

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

OPENING BRIEF

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Appellants' Opening Brief

(Docket 77007)

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Disclosure Statement

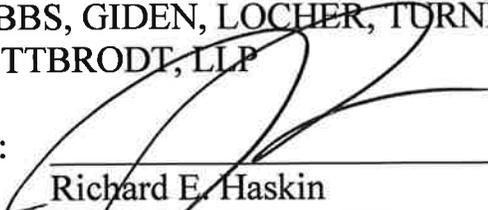
Pursuant to NRAP 26.1, Appellants TRUDI LEE LYTLE; AND JOHN ALLEN LYTLE, AS TRUSTEES OF THE LYTLE TRUST (“Appellants”) state that there is no parent corporation or publicly held company that owns ten percent (10%) or more of any stock in Appellants. Appellants are the Trustees for a trust and are not a corporation.

The attorneys and law firm that have appeared and expected to appear on behalf of Appellants are Richard E. Haskin of Gibbs, Giden, Locher, Turner, Senet & Wittbrodt, LLP.

DATED this 20th day of May, 2019.

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Appellant's Opening Brief

I. JURISDICTIONAL STATEMENT

The Supreme Court has jurisdiction via NRAP 3A(b)(8) because the order appealed from is an order entered after final judgment, awarding attorneys' fees and costs to Respondents.

II. ROUTING STATEMENT

Pursuant to NRAP 17(b)(7), the case is presumptively assigned to the Court of Appeals because it is an appeal from a post-judgment order. However, Appellants contend the case should be heard by the Supreme Court due to its familiarity with the issues and matters at hand. *See* Dockets 60657, 61308, 65721, 63942, 65294, 73039.

III. ISSUES PRESENTED

1. Whether the district court erred in finding the district court's prior order granting different parties summary judgment in a consolidated case was "law of the case," when the ruling was for partial summary judgment and the matter was on appeal before the Supreme Court and not final; thereby, leading to the district court's finding that pursuant to NRS 18.010(2)(b), the district court may grant Respondents attorneys' fees because Appellants maintained their defenses in the lawsuit without reasonable grounds?

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2. Whether the district court abused its discretion in finding that Appellants maintained their defenses to the underlying action without reasonable grounds, as set forth in NRS 18.010(2)(b)?

IV. STATEMENT OF THE CASE

The district court granted summary judgment, which was appealed by Appellants in Docket No. 76198.

Appellants appeal the district court’s post-judgment Order granting Respondents’ Motion for Attorneys’ Fees and Costs and Memorandum of Costs and Disbursements, entered on September 11, 2018.

V. STATEMENT OF FACTS

A. 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”). Original CC&Rs, AA000147 - 150. 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. Respondents each own property within the Association. Complaint, AA000066 - 74.

The Original CC&Rs, in the first paragraph, defines Rosemere Estates as “Lots 1 through 9 of Rosemere Court, a subdivision...” Original CC&Rs, AA000147.

The document adds:

“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.”

WHEREAS, Subdivider hereby declares that all of the land described above is held and shall be held, conveyed, hypothecated, and encumbered, leased, rented, used, occupied, and improved subject to the following covenants, conditions and restrictions...

Id. Each of the properties within Rosemere Estates were conveyed to the Owners’ Committee before the first lot was sold. The Owners’ Committee, now named “Rosemere Estates Property Owners Association,” includes each lot, or unit, therein, and each owner within the community is bound by the Original CC&Rs and governance of the Association.

Sometime after Appellants purchased their property, all of the homeowners filed Articles of Incorporation, naming the Owners’ Committee “Rosemere Estates Property Owners Association,” so that the Owners’ Committee could obtain a bank account. Articles of Incorporation, AA000359; *see also* Order Granting Motion for Summary Judgment, Finding of Fact (“FOF”) Nos. 14, 15, AA000408 - 409.

B. The Unlawful Amendment of the CC&Rs

Without warning or consult with the homeowners, the Board for the Association, on July 2, 2007, presented the Amended and Restated Covenants, Conditions and Restrictions (the “Amended CC&Rs”) to the Association membership. Order Granting Summary Judgment in NRED 1 Litigation, FOF Nos. 23, 24, AA000404 - 405. The Amended CC&Rs contained numerous and onerous new use restrictions including the drastic expansion of the powers, rights, and duties of the Association, a section entitled “Restrictions on Use, Alienation, and Occupancy,” pet restrictions, parking restrictions, lease restrictions, the establishment of a Design Review Committee with unfettered discretion, and a new and expansive definition of “nuisance.” *Id.* The Amended CC&Rs also contained a morality provision. *Id.* at FOF No. 26, AA000405. Finally, the Amended CC&Rs contained a construction timeline that would require Appellants, and only Appellants, to complete the construction of a custom home on the lot within a mere *60 days* of receipt of approval from the proposed *Design Review Committee*—something never envisioned in the Original CC&Rs and impossible to adhere to. *Id.* at FOF No. 28, AA405. Failure to comply would cost Appellants \$50.00 per day. *Id.* at 30, AA000405. Despite failure to obtain the consent of all homeowners, the Board unilaterally recorded the Amended CC&Rs on July 3, 2007, with the Office of the Recorder for Clark County, Nevada. *Id.* at FOF Nos. 34, 35, *see also* Amended CC&Rs AA000361 - 399.

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

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

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

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

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

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

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

Amended CC&Rs, AA000367, 368, 370 – 371, 381.

C. The Underlying Litigation

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

Order Granting Summary Judgment in NRED 2 Litigation, FOF No. 10, AA000466.

The Association initiated non-judicial foreclosure proceedings against Appellants. *Id.* at FOF Nos. 11, 20, AA000466, 468. In addition to instituting the non-judicial foreclosure process afforded to it by NRS Chapter 116 and the Amended CC&Rs, the Board recorded additional, unlawful liens without right against Appellants. *Id.* at FOF Nos. 12 – 18, 22, AA000466 - 467. The total of the three (3) unlawfully recorded liens was \$209,883.19. *Id.* at FOF Nos. 25, 26, AA000468.

