

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 12:21 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appeal

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

Appellants' Appendix to Opening Brief – Volume 1

(Docket 77007)

RICHARD HASKIN
Nevada Bar No. 11592
GIBBS, GIDEN, LOCHER, TURNER,
SENET, & WITTBRODT, LLP
1140 N. Town Center Drive
Las Vegas, Nevada 89144
(702) 836-9800

Attorneys for Appellants

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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 1 (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:

Daniel T. Foley, Esq.
FOLEY & OAKS
626 S. 8th Street
Las Vegas, Nevada 89101

Christina H. Wang, Esq.
FIDELITY NATIONAL LAW GROUP
8363 W. Sunset Road, Suite 120
Las Vegas, Nevada 89113

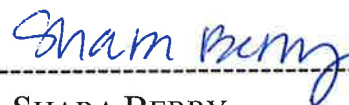
Wesley J. Smith, Esq.
Laura J. Wolff, Esq.
CHRISTENSEN JAMES & MARTIN
7440 W. Sahara Avenue
Las Vegas, Nevada 89117

2. Traditional Service:

Daniel T. Foley, Esq.
FOLEY & OAKS
626 S. 8th Street
Las Vegas, Nevada 89101

Christina H. Wang, Esq.
FIDELITY NATIONAL LAW GROUP
8363 W. Sunset Road, Suite 120
Las Vegas, Nevada 89113

Wesley J. Smith, Esq.
Laura J. Wolff, Esq.
CHRISTENSEN JAMES & MARTIN
7440 W. Sahara Avenue
Las Vegas, Nevada 89117



SHARA BERRY


CLERK OF THE COURT

COMP
DANIEL T. FOLEY, ESQ.
Nevada Bar No. 1078
FOLEY & OAKES, PC
626 S 8th St.
Las Vegas, Nevada 89101
Tel.: (702) 384-2070
Fax: (702) 384-2128
Email: dan@foleyoakes.com
Attorneys for Plaintiffs

**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; and ROE CORPORATIONS)
I through X,)

Defendants.)

Case No. A-16-747800-C

Dept. No.

XVI

COMPLAINT

COMES NOW Marjorie Boulden as Trustee of the Marjorie Boulden Trust (Mrs. Boulden”), Linda Lamothe and Jacques Lamothe as Trustees of the Jacques & Linda Lamothe Living Trust (“Mr. and Mrs. Lamothe”), by and through their attorneys Foley & Oakes, PC, as and for a Complaint against Trudi Lee Lytle, John Lytle, the Lytle Living Trust (collectively the “Lyttles”), DOES I through X; and ROE CORPORATIONS I through X and allege as follows:

1. Mrs. Boulden is the owner of the residential property known as parcel number 163-03-313-008 also known as 1960 Rosemere Ct., Las Vegas, NV 89117 (the “Boulden Property”)

1 2. Mr. and Mrs. Lamothe are the owners of the residential property in Clark County
2 Nevada known as parcel number 163-03-313-002 also known as 1830 Rosemere Ct., Las Vegas,
3 NV 89117 the ("Lamothe Property").

4 3. Mr. and Mrs. Lytle are residents of Clark County.

5 4. The true names and capacities, whether individual, corporate, associate, or
6 otherwise, of the Defendants herein designated as DOES I through V individuals and/or ROE V
7 through X Corporations, inclusive, are unknown to Plaintiff, who therefore sues said Defendants
8 by such fictitious names. Plaintiff is informed and believes, and thereupon alleges, that each of
9 the Defendants designated herein as DOE I through V individuals and/or ROE V through X
10 Corporations is responsible in some manner for the events and happenings herein referred to, or
11 claim an interest in said property. Plaintiff will seek leave to amend this Complaint to show the
12 true names and capacities of said Defendants DOES I through V individuals and/or ROE V
13 through X Corporations when the same have been ascertained by Plaintiff, together with
14 appropriate charges and allegations and to join such Defendants in this action.
15

16 5. Plaintiff is informed, believes, and thereon alleges, that at all times relevant,
17 Defendants, and each of them, including those fictitiously named DOE or ROE, were the agents
18 or sureties of the other and in doing the things alleged herein, were acting within the course and
19 scope of such agency and with the consent and permission of the other co-defendants and/or are
20 liable under the doctrine of respondeat superior. Accordingly, Defendants are liable to Plaintiff
21 for each other's actions as set forth in this Complaint. For ease of reference, the named
22 Defendants may be referred to collectively in the singular as "Defendant," and reference to one
23 shall constitute reference to the others as well.
24

25 6. The Boulden Property and the Lamothe Property are located in the Rosemere
26 Court subdivision and are subject to the CC&R's recorded January 4, 1994.
27

1 7. The Rosemere Court subdivision, as subject to the CC&Rs, is a Limited Purpose
2 Association (the "Rosemere LPA") under NRS 116.1201 and NAC 116.090.

3 8. The Rosemere LPA has been judicially declared to be a Limited Purpose
4 Association.

5 9. Pursuant to NRS 116.1201, NRS 116's application to the Rosemere LPA is
6 limited.

7 10. Pursuant to NRS 116.1201, NRS 116.3117, which provides that a judgment
8 against a homeowners' association, when recorded, is a lien against all real property owned by
9 the owners of the homeowners' association, is not applicable to the Rosemere LPA.
10

11 11. On or about July 29, 2016 the Lytles arguably obtained a Judgment in their favor
12 against Rosemere LPA in the amount of \$361,238.59 (the "Judgment").

13 12. On August 16, 2016, the Lytles recorded with the Clark County Recorder's office
14 an abstract of the Judgement against the Rosemere LPA (the "First Abstract of Judgment"),
15 specifically listing the parcel numbers of the Boulden Property and the Lamothe Property as
16 properties to which the Judgment was to attach. A copy of the First Abstract of Judgment is
17 attached hereto as Exhibit "A".
18

19 13. On September 2, 2016, the Lytles recorded with the Clark County Recorder's
20 office another abstract of the Judgement against the Rosemere LPA, specifically listing the
21 parcel number of the Lamothe Property as the property to which the Judgment was to attach (the
22 "Second Abstract of Judgment"). A copy of the Second Abstract of Judgment is attached hereto
23 as Exhibit "B". (The First Abstract of Judgment and the Second Abstract of Judgment are
24 hereinafter collectively referred to as the "Abstracts of Judgment")
25

26 14. When the Lytles recorded the Abstracts of Judgement, the Lytles specifically
27 included the parcel numbers of the Boulden Property and the Lamothe Property even though
28

1 Plaintiffs were not parties to the lawsuit from which the Judgment arose and certainly were not
2 judgment creditors under the Judgment.

3 15. The Plaintiffs have no legal duty to pay the Judgment and have advised the Lytles
4 of this fact.

5 16. The Lytles knew or should have known that the Plaintiffs did not have a legal
6 duty to pay on the Judgment.

7 17. The Abstracts of Judgment were wrongfully recorded against the Boulden
8 Property and the Lamothe Property and the Lytles knew or should have known the Abstracts of
9 Judgment were wrongfully recorded.

10 18. A Purchase and Sale Agreement to purchase the Boulden Property was executed
11 by a third party buyer and Mrs. Boulden and deposited into the escrow (the "PSA").

12 19. The buyer under the PSA terminated Escrow because of the recorded Frist
13 Abstract of Judgment.

14
15
16 **FIRST CAUSE OF ACTION**
(Slander of Title, Mrs. Boulden)

17 20. Plaintiffs repeat and re-allege each and every allegation set forth above.

18 21. The Lytles' recording of the First Abstract of Judgment was a false and malicious
19 communication that has disparaged Mrs. Boulden's title to the Boulden Property.

20 22. As a proximate result of the Lytles' actions, Mrs. Boulden has been damaged due
21 to a third-party buyer cancelling escrow due to the existence of the recorded First Abstract of
22 Judgment.

23 23. As a proximate result of the Lytles' actions, the vendibility of the Boulden
24 Property is impaired.

25 24. As a proximate result of Lytles' actions Mrs. Boulden is entitled to special
26 damages in an amount in excess of \$10,000.00.
27
28

25. As a proximate result of Lytles' actions Mrs. Boulden is entitled to punitive damages in an amount in excess of \$10,000.00.

26. As a proximate result of Lytles' actions, Mrs. Boulden has been required to retain the services of Foley & Oakes, PC to prosecute this action, and is entitled to an award of attorney's fees and costs.

SECOND CAUSE OF ACTION
(Injunction, All Plaintiffs)

27. Plaintiffs repeat and re-allege each and every allegation set forth above.

28. Plaintiffs do not owe any money whatsoever to the Lytles.

29. Plaintiffs do not have an adequate remedy at law because they cannot sell their property with the Abstracts of Judgment recorded against their property.

30. Plaintiffs will suffer irreparable harm if they are not able to sell their property due to the recording of the Abstracts of Judgment.

31. Plaintiffs are likely to prevail on their claims against the Lytles.

32. Plaintiffs are entitled to injunctive relief in the form of an Order from this Court expunging the liens in the form of the recorded Abstracts of Judgment.

33. Plaintiffs have been required to retain the services of Foley & Oakes, PC to prosecute this action, and are entitled to an award of attorney's fees and costs.

THIRD CAUSE OF ACTION
(Quiet Title, All Plaintiffs)

34. Plaintiffs repeat and re-allege each and every allegation set forth above.

35. The Lytles, by their claims and actions, have asserted certain rights to lien the Boulden Property and the Lamothe Property.

36. The Lytles are without any legal basis whatsoever to lien the Boulden Property and the Lamothe Property.

1 37. The Lytles are without any legal basis whatsoever to claim any interest in the
2 Boulden Property and the Lamothe Property, including any rights to lien or sell the same.

3 38. As a proximate result of the Lytles' actions, the titles to the Boulden Property and
4 the Lamothe Property have been improperly and illegally clouded.

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

7 40. Plaintiffs herein have been required to retain the services of Foley & Oakes, PC,
8 to prosecute this action, and are entitled to an award of attorney's fees and costs.
9

10 **FOURTH CAUSE OF ACTION**
11 **(Declaratory Relief)**

12 41. Plaintiffs repeat and re-allege each and every allegation set forth above.

13 42. A dispute and actual controversy exists between the parties relative to their
14 interpretation of the rights and duties of the Plaintiffs regarding the Judgment, the recorded
15 Abstracts of Judgment, and the Boulden Property and the Lamothe Property.

16 43. The Plaintiffs are entitled to a declaration from the Court, to the effect that the
17 Judgment against the Rosemere LPA is not a judgment against the Plaintiffs, separately or
18 individually, and that the Judgment and the Abstracts of Judgment were improperly and
19 unlawfully recorded against the Boulden Property and the Lamothe Property.
20

21 44. Plaintiffs have been required to retain the services of Foley & Oakes, PC, to
22 prosecute this action, and are entitled to an award of attorney's fees and costs.

23 **WHEREFORE,** Plaintiffs pray for judgment against the Lytles as follows:

24 A. That pending a hearing on the Preliminary Injunction and notice of the same, as
25 required by law, a Temporary Restraining Order issue with such notice as is required by law,
26 restraining and enjoining the Lytles, and each of them, their agents, servants, employees,
27 attorneys, successors, and assigns and all persons in active participation or consort with them
28

1 from selling, attempting to sell, or disposing of the Boulden Property and the Lamothe Property.

2 Further, the Temporary Restraining Order should strike the Abstracts of Judgment;

3 B. That a Preliminary Injunction should be issued, restraining the Lytles, and each of
4 them, their, agents, servants, employees, attorneys, successors and assign, during the pendency
5 of this action, from foreclosing upon or selling the Boulden Property and the Lamothe Property
6 and from doing, causing, or permitting to be done, directly or indirectly, any acts whereby the
7 rights of the Plaintiffs in said property is in any matter impaired, violated or interfered with; and
8 that after such hearing as may be required by law, said preliminary injunction be made
9 permanent. Further, the Preliminary Injunction should strike the Abstracts of Judgment;
10

11 C. For judgment against the Lytles for general, special and punitive damages in
12 amounts in excess of \$10,000.00, plus costs, disbursements and interest;

13 D. For an Order quieting title of the Boulden Property and the Lamothe Property in
14 favor of the Plaintiffs and against the Lytles;

15 E. For a declaration that the Lytles, and each of them, have no right, title or interest
16 in the Boulden Property and the Lamothe Property, and a judgment and order quieting the
17 Plaintiffs' title, canceling and expunging the Abstracts of Judgment;
18

19 F. That Plaintiffs be awarded their reasonable attorneys' fees and costs of such suit
20 herein; and

21 G. For such other and further relief as this Court may deem proper in the premises.

22 DATED this 8th day of December 2016.

23 Respectfully Submitted,

24 FOLEY & OAKES, PC

25 /s/Daniel T. Foley

26 Daniel T. Foley, Esq.

27 626 S. 8th St.

28 Las Vegas, Nevada 89101

Attorneys for Plaintiffs

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

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

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

15 Plaintiff,)

Case No.

Dept. No.

16 v.)

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

21 Defendants.)

22 **INITIAL APPEARANCE FEE DISCLOSURE**

23 Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for
24 parties appearing in the above-entitled action as indicated below:

25 The Marjorie B. Boulden Trust	\$270.00
26 The Jacques & Linda Lamothe Living Trust	\$30.00
27 TOTAL REMITTED	\$300.00

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DATED this 8th day of December 2016.

FOLEY & OAKES, PC

/s/Daniel T. Foley
Daniel T. Foley, Esq.
626 So. 8th Street
Las Vegas, Nevada 89101
Attorneys for Petitioner

DISTRICT COURT CIVIL COVER SHEET

County, Nevada

Case No.

