

EXHIBIT A
LEGAL DESCRIPTION

THAT PORTION OF THE SOUTHEAST QUARTER (SE 1/4) OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION 10, TOWNSHIP 21 SOUTH, RANGE 60 EAST, M.D.B. & M., DESCRIBED AS FOLLOWS:

PARCEL THREE (3) OF THE CERTAIN PARCEL MAP ON FILE IN FILE 46, PAGE 43, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

TOGETHER WITH THAT PORTION OF PALMYRA AVENUE LYING ADJACENT AND NORTHERLY OF SAID LAND AS VACATED BY THE BOARD OF COMMISSIONERS OF CLARK COUNTY, NEVADA IN AN ORDER OF VACATION RECORDED JANUARY 28, 1994, IN BOOK 940128 AS DOCUMENT NO. 01280 AND RE-RECORDED JULY 8, 1994, IN BOOK 940708 AS DOCUMENT NO. 00922 OF OFFICIAL RECORDS, CLARK COUNTY, NEVADA.

APN: 163-10-803-015

**STATE OF NEVADA
DECLARATION OF VALUE FORM**

1. Assessor Parcel Number(s)

a) 163-10-803-015

b)

c)

2. Type of Property:

- a) ☐ Vacant Land b) ☒ Single Fam. Res.
c) ☐ Condo/Twnhse d) ☐ 2-4 Plex
e) ☐ Apt. Bldg. f) ☐ Comm'l/Ind'l
g) ☐ Agricultural h) ☐ Mobile Home
i) ☐ Other _____

FOR RECORDER'S OPTIONAL USE ONLY

Book: _____ Page: _____

Date of Recording: _____

Notes: _____

3. Total Value/Sales Price of Property:

\$829,000.00

Deed in Lieu of Foreclosure Only (value of property):

()

Transfer Tax Value:

\$829,000.00

Real Property Transfer Tax Due:

\$4,227.90

4. If Exemption Claimed:

a. Transfer Tax Exemption, per NRS 375.090, Section: _____

b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100%

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month.

Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____

Capacity Grantor

Signature _____

Capacity Grantee

SELLER (GRANTOR) INFORMATION
(REQUIRED)

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name Lynita Sue Nelson Trust
Address: 3316 Chesterbrook Ct.
City, St., Zip: Las Vegas, NV 89135

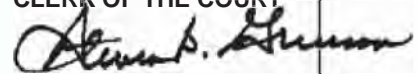
Print Name: Stefan Nathan Chock
Address: 7065 Palmyra Avenue
City, St., Zip: Las Vegas, NV 89117

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)

Print Name: Chicago Title of Nevada, Inc.
Address: 3100 W. Sahara Ave.
City/State/Zip: Las Vegas, NV 89102

Escrow #: 13042142-149

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED



1 **NOT**

2 RHONDA K. FORSBERG, CHARTERED

3 RHONDA K. FORSBERG, ESQ.

4 Nevada Bar No. 009557

5 64 N. Pecos Road, Suite 800

6 Henderson, Nevada 89074

7 Telephone: (702) 990-6468

8 Facsimile: (702) 990-6459

9 rforsberg@forsberg-law.com

10 *Attorney for Eric L. Nelson*

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

13 ERIC L. NELSON

14 Plaintiff,

15 vs.

16 LYNITA SUE NELSON, MATT

17 KLABACKA, as Distribution Trustee of the

18 ERIC L. NELSON NEVADA TRUST

19 DATED May 30, 2001,

20 Defendants,

21 MATT KLABACKA, as Distribution

22 Trustee of the ERIC L. NELSON

23 NEVADA TRUST DATED May 30, 2001,

24 Cross-claimant,

25 vs.

26 LYNITA SUE NELSON,

27 Cross-defendant

28 . . .

CASE NO: D-09-411537-D
DEPT NO: O

FAMILY DIVISION

PSAPP0192

1 **NOTICE OF JOINDER TO REPLY TO OPPOSITION TO MOTION TO**
2 **ENFORCE SUPREME COURT'S ORDER DATED MAY 25, 2017; MOTION TO**
3 **HOLD LYNITA S. NELSON IN CONTEMPT FOR VIOLATION OF**
4 **SEPTEMBER 22, 2014 ORDER; AND FOR ATTORNEY'S FEES AND COSTS**
5 **AND OPPOSITION TO COUNTERMOTION FOR FINAL JUDGMENT**
6 **CONSISTENT WITH THE NEVADA SUPREME COURT'S REMAND OR, IN**
7 **THE ALTERNATIVE FOR AFFIRMATION OF JOINT PRELIMINARY**
8 **INJUNCTION FOR A RECEIVER TO MANAGE THE PROPERTY PENDING**
9 **FINAL JUDGMENT, FOR UPDATED FINANCIAL DICLSOURES AND**
10 **EXCHANGE OF FINANCIAL INFORMATION, AND FOR SALE OF**
11 **PROPERTY FOR PAYMENT OF ATTORNEY'S FEES**

12 PLEASE TAKE NOTICE Defendants, Counterclaimants/Crossdefendants/Third-
13 Party Defendants, Eric Nelson, Individually, and as Investment Trustee of the ERIC L.
14 NELSON NEVADA TRUST dated May 30, 2001, by and through his Counsel of
15 Record, Rhonda K. Forsberg, Esq., hereby join defendants, MATT KLABACKA,
16 Individually and as Distribution Trustee of the ERIC L. NELSON NEVADA TRUST
17 dated May 30, 2001 NOTICE OF JOINDER TO REPLY TO OPPOSITION TO
18 MOTION TO ENFORCE SUPREME COURT'S ORDER DATED MAY 25, 2017;
19 MOTION TO HOLD LYNITA S. NELSON IN CONTEMPT FOR VIOLATION OF
20 SEPTEMBER 22, 2014 ORDER; AND FOR ATTORNEY'S FEES AND COSTS AND
21 OPPOSITION TO COUNTERMOTION FOR FINAL JUDGMENT CONSISTENT
22 WITH THE NEVADA SUPREME COURT'S REMAND OR, IN THE ALTERNATIVE
23 FOR AFFIRMATION OF JOINT PRELIMINARY INJUNCTION FOR A RECEIVER
24 TO MANAGE THE PROPERTY PENDING FINAL JUDGMENT, FOR UPDATED
25 FINANCIAL DICLSOURES AND EXCHANGE OF FINANCIAL INFORMATION,
26
27
28

1 AND FOR SALE OF PROPERTY FOR PAYMENT OF ATTORNEY'S FEES, filed
2 with this Court on or about August 4, 2017 to avoid duplicative pleadings in this matter.
3

4 Dated this 4th day of August, 2017.

5 RHONDA K. FORSBERG, CHARTERED
6

7 
8 RHONDA K. FORSBERG, ESQ.

9 Nevada Bar No. 009557

10 64 N. Pecos Road, Suite 800

11 Henderson, Nevada 89074

12 *Attorneys for Eric L. Nelson*
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) I certify that I am an employee of RHONDA K. FORSBERG, CHARTERED, and that on this 4th day of August, 2017, I caused the above and foregoing document entitled "NOTICE OF JOINDER TO REPLY TO OPPOSITION TO MOTION TO ENFORCE SUPREME COURT'S ORDER DATED MAY 25, 2017; MOTION TO HOLD LYNITA S. NELSON IN CONTEMPT FOR VIOLATION OF SEPTEMBER 22, 2014 ORDER; AND FOR ATTORNEY'S FEES AND COSTS AND OPPOSITION TO COUNTERMOTION FOR FINAL JUDGMENT CONSISTENT WITH THE NEVADA SUPREME COURT'S REMAND OR, IN THE ALTERNATIVE FOR AFFIRMATION OF JOINT PRELIMINARY INJUNCTION FOR A RECEIVER TO MANAGE THE PROPERTY PENDING FINAL JUDGMENT, FOR UPDATED FINANCIAL DISCLOSURES AND EXCHANGE OF FINANCIAL INFORMATION, AND FOR SALE OF PROPERTY FOR PAYMENT OF ATTORNEY'S FEES," to be served as follows:

☒ BY ELECTRONIC SERVICE: Pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and Administrative Order 14-2 captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system;

☐ BY MAIL: Pursuant To NRCP 5(b), I placed a true copy thereof enclosed in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada

☐ BY FACSIMILE: Pursuant to EDCR 7.26, I transmitted a copy of the foregoing document this date via facsimile.

☐ BY ELECTRONIC MAIL: Pursuant to EDCR 7.26, I transmitted a copy of the foregoing document this date via electronic mail.


...
...
...

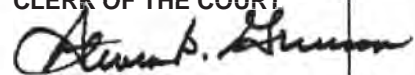
1 ☐ BY CERTIFIED MAIL: I placed a true copy thereof enclosed in a sealed
2 envelope, return receipt requested.

3 To the party(s) listed below at the address, email address, and/or facsimile number
4 indicated below:

5 Robert P. Dickerson, Esq.
6 The Dickerson Law Group
7 1745 Village Center Circle
8 Facsimile: (702) 388-0210
9 Las Vegas, Nevada 89134

Mark A. Solomon, Esq. and Jeffrey P. Luszeck, Esq.
Solomon Dwiggin Freer & Morse, LTD
Cheyenne West Professional Centre
9060 W. Cheyenne Avenue
Facsimile: (702) 853-5485
Las Vegas, Nevada 89129

10 
11 _____
12 An employee of Rhonda K. Forsberg, Chartered



1 RPLY
2 THE DICKERSON KARACSONYI LAW GROUP
3 ROBERT P. DICKERSON, ESQ.
4 Nevada Bar No. 000945
5 JOSEF M. KARACSONYI, ESQ.
6 Nevada Bar No. 010634
7 1745 Village Center Circle
8 Las Vegas, Nevada 89134
9 Telephone: (702) 388-8600
10 Facsimile: (702) 388-0210
11 Email: info@thedklawgroup.com

12 Attorneys for Lynita Sue Nelson

13
14 EIGHTH JUDICIAL DISTRICT COURT
15 FAMILY DIVISION

16 CLARK COUNTY, NEVADA

17 ERIC L. NELSON,

18 Plaintiff/Counterdefendant,

19 v.

20 LYNITA SUE NELSON,
21 MATT KLABACKA,
22 as Distribution Trustee of the
23 ERIC L. NELSON NEVADA TRUST
24 dated May 30, 2001,

25 Defendants/Counterclaimants.

26
27 MATT KLABACKA, as Distribution
28 Trustee of the ERIC L. NELSON
NEVADA TRUST dated
May 30, 2001,

Crossclaimant,

v.

LYNITA SUE NELSON, Individually
and as Investment Trustee of the LSN
NEVADA TRUST, dated
May 30, 2011, and ERIC NELSON,

Cross-Defendant.

CASE NO. D-09-411537-D
DEPT NO. "O"

1 DEFENDANT'S REPLY TO OPPOSITION TO
2 COUNTERMOTION FOR FINAL JUDGMENT CONSISTENT
3 WITH NEVADA SUPREME COURT'S REMAND, OR IN THE
4 ALTERNATIVE, FOR AFFIRMATION OF JOINT PRELIMINARY
5 INJUNCTION, FOR A RECEIVER TO MANAGE PROPERTY
6 PENDING FINAL JUDGMENT, FOR UPDATED FINANCIAL
7 DISCLOSURES AND EXCHANGE OF FINANCIAL
8 INFORMATION, AND FOR SALE OF PROPERTY FOR
9 PAYMENT OF ATTORNEYS' FEES AND COSTS

6 COMES NOW, Defendant and Cross-Defendant, LYNITA SUE
7 NELSON ("Lynita"), by and through her counsel, ROBERT P.
8 DICKERSON, ESQ., and JOSEF M. KARACSONYI, ESQ., of THE
9 DICKERSON KARACSONYI LAW GROUP, and respectfully submits for
10 the Court's consideration her Reply to Opposition to Countermotion for
11 Final Judgment Consistent with Nevada Supreme Court's Remand, or in
12 the Alternative, for Affirmation of Joint Preliminary Injunction, for a
13 Receiver to Manage Property Pending Final Judgment, for Updated
14 Financial Disclosures and Exchange of Financial Information, and for Sale
15 of Property for Payment of Attorneys' Fees and Costs ("Reply").

16 This Reply is made and based upon the pleadings and papers on file
17 herein, the Points and Authorities attached hereto, and the oral argument
18 made at the August 8, 2017 hearing in this matter.

19 DATED this 22 day of August, 2017.

20 THE DICKERSON KARACSONYI
21 LAW GROUP

22 By Robert P. Dickerson
23 ROBERT P. DICKERSON, ESQ.
24 Nevada Bar No. 000945
25 JOSEF M. KARACSONYI, ESQ.
26 Nevada Bar No. 010634
27 1745 Village Center Circle
28 Las Vegas, Nevada 89134
 Attorneys for Lynita Sue Nelson

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 At the August 8, 2017 hearing, the Court granted Lynita leave to file
4 this Reply to ensure that there is a complete record of each party's
5 position with respect to the issues to be determined following the remand
6 from the Nevada Supreme Court. The Court initially set a deadline of
7 August 18, 2017 for this Reply, however, the parties subsequently agreed
8 to extend the deadline set by the Court to August 22, 2017 due to a death
9 in undersigned counsel's family. At the August 8, 2017 hearing, the Court
10 also granted Eric and the ELN Trust time to respond to any "new" issues
11 raised in this Reply beyond those raised in Lynita's Countermotion and
12 the Opposition thereto. The parties agreed to extend such deadlines for
13 a similar length of time, however, this Reply addresses only those points
14 raised in ELN Trust's Opposition to Lynita's Countermotion
15 ("Opposition"), and does not raise any new issues.

16 II. LEGAL ARGUMENT

17 A. Lynita's Countermotion Was Properly Noticed

18 Eric¹ and ELN Trust argue that Lynita's Countermotion was not
19 properly noticed. EDCR 5.502(e) provides:

20 (e) An opposition to a motion that contains a motion related
21 to the same subject matter will be considered as a
22 countermotion. A countermotion will be heard and decided at
the same time set for the hearing of the original motion and no
separate notice of motion is required.

23 ELN Trust's motion pertained to enforcement of the Supreme Court's
24 Order dated May 25, 2017 ("Order"), and return of property previously
25 transferred. Lynita's Countermotion deals with the very same subject
26

27 ¹ Eric, as he always does, filed a notice joining the Opposition to Countermotion
28 filed by ELN Trust.

1 matter – enforcement of the Supreme Court’s Order and the disposition
2 of properties on remand. Accordingly, Lynita’s Countermotion was
3 properly noticed and heard at the time of ELN Trust’s Motion, and this
4 Court’s remand hearing.

5 B. The Purpose Of The Nevada Supreme Court’s Remand

6 At pages 15-16 of its Order, the Supreme Court explained the
7 purpose of its remand as follows:

8 *Tracing trust assets*

9 The parties contest whether the assets within the [Self Settled
10 Spendthrift Trusts (“SSSTs”)] remained separate property or
11 whether, because of the many transfers of property between
12 the trusts, the assets reverted back to community property. In a divorce involving trust assets, the district court must trace those trust assets to determine whether any community property exists within the trusts – as discussed below, the parties’ respective separate property in the SSSTs would be afforded the statutory protections against court-ordered distribution, while any community property would be subject to the district court’s equal distribution. We
14 conclude the district court did not trace the assets in question.

15 Eric’s Trust retained a certified public accountant to prepare
16 a report tracing the assets within the two trusts. However, as
17 noted by the district court, the certified public accountant
18 maintained a business relationship with Eric and Eric’s Trust
19 for more than a decade. Although the certified public
20 accountant’s report concluded that there was “no evidence that
21 any community property was transferred to Eric’s Trust or that
22 any community property was commingled with the assets of
23 Eric’s Trust,” the district court found the report and
24 corresponding testimony to be unreliable and of little
25 probative value. We recognize that the district court is in the
26 best position to weigh the credibility of witnesses, and we will
27 not substitute our judgment for that of the district court here.
28 [Citation omitted]. However, the subject of the certified
public accountant’s report – the tracing of trust assets,
specifically any potential commingling of trust assets with
personal assets – must still be performed. *See Schmanski v.*
Schmanski, 115 Nev. 247, 984 P.2d 752 (1999) (discussing
transmutation of separate property and tracing trust assets in
divorce). Without proper tracing, the district court is left with
only the parties’ testimony regarding the characterization of
the property, which carries no weight. *See Peters v. Peters*, 92
Nev. 687, 692, 557 P.2d 713, 716 (1976) (“The opinion of
either spouse as to whether property is separate or community
is of no weight whatsoever.”). Accordingly, we conclude the

1 district erred by not tracing the assets contained within the
2 trusts, either through a reliable expert or other available
3 means. Separate property contained within the spendthrift
4 trusts is not subject to attachment or execution, as discussed
5 below. However, if community property exists within the
6 trusts, the district court shall make an equal distribution of
7 that community property. See NRS 125.150(1)(b).

8 Order filed May 25, 2017, pgs. 15-16 (emphasis added). In accordance
9 with the Supreme Court's Order, Lynita requested that the Court review
10 the evidence previously submitted and determine that all property held in
11 the ELN and LSN Trusts at the time of divorce was community property,
12 with the exception of the Palmyra residence.

13 Eric and ELN Trust argue Lynita's request "is contrary to the
14 Supreme Court's Opinion that specifically provides that the Separate
15 Property Agreement was a valid agreement and transmuted Eric and
16 Lynita's community property to separate property." Opposition to
17 Countermotion, pg. 5. Lynita's argument does not ignore this Court's
18 finding and the Supreme Court's affirmation that the 1993 Separate
19 Property Agreement was a valid agreement. Lynita recognizes that, in
20 accordance with the prior orders, any property divided in the 1993
21 Separate Property Agreement is the separate property of the parties.
22 Accordingly, the Palmyra residence was Lynita's separate property at the
23 time of divorce and should have been confirmed to her without any
24 equalization to Eric. The remaining property held by the parties at the
25 time of divorce, however, was not addressed at the time of the parties'
26 1993 Separate Property Agreement because all of such property was
27 acquired after 1993 and during the period of the parties' marriage.
28 Accordingly, all such property is presumed to be community property, and
such presumption may only be overcome by clear and convincing
evidence. *Forrest v. Forrest*, 99 Nev. 602, 604-05, 668 P.2d 275, 277
(1983).

1 Next, Eric and ELN Trust argue, "The fact that much of the original
2 assets identified in the Separate Property Agreement were ultimately sold
3 and said proceeds were utilized to purchase other property is
4 inconsequential, because all acquisitions in Eric's Separate Property Trust
5 originated from his separate property." Opposition to Countermotion, pg.
6 5. This conclusion, however, is not supported by any evidence and was
7 specifically contradicted by ELN Trust's own expert witness, Daniel
8 Gerety, CPA. As set forth in Lynita's Countermotion, Mr. Gerety
9 conceded he could not trace the property held in the ELN Trust to the
10 property divided in the 1993 Separate Property Agreement. Based on the
11 faulty conclusion that the property in ELN Trust originated from separate
12 property, Eric and ELN Trust improperly attempt to shift the burden to
13 Lynita to prove such property is community property. The legal analysis
14 provided by ELN Trust with regard to transmutation of separate property
15 to community property is wholly inapplicable because ELN Trust and Eric
16 never overcame the threshold presumption that all the property in the
17 ELN and LSN Trust at the time of divorce (with the exception of the
18 Palmyra residence) was community property.²

19 Knowing that the presumption concerning community property
20 never was, and never can be, overcome, ELN Trust and Eric argue that *the*
21 *Nevada Supreme Court found* that the property in the ELN Trust and LSN
22 Trust was separate property. Opposition to Countermotion, pgs. 7-8. The
23 ELN Trust and Eric argue that any tracing should therefore begin in 2001

24 ² Even if such analysis was applicable, the evidence presented at trial clearly
25 established that the parties' separate property was transmuted to community property.
26 See *Schreiber v. Schreiber*, 99 Nev. 453, 663 P.2d 1189 (1983) (enforcing an oral
27 property agreement between spouses where there was partial performance); see also,
28 *Sprenger v. Sprenger*, 110 Nev. 855, 858, 878 P.2d 284 (1994) (citing to a party's
testimony regarding intent in analyzing whether a transmutation of separate property
occurred).

1 with the assumption that any property held in the ELN and LSN Trust at
2 the time of formation in 2001 was separate property.

3 In arguing that the Nevada Supreme Court found that the parties'
4 property was separate property in 2001, Eric and ELN Trust state:

5 This finding was based upon Lynita's failure to show by clear
6 and convincing evidence that the separate property was
7 transmuted back to community property and the following
8 evidence: (1) the Separate Property Agreement, which as
9 indicated *supra*, the Nevada Supreme Court found to be valid;
10 (2) the Separate Property Trusts, which provides "[t]he
11 property comprising the original Trust estate, during the life of
12 the Trustor, shall retain its character as his separate property
13 . . . ; (3) Shelley Newell, the bookkeeper for Eric and Lynita's
14 Separate Property Trusts testified that the assets and liabilities
15 owned by the Trusts were kept separate, and that all
16 acquisitions in Eric's Separate Property Trust originated from
17 Eric's separate funds; and (4) Section 12.13 of both the ELN
18 Trust and Lynita's SSST, which provide:

19 **Separate Property.** Any property held in trust
20 and any income earned by the trust created
21 hereunder shall be the separate property (in
22 distinction with community property, joint
23 tenancy property, tenancy in common, marital
24 property, quasi-community property or tenancy by
25 the entirety) of the beneficiaries of such trusts.
26 Additionally, any distribution to or for the benefit
27 of the beneficiaries shall be and remain the sole
28 and separate property and estate of the
beneficiaries.

19 Opposition to Countermotion, pg. 8. Of course, other than the Separate
20 Property Agreement, none of this "evidence" was cited by this Court in its
21 Decree or by the Supreme Court in its Order, and Eric and the ELN Trust
22 are simply stating findings they would like the Court to adopt. In fact, the
23 Supreme Court would not have relied on the purported evidence cited by
24 Eric and ELN Trust because doing so would violate Nevada law and its
25 very own Order. As stated above, the affirmation of this Court's findings
26 that the parties' Separate Property Agreement was valid does not change
27 the fact that property acquired during marriage is presumed to be
28 community property. The statements in the parties' respective trust

1 agreements that property held in trust is separate property of the
2 beneficiaries could not be relied upon as competent evidence because such
3 statements are nothing more than a party's opinion of the character of
4 property, which the Nevada Supreme Court specifically held cannot be
5 relied upon.³ Finally, the testimony of Shelley Newell was never
6 referenced in the Court's Decree, or relied upon by the Court in entering
7 its Decree.

8 The Nevada Supreme Court did not find, *sua sponte*, that all property
9 transferred to the ELN and LSN Trusts was separate property. Such an
10 interpretation of the Supreme Court's Order leads to an absurd result: the
11 Nevada Supreme Court contradicting itself and violating its own holding
12 that a finding concerning the nature of property requires a tracing. The
13 Nevada Supreme Court's statements regarding the transfer of properties
14 from the parties' 1993 trusts to the ELN and LSN Trusts, quoted and
15 relied upon by Eric and the ELN Trust, were just summaries of this
16 Court's findings, as opposed to new findings not made by this Court
17 concerning the character of property. Specifically, at page 6, the Supreme
18 Court stated, "On June 3, 2013, the district court found that the SPA was
19 valid and the parties' SSSTs were validly established and funded with
20 separate property."⁴ Emphasis added.

21 . . .

22 . . .

23 ³ "The parties' inconsistent testimony regarding the purported community or
24 separate property characterization of the trust assets carries no weight and should not
25 have been considered when the district court fashioned the property division." Order,
pg. 18.

26 ⁴ Of course, it is true that some of the property transferred into the ELN Trust
27 and LSN Trust was included in the 1993 Separate Property Agreement, and therefore,
28 was separate property pursuant to this Court's Decree and the Supreme Court's
affirmance, e.g., the Palmyra residence.

1 The Court, in its Decree, found as follows:

2 THE COURT FURTHER FINDS that all of the assets and
3 interest held by the Eric L. Nelson Separate Property Trust
4 were transferred or assigned to the ELN Trust.

5 . . .

6 THE COURT FURTHER FINDS that all of the assets and
7 interest held by the Lynita S. Nelson Separate Property Trust
8 were transferred or assigned to the LSN Trust.

9 The Court never found that all property transferred to the ELN and LSN
10 Trusts was separate property, and instead simply found that property
11 titled in the 1993 trusts – whatever its nature – was transferred to the ELN
12 and LSN Trusts.

13 The Nevada Supreme Court in its Order certainly could not have
14 intended to make new and additional findings which contradicted its own
15 holdings of law. Specifically, the Nevada Supreme Court made the
16 following holdings which would be contradicted by reading the Order to
17 include a finding by the Nevada Supreme Court, *sua sponte*, that all
18 property initially transferred to the ELN and LSN Trusts was separate
19 property:

20 In a divorce involving trust assets, the district court must trace
21 those trust assets to determine whether any community
22 property exists within the trusts – as discussed below, the
23 parties' respective separate property in the SSSTs would be
24 afforded the statutory protections against court-ordered
25 distribution, while any community property would be subject
26 to the district court's equal distribution. We conclude the
27 district court did not trace the assets in question.

28 Order, pg. 15.

29 Having concluded the district court had subject matter
30 jurisdiction, the written instruments at issue are valid, and the
31 district court must trace assets to determine whether any
32 community property exists within the trusts . . .

33 Order, pgs. 16-17.

34 . . .

1 The parties' inconsistent testimony regarding the purported
2 community or separate property characterization of the trust
3 assets carries no weight and should not have been considered
4 when the district court fashioned the property division.

5 Order, pg. 18.

6 We note the possible confusion between our conclusion here
7 protecting spendthrift trust assets from the personal child- and
8 spousal-support obligations of the beneficiary and our
9 conclusion above requiring the court to dispose of community
10 property within the spendthrift trust. To clarify: because the
11 nonbeneficiary spouse retains a property interest in
12 community property contained within the spendthrift trust,
13 the restraints . . . would not apply.

14 Order, pg. 23, note 6.

15 In addition to the above, the ELN Trust and Eric argue that the
16 Court's disposition of Wyoming Downs was never reversed on appeal.
17 The Nevada Supreme Court, however, specifically ordered that the
18 property in the ELN and LSN Trusts must be traced: "Accordingly, we
19 conclude the district court erred by not tracing the assets contained within
20 the trusts, either through a reliable expert or other available means." Such
21 property included Wyoming Downs, and the Nevada Supreme Court
22 made no indication that Wyoming Downs was excepted from its Order.
23 Furthermore, the Nevada Supreme Court specifically vacated this Court's
24 Decree of Divorce. The September 22, 2014 Order was entered as a result
25 of Lynita's Motion to Amend or Alter Judgment, for Declaratory and
26 Related Relief, to adjudicate an omitted asset. The Order amended and
27 altered the Decree of Divorce reversed by the Supreme Court. In fact, the
28 Decree was not final and appealable until such Order was entered.

Finally, it must be pointed out that Eric's and the ELN Trust's
argument that the September 22, 2014 Order was not reversed by the
Nevada Supreme Court's Order, and that the Orders contained therein
must stand, is inapposite to the argument made in ELN Trust's Motion.

1 Specifically, in the Motion, ELN Trust requested return of the \$75,000
2 paid to LSN Trust for the deposit on the Wyoming Downs property,
3 stating as follows:

4 Although the Nevada Supreme Court did not vacate the
5 September 22, 2014 Order Determining Disposition of
6 Dynasty Development Management, Inc. *aka* Wyoming
7 Downs, as indicated *supra*, the Nevada Supreme Court found
8 that this Court erred by ordering the ELN Trust to transfer
9 Banone, LLC to the LSN Trust based upon the theory of
unjust enrichment. Consequently, the ELN Trust respectfully
requests that this Court order the LSN Trust to return the
\$75,000 paid by Banone-AZ, LLC on or around June 30,
2014.

10 If the Supreme Court's Order that Banone, LLC was improperly divided
11 necessarily vacated the portion of the September 22, 2014 Order requiring
12 ELN Trust to pay Lynita \$75,000 for Wyoming Downs, then surely the
13 Supreme Court's Order that the Court erred in not tracing the property
14 in the parties' respective trusts vacated the portion of the September 22,
15 2014 Order finding that Wyoming Downs was not community property
16 in the absence of such a tracing.

17 For the reasons stated above, in Lynita's Countermotion, and at the
18 August 8, 2017 hearing, this Court's tracing on remand must be of all
19 property held by the ELN and LSN Trusts at the time of divorce, must
20 cover the period of time from the 1993 Separate Property Agreement to
21 the time of divorce, and must start with the presumption that all property
22 acquired after execution of the 1993 Separate Property Agreement was
23 community property.

24 C. The Court Must Issue The Joint Preliminary Injunction, And Take
25 Appropriate Steps To Preserve Assets Subject To A Claim Of
26 Community Interest, And Protect The Efficacy Of Any Final
Judgment Entered By The Court

27 At the August 8, 2017 hearing, the Court indicated that it may re-
28 appoint Larry Bertsch, CPA to conduct a tracing on remand. If such a

1 tracing is ordered, this Court must take steps to preserve the properties
2 subject to a claim of a community property interest pending the tracing
3 and final judgment of the Court. NRS 125.050 requires the Court to
4 “make such restraining order or other order as appears necessary to
5 prevent the act or conduct and preserve the status quo pending final
6 determination of the cause.” EDCR 5.517 provides:

7 Rule 5.517. Joint preliminary injunction (JPI).

8 (a) Upon the request of any party at any time prior to the
9 entry of a decree of divorce or final judgment, a preliminary
10 injunction will be issued by the clerk against the parties to the
11 action enjoining them and their officers, agents, servants,
12 employees, or a person in active concert or participation with
13 them from:

14 (1) Transferring, encumbering, concealing, selling, or
15 otherwise disposing of any of the joint, common, or
16 community property of the parties or any property that is the
17 subject of a claim of community interest, except in the usual
18 course of conduct or for the necessities of life or for retention
19 of counsel for the case in which the JPI is obtained; or cashing,
20 borrowing against, canceling, transferring, disposing of, or
21 changing the beneficiaries of

22 ELN Trust and Eric argue that “EDCR 5.85 (sic) only applies to the
23 husband and wife in a divorce proceeding, of which the ELN Trust is not.”
24 This argument ignores the express language of EDCR 5.517, which refers
25 to “any party,” rather than just a husband and wife. Furthermore, the
26 ELN Trust’s interpretation of EDCR 5.517 would destroy the efficacy of
27 such rule in any case where parties held property in trust. Certainly the
28 Court has the ability to preserve property subject to its division in a
divorce, whether held by the parties individually or through a trust. In
fact, prior to entry of its Decree the Court issued a joint preliminary
injunction in accordance with the Court’s Rules. The result must be no
different on remand.

At the August 8, 2017 hearing, the Court made clear that it is not
inclined to order a receiver or to freeze assets completely. If that is the

1 case, Lynita prays that the Court will issue the JPI and place enough of a
2 restraint on property to ensure it can enforce any final division of property
3 and award made to Lynita. Lynita's lifetime accumulation of assets are at
4 stake here, and whether this matter is on remand or pre-divorce, has been
5 pending for one (1) day or one (1) decade, Lynita deserves the same peace
6 of mind and protection of any spouse in a divorce proceeding whose
7 lifetime accumulations are at stake. It would be a travesty of justice for
8 the Court to make a final division of property, only to have difficulty
9 securing Lynita's share of such property. At a very minimum, the Court
10 should issue its JPI, leave the Banone and Lindell properties in Lynita's
11 control pending the final determination, leave the funds held at Bank of
12 Nevada frozen, and enjoin any disposition of the Wyoming Downs and
13 Russell Road properties. Entering such orders would ensure that if the
14 Court finds that all property held at the time of divorce, other than the
15 Palmyra property, was community property, it could award to Lynita one-
16 half (1/2) of such property (as it did in the Decree) and secure from
17 community property the payment of the alimony and attorneys' fees
18 previously awarded (as expressly permitted by the Supreme Court's
19 Order).

20 This Court knows all too well the difficulty in preserving assets in
21 Eric's and the ELN Trust's control. Even with injunctions in place,
22 property has been transferred, improved, sold, encumbered by favorable
23 leases to family members, and acquired during the course of litigation.

24 D. All Parties, Not Just Lynita, Should Be Required To Produce
25 Financial Information And Documents Concerning The Current
26 Assets Of The Parties, And All Financial Records Of Transactions
Occurring Since The Court's Entry Of Its Decree

27 The Court should re-appoint Mr. Bertsch to update the prior
28 forensic accountings through to present date. All property held at the time

1 of divorce is subject to a claim of community property interest, and the
2 parties are entitled to have such property disclosed and accounted for
3 pursuant to NRCP 16.2. Without such a disclosure by the parties, the
4 Court could be dividing property that has been sold, transferred, or
5 encumbered, with no ability to give effect to its orders.

6 E. The Court Should Order The Immediate Sale Of The Brianhead
7 Cabin For The Payment Of Attorneys' Fees And Costs

8 Eric and ELN Trust object to the sale of the Brianhead cabin because
9 they do not want to sell, and the property secures monies that may be
10 owed between the parties upon entry of a final judgment. NRS 125.040
11 allows the Court to make any order affecting the property of the parties,
12 including any separate property of the parties, which it deems necessary
13 to enable a party to carry on or defend suit. This litigation has been
14 extremely costly and Lynita is in need of additional funds to continue to
15 defend her interests in this action. The Court made clear at the August 8,
16 2017 hearing that it does not believe the parties should continue to be
17 business partners or jointly hold property following the conclusion of this
18 matter. There is plenty of security in the Lindell building – valued at
19 \$1,145,000 at the time of divorce – to secure any amounts that may later
20 be found to be owed between the parties. Accordingly, the Court should
21 order the sale of the Brianhead cabin. If Eric and ELN Trust are given the
22 opportunity to purchase Lynita's one-half (1/2) share of the cabin, the
23 Court should appoint Mr. Bertsch to obtain a neutral appraisal of the
24 cabin, and should ensure that any payment made to Lynita at this time is
25 properly accounted for in the Court's final division of property (i.e., the
26 Court must ensure that Lynita receives property equal to the full value of
27 the cabin on her side of the ledger at the time of the final property division

28 ...

1 if the Court finds that all property in the parties' trusts at the time of
2 divorce were community properties).

3 III. CONCLUSION

4 For the reasons set forth at the hearing of August 8, 2017, in
5 Lynita's Countermotion, and in this Reply, Lynita respectfully requests
6 the Court grant the requests for relief made in her Countermotion.

7 Dated this 22 day of August, 2017.

8 THE DICKERSON KARACSONYI
9 LAW GROUP

10 
11 ROBERT P. DICKERSON, ESQ.
12 Nevada Bar No. 000945
13 JOSEF M. KARACSONYI, ESQ.
14 Nevada Bar No. 010634
15 1745 Village Center Circle
16 Las Vegas, Nevada 89134
17 Attorneys for Lynita Sue Nelson
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of THE DICKERSON KARACSONYI LAW GROUP, and that on this 22 day of August, 2017, I caused the above and foregoing document entitled DEFENDANT'S REPLY TO OPPOSITION TO COUNTERMOTION FOR FINAL JUDGMENT CONSISTENT WITH NEVADA SUPREME COURT'S REMAND, OR IN THE ALTERNATIVE, FOR AFFIRMATION OF JOINT PRELIMINARY INJUNCTION, FOR A RECEIVER TO MANAGE PROPERTY PENDING FINAL JUDGMENT, FOR UPDATED FINANCIAL DISCLOSURES AND EXCHANGE OF FINANCIAL INFORMATION, AND FOR SALE OF PROPERTY FOR PAYMENT OF ATTORNEYS' FEES AND COSTS, to be served as follows:

☒ [X] pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and Administrative Order 14-2 captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system;

☐ [] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;

☐ [] pursuant to EDCR 7.26, to be sent via **facsimile**, by duly executed consent for service by electronic means;

☐ [] by hand-delivery with signed Receipt of Copy.

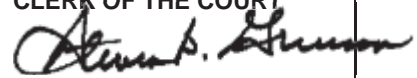
To the attorney(s) listed below at the address, email address, and/or facsimile number indicated below:

RHONDA K. FORSBERG, ESQ.
RHONDA K. FORSBERG, CHARTERED
64 North Pecos Road, Ste. 800
Henderson, Nevada 89074
rforsberg@forsberg-law.com
mweiss@forsberg-law.com
Attorneys for Plaintiff

1 MARK A. SOLOMON, ESQ.
JEFFREY P. LUSZECK, ESQ.
2 SOLOMON, DWIGGINS, FREER & MORSE, LTD.
9060 W. Cheyenne Avenue
3 Las Vegas, Nevada 89129
msolomon@sdfnvlaw.com
4 jluszeck@sdfnvlaw.com
sgerace@sdfnvlaw.com
5 Attorneys for Distribution Trustee of the ELN Trust

6 

7 An employee of The Dickerson Karacsonyi Law Group
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



RSPN

MARK A. SOLOMON, ESQ.

Nevada State Bar No. 0418

E-mail: msolomon@sdfnlaw.com

JEFFREY P. LUSZECK, ESQ.

Nevada State Bar No. 9619

E-mail: jluszeck@sdfnlaw.com

SOLOMON DWIGGINS & FREER, LTD.

Cheyenne West Professional Centre'

9060 W. Cheyenne Avenue

Las Vegas, Nevada 89129

Telephone No.: (702) 853-5483

Facsimile No.: (702) 853-5485

Attorneys for Matt Klabacka, Distribution

Trustee of the ERIC L. NELSON NEVADA

TRUST dated May 30, 2001

DISTRICT COURT

COUNTY OF CLARK, NEVADA

ERIC L. NELSON,

Plaintiff

vs.

LYNITA SUE NELSON, MATT KLABACKA,
as Distribution Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001,

Defendants.

MATT KLABACKA, Distribution Trustee of
the ERIC L. NELSON NEVADA TRUST dated
May 30, 2001,

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

Case No.: D411537

Dept.: O

RESPONSE TO DEFENDANT'S
REPLY TO OPPOSITION TO
COUNTERMOTION FOR FINAL
JUDGMENT CONSISTENT WITH THE
NEVADA SUPREME COURT'S REMAND
OR, IN THE ALTERNATIVE, FOR
AFFIRMATION OF JOINT
PRELIMINARY INJUNCTION, FOR A
RECEIVER TO MANAGE THE
PROPERTY PENDING FINAL
JUDGMENT, FOR UPDATED
FINANCIAL DISCLOSURES AND
EXCHANGE OF FINANCIAL
INFORMATION, AND FOR SALE OF
PROPERTY FOR PAYMENT OF
ATTORNEYS' FEES AND COSTS

/ / /

/ / /

**RESPONSE TO DEFENDANT’S REPLY TO OPPOSITION TO COUNTERMOTION FOR
FINAL JUDGMENT CONSISTENT WITH THE NEVADA SUPREME COURT’S
REMAND OR, IN THE ALTERNATIVE, FOR AFFIRMATION OF JOINT
PRELIMINARY INJUNCTION, FOR A RECEIVER TO MANAGE THE PROPERTY
PENDING FINAL JUDGMENT, FOR UPDATED FINANCIAL DISCLOSURES AND
EXCHANGE OF FINANCIAL INFORMATION, AND FOR SALE OF PROPERTY FOR
PAYMENT OF ATTORNEYS’ FEES AND COSTS**

Matt Klabacka, Distribution Trustee of the ERIC L. NELSON NEVADA TRUST dated May 30, 2001, hereby files his Response to Defendant’s Reply to Opposition to Countermotion for Final Judgment Consistent with Nevada Supreme Court’s Remand, or in the Alternative, for Affirmation of Joint Preliminary Injunction, for a Receiver to Manage Property Pending Final Judgment, for Updated Financial Disclosures and Exchange of Financial Information of Sale of Property for Payment of Attorneys’ Fees and Costs.

This Response is made and based upon the pleadings and papers on file herein, the Points and Authorities attached hereto, and the oral argument made at the August 8, 2017, hearing in this matter.

DATED this 29th day of August, 2017.

SOLOMON DWIGGINS & FREER, LTD.

By: /s/ Jeffrey P. Luszeck

MARK A. SOLOMON, ESQ., NSB 0418
JEFFREY P. LUSZECK, ESQ., NSB 9619
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

*Attorneys for Matt Klabacka, Distribution
Trustee of the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. BRIEF INTRODUCTION**

3 The ELN Trust disagrees that the Reply filed by Lynita “addresses those points raised in
4 ELN Trust’s Opposition to Lynita’s Countermotion, and does not raise any new issues” and that her
5 Countermotion was property noticed. Because Lynita’s Countermotion was improperly noticed and
6 she failed to file a request for an order shortening time, said Countermotion was filed a week before
7 the scheduled hearing. It was for this reason that Lynita was unable to file a reply. Now, after this
8 Court made some preliminary findings at the August 8, 2017, Lynita seeks to sway this Court from
9 its stated positions by arguing new positions. Ordinarily, the ELN Trust would have had the ability
10 to refute said arguments in open court; however, since the issues were raised after the hearing, the
11 ELN Trust has no choice but to make a record of its position in this Response.