D. NRED 1 Litigation

In 2007, Appellants filed an NRS 38.310 mandated non-binding arbitration before the Nevada Real Estate Division (“NRED”), naming the Association as respondent. Appellants sought a declaration that the Amended CC&Rs were unlawfully adopted, recorded and enforced by the Association against Appellants.

After the arbitrator found in favor of the Association, Appellants filed for a trial de novo in this district court, case number A-09-593497-C, which was assigned to Judge Michelle Leavitt in Department XII. The district court initially dismissed the case and affirmed the arbitrator’s decisions, thereby affirming that the Amended CC&Rs were valid and the Association was a NRS 116.3101 unit owners’ association, subject to the entirety of Chapter 116. *See* Supreme Court Order, Docket No. 54886. Appellants had to post a \$53,054.52 to appeal the case.

The Supreme Court ultimately reversed the District Court's order and remanded the case back to district court. *See generally* Order of Reversal and Remand, Supreme Court Order, Docket No. 54886. After remand, Appellants ultimately prevailed, entirely, in the litigation, and the Court granted Appellants summary judgment on July 29, 2013. Order Granting Summary Judgment in NRED 1 Litigation, COL No. 11, AA000408.

The court made the following pertinent findings:

- The Association is a limited purpose association as defined by NRS 116.1201. *Id.* at COL Nos. 13, 19, AA000408 - 409.
- The Amended CC&Rs were improperly recorded, were invalid, and the Amended CC&Rs were ordered released. *Id.* at COL Nos. 25, 26, AA000411.
- Most importantly, from July 3, 2007, through July 29, 2013, the Amended CC&Rs governed the Association and its members, and the Board acted as if the Association was a NRS 116.3101 unit owners association, covered by the entirety of Chapter 116. *See generally id.*

The last finding is consistent with the district court's original dismissal of the case and affirmance of the arbitrator's decision whereby the district court, in effect, ratified the Amended CC&Rs and status of the Association as a NRS 116.3101 unit owners' association, subject to the entirety of Chapter 116.

The matter was once again appealed, and the Nevada Supreme Court affirmed the district court's Order granting Appellants summary judgment. The Supreme Court remanded the case to the district court for redetermination of costs, attorneys' fees and damages on October 19, 2015. Supreme Court Order, AA000525 – 529.

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, the Amended CC&Rs and NRS 116.4117, recognizing that during the entirety of the NRED 1 Litigation, the Association as well as Respondents were governed by the Amended CC&Rs and entirety of Chapter 116. Order Awarding Attorneys' Fees in NRED 1 Litigation, AA000414 - 471.

On June 17, 2016, the district court awarded Appellants damages, after a prove-up hearing, in the amount of \$63,566.93. Order Awarding Damages in NRED 1 Litigation, AA000419 - 420. 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.

Finally, on July 22, 2016, the Court awarded Appellants costs in the amount of \$599.00. Order Awarding Costs in NRED 1 Litigation, AA000422 - 423. Previously, the Court had awarded \$1,962.80 in costs.

On September 2, 2016, Appellants recorded Abstracts of Judgment against each property within the Association pursuant to the law set forth herein. Abstracts of Judgment from NRED 1 Litigation, AA000174 - 179.

E. NRED 2 Litigation

On March 16, 2010, Appellants initiated another NRS 38.310 mandated non-binding arbitration before NRED, naming the Association as respondent (the “NRED 2 Litigation”). The purpose of the NRED 2 Litigation was to halt non-judicial foreclosure proceedings initiated by the Association against Appellants pursuant to NRS, Chapter 116 and the Amended CC&Rs. *See* Complaint in NRED 2 Litigation, AA000434 - 448. Appellants also sought an order from the district court directing the Association to comply with NRS Chapter 116 and the Amended CC&Rs where the Association had failed to comply, e.g. approval of budgets, conduct of meetings, etc. *Id.* In that arbitration, all parties stipulated the Amended CC&Rs were valid and enforceable for the purpose of the NRED 2 Litigation. Stipulation, AA000425 - 430.

After the Association prevailed in the Arbitration (in November 2010), Appellants promptly and timely filed a lawsuit (for trial de novo) on December 13, 2010. Complaint in NRED 2 Litigation, AA000434 - 448. The Association filed a counterclaim, seeking to enforce the assessments the Association levied against Appellants’ property.

Appellants included the following language in their Complaint:

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 [were] 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 that for the purpose of this litigation only that the Amended CC and R's and bylaws of the Defendant ASSOCIATION are valid and enforceable.

Complaint in NRED 2 Litigation, ¶ 11, AA000436 - 437.

On November 14, 2011, the district court granted the Association's Motion for Summary Judgment. The court also awarded the Association's Motion for Attorneys' Fees pursuant to NRS Chapter 116 and the Amended CC&Rs, with an amount to be determined at a subsequent hearing. The court then entered two orders granting the Association's attorneys' fees pursuant to NRS 116.4117 and Section 16 of the Amended CC&Rs. Order Granting Association Fees in NRED 2 Litigation AA000453 – 457, *see also* Supplement Award of Attorneys' Fees in NRED 2 Litigation, AA000459 - 462. Therein, the district court held that the Association was "entitled to recover its attorneys' fees and costs pursuant to NRS 116.4117 and Section 16 of the Amended Covenants, Conditions and Restrictions." Order Granting Association Fees in NRED 2 Litigation AA000455 – 456. The district court then awarded the Association \$23,409.32 in damages (for the liens recorded by the Association against Appellants' property), \$79,483.65 in attorneys' fees, and

\$1,130.77 in costs. *Id.* at AA000456. Thereafter, the district court awarded an additional \$7,068.00 in attorneys' fees and \$117.45 in costs against Appellants. *See* Supplement Award of Attorneys' Fees in NRED 2 Litigation, AA000461, 462.