(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):

Marjorie Boulden, 1960 Rosemere Ct., Las Vegas, NV 89117

Jacques Lamothe, 1830 Rosemere Ct., Las Vegas, NV 89117

Linda Lamothe, 1830 Rosemere Ct., Las Vegas, NV 89117

Defendant(s) (name/address/phone):

Trudi Lee Lytle

John Allen Lytle

Attorney (name/address/phone):

Daniel T. Foley

626 So. 8th Street, Las Vegas, NV 89101

702-384-2070

Attorney (name/address/phone):

II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types****Real Property****Landlord/Tenant**

- ☐ Unlawful Detainer
☐ Other Landlord/Tenant

Title to Property

- ☐ Judicial Foreclosure
☒ Other Title to Property

Other Real Property

- ☐ Condemnation/Eminent Domain
☐ Other Real Property

Negligence

- ☐ Auto
☐ Premises Liability
☐ Other Negligence

Malpractice

- ☐ Medical/Dental
☐ Legal
☐ Accounting
☐ Other Malpractice

Torts**Other Torts**

- ☐ Product Liability
☐ Intentional Misconduct
☐ Employment Tort
☐ Insurance Tort
☐ Other Tort

Probate**Probate** (select case type and estate value)

- ☐ Summary Administration
☐ General Administration
☐ Special Administration
☐ Set Aside
☐ Trust/Conservatorship
☐ Other Probate

Estate Value

- ☐ Over \$200,000
☐ Between \$100,000 and \$200,000
☐ Under \$100,000 or Unknown
☐ Under \$2,500

Construction Defect & Contract**Construction Defect**

- ☐ Chapter 40
☐ Other Construction Defect

Contract Case

- ☐ Uniform Commercial Code
☐ Building and Construction
☐ Insurance Carrier
☐ Commercial Instrument
☐ Collection of Accounts
☐ Employment Contract
☐ Other Contract

Judicial Review/Appeal**Judicial Review**

- ☐ Foreclosure Mediation Case
☐ Petition to Seal Records
☐ Mental Competency

Nevada State Agency Appeal

- ☐ Department of Motor Vehicle
☐ Worker's Compensation
☐ Other Nevada State Agency

Appeal Other

- ☐ Appeal from Lower Court
☐ Other Judicial Review/Appeal

Civil Writ**Civil Writ**

- ☐ Writ of Habeas Corpus
☐ Writ of Mandamus
☐ Writ of Quo Warrant

- ☐ Writ of Prohibition
☐ Other Civil Writ

Other Civil Filing**Other Civil Filing**

- ☐ Compromise of Minor's Claim
☐ Foreign Judgment
☐ Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

12/7/16
Date

Signature of initiating party or representative

See other side for family-related case filings.


CLERK OF THE COURT

1 ANS
2 Richard E. Haskin, Esq.
3 Nevada State Bar # 11592
4 Timothy P. Elson, Esq.
5 Nevada State Bar # 11559
6 **GIBBS GIDEN LOCHER TURNER**
7 **SENET & WITTBRODT LLP**
8 1140 N. Town Center Drive, Suite 300
9 Las Vegas, Nevada 89144-0596
10 (702) 836-9800

11 Attorneys for Defendants
12 TRUDI LEE LYTLE, JOHN ALLEN LYTLE,
13 & THE LYTLE TRUST

14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

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

21 Plaintiff,

22 v.

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

27 Defendants.

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

**DEFENDANTS TRUDI LEE LYTLE AND
JOHN ALLEN LYTLE, TRUSTEES OF
THE LYTLE TRUST'S ANSWER TO
PLAINTIFFS' COMPLAINT**

28 COMES NOW Defendants TRUDI LEE LYTLE and JOHN ALLEN LYTLE, Trustees of
THE LYTLE TRUST (the "Lyttles"), by and through their counsel of record, Richard E. Haskin,
Esq., and Timothy Elson, Esq., of the law firm of GIBBS, GIDEN, LOCHER, TURNER, SENET &
WITTBRODT, LLP, and hereby answers Plaintiffs MARJORIE B. BOULDEN, TRUSTEE OF
THE MARJORIE B. BOULDENR TRUST, LINDA LAMOTHE AND JACQUES LAMOTHE,
TRUSTEES OF THE JACQUES & LINDA LAMOTHE LIVING TRUST's (collectively
"Plaintiffs") Complaint as follows:

1. As to Paragraphs 1-3 of the Complaint, Defendants admit the allegations set forth in
said Paragraphs.

1 2. As to Paragraphs 4-5 of the Complaint, Defendants are without knowledge or
2 information sufficient to admit or deny the allegations contained therein. Said Paragraphs also
3 contain legal conclusions rather than facts that need to be admitted or denied. Defendants deny the
4 same on that basis.

5 3. As to Paragraph 6 of the Complaint, Defendants admit the allegations set forth in said
6 Paragraph.

7 4. As to Paragraph 7 of the Complaint, Defendants admit that Rosemere Estates
8 Property Owners Association, a Nevada non-profit corporation ("Rosemere"), is a Limited Purpose
9 Association governed by Chapter 116 of the Nevada Revised Statutes. As to the remaining
10 allegations, said Paragraph also contains legal conclusions rather than facts that need admitted or
11 denied. Defendants deny the same on that basis, as well as the content of such allegation should
12 such a denial be necessary.

13 5. As to Paragraphs 8-10 of the Complaint, Defendants admit that Rosemere was
14 involved in prior litigation and that litigation may have certain binding effect on this litigation. As to
15 the remaining allegations, said Paragraphs also contain legal conclusions rather than facts that need
16 admitted or denied. Defendants deny the same on that basis, as well as the content of such
17 allegation.

18 6. As to Paragraphs 11-13 of the Complaint, Defendants admit that they obtained a
19 Judgment against Rosemere in the amount of \$361,238.59, plus post-judgment interest. Defendants
20 admit the remaining allegations set forth in said Paragraphs.

21 7. As to Paragraph 14 of the Complaint, Defendants admit that the Bouldens and the
22 Lamothes were not parties to the aforementioned lawsuit. However, Defendants deny the allegation
23 that the property of the Bouldens and Lamothes described in the Complaint is not subject to the
24 judgment described in the Complaint. As to the remaining allegations, said Paragraph also contains
25 legal conclusions rather than facts that need to be admitted or denied. Defendants deny the same on
26 that basis, as well as the content of such allegation should such a denial be necessary.

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1 8. As to Paragraphs 15-17 of the Complaint, Defendants deny the allegations contained
2 therein. Furthermore, said Paragraphs also contain legal conclusions rather than facts that need to be
3 admitted or denied. Defendants deny the same on that basis.

4 9. As to Paragraphs 18-19 of the Complaint, Defendants are without knowledge or
5 information sufficient to admit or deny the allegations contained therein.

6 **FIRST CAUSE OF ACTION**

7 **(Slander of Title, Mrs. Boulden)**

8 10. Defendants repeat herein by this reference Paragraphs 1 through 9, inclusive, with the
9 same force and effect as if said Paragraphs were set forth herein in full.

10 11. As to Paragraph 21 of the Complaint, Defendants deny the allegations contained
11 therein. Furthermore, said Paragraph also contains legal conclusions rather than facts that need to be
12 admitted or denied. Defendants deny the same on that basis.

13 12. As to Paragraphs 22-26 of the Complaint, Defendants are without knowledge or
14 information sufficient to admit or deny the allegations contained therein. Said Paragraphs also
15 contain legal conclusions rather than facts that need to be admitted or denied. Defendants deny the
16 same on that basis.

17 **SECOND CAUSE OF ACTION**

18 **(Injunction, All Plaintiffs)**

19 13. Defendants repeat herein by this reference Paragraphs 1 through 12, inclusive, with
20 the same force and effect as if said Paragraphs were set forth herein in full.

21 14. Defendants deny the allegations in Paragraph 28 of the Complaint.

22 15. As to Paragraphs 29-33 of the Complaint, Defendants are without knowledge or
23 information sufficient to admit or deny the allegations contained therein. Said Paragraphs also
24 contain legal conclusions rather than facts that need to be admitted or denied. Defendants deny the
25 same on that basis.

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THIRD CAUSE OF ACTION**(Quiet Title, All Plaintiffs)**

16. Defendants repeat herein by this reference Paragraphs 1 through 15, inclusive, with the same force and effect as if said Paragraphs were set forth herein in full.

17. As to Paragraph 35 of the Complaint, Defendants admit the allegations contained therein.

18. As to Paragraphs 36-37 of the Complaint, Defendants deny the allegations contained therein. Furthermore, said Paragraphs also contain legal conclusions rather than facts that need admitted or denied. Defendants deny the same on that basis.

19. As to Paragraphs 38-40 of the Complaint, Defendants are without knowledge or information sufficient to admit or deny the allegations contained therein. Said Paragraphs also contain legal conclusions rather than facts that need to be admitted or denied. Defendants deny the same on that basis.

FOURTH CAUSE OF ACTION**(Declaratory Relief, All Plaintiffs)**

20. Defendants repeat herein by this reference Paragraphs 1 through 19, inclusive, with the same force and effect as if said Paragraphs were set forth herein in full.

21. As to Paragraphs 42-44 of the Complaint, Defendants deny that the judgment referenced in the Complaint is against "Rosemere LPA," rather it is against "Rosemere Estate Property Owners Association." As to the remaining allegations in Paragraphs 42-44 of the Complaint, Defendants are without knowledge or information sufficient to admit or deny the allegations contained therein. Said Paragraphs also contain legal conclusions rather than facts that need to be admitted or denied. Defendants deny the same on that basis.

AFFIRMATIVE DEFENSES

For their further and separate affirmative defenses to the Complaint filed by Plaintiffs and the claims asserted therein, and without assuming the burden of proof on any matters for which that burden rests with Plaintiffs, Defendants allege as follows:

///

1 **FIRST AFFIRMATIVE DEFENSE**

2 The Complaint fails to state a claim upon which relief can be granted.

3 **SECOND AFFIRMATIVE DEFENSE**

4 If Plaintiffs suffered or sustained any loss, injury, damage or other detriment, the same was
5 directly and proximately caused and contributed to by the breach of contract, conduct, acts,
6 omissions, activities, carelessness, recklessness, negligence, and/or intentional misconduct of
7 Plaintiffs or persons or entities under Plaintiffs' control, and thereby completely or partially bars
8 Plaintiffs' recovery herein.

9 **THIRD AFFIRMATIVE DEFENSE**

10 Defendants are not legally responsible for the acts and/or omissions claimed herein.

11 **FOURTH AFFIRMATIVE DEFENSE**

12 Plaintiffs failed, refused and neglected to take reasonable steps to mitigate its alleged
13 damages, if any, thus barring or diminishing Plaintiffs' recovery herein.

14 **FIFTH AFFIRMATIVE DEFENSE**

15 The injuries and damages of which Plaintiffs complain were proximately caused by, or
16 contributed to, by the acts of other persons and/or other entities, whether now named or otherwise,
17 and that said acts were an intervening and superseding cause of the injuries and damages, if any, of
18 which Plaintiffs complain, thus barring Plaintiffs from any recovery against these Defendants or
19 entitled Defendants to contribution from such parties.

20 **SIXTH AFFIRMATIVE DEFENSE**

21 Plaintiffs' claims are reduced, modified, and/or barred by the doctrine of unclean hands.

22 **SEVENTH AFFIRMATIVE DEFENSE**

23 Plaintiffs have knowledge of and assumed the risks of their acts or failure to act. The
24 damages alleged by Plaintiffs were caused by, and arose out of, risks which Plaintiffs directly
25 assumed.

26 **EIGHTH AFFIRMATIVE DEFENSE**

27 Defendants are informed and believe, and thereon allege, that Plaintiffs waived their claims
28 against these Defendants at issue herein.

1 **NINTH AFFIRMATIVE DEFENSE**

2 Plaintiffs would be unjustly enriched if they recovered from Defendants any of the damages
3 alleged in the Complaint.

4 **TENTH AFFIRMATIVE DEFENSE**

5 In the event Defendants are found liable in any manner to Plaintiffs, Defendants would be
6 entitled to offsets and credits against any purported damages, if any, allegedly sustained by
7 Plaintiffs.

8 **ELEVENTH AFFIRMATIVE DEFENSE**

9 Defendants allege that Plaintiffs failed to properly confer jurisdiction on this Court on some
10 or all causes of action in its Complaint because Plaintiffs failed to comply with the provisions of
11 Chapter 38 of the Nevada Revised Statutes. Defendants reserve their right to raise this issue at any
12 time, including appeal, as jurisdiction cannot be consented upon this Court by the parties and is
13 never waived.

14 **TWELFTH AFFIRMATIVE DEFENSE**

15 Defendants incorporate by reference those affirmative defenses enumerated in NRCP 8 as
16 fully set forth herein. In the event further investigation or discovery reveals the applicability of any
17 such defenses, Defendants reserve the right to seek leave of the court to amend its answer to
18 specifically assert the same. Such defenses are herein incorporated by reference for the specific
19 purpose of not waiving the same.

20 **THIRTEENTH AFFIRMATIVE DEFENSE**

21 Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have been
22 stated or alleged herein insofar as sufficient facts were not available after reasonable inquiry upon
23 the filing of Defendants' Answer to the Complaint, and therefore, Defendants specifically reserve
24 the right to amend its Answer to allege additional affirmative defenses if subsequent investigation so
25 warrants, up to and including through the time of trial in this matter.

26 ///

27 ///

28 ///

1 WHEREFORE, Defendants pray for relief as follows:

- 2 1. That the Complaint be dismissed and that Plaintiffs take nothing by way of its
3 Complaint;
4 2. For costs and disbursements in connection with this action;
5 3. For reasonable attorney's fees, and
6 For such other and further relief that this Court deems just and proper.
7

8 DATED: February 8, 2017

GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP

9
10
11 By: 

Richard E. Haskin, Esq.
Nevada State Bar # 11592
Timothy P. Elson, Esq.
Nevada State Bar # 11559
1140 N. Town Center Drive, Suite 300
Las Vegas, Nevada 89144
Attorneys for Defendants
TRUDI LEE LYTLE, JOHN ALLEN LYTLE, & THE
LYTLE TRUST
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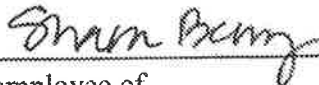
CERTIFICATE OF MAILING

The undersigned, an employee of the law firm of GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP, hereby certifies that on February 8, 2017, she served a copy of the foregoing **DEFENDANTS TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, TRUSTEES OF THE LYTLE TRUST'S ANSWER TO PLAINTIFFS' COMPLAINT** by electronic service through the Regional Justice Center for Clark County, Nevada's ECF System:

Daniel T. Foley, ESQ.
FOLEY & OAKS, PC
626 S. 8th Street
Las Vegas, Nevada 89101

Attorney for Plaintiffs

Tel: (702) 384-2070
Fax: (702) 384-2128
Email: dan@folevoakes.com


An employee of
Gibbs Giden Locher Turner
Senet & Wittbrodt LLP


CLERK OF THE COURT

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

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

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

13 Plaintiff,)

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

14 v.)

