

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellants,

vs.

MARJORIE B. BOULDEN, trustee of the
Marjorie B. Boulden Trust; LINDA
LAMOTHE; and JACQUES LAMOTHE,
Trustees of the Jacques & Linda
Lamothe Living Trust,

Respondents.

No 79776

Electronically Filed
Nov 22 2019 02:15 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**DOCKETING STATEMENT
CIVIL APPEALS**

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District County Eighth Department 16
County Clark Judge Timothy C. Williams
District Ct. Case No. A-16-747800-C

2. Attorney filing this docketing statement:

Attorney Joel D. Henriod, Daniel F. Polsenberg, and Dan R. Waite

Telephone 702-949-8200

Firm LEWIS ROCA ROTHGERBER CHRISTIE LLP

Address 3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169

Client(s) Trudi Lee Lytle and John Allen Lytle, as trustees of the Lytle Trust

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

3. Attorney(s) representing respondents(s):

Attorney Daniel T. Foley Telephone 702-384-2070

Firm FOLEY & OAKES, PC

Address 1210 South Valley View Boulevard, Suite 208
Las Vegas, Nevada 89102

Client(s) Marjorie B. Boulden, trustee of the Marjorie B. Boulden Trust; Linda Lamothe and Jacques Lamothe, trustees of the Jacques and Linda Lamothe Living Trust

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

☐ Judgment after bench trial

☐ Dismissal:

☐ Judgment after jury verdict

☐ Lack of jurisdiction

- | | |
|---|--|
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify) |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Modification |
| | <input checked="" type="checkbox"/> Other disposition (specify):
Order granting award of
attorneys' fees and costs |

5. Does this appeal raise issues concerning any of the following? No.

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Lytle v. Boulden, Case No. 73039

Lytle v. September Trust, Dated March 23, 1972, Case No. 76198

Lytle v. September Trust, Dated March 23, 1972, Case No. 77007

Lytle v. Disman, Case No. 79753

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

September Trust v. Lytle Trust, Eighth Judicial District Court Case No. A-17-765372-C, consolidated with Case No. A-16-747800-C on March 2, 2018.

8. Nature of the action. Briefly describe the nature of the action and the result below:

This action stems from a dispute over the validity and legal effect of abstracts of judgments recorded against certain residential property. The district court granted summary judgment in favor of plaintiffs-respondents. Defendants-appellants appeal from the post-judgment order granting attorneys' fees and costs in the amount of \$77,146.80.

9. Issues on appeal. State specifically all issues in this appeal (attach separate sheets as necessary):

1. Whether the district court abused its discretion in awarding fees and costs.

2. Whether the district court erred in denying defendants-appellants' motion to retax costs.

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

Lytle v. Disman, Case No. 79753, addresses an award of fees entered in the same underlying action.

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

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues? N/A

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

13. Assignment to the Court of Appeals or Retention in the Supreme Court.

Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter is presumptively assigned to the Court of Appeals under NRAP 17(b)(7), but appellants contend that the Supreme Court should retain the case due to its familiarity with the issues and the related cases presently before it.

14. Trial. If this action proceeded to trial, how many days did the trial last?

N/A

Was it a bench or jury trial? N/A

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from 9/20/19
(Exhibit A)

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served 9/20/19
(Exhibit A)

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing N/A

☐ NRCP 52(b) Date of filing N/A

☐ NRCP 59 Date of filing N/A

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. __, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion

(c) Date written notice of entry of order resolving tolling motion was served

Was service by: N/A

☐ Delivery

☐ Mail/Electronic/Fax

19. Date notice of appeal filed 10/4/19 (Exhibit B)

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

N/A

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

The time limit for filing the notice of appeal from a special post-judgment motion is governed by NRAP 4(a)(1).

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

- (a) ☐ NRAP 3A(b)(1) ☐ NRS 38.205
 ☐ NRAP 3A(b)(2) ☐ NRS 233B.150
 ☐ NRAP 3A(b)(3) ☐ NRS 703.376
 ☒ Other (specify) NRAP 3A(b)(8)

(b) Explain how each authority provides a basis for appeal from the judgment or order:

This appeal is from a post-judgment award of attorneys' fees and cost pursuant NRAP 3A(b)(8).

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Marjorie B. Boulden, trustee of the Marjorie B. Boulden Trust
Linda Lamothe and Jacques Lamothe, trustees of the Jacques & Linda Lamothe Living Trust
Trudi Lee Lytle
John Allen Lytle
The Lytle Trust
September Trust, Dated March 23, 1972
Gerry R. Zobrist and Jolin G. Zobrist, as trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust
Raynaldo G. Sandoval and Julie Marie Sandoval Gegen, as trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution Trust Dated May 27, 1992
Dennis A. Gegen and Julie S. Gegen
Robert Z. Disman
Yvonne A. Disman

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

The claims involving Robert Z. Disman and Yvonne A. Disman were dismissed on January 14, 2019 (Exhibit C).

The claims involving the September Trust, Dated March 23, 1972, Gerry R. Zobrist and Jolin G. Zobrist, as trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust, Raynaldo G. Sandoval and Julie Marie Sandoval Gegen, as trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution Trust Dated May 27, 1992, and Dennis A. Gegen and Julie S. Gegen were resolved by summary judgment on May 24, 2018 (Exhibit D).

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Plaintiffs Marjorie B. Boulden, trustee of the Marjorie B. Boulden Trust and Linda Lamothe and Jacques Lamothe, trustees of the Jacques & Linda Lamothe Living Trust filed their "Second Amended Complaint" in case no. A-16-747800-C on July 25, 2017 (Exhibit E). Defendants Trudi Lee Lytle, Johan Allen Lytle, and the Lytle Trust filed their "Answer to Plaintiffs' Second Amended Complaint and Counterclaim" on August 11, 2017 (Exhibit F). Robert Z. Disman and Yvonne A. Disman's filed their "Answer and Crossclaim" on September 26, 2017 (Exhibit G).

Plaintiffs' claims for quiet title and declaratory relief are resolved with the July 25, 2017 "Order Granting Motion to Alter or Amend Findings of Fact and Conclusions of Law" (Exhibit H). The counter- and crossclaims involving Robert Z. Disman and Yvonne A. Disman were resolved with the January 14, 2019 "Stipulation and Order to Dismiss All Remaining Claims Without Prejudice" (Exhibit C).

Plaintiffs the September Trust, Dated March 23, 1972, Gerry R. Zobrist and Jolin G. Zobrist, as trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust, Raynaldo G. Sandoval and Julie Marie Sandoval Gegen, as trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution Trust Dated May 27, 1992, and Dennis A. Gegen and Julie S. Gegen filed their "Complaint" in case no. A-17-765372-C on November 30, 2017 (Exhibit I). Those claims were resolved with the May 24, 2018 "Order Granting Motion for Summary Judgment or, in the Alternative, Motion for Judgment on the Pleadings and Denying Countermotion for Summary Judgment" (Exhibit D).

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

The order appealed from is independently appealable order granting fees and costs. NRAP 3A(b)(8). Thus, the finality of the underlying judgment may be irrelevant for purposes of appellate jurisdiction.

25. If you answered “No” to question 23, complete the following: N/A

- (a) Specify the claims remaining pending below:
- (b) Specify the parties remaining below:
- (c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?
 - ☐ Yes
 - ☐ No
- (d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?
 - ☐ Yes
 - ☐ No

26. If you answered “No” to any part of question 24, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)): N/A

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Trudi Lee Lytle and John Allen Lytle
Name of appellants

Joel D. Henriod
Name of counsel of record

November 22, 2019
Date

/s/ Joel D. Henriod
Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

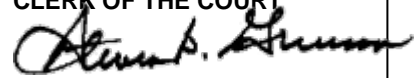
I hereby certify that this “Docketing Statement” was filed electronically with the Nevada Supreme Court on the 22nd day of November, 2019. Electronic service of the foregoing “Docketing Statement” shall be made in accordance with the Master Service List as follows:

Daniel T. Foley
FOLEY & OAKES, PC
1210 South Valley View Boulevard, Suite 208
Las Vegas, Nevada 89102

Attorneys for Respondents

/s/ Lisa Noltie
An Employee of Lewis Roca Rothgerber Christie LLP

EXHIBIT A TO
DOCKETING
STATEMENT



1 **NOE**
2 DANIEL T. FOLEY, ESQ.
3 Nevada Bar No. 1078
4 FOLEY & OAKES, PC
5 1210 So. Valley View Blvd., Suite # 208
6 Las Vegas, Nevada 89102
7 Tel.: (702) 384-2070
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9 Email: dan@foleyoakes.com
10 *Attorneys for Plaintiffs*

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

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

20 Plaintiff,)

Case No. A-16-747800-C

Dept. No. XVI

21 v.)

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

27 **NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFFS' MOTION FOR**
28 **ATTORNEYS' FEES AND COSTS AND ORDER DENYING DEFENDANTS MOTION**
TO RETAX AND SETTLE COSTS

TO: All Parties and their counsel:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an Order was
entered with the above-entitled Court on September 20, 2019.

///

1 A copy of said Stipulation and Order is attached hereto.

2 Dated this 20th day of September 2019.

3
4 FOLEY & OAKES, PC

5 /s/ Daniel T. Foley
6 Daniel T. Foley, Esq.
7 1210 S. Valley View Blvd. #208
8 Las Vegas, NV 89102
9 *Attorneys for Plaintiffs*

10 **CERTIFICATE OF SERVICE**

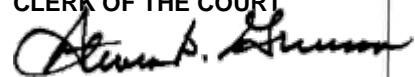
11 Pursuant to N.R.C.P. Rule 5(b), I certify that I am an employee of Foley & Oakes, PC and
12 that on this 20th day of September 2019 I caused this document to be served pursuant to NEFCR
13 9, upon all registered parties via the Court's electronic filing system.

14 I declare that under penalty of perjury under the laws of the State of Nevada that the above
15 is true and correct. I further declare that I am employed in the office of a member of the bar of
16 this court at whose direction this service was made.