The district court's order essentially found the provisions of the Amended CC&Rs and assessment and foreclosure statutes included in Chapter 116 provided the Association with the right to assess and, indeed, foreclose for failure to pay the assessment. Once again, the district court, in effect, sanctioned the Amended CC&Rs and status of the Association as a NRS 116.3101 unit owners' association, subject to the entirety of Chapter 116. More importantly from a practical measure to Appellants, the district court's ruling coupled with the Association's vitriolic thirst to expel Appellants from the Association, compelled Appellants to post a \$123,000.00 bond and incur years of additional litigation.

On July 16, 2012, Appellants filed a Notice of Appeal. On December 21, 2015, the Nevada Supreme Court vacated the Order Granting Summary Judgment and remanded this case back to this Court for determination. Supreme Court Order Re: NRED 2 Litigation, AA000521 – 522. Specifically, the Supreme Court held that the

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

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

Upon remand, the case was essentially thrust back to the beginning. On November 14, 2016, the district court granted Appellants' Motion for Summary Judgment as to each cause of action in Appellants' First Amended Complaint and against the Association's Counterclaim. *See* Order Granting Summary Judgment in NRED 2 Litigation, AA000464 - 478.

The district court then awarded Appellants the following: \$274,608.28 in attorneys' fees, \$4,725.00 in costs, and \$823,824.84 in punitive damages pursuant to NRS 42.005. *See* Order Granting Attorneys' Fees and Costs in NRED 2 Litigation, AA000480 - 483; *see also* Order Granting Punitive Damages in NRED 2 Litigation, AA000485 - 488. Pursuant to the foregoing, the total amount of the judgment against the Association and in favor of Appellants in the NRED 2 Litigation, including attorneys' fees and costs, is \$1,103,158.12.

F. NRED 3 Litigation

On April 2, 2015, Appellants filed an action against the Association in the Eighth Judicial District, Case No. A-15-716420-C, seeking an order from the district

court that the Association hold an election, as it had not held such an election since March 24, 2010. *See* Complaint in NRED 3 Litigation, AA000490 - 497. On September 13, 2017, the district court granted Appellants' Motion for Summary Judgment in the NRED 3 Litigation, and ordered that election take place before a neutral third party. *See* Order Granting Summary Judgment in NRED 3 Litigation, AA000499 - 506.

On November 7, 2017, the district court awarded Appellants \$14,807.50 in attorneys' fees and \$655.10 in costs. Order Granting Attorneys' Fees and Costs in NRED 3 Litigation, AA000508 - 511.

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

G. Recording Of The Abstracts

Appellants recorded abstracts of judgment all stemming from the judgment issued in the NRED 1 Litigation against each unit (property) within the Association, including Respondents' properties. *See* Abstracts of Judgment from NRED 1 Litigation, AA000513 - 519. Appellants obtained an Abstract of Judgment in the NRED 2 Litigation as well, but at this time have only recorded that Abstract against the Association.

H. District Court Case No. A-16-747800-C (Supreme Court Docket 73039)

Two homeowners, The Marjorie B. Boulden Trust (“Boulden Trust”) and Jacques and Linda Lamothe Living Trust (“Lamothe Trust”), filed a lawsuit against Appellants 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, AA000019 - 25, Second Amended Complaint, AA000026 - 34. The Complaint and amendments thereto only dealt with abstracts of judgment related to the NRED 1 Litigation. *See general id.*

On April 26, 2017, after a hearing, the Honorable Judge Timothy C. Williams, district court judge, granted the Boulden Trust and Lamothe Trust’s Motion for Partial Summary Judgment on all claims. *See* Findings of Fact and Conclusions of Law and Order Granting Motion for Partial Summary Judgment, AA000051 - 58. Therein, the district court granted a permanent injunction against Appellants. *Id.* The district court also mistakenly entered an order granting summary judgment as to Respondents’ slander of title claim. *Id.*

On May 16, 2017, Appellants 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. 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 Order”), withdrawing any findings related to Respondents’ slander of title claim. Amended Order, AA000059 - 65.

Appellants appealed the district court’s Amended Order in Supreme Court Docket No. 73039. On December 4, 2018, the Supreme Court entered an Order of Affirmance, after the attorneys’ fees and costs in the instant matter were awarded.

I. Respondents’ Lawsuit, District Court Case No. A-17-765372-C

Respondents filed a lawsuit on November 30, 2017, seeking to quiet title to their respective properties and setting forth claims for quiet title and declaratory relief. Complaint in District Court Case No. A-17-765372-C, AA000066 - 75. Respondents’ claims address the same abstracts of judgment recorded by Appellants on Respondents’ respective properties located within the Association. *See id generally.* The Complaint also addresses the judgments obtained by Appellants against the Association in NRED 2 and NRED 3 Litigation, for which abstracts of judgment were not recorded. *See id.* at ¶¶ 31 – 39, AA000071 - 72. Respondents’ complaint sought declaratory relief as to whether Appellants could enforce the judgments in these cases against Respondents, even though no abstracts of judgment had been recorded. *See id.*

On February 27, 2018, the district court, Department XVIII, consolidated Case No. A-17-765372-C with Case No. A-16-747800-C. *See Order Consolidating Cases, AA000081 - 86.*

The parties each filed motions for summary judgment. The district court heard oral argument on the foregoing motions, initially on March 21, 2018. *See generally* March 21, 2018 Transcript of Proceedings (“March 21, 2018 Tran.”), AA000751 - 770. Respondents, in both their briefs and during oral argument, urged the district court to apply the Amended Order in Case No. A-16-747800-C to the present case as “law of the case.” *See* Respondents’ Motion for Summary Judgment, AA000095 - 96; *see also* March 21, 2018 Tran. 8:9 – 22, 9:8 - 15 AA000758, 759. Initially, the district court found that the Judge Williams’ Amended Order was not law of the case. *Id.* at 12:22 – 13:2, AA000762 - 763 (“Obviously, another district court’s ruling is not binding. There was a lot of briefing on the issue of preclusion, res judicata, law of the case. I don’t think it’s law of the case, it hasn’t gone up to the Supreme Court and then been decided.”)