12 **II. LEGAL ARGUMENT**

13 **A. THE NEVADA SUPREME COURT’S ORDER CONFIRMS THAT ERIC
14 AND LYNITA’S COMMUNITY PROPERTY WAS TRANSMUTATED TO
15 SEPARATE PROPERTY.**

16 Lynita’s self-serving interpretation of the “Nevada Supreme Court’s Remand” as set forth in
17 pages 2-8 defies logic and would require this Court to ignore the law of the case.¹ Specifically, the
18 Nevada Supreme Court confirmed that Lynita has the burden to show that the separate property was
19 transmuted back to community property after 2001, because the sole purpose of the tracing is “to
20 determine whether any community property exists within the trusts,” a fact which Lynita omitted
21 from her Countermotion. See Supreme Court Order at 17. In other words, if all property owned by
22 the SSSTs is community property (because it was acquired during Eric and Lynita’s marriage as
23 Lynita contends), the Supreme Court would have ruled in Lynita’s favor and there would be no
24 reason to conduct a tracing to “determine whether any community property exists.”

25 ¹ See, e.g., *Hsu v. County of Clark*, 123 Nev. 625, 629-30, 173 P.3d 724, 728 (2007) (the law
26 of the case doctrine “is designed to ensure judicial consistency and to prevent the reconsideration,
27 during the course of a single continuous lawsuit, of those decisions which are intended to put a
28 particular matter to rest.”); *Bd. of Gallery of History, Inc. v. Datecs Corp.*, 116 Nev. 289, 288, 994
P.2d 1149, 1150 (2000) (where the law of the case doctrine applies “the district court [is] without
authority to make a contrary finding.”).

1 It is undisputed that the Nevada Supreme Court repeatedly confirmed in its Order that the
2 Separate Property Agreement was a valid agreement and transmuted Eric and Lynita's community
3 property to separate property. *See e.g.*, Order at p. 12 ("We conclude that the SPA is a valid
4 agreement and transmuted the Parties community property to separate property."). Because of
5 such transmutation, Nevada law is clear that it is Lynita/Lynita's SSST, as opposed to Eric/the ELN
6 Trust, which has the burden to show that Eric's separate property was transmuted back to
7 community property. Further, the mere fact that there were transfers between the SSSTs does not
8 mean that said assets were transmuted to Eric and/or Lynita as community property because under
9 Nevada law neither Eric nor Lynita possess a community or separate property interest in the SSSTs.
10 *See, e.g.*, NRS 166.020 (a spendthrift trust is defined as "a trust in which the terms thereof a valid
11 restraint on the voluntary transfer of the interest of the beneficiary is imposed." *See also* NRS
12 166.130 ("A beneficiary of a spendthrift trust has no legal estate in the capital, principal or corpus
13 of the trust estate . . .").

14 Notwithstanding the foregoing, even if the SSSTs contain separate property, "[o]nce the
15 separate character of property is established, a presumption arises that it remained separate property
16 in the absence of sufficient evidence to show an intent to transmute the property from separate
17 property to community property."² "[T]he right of the spouses in their separate property is as
18 sacred as is the right in their community property, and when it is once made to appear that property
19 was once of a separate character, it will be presumed that it maintains that character until some
20 direct and positive evidence to the contrary is made to appear."³ This presumption shifts the burden
21 of proof to the party claiming the property was transmuted to community property.⁴ The spouse

22 ² *In re Estate of Borghi*, 219 P.3d 932 (Wash. 2009).

23 ³ *Id.*

24 ⁴ 37 Am. Jur. Proof of Facts 2d 379 (Originally published in 1984)("Ordinarily, the burden of
25 proof to show that separate property has been transmuted into community property rests on the
26 party alleging that such transmutation has taken place. This rule flows from the presumption that
27 property once fixed as the separate property of one spouse has not been converted by agreement
28 into community property merely because the other spouse acquires possession, management, or
control of it. In such cases, the property is presumed to remain separate property, and the burden

1 claiming transmutation of separate property must produce objective evidence showing that, during
2 the marriage, the parties themselves regarded the property as common property of the marriage;
3 such evidence may include placing the property in joint names, transferring the property to the other
4 spouse as a gift, using the property exclusively for marital purposes, commingling the property with
5 marital property, using marital funds to build equity in the property, or exchanging the property for
6 marital property.⁵ With specific regard to real property, for it to be transmuted to community
7 property, there generally must be an acknowledged writing proving the intent of the separate real
8 property holder to transmute it to community property (*e.g.* community property agreement).⁶

9 Once again, Lynita failed to introduce any evidence, let alone clear and convincing
10 evidence, that any separate property was ever transmuted to community property.

11 **B. LYNITA’S REQUESTED TRACING IS OVERBROAD AND RUNS**
12 **CONTRARY TO THE NEVADA SUPREME COURT’S ORDER.**

13 Despite the fact that Lynita failed to meet her burden at trial that the Eric and Lynita’s
14 separate property was ever transmuted back to community property, Lynita demands that Larry
15 Bertsch conduct a tracing from 1993 through present. In so doing, Lynita ignores the most
16 important portions of the Nevada Supreme Court’s Order that confirms that ELN Trust and
17 Lynita’s SSST were funded with their respective separate property:

18 Later, the parties converted those trusts into self-settled spendthrift trusts (SSSTs)
19 and funded them with their respective separate property. P. 2.

20 In 2001, Eric and Lynita converted their separate property trusts into Eric’s Trust
21 and Lynita’s Trust, respectively, and funded the SSSTs with the separate property
contained within the separate property trusts. P. 4.

22 rests on the other spouse, claiming a gift or change in status of the property, to show that it has in
23 fact been transmuted.”); Kenneth W. Weber, Washington Practice: Family and Community
24 Property Law § 10.1, at 133 (1997) (“Possibly more than in any other area of law, presumptions
play an important role in determining ownership of assets and responsibility for debt in community
property law.”).

25 ⁵ Crossland v. Crossland, 397 S.C. 406, 725 S.E.2d 509 (Ct. App. 2012).

26 ⁶ *In re Estate of Borghi*, 219 P.3d 932 (Wash. 2009); *see also* *Volz v. Zang*, 113 Wash. 378,
27 383, 194 P. 409 (1920).

1 On June 3, 2013, the district court issued the decree. The district court found that
2 the SPA was valid and the parties' SSSTs were validly established and funded
3 with separate property. P. 6.

4 For the reasons set forth below, we hold the SSSTs are valid and the trusts were
5 funded with separate property stemming from a valid separate property
6 agreement. P. 13.

7 The language contained within the Nevada Supreme Court's Order is clear: the SSSTs were
8 "funded with separate property." If the Nevada Supreme Court believed that the SSSTs was funded
9 with community property it would have so stated, or at the very least stated that the District Court
10 needed to make that determination. No such language was utilized by the Nevada Supreme Court
11 in its Order.

12 Evidence, including, but not limited to the following was introduced by the ELN Trust in its
13 appellate briefs to support the Nevada Supreme Court's Order: (1) the Separate Property
14 Agreement, which as indicated *supra*, the Nevada Supreme Court found to be valid; (2) the
15 Separate Property Trusts, which provides "[t]he property comprising the original Trust estate,
16 during the life of the Trustor, shall retain its character as his separate property...";⁷ (3) Shelley
17 Newell, the bookkeeper for Eric and Lynita's Separate Property Trusts testified that the assets and
18 liabilities owned by the Trusts were kept separate, and that all acquisitions in Eric's Separate
19 Property Trust originated from Eric's separate funds;⁸ (4) months before the divorce proceeding
20 was initiated Lynita retained Jeffrey Burr, Esq. to amend and restate her Separate Property Trust to
21 disinherit Eric and confirm that the assets contained therein was her separate property; and (5)
22 Section 12.13 of both the ELN Trust and Lynita's SSST, which provide:

23
24 **Separate Property.** Any property held in trust and any income earned by the
25 trust created hereunder shall be the separate property (in distinction with

26 ⁷ See the Eric L. Nelson Separate Property Trust at p. 1.

27 ⁸ See Trial Testimony of Shelley Newell dated July 17, 2012, pp. 105-144.
28

community property, joint tenancy property, tenancy in common, marital property, quasi-community property or tenancy by the entirety) of the beneficiaries of such trusts. Additionally, any distribution to or for the benefit of the beneficiary shall be and remain the sole and separate property and estate of the beneficiaries.

Further, Lynita's contention that the "statements in the parties' respective trust agreements that property be held in trust is separate property of the beneficiaries could not be relied upon as competent evidence because such statements are nothing more than a party's opinions of the character of property" fails because the Separate Property Trusts and SSST's executed by Eric and Lynita are additional written agreements that confirm that the assets titled in the names of the Separate Property Trust and SSST's are separate property. *See* NRS 123.220(1).

Lynita's contention that the "Nevada Supreme Court made no indication that Wyoming Downs was exempt from its Order" also defies logic because the Nevada Supreme Court denied this issue on appeal⁹ and upheld this Court's September 22, 2014 Order. Indeed, footnote 9 of the Nevada Supreme Court's Order provides: "[w]e have considered the parties' other arguments [which would have included Lynita's argument with respect to Wyoming Downs] and conclude they are without merit."¹⁰

Notwithstanding the foregoing, this Court has already conducted a tracing of Wyoming Downs at the May 30, 2014, Evidentiary Hearing on May 30, 2014, wherein it found:

THE COURT FURTHER FINDS that although Wyoming Downs was acquired by the ELN Trust during the pendency of the marriage between Eric L. Nelson and Lynita S. Nelson, the Court does not find it to be community property as it was clearly purchased through Dynasty, an entity wholly owned by the ELN Trust and the Court maintained the ELN Trust. The Court found no facts leading it to conclude Lynita S. Nelson or the LSN Trust has an interest in Wyoming Downs. The Court maintained the integrity of the ELN Trust and LSN Trust for the reasons set forth in the Divorce Decree.

⁹ *See* LSN Trust's Docketing Statement at 4:10-12, a copy of which is attached hereto as **Exhibit 1**.

¹⁰ The ELN Trust is requesting that the LSN Trust repay the \$75,000 paid pursuant to the September 22, 2014 Order because the Nevada Supreme Court found that this Court erred by ordering the ELN Trust to transfer Banone LLC to the LSN Trust. Now that the Nevada Supreme Court has found that said transfer was made in error, the LSN Trust has no right to retain the \$75,000.

1 THE COURT FURTHER FINDS that there was no transmutation of Wyoming
2 Downs from separate property to community property, even assuming that Wyoming
3 Downs was separate property of Eric L. Nelson, and not the property of the ELN
4 Trust, separate and distinct from Eric L. Nelson. See Notice of Entry of Order
5 entered September 22, 2014.

6 Consequently, even if the Nevada Supreme Court intended that this Court to conduct a
7 tracing on Wyoming Downs, this Court has already effectively done so and can rely upon its prior
8 findings.

9 **C. IT IS INAPPROPRIATE TO ENTER A JOINT PRELIMINARY**
10 **INJUNCTION.**

11 Lynita's demand that this Court impose a JPI over the ELN Trust assets is confusing and
12 contrary to the other requests made in her Countermotion. Indeed, demand for a JPI is contrary to
13 her request that the Brian Head cabin be sold so that she can pay her attorneys' fees and costs.
14 Further, Lynita conveniently omits the fact that in this Court's Divorce Decree the ELN Trust
15 already transferred over \$4,000,000 in assets to the LSN Trust. Consequently, Lynita's demand
16 that this Court allow her to retain title to said assets AND enter a JPI against the remaining assets
17 titled in the ELN Trust is overreaching.

18 Further, if Lynita wishes to pursue an injunction against the ELN Trust she will need to seek
19 a formal injunction that complies with NRCP 65. Contrary to Lynita's unfounded contention,
20 EDCR 5.85 only applies to the husband and wife in a divorce proceeding. Indeed, whenever the
21 term "party" or "parties" is referenced in Part V of the Eight Judicial District Court Rules it
22 contemplates application to a husband and wife,¹¹ and not to third-parties. Lynita's contention that
23 the "ELN Trust's interpretation of EDCR 5.85 would destroy the efficacy of such rule in any case
24 where parties held property in trust" is unavailing because said rule would arguably apply to
25 instances where a husband and wife held their assets in a revocable trust, of which the ELN Trust is
26 not.

27 ¹¹ See, e.g., EDCR 5.02 ("...upon demand of either party..."); EDCR 5.06 ("...no minor child
28 of the parties shall..."); EDCR 5.11 ("...or the best interest of the parties' child(ren) would not...");
EDCR 5.21 ("...if both parties to a domestic relations matter..."); EDCR 5.31 ("...In any case
where custody of a minor child of the parties...").

D. THE ELN TRUST SHOULD NOT BE REQUIRED TO PRODUCE FINANCIAL INFORMATION AND DOCUMENTS CONCERNING ITS CURRENTS ASSETS AND/OR TRANSACTIONS OCCURRING SINCE THE COURT'S ENTRY OF ITS DECREE BECAUSE THE ELN TRUST ALREADY TRANSFERRED OVER \$4,000,000 IN ASSETS TO THE LSN TRUST PURSUANT TO THIS COURT'S DIVORCE DECREE.

Lynita demands that this Court compel the ELN Trust to provide an updated financial disclosure so as to ensure that it does not award Lynita and/or the LSN Trust any additional property that has "been sold, transferred, or encumbered." Said request should be denied for the reasons set forth in the Opposition to Lynita's Countermotion, namely, Lynita does not possess a community property interest in assets that the ELN Trust acquired after the entry of the Divorce Decree. Further, and perhaps more importantly, pursuant to this Court's Divorce Decree, the ELN Trust already transferred over \$4,000,000 in assets to the LSN Trust. Consequently, in the unlikely event this Court finds that any assets contained within the ELN Trust at the time of the entry of the Divorce Decree was community property, it could merely allow the LSN Trust to retain a portion of Banone LLC, Russell Road Promissory Note, *etc.* As such, it is unnecessary for the ELN Trust to provide its current financial disclosure.

E. THIS COURT SHOULD DENY LYNITA'S REQUEST TO SALE THE BRIAN HEAD CABIN UNTIL AFTER LYNITA'S ACCOUNTS FOR THE RENTS AND PROFITS THAT SHE COLLECTED FROM BANONE AND LINDELL FROM 2013 THROUGH PRESENT.

Lynita's request that this Court allow her to sell the Brian Head cabin and utilize said funds to pay her attorneys' fees and costs is absurd given her request that this Court impose a JPI. Lynita cannot have it both ways. Indeed, Lynita cannot demand that this Court impose a JPI, which would inhibit the ELN Trust's ability to conduct business on one hand, and then request that the Brian Head cabin be sold so that she can use said sole proceeds for her own personal use and benefit on the other hand. Further, if a JPI is imposed, and the ELN Trust is not allowed to sell any of its property, it is unclear how the ELN Trust would be able to purchase the LSN Trust's interest in the Brian Head cabin.

Notwithstanding the foregoing, if this Court is inclined to order the Brian Head cabin be sold, the sale proceeds should be held in escrow pending the production of Lynita's accounting to

1 ensure that the ELN Trust has sufficient security for the hundreds of thousands, perhaps millions of
2 dollars, that Lynita owes the ELN Trust.¹² While Lynita self-servingly argues that “there is plenty
3 of security in the Lindell building,”¹³ she has failed to produce any evidence to support her theory.
4 Obviously, if Lynita had provided quarterly accountings as ordered by this Court from June 2013
5 through present, this Court would be in the position to determine how much money the LSN Trust
6 owes the ELN Trust at this juncture. However, since she failed to do so (and has requested 60 days
7 to prepare an accounting), it would be inequitable for this Court to further deplete assets that
8 rightfully belong to the ELN Trust without evidence supporting Lynita’s representation that the
9 Lindell building has sufficient security to protect the ELN Trust’s interests. .

10 **III. CONCLUSION**

11 In light of the foregoing, the ELN Trust respectfully requests that this Court deny the relief
12 sought by Lynita in her Countermotion.

13 DATED this 29th day of August, 2017.

14 SOLOMON DWIGGINS & FREER, LTD.

15 By: /s/ Jeffrey P. Luszeck

16 MARK A. SOLOMON, ESQ.

17 Nevada State Bar No. 0418

18 JEFFREY P. LUSZECK, ESQ.

19 Nevada State Bar No. 9619

20 9060 West Cheyenne Avenue

21 Las Vegas, Nevada 89129

22 ¹² Said transfers, include, but are not limited to: (1) the 50% of the rents collected by Lynita from
23 the Lindell property from June 2013 through present; (2) 100% of the rents collected by Lynita for the
24 Banone, LLC properties from June 2013 through present; (3) 100% of the payments received from the
25 Farmouth Circle promissory note from June 2013 through present; (4) the \$324,000 previously paid to
Lynita pursuant to this Court’s September 22, 2014, Order Regarding Transfer of Property and
Injunctions; (5) the \$6,050 security deposited delivered to the LSN Trust by the Eric’s SSST in or
around September 19, 2014; and (6) the \$75,000 paid by the Eric’s SSST to the LSN Trust on or around
June 30, 2014. Further, Lynita and/or the LSN Trust have failed to pay her 50% of any expenses
pertaining to the Brian Head cabin. The total amount of expenses the LSN Trust owes from 2013
through July 18, 2017 is \$30,265.93.

26 ¹³ See Order Regarding Transfer of Property and Injunctions entered on September 22, 2014 at
27 4:14-20 (THE COURT FURTHER FINDS that the provisions contained in this order are intended to
28 preserve the real property described herein, and to secure with enjoined property(ies) any monetary
amounts owed by the parties, or transferred to the parties.”).

9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-5483
FACSIMILE (702) 853-5485
WWW.SDFNLAW.COM

SOLOMON DWIGGINS & FREER
TRUST AND ESTATE ATTORNEYS



CERTIFICATE OF SERVICE

I HEREBY CERTIFY, pursuant to NRCP 5(b), that on August 29, 2017, I served a true and correct copy of the foregoing **RESPONSE TO DEFENDANT’S REPLY TO OPPOSITION TO COUNTERMOTION FOR FINAL JUDGMENT CONSISTENT WITH THE NEVADA SUPREME COURT’S REMAND OR, IN THE ALTERNATIVE, FOR AFFIRMATION OF JOINT PRELIMINARY INJUNCTION, FOR A RECEIVER TO MANAGE THE PROPERTY PENDING FINAL JUDGMENT, FOR UPDATED FINANCIAL DISCLOSURES AND EXCHANGE OF FINANCIAL INFORMATION, AND FOR SALE OF PROPERTY FOR PAYMENT OF ATTORNEYS’ FEES AND COSTS**, to the following in the manner set forth below:

- ☐ Hand Delivery
- ☐ U.S. Mail, Postage Prepaid
- ☐ Certified Mail, Receipt No.: _____
- ☐ Return Receipt Request
- ☒ E-Service through Wiznet

DICKERSON LAW GROUP
Robert P. Dickerson, Esq.
1745 Village Center Circle
Las Vegas, NV 89134
Attorneys for Defendant

Rhonda K. Forsberg, Esq.
64 N. Pecos Road, Suite 800
Henderson, NV 89074
Attorneys for Plaintiff

/s/ Gretta G. McCall

An Employee of SOLOMON DWIGGINS & FREER, LTD.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

TRANS

ORIGINAL

FILED

JUN 15 2018

Sharon L. Johnson
CLERK OF COURT

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

ERIC L. NELSON,)	
)	
Plaintiff,)	CASE NO. D-09-411537-D
)	
vs.)	DEPT. O
)	
LYNITA NELSON,)	(SEALED)
)	
Defendant.)	

BEFORE THE HONORABLE FRANK P. SULLIVAN
DISTRICT COURT JUDGE

TRANSCRIPT RE: STATUS CHECK

WEDNESDAY, JANUARY 31, 2018

1 APPEARANCES:

2 The Plaintiff:
3 For the Plaintiff:

ERIC L. NELSON
RHONDA FORSBERG, ESQ.
64 N. Pecos Rd., #700
Henderson, Nevada 89074
(702) 990-6448

5 The Defendant:
6 For the Defendant:

LYNITA NELSON
JOSEF KARACSONYI, ESQ.
1745 Village Center Cir.
Las Vegas, Nevada 89134
(702) 388-8600

8 The Trustee:
9 For the Trustee:

MATT KLABACKA
JEFFREY P. LUSZECK, ESQ.
9060 W. Cheyenne Ave.
Las Vegas, Nevada 89129
(702) 853-5483

11

12

13

14

15

16

17

18

19

20

21

22

23

24

2 P R O C E E D I N G S

3 (THE PROCEEDINGS BEGAN AT 11:28:03)

4
5 THE COURT: -- of the Nelson Matter, Case Number D-
6 09-411537. This Court put on a status check to address the
7 property issues, the Supreme Court decision, general ledger,
8 leases, and see if there's any way of getting this matter
9 resolved.

10 The Court did have my staff contact Mr. Bertsch to
11 address the tracing issue that we're going to address in a
12 second on that. So let's get everybody's appearances for the
13 record and kind of tell you what I'm thinking and give
14 attorneys a chance to argue it or we start --

15 MR. KARACSONYI: Oh, down here. I was --

16 THE COURT: Figured I'd just go down.

17 MR. KARACSONYI: Josef Karacsonyi, 10634, on behalf
18 of Lynita Nelson who's present.

19 THE COURT: Good too see you again, Ms. Lynita, it's
20 always a pleasure to see you.

21 MR. LUSZECK: Jeff LUSZECK, bar number 9619, on
22 behalf of Matt Klabacka, Distribution Trustee of the ELN
23 Trust.

24 THE COURT: Thank you.

1 MS. FORSBERG: Good morning, Your Honor. Rhonda
2 Forsberg, 9557, on behalf of Mr. Nelson who's present to my
3 left.

4 THE COURT: Good to see you as well, Mr. Nelson.
5 And we know Mr. Bertsch, please state your appearance just --
6 you can remain sitting -- you can remain seated throughout.

7 MR. BERTSCH: My name's Larry Bertsch. I'm a CPA.

8 THE COURT: Okay. Everybody can sit down and get
9 comfortable. I'm going to tell you where I'm at and give you
10 a chance to argue. I have reviewed all the requests and the
11 motions on that and I'll tell you what I'm inclined to do and
12 give people a chance to see if they can persuade me otherwise.

13 I have reviewed the Supreme Court decision and all
14 the other history and all the motions, the numerous motions
15 that are pending here on that. Basically, the Nelson Trust
16 has requested the transfer back to 50 percent of the Lindell
17 property this Court ordered to be transferred from the ELN
18 Trust to the Lynita -- the LSN Trust on that, based on my
19 order. Also, they're requesting 50 percent of those rents
20 collected from the Lindell from the June 2013 to present.
21 They're also requesting the LSN Trust to transfer back the
22 quit claim deed from the Banone properties and provide copies
23 of leases and all the paperwork that we'll address in a
24 second.

1 Also, they're requesting 100 percent of the rents
2 collected from the Banone properties from June 2013 to
3 present. They're also asking for LSN Trust to pay the ELN
4 Trust 100 percent of any rents received from the Farmouth (ph)
5 Circle promissory note and also requesting the -- the release
6 to the ELN Trust the \$720,000 being held in a blocked account
7 pursuant to this Court's order from October 21st, 2013.
8 They're requesting an order compelling Ms. Lynita to return
9 the \$324,000 paid to her by my court order on September 22nd,
10 2014, indicating that I could not make the Trust pay for any
11 personal obligations of Mr. Nelson and also requesting that
12 LSN return the \$6,050 security deposit that ELN Trust
13 delivered on 9/19/14, and the security deposits collected from
14 any Banone or the Lindell property tenants. And then
15 basically requesting quarterly accountings for the Lindell and
16 Banone properties from June 13th to present and requesting
17 that LSN Trust be ordered to return, to reimburse or return to
18 ELN Trust the \$76,000 paid by Banone Arizona to the LSN Trust
19 on June 30th, 2014.

20 So that's basically all the issues I've seen that
21 were pending. Again, of course, with any copies of leases and
22 stuff for the different properties as addressed. So I think
23 that's kind of the way I see the issues on that.

24 I have read the oppositions to those requests as

1 well. I'll tell you what I'm thinking on those issues, to
2 give Counsel a chance to think about that. I'm inclined as
3 when I made those transfers, making the LSN Trust transfer
4 property to the -- I mean, the ELN Trust transferring property
5 to the LSN Trust, the trusts vehemently opposed it, saying,
6 wait a minute, Judge. We're going to appeal that. Supreme
7 Court changed it, and that property that you transfer on that,
8 so let's wait until it's done. I said no, I wasn't going to
9 wait until done, I make a decision and have that transfer.
10 Said if the Supreme Court overturned that, I could always
11 transfer the property back.

12 So my inclination at this time is to just transfer
13 that property back with quit claims and basically explain how
14 that would work out on that, we'd put it back to how it was
15 with the ELN Trust and the LSN Trust, so basically based on
16 Supreme Court decision that the trust was the trust. So that
17 was my inclination with the Lindell property and the Banone
18 property.

19 I'm not inclined to order any release of funds at
20 this time or rents on that. I want to get when we're done so
21 we can get an accounting of everything, see where we're at,
22 see what's going on there.

23 The \$720,000 I'm not inclined to release that as I
24 need to have that traced to see where that money came from to

1 make sure -- I forgot where it came from. I know we did
2 release half of that to the ELN Trust so that they could use
3 that for their business perspectives on that and held the
4 other half in that trust account until we figure out what's
5 going on.

6 As far as the 324,000, I'm not inclined to release
7 that at this time. When I came up with the numbers on that,
8 ballpark was about \$500,000 that ELN Trust is requesting from
9 LSN Trust. That's the 324,000 from the September 22nd, 2014,
10 the 76,000 it's requesting from Banone Arizona to the LSN
11 Trust on June 30th, and I think we had the \$75,000 that
12 they're asking for the -- 75,000 that the ELN Trust paid to
13 the LSN Trust for the fact about the TransOne -- Banone
14 transfer to LSN Trust based on those issues, to return that
15 paid by Banone on September 30th, 2014.

16 So about \$500,000 give or take some that they're
17 requesting. I'm not inclined to release monies at this time,
18 but I am inclined to order those property transfers. While
19 it's a lot of paperwork on that, the same token, I did that to
20 the ELN Trust, said you gotta transfer it. When they argued
21 about it and said we can always return it back, so I'd be
22 inclined to grant those issues about the transfers on that and
23 then get all the accountings for the property.

24 My real goal is to get tracing. I read the Supreme

1 Court decision. I think the separate property agreement that
2 was executed by the Supreme Court indicated that quote, on
3 page 12 of their order, "We conclude that the separate
4 property agreement is a valid transmutation agreement and the
5 parties' community property was converted into separate
6 property." So I think that's a no brainer so I don't intend
7 to go back before the -- anything prior to the separate
8 property agreement. The Supreme Court made it clear that was
9 a valid agreement and any community property interests were
10 transmuted to commu -- community property was transmuted as
11 separate property.

12 The issue I see is tracing from the separate
13 property agreement, which was 1993, I believe it was signed on
14 July the -- I think it was July 13th, 1993. And so I don't
15 intend to go beyond that period on that, because I think the
16 Supreme Court indicated those were appropriate separate
17 property agreements, so any compu -- any community property
18 interest would be transmuted at that time to separate
19 property.

20 My inclination would be to go tracing from the --
21 after the July 13th, 1993 to see if any community property
22 claims other people put in the trusts on that, they could put
23 their half but they could not put the other party's half, so
24 my plan would be to trace after the July 13th. Because when I

1 read the separate property agreement, I saw nothing for post
2 property after that, it just said here's the property we got,
3 this is separate property as of this time, but nothing for
4 future property acquired during their marriage, which is
5 presumed to be community property. So my plan would be to
6 trace it going back to July, and maybe probably start August
7 1st, 1993 currently, because I know when they did the trusts,
8 those were 2001, but there could have been property from 1993
9 August 1st, to the 2001 trust, which could have had community
10 property claims. I don't know.

11 And then for the 2001 of course, anything that was
12 community property that either party put in the trust, they
13 would not have the right to put the other party's half. So
14 that'd be my inclination is do tracing from August 1st, 1993
15 up to basically the time of the divorce decree, to sift
16 through it and see was there community property interest.

17 That will be very burdensome. I'm not sure if it
18 can be done as far back as you can go. I know Mr. Gerety had
19 testified at the trial on that the fact about going back on
20 that, with all the issues on that, it'd be very difficult to
21 go back to the 1993 just because of the amount of time and
22 paperwork, but that's -- kind of be my inclination is to have
23 the tracing going back from August 1st, 1993 through the
24 divorce decree, to see if there's any community property that

1 was placed in either one's trust because they could place it
2 in a trust, but they could not place the community property of
3 the other party in trust.

4 That would be very costly, very time consuming, I
5 realize that, but we need to get this done for everybody, so
6 that's my inclination. The monies I can always work that out
7 as we need that. I know Ms. Lynita's requesting the sale of
8 the Brianhead. Is that still on the table?

9 MR. KARACSONYI: Yes.

10 THE COURT: I'd be inclined to order the sale of
11 that Brianhead. Mr. Nelson would have the right of first
12 refusal as we indicated in the divorce decree. They can work
13 that out amongst themselves. If not, I would order the
14 property be put on the market. When you get a valid offer,
15 then the other side would have a chance to buy you out or not
16 buy you out, but again, instead of going on the market, if you
17 guys can have an appraisal where you agree with and you want
18 to work that out, I'll leave that between the trusts to see if
19 they want to work it out. If not, I would order the Brianhead
20 to be put on the market. When they get a valid offer, when
21 someone makes an offer on that, that -- then we'd hear that,
22 come to court and see if the party wants to match that to buy
23 the other party out or not.

24 I know you requested some offsets for the

1 maintenance of the property, I think 30,000. We'd look at it
2 that way. So that's kind of where I'm leaning at this point.
3 All the other monies, depending -- I don't know what that
4 Brianhead was worth. I know at the time of the divorce I
5 through the Brianhead property was very low valued and that
6 was because of the economy. I think that prop -- I remember,
7 I think it's a 4000 square foot, am I right? At --

8 THE DEFENDANT: It's -- it's more than that.

9 THE COURT: Yeah, I mean, it's -- I thought -- I
10 remember and I might be wrong, it was like -- and the
11 appraisal was like 400,000. I thought the appraisal should
12 have been millions based on that, but I'm not a real estate
13 person on that, but my understanding is it was a very nice
14 cabin up there and I believe it had what, 10 or 20 acres, I
15 believe? I forgot what it was on that.

16 THE DEFENDANT: No. More than that.

17 THE COURT: Yeah. I mean, so the issue was I
18 thought that was worth a lot of money. I know you're
19 requesting some money to get that. I know Mr. Nelson -- why I
20 did it was Mr. Nelson I believe that has family up there, so
21 he's interested in having a chance to buy that out. You
22 cannot sell a 50 percent interest, no one's going to buy it,
23 and have you guys work on that, it's just not probably
24 tenable, so my plan would be to put the Brianhead on the

1 market or otherwise, give you guys a chance to see if you want
2 to work that out between the trusts and see if you want to do
3 that. That would give you the money that you need, depending
4 on how much money came from those proceeds.

5 I could put some in a blocked account and if there's
6 concerns about any money, the rents would be an issue on that,
7 what rents came in, but I know there's a lot of cost. I know
8 the motions indicated they felt that Ms. Lynita has spent a
9 lot of money on these properties, kind of like a waste
10 argument. I'm not going to entertain any waste argument.
11 She's the manager of that property. I don't think that she
12 would throw money away just to screw Mr. Nelson on that,
13 thinking oh, I'll get the property for a couple years and give
14 it back and just spend his money aimlessly. So I'm really not
15 inclined to any waste unless you could really come and see
16 that thing to make business decisions.

17 You've got the business judgment rule that people
18 get to make decisions. The Court doesn't secondguess someone
19 unless they think there's some type of fraud or funny
20 business, so it's not inclined. My thing would be to see the
21 proceeds that came in for that property time on that and I
22 could put those in a trust depending on how much comes out for
23 that sale of that Brianhead. I have no idea if it'd be
24 millions, bu I thought when I looked at that, that that

1 probably was a couple million dollars at least of property,
2 but again, I'm not a real estate expert, but it -- Brianhead
3 and the economy's kind of really up now and that's my plan
4 would be to either have a real estate appraisal on that, have
5 you guys do your own and see if you can work that out, or put
6 it on the market and see what -- what offers you get that are
7 legit and the party can match that offer to buy out the other
8 side if they want.

9 So that's kind of what I'm thinking. So with that
10 in mind, I'll be glad to hear arguments on any of those issues
11 I said, but it's kind of where I'm at right now.

12 I had Mr. Bertsch come who's very familiar. I
13 looked at a lot of his reports to see if I could trace it from
14 his reports, but to be honest, there's so many documents in
15 that, it's really probably start -- Mr. Bertsch is very
16 respected I believe by both sides. My plan would be to have
17 both sides split the cost of his tracing at that time on that
18 and depending on what it comes out there, I could offset that
19 and put money in any blocked accounts from the sale of the
20 Brianhead if necessary to make sure everybody's protected
21 until we get to the bottom of it, because I know you're
22 looking at some rentals (indiscernible) lot, but that'd be my
23 plan on that.

24 The issue, too, we also talked about mediation

1 before we went there, this would be costly. I know there's
2 some litigation pending as to the trustees, so there's some
3 issues pending on those issues, but this case has been
4 pending. I think you guys separated in 2008, I think filed in
5 2009, and by the time of the divorce decree, I cannot imagine
6 being there for as many years as you were and the Supreme
7 Court held this for several years with their decision, so I
8 would like to see if you think mediation's possible. With the
9 history of this case, it's probably not likely and I don't
10 want to waste anybody's time, but you're talking about a lot
11 of cost and a lot of paperwork going back to August 1st, 1993
12 to the divorce decree, which I think was June 2014, and it's a
13 lot of stuff on that and so many transactions going back and
14 forth, to see if there's any community property interest that
15 were wrongfully placed in someone's trust.

16 You have another problem with property from one
17 trust to another trust. I think the Supreme Court was saying
18 that could be considered a gift from one trust to another, so
19 treat it as community property interest with the tracing, so
20 that's kind of where I'm thinking.

21 So with that in mind, since I think this was the
22 trust's initial motion on that, let me hear from the trust
23 first to address it, then I'll hear from Ms. Lynita's trust,
24 and then I'll hear from Mr. Nelson then as far as property.

1 But I believe right now it's a trust matter I think, so.

2 MR. LUSZECK: Okay. Do you want me to just kind of
3 go --

4 THE COURT: Anything --

5 MR. LUSZECK: -- do you want me to go point by
6 point? What do you think, Josef, or just lay everything out?

7 MR. KARACSONYI: I'm fine with everything.

8 MR. LUSZECK: Okay. That's fine.

9 With respect to the motion to enforce, yes, I agree,
10 I believe all the property should be transferred back
11 immediately. I do think with respect to the accounting and
12 the monies that need to be paid back, I think the LSN Trust
13 should be ordered to pay those back immediately, just like the
14 ELN Trust was required when the properties were transferred,
15 Your Honor.

16 As you will certainly recall, the ELN Trust provided
17 an accounting and it had to pay the LSN Trust the amounts due
18 and owing within months of the determination.

19 THE COURT: Did you get the accounting from --

20 MR. LUSZECK: We got -- we got a binder this
21 morning. I haven't had a chance to look at it.

22 MR. KARACSONYI: And I'll cover that.

23 MR. LUSZECK: Yeah. So I mean we'll obviously go
24 through that, though.

1 THE COURT: So you would like -- you agree with the
2 Court for the quit claim deeds going with that property, but
3 you'd like to get the rental income from the property?

4 MR. LUSZECK: Exactly. We think that should be done
5 immediately, just like the ELN Trust had to do immediately.

6 THE COURT: Okay.

7 MR. LUSZECK: I -- I'm not sure I understood what
8 you were saying with respect to the waste argument.

9 THE COURT: Well, I think some of the stuff was
10 saying that she mismanaged the property, look at all the money
11 she spent in one of your motions. I -- it sounded like a
12 waste document.

13 MR. LUSZECK: Okay. Understood.

14 THE COURT: That she was wasting money. She said
15 she was improving the property because it was dilapidated. I
16 said I really wasn't going to get into that because to me
17 that's a business judgment; as a manager you make investments.

18 MR. LUSZECK: Well, that --

19 THE COURT: So I saw it as a waste argument.

20 MR. LUSZECK: That's the exact same argument that
21 the LSN Trust made against the ELN Trust and the ELN Trust had
22 to write a check for the monies that this Court found was
23 improper. So I guess if this Court is inclined to kind of
24 withhold a ruling on the monies that LSN needs to pay back to

1 ELN until, you know, we can review the accounting, I'm fine
2 with that, but I think this Court needs to consider, you know,
3 once we get the opportunity to look at the accounting, it
4 needs to consider everything as opposed to kind of
5 predetermining an issue now.

6 THE COURT: Okay.

7 MR. LUSZECK: Because I want to say out of the
8 accounting, I think a couple hundred thousand dollars of that
9 were for legal fees, which obviously doesn't relate to the
10 property. So -- so if this Court is not inclined to rule on
11 the amount that the LSN Trust needs to repay the ELN at this
12 point, I just think that all of the argument should be
13 reserved for a time that that can be determined.

14 THE COURT: And I know some of it was the sizable
15 attorney fees that -- and of that Mr. -- now, I don't know how
16 much of that was attorneys fees for the Trust. I think most
17 of it was Mr. Nelson, I believe, that I made him pay Ms.
18 Nelson's fees.

19 MR. LUSZECK: And I'm not sure. So -- so with
20 respect to that, I -- I think, you know, I would just request
21 that this Court keep that issue open and keep an open mind.

22 Moving on to the tracing issue, Your Honor, well,
23 you know, if this Court -- I believe this Court -- if you
24 indicated that you -- based on the information that was

1 provided, you don't have the -- enough information to conduct
2 a tracing or -- or have a firm understanding of that pursuant
3 to the Supreme Court's order, I understand that. But the
4 Supreme Court in my opinion made it clear as to the time frame
5 for the tracing, and that would be from the creation of the
6 self settle spendthrift trust through the divorce decree. And
7 what the Supreme Court ordered, Your Honor, is the law of the
8 case. And by underlying pleadings I cited at least four
9 different references by the Supreme Court with respect to the
10 separate property and the fact that the self settle
11 spendthrift trust were funded with separate property.

12 I mean, if you look at the separate property trust
13 themselves, they indicate that any assets in there are
14 separate property and they will maintain that status. And the
15 self settle spendthrift trusts say the same thing, Your Honor,
16 that it's being funded with separate property and it shall
17 maintain that character.

18 With respect to the -- the specific statements made
19 by the Supreme Court on page 2, on page 4, on page 6, on page
20 13, I mean, one, the parties converted those trusts into self
21 settle spendthrift trusts in --

22 THE COURT: I'm looking at page 2, it says that 10
23 years in the marriage they signed a separate property
24 agreement that transmuted the property into separate property

1 and placed that property into their separate property trusts.
2 So that was your first reference?

3 MR. LUSZECK: Oh no, later. This is the quote.
4 "Later, the parties converted those trusts into self settle
5 spendthrift trusts and funded them with their respective
6 separate property."

7 THE COURT: Okay.

8 MR. LUSZECK: Next one is on page 4.

9 THE COURT: Well, then you -- your position would be
10 then that the Court should go from the 2001 and forward from
11 when the trusts were --

12 MR. LUSZECK: Yeah, the divorce decree.

13 THE COURT: Okay.

14 MR. LUSZECK: With the exception of Wyoming Downs
15 which I'll get to in a minute. Other -- other statement is on
16 page 4, quote, "In 2001, Eric and Lynita converted their
17 separate property trusts into Eric's trust and Lynita's trust
18 respectively, and funded the separate self settle spendthrift
19 trusts with the separate property contained within the
20 separate property trusts."

21 Going to page 6, and these are all outlined in my
22 underlying briefs.

23 THE COURT: And I haven't -- I haven't had a --

24 MR. LUSZECK: Do you want me to -- okay. You've got

1 it all there.

2 THE COURT: I highlighted my copy, too, but ---

3 MR. LUSZECK: Okay.

4 THE COURT: -- we looked at that, that was -- why I
5 threw it out to see about --

6 MR. LUSZECK: Yeah. Page 6, on June 3rd, 2013, the
7 District Court issued the decree. The District Court found
8 the separate property agreement was valid and the parties'
9 self settle spendthrift trusts were validly established and
10 funded with separate property.

11 And then on page 13, for the reasons set forth
12 below, we hold the self settle spendthrift trusts are valid
13 and trusts were funded with separate property stemming from
14 the valid separate property agreement.

