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

LYNITA SUE NELSON,  
INDIVIDUALLY, AND IN HER  
CAPACITY AS INVESTMENT  
TRUSTEE OF THE LYNITA S.  
NELSON NEVADA TRUST DATED  
MAY 30, 2001,

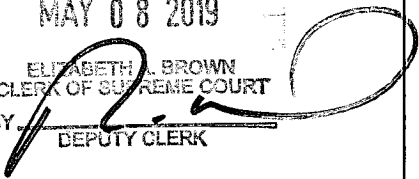
Appellant

v.

ERIC L. NELSON, INDIVIDUALLY,  
AND IN HIS CAPACITY AS  
INVESTMENT TRUSTEE OF THE  
ERIC L. NELSON NEVADA TRUST,  
DATED MAY 30, 2001, and MATT  
KLABACKA, AS DISTRIBUTION  
TRUSTEE OF THE ERIC L.  
NELSON NEVADA TRUST, DATED  
MAY 30, 2001,

Respondents.

Supreme Court Case No.:  
District Ct. Case No.: D411537

**FILED**  
MAY 08 2019  
ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY:   
DEPUTY CLERK

**SUPPLEMENTAL APPENDIX TO APPELLANT,  
LYNITA SUE NELSON'S, OPENING BRIEF  
VOLUME III**

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Attorneys for Appellant, LYNITA SUE NELSON

19-20213

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(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.

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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."<sup>3</sup> 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."<sup>4</sup> This presumption shifts  
7 the burden of proof to the party claiming the property was transmuted to community property.<sup>5</sup>  
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.<sup>6</sup> 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).<sup>7</sup>

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

18 <sup>4</sup> *Id.*

19 <sup>5</sup> 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 <sup>6</sup> *Crossland v. Crossland*, 397 S.C. 406, 725 S.E.2d 509 (Ct. App. 2012).

27 <sup>7</sup> *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).

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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.**

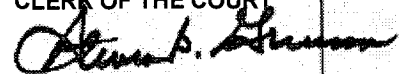
16 If this Court finds that a tracing is necessary to “determine whether any community  
17 property exists within the trusts,” it is not as broad as Lynita would have this Court believe for the  
18 following reasons. First, the Supreme Court never ordered this Court to conduct a tracing from  
19 1993 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  
25 contained within the separate property trusts. P. 4.

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

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



1 **NOT**  
2 RHONDA K. FORSBERG, CHARTERED  
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4 Nevada State Bar No. 009557  
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7 T: 702-990-6468  
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9 rforsberg@forsberg-law.com  
10 *Attorneys for Eric Nelson, Individually*

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

13 ERIC L. NELSON,

14 Plaintiff,

15 vs.

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

20 Defendants.

21 MATT KLABACK, Distribution Trustee  
22 of the ERIC L. NELSON NEVADA  
23 TRUST dated May 30, 2001,

24 Cross-claimant,

25 vs.

26 LYNITA SUE NELSON,

27 Cross- defendant.

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

**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**

28 PLEASE TAKE NOTICE Defendant, Eric Nelson, Individually, by and through  
his Counsel of Record, Rhonda K. Forsberg, Esq., hereby join Defendant Eric L. Nelson,

SRAPP000504

1 Investment Trustee of the ERIC L. NELSON NEVADA TRUST dated May 30, 2001, by  
2 and through his Counsel of Record in the Eighth Judicial District Court Case No. D-09-  
3 411537-D, the law firm of SOLOMON DWIGGINS, & FREER, LTD, in their  
4 OPPOSITION TO LYNITA NELSON'S MOTION FOR RECONSIDERATION AND  
5 CLARIFICATION OF THE COURT'S DECISION ENTERED MAY 22, 2018; AND  
6 COUNTERMOTION TO: (1) TERMINATE THE JPI; (2) IMPOSE A BOND ON ANY  
7 PROPERTY SUBJECT TO THE JPI; (3) EXPUNGE THE INAPPROPRIATELY  
8 RECORDED LIS PENDENS; (4) ALLOW THE ELN TRUST TO MANAGE  
9 LINDELL; AND (5) ATTORNEYS' FEES AND COST, filed with this Court on or  
10 about June 22, 2018 to avoid duplicative pleadings in this matter.  
11  
12  
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14

15 Dated this 22nd day of June, 2018.

16 RHONDA K. FORSBERG, CHARTERED

17 

18  
19 RHONDA K. FORSBERG, ESQ.  
20 Nevada Bar No. 009557  
21 1070 W. Horizon Ridge Pkwy. #100  
22 Henderson, Nevada 89012  
23 *Attorneys for Eric Nelson, Individually*

24 . . .  
25 . . .  
26 . . .

1 CERTIFICATE OF SERVICE

2 I hereby certify that I am an employee of Rhonda K. Forsberg, Chartered, and that on this 20  
3 day of June, 2018, I caused the above foregoing document entitled "NOTICE OF JOINDER TO  
4 OPPOSITION TO LYNITA NELSON'S MOTION FOR RECONSIDERATION AND  
5 CLARIFICATION OF THE COURT'S DECISION ENTERED MAY 22, 2018; AND  
6 COUNTERMOTION TO: (1) TERMINATE THE JPI; (2) IMPOSE A BOND ON ANY PROPERTY  
7 SUBJECT TO THE JPI; (3) EXPUNGE THE INAPPROPRIATELY RECORDED LIS PENDENS; (4)  
8 ALLOW THE ELN TRUST TO MANAGE LINDELL; AND (5) ATTORNEYS' FEES AND COST"  
9  
10 to be served as follows:  
11

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

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

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

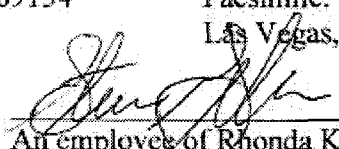
20  BY ELECTRONIC MAIL: Pursuant to EDCR 7.26, I transmitted a copy of the foregoing  
21 document this date via electronic mail.

22  BY CERTIFIED MAIL: I placed a true copy thereof enclosed in a sealed envelope, return  
23 receipt requested.

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

25 Robert P. Dickerson, Esq.  
26 The Dickerson Law Group  
27 1745 Village Center Circle  
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An employee of Rhonda K. Forsberg, Chartered



1 RPLY  
2 THE DICKERSON KARACSONYI LAW GROUP  
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12 Attorneys for Lynita Sue Nelson

13 DISTRICT COURT  
14 FAMILY DIVISION

15 CLARK COUNTY, NEVADA

16 ERIC L. NELSON,  
17 Plaintiff/Counterdefendant,  
18 v.  
19 LYNITA SUE NELSON, MATT  
20 KLABACKA, as Distribution  
21 Trustee of the ERIC L. NELSON  
22 NEVADA TRUST, dated May 30,  
23 2001,  
24 Defendants/Counterclaimants.

25 MATT KLABACKA, as  
26 Distribution Trustee of the ERIC  
27 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, 2001, and  
ERIC NELSON,  
Cross-Defendants.

CASE NO. D-09-411537-D  
DEPT NO. O 07/23/2018  
Date of Hearing: ~~06/23/18~~  
Time of Hearing: 10:00 a.m.

Oral Argument Requested: Yes

SRAPP000507

1 DEFENDANT'S REPLY TO PLAINTIFF'S OPPOSITION TO  
2 DEFENDANT'S MOTION FOR RECONSIDERATION AND  
3 CLARIFICATION OF THE COURT'S DECISION ENTERED  
4 MAY 22, 2018

5 AND  
6 OPPOSITION TO COUNTERMOTION TO: (1) TERMINATE  
7 THE JPI; (2) IMPOSE A BOND ON ANY PROPERTY SUBJECT  
8 TO THE JPI; (3) EXPUNGE THE LIS PENDENS; (4) ALLOW  
9 THE ELN TRUST TO MANAGE LINDELL; AND (5)  
10 ATTORNEYS' FEES AND COSTS

11 COMES NOW Defendant, LYNITA SUE NELSON ("Lynita"), by  
12 and through her attorneys, ROBERT P. DICKERSON, ESQ., and JOSEF  
13 M. KARACSONYI, ESQ., of THE DICKERSON KARACSONYI LAW  
14 GROUP, and submits Defendant's Reply to Plaintiff's Opposition to  
15 Defendant's Motion for Reconsideration and Clarification of the Court's  
16 Decision Entered May 22, 2018, and Opposition to Countermotion To:  
17 (1) Terminate the JPI; (2) Impose a Bond on Any Property Subject to the  
18 JPI; (3) Expunge the Lis Pendens; (4) Allow the ELN Trust to Manage  
19 Lindell; and (5) Attorneys' Fees and Costs ("Reply and Opposition").

20 This Reply and Opposition is made and based upon the following  
21 Memorandum of Points and Authorities, all papers and pleadings on file  
22 herein, all exhibits attached hereto, as well as oral argument of counsel as  
23 may be permitted at the hearing on this matter.

24 DATED this 12<sup>th</sup> day of July, 2018.

25 THE DICKERSON KARACSONYI  
26 LAW GROUP

27 By Robert P. Dickerson

ROBERT P. DICKERSON, ESQ.  
Nevada Bar No. 000945  
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1                    MEMORANDUM OF POINTS AND AUTHORITIES

2 I.    INTRODUCTION

3            In Plaintiff's Opposition to Defendant's Motion for Reconsideration  
4 and Clarification of the Court's Decision Entered May 22, 2018, and  
5 Opposition to Countermotion To: (1) Terminate the JPI; (2) Impose a  
6 Bond on Any Property Subject to the JPI; (3) Expunge the Lis Pendens;  
7 (4) Allow the ELN Trust to Manage Lindell; and (5) Attorneys' Fees and  
8 Costs ("Opposition and Countermotion"), Eric and ELN Trust  
9 disingenuously seek to prevent the Court from granting Lynita's  
10 reasonable and justified request for a reconsideration/clarification of its  
11 Decision Affirming the Date of Tracing; Denying a Separate Blocked  
12 Account for \$720,000; and Granting a Joint Preliminary Injunction for  
13 the Banone, LLC and Lindell Properties ("Decision"). In addition, Eric  
14 and ELN Trust have included a Countermotion baselessly seeking a  
15 variety of relief, ranging from a severely untimely request for  
16 reconsideration, to a ludicrous request for an award of attorneys' fees and  
17 costs.

18 II.   LEGAL ANALYSIS

19 A.    The Court Did Not Previously Address – Let Alone Deny – The  
20 Relief Lynita Has Requested, And Lynita's Motion For  
21 Reconsideration/Clarification Is Therefore Entirely Proper And  
22 Should Be Granted

23            In a disingenuous attempt to oppose Lynita's reasonable and proper  
24 request that the Court reconsider/clarify its Decision, Eric and ELN Trust  
25 have intentionally chosen to misrepresent the Court's Decision. In an  
26 attempt to rewrite history, and to thereby support their position, Eric and  
27 ELN Trust claim over and over again that Lynita is asking the Court to  
"rethink" its position and to grant relief that it has purportedly already

1 rejected. Likewise, all of the case law cited by Eric and ELN Trust in  
2 support of their argument relate specifically to situations in which  
3 reconsideration was sought to obtain a new decision contrary to a  
4 decision already made by the Court. In this case, however, Lynita's  
5 request that a general Joint Preliminary Injunction ("JPI") be issued was  
6 not denied by the Court in its Decision, but was entirely overlooked. The  
7 Court's Decision did not even address – let alone deny – Lynita's request  
8 for relief. The Court issued a limited JPI as part of its Decision, but did  
9 so based on its stated belief that Lynita had requested a JPI only with  
10 regard to the Banone, LLC Properties and the Lindell Property that were  
11 being transferred to Eric and ELN Trust. Specifically, the Court stated  
12 in its Decision that "this Court did not [previously] address the request  
13 for a Joint Preliminary Injunction for the Banone, LLC. and Lindell  
14 properties." In reality, however, Lynita's request that was before the  
15 Court was for a general JPI to be issued, not one related only to the  
16 Banone, LLC, and Lindell properties. A court's inadvertent failure to  
17 address in its order a party's claim for relief does not constitute a denial,  
18 but does constitute grounds for reconsideration/clarification of the order.

19 At this time, Lynita is simply asking the Court to make a decision  
20 as to the remaining, unaddressed portion of her original request that a  
21 general JPI be put in place. As detailed in Lynita's underlying Motion,  
22 there are numerous properties subject to a claim of community interest  
23 other than the Banone and Lindell properties, and a JPI over just the  
24 Banone, LLC and Lindell Properties does not protect sufficient property  
25 to ensure the Court can accomplish an appropriate division of property  
26 if it is determined that the properties held in the ELN Trust and LSN  
27 Trust are community property. In an attempt to counter this fact, Eric

1 and ELN Trust mischaracterize this Court's Decision entered on April 19,  
2 2018, wherein the Court determined that there were "sufficient assets in  
3 both trusts to offset any deficiency once a final balance and distribution  
4 amount has been determined." Contrary to Eric and ELN Trust's attempt  
5 to misinterpret this determination, the Court's comment did not stand for  
6 the proposition that should Eric and ELN Trust improperly sell all of the  
7 parties' real properties there would still be enough assets to properly  
8 compensate Lynita and LSN Trust at the finalization of this matter. The  
9 determination in question was made by the Court in the limited context  
10 of its decision not to require the immediate transfer of certain funds  
11 (totaling only a few hundred thousand dollars).

12 Eric and ELN Trust argue that the Russell Road property should  
13 somehow be excluded from a general JPI, because Lynita and LSN Trust  
14 purportedly do not have an interest in the property. First, the Court has  
15 not decided yet if Russell Road is community or separate property, and  
16 until such a decision is made, all property acquired during marriage is  
17 presumed to be community property. *Forrest v. Forrest*, 99 Nev. 602, 604-  
18 05, 668 P.2d 275, 277 (1983).

19 Even if there was no such presumption under Nevada law, Eric's  
20 and ELN Trust's description of the acquisition of the Russell Road  
21 property is predicably untrue. On November 23, 1999, Lynita's revocable  
22 1993 trust acquired sole ownership of Russell Road.<sup>1</sup> As confirmed by  
23 Larry Bertsch, Lynita's revocable 1993 trust paid \$855,945.00 to  
24

25  
26 <sup>1</sup> See Defendant's trial Exhibit UUUU, and specifically Grant, Bargain, Sale  
27 Deed 1999112301029, executed on September 25, 1999, and recorded on November  
23, 1999, contained within said Exhibit.

1 purchase this property.<sup>2</sup> On June 14, 2001, without any financial  
2 consideration being paid to the LSN Trust, Eric had Lynita transfer title  
3 to Russell Road to CJE&L, LLC,<sup>3</sup> a newly formed entity whose  
4 membership consisted of the LSN Trust, and the Nelson Nevada Trust  
5 (Cal and Jeanette Nelson, Eric's brother and sister-in-law, as Trustees).  
6 On January 1, 2005, Eric had the LSN Trust assign its 50% membership  
7 interest in CJE&L, LLC to the Nelson Nevada Trust (Cal and Jeanette  
8 Nelson, Trustees), thus forfeiting all interest in the Russell Road property  
9 for which Eric had Lynita's 1993 trust pay the \$855,945.00 in 1999. Mr.  
10 Bertsch confirmed that the forfeiture of the LSN Trust's interest in the  
11 Russell Road property was transferred to the capital account of Cal  
12 Nelson, there being no cash attached to this transaction. On February 3,  
13 2010, CJE&L, LLC sold its 50% interest in Russell Road to Eric Nelson  
14 Auctioneering for \$4,000,000.00.<sup>4</sup> The LSN Trust has never received  
15 compensation for its interest in Russell Road.

16 With regard to Eric's and ELN Trust's claim that Wyoming Downs  
17 should be excluded from any JPI that is issued by the Court – and from  
18 any tracing – this property is also presumed to be community property as  
19 it was acquired during marriage. The Nevada Supreme Court did not  
20

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21 <sup>2</sup> The total purchase price was \$875,000.00 as reflected in Defendant's trial  
22 Exhibit UUUU (see Declaration of Value form immediately following Grant, Bargain,  
23 Sale Deed).

24 <sup>3</sup> See Defendant's Trial Exhibit UUUU, and specifically Grant, Bargain, Sale  
25 Deed 2001061400850, executed on June 7, 2001, and recorded on June 14, 2001,  
26 contained within said Exhibit.

27 <sup>4</sup> See Defendant's Trial Exhibit UUUU, and specifically Grant, Bargain, Sale  
Deed 201002030002960, executed on February 2, 2010, and recorded on February 3,  
2010, contained within said Exhibit, and Eric's 2010 Testimony.

1 exclude Wyoming Downs from a tracing when it indicated that the  
2 properties in trust needed to be traced.

3 B. Eric's And ELN Trust's Request For Reconsideration Is Untimely

4 After frivolously attacking Lynita's entirely proper request for  
5 reconsideration of the Court's Decision, Eric and ELN Trust have found  
6 it appropriate to include in their own Countermotion a request for  
7 reconsideration. Eric and ELN Trust have requested that the Court  
8 "reconsider the imposition of its JPI against Banone, LLC and Lindell  
9 without the imposition of a bond." Aside from the fact that such a request  
10 has no merit, it is fatally defective in that it was filed more than two (2)  
11 weeks after the deadline for such a request.

12 Eighth Judicial District Court Rules, Rule 5.512 (2018), provides  
13 as follows:

14 (a) A party seeking reconsideration and/or rehearing  
15 of a ruling (other than any order that may be addressed by  
16 motion pursuant to NRCP 50(b), 52(b), 59 or 60), **must file**  
17 **a motion for such relief within 14 calendar days after**  
18 **service of notice of entry of the order unless the time is**  
19 **shortened or enlarged by order.** A motion for  
20 reconsideration does not toll the period for filing a notice of  
21 appeal.

22 (Emphasis added).

23 Had Eric and ELN Trust wanted the Court to reconsider its  
24 Decision of May 22, 2018, they could have done so at any time within  
25 fourteen (14) calendar days after service of notice of entry of the Decision  
26 – i.e., by no later than June 5, 2018. Instead, Eric and ELN Trust chose  
27 not to file their request until June 22, 2018 – a date seventeen (17) days  
28 after the deadline for same. As a result of the untimely nature of Eric's  
29 and ELN Trust's request for reconsideration, this Court does not have  
30 jurisdiction to entertain same, and the request should be denied.