On May 22, 2018, the district court granted Respondents’ Motion for Summary Judgment, or, in the Alternative, Motion for Judgment on the Pleadings and Denying Countermotion for Summary Judgment. *See* Order Granting Motion, AA000780 - 793. The Order Granting Motion (at issue) holds Judge Williams’ Amended Order in Case No. A-16-747900-C is “law of the case.” Order Granting Motion, Conclusions of Law (“COL”) No. 1, AA000786; *see also* Transcript from May 2, 2018 Hearing (“May 2, 2018 Tran.”), 4:23 – 24, AA000774 (“I found that Judge Williams’ Order was law of the case.”) Hence, the Order Granting Motion mirrors Judge Williams’

Amended Order per the district court's instruction to counsel. *Id.* at 5:12 – 20, AA000775.

J. District Court's Award Of Attorneys' Fees And Costs

On September 11, 2018, the district court issued its Order Regarding Appellants' Motion for Attorneys' Fees and Costs and Disbursements and Defendants' Motion to Retax and Settle Memorandum of Costs ("Order Re: Fees and Costs"), AA000861 - 868. In pertinent part, the district court awarded attorneys' fees solely pursuant to NRS 18.010(2)(b) which provides as follows:

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

Order Re: Fees and Costs, AA000865.

The district court held Appellants had notice of Judge Williams' prior Order granting summary judgment in the consolidated case, and Appellants "were given an opportunity to avoid this litigation and to preserve their legal arguments for appeal." Order Re: Fees and Costs, 5:13-14, AA000865. Importantly, the district court held Judge Williams order was "law of the case." *Id.* at 5:15, AA 000865. As a result, the

district court found [Appellants'] defense to the underlying action was maintained without reasonable ground" and an award of attorneys' fees was appropriate under NRS 18.010(2)(b). *Id.* at 5:18-22, AA000865.

VI. SUMMARY OF ARGUMENT

The district court erred in finding Judge Williams' order granting summary judgment, which was then on appeal before this Supreme Court, was *law of the case*. A trial court's ruling finding only partial summary judgment, which order is on appeal, does not constitute law of the case. *Byford v. State* 116 Nev. 215, 232, 994 P.2d 700, 711-12 (2000). The issue must be fully and finally adjudicated on appeal. *Id.*

This single erroneous finding served as foundation for which the district court then awarded attorneys' fees and costs to Respondents pursuant to NRS 18.010(2)(b). The district court incorrectly concluded Appellants essentially ignored the law of the case and continued to defend the underlying action without reasonable grounds. However, Judge Williams' order was not law of the case, as it was traversing appeal before this Supreme Court and was not decided until December 2018, well after summary judgment in favor of Respondents and an award of attorneys' fees and costs were granted.

While Appellants' arguments ultimately did not prevail and Judge Williams' order granting partial summary judgment was affirmed (See Docket No. 73039),

Appellants did not lack reasonable grounds to maintain their defenses as they presented novel issues, which, if successful, could have resulted in the expansion of Nevada's law regarding the interpretation and application of NRS, Chapter 116 as it relates to limited purpose associations. Judge Williams even commented on the unique arguments presented to him, calling the discourse “interesting” and uncertain.

It full - - I mean, I read this. And I just thought, wow, this is really an interesting issue. I don't know the answer to this. *See* January 19, 2017 Hearing Transcript, 10:11 – 14, AA000888.

VII. ARGUMENT

VIII. THE DISTRICT COURT ERRED IN FINDING THE PRIOR DISTRICT COURT ORDER, WHICH ORDER WAS ON APPEAL, WAS “LAW OF THE CASE”

A. The District Court Should Apply A De Novo Standard Of Review To The District Court’s Application of the Law Of The Case Doctrine

The Supreme Court reviews *de novo* the application of the *law of the case* doctrine. *Rennels v. Rennels*, 127 Nev. 564, 127 Nev. Adv. Rep. 49, 257 P.3d 396, 399 (2011) (reviewing issues of law de novo); *Dictor v. Creative Mgmt. Servs., LLC*, 126 Nev. 41, 44, 223 P.3d 332, 334 (2010) (explaining that the law-of-the-case doctrine applies to previously decided "principle[s] or rule[s] of law"). In the present case, the district court's award of attorneys' fees and costs under NRS 18.010(2)(b)

was premised entirely on its finding that Judge Williams' order granting summary judgment in a consolidated case was *law of the case*. But for this conclusion, attorneys' fees and costs would not have been awarded. Hence, this Court should first examine the district court's error in the application of the *law of the case* doctrine.

B. The District Court Errored In Finding Judge Williams' Amended Order Granting Partial Summary Judgment Was Law Of The Case When That Order Was On Appeal

Fundamental to the district court's award of attorneys' fees and costs is its initial finding that "the Court's prior Order with respect to the Boulden Trust's and Lamothe Trust's Motion for Partial Summary Judgment, Case No. A-16-747900-C, is the law of the case, to the extent applicable to [Respondents'] claims." Order Granting MSJ, COL N0. 1, AA000786; May 2, 2018 Tran., 4:23-24, AA000774 ("I found that Judge Williams' order was law of the case."), *see also* Order Re: Fees and Costs, AA000901.