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

19 AMENDED COMPLAINT

20 COMES NOW Marjorie Boulden as Trustee of the Marjorie Boulden Trust (Mrs.
21 Boulden"), Linda Lamothe and Jacques Lamothe as Trustees of the Jacques & Linda Lamothe
22 Living Trust ("Mr. and Mrs. Lamothe"), by and through their attorneys Foley & Oakes, PC, as
23 and for a Complaint against Trudi Lee Lytle, and John Lytle, as Trustees of the Lytle Trust
24 (collectively the "Lyttles"), DOES I through X; and ROE CORPORATIONS I through X and
25 allege as follows:
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27
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1 1. Mrs. Boulden is the owner of the residential property known as parcel number
2 163-03-313-008 also known as 1960 Rosemere Ct., Las Vegas, NV 89117 (the "Boulden
3 Property")

4 2. Mr. and Mrs. Lamothe are the owners of the residential property in Clark County
5 Nevada known as parcel number 163-03-313-002 also known as 1830 Rosemere Ct., Las Vegas,
6 NV 89117 the ("Lamothe Property").
7

8 3. Mr. and Mrs. Lytle are residents of Clark County, and are co-trustees of the Lytle
9 Trust.

10 4. The true names and capacities, whether individual, corporate, associate, or
11 otherwise, of the Defendants herein designated as DOES I through V individuals and/or ROE V
12 through X Corporations, inclusive, are unknown to Plaintiff, who therefore sues said Defendants
13 by such fictitious names. Plaintiff is informed and believes, and thereupon alleges, that each of
14 the Defendants designated herein as DOE I through V individuals and/or ROE V through X
15 Corporations is responsible in some manner for the events and happenings herein referred to, or
16 claim an interest in said property. Plaintiff will seek leave to amend this Complaint to show the
17 true names and capacities of said Defendants DOES I through V individuals and/or ROE V
18 through X Corporations when the same have been ascertained by Plaintiff, together with
19 appropriate charges and allegations and to join such Defendants in this action.
20

21 5. Plaintiff is informed, believes, and thereon alleges, that at all times relevant,
22 Defendants, and each of them, including those fictitiously named DOE or ROE, were the agents
23 or sureties of the other and in doing the things alleged herein, were acting within the course and
24 scope of such agency and with the consent and permission of the other co-defendants and/or are
25 liable under the doctrine of respondeat superior. Accordingly, Defendants are liable to Plaintiff
26 for each other's actions as set forth in this Complaint. For ease of reference, the named
27
28

1 Defendants may be referred to collectively in the singular as "Defendant," and reference to one
2 shall constitute reference to the others as well.

3 6. The Boulden Property and the Lamothe Property are located in the Rosemere
4 Court subdivision and are subject to the CC&R's recorded January 4, 1994.

5 7. The Rosemere Court subdivision, as subject to the CC&Rs, is a Limited Purpose
6 Association (the "Rosemere LPA") under NRS 116.1201 and NAC 116.090.

7 8. The Rosemere LPA has been judicially declared to be a Limited Purpose
8 Association.

9 9. Pursuant to NRS 116.1201, NRS 116's application to the Rosemere LPA is
10 limited.

11 10. Pursuant to NRS 116.1201, NRS 116.3117, which provides that a judgment
12 against a homeowners' association, when recorded, is a lien against all real property owned by
13 the owners of the homeowners' association, is not applicable to the Rosemere LPA.

14 11. On or about July 29, 2016 the Lytles arguably obtained a Judgment in their favor
15 against Rosemere LPA in the amount of \$361,238.59 (the "Judgment").

16 12. On August 16, 2016, the Lytles recorded with the Clark County Recorder's office
17 an abstract of the Judgement against the Rosemere LPA (the "First Abstract of Judgment"),
18 specifically listing the parcel numbers of the Boulden Property and the Lamothe Property as
19 properties to which the Judgment was to attach. A copy of the First Abstract of Judgment is
20 attached hereto as Exhibit "A".

21 13. On September 2, 2016, the Lytles recorded with the Clark County Recorder's
22 office another abstract of the Judgement against the Rosemere LPA, specifically listing the
23 parcel number of the Lamothe Property as the property to which the Judgment was to attach (the
24 "Second Abstract of Judgment"). A copy of the Second Abstract of Judgment is attached hereto
25
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28

1 as Exhibit "B". (The First Abstract of Judgment and the Second Abstract of Judgment are
2 hereinafter collectively referred to as the "Abstracts of Judgment")

3 14. When the Lytles recorded the Abstracts of Judgment, the Lytles specifically
4 included the parcel numbers of the Boulden Property and the Lamothe Property even though
5 Plaintiffs were not parties to the lawsuit from which the Judgment arose and certainly were not
6 judgment creditors under the Judgment.
7

8 15. The Plaintiffs have no legal duty to pay the Judgment and have advised the Lytles
9 of this fact.

10 16. The Lytles knew or should have known that the Plaintiffs did not have a legal
11 duty to pay on the Judgment.

12 17. The Abstracts of Judgment were wrongfully recorded against the Boulden
13 Property and the Lamothe Property and the Lytles knew or should have known the Abstracts of
14 Judgment were wrongfully recorded.
15

16 18. A Purchase and Sale Agreement to purchase the Boulden Property was executed
17 by a third party buyer and Mrs. Boulden and deposited into the escrow (the "PSA").

18 19. The buyer under the PSA terminated Escrow because of the recorded First
19 Abstract of Judgment.

20 **FIRST CAUSE OF ACTION**
21 **(Slander of Title, Mrs. Boulden)**

22 20. Plaintiffs repeat and re-allege each and every allegation set forth above.

23 21. The Lytles' recording of the First Abstract of Judgment was a false and malicious
24 communication that has disparaged Mrs. Boulden's title to the Boulden Property.

25 22. As a proximate result of the Lytles' actions, Mrs. Boulden has been damaged due
26 to a third-party buyer cancelling escrow due to the existence of the recorded First Abstract of
27 Judgment.
28

1 23. As a proximate result of the Lytles' actions, the vendibility of the Boulden
2 Property is impaired.

3 24. As a proximate result of Lytles' actions Mrs. Boulden is entitled to special
4 damages in an amount in excess of \$10,000.00.

5 25. As a proximate result of Lytles' actions Mrs. Boulden is entitled to punitive
6 damages in an amount in excess of \$10,000.00.

7
8 26. As a proximate result of Lytles' actions, Mrs. Boulden has been required to retain
9 the services of Foley & Oakes, PC to prosecute this action, and is entitled to an award of
10 attorney's fees and costs.

11 **SECOND CAUSE OF ACTION**
12 **(Injunction, All Plaintiffs)**

13 27. Plaintiffs repeat and re-allege each and every allegation set forth above.

14 28. Plaintiffs do not owe any money whatsoever to the Lytles.

15 29. Plaintiffs do not have an adequate remedy at law because they cannot sell their
16 property with the Abstracts of Judgment recorded against their property.

17 30. Plaintiffs will suffer irreparable harm if they are not able to sell their property due
18 to the recording of the Abstracts of Judgment.

19 31. Plaintiffs are likely to prevail on their claims against the Lytles.

20 32. Plaintiffs are entitled to injunctive relief in the form of an Order from this Court
21 expunging the liens in the form of the recorded Abstracts of Judgment.

22 33. Plaintiffs have been required to retain the services of Foley & Oakes, PC to
23 prosecute this action, and are entitled to an award of attorney's fees and costs.

24 **THIRD CAUSE OF ACTION**
25 **(Quiet Title, All Plaintiffs)**

26 34. Plaintiffs repeat and re-allege each and every allegation set forth above.

1 35. The Lytles, by their claims and actions, have asserted certain rights to lien the
2 Boulden Property and the Lamothe Property.

3 36. The Lytles are without any legal basis whatsoever to lien the Boulden Property
4 and the Lamothe Property.

5 37. The Lytles are without any legal basis whatsoever to claim any interest in the
6 Boulden Property and the Lamothe Property, including any rights to lien or sell the same.

7 38. As a proximate result of the Lytles' actions, the titles to the Boulden Property and
8 the Lamothe Property have been improperly and illegally clouded.

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

11 40. Plaintiffs herein have been required to retain the services of Foley & Oakes, PC,
12 to prosecute this action, and are entitled to an award of attorney's fees and costs.

13
14 **FOURTH CAUSE OF ACTION**
15 **(Declaratory Relief)**

16 41. Plaintiffs repeat and re-allege each and every allegation set forth above.

17 42. A dispute and actual controversy exists between the parties relative to their
18 interpretation of the rights and duties of the Plaintiffs regarding the Judgment, the recorded
19 Abstracts of Judgment, and the Boulden Property and the Lamothe Property.

20 43. The Plaintiffs are entitled to a declaration from the Court, to the effect that the
21 Judgment against the Rosemere LPA is not a judgment against the Plaintiffs, separately or
22 individually, and that the Judgment and the Abstracts of Judgment were improperly and
23 unlawfully recorded against the Boulden Property and the Lamothe Property.

24 44. Plaintiffs have been required to retain the services of Foley & Oakes, PC, to
25 prosecute this action, and are entitled to an award of attorney's fees and costs.

26
27 **WHEREFORE**, Plaintiffs pray for judgment against the Lytles as follows:
28

1 A. That a Preliminary Injunction should be issued, restraining the Lytles, and each of
2 them, their, agents, servants, employees, attorneys, successors and assign, during the pendency
3 of this action, from foreclosing upon or selling the Boulden Property and the Lamothe Property
4 and from doing, causing, or permitting to be done, directly or indirectly, any acts whereby the
5 rights of the Plaintiffs in said property is in any matter impaired, violated or interfered with; and
6 that after such hearing as may be required by law, said preliminary injunction be made
7 permanent. Further, the Preliminary Injunction should strike the Abstracts of Judgment;
8

9 B. For judgment against the Lytles for general, special and punitive damages in
10 amounts in excess of \$10,000.00, plus costs, disbursements and interest;

11 C. For an Order quieting title of the Boulden Property and the Lamothe Property in
12 favor of the Plaintiffs and against the Lytles;

13 D. For a declaration that the Lytles, and each of them, have no right, title or interest
14 in the Boulden Property and the Lamothe Property, and a judgment and order quieting the
15 Plaintiffs' title, canceling and expunging the Abstracts of Judgment;

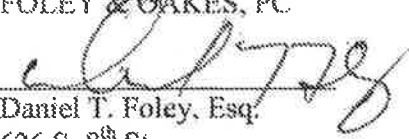
16 E. That Plaintiffs be awarded their reasonable attorneys' fees and costs of such suit
17 herein; and
18

19 F. For such other and further relief as this Court may deem proper in the premises.

20 DATED this 10th day of March 2017.

21 Respectfully Submitted,

22 FOLEY & OAKES, PC

23 
24 Daniel T. Foley, Esq.
25 626 S. 8th St.
26 Las Vegas, Nevada 89101
27 Attorneys for Plaintiffs
28



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

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

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

19 Plaintiff,)

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

20 v.)

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

26 **SECOND AMENDED COMPLAINT**

27 COMES NOW Marjorie Boulden as Trustee of the Marjorie Boulden Trust (Mrs.
28 Boulden”), Linda Lamothe and Jacques Lamothe as Trustees of the Jacques & Linda Lamothe
Living Trust (“Mr. and Mrs. Lamothe”), by and through their attorneys Foley & Oakes, PC, as
and for a Complaint against Trudi Lee Lytle, and John Lytle, as Trustees of the Lytle Trust
(collectively the “Lyttles”), DOES I through X; and ROE CORPORATIONS I through X and
allege as follows:

1 1. Mrs. Boulden is the owner of the residential property known as parcel number
2 163-03-313-008 also known as 1960 Rosemere Ct., Las Vegas, NV 89117 (the "Boulden
3 Property")

4 2. Mr. and Mrs. Lamothe are the owners of the residential property in Clark County
5 Nevada known as parcel number 163-03-313-002 also known as 1830 Rosemere Ct., Las Vegas,
6 NV 89117 the ("Lamothe Property").
7

8 3. Mr. and Mrs. Lytle are residents of Clark County, and are co-trustees of the Lytle
9 Trust.

10 4. The true names and capacities, whether individual, corporate, associate, or
11 otherwise, of the Defendants herein designated as DOES I through V individuals and/or ROE V
12 through X Corporations, inclusive, are unknown to Plaintiff, who therefore sues said Defendants
13 by such fictitious names. Plaintiff is informed and believes, and thereupon alleges, that each of
14 the Defendants designated herein as DOES I through V individuals and/or ROE V through X
15 Corporations is responsible in some manner for the events and happenings herein referred to, or
16 claim an interest in said property. Plaintiff will seek leave to amend this Complaint to show the
17 true names and capacities of said Defendants DOES I through V individuals and/or ROE V
18 through X Corporations when the same have been ascertained by Plaintiff, together with
19 appropriate charges and allegations and to join such Defendants in this action.
20

21 5. Plaintiff is informed, believes, and thereon alleges, that at all times relevant,
22 Defendants, and each of them, including those fictitiously named DOES or ROE, were the agents
23 or sureties of the other and in doing the things alleged herein, were acting within the course and
24 scope of such agency and with the consent and permission of the other co-defendants and/or are
25 liable under the doctrine of respondeat superior. Accordingly, Defendants are liable to Plaintiff
26 for each other's actions as set forth in this Second Amended Complaint. For ease of reference,
27

1 the named Defendants may be referred to collectively in the singular as "Defendant," and
2 reference to one shall constitute reference to the others as well.