1 C. Eric's And ELN Trust's Request For The Posting Of A Bond Should  
2 Be Denied

3 Eric and ELN Trust have provided no justification – legal or  
4 otherwise – for their request that Lynita be required to post a bond as a  
5 result of the Joint Preliminary Injunction that was put in place by the  
6 Court in its Decision. In “support” of such a request, Eric and ELN Trust  
7 first cite to NRCP 65, which is entirely inapplicable to the Joint  
8 Preliminary Injunction issued in this matter. Thereafter, Eric and ELN  
9 Trust state that Lynita should be required to post a bond because “the  
10 ELN Trust has previously been required to post bond.” Such an  
11 argument is characteristically disingenuous. Eric and ELN Trust know  
12 full-well that the only time they were required to post a bond in this  
13 matter was during the appeal to the Nevada Supreme Court, and only in  
14 relation to the approximately \$400,000 in back rents that had been  
15 ordered to be paid to Lynita and LSN Trust. A bond on appeal is  
16 required of a party who wishes to stay enforcement of the judgment being  
17 appealed. *See* NRCP 62. No such requirement attaches to the Joint  
18 Preliminary Injunction. Furthermore, and as the Court is aware, Eric and  
19 ELN Trust were not required to post a bond, even on appeal, for the  
20 Russell Road property (instead they were simply ordered not to transfer  
21 the property pending appeal), nor for any of the properties awarded to  
22 Lynita in the Decree of Divorce and transferred to her post-Decree (i.e.,  
23 Banone and Lindell Properties), even though the Court enjoined Lynita  
24 from transferring such properties pending appeal. Simply put, Eric and  
25 ELN Trust were never required to post bond during the pre-divorce  
26 litigation of this matter, and were never at any time required to post a  
27 . . .

1 bond with regard to any of the parties' real properties even when they  
2 were granted injunctive relief by the Court.

3 D. The Lis Pendens Recorded By Lynita Should Remain In Place

4 On May 11, 2018, Lynita recorded certain Notices of Lis Pendens  
5 on the Banone Properties, the Lindell property, the Bella Kathryn  
6 property, and the Russell Road property ("Lis Pendens"), in order to  
7 protect same. On May 14, 2018, the Lis Pendens were recorded with the  
8 Clark County Recorder's Office.

9 In their Countermotion, Eric and ELN Trust now seek to have the  
10 Lis Pendens expunged. In order to "support" such a request, Eric and  
11 ELN Trust have blatantly mischaracterized the Nevada Supreme Court's  
12 holdings in this matter by stating that "Eric and Lynita's community  
13 property was transmuted to separate property and Lynita failed to  
14 introduce any evidence . . . that the Parties separate property was  
15 transmuted back to community property." As the Court knows, Lynita  
16 and Eric presented an overwhelming amount of evidence that the  
17 property held by the parties in trust was transmuted to community  
18 property. This Court is actively engaged in conducting a tracing of the  
19 parties' properties, as directed by the Nevada Supreme Court, and will  
20 have to review/hear the evidence again and determine the character of  
21 property once the tracing is completed.

22 1. The Lis Pendens Meet All Requirements Of NRS 14.015

23 Pursuant to NRS 14.015(2) and (3), there are several factors that  
24 must be analyzed and established by Lynita in support of her Lis  
25 Pendens. Lynita bears the burden of establishing same to the satisfaction  
26 of the Court, which is an extremely low burden of proof that is less than  
27 . . .

1 even a preponderance of the evidence. Accordingly, and in compliance  
2 with NRS 14.015, Lynita now addresses each factor, in turn, below:<sup>5</sup>

3 a. The instant action affects the title or possession of the  
4 real property described in the Lis Pendens

5 As conceded by Eric and ELN Trust in their Countermotion, lis  
6 pendens are permissible in “an action for the foreclosure of a mortgage  
7 upon real property, or affecting title or possession of real property.” NRS  
8 14.010(1); NRS 14.015(2)(a). Further, Eric and ELN Trust acknowledge  
9 that Nevada law provides that “lis pendens are not appropriate  
10 instruments for use in promoting recoveries in actions for personal or  
11 money judgments, rather, their office is to prevent the transfer or loss of  
12 real property which is the subject of dispute in the action that provides  
13 the basis for the lis pendens.” *Levinson v. District Court*, 109 Nev. 747,  
14 750, 857 P.2d 18, 20 (1993). Eric and ELN Trust do not even argue that  
15 the action does not affect the title to the real property in question.

16 As this Court is aware, the instant action unquestionably and  
17 undisputedly affects the title to countless parcels of real property, all of  
18 which are deserving of the protection offered by imposition of the Lis  
19 Pendens. The Lis Pendens were not recorded to promote the recovery of  
20 any personal or money judgment, but rather to protect Lynita’s potential  
21 community property interest in same. The Nevada Supreme Court  
22 remanded this matter in order for the Court to perform a tracing and to  
23 determine the extent of the parties’ community property interests in the  
24 properties held in the ELN Trust and LSN Trust. In the event the Court  
25

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26 <sup>5</sup> Eric and ELN Trust have cited the relevant factors in their Countermotion, but  
27 have conveniently chosen to omit any analysis of same, knowing full-well that such an  
analysis would only support Lynita’s actions.



1 determines that any or all of the property held in the ELN Trust and LSN  
2 Trust is community property, then the title to such real property subject  
3 to Lynita's Lis Pendens will be affected.

4  
5 b. The action was not brought in bad faith or for an  
improper motive

6 Lynita's First Amended Answer to Claims of the Eric L. Nelson  
7 Nevada Trust; and First Amended Claims for Relief Against Eric L.  
8 Nelson, Eric L. Nelson Nevada Trust dated May 30, 2001, Lana Martin,  
9 Nola Harber, Rochelle McGowan, Joan B. Ramos, and DOES I through  
10 X ("Amended Answer"), was not brought in bad faith or for an improper  
11 motive. Lynita sought by that pleading only to protect her community  
12 property interests in the parties' assets, and to otherwise protect her rights  
13 resulting from the parties' marriage. Lynita did not act in bad faith or for  
14 an improper motive at that time, or at any time throughout the litigation  
15 of this matter, including, but not limited to, at the time that she recorded  
16 her Lis Pendens against a number of the real properties at issue in this  
17 matter.

18 c. Lynita would be able to perform any conditions  
19 precedent to the relief sought in this action insofar as it  
affects the title or possession of the real property

20 Should Lynita ultimately be awarded any of the real properties at  
21 issue in this matter, she would be perfectly able to assume title thereof,  
22 and there are no conditions precedent that she would not be able to  
23 perform.

24 d. Lynita would be irreparably injured by any transfer of  
25 the real properties prior to the conclusion of this action

26 If Lynita's Lis Pendens were expunged – thereby permitting Eric and  
27 ELN Trust to sell the real properties in question – and this Court's tracing

1 and final adjudication ultimately determines that Lynita has a community  
2 property interest in some or all of the real properties in question, Lynita  
3 would be irreparably injured. The Nevada Supreme Court has long held  
4 that the loss of real property constitutes irreparable harm. *See Thatcher v.*  
5 *Dixon*, 103 Nev. 414, 742 P.2d 1029 (1987)(“Because real property and  
6 its attributes are considered unique and loss of real property rights  
7 generally results in irreparable harm). As the Court will recall, Eric and  
8 ELN Trust relied on this same argument (the uniqueness of property) to  
9 enjoin the sale or transfer of the Banone, LLC and Lindell Properties  
10 pending appeal, even though no bond was posted by Eric and ELN Trust  
11 to obtain a stay of enforcement of the judgment.

12       There is no doubt that if the Lis Pendens were expunged, Eric and  
13 ELN Trust would not hesitate to liquidate the properties as soon as  
14 possible, and prior to the completion of the Court’s tracing. First, Eric’s  
15 and ELN Trust’s desire to immediately liquidate the properties in their  
16 grasp is the only reason that Eric and ELN Trust are so desperately  
17 seeking the expungement of the Lis Pendens and the  
18 cancellation/limitation of a JPI. Second, Eric had begun to make  
19 arrangements for the improper sale of a number of the real properties in  
20 question prior to the issuance of the limited JPI. In his haste, Eric made  
21 a mistake and did so even before Lynita had executed the Quitclaim  
22 Deeds necessary to title the properties in the name of the ELN Trust,  
23 thereby allowing Lynita to receive notification of some of the attempted  
24 sales. Exhibit A.

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e. Lynita is likely to prevail in this action or has a fair chance of success on the merits in the action and the injuries described above would be sufficiently serious that the hardship on Lynita would be greater than the hardship on Eric and ELN Trust resulting from the Lis Pendens

It is likely, and, in the alternative, there is at least a fair chance, that Lynita will prevail in this action and that this Court's decision of remand will result in a determination that Lynita has a community property interest in some or all of the real properties in question. The irreparable harm that would be suffered by Lynita in the event the Lis Pendens are expunged, as described above, is extremely serious, and makes clear that the hardship on Lynita would be far greater than the hardship to Eric and ELN Trust, which consists solely of an inability to sell the real properties in question prior to the finalization of this action. It must be pointed out that the real properties in question have been owned during the entire nine (9) year litigation of this action, and ELN Trust and Eric will not suffer any hardship by continuing to hold the properties until this matter is finalized.

f. If Lynita prevails in this action, she will be entitled to relief affecting the title or possession of the real properties at issue

As mentioned above, in the event the Court's tracing confirms Lynita's position that she has a community property in all of the parties' real properties, she will be entitled to relief affecting the title of same.

2. The Lis Pendens Are Also Specifically Permitted By NRS 125.220

In addition to the above analysis of the factors set forth in NRS 14.015, it is important for the Court to take into consideration that Nevada law specifically permits parties in divorce actions to record a

1 notice of pendency of the action in any county in which the other party  
2 has real property. NRS 125.220 provides as follows:

- 3 1. At any time after the filing of the complaint, the complaining  
4 spouse may record a notice of pendency of the action in the  
5 office of the county recorder of any county in which the other  
6 spouse may have real property. The notice has the same  
7 effect as notice in actions directly affecting real property.
- 8 2. The court may enjoin either spouse from disposing of any  
9 property during the pendency of the action.

10 By recording her Lis Pendens, Lynita has done nothing more than  
11 that she was entitled to do by NRS 125.220(1). Pursuant to NRS  
12 125.220(2), this Court may enjoin Eric and ELN Trust from disposing of  
13 any property until a final determination is made.

14 E. Eric's And ELN Trust's Request To Manage The Lindell Property  
15 Should Be Denied

16 Given that the hearing on Lynita's instant Motion is being held  
17 simultaneously with that on Lynita's Motion for an Order to Allow Her  
18 to Continue to Manage the Lindell Property, and Requiring Eric Nelson  
19 and ELN Trust to Pay Rent for Their Tenancy at the Lindell Property  
20 ("Motion to Manage"), and in order to save judicial resources in  
21 reviewing the associated documents, Lynita will address Eric's and ELN  
22 Trust's request to manage the Lindell Property in her Reply to their  
23 Opposition to the Motion to Manage, which will be filed in the coming  
24 days. Suffice it to say, however, Eric's and ELN Trust's request should  
25 be denied, as Eric has proven that he cannot be trusted, and the granting  
26 of his request would certainly cause financial harm to Lynita and the LSN  
27 Trust.

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1 F. Eric's And ELN Trust's Request For Attorneys' Fees and Costs  
2 Should Be Denied

3 Eric's and ELN Trust's request for an award of attorney's fees  
4 should be denied. Lynita's instant Motion is not frivolous in the least,  
5 and Lynita's Lis Pendens were appropriately recorded.

6 III. CONCLUSION

7 For the reasons set forth above, Lynita respectfully requests that the  
8 Court grant the relief requested in her instant Motion, and deny Eric's  
9 and ELN Trust's request for attorneys' fees and costs.

10 DATED this 12<sup>th</sup> day of July, 2018.

11 THE DICKERSON KARACSONYI  
12 LAW GROUP

13 By Josef Karacsonyi

14 ROBERT P. DICKERSON, ESQ.  
15 Nevada Bar No. 000945  
16 JOSEF M. KARACSONYI, ESQ.  
17 Nevada Bar No. 010634  
18 1745 Village Center Circle  
19 Las Vegas, Nevada 89134  
20 Attorneys for Defendant  
21  
22  
23  
24  
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26  
27

CERTIFICATE OF SERVICE

Pursuant to NRCPC 5(b), I certify that I am an employee of THE DICKERSON KARACSONYI LAW GROUP, and that on this 12<sup>th</sup> day of July, 2018, I caused the document entitled 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, to be served as follows:

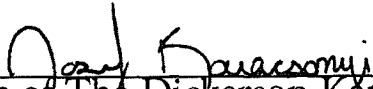
- pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCPC 5(b)(2)(D) and Administrative Order 14-2 captioned “In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court,” by mandatory electronic service through the Eighth Judicial District Court’s electronic filing system;
- 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;
- sent a courtesy copy via e-mail on Eighth Judicial District Court’s electronic filing system;
- by hand-delivery with signed Receipt of Copy.

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

...  
...  
...

1 Mark A. Solomon, Esq.  
Jeffrey P. Luszeck, Esq.  
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5 Trustee of the ELN Trust

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9

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An employee of The Dickerson Karacsonyi Law Group  
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**Exhibit “A”**

**Exhibit “A”**

**Exhibit “A”**





*First American Title*

L S N Nevada Trust  
10170 W TROPICANA AVE #156-16 LAS VEGAS NV 89147

May 01, 2018

Subject Property: 1301 Heather Ridge Road, North Las Vegas, NV 89031  
Assessor's Parcel No. 124-28-814-010

Order No.: 119-2542960

Dear L S N Nevada Trust:

First American Title Insurance Company was selected to provide title insurance involving a transaction on the above listed subject property.

We are writing to you today as part of First American's fraud prevention efforts. We want to alert you that a transaction may be pending. **If you are not in the process of selling or refinancing this property, please contact us immediately at (866) 263-4563.**

However, if you are in the process of selling or refinancing this property, there is no need to contact us. The purpose of this letter is simply to alert you as the property owner, in the event that somebody is trying to convey or encumber your property without your knowledge or permission.

If you are selling or refinancing this property, we thank you very much for allowing First American to handle this transaction. We appreciate your business.

First American Title Insurance Company is the largest subsidiary of First American Financial Corporation (NYSE:FAF). First American Financial Corporation traces its heritage to 1889 and was recognized as a Fortune® 500 Company in 2016.

Sincerely,

First American's Property Notification Group  
Fraud Protection Specialist  
5 First American Way  
Santa Ana, CA 92707  
Phone: 866-263-4563

21148751

SRAPP000525



*First American Title*

L N S Nevada Trust  
10170 W TROPICANA AVE #156-16 LAS VEGAS NV 89147

May 01, 2018

Subject Property: 4133 Compass Rose Way, Las Vegas, NV 89108  
Assessor's Parcel No. 138-03-815-002

Order No.: 119-2542962

Dear L N S Nevada Trust:

First American Title Insurance Company was selected to provide title insurance involving a transaction on the above listed subject property.

We are writing to you today as part of First American's fraud prevention efforts. We want to alert you that a transaction may be pending. **If you are not in the process of selling or refinancing this property, please contact us immediately at (866) 263-4563.**

However, if you are in the process of selling or refinancing this property, there is no need to contact us. The purpose of this letter is simply to alert you as the property owner, in the event that somebody is trying to convey or encumber your property without your knowledge or permission.

If you are selling or refinancing this property, we thank you very much for allowing First American to handle this transaction. We appreciate your business.

First American Title Insurance Company is the largest subsidiary of First American Financial Corporation (NYSE:FAF). First American Financial Corporation traces its heritage to 1889 and was recognized as a Fortune® 500 Company in 2016.

Sincerely,

First American's Property Notification Group  
Fraud Protection Specialist  
5 First American Way  
Santa Ana, CA 92707  
Phone: 866-263-4563

21148754

SRAPP000526



*First American Title*

L S N Nevada Trust  
10170 W TROPICANA AVE #156-16 LAS VEGAS NV 89147

May 03, 2018

Subject Property: 4820 Marnell Drive, Las Vegas, NV 89121  
Assessor's Parcel No. 161-20-712-026

Order No.: 119-2542955

Dear L S N Nevada Trust:

First American Title Insurance Company was selected to provide title insurance involving a transaction on the above listed subject property.

We are writing to you today as part of First American's fraud prevention efforts. We want to alert you that a transaction may be pending. **If you are not in the process of selling or refinancing this property, please contact us immediately at (866) 263-4563.**

However, if you are in the process of selling or refinancing this property, there is no need to contact us. The purpose of this letter is simply to alert you as the property owner, in the event that somebody is trying to convey or encumber your property without your knowledge or permission.

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First American's Property Notification Group  
Fraud Protection Specialist  
5 First American Way  
Santa Ana, CA 92707  
Phone: 866-263-4563

21160864  
SRAPP000527

FILED

AUG 14 2018

*Alvin J. Sullivan*  
CLERK OF COURT

1 TRANS

2

ORIGINAL

3

4

5

EIGHTH JUDICIAL DISTRICT COURT

6

FAMILY DIVISION

7

CLARK COUNTY, NEVADA

8

9

ERIC L. NELSON, )

10

Plaintiff, )

CASE NO. D-09-411537-D

11

vs. )

DEPT. C

12

LYNITA NELSON, )

(SEALED)

13

Defendant. )

(ERRATA)

14

15

BEFORE THE HONORABLE FRANK SULLIVAN  
DISTRICT COURT JUDGE

16

TRANSCRIPT RE: ALL PENDING MOTIONS

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MONDAY, JULY 23, 2018

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1 APPEARANCES:

2       The Plaintiff:                   ERIC L. NELSON  
3       For the Plaintiff:               RHONDA FORSBERG, ESQ.  
4                                       64 N. Pecos Rd., Suite #800  
                                      Henderson, Nevada 89074  
                                      (702) 990-6468

5       The Trustee:                    NOT PRESENT  
6       For the Trustee:                JEFFREY LUSZECK, ESQ.  
7                                       9060 W. Cheyenne Ave.  
                                      Las Vegas, Nevada 89129  
                                      (702) 853-5483

8       The Defendant:                 LYNITA NELSON  
9       For the Defendant:             JOSEF KARACSONYI, ESQ.  
10                                      1745 Village Center Cir.  
                                      Las Vegas, Nevada 89134  
                                      (702) 388-8600

11       Also Present:                  LARRY BERTSCH  
12                                      Larry L. Bertsch, CPA  
                                      & Associates

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1 LAS VEGAS, NEVADA

MONDAY, JULY 23, 2018

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P R O C E E D I N G S

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(THE PROCEEDINGS BEGAN AT 09:05:33)

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THE COURT: -- computer up so I can pull up any documents I need. This is the time set in the -- whoops -- in the matter -- in the Nelson matter, case number D-09-411537. We'll get everyone's appearance for the record. We'll -- we'll start with --

MR. KARACSONYI: Josef Karacsonyi on behalf of Lynita Nelson who is present. 10634 is my bar number.

THE COURT: Mr. Bertsch?

MR. BERTSCH: Larry Bertsch. I've been appointed to do some extra research working on the project.

THE COURT: Thank you.

MR. LUSZECK: Jeff Luszeck, bar number 9619, on behalf of Matt Klabacka, distribution Trustee of the trust.

THE COURT: Thank you.

MS. FORSBERG: Good morning, Your Honor. Rhonda Forsberg, 9557, on behalf of Eric Nelson who is present to my right.

