.: XVIII

**ORDER GRANTING MOTION TO
CONSOLIDATE CASE NO. A-16-
747800-C WITH CASE NO. A-17-
765372-C**

Date: February 21, 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 a Motion to Consolidate Case No. A-16-747800-C with
13 Case No. A-17-765372-C ("Motion"). No Oppositions were filed. The Motion came on for
14 hearing on February 21, 2018 at 9:00 a.m. in Department XVIII of the Eighth Judicial District
15 Court, Clark County, Nevada. Wesley J. Smith, Esq. of Christensen James & Martin appeared on
16 behalf of the Movants, September Trust, dated March 23, 1972 ("September Trust"), Gerry R.
17 Zobrist and Jolin G. Zobrist, as Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family
18 Trust ("Zobrist Trust"), Raynaldo G. Sandoval and Julie Marie Sandoval Gegen, as Trustees of
19 the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution Trust dated May 27, 1992
20 ("Sandoval Trust"), and Dennis A. Gegen and Julie S. Gegen, Husband and Wife, as Joint
21 Tenants ("Dennis & Julie Gegen"). Timothy P. Elson, Esq. of Gibbs Giden Locher Turner Senet
22 & Wittbrodt LLP appeared on behalf of the Trudi Lee Lytle and John Allen Lytle, as Trustees of
23 the Lytle Trust ("Lytle Trust"). Daniel T. Foley, Esq. of Foley & Oaks, PC appeared on behalf of
24 Marjorie B. Boulden, Trustee of the Marjorie B. Boulden Trust, amended and restated dated July
25 17, 1996 ("Boulden Trust") and Linda Lamothe and Jacques Lamothe, Trustees of the Jacques
26 and Linda Lamothe Living Trust ("Lamothe Trust"). Christina H. Wang, Esq. of Fidelity
27 National Law Group appeared on behalf of Robert Z. Disman and Yvonne A. Disman ("Robert
28 & Yvonne Disman"). The Court having considered the Motion and exhibits, having heard the
arguments of counsel, for all the reasons contained in the Motion, and with good cause appearing
therefore, the Court hereby enters the following Order:

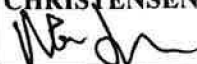
1 **IT IS HEREBY ORDERED** that the Motion to Consolidate Case No. A-16-747800-C
2 with Case No. A-17-765372-C is hereby GRANTED.

3 **IT IS SO ORDERED.**

4 Dated this 27th day of February, 2018.

5
6 
DISTRICT COURT JUDGE

7 Submitted by:
8 **CHRISTENSEN JAMES & MARTIN**

9 
10 Wesley J. Smith, Esq.
11 Nevada Bar No. 11871
12 Laura J. Wolff, Esq.
13 Nevada Bar No. 6869
14 7440 W. Sahara Ave.
15 Las Vegas, NV 89117
16 Attorneys for Plaintiffs September Trust,
17 Zobrist Trust, Sandoval Trust, and
18 Dennis & Julie Gegen

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

15 FIDELITY NATIONAL LAW GROUP

FOLEY & OAK, P.C.

16
17 **CHRISTINA H. WANG, ESQ.**
18 Nevada Bar No. 9713
19 1701 Village Center Circle, Suite 110
20 Las Vegas, Nevada 89134
21 Attorneys for Counter-Defendants/Cross-
22 Claimants Robert & Yvonne Disman

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

25 **DANIEL T. FOLEY, ESQ.**
26 Nevada Bar No. 1078
27 626 S. 8th Street
28 Las Vegas, Nevada 89101
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Defendants/Cross-Defendants Boulden Trust
and Lamothe Trust

22 **RICHARD E. HASKIN, ESQ.**
23 Nevada Bar No. 11592
24 **TIMOTHY P. ELSON, ESQ.**
25 Nevada Bar No. 11559
26 1140 N. Town Center Drive, Suite 300
27 Las Vegas, Nevada 89144
28 Attorneys for Defendants/Counter-
Claimants Lytle Trust

1 **IT IS HEREBY ORDERED** that the Motion to Consolidate Case No. A-16-747800-C
2 with Case No. A-17-765372-C is hereby GRANTED.