3 6. The Boulden Property and the Lamothe Property are located in the Rosemere
4 Court subdivision and are subject to the CC&R's recorded January 4, 1994 (the "CC&Rs").

5 7. The CC&Rs provide in paragraph 21 that a property owners committee shall be
6 established by all owners of lots within the subdivision to determine the landscaping on the four
7 exterior wall planters and the entrance way planters, and to determine the method and cost of
8 watering the planters.
9

10 8. A non-profit corporation, the Rosemere Estates Property Owners Association,
11 was formed in 1997 in order to open a bank account to handle the owners committee's funds for
12 the landscaping described above. The corporate charter of the Rosemere Estates Property
13 Owners Association was revoked by the Nevada Secretary of State's office in 2015.

14 9. The CC&Rs provided 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 10. In 2009, the Lytles filed suit against the Rosemere Estates Property Owners
19 Association directly in case # A09-593497-C (the "Rosemere Litigation").

20 11. A number of lot owners within the Rosemere Subdivision had attempted to amend
21 the CC&R's. The Lytles and the Plaintiffs did not vote in favor of amending the CC&Rs.

22 12. The Lytles did not name the Plaintiffs or any other lot owners as defendants in the
23 Rosemere Litigation.
24

25 13. On or about July 29, 2016 the Lytles obtained a Judgment in their favor against
26 the Rosemere Estates Property Owners Association in the amount of \$361,238.59 (the
27 "Rosemere Judgment").
28

1 14. Thereafter, in August and September of 2016, the Lytles recorded with the Clark
2 County Recorder's office three different abstracts of the Rosemere Judgement against the
3 Rosemere Estates Property Owners Association specifically listing the parcel numbers of the
4 Boulden Property and the Lamothe Property as properties to which the Rosemere Judgment was
5 to attach (the "Abstracts of Judgment").

6 15. When the Lytles recorded the Abstracts of Judgement, the Lytles specifically
7 included the parcel numbers of the Boulden Property and the Lamothe Property even though
8 Plaintiffs were not parties to the Rosemere Litigation from which the Rosemere Judgment arose.
9

10 16. The Plaintiffs have no legal duty to pay the Rosemere Judgment and advised the
11 Lytles of this fact.

12 17. The Lytles knew or should have known that the Plaintiffs did not have a legal
13 duty to pay the Rosemere Judgment.

14 18. The Abstracts of Judgment were wrongfully recorded against the Boulden
15 Property and the Lamothe Property and the Lytles knew or should have known the Abstracts of
16 Judgment were wrongfully recorded.
17

18 19. A Purchase and Sale Agreement to purchase the Boulden Property was executed
19 by a third party buyer and Mrs. Boulden and deposited into the escrow (the "PSA").

20 20. The buyer under the PSA terminated Escrow because of the recorded Abstracts of
21 Judgment.

22 21. In May 2017, the Lytles recorded two *lis pendens* against the Plaintiffs' property.

23 22. On June 15, 2017, Mr. Haskin, counsel for the Lytles, sent an email to Mr. Foley,
24 counsel for the Plaintiffs, enclosing a different judgment the Lytles obtained against the
25 Rosemere Estates Property Owners Association in the amount of \$274,608.28, in case # 10-
26 631355-C (the "Rosemere II Litigation"), a different case from the Rosemere Litigation (the
27 "Rosemere II Judgment").
28

1 23. The Plaintiffs were not named parties in the Rosemere II Litigation and did not
2 have notice of the same.

3 24. In his June 15, 2017 email, Mr. Haskin stated “the Lytle Trust more recently
4 obtained another judgment against the Association in another case. The Lytle Trust was awarded
5 its attorneys’ fees. A copy of that award is attached hereto. We trust your clients will honor
6 their obligation to disclose all judgments and litigation to any buyer.”
7

8 **FIRST CAUSE OF ACTION**
9 **(Slander of Title, Mrs. Boulden)**

10 25. Plaintiffs repeat and re-allege each and every allegation set forth above.

11 26. The Lytles’ recording of the Abstracts of Judgment were false and malicious
12 communications that disparaged Mrs. Boulden’s title to the Boulden Property.

13 27. As a proximate result of the Lytles’ actions, Mrs. Boulden has been damaged due
14 to a third-party buyer cancelling escrow due to the existence of the recorded Abstracts of
15 Judgment.

16 28. As a proximate result of the Lytles’ actions, the vendibility of the Boulden
17 Property was impaired.

18 29. As a proximate result of Lytles’ actions Mrs. Boulden is entitled to special
19 damages in an amount in excess of \$10,000.00.
20

21 30. As a proximate result of Lytles’ actions Mrs. Boulden is entitled to punitive
22 damages in an amount in excess of \$10,000.00.

23 31. As a proximate result of Lytles’ actions, Mrs. Boulden has been required to retain
24 the services of Foley & Oakes, PC to prosecute this action, and is entitled to an award of
25 attorney’s fees and costs.

26 **SECOND CAUSE OF ACTION**
27 **(Injunction, All Plaintiffs)**

28 32. Plaintiffs repeat and re-allege each and every allegation set forth above.

- 1 33. Plaintiffs do not owe any money whatsoever to the Lytles.
- 2 34. Plaintiffs do not have an adequate remedy at law because they cannot sell their
- 3 property with the Abstracts of Judgment recorded against their property.
- 4 35. Plaintiffs will suffer irreparable harm if they are not able to sell their property due
- 5 to the recording of the Abstracts of Judgment.
- 6 36. Plaintiffs are likely to prevail on their claims against the Lytles.
- 7 37. Plaintiffs are entitled to injunctive relief in the form of an Order from this Court
- 8 expunging the liens in the form of the recorded Abstracts of Judgment.
- 9
- 10 38. Plaintiffs have been required to retain the services of Foley & Oakes, PC to
- 11 prosecute this action, and are entitled to an award of attorney's fees and costs.

12 **THIRD CAUSE OF ACTION**
13 **(Quiet Title, All Plaintiffs)**

- 14 39. Plaintiffs repeat and re-allege each and every allegation set forth above.
- 15 40. The Lytles, by their claims and actions, have asserted certain rights to lien the
- 16 Boulden Property and the Lamothe Property.
- 17 41. The Lytles are without any legal basis whatsoever to lien the Boulden Property
- 18 and the Lamothe Property.
- 19 42. The Lytles are without any legal basis whatsoever to claim any interest in the
- 20 Boulden Property and the Lamothe Property, including any rights to lien or sell the same.
- 21
- 22 43. As a proximate result of the Lytles' actions, the titles to the Boulden Property and
- 23 the Lamothe Property have been improperly and illegally clouded.
- 24 44. Plaintiffs are entitled to an Order from this Court pursuant to NRS 40.010
- 25 quieting title in their names and expunging the Abstracts of Judgment.
- 26 45. Plaintiffs herein have been required to retain the services of Foley & Oakes, PC,
- 27 to prosecute this action, and are entitled to an award of attorney's fees and costs.
- 28

FOURTH CAUSE OF ACTION
(Declaratory Relief)

46. Plaintiffs repeat and re-allege each and every allegation set forth above.

47. A dispute and actual controversy exists between the parties relative to their interpretation of the rights and duties of the Plaintiffs regarding the Rosemere Judgment, the recorded Abstracts of Judgment, and the Boulden Property and the Lamothe Property.

48. The Plaintiffs are entitled to a declaration from the Court, to the effect that the Rosemere Judgment against the Rosemere Estates Home Owners Association is not a judgment against the Plaintiffs, separately or individually, and that the Rosemere Judgment and the Abstracts of Judgment were improperly and unlawfully recorded against the Boulden Property and the Lamothe Property.

49. Plaintiffs have been required to retain the services of Foley & Oakes, PC, to prosecute this action, and are entitled to an award of attorney's fees and costs.

FIFTH CAUSE OF ACTION
(Injunction, Rosemere II Judgment)

50. Plaintiffs repeat and re-allege each and every allegation set forth above.

51. Plaintiffs do not owe any money whatsoever to the Lytles.

52. The Lytles have threatened Plaintiffs with the Rosemere II Judgment demanding that Plaintiffs notify any and all prospective purchasers of their property of the Rosemere II Judgment, just as the Lytles did by recording the now cancelled two *Lis Pendens*.

53. If the Lytles were to record the Rosemere II Judgment like they did the Rosemere Judgment, the Plaintiffs will not have an adequate remedy at law because they could not sell their property.

54. Plaintiffs will suffer irreparable harm if they are not able to sell their property due to the recording of the Abstracts of Judgment.

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

1 56. Plaintiffs are entitled to injunctive relief in the form of an Order from this Court
2 enjoining the Lytles from taking any action with respect to the Rosemere II Judgment with
3 respect to the Plaintiffs or their property.

4 57. Plaintiffs have been required to retain the services of Foley & Oakes, PC to
5 prosecute this action, and are entitled to an award of attorney's fees and costs.

6
7 **SIXTH CAUSE OF ACTION**
8 **(Declaratory Relief)**

9 58. Plaintiffs repeat and re-allege each and every allegation set forth above.

10 59. A dispute and actual controversy exists between the parties relative to their
11 interpretation of the rights and duties of the Plaintiffs regarding the Rosemere II Judgment and
12 the Boulden Property and the Lamothe Property.

13 60. The Plaintiffs are entitled to a declaration from the Court, to the effect that the
14 Rosemere II Judgment against the Rosemere Estates Home Owners Association is not a
15 judgment against the Plaintiffs, separately or individually, and that the Rosemere II Judgment
16 cannot be recorded against the Boulden Property and the Lamothe Property.

17 61. Plaintiffs have been required to retain the services of Foley & Oakes, PC, to
18 prosecute this action, and are entitled to an award of attorney's fees and costs.

19 **WHEREFORE**, Plaintiffs pray for judgment against the Lytles as follows:

20 A. That a Preliminary Injunction should be issued, restraining the Lytles, and each of
21 them, their, agents, servants, employees, attorneys, successors and assign, during the pendency
22 of this action, from foreclosing upon or selling the Boulden Property and the Lamothe Property
23 and from doing, causing, or permitting to be done, directly or indirectly, any acts whereby the
24 rights of the Plaintiffs in said property is in any matter impaired, violated or interfered with; and
25 that after such hearing as may be required by law, said preliminary injunction be made
26 permanent. Further, the Preliminary Injunction should strike the Abstracts of Judgment;
27
28

1 B. For judgment against the Lytles for general, special and punitive damages in
2 amounts in excess of \$10,000.00, plus costs, disbursements and interest;

3 C. For an Order quieting title of the Boulden Property and the Lamothe Property in
4 favor of the Plaintiffs and against the Lytles;

5 D. For a declaration that the Lytles, and each of them, have no right, title or interest
6 in the Boulden Property and the Lamothe Property, and a judgment and order quieting the
7 Plaintiffs' title, canceling and expunging the Abstracts of Judgment;

8 E. That Plaintiffs be awarded their reasonable attorneys' fees and costs of such suit
9 herein; and
10

11 F. For such other and further relief as this Court may deem proper in the premises.

12 DATED this 25th day of July 2017.

13 Respectfully Submitted,

14 FOLEY & OAKES, PC

15 /s/Daniel T. Foley

16 Daniel T. Foley, Esq.

17 626 S. 8th St.

18 Las Vegas, Nevada 89101

19 *Attorneys for Plaintiffs*



1 **ANAC**
Richard E. Haskin, Esq.
2 Nevada State Bar # 11592
Timothy P. Elson, Esq.
3 Nevada State Bar # 11559
GIBBS GIDEN LOCHER TURNER
4 **SENET & WITTBRODT LLP**
1140 N. Town Center Drive, Suite 300
5 Las Vegas, Nevada 89144-0596
(702) 836-9800

6 Attorneys for Defendants
7 TRUDI LEE LYTLE, JOHN ALLEN LYTLE,
& THE LYTLE TRUST
8

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

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

14 Plaintiff,

15 v.

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

18 Defendants.
19

20 TRUDI LEE LYTLE, JOHN ALLEN LYTLE,
21 THE LYTLE TRUST,

22 Counter-Claimants,

23 v.

24 LINDA LAMOTHE AND JACQUES LAMOTHE,
TRUSTEES OF THE JACQUES & LINDA
LAMOTHE LIVING TRUST, ROBERT Z.
25 DISMAN, YVONNE A. DISMAN, and ROES 1
through 10, inclusive,

26 Counter-Defendants.
27
28

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

**DEFENDANTS TRUDI LEE LYTLE AND
JOHN ALLEN LYTLE, TRUSTEES OF
THE LYTLE TRUST'S ANSWER TO
PLAINTIFFS' SECOND AMENDED
COMPLAINT AND COUNTERCLAIM**

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

1 COMES NOW Defendants TRUDI LEE LYTLE and JOHN ALLEN LYTLE, Trustees of
2 THE LYTLE TRUST ("Defendants" and/or the "Lyttles"), by and through their counsel of record,
3 Richard E. Haskin, Esq., of the law firm of GIBBS, GIDEN, LOCHER, TURNER, SENET &
4 WITTBRODT, LLP, and hereby answers Plaintiffs MARJORIE B. BOULDEN, TRUSTEE OF
5 THE MARJORIE B. BOULDENR TRUST, LINDA LAMOTHE AND JACQUES LAMOTHE,
6 TRUSTEES OF THE JACQUES & LINDA LAMOTHE LIVING TRUST's (collectively
7 "Plaintiffs") Second Amended Complaint as follows:

8 1. As to Paragraphs 1 through 3 of the Second Amended Complaint, Defendants admit
9 the allegations set forth in said Paragraphs.

10 2. As to Paragraphs 4 through 5 of the Second Amended Complaint, Defendants are
11 without knowledge or information sufficient to admit or deny the allegations contained therein. Said
12 Paragraphs also contain legal conclusions rather than facts that need to be admitted or denied.
13 Defendants deny the same on that basis.

14 3. As to Paragraph 6 of the Second Amended Complaint, Defendants admit the
15 allegations set forth in said Paragraph.