THE COURT: Thank you. Sit down. Good morning. Good morning Ms. Lynita and Mr. Eric. Good to see both of you again. I have -- let me make sure I got everything pending

1 before me, so before -- and this is on Ms. Nelson's motion to  
2 consolidate and also her motion for reconsideration. I have  
3 read the Trustee's opposition to the consolidation and their  
4 countermotion for attorney's fees. I also have it on for Ms.  
5 Nelson's motion to run the Lindell property and for Mr. Nelson  
6 to pay rent. I've read that along with the Trustee's  
7 opposition to the motions and to terminate the JPI and post a  
8 bond on the property, expunge the lis pendens, and allow ENL  
9 Trust (sic) to run the Lindell property and for attorney's  
10 fees and Ms. Nelson's reply to opposition to the motion to  
11 consolidate and the Trustee's opposition to Lynita running the  
12 property and Eric paying rent and all the other replies on  
13 that.

14 Is -- is there anything that I missed that we have  
15 on calendar for?

16 MR. KARACSONYI: I didn't -- you said the JPI,  
17 the --

18 THE COURT: Yeah.

19 MR. KARACSONYI: -- reconsideration?

20 THE COURT: JPI, I said.

21 MR. KARACSONYI: Okay.

22 MR. LUSZECK: I wasn't aware of the motion to  
23 consolidate --

24 MR. KARACSONYI: I wasn't --

1 MR. LUSZECK: -- was on.  
2 MR. KARACSONYI: -- either.  
3 MR. LUSZECK: I --  
4 THE COURT: Was it?  
5 MS. FORSBERG: Yeah.  
6 MR. LUSZECK: I --  
7 MS. FORSBERG: I don't think --  
8 MR. LUSZECK: I thought based on prior  
9 correspondence with your office you were just going to be  
10 making a ruling --  
11 THE COURT: Yeah.  
12 MR. LUSZECK: -- put that on the bench.  
13 THE COURT: That was my thing on that as well, but  
14 that I dig through it just since people were going to be here  
15 if they wanted --  
16 MR. LUSZECK: Okay.  
17 THE COURT: -- anything on that, but I don't really  
18 indicate we do a separate order on that motion.  
19 MR. LUSZECK: Okay.  
20 MR. KARACSONYI: Okay. Yeah, that was my  
21 understanding as well.  
22 MR. LUSZECK: Yeah.  
23 THE COURT: Okay. All right. Let me get logged in  
24 there so I can pull up any documents and get this on a roll



1 for me.

2 (COUNSEL CONFER BRIEFLY)

3 THE COURT: I believe Mr. Bertsch you were here to  
4 try to get a date for your tracing? Is that kind of --

5 MR. BERTSCH: I need --

6 THE COURT: I know you want to trace --

7 MR. BERTSCH: -- further instructions from the  
8 Court --

9 THE COURT: Okay.

10 MR. BERTSCH: -- as well.

11 THE COURT: Okay. Okay. Because some of this is  
12 kind of a motion for reconsideration specifically.

13 MR. KARACSONYI: Do you want me to start there?

14 THE COURT: Yeah, why don't we start there on that,  
15 because as I said, I've already started writing a motion to  
16 consolidate. I may include that in all these orders, all  
17 these orders, so that I have one comprehensive order, but --

18 MR. KARACSONYI: Okay. All right. On May 22nd,  
19 your decision basically set the groundwork for -- for what our  
20 request. And that is you said both the BanOne LLC and Lindell  
21 properties are subject to a claim of community interests, and  
22 I'm quoting you, as such, both properties are entitled to a  
23 joint preliminary injunction to ensure that the properties  
24 remain intact prior to the completion of tracing and the final

1 judgment of this Court.

2           Eventually, the argument we're making here is you  
3 did include the BanOne and the Lindell properties to protect  
4 those, but there are other properties that are subject to a  
5 claim of community interest that we believe were just simply  
6 overlooked. And -- and the reason is clear. You were at that  
7 time transferring the BanOne and Lindell properties from --  
8 from Lynita and LSN Trust back to Eric and the ELN Trust. And  
9 so that point in time, those were the two properties that were  
10 really at the forefront of everyone's mind.

11           And as a result, we really didn't consider the other  
12 properties which are subject to a claim of community interest.  
13 Some of those properties that you divided even in the decree  
14 making an equal division were never transferred to her such as  
15 Russell Road, 2. -- 2.265 million worth of property. Bella  
16 Kathryn. All these properties that are in the ELN Trust and  
17 the LSN Trust are subject to a claim of community interest at  
18 this point in time. And until the tracing determines  
19 otherwise, I think we need to protect all those properties to  
20 ensure that she's protected.

21           EDCR 5.517 states that any property that's subject  
22 to a claim of community interest needs to be protected. And  
23 so we're not so much seeking reconsideration. They -- they  
24 make a big issue of well, you're seeking reconsideration of

1 this order and the Court's already considered it. We're  
2 actually just seeking a decision as to the scope of the JPI as  
3 it concerns those other properties. We're not asking you to  
4 change your prior order. We're just asking you to expand it  
5 and consider all those things.

6           They make some arguments about the -- the ELN Trust,  
7 that we don't have any interest in Russell Road, and the  
8 Wyoming Downs property. I've already -- we've already set  
9 forth the facts. You've heard about those properties and the  
10 transfers a hundred times before. I won't go back into the  
11 specifics of those.

12           But the bottom line is on those that you haven't  
13 made that decision yet as to what the interests are. That's  
14 still open for a tracing and debate. And so until that  
15 decision is made, the -- we need to keep -- make sure that  
16 those properties are protected.

17           So what we've asked for is that the Court enter a  
18 joint preliminary injunction and we set forth the specific  
19 language that -- that we propose that is hereby ordered that  
20 no property list in the decree of divorce entered June 3rd,  
21 2013 is to be transferred, encumbered, concealed, sold, or  
22 otherwise disposed of without a written agreement between the  
23 parties or further order of the Court to ensure the properties  
24 remain intact prior to the completion of the tracing.

1           And then in the alternative -- and I -- I don't  
2 think this is appropriate. I -- I -- but if you weren't  
3 inclined to enjoin all the property, which is subject to a  
4 claim of community interest, then we would ask at the very  
5 least that you ensure that there is at least half the property  
6 enjoined and that would mean enjoining everything that was  
7 awarded to Lyn -- Lynita as part of a -- a half -- a half  
8 property division in the decree of divorce.

9           But again, with changing values and changing facts  
10 and circumstances, I don't know if that's going to be  
11 sufficient. We don't know what the tracing's going to  
12 provide. And property is unique. So we would ask that you  
13 enjoin all that.

14           Did you want me to respond to their counter or or  
15 wait for them and --

16           THE COURT: Why don't we give them a chance --

17           MR. KARACSONYI: Yeah.

18           THE COURT: -- and then we'll do that. So --

19           MR. KARACSONYI: Go piece-by-piece?

20           THE COURT: Because -- yeah, because we got so many  
21 issues on that. We can --

22           MR. KARACSONYI: Thanks.

23           MR. LUSZECK: Your Honor, this is the third time  
24 that they have been asking for the exact same relief which is

1 for JPI over the -- all over the property that's owned by the  
2 ELN Trust and it's inappropriate.

3           You know, even in the last order this Court said  
4 okay, I'm going to impose a JPI, but just over BanOne and  
5 Lindell. But apparently that's not enough and they want a JPI  
6 over all of the property, even property that's -- can't be  
7 subject to a community property interest which includes  
8 Wyoming Downs.

9           I mean, we've -- I don't know how many times we've  
10 argued these facts before Your Honor, but the Wyoming Downs  
11 property was subject to a separate order. This Court found  
12 that it was the ELN Trust -- well, it -- it found that it was  
13 property of the ELN Trust, there was no community property  
14 interest, and that even if it was to be considered separate  
15 property, it was Eric's separate property. It was not  
16 remanded by the Nevada Supreme Court. She has absolutely no  
17 entitlement to a community property interest to it, but if  
18 this Court grants the requested relief today, they would even  
19 get a JPI over that property, Wyoming Downs, which is  
20 completely inappropriate.

21           Your Honor, the Nevada Supreme Court made it clear.  
22 The self-settled spendthrift trust were funded with each  
23 property separate which -- with each -- with Eric's separate  
24 property created the ELN self-settled spendthrift trust,

1 Lynita's separate property, funded Lynita's self-settled  
2 spendthrift trust.

3           Because of that, we're starting off with the  
4 proposition that it's separate property. I concede that in a  
5 regular divorce case you can impose a JPI over property that's  
6 titled in the name of the husband or in the name of the wife.  
7 That's not the circumstance here. The property that's owned  
8 isn't owned by them individually. It's owned by trusts,  
9 separate and distinct legal entities that the Court has -- the  
10 Nevada Supreme Court has already found what's funded with --  
11 with each of their separate property.

12           So because of that, I think it's inappropriate to  
13 treat this like any other divorce case by finding -- by making  
14 some type of finding that it's community property, especially  
15 after the Nevada Supreme Court said that wasn't the case. I  
16 concede that a tracing needs to be done, but the tracing is  
17 going to be limited to whether or not Eric had any assets in  
18 his name individually that were transferred into this trust in  
19 conversely with Lynita. Other than that, the assets owned in  
20 the trust maintain their separate property nature unless it's  
21 proven by clear and convincing evidence that that's not the  
22 case. And that hasn't happened throughout this litigation.  
23 So for that reason, it's inappropriate to enter a JPI over  
24 each and every piece of property that's owned by the ELN

1 Trust.

2           Ironically, Counsel mentioned the fact that there  
3 should be a JPI over the LSN Trust now. Well, the fact of the  
4 matter is that she sold a lot of her assets, so it's gone.  
5 The Palmyra house, gone. It was sold. So it's -- you know,  
6 this Court -- there's really nothing for this Court to impose  
7 a JPI on from her side, because it's all gone.

8           The -- the 720,000 I -- I assume that he's  
9 requesting a JPI over that as well. Your Honor, this Court  
10 has specifically addressed that in the April -- or sorry, the  
11 May 22nd order had a whole section on it and it said it wasn't  
12 going to impose a JPI, yet here we are once again and they're  
13 asking for the exact same relief. If this Court is inclined  
14 to impose any type of JPI on it, I think it has to impose some  
15 type of bond that needs to be paid by -- by Lynita Nelson or  
16 the LSN Trust.

17           The fact of the matter is because this property is  
18 being held up in this litigation, the ELN Trust is losing  
19 millions of dollars, Your Honor. It is suffering irreparable  
20 damage because it's just being held in abeyance because of all  
21 the claims that are being brought. If she wants a JPI, fine,  
22 but this Court can impose a JPI -- or sorry, pose a bond and  
23 require a bond pursuant to NRCP 53. It's what's happens all  
24 the time in any case with preliminary injunctions or temporary

1 restraining orders. It's not uncommon to do.

2           Once again, if the -- if the property was titled in  
3 their names individually and if it clearly was community  
4 property, I wouldn't have an issue with it. But it's titled  
5 in the name of separate entities, the ELN Trust or the LSN  
6 Trust, which there's no community property interest in.

7           Further, Your Honor, with respect to the lis pendens  
8 issue, the problem that I have -- well, I have another -- a  
9 number of issues with that. First, after this Court came out  
10 in the May 22nd, 2018 order, the Court said okay, I'm only  
11 going to impose a JPI over BanOne and Lindell. So guess what  
12 the LSN Trust does? They -- they file a lis pendens over all  
13 of the property owned by the ELN Trust, almost just snubbing  
14 their nose in the Court's face. I mean, I can only imagine  
15 what the arguments would be from that side if this had been  
16 done by Eric or the ELN Trust.

17           So this Court says no, I'm doing the JPI over  
18 Lindell, BanOne, and what -- what happens? We get a lis  
19 pendens over all the properties. We get a lis pendens over  
20 all the property. Even Bella Kathryn, Your Honor, which this  
21 Court I'm sure will recall, she wanted nothing to do with.  
22 The LSN Trust had -- wanted nothing to do with Bella Kathryn.  
23 They fought to make sure that it ended up on the ELN Trust's  
24 -- gosh, side -- side of the equation with respect to the



1 divorce decree. She wanted nothing to do with it. And now  
2 all of a sudden she's filing a lis pendens on the Bella  
3 Kathryn property? It's ridiculous, Your Honor. This needs to  
4 stop.

5           If this Court's inclined to impose a JPI on any  
6 additional property, which I disagree with because I don't  
7 think -- in -- in a matter of equity and a matter of law and  
8 however you want to look at it, Your Honor, I think it's  
9 inappropriate. But if this Court is inclined to impose a JPI  
10 in any other property, it has to be limited to Russell Road  
11 and I think that would even been appropriate. But this Court  
12 should impose a bond over all of those assets as well.

13           It's not unheard for courts to impose bonds on  
14 property that's being held up pursuant to a TRO or a  
15 preliminary injunction. I think it's only equitable for this  
16 Court to do in this case, especially because of the money  
17 that's being lost as a result of the same.

18           THE COURT: Do you have a position on this or --

19           MS. FORSBERG: Your Honor --

20           THE COURT: -- that's kind of --

21           MS. FORSBERG: -- just --

22           THE COURT: -- of the Trust --

23           MS. FORSBERG: -- one -- one point is that I think  
24 the Court can't lose sight of the fact that part of what ELN

1 does is buy and sell property. I mean, that is the business.  
2 I mean, by ham -- you know, hamstringing their entire business  
3 by these lis pendens and JPIs.

4 MR. KARACSONYI: Okay.

5 THE COURT: Reply.

6 MR. KARACSONYI: First of all, this isn't the third  
7 time. This was brought up initially at a hearing and you  
8 reserved the right to -- to -- or you took it under  
9 submission. The first time you made a decision regarding the  
10 JPI was when you issued the May 22nd decision just covering  
11 the BanOne and the Lindell properties which you specifically  
12 said were the only properties you were considering.

13 Wyoming Downs, we -- we have argued about it a lot  
14 of times. But the fact of the matter is that the supreme  
15 court held that a tracing needs to occur to determine whether  
16 the properties in the trust are community property or separate  
17 property. And I don't see anywhere in that order where they  
18 say that this excludes Wyoming Downs, which was acquired  
19 during the marriage and prior to the divorce.

20 All property that these people acquired during their  
21 marriage is presumed to be community property. And the way  
22 they've tried to characterize the tracing is -- is not in  
23 accordance with Nevada law. What -- even if you start with  
24 the presumption or that the -- that the Nevada Supreme Court

1 made a factual finding that all the property in 2001 was  
2 separate property, you have to be able to trace any property  
3 acquired during marriage to that same separate property. So  
4 the property owned at the date of divorce would need to be  
5 traced back to that separate property. If it couldn't be  
6 traced back to that separate property, then it's -- then it's  
7 presumptively community property. And then you have issues of  
8 transfers and why they occurred.

9           You'll find actually that -- well, they mentioned  
10 that these properties were titled in the ELN Trust. I think  
11 the facts are going to bear out that a lot of these properties  
12 were titled in the LSN Trust and I think the testimony has  
13 always been clear and it will be clear or -- or -- if the  
14 Court takes additional evidence that she didn't transfer these  
15 for a transmutation of community property. She transferred  
16 this property because she was told that it was going to be  
17 community property, so no transmutation has occurred.

18           The bottom line is in every divorce you may have --  
19 you're going to have trusts, especially with people of some  
20 affluence and they're going to have property in trust. And  
21 those people are entitled to the same protections as anybody  
22 else who appears before this Court.

23           Just because you were reversed on appeal and we're  
24 sitting here 10 years later and people are a little worn out

1 and this has been going on a long time doesn't mean that she's  
2 not entitled to the same protection today that she was  
3 entitled to on day one. And so we're asking for those same  
4 protections that she was entitled to on day one because that's  
5 really where we find ourselves as far as a tracing goes.

6 Now they mentioned the Palmyra property. The  
7 Palmyra property interestingly is the only property that was  
8 still owned at the date of divorce that was listed in the  
9 separate property agreement. So that's the one property out  
10 of all the property that really was separate property.

11 Now the bond issue. And they -- and they brought  
12 this up and responded in the -- in the opposition, but they've  
13 never been required to post a bond. They only required to  
14 post a bond one time on appeal was the order that you issued  
15 400,000 back to us.

16 If you'll recall, even though you're supposed to  
17 post a bond on appeal, what you did with the properties  
18 pending appeal is you said that I'm going to transfer some of  
19 the properties, not Russell Road, but I'm going to order that  
20 they not be transferred or cumbered -- encumbered or sold.  
21 I'm going to order that you don't transfer, encumber, or sell  
22 Russell Road. So basically what you did is you used the --  
23 the actual real properties as the bond for themselves.

24 We're not asking for the -- any of this to be sold

1 or -- or encumbered. We're -- we're asking for it to be --  
2 for you not to encumber or sell it. We're not asking for it  
3 to be transferred to us, but there shouldn't be a bond in  
4 place. There's not requirement for a bond and a bond would  
5 have a chilling effect in divorce actions, especially if one  
6 party couldn't pay the bond. So the -- there's specific rules  
7 for JPIs and for maintaining the status quo on property that  
8 are unique to divorce and we're relying on those rules.

9           Now the lis pendens, the lis pendens meets all the  
10 requirements of NRS 14.015. And that's why I say again, just  
11 because we're here 10 years later doesn't mean she's not  
12 entitled to the same protections as day one. She has  
13 satisfied everyone of those factors. And, you know, there's  
14 been no response, there's been nothing to show that she  
15 hasn't. And real property is unique and this is the same  
16 argument they made to you, Your Honor, is don't -- make sure  
17 that she can't transfer this property pending appeal because  
18 this is unique. It's unique then. It should be unique now.  
19 And it -- -- she is going to suffer irreparable harm if it's  
20 lost, just as they were going to suffer irreparable harm.

21           And so she's met all the requirements of a lis  
22 pendens to ensure that it doesn't get transferred. And why  
23 did she have to file the lis pendens? Because before you even  
24 had the transfer due date, she was getting notices from title

1 companies that he's trying to transfer the BanOne properties.  
2 She's going to be irreparably harmed. The property will be  
3 gone. So we need to protect this property and she's legally  
4 entitled to have a lis pendens pending -- pending appeal in  
5 this action she claims. And this action affects the title or  
6 possession of real property described in the lis pendens. The  
7 action was not brought in bad faith. I think we can agree  
8 there. She would be able to perform any conditions precedent  
9 to the release sought as it affects the title of property. She  
10 would definitely be able to assume the title.

11 She would be irreparably injured as they conceded  
12 during the appeal and she's likely to prevail in this che --  
13 action or has a fair chance. And for a lis pendens, as they  
14 pointed out, the burden is really low, to the satisfaction of  
15 the Court. If you find those factors are met, she's entitled  
16 to this lis pendens.

17 Again, I know it's been 10 years, it's been a long  
18 time, but please afford us the same -- we're asking to please  
19 be afforded the same protections as if we're here on day one  
20 even though it has been a long time.

21 So we hope that the Court will -- will properly  
22 protect Lynita during the pendency of this action to ensure  
23 that whatever happens at the end of the day that you can make  
24 it happen and that we're not with an order and then trying to

1 scramble to find out what happened and where the property  
2 went.

3 THE COURT: Okay.

4 MR. LUSZECK: Your Honor, with respect to Wyoming  
5 Downs, it's, you know, Page 6 and 7 of -- of my opposition.  
6 This Court had a separate evidentiary hearing on Wyoming  
7 Downs, Your Honor. In that order, this Court specifically  
8 found that there is no transmutation of Wyoming Downs from  
9 separate property, community property. Even assuming that  
10 Wyoming Downs was separate property of the ELN, Eric Nelson  
11 and not the property of the ELN Trust.