15 So it's the ELN Trust's position that if this Court
16 believes that a tracing is necessary, it only needs to look
17 back from 2001 through the entry of the divorce decree, and if
18 this Court is inclined to go back to 1993, we'll likely take
19 that issue up with the Supreme Court on a writ, Your Honor,
20 because it is going to be an extremely time consuming
21 burdensome effort and we think the Supreme Court made it clear
22 in what they ordered and its order is the law of the case and
23 that needs to be followed by this Court.

24 THE COURT: So on page 13 where it says, we hold the

1 SSSTs are valid and trusts were funded with separate
2 properties stemming from valid separate property agreement?

3 MR. LUSZECK: Correct. Correct.

4 THE COURT: Okay.

5 MR. LUSZECK: So based on that, Your Honor, we
6 believe that their intent was clear that it's -- you know, if
7 this Court finds it necessary, 2001 through the entry of the
8 divorce decree.

9 Now, with the exception being Wyoming Downs. You
10 know, as you certainly recall, Your Honor, Wyoming --

11 THE COURT: We had a --

12 MR. LUSZECK: -- we had a whole --

13 THE COURT: -- separate hearing, we --

14 MR. LUSZECK: Exactly. We had a whole --

15 THE COURT: We kept it outside of the divorce
16 decree, saying we kept it as a separate issue to --

17 MR. LUSZECK: Exactly.

18 THE COURT: -- hear that after the fact because
19 their position was that was community property because they
20 were still married, even though they'd been separated.

21 MR. LUSZECK: Correct.

22 THE COURT: And the Court had a hearing on that and
23 -- okay.

24 MR. LUSZECK: Yeah, and you -- and you had a whole -

1 - it was a whole separate order.

2 We had the divorce decree, we have a whole separate
3 order, whole separate evidentiary hearing with respect to
4 Wyoming Downs. This Court made some pointed findings in that.
5 Let's see, in this Court's September 22nd, 2014 order, this
6 Court find that there was no trans -- the Court finds that
7 there was no transmutation of Wyoming Downs from separate
8 property to community property, even assuming that Wyoming
9 Downs was separate property of the -- of the Eric L. Nelson --
10 of Eric L. Nelson, and not the property of the ELN Trust,
11 separate and distinct from ELN -- Eric Nelson.

12 And then, this issue, this exact issue, was appealed
13 to the Supreme Court by Lynita and the Supreme Court found
14 that it lacked merit in one of the footnotes because they said
15 all the other arguments that was raised by Lynita lacked
16 merit. So, with respect to Wyoming Downs, even if this Court
17 orders a tracing from 2001 through the divorce decree, Wyoming
18 Downs is off limits because that issue -- that issue on appeal
19 was denied by the Supreme Court.

20 With respect to Mr. Bertsch conducting a tracing,
21 we're not opposed to that. The big rub here on the issue is
22 going to be the payment of his fees.

23 He obviously deserves to be paid for his work and so
24 far, the ELN Trust has paid \$139,000 and Lynita or Lynita's

1 trust has paid him zero. So if this Court's inclined to
2 appoint him, the EL -- sorry, the LSN Trust for Lynita should
3 bear the first \$139,000 of his fees. It shouldn't have to
4 continue to be borne by the ELN Trust, especially since this
5 tracing really is -- benefits her. It's discovery on her
6 part.

7 We have the separate property agreement. Once
8 separate prop -- or community property's transmuted to
9 separate property, it maintains that character and it has to
10 be proven by clear and convincing evidence that it's
11 transmuted (sic) back.

12 THE COURT: Yeah.

13 MR. LUSZECK: So this is helping her, this isn't
14 helping the ELN Trust. So that trust, the LSN or Lynita,
15 should have to bear the first \$139,000 of his fees, and then
16 after that, it can be split 50/50 or -- or however else this
17 Court wants to address that.

18 With respect to the order of the sale of Brianhead,
19 you know, Your Honor, I -- my understanding is a partition
20 action has to be filed for that to even occur; one. Two,
21 Lynita recently filed a civil case against Eric and the ELN
22 Trust which is requesting that the property be sold. So I
23 think that issue is really being adjudicated in another venue.
24 Notwithstanding, even if this Court goes forward and orders

1 that that property to be sold, I believe what needs to happen
2 is that any sale proceeds have to be held in a blocked
3 account.

4 We've already identified at least -- or this Court
5 recognized, at least \$500,000 that we believe the LSN Trust
6 owes the ELN Trust. And I don't know what her financial
7 status is to repay that \$500,000. So to the extent Brianhead
8 is sold, then that money, at least with respect to Lynita's
9 portion, needs to be held in abeyance pending further order of
10 this Court to ensure that the ELN Trust is repaid all the
11 money that it's owed.

12 THE COURT: All right. Thank you, Counsel.

13 MR. KARACSONYI: Okay. On the accounting, I'll just
14 start with that and the general ledgers that were ordered
15 today. We brought today a general ledger of the repairs and
16 maintenance with the -- explaining the 229,000 in expenses.
17 We also brought them a copy of all the leases.

18 We'll note that 4412 Baxter Place was condemned by
19 Nevada Power and so there's no lease for that property.
20 Lindell Suites 104 and 105 are unleased and Lindell Office
21 Suites 200 and 201 are occupied by Mr. Nelson who's not paying
22 rent and does not have a lease agreement.

23 Ms. -- Ms. Nelson, as they're aware, had a death in
24 the family this month that she had to attend to and she'd

1 request an additional until next Friday to get the rest of the
2 general ledger together. And they're aware of that situation
3 I'm sure. And so, we would just request a little additional
4 time since that was all supposed to happen during this month.

5 MR. LUSZECK: I -- I'm fine with that. Had you
6 asked, I would have been with that.

7 MR. KARACSONYI: Yeah. Okay.

8 MR. LUSZECK: Yeah. That's fine.

9 MR. KARACSONYI: Okay. And I've given them hundreds
10 of pages of leases and general ledgers so far.

11 We also brought for the -- the Trust a copy of the
12 photographs. There was some question last time, some
13 photographs that Ms. Nelson put together. She brought a copy
14 for Your Honor's file as well.

15 THE COURT: Of the condition of the property; is
16 that --

17 MR. KARACSONYI: Yeah, the con -- as to the
18 condition of the property, especially since there's an issue
19 about the repairs and maintenance.

20 THE DEFENDANT: Just a sample.

21 MR. KARACSONYI: And if we could give you col --
22 color photographs for your file.

23 THE COURT: Any objection, Counsel, to that? Again,
24 I really --

1 MR. LUSZECK: Well --

2 THE COURT: -- didn't want to get into what I
3 consider the waste argument.

4 MS. FORSBERG: It's not going to be part of the
5 record with it not being filed.

6 THE COURT: But I'm --

7 MR. LUSZECK: Yeah, I don't object to you having a
8 copy, but --

9 MR. KARACSONYI: Rather than filing it.

10 MR. LUSZECK: -- to the extent that he wants to go
11 through this line -- or --

12 MR. KARACSONYI: No, no, no, I'm --

13 MR. LUSZECK: -- photograph by --

14 MR. KARACSONYI: No.

15 MR. LUSZECK: -- photograph, then I --

16 THE COURT: All right. Again, we're not --

17 MR. LUSZECK: Oh, you go.

18 MR. KARACSONYI: It's just a --

19 MS. FORSBERG: Your Honor, one objection to that
20 from another perspective is unless it's part -- filed part of
21 the court, it -- when this goes up on writ or whatever
22 happens, it needs to be part of the record. If you're -- if
23 you're taking that into consideration, that's our problem with
24 child interviews and stuff like that, that are not part of the

1 LYNITA SUE NELSON,

2 Counterclaimant, Cross-Claimant,
3 and/or Third Party Plaintiff,

4 v.

5 ERIC L. NELSON, individually and as the
6 Investment Trustee of the ERIC L. NELSON
7 NEVADA TRUST dated May 30, 2001; the
8 ERIC L. NELSON NEVADA TRUST dated
9 May 30, 2001; MATT KLABACKA,
10 Distribution Trustee of the ERIC L.
11 NELSON NEVADA TRUST dated
12 May 30, 2001,

13 Counterdefendant, and/or
14 Cross-Defendants, and/or
15 Third Party Defendants.

16 **ORDER REGARDING TRANSFER OF PROPERTY AND INJUNCTIONS**

17 This matter coming on for hearing on this 4th day of June, 2014, before the
18 Honorable Frank P. Sullivan, on the ELN Trust's Status Report and Request for Stay
19 Pending Entry of Final Decree of Divorce; ROBERT P. DICKERSON, ESQ.,
20 KATHERINE L. PROVOST, ESQ., and JOSEF M. KARACSONYI, ESQ., of THE
21 DICKERSON LAW GROUP, appearing on behalf of Defendant, LYNITA NELSON
22 ("Lynita"), individually and as Trustee of LSN NEVADA TRUST dated May 30, 2001
23 ("LSN Trust"), and Defendant being present; RHONDA K. FORSBERG, ESQ., of
24 RHONDA K. FORSBERG, CHTD., appearing on behalf of Plaintiff, ERIC NELSON
25 ("Eric"), and Plaintiff being present; and MARK A. SOLOMON, ESQ., and JEFFREY
26 P. LUSZECK, ESQ., of SOLOMON, DWIGGINS, & FREER, LTD., appearing on
27 behalf of the Distribution Trustee of the ERIC L. NELSON NEVADA TRUST dated
28 May 30, 2001 ("ELN Trust"). The Court having reviewed and analyzed the pleadings
and papers on file herein, and having heard the arguments of counsel and the parties,
and good cause appearing therefore,

...

...

1 THE COURT FINDS that on May 23, 2004, the Nevada Supreme Court
2 entered Orders Denying Petitions for Writs of Prohibition ("Orders"), denying the
3 petitions for writ of prohibition filed by the ELN Trust.

4 THE COURT FURTHER FINDS that although it could be argued that the
5 Orders entered by the Nevada Supreme Court permit the Court to distribute all
6 properties in accordance with the Decree of Divorce ("Decree") entered June 3, 2013,
7 the Court is not inclined to dissolve or modify the injunctions previously issued by the
8 Court at this time, except as otherwise specifically set forth below.

9 THE COURT FURTHER FINDS that for the past year, Lynita has not received
10 the approximately \$20,000 per month the Court anticipated she would have from the
11 income from properties awarded to her and/or the LSN Trust in the Decree, and from
12 her lump sum alimony.

13 THE COURT FURTHER FINDS that \$324,000 of the lump sum alimony
14 awarded to Lynita in the Decree should be released to Lynita at this time, from the
15 \$1,068,000 previously enjoined by the Court at Bank of Nevada. Such lump sum
16 represents the \$20,000 the Court anticipated Lynita would receive from June, 2013,
17 to June, 2014, for a total of \$240,000, and the remaining \$84,000 represents \$7,000
18 per month in alimony (awarded in the Decree as a lump sum) for June, 2014, to June,
19 2015 while this matter continues to be litigated. The Court entered a separate order
20 for the payment of said funds in Open Court, however, while such Order states that the
21 payment would be made to Lynita such payment shall be secured by property enjoined
22 herein as further set forth below.

23 THE COURT FURTHER FINDS that the parties stipulated to the payment of
24 Larry L. Bertsch, CPA & Associates in accordance with the Decree from the \$1,068,000
25 previously enjoined by the Court at Bank of Nevada. The Court entered a separate
26 order for the release of said funds in Open Court.

27 THE COURT FURTHER FINDS that the LSN Trust is entitled to any income
28 it should have received from the properties awarded to the LSN Trust in the Decree

1 from the date of divorce to present date. Lynita and the LSN Trust are not waiving
2 any claim to prejudgment or postjudgment interest they may have on any sums they
3 are entitled to under the Decree.

4 THE COURT FURTHER FINDS that it is not inclined to stay these
5 proceedings as this matter has been pending since 2009. Lynita should receive the
6 income from the properties awarded to her or the LSN Trust at this time, and the
7 Banone and Lindell properties shall be transferred to the LSN Trust at this time so she
8 can manage same and receive the rental payments from same. Eric has had control of
9 such properties for the past year while the petitions for writ of prohibition were
10 pending before the Nevada Supreme Court. Although the Banone and Lindell
11 properties are being transferred to the LSN Trust, the properties should be enjoined
12 from being sold, encumbered, or used as collateral without an Order of the Court to
13 allow for the preservation of same pending any appeal of this matter.

14 THE COURT FURTHER FINDS that the parties' respective interests in the
15 Brian Head cabin should be enjoined from being sold, encumbered, or used as collateral
16 without an Order of the Court, to allow for the preservation of same pending any
17 appeal of this matter.

18 THE COURT FURTHER FINDS that the provisions contained in this order are
19 intended to preserve the real property described herein, and to secure with enjoined
20 property(ies) any monetary amounts owed by the parties, or transferred to the parties.

21 Accordingly, and for good cause appearing therefor,

22 IT IS HEREBY ORDERED that the ELN Trust shall transfer, and execute any
23 necessary deeds to transfer, the Lindell and Banone, LLC properties to the LSN Trust
24 by no later than 5:00 p.m. on June 12, 2014. The LSN Trust shall be permitted to
25 manage the Lindell and Banone, LLC properties, and shall receive all rents received
26 therefrom, but shall not sell, collateralize, or encumber such properties without an
27 order of this Court. After such transfers the LSN Trust shall provide quarterly
28 accountings to Eric and the ELN Trust regarding such properties.

1 IT IS FURTHER ORDERED that all parties are enjoined from selling,
2 collateralizing, or encumbering their interest in the Brian Head cabin absent further
3 order of this Court.

4 IT IS FURTHER ORDERED that the \$324,000 being released to Lynita from
5 the \$1,068,000 in the blocked account at Bank of Nevada, will be secured by the LSN
6 Trust's interests in the properties enjoined herein.

7 IT IS FURTHER ORDERED that the ELN Trust shall pay to the LSN Trust the
8 \$75,000 reimbursement related to the Wyoming Downs decision by the close of
9 business on June 16, 2014. If there are any issues with such payment that the ELN
10 Trust would like to address it may do so at the hearing currently scheduled for June 16,
11 2014 at 9:00 a.m.

12 IT IS FURTHER ORDERED that if Lynita and/or the LSN Trust plan on
13 evicting Eric from the Lindell property they must first submit the issue to the Court.

14 IT IS FURTHER ORDERED that Lynita is entitled to the income from the
15 properties awarded to the LSN Trust in the Decree from the date of the Decree to
16 present date. To determine the amount the LSN Trust is entitled to, Eric and the ELN
17 Trust shall provide an accounting of the income and payments received from the
18 Lindell property, Banone, LLC properties, JB Ramos Note, and Russell Road from the
19 date of divorce to present date by no later than September 2, 2014 (90 days from the
20 date of this hearing). Going forward, Eric shall provide monthly accountings for any
21 income/payments received from properties awarded to the LSN Trust until such time
22 as such properties are transferred to Lynita or the LSN Trust.

23 IT IS FURTHER ORDERED that once Eric and the ELN Trust provide the
24 accountings ordered herein the parties can address with the Court any issues related
25 to same, and the payment, and security of payment, of any amounts that may be owed
26 to Lynita and the LSN Trust.

27 ...

28 ...

1 IT IS FURTHER ORDERED that the injunctions and orders issued herein will
2 permit the Court to make necessary adjustments to property depending on the ultimate
3 decision made by the Nevada Supreme Court, if any appeal is filed by the parties.

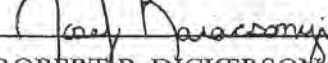
4 DATED this 16 day of September, 2014.

5
6 
DISTRICT COURT JUDGE

7 FRANK P. SULLIVAN

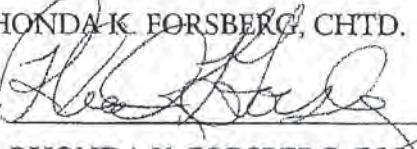
8 Submitted by:

9 THE DICKERSON LAW GROUP

10
11 By 
12 ROBERT P. DICKERSON, ESQ.
13 Nevada Bar No. 000945
14 JOSEF M. KARACSONYI, ESQ.
15 Nevada Bar No. 010634
16 1745 Village Center Circle
17 Las Vegas, Nevada 89134
18 Attorneys for Defendant

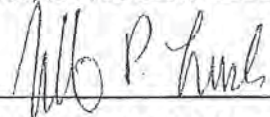
Approved as to Form and Content:

RHONDA K. FORSBERG, CHTD.

19
20 By 
21 RHONDA K. FORSBERG, ESQ.
22 Nevada Bar No. 009557
23 64 N. Pecos Road #800
24 Henderson, Nevada 89074
25 Attorneys for Plaintiff

16
17 Approved as to Form and ~~Content~~:

18 SOLOMON, DWIGGINS & FREER LTD.

19
20 By 
21 MARK A. SOLOMON, ESQ.
22 Nevada Bar No. 000418
23 JEFFREY P. LUSZECK, ESQ.
24 Nevada Bar No. 009619
25 9060 W. Cheyenne Avenue
26 Las Vegas, Nevada 89129
27 Attorneys for the ELN Trust

28
Contributions - trustee of the

EXHIBIT “8”

EXHIBIT “8”

3190

CITY NATIONAL BANK
TRUSTS AND SAVINGS OFFICE
140 WALL STREET, 15TH FLOOR
NEW YORK, NY 10038

SEP 19, 2014

AMOUNT
\$62,050.00

PAY
Six Thousand Fifty and 00/100 Dollars

LSN TRUST
1316 CHESTERBROOK COURT
CAMDEN NEW JERSEY 08135

MEMO: NY HESSEY Stacy Depositor

3190

\$6050.00

Paid: 10/10/2014

3190

NOTES
Bob
O'Hara

RECEIPT

DATE 9/19/14 NO 484281

RECEIVED FROM Eric Nelson

ADDRESS

FOR Payment to LSN Trust

AMT. OF ACCOUNT

AMT. PAID

BALANCE DUE

HOW PAID

CASH

CHECK

MONEY ORDER

BY *[Signature]*

6,050.00

02005 RECEIVED @ 81,810


EXHIBIT “9”

EXHIBIT “9”

CITY NATIONAL BANK


The way up.

Account: 363532799
Date Posted: 7/8/2014
Item Number: 5304
Amount: \$75,000.00

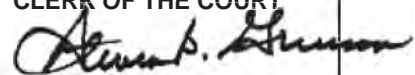
BANONE-AZ, LLC 3611 S LINDELL ROAD, STE 201 LAS VEGAS, NV 89103 (702) 362-3030		CITY NATIONAL BANK TWIN BANKING OFFICE LAS VEGAS, NEVADA 89103 16-1606-1220	5304
DATE Jun 30, 2014		AMOUNT **\$75,000.00	
Seventy-Five Thousand and 00/100 Dollars			
PAY	TO THE ORDER OF LSN NV Trust 3316 Chesterbrook Court Las Vegas, NV 89135		
Memo: Per 6/4/14hearing court order		AUTHORIZED SIGNATURE 	

Security Features Details on back

⑈005304⑈ ⑆122016066⑆ 363532799⑈

	
---	--

The check image copy you requested is shown above. Your account will be debited for any fees that may apply. Please refer to your fee schedule and your next account statement for details. Thank you for banking with City National Bank.



OPPS
THE DICKERSON KARACSONYI LAW GROUP
ROBERT P. DICKERSON, ESQ.
Nevada Bar No. 000945
JOSEF M. KARACSONYI, ESQ.
Nevada Bar No. 010634
1745 Village Center Circle
Las Vegas, Nevada 89134
Telephone: (702) 388-8600
Facsimile: (702) 388-0210
Email: info@thedklawgroup.com

Attorneys for Lynita Sue Nelson

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON,
Plaintiff/Counterdefendant,

v.

LYNITA SUE NELSON,
MATT KLABACKA,
as Distribution Trustee of the
ERIC L. NELSON NEVADA TRUST
dated May 30, 2001,

Defendants/Counterclaimants.

CASE NO. D-09-411537-D
DEPT NO. "O"

8/8/2017 @ 9:30AM

MATT KLABACKA, as Distribution
Trustee of the ERIC L. NELSON
NEVADA TRUST dated
May 30, 2001,

Crossclaimant,

v.

LYNITA SUE NELSON, Individually
and as Investment Trustee of the LSN
NEVADA TRUST, dated
May 30, 2011, and ERIC NELSON,

Cross-Defendant.

PSAPP0134

1 DEFENDANT'S OPPOSITION TO MOTION TO ENFORCE
2 SUPREME COURT'S ORDER DATED MAY 25, 2017; MOTION
3 TO HOLD LYNITA S. NELSON IN CONTEMPT FOR
4 VIOLATION OF SEPTEMBER 22, 2014 ORDER; AND FOR
5 ATTORNEYS' FEES AND COSTS

6 AND

7 COUNTERMOTION FOR FINAL JUDGMENT CONSISTENT
8 WITH NEVADA SUPREME COURT'S REMAND, OR IN THE
9 ALTERNATIVE, FOR AFFIRMATION OF JOINT PRELIMINARY
10 INJUNCTION, FOR A RECEIVER TO MANAGE PROPERTY
11 PENDING FINAL JUDGMENT, FOR UPDATED FINANCIAL
12 DISCLOSURES AND EXCHANGE OF FINANCIAL
13 INFORMATION, AND FOR SALE OF PROPERTY FOR
14 PAYMENT OF ATTORNEYS' FEES AND COSTS

15 COMES NOW, Defendant and Cross-Defendant, LYNITA SUE
16 NELSON ("Lynita"), by and through her counsel, ROBERT P.
17 DICKERSON, ESQ., and JOSEF M. KARACSONYI, ESQ., of THE
18 DICKERSON KARACSONYI LAW GROUP, and respectfully submits for
19 the Court's consideration her Opposition to Motion to Enforce Supreme
20 Court's Order Dated May 25, 2017; Motion to Hold Lynita S. Nelson in
21 Contempt for Violation of September 22, 2014 Order; and for Attorneys'
22 Fees and Costs, and Countermotion for Final Judgment Consistent with
23 Nevada Supreme Court's Remand, or in the Alternative, for Affirmation
24 of Joint Preliminary Injunction, for a Receiver to Manage Property
25 Pending Final Judgment, for Updated Financial Disclosures and Exchange
26 of Financial Information, and for Sale of Property for Payment of
27 Attorneys' Fees and Costs ("Opposition and Countermotion").
28

...

...

...

...

...

...

1 This Opposition and Countermotion is made and based upon the
2 pleadings and papers on file herein, the Points and Authorities attached
3 hereto, and any other evidence the Court may adduce at the hearing on
4 this matter.

5 DATED this 31 day of July, 2017.

6 THE DICKERSON KARACSONYI
7 LAW GROUP

8 By Robert P. Dickerson
9 ROBERT P. DICKERSON, ESQ.
10 Nevada Bar No. 000945
11 JOSEF M. KARACSONYI, ESQ.
12 Nevada Bar No. 010634
13 1745 Village Center Circle
14 Las Vegas, Nevada 89134
15 Attorneys for Lynita Sue Nelson
16
17
18
19
20
21
22
23
24
25
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The ELN Trust's Motion, although captioned a "motion to enforce the Supreme Court's Order dated May 25, 2017," does not seek to actually enforce the Supreme Court's Order. Instead, the ELN Trust seeks to have the Court transfer and distribute property without any regard to the purpose of the Nevada Supreme Court's remand. While it is true that the Supreme Court reversed the conclusions of law and division of property set forth in this Court's Decree of Divorce, the Supreme Court also confirmed and validated what this Court has said throughout this litigation: "Community property in, community property out!" Based on the extensive evidence previously provided to the Court, the Court should enter an Order on remand dividing as community property all property held in the ELN Trust and LSN Trust, as all such property was acquired by the parties during marriage, was not divided in the 1993 separate property agreement, and cannot be traced to the property divided in the 1993 separate property agreement.

II. FACTUAL STATEMENT

A. The Purpose Of The Nevada Supreme Court's Remand

At pages 15-16 of its Order, the Supreme Court explained the purpose of its remand as follows:

Tracing trust assets

The parties contest whether the assets within the [Self Settled Spendthrift Trusts ("SSSTs")] remained separate property or whether, because of the many transfers of property between the trusts, the assets reverted back to community property. In a divorce involving trust assets, the district court must trace those trust assets to determine whether any community property exists within the trusts – as discussed below, the parties' respective separate property in the SSSTs would be afforded the statutory protections against court-ordered distribution, while any community property would be

1 subject to the district court's equal distribution. We
2 conclude the district court did not trace the assets in question.

3 Eric's Trust retained a certified public accountant to
4 prepare a report tracing the assets within the two trusts.
5 However, as noted by the district court, the certified public
6 accountant maintained a business relationship with Eric and
7 Eric's Trust for more than a decade. Although the certified
8 public accountant's report concluded that there was "no
9 evidence that any community property was transferred to
10 Eric's Trust or that any community property was commingled
11 with the assets of Eric's Trust," the district court found the
12 report and corresponding testimony to be unreliable and of
13 little probative value. We recognize that the district court is
14 in the best position to weigh the credibility of witnesses, and
15 we will not substitute our judgment for that of the district
16 court here. [Citation omitted]. However, the subject of the
17 certified public accountant's report – the tracing of trust assets,
18 specifically any potential commingling of trust assets with
19 personal assets – must still be performed. *See Schmanski v.*
20 *Schmanski*, 115 Nev. 247, 984 P.2d 752 (1999) (discussing
21 transmutation of separate property and tracing trust assets in
22 divorce). Without proper tracing, the district court is left with
23 only the parties' testimony regarding the characterization of
24 the property, which carries no weight. *See Peters v. Peters*, 92
25 Nev. 687, 692, 557 P.2d 713, 716 (1976) ("The opinion of
26 either spouse as to whether property is separate or community
27 is of no weight whatsoever."). Accordingly, we conclude the
28 district erred by not tracing the assets contained within the
trusts, either through a reliable expert or other available
means. Separate property contained within the spendthrift
trusts is not subject to attachment or execution, as discussed
below. However, if community property exists within the
trusts, the district court shall make an equal distribution of
that community property. *See* NRS 125.150(1)(b).

19 Order filed May 25, 2017, pgs. 15-16 (emphasis added).

20 B. The Evidence Presented At Trial Confirms That All Property Held
21 In The ELN Trust And LSN Trust Was Acquired During Marriage,
22 And Cannot Be Traced To Separate Property

23 At trial, the various deeds related to the properties held by the
24 parties were admitted into evidence. All of such acquisitions occurred
25 during the period of the parties' marriage. Furthermore, at the time of
26 trial, none of the properties held in the ELN Trust or LSN Trust were the
27 same as those specified in the 1993 separate property agreement, other
28 than the Palmyra marital residence, and the parties' then forty percent
(40%) interest in Eric Nelson Auctioneering.

1 ELN Trust's purported expert witness, Daniel Gerety, CPA (whom
2 the Court found to lack credibility), admitted during direct examination
3 by ELN Trust's attorney that it was not possible to trace the properties
4 from the 1993 separate property agreement to the properties held at the
5 time of trial:

6 Q. [] what specifically were you asked to do?

7 A. Originally we were asked to try to trace the assets from
8 the separate property agreement that was in - - was it '93, if I
9 remember right, '93, I think - - from '93 all the way to
10 September of 2011 at the time and we weren't able to get all
of those old records. We were not able to do a tracing from
'93. The best we - - with the records that were available, was
to go from 2001 to 2011.

11 July 8, 2012 Trial Transcript, pg. 144, line 17, to pg. 145, line 1.

12 C. Accounting Of Property

13 ELN Trust requests that the Court Order Lynita to provide copies
14 of leases entered into with tenants of the Lindell Property and Banone
15 LLC properties. ELN Trust further requests that Lynita be Ordered to
16 provide quarterly accountings for said properties as ordered in the Order
17 Regarding Transfer of Property and Injunctions entered on September 22,
18 2014 ("Transfer and Injunction Order"). ELN Trust further requests that
19 Lynita be sanctioned for failing to provide said accountings.

20 Lynita is not opposed to providing the leases or quarterly
21 accountings, and will be providing same shortly once she has compiled all
22 the information. The first time the ELN Trust requested such information
23 was a little over thirty (30) days ago, as evidenced by its June 20, 2017
24 correspondence.

25 Ironically, during the pendency of the appeal, Lynita discovered that
26 the Russell Road property was no longer occupied by the Oasis Baptist
27 Church, and was instead being leased to Blue Dog RV. The Transfer and
28 Injunction Order, which ELN Trust alleges Lynita has violated, also

1 required the ELN Trust and Eric to "provide monthly accountings for any
2 income/payments received from properties awarded to the LSN Trust until
3 such time as such properties are transferred to Lynita or the LSN Trust."
4 Transfer and Injunction Order, pg. 5, lines 20-22. On July 18, 2016,
5 Lynita's counsel sent a letter to Eric's and ELN Trust's counsel, which
6 stated in pertinent part:

7 It has come to our attention that the Russell Road property is
8 no longer occupied by the Oasis Baptist Church, and is instead
9 being leased to Blue Dog RV. This change was made without
10 notification to, or input from, Ms. Nelson, and in complete
11 disregard of the Court's Decree of Divorce and Ms. Nelson's
12 rights under the Decree to an interest in the Russell Road
13 property. As we predicted, Mr. Nelson is using the stay
14 entered by the Nevada Supreme Court in an attempt to
15 prejudice Ms. Nelson. Please immediately disclose to us the
16 terms and conditions of the agreement Mr. Nelson entered
17 into with Blue Dog RV, and produce a copy of any and all
18 documents pertaining to same. Please also immediately
19 disclose the facts and circumstances which led to the Church's
20 departure from the property, and any and all documents
21 related to same.

22 **Exhibit A.**

23 On July 22, 2016, ELN Trust's counsel responded as follows:

24 This is in response to your correspondence dated July 18,
25 2016. The ELN Trust disagrees with your allegations of
26 wrongdoing regarding the Russell Road property. Be advised
27 that in light of the pending appeal, and the stay imposed by
28 the Nevada Supreme Court, the ELN Trust does not intend to
provide the requested information at this time.

29 **Exhibit B.** Certainly the stay entered by the Nevada Supreme Court
30 during the pendency of the appeal applied equally to all parties. The
31 Supreme Court issued its Remittitur on June 20, 2017, and filed same July
32 14, 2017. Lynita should be given sufficient time to produce all quarterly
33 accountings now that the Remittitur has issued.

34 Furthermore, the ELN Trust must be compelled to provide an
35 accounting of all financial transactions occurring since the time of trial in
36 this matter, and a statement of all assets. The Court will need a complete

1 picture of all of the parties' assets in order to enter and enforce a final
2 judgment in this matter consistent with the Supreme Court's remand.

3 D. Lynita Is In Need Of Funds For Attorney's Fees And Costs

4 As of June 30, 2017 (the date of her last invoices), Lynita owed an
5 outstanding balance of \$105,911.66 to her attorneys for her attorneys'
6 fees and costs incurred in this divorce action and the appeal. Lynita is in
7 need of funds to satisfy her outstanding balance for attorneys' fees and
8 costs, and to pay for her continued representation in this matter.

9 III. LEGAL ANALYSIS

10 A. The Court Should Deny The ELN Trust's Request To Compel The
11 Transfer Of Properties To The ELN Trust, And The Court Should
12 Review The Evidence Previously Presented And Enter An Order
Regarding The Character Of Property In The ELN Trust And LSN
Trust

13 In the Decree of Divorce, the Court Ordered an equal division of the
14 property in the ELN Trust and LSN Trust. While such division was
15 reversed on appeal, the final result in this matter should be the same: an
16 equal division of all property held by the parties. As set forth in the
17 Factual Statement, all property held by the parties at the time of divorce,
18 other than the Palmyra marital residence, and the parties' then forty
19 percent (40%) interest in Eric Nelson Auctioneering, was acquired during
20 marriage. All property acquired during marriage is presumed to be
21 community property, and such presumption may only be overcome by
22 clear and convincing evidence. *Forrest v. Forrest*, 99 Nev. 602, 604-05, 668
23 P.2d 275, 277 (1983). The Nevada Supreme Court has defined clear and
24 convincing evidence as follows:

25 This court has held that clear and convincing evidence must be
26 satisfactory proof that is: "so strong and cogent as to satisfy
27 the mind and conscience of a common man, and so to
28 convince him that he would venture to act upon that
conviction in matters of the highest concern and importance
to his own interest. It need not possess such a degree of force
as to be irresistible, but there must be evidence of tangible

1 facts from which a legitimate inference may be drawn.”
2 [Citation omitted].

3 *In re Discipline of Drakulich*, 111 Nev. 1556, 908 P.2d 709, 715 (1995).

4 Eric and ELN Trust conceded during trial they could not trace the original
5 source of funds used to acquire the properties held in the LSN Trust and
6 ELN Trust to the 1993 separate property agreements. Accordingly, the
7 Court must ultimately find that the property held by the parties is
8 community property, and should equally divide same (with the exception
9 of any proceeds which Lynita can trace to the sale of the Palmyra
10 residence).

11 Because the Court must ultimately divide the property in the ELN
12 Trust and LSN Trust as community property, it should not compel Lynita
13 to transfer any property back to the ELN Trust, or to repay any monies
14 previously paid to her.

15 B. If The Court Requires Additional Evidence And Proceedings, The
16 Court Should Affirm The Joint Preliminary Injunction, Freeze The
17 Parties' Respective Assets, And Appoint A Third-Party Receiver To
Manage All Assets Pending A Final Determination

18 If the Court determines that it would like to receive additional
19 evidence regarding the character of the parties' property, the Court should
20 expressly affirm the Joint Preliminary Injunction previously entered, and
21 require all parties to transfer their property to a third-party receiver until
22 a final decision is rendered in this matter. EDCR 5.517 requires the
23 issuance of a joint preliminary injunction upon the request of any party,
24 to prohibit all parties, and “their officers, agents, servants, employees, or
25 a person in active concert or participation with them from: (1)
26 Transferring, encumbering, concealing, selling, or otherwise disposing of
27 any of the joint, common, or community property of the parties or any
28 property that is subject of a claim of community interest, except in the

1 usual course of conduct or for the necessities of life or for retention of
2 counsel” NRS 125.050 requires the Court to “make such restraining
3 order or other order as appears necessary to prevent the act or conduct
4 and preserve the status quo pending final determination of the cause.”
5 The Court has had difficulty in the past compelling Eric and ELN Trust
6 to preserve assets, and to seek Court approval prior to acquiring,
7 transferring, or liquidating property. The only way to ensure that the
8 Court will be able to give effect to its final Order is to affirm the joint
9 preliminary injunction by issuing another joint preliminary injunction as
10 the Order of the Court, and by having the parties transfer all property to
11 a third-party receiver.

12 C. All Parties, Not Just Lynita, Should Be Required To Produce
13 Financial Information And Documents Concerning The Current
14 Assets Of The Parties, And All Financial Records Of Transactions
Occurring Since The Court’s Entry Of Its Decree

15 Regardless of whether the Court is prepared to issue its final
16 judgment at this time, or if the Court desires to take additional evidence,
17 the Court should require all parties to complete and file a complete
18 statement of assets and liabilities, and to supplement all financial
19 information and documents previously produced to provide a complete
20 and accurate picture of all financial dealings since the date of last
21 production. Such accountings and disclosures must be required of all
22 parties, not just Lynita. The Court should also re-appoint Larry L.
23 Bertsch, CPA and Associates to update the prior forensic accountings
24 through to present date.

25 D. The Court Should Order The Immediate Sale Of The Brianhead
26 Cabin For The Payment Of Attorneys’ Fees And Costs

27 Lynita is in need of funds to pay her outstanding attorneys’ fees and
28 costs, and to pay for the additional attorneys’ fees and costs she will

1 continue to incur in this matter. The parties each hold a 50% interest in
2 the Brianhead cabin. The Court should Order the Brianhead cabin to be
3 sold immediately, with the proceeds frozen for payment of attorneys' fees
4 and costs. From said proceeds, the Court should release to Lynita's
5 counsel the sum of \$200,000 to pay Lynita's outstanding attorneys' fees
6 and costs, and to be paid towards the fees and costs she will continue to
7 incur in this matter until a final judgment is entered and all appeals have
8 been exhausted.

9 E. ELN Trust's Request For Attorneys' Fees Should Be Denied

10 ELN Trust requests attorneys' fees pursuant to EDCR 7.60 and NRS
11 125.240, alleging that Lynita failed to act in good faith and comply with
12 the Nevada Supreme Court's, or this Court's, Orders. Given the Supreme
13 Court's remand of this matter, Lynita certainly did not act in bad faith by
14 refusing to transfer property prior to this Court's remand hearing, and
15 prior to receiving the direction of this Court. Lynita also did not act in
16 bad faith when she did not provide quarterly accountings to Eric and ELN
17 Trust during the pendency of the appeal, as acknowledged by ELN Trust
18 in its July 22, 2016 correspondence to Lynita's counsel, asserting that it
19 did not have to provide information pursuant to this Court's Order during
20 the appeal as a result of the Supreme Court's stay.

21 IV. CONCLUSION

22 For the reasons set forth above, Lynita respectfully requests the
23 Court:

24 1. For an Order finding that all property held by the parties is
25 community property (with the exception of any proceeds which Lynita can
26 trace to the sale of the Palmyra residence), and equally dividing such
27 property;

28 . . .

1 2. In the alternative, for an Order affirming and reissuing the
2 Court's Joint Preliminary Injunction, and requiring the parties to transfer
3 all property to a third-party receiver pending a final determination in this
4 matter;

5 3. For an Order requiring all parties to complete and file an
6 updated statement of assets and liabilities, and to supplement all financial
7 information and documents previously produced to provide a complete
8 and accurate picture of all financial dealings since the date of last
9 production;

10 4. For an Order re-appointing Larry L. Bertsch, CPA and
11 Associates to update the prior forensic accountings through to present
12 date.


13 5. For an Order requiring the immediate sale of the Brianhead
14 cabin, with the proceeds received therefrom to be frozen pending further
15 Court Order;

16 6. For an Order allowing Lynita to receive \$200,000 from the
17 eventual proceeds from the sale of the Brianhead cabin for payment of her
18 attorneys' fees and costs; and

19 7. For such further relief as deemed appropriate in the premises.

20 Dated this 31 day of July, 2017.

21 THE DICKERSON KARACSONYI
22 LAW GROUP

23 
24 ROBERT P. DICKERSON, ESQ.
25 Nevada Bar No. 000945
26 JOSEF M. KARACSONYI, ESQ.
27 Nevada Bar No. 008414
28 1745 Village Center Circle
 Las Vegas, Nevada 89134
 Attorneys for Lynita Sue Nelson

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

1. I am over the age of 18 years. I am the Defendant in this action. I have personal knowledge of the facts contained herein, and I am competent to testify thereto.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

LYNITA NELSON

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of THE DICKERSON KARACSONYI LAW GROUP, and that on this 31 day of July, 2017, I caused the above and foregoing document entitled DEFENDANT'S OPPOSITION TO MOTION TO ENFORCE SUPREME COURT'S ORDER DATED MAY 25, 2017; MOTION TO HOLD LYNITA S. NELSON IN CONTEMPT FOR VIOLATION OF SEPTEMBER 22, 2014 ORDER; AND FOR ATTORNEYS' FEES AND COSTS, AND COUNTERMOTION FOR FINAL JUDGMENT CONSISTENT WITH NEVADA SUPREME COURT'S REMAND, OR IN THE ALTERNATIVE, FOR AFFIRMATION OF JOINT PRELIMINARY INJUNCTION, FOR A RECEIVER TO MANAGE PROPERTY PENDING FINAL JUDGMENT, FOR UPDATED FINANCIAL DISCLOSURES AND EXCHANGE OF FINANCIAL INFORMATION, AND FOR SALE OF PROPERTY FOR PAYMENT OF ATTORNEYS' FEES AND COSTS, to be served as follows:

- ☒ [X] pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and Administrative Order 14-2 captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system;
- ☐ [] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;
- ☐ [] pursuant to EDCR 7.26, to be sent via **facsimile**, by duly executed consent for service by electronic means;
- ☐ [] by hand-delivery with signed Receipt of Copy.

...

...

...

...

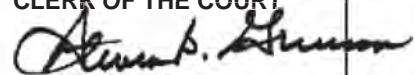
1 To the attorney(s) listed below at the address, email address, and/or
2 facsimile number indicated below:

3 RHONDA K. FORSBERG, ESQ.
4 RHONDA K. FORSBERG, CHARTERED
5 64 North Pecos Road, Ste. 800
6 Henderson, Nevada 89074
7 rforsberg@forsberg-law.com
8 mweiss@forsberg-law.com
9 Attorneys for Plaintiff

10 MARK A. SOLOMON, ESQ.
11 JEFFREY P. LUSZECK, ESQ.
12 SOLOMON, DWIGGINS, FREER & MORSE, LTD.
13 9060 W. Cheyenne Avenue
14 Las Vegas, Nevada 89129
15 msolomon@sdfnvlaw.com
16 jluszeck@sdfnvlaw.com
17 sgerace@sdfnvlaw.com
18 Attorneys for Distribution Trustee of the ELN Trust

19
20
21
22
23
24
25
26
27
28

An employee of The  Dickerson Karacsonyi Law Group



1 APPX
2 THE DICKERSON KARACSONYI LAW GROUP
3 ROBERT P. DICKERSON, ESQ.
4 Nevada Bar No. 000945
5 JOSEF M. KARACSONYI, ESQ.
6 Nevada Bar No. 010634
7 1745 Village Center Circle
8 Las Vegas, Nevada 89134
9 Telephone: (702) 388-8600
10 Facsimile: (702) 388-0210
11 Email: info@thedklawgroup.com

12 Attorneys for Lynita Sue Nelson

13 EIGHTH JUDICIAL DISTRICT COURT
14 FAMILY DIVISION

15 CLARK COUNTY, NEVADA

16 ERIC L. NELSON,

17 Plaintiff/Counterdefendant,

18 v.