16 4. As to Paragraph 7 of the Second Amended Complaint, Defendants admit that
17 Rosemere Estates Property Owners Association, a Nevada non-profit corporation ("Rosemere"), is a
18 Limited Purpose Association governed by Chapter 116 of the Nevada Revised Statutes. As to the
19 remaining allegations, said Paragraph also contains legal conclusions rather than facts that need
20 admitted or denied. Defendants deny the same on that basis, as well as the content of such allegation
21 should such a denial be necessary.

22 5. Defendants deny the allegations in Paragraph 8 of the Second Amended Complaint.

23 6. As to Paragraphs 9 of the Second Amended Complaint, Defendants admit that
24 paragraph 24 of the CC&Rs speaks for itself.

25 7. As to Paragraphs 10 through 14 of the Second Amended Complaint, Defendants
26 admit the allegations set forth in said Paragraphs.

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1 8. As to Paragraph 15 of the Second Amended Complaint, Defendants admit that the
2 Bouldens and the Lamothes were not parties to the aforementioned lawsuit. However, Defendants
3 deny the allegation that the property of the Bouldens and Lamothes described in the Second
4 Amended Complaint is not subject to the judgment described in the Second Amended Complaint.
5 As to the remaining allegations, said Paragraph also contains legal conclusions rather than facts that
6 need to be admitted or denied. Defendants deny the same on that basis, as well as the content of
7 such allegation should such a denial be necessary.

8 9. Defendants deny the allegations in Paragraphs 16 through 18 of the Second Amended
9 Complaint. Furthermore, said Paragraphs also contain legal conclusions rather than facts that need
10 to be admitted or denied. Defendants deny the same on that basis.

11 10. As to Paragraphs 19 and 20 of the Second Amended Complaint, Defendants are
12 without knowledge or information sufficient to admit or deny the allegations contained therein.

13 11. As to Paragraphs 21 and 22 of the Second Amended Complaint, Defendants admit the
14 allegations contained therein.

15 12. As to Paragraph 23. Defendants admit that Plaintiffs were not parties in the Rosemere
16 II litigation; however, Defendants deny that Plaintiffs did not have notice of the same. Plaintiffs
17 regularly attended Board meetings for the Association during which all litigation by and against
18 Defendants were discussed, and Plaintiffs routinely contributed assessments to fund such litigation.

19 13. As to Paragraph 24 of the Second Amended Complaint, Defendants admit the
20 allegations contained therein.

21 **FIRST CAUSE OF ACTION**

22 **(Slander of Title, Mrs. Boulden)**

23 14. Defendants repeat herein by this reference Paragraphs 1 through 13, inclusive, with
24 the same force and effect as if said Paragraphs were set forth herein in full.

25 15. As to Paragraph 25 of the Second Amended Complaint, Defendants deny the
26 allegations contained therein. Furthermore, said Paragraph also contains legal conclusions rather
27 than facts that need to be admitted or denied. Defendants deny the same on that basis.

28 ///

(Injunction, All Plaintiffs)

17. Defendants repeat herein by this reference Paragraphs 1 through 16, inclusive, with the same force and effect as if said Paragraphs were set forth herein in full.

18. Defendants deny the allegations in Paragraph 33 of the Second Amended Complaint.

19. As to Paragraphs 34 through 38 of the Second Amended Complaint, Defendants are without knowledge or information sufficient to admit or deny the allegations contained therein. Said Paragraphs also contain legal conclusions rather than facts that need to be admitted or denied. Defendants deny the same on that basis.

(Quiet Title, All Plaintiffs)

20. Defendants repeat herein by this reference Paragraphs 1 through 19, inclusive, with the same force and effect as if said Paragraphs were set forth herein in full.

21. As to Paragraph 40 of the Complaint, Defendants admit the allegations contained therein.

22. As to Paragraphs 41 through 45 of the Second Amended Complaint, Defendants deny the allegations contained therein. Furthermore, said Paragraphs also contain legal conclusions rather than facts that need admitted or denied. Defendants deny the same on that basis.

(Declaratory Relief, All Plaintiffs)

23. Defendants repeat herein by this reference Paragraphs 1 through 22, inclusive, with the same force and effect as if said Paragraphs were set forth herein in full.

24. As to Paragraph 47 of the Second Amended Complaint, Defendants admit the allegations contained therein.

1 25. As to Paragraphs 48 through 49 of the Second Amended Complaint, Defendants deny
2 that the allegations contained therein.

3 **FIFTH CAUSE OF ACTION**

4 **(Injunction, Rosemere II Judgment)**

5 26. Defendants repeat herein by this reference Paragraphs 1 through 25, inclusive, with
6 the same force and effect as if said Paragraphs were set forth herein in full.

7 27. As to Paragraphs 51 through 57 of the Second Amended Complaint, Defendants deny
8 that the allegations contained therein.

9 **SIXTH CAUSE OF ACTION**

10 **(Declaratory Relief)**

11 28. Defendants repeat herein by this reference Paragraphs 1 through 27, inclusive, with
12 the same force and effect as if said Paragraphs were set forth herein in full.

13 29. Defendants admit the allegations contained in Paragraph 59 of the Second Amended
14 Complaint.

15 30. 27. As to Paragraphs 60 through 61 of the Second Amended Complaint,
16 Defendants deny that the allegations contained therein.

17 **AFFIRMATIVE DEFENSES**

18 For their further and separate affirmative defenses to the Second Amended Complaint filed
19 by Plaintiffs and the claims asserted therein, and without assuming the burden of proof on any
20 matters for which that burden rests with Plaintiffs, Defendants allege as follows:

21 **FIRST AFFIRMATIVE DEFENSE**

22 The Complaint fails to state a claim upon which relief can be granted.

23 **SECOND AFFIRMATIVE DEFENSE**

24 If Plaintiffs suffered or sustained any loss, injury, damage or other detriment, the same was
25 directly and proximately caused and contributed to by the breach of contract, conduct, acts,
26 omissions, activities, carelessness, recklessness, negligence, and/or intentional misconduct of
27 Plaintiffs or persons or entities under Plaintiffs' control, and thereby completely or partially bars
28 Plaintiffs' recovery herein.

1 **THIRD AFFIRMATIVE DEFENSE**

2 Defendants are not legally responsible for the acts and/or omissions claimed herein.

3 **FOURTH AFFIRMATIVE DEFENSE**

4 Plaintiffs failed, refused and neglected to take reasonable steps to mitigate its alleged
5 damages, if any, thus barring or diminishing Plaintiffs' recovery herein.

6 **FIFTH AFFIRMATIVE DEFENSE**

7 The injuries and damages of which Plaintiffs complain were proximately caused by, or
8 contributed to, by the acts of other persons and/or other entities, whether now named or otherwise,
9 and that said acts were an intervening and superseding cause of the injuries and damages, if any, of
10 which Plaintiffs complain, thus barring Plaintiffs from any recovery against these Defendants or
11 entitled Defendants to contribution from such parties.

12 **SIXTH AFFIRMATIVE DEFENSE**

13 Plaintiffs' claims are reduced, modified, and/or barred by the doctrine of unclean hands.

14 **SEVENTH AFFIRMATIVE DEFENSE**

15 Plaintiffs have knowledge of and assumed the risks of their acts or failure to act. The
16 damages alleged by Plaintiffs were caused by, and arose out of, risks which Plaintiffs directly
17 assumed.

18 **EIGHTH AFFIRMATIVE DEFENSE**

19 Defendants are informed and believe, and thereon allege, that Plaintiffs waived their claims
20 against these Defendants at issue herein.

21 **NINTH AFFIRMATIVE DEFENSE**

22 Plaintiffs would be unjustly enriched if they recovered from Defendants any of the damages
23 alleged in the Complaint.

24 **TENTH AFFIRMATIVE DEFENSE**

25 In the event Defendants are found liable in any manner to Plaintiffs, Defendants would be
26 entitled to offsets and credits against any purported damages, if any, allegedly sustained by
27 Plaintiffs.

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ELEVENTH AFFIRMATIVE DEFENSE

Defendants allege that Plaintiffs failed to properly confer jurisdiction on this Court on some or all causes of action in its Complaint because Plaintiffs failed to comply with the provisions of Chapter 38 of the Nevada Revised Statutes. Defendants reserve their right to raise this issue at any time, including appeal, as jurisdiction cannot be consented upon this Court by the parties and is never waived.

TWELFTH AFFIRMATIVE DEFENSE

Defendants incorporate by reference those affirmative defenses enumerated in NRCP 8 as fully set forth herein. In the event further investigation or discovery reveals the applicability of any such defenses, Defendants reserve the right to seek leave of the court to amend its answer to specifically assert the same. Such defenses are herein incorporated by reference for the specific purpose of not waiving the same.

THIRTEENTH AFFIRMATIVE DEFENSE

Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have been stated or alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Defendants' Answer to the Second Amended Complaint, and therefore, Defendants specifically reserve the right to amend its Answer to allege additional affirmative defenses if subsequent investigation so warrants, up to and including through the time of trial in this matter.

WHEREFORE, Defendants pray for relief as follows:

1. That the Second Amended Complaint be dismissed and that Plaintiffs take nothing by way of its Second Amended Complaint;
2. For costs and disbursements in connection with this action;
3. For reasonable attorney's fees, and
4. For such other and further relief that this Court deems just and proper.

COUNTERCLAIM

COMES NOW Defendants and Counter-Claimants TRUDI LEE LYTLE and JOHN ALLEN LYTLE, Trustees of THE LYTLE TRUST (the "Lytles"), by and through their counsel of record, Richard E. Haskin, Esq., of the law firm of GIBBS, GIDEN, LOCHER, TURNER, SENET & WITTBRODT, LLP, and hereby alleges as follows:

I. THE PARTIES AND JURISDICTION

1. The Lytle Trust (the "Lytle Trust"), is the current owner of real property located 1930 Rosemere Court, in Clark County, Nevada, APN 163-03-313-009, and described as:

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

The Lytle Property was previously owned by Defendants, Counter-Claimants J. Allen Lytle and Trudi L. Lytle, the current Trustees of the Lytle Trust, having been purchased by deed recorded November 15, 1996.

2. The Lytles are informed and believe, and thereon allege, that Counter-Defendants Linda Lamothe and Jacques Lamothe, Trustees of the Jacques & Linda Lamothe Living Trust, are the owners of the residential property in Clark County, Nevada known as parcel number 163-03-313-002, and commonly known as 1830 Rosemere Court, Las Vegas, Nevada 89117 ("1830 Rosemere Court").

3. The Lytles are informed and believe, and thereon allege, that Plaintiff Marjorie B. Boulden ("Boulden") was formerly the owner of the residential property in Clark County, Nevada known as parcel number 163-03-313-008, and commonly known as 1860 Rosemere Court, Las Vegas, Nevada 89117 ("1960 Rosemere Court"). However, the Lytles are informed and believe, and thereon allege, that on or about August 4, 2017, Boulden sold 1960 Rosemere Court to Counter-Defendants Robert Z. Disman and Yvonne A. Disman, who are now owners of 1960 Rosemere Court. Under NRS 116.4109, Counter-Defendants Robert and Yvonne Disman knew or should have known that the Association had judgments against it and recorded against it that could encumber

1 their property prior to their purchase of the property.

2 4. The true names and capacities of Counter-Defendants sued herein as ROES 1 through
3 10, inclusive, and each of them, are presently unknown to the Lytles, and, therefore, they are sued
4 herein under fictitious names, and when the true names are discovered, the Lytles will seek leave to
5 amend this Counterclaim and proceedings herein to substitute the true names of said Counter-
6 Defendants. The Lytles are informed and believe and based thereon allege that each of the foregoing
7 Counter designated herein as a ROE is negligent or responsible in some manner for the events herein
8 referred to.

9 **II. ROSEMERE ESTATES COMMUNITY AND GOVERNING DOCUMENTS**

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

16 6. Rosemere Property Owners’ Association (the “Association”), at all times herein
17 mentioned is comprised of nine (9) owners of single family lots all as more particularly described in
18 the recorded Declaration of Covenants, Conditions and Restrictions, dated January 4, 1994 (the
19 “Original CC&Rs”) for the Association, as recorded in the official records of the Clark County
20 Nevada Recorder’s office. A true and correct copy of the Original CC&Rs is attached hereto, and
21 incorporated herein, as Exhibit “1.” The Lytles are informed and believe, and based thereon allege,
22 that the Original CC&Rs were recorded on January 4, 1994, before title to any lot within the
23 Association was conveyed by deed, and are referenced in the deeds to all Nine (9) properties located
24 within the Association.

25 7. On February 25, 1997, Plaintiff and Counter-Defendant Linda Lamothe and Plaintiff
26 Marge Boulden, acting on behalf of all owners, filed Non-Profit Articles of Incorporation (the
27 “Articles”) pursuant to Nevada Revised Statutes (“NRS”) 82, which formalized the property owners’
28 committee and created an association, naming it “Rosemere Estates Property Owners Association.”

1 8. At the July 2, 2007, the Association's Board, the Board presented the homeowners
2 with a binder that contained the following: (1) new Articles of Incorporation, dated July 6, 2007,
3 which articles were never filed although represented to be as set forth herein; (2) a letter from Kearn
4 to the Association members; (3) a Corporate Charter referencing the February 25, 1997 and July 6,
5 2007 Articles of Incorporation; (4) a section entitled "Governing Documents" referencing the July 6,
6 2007 Articles of Incorporation; (5) the "First Statutorily Mandated Amendment to the Bylaws of the
7 Rosemere Estates Homeowners Association," and (5) the proposed Amended and Restated
8 Covenants, Conditions and Restrictions ("Amended CC&Rs").

9 9. The proposed Amended CC&Rs were far more restrictive than the Original CC&Rs
10 and changed the very nature of property ownership within Rosemere Estates. The Amended CC&Rs
11 contained numerous use restrictions including a section entitled "Restrictions on Use, Alienation,
12 and Occupancy," pet restrictions, lease restrictions, the establishment of a Design Review
13 Committee with unfettered discretion, and a new and expansive definition of "nuisance." Further,
14 the Amended CC&Rs made the Association a full blown unit owners' association, subject to the
15 entirety of Chapter 116.

