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

Appeal

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

Appellants' Appendix to Opening Brief – Volume 7

(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 15th day of May 2019, I submitted the foregoing **Appellant's Appendix for Opening Brief – Volume 7 (Docket 77007)** for filing and service through the Court's eFlex electronic filing service. According to the system, electronic notification will automatically be sent to the following:

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Las Vegas, Nevada 89117

Shara Berry

SHARA BERRY

11. Plaintiffs' attorneys did exceptional work in connection with this contentious action, and the fees requested are reasonable given Plaintiffs' counsel's qualifications, the character of the work, the time and skill required, and the result achieved.

12. Plaintiffs are further entitled to costs in accordance with NRS 18.020.

Therefore,

IT IS HEREBY ORDERED that that Plaintiffs' Motion for Attorneys' Fees is GRANTED.

IT IS FURTHER ORDERED that Plaintiffs are awarded $274,608.28 in attorneys' fees and $4,725.00 in costs as against Defendant.

DATED this 19 day of April, 2017.

HONORABLE ROB BARE
DISTRICT COURT JUDGE

Submitted by:

GIBBS GIDEN LOCHER TURNER, SENET & WITTBRODT LLP

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JOHN ALLEN LYTLE and
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EXHIBIT "N"

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JOHN ALLEN LYTLE and
TRUDI LEE LYTLE

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

ROSEMERE ESTATES PROPERTY OWNERS ASSOCIATION, a Nevada non-profit corporation; and DOES I through X, inclusive,

Defendants.

ROSEMERE ESTATES PROPERTY OWNERS ASSOCIATION, a Nevada non-profit corporation; and DOES I through X, inclusive,

Counterclaimants,

v.

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

Counterdefendants.

CASE NO. A-10-631355-C
Dept.: XXXII

ORDER GRANTING PLAINTIFF JOHN ALLEN LYTLE AND TRUDI LEE LYTLE'S, AS TRUSTEES OF THE LYTLE TRUST, PUNITIVE DAMAGES AFTER HEARING

Hearing Date: March 21, 2017
Hearing Time: 9:30 a.m.

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On April 25, 2017, Plaintiffs John Allen Lytle and Trudi Lee Lytle, as Trustees of the Lytle Trust, ("Plaintiffs") Motion for Damages came on regularly for hearing, the Honorable Rob Bare presiding. Plaintiffs appeared through counsel, Richard E. Haskin, Esq. of Gibbs Giden Locher Turner, Senet & Wittbrodt, LLP. The Court held an evidentiary hearing, and Plaintiffs presented Trudi Lee Lytle as a witness. There was no appearance for Defendant Rosemere Estates Property Owners' Association ("Association"). The Association did not file an opposition to the Motion for Damages and did not make an appearance at the hearing.

Having considered the Motion, the testimony of Trudi Lee Lytle at hearing, and the exhibits admitted during the hearing, having also heard the arguments of counsel, the pleadings and papers on file herein, and good cause appearing therefore, the Court finds:

1. The Lytles prevailed on summary judgment with respect to their slander of title claim. Order, Conclusions of Law, ¶¶ 16-27.

2. Plaintiffs suffered damages as a result of the Board's retaliatory actions in the form of attorneys' fees and costs incurred in removing the cloud on title. *Summa Corp. v. Greenspun*, 98 Nev. 528, 532, 655 P.2d 513, 515 (1982).

3. Plaintiffs planned to build a dream home in the Rosemere Estates community, and the actions taken by the Board with respect to the recording of the three liens against Plaintiffs' property were intentionally and directly targeted at Plaintiffs in order to prevent them from ever moving into the community.

4. The Association, through its Board, recorded three (3) improper and unlawful liens against Plaintiff's Property. Each lien incorporated the prior lien amount, reaching a total of $209,883.19, when the only amount that had been adjudicated and could possibly be subject to lien, if at all, was $52,255.19. With respect to this amount, Plaintiffs posted a bond in that amount which was deemed, by the Association, as good and sufficient. Hence, any lien was unnecessary.

5. The Court finds that the Association did not have a right to have any of these liens recorded against Plaintiffs' Property.

6. The totality of the liens made it impossible for Plaintiffs to sell the Property.

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7. The Association's actions were clearly taken in order to prevent Plaintiffs from building their dream home and ever residing in the community.

8. Once more, Plaintiffs underwent financial hardship in posting the various bonds in order to appeal this action (and other actions).

9. This matter commenced with the unlawful amendment in July 2007 and did not conclude until the Supreme Court affirmed the District Court's ruling that the Association's conduct was, indeed, unlawful and in violation of the Lytles' rights as homeowners, subjecting Plaintiffs to years of costly litigation.

10. The Association suspended the Plaintiffs' voting rights, the right to run for the Board, blocked Plaintiffs' attendance at meetings, and suspended membership privileges, all without complying with Article 12, Section 1.2(d) of the Amended CC&Rs and NRS 116.31041(2).

11. The Association's retaliatory actions did, indeed, cost Plaintiffs their dream home, and Plaintiffs cannot now afford to build on the property they purchased long ago.

12. The evidence presented by Plaintiffs provides ample and clear and convincing evidence that the Association's actions were malicious and taken with the clear intent to injure the Lytles through causing them financial and emotional distress.

13. The Association is, therefore, guilty of civil oppression and malice.

14. The Court previously found and awarded attorneys' fees in the amount of $274,608.28.

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Therefore,

IT IS HEREBY ORDERED that that Plaintiffs' be awarded punitive damages in the amount of $823,824.84 pursuant to NRS 42.005.

DATED this 11 day of May, 2017.

HONORABLE ROB BARE
DISTRICT COURT JUDGE
ROB BARE
JUDGE, DISTRICT COURT, DEPARTMENT [illegible]

Submitted by:

GIBBS GIDEN LOCHER TURNER, SENET & WITTBRODT LLP

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TRUDI LEE LYTLE

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EXHIBIT "O"

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Attorneys for Plaintiff
JOHN ALLEN LYTLE and TRUDI LEE LYTLE

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

ROSEMERE ESTATES PROPERTY OWNERS' ASSOCIATION; SHERMAN L. KEARL, an individual, GERRY G. ZOBRIST, an individual, and DOES 1 through 10, inclusive,

Defendants.

CASE NO. A-15-716420-C
Dept.: XXX

COMPLAINT FOR DECLARATORY RELIEF

ARBITRATION EXEMPT
(Appeal from Arbitration; Declaratory Relief Requested)

COMES NOW Plaintiff, the LYTLE TRUST, by and through its Trustees, John Allen Lytle and Trudi Lee Lytle, herein by and through their attorneys, GIBBS GIDEN LOCHER TURNER, SENET & WITTBRODT, LLP, and Richard E. Haskin, Esq., and for its Complaint against ROSEMERE ESTATES PROPERTY OWNERS ASSOCIATION (the "Association"), states unto this Court as follows:

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GENERAL ALLEGATIONS

1. Plaintiff, the Lytle Trust ("Plaintiff"), 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 ("Plaintiff's Property").

Plaintiff's Property was previously owned by J. Allen Lytle and Trudi L. Lytle, the current Trustees of the Lytle Trust, having been purchased by deed recorded November 15, 1996. A true copy of said deed is attached hereto, and incorporated herein, as Exhibit "1."

2. Defendant, the Association, at all times herein mentioned is comprised of nine (9) owners of single family lots all as more particularly described in the recorded Declaration of Covenants, Conditions and Restrictions, dated January 4, 1994 (the "CC&Rs") for the Association, as recorded in the official records of the Clark County Nevada Recorder's office. A true and correct copy of the CC&Rs is attached hereto, and incorporated herein, as Exhibit "2."

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

4. Plaintiff's Property is located within Rosemere Estates.

5. That since the Association is comprised of only nine (9) units, the Association is classified as a small planned community pursuant to NRS 116.1203, and is exempt from many of the provisions of NRS Chapter 116. Further, the Association is a *limited purpose association* pursuant to NRS 116.1201.

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6. The CC&Rs provide, in pertinent part:

a) Establishment of a "property owners committee" responsible for (a) determining the type and cost of landscaping exterior wall planters, entrance way planters, which cost is equally divided amongst the nine (9) owners; (b) maintaining the exterior perimeter and frontage; (c) maintaining the entrance gate; and (d) maintaining the private drive and the sewer system.

b) "...an owner or owners of any of the lots shall have the right to enforce any or all of the provisions of the covenants, conditions and restrictions upon any other owner or owners."

7. Pursuant to the direction of the CC&Rs, the Rosemere Estates owners formed the "owners' committee," tasked with the limited landscape maintenance duties set forth in the CC&Rs.

8. On February 25, 1997, the Rosemere Estates homeowners on the "owners' committee" (as referenced in paragraph 21 of the CC&Rs) formed the Association as a NRS, Chapter 82 non-profit corporation. The homeowners did not convey any of the Rosemere Estates lots to the Association, as the intent of the Association was and is a limited purpose association pursuant to the CC&Rs and 116.1201.

9. NRS 116.1201, 116.31083, and 116.31152 requires that a limited purpose association, such as the Association, maintain a Board of Directors.

10. The Association at all times has been governed by a three (3) person Board of Directors, consisting of a President, Secretary and Treasurer.

11. The Association consistently held Board elections through March 2010, pursuant to the protocols and methodology of NRS 116.31034, even though the Association is a limited purpose association, and Chapter 116 fails to provide for a method of election of a Board.

12. The Board last held an election on March 24, 2010. The Board members in place from 2010 through July 2013 were as follows: Ray Sandoval (President), Orville McCumber (Secretary), and Johnnie McCumber (Treasurer).

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13. On January 27, 2014, during an unrelated court hearing involving the Association, Orville McCumber, former Board Secretary, testified under oath that he no longer sat on the Association's Board. In August 2015, Ray Sandoval, former Board President, told Plaintiff that the Board "dissolved" and had not conducted any business since July 29, 2013. During this conversation, Mr. Sandoval stated that the Board had not conducted any meetings since July 2013, and did not intend on conducting any future meetings or conducting any future Association business. It was abundantly clear from this conversation that the Board simply does not exist, and all former officers abandoned their positions.

14. Presently, there is no sitting and acting Board for the Association, even though such a board is mandated pursuant to NRS 116.1201, 116.31083, 116.31152.

15. As a result of not having a Board, the Association cannot conduct business and maintain the community as required by the CC&RS, and Chapters 82 and 116 of the Nevada Revised Statutes. Therefore, the Rosemere Estates community has begun to dilapidate. Further, the Association has not paid its annual dues to the Nevada Secretary of State, the Nevada Department of Real Estate or filed any of the required forms with these agencies. As it stands, the Association is in "default" status with the Nevada Secretary of State.

16. Further, the Association presently is defending and maintaining appeals with the Nevada Supreme Court, and the attorneys for the Association are acting without any direction or control. There is no Board to enjoy the attorney client privilege, direct counsel, or review and pay attorneys' fee bills and court costs.

17. It also is unknown at this time to Plaintiff or the Association members who possesses the Association's checkbook and is maintaining the Association's business and attorney-client records. Pursuant to NRS 116.311395, only a Board member or a community manager is authorized to deposit, maintain, or invest community funds. As such, an election needs to be held immediately in order to place a Board and re-commence the maintenance and affairs of the Association.

18. Plaintiff has demanded that the Association's attorneys conduct an election for a Board for the reasons set forth above, which demands have been rejected.

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FIRST CAUSE OF ACTION

(For Declaratory Relief Against The Association and DOES 1 through 10)

19. Plaintiff incorporates the allegations contained in Paragraphs 1 through 18 herein as though set forth in full.

20. There exists a controversy between Plaintiff and Defendants regarding the interpretation, application and enforcement of the CC&Rs and Chapter 116 with respect to holding and conducting an election for the Board of Directors, requiring a determination by this Court and entry of declaratory relief.

21. Plaintiff contends that an election must be held immediately so Directors can be elected to the Board and transact the business of the Association and carry out the mandatory maintenance duties and pay the essential bills (*e.g.* Secretary of State and NRED fees). The Association, through its attorneys, however, have refused to conduct an election despite repeated demands.

22. Plaintiff desires a judicial determination of the parties' rights and duties and a declaration that the CC&Rs, and Chapters 82 and 116 of the Nevada Revised Statutes require an election to take place immediately.

23. Plaintiff further seeks a declaration from the Court that the election should be conducted pursuant to NRS 82.271, 82.276, 82.286 and 82.306, which require that the Association (or Chapter 82 corporation) conduct an election at each annual meeting, or no later than 18 months after the last election. Further, if the Association, as a Chapter 82 corporation, fails or refuses, as is the case here, to hold an election within 18 months after the last election, "the district court has jurisdiction in equity, upon application of any one or more of the members of the corporation representing 10 percent of the voting power of the members entitled to vote for the election of directors or for the election of delegates who are entitled to elect directors..." NRS 82.306. Here, there has been no Board election for over five (5) years. Further, all past Board Directors resigned their positions in July 2013. Plaintiff, as the owner of one of the nine lots, represents 11% of the voting power. Thus, Plaintiff may apply to the district court to hold an election, and as set forth below, fully intend to do so if needed.

24. A judicial declaration requiring an election for the Board of Directors is necessary and appropriate at this time so that a Board of Directors can be elected and maintain the community as required by the CC&Rs and Chapters 82 and 116 of the Nevada Revised Statutes.