3 **IT IS SO ORDERED.**

4 Dated this ____ day of February, 2018.

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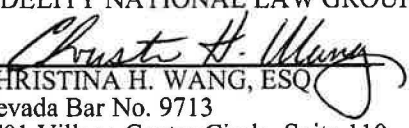
DISTRICT COURT JUDGE

Submitted by:
CHRISTENSEN JAMES & MARTIN

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Zobrist Trust, Sandoval Trust, and
Dennis & Julie Gegen

Approved as to Form and Content by:

FIDELITY NATIONAL LAW GROUP


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1 **IT IS HEREBY ORDERED** that the Motion to Consolidate Case No. A-16-747800-C
2 with Case No. A-17-765372-C is hereby GRANTED.

3 **IT IS SO ORDERED.**

4 Dated this ____ day of February, 2018.

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DISTRICT COURT JUDGE

Submitted by:
CHRISTENSEN JAMES & MARTIN

Wesley J. Smith, Esq.
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Laura J. Wolff, Esq.
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Approved as to Form and Content by:
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Las Vegas, Nevada 89144
Attorneys for Defendants/Counter-
Claimants Lytle Trust

1 **IT IS HEREBY ORDERED** that the Motion to Consolidate Case No. A-16-747800-C
2 with Case No. A-17-765372-C is hereby GRANTED.

3 **IT IS SO ORDERED.**

4 Dated this ____ day of February, 2018.

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DISTRICT COURT JUDGE

Submitted by:
CHRISTENSEN JAMES & MARTIN

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Zobrist Trust, Sandoval Trust, and
Dennis & Julie Gegen

Approved as to Form and Content by:
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Las Vegas, Nevada 89101
Attorneys for Plaintiffs/Counter-
Defendants/Cross-Defendants Boulden Trust
and Lamothe Trust

EXHIBIT “C”



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

16 **EIGHTH JUDICIAL DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 **MARJORIE B. BOULDEN, TRUSTEE OF**
19 **THE MARJORIE B. BOULDEN TRUST,**
20 **LINDA LAMOTHE AND JACQUES**
21 **LAMOTHE, TRUSTEES OF THE**
22 **JACQUES & LINDA LAMOTHE LIVING**
23 **TRUST,**

24 Plaintiffs,

25 vs.

26 **TRUDI LEE LYTLE, JOHN ALLEN**
27 **LYTLE, THE LYTLE TRUST, DOES I**
28 **through X, and ROE CORPORATIONS I**
through X,

Defendants.

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

NOTICE OF ENTRY OF ORDER
GRANTING MOTION FOR
SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, MOTION FOR
JUDGMENT ON THE PLEADINGS
AND DENYING COUNTERMOTION
FOR SUMMARY JUDGMENT

Date: May 2, 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 PLEASE TAKE NOTICE that an **ORDER GRANTING MOTION FOR**
13 **SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, MOTION FOR**
14 **JUDGMENT ON THE PLEADINGS AND DENYING COUNTERMOTION FOR**
15 **SUMMARY JUDGMENT** was filed with the Court on May 24, 2018, a true and correct
16 copy of which is attached hereto.

17 Dated this 25th day of May, 2018.

18 **CHRISTENSEN JAMES & MARTIN**

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

20 Wesley J. Smith, Esq.

21 Nevada Bar No. 11871

22 Laura J. Wolff, Esq.

23 Nevada Bar No. 6869

24 7440 W. Sahara Ave.