16 10. The proposed amended CC&Rs were not agreed to by all owners at the July 2, 2007
17 meeting, in fact less than 67% thereof, with at least 3 owners specifically objecting to the proposed
18 changes and refusing to sign the approval.

19 11. Despite the failure to obtain the required unanimous approval for changing the
20 CC&Rs, the Association proceeded, on July 3, 2007, to record in the office of the Recorder for Clark
21 County, Nevada, the Amended CC&Rs.

22 12. The Lytles immediately contested and continued to contest the Amended CC&Rs and
23 its unlawful adoption.

24 **III. THE UNDERLYING LITIGATION**

25 13. After proceeding through two separate mandatory arbitrations via NRS 38.383 in
26 2009 and 2010, one which contested the validity of the Amended CC&Rs and a second which
27 contested the validity of liens placed against the Lytle Property by the Association due to the Lytles
28 refusing to pay assessments levied against their property to fund litigation against them, the Lytles

1 filed two lawsuits in Nevada District Court. Pursuant to the Amended CC&Rs, which was the
2 governing document at the time and at all times during the underlying litigation, the Lytles were
3 required to file their claims against the Association, not against the any of the individual owners.

4 **A. NRED I LITIGATION**

5 14. The first lawsuit commenced by the Lytles, case number A-09-593497-C which was
6 assigned to Judge Michelle Leavitt in Department XII, contested the validity of the Amended
7 CC&Rs and sought to overturn the Amended CC&Rs ("NRED I Litigation"). The Lytles ultimately
8 prevailed, entirely, in the litigation, and the Court granted the Lytles summary judgment on July 29,
9 2013. The matter was appealed, and the Nevada Supreme Court affirmed the District Court's Order
10 granting the Lytles summary judgment. The Supreme Court remanded the case to the District Court
11 for redetermination of costs, attorneys' fees and damages on October 19, 2015.

12 15. On May 25, 2016, the Court awarded the Lytles \$297,072.66 in attorneys' fees
13 pursuant to the Original CC&Rs and the Amended CC&Rs, which the Court declared as the
14 governing documents during the entirety of the litigation.

15 16. On June 17, 2016, the Court awarded the Lytles damages in the NRED I Litigation,
16 after a prove-up hearing, in the amount of \$63,566.93.

17 17. Finally, on July 22, 2016, the Court in the NRED I Litigation awarded the Lytles
18 costs in the amount of \$599.00.

19 18. On September 2, 2016, the Lytles recorded Abstracts of Judgment from the NRED I
20 Litigation against each property within the Association pursuant to the law set forth herein.

21 **B. NRED II LITIGATION**

22 19. On December 13, 2010, the Lytles filed a second lawsuit against the Association
23 seeking to release and expunge three (3) unlawfully recorded liens, which were recorded by the
24 Association against the Lytle Property in 2009 and 2010. This second lawsuit bore case number A-
25 10-631355-C and was assigned to Department 32, Judge Robert Bare (the "NRED II Litigation").

26 20. Distinct from the NRED I Litigation, in the NRED II Litigation, both the Lytles and
27 the Association stipulated to the underlying fact that the Amended CC&Rs were the controlling
28 governing documents for the Association in the NRED II Litigation.

21. On November 14, 2011, the Court granted the Association's Motion for Summary Judgment against the Lytles in the NRED II Litigation. The Court then granted attorneys' fees to the Association pursuant to the Amended CC&Rs and NRS 116.4117. The Lytles appeals the Court's rulings in the NRED II Litigation.

22. On December 21, 2015, the Nevada Supreme Court vacated the Order Granting Summary Judgment in the NRED II Litigation and remanded the NRED II Litigation back to Department 32 for determination. The Supreme Court also vacated the order awarding attorneys' fees, costs, and damages to the Association.

23. On November 10, 2016, the Court in the NRED II Litigation granted the Lytles' Motion for Summary Judgment and entered an Order thereon, finding in favor of the Lytles as to all causes of action.

24. On April 14, 2017, the Court in the NRED II Litigation awarded the Lytles' attorneys' fees in the amount of \$274,608.28 pursuant to the Original CC&Rs, the Amended CC&Rs and NRS 116.4117, finding that the Amended CC&Rs controlled the remedies provided in the action. The Court also awarded costs in the amount of \$4,725.00.

25. Finally, on May 11, 2017, after a prove-up hearing, the Court in the NRED II Litigation awarded the Lytles punitive damages in the amount of \$823,824.84, pursuant to NRS 42.005.

26. On July 20, 2017, the Court in the NRED II Litigation issued an Abstract of Judgment in the amount of \$1,103,158.12, which has been recorded against the Association but none of the individual lots or properties within the Association.

FIRST CAUSE OF ACTION

(For Declaratory Relief Against Counter-Defendants Jacques and Linda Lamouthe, Third-Party Defendants Robert Disman and Yvonne Disman, and ROES 1 through 10, Inclusive)

27. The Lytles incorporate the allegations contained in Paragraphs 1 through 26 herein as though set forth in full.

///

///

1 28. There exists a controversy between the Lytles and Counter-Defendants and Third
2 Party Defendants regarding the interpretation, application and enforcement of NRS, Chapter 116 as
3 well as the application of the Original CC&Rs and Amended CC&Rs to the controversy at hand,
4 requiring a determination by this Court and entry of declaratory relief.

5 29. Specifically, the Lytles contend as follows:

- 6 a. Pursuant to the Original CC&Rs, a lien or judgment against the Association
7 established under the Original CC&Rs attaches to each lot within the Association.
- 8 b. Pursuant to the Amended CC&Rs, which were in force at all times from 2007
9 through July 29, 2013, a lien or judgment against the Association established
10 under the Amended CC&Rs attaches to each lot within the Association.
- 11 c. Pursuant to NRS, Chapter 116, the Uniform Common Interest Development Act,
12 a lien or judgment against the Association attaches to each lot within the
13 Association, even if the Association is a *limited purpose association*, because
14 under NRS 116.021, each common interest community consists of all “real estate
15 described in a declaration with respect to which a person, by virtue of the person’s
16 ownership of a unit, is obligated to pay for a share of real estate taxes, insurance
17 premiums, maintenance or improvement of, or services or other expenses related
18 to, common elements, other units or other real estate described in that
19 declaration.” Further under NRS 116.093, each “unit” is defined as the “physical
20 portion of the common-interest community designated for separate ownership or
21 occupancy...” Thus, the association, or common interest community, includes
22 each and every unit in the community, including those owned by third parties.
- 23 d. Pursuant to NRS 116.3117, which governed the Association and all owners
24 during the underlying litigation, a judgment against the Association is a lien in
25 favor of the Lytles against all of the real property within the Association and all of
26 the units therein, including Counter-Defendants’ properties. The Association and
27 its membership are not entitled to use Chapter 116 and all of its provisions as a
28 sword during the litigation against the Lytles, *e.g.* to record multiple liens totaling

1 \$209,883.19 against the Lytles and attempt foreclosure against the Lytle Property
2 forcing the Lytles to procure a \$123,000.00 cash bond to prevent such
3 foreclosure, and then a shield to defend against the Lytles after they prevailed in
4 that litigation and the Association was declared a *limited purpose association*.

5 30. The Lytles desire a judicial determination of the parties' rights and duties and a
6 declaration the a lien against the Association, specifically the Abstract of Judgment issued in the
7 NRED II Litigation, can be recorded against 1830 Rosemere Court and 1960 Rosemere Court.

8 31. A judicial declaration is necessary and appropriate at this time so that the parties may
9 ascertain their rights and duties because the Lytles wish to record the Abstract of Judgment in the
10 NRED II Litigation against 1830 Rosemere Court and 1960 Rosemere Court to enforce their rights
11 as creditors against the Association.

12
13 WHEREFORE, Defendants and Counter-Claimants pray for relief as follows:

14 1. That the Second Amended Complaint be dismissed and that Plaintiffs take nothing by
15 way of its Second Amended Complaint;

16 2. That the Court enter a Declaratory Judgment in favor of the Lytles and against the
17 Counter-Defendants and Third Party Defendants, finding and declaring that the Lytles are entitled to
18 record a lien and/or Abstract of Judgment obtained in the NRED II Litigation against 1830
19 Rosemere Court and 1960 Rosemere Court in order to enforce the Lytles' rights as creditors against
20 the Association.

21 3. For an injunction preventing any Counter-Defendant or Third Party Defendant from
22 selling either 1830 Rosemere Court and 1960 Rosemere Court until this Court has entered a
23 Declaratory Judgment;

24 4. For costs and disbursements in connection with this action;

25 5. For reasonable attorney's fees, and

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6. For such other and further relief that this Court deems just and proper.

DATED: August 11, 2017

GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP

By: 

Richard E. Haskin, Esq.
Nevada State Bar # 11592
Timothy P. Elson, Esq.
Nevada State Bar # 11559
1140 N. Town Center Drive, Suite 300
Las Vegas, Nevada 89144
Attorneys for Defendants
TRUDI LEE LYTLE, JOHN ALLEN LYTLE, & 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 August 11, 2017, she served a copy of the foregoing **DEFENDANTS TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, TRUSTEES OF THE LYTLE TRUST'S ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT AND COUNTERCLAIM**; by electronic service through the Regional Justice Center for Clark County, Nevada's ECF System:

Daniel T. Foley, ESQ.
FOLEY & OAKS, PC
626 S. 8th Street
Las Vegas, Nevada 89101

Attorney for Plaintiffs

Tel: (702) 384-2070
Fax: (702) 384-2128
Email: dan@folevoakes.com


An employee of
Gibbs Giden Locher Turner
Senet & Wittbrodt LLP


CLERK OF THE COURT

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

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

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

13 Plaintiff,)

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

14 v.)

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

Date of Hearing: April 13, 2017
Time of Hearing: 9:00 a.m.

19 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING**
20 **PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

21 Plaintiffs' Motion for Partial Summary Judgment and Defendants' Counter Motion for
22 Summary Judgment having come on for hearing before this Court on the 13th day of April 2017,
23 Plaintiffs Marjorie Boulden and Linda Lamothe appeared with their counsel, Daniel T. Foley,
24 Esq. and Defendants John Allen Lytle and Trudi Lee Lytle, as Trustees of the Lytle Trust,
25 appearing with their counsel, Richard Haskin, Esq. The Court having reviewed the Plaintiffs'
26 Motion, the Defendants' Opposition and Counter-Motion and the Plaintiffs' Reply and all
27

1 documents attached thereto or otherwise filed in this case, and good cause appearing therefore,
2 makes these Findings of Fact and Conclusions of Law.

3 To the extent any Findings of Fact also contain Conclusions of Law said Conclusions of
4 Law should be considered as such. To the extent that any Conclusions of Law also contain
5 Findings of Fact said Findings of Fact should be considered as such.

6 FINDINGS OF FACT

7
8 1. Mrs. Boulden is trustee of the Marjorie B. Boulden Trust (hereinafter "Mrs.
9 Boulden") which owns that residential property known as parcel number 163-03-313-008 also
10 known as 1960 Rosemere Ct., Las Vegas, NV 89117 ("the Boulden Property").

11 2. Mr. and Mrs. Lamothe are the trustees of the Linda Lamothe and Jacques Lamothe
12 Living Trust (hereinafter "Mr. and Mrs. Lamothe") which owns that certain residential property
13 known as parcel number 163-03-313-002 also known as 1830 Rosemere Ct., Las Vegas, NV
14 89117 (the "Lamothe Property").

15 3. The Boulden Property and the Lamothe Property are located in the Rosemere
16 Court subdivision and are subject to the CC&Rs recorded January 4, 1994 (the "Original
17 CC&Rs").

18
19 4. John Allen Lytle and Trudi Lee Lytle are the Trustees of the Lytle Trust
20 (collectively the "Defendants") which owns that certain residential property known as parcel
21 number 163-03-313-009 (the "Lytle Property").

22 5. In 2009, the Defendants sued the Rosemere Estates Property Owners Association
23 (the Association") in the Eighth Judicial District Court, case # A-09-593497-C (the "Rosemere
24 LPA Litigation").

25
26 6. None of the Plaintiffs were ever parties in the Rosemere LPA Litigation.

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

3 8. The Defendants obtained a Summary Judgment for Declaratory Relief from the
4 District Court in the Rosemere LPA Litigation, which found and ruled as follows:

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

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

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

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

19 9. Pursuant to NRS 116.1201(2) most of NRS Chapter 116 does not apply to the
20 Association because it is a limited purpose association that is not a rural agricultural residential
21 community.

22 10. After obtaining Summary Judgment in the Rosemere LPA Litigation, the
23 Defendants filed a Motion for Attorneys' Fees and Costs against the Association, and conducted a
24 prove-up hearing on damages. After hearing all matters, a Final Judgment was entered in the
25 Defendants' favor against the Association for \$361,238.59, which includes damages, attorneys'
26 fees and costs (the "Final Judgment").

27 11. After obtaining the Final Judgment, the Defendants, on August 16, 2016, recorded
28 with the Clark County Recorder's office an Abstract of Judgement referencing the Final Judgment

1 against the Association, recorded as Instrument #20160818-0001198 (the "First Abstract of
2 Judgment").

3 12. In the First Abstract of Judgment, the Defendants listed the parcel numbers of the
4 Boulden Property and the Lamothe Property as properties to which the First Abstract of Judgment
5 and Final Judgment was to attach.

6 13. On September 2, 2016, the Defendants recorded with the Clark County Recorder's
7 office an Abstract of Judgment referencing the Final Judgment against the Association, recorded
8 as Instrument #20160902-0002684 (the "Second Abstract of Judgment"). The Second Abstract
9 of Judgment listed the parcel number of the Lamothe Property only as the property to which the
10 Final Judgment was to attach.

11 14. On September 2, 2016, the Defendants recorded with the Clark County Recorder's
12 office an Abstract of Judgment referencing the Final Judgment against the Association, recorded
13 as Instrument #20160902-0002690 (the "Third Abstract of Judgment"). The Third Abstract of
14 Judgment listed the parcel number of the Boulden Property only as the property to which the
15 Final Judgment was to attach.