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

WHEREFORE, Plaintiff prays that this Court:

FIRST CAUSE OF ACTION

(For Declaratory Relief Against the Association and DOES 1 through 10)

A. Enter a Declaratory Judgment in favor of Plaintiff and against the Association finding and declaring that (1) Chapter 116 requires the Association to have a Board of Directors at all times; (2) that the Association currently does not have a Board of Directors, and (3) that an election must be immediately conducted by the Association to fill all three positions for the Association's Board of Directors;

B. That because Chapter 116 does not prescribe a method of election for a limited purpose association, that the election shall be conducted in the manner and methods prescribed by Chapter 82 of the Nevada Revised Statutes;

C. That this Court appoint a neutral third party to maintain and monitor the election pursuant to this Court's order;

D. Enter an injunction mandating that the foregoing election take place immediately;

E. For an order directing a neutral third party to locate and maintain the Association's records, files, documents, and checkbooks until such time as a new Board of Directors is elected pursuant to this Court's order;

F. For attorneys' fees and costs pursuant to the CC&Rs and NRS 116.4117; and

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

DATED: April 1, 2015

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

By: _____
Richard E. Haskin, Esq.
Nevada State Bar # 11592
7450 Arroyo Crossing Parkway, Suite 270
Las Vegas, Nevada 89113-4059Attorneys for JOHN ALLEN LYTLE and TRUDI LYTLE, as Trustees of the Lytle Trust

COMPLETION OF NRS CHAPTER 38 DISPUTE RESOLUTION PROGRAM

I, John and Allen and Trudi Lee Lytle, Trustees of the Lytle Trust, do hereby swear, under penalty of perjury and under the laws of the State of Nevada, that the issues addressed in the this Complaint have been referred to mediation pursuant to the provisions of NRS 38.300 to 38.360, inclusive.

Dated: April ___, 2015

_____
John Allen Lytle, as Co-Trustee of the Lytle Trust

Dated: April ___, 2015

_____
Trudi Lee Lytle, as Co-Trustee of the Lytle Trust

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

DATED: April 1, 2015

GIBBS, GIDEN, LOCHER, TURNER & SENET LLP

By: _____
Richard E. Haskin, Esq.
Nevada State Bar # 11592
7450 Arroyo Crossing Parkway, Suite 270
Las Vegas, Nevada 89113-4059Attorneys for JOHN ALLEN LYTLE and TRUDI LYTLE, as Trustees of the Lytle Trust

COMPLETION OF NRS CHAPTER 38 DISPUTE RESOLUTION PROGRAM

I, John Allen and Trudi Lee Lytle, Trustees of the Lytle Trust, do hereby swear, under penalty of perjury and under the laws of the State of Nevada, that the issues addressed in the this Complaint have been referred to mediation pursuant to the provisions of NRS 38.300 to 38.360, inclusive.

Dated: April 1, 2015

John Allen Lytle, as Co-Trustee of the Lytle Trust

Dated: April 1, 2015

Trudi Lee Lytle, as Co-Trustee of the Lytle Trust

State of Nevada
County of Clark

This instrument was acknowledged before me this 1 day of April, 2015 by J. Allen Lytle

Notary Public

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
SHARON L. WILLIAMS
No: 12-9145-1
My Appointment Expires Oct. 10, 2016

Complaint.DOC

EXHIBIT "P"

ORD
Richard E. Haskin, Esq.
Nevada State Bar # 11592
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(702) 836-9800

Attorneys for Plaintiff
JOHN ALLEN LYTLE and TRUDI LEE
LYTLE, as Trustees of the Lytle Trust

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants.

CASE NO. A-15-716420-C
Dept.: XXX

ORDER GRANTING SUMMARY JUDGMENT

PLEASE TAKE NOTICE that on May 10, 2016, the Court heard Plaintiffs JOHN ALLEN LYTLE and TRUDI LYTLE, as Trustees of the Lytle Trust (hereinafter "Plaintiff" or the "Lytles") MOTION FOR SUMMARY JUDGMENT in the above-captioned matter, filed on September 14, 2016. After considering the First Amended Complaint, deemed filed by Order of this Court on April 7, 2016, the Motion for Summary Judgment, the Declaration of Trudi Lytle, and evidence submitted therewith, and hearing oral argument, and no opposition having been filed by Defendant and Counterclaimant ROSEMERE ESTATES PROPERTY OWNERS ASSOCIATION ("Defendant"), the Court grants Plaintiffs' Motion for Summary Judgment.

☐ Voluntary Dismissal	☑ Summary Judgment
☐ Involuntary Dismissal	☐ Stipulated Judgment
☐ Stipulated Dismissal	☐ Default Judgment
☐ Motion to Dismiss by Deft(s)	☐ Judgment of Arbitration

I. FINDINGS OF FACT

1. At all relevant times, Plaintiff has owned real property located at 1930 Rosemere Court, Las Vegas, Nevada, Assessor Parcel No. 163-03-313-009, which was and is part of Rosemere Estates ("Rosemere Estates").

2. Rosemere Estates consists of nine (9) properties, which originally were sold as undeveloped lots.

3. As an owner of one (1) of nine (9) lots, the Plaintiff represents 11% of the voting power.

4. Rosemere Estates is governed by the community's CC&Rs, which were drafted by the Developer, and dated January 4, 1994 (the "CC&Rs").

5. The CC&Rs created a "property owners' committee" ("Owners Committee").

6. On February 25, 1997, the Owners Committee, unanimously formed "Rosemere Estates Property Owners' Association" (the "Association") on February 25, 1997, a NRS 82 non-profit corporation, for the purpose of acting as a limited purpose association pursuant to Nevada Revised Statutes, Chapter 116.

7. Each property within Rosemere Estates is part of the Association.

8. The Owners Committee has consisted of three members, a President, Secretary and Treasurer.

9. The Association held Board elections every three (3) years through March 2010.

10. Each election cycle, homeowners would be invited to submit applications to run for the Board. Thereafter, election forms would be distributed, and an election would take place wherein three (3) Board members were elected.

11. The last election took place on March 24, 2010.

12. Presently, there is no sitting and acting Board for the Association.

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II. CONCLUSIONS OF LAW

A. Summary Judgment Standard

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

2. "Summary Judgment is appropriate and shall be rendered forthwith when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to judgment as a matter of law." Wood v. Safeway, 121 Nev. Adv. Op. 73, 121 P.3d, 1026, 1029 (2005)(*quoting* NRCP 56(c)). In Wood, the Nevada Supreme Court rejected the "slightest doubt" standard from Nevada's prior summary judgment jurisprudence, Id. at 1037, and adopted the summary judgment standard which had been articulated by the United States Supreme Court in its 1986 Trilogy: Celotex Corp. v. Catrett, 477 U.S. 317 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986); and *Matsushita Electrical* Industrial Company v. Zenith Radio Corporation, 475 U.S. 574 (1986).

3. The application of the standard requires the non-moving party to respond to the motion by "Set[ting] forth specific facts demonstrating existence of a genuine issue for trial." Wood, 121 p.3d at 1031. This obligation extends to every element of every claim made, and where there is a failure as to any element of a claim, summary judgment is proper. Barmettler v. Reno Air, Inc., 114 Nevada 441, 447, 956, P2d. 1382, 1386 (1998).

4. The Nevada Supreme Court held that "Rule 56 should not be regarded as a "disfavored procedural shortcut" but instead as an integral important procedure which is designed "to secure just, speedy and inexpensive determination in every action." *Wood*, 121, p.3d at 1030 (quoting Celotex, 477 U.S. at 327). In Liberty Lobby, the U.S. Supreme Court noted that:

> "Only disputes over facts that might affect the outcome of the suit under governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.

Id. (quoting *Liberty Lobby*, 477 U.S. at 247-48).

B. The District Court Has The Authority To Order An Election

5. The Association is a *limited purpose association* per NRS 116. While a limited purpose association is not restricted by all of the provisions of Chapter 116, a limited purpose association must have a Board of Directors. NRS 116.1201, 116.31083, 116.31152.

6. Pursuant to the provisions of Chapter 116 applicable to limited purpose associations, the Board must conduct noticed meetings at least once every quarter, review pertinent financial information, discuss civil actions, revise and review assessments for the common area expenses, establish adequate reserves, conduct and publish a reserve study, and maintain the common areas as required. NRS 116.31083 – 116.31152, 116.31073.

7. Further, the CC&Rs require the Board to oversee and conduct the maintenance of defined common areas.

8. Chapter 116 does not provide for a method of elections for a limited purpose association Board. However, a Board must exist and, as a consequence, so must elections. See generally NRS 116.1201, 116.31083, 116.31152.

9. While Chapter 116 is silent, Chapter 82, provides needed guidance in this regard. NRS 82.286 states that "[i]f a corporation has members entitled to vote for the election of directors, or for the election of delegates who vote for the election of directors...the directors or delegates of every corporation must be chosen at the annual meeting of the members or delegates, to be held on a date and at a time and in the manner provided for in the bylaws, by a plurality of the votes cast at the election. If for any reason the directors are not elected pursuant to NRS 82.271 or 82.276 or at the annual meeting of the members or delegates, they may be elected at any special meeting of the members which is called and held for that purpose."

10. Further, if a non-profit corporation fails to conduct an election, as required, the directors then in office maintain their respective positions until an election takes place, as required by NRS 82.296. See NRS 82.301.

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11. If the corporation fails or refuses, as is the case here, to hold an election within 18 months after the last election, "the district court has jurisdiction in equity, upon application of any one or more of the members of the corporation representing 10 percent of the voting power of the members entitled to vote for the election of directors or for the election of delegates who are entitled to elect directors..." NRS 82.306.

12. Here, there has been no Board election for well over six (6) years. Further, the Board directors abandoned their positions in 2013.

13. Plaintiff, as the owner of one of the nine lots, represents 11% of the voting power. Thus, Plaintiff may apply to the District Court to hold an election, as Plaintiff has done so in this action.

14. When interpreting a statute, legislative intent "is the controlling factor." Robert E. v. Justice Court, 99 Nev. 443, 445, 664 P.2d 957, 959 (1983). The starting point for determining legislative intent is the statute's plain meaning. Id. When a statute "is clear on its face, a court cannot go beyond the statute in determining legislative intent." Id.; see also State v. Catanio, 120 Nev. 1030, 1033, 102 P.3d 588, 590 (2004). But when "the statutory language lends itself to two or more reasonable interpretations," the statute is ambiguous, and we may then look beyond the statute in determining legislative intent. *Catanio*, 120 Nev. at 1033, 102 P.3d at 590. Internal conflict can also render a statute ambiguous. Law Offices of Barry Levinson v. Milko, 124 Nev. 355, 367, 184 P.3d 378, 387 (2008).

15. To interpret an ambiguous statute, we look to the legislative history and construe the statute in a manner that is consistent with reason and public policy. Great Basin Water Network v. State Eng'r, 126 Nev. ——, ——, 234 P.3d 912, 918 (2010); see also Moore v. State, 122 Nev. 27, 32, 126 P.3d 508, 511 (2006); Robert E., 99 Nev. at 445–48, 664 P.2d at 959–61.

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16. The Legislature's intent is the primary consideration when interpreting an ambiguous statute. Cleghorn v. Hess, 109 Nev. 544, 548, 853 P.2d 1260, 1262 (1993). When construing an ambiguous statutory provision, "this court determines the meaning of the words used in a statute by examining the context and the spirit of the law or the causes which induced the [L]egislature to enact it." Leven v. Frey, 123 Nev. 399, 404, 168 P.3d 712, 716 (2007). In conducting this analysis, "[t]he entire subject matter and policy may be involved as an interpretive aid." Id. (internal quotation marks omitted). Accordingly, a court will consider "the statute's multiple legislative provisions as a whole." *Id.*

17. Chapter 116 is ambiguous with respect to the election of Board for a limited purpose association. While a Board is required, the election process normally required for a Board is not included in the limited purpose association statutory framework. See generally NRS 116.1201, 116.31083, 116.31152.

18. In 1997, the Nevada Legislature passed Senate Bill 314 (SB 314), and in 1999, the Legislature expanded legislation in Senate Bill 451 (SB 451), to provide protection, rights, and obligations of homeowners living in common interest communities, known as the Common-Interest Ownership Act, presently set forth in Chapter 116. SB 451 included several additional provisions intended to protect homeowners' rights to serve on an association's board and elect those board members, including 2-year terms, notification, secret balloting, proxies and public voting.

19. Further, SB 451 offered additional protections regarding the financial accountability of the Board of Directors. See generally NRS 116.31038, 31151, 31152.

20. There is no question that these additional financial safeguards and requirements of the board apply to a limited purpose association. However, the legislature did not include any election protocol for the limited purpose association. The Court is tasked with resolving this obvious ambiguity.

21. The Court has concluded in this matter that the election must proceed in the manner in which elections always have been held by the Association, every three (3) years.

22. The Court grants Plaintiff's First Cause of Action for Declaratory Relief that an election must be held pursuant to NRS 82.271, 82.276, and 82.306.

23. Plaintiff has provided good cause for this Court to order that the election be administered by a neutral third party selected by Plaintiff, and the neutral shall be paid for by the Association after the election is held and directors put in place.

III. JUDGMENT

IT IS HEREBY ADJUDGED AND DECREED

1. The Association shall hold an election within ninety (90) days from the date of this order.

2. Plaintiff is directed to retain a neutral third party, either a licensed community manager or attorney, to administer the election, which shall include all items required of a homeowners' election, including, but not necessarily limited to, the preparation and collection of nomination forms, preparation, mailing and collective of ballots, and counting of ballots at a duly notice Association election meeting. The neutral third party is ordered to look to NRS 116.31034 for guidance in the administration of the election.