17
18 /s/ Liz Gould
19 An employee of Foley & Oakes PC

EXHIBIT “1”

EXHIBIT “1”



ORDR

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Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiff,)

v.)

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

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

Date of Hearing: May 17, 2019
Time of Hearing: 9:00 a.m.

**ORDER GRANTING PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND COSTS
AND ORDER DENYING DEFENDANTS' MOTION TO RETAX AND SETTLE COSTS**

Plaintiffs Marjorie B. Boulden Trustee of the Marjorie B. Boulden Trust's (hereinafter "Mrs. Boulden") and Linda Lamothe and Jacques Lamothe, Trustees of the Linda Lamothe and Jacques Lamothe Living Trust's (hereinafter the "Lamothes") (collectively referred to as "Plaintiffs") Motion For Attorneys' Fees and Costs and Defendants' Trudi Lee Lytle and John Lytle, the Trustees of the Lytle Living Trust's (the "Lytle Trust") Motion to Retax Costs, came on for hearing before this Court on May 17, 2019. Daniel T. Foley, Esq. appeared on behalf of Mrs. Boulden and the Lamothes, Richard Haskin, Esq. appeared on behalf of the Lytle Trust, Christina

1 Wang, Esq. appeared on behalf of Robert C. Disman and Yvonne Disman, and Wesley Smith
2 appeared on behalf of the September Trust, Gerry R. Zobrist, Jolin G. Zobrist, as Trustees of the
3 Gerry Zobrist and Jolin G. Zobrist Trust, Raynaldo G. Sandoval and Julie Marie Sandoval Gegen,
4 as Trustees of the Raynaldo G. And Evelyn Sandoval Joint Living and Devolution Trust Dated
5 May 27, 1992, and Dennis A. Gegen and Julie Gegen, Husband and Wife as Joint Tenants.
6

7 The Court having reviewed the Plaintiffs' Motion, the Lytle Trust's Opposition, the
8 Plaintiffs' Reply, the Lytle Trust's Motion, the Plaintiffs' Opposition and the Lytle Trust's Reply
9 and all documents attached thereto or otherwise filed in this case, and good cause appearing
10 therefore, makes these Findings of Fact and Conclusions of Law.

11 To the extent any Findings of Fact also contain Conclusions of Law said Conclusions of
12 Law should be considered as such. To the extent that any Conclusions of Law also contain
13 Findings of Fact said Findings of Fact should be considered as such.
14

15 **FINDINGS OF FACT**

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

19 2. The Lamothes are the trustees of the Linda Lamothe and Jacques Lamothe Living
20 Trust which owned that certain residential property known as parcel number 163-03-313-002 also
21 known as 1830 Rosemere Ct., Las Vegas, NV 89117 (the "Lamothe Property").
22

23 3. The Boulden Property and the Lamothe Property are located in the Rosemere
24 Court subdivision (the "Subdivision") and are subject to the CC&Rs recorded January 4, 1994
25 (the "Original CC&Rs"), which was later named "Rosemere Estates."
26
27

1 4. In 2009, the Lytle Trust sued the Rosemere Estates Property Owners Association
2 (the Association”) in the Eighth Judicial District Court, case # A-09-593497-C (the “Rosemere
3 LPA Litigation”).

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

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

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

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

13 b. The Association did not have any powers beyond those of the “property owners
14 committee” designation in the Original CC&Rs to take care of those matters set
15 forth in Paragraph 21 of the Original CC&Rs – simply to care for the landscaping
16 and other common elements of Rosemere Estates as set forth in Paragraph 21 of
17 the Original CC&Rs.

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

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

24 8. After obtaining Summary Judgment in the Rosemere LPA Litigation, the Lytle
25 Trust obtained a Judgment against the Association for \$361,238.59. (the “Lytle/Association
26 Judgment”).
27

1 9. After obtaining the Lytle/Association Judgment, the Lytle Trust, on August 16,
2 2016, recorded with the Clark County Recorder's office Abstracts of Judgement referencing the
3 Lytle/Association Judgment (the "Abstracts of Judgment").

4 10. On March 10, 2017, Plaintiffs filed their Amended Complaint against the Lytle
5 Trust asserting Causes of Action for Declaratory Relief, Quiet Title, Slander of Title, and
6 Injunctive Relief.

7 11. In the Amended Complaint, the Plaintiffs alleged in support of all four Causes of
8 Action that the Original CC&R's recorded on January 4, 1994 against all of the properties within
9 the Subdivision created a Limited Purpose Association, that Judge Leavitt had previously
10 declared that the Subdivision was a Limited Purpose Association, that NRS 116.3117 was not
11 applicable to the Rosemere Limited Purpose Association, and therefore the Lytle Trust's
12 Abstracts of Judgment could not be recorded against the Plaintiffs' properties.

13 12. On March 27, 2017, the Lytle Trust filed a Counter Motion for Summary
14 Judgment and alleged and argued that the terms of the NRS Chapter 116 and the Original CC&Rs
15 allowed a lien or judgment against the Association to attach to each lot within the Association and
16 that pursuant to the Original CC&Rs, a lien or judgment against the Association established under
17 Original CC&Rs attaches to each Lot within the Association.

18 13. This Court, on April 27, 2017, entered its Order Granting Partial Summary
19 Judgment as to Plaintiffs' Quiet Title and Declaratory Relief causes of action in favor of the
20 Plaintiffs specifically finding and concluding as follows:

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

23 8. The Defendants obtained a Summary Judgment for Declaratory
24 Relief from the District Court in the Rosemere LPA Litigation, which
25 found and ruled as follows:
26
27

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

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

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

13 d. The Amended and Restated CC&Rs recorded with the
14 Clark County Recorder’s Office as Instrument #20070703-
15 0001934 (the “Amended CC&Rs”) are invalid, and the Amended
16 CC&Rs have no force and effect.

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

20 14. This Court’s Order Granting Partial Summary Judgment was amended on July 25,
21 2017; however, none of the findings of fact and conclusions of law recited above were modified.

22 15. Plaintiffs filed a Second Amended Complaint on July 25, 2017, for Slander of
23 Title, Injunctive Relief, Quiet Title and Declaratory Relief.

24 16. On August 11, 2017, the Lytle Trust filed an Answer to the Second Amended
25 Complaint and its Counter Complaint against the Plaintiffs and specifically alleged that based on
26 the Original CC&Rs, the Lytle Trust was entitled to record the Abstracts of Judgment against the
27 Plaintiffs’ properties. The Lytle Trust specifically alleged as follows:

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

34 29. Specifically, the Lytles contend as follows:

1 a. Pursuant to the Original CC&Rs, a lien or judgment against
2 the association established under the Original CC&Rs attaches to each
lot within the Association.

3 c. Pursuant to NRS, Chapter 116, the Uniform
4 Common Interest Development Act, a lien or judgment against the
5 Association attached to each lot within the Association, even if the
6 Association is a *limited purpose association*, because under NRS
7 116.021, each common interest community consists of all "real estate
8 described in a declaration with respect to which a person, by virtue of
9 the person's ownership of a unit, is obligated to pay for a share of real
10 estate taxes, insurance premiums, maintenance or improvement of, or
11 services or other expenses related to, common elements, other units or
other real estate described in that declaration." Further under NRS
116.093, each "unit" is defined as the "physical portion of the
common-interest community designated for separate ownership or
occupancy..." Thus, the association, or common interest community,
includes each and every unit in the community, including those owned
by third parties.

12 d. Pursuant to NRS 116.3117, which governed the
13 Association and all owners during the underlying litigation, a
14 judgment against the Association is a lien in favor of the Lytles against
15 all of the real property within the Association and all of the units
16 therein, including Counter-Defendants' properties. The association
17 and its membership are not entitle to use Chapter 116 and all of its
18 provisions as a sword during the litigation against the Lytles, *e.g.* to
19 record multiple liens totaling \$209,883.19 against the Lytles and
attempt foreclosure against the Lytle Property forcing to procure a
\$123,000.00 cash bond to prevent such foreclosure, and then a shield
to defend against the Lytles after they prevailed in that litigation and
the Association was declared a *limited purpose association*.

20 30. The Lytles desire a judicial determination of the parties' rights and
21 duties and a declaration (that) the lien against the Association,
22 specifically, the Abstract of judgment issued in the NRED II
Litigation, can be recorded against 1830 Rosemere Court and 1960
Rosemere Court.

23 17. The Plaintiffs were the prevailing parties in this litigation.

24 18. The Lytle Trust was the losing party in this litigation.

25 19. Section 25 of the CC&Rs provides as follows:

26 In any legal or equitable proceeding for the enforcement of or to
27 restrain the violation of the Declaration of Covenants, Conditions and

1 Restrictions or any provision thereof, the losing party or parties shall
2 pay in such amount as may be fixed by the court in such proceeding.
3 Leave this in

4 20. The Plaintiffs' Amended Complaint and the Lytle Trust's Counter Complaint were
5 both based in large part on the parties' rights under the Original CC&Rs and whether the Original
6 CC&Rs created a Limited Purpose Association which excluded most of NRS 116, especially NRS
7 116.3117, from having any application to the Subdivision.

8 21. Plaintiffs, in this litigation, sought to enforce their specific rights under the
9 Original CC&Rs.

10 22. The Lytle Trust, in this litigation, sought to enforce alleged rights under the
11 Original CC&Rs, the Plaintiffs incurred \$75,733.80 in attorneys' fees and \$1,413 in costs.

12 23. The Court analyzed the Plaintiffs' Attorneys' Fees utilizing the factors identified in
13 *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, at 349-50, 455 P.2d 31, at 33 (1969).

14 24. The Plaintiffs' Attorneys' fees and costs are reasonable in amount and were
15 necessarily incurred in this litigation.

16 25. The law firm of Foley & Oakes, PC's and Mr. Foley's hourly rate for legal
17 services was reasonable given Mr. Foley's 35 years of practice, his professional qualities, the
18 nature of the litigation, the work performed, and the results obtained in this case.

19 26. Foley & Oakes, PC and Mr. Foley exhibited the significant skill required to
20 perform the proper legal services in this matter.