19 LYNITA SUE NELSON,
20 MATT KLABACKA,
21 as Distribution Trustee of the
22 ERIC L. NELSON NEVADA TRUST
23 dated May 30, 2001,

24 Defendants/Counterclaimants.

25 MATT KLABACKA, as Distribution
26 Trustee of the ERIC L. NELSON
27 NEVADA TRUST dated
28 May 30, 2001,

Crossclaimant,

v.

LYNITA SUE NELSON, Individually
and as Investment Trustee of the LSN
NEVADA TRUST, dated
May 30, 2011, and ERIC NELSON,

Cross-Defendant.

CASE NO. D-09-411537-D
DEPT NO. "O"

1 APPENDIX OF EXHIBITS TO DEFENDANT'S OPPOSITION TO
2 MOTION TO ENFORCE SUPREME COURT'S ORDER DATED
3 MAY 25, 2017; MOTION TO HOLD LYNITA S. NELSON IN
4 CONTEMPT FOR VIOLATION OF SEPTEMBER 22, 2014
5 ORDER; AND FOR ATTORNEYS' FEES AND COSTS

6 AND

7 COUNTERMOTION FOR FINAL JUDGMENT CONSISTENT
8 WITH NEVADA SUPREME COURT'S REMAND, OR IN THE
9 ALTERNATIVE, FOR AFFIRMATION OF JOINT PRELIMINARY
10 INJUNCTION, FOR A RECEIVER TO MANAGE PROPERTY
11 PENDING FINAL JUDGMENT, FOR UPDATED FINANCIAL
12 DISCLOSURES AND EXCHANGE OF FINANCIAL
13 INFORMATION, AND FOR SALE OF PROPERTY FOR
14 PAYMENT OF ATTORNEYS' FEES AND COSTS

15 COMES NOW, Defendant and Cross-Defendant, LYNITA SUE
16 NELSON ("Lynita"), by and through her counsel, ROBERT P.
17 DICKERSON, ESQ., and JOSEF M. KARACSONYI, ESQ., of THE
18 DICKERSON KARACSONYI LAW GROUP, and hereby submits this
19 Appendix of Exhibits to Defendant's Opposition to Motion to Enforce
20 Supreme Court's Order Dated May 25, 2017; Motion to Hold Lynita S.
21 Nelson in Contempt for Violation of September 22, 2014 Order; and for
22 Attorneys' Fees and Costs, and Countermotion for Final Judgment
23 Consistent with Nevada Supreme Court's Remand, or in the Alternative,

24 ...

25 ...

26 ...

27 ...

28 ...

...

...

...

...

...

1 for Affirmation of Joint Preliminary Injunction, for a Receiver to Manage
2 Property Pending Final Judgment, for Updated Financial Disclosures and
3 Exchange of Financial Information, and for Sale of Property for Payment
4 of Attorneys' Fees and Costs.

5 DATED this 31 day of July, 2017.

6 THE DICKERSON KARACSONYI
7 LAW GROUP

8
9 By [Signature]
10 ROBERT P. DICKERSON, ESQ.
11 Nevada Bar No. 000945
12 JOSEF M. KARACSONYI, ESQ.
13 Nevada Bar No. 010634
14 1745 Village Center Circle
15 Las Vegas, Nevada 89134
16 Attorneys for Lynita Sue Nelson

17
18
19
20
21
22
23
24
25
26
27
28
TABLE OF CONTENTS

Title/Description of Document	Exhibit Number/Letter	Bates Stamp Number
Letter to Jeffrey P. Luszeck, Esq., and Rhonda K. Forsberg, Esq., dated July 18, 2016	A	LSN000001 - LSN000002
Letter to Robert P. Dickerson, Esq., Katherine Provost, Esq., and Josef M. Karacsonyi, Esq., dated July 22, 2015	B	LSN000003

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

- 18
19
20
21
22
23
24
25

26

27

1 To the attorney(s) listed below at the address, email address, and/or
2 facsimile number indicated below:

3 RHONDA K. FORSBERG, ESQ.
4 RHONDA K. FORSBERG, CHARTERED
5 64 North Pecos Road, Ste. 800
6 Henderson, Nevada 89074
7 rforsberg@forsberg-law.com
8 mweiss@forsberg-law.com
9 Attorneys for Plaintiff

10 MARK A. SOLOMON, ESQ.
11 JEFFREY P. LUSZECK, ESQ.
12 SOLOMON, DWIGGINS, FREER & MORSE, LTD.
13 9060 W. Cheyenne Avenue
14 Las Vegas, Nevada 89129
15 msolomon@sdfnvlaw.com
16 jluszeck@sdfnvlaw.com
17 sgerace@sdfnvlaw.com
18 Attorneys for Distribution Trustee of the ELN Trust

19
20
21
22
23
24
25
26
27
28

An employee of The Dickerson Karacsonyi Law Group

EXHIBIT A

EXHIBIT A

EXHIBIT A

THE DICKERSON LAW GROUP

ROBERT F. DICKERSON
JOSEF M. KARACSONYI
NATALIE E. KARACSONYI
KRISTINA M. JANUSZ

A PROFESSIONAL CORPORATION OF ATTORNEYS AT LAW
HILLS CENTER NORTH BUSINESS PARK
1745 VILLAGE CENTER CIRCLE
LAS VEGAS, NEVADA 89134

AREA CODE (702)
TELEPHONE 388-8600
FAX 988-0210

July 18, 2016

SENT VIA ELECTRONIC MAIL

Jeffrey P. Luszeck, Esq.
Solomon, Dwiggin, Freer & Morse, Ltd.
9060 W. Cheyenne Avenue
Las Vegas, Nevada 89129
jluszeck@sdfnvlaw.com

Rhonda K. Forsberg, Esq.
Rhonda K. Forsberg, Chartered
64 N. Pecos Road # 800
Henderson, Nevada 89074
rforsberg@forsberg-law.com

Re: *Nelson v. Nelson, et. al* (Case No. D-09-411537-D)

Dear Jeff and Rhonda:

This letter is sent pursuant to Eighth Judicial District Court Rules, Rule 5.11 (2016), in an attempt to resolve issues without the need for further court intervention.

Pursuant to the parties' Decree of Divorce, Mr. Nelson is to pay \$1,058 on the first (1st) day of each month for the support of the parties' daughter, Carli, "until Carli attains the age of majority or completes high school, whichever occurs last." Mr. Nelson has not yet made his final child support payment which was due on June 1, 2016. I have previously written to Rhonda about this payment, but to no avail. We are trying to avoid filing a motion over this final payment, however, if Mr. Nelson ignores this final request and fails to pay his obligation immediately we will be forced to file a motion with the Court.

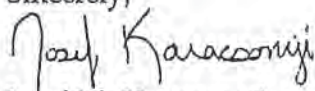
It has come to our attention that the Russell Road property is no longer occupied by the Oasis Baptist Church, and is instead being leased to Blue Dog RV. This change was made without any notification to, or input from, Ms. Nelson, and in complete disregard of the Court's Decree of Divorce and Ms. Nelson's rights under the Decree to an interest in the Russell Road property. As we predicted, Mr. Nelson is using the stay

LSN000001
PSAPP0155

Jeffrey P. Luszeck, Esq.
Rhonda K. Forsberg, Esq.
July 18, 2016
Page 2

entered by the Nevada Supreme Court in an attempt to prejudice Ms. Nelson. Please immediately disclose to us the terms and conditions of the agreement Mr. Nelson entered into with Blue Dog RV, and produce a copy of any and all documents pertaining to same. Please also immediately disclose the facts and circumstances which led to the Church's departure from the property, and any and all documents related to same.

We appreciate your time and attention to this matter. If you have any questions or concerns, please do not hesitate to contact us.

Sincerely,

Josef M. Karacsonyi

cc: Lynita Nelson

LSN000002
PSAPP0156

EXHIBIT B

EXHIBIT B

EXHIBIT B



SOLOMON | DWIGGINS | FREER ^{LLP}
TRUST AND ESTATE ATTORNEYS

Mark A. Solomon
Dana A. Dwiggins
Alan D. Freer
Brian K. Steadman
Steven E. Hollingworth
Brian P. Eagan
Jeffrey P. Luszeck

Cheyenne West Professional Centre
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

Telephone: 702.853.5483
Facsimile: 702.853.5485

Ross E. Evans
Jordanna L. Evans
Alexander G. LeVeque
Joshua M. Hood
*Christopher J. Fowler

*Licensed only in Florida

Direct Dial (702) 589-3511
jluszeck@sdfnlaw.com

July 22, 2015

Via Electronic Mail Only

Robert P. Dickerson, Esq.
Katherine L. Provost, Esq.
Josef M. Karacsonyi, Esq.
Dickerson Law Group
1745 Village Center Circle
Las Vegas, NV 89134

Re: *In the Matter of Eric L. Nelson v. Lynita Sue Nelson*
Case No. D-411537

Dear Josef:

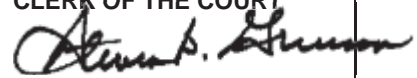
This is in response to your correspondence dated July 18, 2016. The ELN Trust disagrees with your allegations of wrongdoing regarding the Russell Road property. Be advised that in light of the pending appeal, and the stay imposed by the Nevada Supreme Court, the ELN Trust does not intend to provide the requested information at this time.

Sincerely,

/s/ Jeffrey P. Luszeck

Jeffrey P. Luszeck

cc: Rhonda Forsberg, Esq.
Client



RPLY

1 MARK A. SOLOMON, ESQ.
Nevada State Bar No. 0418
2 E-mail: msolomon@sdfnvlaw.com
JEFFREY P. LUSZECK, ESQ.
3 Nevada State Bar No. 9619
4 E-mail: jluszeck@sdfnvlaw.com
SOLOMON DWIGGINS & FREER, LTD.
5 Cheyenne West Professional Centre'
9060 W. Cheyenne Avenue
6 Las Vegas, Nevada 89129
Telephone No.: (702) 853-5483
7 Facsimile No.: (702) 853-5485

8 *Attorneys for Matt Klabacka, Distribution*
Trustee of the ERIC L. NELSON NEVADA
9 *TRUST dated May 30, 2001*

10 **DISTRICT COURT**
11 **COUNTY OF CLARK, NEVADA**

12 ERIC L. NELSON,

Case No.: D411537
Dept.: O

13
14 Plaintiff

15 vs.

16 LYNITA SUE NELSON, MATT
17 KLABACKA, as Distribution Trustee of the
ERIC L. NELSON NEVADA TRUST dated
18 May 30, 2001,

19 Defendants.

20 MATT KLABACKA, Distribution Trustee of
21 the ERIC L. NELSON NEVADA TRUST
dated May 30, 2001,

22 Cross-claimant,

23 vs.
24

25 LYNITA SUE NELSON,

26 Cross-defendant.
27
28

/ / /

**REPLY TO OPPOSITION TO MOTION TO ENFORCE SUPREME COURT'S ORDER
DATED MAY 25, 2017; MOTION TO HOLD LYNITA S. NELSON IN CONTEMPT FOR
VIOLATION OF SEPTEMBER 22, 2014 ORDER; AND FOR ATTORNEYS' FEES AND
COSTS**

AND

**OPPOSITION TO COUNTERMOTION FOR FINAL JUDGMENT CONSISTENT WITH
THE NEVADA SUPREME COURT'S REMAND OR, IN THE ALTERNATIVE, FOR
AFFIRMATION OF JOINT PRELIMINARY INJUNCTION, FOR A RECEIVER TO
MANAGE THE PROPERTY PENDING FINAL JUDGMENT, FOR UPDATED
FINANCIAL DISCLOSURES AND EXCHANGE OF FINANCIAL INFORMATION, AND
FOR SALE OF PROPERTY FOR PAYMENT OF ATTORNEYS' FEES AND COSTS**

Matt Klabacka, Distribution Trustee of the ERIC L. NELSON NEVADA TRUST dated May 30, 2001, hereby files his Reply to Opposition to Motion to Enforce Supreme Court's Order dated May 25, 2017; Motion to Hold Lynita S. Nelson in Contempt for Violation of September 22, 2014 Order; and for Attorneys' Fees and Costs and Opposition to Countermotion for Final Judgment Consistent with the Nevada Supreme Court's Remand or, in the Alternative, for Affirmation of Joint Preliminary Injunction, for a Receiver to Manage the Property Pending Final Judgment, for Updated Financial Disclosures and Exchange of Financial Information, and for Sale of Property for Payment of Attorneys' Fees and Costs.

This Reply and Opposition to Countermotion is made and based upon the pleadings and papers on file herein, the Points and Authorities attached hereto, and any other evidence the Court may adduce at the hearing on this matter.

DATED this 4th day of August, 2017.

SOLOMON DWIGGINS & FREER, LTD.

By: /s/ Jeffrey P. Luszeck

MARK A. SOLOMON, ESQ., NSB 0418
JEFFREY P. LUSZECK, ESQ., NSB 9619
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

*Attorneys for Matt Klabacka, Distribution
Trustee of the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Lynita's Opposition and Countermotion disregards the Supreme Court's Opinion, which is
4 now the law of the case. Specifically, Lynita has failed/refused to return assets that the ELN Trust
5 had previously transferred to it as a result of this Court's imposition of a constructive trust and
6 finding of unjust enrichment despite the fact that the Supreme Court vacated the constructive trusts.
7 The Supreme Court's ruling was effective immediately and not subject to a "remand hearing" as
8 Lynita would have this Court believe. Consequently, the ELN Trust's Motion should be granted in
9 its entirety.

10 Lynita's Countermotion, which failed to comply with the requisite notice requirements,
11 should be denied because it misconstrues, and quite frankly ignores, the Supreme Court's Opinion.
12 Further, the relief requested by Lynita is inapplicable to the ELN Trust and/or she failed to establish
13 why the requested relief should be granted. As such, Lynita's Countermotion should be denied in
14 its entirety.

15 **II. LEGAL ARGUMENT**

16 **A. THE PORTIONS OF THE SUPREME COURT'S OPINION REGARDING**
17 **THE IMPOSITION OF A CONSTRUCTIVE TRUST AND PAYMENT OF**
18 **ALIMONY FROM THE ELN TRUST EFFECTIVE IMMEDIATELY,**
CONSTITUTES THE LAW OF THE CASE.

19 Contrary to Lynita's contention, the purpose of the ELN Trust's Motion is to "actually
20 enforce the Supreme Court's Order" because said Order vacated the: (1) constructive trusts imposed
21 by the District Court in its Divorce Decree;¹ and (2) payment of alimony from the ELN Trust's
22 assets held in a blocked account at Bank of Nevada.²

23 Without citation to any authority to support her noncompliance with the Supreme Court's

24 ¹ See, e.g., Nevada Supreme Court Order dated May 25, 2017, p. 3 ("the constructive trusts
25 placed over the Russell Road and Lindell properties should be vacated"); p. 27 ("Consistent with
our analysis in the above sections, we conclude the constructive trusts should be vacated.").

26 ² See, id., p. 3 ("the district court...erred insofar that the alimony was awarded against Eric's
27 Trust..."); p. 3 ("the district court's alimony award is...vacated to the extent that it is awarded
28 against Eric's Trust instead of Eric in his personal capacity."); p. 25 ("Accordingly, we vacate the
award in order for the district court to reassess that award against Eric in his personal capacity.").

1 Opinion, Lynita justifies her actions by stating that she is merely waiting for this Court to rule on
2 various issues on remand. While it is true that the Supreme Court remanded the matter to this Court
3 for further proceedings, it did not stay the portions of its Order vacating the constructive trusts or
4 payment of alimony from the ELN Trust pending remand. In other words, the Opinion vacating the
5 constructive trusts was effective immediately, and as such, is the law of the case. *See, e.g., Hsu v.*
6 *County of Clark*, 123 Nev. 625, 629-30, 173 P.3d 724, 728 (2007) (the law of the case doctrine “is
7 designed to ensure judicial consistency and to prevent the reconsideration, during the course of a
8 single continuous lawsuit, of those decisions which are intended to put a particular matter to rest.”);
9 *Bd. of Gallery of History, Inc. v. Datecs Corp.*, 116 Nev. 289, 288, 994 P.2d 1149, 1150 (2000)
10 (where the law of the case doctrine applies, “the district court [is] without authority to make a
11 contrary finding.”).

12 Because the Supreme Court’s Opinion vacated the constructive trusts and alimony award
13 against the ELN Trust, it is respectfully requested that this Court enforce said Opinion and:

- 14 (1) compel the LSN Trust to execute the quitclaim deed transferring 50%
15 of the Lindell Property to the Eric’s SSST;
- 16 (2) compel the LSN Trust to provide the ELN Trust with copies of any and
17 all leases with the tenants (past or present) of the Lindell Property, and the
18 books and records relating to said tenants;
- 19 (3) compel the LSN Trust to pay the ELN Trust 50% of rent collected
20 from the Lindell Property from June 2013 through present;
- 21 (4) compel the LSN Trust to execute the quitclaim deeds transferring the
22 Banone, LLC properties to the ELN Trust;
- 23 (5) compel the LSN Trust to provide the ELN Trust with copies of any and
24 all leases with the tenants (past or present) of the Banone, LLC properties,
25 and the books and records relating to said tenants;
- 26 (6) compel the LSN Trust to pay the ELN Trust 100% of rent collected
27 from the Banone, LLC properties from June 2013 through present;
- 28 (7) compel the LSN Trust to pay the ELN Trust 100% of the payments
received from the Farmouth Circle Promissory Note;
- (8) enter an order releasing to the ELN Trust the \$720,000.00 that is being
held in a blocked account at Bank of Nevada;

(9) compel Lynita to return the \$324,000.00 that was previously paid by the ELN Trust;

(10) compel the LSN Trust to return the \$6,050.00 security deposit that the ELN Trust delivered to the LSN Trust on or around September 19, 2014;

(11) compel the LSN Trust to prepare quarterly accountings for the Lindell Property and Banone LLC properties from June 2013 through present pursuant; and

(12) compel the LSN Trust to return to the ELN Trust the \$75,000.00 paid by Banone-AZ, LLC to the LSN Trust.

B. THE SUPREME COURT FOUND THAT ERIC AND LYNITA'S COMMUNITY PROPERTY WAS TRANSMUTATED TO SEPARATE PROPERTY AND LYNITA FAILED TO INTRODUCE ANY EVIDENCE, LET ALONE CLEAR AND CONVINCING EVIDENCE, THAT THE PARTIES SEPARATE PROPERTY WAS TRANSMUTATED BACK TO COMMUNITY PROPERTY.

As an initial argument, Lynita requests that this Court review the evidence presented at trial (in lieu of conducting a tracing) and find that all assets owned by the SSSTs (with the exception of the Palmyra residence) are the community property of Eric and Lynita because all property was acquired during the marriage and her belief that the ELN Trust "conceded" at trial that it could not trace its assets from the property identified in the Separate Property Agreement. Lynita's argument is contrary to the Supreme Court's Opinion that specifically provides that the Separate Property Agreement was a valid agreement and transmuted Eric and Lynita's community property to separate property. *See, e.g.*, Opinion at p. 12 ("We conclude that the SPA is a valid agreement and transmuted the Parties community property to separate property."). The fact that much of the original assets identified in the Separate Property Agreement were ultimately sold and said proceeds were utilized to purchase other property is inconsequential, because all acquisitions in Eric's Separate Property Trust originated from his separate property. Moreover, as discussed below, the Supreme Court also held that Eric's SSST was funded with his separate property in 2001. Because of such transmutation, Nevada law is clear that it is Lynita/Lynita's SSST, as opposed to Eric/the ELN Trust, that has the burden to show that Eric's separate property was transmuted back to community property.

1 “Once the separate character of property is established, a presumption arises that it remained
2 separate property in the absence of sufficient evidence to show an intent to transmute the property
3 from separate property to community property.”³ Indeed, “the right of the spouses in their separate
4 property is as sacred as is the right in their community property, and when it is once made to appear
5 that property was once of a separate character, it will be presumed that it maintains that character
6 until some direct and positive evidence to the contrary is made to appear.”⁴ This presumption shifts
7 the burden of proof to the party claiming the property was transmuted to community property.⁵
8 The spouse claiming transmutation of separate property must produce objective evidence showing
9 that, during the marriage, the parties themselves regarded the property as common property of the
10 marriage; such evidence may include placing the property in joint names, transferring the property
11 to the other spouse as a gift, using the property exclusively for marital purposes, commingling the
12 property with marital property, using marital funds to build equity in the property, or exchanging
13 the property for marital property.⁶ With specific regard to real property, for it to be transmuted to
14 community property, there generally must be an acknowledged writing proving the intent of the
15 separate real property holder to transmute it to community property (e.g. community property
16 agreement).⁷

17 ³ *In re Estate of Borghi*, 219 P.3d 932 (Wash. 2009).

18 ⁴ *Id.*

19 ⁵ 37 Am. Jur. Proof of Facts 2d 379 (Originally published in 1984)(“Ordinarily, the burden of
20 proof to show that separate property has been transmuted into community property rests on the
21 party alleging that such transmutation has taken place. This rule flows from the presumption that
22 property once fixed as the separate property of one spouse has not been converted by agreement
23 into community property merely because the other spouse acquires possession, management, or
24 control of it. In such cases, the property is presumed to remain separate property, and the burden
25 rests on the other spouse, claiming a gift or change in status of the property, to show that it has in
26 fact been transmuted.”); Kenneth W. Weber, Washington Practice: Family and Community
27 Property Law § 10.1, at 133 (1997) (“Possibly more than in any other area of law, presumptions
28 play an important role in determining ownership of assets and responsibility for debt in community
property law.”).

26 ⁶ *Crossland v. Crossland*, 397 S.C. 406, 725 S.E.2d 509 (Ct. App. 2012).

27 ⁷ *In re Estate of Borghi*, 219 P.3d 932 (Wash. 2009); *see also* *Volz v. Zang*, 113 Wash. 378,
28 383, 194 P. 409 (1920).

1 Here, the Supreme Court confirmed that Lynita has the burden to show that the separate
2 property was transmuted back to community property after 2001, because the purpose of the
3 tracing is “to determine whether any community property exists within the trusts.” See Supreme
4 Court Opinion at 17. In other words, if all property owned by the SSSTs is community property
5 because it was acquired during Eric and Lynita’s marriage, the Supreme Court would have ruled in
6 Lynita’s favor and there would be no reason to conduct a tracing to “determine whether any
7 community property exists.”

8 In light of the foregoing, if this Court believes that it has sufficient information to conduct a
9 tracing “to determine whether any community property exists within the trusts” after 2001, without
10 retaining a forensic accountant, the ELN Trust requests that this Court grant the relief requested in
11 the Motion to Enforce the Supreme Court’s Order because Lynita has failed to show by clear and
12 convincing evidence that the separate property contained within the ELN Trust was transmuted to
13 community property.

14 **C. LYNITA’S REQUESTED TRACING IS OVERBROAD AND RUNS**
15 **CONTRARY TO THE NEVADA SUPREME COURT’S ORDER.**

16 If this Court finds that a tracing is necessary to “determine whether any community
17 property exists within the trusts,” it is not as broad as Lynita would have this Court believe for the
18 following reasons. First, the Supreme Court never ordered this Court to conduct a tracing from
19 1993 through the creation of the SSSTs in 2001 because it repeatedly held that the ELN Trust and
20 Lynita’s SSST were funded with their respective separate property:

21 Later, the parties converted those trusts into self-settled spendthrift trusts (SSSTs)
22 and funded them with their respective separate property. P. 2.

23 In 2001, Eric and Lynita converted their separate property trusts into Eric’s Trust
24 and Lynita’s Trust, respectively, and funded the SSSTs with the separate property
contained within the separate property trusts. P. 4.

25 On June 3, 2013, the district court issued the decree. The district court found that
26 the SPA was valid and the parties’ SSSTs were validly established and funded
with separate property. P. 6.

27 For the reasons set forth below, we hold the SSSTs are valid and the trusts were
28 funded with separate property stemming from a valid separate property

1 agreement. P. 13.

2 Thus, the Supreme Court found that the ELN Trust was funded in 2001 with his separate
3 property, as opposed to community property. This finding was based upon Lynita's failure to show
4 by clear and convincing evidence that the separate property was transmuted back to community
5 property and the following evidence: (1) the Separate Property Agreement, which as indicated
6 *supra*, the Nevada Supreme Court found to be valid; (2) the Separate Property Trusts, which
7 provides "[t]he property comprising the original Trust estate, during the life of the Trustor, shall
8 retain its character as his separate property...";⁸ (3) Shelley Newell, the bookkeeper for Eric and
9 Lynita's Separate Property Trusts testified that the assets and liabilities owned by the Trusts were
10 kept separate, and that all acquisitions in Eric's Separate Property Trust originated from Eric's
11 separate funds;⁹ and (4) Section 12.13 of both the ELN Trust and Lynita's SSST, which provide:

13 **Separate Property.** Any property held in trust and any income earned by the
14 trust created hereunder shall be the separate property (in distinction with
15 community property, joint tenancy property, tenancy in common, marital
16 property, quasi-community property or tenancy by the entirety) of the
17 beneficiaries of such trusts. Additionally, any distribution to or for the benefit of
18 the beneficiary shall be and remain the sole and separate property and estate of the
19 beneficiaries.

20 By finding that the ELN Trust and Lynita's SSST were funded with their respective
21 separate property the Supreme Court has established the law of the case, and Lynita's argument
22 that the tracing should begin in 1993 fails.

23 Second, this Court disposed of all assets (except Wyoming downs) in its Divorce Decree
24 entered on June 3, 2013. Consequently, even assuming the ELN Trust possesses Lynita's
25 community property acquired after 2001, she does not possess a community property interest in
26 the assets that the ELN Trust acquired after the Divorce Decree was entered.

27 Finally, it is unnecessary to conduct a tracing on Wyoming Downs because: (1) this Court
28 previously found that Wyoming Downs was not community property; and (2) the Supreme Court

⁸ See the Eric L. Nelson Separate Property Trust at p. 1.

⁹ See Trial Testimony of Shelley Newell dated July 17, 2012, pp. 105-144.

1 upheld the September 22, 2014 Order that disposed of said asset. Specifically, as this Court will
2 certainly recall, the Divorce Decree disposed of all of the assets owned by the ELN Trust and
3 Lynita's SSST, with the exception of Wyoming Downs. After a separate evidentiary hearing on
4 Wyoming Downs on May 30, 2014, this Court entered the following findings and orders:

5 THE COURT FURTHER FINDS that although Wyoming Downs was acquired by
6 the ELN Trust during the pendency of the marriage between Eric L. Nelson and
7 Lynita S. Nelson, the Court does not find it to be community property as it was
8 clearly purchased through Dynasty, an entity wholly owned by the ELN Trust and
9 the Court maintained the ELN Trust. The Court found no facts leading it to
conclude Lynita S. Nelson or the LSN Trust has an interest in Wyoming Downs.
The Court maintained the integrity of the ELN Trust and LSN Trust for the reasons
set forth in the Divorce Decree.

10 THE COURT FURTHER FINDS that there was no transmutation of Wyoming
11 Downs from separate property to community property, even assuming that Wyoming
12 Downs was separate property of Eric L. Nelson, and not the property of the ELN
13 Trust, separate and distinct from Eric L. Nelson. See Notice of Entry of Order
entered September 22, 2014.

14 Lynita appealed the September 22, 2014 Order. Indeed, one of the "Issues on Appeal" that Lynita
15 identified in her Docketing Statement was the following:

16 Whether the district court erred in denying Lynita a one-half (1/2) interest in
17 Wyoming Downs, which was purchased during the pendency of Eric's and Lynita's
divorce proceedings. See LSN Trust's Docketing Statement at 4:10-12, a copy of
which is attached hereto as **Exhibit 1**.¹⁰

18 In its Opinion, the Nevada Supreme Court upheld, as opposed to overturned, the September 22,
19 2014 Order:

20 Accordingly, we affirm in part and vacate in part the district court's decree of
21 divorce, affirm in part and vacate in part the district court's June 8, 2015, order
22 modifying and implementing the divorce decree, and remand this matter for
23 further proceedings consistent with this opinion. See Nevada Supreme Court
Order at p. 30.

24 Further, and perhaps most importantly, footnote 9 provides: "[w]e have considered the parties'
25 other arguments [which would have included Lynita's argument with respect to Wyoming Downs]
26 and conclude they are without merit." In light of the foregoing, it is unnecessary (and improper) to

27 ¹⁰ See also Lynita's Answering Brief and Opening Brief on Cross-Appeal at pp. 52-53, a copy
28 of which is attached hereto as **Exhibit 2**.

1 re-litigate issues surrounding Wyoming Downs because the Nevada Supreme Court’s ruling on this
2 issue is the law of the case.

3 **D. IT IS INAPPROPRIATE TO ENTER A JOINT PRELIMINARY**
4 **INJUNCTION AND/OR APPOINT A RECEIVER.**

5 Lynita’s request that this Court “expressly affirm the Joint Preliminary Injunction previously
6 entered, and require all parties to transfer their property to a third-party receiver until a final
7 decision is rendered in this matter” should be denied. EDCR 5.85 only applies to the husband and
8 wife in a divorce proceeding, of which the ELN Trust is not. Consequently, if Lynita wishes to
9 pursue an injunction against the ELN Trust she will need to seek a formal injunction that complies
10 with NRCP 65.

11 This Court should similarly deny Lynita’s request for the appointment of a receiver¹¹
12 because it is a “harsh and extreme remedy which should be used sparingly and only when securing
13 of ultimate justice requires it.” *Hines v. Plant*, 99 Nev. 259, 261, 661 P.2d 880, 881-82 (Nev.
14 1983). As explained by the Supreme Court:

15 The reasons for the above rules are fundamental: appointing a receiver to
16 supervise the affairs of a business is potentially costly, as the receiver typically
17 must be paid for his or her services. A receivership also significantly impinges on
18 the right of individuals or corporations to conduct their business affairs as they
see fit, and may endanger the viability of a business. The existence of a
receivership can also impose a substantial administrative burden on the court.
Hines, 99 Nev. at 261, 661 P.2d at 882.

19 Further, the court should not appoint a receiver if injury resulting from the appointment is
20 outweighed by the injury the applicant seeks to deter. *See Lynch v. Lynch*, 277 S.W.2d 692, 694
21 (Mo. Ct. App. 1955) (holding that a “receiver should be appointed only when the court is satisfied
22 that the appointment will promote the interests of one or both parties, that it will prevent manifest
23 wrong, imminently impending, and that the injury will not be greater than the injury sought to be
24

25 ¹¹ As this Court will certainly recall, Lynita previously sought the imposition of a receiver;
26 however, this Court denied such requests. *See* Order from April 10, 2012 Hearing and Injunction
27 previously entered on August 31, 2012, at 4:13-15 (“IT IS FURTHER ORDERED that Defendant’s
28 requests to appoint a receiver to manage the assets of the Eric’s SSST, and to place in a blocked
account the proceeds from the Mellon Bank account, and Wyoming Downs purchase are
DENIED.”).

1 averted.”).

2 Here, the appointment of a receiver is outweighed by the injury to the ELN Trust that Lynita
3 seeks to deter. First, the appointment of a receiver is costly and will greatly add to the expense of
4 litigation. To date, the Parties have spent millions of dollars in legal fees in this proceeding. Based
5 upon her prior conduct, the ELN Trust is informed and believes Lynita will seek to have any and all
6 fees incurred by a receiver paid by the ELN Trust. Second, the appointment of a receiver would
7 likely impinge upon the ability of Eric, the Investment Trustee, to manage and invest the ELN Trust
8 as required by the terms of the ELN Trust,¹² Nevada statutes¹³ and treatises¹⁴ thereby endangering
9 the viability of the assets and/or business interests of the ELN Trust. As this Court has recognized
10 on numerous occasions, Eric is a proven and successful businessman and both the ELN Trust and
11 LSN Trust have acquired great wealth as a result of his efforts. Appointing a receiver who is not
12 familiar the management/operation of distressed assets could have a disastrous effect on the value
13 of said assets. Third, the appointment of a receiver will impose a substantial administrative burden
14 on this Court. Finally, given the make-up of the assets of the ELN Trust, some of which require
15 specific licenses, it would be impractical, if not impossible, for a receiver to manage the same.

16 In light of the foregoing, Lynita’s Countermotion for the appointment of a receiver is
17 improper and must be denied.

18 / / /

19 / / /

20

21 ¹² See the ELN Trust at Article III, Section 3.1 and Article XII, Section 12.1(b), Section
22 12.1(e), Section 12.1 (f), Section 12.1(o), Section 12.1 (t), Section 12.1(v) and Section 12.1(aa)

23 ¹³ See NRS 164.715 (“A trustee shall invest and manage the trust property solely in the interest
24 of the beneficiaries”); NRS 164.740 (duty to comply with prudent investor rule); NRS 164.750 (“A
trustee shall diversify the investments of the trust. . .”).

25 ¹⁴ See 76 Am. Jur. 2d Trusts § 435 (“Under the general law . . . [a trustee] must exercise his or
26 her independent discretion and judgment in reference to the investment of funds, even where broad
27 discretionary power of investment is given, although provisions enlarging his or her power to invest
28 are strictly construed.”); G. Bogert, The law of Trusts and Trustees § 611 (3d ed. 2010) (“The duty
to invest and make the trust property productive must be performed within a reasonable time,
considering the difficulty or ease of finding an appropriate investment and other circumstances.”).

E. THE ELN TRUST SHOULD NOT BE REQUIRED TO PRODUCE FINANCIAL INFORMATION AND DOCUMENTS CONCERNING ITS CURRENTS ASSETS AND/OR TRANSACTIONS OCCURRING SINCE THE COURT'S ENTRY OF ITS DECREE.

Lynita does not possess a community property interest in assets that the ELN Trust acquired after entry of the Divorce Decree, and Lynita has failed to introduce any authority to the contrary. Consequently, Lynita's request that this Court order the ELN Trust to supplement and produce "all financial information and documents previously produced to provide a complete and accurate picture of all financial dealings since the date of last production" should be denied.

Although the ELN Trust should not be required to provide financial information concerning its current assets, Lynita should do so because she is in possession of property that the Supreme Court found was improperly transferred to Lynita/Lynita's SSST and should be overturned. Consequently, the ELN Trust is entitled to know the current status of said assets, including the rents that it has collected for the past four years.

F. THIS COURT SHOULD DENY LYNITA'S REQUEST TO SALE THE BRIAN HEAD CABIN.

The ELN Trust would not generally object to Lynita and/or LSN Trust selling its property; however, here, the Brian Head cabin is owned 50% by the LSN Trust and 50% by the ELN Trust, and the ELN Trust does not want to sell its 50% interest. If Lynita desires to sell her 50% interest of the Brian Head cabin, then she has the right to do so.

Notwithstanding the foregoing, Lynita's request is still improper because this Court previously ruled that it would utilize the Brian Head cabin as security for "any amounts owed by the parties."

THE COURT FURTHER FINDS that the provisions contained in this order are intended to preserve the real property described herein, and to secure with enjoined property(ies) any monetary amounts owed by the parties, or transferred to the parties.¹⁵

Here, more now than ever, Lynita should not be allowed to sell the Brian Head property because based upon the Nevada Supreme Court's Order she must repay the ELN Trust for the

¹⁵ See Order Regarding Transfer of Property and Injunctions entered on September 22, 2014 at 4:14-20.

1 substantial assets that the ELN Trust transferred to her and/or the LSN Trust pursuant to the
2 Divorce Decree and June 8, 2015 Order that have subsequently been overturned. Said transfers,
3 include, but are not limited to: (1) the 50% of the rents collected by Lynita from the Lindell
4 property from June 2013 through present; (2) 100% of the rents collected by Lynita for the Banone,
5 LLC properties from June 2013 through present; (3) 100% of the payments received from the
6 Farmouth Circle promissory note from June 2013 through present; (4) the \$324,000 previously paid
7 to Lynita pursuant to this Court's September 22, 2014, Order Regarding Transfer of Property and
8 Injunctions; (5) the \$6,050 security deposited delivered to the LSN Trust by the Eric's SSST in or
9 around September 19, 2014; and (6) the \$75,000 paid by the Eric's SSST to the LSN Trust on or
10 around June 30, 2014.

11 In addition to the transfers mentioned above, Lynita and/or the LSN Trust have failed to pay
12 her 50% of any expenses pertaining to the Brian Head cabin. The total amount of expenses from
13 2013 through July 18, 2017 is \$30,265.93.¹⁶

14 On a final note, it is difficult to fathom that Lynita will be unable to pay her attorneys' fees
15 and costs unless the Brian Head cabin is sold. Indeed, since June 2013 Lynita has received over
16 \$2,000,000 through rents collected from the Banone, LLC and Lindell properties, the sale of the
17 Palmyra residence on or around November 1, 2013, for \$829,000, *see* Grant, Bargain and Sale
18 Deed, attached hereto as **Exhibit 4**, and the \$324,000 previously paid to Lynita pursuant to this
19 Court's September 22, 2014, Order Regarding Transfer of Property and Injunctions.

20 In light of the foregoing, the ELN Trust respectfully requests that this Court deny Lynita's
21 request; however, in the event that a sale is ordered, the ELN Trust requests the ability to purchase
22 the Brian Head cabin as set forth in this Court's Divorce Decree at 46:13-15: "IT IS FURTHER
23 ORDERED that both parties shall have the right of first refusal should either Trust decide to sell its
24 interest in the Brian Head cabin."

25 / / /

26 / / /

27

28 ¹⁶ See Utah Cabin Expenses Summary Sheet, attached hereto as **Exhibit 3**.

G. THE ELN TRUST IS ENTITLED TO ATTORNEYS' FEES AND COSTS FOR LYNITA'S FAILURE TO ABIDE BY THE ORDERS ENTERED BY THE NEVADA SUPREME COURT AND THIS COURT.

The ELN Trust is entitled to its attorneys' fees and costs associated with the instant Motion because of Lynita's failure to comply with the orders of both the Nevada Supreme Court and this Court. Once again, the constructive trust and/or payment of alimony was vacated on May 25, 2017, and was not stayed pending "this Court's remand hearing, and prior to receiving direction of this Court."

Further, Lynita has failed to provide quarterly accountings as required by this Court's September 22, 2014 Order. Lynita justifies her noncompliance based on her belief that the ELN Trust did not provide the information after the Supreme Court stayed the District Court proceeding. Said argument fails, however, because on June 28, 2017, after the appeal was closed and the stay lifted, Lynita's Counsel made it clear that she would not produce said accountings. In other words, although Lynita is now taking the position that "Lynita is not opposed to providing the leases or quarterly accountings, and will be providing same shortly" that was not her position on June 28, 2017. Consequently, the ELN Trust was left with no choice but to seek intervention from this Court.

III. CONCLUSION

In light of the foregoing, the ELN Trust respectfully requests that this Court granted the Motion to Enforce in its entirety, and deny the relief sought by Lynita in her Countermotion.

DATED this 4th day of August, 2017.

SOLOMON DWIGGINS & FREER, LTD.

By: /s/ Jeffrey P. Luszeck

MARK A. SOLOMON, ESQ.

Nevada State Bar No. 0418

JEFFREY P. LUSZECK, ESQ.

Nevada State Bar No. 9619

9060 West Cheyenne Avenue

Las Vegas, Nevada 89129

Attorneys for Matt Klabacka, Distribution

Trustee of the ERIC L. NELSON NEVADA

TRUST dated May 30, 2001



CERTIFICATE OF SERVICE

I HEREBY CERTIFY, pursuant to NRCP 5(b), that on August 4, 2017, I served a true and correct copy of the foregoing **REPLY TO OPPOSITION TO MOTION TO ENFORCE SUPREME COURT'S ORDER DATED MAY 25, 2017; MOTION TO HOLD LYNITA S. NELSON IN CONTEMPT FOR VIOLATION OF SEPTEMBER 22, 2014 ORDER; AND FOR ATTORNEYS' FEES AND COSTS AND OPPOSITION TO COUNTERMOTION FOR FINAL JUDGMENT CONSISTENT WITH NEVADA SUPREME COURT'S REMAND, OR IN THE ALTERNATIVE, FOR AFFIRMATION OF JOINT PRELIMINARY INJUNCTION, FOR A RECEIVER TO MANAGE THE PROPERTY PENDING FINAL JUDGMENT, FOR UPDATED FINANCIAL DISCLOSURES AND EXCHANGE OF FINANCIAL INFORMATION, AND FOR SALE OF PROPERTY FOR PAYMENT OF ATTORNEYS' FEES AND COSTS**, to the following in the manner set forth

below:

- ☐ Hand Delivery
- ☐ U.S. Mail, Postage Prepaid
- ☐ Certified Mail, Receipt No.: _____
- ☐ Return Receipt Request
- ☒ E-Service through Wiznet

DICKERSON LAW GROUP
Robert P. Dickerson, Esq.
1745 Village Center Circle
Las Vegas, NV 89134
Attorneys for Defendant

Rhonda K. Forsberg, Esq.
64 N. Pecos Road, Suite 800
Henderson, NV 89074
Attorneys for Plaintiff

/s/ Gretta G. McCall

An Employee of SOLOMON DWIGGINS & FREER, LTD.