The district court reasoned as follows in granting attorneys' fees and costs:

The Motion and Countermotion came on for hearing on March 21, 2018 and May 2, 2018, where the Court decided in the favor of the Plaintiffs, adopting Judge Williams' prior Order as the "law of the case."

The Defendants had notice of the Order entered by Judge Williams ...After the Order was entered and prior to this Case being filed by the Plaintiffs, the Defendants were given the opportunity to avoid this litigation and to preserve their legal arguments for appeal. As this Court has already held, Judge Williams' Order is law of the case and binding on this court. Therefore, given the directive in NRS 18.010(2) to liberally construe the paragraph in favor of awarding attorney's fees, the Court finds that the Defendants' defense to this action was maintained without reasonable ground. Order Re: Fees and Costs, AA000865.

Nevada law is clear - Judge Williams' Amended Order in Case A-16-747800-C is **not** binding on the district court because that order was for partial summary judgment and was on appeal. Judge Williams' Amended Order, at the time of the district court's hearing and determination of this matter, was not final, rather it was partial and interlocutory. The Order Granting Motion for Summary Judgment in favor of Respondents was entered on May 22, 2018. *See* Order Granting Motion, AA000780. The Supreme Court's Order of Affirmance related to Judge Williams' Amended Order was entered nearly six (6) months later, on December 4, 2018.

The doctrines of res judicata and issue preclusion are "triggered when judgment is entered." *Univ. of Nev. v. Tarkanian*, 1110 Nev. 581, 598, 879 P.2d 1180, 1191 (1994). There must be a **final** determination by a court of competent jurisdiction. *Id.* An order granting partial summary judgment is not a **final order** or judgment where issues of damages remain. *Mid-Century Ins. Co. v. Pavilkowski*, 94 Nev. 162, 576 P.2d 748 (1978), *see also Hallicrafters Co. v. Moore*, 102 Nev. 526, 528, 728 P.2d 441, 442 (1986). Further, there was no certification by the court that this was a final

judgment under NRCP 54(b).

A “final order” resolves all claims against all parties, leaving nothing for further consideration except for post-judgment issues, *i.e.* attorneys’ fees. *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000); *see also Cox v. Gilcrease Well Corp.*, 2014 WL 2466229 (2014). The Amended Order Granting Partial Summary Judgment was not a final order as claims remained in that case. Further, that order was on appeal.

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.” *Crocker v. Piedmont Aviation, Inc.*, 49 F.3d 735, 739 (D.C.Cir.1995). “Normally, ‘for the law-of-the-case doctrine to apply, the appellate court must actually address and decide the issue explicitly or by necessary implication.’” *Reconstruct Co. v Zhang*, 317 P.3d 814, 818 (2014) (quoting *Dictor v. Creative Mgmt. Servs., L.L.C.*, 126 Nev. —, —, 223 P.3d 332, 334 (2010)), *see also Dictor v. Creative Management Services, LLC*, 126 Nev. 41, 44-46, 223 P.2d 332, 335 (2010) (holding that in order for the law-of-the-case doctrine to apply, the appellate court must specifically and actually address and decide the issue). A trial court’s ruling does not constitute law of the case. *Byford v. State* 116 Nev. 215, 232, 994 P.2d 700, 711-12 (2000). The issue must be adjudicated on appeal. *Id.*

Indeed, a district court has the discretion to revisit prior rulings in the same case, provided such rulings and issues decided therein have not been decided by the appeal or Supreme Court. *Bejarano v. State*, 122 Nev. 1066, 1074-75, 146 P.3d 265, 271-72 (2006). Thus, in *Dictor, supra*, the Supreme Court held that a district court could entertain a renewed motion for summary judgment based on new and alternative statutory defenses that were not raised in a prior summary judgment motion.

In the present case, the district court had the jurisdiction and discretion to revisit all prior rulings, specifically Judge Williams' Amended Order. And initially, the district court indicated that it would revisit the Amended Order, noting Judge Williams order was subject to scrutiny. March 21, 2018 Tran. 12:22 – 13:2, AA000909 - 910. The district court, for reasons unknown, then reversed course and held Judge Williams' order was *law of the case*. This finding is clear error. Judge Williams' Amended Order was not *law of the case* and not binding on the district court in this matter because the order was for partial summary judgment, was on appeal, and the Order of Affirmance related to the Amended Order was not entered (and the appeal not decided by this Supreme Court) until December 4, 2018, well after the district court granted Respondents summary judgment and awarded fees and costs pursuant to NRS 18.010(2).

C. This Court Should Overturn The District Court's Award Of Attorneys' Fees And Costs Because The District Court's Application Of NRS 18.010(2)(b) Was Predicated Solely On Its Erroneous Application Of The Law Of The Case Doctrine The district court granted attorneys' fees and costs solely based on its finding

Judge Williams' order granting summary judgment was law of the case. As the district court explained, "the Court finds that the Defendants' defense to this action was maintained without reasonable ground" because Judge Williams had previously established the *law of the case*. Order Re: Fees and Costs, AA000865. As set forth above, at all times Appellants maintained defenses of the claims asserted by Respondents, Judge Williams' order granting partial summary judgment in the consolidate case was unquestionably and unarguably not *law of the case*.

Once more, and as further explained in Section III, herein, Appellants had good and ample grounds for defending Respondents' lawsuit.

Because the district court's basis for granting fees and costs pursuant to NRS 18.010(2)(b) was erroneous, the fee and cost award is similarly in error. For that reason, this Court should overturn the fee and cost award.