12 THE COURT: Are you referring to Page 6 of your --

13 MR. LUSZECK: Yeah.

14 THE COURT: -- of your position?

15 MR. LUSZECK: Lynita -- Lynita appealed that order.  
16 And the Court upheld the order, Your Honor. So this argument  
17 that somehow the Nevada Supreme Court ordered that that issue  
18 to be traced is false because the Court never overturned the  
19 September 22nd, 2014 order. In fact, the -- the Supreme Court  
20 specifically said we have considered the parties' other  
21 arguments which would have included Lynita's argument with  
22 respect to Wyoming Downs to include there without merit.

23 So this fallacy that somehow Wyoming Downs is  
24 included in this tracing and that somehow she has a community

1 interest in that is false and it's completely contrary to the  
2 Nevada Supreme Court's decision. It upheld the September  
3 22nd, 2014 order, period.

4           With respect to the argument that trust are always  
5 parties to a divorce proceeding. Well, that may be the case  
6 with the simple revocable trust. That's not what we have  
7 here. We have complex irrevocable trusts which have a whole  
8 different set of law under NRS 166. So you can't treat these  
9 self-settled spendthrift trusts which the supreme court has  
10 found to be valid the same way as you would a simple revocable  
11 trust. They are completely different concepts and trusts.

12           With respect to the bond issue, how, you know,  
13 Counsel's argument that that somehow is going to have a  
14 chilling effect on divorce, one, I disagree, but even if  
15 that's the case, Your Honor, if -- if the LSN Trust can't post  
16 a bond now which would really be de minimis in light of the  
17 ultimate damages that can be proven later, then how is she  
18 going to be able to -- to pay damages down the road? How is  
19 the ELN Trust going to be -- going to be protected and  
20 compensated if we -- if -- if all of the evidence shows that  
21 it was the separate property and there's no community property  
22 interest therein?

23           She should have to post a bond to protect the ELN  
24 Trust down the road, just like she's asking for protection,



1 the ELN Trust needs to be protected as well, Your Honor. And  
2 that's why a bond has to be posted now. The ELN Trust was  
3 required to post one during appeal. LSN Trust should be  
4 ordered to post one as well.

5 And with respect to the lis pendens issue, I think  
6 Ms. Forsberg may deal with that on a little more issue.

7 But she's not likely to prevail. There's not even a  
8 reasonably likelihood that she's going to prevail in this  
9 instance, Your Honor, because it is clear that it was separate  
10 property by the Nevada Supreme Court, so they have to prove by  
11 clear and convincing evidence that it was transmuted from  
12 separate to community property and there's no evidence that  
13 that occurred, Your Honor.

14 MS. FORSBERG: Your Honor, a couple issues on the --  
15 the lis pendens issue. I -- I think opposing Counsel fails to  
16 recognize that the Supreme Court has already ruled that those  
17 properties have to go back. And this Court ordered you need  
18 to do the deeds back. Instead of that -- and this Court also  
19 found that there was sufficient property in the list to  
20 compensate for anything that might have been found. But  
21 instead, they want all of this frozen when the Supreme Court  
22 has already ruled that it should go back. Instead, they're  
23 kind of circumventing the Supreme Court by filing these lis  
24 pendens. Those lis pendens need to be removed so that

1 business contin -- can continue as usual.

2 Everything is not going to go anywhere at any time.  
3 If you buy and you sell property, you're going to sell one  
4 thing and then buy something else. I mean, that's how they  
5 make money. That was -- that's how they became successful to  
6 begin with. This Court knows that was Mr. Nelson's acumen,  
7 that that's how he takes to press properties and purchase them  
8 and that's part of the -- the issue.

9 But for them to put a lis pendens, now that stops  
10 that whole process. And they're failing to recognize that the  
11 Supreme Court has already ruled those need to go back. So I  
12 think they're -- you know, they have enough security already  
13 in the amount of property that is available. Even -- even  
14 without -- with -- releasing those lis pendens, they have  
15 sufficient property. This Court has already ruled that they  
16 have sufficient property on that. So them doing a lis pendens  
17 is another thing of snubbing their nose at this Court's  
18 ruling.

19 THE COURT: Thank you. All right. With regard to  
20 our next issue. I think we wanted to address the Lynita  
21 running Lindell and her paying rent. Is that --

22 MR. KARACSONYI: Yes, Your Honor. Ms. Nelson has  
23 managed the Lindell property for the last four years.

24 THE COURT: 2013, right, I think?

1           MR. KARACSONYI: That's correct. And she's -- she's  
2 loved and cared for for this property and she's really poured  
3 her heart and soul into it. When she took it over, and we --  
4 we attached the pictures and -- and I know the Court -- the  
5 Court didn't like us saying that she -- that he was a -- a  
6 slum landlord. We won't say that with -- with regard to this  
7 property, but there was graffiti on the building, years of  
8 pigeon droppings on the roof, cracks and peeling of the paint,  
9 and unprofessional sign that you saw and that she's replaced  
10 with a very nice sign, trash collecting outside. A Clark  
11 County Building Department violations that noted that the  
12 building would be shutdown in 30 days if it wasn't brought  
13 into con -- compliance, homeless people sleeping or living in  
14 the steering gar -- well, taggers regularly climbing on the  
15 roof and -- and graffitiing the building and windows, breaking  
16 into suites, and leaving behind drug paraphernalia, food, and  
17 even feces.

18           So it -- she's really poured her heart and soul into  
19 this. Yes, she's put a lot of money into it, but she's done  
20 it so she can bring it to where it is today. And today, it's  
21 a beautiful building with a beautiful sign. And it's  
22 profitable. And it's attracting the type of tenants who are  
23 going to stay a long time, renew their lease, pay their rent.

24           THE COURT: I think you said there's only one

1 vacancy at the point --

2 MR. KARACSONYI: That's correct.

3 THE COURT: -- in time?

4 MR. KARACSONYI: That's correct. And -- and if you  
5 had -- had the rents, and -- and what we said is if you had  
6 the rents from 201, even with all the upgrades and  
7 improvements, if he had paid the hundred and eighty-eight  
8 thousand eight hundred dollars since June 3rd, 2013 when the  
9 property was transferred, well, then you wouldn't have this  
10 negative situation. It would have even covered all the  
11 improvements that had brought the property to where it is  
12 today.

13 So we ask that she continue -- be able to continue  
14 to manage the property. We ask for a 10 percent property  
15 management fee. And you previously found this sum to be  
16 reasonable for him. Now they -- they do some play on words,  
17 that she's asking for gross rents, but if you look at your  
18 order from the hearing, which we quoted in the -- in the  
19 reply, it's the exact -- exact same thing that you awarded to  
20 him which was 10 percent of the rents, the gross profit, and  
21 then less the expenses, the 10 percent of was one of the  
22 expenses.

23 But -- so it's no different than what they asked for  
24 before. And we ask that there is a lease entered into by Eric

1 and the ELN Trust because we need to have these rights and  
2 obligations and we -- they need to be responsible for rent.  
3 They can't take advantage of the fact that they're an owner  
4 because they're only a half owner. And them taking advantage  
5 -- advance -- advantage of being an owner is taking advantage  
6 of her and her rights.

7           And then we ask that you prohibit Eric from  
8 communicating with the tenants about the occupancy because  
9 obviously that would create issues within the building and he  
10 has been telling tenants that I believe from what she's been  
11 informed that -- that he is the exhusband and -- and to come  
12 to him with issues.

13           Now they asked to -- to manage it and to -- to do it  
14 for free. The reason they're making this offer is because  
15 they're going to make money on -- on the other end doing  
16 business, the way that he always did business, and that's  
17 making sure that there's no profits and that all kinds of  
18 expenses including children's health insurance and all the  
19 other expenses that we saw being paid through the business  
20 last time are paid through the business last time are paid  
21 through the business again and at the end of the day she gets  
22 nil. And so that is to her detriment and has always been to  
23 her detriment whenever he's in charge of things.

24           And so we allow that -- we ask that you not allow

1 that to happen again, but he needs to pay rent and she should  
2 be able to continue to manage the property going forward.

3 THE COURT: Do you want that rent to go back to June  
4 3rd, 2013 I think is what you're asking?

5 MR. KARACSONYI: Yeah -- yes. If -- if the Court's  
6 inclined -- but you did incline -- say that you may be  
7 inclined to do the offsets later. The -- the most important  
8 part is that it's going forward. But yeah, if the rent can be  
9 caught current -- current, that would be great as well. And  
10 -- and you remind me one other point. I apologize for -- for  
11 backtracking, but they said that they should only be required  
12 to pay 1600. That doesn't -- that's not how it works, because  
13 you're not factoring in to the overall expenses of the  
14 building. You pay in your 3200 into the general pool of  
15 monies and then you may not necessarily get 1600 profit from  
16 that 32 because all the expenses for the building are going to  
17 be paid. And whatever is left at the end of the day, you get  
18 one-half of that amount. And so doing it the way they're  
19 suggesting would only deprive her of -- of being able to get  
20 her full portion or benefit of that rent, the 3200.

21 THE COURT: Thank you. The Trust?

22 MR. LUSZECK: Your Honor, I know this is kind of  
23 paraphrasing, but I think the argument to some degree is is  
24 Eric can't manage it because if he does that he's going to

1 make sure there's no profits and ensure at the end of the day  
2 that Lynita gets nil because that's always been the way when  
3 Eric's in charge.

4           Your Honor, if you've looked at the numbers, that's  
5 exactly the situation since Lynita has been running Lindell.  
6 There has been no profits. She has dumped over a hundred and  
7 seventy-thousands dollars into that building and she's make --  
8 she's collecting less in rent today than she was when Eric --  
9 the ELN Trust transferred those property to her back in 2014,  
10 Your Honor.

11           If you look at the rent roles, if you just compare  
12 Exhibit 4 which is the accounting that they provided back in  
13 2015 with the current rent roles, unit 101 in July of 2016 was  
14 collecting \$1,600 a month. So Lynita dumps a hundred and  
15 seventy thousand dollars into Lindell. Guess how much it's  
16 collecting in rent now? \$1,102. Unit 102, \$800 a month. The  
17 lease that -- that she entered into now is for \$616 a month.  
18 Unit 103, \$800 a month back in 2014. Now it's -- I think it's  
19 around 650 a month. It's a little hard to tell based on the  
20 accounting. I mean, it's -- it's an absolute joke, Your  
21 Honor.

22           In December of 2008 -- or '17, the LSN Trust  
23 collected \$5,529. You compare that to July, August -- or  
24 July, August, September fo 2014, it collected \$7,800 a month.

1 So she's thrown in a hundred and seventy thousand dollars in  
2 maintenance and repairs and she's collecting less money than  
3 the ELN Trust was when apparently the -- the Lindell was in a  
4 horrible status and nobody wanted to -- to be tenants, Sir  
5 it's simply not the case.

6 I mean, the business loss, Your Honor, is just  
7 inexcusable. You know, it's interesting because when the ELN  
8 Trust was managing Lindell, and this court I'm -- I'm sure  
9 will certainly recall at one point the ELN Trust tried to get  
10 an offset for maintenance and repairs. And do you remember  
11 what the argument there was, Your Honor? It's so  
12 unreasonable. How can the ELN Trust this month's for  
13 maintenance and repairs? Well, that's a small fraction  
14 compared to what the LSN Trust has charged.

15 And this Court actually found that it wasn't even  
16 going to award the ELN Trust, all of the maintenance and  
17 repairs, because it found it to be excessive. And now in four  
18 years or five years they have incurred a hundred and  
19 seventy-five thousand dollars in debt to make Lindell not  
20 profitable.

21 And with respect to Lynita and the LSN Trust, I  
22 don't even know if she's properly licensed. I don't know if  
23 she has a license to manager the property. I don't know if  
24 she has business licenses. I don't know if she has any of



1 that. Maybe she does. I don't know. But it makes no sense  
2 for Lindell to pay her a -- or the ELN Trust to make sure she  
3 receives a 10 percent management fee when it's willing to do  
4 it for free. If she wants to do it for free, maybe that  
5 changes the equation to some degree.

6 But the ELN Trust shouldn't have to pay her  
7 management fee to do something that it's willing to do for  
8 free, especially with respect to the unit that it's renting,  
9 on the second floor. So even if this Court ordered that it  
10 start paying \$3200 a month, it's going to have to pay Lynita  
11 \$320 a month to manage the property. I don't know what if  
12 anything she's doing with respect to unit 201 where the ELN  
13 Trust operates out of. So it wouldn't be appropriate for her  
14 to do that.

15 With respect to paying rent, Your Honor, if this  
16 Court is inclined to order the ELN to start paying rent. AS  
17 Mr. Karacsonyi indicated, the LSN Trust already owes the ELN  
18 Trust 4 to \$500,000. So to the extent this Court wants to  
19 start ordering that those payments be made, it should be  
20 deducted from the amount. It should be offset so that the ELN  
21 Trust doesn't have to keep writing a -- a -- write a check  
22 every month to the LSN Trust. It should be deducted from the  
23 4 or \$500,000 that this Court already recognized should not  
24 have been transferred from the ELN Trust to the LSN Trust.

1           With respect to the sign that we probably heard 10  
2 times about today, at least the sign that the ELN Trust had  
3 up, at least it said that there was a vacancy. At least there  
4 was a phone number for somebody to call if they wanted to rent  
5 one of the units. The sign that's up now, there's nothing.  
6 There's no contact information. If somebody wanted to get  
7 into Lindell based on the pictures that were shown, I don't  
8 know how they would get in contact with Lynita to find out  
9 about that vacancy.

10           The fact of the matter is while she may have poured  
11 her heart and soul into this property, maybe she -- I don't  
12 know, but it's been a losing proposition from day one and the  
13 ELN Trust is suffering because of bad business decisions that  
14 have been made by the LSN Trust. Those units have been vacant  
15 -- vacant for years and I believe I identified that in my  
16 opposition. And the ELN Trust should not continue to incur  
17 damages because of -- of what's been going on today.

18           THE COURT: Do you got a position on this?

19           MS. FORSBERG: Your Honor, one thing to add. To our  
20 knowledge, I know they say that she's still a resident of  
21 Nevada, but she technically lives from our understanding is in  
22 Evanston. She's even on the Omni Award directory in Evanston,  
23 Wyoming, to our knowledge.

24           So the other problem is he's on property to manage

1 this -- this property all the time. She's nowhere to be  
2 found. So that's kind of hard to manage that on a day-to-day  
3 basis whenever it's early, not here, so --

4 MR. LUSZECK: Can I -- can I just add one more  
5 thing, Your Honor? And I don't know -- even if this Court  
6 finds if she can still manage it, I don't understand how this  
7 Court can preclude the ELN Trust which is a 50 percent owner  
8 in Lindell from speaking with any other -- any of the other  
9 tenants or precluding it somehow to exercise any of its rights  
10 as a manager.

11 Just because -- if this Court finds that the LSN  
12 Trust can continue to manage it, she can't still keep  
13 incurring this debt and making improvements without the  
14 consent of the ELN Trust. There still has to be  
15 communication. But it seems like what she's asking for is  
16 just cart blanche authority to do whatever she wants despite  
17 the fact that the Nevada Supreme Court found a year ago that  
18 the ELN Trust still has a community -- or sorry, a 50 percent  
19 interest in the property.

20 Oh, gosh. And then the whole parking roof debacle.  
21 I mean, that's just one example, Your Honor. I mean, that  
22 happens in December 20th and it's not -- there is -- a tenant  
23 has their truck that's stuck under this carport for a month  
24 and nothing happens. And I know in the reply they say well,

1 he wanted it to stay there for insurance purposes.

2           Your Honor, that is so farfetched. You're telling  
3 me a tenant of a property is going to want their truck to  
4 stand under a carport for a month? That's a joke. There is  
5 no evidence of that. Where is the affidavit from the tenant  
6 stating that? That's not what happened. That's not what  
7 occurred. It was a complete liability for Lindell property,  
8 nonetheless, it sat there for 30 days until it was ultimately  
9 removed and the tenant was allowed to get his car out of  
10 there. And that carport still isn't up even though she's  
11 managing the property.

12           THE COURT: Any rebuttal?

13           MR. KARACSONYI: Okay. And -- and Ms. Nelson would  
14 like to say a few words about his last point. I mean, she's  
15 really -- really upset about that.

16           THE COURT: Sure.

17           MR. KARACSONYI: But the rent roles -- first of all,  
18 two of those people stopped paying rent and were run off by  
19 Eric immediately after the transfer or weren't paying rent at  
20 the time. The church group stopped paying rent two months  
21 after the transfer. So you can have a lease for all the money  
22 you want, but if the people aren't paying rent and they're not  
23 staying at the building, you're not going to be profitable.

24           Now as far as the repairs and maintenance that they

1 requested in the past, as you recall, a lot of those repairs  
2 and maintenance were for things that the Court really couldn't  
3 justify. He wasn't changing a roof. He wasn't painting the  
4 building. It was Lance Lou (ph) and other people who were  
5 just getting these -- these monies for repair and management  
6 but the Court couldn't really determine at that point what was  
7 being repaired or managed by these people. You don't need to  
8 have a license as a private owner to rent your own property.  
9 You don't have to have a property management license. She's  
10 an owner of this property.

11 I didn't say -- he says that we acknowledge that she  
12 owes money. I didn't say she owes money. What I did  
13 acknowledge, and -- and reminded this Court of, is that the  
14 fact that -- that you've already said that if there are monies  
15 owed between the parties that you are going to reserve that  
16 for a later date. You haven't made that determination whether  
17 he owes money, she owes money, and you decided, I believe  
18 rightfully, that it should wait until we find out what the  
19 tracing produces because if the tracing states that property  
20 doesn't -- it needs to be transferred back to Ms. Nelson or  
21 vice versa, it's going to affect how you look at those monies  
22 that were collected during the pendency of the appeal, if she  
23 still has a right to those properties.

24 So you haven't made a determination that anybody

1 owes money. I haven't conceded that we owe any money. All I  
2 was simply saying is you took the issue of past monies owed  
3 between the parties. You took that and reserve that to be  
4 done at the very end of this case. And so to the extent that  
5 you asked about him paying the back rent, I -- I just reminded  
6 the Court that that was something that was reserved for a  
7 better -- for -- for a future date.

8           So the receivership we asked -- or they asked for,  
9 if you're not inclined to allow Ms. Nelson to run the  
10 property, certainly allowing Mr. Nelson to run the property  
11 isn't viable and we would ask then that you go with the  
12 receivership.

13           Now she is a resident of Nevada. She's never given  
14 up her residency. She is here managing the property.

15           And this -- this parking structure issue is so  
16 upsetting, because Ms. Nelson was on top of this issue from  
17 the very start even during the time of her mother's passing  
18 which was very difficult. So the -- the tenant asked to leave  
19 the -- the vehicle there until he can determine how to proceed  
20 with the insurance. And in the meantime, she had bids  
21 performed to replace the structure with the existing  
22 materials.