3. The Association shall pay the neutral third party for its efforts in administering the election after the election takes place and directors take office.

4. This Court shall retain jurisdiction until this Order has been fully complied with, including but not limited to, the election has occurred, a Board is sitting, and the neutral third party has been paid by the Association.

5. Plaintiff is the prevailing party in this litigation and is ordered to submit a separation application for attorneys' fees and costs.

IS SO ORDERED this 13 day of Sept, 2017.

HONORABLE JERRY A. WIESE
District Court Judge, Dept. XXX

DATED: September 8, 2017

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

By: _____

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Attorneys for Plaintiff
JOHN ALLEN LYTLE and TRUDI LEE LYTLE, as Trustees of the Lvtle Trust

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

EXHIBIT "Q"

ORD
Richard E. Haskin, Esq.
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Attorneys for Plaintiff
JOHN ALLEN LYTLE AND TRUDI LEE LYTLE

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

ROSEMERE ESTATES PROPERTY OWNERS' ASSOCIATION; SHERMAN L. KEARL, an individual; GERRY G. ZOBRIST, an individual; and DOES 1 through 10, inclusive,

Defendants.

CASE NO.: A-15-716420-C
Dept.: XXX

ORDER GRANTING PLAINTIFF JOHN ALLEN LYTLE AND TRUDI LEE LYTLE'S, AS TRUSTEES OF THE LYTLE TRUST, MOTION FOR ATTORNEYS' FEES

On November 2, 2017, Plaintiffs John Allen Lytle and Trudi Lee Lytle ("Plaintiffs") Motion for Attorneys' Fees and Costs came on regularly for hearing, the Honorable Jerry A. Wiese presiding. Plaintiffs appeared through counsel, Richard E. Haskin, Esq. of Gibbs Giden Locher Turner, Senet & Wittbrodt, LLP. There was no appearance for Defendant Rosemere Estates Property Owners' Association ("Defendant"). Defendant did not file an opposition to the Motion and did not make an appearance at the hearing. Having considered the Motion, the arguments of counsel, the pleadings and papers on file herein, and good cause appearing therefore, the Court finds:

1. As the prevailing parties, Plaintiffs are entitled to an award of attorney fees under the Original CC&Rs and NRS § 116.4117.

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2. The plain terms of the Original CC&Rs authorize an award of fees in favor of Plaintiffs. As the Original CC&Rs provide, in pertinent part:

> 24. Except as otherwise provided herein, Subdivider or any owner or owners of any of the lots shall have the right to enforce any or all of the provisions of the covenants, conditions, and restrictions upon any other owner or owners. In order to enforce said provision or provisions, any appropriate judicial proceeding in law or in equity may be initiated and prosecuted by any lot owners or owners against any other owner or owners.
>
> 25. Attorney's Fees: In any legal or equitable proceeding for the enforcement of or to restrain the violation of the Declaration of Covenants, Conditions and Restrictions or any provision thereof, the losing party or parties shall pay in such amount as may be fixed by the court in such proceeding.

See Original CC&Rs, ¶¶ 24, 25.

3. Plaintiffs prevailed in this action, and the Court granted Plaintiffs' motion for summary judgment, in its entirety. Accordingly, Plaintiffs are entitled to an award of attorney fees, pursuant to the terms of the Original CC&Rs.

4. Further, Plaintiffs are also entitled to an award of attorney fees pursuant to NRS 116.4117. NRS 116.4117 provides as follows:

> 1. Subject to the requirements set forth in subsection 2, if a declarant, community manager or any other person subject to this chapter fails to comply with any of its provisions or any provision of the declaration or bylaws, any person or class of persons suffering actual damages from the failure to comply may bring a civil action for damages or other appropriate relief. . .
>
> 4. The court may award reasonable attorney's fees to the prevailing party.

5. The term "damages" in the phrase "suffering actual damages" refers to damages in the general sense of specifically provable injury, loss, or harm rather than the specific sense of economic damages. Whether quantifiable as a monetary loss or not, Plaintiffs suffered an injury, loss or harm as a result of the Association's actions. Accordingly, under the statute they had the right to bring a civil action for damages or other appropriate relief and, having, prevailed thereon may be awarded their reasonable attorney fees as the prevailing party.

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6. Plaintiffs' attorneys' fees, as set forth in the Motion and the affidavits in support thereof, satisfy the factors set forth in *Brunzell v. Golden gate Nat'l Bank* (1969) 85 Nev. 345, 349, 455 P.2d 31, 33. The Court considered all of the factors and applied them to Plaintiffs' request for attorneys' fees.

7. Specifically, the Court considered: (1) the qualities of the advocate, *i.e.* his ability, training and experience; (2) the character of the work done, its difficulty, intricacy, importance, time and skill required; (3) the work actually performed by the attorneys; and (4) the result, *i.e.* whether the attorney was successful in achieving a result for the client.

8. The Court applied each of the foregoing *Brunzell* factors to the work performed by Plaintiffs' attorneys, as set forth in the various affidavits and declarations presented to this Court with the moving papers, and concludes that each factor favors an award of the fees requested.

9. Plaintiffs' attorneys did admirable work in connection with this action, and the fees requested are reasonable given Plaintiffs' counsel's qualifications, the character of the work, the time and skill required, and the result achieved.

10. Plaintiffs are further entitled to costs in accordance with NRS 18.020.

Therefore,

IT IS HEREBY ORDERED that that Plaintiffs' Motion for Attorneys' Fees is GRANTED.

IT IS FURTHER ORDERED that Plaintiffs are awarded $14,807.50 in attorneys' fees and $655.10 in costs as against Defendant.

DATED this 7 day of November, 2017.

HONORABLE ~~ROB BARE~~ Jerry A. Wiese II
DISTRICT COURT JUDGE

JAG

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

Submitted by:

GIBBS GIDEN LOCHER TURNER, SENET & WITTBRODT LLP

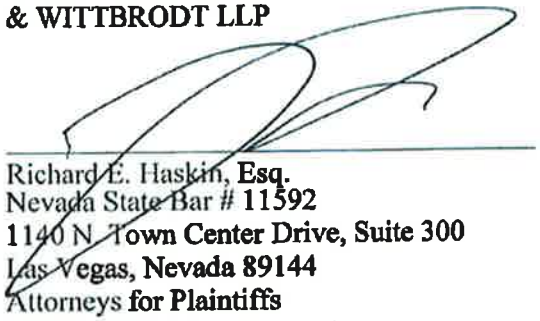

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EXHIBIT "R"

RECORDING REQUESTED BY

GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP

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

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APN No.: 163-03-313-007
APN No.: 163-03-313-008

ABSTRACT OF JUDGMENT

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DISTRICT COURT

CLARK COUNTY, NEVADA

JOHN ALLEN LYTLE and TRUDI LEE LYTLE, as Trustees of the Lytle Trust, Plaintiff, v. ROSEMERE ESTATES PROPERTY OWNERS' ASSOCIATION; and DOES 1 through 10, inclusive, Defendants.	CASE NO. A-09-593497-C Dept.: XII **ABSTRACT OF JUDGMENT**

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

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

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

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

///

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

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

DATED: 8/15/16

DISTRICT COURT JUDGE

RL

Respectfully requested by:

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

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EXHIBIT "S"

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JOHN ALLEN LYTLE and
TRUDI LEE LYTLE

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

ROSEMERE ESTATES PROPERTY OWNERS ASSOCIATION, a Nevada non-profit corporation; and DOES I through X, inclusive,

Defendants.

CASE NO. A-10-631355-C
Dept.: XXXII

ABSTRACT OF JUDGMENT

ROSEMERE ESTATES PROPERTY OWNERS ASSOCIATION, a Nevada non-profit corporation; and DOES I through X, inclusive,

Counterclaimants,

v.

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

Counterdefendants.

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JUL 12 2017

In the District Court of Clark County, State of Nevada, on November 14, 2016, an Order Granting Summary Judgment was entered in favor of Plaintiffs JOHN ALLEN LYTLE and TRUDI LEE LYTLE, as Trustees of the Lytle Trust ("Plaintiffs") and against Defendant ROSEMERE ESTATES PROPERTY OWNERS' ASSOCIATION ("Defendant").

On April 14, 2017, the District Court entered an Order Awarding Attorneys' Fees in the amount of $274,608.28, and $4,725.00 in costs, all in favor of Plaintiff and against Defendant.

On May 11, 2017, the District Court entered an Order Awarding Plaintiffs' Punitive Damages Following Prove-Up Hearing against Defendant in the amount of $823,824.84, pursuant to NRS 42.005.

Pursuant to the foregoing, the total amount of the Judgment, including attorneys' fees and costs, is $1,103,158.12.

In addition, Plaintiffs are due post-judgment interest at the Nevada legal rate annually until the Judgment is satisfied.

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

DATED: July 20, 2017

DISTRICT COURT JUDGE

ROB BARE
JUDGE, DISTRICT COURT, DEPARTMENT 32

Respectfully requested by:

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

By: _____

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Attorneys for Plaintiffs
JOHN ALLEN LYTLE and TRUDI LEE LYTLE

EXHIBIT "T"

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN ALLEN LYTLE AND TRUDI LEE LYTLE, AS TRUSTEES OF THE LYTLE TRUST,
Appellants,
vs.
ROSEMERE ESTATES PROPERTY OWNERS ASSOCIATION, A NEVADA NON-PROFIT CORPORATION,
Respondent.

No. 60657

JOHN ALLEN LYTLE AND TRUDI LEE LYTLE, AS TRUSTEES OF THE LYTLE TRUST,
Appellants,
vs.
ROSEMERE ESTATES PROPERTY OWNERS ASSOCIATION, A NEVADA NON-PROFIT CORPORATION,
Respondent.

No. 61308

FILED

DEC 21 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER VACATING AND REMANDING

These are consolidated appeals from a district court final judgment in a real property and declaratory relief action (Docket No. 60657) and a post-judgment award of attorney fees (Docket No. 61308). Eighth Judicial District Court, Clark County; Rob Bare, Judge.

Having considered the record, we conclude that the Lytles' actions during the NRED arbitration were sufficient to "submit" their slander of title claim to the NRED arbitrator for purposes of NRS 38.330(5). We also conclude that the Lytles did not need to establish that

they suffered monetary damages for their remaining claims to be viable. Accordingly, we vacate the district court's summary judgment.[1]

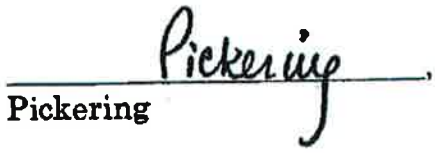
In light of our conclusion that summary judgment was improperly granted, we vacate the district court's June 5, 2012, order awarding attorney fees, costs, and damages to Rosemere, as Rosemere at this point is not the prevailing party. For the same reasons, we vacate the district court's August 13, 2012, order awarding supplemental attorney fees that the Lytles are challenging in Docket No. 61308.

Consistent with the foregoing, we

ORDER the judgment of the district court VACATED AND REMAND this matter to the district court for proceedings consistent with this order.[2]

J.
Saitta

J.
Gibbons



J.
Pickering

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[1]We have considered Rosemere's alternative arguments as to why the Lytles' claims fail on their merits. Based on the current record, we are unable to determine that all aspects of the Lytles' claims would fail as a matter of law.

[2]To the extent that our resolution of these appeals may appear inconsistent with our resolution of the appeal in Docket No. 63942, we note that our resolution of these appeals was premised in part on the Lytles' stipulation as to the amended CC&Rs' validity.

cc: Hon. Rob Bare, District Judge
Persi J. Mishel, Settlement Judge
Sterling Law, LLC
Leach Johnson Song & Gruchow
Eighth District Court Clerk

EXHIBIT "U"

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROSEMERE ESTATES PROPERTY OWNERS ASSOCIATION,
Appellant,
vs.
JOHN ALLEN LYTLE AND TRUDI LEE LYTLE, AS TRUSTEES OF THE LYTLE TRUST,
Respondents.

No. 63942

JOHN ALLEN LYTLE AND TRUDI LEE LYTLE, AS TRUSTEES OF THE LYTLE TRUST,
Appellants,
vs.
ROSEMERE ESTATES PROPERTY OWNERS ASSOCIATION,
Respondent.

No. 65294

JOHN ALLEN LYTLE AND TRUDI LEE LYTLE, AS TRUSTEES OF THE LYTLE TRUST,
Appellants,
vs.
ROSEMERE ESTATES PROPERTY OWNERS ASSOCIATION,
Respondent.

No. 65721

ORDER AFFIRMING (DOCKET NO. 63942); VACATING AND REMANDING (DOCKET NO. 65294); AFFIRMING IN PART, REVERSING IN PART, AND REMANDING (DOCKET NO. 65294); AND VACATING AND REMANDING (DOCKET NO. 65721)

These consolidated appeals challenge a district court summary judgment in a declaratory relief action (Docket No. 63942), an order denying monetary damages (Docket No. 65294), an order partially granting a motion to retax costs (Docket No. 65294), and an order denying a motion for attorney fees (Docket No. 65721). Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Docket No. 63942

In their summary judgment motions, the parties acknowledged that no genuine issues of material fact existed, that the sole legal issue for the district court to determine was whether Rosemere Estates Property Owners Association needed unanimous consent from its members to amend its CC&Rs, and that NRS 116.2117 did not dictate the outcome of this legal issue. Based on this common ground, the district court concluded that unanimous consent was required because, under common-law principles, the original CC&Rs were reciprocal servitudes that could not be amended absent unanimous consent from the affected property owners.