21 27. The nature of this case, although direct, was not simple and required a dissection
22 of the Lytle Trust's 9-year legal battle in an underlying case and legal research regarding the
23 Homeowners' Association statutes in NRS 116.

24 28. The results obtained were exactly what were prayed for and predicted in the pre-
25 litigation demand letters.

29. The Court declines to make a determination regarding the lack of reasonableness of the Lytle Trust's grounds for defending and prosecuting this case, other than to conclude that the Lytle Trust's recording of Lis Pendens after the Abstracts of Judgment were released was unreasonable in light of the procedural history of the case.

CONCLUSIONS OF LAW

Section 25 of the CC&Rs is a mandatory provision regarding the award of attorneys' fees and costs being paid by the losing party in any legal or equitable proceeding for the enforcement of or to restrain the violation of the CC&Rs or any provision thereof.

ORDER

Based upon the Findings of Facts and Conclusions of Law above, and good cause appearing therefore,

IT IS HEREBY ORDERED ADJUDGED AND DECREED that the Plaintiffs' Motion for Attorneys' Fees and Costs and Memorandum of Costs and Disbursements are hereby Granted.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that the Lytle Trust's Motion to Retax Costs is Denied;

IT IS HEREBY ORDERED ADJUDGED AND DECREED that attorneys' fees are awarded in favor of the Plaintiffs Marjorie B. Boulden Trustee of the Marjorie B. Boulden Trust's and Linda Lamothe and Jacques Lamothe, Trustees of the Linda Lamothe and Jacques Lamothe Living Trust in the total and aggregate amount of \$77,146.80 against Trudi Lee Lytle and John Lytle, the Trustees of the Lytle Living Trust.

DATED this 19 day of 09 2019.


DISTRICT COURT JUDGE

1 Submitted by:

2 FOLEY & OAKES, PC

3

4


Daniel T. Foley, Esq.

5

1210 So. Valley View Blvd, Suite # 208

Las Vegas, Nevada 89102

6

Attorney for Plaintiffs

7

8

Approved as to form:

9

/s/ Richard E. Haskin

Richard E. Haskin, Esq.

10

Gibbs Giden Locker Turner Senet & Wittbrodt LLP

1140 N. Town Center Dr., Ste. 300

11

Las Vegas, Nevada 89144

12

Attorney for Defendants

13

14

15

16

17

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19

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21

22

23

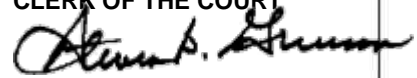
24

25

26

27

EXHIBIT B TO
DOCKETING
STATEMENT



1 **NOAS**

Richard E. Haskin, Esq.

2 Nevada State Bar # 11592

GIBBS GIDEN LOCHER TURNER

3 **SENET & WITTBRODT LLP**

1140 N. Town Center Drive, Suite 300

4 Las Vegas, Nevada 89144-0596

(702) 836-9800

5 Attorneys for Defendants

6 TRUDI LEE LYTLE AND JOHN ALLEN

LYTLE, AS TRUSTEES OF THE LYTLE

7 TRUST

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

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

13 Plaintiff,

14 v.

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

17 Defendants.

Case No.: A-16-747800-C

Dept.: XVIII

NOTICE OF APPEAL

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

25 Plaintiff,

26 v.

Case No.: A-17-765372-C

Dept.: XVIII

1 TRUDI LEE LYTLE AND JOHN ALLEN
2 LYTLE, AS TRUSTEES OF THE LYTLE
3 TRUST; JOHN DOES I through V, inclusive, ROE
4 ENTITIES I through V, inclusive,

Defendants.

5 NOTICE IS HEREBY GIVEN that Defendants TRUDI LEE LYTLE AND JOHN ALLEN
6 LYTLE, AS TRUSTEES OF THE LYTLE TRUST (hereinafter the "Lytle" or "Defendants") hereby
7 appeals to the Supreme Court of Nevada from the District Court's, Clark County, Nevada Order
8 Granting Plaintiffs MARJORIE B. BOULDEN, TRUSTEE OF THE MARJORIE B. BOULDEN
9 TRUST, LINDA LAMOTHE AND JACQUES LAMOTHE, TRUSTEES OF THE JACQUES &
10 LINDA LAMOTHE LIVING TRUST Motion for Attorney's Fees and Costs and Order Denying
11 Defendants' Motion to Retax and Settle Costs, entered on September 20, 2019, in Case No. A-16-
12 747800-C.

13
14 DATED: October 4, 2019

GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP

15
16
17 By: 

Richard F. Haskin, Esq.
Nevada State Bar # 11592
1140 N. Town Center Drive, Suite 300
Las Vegas, Nevada 89144
Attorneys for Defendants
TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, AS
TRUSTEES OF THE LYTLE TRUST

CERTIFICATE OF MAILING

The undersigned, an employee of the law firm of GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP, hereby certifies that on October 4, 2019, she served a copy of the foregoing **NOTICE OF APPEAL** by electronic service through the Regional Justice Center for Clark County, Nevada's ECF System:

DANIEL T. FOLEY, ESQ.
FOLEY & OAKS
1210 So. Valley View Blvd., Suite 208
Las Vegas, NV 89102

Attorneys for Plaintiffs **MARJORIE BOULDEN, TRUSTEE OF THE MARJORIE B. BOULDEN TRUST, ETAL.**

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

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

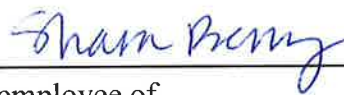
Attorneys for Plaintiffs

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

Christina H. Wang, Esq.
FIDELITY NATIONAL LAW GROUP
1701 Village Center Circle, Suite 110
Las Vegas, Nevada 89134

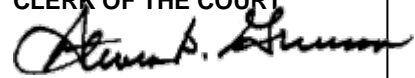
Attorneys for Respondents **ROBERT Z. DISMAN and YVONNE A. DISMAN**

Tel: (702) 667-3000
Fax: (702) 433-3091
Email: christina.wang@fnf.com



An employee of
Gibbs Giden Locher Turner
Senet & Wittbrodt LLP

EXHIBIT C TO
DOCKETING
STATEMENT



NOE
DANIEL T. FOLEY, ESQ.
Nevada Bar No. 1078
FOLEY & OAKES, PC
1210 S. Valley View Blvd. #208
Las Vegas, NV 89102
Tel.: (702) 384-2070
Fax: (702) 384-2128
Email: dan@foleyoakes.com
*Attorneys for the Boulden and
Lamothe Plaintiffs.*

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

TRUDI LEE LYTLE AND JOHN ALLEN
LYTLE, AS TRUSTEES OF THE LYTLE
TRUST, DOES I through X; and ROE
CORPORATIONS I through X

Defendants.

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

**NOTICE OF ENTRY OF
STIPULATION AND ORDER TO
DISMISS ALL REMAINING
CLAIMS WITHOUT
PREJUDICE**

AND ALL RELATED COUNTERCLAIMS
AND CROSS-CLAIMS

1 SEPTEMBER TRUST, DATED MARCH 23,)
1972; GERRY R. ZOBRIST AND JOLIN G.)
2 ZOBRIST, AS TRUSTEES OF THE GERRY)
R. ZOBRIST AND JOLIN G. ZOBRIST)
3 FAMILY TRUST; RAYNALDO G.)
SANDOVAL AND JULIE MARIE)
4 SANDOVAL GEGEN, AS TRUSTEES OF)
THE RAYNALDO G. AND EVELYN A.)
SANDOVAL JOINT LIVING AND)
5 DEVOLUTION TRUST DATED MAY 27,)
1992; and DENNIS A. GEGEN AND JULIE)
6 GEGEN, HUSBAND AND WIFE AS JOINT)
TENANTS,)
7)
8)
9 Plaintiffs)
v.)
10)
11 TRUDI LEE LYTLE AND JOHN LYTLE, AS)
TRUSTEES OF THE LYTLE TRUST; JOHN)
12 DOES I through V; and ROW ENTITIES I)
through I inclusive.)
13)
14 Defendants.)

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

15
16 **NOTICE OF ENTRY OF STIPULATION AND ORDER TO DISMISS ALL REMAINING**
17 **CLAIMS WITHOUT PREJUDICE**

18 TO: All Parties and their counsel:

19 **YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE** that a Stipulation and
20 Order was entered with the above-entitled Court on January 14, 2019. A copy of said Stipulation
21 and Order is attached hereto.

22 Dated: January 14, 2019.

23 FOLEY & OAKES, PC

24 **/s/ Daniel T. Foley**
25 Daniel T. Foley, Esq.
26 1210 S. Valley View Blvd. #208
Las Vegas, NV 89102
27 *Attorneys for Plaintiffs*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NEFCR 9, N.R.C.P. 5(b) and EDCR 7.26, I hereby certify that I am an
3 employee of Foley & Oakes, PC, and that on the 14th day of January, 2019 I served the following
4 document(s):

5 **NOTICE OF ENTRY OF STIPULATION AND ORDER TO DISMISS ALL**
6 **REMAINING CLAIMS WITHOUT PREJUDICE**

7 I served the above-named document(s) by the following means to the person s as listed
8 below: [x] By Electronic Transmission through the Wiznet System:

9 Richard E. Haskin, Esq.
10 GIBBS, GIDEN, LOCHER, TURNER,
11 SENET & WHITTBRODT, LLP
12 1140 N. Town Center Drive, Suite 300
Las Vegas, NV 89144
Attorneys for the Lytles

13 Christina H. Wang, ESQ.
14 FIDELITY NATIONAL LAW GROUP
15 8363 W. Sunset Road, Suite 120
Las Vegas, Nevada 89113
Attorneys for Counter-Defendants/Cross-Claimants
16 *Robert Z. Disman and Yvonne A. Disman*

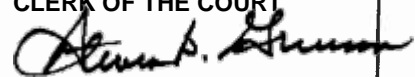
17 **CHRISTENSEN JAMES & MARTIN**
18 KEVIN B. CHRISTENSEN, ESQ. (175)
19 WESLEY J. SMITH, ESQ. (11871)
LAURA J. WOLFF, ESQ. (6869)
20 7440 W. Sahara Avenue
Las Vegas, Nevada 89117
Attorneys for September Trust, Zobrist Trust, Sandoval Trust,
21 *and Dennis & Julie Gegen*

22 I declare under the penalty of perjury that the foregoing is true and correct.

23 /s/ Liz Gould
24 An employee of FOLEY & OAKES

EXHIBIT “A”

EXHIBIT “A”



1 **SAO**
2 DANIEL T. FOLEY, ESQ.
3 Nevada Bar No. 1078
4 FOLEY & OAKES, PC
5 1210 S. Valley View Blvd. #208
6 Las Vegas, NV 89102
7 Tel.: (702) 384-2070
8 Fax: (702) 384-2128
9 Email: dan@foleyoakes.com
10 *Attorneys for the Boulden and*
11 *Lamothe Plaintiffs.*

12 **DISTRICT COURT**
13 ***
14 **CLARK COUNTY, NEVADA**

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

20 Plaintiffs,

21 vs.