EXHIBIT "1"

EXHIBIT "1"

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2 MATT KLABACKA,
3 DISTRIBUTION TRUSTEE OF THE
4 ERIC L. NELSON NEVADA TRUST
DATED MAY 30, 2001,
Appellant/Cross-Respondent,

5 and

6 LYNITA SUE NELSON,
7 INDIVIDUALLY, AND IN HER
8 CAPACITY AS INVESTMENT
9 TRUSTEE OF THE LSN NEVADA
TRUST DATED MAY 30, 2001,
Cross-Respondent,

10 vs.

11 ERIC L. NELSON, INDIVIDUALLY,
12 AND IN HIS CAPACITY AS
13 INVESTMENT TRUSTEE OF THE
ERIC L. NELSON NEVADA TRUST
DATED MAY 30, 2001;
Respondents/Cross-Appellant.

SUPREME COURT CASE NO.: 66772

District Court Case No. D411537

Electronically Filed
Dec 03 2014 08:33 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

14
15 DOCKETING STATEMENT
16 CIVIL APPEALS

17 1. Judicial District Eighth Department O
County Clark Judge Frank P. Sullivan
18 District Ct. Docket No. D-09-411537-D

19 2. Attorneys filing this docketing statement:

20 Attorneys Robert P. Dickerson, Esq., Josef M. Karacsonyi, Esq., and
Katherine L. Provost, Esq.
21 Telephone (702) 388-8600
Firm The Dickerson Law Group
22 Address 1745 Village Center Circle, Las Vegas, Nevada 89134
Client(s) Lynita Sue Nelson, Individually and as Investment Trustee of the
LSN Nevada Trust dated May 30, 2001

23 If this is a joint statement by multiple appellants, add the names and addresses
24 of other counsel and the names of their clients on an additional sheet
25 accompanied by a certification that they concur in the filing of this statement.

26 3. Attorney(s) representing Appellant / Cross-Respondent, and Respondent
/ Cross-Appellant:

27 Attorneys Mark A. Solomon, Esq. and Jeffrey P. Luszeck, Esq.
28 Telephone (702) 589-3511
Firm Solomon Dwiggin & Freer, Ltd.

1 In the Decree the district court did not divide a Wyoming racetrack and real
2 property ("Wyoming Downs") purchased by Eric and the ELN Trust during the
3 pendency of the divorce action. Following entry of the Decree, a separate trial was held
4 concerning such property. At the conclusion of the trial, the property was not divided
5 and was instead awarded to the ELN Trust, however, Eric and the ELN Trust were
6 ordered to pay the LSN Trust \$75,000 as reimbursement for funds used to purchase
7 such property.

8 9. **Issues on appeal.** State specifically all issues in this appeal:

- 9 (a) Whether the district court applied the correct legal standard to Lynita's
10 claim that the ELN Trust was Eric's alter ego, and that the veil of the
11 ELN Trust should be pierced.
- 12 (b) Whether the district court erred in maintaining the validity of the ELN
13 Trust and LSN Trust when the court found sufficient factual basis to
14 invalidate such trusts, including, but not limited to, a failure to follow
15 trust formalities.
- 16 (c) Whether the district court erred in denying Lynita a one-half (1/2)
17 interest in Wyoming Downs, which was purchased during the pendency
18 of Eric's and Lynita's divorce proceedings.
- 19 (d) Whether the district court erred in enjoining certain property awarded to
20 Lynita pending appeal.

21 10. **Pending proceedings in this court raising the same or similar issues.** If you
22 are aware of any proceedings presently pending before this court which raises the
23 same or similar issues raised in this appeal, list the case name and docket
24 numbers and identify the same or similar issue raised:

25 None.

26 11. **Constitutional issues.** If this appeal challenges the constitutionality of a
27 statute, and the state, any state agency, or any officer or employee thereof is not
28 a party to this appeal, have you notified the clerk of this court and the attorney
general in accordance with NRAP 44 and NRS 30.130?

Yes N/A X Yes _____ No _____

If not, explain: _____

12. **Other issues.** Does this appeal involve any of the following issues? No.

- ☐ Reversal of well-settled Nevada precedent (identify the case(s))
☐ An issue arising under the United States and/or Nevada Constitutions
☐ A substantial issue of first-impression
☐ An issue of public policy
☐ An issue where en banc consideration is necessary to maintain uniformity of
this court's decisions
☐ A ballot question

If so, explain: _____

EXHIBIT "2"

EXHIBIT "2"

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 MATT KLABACKA,
3 DISTRIBUTION TRUSTEE OF
4 THE ERIC L. NELSON NEVADA
TRUST DATED MAY 30, 2001,
Appellant/Cross-Respondent,

5 vs.

6 LYNITA SUE NELSON,
7 INDIVIDUALLY, AND IN HER
CAPACITY AS INVESTMENT
8 TRUSTEE OF THE LSN NEVADA
TRUST DATED MAY 30, 2001;
9 AND ERIC L. NELSON,
INDIVIDUALLY, AND IN HIS
10 CAPACITY AS INVESTMENT
TRUSTEE OF THE ERIC L.
NELSON NEVADA TRUST
11 DATED MAY 30, 2001,
Respondents/Cross-Appellant.

} SUPREME COURT CASE NO.: 66772

} District Court Case No. D411637
Electronically Filed
Mar 02 2016 08:49 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

} Consolidated with Case No. 68292

13
14 **RESPONDENT/CROSS-APPELLANT, LYNITA SUE NELSON'S,**
15 **ANSWERING BRIEF AND OPENING BRIEF ON CROSS-APPEAL**
16

17 ROBERT P. DICKERSON, ESQ.
18 Nevada Bar No. 000945
KATHERINE L. PROVOST, ESQ.
19 Nevada Bar No. 008414
JOSEF M. KARACSONYI, ESQ.
20 Nevada Bar No. 010634
1745 Village Center Circle
21 Las Vegas, Nevada 89134
Attorneys for Respondent/Cross-Appellant, LYNITA SUE NELSON
22
23
24
25
26
27
28

1 page findings and ruling concerning unjust enrichment. Despite being present and
2 active at trial, neither ELN TRUST's nor ERIC's counsel objected to the
3 presentation of evidence which would support a finding of unjust enrichment.

4 This court has repeatedly given effect to the provisions of NRCP
5 Rule 15(b) to the effect that when issues not raised by the pleadings
6 are treated by express or implied consent of the parties, they shall be
7 treated in all respects as if they had been raised in the pleadings and
8 that, though the pleadings may be amended to conform to the
9 evidence, failure to amend does not affect the result of the trial of
10 such issues. *Johnson v. Johnson*, 76 Nev. 318, 353 P.2d 449. We
11 have also given effect on many occasions to NRCP Rule 61 (a
12 repetition of earlier statutes) prohibiting the disturbance of a
13 judgment for sundry errors of the trial court, unless such errors
14 appeared to this court inconsistent with substantial justice, and that
15 this court must disregard any error or defect in the proceeding which
16 does not affect the substantial rights of the parties.

17 *United Tungsten v. Corp. Svc.*, 76 Nev. 329, 331-32, 353 P.2d 452 (1960).

18 Accordingly, the district court properly found that ERIC and ELN TRUST were
19 unjustly enriched by ERIC's actions.

20 **G. THE DISTRICT COURT ERRED IN REFUSING TO DIVIDE**
21 **WYOMING DOWNS**

22 The district court erred by not equally dividing Wyoming Downs, which
23 was acquired during the pendency of the divorce litigation. Instead, the district
24 court awarded LYNITA an additional \$75,000 for money taken from Banone,
25 LLC, to pay the down payment for the purchase of Wyoming Downs. As has been
26 set forth throughout, the ELN TRUST and LSN TRUST were not valid, and the
27 district court found sufficient evidence to justify invalidating same. ERIC and
28 ELN TRUST were able to transfer property from LSN TRUST without
consideration based upon representations that such property was being maintained
for the benefit of the community. At the time of the divorce, and at the time of the
purchase of Wyoming Downs, ELN TRUST had the benefit of millions of dollars

...

...

...

1 of property that had been taken from LYNITA without compensation. It was
2 inconsistent with the district court's findings and rulings in the Decree not to
3 equally divide the Wyoming Downs property. The district court's ruling on
4 Wyoming Downs made for an unequal division of property.

5 **H. THE DISTRICT COURT PROPERLY ORDERED THAT CERTAIN**
6 **OBLIGATIONS BE PAID WITH PROPERTY PURPORTEDLY**
7 **HELD IN ELN TRUST**

8 ELN TRUST argues that Nevada's self-settled spendthrift trust laws do not
9 allow for the district court to order a distribution of assets held in ELN TRUST to
10 LYNITA to satisfy ERIC's obligations for alimony and child support, and that the
11 district court erred in entering such an order. In support of such argument, ELN
12 TRUST points out that the district court did not specifically invalidate ELN
13 TRUST in its Decree. ELN TRUST ignores the district court's detailed findings
14 concerning ERIC's failure to follow the formalities of ELN TRUST and LSN
15 TRUST, and ERIC's complete and unfettered access to distributions from such
16 trusts in contravention of the express terms of ELN TRUST and Nevada law for
17 the maintenance of a valid, self-settled spendthrift trust. *See* NRS 166.040. The
18 district court found that it would have been wholly justified in invalidating the
19 Trusts, but decided not to do so because it believed substantial justice could be
20 afforded to the parties without invalidating such trusts. Any argument that ELN
21 TRUST should be granted protections afforded by law to valid, self-settled
22 spendthrift trusts should be rejected by the Court.

23 The district court was completely justified under the facts in its refusal to
24 provide any protections to ELN TRUST. To the extent that the district court's
25 specific reasoning for distributing trust assets, and reference to foreign statutes,
26 was in error, such errors would be clearly harmless and should not provide a basis
27 for relief to ELN TRUST. NRCP 61 provides:

28 No error in either the admission or the exclusion of evidence and no
error or defect in any ruling or order or in anything done or omitted
by the court or by any of the parties is ground for granting a new trial

EXHIBIT “3”

EXHIBIT “3”

Utah Cabin Expenses
Summary Sheet

Cabin Expenses

For the period Jan 1, 2015 thru Jul 18, 2017

Payment

Due fr LSN Trust

Gas Expense - Amerigas 2015	840.48
Gas Expense - Amerigas 2016	110.11
Power Expense - Rocky Mountain Power 2015	282.75
Power Expense - Rocky Mountain Power 2016	390.23
Power Expense - Rocky Mountain Power Jan 1, 2017 thru Jul 15, 2017	210.91
Satellite TV Exp- Direct TV 2015	505.11
Satellite TV Exp- Direct TV 2016	734.19
Satellite TV Exp- Direct TV Jan 1, 2017 thru Jul 15, 2017	581.59
Property Tax Expense- Iron County Treasurer 2016	9,809.39
Property Tax Expense- Iron County Treasurer Jan 1, 2017 thru Jul 18, 2017	11,213.36

Total Cabin Expenses paid by ELN Trust

\$24,678.12

50% of Expenses fr Jan 1, 2015 thru Jul 18, 2017 due from LSN Trust to
ELN Trust

\$12,339.06

Utah Cabin Expenses
Summary Sheet

Cabin Expenses	Payment	Due fr LSN Trust
Previously Submitted to LSN Trust (still outstanding)		
for the Period June 2013 thru June 30,2014	2,805.25	
	20,298.77	
for the period July 2014 thru December 2014	12,749.71	

Total Cabin Expenses paid by ELN Trust	\$35,853.73
---	--------------------

50% of Expenses fr June 3, 2013 thru December 31 2014 due from LSN Trust to ELN Trust	\$17,926.87
--	--------------------

General Ledger
For the Period From Jun 1, 2013 to Jun 30, 2014

Filter Criteria includes: 1) IDs from 7010-00-00-099 to 7010-00-00-099. Report order is by ID. Report is printed with

Account ID	Date	Reference	Jrnl	Trans Description	Debit Amt	Credit Amt	Balance
Account Description							
7010-00-00-099	6/1/13			Beginning Balance			
Utah Expenses	7/1/13			Beginning Balance			
cabin	7/3/13			CDJ Rocky Mt Power - cabin power	18.43		
	7/8/13	3028		CDJ West Haven Ranch - Fish for pond at	600.00		
	7/30/13			CDJ Rocky Mt Power	140.12		
				Current Period Change			
	8/1/13			Beginning Balance			
	8/1/13		CDJ	Rocky Mt Power	103.83		
				Current Period Change			
	9/1/13			Beginning Balance			
	10/1/13			Beginning Balance			
	10/3/13		CDJ	Rocky Mt Power - cabin power	54.70		
	10/22/13		CDJ	Rocky Mt Power - power	30.19		
				Current Period Change			
	11/1/13			Beginning Balance			
	11/19/13	3084	CDJ	Davis Heating & AC - Nelson cabin pi	60.00		
				Current Period Change			
	12/1/13			Beginning Balance			
	12/4/13		CDJ	Rocky Mt Power	23.88		
	12/30/13		CDJ	Rocky Mt Power	42.20		
				Current Period Change			
	12/31/13			Fiscal Year End Balance			
	1/1/14			Beginning Balance			
	1/29/14		CDJ	Rocky Mt Power	23.35		
				Current Period Change			
	2/1/14			Beginning Balance			
	3/1/14			Beginning Balance			
	3/31/14		CDJ	Rocky Mt Power	14.66		
				Current Period Change			
	4/1/14			Beginning Balance			
	5/1/14			Beginning Balance			
	5/8/14		CDJ	Rocky Mt Power	14.48		
				Current Period Change			
	6/1/14			Beginning Balance			
	6/2/14		CDJ	Rocky Mt Power	14.36		
	6/26/14		CDJ	Amerigas - gas cabin	1,644.96		
	6/26/14		CDJ	Rocky Mt Power - cabin power	20.09		
				Current Period Change			
	6/30/14			Ending Balance			2,805.26

Cash Disbursements Journal
For the Period From Jun 1, 2013 to Jun 30, 2014

Filter Criteria Includes: 1) Vendor IDs from IRON COUNTY TREAS to IRON COUNTY TREAS. Report order is by

Date	Check #	Account ID	Line Description	Debit Amount	Credit Amount
7/3/13	3019	3960-00-00-000	0152352	64.01	
		3960-00-00-000	0095908	32.04	
		3960-00-00-000	0093814	64.55	
		3960-00-00-000	0373909	32.04	
		3960-00-00-000	0373917	32.04	
		3960-00-00-000	0490689	32.04	
		1020-00-10-000	Iron County Treasurer		256.72
12/16/13	3098	3960-00-00-000	Account ID 0352945 2012	10,844.93	
		1020-00-10-000	Iron County Treasurer		10,844.93
1/8/14	3114	3960-00-00-000	0152352	60.74	
		3960-00-00-000	0093814	61.24	
		3960-00-00-000	0095908	30.50	
		3960-00-00-000	0373909	30.50	
		3960-00-00-000	0373917	30.50	
		3960-00-00-000	0490689	30.50	
		3960-00-00-000	0352945	8,953.14	
		1020-00-10-000	Iron County Treasurer		9,197.12
Total				20,298.77	20,298.77

CABIN TAXES

Page: 1

PSAPP0185

General Ledger
For the Period From July 1, 2014 to Dec 31, 2014

Account ID	Date	Reference Jmrl	Trans Description	Debit Amt	Credit Amt	Balance
Account Description						
7010-00-00-099						
Cabin Expenses	7/1/14		Beginning Balance			
Utah	8/1/14		Beginning Balance			
	9/1/14		Beginning Balance			
	9/3/14		CDJ Iron County Treasurer - Trash Cabin	122.50		
	9/26/14		CDJ Rocky Mt Power - cabin	62.06		
	9/29/14	3193	CDJ Altitude Performance & Marine - polaris repairs	3,854.11		
	10/1/14		Beginning Balance			
	10/16/14		CDJ Direct TV - cabin cable	88.66		
	10/27/14	3206	CDJ Iron County Treasurer - 0093614 Property Taxes	47.61		
	10/27/14	3206	CDJ Iron County Treasurer - 0373917 Land	19.04		
	10/27/14	3206	CDJ Iron County Treasurer - 0373909 Land	19.04		
	10/27/14	3206	CDJ Iron County Treasurer - 0352945 Cabin	8,096.24		
	10/27/14	3206	CDJ Iron County Treasurer - 0095908 Land	19.04		
	10/27/14	3206	CDJ Iron County Treasurer - 0490689 Land	19.04		
	11/1/14		Beginning Balance			
	11/12/14	3209	CDJ Altitude Performance & Marine - Arctic Cat repair	350.85		
	11/14/14		CDJ Direct TV - cabin	13.86		
	12/1/14		Beginning Balance			
	12/12/14		CDJ Direct TV - cabin	37.66		
	12/31/14		Ending Balance			12,749.71

EXHIBIT “4”

EXHIBIT “4”

Inst #: 201311010001148
Fees: \$19.00 N/C Fee: \$0.00
RPTT: \$4227.90 Ex: #
11/01/2013 11:34:27 AM
Receipt #: 1829701
Requestor:
CHICAGO TITLE LAS VEGAS
Recorded By: SAO Pgs: 4
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN: 163-10-803-015
Affix R.P.T.T. \$4,227.90

WHEN RECORDED MAIL TO and MAIL TAX
STATEMENT TO:
STEFAN NATHAN CHOCK
7065 PALMYRA AVENUE
LAS VEGAS, NV 89117

ESCROW NO: 13042142-149-CK

GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH: That

Lynita Sue Nelson, Trustee of the Nelson Trust w/a/d July 13, 1993

in consideration of \$10.00 and other valuable consideration, the receipt of which is hereby acknowledged, do hereby Grant, Bargain, Sell and Convey to

Stefan Nathan Chock, An Unmarried Man

all that real property situated in the County of Clark, State of Nevada, bounded and described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Subject to: 1. Taxes for the current fiscal year, paid current.
2. Conditions, covenants, restrictions, reservations, rights, rights of way and easements now of record, if any.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Witness my/our hand(s) this 30th day of October, 2013.

The Nelson Trust u/a/d July 13, 1993


By: Lynita Sue Nelson, Trustee

Lynita Sue Nelson, Trustee

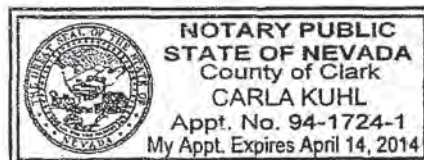
STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On this October 30, 2013
appeared before me, a Notary Public,

Lynita Sue Nelson
personally known or proven to me to
be the person(s) whose name(s) is/are
subscribed to the above instrument,
who acknowledged that he/she/they
executed the instrument for the
purposes therein contained.


Notary Public Carla Kuhl

My commission expires: 4-14-14



STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On this _____
appeared before me, a Notary Public,

personally known or proven to me to be
the person(s) whose name(s) is/are
subscribed to the above instrument, who
acknowledged that he/she/they executed
the instrument for the purposes therein
contained.

Notary Public

My commission expires: _____

EXHIBIT "A"

Assessor's Parcel No: 138-14-711-033

LOT TWENTY FIVE (25) IN BLOCK SEVEN (7) OF TORREY PINES PARK NO. 3A AS SHOWN BY MAP THEREOF
ON FILE IN BOOK 21 OF PLATS, PAGE 85 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY,
NEVADA.

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

- a. 138-14-711-033
b. _____
c. _____
d. _____

2. Type of Property:

- a. ☐ Vacant Land b. ☒ Single Fam. Res.
c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
g. ☐ Agricultural h. ☐ Mobile Home
☐ Other

FOR RECORDERS OPTIONAL USE ONLY

Book _____ Page: _____

Date of Recording: _____

Notes: _____

3.a. Total Value/Sales Price of Property

\$ 0.00

b. Deed in Lieu of Foreclosure Only (value of property (_____)

c. Transfer Tax Value: \$ 0.00

d. Real Property Transfer Tax Due \$ 0.00

4. **If Exemption Claimed:**

a. Transfer Tax Exemption per NRS 375.090, Section 07

b. Explain Reason for Exemption: Transfer without consideration to or from a trust.

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____ Capacity: Grantor

Signature _____ Capacity: Grantee

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: LSN Nevada Trust u/a/d 5/30/01

Address: _____

City: _____

State: _____ Zip: _____

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: Banone, LLC

Address: P.O. Box 30188

City: Las Vegas

State: NV Zip: 89173

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: _____

Escrow # _____

Address: _____

City: _____

State: _____ Zip: _____

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

PSAPP0062

APN: 139-31-411-073

Affix R.P.T.T. \$ 0.00

WHEN RECORDED MAIL TO and MAIL TAX
STATEMENTS TO:

BANONE, LLC
P.O. BOX 30188
LAS VEGAS, NV 89173

QUITCLAIM DEED

THIS INDENTURE WITNESSETH: That

LYNITA SUE NELSON, Trustee of the LSN NEVADA TRUST u/a/d 5/30/01,
FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged,
does hereby remise, release and forever quitclaim to

BANONE, LLC, A NEVADA LIMITED LIABILITY COMPANY
all that real property situate in Clark County, State of Nevada, bounded and described as
follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Commonly referred to as: 4412 Baxter Place, Las Vegas, NV 89108

Subject to: 1. Taxes for the current fiscal year, paid current.
2. Conditions, covenants, restrictions, reservations, rights, rights of way and
easements now of record, if any.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging
or in anywise appertaining.

Witness my/our hand(s) this

____ day of _____, 2017

LSN NEVADA TRUST U/A/D 5/30/01

By: Lynita Sue Nelson, Investment Trustee

PSAPP0063

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On this _____
appeared before me, a Notary Public,

personally known or proven to me to be
the person(s) whose name(s) is/are
subscribed to the above instrument, who
acknowledged that he/she/they executed
the instrument for the purposes therein
contained.

Notary Public

My commission expires: _____

EXHIBIT "A"

Assessor's Parcel No: 139-31-411-073

LOT SIXTY-FOUR (64) IN BLOCK THREE (3) OF HYDE PARK SUBDIVISION NO. ONE (1), AS SHOWN BY MAP THEREOF ON FILE IN BOOK THREE (3) OF PLATS, PAGE FIFTY-SIX (56), IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

- a. 139-31-411-073
b. _____
c. _____
d. _____

2. Type of Property:

- a. ☐ Vacant Land b. ☒ Single Fam. Res.
c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
g. ☐ Agricultural h. ☐ Mobile Home
☐ Other

FOR RECORDERS OPTIONAL USE ONLY

Book _____ Page: _____

Date of Recording: _____

Notes: _____

- 3.a. Total Value/Sales Price of Property \$ 0.00
b. Deed in Lieu of Foreclosure Only (value of property (_____)
c. Transfer Tax Value: \$ 0.00
d. Real Property Transfer Tax Due \$ 0.00

4. If Exemption Claimed:

- a. Transfer Tax Exemption per NRS 375.090, Section 07
b. Explain Reason for Exemption: Transfer without consideration to or from a trust.

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____ Capacity: Grantor

Signature _____ Capacity: Grantee

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: LSN Nevada Trust u/a/d 5/30/01
Address: _____
City: _____
State: _____ Zip: _____

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: Banone, LLC
Address: P.O. Box 30188
City: Las Vegas
State: NV Zip: 89173

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: _____ Escrow # _____
Address: _____
City: _____ State: _____ Zip: _____

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

PSAPP0066

APN: 138-23-519-054

Affix R.P.T.T. \$ 0.00

WHEN RECORDED MAIL TO and MAIL TAX
STATEMENTS TO:

BANONE, LLC
P.O. BOX 30188
LAS VEGAS, NV 89173

QUITCLAIM DEED

THIS INDENTURE WITNESSETH: That

LYNITA SUE NELSON, Trustee of the LSN NEVADA TRUST u/a/d 5/30/01,
FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged,
does hereby remise, release and forever quitclaim to

BANONE, LLC, A NEVADA LIMITED LIABILITY COMPANY
all that real property situate in Clark County, State of Nevada, bounded and described as
follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Commonly referred to as: 6301 Cambria Avenue, Las Vegas, NV 89108

Subject to: 1. Taxes for the current fiscal year, paid current.
2. Conditions, covenants, restrictions, reservations, rights, rights of way and
easements now of record, if any.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging
or in anywise appertaining.

Witness my/our hand(s) this

____ day of _____, 2017

LSN NEVADA TRUST U/A/D 5/30/01

By: Lynita Sue Nelson, Investment Trustee

PSAPP0067

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On this _____
appeared before me, a Notary Public,

personally known or proven to me to be
the person(s) whose name(s) is/are
subscribed to the above instrument, who
acknowledged that he/she/they executed
the instrument for the purposes therein
contained.

Notary Public

My commission expires: _____

EXHIBIT "A"

Assessor's Parcel No: 138-23-519-054

LOT SEVEN (7) IN BLOCK NINE (9) OF CHARLESTON HEIGHTS TRACT 51-C, AS SHOWN BY MAP THEROF
ON FILE IN BOOK 20 OF PLATS, PAGE 52, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY,
NEVADA.

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

- a. 138-23-519-054
b. _____
c. _____
d. _____

2. Type of Property:

- a. ☐ Vacant Land b. ☒ Single Fam. Res.
c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
g. ☐ Agricultural h. ☐ Mobile Home
☐ Other

FOR RECORDERS OPTIONAL USE ONLY

Book _____ Page: _____

Date of Recording: _____

Notes: _____

3.a. Total Value/Sales Price of Property

\$ 0.00

b. Deed in Lieu of Foreclosure Only (value of property (_____)

c. Transfer Tax Value:

\$ 0.00

d. Real Property Transfer Tax Due

\$ 0.00

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section 07

b. Explain Reason for Exemption: Transfer without consideration to or from a trust.

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____ Capacity: Grantor

Signature _____ Capacity: Grantee

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: LSN Nevada Trust u/a/d 5/30/01

Address: _____

City: _____

State: _____ Zip: _____

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: Banone, LLC

Address: P.O. Box 30188

City: Las Vegas

State: NV Zip: 89173

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: _____

Escrow # _____

Address: _____

City: _____

State: _____

Zip: _____

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

PSAPP0070

APN: 138-36-514-034

Affix R.P.T.T. \$ 0.00

WHEN RECORDED MAIL TO and MAIL TAX
STATEMENTS TO:

BANONE, LLC
P.O. BOX 30188
LAS VEGAS, NV 89173

QUITCLAIM DEED

THIS INDENTURE WITNESSETH: That

LYNITA SUE NELSON, Trustee of the LSN NEVADA TRUST u/a/d 5/30/01,
FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged,
does hereby remise, release and forever quitclaim to

BANONE, LLC, A NEVADA LIMITED LIABILITY COMPANY
all that real property situate in Clark County, State of Nevada, bounded and described as
follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Commonly referred to as: 5113 Churchill Avenue, Las Vegas, NV 89107

Subject to: 1. Taxes for the current fiscal year, paid current.
2. Conditions, covenants, restrictions, reservations, rights, rights of way and
easements now of record, if any.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging
or in anywise appertaining.

Witness my/our hand(s) this

____ day of _____, 2017

LSN NEVADA TRUST U/A/D 5/30/01

By: Lynita Sue Nelson, Investment Trustee

PSAPP0071

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On this _____
appeared before me, a Notary Public,

personally known or proven to me to be
the person(s) whose name(s) is/are
subscribed to the above instrument, who
acknowledged that he/she/they executed
the instrument for the purposes therein
contained.

Notary Public

My commission expires: _____

EXHIBIT "A"

Assessor's Parcel No: 138-36-514-034

LOT NINE (9) IN BLOCK THREE (3) OF THE STELMAR SUBDIVISION TRACT 1, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 6 OF PLATS, PAGE 41, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY NEVADA.

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

- a. 138-36-514-034
b. _____
c. _____
d. _____

2. Type of Property:

- a. ☐ Vacant Land b. ☒ Single Fam. Res.
c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
g. ☐ Agricultural h. ☐ Mobile Home
☐ Other

FOR RECORDERS OPTIONAL USE ONLY

Book _____ Page: _____

Date of Recording: _____

Notes: _____

- 3.a. Total Value/Sales Price of Property \$ 0.00
b. Deed in Lieu of Foreclosure Only (value of property (_____)
c. Transfer Tax Value: \$ 0.00
d. Real Property Transfer Tax Due \$ 0.00

4. **If Exemption Claimed:**

- a. Transfer Tax Exemption per NRS 375.090, Section 07
b. Explain Reason for Exemption: Transfer without consideration to or from a trust.

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____ Capacity: Grantor

Signature _____ Capacity: Grantee

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: LSN Nevada Trust u/a/d 5/30/01
Address: _____
City: _____
State: _____ Zip: _____

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: Banone, LLC
Address: P.O. Box 30188
City: Las Vegas
State: NV Zip: 89173

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: _____ Escrow # _____
Address: _____
City: _____ State: _____ Zip: _____

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

PSAPP0074

APN: 124-31-220-093

Affix R.P.T.T. \$ 0.00

WHEN RECORDED MAIL TO and MAIL TAX
STATEMENTS TO:

BANONE, LLC
P.O. BOX 30188
LAS VEGAS, NV 89173

QUITCLAIM DEED

THIS INDENTURE WITNESSETH: That

LYNITA SUE NELSON, Trustee of the LSN NEVADA TRUST u/a/d 5/30/01,
FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged,
does hereby remise, release and forever quitclaim to

BANONE, LLC, A NEVADA LIMITED LIABILITY COMPANY

all that real property situate in Clark County, State of Nevada, bounded and described as
follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Commonly referred to as: 5317 Clover Blossom Court, North Las Vegas, NV 89031

Subject to: 1. Taxes for the current fiscal year, paid current.
2. Conditions, covenants, restrictions, reservations, rights, rights of way and
easements now of record, if any.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging
or in anywise appertaining.

Witness my/our hand(s) this

____ day of _____, 2017

LSN NEVADA TRUST U/A/D 5/30/01

By: Lynita Sue Nelson, Investment Trustee

PSAPP0075

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On this _____
appeared before me, a Notary Public,

personally known or proven to me to be
the person(s) whose name(s) is/are
subscribed to the above instrument, who
acknowledged that he/she/they executed
the instrument for the purposes therein
contained.

Notary Public

My commission expires: _____

EXHIBIT "A"

Assessor's Parcel No: 124-31-220-093

PARCEL ONE (1):

LOT NINETY-THREE (93) OF ARBOR GATE AS SHOWN BY MAP THEREOF ON FILE IN BOOK 91 OF PLATS, PAGE 71 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA AND AS AMENDED BY THAT CERTIFICATE OF AMENDMENT RECORDED FEBRUARY 14, 2000 , IN BOOK 20000214 AS INSTRUMENT NO. 01540 AND RECORDED JANUARY 23, 2001, IN BOOK 20010123 AS INSTRUMENT NO. 01729 OF OFFICIAL RECORDS.

PARCEL TWO (2)

A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND ENJOYMENT IN AND TO THE ASSOCIATION PROPERTY AS SET FORTH IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR COUNTRY GARDEN (ARBOR GATE) A COMMON INTEREST COMMUNITY, RECORDED FEBRUARY 25, 2000 IN BOOK 2000225 AS DOCUMENT NO. 00963, OF OFFICIAL RECORDS OF CLARK COUNTY, NEVADA, AS THE SAME MAY FROM TIME TO TIME BE AMENDED AND OR SUPPLEMENTED, WHICH EASEMENT IS APPURTENANT TO PARCEL ONE (1).

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

- a. 124-31-220-093
b. _____
c. _____
d. _____

2. Type of Property:

- a. ☐ Vacant Land b. ☒ Single Fam. Res.
c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
g. ☐ Agricultural h. ☐ Mobile Home
☐ Other

FOR RECORDERS OPTIONAL USE ONLY

Book _____ Page: _____

Date of Recording: _____

Notes: _____

- 3.a. Total Value/Sales Price of Property \$ 0.00
b. Deed in Lieu of Foreclosure Only (value of property (_____)
c. Transfer Tax Value: \$ 0.00
d. Real Property Transfer Tax Due \$ 0.00

4. If Exemption Claimed:

- a. Transfer Tax Exemption per NRS 375.090, Section 07
b. Explain Reason for Exemption: Transfer without consideration to or from a trust.

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____ Capacity: Grantor

Signature _____ Capacity: Grantee

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: LSN Nevada Trust u/a/d 5/30/01
Address: _____
City: _____
State: _____ Zip: _____

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: Banone, LLC
Address: P.O. Box 30188
City: Las Vegas
State: NV Zip: 89173

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: _____ Escrow # _____
Address: _____
City: _____ State: _____ Zip: _____

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

PSAPP0078

APN: 138-03-815-002

Affix R.P.T.T. \$ 0.00

WHEN RECORDED MAIL TO and MAIL TAX
STATEMENTS TO:

BANONE, LLC
P.O. BOX 30188
LAS VEGAS, NV 89173

QUITCLAIM DEED

THIS INDENTURE WITNESSETH: That

LYNITA SUE NELSON, Trustee of the LSN NEVADA TRUST u/a/d 5/30/01,
FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged,
does hereby remise, release and forever quitclaim to

BANONE, LLC, A NEVADA LIMITED LIABILITY COMPANY
all that real property situate in Clark County, State of Nevada, bounded and described as
follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Commonly referred to as: 4133 Compass Rose Way, Las Vegas, NV 89108

Subject to: 1. Taxes for the current fiscal year, paid current.
2. Conditions, covenants, restrictions, reservations, rights, rights of way and
easements now of record, if any.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging
or in anywise appertaining.

Witness my/our hand(s) this

____ day of _____, 2017

LSN NEVADA TRUST U/A/D 5/30/01

By: Lynita Sue Nelson, Investment Trustee

PSAPP0079

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On this _____
appeared before me, a Notary Public,

personally known or proven to me to be
the person(s) whose name(s) is/are
subscribed to the above instrument, who
acknowledged that he/she/they executed
the instrument for the purposes therein
contained.

Notary Public

My commission expires: _____

EXHIBIT "A"

Assessor's Parcel No: 138-03-815-002

LOT SIX (6) IN BLOCK ONE (1) OF NEVADA CLASSIC NORTH, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 47 OF PLATS, PAGE 70, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

- a. 138-03-815-002
b. _____
c. _____
d. _____

2. Type of Property:

- a. ☐ Vacant Land b. ☒ Single Fam. Res.
c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
g. ☐ Agricultural h. ☐ Mobile Home
☐ Other

FOR RECORDERS OPTIONAL USE ONLY

Book _____ Page: _____

Date of Recording: _____

Notes: _____

3.a. Total Value/Sales Price of Property

\$ 0.00

b. Deed in Lieu of Foreclosure Only (value of property (_____)

c. Transfer Tax Value:

\$ 0.00

d. Real Property Transfer Tax Due

\$ 0.00

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section 07

b. Explain Reason for Exemption: Transfer without consideration to or from a trust.

w

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____ Capacity: Grantor

Signature _____ Capacity: Grantee

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: LSN Nevada Trust u/a/d 5/30/01

Address: _____

City: _____

State: _____

Zip: _____

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: Banone, LLC

Address: P.O. Box 30188

City: Las Vegas

State: NV

Zip: 89173

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: _____

Escrow # _____

Address: _____

City: _____

State: _____

Zip: _____

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

PSAPP0082

APN: 139-19-310-032

Affix R.P.T.T. \$ 0.00

WHEN RECORDED MAIL TO and MAIL TAX
STATEMENTS TO:

BANONE, LLC
P.O. BOX 30188
LAS VEGAS, NV 89173

QUITCLAIM DEED

THIS INDENTURE WITNESSETH: That

LYNITA SUE NELSON, Trustee of the LSN NEVADA TRUST u/a/d 5/30/01,
FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged,
does hereby remise, release and forever quitclaim to

BANONE, LLC, A NEVADA LIMITED LIABILITY COMPANY
all that real property situate in Clark County, State of Nevada, bounded and described as
follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Commonly referred to as: 4601 Concord Village Drive, Las Vegas, NV 89108

Subject to: 1. Taxes for the current fiscal year, paid current.
2. Conditions, covenants, restrictions, reservations, rights, rights of way and
easements now of record, if any.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging
or in anywise appertaining.

Witness my/our hand(s) this

____ day of _____, 2017

LSN NEVADA TRUST U/A/D 5/30/01

By: Lynita Sue Nelson, Investment Trustee

PSAPP0083

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On this _____
appeared before me, a Notary Public,

personally known or proven to me to be
the person(s) whose name(s) is/are
subscribed to the above instrument, who
acknowledged that he/she/they executed
the instrument for the purposes therein
contained.

Notary Public

My commission expires: _____

EXHIBIT "A"

Assessor's Parcel No: 139-19-310-032

LOT TWENTY FOUR (24) IN BLOCK THREE (3) OF CONCORD VILLAGE PHASE 1, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 32 OF PLATS, PAGE 33 AND AMENDED BY CERTIFICATE OF AMENDMENT RECORDED NOVEMBER 20, 1984, IN BOOK 2024, AS DOCUMENT NO. 1983879, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

- a. 139-19-310-032
b. _____
c. _____
d. _____

2. Type of Property:

- a. ☐ Vacant Land b. ☒ Single Fam. Res.
c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
g. ☐ Agricultural h. ☐ Mobile Home
☐ Other

FOR RECORDERS OPTIONAL USE ONLY

Book _____ Page: _____

Date of Recording: _____

Notes: _____

- 3.a. Total Value/Sales Price of Property \$ 0.00
b. Deed in Lieu of Foreclosure Only (value of property (_____)
c. Transfer Tax Value: \$ 0.00
d. Real Property Transfer Tax Due \$ 0.00

4. If Exemption Claimed:

- a. Transfer Tax Exemption per NRS 375.090, Section 07
b. Explain Reason for Exemption: Transfer without consideration to or from a trust.

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____ Capacity: Grantor

Signature _____ Capacity: Grantee

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: LSN Nevada Trust u/a/d 5/30/01
Address: _____
City: _____
State: _____ Zip: _____

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: Banone, LLC
Address: P.O. Box 30188
City: Las Vegas
State: NV Zip: 89173

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: _____ Escrow # _____
Address: _____
City: _____ State: _____ Zip: _____

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

PSAPP0086

APN: 138-23-519-014

Affix R.P.T.T. \$ 0.00

WHEN RECORDED MAIL TO and MAIL TAX
STATEMENTS TO:

BANONE, LLC
P.O. BOX 30188
LAS VEGAS, NV 89173

QUITCLAIM DEED

THIS INDENTURE WITNESSETH: That

LYNITA SUE NELSON, Trustee of the LSN NEVADA TRUST u/a/d 5/30/01,
FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged,
does hereby remise, release and forever quitclaim to
BANONE, LLC, A NEVADA LIMITED LIABILITY COMPANY
all that real property situate in Clark County, State of Nevada, bounded and described as
follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Commonly referred to as: 6304 Guadalupe Avenue, Las Vegas, Nevada 89108

Subject to: 1. Taxes for the current fiscal year, paid current.
2. Conditions, covenants, restrictions, reservations, rights, rights of way and
easements now of record, if any.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging
or in anywise appertaining.

Witness my/our hand(s) this

_____ day of _____, 2017

LSN NEVADA TRUST U/A/D 5/30/01

By: Lynita Sue Nelson, Investment Trustee

PSAPP0087

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On this _____
appeared before me, a Notary Public,

personally known or proven to me to be
the person(s) whose name(s) is/are
subscribed to the above instrument, who
acknowledged that he/she/they executed
the instrument for the purposes therein
contained.

Notary Public

My commission expires: _____

EXHIBIT "A"

Assessor's Parcel No: 138-23-519-014

LOT 19 IN BLOCK 7 OF CHARLESTON HEIGHTS TRACT NO. 51-C, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 20 OF PLATS, PAGE 52, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY NEVADA.

**STATE OF NEVADA
DECLARATION OF VALUE**

1. Assessor Parcel Number(s)

- a. 138-23-519-014
b. _____
c. _____
d. _____

2. Type of Property:

- a. ☐ Vacant Land b. ☒ Single Fam. Res.
c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
g. ☐ Agricultural h. ☐ Mobile Home
☐ Other

FOR RECORDERS OPTIONAL USE ONLY

Book _____ Page: _____

Date of Recording: _____

Notes: _____

3.a. Total Value/Sales Price of Property

\$ 0.00

b. Deed in Lieu of Foreclosure Only (value of property (_____)

c. Transfer Tax Value: \$ 0.00

d. Real Property Transfer Tax Due \$ 0.00

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section 07

b. Explain Reason for Exemption: Transfer without consideration to or from a trust.