We have considered the arguments in Rosemere's opening brief and conclude that they do not call into question the basis for the district court's summary judgment. Nor are we persuaded that Rosemere's arguments otherwise warrant reversal of the summary judgment. In particular, we are not persuaded by Rosemere's argument regarding Section 37 of 1999 Senate Bill 451 because Rosemere has not identified any provision in the original CC&Rs that did not conform to NRS Chapter 116 and that would have required amendment.[1] As for Rosemere's argument that the Lytles failed to include a sworn statement in their complaint, this court has never held that NRS 38.330(5)'s sworn-statement requirement is jurisdictional. Accordingly, we affirm the district court's July 30, 2013, summary judgment in Docket No. 63942.[2]

---

[1]Nor has Rosemere explained how its 2007 amendments complied with Section 37's October 2000 deadline for making such amendments.

[2]We have considered Rosemere's remaining arguments and conclude that they either lack merit, have no bearing on the legal issue presented to the district court, or both.

Docket No. 65294

The Lytles challenge the district court's (1) order denying their request for monetary damages and (2) order partially granting Rosemere's motion to retax costs.

Monetary damages

The district court denied the Lytles' request for monetary damages based on the conclusion that monetary damages are not recoverable in a declaratory relief action. On appeal, the Lytles contend that this conclusion was erroneous, as NRS 30.100 expressly authorizes district courts to award monetary damages in declaratory relief actions. We agree.[3] *See Fred Ahlert Music Corp. v. Warner/Chappell Music, Inc.*, 155 F.3d 17, 25 (2d Cir. 1998) (recognizing that district courts have authority under NRS 30.100's federal counterpart to award monetary damages as "further relief"). Accordingly, we vacate the district court's March 11, 2014, order and remand for further proceedings consistent with this order.[4]

---

[3]Rosemere contends that the Lytles did not rely on NRS 30.100 in district court and should be prohibited from doing so for the first time on appeal. *Cf. Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in trial court . . . is deemed to have been waived and will not be considered on appeal."). Because the district court sua sponte denied the Lytles' request for damages based on an erroneous legal conclusion, *Old Aztec*'s waiver rule is inapplicable.

[4]Rosemere contends that the district court's order should be affirmed on the alternative ground that the Lytles failed to provide admissible evidence to support their requested monetary damages. Because the record on appeal is unclear in this respect, we decline to do so. *See Zugel v. Miller*, 99 Nev. 100, 101, 659 P.2d 296, 297 (1983) ("This court is not a fact-finding tribunal . . . .").

Costs

The Lytles contend that the district court abused its discretion in partially granting Rosemere's motion to retax costs. *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev., Adv. Op. 15, 345 P.3d 1049, 1054 (2015) (recognizing that district courts have wide discretion in determining whether to award costs). In particular, the Lytles contend that they provided sufficient documentation to demonstrate that they reasonably, necessarily, and actually incurred costs relating to (1) photocopies and telecopies, and (2) filing fees and e-filing charges. We disagree with the Lytles' contention with respect to the first category, *see id.*, but agree with the Lytles' contention with respect to the second category, particularly in light of Rosemere's failure to specifically address that issue. *See Ozawa v. Vision Airlines, Inc.*, 125 Nev. 556, 563, 216 P.3d 788, 793 (2009) (treating the failure to respond to an argument as a confession of error). Accordingly, we reverse the district court's February 13, 2014, order to the extent that it denied the Lytles' request for costs relating to filing fees and e-filing charges. All other aspects of that order are affirmed.

Docket No. 65721

The parties dispute whether the Lytles timely filed their motion for attorney fees. We agree with the Lytles that their motion was filed within 20 days from the notice of entry of the final judgment, which rendered their motion timely. *See Barbara Ann Hollier Trust v. Shack*, 131 Nev., Adv. Op. 59, ___ P.3d ___, ___ (2015); *see also Miltimore Sales, Inc. v. Int'l Rectifier, Inc.*, 412 F.3d 685, 688 (6th Cir. 2005); *Weyant v. Okst*, 198 F.3d 311, 314 (2d Cir. 1999).

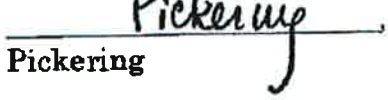
The parties next dispute whether a statute, rule, or contractual provision authorized the Lytles to recover attorney fees. Both parties agree, however, that NRS 116.4117 authorizes attorney fees if the

prevailing party suffers "actual damages." NRS 116.4117(1), (6). In light of our determination in Docket No. 65294 that the Lytles may be entitled to monetary damages, *cf. Davis v. Beling*, 128 Nev., Adv. Op. 28, 278 P.3d 501, 512 (2012) (equating "actual damages" with "compensatory damages"), the district court's denial of attorney fees may have been improper.[5] Accordingly, we vacate the district court's May 29, 2014, order denying attorney fees and remand for further proceedings consistent with this order.

It is so ORDERED.

_____, J.
Saitta

_____, J.
Gibbons



_____, J.
Pickering

cc: Hon. Michelle Leavitt, District Judge
Sterling Law, LLC
Gibbs Giden Locher Turner Senet & Wittbrodt LLP
Leach Johnson Song & Gruchow
The Williamson Law Office, PLLC
Eighth District Court Clerk

[5]In light of our determination in this respect, we decline to consider the parties' arguments regarding whether the original CC&Rs or the amended CC&Rs authorized attorney fees. We likewise decline to consider the parties' arguments regarding whether the Lytles' requested fees were reasonable.

Docket Number - 65970

Document Year - 2015

Document Number - 31751

EXHIBIT "V"

ORDR
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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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On June 29, 2017, Defendants' Motion for Reconsideration or, in the Alternative, Motion to Alter or Amend Judgment, came on for hearing. 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.

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

FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. After obtaining the Attorneys' Fees Judgment, the Defendants, on August 16, 2016, recorded with the Clark County Recorder's office an Abstract of Judgement referencing the Final Judgment against the Association, recorded as Instrument #20160818-0001198 (the "First Abstract 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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13. On September 2, 2016, the Defendants recorded with the Clark County Recorder's office an Abstract of Judgement referencing the Final Judgment against the Association, recorded as Instrument #20160902-0002684 (the "Second Abstract of Judgment"). The Second Abstract of Judgment listed the parcel number of the Lamothe Property only as the property to which the Judgment was to attach.

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

CONCLUSIONS OF LAW

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

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

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

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.

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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.

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

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 as to Plaintiffs' claims and causes of action for quiet title and declaratory relief, the Second and Third Causes of Action in Plaintiffs' First Amended Complaint.

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

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

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

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

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

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

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

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 14th day of July 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.
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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SEPTEMBER TRUST, DATED MARCH 23, 1972; GERRY R. ZOBRIST AND JOLIN G. ZOBRIST, AS TRUSTEES OF THE GERRY R. ZOBRIST AND JOLIN G. ZOBRIST FAMILY TRUST; RAYNALDO G. SANDOVAL AND 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, Plaintiffs, vs. TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, AS TRUSTEES OF THE LYTLE TRUST; JOHN DOES I through V; and ROE ENTITIES I through V, inclusive, Defendants.	Case No.: A-17-765372-C Dept. No.: XXVIII **PLAINTIFFS' REPLY TO DEFENDANTS' OPPOSITION TO THE MOTION FOR SUMMARY JUDGMENT, OR, IN THE ALTERNATIVE, MOTION FOR JUDGMENT ON THE PLEADINGS AND OPPOSITION TO PLAINTIFFS' COUNTERMOTION FOR SUMMARY JUDGMENT** Date: March 8, 2018 Time: 9:00 a.m.

Come Now the Plaintiffs, September Trust, dated March 23, 1972 ("September Trust"), Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust ("Zobrist Trust"), Raynaldo G. Sandoval and Julie Marie Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution

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

Trust Dated May 27, 1992 ("Sandoval Trust"), and Dennis A. Gegen and Julie S. Gegen, Husband and Wife, as Joint Tenants ("Gegen") (hereafter September Trust, Zobrist Trust, Sandoval Trust and Gegen may be collectively referred to as "Plaintiffs"), by and through their attorneys, Christensen James & Martin, hereby Reply to and Oppose the Defendants Trudi Lee Lytle, and John Allen Lytle, the Lytle Trust (1) Opposition to Motion for Summary Judgment, or, in the Alternative, Motion for Judgment on the Pleadings; and (2) Countermotion for Summary Judgment (hereafter the "Countermotion"). This Reply and Opposition are made and based on the following Memorandum of Points and Authorities, the pleadings, papers, and exhibits on file herein or attached hereto, and any oral argument entertained by the Court.

DATED this 21st day of February, 2018.

CHRISTENSEN JAMES & MARTIN

By: */s/ Laura J. Wolff, Esq.*
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Attorneys for Plaintiffs

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

The Plaintiffs have brought this lawsuit to have liens expunged from their properties that were wrongfully recorded by the Lytles. One court has already decided this issue in favor of similarly situated homeowners. In his Summary Judgment Order (the "Order"), Judge Timothy C. Williams in Case No. A-16-747900-C found, among other things, that the

Association is not subject to NRS 116.3117, the property owners were not parties to the Rosemere Litigation, the Rosemere Judgment I is not an obligation or debt of the property owners and that the Abstracts of Judgment were improperly recorded against such properties and must be expunged and stricken from the record. The Plaintiffs believe that when this Court reviews Judge Williams' Order it will determine such is a judicially sound decision based on all the facts and law of this case, as explained in detail below. The Plaintiffs request that this Court grant substantially similar relief in this case to avoid inconsistent rulings involving the same facts, the same or similarly situated parties, and the same law.

II.

RESPONSE TO BRIEF STATEMENT OF MATERIAL AND UNDISPUTED FACTS

Defendants state as a fact that the Association includes every lot in the subdivision based on the language in the first paragraph of the Original CC&Rs. *See* Countermotion at 4:1-8. This has no basis in law or fact and is simply not true. *See* discussion *infra* Section III.D.5.

The allegations with regard to the Amended CC&Rs are simply not relevant to this litigation because the Lytles have argued since 2007 in every contested stage of every case they have filed related to this issue that the Amended CC&Rs should be declared void *ab initio* - which they were in the NRED 1 and 2 litigations. *See* Countermotion at 4:14-28, 5, 6:1-3; *see also infra* Section III.C. Simply put, the Lytles are attempting to paint a picture of the horrible acts of the Association, which may or may not be true, but such actions are not relevant to this case. This case is about the Lytles taking Judgments obtained against the Association and unlawfully recording them against the Plaintiffs' properties.

Defendants spend three (3) pages explaining the past litigation between the Lytles and the Association. Countermotion at 6:4-28, 8, 9. The NRED 1, 2 and 3 cases were against the Association and not the Plaintiffs. Therefore, any judgments obtained and motions won by the Lytles were against the Association and not the individual homeowners. Additionally, what the Lytles conveniently leave out is that all the money Judgments obtained against the Association in the NRED 1, 2 and 3 cases were granted after the Association's counsel withdrew. On January 6, 2016, the attorneys for the Association filed their Motion to Withdraw as Attorney of Record on an Order Shortening Time in all three (3) cases. Thereafter, all orders and judgments obtained by the Lytles, including the Judgments recorded against the Plaintiffs' properties, were uncontested, as explained below.

In the NRED 1 litigation, the Court entered its Order on the Motion to Withdraw on February 2, 2016. Thereafter, the Association was not represented by counsel and all pleadings were unopposed, as follows: 1. On March 24, 2016, the Lytles filed their Motion for Attorney's Fees; 2. On April 26, 2016, the Lytles filed a Notice of Non-Opposition to their Motion for Attorney's Fees; 3. On May 2, 2016, Judge Leavitt granted the unopposed Motion for Attorney's Fees; 4. On June 3, 2016, the Court entered its Order granting the Attorney's Fees; and 5. Thereafter, the Lytles filed and the Court heard their unopposed Motion to Prove Up Damages and Costs and the Abstract of Judgment was recorded.

On February 12, 2016 in the NRED 2 Litigation, Judge Rob Bare granted the Motion and the Order on the Motion to Withdraw was filed. Thereafter, the Association was not represented by counsel and all pleadings filed thereafter were unopposed, as follows: 1. On or about March 8, 2016, the Lytles filed a Motion for Leave to File a First Amended Complaint, which was granted on June 3, 2016; 2. On or about September 14, 2016, the

Lytles filed their Motion for Summary Judgment which was granted on or about November 14, 2016, which included punitive damages; 3. On or about January 16, 2017, the Lytles filed their Motion for Attorney's Fees which was granted on April 18, 2017; 4. On or about February 23, 2017, the Lytles filed their Motion to Prove-Up Damages which was granted on or about May 15, 2017; and 5. On or about July 20, 2017, the District Court signed an Abstract of Judgment in the amount of $1,103,158.12.

At a hearing on January 14, 2016 in the NRED 3 Litigation, Judge Jerry A. Wiese granted the Motion to Withdraw. On January 26, 2016, the Order on the Motion to Withdraw was filed. Thereafter, the Association was not represented by counsel and all pleadings filed thereafter were unopposed, as follows: 1. On or about May 10, 2016, the Lytles filed their Motion for Summary Judgment; 2. On or about September 13, 2017, the Court entered its Order granting Summary Judgment; and 3. On or about November 7, 2017, the Lytles' Motion for Attorney's Fees and Costs was granted.

III.