23           But here's what happened. We -- she gets these bids  
24 and he has all the stuff -- all -- all the material hauled

1 away. And so we sent them a letter as they know. And it --  
2 we sent them a letter saying we believe you had all the -- all  
3 the -- the material hauled away and you're causing -- costing  
4 her more money because she was going to use the existing  
5 material and already had the bids done. She's been on top of  
6 these issues for day -- from day one.

7           The pictures don't lie. The condition of this  
8 property is a hundred times better today than it was back  
9 then. And with that, I think she would like to say a few  
10 words about that issue because -- because it's really  
11 upsetting to her to hear -- to hear such lies spewed in court.

12           MS. NELSON: Thank you, Your Honor. I stand here on  
13 the merit of my honesty that I've had ever since I walked into  
14 this court and that I've sworn to. And for the representation  
15 of Coun -- of opposing Counsel to suggest that from their  
16 client who has --

17           MR. KARACSONYI: You can just --

18           MS. NELSON: -- determined --

19           MR. KARACSONYI: -- stick to the --

20           MS. NELSON: -- otherwise. I -- I appreciate the  
21 opportunity to talk about this proposed issue with the cover.  
22 Okay.

23           With regards to -- I -- I -- I'm not sure where the  
24 information is coming from. It's -- it's not from the tenant.

1 It's -- it's not accurate. It is a lie. It's not honest. I  
2 was in contact with the tenant and told him that I could have  
3 lifted it off myself. He wanted to pursue some situations  
4 with insurance and almost refused my -- my multiple time after  
5 time suggestions just to move the truck and have the insurance  
6 cover for it afterwards. That's not what he wanted to do. It  
7 could have been removed. I could lift the cover and pull the  
8 truck out. I could do it. I had a maintenance employee lift  
9 it with me, however, and there wasn't a problem.

10           The tenant also called one of the persons that I had  
11 obtained a bid from, because he wanted the insurance to  
12 oversee all of this. He didn't want to do it himself. Like I  
13 said, I don't know why. That -- that was his decision. It  
14 wasn't my responsibility. He originally wanted it to be my  
15 responsibility. I told him it was not. I wasn't in charge of  
16 the accident. It wasn't my responsibility. It was between  
17 him and his insurance company and had nothing to do with mine  
18 which is I think why he delayed it. He was trying to convince  
19 people that it was my responsibility.

20           He ended up -- I have emails, I have texts, going  
21 out, lifting the cover himself, and pulling the truck out.  
22 It's between -- it was his decision. It had nothing to do  
23 with mine. And I will address the timing as well.

24           My mom asked me to stay with her and not to leave



1 her side, because there were family members who were visiting  
2 her every day asking her to transfer what little she had,  
3 which was a house and two cars, over to them. When I began  
4 staying with her, they ceased to come. But a new one came.  
5 They were not invited to stay with her the last few days of  
6 her life because they were her family. They were her flesh  
7 and blood. And she because of the deceit was not allowed to  
8 be with her own mother when she passed.

9           And the suggestions and the lies that are coming  
10 about weeds from a person who would go and steal from a person  
11 on their death bed cannot be considered --

12           MR. LUSZECK: Your Honor, I --

13           MS. NELSON: -- or acknowledged --

14           MR. LUSZECK: -- object to the extent she's talking  
15 about Eric Nelson.

16           MS. NELSON: And anyway --

17           MR. LUSZECK: This is ridiculous.

18           MR. NELSON: No, she's not talking about me.

19           THE COURT: Yeah, I'm not sure it's --

20           MS. FORSBERG: She's talking about someone else.

21           THE COURT: And I didn't take it --

22           MS. FORSBERG: Her family --

23           THE COURT: -- that it still bothered her --

24

1 MR. LUSZECK: And she's not talking about her --  
2 MS. FORSBERG: It's someone in her family I think  
3 what she's --  
4 MS. NELSON: No, I am talking about you.  
5 MR. LUSZECK: Me?  
6 MS. NELSON: Yes.  
7 MR. LUSZECK: Come on, Your Honor.  
8 THE COURT: Yeah. Yeah.  
9 MR. LUSZECK: This has got to stop. This is --  
10 THE COURT: Yeah, we don't --  
11 MR. LUSZECK: -- ridiculous.  
12 THE COURT: Yeah, I didn't think -- I didn't talk --  
13 I did not take it as being --  
14 MS. NELSON: I'm talking about --  
15 THE COURT: -- Eric at this time.  
16 MS. NELSON: -- Mr. Nelson and my sister who were in  
17 cahoots together --  
18 MR. LUSZECK: Your Honor, I object --  
19 MS. NELSON: -- during this.  
20 MR. LUSZECK: -- to this.  
21 MS. NELSON: And they bring up the point that there  
22 was --  
23 MR. KARACSONYI: Okay.  
24 MS. NELSON: -- there was --

1 MR. LUSZECK: Your Honor --

2 MS. NELSON: -- some weeds that weren't pulled.

3 THE COURT: Okay. Well, we'll strike that --  
4 anything from the record as far as anything dealing with the  
5 mother and stuff on that. I was more concerned about the  
6 property management. Those issues are -- and obviously what  
7 happens -- you know, the reason I had transferred the  
8 management to Ms. Lynita back in 2014, when it was on that,  
9 because there was -- these people can't communicate. That was  
10 the problem. They couldn't deal with the altercation with the  
11 gate and push in and Lynita's heel getting caught on that and  
12 we were having almost altercations over a gate and access to  
13 the property and changing locks.

14 That's why we going to have you guys communicate.  
15 So I know you indicate they need to be able to communicate as  
16 co-owners and do it. And I wish they could, but we couldn't  
17 do that. And we almost got to a point where we had TPOs  
18 being filed and things like that, so we could not co-manage.  
19 And my other option would be to have a separate manager come  
20 and manage the property. That costs both parties money out  
21 that, because I think from when we had the testimony years ago  
22 about a 10 percent management fee was somewhere in the  
23 ballpark when we had it. We didn't really get a lot of  
24 expert. I mean, that's the problem, but my other option is to

1 get a separate person to come in and manage. Again, that  
2 costs -- that takes money out of both pockets. But if they  
3 have both owners communicate, I wish they could, but that's  
4 the problem on that.

5           But I think you're right for me to order and they  
6 cannot communicate with tenants. It's tough as ownership  
7 rights and that from the trust on that, but the fact is to try  
8 to have them communicate and work together, you know, probably  
9 is not going to happen. It's still very emotionally charged.  
10 It's been going on for -- I think they separated in 2008,  
11 filed in 2009, if I remember.

12           I mean, so I was hoping the case would ultimately  
13 settle after the Supreme Court decision to try to get there  
14 because I can only imagine the -- the pain and the stress and  
15 let alone business, but I think Ms. Lynita has always felt  
16 that when she came in on it, they talked to her kinda she was  
17 like a not very bright stay-at-home kind of mom raising kids  
18 on that and she felt that she can run business on that and she  
19 can always get into -- should they put the money in whose  
20 better business.

21           You know, the Court follows the business judgment  
22 rule. You assume people -- there's a judgment and not for me  
23 to secondguess people's judgment. They come in and make  
24 investments, do things like that, and people make business

1 enough for me to determine unless I see someone who's doing  
2 things fraudulently or not taking care of property, but that's  
3 the problem we're at this point, that no one trusts each other  
4 still, that they're afraid you're going to get rid of all the  
5 property just to try to make sure that no matter what happens  
6 that she won't get anything.

7           Your issue is you don't think that they're trying to  
8 tie you guys up, so you can't do business, but you guys need  
9 to get this resolved. But it's not going to be resolved. You  
10 guys are going to be litigating this probably -- I'm retiring  
11 in two-and-a-half years and I expect this will be litigated  
12 after my retirement and so be it. But I will take all the --  
13 any issues that I missed that you want to address? Because  
14 I --

15           MR. LUSZECK: Well, I just had two quick things.  
16 Counsel said that some of the tenants that were in the  
17 property when the LSN Trust took over the property weren't  
18 paying rent or only differ two months. That's false. If you  
19 look at Exhibit 4, gosh, the accounting that they provided for  
20 July, August, September of 2014 shows that every single tenant  
21 in there paid rent. The total of \$7,800 was collected from  
22 each month.

23           So I'm just telling you what they put in the  
24 accounting that they sent over to me that they ordered to by

1 the Court back in 2014. I believe it's Exhibit 4. Exhibit 4  
2 to my opposition.

3           And then with respect to the -- the carport, Your  
4 Honor, it just boils down to it's a liability issue. If it  
5 was this light -- you know, if -- if it was as light as -- as  
6 Ms. Nelson says that it was and she could have lifted it up,  
7 we're talking about December. What -- what would have stopped  
8 the wind from coming and blowing that across the street or  
9 hitting a house or hitting a commercial property or hitting  
10 somebody? It's a liability issue. It needed to be submitted  
11 to the insurance company for them to deal with it. It's a  
12 pretty straightforward type thing when it comes to commercial  
13 liability and commercial insurance policies. So that's what  
14 should have been done, but it wasn't.

15           MR. KARACSONYI: And it's just not true Your Honor  
16 about the rents. They -- they weren't paying full rents,  
17 so --

18           MR. LUSZECK: Well, that's -- we got it from his  
19 office. So it's Exhibit 4.

20           THE COURT: Any other things? I felt that -- as I  
21 said, I'll give you guys written orders on, everything we need  
22 written orders on, everything to get this moving forward. I  
23 think Mr. Bertsch -- I think you need an issue as -- as far as  
24 the tracing? I mean, and so you can get started. I think

1 that was the tie up on that. The parties cannot agree on a  
2 tracing date. Is that where we're still at?

3 MR. BERTSCH: You know, as I listen to this, in some  
4 cases it sounds like we're chasing the hamster and letting the  
5 elephants running over us.

6 THE COURT: Yeah, I --

7 MR. BERTSCH: And I've always tell my clients one of  
8 the best things to do if you're going any place, you get in  
9 the car and you go. What's the biggest window in that car?  
10 It's the windshield. That's where you're going. If you drive  
11 down the road looking in the rearview mirror, you're going to  
12 have an accident. And it appears by some of this that's about  
13 where we're headed.

14 Now as far as the tracing is concerned, I was  
15 looking for a starting point. And I looked at the schedules  
16 that were prepared on May 31st, 2001. And ask each side to  
17 verify if that is the starting point.

18 So as I understand the trust, it's like two  
19 different companies. They have no relationship other than  
20 they do business with each other like a vendor. I find in  
21 looking at those, there was -- it was titles for everything  
22 that was on there with a few exceptions which have to be  
23 answered. But after that, they're claiming what went in  
24 there, there's no community assets because now it's private

1 and it belongs to them individually.

2           What I find in looking at some of the information is  
3 after that things get commingled. And they don't remain  
4 separate. The titles go back and forth. And what I'm told is  
5 if we change one or if the other person got this, they can do  
6 whatever they want. So they're gifts.

7           And to my way of thinking, if there is a transfer,  
8 or money transferred, even though it's commingled, there's got  
9 to be due to and due from. And the transfers have to be at an  
10 arms length transaction and they were not arms length  
11 transactions here.

12           So the differences are passing through the  
13 commingling of funds. Should be an arms length transaction.  
14 If it isn't arms length and it goes to this considering a  
15 gift, to me, it may not be community property going in, but it  
16 gives me some sense. It became community property afterwards.  
17 So we need a definition what is the community property.

18           The Lindell, I think there's no question the  
19 receiver has to operate that property. In my doing this for  
20 over 50 years, that's the solution. And the receiver then can  
21 report and operate the property. That's my look. So it  
22 becomes hard to trace if everybody has a different opinion.  
23 If I trace it and it goes from one commingled to another, does  
24 that mean it's a gift and I forget about it? If that's the



1 case, where everything was signed up on May 31st, and it can  
2 be at a price that's not at fair value, you don't setup a due  
3 to and due from on everything. Then it's over. I have no  
4 tracing to do.

5           The other thing, we talked about the appraisal. And  
6 as I received the -- getting an appraisal on the property, one  
7 side said they didn't want to use the same person. I looked  
8 at finding an appraiser for the property on the cabin. And  
9 looking at their requirements and doing background checks, and  
10 I didn't look at the prior appraisal, I came up with who I'd  
11 like to talk to. I pull the appraisal it was the same person.  
12 So I think they're qualified. They both said it's okay to use  
13 the same one. I think it's cheaper. I think they're  
14 qualified. And I will contact them for doing an appraisal.

15           But I would like to have direction from the Court of  
16 how we treat this commingling, and if there are gifts, and  
17 should we pursue it on that basis.

18           MR. KARACSONYI: I'm going to -- oh.

19           MR. LUSZECK: Oh, sure.

20           THE COURT: Do you want to be heard on that? And  
21 then we'll -- thank you, Mr. Bertsch.

22           MR. LUSZECK: Yeah, I -- I thought this Court's  
23 order was clear. He's supposed to conduct a tracing as to  
24 what happened between the two entities, if anything. He's not

1 supposed to make opinions as to commingling or whether it's  
2 community property or whether it's fair market value or  
3 anything else. We have two separate entities. We've never  
4 disputed that there was business transactions between the two.

5 In the Supreme Court order on Page 17, this said the  
6 Court must trace trust assets to determine whether any  
7 community property exists within the trust. While I concede a  
8 tracing has to be done, it's not Mr. Bertsch's within his I  
9 think appointment of a special master to make a determination  
10 of whether or not anything was commingled or whether or not  
11 anything constitutes community property. I think that's a  
12 determination to be made by this Court.

13 So my understanding from day one is he's supposed to  
14 look at the two entities, identify any transactions between  
15 the two, and then come back to the Court and report that's  
16 what my finding is, Your Honor, you know. Entity A sold, you  
17 know, (indiscernible) to entity B, period. And then this  
18 Court makes a determination as to whether or not there's  
19 community property interest in there. If there's any claims  
20 of malfeasance or anything else with respect to a transaction,  
21 that's an A case, Your Honor. They've already filed a civil  
22 case for that. And that's where that deal's -- that's a  
23 situation where that's dealt with.

24 But I don't think it's appropriate for the special

1 master who is appointed for a -- a fairly limited purpose to  
2 make determinations with respect to questions of fact and law  
3 which I think are ultimately for this Court to decide. And  
4 then --

5 MR. BERTSCH: Your Honor, if I recall, the order to  
6 me was to find if community property got involved with those  
7 transactions. So we need a starting point. They were all in  
8 the trust. There was no community property at that time  
9 because the titles were in the appropriate names.

10 If that's considered gifts, after that if it goes  
11 back and forth, there's nothing for me to do other than just  
12 say it starts where it is. But I'm telling you, as I started  
13 through it, some of these other questions came to mind, and I  
14 need instructions from the Court, do I just drop it or do I  
15 finish going through the transactions from the first up to  
16 current?

17 MS. FORSBERG: Your Honor, if I can -- one -- one  
18 thing and I think perhaps would help Mr. Bertsch is that the  
19 character of property remains as it is. If it's separate  
20 property and you're transfer between, it's still separate  
21 property. It doesn't lose its characteristic. I think that's  
22 the confusion he's having. He's basically saying nothing else  
23 happened and they were separate to begin with. And I don't  
24 see -- I believe that's what he's saying. So I think he's not

1 understanding that character of property remains as is, the  
2 existing property. If it's separate property, rents, issues,  
3 and profits, which means selling or purchasing of other things  
4 which is profits, rents, issues, and profits remain as they  
5 are. And yet, they have to determine if they brought  
6 something else in to make them community. I think that's what  
7 he's confused about.

8 MR. KARACSONYI: I think what -- what's causing the  
9 confusion is that it sounds to me like he's being told -- and  
10 I assume this is coming from Mr. Nelson, that these transfers  
11 are gifts. He -- he's not supposed to presume anything. I  
12 think what you would like -- and I think what the Supreme  
13 Court's charge is and what you would like him to do is find  
14 out -- to report on each and every one of those transactions.  
15 Okay. As he said, property was transferred, was it arms  
16 length. Was there money back. If not, what should have been  
17 paid and what wasn't paid. And to do that with each and every  
18 transaction going forward and to find out where the property  
19 that existed in 2013 came from and whether you can trace it  
20 all the way back or whether it's so commingled you can't even  
21 trace it back.

22 And so with each -- with each transaction, I think  
23 it -- it -- it's his charge to just chart each and every  
24 transaction between these entities, whether money was paid for

1 it, you know, how the transfer occurred, each and every  
2 property that was acquired, where did the money come from to  
3 acquire that. Was -- did it come from the original money or  
4 did it come from money that was transferred between the two or  
5 did it come from money that it's impossible to say where it  
6 came from in which case that it's presumed to be community  
7 property.

8           And then at the end of the day Your Honor needs to  
9 make the decision once you have all this information, and they  
10 wrote this in their initial brief, they argued some of these  
11 points in their initial brief on remand, the -- the transfers  
12 were gifts and this and that, so you should find that they're  
13 separate property or whatever.

14           But it's ultimately your decision to determine under  
15 community property law whether there was a transmutation. And  
16 they talked a lot about transmutation. Whether her separate  
17 property was transmuted to his separate property. Whether her  
18 tran -- separate property was transmuted to community property  
19 or whether his community property -- or separate property was  
20 transmuted.

21           And so once you have all those transactions, then  
22 you can make the determination. And you can look at the law.  
23 Is this a clear and convincing evidence of a transmutation?  
24 This was Lynita's separate property. It went to Eric. Did

1 she intend to transmute that property and -- or did she intend  
2 to gift it to him?

3           And so those are all the things that you are  
4 ultimately -- I agree with Counsel. You are ultimately going  
5 to make those decisions as to whether the character of  
6 property change. But I think for Mr. Bertsch's purposes, I  
7 think the charges map each and every transaction from 2001 you  
8 -- which you indicated was the date that you thought the  
9 Supreme Court set to present -- to 2013 -- or 2013 and let me  
10 know what happened between these trusts and where the property  
11 that existed in 2013 if you can tell me definitively where  
12 that property came from. If you can tell me that you can  
13 trace that back to 2001.

14           MR. LUSZECK: Yeah, I don't -- I don't disagree with  
15 that. But that's what the charge is and that's the tracing  
16 that's supposed to happen is this -- yeah, what do we have in  
17 2001 and where was it going forward.

18           But I think the big misconception here is the fact  
19 that the only way the community property would even arise in  
20 this situation is if Eric or Lynita have assets titled outside  
21 of the trust that they transferred into the trust. And that  
22 would make it community property. So if Eric had assets  
23 income that were outside of the ELN Trust that he funded after  
24 2001 into the ELN Trust, then we may have a community property

1 issue. But the fact that the ELN Trust had an -- an asset in  
2 2001, sold it, purchased another asset, things like that  
3 nature, that doesn't transmute it into community property.  
4 The separate property retains its character throughout,  
5 through present.

6           So I think that distinction needs to be made, that  
7 just because there may have been transfers between the trust  
8 or business transactions, that doesn't mean it's transmuted  
9 into community property. It keeps and it retains its same  
10 nature.