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

26 *Defendants.*

27 AND ALL RELATED COUNTERCLAIMS)
28 AND CROSS-CLAIMS)

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

**STIPULATION AND ORDER TO
DISMISS ALL REMAINING
CLAIMS WITHOUT
PREJUDICE**

<input type="checkbox"/> Voluntary Dismissal	<input type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input checked="" type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

**FOLEY
&
OAKES**

JAN 09 2019

1 SEPTEMBER TRUST, DATED MARCH 23,)
2 1972; GERRY R. ZOBRIST AND JOLIN G.)
3 ZOBRIST, AS TRUSTEES OF THE GERRY)
4 R. ZOBRIST AND JOLIN G. ZOBRIST)
5 FAMILY TRUST; RAYNALDO G.)
6 SANDOVAL AND JULIE MARIE)
7 SANDOVAL GEGEN, AS TRUSTEES OF)
8 THE RAYNALDO G. AND EVELYN A.)
9 SANDOVAL JOINT LIVING AND)
10 DEVOLUTION TRUST DATED MAY 27,)
11 1992; and DENNIS A. GEGEN AND JULIE)
12 GEGEN, HUSBAND AND WIFE AS JOINT)
13 TENANTS,)

9 Plaintiffs)

10 v.)

11 TRUDI LEE LYTLE AND JOHN LYTLE, AS)
12 TRUSTEES OF THE LYTLE TRUST; JOHN)
13 DOES I through V; and ROW ENTITIES I)
14 through I inclusive.)

15 Defendants.)

Case No.: A-17-765372-C

Dept. No.: XVIII

16 **STIPULATION AND ORDER TO DISMISS ALL REMAINING CLAIMS WITHOUT**
17 **PREJUDICE**

18 IT IS HEREBY STIPULATED AND AGREED by and between counsel for all parties
19 herein, that all of the remaining causes of action in the above captioned case be dismissed without
20 prejudice. Specifically, the parties agree that the Plaintiffs, MARJORIE B. BOULDEN,
21 TRUSTEE OF THE MARJORIE B. BOULDEN TRUST ("Boulden Trust"), and LINDA
22 LAMOTHE AND JACQUES LAMOTHE, TRUSTEES OF THE JACQUES & LINDA
23 LAMOTHE LIVING TRUST ("Lamothe Trust")' First, Fifth, and Sixth Causes of Action in
24 their Second Amended Complaint filed July 25, 2017 be dismissed without prejudice.

25 IT IS FURTHER STIPULATED AND AGREED, specifically that TRUDI LEE LYTLE
26 AND JOHN ALLEN LYTLE, AS TRUSTEES OF THE LYTLE TRUST'S Counterclaim
27

1 against the Lamothe Trust and Robert Z. Disman and Yvonne A. Disman, filed August 11, 2017
2 be dismissed without prejudice.

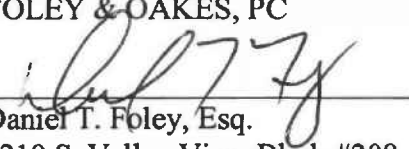
3 IT IS FURTHER STIPULATED AND AGREED that Robert Z. Disman's and Yvonne A.
4 Disman's Crossclaim against the Boulden Trust filed September 26, 2017, be dismissed without
5 prejudice and that each of these parties shall bear their own attorney's fees and costs associated
6 with the Crossclaim
7

8 IT IS FURTHER STIPULATED AND AGREED that, other than as provided above, the
9 parties are not dismissing or waiving any rights they may have to seek to recover attorneys' fees
10 and costs, to the extent that any such rights may exist.

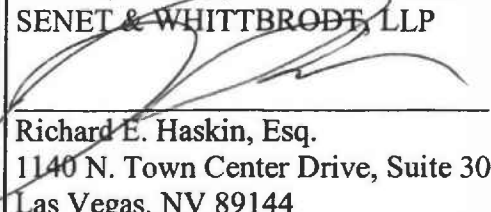
11 It is further stipulated that the parties are not dismissing any currently pending appeals from
12 decisions of the above captioned court or stipulating as to anything related to the right to file any
13 future appeals from future decisions of the above captioned court related to this matter.

14 Dated: January 8, 2019


15 FOLEY & OAKES, PC

16 
17 Daniel T. Foley, Esq.
18 1210 S. Valley View Blvd. #208
19 Las Vegas, NV 89102
Attorneys for Plaintiffs

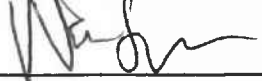
20 GIBBS, GIDEN, LOCHER, TURNER,
21 SENET & WHITT BRODT, LLP

22 
23 Richard E. Haskin, Esq.
24 1140 N. Town Center Drive, Suite 300
Las Vegas, NV 89144
Attorneys for Defendants

1 FIDELITY NATIONAL LAW GROUP

2 
3 Christina H. Wang, Esq.
4 8363 W. Sunset Road, Suite 120
5 Las Vegas, Nevada 89113
6 *Attorneys for Counter-Defendants/Cross-Claimants*
7 *Robert Z. Disman and Yvonne A. Disman*

8 **CHRISTENSEN JAMES & MARTIN**

9 
10 Wesley J. Smith, ESQ.
11 7440 W. Sahara Avenue
12 Las Vegas, Nevada 89117
13 *Attorneys for September Trust, Zobrist Trust, Sandoval Trust,*
14 *and Dennis & Julie Gegen*

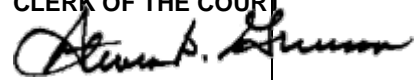
15 **ORDER**

16 It is so ORDERED.

17 DATED this 10th day of January 2019.

18 
19 _____
20 DAVID B. BARKER
21 SENIOR DISTRICT COURT JUDGE 

EXHIBIT D TO
DOCKETING
STATEMENT



NEOJ
CHRISTENSEN JAMES & MARTIN
KEVIN B. CHRISTENSEN, ESQ.
Nevada Bar No. 175
WESLEY J. SMITH, ESQ.
Nevada Bar No. 11871
LAURA J. WOLFF, ESQ.
Nevada Bar No. 6869
7440 W. Sahara Avenue
Las Vegas, Nevada 89117
Tel.: (702) 255-1718
Facsimile: (702) 255-0871
Email: kbc@cjmlv.com; wes@cjmlv.com; ljw@cjmlv.com
*Attorneys for September Trust, Zobrist Trust, Sandoval Trust
and Dennis & Julie Gegen*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

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

**NOTICE OF ENTRY OF ORDER
GRANTING MOTION FOR
SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, MOTION FOR
JUDGMENT ON THE PLEADINGS
AND DENYING COUNTERMOTION
FOR SUMMARY JUDGMENT**

Date: May 2, 2018
Time: 9:00 a.m.

AND ALL RELATED COUNTERCLAIMS
AND CROSS-CLAIMS

SEPTEMBER TRUST, DATED MARCH 23,
1972; GERRY R. ZOBRIST AND JOLIN G.
ZOBRIST, AS TRUSTEES OF THE GERRY
R. ZOBRIST AND JOLIN G. ZOBRIST
FAMILY TRUST; RAYNALDO G.
SANDOVAL AND JULIE MARIE
SANDOVAL GEGEN, AS TRUSTEES OF
THE RAYNALDO G. AND EVELYN A.
SANDOVAL JOINT LIVING AND

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

1 DEVOLUTION TRUST DATED MAY 27,
2 1992; and DENNIS A. GEGEN AND JULIE
3 S. GEGEN, HUSBAND AND WIFE, AS
4 JOINT TENANTS,

5 Plaintiffs,

6 vs.

7 TRUDI LEE LYTLE AND JOHN ALLEN
8 LYTLE, AS TRUSTEES OF THE LYTLE
9 TRUST; JOHN DOES I through V; and ROE
10 ENTITIES I through V, inclusive,

11 Defendants.

12 PLEASE TAKE NOTICE that an **ORDER GRANTING MOTION FOR**
13 **SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, MOTION FOR**
14 **JUDGMENT ON THE PLEADINGS AND DENYING COUNTERMOTION FOR**
15 **SUMMARY JUDGMENT** was filed with the Court on May 24, 2018, a true and correct
16 copy of which is attached hereto.

17 Dated this 25th day of May, 2018.

18 **CHRISTENSEN JAMES & MARTIN**

19 By: /s/ Wesley J Smith, Esq.

20 Wesley J. Smith, Esq.

21 Nevada Bar No. 11871

22 Laura J. Wolff, Esq.

23 Nevada Bar No. 6869

24 7440 W. Sahara Ave.

25 Las Vegas, NV 89117

26 Attorneys for Plaintiffs September Trust,

27 Zobrist Trust, Sandoval Trust, and

28 Dennis & Julie Gegen

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CERTIFICATE OF SERVICE

I am an employee of Christensen James & Martin. On May 25, 2018, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, MOTION FOR JUDGMENT ON THE PLEADINGS AND DENYING COUNTERMOTION FOR SUMMARY JUDGMENT**, to be served in the following manner:

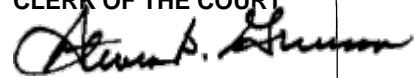
☒ **ELECTRONIC SERVICE**: electronic transmission (E-Service) through the Court's electronic filing system pursuant to Rule 8.05 of the Rules of Practice for the Eighth Judicial District Court of the State of Nevada.