ARGUMENT

The Lytles are taking a Judgment they have obtained against the Association and are trying to enforce it against the individual homeowners. They are doing this in direct contravention of the results of the NRED 1, 2 and 3 cases. In the NRED 1 and 2 cases, the Court found that the Amended CC&R's were void *ab initio*. Thus, the Lytles are not entitled to any remedies found in NRS 116.3117. This very same issue has already been decided by Judge Timothy Williams in the BL Lawsuit, which should be followed by this Court.

A. Judicial Economy and Judicial Consistency Will be Served if this Court Adopts a Similar Ruling to Judge Williams.

On July 25, 2017, Judge Timothy C. Williams issued the Order in Case No. A-16-747900-C granting the Bouldens' and Lamothes' Motion for Partial Summary Judgment. *See* Exhibit 10 attached to the Plaintiffs' SJ Motion. In the Order, Judge Williams found that, among other things, the Association is not subject to NRS 116.3117, the Judgment is not an obligation or debt of the Bouldens or the Lamothes and that the Abstracts of Judgment were improperly recorded against such properties and must be expunged and stricken from the record. *See* Ex. 10 at 4-5. After the Court issued its Order, the Lytles released their liens against the Boulden and Lamothe properties. *See* Exhibit 11 attached to the SJ Motion. The Lytles have appealed Judge Williams' Order. A true and correct copy of the Appellants' Opening Brief is attached hereto as Exhibit "16".

Naturally, the Plaintiffs in this case would like the same relief that Judge Williams granted to the Bouldens and Lamothes. This relief is necessary and appropriate now to clear the Plaintiffs' title to their property. The Plaintiffs urge this Court to review Judge Williams' Order and all the prior court pleadings that resulted in his decision. It is legally sound and appropriate to be applied here in this Case.

Further, on February 21, 2018, Judge Mark Bailus granted the Plaintiffs' Motion to Consolidate this Case with Case No. A-16-747900-C, where the Order was entered. Since the cases have been consolidated, the doctrine of the "law of the case" should apply. "The law-of-the-case doctrine 'refers to a family of rules embodying the general concept that a court involved in later phases of a lawsuit should not re-open questions decided (i.e., established as law of the case) by that court or a higher one in earlier phases.'" *Recontrust Co. v. Zhang*, 130 Nev. Adv. Op. 1, 317 P.3d 814, 818 (2014) (quoting *Crocker v. Piedmont*

Aviation, Inc., 49 F.3d 735, 739 (D.C. Cir. 1995)). For the doctrine to apply, the earlier court must have actually addressed the issue explicitly or by necessary implication. *Id.*

> The law of the case doctrine "is designed to ensure judicial consistency and to prevent the reconsideration, during the course of a single continuous lawsuit, of those decisions which are intended to put a particular matter to rest." The law of the case doctrine, therefore, serves important policy considerations, including judicial consistency, finality, and protection of the court's integrity.

Hsu v. Cty. of Clark, 123 Nev. 625, 630, 173 P.3d 724, 728 (2007) (quoting *U.S. v. Real Prop. Located at Incline Vill.*, 976 F.Supp. 1327, 1353 (D. Nev. 1997)). The rule is "designed to protect both the court and the litigants before it from repeated reargument of issues already decided." *U.S. v. Real Prop. Located at Incline Vill.*, 976 F. Supp. 1327, 1353 (D. Nev. 1997).

Here, several key issues were addressed by Judge Williams which should be the law of the case, including that the Association is not subject to NRS 116.3117, the property owners were not parties to the Rosemere Litigation, the Rosemere Judgment I is not an obligation or debt of individual property owners, and that the Abstracts of Judgment were improperly recorded against such properties and must be expunged and stricken from the record. The only issue not decided by Judge Williams is whether this relief is appropriate as to these particular Plaintiffs/Property Owners. Adopting Judge Williams' Order for these Plaintiffs will promote judicial economy, consistency, finality, and protection of the court's integrity.

Plaintiffs are aware that since Judge Williams has recused himself Judge Bailus will be deciding this SJ Motion. However, this Court should decide these issues in the same way to avoid inconsistent verdicts and to serve judicial economy. The Court should not reopen every decision entered in this case merely because the case has been reassigned, and

entering inconsistent opinions dealing with the exact same issues will not serve anyone's interests.

Adopting Judge Williams' Order also makes sense because the Lytles have already appealed the decision, and the Supreme Court will now be making the ultimate decision in this matter. Judicial resources should not be spent relitigating these issues when the ultimate legal questions will be decided by the Nevada Supreme Court.

Additionally, Plaintiffs assert that issue preclusion applies in this case. "Issue preclusion, or collateral estoppel, is a proper basis for granting summary judgment." *LaForge v. State, University and Community College System of Nevada*, 116 Nev. 415, 419, 997 P.2d 130 (2000). Courts have found that a "district court's partial summary judgment arguably finally adjudicates one of respondent's claims for relief." *Hallicrafters Co. v. Moore*, 102 Nev. 526, 528, 728 P.2d 441, 442 (1986).

In *Executive Mgmt. v. Ticor Title Ins. Co.*, 114 Nev. 823, 835-36, 963 P.2d 465, 473-74 (1998), the Nevada Supreme Court clarified the three-part test for issue preclusion as follows: "(1) the issue decided in the prior litigation must be identical to the issue presented in the current action; (2) the initial ruling must have been on the merits and have become final; and (3) the party against whom the judgment is asserted must have been a party in privity with a party to the prior litigation." "Unlike claim preclusion, issue preclusion 'does not apply to matters which could have been litigated but were not.' " *Id* at 473 *quoting Pomeroy v. Waitkus*, 183 Colo. 344, 517 P.2d 396, 399 (1974) (footnote omitted). Issue preclusion may apply "even though the causes of action are substantially different, if the same fact issue is presented." *Clark v. Clark*, 80 Nev. 52, 56, 389 P.2d 69, 71 (1964).

In the instant case, the facts and circumstances are exactly the same and the Defendants are the same. The exact same fact pattern exists in this case as in the case it has been consolidated with, Case No. A-16-747900-C. The only difference in this case is that there are four (4) different homeowners asserting the exact same request for relief. Thus, issue preclusion should be applied and Judge Williams' Order should be followed by this Court.

B. The Lytles' Monetary Judgments Against the Association are Akin to Default Judgments So Should be Weighted Lightly in any Deliberations by this Court.

In each of the cases filed by the Lytles (NRED 1, 2 and 3), the monetary Judgments that the Lytles obtained against the Association were prepared and filed by the Lytles' attorneys and were unopposed by the Association. Any hearings held to obtain the Judgments were not contested or attended by any representative of the Association. *See supra* Section II; Exhibit "17", a true and correct copy of the Case Summaries in the NRED 1, 2 and 3 cases. Thus, the Lytles obtained what can only be considered "default judgments" against the Association. In the instant case, the Lytles are now trying to enforce these "default judgments" against parties that were never named in the lawsuits **they** filed.

The Nevada courts have been clear that justice is best served when cases are decided upon their merits and not through default judgments. *Hotel Last Frontier Corp. v. Frontier Props., Inc.*, 79 Nev. 150, 155, 380 P.2d 293 (1963). A strong policy exists in favor of resolution of disputes on their merits. *Yochum v. Davis*, 98 Nev. 484, 487, 653 P.2d 1215 (1982). "Default judgments are only available as a matter of public policy when an essentially unresponsive party halts the adversarial process." *Lindblom v. Prime Hospitality Corp.*, 120 Nev. 372, 376, 90 P.3d 1283 (2004). Default judgments are usually set aside "because the court favors resolving disputes on their merits." *Jiminez v. State, Dept of*

Prisons, 98 Nev. 204, 644 P.2d 1023 (1982). "The district court has wide discretion in determining whether to set aside a default judgment." *Reynolds v. Spinelli*, 281 P.3d 1213, 2009 WL 3189344 * 1 (2009). Further, the defaulting actions of one defendant cannot be imputed to another who behaves properly. *Gearhart v. Pierce Enters., Inc.*, 105 Nev. 517, 520, 779 P.2d 93, 95 (1989) (citing *Doyle v. Jorgensen,* 82 Nev. 196, 203 n. 11, 414 P.2d 707, 711 n. 11 (1966)).

The Plaintiffs are not the Association and so cannot request that the monetary Judgments obtained by the Lytles against the Association be set aside. However, what the Plaintiffs are asking this Court to do is to look at the nature of the Judgments that the Lytles are trying to now impose against the individual homeowners. For instance, when the Lytles point to certain language in the monetary Judgments they obtained against the Association, it would be appropriate for this Court to consider that such language was written by the Lytles and was unopposed by the Association. The monetary Judgments obtained by the Lytles have not been tried on their merits and have now been recorded against parties not part of such litigation. This Court should use its wide discretion in determining what kind of weight it should use in considering the language of the monetary judgments obtained by the Lytles in the NRED 1, 2 and 3 litigation.

C. The NRED 2 Stipulation Between the Lytles and the Association Has No Effect in This Case and Was Rendered Null and Void When the Lytles Obtained Their Summary Judgment Order.

Defendants assert that there is no "declaration that the Amended CC&Rs were void *ab initio* in the NRED 2 Ligation." Countermotion, p. 12:14-16. Plaintiffs assert that the exact opposite is true based on the pleadings prepared and filed by the Lytles.

A judgment pursuant to a stipulation of the parties does not have a *res judicata* effect. *Geissel v. Galbraith*, 105 Nev. 101, 104, 769 P.2d 1294, 1296 (1989) (citing *United States v. International Building Co.*, 345 U.S. 502, 505–506 (1953)). Further, Paragraph 11 of the NRED 2 litigation Complaint states, "Pursuant to a stipulation and/or agreement between the Plaintiff TRUST and the Defendant ASSOCIATION in the NRED action, the parties to the NRED action agreed that the Amended CC and R's and Bylaws of the Defendant ASSOCIATION was valid and enforceable **only for the purpose of the NRED action** and because this is a trial de novo of the NRED action **the Plaintiff TRUST once again agrees for the purpose of this litigation only** that the Amended CC and R's and Bylaws of the Defendant ASSOCIATION are valid and enforceable" (emphasis added). Ex. I, attached to the Countermotion at 3:24-28, 4:1. Thus, according to binding law, and as explained in the Complaint filed by the Lytles, the Stipulation stating that the Amended CC&Rs were valid was exclusively for the purposes of that case only and cannot be used in any manner in this case.

Second, and more importantly, the language of the NRED 2 Summary Judgment Order **prepared by Lytles' attorney** and unopposed by the Association (which they acknowledge in the Order) entered on November 15, 2016, **specifically refutes** what the Lytles have asserted about the NRED 2 Litigation in their Countermotion. The "Conclusions of Law" Section specifically states:

> 6. The Lytles' Seventh Cause of Action seeks Declaratory Relief and assumes, therein, **that the Amended CC&Rs are void ab initio, as they indeed are.**[1] [FN 1. Plaintiffs believe that a determination as to the Seventh Cause of Action first, which alleges that the liens are void ab initio and must be revoked **because the District Court already has determined that the Amended CC&Rs are void ab initio is the appropriate starting point for the Court's determination of this matter.**] See First Amended Complaint ("FAC"), ¶¶ 32 -39. Specifically, the Lytles seek this Court to declare that the

Liens based on the assessments at issue are invalid because they were based on the Amended CC&Rs, which were void *ab initio* - meaning that there was never any right prescribed by the Amended CC&Rs as they were void from their inception and recording.

7. *Void ab initio* means that the documents are of no force and effect, *i.e.* it does not legally exist. Washoe Medical Center v. Second Judicial Dist. Court of State of Nev., 122 Nev. 1298, 1304, 148 P.3d 790, 794 (2006); see also Black's Law Dictionary, 2d ed.. The phrase *ab initio* comes from Latin and has the literal translation "from the start" or "from the beginning." If a court declares something void ab initio, it typically means that the court's ruling applies from the very beginning, from when the act occurred. **In other words, the court declares the documents, in this case, the Amended CC&Rs, invalid from the very inception.**

8. Here, this Court has declared the Amended CC&Rs void *ab initio*, meaning that they never had any force and effect. The liens in questions are all based on assessments that were levied pursuant to the Amended CC&Rs. As a result, the assessments and resulting liens are invalid and must be similarly declared void *ab initio*

. . .

13. As set forth above in this Order, the Amended CC&Rs and the liens based thereon are all void *ab initio*. The recording of the Amended CC&Rs and the liens all were a cloud on title, and summary judgment granting Plaintiffs Quiet Title cause of action is warranted and granted.

. . .

22. This Court already found that the Association had no lawful right to record and enforce the Amended CC&Rs. As such, the Amended CC&Rs were declared *void ab initio*....

. . .

53. The Association's Counterclaim merely seeks to enforce actions taken against the Lytles via the Amended CC&Rs, which are *void ab initio* as set forth herein....

(emphasis added). *See* Exhibit L, attached to the Countermotion, at 7:1-17, 8:12-14, 9:18-19, 14:1-3.

Thus, even in the NRED 2 litigation where the Lytles stipulated that the Amended CC&Rs were in effect for the purpose of that litigation only, in the Summary Judgment Order prepared by their attorneys, the Lytles declare that the Amended CC&Rs are void *ab initio* at least six (6) times. The Order itself explains what this means—they are void from

the very beginning thus completely obliterating the Stipulation entered into that validated the Amended CC&Rs. Therefore, the Lytles are now estopped from arguing that they can obtain relief under the Amended CC&Rs in the NRED 2 litigation because of the Stipulation entered into with the Association and cited by the Supreme Court in an opinion. Plaintiffs are hard pressed to understand how the Lytles can even make such an argument before this Court without it actually being considered a lie and a falsehood punishable by law.