25 Las Vegas, NV 89117

26 Attorneys for Plaintiffs September Trust,

27 Zobrist Trust, Sandoval Trust, and

28 Dennis & Julie Gegen

1 **CERTIFICATE OF SERVICE**

2 I am an employee of Christensen James & Martin. On May 25, 2018, I caused a true
3 and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING**
4 **MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, MOTION**
5 **FOR JUDGMENT ON THE PLEADINGS AND DENYING COUNTERMOTION**
6 **FOR SUMMARY JUDGMENT**, to be served in the following manner:

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

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

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

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

15 /s/ Natalie Saville

16 Natalie Saville



ORDR
CHRISTENSEN JAMES & MARTIN
KEVIN B. CHRISTENSEN, ESQ.
Nevada Bar No. 175
WESLEY J. SMITH, ESQ.
Nevada Bar No. 11871
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Tel.: (702) 255-1718
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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 GRANTING MOTION FOR
SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, MOTION FOR
JUDGMENT ON THE PLEADINGS
AND DENYING COUNTERMOTION
FOR SUMMARY JUDGMENT**

Date: May 2, 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 Summary Judgment or, in the
13 Alternative, Motion for Judgment on the Pleadings filed by the September Trust, dated March
14 23, 1972 ("September Trust"), Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the Gerry R.
15 Zobrist and Jolin G. Zobrist Family Trust ("Zobrist Trust"), Raynaldo G. Sandoval and Julie
16 Marie Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and
17 Devolution Trust dated May 27, 1992 ("Sandoval Trust"), and Dennis A. Gegen and Julie S.
18 Gegen, Husband and Wife, as Joint Tenants ("Dennis & Julie Gegen") (collectively the
19 "Plaintiffs") in Case No. A-17-765372-C, and Defendants' Countermotion for Summary
20 Judgment filed by Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle Trust ("Lytle
21 Trust") in Case No. A-17-765372-C, which came on for hearing on March 21, 2018 at 9:00 a.m.
22 and May 2, 2018 at 9:00 a.m. in Department XVIII of the Eighth Judicial District Court, Clark
23 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. Daniel T. Foley, 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 Motions and exhibits, having heard the arguments of
5 counsel, for all the reasons contained in the Plaintiffs’ Motion for Summary Judgment or, in the
6 Alternative, Motion for Judgment on the Pleadings, and with good cause appearing therefore, the
7 Court hereby enters the following Order:

8
9 **FINDINGS OF FACT**

10 1. The September Trust is the owner of the residential property in Clark County,
11 Nevada known as 1861 Rosemere Court, Las Vegas, Nevada 89117, Assessor’s Parcel No. 163-
12 03-313-004 (“September Property”).

13 2. The Zobrist Trust is the owner of the residential property in Clark County,
14 Nevada known as 1901 Rosemere Court, Las Vegas, Nevada 89117, Assessor’s Parcel No. 163-
15 03-313-005 (“Zobrist Property”).

16 3. The Sandoval Trust is the owner of the residential property in Clark County,
17 Nevada known as 1860 Rosemere Court, Las Vegas, Nevada 89117, Assessor’s Parcel No. 163-
18 03-313-001 (“Sandoval Property”).

19 4. Dennis & Julie Gegen are the owner of the residential property in Clark County,
20 Nevada known as 1831 Rosemere Court, Las Vegas, Nevada 89117, Assessor’s Parcel No. 163-
21 03-313-003 (“Gegen Property”) (hereafter September Property, Zobrist Property, Sandoval
22 Property and Gegen Property may be collectively referred to as “Plaintiffs’ Properties”).
23

24 5. The Plaintiffs’ Properties are located in the Rosemere Estates subdivision
25 (“Rosemere Subdivision” or “Subdivision”) and are subject to the CC&R’s recorded January 4,
26 1994 (the “CC&Rs”).
27
28

1 6. John Allen Lytle and Trudi Lee Lytle are the Trustees of the Lytle Trust
2 (collectively "Lytle Trust") which owns that certain residential property known as parcel number
3 163-03-313-009 (the "Lytle Property"), also located in the Rosemere Subdivision.