16 CONCLUSIONS OF LAW

17 1. The Association is a "limited purpose association" as referenced in NRS
18 116.1201(2).

19 2. As a limited purpose association, NRS 116.3117 is not applicable to the
20 Association.

21 3. As a result of the Rosemere LPA Litigation, the Amended CC&Rs were judicially
22 declared to have been improperly adopted and recorded, the Amended CC&Rs are invalid and
23 have no force and effect and were declared void ab initio.

24 4. The Plaintiffs were not parties to the Rosemere LPA Litigation.

5. The Plaintiffs were not “losing parties” in the Rosemere LPA Litigation as per Section 25 of the Original CC&Rs.

6. The Final Judgment in favor of the Defendants is not against, and is not an obligation of, the Plaintiffs.

7. The Final Judgment against the Association is not an obligation or debt owed by the Plaintiffs.

8. The First Abstract of Judgment recorded as Instrument #20160818-0001198 was improperly recorded against the Lamothe Property and constitutes a cloud against the Lamothe Property.

9. The First Abstract of Judgment recorded as Instrument #20160818-0001198 was improperly recorded against the Boulden Property and constitutes a cloud against the Boulden Property.

10. The Second Abstract of Judgment recorded as Instrument #20160902-0002684 improperly recorded against the Lamothe Property and constitutes a cloud against the Lamothe Property.

11. The Third Abstract of Judgment recorded as Instrument #20160902-0002690 was improperly recorded against the Boulden Property and constitutes a cloud against the Boulden Property.

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 Partial Summary Judgment is **GRANTED**.

1 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that
2 Defendants' Motion for Summary Judgment is DENIED.

3 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
4 Defendants improperly clouded the title to the Boulden Property.

5 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
6 Defendants improperly clouded the title to the Lamothe Property.

7 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
8 Defendants slandered the title to the Boulden Property.

9 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the First
10 Abstract of Judgment recorded as Instrument #20160818-0001198 in the Clark County
11 Recorder's Office is hereby expunged and stricken from the records of the Clark County
12 Recorder's Office.

13 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
14 Second Abstract of Judgment recorded as Instrument #20160902-0002684 in the Clark County
15 Recorder's Office is hereby expunged and stricken from the records of the Clark County
16 Recorder's Office.

17 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the Third
18 Abstract of Judgment recorded as Instrument #20160902-0002690 in the Clark County
19 Recorder's Office is hereby expunged and stricken from the records of the Clark County
20 Recorder's Office.

21 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
22 Defendants are permanently enjoined from recording and enforcing the Final Judgment from the
23 Rosemere LPA Litigation or any abstracts related thereto against the Boulden Property or the
24 Lamothe Property.

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Defendants are hereby ordered to release the First Abstract of Judgment, the Second Abstract of Judgment, and the Third Abstract of Judgment recorded with the Clark County Recorder within ten (10) days after the date of Notice of Entry of this Order.

DATED this 25th day of April 2017


DISTRICT COURT JUDGE

Submitted by:
FOLEY & OAKES, PC

Daniel T. Foley, Esq.
626 S. 8th St.
Las Vegas, Nevada 89101
Attorney for Plaintiffs

Approved as to form:

Richard E. Haskin, Esq.
Gibbs Giden Locker Turner Senet & Wittbrodt LLP
1140 N. Town Center Dr., Ste. 300
Las Vegas, Nevada 89144
Attorney for Defendants

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Defendants are permanently enjoined from taking any action in the future against the Plaintiffs or their properties based upon the Rosemere LPA Litigation.

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Defendants are hereby ordered to release the First Abstract of Judgment, the Second Abstract of Judgment, and the Third Abstract of Judgment recorded with the Clark County Recorder within ten (10) days after the date of Notice of Entry of this Order.

DATED this ____ day of _____ 2017

DISTRICT COURT JUDGE

Submitted by:
FOLEY & OAKES, PC

Daniel T. Foley, Esq.
626 S. 8th St.
Las Vegas, Nevada 89101
Attorney for Plaintiffs

Approved as to form:

Richard E. Maskin, Esq.
Gibbs Oiden Locker Turner Senet & Wittbrodt LLP
1140 N. Town Center Dr., Ste. 300
Las Vegas, Nevada 89144
Attorney for Defendants



ORDR

Richard E. Haskin, Esq.
Nevada State Bar # 11592
Timothy P. Elson, Esq.
Nevada State Bar # 11559
**GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP**
1140 N. Town Center Drive, Suite 300
Las Vegas, Nevada 89144-0596
(702) 836-9800

Attorneys for Defendants
TRUDI LEE LYTLE, JOHN ALLEN LYTLE,
& 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.: XVI

**ORDER GRANTING MOTION TO
ALTER OR AMEND FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

Hearing: June 29, 2017

Plaintiffs' Motion for Partial Summary Judgment and Defendants' Counter Motion for Summary Judgment having come on for hearing before this Court on of April 13, 2017. Plaintiffs Marjorie Boulden and Linda Lamothe appeared with their counsel, Daniel T. Foley, Esq. and Defendants John Allen Lytle and Trudi Lee Lytle, as Trustees of the Lytle Trust, appeared with their counsel, Richard Haskin, Esq. After hearing, the Court entered Findings of Fact, Conclusions of Law and entered an Order Granting Plaintiffs' Motion for Partial Summary Judgment on April 25, 2017.

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1 On June 29, 2017, Defendants' Motion for Reconsideration or, in the Alternative, Motion to
 2 Alter or Amend Judgment, came on for hearing. Plaintiffs Marjorie Boulden and Linda Lamothe
 3 appeared with their counsel, Daniel T. Foley, Esq. and Defendants John Allen Lytle and Trudi Lee
 4 Lytle, as Trustees of the Lytle Trust, appeared with their counsel, Richard Haskin, Esq.

5 The Court having reviewed the Defendants' Motion, Plaintiff's Opposition and the
 6 Defendants' Reply, all documents attached thereto or otherwise filed in this case, and good cause
 7 appearing therefore, grants Defendants' Motion to Alter and Amend Judgment pursuant to EDCR
 8 2.24(b), and the Court makes the following Amendment Findings of Fact and Conclusions of Law,
 9 granting Plaintiffs' Motion for Partial Summary Judgment.

10 FINDINGS OF FACT

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

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

18 3. The Boulden Property and the Lamothe Property are located in the Rosemere Court
 19 subdivision and are subject to the CC&Rs recorded January 4, 1994 (the "Original CC&Rs").

20 4. John Allen Lytle and Trudi Lee Lytle are the Trustees of the Lytle Trust (collectively
 21 the "Defendants") which owns that certain residential property known as parcel number 163-03-313-
 22 009 (the "Lytle Property").

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

26 6. None of the Plaintiffs were ever parties in the Rosemere LPA Litigation.

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

1 8. The Defendants obtained a Summary Judgment for Declaratory Relief from the
2 District Court in the Rosemere LPA Litigation, which found and ruled as follows:

- 3 a. The Association is a limited purpose association under NRS 116.1201, is not
4 a Chapter 116 "unit-owners' association," and is relegated to only those
5 specific duties and powers set forth in Paragraph 21 of the Original CC&Rs
6 and NRS 116.1201.
- 7 b. The Association did not have any powers beyond those of the "property
8 owners committee" designation in the Original CC&Rs – simply to care for
9 the landscaping and other common elements of Rosemere Estates as set forth
10 in Paragraph 21 of the Original CC&Rs.
- 11 c. Consistent with the absence of a governing body, the Developer provided
12 each homeowner the right to independently enforce the Original CC&Rs
13 against one another.
- 14 d. The Amended and Restated CC&Rs recorded with the Clark County
15 Recorder's Office as Instrument #20070703-0001934 (the "Amended
16 CC&Rs") are invalid, and the Amended CC&Rs have no force and effect.

17 9. Pursuant to NRS 116.1201(2) much of NRS Chapter 116 does not apply to the
18 Association because it is a limited purpose association that is not a rural agricultural residential
19 community.

20 10. After obtaining Summary Judgment in the Rosemere LPA Litigation, the Defendants
21 filed a Motion for Attorneys' Fees and Costs against the Association, and conducted a prove-up
22 hearing on damages. After hearing all matters, a Final Judgment was entered in the Defendants'
23 favor against the Association for \$361,238.59, which includes damages, attorneys' fees and costs
24 (the "Final Judgment").

25 11. After obtaining the Attorneys' Fees Judgment, the Defendants, on August 16, 2016,
26 recorded with the Clark County Recorder's office an Abstract of Judgement referencing the Final
27 Judgment against the Association, recorded as Instrument #20160818-0001198 (the "First Abstract
28 of Judgment").

 12. In the First Abstract of Judgment, the Defendants listed the parcel numbers of the
Boulden Property and the Lamothe Property as properties to which the First Abstract of Judgment
and Final Judgment was to attach.

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1 13. On September 2, 2016, the Defendants recorded with the Clark County Recorder's
2 office an Abstract of Judgement referencing the Final Judgment against the Association, recorded as
3 Instrument #20160902-0002684 (the "Second Abstract of Judgment"). The Second Abstract of
4 Judgment listed the parcel number of the Lamothe Property only as the property to which the
5 Judgment was to attach.

6 14. On September 2, 2016, the Defendants recorded with the Clark County Recorder's
7 office an Abstract of Judgement referencing the Final Judgment against the Association, recorded as
8 Instrument #20160902-0002690 (the "Third Abstract of Judgment"). The Third Abstract of
9 Judgment listed the parcel number of the Boulden Property only as the property to which the
10 Judgment was to attach.

11 CONCLUSIONS OF LAW

12 1. The Association is a "limited purpose association" as referenced in NRS 116.1201(2).

13 2. As a limited purpose association, NRS 116.3117 is not applicable to the Association.

14 3. As a result of the Rosemere LPA Litigation, the Amended CC&Rs were judicially
15 declared to have been improperly adopted and recorded, the Amended CC&Rs are invalid and have
16 no force and effect and were declared void ab initio.

17 4. The Plaintiffs were not parties to the Rosemere LPA Litigation.

18 5. The Plaintiffs were not "losing parties" in the Rosemere LPA Litigation as per
19 Section 25 of the Original CC&Rs.

20 6. The Final Judgment in favor of the Defendants is not against, and is not an obligation
21 of, the Plaintiffs.

22 7. The Final Judgment against the Association is not an obligation or debt owed by the
23 Plaintiffs.

24 8. The First Abstract of Judgment recorded as Instrument #20160818-0001198 was
25 improperly recorded against the Lamothe Property and constitutes a cloud against the Lamothe
26 Property.

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1 9. The First Abstract of Judgment recorded as Instrument #20160818-0001198 was
2 improperly recorded against the Boulden Property and constitutes a cloud against the Boulden
3 Property.

4 10. The Second Abstract of Judgment recorded as Instrument #20160902-0002684
5 improperly recorded against the Lamothe Property and constitutes a cloud against the Lamothe
6 Property.

7 11. The Third Abstract of Judgment recorded as Instrument #20160902-0002690 was
8 improperly recorded against the Boulden Property and constitutes a cloud against the Boulden
9 Property.

10 12. The Court does not make any findings that the Defendants slandered title to
11 Plaintiffs' properties, and this issue is left to trier of fact.

12 **ORDER**

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

15 **IT IS HEREBY ORDERED ADJUDGED AND DECREED** that Plaintiffs' Motion for
16 Partial Summary Judgment is GRANTED as to Plaintiffs' claims and causes of action for quiet title
17 and declaratory relief, the Second and Third Causes of Action in Plaintiffs' First Amended
18 Complaint.

19 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that Defendants'
20 Motion for Summary Judgment is DENIED.

21 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
22 Defendants improperly clouded the title to the Boulden Property.

23 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
24 Defendants improperly clouded the title to the Lamothe Property.

25 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the First
26 Abstract of Judgment recorded as Instrument #20160818-0001198 in the Clark County Recorder's
27 Office is hereby expunged and stricken from the records of the Clark County Recorder's Office.

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1 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the Second
2 Abstract of Judgment recorded as Instrument #20160902-0002684 in the Clark County Recorder's
3 Office is hereby expunged and stricken from the records of the Clark County Recorder's Office.

4 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the Third
5 Abstract of Judgment recorded as Instrument #20160902-0002690 in the Clark County Recorder's
6 Office is hereby expunged and stricken from the records of the Clark County Recorder's Office.

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1 IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the
2 Defendants are permanently enjoined from recording and enforcing the Final Judgment from the
3 Rosemere LPA Litigation or any abstracts related thereto against the Boulden Property or the
4 Lamothe Property.

5 IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the
6 Defendants are permanently enjoined from taking any action in the future against the Plaintiffs or
7 their properties based upon the Rosemere LPA Litigation.

8 IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the
9 Defendants are hereby ordered to release the First Abstract of Judgment, the Second Abstract of
10 Judgment, and the Third Abstract of Judgment recorded with the Clark County Recorder within
11 ten (10) days after the date of Notice of Entry of this Order.
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13 DATED this 19th day of July 2017

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DISTRICT COURT JUDGE

Submitted by:

FOLEY & OAKES, PC

Daniel T. Foley, Esq.

626 S. 8th St.

Las Vegas, Nevada 89101

Attorney for Plaintiffs

Approved as to form:

Richard E. Haskin, Esq.

Gibbs Giden Locker Turner Senet & Wittbrodt LLP

1140 N. Town Center Dr., Ste. 300

Las Vegas, Nevada 89144

Attorney for Defendants



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

1 **COM**
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 Plaintiffs*

8 **EIGHTH JUDICIAL DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

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

17 Plaintiffs,

18 vs.