D. Key Provisions of NRS 116 Do Not Apply to Limited Purpose Associations so the Lytles Cannot Record the Judgments Obtained Against the Association to Lien Plaintiffs' Properties.

The provisions of Chapter 116 that apply to limited purpose associations are expressly limited to only those enumerated in NRS 116.1201. These limited provisions do not include NRS 116.3117. However, the Lytles are now trying to invoke all the rights, privileges and remedies allowed under Chapter 116 based on the Amended CC&R's which they had declared void *ab initio* in the NRED 1 and 2 litigation, and upon which they do not rely in the NRED 3 litigation.

1. *The American Rule Provides that Void Contracts Are Unenforceable.*

Void ab initio contracts are completely unenforceable. In *Golden Pisces, Inc. v. Fred Wahl Marine Constr., Inc.*, 495 F.3d 1078 (9th Cir. 2007), a shipowner who prevailed in a breach of contract action by showing that the underlying contract was void sought to enforce an attorney's fee provision from the void contract. After analyzing many state and federal cases including *Mackintosh v. California Fed. Sav. & Loan Ass'n*, 113 Nev. 393, 405–06, 935 P.2d 1154, 1162 (1997), a case on which the Lytles heavily rely, the Ninth Circuit determined that "[t]he principle that emerges from our survey of federal and state case law is that, consistent with the American Rule, a party who prevails by demonstrating that a

contract is entirely void, as opposed to divisible, voidable, or rescindable, cannot then seek the benefit of an attorney' fees provision from that contract." *Id.* at 1083. In fact, the Ninth Circuit stated the *Macintosh* case "distinguished between a **void contract and a rescinded contract** . . . and enforced an attorneys' fees provision in favor of the party who prevailed by showing that the contract at issue was **rescinded.**" *Id.* (emphasis added). The Ninth Circuit Court reasoned that the doctrine of judicial estoppel, "which precludes a party from gaining an advantage by taking contradictory positions at different stages of a judicial proceeding," applied to the shipowner's attempt to claim attorney's fees because the shipowner "first argued to [its] advantage that the written contract was void ... and now seek[s], again to [its] advantage, to enforce a term from that same contract." *Id.* at 1084 (internal quotation marks omitted).

Further, *Katz v. Ban Der Noord*, 546 So.2d 1047 (Fla. 1989), upon which *Mackintosh* relies, makes clear that the holding is about a contract that is **rescinded**, not a contract that is void *ab initio*, as follows:

> The legal fictions which accompany a judgment of rescission do not change the fact that a contract did exist. It would be unjust to preclude the prevailing party to the dispute over the contract which led to its rescission from recovering the very attorney's fees which were contemplated by that contract. This analysis does no violence to our recent opinion in *Gibson v. Courtois* in which we held that the prevailing party is not entitled to collect attorney's fees under a provision in the document which would have formed the contract **where the court finds that the contract never existed**.

Id. at 1049 (emphasis added). Thus, although the Lytles cited to *Mackintosh* in their Attorneys' Fees Order, and rely on it here (Countermotion at 16), the case clearly does not apply since the Lytles had the Amended CC&R's declared void *ab initio*, and not just rescinded, in both the NRED 1 and 2 litigations. Further, the Plaintiffs remind the Court that the Lytles prepared the Order upon which they are relying and the Association had

withdrawn representation at that point. Therefore, any language in the Order should be construed narrowly and suspiciously as explained in Section III.B., *supra*.

2. *The Sword and Shield Doctrine Only Applies Against the Lytles.*

The Lytles argue that the Plaintiffs cannot use NRS 116 as a shield when the **Association** used it as a sword in the underlying litigation. First and foremost, the Plaintiffs are not the Association. Therefore, any arguments the Plaintiffs make in this case were never asserted in the NRED 1, 2 and 3 litigations. Thus, the Plaintiffs have never used NRS 116 as a sword and the "sword and shield" doctrine cannot be used against the Plaintiffs when they were not even parties to the litigation. This is made paramount when reviewing Defendants' arguments in Section III.D.2.b. of their Countermotion – every argument and allegation made regarding this issue is directed at the "Association." *See* Countermotion at 17-18. The Plaintiffs are not the Association, it is that simple.

On the other hand, the Lytles **were** parties in the NRED 1, 2 and 3 litigations. In each of those cases, the Lytles used NRS 116 as a shield to protect themselves from the Amended CC&Rs requesting that the Court declare such void *ab initio*. The Lytles now have the audacity to claim that they can benefit from all the remedies provided by NRS 116 in order to enforce a lien obtained against the Association against the individual homeowners. In presenting such an argument, the Lytles themselves provide a perfect case scenario of the "sword and shield" doctrine. Now that it benefits the Lytles to use the remedies available in NRS 116, they completely change their argument and swear that though they spent hundreds of thousands of dollars to have the Courts declare that the Amended CC&Rs were void *ab initio*, now they want to claim that they can still avail

themselves of such in accessing NRS 116. In doing so, the Lytles are attempting to have their cake and eat it too.

Further, the sword and shield doctrine is not applicable against the Plaintiffs in this case because it is mostly applied in the context of the use of privileges. For example, Defendants cite to *Molina v. State*, 120 Nev. 185, 194, 87 P.3d 533 (2004), which states, "We will not permit a defendant to use insufficient communication with his attorney as a sword to assert a claim of ineffective assistance of counsel, but then use a claim of attorney-client privilege as a shield to protect the content of his conversations with his attorney." *See also Fong v. MGM Mirage Intern. Marketing, Inc.*, 128 Nev. 896, 381 P.3d 612 (Table) (2012) (Plaintiff asserts sword and shield doctrine with regard to a gaming privilege); *Wardleigh v. Second Judicial Dist. Court in and for County of Washoe*, 111 Nev. 345, 354, 891 P.2d 1180 (1995) ("The doctrine of waiver by implication reflects the position that the attorney-client privilege was intended as a shield, not a sword.")(citations and quotation omitted); *Wynn Resorts, Limited v. Eighth Judicial District Court in and for County of Clark*, 399 P.3d 334, 346 (2017) (Invoking the sword and shield doctrine with regard to producing an investigative report but claiming a privilege for the underlying documents); *Las Vegas Sands v. Eighth Jud. Dist. Ct.*, 319 P.3d 618, 625, 130 Nev. Adv. Op. 13 (2014) (We have previously observed that "the attorney-client privilege was intended as a shield, not a sword." (citations omitted)); *Sahara Gaming Corp. v. Culinary Workers Union Local 226*, 115 Nev. 212, 224, 984 P.2d 164 (1999)(attempting to use the fair report privilege as a shield and a sword); *Dredge Corp. v. Wells Cargo, Inc.*, 80 Nev. 993, 102, 89 P.2d 394 (1964); (The statute of limitations is available only as a shield, not as a sword); *Righetti v. Eighth Judicial District Court of State in and for County of Clark*, 388 P.3d 643, 649, 133

Nev. Adv. Op. 7 (2017) (the double jeopardy clause may not be used as a sword and a shield). Thus, in the context of this case the sword and the shield doctrine does not apply because there is no type of privilege or limitation that the Plaintiffs are trying to claim.

3. *Judicial Estoppel Bars the Lytles' Arguments Regarding the Amended CC&Rs and Limited Purpose Associations.*

As discussed above, the Lytles would like to have their cake and eat it too, arguing that it was proper to record the Abstracts of Judgment against the Plaintiffs' properties under the Amended CC&Rs and that all of NRS 116 should be applicable. Judicial estoppel bars any such argument. Under the doctrine of judicial estoppel, "[i]f a party has taken a position before a court of law, whether in a pleading, in a deposition, or in testimony, judicial estoppel may be invoked to bar that party, in a later proceeding, from contradicting his earlier position." Rand G. Boyers, *Comment, Precluding Inconsistent Statements: The Doctrine of Judicial Estoppel*, 80 NW. U.L.Rev. 1244, 1244–45 (1986). "The independent doctrine of judicial estoppel precludes a litigant from playing fast and loose with a court of justice by changing his position according to the vicissitudes of self-interest...." *Porter Novelli, Inc. v. Bender*, 817 A.2d 185, 188 (D.C. 2003). In Nevada, judicial estoppel applies when "(1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake." *Marcuse v. Del Webb Communities, Inc.*, 123 Nev. 278, 288, 163 P.3d 462 (2007). The Lytles attempt to use the Amended CC&Rs against the Plaintiffs in this case is subject to the doctrine of judicial estoppel because this position is inconsistent with

the position the Lytles took in NRED 1, 2 and 3 and such position is not the result of fraud, ignorance or mistake.

4. *NRS 116.3117 Does Not Apply to Limited Purpose Associations.*

The Lytles argue that NRS 116.3117 applies to limited purpose associations. They do not cite to any authority to support this reading of the statute, and the Plaintiffs have been unable to locate any cases that have interpreted the statutes this way. This reading is also not supported by the plain meaning of the statutes.

Statutory language must be given its plain meaning if it is clear and unambiguous. *D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 123 Nev. 468, 476, 168 P.3d 731, 737 (2007). The provisions of NRS 116 that apply to a limited purpose association are limited to those that are expressly enumerated in NRS 116.1201. On its face, NRS 116.3117 is not included, which should be enough to end the discussion.

However, it seems the Lytles understand that dilemma so instead they rely on a string of statutory references to come to the conclusion that NRS 116.3117 applies to limited purpose associations. However, this string is illogical, not supported by case law, and the statutes in the chain are aimed at specific tort and contract liabilities with regard to condominium type units, not the kind of claim at issue here.

The statutory string the Lytles follow in order to reach NRS 116.3117 is 116.1201 → 116.4117 → 116.3111 → 116.3117. NRS 116.1201 was amended in 2005 (Senate Bill 325) to add that a limited purpose association is subject to 116.4101 to 116.412 (including 116.4117). NRS 116.4117 was added to Chapter 116 in 1997 by Senate Bill 314. It contained a reference to NRS 116.3111 at the time of the 2005 amendment to NRS 116.1201. However, NRS 116.3111 did not contain a reference to NRS 116.3117 at the time

of the 2005 amendment. In fact, the last sentence buried at the end of NRS 116.3111, which completes the string and is essential to the Lytles argument (stating that "liens resulting from judgments against the association are governed by NRS 116.3117"), was not added until 2011 (Senate Bill 204). This suggests that the Legislature did not intend to create the string or make the connection that the Lytles are now suggesting can be used to record an association judgment against an individual unit owner.

This is further emphasized when the substance of the statutes in the string is analyzed. NRS. 116.4117 states that claims for failure to comply with NRS 116 or governing documents can be brought against the association (NRS 116.4117(2)(b)(1)) or another unit's owner (NRS 116.4117 (2)(b)(3)). But, NRS 116.3111 states that an action alleging a wrong done by the association may be maintained only against the association and not against any unit's owner. These two (2) statutes are directly contradictory, which suggests that they must apply to different situations, and that they cannot be used together to create a right to record the Lytles' judgment against the unit owners.

Further, NRS 116.3111 is titled "tort and contract liability", which must be different than liability under NRS 116.4117 for failure to follow 116 or the governing documents. NRS 116.3111 is the statute that states that judgments are governed by NRS 116.3117. So, it appears that NRS 116.3117 only applies for the specific kind of association liability addressed in NRS 116.3111, and not the liability addressed in NRS 116.4117. To reiterate, NRS 116.4117 allows for claims against unit owners, while NRS 116.3111 does not. It makes sense then that NRS 116.3111 would provide a mechanism for recording an association liability judgment against the unit owner, because the creditor had no other remedy against the unit owner. On the other hand, NRS 116.4117 provides a remedy and

therefore does not need a mechanism for unit assessment - the creditor can proceed directly against the unit owner and record if a judgment is obtained. For whatever reason, the Lytles chose not pursue this remedy, even though it was readily available to them.

In the session on May 13, 2011, the Assembly Subcommittee discussed whether NRS 116.3111 needed to include language to make clear that that the words "unit owner" refers to condominium unit owners as opposed to home owners. The committee decided that it was clear enough that the statute was talking about condominiums only.

> Assemblyman McArthur: I understand that. Do we need language in here that refers just to condominium-type units? Is this fine the way it is? This way, it is sort of all-inclusive. You do not go after individual unit owners for a common element liability, but you would in the case of condominium units or townhomes, where the unit owner has an interest in the whole thing. I just did not know whether we needed to divide those people out or not.
> Karen Dennison: This is a Uniform Act change. I think the intent is basically that unit owners do not have control over what happens with the common elements. Normally, the maintenance, management, and operation of the common elements have been delegated to the association. The unit owners should not be liable for something for which they had no responsibility in creating.
> Assemblyman McArthur: I understand that. **There is a difference between an HOA unit and a condominium unit. Maybe we do not need to separate the two in this case because it is obvious that you would not do that in an HOA, but you would need it for other unit types. This wording may be okay, I guess.**
> Acting Chairman Carrillo: Assemblyman McArthur, you are good with this language?
> Assemblyman McArthur: I guess we do not really need to separate them out. It is obvious that you would not do that in an HOA. This would actually pertain to condominium-types, so I think we are okay with this.

Minutes of the Meeting of the Assembly Subcommittee on Judiciary, Seventy-Sixth Session, May 13, 2011, at 13-14 (emphasis added).