4 7. In 2009, the Lytles filed suit against the Rosemere Association directly in the
5 Eighth Judicial District Court, Case No. A-09-593497-C ("Rosemere Litigation I").

6 8. None of the Plaintiffs were ever parties in the Rosemere Litigation I.

7 9. None of the Plaintiffs were a "losing party" in the Rosemere Litigation I as that
8 term is found in Section 25 of the Original CC&Rs.
9

10 10. The Lytles obtained a Summary Judgment for Declaratory Relief from the District
11 Court in the Rosemere Litigation I, which found and ruled as follows:

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

15 b. The Association did not have any powers beyond those of the "property owners
16 committee" designation in the Original CC&Rs - simply to care for the
17 landscaping and other common elements of Rosemere Estates as set forth in
Paragraph 21 of the Original CC&Rs.

18 c. Consistent with the absence of a governing body, the Developer provided each
19 homeowner the right to independently enforce the Original CC&Rs against one
another.

20 d. The Amended and Restated CC&Rs recorded with the Clark County Recorder's
21 Office as Instrument No. 20070703-0001934 (the "Amended CC&Rs") are
22 invalid, and the Amended CC&Rs have no force and effect.

23 11. Pursuant to NRS 116.1201(2) much of NRS Chapter 116 does not apply to the
24 Association because it is a limited purpose association that is not a rural agricultural residential
25 community.

26 12. After obtaining Summary Judgment in the Rosemere Litigation I, the Lytle Trust
27 filed a Motion for Attorneys' Fees and Costs against the Association, and conducted a prove-up
28

1 hearing on damages. After hearing all matters, a Final Judgment was entered in the Lytle Trust's
2 favor against the Association for \$361,238.59, which includes damages, attorneys' fees and costs
3 (the "Final Judgment").

4 13. After obtaining the Attorneys' Fees Judgment, the Lytle Trust, on August 16,
5 2016, recorded with the Clark County Recorder's office an Abstract of Judgment referencing the
6 Final Judgment against the Association, recorded as Instrument No. 20160818-0001198 (the
7 "First Abstract of Judgment").
8

9 14. In the First Abstract of Judgment, the Lytle Trust listed the parcel numbers for all
10 of the Plaintiffs' Properties as properties to which the First Abstract of Judgment and Final
11 Judgment was to attach.

12 15. On September 2, 2016, the Lytle Trust recorded with the Clark County Recorder's
13 office an Abstract of Judgment referencing the Final Judgment against the Association, recorded
14 as Instrument No. 20160902-0002685 (the "Second Abstract of Judgment"). The Second
15 Abstract of Judgment listed the parcel number of the Gegen Property only as the property to
16 which the Judgment was to attach.
17

18 16. On September 2, 2016, the Lytle Trust recorded with the Clark County Recorder's
19 office an Abstract of Judgment referencing the Final Judgment against the Association, recorded
20 as Instrument No. 20160902-0002686 (the "Third Abstract of Judgment"). The Third Abstract of
21 Judgment listed the parcel number of the September Trust Property only as the property to which
22 the Judgment was to attach.
23

24 17. On September 2, 2016, the Lytle Trust recorded with the Clark County Recorder's
25 office an Abstract of Judgment referencing the Final Judgment against the Association, recorded
26 as Instrument No. 20160902-0002687 (the "Fourth Abstract of Judgment"). The Fourth Abstract
27
28

1 of Judgment listed the parcel number of the Zobrist Trust Property only as the property to which
2 the Judgment was to attach.

3 18. In 2010, the Lytle Trust filed another suit against the Rosemere Association
4 directly in Case No. A-10-631355-C ("Rosemere Litigation II"). The Lytle Trust did not name
5 the Plaintiffs as Defendants in the Rosemere Litigation II.

6 19. On or about November 14, 2016, the Lytle Trust was granted Summary Judgment
7 against the Rosemere Association.