11           THE COURT: I think the issue with Mr. Bertsch is to  
12 -- except -- is to trace -- is to tell (indiscernible) -- is  
13 to trace it so the Court can make a determination. Many  
14 positions will be it's a gift. The Supreme Court talked  
15 about, you know, gifts, things like that. Well, that's the  
16 whole thing to determine about. Was it -- and part of to  
17 determine the gift is you look to see, you know, was there  
18 arms length transaction, was there value. If I find  
19 everything going from one to the other, there's millions of  
20 dollars of gifts to that side and this group's getting  
21 nothing, I don't know if it's really a gift or not. I mean,  
22 that's the whole issue it comes on that.

23           And so I think (indiscernible) as far as whether  
24 it's commingling, I -- I think those issues are due -- due to,

1 due from. And to say where it went, how it got there, and  
2 where it went afterwards so we can determine those issues on  
3 that, was there a value paid, was there not value paid. Is it  
4 then going to be -- did he send her a gift or not a gift. I  
5 think that's the issue.

6           So I think the other fact is on that if we start  
7 from the premise that everything was a gift, I thin Mr.  
8 Bertsch says that there's nothing to trace. And I'm not  
9 taking a presumption everything was a gift. I think the issue  
10 is to see where it came from, May 31st, 2001 through the  
11 divorce decree or that property was, who owned it, where it  
12 went.

13           And again, I agree with you. If it was separate  
14 property, it doesn't automatically lose that, but the issue --  
15 I don't know where everything came. That's the issue on this  
16 question is that there's all these transactions, did this come  
17 from that, did this come from here, and that's what the  
18 Supreme Court was saying with the tracing. We don't know  
19 where everything came from, let alone with titles on that.  
20 But I know Mr. Karacsonyi disagrees, and I respect that about  
21 the Supreme Court, but they -- to me with their language, we  
22 hold. We find. I felt -- and that's why I went from the May  
23 31st, 2001 based upon a -- now maybe they used poor language,  
24 but that's something you clarify with them. But that's why I



1 went from the May 31st, 2001, here's where it started, where  
2 did it go through, June 2013. That's all I'm trying to trace  
3 it through that.

4           And I think Mr. Bertsch needs in all those issues,  
5 like was there value paid for it, was it this or that, so he  
6 can let me know on those issues and the Court would determine  
7 whether it's separate property or was it community property or  
8 where it went through, but there was the issues. I don't know  
9 where all the BanOne stuff came from, how it got there, to be  
10 honest.

11           I know we had different pieces of property. It's  
12 been so long ago, I forgot, but there's an awful lot of  
13 transactions from the 2001 when they created the trust what  
14 was in there and what came up to 2013, was there any property  
15 that a party put in that was separate property that of course  
16 they could not give their community property and trust if  
17 there was community property used on that. Eric could give  
18 his half, but not Ms. Lynita's half.

19           So that's the issue is what it looks like with the  
20 properties. So I'm not sure what the exact issue is from --  
21 from the trust, but I'll hear it from --

22           MR. LUSZECK: Well, the issue is is -- yeah, he's  
23 supposed to conduct a tracing, but he's not supposed to state,  
24 you know, this is community property, this is -- I believe

1 this wasn't for fair market value in our link's transaction.  
2 That's not the scope of his retention. He's supposed to  
3 trace. He's supposed to look at the transactions, here they  
4 are, Your Honor, here's my spreadsheet, here's my document,  
5 here's what it is, but it shouldn't contain language such as  
6 community property, commingling, you know, it shouldn't have  
7 any of that because that's not what a special master is  
8 supposed to do.

9 THE COURT: I agree.

10 MR. LUSZECK: That's one. And two, Wyoming Downs  
11 shouldn't be included in this tracing either based upon the  
12 fact that the 9/22/2014 was not overturned by the Nevada  
13 Supreme Court. So the issue is completely outside of the  
14 scope of his retention because it has nothing to do with  
15 anything.

16 MS. FORSBERG: Your Honor, just to -- to finish the  
17 clarification on that, is -- is -- it's -- to determine  
18 whether it was community property instead of if it's trust  
19 property and they did business between each other, that's not  
20 community property. That's two trusts that are separate  
21 entities that don't have a community interest. They're now  
22 separate property that are going back and forth. And whether  
23 that's fair or not is not before the Nevada Supreme Court the  
24 Supreme Court said. It said find out if there's any community

1 property that's been put in there and gone back and forth.  
2 That's the difference. I think that's one thing that Eric --  
3 we have been discussing that that's what the task is.

4           And that's what the tracing should show you, whether  
5 they brought something in from the outside that they -- they  
6 had earned on a community property setting and put it in.  
7 It's not whether they tran -- transferred separate property  
8 and transferred -- it still remains separate property. I  
9 think that's the confusion too.

10           MR. LUSZECK: But that's true, because any -- any  
11 claims that, you know, a transaction --

12           MS. FORSBERG: It's unfair or --

13           MR. LUSZECK: -- was not fair or anything else,  
14 that's subject to the A case.

15           MS. FORSBERG: That's not --

16           MR. LUSZECK: That's not --

17           MS. FORSBERG: -- this.

18           MR. LUSZECK: -- even -- this Court is to determine  
19 whether or not there's any --

20           MS. FORSBERG: Community --

21           MR. LUSZECK: -- community --

22           MS. FORSBERG: -- property, period.

23           MR. LUSZECK: -- property within either one of the  
24 trusts. It's not to determine whether or not a transaction

1 was fair or anything else. It's whether there was community  
2 property. Once again, that's your determination, not Mr.  
3 Bertsch's.

4 MR. KARACSONYI: So if I may just respond to them.  
5 I don't disagree on the part -- part that he's not going to  
6 make decision as he's not the judge and he's not going to make  
7 the decision on the character of property. I don't think we  
8 have any disagreement there or the character -- how -- how  
9 transactions changes the character of property.

10 Certainly though if -- if a transaction was done  
11 where property -- her separate property was transferred to his  
12 trust without consideration, he would say -- he would note  
13 that this was a transfer for zero dollars and the property  
14 sold for X dollars and she didn't get that. So whether you  
15 want to say whether he determines if it's arms length or not,  
16 he can say -- he can trace the transactions, was it zero, was  
17 it \$5, was it \$10.

18 And it is this Court's charge to find out what the  
19 character of property is and the transmutation issues. That's  
20 part of community property law and whether there were  
21 transmutions of property. And we -- we must not forget that  
22 anything earned or required during marriage is community  
23 property.

24 And everything they're doing in their trust, if he's

1 earning monies during marriage, those are community efforts  
2 that need to be compensated. And so that -- if that's  
3 occurring in the trust and there's properties being acquired,  
4 even if you acquire them in trust, I can't go defeat my wife's  
5 community property interest by setting up a trust and buying a  
6 property in the name of that trust. I can't do that.

7           If you purchase a property during marriage in the  
8 name of a trust, just because you title it in a trust doesn't  
9 make it separate property. You have to show that it was  
10 derived from actual separate property. And that's exactly  
11 what his charge is, to go back and look. If it's the rents  
12 issues and profits, if you own the Palmyra residence, I'll  
13 just use my client as an example, and you sold it for 700,000  
14 and you bought another house for 700,000, that's your separate  
15 property. I don't disagree if the transaction is the same on  
16 that side, although I disagree with the date of tracing, but  
17 that's for the Supreme Court to later decide if that was  
18 correct or not.

19           But this -- this idea that just because you did  
20 things in the name of the trust, that doesn't defeat your  
21 spouse's community property interest. So we just need to see  
22 all the transactions all the way through. If Wyoming Downs  
23 gets covered there at the very end, we need to see every  
24 dollar from point A to point B and then make a determination

1 as to how that affected the character of property.

2 MS. FORSBERG: Your Honor, one thing that Mr. --

3 MR. KARACSONYI: I would just --

4 MS. FORSBERG: -- Karacsonyi --

5 MR. KARACSONYI: I would just ask that --

6 MS. FORSBERG: Oh, sorry.

7 MR. KARACSONYI: -- we have, like, replies to --  
8 they've talked last every time. I mean, I've noticed that  
9 even when it's my motion, so I -- I don't do that generally  
10 with them.

11 THE COURT: I'll give you a last -- we got so many  
12 motions going back and forth and counter motions.

13 MS. FORSBERG: I'm just --

14 THE COURT: I'm not sure who's filed --

15 MS. FORSBERG: Watching them is misstated. There is  
16 a separate -- separate property agreement way, way back before  
17 any trust that --

18 THE COURT: Between 93.

19 MS. FORSBERG: -- separates the in come. 93. That  
20 said his income is now his separate property and the Supreme  
21 Court held that. I think that was the only thing I was saying  
22 is that he forgot that portion, that -- that -- you -- you  
23 can't say now well, if he earned it in here that now it's  
24 community, because it's not according to the separate property

1 agreement.

2 THE COURT: Now the -- the issue for Mr. Bertsch on  
3 that is -- to me is to see what transactions happened and was  
4 there value paid, not value paid, not whether it was gifts or  
5 commingled or transmuted where they to say what a property is.  
6 That's been the big question of this case from day one, what's  
7 the property, where it came from. There's so many  
8 transactions and this accounts. That's what we're trying to  
9 do is see where it came from and how it got there and from the  
10 2001 to 2013. So as far as --

11 MR. KARACSONYI: And if this --

12 THE COURT: -- those issues about arms length  
13 transactions, it's like that, I think the issue is -- this was  
14 transferred from here to there, they paid a hundred bucks or  
15 paid no money --

16 MR. KARACSONYI: And --

17 THE COURT: -- and it --

18 MR. KARACSONYI: And when prop --

19 THE COURT: -- that becomes gifts or if it's  
20 community or separate. That's right.

21 MR. BERTSCH: Your Honor, what I'm talking about is  
22 on Page 5 and on the top of Page 6, because it's talking about  
23 at this particular point --

24 MS. FORSBERG: Of the Supreme Court?

1 MR. BERTSCH: -- this is from --

2 MR. LUSZECK: Yeah.

3 MR. BERTSCH: -- the Supreme Court.

4 THE COURT: Okay.

5 MR. BERTSCH: It's talking about where Lana Martin,  
6 a Nevada resident, as initial distribution trustee was for  
7 both parties. And then on the top of Page 8, it said many  
8 transfers of property occurred between the trusts between  
9 2001, 2009, most of which were gifts from one trust to  
10 another. They're not designated that, but if they're saying  
11 that any -- anything was transferred after that was a gift,  
12 then the tracing of it is moot.

13 THE COURT: Is -- is moot, yeah.

14 MR. LUSZECK: Because there was no community.

15 MR. KARACSONYI: I -- I don't have the full context  
16 of what he's reading right there, but I think he needs to  
17 trace again all the transactions, nobody disagrees, and let  
18 you make the ultimate decision of what the laws and the fact  
19 -- laws are and the facts.

20 As far as -- just one thing that I hope isn't  
21 missed, that he also has to when there's an acquisition,  
22 because we keep talking about these transfers back and forth,  
23 when there's an acquisition, he does need to say if it's  
24 acquired during marriage a piece of property do you know the



1 source of those monies. Can you determine where that money  
2 came from. Is it monies that could have come from her trust  
3 or both their trusts or -- or where. Can you trace it back to  
4 -- to which -- where did it come from, that money, so that you  
5 can determine whether you can trace that property back to  
6 separate property or whether you can't tell where that money  
7 came from, in which case the presumption arises that it's  
8 community property.

9 THE COURT: Well, the issue on that, I think the  
10 Supreme Court on that they did use the word gifts. But I  
11 think if they had meant gifts all the way 2009 and there are  
12 no sense to trace and they did mention about the need to trace  
13 is that's the issue is try to see where the property went from  
14 2001 to 2013 time of divorce to see what was in there to see  
15 if there's any community property claims. There may have been  
16 gifts back and forth to trusts. You can give gifts between  
17 trusts on that, but I think the issue from this Court is to  
18 see where it came from, what it was, where it came from.  
19 That's what the whole purpose of tracing was then determined,  
20 was there any community interest or not.

21 I think the Supreme Court -- I said with their  
22 language I wasn't sure when it went back to 1993. They made  
23 it real clear that we find -- we hold that they were funded  
24 with separate property agreements. That's why I started with

1 the 2001 date because I thought the Supreme Court used the  
2 word we find, we hold. That's not dicta, that's findings.  
3 That's why again I did the tracing from the 2001 to the  
4 divorce decree to sit there and see where it came from, where  
5 it went, that way we can make a determination was it separate  
6 property, maintain separate property, fine.

7 Mr. Bertsch, anything else on that? I mean --

8 MR. BERTSCH: And then I take it that I will start  
9 with the deeds and things that are present at March 31st,  
10 2001. I will then take it to disposition through today or  
11 2009, whatever you ask me to do, which would be if there's a  
12 sale, where did the funds go, how they show on a tax return.  
13 Then if there's other purchases in the -- after that, then  
14 where did the funds come from to have the purchase. And if  
15 it's from one trust to the other, they used funds and there's  
16 got to be a due to or due from.

17 THE COURT: Yeah.

18 MR. KARACSONYI: And there's one other issue. When  
19 money comes --

20 MS. NELSON: Wait. Wait. We can cut Larry --

21 MR. LUSZECK: Oh, I -- I don't -- I don't doubt  
22 that. Yeah.

23 MR. KARACSONYI: Just to -- for -- as accounting  
24 purposes, I thin. But when there's money coming in to the

1 trust too, he's -- one other thing. Not just deeds, but if  
2 money comes into the trust, you have to determine where did  
3 that money come from. If -- if a trust -- if you take 200,000  
4 in your savings and put it in a trust, you don't defeat the  
5 character of property and then buy property with it. So any  
6 money coming in too, you'll have to say where did that money  
7 come from, was it earnings, was it -- where did it -- do we  
8 know where it came from? If -- if we don't know, then it's  
9 community property and we -- the presumption arises.

10 THE COURT: I'm inclined not to have the Wyoming  
11 Downs thrown in there, I remember when I did the divorce  
12 decree and we held off on Wyoming Downs separately, but I'll  
13 look at that, but we held separate. I think I made a separate  
14 ruling on the Wyoming Downs. I heard separate testimony on  
15 that. I believe it was not a final decree because I had held  
16 off on Wyoming Downs because I needed to get an evidentiary  
17 hearing, but I'll look at that, but I will not be inclined --  
18 I think I made findings that the Wyoming Downs was separate at  
19 that time even though they argued that it was still acquired  
20 during marriage, should or shouldn't have been included on  
21 that, but my inclination is not to include the Wyoming Doi --  
22 Wyoming Downs in your tracing at this point. But I'll look at  
23 all that whether -- a detailed written order.

24 But to get this going, I would think we start with

1 the -- there was the May 31st, was it the date? May 30th,  
2 2001 date to --

3 MR. BERTSCH: Your Honor --

4 THE COURT: -- tracing --

5 MR. BERTSCH: -- if I take it from the trust because  
6 you have to start with an inventory and see what happens, if I  
7 happen to hit Wyoming Downs then I'm going to --

8 MR. KARACSONYI: Yeah.

9 MR. BERTSCH: -- have --

10 THE COURT: Sure.

11 MR. BERTSCH: -- to talk about it.

12 MR. KARACSONYI: That's -- you're not going to be  
13 able to do that.

14 THE COURT: Absolutely. I mean, if it's there on  
15 that, but that was my issue. I don't remember when that was  
16 purchased initially.

17 MR. KARACSONYI: It was --

18 THE COURT: I don't --

19 MR. KARACSONYI: -- right before the divorce.

20 THE COURT: How they bought it and sold it and then  
21 it --

22 MR. LUSZECK: It was --

23 THE COURT: -- reacquired it --

24 MR. LUSZECK: -- during the pendency --

1 THE COURT: Yeah.

2 MR. LUSZECK: -- of the divorce.

3 THE COURT: Exactly.

4 MS. FORSBERG: Very end of it.

5 MR. LUSZECK: It was 2012, 2000 --

6 MR. KARACSONYI: Yeah, right -- right prior to the

7 divorce.

8 MS. FORSBERG: What we --

9 THE COURT: But yeah --

10 MS. FORSBERG: -- we --

11 THE COURT: -- but if you don't come up with that --

12 MS. FORSBERG: We owned it before then.

13 THE COURT: -- of course, that comes in network.

14 MR. LUSZECK: Okay.

15 THE COURT: All right. That gives you enough to get

16 started on that. I'm going to get a written decision on all

17 these issues.

18 MR. BERTSCH: And I will take May 31st. I will not

19 go prior to that. May 31st, the balance sheets, is the

20 starting point and we'll go forward from that. Whatever is on

21 those balance sheets, and I will consider, is their trust

22 property.

23 THE COURT: Fair enough. I think that --

24 MR. LUSZECK: Yeah, and I think he's already

1 prepared a table that identifies all of the assets on each of  
2 the trusts on that day. My -- that's my recollection --

3 THE COURT: Yeah, and when --

4 MR. LUSZECK: -- and I guess he can go --

5 THE COURT: -- we had so many --

6 MR. LUSZECK: -- back and see, yeah.

7 THE COURT: And they had a lot of accountings on  
8 that. I know that Mr. Bertsch had several during the pendency  
9 of the matter. So all right.

10 MR. BERTSCH: What he says is correct, but I needed  
11 verification from each side, do you agree that it would be the  
12 starting point. That's what I'm asking. That's what I asked  
13 for.

14 MR. KARACSONYI: That's what the Court ordered.

15 THE COURT: The starting point would be --

16 MS. FORSBERG: It's what the Court ordered.

17 THE COURT: -- May 31st, 2001.

18 MR. BERTSCH: And there was one exception on that.

19 So --

20 THE COURT: Which -- which is the exception?

21 What --

22 (COUNSEL CONFER BRIEFLY)

23 MR. KARACSONYI: All right. Are we --

24 THE COURT: I think we're --

1 MR. KARACSONYI: Thank you, Your Honor.

2 MR. LUSZECK: And one I guess further clarification  
3 point is I don't know that we asked for a receiver over  
4 Lindell. I think we just said a third party --

5 THE COURT: You said --

6 MR. LUSZECK: -- manager.

7 THE COURT: -- a disinterested manager.

8 MR. LUSZECK: Yeah.

9 THE COURT: Okay.

10 MR. KARACSONYI: I -- I was using receiver  
11 interchangeably with that.

12 THE COURT: I would be inclined to do that just  
13 because it's unfortunate on that, but I think under the  
14 circumstance there's no way we can -- that either party --

15 (COUNSEL CONFER BRIEFLY)

16 MR. BERTSCH: If you want to appoint that third  
17 party over --

18 THE COURT: Do you --

19 MR. BERTSCH: -- they'll never get agreement.

20 THE COURT: Yeah, do you -- do you have -- do you  
21 feel comfortable with making a recommendation to the Court as  
22 a disinterested manager? I mean, you have more experience in  
23 that or you -- I can check (indiscernible) disinterested  
24 manager for the --

1 MR. KARACSONYI: Yeah, if he wants to suggest one.  
2 If you're going to do a third party, I think it'd be easiest  
3 to let a mutual pick the third party and I'm fine with that.