While there are no cases under these sections of NRS, in states that have similar statutes with regard to "tort and contract liability," the types of cases that have been brought pursuant to these statutes have to do with traditional tort or contract liability of the

Association, and not failure to follow the common-interest community act. For instance, Hawaii has a similar statute, HRS § 514B-141, with regard to "tort and contract liability." A case brought under this statute was filed against the Association for the drowning of a child in a swimming pool at the condominium. *Estate of Rogers v. AOAO Maluna Kai Estates*, 2008 WL 11344919 (D. Hawaii 2008). Similarly, under a similar statute in Washington, RCW 64.34.344, the association sued the developer under this statute for failure to repair the common elements. *Water's Edge Homeowners Ass'n v. Water's Edge Associates*, 152 Wash.App. 572, 216 P.3d 1110 (Wash Ct. App. 2009). These are the kinds of cases contemplated by this type of statute. Thus, the plain language of the statute did not and does not contemplate the filing of liens obtained by individuals against the Association for declaratory judgments regarding the CC&Rs. The Court should reject the Lytles' strained and remote reading of NRS 116.

5. *General Common Interest Community Principles Are Inapplicable to the Association.*

The Lytles quote NRS 17.150(2) as authority to allow recording of the abstracts of Judgment against the Plaintiffs' properties. However, the part of the rule that the Lytles have bolded states that the abstract of judgment becomes a "lien upon all the real property of the judgment debtor." The Judgment Debtor is the **Association**, not the Plaintiffs. The Lytles never sued the Plaintiffs individually and the Plaintiffs are not judgment debtors. Therefore, there is no basis for the Lytles to record a lien against the Plaintiffs under NRS 17.150(2).

Further, in the NRED 3 Complaint filed in 2015, the Lytles only quote from the Original CC&Rs to obtain relief and never mention the Amended CC&Rs. Paragraph five of the Complaint states, "That since the Association is comprised of only nine (9) units, the Association is classified as a small planned community pursuant to NRS 116.1203, and is

exempt from many of the provisions of NRS Chapter 116. Further, the Association is a limited purpose association pursuant to NRS 116.1201." *See* Exhibit O attached to Countermotion at 2:24-28.

The NRED 3 Complaint was only filed to obtain declaratory relief against the Association that Chapter 116 requires the Association to have a Board of Directors at all times, that the Association currently does not have a Board of Directors, and that an election must be made immediately. *Id.* at 6. In the Order Granting Summary Judgment in the NRED 3 litigation, one of the Findings of Fact is, "Rosemere Estates is governed by the community's CC&Rs, which were drafted by the Developer, and dated January 4, 1994 (the 'CC&Rs')". One of the Conclusions of Law is that, "The Association is a limited purpose association per NRS 116. While a limited purpose association is not restricted by all of the provisions of Chapter 116, a limited purpose association must have a Board of Directors. NRS 116.1201, 116.31083, 116.31152." *See* Exhibit P attached to the Countermotion, at 2: 10-11, 4:2-4. There is no mention of the Amended CC&R's or a request for any finding but that the Association is a limited purpose association.

Therefore, this attempt by the Lytles to now characterize the Association as anything but a limited purpose association is specifically contrary to what they requested in the NRED 1, 2 and 3 litigations. And, in the NRED 3 litigation, they filed all pleadings as if the Amended CC&R's were void *ab initio*.

6. *The Original CC&Rs Do Not Allow the Plaintiffs' Properties to be Subject to Liens Against the Association.*

Defendants assert that the Original CC&Rs allows a judgment or lien against the Association to attach to each lot within the Association. There is no language in the CC&Rs that allows a judgment against the Association to attach to a unit owner's property.

Defendants assert that the introductory language in the CC&Rs that states that breaches of the CC&Rs shall not defeat mortgages or deeds of trusts recorded against any of the properties also gives them the right to file the Abstracts of Judgment against the Plaintiffs' Properties. However, this language is simply and only to allow buyers of property to obtain loans to finance the purchases of their homes. In other words, the words "or any liens established hereunder" is only referring to liens authorized by the unit owner and does not give the Lytles the right to attach their Judgments to the Plaintiffs' properties. Even if this far-fetched argument were true, it is defeated by the specific words of Paragraph 24 that provides the only remedy allowed by the CC&Rs:

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

Ex. 5, attached the SJ Motion, at 4. This provision provides the mechanism by which a lawsuit may be brought with regard to the Original CC&Rs. The Plaintiffs were never named parties to any litigation between the Association and the Lytles. In fact, when several of the Plaintiffs were originally named in one of the lawsuits, Defendants filed an Errata and specifically removed them from the caption. Therefore, the Lytles deliberately chose to not bring such a lawsuit, despite the clear availability of such a claim under NRS 116.4117. If the Court does interpret the CC&Rs as a contract, the words that the Lytles have chosen to take out of context to imply a lien right against the individual homeowners simply cannot possibly create such rights.

Defendants also argue that since all the lots are subject to the CC&Rs that somehow judgment against the Association is enforceable against all property owners. However, such

language only shows that the CC&Rs are for the benefit of the Subdivision properties. The simplicity and purpose of the language is obvious. The CC&Rs are restrictions that attach to the land and do not grant ownership to the Developer or to the Association. The CC&Rs are minimally limited to specific responsibilities. To conclude from this language that the Association has an actual ownership interest in the Plaintiffs' properties is factual and legal impossibility. The Association does not hold title to the Plaintiffs' properties.

7. *The Fact that Plaintiffs Were Not Parties to the NRED Litigation is EXTREMELY Relevant.*

The Lytles' final flawed argument is that there is no distinction between the Association and the Plaintiffs, so they can record a lien obtained against the Association against the Plaintiffs' properties without ever naming them in a lawsuit. The difference between the Association and the Plaintiffs is paramount to this lawsuit.

Defendants again point to NRS 116.3117 and the Amended CC&Rs which they assert allow them this privilege. However, this position is directly contradictory to the position they took in the NRED 1, 2 and 3 litigations. In the previous litigations, the Lytles specifically sought and obtained declaratory relief that the Association was a "a limited purpose association under NRS 116.1201, is not a Chapter 116 "unit-owners' association" and is relegated to only those specific duties and powers set forth in paragraph 21 of the Original CC&R's and NRS 116.1201." *See* Ex. 2 attached to the SJ Motion, ¶ 19. As a limited purpose association, NRS 116 does not apply to its actions. See NRS 116.1201(2) (specifically excluding the application of NRS 116 to limited purpose associations).

In any event, the Lytles have not demonstrated any law or fact that makes the Association and the Plaintiffs one and the same. They have not demonstrated any law or fact that allows a judgment against the Association to be recorded against the Plaintiffs'

individual property. They have not shown how their actions are consistent with or authorized by existing law. Thus, the Abstract of Judgment must be released and expunged from the Plaintiffs' properties.

IV.

CONCLUSION

For the foregoing reasons, the Plaintiffs respectfully request that this Court deny the Lytles Countermotion for Summary Judgment and grant the Plaintiffs Motion for Summary Judgment, or in the alternative, Motion for Judgment on the Pleadings expunging and striking the Abstracts of Judgment recorded against the Plaintiffs' Properties, restraining and enjoining the Lytles from selling or attempting to sell the Plaintiffs' Properties and from taking any action in the future against the Plaintiffs or their Properties based upon any litigation the Lytles have commenced against the Association.

DATED this 21st day of February, 2018.

CHRISTENSEN JAMES & MARTIN

By: */s/ Laura J. Wolff, Esq.*
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CERTIFICATE OF SERVICE

I am an employee of Christensen James & Martin. On February 21, 2018, I caused a true and correct copy of the foregoing PLAINTIFFS' REPLY TO DEFENDANTS' OPPOSITION TO THE MOTION FOR SUMMARY JUDGMENT, OR, IN THE ALTERNATIVE, MOTION FOR JUDGMENT ON THE PLEADINGS AND OPPOSITION TO PLAINTIFFS' COUNTERMOTION FOR SUMMARY JUDGMENT, to be served in the following manner:

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

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

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

/s/ Natalie Saville
Natalie Saville

DECL
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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SEPTEMBER TRUST, DATED MARCH 23, 1972; GERRY R. ZOBRIST AND JOLIN G. ZOBRIST, AS TRUSTEES OF THE GERRY R. ZOBRIST AND JOLIN G. ZOBRIST FAMILY TRUST; RAYNALDO G. SANDOVAL AND JULE MARIE SANDOVAL GEGEN, AS TRUSTEES OF THE RAYNALDO G. AND EVELYN A. SANDOVAL JOINT LIVING AND DEVOLUTION TRUST DATED MAY 27, 1992; and DENNIS A. GEGEN AND JULIE S. GEGEN, HUSBAND AND WIFE, AS JOINT TENANTS, Plaintiffs, vs. TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, AS TRUSTEES OF THE LYTLE TRUST; JOHN DOES I through V; and ROE ENTITIES I through V, inclusive, Defendants.	Case No.: A-17-765372-C Dept. No.: XXVIII **DECLARATION OF COUNSEL IN SUPPORT OF PLAINTIFFS' REPLY TO DEFENDANTS' OPPOSITION TO THE MOTION FOR SUMMARY JUDGMENT, OR, IN THE ALTERNATIVE, MOTION FOR JUDGMENT ON THE PLEADINGS AND OPPOSITION TO PLAINTIFFS' COUNTERMOTION FOR SUMMARY JUDGMENT**

DECLARATION OF LAURA J. WOLFF, ESQ.

STATE OF NEVADA)
:ss.
COUNTY OF CLARK)

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

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

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

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

3. I am an Associate Attorney at Christensen James & Martin, counsel for the Plaintiffs, September Trust, dated March 23, 1972 ("September Trust"), Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust ("Zobrist Trust"), Raynaldo G. Sandoval and Jule Marie Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution Trust Dated May 27, 1992 ("Sandoval Trust"), and Dennis A. Gegen and Julie S. Gegen, Husband and Wife as Joint Tenants (hereafter "Gegen") (hereafter September Trust, Zobrist Trust, Sandoval Trust and Gegen may be collectively referred to as "Plaintiffs").

4. I make this Declaration in support of Plaintiffs' Reply to Defendants' Opposition to the Motion for Summary Judgment, or, in the Alternative, Motion for Judgment on the Pleadings and Opposition to Plaintiffs' Countermotion for Summary Judgment ("Opposition").

5. A true and correct copy of the Appellants' Opening Brief, Supreme Court No. 73039, is attached to the Opposition as Exhibit 16.

6. I reviewed the online records of the Eighth Judicial District Court, Clark County Nevada, and I found and printed records from that website, including the pertinent parts of the Case Information for Case No.A-09-593497-C, Case No. A-10-631355-C and Case No. A-15-716420-C. A true and correct copy of these records is attached to the Opposition as Exhibit "17".

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

Further your affiant sayeth naught.

DATED this 21st day of February, 2018.

/s/ Laura J. Wolff
Laura J. Wolff, Esq.

Exhibit 16

Exhibit 16

IN THE SUPREME COURT OF THE STATE OF NEVADA

TRUDI LEE LYTLE; AND JOHN ALLEN LYTLE, AS TRUSTEES OF THE LYTLE TRUST, Appellant , v. MARJORIE B. BOULDEN, TRUSTEE OF THE MARJORIE B. BOULDEN TRUST; LINDA LAMOTHE; AND JACQUES LAMOTHE, TRUSTEES OF THE JACQUES & LINDA LAMOTHE LIVING TRUST, Respondents .	**Supreme Court No.: 73039** District Court Case No.: A-16-747800-C **APPELLANTS' OPENING BRIEF**

Appeal

From the Eighth Judicial District Court, Clark County
Honorable Timothy Williams, Judge

Appellants' Opening Brief

(Docket 73039)

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Jurisdictional Statement

The Supreme Court has jurisdiction via NRAP 3A(b)(3). On April 26, 2017, the district court granted Marjorie B. Boulden, Trustee of the Marjorie B. Boulden Trust, Linda Lamothe and Jacques Lamothe, Trustees of the Jacques & Linda Lamothe Living Trust's (collectively, "Respondents") Motion for Partial Summary Judgment to quiet title to property and for cloud on title, and in doing so granted a permanent injunction prohibiting Trudi Lee Lytle, John Allen Lytle, as Trustees of the Lytle Trust ("Appellants"), from enforcing a judgement obtained in civil litigation against Respondents' real properties.

Routing Statement

Pursuant to NRAP 17(b)(7), the case is presumptively assigned to the Court of Appeals because it is an appeal from an order granting injunctive relief. However, Appellants contend the case should be heard by the Supreme Court due to its familiarity with the issues and matters at hand. The Supreme Court has considered and determined appeals related to Appellants and Rosemere Estate Property Owners' Association, which issues are unique and involved herein. See Dockets 60657, 61308, 65721, 63942, 65294.

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Issue Presented

1. Whether the district court erred in granting a permanent injunction after finding that Appellants clouded title to Respondents' properties when Appellants recorded abstracts of judgment awarded to Appellants in a separate civil action against Respondents' homeowners' association, Rosemere Estates Property Owners' Association (the "Association")?

Statement of the Case

Appellants appeal the district court's Amended Findings of Fact and Conclusions of Law whereby the district court issued a permanent injunction prohibiting Appellants from recording an abstract of judgment or other judgment lien against Respondents' real property. Order Granting Motion to Alter or Amend Findings of Fact and Conclusions of Law ("Amended Order"), Appellants' Index ("AA") 000550 - 000556.