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

23 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

By: /s/ Laura J. Wolff, Esq.
Laura J. Wolff, Esq.
Nevada Bar No. 6869
7440 W. Sahara Avenue
Las Vegas, NV 89117
Tel.: (702) 255-1718
Fax: (702) 255-0871
Attorneys for Plaintiffs



1 **ANSC**
2 Richard E. Haskin, Esq.
3 Nevada State Bar # 11592
4 **GIBBS GIDEN LOCHER TURNER**
5 **SENET & WITTBRODT LLP**
6 1140 N. Town Center Drive, Suite 300
7 Las Vegas, Nevada 89144-0596
8 (702) 836-9800

9 Attorneys for Defendant
10 TRUDI LEE LYTLE AND JOHN ALLEN
11 LYTLE, AS TRUSTEES OF THE LYTLE
12 TRUST

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

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

26 Plaintiff,

27 v.

28 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.

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

ANSWER TO COMPLAINT

COMES NOW Defendants TRUDI LEE LYTLE and JOHN ALLEN LYTLE, Trustees of
THE LYTLE TRUST ("Defendants"), by and through their counsel of record, Richard E. Haskin,
Esq., and Timothy Elson, Esq., of the law firm of GIBBS, GIDEN, LOCHER, TURNER, SENET &
WITTBRODT, LLP, and hereby answers Plaintiffs 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

1 A. SANDOVAL JOINT LIVING AND DEVOLUTION TRUST DATED MAY 27, 1992; and
2 DENNIS A. GEGEN AND JULIE S. GEGEN, HUSBAND AND WIFE, AS JOINT TENANTS
3 (collectively "Plaintiffs") Complaint as follows:

4 1. As to Paragraphs 1 through 6 of the Complaint, Defendants admit the allegations set
5 forth in said Paragraphs.

6 2. As to Paragraphs 7 and 8 of the Complaint, Defendants are without knowledge or
7 information sufficient to admit or deny the allegations contained therein. Said Paragraphs also
8 contain legal conclusions rather than facts that need to be admitted or denied. Defendants deny the
9 same on that basis.

10 3. As to Paragraphs 9 and 10 of the Complaint, Defendants deny the allegations
11 contained in said Paragraphs.

12 4. As to Paragraphs 11 and 12 of the Complaint, Defendants are without knowledge or
13 information sufficient to admit or deny the allegations contained therein.

14 5. Defendants repeat herein by this reference Paragraphs 1 through 12, inclusive, with
15 the same force and effect as if said Paragraphs were set forth herein in full.

16 6. As to Paragraphs 14 and 15 of the Complaint, Defendants admit the allegations set
17 forth in said Paragraphs.

18 7. As to Paragraphs 16 and 17 of the Complaint, the CC&Rs for Rosemere Estates
19 Property Owners' Association ("REPOA") speak for themselves, and the foregoing Paragraphs
20 contained legal conclusions rather than facts that need to be either admitted or denied. Defendants
21 deny the same on that basis.

22 8. As to Paragraph 18 of the Complaint, Defendants admit that REPOA was formed in
23 1997 as the formal association for the Rosemere Estates community, as provided in the CC&Rs.
24 Defendants deny the remaining allegations contained in this Paragraph.

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28 ///

1 9. As to Paragraph 19, Defendants admit that they filed a lawsuit against REPOA in
2 Case No. A-09-593497-C ("NRED 1"); however, Defendants deny that they did not name any
3 Plaintiffs in the NRED 1 Litigation. Defendants attempted to name Sherman Kearn and Gerry
4 Zobrist as individual defendants in that action via an amended complaint, but the motion for leave to
5 amend to allow their addition was denied by the Court.

6 10. As to Paragraph 20, Defendants admit the allegations contained therein.

7 11. As to Paragraph 21, Defendants admit that they recorded abstracts of judgment with
8 the Clark County Recorder's Office against Plaintiffs' Properties with respect to the NRED 1
9 Litigation. With respect to the remaining allegations in Paragraph 21, the abstracts of judgment
10 speak for themselves. Therefore, Defendants deny the remaining allegations for the foregoing
11 reasons.

12 12. As to Paragraph 22 through 25, Defendants deny the allegations contained therein.

13 13. As to Paragraph 26, Defendants admit that two other Rosemere Estates property
14 owners filed a lawsuit against Defendants in a separate action, Case No. A-16-747900-C.

15 14. As to Paragraph 27, Defendants admit the allegation contained therein.

16 15. As to Paragraph 28, the paragraph contains conclusions of law that can neither be
17 admitted nor denied. Further, the Findings of Fact and Conclusions of Law referenced therein speak
18 for themselves. For those reasons, Defendants deny the allegations contained in Paragraph 28.

19 16. As to Paragraph 29, Defendants admit the allegations contained therein.

20 17. As to Paragraph 30 through 34, Defendants deny the allegations contained therein.

21 18. As to Paragraph 35 of the Complaint, Defendants admit the allegation contained
22 therein.

23 19. As to Paragraph 36 of the Complaint, Defendants deny that they filed an Errata to the
24 Complaint for the purpose of removing the names "Kearn" and "Zobrist" from the Complaint.
25 Defendants admit the remaining allegations in this Paragraph.

26 20. As to Paragraphs 37 and 38 of the Complaint, Defendants admit the allegations
27 contained therein.

28 ///

21. As to Paragraph 39 of the Complaint, Defendants are without knowledge or information sufficient to admit or deny the allegations contained therein.

22. Defendants repeat herein by this reference Paragraphs 1 through 22, inclusive, with the same force and effect as if said Paragraphs were set forth herein in full.

23. As to Paragraphs 41 through 46 of the Complaint, Defendants deny the allegations contained therein.

24. Defendants repeat herein by this reference Paragraphs 1 through 23, inclusive, with the same force and effect as if said Paragraphs were set forth herein in full.

25. As to Paragraph 48 of the Complaint, Defendants admit the allegations contained therein.

26. As to Paragraphs 49 through 58 of the Complaint, Defendants deny the allegations contained therein.

WHEREFORE, Defendants pray for relief as follows:

1. That the Complaint be dismissed and that Plaintiffs take nothing by way of its Complaint;
2. For costs and disbursements in connection with this action;
3. For reasonable attorney's fees, and
4. For such other and further relief that this Court deems just and proper.

DATED: January 9, 2018

GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP

By: 

Richard E. Haskin, Esq.
Nevada State Bar # 11592
1140 N. Town Center Drive, Suite 300
Las Vegas, Nevada 89144
Attorneys for Defendant
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 January 10, 2018, she served a copy of the foregoing **ANSWER TO COMPLAINT** by electronic service through the Regional Justice Center for Clark County, Nevada's ECF System:

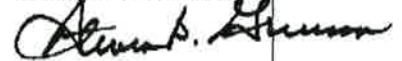
Kevin B. Christensen, Esq.
Wesley J. Smith, Esq.
Laura J. Wolff, Esq.
CHRISTENSEN JAMES & MARTIN
7440 W. Sahara Avenue
Las Vegas, Nevada 89117

Attorneys for Plaintiffs

Tel: (702) 255-1718
Fax: (702) 255-0871
Email: *kbc@cjmlv.com*
Email: *wes@cjmlv.com*
Email: *ljw@cjmlv.com*

Shara Berry

An employee of
Gibbs Giden Locher Turner
Senet & Wittbrodt LLP



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

1 **ORDR**

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

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,

17 Plaintiffs,

18 vs.

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

23 Defendants.

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

26 SEPTEMBER TRUST, DATED MARCH 23,
27 1972; GERRY R. ZOBRIST AND JOLIN G.
28 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-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.

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.

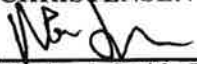
3 **IT IS SO ORDERED.**

4 Dated this 27th day of February, 2018.

5
6 
DISTRICT COURT JUDGE

7 Submitted by:

8 **CHRISTENSEN JAMES & MARTIN**

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

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

15 **FIDELITY NATIONAL LAW GROUP**

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

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

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

FOLEY & OAK, P.C.

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

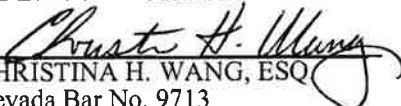
Submitted by:

CHRISTENSEN JAMES & MARTIN

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,
Zobrist Trust, Sandoval Trust, and
Dennis & Julie Gegen

Approved as to Form and Content by:

FIDELITY NATIONAL LAW GROUP


CHRISTINA H. WANG, ESQ.
Nevada Bar No. 9713
1701 Village Center Circle, Suite 110
Las Vegas, Nevada 89134
Attorneys for Counter-Defendants/Cross-
Claimants Robert & Yvonne Disman

GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP

RICHARDE E. HASKIN, ESQ.
Nevada Bar No. 11592
TIMOTHY P. ELSON, ESQ.
Nevada Bar No. 11559
1140 N. Town Center Drive, Suite 300
Las Vegas, Nevada 89144
Attorneys for Defendants/Counter-
Claimants Lytle Trust

FOLEY & OAK, P.C.

DANIEL T. FOLEY, ESQ.
Nevada Bar No. 1078
626 S. 8th Street
Las Vegas, Nevada 89101
Attorneys for Plaintiffs/Counter-
Defendants/Cross-Defendants Boulden Trust
and Lamothe 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

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,
Zobrist Trust, Sandoval Trust, and
Dennis & Julie Gegen

Approved as to Form and Content by:

FIDELITY NATIONAL LAW GROUP

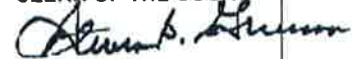
CHRISTINA H. WANG, ESQ.
Nevada Bar No. 9713
1701 Village Center Circle, Suite 110
Las Vegas, Nevada 89134
Attorneys for Counter-Defendants/Cross-
Claimants Robert & Yvonne Disman

GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP

RICHARD E. HASKIN, ESQ.
Nevada Bar No. 11592
TIMOTHY P. ELSON, ESQ.
Nevada Bar No. 11559
1440 N. Town Center Drive, Suite 300
Las Vegas, Nevada 89144
Attorneys for Defendants/Counter-
Claimants Lytle Trust

FOLEY & OAK, P.C.

DANIEL T. FOLEY, ESQ.
Nevada Bar No. 1078
626 S. 8th Street
Las Vegas, Nevada 89101
Attorneys for Plaintiffs/Counter-
Defendants/Cross-Defendants Boulden Trust
and Lamothe Trust



1 **MSJD**
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
9 *Attorneys for Plaintiffs*

10 **EIGHTH JUDICIAL DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

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

25 Plaintiffs,

26 vs.

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

Defendants.

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

**MOTION FOR SUMMARY JUDGMENT
OR, IN THE ALTERNATIVE, MOTION
FOR JUDGMENT ON THE PLEADINGS**

29 Come Now the Plaintiffs, September Trust, dated March 23, 1972 ("September Trust"),
30 Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the Gerry R. Zobrist and Jolin G. Zobrist
31 Family Trust ("Zobrist Trust"), Raynaldo G. Sandoval and Julie Marie Sandoval Gegen, as
32 Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution Trust Dated
33 May 27, 1992 ("Sandoval Trust"), Dennis A. Gegen and Julie S. Gegen, Husband and Wife as

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

1 Joint Tenants (hereafter "Gegen") (hereafter September Trust, Zobrist Trust, Sandoval Trust and
2 Gegen may be collectively referred to as "Plaintiffs"), by and through their attorneys,
3 Christensen James & Martin, and hereby move this Court for Summary Judgment pursuant to
4 NRCP 56, or in the alternative, for a Judgment on the Pleadings pursuant to NRCP 12(c), on all
5 of the causes of action alleged in the Complaint filed concurrently herewith, against Defendants
6 Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle Trust (collectively the "Lytles" or
7 "Defendants").

8 DATED this 29th day of November, 2017.

9 CHRISTENSEN JAMES & MARTIN

10 By: /s/ Laura J. Wolff, Esq.
11 Laura J. Wolff, Esq.
12 Nevada Bar No. 6869
13 7440 W. Sahara Avenue
14 Las Vegas, NV 89117
15 Tel.: (702) 255-1718
16 Fax: (702) 255-0871
17 *Attorneys for Plaintiffs*

18 **NOTICE OF MOTION**

19 To: All Interested Parties; and

20 To: Their Attorneys of Record herein.

21 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that Plaintiffs' Motion for
22 Summary Judgment, Or in the Alternative, Motion for Judgment on the Pleadings will be heard
23 **XXVIII**
24 by the above captioned court in Department ____ of the Regional Justice Center the **4** day of
25 **Jan.**, 20**18** at the hour of **9:00 am** .

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2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 I.

4 **STATEMENT OF UNDISPUTED FACTS**

5 1. The September Trust is the owner of the residential property in Clark County,
6 Nevada known as 1861 Rosemere Court, Las Vegas, Nevada 89117, Assessor's Parcel No. 163-
7 03-313-004 ("September Property"). A true and correct copy of the Grant, Bargain, Sale Deed is
8 attached hereto as Exhibit "1". See Affidavit of Sherman Kearn, as Trustee of the September
9 Property ("Kearn Affidavit").
10

11 2. The Zobrist Trust is the owner of the residential property in Clark County,
12 Nevada known as 1901 Rosemere Court, Las Vegas, Nevada 89117, Assessor's Parcel No. 163-
13 03-313-005 ("Zobrist Property"). A true and correct copy of the Grant, Bargain, Sale Deed is
14 attached hereto as Exhibit "2". See Affidavit of Gerry R. Zobrist, as Trustee of the Zobrist
15 Property ("Zobrist Affidavit").
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17 3. The Sandoval Trust is the owner of the residential property in Clark County,
18 Nevada known as 1860 Rosemere Court, Las Vegas, Nevada 89117, Assessor's Parcel No. 163-
19 03-313-001 ("Sandoval Property"). A true and correct copy of the Quitclaim Deed is attached
20 hereto as Exhibit "3". See Affidavit of Julie Marie Sandoval Gegen, as Trustee of the Sandoval
21 Property and as Joint Tenant of the Gegen Property (defined below)("Gegen Affidavit")
22 (hereafter Kearn Affidavit, Zobrist Affidavit and Gegen Affidavit are collectively "Plaintiffs'
23 Affidavits").
24

25 4. Gegen is the owner of the residential property in Clark County, Nevada known as
26 1831 Rosemere Court, Las Vegas, Nevada 89117, Assessor's Parcel No. 163-03-313-003
27 ("Gegen Property") (hereafter September Property, Zobrist Property, Sandoval Property and
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