4 THE COURT: You're comfortable with that, Mr. --

5 MR. BERTSCH: Take like Mike (indiscernible) or  
6 someone that --

7 THE COURT: Are you okay with that, Mr. Bertsch, and  
8 make a recommendation or do you --

9 MR. BERTSCH: Yeah, I can make a recommendation --

10 MR. KARACSONYI: No.

11 MR. BERTSCH: -- to --

12 MR. KARACSONYI: I think --

13 MR. BERTSCH: -- talk to him to the Court.

14 MR. KARACSONYI: Do you have any issue?

15 MR. LUSZECK: I'd -- I'd rather get -- maybe a list.  
16 I'm -- I'm curious to see what these -- what they charge. I  
17 don't even know if they --

18 THE COURT: Okay.

19 MR. LUSZECK: -- charge, so I think that's --

20 THE COURT: Okay. Why don't we get a couple like  
21 they just said and they won't agree. And what happens if they  
22 agree, great, if not, just submit names to me and I'll pick  
23 one if i have to.

24 MR. LUSZECK: That too.



1 THE COURT: But at least I want to give them a  
2 chance to talk about the fees would be, so --

3 MR. LUSZECK: Thank you.

4 THE COURT: -- fair enough. And then what happens  
5 if they can't agree is just submit a --

6 MR. KARACSONYI: But if he has somebody he  
7 recommends and if he wants to submit that to the Court, we're  
8 fine. If he wants to tell the Court why he recommends this  
9 person because if -- he probably knows people better than we  
10 do in this business or I do.

11 MR. LUSZECK: Yeah, I'd like to know who it is --

12 MR. KARACSONYI: Yeah.

13 MR. LUSZECK: -- first before we --

14 MR. KARACSONYI: And what they charge. If he wants  
15 to submit a recommendation to us, we'll consider it. I mean,  
16 I would --

17 MR. LUSZECK: Yeah.

18 MR. KARACSONYI: -- consider it highly.

19 THE COURT: And if they can't agree, then I'll  
20 decide on it.

21 MR. BERTSCH: I want to talk to them bef -- so I --

22 THE COURT: For the --

23 MR. BERTSCH: -- can explain what -- what --

24 THE COURT: What --

1 MR. BERTSCH: -- it's about.

2 THE COURT: -- they're getting into. What they're  
3 stepping into, right?

4 MR. KARACSONYI: I understood.

5 THE COURT: All right. We'll make sure. It's good  
6 to see everybody and hopefully you guys get this resolved  
7 sometime, just peace of mind. I couldn't imagine being in  
8 that situation from anybody. Thanks --

9 MR. KARACSONYI: Thank you, Your Honor.

10 THE COURT: -- Mr. Bertsch. Appreciate your  
11 presence.

12 MR. BERTSCH: Thank you, Your Honor.

13 MR. LUSZECK: Do we -- do we have a general idea for  
14 timeline just so the parties can annul, witness the order and  
15 what the tracing just -- I'm not going to hold you to anything  
16 --

17 THE COURT: Yeah, I think we can start.

18 MR. LUSZECK: -- but just a ballpark.

19 MR. BERTSCH: I will put this out there. Some  
20 documents I see I need. It depends on the cooperation of the  
21 parties so I can get the information.

22 MR. KARACSONYI: I trust Mr. Bertsch is working on  
23 it diligently.

24 MR. LUSZECK: I don't doubt that. I'm -- I was just

1 asking for --  
2 THE COURT: Do you want a status check in --  
3 MR. KARACSONYI: Yeah, maybe a status check and --  
4 THE COURT: -- 90 days, 120 days just to see --  
5 MR. KARACSONYI: Do you want --  
6 THE COURT: -- where we're at?  
7 MR. KARACSONYI: -- 20 days?  
8 MR. LUSZECK: 30 days.  
9 MS. FORSBERG: 30 days.  
10 MR. LUSZECK: Yeah.  
11 MR. KARACSONYI: Yeah, a hundred and twenty days.  
12 THE COURT: Yeah. Well, for now --  
13 MS. FORSBERG: We need 120?  
14 THE COURT: -- if it's just a status check --  
15 MS. FORSBERG: That's a long time.  
16 THE COURT: -- about a hundred and twenty days as to  
17 -- as the tracing or see where we're at to -- to --  
18 THE CLERK: Do you want this on a regular calendar  
19 or --  
20 THE COURT: No, not on a Wednesday. Wednesday's my  
21 heavy day.  
22 THE CLERK: Right.  
23 THE COURT: So put it on either -- because when I  
24 got my trial day it's like a Monday or a --

1 THE CLERK: Or a Thursday?

2 THE COURT: -- Tuesday -- or Tuesday if it's got a  
3 Drug Court when Holly is doing Drug Court. I do mine. We're  
4 alternating on Drug Court. So Tuesday afternoon when I got  
5 some time.

6 (COUNSEL CONFER BRIEFLY)

7 THE COURT: Probably a Monday or Tuesday or Thursday  
8 I could probably sneak it in.

9 MS. FORSBERG: Do you have a guess on how long we  
10 should set a status check for? I mean, it seems like a  
11 hundred and --

12 MR. BERTSCH: No --

13 MS. FORSBERG: -- twenty days --

14 MR. BERTSCH: -- a hundred and --

15 MS. FORSBERG: -- is a long way.

16 MR. BERTSCH: -- twenty days is fine. If we get --

17 MS. FORSBERG: It just seems a long way.

18 MR. BERTSCH: -- it done before, we can ask for --

19 THE CLERK: November 15th at 1:30.

20 MR. BERTSCH: -- shortening time.

21 THE COURT: November 15th at 1:30?

22 MR. KARACSONYI: That's good to me.

23 THE COURT: And again, if you move it up there, any  
24 issue before the courts, I would suggest the date so it

1 doesn't go into the big void.

2 MR. LUSZECK: Actually, can we do -- I know I'm  
3 going to be out of town that week because I just booked  
4 something. Can we do the following week.

5 THE CLERK: The following week is Thanksgiving.

6 MR. LUSZECK: Or --

7 MS. FORSBERG: Do the week before?

8 MR. LUSZECK: Or the week before?

9 THE CLERK: November 8th at 1:30.

10 MR. KARACSONYI: Okay.

11 MR. LUSZECK: Okay. Thank you, Your Honor.

12 MR. KARACSONYI: Just one other thing, Your Honor.

13 We had stipulated earlier before you -- you even came in that  
14 there is still some HOA and sewer and other utilities from the  
15 BanOne properties that are in her name and they said they  
16 would transfer those immediately.

17 MR. LUSZECK: We would.

18 MR. KARACSONYI: And then they said also that they  
19 were having some kind of problem with the property taxes --

20 MS. FORSBERG: From the deed.

21 MR. KARACSONYI: -- from the recorder from the  
22 deeds.

23 MR. LUSZECK: Yeah.

24 MR. KARACSONYI: So they may need an order from this

1 Court specifically listing the properties that you ordered to  
2 be transferred back so that the receipt -- so that the  
3 assessor can see that and we had no recording --

4 MR. LUSZECK: Yeah, and we'll --

5 MR. KARACSONYI: -- we have no problem with that.

6 MR. LUSZECK: -- we'll send a --

7 THE COURT: And you just have to --

8 MR. LUSZECK: -- stipulation and order to them and  
9 then that will be (indiscernible).

10 MR. KARACSONYI: And just for the record.

11 MR. LUSZECK: Yeah.

12 THE COURT: Good to see you, Ms. Lynita.

13 MS. NELSON: Thank you.

14 THE COURT: Good to see you, Mr. Eric. Thanks,  
15 Counsel, for your --

16 MR. LUSZECK: Thank you.

17 (PROCEEDINGS CONCLUDED AT 10:22:35)

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\* \* \* \* \*

ATTEST: I do hereby certify that I have truly and correctly transcribed the digital proceedings in the above-entitled case to the best of my ability.

*Adrian Medrano*

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Adrian N. Medrano



DISTRICT COURT  
FAMILY DIVISION – JUVENILE  
CLARK COUNTY, NEVADA

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ERIC L. NELSON,

Plaintiff,

v.

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

Defendants.

Case No.: D-09-411537-D

Dept. No.: O

Date of Hearing: 7/23/2018

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

Cross-claimant,

v.

LYNITA SUE NELSON,

Cross-defendant.

DECISION

This matter was before the Court on July 23, 2018, pursuant to multiple Motions, Oppositions and Counter-motions, and Replies filed between May 25, 2018, and July 18, 2018. Present in Court were: Josef Karacsonyi, Esq., representing Lynita Nelson, who was also present; Jeffrey Luszeck, Esq.,



1  
2 representing Matt Klabacka, Trustee of the ELN Trust; Rhonda Forsberg, Esq.,  
3 representing Eric Nelson, who was also present; and Larry Bertsch, C.P.A.  
4

5 **FINDINGS OF FACT and CONCLUSIONS OF LAW**

6 **A. Case D-09-411537-D and Case A-17-763004-C Cannot Be Consolidated**  
7 **As They Do Not Share the Same Question of Law**

8 Nevada Rules of Civil Procedure (“NRCP”) Rule 42(a) states that, “[w]hen  
9 actions involving a common question of law or fact are pending before the court,  
10 it may...order all the actions consolidated...” Eric Nelson (“Mr. Nelson”) and  
11 Lynita Nelson (“Ms. Nelson”) are currently involved in multiple cases regarding  
12 the Eric L. Nelson Nevada Trust (“ELN Trust”) and the Lynita Sue Nelson  
13 Nevada Trust (“LSN Trust”). Ms. Nelson is requesting that this Court consolidate  
14 a divorce case, D-09-411537-D (“Divorce Proceeding”), and a case based on tort  
15 relief, A-17-763004-C (“Tort Claim”).  
16  
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18 The Divorce Proceeding is currently in its final stage, which revolves  
19 around the tracing of property in both the ELN and LSN Trusts to determine if  
20 any community property is being held within either Trust. Pending any further  
21 Motions by the parties, there is no question of law remaining in the Divorce  
22 Proceeding, with the only question of fact being the determination of property  
23 ownership after the tracing is completed. The Tort Claim revolves around  
24 questions of law and fact involving a, “Complaint for Breach of Fiduciary Duty,  
25 Fraud, Deceit, and Intentional Misrepresentation, Conversion, Fraud in the  
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1  
2 Inducement, [and] Unjust Enrichment...”<sup>1</sup> As the Divorce Proceeding involves  
3 the tracing of property and the Tort Claim involves questions of law and fact  
4 regarding Breach of Fiduciary Duty, as well as other claims, this Court finds that  
5 there is no current common question of law or fact between the two cases.  
6

7         Additionally, on February 23, 2012, this Court declined to take jurisdiction  
8 over tort claims in this case, including: (1) Breach of Fiduciary Duty; (2) Fraud,  
9 Deceit, and Intentional Misrepresentation; (3) Conversion; (4) Fraud in the  
10 Inducement; and (5) Unjust Enrichment.<sup>2</sup> Specifically, this Court stated that these  
11 claims were “DISMISSED WITHOUT PREJUDICE so that the claims can be  
12 brought in another tribunal.”<sup>3</sup> Therefore, as this Court finds that there is no  
13 common question of law or fact, and as this Court has previously declined to hear  
14 the very same tort claims, this Court declines to consolidate the Divorce  
15 Proceeding and the Tort Claim cases.  
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18  
19         B. A Joint Preliminary Injunction Shall Only Be Placed On the Banone, LLC  
20 and Lindell Properties

21         Eighth Judicial District Court Rule (“EDCR”) 5.517 states that “[u]pon the  
22 request of any party at any time prior to the entry of...final judgment, a  
23 preliminary injunction will be issued by the clerk against the parties to the action  
24 enjoining them and their officers, agents, servant, employees, or a person in  
25  
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27  
28 <sup>1</sup> Amended Complaint, Case No. A-17-763004-C, Pg. 1, Filed Feb. 9, 2018.

<sup>2</sup> Answer and Counterclaim, Case No. D-09-411537-D, Pgs. 28-34, Filed Dec. 20, 2011.

<sup>3</sup> Order from February 23, 2012 Hearing, Case No. D-09411537D, Pg. 6, Filed Aug. 29, 2012.

1  
2 active concert or participation with them from: transferring, encumbering,  
3 concealing, selling, or otherwise disposing of...any property that is the subject of  
4 a claim of community interest...”<sup>4</sup>  
5

6 In a Hearing on April 10, 2012, this Court found that the ELN Trust had a  
7 right to defend itself during the proceedings.<sup>5</sup> While this Court found that the  
8 ELN Trust could defend itself, it did not confer party status to either Trust in this  
9 action. The EDCR specifically states that upon “request of any party...a  
10 preliminary injunction will be issued by the clerk against the parties to the  
11 action...”<sup>6</sup> In these proceedings, only Mr. and Ms. Nelson are considered parties,  
12 not the Trusts. Therefore, as the ELN Trust is not a party to the case, this Court  
13 finds that it is not required to place a JPI on a non-party’s property at the request  
14 of a party.  
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18 In its May 22, 2018 Decision, this Court Ordered that a Joint Preliminary  
19 Injunction (“JPI”) to be placed over the Banone, LLC. and Lindell properties. To  
20 clarify this Court’s Order, the JPI was granted on these properties solely due to  
21 the fact that both the ELN and LSN Trusts have held an ownership stake in both  
22 properties at some point during these proceedings. Given the contentious nature  
23 of both the litigation and the ownership/management of the properties involved,  
24 this Court finds that placing a JPI on the Banone, LLC. and Lindell properties  
25  
26

27 <sup>4</sup> EDCR 5.517(a).

<sup>5</sup> All Pending Motions, Case No. D-09-411537-D, Hearing held April 10, 2018.

<sup>6</sup> EDCR 5.517(a).

1  
2 would protect both Mr. and Ms. Nelson, as well as the ELN and LSN Trusts, as  
3 the properties had exchanged hands during these proceedings. Furthermore, this  
4 Court finds that the only properties that require a JPI based on the history of this  
5 case are the Banone, LLC. and Lindell properties.  
6

7 C. A Lis Pendens Is Not Proper Because It Was Not Timely Filed  
8

9 NRS 14.010 states that, “[i]n an action...affecting the title or possession of  
10 real property , the plaintiff, at the time of filing the complaint, and the defendant,  
11 at the time of filing his or her answer...shall record with the recorder of the  
12 county in which the property...is situated, a notice of pendency of the action.”<sup>7</sup> In  
13 the plain language of the statute, a lis pendens must be filed with the complaint or  
14 the answer in order to be valid.  
15

16 The Complaint for divorce in the current proceeding was filed on May 6,  
17 2009. The Answer and Counterclaim for this proceeding was filed on June 22,  
18 2009. A notification for the pendency of the current action was filed on May 11,  
19 2018, well after the filing date of both the Complaint and the Answer and  
20 Counterclaim. Therefore, this Court finds that the lis pendens was untimely filed  
21 and should be expunged.  
22  
23

24 D. A Third Party Shall Be Appointed To Manage the Lindell Property and Set  
25 Market Rate Rent for Both Eric Nelson and Lynita Nelson  
26  
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7 NRS 14.010(1).

1  
2 In the July 23, 2018 Motion Hearing, this Court found that it was in the  
3 best interest of both the parties, the Trusts, and the property, for the Lindell  
4 property to be managed by a third party Property Manager. This Court finds that  
5 based on the contentious nature of the litigation and to protect the property for  
6 both Mr. and Ms. Nelson, as well as the ELN and LSN Trusts, that Larry Bertsch  
7 shall appoint a third party Property Manager to manage the Lindell Property.  
8  
9

10 Additionally, the third party Property Manager selected by Mr. Bertsch  
11 shall designate a market rate rent payment for tenants of the Lindell property. In  
12 the event that either Mr. or Ms. Nelson are tenants of the Lindell property, the  
13 market rate rent shall be applied to them in order to ensure that both Mr. and Ms.  
14 Nelson, as well as the Lindell property, are protected from any financial harm.  
15

16  
17 E. A Bond Is Not Necessary At This Time

18 The ELN Trust requested that a Bond be placed on any properties that may  
19 be placed under new JPIs. As this Court is not expanding the JPI to properties  
20 other than the Banone, LLC. and the Lindell properties, no Bonds will be placed  
21 on any additional properties at this time.  
22

23 F. Wyoming Downs Is Property of the ELN Trust

24 On September 18, 2014, this Court filed an Order Determining Disposition  
25 of Dynasty Development Management, Inc. aka Wyoming Downs. In this Order,  
26 this Court ordered that, "neither Lynita S. Nelson nor the LSN Trust are entitled  
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to an interest in Dynasty Development Management, LLC aka Wyoming Downs.”<sup>8</sup> This Court also Ordered that “Dynasty Development Management, LLC aka Wyoming Downs belongs to the ELN Trust.”<sup>9</sup>

On May 25, 2017, the Nevada Supreme Court filed their Decision affirming in part, vacating in part, and remanding this Court’s June 8, 2015 Order. In its Decision, the Nevada Supreme Court made note that “an appeal would be available to all parties upon the disposition of Wyoming Downs.”<sup>10</sup> The Nevada Supreme Court also made note that Wyoming Downs had been disposed of by this Court, making its judgment final.<sup>11</sup> Finally, the Nevada Supreme Court vacated 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...”<sup>12</sup>

This Court disposed of the Wyoming Downs property on September 18, 2014. The only references to the Wyoming Downs Property in the June 8, 2015 Order involves providing documentation and income received, not a disposition of any property.<sup>13</sup> Therefore, as the Nevada Supreme Court’s Decision vacated portions of the divorce decree relating to assets in the ELN and LSN Trust, and the Wyoming Downs property was disposed of in this Court’s September 18,

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<sup>8</sup> Order Determining Disposition of Dynasty Development Management, Inc. aka Wyoming Downs, Case No. D-09-411537-D, Pg. 5, Filed September 18, 2014.  
<sup>9</sup> *Id.*  
<sup>10</sup> *Klabacka v. Nelson*, 394 P.3d 940, 945 n.2 (2017).  
<sup>11</sup> *Klabacka*, 394 P.3d at 945.  
<sup>12</sup> *Id.* at 954.  
<sup>13</sup> Findings of Fact and Order, Case No. D-09-41537-D, Pg. 23, Filed June 8, 2015.