IX. THE DISTRICT COURT ABUSED ITS DISCRETION IN FINDING APPELLANTS' MAINTAINED THEIR DEFENSES IN THE UNDERLYING ACTION WITHOUT MERIT

A. This Court Should Apply An Abuse Of Discretion Standard To The District Court's Application Of NRS 18.010(2)(b)

The Supreme Court reviews a District Court's attorneys' fee orders for an abuse of discretion. *Baldonado v. Wynn Las Vegas, LLC*, 124 Nev. 951, 967, 194 P.3d 96, 106. In *Frederic & Barbara Rosenberg Living Trust v. MacDonald Highlands Realty, LLC*, 427 P.3d 104, 134 Nev. Adv. Rep. 69 (2018), the Supreme Court applied an abuse of discretion standard to District Court's award of attorneys' fees pursuant to NRS 18.010(2)(b). *Id.* at 108.

As set forth in Section II, above, the attorney fee and cost award should be overturned because the District Court applied a false premise – that the law of the case cautioned Appellants to drop their defenses of the underlying action and concede the merits to Respondents. While this premise and the ultimate fee and cost award was no doubt erroneous, even assuming, *arguendo*, the district court did not apply the *law of the case* doctrine, fees and costs are still not warranted under NRS 18.010(2)(b), and the District Court abused its discretion in making such a finding.

B. The District Court Erred In Finding Appellants Maintained The Action Without Reasonable Ground

NRS 18.010(2)(b) provides a court may make an allowance of attorney's fees to a prevailing party when the court finds the claim, counterclaim, or defense was brought "without reasonable ground or to harass the prevailing party." To support an award of attorney fees without regard to recovery sought, there must be evidence in the record supporting the proposition that claims were brought without reasonable grounds or to harass the other party. *Semenza v. Caughlin Crafted Homes*, 1995, 901 P.2d 684, 111 Nev. 1089. Although a district court has discretion to award attorney fees against a party for unreasonably maintaining a lawsuit, there must be evidence supporting the district court's finding that the claim or defense was unreasonable or brought to harass. *Bower v. Harrah's Laughlin, Inc.*, 2009, 215 P.3d 709, 125 Nev. 470.

1. The Court Must Balance The Need To Deter Frivolous Lawsuits Against A Party's Right to Advocate A Novel Or Difficult Issue Of Law

In a recent Nevada Supreme Court case, *Frederic & Barbara Rosenberg Living Trust v. MacDonald Highlands Realty, LLC*, 427 P.3d 104, 134 Nev. Adv. Rep. 69 (2018), the Supreme Court held the district court abused its discretion in awarding attorneys' fees pursuant to NRS 18.010(2)(b). In *Frederic & Barbara Rosenberg*

Living Trust, the trust purchased a residential lot and attempted to maintain an implied restrictive covenant on a parcel adjoining the lot and a golf course. *Id.* at 18. The trust ultimately filed a lawsuit against a third-party purchaser of the adjoining parcel, Malek, seeking to establish an easement. *Id.* Malek brought a motion for summary judgment against the trust because Nevada does not recognize the type of easement sought to be enforced. *Id.* The district court agreed and granted the motion for summary judgment. *Id.*

The district court then awarded attorneys' fees to Malek pursuant to NRS 18.010(2)(b). *Frederic & Barbara Rosenberg Living Trust*, 427 P.3d at 112. The court found the trust "lacked reasonable grounds to maintain the litigation, even if it initially had reasonable grounds to file suit, because of the facts and law" in the motion for summary judgment. *Id.* at 112-113.

The Supreme Court, however, disagreed and found the district court abused its discretion in awarding fees. *Frederic & Barbara Rosenberg Living Trust*, 427 P.3d at 112-113. The Court cited *Semenza v. Caughlin Crafted Homes*, 111 Nev. 1089, 1095, 901 P.2d 684, 687-88 (1995), in finding that "[f]or purposes of NRS 18.010(2)(b), a claim is frivolous or groundless if there is no credible evidence to support it." *Id.* "Although a district court has discretion to award attorney fees under NRS 18.010(2)(b), there must be evidence supporting the district court's finding that the claim or defense was unreasonable or brought to harass." *Id.* (quoting *Bower*, 125

Nev. at 493, 215 P.3d at 726).

The Supreme Court reasoned that while it agreed the evidence presented by the trust on summary judgment did not support its lawsuit, the trust did not lack “reasonable grounds to maintain the suit, as it presented a novel issue in state law, which, if successful, could have resulted in the expansion of Nevada's caselaw regarding restrictive covenants.” *Frederic & Barbara Rosenberg Living Trust*, 427 P.3d at 21 (citing *Rodriguez v. Primadonna Co., LLC*, 125 Nev. 578, 588, 216 P.3d 793, 801 (2009) where the district court denied attorney fees under NRS 18.010(2)(b) because the claim “presented a novel issue in Nevada law concerning the potential expansion of common law liability”). Finally, the Court held while there is a need to deter frivolous lawsuits, this “must be balanced with the need for attorneys to pursue novel legal issues or argue for clarification or modification of existing law.” *Id.*

In the case of *Stubbs v. Strickland*, 129 Nev. 146, 297 P.3d 326 (2013), this Supreme Court refused to award attorneys’ fees pursuant to NRS 18.010(2)(b) where the plaintiff pursued a case seeking a “change or clarification in existing law.” *Id.* at 153-154. In *Stubbs*, the plaintiff filed an anti-SLAPP lawsuit against the defendant who previously filed a defamation lawsuit against the plaintiff, only to dismiss the lawsuit nine (9) days later before a responsive pleading was filed. *Id.* at 149. The defendant in the anti-SLAPP lawsuit prevailed on a motion to dismiss and sought an award of attorneys’ fees pursuant to NRS 18.010(2)(b), arguing the plaintiff had no

reasonable basis for bringing an anti-SLAPP lawsuit that was voluntarily dismissed prior to the plaintiff filing an answer, as permitted by Nevada law. *Id.*

Ultimately, the Supreme Court upheld the district court's denial of attorneys' fees, reasoning that even though Nevada law was certainly counter to the plaintiff's arguments, the plaintiff was seeking to change and/or clarify Nevada law as to whether a party can recover damages when a party voluntarily dismisses a defamation lawsuit prior to the defendant in such an action responding. *Stubbs*, 129 Nev. at 153-154, 297 P.3d at 330-331.