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

☐ **FACSIMILE**: By sending the above-referenced document via facsimile as follows:

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

/s/ Natalie Saville
Natalie Saville



ORDR
CHRISTENSEN JAMES & MARTIN
KEVIN B. CHRISTENSEN, ESQ.
Nevada Bar No. 175
WESLEY J. SMITH, ESQ.
Nevada Bar No. 11871
LAURA J. WOLFF, ESQ.
Nevada Bar No. 6869
7440 W. Sahara Avenue
Las Vegas, Nevada 89117
Tel.: (702) 255-1718
Facsimile: (702) 255-0871
Email: kbc@cjmlv.com; wes@cjmlv.com; ljw@cjmlv.com
*Attorneys for September Trust, Zobrist Trust, Sandoval Trust
and Dennis & Julie Gegen*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

AND ALL RELATED COUNTERCLAIMS
AND CROSS-CLAIMS

SEPTEMBER TRUST, DATED MARCH 23,
1972; GERRY R. ZOBRIST AND JOLIN G.
ZOBRIST, AS TRUSTEES OF THE GERRY
R. ZOBRIST AND JOLIN G. ZOBRIST
FAMILY TRUST; RAYNALDO G.
SANDOVAL AND JULIE MARIE
SANDOVAL GEGEN, AS TRUSTEES OF
THE RAYNALDO G. AND EVELYN A.
SANDOVAL JOINT LIVING AND

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

**ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, MOTION FOR
JUDGMENT ON THE PLEADINGS
AND DENYING COUNTERMOTION
FOR SUMMARY JUDGMENT**

Date: May 2, 2018
Time: 9:00 a.m.

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

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

1 DEVOLUTION TRUST DATED MAY 27,
2 1992; and DENNIS A. GEGEN AND JULIE
3 S. GEGEN, HUSBAND AND WIFE, AS
4 JOINT TENANTS,

5 Plaintiffs,

6 vs.

7 TRUDI LEE LYTLE AND JOHN ALLEN
8 LYTLE, AS TRUSTEES OF THE LYTLE
9 TRUST; JOHN DOES I through V; and ROE
10 ENTITIES I through V, inclusive,

11 Defendants.

12 Presently before the Court is Plaintiffs' Motion for Summary Judgment or, in the
13 Alternative, Motion for Judgment on the Pleadings filed by the September Trust, dated March
14 23, 1972 ("September Trust"), Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the Gerry R.
15 Zobrist and Jolin G. Zobrist Family Trust ("Zobrist Trust"), Raynaldo G. Sandoval and Julie
16 Marie Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and
17 Devolution Trust dated May 27, 1992 ("Sandoval Trust"), and Dennis A. Gegen and Julie S.
18 Gegen, Husband and Wife, as Joint Tenants ("Dennis & Julie Gegen") (collectively the
19 "Plaintiffs") in Case No. A-17-765372-C, and Defendants' Countermotion for Summary
20 Judgment filed by Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle Trust ("Lytle
21 Trust") in Case No. A-17-765372-C, which came on for hearing on March 21, 2018 at 9:00 a.m.
22 and May 2, 2018 at 9:00 a.m. in Department XVIII of the Eighth Judicial District Court, Clark
23 County, Nevada.

24 Wesley J. Smith, Esq. of Christensen James & Martin appeared on behalf of the Plaintiffs
25 September Trust, Zobrist Trust, Sandoval Trust, and Dennis & Julie Gegen. Richard Haskin,
26 Esq. of Gibbs Giden Locher Turner Senet & Wittbrodt LLP appeared on behalf of the Lytle
27 Trust. Daniel T. Foley, Esq. of Foley & Oakes, PC appeared on behalf of Marjorie B. Boulden,
28 Trustee of the Marjorie B. Boulden Trust, amended and restated dated July 17, 1996 ("Boulden

1 Trust”) and Linda Lamothe and Jacques Lamothe, Trustees of the Jacques and Linda Lamothe
2 Living Trust (“Lamothe Trust”). Christina H. Wang, Esq. of Fidelity Law Group appeared on
3 behalf of Robert Z. Disman and Yvonne A. Disman (“Robert & Yvonne Disman”).

4 The Court having considered the Motions and exhibits, having heard the arguments of
5 counsel, for all the reasons contained in the Plaintiffs’ Motion for Summary Judgment or, in the
6 Alternative, Motion for Judgment on the Pleadings, and with good cause appearing therefore, the
7 Court hereby enters the following Order:

8
9 **FINDINGS OF FACT**

10 1. The September Trust is the owner of the residential property in Clark County,
11 Nevada known as 1861 Rosemere Court, Las Vegas, Nevada 89117, Assessor’s Parcel No. 163-
12 03-313-004 (“September Property”).

13 2. The Zobrist Trust is the owner of the residential property in Clark County,
14 Nevada known as 1901 Rosemere Court, Las Vegas, Nevada 89117, Assessor’s Parcel No. 163-
15 03-313-005 (“Zobrist Property”).

16 3. The Sandoval Trust is the owner of the residential property in Clark County,
17 Nevada known as 1860 Rosemere Court, Las Vegas, Nevada 89117, Assessor’s Parcel No. 163-
18 03-313-001 (“Sandoval Property”).

19 4. Dennis & Julie Gegen are the owner of the residential property in Clark County,
20 Nevada known as 1831 Rosemere Court, Las Vegas, Nevada 89117, Assessor’s Parcel No. 163-
21 03-313-003 (“Gegen Property”) (hereafter September Property, Zobrist Property, Sandoval
22 Property and Gegen Property may be collectively referred to as “Plaintiffs’ Properties”).
23

24 5. The Plaintiffs’ Properties are located in the Rosemere Estates subdivision
25 (“Rosemere Subdivision” or “Subdivision”) and are subject to the CC&R’s recorded January 4,
26 1994 (the “CC&Rs”).
27
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1 6. John Allen Lytle and Trudi Lee Lytle are the Trustees of the Lytle Trust
2 (collectively "Lytle Trust") which owns that certain residential property known as parcel number
3 163-03-313-009 (the "Lytle Property"), also located in the Rosemere Subdivision.

4 7. In 2009, the Lytles filed suit against the Rosemere Association directly in the
5 Eighth Judicial District Court, Case No. A-09-593497-C ("Rosemere Litigation I").

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

7 9. None of the Plaintiffs were a "losing party" in the Rosemere Litigation I as that
8 term is found in Section 25 of the Original CC&Rs.
9

10 10. The Lytles obtained a Summary Judgment for Declaratory Relief from the District
11 Court in the Rosemere Litigation I, which found and ruled as follows:

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

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

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

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

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

26 12. After obtaining Summary Judgment in the Rosemere Litigation I, the Lytle Trust
27 filed a Motion for Attorneys' Fees and Costs against the Association, and conducted a prove-up
28

1 hearing on damages. After hearing all matters, a Final Judgment was entered in the Lytle Trust's
2 favor against the Association for \$361,238.59, which includes damages, attorneys' fees and costs
3 (the "Final Judgment").

4 13. After obtaining the Attorneys' Fees Judgment, the Lytle Trust, on August 16,
5 2016, recorded with the Clark County Recorder's office an Abstract of Judgment referencing the
6 Final Judgment against the Association, recorded as Instrument No. 20160818-0001198 (the
7 "First Abstract of Judgment").
8

9 14. In the First Abstract of Judgment, the Lytle Trust listed the parcel numbers for all
10 of the Plaintiffs' Properties as properties to which the First Abstract of Judgment and Final
11 Judgment was to attach.

12 15. On September 2, 2016, the Lytle Trust recorded with the Clark County Recorder's
13 office an Abstract of Judgment referencing the Final Judgment against the Association, recorded
14 as Instrument No. 20160902-0002685 (the "Second Abstract of Judgment"). The Second
15 Abstract of Judgment listed the parcel number of the Gegen Property only as the property to
16 which the Judgment was to attach.
17

18 16. On September 2, 2016, the Lytle Trust recorded with the Clark County Recorder's
19 office an Abstract of Judgment referencing the Final Judgment against the Association, recorded
20 as Instrument No. 20160902-0002686 (the "Third Abstract of Judgment"). The Third Abstract of
21 Judgment listed the parcel number of the September Trust Property only as the property to which
22 the Judgment was to attach.
23

24 17. On September 2, 2016, the Lytle Trust recorded with the Clark County Recorder's
25 office an Abstract of Judgment referencing the Final Judgment against the Association, recorded
26 as Instrument No. 20160902-0002687 (the "Fourth Abstract of Judgment"). The Fourth Abstract
27
28

1 of Judgment listed the parcel number of the Zobrist Trust Property only as the property to which
2 the Judgment was to attach.

3 18. In 2010, the Lytle Trust filed another suit against the Rosemere Association
4 directly in Case No. A-10-631355-C ("Rosemere Litigation II"). The Lytle Trust did not name
5 the Plaintiffs as Defendants in the Rosemere Litigation II.

6 19. On or about November 14, 2016, the Lytle Trust was granted Summary Judgment
7 against the Rosemere Association.

8 20. On or about July 20, 2017, the District Court signed an Abstract of Judgment in
9 the amount of \$1,103,158.12. ("Rosemere Judgment II").
10

11 21. The Plaintiffs were not named parties in the Rosemere II Litigation.

12 22. On or about April 2, 2015, the Lytle Trust filed a third case (Case No. A-15-
13 716420-C) against the Association and named as Defendants Sherman L. Kearl ("Kearl") and
14 Gerry G. Zobrist ("Zobrist") ("Rosemere Litigation III"). On April 8, 2015, the Lytles filed an
15 Errata to the Complaint amending it so that all references to Kearl and Zobrist were taken out of
16 the Complaint.
17

18 23. On or about September 13, 2017, the Court in the entered its Order granting
19 Summary Judgment for Declaratory Relief as against the Association ("Rosemere Judgment III").
20 On November 8, 2017, the Rosemere Litigation III Court granted a Motion for Attorney's Fees
21 and Costs.