8 20. On or about July 20, 2017, the District Court signed an Abstract of Judgment in
9 the amount of \$1,103,158.12. ("Rosemere Judgment II").
10

11 21. The Plaintiffs were not named parties in the Rosemere II Litigation.

12 22. On or about April 2, 2015, the Lytle Trust filed a third case (Case No. A-15-
13 716420-C) against the Association and named as Defendants Sherman L. Kearl ("Kearl") and
14 Gerry G. Zobrist ("Zobrist") ("Rosemere Litigation III"). On April 8, 2015, the Lytles filed an
15 Errata to the Complaint amending it so that all references to Kearl and Zobrist were taken out of
16 the Complaint.
17

18 23. On or about September 13, 2017, the Court in the entered its Order granting
19 Summary Judgment for Declaratory Relief as against the Association ("Rosemere Judgment III").
20 On November 8, 2017, the Rosemere Litigation III Court granted a Motion for Attorney's Fees
21 and Costs.

22 24. On February 24, 2017, the Boulden Trust, owner of Parcel No. 163-03-313-008 in
23 the Rosemere Subdivision, and the Lamothe Trust, owner of Parcel No. 163-03-313-002 in the
24 Rosemere Subdivision, filed a Motion for Partial Summary Judgment in this Court in this Case,
25 Case No. A-16-747900-C.
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1 25. This Court granted the Boulden Trust's and Lamothe Trust's Motion for Partial
2 Summary Judgment, and on July 25, 2017, entered its Order Granting Motion to Alter or Amend
3 Findings of Fact and Conclusions of Law ("Order").

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

11 27. After the Court issued its Order, the Lytles released their liens against the
12 Boulden Trust and Lamothe Trust properties.

13 28. On February 21, 2018, Case No. A-17-765372-C was consolidated with Case No.
14 A-16-747900-C.
15

16 CONCLUSIONS OF LAW

17 1. The Court's prior Order with respect to Boulden Trust's and Lamothe Trust's
18 Motion for Partial Summary Judgment, Case No. A-16-747900-C, is the law of the case, to the
19 extent applicable to Plaintiffs' claims.

20 2. The Association is a "limited purpose association" as referenced in NRS
21 116.1201(2).
22

23 3. As a limited purpose association, NRS 116.3117 is not applicable to the
24 Association.

25 4. As a result of the Rosemere Litigation I, the Amended CC&Rs were judicially
26 declared to have been improperly adopted and recorded, the Amended CC&Rs are invalid and
27 have no force and effect and were declared *void ab initio*.
28

1 5. The Plaintiffs were not parties to the Rosemere Litigation I, Rosemere Litigation
2 II or Rosemere Litigation III.

3 6. The Plaintiffs were not "losing parties" in the Rosemere Litigation I, Rosemere
4 Litigation II or Rosemere Litigation III as per Section 25 of the Original CC&Rs.

5 7. Rosemere Judgments I, II and III in favor of the Lytle Trust, are not against, and
6 are not an obligation of the Plaintiffs to the Lytle Trust.

7 8. Rosemere Judgments I, II and III are against the Association and are not an
8 obligation or debt owed by the Plaintiffs to the Lytle Trust.

9 9. The First Abstract of Judgment recorded as Instrument No. 20160818-0001198
10 was improperly recorded against the Plaintiffs' Properties and constitutes a cloud against each of
11 the Plaintiffs' Properties.

12 10. The Second Abstract of Judgment recorded as Instrument No. 20160902-0002685
13 was improperly recorded against the Gegen Property and constitutes a cloud against the Gegen
14 Property.

15 11. The Third Abstract of Judgment recorded as Instrument No. 20160902-0002686
16 was improperly recorded against the September Trust Property and constitutes a cloud against
17 the September Trust Property.

18 12. The Fourth Abstract of Judgment recorded as Instrument No. 20160902-0002687
19 was improperly recorded against the Zobrist Trust Property and constitutes a cloud against the
20 Zobrist Trust Property.