2. **Appellants, In Defending Against Respondents' Lawsuit, Maintained Defenses That Sought To Clarify Existing Nevada Law And Seek Suitable Equitable Relief**

There can be no argument regarding the novel and complex concepts involved in the underlying litigation. Appellants have reasonable grounds to believe that they had an absolute right to record the abstracts of judgments and seek relief pursuant to the plethora of law cited in the briefing in this case.

There is an unquestionable gap and vagueness in Chapter 116 that creates ambiguity as to whether a creditor of a limited purpose association can enforce a judgment against the owners therein, something a creditor undoubtedly can do in a NRS 116.3101 unit owners' association as set forth in Chapter 116. Further, the district court, in prior judgments in favor of Appellants, awarded attorneys' fees,

costs, and damages pursuant to the Amended CC&Rs and the entirety of Chapter 116. Appellants contend because the judgments were not limited in scope to those provisions of Chapter 116 that applied only to limited purpose associations, neither should collection efforts. Appellants should be afforded all of the rights of any creditor against a unit owners' association. Thus, there is an ambiguity and a contradiction in the District Court rulings. While the district court awarded attorneys' fees to Appellants pursuant to Chapter 116 in the NRED 1, 2 and 3 litigation, the district court in this case concluded Appellants cannot collect those fees under the very same statutory framework under which they recovered those fees. Appellants sought to eradicate this contradiction through clarification and interpretation of Chapter 116.

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

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

Further, Appellants argued the principals of equity are better served with a broad interpretation of Chapter 116 that would permit Appellants to recover as a creditor against a homeowners' association. Where a statute is not clear or is ambiguous, the plain meaning rule has no application. *Thompson v. District Court*, 100 Nev. 352, 354, 683 P.2d 17, 19 (1984); *Robert E. v. Justice Court*, 99 Nev. 443, 664 P.2d 957 (1983); *see also McKay v. Board of Supervisors*, 102 Nev. 644, 648, 730 P.2d 438, 441, 1986 Nev. LEXIS 1609, 13 Media L. Rep. 2066. An ambiguous statute can be construed "in line with what reason and public policy would indicate the legislature intended." *Robert E. v Justice Court of Ren Township*, 99 Nev.443, 445 (1983).

With due respect to the Nevada legislature, Chapter 116 is incomplete, ambiguous and often confusing with respect to the inclusion (or exclusion) of limited purpose associations. For example, while a limited purpose association must have a Board of Directors, there is no statutory mechanism for elections. NRS 116.1201, 116.31083, 116.31152. 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. But electing this Board for a limited purpose association is absent from Chapter 116.

A limited purpose association is not required by Chapter 116 to obtain insurance for the common elements (NRS 116.3113, et. seq.), but a limited purpose association only stands to benefit from procuring such insurance. A limited purpose association is required to complete a reserve study and maintain adequate reserves (NRS 116.31152), but there are no provisions related to the funding of the reserves. Simply stated, Chapter 116 is, in some respects, poorly drafted and incomplete as it relates to limited purpose associations.

Because the plain meaning does not apply, the Court may use its discretion to interpret and apply the statute in line with equitable public policy. *Robert E.*, 99 Nev. at 445. *Mackintosh v. California Federal Savings & Loan Association*, 113 Nev. 393, 935 P.2d 1154 (1997), tells us the Nevada Supreme Court is concerned with equity, fairness, and equal application of contractual provisions even when the party asserting the invalidity of the contract prevails.

Appellants continued to rely on the language in Chapter 116 to support their position before this Supreme Court. Appellants did not have an obligation to alter their position or drop their defense simply because Respondents asked them to. Thus, Appellants have reasonable grounds for their claims, and their defenses in the underlying litigation was not intended to harass Respondents.

3. Judge Williams Believed The Issues In The Case To Be “Interesting” And “Complex,” And Without A Clear Answer

Soon after the consolidated action was filed by the Boulden and Lamothe plaintiffs, Judge Timothy Williams acknowledged the complexity of the legal issues involved, and stated the proper outcome was not clear-cut. On January 19, 2017, at the hearing on the plaintiffs’ application for a temporary restraining order, Judge Williams stated as follows after he was presented with the ultimate legal issues and theories of the case:

Court: I thought it was a fascinating issue because when I read it I said, this is really interesting. I don’t know the answer. I’m looking forward to being fully briefed on it. *See* January 19, 2017 Hearing Tran., 9:24 – 10:2, AA000887 - 888.

...

Court: It full - - I mean, I read this. And I just thought, wow, this is really an interesting issue. I don’t know the answer to this. *See* January 19, 2017 Hearing, 10:11 – 14, AA000888.

The issues before district court, and indeed this Court, are novel and complex. Chapter 116, at best, is an incomplete and ambiguous statute. For example, while Chapter 116 requires a *limited purpose association* to have a Board of Directors, the provisions governing an election (NRS 116.3103) do not apply to a limited purpose

association. *See* NRS 116.1201(2)(a); *but see* NRS 116.31038.¹ This was the very subject of the NRED 3 Litigation, wherein the district court declared the Association must hold an election to seat a Board despite Chapter 116's confusing failure to include an election provision. Once more, there is little to no case law related to limited purpose associations and the application of Chapter 116 (or similar statutes in other states). The concepts and issue in this matter are novel.

Specific to the present case, there is an unquestionable gap in Chapter 116 that creates ambiguity as to whether a creditor can enforce a judgment against the owners in a limited purpose association, a right specifically afforded to creditors of NRS 116.3101 unit owners' associations. *See* NRS 116.3117.