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____ Capacity: Grantor

Signature _____ Capacity: Grantee

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: LSN Nevada Trust u/a/d 5/30/01

Address: _____

City: _____

State: _____ Zip: _____

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: Banone, LLC

Address: P.O. Box 30188

City: Las Vegas

State: NV Zip: 89173

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: _____

Escrow # _____

Address: _____

City: _____

State: _____ Zip: _____

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

PSAPP0090

APN: 124-28-814-010

Affix R.P.T.T. \$ 0.00

WHEN RECORDED MAIL TO and MAIL TAX
STATEMENTS TO:

BANONE, LLC
P.O. BOX 30188
LAS VEGAS, NV 89173

QUITCLAIM DEED

THIS INDENTURE WITNESSETH: That
LYNITA SUE NELSON, Trustee of the LSN NEVADA TRUST u/a/d 5/30/01,
FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged,
does hereby remise, release and forever quitclaim to
BANONE, LLC, A NEVADA LIMITED LIABILITY COMPANY
all that real property situate in Clark County, State of Nevada, bounded and described as
follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Commonly referred to as: 1301 Heather Ridge Road, North Las Vegas, NV 89031

Subject to: 1. Taxes for the current fiscal year, paid current.
2. Conditions, covenants, restrictions, reservations, rights, rights of way and
easements now of record, if any.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging
or in anywise appertaining.

Witness my/our hand(s) this

____ day of _____, 2017

LSN NEVADA TRUST U/A/D 5/30/01

By: Lynita Sue Nelson, Investment Trustee

PSAPP0091

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On this _____
appeared before me, a Notary Public,

personally known or proven to me to be
the person(s) whose name(s) is/are
subscribed to the above instrument, who
acknowledged that he/she/they executed
the instrument for the purposes therein
contained.

Notary Public

My commission expires: _____

EXHIBIT "A"

Assessor's Parcel No: 124-28-814-010

LOT FORTY-ONE (41) IN BLOCK FIFTEEN (15) OF ELDORADO-R1-65 NO. 2, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 44, OF PLATS, PAGE 38, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA; AND BY CERTIFICATE OF AMENDMENT RECORDED FEBRUARY 7, 1990 IN BOOK 900207 OF OFFICIAL RECORDS AS DOCUMENT NO. 00491 AND AUGUST 20, 1990 IN BOOK 900820 OF OFFICIAL RECORDS AS DOCUMENT NO. 00802.

**STATE OF NEVADA
DECLARATION OF VALUE**

1. Assessor Parcel Number(s)

- a. 124-28-814-010
b. _____
c. _____
d. _____

2. Type of Property:

- a. ☐ Vacant Land b. ☒ Single Fam. Res.
c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
g. ☐ Agricultural h. ☐ Mobile Home
i. ☐ Other

FOR RECORDERS OPTIONAL USE ONLY

Book _____ Page: _____

Date of Recording: _____

Notes: _____

- 3.a. Total Value/Sales Price of Property \$ 0.00
b. Deed in Lieu of Foreclosure Only (value of property (_____)
c. Transfer Tax Value: \$ 0.00
d. Real Property Transfer Tax Due \$ 0.00

4. If Exemption Claimed:

- a. Transfer Tax Exemption per NRS 375.090, Section 07 _____
b. Explain Reason for Exemption: Transfer without consideration to or from a trust.

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____ Capacity: Grantor

Signature _____ Capacity: Grantee

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: LSN Nevada Trust u/a/d 5/30/01
Address: _____
City: _____
State: _____ Zip: _____

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: Banone, LLC
Address: P.O. Box 30188
City: Las Vegas
State: NV Zip: 89173

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: _____ Escrow # _____
Address: _____
City: _____ State: _____ Zip: _____

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

PSAPP0094

APN: 161-20-712-026

Affix R.P.T.T. \$ 0.00

WHEN RECORDED MAIL TO and MAIL TAX
STATEMENTS TO:

BANONE, LLC
P.O. BOX 30188
LAS VEGAS, NV 89173

QUITCLAIM DEED

THIS INDENTURE WITNESSETH: That

LYNITA SUE NELSON, Trustee of the LSN NEVADA TRUST u/a/d 5/30/01,
FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged,
does hereby remise, release and forever quitclaim to

BANONE, LLC, A NEVADA LIMITED LIABILITY COMPANY

all that real property situate in Clark County, State of Nevada, bounded and described as
follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Commonly referred to as: 4820 Marnell Drive, Las Vegas, NV 89121

Subject to: 1. Taxes for the current fiscal year, paid current.
2. Conditions, covenants, restrictions, reservations, rights, rights of way and
easements now of record, if any.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging
or in anywise appertaining.

Witness my/our hand(s) this

____ day of _____, 2017

LSN NEVADA TRUST U/A/D 5/30/01

By: Lynita Sue Nelson, Investment Trustee

PSAPP0095

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On this _____
appeared before me, a Notary Public,

personally known or proven to me to be
the person(s) whose name(s) is/are
subscribed to the above instrument, who
acknowledged that he/she/they executed
the instrument for the purposes therein
contained.

Notary Public

My commission expires: _____

EXHIBIT "A"

Assessor's Parcel No: 161-20-712-026

LOT SEVEN HUNDRED EIGHTY-TWO (782) IN BLOCK TWENTY-FIVE (25) OF DESERT HILLS UNIT NO. 8, AS SHOWN BY MAP THEROF ON FILE IN BOOK 10, OF PLATS, PAGE 64, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

- a. 161-20-712-026
b. _____
c. _____
d. _____

2. Type of Property:

- a. ☐ Vacant Land b. ☒ Single Fam. Res.
c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
g. ☐ Agricultural h. ☐ Mobile Home
i. ☐ Other

FOR RECORDERS OPTIONAL USE ONLY

Book _____ Page: _____

Date of Recording: _____

Notes: _____

3.a. Total Value/Sales Price of Property

\$ 0.00

b. Deed in Lieu of Foreclosure Only (value of property (_____)

c. Transfer Tax Value: \$ 0.00

d. Real Property Transfer Tax Due \$ 0.00

4. **If Exemption Claimed:**

a. Transfer Tax Exemption per NRS 375.090, Section 07

b. Explain Reason for Exemption: Transfer without consideration to or from a trust.

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____ Capacity: Grantor

Signature _____ Capacity: Grantee

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: LSN Nevada Trust u/a/d 5/30/01

Address: _____

City: _____

State: _____ Zip: _____

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: Banone, LLC

Address: P.O. Box 30188

City: Las Vegas

State: NV Zip: 89173

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: _____

Escrow # _____

Address: _____

City: _____

State: _____ Zip: _____

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

PSAPP0098

APN: 179-34-614-071

Affix R.P.T.T. \$ 0.00

WHEN RECORDED MAIL TO and MAIL TAX
STATEMENTS TO:

BANONE, LLC
P.O. BOX 30188
LAS VEGAS, NV 89173

QUITCLAIM DEED

THIS INDENTURE WITNESSETH: That

LYNITA SUE NELSON, Trustee of the LSN NEVADA TRUST u/a/d 5/30/01,
FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged,
does hereby remise, release and forever quitclaim to

BANONE, LLC, A NEVADA LIMITED LIABILITY COMPANY
all that real property situate in Clark County, State of Nevada, bounded and described as
follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Commonly referred to as: 1608 Rusty Ridge Lane, Henderson, NV 89002

Subject to: 1. Taxes for the current fiscal year, paid current.
2. Conditions, covenants, restrictions, reservations, rights, rights of way and
easements now of record, if any.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging
or in anywise appertaining.

Witness my/our hand(s) this

____ day of _____, 2017

LSN NEVADA TRUST U/A/D 5/30/01

By: Lynita Sue Nelson, Investment Trustee

PSAPP0099

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On this _____
appeared before me, a Notary Public,

personally known or proven to me to be
the person(s) whose name(s) is/are
subscribed to the above instrument, who
acknowledged that he/she/they executed
the instrument for the purposes therein
contained.

Notary Public

My commission expires: _____

EXHIBIT A

PARCEL I:

LOT TWO (2) IN BLOCK TWENTY-FOUR (24) OF OLD VEGAS RANCH UNIT 1 (HIGH NOON), A COMMON INTEREST COMMUNITY, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 106 OF PLATS, PAGE 61, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

TOGETHER WITH ASSOCIATED GARAGE UNIT, AS SET FORTH IN THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS OF HIGH NOON AT OLD VEGAS RANCH, RECORDED OCTOBER 9, 2002 IN BOOK 20021009 AS DOCUMENT NO. 00581.

PARCEL II:

A NON-EXCLUSIVE EASEMENT OF REASONABLE INGRESS, EGRESS AND USE IN, TO AND OVER THE COMMON ELEMENTS AS SET FORTH AND SUBJECT TO THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS FOR OLD VEGAS RANCH RECORDED OCTOBER 3, 2002 IN BOOK 20021003 AS DOCUMENT NO. 01559 OF OFFICIAL RECORDS.

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

- a. 179-34-614-071
b. _____
c. _____
d. _____

2. Type of Property:

- a. ☐ Vacant Land b. ☐ Single Fam. Res.
c. ☒ Condo/Twnhse d. ☐ 2-4 Plex
e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
g. ☐ Agricultural h. ☐ Mobile Home
 ☐ Other

FOR RECORDERS OPTIONAL USE ONLY

Book _____ Page: _____

Date of Recording: _____

Notes: _____

- 3.a. Total Value/Sales Price of Property \$ 0.00
b. Deed in Lieu of Foreclosure Only (value of property (_____)
c. Transfer Tax Value: \$ 0.00
d. Real Property Transfer Tax Due \$ 0.00

4. If Exemption Claimed:

- a. Transfer Tax Exemption per NRS 375.090, Section 06
b. Explain Reason for Exemption: Transfer without consideration to or from a trust.

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____ Capacity: Grantor

Signature _____ Capacity: Grantee

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: LSN Nevada Trust u/a/d 5/30/01
Address: _____
City: _____
State: _____ Zip: _____

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: Banone, LLC
Address: P.O. Box 30188
City: Las Vegas
State: NV Zip: 89173

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: _____ Escrow # _____
Address: _____
City: _____ State: _____ Zip: _____

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

APN: 139-19-213-073

Affix R.P.T.T. \$ 0.00

WHEN RECORDED MAIL TO and MAIL TAX
STATEMENTS TO:

BANONE, LLC
P.O. BOX 30188
LAS VEGAS, NV 89173

QUITCLAIM DEED

THIS INDENTURE WITNESSETH: That

LYNITA SUE NELSON, Trustee of the LSN NEVADA TRUST u/a/d 5/30/01,
FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged,
does hereby remise, release and forever quitclaim to

BANONE, LLC, A NEVADA LIMITED LIABILITY COMPANY
all that real property situate in Clark County, State of Nevada, bounded and described as
follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Commonly referred to as: 4612 Sawyer Avenue, Las Vegas, NV 89108

Subject to: 1. Taxes for the current fiscal year, paid current.
2. Conditions, covenants, restrictions, reservations, rights, rights of way and
easements now of record, if any.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging
or in anywise appertaining.

Witness my/our hand(s) this

____ day of _____, 2017

LSN NEVADA TRUST U/A/D 5/30/01

By: Lynita Sue Nelson, Investment Trustee

PSAPP0103

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On this _____
appeared before me, a Notary Public,

personally known or proven to me to be
the person(s) whose name(s) is/are
subscribed to the above instrument, who
acknowledged that he/she/they executed
the instrument for the purposes therein
contained.

Notary Public

My commission expires: _____

EXHIBIT "A"

Assessor's Parcel No: 139-19-213-073

LOT 49 IN BLOCK 6 OF COLLEGE HEIGHTS #3-A AS SHOWN BY MAP THEREOF ON FILE IN BOOK 9 OF PLATS, PAGE 42 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

- a. 139-19-213-073
b. _____
c. _____
d. _____

2. Type of Property:

- a. ☐ Vacant Land b. ☒ Single Fam. Res.
c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
g. ☐ Agricultural h. ☐ Mobile Home
i. ☐ Other

FOR RECORDERS OPTIONAL USE ONLY

Book _____ Page: _____

Date of Recording: _____

Notes: _____

- 3.a. Total Value/Sales Price of Property \$ 0.00
b. Deed in Lieu of Foreclosure Only (value of property (_____)
c. Transfer Tax Value: \$ 0.00
d. Real Property Transfer Tax Due \$ 0.00

4. If Exemption Claimed:

- a. Transfer Tax Exemption per NRS 375.090, Section 07
b. Explain Reason for Exemption: Transfer without consideration to or from a trust.

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____ Capacity: Grantor

Signature _____ Capacity: Grantee

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: LSN Nevada Trust u/a/d 5/30/01
Address: _____
City: _____
State: _____ Zip: _____

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: Banone, LLC
Address: P.O. Box 30188
City: Las Vegas
State: NV Zip: 89173

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: _____ Escrow # _____
Address: _____
City: _____ State: _____ Zip: _____

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

PSAPP0106

APN: 138-12-415-012

Affix R.P.T.T. \$ 0.00

WHEN RECORDED MAIL TO and MAIL TAX
STATEMENTS TO:

BANONE, LLC
P.O. BOX 30188
LAS VEGAS, NV 89173

QUITCLAIM DEED

THIS INDENTURE WITNESSETH: That
LYNITA SUE NELSON, Trustee of the LSN NEVADA TRUST u/a/d 5/30/01,
FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged,
does hereby remise, release and forever quitclaim to
BANONE, LLC, A NEVADA LIMITED LIABILITY COMPANY
all that real property situate in Clark County, State of Nevada, bounded and described as
follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Commonly referred to as: 3301 Terra Bella Drive, Las Vegas, NV 89108

Subject to: 1. Taxes for the current fiscal year, paid current.
2. Conditions, covenants, restrictions, reservations, rights, rights of way and
easements now of record, if any.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging
or in anywise appertaining.

Witness my/our hand(s) this

____ day of _____, 2017

LSN NEVADA TRUST U/A/D 5/30/01

By: Lynita Sue Nelson, Investment Trustee

PSAPP0107

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On this _____
appeared before me, a Notary Public,

personally known or proven to me to be
the person(s) whose name(s) is/are
subscribed to the above instrument, who
acknowledged that he/she/they executed
the instrument for the purposes therein
contained.

Notary Public

My commission expires: _____

EXHIBIT "A"

Assessor's Parcel No: 138-12-415-012

LOT TWENTY (20), IN BLOCK TWO (2), OF NEW CENTURY UNIT NINE (9), AS SHOWN BY MAP THEROF ON FILE IN BOOK 35 OF PLATS, PAGE 36, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

- a. 138-12-415-012
b. _____
c. _____
d. _____

2. Type of Property:

- a. ☐ Vacant Land b. ☒ Single Fam. Res.
c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
g. ☐ Agricultural h. ☐ Mobile Home
i. ☐ Other

FOR RECORDERS OPTIONAL USE ONLY

Book _____ Page: _____

Date of Recording: _____

Notes: _____

- 3.a. Total Value/Sales Price of Property \$ 0.00
b. Deed in Lieu of Foreclosure Only (value of property (_____)
c. Transfer Tax Value: \$ 0.00
d. Real Property Transfer Tax Due \$ 0.00

4. If Exemption Claimed:

- a. Transfer Tax Exemption per NRS 375.090, Section 06
b. Explain Reason for Exemption: Transfer without consideration to or from a trust.

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____ Capacity: Grantor

Signature _____ Capacity: Grantee

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: LSN Nevada Trust u/a/d 5/30/01
Address: _____
City: _____
State: _____ Zip: _____

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: Banone, LLC
Address: P.O. Box 30188
City: Las Vegas
State: NV Zip: 89173

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: _____ Escrow # _____
Address: _____
City: _____ State: _____ Zip: _____

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

EXHIBIT “5”

EXHIBIT “5”

APN: 139-08-512-015

When recorded, return to:
Lynita Nelson
c/o Dickerson Law Group
1745 Village Center Circle
Las Vegas, Nevada 89134

Mail tax bills to:
Lynita Nelson
3316 Chesterbrook Court
Las Vegas, Nevada 89135

2

Inst #: 20150213-0001070
Fees: \$18.00
N/C Fee: \$0.00
02/13/2015 09:27:44 AM
Receipt #: 2314294
Requestor:
JUNES LEGAL SERVICES
Recorded By: DXI Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

ASSIGNMENT OF NOTE AND DEED OF TRUST

The undersigned, ERIC L. NELSON, as Manager of Banone, LLC, a Nevada limited liability company, as Beneficiary ("Assignor"), pursuant to Court Order, hereby grants, conveys, assigns and transfers to the LSN NEVADA TRUST, LYNITA NELSON as Investment Trustee ("Assignee"), all beneficial interest under the Deed of Trust dated the 2nd day of January, 2012, between Wendell D. and Laurreta G. McGowan, whose address is 2209 Farmouth Circle, North Las Vegas, NV 89032, as Trustors; Nations Title Company of Nevada, a Nevada Corporation, whose address is 3036 East Russell Road, Las Vegas, NV 89120, as Trustee; and Banone, LLC, a Nevada limited liability company, whose address is 3611 S. Lindell Rd., Ste. 201, Las Vegas, NV 89103, Assignor herein, as Beneficiary, recorded on January 23, 2012, under Recording No. 201201230000117, records of Clark County, Nevada, together with the promissory note(s) therein described, the money due and to become due thereon, with interest, and all rights accrued or to accrue under said Deed of trust.

Assignee is not assuming any obligations or liabilities to the maker under the Note or Deed of Trust described herein and shall not hereafter be deemed to have assumed any such obligations or liabilities except that Assignee agrees that, at such time as the maker has fully paid and performed all obligations set forth in the Note and Deed

of Trust described herein, Assignee will deliver to the maker a full reconveyance under the Deed of Trust.

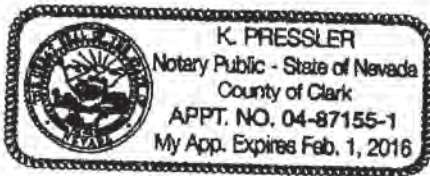
Dated this ____ day of January, 2015.

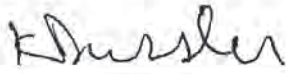
BANONE, LLC
a Nevada Limited Liability Company


ERIC L. NELSON, Manager

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

On this 30th day of January, 2015, before me, the undersigned, a Notary Public in and for said County and State ERIC L. NELSON personally appeared, known to me to be the person whose name is subscribed to the above instrument, and he acknowledged to me that he executed the same freely and voluntarily and for the uses and purpose therein mentioned.

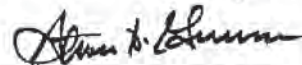




NOTARY PUBLIC

EXHIBIT “6”

EXHIBIT “6”



CLERK OF THE COURT

1 **ORDER**
2 **THE DICKERSON LAW GROUP**
3 **ROBERT P. DICKERSON, ESQ.**
4 Nevada Bar No. 000945
5 **JOSEF M. KARACSONYI, ESQ.**
6 Nevada Bar No. 010634
7 1745 Village Center Circle
8 Las Vegas, Nevada 89134
9 Telephone: (702) 388-8600
10 Facsimile: (702) 388-0210
11 Email: info@dickersonlawgroup.com
12 Attorneys for LYNITA SUE NELSON

13 **EIGHTH JUDICIAL DISTRICT COURT**
14 **FAMILY DIVISION**

15 **CLARK COUNTY, NEVADA**

16 **ERIC L. NELSON,**)
17)
18 Plaintiff/Counterdefendant,)
19 v.)

20 **LYNITA SUE NELSON,**)
21)
22 Defendant/Counterclaimant.)

CASE NO. D-09-411537-D
DEPT NO. "O"

23 **ERIC L. NELSON NEVADA TRUST**)
24 **dated May 30, 2001, and LSN NEVADA**)
25 **TRUST dated May 30, 2001,**)

26 **Necessary Parties (joined in this**)
27 **action pursuant to Stipulation and**)
28 **Order entered on August 9, 2011)**)

29 **LANA MARTIN, as Distribution Trustee of**)
30 **the ERIC L. NELSON NEVADA TRUST**)
31 **dated May 30, 2001,**)

32 **Necessary Party (joined in this action)**)

1 pursuant to Stipulation and Order)
2 entered on August 9, 2011)/ Purported)
3 Counterclaimant and Crossclaimant,)

4 v.)

5 LYNITA SUE NELSON and ERIC)
6 NELSON,)

7 Purported Cross-Defendant and)
8 Counterdefendant)

9 LYNITA SUE NELSON,)

10 Counterclaimant, Cross-Claimant,)
11 and/or Third Party Plaintiff,)

12 v.)

13 ERIC L. NELSON, individually and as the)
14 Investment Trustee of the ERIC L. NELSON)
15 NEVADA TRUST dated May 30, 2001; the)
16 ERIC L. NELSON NEVADA TRUST dated)
17 May 30, 2001; LANA MARTIN, individually,)
18 and as the current and/or former Distribution)
19 Trustee of the ERIC L. NELSON NEVADA)
20 TRUST dated May 30, 2001, and as the)
21 former Distribution Trustee of the LSN)
22 NEVADA TRUST dated May 30, 2001);)

20 Counterdefendant, and/or)
21 Cross-Defendants, and/or)
22 Third Party Defendants.)

23
24 ORDER FROM OCTOBER 21, 2013 HEARING REGARDING TRANSFER
25 OF ENJOINED FUNDS FROM BNY MELLON TO BANK OF NEVADA, AND
26 FURTHER INJUNCTION OF FUNDS AT BANK OF NEVADA

26 This matter coming on for hearing on this 21st day of October, 2013, before the
27 Honorable Frank P. Sullivan; ROBERT P. DICKERSON, ESQ., KATHERINE L.
28 PROVOST, ESQ., and JOSEF M. KARACSONYI, ESQ., of THE DICKERSON LAW

1 GROUP, appearing on behalf of Defendant, LYNITA NELSON ("Lynita"), and
2 Defendant being present; RHONDA K. FORSBERG, ESQ., of RADFORD J. SMITH,
3 CHTD., appearing on behalf of Plaintiff, ERIC NELSON ("Eric"), and Plaintiff being
4 present; and JEFFREY P. LUSZECK, ESQ., of SOLOMON, DWIGGINS, & FREER,
5 LTD., appearing on behalf of the Distribution Trustee of the ERIC L. NELSON
6 NEVADA TRUST ("ELN Trust"). The Court having reviewed and analyzed the
7 pleadings and papers on file herein, and having heard the arguments of counsel and the
8 parties, and good cause appearing therefore,

9 THE COURT HEREBY ORDERS that BNY MELLON WEALTH
10 MANAGEMENT shall transfer the sum of \$1,068,000 from Account Number
11 10594001700, held in the name of the "Investment Manager for Eric L. Nelson
12 Trustee under Trust Agreement of Eric L. Nelson dated May 30, 2011 under
13 Agreement dated August 24, 2006," and previously frozen by this Court, to BANK OF
14 NEVADA, Account Number 7502338705, held in the name of the ELN Trust for the
15 benefit of "In re: Nelson." Said account at BANK OF NEVADA shall be established
16 in a manner to ensure that the entire amount deposited therein will be FDIC insured.

17 IT IS FURTHER ORDERED that immediately upon receipt and deposit of the
18 aforementioned \$1,068,000 at BANK OF NEVADA, Account Number 7502338705
19 shall be BLOCKED and FROZEN by BANK OF NEVADA indefinitely. The
20 \$1,068,000 shall be preserved in said account, and BANK OF NEVADA shall not allow
21 for said funds to be invested, transferred, withdrawn, or otherwise disturbed without
22 a certified Order of this Court.

23 IT IS FURTHER ORDERED that BANK OF NEVADA shall provide copies of
24 any monthly account statements or any other documents related to Account Number
25 7502338705 to the undersigned attorneys upon request for same. The ELN Trust shall


26 ...

27 ...

28 ...

1 also provide any monthly account statements or other documents received related to
2 said account to Lynita's and Eric's counsels upon receipt of same.

3 DATED this 13 day of November, 2013.

4
5 
DISTRICT COURT JUDGE

6 FRANK P. SULLIVAN

7 Submitted by:

Approved as to Form and Content:

8 THE DICKERSON LAW GROUP

LAW OFFICE OF RADFORD J.
SMITH, CHTD.

9
10 By 

By _____

11 ROBERT P. DICKERSON, ESQ.
12 Nevada Bar No. 000945
13 KATHERINE L. PROVOST, ESQ.
14 Nevada Bar No. 008414
15 JOSEF M. KARACSONYI, ESQ.
16 Nevada Bar No. 010634
17 1745 Village Center Circle
18 Las Vegas, Nevada 89134
19 Attorneys for Defendant

RHONDA K. FORSBERG, ESQ.
Nevada Bar No. 009557
64 N. Pecos Road #700
Henderson, Nevada 89074
Attorneys for Plaintiff

20 Approved as to Form and Content:

SOLOMON, DWIGGINS & FREER LTD.

21 By 

22 MARK A. SOLOMON, ESQ.
23 Nevada Bar No. 000418
24 JEFFREY P. LUSZECK, ESQ.
25 Nevada Bar No. 009619
26 9060 W. Cheyenne Avenue
27 Las Vegas, Nevada 89129
28 Attorneys for the ELN Trust

1 also provide any monthly account statements or other documents received related to
2 said account to Lynita's and Eric's counsels upon receipt of same.

3 DATED this _____ day of November, 2013.

4
5 DISTRICT COURT JUDGE FRANK P. SULLIVAN

6
7 Submitted by:

8 THE DICKERSON LAW GROUP

9
10 By _____

11 ROBERT P. DICKERSON, ESQ.
12 Nevada Bar No. 000945
13 KATHERINE L. PROVOST, ESQ.
14 Nevada Bar No. 008414
15 JOSEF M. KARACSONYI, ESQ.
16 Nevada Bar No. 010634
17 1745 Village Center Circle
18 Las Vegas, Nevada 89134
19 Attorneys for Defendant

Approved as to Form and Content:

LAW OFFICE OF RADFORD J.
SMITH, CHFD.

By 

RHONDA K. FORSBERG, ESQ.
Nevada Bar No. 009557
64 N. Pecos Road #700
Henderson, Nevada 89074
Attorneys for Plaintiff

18
19 Approved as to Form and Content:

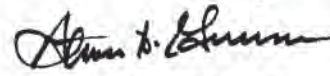
20 SOLOMON, DWIGGINS & FREER LTD.

21 By _____

22 MARK A. SOLOMON, ESQ.
23 Nevada Bar No. 000418
24 JEFFREY P. LUSZECK, ESQ.
25 Nevada Bar No. 009619
26 9060 W. Cheyenne Avenue
27 Las Vegas, Nevada 89129
28 Attorneys for the ELN Trust

EXHIBIT “7”

EXHIBIT “7”


CLERK OF THE COURT

1 NEOJ
2 THE DICKERSON LAW GROUP
3 ROBERT P. DICKERSON, ESQ.
4 Nevada Bar No. 000945
5 JOSEF M. KARACSONYI, ESQ.
6 Nevada Bar No. 010634
7 KATHERINE L. PROVOST, ESQ.
8 Nevada Bar No. 008414
9 1745 Village Center Circle
10 Las Vegas, Nevada 89134
11 Telephone: (702) 388-8600
12 Facsimile: (702) 388-0210
13 Email: info@dickersonlawgroup.com
14 Attorneys for LYNITA SUE NELSON

DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

11 ERIC L. NELSON,
12 Plaintiff/Counterdefendant,
13 v.
14 LYNITA SUE NELSON,
15 Defendant/Counterclaimant.

CASE NO. D-09-411537-D
DEPT NO. "O"

16 ERIC L. NELSON NEVADA TRUST
17 dated May 30, 2001, and LSN NEVADA
18 TRUST dated May 30, 2001,

19 Necessary Parties (joined in this
20 action pursuant to Stipulation and
21 Order entered on August 9, 2011)

NOTICE OF ENTRY OF
ORDER REGARDING
TRANSFER OF PROPERTY
AND INJUNCTIONS

21 MATT KLABACKA, as Distribution Trustee
22 of the ERIC L. NELSON NEVADA TRUST
23 dated May 30, 2001,

24 Counterclaimant and Crossclaimant,
25 v.

26 LYNITA SUE NELSON and ERIC
27 NELSON,

28 Purported Cross-Defendant and
Counterdefendant,

1 LYNITA SUE NELSON,

2 Counterclaimant, Cross-Claimant,
3 and/or Third Party Plaintiff,

4 v.

5 ERIC L. NELSON, individually and as the
6 Investment Trustee of the ERIC L. NELSON
7 NEVADA TRUST dated May 30, 2001; the
8 ERIC L. NELSON NEVADA TRUST dated
9 May 30, 2001; MATT KLABACKA,
10 Distribution Trustee of the ERIC L.
11 NELSON NEVADA TRUST dated
12 May 30, 2001,

13 Counterdefendant, and/or
14 Cross-Defendants, and/or
15 Third Party Defendants.

16 TO: ERIC L. NELSON, Plaintiff; and

17 TO: RHONDA K. FORSBERG, ESQ., of RHONDA K. FORSBERG, CHTD.,
18 Attorneys for Plaintiff;

19 TO: MARK A. SOLOMON, ESQ., and JEFFREY P. LUSZECK, ESQ., of
20 SOLOMON, DWIGGINS & FREER, LTD., Attorneys for the Eric L. Nelson
21 Nevada Trust;

22 PLEASE TAKE NOTICE that an ORDER REGARDING TRANSFER OF
23 PROPERTY AND INJUNCTIONS was entered in the above-entitled matter on
24 September 18, 2014, a copy of which is attached.

25 DATED this 22nd day of September, 2014.

26 THE DICKERSON LAW GROUP

27 By Robert P. Dickerson
28 ROBERT P. DICKERSON, ESQ.
Nevada Bar No. 000945
JOSEF M. KARACSONYI, ESQ.
Nevada Bar No. 010634
KATHERINE L. PROVOST, ESQ.
Nevada Bar No. 008414
1745 Village Center Circle
Las Vegas, Nevada 89134
Attorneys for Defendant

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am an employee of THE DICKERSON
3 LAW GROUP, and that on this 22nd day of September, 2014, I caused the above and
4 foregoing document entitled NOTICE OF ENTRY OF ORDER REGARDING
5 TRANSFER OF PROPERTY AND INJUNCTIONS to be served as follows:

6 [X] pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and
7 Administrative Order 14-2 captioned "In the Administrative Matter of
8 Mandatory Electronic Service in the Eighth Judicial District Court," by
mandatory electronic service through the Eighth Judicial District Court's
electronic filing system;

9 [X] by placing same to be deposited for mailing in the United States Mail, in
10 a sealed envelope upon which first class postage was prepaid in Las Vegas,
Nevada;

11 [] pursuant to EDCR 7.26, to be sent via **facsimile**, by duly executed
12 consent for service by electronic means;

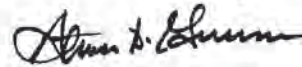
13 [] by hand-delivery with signed Receipt of Copy.

14 To the attorney(s) listed below at the address, email address, and/or facsimile number
indicated below:

15 RHONDA K. FORSBERG, ESQ.
16 RHONDA K. FORSBERG, CHARTERED
17 64 North Pecos Road, Ste. 800
Henderson, Nevada 89074
18 rforsberg@forsberg-law.com
mweiss@forsberg-law.com
Attorneys for Plaintiff

19
20 MARK A. SOLOMON, ESQ.
JEFFREY P. LUSZECK, ESQ.
21 SOLOMON, DWIGGINS, FREER & MORSE, LTD.
22 9060 W. Cheyenne Avenue
Las Vegas, Nevada 89129
23 jluszeck@sdfnvlaw.com
sgerace@sdfnvlaw.com
Attorneys for Distribution Trustee of the ELN Trust

24
25
26 
An employee of The Dickerson Law Group



CLERK OF THE COURT

1 **ORDR**
2 THE DICKERSON LAW GROUP
3 ROBERT P. DICKERSON, ESQ.
4 Nevada Bar No. 000945
5 JOSEF M. KARACSONYI, ESQ.
6 Nevada Bar No. 010634
7 1745 Village Center Circle
8 Las Vegas, Nevada 89134
9 Telephone: (702) 388-8600
10 Facsimile: (702) 388-0210
11 Email: info@dickersonlawgroup.com
12 Attorneys for LYNITA SUE NELSON

8 EIGHTH JUDICIAL DISTRICT COURT
9 FAMILY DIVISION

10 CLARK COUNTY, NEVADA

11 ERIC L. NELSON,
12 Plaintiff/Counterdefendant,
13 v.

14 LYNITA SUE NELSON,
15 Defendant/Counterclaimant.

CASE NO. D-09-411537-D
DEPT NO. "O"

16 ERIC L. NELSON NEVADA TRUST
17 dated May 30, 2001, and LSN NEVADA
18 TRUST dated May 30, 2001,

19 Necessary Parties (joined in this
20 action pursuant to Stipulation and
21 Order entered on August 9, 2011)

Date of Hearing: June 4, 2014
Time of Hearing: 9:00 a.m.

22 MATT KLABACKA, as Distribution Trustee
23 of the ERIC L. NELSON NEVADA TRUST
24 dated May 30, 2001,

25 Counterclaimant and Crossclaimant,
26 v.

27 LYNITA SUE NELSON and ERIC
28 NELSON,

Purported Cross-Defendant and
Counterdefendant,

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 LYNITA SUE NELSON,
3 INDIVIDUALLY, AND IN HER
4 CAPACITY AS INVESTMENT
5 TRUSTEE OF THE LYNITA S.
6 NELSON NEVADA TRUST DATED
7 MAY 30, 2001,

8 Petitioner,

9 v.

10 EIGHTH JUDICIAL DISTRICT
11 COURT OF THE STATE OF
12 NEVADA, FAMILY DIVISION,
13 CLARK COUNTY; THE
14 HONORABLE FRANK P.
15 SULLIVAN,

16 Respondents,

17 ERIC L. NELSON, INDIVIDUALLY,
18 AND IN HIS CAPACITY AS
19 INVESTMENT TRUSTEE OF THE
20 ERIC L. NELSON NEVADA TRUST,
21 DATED MAY 30, 2001, and MATT
22 KLABACKA, DISTRIBUTION
23 TRUSTEE OF THE ERIC L.
24 NELSON NEVADA TRUST, DATED
25 MAY 30, 2001,

26 Real Parties in Interest.

Supreme Court Case No.:

 Electronically Filed
District Court Case No. 2018-42488
October 10, 2018 10:07 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

27 **PETITIONER, LYNITA SUE NELSON'S, SUPPLEMENTAL**
28 **APPENDIX OF EXHIBITS TO PETITION FOR**
 WRIT OF MANDAMUS VOLUME 1

THE DICKERSON KARACSONYI LAW GROUP
ROBERT P. DICKERSON, ESQ.
Nevada Bar No. 000945
JOSEF M. KARACSONYI, ESQ.
Nevada Bar No. 010634
1745 Village Center Circle
Las Vegas, Nevada 89134
Telephone: (702)388-8600
Facsimile: (702)388-0210
Email: info@thedklawgroup.com
Attorneys for Petitioner, LYNITA SUE NELSON

1		INDEX	
2	VOLUME		PAGE NUMBER
3	1		1-250
4	2		251-500
5	3		501-530
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			

INDEX

VOLUME	DATE	DESCRIPTION	PAGE NUMBER
1	07/31/17	Appendix of Exhibits to Defendant's Opposition to Motion to Enforce Supreme Court's Order Dated May 25, 2017; Motion to Hold Lynita S. Nelson in Contempt for Violation of September 22, 2014 Order; and for Attorneys' Fees and Costs and Countermotion for Final Judgment Consistent with Nevada Supreme Court's Remand, or in the Alternative, for Affirmation of Joint Preliminary Injunction, for a Receiver to Manage Property Pending Final Judgment, for Updated Financial Disclosures and Exchange of Financial Information, and for Sale of Property for Payment of Attorneys' Fees and Costs	0149-0158
2	05/22/18	Decision Affirming the Date of Tracing; Denying a Separate Blocked Account for \$720,000; and Granting a Joint Preliminary Injunction for the Banone, LLC. and Lindell Properties, entered in case no. D-09-411537-D	0339-0345
2	04/19/18	Decision entered in case no. D-09-411537-D	0291-0299
3	10/16/18	Decision entered in case no. D-09-411537-D	0509-0518
1	07/31/17	Defendant's Opposition to Motion to Enforce Supreme Court's Order Dated May 25, 2017; Motion to Hold Lynita S. Nelson in Contempt for Violation of September 22, 2014 Order, and for Attorneys' Fees and Costs and Countermotion for Final Judgment Consistent with Nevada Supreme Court's Remand, or in the Alternative, for Affirmation of Joint Preliminary Injunction, for a Receiver to Manage Property Pending Final Judgment, for Updated Financial Disclosures and Exchange of Financial Information, and for Sale of Property for Payment of Attorneys' Fees and Costs	0134-0148

1	1	08/22/17	Defendant's Reply to Opposition to Countermotion for Final Judgment Consistent with Nevada Supreme Court's Remand, or in the Alternative, for Affirmation of Joint Preliminary Injunction, for a Receiver to Manage Property Pending Final Judgment, for Updated Financial Disclosures and Exchange of Financial Information, and for Sale of Property for Payment of Attorneys' Fees and Costs	0197-0213
2	2	07/12/18	Defendant's Reply to Plaintiff's Opposition to Defendant's Motion for Reconsideration and Clarification of the Court's Decision Entered May 22, 2018 and Opposition to Countermotion to: (1) Terminate the JPI; (2) Impose a Bond on any Property Subject to the JPI; (3) Expunge the Lis Pendens; (4) Allow the ELN Trust to Manage Lindell; and (5) Attorneys' Fees and Costs	0412-0432
3	2	05/21/18	Initial Opposition to Lynita Nelson's Motion for Reconsideration and Clarification of the Court's Decision Entered April 19, 2018; Counterpetition to Remove Lis Pendens Inappropriately Filed by the LSN Trust; and for Attorneys' Fees and Costs	0330-0338
4	2	05/03/18	Lynita Nelson's Motion for Reconsideration and Clarification of the Court's Decision Entered April 19, 2018	0311-0329
5	2	06/05/18	Lynita Nelson's Motion for Reconsideration and Clarification of the Court's Decision Entered May 22, 2018	0355-0362
6	1	07/10/17	Motion to Enforce Supreme Court's Order Dated May 25, 2017; Motion to Hold Lynita S. Nelson in Contempt for Violation of September 22, 2014 Order; and for Attorneys' Fees and Costs	0035-0133
7	1	05/25/17	Nevada Supreme Court Opinion filed in case no. 66772	0005-0034
8	1	11/03/14	Notice of Appeal	0001-0004
9	2	04/19/18	Notice of Entry of Order entered in case no. D-09-411537-D	0300-0310

2	05/22/18	Notice of Entry of Order entered in case no. D-09-411537-D	0346-0354
3	10/16/18	Notice of Entry of Order entered in case no. D-09-411537-D	0519-0530
2	06/22/18	Notice of Joinder to Opposition to Lynita Nelson's Motion for Reconsideration and Clarification of the Court's Decision Entered May 22, 2018; and Countermotion to: (1) Terminate the JPI; (2) Impose a Bond on any Property Subject to the JPI; (3) Expunge the Inappropriately Recorded Lis Pendens; (4) Allow the ELN Trust to Manage Lindell; and (5) Attorneys' Fees and Cost	0409-0411
1	08/04/17	Notice of Joinder to Reply to Opposition to Motion to Enforce Supreme Court's Order Dated May 25, 2017; Motion to Hold Lynita S. Nelson in Contempt for Violation of September 22, 2014 Order; and for Attorney's Fees and Costs and Opposition to Countermotion for Final Judgment Consistent with the Nevada Supreme Court's Remand or, in the Alternative for Affirmation of Joint Preliminary Injunction for a Receiver to Manage the Property Pending Final Judgment, for Updated Financial Disclosures and Exchange of Financial Information, and for Sale of Property for Payment of Attorney's Fees	0192-0196
2	06/22/18	Opposition to Lynita Nelson's Motion for Reconsideration and Clarification of the Court's Decision Entered May 22, 2018; and Countermotion to: (1) Terminate the JPI; (2) Impose a Bond on any Property Subject to the JPI; (3) Expunge the Inappropriately Recorded Lis Pendens; (4) Allow the ELN Trust to Manage Lindell; and (5) Attorneys' Fees and Costs	0363-0408

1	1	08/04/17	Reply to Opposition to Motion to Enforce Supreme Court's Order Dated May 25, 2017; Motion to Hold Lynita S. Nelson in Contempt for Violation of September 22, 2014 Order; and for Attorneys' Fees and Costs and Opposition to Countermotion for Final Judgment Consistent with the Nevada Supreme Court's Remand or, in the Alternative, for Affirmation of Joint Preliminary Injunction, for a Receiver to Manage the Property Pending Final Judgment, for Updated Financial Disclosures and Exchange of Financial Information, and for Sale of Property for Payment of Attorneys' Fees and Costs	0159-0191
10	1	08/29/17	Response to Defendant's Reply to Opposition to Countermotion for Final Judgment Consistent with the Nevada Supreme Court's Remand or, in the Alternative, for Affirmation of Joint Preliminary Injunction, for a Receiver to Manage the Property Pending Final Judgment, for Updated Financial Disclosures and Exchange of Financial Information, and for Sale of Property for Payment of Attorneys' Fees and Costs	0214-0224
16	2,3	07/23/18	Transcript Re: All Pending Motions from Monday, July 23, 2018 (Errata)	0433-0508
18	1,2	01/31/18	Transcript Re: Status Check of Wednesday, January 31, 2018	0225-0290



CLERK OF THE COURT

1 NOAS
THE DICKERSON LAW GROUP
2 ROBERT P. DICKERSON, ESQ.
Nevada Bar No. 000945
3 JOSEF M. KARACSONYI, ESQ.
Nevada Bar No. 010634
4 KATHERINE L. PROVOST, ESQ.
Nevada Bar No. 008414
5 1745 Village Center Circle
Las Vegas, Nevada 89134
6 Telephone: (702) 388-8600
Facsimile: (702) 388-0210
7 Email: info@dickersonlawgroup.com
8 Attorneys for LYNITA SUE NELSON

9
10 DISTRICT COURT
FAMILY DIVISION
11 CLARK COUNTY, NEVADA

12 ERIC L. NELSON,
13 Plaintiff/Counterdefendant,
14 v.
15 LYNITA SUE NELSON,
16 Defendant/Counterclaimant.

CASE NO. D-09-411537-D
DEPT NO. "O"

17 ERIC L. NELSON NEVADA TRUST
18 dated May 30, 2001, and LSN NEVADA
TRUST dated May 30, 2001,

NOTICE OF APPEAL

19 Necessary Parties (joined in this
20 action pursuant to Stipulation and
21 Order entered on August 9, 2011)

22 MATT KLABACKA, as Distribution Trustee
23 of the ERIC L. NELSON NEVADA TRUST
dated May 30, 2001,

24 Counterclaimant and Crossclaimant,

25 v.
26 LYNITA SUE NELSON and ERIC
NELSON,

27 Purported Cross-Defendant and
28 Counterdefendant,

1 LYNITA SUE NELSON,
2 Counterclaimant, Cross-Claimant,
3 and/or Third Party Plaintiff,
4 v.
5 ERIC L. NELSON, individually and as the
6 Investment Trustee of the ERIC L. NELSON
7 NEVADA TRUST dated May 30, 2001; the
8 ERIC L. NELSON NEVADA TRUST dated
9 May 30, 2001; MATT KLABACKA,
10 Distribution Trustee of the ERIC L.
11 NELSON NEVADA TRUST dated
12 May 30, 2001,
13 Counterdefendant, and/or
14 Cross-Defendants, and/or
15 Third Party Defendants.