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ORDER

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

IT IS HEREBY ORDERED ADJUDGED AND DECREED that Plaintiffs' Motion for Summary Judgment is GRANTED.

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Lytle Trust's Countermotion for Summary Judgment is DENIED.

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Lytle Trust improperly clouded the title to the September Property.

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Lytle Trust improperly clouded the title to the Zobrist Property.

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Lytle Trust improperly clouded the title to the Sandoval Property.

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Lytle Trust improperly clouded the title to the Gegen Property.

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the First Abstract of Judgment recorded as Instrument No. 20160818-0001198 in the Clark County Recorder's Office is hereby expunged and stricken from the records of the Clark County Recorder's Office.

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Second Abstract of Judgment recorded as Instrument No. 20160902-0002685 in the Clark County Recorder's Office is hereby expunged and stricken from the records of the Clark County Recorder's Office.

1 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
2 Third Abstract of Judgment recorded as Instrument No. 20160902-0002686 in the Clark County
3 Recorder's Office is hereby expunged and stricken from the records of the Clark County
4 Recorder's Office.

5 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
6 Fourth Abstract of Judgment recorded as Instrument No. 20160902-0002687 in the Clark County
7 Recorder's Office is hereby expunged and stricken from the records of the Clark County
8 Recorder's Office.
9

10 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
11 Lytle Trust is permanently enjoined from recording and enforcing the Judgments obtained from
12 the Rosemere Litigation I, Rosemere Litigation II and Rosemere Litigation III, or any other
13 judgments obtained against the Association, against the September Property, Zobrist Property,
14 Sandoval Property or Gegen Property.
15

16 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
17 Lytle Trust is permanently enjoined from taking any action in the future directly against the
18 Plaintiffs or their properties based upon the Rosemere Litigation I, Rosemere Litigation II or
19 Rosemere Litigation III.

20 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
21 Lytle Trust is hereby ordered to release the First Abstract of Judgment, the Second Abstract of
22 Judgment, the Third Abstract of Judgment and the Fourth Abstract of Judgment recorded with
23 the Clark County Recorder within ten (10) days after the date of Notice of Entry of this Order.
24

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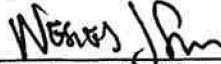
1 **IT IS SO ORDERED.**

2
3 Dated this ____ day of May, 2018.

4
5
6 _____
DISTRICT COURT JUDGE

7 Submitted by:

8 **CHRISTENSEN JAMES & MARTIN**

9 
10 _____
Wesley J. Smith, Esq.
Nevada Bar No. 11871
Laura J. Wolff, Esq.
Nevada Bar No. 6869
7440 W. Sahara Ave.
Las Vegas, NV 89117
Attorneys for Plaintiffs September Trust,
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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20 Claimants Robert & Yvonne Disman

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and Lamothe Trust

23 **RICHARD E. HASKIN, ESQ.**
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Nevada Bar No. 11559
1140 N. Town Center Drive, Suite 300
25 Las Vegas, Nevada 89144
Attorneys for Defendants/Counter-
26 Claimants Lytle Trust

1 **IT IS SO ORDERED.**

2
3 Dated this ____ day of May, 2018.

4
5
6 _____
DISTRICT COURT JUDGE

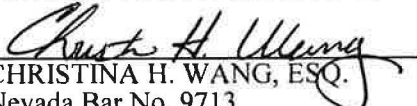
7 Submitted by:

8 **CHRISTENSEN JAMES & MARTIN**

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12 Las Vegas, NV 89117
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13 Zobrist Trust, Sandoval Trust, and
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15 **Approved as to Form and Content by:**

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20 Claimants Robert & Yvonne Disman

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26 Claimants Lytle Trust

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

1 **IT IS SO ORDERED.**

2
3 Dated this 22 day of May, 2018.