22 24. On February 24, 2017, the Boulden Trust, owner of Parcel No. 163-03-313-008 in
23 the Rosemere Subdivision, and the Lamothe Trust, owner of Parcel No. 163-03-313-002 in the
24 Rosemere Subdivision, filed a Motion for Partial Summary Judgment in this Court in this Case,
25 Case No. A-16-747900-C.
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1 25. This Court granted the Boulden Trust's and Lamothe Trust's Motion for Partial
2 Summary Judgment, and on July 25, 2017, entered its Order Granting Motion to Alter or Amend
3 Findings of Fact and Conclusions of Law ("Order").

4 26. In its Order, the Court found that, among other things, the Association is not
5 subject to NRS 116.3117, the Boulden Trust and Lamothe Trust were not parties to the
6 Rosemere Litigation, the Rosemere Judgment I (referred to as the "Rosemere LP Litigation" in
7 the Order) is not an obligation or debt of the Boulden Trust or the Lamothe Trust and that the
8 Abstracts of Judgment were improperly recorded against their properties and must be expunged
9 and stricken from the record.
10

11 27. After the Court issued its Order, the Lytles released their liens against the
12 Boulden Trust and Lamothe Trust properties.

13 28. On February 21, 2018, Case No. A-17-765372-C was consolidated with Case No.
14 A-16-747900-C.
15

16 CONCLUSIONS OF LAW

17 1. The Court's prior Order with respect to Boulden Trust's and Lamothe Trust's
18 Motion for Partial Summary Judgment, Case No. A-16-747900-C, is the law of the case, to the
19 extent applicable to Plaintiffs' claims.

20 2. The Association is a "limited purpose association" as referenced in NRS
21 116.1201(2).

22 3. As a limited purpose association, NRS 116.3117 is not applicable to the
23 Association.
24

25 4. As a result of the Rosemere Litigation I, the Amended CC&Rs were judicially
26 declared to have been improperly adopted and recorded, the Amended CC&Rs are invalid and
27 have no force and effect and were declared *void ab initio*.
28

1 5. The Plaintiffs were not parties to the Rosemere Litigation I, Rosemere Litigation
2 II or Rosemere Litigation III.

3 6. The Plaintiffs were not “losing parties” in the Rosemere Litigation I, Rosemere
4 Litigation II or Rosemere Litigation III as per Section 25 of the Original CC&Rs.

5 7. Rosemere Judgments I, II and III in favor of the Lytle Trust, are not against, and
6 are not an obligation of the Plaintiffs to the Lytle Trust.

7 8. Rosemere Judgments I, II and III are against the Association and are not an
8 obligation or debt owed by the Plaintiffs to the Lytle Trust.

9 9. The First Abstract of Judgment recorded as Instrument No. 20160818-0001198
10 was improperly recorded against the Plaintiffs’ Properties and constitutes a cloud against each of
11 the Plaintiffs’ Properties.

12 10. The Second Abstract of Judgment recorded as Instrument No. 20160902-0002685
13 was improperly recorded against the Gegen Property and constitutes a cloud against the Gegen
14 Property.
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16 11. The Third Abstract of Judgment recorded as Instrument No. 20160902-0002686
17 was improperly recorded against the September Trust Property and constitutes a cloud against
18 the September Trust Property.
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20 12. The Fourth Abstract of Judgment recorded as Instrument No. 20160902-0002687
21 was improperly recorded against the Zobrist Trust Property and constitutes a cloud against the
22 Zobrist Trust Property.
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ORDER

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

IT IS HEREBY ORDERED ADJUDGED AND DECREED that Plaintiffs' Motion for Summary Judgment is GRANTED.

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Lytle Trust's Countermotion for Summary Judgment is DENIED.

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Lytle Trust improperly clouded the title to the September Property.

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Lytle Trust improperly clouded the title to the Zobrist Property.

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Lytle Trust improperly clouded the title to the Sandoval Property.

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Lytle Trust improperly clouded the title to the Gegen Property.

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the First Abstract of Judgment recorded as Instrument No. 20160818-0001198 in the Clark County Recorder's Office is hereby expunged and stricken from the records of the Clark County Recorder's Office.

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Second Abstract of Judgment recorded as Instrument No. 20160902-0002685 in the Clark County Recorder's Office is hereby expunged and stricken from the records of the Clark County Recorder's Office.

1 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
2 Third Abstract of Judgment recorded as Instrument No. 20160902-0002686 in the Clark County
3 Recorder's Office is hereby expunged and stricken from the records of the Clark County
4 Recorder's Office.

5 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
6 Fourth Abstract of Judgment recorded as Instrument No. 20160902-0002687 in the Clark County
7 Recorder's Office is hereby expunged and stricken from the records of the Clark County
8 Recorder's Office.
9

10 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
11 Lytle Trust is permanently enjoined from recording and enforcing the Judgments obtained from
12 the Rosemere Litigation I, Rosemere Litigation II and Rosemere Litigation III, or any other
13 judgments obtained against the Association, against the September Property, Zobrist Property,
14 Sandoval Property or Gegen Property.
15

16 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
17 Lytle Trust is permanently enjoined from taking any action in the future directly against the
18 Plaintiffs or their properties based upon the Rosemere Litigation I, Rosemere Litigation II or
19 Rosemere Litigation III.

20 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
21 Lytle Trust is hereby ordered to release the First Abstract of Judgment, the Second Abstract of
22 Judgment, the Third Abstract of Judgment and the Fourth Abstract of Judgment recorded with
23 the Clark County Recorder within ten (10) days after the date of Notice of Entry of this Order.
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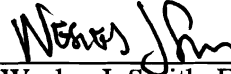
IT IS SO ORDERED.

Dated this ____ day of May, 2018.

DISTRICT COURT JUDGE

Submitted by:

CHRISTENSEN JAMES & MARTIN



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IT IS SO ORDERED.

Dated this ____ day of May, 2018.

DISTRICT COURT JUDGE

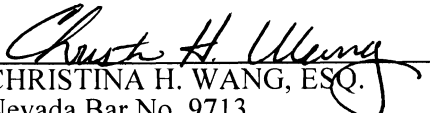
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Defendants/Cross-Defendants Boulden Trust
and Lamothe Trust

1 **IT IS SO ORDERED.**

2
3 Dated this 22 day of May, 2018.

4
5 _____
DISTRICT COURT JUDGE

6 Submitted by:

L. R.

7
8 **CHRISTENSEN JAMES & MARTIN**

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Defendants/Cross-Defendants Boulden Trust
and Lamothe Trust

1 **IT IS SO ORDERED.**

2
3 Dated this 28 day of May, 2018.



DISTRICT COURT JUDGE

4
5
6 Submitted by:

7
8 **CHRISTENSEN JAMES & MARTIN**

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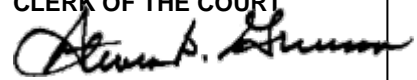
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EXHIBIT E TO
DOCKETING
STATEMENT



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**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiff,)

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

v.)

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

SECOND AMENDED COMPLAINT

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

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

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

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

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

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

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

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

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

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

13 9. The CC&Rs provided in paragraph 24 that in order to enforce the CC&Rs any
14 appropriate judicial proceeding in law or in equity could be used by any lot owner suing directly
15 any other lot owner or owners for any violation of the CC&Rs.

16 10. In 2009, the Lytles filed suit against the Rosemere Estates Property Owners
17 Association directly in case # A09-593497-C (the “Rosemere Litigation”).

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

20 12. The Lytles did not name the Plaintiffs or any other lot owners as defendants in the
21 Rosemere Litigation.

22 13. On or about July 29, 2016 the Lytles obtained a Judgment in their favor against
23 the Rosemere Estates Property Owners Association in the amount of \$361,238.59 (the
24 “Rosemere Judgment”).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 33. Plaintiffs do not owe any money whatsoever to the Lytles.

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

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

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

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

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

11
12 **THIRD CAUSE OF ACTION**
13 **(Quiet Title, All Plaintiffs)**

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

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

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

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

21 43. As a proximate result of the Lytles' actions, the titles to the Boulden Property and
22 the Lamothe Property have been improperly and illegally clouded.

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

25 45. Plaintiffs herein have been required to retain the services of Foley & Oakes, PC,
26 to prosecute this action, and are entitled to an award of attorney's fees and costs.
27
28

FOURTH CAUSE OF ACTION
(Declaratory Relief)

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

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

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

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

FIFTH CAUSE OF ACTION
(Injunction, Rosemere II Judgment)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 DATED this 25th day of July 2017.

13 Respectfully Submitted,

14 FOLEY & OAKES, PC

15 /s/Daniel T. Foley

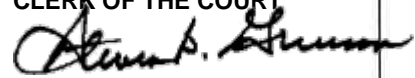
16 Daniel T. Foley, Esq.

17 626 S. 8th St.

18 Las Vegas, Nevada 89101

19 *Attorneys for Plaintiffs*
20
21
22
23
24
25
26
27
28

EXHIBIT F TO
DOCKETING
STATEMENT



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2 Nevada State Bar # 11592
Timothy P. Elson, Esq.
3 Nevada State Bar # 11559
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6 Attorneys for Defendants
7 TRUDI LEE LYTLE, JOHN ALLEN LYTLE,
& THE LYTLE TRUST

8
9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

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

14 Plaintiff,

15 v.

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

18 Defendants.

19
20
21 TRUDI LEE LYTLE, JOHN ALLEN LYTLE,
THE LYTLE TRUST,

22 Counter-Claimants,

23 v.