12 NOTICE OF APPEAL

13 NOTICE IS HEREBY GIVEN that Defendant/Counterclaimant, LYNITA SUE
14 NELSON, Individually and as Investment Trustee of the LSN NEVADA TRUST, dated
15 May 30, 2001, hereby appeals to the Supreme Court of the State of Nevada from the
16 following judgments and orders: (1) Order Regarding Transfer of Property and
17 Injunctions, entered September 18, 2014 (2) Order from July 22, 2013 Hearing on
18 Lynita Nelson's Motion to Amend or Alter Judgment, for Declaratory and Related
19 Relief, entered September 6, 2013 (3) Order Determining Disposition of Dynasty
20 Development Management, Inc. aka Wyoming Downs, entered on September 18, 2014;
21 (4) Decree of Divorce, entered June 3, 2013; (5) Order from February 23, 2012 Hearing

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

1 Partially Granting ELN Trust's Motion to Dismiss Third-Party Complaint Without
2 Prejudice, entered August 29, 2012; and (6) Findings of Fact and Order, entered July
3 11, 2012.

4 DATED this 3rd day of November, 2014.

5 THE DICKERSON LAW GROUP

6
7 By Robert P. Dickerson
8 ROBERT P. DICKERSON, ESQ.
9 Nevada Bar No. 000945
10 JOSEF M. KARACSONYI, ESQ.
11 Nevada Bar No. 010634
12 KATHERINE L. PROVOST, ESQ.
13 Nevada Bar No. 008414
14 1745 Village Center Circle
15 Las Vegas, Nevada 89134
16 Attorneys for LYNITA SUE NELSON
17
18
19
20
21
22
23
24
25
26
27
28

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am an employee of THE DICKERSON
3 LAW GROUP, and that on this 3rd day of November, 2014, I caused the above and
4 foregoing document entitled NOTICE OF APPEAL to be served as follows:

5 [X] pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and
6 Administrative Order 14-2 captioned "In the Administrative Matter of
7 Mandatory Electronic Service in the Eighth Judicial District Court," by
mandatory electronic service through the Eighth Judicial District Court's
electronic filing system;

8 [X] by placing same to be deposited for mailing in the United States Mail, in
9 a sealed envelope upon which first class postage was prepaid in Las Vegas,
Nevada;

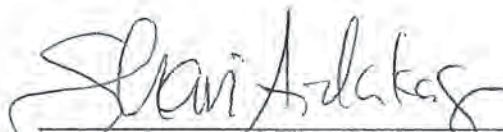
10 [] pursuant to EDCR 7.26, to be sent via **facsimile**, by duly executed
consent for service by electronic means;

11 [] by hand-delivery with signed Receipt of Copy.

12 To the attorney(s) listed below at the address, email address, and/or facsimile number
13 indicated below:

14 RHONDA K. FORSBERG, ESQ.
15 RHONDA K. FORSBERG, CHARTERED
16 64 North Pecos Road, Ste. 800
Henderson, Nevada 89074
17 rforsberg@forsberg-law.com
mweiss@forsberg-law.com
Attorneys for Plaintiff

18 MARK A. SOLOMON, ESQ.
19 JEFFREY P. LUSZECK, ESQ.
20 SOLOMON, DWIGGINS, FREER & MORSE, LTD.
9060 W. Cheyenne Avenue
Las Vegas, Nevada 89129
21 jluszeck@sdfnvlaw.com
sgerace@sdfnvlaw.com
22 Attorneys for Distribution Trustee of the ELN Trust

23 

24 An employee of The Dickerson Law Group

133 Nev., Advance Opinion 24
IN THE SUPREME COURT OF THE STATE OF NEVADA

MATT KLABACKA, DISTRIBUTION
TRUSTEE OF THE ERIC L. NELSON
NEVADA TRUST DATED MAY 30, 2001,
Appellant/Cross-Respondent,


vs.

LYNITA SUE NELSON,
INDIVIDUALLY AND IN HER
CAPACITY AS INVESTMENT
TRUSTEE OF THE LSN NEVADA
TRUST DATED MAY 30, 2001; AND
ERIC L. NELSON, INDIVIDUALLY
AND IN HIS CAPACITY AS
INVESTMENT TRUSTEE OF THE
ERIC L. NELSON NEVADA TRUST
DATED MAY 30, 2001,
Respondents/Cross-Appellants.

No. 66772

FILED

MAY 25 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
CHIEF DEPUTY CLERK

MATT KLABACKA, AS DISTRIBUTION
TRUSTEE OF THE ERIC L. NELSON
NEVADA TRUST DATED MAY 30, 2001,
Appellants,

vs.

ERIC L. NELSON; LYNITA SUE
NELSON, INDIVIDUALLY; AND LSN
NEVADA TRUST DATED MAY 30, 2001,
Respondents.

No. 68292

Consolidated appeal and cross-appeal from a decree of divorce
and appeal from findings of fact and conclusions of law modifying a divorce
decree. Eighth Judicial District Court, Family Court Division, Clark
County; Frank P. Sullivan, Judge.

Affirmed in part, vacated in part, and remanded.

Solomon Dwiggins & Freer, Ltd., and Jeffrey P. Luszeck and Mark A. Solomon, Las Vegas,
for Matt Klabacka, distribution trustee of the Eric L. Nelson Nevada Trust.

Dickerson Law Group and Josef M. Karacsonyi, Robert P. Dickerson, and Katherine L. Provost, Las Vegas,
for Lynita Sue Nelson, individually and in her capacity as investment trustee of the LSN Nevada Trust.

Rhonda K. Forsberg, Chtd., and Rhonda K. Forsberg, Henderson,
for Eric L. Nelson, individually and in his capacity as investment trustee of the Eric L. Nelson Nevada Trust.

BEFORE THE COURT EN BANC.

OPINION

By the Court, GIBBONS, J.:

These appeals involve a divorce and a division of assets held in self-settled spendthrift trusts owned by the former husband and wife. Suffice it to say, the parties have substantial trust issues. Ten years into their marriage, Eric and Lynita Nelson signed a separate property agreement (the SPA) that transmuted their property into separate property and placed that property into the parties' respective separate property trusts. Later, the parties converted those trusts into self-settled spendthrift trusts (SSSTs) and funded them with their respective separate property. The SSSTs were, respectively, the Eric L. Nelson Nevada Trust (Eric's Trust) and the Lynita S. Nelson Nevada Trust (Lynita's Trust). In 2009, the parties began divorce proceedings and subsequently added the

SSSTs as necessary parties. Issues presented within the divorce proceedings bring us to the instant appeals.

We conclude (1) the family court has subject-matter jurisdiction over the trust-related claims in the Nelsons' divorce; (2) the SPA and SSSTs are valid and unambiguous; (3) the district court erred in considering parol evidence to determine the parties' intent behind the SPA and SSSTs; (4) the district court erred in equalizing the trust assets; (5) the district court erred in ordering Eric's personal obligations to be paid by Eric's Trust; (6) the district court did not err in awarding Lynita a lump sum alimony award of \$800,000, but erred insofar that the alimony was awarded against Eric's Trust, and not Eric in his personal capacity; (7) the district court erred in making findings of unjust enrichment after the claim was dismissed; (8) the constructive trusts placed over the Russell Road and Lindell properties should be vacated; and (9) the June 8, 2015, order should be vacated to the extent it enforces or implements portions of the divorce decree relating to assets in Eric's Trust and Lynita's Trust and affirmed in all other respects.

Given the complexity of the divorce decree (the decree), we conclude that (1) the dissolution of marital bonds between Eric and Lynita is affirmed, (2) the district court's alimony award is affirmed in part but vacated to the extent it is awarded against Eric's Trust instead of Eric in his personal capacity, (3) the district court's child support award is affirmed in part but vacated to the extent it is awarded against Eric's Trust instead of Eric in his personal capacity, (4) all other portions of the decree are vacated, (5) the June 8, 2015, order, is vacated to the extent it enforces or implements portions of the divorce decree relating to assets in Eric's Trust and Lynita's Trust and affirmed in all other respects, and

(6) the case is remanded to the district court for further proceedings consistent with this opinion.

FACTS AND PROCEDURAL HISTORY

The SPA

In 1993, Eric and Lynita entered into the SPA in order to transmute the family's community assets into the parties' respective separate property. The SPA equally divided the parties' assets into two separate property trusts. Both parties consulted counsel prior to signing the document, and Lynita consulted additional outside counsel prior to her signing.

In relevant part, the SPA states that "the parties hereto desire to split the community estate into the sole and separate property of each spouse in accordance with and for the purposes contained in NRS 123.130 through 123.170, inclusive." Additionally, the SPA provides that "[t]he [p]arties agree that [the SPA] shall be controlling in determining the ownership of each party's property regardless of the manner in which the property was previously held or titled, acquired through capital or personal efforts, or whether the property is real, personal or any variation thereof."

The SSSTs

In 2001, Eric and Lynita converted their separate property trusts into Eric's Trust and Lynita's Trust, respectively, and funded the SSSTs with the separate property contained within the separate property trusts. The trust agreements for Eric's Trust and Lynita's Trust are nearly identical. Both trust agreements are in writing and establish an irrevocable trust. Each trust has a spendthrift provision that provides, in relevant part:

No property (income or principal) distributable under this Trust Agreement, . . . shall be subject to anticipation or assignment by any beneficiary, or to attachment by or of the interference or control of any creditor or assignee of any beneficiary, or be taken or reached by any legal or equitable process in satisfaction of any debt or liability of any beneficiary, and any attempted transfer or encumbrance of any interest in such property by any beneficiary hereunder shall be absolutely and wholly void.

Both trust agreements named Lana Martin, a Nevada resident, as the initial distribution trustee.¹ The parties' respective trusts give them the right to veto any distribution and require that the distribution trustee provide ten days' notice of any impending distribution.

The parties named themselves as the investment trustee for their respective trusts. Pursuant to Section 11.14 of the trust agreements,

the "Investment Trustee(s)" shall at all times have the exclusive custody of the entire Trust estate and shall be the legal owner of the Trust estate. The title to Trust properties need not include the name of the Distribution Trustee, and all Trustee powers . . . may be effected under the sole and exclusive control of the Investment Trustees, subject to the requirements for authorization of distributions to Trustor

¹There have been several distribution trustees for the trusts since 2001. Appellant Matt Klabacka was acting in that capacity when the first notice of appeal was filed.

Many transfers of property occurred between the trusts between 2001 and 2009, most of which were gifts from one trust to the other.

Initial divorce proceeding

Eric filed for divorce in 2009. During the initial stages of trial, Eric testified that the SPA and trust agreements were signed in an effort to protect the parties' assets from creditors and that much of the property contained within the trusts was community property. After six days of trial, the SSSTs were added to the divorce action as necessary parties. Lynita then filed an amended complaint against Eric's Trust and its former distribution trustees alleging various torts. Eric's Trust moved to dismiss Lynita's tort claims. The district court dismissed nearly all of the tort claims, including unjust enrichment and breach of fiduciary duty. Additionally, the district court denied the motion to dismiss as to several of Lynita's other claims against Eric and Eric's Trust, including constructive trust.

During the trial, Eric's Trust retained an expert certified public accountant to analyze the trust accounting for both SSSTs. The expert "found no evidence that any community property was transferred to [Eric's Trust] or that any community property was commingled with the assets of [Eric's Trust]." The district court, noting the expert's financial relationship with Eric and the expert's purportedly unreliable testimony, found the expert's report and testimony to be of little probative value.

Decree of divorce

On June 3, 2013, the district court issued the decree. The district court found that the SPA was valid and the parties' SSSTs were validly established and funded with separate property. The district court

kept Eric's Trust and Lynita's Trust intact for creditor-protection purposes. However, the district court noted "the [c]ourt could [have] invalidate[d] both Trusts" under theories of constructive trust or unjust enrichment based on Eric's extensive testimony regarding the community nature of the assets held by each trust, the breaches of Eric's fiduciary duties, and the lack of trust formalities.

Additionally, the district court found "that the testimony of the parties clearly established that the intent of creating the spendthrift trusts was to provide maximum protection from creditors and was not intended to be a property settlement in the event that the parties divorced." The district court based these findings, in large part, on testimony that purportedly established: (1) the parties intended to occasionally "*level off the trusts*," (2) the trust assets had become community property through Eric's comingling, (3) Lynita had delegated her role as investment trustee to Eric, and (4) an oral transmutation agreement occurred between the parties to transmute the separate property back into community property.

In addition to the dissolution of marriage, the district court ordered: (1) an equalization of \$8.7 million in total trust assets to remain in or be transferred into each trust, (2) the Brianhead cabin property to be divided equally between the trusts, (3) the interest in the Russell Road property and its note/deed for rents and taxes be divided equally between the trusts, (4) Eric's Trust to use the distribution of \$1.5 million from a previously enjoined trust account to pay Lynita spousal support in a lump sum of \$800,000, (5) Eric's Trust to pay Lynita child support arrears; (6) Eric's Trust to pay Lynita's attorney fees, (7) Eric's Trust to pay expert

fees, and (8) Eric to pay child support for each child and half of the private school tuition for his daughter.

Constructive trusts: Eric's purported breach of fiduciary duty and unjust enrichment

The district court found that Lynita delegated her role as investment trustee to Eric and that Eric had acted as the de facto investment trustee since the inception of Lynita's Trust. The district court reasoned that, because Eric acted in such a capacity, his actions involving the transfer of property between the trusts and his various corporate entities amounted to a breach of fiduciary duty. Further, the district court reasoned this breach of fiduciary duty resulted in transfers of property that unjustly enriched Eric. This finding of unjust enrichment led to the district court imposing constructive trusts over two properties held within the SSSTs—the Lindell property and the Russell Road property.

Wyoming Downs and the June 8, 2015, order

The decree disposed of all property, with the exception of Wyoming Downs, an asset purchased during the pendency of the divorce.² A corporate entity owned by Lynita's Trust loaned Eric's Trust money toward the purchase price of Wyoming Downs, and Eric's Trust subsequently purchased the property. Eric testified this loan was paid back. The district court noted it was "without sufficient information" to

²Eric's Trust petitioned this court for writ relief stemming from the decree on June 21, 2013, and July 9, 2013. We ultimately dismissed both petitions, noting that an appeal would be available to all parties upon the disposition of Wyoming Downs. *See Harber v. Eighth Judicial Dist. Court*, Docket Nos. 63432/63545 (Order Denying Petitions for Writs of Prohibition, May 23, 2014).

make a determination regarding the disposition of Wyoming Downs at the time it issued the decree, and therefore, did not make any findings or decisions as to the disposition of the property in the decree. On September 22, 2014, the district court disposed of Wyoming Downs, thereby making its judgment final. Eric and Eric's Trust subsequently filed their first notice of appeal.

Following the first notice of appeal, Lynita filed a motion with the district court to enforce the decree. Specifically, Lynita sought a court order mandating Eric or Eric's Trust to disclose certain documents and rent payments for, among other things, the Lindell and Russell Road properties. On June 8, 2015, the district court ordered Eric and Eric's Trust to pay the additional monies to Lynita pursuant to her motion to enforce the decree (the June 8, 2015, order). Eric's Trust also appealed the June 8, 2015, order, filing the second notice of appeal.

DISCUSSION

Subject-matter jurisdiction of district court to hear trust-related claims

As a preliminary matter, Eric's Trust argues the family court in which he initiated the divorce lacked subject-matter jurisdiction over the trust-related claims brought during the divorce. We disagree.

Subject matter jurisdiction is a question of law we review de novo. *Ogawa v. Ogawa*, 125 Nev. 660, 667, 221 P.3d 699, 704 (2009). "[I]f the district court lacks subject matter jurisdiction, the judgment is rendered void." *Landreth v. Malik*, 127 Nev. 175, 179, 251 P.3d 163, 166 (2011).

Eric's Trust contends the family court lacked jurisdiction to hear the trust-related claims in the divorce and that the claims should have instead been heard by a probate judge. Eric's Trust argues that the

trust claims were “a proceeding commenced pursuant to” NRS Title 12 (Wills and Estates of Deceased Persons) or Title 13 (Guardianships; Conservatorships; Trusts), which Eric’s Trust argues are under the exclusive jurisdiction of the probate court, citing NRS 166.120 and NRS 164.015(1) to support this proposition. NRS 166.120(2) provides in part:

Any action to enforce [a spendthrift trust] beneficiary’s rights, to determine if the beneficiary’s rights are subject to execution, to levy an attachment or for any other remedy must be made only in a proceeding commenced pursuant to . . . NRS 164.010, if against a nontestamentary trust. A court has exclusive jurisdiction over any proceeding pursuant to this section.

Additionally, under NRS 164.015(1), “[t]he court has exclusive jurisdiction of proceedings initiated by the petition of an interested person concerning the internal affairs of a nontestamentary trust.” As used in both statutes, “court” is defined as “a district court of this State sitting in probate or otherwise adjudicating matters pursuant to this title.” NRS 132.116; *see also* NRS 164.005 (applying NRS 132.116 to trust proceedings under Title 13).

We conclude that this case was not initiated for the purpose of enforcing or determining a spendthrift beneficiary’s rights under NRS 164.120(2) or determining the internal affairs of a nontestamentary trust under NRS 164.015(1). Rather, the case was initiated as a divorce proceeding under NRS Chapter 125. Whether a family court has subject-matter jurisdiction in divorce proceedings involving issues outside the

scope of NRS 3.223³ has been firmly decided by this court. In *Landreth*, this court held a “district court judge sitting in the family court division did not lack the power and authority to dispose of [a] case merely because it involved a subject matter outside the scope of NRS 3.223.” 127 Nev. at 180-81, 251 P.3d at 167. The claims at issue here are no different. Accordingly, we reach the same result as we did in *Landreth*—we conclude that the family court had subject-matter jurisdiction over all claims brought in the Nelsons’ divorce, including those relating to property held within the SSSTs.

Validity of the SPA/SSSTs

Next, we examine the validity of the SPA and the SSST agreements. “When the facts in a case are not in dispute, contract interpretation is a question of law, which this court reviews de novo.” *Lehrer McGovern Bovis, Inc. v. Bullock Insulation, Inc.*, 124 Nev. 1102, 1115, 197 P.3d 1032, 1041 (2008). Both the SPA and the parties’ respective SSSTs were signed, written agreements. We hold the written instruments at issue here are all valid and the terms therein are unambiguous.

The SPA is a valid transmutation agreement

The parties contest the validity of the SPA, and Lynita argues the parties understood and intended the SPA would have no effect in the event of divorce. We conclude the SPA is a valid transmutation agreement, and the plain terms of the SPA indicate it remains in effect during divorce.

³The powers of family courts are enumerated in NRS 3.223.

NRS 123.220(1) provides that “[a]ll property, other than [separate property outlined] in NRS 123.130, acquired after marriage by either husband or wife, or both, is community property *unless otherwise provided by . . . [a]n agreement in writing between the spouses.*” (Emphasis added.) Additionally, “[w]here a written contract is clear and unambiguous on its face, extraneous evidence cannot be introduced to explain its meaning.” *Kaldi v. Farmers Ins. Exch.*, 117 Nev. 273, 281, 21 P.3d 16, 21 (2001) (internal quotation marks omitted). “Extrinsic or parol evidence is not admissible to contradict or vary the terms of an unambiguous written instrument, since all prior negotiations and agreements are deemed to have been merged therein.” *Frei v. Goodsell*, 129 Nev. 403, 409, 305 P.3d 70, 73 (2013) (internal quotation marks omitted).

We conclude the SPA is a valid transmutation agreement and that the parties’ community property was converted into separate property. The terms of the SPA are clear and unambiguous: the parties agree “to split the community estate into the sole and separate property of each spouse.” Lynita argues that, despite these plain terms, the parties intended for the property to remain community property. Lynita’s argument fails because, as discussed above, it relies on extraneous evidence—a purported agreement between the parties not contained within the four corners of the SPA—that would contradict the unambiguous language of the SPA. Both parties were apprised of the legal consequences of the agreement by their attorney. Additionally, Lynita had her own outside counsel review the agreement prior to signing and provide additional legal advice regarding the consequences of the SPA. Therefore, we conclude the SPA was valid, and the parties’ property

was validly separated into their respective separate property trusts at that time.

The parties' respective SSSTs are valid

Lynita argues the district court erred in finding the SSSTs to be validly created under NRS Chapter 166. Lynita contends the trusts should be invalidated because “testimony and evidence presented at trial conclusively established that [Eric’s Trust] and [Lynita’s Trust] were not valid trusts.” We disagree.

For the reasons set forth below, we hold the SSSTs are valid and the trusts were funded with separate property stemming from a valid separate property agreement. Additionally, we conclude the district court had substantial evidence to make its finding of fact and, thus, did not err in finding the parties’ SSSTs to be validly created.

Requirements of a valid SSST in Nevada

No specific language is necessary to create a spendthrift trust. NRS 166.050. A spendthrift trust is created “if by the terms of the writing (construed in the light of [NRS Chapter 166] if necessary) the creator manifests an intention to create such a trust.” *Id.* In addition to the spendthrift requirements, to create a valid SSST, NRS 166.015(2)(a) requires the settlor to name as trustee a person who is a Nevada resident. Further, NRS 166.040(1)(b) provides that the SSST must (1) be in writing, (2) be irrevocable, (3) not require that any part of the trust’s income or principal be distributed to the settlor, and (4) not be “intended to hinder, delay or defraud known creditors.”

Validity of Eric’s Trust and Lynita’s Trust

To determine the validity of the trusts, one must first look to the words of the trust agreement to determine if the settlor had the intent

to create a spendthrift trust. 76 Am. Jur. 2d *Trusts* § 29 (2016). Accordingly, “courts look first and foremost to the language in the trust and interpret that language to effectuate the intent of the settlors.” *Id.* If a trust’s language is plain and unambiguous, then courts determine intent from this language alone. *Id.* § 30.

On the contrary, if the meaning of the writing is uncertain, incomplete, or ambiguous, parol evidence of the circumstances is admissible to determine the settlor’s intent. Restatement (Third) of Trusts § 21 cmt. a (Am. Law Inst. 2003). However, “parol evidence is not admissible to contradict or vary the terms of an unambiguous written instrument.” *Frei*, 129 Nev. at 409, 305 P.3d at 73.

A plain reading of the written terms of Eric’s Trust agreement reveals the following: Eric’s Trust has a spendthrift provision, manifesting a plain and unambiguous intent to create a spendthrift trust, in accordance with NRS 166.050; Eric’s Trust names Lana Martin, a Nevada resident, as distribution trustee, satisfying NRS 166.015(2)(a); the trust agreement is in writing, and the trust is irrevocable; and there is no requirement that any part of the trust’s income or principal be distributed to the settlor. Finally, there is no evidence that the trust was created to hinder, delay, or defraud known creditors. Thus, we hold Eric’s Trust is a valid Nevada SSST.⁴

⁴We note that the parties’ respective trust agreements are nearly identical. The analysis here is also applicable to Lynita’s Trust, which we also conclude is a valid Nevada SSST.

The validity of the trusts brings into question many of the district court's findings in the decree. As discussed below, the district court found that it could have invalidated the SSSTs based on Eric's purported breach of trust formalities. Breaching trust formalities of an otherwise validly created SSST does not invalidate a spendthrift trust; rather, it creates liability upon the trustee(s) for that breach. Indeed, if, after an SSST is validly formed, the trust formalities are breached by a trustee, the proper remedy is a civil suit against the trustee—not an invalidation of the trust itself. See NRS 163.115. Lynita filed such claims against Eric's Trust, and the district court then dismissed many of those claims. As such, we conclude the district court's findings regarding the potential invalidity of Eric's Trust and Lynita's Trust were made in error.

Tracing trust assets

The parties contest whether the assets within the SSSTs remained separate property or whether, because of the many transfers of property between the trusts, the assets reverted back to community property. In a divorce involving trust assets, the district court must trace those trust assets to determine whether any community property exists within the trusts—as discussed below, the parties' respective separate property in the SSSTs would be afforded the statutory protections against court-ordered distribution, while any community property would be subject to the district court's equal distribution. We conclude the district court did not trace the assets in question.

Eric's Trust retained a certified public accountant to prepare a report tracing the assets within the two trusts. However, as noted by the district court, the certified public accountant maintained a business relationship with Eric and Eric's Trust for more than a decade. Although

the certified public accountant's report concluded that there was "no evidence that any community property was transferred to [Eric's Trust] or that any community property was commingled with the assets of [Eric's Trust]," the district court found the report and corresponding testimony to be unreliable and of little probative value. We recognize that the district court is in the best position to weigh the credibility of witnesses, and we will not substitute our judgment for that of the district court here. *See In re Parental Rights as to J.D.N.*, 128 Nev. 462, 477, 283 P.3d 842, 852 (2012). However, the subject of the certified public accountant's report—the tracing of trust assets, specifically any potential commingling of trust assets with personal assets—must still be performed. *See Schmanski v. Schmanski*, 115 Nev. 247, 984 P.2d 752 (1999) (discussing transmutation of separate property and tracing trust assets in divorce). Without proper tracing, the district court is left with only the parties' testimony regarding the characterization of the property, which carries no weight. *See Peters v. Peters*, 92 Nev. 687, 692, 557 P.2d 713, 716 (1976) ("The opinion of either spouse as to whether property is separate or community is of no weight [whatsoever]."). Accordingly, we conclude the district court erred by not tracing the assets contained within the trusts, either through a reliable expert or other available means. Separate property contained within the spendthrift trusts is not subject to attachment or execution, as discussed below. However, if community property exists within the trusts, the district court shall make an equal distribution of that community property. *See* NRS 125.150(1)(b).

Distribution of parties' assets held in trust

Having concluded the district court had subject-matter jurisdiction, the written instruments at issue are valid, and the district

court must trace trust assets to determine whether any community property exists within the trusts, we now turn our attention to the district court's various decisions regarding the division of property. Distribution of the parties' assets held in the SSSTs was perhaps the most contested issue in the Nelsons' divorce.

Despite recognizing the validity of the SPA and SSSTs in the decree, the district court made several missteps in fashioning the ultimate distribution of property, namely: (1) considering parol evidence to determine the parties' intent, despite the written instruments at issue being unambiguous; (2) equalizing assets held within the valid SSSTs; and (3) ordering Eric's personal obligations to be paid by a trust for which he is a beneficiary.

The district court erred by using parol evidence to determine the intent of the parties' respective trusts

The district court ordered the trust assets equalized between Eric's Trust and Lynita's Trust, and for Eric's personal obligations to be paid by Eric's Trust. In order to fashion these remedies, the district court improperly considered parol evidence—namely, testimony from Eric and Lynita regarding their purported intent. We hold the district court abused its discretion in doing so.

“Where a written contract is clear and unambiguous on its face, extraneous evidence cannot be introduced to explain its meaning.” *Kaldi*, 117 Nev. at 281, 21 P.3d at 21 (internal quotation marks omitted). “Extrinsic or parol evidence is not admissible to contradict or vary the terms of an unambiguous written instrument, since all prior negotiations and agreements are deemed to have been merged therein.” *Frei*, 129 Nev. at 409, 305 P.3d at 73 (internal quotation marks omitted). This court “review[s] a district court’s decision to admit or exclude evidence for abuse

of discretion, and we will not interfere with the district court's exercise of its discretion absent a showing of palpable abuse." *Id.* at 408-09, 305 P.3d at 73.

Here, both Eric's Trust and Lynita's Trust are valid Nevada SSSTs with plain, unambiguous language indicating a clear intent to create a spendthrift trust. Where, as here, a valid SSST agreement is clear and unambiguous, the district court may not consider the parties' testimony regarding their purported intent when fashioning remedies related to that SSST. 76 Am. Jur. 2d *Trusts* § 30 (2016). The parties' inconsistent testimony regarding the purported community or separate property characterization of the trust assets carries no weight and should not have been considered when the district court fashioned the property division. *See Peters*, 92 Nev. at 692, 557 P.2d at 716. Accordingly, the district court was precluded from considering this extrinsic evidence to discern the parties' intent, and the district court abused its discretion in doing so.

The district court erred in equalizing the trust assets

Eric's Trust argues that, in addition to improperly considering parol evidence, the district court erred by ordering the trust assets to be equalized and Eric's Trust to pay Eric's personal obligations—namely, child support arrears and spousal support. We agree.

This court defers to a district court's findings of fact and will only disturb them if they are not supported by substantial evidence. *Ogawa*, 125 Nev. at 668, 221 P.3d at 704. Questions of law, including statutory interpretation, are reviewed de novo. *Waldman v. Maini*, 124 Nev. 1121, 1136, 195 P.3d 850, 860 (2008).

NRS Chapters 163 and 166 evince a clear intention to protect spendthrift trust assets against court order.⁵ NRS 163.417(1)(c)(1) provides that “a court may not order the exercise of... [a] trustee’s discretion to... [d]istribute any discretionary interest.” Additionally, NRS 166.120(2) provides in relevant part:

Payments by the trustee to the beneficiary... must be made only to or for the benefit of the beneficiary and not... upon any order, written or oral, given by the beneficiary, whether such... order... be made pursuant to or by virtue of any legal process in judgment, execution, attachment, garnishment, bankruptcy or otherwise, or whether it be in connection with any contract, tort or duty.

Finally, NRS 166.120(3) uses mandatory language indicating the beneficiary lacks the ability to make dispositions of trust property, even in response to a court order. NRS 166.120(3) provides:

[A spendthrift trust beneficiary] shall have no power or capacity to make any disposition whatever of any of the income... whether made upon the order or direction of any court or courts,

⁵We note that these protections do not apply if a court order is enforcing a judgment levied against the trust by a creditor able to prove, by clear and convincing evidence, that a “transfer of [trust] property was a fraudulent transfer pursuant to chapter 112 of NRS or that the transfer violates a legal obligation owed to the creditor under a contract or a valid court order that is legally enforceable by that creditor.” NRS 166.170(3). The court order at issue here, the decree, is not legally enforceable because it requires Eric or the trustees of Eric’s Trust to violate NRS 166.120. We note the record here does not indicate that a fraudulent transfer under NRS 166.170(3) occurred between the SSSTs.

whether of bankruptcy or otherwise; nor shall the interest of the beneficiary be subject to any process of attachment issued against the beneficiary, or to be taken in execution under any form of legal process directed against the beneficiary or against the trustee, or the trust estate, or any part of the income thereof, but the whole of the trust estate and the income of the trust estate shall go to and be applied by the trustee solely for the benefit of the beneficiary, free, clear, and discharged of and from any and all obligations of the beneficiary whatsoever and of all responsibility therefor.

We conclude the statutory framework governing SSSTs does not allow a court to equalize spendthrift trust assets between or among different SSSTs. Such an equalization would require the district court to order the exercise of a trustee's discretion to distribute some discretionary interest, in contravention of NRS 163.417(1)(c)(1). Additionally, such a court order would require the trustee to make a distribution outside the scope of the trust agreement and, perhaps more importantly, would run afoul of NRS 166.120(2), which prohibits payments made pursuant to or by virtue of any legal process. Finally, pursuant to NRS 166.120(3), Eric, as the beneficiary of Eric's Trust, has no power to make any disposition of any of Eric's Trust income upon order of the district court. Thus, we conclude the district court erred in ordering trust assets to be equalized between Eric's Trust and Lynita's Trust.

The district court erred in ordering Eric's personal obligations to be paid by Eric's Trust

The district court also ordered Eric's Trust to satisfy Eric's personal obligations—specifically, Eric's child- and spousal-support arrears. In doing so, the district court relied upon SSST statutes from South Dakota and Wyoming, as well as caselaw from Florida, which

specifically allow for SSST assets to be reached to satisfy child and spousal support. The statutes and caselaw relied upon by the district court annunciate public policy concerns for allowing spendthrift trusts to be reached for child and spousal support. *See Gilbert v. Gilbert*, 447 So. 2d 299, 301 (Fla. Dist. Ct. App. 1984) (“The cardinal rule of construction in trusts is to determine the intention of the settlor and give effect to his wishes. . . . On the other hand, there is a strong public policy argument which favors subjecting the interest of the beneficiary of a trust to a claim for alimony. . . . [T]he obligation to pay alimony is a duty, not a debt.” (internal quotation marks omitted)); *see also* S.D. Codified Laws § 55-16-15(1) (2016) (providing that many of South Dakota’s statutory spendthrift trust protections “do[] not apply in any respect to any person to whom at the time of transfer the transferor is indebted on account of an agreement or order of court for the payment of support or alimony in favor of the transferor’s spouse, former spouse, or children, or for a division or distribution of property in favor of the transferor’s spouse or former spouse, to the extent of the debt”); Wyo. Stat. Ann. § 4-10-503(b) (2015) (“Even if a trust contains a spendthrift provision, a person who has a judgment or court order against the beneficiary for child support or maintenance may obtain from a court an order attaching present or future distributions to, or for the benefit of, the beneficiary.”). The district court also cites to the Restatement (Third) of Trusts § 59 (Am. Law Inst. 2003), which provides “[t]he interest of a beneficiary in a valid spendthrift trust can be reached in satisfaction of an enforceable claim against the beneficiary for . . . support of a child, spouse, or former spouse.”

We conclude the district court’s order runs contrary to Nevada law. Despite the public policy rationale used in the other jurisdictions,

Nevada statutes explicitly protect spendthrift trust assets from the personal obligations of beneficiaries. Indeed, “[p]rovision for the [spendthrift trust] beneficiary will be for the support, education, maintenance and benefit of the beneficiary alone, and *without reference to . . . the needs of any other person, whether dependent upon the beneficiary or not.*” NRS 166.090(1) (emphasis added).

The legislative history of SSSTs in Nevada supports this conclusion. It appears that the Legislature enacted the statutory framework allowing SSSTs to make Nevada an attractive place for wealthy individuals to invest their assets, which, in turn, provides Nevada increased estate and inheritance tax revenues. See Hearing on A.B. 469 Before the Assembly Judiciary Comm., 70th Leg. (Nev., Mar. 26, 1999) (statement of Assemblyman David Goldwater). When crafting the language to allow SSSTs, the Legislature contemplated a statutory framework that protected trust assets from unknown, future creditors, as opposed to debts known to the settlor at the time the trust was created. See *id.* The legislative history explicitly mentions child support as an example of a debt that would not be free from attachment *if known at the time the trust was created.* *Id.* However, the trust assets would be protected from attachment as to debts unknown at the time the trust was created—presumably, this protection extended to child- and spousal-support obligations unknown at the time the trust was created. Additionally, in 2013, the Legislature proposed changes to NRS Chapter 166 that would have allowed a spouse or child to collect spousal support or child support from otherwise-protected spendthrift trust assets. See Hearing on A.B. 378 Before the Senate Judiciary Comm., 77th Leg. (Nev., May 8, 2013) (statement of Assemblywoman Marilyn Dondero Loop).

However, the proposed changes to NRS Chapter 166 did not pass, and, as a result, the Nevada spendthrift trust statutes were not amended to allow for an exception for child- and spousal-support orders of a beneficiary to be enforced against a spendthrift trust.

This rigid scheme makes Nevada's self-settled spendthrift framework unique; indeed, the "key difference" among Nevada's self-settled spendthrift statutes and statutes of other states with SSSTs, including Florida, South Dakota, and Wyoming, "is that Nevada abandoned the interests of child- and spousal-support creditors, as well as involuntary tort creditors," seemingly in an effort to "attract the trust business of those individuals seeking maximum asset protection." Michael Sjuggerud, *Defeating the Self-Settled Spendthrift Trust in Bankruptcy*, 28 Fla. St. U. L. Rev. 977, 986 (2001).

We conclude Nevada SSSTs are protected against the court-ordered child-support or spousal-support obligations of the settlor/beneficiary that are not known at the time the trust is created.⁶

⁶We note the possible confusion between our conclusion here protecting spendthrift trust assets from the personal child- and spousal-support obligations of the beneficiary and our conclusion above requiring the court to dispose of community property within the spendthrift trust. To clarify: because the nonbeneficiary spouse retains a property interest in community property contained within the spendthrift trust, the restraints on the court-ordered alienation of spendthrift trust assets would not apply to the nonbeneficiary spouse's community property share of that property. Accordingly, the district court's equal distribution of community property pursuant to the dissolution of marriage does not implicate the protections against a trust being ordered to pay the personal obligations of a beneficiary articulated in NRS Chapters 163 and 166.

Here, Eric's child- and spousal-support obligations were not known at the time the trust was created. Accordingly, the district court abused its discretion in ordering Eric's Trust to pay Eric's child- and spousal-support arrears. We further conclude the child- and spousal-support exception articulated in section 59 of the Third Restatement of Trusts is inconsistent with Nevada's statutory framework and the legislative history of NRS Chapter 166, and we expressly reject that exception here.

The district court did not err in awarding spousal support as a lump sum but erred in ordering it paid by Eric's Trust

In his individual capacity, Eric argues the amount of spousal support awarded to Lynita was inequitable and should not have been awarded in a lump sum. Eric argues that the \$800,000 lump sum alimony award was not just and equitable considering the NRS 125.150(9) factors because Lynita can adequately support herself on trust income. We disagree.

The district court "[m]ay award such alimony . . . in a specified principal sum or as specified periodic payments, as appears just and equitable." NRS 125.150(1)(a). Additionally, this court reviews an award of spousal support for an abuse of the discretion. *Gardner v. Gardner*, 110 Nev. 1053, 1055-56, 881 P.2d 645, 646 (1994); *see also Williams v. Waldman*, 108 Nev. 466, 471, 836 P.2d 614, 617 (1992) (noting this court generally affirms district courts' rulings in divorce proceedings where supported by substantial evidence and free from appearance of abuse of discretion).

We conclude the district court did not abuse its discretion in awarding spousal support. The district court properly considered the factors under NRS 125.150(9). Additionally, the court has discretion to

award spousal support as a lump sum or a periodic payment, and, here, we conclude the district court did not abuse that discretion in awarding a lump sum. *See Sargeant v. Sargeant*, 88 Nev. 223, 228, 495 P.2d 618, 622 (1972) (affirming a lump sum award of spousal support where the husband's conduct indicated the possibility he might liquidate or interfere with his assets to avoid paying support). However, we conclude the only error was in ordering the spousal support to be paid by Eric's Trust instead of by Eric because, as noted above, Nevada's statutory framework explicitly protects spendthrift trust assets from the personal obligations of beneficiaries—in this case, Eric. Accordingly, we vacate the award in order for the district court to reassess that award against Eric in his personal capacity.