1  
2 2014 Order, and not the June 8, 2015 Order, this Court finds that the ELN Trust  
3 remains the owner of the Wyoming Downs Property.  
4

5 **ORDER**

6 Based thereon:

7 **IT IS HEREBY ORDERED** the request to consolidate case D-09-  
8 411537-D and A-17-763004-C is **DENIED**.  
9

10 **IT IS FURTHER ORDERED** that request to expand the Joint  
11 Preliminary Injunction to the entirety of the property, or any property other than  
12 the Banone, LLC. and Lindell properties, within the Eric L. Nelson Nevada Trust  
13 is **DENIED**.  
14

15 **IT IS FURTHER ORDERED** that the request to terminate the Joint  
16 Preliminary Injunction from the Banone, LLC. and Lindell properties is  
17 **DENIED**.  
18

19 **IT IS FURTHER ORDERED** that the request to expunge the Lis  
20 Pendens Notices, filed on May 11, 2018, is **GRANTED** for the following  
21 properties:  
22

- 23 1. 3611 S. Lindell Road, Las Vegas, NV 89103  
24 2. 1301 Heather Ridge Road, North Las Vegas, NV 89031  
25 3. 6304 Guadalupe Avenue, Las Vegas, NV 89108  
26 4. 4601 Concord Village Drive, Las Vegas, NV 89108  
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- 5. 4133 Compass Rose Way, Las Vegas, NV 89108
- 6. 5317 Clover Blossom Court, North Las Vegas, NV 89031
- 7. 5113 Churchill Avenue, Las Vegas, NV 89107
- 8. 6301 Cambria Avenue, Las Vegas, NV 89108
- 9. 6213 Anaconda Street, Las Vegas, NV 89108
- 10. 2911 Bella Kathryn Circle, Las Vegas, NV 89117
- 11. 4412 Baxter Place, Las Vegas, NV 89108
- 12. 3301 Terra Bella Drive, Las Vegas, NV 89108
- 13. 4612 Sawyer Avenue, Las Vegas, NV 89108
- 14. 1608 Rusty Ridge Lane, Henderson, NV 89002
- 15. 5220 E. Russell Road, Las Vegas, NV 89122
- 16. 4820 Marnell Drive, Las Vegas, NV 89121

**IT IS FURTHER ORDERED** that both the request for Lynita Nelson to manage the Lindell property and the request for the Eric L. Nelson Nevada Trust to manage the Lindell property are **DENIED**.

**IT IS FURTHER ORDERED** that Larry Bertsch, CPA, shall select a third party Property Manager for the Lindell property. In the event that either Eric Nelson or Lynita Nelson are tenants of the Lindell property, they are to be charged a market value rent set by the third party Property Manager.




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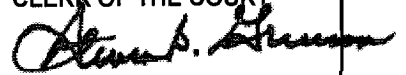
**IT IS FURTHER ORDERED** that the request for a Bond on any new properties being placed under Joint Preliminary Injunction is **DENIED** as this Court is not expanding the Joint Preliminary Injunction to any additional properties.

**IT IS FURTHER ORDERED** that Dynasty Development Management, LLC aka Wyoming Downs belongs solely to the ELN Trust.

**IT IS FURTHER ORDERED** that all requests for Attorneys' Fees and Costs are **DENIED**.

DATED this 16<sup>th</sup> day of October, 2018.

  
\_\_\_\_\_  
Honorable Frank P. Sullivan  
District Court Judge – Dept. O



DISTRICT COURT  
FAMILY DIVISION – JUVENILE  
CLARK COUNTY, NEVADA

ERIC L. NELSON,

Plaintiff,

v.

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

Defendants.

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

Cross-claimant,

v.

LYNITA SUE NELSON,

Cross-defendant.

Case No.: D-09-411537-D

Dept. No.: O

**NOTICE OF ENTRY OF ORDER**

TO:

Rhonda Forsberg, Esq.  
E-Service

Robert Dickerson, Esq.  
E-Service

Marc Solomon, Esq.  
E-Service

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PLEASE TAKE NOTICE that the DECISION was duly entered in the above-referenced case on the 16th day of October, 2018.

DATED this 16 day of October, 2018.



\_\_\_\_\_  
Lori Parr  
Judicial Executive Assistant  
Dept. O

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**DISTRICT COURT  
FAMILY DIVISION – JUVENILE  
CLARK COUNTY, NEVADA**

ERIC L. NELSON,

Plaintiff,

v.

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

Defendants.

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

Cross-claimant,

v.

LYNITA SUE NELSON,

Cross-defendant.

Case No.: D-09-411537-D  
Dept. No.: O  
Date of Hearing: 7/23/2018

**DECISION**

This matter was before the Court on July 23, 2018, pursuant to multiple Motions, Oppositions and Counter-motions, and Replies filed between May 25, 2018, and July 18, 2018. Present in Court were: Josef Karacsonyi, Esq., representing Lynita Nelson, who was also present; Jeffrey Luszeck, Esq.,

1  
2 representing Matt Klabacka, Trustee of the ELN Trust; Rhonda Forsberg, Esq.,  
3 representing Eric Nelson, who was also present; and Larry Bertsch, C.P.A.  
4

5 **FINDINGS OF FACT and CONCLUSIONS OF LAW**

6 **A. Case D-09-411537-D and Case A-17-763004-C Cannot Be Consolidated**  
7 **As They Do Not Share the Same Question of Law**

8 Nevada Rules of Civil Procedure (“NRCP”) Rule 42(a) states that, “[w]hen  
9 actions involving a common question of law or fact are pending before the court,  
10 it may...order all the actions consolidated...” Eric Nelson (“Mr. Nelson”) and  
11 Lynita Nelson (“Ms. Nelson”) are currently involved in multiple cases regarding  
12 the Eric L. Nelson Nevada Trust (“ELN Trust”) and the Lynita Sue Nelson  
13 Nevada Trust (“LSN Trust”). Ms. Nelson is requesting that this Court consolidate  
14 a divorce case, D-09-411537-D (“Divorce Proceeding”), and a case based on tort  
15 relief, A-17-763004-C (“Tort Claim”).  
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19 The Divorce Proceeding is currently in its final stage, which revolves  
20 around the tracing of property in both the ELN and LSN Trusts to determine if  
21 any community property is being held within either Trust. Pending any further  
22 Motions by the parties, there is no question of law remaining in the Divorce  
23 Proceeding, with the only question of fact being the determination of property  
24 ownership after the tracing is completed. The Tort Claim revolves around  
25 questions of law and fact involving a, “Complaint for Breach of Fiduciary Duty,  
26 Fraud, Deceit, and Intentional Misrepresentation, Conversion, Fraud in the  
27  
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1  
2 Inducement, [and] Unjust Enrichment...<sup>1</sup> As the Divorce Proceeding involves  
3 the tracing of property and the Tort Claim involves questions of law and fact  
4 regarding Breach of Fiduciary Duty, as well as other claims, this Court finds that  
5 there is no current common question of law or fact between the two cases.  
6

7         Additionally, on February 23, 2012, this Court declined to take jurisdiction  
8 over tort claims in this case, including: (1) Breach of Fiduciary Duty; (2) Fraud,  
9 Deceit, and Intentional Misrepresentation; (3) Conversion; (4) Fraud in the  
10 Inducement; and (5) Unjust Enrichment.<sup>2</sup> Specifically, this Court stated that these  
11 claims were “DISMISSED WITHOUT PREJUDICE so that the claims can be  
12 brought in another tribunal.”<sup>3</sup> Therefore, as this Court finds that there is no  
13 common question of law or fact, and as this Court has previously declined to hear  
14 the very same tort claims, this Court declines to consolidate the Divorce  
15 Proceeding and the Tort Claim cases.  
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19         B. A Joint Preliminary Injunction Shall Only Be Placed On the Banone, LLC  
20         and Lindell Properties

21         Eighth Judicial District Court Rule (“EDCR”) 5.517 states that “[u]pon the  
22 request of any party at any time prior to the entry of... final judgment, a  
23 preliminary injunction will be issued by the clerk against the parties to the action  
24 enjoining them and their officers, agents, servant, employees, or a person in  
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28 <sup>1</sup> Amended Complaint, Case No. A-17-763004-C, Pg. 1, Filed Feb. 9, 2018.

<sup>2</sup> Answer and Counterclaim, Case No. D-09-411537-D, Pgs. 28-34, Filed Dec. 20, 2011.

<sup>3</sup> Order from February 23, 2012 Hearing, Case No. D-09411537D, Pg. 6, Filed Aug. 29, 2012.

1  
2 active concert or participation with them from: transferring, encumbering,  
3 concealing, selling, or otherwise disposing of...any property that is the subject of  
4 a claim of community interest...”<sup>4</sup>  
5

6 In a Hearing on April 10, 2012, this Court found that the ELN Trust had a  
7 right to defend itself during the proceedings.<sup>5</sup> While this Court found that the  
8 ELN Trust could defend itself, it did not confer party status to either Trust in this  
9 action. The EDCR specifically states that upon “request of any party...a  
10 preliminary injunction will be issued by the clerk against the parties to the  
11 action...”<sup>6</sup> In these proceedings, only Mr. and Ms. Nelson are considered parties,  
12 not the Trusts. Therefore, as the ELN Trust is not a party to the case, this Court  
13 finds that it is not required to place a JPI on a non-party’s property at the request  
14 of a party.  
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18 In its May 22, 2018 Decision, this Court Ordered that a Joint Preliminary  
19 Injunction (“JPI”) to be placed over the Banone, LLC. and Lindell properties. To  
20 clarify this Court’s Order, the JPI was granted on these properties solely due to  
21 the fact that both the ELN and LSN Trusts have held an ownership stake in both  
22 properties at some point during these proceedings. Given the contentious nature  
23 of both the litigation and the ownership/management of the properties involved,  
24 this Court finds that placing a JPI on the Banone, LLC. and Lindell properties  
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28 <sup>4</sup> EDCR 5.517(a).

<sup>5</sup> All Pending Motions, Case No. D-09-411537-D, Hearing held April 10, 2018.

<sup>6</sup> EDCR 5.517(a).

1  
2 would protect both Mr. and Ms. Nelson, as well as the ELN and LSN Trusts, as  
3 the properties had exchanged hands during these proceedings. Furthermore, this  
4 Court finds that the only properties that require a JPI based on the history of this  
5 case are the Banone, LLC. and Lindell properties.  
6

7 C. A Lis Pendens Is Not Proper Because It Was Not Timely Filed

8  
9 NRS 14.010 states that, “[i]n an action...affecting the title or possession of  
10 real property , the plaintiff, at the time of filing the complaint, and the defendant,  
11 at the time of filing his or her answer...shall record with the recorder of the  
12 county in which the property...is situated, a notice of pendency of the action.”<sup>7</sup> In  
13 the plain language of the statute, a lis pendens must be filed with the complaint or  
14 the answer in order to be valid.  
15

16  
17 The Complaint for divorce in the current proceeding was filed on May 6,  
18 2009. The Answer and Counterclaim for this proceeding was filed on June 22,  
19 2009. A notification for the pendency of the current action was filed on May 11,  
20 2018, well after the filing date of both the Complaint and the Answer and  
21 Counterclaim. Therefore, this Court finds that the lis pendens was untimely filed  
22 and should be expunged.  
23

24  
25 D. A Third Party Shall Be Appointed To Manage the Lindell Property and Set  
26 Market Rate Rent for Both Eric Nelson and Lynita Nelson  
27

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<sup>7</sup> NRS 14.010(1).



1  
2 In the July 23, 2018 Motion Hearing, this Court found that it was in the  
3 best interest of both the parties, the Trusts, and the property, for the Lindell  
4 property to be managed by a third party Property Manager. This Court finds that  
5 based on the contentious nature of the litigation and to protect the property for  
6 both Mr. and Ms. Nelson, as well as the ELN and LSN Trusts, that Larry Bertsch  
7 shall appoint a third party Property Manager to manage the Lindell Property.  
8  
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10 Additionally, the third party Property Manager selected by Mr. Bertsch  
11 shall designate a market rate rent payment for tenants of the Lindell property. In  
12 the event that either Mr. or Ms. Nelson are tenants of the Lindell property, the  
13 market rate rent shall be applied to them in order to ensure that both Mr. and Ms.  
14 Nelson, as well as the Lindell property, are protected from any financial harm.  
15

16  
17 E. A Bond Is Not Necessary At This Time

18 The ELN Trust requested that a Bond be placed on any properties that may  
19 be placed under new JPIs. As this Court is not expanding the JPI to properties  
20 other than the Banone, LLC. and the Lindell properties, no Bonds will be placed  
21 on any additional properties at this time.  
22

23 F. Wyoming Downs Is Property of the ELN Trust

24 On September 18, 2014, this Court filed an Order Determining Disposition  
25 of Dynasty Development Management, Inc. aka Wyoming Downs. In this Order,  
26 this Court ordered that, "neither Lynita S. Nelson nor the LSN Trust are entitled  
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to an interest in Dynasty Development Management, LLC aka Wyoming Downs.”<sup>8</sup> This Court also Ordered that “Dynasty Development Management, LLC aka Wyoming Downs belongs to the ELN Trust.”<sup>9</sup>

On May 25, 2017, the Nevada Supreme Court filed their Decision affirming in part, vacating in part, and remanding this Court’s June 8, 2015 Order. In its Decision, the Nevada Supreme Court made note that “an appeal would be available to all parties upon the disposition of Wyoming Downs.”<sup>10</sup> The Nevada Supreme Court also made note that Wyoming Downs had been disposed of by this Court, making its judgment final.<sup>11</sup> Finally, the Nevada Supreme Court vacated 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...”<sup>12</sup>

This Court disposed of the Wyoming Downs property on September 18, 2014. The only references to the Wyoming Downs Property in the June 8, 2015 Order involves providing documentation and income received, not a disposition of any property.<sup>13</sup> Therefore, as the Nevada Supreme Court’s Decision vacated portions of the divorce decree relating to assets in the ELN and LSN Trust, and the Wyoming Downs property was disposed of in this Court’s September 18,

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<sup>8</sup> Order Determining Disposition of Dynasty Development Management, Inc. aka Wyoming Downs, Case No. D-09-411537-D, Pg. 5, Filed September 18, 2014.  
<sup>9</sup> Id.  
<sup>10</sup> *Klabacka v. Nelson*, 394 P.3d 940, 945 n.2 (2017).  
<sup>11</sup> *Klabacka*, 394 P.3d at 945.  
<sup>12</sup> *Id.* at 954.  
<sup>13</sup> Findings of Fact and Order, Case No. D-09-41537-D, Pg. 23, Filed June 8, 2015.

1  
2 2014 Order, and not the June 8, 2015 Order, this Court finds that the ELN Trust  
3 remains the owner of the Wyoming Downs Property.  
4

5 **ORDER**

6 Based thereon:

7 **IT IS HEREBY ORDERED** the request to consolidate case D-09-  
8 411537-D and A-17-763004-C is **DENIED**.  
9

10 **IT IS FURTHER ORDERED** that request to expand the Joint  
11 Preliminary Injunction to the entirety of the property, or any property other than  
12 the Banone, LLC. and Lindell properties, within the Eric L. Nelson Nevada Trust  
13 is **DENIED**.  
14

15 **IT IS FURTHER ORDERED** that the request to terminate the Joint  
16 Preliminary Injunction from the Banone, LLC. and Lindell properties is  
17 **DENIED**.  
18

19 **IT IS FURTHER ORDERED** that the request to expunge the Lis  
20 Pendens Notices, filed on May 11, 2018, is **GRANTED** for the following  
21 properties:  
22

- 23 1. 3611 S. Lindell Road, Las Vegas, NV 89103  
24 2. 1301 Heather Ridge Road, North Las Vegas, NV 89031  
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- 14. 1608 Rusty Ridge Lane, Henderson, NV 89002
- 15. 5220 E. Russell Road, Las Vegas, NV 89122
- 16. 4820 Marnell Drive, Las Vegas, NV 89121

**IT IS FURTHER ORDERED** that both the request for Lynita Nelson to manage the Lindell property and the request for the Eric L. Nelson Nevada Trust to manage the Lindell property are **DENIED**.

**IT IS FURTHER ORDERED** that Larry Bertsch, CPA, shall select a third party Property Manager for the Lindell property. In the event that either Eric Nelson or Lynita Nelson are tenants of the Lindell property, they are to be charged a market value rent set by the third party Property Manager.

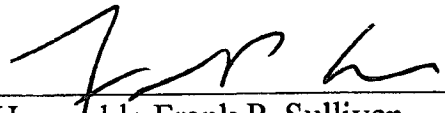
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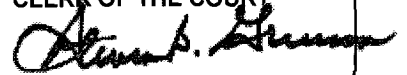
**IT IS FURTHER ORDERED** that the request for a Bond on any new properties being placed under Joint Preliminary Injunction is **DENIED** as this Court is not expanding the Joint Preliminary Injunction to any additional properties.

**IT IS FURTHER ORDERED** that Dynasty Development Management, LLC aka Wyoming Downs belongs solely to the ELN Trust.

**IT IS FURTHER ORDERED** that all requests for Attorneys' Fees and Costs are **DENIED**.

DATED this 16<sup>th</sup> day of October, 2018.

  
\_\_\_\_\_  
Honorable Frank P. Sullivan  
District Court Judge – Dept. O



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

12 Attorneys for Lynita Sue Nelson

13 DISTRICT COURT  
14 FAMILY DIVISION

15 CLARK COUNTY, NEVADA

16 ERIC L. NELSON,

17 Plaintiff/Counterdefendant,

18 v.

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

24 Defendants/Counterclaimants.

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

29 Crossclaimant,

30 v.

31 LYNITA SUE NELSON,  
32 Individually and as Investment  
33 Trustee of the LSN NEVADA  
34 TRUST, dated May 30, 2001, and  
35 ERIC NELSON,

36 Cross-Defendants.

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

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**DEFENDANT, LYNITA SUE NELSON'S, NOTICE OF APPEAL**

NOTICE IS HEREBY GIVEN that Defendant, LYNITA SUE NELSON ("Lynita"), by and through her attorneys, ROBERT P. DICKERSON, ESQ., and JOSEF M. KARACSONYI, ESQ., of THE DICKERSON KARACSONYI LAW GROUP, hereby appeals to the Supreme Court of Nevada from the following Orders: (1) 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 May 22, 2018; and (2) Decision, entered October 16, 2018.

DATED this 6<sup>th</sup> day of November, 2018.

THE DICKERSON KARACSONYI  
LAW GROUP

By Josef Karacsonyi  
ROBERT P. DICKERSON, ESQ.  
Nevada Bar No. 000945  
JOSEF M. KARACSONYI, ESQ.  
Nevada Bar No. 010634  
1745 Village Center Circle  
Las Vegas, Nevada 89134  
Attorneys for Lynita Sue 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 7<sup>th</sup> day of November, 2018, I caused the document entitled DEFENDANT, LYNITA SUE NELSON'S, NOTICE OF APPEAL, to be served as follows:

- 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;
- sent a courtesy copy via e-mail on Eighth Judicial District Court's electronic filing system;
- by hand-delivery with signed Receipt of Copy.

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

MARK A. SOLOMON, ESQ.  
JEFFREY P. LUSZECK, ESQ.  
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9060 West Cheyenne Avenue  
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[msolomon@sdfnvlaw.com](mailto:msolomon@sdfnvlaw.com)  
[jluszeck@sdfnvlaw.com](mailto:jluszeck@sdfnvlaw.com)

Attorneys for Matt Klabacka, Distribution Trustee of ELN Trust

RHONDA S. FORSBERG, ESQ.  
RHONDA S. FORSBERG, ESQ., CHARTERED  
64 North Pecos Road, Suite 800  
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[rforsberg@forsberg-law.com](mailto:rforsberg@forsberg-law.com)

Attorney for Eric L. Nelson, Individually and as Investment Trustee of the ELN Trust

*W. Dig*

\_\_\_\_\_  
An employee of The Dickerson Karacsonyi Law Group