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

26 Counter-Defendants.
27
28

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

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

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

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

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

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

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

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

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

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

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

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///

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

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

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

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

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

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

21 **FIRST CAUSE OF ACTION**

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

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

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

28 ///

(Injunction, All Plaintiffs)

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

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

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

(Quiet Title, All Plaintiffs)

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

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

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

(Declaratory Relief, All Plaintiffs)

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

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

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

3 **FIFTH CAUSE OF ACTION**

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

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

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

9 **SIXTH CAUSE OF ACTION**

10 **(Declaratory Relief)**

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

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

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

17 **AFFIRMATIVE DEFENSES**

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

21 **FIRST AFFIRMATIVE DEFENSE**

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

23 **SECOND AFFIRMATIVE DEFENSE**

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

1 **THIRD AFFIRMATIVE DEFENSE**

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

3 **FOURTH AFFIRMATIVE DEFENSE**

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

6 **FIFTH AFFIRMATIVE DEFENSE**

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

12 **SIXTH AFFIRMATIVE DEFENSE**

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

14 **SEVENTH AFFIRMATIVE DEFENSE**

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

18 **EIGHTH AFFIRMATIVE DEFENSE**

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

21 **NINTH AFFIRMATIVE DEFENSE**

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

24 **TENTH AFFIRMATIVE DEFENSE**

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

28 ///

ELEVENTH AFFIRMATIVE DEFENSE

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

TWELFTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

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

WHEREFORE, Defendants pray for relief as follows:

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

COUNTERCLAIM

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

I. THE PARTIES AND JURISDICTION

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

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

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

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

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

1 their property prior to their purchase of the property.

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

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

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

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

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

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

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

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

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

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

24 **III. THE UNDERLYING LITIGATION**

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

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

4 **A. NRED I LITIGATION**

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

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

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

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

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

21 **B. NRED II LITIGATION**

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

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

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

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

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

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

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

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

FIRST CAUSE OF ACTION

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

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

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

5 29. Specifically, the Lytles contend as follows:

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

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

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

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

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

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

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

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

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

5. For reasonable attorney's fees, and

///

///

///

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

DATED: August 11, 2017

GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP

By: 

Richard E. Haskin, Esq.

Nevada State Bar # 11592

Timothy P. Elson, Esq.

Nevada State Bar # 11559

1140 N. Town Center Drive, Suite 300

Las Vegas, Nevada 89144

Attorneys for Defendants

TRUDI LEE LYTLE, JOHN ALLEN LYTLE, & THE
LYTLE TRUST

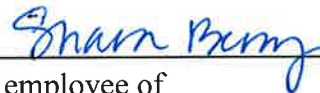
CERTIFICATE OF MAILING

The undersigned, an employee of the law firm of GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP, hereby certifies that on August 11, 2017, she served a copy of the foregoing **DEFENDANTS TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, TRUSTEES OF THE LYTLE TRUST'S ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT AND COUNTERCLAIM**; by electronic service through the Regional Justice Center for Clark County, Nevada's ECF System:

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

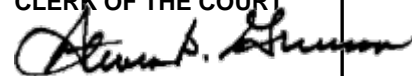
Attorney for Plaintiffs

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



An employee of
Gibbs Giden Locher Turner
Senet & Wittbrodt LLP

EXHIBIT G TO
DOCKETING
STATEMENT



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Attorneys for Counter-Defendants/Cross-Claimants
6 *Robert Z. Disman and Yvonne A. Disman*

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

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

14 Plaintiffs,)

15 vs.)

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

18 Defendants.)

19
20 TRUDI LEE LYTLE, JOHN ALLEN LYTLE,)
THE LYTLE TRUST,)

21 Counter-Claimants,)

22 vs.)

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

26 Counter-Defendants.)
27
28

Case No.: A-16-747800-C

Dept. No.: XVI

**COUNTER-DEFENDANTS AND
CROSS-CLAIMANTS ROBERT Z.
DISMAN AND YVONNE A. DISMAN'S
ANSWER AND CROSSCLAIM**

1 ROBERT Z. DISMAN, an individual; and)
2 YVONNE A. DISMAN, an individual,)
3 Cross-Claimants,)
4 vs.)
5 MARJORIE B. BOULDEN, TRUSTEE OF THE)
6 MARJORIE B. BOULDEN TRUST,)
7 AMENDED AND RESTATED DATED JULY)
8 17, 1996; DOES I through X; and ROE)
9 BUSINESS ENTITIES XI through XX,)
10 Cross-Defendants.)

11 Counter-Defendants ROBERT Z. DISMAN and YVONNE A. DISMAN (hereinafter
12 collectively referred to as, the “Dismans”) by and through their attorneys of record, the Fidelity
13 National Law Group, hereby file this Answer to Counter-Claimants TRUDI LEE LYTLE and
14 JOHN ALLEN LYTLE, Trustees of THE LYTLE TRUST (hereinafter collectively referred to
15 as, the “Lyttles”) Counterclaim as follows:

16 **I. THE PARTIES AND JURISDICTION**

17 1. Answering paragraph numbers 1 and 2, the Dismans are without sufficient
18 knowledge or information to form a belief as to the truth of the allegations of said paragraphs
19 and on that basis deny each and every allegation set forth therein.

20 2. Answering paragraph number 3, the Dismans admit that in or about August 2017,
21 they purchased the real property commonly known as 1960 Rosemere Court, Las Vegas, Nevada
22 89117, Parcel No. 163-03-313-008 (“1960 Rosemere Court” or “Property”) from Marjorie B.
23 Boulden, Trustee of The Marjorie B. Boulden Trust, amended and restated dated July 17, 1996.
24 The Dismans further admit that they are now owners of 1960 Rosemere Court. The Dismans
25 generally and specifically deny all other allegations set forth in paragraph number 3.

26 3. Answering paragraph number 4, the Dismans are without sufficient knowledge or
27 information to form a belief as to the truth of the allegations of said paragraph and on that basis
28 deny each and every allegation set forth therein.

II. ROSEMERE ESTATES COMMUNITY AND GOVERNING DOCUMENTS

4. Answering paragraph number 5, the allegations set forth therein attempt to

1 characterize the terms of the document referenced, which speaks for itself. Therefore, the
2 Dismans generally and specifically deny any characterization or legal conclusion inconsistent
3 with the document referenced and no further response is required.

4 5. Answering paragraph numbers 6, 7, 8, 9, 10, 11 and 12, the Dismans are without
5 sufficient knowledge or information to form a belief as to the truth of the allegations of said
6 paragraphs and on that basis deny each and every allegation set forth therein.

7 **III. THE UNDERLYING LITIGATION**

8 6. Answering paragraph number 13, the Dismans are without sufficient knowledge
9 or information to form a belief as to the truth of the allegations of said paragraph and on that
10 basis deny each and every allegation set forth therein.

11 **A. NRED I LITIGATION**

12 7. Answering paragraph numbers 14, 15, 16, 17 and 18, the Dismans are without
13 sufficient knowledge or information to form a belief as to the truth of the allegations of said
14 paragraphs and on that basis deny each and every allegation set forth therein.

15 **B. NRED II LITIGATION**

16 8. Answering paragraph numbers 19, 20, 21, 22, 23, 24, 25 and 26, the Dismans are
17 without sufficient knowledge or information to form a belief as to the truth of the allegations of
18 said paragraphs and on that basis deny each and every allegation set forth therein.

19 **FIRST CAUSE OF ACTION**

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

22 9. Answering paragraph number 27, the Dismans repeat and reallege their answers
23 to paragraphs 1 through 26 above, and incorporates the same by reference as though fully set
24 forth herein.

25 10. Answering paragraph number 28, the Dismans generally and specifically deny
26 the allegations set forth therein.

27 11. Answering paragraph numbers 29(a) and (b), the allegations set forth therein
28 attempt to characterize the terms of the documents referenced, which speak for themselves.

1 Therefore, the Dismans generally and specifically deny any characterization or legal conclusion
2 inconsistent with the documents referenced and no further response is required.

3 12. Answering paragraph numbers 29(c) and (d), and 30, the allegations set forth
4 therein call for legal conclusions to which no response is required. To the extent paragraph
5 numbers 29(c) and (d) are determined to contain factual allegations, the Dismans are without
6 sufficient knowledge or information to form a belief as to the truth of the allegations of said
7 paragraphs and on that basis deny each and every allegation set forth therein.

8 13. Answering paragraph number 31, the Dismans generally and specifically deny
9 the allegations set forth therein

10 **AFFIRMATIVE DEFENSES**

11 The Dismans assert the following affirmative defenses to the claims and allegations
12 contained in the Counterclaim.

13 1. The Counterclaim fails to state a claim or cause of action against the Dismans
14 upon which relief can be granted.

15 2. The Counterclaim is not ripe for determination.

16 3. The Counterclaim is barred in whole or in part by the doctrines of laches, waiver,
17 estoppel, and/or unclean hands.

18 4. The Counterclaim is barred in whole or in part by the doctrines of ratification,
19 confirmation, release, discharge, and/or set-off.

20 5. The Counterclaim is barred in whole or in part by the doctrines of mistake,
21 excuse, and/or non-performance.

22 6. The Dismans acted at all times in accordance with their contractual and legal
23 rights.

24 7. The Dismans acted at all times in good faith and in conformity with applicable
25 law and regulations.

26 8. Any damage, injury or loss sustained by the Lytles was caused by the actions of
27 others or by intervening or superseding events for which the Dismans have no responsibility.
28

1 **PARTIES**

2 1. The Dismans are, and at all times relevant herein were, residents of Clark
3 County, Nevada.

4 2. The Dismans are informed and believe and on that basis allege that MARJORIE
5 B. BOULDEN, Trustee of THE MARJORIE B. BOULDEN TRUST, AMENDED AND
6 RESTATED DATED JULY 17, 1996 ("Boulden"), is, and at all relevant times herein was, a
7 resident of Clark County, Nevada.

8 3. The Dismans are unaware of the true names and legal capacities, whether
9 individual, corporate, associate, or otherwise, of the Cross-Defendants sued herein as DOES I
10 through X and ROE BUSINESS ENTITIES XI through XX, inclusive, and therefore sue said
11 Cross-Defendants by their fictitious names. The Dismans pray leave to insert said Cross-
12 Defendants' true names and legal capacities when ascertained. The Dismans are informed and
13 believe and on that basis allege that each of the Cross-Defendants designated herein as a DOE or
14 a ROE is in some way legally responsible and liable for the events referred to herein and
15 proximately caused the damages alleged herein.

16 **JURISDICTION AND VENUE**

17 4. This Court's jurisdiction over the parties is proper under NRS 14.065 as it is
18 consistent with the constitution of this state and the Constitution of the United States.

19 5. Venue is proper in the Eighth Judicial District Court of Nevada under NRS
20 13.010 as the subject property is located in Clark County, Nevada.