A. Statement of Facts

1. The Association

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

Motion for Summary Judgment ("RJN for Opp."), Original CC&Rs, AA000155 – 000156, 000159, *see also* RJN for Opp, Order Granting Motion for Summary Judgment, AA000167. Appellants purchased their property, Lot 163-03-313-009 ("Appellants' Property") on November 6, 1996, from the original buyer who first purchased it from the Developer on August 25, 1995. *Id.*, AA000167.

Respondents each own property within the Association. Complaint, AA000001 - 000002. In or about August 2017, Respondents Robert Z. Disman, an individual, and Yvonne A. Disman (collectively the "Dismans") purchased the real property formerly belonging to Respondent Boulden. The Dismans are the current owners and were added to this Appeal by this Court on December 5, 2017.

The Original CC&Rs, in the first paragraph, defines Rosemere Estates as "Lots 1 through 9 of Rosemere Court, a subdivision…" RJN for Opp., Original CC&Rs, AA000159. The document adds that "it is the desire and intention of the Subdivider to sell the land described above and to impose on it mutual, beneficial, covenants, conditions and restrictions under a general plan or scheme of improvement for the benefit of all of the land described above and the future owners of the lots comprising said land." *Id.* Thus, the Association includes each lot, or unit, therein.

Sometime after Appellants purchased their property, a group of homeowners formed the Association. RJN for Opp., Articles of Organization, AA000155 – 000156, 000164. In 1997, Respondents, acting on behalf of all owners, filed Non-

Profit Articles of Incorporation (the "Articles") pursuant to Nevada Revised Statutes ("NRS") 82, which formalized the property owners' committee and named it "Rosemere Estates Property Owners Association."[1] *Id.* It was the intention of the homeowners to formalize the "owners committee" referenced in the Original CC&Rs. RJN for Opp, Order Granting Motion for Summary Judgment, Finding of Fact ("FOF") Nos. 14, 15, AA000155 – 000156, AA000168.

2. The Underlying Litigation

In 2007, Appellants filed a NRS 38.310 mandated non-binding arbitration before the Nevada Real Estate Division ("NRED"), naming the Association as respondent. The underlying dispute arose out of the Amended Covenants, Conditions, and Restrictions (the "Amended CC&Rs") which were recorded by the Association's Board of Directors on July 3, 2007, and enforced by the Association against Appellants, and Appellants' Property. Appellants sought to un-cloud title to their property through the revocation of the Amended CC&Rs.

After the arbitrator found in favor of the Association, Appellants filed for a trial de novo in district court, case number A-09-593497-C (the "Underlying Litigation"), which was assigned to Judge Michelle Leavitt in Department XII of the Eighth Judicial District Court. After the matter was initially dismissed by the

[1] Throughout the district court litigation, Respondents disingenuously refer to the Association as the "Rosemere LPA" or "Rosemere Limited Purpose Association." There is no such entity. The Association is a Chapter 82 corporation, formed pursuant to the laws of the State of Nevada, to formalize the "owners' committee" referenced in the Original CC&Rs and named "Rosemere Estates Property Owners' Association." RJN for Opp, Order Granting Motion for Summary Judgment, FOF Nos. 14, 15, AA000155 – 000156, AA000168.

district court, Appellants appealed to the Supreme Court, prevailed, and the matter was then remanded back to the district court.

Appellants ultimately prevailed, entirely, in the Underlying Litigation, and the district court granted Appellants summary judgment on July 29, 2013. RJN for Opp., Order Granting Summary Judgment, AA000166 - 000177. In doing so, the district court found the Amended CC&Rs were improperly adopted and unlawfully recorded. *Id.* at AA000176. The district court ordered that the Amended CC&Rs were *void ab initio*. *Id.* Finally, the district court ordered the Association to release the recording of the Amended CC&Rs, which revocation was ultimately accomplished. *Id.*

The matter was once again appealed, and the Nevada Supreme Court affirmed the district court's Order Granting Appellants' summary judgment. RJN for Opp., Supreme Court Order, AA000155 -000156, 000179 - 000183. The Supreme Court remanded the case to the district court for redetermination of costs, attorneys' fees and damages on October 19, 2015. *Id.*

On May 25, 2016, after hearing Appellants' motion for attorneys' fees, the Court awarded Appellants $297,072.66 in attorneys' fees pursuant to the Original CC&Rs, Amended CC&Rs and NRS 116.4117. RJN for Opp., Order Awarding Attorneys' Fees, AA000155 – 000156, 000186 - 000189.

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On June 17, 2016, after a prove-up hearing, the district court awarded Appellants damages in the amount of $63,566.93. Order Awarding Damages, RJN for Opp., Order Awarding Damages, AA000155 – 000156, 000189 – 000192. These damages included amounts expended by Appellants in the design, engineering, and other costs associated with the construction of their home for Rosemere Estates, all of which were now stale and useless. *Id.*

Finally, on February 13, 2014, the district court awarded Appellants $1,962.80 in costs. Then, after remand from the Supreme Court, the district Court awarded Appellants' additional costs in the amount of $599.00 on July 22, 2016. RJN for Opp, Order Awarding Costs, AA000155 – 000156, 000193 – 000194.

On September 2, 2016, Appellants recorded abstracts of judgment against each property within the Association pursuant to the authorities set forth herein. RJN for Opp, Abstracts of Judgment, AA000155 – 000156, 000195 - 000220.

3. The Financial Burden Of The Litigation Against The Appellants

While Respondents constantly characterized themselves as victims in this case, quite the opposite is true. Allen Lytle, now retired from Southwest Gas, and Trudi Lytle, a retired school teacher, were forced to bear a tremendous financial and emotional burden in fighting the Association for over seven (7) years. The fight was necessitated by the Association's unwillingness to revoke the illegally recorded Amended CC&Rs as well as the Association's unconscionable threats

and actions to foreclose against Appellant's property when Appellants dared not to pay a special assessment to fund litigation against them.

Appellants' legal fight was necessary because, as the district court found in the Underlying Litigation

- the Amended CC&Rs created unreasonable restrictions on construction that made it impossible for Appellants to build their home. RJN for Opp., Order Granting Summary Judgment, Findings of Fact ("FOF") Nos. 28-30, AA 000155 – 000156, 000170.
- the Board for the Association took unlawful steps to amend the CC&Rs, which included the failure to obtain unanimous consent of the homeowners. RJN for Opp., Order Granting Summary Judgment, Conclusions of Law, Nos. 22, 23, AA 000155 – 000156, 000169.
- the promotion and purported adoption of the Amended CC&Rs was procedurally unconscionable in as much as the Board forced the Amended CC&Rs to a vote with no advanced notice or discussion. RJN for Opp., Order Granting Summary Judgment, FOF, Nos. 23, 24, 32, 33, AA 000155 – 000156, 000169.

Meanwhile, Respondents contributed heartily to the legal fund against Appellants (by way of payment of special assessments). Respondents also each testified on the Association's behalf. Declaration of Richard E. Haskin ("Haskin Decl."), AA000147 - 000154.

Interestingly, Respondents both refused, initially, to approve the Amended CC&Rs, declining to sign in favor on the day of the adoption meeting. Lamothe sought legal counsel with Appellants to file suit against the Association but ultimately refused to join the fight for fear of retribution. Years later, during deposition, Respondents, now testifying on the Association's behalf, recanted their objection to the Amended CC&Rs and testified that they approved of the Amended CC&Rs after further thought. Haskin Decl., ¶ 3, Lamothe Deposition Transcript, AA000147 – 000154.

Appellants seek to recover the funds they lost because of the Association's actions, which amounts were awarded to Appellants by the district court in the Underlying Litigation.[2]

B. Procedural History

Respondents filed this lawsuit on December 8, 2016, seeking to quiet title to their respective properties and setting forth claims for quiet title, cloud on title, and slander of title. Complaint, AA000001 – 000009, see also First Amended Complaint, AA000122 - 000132.

On April 26, 2017, after a hearing, the district court granted Respondents' Motion for Partial Summary Judgment on all claims. *See* Findings of Fact and Conclusions of Law and Order Granting Motion for Partial Summary Judgment ("Order"), AA000275 - 000282. Therein, the district court granted a permanent

[2] The Association did not appeal the district court's orders regarding damages, attorneys' fees or costs.

injunction against Appellants. *Id.* The district court also entered an order granting summary judgment as to Respondents' slander of title claim. *Id.*

On May 16, 2017, the Trust filed a Motion for Reconsideration as to the slander of title claim, arguing that the district court made no findings with respect to malice, oppression, or fraud, and, therefore, a finding of slander of title was unwarranted. Motion for Reconsideration, AA000380 – 000418. That Motion for Reconsideration was heard on June 29, 2017, and was granted, and the district court entered Amended Findings of Fact and Conclusions of Law ("Amended Findings"), withdrawing any findings related to Respondents' slander of title claim. Amended Order, AA000550 - 000556.

Summary of Argument

The district court erred in granting Respondents a permanent injunction when the district court erroneously concluded that because the Association was declared a *limited purpose association* in the Underlying Litigation, NRS 116.3117 did not apply and afford Appellants the right to place a judgment lien against Respondents' real property located within the Association. The district court errored in several respects. First, at all times during the Underlying Litigation, from which the monetary judgment was awarded, the Association operated a unit owners' association that enjoyed all of the rights and benefits of NRS Chapter 116 and also undertook the Chapter's burdens and obligations. Indeed, the district court in the Underlying Litigation, citing *Mackintosh v. California Federal Sav. &*

Loan Ass'n (1997) 113 Nev. 393, 405-406, 935 P.2d 1154, 1162, made such a finding in awarding Appellants attorneys' fees incurred therein pursuant to NRS 116.4117 and the Amended CC&Rs, even though the district court had declared such Amended CC&Rs *void ab initio*.

Further, the statutory construction of NRS Chapter 116 and principles of common-interest community law provide a judgment creditor with the right to record a lien against all units within the Association because such units, whether they be owned or unowned, are defined as a physical portion of the common-interest community. Thus, the Association includes all units therein. NRS 116.021, NRS 116.093.

Argument

I. THE DISTRICT ERRED IN GRANTING THE PERMANENT INJUNCTION

A. The Court Should Apply A De Novo Standard Of Review To The District Court's Granting A Permanent Injunction

A district court's granting of an injunction is generally reviewed under an abuse of discretion standard, or if the decision was based on an erroneous legal standard. *Univ. and Comm. College System of Nevada v. Nevadans for Sound Govt.*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004), *see also Attorney General v. NOS Communications*, 120 Nev. 65, 67, 84 P.3d 1052, 1053 (2004); *S.O.C., Inc. v. The Mirage Casino–Hotel*, 117 Nev. 403, 407, 23 P.3d 243, 246 (2001); *Dangberg*

Holdings v. Douglas Co., 115 Nev. 129, 142–43, 978 P.2d 311, 319 (1999). While factual determinations will be set aside when clearly erroneous or not supported by substantial evidence, questions of law are reviewed de novo. *Univ. and Comm. College Systems of Nevada*, 120 Nev. at 721, 100 P.3d at 187.

In the present case, this Court should review the district court's order de novo. Questions of statutory construction are reviewed de novo. *I. Cox Constr. Co., LLC v. CH2 Invs., LLC*, 129 Nev. 139, 142, 296 P.3d 1202, 1203 (2013), *see also Univ. and Comm. College Systems of Nevada*, 120 Nev. at 721, 100 P.3d at 187; (holding that questions of law are reviewed de novo, even in the context of an appeal from a preliminary injunction.) In *Univ. and Comm. College Systems of Nevada*, the appellants argued the district court committed legal errors in issuing a preliminary injunction through, what appellants contended was, an erroneous interpretation of NRS 293.127565. *Id.* The Supreme Court reviewed the district court's decision de novo, giving a thorough and impressive academic review of the statute in affirming part of the district court's holding and reversing another portion. *Id.* 120 Nev. at 736, 296 P.3d at 196.

In *Boulder Oaks Comm. Ass'n. v. B&J Andrews Enterprises, LLC*, 125 Nev. 397, 215 P.3d 27 (2009), the Supreme Court reviewed a district court's granting of a preliminary injunction on a de novo standard where the district court considered the application of NRS, Chapter 116, to an association's determination that a homeowners' consent was not required to amend CC&Rs. *Id.*, 125 Nev. at 403-04,

215 P.3d at 31.

In the present case, the district court determined certain provisions of the Common-Interest Ownership Act (NRS, Chapter 116) did not apply and provide rights and remedies to Appellants. Amended Order, FOF No. 9, Conclusions of Law ("COL") No. 2, AA000550 - 000556. In order to reach this conclusion, the district court first concluded that the Association was a limited purpose association pursuant to NRS 116.1201 and, therefore, certain provisions of Chapter 116 did not apply. *Id.*, FOF Nos. 8, 9, COL No. 2, AA000552, 000553. Appellants contend, however, for the reasons set forth herein, that specific provisions of Chapter 116 apply and provide the basis for Appellants' right to record abstracts of judgment against Respondents' properties. Therefore, this Court should review the district court's determination de novo.

B. The District Court Erred In Finding Respondents Were Likely To Prevail On The Merits

"NRS 33.010(1) authorizes an injunction when it appears from the complaint that the plaintiff is entitled to the relief requested and at least part of the relief consists of restraining the challenged act. Before a preliminary injunction will issue, the applicant must show '(1) a likelihood of success on the merits; and (2) a reasonable probability that the non-moving party's conduct, if allowed to continue, will cause irreparable harm for which compensatory damage is an inadequate remedy.' In considering preliminary injunctions, courts also weigh the potential