4
5
6 _____
DISTRICT COURT JUDGE

7 Submitted by:

L. R.

8 **CHRISTENSEN JAMES & MARTIN**

9 _____
Wesley J. Smith, Esq.
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Defendants/Cross-Defendants Boulden Trust
and Lamothe Trust

1 **IT IS SO ORDERED.**

2
3 Dated this 28 day of May, 2018.



DISTRICT COURT JUDGE

6 Submitted by:

7
8 **CHRISTENSEN JAMES & MARTIN**

9
10 Wesley J. Smith, Esq.
11 Nevada Bar No. 11871
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16 Attorneys for Plaintiffs September Trust,
17 Zobrist Trust, Sandoval Trust, and
18 Dennis & Julie Gegen

19
20 **Approved as to Form and Content by:**

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28 Claimants Robert & Yvonne Disman

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Attorneys for Defendants/Counter-
Claimants Lytle Trust

EXHIBIT “D”

1 **ORDR**

2 **CHRISTENSEN JAMES & MARTIN**

3 KEVIN B. CHRISTENSEN, ESQ.

Nevada Bar No. 175

4 WESLEY J. SMITH, ESQ.

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8 Email: kbc@cjmlv.com; wes@cjmlv.com; ljw@cjmlv.com

Attorneys for September Trust, Zobrist Trust, Sandoval Trust

and Dennis & Julie Gegen

9 **EIGHTH JUDICIAL DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

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

Plaintiffs,

17 vs.

18 TRUDI LEE LYTLE, JOHN ALLEN
19 LYTLE, THE LYTLE TRUST, DOES I
20 through X, and ROE CORPORATIONS I
21 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.

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

24 SEPTEMBER TRUST, DATED MARCH 23,
25 1972; GERRY R. ZOBRIST AND JOLIN G.
26 ZOBRIST, AS TRUSTEES OF THE GERRY
27 R. ZOBRIST AND JOLIN G. ZOBRIST
28 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

15
16
17
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
27
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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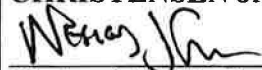
IT IS SO ORDERED.

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.
Nevada Bar No. 6869
7440 W. Sahara Ave.
Las Vegas, NV 89117
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Zobrist Trust, Sandoval Trust, and
Dennis & Julie Gegen

Approved as to Form and Content by:

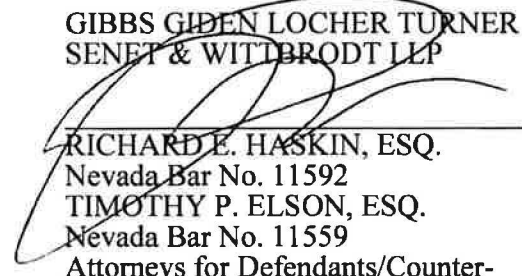
FIDELITY NATIONAL LAW GROUP

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Claimants Robert & Yvonne Disman

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Attorneys for Defendants/Counter-
Claimants Lytle Trust

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IT IS SO ORDERED.

Dated this ____ day of August, 2018.

DISTRICT COURT JUDGE

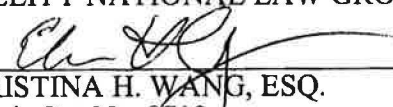
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Dennis & Julie Gegen

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Nevada Bar No. 11559
Attorneys for Defendants/Counter-
Claimants Lytle Trust

1 IT IS SO ORDERED.

2
3 Dated this 11 day of ^{SEPTEMBER} ~~August~~, 2018.

4
5 
DISTRICT COURT JUDGE

L.A.

6 Submitted by:


7
8 **CHRISTENSEN JAMES & MARTIN**

9
10 Wesley J. Smith, Esq.
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Dennis & Julie Gegen

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

16 **FIDELITY NATIONAL LAW GROUP**

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Attorneys for Counter-Defendants/Cross-
19 Claimants Robert & Yvonne Disman

20 **FOLEY & OAKES, P.C.**
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27 Claimants Lytle Trust