In their defense, Appellants relied on the language in NRS 116.4117, NRS 116.3111 and NRS 116.3117, as well as the prior rulings from the NRED 1, 2 and 3 litigation. NRS 116.3111(3) provides that "[l]iens resulting from judgments against the association are governed by NRS 116.3117." NRS 116.3117 then provides:

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

¹ The election provisions of NRS 11.3103 do not apply to a limited purpose association, yet a limited purpose association must have a Board.

Appellants relied on the language in these statutes to support their position before this Supreme Court. Thus, Appellants had reasonable grounds for their claims and their defenses in this litigation was not intended to harass any party in this litigation.

C. **The Supreme Court Did Not Believe Appellants' Actions Or Prior Appeals Were Frivolous**

This Court's abstention from awarding attorneys' fees in related and prior appeals is an indication that the case was certainly novel and ripe for judicial review and fair determination. Nevada Rule of Appellate Procedure 38(b) authorizes the Supreme Court, on its own accord and without motion, to make an award of attorneys' fees and costs "when an appeal has frivolously been taken or been processed in a frivolous manner..." In this case, the Supreme Court issued a detailed and reasoned finding affirming the district court's determination but made no indication that the case was frivolous or without merit. Certainly, had the Supreme Court believed this to be true it would have issued its own award of fees and costs.

Finally, once the Supreme Court affirmed the district court's adverse findings, the Lytles conceded the ruling and agreed to dismiss their claims and end the litigation. *See Stipulation Re Dismissal, AA000876 - 878.*

D. Appellants Are Justified In Pursuing Their Defense Of The Underlying Litigation Because NRED 2 Litigation Is Distinguishable

In addition to the foregoing, Appellants justifiably maintained defense of Respondents' lawsuit because Judge Williams order granting summary adjudication only related to the NRED 1 Litigation. The NRED 2 Litigation has additional facts the provide Appellants with additional and alternative grounds for enforcing a judgment against the units within the Association.

In the NRED 2 Litigation (and underlying Chapter 38 arbitration), Appellants and the Association stipulated the Amended CC&Rs were valid and enforceable for the purpose of the NRED 2 Litigation. Stipulation, AA000425 - 430. Indeed, in the Complaint in that action, Appellants included the following language in their Complaint:

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.

Complaint in NRED 2 Litigation, ¶ 11, AA000436.

Indeed, for the purposes of that litigation only, the Amended CC&Rs unquestionably define the rights, liabilities and obligations of the parties. Appellants

obtained a judgment in the NRED 2 Litigation in the total amount of \$1,103,158.12, which amount was awarded pursuant to the Amended CC&Rs and NRS, Chapter 116.

When this litigation was before the Supreme Court (after Appellants appealed an adverse ruling), the Supreme Court noted the importance of the foregoing Stipulation, stating that its ruling was “premised in part on [Appellants’] stipulation as to the Amended CC&Rs validity.” Supreme Court Order Re: NRED 2 Litigation, AA000521 – 522.

In the underlying litigation at issue, Appellants rely, in part, on the foregoing facts as additional justification for enforcing the judgment in the NRED 2 Litigation against the Association’s members pursuant to the Amended CC&Rs and NRS 116.4117.

X. CONCLUSION

For the reasons set forth herein, Appellants respectfully contend the district court erred in granting attorneys’ fees and costs to Respondents under NRS 18.010(2)(b). The district court set the stage for the error when it erroneously concluded Judge Williams’ order granting partial summary adjudication was *law of the case*. This fundamental mistake then gave the district court reason to conclude Appellants continued their defense of Respondents’ lawsuit without justification.

Judge Williams’ ruling was unsettled, not final, and was still subject of controversy in this matter. Appellants have good faith defenses to the claims

brought against them, rooted in equity. Appellants were provided remedies by the district court in prelude actions that were then unceremoniously cut-off in this matter.

Simply stated, the district court improperly awarded attorneys' fees and costs to Respondents because it concluded Appellants were unreasonably stubborn in defending an action that had already been decided by Judge Williams.

The district court's premise is in error, and with the utmost respect, so is its conclusion as to an award of fees and costs pursuant to NRS 18.010(2).

DATED this 20th day of May, 2019.

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Certificate of Compliance

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

[X] This brief has been prepared in a proportionally spaced typeface using **Microsoft Word 2010 Times New Roman 14—point font.**

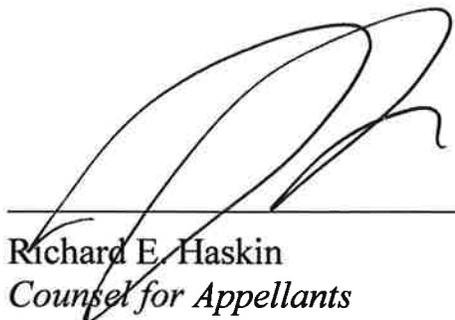
2. I further certify that this Brief complies with the page or type—volume limitations of NRAP 32(a)(7). Excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is:

[] Does not exceed 30 pages; or

[X] Proportionately spaced, has a typeface of 14 points or more and contains **9,172** words.

3. I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 20th day of May, 2019.



Richard E. Haskin
Counsel for Appellants

Certificate of Service

1. Electronic Service:

I hereby certify that on this date, the 20th day of May 2019, I submitted the foregoing **Appellant's Opening Brief (Docket 77007)** for filing and service through the Court's eFlex electronic filing service. According to the system, electronic notification will automatically be sent to the following:

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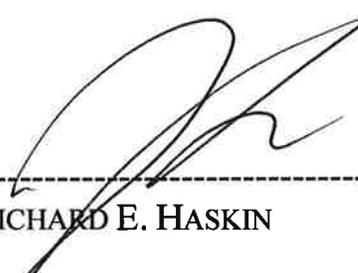
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