Unjust enrichment, constructive trusts, and the delegation of Lynita's role as investment trustee of Lynita's Trust

The district court found that Lynita delegated to Eric her role as investment trustee of Lynita's Trust. Based on this delegation, the district court found that Eric had a fiduciary duty to disclose pertinent facts related to the transfer of assets held by Lynita's Trust. The district court found Eric breached this fiduciary duty by not disclosing that information.

The district court erred in relying upon a dismissed claim of unjust enrichment to afford relief

Based on this purported breach, the district court provided relief upon a theory of unjust enrichment when imposing constructive trusts over two contested properties. Eric's Trust contends the district court improperly relied upon a theory of unjust enrichment to fashion its remedies. Eric's Trust argues that, because a claim of unjust enrichment was dismissed without prejudice and never repleaded, the district court

could not rely upon that claim to assess damages or provide relief. Additionally, Eric's Trust argues that at no point in the trial transcript is the phrase "unjust enrichment" used—accordingly, there could not have been consent. Lynita argues that a claim of unjust enrichment was tried by express or implied consent because the pleadings in the case conformed to evidence demonstrating that Eric was being unjustly enriched by way of his power over Lynita's Trust.

This court defers to a district court's findings of fact and will only disturb them if they are not supported by substantial evidence. *Ogawa*, 125 Nev. at 668, 221 P.3d at 704. Questions of law are reviewed de novo. *Waldman*, 124 Nev. at 1136, 195 P.3d at 860.

We conclude the district court erred in relying upon a dismissed claim to afford relief to the parties. We further conclude Eric's Trust did not expressly or impliedly consent to the claim being tried. Indeed, Eric's Trust moved to dismiss the claim of unjust enrichment; this alone evinces the trust's lack of express consent for the claim. Further, the crux of Eric's Trust's entire argument was that trust formalities and property transactions were done legally and in accordance with the trust agreement—in other words, Eric's Trust argues that Eric was justified in his actions, running contrary to any notions of unjust enrichment. We conclude Lynita's claims of express consent for the claims of unjust enrichment fail.

Likewise, we conclude Lynita's argument on implied consent fails. Implied consent is a high threshold. For example, this court has determined that an issue was tried by implied consent where counsel "had raised the issue in his opening argument, [opposing counsel] had specifically referred to the matter as an issue in the case, . . . the factual

issue had been explored in discovery, [and] no objection had been raised at trial to the admission of evidence relevant to the issue.” *Schwartz v. Schwartz*, 95 Nev. 202, 205, 591 P.2d 1137, 1140 (1979). Lynita’s unjust enrichment claim fails to meet this standard. The phrase “unjust enrichment” was not used during trial; it therefore was not specifically referred to as an issue in the case following its dismissal. Eric’s Trust moved to dismiss it, which demonstrates an objection was raised to the admission of evidence relevant to the issue. Therefore, we hold the issue of unjust enrichment was not tried by implied consent and, therefore, the district court erred in considering it when fashioning its remedies in the decree.⁷

The district court erred in placing constructive trusts over the Russell Road and Lindell properties

Eric’s Trust argues the district court erred in its imposition of a constructive trust over the Russell Road and Lindell properties, while Lynita argues the imposition of the constructive trusts was proper because of Eric’s purported breaches of fiduciary duty as a de facto investment trustee of Lynita’s Trust. Consistent with our analysis in the above sections, we conclude the constructive trusts should be vacated.

“A constructive trust is a remedial device by which the holder of legal title to property is held to be a trustee of that property for the benefit of another who in good conscience is entitled to it.” *Locken v. Locken*, 98 Nev. 369, 372, 650 P.2d 803, 804-05 (1982). Although remedial,

⁷This court makes no conclusions regarding the merits of Lynita’s trust-related tort claims. However, we conclude the district court exceeded its authority to make findings based upon a dismissed claim.

a constructive trust is “the result of judicial intervention.” Restatement (Third) of Trusts § 1 cmt. e (Am. Law Inst. 2003). Additionally, a constructive trust violates a spendthrift prohibition on assignment or alienation of benefits. See *Guidry v. Sheet Metal Workers Nat’l Pension Fund*, 493 U.S. 365, 376-77 (1990).

We conclude the district court erred in placing constructive trusts over the Russell Road and Lindell properties because the imposition of a constructive trust violates the statutory protections shielding spendthrift trusts from court order. See NRS 166.120; see also NRS 163.417(1)(c)(1). Placing a constructive trust over assets in a valid spendthrift trust violates the trust’s prohibition on assignment or alienation of assets. See, e.g., *Guidry*, 493 U.S. at 376-77 (holding imposition of a constructive trust over a pensioner’s ERISA benefits violated the plan’s spendthrift provisions and that statutorily defined spendthrift protections “reflect[] a considered . . . policy choice, a decision to safeguard a stream of income for pensioners . . . even if that decision prevents others from securing relief [from the assets protected by spendthrift provision]”).⁸ Accordingly, we conclude the district court erred in imposing equitable remedies over assets that were held in a valid SSST.

⁸Although we reach a result here that is similar to the result in *Guidry*, we recognize there are several factual distinctions between *Guidry* and the instant appeals. Here, the parties are not arguing over pension benefits, they are arguing over assets held in SSSTs. Here, the trusts are not created by federal statute, they are enacted by state law. Despite these differences, *Guidry* demonstrates that, at least with respect to certain spendthrift provisions, the imposition of equitable remedies runs afoul of the protections afforded by those spendthrift provisions. Additionally, like the congressionally approved ERISA provisions, we

continued on next page . . .

The June 8, 2015, order

Lastly, Eric's Trust and Eric argue the district court lacked subject-matter jurisdiction to enter the June 8, 2015, order because the order was entered after the final order and during the pendency of the first appeal.


The district court can enforce an order that is pending on appeal and retains jurisdiction over matters that are collateral and independent from the order appealed, such as attorney fees. *See Foster v. Dingwall*, 126 Nev. 49, 52, 228 P.3d 453, 455 (2010). We conclude that although the district court retains jurisdiction to enforce an order during the pendency of an appeal, most of the June 8, 2015, order will nonetheless be vacated because it concerns property distribution that will be vacated pursuant to this opinion. We therefore vacate the June 8, 2015, order to the extent it enforces or implements portions of the divorce decree relating to assets in Eric's Trust and Lynita's Trust, which are being reversed in this opinion. However, we affirm the June 8, 2015, order with respect to the directives regarding health care costs of the son and Lynita's insurance costs, Eric's payment of costs to remove the security gate, and attorney fees for contempt.

... continued

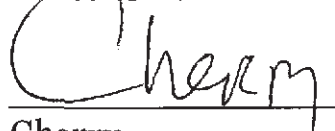
conclude the self-settled spendthrift provisions of NRS Chapter 166 reflect a considered legislative policy choice, and if exceptions to the policy are to be made for equitable remedies, it is for the Legislature to undertake that task.

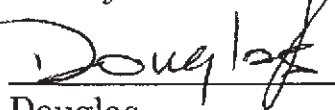
CONCLUSION


Accordingly, we affirm in part and vacate in part the district court's decree of divorce, affirm in part and vacate in part the district court's June 8, 2015, order modifying and implementing the divorce decree, and remand this matter for further proceedings consistent with this opinion.⁹

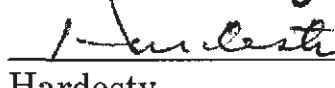

Gibbons J.


We concur:



Cherry C.J.


Douglas J.

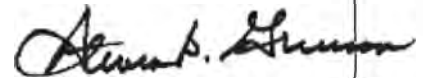

Pickering J.


Hardesty J.


Parraguirre J.


Stiglich J.

⁹We have considered the parties' other arguments and conclude they are without merit.



MOT

MARK A. SOLOMON, ESQ.
Nevada State Bar No. 0418
E-mail: msolomon@sdfnlaw.com
JEFFREY P. LUSZECK, ESQ.
Nevada State Bar No. 9619
E-mail: jluszeck@sdfnlaw.com
SOLOMON DWIGGINS & FREER, LTD.
Cheyenne West Professional Centre
9060 W. Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone No.: (702) 853-5483
Facsimile No.: (702) 853-5485

*Attorneys for Matt Klabacka, Distribution
Trustee of the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001*

**DISTRICT COURT
COUNTY OF CLARK, NEVADA**

ERIC L. NELSON,

Plaintiff

vs.

LYNITA SUE NELSON, MATT
KLABACKA, as Distribution Trustee of the
ERIC L. NELSON NEVADA TRUST dated
May 30, 2001,

Defendants.

MATT KLABACKA, Distribution Trustee of
the ERIC L. NELSON NEVADA TRUST
dated May 30, 2001,

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

Case No.: D411537
Dept.: O

**MOTION TO ENFORCE SUPREME
COURT'S ORDER DATED MAY 25,
2017; MOTION TO HOLD LYNITA S.
NELSON IN CONTEMPT FOR
VIOLATION OF SEPTEMBER 22, 2014
ORDER; AND FOR ATTORNEYS'
FEES AND COSTS**

9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-5483
FACSIMILE (702) 853-5485
WWW.SDFNLAW.COM

**SOLOMON
DWIGGINS & FREER**
TRUST AND ESTATE ATTORNEYS



PSAPP0035

1 **MOTION TO ENFORCE SUPREME COURT'S ORDER DATED MAY 25, 2017; MOTION**
2 **TO HOLD LYNITA S. NELSON IN CONTEMPT FOR VIOLATION OF SEPTEMBER 22,**
3 **2014 ORDER; AND FOR ATTORNEYS' FEES AND COSTS**

4 Matt Klabacka, Distribution Trustee of the ERIC L. NELSON NEVADA TRUST dated
5 May 30, 2001, by and through his Counsel of Record, the law firm of Solomon Dwiggins & Freer,
6 Ltd., hereby files his Motion to Enforce Supreme Court's Order Dated May 25, 2017; Motion to
7 Hold Lynita S. Nelson In Contempt for Violation of September 22, 2014 Order; and for Attorneys'
8 Fees and Costs.

9 This Motion is based upon the papers and pleadings on file, the following Memorandum of
10 Points and Authorities, and any oral argument at the time of the hearing of this matter.

11 DATED this 7th day of July, 2017.

12 SOLOMON DWIGGINS & FREER, LTD.

13 By: 

14 MARK W. SOLOMON, ESQ.
15 Nevada State Bar No. 0418
16 JEFFREY P. LUSZECK, ESQ.
17 Nevada State Bar No. 9619
18 9060 West Cheyenne Avenue
19 Las Vegas, Nevada 89129

20 *Attorneys for Matt Klabacka, Distribution Trustee of*
21 *the ERIC L. NELSON NEVADA TRUST dated May*
22 *30, 2001*

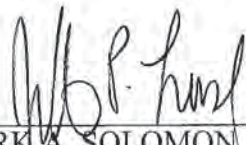
NOTICE OF MOTION

TO: ALL PARTIES and their attorneys of record:

PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing
MOTION TO ENFORCE SUPREME COURT'S ORDER DATED MAY 25, 2017; MOTION
TO HOLD LYNITA S. NELSON IN CONTEMPT FOR VIOLATION OF SEPTEMBER 22,
2014 ORDER; AND FOR ATTORNEYS' FEES AND COSTS, on for hearing before the
aforementioned Court on the 8th day of August, 2017, at the hour of 9:30am, or
as soon thereafter as counsel may be heard, at the Eighth Judicial District, Family Courts and
Services Center, 601 North Pecos Road, Dept. O, Las Vegas, Nevada, 89101.

DATED this 7th day of July, 2017.

SOLOMON DWIGGINS & FREER, LTD.

By: 
MARK A. SOLOMON, ESQ.
Nevada State Bar No. 0418
JEFFREY P. LUSZECK, ESQ.
Nevada State Bar No. 9619
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

*Attorneys for Matt Klabacka, Distribution Trustee of
the ERIC L. NELSON NEVADA TRUST dated May
30, 2001*

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND STATEMENT OF FACTS

The Nevada Supreme Court's Order dated May 25, 2017, vacated numerous portions of the Decree of Divorce entered on June 3, 2013, and the Findings of Fact and Order entered on June 8, 2015. On June 20, 2017, the Eric L. Nelson Nevada Trust dated May 30, 2001 ("ELN Trust") circulated to Counsel for the Lynita S. Nelson Nevada Trust dated May 30, 2001 ("LSN Trust"), a copy of which attached hereto as **Exhibit 1**, the necessary paperwork for the LSN Trust to execute to effectuate the Nevada Supreme Court's ruling. Specifically, the ELN Trust requested that the LSN Trust return the assets that the ELN Trust transferred to it, and the rents collected by the LSN Trust from June 2013 through present, as a result of this Court's imposition of a constructive trust and finding of unjust enrichment. On June 28, 2017, Counsel for the LSN Trust advised Counsel for the ELN Trust that it would not execute any of the requested documentation. See Correspondence dated June 28, 2017, a copy of which is attached hereto as **Exhibit 2**.

In light of the foregoing, the ELN Trust requests the following:

1. An order compelling the LSN Trust to execute the quitclaim deed transferring 50% of the Lindell Property, a copy of which is attached hereto as **Exhibit 3**, to the ELN Trust, or alternatively, if she refuses to do so within a specific timeframe, appoint a third-party pursuant to NRCP 70 to execute said deed on her behalf;

2. An order compelling the LSN Trust to provide the ELN Trust with copies of any and all leases with the tenants (past or present) of the Lindell Property, and the books and records relating to said tenants;

3. An order compelling the LSN Trust to pay the ELN Trust 50% of rent collected from the Lindell Property from June 2013 through present;

4. An Order compelling the LSN Trust to execute the quitclaim deeds transferring the Banone, LLC properties, copies of which are attached hereto as **Exhibit 4**, to the ELN Trust, or alternatively, if she refuses to do so within a specific timeframe, appoint a third-party pursuant to NRCP 70 to execute said deeds on her behalf;

5. An order compelling the LSN Trust to provide the ELN Trust with copies of any and

1 all leases with the tenants (past or present) of the Banone, LLC properties, and the books and
2 records relating to said tenants;

3 6. An order compelling the LSN Trust to pay the ELN Trust 100% of rent collected
4 from the Banone, LLC properties from June 2013 through present;

5 7. An order compelling the LSN Trust to pay the ELN Trust 100% of the payments
6 received from the Farmouth Circle Promissory Note, a copy of the Assignment of Note and Deed of
7 Trust is attached hereto as **Exhibit 5**;

8 8. An order releasing to the ELN Trust the \$720,000.00 that is being held in a blocked
9 account at Bank of Nevada pursuant to this Court's order entitled Order From October 21, 2013
10 Hearing Regarding Transfer of Enjoined Funds from BNY Mellon to Bank of Nevada, and Further
11 Injunction of Funds at Bank of Nevada, dated November 15, 2013, a copy of which is attached
12 hereto as **Exhibit 6**;

13 9. An order compelling Lynita to return the \$324,000.00 that was previously paid
14 pursuant to this Court's Order Regarding Transfer of Property and Injunctions entered on
15 September 22, 2014, a copy of which is attached hereto as **Exhibit 7**;

16 10. An order compelling the LSN Trust to return the \$6,050.00 security deposit that the
17 ELN Trust delivered to the LSN Trust on or around September 19, 2014, proof of payment of which
18 is attached hereto as **Exhibit 8**, and the security deposits collected from any Banone, LLC and
19 Lindell Property tenants;

20 11. An order compelling the LSN Trust to prepare quarterly accountings for the Lindell
21 Property and Banone LLC properties from June 2013 through present pursuant to this Court's prior
22 order; and

23 12. An order compelling the LSN Trust to return to the ELN Trust the \$75,000.00 paid
24 by Banone-AZ, LLC to the LSN Trust on or around June 30, 2014, proof of payment is attached
25 hereto as **Exhibit 9**.

26 **II. LEGAL STANDARD**

27 "When an appellate court states a principle or rule of law necessary to a decision, the
28 principle or rule becomes the law of the case and must be followed throughout its subsequent

progress, both in the lower court and upon subsequent appeal.” *Hsu v. County of Clark*, 123 Nev. 625, 629-30, 173 P.3d 724, 728 (2007). 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.” *Id.* The law of the case doctrine, therefore, serves important policy considerations, including judicial consistency, finality, and protection of the court's integrity. *Id.* Where the law of the case doctrine applies, “the district court [is] without authority to make a contrary finding.” *Bd. of Gallery of History, Inc. v. Datecs Corp.*, 116 Nev. 289, 288, 994 P.2d 1149, 1150 (2000).

Here, the Nevada Supreme Court explicitly vacated the constructive trusts imposed by this Court, as well as this Court's finding, in its June 3, 2013, Decree of Divorce. Consequently, the properties transferred by the ELN Trust to the LSN Trust under the theories of constructive trust and/or unjust enrichment must be transferred back to the ELN Trust.

III. LEGAL ARGUMENT

A. THE LSN TRUST MUST TRANSFER 50% OF THE LINDELL PROPERTY BACK TO THE ELN TRUST BECAUSE THE NEVADA SUPREME COURT VACATED THE CONSTRUCTIVE TRUST IMPOSED OVER SUCH PROPERTY.

The Nevada Supreme Court vacated the constructive trusts that this Court imposed over the Lindell and Russell Road Properties. *See* Nevada Supreme Court Order entered on May 25, 2017 at page 27 (“Consistent with our analysis in the above sections, we conclude the constructive trusts should be vacated.”); 28 (“We conclude the district court erred in placing constructive trusts over the Russell Road and Lindell Properties because the imposition of a constructive trust violates the statutory protections shielding spendthrift trusts from court order.”).

In light of the foregoing, the ELN Trust respectfully requests that this Court order the LSN Trust to: (1) execute the quitclaim deed transferring 50% of the Lindell Property to the ELN Trust, or alternatively, if Lynita and/or the LSN Trust refuses to do so within a specific timeframe, appoint a third-party pursuant to NRCP 70 to execute said deed on their behalf, *see* Ex. 3; (2) produce copies of any all leases with the tenants (past and present) of the Lindell Property; (3) provide quarterly accountings as previously ordered by this Court in its Order Regarding Transfer of

1 Property and Injunctions entered on September 22, 2014 at 5:20-22 ("Order")¹; and (4) pay the
2 ELN Trust 50% of the rental proceeds collected by the LSN Trust from June 2013 through present.

3 The ELN Trust hereby reserves its right to pursue damages against Lynita and/or the LSN
4 Trust for diminution of value to the Lindell Property and/or loss of rental income due to Lynita
5 and/or the LSN Trust's actions or omissions.

6 B. THE LSN TRUST MUST TRANSFER 100% OF THE BANONE LLC
7 PROPERTIES BACK TO THE ELN TRUST BECAUSE THE NEVADA
8 SUPREME COURT FOUND THAT THIS COURT ERRED IN RELYING UPON
9 A DISMISSED CLAIM OF UNJUST ENRICHMENT TO AFFORD RELIEF.

10 The Nevada Supreme Court found that Judge Sullivan erred by ordering the ELN Trust to
11 transfer the properties owned by Banone, LLC to the LSN Trust based upon the theory of unjust
12 enrichment. See Nevada Supreme Court Order entered on May 25, 2017 at page 27 ("we hold the
13 issue of unjust enrichment was not tried by implied consent and, therefore, the district court erred in
14 considering it when fashioning the remedies in the decree.").

15 In light of the foregoing, the ELN Trust respectfully requests that this Court order the LSN
16 Trust to: (1) execute the quitclaim deeds transferring the following properties owned by Banone
17 LLC to the ELN Trust: 1301 Heather Ridge, 5317 Clover Blossom Court, 4133 Compass Rose
18 Way, 3301 Terra Bella Drive, 6213 Anaconda Street, 6304 Guadalupe Avenue, 6301 Cambria
19 Avenue, 5113 Churchill Avenue, 4612 Sawyer Avenue, 4601 Concord Village Drive, 4412 Baxter
20 Place, 4820 Marnell Drive and 1608 Rusty Ridge Drive, see Ex. 4, or alternatively, if Lynita and/or
21 the LSN Trust refuse to do so within a specific timeframe, appoint a third-party pursuant to NRCP
22 70 to execute said deed on their behalf; (2) produce copies of any all leases with the tenants (past
23 and present) of the Banone LLC properties; (3) provide quarterly accountings as previously ordered
24 by this Court in its Order Regarding Transfer of Property and Injunctions entered on September 22,
25 2014 at 5:20-22 ("Order"); (4) pay the ELN Trust 100% of the rental proceeds collected by the LSN
26 Trust from June 2013 through present; (5) return any payments collected pursuant to the Farmouth
27 Circle Note; (6) return the \$6,050.00 security deposit paid by the ELN Trust on or around

28 ¹ The ELN Trust also requests that this Court sanction Lynita and/or the LSN Trust for failing
to comply with said Order.

1 September 19, 2014, *see* Exhibit 8; and (7) return any security deposits collected by the LSN Trust.

2 The ELN Trust hereby reserves its right to pursue damages against Lynita and/or the LSN
3 Trust for diminution of value to the Lindell Property and/or loss of rental income due to Lynita
4 and/or the LSN Trust's actions or omissions.

5 C. THE ELN TRUST RESPECTFULLY REQUESTS THAT THIS COURT ORDER
6 THE LSN TRUST TO REPAY THE ELN TRUST \$75,000.00 PAID TO IT ON OR
7 AROUND JUNE 30, 2014.

8 Although the Nevada Supreme Court did not vacate the September 22, 2014 Order
9 Determining Disposition of Dynasty Development Management, Inc. *aka* Wyoming Downs, as
10 indicated *supra*, the Nevada Supreme Court found that this Court erred by ordering the ELN Trust
11 to transfer Banone, LLC to the LSN Trust based upon the theory of unjust enrichment.
12 Consequently, the ELN Trust respectfully requests that this Court order the LSN Trust to return the
13 \$75,000 paid by Banone-AZ, LLC on or around June 30, 2014. *See* Ex. 9.

14 D. THE ELN TRUST RESPECTFULLY REQUESTS THAT THIS COURT ORDER
15 THE LSN TRUST TO REPAY THE ELN TRUST \$75,000.00 PAID TO IT ON OR
16 AROUND JUNE 30, 2014.

17 The Nevada Supreme Court held that this Court erred by ordering Eric's personal
18 obligations to be paid from the Dynasty Development Group, LLC proceeds. *See* Nevada Supreme
19 Court Order entered on May 25, 2017 at page 23 ("We conclude Nevada SSSTs are protected
20 against the court-ordered child-support or spousal support obligations of the settlor/beneficiary...").
21 Consequently, the ELN Trust respectfully requests that this Court release to the ELN Trust the
22 \$720,000 that is being held in a blocked account at Bank of Nevada. *See* Ex. 6. Further, the ELN
23 Trust respectfully requests that this Court order Lynita to repay the ELN Trust the \$324,000 that
24 was previously paid by the ELN Trust on or around June 5, 2014. *See* Ex. 7.

25 E. ATTORNEYS' FEES FOR BRING THE MOTION.

26 The ELN Trust has been forced to obtain enforcement of both this Court and the Nevada
27 Supreme Court's Orders because Lynita and/or the LSN Trust failed to act in good faith and comply
28 with said Orders. The actions of Lynita and/or the LSN Trust warrant an award of attorneys' fees
and costs to the ELN Trust pursuant to NRS 125.240 and EDCR 7.60.

1 As the ELN Trust's actual fees and costs cannot be determined at this time, the ELN Trust
2 respectfully requests permission to submit a Memorandum of Fees and Costs to the Court following
3 hearing on this Motion, at which time, the ELN Trust will provide an analysis of the factors set
4 forth in Brunzell v. Golden Gate, Nat'l Bank, 85 Nev. 345, 455 P.2d 31 (1969).

5 **III. CONCLUSION**

6 In light of the foregoing, the ELN Trust respectfully requests that this Court grant the instant
7 Motion to Enforce Supreme Court's Order Dated May 25, 2017; Motion to Hold Lynita S. Nelson
8 in Contempt for Violation of September 22, 2014 Order; and for Attorneys' Fees and Costs in its
9 entirety.

10 DATED this 7th day of July, 2017.

11
12 SOLOMON DWIGGINS & FREER, LTD.

13
14 By: 

15 MARK A. SOLOMON, ESQ.
16 Nevada State Bar No. 0418
17 JEFFREY P. LUSZECK, ESQ.
18 Nevada State Bar No. 9619
19 9060 West Cheyenne Avenue
20 Las Vegas, Nevada 89129

21
22 *Attorneys for Matt Klabacka, Distribution Trustee of*
23 *the ERIC L. NELSON NEVADA TRUST dated May*
24 *30, 2001*
25
26
27
28

CERTIFICATE OF SERVICE

PURSUANT to NRCP 5(b), I HEREBY CERTIFY that on July 7, 2017, I served a true and correct copy of the foregoing **MOTION TO ENFORCE SUPREME COURT'S ORDER DATED MAY 25, 2017; MOTION TO HOLD LYNITA S. NELSON IN CONTEMPT FOR VIOLATION OF SEPTEMBER 22, 2014 ORDER; AND FOR ATTORNEYS' FEES AND COSTS**, was served to the following in the manner set forth below:

Via:

- ☐ Hand Delivery
- ☐ U.S. Mail, Postage Prepaid
- ☐ Certified Mail, Receipt No.: _____
- ☐ Return Receipt Request
- ☒ E-Service through Wiznet

Robert P. Dickerson, Esq.
Josef Karacsonyi, Esq.
THE DICKERSON KARACSONYI LAW
GROUP
1745 Village Center Circle
Las Vegas, NV 89134
Attorneys for Defendant

Rhonda K. Forsberg, Esq.
64 N. Pecos Road, Suite 800
Henderson, NV 89074
Attorneys for Plaintiff


An Employee of SOLOMON DWIGGINS & FREER, LTD.

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

ERIC L. NELSON
Plaintiff/Petitioner

v.
LYNITA SUE NELSON, et al.
Defendant/Respondent

Case No. D411537

Dept. 0

**MOTION/OPPOSITION
FEE INFORMATION SHEET**

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of \$25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of \$129 or \$57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the \$25 or \$0 filing fee in the box below.

- ☒ **\$25** The Motion/Opposition being filed with this form is subject to the \$25 reopen fee.
-OR-
☐ **\$0** The Motion/Opposition being filed with this form is not subject to the \$25 reopen fee because:
- ☐ The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
 - ☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
 - ☐ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.
 - ☐ Other Excluded Motion (must specify) _____.

Step 2. Select the \$0, \$129 or \$57 filing fee in the box below.

- ☒ **\$0** The Motion/Opposition being filed with this form is not subject to the \$129 or the \$57 fee because:
- ☒ The Motion/Opposition is being filed in a case that was not initiated by joint petition.
 - ☐ The party filing the Motion/Opposition previously paid a fee of \$129 or \$57.
- OR-
☐ **\$129** The Motion being filed with this form is subject to the \$129 fee because it is a motion to modify, adjust or enforce a final order.
- OR-
☐ **\$57** The Motion/Opposition being filing with this form is subject to the \$57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of \$129.

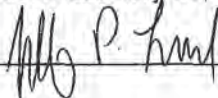
Step 3. Add the filing fees from Step 1 and Step 2.

The total filing fee for the motion/opposition I am filing with this form is:

☐ \$0 ☒ \$25 ☐ \$57 ☐ \$82 ☐ \$129 ☐ \$154

Party filing Motion/Opposition: Matt Klabacka, Distribution Trustee of ELN Date 07/10/17
Trust dated May 30, 2001

Signature of Party or Preparer



PSAPP0045

EXHIBIT “1”

EXHIBIT “1”



SOLOMON | DWIGGINS | FREER LTD.
TRUST AND ESTATE ATTORNEYS

Mark A. Solomon
Dana A. Dwiggins
Alan D. Freer
Brian K. Steadman
Steven E. Hollingworth
Brian P. Eagan
Jeffrey P. Luszeck
Alexander G. LeVeque

Cheyenne West Professional Centre
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

Telephone: (702) 853-5483
Facsimile: (702) 853-5485

Ross E. Evans
Jordanna L. Evans
Joshua M. Hood
Christopher J. Fowler
Craig D. Friedel
Jeremy M. Welland

Direct Dial: (702) 589-3511
Email: jluszeck@sdfnlaw.com

June 20, 2017

VIA EMAIL & FIRST CLASS MAIL

Josef Karacsonyi, Esq.
THE DICKERSON KARACSONYI LAW GROUP
1745 Village Center Circle
Las Vegas, Nevada 89134

**Re: *Nelson v. Nelson, District Court Case No. D-09-411537*
*Kablacka v. Nelson, Supreme Court Case No. 66772***

Dear Josef,

As you know, the Nevada Supreme Court's Order dated May 25, 2017, vacated numerous portions of the Decree of Divorce entered on June 3, 2013, and the Findings of Fact and Order entered on June 8, 2015. Attached to this correspondence is the necessary paperwork for the LSN Nevada Trust dated May 30, 2001 ("LSN Trust") to execute to effectuate the Nevada Supreme Court's ruling. Specifically, the Eric L. Nelson Nevada Trust dated May 30, 2001 ("ELN Trust") requests that the LSN Trust return the assets transferred that the ELN Trust transferred to it, and the rents collected from June 2013 through present, as a result of the District Court's imposition of a constructive trust and finding of unjust enrichment since those portions of the Decree of Divorce were vacated by the Nevada Supreme Court. Further, the ELN Trust requests that Lynita stipulate to unfreeze the Bank of Nevada account, which currently holds approximately \$720,000.00, which belongs to the ELN Trust *via* its interest in Dynasty Development Group, LLC.

Lindell and Russell Road

The Nevada Supreme Court vacated the constructive trusts that Judge Sullivan imposed over the Lindell and Russell Road Properties. *See* Order at page 27 ("Consistent with our analysis in the above sections, we conclude the constructive trusts should be vacated."); 28 ("We

June 20, 2017

Page 2

conclude the district court erred in placing constructive trusts over the Russell Road and Lindell Properties because the imposition of a constructive trust violates the statutory protections shielding spendthrift trusts from court order.”).

In light of the foregoing, please have Lynita execute the attached quitclaim deed transferring 50% of Lindell to the ELN Trust. Further, please provide us with copies of any and all leases with the current tenants of Lindell, and any books and records relating to said tenants.

Be advised that the ELN Trust is reserving its right to pursue damages against Lynita and/or the LSN Trust for diminution of value to Lindell and/or loss of rental income due to Lynita’s actions or omissions.

Banone LLC

The Nevada Supreme Court found that Judge Sullivan erred by ordering the ELN Trust to transfer the properties owned by Banone, LLC to the LSN Trust based upon the theory of unjust enrichment. As such, please have Lynita execute the attached quitclaim deeds for the following properties: 1301 Heather Ridge, 5317 Clover Blossom Court, 4133 Compass Rose Way, 3301 Terra Bella Drive, 6213 Anaconda Street, 6304 Guadalupe Avenue, 6301 Cambria Avenue, 5113 Churchill Avenue, 4612 Sawyer Avenue, 4601 Concord Village Drive, 4412 Baxter Place, 4820 Marnell Drive and 1608 Rusty Ridge Drive.

Further, please provide us with copies of any and all leases with the current tenants of the aforementioned properties, and any books and records relating to said tenants.

Be advised that the ELN Trust is reserving its right to pursue damages against Lynita and/or the LSN Trust for diminution of value to the aforementioned properties and/or loss of rental income due to Lynita’s actions or omissions.

Enjoined Funds

In light of the fact that the Nevada Supreme Court held that Judge Sullivan erred by ordering Eric’s personal obligations to be paid from the Dynasty Development Group, LLC proceeds, the ELN Trust requests that Lynita stipulate to release the \$720,000 that is being held in a blocked account at Bank of Nevada to the ELN Trust. A copy of the ELN Trust’s proposed Stipulation and Order is attached hereto. Further, as you will certainly recall, pursuant to the District Court’s Order Regarding Transfer of Property and Injunctions entered on September 22, 2014, Lynita was previously paid \$324,000, which must be repaid to the ELN Trust (either in cash or through her interest in the Brian Head cabin, which was utilized as a security for payment of said funds).

June 20, 2017

Page 3

Quarterly Accountings

In its Order Regarding Transfer of Property and Injunctions entered on September 22, 2014, the District Court ordered the LSN Trust to provide quarterly accountings to Eric and the ELN Trust regarding the Lindell and Banone, LLC properties. To date, no quarterly accountings have been provided. Please provide said accountings with backup documentation on or before Friday, June 30, 2017.

Payment of Rental Income

Please allow this letter to also serve as the ELN Trust's notice and request that 100% of rent collected and/or payments received pursuant to the Farmouth Circle Note and Banone, LLC properties from June 2013 through present, and 50% of the rent collected from Lindell from June 2013 through May 2017 be paid to the ELN Trust. Further, any rental income and/or payments received pursuant to the terms of the notes that is collected and/or received by the LSN Trust, or any subsidiary thereof, going forward, should be delivered to our office within twenty-four (24) hours of receipt. As the LSN Trust has no entitlement to such funds received there is no legitimate basis for these monies to be withheld from the ELN Trust for any period of time.

Be advised that the ELN Trust intends to notify the tenants of Banone, LLC properties of the change of landlord (similar to what Lynita did shortly after the entry of the Decree of Divorce).

Return of Security Deposits

Please allow this letter to also serve as the ELN Trust's notice and request that the LSN Trust return the \$6,050.00 security deposit that the ELN Trust delivered to your office on or around September 19, 2014, and any additional security depositions collected from the Banone, LLC and/or Lindell properties.

\$75,000 Banone – AZ, LLC Payment

Although the Nevada Supreme Court did not vacate the September 22, 2014, Order Determining Disposition of Dynasty Development Management, Inc. aka Wyoming Downs, demand is made herewith that the LSN Trust return the \$75,000 paid by Banone-AZ, LLC on or around June 30, 2014, because the Supreme Court found that Judge Sullivan erred by ordering the ELN Trust to transfer Banone, LLC to the LSN Trust based upon the theory of unjust enrichment.

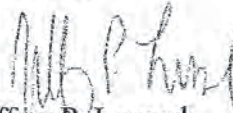
June 20, 2017
Page 4

Bond

On a final note, we expect the Nevada Supreme Court will vacate the bond that it required in its July 8, 2015, Order Consolidating Appeals and Granting Stay Condition Upon Posting of Bond in its remittitur, which we anticipate will be issued in the next couple of days. To the extent it does not, however, be advised that the ELN Trust intends to tell the surety, Platte River Insurance Company of the Nevada Supreme Court's disposition and that the bond can be released. Please let us know within 24 hours if you object to our proposed course of action on this issue.

I thank you for your immediate attention to these matters. This letter is sent in compliance with EDCR 5.11 as our effort to resolve this issue without the need for further Court involvement.

Sincerely,


Jeffrey P. Luszeck

JPL:ggm
Enclosures as stated

EXHIBIT “2”

EXHIBIT “2”

THE DICKERSON LAW GROUP

ROBERT P. DICKERSON
JOSEF M. KARACSONYI
NATALIE E. KARACSONYI
MICHAEL C. FLAXMAN
SABRINA M. DOLSON

A PROFESSIONAL CORPORATION OF ATTORNEYS AT LAW
HILLS CENTER NORTH BUSINESS PARK
1745 VILLAGE CENTER CIRCLE
LAS VEGAS, NEVADA 89134

AREA CODE (702)
TELEPHONE 388-8600
FAX 388-0210

June 28, 2017

Jeffrey P. Luszeck, Esq.
Solomon Dwiggin Freer
9060 West Cheyenne Avenue
Las Vegas, NV 89129
jluszeck@sdfnvlaw.com

SENT VIA U.S. AND ELECTRONIC MAIL

Re: *Nelson v. Nelson*, D-09-411537-D

Dear Jeff,

I am writing in response to your June 20, 2017 correspondence. For reasons I discussed with you during our telephone conversation, and that are known to you, we will not sign any property transfer documents at this time. We await the Court's instructions at the remand hearing (which we assume the Court will schedule shortly). As you are aware, despite the Nevada Supreme Court's decision all of the property of the parties remains at issue in this case.

We appreciate your time and attention to this matter.

Sincerely,



Josef M. Karacsonyi, Esq.

cc: Lynita S. Nelson

PSAPP0052

EXHIBIT “3”

EXHIBIT “3”

APN: 163-13-205-001

Affix R.P.T.T. \$ 0.00

WHEN RECORDED MAIL TO and MAIL TAX
STATEMENTS TO:

ERIC L. NELSON NEVADA TRUST
P.O. BOX 30188
LAS VEGAS, NV 89173

QUITCLAIM DEED

THIS INDENTURE WITNESSETH: That

LYNITA SUE NELSON, Trustee of the LSN NEVADA TRUST u/a/d 5/30/01
FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged,
does hereby remise, release and forever quitclaim to

ERIC L. NELSON, TRUSTEE OF THE ERIC L. NELSON NEVADA TRUST U/A/D 5/30/01 as
to an undivided 50% interest and LYNITA SUE NELSON, TRUSTEE OF THE LSN NEVADA
TRUST U/A/D 5/30/01 as to an undivided 50% interest

all that real property situate in Clark County, State of Nevada, bounded and described as
follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Commonly referred to as: 3611 S Lindell Road, Las Vegas, NV 89103

Subject to: 1. Taxes for the current fiscal year, paid current.
2. Conditions, covenants, restrictions, reservations, rights, rights of way and
easements now of record, if any.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging
or in anywise appertaining.

Witness my/our hand(s) this

LSN NEVADA TRUST U/A/D 5/30/01

____ day of _____, 2017

By: Lynita Sue Nelson, Investment Trustee

PSAPP0054

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On this _____
appeared before me, a Notary Public,

personally known or proven to me to be
the person(s) whose name(s) is/are
subscribed to the above instrument, who
acknowledged that he/she/they executed
the instrument for the purposes therein
contained.

Notary Public

My commission expires: _____

EXHIBIT "A"

Assessor's Parcel No: 163-13-205-001

That portion of the Southeast Quarter (SE1/4) of the Northwest Quarter (NW1/4) of Section 13, Township 21 South, Range 60 East, M.D.M., described as follows:

Lot One (1) of that certain Parcel Map on file in File 86 of Parcel Maps, Page 73, in the Office of the County Recorder, Clark County, Nevada recorded September 6, 1996 in Book 960906 as Document No. 01660, Official Records.

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

- a. 163-13-205-001
b. _____
c. _____
d. _____

2. Type of Property:

- a. ☐ Vacant Land b. ☐ Single Fam. Res.
c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
e. ☐ Apt. Bldg f. ☒ Comm'l/Ind'l
g. ☐ Agricultural h. ☐ Mobile Home
☐ Other

FOR RECORDERS OPTIONAL USE ONLY

Book _____ Page: _____

Date of Recording: _____

Notes: _____

- 3.a. Total Value/Sales Price of Property \$ 0.00
b. Deed in Lieu of Foreclosure Only (value of property (_____)
c. Transfer Tax Value: \$ 0.00
d. Real Property Transfer Tax Due \$ 0.00

4. If Exemption Claimed:

- a. Transfer Tax Exemption per NRS 375.090, Section 07
b. Explain Reason for Exemption: Transfer without consideration to or from a trust.

5. Partial Interest: Percentage being transferred: 50 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____ Capacity: Grantor

Signature _____ Capacity: Grantee

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: LSN Nevada Trust u/a/d 5/30/01
Address: _____
City: _____
State: _____ Zip: _____

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: ELN Nevada Trust u/a/d 5/30/01
Address: P.O. Box 30188
City: Las Vegas
State: NV Zip: 89173

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: _____ Escrow # _____
Address: _____
City: _____ State: _____ Zip: _____

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

PSAPP0057

EXHIBIT “4”

EXHIBIT “4”

APN: 138-14-711-033

Affix R.P.T.T. \$ 0.00

WHEN RECORDED MAIL TO and MAIL TAX
STATEMENTS TO:

BANONE, LLC
P.O. BOX 30188
LAS VEGAS, NV 89173

QUITCLAIM DEED

THIS INDENTURE WITNESSETH: That
LYNITA SUE NELSON, Trustee of the LSN NEVADA TRUST u/a/d 5/30/01,
FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged,
does hereby remise, release and forever quitclaim to
BANONE, LLC, A NEVADA LIMITED LIABILITY COMPANY
all that real property situate in Clark County, State of Nevada, bounded and described as
follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.
Commonly referred to as: 6213 Anaconda Street, Las Vegas, NV 89108

Subject to: 1. Taxes for the current fiscal year, paid current.
2. Conditions, covenants, restrictions, reservations, rights, rights of way and
easements now of record, if any.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging
or in anywise appertaining.

Witness my/our hand(s) this

____ day of _____, 2017

LSN NEVADA TRUST U/A/D 5/30/01

By: Lynita Sue Nelson, Investment Trustee

PSAPP0059