21 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

22 6. This action concerns the real property commonly known as 1960 Rosemere
23 Court, Las Vegas, Nevada 89117, Parcel No. 163-03-313-008 ("1960 Rosemere Court" or
24 "Property").

25 7. In or about August 2017, the Dismans purchased 1960 Rosemere Court from
26 Boulden for \$550,000.00.

27 8. The Grant, Bargain, Sale Deed conveying title of the Property from Boulden to
28 the Dismans was recorded on August 4, 2017, as Instrument No. 20170804-0002656 of the

1 Official Records of Clark County, Nevada.

2 9. Trudi Lee Lytle and John Allen Lytle, Trustees of The Lytle Trust (hereinafter
3 collectively referred to as, the "Lyttles") allege that 1960 Rosemere Court is encumbered by a
4 judgment lien that they recorded against the Rosemere Property Owners' Association and that
5 attached to the Property (the "Judgment Lien").

6 **FIRST CLAIM FOR RELIEF**

7 **(Breach of Warranty)**

8 10. The Dismans repeat, reallege and incorporate by reference each and every
9 allegation contained in Paragraphs 1 through 9 as though fully set forth herein.

10 11. Pursuant to Nevada law and, specifically, NRS 111.170, the Grant, Bargain, Sale
11 Deed whereby Boulden conveyed 1960 Rosemere Court to the Dismans is a warranty deed that
12 contains certain covenants, including, but not limited to, the covenant that the Property is free
13 from any encumbrance and defect in title.

14 12. Such covenants may be sued upon in the same manner as if they had been
15 expressly inserted in the conveyance.

16 13. By virtue of the Lyttles' Counterclaim against the Dismans, 1960 Rosemere Court
17 may be subject to the Judgment Lien.

18 14. Boulden, therefore, breached the covenants contained in the Grant, Bargain, Sale
19 Deed whereby she conveyed the Property to the Dismans.

20 15. As a direct and proximate result of Boulden's breach, the Dismans have suffered
21 damages in an amount in excess of Fifteen Thousand Dollars (\$15,000.00), all in a sum to be
22 determined according to proof at the time of trial.

23 16. As a direct and proximate result of Boulden's breach, the Dismans have been
24 required to retain legal counsel and incur legal fees and costs in connection with this action and
25 is, therefore, entitled to recover reasonable attorneys' fees and costs from Boulden as special
26 damages.

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1 WHEREFORE, the Dismans pray for judgment against Boulden, DOES I through X and
2 ROE BUSINESS ENTITIES XI through XX, and each of them, as follows:

- 3 1. For damages in excess of \$15,000.00, plus all applicable interest thereon;
- 4 2. For an award of attorney's fees and costs of litigation; and
- 5 3. For any and all such other relief as the Court deems just and proper.

6 DATED this 26th day of September, 2017.

7 FIDELITY NATIONAL LAW GROUP

8
9 
10 CHRISTINA H. WANG, ESQ.
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12 8363 W. Sunset Road, Suite 120
13 Las Vegas, Nevada 89113
14 *Attorneys for Counter-Defendants/Cross-*
15 *Claimants Robert Z. Disman and*
16 *Yvonne A. Disman*

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Richard E. Haskin, Esq.
Timothy P. Elson, Esq.
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*Attorneys for Defendants/Counter-
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Allen Lytle, Trustees of The Lytle Trust*

Daniel T. Foley, Esq.
Foley & Oakes, PC
626 S. 8th Street
Las Vegas, Nevada 89101
*Attorneys for Plaintiffs Marjorie B.
Boulden, Trustee of The Marjorie B.
Boulden Trust, amended and restated
dated July 17, 1996; and Linda Lamothe
and Jacques Lamothe, Trustees of the
Jacques and Linda Lamothe Living Trust*

DATED: 9/26/17


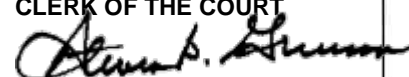

An employee of Fidelity National Law Group

EXHIBIT H TO
DOCKETING
STATEMENT



NEOJ
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Nevada State Bar # 11592
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Attorneys for Defendants
TRUDI LEE LYTLE, JOHN ALLEN LYTLE,
& THE LYTLE TRUST

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants.

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

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

NOTICE IS HEREBY GIVEN that on the 25th day of July, 2017, an ORDER GRANTING
MOTION TO ALTER OR AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW was
entered in the above-entitled matter, a copy of which is attached hereto.

DATED: July 25, 2017

GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP

By: /s/ Richard E. Haskin

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

CERTIFICATE OF MAILING

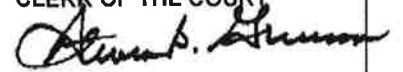
The undersigned, an employee of the law firm of GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP, hereby certifies that on July 25, 2017, she served a copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING MOTION TO ALTER OR AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW** by electronic service through the Regional Justice Center for Clark County, Nevada's ECF System:

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

Attorneys for Plaintiffs **MARJORIE BOULDEN, TRUSTEE OF THE MARJORIE B. BOULDEN TRUST, ETAL.**

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


An employee of
Gibbs Giden Locher Turner
Senet & Wittbrodt LLP



ORDR

Richard E. Haskin, Esq.
Nevada State Bar # 11592
Timothy P. Elson, Esq.
Nevada State Bar # 11559

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiff,

v.

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

Defendants.

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

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

Hearing: June 29, 2017

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

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

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

10 FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

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

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

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

///

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

1. The Association is a “limited purpose association” as referenced in NRS 116.1201(2).
2. As a limited purpose association, NRS 116.3117 is not applicable to the Association.
3. As a result of the Rosemere LPA Litigation, the Amended CC&Rs were judicially declared to have been improperly adopted and recorded, the Amended CC&Rs are invalid and have no force and effect and were declared void ab initio.

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

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

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

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

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

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

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

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

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

12 **ORDER**

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

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

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

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

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

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

28 ///

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

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

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

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

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

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13 DATED this 19th day of July 2017

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DISTRICT COURT JUDGE

Submitted by:

FOLEY & OAKES, PC

Daniel T. Foley, Esq.

626 S. 8th St.

Las Vegas, Nevada 89101

Attorney for Plaintiffs

Approved as to form:

Richard E. Haskin, Esq.

Gibbs Giden Locker Turner Senet & Wittbrodt LLP

1140 N. Town Center Dr., Ste. 300

Las Vegas, Nevada 89144

Attorney for Defendants

EXHIBIT I TO
DOCKETING
STATEMENT

DISTRICT COURT CIVIL COVER SHEET

County, Nevada

Case No.

(Assigned by Clerk's Office)

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

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

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

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

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

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

Trudi Lee Lytle

John Allen Lytle

Attorney (name/address/phone):

Daniel T. Foley

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

702-384-2070

Attorney (name/address/phone):

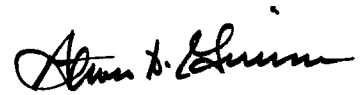
II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types****Real Property****Landlord/Tenant**☐ Unlawful Detainer☐ Other Landlord/Tenant**Title to Property**☐ Judicial Foreclosure☒ Other Title to Property**Other Real Property**☐ Condemnation/Eminent Domain☐ Other Real Property**Negligence**☐ Auto☐ Premises Liability☐ Other Negligence**Malpractice**☐ Medical/Dental☐ Legal☐ Accounting☐ Other Malpractice**Torts****Other Torts**☐ Product Liability☐ Intentional Misconduct☐ Employment Tort☐ Insurance Tort☐ Other Tort**Probate****Probate** (select case type and estate value)☐ Summary Administration☐ General Administration☐ Special Administration☐ Set Aside☐ Trust/Conservatorship☐ Other Probate**Estate Value**☐ Over \$200,000☐ Between \$100,000 and \$200,000☐ Under \$100,000 or Unknown☐ Under \$2,500**Construction Defect & Contract****Construction Defect**☐ Chapter 40☐ Other Construction Defect**Contract Case**☐ Uniform Commercial Code☐ Building and Construction☐ Insurance Carrier☐ Commercial Instrument☐ Collection of Accounts☐ Employment Contract☐ Other Contract**Judicial Review/Appeal****Judicial Review**☐ Foreclosure Mediation Case☐ Petition to Seal Records☐ Mental Competency**Nevada State Agency Appeal**☐ Department of Motor Vehicle☐ Worker's Compensation☐ Other Nevada State Agency**Appeal Other**☐ Appeal from Lower Court☐ Other Judicial Review/Appeal**Civil Writ****Civil Writ**☐ Writ of Habeas Corpus☐ Writ of Mandamus☐ Writ of Quo Warrant☐ Writ of Prohibition☐ Other Civil Writ**Other Civil Filing****Other Civil Filing**☐ Compromise of Minor's Claim☐ Foreign Judgment☐ Other Civil Matters

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

12/7/16
Date

Signature of initiating party or representative

See other side for family-related case filings.



CLERK OF THE COURT

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiff,)

v.)

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

Defendants.)

Case No. A-16-747800-C

Dept. No.

XVI

COMPLAINT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6
7 **SECOND CAUSE OF ACTION**
 (Injunction, All Plaintiffs)

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

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

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

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

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

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

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

19
20 **THIRD CAUSE OF ACTION**
 (Quiet Title, All Plaintiffs)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 from selling, attempting to sell, or disposing of the Boulden Property and the Lamothe Property.
2 Further, the Temporary Restraining Order should strike the Abstracts of Judgment;

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

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

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

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

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

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

22 DATED this 8th day of December 2016.

23 Respectfully Submitted,

24 FOLEY & OAKES, PC

25 /s/Daniel T. Foley

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

IAFD
DANIEL T. FOLEY, ESQ.
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Email: dan@foleyoakes.com
Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiff,)

Case No.)

Dept. No.)

v.)

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

Defendants.)

INITIAL APPEARANCE FEE DISCLOSURE

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

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

///

///

///

1 DATED this 8th day of December 2016.

2 FOLEY & OAKES, PC

3 /s/Daniel T. Foley

4 Daniel T. Foley, Esq.
5 626 So. 8th Street
6 Las Vegas, Nevada 89101
7 Attorneys for Petitioner
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